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ANNEXURE A

GOVERNANCE COMMITTEE

RECOMMENDATIONS FOR CHANGES TO THE CONSTITUTION

MAY 2025

EXPLANATORY MEMORANDUM

Responsibility of the Governance Committee

The Charter of the Governance Committee (“Committee”) of the Board of Directors (“Board”) charges the Committee with the responsibility for providing the Board with advice and guidance on, among other things, ensuring that the Constitution of First National Group of Independent Real Estate Agents Ltd (“Company”) is in keeping with the requirements of the membership (“Network”) and serves to enhance the objectives and operation of the Network.

Constitution

The Constitution is a legal agreement required by the Corporations Act which sets out the fundamental rules related to corporate governance, business activities, rights and obligations of members and structures under which the Company operates. The current Constitution is the successor to the original Memorandum and Articles of Association which was written at the time of the Company’s incorporation in 1981. Since that time the document has been amended on a number of occasions to reflect changes in the requirements of the Company or its Members.

Amendments to the Constitution

The Constitution may be amended by the passing of a Special Resolution (75%) by Members, present or by proxy, at a General Meeting of the Company.

Proposed Recommendations

In considering the matters or issues brought before it, the role of the Committee has been to endeavour to align with the strategic direction of the Company and to remove areas of potential ambiguity or uncertainty whilst seeking to enhance the governance regime.

As the Company expands and develops, the Committee is keen to ensure that the Constitution continues to evolve to reflect the values and expectations of members; to ensure the provisions within the Constitution are clearly understood by all members; and, to ensure the Constitution provides a consistent basis for stability in keeping with the highest of professional standards.

During 2024 the Governance Committee met to discuss a range of issues submitted by members. Following consideration by the Board at its November 2024 meeting, the Governance Committee circulated its proposals for changes to the Constitution to all Regional Councils for their review and

input. The responses received from Regional Councils were discussed at length by the Governance Committee as a consequence of which the following amended recommendations to change the Constitution were submitted to and approved by the Board to be put before the Members.

1. Authorised Representatives

Background

As most Members are companies or partnerships, for the avoidance of doubt as to who has the authority to act on behalf of the Member, the Constitution currently requires each Member to appoint a Representative being *the current holder of a Real Estate Licence and being either a director or partner of the Member or a full-time employee of the Member.*

The Representative has the authority to:

- (a) Speak
- (b) Vote; and
- (c) Hold office

on behalf of the Member.

Proposal

The proposal submitted to the Committee was that only owners or directors be permitted to be authorised representatives, not employees. The view expressed to the Committee was that only owners or directors (ie those with 'skin in the game') should have the right to vote on matters impacting Members.

Discussion

The crux of the issue for the Committee was whether an employee appointed as a Representative ("Employee Representative") can be appointed to the Board of Directors.

The Committee felt it was desirable for Employee Representatives to be appointed to Regional Councils and to be able to speak and vote on behalf of their Member if authorised by the Principals of the Member to do so, and that it should be encouraged that employees participate at Regional Council to expand the knowledge and ideas feeding back into the NSO. The Committee agreed that only Principals (directors and owners of Members) should be eligible for appointment to the Board of Directors as that is the body that actually makes decisions impacting the Members. Regional Councils provide feedback and recommendations but ultimately it is the Board which makes decisions.

The Committee was also of the opinion that there should be no requirement for the Employee Representative to either be a full-time employee of the Member or be the holder of a Real Estate Licence. If this person is appointed by the Principals of the Member to be their Representative, that should be sufficient, particularly as this person would not be eligible for appointment to the Board. Nevertheless, the Representative should have an association with the Member and whilst they need not hold a real estate licence, they should have at least 4 years' experience working in real estate.

To identify the different categories of Representative and ensure that only Principals (directors or beneficial owners) are appointed to the Board, the Representatives will be identified as either Member Representatives or Principal Representatives.

The Committee agreed that the number of Member Representatives should be limited to a maximum of 2 on each Regional Council.

Recommendations

1.1 That the Constitution be amended to provide that:

- (a) All Members be required to appoint a Representative being either a **Principal Representative** or a **Member Representative**.
- (b) A **Principal Representative** is defined to be a person over the age of 18 years who is appointed by a Member to be its Representative and who is either a director or a beneficial owner of that Member and who holds a Real Estate Licence.
- (c) A **Member Representative** is defined to be a person over the age of 18 years who is appointed by a Member to be its Representative who is not a Principal Representative of that Member but is an employee and who has at least 4 years' experience working in real estate.
- (d) Only **Principal Representatives** shall be eligible to be elected to be Chair or Vice Chair of Regional Councils.
- (e) Only **Principal Representatives** shall be eligible to be elected to be a Director of the Company (provided that this restriction does not apply to Board Appointed Directors).
- (f) There shall be limit of 2 **Member Representatives** on any Regional Council.

1.2 That the Constitution be amended to provide that a Member Representative need not be a full-time employee of a Member and need not be the current holder of a Real Estate Licence.

2. Board Appointed Directors

Background

The Constitution provides that the Board has the right to appoint up to 2 Board Appointed Directors during any Board Term but provides that a Board Appointed Director *cannot* be appointed as Chair, Vice-Chair or to the Executive Committee. The term of appointment of a Board Appointed Director is 1 year but the Director may be reappointed.

The Charter of the Executive Committee empowers it to act on behalf of the Board between meetings of the Board and delegates it specific authority in relation to the CEO.

Proposal

It was proposed that:

- (a) a Board Appointed Director be eligible to be elected to the position of Chair, Vice-Chair or to the Executive Committee if so determined by the Board;
- (b) the term of appointment of a Board Appointed Director be 2 years (i.e. the same as a Member elected director).

Discussion

To be appointed to one of the officeholder positions, a Board Appointed Director would need to be so appointed by a majority of Member Elected Directors and accordingly the Committee felt that there was no reason that a Board Appointed Director should not be Chair, Vice-Chair or appointed to the Executive Committee if this was the will of the Board.

The number of Member Elected Directors is 5, compared to a maximum of 2 Board Appointed Directors. Accordingly if the Member Elected Directors determine that it would be in the best interests of the company to appoint a Board Appointed Director to one of the nominated positions, there should be no impediment to doing so. The Board Appointed Directors are always subject to the votes of the Member Elected Directors.

There was discussion on the possibility in the future of having a Chair who may be highly desirable whilst not necessarily being a Member and that might be in the best interest of the Network. That person would need to be a Board Appointed Director.

It was put forward that all directors should have the same term and that a Board Appointed Director may be prejudiced in providing contrary input if they felt their term might not be renewed. After consideration the Committee formed the view that the term of appointment of a Board Appointed Director should be the same as for a Member Elected Director.

Recommendations

- 2.1 That the Constitution be amended to provide that a Board Appointed Director will have the right to occupy the positions of Chair, Vice-Chair of the Board of Directors or Executive Member or Alternate Executive Member on the Board of Directors.
- 2.2 That the Constitution be amended to provide that the term of appointment of a Board Appointed Director be the same as a Member Elected Director (i.e.2 years).

3. Regional Council Officebearer Positions

Background

Under the Constitution, the Members of a Regional Council appoint their Chair, Vice-Chair and one of those two to be Director of the Company. Where a Region has less than 20 members (currently SANT and WA), all Members in the Region elect these officebearers. The position is different where there is a Continuing Director. A Continuing Director will retain their position during the term of their directorship.

Proposal

That Regional Councils cease to appoint their Officebearers and that the Officebearers of Regional Councils be elected by the Members of that Region.

Discussion

The Committee was of the view that:

1. A vote by all members would make it less likely that someone was 'selected' to come onto the Board;
2. It would remove the "I'm next" issue;
3. The candidate would need to show their skill in communication, persuasion and politics to sway the vote;
4. The electronic tools we have at our disposal would make this a simple enough process; and
5. The fact everyone gets a vote would give the member 'ownership' of the appointment.

There was some concern that there is the potential for the process to end up in a popularity contest; for single issue advocates to be voted in and for unsuccessful candidates to become disaffected. Overall the Committee felt that the advantages greatly outweighed any potential downside and that it was important for the Members to be engaged in the appointment of their Officebearers.

Adoption of this Recommendation would remove the provisions for small Regions.

Recommendation

- 3.1 That the Constitution be amended to provide that in the event there is more than 1 nomination for an Officebearer position on a Regional Council, all Members in the Region shall elect, as may be required, one Member of the Regional Council as Chair and another as Vice-Chair and shall then appoint either the Chair or Vice-Chair as Director of the Company subject to the requirement that the Director must be a Member Principal (director or owner).

4. Executive Committee Membership

Background

The Constitution currently states that:

"The Board of Directors shall elect one of their number to the position of Executive Member, who with the Chair and Vice-Chair shall comprise the Executive Committee of the Board of Directors and can be held by a Director from any Region who has served a minimum of 12 months on the Board of Directors."

What is not clear is when that 12-month period needs to have occurred. Could it have been many years prior? Need it be 12 continuous months? What is the reason for its inclusion?

Proposal

That the prerequisite period of 12 months be clarified.

Discussion

The Committee was uncertain as to the intent of this provision and whether the intention was for someone with 12 months recent experience on the Board or someone with just a cumulative period of 12 months be it recent or otherwise.

Then there was concern that being too prescriptive might have uncertain consequences.

Recommendation

That it be a requirement that a Director appointed as the Executive Member shall have served 12 continuous months on the Board within the preceding 36 months.

5. Board Chair and Vice-Chair

Background

The Constitution currently provides that as a prerequisite to being appointed as Chair or Vice-Chair, a Director must have served a minimum of 12 months on the Board.

- (c) The positions of Chairman and Vice-Chairman can be held by a Director from any Region who has served a minimum of 12 months on the Board of Directors.*

Having regard to the considerations in the previous Recommendation, the Committee formed the view that this clause should be consistently amended to provide that to be appointed as Chair or Vice Chair a Director needs to have served 12 continuous months on the Board within the preceding 36 months.

Recommendation

It is recommended that clause 81(d) of the Constitution be amended to read:

- (d) The positions of Chairman and Vice-Chairman can be held by a Director from any Region who has served a minimum of 12 continuous months on the Board of Directors within the preceding 36 months.

6. Regional Council Officebearer positions

Background

The Committee noted that there is no requirement that the Chair or Vice-Chair of a Regional Council need serve any minimum time on the Council before becoming eligible to fill one of these positions.

Discussion

The Committee was of the view that to maintain consistency the positions of Chair and Vice-Chair of a Regional Council should also require that the appointee have served a minimum of 12 continuous months on the Regional Council within the preceding 36 months prior to appointment to these positions.

However, if there are no persons on the Council that meet these criteria then the next longest serving Principal Members of the Council should assume those positions.

The Committee acknowledged that prior experience and knowledge would be a significant advantage to assuming these positions.

Recommendation

The Committee determined that it would recommend to the Board that the Constitution be further amended by the addition of the following clause 99(e):

- (e) *For the purposes of this clause, a Member of the Regional Council must the positions of Chair and Vice-Chair can only be held by Principal Members of the Regional Council who have served a minimum of 12 continuous months on the Regional Council within the preceding thirty-six (36) months ("Principal Member") to be eligible as Chair or Vice-Chair. or, in the event In the event that there are no such Principal Members, the Chair or Vice-Chair shall be then the longest serving Principal Members on the Regional Council.*

7. Gender neutral language

In keeping with First National's policies, the Board requested that the Constitution be amended to include non-gender specific language. Accordingly, Chairman has been amended to "Chair" and "Vice-Chairman" has been amended to "Vice-Chair". Words such as "he", "him" or "his" have been amended to "they", "them" or "their" as appropriate.

I commend the proposed changes to Members.



Kelly Donaldson
Chair