

# **BY-LAWS OF TOY SHIPPERS ASSOCIATION, INC. (TOYSA)**

## **ARTICLE I - NAME**

The name of the Association is Toy Shippers Association, Inc.

## **ARTICLE II - PURPOSE**

The purposes for which the Association is formed are to promote and develop increased efficiency and economy in the distribution of its members' shipments; to foster the trade, commerce and interests of its members; to encourage and promote harmony and cooperation among its members and generally to negotiate ocean transportation rates and provide services for the shipment of products between foreign countries and the United States. The Association is not formed for pecuniary or financial gain, and no part of the assets, income, or profit of the association is distributed to, or inures to the benefit of, its directors or officers.

## **ARTICLE III - MEMBERSHIP**

Sec. 1 Any company having a place of business in North America engaged in the importation and manufacture, sale or distribution of toys or other products designed for amusement, diversion or recreation, including promotional products, may become a member of this Association. Membership shall be restricted to the beneficial owners of the merchandise being shipped. The Board of Directors shall have complete discretion to determine whether a company meets these standards for eligibility, provided that members of the Toy Industry Association, Juvenile Products Manufacturers Association and Promotional Products Association International are presumed to be qualified. Qualified companies shall become members upon their signing an application for membership in a form prepared by the Secretary and upon paying the first year's dues.

There shall be a separate class of members designated as Trial Members. This class of Membership shall be open to otherwise qualified companies that do not wish to commit to long-term membership in the Association until they have had the opportunity to make trial shipments with the Association to gauge the benefits of long-term membership. Trial Members shall not be required to pay dues or FEU assessments on their trial shipments. Trial shipments shall not be entitled to refunds and Trial Members shall have no vote in Association affairs. Trial Memberships shall not exceed three (3) months in duration.

Sec. 2 The rights and privileges of a member shall not be assignable.

Sec. 3 Each member shall have voting rights as outlined in Article VI, Section 6 of these Bylaws.

Sec. 4 **Resignation.** Any member may withdraw from the Association after fulfilling all obligations to it by giving written notice of such intention to the Secretary, which notice shall be presented to the Board of Directors or executive committee by the Secretary at the first meeting after its receipt.

Sec. 5 **Suspension or Expulsion for Cause.** A member may be suspended for a period or expelled for cause for reasons such as, but not limited to; violation of any of the by-laws or rules of the Association, failure to participate in at least one TOYSA Program in a calendar year, or for conduct prejudicial to the best interests of the Association. Suspension or expulsion shall be by a two-thirds vote of the Board of Directors, provided that a statement of the charges shall have been mailed by registered mail to the member at its last recorded address at least fifteen (15) days before final action is taken thereon. This statement shall be accompanied by a notice of the time and place where the Board of Directors is to meet for such purpose. The member shall be given an opportunity to present a defense to the Board at that time and place.

Sec. 6 **Agreements.** No member shall, by virtue of its membership in the Association, be entitled to review, photocopy, electronically retain or otherwise come into possession of any of the terms and/or conditions deemed confidential by the Finance Committee of any Agreement (as defined in Article IX Section 4 of these Bylaws). Members of the Association shall be entitled to review, photocopy, electronically retain or otherwise come into possession of only those terms and/or conditions of any Agreement directly applicable to the member's shipping operations after such terms or conditions have been accepted by the Association and the Agreement has been entered into and delivered to the Association.

## **ARTICLE IV - FISCAL YEAR**

The fiscal year of the Association shall begin on the first day of January and end on the last day of December in each year.

## **ARTICLE IV(A) - REFUNDS**

Sec.1 **Income for the Benefit of Members.** As indicated in Article II of TOYSA's Bylaws, this Association was formed solely for the benefit of its members. The Association was not formed for pecuniary benefit or financial gain, and no part of its assets, income, or profits inures to the personal benefit of its directors or officers. The dues and assessments received from the members as well as any lawful refunds, incentive projects or other income received from third parties constitute a fund which TOYSA, as an agent, is obligated to expend for the benefit of its members. It is, and always has been, TOYSA's intention that any funds received in excess of the required operating needs of the Association should be refunded to members in good standing within a reasonable period of time following the year end. This amount will be determined annually by the Board.

Sec. 2 **Refunds.** Any funds remaining at the end of the fiscal year from dues, fees, forty-foot equivalent unit (FEU) assessments or other income will be disposed by the Board in such manner as to further the common business interests of the members. The Association shall refund, within a reasonable period of time after the year end but no later than December 31 of the

following year, to all members in good standing at that time, any funds which the Board determines are in excess of the Association's operating requirements. A member will be considered to be in good standing if such member's annual dues and assessments are current as of the December 31 date referred to in the preceding sentence. If a member is not current as of the December 31 refund date, the Board may use a portion of the member's refund entitlement to bring its annual dues and assessments current after which the remainder will be refunded to the member.

**Sec. 3 Obligation to Cash Refund Checks.** All refund checks issued by TOYSA must be cashed by the members within one hundred and eighty days (180) after their issuance. Refund checks not cashed within this period of time shall be void and the funds shall be returned to TOYSA's account to be used for TOYSA's operating needs and future refunds to the general membership.

## **ARTICLE V - DUES**

**Sec. 1 Annual Dues.** Each new member of the Association shall have the option of paying an annual dues assessment in the amount of fifty dollars (\$50.00), or a five-year dues assessment of two hundred dollars (\$200.00), at the time of application, plus a fee per FEU shipped through the Association as established by the Board.

**Sec. 2 Payment of Annual Dues and FEU Assessments.** Dues and FEU assessments shall be payable upon receipt of invoices of the Association.

**Sec. 3 Default and Termination of Membership.** Failure of any member to pay the FEU assessments or annual dues within sixty (60) days after mailing of an invoice shall be reported to the Board which may thereupon declare such member delinquent, and there shall be mailed to such member a bill covering the unpaid FEU assessments or dues. If such FEU assessment or dues remain unpaid for a period of fifteen (15) days after the mailing of such a bill, the Board may in its discretion expel the delinquent member from the membership. Expulsion shall not affect the existing liabilities of the expelled member to the Association.

## **ARTICLE VI - MEETINGS**

**Sec. 1 Annual Meeting.** There shall be an annual meeting of the members for the election of members of the Board of Directors and for receiving the annual reports of officers, directors, and committees, and the transaction of other business, to be held within two hundred fifty (250) days of the fiscal year end.

Notices of the meeting, signed by the Secretary, shall be mailed, except as herein or by statute otherwise provided, to the latest recorded address of each member at least ten (10) days and not more than (50) days before the time appointed for the meeting. All notices of meetings shall set forth the place, date, time and purpose of the meeting.

**Sec. 2 Special Meetings.** Special meetings may be called by the Board of Directors at their discretion. Upon the written request of 10% of the members, the Board of Directors shall call a

special meeting to consider a specific subject. Notice for any special meeting is to be given in the same manner as for the annual meeting. No business other than that specified in the notice of meeting shall be transacted at any special meeting of the members of the Association.

Sec. 3 **Waiver.** Notwithstanding the provisions of any of the foregoing sections, a meeting of the members of this Association may be held at any time and at any place within the State of New York, or any other state, and any action may be taken thereat, if notice and lapse is waived in writing by every member having the right to vote at the meeting.

Sec. 4 **Quorum.** The presence in person or by proxy of a majority of the members of the Association entitled to vote shall be necessary to constitute a quorum for the transaction of business.

Sec. 5 **Inspectors of Election.** Two inspectors of election shall be chosen by vote of the members at the first Annual Meeting and at each subsequent Annual Meeting.

Sec. 6 **Voting.** Any member company may be represented at any Association meeting by a member of its staff designated by it for that purpose. The number of votes assigned to each member company is to be determined by averaging the company's actual participation in the Association in the previous fiscal year and their committed participation for the current fiscal year. Such figure is to be calculated according to FEU's. The number of votes assigned to any individual member company shall not exceed ten percent of the total membership votes. All questions regarding the manner of deciding which is not otherwise prescribed shall be decided by majority vote of the Board of Directors.

Sec. 7 **Proxies.** Every member of the Association entitled to vote at any meeting thereof may vote in proxy. A proxy shall be in writing and revocable at the pleasure of the member executing it. Unless the duration of the proxy is specified, it shall be invalid after eleven months from the date of the execution.

Sec. 8 **Order of Business.** The order of business shall be as follows at all the meetings of the Association and Board of Directors:

1. Calling of the roll.
2. Proof of notice of meeting or waiver of notice.
3. Reading of the minutes.
4. Receiving communications.
5. Election of officers and new members.
6. Reports of officers.
7. Reports of committee.
8. Unfinished business.
9. New Business.

Any question as to priority of business shall be decided by the chair without debate.

## **ARTICLE VII - DIRECTORS**

Sec. 1 The property, affairs, business and concerns of the Association shall be vested in a Board of Directors, consisting of no less than four and no more than seven Directors, the exact number to be determined from time to time by the members of the Association provided that, during the period between annual meetings of the Members, the Board of Directors may establish the exact number of Directors until the next such Members' meeting. The Directors shall be selected from the general membership of the Association.

**Sec. 2 Election of Directors and Terms.** The Board shall be composed of three classes of voting Directors serving staggered terms. Classes shall be determined by the year of election to the Board. Insofar as possible, each class shall be composed of an equal number of Directors. At each Annual Meeting of the Association one class of Directors shall be elected to replace the Directors whose terms expire that year. Directors shall be elected to hold office for a term of three years. All Directors shall take office immediately after their election. There shall be no more than one representative of a member company serving on the Board of Directors at any given time.

The Board shall provide nominations for full term vacancies of the Board each year. At least four weeks prior to the Annual Meeting, the Secretary shall mail to each member of the Association a statement of the Board nominations for each open Board position, and advise the membership of their rights pursuant to these by-laws. Additional nominations from the membership for full-term directors and short-term directors may be made only in writing signed by not less than 20% of the membership of the Association and submitted to the Chairman at least 145 days before the Annual Meeting. Notice thereof shall promptly be sent by the Secretary to all members. If there are more nominations for full or short term directorships than there are vacancies, an election shall be held at the Annual Meeting by written ballot for each directorship and the person or persons nominated who receive the highest number of votes shall be declared elected to fill such vacancies.

**Sec. 3 Duties of Directors.** The Board of Directors shall (1) hold meetings at such times and places as they think proper; (2) suspend or expel members by ballot; (3) appoint committees on particular subjects from the members of the Board, or from other members of the Association; (4) dispose of the affairs of the Association; (5) carry on correspondence and communicate with other Associations interested in the shipping of toys or other products designed for amusement, diversion or recreation, including promotional products; (6) devise and carry into execution such other measures as they deem proper and expedient to promote the objects of the Association and to best protect the interest and welfare of the members.

**Sec. 4 Appointment of a Managing Director.** The Board of Directors shall designate a Managing Director, who shall serve until withdrawal or removal by the Board of Directors. The Managing Director may not be a representative or employee of any Association member. The Managing Director shall manage the daily affairs of the Association, and shall have such authority and perform such duties in the management of the Association as may be provided in these by-laws, or as may be determined by resolution of the Board of Directors not inconsistent with these by-laws.

**Sec. 5 Appointment of a Secretary.** The Board of Directors shall designate a Secretary, who need not be a member of the Board, who shall serve until withdrawal or removal by the Board of Directors. The Secretary shall keep a full and complete record of the proceedings of all meetings and shall preserve all documents, reports, and communications connected with the business of the Association, send out all notices, and perform such other duties as may be provided in these by-laws, or as may be determined by resolution of the Board of directors not inconsistent with these by-laws.

**Sec. 6 Meeting of Board.** Regular meetings of the Board of Directors shall be held annually, the time to be fixed by the Board at its first meeting of the year. Notice of the meeting, signed by the secretary, shall be mailed to the last recorded address of each member at least ten (10) days before the time appointed for the meeting. The Chairman may, when he deems necessary, or the secretary shall, at the request in writing of five members of the Board, issue a call for a special meeting of the Board, and only five (5) days' notice shall be required for such special meetings.

**Sec. 7 Quorum.** Four (4) members of the Board of Directors shall constitute a quorum for the transaction of business. In the absence of the Chairman and Vice-Chairman, the quorum present may choose a chairman for the meeting. If a quorum is not present, a less number may adjourn the meeting to a later day, not more than 30 days later.

**Sec. 8 Absence.** Should any Member of the Board of Directors absent himself from three consecutive meetings of the Board without adequate excuse or without communicating in writing the reason for his absences to the Board prior to each meeting, the Board may declare that Board seat vacant and the Chairman may forthwith proceed to fill the vacancy. The person so chosen shall hold office until the next Annual Meeting or until his successor shall have been chosen at a special meeting of the Members.

**Sec. 9 Vacancies.** Whenever any vacancy occurs in the Board of Directors by death, resignation or otherwise, it shall be filled without undue delay by a majority vote by ballot of the remaining members of the Board at a special meeting which shall be called for that purpose. The election shall be held within 30 days after the occurrence of the vacancy. The person so chosen shall hold office until the next Annual Meeting or until his successor shall have been chosen at a special meeting of the members.

**Sec. 10 Removal of Directors.** Any one or more of the directors may be removed either with or without cause, at any time, by a vote of at least 51% of the members present at any special meeting called for that purpose.

**Sec. 11 Resignation of Directors.** Directors shall be required to resign their seat if employment is terminated with a current member Company of the Association or if their employer ceases to be a member of the Association. If a Director leaves a current member of the Association to work for another company that is also a member of the Association, the Board shall have the option of refusing to accept that Director's resignation and he or she shall continue to serve on the Board.

**Sec. 12 Telephonic Participation.** Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors, or any committee, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

**Sec. 13 Written Consents.** Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board of Directors or any committee thereof may be taken without a meeting, if all Members of the board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or committee.

## **ARTICLE VIII - OFFICERS**

**Sec. 1 Numbers.** The officers of this Association shall be a Chairman, a Vice-Chairman, and a Treasurer.

**Sec. 2 Method of Election.** Officers shall be elected by the Board of Directors from the members of the Board, with the exception of the Secretary, who need not be a Board member. The term of office for officers shall be one year. A quorum of the Board shall be necessary to constitute an election. All officers shall take office immediately after their election. As far as possible, sections or divisions of the trade as classified by the Board shall be entitled to representation on of the Board of Directors.

**Sec.3 Duty of Officers.** The duties and powers of the officers of the Association shall be as follows:

**Chairman.** The Chairman shall preside at all meetings and shall be ex-officio Chairman of the Executive Committee.

**Vice-Chairman.** The Vice-Chairman shall in order of seniority as specified by the Executive Committee, assist the Chairman in the discharge of his or her duties and preside in his or her absence.

**Treasurer.** The Treasurer shall receive reports from the Managing Director of the collection of all moneys and deposits of same in the name of the Association in such bank as may be approved by the Board of Directors. At the Annual Meeting, the Treasurer shall submit a full report annually in writing of the financial condition of the association, which shall previously have been audited and approved by the Board of Directors.

**Sec. 4 Vacancies.** All vacancies in any office shall be filled by the Board of Directors without undue delay, at its regular meeting, or at a meeting specially called for that purpose.

**Sec. 5 Compensation of Officers.** The officers shall receive such salary or compensation as the Board of Directors determines.

**Sec. 6 Contracts of Employment.** Any contract of employment with the Association may be signed on behalf of the Association by any director so designated by a majority of the Board of Directors, except that no director may sign a contract on behalf of the Association for his or her own employment.

## **ARTICLE IX - COMMITTEES**

**Sec. 1 Designation of Committees.** The Board of Directors may designate one or more committees, each committee to consist of two or more representatives of members of the Association, which shall have and may exercise powers to the extent provided in the resolution. Such committee or committees shall have such name or names as may be determined from time to time by the Board of Directors.

**Sec. 2 Committee Quorum.** A majority of any committee of the Association shall constitute a quorum for the transaction of business, unless any committee shall by a majority vote of its entire membership decide otherwise.

**Sec. 3 Committee Vacancies.** The various committees shall have the power to fill vacancies in their membership.

**Sec. 4 Finance Committee.** The Board of Directors may establish a Finance Committee comprised of three (3) members of the Board elected by the Board of Directors each year. When established, the Finance Committee shall review all of the terms and conditions of all proposed contracts or other commitments binding on the Association and/or the members of the Association including, but not limited to, all contracts for the carriage of goods by ocean vessel negotiated by any agent of the Association (an "Agreement"). The Finance Committee shall have no power to enter into or deliver any Agreements and shall be required to submit to the Board the Finance Committee's recommendations for approval of any Agreement. The Board shall be entitled to rely on the judgment and recommendations of the Finance Committee. The Finance Committee may be required to report to the Board on the progress of negotiations and other matters without disclosing any confidential material. The final approval of the Board and the Board's direction for execution of any Agreement by the appropriate officer(s) of the Association shall be required to bind the Association to any Agreement. By a director's acceptance of his or her election to the Finance Committee, such director shall be deemed to have accepted any and all additional and special requirements and/or obligations of service as the Board may establish by resolution from time to time including, but not limited to, any requirements or obligations to keep strictly confidential any and all of the contents of the negotiations of any Agreement including without limitation any proposed terms and conditions thereof. Any member of the Finance Committee may resign, or may be removed from service on the Finance Committee, as and in the manner set forth in these Bylaws for the resignation or removal of directors.

## **ARTICLE X - ASSOCIATION ACTIVITIES**

**Sec. 1** The primary purpose and activity of the Association shall be to negotiate ocean transportation rates and to provide services for the shipment of products between foreign countries and the United States. In addition, the Association may undertake such other activities germane to the common business interests of the Association's members related to transportation, customs and trade regulations as the members and/or the Board of Directors deem appropriate.

**Sec. 2** All transportation and service rate negotiations shall be conducted exclusively by legal counsel and either the Managing Director or one or more Association officers, none of whom is also an employee of a member. Information submitted by any Association member for the purpose of assisting in the transportation and service rate negotiations will be treated as confidential, and the Association shall not disclose which members are purchasing transportation services under a particular contract. Association members are expressly prohibited from negotiating transportation or service rates on behalf of the Association or from engaging in any form of collective rate making or rate discussions.

**Sec. 3** Association members are not obligated to ship their freight with carriers with whom the Association has negotiated a rate agreement. Members are free to use other services for their shipping needs or to negotiate directly with carriers. Association members are free to use whichever freight consolidation service they choose.

**Sec. 4** As soon as possible and in no circumstances more than ten (10) business days after a determination by the Board of Directors that the making of a rate agreement with a particular carrier or conference of ocean carriers is appropriate, the members desiring to use the services of the carrier or conference shall enter into an agreement with the Association. Through such agreement, the member shall commit to: (a) use the services of the ocean carrier or conference with whom the Association has negotiated a rate agreement to ship an annual minimum quantity of goods; and (2) pay to the Association an assessment fee for each container shipped with an ocean carrier or conference with whom the Association has negotiated a rate agreement. The assessment fee shall be determined by the Board of Directors.

**Sec. 5** When an Association member ships freight by a carrier or conference with whom the Association has negotiated a transportation rate, the Association has to be included as a notify party on the bill of lading. The invoice for the shipping charges shall be sent by the ocean carrier to the member, and payment of the shipping charges in a timely manner is the sole responsibility of the member. The Association member will be billed separately by the Association for the administrative assessment fee as provided for in Article V Sec. 1.

**Sec. 6** It is the Association's policy that it shall not induce, encourage, or assist any member or non-member in breaching any contract with an ocean carrier. Further, at no time shall the Association or any of its members interfere with any carrier's existing contractual relations. In the event a non-member third-party under a separate service contract with a carrier is accepted for membership in the Association, such new member shall not qualify for any of the rates or

services in the Association's existing contract(s) with such carrier, until following the expiration of such separate service contract. The Association may agree with such carriers, if they concur, to establish rates for new members in the Association contracts that are identical to the rates in such separate service contracts.

## **ARTICLE XI - SEAL**

The seal of the Association shall be the one adopted by the Board of Directors, containing the legend "Toy Shippers Association, Inc."

## **ARTICLE XII - AMENDMENTS**

These by-laws may be amended, repealed, or altered in whole or in part by either a majority vote of the membership at any duly organized meeting of the Association or by majority vote of the Board of Directors at any duly organized meeting of the Board. The proposed change shall be mailed to the last recorded address of each member or each Director, as the case may be, at least ten (10) days before the time of the meeting which is to consider the change.

## **ARTICLE XIII - COMPLIANCE WITH ANTITRUST LAWS**

**Sec. 1** It is the policy of the Association to comply strictly with the letter and spirit of all federal, state and applicable international trade regulations and antitrust laws. Any activities of the Association or association-related actions of its staff, officers, directors or members which violate these regulations and laws are detrimental to the interests of the Association and are contrary to Association policy.

**Sec. 2** Implementation of the antitrust compliance policy of the Association shall include, but shall not be limited to, the following:

(a) All association members shall avoid in their activities or discussions anything outside the purview of Title 46 which might be construed as tending to: 1) raise, lower or stabilize prices, 2) allocate markets; 3) encourage boycotts; 4) foster unfair trade practices; 5) assist in monopolization; or in any other way violate federal, state or applicable international trade regulations and antitrust laws.

(b) The Association's legal counsel shall attend as many meetings of the Board of Directors and the Membership as possible. Attendance of legal counsel at other meetings shall be at the discretion of the Association's Chairman.

(c) Association members, officers, directors or employees who participate in conduct which the Board of Directors, by a two-thirds majority vote, determines to be contrary to the Association's antitrust policy shall be subject to disciplinary measures up to and including expulsion, as provided for in Article III Sec. 5.

## **ARTICLE XIV - INDEMNIFICATION**

**Sec. 1** Any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a director, officer, employee or agent of the Association, or who is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be indemnified against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action suit or proceeding, if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding had reasonable cause to believe that his conduct was unlawful.

**Sec. 2** Any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit, if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to the best interests of the Association, and except that no indemnification shall be made in respect of any claim, issued or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Association, unless, and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.

**Sec.3** To the extent that a director, officer, employee or agent of the Association has been successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to in paragraphs (a) and (b), or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

**Sec. 4** Any indemnification under paragraphs (a) and (b) (unless ordered by a court) shall be made by the Association only as authorized in the specific case, upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in paragraphs (a) or (b). Such

determination shall be made (1) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the members.

**Sec. 5** Expenses incurred in defending a civil or criminal action, suit or proceeding, may be paid by the Association in advance of the final disposition of such action or proceeding, as authorized by the Board of Directors in the specific case, upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount, unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this section.

**Sec. 6** The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any agreement, vote of members or disinterested directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent, and shall inure to the benefit of the heirs, executors and administrators of such a person.

**Sec. 7** The Association may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or who is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of Article XIV.