

## RÈGLEMENT INTÉRIEUR

## INTERNAL RULES &amp; REGULATIONS

Mise à jour le

Updated 5<sup>th</sup> October 2005 & 27<sup>th</sup> March 2006

**Article 1 Dispositions diverses**

**Article 1 General**

The present Internal Rules are intended to set down the particular conditions under which the Association operates and to define the customs and practices of the profession. In the case of a contradiction between the Articles in the Statutes and the Internal Rules, the Statutes will prevail.

All Members whether Full or Associate or MYBA Firms, are bound to comply with the rules of practice and conduct set down by the Association and to abide by the 'Protocol'.

**Article 2 Assurance professionnelle**

**Article 2 Professional Insurance**

All Members and/or MYBA Firms are required to be adequately covered by world-wide Professional Indemnity Insurance according to the minimum levels established by the Association.

**Article 3 Critères et procédures applicables aux demandes d'admission**

**Article 3 Membership applications criteria and procedures**

Membership applications from new individuals and Firms shall be submitted to the Secretary on comprehensively completed membership application forms.

All applicants shall have a clear knowledge and understanding of the Association's Statutes and 'PROTOCOL'.

All applications shall be endorsed by three sponsors; one sponsor shall be a principal of the Firm for which the applicant is working (If already a MYBA Firm) and the other two shall be Full Members who have conducted business with the applicant.

Toutes les sociétés candidates présenteront :

All applicant Firms shall present the documentation required by the Statutes

And must sign that they will comply with the MYBA Protocol

In the case of contradiction between the Articles in the Statutes and the Internal Rules, the intent of the Statutes and Internal Rules shall prevail.

The Secretary shall verify that all required conditions are satisfied and shall submit the request to the Membership Committee which shall review the candidature and make recommendations to the Board for approval or rejection. If a Membership Committee is not operating the Secretary will submit the request directly to the Board.

**Article 4 Rémunérations**

**Article 4 Remunerations**

For the purpose of clarity, the Broker acting as a Central Agent shall hereinafter be referred to as the "Agent" and the Sales or Charter Broker shall hereinafter be referred to as the "Broker".

PAYMENT OF COMMISSIONS - Sale and Charter Commissions are payable in accordance with the Terms and Conditions of the current MYBA MOA (Sale and Purchase Agreement) and the current MYBA Charter Agreement.

CHARGING OF COMMISSIONS - Members should only receive one commission in a transaction. Receiving commissions from more than one party in a transaction, unless fully declared to all parties, is unacceptable.

SURVEYORS- Members shall not receive any share of fees paid to a surveyor appointed in a Sale and Purchase transaction. By the same token, Members shall not pay a share of the commission to a Surveyor appointed in a Sale & Purchase transaction. Members are discouraged from directly appointing a surveyor. The recommended procedure is for Members to submit a list of surveyors to the Buyer who will remain solely responsible for the final choice.

MANAGEMENT FEES – Members that provide management services of any nature for a fee paid by a client should not receive any compensation by third parties unless said client's agreement has been expressly obtained.

## **Article 5 Procédures administratives**

### **Article 5 Administrative procedures**

It is recommended that all Members use the current M.Y.B.A. contract forms/agreements:

Memorandum of Agreement (MOA)

M.Y.B.A. Charter Agreement

Central Agency Agreement

It is the obligation of all Members who are responsible for signing Memoranda of Agreement (MOA) and/or Charter Agreements to fully understand the terms and conditions of the Agreements. Members are obliged to ensure that only original and current MYBA Memoranda of Agreement (MOA) and MYBA Charter Agreements with the original blue MYBA Logo on all pages are used in all transactions. Photocopies or computer-generated copies should not be accepted as they may contain modifications and/or errors that may not be immediately apparent.

#### **SALE & CHARTER MANDATES**

(Central Agency/Joint Central Agencies)

Members of the Association should obtain a clear authority to sell, charter or manage a vessel prior to embarking on any commercial sales, charter or management activity.

SALE MANDATE – (Open Listing/Agency) - An Open Listing Agreement between an Owner and an “Agent” shall be used in all cases. Proof of such an Agreement shall be made available (if requested) to another Member if a wish to share the Open Listing is expressed.

SALE & CHARTER MANDATES (Central Agency) - A Member shall not claim to have a Central Agency without a fully valid Central Agency Agreement duly signed by the Owner or the Owner's authorized representative.

SALE & CHARTER CO-BROKERAGE AGREEMENT (Open Listing/Agency) - The use of a Co-Brokerage Agreement between Members and/or between Members and non-Members is recommended in all cases. The “period of validity” of the Co-Brokerage Agreement should be clearly defined.

## **Article 6 Code de déontologie**

### **Article 6 Code of professional ethics**

TRANSMISSION OF A PURCHASE OFFER – It is the duty of an Agent, whether on a Central Agency or an Open Listing basis, to communicate to an Owner any valid offer received on a vessel.

The Association recommends that, wherever possible, a purchase offer should be accompanied by a ten per cent (10%) deposit and a signed Memorandum of Agreement or an equivalent formal commitment in writing.

However, it is generally deemed acceptable practice between Member ‘Agents’ and ‘Brokers’ to communicate any and all offers in writing, or in special circumstances, verbally to an Owner without any such deposit or formal written commitment.

CHARTER FUNDS - The Charter Funds are held by the Stakeholder and disbursed as per the MYBA Charter Agreement.

SALES DEPOSITS - Unless otherwise mutually agreed, the "Broker" (Buyer's Broker) shall hold the Deposit as the Stakeholder. Such Deposit shall be in cleared funds and evidence shall be provided to the parties concerned.

STAKEHOLDER OBLIGATIONS (SALES & CHARTER) - The Stakeholder undertakes to ensure the safety of the Buyer and/or Charterer's funds in accordance with the relevant clauses of the MYBA Agreement being used (MOA/Sale & Purchase or Charter).

DIRECT MARKETING (competition - Sales, Charter & Management) - The general principle is that an Owner should not be solicited by a 'Broker' for the specific business for which he is under contract with another "Agent" until such contract expires.

CENTRAL AGENCY - An 'Agent' has a commitment to act expediently and in the best interests of the Owner in the brokerage and charter fields and to promote the vessel in order to achieve a sale or charter under the most favourable terms acceptable to the Owner. Upon receiving a mandate from an Owner, the "Agent" generally has a duty to distribute information on the vessel to qualified brokers world-wide without delay, unless specifically instructed otherwise by the Owner.

DIRECT MARKETING TO CHARTER OR SALES CLIENTS AND CLIENT INFORMATION HANDLING - It is acknowledged that some clients may be listed by both the "Agent" and "Broker" and will therefore receive general marketing approaches from both sources. In such circumstances, should a Sale or Charter contract be entered into, the recommended procedure is for the "Agent" to check their Firm's database and to inform the "Broker" in writing if the client is already registered with the "Agent" and, if so, will continue to be marketed to, but within a generic context only. The targeted soliciting of a client by an "Agent" in these circumstances is not permissible.

It is not permissible for an "Agent" to make use of a third party "Broker's" client name and contact details if obtained directly from Sale or Charter documents and Agreements.

It is recommended that the exposure of an "Agent's" marketing material on board a Central Agency vessel is kept to a minimum for the duration of a charter to any client of a third party "Broker", even if the client has been identified as a "shared client" by the "Agent".

EXCLUSIVE AGENCY - The practice of exclusive listings is strongly discouraged.

VERBAL CENTRAL AGENCY AGREEMENTS - The practice of verbal Central Agency Agreements is discouraged.

STAFF MOBILITY - A member of staff/independent contractor (the "employee") would maintain his membership by committing in writing that he will comply with the employment guidelines

## **Article 7 Procédures disciplinaires**

LITIGES ENTRE MEMBRES – En cas de litige survenant entre membres, la procédure suivante sera appliquée :

## **Article 7 Disciplinary and Mediation Procedures**

### **COMPLAINT AGAINST A MEMBER**

If the MYBA Board of Directors receives a complaint against a Member of the Association (The Respondent) who is purported to have contravened the Protocol or to have acted unethically or unprofessionally, the Board of Directors shall investigate and examine the facts of the complaint in order to take any action as the Board of Directors may eventually decide.

Any Board Member involved in the complaint or closely associated to either party shall not be permitted to participate in any deliberations by the Board of Directors.

### **DISCIPLINARY ACTION AGAINST A MEMBER**

Any Member who has been found by the Board's decision failing to comply with the Protocol or to have acted unethically or unprofessionally may be subject to suspension or expulsion from the Association. The expulsion may include revoking the access to MYBAnet and to other tools and events operated under the guidance or control of MYBA and requiring ethical and professional behaviour.

### **Complaint Procedures**

A. Any Member who considers having a justifiable cause for complaint against another Member shall make such a request in writing to the Board of Directors and will simultaneously produce a written statement of the facts, and shall at the same time submit hard copies of all relevant documents in triplicate to the MYBA Office.

B. Within forty-five (45) days of receipt of such documents by the MYBA Office, the Board of Directors will decide on the legitimacy of such a complaint.

C. If the Board of Directors notifies the Respondent in writing that there is a legitimate complaint to answer the Respondent will have thirty (30) days in which to submit his reply with supporting documents in hard copy and in triplicate to the MYBA office.

D. The MYBA office will deliver copies of the Respondents reply and any supporting documents to the Complainant within fifteen (15) days of receipt. At the same time the Respondent will receive copies of the documents submitted by the Complainant as per A.

E. Both parties shall have thirty (30) days in which to submit a written reply after receipt of documents served by the MYBA office under D.

F. The Board of Directors will decide within thirty (30) days after receipt of replies as per E and shall serve notice of its decision in writing to both parties within ten (10) days after having taking the decision.

Note: Any Member summoned to appear before the Board of Directors shall do so save in the most exceptional circumstances.

## **Appeal Procedures**

Once the Board of Directors has completed an investigation and examination of a complaint and has found that a Member has contravened any Section of the present Internal Rules of the Association or has acted unethically or unprofessionally, any such Member shall have one calendar month as from the date of notice served by the Board of Directors to appear and justify themselves before the MYBA Board of Directors during a special hearing.

Beyond this time limit or in case the Board of Directors does not find the arguments of the Member during the hearing satisfactory, the Member's suspension or expulsion from the Association, or any other action(s) decided upon by the Board of Directors, shall be considered legitimately in force and will be notified by registered letter to the Member's address as shown on the register of the Association.

Notwithstanding the above any affected Member may appeal against the Board decision before an Extraordinary General Meeting (EGM), by written request to the President. The application for such a EGM should relate all the facts of the case, as well as the Member's defence. The President shall then call and set a date for such a EGM. Until such EGM has been held, the action(s) decided upon by the Board against the Member shall be considered suspended.

## **MEDIATION BETWEEN MEMBER FIRMS**

### **General**

Any two or more MYBA Member Firms may apply to the Association for mediation of a dispute where the parties seek an amicable settlement of their dispute.

Mediation by the Association can only take place if all parties named in the application submit to mediation on the according form (MYBA Application For Mediation Form).

Each party requesting mediation will pay an appointment fee of one thousand Euros (EUR1,000) to MYBA. This shall be refunded in full if any party to the dispute does not agree to mediate.

The MYBA Mediation Panel (hereinafter the "Mediator") will consist of one Board Member and two Full Members. The Board of Directors may appoint a single Board Member to act as Mediator if all parties agree to this. No Board Member or Full Member of the Member Firms in mediation may be part of the related MYBA Mediation Panel.

The parties to the mediation shall co-operate with each other and the Mediator in good faith and shall endeavour to comply with all requests for written submissions, evidence or attendance at meetings.

The Mediator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement. The Mediator shall be guided by the principle of objectivity, fairness and justice and shall give consideration to *inter alia* the rights and obligations of the parties, the usages of the yacht broking trade and the circumstances surrounding the dispute.

The Mediator shall conduct the mediation in such manner as it considers appropriate in light of the circumstances of

the case and the requests of the parties concerned.

The Mediator may invite all or any of the parties to meet with it, provide further written or make oral submissions.

The Mediator may at any time make proposals for the settlement of disputes which proposals need not be accompanied by reasons therefore.

The mediation procedure may be terminated by:-

- (i) The signing of a settlement agreement by all parties to the mediation;
- (ii) The written notice of any party to the mediation to the effect that further efforts in mediation are no longer justified;
- (iii) The written notice of the Mediator to the effect that further efforts in mediation are no longer justified.

### **Mediation Procedures**

A. A party applying for mediation shall complete the MYBA Application For Mediation Form and send this together with the appointment fee to the Secretary of MYBA. The party applying for mediation shall simultaneously send a copy of the application to all other parties named therein. Upon receipt thereof the parties named therein shall complete the application and send it to the MYBA office. Each MYBA Application For Mediation Form must be signed by a Director of the Member Firm and by one full MYBA Member of the same firm. Where it is the Director of the Member Firm who asks for mediation, the signature of the additional one full MYBA Member of the same firm will be unnecessary.

B. Within seven (7) days of receipt of all signed MYBA Application For Mediation Forms and payment of all appointment fees the Board of Directors shall appoint the Mediator and notify all parties concerned of the appointment. The mediation shall commence from the date of such appointment.

C. Within fourteen (14) days of the notification of the appointment, the party applying for the Mediation shall submit a summary of its case and all supporting documents to the Mediator at the MYBA office.

D. The Mediator shall within seven (7) days deliver these documents to the other parties.

E. All parties shall have fourteen (14) days from receipt of such documents in which to submit any further responses.

F. Once all responses have been submitted in accordance with (E) the Mediator shall as soon as reasonably practicable contact all parties involved with proposals for the future conduct of the mediation process.

### **Important Notice**

#### **MEDIATION BETWEEN ONE MYBA MEMBER AND MYBANET SUBSCRIBING FIRM**

Mediation by the Association will only be considered if at least one party is a Member Firm, the other party is a MYBANet Subscribing Firm and if all parties seek amicable settlement of their disputes. The same conditions and procedure as above will apply. Non-compliance with the final decision by the MYBANet Subscribing Firm will incur

automatic revocation of MYBAnet subscription.

Draft CTC 06/10/05

As accepted by MYBA Members during the 5<sup>th</sup> of April 2006 EGM. Must be re-translated and made available to Members.