

Transition to the *Canada Not-for-Profit Corporations Act* (*The NFP Act*)

Harbour Authority Checklist

Not-for-profit corporations have until **October 17, 2014** to transition to the NFP Act.

This checklist provides you with the steps that you must take to take to transition to the new Act.

√ **STEP ONE – Review your Letters Patent and By-laws**

- Review the Harbour Authority's letters patent, supplementary letters patent (if applicable) and the by-laws. ***Copies are available from Corporations Canada if you are not able to locate them.***
- Under the old Act, not-for-profit corporations were required to include a lot of details in their by-laws. The NFP Act doesn't require the same level of details in the articles or by-laws because many of the rules are now contained in the Act. Some of these rules are considered to be default Rules because corporations can override the default rules in the articles and/or the by-laws if they don't suit its needs.

√ **STEP TWO – Prepare Articles**

- The articles will be attached to the Certificate of Continuance that is issued to the corporation by Corporations Canada. The Certificate of Continuance and the articles together become the corporation's constitution and replace the letter's patent.
- Form for Articles of Continuance (Form 4031 – Articles of Continuance (transition)) has been provided with this package and is also available in PDF format on the Corporations Canada website.
- An example of a Model Article of Continuance has also been provided with this package.

√ **STEP THREE – Create By-laws**

- A long set of by-laws were required under the old Act to govern the corporations internal affairs. This is no longer the case with the NFP Act since the act already contains many rules.
- There are two by-law provisions that are mandatory under the NFP Act:
 - Conditions required for membership.

Disclaimer: Any information provided by Small Craft Harbours, Fisheries and Oceans Canada, including this document, is not intended to be a substitute for legal advice. Not-for-profit corporations are encouraged to seek professional advice.

- Notice of meetings to members who are entitled to vote at the meeting.
- If there are no other provisions in the by-laws, all the default rules will apply. (***See Harbour Authority Model By-Law – Mandatory Provisions***). Information on the default rules is available in Annex C of the Transition Guide on Corporations Canada's website.
- If these default rules do not meet the needs of your corporation, you may want to create by-laws that would override them. (***See Harbour Authority Model By-Law – Alternate Rules***)

√ **STEP FOUR – Get Member's Approval**

- A meeting of members will need to be held as part of the transition process. This meeting must be held in accordance with the existing by-laws since those are the rules governing the affairs of the corporation until a Certificate of Continuance is obtained.
- Despite the voting rules in the existing by-laws, the NFP Act requires that the articles of continuance be approved by **two-thirds** of the members of the corporation.

√ **STEP FIVE – Submit the Required Documents**

- Once the articles have been approved, the next step is to obtain a Certificate of Continuance. To do so, you are required to file the following with Corporations Canada:
 - Form 4031 – Articles of Continuance (transition);
 - Form 4002 – Initial Registered Office Address and First Board of Directors – This form sets out the registered office address and the board of directors at the time of continuance.
 - NUANS Name Search Report – Only if the name of the corporation is changing.
- When Corporations Canada receives your documents, they will make sure that they have been properly completed and, if applicable, that the new name is acceptable.
- Once the documents are approved, Corporations Canada will send you a Certificate of Continuance with the articles attached.
- **THE BY-LAWS DO NOT HAVE TO BE FILED TO OBTAIN A CERTIFICATE OF CONTINUANCE. THE NFP ACT REQUIRES THAT THEY BE FILED WITHIN 12 MONTHS AFTER MEMBERS HAVE APPROVED THEM AS SET OUT IN STEP 4. YOU CAN, HOWEVER, FILE THEM WITH THE ABOVE DOCUMENTS IF YOU WISH.**
- Note: The NFP Act does not require Corporations Canada to review and provide Ministerial approval of by-laws. The benefit to the corporation is that the by-laws come into effect immediately when they are made. The only requirement is that the by-laws be filed with Corporations Canada within 12 months of their being confirmed by members. There is no fee.

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- Where to File:
 - By e-mail at corporationscanada@ic.gc.ca
 - By fax at 613-941-4803
 - By mail to the following address:
Corporations Canada
Jean Edmonds Building
South Tower, 9th Floor
365 Laurier Avenue West
Ottawa, ON K1A 0C8
- Fee – Existing federally incorporated not-for-profit corporations **do not** have to pay a filing fee for the transition.