

5° Les embarcations de 2 tonneaux et au-dessus appartenant à des habitants de la Principauté qui ne s'en servent que pour leur usage et celui de leur famille, en s'abstenant de tout transport de marchandises;

6° Les embarcations de 2 tonneaux et au-dessous, employées à la pêche en vue des côtes ou à la récolte des varechs;

7° Les bateaux de plaisance de 10 tonneaux et au-dessous qui ne se livrent à aucune opération commerciale.

Les navires et embarcations visés aux numéros 3 et suivants sont toutefois tenus de se faire délivrer chaque année un congé.

*Article 25.* Les dispositions des articles 1 et 23 ci-dessus relatives à la propriété des navires et à la composition des équipages ne sont applicables ni aux navires appartenant au Prince ni aux navires qui ont été régulièrement autorisés à porter pavillon monégasque à la date du 1<sup>er</sup> janvier 1912, ni aux bateaux de pêche qui ne comptent pas un équipage de plus de cinq hommes et vendent le produit de leur pêche à Monaco.

#### 40. The Netherlands

(a) COMMERCIAL CODE,<sup>1</sup> AS AMENDED ON 22 DECEMBER 1924 AND 10 JUNE 1926

*Article 311.* The expression "Netherlands ship" includes any ship which belongs—

(a) To Netherlands;

(b) As to at least two-thirds to Netherlands and as to the remainder to residents in the Kingdom;<sup>2</sup> provided that the ship's husband, if any, is a Netherlander resident in the Netherlands.

In this article the expression "Netherlanders" includes—

(1) Partnerships and commandite partnerships which have their head offices in the Kingdom and of which all the partners with joint and several liability are Netherlanders;

(2) Limited liability companies which are incorporated under Netherlands law and have their head offices in the Kingdom, and of which either shares representing two-thirds at least of the issued capital are registered in the name of Netherlanders and the majority of the directors and of the supervisors are Netherlanders resident in the Kingdom; or of which all the directors are Netherlanders and three-quarters at least of the directors are resident in the Kingdom, and three-quarters at least of the supervisors are Netherlanders and two-thirds at least of the supervisors are Netherlanders resident in the Kingdom;

(3) Associations and foundations which are incorporated under Netherlands law and have their head offices in the Kingdom, and of which all the directors are Netherlanders and three-quarters at least of the directors are resident in the Kingdom, and three-quarters at least of the supervisors are Netherlanders and two-thirds at least of the supervisors are Netherlanders resident in the Kingdom.

<sup>1</sup> Translation by Dr. F. W. A. de Kock van Leeuwen (revised and adapted): *Maritime Code of the Netherlands*, ed. Zuid-Hollandse Boek en Handelsdrukkerij.

<sup>2</sup> Article 13 of the Act of 12 December 1892 as amended by the Act of 21 December 1951, A O D 593: Persons who have their residence within the Kingdom and have resided during the last eighteen months in the Realm, Indonesia, Surinam or the Netherlands West Indies are residents of the Kingdom.

In this article the expression "resident in the Kingdom" includes—

(1) Partnerships and commandite partnerships of which all the partners with joint and several liability are resident in the Kingdom;

(2) Limited liability companies which are incorporated under the law of the Netherlands and have their head offices in the Kingdom, and of which either shares representing two-thirds at least of the issued capital are registered in the name of residents in the Kingdom and the majority of the directors and of the supervisors are resident in the Kingdom, or all the directors and all the supervisors are resident in the Kingdom;

(3) Associations and foundations which are incorporated under Netherlands law, and have their head offices in the Kingdom, and of which all the directors and all the supervisors are resident in the Kingdom.

The head office of the shipping undertaking shall in every case be required to be in the Netherlands.

*Article 312.* A ship which is built or being built in this country shall be a Netherlands ship until the builder has delivered it to the person at whose expense it is built or being built, or has put it into commission at his own expense.

*Article 313.* The consent of all the co-owners shall be necessary for the total or partial transfer of a share in a ship whereby it would cease to be a Netherlands ship. Where the owner of a share in a ship loses his Netherlands citizenship or ceases to be resident in the Kingdom, or the ownership of a share in a ship passes otherwise than by transfer wholly or partly to a person who is not a Netherlander or resident in the Kingdom, and in consequence thereof the ship would cease to be a Netherlands ship, any of the co-owners may within six months move the court of the place where the ship is entered in the shipping register to order the sale of that share by public auction. The order shall not be made until all the members of the firm of shipowners have been heard or properly summoned by registered letter sent by the register of the court. The share may be awarded only to a bidder who by obtaining the share would cause the ship again to satisfy the requirements of a Netherlands ship. The ship shall then be deemed not to have ceased to be a Netherlands ship.

*Article 314.* A public register shall be kept for the registration of Netherlands ships of at least twenty cubic metres gross capacity.

*Article 316.* Registration shall be cancelled: (1) if the ship is lost or taken by pirates or the enemy: . . . (3) if the ship is broken up; or (4) if the ship has ceased to be a Netherlands ship.

Registration shall be cancelled on application or, by leave of the court, administratively.

*Article 341 (a).* Only a Netherlands subject may be appointed master of a Netherlands ship.

*Article 347.* The master on board a ship shall be provided with the ship's certificate of registry, the survey certificate, an extract from the shipping register containing all entries relating to the ship until the day of its last departure from a Netherlands port; the ship's articles, the manifest of the cargo, the charterparty and the bills of lading, or copies of those docu-

ments; the Netherlands statutes and regulations applying to the voyage, and all further necessary documents.

With respect to the charterparty and the bills of lading, this provision shall not apply in the circumstances to be laid down by Order in Council.

(b) NOTE OF 23 SEPTEMBER 1954 RECEIVED FROM THE PERMANENT REPRESENTATIVE OF THE NETHERLANDS TO THE UNITED NATIONS

The main principles of the Netherlands legislation concerning the nationality of sea-going vessels have been laid down in articles 311 through 317 of the *Commercial Code*.

Articles 311, 312 and 313 indicate which vessels are Netherlands ships by law and the way in which a sea-going ship may lose this nationality.

Articles 314 through 317 deal with the registration of Netherlands sea-going vessels.

A translation of the text of these articles has been annexed to this letter; see also Chapter 15 (b) of the Netherlands Consular Manual.

In order to give a more comprehensive picture of the Netherlands laws and regulations concerning the nationality of ships now in force in this country, a number of other legal provisions should be mentioned as well:

1. *Commercial Code* (Wetboek van Koophandel)

The master of a Netherlands sea-going vessel must be a Netherlands subject; under the transitional provisions of the Act of 14 June 1930, A.O.D. no. 240 (article IX b), a foreigner who was master of a Netherlands vessel on 1 November 1928, may continue to serve in that capacity. The ship's certificate of nationality must always be on board. For a translation of the text of these articles, see also Consular Manual, Chapter 15 (b).

2. *Recording of Ships Order* (Maatregel Schepen) (Royal Decree of 6 August 1948, A.O.D. No. I 359)

This Decree contains additional provisions concerning the registration of ships based on articles 315 through 317 of the Commercial Code. This Decree regulates *inter alia* the recording of ships that have already been registered abroad (article 10) and contains provisions as to what documents should be submitted to obtain a legally valid declaration that the ship is a Netherlands ship (article 11) (see article 315, Commercial Code).

3. *Ships' Certificates of Nationality Act* (Zeebrievenwet) (Act of 10 June 1926, A.O.D. no. 178)

A Netherlands certificate of nationality entitles a ship to carry the Netherlands flag. Barring the exceptions mentioned below, a certificate of nationality is issued only for recorded Netherlands sea-going vessels (article 4). The exceptions referred to above are:

I. The ship possesses Netherlands nationality (article 311, Commercial Code), but is not recorded; in that case a "provisional certificate of nationality" may be issued for a period not exceeding six months (barring extension) (article 11 Ships' Certificates of Nationality Act).

II. The ship does not possess Netherlands nationality, but has been built or purchased in the Netherlands; in that case an extraordinary certificate of nationality may be issued for the voyage direct and within a specified period to the country of destination (article 12).

The fact that a ship carries the Netherlands flag is no guarantee of its being a "Netherlands ship" in the sense of article 311 of the Commercial Code. Barring the case of unlawfully carrying the Netherlands flag, a ship may carry the Netherlands flag without being a "Netherlands ship" in the following cases:

1. One of the exceptions of article 2 Ships' Certificates of Nationality Act may be applicable.
2. The ship is used for public service (article 3 Ships' Certificates of Nationality Act).
3. A ship built in the Netherlands is making a trial trip (article 3 Ships' Certificates of Nationality Act).
4. The ship has been built or purchased in the Netherlands for foreign account and is taken to the country of destination (article 12 Ships' Certificates of Nationality Act).
5. The ship has a temporary permit to carry the Netherlands flag (article 13 Ships' Certificates of Nationality Act).
6. The ship is a New Guinea, Surinam or Netherlands Antillean ship; these ships are entitled to carry the Netherlands flag if they comply with the regulations in force in the Part of the Realm in question (Ships' Certificates of Nationality and Ships' Passports Decree 1934, Surinam Ships' Certificates of Nationality Decree 1933, Netherlands Antillean Ships' Certificates of Nationality Decree 1933).

For a translation of the Ships' Certificates of Nationality Act of 1926 and of the Decree of 13 April 1927, A.O.D. no. 84, containing regulations specifying how temporary permits to carry the Netherlands flag may be obtained, reference is made to the Consular Manual, Chapters 15-c (Annex A) and 15-d (Annex C).

#### 4. *Penal Code* (Wetboek van Strafrecht)

The Netherlands Penal Code applies on board Netherlands ships (article 3 and article 86).

Article 389ter: Making untruthful statements as regards the Netherlands nationality of a ship is a punishable offence (sanction on Articles 315 and 318, third paragraph, Commercial Code).  
(Consular Manual, Chapter 15-a, Annex B).

Article 409: Penal sanction on unlawfully carrying the Netherlands flag (Consular Manual, Chapter 15-a, Annex B).

Article 470: Penal sanction *inter alia* on not having the Ships' Certificate of Nationality on board.

The whole subject is more extensively dealt with in Chapter 15 of the Netherlands Consular Manual.