

51. Spain

(a) MEMORANDUM BY THE MINISTRY OF FOREIGN AFFAIRS, DATED 7 SEPTEMBER 1954.¹

The document proving the nationality of Spanish vessels is the ship's certificate (*patente de navegación*), which all vessels are required to carry on board together with a copy of the certificate of registration in the Commercial Register, in which every ship must be registered in order to establish title and for taxation purposes.

A vessel acquires Spanish nationality by entry in the Shipping Register kept by the shipping authorities and in the Commercial Register, and by construction in a Spanish shipyard, or, if foreign built, by grant of the flag. The owner must, if an individual, establish Spanish nationality or, if a company, be registered in the Commercial Register.

The basic provisions on registration and grant of the flag are contained in chapter IX of the Regulations of 13 October 1913 made under the Act of 14 June 1909 to protect Maritime Industries and Communications. Those regulations are amplified by the Decree of 13 June 1916 requiring that the registered capital of shipping companies shall consist of registered shares, for the transfer of which Government permission must be obtained, and that the proportion of shares held by aliens may not exceed twenty-five per cent of the capital.

Transfer and ownership of ships also calls for proof of Spanish nationality by individuals or compliance with the 1916 Decree by companies. Generally speaking, the sale of Spanish ships to aliens is prohibited by the Act of 2 March 1938, but the sale of vessels of less than five hundred tons is allowed by the Decree of 26 November 1944. The purchase of foreign ships is subjected to certain restrictions by the amended Acts for the Protection of Shipbuilding, approved by the Decree of 26 May 1946.

A Spanish ship registered in the Shipping Register and the Commercial Register carries a ship's certificate, which proves its nationality and authorizes it to wear and sail under the Spanish flag.

(b) REGULATIONS MADE ON 13 OCTOBER 1913, UNDER THE ACT OF 14 JUNE 1909 TO PROTECT AND ENCOURAGE MARITIME INDUSTRIES AND COMMUNICATIONS.²

CHAPTER IX

Grant of flag: registration and clearance of ships

Article 145. A shipowner desiring grant of the flag and registration for a ship shall be required, if an individual, to show that he is a Spanish national by means of a certificate in due form issued by the local authority of his place of residence or, if a body corporate, to be registered in the Commercial Register.

Article 146. An owner shall likewise be required to prove lawful title to the ship by means of a duly-authenticated document. If the ship was acquired abroad, the document shall comply in form and otherwise with

¹ Translation by the Secretariat of the United Nations.

² Text of Regulations provided by the Consulate General of Spain in New York. Translation by the Secretariat of the United Nations.

the law of the country in which the contract was concluded and shall also be authenticated by the Spanish consul and countersigned by the Ministry of State; if the contract was concluded in Spain, the conveyance shall comply with the ordinary rules of law.

Article 147. The owner shall produce a survey certificate. . .

Article 148. Upon presentation of those documents the port authority in whose register the ship is to be entered shall grant it the flag and registration and shall register it, according to the type of shipping in which it is to be engaged, in the appropriate list of the shipping register of the port authority and local shipping control office to which application was made.

The special provisions now governing the grant of the flag to pleasure craft and to naval craft in harbour service shall remain in force.

Article 149. Consulates may henceforward grant the flag provisionally in accordance with the Royal Order of the Ministry of Shipping dated 1 August 1909, as amended by the Order dated 15 September 1909; but the time limit of six months allowed for permanent grant of the flag may be extended for a further six months for sufficient reason, and indefinitely for reasons related to unavoidable circumstances.

(c) COMMERCIAL REGISTER REGULATIONS OF 20 SEPTEMBER 1919. ¹

Article 147. The shipping register shall contain a record of—

1. Ships wearing the Spanish flag registered in Spain;
2. Ships under construction encumbered by a mortgage as provided by the Shipping Mortgage Act of 21 August 1893, article 16.

There shall likewise be recorded therein every change in the ownership or name of the ship or in any other particular listed in article 22, item (1), of the Commercial Code, and the creation, variation or cancellation, as provided in that article, of any charge on the ship.

(d) DECREE OF 22 AUGUST 1931 PROHIBITING THE TRANSFER OF SHIPS TO ALIENS. ²

1. The sale of a Spanish merchant ship of any class to an alien individual or body corporate, and the registration of such a ship in any foreign country, are hereby prohibited.

2. No mortgage may be created on a Spanish ship in favour of an alien individual or body corporate; and any transaction or agreement in general limiting in any way the title of a Spanish ship-owner to a Spanish ship or the powers of the State in respect thereof is hereby prohibited.

3. Any transfer of ownership in a Spanish ship to, and any charge on such a ship established in favour of, an alien individual or body corporate shall be null and void.

4. A notary shall not certify any public instrument relating to a prohibited transaction, and a commercial registrar shall refuse to register or record any interest conferred thereby.

¹ Text from Leon Medina and Manuel Marañón, *Leyes Civiles de España* (1943). Translation by the Secretariat of the United Nations.

² *Ibid.*

The Government may seize ships of a shipping company or operator contravening the provisions of the foregoing articles.

(e) ACT OF 27 FEBRUARY 1939 CONCERNING SHIPPING MORTGAGES IN FAVOUR OF ALIENS. ¹

1. In special circumstances for the purpose of restoring our merchant or fishing fleet the Minister of Industry and Commerce may, with the agreement of the Council of Ministers, authorize the creation of mortgages on Spanish ships in favour of alien individuals or bodies corporate, notwithstanding the provisions of the Decree of 22 August 1931 ratified by the Act of 14 October 1931, which Decree shall remain in force in so far as it does not conflict with the provisions of this Act.

52. Suisse

a) ARRÊTÉ DU CONSEIL FÉDÉRAL CONCERNANT LA NAVIGATION MARITIME SOUS PAVILLON SUISSE (DU 9 AVRIL 1941) ².

Article 3. Le registre des navires prévu par le présent arrêté est tenu par l'Office fédéral du registre des navires, dont le siège est à Bâle.

CHAPITRE II. DROIT AU PAVILLON ET ENREGISTREMENT DES NAVIRES

1. *Droit au pavillon*

Article 5. Sont considérés comme navires suisses les bâtiments qui ont le droit, en vertu d'une concession accordée par le Conseil fédéral, de porter le pavillon suisse et qui ont été immatriculés dans le registre des navires tenu par l'Office fédéral du registre des navires. Ces navires ont l'obligation de porter le pavillon suisse sur mer.

Article 6. Le Conseil fédéral peut conférer le droit au pavillon suisse à des ressortissants suisses domiciliés en Suisse, à des sociétés commerciales ou coopératives suisses, ainsi qu'à des corporations ou établissements suisses de droit public; il peut également autoriser des services de l'administration fédérale à user du pavillon suisse.

Le droit au pavillon ne peut être accordé à des sociétés commerciales ou coopératives que:

1. Si elles sont inscrites dans le registre suisse du commerce.
2. Si le contrat de société ou les statuts disposent que la qualité de membre ne peut être acquise que par des ressortissants suisses, par des corporations ou établissements suisses de droit public ou par des sociétés commerciales ou coopératives auxquelles l'origine du capital social et la composition des organes confèrent le caractère suisse.
3. Si les organes chargés de l'administration et du contrôle sont composés uniquement de ressortissants suisses.

¹ *Ibid.*

² *Recueil systématique des lois et ordonnances*, 1848-1947, vol. 7, XIII. Transports et communications, pp. 503 et s.