

# Flying the Dutch flag: opportunities for shipowners

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## Introduction

Flying the Dutch flag has unfortunately become less popular with shipowners over the past 10 years. Although the exact reasons for this fall in popularity are unknown, the presumption that flying the Dutch flag is limited by the location of the vessel's owner may be a contributing factor.

Seagoing vessels are eligible for registration in the Netherlands and may fly the Dutch flag if:

- they have Dutch nationality under the Certificates of Registry Act; and
- the Human Environment and Transport Inspectorate has confirmed Dutch nationality by issuing a nationality certificate.

Although on the face of it only European shipowners appear to be able to obtain a nationality certificate, the scope for flying the Dutch flag is actually much wider. This article outlines the possibilities for owners registered in the British Virgin Islands, the Cayman Islands, Saint Pierre and Miquelon (among other places) to obtain a Dutch flag for their vessels without the need to have their headquarters or a secondary establishment in the Netherlands.

## Registration in Dutch register

A seagoing vessel may be registered in the Netherlands and fly the Dutch flag only if it qualifies as a 'Dutch vessel' within the meaning of Article 311 of the Commercial Code. For registration in the Netherlands, the following criteria must be met:

- Owner's nationality – the ship must be owned by one or more:
  - natural persons who are citizens of an EU member state, an EEA member state or Switzerland or natural persons who are EU-equated nationals;
  - companies or legal entities governed by the laws of an EU member state, an EEA member state, Switzerland or one of the countries, islands or areas referred to in Articles 299(2) to (5) and (6)(c) of the Treaty Establishing the European Community (EC Treaty); or
  - individuals, companies or legal entities, other than those mentioned above, that can invoke EU law of freedom of establishment on the basis of a treaty between the European Union and a third country.
- Owner's location – the owner must have its headquarters or a secondary establishment in the Netherlands.
- Manager's location – one or more individuals who have their office in the Netherlands must be responsible, on behalf of the shipowner, for the ship, the master and other crew members, as well as for all related matters, and must, either alone or together, have the power of decision and the power to represent the shipowner.
- Responsible person headquarters or a secondary establishment in the Netherlands – one or more individuals as mentioned above or, in their absence, a deputy must be permanently available and have the power to act without delay if so required (ie, the ship's manager).

Shipowners do not need to comply with requirements two, three and four themselves; instead, they may appoint a ship's manager in the Netherlands. This manager must also be established in the Netherlands (headquarters or a secondary establishment) and needs to meet requirements three and four. The manager is responsible for managing the vessel, which includes providing the government with relevant data to enable it to supervise the vessel.

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Requirement one above is considerably broader than may be expected. In particular, the reference to companies and entities established in countries, islands or areas referred to in Articles 299(2) to (5) and (6)(c) of the EC Treaty is notable. The countries and geographic areas as referred to in Article 299(3) of the treaty are not limited to European territory and include:

- the British Virgin Islands;
- the Cayman Islands;
- Saint Pierre and Miquelon;
- French Polynesia;
- Anguilla; and
- Bermuda.

Thus, an owner duly established in one of these countries, islands or geographic areas may also fly the Dutch flag on its vessels, provided that all other requirements of Article 311 of the Commercial Code are also met.

### **Bareboat charter register**

In addition to entry in the Dutch register, shipowners can opt to register their vessels in the Dutch bareboat charter register. Articles 2 and 3 of the Seagoing Ships under Bareboat Charter (Nationality) Act stipulate the requirements for registering a vessel in the Dutch bareboat charter register and for obtaining the Dutch flag in accordance with the Certificates of Registry Act. Under Article 5 of the Seagoing Ships under Bareboat Charter (Nationality) Act, a vessel will obtain Dutch nationality on registration in the bareboat registry, even if it has been entered into another registry.

### **Comment**

Reference to Article 299 of the EC treaty in Article 311 of the Dutch Commercial Code means that vessels owned by owners established in the countries, islands or geographic areas included in Annex II of the EC treaty can fly the Dutch flag. Owners have the possibility to transfer vessels with a Dutch flag to entities in these countries, islands or geographic areas without the vessels losing their Dutch flag.

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