

SHIP ARREST IN ARGENTINA



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1. Please give an overview of ship arrest practice in your country.

Ship arrest in Argentina is a practical and legal alternative designed to ensure that credit holders against national or foreign vessels should collect their debt. Embargo involves the possibility of banning sailing of embargoed vessels, thus ensuring collection preventively while leaving open the possibility of foreclosure. The formality is usually swift and simple, matching the pace of foreign trade and the eventual change of jurisdiction of vessels liable to be embargoed. Let it be noted that embargo can be requested in advance to arrival of a vessel to an Argentine port.

2. Which International Convention applies to arrest of ships in your country?

The Argentine Republic has not subscribed any international conventions that regulate ship embargo or arrest. However, these institutions are present in its legislation, namely in Navigation Act N° 20,094 of 1973, published on February 2, 1973, which reflects some provisions of the Brussels Convention of 1952. According to the provisions of the Argentine Navigation Act, ship arrest in Argentine territory is fast, swift and favorable to the creditor's interest.

3. Is there any other way to arrest a ship in your jurisdiction?

There are two ways of obtaining an embargo and banning navigation: preventive embargo and foreclosure. Both options require action on the part of a judge with jurisdiction over the issue giving rise to credit justifying the embargo. Both can and should bring about interdiction of sailing. The difference between them is that the former requires court order and the latter requires court ruling following due judicial process.

4. Are these alternatives e.g. saisie conservatoire or freezing order?

Under Argentine legislation we see two types of unavailability, namely: a) legal unavailability – embargo – and/or b) physical unavailability – detention or arrest. Thus our legislation provides the tools to obtain not only legal but also physical unavailability of a ship.

5. For which types of claims can you arrest a ship?

In order to answer this question we must first ascertain that no matter the origin of the credit, any claim can lead to ship arrest, following court order or court ruling. Any credit, ordinary or privileged, stemming from a maritime claim or not is valid to request ship arrest or embargo. Requirements for the embargo or arrest to be granted depend on credit origin. Our Act, in sections 531 et al., as well as in section 482, draws the relation between the credit involved and the ship liable to be embargoed or arrested.

6. Can you arrest a ship irrespectively of her flag?

Absolutely: ship arrest is irrespectively of her flag for privileged credits. Foreign (non Argentine) ships can be arrested due to: i) debts incurred in Argentine territory with respect to the ship involved or to another that belongs or belonged at the time of the credit origin to the same owner (principle drawn from the Brussels Convention of 1952) and ii) debts stemming from ship activity or from credits alien to it when they are recoverable before Argentine courts. This last option widens the chances of arrest and embargo of a ship when it is moored in Argentine territory. Regarding national vessels, the conditions for embargo and arrest are three. I) privileged credits; ii) other credits at the port of the owner's domicile or main facility; iii) credits alien to the ship, in which case the ordinary legal requirements must be filled.

7. Can you arrest a ship irrespectively of the debtor?

Yes. A ship may be arrested irrespectively of the debtor. The prohibition to embargo or arrest does not fall on the character of the debtor but of the ship. According to the provisions of section 541, there is an absolute prohibition to embargo or arrest: a) war ships, national or foreign; ships under construction with a view to join military forces of a State; ships at the service of national, provincial or municipal governments; and there is a relative prohibition to embargo or arrest ships belonging to national, provincial or municipal governments and ships loaded and ready to depart.

8. What is the position as regards sister ships and ships in associated ownership?

There is no mention of sister ships in our legislation. Regarding associated ownership, our legislation says that a ship belongs or belonged to the same owners when all and every part of it belongs to the same owners. E.g. Supposing I intend to embargo and arrest ship Z by virtue of a credit generated by ship Y, which at the time of credit origin belonged to A, B and C, the cautionary measure on Z will be relevant provided Z belongs to A, B and C.

9. What is the position as regards Bareboat and Time-Chartered vessels?

Our legislation deals with this issue under the category "Buque locado". If the ship that caused the credit was at the time chartered, operated by its shipowner/builder or by a time freighter, any other boat owned by the shipowner or the time freighter is liable to embargo, but not another ship belonging to the same owner. In this case the law restricts the possibility of issuing cautionary measures with respect to a ship different from the one that originated the credit owned by somebody who did not have direct or personal intervention in the original obligation.

10. Do your Courts require counter-security in order to arrest a ship?

According to the provisions of the Argentine law, the court, more specifically the judge, who is dealing with the request for embargo or arrest will assess the need or otherwise of requiring counter security. This is in answer to two clashing interests, both relevant. On the one hand is the advisability of clearing obstacles to navigation, which is the main purpose of a ship; on the other hand, releasing the ship to navigate freely would eventually jeopardize the credit generated by its own activity. Let it be noted that the counter security that is customarily is responsibility of the intervening Court.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

From a procedural point of view there are no significant differences, except in cases when credit stems from matters alien to the ship activity. In these cases the parties must appear before the court that has jurisdiction in the matter of the credit, e.g. credit stemming from a bank loan to the ship owner, or credit for compensation for damages generated by a car crash due to fault or negligence of the owner of the ship.

12. Does you country recognise maritime liens? Under which International Convention, if any?

Yes. Our country recognizes lien with respect of debt or credit that is relevant to move on to ship embargo.

13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

Once in possession of the relevant documents, the time to draw an embargo or arrest will vary depending on the next port of call. The possibility of application in the port of Buenos Aires should

take a reasonable time period, in the understanding that we must file the claim before the competent court, and provided that the ruling is issued before the ship leaves Argentine port.

14. Do you need to provide a POA, or any other documents of the claim to the Court?

To act in the name and representing an individual or a legal entity we need a POA apostilled by The Hague.

15. What original documents are required, what documents can be filed electronically, what documents require notarization and/or apostille, and when are they needed?

The documents required to embargo or arrest a ship are those that prove the existence and nature of a credit (contracts, invoices, etc) in the original and/or notarized, apostilled copy and the POA mentioned above. They must all be submitted at the time of request of arrest, which means that this firm should have access to them in advance.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

The Argentine court dealing with the arrest must take the substantive claim, which means that the preventive embargo must be followed by foreclosure.

17. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

There is no term, only the terms provided for in the context of the statutes of limitation.

18. Do the Courts of your country acknowledge wrongful arrest?

No. Both embargo and arrest are legal remedies and call for immediate compliance, both on the part of the court and the law enforcing agency, in this case the Coastguards.

19. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

Argentina has a lengthy sea coast, and Argentine judges have long experience in maritime law. Judges have been in office for many years and are well acquainted with the particulars of the activity. They will bear in mind the best interest of the claimant as well as the rights of the defendant.

20. Is it possible to have a ship sold pendente lite; if so how long does it take?

The option to sell a boat for the purpose of collecting the credit that gave way to the embargo involves a court procedure that the parties have to follow. Both parties are entitled to procedural tools which may speed or slow the process of liquidation. The final duration of the process may be influenced by many factors, both intrinsic and external, so much so that we are not in a position to estimate a term.



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