

SHIP ARREST IN PERU

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

Peru is a country that has no specific maritime law. Henceforth, when it comes to trying cases of this nature, one must rely on international treatise, doctrine and current applicable local laws in order to arrest a ship even though the term itself is inapplicable in this country but the outcome is the same. Peru has a mere handful of maritime attorneys who can be referred to as such but only by profession and not by dedication. Given the intricacies of practicing law in an area that does not have a law of its own is a monumental task as there is only experience on which to base your legal actions for filing claims and following them through to the end. The concept of arresting a ship in Peru is non-existent per se, it must be done through a preliminary injunction that if requested "out of process" it can be obtained in up to 72 hours, but this on its own is a costly, tedious and complex task. The other option to requesting an injunction is to do it "within the judiciary proceeding", but in Peru, this may easily take up to four months provided no strike, holidays or vacations come up for the courts. In Summary, placing a do not move order on a ship is a viable option, but documents need to be in place that can readily be legalized at the Peruvian Consulate or by apostille and FedExed immediately for official translation whilst the claim is being drawn up and all this can be done in as little as 48 hours, how long will the court take is a completely different question.

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

- a. International Convention on the Arrest of Ships, Geneva 1999
- b. Santiago Declaration
- c. The Hague Rules
- d. Convemar
- e. Cartagena Agreement
- f. Decision 487
- g. Decision 532

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

The precautionary measure of placing a lien on the ship is a solid option that goes hand in hand with filing a formal claim before the pertinent authorities. This however leaves a great deal up for interpretation, as it requires counsel to approach the court presiding over the case for an ex parte meeting with the judge to explain the case. However, this is an option that is widely used and mostly accepted in the event the defendant has incurred debts with companies or government agencies located within the Peruvian territory. I would add that limiting this task to debts incurred in Peru only would be erroneous as we have been able to detain and hold vessels for debts with foreign entities in Peruvian waters just as well.

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

Only precautionary measure

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

- a. Debts,
- b. Criminal activities,
- c. International arrest warrants,
- d. Suspicion of illegal trafficking or
- e. Human trade, etc.

6. Can you arrest a ship irrespectively of her flag

Yes, in accordance with the Convention of 1999.

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

Yes, if it can be demonstrated that there is just cause and a pre-existing debt that is going through a valid judicial proceeding in Peru then yes it can.

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

Although not customary, a sister ship or any other property for that matter can be arrested if the property can be demonstrated to be that of the debtor beyond shadow of a doubt.

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

The bareboat chartered is only for charter; its specific purpose is freight cargo. The Time-chartered is a charter party. Either ship can be detailed and held under a Do Not Sail order if a court order so mandates it.

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

Yes, counterclaims are mandatory and represent a percentage of the outstanding amount allegedly owed.

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

The judicial proceedings will be the same for both.

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

Yes. International Convention on Maritime Liens and Mortgages.

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

Company documents that attest to the debt (invoices, Charterparty, amounts, wire transfers, etc.) can be legalized at the Peruvian Consulate or they can be Apostilled, either way, they then need to be officially translated into Spanish In Peru. There must also be a Power of Attorney enacted in our favor, which can also be at the Consulate or, by Apostille. Please note that any documents procured at a Peruvian Consulate, upon arrival in Peru must be further legalized before the Peruvian Ministry of Foreign Affairs and then officially translated into Spanish. These must then be registered locally at the Lima Public Records. As a result of all these steps, clients must start this process as soon as possible in order to have them completed in time. Assuming all documents are in order then an detention with a Do Not Sail order can be obtained in 72 hours and even less depending on the circumstances and while pending a litigious process.

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

Yes, POA is necessary as well as all supporting documents that would lead to a ship detention. These documents are be BL, Invoices, Charter party, etc. POA will be provided to client on the day they contact and retain our services but they will process it internally.

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

No original documents are ever needed, that is why the court requests legalizations by way of Peruvian Consulate or Apostille services to ensure the copies adhere to the originals. These documents are needed in order for the court to issue a final ruling but given the time constraints, many times we file claims with simple copies while the client is processing the legalizations. The court will then indicate that legalized copies are needed but by then we will have gotten them via courier from the client.

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

Yes, as long as all documentation support the claim then the court will issue a Do Not Sail order awaiting the start of the case or further indication from outside courts.

17. What is the procedure to release a ship from arrest?

In order for the Sail block to be lifted, the court that issued the block in the first place has to be the one that lifts it. This can only take place once the reason that initiated the block in the first place has been

satisfied, i.e. an outstanding debt has been paid, ship has been turned over to its rightful owners, etc.

18. What type of security needs to be placed for the release?

That all debts and commitments between the defendant and the plaintiffs have been satisfied accordingly.

19. Does security need to cover interest and costs?

If that makes up part of the agreement then yes. Other times the debtor agrees only to a written agreement but this is entirely between the parties, all the courts need to know is if the plaintiff is desisting in his endeavors at recovering a debt.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

No, since Peru has no specific maritime law it needs to only go by that which is stated in the Peruvian Civil Code and international treaties.

21. How long does it take to release the ship?

The court order indicating the release of the vessel can be issued in 72 hours, however, this order needs to go through due process and that is what can take several weeks to complete its process.

22. Is there a procedure to contest the arrest?

The defendant, in responding to the initial claim can assert a lack of validity to the invoices, the BL, and even question the Charterparty itself in order to cast a shadow of doubt to the claim. We have seen many courts prefer to discard an initial claim in fear of starting an international debate while others actually go through the due diligence process in order to determine who has a better right.

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

Legal action starts with the granting of the arrest of the ship, which can take place in two forms: "out of process" or "within the process". In the foremost the claimant must initiate legal actions by filing the claim immediately after said arrest has been granted, while in the latter the lien is granted as a result of the legal proceedings initiated by the plaintiff.

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

On a personal note, we do not engage in claims where we feel the plaintiff is filing a claim out of malice or without evidentiary support. The claimant I asked to deposit a counterclaim with the court. However, if the defendant can through the judicial proceedings demonstrate that it was in fact a wrongful claim then the affected party can file for damages against the claimant.

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

Corporate veils can only be lifted through judicial orders, which must be ratified by a local judge in the event the order is foreign.

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

Yes it is possible but under two conditions: only through a court order from a local judge and only if the buyer is fully aware that the ship being sold is currently undergoing a legal proceeding.

*Sandro O. Monteblando is a licensed attorney practicing in the Lima, Peru.

Mr. Monteblando was raised in the United States and spent his formative years between Oregon and New York. Later in life he travelled to Europe where he lived, studied and graduated from Chelsea University with an advanced degree in International Business Administration.

Mr. Monteblando later returned to Peru where he worked as a foreign business consultant assisting franchises and chains set up operations in Peru as well as throughout South and Central America. While successful at this venture, Mr. Monteblando needed to bridge the gap between the business plan and taking the project forward. As a result, Mr. Monteblando began attending law school focusing on corporate law and international trade.

Nowadays, Mr. Monteblando is Managing Partner at a practice that specializes in Maritime, Mining and Corporate Law as well as other specialties handled by his growing number of associates yet he still handles maritime cases personally.