

SHIP ARREST IN ARGENTINA

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

Argentina is a friendly jurisdiction for ship arrest. A claimant seeking to obtain security for a maritime claim may consider arresting the vessel in Argentina irrespective of whether it is a foreign-flagged vessel. The federal courts are expeditious and prepared to hear maritime claims. The arrest procedure is straightforward and is carried out *inaudita altera parte*.

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

Argentina has not ratified any arrest convention.

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

Vessels may be arrested pursuant to the provisions of the Argentine Navigation Act.

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

Under Argentine law, it is possible to arrest by way of *saisie conservatoire* the specific vessel in respect of which the intended action is brought. However, if the claimant seeks a freezing order, the general provisions of the Civil and Commercial Procedural Code shall apply, rather than those of the Argentine Navigation Act.

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

Vessels can be arrested on the basis of:

- a. Preferred claims;
- b. Maritime claims regarding debts incurred in Argentina and in connection with the ship; or
- c. Claims regarding any debt where Argentine courts have jurisdiction on the merits.

The Navigation Act lists 'preferred claims' in Article 476, which coincides with Articles 1(1)(a)–(q) of the 1952 Arrest Convention, even though Argentina is not a signatory thereto.

Argentina has adopted a long list of preferred claims which can be found in Article 476 of the Navigation Act, as follows:

- judicial expenses incurred in the common interest of creditors for:
 - the preservation of the vessel; or
 - its sale and the distribution of its price;
- claims of the captain and other crew members arising:
 - from employment contracts; or
 - under labour laws;
- claims for credits associated with the construction of a vessel that has been mortgaged;
- taxes, duties, contributions and service fees arising from:
 - navigation activities; or
 - the commercial operation of the vessel;

- claims for death or personal injury occurring on land, on board or in the water, directly related to the operation of the vessel;
- claims for unlawful acts against the owner, the operator or the vessel, not based on a contractual relationship, for damages to property located on land, on board or in the water, directly related to the operation of the vessel;
- claims for:
 - assistance and salvage;
 - removal of wreckage; and
 - contributions to general average;
 - claims for damage to cargo and luggage;
- claims arising from contracts for the lease or chartering of a vessel or a transport contract;
- claims for the supply of products or materials to a vessel for its operation or maintenance;
- claims for:
 - the construction, repair or equipment of the vessel; or
 - dockyard expenses;
- claims for:
 - disbursements by the captain; and
 - expenses incurred by shippers, charterers or agents on behalf of the vessel or its owner; and
- claims for the price of the last acquisition of the vessel and interest due in the last two years.

A comparison of Article 476 of the Navigation Act and Articles 1(1)(a)–(q) of the 1952 Arrest Convention reveals that the preferred claims under the act are mostly based on the convention, even though Argentina is not a signatory thereto.

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

Yes. Foreign flag vessels can be arrested.

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

Argentina – a civil law country – recognises ‘preferred claims’, which are the equivalent of maritime liens under common law and the arresting party may commence *in rem* proceedings irrespective of the debtor.

Based on the Supreme Court decisions in *The Pavlo* (1997) and *The Oceana* (2024), the characterisation of a preferred claim will be established according to the *lex forum* – that is, Argentine law.

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

According to the Navigation Act, the claimant of a debt incurred in Argentina may arrest either the particular ship in respect of which the maritime claim arose, or any other ship which is owned by the person who was, at the time when the maritime claim arose, the owner of the particular ship. As regards associated ownership, ships shall be deemed to be in the same ownership when all the shares therein are owned by the same person or persons.

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

In the case of a charter by demise, the charterer and not the registered owner will be liable in respect of a maritime claim relating to that ship, **save for claims based on a maritime lien**. The claimant may arrest such ship or any other ship in the ownership of the charterer by demise, but no other ship in the ownership of the registered owner will be liable to arrest in respect of such maritime claim.

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

Typically, the court will request a counter-security of 30% of the amount claimed, which can be replaced by a local surety bond.

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

The proceeding does not differ.

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

Yes. Argentina –civil law country- recognises “preferred claims” which are the equivalent to “maritime liens” under common law. Based on latest precedents from the Federal Court of Appeal and the Supreme Court, the characterisation of the “preferred claim” will be established according to the *lex forum*, i.e., Argentine law.

Furthermore, Argentina ratified the 1926 International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages which stands above the navigation act.

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

The timing will depend on the port of call; however, in practice it usually takes between 6 and 12 hours. Argentine courts handling maritime matters are generally very expeditious, particularly in recovery cases, and arrest orders are often granted within a matter of hours.

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

The Civil and Commercial Procedural Code requires a notarised PoA is submitted within 40 working days.

As regards the documentation, it is recommended to submit all relevant material as soon as possible (invoices, terms and conditions, delivery orders), as Argentine courts require documents drafted in a foreign language to be duly translated.

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

There is no need to file the original documents at the time of submitting the arrest application, as scanned copies will suffice. As regards the Power of Attorney, it must be notarised and either apostilled in accordance with the Hague Apostille Convention or otherwise duly legalised through the competent foreign authority of the country of issuance. Argentina is a party to the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents.

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

Yes. Federal courts shall have jurisdiction over the merits in any case where the owner of a foreign-flagged vessel is a party and, pursuant to Argentine law, the vessel may be subject to arrest.

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

The arrest order may be lifted upon the posting of sufficient security. However, the release of the vessel is not automatic and requires the approval of the arresting party. The time it takes to lift the arrest will vary depending on the port at which the vessel is arrested. The scenarios vary depending on whether the vessel is located:

- upriver on the Parana river;
- on the River Plate; or
- at southern Atlantic ports.

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

Cash deposit, banking guaranty or a surety bond issued by local insurer are the most common. The protection and indemnity letter of undertaking may be accepted if there is no objection by the arrestor.

19. Does security need to cover interest and costs?

Yes.

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

Following the strict public policy in the field of insuring, the P&I's LOUs are not binding, but may be accepted if there is no objection by the arrestor.

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

It would depend upon the circumstance of the case and the court. The court must request prior approval of the security from the arrest petitioner. Naturally, the ship could be released by mutual agreement of the parties and the arrest would be lifted in a matter of hours, otherwise the whole process could take 3 to 5 days.

In case of casualties and collisions in Argentina, the Coastguard may order the detention of the vessel irrespective of any arrest order and the release would depend upon completion of the safety measures ordered by the Coastguard.

22. Is there a procedure to contest the arrest?

There is a five (5)-day deadline to appeal the arrest order. The appeal does not stay the arrest order.

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

The time bar to bring proceedings on the merits is 10 days. The time runs from the moment any party requests the court intervening to compel the arresting party to file the claim on the merits.

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

A claim for wrongful arrest may have no link to the arrest proceeding itself; but if the arrestor is the losing party in the proceedings on the merits, the shipowner may seek to claim damages for losses incurred while the vessel was arrested.

The only reference to wrongful arrest in the Navigation Act concerns the situation where a claimant seeks arrest but fails to commence a claim on the merits. In such case, the arrestor will be liable for damages caused by the immobilisation of the vessel from the moment the arrest order was enforced until the arrest is lifted (eg, by means of security). However, the claim will succeed if the claimant can prove that the arrestor acted with the intent to cause such loss.

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

Courts have pierced and lifted the corporate veil in bankruptcy and labour proceedings. However, courts are reluctant to do so in arrest proceedings involving one-ship companies.

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

Yes. The court may authorise the sale of the ship *pendente lite* in two scenarios. First, whereas the ship-owner exercises its right to abandon the ship having complied with the limitation of liability proceeding. Secondly, where such sale is necessary to avoid a depreciation of the vessel's value.

**Francisco J. Venetucci holds an LL.M. in Maritime Law from the University of Southampton and is a fully licensed attorney in Argentina. He has over 10 years of experience handling a broad range of disputes on the Paraná River involving both dry and wet cargoes. Francisco advises and has acted on behalf of shipowners, charterers, traders, shipyards, hull and machinery insurers, cargo insurers, bunker suppliers, among others, on a wide variety of maritime matters. He currently works as an external consultant for both local and international law firms.*