

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. The court fees and the cost of the counter-security could reach up to 6% of the amount claimed which would be recoverable from the owners of the vessel if the claim is successful. Arrest orders are normally granted in a matter of hours.

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?

Ships can be arrested pursuant to the Argentine Navigation Act.

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

Under Argentine law, it is possible to arrest by saisie conservatoire the particular ship with which the contemplated action is concerned. Should the claimant seek a freezing order, the general rules of the Civil and Commercial Procedural Code will apply and not the Navigation act

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

Vessels can be arrested on the following grounds:

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

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?

Yes. Ships can be arrested irrespective of the debtor when *in rem* proceeding are brought.

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 of a ship, the charterer and not the registered owner is liable in respect to a maritime claim relating to that ship; 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 shall be liable to arrest in respect of such maritime claim.

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

According to the Navigation Act, the court may order counter-security. As a common practice, courts request a counter-security of 30% of the amount claimed which could be satisfied with a 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, the characterisation of the “preferred claim” will be established according to the *lex forum*, i.e., Argentine law.

A comparison of article 476 of the Navigation Act and article 1(1)(a) to (q) of the 1952 Arrest Convention show that the “preferred claims” are mostly based on the Convention despite Argentina is not a signatory country.

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?

It would depend on the port but normally it would take 6 to 12 hours. Courts dealing with maritime cases are very expeditious, particularly in cases related to recoveries, and arrest orders are granted in 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. Further, it must be submitted the invoices and delivery orders. As regards the PoA, courts normally accept scanned copies and the original must be submitted within 40 working days.

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 hand in the original documents at the time of the arrest submission. It can be submitted at a later stage provided that the PoA is dated at the time of the submission. With regard to the invoices and delivery orders, the court requests the submission of the original documents unless it was issued electronically. As regards the PoA, it must be notarized and legalized with the apostille convention or duly legalized through the foreign office of the country where it was issued. Argentina is 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?

Again, it would depend on the circumstances of the case. Argentina is party to the 1952 International Convention for the Unification of Certain Rules relating to Civil Jurisdiction in Matters of Collision. Hence, in such a case, Argentine court would accept jurisdiction over the substantive claim once the vessel has been arrested.

In cases other than collisions, the general rules of conflict of laws will apply.

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

Once the arrest is ordered, any interested party must appear in court to request the release of the ship by providing enough security.

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

Cash deposit, banking guaranty or any bonds issued by local insurer are the most common.

19. Does security need to cover interest and costs?

Yes.

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

Local courts are in occasion unfamiliar with documents such as LoU. Furthermore, following the strict public policy in the field of insuring, surety bonds and guarantees issued by local insurers are most advisable.

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 5 days deadline to appeal the arrest order. The arrest procedure is carried out *inaudita altera parte*, hence, once the writ is served, time would be best spent seeking the release of the ship.

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.

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

Yes.

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

Yes. Courts have pierced and lifted the corporate veil in bankruptcy proceedings and labour cases. 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 shall authorise the sale of the ship *pendente lite* in two scenarios. First, whereas the ship-owner exercises its right to abandon the ship having fulfilled the limitation of liability proceeding. Secondly, to avoid diminishing the value of the ship.

**Francisco J. Venetucci, LL.M. in Maritime Law at Southampton University, is a partner at Venetucci & Asociados. He was called to the Rosario Bar Association and the Buenos Aires Bar Association. He has an extensive experience handling a broad range of disputes involving the Parana River Waterway. Francisco has a particular interest in complex issues of conflict of laws and judicial cooperation. He worked as an external consultant for local and international law firms. His firm specialized in Maritime Law and Commodity Trading.*