

SHIP ARREST IN URUGUAY

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

An overview is contained in the answers given hereunder.

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

Uruguay did not ratify any of the International Conventions on Arrest of Ships: neither the 1952 Brussels Convention nor the subsequent 1999 Geneva Convention.

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

Uruguay has a new Ships Arrest Act (SAA) No. 18.803, and the procedures for obtaining an arrest of ships have been greatly simplified. Therefore, if the ship enters to Uruguayan ports we may obtain her arrest.

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

Uruguay is a civil law country. Therefore, its rules on precautionary measures, arrests or freezing orders are very similar to those of the French system of "saisie conservatoire". However, the new Ship Arrest Act has taken elements of the common law system which facilitates both, the arrest of the ship, and its immediate lifting when appropriate.

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

The Uruguayan Ships Arrest Act lays out the types of claims for which you can arrest a ship. Refer to answer in Question 6.

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

The new SAA has different requirements for the arrest of national flag ships and foreign-flagged vessels.

National flag vessels (Article 1) may be arrested for:

- A) Maritime credits with a lien (privileged credits).
- B) Any common maritime credit (without a lien) but derived from the operation or navigation of the ship.

Preventive precautionary measures for common credits that are not derived from the vessel, its operation or navigation, must meet the requirements of general rules of civil procedure and are not subject to the Ship Arrest Act.

Foreign-flagged ships (Article 2) may be arrested for:

- A) Privileged maritime credits (those secured by a lien on the ship).
- B) By common credits (debts incurred in the national territory in connection with the concerned ship or its cargo; or debts to be paid in the Republic; or debts enforceable in the Uruguayan Courts).

- C) For credits (common or privileged) for claims arising from non-contractual liability derived from the activity of the vessel. This includes all kinds of torts, credits derived from collision, credits derived from episodes of marine pollution and ecological disasters; and also, credits derived from salvage and other institutions typical of maritime law that do not have their origin in a contractual agreement .

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

If the arrest is ordered on the basis of a privileged maritime credit, the Brussels Convention of 1926 on Maritime Liens and Mortgages states that "claims secured by a lien follow the vessel into whatever hands it may pass" (Art.8). Therefore, the vessel can be arrested regardless of who her actual owner or charterer is.

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

Article 2.D) of the SAA introduces sister-ship's arrest. Not only the arrest is allowed for credits incurred by the ship itself, but also for the "debts of those indicated in letters A, B and C above that have been contracted by another vessel which belongs or has belonged to the same owner or shipowner at the time the credit was entered into".

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

There is no case law on the subject. The SAA is too recent, and no cases have reached the Courts yet. According to Arts. 1048 and 1049 of the Commercial Code, the registered owner is jointly liable for debts incurred by the Master or the ship-owner. Therefore, the owner who ceded the use of the vessel based on Bareboat Charter, could not oppose her arrest.

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

The law requires a party filing for arrest to provide security for damages. The new SAA establishes the amounts and forms of security that must be granted by the creditor requesting the arrest.

The amount of the counter-guarantee may be: a) the sum claimed plus 20% or b) an estimate of the cost of the ship's stay in port for a maximum of ten days plus 20% (Article 10.1).

The law requires, that in case of arrest, the vessel's P & I Club must grant a guarantee in a few days and the ship will be released. Therefore, the law provides that the eventual indemnity for damage cannot exceed the cost of the ship staying in port during those few days of the arrest.

Thus, the amount of the security shall **be equal to the cost of the ship's stay in port, for a maximum of ten days**. The Court will ask the claimant to file a certificate signed by a marine surveyor, certifying the approximate amount of this cost.

The mechanism for granting the counter-guarantee (Article 10.2) can be:

- A) A bank guarantee (our experience is that this mechanism is difficult to obtain and too slow in case of an emergency).
- B) A surety bond issued by an insurance company established in Uruguay (there is a local company specialized in providing bonds and judicial guarantees).
- C) A deposit of money to the order of the Court for the necessary amount. This amount is recovered by the end of the proceedings. In cases of urgency, this is the simplest and fastest mechanism.

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

No.

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

Uruguay ratified the 1926 Brussels Convention on Maritime Liens and Mortgages.

Privileged maritime credits are those of Arts. 1037 and 1038 of the Commercial Code.

And credits secured with a lien are those of the International Convention on Privileges and Maritime Mortgages (Brussels 1926).

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

It depends on the case. The party must provide the attorneys or solicitors with the necessary documents proving the existence of the debt in time for filing the request. In addition, the Court usually issues the warrant conditional on the claimant to show that he has deposited the guarantee. We estimate that we should receive the case at least five days before the ship enters port. Notwithstanding the foregoing, there have been cases in the past where the arrest was obtained in less time.

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

Yes.

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

In order to file a petition in Court, we need a Power of Attorney from the client. The POA must have its signatures certified by a Notary Public and legalized with the Apostille. Again, we may file our claim in court with a PDF copy and later provide the originals.

We must provide the Court "prima facie" evidence that the ship owes the amount claimed to our client. In order to file a claim, we need the originals or certified copies of these documents signed by the vessel's master, or their agents or representatives.

However, in urgent cases we can request the ship arrest with PDF copies, and the Court will grant us an extension to provide the originals.

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

According to the Uruguayan law, the Court that arrests a ship, has also jurisdiction to hear the case (*forum arresti*). The Act grants the party requesting the arrest thirty days to file his claim. If the claimant fails to initiate the substantive claim within the specified time, the arrest will be lifted and the vessel will be released.

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

The SAA establishes a fast procedure in which the judge must order the arrest or release the ship within 24 hours since he receives the petition. Once the ship is arrested, the defendant must provide a guarantee of payment of the debt if he wants the ship released.

The SAA provides that: "A bond shall be considered sufficient for the seizure or arrest of a ship, or for its removal, by an insurance company authorized to operate in the country or by a P & I Club, which is a member of the International Group of Protection and Indemnity Clubs ... ". This was not in the original Ships Arrest Act (SAA) No. 18.803 but was added by Art. 4º of Commercial and Maritime Act No. 19.246.

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

See answer to question number 17.

19. Does security need to cover interest and costs?

The amount of the security shall be equal to the cost of the ship's stay in port, for a maximum of ten days. The Court will ask the claimant to file a certificate signed by a marine surveyor, certifying the approximate amount of this cost. (See answer #10)

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

Yes, it must come from a member of the International Group of Protection and Indemnity Clubs.

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

The judge must order the arrest or release of the ship within 24 hours since he receives the petition.

22. Is there a procedure to contest the arrest?

Yes, the shipowner or registered owner of the vessel arrested may appeal the arrest and claim that the arrest was incorrectly seized. This is an independent and parallel procedure. It is not affected, neither by the lifting or not of the measure (if a P&I's LOU Club was granted), nor by the development of the main trial.

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

There are two different deadlines: the time to appeal the arrest is six days from the moment it was notified . The time to file the claim is 30 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, it is difficult to prove but the lifting of the corporate veil can be requested on the basis of the disregard theory.

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

If the vessel has been arrested and the arrest has not been lifted, no one is going to buy a vessel under such conditions. But, if the P&I Club issues a LOU and the arrest is lifted, any litigation over the arrest measure or on the main issue will continue on the LOU's warranty, and the ship would be able to sail free and may be sold.

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