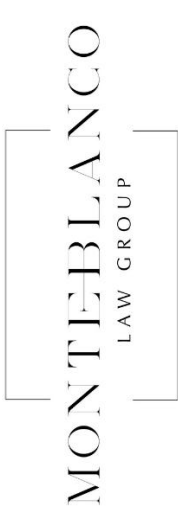


MONTEBLANCO LAW GROUP
in collaboration with
PEZOA & CÍA
Collaborative Ship Arrests Practices
between Peru and Chile



Ship Arrests in PERU



- What are the options to a party seeking to obtain security for a maritime claim against a vessel entering Peruvian Waters and the applicable procedure?



Ship Arrests in PERU



- Peru is a party to the Andean Pact, and as such ought to abide by the Decisions or Resolutions issued by the relevant Authority (the Andean Community Commission), specifically, Decision 487, which is the applicable one for the arrest of vessels, commissioned by the Andean Community on 7 December 2000.



Ship Arrests in PERU



- Decision 487 incorporated provisions of both the International Convention on Maritime Liens and Naval Mortgages (1993) and the International Convention on the Preliminary Arrests of Vessels of 1999 which was subsequently incorporated into Peruvian Legislation on 22 May 2017, plus adding a few Sections, namely its own legislation on the matter.



Ship Arrests in PERU



- According to Chapter III, Article 37 of Decision 487, applicants seeking the arrest of a vessel are entitled to ask Peruvian Courts for such task but only when it pertains to maritime credits incurred by the original creditor (owner of the vessel) at the time when the maritime credit took place and therefore bound under the said credit.



Ship Arrests in PERU



- Additionally, under Section 42, Sub-Section c) of said Decision, plaintiffs would be entitled to ask for the preliminary arrest of sister ships, provided that at the time of the arrest, the vessels belong to the creditor who is personally bound under the relevant maritime credit, and that at the time when the credit arose, said person was the owner of the vessel in respect of which the maritime credit had arisen.



Ship Arrests in PERU



- However, in order to carryout the arrest, applicants should file their claim accompanied by the necessary supporting documentation set out in Articles 608, 610 and 613 of the Peruvian Civil Procedural Code, which includes depositing the counter guarantee in the National Bank. On an ideal world, the arrest will be served upon owners only after al demands have been met.

Ship Arrests in PERU

Is it possible for a bunker supplier to arrest a vessel for a provision?

- Yes, pursuant to Section 1.12 of Decision 487 of the Andean Community, any claim related to the bunker provided to a vessel qualifies as maritime credit. Therefore, vessel can be arrested.



Ship Arrests in PERU



Where security is sought from a party other than the vessel owner for a maritime claim that may include liens over cargo, what options are there?

- In accordance with Sections 678, 679 and 680 of the Commercial Code, the carrier cannot retain the cargo in the case of lack of payment of freight or other expenses. Nevertheless, the carrier is entitled to proceed with the embargo of the cargo and later sell it in order to recover the amount due and the costs and fees incurred.

Ship Arrests in PERU

Is a bank guarantee and a P&I letter of undertaking acceptable forms of security in maritime claims?

- All of the above is at the claimants' discretion, Yes. Section 85 of the Regulations on the Law of Control and Surveillance of Maritime, River and Lake Activities states that any commercial vessel that arrives at a national port must certify that it is insured by members of the International Group of P&I Clubs.



Ship Arrests in PERU



- Best solution available to arrest a vessel in Peru is to ACT FAST!
- When you know that a vessel will be entering Peruvian waters, contact your Maritime Lawyer immediately and start gathering documentation.



Ship Arrests in CHILE



- Arresting a ship in Chile is a legal mechanism used to secure maritime claims. It's regulated by Chilean maritime and civil procedural laws and aligns with international practices under conventions like the International Convention on the Arrest of Ships (though Chile is not a signatory, its procedures are similar in practice).
- Here's a step-by-step overview of the **ship arrest process in Chile:**

Ship Arrests in CHILE

Legal Grounds for Arrest

A ship can be arrested in Chile for a variety of maritime claims, including (but not limited to):

- Unpaid crew wages, Salvage Claims, Damage Caused by the Vessel (e.g. collision, pollution), Breach of Charter Party or contract, Mortgage or lien enforcement, Supplies, Repairs, or Services Rendered to the Vessel



Ship Arrests in CHILE



Filing the Petition

The claimant (creditor) must file a petition for precautionary measures (*medidas precautorias*) before a Maritime Court (*Juzgado de Letras con Competencia Marítima*). The petition should include:

- Clear explanation of the maritime claim, Evidence supporting the claim, Details of the vessel (name, flag, IMO number, Proof that the vessel is in Chilean territorial waters (or expected to arrive))



Ship Arrests in CHILE

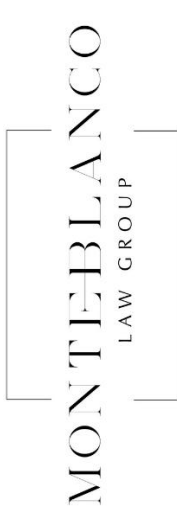


Security or Guarantee

The court may require the claimant to post a **counter-security** (fianza) to cover potential damages if the arrest is later deemed wrongful. This amount is determined by the judge, based on the nature and size of the claim



Ship Arrests in CHILE

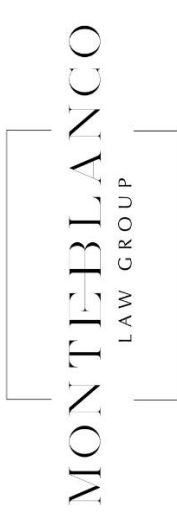


Court Order for Arrest

- If the judge finds the claim legitimate, they issue an arrest warrant (*orden de embargo*).
- The order is sent to the Chilean Navy or the Port Authority where the ship is located.
- The vessel is then detained and cannot sail until the issue is resolved or security is posted



Ship Arrests in CHILE



Lifting the Arrest

The arrest can be lifted by:

- **Posting a bond or other security** (e.g., bank guarantee or P&I Club letter of undertaking),
- **Settling the Claim** with the creditor,
- **Challenging the Arrest** in court and proving the claim is unfounded.



Ship Arrests in CHILE



Legal Proceedings

- The underlying claim must be pursued in Chilean courts unless both parties agree to **arbitration** or a **foreign jurisdiction**.
- The ship remains under arrest unless the court lifts the embargo or appropriate security is provided.



Ship Arrests in CHILE



Thank you for your time



Ship Arrests in CHILE



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