# Legal 500
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## Argentina
## Shipping

## Contributor


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This country-specific Q&A provides an overview of shipping laws and regulations applicable in Argentina.

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# Argentina: Shipping

## 1. What system of port state control applies in your jurisdiction? What are their powers?

Argentina is a member of the International Maritime Organization (IMO), and signatory to the Latin American Agreement on Port State Control of Vessels (Viña del Mar, November 5th, 1992), which is one of the 10 regional Port State Control regimes currently in force.

For the purposes of exercising the Port State Control, the Argentine Maritime Authority (Prefectura Naval Argentina), in their capacity of Argentine Maritime Authority, verifies whether foreign vessels visiting Argentine ports comply with the so called "relevant instruments" under the Agreement and their respective amendments in force, which are the following:

- International Convention on Load Lines, 1966 (LOAD LINES, 1966).
- Protocol of 1988 relating to the International Convention on Load Lines, 1966 (1988 SOLAS Protocol)
- International Convention for the Safety of Life at Sea, 1974 (SOLAS, 1974).
- Protocol of 1988 relating to the International Convention for the Safety of Life at Sea, 1974 (1988 SOLAS Protocol).
- International Convention for the Prevention of Pollution from Ships, 1973, as amended by the Protocol of 1978 relating thereto (MARPOL 73/78).
- International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW, 1978).
- Convention on the International Regulations for Preventing Collisions at Sea, 1972. (COLREGs, 1972)
- International Convention on Tonnage Measurement of Ships (Tonnage),

The provisions of the Viña del Mar Agreement have been effective in the country since 1993, and the surveillance of the observance of these is in charge of the Vessel Control Division (within the Prefectura Naval Argentina) which was created specifically for such purpose.

Currently, the Agreement is applicable at the Argentine ports of San Lorenzo, Rosario, Arroyo Seco, Villa Constitución, San Nicolás, Ramallo, San Pedro, Zárate, Campana, Buenos Aires, Dock Sud, La Plata, Mar del Plata, Quequén, Bahía Blanca, San Antonio Oeste, Puerto Madryn, Caleta Olivia, Comodoro Rivadavia, Puerto Deseado and Ushuaia.

Accordingly, the Argentine Maritime Authority, through Inspectors specially trained to do so, is empowered to conduct on board, inspections, check the validity of the pertinent certificates and documents, as well as the general condition of the vessel, her equipment and crew.

In case there are evident grounds for the Authority to consider that the vessel, her equipment, or crew do not substantially comply with the requirements of any of the pertinent instruments, a more detailed inspection may be carried out.

If the detected deficiencies pose a clear risk to safety in navigation or to the marine environment, the Maritime Authority shall ensure that the risk has been eliminated before authorizing the vessel to sail and, to that end, foreign vessels may be detained.

## 2. Are there any applicable international conventions covering wreck removal or pollution? If not what laws apply?

Argentina is not a party to the any international convention covering wreck removal; therefore, the relevant provisions set forth by the Argentine Navigation Law Nº 20,094 and Law Nº 16,526 about the legal regime applicable to wreck removal operations (sections 12 to 18) apply.

Regarding pollution, through the enactment of Law Nº 25,137, Argentina ratified the 1992 Protocols amending the International Convention on Civil Liability for Oil Pollution Damage (CLC/69) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 (FUND/71), becoming, a party to those conventions. Argentina is not a Party to the Supplementary Fund of 2003.

On the other side, Argentina is neither a party to the International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunkers Convention 2008) nor to The Hazardous and Noxious Substances Convention of London (HSN Convention 1996) and its amending Protocols.

 

Regarding marine pollution prevention, Argentina is signatory of the following international conventions:

- International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (INTERVENTION 69), approved by Act Nº 23,456.
- International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 (MARPOL 73/78), approved by Act Nº 24,089, and Protocol of 1997, approved by Act N°27,584
- International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC), approved Act Nº 24,292, approved by Act Nº 24,292.
- Cooperation Agreement with Uruguay to Prevent and Combat Incidents of Pollution on the Aquatic Environment caused by Hydrocarbons and other Harmful Substances, approved by Act Nº 23,829.
- And the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 (LC 72), approved by Act Nº 21,947.

## 3. What is the limit on sulphur content of fuel oil used in your territorial waters? Is there a MARPOL Emission Control Area in force?

On June 8th, 2021, Argentina deposited the instrument of accession to the Protocol of 1997, adopting Annex VI of Marpol with the IMO. Therefore, the limit on the sulphur content in the fuel oil used onboard ships navigating Argentine Territorial waters is a maximum of 0.50 % mass by mass.

After completing a period of three months from the accession date, the Argentine Republic is able to enforce the port State control regime, and by virtue of this, the Prefectura Naval Argentina will be entitled to inspect the vessels arriving at the country's ports, regardless of their flags, in view of ensuring the compliance with the environmental protection provisions stipulated by MARPOL Annex VI, and demanding the fulfilment of the operational requirements set forth by the convention to national-flag vessels.

## 4. Are there any applicable international conventions covering collision and salvage? If not what laws apply?

Argentina is signatory of the Brussels Conventions for the Unification of Certain Rules with Respect to Assistance and Salvage at Sea, as well as it is of the International Convention for the Unification of Certain Rules in respect to Collisions between Vessels, both of 1910. Such conventions apply only when one of the vessels involved in the incident flies the flag of a state party to the convention.

In all other cases, the specific provisions on Collision and Salvage provided by the Argentine Navigation Law No. 20,094 apply. These specific provisions refer to procedural aspects, causation and apportionment of liability, applicable law and jurisdiction.

Likewise, Argentina has ratified the International Convention on Certain Rules concerning Civil Jurisdiction in Matters of Collision of 1952, International Convention on Certain Rules concerning Criminal Jurisdiction in Matters of Collision of 1952, and the Montevideo International Commercial Navigation Treaty of 1940 (which provides rules on jurisdiction in matters of salvage and collision).

## 5. Is your country party to the 1976 Convention on Limitation of Liability for Maritime Claims? If not, is there equivalent domestic legislation that applies? Who can rely on such limitation of liability provisions?

Argentina is not party to the LLMC 1976.

Section 175 of the Argentine Navigation Law (ANL) No. 20,094 entitles the Disponent Owner to limit their liability for losses and damages caused by the acts or omission of their employees, servants and agents who performed their duties at sea.

Likewise, Section 181 states that the same limitation may be claimed by the registered shipowner (when the shipowner is a different person from the Disponent Owner), and by their servants and agents when the claim is directly brought against them.

If more than one of these persons are claimed against, the total liability cannot exceed the limit as set, which shall be the value of the ship at the end of the voyage, plus the credits (such as freights, tickets and any others) accrued on the last voyage. If the vessel is sunk —thus becoming a total loss—, the value of the ship at the end of the voyage will be zero, and accordingly, the cap to liability will be zero as well.

In addition to limiting liability to the value of the ship at the end of the voyage, Section 175 also gives the registered shipowner a further opportunity to limit their liability by abandoning the ship to their creditors. This means that the shipowner shall be entitled to put the vessel at the disposal of the creditors, depositing the title of ownership in a judicial court pursuant to a special

 

judicial proceeding which, as per the ANL, should be brought within three months since the incident's occurrence.

After the sale of the vessel, the creditors shall collect from the price of sale the amount of the debts to which they are entitled and shall be prevented from claiming any additional amount. Credits accrued by the ship (such as freights, tickets and any others) should be added to the price of sale.

The ANL also provides (at section 175, paragraph 3) for a supplementary limit for claims for death or personal injury, should the value of the vessel at the end of the voyage is insufficient to pay compensations.

## 6. If cargo arrives delayed, lost or damaged, what can the receiver do to secure their claim? Is your country party to the 1952 Arrest Convention? If your country has ratified the 1999 Convention, will that be applied, or does that depend upon the 1999 Convention coming into force? If your country does not apply any Convention, (and/or if your country allows ships to be detained other than by formal arrest) what rules apply to permit the detention of a ship, and what limits are there on the right to arrest or detain (for example, must there be a "maritime claim", and, if so, how is that defined)? Is it possible to arrest in order to obtain security for a claim to be pursued in another jurisdiction or in arbitration?

Argentina is not party to the International Convention for the Unification of Rules in connection with the Preventive Arrest of Vessels of 1952, and neither it is to the International Convention for the Arrest of Vessels of New York (1999).

For cargo claims resulting from breach of contract of carriage, the Argentine Navigation Law (ANL) provides that the legitimate holder of the bill of lading or consignee may request the arrest of the carrying vessel by submitting proof of the cargo damaged or lost, which may be evidenced by a joint survey, a revised cargo note or any other written evidence, signed by two (2) witnesses.

In addition, the ANL provides that the consignee or legitimate holder of the bill of lading may request the arrest of the carrying vessel, after carrying out the judicial examination of the damages in accordance with the special procedure set forth by the Law.

Likewise, under the ANL, Argentine vessels can be arrested in Argentine ports by virtue of the order of an Argentine Court in the following cases:

1.- to grant a maritime lien;

2.- to grant a debt incurred by the master, owner or disponent owner of the vessel in connection with her use, navigation and exploitation (at the port of the jurisdiction where the shipowner is domiciled or has their principal establishment).

(…)

And, foreign vessels can be arrested in Argentine Ports and prohibited from sailing in the following cases:

a. to grant a maritime lien;
b. to grant a credit accrued in the Argentine territory for the use of a vessel, or a sister vessel of the same, belonging to the same ownership when bringing actions of arrest or when the credit accrued;
c. to grant a credit, connected or not with the use of the vessel, which is capable of being claimed by the creditor before the Argentine Tribunals, which should be competent to hear the case.

Finally, National Civil and Commercial Court of Appeals has regularly decided that Argentine Courts have concurrent jurisdiction in all judicial proceedings where a foreign vessel could be arrested under Argentine Law.

The aforesaid means that Argentine Courts' concurrent jurisdiction to arrest a vessel is valid, despite the jurisdiction of another court which might be competent to resolve the dispute which gave rise to the arrest; either because an extension of jurisdiction clause has been agreed between the parties, or because another court might result competent due to another provision of international private law.

## 7. For an arrest, are there any special or notable procedural requirements, such as the provision of a PDF or original power of attorney to authorise you to act?

Claimants will need to grant their lawyers a POA empowering them to bring actions of arrest; nevertheless, actions could be brought without the POA, if this document is presented in its original form within the following 40 days after the initial presentation requesting the vessel arrest.

On the other side, arrestor will need to meet the following procedural requirements:

 

- pay Court fee: 3 % of the claimed amount must be paid to court.
- afford expenses concerning the Registry of Ships: 0.1 % of the claimed amount.
- provide adequate Counter-security for eventual the damages that the arrest might cause if brought without being entitled to (it may be given in cash, by a local bank, or a local well known insurance company).

Being the Arrestor a foreign entity, some difficulties to get the requested adequate security may be faced in Argentina; however, there might be different alternatives to try to overcome any obstacle in this regard.

## 8. What maritime liens / maritime privileges are recognised in your jurisdiction? Is recognition a matter for the law of the forum, the law of the place where the obligation was incurred, the law of the flag of the vessel, or another system of law?

Under Argentine Law, the following credits are considered maritime liens and confer a special privilege over the vessel to Claimants:

- judicial and legal costs incurred for the common interest of creditors for the maintenance of the ship, for her judicial sale, and for the distribution of the sums obtained from the judicial sale of the vessel among the creditors;
- claims for wages and other sums due to the master, officers and other members of crew resulting from employment contracts, labour laws and agreements signed with Unions.
- claims arising from shipbuilding contracts;
- taxes, duties, contributions and others, resulting from the navigation or the commercial exploitation of the vessel;
- claims resulting from death or personal injury occurred onboard or ashore, in connection with the vessel operation;
- claims for tortious acts against the owner, disponent owner, or the vessel resulting from the operation of the vessel;
- claims for salvage reward, wreck removal expenses and general average contributions.
- claims for damage or loss caused to the cargo or goods onboard.
- claims resulting from Charterparties disputes or from the execution of the contracts of Carriage;
- claims resulting from supplies or other necessaries for the vessel operation, maintenance or service;
- credits for the construction, repair or equipment of the Vessel and for dock expenses;
- claims arising from disbursements made by the master, shippers, charterers or agents on behalf of the Vessel or her Owner;
- claims for the last purchase price of the Vessel and the interests accrued during the last two (2) years.

According to Section 598 of the Argentinian Navigation Law, the maritime privileges are ruled by the law of the nationality of the vessel (i.e., flag)

## 9. Is it a requirement that the owner or demise charterer of the vessel be liable in personam? Or can a vessel be arrested in respect of debts incurred by, say, a charterer who has bought but not paid for bunkers or other necessaries?

As per Argentine law, the supply of bunkers or other necessaries does give rise to a maritime lien, and thus, claims against a time charterer who contracted the bunkers or other necessaries give a right to arrest the ship. It should be recalled that maritime liens expire after one year.

## 10. Are sister ship or associated ship arrests possible?

Yes, pursuant to the Argentine Navigation Law, it is possible to arrest a foreign sister ship, provided that both the vessel that generated the credit to be secured with the arrest and the one to be arrested belong to the same ownership, when requesting the arrest or when the credit accrued.

## 11. Does the arresting party need to put up counter-security as the price of an arrest? In what circumstances will the arrestor be liable for damages if the arrest is set aside?

The arresting party must put up Counter-security to secure the eventual the damages that the arrest might cause if brought without being entitled to (it may be given in cash, by a local bank, or a local well-known insurance company).

The Argentine Navigation Law (ANL) Nº 20,094 does not contain any express provision about wrongful arrests; however, the most recognized doctrine has considered that, in case of an intentional wrongful arrest, the arrestor shall be liable unlimitedly for all the damages and losses resulting from the illegitimate immobilization of the vessel. In this respect, it should be noted that the burden

 

of proof to demonstrate the arrestor´s liability would be harsh to meet.

The ANL only provides that the liability of the arrestor, who —without acting maliciously— obtains the arrest of a vessel and does not ultimately initiate actions of claim, is limited to the damages caused by the immobilization of the vessel, until the moment in which the shipowner substitutes said arrest with another security, and to the expenses related thereof (section 540, ANL).

## 12. How can an owner secure the release of the vessel? For example, is a Club LOU acceptable security for the claim?

An arrested vessel may be released if adequate security is given to substitute the arrest. Adequate security may be given in the form of cash deposit, insurance policy issued by a local company, a local bank guarantee, an insurance policy given by the shipping agents of the foreign Vessel or by giving Argentine National Treasury Bonds.

A Club´s LOU may be effective to get the vessel released from the arrest whether opponents accept it. If the counterpart objects its effectiveness or appropriateness, the judge may not admit it and it will depend on court´s criterion.

## 13. Describe the procedure for the judicial sale of arrested ships. What is the priority ranking of claims?

After an enforceable title is in place, the Court shall —before ordering the judicial sale of the ship— request the National Registry of Ships report of the Vessel´s mortgages, liens, and encumbrances. If the vessel flies a foreign flag, such request shall be made to the corresponding consular authority.

If liens and encumbrances do not exceed the vessel price, the Court will order the judicial sale of the ship and the funds obtained from the auction shall be distributed among the creditors.

If liens and encumbrances exceed the vessel price, creditors may request the initiation of the special proceeding of privileged creditors on the vessel.

Should this special proceeding be commenced, and all relevant formalities about the notifications are met, any interested party may object the judicial sale of the vessel. If no objections are entered or if they are dismissed by the Court, the judicial sale of the vessel shall be ordered, and the sums obtained thereof shall be distributed among the creditors, observing the priority ranking provided by the Navigation Law.

## 14. Who is liable under a bill of lading? How is "the carrier" identified? Or is that not a relevant question?

Pursuant to Argentine Legislation and judicial precedents, either the Contracting Carrier (i.e. the party issuing the B/L), the Actual Carrier (i.e. the party undertaking to carry and take care of the cargo) and/or the Owners may be found jointly and severally liable for cargo damaged or lost, without prejudice of the recovery actions they may possibly have against each other.

## 15. Is the proper law of the bill of lading relevant? If so, how is it determined?

In the event that the bill of lading has an applicable law clause or a clause paramount indicating that the contract of carriage is subject to a specific legislation or an international convention, such as the Hague or Hague-Visby Rules, such provision will be valid before the Argentine courts (in the case of the Hague or the Hague Visby Rules, irrespective of the ambit of application set forth by the relevant convention).

Nevertheless, whether any provision of the applicable law or convention restricts or limits the liability of the carrier or shipowner to a greater degree than the Argentine Navigation Law (ANL) does, such provision shall be considered null and void.

## 16. Are jurisdiction clauses recognised and enforced?

Jurisdiction Clauses are recognized and enforced by Argentine Courts; however, attention should be paid to Section 614 of the Argentine Navigation Law, which expressly states that clauses of jurisdiction excluding Argentine Courts from resolving disputes, incorporated into a voyage charterparty, a contract of carriage of goods or persons, or into any contract where the Carrier undertakes to transport goods to destination, shall be null and void.

Likewise, under section 621, it is left open to the parties to agree that a charterparty dispute or cargo claim shall be subject to arbitration proceedings or resolved by a court from a different jurisdiction, provided that such

 

agreement is reached after the damage or the cause of the claim has occurred.

### 17. What is the attitude of your courts to the incorporation of a charterparty, specifically: is an arbitration clause in the charter given effect in the bill of lading context?

Local Courts will recognise that the carriage of goods under a bill of lading shall be subject to the provisions of a charterparty expressly incorporated to it. However, whether the mentioned charterparty sets forth an arbitration clause stating a foreign Arbitrator or Arbitration Tribunal shall be competent to resolve cargo claims disputes concerning the goods that are to be discharged in Argentina, the same shall be considered null and void.

### 18. Is your country party to any of the international conventions concerning bills of lading (the Hague Rules, Hamburg Rules etc)? If so, which one, and how has it been adopted – by ratification, accession, or in some other manner? If not, how are such issues covered in your legal system?

The carriage of goods by sea is governed by the Argentine Navigation Law No 20,094 and by the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (the Hague Rules) signed in Brussels on August 25th, 1924, and ratified by Argentina through Act No. 15,787 in 1960.

The Hague Rules therefore apply when, according to Article 10, a bill of lading or a similar document of title has been issued in a contracting state to the Rules. Otherwise, the Argentine Navigation Law applies.

### 19. Is your country party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? If not, what rules apply? What are the available grounds to resist enforcement?

Argentina is party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards signed in New York on June 10th, 1958. Accordingly, an enforcement of an arbitral award may be resisted pursuant to the grounds provided for on Section V of the referred convention.

Moreover, Law No. 27,449 about International Commercial Arbitration, which is in force since August 4th, 2018, sets forth the relevant grounds upon which the enforcement of an arbitral award can be resisted, whether or not seat of arbitration is in Argentina. Such grounds are similar to those of the New York Convention, which can be summarized as follows:

a. inability of a party or invalidity of the arbitration agreement;
b. the violation of due process;
c. the arbitral tribunal exceeding its authority;
d. the improper constitution of the arbitral tribunal or procedural irregularities;
e. when an award has not yet become binding or has been set aside or suspended;
f. the matter cannot be subjected to arbitration pursuant to Argentine law; or
g. the recognition or enforcement of the award would be contrary to public policy regulations

### 20. Please summarise the relevant time limits for commencing suit in your jurisdiction (e.g. claims in contract or in tort, personal injury and other passenger claims, cargo claims, salvage and collision claims, product liability claims).

The general time limit for the exercise and enforcement of rights in Argentina is five (5) years to bring actions in contract, and three (3) years to bring actions in tort. However, shorter time limits related to shipping matters are provided by the Argentine Navigation Law No. 20,094, and they can be summarized as follows:

Cargo Claims and Charterparty disputes shall be time barred after one (1) year, claims arising from a contract of carriage of passengers and their luggage shall be time barred after one (1) year; and Salvage and Collision Claims shall have a time limit of two (2) years.

### 21. Does your system of law recognize force majeure, or grant relief from undue hardship?

The Argentine Navigation Law provides in several specific provisions, when the force majeur defence can be invoked under the contract of carriage of goods by sea, under the contracts for the use of the vessel, time and voyage charterparties, and under the charter by demise.

Further, the maritime doctrine and relevant judicial precedents, have stated that an event, to be considered force majeure which exempts the carrier, the shipowner or the vessel form liability, should be unforeseeable,

 

unavoidable, real, current, not a mere possibility, beyond the control of the parties, alien to their negligence, supervening and should pose an insuperable obstacle which prevents the full performance of a contractual obligation (not a mere difficulty).

Courts have interpreted this defence strictly and narrowly, and stated that the concept of force majeure is dynamic and cannot be analysed in abstract situations, and that the admissibility of this defence depends strictly on the circumstances of the case.

On the other side, the Argentine Civil and Commercial Code provides that those events that could not be foreseen, or that having been foreseen could not be avoided, shall be considered Force Majeure, and therefore, an exemption from liability cause (section 1730); and also refers to the doctrine of undue hardship as, the Theory of Frustration (section 1090); and as, the Theory of the Unpredictability (section 1091).

However it should be pointed out that these contractual remedies as set forth by the Civil and Commercial code, may not apply to all maritime matters.

The contractual defence of frustration grants relief to the affected party by allowing it to claim the termination of the contract, when due to an unforeseeable and extraordinary event (alien to the parties), the purpose of the contract is frustrated, or the underlying considerations upon which a contract was entered are altered.

The Theory of the Unpredictability grants relief to the affected party by allowing it to claim the modification of the contract, when due to an unforeseeable and extraordinary event (alien to the parties), the performance of any of the obligations under contract becomes excessively onerous, and therefore, extremely difficult or impossible to be fulfilled.

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