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Argentina: Law & Practice

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ARGENTINA



Law and Practice

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International Transport & Logistics Legal Consultants was established in the city of Buenos Aires in 2011 with the purpose of providing national and international clients with comprehensive legal advice in issues associated with different areas of the maritime and aeronautical transport industries, international trade, and insurance. The firm is qualified to provide legal advice to enterprises related to energy, and oil & gas, including those involved in operations, services and supplies linked to the offshore in-

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1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

Section 116 of the Argentine National Constitution provides that admiralty cases fall within the jurisdiction of the Supreme Court and other lower federal courts.

Accordingly, Section 515 of the Argentine Navigation Law (No 20,094) sets forth that all cases resulting from, or related to, navigation shall be heard by the Civil and Commercial Federal Courts of Buenos Aires.

The Argentine Maritime Authority (ie, *Prefectura Naval Argentina*) exercises the administrative jurisdiction on navigation matters pursuant to Law No 18,398, being responsible for investigating the facts and determining administrative and professional liabilities involved in shipwrecks, collisions, groundings and other maritime incidents. Its findings are considered important pieces of evidence in judicial proceedings related thereto.

Additionally, there is a *Tribunal Administrativo de la Navegación*, which is another administrative body under the Argentine Navy (*Armada Argentina*), responsible for determining the professional liability of national or foreign crew members in cases involving incidents in navigation.

1.2 Port State Control

Argentina is a signatory to the Latin American Agreement on Port State Control of Vessels, signed in *Viña del Mar* on 5 November 1992, which has been in force since 1993.

For the purposes of exercising port state control, the Argentine Maritime Authority checks whether foreign vessels visiting Argentine ports comply with the provisions set forth by the international conventions of the International Maritime Organization (IMO), which are mandatory under the agreement.

These conventions are:

- the International Convention on Load Lines, 1966;
- the Protocol of 1988 relating to the International Convention on Load Lines, 1966;

- the International Convention for the Safety of Life at Sea, 1974;
- the Protocol of 1988 relating to the International Convention for the Safety of Life at Sea, 1974;
- the International Convention for the Prevention of Pollution from Ships, 1973, as amended by the Protocol of 1978 relating thereto (MARPOL);
- the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978;
- the Convention on the International Regulations for Preventing Collisions at Sea, 1972; and
- the International Convention on Tonnage Measurement of Ships, 1969.

Currently, the Agreement is applicable at the 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.

The Argentine Maritime Authority's inspectors are empowered to conduct onboard inspections, check the validity of the pertinent certificates and documents, and verify the general condition of the vessel, her equipment and crew.

If there are evident grounds of non-compliance with the requirements set forth by the aforementioned international conventions, a more detailed inspection can be carried out, and if they pose a serious risk to navigation or the maritime environment, foreign vessels may be detained until the deficiencies are fixed.

1.3 Domestic Legislation Applicable to Ship Registration

In Argentina, ship registration is regulated by:

- the Argentine Navigation Law;
- Law No 19,170;
- the Argentine Maritime, River and Lake Navigation Regime (Decree 770/19); and
- Maritime Ordinance 9/02.

For vessels with a gross tonnage of less than three, Maritime Ordinance 2/19 shall apply.

The authority handling domestic registration of vessels is the National Register of Ships, under the ambit of the Argentine Maritime Authority, which is ultimately under the Ministry of National Security.

1.4 Requirements for Ownership of Vessels

According to Section 52 of the Argentine Navigation Law, the requirements that must be met to have a vessel registered in the Argentine National Registry of Ships are the following:

- compliance with the construction and seaworthiness requirements set forth by the Argentine Maritime Authority (Section 52.a);
- the ship-owner should be domiciled in Argentina;
- where the ship-owner is an entity, it shall be established in accordance with the Argentine regulations (Section 52.c); and
- where the ship-owner is a foreign company, it must have a branch or any other kind of permanent representation established in Argentina according to the applicable domestic law (Section 52.c).

1.5 Temporary Registration of Vessels

Under Argentine law, the temporary registration of vessels in the National Registry of Ships is not provided for. Nevertheless, Decree Law 19492/44 (regarding national cabotage), as ratified by Law 12,980, and the Law on the Development of the Argentine Merchant Fleet and Regional Fluvial Integration (No 27,419) provide that – under specific circumstances and after complying with formal requirements – foreign vessels may receive the treatment of Argentine flag vessels and enjoy all the rights and obligations of registered Argentine vessels, without being registered in the National Registry of Ships.

1.6 Registration of Mortgages

Maritime mortgages are registered in the National Registry of Ships.

To register a mortgage attached to a vessel of ten or more gross tonnage, the following documentary requirements must be complied with.

- The mortgage agreement must be executed in a public deed or an authenticated private agreement, including:
 - (a) the name, surname, filiation, nationality, profession and domicile of the creditor and the debtor;
 - (b) particulars of the ship according to the certificate of registration;
 - (c) relevant details of the contract; and
 - (d) the amount of the loan, the interest rate agreed, and the terms of payment.
- Evidence of having paid salaries and all social security contributions of the crew serving the vessel in her last voyage must be submitted.

1.7 Ship Ownership and Mortgages Registry

The information recorded by the National Registry of Ships is available to those who have a justified interest in enquiring about the ownership, mortgages, liens and encumbrances attached to vessels registered therein. Pursuant to Section 40 of Law No 19,170, any interested party may request a certificate of ownership, liens and encumbrances of vessels, by filling the form F-004-RNB, to have access to such data.

2. Marine Casualties and Owners' Liability

2.1 International Conventions: Pollution and Wreck Removal

Argentina is not a party to any international convention covering wreck removal. Hence, domestic legislation applies (ie, the Argentine Navigation Law and Law No 16,526 concerning the legal regime applicable to wreck removal operations, Sections 12 to 18).

Regarding pollution, Argentina ratified the 1992 Protocol amending the International Convention on Civil Liability for Oil Pollution Damage and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, becoming, thus, a party to those conventions. Argentina is not a party to the 2003 Protocol establishing an International Oil Pollution Compensation Supplementary Fund.

On the other hand, Argentina did not ratify the International Convention on Civil Liability for Bunker Oil Pollution Damage, nor the International Convention on Liability and Compensation for Damage in Connection with the Carriage of

Hazardous and Noxious Substances, 1996, and its amending protocols.

Regarding marine pollution prevention, Argentina has ratified the following international conventions:

- the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969;
- the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978;
- the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990;
- the co-operation agreement with Uruguay to Prevent and Combat Incidents of Pollution of the Aquatic Environment Caused by Hydrocarbons and Other Harmful Substances, 1987; and
- the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972.

2.2 International Conventions: Collision and Salvage

Argentina is a signatory to the Brussels Convention for the Unification of Certain Rules with Respect to Assistance and Salvage at Sea, and of the International Convention for the Unification of Certain Rules with Respect to Collisions between Vessels, both of 1910.

Likewise, Argentina has ratified the International Convention on Certain Rules concerning Civil Jurisdiction in Matters of Collision, 1952; the International Convention on Certain Rules concerning Civil Jurisdiction in Matters of Collision, 1952; and the Montevideo International Commercial Navigation Treaty, 1940 (which provides

rules on jurisdiction in matters of salvage and collision).

In those cases where these conventions do not apply, the Argentine domestic legislation does. Accordingly, the Argentine Navigation Law contains specific provisions about procedural aspects, causation and apportionment of liability, applicable law and jurisdiction on collision and salvage matters.

2.3 1976 Convention on Limitation of Liability for Maritime Claims

Argentina is not party to the Convention on Limitation of Liability for Maritime Claims, 1976, but the Argentine Navigation Law provides for a specific regime that allows the ship-owner and the disponent owner to limit their liability by setting up a limitation fund, for losses and damages caused by the acts of, or omission to perform an act by, their employees, servants and agents who performed their duties at sea.

The cap on the liability for maritime claims is the value of the ship at the end of the voyage, plus the credits (such as freights and tickets) accrued on the last voyage. If the value of the vessel at the end of the voyage is insufficient to pay all compensation for claims due to death or personal injury, there is a supplementary limitation based on the tonnage of the vessel.

Registered owners can also limit their liability for maritime claims, by making abandonment of their vessel in favour of their creditor, depositing the title of ownership in a judicial court pursuant to a special judicial proceeding within three months after the incident occurred.

2.4 Procedure and Requirements for Establishing a Limitation Fund

Limitation funds must be set up in cash by depositing an amount that equals the value of the ship at the end of the voyage, plus the credits (such as freights and tickets) accrued on the last voyage. The right to set up a limitation fund may be alleged by the owner or the disponent owner before the expiry of the time limit to allege defences in the sentence enforcement process. Among other formalities, explanatory details of the composition of the limitation fund and a list of the creditors or claimants subject to such limitation fund shall be provided by the owner or the disponent owner. Afterwards, a special proceeding of limitation of liability shall be initiated. If the ship-owners elect to limit their liability by making abandonment of the vessel, they must provide the property deed of the vessel. The owners' right to make abandonment of their vessel should be alleged within three months after the incident occurred.

2.5 Seafarers' Safety and Owners' Liability

Argentina is a party to the Maritime Labour Convention (MLC, 2006), approved by Law 26.920, and its amendments of 2014, 2016 and 2018.

In addition, the following national legislation applies to the rights and safety of seafarers.

- Labour Law 20.744.
- Relevant sections of the old Commercial Code, as amended by laws related to the legal regime applicable to work on-board ships "17.823" and "17.371".
- Labour Risks Law 24.557.
- Argentine Navigation Law 20.094.
- Collective Bargaining Agreements.

- *Regimen de Formación y Capacitación del Personal de la Marina Mercante* (REFO-CAPEMM).

3. Cargo Claims

3.1 Bills of Lading

The transport of cargo under a bill of lading is governed by:

- the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (the "Hague Rules"), signed in Brussels in 1924, which was ratified by Argentina in 1960; and
- the Argentine Navigation Law, which contains specific provisions applicable to the contract of carriage of goods by sea, when the International Convention does not apply.

Therefore, when a bill of lading or similar document of title has been issued in a contracting state to the Hague Rules, the Hague Rules apply; otherwise, the Argentine Navigation Law does.

3.2 Title to Sue on a Bill of Lading

The consignee of the cargo and/or the legitimate holder of the bill of lading shall be entitled to sue under a bill of lading.

3.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

The Argentine Navigation Law establishes a package limitation based on the nature of the cargo (per package, piece, unit, or per kilo weight). It follows the spirit of the Hague-Visby Rules, but sets its own unit of account – namely, Argentine gold peso – for the calculation of the limit. It is restricted to carriers, but their servants and agents can also allege the benefit of this limitation when a claim is brought directly

against them. Therefore, the ship-owner – acting as actual carrier – can also claim the benefit of this limitation.

Section 278 of the Argentine Navigation Law provides that the limit to the carrier's liability for cargo claims shall be calculated per damaged or lost piece of cargo (when the cargo is carried unpacked; ie, heavy objects) or package of cargo (when the cargo is carried packed; eg, in boxes, pallets) or per unit of freight (when the cargo is carried in bulk). When cargo is carried in containers, the law states that where a container is used to consolidate goods, the number of packages or units enumerated in the bill of lading as packed in it shall be deemed the number of packages (for the purpose of limitation) as far as these packages or units are concerned. The limitation of liability operates as a defence to which the carrier is entitled and must allege when first appearing in court. Although the legislation fails to provide a cap to carrier's liability for damages and/or losses caused by a delay in delivering the cargo at the port of destination, Argentine courts have resolved to follow the same limitation of liability regime as for loss of, or damage to, cargo.

3.4 Misdeclaration of Cargo

Section 296 of the Argentine Navigation Law provides that shippers shall be deemed to have guaranteed to carriers the accuracy of the particulars of the cargo as inserted by them in the shipping instructions or the declaration of cargo for shipment. Therefore, carriers could bring a claim against shippers, if their failure to describe the cargo accurately causes damages to them or makes them incur liability before third parties.

3.5 Time Bar for Filing Claims for Damaged or Lost Cargo

Under Argentine legislation, the time limit for cargo claims under the contract of carriage is one year from the unloading of the cargo; or, in the event that the goods were not discharged from the ship, from the date on which they should have been discharged; or, in the event that the goods have not been loaded on to the ship, from the date on which the ship departed, or should have departed, from the port of loading. Parties are allowed to agree on an extension to the time bar, provided that such agreement is reached after the damage, or the cause of the damage, occurred.

4. Maritime Liens and Ship Arrests

4.1 Ship Arrests

Argentina is neither a party to the Brussels Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships, 1952, nor to the International Convention on Arrest of Ships, of New York, 1999.

Ship arrests are governed by the Argentine Navigation Law, which provides that Argentine vessels can be arrested in the following cases:

- to grant a maritime lien; and
- to grant a debt incurred by the Master, owner or disponent owner of the vessel in connection with her use, her navigation and exploitation (in the port of the jurisdiction where the ship-owner is domiciled or has their principal establishment).

Furthermore, it sets forth that foreign vessels can be arrested and prohibited from sailing in the following cases:

- to grant a maritime lien;
 - 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; and
 - to grant a credit, connected or not with the use of the vessel, which is capable of being claimed by the creditor before Argentine courts, which should be competent to hear the case.
- claims resulting from charterparties disputes or from the execution of contracts of carriage;
 - claims resulting from supplies or other necessities for the vessel's 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; and
 - claims for the last purchase price of the vessel and the interests accrued during the last two years.

4.2 Maritime Liens

Under Argentine law, the following claims are considered maritime liens and may entitle claimants to arrest a vessel and collect their credit with preference over other creditors:

- 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 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 ship-building contracts;
- taxes, duties, contributions and others resulting from the navigation or the commercial exploitation of the vessel;
- claims resulting from death or personal injury that occurred on board or ashore, in connection with the operation of the vessel;
- 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 on board;

4.3 Liability in Personam for Owners or Demise Charterers

Depending on the case, in Argentina, a vessel could be arrested regardless of its owners' personal liability on the merits constituting a recognised maritime lien, for debts incurred by the demise charterer.

4.4 Unpaid Bunkers

The supply of bunkers or other necessities gives rise to a maritime lien, and thus gives a right to arrest the ship irrespective of whether it was ordered by the charterer or the owner.

4.5 Arresting a Vessel

In order to obtain an order of arrest from an Argentine court, the arrestor will need to meet the following procedural requirements:

- pay a court fee – 3% of the claimed amount must be paid to court;
- afford expenses concerning the National Registry of Ships – 0.1% of the claimed amount; and
- provide adequate counter-security for eventual damages that the arrest might cause if brought without being entitled to.

Counter-security may be given in cash, by a local bank, or a local well-known insurance company. It may be difficult to be obtained locally when the arrestor is a foreign entity; however, there might be alternatives to try to overcome any obstacle in this regard.

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

4.6 Arresting Bunkers and Freight

The Argentine Navigation Law does not specifically deal with the possibility of arresting bunkers and freights, as it does with the possibility of arresting a vessel; however, it provides that specific maritime claims confer a maritime lien over freight.

Regarding the procedural requirements to bring actions of arrest on freights, and on bunkers, the requirements set forth by the National Civil and Commercial Procedural Code about precautionary measures over any asset, goods or credits shall apply.

4.7 Sister-Ship Arrest

Pursuant to the Argentine Navigation Law, it is possible to arrest a foreign sister-ship if 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.

4.8 Other Ways of Obtaining Attachment Orders

The Argentine Civil and Commercial Procedural Code sets forth different precautionary meas-

ures to obtain security, such as seizure of assets, credits, and rights, prohibition of disposal of movable or immovable property, judicial intervention, and the possibility to request a more convenient measure aimed at obtaining a more appropriate security in view of the particular case.

4.9 Releasing an Arrested Vessel

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

A club's letter of intent or a foreign bank's letter of guarantee may be effective to get the vessel released from the arrest; however, if the arrestor objects its effectiveness or appropriateness, the judge may not admit the substitution.

4.10 Procedure for the Judicial Sale of Arrested Ships

After an enforceable title is in place, the court shall – before ordering the judicial sale of a national ship – request from the National Registry of Ships a 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.

Any interested party may object to 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 order of preference provided by the Argentine Navigation Law. The Argentine Navigation Law divides maritime claims into two groups. The first group is integrated by credits resulting from non-contractual claims and has preference over the claims of the second group, which is integrated by credits resulting from contractual claims. The credit of the mortgagor has preference after the credits of the first group and before the credits of the second group.

4.11 Insolvency Laws Applied by Maritime Courts

The Argentine Insolvency and Bankruptcy Law (No 24,522), as amended by Laws 25,563, 25,589 and 26,086, provides for a debt restructuring proceeding that is similar to the one set forth under Title 11 of the US Bankruptcy Code. Once debtors file a judicial restructuring proceeding (*Concurso preventivo de acreedores*), all existing actions to enforce claims against them – except from those claims arising from a pledge or mortgage – shall be stayed and transferred to be continued by the bankruptcy court and no similar actions may be brought. However, any existing contentious proceeding against debtors, where their liability has not been yet determined, shall continue its regular course before the same court where the claim was originally brought, up to the final sentence.

Privileged creditors secured by pledges or mortgages shall be allowed to continue enforcement actions, but the court may order to stay such proceedings for a period no longer than 90 days. Moreover, the court shall not authorise

precautionary measures or judicial sale unless the claimant proved the credit was verified in the judicial restructuring proceeding. Among privileged creditors, those whose claims are secured by maritime liens set forth by the Argentine Navigation Law may request the formation of the special process of maritime privileged creditors. Moreover, a vessel mortgagee may request the judicial sale of the ship, over which maritime privileged creditors will concur following the ranking of priority set forth by the Argentine Navigation Law. If, after the judicial sale of the ship, any part of the purchase price remains, it will be transferred to the relevant bankruptcy court.

Despite the aforesaid, the debtor and other interested creditors may request the bankruptcy court to lift all precautionary measures pending over those assets considered essential for the continuance of their commercial activities, such as a vessel might be for her owners. Under these circumstances, the judicial sale of a vessel property of owners that are under a judicial restructuring proceeding shall be subject to the judicial bankruptcy proceedings.

4.12 Damages in the Event of Wrongful Arrest of a Vessel

The Argentine Navigation Law does not contain any express provision about wrongful arrests; however, the most recognised doctrine has considered that, in the case of an intentional wrongful arrest, the arrestor shall be liable unlimitedly for all the damages and losses resulting from the illegitimate immobilisation of the vessel. In this respect, the burden of proof to demonstrate the arrestor's liability would be harsh to meet, as the intention of the arrestor, the wrongful arrest and the causation link between the arrest and the damages will need to be demonstrated.

The Argentine Navigation Law 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 immobilisation of the vessel, until the moment at which the ship-owner substitutes said arrest with another security, and to the expenses related thereof (Section 540, Argentine Navigation Law).

5. Passenger Claims

5.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

Argentina approved the accession to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea and its Protocol (1974) by means of Law No 22,178. Furthermore, the Argentine Navigation Law rules apply to those cases that do not fall within the scope of application of the aforementioned international convention and contains specific provisions on the contract of carriage of passengers, including passengers claims for personal injury, death, and damages suffered by their cabin luggage, and luggage and vehicles in the ship's hold.

The time bar limit for passengers claims is two years under the international convention and a year under the Argentine Navigation Law. Both legal systems establish a presumed fault or a fault base liability regime applying to the carrier, which varies depending on whether the cause of the personal injury, death or damages to luggage or vehicles is related to a maritime incident or not. Furthermore, both legal systems set forth that the carrier is entitled to claim the benefits of the limitation of liability. Claims for indemnities for personal injury of a passenger would be recognised as a maritime lien and claim.

6. Enforcement of Law and Jurisdiction and Arbitration Clauses

6.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

Jurisdiction clauses are recognised 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 a destination where they have to be delivered in Argentina – shall be null and void.

Likewise, Section 621 provides that the parties are allowed 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 it has occurred.

6.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

In the event that the bill of lading has an applicable law clause indicating that the contract of carriage is subject to a specific law or to an international convention such as the Hague or Hague-Visby Rules (clause paramount), such provision will be valid before the Argentine courts, and such legislation will apply, irrespective of its ambit of application. However, if any of the provisions of the chosen applicable legislation or international convention restrict or limit the liability of the carrier or ship-owner to a greater degree than the Argentine Navigation Law does, those provisions will be considered null and void. An example of provisions that

would be considered null and void by Argentine courts are those referring to the limitation of liability of the carrier under the Hague and Hague–Visby Rules.

Arbitration clauses referring disputes to foreign arbitration, incorporated into a bill of lading for the transport of goods that shall be discharged at Argentine ports, shall be null and void, pursuant to Section 614 of the Argentine Navigation Law, which gives exclusive jurisdiction to Argentine courts to resolve claims arising under a contract of carriage whereby goods are to be delivered at any Argentine port.

6.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Argentina has been a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards signed in New York on 10 June 1958 since 1988. Moreover, Law No 27,449, concerning international commercial arbitration, contains specific provisions that apply to international commercial arbitration with a seat outside Argentina. This body of provisions follows the spirit of the aforementioned international convention.

6.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

Judicial precedents issued by the National Civil and Commercial Court of Appeals have regularly stated that Argentine courts have concurrent jurisdiction to arrest a vessel, in all cases where a vessel could be arrested under the Argentine Navigation Law, despite the jurisdiction of another court that might be competent to resolve the merits of the dispute that gave rise to the arrest, either because an extension of jurisdiction clause has been agreed between the parties or because another court might be

competent due to another provision of international private law.

Furthermore, as Argentina is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Argentine courts could order an arrest on a vessel to secure a claim, which would be subject to arbitration proceedings in a country that has ratified such convention, if they are empowered to do so under Argentine law.

6.5 Domestic Arbitration Institutes

The Argentine Maritime Law Association (*Asociación Argentina de Derecho Marítimo*) has issued Arbitration Rules and created an Arbitration Committee within the organisation. Although it is known that some contracts would have incorporated an arbitration clause referring all disputes that may arise thereunder to be resolved following the Association's Arbitration Rules and by the Arbitration Committee, there is no record of disputes being resolved by the institution.

6.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

At the first appearance at court, the defendant should raise an objection of lack of competence based on the breach of a foreign jurisdiction or arbitration clause.

7. Ship-Owner's Income Tax Relief

7.1 Ship-Owner's Income Tax Relief

In Argentina, there is no tonnage tax and the incomes earned by ship-owners established in Argentina are fully subject to income tax. The income tax is calculated on the profit or loss shown in the company's financial statements,

which is adjusted by adding up non-deductible expenses, and deducting non-taxable incomes and/or allowable deductions not accounted for in the accounting records. The tax rate on the net income of companies incorporated in Argentina is 30%. Depending on the particulars of the case, if a ship-owner's vessel is engaged in several contracts, in excess of her ordinary use during a fiscal year, the benefits of the accelerated depreciation of such asset may be claimed before the tax authority, in the form of a reduction in income tax.

8. Implications of Non-performance, the IMO 2020, Trade Sanctions and the War in Ukraine

8.1 Non-performance of a Shipping Contract

The Argentine Navigation Law, when regulating the different shipping contracts, provides that a force majeure event shall operate as an exemption to liability cause, in different specific scenarios. The maritime doctrine and relevant judicial precedents have stated that the defence of force majeure should be interpreted narrowly, 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. Further, it has stated that for an event to be considered force majeure, it should not be a mere difficulty, but unforeseeable, unavoidable, real, current, beyond the control of the parties, supervening and should pose an insuperable obstacle that prevents the full performance of a contractual obligation. The theory of frustration as such is provided by Section 1091 of the Argentine Civil and Commercial Code; however, it should be pointed out that this contractual remedy may not apply to all maritime matters.

8.2 Enforcement of the IMO 2020 Rule Relating to Limitation on the Sulphur Content of Fuel Oil

On 8 June 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. The Argentine Maritime Authority is empowered to inspect vessels arriving at Argentine ports, regardless of their flags, to ensure compliance with the environmental protection provisions stipulated by MARPOL Annex VI, and demand the fulfilment of the operational requirements set forth by the convention for national-flag vessels.

8.3 Trade Sanctions

The Argentine Republic is a founding member of the United Nations. Since its foundation, the country has played an active role in the defence and promotion of international peace and security, human rights and sustainable development. Regarding international trade sanctions, Argentina generally follows the sanctions imposed by the UN Security Council, published by the Ministry of Foreign Affairs, International Trade and Worship. The decisions adopted by the Security Council are incorporated in domestic law according to the procedure set forth in Law 24,080 and its regulatory decrees.

With respect to the impact that the trade sanctions imposed by the International Community due to the conflict between Russia and Ukraine may have in Argentina, it should be noted that it does not differ from the one observed in the shipping industry at large.

Issues encountered include cancellations of voyages, shipment, and bookings, as well as the

need of issuing letters of indemnities. When a specific cargo has been intended to be consigned to a Russian-related party or a Russian-related territory, delays and additional costs have been observed.

8.4 The War in Ukraine

Argentina has not been alien to the global economic consequences of the war in Ukraine, such as the increase in the prices of energy, agricultural products, minerals and fertilisers, fuels, as well as higher rates for the international transportation. Likewise, since Argentina is a notable exporter of agricultural products, the interruption of trade with Ukraine and Russia has given the country the opportunity to increase and expand its foreign commerce in these sectors of the economy. With regard to the non-performance of contractual obligations due to the war, depending on the circumstances of the case, the defence of force majeure could be invoked by the defaulting party in order to escape from liability. To date, there are no records of any judicial final decision in this regard.

9. Additional Maritime or Shipping Issues

9.1 Other Jurisdiction-Specific Shipping and Maritime Issues

All the main maritime matters regulated by Argentine law have been covered throughout this chapter; nevertheless, the author would like to address the Act on the Development of the Argentine Merchant Fleet and Regional Fluvial Integration (No 27,419), in force since 29 December 2017, which was enacted with the purpose of promoting the transport industry and the participation of Argentine ship-owners in the local market.

Said act brought about the creation of the Special Registry of National Shipowners, which depends on the Undersecretariat of Ports, Waterways and Merchant Navy of the Ministry of Transport, in contrast with the Registry of Onshore Personnel, which depends on the Argentine Maritime Authority.

Those registered in this new registry can benefit from the advantages established by Act No 27,419; among them, the reduction of obstacles to:

- import foreign vessels to incorporate them in the Argentine fleet (without paying import taxes); and
- charter foreign-flagged vessels and naval artefacts under bareboat charter contracts within a temporary import legal regime and to have them considered Argentine-flagged to all effects, including to operate on national cabotage during the chartering period (ie, the vessel shall keep her foreign flag but she will receive “Argentine flag treatment”).

On the other side, The Executive Power of the Argentine Republic issued the Decree of Necessity and Urgency 70/2023, which was published in the official gazette on 21 December 2023 and entered into force on 29 December 2023. This Decree declared a public emergency in the country in economic, financial, fiscal, administrative, social security, tariff, health and social matters until 31 December 2025.

Through the implementation of a far-reaching deregulation plan, the government plans to rebuild Argentina’s economy by immediately eliminating state barriers and restrictions that impede its normal development, while at the same time it aims to promote greater insertion in world trade.

In an extensive development of more than 300 articles, measures related to various economic, customs, foreign trade, legal, labour, corporate and social aspects, among others, have been established.

It should also be noted that a draft bill (called “Omnibus Law”) referring to other aspects of the aforementioned matters and which includes amendments to other important laws, such as the Fisheries, Hydrocarbons and Companies Laws, is currently under consideration by the Congress of the Nation.

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