

Standard Bulletin: Latin America Special Edition

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The Standard



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The majority of the countries of Latin America have civil codes (or codified legal systems), which means that, although prior court decisions carry some weight, legislation and regulations generally provide the legal framework.

Efforts to create uniformity with the international maritime community have had limited success in Latin America for two principal reasons: firstly, not all of the countries in the region have adopted the various international conventions, and secondly, countries have implemented the conventions in different ways.

As we have highlighted in previous articles, the potential for delay, complicated procedural requirements and escalating claim costs (including interest and monetary indexation as a consequence of inflation) are features inherent in a number of Latin American jurisdictions. Additional factors to bear in mind are:

- There are few dedicated maritime tribunals. Most cases will be heard by civil or commercial judges without the specialist maritime expertise and

In this second Latin American special edition of The Standard Bulletin we provide a summary of the legal regimes in place across the region and highlight some common themes.

experience seen in more mature maritime jurisdictions; and

- Alternative dispute resolution is becoming increasingly common (perhaps because of concerns about delays and costs) but is still not used as much across Latin America as in other jurisdictions. However, in some countries in the region, mediation is a compulsory step before court proceedings may be commenced.

The Standard Club has extensive experience in litigation and alternative dispute resolution in Latin America. Not only are members of our team legally qualified, we also have an extensive network of correspondents and lawyers that we are able to draw upon to assist with particular cases.

Latin American trading blocs

- Two blocs of Latin American countries exist with the aim of facilitating trade and encouraging integration in the region through establishing uniformity in Customs and other trading laws between countries, as well as encouraging co-operation and mutual support and understanding.
- Mercosur (www.mercosur.int) is composed of Argentina, Brazil, Uruguay, Paraguay and Venezuela, and was established in 1991 by the Treaty of Asuncion
- The Pacific Alliance (www.alianzapacifico.net) is composed

of Chile, Colombia, Mexico and Peru, and was formally launched in 2012.

Rocram – The operative network for regional co-operation amongst the maritime authorities of the Latin Americas

Rocram (www.rocram.net) is a regional organisation which was created to encourage maritime authorities to co-operate. Its main objectives include:

- facilitating the implementation of maritime laws;
- facilitating the implementation of IMO conventions;
- focusing on maritime safety and security;
- supporting the training and certification of seafarers; and
- the protection of the environment.

Conclusion

Latin America is a region with huge economic potential. However, it is important that growth continues to be mirrored by the evolution of the states' legal systems to promote certainty and consistency for the benefit of all stakeholders.

Lastly, it must be stressed that some legislative initiatives are taking place to update maritime legal frameworks (for example, in Brazil) and some countries are trying to move towards more globalised regimes, including by ratifying the latest international conventions (for example, Paraguay and Chile).

Map of Latin American countries covered in legal overview



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Venezuela: Globalpandi

Table of Latin American countries

Legal overview	Argentina	Brazil
Main body of local law regulating maritime law aspects	<ul style="list-style-type: none"> Argentine Navigation Act 20,094 – incorporates the Hague Rules Argentina has not formally ratified the Hague-Visby Rules but has incorporated the majority of its principles into its Navigation Act 	<ul style="list-style-type: none"> Commercial Code 1850 (Part II) Civil Procedure Laws/decrees form the new Civil Code
Time bars	<ul style="list-style-type: none"> Cargo claims: one year Extra-contractual claims: two years Contractual claims: 10 years unless a shorter period is mentioned in a particular situation (we recommend checking this case-by-case) Collisions: two years from the date of the casualty Personal injury claims: two years (however, the position has to be checked on a case-by-case basis) Customs fines: five years starting from the 1 January of the year after the infraction 	<ul style="list-style-type: none"> Cargo claims: one year Freight and demurrage claims: one year Personal injury claims: three years, however, in relation to passenger claims, if Consumer Protection Code applies, the time limit could be five years Extra-contractual claims: three years
Cargo conventions	<ul style="list-style-type: none"> Hague Rules incorporated into the Argentine Navigation Act 20,094 Hague-Visby Rules also incorporated into the Navigation Act, although they have not been formally ratified 	<ul style="list-style-type: none"> Not signatory to any cargo convention – incorporating the provision of any cargo convention in the contract of carriage will not be valid under Brazilian law
Limitation of liability	<ul style="list-style-type: none"> Argentine Navigation Act 20,094 – owner may limit its liability to the value of the ship as at the end of the voyage during which such facts took place, plus gross freight, the passage money collected or to be collected from that voyage and any other amount it may be entitled to as a result of the voyage in question In case of personal injuries, if the aggregate of those values is insufficient to pay the total amount of the relevant compensations up to a total of 13 Argentine gold pesos per registered tonne, the owner’s liability shall be increased to the extent necessary to ensure such amount, which shall be exclusively applied to the payment of such compensations. The amount received from the insurance is not comprised in this limitation except in the case of personal injuries 	<ul style="list-style-type: none"> Limitation of Liability Convention 1924 Commercial Code establishes a limitation of liability principle for the shipowner through the abandonment of the vessel to the creditors, known as abandonment of ship and freight. It is a physical abandonment of the vessel (and not of its monetary value) The limitation of liability of the maritime carrier is the cargo value declared in the bill of lading, according to the provision of the Civil Code
International conventions	<ul style="list-style-type: none"> COLREGS 1972 CLC 1969 and its Protocol of 1992 1910 Collision Convention 	<ul style="list-style-type: none"> COLREGS 1972 CLC 1969 1910 Salvage Convention
Interest and monetary indexation	<ul style="list-style-type: none"> 18-20% per annum for civil claims filed in Argentinean pesos 6-12% per annum for civil claims filed in US dollars 	<ul style="list-style-type: none"> Interest 12% per annum or 1% per month Average value of monetary indexation is 6% per annum

Table of Latin American countries continued

Legal overview	Chile	Colombia
Main body of local law regulating maritime law aspects	<ul style="list-style-type: none"> • Book III of the Chilean Code of Commerce – incorporates the Hamburg Rules • Law of Navigation (Decree Law 2,222 of 1978) 	<ul style="list-style-type: none"> • Colombian Commercial Code 1971
Time bars	<ul style="list-style-type: none"> • General time bar for maritime matters: two years (Chilean Commercial Code) • Collecting freight and passengers' tariffs: six months (Chilean Commercial Code) • General average: six months (Chilean Commercial Code) • Marine pollution: CLC time bar periods apply • Time extension: Explicit reference to Art. 20.4 of the Hamburg Rules (two years) 	<ul style="list-style-type: none"> • Cargo claims: <ol style="list-style-type: none"> a) General carriage of goods by sea: two years b) Carriage of goods by sea under C/P: one year c) Multimodal transport: nine months • Extra-contractual claims: 10 years • Collisions: two years • Personal injury claims: <ol style="list-style-type: none"> a) For criminal proceedings: five years b) For civil claims under criminal proceedings: three years c) For civil claims out of criminal proceedings: 10 years • Customs fines: three years
Cargo conventions	<ul style="list-style-type: none"> • Signatory to Hamburg Rules 	<ul style="list-style-type: none"> • Domestic regime similar to Hague Rules
Limitation of liability	<ul style="list-style-type: none"> • The Chilean Commercial Code has taken its provisions from both the 1976 Brussels Convention and the 1976 London Convention. As far as the amount of limitation is concerned, it follows the 1976 Convention 	<ul style="list-style-type: none"> • Local law allows the carrier to agree with the shipper/consignee a limit to liability, provided it is not a derisory amount
International conventions	<ul style="list-style-type: none"> • COLREGS 1974 • CLC 1969 and its Protocol of 1992 	<ul style="list-style-type: none"> • COLREGS 1972 • CLC 1969 and its Protocol of 1992
Interest and monetary indexation	<ul style="list-style-type: none"> • Unless the parties have agreed on a higher interest rate, maritime obligations will be subject to current interest rates fixed by the Chilean Central Bank 	<ul style="list-style-type: none"> • Interest applied on maritime claims limited to 1.5 times the maximum bank interest rate

Legal overview	Ecuador	Mexico
Main body of local law regulating maritime law aspects	<ul style="list-style-type: none"> Code of Commerce 1906 (Book III) – incorporates Hague-Visby Rules 	<ul style="list-style-type: none"> Navigation and Maritime Trade Law (NMTL) regulates maritime law aspects Commerce and Civil Codes supplementary to the NMTL
Time bars	<ul style="list-style-type: none"> Cargo claims: one year provided the vessel stayed in port for at least 15 days. Otherwise, five years or one year if Hague-Visby Rules apply. Ecuadorian judges are already applying Hague-Visby Rules Extra-contractual claims: five years Collisions: five years Personal injury claims: five years Customs fines: five years 	<ul style="list-style-type: none"> Cargo claims: one year under the Hague-Visby Rules (confirmed by NMTL) One year statutory time bar to start limitation proceedings under the LLMC Extra-contractual claims: two years under the Mexican Federal Civil Code Personal injury claims: two years Customs fines: five years
Cargo conventions	<ul style="list-style-type: none"> Signatory to Hague-Visby Rules 	<ul style="list-style-type: none"> Signatory to Hague-Visby Rules
Limitation of liability	<ul style="list-style-type: none"> Hague-Visby rules apply 	<ul style="list-style-type: none"> LLMC 1976
International conventions	<ul style="list-style-type: none"> COLREGS 1972 CLC 1969 and its Protocols of 1973 and 1984 1989 Salvage Convention 	<ul style="list-style-type: none"> COLREGS 1972 1989 Salvage Convention
Interest and monetary indexation	<ul style="list-style-type: none"> Interest rate fluctuates every three months No difference between local and foreign currency 	<ul style="list-style-type: none"> Interest rate agreed by the parties once judgment is made. In the event of no agreement, the applicable rate will be 6% per annum in commercial cases and 9% per annum in civil cases No difference between local and foreign currency

Table of Latin American countries continued

Legal overview	Paraguay	Peru
Main body of local law regulating maritime law aspects	<ul style="list-style-type: none"> • Code of Commerce 1903 (Book III) • Paraguay-Paraná River Transport Agreement – regulates international river transport through the most important waterway in South America 	<ul style="list-style-type: none"> • Code of Commerce 1902 • Hague Rules apply to straight bills of lading; if the bill of lading is not issued in a country party to the Hague Rules and Peru is the country of destination of the cargo, local Peruvian law will apply as it is considered that Peru is the place of the performance of the contract of carriage.
Time bars	<ul style="list-style-type: none"> • Cargo claims: Domestic cargo claims – involving transport within Paraguayan ports – need to be filed within a year, counted from the day on which the goods were delivered or from the day they should have been delivered. If the dispute is related to international river carriage, the time bar for initiating the claim is 18 months; if the cargo claim concerns an international maritime transport, the time bar is the one contained in the Hamburg Rules: two years • Collisions: two years since casualty • Extra-contractual time bar: two years • Personal injury: two years • Customs fine: three years for administrative sanctions and fines for Customs infringements, five years for import duties, one year to claim against customs authorities for undue payments 	<ul style="list-style-type: none"> • Cargo claims: one year • Extra-contractual claims: two years • Collisions: two years from the date of the casualty provided there is a sea protest • Personal injury claim: two years from the date of the casualty • Custom fines: four years from 1 January of the year after the date of the infraction or if this is not possible to determine, to the date that Customs detected the infraction
Cargo conventions	<ul style="list-style-type: none"> • Hamburg Rules incorporated into domestic law 	<ul style="list-style-type: none"> • The Hague Rules limitation of liability of £100 gold value has been recently applied by the Court of Appeals of Callao for cargo claims. However, said criterion is not unanimous across all the Peruvian courts • The Code of Commerce provides a global limitation of liability for cargo. It allows the shipowner to exempt liability by making abandonment of the ship with all her belongings and the freight of the voyage • The Code of Commerce also limits the shipowners' liability arising out of collision to the value of the vessel with all her belongings and the freight of the voyage
Limitation of liability	<ul style="list-style-type: none"> • Hamburg Rules incorporated into domestic law 	<ul style="list-style-type: none"> • Hague Rules incorporated into Peruvian law
International conventions	<ul style="list-style-type: none"> • 1910 Collision Convention • 1952 Collision Convention • 1952 Criminal Collision Convention 	<ul style="list-style-type: none"> • COLREGS 1972 • CLC 1969 and its Protocol of 1992
Interest and monetary indexation	<ul style="list-style-type: none"> • Interest rate not exceeding 12% annually • No difference between local and foreign currency 	<ul style="list-style-type: none"> • Daily interest established by the Superintendencia de Banca, Seguros y AFP • Different rates of interest in local and foreign currency

Legal overview

Uruguay

Venezuela

<p>Main body of local law regulating maritime law aspects</p>	<ul style="list-style-type: none"> Uruguayan Commercial Code 1865 	<ul style="list-style-type: none"> The law on Maritime Commerce of 2006 incorporates the main provisions of the international conventions related to collisions, salvage, limitation of liability, arrest, carriage of passengers and goods
<p>Time bars</p>	<ul style="list-style-type: none"> Cargo claims: two years Extra-contractual claims: two years Collisions: two years since the casualty Personal injury claims: two years Customs fines: five years 	<ul style="list-style-type: none"> Cargo claims: one year, counted from the date of delivery of the cargo by carrier to the consignee, or the date when the cargo should have been delivered Extra-contractual claims: 10 years (Civil Code) Insurance claims: three years Collisions: two years from the date of the casualty Personal injury claims: two years (actions in tort exercised by dockworkers: 10 years) Customs fines: six years
<p>Cargo conventions</p>	<ul style="list-style-type: none"> Domestic regime – carriers liable for sea carriage from receiving the goods until delivery at place agreed 	<ul style="list-style-type: none"> Mixed regime (i.e. Hague-Visby/Hamburg Rules) Any shipment to or from Venezuela will be subject to the provisions governing the carriage of goods in terms of the liability regime, exoneration and limitation of liability, time bar, etc., irrespective of the nationality of the ship
<p>Limitation of liability</p>	<ul style="list-style-type: none"> Not signatory to any convention that regulates the limitation of liability Courts do not accept the limitation of liability clauses on the reverse of the bill of lading 	<ul style="list-style-type: none"> LLMC 1976 incorporated into domestic legislation – the law on Maritime Commerce also prescribes the procedural rules to exercise the limitation, constitute the fund and distribute it among the creditors
<p>International conventions</p>	<ul style="list-style-type: none"> CLC 1969 and its Protocol of 1992 1910 Collision Convention 	<ul style="list-style-type: none"> CLC 1969 and its Protocol of 1992 1989 Salvage Convention
<p>Interest and monetary indexation</p>	<ul style="list-style-type: none"> Interest applied at the end of the trial is the current interest rate applied by the bank, and it is calculated from the day the lawsuit was filed No difference between local and foreign currency 	<ul style="list-style-type: none"> Interest rate not exceeding 12% annually No difference between local and foreign currency

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