



PASA  APF

# Claim management in Latin America

Venezuela





# The most common types of Bonds and Terms

# 1 The most common types of Bonds and Terms



## Types of bonds

- *Bid*
- *Performance*
- *Advance*
- *Labor*
- *Customs*
- *Judicial*



## Terms and conditions

- *Bonds are conditional*
- *On demand bonds are forbidden*
- *Public bonds have a special system" (Public Procurement Law).*

**There exists the need to create a formal financial bond segment within the regulatory framework**



# 1 The most common types of Bonds and Terms



## Legal Framework

In Venezuela surety bonds are not insurance, policies, they are a surety contract created in an insurance operation. They are regulated by the:

- *Civil Code of Venezuela*
- *Civil Procedure Code*
- *Code of Commerce*
- *Public Procurement Law and its regulatory provisions*
- *Insurance Law*
- *Other sublegal instruments (Conditioned).*



## Difference between public and private bonds

	PUBLIC	PRIVATE
<b>INSTRUMENT</b>	<b>Public Procurement law . Regulations</b>	<i>Civil Code Code of Commerce Sublegal regulations</i>
<b>COUNTERGUARANTEES</b>	<i>Not granted</i>	<i>Required</i>
<b>RELEASE</b>	<b>By the contracting entity through an Administrative Act</b>	<i>Creditor's consent Check of compliance</i>

# 2

## Who are entitled to recovery under a surety bond?



Who may claim?

- *The creditor/beneficiary before a civil or administrative Court of the Republic.*

A written notice to the Insurer/Surety is required.



Does the bond describe who may claim?

- **PRIVATE BONDS:** *according to the law and the bond conditions as well as the bond main contract, the claimant will be the Beneficiary or Creditor*
- **PUBLIC BONDS:** *according to the General Conditions of the Surety Contract with public entities, the claimant will be the Contracting Entity.*



May the beneficiary be changed without the insurer's consent?

***All changes should be informed to the insurer/surety who will issue an addendum or endorsement to appoint the new beneficiary .***

# 3 Which kind of damages are covered by the surety bond?



01

Does it cover interest, penalties, fines?

**PUBLIC BONDS:** Only the direct damage set forth in the main purpose of the contract as risk description will be covered.

**PRIVATE BONDS:** when the surety has paid, he is entitled to recover from the debtor:

- All monies paid under the main contract
- Interest corresponding to all amounts paid by the debtor.
- Damages, if applicable.

02

Are the litigation fees recoverable?

**Yes** in the case of **PRIVATE BONDS**, through the request for the reimbursement of costs and legal expenses submitted in the demand

03

What may the beneficiaries claim?

- **CREDITOR/BENEFICIARY:** Damages covered by the bond.
- **SURETY/INSURER:** They may claim all monies paid on behalf of the principal.

# 3 Which kind of damages are covered by the surety bond?



04

**Actions other than payment that the surety can resort to in order to terminate the purpose of the bond.**

*The surety may offer, and the creditor may choose to accept, to comply with the main object of the bond. This is not common practice in the market. In the majority of cases the bond is terminated with the payment of the bonded amount.*

05

**Damages attributable to the surety**

*Litigation and adjuster expenses shall be borne by the surety*

06

**Is the surety liable for all the damages specified in the main contract?**

*The surety is only liable for the main object of the bond, and the damages that may result from nonperformance.*

07

**The beneficiary nonperformance enabling the surety's release from liability**

*Nonperformance by the beneficiary or the creditor releases the principal and hence the surety. This has to be proved in Arbitration, at court or settled by means of out-of-court negotiations.*

# 4

## Changes in the Insurer's maximum liability with respect to the bonded/insured amount



Which is the maximum amount to be paid under a surety bond?

**PUBLIC BONDS:** the maximum liability or enforcement payment stated in the bond or covered by the policy (Exception: final judgment). Conditioned: surety bond to cover contracts with public entities.

**PRIVATE BONDS:** the limit amount is not presumed, it must be expressed, since should there be no limitation, it could be considered that the amount includes all debt accessories and even the court costs that might arise (Indefinite bond) . (Exception: final judgment).



May liability be increased without the insurer's consent? **No,** for this to be possible, the insurer must be given notice and shall issue an addendum for an additional premium.

# 5

## Notices/communications required in case of claims



Requirements to give notice of a claim

*The creditor, or, in his absence, the principal, have a duty **to inform the insurer/surety** in writing of everything related to the contract and any reasons that could lead to an eventual call on the bond.*



Does the absence of prior notice release the surety from responsibility?

- **PUBLIC BONDS:** *The Entity demands payment 90 days after termination of the contract, whose period for termination is eighteen (18) months from the term of the contract. Then, it enforces 12 months' acceleration.*
- **PRIVATE BONDS:** *there is a one (1) year term after the event that gives rise to the claim.*

# 6 Term required to start legal actions



## Term to file suit

- **PRIVATE BONDS:** *After one year has elapsed without any corresponding legal action being brought before a competent court, any claims against the surety shall extinguish.*
- **PUBLIC BONDS:** *The right to start legal actions against the insurance company to demand the payments of the bonds shall extinguish after 12 months from the expiry of the 90 working days' period following the notice of claim.*



# Procedure for the management and administration of claims



01

Rules for lawsuits

- **PRIVATE BONDS:** **Organic Code of Civil Procedure**  
**Civil Code**  
*Commercial Code and sub legal rules.*
- **PUBLIC BONDS:** *All the above plus the Public Procurement Law and its Regulations*

02

Arbitration

*Arbitration is considered as a way of avoiding a lawsuit .*

03

Is mediation usual before arbitration?

**YES...** *In fact there is a mediation room in the Superintendence of Insurance-intended for this purpose.  
However, the most frequent way of settling disputes is the private negotiation between the parties.*

# 8 Defenses that may be raised by the insurer/surety



Defenses that may be raised by the insurer by reason of fraud, technical problems, notice of claim, changes in the main contract, without prior notice to the insurer.

*Insurers may raise any defenses and submit conclusive and sufficient evidence that may prove:*

- *Fraud in connection with the issuance of the bond*
- *Problems or responsibilities attributable to the beneficiary/creditor*
- *Regulations that prevent the full performance of the object of the bonded contract*
- *Acts of the Sovereign*
- *Force Majeure*

# 9

## Call on the counterguarantee/indemnification agreement submitted by the policyholder to the insurer/surety



Indemnification agreements

*In Venezuela, there exist on demand **counterguarantees** signed by the shareholders of the company or by legal persons, on behalf of the insurer.*



May the counterguarantee be used as part of the payment of the bond?

**Yes** *Part of the counterguarantee may be used to satisfy the payment of the bond. It is important that, prior to this, when the counterguarantee is established, the following requirements are met:*

- 1.- In the case of an individual, the counterguarantee must be notarized to authenticate the date and signatures.*
- 2.- In the case of a legal person, it is necessary to verify that the person signing the counterguarantee has the authority to bind the company.*



Calling on the counterguarantee

**No** *There is no obstacle or legal impediment, except that the principal themselves fail to admit the breach.*

# 9

## Call on the counterguarantee/indemnification agreement submitted by the policyholder to the insurer



### Kinds of counterguarantees attaching assets: how are they called on?

*A mortgage or pledge (that are the principal's assets) may serve as counterguarantees and be called on according to the time periods provided for by the law for each of them (2-6 years). The enforcement is dependent upon conclusive evidence of the principal's breach.*



### Accumulation of counterguarantees in the same enforcement lawsuit

*No, It is not possible to enforce more than one counterguarantee in the same lawsuit because surety bonds in Venezuela are joint-and-several. For most surety bonds, insurers waive the right to demand prior exhaustion of remedies against the principal (which is obligatory in the case of Public Bonds), and because of this there must be separate lawsuits.*



### Limitations to call on the counterguarantee

#### **The main limitations are:**

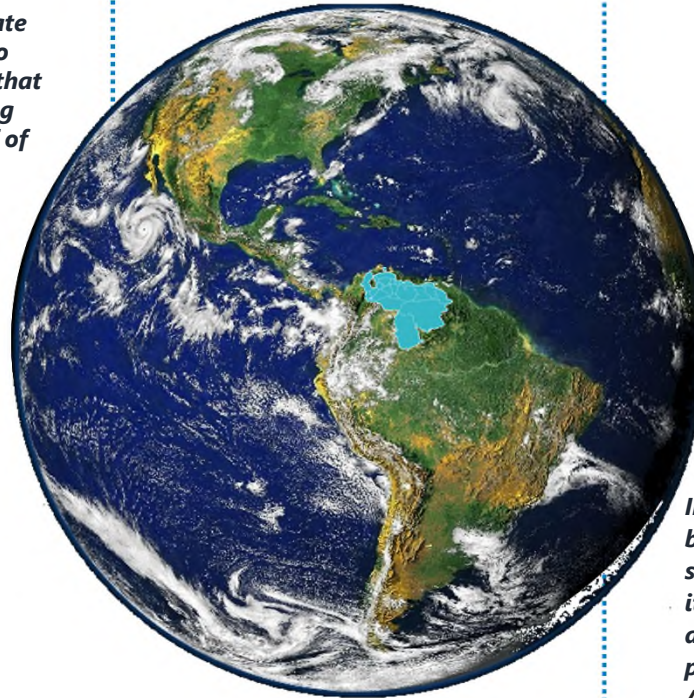
- *When the claim to call on the counterguarantee arises from causes other than the liability of the principal (surety/policyholder)*
- *The preferential right of employees and the tax authority in the case of a legal person or the homestead .*

10

## Subrogation and other actions for recovery



# 10 Subrogation and other actions for recovery



Accumulation of subrogation

*The right to subrogate enables the surety to claim all the rights that arise from satisfying payments on behalf of the principal*

*These are cases that bear no relationship to surety bonds and involve a different kind of legal proceedings between the interested parties without affecting the bond (for example a claim for damages against a negligent professional filed as a separate lawsuit)  
(Exception litigation)*

Additional expenses

*In theory, if the beneficiary is not satisfied with the bond, it has the right to go against the assets of the principal (COSURETY, AND THIS COUNTERGUARANTEE SHOULD ALSO BE REGISTERED)*

Recovery from third parties



THANK YOU VERY MUCH



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