**CONCLUSIONS OF THE CLAIMS PANEL - 2019 TECHNICAL SEMINAR/ Legal claims management**

| QUESTIONS/ COUNTRIES | BRAZIL | COLOMBIA | VENEZUELA |
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| **The most commnon types of surety bonds/ terms and conditions** | | | |
| **Which are the most common types of surety bonds underwritten in the country?** | Judicial bonds in tax, civil and labor lawsuits currently account for the largest number of issued policies and premiums. In most of the following answers only judicial bonds will be considered. When this is not the case, it will be clarified that it refers to traditional surety insurance (performance). | In Colombia it is called surety insurance, which is aimed at protecting property damage. The main policies issued are the following: Surety insurance between individuals.<br>Surety insurance to comply with government provisions.<br>Surety insurance for public entities.<br>Judicial bond. | Bid, performance, advance payment, labor, customs, judicial bonds. |
| **Which are the most common terms and conditions for surety bonds and claims management?** | It is linked to the lawsuit, with a renewal mechanism, whenever there is a risk to be covered or the bond is not replaced. In tax lawsuits, the indemnity is paid within 15 days at the updated value of the guaranteed debt. In civil and labor lawsuits, the indemnity will be paid within the period and in the amount fixed by the court, limited to the bond amount (the payment term is generally 5 days).<br>Traditional surety insurance coverage is conditional, and the maximum term to pay the indemnity is 30 days from the time the insurer receives all the requested documents. | It is an insurance product and is governed by the indemnity principle. It does not have a special regulatory regime. The insurer will be obliged to pay the claim within the month following the date on which the insured or beneficiary proves his right in accordance with Section 1077. The insured must demonstrate the loss occurrence and amount. The term for insurers begins to run, either to pay the indemnity or to object to it.<br>In state contracting, there is a regime for policy coverage (Decree 1082) and its claim (mostly regulated by Law 1474 without prejudice to some special rules for special claims). | Surety bonds are conditional. On-demand and financial bonds are prohibited. Government surety bonds have a special regime (public procurement). The bond wording must be approved by the Superintendence of Insurance Activity. There is a need to create a formal segment of financial guarantees within the regulatory framework. |
| **Which are the applicable laws, if any, regulating underwritting and surety bond types?** | Decree-Law 73/1966, Civil Code, Code of Civil Procedure, Tax Enforcement Law, Consolidation of Labor Laws, SUSEP Circular 477/2013, PGFN Decree 164 and other sublegal regulations and Law 8666. | The regulatory origin of surety insurance is found in the Organic Statute of the Financial System (Sec. 203).<br>Now, there are also regulations that specifically apply to surety insurance. In the case of surety insurance for public entities, Law 80 on Public Procurement (1993) establishes their mandatory nature, especially regulated by Decree 1082 (2015).<br>With respect to surety insurance to comply with government provisions and judicial bonds, the regulations that legally require them establish the general conditions for their issuance (especially in terms of coverage and amount).<br>Regarding surety insurance between individuals, due to the principle of contractual autonomy, the terms are defined by the contracting parties without there being any legal guidelines for their issuance or claim. | Civil Code of Venezuela. Code of Civil Procedure. Code of Commerce. Public Procurement Law, 2014, and its Regulations, 2009. Law on Insurance Activity. Other instruments of a sublegal nature (conditional). |
| **Are there any substantial differences in the contents and/or scope of the bonds issued for the public sector and those issued for the private sector?** | Except for judicial bonds, there are no substantial differences between the public and private sectors. In both cases, they are conditional. | 1. Surety insurance between individuals guarantees the fulfilment of obligations derived from a contract entered into between natural or legal persons governed by private law (civil and commercial law). Surety insurance for public entities guarantees the fulfilment of obligations derived from a contract where the contracting party (insured and beneficiary) is a public entity and/or governed by public law. 2. Surety insurance between individuals is not mandatory. For public entities, it is mostly mandatory (with few exceptions where, in any case, it is the public entity which will decide to request it). 3. Between individuals, the payment of fines or penalties is not guaranteed unless the company, by express acceptance, provides this coverage. In state contracting, they are covered by express legal provisions. 4. The claim process between private parties is governed by the Code of Commerce. In surety insurance for public entities, the process is carried out directly by the contracting entity. | Yes, there are differences. Indeed, the surety bonds issued for the public sector, specifically those covering contracts for works, supplies and services, are governed by very different conditions (2012) compared to those issued for the private sector, whose scope is simpler (Civil Code and Code of Commerce). Moreover, each public entity has and/or requires certain conditions that, in the long run, lead the insurance company to be the weak party in the legal relationship.<br>To release government surety bonds, an administrative process must be followed. Between private parties, written acceptance is sufficient.<br>Surety bonds for the public sector are governed by the Public Procurement Law. Those of the private sector, by the Civil Code and the Code of Commerce. |
| **Who is entitled to recover under a surety bond?** | | | |
| **Who may claim the bond?** | The claim is filed in a court of law on behalf of the obligee and/or potential obligee. | The policy beneficiary is the only one authorized to claim the performance of insured obligations (and exceptionally, the insured's employees only for the coverage of salaries and social security, under the understanding that there is employer solidarity and the judicial claim has been filed).<br>Law 610 granted powers to the Office of the Comptroller General of the Republic to demand payments covered by surety insurance provided that the contractor's liability is proven. In this case, the Office of the Comptroller General of the Republic, without necessarily being the beneficiary, has the power to demand the performance of insured obligations. | The obligee/beneficiary in a civil court of the Republic depending on whether they are private or government surety bonds. Written notification to the insurer/surety is required. |
| **Does the bond wording define who may claim it? Or is it defined by the law or the case law?** | It is defined by the court only. The claimant shall be the insured (beneficiary, obligee). | The policy wording defines who the beneficiary will be. Regarding the contractor's employees, it has rather been a case-law development, since according to the policy wording, the only beneficiary is the contracting party. | Private surety bonds: as provided for in the law and the bond conditions, as well as in the main bonded contract, the claimant is the beneficiary or obligee. Government surety bonds: according to the general conditions of the bond contract with state agencies, the claimant will be the contracting entity. Except for the labor bond where the obligee can be the workers. It is seldom used. |
| **May the beneficiary (the entity in whose favor the surety bond is issued) assign the indemnification benefit to a third entity without the consent of the insurer who wrote the surety policy/bond?** | No | This is not possible, since the insurer's express acceptance is required to make any amendment to the policy, to assign the indemnification benefit to another beneficiary, and this must be recorded as an amendment to the original policy. Additionally, in view of the indemnity principle of insurance, it is not possible to assign the insured's economic rights to someone who has not suffered the damage. | Any change must be reported to the insurer/surety, who will issue an addendum or endorsement naming the new beneficiary. |

| What kind of damage is covered by a surety bond? | | | |
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| For instance: Does the surety bond cover interests, penalties, fines, etc., in addition to the main purpose set out in the risk description? | In addition to the main debt (whether tax, civil or labor), the bond will cover interests, fines and lawyers' fees imposed by the court. For traditional surety insurance, this will depend on what is defined in the main contract as well as on what the insurer wants to cover. | Generally speaking, only consequential damage is covered; as a general rule, loss of profit is excluded, but may be covered by a particular condition (i.e., the insurer's express agreement). Likewise, fines or penalties are only covered in public contracting, and in private contracting, they must be expressly covered by the company. In private contracts, as a general rule, the payment of fines or penalties is not guaranteed. In public contracts, the payment of fines and penalties agreed in the contract is guaranteed. In policies for the tax authority, interests are also covered (penalties are not covered by the policy, according to case law development). | Only damages caused by breach of the main bonded contract will be covered. If coverage is extended, the text must be submitted for approval. Indexation ruling, 2018. |
| Are the claimants entitled to recover lawyers' fees in case of a lawsuit decision in their favor? | Yes, the lawyers' fees imposed by the court may be recovered. | If it is defeated in court, and if the judge has issued a sentence, the company must pay the amount imposed for this concept (this is called court costs). However, it is not part of the coverage. | Yes, in the case of private surety bonds. Court costs and fees are requested by filing a petition. This is not the case for government surety bonds: the state does not pay court costs. Law of the Attorney General's Office. In both cases, they can be recovered from the principal. |
| Are all claimants entitled to recover interests or penalties, or is this applied solely to certain types of claimants? | The interests and fines applicable to the guaranteed debt are covered by the policy. | Fines and penalties are covered in surety insurance for public entities. | Obligee/Beneficiary: bond amount for damages. Surety/Insurer: they can claim everything they have paid on behalf of the principal. |
| Do the law or regulations on statute of limitations, if any, provide the insurer/surety with options or alternatives other than the payment of indemnity to comply with the obligation? For instance, is the insurer/surety authorized to complete the works or make repairs on account of a third party other than the principal (policyholder) to comply with the bonded obligation? If yes, is it a common practice in your country's surety market ? | It is not applicable to judicial bonds. For traditional surety insurance, the works can be completed instead of paying the indemnity. However, as surety insurance (performance) so far generally covers 1%-5% of the contract value, it is more common to pay than to complete the works. | The insurance company is liable for the payment of indemnity, limited to the insured amount and not beyond the patrimonial damage that the insured party proves to have suffered. However, the insurance company has the power to compensate the insured for the loss by completing the works directly or by a third party or at its expense. The state contracting regulations also provide for this possibility, but, in this case, it is at the entity's discretion to accept it, while in private law it is within the insurance company's power.<br>In any case, in market practice this power has rarely been exercised. | If the proposal submitted by the surety is accepted by the obligee, the bonded obligation may be complied with. It is not a common practice in the market. In general, the bond amount is paid. |
| Is there any special aspect of the indemnity, namely, of the damage, for which the insurer/surety may be held liable? | No | No. However, all loss adjustment expenses are borne by insurers and reinsurers. | The surety will be liable for litigation and loss adjuster's expenses. |
| Is the contract between the parties (policyholder and the entity to which the surety bond or surety insurance is written) an integral part of the wording of the bond issued, so that the insurer/surety may be held liable for all damage detailed in the contract? If yes, should this apply to performance bonds or to any other type of surety bond as well? | Risks are identified in the policy. Their coverage is guaranteed by a legal proceeding only. For traditional surety insurance, it is possible to restrict coverage to the contract provisions, but the insured is often required to agree to such a restriction just to avoid litigation in the event of a claim. | The indemnity limit is set out in the insurance policy, by virtue of the principle of the parties' autonomy. However, if nothing is said in the policy, all the obligations contained in the contract will be covered by the insurance policy. | The main contract must be taken into account for the surety bond's purpose. However, in the bond wording or schedule, only the main object is included, and certain clauses of the main contract will not apply to the commitment assumed by the surety company, such as default interest per day of noncompliance; it is necessary that a percentage be exceeded for the bond to be enforced in its entirety. Another example is the social responsibility clauses included in some public sector contracts, since they have nothing to do with its main object.<br>This applies equally to all types of bonds. |
| May noncompliance by the beneficiary release the insurer/surety from its obligations under the surety bond? | Yes, when the policy requirements are not met. In judicial bonds, procedural failures could occur, but they would not effectively cause the loss of cover. Furthermore, these situations would not be common. | Yes, as provided for in Section 1060 of the Code of Commerce. "Maintenance of risk status and notification of changes.<br>The insured or the policyholder, as the case may be, is obliged to maintain the status of the risk. Accordingly, one or the other must notify the insurer in writing of the unforeseeable events or circumstances that occur after the execution of the contract and that, according to the criteria set forth in Subparagraph 1 of Section 1058, mean risk aggravation or variation of its local identity." Likewise, it has been legally defined that the insurer has the same exceptions that the insured has against the beneficiary, among which would be the breach of contract exception. | The beneficiary or obligee's noncompliance releases the principal, and therefore the surety, from their obligations. This must be demonstrated in arbitration, trial or settlement between the parties. |
| Variations in the maximum indemnity amount from the bonded/insured amount: | | | |
| Is the insurer/surety's liability limited to the total insured amount or may they be obliged to pay amounts in excess of coverage? | Yes, considering the monetary update of the claims. For traditional surety insurance, the update is not automatic and must be accepted by the insurer through an endorsement. | The insurance company is liable for the payment of indemnity, limited to the insured amount and not beyond the patrimonial damage that the insured party proves to have suffered. The only known case where via case law (judicial decision) the insured amount has been exceeded is in statutory clauses related to tax refunds (DIAN) where the amount of interest to be paid by the taxpayer is transferred to the insurers. | GOVERNMENT SURETY BONDS: the maximum amount of the indemnity or the payment resulting from the bond enforcement is up to the bond amount (exception: final judgment providing for indexation). In government contract bonds this provision is conditional.<br><br>PRIVATE SURETY BONDS: the limitation of liability must be expressly stated; otherwise, it could well be construed that it includes all the accessories of the debt and even the court costs that may arise (unlimited surety bond). (Exception: final judgment). |

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| May the insurer/surety liability increase in any way during the bond period if the insurer/surety has not issued an addendum or endorsement to increase the amount of the existing bond? | As is described in the above answer. | No, because it is necessary to amend the insurance contract to increase the insurer's liability, which must be expressly accepted. In any case, paradoxically, once the initial policy has been issued, the amendments are equally mandatory for the insurance company, since if it refuses to accept them, it may be exposed to the issued policy claim. In this way, any amendment to the initially insured contract must also be covered by the corresponding addendum or endorsement; otherwise, it may result in breach of the policy. In these cases, the insurer will always have the right to collect the resulting premium. | No, for this to happen, the surety must be notified. It will then issue an addendum and charge an additional premium. |
| **Required notices/communications in case of a claim** | | | |
| Which are the legal requirements to notify an insurer/surety of a surety bond claim? | The court will notify the insurer of the claim through a simple summons. In tax lawsuits, the policy can be triggered if the withdrawal of the lawsuit was not accepted or the policy was not renewed within 60 (sixty) days prior to its expiration. In civil or labor lawsuits, the insurer can be notified upon a final decision of the court. The documents for traditional surety insurance are well defined in Circular 477. | The insured, either public or private, shall provide evidence of the occurrence and amount of the loss. In the case of government policies the statutory process defined in Section 86 of Law 1474 should be complied with. It involves a prior procedure for the entity to declare the breach of contract and the loss occurrence. In the case of private insureds, the insurance company defines the loss, at its sole discretion, once the beneficiary has proved the occurrence and the amount of the loss. | The obligee or, failing him, the principal, is obliged to inform the insurer/surety in writing of everything related to the contract and the different reasons that could give rise to a possible bond enforcement. |
| If the notification requirements established are not complied with, could the insurer/surety be considered exempt from paying the indemnity? | Yes | Until the legal requirements are complied with, the company is not obliged to pay the indemnity. However, in the case of government contracts and due to the principle of legality in public administration acts, the payment of the amounts owed and the filing of legal actions tending to distort the legality of the administration decisions may be required. | The surety company is not exempted from payment unless the limitation period and expiration term have elapsed. |
| **Term established to file a lawsuit or a demand** | | | |
| Which is the time limit established for filing a demand or any other legal action related to a surety bond claim? If such time limit is prescribed in the statute of limitation applied in the country, may it alter or change those established in the surety bond for filing a demand? | For traditional surety insurance, in the infrequent case of practical verification, the limitation period will be one (1) year from the date of the claim or the insurer's refusal to pay the indemnity. | The so-called ordinary limitation, for which the Code establishes a limitation period of two years from the date the interested party had real or presumed knowledge of the loss event that gave rise to the legal action. Extraordinary limitation: the Code establishes a maximum term of five years from the date the right is acquired, which applies to all kinds of people. As an exception, the Office of the Comptroller General of the Republic (the entity which controls public resources) can file an action for investigation and collection that will expire five years after the date of filing (unsuccessful legislative efforts have been made to increase the limitation period to 10 years). The parties may not agree to a limitation period other than that prescribed by law. | PRIVATE SURETY BONDS: All the rights against the surety will lapse after 1 year from the occurrence of an event that would give rise to the claim, provided that the corresponding lawsuit has not been filed with the competent courts.<br>GOVERNMENT SURETY BONDS: Legal actions against the insurance company to demand compliance with the surety bonds will lapse 12 months after the expiration of the period of 90 business days from the notice of contract termination.The contract also provides for an additional eighteen-month term from its expiration date to file the claim. |
| **Claims handling and management procedure** | | | |
| Are there any regulations on the statute of limitations or administrative parameters affecting claims management in your company, the market or your country? | As is described in the above answer. | As is described in the above answer. Additionally, it is worth mentioning that the regulations define the causes for the natural or civil interruption of the limitation period, among which are the filing of a claim or a lawsuit | |
| Are there any regulations on the handling or management of claims that are the subject of a legal action? | In the infrequent case of practical verification, the litigation will be resolved according to the policy terms. | The applicable rules of the Code of General Procedure and the Code of Administrative Procedure and Litigation. | Private surety bonds: Organic Code of Civil Procedure, Civil Code, Code of Commerce and sublegal regulations.<br>Government surety bonds: all of the above, Public Procurement Law and its Regulations, Organic Law on Administrative Litigation, Law of the Attorney's General Office. |
| Is arbitration commonly used in surety bond claims in your country? If so, which are the particular rules applied that may affect the claim in these arbitration procedures? | Arbitration is not commonly used in judicial bonds and traditional surety insurance. | Arbitration in insurance matters is contemplated, but it is not a common practice to resort to arbitration courts in case of insurance-related disputes. However, the Colombian Arbitration Statute (Law 1563) provides that the guarantors of an obligation are linked to the arbitration agreement that may exist between the contracting parties. Therefore, if there is a dispute between the contracting parties, and there is an insurance policy, and if said contract is submitted to arbitration, the arbitration agreement also applies to the insurance company. It must be taken into account that, in these cases, the contracting party, as beneficiary, is not a party to the insurance contract, since the parties are the policyholder and the insurance company. So, in insurance contracts, arbitration clauses are rare. They cannot be unilaterally imposed by the insurance company, but must be requested by the policyholder. | Arbitration is contemplated before filing a lawsuit. Commercial Arbitration Law (1998) (Venezuela) and Inter-American Convention on Commercial Arbitration (1975). |

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| **Is the mediation between the parties used in your country or market as a prior step to arbitration?** | No | If agreed by the parties, mediation is mandatory. In case of declarative proceedings (that is, not of coactive jurisdiction) conciliation is a prerequisite for filing a judicial claim or arbitration petition. However, this conciliation seldom succeeds, especially when dealing with policies in favor of government entities. | Yes. Even in the Superintendence of Insurance Activity there is a conciliation room.<br>However, the most common procedure is private negotiation between the parties. |
| **Defenses asserted by the insurer/surety** | | | |
| **May the insurer/surety assert defenses different from the arguments the policyholder may present? (For instance, fraud committed in the surety bond issuance, technical problems in the compliance with claims submission or notification requirements, amendments to the source contract on which the surety bond is based which have not been notified to the insurer/surety, etc.).** | Yes, in case the policy requirements are not met. | Yes, the policy may establish coverage limitations, which will only be applicable to the policy and not to the insured contractor. Likewise, the theory has gained strength that, for example, changes in the risk status known by the contracting party and not informed to the insurer would not be covered; for example, additions or amendments not notified to the insurance company. | Insurers may assert defenses based on all valid and sufficient evidence and arguments that can prove:<br>Fraud in the surety bond issuance<br>Problems or responsibilities of the beneficiary/obligee<br>Regulations that hinder the perfect compliance with the object of the bonded contract<br>Act of God<br>Force Majeure |
| **Application or enforcement of the counterguarantee/indemnity agreement submitted by the policyholder to the insurer/surety:** | | | |
| **May the indemnity agreement signed by the parties be enforced by the insurer/surety?** | Yes | Yes | In Venezuela an on-demand counterguarantee (surety bond), signed by the companies' shareholders or by legal entities on behalf of the insurance company, is used. |
| **Technically speaking, is there any other step or measure the insurer/surety should take when the counterguarantee or indemnity agreement is enforced? (For example, registration or notarization of the signatures in an indemnity agreement, deduction of the amount that can be used to pay the claim from the aggregate amount of the indemnity agreement).** | No. The legal requirements necessary for the counterguarantee to be valid are verified at the time the contract is signed by the parties. This makes it fully enforceable if necessary. | The counterguarantee should be signed by the guarantor's authorized legal representative. The signed document provides executive merit and can be enforced by the insurer in accordance with the counterguarantee provisions. | Yes, part of the counterguarantee can be used to meet the surety bond payment. It is important that as a previous step to the formalization of such counterguarantee:<br>1. Natural persons have it notarized to authenticate the date and signatures.<br>2. Legal persons provide evidence that the signatory has legal capacity to bind the company. |
| **Is there any impediment that may hinder counterguarantee enforcement? (For example, a law in the country forbidding the advance payment of a debt before it is due and legally enforceable).** | No. The counterguarantee is formalized based on the conditions provided for by the national laws, which make it legally enforceable. | No, the counterguarantee provides executive merit from the moment it is signed and once the condition mentioned therein is met, i.e., that the insurer has made a payment due to the occurrence of a loss event and has to collect the amount paid from the guarantor. | There is no impediment by law or obstacle, except that the beneficiary has refused to recognize his noncompliance. |
| **Is it an acceptable practice in your market to include provisions in a counterguarantee document allowing for the inclusion of property assets that may be foreclosed if necessary? (For example, by creating a lien on an asset). If the answer is yes, how long would it take to foreclose such assets?** | Yes. The vast majority of counterguarantees include the partners' guarantee. In addition, it is a common market practice, in certain cases, to add guarantees in order to increase the security of obligations. The process completion will take from 3 to 5 years. | In Colombia, the most common counterguarantees are promissory notes. Although less common, due to risk placement conditions, additional guarantees (either personal or real) may be required. So, it is possible that real or personal assets or codebtors may also be required as counterguarantees. In this case, their collection through court proceedings will depend on the litigiousness of the recovery process and may take between 1 and 3 years unless the debtor accepts to pay, in which case this term would be considerably shorter. | Mortgage or pledge (on the principal's property assets) may be used as counterguarantee and enforced according to their respective legal terms (2-6 years).The principal's noncompliance will have to be fully demonstrated to enforce the counterguarantee. |
| **May the same legal action be brought both to enforce the counterguarantee or indemnity agreement and to call on the surety bond claimed by the beneficiary?** | No | The counterguarantee cannot be enforced within the same legal action. However, within the same court proceeding for noncompliance and declaration of claim, the insurance company may request the declaration of the policyholder's liability through a legal tool called "impleader." According to this tool, the judge, at the time of ruling, declares not only the loss, but also the recovery action against the policyholder, a decision that will provide executive merit once enforced | They cannot be enforced within the same court proceeding, since in Venezuela surety bonds are joint and several when the counterguarantor is the principal. If the counterguarantor is a third party, both actions could be brought together, but it should be analyzed whether it is convenient to adopt this procedural strategy. Insurance companies waive the benefits of excussion and division (mandatory condition for commercial surety bonds). |

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| **Are there any special considerations or limitations that may affect the right of the insurer/surety to enforce the counterguarantee or indemnity agreement?** | No, as long as the counterguarantee agreement has been fully formalized and all legal requirements for its validity have been met. | No. As long as the counterguarantee has been duly executed, there is no limitation for the insurer or the legitimate policyholder to enforce said counterguarantee once the claim has been paid, since the promissory note cannot be enforced without prior payment. | The main limitations are: That the claim to enforce a counterguarantee is due to a reason other than the liability of the principal (guarantor). The preferential right that workers, the tax authority, the homestead, etc., enjoy (privileges). |
| **Subrogation and other recovery actions.** | | | |
| **May the insurer/surety be subrogated to the rights of the other policyholder's creditors if it pays the claim?** | Yes | No, because the collection action can only be brought against the policyholder and against those who have acted as his codebtors, according to the counterguarantee issued. | Subrogation will entitle the surety to all the rights granted by having paid on behalf of the principal. |
| **May the insurer/surety be subrogated to the rights of the claimant/ creditor/beneficiary/ insured if it pays the claim?** | Yes (legal subrogation). | Yes, because once the payment has been made, the insurer would be subrogated to the insured's right. However, this subrogation action is exclusive of the counterguarantee enforcement. The subrogation action requires a prior judicial declaration, while the counterguarantee is a more efficient tool since it demands payment automatically. | Yes, subrogation is mandatory under the Law on Insurance Activity. The general conditions of the surety bond shall state: "If the COMPANY makes a payment under this Contract, it will be subrogated to all the rights, actions, guarantees and privileges of the PRINCIPAL and third parties up to the amount of the claim paid." |
| **Is the insurer/surety entitled to recovery due to professional negligence or malpractice by professionals appointed to the case if it has caused economic damage to the insurer/surety in the loss/claim event?** | No | No, but the insurer could file a lawsuit against the professionals. | No, but there are legal actions that the insurer could file against the professionals.<br>Civil Code of Venezuela:<br>Chapter V<br>Of Unlawful Acts<br>Section 1185. Whoever, either intentionally or through negligence or recklessness, has caused damage to another party shall be liable to repair it. Likewise, whoever has caused damage to another party, exceeding, in the exercise of his right, the limits set by good faith or the object of the right granted, shall also be liable to repair it. |
| **Could there be other considerations related to subrogation and recovery that could limit the insurer's/surety's potential for recovery from third parties?** | Yes, if it is impossible to find the policyholder, guarantors and/or their assets. | Yes, when the policyholder enters into an insolvency or restructuring proceeding. Or when it is impossible to locate the policyholder or his assets. | To be entitled to subrogation there must be evidence that the principal failed to comply and is legally liable, otherwise, the third party may assert all the valid objections that can be used against the obligee; therefore, there is no possibility of recovery if the cedant or reinsurer made a wrongful payment. |

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