## CONCLUSIONS OF THE CLAIMS PANEL - 2015 PASA TECHNICAL SEMINAR - Legal claims management

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Which we muscle common terms and continues for summy based with the manual continues for summy based with the manual continues for summy based with the summer based	Which are the most common types of surety bonds		Surety insurance .	Contract bonds (public and private) and customs
Proceeding produce and pr	Which are the most common terms and conditions for surety	Unconditional, irrevocable	bonds.Unconditional and on-demand	Conditional policies, except for judicial bonds (which
Stoppe of the bands stored for the public sector, and these   Yes.   differences, they are usually constant.   area. Prove sector, notice to the public/holder at period of the dimagence of the dimagence sector.     Which is enabled for theorem the band?   The isometric theorem and band?   The isometric public.   The isometric public.   Item of the dimagence isometric public.   Item of the dimagence isometric public.   Ite isometric public.	Which are the applicable laws, if any, regulating underwritting and surety bond types?	Procedure: Public and private sector, Organic Law of the National Procurement System/ General regulation of the LOSNCP/ Monetary and	Civil code, Public Procurement Law, Customs Code.	Regulations on surety contracts (Section 1594 and subsequent ones of the Civil and Commercial Code) and Insurance Law.
Who may may calain the hort?   The insured   The insure insured   The insured <t< td=""><td>scope of the bonds issued for the public sector and those</td><td>Yes.</td><td>differences; they are usually</td><td>area. Private sector: notice to the policyholder and</td></t<>	scope of the bonds issued for the public sector and those	Yes.	differences; they are usually	area. Private sector: notice to the policyholder and
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is is assign the indemnity benefit to a third entity without the incurrer's indemnity benefit to a third entity without the issuer's indemnity benefit to a third entity without the issuer's indemnity benefit to a third entity without the issuer's indemnity benefit to a third entity without the issuer's indemnity benefit to a third entity without the issuer's indemnity benefit to a third entity without the issuer's indemnity benefit to a third entity without the issuer's indemnity benefit to a third entity in a third entity with the broad is a comparison of the issuer's indemnity with the broad is a comparison of the issuer's indemnity with the broad is a comparison of the issuer's indemnity with the broad is a comparison of the issuer's indemnity with the broad is a comparison of the issuer's indemnity with the broad is a comparison of the issuer's indemnity with the broad is a comparison of the issuer's indemnity with the broad is a comparison of the issuer's indemnity with the broad is a comparison of the issuer's indemnity with the broad is a comparison of the issuer's indemnity with the broad is a comparison of the issuer's indemnity with the broad is a comparison of the issuer's indemnity with the broad is a comparison of the issuer's indemnity with the broad is a comparison of the issuer's indemnity with the broad is a comparison of the issuer's indemnity with the broad is a comparison of the issuer's broad or a with the issuer's indemnity and with the broad is a comparison of the issuer's broad or a comparison of the issuer's broad or a substance is a discust of comparison of the issuer's broad or a substance is a discust of the issuer's broad or a substance is a discust of comparison of the issuer's broad or a substance is a discust of comparison of the issuer's broad or a substance is a discust of comparison of the issuer's broad or a substance is a discust of comparison of the issuer's broad or a substance issuer's broad is a comparison of the issuere's broad or a substance issu			It is defined in the bond wording.	It is defined in the bond's general conditions.
Noncompliance with contractal or fires, act, in addition to the man purpose set out in the risk deciption?   Noncompliance with contractal or backs do not cover speakles. Covers fires.   The performance bond covers penalles out costs   The performance bond covers fires.     Are the clamante entitled to neover inverses or penalles acquired bodies in the favor?   The performance bond covers fires.   Yes, they are mitted to court costs   The performance bond covers penalles out costs   Yes, they are mitted to court costs   The performance bond covers penalles court costs   Yes, they are mitted to court costs   Yes, they are mitted to court costs   The performance bond covers penalles court costs   Yes, they are mitted to court costs   Yes, they are mitted to court costs   Yes, they are mitted to court costs   The covers supported to application of the integenity of the cost costs penalles costs costs penalles   Yes, the statute of the insurer costs penalles costs   The covers supported to application of the cost penalles costs penalles   The covers supported to application of the costs penalles costs penalles   The covers supported to application of the penalles covers penalles   The covers supported to application of the penalles covers penalles   The performance bond covers penalles     S there assure to application of the penalles covers of the policyholde to applicatio	is issued) assign the indemnity benefit to a third entity without the consent of the insurer who wrote the surety policy/bond?	It is not possible.	beneficiary without the insurer's	No.
For instance. The sump bound cover interests, pennalities, and firms, etc., in addition, to the man purpose set out in the risk.   The performance bond covers penalities and firms.   Examples and firms, etc., in addition, or covers firms, Customs bond, susualy cover penalities and firms.   The performance bond covers penalities and firms.     A the charman sentified to recover interests or penalities, and firms, etc., in addition, or covers firms, etc., in addition, additon, additon, addition, additon, addition, addition	What kind of damage is covered by a surety bond?		Noncompliance with contractual or	
Jamesel decision in their law?   claim against the procest   Court cests.   The court cests.     Are all channess and the starts for penalties or planness or planness?   Be applies to any beneficiary.   The court cests.   The court ces			legal obligations. In general, contract bonds do not cover penalties. Customs bonds usually cover	The performance bond covers penalties and fines up to the insured amount. It covers interests in case of a legal action.
Are at a claimants entitled to necover interests or penalties, or is Ves, they have the right to claimants? They could only claim interests in case of the insurance company's default   Do the law or regulations on statute of limitations, if any, provide the insurance company's default The covers usually establish a shape clause which makes it possible that insurance company's default   Do the law or regulations on statute of limitations, and the policy holder and insurance company's default The covers usually establish a shape clause which makes it possible that insurance company's default   Pointstone, is the insurance company with the bounded obligation? For instance, is the insurance is writen bounded in the policyholder and the only of the bound statute, is the analysis of the bounded obligation? Plays, it is not a usual practice due to its complexity. It was the contract between the parties (policyholder and the entity to on hold his apply to performance bounds or low particulary, and the policyholder and the policyhold				Yes.
Do the inverse regulations on statute of limitations, if any, provide the insurgence with a limitations exists, neither than the payment of indemnity. To comply with the obligation? For instance, is the insurgence with a limitations exists, neither the insurgence with a line to beject of the maximum it that allows the insurgence with a line to beject of the maximum it that allows the insurgence with advantage, for which the maximum it has the payment of the indemnity, namely, of the bonk that maximum it has allows the insurgence with advantage, for which the maximum it has the payment of the indemnity, namely, of the bonk the surgence with a line to beject of the cover in a diagrap. for which the maximum is the failed bala?   No. The insure and the policyholder as evently lable.     Is the original part of the works of minum/surgen part which as any be off lable for all damage dore which the surgence with a limit of the advantage for which the assess insurgence with the obligations under the surgely bond any other type of surgely bond as well?   No. The insure and the policyholder are jointly a generally lable.     May noncompliance by the beneficiary release the insurgence with the boligations under the surgely bond?   Yes, the contract is a lis in the insurgence with the obligations under the surgely bond?   Yes, noncompliance by the beneficiary are used to the total insurgence and the beneficiary release the total insurgence and the insurgence with a lise maximum indemnity anount. If the insurgence anount.   Yes, noncompliance on the part of the policyholder avants the insurgence with a lable.   Yes, noncompliance on the part of the policyholder avants the insurgence with a lable.     Variations in the maximum indemnity anount. If the insurgence with a lable.   No .   Yes,	Are all claimants entitled to recover interests or penalties, or is	Yes, they have the right to		
Is there any special aspect of the indemnity, namely, of the damage, for which the insurvisurely may be held liable?   None.   No, there is not.   No. The insure and the policyholder are jointly at severally liable.     Is the contract between the parties (policyholder and the entity to which the survey bond or survey, insurance to written) an integral part of the wording of the bond issued, so that the insurvisury may be held liable for all damage detailed in the insurvisury may be held liable for all damage detailed in the insurvisury may be held liable for all damage detailed in the insurvisury may be held liable for all damage detailed in the insurvisury may be held liable for all damage detailed in the insurvisury may be held liable for all damage detailed in the source difference of survey bond as welf?   Yes, the contract is an integral part of the policyholder source insurves on the part of the policyholder and other type of survey bond as welf?   Yes, noncompliance on the part of the policyholder all cannot release the inter of the insurves on the policy allows the insurver to reluse payment of the indemnitification in finited to the indemnitification for infess are established.   Yes. It	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	Yes, the statute of limitations exists; neither the insurer nor a third party	salvage clause which makes it possible that insurers complete the works that are the object of the insurance if this allows the insurer to	It is not a usual practice due to its complexity. It will
to which the surely bond or surely insurance is written) an integral part of the wording of the bond issued; so that the insurer/surely may be held liable for all damage detailed in the insure integral part of the policy. The insurance contract or policy is contract. The surery policy hold from the bond issued in the policy.   May noncompliance by the beneficiary release the insurer/surely ram. is boligations under the surety bond? It cannot release them. Noncompliance by the beneficiary. Yes, noncompliance on the part of the policy-holde always required. In addition, deviations from the policy be obliged to pay amount from the bonded frameworks or any they be obliged to pay amounts in excess of a mount. It is limited to the insured amount. Yes, It is limited to the total insured amount.   May the insure/surely lability limited to the total insured amount. No . No . Yes. It is limited to the total insured amount.   May the insure/surely lability limited to the total insured amount. A prior official notice by the policy hold of admited amount of the insurer. No . No .   May the insure/surely lability limited to the total insured amount. A prior official notice by the policyholder: acts or omissions due to which the policyholde		None.	No, there is not.	No. The insurer and the policyholder are jointly and severally liable.
May noncompliance by the beneficiary release the insurer/surety from its obligations under the surety bond? It cannot release them. Noncompliance by the beneficiary with the obligations established in the policy allows the insurer to refuse payment of the indemnification. always required. In addition, deviations from the contract amount higher than 10% which were not insurer release the latter from its obligations under the insurer/surety is liability limited to the total insured amount or may they be obliged to pay amounts in excess of coverage? The amount of the indemnification is limited to the insured amount, except for customs bonds, where penalties or fines are established. Always required. In addition, deviations from the bondedification is limited to the insured amount.   Way the just provide the total insured amount or may they be obliged to pay amounts in excess of coverage? It is limited to the insured amount. The amount of the indemnification is limited to the insured amount, except for customs bonds, where penalties or fines are established. Yes. It is limited to the total insured amount or endorsement to increase the amount of the existing bond?   Which are the legal requirements to notify an insurer/surety a surety bond claim? A prior official notice by the beneficiary is required and then, unilateral termination then, unilateral termination with, could the insurer/surety be considered exempt from paying the indemnity? A prior official notice by the beneficiary is required and then, unilateral termination with could the insurer/surety be considered exempt from paying the indemnity? The insured fails to comply with the requirements established, the insurer indemnity.   Term established to file a lawsuit or a de	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		issued identifies the policyholder and the beneficiary of the cover in all	The surety policy mentions the bonded contract, but it is not an integral part thereof.
bonded/insured amount:   unded/insured amount   unded/insured   unded/insured   unded/insured   unded/insured   unded/insured   unded/insured   unded/insured <thunded insured<="" th="">   unded/insured</thunded>	May noncompliance by the beneficiary release the insurer/surety from its obligations under the surety bond?	It cannot release them.	with the obligations established in the policy allows the insurer to refuse	Yes, noncompliance on the part of the policyholder is always required. In addition, deviations from the contract amount higher than 10% which were not notified, or failure of the insured to give notice to the insurer release the latter from its obligations under the surety bond.
Is the insurer/surety's liability limited to the total insured amount or may they be obliged to pay amounts in excess of coverage? It is limited to the insured amount. The amount of the indemnitification is limited to the insured for customs bonds, where penalties or fines are established. Yes. It is limited to the total insured amount.   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? No . No . No . No .   Required notices/communications in case of a claim No . No . No . No . No .   Which are the legal requirements to notify an insurer/surety of a surety bond claim? A prior official notice by the beneficiary is required and then, unilateral termination. Final and enforceable decision. Prior notice to the policyholder. Submission of claim supporting documents to the insurer. The insured fails to comply with the requirements established, the insurer is to the insurer will consider it as an unasserted claim and thus, it is exempt from paying the indemnity. Yes, this is expressly clarified in the surety bond claim? If such time fimit established to filling a demand or any other legal action related to a surety bond claim? If such time fimit sprescribed in the statute of limitations applied in the country, may it after or change those established in the surety bond claim? If such time fimit as prescribed in the statute of limitations applied in the country may the file divithin a five-year period. The timitation period to file a lawsuit against the insurer is the same as that for filing a a demand?				
bond period if the insurer/surety has not issued an addendum or endorsement to increase the amount of the existing bond? No . No . No . No .   Required notices/communications in case of a claim Image: Communications in case of a claim on communications in case of a claim Image: Communications in case of a claim <	amount or may they be obliged to pay amounts in excess of		limited to the insured amount, except for customs bonds, where penalties	Yes. It is limited to the total insured amount
Which are the legal requirements to notify an insurer/surety of a surety bond claim? A prior official notice by the beneficiary is required and then, unilateral termination. Final and enforceable decision. Prior notice to the policyholder. Submission of claim supporting documents to the insurer. The insured should notify the insurer of the policyholder's acts or omissions due to which th bond may be called on within a 10-day period of the occurrence.   If the notification requirements established are not complied with, could the insurer/surety be considered exempt from paying the indemnity? If the insured fails to comply with the requirements established, the insurer wiolation. If the insured fails to comply with the requirements established, the insurer wiolation. Yes, this is expressly clarified in the surety bond indemnity.   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 limitations applied in the country, may it alter or change those established in the surety bond for filing a demand? The limitation period is two years and besides, a lawsuit may be filed within a five-year period. The limit to file a demand is ten days from the date on which the administrative procedures have been exhausted. The limitation period to private entii and five years for customs bonds.	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?	No .	No .	No.
Which are the legal requirements to notify an insurer/surety of a surety bond claim? A prior original notice to the policyholder. Submission of claim supporting documents to the insurer. Prior notice to the policyholder. Submission of claim supporting documents to the insurer. policyholder's acts or omissions due to which the bond may be called on within a 10-day period of the occurrence.   If the notification requirements established are not complied with, could the insurer/surety be considered exempt from paying the indemnity? If the insured fails to comply with the requirements established, the insurer wiolation. Yes, this is expressly clarified in the surety bond indemnity.   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 limitations applied in the country, may it alter or change those established in the surety bond for filing a demand? The limitation period is two years and besides, a lawsuit may be filed within a five-year period. The limitation period to file a lawsuit against the insurer is the same as that for filing an action again the policyholder is not ever to mostly withen or or surget on bonds. The limitation and five years for customs bonds.	Required notices/communications in case of a claim			
If the notification requirements established are not complied It constitutes a due process violation. requirements established, the insurer will consider it as an unasserted claim and thus, it is exempt from paying the indemnity. Yes, this is expressly clarified in the surety bond and thus, it is exempt from paying the indemnity.   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 limitations applied in the country, may it alter or change those established in the surety bond for filing a demand? The limitation period is two years and besides, a lawsuit may be filed within a five-year period. The limit to file a demand is ten administrative procedures have been exhausted. The limitation period to file a lawsuit against the insurer is the same as that for filing an action again to policyholder in public works bonds. The limitation and five years for customs bonds.	Which are the legal requirements to notify an insurer/surety of a surety bond claim?	beneficiary is required and	Prior notice to the policyholder. Submission of claim supporting documents to the insurer.	policyholder's acts or omissions due to which the bond may be called on within a 10-day period of their
Which is the time limit established for filing a demand or any other legal action related to a surety bond claim? If such time time to the legal action related to a surety bond claim? If such time to the point is prescribed in the statute of limitations applied in the country, may it alter or change those established in the surety bond for filing a demand? The limitation period is two years and besides, a lawsuit may be filed within a five-year period. The time limit to file a demand is ten days from the date on which the administrative procedures have been exhausted. The limitation period to file a lawsuit against the insurer is the same as that for filing an action again to public works bonds. The limitation period is not be viewed at the period is one year for bonds written to private entities and five years for customs bonds.	If the notification requirements established are not complied with, could the insurer/surety be considered exempt from paying the indemnity?		requirements established, the insurer will consider it as an unasserted claim and thus, it is exempt from paying the	Yes, this is expressly clarified in the surety bond.
	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 limitations applied in the country, may it alter or change those established in the surety bond for filing a demand?	years and besides, a lawsuit may be filed within	days from the date on which the administrative procedures have been	The limitation period to file a lawsuit against the insurer is the same as that for filing an action against the policyholder in public works bonds. The limitation period is one year for bonds written to private entities and five years for customs bonds.
Are there any regulations on the statute of limitations or administrative parameters affecting claims management in your company, the market or your country? Yes. Contract provisions, contract insurer. Commercial Code in general, and a Customs Co- rule for these surety bonds. "Limited" expiration applies to surety bonds between private entities	Are there any regulations on the statute of limitations or administrative parameters affecting claims management in your company, the market or your country?	Yes.	contract provisions, contract amendments not notified to the	Statutes of limitations derived from the Civil and Commercial Code in general, and a Customs Code rule for these surety bonds. "Limited" expiration applies to surety bonds between private entities.
	Are there any regulations on the handling or management of claims that are the subject of a legal action?	Yes.	No.	No.

	Arbitration is an	Due to its high post arbitration is and	
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 an exceptional procedure, provided it is agreed to in the contract.	Due to its high cost, arbitration is not widely used yet, even though it is provided for in most of the private and public works contracts.	Only exceptionally.
Is the mediation between parties commonly used in your country or market as a prior step to arbitration?	Yes, it is.	Mediation is commonly used as a prior step to arbitration or legal action.	Occasionally.
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 procedural matters.	Yes, fraud, breach of insurance contract provisions, contract amendments not notified to the insurer.	The surety/insurer may assert its own defenses on top of the one the policyholder (main obligor) is entitled to.
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	(No answer).	Yes, the insurer/surety is subrogated to rights of the insured when the bond has been paid.
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.	Yes, the beneficiary has to certify in an addendum to the policy that it has received payment and that the insurer is subrogated to its rights.	In Paraguay, the registry where the counterguarantee was notarized ensures the signer's identity and prevents it from alleging that it is not aware of the counterguarantee contents. This requirement is nowadays highly requested in the market because insurers' counterguarantee foreclosures were challenged on the grounds that the signatures were not authentic, among other cases.	No, only what is required for an ordinary lawsuit.
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).	Yes, in case of constitutional violations	Not known.	There are no special impediments. Legal enforcement requires a final judgement.
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, a lien may by created on the debtor's assets through precautionary measures	Security interests in real property are allowed. A mortgage foreclosure lawsuit may usually take about one year.	Assets may be taken as counterguarantee, but it is not a widespread practice. The foreclosure term may be long, depending on procedural matters.
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.	Yes.	It may be possible, even though usually no legal action is taken to claim a surety bond. In some cases, it would not be feasible because the recovery action would correspond to different jurisdictions.
Are there any special considerations or limitations that may affect the right of the insurer/surety to enforce the counterguarantee or indemnity agreement?	In case of preferred tax or labor liabilities.	Annulment actions.	In case the policyholder goes into insolvency or bankruptcy proceedings. The counterguarantee, unless it is supported by a security interest in an asset, will no longer be valid, and the insurer will participate on a pro rata basis with all the other creditors.
Subrogation and other recovery actions			
May the insurer/surety be subrogated to the rights of the other policyholder's creditor if it pays the claim?	Yes, it can, in insolvency proceedings.	Yes, it can.	Yes, it can.
May the insurer/surety be subrogated to the rights of the other policyhoder's creditors if it pays the claim?	No, it cannot, each one operates independently.	Yes, it can.	It is technically feasible.
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's in the loss/claim event ?	No it is not; the only recourse is through reimbursement and payment.	Yes, it is.	Yes, but evidence of responsibility is difficult to obtain.
Could there be other considerations related to subrogation and recovery that could limit the insurer's/surety's potential for recovery from third parties?	No other considerations can limit recovery rights.	l do not know.	There are a few background cases of recovery from third parties that caused damage to the policyholder or forced its nonperformance.

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