



ON DEMAND GUARANTEES CLAIMS MANAGEMENT IN BOLIVIA

PASA  APF

Jaime Christian Gutiérrez J.

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LEGAL FRAMEWORK IN BOLIVIA



SOCIAL AND ECONOMIC DEVELOPMENT PLAN IN BOLIVIA

- \$ 12,681 million up to 2020.

Hydrocarbons



- \$ 5,854 million: electric power.
- \$ 168 million: solar energy.
- \$ 927.1 million: transmission lines.

Energy



- \$ 2,000 million: construction of a propylene and polypropylene plant.

Propylene Polypropylen



- \$ 10,000 million for the 2019 Project Management.

Bi-Oceanic railway



- \$ 135 million: Public sector.
- \$ 1,600 million: Private sector.

Ethanol



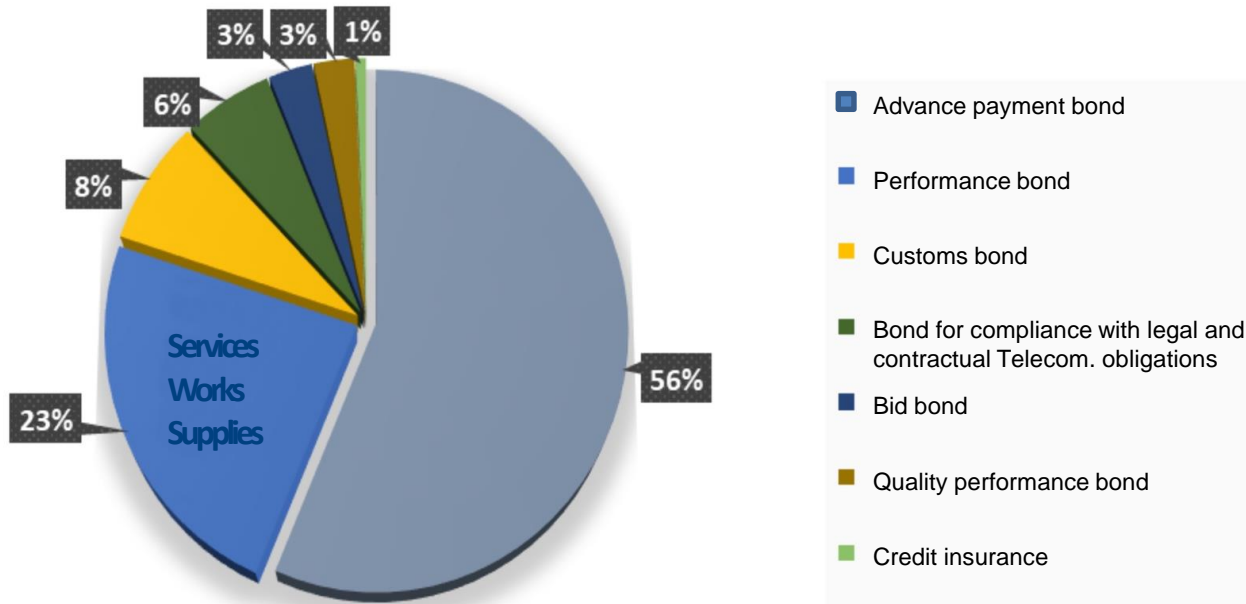
- \$ 2,760 million for the building of new highways.
- \$ 450 million for the building of hospitals.

Construction





SURETY BONDS IN THE BOLIVIAN MARKET JULY 2018



Public Beneficiary 98.44%
Private Beneficiary 1.56%

KINDS OF BENEFICIARIES ENTITLED TO RECOVER

Public

- On demand enforcement
- Public entities and corporations with a majority of state ownership
- Only requirement: Original or notarized copy of Notice of default signed by the Chief Executive Officer or the officer in charge of the contracting process
- 15 calendar days to indemnify.

**Law 365
D.S. 2036**

Private

- Condicional enforcement
- Private sector
- Requirement: Give proof of the principal's default by submitting the request for enforcement signed by the legal representative duly authorized pursuant to law.
- 60 calendar days to indemnify.

**Code of
Commerce
(Law 1739)**

 **Tendency: On Demand Guarantees**

IMPORTANCE OF LAW 365

It sets up the characteristics of surety policies, when the beneficiaries are public entities and state-owned corporations as well as corporations with a majority of state ownership.

It establishes that surety policies are irrevocable, enforced on demand, renewable, of single and uniform wording, prepared and approved by the Pensions and Insurance Supervision Authorities.

It regulates the issuance, renewal and enforcement terms and processes.

CLAIMS MANAGEMENT WITH PUBLIC BENEFICIARIES

LAW 365 SURETY
INSURANCE FOR
PUBLIC ENTITIES
AND STATE OWNED
CORPORATIONS
DATED APRIL 23,
2013

DECRETO
SUPREMO 2036
DATED JUNE 18,
2014

On demand and immediate enforcement

- Filing of a single original or a notarized copy of the “notice of default”, signed by the civil servant in charge or the Chief Executive Officer.
- For advance payment guarantees, there is an additional request to submit the “positive and negative balances report”.
- The insurer shall indemnify within a maximum of fifteen (15) calendar days after receipt of the notice of default.
- Should the insurer request any supplementary information, this must be submitted within 15 calendar days after receipt of the “notice of default”



CLAIMS MANAGEMENT WITH PRIVATE BENEFICIARIES

CODE OF
COMMERCE
(LAW 14379)
DATED APRIL 25,
1979

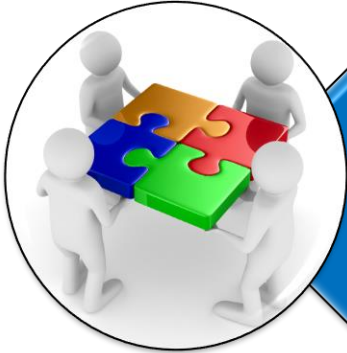
Conditional and Immediate Enforcement

- The beneficiary “shall give sufficient proof of the principal’s default” due to reasons attributable to the latter.
- If the default is proved, the insurer shall indemnify within 60 calendar days.
- Should the insurer request any supplementary information, this must be submitted within 30 days.
- The request for supplementary information cannot be made more than twice after the first request.
- “The silence of the insurer after the term has expired gives rise to the implied acceptance of the enforcement” .



COVER AND INSURED AMOUNT

COVER



- The insurance cover is set up in the main contract and made part of it.
- The insured amount is the maximum cover value.
- The beneficiary cannot claim court costs.
- Customs policies cover fines and penalties (up to the amount insured).
- Judicial and appeal bonds are not regulated in Bolivia.

INSURED AMOUNT



- Bid bond: 2%
- Advance payment bond: 50%
- Performance bond: 20%
- Service or supply bond: 30%
- Quality performance bond : 20%
- Customs bond - Customs .
- Compliance with legal and Telecom. obligations-EEFF.



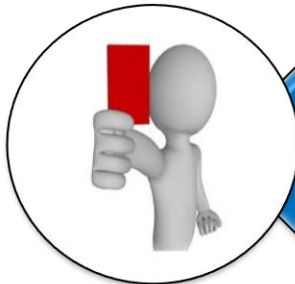
PAYMENT OF CLAIMS AND PENALTIES

PAYMENT OF CLAIMS



- Indemnification is in favor of the beneficiary named in the policy.
- There are no regulations that authorize insurers to negotiate or complete on behalf of the principal the subject matter of the bond.
- The refusal to pay the claim within the terms of the Law will lead to penalties imposed by the regulatory body, the “Pensions and Insurance Supervision Authority (APS) ”.

PENALTIES



- Warning
- Fine
- Ban
- Suspension
- Disqualification



The beneficiary is entitled to start criminal proceedings for property damage to the State.



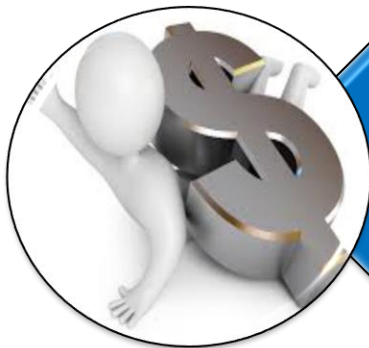
RIGHTS AND OBLIGATIONS

INSURER



- The payment by the insurer to the beneficiary results in the discharge of the insurer's liability.
- The claim becomes "*unenforceable*" after 2 years have passed from the last notice from the insurer if the beneficiary has failed to answer.
- In case of dispute between the parties before the payment of the claim, said claim shall "*remain enforceable*" until the settlement of the dispute.

BENEFICIARY



- The beneficiary can claim the enforcement of a policy only during the period of the policy.



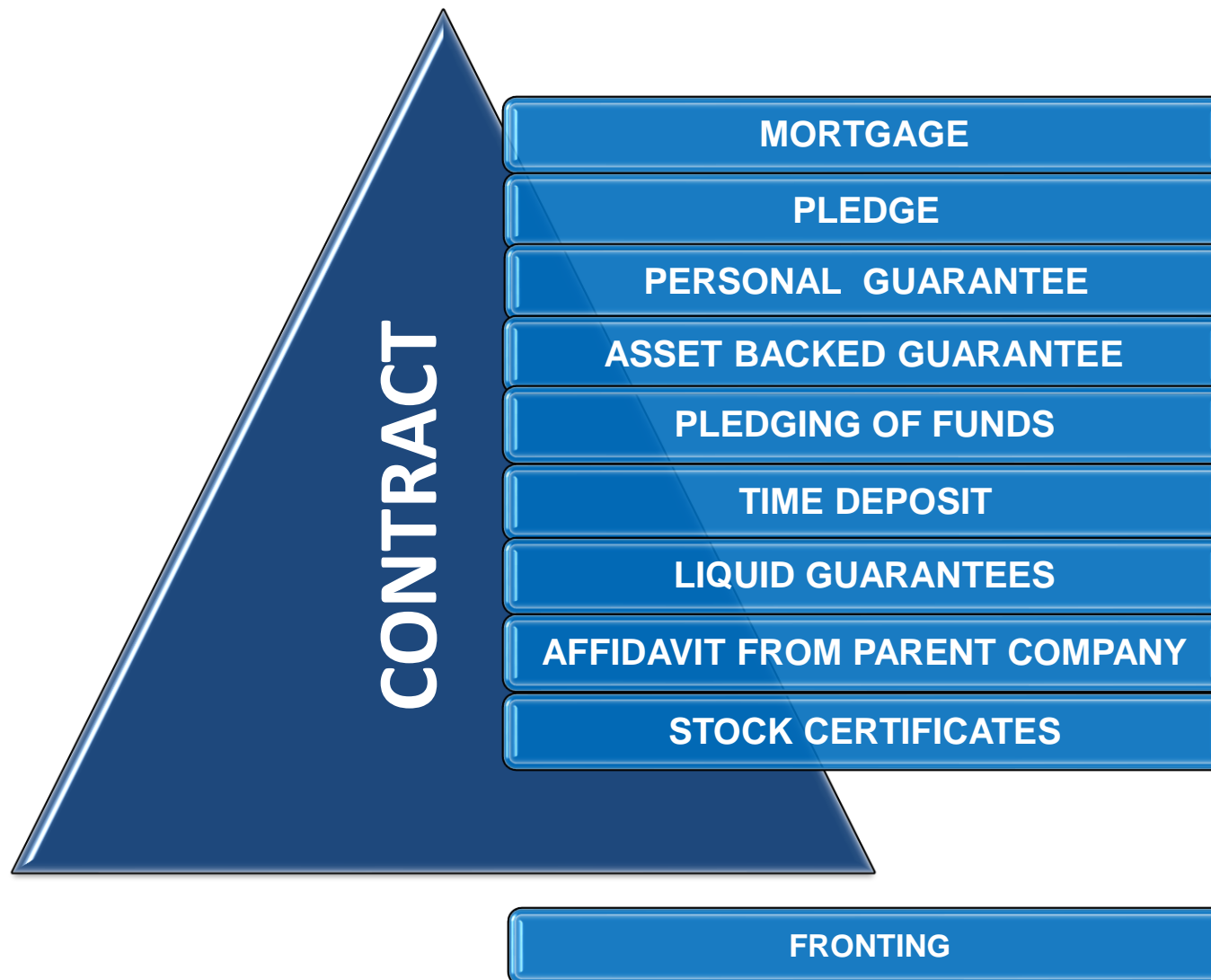
DEFENSES RAISED BY THE INSURER

- The insurance company that has made the payment and considers that there are factual or legal controversial aspects which have not been settled, is entitled to resort to “arbitration”.

- In the case of a public beneficiary, the existence of any controversy shall not delay the “indemnification” payment.

- An Arbitration Award favorable to the insurer will entitle the latter to take legal actions in order to pursue “recovery” from the Beneficiary.

COUNTERGUARANTEES



ENFORCEMENT OF COUNTERGUARANTEES

SETTLEMENT

Payment schedule, *datio en solutum*.

LEGAL ACTION

Summary proceedings.

RECOVERY

Collection and/or auction of counterguarantees.

SUBROGATION IN THE RIGHT TO RECOVER

The insurer's payment arising from the enforcement of the policy automatically subrogates the insurer in the rights of the beneficiary.

DECRETO SUPREMO N° 3469 and N° 3548

D.S.N°3469

PUBLIC-PRIVATE PARTNERSHIPS (PPP)–JANUARY 2018

- It establishes the provisions and minimum content of joint venture strategic alliance contracts.
- It sets up new work dynamics of public and private sectors.
- It is pending regulation.

D.S.N°3548

AMENDMENT OF CONTRACTUAL REGULATIONS–MAY 2018

- During the contracting process the owner shall decide the kind of guarantee to be submitted.
- Timely return of the performance bond in contracts for work when 70% of the work progress has been documented.
- The guarantee may be renewed for 30% of the amount of the contract balance.





THANK YOU