

**FAQ for One-off Advance Payment for Public Sector Construction Contracts Affected by the Extended Circuit Breaker (from 5 May 2020 to 1 Jun 2020)**

*Note: This FAQ supersedes the copy attached with the circular on “Reminder on the one-off advance payment for public sector construction contracts affected by suspension of activities at workplaces due to COVID-19” which was issued on 17 April 2020.*

<b>Q1</b>	<b>Does this circular apply to all construction contracts?</b>
A1	No. It only applies to public-sector projects undertaken by Government agencies. As such, it does not apply to projects under private entities. Nonetheless, contractors could discuss the arrangement with their clients.
<b>Q2</b>	<b>Does the circular apply to maintenance contracts (eg. maintenance of lifts, air-cons etc) or term contracts?</b>
A2	No, it only applies to public sector construction contracts.
<b>Q3</b>	<b>Is it mandatory for main contractor to claim for the advance payment?</b>
A3	<p>It is not mandatory for main contractors to claim for advanced payment.</p> <p>As most construction works have been suspended during the circuit breaker, most contractors would not receive much progress payment in the months of April and May 2020.</p> <p>Hence, we strongly encouraged main contractors to assist their subcontractors and suppliers to work out a mutually acceptable arrangement with their subcontractors or suppliers such that they will have cashflow to tide over the circuit breaker. Main contractors can also claim advanced payment from the Government agencies so as to disburse it to the subcontractors or suppliers which may be in need of the advance payment. What we hope to avoid is a situation that main contractor fails to claim for advance payment, and their subcontractors and suppliers suffer from cashflow issues during the circuit breaker.</p>
<b>Q4</b>	<b>Are suppliers (e.g. rental of equipment etc) entitled to the same advance payment as subcontractors?</b>
A4	It would depend on the payment arrangement in the contract and whether the stop work period has affected the payment for material or equipment suppliers. For example, for suppliers of equipment, if the main contractor is paying for the rental of equipment during the stop work period, there is no need to pay them the advance payment.
<b>Q5</b>	<b>If I carried out the project without any subcontractors or suppliers, am I also entitled to claim for the advance payment?</b>
A5	Yes.
<b>Q6</b>	<b>What is the deadline for the submission of the claim? Will I still be eligible for the claim if I were to submit it after the deadline?</b>
A6	The claim for first tranche (i.e. April 2020) and second tranche (i.e. May 2020) must be submitted by 30 April 2020 and 8 June 2020 respectively. Any late claims will not be entertained by the agencies.

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Q7	<b>Please clarify the method/formula for the apportionment of advance payment to the main contractor and subcontractors/suppliers.</b>
A7	<p><u>From government agency to main contractors:</u> The amount of advance payment covering Circuit Breaker period from 7 April 2020 to 4 May 2020 would be computed based on 50% of the average monthly amount of certified progress payments in past 3 months received by the main contractor, capped at 2.5% of contract sum or \$5 million, whichever is lower. The amount of advance payment covering the Extended Circuit Breaker period from 5 May 2020 to 1 June 2020 shall be calculated based on (i) the advance payment amount certified in April or (ii) the average monthly payment based on past 3 most recent certified monthly payments, if no advance payment was certified in April 2020. The advance payment quantum shall be capped at 2.5% of the awarded contract sum or \$5mil, whichever is lower.</p> <p><u>From main contractors to subcontractors/suppliers:</u> Main contractors need not equally apportion the payment to their subcontractors or suppliers. Main contractors can use similar computation to decide how much advance payment to be apportioned, i.e. to provide advance payment quantum based on 50% of what the subcontractor should be receiving during the circuit breaker (estimated using average monthly payment to the subcontractors in the past 3 months) for Circuit Breaker period from 7 April 2020 to 4 May 2020; and estimate the advance payment amount based on (i) the advance payment amount certified in April 2020 or (ii) the average monthly payment based on past 3 most recent certified monthly payments, if no advance payment was certified in April 2020, for the Extended Circuit Breaker period from 5 May 2020 to 1 June 2020.</p>
Q8	<b>How do we compute the amount of advance payment for newly awarded projects that do not have any progress payments or less than 3 certified progress payments thus far?</b>
A8	It can be computed based on the cashflow projection for the project or the available numbers of certified progress payment or a combination of the two methods.

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Q9	<p>If the maximum advance payment claim received by the main contractor (computed based on 50% of the average monthly amount of certified progress payments in past 3 months received by the main contractor, capped at 2.5% of contract sum or \$5 million, whoever is lesser) is less than the sum of the subcontractor's advance payment claim computed with the same basis (i.e. based on 50% of the average monthly amount of certified progress payments in past 3 months received by the subcontractors / suppliers, what should the main contractor do?</p>
A9	<p>First of all, main contractors are not expected to pass down to their subcontractors / suppliers more than what they have received from the government agencies. For example, if the advance payment received from the government agency is \$1mil, the main contractor just needs to apportion portion of the advance payment of \$1mil to their subcontractors and suppliers which are supposedly to be involved in the construction works during the circuit breaker. The basis of using 50% of average monthly amount of certified progress payments in past 3 months is just one of the methods to estimate the amount of progress payment that the contractor is supposed to receive during the circuit breaker. The exact amount that the subcontractor/supplier would receive still depends on the actual amount of advance payment received by the main contractor from the government agency, but the main contractor shall use his best efforts to apportion the advance payment on a fair basis accordingly.</p>
Q10	<p><b>Is this advance payment claim over and above the progress claim for work done in the month of April and/or May 2020 which the main contractor will be claiming separately?</b></p>
A10	<p>Yes, this advance payment claim is over and above the progress claim for work done in April and/or May 2020. Contractors can submit the claim for advance payment in their regular progress payment claim or as a standalone payment claim. The same applies for the second tranche of advance payment.</p>
Q11	<p><b>Upon submission of the advance payment claim, when will the advance payment certificate be issued and when will the advance payment be made to the main contractor?</b></p>
A11	<p>The issuance of the payment certificate and payments will be made in accordance to the main contract provisions or as advised by the government agencies.</p>
Q12	<p><b>When should main contractor pay the subcontractors or suppliers the advance payment?</b></p>
A12	<p>The main contractor shall pay the advance payment to subcontractors or suppliers according to the terms stated in their respective subcontracts. Within 14 days from the receipt of the Payment Certificate for the advance payment from the Government agency, the main contractor shall submit Payment Responses issued to subcontractors or suppliers, to the Government agency.</p>

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Q13	<b>Can the main contractor request for a security deposit (SD) or performance bond from subcontractors or suppliers for the advance payment?</b>
A13	<p>For contracts where there are already existing provisions such as security deposit (SD) or retention monies to safeguard main contractor's interest, main contractors can rely on the existing provisions.</p> <p>As MOF has waived the requirement for main contractor to submit a SD to Government agencies for the advance payment, likewise, main contractors should avoid requesting for SD from their subcontractors/suppliers for the advance payment. To minimise risks, main contractors may request subcontractors to submit advance payment guarantee (in the form of banker or insurance guarantee) if the advance payment passed down to the subcontractor/supplier is at least \$500,000. During this difficult period, we appeal to all members of the construction sector to support each other. Without the advance payment, some subcontractors or suppliers could face cashflow problems and may become insolvent.</p>
Q14	<b>What if the main contractor does not pass down the advance payment to their subcontractor or supplier?</b>
A14	<p>Where a main contractor fails to pass on the advance payment to its subcontractors or suppliers, the advance payment shall be recovered in full in the next immediate progress payment. The main contractor's performance assessment in the project C41 report will also be accorded a "Poor" rating by the Government agency.</p> <p>BCA may review the CRS registration of the CRS registered contractor if BCA receives any feedback on the contractor failing to pass down the advance payment received.</p>