

Dealing with COVID-19 in the Construction Industry: An Update

11 April 2020



This update is provided, further to our article issued on 5 April 2020.

On Friday 3 April 2020, to reduce the risk of further local transmission of COVID-19, the Building and Construction Authority (BCA) released an advisory to inform contractors that all building works (except for essential works) are to cease from 7 April 2020 to 4 May 2020 (“**Stop Work Period**”).

On Tuesday 7 April 2020, BCA released a circular on:

- (a) One-off advance payment for public sector construction contracts affected by the suspension of activities at workplaces due to COVID-19; and
- (b) The passing down of foreign worker levy rebate to work permit and S Pass Holders.

A. One-off advance payment for public sector construction contracts affected by the suspension of activities at workplaces due to COVID-19

What's Covered

As contractors will not receive any progress payment during the Stop Work Period, the circular aims to help contractors manage cash flow. All Government Procuring Entities (“GPEs”) will make a one-off advance payment, on ex-gratia basis, to the main contractors for affected public sector projects during the Stop Work Period.

The Quantum

The amount of advance payment would be computed based on 50% of the average monthly amount of certified progress payments in the past 3 months received by the main contractor. The quantum would depend on the stage of the projects and is capped at 2.5% of contract sum or \$5 million, whichever is lower.

The Process

To claim the advance payment, the main contractor has to submit the list of its first-level sub-contractors involved in the works originally scheduled during the Stop Work Period to the GPE. It can be submitted either in the regular progress payment claim or as a standalone payment claim. The payment claim must be submitted between 3 April 2020 and 30 April 2020.

The main contractor must include its commitment and plan to apportion and pass down the advance payment to its sub-contractors in the payment claim.

Advance Payment Must Be Passed Down

The main contractor must submit Payment Responses issued to subcontractors to the GPE within two (2) weeks from the receipt of Payment Certificate for the advance payment from the GPE, as proof of passing down the advanced payments to its sub-contractors.

The main contractor will also indicate to the GPE the amounts and nature of other payments made during the Stop Work Period, for example, expenses on security or vector control.

If a main contractor fails to pass on the advance payment:

- (a) the advance payment will be recovered in full in the next progress payment; and
- (b) the main contractor's performance assessment in the project C41 report may be accorded a "Poor" rating by the GPE.

Sub-contractors are similarly expected to similarly pass down a portion of the advance payment received from the main contractor, to relevant sub-contractors which they engage.

As both main contractors and first level sub-contractors in public sector projects are required to be registered in BCA's Contractors Registration System (CRS), BCA may review the CRS registration of the defaulting contractor should BCA receive feedback on the contractor failing to pass down the advance payment received.

B. Passing down of foreign worker levy rebate to work permit and S Pass Holders

With a similar purpose in mind, firms are also expected to pass down foreign worker levy rebates received.

On 6 April 2020, the Singapore Government announced that employers will receive a foreign worker levy rebate of \$750 for each work permit or S Pass holder. The levy rebate is to help firms continue paying their foreign employees during the Stop Work Period.

Contractors are then expected during the Stop Work Period, to be responsible for the maintenance and upkeep of their foreign employees and work out mutually agreeable salary and leave arrangements with unions and employees.

Irresponsible employers who do not pay salaries to their workers despite receiving the levy rebates will face enforcement actions by Ministry of Manpower or other actions by BCA.

The advance payment and the passing down obligations are intended to benefit stakeholders in the construction industry, and maintain cash flow.

For More Information

If you have any questions about this *update*, please contact Sean La'Brooy, any of the attorneys in our Singapore office or the attorney in the firm with whom you are in regular contact.

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