

# JBCC ADVISORY NOTE: EDITION 6.2

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## DOCUMENT/S

**Principal Building Agreement  
Nominated/Selected Subcontract Agreement  
Minor Works Agreement (Clause 9.0)**

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***DISCLAIMER** The purpose of this publication is to give advice on the most effective use of the JBCC documents. Advice is given in good faith and JBCC disclaims all liability for any loss, damage or expense that may be incurred through acting on such advice*

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## 1.0 DEFINITIONS and INTERPRETATION – Advance Payments

**GUARANTEE FOR ADVANCE PAYMENT:** A **security** in terms of the **JBCC** Guarantee for Advance Payment form, obtained by the **(sub)contractor** from an institution approved by the **employer** [CD]

## 11.0 SECURITY

11.2 The **(sub)contractor** shall

11.2.1 ....

11.2.2 Provide a **guarantee for advance payment** where an advance payment is required. The **(sub)contractor** shall keep such **security** valid and enforceable until the advance payment is repaid [11.3]

11.3 The amount of the **guarantee for advance payment** shall be reduced by the amount repaid by the **(sub)contractor** as certified by the **principal agent** in **payment certificates**. ...

## INTERPRETATION

A **Guarantee for Advance Payment** is a financial instrument intended as **security** to be provided by the **contractor** or **subcontractor** to the **employer** where an advance payment (a loan) is required in terms of the accepted tender. The purpose of the advance is not limited to **materials and goods** off the **site**

The **Guarantee for Advance Payment** is obtainable from major financial institutions and specialist insurers with the guarantee having the same legal standing as the **Guarantees for Construction and Payment**. Some form of collateral will be required by the institution for providing such **security**

Where a tender requires an advance payment the **principal agent**, before acceptance of the tender is given, must ensure that the **employer**:

- Is informed of the requirement of the advance payment
- Accepts the need for the advance
- Confirms the request will be met

The administration of the advance and recoupment transactions are dealt with in the applicable **recovery statements** and **payment certificates** and no 'direct payments' or recoupments may bypass the monthly **payment certificate** process to ensure that all financial transactions pertaining to the **agreement** are accounted for

Note: The end Current Certification balances with the end Total Net Payment (see Table on next page)

## ADMINISTRATION

The following tables set out the typical cash flow of an advance payment to either the contractor or subcontractor

Assumptions	
<b>Contract value</b>	10 140 000
Advance payment requirement	200 000
Recoupment period (months)	2
Recoupment start month	M3
Recoupment monthly amount	100 000
Construction period	12 months

Payment certificate calculations	M1	M2	M3	M4	Total
Certification	600 000	2 100 000	2 300 000	3 140 000	n/a
Less: Previous payment	0	600 000	2 100 000	2 300 000	n/a
Net amount certified	600 000	1 500 000	200 000	840 000	<b>3 140 000</b>
Add: VAT (15%)	90 000	225 000	30 000	126 000	<b>471 000</b>
Subtotal	690 000	1 725 000	230 000	966 000	<b>3 611 000</b>
<i>Advance / Recoupment</i>	<i>200 000</i>	<i>0</i>	<i>100 000</i>	<i>100 000</i>	<i>0</i>
<b>Total net payments</b>	<b>890 000</b>	<b>1 725 000</b>	<b>130 000</b>	<b>866 000</b>	<b>3 611 000</b>

## COMMENTS

1. The calculations in the above schedule are related to a specific recipient (contractor /subcontractor)
2. The advance and recoupment amounts are 'generated' in the recovery statement as they do not:
  - a. Form part of the valuation of the works executed or for materials on or off the site
  - b. Attract tax (similar to interest)
3. All payments are made via the recovery statement / payment certificate and no direct payments / recoupments outside of the terms of the agreement should be made by the employer, contractor or subcontractor
4. As all payments flow via the contractor a situation may arise that where the advance is made to a subcontractor, and the contractor's security is considered insufficient to cover the advance payment, specific arrangements would have to be made to make the advance to the subcontractor(s) direct
5. Interest or any other charges that may be agreed between the employer and the recipient should preferably be dealt with outside the agreement but can be added to the recoupment amounts but such interest or charge will not be covered by the Guarantee for Advance Payment but will be covered by the recipient's security