

Project Bank Accounts – an overview

What are Project Bank Accounts?

Project Bank Accounts (PBA's) were introduced to alleviate the problem of poor payment practices within the construction industry, following a review by the Government of the UK Construction Industry. PBA's are ring-fenced bank accounts from which payments are made directly and simultaneously by a client to members of the supply chain.

Currently PBAs are used in UK Government contracts by bodies such as the Ministry of Defence and Highways Agency. In Northern Ireland PBAs form part of the conditions for contracts with an estimated value of £1 million and over where there is a significant subcontracting element. In April, the Scottish government committed to a trial of Project Bank Accounts on public sector projects.

The objective of PBAs to improve payment problems in the industry is no doubt a welcome change and the introduction of standard forms by JCT, NEC3 and PPC 2000 will most likely assist in their integration with bespoke agreements. However, contractors and consultants should remember that PBAs are not full payment protection schemes

How do PBAs work?

A PBA has trust status which secures the funds in it ensuring they can only be paid to beneficiaries. Trustees are likely to be the client and lead contractor but could include members of the supply chain. A bank account is set up jointly by the trustees under which all payments are authorised to be made by the bank.

Where there is a PBA a trust deed will be required to ensure the account has trust status. The account will be the trust asset and the trustee will be responsible for managing the account including payments and distributions from the trust. The trust agreement will set out the terms including the basis for withdrawals and deposits to the account. Where the trustee is in breach of the terms of the trust deed there is a risk they could be personally liable for any loss incurred.

Following from the Government recommendation JCT, NEC3 and PPC 2000 have all produced standard documents which include PBA provisions.

Advantages of PBAs

- Transparency over cash flow as the money is held independently – this allows the employer to see when payments are made and who they are made to. As payments are made direct to the members of the supply chain this ensures

money does not sit in the main contractor's account for months before being distributed.

- Industry savings and decreased disputes – prompt payments should benefit all parties involved in the project. The effect of prompt payments should mean fewer disputes and increased savings for all parties as the reliance on credit from suppliers etc. should be reduced.
- Protection from insolvency – as the money held in the PBA is ring fenced from the main contractor's third party creditors and payments are made direct to supply chain members the members are protected in the event that the contractor or another member higher up the supply chain is made insolvent.

Risks Associated with PBAs

- No protection from insolvency of the Client – PBAs should not be seen as a security of full payment as the amount paid into the PBA will be the amount certified as already due to the contractor and members. As such, payment guarantees and traditional forms of security should still be considered.
- PBAs are designed to protect the signatories to the trust deed only – there is an argument that PBAs should be more inclusive of other parties including sub-contractors responsible for small value work packages as well as the main parties.
- Costs of setting up PBA's – this cost is likely to be passed down the chain to supply members who may be expected to contribute to the administrative costs in securing project finance.
- Uncertainty – as with anything new there is likely to be some reluctance from contractors and clients to give up control of project payments, however this should improve as the industry becomes more familiar with PBAs.

Resources and Further Reading:

<https://www.gov.uk/government/publications/government-construction-strategy>

<https://www.gov.uk/government/publications/project-bank-accounts>

<http://www.scotland.gov.uk/News/Releases/2013/04/Contractor-payments-17042013>

<http://www.northernireland.gov.uk/index/media-centre/news-departments/news-dfp/news-releases-dfp-january-2013/news-dfp-080113-project-bank-accounts.htm>

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June 2013