

# GUIDE TO PROJECT BANK ACCOUNT

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This guide is to help you to understand what a Project Bank Account is ('PBA'), what significance it has and how it is merged into the framework of the construction industry.

## 1. OVERVIEW OF PBA

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The Cabinet Office is working together with public sector construction procurers in pioneering a new way of paying supply chain members in construction projects through PBAs, which will see construction SMEs receiving payment in 5 days or less from the due date. PBAs assure security and speed of payment; they ensure that payment is made promptly.

Government Construction Board members have committed over the next few years to deliver £4bn worth of construction projects using PBAs. In estimation, PBAs can deliver 1 per cent savings in the cost of construction projects.

Traditionally, it has not been unusual for lower tier supply chain members to have to wait for up to 120 days to receive payment, which damages their cash flow and can harm their business.

Members who work in the lower tiers of the supply chain on projects utilising PBAs will no longer have to wait for higher tier contractors to release their payment, instead they will receive it directly through a bank account specific to the project they are working on.

The ultimate plan is to revolutionise the way the construction supply chain gets remunerated, in an industry in which over 99 per cent of businesses are Small to Medium Enterprises (SMEs).

## 2. WHAT IS A PBA?

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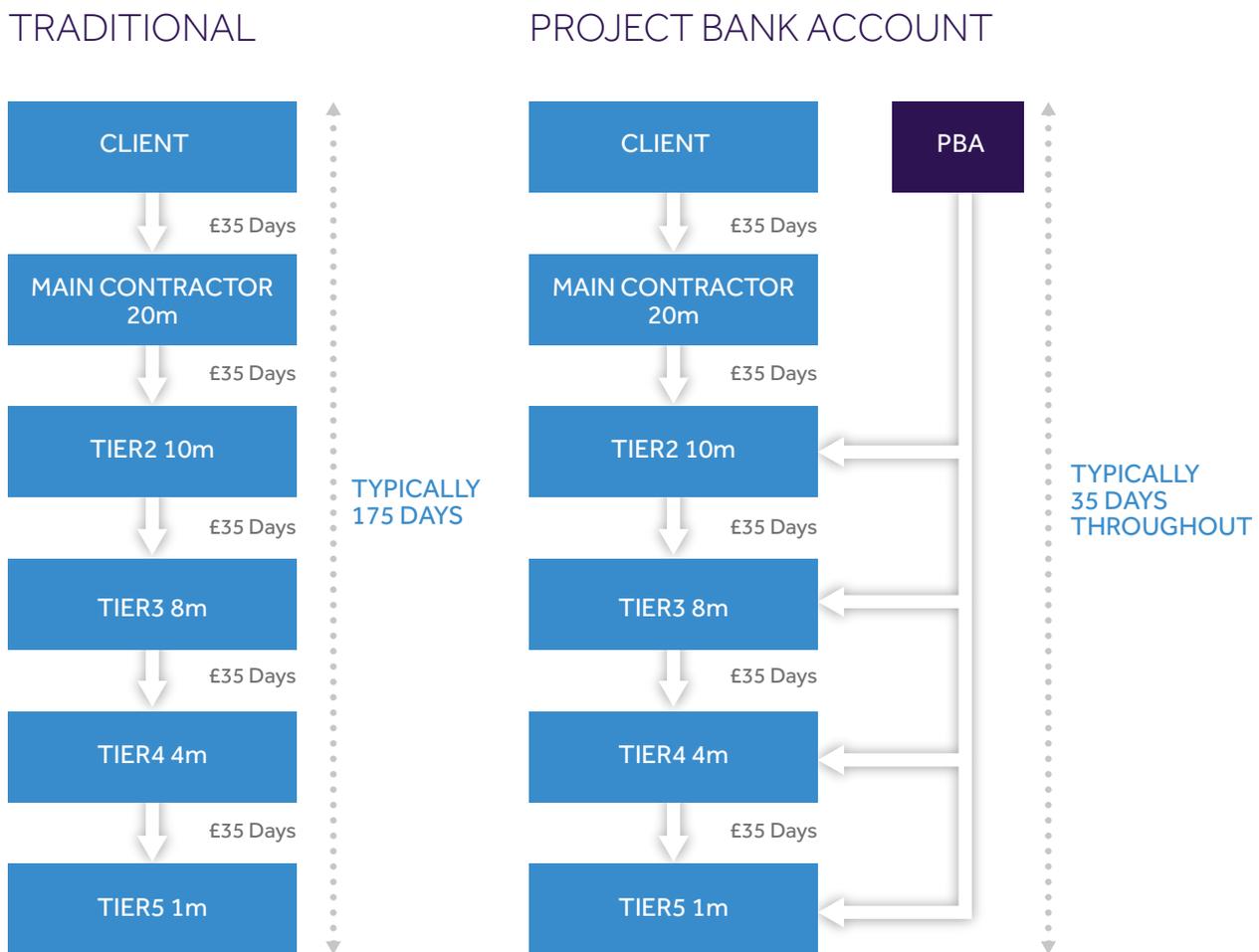
A PBA is a ring-fenced bank account – often seen as similar to an escrow account – from which payments are made directly and simultaneously by a client to the various levels of the supply chain, including contractor, sub-contractor, sub-sub-contractor, sub-sub-sub-contractor and supplier.

PBAs are more likely to be used in higher value projects, because there are set-up and administrative costs, and potential needs to train the team who are unfamiliar with such arrangements. However, there has been misinformation released regarding these costs, which are already lowering in Scotland and other jurisdictions as PBAs become part of what is considered 'normal' procurement practice.

However, PBAs could also be useful to the parties engaged in lower value projects and framework projects, for example, where there are numerous suppliers involved as a way of providing security, and speed of payment.

<sup>1</sup> Access to the government page about Prompt Payment Code can be found here: <http://www.promptpaymentcode.org.uk/>

### 3. CASH FLOW DISBURSEMENT MODEL:



Standard form PBA documentation to enable the use of PBAs has been published by PPC2000, JCT and NEC.

### 4. HOW DOES IT WORK?

The parties further down the construction chain do not have to wait for the contractor or other party above them in the chain to pass on payment to them – payment is made directly by the bank at the same time as payment is made to the contractor. These arrangements offer the supply chain security if the main contractor becomes insolvent.

PBAs have trust status which secures the funds as they can only be paid to the named beneficiaries – the supply chain members named in the account. The advantage of trust status is that in the case of insolvency monies in the account due for payment to the supply chain are protected from the insolvency process as they exist outside the main contractor’s accounts and can only be paid to the beneficiaries.

There are number of bodies currently offering PBA facilities, including:

- Barclays Bank
- Bank of Scotland

## 5. LIMITATIONS

Each tier of the supply chain is still, in the traditional way, responsible for valuing, on an interim basis, the amounts of payment due to the tiers below. Therefore, an unscrupulous contractor at any level of the supply chain may still seek, in the historic way, to undervalue payments downstream in order to ensure its proportion of the funds within the PBA are preserved at the detriment of the lower tiers.

## 6. WHY CHOOSE A PBA?

The Banwell, Latham, Egan and Farmer reports published by UK Government over the last thirty years in the UK diagnosed a highly fragmented construction industry and unfair payment practices causing significant waste and serious productivity issues.

The inefficiencies that poor payment practices create are now acknowledge to be detrimental to: cost, duration and quality of; project delivery. PBAs represent a major culture shift in an industry utilising lengthy payment cycles into its business models as a means of low cost finance.

In a construction industry, where 99% of businesses are SMEs, traditional payment processes are becoming increasingly inappropriate as these businesses are having to increase their overheads dedicated to securing their cash flow and controlling their credit, thereby risking delays and insolvencies.

## 7. BENEFITS OF USING PBAS

<b>SECURITY OF PAYMENT</b>	Once a client has deposited the monies in the PBA the cash belonging to each tier of the supply chain is safe since the PBA is ring-fenced. This means if any of the parties in the top tier for the contractual chain (trustees) become insolvent, monies within the PBA are safe from the insolvency process and the supply chain still gets paid.
<b>EFFICIENCY OF PAYMENT</b>	Payments out of the PBA are made simultaneously to everybody therefore the cash flow management is quicker due to suppliers being paid on time.
<b>COST SAVINGS</b>	There is a reduction in unnecessary overheads employed for credit control as it removes the need for the SME to chase overdue or under, payment, which subsequently leads to a reduction in not only administration costs, but also finance costs as well, as the SME doesn't have to borrow money to forward fund the projects.
<b>COLLABORATION</b>	PBAs encourage trust within the overall team, as the risk of not being paid is significantly reduced. This greater certainty leads to an increase in collaboration, quality, confidence and better productivity.
<b>PROTECTION AGAINST INSOLVENCY</b>	Compared to other sectors, the construction industry has the highest rate of insolvencies as businesses struggle to fund ongoing projects due to delayed payment terms and late payment. The utilisation of PBAs, reduces the negative impact of insolvency on the supply chain causing less disruption to a project.
<b>PROTECTION FOR SMES</b>	PBAs supports Governments' commitment to endorsing the interests of SMEs by safeguarding them from not getting paid. The detriment of poor payment may bring on the loss of the experienced quality SMEs, either due to insolvency, or due to their lack of confidence in projects.

## 8. WHO SUPPORTS PBAS?

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### ENGLAND

In England, the Specialist Engineering Contractors' Group (SEC Group) had issued a press release announcing that the UK government's target of £4bn of construction work paid by the means of PBA by 2014 has been achieved.<sup>2</sup> The PBA move has been widely welcomed by supply chain trade associations, but faces ardent hostility from tier 1 contractors who see it as an attack on their business model.

### WALES

In Wales, Flintshire, Swansea and Torfaen Councils have all identified construction projects to pilot the use of Project Bank Accounts (PBAs). The option to adopt PBAs also features in the North Wales framework agreement for delivery of future schools building programme incorporating all six North Wales Local Authorities.<sup>3</sup>

### NORTHERN IRELAND

Northern Ireland introduced the use of PBAs in January 2013 on all construction projects above £1m value. Guidance can be found in the Procurement Guidance Note.<sup>4</sup>

### SCOTLAND

Following the successful completion of the trial programme recommended by the Review of Scottish Public Sector Procurement in Construction, the guidance on the implementation of Project Bank Accounts (PBAs) in construction contracts has been published. Scottish Government bodies must include PBA in tender documents for contracts commencing procurement procedures from 31 October 2016.<sup>5</sup>

NOTE: Differences in trust law between Scotland and England mean that a straight application of English law solutions may not be effective in Scotland.

## 9. HOW IS A PBA IMPLEMENTED INTO CONSTRUCTION CONTRACT?

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As stated above, a PBA requires a modification to the conventional contractual arrangement, below are the two main contractual options.

### JCT – PBA OPTION.

- ▶ A PBA is in the joint names of client and main contractor
- ▶ A PBA is best suited to larger projects where there are a number of sub-contractors involved as it can have the most profound benefit in terms of stabilising the financial model of the project.
- ▶ PBAs usually hold a trust status meaning that the money in the account can only be paid out to the beneficiaries named in the agreement.
- ▶ PBAs are expressed as a deed to reinforce the trust status.

<sup>2</sup> The SEC Group has come up with the guide in "12 easy steps" to set up a PBA: [SEC Group - PBA](#)

<sup>3</sup> The Construction Procurement Plan note can be found here: <http://prp.gov.wales/splash?orig=/>

<sup>4</sup> The link to the note can be found here: [NI- guidance note on PBA](#)

<sup>5</sup> The article and the report on PBA in Scotland can be found here: [Scotland moves to PBA, Scotland - key questions](#)

- › Money deposited into a PBA is protected in the event of insolvency of the employer and / or contractor.
- › A PBA provides security and transparency to the supply chain.

### NEC3 – PBA OPTION.

- › Includes clauses Z and Y.
- › A new Option Y (UK) 1 of PBA has been added to the contracts, which requires that the tier 1 main contractor sets up a PBA but the banking arrangements must be approved by the client.
- › The NEC PBA option has a trust deed.
- › Under NEC, the lead contractor is sole trustee meaning the tier 1 main contractor cannot release funds.
- › PBAs are a quantum leap forward in terms of speed and security of payment in construction, but they are simply a cash-flow disbursement model and are therefore not the panacea answer to payment abuse in construction, but instead a major piece in the puzzle to the overall solution to payment abuse.