



M-008 PROJECT BANK ACCOUNTS **TARGET AUDIENCE & DESCRIPTION:** This document is intended for clients, contractors and sub-contractors within the Scottish Construction Industry. It introduces and briefly describes the concept of Project Bank Accounts (PBAs) and discusses their advantages and disadvantages.

Overview
It has long been recognised that late payment practices by some contractors towards their sub-contractors causes problems down the supply chain. In the current economic climate it is likely that:
a) this practice will increase and
b) the consequences will be more severe to a sub-contractor.
There is also the risk that a main contractor will go into liquidation and a sub-contractor will not get paid at all for work completed and certified by the client. The Federation of Small Businesses estimates that 10% of small business collapses are triggered by late or non-payment of bills⁽⁵⁾. The use of a Project Bank Account (PBA) is a measure which can potentially help with some of these problems.
What are PBAs?
A Project Bank Account is a fair payment system which ensures the supply chain receives prompt payment for monies rightfully due through certified interim payments. The project bank account is the medium through which payments are made. It is not a contractor's account, it is set up jointly by the employer and contractor. In order to protect subcontractors in the event of main contractor insolvency the PBA is set up in Trust. A trust deed is required and should be signed by all those participating in the PBA arrangements, i.e. employer, main contractor and relevant subcontractors. It should be noted that under Scots law the establishment of a trust are different and more onerous than those applying in England and Wales.



How do PBAs Operate?
During the course of the Works, the contractor prepares an application for an interim or milestone payment, having checked payment applications received from his subcontractors and suppliers. The employer reviews the contractor's payment application in the normal way, which will include payments due from the main contractor to the relevant members of his supply chain. As soon as the interim valuation is agreed (or determined by the employer), the employer issues the payment notice or certificate and arranges for the release of funds into the PBA. Invoices are raised by the contractor and supply chain members and the contractor will issue a payment schedule to the employer and the bank. Under the operating mandate for the PBA the authorised signatories for the employer and contractor then approve the release of funds directly to the relevant members of the supply chain (including the main contractor). This should normally be within five days of deposit of funds.

What are the Benefits?
While PBAs predominantly benefit subcontractors as they are usually the ones that suffer from late payment, the main contractor also benefits, as PBAs improve cash flow in the project and the scope for uncertainty, delays and disputes should be reduced⁽⁴⁾. Brian Kilgallon, a partner with cost consultant Rider Levett Bucknall, said of project bank accounts "They lead to improved trust and collaboration which results in better value for money, better productivity and fewer disputes"⁽²⁾.



What the PBS does not do

PBAs do not cut across the usual contractual provisions governing the preparation and submission of interim applications, or the valuation or certification of interim payments. Neither are they intended to cut across any rights by a contractor to withhold payment as set off against monies due.

They do not offer total protection against the effect of insolvency by the main contractor as they deal with interim payments only. Consequently such protection only applies to the interim payment that is currently due to the contractor (and subcontractor) and has been paid into the PBA). Also the protection only applies to those supply chain members that are included in the Trust deed.

They do not deal with the issue of retention and when retention monies are released to any individual subcontractor (for example a subcontractor who completes his work early in the contract period might not have retention monies released until 12 months after completion of the whole contract).

Summary

PBAs should, in theory, lead to better payment practice. This in turn should lead to more competitive pricing by the direct supply chain leading to a lower project cost overall⁽⁴⁾.

Research predicts the increase in payment certainty will reduce tender prices by around 2.5 per cent, as well as generating further savings over time in overheads associated with debt chasing and administration⁽⁵⁾. The contractor may look for a higher initial margin to reflect its loss of use of the subcontract funds but should also benefit from the improved terms and trust from the subcontractors. Defence Estates are using project bank accounts wherever possible in future standalone contracts⁽¹⁰⁾. Whether PBAs really address payment problems is yet to be seen. Views amongst their critics are that there are already several pieces of legislation dealing with late payment and that these haven't improved payment practices. There is uncertainty as to why a voluntary arrangement on project bank accounts would actually make any difference⁽⁹⁾.

Critics claim that there is no real problem in getting paid once a month and that the issue lies in avoiding sums building up into a fund which becomes the last payment on the project which is often difficult to receive due to retentions⁽⁹⁾.

REFERENCES

No.	DESCRIPTION	LINKS
1	Analysis: A fairer payment system. By Brian Kilgallon	http://www.rlb.com/news/current/news_bank.html
2	Banks back Project Accounts in the U.K. Construction News - 30/01/08	http://www.rlb.com/news/current/news_bank.html
3	How project bank accounts work. Construction News 8/9/08	http://www.cnplus.co.uk/how-project-bank-accounts-work/1839210.article
4	When to set up a project bank account. Construction News 8/12/08	http://www.cnplus.co.uk/when-to-set-up-a-project-bank-account/1943742.article
5	New construction project bank account launched from Barclays	http://www.nce.co.uk/new-construction-project-bank-account-launched-from-barclays/1293691.article
6	Defence Estates makes project bank account pledge. Construction News 27/1/2009	http://www.cnplus.co.uk/news/defence-estates-makes-project-bank-account-pledge/1975287.article
7	Bank of Scotland: Project Bank Account	http://www.bankofscotland.co.uk/corporate/day-to-day-banking/accounts/project-bank-account/index.html
8	Barclays: Project Bank Account	http://www.business.barclays.co.uk/BRC1/jsp/brcontrol?task=popup1vi1&value=12119&target=_blank&site=bbb
9	Will project bank accounts really address payment problems?	http://www.contractjournal.com/blogs/construction-rant/2008/05/will-project-bank-accounts-rea.html
10	SELECT drives action on slow payment for construction industry's sub contractors	http://www.voltimum.co.uk/news/11453/infopro.tradeassoc.latest/SELECT-drives-action-on-slow-payment-for-construction-industry-s-sub-contractors.html

Further reading

No.	DESCRIPTION	LINKS
1	Project bank accounts: Up close and personal	http://www.building.co.uk/story.asp?storycode=3117761
2	Project bank accounts: Private practices	http://www.building.co.uk/story.asp?storycode=3105642
3	Mandelson welcomes project bank accounts	http://www.heatingandventilating.net/news/news.asp?id=5876&title=Mandelson+welcomes+project+bank+accounts
4	Slow payment for construction contractors	http://www.buildingtalk.com/news/slq/slq124.html

