



## Project Bank Accounts - FAQ

### Application of PBAs

#### **Q. When are PBAs used?**

**A.** On the majority of construction projects managed by the Department of Finance's (Finance) Building Management and Works and Strategic Projects that are valued at over \$1.5 million.

#### **Q. How does the Personal Property Securities Act impact PBAs?**

**A.** The Personal Property Securities Act 2009 (Cth) ("PPSA") is a Commonwealth Law that applies to personal property and security interests. It is likely that the enhanced rights which the PBA provides mean the PPSA will apply to moneys in the PBA (both the regular progress payments for works undertaken by subcontractors and to any subcontractor retentions).

By properly registering their interests in moneys in the PBA on the PPSR, subcontractors will greatly enhance their security of payment. If subcontractors fail to register their interests on the PPSR, the subcontractors' interests under the PBA trust are likely to be lost in the event of head contractor insolvency. While regular progress payments through a PBA to subcontractors are made almost simultaneously with progress payments to head contractors, retention moneys remain in a PBA for a longer period of time and addressing PPSA impacts on them is therefore advisable.

To ensure their interests in moneys passing through or held in project bank accounts are protected, head contractors and participating subcontractors are strongly encouraged to seek their own independent legal or specialist advice about:

- (a) the PPSA;
- (b) the advisability of registering on the PPSR for any interest in moneys held or passing through the PBA; and
- (c) steps to take and applicable time frames.

### The account

#### **Q. Who is responsible for the account?**

**A.** The head contractor is responsible for establishing the account and will be liable for the associated charges. Head contractors will be entitled to the interest on the account.

#### **Q. What money will be held in the account?**

**A.** All payments from Finance will go through the account, but only subcontractor retentions will remain in the account for an extended period. All other amounts will be dispersed in accordance with the relevant payment instruction. Head contractors will not be able to 'bank' money in the account.



***Q. Do PBAs limit a head contractor's ability to access retentions?***

**A.** No. PBAs do not alter existing contractual rights and responsibilities. A head contractor's entitlement to retentions will remain as set out and agreed in its subcontracts.

***Q. Can subcontractors view the account?***

**A.** No. Only the principal (Finance) and its agents have viewing rights to the account.

***Q. Is a separate PBA required for each project?***

**A.** Yes. PBAs are project-specific accounts established for the sole purpose of directing payments and housing retentions for individual projects.

***Q. What if not all subcontractors are known at the time of contract award?***

**A.** There is no requirement to know all subcontractors at the time of contract award. Subcontractors with a contract valued over \$20,000 will be automatically 'joined' to the PBA upon entering into a contract with the head contractor. Subcontractors with a contract valued under \$20,000 and suppliers can sign up to the PBA at any stage of a contract by executing a simple opt-in notice.

***Q. Can subcontractors with contracts valued at greater than \$20,000 (GST inclusive) opt out of the PBA arrangement?***

**A.** No.

## **The payment process**

***Q. Is a head contractor able to pay a subcontractor faster than the PBA payment cycle if it wishes to do so?***

**A.** Yes. However, payment must still be directed through the PBA account by using a contractor deposit instruction. The head contractor can then recoup the payment through the head contractor's allocation in the ordinary payment cycle.

***Q. Can a head contractor cancel a progress payment instruction after it is issued to the principal (Finance) and the bank?***

**A.** The progress payment instruction is irrevocable unless a clear error has been made.

***Q. Do head contractors need to notify Finance and the bank of any subcontractor retentions being retained?***

**A.** Not specifically. This information will be evident from the details in the payment instruction that is provided to the bank and Finance each month.

***Q. What does a head contractor do if a subcontractor has finished work but has not submitted an invoice at the time a claim is submitted to Finance?***

**A.** The existence of a PBA does not alter a head contractor's obligations to its subcontractors or the head contractor's ability to submit a claim to Finance for work completed. As part of the monthly payment process, the head contractor is required to provide Finance with the details of any subcontractors that have completed work but failed to submit an invoice. Once the subcontractor has submitted an invoice, the contractor will deposit the amount owed into the PBA and will instruct the bank on how that money should be disbursed.



**Q. Will the PBA be used to pay liquidated damages?**

A. No. The process for the payment of liquidated damages remains unchanged under a PBA arrangement.

**Q. Do PBAs alter the existing dispute resolution process between a head contractor and subcontractors?**

A. No. PBAs are an alternative payment mechanism and do not alter existing contractual rights and responsibilities or dispute resolution processes.

**Q. What are the taxation and accounting implications?**

A. Finance has sought the views of Deloitte on taxation and accounting implications, and a flyer summarising Deloitte's response is available at [www.finance.wa.gov.au/cms/uploadedfiles/Building\\_Management\\_and\\_Works/New\\_Buildings/deloitte](http://www.finance.wa.gov.au/cms/uploadedfiles/Building_Management_and_Works/New_Buildings/deloitte). This flyer provides general information only and contractors should seek the advice of their financial and legal advisers.

**More information**

If you would like to know more about PBAs, please contact Finance's Industry Liaison team on:

Telephone: **(08) 6551 1888**

Email: **BMIndustryliaison@finance.wa.gov.au**

Website: **[www.finance.wa.gov.au/works](http://www.finance.wa.gov.au/works)**

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