



CabinetOffice

Government Construction

A Guide to the implementation of Project Bank
Accounts (PBAs) in construction for government
clients

03 July 2012

The briefing and guidance on this page are now out of date. A replacement is being prepared

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Overview of the Project Bank Account (PBA) Guide

This guide has been produced by the Government Construction Board Fair Payment User Group. The purpose of the guide is to provide a process map for government clients looking to introduce Project Bank Accounts (PBA) in their construction projects. The Government Construction Board decided in September 2009 that Central Government Departments, their Agencies and Non-Departmental Public Bodies would move to a position where PBAs are adopted unless there are compelling reasons not to do so. This was confirmed in Policy Procurement Note 2/2010 of October 2010, attached at Annex E. The Government Construction Strategy, published in May 2011, made a further commitment to PBAs and targets subsequently set for the volume of contracts delivered this way.

There are two approaches to implementing PBAs which are considered in this document. These are the *'dual authority'* approach and *'single authority'* approach, which refer as to whether both the Client and Lead Contractor (Dual Authority), or only the Lead Contractor (Single Authority) instruct the bank to distribute the authorized amounts to the supply chain from the PBA – not to alter amounts or payees. Both methods offer the same level of security and payments of funds to the supply chain, albeit with a slightly different approach to transparency.

The headings in this Guide refer to the Fair Payment Flowchart at Annex D; these two documents should be read together.

1. PBA Strategy Business Case

1.1 Introduction

The use of PBAs ensures compliance with the Government Construction Boards (GCB) agreement for the use of Fair Payment Terms on central government construction contracts. The GCB agreed that PBAs should be used wherever possible; there should only be a very small number of projects where PBAs cannot be used.

The GCB require PBAs to be used to at least Tier three on projects and for at least 80% of the value of work sub-contracted.

PBAs provide security and certainty of payment to the supply chain and minimize unnecessary costs such as financing charges. Research by the Fair Payment working group mapped typical traditional existing payment regimes

against a Fair Payment best practice process; this is summarized in the *Guide to Fair Payment Practices*¹. That research indicates that on a typical £10m, 52 week project with 16 subcontractors, savings in the region of 1% - 2.5% could accrue for Fair Payment and Project Bank Accounts. These savings could rise over time if the supply chain were able to reduce overheads relating to debt chasing and administration. The additional knock-on benefits of greater productivity and a reduction in construction disputes, and supply chain failures are difficult to quantify but they are likely to be substantial.

1.2 What a PBA is and how it works

A PBA is a ring-fenced bank account from which payments are made directly and simultaneously to a lead contractor and members of the supply chain. The PBA **must have trust status which means that the monies in the account can only be paid to the beneficiaries – the lead contractor and supply chain members**. The account is held in the names of trustee who are likely to be the Client and Lead Contractor under the Dual Authority approach (but members of the supply chain could potentially also be trustees). While under the 'Single Authority' approach the lead contractor is the sole trustee, this does not materially alter the protection offered in terms of security of funds, certainty of payment or the operation of the PBA.

Key client benefits of a PBA include:

- Ease of compliance with Fair Payment Charter principles.
- Effective mitigation to the risk of payment delay and cost associated with it and avoidable supply chain failure.
- Reduction of the risk of supply chain failure by improvement of cash flow.
- Transparency of supply chain spend and payment flow.
- Easier measurement of payment timescales across supply chain.

A PBA:

- Does not involve client prefunding.
- Can be set up in joint names of client and contractor (dual model) or in the contractor's name only (single model).
- Is simple and cost effective to set up and operate for all parties.
- Is linked to a Trust Deed, and provides insolvency protection for the supply chain.
- Provides visibility for supply chain over timing/amounts of payments.
- Is easily auditable by clients.
- Supports the principle of collaborative working and allows suppliers to focus on delivery.

A PBA does not:

- Cut across contractual provisions governing the preparation and submission of interim applications or the valuation, authorisation or certification of interim payments.
- Take away the lead contractor's responsibility for managing and selecting the supply chain so that the work is performed in accordance with the

¹ www.ogc.gov.uk/documents/Guide_to_Fair_Payment_Practices.pdf

contract. The client's role is merely to confirm payment transfers from the account.

- Require a separate bank account for each contract let under the PBA methodology.
- Remove statutory obligations for VAT, taxation accounting liabilities etc from the client or suppliers
- Add any more than a minimal, if any, cost to the project as interest costs are used by the contractor to off-set banking fees.

Challenges to use of PBAs will arise; some of these raised to date with responses are shown below.

Internal Client Organisation

Issue	Response
They are complicated and time consuming to set up	They are no more complicated than a normal bank account
They are expensive to use, only viable on large schemes	Costs are modest, e.g., only 15p per payment
It is difficult to demonstrate the benefits	A PBA will provide quicker payment and The Fair Payment Guide highlights a study showing a benefit of 2.5% for the use of a PBA ²
Engagement and acceptance will be difficult	Education and clarification of requirements and a structured implementation approach is needed

Tier 1 Supplier (Lead Contractor) - Issue

Issue	Response
Perceived impact on maintaining profitability/cash flow	The use of a PBA reduces risk of supply chain failure and supports suppliers' engagement in projects. It is accepted that T1 suppliers may have to raise their prices marginally.
Changes to processes and financial systems will be problematic	The PBA process works in accordance with current International Financial Reporting Standards (IFRS) requirements
They affect declared turnover and shareholder value of Tier 1's	Not true - see IFRS 5 Application, note G, paragraph 60 ³
PBAs undermine Tier 1's ability to manage the supply chain	This is not correct as PBAs do not interfere with any contractual provisions

Tiers 2 & 3 Suppliers

Issue	Response
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² Study undertaken by Rider Levitt Bucknall on behalf of the Office of Government Commerce

³ For more information please refer to the IFRS / International Accounting Standards Board (IASB) web-site; <http://www.ifrs.org>

It will cause changes to processes and financial systems	Some may be experienced but less time should be required to chase payments, balance should be positive.
It is difficult for Tier 2 to deal with the implementation	PBAs have been welcomed by both the Specialist Engineering Contractors Group (SEC) National Specialist Contractors Council (NSCC). Experience to date is positive.

1.3 How to start using PBAs

There are a number of ways in which clients can move to using PBAs. It can be either through a single project to act as a pilot or in a structured programme. It is reasonable to apply a PBA for the first time to a reasonably straightforward project of medium duration and value.

Considering the Government Construction Board's decision to move to PBAs, if a PBA is not to be used or members of the supply chain are to be excluded from PBA arrangements, internal arrangements need to justify this through governance procedures for each organisation and project.

There are two models for implementing PBAs - Single Authority and Dual Authority. These are explained further in Annexes A, B and C.

1.4 The Minimum Requirements for PBAs

The Government Construction Board's (GCB) Fair Payment User Group has agreed a set of minimum requirements that a PBA Product used by government should conform with. These minimum requirements are:

1. The account needs to be linked to a Trust Deed so that the money is ring-fenced and can only operate with joint agreement of both parties.
2. The banking service provided should not materially alter the operation of the Trust Deed or the PBA.
3. To be a beneficiary of the PBA the parties must be joined by the Deed of Adherence (Dual Authority) or Joining Deed (Single Authority).
4. Dual agreement is to be required before the payment is to be made, i.e., the lead contractor / client knows that it can only act when both parties have agreed to the payment and one party can not alter the payment without the agreement of the other party.
5. The bank must be informed and acknowledge that a Trust Deed exists and that operation of the payments will be covered by this Deed.
6. Transactions must be easily available for the client to view from the bank report no more than one day after payment.

7. The Lead Contractor (Tier 1) is to advise when and how much Tiers 2 and 3 have been paid (Single Authority).
8. All of the contractors and sub contractors signed up to the PBA Trust Deed should be paid at the same time and no later than the times advised in the Fair Payment Guidance published in Procurement Information Note 2/2010 (see Annex E).
9. Payments from the PBA should only be able to be made to the contractor and other named supplier beneficiaries.
10. No cheque facility is to be made available on the account.
11. No overdraft facility is to be available on the account.
12. Confirmation is to be obtained from the PBA bank that monies are held in Trust and that they cannot be used to offset any other contractor/supplier chain liabilities.
13. There is an obligation on the Lead Contractor to inform the client and appropriate members of the supply chain and trustees of any changes to the PBA with respect to alteration to any terms and payment authorisations.

1.5 How to address suppliers that may need to operate outside of a PBA?

Employers and lead contractors will need to give early consideration to agreeing exceptions to suppliers participating directly in a PBA. Employers should be closely involved in agreeing exceptions in order to ensure that there are valid reasons and vulnerable suppliers are not disadvantaged.

Reasons for suppliers not participating directly may include:

1. De minimis for low value spend
2. Suppliers which are paid more frequently than a monthly cycle
3. Non vulnerable suppliers that may not wish to participate (eg national/international material suppliers)

It is preferable to set KPIs with the lead contractor, to agree and control the percentage value of spend of tiers 2 and 3 that will be paid directly through the PBA.

1.6 PBA banking products

Clients and lead contractors should satisfy themselves that PBA products providers provided by banks comply with the minimum requirements set out in section 1.4. Banks that provide products to these requirements can be found through contacting the ERG team in the Cabinet Office at: GovernmentConstructionTeam@cabinet-office.gsi.gov.uk

2. Pre-procurement

2.1 Considering Governance Requirements

The following should be considered when addressing governance arrangements:

- Confirmation that bank PBA product satisfies the minimum standards at 1.4 above.
- Process and system creation and compliance.
- Approving Deeds of Trust, Deeds of Adherence (Dual Authority) or Joining Deeds (Single Authority) creating PBAs.
- Agreeing the basis on deciding why supply chain members may not be paid directly from PBA.
- Agreeing payments due to lead contractors and each of their named suppliers.
- Paying money into PBA and approving payments from PBA.
- Client visibility and management information relating to PBA.
- Delegated authority and control for PBA processes.

2.2 Obtaining specialist training and support that may be needed

Members of the client team will need to familiarise themselves with PBAs and their operation so that they know how they work and what they need to consider for internal processes, for tenders and for contract documents. Familiarisation (perhaps through training) should typically address the items below:

- What is a project bank account?
 - How it operates
- A typical interim payment cycle
- The benefits for the whole supply chain
- Selecting and appointing the bank
- Setting up the account
- Key bank contacts
- Changes to tender invitation and contract documents
- Educating the tendering supply chains
- Arrangements for supply chain members outside the PBA

The above have taken from a short training programme produced by Constructing Excellence, Specialist Engineering Contractors Group and Ryder

2.3 Identifying changes that may be needed for tender documents

Tender requirements should reflect the agreed minimum standards at 1.4 above, to ensure that suppliers have the ability and appropriate commitment to the implementation of Fair Payment through PBAs. Issues that may be addressed include:

- Existing commitment to Fair Payment and demonstration of its use.
- Current methods used to assess payment outside of fair payment.
- Measures of supply chain payment that already exist within the company.
- Planned measures to engage with the supply chain in implementing Fair Payment.
- Tender requirements for PBAs - a list of those for use with the Single Authority approach is at Annex B.

2.4 Preparing a briefing pack to go into contract documents

The lead contractor needs to ensure that the benefits of payment through a PBA are cascaded down the supply chain and reflected in the pricing of the project and their contract documentation.

Lead contractors need to be informed that any exceptions to the PBA process must be made clear to the client's representative during the tender process.

2.5 OJEU PBA requirements

The OJEU notice needs to state that a PBA will operate on the project and that this will have to adhere the minimum requirements of payment set down in Procurement Information Note 2/2010 (see Annex E). It should also state that it should extend to 80% of the value of sub-contracted payments used on the project and ensure payment to the supply chain within the time periods from the due date as set down in the Procurement Information Note, i.e. 14, 19 and 23 days from the due date for Tier 1, Tier 2 and Tier 3 respectively.

3. Procurement

3.1 Tenderers' briefing

As part of the procurement process, briefing of tenderers about the benefits and requirements should take place.

This briefing may be provided via:

- Tender open days.
- Bilateral meetings with each tenderer during the tender period to allow the discussion of any PBA issues.
- Structured query (question and answer) sheets to facilitate questions outside the bi-lateral meetings.

3.2 Briefing of supply chain on PBA and benefits (before tender return)

An important part of the benefits of PBAs arises from the cost benefits resulting from early and certain payment. To capture these benefits the supply chain needs to be asked:

- What benefits have they gained through using PBAs e.g. have they secured discounts through the supply chain?
- What benefits they think using a PBA will accrue to the client? e.g. A line to be added to tender requirements to ask - 'the reduction to be secured through use PBAs'.

4. Post appointment

4.1 Education of Client/Lead Contractor project team and Supply Chain in operation and benefits

It is important to bring the whole supply chain to a common standard of knowledge in PBA operation. This may be through training that addresses:

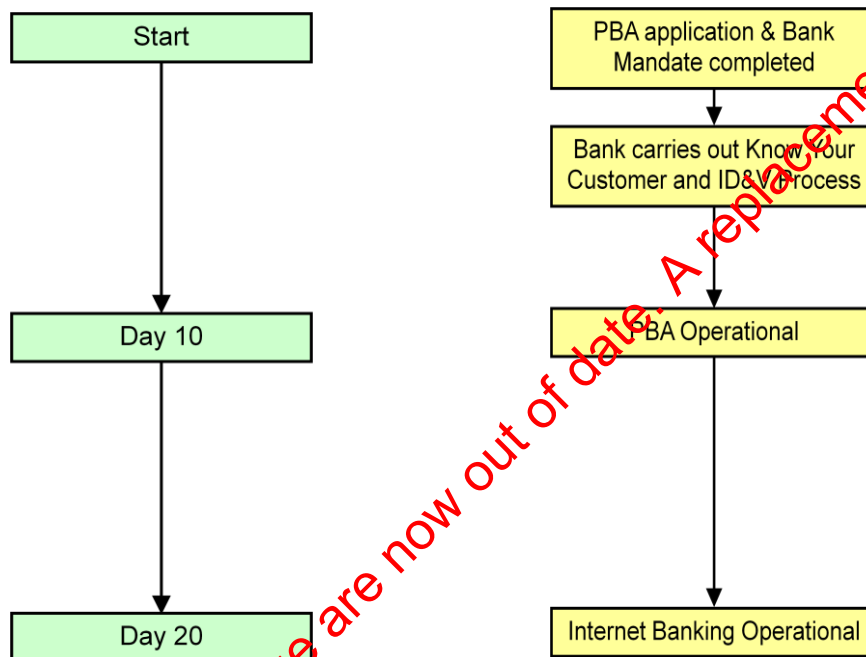
- Background of Fair Payment and PBAs
- Impact on the extended the supply chain
- Key controls
- KPIs
- High level process map
- Changes to reporting
- Contractor and Employer
- More detailed process maps
- FAQs

4.2 Opening the account

The typical information that will be required by a bank for opening a PBA includes:

- The Account Application and relevant due diligence requirements
- The Account Bank Agreement
- The Deed of Trust
- The Bank Mandate
- That the internet banking process is being established within the relevant organisations

An indicative timescale for opening a PBA can be seen below:



The timescale should allow for the processing of Deeds of Adherence/Joining Deeds where there is not an existing relationship with the bank.

4.3 Capture the lessons

Lessons learned should be captured and fed back to all relevant parties for future planning and implementation.

5. Annex A – Two approaches to PBAs

Two methods for operating a project bank account have been developed and are recognised and operating within the central government community. These are the *Dual Authority* and the *Single Authority*.

Both of these methods provide the appropriate level of control and comply with the Minimum Standards described at 1.4 above – they both use a Trust Deed and assure certainty, speed and visibility of payment down the supply chain.

The Single Authority approach requires that only the contractor is named on the bank mandate while the Dual Authority requires the both the Client and Lead Contractor to be joint signatories.

A summary of the differences is shown below:

Dual	Single
Client and contractor are joint holders	Contractor is the sole account holder
Only the client can deposit funds into the PBA	Client and contractor can deposit funds into the PBA
Client has to authorise payment to supply chain via internet banking	Payment detail is agreed when head contract value is agreed. Contractor instructs via bank
If funds are insufficient to pay amounts due to supply chain, all payments are reduced pro-rata	In these circumstances the contractor has the ability to top up the PBA so that all are paid in full
Client and contractor are joint trustees	Contractor is the sole trustee
The addition of new parties to the trust is through a Deed of Adherence	The addition of new parties is through a Joining Deed

6. Annex B – Requirements for use with Single Authority Model

Requirements to be used for the Single Authority Model for Project Bank Accounts with the NEC form of contract are shown below. These may be adapted for use with other forms of contracts.

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6.1 Copy of the Model Fair Payment Charter

6.2 Z clauses for use with the NEC3 Engineering and Construction Contract (ECC)

6.3 Additional Contract Data entries

6.4 Trust Deed

6.5 Joining Deed

6.6 Guidance Notes

6.7 Flow Charts

The briefing and guidance on this page are now out of date. A replacement is being prepared

6.1 MODEL FAIR PAYMENT CHARTER

Fair and transparent payment practices are an essential underpinning to achieving successful integrated working on construction projects. In working with each other in good faith and in a spirit of mutual trust and respect, we agree that we will meet the 'Fair Payment' commitments set out below:

- Companies have the right to receive correct full payment as and when due. Deliberate late payment or unjustifiable withholding of payment is ethically not acceptable.
- 'Fair Payment' will apply equally between the client and lead contractor and throughout the supply chain.
- The process will be transparent in order that members of the supply chain have certainty of how much and when they will be paid.
- Companies will consider, where appropriate, operating relevant contracts on an open book basis.
- The correct payment will represent the work properly carried out, or products supplied, in accordance with the contract. Any client arrangements for retention will be replicated on the same contract terms throughout the supply chain. Any withholding of payment due to defects or non-delivery will be proportionate and demonstrably justified in line with arrangements made at the time of contract.
- To ensure effective and equitable cash flow for all those involved, all contracts will provide for regular payments and have payment periods not exceeding 30 days.
- In order to avoid payment delays, the client and all supply chain members will agree payment procedures at the outset of their contracts. Payment will be through electronic BACS transfer and will apply throughout the supply chain.
- Monitoring and auditing and problem resolution procedures will be agreed between the parties.

We the undersigned agree that this Charter is not intended to be a legally binding document and not used in construing any contractual commitment.

The Charter sets out the values and arrangements relating to payment practices with integrated working. The Model Charter is flexible to allow for adaptation and can be either a standalone document or part of a wider partnership charter. In either case it is not intended to be legally binding.

The client would sign the Charter at the outset. Contractors and suppliers subsequently engaged would be expected to sign the Charter before appointment.

6.2 Z CLAUSES

Z3: Project Bank Account

- Defined term** Z3.1 (1) The Authorisation is a document authorising the *project bank* to make payments to the *Contractor* and Named Suppliers.
- (2) Named Suppliers are *named suppliers* unless later changed in accordance with this contract.
- (3) Project Bank Account is the account used to receive payments from the *Employer* and make payments to the *Contractor* and Named Suppliers.
- (4) A Supplier is a person or organisation who has a contract to:
- construct or install part of the *works*,
 - provide a service necessary to Provide the Works or
 - supply Plant and Materials for the *works*.
- (5) Trust Deed is an agreement between the Employer, the Contractor and Named Suppliers which contains provisions for administering the Project Bank Account.

Project Bank Account

- Z3.2 The *Contractor* establishes the Project Bank Account with the project bank within one week of the Contract Date.
- Z3.3 Unless stated otherwise in the Contract Data, the *Contractor* pays any charges and is paid any interest made by the *project bank*.
- Z3.4 The *Contractor* submits to the *Project Manager* for acceptance details of the banking arrangements for the Project Bank Account. A reason for not accepting the banking arrangements is that they do not provide for payments to be made in accordance with this contract. The *Contractor* provides to the *Project Manager* copies of communications with the *project bank* in connection with the Project Bank Account.

**Named
Suppliers**

Z3.5 The *Contractor* includes in his contracts with Named suppliers the arrangements in this contract for the operation of the Project Bank Account and Trust Deed. The *Contractor* notifies the Named Suppliers of the details of the Project Bank Account and the arrangements for payment of amounts due under their contracts.

Z3.6 The *Contractor* submits proposals for adding a Supplier to the Named Suppliers to the *Project Manager* for acceptance. A reason for not accepting is that the addition of the Supplier does not comply with the Works Information.

Payments

Z3.7 On or before each assessment date, the *Contractor* submits to the *Project Manager* an application for payment, and shows in the application the amounts due to Named Suppliers in accordance with their contracts.

Z3.8 No later than one week before the final date for payment, the *Employer* makes payment to the Project Bank Account of the amount which is due to be paid to the *Contractor*.

Z3.9 The *Contractor* makes payment to the Project Bank Account of

- any amount not paid by the *Employer* and
- any amount required to make payment in full to Named Suppliers.

Z3.10 The *Contractor* prepares the Authorisation, setting out the sums due to Named Suppliers as assessed by the *Contractor* and to the *Contractor* for the balance of the certified payment. After signing the Authorisation, the *Contractor* submits it to the *Project Manager* for signature by the *Employer* and submission to the *project bank*.

Z3.11 The *Contractor* and Named Suppliers receive payment from the Project Bank Account of the sums set out in the Authorisation as soon as practicable after the Project Bank Account receives payment.

Z3.12 A payment which is due from the *Contractor* to the *Employer* is not made through the Project Bank Account.

Effect of Payment	Z3.13	Payments made from the Project Bank Account are treated as payments from the <i>Employer</i> to the <i>Contractor</i> in accordance with this contract or from the <i>Contractor</i> or <i>Subcontractor</i> to Named Suppliers in accordance with their contracts as applicable.
Trust Deed	Z3.14	The <i>Employer</i> , the <i>Contractor</i> and <i>named suppliers</i> sign the Trust Deed before the first assessment date.
Termination	Z3.15	If the <i>Project Manager</i> issues a termination certificate, no further payment are made into the Project Bank Account.

The briefing and guidance on this page are now out of date. A replacement is being prepared

6.3 ADDITIONAL CONTRACT DATA ENTRIES

Contract Data part one – Data provided by the Employer

If the *Employer* is to pay any charges and is paid interest made by the *project bank*, add the following to the Contract Data part one.

- The *Employer* is to pay any charges and is paid interest made by the *project bank*.

Contract Data part two – Data provided by the Contractor

Add the following to the Contract Data part two

- The *project bank* is
.....
.....
- *Named suppliers* are
.....
.....

The briefing and guidance on this page are now out of date. A replacement is being prepared

6.4 TRUST DEED

This agreement is made between the *Employer*, the *Contractor* and the Named Suppliers.

Terms in this deed have the meanings given to them in the contract between and for (the works).

Background

The *Employer* and the *Contractor* have entered into a contract for the works.

The Named Suppliers have entered into contracts with the *Contractor* or a Subcontractor in connection with the works.

The *Employer* and the *Contractor* have established a Project Bank Account to make provision for payment to the *Contractor* and the Named Suppliers.

Agreement

The parties to this deed agree that

- sums due to the *Contractor* and Named Suppliers and set out in the Authorisation are held in trust in the Project Bank Account for distribution to the Named Suppliers in accordance with the banking arrangements applicable to the Project Bank Account,
- further Named Suppliers may be added as parties to this deed with the agreement of the *Employer* and *Contractor*. The agreement of the *Employer* and *Contractor* is treated as agreement by the Named Suppliers,
- this deed is subject to the law of the contract for the works,
- the benefits under this deed may not be assigned.

Executed as a deed on

..... (Employer)
..... (Contractor)
.....
.....
.....
.....

(Named Suppliers)

6.5 JOINING DEED

This agreement is made between the
Employer, the *Contractor* and
. (the Additional Supplier).

Terms in this deed have the meanings
given to them in the contract between
..... and
..
for (*the works*).

Background

The *Employer* and the *Contractor* have
entered into a contract for the *works*.

The Named Suppliers have entered into
contracts with the *Contractor* or a
Subcontractor in connection with the *works*.

The *Employer* and the *Contractor* have
established a Project Bank Account to make
provision for payment to the *Contractor* and
the Named Suppliers.

The *Employer*, the *Contractor* and the
Named Suppliers have entered into a deed
as set out in 6.5 above (the Trust Deed),
and have agreed that the Additional
Supplier may join that deed.

Agreement

The Parties to this deed agree that

- the Additional Supplier becomes a party
to the Trust Deed from the date set out
below,
- this deed is subject to the law of the
contract for the *works*,
- the benefits under this deed may not be
assigned.

Executed as a deed on

by

.....
(*Employer*)

.....
(*Contractor*)

..... (*Additional
Supplier*)

6.6 GUIDANCE NOTES

The implementation of the fair payment practice into the NEC contracts is achieved through signing the fair payment charter, inserting additional conditions of contract, and signing a separate Trust Deed.

Fair Payment Charter

As the charter is stated as not legally binding and not used in construing the contract, it should not be included as a contract document. A copy of the charter should be provided to Tenderers, and they should be advised that signing the charter is a precondition of an award of a contract.

Project Bank Account (PBA)

A “Z clause” and associated Contract Data entries is provided for use with the NEC3 Engineering and Construction Contract; it can be altered as appropriate for use with other NEC3 contracts where a Project Bank Account is required. The clause deals with payments into and out of the account, and its effect on other contract obligations.

Subcontractors at any level, known as “Named Suppliers”, can be included in the PBA arrangements. The *Contractor* will initially identify those to be included at tender (*named suppliers*), but subject to the acceptance of the *Project Manager*, the *Contractor* can add further Suppliers during the contract.

The *Employer* should set out in the Works Information any stipulations or restrictions on establishing the list of suppliers who can participate in payments from the PBA.

If Option Y(UK)3 is used, the rights of Named Suppliers needs to be listed in the Contract Data.

The PBA is established and maintained by the *Contractor*, who pays any bank charges and retains any interest earned on the account. At tender, the *Contractor* must identify a suitable bank able to offer arrangements which comply with the requirements for payment in this option.

The *Contractor* is required to submit an application for payment, showing the amounts due to each Named Supplier, following which the *Project Manager* issues a certificate as normal. The *Employer* pays to the PBA the amount certified, subject to any withheld sums notified to the *Contractor*. The *Contractor* completes the Authorisation, confirming the payments to Named Suppliers, and forwards it to the *Project Manager* for the *Employer's* countersignature. This is then forwarded to the bank – it is envisaged that electronic means of authorisation will be used to simplify this process.

The *project bank* makes payment to the *Contractor* and Named Suppliers from the sums deposited. In the event the Project Bank Account has insufficient funds to make all payments, the *Contractor* is required to add funds to the account to make up the shortfall.

The payment arrangements, and how these fit with other contract provisions, is shown in the following chart.

Note: Y(UK)2 seven day periods could be longer than clause 51 week periods, as former excludes Christmas Day, Good Friday and bank holidays from count of days.

Trust Deed

This is intended to allow payment to Named Suppliers to continue in the event of the insolvency of the *Contractor*. The deed is executed by the *Employer*, *Contractor* and initial *named suppliers*.

Where an Additional Supplier is to be joined into the deed, a Joining Deed needs to be executed by the *Employer*, *Contractor* and the Additional Supplier.

A copy of the initial Trust Deed should be annexed to each Joining Deed.

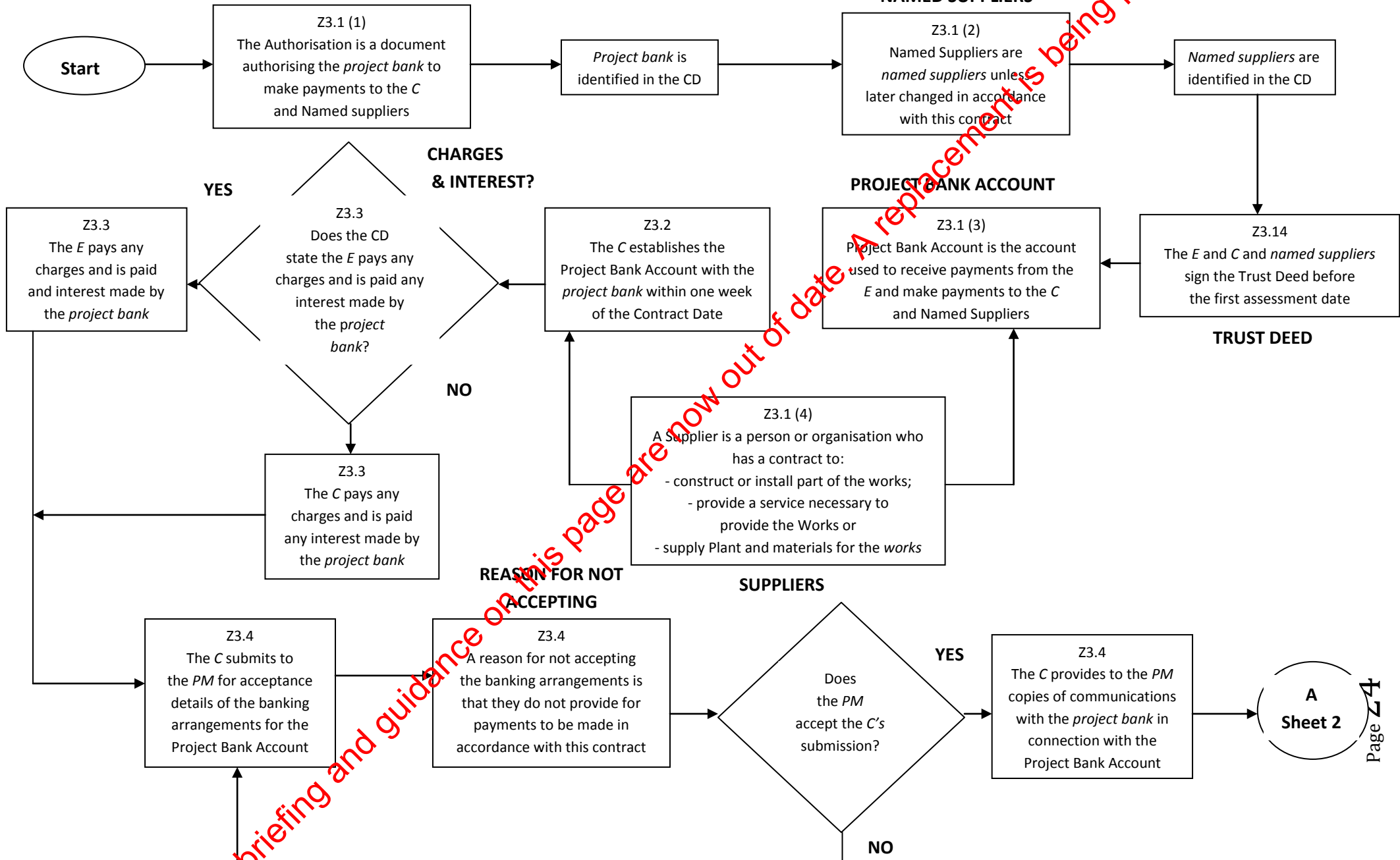
ABBREVIATIONS USED IN THE FLOW CHARTS

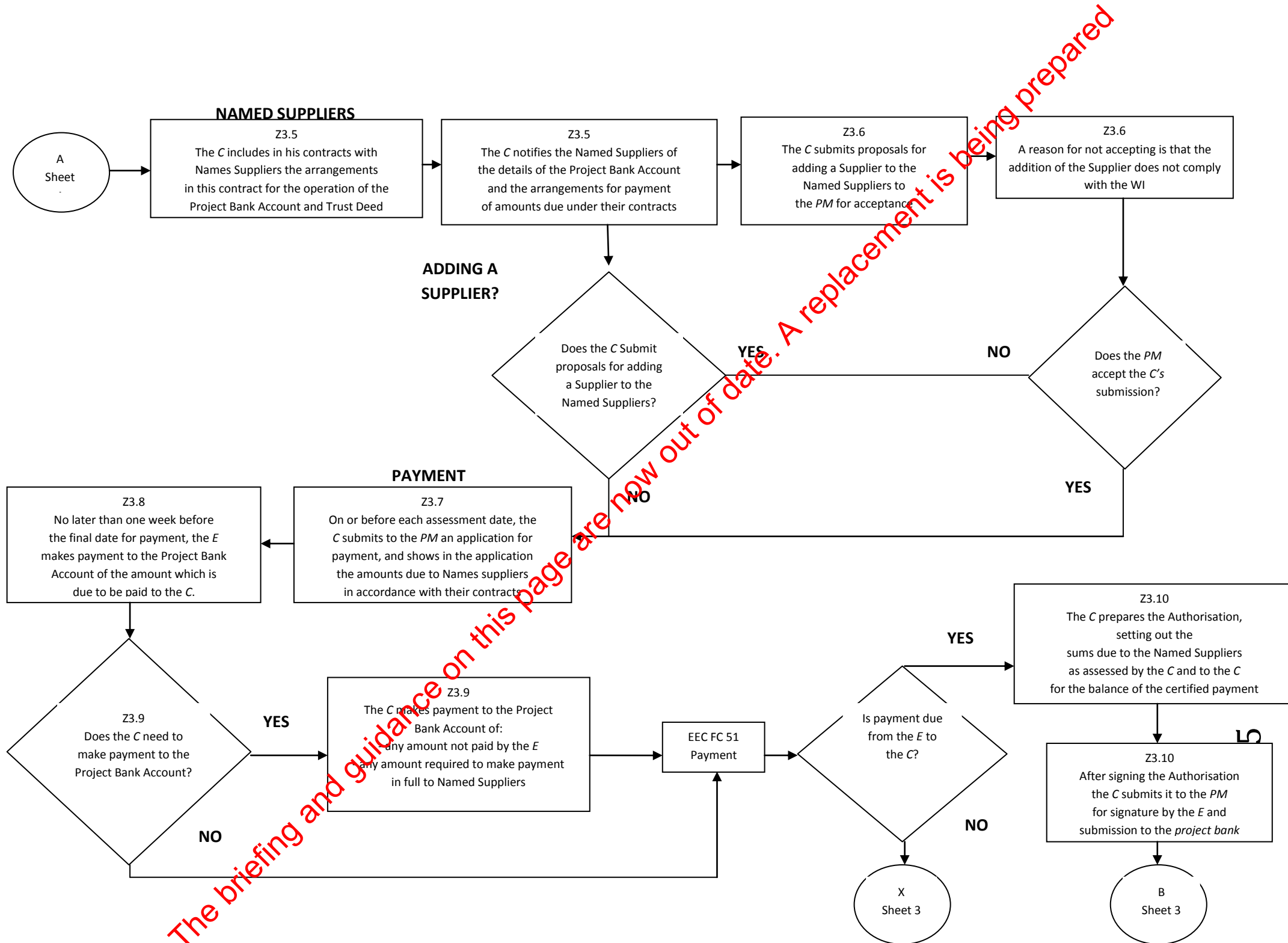
FC	-	1.9 Flow chart for clause 1.9
CD	-	Contract Data
C	-	Contractor
E	-	Employer
PM	-	Project Manager
WI	-	Works information

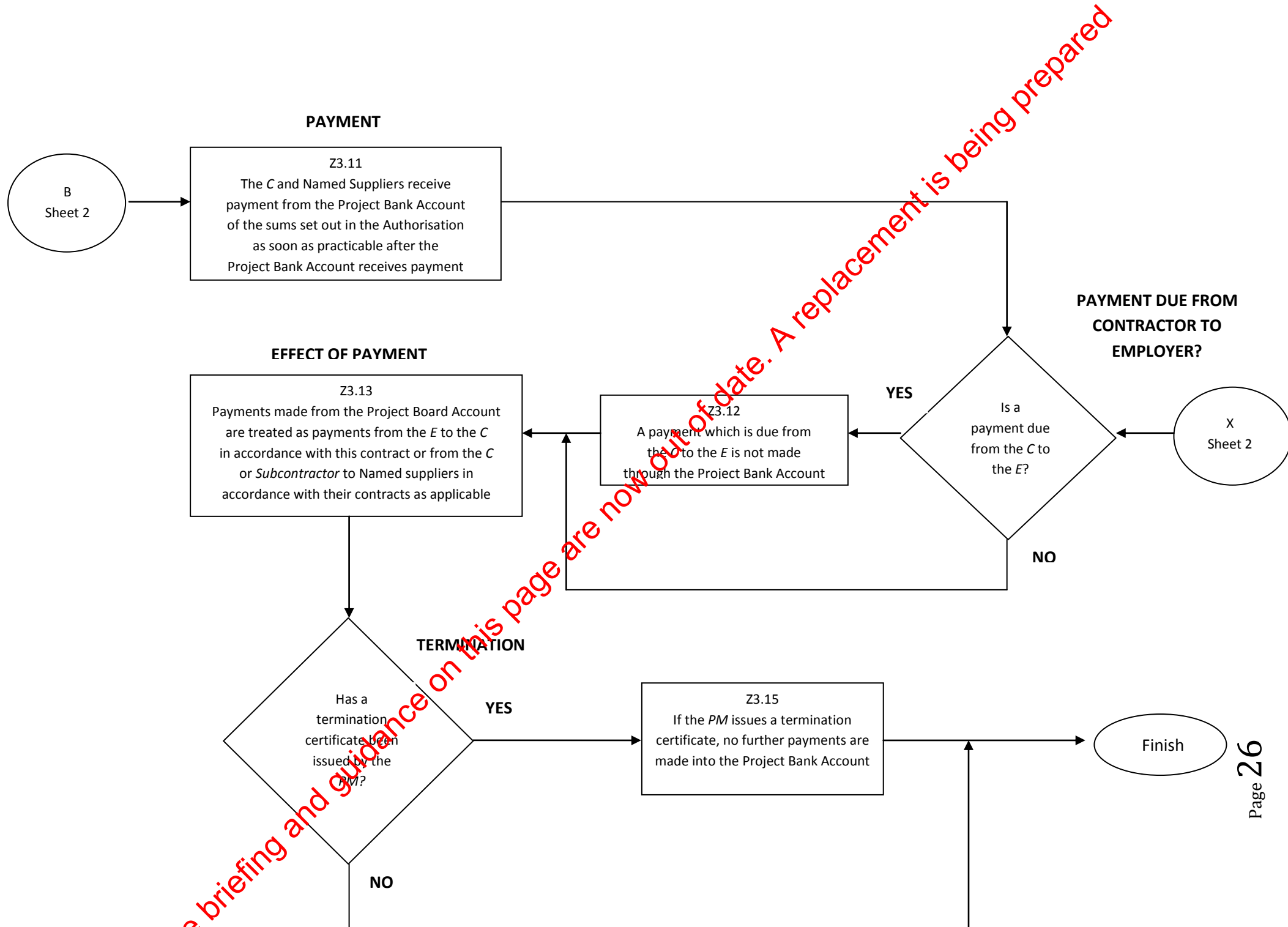
The briefing and guidance on this page are now out of date. A replacement is being prepared

AUTHORISATION

NAMED SUPPLIERS







The briefing and guidance on this page are now out of date. A replacement is being prepared

Timescales for Assessment and Payment under Project Bank Account arrangements

Clause 51 dates	Clause 51 actions	Project Bank Account actions	Y(UK)2 actions	Y(UK)2 dates
Assessment date	<i>Contractor</i> may submit application for payment	<i>Contractor</i> submits application for payment showing amounts due to Named suppliers		
Assessment date + 1 week	<i>Project Manager</i> assesses amount due and certifies payment		date on which payment becomes due	Assessment date + 7 days
Assessment date + 2 weeks		<i>Employer</i> makes payment to Project Bank Account	Latest date for Notice of intention to pays less	Assessment date + 14 days
		<i>Contractor</i> prepares and signs Authorisation, forwards to <i>Project Manager</i> for <i>Employer</i> signature and issue to project bank		
Assessment date + 3 weeks	<i>Employer</i> or <i>Contractor</i> makes certified payment	Payment made to <i>Contractor</i> and Named Suppliers	Final date for payment	Assessment date + 21 days

The briefing and guidance on this page are now out of date. A replacement is being prepared

7. Annex C – Requirements for use with Dual Authority Model

7.1 Illustrative Trust Deed

THIS DEED is made the _____ day of _____ 2008

BETWEEN: -

- (1) **The Client** (as detailed in Schedule 2 to this Deed);
- (2) **The Contractor** (as detailed in Schedule 2 to this Deed); and
- (3) **The Sub-Contractors** (as detailed in Schedule 2 to this Deed).
Collectively referred to in this Deed as “the Parties”.

Background

- A. The Client has engaged the Contractor to carry out the Project (as defined below).
- B. To assist in the development and performance of the Project, the Contractor has engaged the Sub-Contractors to carry out certain parts of the work required in respect of the Project as set out in more detail in the Sub-Contracts (as defined below).
- C. The Parties wish to adopt a payment mechanism which will (i) ensure the fair payment of both the Contractor and the Sub-Contractors; and (ii) that the Sub-Contractors receive payment at the same time as the Contractor. To achieve this objective, the Parties have agreed to operate a bank account in accordance with the terms of this Deed.

1.0 Definitions

1.1. In this Deed, the following words have the following meanings:

“Account Holders”	means the Client and the Contractor;
“Bank”	means the bank where the Bank Account will be held as set out in Schedule 2 to this Deed;
“Bank Account”	means a bank account opened with the Bank which has no overdraft facility into which all monies due under the Contract will be paid by the Client in accordance with this Deed;
“Bank Mandate”	means the instructions as to the operation of the Bank Account as agreed between the Account Holders and the Bank as set out in Schedule 3 to this Deed;
“Contract”	means the contract between the Client and the Contractor in respect of the Project as detailed in Schedule 2 to this Deed;
“Project”	means the project defined in Schedule 2 to this Deed;
“Sub-Contract”	means a sub-contract agreement between a Sub-Contractor and the Contractor in respect of the Project; and
“Term”	means from the date of this Deed until such time as all monies due to the Contractor and the Sub-Contractors under the Contract and/or the Sub-Contracts have been paid in full.

2.0 Bank Account

2.1. The Account Holders undertake to open a new interest bearing deposit bank account with the Bank, such account to be opened and held in the names of the Account Holders.

The Client undertakes to pay all monies due to the Contractor and/or the Sub-Contractors under the Contract and the Sub-Contracts into the Bank Account as and when such monies become due for payment in accordance with the terms of the Contract.

- 2.2. The Parties agree that any monies paid into the Bank Account shall, as from the date on which such monies are paid into the Bank Account, be kept separate and distinct and clearly identifiable and shall be held on trust for each of the Contractor and the Sub-Contractors in the amounts owing to them as set out in the Account Holder's instructions to the Bank for the payment of monies to the Contractor and the Sub-Contractors. The Contractor and the Sub-Contractors acknowledge that they have no rights and/or interest in the monies held in the Bank Account other than as a beneficiary of the monies owing to them.
- 2.3. If for any reason the total amount of monies deposited by the Client in the Bank Account is less than the total amount of monies which has been authorised by the Account Holders for payment to the Sub-Contractors and the Contractor, the monies held in the Bank Account shall be allocated to and held on trust for each of the Sub-Contractors and the Contractor in the same proportions that the monies owed to them forms of the total amount of monies owed at that time to the Sub-Contractors and the Contractor collectively.
- 2.4. The Client acknowledges that, as and when monies are paid by it into the Bank Account in accordance with the Contract, it will cease to have any further rights and/or interest in such monies.
- 2.5. The Account Holders accept that, irrespective of any disputes, which may arise in respect of work performed by the Contractor and/or the Sub-Contractors, the Account Holders may not withdraw any monies from the Bank Account (other than in the case of the Contractor where it may withdraw monies owned by it).

3.0 Operation of the Bank Account

- 3.1. The Account Holders each agree that:

3.1.1. they will sign the Bank Mandate as soon as reasonably practicable following execution of this Deed and, in any event, within 21 days of the date of this Deed;

3.1.2. they will operate the Bank Account at all times in accordance with the Bank Mandate, this Deed and the Contract. If there is any conflict between the Bank Mandate, this Deed and/or the Contract, the documents shall take precedence in the following order:

3.1.2.1. this Deed;

3.1.2.2. the Bank Mandate; and

3.1.2.3. the Contract.

the Bank Account shall not become overdrawn;

3.1.3. they will keep accurate, complete and up to date books of account and records of all transactions relating to the Bank Account, including but not limited to details of all payments out of the Bank Account authorised by the Account Holders and any bank charges payable;

- 3.1.4. if the Account Holders have the ability to authorise transactions in respect of the Bank Account via an electronic facility operated by the Bank, each Account Holder shall ensure that its access details for such facility are only made available to those of its employees and/or representatives which need to know such information and that such employees and/or representatives are aware of the confidential nature of the access details, the Bank Account details and the Bank Account transactions;
- 3.1.5. they are each responsible for the acts and/or omissions of their own employees and/or other representatives as if they were its own acts and/or omissions;
- 3.1.6. they are each liable for their own acts and/or omissions under this Deed and have no liability for the acts and/or omissions of the other Account Holder;
- 3.1.7. they hold all monies in the Bank Account on trust for the full and exclusive benefit of the Contractor and the Sub-Contractors in accordance with clauses 2.3 and 2.4 above.
- 3.2. As and when payment milestones set out in the Contract have been achieved, the Account Holders shall identify any payments due under the Contract and the Sub-Contracts and:
- 3.2.1. the Client shall promptly pay the monies due under the Contract into the Bank Account;
- 3.2.2. as and when the monies have cleared, the Account Holders shall promptly authorise the Bank to make any payments due pursuant to the Contract and/or Sub-Contract to the Sub-Contractors and/or the Contractor from the Bank Account.
- 3.3. The Contractor agrees to inform each of the Sub-Contractors of the amounts which are to be paid to them from the Bank Account and the date on which the Sub-Contractor can expect to receive such payment on the same day as the Account Holders authorise the payments out of the Bank Account.
- 3.4. All payments to the Sub-Contractors and the Contractor shall be made by bank transfer. The Sub-Contractors and the Contractor must inform the Account Holders of their relevant bank account details and keep them up to date at all times. The Sub-Contractors and the Contractor accept that failure to do so may result in monies not being paid to them and that the Account Holders have no liability for such failure.
- 3.5. Any interest paid by the Bank in respect of the monies held in the Bank Account shall belong to the Contractor and may be withdrawn by it on conclusion of the works under the Contract.
- 3.6. Any bank charges, money transmission costs and other disbursements incurred in the establishment and operation of the Bank Account shall be borne by the Contractor.

4.0 New Sub-Contractors

- 4.1. If the Contractor appoints a new sub-contractor in respect of the Contract after the date of this Deed and agrees with that new sub-contractor that it shall be paid via the Bank Account, the Account Holders shall arrange for the new sub-contractor to sign a deed of adherence in the form set out in Schedule 1 to this Deed.

- 4.2. The Parties agree that, in signing the deed of adherence, the Account Holders are signing on behalf of themselves and as agent for each of the Sub-Contractors. Each Sub-Contractor agrees to be bound by the terms of any deed of adherence validly executed by the Account Holders on behalf of all the Parties.

5.0 Removal of Sub-Contractor

- 5.1. If prior to the expiry of the Term a Sub-Contractor ceases to be involved in the Project for whatever reason (including but not limited to the termination of its Sub-Contract), the Account Holders shall arrange for the payment out of the Bank Account to the Sub-Contractor of any monies held on trust for the benefit of that Sub-Contractor.
- 5.2. On payment of all the monies due to it from the Bank Account in accordance with clause 5.1 above the Sub-Contractor shall cease to have any further rights and/or interests in the Bank Account.

6.0 Confidentiality

- 6.1. No party shall use and/or disclose any confidential information, which is acquired by it about another party's business and/or given to it by another party to this Deed except in the proper performance of this Deed.

7.0 Termination

This Deed shall continue for the Term, subject to early termination in accordance with clause 7.2 below.

- 7.1. This Deed shall immediately terminate if:
- 7.2.1. the parties agree in writing that the Deed should terminate; and/or
 - 7.2.2. the Contract terminates and all monies have paid out from the Bank Account.
- 7.2. On termination of this Deed the Account Holders undertake to ensure all monies held on trust for the benefit of the Contractor and/or the Sub-Contractors and held in the Bank Account are promptly paid to the relevant parties (less any outstanding bank charges and expenses).

8.0 General

- 8.1. This Deed contains the whole agreement between the Parties and it supersedes any prior written or oral agreement between them and is not affected by any other promise, representation, warranty, usage, custom or course of dealing. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this Deed shall exclude liability for any fraudulent statement or act made prior to the date of this Deed.
- 8.2. No waiver by any Party of any breach of this Agreement shall be considered as a waiver of any subsequent breach of the same provision or any other provision.
- 8.3. The invalidity, illegality or unenforceability of any of the provisions of this Deed shall not affect the validity, legality or enforceability of the remaining provisions of this Deed.

- 8.4. No Party shall be liable for any delay or failure in performing its obligations under this Deed as a result of reasons beyond its reasonable control, including but not limited to acts of God, war, flood, fire, labour disputes, sub-contractor delays, strikes, lock-outs, riots, civil commotion, malicious damage, explosion, governmental actions and any other similar events. Failure to make payment due to insufficient funds in the Bank Account is not a force majeure event.
- 8.5. The Sub-Contractors are only liable for their own acts and/or omissions under this Deed and not the acts and/or omissions of any of the other Sub-Contractors. The Sub-Contractors are not jointly and severally liable under this Deed.
- 8.6. No party may assign its interest in this Deed (or any part) without the written consent of the other parties, such consent not to be unreasonably withheld or delayed.
- 8.7. None of the terms and conditions of this Deed shall be enforceable by any person who is not a party to it.
- 8.8. This Deed is governed by and interpreted in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English courts.

IN WITNESS OF THE ABOVE the parties execute this document as a Deed on the date written above.

The briefing and guidance on this page are now out of date. A replacement is being prepared

Schedule 1: Deed of Adherence

THIS DEED OF ADHERENCE is dated the day of 2008

BETWEEN: -

- (1) **THE CURRENT PARTIES** (as defined below); and
- (2) **[INSERT NAME OF NEW SUB-CONTRACTOR]** (Company number: {}) whose registered office is at {} ("New Party").

Background

- A. The Current Parties have entered into a deed dated {} which governs the operation of a project bank account into which all monies due under the Contract (as defined below) are paid.
- B. The New Party is a sub-contractor of [insert name of contractor]. It has been agreed by [the Client and] the Contractor that the New Party will be paid for its work using the Project Bank Account (as defined below).
- C. This Deed of Adherence constitutes the terms upon which the New Party agrees to be paid for the work it performs for the Contractor via the Project Bank Account and sets out the New Party's rights and interests in the monies contained within the Project Bank Account.

The briefing and guidance on this page are now out of date. A replacement is being prepared

1.0 Definitions

1.1. In this Deed the following words have the following meanings:

“Admission Date”	means [insert date];
“Client”	means [insert name of client];
“Contract”	means the contract between the Client and the Contractor dated {} for [insert details of the project];
“Contractor”	means [insert name of contractor];
“Current Parties”	means the persons/organisations whose names are set out in Appendix 1 to this Deed of Adherence being the current parties to the Deed;
“Deed”	means the Deed between the Current Parties dated { } which sets out the basis on which the Project Bank Account is to be operated; and
“Project Bank Account”	means the bank account held in the name of the Client and the Contractor at [Barclays Bank Plc] account number { } into which all monies due in respect of the Contract are to be paid.

2.0 Admission

- 2.1. The New Party will be added as a party to the Deed on the Admission Date.
- 2.2. The New Party agrees to be bound by the Deed in relation to the Current Parties as from the Admission Date as if the New Party was an original party to the Deed.
- 2.3. The Current Parties agree to be bound by the Deed in relation to the New Party as from the Admission Date as if the New Party was an original party to the Deed.

3.0 General

- 3.1. The Client and the Contractor are authorised by the remaining Current Parties to enter into and execute this Deed on behalf of all the Current Parties as their agent.
- 3.2. This Deed of Adherence is governed by English law and the parties agree to submit to the non-exclusive jurisdiction of the English Courts.

IN WITNESS OF THE ABOVE the parties execute this document as a Deed on the date written above.

APPENDIX 1: THE CURRENT PARTIES

[insert details of the current parties to the Deed]

The briefing and guidance on this page are now out of date. A replacement is being prepared

**EXECUTED and DELIVERED as a
DEED**

by [INSERT NAME OF CLIENT]

.....

acting by:

Director

.....

Director/Secretary

**EXECUTED and DELIVERED as a
DEED**

**by [INSERT NAME OF
CONTRACTOR]**

.....

Director

acting by:

.....

Director/Secretary

**EXECUTED and DELIVERED as a
DEED**

by [INSERT NAME OF NEW PARTY]

.....

Director

.....

Director/Secretary

The briefing and guidance on this page are now out of date. A replacement is being prepared

Schedule 2: Details

Client:	[insert name, address and company number of the Client].
Contractor:	[insert name, address and company number of the Client].
Sub-Contractors:	[insert names, addresses and company numbers for each sub-contractor who will be a party to this Deed].
Bank:	[insert details of the bank which will operate the project bank account].
Contract:	Contract between (1) the Client and (2) the Contractor in respect of the Project and dated [insert date] (contract reference number: {}).
Project:	[insert description of the purpose of the Contract and the works to be performed under it].

The briefing and guidance on this page are now out of date. A replacement is being prepared

Schedule 3: Bank Mandate

[Insert the instructions as to operation of the bank account as agreed between the account holders and the bank]

The briefing and guidance on this page are now out of date. A replacement is being prepared

EXECUTED and DELIVERED as a DEED

by [INSERT NAME OF CLIENT]

acting by:

.....
Director

.....
Director/Secretary

EXECUTED and DELIVERED as a DEED

by [INSERT NAME OF CONTRACTOR]

acting by:

.....
Director

.....
Director/Secretary

EXECUTED and DELIVERED as a DEED

**by [INSERT NAME OF SUB-
CONTRACTOR]**

acting by:

.....
Director

.....
Director/Secretary

**Use the following execution wording if
dealing with an individual:**

SIGNED and DELIVERED as a DEED

by [INSERT NAME]

.....

in the presence of

Witness signature:

Witness name:

Witness address:

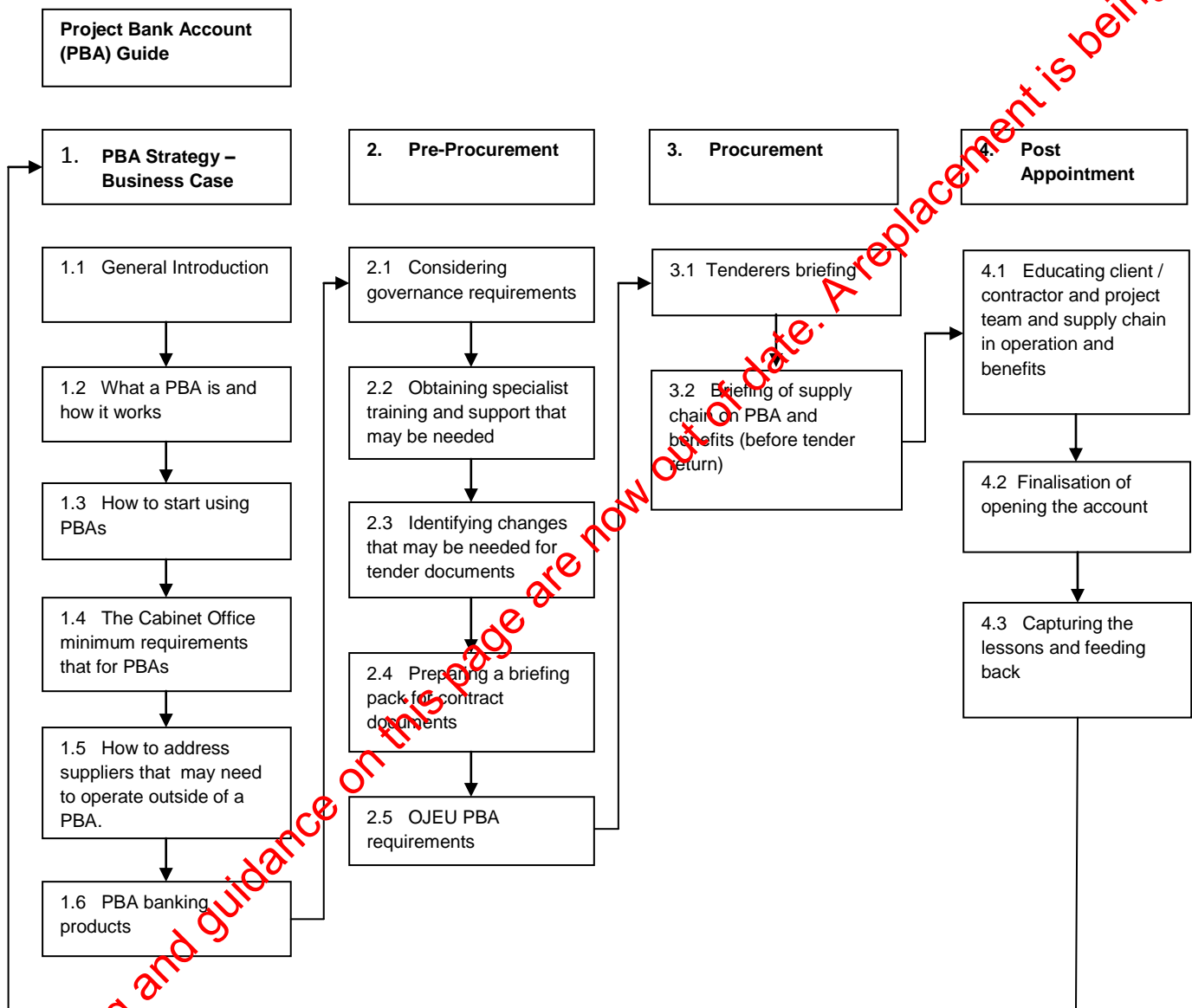
Witness occupation:

7.2 Typical Payment Cycle



The briefing and guidance on this page are now out of date. A replacement is being prepared

8. Annex D – Fair Payment Flowchart



9. Annex E – Making Fair Payment in Construction a Requirement in Central Government Contracts

Procurement
Information Note

Making fair payment in construction a requirement in central government contracts

Information Note 2/2010

This Information Note

- Reminds Central Government construction clients of the Construction Clients Board's decision taken in September 2009. This was to make the fair payment provisions as outlined in *Guide to best 'Fair Payment' practices* (the Fair Payment guide) a contractual requirement in all central government construction contracts moving forward.
- Provides guidance for the development of clauses to implement fair payment which are to be used with the NEC form of contract. Similar guidance where using JCT and PPC2000 forms will follow.
- Advises of a route that can be used by all suppliers to raise concerns about non-compliance called the Supplier Feedback Service.
-
- Advises that the Construction Clients Board has agreed that central Government departments, their agencies and Non-Departmental Public Bodies, move to a position where Project Bank Accounts are adopted unless there are compelling reasons not to do so.

Background

In 2007 the Fair Payment guide and Charter were introduced which stipulated that public sector clients pay their suppliers the correct full sum within a specified timeline. This requirement applied equally to suppliers paying their sub-contractors. The aim of this process was to prevent late or delayed payment, provide greater certainty on payment in the supply chain and optimise payment periods to minimise financing charges. The *Guide to Best 'Fair Payment' Practices* can be obtained from the Cabinet Office Construction Team.

Actions

Implementation

Construction procurers in central Government departments, their agencies and Non-Departmental Public Bodies, need to ensure that their contracts with suppliers include the payment provisions outlined in Annex A.

Suppliers and their sub-contractors whose services are procured for central Government construction programmes and projects should also ensure that fair payment practices, as described in the guidance for the development of contract clauses provided, are implemented through the supply chain.

The fair payment cycle outlined in Figure 1 on the next page defines payment periods for different Tiers in the supply chain:

Tier 1 – payment is required within 14

calendar days from the Due Date

Tier 2 – payment is required within 19

calendar days from the Due Date

Tier 3 – payment is required within 23

calendar days from the Due Date.

Guidance for the development of clauses to implement this fair payment requirement through NEC contracts is attached at Annex A.

These contract clauses are to be introduced through the Works Information in the main contract which will avoid significant changes to the Head Contract.

Additional guidance concerning clauses to be used with JCT and PPC2000 contracts will be published in due course.

This contractual requirement is not intended to be applied retrospectively to existing construction contracts. However, where feasible, suppliers' voluntary agreement to this new payment requirement should be sought.

Dissemination

In the wider public sector these requirements are recommended as best practice and uptake has been recommended by the National Improvement and Efficiency Partnership for the Built Environment.

Non-compliance

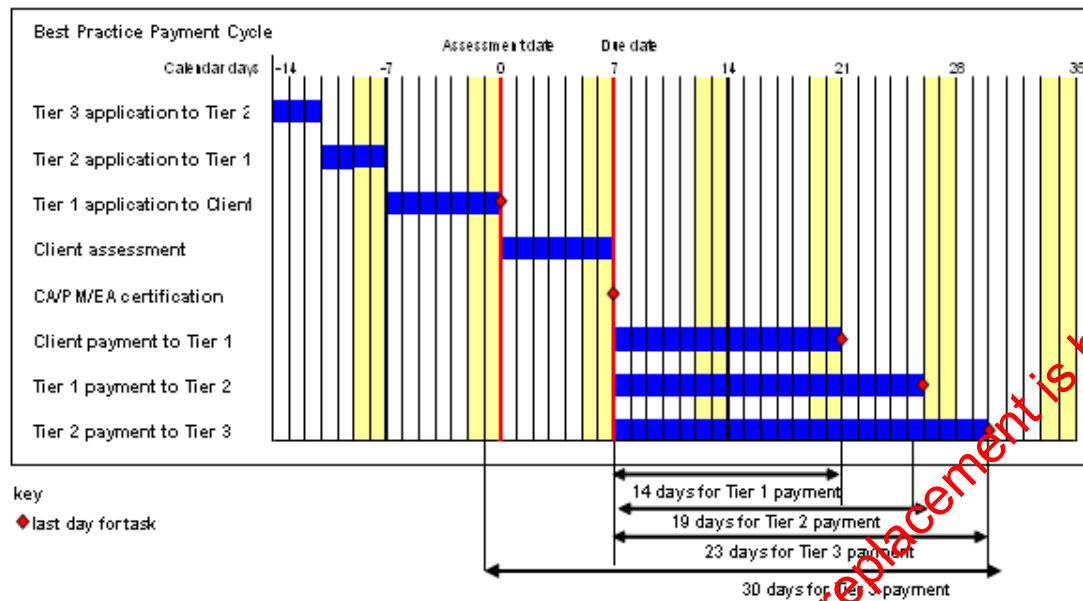
A reporting procedure is available through the Cabinet Office's Supplier Feedback Service where the supply chain feels that these requirements have not been met. For further information about the Supplier Feedback Service contact the Service Desk on 0845 000 4999 .

To report incidents of non-compliance please complete and submit the Supplier Feedback Form contact the Service Desk on 0845 000 4999 .

Project Bank Accounts (PBAs)

The use of PBAs was recommended in 'The Fair Payment Guide'. Their use aligns well with the new fair payment contractual provisions as the PBA process automatically provides clients with visibility over payment timescales in the supply chain. For further information on PBAs contact the ERG Service Desk.

Figure 1



Notes re Figure 1

1. Assessment date is also known as valuation date.
2. Due date is also known as certification date.
3. The time for payment is 30 days from the assessment date as outlined in the original Fair Payment guide; this is the same as 23 days from the due date.