Will a change to project bank accounts ease the payment difficulties felt by many in the construction industry?

A proposed bill on the use of project bank accounts (PBA) on government and public authority contracts indicates a further step being taken to legislate to ease the payment pressures in the construction industry and in particular the risk on SMEs.

Payment remains one of the major issues in the construction industry today and trying to solve it will run on beyond whatever Brexit the UK faces. Last year I reported on the Construction (Retention Deposit Scheme) Bill (known as the Aldous Bill) and the alternative steps taken by Network Rail (as supported by Build UK and CECA) to potentially end retentions, as a way to ease cash-flow burdens.

While both these efforts are admirable, there remains a lack of impetus; the Government has not passed any legislation and there is no new industry-wide adopted practice on payment, whether that be on retentions, time for payment or PBAs.

Indeed the second reading of the Aldous Bill has now been postponed five times, even though it has 270 MPs supporting it, and the Government has not reported on the Consultation on retentions and payment practices, which closed over a year ago.

That said, some stakeholders, including the Government, are looking at other measures by which payment practices can be improved and the risk arising from insolvency and delays to payment are reduced.

**Public Sector Supply Chains (Project Bank Accounts) Bill**

The Public Sector Supply Chains (Project Bank Accounts) Bill (the PBA Bill) was introduced to Parliament by Labour MP Debbie Abrahams under the Ten Minute Rule on 15 January 2019.

It calls for payments on government and public authority contracts to be made through a PBA. Its priority is to protect small businesses and ensure that they are paid more quickly.

The PBA Bill has been proposed having witnessed the fall out of Carillion’s liquidation including the impact on public sector projects they were employed on. Quoting from the Motion by Ms Abrahams MP: “A survey of building, engineering and electrical firms showed that small businesses were, on average, owed £141,000 by Carillion, out of a total of £2 billion owed to suppliers. The vast majority of those suppliers never received any recompense. Following on from those losses, it has been estimated that 780 small building firms went into insolvency in the first quarter of 2018 as a direct consequence of Carillion’s collapse—that is a 20% increase in insolvencies on the previous year”.

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The Motion also referred to the general picture on late payments, where it was reported that "Collectively, small businesses were owed a “shocking” £14 billion in late payments last year. Just under half of small and medium-sized enterprises (SMEs) spend around £4.4 billion in admin costs alone on chasing late payments". This is a staggering amount of money.

The PBA Bill looks to protect SMEs against such disastrous consequences of upstream insolvency as well as trying to stop late payment practices. The proposal is that all public sector projects over £500,000 use PBAs, from which payments are made to the Tier 1 contractor (rather than being paid by the public body directly) and the supply chain at the same time. No other contractual arrangements would be impacted.

That way, if the Tier 1 contractor becomes insolvent there is protection for the supply chain in respect of sums owed to them.

The PBA Bill is directed at how funds for a project are paid out, but Ms Abrahams MP also made reference to the benefits of a PBA from a disputes-perspective. Better payment practices should lead to fewer disputes and less disruption caused by suspension or even termination for non-payment.

PBAs are not new and used widely in public sector projects (for example, in Highways England projects) but by making them apply to a broader range of projects the Government will be taking the lead in driving better payment practices.

The wording of the PBA Bill is currently being prepared and so we must wait for the detail as to how the mechanism for payment and the detail behind ensuring sufficient funds are in the PBA is to be set out.

Without tempting fate, given the recorded issues with the second reading of the Aldous Bill, the PBA Bill is due to have its second reading on Friday 1 March 2019. Hopefully that will take place and we will move another step towards a fairer payment regime for those who worked on public projects.

What will be the bigger step is for PBAs and/or retention deposit schemes (or even the abolition of retentions) being formally incorporated into all construction contracts by way of a clear statutory framework for payment so that all members of the industry can benefit.

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