

Olympus

FSCS Subrogation Determination – East West Insurance Company Ltd ("EWIC")

1. On 12 October 2020, East West Insurance Company ("EWIC") was declared by the Financial Services Compensation Scheme ("FSCS") to be in default for the purposes of Rule 10 of the Policyholder Protection Rules within the PRA Handbook (the "PPR").
2. FSCS has paid or will in future pay compensation in respect of policyholders who are eligible claimants and have a protected claim under their building guarantee insurance policies underwritten by EWIC (the "Policyholders"). FSCS has used its powers under PPR 12.2 to effect automatic assignments of certain Policyholders rights on the terms published by FSCS. Further, FSCS has entered into written assignment agreements with certain Policyholders whereby FSCS has taken an assignment of certain of the Policyholder's rights, including rights against EWIC and/or any other person (a "Third Party"). Where a Policyholder has entered into an effective written assignment agreement with FSCS, then the assignment of any rights of the Policyholder against EWIC or any Third Party takes effect under and is governed by the terms of the written assignment.
3. FSCS has determined to use the powers set out in PPR 13 in respect of EWIC and in respect of the Policyholders who had a protected claim against EWIC at the date of its default (such protected claim against EWIC, a "Claim"). FSCS has determined that pursuant to PPR 13.2 the exercise of powers under PPR 13 are subject to the incidental, consequential or supplemental conditions referred to below.
4. FSCS has determined in relation to each Policyholder that if and to the extent that (a) any written assignment entered into between that Policyholder and FSCS and (b) any exercise or purported exercise of FSCS's powers of automatic assignment in respect of that Policyholder in accordance with PPR 12.2, are ineffective as a matter of statutory provision or in law or equity to pass or assign to FSCS any right or claim of that Policyholder against EWIC or any Third Party (whether such rights are legal, equitable or of any other nature whatsoever and in whatever capacity EWIC or the Third Party is acting) in respect of or arising out of the Claim in respect of which the payment of compensation was made, the payment of compensation by FSCS in respect of the Policyholder's Claim shall have the effect that FSCS shall immediately and automatically be subrogated to such right or claim pursuant to PPR 13.7(1), and shall have the following effects:

(a) pursuant to PPR 13.7(2), FSCS may claim and take legal or any other proceedings or steps in the United Kingdom or elsewhere to enforce such rights in its own name or in the name of, and on behalf of, the Policyholder or in both names against EWIC and/or any Third Party; and

(b) pursuant to PPR 13.7(3), the subrogated rights and claims conferred on FSCS shall be rights of recovery and claims against EWIC and / or any Third Party which are equivalent (including as to amount and priority) to and shall not exceed the rights and claims that the Policyholder would have had.

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5. FSCS reserves the right to amend, remake, or revoke these determinations at any time as permitted by PPR 13.3(5).
 6. This instrument does not apply to a Policyholder with a Claim against EWIC or any third party which relates to the Meridian Quay Development.
 7. This instrument takes effect immediately on the date and time at which it is made and remains effective until it is revoked by FSCS by way of a further instrument.
 8. Unless defined in this determination, all expressions used which are also defined terms in the PRA Handbook Glossary shall have the meaning given to them in that Glossary.
 9. This determination is agreed on behalf of the Executive by:



Name:

FIONA KIDY

Date: 14.4.22

Time: 11:15.