

Olympus

FSCS Notice and Publication of Terms of Automatic Assignment – 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 or partial compensation to policyholders who are eligible claimants and have a protected claim under their building guarantee insurance policies underwritten by EWIC (the "Policyholders"). FSCS has entered into written assignment agreements with certain Policyholders whereby FSCS has taken an assignment of certain of the Policyholders' rights, including rights against EWIC and/or any other person.
3. Under PPR 12.2, upon payment of compensation by the FSCS (including partial compensation) to an eligible claimant in respect of a protected claim, all of that claimant's rights against the relevant person (or where applicable, the successor) and any third party involved in or connected to the claim will be deemed to be automatically assigned by way of legal assignment to the FSCS absolutely on terms published by the FSCS.
4. FSCS has determined to use the powers set out in PPR 12.2 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"). This automatic assignment will only apply to a Policyholder if the Policyholder has not entered into a written assignment agreement with FSCS in respect of compensation paid by FSCS in connection with their claim under their building guarantee insurance policies underwritten by EWIC by the date of this determination (such Policyholders to whom this automatic assignment applies, the "Remaining Policyholders").
5. FSCS determines that upon payment of any compensation by it, all of each Remaining Policyholder's rights against EWIC and / or any third party involved in or connected to that Remaining Policyholder's Claim under the policy will automatically pass to and be assigned to FSCS absolutely on the following terms, which FSCS hereby publishes under PPR 12.2:

- (a) all of each Remaining Policyholder's rights against EWIC and / or any third party involved in or connected to that Remaining Policyholder's Claim under the policy will automatically pass to and be assigned to FSCS absolutely on payment of compensation (or any part of it) by FSCS;
- (b) the Remaining Policyholder's rights against any third party involved in or connected to the Claim so assigned to FSCS include any right, claim or cause of action (of whatever nature) (each, a "Third Party Claim") that the Remaining Policyholder has or may have against any person other than the EWIC or against any fund or property in the hands of any person other than the EWIC (a) in connection with or arising out of the circumstances giving rise to the Claim or (b) otherwise relating to the Claim or to any of the losses in respect of which the Remaining Policyholder has claimed compensation from FSCS.
- (c) on payment of compensation (or any part of it) by FSCS the Remaining Policyholder will no longer have the right to make any claim against the EWIC or any other person in respect of the Claim or a Third Party Claim, and the right to make any such claims will be vested in FSCS. Any sums that would otherwise be payable to the Remaining Policyholder in respect of the Claim (including but not limited to any dividend or other payment in a liquidation or compromise with creditors or scheme of arrangement) or a Third Party Claim will be paid instead to FSCS.
- (d) the Remaining Policyholder will not exercise any right or remedy that the Remaining Policyholder may have or retain against the EWIC or any other person arising out of, or in connection with, the Claim or any Third Party Claim, namely:
- (i) to rescind, set aside, avoid or otherwise alter any contract or obligation;
 - (ii) to set off, or reduce liability in respect of such a contract or obligation; or
 - (iii) any other right or remedy that is either personal to the Policyholder or cannot be assigned or both.

- (e) If the Remaining Policyholder recovers any money or assets in respect of the Claim or in respect of a Third Party Claim, the Remaining Policyholder will immediately pay or transfer it to FSCS.
- (f) If the payment of some or all of the compensation should not have been made for any reason, the Remaining Policyholder will immediately and fully repay to FSCS any such compensation, without any deduction or set-off, plus interest.
- (g) the Remaining Policyholder will give all reasonable co-operation and assistance that FSCS asks the Remaining Policyholder to give in connection with any investigation or pursuit by FSCS of claims corresponding to the Claim and/or of any Third Party Claim, including providing documents and sworn statements and attending court to give oral evidence where FSCS wishes the Remaining Policyholder to do so. If the Remaining Policyholder makes or gives (or has made or given) any false or misleading statement, affirmation, or other evidence, the Remaining Policyholder agrees to indemnify and protect FSCS against any loss, liability, expense or cost that it may incur directly or indirectly as a result. Without prejudice to paragraphs 4(h) to 4(j) and paragraphs 6 to 8 below, the Remaining Policyholder also consents to become a party to any proceedings brought by FSCS in respect of claims corresponding to the Claim and/or any Third Party Claim if FSCS so wishes.
- (h) the Remaining Policyholder will give such further help or authority that FSCS from time to time may require to give full effect to the transfer of the Remaining Policyholder's rights and/or claims to FSCS under and for the purpose of this automatic assignment. If any assignment under this document is ineffective in transferring any such rights and/or claims to FSCS, then FSCS will still be entitled to benefit from those rights and/or claims and will be entitled to any proceeds of them. All such proceeds will be paid to FSCS.
- (i) FSCS may give a valid receipt to any person in respect of the Claim and/or any Third Party Claim.

(j) FSCS will conduct all proceedings and settlement negotiations regarding claims assigned by the Remaining Policyholder reasonably and with due regard to the Policyholder's interests as well as its own.

(k) if and to the extent any Remaining Policyholder after the date of this determination enters into an effective written assignment agreement with FSCS in respect of compensation paid by FSCS in connection with their claim under their building guarantee insurance policies underwritten by EWIC, then the automatic assignment set out herein shall be deemed never to have been effected and to be of no effect and the assignment of any rights of the Remaining Policyholder against EWIC and/or any third party to FSCS shall take effect under and instead be governed by the terms of such written assignment agreement.

6. Under PPR 12.9, FSCS has determined that to the extent that any assignment under this document is ineffective in any way (other than by reason of paragraph 5(k) above), in any respect or to any extent to pass any rights, claims or causes of action to FSCS, the Remaining Policyholder irrevocably and unconditionally appoints the Chairman of FSCS as the Policyholder's agent to do such things and execute such deeds and documents as may be required under such laws of the UK or any other country to create or give effect to such assignment or transfer or otherwise give full effect to the powers in PPR Chapters 12 or 13.

7. In this document, reference to "compensation" are references to compensation paid on an interim or final basis, as the case may be.

8. This document and assignment is without prejudice to any rights which FSCS may have or acquire against EWIC and/or any third party and to the extent that such rights conflict with the terms of this notice and assignment, FSCS may elect, to which election the Policyholder consents, which rights and claims it shall pursue.

9. If, after taking assignment of the Policyholder's rights as set out above, FSCS decides not to pursue recoveries using those rights it will, if the Policyholder so requests in writing, reassign the assigned rights to the Policyholder.

10. This instrument does not apply to a Policyholder with a Claim against EWIC or any third party which relates to the Meridian Quay Development.
11. Unless defined in this document, all expressions used which are also defined terms in the PRA Handbook Glossary shall have the meaning given to them in that Glossary.
12. If for any reason any of the terms set out above are held to be invalid whether in whole or in part, the validity of the remainder of this document shall not be affected.
13. This instrument takes effect immediately on the date and time at which it is made, and remains effective unless and until it is revoked by FSCS by way of a further instrument.
14. This determination and publication of the terms of automatic assignment under PPR 12.2 is agreed on behalf of the Executive by:



Name:

FIONA KIDY

Date: 14.4.22

Time: 11:10

