محكمة قطر الدولية
ومركز تسوية المنازعات
QATAR INTERNATIONAL COURT
AND DISPUTE RESOLUTION CENTRE

In the name of His Highness Sheikh Tamim bin Hamad Al Thani,

Emir of the State of Qatar

Neutral Citation: [2024] QIC (A) 6

IN THE QATAR FINANCIAL CENTRE

CIVIL AND COMMERCIAL COURT

APPELLATE DIVISION

[On appeal from [2023] QIC (F) 22]

Date: 17 April 2024

CASE NO: CTFIC0030/2022

AHMED AL-KHATEEB

Claimant/Appellant

V

NEXUS FINANCIAL SERVICES WLL

Defendant/Respondent

JUDGMENT

Before:

Lord Thomas of Cwmgiedd, President

Justice Chelva Rajah SC

Justice Fritz Brand

Order

1. Permission to appeal is granted on ground 1 and the appeal is allowed on that ground. Permission to appeal is refused on the other grounds.

2. The Respondent is to pay the Appellant $175,634.50 by way of damages within 28 days of the date of this judgment.

3. The Respondent is to pay the costs of the Appellant before the First Instance Circuit and on the appeal, to be assessed by the Registrar if not agreed.

Judgment

1. The Applicant and Appellant (Mr Al-Khateeb) seeks permission by an application dated 10 September 2023 to appeal from the judgment of the First Instance Circuit ([2023] QIC (F) 22; Justices Her Honour Frances Kirkham CBE, Ali Malek KC and Dr Muna Al-Marzouqi) given on 12 July 2023 dismissing the claims that Mr Al-Khateeb had brought against the Respondent ('**Nexus**') in respect of investment advice given to him in 2017 by Nexus. It ordered that Mr Al-Khateeb pay the costs of Nexus to be assessed by the Registrar in default of agreement.

2. After considering the application and Nexus' written submissions in response dated 15 October 2023, we ordered on 3 December 2023 that the application should be considered at a rolled-up hearing with the appeal to follow if permission was granted and gave directions for the hearing.

Factual Background

<u>The parties</u>

3. Nexus is a privately-owned company with offices across the Gulf region. In 2017, the Qatar office was a branch of the office in Bahrain. In Qatar, Nexus was authorised in 2012 by the Qatar Financial Centre ('**QFC**') Regulatory Authority to conduct insurance mediation business with or for retail customers, but it was not entitled to hold client money (e/336). Two features were significant:

i. Nexus was only authorised to give investment advice in the context of placing and administering a contract of insurance.

ii. Nexus remunerated its agents and many of its employees by paying a significant part of the commission which the insurer paid to Nexus when Nexus' clients entered into a policy of insurance.

4. Mr Al-Khateeb became a retail customer of Nexus in 2017. He is a Jordanian citizen resident in Qatar. In 2017 he was 48 years old. He had been resident in Qatar for 20 years and was employed as a designer in a publishing business.

The regulatory duties of Nexus in respect of investment advice

5. The regulations that applied to the conduct of Nexus' business in Qatar in 2017 were the Conduct of Business Rules 2007 ('**COBR**') as amended and as applicable 1 January 2016 – 31 December 2019. These were replaced by the Customer and Investor Protection Rules 2019 (at e/1174-1186, and e/1387). The key requirements in respect of retail customers under the applicable COBR were the requirements of "*know your customer*" and of advice based on suitability for the customer. The applicable COBR provided:

> *4.3.1 Retail investment advice—general requirements*
>
> *If an authorised firm gives advice on relevant investments to a retail customer, it must—*
>
> *(a) take reasonable steps to ensure that it has sufficient personal and financial information about the customer to give the advice (see rule 4.3.3); and*
> *(b) take reasonable steps to ensure that the advice is suitable for the customer (see rule 4.3.4); and*
> *(c) give the customer a statement of why the firm considers the advice to be suitable for the customer (see rule 4.3.5).*
>
> *…*
> *4.3.3 Retail investment services—know your customer*
>
> *(1) For rule 4.3.1 (a) (Retail investment advice—general requirements) and 4.3.2 (2) (a) and (3) (Retail investment management—general requirements), the information obtained by an authorised firm about a retail customer must, to the extent appropriate to the nature of the customer, the nature and extent of the service to be provided and the*

type of product or transaction envisaged, including their complexity and the risks involved, include all of the following:

(a) the customer's financial situation;

(b) the customer's investment objectives and risk tolerance;

(c)the customer's knowledge of and experience in the relevant investment field;

(d) the nature, volume and frequency of the customer's transactions in the investment field and the period over which they have been carried out;

(e) the customer's level of education and profession or relevant former profession.

(2) ....
(3) ....

4.3.4 Retail investment services—suitability and risk

(1) For rule 4.3.1 (b) (Retail investment advice—general requirements) and 4.3.2 (2) (b) (Retail investment management—general requirements), an authorised firm must ensure that the service it provides for a retail customer is suitable for the customer having regard to—

(a) the information held by the firm; and

(b) any requirement of, or any other relevant facts about, the customer of which the firm is, or ought reasonably to be, aware.

(2) ....

4.3.5. Retail investment services—disclosure of suitability assessment

For rule 4.3.1 (c) (Retail investment advice—general requirements), the statement given by an authorised firm to a retail customer must include the following information:

(a) the customer's demands and needs;

(b) an explanation of why the firm has concluded that the advice is suitable for the customer having regard to the information provided by the customer;

(c) an explanation of any possible disadvantages that the advice might have for the customer, including the nature of the risks involved.

The discussions between Mr Al-Khateeb, Mr Mustafa and Mr Veiss

6. In 2017, Mr Al-Khateeb started discussions about investments with Mr Alaa Mustafa who had been employed by Nexus from 1 February 2017 until 18 April 2017 as a business development coordinator (e/282) when he was dismissed (e/291) as an employee. His role had been to introduce clients. He was not qualified to give financial advice and was not permitted by Nexus to give such advice.

7. Mr Mustafa's work was supervised by Mr Rudolfs Veiss who was employed by Nexus as a financial adviser from September 2013 until 25 January 2020 when he left to join another company as we will set out.

8. Mr Mustafa introduced himself to Mr Al-Khateeb as a Nexus Financial Adviser though by that time he was not. In September 2017, Mr Mustafa introduced Mr Al-Khateeb to Mr Veiss as Mr Mustafa had continued to introduce business to Nexus through Mr Veiss.

Mr Al-Khateeb's agreement to purchase a life insurance or wrapper

9. The discussions which ensued resulted in Mr Al-Khateeb agreeing to enter into a contract of whole life insurance with Generali Worldwide Insurance Company Ltd ('**Generali Worldwide**'; then a subsidiary of the well know Italian Insurer, Assicurazioni Generali). Generali Worldwide was regulated in Guernsey. In February 2019 Generali Worldwide was acquired by the Utmost Group of companies based in the UK which then changed the name to Utmost Worldwide Ltd. It is convenient to refer to it as Generali Worldwide.

10. The contract of whole life insurance entered into by Mr Al-Khateeb was referred to as a wrapper (or '**Bond**'), as under its terms the premiums paid were invested on the instructions given by Mr Al-Khateeb on the advice of Mr Veiss as the employee of Nexus. The costs of Generali Worldwide (including the commission paid to Nexus) were paid for by charges made throughout the duration of the wrapper.

11. In considering the circumstances leading to the conclusion of the wrapper and the subsequent dealings between Mr Al-Khateeb and Nexus in relation to investment

of the monies held under the wrapper, it is important to distinguish between the wrapper where the risk related to the solvency of Generali Worldwide as the issuer of the wrapper, and the investments made under the wrapper where the risks related to the quality of the investments made.

12. At the trial and on the appeal, significant reliance was placed on the documentation that was signed as part of the QFC regulatory requirements under which Nexus was required to conduct its business at the QFC:

    i. On 7 September 2017, Mr Veiss prepared a *Confidential Financial Health Check* (e/422, e/292); this set out Mr Al-Khateeb's assets and liabilities and classified him as a retail customer (e/425). It contained an assessment of his risk tolerance.

    ii. On 14 September 2017, at a meeting in Nexus' office, Mr Al-Khateeb signed and Mr Veiss counter signed:

        1. A Form for Investment into the Generali Worldwide wrapper (e/301, e/361). The Form stated that the annual basic income of Mr Al-Khateeb was QAR 360,000 and the purpose of applying for the plan was "*retirement planning*".

        2. A Risk Assessment form (e/341) which concluded that Mr Al-Khateeb was looking for capital protected investment that would generate for him a quarterly or semi-annual income.

        3. A Confidential Financial Health Check form (e/347) which classified him as a retail customer (e/353).

        4. A Suitability Report (e/392) in respect of the Generali Worldwide wrapper and the investment under the wrapper, as required by the COBR.

5. Nexus' Terms of Business (e/335, e/356) which set out the responsibilities of both parties, including an obligation to ensure that Mr Al-Khateeb understood the information provided and asked for clarification if anything was unclear.

iii. On 17 September 2017, Mr Veiss completed an internal New Business File Check form (e/402) which was approved by Mr Allderidge, the General Manager of Nexus' Bahrain office.

The suitability report of 14 September 2017 about investment in a Canaccord Mutual Fund

13. The Suitability Report dated 14 September 2017 set out Mr Veiss' assessment of Mr Al-Khateeb's position and his attitude to risk:

> *… you have existing savings that are providing very little return and you wish to consider investment options to attempt to offset the effects of inflation and achieve better returns for some of this amount. You would like a vehicle that enables you to access various international markets…. You have a negative experience with Qatar Stock Exchange market where you have accumulated losses over QR 3,000,000 in past.*
>
> *You mentioned that you are very concerned about the security of any investment you make and this is one of the reasons you would like to make the first international investment. You are considering investing a sum of $150,000 initially.*

14. The Suitability Report set out recommendations based on an assessment of Mr Al-Khateeb's willingness to accept a medium/high exposure to risk. It first reviewed the risk profile in relation to the wrapper and recommended Generali Worldwide. It then set out the investment options under the wrapper. It advised that the investments should be spread across different types of assets and securities. It set out the view of Nexus as to risk assessment and objectives:

> *As a result of your Risk Assessment, I concluded that your overall Risk Profile was Medium High Risk.*
>
> *Your Risk Tolerance score placed you in the Moderately High category and you agreed with the general traits of that category:*
>
> - *You view risk as an opportunity*
> - *You focus more on the potential gains than the potential losses*

• You are willing to take on a significant risk exposure to achieve greater growth and are prepared for the additional volatility this may involve
• You are confident when making financial decisions and while you do experience some regret when you encounter poor results, you adapt fairly easily
• Overall you have an optimistic view of investment

My assessment of your Capacity for Risk supports your ability to take on the risks associated with an investment carrying moderately high risk.

Overall you aim to protect your capital from erosion by inflation and to achieve significant growth.

We have discussed the type of returns you might typically expect from a well balanced moderately high risk investment as well as the associated risks and potential downturns and as such I have researched and chosen an appropriate investment with the potential to meet your objectives while keeping exposure to risk at a minimum.

15. The Suitability Report next recommended that the $150,000 be invested in the Canaccord Genuity Select Global Opportunity Fund on the basis that:

Instead of choosing a set of individual funds to make up an investment portfolio, I am recommending an actively managed "Fund of Funds". The individual investments within a "Fund of Funds" are carefully chosen and managed by a dedicated team of professional researchers and analysts with the expertise and experience to optimise the return on your investment based on specific investment objectives. They are able to analyse and manage the exposure to different risks ensuring that the Fund remains suitable for a moderately high-risk investor, rebalancing the portfolio when necessary. All decisions about the Fund are made by a team of specialist experts with access to the latest analysis and information. This is the most effective and efficient solution for you.

Why Canaccord?

The Canaccord Select funds were set up specifically for investors in savings plans such as yours. They describe their funds as "sleep at night" funds! They set their objectives and make decisions about their funds that best suit the client so they can "sleep at night" knowing they have done their best by their clients. No one person is in control of decision making about what happens to the funds. As this is a fund of funds, specialists in different asset classes and sectors meet to discuss strategy and make decisions as a team and their investment process ensures all risks are maintained within strict parameters. The company is also 50% employee owned so staff have a vested interest in the success of their funds. The manager of this fund has been with the fund since 2008 when it was created so his knowledge is a key factor in the quality of this fund.
....

The Canaccord fund's worst year saw a drop of 4.86%. This is due in part to Canaccord's investment philosophy of outperforming during falling markets and avoiding loss. This is also a level that a medium high investor is prepared to tolerate in pursuit of an increased level of performance.

Of course past performance is only to be used as an indicator of what may be achieved in the future so we must also consider the qualitative features of the fund. Canaccord choose funds for their portfolios where the managers are capable of consistently reproducing consistent returns.

16. The Canaccord Genuity Select Global Opportunity was a fund managed by Canaccord Genuity, a large Canadian based Investment Bank and Wealth Management Company (e/153). The Fact Sheet (e/428) showed that this was invested in major mutual funds spread across the word (including funds managed by leading houses such as Blackrock, I-shares, Polar Capital and Vanguard). The fund did not produce an income.

17. The Suitability Report also set out the charging structure of Generali Worldwide under the wrapper and that the commission payable to Nexus would be $10,500.

The payment of $150,000 to the Generali Worldwide wrapper

18. On 26 October 2017, Mr Al-Khateeb paid $150,000 to Generali Worldwide (e/437). This was held by Generali Worldwide in a call deposit account (e/753). It was paid directly to Generali Worldwide as Nexus was not permitted to hold client money.

19. It is clear from the documents that this sum was never invested in the Canaccord Funds. It remained on deposit under the wrapper in a call account until 19 December 2017 when it was invested in a different investment product as we shall explain.

The investment of a further $300,000 into the wrapper and the Suitability Report of 16 October 2017

20. There was a meeting between Mr Al-Khateeb and Mr Veiss on 8 October 2017 (as recorded in a letter dated 16 October 2017 (e/426)). Mr Al-Khateeb said he wanted to invest a further $300,000.

21. On 16 October 2017:

i. Mr Al-Khateeb signed a further confidential Financial Health Check form (e/406) which was countersigned on 19 October 2017 by Mr Allderidge. This classified Mr Al-Khateeb as a retail customer (e/413) and noted that he had no international investment experience (e/408). It showed that in addition to properties he held some cash funds in Jordan and $500,000 that was derived from investments that had matured.

ii. A letter on Nexus' letterhead (e/427) written by Mr Veiss provided a further Suitability Report on the investment of the further sum of $300,000. It was signed by Mr Al-Khateeb. It stated that in respect of the investment of the further monies:

> *Following a review of your attitude to risk you confirmed this remains the same as previously agreed. As a medium high risk investor, you are happy to follow Nexus medium high risk fund recommendation:*
>
> *Canaccord Global Opportunity Fund USD*

iii. This Suitability Report then went on to repeat what had been said in the Suitability Report of 14 September 2017. It also set out the charges which would be payable under the wrapper and the further commission of $24,500 paid by Generali Worldwide to Nexus.

22. The sum of $300,000 was paid by Mr Al-Khateeb to Generali Worldwide on 6 November 2017 (e/438). This was held together with the $150,000 in a call deposit account under the wrapper. Again, it was never invested into the Canaccord Fund, though Mr Allderidge thought it had been and the First Instance Circuit appears to have been told it was.

<u>The investment of the funds under the wrapper in a Natixis structured product</u>

23. On 19 December 2017, $445,000 of the $450,000 (just over 98% of the funds held under the wrapper) was invested in a Triple Index Income Generator Note arranged by Mariana Investments (a London-based company) and issued by Natixis, the

corporate, investment, insurances and financial services arm of PCE, the second largest banking group in France. This was a complex product.

24. In outline, it was a type of structured product described as an "*autocallable or Kick Out Note with income*" linked to the performance of three indices (i) FTSE MIB Index, an index linked to leading Italian equities, (ii) the Hang Seng China Enterprises Index, and (iii) the Taiwan Stock Exchange Index. It ran for a 6 year period from its start date on 23 December 2017 to its maturity date on 22 December 2023 when it was repayable by Nataxis at par, but if the final valuation of any of the three indices was below 70% of the level that had been set on 17 December 2017, capital would be lost at a specified level. It paid income semi-annually at a rate of 10% per annum, but a semi-annual payment amount would not be paid and permanently lost if the closing price of any of the indices was below the income trigger level for that period. It was designated by Generali Worldwide in its accounting documents as a "*phoenix*" structured product. These products are described by the UK Structured Products Association as combining features from "*Conditional Income Products*" and "*Kick Out products*" offering:

> *… the chance for income payments at regular intervals during the product term. This income is not guaranteed, instead it will only be paid if certain market conditions are met (for example, if an index such as the FTSE 100 closes at or above a given level on a set date). In addition, they include an 'autocall' feature, meaning they offer the chance for early maturity at regular intervals during the term. This means that they will mature early if another market condition is met (such as the FTSE 100 closing at or above a higher level on a set date).*

We shall refer to this as the '**Natixis Structured Product**', as the proper description of this investment was a structured product which is a form of investment quite different to a mutual fund, a bond or other form of note.

25. The First Instance Circuit observed at paragraph 52 that there was a lack of documentary evidence concerning this investment. As best appears from the documents, the investment of the funds held under the wrapper into the Natixis Structured Product was made in the following circumstances:

i. A one-page document dated 28 November 2017 (e/457) written by Mr Veiss was provided to Mr Al-Khateeb. It was not on Nexus headed

paper; Nexus contended that it was not found in their files; and their employees other than Mr Veiss had no knowledge of it. Although addressed to Mr Al-Khateeb, it was not signed by either Mr Al-Khateeb or Mr Veiss. It is necessary to set it out in full:

> *Further to our previous conversations over past three months, we have discussed various investment strategies that are available worldwide. You would like to change the originally discussed investment strategy from investing into mutual funds into more structured investment ensuring the certainty of regular income from your investment portfolio.*
>
> *The key importance to this point is that you have no longer a regular income from your employment.*
>
> *Based on our discussions, you are considering to opt to Natixis Tripple Index Income Generator Note that would ensure income generation at the level of 5% on a semi-annual basis on the invested capital if the underlying conditions are met. The investment amount would be $445,000 leaving $5000.- aside in cash account to cover the investment account ongoing fees during Year 1. You are satisfied to have one holding within your investment portfolio only.*
>
> *The investment would be based on the following markets: China, Taiwan and Italy.*
>
> *There is a potential for early maturity from the end of the first year and semi-annually thereafter. This is a medium/long term investment that may last up to six years. Please see attached the complete product technical guideline. Please see various scenarios on Page 4 on the attached brochure. This is in line with your retirement planning needs.*
>
> *Natixis is the issuer of the Note that is purchased to generate the returns described in this Factsheet. The Note is a type of corporate bond, which is essentially a loan that the Issuer promises to repay at maturity. Natixis is the corporate, investment, insurance and financial services arm of Groupe BPCE and the 2nd-largest banking group in France with 36 million clients spread over two retail banking networks, Banque Populaire and Caisse d'Epargne. With more than 16,000 employees, Natixis has a number of areas of expertise that are organised into three main business lines: Corporate & Investment Banking, Investment Solutions & Insurance, and Specialised Financial Services.*

In terms of key risks — if the issuer defaults all initial capital may be lost, but it is highly unlikely situation, but still technically possible. Please see other risks and warnings in the product factsheet.

Meanwhile, you will have an online access 24/7 to Generali International to monitor the progress on your investment with all the relevant details.

You understand that it is your responsibility to read the product brochure provided and understand the information you have been given. You must be satisfied that the solution discussed meet your retirement planning requirements and by signing and returning the provided dealing form you accept the investment placement you are confirming information has been fully disclosed.

Thank you for entrusting Nexus Financial Services and do not hesitate to contact us if you have any further questions.

ii. A fact sheet on the Nataxis Structured Product (e/272) written by Mariana Investments was provided by Mr Veiss to Mr Al-Khateeb. The First Instance Circuit considered that it showed the structured product carried significant risk (see paragraph 55 of its judgment). It contained a full and detailed description of the product in the complex language used in relation to this type of specialised investment. It made clear in the introduction in bold type:

This is a capital at risk investment. This information sheet is for professional advisers only"

It made clear:

It has been prepared for use only by professional financial advisers for the purpose of advising their clients.

….

"Mariana does not offer investment, financial or tax advice and this document should not be treated as providing any advice. Mariana does not take into account the circumstances of any investor. Any investors seeking exposure to the Note should satisfy themselves about the terms of any investment, the related risks and its suitability having regard to their circumstances. It is the responsibility of the professional financial advisers, for whose use this document has been prepared, to address such matters with their clients.

iii. On 30 November 2018, instructions were given by Mr Al-Khateeb to Generali Worldwide on a Generali Worldwide form to invest the entirety of the funds on deposit save for $5,000 in the Natixis Structured Product (e/458); Mr Al-Khateeb and Mr Veiss both signed Generali Worldwide's form. It set out appropriate warnings for a structured product (e/459). The form required Mr Al-Khateeb to confirm that ["I"]:

- *understand that structured products are typically higher risk Investment Instruments, intended for sophisticated investors who can afford to experience a loss of their capital;*

- *understand the circumstances under which selected Investment Instrument can provide a return or a loss;*

- *have read and understood the prospectus, term sheet and any other relevant literature in relation to the selected Investment Instrument;*

- *confirm that I am not prohibited from having exposure to the selected Investment instrument;*

- *understand the risks associated with the selected Investment Instrument and consider that it is within my risk appetite;*

- *understand that where a capital protection/guarantee forms part of the selected Investment Instrument, the financial status of the guarantor will determine whether any such guarantee will be made good if called upon;*

- *understand that in the absence of capital protection guarantees, the entire value of the Investment Instrument may be at risk at any point in time;*

- *understand the fee structure of the selected Investment Instrument and how this will affect the value of the selected Investment Instrument; and*

- *accept that early redemption of the selected Investment Instrument may be restricted or prohibited during the term of the Investment Instrument and liquidity may be limited.*

…

iv. The First Instance Circuit found at paragraph 56 of its judgment that Mr Veiss did not follow Nexus' internal procedures and the transaction was not brought to the attention of Mr Allderidge. It further found at paragraph 97 that it had been given no good reason why Mr Veiss did not deal properly with the formality required for a document summarising the structured product.

26. In the submissions made to us when we asked that the issue of suitability be addressed, it was contended by Nexus that the document dated 28 November 2017 was a Suitability Report. In its case before the First Instance Circuit as recorded in the judgment, Nexus had contended:

> *26. In November 2017, Mr Veiss arranged for Mr Al-Khateeb to invest in the Note* [the term used by the First Instance Circuit for the Natixis Structured Product]. *Nexus had no knowledge of this. The Note was not approved by Nexus. Nexus did not know that the Note was being offered or the terms on which that offer was made as no suitability report recommending the Note was ever provided to Nexus. Mr Veiss acted independently of Nexus and outside the governance and compliance processes and protocols required for all products managed and sold by Nexus.*
>
> *27. Although Nexus used its best endeavours to ensure that all its financial consultants complied with its policies and procedures, there was no way for it to prevent a financial consultant deliberately choosing to flout its governance and compliance requirements.*

Payments under the Natixis Structured Product

27. After the Natixis Structured Product had been purchased, it paid dividends between 2018 and December 2021 of $22,250 each half year, a rate of 10% per annum. These were paid out by Generali Worldwide to Mr Al-Khateeb after deduction of quarterly administration and service changes of about $1,600 per quarter. No dividends were paid in 2022 or 2023, but the quarterly administration and service charges continued to be made.

28. The capital value of the product started to decline, according to the statements for the account supplied by Generali Worldwide, at 31 December 2021, from $445,000 to $428,215 (e/548) and continued thereafter. By July 2022, the market value had fallen to $296,978 (or $301,526) and by December 2022, it was $262,633. The note

was to due mature on 23 December 2023, but it was sold on 1 September 2023 for $247,954. After various charges Mr Al-Khateeb received $223,000.08. It is claimed on behalf of Mr Al-Khateeb that he sold it to defray the costs of this appeal, but had he continued to hold it, the surrender value on maturity in December 2023 would have been about 5% less than he received in September 2023.

Further investment in 2018

29. In February 2018, Mr Al-Khateeb bought a Nexus Life Insurance Policy with RL360 for which there was a Suitability Report dated 7 February 2018 (e/462). This was on Nexus headed paper and recommended investment in the Canaccord Genuity select Global Opportunity Fund. It repeated in substantially the same terms what had been said about Canaccord Genuity in the Suitability Reports of 14 September 2017 and 16 October 2017. The Suitability Report disclosed the charges and commission. A new business report for this purchase (e/471) was countersigned by Mr Allderidge on 25 February 2018.

The complaints and further dealings

30. On 10 June 2019, Mr Al-Khateeb sent an email to Generali Worldwide (e/523) setting out his understanding of the investment advice he was given and making a complaint. These matters are set out in the judgment of the First Instance Circuit at paragraphs 57-63, but it is not necessary for us to consider it in relation to the issue on the appeal.

31. On 25 January 2020, Mr Veiss resigned from Nexus with immediate effect (e/560). He joined International Financial Services Qatar ('**IFSQ**'). The responsibility for Mr Al-Khateeb's Generali Worldwide wrapper and the investment under it was transferred within Nexus to Mr Vimal Vohra. On 21 June 2020, Mr Al-Khateeb transferred the Generali Worldwide wrapper from Nexus to IFSQ. On 21 June 2020, Mr Al-Khateeb complained about his investment to Nexus which investigated it. Nexus rejected the complaint on 2 September 2020. On 22 September 2020, Mr Al-Khateeb complained under the QFCRA Customer Dispute Resolution Scheme. On 3 January 2021, the complaint was rejected as out of scope because of the size of the sum claimed. In July 2022, Mr Al-Khateeb complained again. On 22 September 2022, the wrapper was transferred out of ISFQ. All these matters are set

out in detail in the judgment of the First Instance Circuit at paragraphs 64-77, but it is not relevant for us to consider them as they are not material to the issues in the appeal.

Proceedings before the First Instance Circuit

32. The claim was brought later in 2022. It was Mr Al-Khateeb's case that he was an inexperienced retail customer; he had been told that he would get an income of 10% and there were no risks to capital; $50,000 would be deducted to run the plan. He claimed that he had been the victim of deliberate misrepresentation. He claimed the return of the capital sum invested of $450,000, compensation for the damage Nexus had caused him and loss of profits.

33. It was Nexus' case that the claim had been brought in collusion with Mr Veiss with the aim of extracting $595,000 from Nexus on the pretext that Nexus had professional indemnity insurance. Mr Al-Khateeb had been classified as a medium/high risk investor, as summarised at paragraph 25 of the judgment of the First Instance Circuit:

> *... i.e. a person who has a "significant capacity" for his investments to underperform leading to a failure to reach his goals or actual loss of capital invested without a detrimental effect on his circumstances. He was therefore offered investment in the Canaccord Fund, in which the cash sums of USD 150,000 and USD 300,000 were held.*

Without Nexus' knowledge, Mr Veiss had arranged for the investment in the Natixis Structured Product; he had acted outside the compliance process and deliberately flouted it. There was no way Nexus could have prevented this.

34. Directions were given on 21 December 2022 (e/967), and a trial over four days took place in 2023. At the trial, Mr Al-Khateeb had no legal representation and conducted the case himself. He gave evidence and called Mr Veiss. Nexus was represented by Ms Natasha Zahid then of Clyde & Co, Dubai; two witnesses were called on its behalf – Mr Allderidge and Mr Hines. At the conclusion of the hearing, the parties were permitted to make written submissions.

The decision of the First Instance Circuit

35. The First Instance Circuit concluded in respect of Mr Al-Khateeb that:

i. It was not persuaded that he was an inexperienced investor as he suggested. He plainly had investment experience at the time he decided to invest in the wrapper and the structured product. He was able to understand the risks associated with such investments. It rejected his evidence that he believed that there was no risk in these structured products. Clearly that was not the case and the documentation he signed showed that he accepted and understood the risks involved (see paragraph 105).

ii. It was not entirely clear from the papers whether Mr Al-Khateeb made a claim against Nexus for mis-selling in addition to misrepresentation. However, the First Instance Circuit found at paragraph 106, that "*any duties on the part of Nexus to advise on the products were satisfied by the documentation that was signed by Mr Al-Khateeb*".

iii. It had little confidence in the evidence given by Mr Veiss for the reasons set out at paragraphs 108-118 of the judgment.

iv. There had been no misrepresentation. Mr Al-Khateeb's English language skills were reasonably good and he understood what he had been told and the documentation.

v. The First Instance Circuit concluded at paragraph 126 that Mr Al-Khateeb's claims were not credible and found that he:

- was an experienced investor who was aware that it was possible to suffer losses as well as make gains;

- had been made aware of the key terms, including the risks, of the investments;

- has not proved that either Mr Veiss or Mr Mustafa made the representations to him or gave him explanations as to the terms of either the Bond or the Note as he alleges;

- has not proved that he was the victim of falsehood or misrepresentation by Nexus representatives;

- was not induced by any representation made by Mr Veiss or Mr Mustafa to enter into either of the Bond or the Note; and

- has not demonstrated any breach of contract or of duty of care by Nexus that has caused him loss or damage.

vi. It was not necessary for it to make an assessment of the damages, but he was plainly not entitled to the full amount claimed.

The grounds of the appeal

36. There were four grounds of appeal:

i. The First Instance Circuit had not had any regard to the fact that Mr Al-Khateeb was a retail customer and therefore had not had proper regard to the obligations owed to him as such.

ii. The evidence of Mr Veiss was dismissed on erroneous grounds.

iii. The First Instance Circuit had wrongly refused to admit further documents.

iv. The Court misjudged the English language skill of Mr Al-Khateeb.

Our refusal of permission on grounds 2, 3 and 4

37. We grant permission to appeal on the first ground, but refuse permission on the other three grounds. It is convenient first to deal with our reasons for refusal. Each

of these grounds raised issues that were issues which the First Instance Circuit was best equipped to deal with and they were matters very much for its judgement.

Ground 2: Mr Veiss' evidence

38. Although both Nexus and Mr Al-Khateeb had occasions on which they each either wished to rely on the evidence of Mr Veiss or to have that evidence rejected, the First Instance Circuit reached a clear conclusion on the reliability of his evidence. Having carefully assessed his evidence in the context of the events that occurred, the First Instance Circuit was clearly of the view that little weight should be attached to his evidence – see paragraphs 107-109. We can see no basis whatsoever for overturning the clear conclusions it reached in respect of his evidence.

Ground 3: The failure to admit documents

39. The trial lasted some 4 days. It is more than evident from the transcripts with which we were provided that the First Instance Circuit went to very considerable lengths to give Mr Al-Khateeb as a litigant-in-person every assistance and latitude in presenting his case. As to ground 3, it was matter of the discretion of the First Instance Circuit as to whether to admit further documents in the post-trial submissions. Moreover, to have done so would have necessitated giving Nexus an opportunity to respond further delaying the Court in giving its judgment. There is no basis on which to challenge the discretion to refuse to admit the documents.

Ground 4: Mr Al-Khateeb's understanding of English

40. In assessing the contention in ground 4 that the Court misjudged the language skills of the Appellant, we have considered the transcripts and submissions made. We cannot see any basis for finding that the First Instance Circuit can be said to have misjudged the English language skills of Mr Al-Khateeb. The Judges brought to bear their great experience of hearing cases in Qatar.

Approach to the appeal on ground 1

What were the duties owed to Mr Al-Khateeb as a retail customer?

41. The ground of appeal essentially involves an examination of the duties of Nexus to Mr Al-Khateeb as a retail customer in relation to the purchase of the sole investment made under the wrapper - the Natixis Structured Product. Although it was Mr Veiss

who had the responsibility to advise on the investment in the Natixis Structured Product, he was the employee and agent of Nexus. Although Nexus contended that it could have done nothing more than it did in relation to supervising the actions of Mr Veiss, that is not a matter that it is relevant for us to consider. There is no basis for contending that in relation to the transactions, Nexus can escape liability for the actions of Mr Veiss if he acted in breach of the duties that Nexus owed Mr Al-Khateeb as a retail customer. It is therefore not necessary for us to examine whether others in Nexus should have done more than they did.

42. It was contended by Mr Al-Khateeb that the First Instance Circuit failed to take into account his status as a retail customer. Nexus contended that his status as a retail customer was never in dispute; he did not point to any basis on which he claimed to have suffered loss as a result of the failure to classify him as a retail customer.

43. The First Instance Circuit did not refer to Mr Al-Khateeb's status as a retail customer, but his status as a retail customer appears to have been common ground. However, the significance of this ground of appeal is that it appears that the First Instance Circuit was not referred to the obligations of Nexus to a retail customer under the regulatory regime applicable to Nexus as an authorised entity entitled to conduct insurance mediation business in the QFC. Although we were provided in the appeal bundle with the Customer and Investor Protection Rules that applied after 2019, we were not originally provided with the COBR which were applicable in 2017 at the time the Natixis Structured Product was purchased by Mr Al-Khateeb.

44. An examination of the regulatory duties that Nexus owed to Mr Al-Khateeb was essential to consideration of his claim. It is therefore regrettable that the First Instance Circuit was not referred to the obligations under the COBR to retail customers which set out with great clarity the duties owed by Nexus.

45. It was contended by Nexus that it had discharged its duties. It relied on the finding at paragraph 106 of the judgment of the First Instance Circuit that any duties on the part of Nexus to advise were satisfied by the documentation signed by Mr Al-Khateeb. However, the duties imposed on Nexus under the 2007 regime (and the subsequent 2019 regime) contain very similar key requirements common to most

similar regulatory regimes elsewhere – a know your customer requirement, and a suitability requirement. We will examine each in turn.

The know your customer duty

46. As we have set out, there were numerous documents where Nexus set out the information it had obtained about Mr Al-Khateeb and their assessment of him. Mr Al-Khateeb challenged this, but after considering all the evidence, the First Instance Circuit concluded that he was an experienced investor who was aware that it was possible to suffer losses as well as make gains. It is right that Mr Al-Khateeb could be described as an investor with some experience. There is therefore, in our view, no basis for contending that Nexus did not discharge its regulatory duty in respect of knowing its customer. Indeed, as the First Instance Circuit observed at paragraph 106 of its judgment, he signed all the documents in respect of this obligation which set out his investment experience and his intention to invest for his retirement.

The duty in respect of suitability

47. We next consider the further regulatory duty in respect of suitability to which the First Instance Circuit was not referred. The obligation of Nexus to advise on suitability related to both parts of the investment that Mr Al-Khateeb was making – the suitability of whole life insurance for him under the Generali Worldwide wrapper, and the suitability of the investments made under that wrapper. Nexus was also required to provide the customer with a statement of suitability.

48. It is important to stress that suitability is a key requirement of regulatory regimes which protects retail customers. The regime in the QFC applicable in 2007 was absolutely clear as to this requirement in Rule 4.3.4 and reinforced this by Rule 4.3.5 which required the provision to the retail customer of a document which has to explain why the advice on investment was suitable for the customer having regard to the information provided by the customer and an explanation of any possible disadvantage to the customer, including the nature of the risks involved.

49. By way of international comparison, for example in the UK, the Financial Services Ombudsman, the body with responsibility for determining almost all retail customer disputes relating to investment and awarding compensation, helpfully summarises

its approach (in the section of its website which provides information to businesses on how it handles a complaint):

> *The suitability of advice and any personal recommendation to a customer is vital when selling investment products . Unsuitable advice is the cause of many complaints about investments that we see. ….*
>
> *Sometimes a customer complains to us about the suitability of an investment they were advised to buy. A customer may complain about something like poor performance, which is actually masking underlying unsuitability.*
>
> *How the investment performed doesn't determine whether it was suitable, however. We consider suitability to be about a product matching a customer's needs and circumstances.*
>
> *When we receive a complaint about investments, we need to decide whether it was a suitable recommendation for the customer. We look at the evidence, consider regulatory standards and carefully investigate both sides of the story.*

50. As we have set out, there was considerable detail as to the recommendation and suitability of the wrapper and of the proposed investment in the Canaccord Global Opportunity Fund in the Suitability Report of 14 September 2017 and in the subsequent Suitability Report of 16 October 2017. It is significant that the Canaccord Global Opportunity Fund was fully and accurately described as an actively managed fund of funds and "*a sleep at night*" product. It was entirely suitable for Mr Al-Khateeb in the protection of his capital but did not explain that it would not provide any income. Mr Allderidge plainly thought that Mr Al-Khateeb's money had been invested in this fund and he was content with that advice.

51. The only suitability advice in respect of the investment of over 98.8% of the monies in the Natixis Structured Product on 17 December 2018 was that set out in Mr Veiss' typed document dated 28 November 2017 which had attached the fact sheet on Mariana Investments paper. In the post-hearing submissions, Nexus relied on the documents as the Suitability Report required under the regulatory regime, in contrast to the position taken by Nexus before the First Instance Circuit.

52. In our judgment, it was manifestly deficient as a Suitability Report required under Rule 4.3.5 and the advice to make an investment of over 98% of the monies held under the wrapper was in breach of the duty of Nexus under Rule 4.3.4 as to the advice on its suitability for Mr Al-Khateeb:

i. Although the typed document referred to the "*change of strategy from investment in mutual funds into more structured investment*" and that Mr Al-Khateeb was satisfied "*to have one holding within your portfolio only*", it did not explain the suitability of investing in this type of product.

ii. The typed document did not explain why the Natixis Structured Product based on stock indices was a suitable investment for over 98% of the monies intended for a retirement fund. It plainly was not.

iii. The typed document did not explain why the selection of a structured product which was geared to the Italian, Taiwanese and Chinese markets was a suitable structured product; structured products are set by reference to many markets. It did not explain why these markets had been advised in contradiction to indices in other markets such as the US or wider European or Asian markets. This was in stark contrast to the advice given in respect of the Canaccord funds in September and October 2017, and February 2018.

iv. The typed document referred to the customers' need for ensuring the certainty of regular income from the investment portfolio. It did not make clear that there was no income guarantee. It did not address suitability in the light of the risks to income in investing over 98% of the funds in this way.

v. The typed document wrongly identified the key risk as the default of the issuer, Natixis. Although the obligation to pay at maturity (or any prior time triggered by the autocall nature of the product) was the sole responsibility of Natixis as the issuer, this was not in fact a key risk, as the issuer was the second largest bank in France.

vi. The key risk, in addition to the risk that income might not be paid, was the risk to capital in the event of a decline in any one of the three indices - Italian, Chinese or Taiwanese. This was not dealt with in the typed document. The typed document referred to the Fact Sheet for these risks. The Mariana Investments fact sheet identified two further risks:

- *If the Final Valuation Level of any one of the Underlyings is below 70% of the Strike Level on the Final Valuation Date, there will be a significant loss of Initial Capital;*

- *The terms detailed in this document apply only if the Note is held until Maturity (or Early Maturity if applicable) and opting to exit early may mean Initial Capital is substantially reduced.*

vii. As the Mariana Investments Fact Sheet made abundantly clear, that document was intended for a professional adviser. Nexus could not discharge its duty as to suitability by a short reference to the paragraphs in the Fact Sheet we have set out above with their complex wording and reference to defined terms in a Fact Sheet which had been drafted for a professional adviser. Nexus had itself to point out in clear language understandable by a retail customer what the risks were to capital and to income and why these risks were suitable for Mr Al-Khateeb to run for over 98% of the sums invested. The typed document did not explain in any way why these risks were suitable for Mr Al-Khateeb. It could not have done so, as the risks were plainly unsuitable for the investment of over 98% of the capital in this single structured product.

53. Thus, the finding at paragraph 126(ii) of the judgment of the First Instance Circuit that Mr Al-Khateeb had been made aware of the key terms and other matters from the explanations in the documents is immaterial, as the obligations in respect of the suitability of the Natixis Structured Product for Mr Al-Khateeb were not discharged by Nexus.

Our conclusion in relation to the liability of Nexus

54. We are satisfied for these reasons that Nexus was in breach of its duty under the COBR for the advice on suitability given in relation to the investment in the Natixis Structured Product. The advice was given by Mr Veiss in a document that was not

on Nexus paper and of which the management above him were, it seems, at the time unaware. Nonetheless he was Nexus' employee and agent, and Nexus is responsible for the clear and serious failures in respect of one of the most important duties of an investment adviser – advice on the suitability of an investment.

The damages suffered by Mr Al-Khateeb

55. The claim for damages put forward before the First Instance Circuit was substantially misconceived for the short reasons given at paragraph 128 of the judgment of the First Instance Circuit.

56. The claim was reformulated before us in the submissions made subsequent to the hearing as:

    i. The loss of the value of his investment: $226,930.92, being the initial investment of ($450,000) less the amount received in September 2023 ($223,069.08).

    ii. The service and administration fees on the wrapper - $22,207 and $3,003.75 – less an amount of $3,296.50 paid by Mr Veiss.

    iii. Unpaid dividends in 2022 and 2023 – $89,000.

    iv. Moral damages in the amount of $300,000 or such amount as the Court considers just under article 364 of the Qatar Civil Code.

57. Mr Al-Khateeb accepted that he received dividends in the amount of $178,000 between 2018 and 2021.

58. We directed that Nexus should respond to this formulation of the claim. It contended in the submissions served in answer to our direction that:

    i. All the loss that Mr Al-Khateeb had suffered resulted from the effect of Covid-19 on the stock markets.

ii. If Mr Al-Khateeb had lost anything by reason of anything done by Nexus in breach of contract, his loss was no more than $45,634.19. It was necessary to take into account:

- The fees and charges applicable to the Generali Worldwide wrapper which would have had to be paid whatever investment was made under the wrapper; the fees totalled – $50,134.51 made up of (1) $32,939.88 (being Generali Worldwide's quarterly administration charge at the rate of 0.3125% of the initial investment); (2) $4,480.50 (being the Generali Worldwide quarterly service charges of $187.50); (3) $12,656.25 (being the early discontinuance charge); and (4) trading charges of $57.88.

- The agreed amounts for the value received on surrender ($223,069.08) and the income received ($178,000).

- The amounts paid by Mr Veiss to Mr Al-Khateeb of $3,296.50.

iii. Nexus could not be liable for the unpaid dividends in 2022 and 2023.

iv. This was not a case for moral damages under article 364 of the Qatar Civil Code.

59. In our view, although the claim was formulated originally as a claim for misrepresentation, it was a claim for breach of Nexus' contractual duty in respect of the failure to advise on the suitability of the investment. Mr Al-Khateeb is entitled under articles 100 and 101 of the QFC Contract Regulations 2005 to be compensated for loss arising directly from the breach so that he will be placed in the position he would have been in if the contract had been properly performed.

60. The principal respect in which there was a failure to assess and advise on suitability was the lack of protection of the capital invested in the type of structured product

selected and the three indices chosen. That failure was the direct cause of the loss, not any decline in the markets due to Covid-19. In our judgement:

i. The principal loss which flowed from that failure was therefore the capital loss. That can be calculated by reference to the initial capital invested of $450,000 less the surrender value of $223,069.08, and also less the sum he received from Mr Veiss. The loss amounted to $223,634.42. His claim for unpaid dividends is unsustainable because he could not enjoy the benefits of the high-risk Natixis Structured Product and the security of his capital at the same time.

ii. However, if Mr Veiss had invested in a product that protected his capital, on the evidence before us the income he received would have been no more than 5% per annum (or $22,500) for 6 years. This would have amounted to $135,000. He, however, received by way of interest $178,000 and therefore had a net benefit of $43,000 which must be deducted from the sum lost by way of capital.

iii. Leaving out of account the fees he paid, his loss was therefore $180,634.50.

61. It was contended by Nexus that fees would have in any event been payable and such fees, particularly the amount charged by Generali Worldwide, should be deducted from the sum we have set out. As we understand the position, the fees payable to Generali Worldwide were in part for the cost of life insurance and in part for management of the investment. It was not clear that Mr Al-Khateeb required or in any way needed life insurance; the primary reason for obtaining the policy was that it was only possible for Nexus under the terms of its licence in Qatar to advise Mr Al-Khateeb if the product was a contract of insurance. We do not think therefore a charge reflecting the life insurance element should be deducted. However, Mr Al-Khateeb would have had to pay for advice and administration either as a lump sum or an annual charge, the amount of his loss should reflect such a charge which we estimate as $5,000.

62. His loss as a result of Nexus' failure to carry out its duty was therefore $175,634.50.

63. We are firmly of the view that it would not be appropriate to award moral damages for injuries to feelings as a result of the conduct of Nexus. The Court gave some preliminary guidance as to the award of moral damages in *Khadija Al-Marhoon v Ooredoo Group Company* [2023] QIC (A) 5 at paragraphs 59-63. The circumstances in which the Court awards such damages are not likely to be frequently encountered, but this was plainly not a case for such award. There was nothing in the conduct of Nexus or its agents which leads us to the view that it should have been marked by the award of moral damages. The loss in relation to the breach of duties in relation to investment advice was a pecuniary one and nothing more.

64. We therefore assess the damages payable by Nexus to Mr Al-Khateeb to be $175,634.50.

Costs before the First Instance Circuit

65. Although Mr Al-Khateeb was represented before us, he was not represented before the First Instance Circuit. He nonetheless claimed the costs of the First Instance Circuit proceedings in addition to the costs of the appeal.

66. The specific power in relation to costs in the Regulations and Procedural Rules of this Court are widely drawn and permit the Court under article 33 to make "*such order as it thinks fit in relation to the parties' costs of the proceedings*"; the powers contained in article 10.3 are similarly widely drawn. The principles for the assessment of costs are set out in a number of decisions of the Registrar of this Court; these principles have been restated in the Maroon Book, the Court's User Guide, issued in December 2023, so as to make reference to the case law unnecessary in an assessment.

67. The principles, however, do not address at present the position of a litigant-in-person. Nonetheless in *Mieczyslaw Dominik Wernikowski v CMH Global LLC* [2023] QIC (C) 1, the Registrar held that:

> *As a matter of principle, it seems to me that a litigant in person ought to be able to recover something for the time he or she has spent pursuing their case in circumstances where the Court has made an Order of costs in their favour.*

It appears that the party who was to pay the costs in that case did not dispute the entitlement, but simply contended that the amount ought to be reasonable. The award in that case was made in the sum of QAR 1,400, representing the compensation for time reasonably spent.

68. In the present appeal, Nexus contends that no costs at all should be awarded as Mr Al-Khateeb had not incurred any legal costs; reliance was placed on the decision *in Fadi Sabsabi v Devisers Advisory Services LLC* [2023] QIC (F) 4 where the First Instance Circuit decided that a party who had given the impression that it was not legally represented should not be entitled to recover the costs of legal representation.

69. The issue in *Wernikowski* and the present case is different as the issue for decision is whether a party who has had no legal assistance is entitled to some recompense for the time spent in bringing and conducting proceedings; the litigant will have spent time that otherwise could have been spent on other matters and there is no reason why some recompense should be denied. We therefore decide as a matter of principle, in accordance with the approach of the Registrar in *Wernikowski (*where the point was conceded), that a litigant-in-person is entitled to be compensated for the reasonable and proportionate time spent in bringing and conducting the proceedings and for any reasonable and proportionate out of pocket expenses.

70. We therefore order that in default of agreement between the parties as to the amount to be paid by way of costs to Mr Al-Khateeb for the proceedings before the First Instance Circuit, the Registrar is to assess the amount to which Mr Al-Khateeb is entitled to be paid by way of an award of costs for the reasonable and proportionate time he can show he spent and for any reasonable and proportionate out of pocket expenses he can show he incurred. It must be for the Registrar to assess the rate, but it will be at a modest scale.

Costs of the Appeal

71. Mr Al-Khateeb has succeeded on the appeal and is entitled to his costs to be assessed by the Registrar in default of agreement.

By the Court,

[signed]

Lord Thomas of Cwmgiedd, President

A signed copy of this Judgment has been filed with the Registry.

Representation

The Appellant was represented by Mr Paul Fisher, Counsel (4 New Square, London, UK), and Eversheds Sutherland (International) LLP (Doha, Qatar).

The Respondent was represented by Ms Natasha Zahid, Counsel (Dubai, United Arab Emirates).

DIGITALLY SIGNED AND VERIFIED
موقّع رقمياً ومعتمد