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November • 2010

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NEWS

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AUSTRALIAN LEBANESE
CHAMBER OF COMMERCE

NEWS

In This Edition

Owners Corporations & Building Controls	p4
Lebanon's Economy Shows Strength	p7
Carlos Slim Helu - Guest of ALCC	p10
Annual Business Luncheon	p12
Future Growth of Sydney	p14
TMA Cargo is Back in Lebanon	p17

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A Word from the President



Dear Members and Friends,

As we come to the end of 2010 we can reflect on what has been a very significant year for the Australian-Lebanese trading relationship. There is a greater presence and interest in Middle Eastern financial institutions participation in Australia, making cross investment with many Lebanese community members even more attractive.

Australia has also continued to focus on its relationship with many Middle Eastern trading partners such that the rise of airlines such as Etihad and Emirates are now a prominent and important part of Australian life.

For the Lebanese community here in Australia, all of this is good news for our commercial prospects. We have knowledge of the region which is becoming more valued and for Lebanese people wishing to invest in Australia, we are the first port of call.

This strengthening of Australian / Middle East ties also adds momentum to the recovering Australian economy. Happily, most businesses can report a less acutely difficult year than 2009.

With all of this in mind, I wish everyone a successful end to a year of recovery. I look forward to seeing all our members go from strength to strength in the coming year.

On behalf of the ALCC board of directors, I wish to thank all our sponsors, and supporters for their loyalty and continuous participation in the Chamber's activities.

Joe Khattar

President

The Australian Lebanese Chamber of Commerce Ltd.

AUSTRALIAN LEBANESE CHAMBER OF COMMERCE Board Members

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Owners Corporations and Builders Battle for Control: The Proportionate Liability Defence and the Home Building Act 1989 (NSW)

Introduction

In the recent decision *Owners Corporation Strata Plan 72357 v Dasco Constructions Pty Ltd (Dasco)* [2010] NSW 819, Blackstone Waterhouse, on behalf of the defendant, successfully argued that the proportionate liability defence can be used by builders defending defects actions under the Home Building Act 1989 (NSW) (HBA).

The major impact of this decision is that Owners Corporations cannot target a single party for any recovery action for the costs of defects.

This means that builders have protected their right to plead proportionate liability where unsatisfactory work was carried out through no fault of their own.

This is because, under Part 4 of the Civil Liability Act 2002 (NSW) (CLA), a defendant in a case for most types of negligence or breach of contract can join other parties that it considers to be jointly responsible for the alleged damage done to the plaintiff.

The question before the Court in the *Dasco* decision was whether this defence applied to a claim based on the HBA warranties. The plaintiff ran a very technical argument, saying that the HBA warranties had a special status because they are created by legislation. Therefore, the plaintiff argued, the HBA warranties are not subject to the CLA defences.

Einstein J rejected this argument in a comprehensive written decision. The consequences of this will be far reaching for both builders and owners corporations throughout NSW and the rest of Australia where similar legislative regimes are in place.

The Facts

The matter involves a dispute as to alleged building defects in the Whitecrest Apartments, Concord. The defects related, insofar as proportionate liability was concerned, to fire safety construction and design. The concurrent wrongdoers alleged are the certifiers and the engineer.

The builder and first defendant, *Dasco Constructions Pty Ltd*, has sought to rely on the proportionate liability defence as an arm of its defence. The plaintiff objected to the use of this defence, arguing that the HBA guarantees were not intended to be included in the provisions of the CLA.

In their view, the proper treatment of the HBA warranties is that of "statutory warranties", or special warranties in place generally for the protection of important public rights. The defendant disagreed, saying that the HBA warranties are essentially compulsory terms of any home building contract in New South Wales. The defendant argued that the HBA warranties had no special "statutory warranty" status.

The plaintiff brought an application before the Supreme Court of New South Wales, seeking to strike out the parts of *Dasco's* defence that relied on Part 4 of the CLA.

Einstein J's decision rejecting the plaintiff's argument is an "interlocutory" decision, or one that is not a final determination of the dispute between the parties. Therefore the question as to whether there have been fire safety defects is still to be decided in a trial probably next year.

Einstein J's Decision: An Analysis

The plaintiff submitted that section 39 (c) of the CLA provides that Part 4 does not affect the operation of any other Act "to the extent that it imposes several liability on any person in respect of what would otherwise be an apportionable claim".

Therefore, according to the plaintiff's argument, given that Part 2C of the HBA is entitled "statutory warranties", the warranties should be accorded the status of statutory causes of action and thus excluded by operation of section 39(c).

In the alternative, the plaintiff argued that there are good policy reasons for excluding the HBA from the operation of Part 4 of the CLA including the fact that the HBA warranties provide an important remedy against builders who engage in negligent building practices.

The plaintiff likened the HBA warranties with consumer protection clauses in the Fair Trading Act: ie essential clauses that are put in place by the government to protect the consumer, or in this case, a new home or apartment purchaser.

The defendant argued that the Part 2C HBA warranties are merely contractual terms, even if mandatory for every home building contract. Further, they do not have the social importance that is alleged by the plaintiff.

The defendant also argued that if the NSW Parliament had wanted to specifically exclude the HBA from the operation of Part 4 of the CLA, it would have done so, as it has with other statutes.

The Decision

Einstein J agreed with the defendant. Firstly, in His Honour's view, "section 39(c) of the CLA does not assist the plaintiff as the HBA does not impose liabilities. It implies warranties in certain contracts and gives certain non-contracting parties the benefit of those warranties." (paragraph 21)

Secondly, there is no special social importance of the HBA warranties.

What does this mean for you?

For builders this decision provides useful confirmation that the CLA proportionate liability defence can be relied

upon in complex defects claims. Builders will continue to be able to include parties that have produced defective work through no fault of the builder.

For Owners Corporations the effects of the decision will be that actions to recover the costs of rectifying defects will be subject to the proportionate liability defence and a careful evaluation of the wrongdoers will be required.

It is also important to note that it is difficult for Owners Corporations to run cases against concurrent wrongdoers because the CLA requires that they argue their own case against the concurrent wrongdoer. This is the case even if that party is brought into the action against the will of the Owners Corporation via the original defendant.

In addition, for many procedural reasons, the Dasco decision also means that many cases run by Owners Corporations in the CTTT will have to migrate to the Local, District or Supreme Courts. In these courts the formal rules of evidence apply and any evidence prepared will have to be in accordance with those rules. All of these factors make Owners Corporations cases many times more complicated and expensive to administer and ultimately affects the chances of full recovery for the cost of any defects. It erodes the economic viability of running many smaller defects cases against builders.

Winds of legislative change

Given the important ramifications of the decision for Owners Corporations, one can speculate whether they will lobby the legislature to act with speed to “plug” this perceived legislative gap? The legislature has certainly proven itself to be able to act with alacrity in the past where perceived “gaps” in this area have arisen.

Alternatively will the builders be able to retain the defences currently available to them at law? Builders certainly would be well advised to fight to keep Einstein J’s decision as it stands as it will certainly decrease the number of actions they will have to face in the future from Owners Corporations.

With a new election due next year, spectators of this battle should watch the post election parliament carefully to see whether legislation will be put through to alter the current state of the law.

Blackstone Waterhouse Lawyers is happy to assist you with all your building and construction law advice and requirements. Contact Danny Arraj, Managing Partner or Harriet Warlow-Shill, Special Counsel on (02) 92790288 with any questions.



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LEBANON'S ECONOMY CONTINUES TO SHOW STRENGTH

Merchandise trade activity up by 12% in the first nine months of 2010

Lebanon's external sector flourished in the first nine months of 2010, affected by the gradual recovery from the global crisis witnessed in neighbouring Arab countries. And by the continuous strong economic performance of the Lebanese economy, at large. Lebanon's merchandise trade activity flourished with both imports and exports posting significant growth. Figures released by the Higher Customs Council show that aggregate imports and exports totalled US\$16,207 million in the first nine months of 2010 rising by 12.2% from US\$14,445 million in the same period of 2009.

In parallel, imports amounted to US\$13,189 million in the first nine months of 2010, Up by 10.0%, when compared to the same period of 2009. Although the increase in imports aggravates the country's trade and current account deficit, it bodes well for domestic economic activity in the country, as it mirrors a rise in demand by Lebanese consumers and investors. As a matter of fact, the former increase is highlighted by the 15.0% increase in imports of consumer products in the first nine months of 2010 relative to the same period of 2009, while the latter can be understood by the 5.0% rise in imports of investment products over the same period.



Sources: Higher Customs Council, Bank Audi's Research Department

In details, total exports amounted to US\$3,018 million in the first nine months of 2010, up by 22.9% relative to the same period of 2009. External demand for Lebanese products is to a large extent shaped by overall economic conditions in Lebanon's main trade partners, which happen to be Arab countries in the first degree and European countries in the second degree. Those countries are currently witnessing a recovery from the global financial crisis, and this is positively affecting demand for Lebanese products.

The significant growth in exports within the context of a smaller growth in imports has resulted in a gradual moderation in the growth of the trade deficit from double-digit growth rates in earlier months of 2010 to a current 6.7% in the first nine months in the first nine months of 2010, compared to US\$9,533 million in the same period of 2009. The trade deficit was at US\$10,171 million in the first nine months of 2010, compared to US\$9,533 million in the same period the previous year. Furthermore, the export-to-import coverage ratio improved by 20.5% in the first nine months of 2009 to 22.0% in the same period of 2010.

(Lebanon's Economy - continued from previous page)

The breakdown of Lebanese exports by country of destination for the first nine months of 2010 indicates that Switzerland was the major export destination with 14.0% of the total. It was followed by the UAE with 10.5% and Iraq with 6.7%. As for the breakdown of imports to Lebanon, by country of origin, it reveals that China was the main source of imports with 9.4% of the total, followed by the USA with 9.1% and Italy with 7.8%.

Lebanon's primary export item in the first nine months of the year was jewellery, which accounted for 27.7% of total exports. It was followed by electrical equipment and products with 18.0%. On the other hand, mineral products, which accounted to 19.8% of total imports, retained the lion's share of imports, followed by electrical equipment and products with 12.4%.

Dhaman forecasts Lebanon's FDI at US\$3.9 billion in 2010

The Arab Investments and Export Credit Guarantee Corporation (Dhaman) issued forecasts for Foreign Direct Investment (FDI) in Arab countries in 2010, in which it expected FDI into Lebanon to reach US\$3.9 billion in 2010. Although this constitutes a drop in FDI in the country from the record high inflow of FDI into the country of precisely US\$4.8 billion witnessed in 2009, it is still deemed significant as it is the third highest amount of FDI in Lebanon's history following 2008, during which FDI was at US\$4.3 billion, and 2009.

As a matter of fact, during 2008 and 2009, Lebanon saw an exceptionally high level of FDI, as the country benefited from the effects of the global financial crisis on neighbouring Arab countries, thereby attracting capital inflows, specifically FDI into its economy, which remained more or less immune from effects of the global financial crisis. Here, it is worth noting that amid the global financial crisis, Lebanon saw a high real GDP growth rates of 9.3% in 2008 and 9% in 2009, also benefitting from improved political conditions in the country. As such, with the current recovery underway in other Arab countries, as some investors are now aiming to reap the benefits from recovering Arab countries.

It remains to be said that as per the report, most of FDI into Lebanon is currently targeting the real estate sector, bearing in mind that FDI plays a major role in financing investment projects in the country.

Construction permits grow significantly in the first nine months of 2010

Figures released by the Orders of Engineers of Beirut and Tripoli indicated that the area of newly issued construction permits reached 13.0 million square metres in the first nine months of 2010, up by 43.1% from the same period of 2009, and hitting a record high when compared to the same period of previous years. Not only does this significant growth in construction activity constitutes an important driver of economic activity in the country, it also prolongs the real estate boom currently witnessed in the country, as it suggests that contractors are indeed launching new projects to cater for the high demand for real estate in the country.

The statistics for the first nine months of 2010 showed that the majority of those construction permits (55.4%) were issued in Mount Lebanon, where real estate projects are usually medium-scale, targeting the majority of Lebanese residents. The area was followed by the North, which captured 15.0% of newly issued construction permits, the South (14.5%), Beirut (8.6%) and the Bekaa (6.5%).

Tourism activity up by 18% in the first nine months of 2010

The figures released by the Ministry of Tourism pointed to a growth of 17.8% in the sector's activity during the first nine months of 2010. In fact, total number of tourists arriving to Lebanon reached 1,694,662 during the first nine months of this year versus 1,438,619 during the same period of last year. The number of tourists that visited the country in the first nine months of 2010 reached a record high when compared to the same period of previous years. This proves that the country continues to witness strong tourism activity. It is worth noting that the yearly growth in the number of tourists over the first eight months of the year was slightly lower, at 16.1% due to the decline in tourism activity during the month of August because of the Ramadan period.

The distribution of tourists by origin in the first nine months of 2010 indicates that the majority of visitors were from Arab countries with 41.9% of aggregate visitors, followed by visitors from Europe with 24.6%, and Asia with 17.1%, from Americas

with 11.8%, visitors from Oceania with 2.8% and visitors from Africa with 1.7%.

During the month of September 2010, the number of tourists that visited Lebanon totalled 20,529, up by 31.8% relative to the same month of the previous year. This growth is significant given the fact that in September 2009, tourism activity in Lebanon was at its pinnacle, and thus figures for September 2010 compare to a high base. As for the month of August 2010, the number of visitors to Lebanon reached 166,132, down by 16.6% year-on-year, due to the Ramadan period.

Clearing activity up by 26% year-to-date

The value of cleared checks in the banking system, a coincident indicator of overall spending patterns in the economy, showed a buoyant performance in the first nine months of the year. Figures released by the Association of Banks in Lebanon indicate that total cleared checks amounted to US\$ 59,909 million in the first nine months of 2010, up by a substantial 26.4% from the corresponding period of 2009. This reflects a sustained upward trend of investor and consumer confidence manifested by the increased spending on consumer and capital goods.

This rise is mostly the result of a 27.4% increase in foreign currency denominated checks that totalled US\$40,972 million, which was higher than the increase of 22.5% in local currency denominated checks totalling LP 14,976 billion. The rise in foreign currency denominated checks within a context of a lower increase in LP denominated checks has led to an increase in the dollarization rate to 80.5% in the first nine months of 2010 versus 79.9% in the same period of last year.

Cleared checks totalled US\$5,159 million in September 2010, up by significant 7.9% from the same month of the previous year. The year-on-year increase in clearing activity was mainly driven by increased local currency denominated checks and to a lesser extent by foreign currency denominated checks. The former went up by 24.9% to LP1,693 billion, while the latter progressed by 4.0% to US\$ 4.036 million.

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CARLOS SLIM HELU – GUEST OF THE ALCC 30th September 2010

Thursday 30th September 2010, was a memorable day for the Australian Lebanese Chamber of Commerce, taking up a rare opportunity of hosting a luncheon to honor Mr Carlos Slim Helu, and members of his family who travelled with him. Carlos Slim was in town for the Forbes Global CEO conference, where he was presented the Malcolm S. Forbes Lifetime Achievement Award for being “A Hero of Entrepreneurial Capitalism”.

The luncheon was held at Sydney’s most elegant function centres, Doltone House, Jones Bay Wharf, Pyrmont, extending their warm hospitality and outstanding service, with a touch of class from the Managing Director, Mr Paul Signorelli, making it a most enjoyable event, to greet and welcome guests and major sponsors of the ALCC.

The Premier of New South Wales, The Hon. Kristina Keneally was also present at this gathering, where she warmly welcomed Mr Slim, and his son Marco Antonio Slim, who accompanied him on his first visit to Sydney, with his wife Jimena.

Much has been written about the wealth of Carlos Slim Helu, but those who had the opportunity of meeting Mr Slim, could only feel his warmth and humility, which glows from within. Although his net worth is said to be equivalent to seven per cent of Mexico’s GDP, Carlos Slim spoke of his Lebanese heritage, in particular his father’s dedication to the Lebanese community in Mexico, when he served as President of Mexican Lebanese Chamber of Commerce for many years.

Both of his parents were born in Lebanon, emigrating with their families to Mexico over a century ago. During the lunch Mr Slim spoke of his origin, background and career. He also acknowledged how the Lebanese community in Australia has been an integral part of the growth of this great country.

The President Mr Joe Khattar, and Board of Directors, of the ALCC, wish to thank all those who attended the luncheon, at the same time, extend their warmest wishes to Mr Slim to be the recipient of a most worthy award, and would welcome future opportunities to meet again, in the not too distant future.

The Australian Lebanese Chamber of Commerce Ltd.
Sydney 2010





7TH JULY 2010 – THE ALCC - ANNUAL BUSINESS LUNCHEON

The annual business lunch has become the highlight of the Chamber's calendar and this year's event was again another success for the Chamber. This function was attended by a large audience representing major banks and businesses all of whom were eager to hear Keynote speaker The Honourable Wayne Swan.

The Chamber was also fortunate to secure the services of Ross Greenwood as the Master of Ceremonies for the event. The timing of the function made for a very interesting lead up to the address by Mr Swan. The Leadership challenge was still fresh in the minds of most people, the resources tax, recently renegotiated by PM Julia Gillard, was being marketed as a win for the new Gillard Government and the looming threat of a snap election had the media and guests very keen to hear Mr Swan's view on the present economic and political climate in Australia. The pending election combined with the post GFC economy created a real buzz prior to the lunch, many guests enjoyed pre lunch drinks on the terrace overlooking Sydney Harbour whilst they quietly speculated as to what Mr Swan would say in his address.

Mr Swan was greeted by ALCC President Mr Joseph Khattar and he immediately made his way into the luncheon where he was greeted by several members of the Lebanese business community. The Chamber has a strong link to the construction and development industry therefore many of the guests in attendance were keen to hear Mr Swan's unique perspective on the general economy, interest rates, the liquidity of Australian banks and the impact of a rising Australian Dollar.

Mr Swan's address was strongly focussed on the Resources Tax, a major media and policy issue at the time of the luncheon. Mr Swan promoted the resources tax as a win for Australia as a whole and a profitable redistribution of the wealth created from mining.

Once questions were opened to the floor by Master of Ceremonies Ross Greenwood Mr Swan was asked a variety of questions ranging from the liquidity of the Australian banking system to the importance of Migration and the role of migrants in the modern Australian economy. Many of the guests were impressed not only by the detail given in Mr Swan's responses but also with the confidence in which he delivered the Governments message.

Attracting the Treasurer was considered a major victory for the Chamber and the following day the Chamber was acknowledged in the Financial Review and Radio 2GB. Recognition from the Federal Government and the national media is seen as positive progress as the chamber attempts to grow its current membership base and expand into a national presence in the Australian business community.

On behalf of the Australian Lebanese Chamber of Commerce, its President Mr Joseph Khattar and the Board of Directors we would like to thank all those who attended this year's business lunch. A chamber of commerce is only as good as it members and each year the support base from the chamber grows. Special thanks to The Honourable Wayne Swan for attending the function and delivering the Keynote address and sincere thanks to Mr Ross Greenwood for his wonderful efforts as the Master of Ceremonies.





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Planning Department Head Sam Haddad Speaks on Future Growth of Sydney

The ALCC held a seminar on August 18th 2010 with guest speaker, Mr Sam Haddad – Director General Department of Planning NSW

Capitalising on the success of our last networking event the Chamber was fortunate to host Mr Sam Haddad, Director General of the Department of Planning. Given the strong support the chamber enjoys from the construction and development industry this event proved to be a highly sought after event with tickets selling out quickly.

In his role as director general of the Department of Planning Mr Haddad is critical in assisting the NSW government to formulate and approve their policy to the development of land in New South Wales so his perspective on the future growth of Sydney was one that would attract great interest. Further interest was generated given the Department Planning was close to finalising their recommendations to Planning Minister, the Honourable Tony Kelly, on their view of the Metropolitan development strategy for Sydney.

Mr Haddad addressed a small a group of 00 people of his thoughts for the future growth of Sydney. Critical issues raised during his presentation were:

- The Need to provide 32,000 new homes in Sydney per annum;
- The growth of Sydney into 5 regional cities Parramatta, Liverpool, Sydney, North Sydney and Campbelltown;

- The Growth of medium and High Density development and its ability to utilise existing infrastructure;
- The cost of infrastructure and the lack of services and infrastructure to support green field development in the outer regions of Sydney.

Following his address Mr Haddad fielded a number of questions from the audience, many of whom actively participate in the development industry. Many chamber members to advantage of the opportunity to express their thoughts and opinions on the current planning policy and were pleasantly surprised at Mr Haddad's open and honest approach and his willingness to engage into discussion on several matters.

At the conclusion of the event Mr Haddad remarked that he was very impressed with the quality of the questions from the guests, the high level understanding those in attendance had with regards to planning matters and positive comments made by many of those who attended the event.

In closing the Chamber would like to thank Mr Sam Haddad for his address. We would also like to acknowledge Mr Jim Hanna, Senior Media Adviser from the Department of Planning, for his assistance in organising the event. Planning is integral part of the development process and the Chamber hopes that successful events such as this will help foster good relations between the business community and the NSW State Government.



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LEBANON'S AIR CARGO CARRIER (TMA) IS BACK



Trans Mediterranean Airlines was established in 1953 and was the first cargo airline in Lebanon and the Middle East at the time, is now back in operation and the official launching took place recently at Beirut's Rafic Hariri International Airport.

The Airline was grounded in mid 2005 after Middle East

Airlines (MEA) decided to carry air cargo in its new fleet of airbuses, eventually prompting TMA's management to suspend all operations.

The launching ceremony was attended by Public Works Minister Ghazi Aridi and TMA chairman Mazen Al-Bsat and other senior officials and executives from the Ministry. Aridi stressed that the launching of TMA's flights was a clear sign that the Lebanese are not willing to give up hope on the future of their country regardless of all the difficulties facing them...he said that he was highly impressed by the fact that the new owners and management of TMA have restructured the airline, which suffered massive financial losses in those very

difficult years...Aridi expressed hope that TMA would be restored to its former glory by resuming its international flights.

TMA Chairman Bsat said that TMA was resurrected because all realised that the private sector is the engine of Lebanese economy.

The inauguration of a 320 meter cooling container at the airport to store fresh goods and products is definitely a major contributing factor to the Airline's airport facilities.

TMA is currently making two weekly flights to Europe and to the United Arab Emirates and there are plans to increase the flights to Europe to four times a week.

Michael Rizk
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 - 1 table of 10 at the Annual Business Luncheon.
 - Tickets to our Business Seminar (or similar event)
 - 15 copies of our "Chamber News" newsletter for every issue
 - Mention (your Company logo) in Chamber News
 - Exposure on ALCC Website with links to your own website
 - Free Corporate Membership with ALCC
- Total Cost: A\$5,000 (including GST)**

Silver Package
General Sponsor
Package includes:

- 1 table of 10 at the Annual Business Awards Dinner.
 - 1 table of 5 at the Annual Business Lunch
 - Tickets to Business Seminar or similar event.
 - 10 copies of our "Chamber News" newsletter for every issue.
 - Exposure at all functions by way of corporate signage and official acknowledgement.
 - Exposure on our website, with links to your own website.
 - Free Corporate Membership – valued at \$250
- Total Cost: A\$3,500 (including GST)**



G R E G O R Y

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IMAGE BY JESSICA KINGLUFUSS FOR EMERALD COUTURE - EMERALDCOUTURE.COM

> Celebrating 15 years of service to the Lebanese community in Australia.

From the day we began banking operations in Australia in 1994, we've helped thousands of Lebanese Australians achieve their dream of buying a home, setting up a new business, or financing expansion of their company operations. We have strong expertise in the areas of:

- Property & Construction
- Investment & Commercial property
- Taxi plate finance
- Petrol Stations
- International trade with the Middle East and Northern Africa region

Coupled with our deep understanding of the Lebanese and Arab culture, we can offer a service that is unrivalled by any other Bank.

We have been recognised as one of the leading Bank's in the country, having won numerous awards, including:

- Business Online Savings account awarded a 5-Star Canstar Cannex rating*
- Best Savings Account for our Online Savings Account in 2010**
- Foreign Bank of the Year Finalist 2009#
- Employer of the Year 2009^

We have always supported the Lebanese community by understanding their specific needs, and helping countless individuals, both here and in Lebanon, live a better life.

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Call 1800 272 222 or visit arabbank.com.au to learn more

*Awarded by Canstar Cannex 2010 in the business banking product category. **Awarded by Money Magazine "Best of the Best" awards 2010. #Australian Banking & Finance Awards 2009. ^Awarded by Executive PA magazine 2009. To the extent that any material in this advert could be construed as general advice, it has been prepared without taking account of your objectives, financial situation or needs. Because of this before acting on any advice, you should consider its appropriateness, having regard to your objectives, financial situation and needs. Arab Bank Australia Limited ABN 37 002 950 745 AFSL 234563 ABA3565