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July • 2011

AUSTRALIAN LEBANESE CHAMBER OF COMMERCE

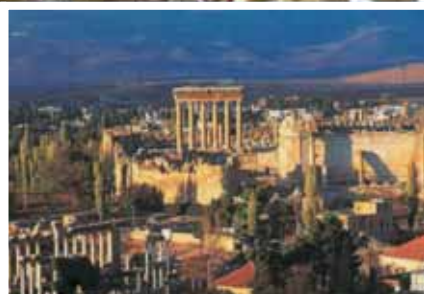
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Chamber

AUSTRALIAN LEBANESE
CHAMBER OF COMMERCE

NEWS

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A Word from the President



Dear Members and Friends,

It is my pleasure to inform you that the ALCC recently held a very successful seminar, on the topic of Real Estate with over a hundred guests in attendance. The guest speaker was John McGrath, and I can proudly say that John delivered an excellent talk about the Real Estate industry and how he was able to do so well with the perseverance, dedication and hard work.

It was extremely inspiring for all those who attended this seminar. In a very simple and adequate manner, Mr. McGrath spoke about his experience from the start of his career, and how he was able to build his company from a very modest beginning, to what it is today.

This is the sort of activities that the Chamber is regularly organizing, in order to assist its members and friends, in whatever sector they are involved in.

We welcome any suggestions or ideas that you may have and would like the Chamber to organize a seminar or special event to serve that purpose.

As for Trade with Lebanon, and vice versa, the Chamber through the Head of Trade Relations, Michael Rizk is regularly assisting and guiding all those that are active in either exporting from Australia to the Arab World, or importing from Lebanon.

Finally, I wish you all every success in whatever field you are in, and look forward to seeing you at future Chamber events.

Joe Khattar

President

The Australian Lebanese Chamber of Commerce Ltd.

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CHALLENGES FOR BUSINESSES UNDER THE NEW AUSTRALIAN CONSUMER LAW



Danny Arraj

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Blackstone Waterhouse Lawyers



Mark Fitzpatrick

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Blackstone Waterhouse Lawyers

Introduction

The Australian Consumer Law (ACL) was introduced nationally on 1 January 2011. The ACL consolidates over 20 different state and federal laws governing consumer protection.

Amongst other things, the ACL regulates:

- Consumer guarantees on the purchase of goods and services; and
- The fairness of consumer contracts.

Consumer guarantees

The obligations of retailers and manufacturers of consumer goods are now tightly defined. These provisions of the ACL apply to all goods and services purchased for **domestic use**. The range of goods and services that the new provision applies to is just about unlimited.

The consumer guarantees are designed to ensure that a retailer or manufacturer must repair or replace, or refund the price for, defective goods or services. If there is a major defect, the consumer can choose which remedy will apply. This consumer choice is a major departure from industry practice. Traditionally, contracts for the supply of goods and services usually reserve to the retailer or the manufacturer the right to decide whether to repair or replace a defective item, or to refund the price.

There are now 9 consumer guarantees for goods that both retailers and manufacturers must comply with. The goods must:

- be of acceptable quality. *This will depend on the nature of the goods and the price paid.*
- be fit for purpose made known to the retailer before the sale. *This is an important change. If a consumer told a retailer what a particular item was going to be used for, the onus falls on the retailer/manufacturer to advise the consumer that the goods may not be suitable for that purpose. This reverses the traditional position that the consumer must make sure the goods are suitable for their intended purpose.*
- match the description of the goods prior to sale.
- match any sample or demonstration that the purchase was based on.
- meet any express warranties about performance and durability.
- have available for a reasonable time after the sale accessible spare parts/repair facilities provided by the manufacturer or importer.
- be sold outright with full title to the consumer.
- be sold, without any attempt at repossession unless sold under a payment plan.
- be sold free from any undisclosed security (such as an existing charge).

There are 3 consumer guarantees for all consumer services. They must:

- be undertaken with due care and skill, using reasonable steps to avoid loss or damage.
- be fit for the intended purpose specified by the consumer prior to the provision of the services.
- be supplied within a reasonable time.

Unfair contracts

The ACL has also introduced new measures to provide remedies for consumers who suffer loss under **unfair terms** in a **standard form consumer contract**. **Unfair terms** can be declared void.

A contract for the supply of goods and services will be assumed to be a standard form contract unless the retailer, manufacturer or vendor can show otherwise. The onus is on the retailer, manufacturer or vendor. Importantly, a consumer contract includes a contract for sale of an interest in land, including off the plan contracts for sale.

A term in a consumer contract will be deemed to be unfair if:

- it would cause a significant imbalance in the parties' rights and obligations arising under a contract;
- it would cause either financial or other detriment to the consumer if the retailer, manufacturer or vendor relied upon the term; and
- it is not reasonably necessary to protect the legitimate business interests of the retailer, manufacturer or vendor.

Claims by consumers

Factors which may determine that a contract is a **standard form contract** or not include:

- the retailer/manufacturer/vendor has all or most of the bargaining power;
- the standard contract is submitted on a 'take-it-or-leave-it' basis;
- the consumer is not given an effective opportunity to negotiate the terms of the contract; and
- The terms of the contract do not take into account the specific characteristics of the consumer and/or the particular transaction.

The Courts **may** take into account any matters that they think relevant to determine whether a term is **unfair**. But the Courts **must** take into account the context of the contract as a whole and whether the term is **transparent**. A term of a contract is **transparent** if it is legible, presented clearly and written in plain English. *This means that the language and the format of a contract can influence whether or not its terms will be interpreted as unfair (e.g. small font, double sided pages, terms available only on a website and not the printed contract)*

Examples of unfair terms in consumer contracts

Although there has been no case law to provide concrete guidance on the application of the ACL as yet, the following types of clauses in consumer contracts (which typically give broad or unilateral rights to retailers, manufacturers and vendors) may be **unfair** under the ACL:

- **Exclusion of warranty clauses** – the retailer/manufacturer/vendor makes no representation or warranty that documents in a contract are accurate or reliable.
- **Extension of completion** – the retailer/ manufacturer/vendor has the unilateral right to extend the supply or completion date under a contract. *The Courts might consider that these largely unqualified powers are more than is necessary to protect a retailer/ manufacturer /vendor.*
- **Reservation of powers** – clauses where the retailer/manufacturer/vendor has the unilateral power to determine issues under the contract including:
 - varying the terms of the contract, including the price or the characteristics of goods or services;
 - determining whether the contract has been breached or interpret its meaning.
- **Limitation of liability clauses** – limiting the retailer/manufacturer/vendor's liability for its agents.

In relation to contracts for sale of land, the following types of clauses (typical in off the sale contracts for sale) may also be open to challenge under the ACL:

- **Assignment** – clauses permitting assignment of the contract to the detriment of the consumer without its consent.
- **Amendments** - varying the characteristics of the inclusions to be supplied or the interest in land to be sold. This would include clauses allowing changes to appliances and/or car and storage allocations.
- **No re-sale clauses** – consumers are prohibited from on-selling their lot before completion.
- **Time frames and waiver of rights** – consumers have strict and short periods of time to respond to major changes to development documents.
- **Defects liability clauses** – the consumer is entitled to lodge only 1 defect notice within a specified period and the vendor has an extended (or even uncapped) time within which to remedy defects.
- **Penalty clauses** – even standard interest-for-default clauses have been targeted by certain lawyers as open to challenge.
- **No objection clauses** – limitations on or blanket prohibitions against a consumer right to object to or claim compensation under the contract.

What should you do now?

Retailers, manufacturers and vendors of consumer products need to ensure that their businesses are aligned with the new consumer guarantee and unfair contracts requirements. This includes:

- Ensuring point of sale staff are aware of the impact of the consumer guarantees, including in relation to representations made about suitability of goods and services;
- Ensuring advertising materials all comply with the new guarantees; and
- Contracts, and terms and conditions of sale, are compliant.

Retailers, manufacturers and vendors (including vendors) can reduce their risks of claims against them under the ACL by:

- reviewing their existing contracts to assess whether there are particular terms which may be seen as unfair if challenged.
- be prepared to deal with problem clauses on a case by case basis to avoid litigation and setting unhelpful precedents under the ACL.
- review and where relevant amend their template documents to be used for future sales and projects. *This means assessing particular clauses that give vendors wide discretions or unilateral rights that cannot be objected to.*
- review procedures to ensure that, if challenged, the retailer/manufacture/vendor can show that it engaged in negotiations with particular consumers, and agreed the terms of particular contract, in the context of that consumer's specific transaction.
- Keep detailed notes on why particular terms were included in contracts. *This may assist by showing that the particular clauses were specifically considered as a way to protect its legitimate interests in relation to a specific site or consumer.*

Blackstone Waterhouse Lawyers are happy to provide you with legal advice on the matters or comments contained in this article.

If you have any queries in relation to any aspect of this article please contact Danny Arraj (Managing Partner) or Mark Fitzpatrick (Special Counsel) on +612 9279 0288.



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Contact Person	
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Email Address:	
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Type of business or Industry	
Number of years in Business	
Number of Employees	
Category of Nomination:	

ALCC Nomination Form:

Business Awards Dinner - 2011

Achievements: Please list	
1.	
2.	
3.	
Nominated by:	
Full Name:	
Contact Numbers:	
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Non – Member	

Kindly complete this form and return to: The Australian Lebanese Chamber of Commerce by Friday 16th September 2011 or by email to info@alcc.com.au

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FOREIGN INVESTMENT TO LEBANON IN Q1 AND Q2 2011



Foreign investments to Lebanon have maintained their pace in the 1st Quarter of 2011 across various economic sectors, despite the overall regional slowdown in investment activity.

Two significant transactions took place in the Telecommunication and Media sector. The Swedish telecom company, Ericsson, partnered with the local mobile operator Alpha, managed by Egyptian Orascom Telecom, to introduce the 3G technology in Lebanon. Ericsson will be responsible for the upgrade and modernization of the current Alfa mobile network to 3G/ HSPA+ technology across the country.

Monaco Telecom, a Monaco based telecom operator, signed an agreement with eight local TV channels among which are LBC, Future TV and MTV, to add content to its television bouquet. The agreement was signed on January 13, 2011. LBC was set to start its transmission on January 18, 2011, with the remainder in the spring of 2011.

In parallel, a series of foreign companies operating across various fields such as services, manufacturing and electronics have opened branches in Lebanon to serve the local market.

ICT- A SECTOR WITH POTENTIAL IN SHAPING THE LEBANESE ECONOMY



IDAL'S ROLE IN SUPPORTING THE ICT SECTOR

As part of the Government commitment to support the growth of the ICT sector and with IDAL mandated by Investment Law No. 360 to assist in the support and promotion of Lebanese products, we are in the process of putting in place a program that would help increase investment levels to this sector.

A workshop was organized with key ICT representatives at IDAL's premises, where a preliminary program of cooperation was discussed. Part of the program will include:

- 1 Holding awareness campaigns on IDAL's incentives for the ICT sector
- 2 Providing financial and technical support to international fairs
- 3 Launching of a Technology Internship Program

Our implementation of the program has started with a workshop that we are organizing at the Chamber of Commerce, Industry, and Agriculture of Beirut (CCIAB) on June 21, to provide ICT companies with an overview of the various fiscal and administrative incentives available to them.

WHY THE ICT SECTOR?

The Lebanese Information Communication and Technology (ICT) industry is a very promising sector with potential in shaping the Lebanese economy's landscape if the right policies are adopted on a national level. Potential for the sector stems from the country's labor force which is endowed with the most competitive skills in the region. Around 1200 new ICT university graduates join the sector every year, spread over the fields of engineering, computer science, and applied informatics. This sector offers vast FDI opportunities including investments in software related activities such as financial services software, business applications, in addition to other activities leveraging the multi-lingual workforce (e.g., translation, language, e-learning software).

THE ICT SECTOR IN NUMBERS

- The ICT market in Lebanon is estimated to have a **size of 287 million dollars in 2010** (based on data from Business Monitor International (BMI)[1]), and is forecasted to reach a value of 321 million dollars by end of 2011 (or the equivalent of a 11.8% rise) based on similar estimates.
- Employs around 7,000 people.
- **Over 20%** of Lebanese **companies are involved in the IT sector** (either in the hardware, software or as internet service providers). **A high share of companies is involved in the wholesale and retail of computers and electronics** with a considerable share also involved in software development.
- Almost 25% of firms involved in software business are export oriented with over 75% of their revenue generated outside the country.
- **Key exported ICT products include** business related applications and web development, as well as software development tasks outsourced from Europe to the Lebanese market. The export of semiconductors has also been picking up in recent years.
- **The Gulf region is the primary export destination for Lebanese products;** other Middle Eastern countries rank second, whereas European countries rank third, with countries like France at the top of the list.
- Lebanese ICT firms have a **prominent presence in the banking sector** (almost all procedures are automated,...). Other equally significant fields include retail, education, distribution and general trade.
- **Broadband penetration rate** was estimated at 4.9% in 2008, better than some of the neighboring countries but still low compared to other emerging economies.
- **Mobile penetration rates are in fact among the highest in the region and have totaled 68%** by end of 2010.

Courtesy of Investment Development authority of Lebanon (IDAL)

[1]BMI or Business Monitor International is an independent information provider in the fields of Country Risk and Industry Research.



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ALCC YOUNG PROFESSIONALS NETWORKING EVENT



On Monday the 16th of May at the Hilton Hotel in Sydney, 100 young professionals gathered together for a networking event organised by the Young Professionals Committee of the Australian Lebanese Chamber of Commerce.

The Young Professionals were greeted upon entry by some new faces and light refreshments. This was a great chance to mingle and get to know other young attendees, who hail from a variety of professions and industries.

The theme for the evening was “How to Build a Successful Brand” and it was fitting that the guest speaker for the evening was John McGrath, Founder and CEO of McGrath Real Estate, which today is one of the leading Real Estate Agencies in Australia.



John McGrath shared his experiences in the business world with the Young Professionals and provided value and insight into the challenges and competencies which have been essential in driving John McGrath in building his brand.

These insights included seven strategies which John McGrath has implemented in his own business, which has awarded him a reputable name in the Real Estate Industry. One of the seven strategies focused on the maxim that “a business never outpaces its leader”. This highlighted the importance of business leaders being the direct driving force behind the success of their business. John also highlighted the importance of leaders ensuring the brand remains energetic, constantly innovates and differentiates itself from its competition. He summed up by emphasising the necessity of turning your ordinary consumers into raving fans, by going the extra mile to ensure consumers satisfaction.

Overall, the evening was very successful in ensuring that the Young Professionals of the future were equipped with the information to assist them in their entrepreneurial dreams of the future. This networking event for the young professionals was definitely the first of many more to come, which will provide a unified framework for enthusiastic and ambitious Young Lebanese Australians to “Unite for Growth”.

About ALCC YPC:

Comprising of six members, the ALCC Young Professionals Committee was established with the aim to provide a platform and encourage networking and collaboration for like minded young professionals and entrepreneurs from the Australian Lebanese Community. The ALCC Board would formally like to welcome and acknowledge the following people to the newly formed Young Professional Committee:
Pierre Wakim, Jade El-Choueifati, Matthew Semaan, George Bou-Samra, and John Paul Abi-Khattar.



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Stock Market Update.



Peter Semaan, Austock Securities

23 June 2011

The 500 point correction on the ASX 200 (as shown below) is harsh and a reflection of the fear and uncertainty many investors are feeling at the moment. The usual suspects were in the spotlight: Greek debt, manufacturing, inflation, employment and housing have been in the spectre of traders in the US.

We continue to advise investors to hold some cash and assess risk weightings within portfolios until we see more stability come to global markets.

On the home front we saw economic activity retract in the March Quarter. The sluggish economic growth will not provide the Reserve bank with any ammunition to move interest rates in the near term. Thus the AUD/USD cross rate could retreat back to \$1.00 or lower and should be a 'Good' thing for the Australian economy and equity markets, particularly the industrials and financials.

At the same time Australian households have lost confidence and 'thrown in the towel' on equities as an asset class. This is usually a good sign that the bottom is near. It is not surprising that this coincides with the price/earnings ratio for the top 200 companies on the ASX for FY12 is at 11.9 which is the lowest it has been for many years. This represents good value for medium term and long term investors looking for entry into some solidly performing blue chip stocks whose dividends have either been maintained or increased. Sound companies with firm fundamental underpinnings should see their share price increase over time to more appropriate levels.

The table shows the 10 largest companies in the ASX 200 representing just under 50% of the index, illustrating the low average Price to Earnings ratio and high average Dividend Yield, based on consensus forecasts for FY 2012.

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	Price	Market Cap	Index Weight	FY 12 Div Yield	FY 12 PER
BHP	\$41.95	\$134.6 bln	11.32%	2.30%	8.9
CBA	\$49.52	\$77.2 bln	6.55%	6.90%	10.8
WBC	\$21.21	\$63.8 bln	5.38%	7.60%	9.7
ANZ	\$21.34	\$55.4 bln	4.69%	7.10%	9.3
NAB	\$24.36	\$52.9 bln	4.45%	7.60%	9
TLS	\$3.04	\$37.8 bln	3.13%	9.20%	11.3
WES	\$31.46	\$31.6 bln	2.60%	5.90%	14.4
RIO	\$77.82	\$34.0 bln	2.89%	1.50%	7.7
WOW	\$26.88	\$32.7 bln	2.74%	5.10%	13.9
NCM	\$36.57	\$28.0 bln	2.36%	1.10%	17.5
		\$548 bln	46.12%	Avg: 5.43%	Avg: 11.25

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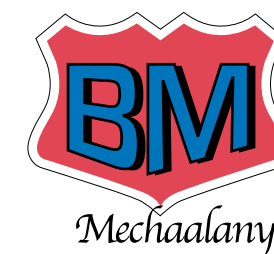
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LEBANON'S TOURISM INDUSTRY



This summer, Lebanon's tourism industry is once again in need of outside help, from the Lebanese in the Diaspora, the Gulf States and other potential visitors in order to revive Lebanon's tourism sector which has suffered terribly as a result of the political issues that delayed the formation of a new Government.

At a time when some countries in the Middle East Region are facing political and security unrest, Lebanon is in a good position, security wise to attract a lot of visitors from abroad.

To achieve this, Lebanon's tourism companies in addition to government assistance should focus a great deal more on what Lebanon has to offer. The Lebanese authorities should also do all they could to make sure that all visitors receive the treatment they deserve by all relevant sectors.

This is to ensure repeated regular visits, and to create the good image of Lebanon.

In an effort to further strengthen the Lebanese Tourism industry, Central Bank Governor, Riad Salame is proposing the creation of a development Bank that would finance the infrastructure projects, and grant loans to the private sector for all countries in the Mediterranean Region, Lebanon included.

This small, amazing country has done it time and again, and has proven that if given the opportunity to enjoy stability, it can do wonders for all to experience what Lebanon has to offer.

Michael Rizk

Head of Trade Relations, Australia and Lebanon



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