

Liability and redress under the Cartagena Protocol on Biosafety

The International Grain Trade Coalition (IGTC) made good progress on behalf of the international grain trade at a meeting held in Kuala Lumpur on liability and redress within the context of the Cartagena Protocol on Biosafety.

Dennis Stephens of the Canada Grains Council attended on behalf of IGTC and reports that some changes, agreed at the meeting, to the wording of the Supplementary Protocol on Liability and Redress considerably reduce the burden of responsibility on the trade for any damage to biodiversity resulting from the transboundary movement of living modified organisms (LMOs).

There had been considerable concern that, under the old definition, the term 'operator' would result in traders being held responsible for any damage arising from transboundary movements, but this has now been amended to 'any person in direct or indirect control of the living modified organism which could, as appropriate and as determined by domestic law, include, inter alia, the permit holder, person who placed the living modified organism on the market, developer, producer, notifier, exporter, importer, carrier or supplier'.

While the changes may appear subtle, they are very significant, said Dennis. "The changes place the focus of damage to biodiversity on the living modified organisms and not, as before, on the activities involved in the transboundary movement. Delegates have in effect, created the fault based liability system that we have been recommending."

The Bribery Act 2010 and how it affects you



By Aurora Villacellino, Thomas Cooper

The Bribery Act 2010 (the "Act") received Royal Assent on 8 April 2010 and is expected to enter into force shortly. It provides a new consolidated scheme to cover bribery offences.

The Act's four new criminal offences comprise two general offences, broadly offences of bribing another person and being bribed, a discrete offence of bribery of a foreign public official and a new 'corporate' offence committed if a commercial organisation fails to prevent bribery.



As regards the general offences, it will be illegal to give, promise or offer a bribe, meaning a financial or other advantage intended to induce a person to 'improperly' perform a function of a public nature or any activity connected with a business which the person is expected to perform impartially or in good faith, or to reward that person for doing so. Improper performance will be determined by reference to what a reasonable person in the UK would expect in relation to the performance of the activity. This means that local customs will be disregarded unless expressly permitted by local law.

British nationals or persons who are ordinarily resident in the UK will be caught by the legislation, even if the relevant act takes place outside the UK. In theory a British trader working for a foreign company could be guilty of an offence if he/she paid a 'facilitation' payment in, for example, Africa to expedite performance of a routine administrative function. It remains to be seen whether the authorities would prosecute in such cases. The new corporate offence is a strict liability offence and all commercial organisations, including companies and partnerships, that are either registered in the UK or have operations in the UK are covered by the legislation.

An organisation will be liable where a

person associated with the organisation bribes another person intending to obtain or retain business or an advantage in the conduct of business for the organisation.

It will, however, be a defence for the organisation to prove that it had in place adequate procedures designed to prevent associated persons from paying bribes. In assessing adequacy, the Ministry of Justice has suggested it may be relevant to take account of the organisation's size, the particular sector or country in which it operates and the foreseeable risks.

All businesses are advised to revisit their anti-corruption policies. For larger organisations, an adequate anti-corruption programme will probably need to extend beyond a clear written policy to include steps such as regular 'on the ground' training of staff, procedures to vet third party contractors or agents, inserting anti-bribery clauses into supply or other contracts with third parties where appropriate, setting up internal systems which allow staff easily to voice concerns at an early stage coupled with procedures for investigating such concerns and, above all, follow up monitoring to ensure that any company procedures are complied with in practice.

The maximum penalty for the corporate offence is an unlimited fine. The maximum penalty for the other offences is 10 years imprisonment.

For further questions please contact:
aurora.villacellino@thomascooperlaw.com or charles.williams@thomascooperlaw.com