

Crop Seed Company Propositions for Improving Current Seed Regulations

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Introduction

The sensitive nature of the crop seed industry requires some form of regulatory framework for it to function well, and reliably supply quality seed of improved varieties to all farmers. The regulatory role, which is the ultimate preserve of public sector agencies, is often complicated in Kenya by significant public sector involvement in other areas of the sector, most importantly research and development of new crop varieties as well as commercial production and distribution of seed. However, the private sector has an important role to play, as it is best positioned to carry out large scale multiplication and distribution of seed of improved crop varieties. Given this, it is critical that any or all sector regulations be developed in an inclusive manner, taking into account the interests of and incentives for both public and private sector enterprises. Public and private sector enterprises in the seed industry often have different perspectives of what constitutes ideal regulatory reforms, and consequently have divergent views on the necessary remedial measures and the pertinent roles of each sector player. It is imperative that both voices be accorded requisite attention as seed industry stakeholders in order for the country to develop a robust and competitive seed industry.

The Challenge for Seed Industry Regulations

Regulators and the private sector alike wrestle with a basic dilemma in the seed industry. The challenge is determining how to strike a

balance between the clamor for an increased oversight-oriented regulatory framework by the public sector on the one hand and, on the other hand, the private sector's desire for a self-regulating approach based on high standards that will encourage and sustain private sector vibrancy while offering high quality improved crop seed to farmers. The thrust of the government seed industry regulatory agency is to continue protecting smallholder farmers from distributors of low quality crop seed while gradually shifting toward a more liberal seed industry. While the sector continues to pursue solutions to this challenge, it is interesting to note that the most vibrant and advanced seed sectors outside Africa are generally based on regulatory frameworks that allow for high degrees of self-regulation, but with strong penalties for non-compliance. Kenya's seed industry is therefore at a cross-road.

Seed industry stakeholders collectively envision a seed industry characterized by high quality improved seed, reliable supply to farmers, innovation, and high levels of efficiency that permit increased access, high value, and affordability. In 2013, the Ministry of Agriculture kicked off the seed sector regulations review process to bring this vision to life, and proposed new draft regulations. At least three stakeholder meetings were subsequently convened with various groups to discuss the proposed regulatory revisions. Seed industry stakeholders' comments from these meetings were consolidated, summarized, and shared with policy makers. To date, new regulations incorporating the seed industry stakeholders' feedback have not been finalized. It is this feedback that is the subject of this brief.

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Why the Seed Industry is Concerned with Current Seeds Regulations

The tone of seed regulations sets the pace for the growth of the seed industry, which in turn accelerates the pursuit of improved performance of the agricultural sector. These may consequently lead to the achievement of the Country's over-arching objectives of improved agricultural productivity and food security. Conversely, unfavourable seed regulations constrain the development of the seed industry, deter increased private sector investment, and raise seed costs to farmers. With the new Constitution's provision for public participation and input into pertinent policy and legislation, it is imperative that all affected players in the seed industry, both public and private, contribute toward the development of the industry's regulatory framework.

The current seed regulations are generally viewed by industry stakeholders as overly bureaucratic and more focused on protecting seed consumers from low quality seed through compulsory certification than on stimulating the industry toward a competitive environment hinged on self-regulation that leads to higher seed quality, more reliable supply, greater competition, more innovation and ultimately lower costs. The following sections highlight some of the key issues raised by seed companies with policy makers regarding the proposed regulations.

Regulatory Improvements for Consideration

Composition of Regulatory Committees

Under the amended (2013) Seeds and Plants Variety Act, the main functional organ of the Seed and Plant Varieties regulation is the Seeds Regulation Committee whose membership and composition is aptly defined and consists primarily of government representatives. Likewise, there are similar committees for National Plant Variety Release and other seed-related duties. Typically, there is one membership position assigned to a representative of the Seed Trade Association of Kenya (STAK), but seed industry stakeholders hold the view that there is need for a more direct involvement of seed firms, including private sector seed companies, in the committee as permanent members so that their interests can be fairly and adequately represented. This

can be accomplished by expressly making a provision for the inclusion of representatives of private seed firms in the committee.

Registration of Seed Merchants

The registration of seed merchants (Seed Regulation 6 (3) a) requires that applicants have at least seventy five percent of their business in seed processing, production or marketing for approval to be granted. However, many seed merchants such as agro-vets and agro-dealers engage in or stock a multiplicity of products and services that may or may not be related to seed, recognising that the seed business is seasonal and requires support from other income streams. This registration requirement is therefore restrictive and a constraint to increased investments in the sector. Private sector seed industry stakeholders propose that this requirement be removed. They believe entry conditions should place less insistence on pre-conditions for registration and more emphasis on clearly defined operating rules and strict enforcement of sanctions against firms that violate defined regulations.

Registration of Growers

Seed growers of registered varieties in the country are required to register with the government through their respective seed merchants and are limited under current regulations to growing not more than two cultivars in a given area. However, the seed companies cite the fact that global best practice has shifted the responsibility of managing seed growers from the government to seed merchants, leaving the regulatory agency to set minimum quality standards and enforce sanctions against seed merchants who do not meet these standards due to errant out-growers. In addition, global best practices indicate that capable seed growers should not be limited as to the number of cultivars they can grow in any one location as long as they maintain defined isolation standards.

Seed Certification

Seed companies acknowledge that the ultimate authority for seed certification in Kenya remains with KEPHIS. However, there is strong sentiment that the current certification approach could be made much more efficient, effective, and practical. Seed production and processing are

extremely time-sensitive activities, so certification bottlenecks and additional bureaucracy can be very problematic during the key harvesting and processing periods. There are ongoing discussions about how to outsource certain certification steps as provided for in Seed Regulation 9 (6), but it is very important that these discussions include pragmatic measures for moving towards self-regulation so that seed companies can be free to develop their own cost-effective and efficient quality control measures. Finished products can be tested by KEPHIS to determine overall quality, and improved channels for farmer feedback about low quality seed can also play an important role in identifying seed companies not meeting quality standards.

There can also be a role for third party quality control experts. Quality control tasks such as field inspections and seed lot examinations (Seed Regulation 10 on Seed Field Inspections) are currently conducted by the regulatory agency personnel to the exclusion of everybody else and remain mandatory. However, it is impractical to expect that the regulatory agency personnel can effectively cover all seed fields ready for inspection especially during peak seasons or examine all seed lots prior to labeling and sealing. Again, in keeping with global best practices in the seed industry, the trend is toward developing independent seed certification agents and testing laboratories subject to prescribed conditions and licensing. This reduces demand for, and the burden on, regulatory agency personnel and may improve seed certification efficiency and at the same time significantly reduce certification costs.

A further consideration relates to whether or not certification should be mandatory, or voluntary. Countries such as India do not have mandatory certification for major crops such as maize, yet their seed industry produces very high quality seed. There are, however, serious implications in such countries for companies that put low quality seed into the market. Offending companies can be issued a “Stop Sale” order by the government, financial penalties may be assessed, or various states or countries may revoke licenses or put a company on probation until problems are resolved.

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Packaging, Labeling and Sealing

The current Seeds Regulation 13 states that seed lots shall not be labeled or sealed before test results have been released by the Official Seed Tester. It further requires that in case a seed lot has to be moved or marketed prior to the release of Official Test results, then the seed merchant has an obligation to provide the purchaser with a written statement indicating that the seed lot is being marketed prior to the release of Official Seed Testing results.

In many instances, seed merchants have the capacity and ability to conduct preliminary seed testing and provide provisional results on the basis of which advance marketing decisions can be made. Seed companies propose that restrictive conditions relating to seed testing such as these be expunged and the associated costs set aside.

Seed Importation

In 2013 and 2014, approximately 11 percent and 8 percent respectively, of certified crop seed sold in Kenya was produced outside the country and then imported. However, the current seed importation process is lengthy with multiple requirements including examination, sampling, testing and pre-control that make the seed importation process longer and more costly than necessary. In particular, pre-control is viewed as a redundant procedure with diminished added value if sampling and testing are conducted properly.

While it is important to assure seed quality through rigorous import regulations, private sector seed industry stakeholders propose the removal of redundant requirements especially pre-control that unnecessarily prolongs the importation process.

National Performance Trials (NPTs)

All crop varieties are required to undergo NPTs before being released, which means they can then be sold in Kenya. These trials are managed by KEPHIS and effected through a Trials Committee and a Release Committee. It is noteworthy that just as in the case of mandatory certification, many if not most countries with vibrant seed sectors do not utilize NPTs anymore

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and instead rely on market-based approaches for registered seed merchants, customer acceptance and repeat purchases. This approach utilizes a simple variety registration process rather than the costly and lengthy NPT process.

If the NPT process must be maintained, many sector participants call for a thorough review of the release requirements. For example, a key proposition is to move away from the requirement that a new variety should register more than 10% improvement in yields over the control varieties. There is supporting evidence for this approach. Many countries that have recorded significant variety improvements over time have adopted an incremental approach where crop varieties with yield improvements as low as 1.5% have been commercialized, but over time have cumulatively improved productivity at a much faster rate than is currently seen in Kenya.

Another proposed modification is based on regularly recognizing and according some weight on superior characteristics other than yield. The main proposition here is to critically re-evaluate, clarify and justify the continued use of NPTs in accelerating commercialization. In the meantime, it is critical that the composition and operations of the two committees be reviewed to make them more efficient and effective. In particular, as noted earlier, private sector participation needs to be increased through greater representation on the committees.

Conclusion

The seed industry private sector stakeholders recognize the critical role of government regulatory agencies in ensuring a high performance industry but simultaneously advocate for a regulatory environment that allows efficient business operations and creates an enabling environment for growth, innovation and competition. The propositions emphasize market growth that is accelerated by increased opportunities for self-regulation, with appropriate checks and balances. As in many if not most other industries, companies emphasizing exceptional quality and value will develop

strong reputations and brand loyalty, and will strive to exceed minimum government standards. Competition, including competition with respect to quality, is good for the sector and will drive greater value for customers.

The private sector propositions with respect to current seed regulations reveal a preference for a seed industry regulatory approach that imposes deterrent penalties and fines for violating rules and procedures in place of a preventive approach that attempts to test and certify all seed quality aspects for all crops, at virtually all stages, for all contract growers and in all processing locations. The current approach raises seed costs, reduces the timely availability of seed, limits private sector growth and reinvestment in continuous quality improvement, and often gives a false sense of security to farmers regarding seed quality. The seed companies' approach recommends a shift in enforcement strategy and re-orientation toward stringent and effective self-regulatory mechanisms, truthful labeling and clear understanding and enforcement of offenses and corresponding penalties. At a minimum, the proposals advocate relieving high performing and high integrity seed companies, both private and public, of specific regulatory steps contingent on maintaining overall seed quality and truthful labeling practices that can be easily verified at market level.

In addition, private sector seed industry stakeholders view the National Performance Trials contribution to the sector as contestable, in the NPT's current form. They believe the NPTs need a complete review and update to ascertain costs and benefits, and whether evaluation of new products is a public or a private sector responsibility.

Private sector crop seed firms appear most willing to engage with government policy makers to discuss these and other issues impacting Kenya's crop seed sector and ultimately Kenya's food security. A key element of this engagement should be developing a greater understanding of how other countries ensure that their farmers access high quality seed, and the appropriate roles for both public and private sector participants.



Better Markets, Better Lives

This policy brief is based on stakeholders' positions as expressed in Reports of the Seed Industry Private Sector Roundtable Meetings and Convenings on the Seed and Plant Varieties Regulations in late 2013 and in the course of 2014, found at www.seedsectorplatformkenya.com/downloads