HIGH-LEVEL ANALYSIS OF KEY LEGISLATION RELATED TO NEW ALLIANCE FRAMEWORK

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CHAPTER ONE: INTRODUCTION

Under the New Alliance Framework the Mozambican government is committed to a number of legislative reforms. The purpose of this paper is to comment briefly on the legislation promulgated to date in reference to its fulfillment of the New Alliance (NA) objectives.

One of the constraints in undertaking this work has been access to the necessary legislation. The following table illustrates the legislation expected to be promulgated and its current status.

Item	Status	No.	Portuguese	English
Seed Policy				
Seed regulations		Decree 12/2013	Yes	No
Seed regulations 2 (SADC protocol compliance)	Not drafted yet			
Fertilizer strategy			No	Yes
Fertilizer regulation		Decree 11/2013	Yes	Yes
Cessao de exploracao	Not drafted yet			
Eliminate VAT - revisions to VAT law				
Private credit information bureaus				
Mobile finance regulations	Not drafted yet			
Food fortification regulations	Draft		Yes	

Of necessity the following analysis is general and should not be considered as a replacement for a full legal review where that is required. My aim has been to highlight any areas of major concern particularly for the private sector.

CHAPTER TWO: THE LEGISLATION

DECREE 12/2013, SEED REGULATIONS

The NA objective in terms of seed policy and regulation is to increase domestic input and private sector involvement.

Specific objectives under NA Objective I are:

1. Revise and Implement National Seed Policy, including*:*

a) Systematically cease distribution of free and unimproved seeds except for pre-identified staple crops in emergency situations.

b) Allow for private sector accreditation for inspection.

2. Implement approved regulations governing seed proprietary laws which promote private sector investment in seed production (basic and certified seed).

3. Revise and approve legislation regulating the production, trade, quality control and seed certification compliant with the Southern African Development Community (SADC) seed protocol requirements

Therefore Decree 12/2013 should be expected to:

- Allow private sector accreditation for inspection
- Promote private sector investment in seed production through recognition of intellectual property and consequent protections
- Focus on production, trade, quality control and certification
- Be compliant with the SADC Seed Protocol

This decree revokes a number of preceding ones with the aim of bringing together all seed-related legislation in one document, which is welcome.

Recognition of seed varieties is carried out on authorization of the Minister of Agriculture through the relevant subcommittee (*Subcomité de Registo e Libertação de Variedades* (SCRLV)). MINAG is to produce an annual approved list which is published in the government gazette. This in practice means that any varietal authorised during a year cannot be used until the next annual publication of the list. (Arts 8-11)

Non-resident companies cannot register seeds in Mozambique. Registration must be carried out through a local company or research institute (Art 13). In practice this presumably means that a company in Mozambique wanting to import seeds approved in another SADC jurisdiction cannot do so until the producer of that seed has had it registered in Mozambique. Only approved seed can be imported, unless it is for testing purposes (Art 47). While this may be relatively simple in the case of seeds for staple crops, it is likely to slow down the process of development of other types of crops such as nuts, fruits, and even forestry seedlings.

Seed exports also require specific authorization from MINAG (Art 51). Exports can be temporarily suspended (Art 52).

Seed varieties requiring registration must be approved following a process which requires it to be grown and monitored in test fields for at least two agricultural seasons (Art 13, para 3 clause c)). New seed varieties from the SADC region can be registered, but must first demonstrate that they are registered in at least two other SADC jurisdictions. The variety is then submitted to the SADC Program Implementation Unit for approval and approval is communicated to other SADC countries.

Both registration procedures seem complex. It is not entirely clear from the legislation how the Mozambican and SADC legislation interacts. However the PDF document “Mozambique Seed Registration Process June 26, 2013” produced by MINAG provides details of the expected procedures.

Registration to produce or process seeds requires registration the costs of which, including inspections visits, are borne by the company. There are a series of annual and seasonal reporting and inspection requirements to be complied with throughout the company’s activities. The procedures and requirements seem complex and onerous on initial analysis (Arts 15 – 24).

Private seed inspectors and laboratories are authorized by the legislation (Art 26) in accordance with the NA objective.

Seed trading is subject to licensing (Art 41). The decree makes producers and distributors responsible for controlling the quality of product distributed by suppliers and requires them to have a contractual relationship (Art 42). This seems a potentially complex imposition particularly given the size of the country and the number of producers.

Overall the legislation appears complex and onerous. It does allow for private sector accreditation but the specifics of how such accreditation can be done are not provided. The question of intellectual property is not specifically dealt with by the legislation. The requirements for registration throughout the trade value chain are likely to slow down the trade of seeds. There are quality control requirements and these are stringent, as is necessary in this type of legislation. Certification is dealt with in detail with a number of procedures to be followed. The legislation recognizes the requirements laid out in the SADC seed protocol, however it appears to go beyond the spirit of the protocol and rather than encouraging the exchange of seeds within the region may restrict this by requiring seed producing companies to be registered in or partnered with a company which is registered in Mozambique. The complexity of the procedures, and the attendant costs in terms of time, and financial costs for registration, inspection and certification seem unlikely to significantly promote private sector investment in seed production.

FERTILIZER STRATEGY

The NA objective in terms of fertilizer policy and regulation is to develop domestic input and private sector involvement.

Specific objectives under NA Objective I are:

- Develop and implement a national fertilizer regulatory and enforcement framework.
- Assess and validate the National Fertilizer Strategy

Therefore the Fertilizer Strategy can be expected to promote domestic production and private sector involvement. The strategy was approved early in the NA process, in July 2012, under various other commitments such as the Abudja Declaration to which Mozambique is a signatory. It is not clear if it has yet been formally assessed and validated.

The strategy undertakes a comprehensive analysis of the current fertilizer market in Mozambique and constraints to its development including constraints to private sector involvement. It envisages the creation of the Fertilizer Strategic Program (PENF) which is to run for five years and is defined as "The Fertilizer Strategic Program promotes the development of agriculture through the improvement in the physical flow of fertilizers based on a well-defined distribution system. The distribution system can be operated partially or completely by the public or private sectors.

The strategy goes on to note that "The public sector participates totally or partially in the fertilizer distribution system in place of the private sector when the private sector is unable to supply fertilizers to farmers on time and at competitive prices". The strategy therefore shies away from addressing the main constraints to private sector development in the fertilizer sector and instead seeks to replace this with state intervention. While elsewhere in the document there is robust analysis of the reasons why the fertilizer sector is not functioning, the actions required to correct the market failures are not taken further in the strategy.

In concluding the strategy has the following actions:

- Preparation and approval of a legislative and regulatory fertilizer framework for registry of fertilizers circulating in Mozambique.
- Mandate MINAG and other concerned institutions to implement both PENF and the Regulatory System.
- Wide dissemination of PENF and regulations.
- Baseline study.
- Establish a subsidy program.
- Establish laboratories.
- Prepare an Act for Fertilizers and submit to Parliament for approval

It does not however includes actions (other than the proposal to remove duties and VAT on imports of fertilizers, which is not then included in the budget, though it is included in the activity matrix) which would significantly benefit or promote private sector operations. In fact it may do the reverse by proposing state involvement and subsidies.

The activity of assessing the strategy and likely not validating it but instead bringing it in line with the NA requirements of developing domestic input and private sector involvement should be considered as a priority.

DECREE 11/2013 FERTILIZER MANAGEMENT REGULATIONS

The NA objective in terms of fertilizer policy and regulation is to develop domestic input and private sector involvement.

Specific objectives under NA Objective I are:

- Develop and implement a national fertilizer regulatory and enforcement framework.
- Assess and validate the National Fertilizer Strategy

Therefore the Fertilizer Management Regulations could be expected to:

- Be in line with the Fertilizer Strategy discussed above;
- Regulate the fertilizer sector
- Promote domestic input and production
- Promote private sector involvement

The regulation creates an institution responsible for the oversight of any and all activities related to fertilizer in Mozambique (*Comite de Avaliacao Tecnica do Registo de Fertlizantes* – CATERF) (Arts 5-9). The production, distribution, import, export and use of fertilizer is subject to registration. Registration can only be undertaken by a company duly registered in Mozambique (Art 10). Registration is subject to a fee and is valid for five years (Art 12). It is not clear how registration to use fertilizers applies to family sector farmers.

All fertilizer used in the country must be duly registered and correctly labeled in Portuguese (Art 15). This requirement is potentially complex for any company wanting to import specialist fertilizer not available in the country.

Importation of fertilizer is subject to approval by CATERF and must include information about the expected end users of the fertilizer among other details. Authorization is valid for three months (Art 24). This seems a complex procedure if an importer is consistently importing the same fertilizer for the same purpose. The importer is also responsible for guaranteeing the conditions of transport and storage from entry into the country until final distribution (Art 25). Again this seems onerous particularly for companies that want to import and sell fertilizer to traders who are not the end user. Transport of fertilizer within the country also requires registration (Art 27). Where fertilizer is in transit this is also required, which adds an additional documentary burden to the existing customs requirements. In addition fertilizer in transit must be accompanied by documentation in Portuguese about its nature and any safety measures required for its management Art 27, para 5).

Fertilizer traders must be registered and report quarterly to CATERF (Art 30). There is no indication that fertilizer analysis and inspection can be conducted by private firms (Art 34).

The Fertilizer Management Regulations do not appear specifically related to the Fertilizer Strategy. The levels of requirements and costs of compliance are likely to render it difficult for companies to comply. In addition the regulations are restrictive and do not recognize the need of specific industries (fruit, nut, vegetable, forestry) to import specialist fertilizers. The regulations do regulate the fertilizer sector. There is nothing specifically in the regulations which would serve to promote local production and the complexities in the regulation are likely to hinder private sector investment in the sector.

FOOD FORTIFICATION REGULATIONS (DRAFT)

The NA objective in terms of food fortification is to Support the implementation of the Multi-Sectoral Nutrition Action Plan for the Reduction of Chronic Under-nutrition 2011-2015 (PAMRDC) which is aligned with Scaling Up Nutrition (SUN) Movement.

Specific objectives under NA Objective V are:

- Enact approved Food Fortification regulations (including bio-fortification).
- Determine optimal structure for institutional coherence within nutrition, as per SUN country-level strategic priorities.
- Ensure that PAMRDC and CAADP/PEDSA implementation plans are aligned with one another.

The draft food fortification regulations are therefore considered in light of the foregoing and principally in respect of their impacts on the private sector.

The initial approach to food fortification will target salt, wheat and maize flour sugar and oil (introduction to the legislation and Art 1 which adds in sugar to the list). The introduction indicates that AIMO and AMOPAO have been consulted, there is no indication that APAMO (sugar producers association) has been consulted.

Per Article 4 all maize and wheat flour, sugar, vegetable oil and salt produced, traded or imported must be fortified in accordance with the Mozambican food fortification norms. This is likely to cause significant difficulties unless there is a phased introduction of this requirement. For example family sector producers who sell small amounts of flour are covered. All national producers of these key food staples are covered and may need to alter their production processes – particularly the large millers and sugar producers. One example, sugar for export can be fortified in accordance with the requirements of the importing country – this means two separate production and handling processes – it is unlikely that the local producers are equipped (Art 5).

Fortifying agents produced or imported are subject to registration (Art 10). All production is subject to quarterly quality checks by registered laboratories (Art 11) – there is no indication if these can be private laboratories.

This legislation is concerning in that it does not allow for choice for consumers. All consumers of flour, sugar, salt and vegetable oil will be required to buy fortified produce. In addition it does not take into account the complexities in the production process for manufacturers, or small producers, or indeed exporters who may need to produce items with different or zero fortification for the export market. Additional consultation and studies of the viability of this legislation from both a consumer rights and business perspective is required.