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**GAZETTE OF ERITREAN LAWS  
PUBLISHED BY THE GOVERNMENT OF ERITREA**

**Vol.16/2007 No. 2 Asmara, 12<sup>th</sup> April, 2007 Price 5.00 Nakfa**

**PROCLAMATION NO.159/2007  
Foreign Financed Special Investments Proclamation**



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**Article 1. Short Title**

This Proclamation may be cited as the "Foreign Financed Special Investments Proclamation No.159/2007".

**Article 2. Scope of Application**

This Proclamation shall apply to all Foreign Financed Special Investments (FFSI) of more than Twenty Million US Dollars (20,000,000.00 USD) or its equivalent in other convertible currency.

**Article 3. Definitions**

In this Proclamation, unless the context otherwise requires:

- (1) "Capital" means currency, negotiable instruments, plant, machinery, equipment, buildings, spare parts, raw materials and other business assets;
- (2) "Customs" means the Customs Department of the Ministry of Finance;
- (3) "Director General" means the Director General of Customs;
- (4) "Eritrean bank" means any bank which is incorporated and/or operating in Eritrea;
- (5) "Eritrean Free Zone" shall have the meaning assigned to it under Article 2 of the Eritrean Free Zone Proclamation No.115/2001;
- (6) "Expansion" means an increase in the volume and/or quality of existing production or services, or the addition of related new products or services by either improving production or service-rendering capacity or by opening branches or enlarging facilities;
- (7) "Foreign capital" means investment of foreign origin which shall include foreign convertible currency, negotiable instruments, plant machinery, equipment, buildings, spare parts, raw materials and other business assets brought into Eritrea and includes profit converted into capital;
- (8) "Government" or "State" means the Government or State of Eritrea, respectively;
- (9) "Investor" means any physical person or any juridical person registered outside Eritrea who or which, respectively, has invested foreign capital and goods and equipments in Eritrea; and

(10 "Person" means a physical person or a juridical entity.

#### **Article 4. Objectives**

Without in any way limiting the broad purposes of this Proclamation, this Proclamation has the following objectives:

- (1) to achieve self-sustaining economic growth and thereby to ensure steady improvement in the standard of living of the population of Eritrea;
- (2) to facilitate the rapid expansion of Eritrea's export potential and acceleration of social development;
- (3) to create and expand employment opportunities; and
- (4) to promote, encourage, safeguard and protect Foreign Financed Special Investments.

#### **Article 5. Investment Areas**

- (1) Except for the financial sector, domestic wholesale and retail trade, as well as for commission agency, all other areas of investment shall be open to investors as per the laws of Eritrea that govern them.
- (2) The limitations imposed on investors under sub-Article (1) hereof may be waived by the Government.

#### **Article 6. Allocation of Land and/or Water**

The size, location, purpose, terms and conditions of allocation of land and/or water shall be determined by the relevant laws of Eritrea.

#### **Article 7. License**

The Business Licensing Office of the Ministry of Trade and Industry shall, in coordination with the relevant Government institutions of the State of Eritrea, be responsible for the issuance of the required business license to the investor. It shall be the responsibility of the investor to primarily finalize matters with the concerned institutions.

#### **Article 8. Tax and Customs Legislations Applicable to FFSI**

Without prejudice to the following provisions of this Proclamation, the relevant provisions of the laws of Eritrea that govern customs duties and taxation shall apply to investments made under this Proclamation.





## **Article 9. Foreign Financed Special Investments**

- (1) A Foreign Financed Special Investment located outside the Eritrean Free Zone area that fulfils the following requirements shall be entitled to customs duty and sales tax relief if:
  - a) its initial foreign capital investment or expansion is more than 20,000,000.00 USD (Twenty Million US Dollars) or its equivalent in other convertible currency;
  - b) it is engaged in sectors or activities that have already been recommended and approved by the Government;
  - c) it either exports all of its outputs or sells in the domestic market only a share not exceeding 15% of its total output, provided outputs which are not exported and which are sold domestically shall be subject to the payment of appropriate customs duties and sales taxes at the prevailing rate;
  - d) it has bank accounts in foreign exchange in an Eritrean bank;
  - e) it is committed to acquire all the domestic currency needed for its domestic expenditures only from the bank referred to under paragraph (d) above;
  - f) it is, directly or indirectly, a source of employment for Eritreans; and
  - g) it uses domestic construction materials, equipment, raw materials and intermediate inputs, which are reasonably comparable in quality and price with those of foreign markets.
- (2) The provisions of sub-Article 1 hereof shall not apply to investments in the mining sector and said mining investments shall be governed by the provisions of Eritrean laws dealing with the mining sector .

## **Article 10. Draw-back (Rebate) Relief Option**

- (1) All investments of more than 20,000,000.00 USD (Twenty Million US Dollars) or its equivalent in other convertible currency which meet the requirements of Article 9 above shall be entitled to the draw-back (rebate) option of customs duty and sales tax relief.
- (2) In the draw-back (rebate) option, goods shall pay up-front all customs duty and sales tax before they are released from Customs control. The investment shall, however, be entitled to a 100% refund when Customs is satisfied of the non-existence of any fraud or abuse of the relief privilege.

- (3) An investor desiring to exercise the privilege under this Article shall first submit a written request and obtain Government approval.

**Article 11. Temporary Admission for Inward Processing Relief Option**

- (1) All investments of more than 50,000,000.00 USD (Fifty Million US Dollars) or its equivalent in other convertible currency which meet the requirements of Article 9 above shall be entitled to the Temporary Admission for Inward Processing option of customs duty and sales tax relief on goods intended for facility construction, factory or plant equipment, raw material imports, and intermediate imports. All investments of between 20,000,001.00 USD (Twenty Million and one US Dollars) and 50,000,000.00 USD (Fifty Million US Dollars) or its equivalent in other convertible currency which meet the requirements of Article 9 shall, in the same manner, be entitled to the Temporary Admission for Inward processing relief privilege on those goods that are intended for facility construction and for factory or plant equipment only.
- (2) In the Temporary Admission for Inward Processing option, goods shall be released from Customs control without paying up-front customs duty and sales tax, provided that the investor shall first supply a bank guarantee, a bond, or any other acceptable security instrument that Customs can recourse to in case of fraud or abuse of the relief privilege.
- (3) An investor desiring to exercise the privilege under this Article shall first submit a written request and obtain Government approval.

**Article 12. Implementation Procedures and Particulars**

- (1) The investor shall submit the written request referred to under sub-Article (3) of Articles 10 and 11 above to the Director General. Such written request shall include, among others, the importer's name, a project description, a list of goods to be imported (described by heading, quantity, value, time frame for importation ), and the port of importation.
- (2) The Director General shall approve the request after verifying that the requirements under this Proclamation are met to his/her satisfaction, and ascertain registration of the approved request at the Head Quarters of Customs in Asmara and at the port of entry.
- (3) The investor shall submit a self-prepared commercial import declaration and compute the total duty and sales tax revenue that Government foregoes as a result of the relief.



- (4) The Customs Officers at port of entry shall verify declarations against the approved checklist and proceed to release goods accordingly.
- (5) Customs may visit sites for checking, and run a post-release audit, if necessary, to assure that no fraud and/or abuse occur.

#### **Article 13. Foreign Exchange Accounts and Usage**

- (1) Investors may, in accordance with the regulations of the Bank of Eritrea, open and operate foreign exchange accounts in Eritrea.
- (2) Investors may use the foreign exchange accounts in procurements necessary for the operation of their investments.
- (3) Investors may retain upto 100% of their export earning in foreign currency in Eritrea in accordance with the Bank of Eritrea's regulations.

#### **Article 14. Remittance of Foreign Exchange**

- (1) Without prejudice to the provisions of this Proclamation, investors may, in accordance with the rate of exchange at the time, remit foreign exchange out of Eritrea as follows:
  - a) net profits and dividends accrued from investment capital;
  - b) debt-servicing payment for a foreign loan, provided that the debt was contracted with prior knowledge of the Bank of Eritrea and in accordance with regulations issued by the latter;
  - c) proceeds received from liquidation of investment; and
  - d) payments received from the sale or transfer of shares.
- (2) Expatriates, employed from abroad in accordance with this Proclamation and the labour laws of Eritrea may remit savings from their salaries in accordance with the foreign exchange regulations of the Bank of Eritrea.

#### **15. Investment Guarantees**

1. Investment and/or expansion allowed under this Proclamation and all property on such investment and/or expansion shall:
  - a. not be nationalized or confiscated; and
  - b. not be attached, seized, frozen, expropriated, or put under custody by the Government except for public purposes and with the due process of law.

2. In cases of expropriation, prompt, full and fair compensation in a convertible currency shall be paid by the Government.

#### **16. Settlement of disputes**

1. The mode of settlement of disputes arising in relation to this Proclamation shall be stipulated in the agreements signed.
2. The Government shall accord investors further protection through appropriate bilateral and multilateral investment protection or guarantee treaties (e.g. MIGA, ICSID). Investors may choose any one of the two alternatives.
3. Decisions rendered shall be executed in accordance with the laws of Eritrea.

#### **17. Punitive provisions**

Any person who in relation to this Proclamation:

- 1) intentionally gives false or misleading information or evidence;
- 2) refuses to avail information or documents when requested by the Customs;
- 3) fails to implement decisions rendered by the Customs; or
- 4) is a cause for the non implementation of this Proclamation or directives and decisions made pursuant to this Proclamation;

shall be fined according to the provisions of the Penal Code of Eritrea.

#### **Article 18. Effective Date**

This Proclamation shall enter into force on the date of its publication in the Gazette of Eritrean Laws.

Done at Asmara , this 12th day of April, 2007,  
The Government of Eritrea.





