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PROCLAMATION No. 114/2001

**A PROCLAMATION TO AMEND THE
NATIONAL AGENCY FOR THE SUPERVISION
AND
PRIVATISATION OF PUBLIC ENTERPRISES
PROCLAMATION NO. 83/1995**

PROCLAMATION No. 115/2001

**THE ERITREAN FREE ZONES
PROCLAMATION**

Proclamation No. 115/2001

The Eritrean Free Zones Proclamation Part One – Preliminary

Article 1. Short Title

This Proclamation may be cited as "the Eritrean Free Zones Proclamation No. 115/ 2001."

Article 2. Interpretation

In this Proclamation, unless the context otherwise requires,

"Authority"

means the Eritrean Free Zones Authority established under Article 6 of this Proclamation.

"Customs Proclamation"

means the Customs Proclamation No. 112/2000 of the Government of Eritrea.

"Customs Territory"

means the customs territory of Eritrea as defined in the Customs Proclamation.

"Chief Executive Officer"

means the Chief Executive Officer of the Authority, appointed under Article 9 of this Proclamation.

"Free Zone"

means any part of the national territory of Eritrea, including

any part of the territorial waters of the State and/or building thereon that is declared to be a free zone under Article 5 of this Proclamation.

"Member" means a member of the Board of the Authority appointed under Article 8 of this Proclamation.

"Person" means

- (i) a natural person or any body corporate which is given or is recognized as having a legal personality under the laws of any country or territory;
- (ii) any unincorporated association or unincorporated body of persons whether formed in Eritrea or elsewhere, including a partnership or joint venture or consortium; and
- (iii) the government of a country or territory or any public (local or municipal) Authority in Eritrea or elsewhere and any international organization or body, whether or not its members include Eritrea and whether or not it has a legal personality.

"Minister" means the Minister of Finance.

Part Two – Free Zones

Article 3. Free Zone Objectives

(1) The objectives of the free zone program in Eritrea shall be to contribute to the development of an internationally competitive business sector in Eritrea by creating an environment in which domestic and foreign investors will be encouraged to invest in export business activities thereby:

- (a) creating employment opportunities,
- (b) extending the technology base,
- (c) developing the technical and managerial skill of the Eritrean Workforce,
- (d) expanding Eritrea's external business and marketing contacts, or
- (e) building industrial projects of all kinds and storage for raw and produced materials, excluding storage of drugs.

Article 4. Free Zone Activities

The Authority may permit any activity in a free zone that in the opinion of the Authority will contribute directly or indirectly to the achievement of the objectives set out in Article 3 hereof.

Article 5. Establishment or Termination of Free Zones

- (1) The Minister of Finance may, by a public notice in a national newspaper declare that, on or after a

specified date, the land, territorial waters and/or buildings within the limits defined in the public notice, shall be a free zone for the purposes of this Proclamation.

(2) The Minister may revoke or amend by a public notice a declaration made under sub-Article (1) hereof. The Minister, may not, however, cancel any previous agreement signed with an investor without the agreement of the investor.

(3) The manager of a free zone or zones shall be appointed by the Minister.

Part Three – The Eritrean Free Zones Authority

Article 6. Establishment of the Eritrean Free Zones Authority.

(1) There shall be established on a day designated by the Minister the Eritrean Free Zones Authority to carry out the powers, duties and functions assigned to it under this Proclamation.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and power to sue and be sued in its corporate name, to acquire, purchase, hold, and dispose of moveable or immovable property and enter into contracts.

Article 7. Powers, Duties and Functions of the Authority

- (1) The Authority shall have overall responsibility for the promotion, development, management, control, and administration of free zones.
- (2) In particular the Authority shall:
 - (a) Inform the Minister on all aspects of development, promotion, operation, management and control of free zones;
 - (b) promote investment in free zones and assist persons who want to develop and manage a free zone, or establish a business therein;
 - (c) evaluate proposals for the designation of areas of land, water, and/or buildings as free zones;
 - (d) evaluate license applications from persons to construct, develop, and/or manage free zones or buildings or facilities therein;
 - (e) evaluate applications for an operator's license from persons who want to establish a business within a free zone;
 - (f) establish in consultation with the pertinent Government authority guidelines, standards, and regulations for the development and construction of free zones and buildings and facilities therein;
 - (g) establish in consultation with the pertinent Government authority guidelines, standards, and regulations relating to the behavior of persons developing or managing free zones

or operating businesses within free zones, including standards relating to air and effluent emissions, storage and disposal of dangerous and toxic substances, noise parking and general behavior;

- (h) ensure that the Customs Administration and other elements of the State administration with functions or responsibilities in a free zone provide efficient and competent service, thus enabling free zone developers and licensed operators to transact business with speed and efficiency;
- (i) strive on a continuing basis to enhance and upgrade the skills of workers and the level of technology used in free zones;
- (j) encourage trade and the transfer of technology between free zones and the domestic economy;
- (k) carry out any other functions as may be lawfully assigned to it by the Minister; and
- (l) perform all such administrative functions in relation to the designated free zones as would normally be performed by local authorities.

Article 8. Board of Directors

- (1) The Authority shall be governed by a Board of Directors (hereinafter "the Board") appointed by the Minister, one of whom shall be selected by the Minister as chairperson.

- (2) The Board shall consist of not more than nine persons, including:
- (a) one person nominated by the Minister;
 - (b) one person nominated by the Minister of Trade and Industry;
 - (c) one person nominated by the Eritrean Chamber of Commerce;
 - (d) the Chief Executive Officer; and
 - (e) up to five other persons.
- (3) A Minister or member of the National Assembly or a member of local or Municipal Authority may not serve as a Board member.

Article 9. The Chief Executive Officer

- (1) The President of the State of Eritrea shall, on the recommendation of the Minister, appoint the Chief Executive Officer.
- (2) The Chief Executive Officer shall, for the duration of his or her appointment, be an ex-officio member of the Board.

Article 10. Meeting of the Board

- (1) The Board shall hold as many meetings as may be necessary for the performance of its functions.
- (2) The Minister shall, in consultation with the chairperson of the Board, fix the time of the first

meeting of the Board.

- (3) The quorum for a meeting of the Board shall be five members.
- (4) At a meeting of the Board:
 - (a) the Chairperson of the Board shall, if present, be Chairperson of the meeting; or
 - (b) if the Chairperson of the Board is not present or if the office of Chairperson is vacant, Members of the Board who are present shall choose one Member to chair the meeting.
- (5) At a meeting of the Board each Member present, including the Chairperson, shall have a vote. Any question on which a vote is required in order to establish the Board's view on the matter shall be determined by a majority of votes of those present and voting on the question. In the case of an equal division of votes, the Chairperson of the meeting shall have a second and casting vote.
- (6) The Board may invite any person who has expert knowledge on matters before it to take part in its meeting, provided that such person shall not have any voting rights.
- (7) Subject to this Proclamation, the Board shall issue its own working rules and procedures.



Article 11. Term of Office

- (1) On the anniversary of the inaugural meeting of the Board and thereafter on each anniversary of the inaugural meeting, three Members of the Board shall retire from office.
- (2) Members to retire every year shall be those who have been longest in office since the previous appointment. Between persons who first become Members on the same day, those to retire shall, unless otherwise agreed among themselves, be determined by lot.
- (3) A retiring Member shall be eligible for re-appointment, provided no Board Member may serve for more than nine consecutive years.

Article 12. Conditions of Office

- (1) A Member of the Board may at any time resign his or her membership by notice in writing to the Minister and the resignation should take effect from the date specified in the notice or upon receipt of the notice by the Minister, whichever is the latter.
- (2) A Member shall be disqualified from holding office and shall cease to hold office if the Member:
 - (a) is adjudged bankrupt or makes a composition scheme or arrangement with his or her creditors, or



(b) is convicted of an offence involving fraud or dishonesty, whether in connection with a business or not and whether in connection with the work of the Authority or not.

(3) When a Member of the Board who has been given proper notice of each meeting is absent from three consecutive meetings of the Board without leave or good cause, the Member shall automatically cease to be a Member of the Board. The Board shall inform the Minister in writing immediately after the third consecutive meeting from which the member has been absent, and the Minister may appoint a new Member under Article 8 hereof.

(4) A member of the Board may at any time and for stated reasons be removed from Membership of the Board by the Minister if:

(a) in the Minister's opinion the member has become incapable through ill health of performing his or her functions;

(b) the Member has committed stated misbehavior; or

(c) the Member's removal appears to the Minister to be necessary for the effective performance of the functions of the Authority.

(5) If a Member of the Board dies, resigns, retires, becomes disqualified, or is removed from office, the Minister may appoint a person to be a Member of

the Board to fill the casual vacancy so occasioned. The person appointed shall be appointed in the same manner as the Member of the Board who occasioned the casual vacancy.

Article 13. Delegation

- (1) The Authority may without prejudice to its general responsibilities under this Proclamation, perform any of its functions through or by any Member of its Board or through any other person or persons duly authorized by the Authority to that effect.
- (2) The Authority may without prejudice to the generality of the foregoing, delegate, powers, duties and functions to a committee constituted by the Authority or to member of the staff or other person duly authorized by the Authority to that effect. The terms and conditions of delegation made by the Authority hereunder shall be communicated to the Minister.
- (3) The Authority may, as it thinks proper from time to time, constitute committees for the purposes of this provision and may dissolve any such body.
- (4) Membership in a Committee may include persons who are not members of the Authority or its staff.

Article 14. Staff of the Authority

The Authority may employ as many persons to be members of the staff of the Authority, as it thinks proper from time to time.

Article 15. Disclosure of Interest

(1) When a member of the Board of the Authority, or a member of a committee formed by the Authority, or a member of the staff of the Authority, or any other person engaged by the Authority, has a pecuniary or other beneficial interest in any matter which is being considered by the Board, a committee or the management of the Authority, the member shall declare the nature of the interest to the Board, committee or management of the Authority, as the case may be, prior to any consideration of the matter. The member shall ensure that the disclosure is recorded in the minutes of the meeting concerned. The member shall neither be present during any deliberations in respect of the matter nor take part in or seek to influence any decision in respect of the matter and may not act in relation to the matter.

(2) For the purposes of article sub-Article (1) hereof, a person shall be regarded as having a beneficial interest if he or she or a spouse or member of his or her household has a pecuniary or other beneficial interest in the matter being discussed.

- (3) Where a question arises as to whether or not a person has a pecuniary or other beneficial interest in a matter, such a question shall be referred to the Board for decision.
- (4) Where a person fails to disclose a beneficial interest, the Minister in the case of a Board Member or the Chief Executive Officer in other cases, may remove that person from office or terminate that person's contract.

Article 16. Disclosure of Information

A person shall not disclose any information obtained by him or her while performing duties as a member of the Board of the Authority or of any committee of the Authority or as a member of the staff or as an advisor or consultant to the Authority.

Article 17. Personal Liability

No member of the Authority, or Member of the Board or any Committee appointed by the Authority or staff member or other person engaged by the Authority shall be personally liable for any act done in good faith, while carrying out one's duties for or on behalf of the Authority.

Part Four – Finance

Article 18. Grants to the Authority

The Government may grant the Authority such amounts as the Government may sanction to enable the Authority discharge its obligations.

Article 19. Other Revenue

The Authority may have revenue from:

- (a) rent and charges collected in the free zones;
- (b) the sale of goods, services or its property; and
- (c) trading income or other income.

Article 20. Borrowing

The Authority may, with the agreement of the Minister, borrow by arrangement with bankers or otherwise such sums as it may require.

Article 21. Accounts

- (1) The Authority shall cause proper books of accounts to be kept of its income and expenditure, assets and liabilities and all other transactions of the Authority.
- (2) The Authority shall, within 4 months after the end of the financial year, submit for audit financial statements and accounts to the Auditor General or

to an accredited auditor designated and approved by the Auditor General, who shall conduct the audit according to generally accepted accounting principles.

Article 22. Annual Report

The Authority shall submit to the Minister an annual report of its activities together with its audited annual accounts not later than three months after the accounts have been certified.

Part Five – Licenses

Article 23. Restrictions on Unlicensed Activity

- (1) No person may establish a free zone or a business in a free zone without obtaining a license from the authority.
- (2) Any person or party may visit the free zone and contact any company or establishment or factory which has a license to work in that zone, for the purpose of buying, selling, storing, importing, re-exporting and concluding agreements for any local or international business.

Article 24. Granting of Licenses

The authority may grant or refuse to grant to any person:

- (a) a license to develop and/or manage a free zone; or a

- (b) a license for trading or engaging in industrial or storage or other activities.

Article 25. Application for a License

- (1) Any person may apply to the authority for:
 - (a) a developer's license; and/or
 - (b) a license for trading or engaging in industrial or storage or other activities.
- (2) Each application shall:
 - (a) be in writing;
 - (b) addressed to the authority;
 - (c) specify the free zone to which the application relates;
 - (d) be supported by information required and prepared in special forms.
- (3) In deciding whether to grant or refuse a license, the authority shall have regard to the extent to which the proposed activity will contribute to:
 - (a) the growth of employment and exports;
 - (b) the development of worker skills and technology;
 - (c) the development of the surrounding region; and
 - (d) other priority government objectives.
- (4) If the project is industrial, the applicant should explain by simple statement approximately the quantities to be imported as raw material, the final

products, his or her requirements for water, electricity, gas and labour.

- (5) For any license the applicant shall pay all the requisite fees to the Authority.

Article 26. Conditions Attached to a License

The Authority may, following consultation with the Minister, attach to a license such conditions as it thinks proper, including conditions relating to the date when the license shall come into operation.

Article 27. Cancellation of a License

- (1) The authority may cancel the license if the licensee uses his or her license to create damage to State property or interests.
- (2) If the investor fails to observe any condition mentioned in the free zone agreement, the authority may send the investor a friendly notice to solve the problem.
- (3) If the investor fails to observe Customs rules, the investor shall pay the penalties according to the applicable Customs regulations.

Article 28. Amendment or Transfer of a License

The Authority may, at the request of the license holder:

- (a) vary the conditions to the license; or

- (b) agree to the transfer of the license to another person.

Article 29. Register of Licenses

- (1) The Authority shall establish and maintain a Register of Licenses granted under Article 24 of this Proclamation.
- (2) The register shall contain in respect of each license:
- (a) the name of the person to whom the license is granted;
 - (b) the date of issuance;
 - (c) the expiry date, if any;
 - (d) the lot number or address;
 - (e) in the case of an operator's license, the trade, business or manufacture to which the license relates; and
 - (f) in the case of a developer's license, the free zone to which the license refers.

Part Six – Imports and Exports

Article 30. Import and Export of Goods

- (1) Free Zones established under this Proclamation shall operate under Customs control pursuant to the Customs Proclamation (Proclamation 112/2000) and free zone customs regulations issued by the Minister under article 60(1) of the Customs Proclamation.

- (2) The investors may import or export all kinds of goods, except the prohibited items, without payment of any Customs duties or taxes provided all Customs procedures are observed.
- (3) Goods imported into and exported from a free zone shall, pursuant to Article 60(2) of the Customs Proclamation, be exempted from all import and export licensing requirements and other restrictions other than those imposed on grounds of public morality or order, public hygiene or health, or relating to the protection of patents, trademarks, copyrights, and other intellectual property.

Part Seven – Miscellaneous

Article 31. Tax Exemption

- (1) Persons with a free zone developer's license granted under Article 24 shall be granted exemption from the payment of any or all taxes, including income tax from personal income, profit, income from rent, sales tax, service tax, excise tax, stamps duty, tax on dividends and withholding taxes for a period of 15 years from date of issue of the license.
- (2) Any investor engaged in trading or industry or storage or other activities in the free zone may not pay any tax including taxes for his or her profits or bank interests from accounts or bank business

documents or shares.

Article 32. Repatriation of Income and Profits

Foreign investors may repatriate income and profits arising from activities in a free zone permitted in any license without restriction.

Article 33. Settlement of Investment Disputes

(1) Investment disputes that arise in a free zone can be settled in a manner agreed between the parties in the dispute, or if there is an agreement between Eritrea and the home country of the other party, by that agreement, or by using the International Convention for the Settlement of Investment Disputes (ICSID), or by arbitration.

(2) An Arbitration Tribunal shall consist of two arbitrators appointed by the parties to the dispute and a third arbitrator appointed by the two arbitrators as chairperson. In the event of the arbitrators failing to agree on the nomination of a third member within 15 days, the matter shall be referred to the Chief Executive of the Authority who shall appoint the chairperson of the Arbitration Tribunal.

Article 34. The Operation of Foreign Currency Accounts

(1) Persons holding a free zone license issued under Article 24 shall be permitted to operate a foreign

currency account with a bank in Eritrea.

- (2) Investors are permitted to deal in all currencies to transfer, receive, pay open letters of credit and engage in all types of bank activity without any restriction.
- (3) The Bank of Eritrea shall be consulted by the Authority about the terms and conditions referred to in sub-Article (2) of this Article.
- (4) The Bank of Eritrea shall supervise the operation of the foreign currency accounts. It shall be empowered to request any information it considers necessary from the account holder or the concerned bank.

Article 35 Appeal to the Minister

- (1) Any person aggrieved by any direction given by a free zone manager or the Authority to such person or by a decision of the Authority
 - (a) refusing to grant a license;
 - (b) imposing limitations or restrictions on a license; or
 - (c) canceling or suspending a license;may appeal to the Minister against such direction, refusal, imitations or restrictions, cancellations, suspension or removal, as the case may be, within thirty days from the

date on which the decision was communicated to such person;

- (2) the Minister may, if he or she considers it in the public interest to do so, set aside the Authority's decision.

Article 36. Regulations by the Minister

- (1) The Minister may issue regulations for the management and control of free zones.
- (2) Regulations issued under sub-Article(1) of this Article shall, insofar as they relate to the administration of health, agriculture, or law and order be made only with the consent of the ministry concerned.
- (3) Regulations relating to physical and environmental planning and control shall be made with the consent of the relevant authority.

Article 37. Effective Date

This Proclamation shall enter into force on a date fixed by the Minister by public notice in a national newspaper.

Done at Asmara, this 25th day of August, 2001,

Government of Eritrea.



