

Eritrea

INVESTMENT PROCLAMATION NO. 59/1994 (1994)

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INVESTMENT PROCLAMATION NO. 59/1994

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PROCLAMATION NO. 59/1994

INVESTMENT PROCLAMATION

Where as, Eritrea has entered a new era of peace, stability and economic prosperity;

Whereas, Eritrea adopted open, free market-led economic policy;

Whereas, the private sector, as the lead actor in the economic activities of the Country, is allowed to function with no restriction and discrimination;

Whereas, the Government is determined to promote, encourage, safeguard and protect investments by and of the private sector;

Whereas, investments should be encouraged by conducive investment atmosphere;

Now, therefore, the following Investment Proclamation is hereby promulgated:

PART I ENCOURAGEMENT AND DEVELOPMENT OF INVESTMENTS

CHAPTER ONE: GENERAL PROVISIONS

1. Issuing authority

This proclamation has been issued by the Government of Eritrea.

2. Short title

This Proclamation may cited as the "Investment Proclamation No. 59,1994".

3. Definition

In this Investment Proclamation, unless the context otherwise requires:

1/ "Advisory Committee" means the committee of the Center mentioned in Article 22 of this Proclamation;

2/ "appropriate bodies" means Government organizations, institutions, ministries or authorities which have either direct or marginal responsibilities or functions related to investment;

3/ "Bank" means the Bank of Eritrea;

4/ "business organization" or "organization" means undertaking as defined in the transitional Commercials Code of Eritrea, created to perform activities of production, commerce or service in accordance with the provision of this proclamation;

5/ "capital" means currency, negotiable instrument, plant, machinery, equipment, buildings, spare parts, raw materials and other business assets;

6/ "certification" means the document issued by the Center in accordance with Article 17, sub-article 2 of this Proclamation;

7/ "Country" or "Nation" means Eritrea;

8/ "enterprise" means any undertaking carrying on business in Eritrea;

9/ "Eritrean" means

(i) a citizen of Eritrea; or

(ii) a company incorporated or established in accordance with the laws of Eritrea;

10/ "expansion" means an increase in the volume and /or quality of:

a) existing production;

b) existing services; or

c) the addition of related new products or services by either improving production or service rendering capacity or by opening branches or enlarging facilities;

11/ "foreign capital" means investment of foreign origin, foreign convertible currency, negotiable instrument, plant, machinery, equipment, buildings, spare parts, raw materials and other business assets brought into Eritrea and includes profit converted into capital;

12/ "foreign investor" means any physical person of foreign nationality or any judicial person registered outside Eritrea, who or which respectively, has invested foreign capital and goods and equipment in Eritrea and may include Eritrean national residing abroad, foreign governments, non-Eritrean organizations;

13/ "Government" or "State" means the Government of Eritrea respectively;

14/ "Investment Center" or "Center" means the body mentioned in Article 20 of this Proclamation;

15/ "Managing Director" means the chief executive officer of the Investment Center;

16/ "person" means a physical person or a judicial entity; and

17/ "retention" means freely convertible currency that may be held from the proceeds of exports.

4. Objectives

Without in any way limiting the board purposes of this proclamation has the following objectives:

1/ to encourage investments so as to develop and utilize the natural resources of the country;

2/ to expand export and encourage competitive import- substituting businesses;

3/ to create and expand employment opportunities;

4/ to encourage the introduction of new technology in order to enhance production efficiency and thereby optimize resource exploitation;

5/ to encourage equitable regional growth and development; and

6/ to encourage small and medium scale enterprises.

CHAPTER TWO: INVESTMENT AREAS, ALLOCATION OF LAND AND/OR WATER

5. Investment areas

1. Without in any way limiting other provisions of this Proclamation, all areas of investment shall be open to investors.

2. Domestic retail and wholesale trade, import and commission agency shall be allowed to foreign investors when Eritrea has bilateral agreement of reciprocity with the country of the investor.

However, this precondition may be waived by the Government.

6. Allocation of land and/or water

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

CHAPTER THREE

TECHNOLOGY TRANSFER AGREEMENT

7. Technology transfer agreements

1. "Technology transfer agreement" means agreement signed with foreign investors regarding but not limited to the following:

- a) the use of patents, trade marks, trade names , copyright;
- b) training for and provision of technical knowledge and information;
- c) technical services including but not limited to technical assistance , engineering and constancy; and
- d) acquisition of managerial and marketing skills.

2. Technology transfer agreements shall be lodged and registered by the Center.

3. Technology transfer agreements shall be approved by a duly authorized Government body.

4. Unless the agreement is renewed by the center it shall expire after the lapse of its duration

5. Investors, investment projects, organizations may employ expatriate experts in the absence of national experts whether technical or managerial, but shall be under obligation to train nationals and replace expatriates.

CHPATER FOUR INCENTIVES

8. Duties and taxes levied on imports and exports

1. Capital goods, intermediates, industrial spare parts and raw materials shall pay a nominal customs of 2%.

2. Raw materials and intermediate inputs shall be subject to 3% sales tax. However, all sales tax will be rebated on all materials and inputs that have been used for export production.

3. Exports shall be exempted from export duties and sales taxes.

9. Income tax

1. There shall be no exemption from income tax.

2. Notwithstanding the provision of sub- article 1 of this Article, the marginal tax rate shall range as follows:

- On personal income from 2% to 3%;
- On non-corporate profit from 2% to 3%;
- On corporate profit from 25% to 35%;
- On rent income from 1% to 48%.

Profit derived from mining activities will be taxed as per the mining legislation.

3. Any corporate profit that is set aside for reinvestment shall be taxed at the rate of 20%.

4. There shall be no taxes on declared dividends.

5. Any loss incurred during the first two years of operation by an investor may be carried forward for three consecutive years.

However, the Inland Revenue Office may, in exceptionally critical circumstances, extend the carry-over period future for one year where it is convinced that such an extension would render the operation viable.

10. Loans

1. Investors may contact local loans in accordance with the banking regulations of the Country.
2. Only investors who contracted loans from external sources with the prior knowledge of the Bank may avail themselves for foreign exchange facilities.

11. Allocation of foreign exchange

1. Investors may, in accordance with the regulations of the Bank, open and operate foreign exchange accounts in Eritrea.
2. Investors may use the foreign exchange in their accounts for procurements necessary for the operation of their investments.
3. The Bank shall grant foreign exchange allocation to all investors subject to its rules and regulations. However, priority shall be given to exporters.
4. Investors may retain up to 100% of their export earnings in foreign currency in Eritrea in accordance with Bank regulations.

12. Remittance of foreign exchange

1. Without altering the provisions of this Proclamation, foreign 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 investments capital;

- b) debt-servicing payments for a foreign loan incurred pursuant to this Proclamation and Bank regulations;
 - c) fees or royalties in respect of any technology transfer agreements;
 - d) proceeds received from liquidation of investment and /or expansion; and
 - e) payments received from the sale or transfer of share.
3. 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.

13. Investment guarantees

1. Investment and/or expansion allowed under this Proclamation and all property on such investments and/or 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, full and fair compensation shall be paid by the Government.

14. Additional facilities

1. Without in any way limiting the provisions of this proclamation, the Government may designate special areas of investment to be accorded additional incentives facilities.
2. To encourage small and medium scale enterprises, the Center shall also provide the following facilities:
- a) Introduce various supporting programs in collaboration with appropriate private and/or Government bodies;
 - b) Provided investment related technical and managerial counseling and training on its own and/or in cooperation with private and Government bodies; and
 - c) Assist in the creation of smooth working relationship between the private sector and respective, Government bodies with the aim of enhancing research and development.

CHAPTER FIVE: SETTLEMENT OF DISPUTES AND GRIEVANCE PROCEDURE

15. 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 foreign investors further protection by entering into appropriate bilateral and multilateral investment protection or guarantee treaties (MIGA, ICSID).
- Foreign investors may choose any one of the two alternatives.
3. Decisions rendered shall be executed in accordance with the laws of Eritrea.

16. Grievance procedure

1. Any investor who feels he has been grieved in relation to this Proclamation may present his case to the Center.
2. Any investor whose case is not resolved by the Center can appeal to the Advisory Committee within 60 days as of the date of the decision by the Center.

CHAPTER SIX: APPLICATION FOR CERTIFICATION

17. Application for certification

1. Investors who seek certification in regard to the following:
 - a) registration of technology transfer agreement;
 - b) guarantee for investment and settlement of disputes; and
 - c) fiscal incentives related to carry-over period;are required to fill out application forms prepared by the Center and present all necessary documents requested by the Center.
2. The Center shall issue certification within a maximum of ten days as of the date completion by the investor of the formalities required for certification.
3. In issuing certification, the Center shall ascertain the following:
 - a) the names, nationality and addresses of investors;
 - b) the type and amount of investment and the type business organization;
 - c) the signing of a technology transfer agreement;
 - d) the signing of the mode of settlement of disputes; and
 - e) statements in regard to accorded fiscal incentives.
4. The Center shall, in addition, ascertain the following before issuing certification:

- a) the number of national and expatriate employees;
- b) the training that is accorded to nationals;
- c) available precautionary measures for the prevention of accidents;
- d) activity reporting methods;
- e) degree of protection and utilization of natural resources;
- f) extent of protection of ecology and natural habitat; and
- g) other requirement which concern public interest.

18. Implementation and reporting

1. the Center may inspect the premises of investment projects for which a certification has been requested.
2. Investors granted certification shall comply with requests for inspection, monitoring and reporting required by the center.

19. Transfer and cancellation of certification

1. No certification may be transferred without the prior written approval of the Center.
2. The Center may on its own cause the revocation or cancellation of any certification issued where:
 - a) the certification was obtained by presentation of false evidence or information;
 - b) the certification has been transferred without the prior written approval of the center;
 - c) the facilities, privileges land or services accorded have been or are being used by other persons or for being used by other persons or for other purposes; and
 - d) the conditions for the certification have not been met.
3. The Center may, in addition to cancellation, take the necessary steps to recover privileges accorded.

PART TWO: MANAGEMENT OF INVESTMENT AND MISCELLANEOUS PROVISIONS

CHAPTER SEVEN: INVESTMENT CENTER

20. Establishment of the Center

1. There is hereby established the Eritrea Investment Center (EIC).
2. The Center shall have a Managing Director and the necessary staff.
3. The Center is directly responsible to the Office of the President of the State of Eritrea.
4. All assets and liabilities of the Center established under Proclamation No. 18/1991 are hereby transferred to the Center established under this Proclamation.

21. Functions of the Center

The Investment Center shall be an autonomous entity with juridical personality, empowered with the duties of interpreting, implementing and facilitating the provisions of this Proclamation.

The function of the Center shall be to:

1. promote investment and provide information about investment opportunities in Eritrea
2. monitor and assess the implementation of the provisions of this Proclamation;
3. provide and organize advisory and training services for local investors;
4. assist foreign investors in acquiring the necessary legality for their investment;
5. keep registers of certification and technology transfer agreement;
6. advise the Government on investment policy matters;
7. perform other activities that are in line or incidental to the purposes of This Proclamation; and ,
8. perform other duties entrusted to it by the Government.

22. Advisory Committee of the center

1. There shall be an advisory Committee of the Center consisting of:
 - a) a representative of the Office of the President Chairman;
 - b) a representative of the Ministry of Finance and Development ...member;
 - c) a representative of the Customs Authority.....member;
 - d) a representative of the Income Tax Authority.....member;
 - e) a representative of the Ministry of Trade and Industry...member;

- f) a representative of the Bank of Eritrea...member;
 - g) a representative of the Chamber of Commerce....member;
 - h) as the case may demand a representative of the pertinent ministry...member; and
 - i) the Managing Director of the Center..... member and secretary.
2. The role of the Advisory Committee shall be to help the center in implementing its duties and to ensure that proper work procedures and integrity are maintained.
 3. The Advisory committee shall meet every three (3) months or more frequently as the situation demands.
 4. The Advisory Committee shall assist the Center in resolving investment issues not covered by this proclamation.
 5. The advisory Committee shall hear appeals made by investors and give recommendations to the Center on the same.

23. Managing Director

1. The Managing Director of the Center shall be appointed by the President of the State of Eritrea.
2. The Managing Director is the chief executive Officer of the Center.
3. Without limiting the generality of the foregoing, The Managing Director shall:
 - a) organize the Center, employ, administer and discharge personnel;
 - b) represent the Center in accordance with This Proclamation;
 - c) negotiate and sign on behalf of the Center;
 - d) operate bank accounts;
 - e) collect fees and revenues of the Center;
 - f) prepare and submit to the Office of the President work report, work program and the annual budget proposal of the Center;
 - g) submit to the Office of the President within three months after the close of each fiscal year, reports containing financial statements and performance of work;
 - h) present to the Office of the President proposals, studies, information and working paper;
 - i) delegate his authority;
 - j) attend the Advisory Committee meetings as member and secretary; and,
 - k) execute the functions of the Center enumerated in Article 21 of This Proclamation.

24. Duties of Officials of the Center

1. Officials of the center shall:
 - a) perform their duties in such a way so as to facilitate all dealings relating to any project or investment, its implementation and operation;
 - b) refrain from committing any act which may harm any investment or project, delay it, obstruct its dealing or the progress of its implementation, or operation; and
 - c) maintain the secrecy, data and documents made available to them by virtue of their work and not use the same, save in the application of the provision of This Proclamation.
2. Any official of the Center who contravenes any of the provisions of sub article 1 of This Article shall upon conviction, be punished in accordance with the provisions of the Transitional Penal Code of Eritrea.

CHAPTER EIGHT: FISCAL PROVISIONS

25. Source of revenue

The Center shall have the following sources of revenue:

1. fees and charges,
2. proceeds obtained form the sale of bulletins, gazettes and reports,
3. government subsidies
4. grants or other forms of assistance

26. Fiscal year

The fiscal year of the Center shall be the fiscal year of the Government.

27. Auditors

The books of account and all financial activities of the investment Center shall be audited at least once a year by the Auditor General or any other auditor appointed by him.

CHAPTER NINE: MISCELLANEOUS

28. Appropriate bodies

Appropriate bodies of the Government shall, in accordance with this Proclamation, have the following obligations:

- a) to assist and cooperate with the Center in the fulfillment of its duties;
- b) to comply, in so far as possible, with requests from the Center within the time limit specified by the Center; and,
- c) to coordinate investment related issues and policies with the Center.

29. 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 Center;
3. fails to implement decisions rendered by the Center; or
4. is a cause for the non implementation of this Proclamation or directives and decision made pursuant to this Proclamation;

Shall be fined according to the provisions of the Transitional Penal Code of Eritrea.

30. Repeal

Investment Proclamation No.18/1991 is hereby repealed.

31. Transitory Provisions

1. Notwithstanding the provisions of Article 30 of this proclamation any investment and/or expansion made and is granted incentives under Investment Proclamation No.18/1991 shall continue in force in accordance with said Proclamation.
2. Investment applications submitted to but approved by the Center before the effective date of this Proclamation shall be governed by the provisions of this Proclamation.

32. Issues not covered

Issues and matters not provided for the Advisory Committee shall resolve this Proclamation.

33. Effective date

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

Done at Asmara this 24th day of August 1994.

Government of Eritrea

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