

**GAZETTE OF ERITREAN LAWS**

**PUBLISHED BY THE GOVERNMENT OF ERITREA**

**Vol. 20/2012 No. 6 Asmara, 3<sup>rd</sup> December, 2012**

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Promote the Participation of Eritreans in the  
Ownership of Public Enterprises**

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## **PROCLAMATION NO. 171/2012**

### **A Proclamation to Establish a National Agency to Promote the Participation of Eritreans in the Ownership of Public Enterprises**

**WHEREAS**, one of the primary economic goals of Eritrea is to ensure the dignity and prosperity of the Eritrean society;

**WHEREAS**, in pursuance of its development policy of sustainable economic growth in fostering the socio-economic enhancement of Eritrean society, the Eritrean Government has initiated, among others, a share-equity based participation of Eritrean citizens in public enterprises; and

**WHEREAS**, the Eritrean Government is confident that, the open participation of Eritrean citizens in direct share-equity investments in existing and future public enterprises would, aside from providing returns to said citizens, enhance the new phase of accelerated economic growth which is attributable to the steadfastness, diligence and unyielding support of the people, and sustained Government investment;

**NOW, THEREFORE**, in consideration of the above premises, it is proclaimed as follows:

#### **Article 1. Short Title**

This Proclamation may be cited as the “National Agency to Promote the Participation of Eritrean Citizens in the Ownership of Public Enterprises Establishment Proclamation No. 171/ 2012”.

#### **Article 2. Definitions**

In this Proclamation, unless the context requires otherwise:

- (1) “**Board**” means the Board of Directors of the National Agency established under Article 6 of this Proclamation;

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- (2) **“Business Organizations”** means those organizations established under Article 212 of the Transitional Commercial Code of Eritrea, namely a Share Company, Private Limited Company, Limited Partnership, General Partnership or Ordinary Partnership, but excluding a Joint Venture for purposes of this Proclamation;
  - (3) **“Eritrean Associations”** means associations legally established by Eritrean citizens under the Transitional Civil Code of Eritrea;
  - (4) **“Eritrean Citizen”** means a person so defined by The Eritrean Nationality Proclamation No. 21/1992;
  - (5) **“National Agency”** means the National Agency established under Article 3 of this Proclamation;
  - (6) **“Par Value of Share”** means the face value of each company’s share so determined and registered in the initial share capital of the company;
  - (7) **“Public Enterprises”** means partially or wholly State-owned enterprises operating under the laws of Eritrea;
  - (8) **“Secondary Share Market”** means a non - profit mechanism operating under the Transitional Civil Code of Eritrea for transferring ownership (selling and buying) of company shares;
  - (9) **“Selling Price of a Share”** means the unit selling price of a company’s share as determined by the National Agency taking into account the objective of encouraging broad-based participation of Eritrean citizens;
  - (10) **“Small Public Enterprises”** means State-owned public enterprises so categorized by the National Agency, taking into account their respective investments, related status and number of employees; and
  - (11) A singular word shall include the plural and vice versa, while a reference to the male gender shall also include the female gender.

**Article 3. Establishment**

- (1) There is hereby established the National Agency to Promote the Participation of Eritrean Citizens in the Ownership of Public Enterprises (hereinafter the “**National Agency**”) as an autonomous entity having its own juridical personality.
- (2) The National Agency shall be accountable to the President of the State of Eritrea.

**Article 4. Head Office**

The National Agency shall have its head office in Asmara, and it may, as it deems necessary, open branch offices within and outside Eritrea.

**Article 5. Objective and Responsibilities of the National Agency**

- (1) The objective and responsibilities of the National Agency shall be to undertake, implement and ensure the participation of Eritreans living in Eritrea and abroad in national economic development activities through the direct transfer of ownership of Small Public Enterprises or of shares in Public Enterprises converted into share companies.
- (2) The National Agency shall, for implementing the responsibilities entrusted to it pursuant to this Proclamation, have the powers and duties to:
  - (a) identify the Public Enterprises that shall be converted into share companies and / or those already existing as share companies that would offer shares to Eritrean citizens;
  - (b) identify Small Public Enterprises the ownership of which shall be transferred to Eritrean business organizations, associations and individual citizens;
  - (c) determine the number of shares to be offered, the par value and selling price of each share and the ceiling to the number of shares that can be bought and owned by Eritrean business organizations, associations and individual citizens;

- (d) endeavor, in cooperation with pertinent Government institutions and public associations, to ensure the broadest participation of Eritreans living in all regions of Eritrea and abroad in the ownership of shares of Public Enterprises;
  - (e) provide, in cooperation with the management of the relevant Public Enterprises, full and timely information to the Eritrean public regarding the identity, net worth and profile of the share companies offering shares, the par value and selling price of shares on offer, the ceiling to the number of share that can be owned, the process of selling and buying shares, as well as any other pertinent information;
  - (f) provide full and timely information to the Eritrean public regarding the asset base, net worth, reservation price and the sale of Small Public Enterprises whose ownership shall be transferred to Eritrean business organizations, associations and individual citizens;
  - (g) cause the transfer of ownership of Small Public Enterprises to Eritrean business organizations, associations and individual citizens that provide the best offer in terms of new investments, business plans, quality of management and price;
  - (h) enter into contracts with any national or foreign natural or juridical person;
  - (i) own and dispose of movable property and issue negotiable instruments;
  - (j) sue and be sued in its own name; and
  - (k) perform all and whatever legitimate, necessary and incidental acts to attain its objective.
- (3) The National Agency shall, in the implementation process of the sale of equity-share of Public Enterprises owned by the Government to the Eritrean public, ensure that each of such Public Enterprises shall first be converted into a share company in accordance with the requirements of the Transitional Commercial Code of Eritrea and cause the same to offer such shares to Eritrean business organizations, associations and individual citizens inside and outside Eritrea, provided that:

- (a) valuation of the net worth of the Public Enterprises shall have been carried out by competent, independent and credible individuals or institutions as a condition precedent;
  - (b) the shares shall be offered in Nakfa to Eritrean citizens living in Eritrea and in US Dollars to citizens residing outside Eritrea;
  - (c) a secondary share market shall be legally established to facilitate transactions in shares and encourage investment;
  - (d) transactions in the secondary share market may not allow for ownership of shares above the ceiling fixed by the National Agency for each Public Enterprise; and
  - (e) the terms and conditions for the sale and transfer of the shares of Public Enterprises to each Eritrean buyer shall, in accordance with the relevant Eritrean laws, be stipulated and documented in a contract of sale between the concerned Government entity and the buyer, it being understood that due registration shall be effected with the Inland Revenue Department of the Ministry of Finance and the Business Licensing Office of the Ministry of Trade and Industry.
- (4) The transfer of the ownership of Small Public Enterprises by the National Agency to Eritrean business organizations, associations and individual citizens residing within or outside Eritrea shall be implemented as follows:
- (a) the price of transfer of ownership of Small Public Enterprises shall give due weight to the business plan of the prospective buyers, including size of new investment, quality of management, envisaged improvement of service, and growth prospects of the business; and
  - (b) the terms and conditions for the transfer of ownership of Small Public Enterprises, which may vary among enterprises depending on the sector as well as the nature and importance of each enterprise, shall, in accordance with the relevant Eritrean laws, be stipulated and documented in a contract of sale between the concerned Government entity and the buyer. The

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contract of sale shall, *inter alia*, include a stipulation that such purchase and transfer may not create an opportunity solely to amass land in disguise and that the size of land may be re-parceled so as to adjust it to the business purposes of the enterprise.

**Article 6. Organs of the National Agency**

(1) The organs of the National Agency are constituted as follows:

- (a) the Board of Directors composed of five (5) members;
- (b) the General Manager; and
- (c) the necessary staff.

(2) The Board members and the General Manager shall be appointed by the President of the State of Eritrea.

**Article 7. Authority of the Board**

(1) The Board is hereby entrusted with the full authority and ultimate responsibility to ensure that the National Agency implements and realizes in real and concrete terms its exclusive objective and responsibilities provided under this Proclamation.

(2) The Board, in facilitating and expediting the participation of Eritreans in the ownership of the envisioned Public Enterprises, shall:

- (a) consider, formulate, layout and establish the performance time schedules, the pragmatic locations and the related factors and mechanism for the implementation of the participation of Eritreans in the ownership of the said Public Enterprises;
- (b) submit its projected annual budget to the Ministry of Finance for allocation;
- (c) in consultation with all concerned bodies, assign Eritrean representatives of the National Agency abroad for the :



- (i) conducting of seminars to Eritreans on the motive, nature and purpose of the project objective of the National Agency; and
- (ii) provision of necessary services and assistance to implement the objective of the National Agency;
- (d) ensure that bi-monthly reports on the activities and achievements, along with impediments, if any, as well as possible proposals and recommendations are submitted to it by the General Manager for its due consideration and appropriate action;
- (e) submit to and update the President of the State of Eritrea with its bi-annual report on the progress and status of the implementation process in the participation of Eritreans in the ownership of Public Enterprises; and
- (f) execute whatever legitimate and contributory actions.

**Article 8. Meetings of the Board**

- (1) The Board shall elect its Chairperson. It may also appoint a secretary for each meeting so as to formalize and legalize the Minutes and Resolutions of the Board.
- (2) The Board shall conduct a regular meeting every ninety (90) days and, in case of pressing circumstances, meetings may be called earlier by the Board Chairperson or by the General Manager of the National Agency through the former.
- (3) The agenda item for each of such meeting shall, subject to the prior consideration and approval by the Board Chairperson, be provided to each Board member.
- (4) While the attendance of three Board members shall constitute the quorum for each meeting, decisions shall be taken by consensus, provided that in the case of four or more Board members attending, decision shall be taken by a simple majority of those present or, in the case of a tie, re-convene another meeting.

**Article 9. Duties and Responsibilities of the General Manager**

- (1) The General Manager is, in strict compliance with the provisions of this Proclamation and under the overall Board authority, supervision and directives,

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hereby entrusted with the management duties and responsibilities of the National Agency.

- (2) Without limiting the generality of the foregoing, the General Manager shall:
- (a) prepare and submit to the Board detailed:
    - (i) bi-monthly reports on the performance and progress of the implementation process to realize the objective of the National Agency; and
    - (ii) specific records of the Eritreans who have executed and completed their respective participation in the ownership of Public Enterprises;
  - (b) represent the National Agency before any third parties within or outside Eritrea and to perform and execute on its behalf any act for and related to its routinely-expected conduct of his management responsibilities;
  - (c) in particular, be empowered to sign and execute for the National Agency any contract, except the contracts of sale mentioned in Article 5 (3) and (4) hereof, provided, however, that he may grant a power of attorney to any Eritrean third party abroad to sign and execute a contract on his behalf and on behalf of the National Agency;
  - (d) open and operate bank accounts in whatever currency for and in the name of the National Agency, whether it be in Eritrean and / or foreign banks;
  - (e) subject to the prior approval of the Board, be empowered to employ and dismiss such staff and personnel of the National Agency;
  - (f) keep and cause to be kept accounts, records, books and up-to-date progressive status of the activities of the National Agency;
  - (g) submit financial books and accounts to an accredited external auditor for each year or period, who, in turn, shall present the audit report to the Board ; and

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- (h) appoint an advocate to solicit legal advice and represent the National Agency before courts of law and quasi-judicial bodies, as and when necessary.

**Article 10. Judicial Review**

- (1) A prospective buyer of a Small Public Enterprise or of shares in a Public Enterprise offered for sale aggrieved by an adverse decision of the National Agency regarding said sale may appeal to the High Court of Eritrea within thirty (30) calendar days.
- (2) The High Court may set aside the decision where convinced that it was inappropriate.
- (3) The decision of the High Court shall be final.

**Article 11. Inconsistency**

Any proclamation, regulation, directive, guideline or practice which is inconsistent with or contrary to the provisions of this Proclamation shall not prevail over matters and issues provided for in this Proclamation.

**Article 12. Duration**

The duration of the National Agency shall be for an indefinite period.

**Article 13. Entry into Force**

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

Done at Asmara, this 3<sup>rd</sup> day of December, 2012,  
The Government of Eritrea.