

ERITREA
PROCLAMATION NO. 68/1995

A PROCLAMATION TO PROMOTE THE DEVELOPMENT OF MINERAL RESOURCES

PART I GENERAL

1. Short Title
2. Definitions
3. Scope of Application

PART II MINING RIGHTS

Chapter 1 General

4. Requirements of mining Rights
5. Eligibility for mining Rights
6. Reserved and Excluded Areas and Minerals
7. Government Mining Operations

Chapter 2 Pre-Development Rights

Section 1 Prospecting And Exploration

8. Prospecting License
9. Exploration License
10. Duration And Renewal
11. Relinquishment of Portion of License area

Section 2 Discovery

12. Notification of Discoveries
13. Discovery system

Chapter 3 Development Rights

Section 1 Artisanal Mining

14. Artisanal Mining License
15. Duration and Renewal

Section 2 Mining

16. Mining License
17. Duration and Renewal

Section 3 Mineral Water, Geothermal Deposits And Construction Minerals

- 18. Mineral Water and Geothermal Deposits
- 19. Construction Minerals

Chapter 4 Rights And Obligations Of Licensee

- 20. Possession and Use of Land
- 21. Use of Construction Minerals, Water and Timber
- 22. Other Occupants
- 23. Infrastructure and Other Construction
- 24. Conduct of Mining operations
- 25. Employment, Training and Local Supply
- 26. Delimitation of Areas
- 27. Books, Records and Reports

Chapter 5 Common Provisions For Licenses

- 28. Applications
- 29. Surrender
- 30. Boundaries
- 31. Granting Licenses
- 32. Title to Sale and Export of Minerals
- 33. Liability on Surrender

PART III FINANCIAL REGIME

- 34. Royalty
- 35. Taxes
- 36. Fees
- 37. Rentals
- 38. Customs Duties and Taxes
- 39. Exchange Control
- 40. Other Incentives
- 41. Participation
- 42. Guarantee

PART IV ADMINISTRATION

- 43. Responsibility of the Licensing Authority
- 44. Inspection of Mining Operations
- 45. Registration and Representation of Licensees
- 46. Registration of Licenses & Leases
- 47. Confidentiality
- 48. Settlement of Disputes
- 49. Termination of Mining Rights
- 50. Infractions and Sanctions

PART V MISCELLANEOUS

- 51. Existing Mining Right
- 52. Inapplicable Laws
- 53. Effective Date

PROCLAMATION NO. 8/1995

A PROCLAMATION TO PROMOTE THE DEVELOPMENT OF MINERAL RESOURCES

WHEREAS, all mineral resources are public property which can make a significant contribution to the economic development of the country and that the state shall ensure the conservation and development of the resources for the benefit of the people;

WHEREAS, prospecting, exploration and exploitation of mineral resources should be carried out in accordance with appropriate technology and sound principles of resource management and to develop national expertise in the mining industry;

WHEREAS, recognizing the significant role of private investment in the capital formation, technology acquisition and marketing of minerals; and

WHEREAS, to achieve these ends it is essential to promulgate a new law on mining operations;

NOW, THEREFORE it is hereby proclaimed as follows:

PART I GENERAL

1. SHORT TITLE

This proclamation may be cited as the “Mining Proclamation No. 68/1995”

2. DEFINITIONS

In this Proclamation unless the context provides otherwise:

1. “**agreement**” means a contract between the Government and a licensee in order to prospect, explore and/or mine for minerals;
2. “**artisanal mining**” means, unless otherwise specified by directive issued by the Minister, non-mechanized mining operations of, an essentially manual nature carried out by Eritrean individuals or groups of such persons;
3. “**construction minerals**” means sand, gravel, stone (marble, granite, basalt etc) clay, including non-metallic minerals used for construction purposes and such other minerals as the Minister may, by directive so designate;
4. “**controller**” means an officer authorized by the Licensing Authority to control Mining Operations;
5. “**deposit**” means any natural concentration of minerals found on or within a specified area of the earth's crust;
6. “**to explore**” means to undertake all acts to search for, appraise and evaluate a deposit, by using different methods of studies (geological, geochemical and geophysical) relating to surface and subsurface geology and structure, excavation, boring and drilling, analysis of the physical and chemical properties of minerals and examination of the economic feasibility of developing and exploiting a deposit;
7. “**Government**” means the Government of Eritrea;
8. “**License**” means a license issued pursuant to this Proclamation to prospect and explore or mine for minerals;
9. “**license area**” means any area which is the subject of a license;
10. “**licensing Authority**” means the Ministry of Energy, Mines and Water Resources;
11. “**to mine**” means to undertake all acts to develop, extract and remove minerals from a deposit, including their storage, treatment, processing (excluding smelting and refining), transportation and/or disposal;
12. “**mineral water**” means water containing minerals with healthful properties and water such as brines from which minerals may be extracted on an economic basis;
13. “**minerals**” means any naturally occurring mineral substance of potential economic

value forming part of or found on or within the earth's crust, including salt, mineral water and geothermal deposits, but excluding petroleum, natural gas and oil shale as defined in Articles 5 and 7 of Proclamation No. 40/1993;

14. “**Minister**” and “**Ministry**” means the Minister and the Ministry of Energy, Mines and Water Resources;
15. “**mining operations**” means all acts carried out to prospect, explore and mine for minerals;
16. “**person**” means any natural or legal person;
17. “**precious minerals**” means precious metals such as platinum, gold and silver and precious stones such as diamonds, rubies, emeralds and sapphires and such other minerals as the Minister may, by directive so designate;
18. “**to prospect**” means to undertake on or above the surface of the earth all acts to search for mineral occurrences in order to ascertain the possible presence of minerals including the geological and structural characteristics of the land;
19. “**Regulations**” means the Mining Regulations No.19/1995.

3. SCOPE OF APPLICATION

This Proclamation shall apply to and govern the conduct of all mining operations and related activities within the territory of Eritrea.

PART II MINING RIGHTS

CHAPTER 1 GENERAL

4. REQUIREMENTS OF MINING RIGHTS

1. Without prejudice, to Article 21(1) and 22 of this proclamation and subject to sub-article 2 of this Article, no person may prospect, explore or mine unless he is the holder of a granted license.
2. Any Eritrean may prospect without a license provided the land is not the subject of an existing license or application thereof.

5. ELIGIBILITY FOR MINING RIGHTS

1. Without prejudice to sub-article 2 of this Article, any person, who satisfies the requirements of license set out in this Proclamation, Regulations, and Directives to be issued under this proclamation may acquire a license provided that he possesses the required financial resources, technical competence, professional skill and experience necessary to fulfil the obligations under the

license.

2. No person is required to possess financial resources, technical competence, professional skill and experience in order to acquire an artisanal mining license.
3. No person whose license has been revoked except as provided for under Article 16(2) of this Proclamation may hold another license for 5 years following such revocation.

6. RESERVED AND EXCLUDED AREAS AND MINERALS

The Government may designate any area or mineral as reserved or excluded for particular mining operations and exclude any area from mining operations particularly as it regards sites of historical, cultural or religious interest and public buildings, infrastructure and other installations.

7. GOVERNMENT MINING OPERATIONS

The Government may undertake some mining operations that are vital for overall economic growth either by itself or in partnership with private investors.

CHAPTER 2 PRE-DEVELOPMENT RIGHTS

SECTION 1 PROSPECTING AND EXPLORATION

8. PROSPECTING LICENSE

1. A prospecting license grants an exclusive right to prospect for the minerals within the license area. Prospecting license may not be transferred, assigned, encumbered or inherited.
2. A prospecting license is valid for a period of one year and may not be renewed.
3. Upon his discovery of indications of minerals within the license area, the licensee shall have the right to be granted an exploration license, provided that,
 - a. he has fulfilled all obligations under the prospecting license;
 - b. meets all requirements in connection with the application for an exploration license; and
 - c. he is not in breach of any provisions of this Proclamation, Regulations or directives issued hereunder which constitute grounds for suspension or revocation of the prospecting license.

9. EXPLORATION LICENSE

1. An exploration license grants an exclusive right to explore for all minerals within the area specified in the license other than construction material, mineral water and geothermal deposits.
2. The license area shall, unless the Licensing Authority specifies otherwise, be of rectangular shape as specified in the regulations.
3. An exploration license, and the licensee's right to obtain a license pursuant to Article 10 sub-article 3 of this Proclamation may be transferred or assigned with the prior approval of the licensing Authority if it is satisfied that the incoming party has the financial and technical resources to meet the obligations of the license.

10. DURATION AND RENEWAL

1. An exploration license is valid for an initial period of three years and may be renewed twice for additional terms of one year each. The Licensing Authority may further allow extension of renewal periods where the licensee documents the necessity for additional advanced exploration activity or provides information on other circumstances which justify an extension of the duration of the license.
2. The licensee shall have the right to renew the license, provided he has fulfilled the obligations specified in the license, meets all requirements in connection with the application for the renewal and is not in breach of any provision of this Proclamation which constitutes grounds for suspension or revocation of the license.
3. The licensee shall have the right to be granted a mining license in the event that he determines a mineral deposit within the license area which may be mined on an economically viable basis, provided that, he:
 - a) has fulfilled all obligations under the exploration license;
 - b) meets all requirements in connection with the application for such a mining license; and
 - c) is not in breach of any provisions of this Proclamation, Regulation or directives issued hereunder which would constitute grounds for suspension or revocation of the exploration license.

11. RELINQUISHMENT OF PORTION OF LICENSE AREA

1. In applying for each renewal of an exploration license, the licensee shall indicate the portion of the license area, to be relinquished, which shall not be less than one quarter of the original license area unless the minimum size specified in the Regulations has been reached.

2. The form, orientation and other details regarding relinquishments shall be specified in the Regulations.

SECTION 2 DISCOVERY

12. NOTIFICATION OF DISCOVERIES

Any person who discovers indications or existence of minerals shall immediately notify the controller in writing the location and nature of such discovery as required by Article 20 of the Regulations.

13. DISCOVERY SYSTEM

1. Any person who, while prospecting on land that is not the subject of a license or of an application for a license, discovers indications of minerals or a deposit of minerals which had not been previously discovered, shall immediately mark the location of the discovery, and within 7 days notify the Controller about the discovery.
2. If the discovery is proven to the satisfaction of the Licensing Authority, then the discoverer shall have a preferential right to obtain an exploration license in respect of an area specified in the regulations with the discovery mark being at the point where two diagonal lines drawn from opposite corners of the license would intersect. The period during which such an application can be made shall be specified in a discovery certificate issued by the Licensing Authority and shall not exceed 12 months from the notification of the discovery.
3. Upon receipt of advice of a discovery, the Controller shall indicate on plans held at the Licensing Authority's office the extent of the discovery area which shall not include any ground already held under license or the subject of a prior license application.
4. The fees and expenditure obligations for an exploration license obtained as a result of an application by the holder of a discovery certificate shall be as specified in the Regulations.

CHAPTER 3 DEVELOPMENT RIGHTS

SECTION 1 ARTISANAL MINING

14. ARTISANAL MINING LICENSE

1. An artisanal mining license may be granted in respect to part of the surface area of an existing exploration license provided that:-

- a) the artisanal mining license is restricted to construction minerals to a depth of five metres and/or mineral water and geothermal deposits.
 - b) the Licensing Authority is satisfied that the activities of the artisanal miner will not interfere with the operations of the existing license.
2. An artisanal mining license may be granted for minerals other than construction minerals, mineral water and geothermal deposits if the land in question is not the subject of any existing license or prior license application provided that mining in the artisanal license is restricted to a depth of 5 metres.
 3. An artisanal mining license may be transferred, assigned, encumbered or inherited subject to the approval of the Licensing Authority.

15. DURATION AND RENEWAL

1. An artisanal mining license shall be valid for one year and may be renewed indefinitely for like periods.
2. The Licensing Authority may, after giving 90 days prior written notice, cancel an artisanal mining license where it is considered that the deposit requires more advanced exploration and mining method for the best development of its economic potential.
3. The Licensing Authority may at the request of the artisanal licensee, grant an exploration or mining license provided the artisanal licensee shows that he has the necessary technical and financial resources to engage in the advanced exploration and mining as prescribed by the Licensing Authority.
4. Where an artisanal license is revoked and the artisanal licensee is not granted an exploration or mining license over the area of the former, the Licensing Authority shall determine an appropriate amount of compensation which shall be promptly paid to the licensee for the loss he incurred due to the revocation of the license.

SECTION 2 MINING

16. MINING LICENSE

1. A mining license grants an exclusive right to mine for the specified minerals within the license area. The license shall cover the area reasonably necessary to carry out mining operations. The form and boundary of the area shall be as specified in the Regulations.
2. A mining license may be transferred, assigned or encumbered and inherited with the prior approval of the Licensing Authority.

3. Suspension of mining operations under the license for more than 180 days shall be grounds for revocation of a mining license.

17. DURATION AND RENEWAL

1. A mining license shall be valid for a maximum period of twenty years or the life of the deposit whichever is shorter. The license may be renewed subject to subarticle 2 of this Article for a maximum period of ten years for each renewal.
2. The licensee shall have the right to renew the license, provided he can demonstrate the continued economic viability of mining the deposit, has fulfilled the obligations specified in the license and is not in breach of any provision of this Proclamation, Regulations or Directives issued hereunder which constitutes grounds for suspension or revocation of the license.

SECTION 3 MINERAL WATER, GEOTHERMAL DEPOSITS AND CONSTRUCTION MINERALS

18. MINERAL WATER AND GEOTHERMAL DEPOSITS

1. A legitimate occupant of land may produce and use for non-commercial purpose, without charge and with prior notification to the Licensing Authority, mineral water from the area he occupies, provided that the area is not reserved or excluded pursuant to Article 6 of this Proclamation and, provided further, that he does not disturb or damage the adjacent occupants' land or property.
2. A mining license granted for the extraction of mineral water may specify the amount and rate of production, which shall generally be limited to that which permits the renewal of the water aquifer, and the horizon or depth from which the water may be extracted. A license for brines may specify conditions of production and of extraction and disposal of minerals produced and of the use and disposal of the water remaining.
3. A mining license granted for a geothermal deposit may limit the volume of water and the calorific content which may be extracted, it may also fix conditions on the extraction and disposal of by-products and on the production, use and reinjection of water in order to preserve the deposit.

19. CONSTRUCTION MINERALS.

1. A legitimate occupant of land, may produce and use for non commercial purpose, free of charge and without permission of the Licensing Authority, construction minerals from the area he occupies, provided that the area is not reserved or excluded pursuant to Article 6 of this Proclamation and, provided

further, that he does not disturb or damage the adjacent occupants' land or property.

2. Any person may produce and use for non-commercial purpose without charge and with prior permission of the Licensing Authority, construction minerals for the construction and maintenance of roads, dams, airports, schools, hospitals and other non-commercial public works.
3. The provisions of Articles 22 and 24 Sub Articles (3) and (4) of this Proclamation shall apply to the mining operation of construction minerals conducted pursuant to Sub Article (2) of this Article.

CHAPTER 4 RIGHTS AND OBLIGATIONS OF LICENSEE

20. POSSESSION AND USE OF LAND

1. The licensee may enter and occupy the land covered by the license during its term.
2. The licensee may use the land of the license area for activities in support of mining operations and may grow crops and graze livestock for consumption by himself, his agents and employees and their dependents.
3. The holder of a mining license may also request from the appropriate authority a lease for land outside of the license area which may be required in connection with mining operations. The terms and conditions of such lease shall be determined by the appropriate authority and its duration shall be the same as that of the license including any renewals thereof.

21. USE OF CONSTRUCTION MINERALS, WATER AND TIMBER

1. The licensee may remove and use construction minerals required for mining operations which are found within the license area or within the land covered by a lease, provided that no other license has been issued to another person for such minerals.
2. The licensee may use surface and subsurface water found in the license area and the area of a lease for consumption by himself, his agents, employees and their dependents. A licensee may also use surface water for mining operations, provided that such use does not result in a substantial reduction of the amount of water available to satisfy the need of other users or, unless authorized pursuant to directive, result in the pollution thereof. A licensee shall not construct a dam or divert any watercourse without the prior approval of the appropriate Government Authority.

3. The holder of an exploration or mining license may cut and use, from the license area and the area of lease, timber which is necessary for mining operations. The licensee shall comply with the applicable laws regarding the cutting of timber and reforestation and must submit a restoration plan as may be specified by directive.
4. The holder of a prospecting and artisanal mining license shall cut and use only such timber as is strictly necessary for access to the areas in which mining operations are carried out.

22. OTHER OCCUPANTS

1. The licensee shall take proper precaution not to interfere with other legitimate occupants of the license area, the land covered by a lease and adjacent land.
2. Notwithstanding the provision of sub-article 1 of this Article, if the licensee's mining operations require that the other occupant be displaced, the licensee shall attempt to negotiate the compensation payable to such occupants. If the occupants refuse to be displaced or to agree on the compensation, the Licensing Authority may cause the expropriation of immovable property, if any, and the eviction of such occupants from the area of the licenses mining operations.
3. A licensee shall, if he damages, injures or destroys any installations or other property of another legitimate occupant of the license area, the land covered by a lease or adjacent land, pay to the occupant compensation representing the value of such damage, destruction or injury as agreed by the parties or as assessed by the Licensing Authority.

23. INFRASTRUCTURE AND OTHER CONSTRUCTION

1. The holder of an exploration mining license may construct, operate and maintain within the license area and the area covered by a lease all infrastructure necessary for operations including facilities for roads, communications and power. The licensee may also, with the prior written approval of the Licensing Authority and in consultation with other authorities of the Government, construct such facilities outside of the areas covered by the license and a lease.
2. The licensee may use the existing infrastructure if its use by such licensee shall not impair the existing and approved use thereof by other persons.
3. The Licensing Authority may require the licensee to cooperate and contribute financially in the construction and maintenance of infrastructure to be used jointly with another licensee or other authorised persons within the areas covered by his license or lease if such joint use of the infrastructure is deemed to be to the economic benefit of all parties concerned. The allocation of the

costs of construction and maintenance of such infrastructure shall be determined by the Licensing Authority on the basis of proportional use.

4. The Licensing Authority may require the licensee to permit other persons to use infrastructure of the licensee, provided that such use does not impede mining operations.
5. The Licensing Authority may impose on such person stated under sub-article 4 hereof a fee payable to the licensee if the use of such infrastructure is for commercial purposes. The fee imposed shall be based on the extent of that person's use in proportion to the total use of such infrastructure by all other such persons and the licensee provided that the licensee shall have a preferential right to capacity utilisation of the infrastructure.
6. Notwithstanding sub-article 4 of this article in circumstances of national emergency, the Government may also require the licensee to permit another person or the Government to use temporarily the infrastructure of the licensee, subject only to the payment of compensation in the event of damage including loss of production thereto.
7. The licensee may construct within the area covered by the license or a lease all industrial, administrative, residential, medical and other buildings and facilities necessary for mining operations.
8. All constructions by the holder of a prospecting, an exploration or an artisanal mining license shall be of a temporary nature and shall be removed prior to the termination of the license or to the relinquishment of the area on which such construction is located unless otherwise required by the Licensing Authority.
9. Notwithstanding the provisions of Article 49(2) of this Proclamation, all constructions of a permanent nature built by a holder of a mining license may, upon the termination of the license, either be removed by the licensee or at the request of the Licensing Authority be abandoned and become the property of the Government free of charge.

24. CONDUCT OF MINING OPERATIONS

The licensee shall:

1. promptly commence and carry out mining operations in a prudent, diligent and efficient manner, in accordance with appropriate technology and good practices generally accepted in the international mining industry;
2. comply with all work programmes and expenditure obligations unless a departure therefrom is justified and receives the prior written approval of the Licensing Authority, and avoid the performance of work or the incurring of expenditure which is not required;

3. conduct mining operations in such a manner as to ensure the health and safety of his agents, employees and other persons, and to minimize damage or pollution to the environment; and
4. conduct mining operations in accordance with applicable regulations and directives.

25. EMPLOYMENT, TRAINING AND LOCAL SUPPLY

The licensee shall,

1. give preference to the employment of Eritrean nationals, provided that such persons have the required qualifications or skills;
2. give employees the training and education necessary to carry out mining operations effectively and efficiently and comply with appropriate training programmes;
3. give preference to domestic goods and services, where they are readily available at competitive prices and are of comparable quality.

26. DELIMITATION OF AREAS

The applicant for a mining license shall delimit by official survey the boundaries of the area for which the license is sought. The same obligation shall apply with regard to the application for a lease.

27. BOOKS, RECORDS AND REPORTS

The licensee shall:

1. maintain records of mining operations and submit reports and other documents periodically to the Licensing Authority, the form, content and manner of which shall be specified in the Regulations;
2. maintain all financial, accounting, employment, commercial and other books and records and comply with all other reporting and filing obligations under the appropriate laws;
3. make available all books and records for inspection by the Licensing Authority and other duly authorized officials.

**CHAPTER 5
COMMON PROVISIONS FOR LICENSES**

28. APPLICATIONS

An application for a license or for its amendment, renewal, transfer, assignment, encumbrance or inheritance shall be in the form and contain the information specified by Regulations and directives issued to implement this Proclamation.

29. SURRENDER

1. A licensee may, upon giving prior notice to the Licensing Authority, surrender all or any part of the license area, provided that the licensee has fulfilled all obligations under the license and is in compliance with the provisions of this Proclamation and the Regulations or directives issued thereunder.
2. Upon surrender of part or the whole of the license, the licensee shall vacate the surrendered portion of the license area.

30. BOUNDARIES

The license area shall comprise all of the land within its boundaries and all subsoil thereunder to an indefinite depth within the vertical planes passing through each boundary.

31. GRANTING LICENSES

1. An artisanal mining license may be granted over a license if the Licensing Authority considers that the activities of the artisanal miner will not unduly interfere with the licensee's operations.
2. A license may be granted over an artisanal mining license on the condition that the licensee shall make every reasonable endeavour not to interfere with the artisanal miner's operations.

32. TITLE TO SALE AND EXPORT OF MINERALS

1. The holder of a prospecting or an exploration license may remove, transport, analyze and, with the prior written consent of the Minister, export samples of minerals for testing, provided that a comparable sample is maintained in Eritrea. However, such minerals shall remain the property of the Government, and the licensee shall return such exported samples to Eritrea, unless otherwise authorized to dispose of them upon the prior written consent of the Minister.
2. The holder of an artisanal or mining license shall obtain title to the minerals specified in the license upon their extraction.

3. The holder of a mining license shall have the right to sell the minerals locally or export all minerals specified in the license.

33. LIABILITY ON SURRENDER

Any person who surrenders or relinquishes his license or lease shall not be released from the liability of performing the duties imposed upon him and due to be performed by him prior to the date of surrender or relinquishment of the license or lease.

PART III FINANCIAL REGIME

34. ROYALTY

- 1 The licensee shall pay royalty for all minerals produced.
2. The rates and manner of such payment, unless specified by agreement shall be as determined by Regulations issued hereunder. The Regulation may specify the conditions under which the rate and manner of royalty payment shall be determined by agreement.
3. The Licensing Authority may, in circumstances it deems appropriate, cause the reduction, suspension or waivers of the imposition of royalty by requesting the appropriate Government body.

35. TAXES

1. The licensee shall pay income tax in accordance with the Mining Tax Proclamation No.69/1995.
2. The compensation received, according to their contract of employment, by expatriate employees of the licensee or his contractor shall be subject to the payment of income tax at a flat rate of 20%.

36. FEES

The licensee shall pay filing fees in connection with the application for a license and for the renewal, transfer and other dealing thereof. The amount and manner of payment such fees shall be determined by Regulations issued hereunder.

37. RENTALS

1. The licensee shall pay annually in advance to the Licensing Authority rental based on the surface of the license area. Such rentals shall be specified by Regulations issued hereunder and may be adjusted; such adjustments shall only apply to licenses issued after the date of the adjustment.

2. The licensee shall also pay annually in advance to the appropriate authority a rental for the area covered by a lease. Such rental shall be fixed in the instrument granting the lease and shall remain fixed during its term, unless the instrument provides otherwise.

38. CUSTOMS DUTIES AND TAXES

1. The holder of a license and his contractor shall pay 0.5 percent duty on all imports into Eritrea of equipment, machinery, vehicles and spare parts (excluding sedan cars and their spare parts) necessary for mining operations.
2. All goods imported pursuant to, sub-article 1 of this Article may be re-exported, free of all export duties and taxes, but may subject to the provisions of Articles 23(9) and 49(2), be disposed of with payment of duty and tax thereon in accordance with the applicable laws.
3. The holder of a license is entitled to export, free of all duties and taxes, all minerals produced pursuant to his license.

39. EXCHANGE CONTROL

1. A holder of mining license producing exportable minerals may:
 - a) open and operate a foreign currency account in banks in Eritrea in accordance with the regulations of the Bank of Eritrea;
 - b) retain abroad in an external account a portion of his foreign currency earning as may be determined by directives to be issued by the Bank of Eritrea and pay from the retained earnings where foreign currency may not be readily available by the Bank of Eritrea for the following purposes:
 - 1) to import equipment necessary for the mining operations;
 - 2) for services, leases and licenses to be paid for in foreign currency in accordance with agreements entered into;
 - 3) for reimbursement of loans and debt services due legally to financial institutions outside Eritrea;
 - 4) for compensation payable to foreign employees who are not permanently resident in Eritrea, and
 - 5) for such other activities which contribute to the process and enhancement of the mining operations.

2. A holder of a mining license producing exportable minerals may make the following remittances out of Eritrea in the currency of investment or in an approved currency at the prevailing rate of exchange on the date of remittance:
 - a) profits and dividends accruing from mining investment;
 - b) principal and interest on a foreign loan;
 - c) fees, royalties or any other payments accruing pursuant to a technology or management agreement relating to the mining investment;
 - d) proceeds from any sales of assets including those derived upon the liquidation or winding up of the mining business of a foreign investor or enterprise voluntarily or due to bankruptcy; and
 - e) payment from the sale or transfer of shares of a mining investment or acquisition in part or in whole of a mining operation by a domestic investor.
3. Expatriates employed in a Mining operation may remit salaries and other payments accruing from their employment in accordance with the foreign exchange regulations of Eritrea

40. OTHER INCENTIVES

The rates of royalty and rentals to be determined under Articles 34 and 37(1) of this Proclamation shall be in such a manner as to encourage investment in minerals given priority of development and mineral development areas.

41. PARTICIPATION

Without prejudice to the provisions of Article 7 of this Proclamation, the Government may acquire without cost to it a participation interest of up to ten percent of any mining investment. Additional equity participation not exceeding a total of 30 per cent including the ten percent above may also be provided to Government by agreement which shall specify the percentage, timing, financing, resulting rights and obligations and other details of such participation.

42. GUARANTEE

The Licensing Authority may require the applicant for a license, or renewal or for the transfer, assignment or encumbrance of a license to provide a cash, bank or other guarantee to secure the applicant's obligations with regard to rehabilitation of the mining area progressively or at the end of mining operations. The conditions of such a guarantee shall be determined by directives to be issued by the Minister.

**PART IV
ADMINISTRATION**

43. RESPONSIBILITY OF THE LICENSING AUTHORITY

1. All types of mining licenses shall be issued by the Licensing Authority.
2. The Licensing Authority has the power to:
 - a) issue, suspend or cancel a License pursuant to this Proclamation and Regulations and directives issued hereunder;
 - b) ensure that a licensee has the financial resources and technical competence necessary to fulfil the obligations under the license;
 - c) either by competitive bidding or direct negotiation, enter into agreements on behalf of the Government;
 - d) inspect and ensure that mining operations are carried out in accordance with this Proclamation, Regulations and directives issued hereunder and any agreement;
 - e) collect and audit royalties, rentals and other fees payable pursuant to this Proclamation;
 - f) require an applicant for a mining license to submit an environmental impact study before the granting of the license; and
 - g) without prejudice to prior commitment of the licensee, require that a licensee sell all or a portion of his minerals to the Government, to a legal person owned by it, or to another Eritrean person subject to the payment of the international market price prevailing at the time of the sales transaction.
3. The Minister may issue directives and prepare model contracts to serve as basis for the negotiation of agreements in order to give effect to the provisions of this Proclamation.

44. INSPECTION OF MINING OPERATIONS

An officer, duly authorized by the Licensing Authority may, at all reasonable times but so as not to unreasonably impede or obstruct the mining operations, enter, inspect and examine any place, works, machinery and equipment occupied or used in or in connection with mining operations.

45. REGISTRATION AND REPRESENTATION OF LICENSEES

1. Unless otherwise permitted or determined by the Ministry, the licensee shall be registered in the Registry of Trade with the appropriate authority and shall maintain an office in Eritrea during the entire term of the license.
2. The licensee shall not be required to obtain any other authorization or permission from any other Government office in order to produce, sell or export minerals covered by the license or to import any goods or to enter into contract for the acquisition of licenses of any intellectual property required for mining operations.
3. The provision of sub-article 2 of this Article shall not relieve the licensee from complying with other obligations of customs and bank formalities.
4. The licensee that is not a natural person shall also maintain, during the term of the license a representative who is authorized to act on its behalf and shall notify the Licensing Authority of the identity of such representative or any change thereof.

46. REGISTRATION OF LICENSES & LEASES

The Licensing Authority shall establish a Register in which shall be entered details of each license applied for and the subsequent grant/refusal of that license. license and any relevant conditions. Every instrument under which such license is transferred, assigned, relinquished, encumbered or otherwise dealt with shall be presented to the Licensing Authority for registration within 90 days after the date thereof (or within such further time as the Licensing Authority may allow) or it shall otherwise become null and void. The Licensing Authority shall record in the Register Summary details of every such instrument and also record any other action taken which affects the tenure or conditions of the license. The register shall be open for public inspection at all reasonable times.

47. CONFIDENTIALITY

1. Except as provided in Article 46 of this Proclamation all information submitted in applications reports and other filings pursuant to this Proclamation shall be kept confidential.
2. Notwithstanding the provision of sub-article 1 of this Article:
 - a) Government officials may request access on a confidential basis to such information for their Official duties, and in such capacity permit access to accountants professional consultants and legal counsel.
 - b) The Government may compile and distribute information, geographic or geological maps statistics and reports and other documents where

the identity of licensee is not disclosed or apparent and his interests are in no way adversely affected.

3. This confidentiality obligation shall end upon the termination of the license to which information relates or as such otherwise specified by agreement.

48. SETTLEMENT OF DISPUTES

1. The Licensing Authority may, in accordance with procedures to be laid down by regulations, examine and decide disputes between licensees, as well as between a licensee and a third party concerning rights arising from licenses. The Licensing Authority shall have the power to determine and enforce compensation to be paid by one party to the other.
2. A decision of the Licensing Authority made pursuant to sub-article 1 of this Article may be appealed to the court of competent jurisdiction; within 60 days in accordance with the provision of the Eritrean Civil Procedure Code.
3. The Licensing Authority shall have the power to administer oaths in any proceeding before it.
4. Any dispute, controversy or claim between the government and the licensee arising out of, or relating to the agreement or the interpretation, breach or termination thereof shall, to an extent possible, be resolved through negotiations.
5. In the event that agreement cannot be reached through negotiations, the case shall be settled by arbitration in accordance with the as laid down by the procedures the Licensing Authority or as specified in the agreement. An arbitral award shall be final and binding upon the Parties.

49. TERMINATION OF MINING RIGHTS

1. The licensee's right to conduct mining operations shall terminate if:
 - a) the licensee relinquishes the whole area or surrenders the license;
 - b) the license is revoked by the Ministry pursuant to the provisions of this Proclamation or Regulations issued pursuant to this Proclamation;
 - c) the license expires without being renewed; or
 - d) without prejudice to the right of heirs, the licensee dies or where the licensee is not a natural person, it is liquidated or declared bankrupt.
2. Upon the termination of a mining license, the Government may, unless an agreement specifies otherwise, acquire all of the immovable and movable property used in mining operations at a price equal to the then undepreciated

and unamortised value of such assets, as shown in the financial books of account of the licensee. If the Government does not exercise such right, within 90 days the licensee shall be free to dispose of such assets to another person in accordance with applicable laws.

3. The Government shall have the option to either take over at no cost to it any asset that may not have been disposed of by way of sale within a period of one year from the termination of the mining license or to require the licensee to remove such assets and rehabilitate the mining license area.
4. The holder of a license or a lease may be required, on surrender or revocation, to fence and safeguard to the satisfaction of the Licensing Authority, any pits and such other works in the license and/or lease area so that the health, life and property of persons may not be endangered.

50. INFRACTIONS AND SANCTIONS

1. If a licensee, or any other person fails to comply with the requirements of this Proclamation, Regulations or directive issued pursuant to this Proclamation or with the obligations the license applicable to such person, he shall be guilty of an infraction under this Proclamation.
2. An infraction may result in revocation or suspension of the license and/or in the imposition of a fine. The classification of infractions and the sanctions applicable to each category, in addition to those which may be applicable under the Penal Code of Eritrea shall be specified by Regulations.
3. Officials of the Licensing Authority or any other person shall report all infractions to the Controller. A report of any infractions shall include a statement of the facts and all available evidence in support of such statement.
4. The Controller shall immediately notify the licensee of the infraction reported, and the licensee shall take immediate remedial action, if such infraction is capable of remedy.
5. Any person who violates the provisions of this Proclamation or Regulations or directives issued hereunder is guilty of an offence and liable, upon conviction, to punishment under the provisions of the Penal Code.

PART V MISCELLANEOUS

51. EXISTING MINING RIGHT

1. All mining rights existing before entry into force of this Proclamation shall remain valid and shall be governed by the terms of their respective agreements,

provided, however, that if such terms are inconsistent with the provisions of this Proclamation, the Licensing Authority shall undertake negotiations with the holder of such right so that the terms of such right shall, in so far as practicable, be revised to conform to the provisions of this Proclamation.

2. Notwithstanding the provision of sub-article 1 of this Article, the holder of mining rights issued before entry into force of this Proclamation may be entitled to incentives under this Proclamation, provided, however, the holder of mining rights shall be willing to negotiate with the Licensing Authority regarding the agreement which is inconsistent with this Proclamation.

52. INAPPLICABLE LAWS

1. Unless otherwise provided by agreement, the provisions of the Civil Code of Eritrea regarding Administrative Contracts shall not be applicable to such agreements that may be concluded between the Government and the licensee.
2. Any law, Regulations, directives or practices which are inconsistent with this Proclamation shall not apply with respect to matters provided for in this Proclamations.

53. EFFECTIVE DATE

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

Done at Asmara this 20th day of March 1995
Government of Eritrea.

