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1

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# Proclamation No. 157/2006

# Eritrean National Mining Corporation Establishment Proclamation

RDC 1
DOCUMENT RDC

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## Eritrean National Mining Corporation Establishment Proclamation

**Whereas,** the equitable distribution of wealth and the improvement and betterment of the qualities of life of the Eritrean people have been priority objectives of the Government;

**Whereas,** the proper exploitation of mineral resources can make a significant contribution to sustainable national development and realization of the priority objectives;

**Whereas,** resource exploitation and utilization need to be conducted with full transparency and accountability to the public;

**Whereas,** the acquisition of appropriate mining technology and expertise, as well as the attainment of marketing skills are essential for the building of national mining capacities and the maximization of national benefits resulting from mining operations; and

**Whereas,** the establishment of a corporation is required to realize the above-mentioned policies;

**Now, therefore,** for and in consideration of the premises herein above, it is proclaimed as follows:

## Part I: Establishment

### Article 1: Title

This Proclamation may be cited as "the Eritrean National Mining Corporation Establishment Proclamation No.157/2006."

### Article 2: Establishment

There is hereby established the Eritrean National Mining Corporation - Enamco (hereinafter called the "Corporation") as an autonomous corporate legal entity.

### Article 3: Head office

1) The head office of the Corporation shall be in Asmara.

2) The Corporation may, as it deems necessary, establish branch offices and agencies elsewhere within and outside Eritrea.

## Part II Objectives, Powers and Responsibilities

### Article 4: Corporate Objectives

The objectives of the Corporation shall be to undertake and engage in mining operations, including prospecting, exploration and exploitation of mineral resources and marketing of the same. and

### Article 5: Powers

For and in the effective implementation and realization of its said objectives, the Corporation is authorized to:-

1. invest in activities of mineral prospecting, exploration, mining, extraction and refining in Eritrea in accordance with the mining laws of Eritrea;
2. enter into joint investment undertakings with foreign natural or juridical persons in mining operations in consonance with the mining laws of Eritrea, including the formation and registration of companies in accordance with the Eritrean Commercial Code;
3. provide necessary services to licensed natural or juridical persons engaged in mining operations, including drilling, earth-moving, infrastructural civil works and related activities, as well as the provision of machinery and equipment on lease and in other related value adding activities;
4. acquire such real properties and hire and /or to import the necessary equipment, machinery and related facilities and materials; and
5. perform and implement whatever necessary and legitimate investments or undertakings related to mining activities.

### Article 6: Responsibilities

The Corporation shall, for and in the implementation and realization of its objectives, comply with the relevant laws of the State of Eritrea, and particularly those laws pertinent to mining operations, environmental protection and labour safety.

### Article7: Capital

The capital of the Corporation is constituted of ENF 450,000,000.00 (four hundred and fifty million) in cash and in kind divided into 450,000.00 (four hundred and fifty thousand)

shares of the par value of ENF 1000.00 (one thousand) each one of which shall be issued for and in the name of the Ministry of Finance (hereinafter the "Ministry")

## Part III Organization and Management Powers

### Article 8: Organs

The Corporation shall consist of:

a) a Board of Directors, (hereinafter the "Board");
b) a General Manager; and
c) the necessary staff.

### Article 9: Composition of the Board

1) The Board shall be composed of a minimum of five members appointed by the President of the State of Eritrea.
2) The Board shall have a chairperson who shall also be appointed by the President of the State of Eritrea.
3) The Board shall appoint its secretary.
4) The Board shall be accountable to the Ministry.

### Article 10: Powers of the Ministry

1) The ultimate authority of overseeing the financial performance and pursuance of the implementation and realization of the objectives and commitments of the Corporation is vested in the Ministry.
2) The Ministry, in consultation with the Ministry of Energy and Mines, shall motivate, support and promote the Corporation's investment in partnership with foreign enterprises.
3) Without limiting the generality of the foregoing, the Ministry is entrusted with the responsibility to receive, review and evaluate and implement appropriate steps on the:

(a) interim Reports of the Board of Directors on the activities and performances of the Corporation;

(b) annual Report of the Board of Directors on the Corporation's performance achievements and recommendations; and

(c) annual audit report and recommendations of the External Auditors on the

Balance Sheet, Profit and Loss Accounts and Assets' Inventory.

**Article 11: Duties and Responsibilities of the Board**

1) The Board of Directors is hereby entrusted with the management responsibility to ensure that the Corporation implements and accomplishes its business objectives.

2) Without limiting the generality of the foregoing, the Board is, for and in the effective realization of the objectives of the Corporation, entrusted with the responsibility to: -

a) formulate and pursue short and long term development programmes and schedules;

b) attribute particular consideration and implement appropriate action to promote the role and partnership of foreign investors with the Corporation;

c) negotiate and secure development funds and /or loans and financial facilities from within or outside the State of Eritrea for and in the realization of said purposes and objectives of the Corporation; it being understood that, upon prior approval thereon by the Government of the State of Eritrea, all sorts of workable and convenient forms and type of contractual commitments and guarantees may be utilized therefor;

d) formulate and recommend for each of such annual Fiscal Year for consideration, approval and authorization by the Ministry the annual budget of the Corporation for the administration, management and performance of its duties, functions and responsibilities;

e) review and evaluate of the Corporation's activities and performance every six (6) months and take appropriate steps thereon; inclusive of presentation of interim and consolidated Annual Reports thereon with recommendations for consideration by the Ministry in consonance with the provisions of Article 10 (3) hereof; and

f) initiate and implement internal regulations and guidelines in consonance with the provisions of this Proclamation.

**Article 12: Answerability of the Board**

1) At the end of each Financial Year, the Board of Directors shall see to it that a Balance Sheet, Profit and Loss Account and Inventories setting out the assets and liabilities of the Corporation shall have been drawn for presentation to the Minister/Ministry.

2) All documents establishing the annual situation of the Corporation i.e. Balance Sheet, Profit and Loss Accounts, Inventories, Performance Reports of the Board of Directors and of the External Auditors, shall be fully substantiated.

3) For and in the effective performance of its duties and responsibilities, the Board is, in consultation with and the written approval of the Minister, fully empowered to employ or replace a General Manager and determine such terms and conditions of his employment; including, his qualification and due remuneration.

**Article 13: Term of office**

1) A Board member shall hold office for a period not exceeding five years and may upon the expiration of that period be eligible for re-appointment.

2) Notwithstanding sub-article (1) hereof, if a Board member's term of office expires before a replacement is appointed, such member shall continue in office for a further period not exceeding six months until a replacement is appointed.

**Article 14: Vacation of Office or Filling of Vacancies**

The office of a Board member becomes vacant if he/she:

1) is absent for five consecutive meetings of the Board without the permission of the Board chairperson; or

2) resigns by notice in writing to the Board chairperson or is removed from office due to incapacity resulting from physical or mental illness, or for any other cause which renders him/her unfit to discharge the functions of a Board member.

**Article 15: Meetings**

1) Within 4 months following the end of each Fiscal Year, annual meetings of the Board shall be convened for and in consideration of appropriate action on the annual report of the General Manager on:

(a) the performance and achievements of the Corporation;

(b) the Balance Sheet, Profit & Loss Account and related Inventory of Assets; and

(c) recommendations of annual budgets and work plans.

2) The Board shall conduct regular quarterly meetings and such other meetings as it deems necessary, for which, the chairperson of the Board shall fix the time and place.

3) While the quorum for a meeting of the Board shall require the presence of the majority of the members, any issue on which a vote is required shall be determined by a majority of votes of those present and voting on the issue, it being understood that in case of a tie, the Chair-person shall have a casting vote.

4) The substance of the proceedings of Board meetings shall be recorded as minutes to be duly signed and authenticated by the chair-person and the secretary.

**Article 16: Powers and Responsibilities of the General Manager**

1) The routine conduct of administration and day-to-day management of the activities of the Corporation, for and in the actual implementation and realization of its objectives, is vested in the General Manager.

2) Without prejudice to the provisions of Article 11 of this Proclamation, the General Manager shall manage all of the Corporation's affairs and activities and shall deal with third parties, whether physical persons or bodies corporate, on behalf of the Corporation and is hereby authorized to sign any document for and on its behalf.

3) Without limiting the generality of the foregoing, the General Manager shall in particular, have the power to:

a) represent the Corporation to all effects and purposes, before courts of justice, quasi-judicial bodies, government departments, municipal authorities, domestic and or foreign business organizations, agencies or entities and governments, financial institutions, banks or any other person and or body for and in the interest and activities of the Corporation;

b) open bank accounts in the name of the Corporation in Nakfa or in any foreign currency and, subject to sub-paragraph (d) hereof, operate same and to draw;

c) endorse and sign in the name of the Corporation all cheques, drafts, payment orders, transfers, assignments and any other instruments relating to activities of the Corporation, inclusive of establishment of letters of credit;

d) sign and execute necessary agreements or transactions related to the objectives and activities of the Corporation and related services, purchases, procurements and or imports in accordance with regulatory financial management procedures to be determined by the Board;

e) review the organizational and administrative manuals of the Corporation;

f) prepare Corporate business plan and submit it to the Board for approval;

g) carry out the decisions or directives of the Board; execute and follow up same;

h) keep and/or cause to be kept accounts, records, books and up-to-date inventories of the Corporation in accordance with the provisions of the Commercial Code of Eritrea dealing with share companies and the usual business practice applicable to the industry;

i) prepare and submit to the Board detailed quarterly interim reports as well as a comprehensive annual report relevant to each fiscal year on the activities of the Corporation;

j) employ and or dismiss personnel as required; and

k) designate a person at the management level to act on his/her behalf in case of his absence or illness.

**Article17: External Auditors**

1) Independent External Auditors shall be appointed by the Ministry.

2) The External Auditors shall audit the financial books and records as well as the business performance of the Corporation, verify the correctness and accuracy of

the Balance Sheet, Profit and Loss Accounts, Inventory of Assets, records and certify their evaluation and submit their report along with their recommendations, if any.

3) The audit reports shall be presented within four (4) months following the end of each fiscal year for the Ministry's consideration and appropriate action.

**Article 18: Fiscal Year**

The Fiscal Year of the Corporation shall begin on the first day of January and shall end on the last day of December of the same year. Provided, however, that the first Fiscal Year shall begin on the date on which the Corporation is incorporated and shall end on the last day of December of the same year.

**Article 19: Allotment of Net Revenues**

1) The Corporation shall, with the approval of the Ministry, out of each financial year, ensure that a Reserve Fund of an appropriate amount is set aside for the purposes of future capital investment or unexpected costs.

2) Any outstanding balance after said Reserve Fund may be utilized for the purposes and objectives of the Corporation in accordance with the decision and directives of the Ministry.

**Article 20: Duration of the Corporation**

The Corporation shall have a perpetual existence.

RDC 1
DOCUMENT RDC

**Article 21: Effective Date**

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

Done at Asmara, this 18th day of December 2006,

Government of Eritrea.