DRAFTING NOTE

INVESTMENT ACT 2026

1. Status and purpose of this note

This drafting note is explanatory and is not part of the proposed Assembly Act. It identifies the legislative need, the relationship with earlier Eritrean law, the principal matters retained, the modernization choices made and the place of the draft within the emerging constitutional statute book. The instrument remains a consultation draft and should be finalized only after legal, institutional, fiscal and public review.

2. Legislative need and prior law

The draft replaces the investment chain beginning with Proclamation 18/1991 and later investment and privatization measures, which combined incentives with broad administrative discretion.

3. What the draft retains

It retains investor entry, guarantees, incentives authorized by law, investment agreements and protection of lawful property and contracts.

4. What the draft updates and modernizes

It establishes equal and transparent treatment, one-stop electronic administration, published criteria, responsible-investment duties, lawful expropriation and fair compensation, access to courts, calibrated dispute settlement, competition and disclosure of fiscal commitments.

5. Constitutional, code and treaty fit

The draft is framed under the Constitution of Eritrea 1997 and must be read with the Civil Code, Penal Code, Civil Procedure Code and Criminal Procedure Code of Eritrea 2015 where those Codes govern. It is also coordinated with the other institutional, financial, commercial, land, labour, administrative and sectoral drafts in this collection. References to international or regional standards guide compatibility and implementation; they do not bypass the Treaty-Making Act or convert an unincorporated instrument into domestic law.

6. Scope and organization

The principal divisions address preliminary provisions; freedom to invest and market entry; investment facilitation; treatment and protection of investment; investor responsibilities; land, natural resources and public assets; incentives and development measures; investment agreements and public transparency; dispute prevention and resolution; governance, monitoring and accountability; transition and final provisions.

7. Transition, implementation and consultation

The draft preserves lawful accrued rights, completed transactions, pending proceedings and institutional continuity where appropriate, while preventing temporary savings from preserving unconstitutional coercion or indefinite executive discretion. Before enactment or issuance, authentic predecessor instruments and amendments should be verified, cross-references and fiscal capacity confirmed, implementing regulations and digital systems prepared, and affected institutions, professions, communities and the public given a practical opportunity to comment.

CONSULTATION DRAFT — NOT ENACTED LAW

ACT NO. ___/2026

INVESTMENT ACT 2026

(ACT)

AN ACT TO PROMOTE, FACILITATE AND PROTECT RESPONSIBLE INVESTMENT, ESTABLISH TRANSPARENT INVESTMENT ADMINISTRATION, AND PROVIDE FOR RELATED MATTERS.

PREAMBLE

WHEREAS Articles 8, 21 and 23 of the Constitution of Eritrea require economic and social development consistent with social justice, dignified livelihood and protection of property;
WHEREAS Eritrea requires domestic, diaspora and foreign investment to create employment, rebuild productive capacity, introduce technology, expand exports and develop infrastructure within a democratic and competitive market economy;
WHEREAS the investment systems established by Proclamations 18/1991 and 59/1994 should be replaced by a transparent system that does not condition ordinary lawful investment upon discretionary political or administrative approval;
WHEREAS investment protection must coexist with taxation, labour rights, environmental stewardship, competition, community interests, public accountability and the State's lawful authority to regulate in the public interest;
NOW, THEREFORE, the National Assembly of Eritrea enacts as follows:

CHAPTER I
PRELIMINARY PROVISIONS

Article 1 — Short title

This Act may be cited as the Investment Act 2026.

Article 2 — Objects

1. promote productive and responsible investment;
2. protect investors and communities through predictable law and effective remedies;
3. remove unnecessary entry approvals and administrative discrimination;
4. facilitate technology, skills, employment, exports and regional development; and
5. ensure transparency in incentives, concessions and State agreements.

Article 3 — Application

1. This Act applies to an investment lawfully established in Eritrea by a domestic or foreign investor.

2. It applies to public bodies administering investment, but does not displace a sector Act, the Commercial Code, tax law, land law or foreign-exchange law.
3. A public enterprise receives no greater investment protection than a private enterprise and remains subject to public-finance, procurement, audit and competition law.

Article 4 — Definitions

1. "domestic investor" means an Eritrean citizen or entity controlled by Eritrean citizens, including an eligible diaspora investor;
2. "enterprise" means a business organization or undertaking established under Eritrean law;
3. "foreign investor" means a foreign natural person or foreign-controlled entity that lawfully owns or controls an investment;
4. "investment" means a commitment of capital, assets, technology or enterprise resources carrying commercial risk and an expectation of gain;
5. "investment agreement" means a written agreement authorized by law between the State and an investor concerning a specific major project;
6. "negative list" means the statutory list of prohibited or restricted investment activities; and
7. "responsible authority" means the Ministry or agency assigned investment facilitation under this Act.

Article 5 — Qualifying investment

1. An investment may include an enterprise, shares, debt with the characteristics of an investment, movable and immovable rights, intellectual property, contractual rights and a lawful concession.
2. A court judgment, ordinary trade receivable, short-term speculative movement, unlawful asset or asset acquired through corruption is not protected as an investment merely because it has economic value.

Article 6 — Constitutional and international interpretation

1. This Act shall be interpreted consistently with the Constitution and treaties lawfully binding upon Eritrea.
2. No treaty, agreement or administrative representation may remove a constitutional safeguard, confer legislative power upon the executive or prevent proportionate regulation for a legitimate public purpose.

Article 7 — Relationship with the Codes

1. The Commercial Code governs formation, governance, insolvency, securities and commercial transactions.
2. The Civil Code governs property, contract, delict and civil remedies except where this Act provides a specific rule.
3. The Penal Code governs criminal responsibility, and the procedural Codes govern courts, evidence and enforcement.

CHAPTER II
FREEDOM TO INVEST AND MARKET ENTRY

Article 8 — Freedom of investment

1. A person may establish, acquire, expand, operate, reorganize or dispose of a lawful investment without an investment certificate or general investment permit.
2. Commercial registration and any risk-based sector licence remain governed by the Commercial Code and Business Licensing Act.

Article 9 — National treatment

1. A foreign investor and investment shall receive treatment no less favourable than a comparable domestic investor and investment in like circumstances.
2. A difference is permitted only where an Act establishes a necessary and proportionate measure for a legitimate purpose and does not disguise arbitrary discrimination.

Article 10 — Negative list

1. The negative list shall identify activities prohibited to all private investment, reserved to Eritrean citizens, subject to ownership limits, or requiring special review.
2. No restriction is enforceable unless stated in an Act or validly made under specific statutory authority and published before application.
3. The list shall be reviewed at least every three years with a presumption in favour of openness and competition.

Article 11 — Reserved activities

1. Activities may be reserved only to protect national security, constitutional functions, scarce public resources, small local livelihoods or another compelling public interest.
2. Reservation shall not be used to protect a politically connected enterprise, create an unnecessary State monopoly or exclude diaspora Eritreans without objective reason.

Article 12 — Sector licences

1. Banking, insurance, telecommunications, transport, energy, mining, petroleum, fisheries, health, education and other risk-based sectors remain subject to their sector Acts.
2. A sector authority shall decide only the matters assigned to it and shall not require a duplicate investment approval.

Article 13 — No performance approval

1. An authority shall not condition entry on an undertaking to export, use a fixed proportion of domestic content, transfer technology, employ a named person, purchase from a named supplier or surrender foreign currency, unless an Act authorizes a proportionate measure consistent with Eritrea's obligations.

2. Voluntary and competitively awarded commitments in a public concession or incentive agreement remain enforceable according to law.

Article 14 — Investment screening

1. A narrowly defined review may apply to foreign acquisition of critical infrastructure, defence-sensitive technology, strategic ports, major communications networks or another asset expressly listed by an Act.
2. Review shall assess a concrete security risk, not nationality alone, and shall use transparent criteria, deadlines, reasons and independent review.

CHAPTER III
INVESTMENT FACILITATION

Article 15 — Responsible authority

1. The Ministry responsible for trade and investment shall coordinate facilitation and policy without assuming powers assigned to sector regulators.
2. It shall maintain a public investment portal, assist investors, identify systemic barriers and report performance.

Article 16 — One-stop investment service

1. The responsible authority shall provide a single service connecting commercial registration, licensing, taxation, customs, land, immigration and utilities.
2. Each participating authority retains legal responsibility for its own decision and shall not transfer undisclosed discretion to the one-stop service.

Article 17 — Digital access

1. Applications, guidance, fees, status, decisions and review routes shall be available electronically in accessible form.
2. Physical and regional assistance shall remain available to persons without reliable digital access.

Article 18 — Investor information

1. The portal shall publish the negative list, laws, procedures, forms, fees, service standards, available public land, incentives, procurement opportunities and aggregate decisions.
2. An investor may rely on current official information in good faith, subject to correction that is prospective unless fraud or manifest error exists.

Article 19 — Time limits and coordination

1. Authorities shall apply the decision periods in the Business Licensing Act or the relevant sector Act.

2. A coordinating body shall not restart a statutory period by transferring a file or requesting information already lawfully available.

Article 20 — Investment ombud

1. An independent Investment Ombud within the responsible authority shall receive complaints concerning delay, inconsistency, corruption risk and inter-agency obstruction.
2. The Ombud may recommend correction and publish systemic findings but shall not replace a court, regulator or formal appeal.

Article 21 — Regional investment services

1. Each province (zoba) shall designate an investment service point linked to the national portal.
2. Regional facilitation shall respect local-government competence and shall not create internal border controls or duplicate national approvals.

Article 22 — Small and medium enterprises

1. Policy shall facilitate finance, premises, skills, standards, technology and market access for micro, small and medium enterprises.
2. Assistance shall use objective published criteria and shall not require political membership, sponsorship or unofficial payment.

Article 23 — Diaspora investment

1. Diaspora Eritreans shall have equal access to investment services, property protections, courts, financial services and published incentives.
2. No compulsory contribution, discriminatory exchange arrangement or political clearance may be imposed as a condition of investment.

CHAPTER IV
TREATMENT AND PROTECTION OF INVESTMENT

Article 24 — Fair administrative treatment

1. A public body shall administer investment law consistently, transparently, without arbitrariness and through procedures appropriate to the rights affected.
2. This Article does not guarantee regulatory stability, commercial success or immunity from a general change of law.

Article 25 — Physical protection

1. The State shall provide investors the ordinary protection of law and public security without discrimination.

2. It is not strictly liable for private violence, war, disaster or loss beyond what Eritrean law and a lawfully binding treaty provide.

Article 26 — Protection of property

1. No investment shall be nationalized or expropriated except for a public purpose, under law, without discrimination, with due process and against prompt, fair compensation.
2. A bona fide, proportionate and generally applicable regulation protecting health, safety, environment, labour, consumers, competition, taxation or financial stability is not expropriation merely because it reduces value.

Article 27 — Compensation

1. Compensation shall reflect the fair market value immediately before the expropriation became known, excluding value created by the project announcement or unlawful conduct.
2. It shall include reasonable interest from taking to payment and be paid in a transferable form, subject to lawful tax and anti-money-laundering controls.

Article 28 — Expropriation procedure

1. The investor shall receive notice, disclosure of purpose and valuation, opportunity to respond, and access to an independent court.
2. Urgent possession before final determination requires express statutory authority, immediate necessity and provision for secured compensation.

Article 29 — Non-discrimination

1. No authority may discriminate in administration, enforcement, access to court or protection on an arbitrary ground.
2. Comparable circumstances shall consider sector, risk, scale, regulatory purpose, public obligations and actual conduct.

Article 30 — Access to justice

1. An investor may seek timely relief in independent Eritrean courts and tribunals on the same terms as another person.
2. A foreign investor shall not be required to exhaust diplomatic protection or obtain executive permission before using domestic remedies.

Article 31 — Transfer of funds

1. Subject to tax, judgment, insolvency, prudential, anti-money-laundering and foreign-exchange law, an investor may transfer capital, profits, dividends, interest, royalties, compensation, sale proceeds and lawful earnings.
2. The National Bank shall administer temporary foreign-exchange measures transparently, without confiscatory rates, discrimination or indefinite restriction.

Article 32 — Currency conversion

1. Conversion shall occur through authorized markets at the applicable lawful market rate.
2. A mandatory official rate materially divorced from fair market value shall not be used to appropriate private foreign currency without lawful authority and fair compensation.

Article 33 — Employment of personnel

1. An investor may employ qualified Eritreans freely and may engage foreign specialists where skills are unavailable or transfer of knowledge is reasonably planned.
2. Employment, immigration, labour standards and professional licensing remain governed by their respective laws.

Article 34 — Protection against requisition

1. Temporary requisition is permitted only under an Act during a genuine emergency, for a defined public need and with fair compensation.
2. Military or security necessity does not permit unofficial seizure, uncompensated use or occupation of an enterprise.

Article 35 — Subrogation

1. Where an insurer or guarantor pays an investor under a lawful investment guarantee, Eritrea may recognize subrogation to the extent of payment.
2. Subrogation grants no greater right than the investor possessed and remains subject to defences and public law.

CHAPTER V
INVESTOR RESPONSIBILITIES

Article 36 — Compliance with law

1. An investor shall comply with Eritrean law concerning labour, environment, taxation, competition, consumers, data, corruption, land and sector regulation.
2. Investment protection does not excuse illegality or prevent proportionate enforcement.

Article 37 — Human rights and labour

1. An enterprise shall respect constitutional and internationally recognized human and labour rights applicable in Eritrea.
2. Forced labour, compulsory national-service labour in private production, child exploitation, discrimination and retaliation against lawful worker organization are prohibited.

Article 38 — Environmental and social responsibility

1. A project shall undergo the assessment and consultation required by environmental and land law before irreversible commitment.
2. The investor shall prevent, mitigate, restore and, where law requires, compensate material environmental and community harm.

Article 39 — Community engagement

1. A project materially affecting a community shall provide timely information and meaningful, accessible consultation before approval and throughout operation.
2. Consultation does not displace lawful consent requirements, land rights, environmental review or access to court.

Article 40 — Anti-corruption

1. An investor shall not offer, promise, give, solicit or conceal an improper advantage connected with an investment or public decision.
2. A protection or incentive obtained through corruption, fraud or material misrepresentation may be withdrawn through due process without shielding public officials involved.

Article 41 — Beneficial ownership

1. An enterprise receiving a licence, incentive, concession, public contract or significant land right shall disclose and update its natural beneficial owners under law.
2. Required information shall be available to competent authorities and to the public to the extent prescribed by transparency and data-protection law.

Article 42 — Books, audit and reporting

1. An enterprise shall maintain reliable accounts and records under the Commercial Code and applicable accounting law.
2. A major or regulated project shall publish or file financial, tax, ownership, environmental and performance information required by law.

Article 43 — Responsible business conduct

1. Large enterprises shall identify and address material human-rights, labour, environmental and integrity risks in their operations and supply chains.
2. Requirements shall be proportionate to size, sector, influence and risk and shall not impose unrealistic burdens on micro-enterprises.

CHAPTER VI
LAND, NATURAL RESOURCES AND PUBLIC ASSETS

Article 44 — Land rights

1. This Act grants no ownership of land and no right to displace an occupant or community.
2. Lease, use, allocation, compensation and resettlement are governed exclusively by the Constitution and land law through transparent procedure.

Article 45 — Public land allocation

1. Material public land for investment shall ordinarily be allocated through open, competitive and published procedure.
2. Direct allocation requires statutory authority, independent valuation, reasons, conflict disclosure and publication.

Article 46 — Natural resources

1. Mining, petroleum, fisheries, water and other natural resources may be developed only under the relevant sector Act and environmental law.
2. This Act does not create a concession, reserve, production right or entitlement to a resource.

Article 47 — Ports and strategic infrastructure

1. A lease or concession involving a port, airport, major transport corridor, power grid or communications backbone requires transparent authority, security review and public-interest safeguards.
2. No executive agreement may transfer sovereignty, territorial control or an exclusive strategic right without constitutional and legislative authorization.

Article 48 — Community and customary interests

1. Investment administration shall identify lawful occupation, communal use, grazing, water, fishing, cultural and livelihood interests before allocating land or resources.
2. Affected persons are entitled to notice, participation, fair compensation where rights are taken, and effective review.

CHAPTER VII
INCENTIVES AND DEVELOPMENT MEASURES

Article 49 — Authority for incentives

1. A tax, customs, grant, guarantee, land-price or other financial incentive may be granted only under an Act and within an appropriation where public money is involved.

2. An official, ministry or investment agreement may not create an unpublished exemption or waive law without authority.

Article 50 — Criteria

1. An incentive shall address a demonstrated market failure or public objective such as employment, exports, technology, infrastructure, regional development or environmental improvement.
2. Criteria shall be objective, time-limited, fiscally affordable, competitively neutral and measurable.

Article 51 — Publication

1. The legal basis, recipient, estimated value, duration, conditions and verified performance of a material incentive shall be published.
2. Legitimate trade secrets may be redacted narrowly, but confidentiality shall not conceal the public cost or beneficiary.

Article 52 — Performance and recovery

1. An incentive agreement shall state measurable commitments, reporting, review and proportionate recovery for material non-performance.
2. Recovery shall consider good-faith effort, changed circumstances, partial performance and public benefit and shall follow due process.

Article 53 — No discretionary tax bargain

1. Tax liability and exemption shall be determined under tax legislation administered by the revenue authority.
2. The responsible investment authority may facilitate but shall not negotiate a private tax rate or bind the National Assembly's future taxing power.

Article 54 — Infrastructure support

1. Public infrastructure supporting a project shall be appraised, budgeted, procured and audited under public-finance and procurement law.
2. Exclusive infrastructure access shall be avoided unless objectively necessary, time-limited and transparently priced.

Article 55 — Local linkages

1. Government may promote voluntary supplier development, training, technology collaboration and access to standards for Eritrean enterprises.
2. A mandatory local-content measure requires an Act, evidence of capacity and consistency with competition and international obligations.

CHAPTER VIII
INVESTMENT AGREEMENTS AND PUBLIC TRANSPARENCY

Article 56 — Authority to conclude agreement

1. A public body may conclude an investment agreement only within power expressly granted by the Constitution or an Act.
2. An agreement affecting taxation, public debt, sovereign guarantee, natural resources, strategic infrastructure or material public land requires the approvals prescribed by the relevant laws.

Article 57 — Competitive selection

1. A concession, exclusive right, public-private partnership or material use of public assets shall ordinarily be awarded competitively.
2. Direct negotiation requires a lawful exception, independent assessment, written reasons and publication.

Article 58 — Mandatory terms

1. An investment agreement shall state authority, parties, beneficial ownership, purpose, term, performance, public contributions, monitoring, termination, dispute procedure and restoration obligations.
2. It shall contain anti-corruption, audit, transparency, labour, environmental and change-control provisions appropriate to the project.

Article 59 — Publication of agreements

1. A material investment agreement and amendments shall be published promptly after signature.
2. Only specifically identified information whose disclosure would cause substantial lawful harm may be redacted, with reasons and periodic review.

Article 60 — Stabilization clauses

1. No agreement may freeze the Constitution, prevent application of non-discriminatory human-rights, labour, environmental, health, safety, competition or criminal law, or require compensation merely because such law changes.
2. A narrowly tailored fiscal or contractual adjustment mechanism may be agreed for a major long-term project if authorized, valued, disclosed and subject to legislative limits.

Article 61 — Sovereign guarantees

1. A guarantee, indemnity or termination payment creating contingent public liability requires authority under public-debt and public-finance law.

2. An unauthorized signature does not bind Eritrea merely because the counterparty relied on the official's assertion of power.

Article 62 — No secret side arrangement

1. No letter, oral assurance or side agreement may vary a published investment agreement or confer an undisclosed benefit.
2. A material amendment follows the same authority, review and publication requirements as the original agreement.

CHAPTER IX
DISPUTE PREVENTION AND RESOLUTION

Article 63 — Consultation and mediation

1. An investor and public authority shall attempt good-faith consultation and may use independent mediation before adversarial proceedings.
2. Consultation does not suspend a limitation period or urgent right unless the parties lawfully agree.

Article 64 — Domestic courts

1. Eritrean courts have jurisdiction over investment disputes according to the Constitution and procedural Codes.
2. The State shall ensure independent, timely and enforceable remedies without favouring a domestic or foreign party.

Article 65 — Arbitration by consent

1. Arbitration requires clear written consent in an Act, lawfully ratified treaty or authorized agreement; this Act alone is not standing consent to investor-State arbitration.
2. Consent shall identify the scope, rules, seat or method of selection, transparency, applicable law and relationship with domestic remedies.

Article 66 — Transparency in investor-State arbitration

1. Notices, pleadings, hearings, awards and settlement terms shall be public subject to narrow protection of personal, security and genuine commercial information.
2. A tribunal shall permit submissions by affected communities or public-interest persons where useful and fair.

Article 67 — Applicable law and public policy

1. A tribunal shall apply the Constitution, applicable Eritrean law, the controlling agreement and any lawfully binding treaty.

2. No award shall enforce corruption, unlawful transfer of public assets, violation of fundamental rights or another result contrary to constitutional public policy.

Article 68 — Settlement authority

1. A public authority may settle only within statutory power after legal, fiscal and public-interest assessment.
2. A settlement involving material payment, tax waiver, public asset or regulatory commitment shall be published and audited.

CHAPTER X
GOVERNANCE, MONITORING AND ACCOUNTABILITY

Article 69 — Investment policy council

1. An inter-institutional Investment Policy Council shall coordinate reform while respecting the independence of regulators, the National Bank, Auditor General and courts.
2. It shall include public, private, worker, community, professional, regional, women's, youth and diaspora perspectives through transparent consultation.

Article 70 — Annual investment report

1. The responsible authority shall report investment flows, sectors, regions, employment, approvals, delays, incentives, disputes, environmental and community performance and reform priorities.
2. Data shall distinguish commitments from realized investment and shall be independently verifiable.

Article 71 — Audit and legislative oversight

1. The Auditor General may audit incentives, agreements, land allocations, guarantees, facilitation systems and reported outcomes.
2. The National Assembly may require officials to explain policy and specific public commitments without interfering in an individual lawful adjudication.

Article 72 — Conflicts of interest

1. An official participating in investment decisions shall disclose and recuse from a financial, family, political or professional conflict.
2. Former officials shall observe lawful cooling-off and confidentiality duties without being unreasonably barred from private employment.

Article 73 — Complaints and anti-retaliation

1. A person may report corruption, coercion, discrimination, environmental harm or abuse connected with investment through protected channels.

2. Retaliation is prohibited and remedies shall be available under whistleblower, labour, civil and criminal law.

CHAPTER XI
TRANSITION AND FINAL PROVISIONS

Article 74 — Inventory of legacy approvals

1. Within twelve months, the responsible authority shall inventory investment certificates, agreements, incentives, land allocations, guarantees and unresolved applications under prior Proclamations.
2. The inventory shall identify authority, current status, public obligation, beneficiary and required legal review, subject to lawful redaction.

Article 75 — Existing investments

1. A lawful existing investment continues and need not obtain a new investment certificate.
2. Continuity does not validate corruption, unconstitutional privilege, unlawful expropriation, secret public liability or a right inconsistent with land, environmental or sector law.

Article 76 — Conversion of certificates

1. An investment certificate under prior law shall be treated as evidence of historical approval, not as an independent continuing regulatory licence.
2. Any continuing sector authorization shall be converted by the competent regulator without unnecessary fee or repeated submission.

Article 77 — Review of State agreements

1. Material legacy investment agreements shall be reviewed for authority, performance, corruption risk, fiscal exposure, rights, environment and publication.
2. Renegotiation or challenge shall follow law, evidence, good faith and due process and shall protect legitimate reliance without preserving illegality.

Article 78 — Repeal

1. Investment Proclamations 18/1991 and 59/1994 and their general amendments are repealed upon full commencement.
2. A valid sector regulation made under them continues temporarily only to the extent listed in a published transitional schedule and consistent with this Act.

Article 79 — Regulations

1. The authority designated by law may make regulations concerning the negative list, screening, facilitation, reporting, incentives registry and transition.

2. Regulations shall follow public consultation, remain within delegated authority and be published before enforcement.

Article 80 — Periodic review

1. The National Assembly shall review this Act five years after commencement and at intervals not exceeding five years thereafter.
2. The review shall examine realized investment, jobs, productivity, competition, regional distribution, public cost, disputes, rights, environment and administrative performance.

Article 81 — Commencement

1. Chapters I, II, III and XI commence upon publication in the Gazette.
2. The remaining Chapters commence six months after publication to permit institutional and regulatory preparation.

Made at Asmara, this ___ day of __________ 2026.

THE NATIONAL ASSEMBLY OF ERITREA