RAS AL KHAIMAH ECONOMIC ZONE

DNFBP REGULATIONS - 2020

1. **Short title, Scope, Commencement and Authority.**

These Regulations may be cited as the **Ras Al Khaimah Economic Zone – DNFBP Regulations 2020.** These Regulations come into force on the date of publication.

These Regulations are made by the Board of directors of RAKEZ pursuant to:

- Ras Al Khaimah Law No. 2 of 2017.
- UAE Anti Money laundering laws, as more fully described in Section 2 of these regulations.

The scope of these regulations apply to Designated Non-Financial Businesses and Professions ("DNFBPs") and registered with RAKEZ and licenced to execute such Business activity to execute transactions for and on behalf of their Customers in the UAE.

"DNFBP" means anyone who is engaged in the following Trade or business activities:

1. **Brokers and real estate agents when they conclude operations for the benefit of their Customers with respect to the purchase and sale of real estate.**

2. **Dealers in precious metals and precious stones in carrying out any single monetary transaction or several transactions that appear to be interrelated or equal to more than AED 55000.**

3. **Lawyers, Notaries and other Independent legal professionals and independent accountants, when preparing, conducting or executing financial transactions for their customers in respect of the following activities:**

   (a) Purchase and Sale of real estate.

   (b) Management of funds owned by the Customer.

   (c) Management of bank accounts, saving accounts or securities accounts.

   (d) Organising contributions for the establishment, operation or management of companies.

   (e) Creating, operating or managing legal persons or Legal arrangements.

   (f) Selling and buying commercial entities.

4. **Providers of Corporate services and trusts upon performing or executing a transaction on the behalf of their Customers in respect of the following activities:**

   (a) Acting as an agent in the creation or establishment of legal persons.

   (b) Working as or equipping another person to serve as director or secretary of a company, as a partner or in a similar position in a legal person.

(c) Providing a registered office, work address, residence, correspondence address or administrative address of a legal person or Legal arrangement.

(d) Performing work or equipping another person to act as a trustee for a direct trust or to perform a similar function in favour of another form of Legal arrangement.

(e) Working or equipping another person to act as a nominal shareholder in favour of another person.

2. <u>Definitions.</u>

In these Regulations, unless the context otherwise requires –

"AED" means UAE Dirhams, the lawful currency for the time being of the UAE;

"Authority" means Ras Al Khaimah Economic Zone Authority established pursuant to Law No. 2 of 2017, promulgated by H.H. Sheikh Saud Bin Saqr Bin Mohammed Al-Qasimi, Ruler of Ras Al Khaimah;

"Business Companies Regulations" means the RAKEZ Companies Regulations 2017;

"Corporate Service Provider Services" or "CSP Services" has the meaning given in Regulation 4(3) herein.

"Crime": Money laundering crime and related predicate offences, or Financing of Terrorism or Illegal Organisations.

"Customer" means anyone who performs or attempts to perform any of the acts defined in Article 4(3) with any Corporate Services Provider.

"Customer Due Diligence" or "CDD" means the process of identifying or verifying the information of a customer or Beneficial Owner, whether a natural or legal person or a legal arrangement, and the nature of its activity and the purpose of the business relationship and the ownership structure and control over it.

"FIU" means the Financial Intelligence Unit;

"Financing of Terrorism" means any of the acts mentioned in Articles (29) and (30) of Federal Law no (7) of 2014 on Combating terrorism offences;

"Financing of Illegal Organisations" means any physical or legal action aiming at providing funding to an illegal organisation, or any of its activities or members.

"High risk customer" means a Customer who represents a risk either in person, activity, business relationship, nature of geographical area, such as a customer from a high-risk country or non-resident in a country in which he does not hold an identity card, or a customer having

a complex structure, performing complex operations or having unclear economic objective, or who conducts cash intensive operations, or operations with an unknown third party, or operations without directly confronting any other high risk operations identified by financial institutions, or designated non-financial businesses and professions.

"Illegal Organisations" means organisations whose establishment is criminalised or which pursue a criminalised activity;

"Money Laundering" means any of the acts mentioned in Clause (1) of Article (2) of the Federal Law No. 20 of 2018 on Anti-Money Laundering and Combating the Financing of Terrorism and Illegal Organisations;

"Politically Exposed Persons (PEPs)" means Natural persons who are or have been entrusted with prominent public functions in the State or any other foreign country such as Heads of States or Governments, Senior politicians, Senior government officials, judicial or military officials, senior executive managers of state owned corporations, and senior officials of political parties and persons who are, or have previously been, entrusted with the management of an international organisation or any prominent function within such an organisation; and the definition also includes the following:

1. Direct family members (of the PEP, who are spouses, children, spouses of children, parents)

2. Associates known to be closed to the PEP, which include:

   (a) Individuals having joint ownership rights in a legal person or arrangement or any other close business relationship with the PEP.

   (b) Individuals having individual ownership rights in a legal person or arrangement established in favour of the PEP.

"RAKEZ" means Ras Al Khaimah Economic Zone, a Government Authority of Ras Al Khaimah;

"Registrar" means the registrar of companies appointed in accordance with Regulation 7 of the RAKEZ Companies Regulations of 2017;

"State" means the United Arab Emirates;

"UAE" means the United Arab Emirates;

"UAE Anti-Money Laundering Laws" means all applicable laws, rules and regulations in force in the United Arab Emirates concerning the prevention of money laundering and/or the prevention of the financing of terrorist activity as such laws, rules and regulations may be amended or re-enacted from time to time and including:

(a) Federal Law No. 20 of 2018 on Anti-Money Laundering and Combating the Financing of Terrorism and Illegal Organisations;

(b) Cabinet Decision No. 10 of 2019 Concerning the Implementing Regulation of Decree Law No (20) of 2018 on Anti-Money Laundering and Combating the Financing of Terrorism and Illegal Organisations.

"Ultimate Beneficial Owner" or "Beneficial Owner" means the natural person who owns or exercises effective ultimate control, directly or indirectly, over a customer or the natural person on whose behalf a transaction is being conducted or, the natural person who exercises effective ultimate control over a legal person or Legal arrangement.

3. General Interpretations.

In these Regulations, a reference to—

a statutory or regulatory provision includes a reference to the statutory or regulatory provisions as amended or re-enacted from time to time;

a person includes any natural person, body corporate or body unincorporated, including a company, partnership, unincorporated association, government or state;

an obligation to publish or cause to be published a particular document or notice shall, unless expressly provided otherwise in the Business Companies Regulations or these Regulations, include publishing or causing to be published in printed or electronic form;

a day shall mean a calendar day of the Gregorian calendar;

a year shall mean a year of the Gregorian calendar;

a reference to any gender includes all other genders;

a paragraph or subsection identified by number only and without further identification is a reference to the paragraph or subsection of that number contained in the Regulation or other Section of these Regulations in which that reference occurs;

4. General Prohibition

(1) No person may be engaged in DNFBP trade or business activity or purport to do so, unless specifically licenced by RAKEZ to do such trade or business activity.

(2) The prohibition in subsection (1) is referred to in these regulations as the General Prohibition.

6. Contravention of the General Prohibition

A person who contravenes the General Prohibition is liable to a fine not exceeding level 5.

In proceedings in respect of a contravention of the General Prohibition, it is a defence for the person accused of the contravention to show that he took all reasonable precautions and exercised all due diligence to avoid committing the contravention.

An agreement made by a person in the course of providing DNFBP Services in contravention of the General Prohibition shall not, by virtue of such contravention alone, be void or unenforceable.

7. Compliance with Anti Money Laundering Regulations

I. Identification and Mitigation of Risks:

1. DNFBPs are required to identify, assess and understand their Crime risks in concert with their business nature and size and comply with the following:

(a) Considering all the relevant risk factors such as customers, countries or geographic areas; and products, services, transactions and delivery channels, before

determining the level of overall risk and the appropriate level of mitigation to be applied.

(b) Documenting risk assessment operations, keeping them up to date on an on-going basis and making them available upon request.

2. DNFBPs shall commit to take steps to mitigate the identified risks mentioned as per Clause (1) herein taking into consideration the results of the National Risk Assessment, by the following:

(a) Developing internal policies, controls and procedures that are commensurate with the nature and size of their business and are approved by senior management to enable them to manage the risks that have been identified, and if necessary, to monitor the implementation of such policies, controls and procedures and enhance them.

(b) Applying CDD measures to enhance high-risk management once identified. Examples include:

(1) Obtaining more information and investigating this information, such as information relating to the Customer and Beneficial Owner identity, or information relating to the purpose of the business relationship or reasons for the transaction.

(2) Updating the CDD information of the Customer and Beneficial Owner more systematically.

(3) Taking reasonable measures to identify the source of the funds of the Customer and Beneficial Owner.

(4) Increasing the degree and level of ongoing business relationship monitoring and examination of transactions in order to identify whether they appear unusual or suspicious.

(5) Obtaining the approval of senior management to commence the business relationship with the customer.

3. In case the requirements stipulated in Clauses (1 and 2) above are met, the DNFBPs shall apply simplified CDD measures to manage and limit the identified low risks, unless there is suspicion of a committed crime. The simplified CDD measures should be commensurate with low risk factors. These include the following, as examples:

(a) Verifying the identity of the Customer and Beneficial Owner after establishing the business relationship.

(b) Updating the Customer's data based on less frequent intervals.

(c) Reducing the rate of ongoing monitoring and transaction checks.

Concluding the purpose and nature of the business relationship based on the type of transactions or the business relationship that has been established, without the need to gather information or performing specific procedure.

II. Customer Due Diligence (CDD):

1. DNFBPs are required to undertake CDD measures to verify the identity of the Customer and the Beneficial Owner before or during the establishment of the business relationship or before executing a transaction for a Customer with whom there is no business relationship. And in the cases where there is a low crime risk, it is permitted to complete verification of Customer identity after establishment of the business relationship, under the following conditions:
2. The verification will be conducted in a timely manner as of the commencement of business relationship or the implementation of the transaction.
3. The delay is necessary in order not to obstruct the natural course of business.
4. The implementation of appropriate and effective measures to control the risks of the crime.

DNFBPs are required to take measures to manage risks in regards to the circumstances where customers are able to benefit from the business relationship prior to the completion of the verification process.

III. CDD Measures:

DNFBPs shall undertake CDD measures in the following cases:

(a) Establishing the business relationship.

(b) Carrying out occasional transactions in favour of a Customer for amounts equal to or exceeding AED 55000, whether the transaction is carried out in a single transaction or in several transactions that appear to be linked.

(c) Carrying out occasional transactions in the form of wire transfers for amounts equal to or exceeding AED 3500.

(d) Where there is suspicion of crime.

(e) Where there are doubts about the veracity or adequacy of previously obtained customer's identification data.

IV. Ongoing supervision of business relationships:

DNFBPs shall undertake ongoing supervision of business relationships, including:

1. Audit transactions that are carried out throughout the period of the business relationship, to ensure that the transactions conducted are consistent with the information they have about Customer, their type of activity and the risks they pose, including where necessary, the source of funds.

2. Ensure that the documents, data or information obtained under CDD measures are up to date and appropriate by reviewing the records, particularly those of high-risk customer categories.

V. Identifying the Customer's identity:

3. DNFBPs shall identify the Customer's identity, whether the customer is a natural or legal person or legal arrangement, and verify the customer's identity and identity of the Beneficial Owner. This should be done using documents, data or information from a reliable and independent source or any other source to verify the identity verification as follows:

   (a) For natural persons:

   The name, as in the identification card or travel document, nationality, address, place of birth, name and address of employer, attaching a copy of the original and valid identification card or travel document, and obtain approval from senior management, if the Customer or the Beneficial Owner is a PEP.

   (b) For legal persons and legal arrangements:

   (1) The name, legal form and Memorandum of Association.
   (2) Headquarter office address or the principal place of business; if the legal person or arrangement is a foreigner, it must mention the name and address of its legal representative in the State and submit the necessary documents as a proof.
   (3) Articles of Association or any similar documents, attested by the competent authority within the State.
   (4) Names of relevant persons holding senior management positions in the legal person or legal arrangement.

4. DNFBPs are required to verify that any person purporting to act on behalf of the customer is so authorised, and verify the identity of that person as prescribed in Clause 1 of this section.

5. DNFBPs are required to understand the intended purpose and nature of the business relationship, and obtain, when necessary, information related to this purpose.

6. DNFBPs are required to understand the nature of the Customer's business as well as Customer's ownership and control structure.

VI. Verifying the identity of Beneficial Owners:

DNFBPs are required to take reasonable measures to verify the identity of Beneficial Owners of legal persons and legal arrangements, by using information, data or statistics acquired from a reliable source, by the following:

1. For Customers that are legal persons:

(a) Obtaining and verifying the identity of the natural person, who by himself or jointly with another person, has a controlling ownership interest in the legal person of 25% or more, and in the case of failing or having doubt about the information acquired, the identity shall be verified by any other means.

(b) In the event of failing to verify the identity of the natural person exercising control as per paragraph (a) of this Clause, or the person(s) with the controlling ownership is not the Beneficial Owner, the identity shall be verified for the relevant natural person(s) holding the position of senior management officer, whether one or more persons.

2. For Customers that are legal arrangements:

Verifying the identity of the settlor, the trustee(s), or anyone holding a similar position, the identity of the beneficiaries or class of beneficiaries, the identity of any other natural person exercising ultimate effective control over the legal arrangement, and obtaining sufficient information regarding the Beneficial Owner to enable the verification of his/her identity at the time he/she intends to exercise his/her legally acquired rights.

VII. Exemption from identifying and verifying the identity:

DNFBPs shall be exempt from identifying and verifying the identity of any shareholder, partner, or the Beneficial Owner, if such information is obtainable from reliable sources where the Customer or the owner holding the controlling interest are as follows.

1. A company listed on a regulated stock exchange subject to disclosure requirements through any means that require adequate transparency requirements for the Beneficial Owner.

2. A subsidiary whose majority shares of stocks are held by the shareholders of the holding company.

VIII. Suspicious Transactions:

1. DNFBPs shall be prohibited from establishing or maintaining a business relationship or executing any transaction should they be unable to undertake CDD measures towards the customer and should consider reporting a suspicious transaction to the FIU.

2. Even if they suspect the commission of a crime, DNFBPs should not apply CDD measures if they have reasonable grounds to believe that
undertaking such measures would tip off the customer and they should report a suspicious transaction to the FIU along with the reasons having prevented them, from undertaking such measures.

IX. Shell Companies:

DNFBPs shall commit to the following:

1. Not to deal in any way with Shell Companies.

2. Not to create and keep records of Customer relationships using Pseudonyms, fictitious names or numbered relationships without the Customer's name.

X. Politically Exposed Persons (PEPs):

In addition to undertaking CDD, measures required and more fully described in the foregoing Sections, DNFBPs shall be required to carry out the following.

For Foreign PEPs:

(a) Put in place suitable risk management systems to determine whether a customer or the Beneficial Owner is considered a PEP.
(b) Obtain senior management approval before establishing a business relationship, or continuing an existing one with a PEP.
(c) Take reasonable measures to establish the source of funds and wealth of Customers and Beneficial Owners identified as PEPs.
(d) Conduct enhanced ongoing monitoring over such relationship.

For Domestic PEPs and individuals previously entrusted with prominent functions at international organisations:

(a) Take sufficient measures to identify whether the customer or the Beneficial Owner is considered one of those persons.
(b) Take the measures identified in Clauses (b), (c) and (d) under the first paragraph of this Article, when there is a high risk business relationship accompanying such persons.

XI. Suspicious Transaction Reports ("STRs"):

DNFBPs shall put in place indicators that can be used to identify the suspicion on the occurrence of a crime in order to report STRs, and shall update these indicators on an ongoing basis, as required, in accordance with the development and diversity of the methods used for committing such crimes.

XII. Direct reporting to FIU:

If DNFBPs have reasonable grounds to suspect that a transaction, attempted transaction, or funds constitute crime proceeds in whole or in part, or are related to the crime or intended to be used in such activity, regardless of the amount, they shall adhere to the following without invoking professional or Contractual secrecy.

(a) Directly report STRs to the FIU without any delay, via the electronic system of the FIU or by any other means approved by the FIU.
(b) Respond to all additional information requested by the FIU.

XIII. Non-Disclosure:

DNFBPs their managers, officials or staff, shall not disclose, directly or indirectly, to the Customer or any other person(s) that they have reported, or are intending to report a suspicious transaction, nor shall they disclose the information or data contained therein, or that an investigation is being conducted in that regard.

XIV. Reliance on a third party:

1. Taking into consideration the high risk countries identified, the DNFBPs may rely on a third party to undertake the necessary CDD measures towards Customers and the DNFBP shall be responsible for the validity of these CDD measures and shall do the following:

   (a) Immediately obtain, from third parties, the necessary identification data and other necessary information collected through CDD measures and ensure that copies of the necessary documents for such measures can be obtained without delay and upon request.
   (b) Ensure that the third party is regulated and supervised, and adheres to the CDD measures towards customers and record keeping provisions in these regulations.

2. DNFBPs who rely on the third parties of the same group Company, shall ensure that:

   (a) The group company applies the CDD, PEP and record keeping requirements and implements programs for combating the crime in accordance with these regulations and the group company is subject to supervision in that regard.
   (b) The group company sufficiently mitigates any high risks linked to countries through its own policies and controls for combating the crime.

XV. Compliance Officer Tasks:

DNFBPs shall appoint a Compliance officer. The Compliance Officer shall have the appropriate competencies and experience and under his or her own responsibility, shall perform the following tasks:

1. Detect transactions relating to any crime.

2. Review, scrutinise and study records, receive data concerning suspicious transactions, and take decisions to either notify the FIU or maintain the transactions with the reasons for maintaining while maintaining complete confidentiality.

3. Review the internal rules and procedures relating to combating crime and their consistency with UAE Anti Money laundering laws and these regulations, assess the extent to which the institution is committed to the application of these rules and procedures, propose what is needed to update and develop these rules and procedures, prepare and submit semi-annual reports on these points to senior management and, if requested, provide a copy of that report to RAKEZ as the licensing authority, addressed to The Registrar, RAKEZ, enclosed with senior management remarks and decisions.

4. Prepare, execute and document ongoing training and development programs and plans for the institution's employees on Money Laundering and the Financing of Terrorism and Financing of Illegal organisations, and the means to combat them.

5. Collaborate with RAKEZ as the licensing authority and FIU, providing all requested data and allow authorised employees to view the necessary records and documents that will allow them to perform their duties.

XVI. High Risk Countries:

DNFBPs shall implement enhanced CDD measures based on the level of risk that might arise from business relationships and transactions with natural or legal persons from high-risk countries.

XVII. Record Keeping:

1. DNFBPs shall maintain all records documents, data and statistics for all transactions with Customers for a period of no less than five years from the date of completion of the transaction or termination of the business relationship with the Customer.

2. DNFBPs shall keep all records and documents obtained through CDD measures, ongoing monitoring, account files, and business correspondence and copies of personal identification documents, including STRs and results of analysis performed, for a period of no less than five years from the date of termination of the business relationship or after the completion of a casual transaction or from the date of completion of the inspection by RAKEZ or any supervisory authorities, or from the date of issuance of a final judgement of the competent judicial authorities, all depending on the circumstances.

3. The records and documents kept shall be organised so as to permit data analysis and tracking of transactions.

4. DNFBPs shall make all Customer information regarding CDD towards Customers, ongoing monitoring and results of their analysis, records, files, documents, correspondence and forms available immediately to RAKEZ and other competent authorities upon request.

8. <u>Registrar's power to require information.</u>

1. The Registrar may, by notice in writing given to a DNFBP, require them –

- To provide specified information or information of a specified description; or

- To produce specified documents or documents of a specified description.

2. The information or documents must be provided or produced—

- Before the end of such reasonable period as may be specified; and

- At such place as may be specified.

3. The Registrar may require—

- Any information provided, whether in a document or otherwise, to be verified in such manner; or

- Any document produced to be authenticated in such manner, as it may reasonably require.

9. Inspection of DNFBP's premises.

The Authority may inspect DNFBP premises to monitor compliance with these Regulations and/or UAE Anti-Money Laundering Laws. The Authority will endeavour to arrange any such inspection so that disturbance or disruption is kept to a minimum. However, the Authority reserves the right to enter DNFBP premises at any time without prior notice. Whereas the Authority has absolute discretion as to the frequency of such inspections for individual DNFBPs the authority would carry out no less than one inspection in a four-year period.

10. Contraventions

1. A person who knows or suspects that an investigation is being or is likely to be conducted under this Part commits a contravention of these Regulations if—

(a) he falsifies, forges, conceals, destroys or otherwise disposes of a document which he knows or suspects is or would be relevant to such an investigation; or

(b) he causes or permits the falsification, concealment, destruction or disposal of such a document, unless he shows that he had no intention of concealing facts disclosed by the documents from the investigator.

2. A person who, in purported compliance with a requirement imposed on him under this Part—

(a) provides a document that he knows or suspects has been falsified or forged without disclosing such knowledge or suspicion to the Registrar;

(b) provides information which he knows to be false or misleading in a material particular; or

(c) recklessly provides information which is false or misleading in a material particular,

commits a contravention of these regulations.

3. A person who commits either of the contraventions set out in 1 or 2 above is liable to a fine not exceeding Level 3.

11. Enforcement

Warning notices

A warning notice must—

(a) state the action which the Registrar proposes to take;

(b) be in writing; and

(c) give reasons for the proposed action.

(d) A warning notice must specify a reasonable period (which may not be less than 14 days) within which the person to whom it is given may make representations to the Registrar.

(e) The Registrar may extend the period specified in the notice.

(f) The Registrar must then decide, within a reasonable period, whether to give the person concerned a decision notice.

Decision notices

A decision notice must—

(a) be in writing;

(b) give the reasons of the Registrar for the decision to take the action to which the notice relates;

(c) state the date on which the action is to be taken; and

(d) if it imposes a fine, state the amount of the fine and the manner in which, and the period within which, the fine is to be paid.

12. Incomplete, inaccurate or falsified information

1. A person who fails to provide the information required under these Regulations to the Registrar, or who provides information which is incomplete, inaccurate or misleading, commits a contravention of these Regulations and is liable to a fine not exceeding level 5.

2. A person who provides falsified or forged documents to the Registrar is liable to a fine not exceeding level 5 unless he shows that he did not know or suspect that the documents were falsified or forged or he informed the Registrar at the time the documents were provided of his knowledge or suspicion.

13. Right to request additional information

The Registrar shall be entitled from time to time to request additional documents or information from a DNFBP, which the Registrar deems necessary for or in connection with, or reasonably incidental to, the performance of his functions.

14. DNFBP continues to be liable for fees, etc.

A DNFBP continues to be liable for all fees and penalties payable under these Regulations notwithstanding that its approval to provide DNFBP Services has expired or been revoked.

Schedule

The Standard Fines Scale

Level on the Scale	Amount of Fine (AED)
1	1000
2	2000
3	5000
4	10000
5	20000