

L.N. 261 of 2020

**TRADING LICENCES ACT
(CAP. 441)**

Trading Licences (Amendment) Regulations, 2020

IN EXERCISE of the powers conferred by article 17 of the Trading Licences Act, the Minister for the Economy, Investment and Small Businesses, has made the following regulations:-

1. The title of these regulations is the Trading Licences (Amendment) Regulations, 2020 and these regulations shall be read and construed as one with the Trading Licences Regulations, hereinafter referred to as "the principal regulations". Citation.
S.L. 441.07.

2. In the Arrangement of regulations, the words "Part VIII Offences and Penalties 48 - 50" shall be substituted by the words "Part VIII Dealers in Precious Metals and Stones Obligation licensing of dealers 48 - 57" and immediately under it there shall be added the words "Part IX Offences and Penalties 58 - 60". Amends
Arrangement of
regulations.

3. Regulation 2 of the principal regulations shall be amended as follows: Amends
regulation 2 of
the principal
regulations.
 - (a) immediately after the definition "bank" there shall be added the following new definition:

" "beneficial owner" shall have the same meaning as assigned to it under the Prevention of Money Laundering and Funding of Terrorism Regulations;"

S.L. 373.01.

 - (b) immediately after the definition "Central Credit Register" there shall be added the following new definition:

" "commercial partnership" shall have the same meaning as assigned to it under the Companies Act and shall include a company formed and registered under the Companies Act;"

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 - (c) immediately after the definition "date of the ceasing of operations" there shall be added the following new definition:

" "dealer in precious metals and stones" means any person who conducts the following operations:

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(a) manufacture of jewellery and related articles where related articles in this case consists of;

(i) production of worked pearls;

(ii) production of precious and semi-precious stones in the worked state, including the working of industrial quality stones and synthetic or reconstructed precious or semi-precious stones;

(iii) working of diamonds;

(iv) manufacture of jewellery of precious metal or of base metals clad with precious metals, or precious or semi-precious stones, or of combinations of precious metal and precious or semi-precious stones or of other materials;

(v) manufacture of goldsmiths' articles of precious metals or of base metals clad with precious metals including articles for religious use;

(vi) manufacture of technical or laboratory articles of precious metal (except instruments and parts thereof): crucibles, spatulas, electroplating anodes etc.

(vii) manufacture of precious metal watch bands, wristbands, watch straps and cigarette cases;

(b) precious metals production;

(c) retail sale of watches and jewellery, precious stones and precious metals in specialised stores where the main line of activity is the selling of watches, jewellery, precious stones and/or precious metals;

(d) retail sale of watches and jewellery, precious stones and precious metals in stores where the main line of activity is not the selling of watches and jewellery;

(e) wholesale of watches and jewellery;

(f) wholesale of gold and other precious metals;

(g) wholesale of precious stones.";

(c) immediately after the definition "Farmers' Market" there shall be added the following new definition:

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" "Financial Intelligence Analysis Unit" shall have the same meaning as assigned to it in the Prevention of Money Laundering Act;"

(d) immediately after the definition "personal data" there shall be added the following new definition:

" "police certificate" means a comprehensive police certificate or statement, issued by a national law enforcement authority or other public authority in charge of criminal records, on the status of an applicant's criminal record;"

4. Immediately after Part VIIB of the principal regulations there shall be added the following new Part:

Adds new Part of the principal regulations.

"PART VIII

Dealers in Precious Metals and Stones

Obligation licensing of dealers.

48. Without prejudice to regulation 9 and to any other licence or authorization needed under any other law, no person shall carry on the business of a dealer in precious metals and stones after 1st January 2021 unless he is the holder of a licence issued under these regulations:

Provided that any person who was registered with the VAT department up to and including 1st January, 2021 as performing any of the operations listed under the definition of dealer in precious metals and stones under these regulations:

(a) may continue to do so until said date without the need of a trading licence;

(b) shall be deemed to have been issued a licence as from 1st January 2021 unless that person had informed the Trade Licensing Unit that he is not willing to be so deemed and that he will not be continuing operating as a dealer;

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Licensing
application.

(c) shall be deemed to have given consent to have a licence number, the name of the licence holder and the nature of the commercial activity published as per regulation 12;

(d) shall be bound by the conditions of these regulations as from 1st January 2021.

49. (1) An application for a trading licence in order to carry out the business of a dealer in precious metals and stones shall be made to the Trade Licensing Unit on the appropriate form which shall *inter alia* include the following information:

(a) an indication whether the applicant is a sole trader or a commercial partnership;

(b) the address of the applicant's head office and the principal place of business if applicable;

(c) the names of the persons who effectively direct the business and operations and in the case of sole traders also the names of the owners;

(d) the business activity in respect of which the application is being applied for.

(2) Where the business is a commercial partnership the form shall also include:

(a) the official full name and registration number of the commercial partnership;

(b) the date of incorporation or registration of the commercial partnership;

(c) the registered address or principal place of business of the commercial partnership;

(d) the names and identity reference numbers of all directors, partners, the company secretary and beneficial owners of the commercial partnership.

(3) The application shall be accompanied by the following documents:

(a) a police certificate, issued not more than one (1) month before the date of filing of the application, of the persons who effectively direct the business, of the owner or owners of the business and as applicable of all directors, partners, the company secretary and beneficial owners; and

(b) a document issued by the statutory auditors or audit firms responsible to carry out the audit of the operation in question indicating such responsibility.

(4) Without prejudice to the above sub-regulations, the Trade Licensing Unit may require the applicant to submit further documentation and information.

(5) An application form shall not be deemed to be complete unless the Trade Licensing Unit is in receipt of all the documentation required to be submitted together with the application form.

Eligibility
criteria.

50. For a person to be eligible for a licence under this Part, that person must:

(a) be over eighteen (18) years old;

(b) not have been convicted by any competent court or tribunal in or outside Malta, of any offence punishable by deprivation of liberty or a detention order for a maximum of more than one (1) year or, in the case of jurisdictions that have a minimum threshold for offences in their legal systems, any offence punishable by deprivation of liberty or a detention order for a minimum of more than six (6) months, other than involuntary homicide or other crime against the person excusable in terms of the Criminal Code; and

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(c) is, in the opinion of the Trade Licensing Unit, a fit and proper person to carry on the business of a dealer in precious metals and stone, after the Trade Licensing Unit considered the person's conduct and repute, and the interests of the public:

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Provided that for a commercial partnership to be eligible for a licence under these regulations, the directors, partners, secretary and beneficial owners must satisfy the eligibility criteria under paragraphs (b) and (c).

Processing of application.

51. (1) The Trade Licensing Unit shall, without delay, acknowledge receipt of an application and receipt of the applicable licence fee in writing to the applicant and shall specify the procedure under which a refusal by the Trade Licensing Unit to grant a licence may be appealed in terms of the Act and regulations.

(2) The Trade Licensing Unit shall within three (3) working days from the date of receipt of the application form with all the obligatory information and the accompanying documents, forward relevant details which may include copy of application forms and accompanying documents to any entity it deems fit, for assessment and opinion.

(3) Without prejudice to regulation 49, the Trade Licensing Unit, may at any time before it takes a decision on the issuance of a licence, require the applicant to submit further documentation and information.

(4) An entity contacted by the Trade Licensing Unit for opinion and assessment shall, provide all information requested to the Trade Licensing Unit within twenty (20) working days from the date of receipt of a complete application:

Provided that during the twenty (20) working day period, the said entity may require further clarifications, additional information and documentation in which case the twenty (20) working days shall run from when said information and documentation is provided to said entity:

Provided further that the twenty (20) working day period may at upon request of the entity be extended for one period of not more than twenty (20) working days. Such extension shall be notified to the Trade Licensing Unit before the expiry of the first twenty (20) day period.

(5) If the entity contacted by the Trade Licensing Unit for opinion and assessment does not reply within the periods stipulated above, it will be deemed to have no relevant information or advice in relation to the application of a dealer.

(6) The Trade Licensing Unit may:

(a) issue the licence subject to any conditions it may deem fit; or

(b) refuse the application for a licence:

Provided that when any licences are issued subject to conditions, all such conditions shall be specified in writing and shall form an integral part of the licence.

(7) The Trade Licensing Unit may from time to time, vary or revoke any conditions so imposed or may impose new conditions:

Provided that the Trade Licensing Unit before varying or revoking any conditions or adding new ones shall notify the licence holder of its intention and request him to make any submissions within twenty (20) working days:

Provided further that after said period of twenty (20) days, the Trade Licensing Unit shall decide whether or not to proceed with its intended action taking into consideration any submissions it may have received from the licence holder.

(8) The provisions in sub-regulation (6) shall apply in case of renewals of a licence.

(9) If a licence is issued, it is to be issued by reference to the applicable code issued by the Trade Licensing Unit:

(a) in the name of the owner or owners of the business listed in the application form where the business is not owned by company;

(b) in the name of the commercial partnership where the business is to be carried out by a commercial partnership:

Provided that a licence once so issued is non-transferable.

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Refusing of an application for a licence.

52. (1) The Trade Licensing Unit shall refuse the application or a renewal of licence if it is not satisfied that the person on whom the trading licence or renewal thereof is to be issued and, where that person is a commercial partnership, the directors, partners, company secretary and beneficial owners thereof fulfil the eligibility criteria envisaged under regulation 50.

(2) The Trade Licensing Unit may also refuse the application on the basis of other matters or non compliance with other requirements which may be considered necessary in the particular circumstances.

(3) A decision to refuse the issue of a licence shall be accompanied with the reasons for such refusal:

Provided that for reasons of public safety and public security, the Trade Licensing Unit may not give any reasons for refusal.

(4) Any applicant who feels aggrieved by a decision of the Trade Licensing Unit may file an appeal to the Licensing Appeals Board in accordance with the Act and relevant provisions of the regulations.

When application is deemed invalid.

53. (1) An application shall be deemed to be invalid:

(a) when it does not contain the name and contact details of the applicant;

(b) when it does not include, or is not accompanied by the information and documentation envisaged under sub-regulations (1) to (3) of regulation 49;

(c) when the applicant does not within sixty (60) working days provide any requested information or documents to the Trade Licensing Unit:

Provided that before the expiry of the sixty (60) working days, an applicant may request an extension for another sixty (60) days.

(2) When an extension is requested by the applicant, the application shall be deemed invalid after the expiry of the extended period of sixty (60) days.

Nullification
of licence.

54. Without prejudice to sub-regulation (6) of regulation 9, a licence to carry out the business of dealer under this Part shall be deemed null *ab initio* if the pre-requisites of regulations 49, 50 and 52 were not met by the applicant.

Cancellation
of licence.

55. (1) A licence may be cancelled under this Part by the Trade Licensing Unit:

(a) where it becomes aware of proof of dissolution of the business operation in respect of which the licence was issued; or

(b) at the request of the person on whom the licence was issued or at the request of a person authorised to so act on its behalf. Such request shall be made on the appropriate form.

(2) The effective date of cancellation in the case of dissolution shall be the day following the date of dissolution of the business operation in question.

(3) Without prejudice to sub-regulation (1), a licence to carry out the business of a dealer in precious metals and stones may be suspended or cancelled by the Trade Licensing Unit:

(a) when the commercial activity does not commence the operation pursuant to the licence within twelve (12) months of its issue, or has ceased its operations for more than six (6) months; or

(b) when the commercial activity no longer fulfils the conditions for the granting of a licence including the eligibility criteria envisaged under regulation 50; or

(c) if in the opinion of the Trade Licensing Unit, the manner in which the commercial activity is conducted, is in breach of any legal obligations; or

(d) where the Trade Licensing Unit is informed by the Financial Intelligence Analysis Unit that a licensed dealer in precious metals or stones has seriously, repeatedly or systematically failed to satisfy its obligations under the Prevention of Money Laundering Act or the Prevention of Money Laundering and Funding of Terrorism Regulations; or

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(e) if any director, partner, company secretary, or beneficial owner of a licensed dealer in precious metals and stones has been found guilty of irregularity or misconduct.

(4) In the event that a licence is suspended or cancelled, no refund of fees will be affected by Trade Licensing Unit.

(5) The Trade Licensing Unit, may lift a suspension subject to the:

(a) the removal of any director, manager, or partner; or

(b) provision of proof of compliance with any obligation or restriction imposed.

(6) A dealer in precious metals or stones which has his licence suspended or cancelled shall cease to act in that capacity from the date on which the suspension or cancellation takes effect:

Provided that the suspension shall cease to have effect from the date when the Trade Licensing Unit notifies the dealer in writing that it is satisfied that the dealer has abided with the obligations or restrictions imposed.

(7) The Trade Licensing Unit shall publish a notice of suspension or cancellation of a licence and a notice of the lifting of a suspension of a licence on its website.

Validity of licence.

56. (1) A licence to carry out the business of a dealer in precious metals and stones shall be renewable every three (3) years upon a submission by said dealer for renewal:

Provided that in the case of those Dealers in Precious Metals and Stones who are deemed to have been licensed as from 1st January 2021, in terms of regulation 48, may at any time after January 2021 be required by the Trade Licensing Unit to provide it with all the details and documentation which must be provided when applying for a new licence:

Provided further that if the Trade Licensing Unit considers that the dealer is not in compliance with the eligibility criteria envisaged under regulation 50, the Trade Licensing Unit shall cancel or suspend the licence as it deems appropriate.

(2) An application for the renewal of a licence may be made to the Trade Licensing Unit not earlier than three (3) months preceding the date of the expiry of the licence.

(3) A dealer may not continue operating as a dealer unless he submits an application for renewal and the licence is renewed.

Changes.

57. In the case of a commercial partnership the dealer shall when there is any change in to the composition of directors, partners or beneficial owners, inform the Trade Licensing Unit within thirty (30) working days of such change."

5. Part VIII of the principal regulations shall be amended as follows:

Amends Part VIII of the principal regulations.

(a) the title thereof shall be substituted by the words "PART IX"; and

(b) regulations 48, 49 and 50 thereof shall be renumbered as regulations 58, 59 and 60 respectively.

6. In Part I of the First Schedule to the principal regulations, the words "36.2 Manufacture of jewellery and related articles" shall be deleted.

Amends Part I of the First Schedule to the principal regulations.

7. In Part II of the First Schedule to the principal regulations, immediately under the word "Auctioneer" there shall be added the following :

Amends Part II of the First Schedule to the principal regulations.

"24.41 Precious metals production

36.12 Manufacture of jewellery and related articles

46.48 Wholesale of watches and jewellery

46.72 Wholesale of gold and other precious metals

46.76 Wholesale of precious stones

47.19 Retail sale of watches, jewellery, precious stones and metals in non-specialised stores where the main line of activity is not the selling of watches and jewellery example departmental stores

47.77 Retail sale of watches, jewellery, precious stones and/

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or precious metals in specialised stores where the main line of activity is the selling of watches, jewellery, precious stones and/or precious metals".
