

Licensing of Dealers in Precious Metals and Stones Frequently Asked Questions

1. Introduction

The Moneyval report 2019 put forward a number of recommendations to improve regulation and controls to counter money laundering and the financing of terrorism.

These included the recommendation that the Maltese authorities should ensure that dealers in precious metals and stones be subject to licensing requirements. As a result of amendments to SL441.07 Trading Licences Regulations (the Regulations), a number of obligations related to the licensing of dealers in precious metals and stones after 1st January 2021 were introduced.

2. Who may be defined as a dealer in precious metals and stones?

The Regulations stipulate that a "dealer in precious metals and stones" means any person who conducts the following operations:

Manufacture of jewellery and related articles. This includes:

- the production of worked pearls,
- the production of precious and semi-precious stones in the worked state, including the working of industrial quality stones and synthetic or reconstructed precious or semiprecious stones,
- the working of diamonds,
- the 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 metals and precious or semi-precious stones or of other materials,
- the manufacture of goldsmiths' articles of precious metals or of base metals clad with precious metals including articles for religious use,
- the manufacture of technical or laboratory articles of precious metals (except instruments and parts thereof): crucibles, spatulas, electroplating anodes etc.,
- the manufacture of precious metal watch bands, wristbands, watch straps and cigarette cases.

Production of precious metals.

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; or where the main line of activity is not the selling of watches and jewellery.

Wholesale of:

- watches and jewellery
- gold and other precious metals
- precious stones.

3. Does a person need to be licensed in order to operate as a dealer in precious metals and stones?

Yes. According to the Regulations, after 1st January 2021, a person may not carry out the business of a dealer in precious metals and stones unless that person is the holder of a licence to carry out such business. The licence must be issued by the Trading Licence Unit of the Commerce Department.

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 provided in the Regulations do not need to apply for a licence. In such case the person in question is deemed to have been issued a licence as from 1st January 2021.

Both Persons who are issued a licence to operate as a dealer in precious metals and stones and persons deemed to have been issued such a licence are bound by the conditions and obligations stipulated in the Regulations.

A person is considered to be committing an offence if he operates as a dealer in precious metals and stones even though he has not been issued a licence to do so or does not fall in the category of those deemed to have been issued a licence.

4. If a person has been operating as a dealer in precious metal and stones before January 1st, 2021, but was registered with the VAT Department under an unrelated NACE code would that person be deemed to have been issued a licence or would that person need to apply for a licence?

The Regulations stipulates that only persons who were 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 same Regulations would be deemed to have been issued a licence. So a person registered with the VAT Department in respect of an unrelated NACE code would have to apply for a licence to legally operate as a dealer in precious metals and stones.

5. My business only deals with precious metals and stones in a minor proportion and it is only a minor part of my sales. Do I still need a “Dealers in precious metals and stones” licence?

Yes. Even if precious metals and stones only constitute a minor proportion of your activity or constitute just a minor component of the goods you deal in, a “Dealers in precious metals and stones” licence is required.

6. My father is the owner of the family business, do I have to apply or is the license granted automatically/ inherited?

If the family business is a company and a holder of a DPMS licence, the licence calling the entity remains valid but the Department needs to be informed of a change in directorship and/or ownership structure within thirty (30) working days of such change. If on the other hand, your father ran the business as a sole trader and was holder of a DPMS licence in his own name, the licence ceases to be valid with his demise. Anyone replacing him as a sole trader would need to apply for a licence unless he is already holder of such a licence.

7. Are the obligations applicable to both natural and legal persons?

Yes. Both sole proprietors, as well as companies and commercial partnerships incorporated under Companies Act Cap. 386 and registered with the Malta Business Register, are obliged to be licensed in order to operate as a dealer in precious metals and stones.

8. How can an application for a DPMS licence be filed ?

An application may be submitted online through the Trade Licences Portal which can be found on the following link: www.tradelicences.gov.mt

Supporting documents are to be attached as required.

9. Is a licence required when the activity is going to be conducted only online?

Yes. The obligation to have a licence applies irrespective of whether the activity takes place from a premises or on line.

10. What documents need to be submitted with the application?

The documents to be provided with the application depend on whether the application being made on behalf of a company or a sole trader. Should it be the case that not all documents are provided, the Trading Licences Unit will indicate to the applicants which documents are the missing ones and need to be submitted. An application will only be deemed complete once all requested documents have been submitted. The due diligence review process shall only commence then.

The basic supporting documents are:

- a. a police conduct certificate for the applicant in case of sole trader. In the case of companies, for the person/s who effectively direct the business, the owner/s, partner/s, directors, company secretary and beneficial owners.
- b. a statement drawn by the auditors appointed to audit the operations of an entity, indicating that they have the responsibility to conduct such audits.
- c. a clean compliance certificate issued by the Office of the Commissioner for Revenue for the entity under application.
- d. an employment history issued from Jobsplus or an equivalent entity for the applicant in case of sole trader. In the case of companies, for the person/s who effectively direct the business, the owner/s, partner/s, directors, company secretary and beneficial owners.

11. What are the eligibility requirements to be licensed as a dealer in precious metal and stones?

In order to be licensed as a dealer in precious metal and stones a person must be over 18 years of age, be of good conduct and, in the opinion of the Commerce Department, be fit and proper to carry out the business of a dealer in precious metals and stones.

The Commerce Department conducts due diligence review of applicants to determine their fitness in terms of the Trading Licences Regulation SL441.07.

12. How much does it cost to apply and is there a fee for the licence?

Both the application and the licence are free of charge.

13. Does the licence expire ,and if so how much does it cost to renew it and what documents are needed to renew it?

A licence has a three-year validity term, after which it must be renewed, though a renewal application. Renewal is free of charge.

In regards to documents which are necessary when making a new application may be requested at the point of renewal

- a) if they had not been submitted when the business was originally licensed.
- b) If it is deemed necessary that documents which may have been submitted need to be update.

Additional documents may be requested depending on the particular circumstances at the time of renewal

In any case the office will guide the licensee on the documents required

14. What happens after I apply for a licence to operate as a dealer in precious metal and stones ?

On successful submission of the application you will receive a system generated acknowledgement. Should it be the case that additional documentation is required, the Commerce Department will contact you by means of email if this is provided in the application. Otherwise, extend a communication by registered mail. In this letter, an email contact from the Department will be provided and any further interaction is continued through that medium.

15. How will I know if my application for a licence was approved?

If an application successfully undergoes due diligence review and a licence is issued, the Commerce Department will forward the licence through email.

16. Can a licence be transferred from one person to another?

No. The licence is issued in the name of the entity which applied for it in the first place i.e., in the name of the sole trader or the company. Once issued, a licence is not transferrable.

17. Can a licence be refused and if so on what basis?

Yes. An application may be refused if the applicant in the case of a sole trader, or, in the case of a company if its director/s, partner/s, company secretary or beneficial owner/s, do not fulfil the eligibility criteria. In particular, an application will be refused if the person submitting it or the beneficial owner do not comply good conduct obligations of Rule 50b of the Regulations, or if a person is considered not to be of good repute or fit to carry out the activity of dealer in precious metals and stones.

The Trading Licences Unit may also refuse the application on of non-compliance with other requirements which may be considered necessary in a particular circumstance.

Should an applicant feel aggrieved by the decision of refusal to the licence, an appeal may be filed with the Licensing Appeals Board in accordance with the Trade Licences Act Cap 441.

18. How may the licence be cancelled?

The licence may be cancelled:

- a) at the request of the licensee or a person authorised to act on his behalf, and
- b) by the Trade Licensing Unit for specific reasons.

19. Can a licence holder ask for the licence to be cancelled?

Yes. The person on whom the licence was issued or in the case of companies, the person authorised to act on its behalf, may ask for the licence to be cancelled.

20. On what basis may the Trade Licensing Unit cancel or suspend a licence?

The Trade Licensing Unit may cancel or suspend a licence for any one or more of the following reasons:

- (a) when the commercial activity does not commence operations 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 in the law, 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 obligation; 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
- (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.

There might be other justified reasons warranting the cancellation or suspension of a licence. In all cases, the licensee will be informed of such an action with the opportunity to contest it.

21. If my business is a company, should I inform the Trade Licensing Unit of any relevant changes in its composition?

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

22. From where may I find more information about licensing of dealers in precious metal and stones?

Further information may be found on the Commerce Department's website www.commerce.gov.mt Should you wish to contact the Department the contact details are: 21226688 or tradelicenceapplications@gov.mt

23. From where may I get more information on obligations related to prevention of money laundering and funding of terrorism?

The FIAU website, provide extensive information specifically targeted to DPMS: <https://fiaumalta.org/wp-content/uploads/2021/03/Training-material-for-DPMS.pdf>