



Sep 14, 2017

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A Regulatory Primer for Bitcoin ATM Operators – State Law & Regulations

Depending on the state where the Bitcoin ATM operator sets up the business, the operator may – or may not – need to comply with that state’s laws, regulations and/or licensing. For operators, the primary state-level matters of concern are typically its state or states of operation’s money transmitter laws.

At the federal law level, Money Services Businesses (“MSB”) as defined by the Bank Secrecy Act, must register with FinCEN and thereafter comply with the BSA’s mandates. For a discussion of the federal law issues, see [Federal Law & Regulations for Bitcoin ATM Operators](#). In addition, nearly all the states have promulgated their own laws and regulations, which will be an additional layer of compliance to be navigated by the Bitcoin ATM’s operators. Therefore, Bitcoin ATM operators need to consider *both* state and federal regulatory requirements.

Overview

Nearly every state has enacted a licensing scheme governing money transmitters or money services business operating within their borders. In fact, only Montana and South Carolina have opted to not affirmatively adopt such a scheme. Of the other states, 13 states have enacted or proposed laws regarding virtual or digital currency (“VC”) and its associated MSBs. However, the other states which have not explicitly included VC in its laws will still take the position that MSB activity, regardless of whether it is VC-based, will require licensure and oversight. The following is a discussion of a few states which have affirmatively chosen to require Money Transmitter Licenses (“MTLs”) for VC MSBs, and other state requirements which may touch and concern Bitcoin ATM operators, with [much of these requirements being implemented or proposed in 2017](#).

Some States May Not Require Registration...

Some states, such as Arkansas, have gone out of their way to accommodate VC companies, by honoring MTLs held by VC

businesses in other states. Other states have explicitly exempted VC businesses from MTL requirements under certain situations (such as Illinois, Kansas, New Hampshire, North Carolina, Tennessee, and Texas). As discussed below, Bitcoin ATM operators in Texas need not register, so long as the Bitcoin tokens^[1] are sent directly from the operator and not from an exchange or other third-party sources.^[2] Idaho's Department of Finance has also taken "no-action" approach to Bitcoin ATM operators, under certain circumstances.^[3] The Kansas Office of the State Bank Commissioner has also said that the operation of Bitcoin ATMs "may not be money transmission depending on the facts and circumstances."^[4]

...And Some States Will

Some states affirmatively require, or will soon require, VC MSBs to obtain an MTL. Alaska introduced House Bill 180 in March, which would require VC businesses to obtain an MTL, via the state's Banking and Securities Commission. In April 2017, California proposed AB 1123, in an attempt to clarify VC business status under MTL licensing schemes. Connecticut enacted HB 6800 in 2015, which applies MTL laws to VC companies, and grants the VC business licensing authority to the Department of Banking. New York has developed a blockchain-specific "BitLicense" scheme for VC businesses effective August 8, 2015. Washington also requires VC businesses to comply with its MTL scheme.

Other States' Requirements

As mentioned above, Connecticut's Department of Banking has authority to grant/deny MTL applications. However, part of the Department's analysis includes an examination of the institutional risk associated with the given VC business. Connecticut also has sizable reserve requirements for VC businesses under HB 6800. Florida enacted HB 1379 in April 2017, which adds VC to the state's anti-money laundering laws. This was following the ruling in *Espinoza*, where the trial court judge ruled that VC was property, and not "money" for the purposes of money laundering activity.^[5] New York's "BitLicense" scheme requires many bureaucratic barriers to entry, and has been reported to effectively cost as much as \$100,000, just to obtain the license.^[6] Washington requires that VC

businesses comply with bond requirements under the MTL regulations.

Regardless of the state where the Bitcoin ATM Operator decides to set up shop, state licensing also often entails working with the state-body designated for licensing and supervision. In our experience, the application process typically involves completing the paperwork for the license application, often due diligence/disclosure of the operator's net worth, often a surety bond requirement, and always a state license fee. The time to complete the process varies, and ranges from about 3 months to 12 months (in California, for example).

While not all states require licenses, reviewing a few examples of states with more stringent licensing criteria may provide some real-world context. California licensing requires, among other elements, a current filing fee of \$5,000, an operator's minimum net worth of \$250,000, and the posting of a surety bond that might range from around \$500,000 to \$7MM. Florida licensing requires a current filing fee of \$375, a demonstrated minimum net worth of \$100,000, and a surety bond that might be as high as \$2MM. New Hampshire's current regulations suggest a filing fee of \$600, an operator's minimum worth of at least \$1MM, and a surety bond in the range of \$100,000. North Carolina licensing requires, among other elements, a current filing fee of \$1,500, an operator's minimum worth of at least \$100,000 or more, and a surety bond that might range from around \$150,000 to \$250,000. The devil is in the details, so in all cases, the operator needs to verify the current state of its State's laws and regulations, understand the exact due diligence expected by the agencies, and then to consider whether it is best to work with others who are familiar with the state's licensing scheme and requirements.

Connecting to an Exchange?

One of those important "facts and circumstances" in many states is whether the Bitcoin ATM sends Bitcoin tokens from an exchange account or directly from the operator's reserve wallet. Take Texas for an example.^[7] If a Bitcoin ATM operator sends Bitcoin tokens from an online exchange, then Texas most likely will view the operator a money transmitter, and would require state licensing.

However, if the Bitcoin ATM operator does not send from an exchange account, but instead deals directly with customers, such as “selling” its own bitcoin via an ATM, then the operator likely will *not* be a money transmitter under state regulations and may *not* be subject to state-level licensing. Therefore, it’s important to check with the Bitcoin ATM manufacturer whether the machines they sell provide the option to send Bitcoin tokens directly from the operator’s wallet, or if the machines require the use of a third-party exchange.

Conclusion

An important early step for Bitcoin ATM operators is to determine the laws of the states in which they operate, which often are in flux. Once those laws are understood, the business can evaluate the requirements for licensure or the tradeoffs that may allow it to avoid licensing.

Navigating a path to successfully obtaining state licensing – if needed – suggests that the Bitcoin ATM operator should work from a strategic approach. Importantly, its team should include a member who is familiar with that state’s licensing rules and agency procedures. Nonetheless, many find that most states are encouraging businesses wishing to locate operations there, and with patience and preparation, the necessary state licensing will be within reach.

If you have specific questions or would like more details, please do not hesitate to contact [Josh Rosenblatt](#), [Bill Repasky](#), or [Jeff Gorham](#) with Frost Brown Todd’s [Blockchain and Digital Currency Group](#).

[1] Note: industry standard usage dictates that the capitalized *Bitcoin* refers to code, whereas lowercase *bitcoin* refers to the unit of currency. For the sake of clarity, this article series will refer to the currency as *Bitcoin tokens* throughout.

[2] See TX Dept. of Banking Supervisory Memorandum 1037 (Apr. 3, 2014).

[3] See ID Dept. of Fin. No Action Op. Ltr. (Oct. 10, 2014).

[4] See KS Off. of State Bank Comm’r. Guid. Doc. MT2014-01 (June 6, 2014).

[5] See *State v. Espinoza*, No. F14-2923, 11th Cir. Ct. (July 22, 2016).

[6] See Yessi Bello Perez, *The Real Cost of Applying for a New York BitLicense*, Coindesk (Aug. 13, 2015), available at <https://www.coindesk.com/real-cost-applying-new-york-bitlicense/>.

[7] *Id.* at 1.

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