

Money Service Business Compliance

If you operate a money service business in the U.S. you should be worried. This article provides a brief overview of money transfer business requirements. Section 359 of the USA PATRIOT Act changed the definition of "financial institution" so that informal value transfer systems such as hawala and digital currency are now money service businesses. Additionally, both formal and informal MSBs may be subject to regulation at the State level. You can take proactive steps to avoid your loss of money, avoid loss of assets, and avoid losing your freedom. Contact Saboor H. AbdulJaami for additional information.

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If you operate a money transfer business in the U.S. and do not have your paperwork in order, you should be worried. The 2005 U.S. Dep't of Treasury, U.S. Money Laundering Threat Assessment 2005 singled out money services businesses (MSBs) as being highly vulnerable to the illicit transmission of money and a means of terrorism finance. The result is ever increasing Federal prosecution of MSBs, particularly money transfer businesses and illegal, unregistered MSBs. Section 359 of the USA PATRIOT Act changed the definition of "financial institution" so that informal value transfer systems such as hawala and digital currency are now subject to the Bank Secrecy Act (BSA) and prosecution under 18 U.S.C. § 1960 (§ 1960).

For example, on March 15, 2005, ICE federal agents arrested Mr. Habbal, a naturalized U.S. citizen of Syrian origins, and accused him of operating an illegal money transfer business. Apparently, Mr. Habbal operated a hawala. Mr. Habbal had properly registered his money service business under Federal law. However, Mr. Habbal received 12 months in a federal penitentiary and 24 months of probation. Why?

Money Service Business Regulations

You are an MSB subject to the BSA if you provide one or more of the following products or services: funds transfer, travelers' checks, money orders, check cashing, currency dealing or exchange.

The BSA requires MSBs to register with the Financial Crimes Enforcement Network (FinCEN) within 180 days of beginning business. Registration is accomplished by filing Form 107. MSBs are required to renew their FinCEN registration every two years. Along with other recordkeeping requirements, MSBs must also prepare and maintain a list of agents and update the list annually. Failure to comply with U.S. Federal registration, recordkeeping, and agent list requirements may result in civil penalties of up to \$5,000 per violation, injunctive relief, and/or civil forfeiture of all property involved in the violation, including real estate. Failure to register your money transfer business with FinCEN is a felony punishable by up to 5 years imprisonment, a fine of up to \$250,000, and/or civil forfeiture of all property involved in the violation. Criminal penalties apply to each separate violation (or count) and therefore may be significantly greater than 5 years or \$250,000.

MSBs, including money transfer businesses, are required to:

- Establish an anti-money laundering compliance program;
- Report transactions in currency exceeding \$10,000;
- File suspicious activity reports;
- Maintain records of each cash purchase of money orders and traveler's checks ranging from \$3,000 up to and including \$10,000;

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International Commercial Transactions

- Maintain records of funds transfers of \$3,000 or more regardless of the method of payment; and
- Maintain a record of each currency exchange in excess of \$1,000.

Insofar as under Federal law an MSB is an “agent, agency, branch, or office within the United States,” a foreign money service business that maintains an account with a U.S. financial institution may be an MSB subject to Federal registration and recordkeeping requirements, and criminal prosecution.

FinCEN and Money Service Business Compliance

As mentioned above, all money service businesses that operate in the U.S. are required to register with FinCEN by filing Form 107. What does FinCEN do with the information that you provide? Your information is made available to increase the government’s intelligence and further investigations. FinCEN provides federal, state, and local law enforcement agencies and regulatory bodies with direct online access to Form 107 information through FinCEN’s Gateway program.

State Law and Money Service Business Regulations

It is likely that your money service business (MSB) is subject to regulation at the State level. The U.S. has 50 States and each State has its own approach to the regulation of MSBs. A handful of States do not regulate MSBs.

*If you are operating an MSB, **especially a money transfer business**, and are not registered or licensed in the U.S. State or States that you operate in, stop reading and immediately determine how and to what extent your particular State(s) regulates MSB.* Here is where we return to Mr. Habbal. Remember, even though Mr. Habbal operated a hawala that was properly registered with FinCEN, the Feds threw Mr. Habbal into the penitentiary for 12 months with 24 months of probation. Why? Mr. Habbal did not register or get licensed at the State level. Under § 1960, it is illegal to operate a MSB in a State that mandates registration or licensing, unless your MSB is registered or licensed by that State. **FinCEN Form 107 registration may not be enough.** Failure to meet State requirements can lead to financial penalties, forfeiture of all property used in the MSB, and your loss of freedom.

Protecting Yourself and Your Money Service Business

Formal MSBs (e.g. MoneyGram), informal value transfer systems (e.g. hawala), and electronic financial service providers (e.g. eGold Ltd.) are being targeted if they facilitate funds transfers. You can take proactive steps to avoid your loss of money, avoid loss of assets, and avoid losing your freedom. The first thing you can do is to structure your business to take advantage of the differences in State law. The next thing you can do is to approach Form 107 registration with care, making arrangements from the outset to successfully meet registration, recordkeeping, and agent list requirements in a way that makes the most sense for you and your business and limits the risk of penalties and forfeiture. Finally, institute compliance measures, such as an effective anti-money laundering program, employee screening measures, operating procedures, etc.

For more information, contact Saboor H. AbdulJaami at +1 646 435 0668.

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