

Money Transmitter License = Freedom

Money services businesses that do business in the U.S., but are located outside of the U.S. are now firmly within the sweep of the Bank Secrecy Act and U.S. MSB registration requirements. Failure to get your money transmitter license could result in your being sentenced to a long stay in a U.S. federal penitentiary. If you conduct, control, manage, supervise, direct or own a non-U.S. MSB that does business in the U.S., you should take four steps to avoid loss of money and avoid losing your freedom. Contact Saboor H. AbdulJaami for additional information.

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If you conduct, control, manage, supervise, direct or own a money services business that is located outside of the U.S. and has U.S. customers, but that is not licensed and/or registered with the relevant U.S. federal and state authorities, you may lose 5 years or more of your personal freedom.

In January 2009, the owner of a Chilean money services business, Mr. Mazza-Alaluf, was sentenced to 42 months (3.5 years) imprisonment in a U.S. federal penitentiary. Mr. Mazza's business, Turismo Costa Brava S.A., consisted of three storefront locations in Santiago, Chile. Turismo offered services such as funds transfers, currency exchange, etc. The U.S. federal court that convicted Mr. Mazza found that "Turismo had no branch offices or employees in the United States, and it solicited no customers in the United States." Despite this finding, the court convicted Mr. Mazza of (1) conspiring to conduct an unlicensed money-transmitting business, and (2) conducting an unlicensed U.S. money transmitting business.

At the time, to facilitate its U.S. dollar business, Turismo maintained at least five U.S. bank accounts: one account in Chicago, Illinois with an associated lockbox; one account in Dearborn, Michigan; two accounts in New York, New York; and one New York, New York account that was opened and administered by a third party. To fund Turismo's U.S. accounts, Mazza and other individuals personally couriered Euros and other foreign currency into the U.S., typically transiting through LAX. All funds were declared in accordance with U.S. law. The funds were then placed into the custody of an armored car service for transport to a leading foreign exchange specialist. The foreign exchange then wired U.S. dollars to one or more of Turismo's U.S. accounts as directed.

On at least two occasions, Mr. Mazza came to the attention of U.S. Customs and other federal agents. On those occasions, Mr. Mazza was personally couriating US\$ 1.8 million and US\$ 2.0 million, respectively. Using these and other methods, Turismo transmitted approximately US\$ 244 million both to and from the U.S. and throughout the U.S.

On March 31, 2007, Mr. Mazza was arrested passing through LAX. The Federal government charged him with operating an unlicensed money services business, a felony punishable by up to 5 years in U.S. federal prison for each violation. *Mr. Mazza was convicted because Turismo was not a licensed MSB in the states where Turismo held bank accounts.* Under the federal sentencing guidelines, Mr. Mazza should have received a sentence of 121-151 months imprisonment for each count, for a total of 242-302 months imprisonment (20 to 25+ years). However, Mr. Mazza was saved because 18 U.S.C. § 1960 limits the prison sentence to a maximum of 5 years (120 months) per violation, and the sentencing court "determined that a considerably lower prison term was warranted." This being the good news, Mr. Mazza received a sentence of 42 months (3.5 years) imprisonment, two years' supervised release and "a \$200 special assessment."

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New MSB Definition Exposes You to Felony Prison in a Federal Penitentiary

Prior to Mr. Mazza's conviction and sentencing to 42 months imprisonment, the U.S. government's definition of "money services business" did not clearly reach MSBs that were located outside of the U.S. Only "each [MSB] agent, agency, branch, or office *within the United States...*" was covered by the definition and therefore MSBs that did not have U.S. agents, branches or offices were arguably not subject to FinCEN 107 registration requirements or Bank Secrecy Act (BSA) regulation. This issue is touched on in FinCEN Ruling 2004-1, where it is stated that "the question is whether [a bank account] could be considered an 'agent, agency, branch, or office within the United States'...which is engaged in conducting the activities of a money services business." The court in *United States v. Mazza* found that a money transmitter business is a "financial institution," that "[t]he phrase 'within the United States'...[does] not to apply to a financial institution physically located abroad," and therefore did not find Mr. Mazza's guilty of failing to register his non-U.S. MSB with FinCEN.

In 2011, the U.S. government changed the definition of "money services business" to clearly include MSBs that are not located in the U.S. A "money services business" is now,

A person *wherever located doing business*, whether or not on a regular basis or as an organized or licensed business concern, *wholly or in substantial part within the United States*, in one or more of the capacities listed in paragraphs (ff)(1) through (ff)(7) of this section [including, (1) Currency dealer or exchanger; (2) Check casher; (3) Issuer of traveler's checks, money orders, or stored value; (4) Seller or redeemer of traveler's checks, money orders, or stored value; and/or (5) Money transmitter]. This *includes but is not limited to maintenance of any agent, agency, branch, or office within the United States*. 31 CFR Chapter X, Part 1010, Section 1010.100 (ff). (emphasis supplied).

FinCEN clarified that the new "money services business" definition has the following impact:

- foreign-located persons engaging in MSB activities within the U.S. are subject to BSA rules;
- *an entity qualifies as an MSB based on its activity within the U.S.*, not the physical presence of one or more of its agents, agencies, branches, or offices in the U.S.;
- it is the activities performed that cause a person to be categorized as an MSB subject to anti-money laundering rules;
- *BSA rules apply to all persons engaging in MSB activities within the U.S., regardless of their physical location.*

The new definition is a big problem for unlicensed non-U.S. MSBs that do business in the U.S.

Money Transmitter License for Non-U.S. MSBs taking advantage of the U.S. Market

You can do four things *now* to avoid the fate of Mr. Mazza: (1) Register your MSB with FinCEN; (2) For each U.S. state that you operate in, determine whether operating an unlicensed MSB is a misdemeanor or a felony; (3) Based on your analysis of U.S. state law, register your MSB in each state necessary; (4) Remain current on all registration and license requirements. See *U.S. v. Mazza*, 607 F.Supp.2d 484 (2009). For more information, contact Saboor H. AbdulJaami at +1 646 435 0668.

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