

Regulation of Bitcoin ATM machines varies by country but, currently, the U.S. is home to 60% of all Bitcoin ATMs in the world. This means that America is the leading market in Bitcoin ATM regulation. The regulation happens on both the federal and state levels. Bitcoin ATM machine operators are to follow the federal Bank Secrecy Act (BSA) which requires that they register with FinCEN (Financial Crimes Enforcement Network) and follow an AML compliance policy. Bitcoin ATM operators need to register as a Money Services Business (MSB) with FinCEN so the government can detect and prevent financial crimes including money laundering, terrorist financing, and tax evasion. Under FinCEN regulation, Bitcoin ATM operators are referred to as “exchangers” of virtual currency and therefore need proper registration. Registration must be done within 180 days of establishing MSB business and then renewed every 2 years. Operators can register online. Bitcoin ATM operators must also develop an AML compliance policy. Standing for “Anti-money Laundering”, it is a set of procedures, laws or regulations designed to stop the practice of generating income through illegal actions. AML is enforced by the Financial Action Task Force on Money Laundering.

AML policy is not required for FinCEN registration, but it is recommended that the operator have an AML policy developed because it can be asked for at any time. AML policy must do the following: define policies, procedures and internal controls to assure compliance with the BSA, designate a compliance officer with expertise in the field to ensure day-to-day compliance with AML and BSA regulations, provide employee training so that employees will be educated on BSA regulations and report suspicious transactions if necessary, must meet the Know Your Customer (KYC) requirements via a written Customer Identification Procedure (CIP), and provide independent audits to monitor and maintain AML policy.

On the state level, regulation varies state by state. Some states, like Arkansas and Texas, do not require any registration while other states, like New York and California, require registration VC (virtual currency) MSB licenses. New Jersey, for example, requires registration but does not require state level AML reporting. However, most states require that operators provide surety bond, due diligence/disclosure of operator’s net worth, and always state license fee payments.

New Jersey has regulations tailored to digital currency technologies so that previous ambiguities in money transmission law are eliminated creating certainty for innovators. Covered license activities refer to businesses that “maintain custody” of digital currency. They have no exemptions for Multi-sig, software, non-financial, and infrastructure. They do not require state level AML reporting. Notification of material change is required for change of business. There are no permissible investment, bonding, minimum capital requirements. There is no start-up on ramp but it takes 30 days to register and registration rather than licensing makes it easier for startups to startup. New Jersey regulations also state that “no person shall, without completing a registration as set forth in this act, engage in any digital currency custodial activity for more than 30 days. Only a person engaging in digital currency custodial activity as its primary business may complete a registration under this act. (Can be read to forbid digital currency custodial activity by businesses that engage in it not as a primary business)”. The state requires registration. Legislation for bitcoin ATM machines was introduced in House but failed.

New York has developed a blockchain-specific “BitLicense” scheme for VC businesses effective August 8, 2015. 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.

New York's approach is rulemaking that crafts digital currency licenses outside of legislation. They believe the definition covered licensed activities are too broad and "the words "storing" and "holding" should be removed and "maintaining custody or control" should be defined as: "having the ability to unilaterally execute or prevent a virtual currency transaction." Administering, controlling, and issuing a virtual currency should only require licensure if that currency is centralized by design". New York has a software exemption: "The development and dissemination of software in and of itself does not constitute Virtual Currency Business Activity." And it has a non-financial exemption: "transaction is undertaken for non-financial purposes and does not involve the transfer of more than a nominal amount of Virtual Currency" Exemptions remain insufficient. Business services, should be exempted. "Administration" "issuing" and "controlling" should not apply to decentralized currencies. New York requires state level AML reporting outlined as followed: "SARs without lower bound, reporting all over 10,000, KYC and per-transaction record keeping obligations. IN FINAL DRAFT reporting and SARs requirements are waived if the company is "subject to . . . requirements under federal law." Our understanding is that all virtual currency custodians are subject to requirements under federal law, so it is unclear who would not be exempted. But if that is the case why bother having this requirements that would apply to no one? Per-transaction record keeping obligations apply irrespective of federal compliance, and therefore still constitute an entirely novel, state-level obligation on all bitcoin companies." There are permissible investment, bonding, minimum capital requirements: Pre Approval of new products or material change to existing products. FINAL draft clarifies what constitutes these material changes but still mandates pre-approval. Transaction obfuscation is prohibited. The rulemaking for the regulations are finalized and in effect.

In regard to cost, it is recommended that operators start with legal advice on the local regulation which costs about \$500-1000. The mandatory registration with FinCEN (which can be done via their website) does not cost money and takes about 30-60 minutes and is approved and uploaded to the FinCEN database within a few weeks. The operator can either write their own AML/KYC compliance policy which reportedly costs less than \$1000, hire an independent consultant which costs between \$8 and 10k, or hire a lawyer which will cost upwards of \$20k. Maintaining compliance policy (which must be updated annually) costs between \$5 and 8k. The compliance officer's salary will be between \$80-100k a year. Depending on state regulations, license application fees can cost between \$500-1000 and operators are required to pay a surety bond. A surety bond or trust account (amount at superintendent's discretion) and capital requirements that can be held in virtual currency are required for a startup on-ramp.