

# Bitcoin in a nutshell, the FinCEN ruling and what it means for Bitcoin companies?

---

Unless you've been hiding in a cave, you must have heard of Bitcoin by now.

Bitcoin is gaining momentum on a daily basis in the financial & business world. From payment processors, exchanges, brokers, remittance payment rails, speculative investment vehicle, merchants, etc. Bitcoin is seeing it all.

## Bitcoin In a Nutshell

Bitcoin in a nutshell is a couple of things (without discussing things like the cryptographic nature of Bitcoin or how mining works):

1. It's first and foremost a protocol. Just like SMTP, FTP, HTTP, Bitcoin is a protocol.
2. It allows a person to send *value* across the Internet without the threat of double-spend.
3. It maintains an open (public) ledger called the *Blockchain* which records all the transactions happening within the Bitcoin network.
4. The ledger is decentralized, i.e. nobody owns it. Everybody can run a copy of the ledger.
5. It's a consensus network. All the nodes in the network every 10 minutes agrees what transactions have happened.
6. Bitcoin also is *limited-supply* money. Its own currency. Actually, the very first application that was programmed on top of the Bitcoin protocol, was money, and was *also* named Bitcoin (which sometimes adds to the confusion).
7. Only 21 Million Bitcoins will ever be minted (or mined)
8. Bitcoin is *digital* in nature. It doesn't exist in physical form.
9. Perhaps the most important element of all is that Bitcoin is open-source. No one owns it. There is no entity, body, organization, government, committee that owns Bitcoin. You, I and anyone else can download the Bitcoin client software and run it. Thus becoming a fully functioning node on the Bitcoin network.
10. 1 Bitcoin or BTC equals 100 Million Satoshis. Alternatively, put, 1 Bitcoin equals a 100 Million pennies.
11. There is no cost associated on *value* of transfer. A \$100 Million worth of Bitcoins can be transferred with near zero costs. The same would hold true for 0.000001 BTC. This is what makes it super economical to use.
12. You can send Bitcoins from anywhere in the world to any other person in the world, almost instantly, securely and with very very little or no fees at all.

Here is an excellent video by Andreas Antonopoulos on Bitcoin (YouTube Video): <https://www.youtube.com/watch?v=c2CsJ2HMA2I>

## Legality

Bitcoin has taken the internet by storm. 1,000s of startups are trying to get an early advantage on this great piece of technology and implement it in various products & services. Central Banks & Financial Regulators worldwide are watching with keen interest.

Because of the revolutionary nature of Bitcoin and how it can easily enable money to move, governments worldwide are cautious. Some have embraced bitcoin, others are waiting on the sidelines.

Some governments have taken a knee-jerk approach to the threat of Bitcoin destabilizing their monetary systems or by-passing the regulatory systems for money movement & monitoring and have outright banned it or deemed it illegal to trade (countries like Bangladesh, China, Russia, Mexico, India, etc). See [Legality of Bitcoin by Country](#).

Countries who are embracing Bitcoin, are essentially *ignoring* the Bitcoin price, i.e. the prevailing market rate, but instead are more focused in understanding and appreciating the Bitcoin “...*the technology, the invention and the network it creates*” (Andreas Antonopoulos)

Developed markets like the US, Germany, UK, Canada, etc. have started to work with the Bitcoin Foundation and Bitcoin companies to get a better understanding if, how and when they need to be licensed.

## Recent FinCEN Ruling

The US Financial Crimes Enforcement Network (FINCEN) released its opinions on: [Request for Administrative Ruling on the Application of FinCEN's Regulations to a Virtual Currency Payment System](#) and [Request for Administrative Ruling on the Application of FinCEN's Regulations to a Virtual Currency Trading Platform](#) yesterday (27th October 2014).

The ruling which is an update to an earlier ruling of October 2013, in which only Bitcoin Exchanges were subject to the Money Transmitter Rules, exempted other types of businesses from being categorized as money transmitters.

With the new ruling, it seems that Bitcoin Brokers and Merchant processors would now also need to be licensed and obtain Money Transmitters Licenses in the States where the Bitcoin companies intends to source clients from.

This would not bode well for the likes of [Coinbase](#), [Bitpay](#) and [Circle](#), companies who have insisted that they are exempt from Money Transmitter Licenses as per the earlier FinCEN ruling.

Now that FinCEN has issued new guidelines what remains to be seen, what action would the individual department of banking & financial services (or equivalent) in each State do? Would they issue a cease & desist notice to the existing players? give them a temporary pass till such time they are licensed?

If the States do not give a temporary relief to these companies then it would have serious repercussions on their daily trade volume and company valuations.

I have a sinking feeling that the regulators, especially FinCEN will also go after exchanges that are outside the US and yet picking up business from the US. The only clear winner in this battle of regulatory compliance with having the associated licenses is CoinX, a stealth startup based out of Atlanta, GA, that has 30+ related money transmitter licenses.

For other startups, this news could not come at a worse time. These companies now have to pony up the capital to apply for licenses, increase their net worth, find surety bonding and insurance so that they can qualify for license application, a process which can take many many months.

### **Are you affected by the Ruling?**

One of the first questions you have to ask yourself is if you are affected by the recent ruling. You may need to seek a legal opinion (or two, or three) and be quite certain about the direction the opinion leans towards:

- Get Licensed? or
- Not Applicable to you?

Do not rely on the opinion of a single lawyer, no matter how good he/she/they may be. At the risk of being blunt, it is times like these that law firms and attorneys juice their clients. Get a 2nd and 3rd opinion (if necessary).

### **Does the Ruling affect your current operations/plans?**

Are you yet to go live or are you live? If you're yet to go live, you have your fair share of work carved out for you. If you were live and engaged in commercial transactions, the ruling could mean problems for you. You *may* need to stop commercial transactions all together. This can be devastating for some. If you have a large payroll to deal with, or monthly recurring is high, you may want to consider shedding the excess weight off, until you get licensed.

### **Can you move operations overseas?**

For **some** businesses (emphasis supplied), the option to move operations (or business) overseas and be able to continue, might just be possible. Just don't expect to pick up transactions/clients from the US that easily.

Do remember, as per FinCEN ruling of 2011, includes Foreign-Located MSBs doing business in the US. (See: [http://www.fincen.gov/news\\_room/nr/pdf/20110715.pdf](http://www.fincen.gov/news_room/nr/pdf/20110715.pdf)).

So, by merely transitioning overseas, don't expect you would be able to pickup US clients.

## How long does licensing take?

The answer is not so simple. On average, the 50 States will take you between 1-3 years. For a few states you might be able to secure licenses in 3-5 months, but then again, how many of your clients are walking about in Utah or North Dakota? States like Illinois, New Jersey, Florida, Massachusetts, Pennsylvania, etc. hover between 6-10 months. Heavy weights like Texas, New York and California, easily 1 to 1.5 years (if not more). For example, if CA does view your application and finds out your Audit has expired and wants you to redo an Audit, that can easily extend the time.

For NY you will have to get the *BitLicense* when it comes out. CA might offer its own BitLicense equivalent. Texas so far has no plans – or do they? One cannot be sure. They don't advertise much. Everyone is playing the 'wait and see' game with how NY's DFS handles the *BitLicense*.

Those who have applied, will testify that the process is brutal and frustrating at times; one that requires money and patience (in that order) and a tad bit of good luck.

## What problems can one face?

No action by the Regulator weeks after you submitted your application. Added delays. Audit report not acceptable. No Commissioner to sign-off your application. Associate to go through your application not awarded. Missing information, please refile again. Missing fingerprints, please refile. Application being returned, please go through checklist as attached again (a lot of elements are not correct or missing).

Shampoo. Rinse. Repeat.

Then there are the highly important Surety Bond Providers. Surety Bond companies that the State Regulators can work with, is a small bunch, about 16 or so of them. You have to deal with their appointed agents who then provide surety bonding to you. Because you are Bitcoin, they may or may not decide to do business with you. If they all deny you (a very very strong possibility) then you're as good as dead. Many States will not take any other form of a Surety Bond (like Certificate of Deposit, Cash, etc.)

They all work in collusion. I have no fear in citing this. You'll find out. There are some Agents whom you should avoid like the plague, but then again, you will experience this yourselves.

Audit (Security Audits, Financial Audits) are a pain and cost a lot of money. Some will be outright rejected *after* the audit is done. Why? Because the person who conducted the audit is on the regulator's shit list. But they won't tell you so. They'll just reword it and let you know that you need to find another auditor to work with.

Banking is also going to be one of your biggest woes. You'd be hard pressed to find a bank that will work with you once they find out you are a licensed money transmitter. Even the bank accounts you have can be closed without warning. In fact, Banking is one of the *biggest* challenges after licensing.

The pain points are many. Be prepared. Don't say I didn't tell you so.

## How much Money?

Plan on having lots of it. The whole licensing experience is all about spending a lot of money. Lawyers. Net Worth. Permissible Investments. Surety Bonding. Insurance. Audits. Auditor Fees. Specialists Fees. Etc.

If you have to raise this money, it will be difficult. Raising the necessary finance itself will add to the time period.

## Can I become an Authorized Agent of an existing Money Transmitter License holder?

Sure you can. Theoretically this is possible. Practically, the value of a money transmitter license just went through the roof after the FinCEN ruling.

A couple of years ago, you would work with the like of Obopay (now it's pretty much dead). PreCash isn't doing anything in the Bitcoin space. Incomm will only make you an Agent *if* you are promoting their products and that too is a sketchy 'if'. Meracord won't touch Bitcoins. Large FX or Money Transfer Companies that have Money Transmitter Licenses will just not work with Bitcoin companies.

You would be hard-pressed to find money transmitters in this space. One name I can provide that you can talk to is Megan Burton's CoinX ([www.coinx.com](http://www.coinx.com)). She has licenses in 30+ States for money transmission related to Bitcoin.

## Can I work with a Nationwide Chartered Bank by OCC?

Sure you can. A nationally chartered bank by the OCC is exempt from Money Transmitter Licenses, but then again, how many banks do you think would like to work with Bitcoin related companies. If you find one. Hide it. Its a keeper. Don't let anyone know.

The road to licensing is not easy. A few companies like CoinX had the vision to go and get licenses earlier on. Others were very sure of themselves based on the

previous FinCEN ruling. Needless to say, the way things are right now, it seems clear the Federal government has paved the way for States to declare you as money transmitters, and would not want you to pursue that path as well.

Its going to be tough. You will feel like giving up. You might just go broke. But don't give up. There *is* light at the end of the tunnel.

By Faisal Khan

*Faisal Khan is a payments consultant & digital money evangelist. He is the co-host of Around the Coin, a weekly podcast on Banking, Money & Payments and is also the resident payments expert on Quora. Faisal specializes in the design, solution architecting and validation of Payment Systems & Networks based on the current payment rails, and on advance rails such as Bitcoin, etc. His speciality is in the designing of cross-border payment networks & systems. He can be contacted at: [fk@faisalkhan.com](mailto:fk@faisalkhan.com)*