同一个词的两种含义

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监管机构把“监管套利”当作指责，创业者把它当作策略。两者描述的都是选择在何处接受监管这一行为。这个说法掩盖了唯一重要的问题：所选司法管辖区的规则是否实际适用于该业务。就其正当含义而言，套利是指选择法律与业务相契合的司法管辖区，在当地按法律要求的实质开展业务，并全面接受该司法管辖区的监管。每一家跨国企业都这样做。瑞士和新加坡的金融中心正是建立在被选择的基础上。两地都不会因为一家公司偏好楚格的基金会法或新加坡的基金激励措施、而不选择竞争对手的制度而对其加以处罚。就其不正当含义而言，套利是指在规则宽松的司法管辖区设立一个信箱公司，而业务经营、客户服务和决策都在别处进行，结果是没有任何一个司法管辖区监管实际发生的事情。这正是FINMA和MAS所处罚的行为。两种含义之间的分界线就是实质。[1]

这一区分之所以重要，是因为数字资产行业在不长的历史中就有过不正当套利的先例。在塞舌尔注册的交易所在香港运营。借贷机构持有新加坡公司，却在新加坡没有任何业务存在的情况下开展经营。代币发行人使用瑞士社团，而其在瑞士的唯一活动只是一份公证人签名。只做离岸业务的服务提供者坐在新加坡的办公室里，为新加坡人以外的所有人提供服务。每一种情况都引发了监管回应。2025年6月30日生效的DTSP制度是新加坡对最后一种情

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况的回应。FINMA对无牌公司的执法行动及其公开警告则是瑞士对其他几种情况的回应。本章阐述两地监管机构处罚的行为、实质在法律上的含义、各司法管辖区的规则在跨境方面的适用范围，最后针对十种商业模式给出一个决策矩阵，以运用整个部分的经验。

注释

1. 这一点有监管机构自己的表述为证。MAS, Response to feedback received on proposed regulatory approach for digital token service providers under FSMA，2025年5月30日，其中说明，对于除注册办事处外与新加坡没有实质关联的服务提供者，MAS将不予发牌。FINMA, Annual Report 2023，金融科技监管一节，描述了针对利用瑞士地址暗示受瑞士监管而实际在境外经营的实体所采取的执法行动。 ↩

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