“套利”的正当含义

Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland and Germany),
Solicitor (England & Wales and Hong Kong)
Of Counsel, KGP Legal LLC
alexander.ressos@kgplegal.com.sg
www.ressos.com.sg

客户来访时往往心中想着“套利”一词，顾问使用这个词时也常常很随意。这个词值得精确界定。正当的法域选择与两地监管机构都会处罚的行为之间的界线，是本书中最重要的界线之一。

因为某一法域的规则契合业务需要而选择该法域，是正当的，也是每一家跨国企业都在做的事。一个需要让零售投资者接触基于账本的证券并以中央银行货币结算的代币化平台会选择瑞士，因为那里有DLT交易设施和Helvetia项目。投资者在亚洲、投资策略涉及积极交易的基金经理，会选择享受税收优惠的新加坡VCC，因为这一载体正是为此设计的。社区希望拥有非营利性金库的协议会选择楚格基金会，因为这一形式已广为人知。这些都不属于贬义上的套利，而是契合。

因为某一法域的规则不涵盖该业务而选择该法域，在一定限度内同样正当。一家在新加坡没有客户的企业，只要不从新加坡开展经营，对新加坡就不负任何义务。一家将每位客户的代币都存放在隔离钱包中的企业，在瑞士只受反洗钱监管，因为立法者认定隔离托管无需银行牌照。限度在于实质与诚实。两地监管机构都会透过形式，审视业务实际在何处开展、决策在何处作出、风险在何处承担。MAS之所以设立DTSP制度，是因为在新加坡注册的

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公司曾被用作离岸代币业务的“方便旗”。该制度消除了这种便利。[1]FINMA的反洗钱实践则是：只要外国集团公司的瑞士员工实际从事受监管活动，无论组织架构图如何表述，都将该公司视为瑞士金融中介机构。[2]

如果一个架构的唯一目的是规避本应适用于业务实际运营方式的规则，套利便到此为止。一家只存在于纸面上的楚格GmbH，而交易所实际在新加坡的一套公寓里运营，对MAS而言是新加坡企业，对FINMA而言是瑞士金融中介机构。它承担两地的义务，却得不到任何一方的保护。一家新加坡VCC，如果其“投资专业人员”只是名义人员，决策实际在苏黎世作出，那么它既无权享受税收优惠，也逃不出瑞士的资产管理人牌照要求。两地监管机构都已表明会依据此类事实采取行动。双方还依据谅解备忘录和FATF框架相互交换信息。实务规则很简单：一个架构应当是顾问能够坦然向每个相关法域的监管机构解释清楚的，说明人员、决策、密钥和客户实际所在之处。

跨境视角

在任何律师起草文件之前，您就可以用三个问题检验一个拟议的瑞士—新加坡架构。第一，在一个普通的星期二，负责决策和掌控密钥的人实际坐在哪里？无论登记册怎么写，那里就是业务所在地。第二，企业将服务哪些客户，他们在哪里？这决定了哪个监管机构享有管辖主张。第三，如果两地监管机构能同时看到每一个实体，这个架构还说得通吗？它们确实能看到，因为它们相互合作。因此，依赖于任何一方只看到局部的架构必将失败。第O部分第VI章基于这三个问题，为十种商业模式提供了决策矩阵。

注释

1. Financial Services and Markets Act 2022，第137条；MAS，2025年6月6日新闻稿。 ↩
2. Anti-Money Laundering Act（SR 955.0），第2条第3款；Anti-Money Laundering Ordinance（SR 955.01），第2条（在瑞士境内或从瑞士开展的活动）。 ↩

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Author contact: Dr Alexander Ressos, TEP · contact@ressos.com