同一用語的兩種含義

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監管機構以「監管套利」作為指控，創辦人則以之作為策略。兩者描述的都是選擇在何處受監管的行為。這個用語掩蓋了唯一重要的問題：所選司法管轄區的規則是否實際適用於該業務。就正當含義而言，套利是指選擇法律與業務相配的司法管轄區，按法律要求的實質在當地設立業務，並全面接受該司法管轄區的監管。每家跨國企業都這樣做。瑞士和新加坡的金融中心，正是建基於被選擇。兩地都不會因為某公司選擇楚格的基金會法或新加坡的基金優惠措施、而非競爭對手的制度而加以懲罰。就不正當含義而言，套利是指在規則寬鬆的司法管轄區設立一個信箱，卻在別處經營業務、服務客戶及作出決策，令兩個司法管轄區都無法監管實際發生的事情。這正是瑞士金融市場監管局（FINMA）及新加坡金融管理局（MAS）所懲處的行為。兩種含義的分界線在於實質。[1]

這項區分之所以重要，是因為數碼資產行業在不正當套利方面早有前科。在塞舌爾註冊的交易所在香港營運。借貸平台持有新加坡公司，但在新加坡並無任何實際營運。代幣發行人使用瑞士社團，而其在瑞士的唯一活動只是一名公證人的簽署。只做境外業務的提供者坐在新加坡的辦公室，服務除新加坡人以外的所有人。每一種情況都引來監管回應。2025年6月30日實施的數碼代幣服務提供者（DTSP）制度，是新加坡對最後一種情況的回應。

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FINMA針對無牌公司的執法行動及其公開警告，則是瑞士對其他情況的回應。本章闡述兩個監管機構所懲處的行為、法律上實質的含義、各司法管轄區規則的跨境適用範圍，最後提出一個涵蓋十種業務模式的決策矩陣，應用整個部分的經驗。

註釋

1. 監管機構本身亦有此說。MAS，Response to feedback received on proposed regulatory approach for digital token service providers under FSMA，2025年5月30日，解釋其不會向除註冊辦事處外與新加坡並無實質聯繫的提供者發牌。FINMA，Annual Report 2023，金融科技監管一節，描述針對利用瑞士地址暗示受瑞士監管、實則在境外營運的實體所採取的執法行動。 ↩

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