What "arbitrage" legitimately means

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Clients often arrive with the word "arbitrage" in mind and advisers often use it loosely. The word deserves precision because the line between legitimate choice of jurisdiction and conduct that both regulators penalise is one of the most important lines in this book.

Choosing a jurisdiction because its rules fit the business is legitimate and is what every multinational does. A tokenisation platform that needs retail access to ledger-based securities and central bank settlement chooses Switzerland because the DLT trading facility and Project Helvetia exist there. A fund manager whose investors are in Asia and whose strategy involves active trading chooses a Singapore VCC with an incentive because that is the vehicle designed for it. A protocol whose community wants a non-profit treasury chooses a Zug foundation because the form is well understood. None of this is arbitrage in a pejorative sense. It is fit.

Choosing a jurisdiction because its rules do not reach the business is also legitimate within limits. A business that has no customers in Singapore owes Singapore nothing, provided it does not operate from Singapore. A business that holds every customer's tokens in a segregated wallet is AML-only in Switzerland because the

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legislator decided that segregated custody does not need a banking licence. The limits are substance and honesty. Both regulators look through form to where the business is in fact carried on, where the decisions are taken and where the risk sits. MAS's DTSP regime exists because Singapore-incorporated companies were being used as flags of convenience for offshore token businesses. The regime removed the convenience.[1] FINMA's AML practice treats a foreign group company as a Swiss financial intermediary where its Swiss staff in fact perform the regulated activity, whatever the organisation chart says.[2]

Arbitrage ends where the structure's only purpose is to defeat a rule that would otherwise apply to the business as it actually operates. A Zug GmbH that exists on paper while the exchange is run from a flat in Singapore is a Singapore business for MAS and a Swiss financial intermediary for FINMA, with the obligations of both and the protection of neither. A Singapore VCC whose "investment professionals" are nominees and whose decisions are taken in Zürich is neither entitled to its incentive nor outside Swiss manager licensing. Both regulators have shown that they will act on such facts. Both exchange information with each other under memoranda of understanding and the FATF framework. The practical rule is simple. A structure should be one that the adviser could explain, with a straight face, to the regulator of each jurisdiction involved, describing where the people, the decisions, the keys and the customers actually are.

Cross-border perspective

You can test a proposed Swiss–Singapore structure against three questions before any lawyer drafts a document. First, where will the people who take decisions and control the keys actually sit, on an ordinary Tuesday? That is where the business is, whatever the register says. Second, which customers will the business serve and where are they? That determines which regulator has a claim. Third, would the structure make sense if both regulators could see every entity at once? They can, because they cooperate, so a structure that depends on either of them seeing only part of the picture will fail. Part O, Chapter VI gives a decision matrix for ten business models built on these three questions.

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Notes

1. Financial Services and Markets Act 2022, s. 137; MAS, media release of 6 June 2025. ↩
2. Anti-Money Laundering Act (SR 955.0), Art. 2 para. 3; Anti-Money Laundering Ordinance (SR 955.01), Art. 2 (activity carried out in or from Switzerland). ↩

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