What both regulators penalise

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The letter-box

The first target is the entity with a Swiss or Singapore address and nothing else. Swiss financial-market law requires effective management in Switzerland for every licensed institution. Art. 10 para. 1 FinIA requires a financial institution to be effectively managed from Switzerland, with exceptions only for instructions given within a group subject to consolidated supervision. Art. 3 para. 2 lit. d BankA requires that persons entrusted with the management of a bank be resident in a place that allows them to manage it effectively. The DLT trading facility rules in FinMIA contain the same requirement through the general provisions for financial market infrastructures.[1] For an unlicensed financial intermediary under the AMLA, the SROs apply a parallel test in their membership rules and refuse or expel members whose Swiss activity is nominal. The SRO supervises what the member does in Switzerland and cannot supervise a business that exists only abroad.

Singapore's test is statutory and specific. A payment-service licensee must be a company incorporated in Singapore or a foreign company registered under the Companies Act. It must have a permanent place of business or registered office in Singapore at which it keeps its records and can be served. It must also have at least one executive director who is a Singapore citizen, permanent resident or

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employment-pass holder resident in Singapore. MAS has used these provisions to refuse applications where the "executive director" was a nominee and the decisions were taken by a parent abroad. The DTSP regime goes further in the other direction: it captures entities whose Singapore presence is real but whose customers are not, and MAS's statement that licences would be granted only in extremely limited circumstances tells such entities to restructure or leave.[2]

The borrowed reputation

The second target is the use of a Swiss or Singapore connection to suggest supervision that does not exist. Switzerland prohibits the unauthorised use of the terms "bank" and "banker" under Art. 1 para. 4 BankA and penalises under Art. 44 FINMASA anyone who carries on a licensable activity without the licence. FINMA publishes a warning list of entities that may be operating without authorisation and has ordered the liquidation of Swiss companies that collected funds from the public under the cover of a Swiss address. MAS maintains the Investor Alert List for the same purpose and treats the false suggestion of MAS regulation as an offence under the FSMA's provisions on misrepresentation. A Zug association that calls itself a "regulated Swiss foundation" in a token sale and a Singapore Pte Ltd that puts "MAS-registered" on a website without a licence are committing the same error. Both regulators have the tools to reach them.[3]

The circumvention structure

The third target is the structure designed to split an activity so that no part of it triggers a licence. The classic Swiss example is deposit-taking. A Swiss company that collects customer funds through a foreign group entity with no Swiss licence, while providing the service from Switzerland, is treated by FINMA as taking deposits in Switzerland. FINMA looks to the economic reality of who accepts the funds and where the activity is performed. The parallel Singapore example is the platform that routes Singapore customers' orders to an offshore affiliate's order book while holding only a marketing presence in Singapore. MAS treats the Singapore entity as carrying on the DPT service in Singapore if it is the party the customer deals with,

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regardless of where the matching happens.[4] Both regulators also look through group structures for AML purposes. A Swiss SRO member's foreign affiliate that serves Swiss customers creates a risk that the SRO will assess, while a Singapore MPI's group-wide AML programme must cover branches and subsidiaries abroad under PSN02's group provisions.

Example

A Dubai-licensed exchange sets up a Zug AG to "give European customers a Swiss counterparty". The Zug AG signs the customer agreements, receives fiat into a Swiss bank account and forwards it to the Dubai entity, which executes trades and holds the tokens. The Zug AG has two employees and a director who flies in monthly. Under Swiss law the Zug AG is a financial intermediary under Art. 2 para. 3 AMLA (it accepts and transfers customer assets professionally) and must join an SRO. It is also, on FINMA's economic analysis, accepting public deposits in Switzerland if customers have a repayment claim against it, which would require a fintech or banking licence that it cannot obtain without effective management in Switzerland. The structure fails on both counts. The lawful version has the Zug AG as the licensed intermediary with real management, holding the customer relationship and the customer assets, with the Dubai entity as an outsourcing provider for execution under a written agreement that satisfies FINMA's outsourcing circular.

Notes

1. Art. 10 para. 1 FinIA. Art. 3 para. 2 lit. d BankA. Art. 8 para. 2 FinMIA on the management of financial market infrastructures. The requirement is applied by FINMA to the fintech licence through Art. 1b BankA's reference to the banking provisions. ↩
2. Payment Services Act 2019, s. 6(5) to (7) (eligibility of applicants: incorporation, permanent place of business, resident executive director). FSMA 2022, s. 137 (licensing of DTSPs providing digital token services outside Singapore from a place of business in Singapore). MAS, Response to

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feedback on DTSP regime, 30 May 2025, and clarification of 6 June 2025. See Part K, Chapters II and V. ↩

3. Art. 1 para. 4 BankA. Art. 44 and 48 FINMASA. FINMA warning list, published under Art. 22 FINMASA. MAS Investor Alert List. FSMA 2022, s. 20 ff. on false or misleading statements. See Part H, Chapter IV, and Part N, Chapter VII. ↩
4. FINMA's practice on the attribution of deposit-taking within groups is reflected in FINMA Circular 2008/3 "Public deposits with non-banks", margin nos. 1 ff., and in enforcement decisions summarised in FINMA's Enforcement Reports 2019 to 2024. On MAS's approach see MAS, Frequently Asked Questions on the Payment Services Act, question on "providing a payment service in Singapore". ↩

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