

inBrief

**DIFC Courts to oversee disputes in all free zones?**

By Mevan Bandara and Sulakshana Senanayake | 20 October 2023

A [survey](#) published by the Dubai Statistics Center has called for input from the public in what appears to be research relating to the application of 'Common Law' in all free zones in Dubai. The survey is not about the use of 'Common Law' in a general sense. Instead, the Dubai government is focused on integrating DIFC laws and giving jurisdiction to the DIFC Courts for overseeing civil and commercial disputes within the free zones.

This potential shift seeks to further enhance Dubai's business landscape, boosting its appeal and economic proficiency. Embracing this transition resonates with the broader vision of the Dubai Economic Agenda D33, which envisions Dubai as one of the top three global economic hubs.

The DIFC

The DIFC is governed by its own body of laws with an independent judicial authority, the DIFC Courts. The DIFC Courts currently have jurisdiction to hear disputes in connection with an entity established in the DIFC, disputes which are connected to the DIFC or disputes in which the parties have agreed to the jurisdiction of the DIFC Courts.

The rules of procedure in the DIFC Courts largely follow the Civil Procedure Rules followed by the English courts. The DIFC Courts apply DIFC laws in disputes before it, unless there is an agreement to the contrary. DIFC laws are largely a codification of English common law. The DIFC Courts can also apply any other law agreed among the parties to the dispute, such as UAE law.

Under the current legal framework in Dubai, unless a free zone company agrees to resolve its dispute through arbitration or through the DIFC Courts, all disputes will have to be referred to the on-shore Dubai Courts. The on-shore Dubai Courts operate under a civil law system and apply UAE laws by default. Proceedings before the Dubai Courts are conducted exclusively in Arabic, whereas in the DIFC Courts they are conducted in English.

The Survey

The survey published by the Dubai Statistics Center appears to suggest that the Dubai government is considering two possible means by which the jurisdiction of the DIFC Courts and the laws of the DIFC may be extended to all free zones in Dubai: a hybrid system and a standalone system.

The Authors**Mevan Bandara**

Partner

mbandara@afриди-angell.com

Tel: +971 4 330 3900

Mevan practices in the firm's dispute resolution group. He advises and represents clients in arbitration, DIFC Court litigation and on-shore litigation. Mevan has represented clients in DIFC-LCIA, DIAC, ICC and ad hoc arbitrations seated in London, Dubai, Singapore and Sri Lanka. He specialises in cross-border disputes, tax, construction, banking, real estate, maritime and employment disputes

**Sulakshana Senanayake**

Senior Associate

ssenanayake@afриди-angell.com

Tel: +971 4 330 3900

Sulakshana practices in the firm's dispute resolution group and advises and represents clients in litigation disputes. His experience and specialties include advising on and assisting with disputes relating to international law, commercial law, banking, labour law, fundamental rights and intellectual property. Sulakshana is a registered practitioner of the DIFC Courts with full rights of audience.

a) Hybrid System: DIFC Courts having jurisdiction with UAE laws as default

Under this framework, the DIFC Courts would be responsible for overseeing civil and commercial disputes within the free zone. UAE laws will be applicable by default to the dispute. However, for matters concerning litigation procedures and evidentiary rules, the DIFC laws will take precedence. This means that while disputes will be adjudicated by the DIFC Courts, the foundational laws of the UAE would influence and guide the decisions in court cases.

b) Standalone System: Extended jurisdiction of DIFC to selected free zones

In this setup, the entire legal framework of DIFC's civil and commercial laws (excluding licensing regulations) would extend to the selected free zone. This would mean that companies in these zones will function entirely under DIFC laws and regulations (*e.g.* company law, bankruptcy law, employment law, etc.), with the DIFC Courts handling all respective disputes.

Outcomes

As noted above, if the Hybrid System is implemented, the DIFC Courts will have jurisdiction over any entity in any free zone in Dubai without the need for agreement among the disputing parties to submit to the jurisdiction of the DIFC Courts. However, the DIFC Courts will only apply UAE law (and not DIFC law) unless there is an agreement among the parties to apply a specific different law. In other words, the *lex fori* (the law of the Court) would be common law.

Under the Standalone System, the DIFC Courts will, in addition to having jurisdiction over disputes concerning other free zone entities, also apply DIFC Laws by default. In effect, this system will determine disputes under common law, through a common law process of court (*lex fori* and *lex loci*). It is unclear whether a non-DIFC free zone entity engaged in financial services will be subject to the supervision of the Dubai Financial Services Authority in the same manner that applies to DIFC entities. ■

Afridi & Angell

Founded in 1975, Afridi & Angell is a full-service UAE law firm in its fifth decade at the forefront of the legal community. From the beginning, our hallmarks have been a commitment to quality, unsurpassed knowledge of the law and the legal environment, and crafting of innovative business solutions. Licensed in the three largest Emirates of Abu Dhabi, Dubai and Sharjah as well as the Dubai International Financial Centre, our practice areas include banking and finance; corporate and commercial law; arbitration and litigation; construction; real estate; infrastructure projects; energy; project finance; maritime (wet and dry); and employment. We advise local, regional and global clients ranging in size and sophistication from start-ups, sole proprietorships, family-owned businesses, entrepreneurs and investors to some of the world's largest public and private companies, governments and quasi-government institutions. We attract and retain clients with our dedication to practical guidance focused on their business needs supported by decades of experience here in our home jurisdiction, the UAE.

Afridi & Angell is the exclusive member firm in the UAE of top legal networks and associations, most notably Lex Mundi, the world's leading network of independent law firms, and World Services Group.

www.afridi-angell.com