International Finance Center and the Common Law System

부산국제금융진흥원
Busan Finance Center

Int'l Finance Center and the Common Law System

🅰 many experts advocate for adopting a **common law system** in international finance centers (IFCs) for several **strategic and practical reasons**. Here's a breakdown:

💡 Key Concept:
Common law systems are based on judicial precedent and case law, offering flexibility, predictability, and commercial familiarity — traits that global investors and financial institutions value.

✔ Detailed Explanation:

Investor Trust and Familiarity
- Most international contracts (e.g., cross-border loans, derivatives, M&A) are governed under **English or New York law**— both rooted in common law.
- Adopting common law locally gives foreign investors a **legal environment they're already comfortable with**.

Contractual Certainty & Enforceability
- Common law emphasizes **freedom of contract**. Courts generally enforce the literal terms agreed between sophisticated parties.
- This minimizes regulatory overreach or arbitrary reinterpretation — a key concern in civil law jurisdictions.

Precedent-Based System
- Decisions are made based on **past rulings (stare decisis)**. This offers **predictability** — crucial for long-term financial and investment planning.

Judicial Independence & Reputation
- Many successful financial centers (e.g., DIFC in Dubai, AIFC in Kazakhstan, Singapore's SICC) use **independent common law courts**.
- They often **import experienced foreign judges**, boosting international credibility and helping resolve complex financial disputes competently.

Support for Sophisticated Instruments
- Common law systems are generally **more adaptive** to innovation in finance (e.g., trusts, structured finance, crypto assets).
- Judges can interpret evolving financial products flexibly without waiting for new statutes.

Arbitration and Dispute Resolution
- Common law jurisdictions are often **friendly to arbitration** and offer strong enforcement of awards under the **New York Convention**.
- This gives global businesses more confidence in dispute resolution mechanisms.

📌 Summary:

Adopting a common law system helps an international finance center build **legal credibility, attract foreign investors, support complex financial products, and ensure predictable, enforceable outcomes**. This is why financial hubs from Dubai to Astana to Singapore have either adopted or incorporated common law elements to compete globally.

🅱 The **common law system is not strictly essential**, but it is **highly advantageous — often a competitive differentiator**— for an international finance center (IFC). Here's a realistic breakdown:

💡 Key Concept:
A common law system significantly enhances legal credibility, dispute resolution, and investor attraction, but success also depends on infrastructure, regulation, tax policy, and geopolitical factors.

✔ How Vital Is It?

Factor	Impact of Common Law
Investor Confidence	✅ High — investors prefer legal systems they know (e.g., English law)
Contract Enforcement	✅ Strong — common law courts generally uphold sophisticated commercial agreements
Legal Predictability	✅ High — precedent-driven rulings provide stable expectations for business planning
Financial Innovation	✅ Supportive — trusts, derivatives, fintech tools often better accommodated
Global Reputation	✅ Boosted — links to English law signal openness, rule of law, and professionalism
Absolute Necessity?	❌ No — some civil law-based IFCs (e.g., Luxembourg, Tokyo) succeed via other strengths

---

📌 Summary:

A **common law system is not a requirement**, but it **strongly enhances global competitiveness** of an IFC by aligning with international business norms, reducing legal risk, and supporting high-value financial transactions. Without it, a center must compensate with world-class infrastructure, tax incentives, and regulatory sophistication — which is more difficult to establish trust in.

🅲 For **Busan**, a Korean city with ambitions to become an international finance center (IFC), adopting a **common law system is not essential but without it, Busan faces serious disadvantages** in competing globally. Here's a realistic, evidence-based assessment:

💡 Key Concept:
Busan can pursue IFC development without a full common law system, but doing so limits its global appeal, especially in areas like cross-border finance, dispute resolution, and investor confidence.

✔ Analysis for Busan

Criterion	Impact Without Common Law	Implication
Investor Trust (Global)	❌ Weak — foreign investors less confident in Korean civil law framework	Less likely to host complex offshore structures or capital markets deals
Dispute Resolution	❌ Local courts perceived as slow, conservative, and less independent	Global firms prefer London, Singapore, or Hong Kong for arbitration
Legal Familiarity	❌ Most cross-border finance runs on English or NY law	Korean law unfamiliar, deters foreign legal teams and insurers
Financial Product Innovation	⚠□limited — Korean law slower to adapt to fintech, digital assets, trust law	Global financial instruments may face legal ambiguity or friction
Alternative Strategy Available?	✅ Yes — Build credibility via arbitration centers, bilingual courts, treaties	But this requires aggressive legal reform, international cooperation

---

📌 Summary:

For **Busan**, adopting common law **is not strictly required**, but **without some mechanism to offer common-law-style legal certainty and neutrality**, it will struggle to become a **truly international, cross-border financial center**. Cities like **Singapore (SICC)** and **Dubai (DIFC)** overcame this by creating **separate common law jurisdictions or courts** inside a civil law country — **a model Busan could realistically consider** under Korea's legal framework.

🅳 Here is a **realistic policy roadmap** for how **Busan** could incorporate **common-law-compatible elements** into its legal framework to support development as an **International Finance Center (IFC)**— without requiring full-scale legal overhaul of Korea's civil law system.

KR📈 Policy Roadmap: Introducing Common-Law-Compatible Legal Framework in Busan IFC

□ 1. Establish a Special Legal Zone (금융특화법률구역)

- **Legal Basis**: Create a special provision under the *Financial Hub Development Act* or a new "Busan Global Finance Special Law (가칭)" to designate Busan IFC as a special autonomous legal district
- **Purpose**: Permit alternative dispute resolution and contract governance models distinct from the standard Korean civil law
-

✓ *Benchmark*: Dubai DIFC and Kazakhstan AIFC both operate within civil law countries but run **separate common law jurisdictions**

□ 2. Create an English-Language Commercial Court Division

- **Structure**: Set up a "Busan International Commercial Court (BICC)" modeled on the Singapore International Commercial Court (SICC)
- **Judges**:
  - Include **foreign judges from common law jurisdictions**
  - Appoint **retired Korean judges with international commercial law experience**

○ **Jurisdiction**: Voluntary opt-in for cross-border disputes, financial contracts, maritime cases

✓ *Advantage*: No constitutional amendment needed — can operate as a specialized division of the Busan District Court

---

□ 3. Recognize English/Common Law in Specified Contract Types

- **Scope**:
  - Allow parties to choose English law or New York law for governing **financial contracts, syndicated loans, derivatives, trusts**

○ **Enforcement**: Ensure Busan courts and arbitration panels enforce such contracts **without recharacterization under Korean law**

⚠ *Current Barrier*: Korean courts often reinterpret foreign-governed contracts under Korean public policy — a major deterrent

---

□ 4. Develop an International Arbitration Center in Busan

- **Institution**: Establish "Busan Financial Arbitration Centre (BFAC)" under Korea's Arbitration Act
- **Rules**: Allow proceedings in English, permit foreign arbitrators, use international arbitration rules (e.g., UNCITRAL, LCIA)
- **Function**: Become a neutral dispute resolution venue for Korean and foreign counterparties

✓ *Precedent*: Singapore International Arbitration Centre (SIAC) and HKIAC have successfully attracted global disputes through neutrality and speed

☐ 5. Amend Financial Supervisory Regulations to Allow Legal Flexibility

- Allow financial institutions in Busan to operate under **governance structures based on common law trust and SPV principles**
- Permit **contractual freedom** in structuring fintech, digital asset, and tokenization projects using offshore templates

⚠ *Current Issue*: Financial regulations (e.g., Capital Markets Act, Commercial Code) impose rigid governance rules unfriendly to international standards

☐ 6. Promote Legal Infrastructure in English

- Require bilingual publication of key commercial laws and regulations
- Establish legal certification programs for Korean lawyers in English commercial law
- Create public databases for precedent-based financial rulings

📌 Summary:

Policy Pillar	Goal
Special Legal Zone in Busan	Legal autonomy for international finance
English-language Commercial Court	Dispute neutrality & global investor assurance
Legal recognition of foreign law	Contractual confidence for cross-border deals
Arbitration center in Busan	Efficient dispute resolution with global credibility
Flexible financial legal regime	Support innovation in digital finance & structured products
Bilingual & precedent-based legal tools	Improve legal transparency and accessibility

Conclusion:

Busan **does not need to adopt full common law**, but it can become globally competitive by **importing key legal functions**— court systems, arbitration, contract flexibility — modeled on common law jurisdictions. This hybrid model has **proven successful**in other civil law countries and is politically feasible in Korea if driven by local government, MOJ, and FSC coordination.

🅴 Here's a **comparative analysis** of how **common law systems operate** in three prominent international financial centers — **DIFC (Dubai)**, **AIFC (Kazakhstan)**, and **Singapore (SICC)**. These jurisdictions are all located in **civil law countries** but have strategically incorporated **common law systems** to enhance their global competitiveness.

📊 Comparative Table: DIFC vs AIFC vs Singapore (SICC)

Feature	DIFC (Dubai)	AIFC (Astana)	Singapore (SICC)
Host Country Law System	Civil Law (UAE)	Civil Law (Kazakhstan)	Common Law (Singapore)
Type of Legal System Used	Independent common law system	Independent common law system	International court within national system
Legal Basis	DIFC Law enacted by Dubai Law No. 12 of 2004	AIFC Constitutional Statute 2015	Rules of Court (Order 110); Part of Singapore judiciary
Governing Law	DIFC law, based on English common law	AIFC law, based on English common law	Any foreign or Singapore law, if chosen by parties
Judges	Retired English judges, international & UAE nationals	Ex-UK judges, international commercial judges	Global roster: UK, Australia, Singapore, etc.
Jurisdiction	Opt-in (by contract) or default if within DIFC	Opt-in via agreement	Opt-in via written agreement
Precedent System	Yes — precedents of DIFC courts binding	Yes — own precedent-based decisions	Yes — follows common law stare decisis
Language of Proceedings	English	English	English
Court Independence	Independent from UAE courts	Independent from Kazakhstan judiciary	Part of Singapore Supreme Court but independent in panel
Arbitration Interface	DIFC-LCIA Arbitration Centre	IAC Astana	Supports SIAC & other arbitration centers
Enforceability (Local)	Requires MoU with Dubai Court for UAE-wide enforcement	Requires recognition under Kazakhstan enforcement law	SICC judgments fully enforceable under Singapore law
Investor Perception	High – seen as credible and neutral	Improving – newer but respected among investors	Very high – mature legal infrastructure and reputation

📌 Summary of Key Differences

- DIFC and AIFC are **independent jurisdictions** within civil law countries, using **English-based common law** and operating their **own legal codes, courts, and precedent systems**.
  - ✔ High degree of autonomy
  - ⚠ Requires special enforcement protocols within host countries

- **Singapore's SICC** is **not a separate jurisdiction**, but a **specialized international court** within the national court system.
  - ✔ Easier enforceability across Singapore
  - ✔ Strong reputation but less autonomous structurally

💬 Strategic Implications

- For countries like **South Korea or Japan**(civil law jurisdictions considering IFC development), **the DIFC/AIFC model** offers a blueprint for setting up an **independent common-law enclave**.
- For **strong legal systems like Singapore**, integrating international courts within the **national judiciary** offers credibility **without legal fragmentation**.

🅵 Here's a critical look at **non-common law international financial centers (IFCs)**— both **successes** and **struggles**— to show how far a civil law system can take you **without common law integration**.

✅ Successful Non-Common Law IFCs

1. Luxembourg

- **System**: Civil law (Roman-Germanic tradition)
- **Success Factors**:
  - Strong EU integration
  - Clear, investor-friendly financial regulations (e.g. UCITS, AIFs)
  - Tax treaty network and cross-border fund expertise
  - Political neutrality and language diversity

Key Point: Became Europe's #2 investment fund center by adapting civil law to international norms.

2. Tokyo

- **System**: Civil law (Japanese code)
- **Success Factors**:
  - Deep domestic capital base
  - Advanced fintech and banking infrastructure
  - Close integration with G7 economies

Limitations:

- Foreign investor trust is limited by **language barriers**, **rigid legal framework**, and **slow dispute resolution**

3. Frankfurt

- **System**: Civil law (German law)
- **Success Factors**:
  - ECB headquarters, EU banking hub
  - Strong legal clarity in regulatory enforcement
  - Deep financial engineering capacity

Note: Post-Brexit, Frankfurt absorbed some financial activity but lacked arbitration/legal draw of London.

✕ Struggling or Limited Non-Common Law IFCs

1. Seoul

- **System**: Civil law (Korean law)
- **Struggles**:
  - Korean courts not perceived as neutral or fast for global financial disputes
  - Contract rigidity and limits on English law application
  - No internationally prominent arbitration or trust law system
  - **Foreign investor hesitation remains high**

2. Paris (pre-Brexit repositioning)

- **System**: Civil law (French law)
- **Struggles**:
  - Historically less favored for complex financial contracts
  - Strong labor law rigidity, high compliance costs
  - Post-Brexit efforts to lure banks were partially successful but limited by **language/legal friction**

📌 **Summary**:

Jurisdiction	System	Status	Key Strength	Key Weakness
Luxembourg	Civil law	✅ Succeeded	Funds & EU alignment	Not strong in litigation or arbitration
Tokyo	Civil law	✅ Domestic success	Technology & capital	Poor legal accessibility for foreigners
Frankfurt	Civil law	⚠️ Partial success	EU regulatory center	Low dispute resolution attractiveness

Seoul	Civil law	✕ Struggled	Tech infrastructure	Legal unfamiliarity, no global court
Paris	Civil law	⚠ Mixed	Cultural capital, EU laws	Perceived rigidity, limited flexibility

---

☞ **Conclusion**:
Civil law IFCs can succeed — but **only when paired with regulatory innovation, financial specialization, or geopolitical leverage**. Without that, lacking common law becomes a serious handicap in attracting cross-border capital.