“ADOLAT”
MILLIY HUQUQIY AXBOROT MARKAZI
Guvohnoma № 636478
Litsenziya C-5669732

“HUQUQ va BURCH+” —
«ПРАВО и ДОЛГ+» —
"RIGHT and DUTY+"
Journal home page:
https://adolatmarkazi.uz/magazine/electron?id=357

2026-yil
3-son
mart
ISSN 3093-8546



# Expanding party autonomy through institutional innovation: choice of law and the tashkent international commercial court

*Davronbek Abdugaffarov,*
*Toshkent davlat yuridik universiteti*
*tayanch doktoranti*
*e-mail: davronbekabdugaffarov@gmail.com*

***Аннотация.*** Taraflar muxtoriyati transchegaraviy bitimlar uchun neytral va murakkab huquqiy bazani tanlash erkinligini beruvchi xalqaro tijorat huquqining tortishish markazi sifatida umumjahon miqyosida tan olingan. Biroq, rivojlanayotgan yurisdiksiyalarda ushbu huquqning qonuniy tan olinishi ko'pincha milliy sudlarning proteksionistik tendensiyalari bilan to'qnashadi, ular xorijiy huquqni tanlash to'g'risidagi kelishuvlarni haqiqiy emas deb topish uchun keng "ommaviy tartib" (public order) istisnolarini tez-tez qo'llaydilar. Ushbu maqola O'zbekistonda mazkur bo'shliqni to'ldirishga qaratilgan muhim institutsional innovatsiya sifatida "Enterprise Uzbekistan" xabi doirasida Toshkent xalqaro tijorat sudining (TICC) tashkil etilishini tanqidiy tahlil qiladi. O'zbekistonning nizolarni hal qilishdagi ikki tomonlama tizimini xalqaro paradigmalar (Gaaga prinsiplari, SICC va AIFC) bilan taqqoslab, ushbu tadqiqot ixtisoslashtirilgan tijorat sudlari huquqni tanlash to'g'risidagi kelishuvlarni ijro etish, shuningdek, an'anaviy fuqarolik huquqi doktrinalari va texnologik savdo o'rtasidagi ziddiyatlarni yumshatish uchun zarur ekanligini isbotlaydi.

***Калит сўзлар.*** Taraflarning erk muxtoriyati, Toshkent xalqaro tijorat sudi, Huquqni tanlash, Institutsional innovatsiya, Enterprise Uzbekistan, Ingliz umumiy huquqi, Xalqaro xususiy huquq, Huquqiy aniqlik.

***Аннотация.*** Автономия воли сторон повсеместно признается гравитационным центром международного коммерческого права, предоставляя субъектам свободу выбора нейтральной и сложной правовой базы для их трансграничных сделок. Однако в развивающихся юрисдикциях законодательное признание этого права часто вступает в противоречие с протекционистскими тенденциями национальных судов, которые нередко ссылаются на широкие исключения «публичного порядка» для признания недействительными оговорок о выборе иностранного права. В данной статье критически анализируется создание Ташкентского международного коммерческого суда (TICC) в рамках хаба "EnterpriseUzbekistan" как жизненно важной институциональной инновации, призванной восполнить этот пробел. Сравнивая двухуровневую систему разрешения споров Узбекистана с международными парадигмами (Гаагские принципы,SICCи МФЦА), данное исследование доказывает, что специализированные

Guvohnoma № 636478 Litsenziya C-5669732 ISSN 3093-8546

коммерческие суды необходимы не только для обеспечения исполнения соглашений о выборе права, но и для смягчения трений между жесткой технологической коммерцией и традиционными доктринами гражданского права.

***Ключевые слова.*** Автономия воли сторон, Ташкентский международный коммерческий суд, Выбор права, Институциональная инновация, Enterprise Uzbekistan, Английское общее право, Международное частное право, Правовая определенность.

***Annotation.*** Party autonomy is universally recognized as the gravitational center of international commercial law, granting actors the freedom to select a neutral and sophisticated legal framework for their cross-border transactions. However, in emerging and transitioning jurisdictions, the statutory recognition of this right often clashes with the protectionist tendencies of domestic courts, which frequently invoke broad "public order" exceptions to invalidate foreign choice-of-law clauses. This article critically analyzes the establishment of the Tashkent International Commercial Court (TICC) within the "Enterprise Uzbekistan" hub as a vital institutional innovation designed to bridge this gap. By comparing Uzbekistan's dual-track dispute resolution framework with international paradigms—such as the Hague Principles, the Singapore International Commercial Court (SICC), and the Astana International Financial Centre (AIFC)—this study argues that specialized, independent commercial courts are essential not only for enforcing choice-of-law agreements but also for mitigating the friction between rigid algorithmic/technological commerce and traditional civil law doctrines.

***Keywords.*** Party Autonomy, Tashkent International Commercial Court, Choice of Law, Institutional Innovation, Enterprise Uzbekistan, English Common Law, Private International Law, Legal Certainty.

## I. Introduction

In the modern architecture of private international law, party autonomy operates as the absolute foundation of transnational commerce. It empowers commercial actors to detach their complex, high-value transactions from the unpredictable idiosyncrasies of domestic civil codes and anchor them in neutral, highly developed legal orders [1]. The historical transition from rigid territorialism – where choice of law was dictated strictly by the lex loci contractus or lex loci solutionis – to the supremacy of party autonomy reflects a global consensus that sophisticated business entities are best positioned to determine the legal rules that maximize their mutual economic efficiency.

However, for a transitioning and rapidly liberalizing economy like the Republic of Uzbekistan, merely enshrining party autonomy in the statutory text is insufficient to guarantee legal certainty for foreign direct investment (FDI). While the Civil Code of Uzbekistan theoretically grants parties the right to choose the applicable law (Article 1189), the practical application of this right frequently

collides with state-centric interpretations of "public order" (Article 1164) and the inherent limitations of local judiciaries unfamiliar with complex cross-border commercial and digital practices [2]. When a domestic court applies the lex fori rigidly to a choice-of-law clause, mischaracterizing legitimate forum shopping as an evasion of domestic law, the predictability that commercial actors sought to construct is fundamentally destroyed.

To cure this institutional deficiency, substantive legal reforms must be coupled with disruptive institutional innovation. The recent conceptualization and establishment of the Tashkent International Commercial Court (TICC) – nested within the "Enterprise Uzbekistan" International Digital Technology Center – represents a paradigm shift in Central Asian jurisprudence [3]. By creating an autonomous legal "enclave" that operates on the principles of English common law and relies on an independent bench, Uzbekistan is not simply upgrading its courts; it is creating a bespoke "legal laboratory" designed to shield party autonomy from the traditional constraints of the domestic judicial hierarchy [4].

This article provides a critical, doctrinal analysis of how the TICC, acting alongside the Tashkent International Arbitration Centre (TIAC), enhances the absolute primacy of party autonomy. By comparing Uzbekistan's domestic framework with the global phenomenon of "International Commercial Courts 2.0 and 3.0", this study explores how institutional innovation resolves the tension between national public policy and the demands of international digital commerce.

## II. Main Analysis

### A. The Evolution of Party Autonomy in Uzbekistan: National Legislation vs. Institutional Reality

The modernization of Uzbekistan's dispute resolution framework must be understood as a phased exit from a restrictive, state-centric legal environment. Historically, arbitration and commercial litigation in Uzbekistan were highly constrained by domestic legislation that favored local laws and provided limited protections for foreign participants [5]. Under earlier regimes, an arbitral tribunal’s deviation from Uzbek mandatory law could readily serve as a legitimate ground for a domestic economic court to set aside the award under the guise of public policy violations.

The turning point emerged with a dual-track reform strategy: the adoption of the 2018 Economic Procedural Code, which streamlined the enforcement of foreign judgments and arbitral awards, and the pivotal 2021 Law on International Commercial Arbitration, heavily modeled on the UNCITRAL Model Law [6]. Analytically, these legislative acts succeeded in aligning the text of Uzbekistan's law with international standards. Article 1189 of the Civil Code explicitly permits dépeçage (selecting different laws for different parts of a contract) – a hallmark of advanced party autonomy recognized in the Rome I Regulation and the Hague Principles.

However, a critical implementation gap remains at the judicial level. The statutory right to select a foreign law is continuously threatened by the "public order" (ordre public) exception in Civil Code Article 1164. In ordinary economic courts, judges lacking specialized training in private international law often struggle to distinguish between a foreign law that merely differs from Uzbek law and one that genuinely violates the fundamental political or economic organization of the state. As international scholars have noted in broader contexts, without a sophisticated judiciary capable of applying the public policy exception restrictively, the substantive freedom of choice is rendered illusory [7].

To address this exact gap, Uzbekistan engineered a structural carve-out: the International Digital Technology Center (IDTC), "Enterprise Uzbekistan." Under Presidential Decree No. UP-233, this center is recognized not merely as a free economic zone, but as a "separate territory (jurisdiction) with a special legal regime based on the norms and principles of the common law of England and Wales" [8]. By removing the adjudication of complex commercial and digital disputes from the ordinary Uzbek courts and placing them under the exclusive or mutually agreed jurisdiction of the TICC, the state effectively immunizes party autonomy against the unpredictability of local, civil law interpretations.

**B. Institutional Autonomy: The TICC as a "Generation 3.0" Commercial Court**

To properly evaluate the institutional innovation of the Tashkent International Commercial Court (TICC), it must be situated within the global taxonomy of international commercial courts (ICCs). Scholars categorize the proliferation of ICCs into three generations: Generation 1.0 comprises traditional established forums like the London Commercial Court (LCC) and the New York Commercial Division (NYCD); Generation 2.0 encompasses "emerging jurisdiction" models such as the Singapore International Commercial Court (SICC) and the Astana International Financial Centre (AIFC) Court; and Generation 3.0 features courts driven by specific regional, geopolitical, or sectoral strategies, such as post-Brexit European courts or China’s Belt and Road Initiative courts [9].

Analytically, the TICC represents a highly specialized hybrid of Generation 2.0 and 3.0 models. Established pursuant to Presidential Decree No. UP-233 (November 2025), the TICC operates within the "Enterprise Uzbekistan" International Digital Technology Center. However, unlike the SICC – which functions as a subdivision of the Singapore High Court and accepts internal referrals – the TICC follows the AIFC's more radical "enclave" approach[10]. It is structurally excised from the national judicial system of the Republic of Uzbekistan and operates on the norms and principles of English common law [11].

The primary analytical justification for this separation is the preservation of party autonomy. When foreign investors and Uzbek

enterprises draft a choice-of-law clause selecting English law or the UNIDROIT Principles, they require an adjudicative body that inherently understands the philosophical underpinnings of those systems. By recruiting foreign judges and utilizing English as the language of proceedings, the TICC prevents the "localization" of foreign law – a common pitfall where domestic civil law judges unconsciously interpret foreign legal concepts through the restrictive lens of their own national codes [12]. Consequently, the TICC acts as an institutional shield, ensuring that the parties' contractual *lex causae* is applied precisely as intended, free from unwarranted domestic public policy overrides.

**C. Navigating Mandatory Rules: Good Faith and the Limits of Party Autonomy**

While the TICC's institutional design maximizes party autonomy, global commercial jurisprudence dictates that this autonomy cannot be absolute. The court must balance the freedom of contract against the imperative to prevent the evasion of mandatory laws (*fraus legis*), particularly in asymmetric commercial relationships where a dominant foreign investor might impose a choice-of-law clause on a weaker Uzbek SME (such as a local franchisee or distributor).

The *Hague Principles on Choice of Law in International Commercial Contracts* (2015), widely regarded as the gold standard for transnational commercial litigation, explicitly address this tension. Article 11 of the Hague Principles permits a forum to exclude the chosen law if its application is "manifestly incompatible with fundamental notions of public policy (ordre public)" or contravenes "overriding mandatory provisions" [13].

However, applying the public policy exception is notoriously blunt and risks undermining the very legal certainty the TICC is designed to promote. From a doctrinal perspective, this research posits that the TICC should instead rely on a refined "Good Faith Test" derived from Article 9 of the Civil Code of Uzbekistan, which mandates reasonableness and prohibits the abuse of right.

*Analytical Case Perspective:* Consider a scenario where a multinational technology corporation dictates a choice-of-law clause selecting the law of a minimally regulated offshore jurisdiction in a contract with an Uzbek software developer in the IT Park. If the foreign corporation terminates the contract abruptly, stripping the Uzbek developer of fundamental equitable protections, a traditional domestic court might strike down the entire clause citing a broad "public order" violation under Article 1164 of the Civil Code, thereby destroying contractual predictability. In contrast, a sophisticated TICC tribunal can employ the Good Faith standard as a surgical tool. The tribunal would evaluate: (1) the structural asymmetry of the parties, (2) whether the chosen law has any legitimate commercial connection to the transaction, and (3) whether the choice was made with an evasive intent to bypass mandatory protective rules. By utilizing Good Faith to police the

*abuse* of party autonomy rather than rejecting the concept of autonomy itself, the TICC can establish a world-class jurisprudence that protects vulnerable local actors without resorting to the protectionist, state-centric rulings that historically deterred foreign direct investment (FDI).

**D. Diagonal "Co-opetition": The Synergy between the TICC and TIAC**

A final critical dimension of Uzbekistan's institutional innovation is the "diagonal co-opetition" between the TICC and the pre-existing Tashkent International Arbitration Centre (TIAC). Traditional legal scholarship often frames international commercial courts and international arbitration as mutually exclusive competitors engaged in a zero-sum race for cases[14]. However, the Uzbek strategy fundamentally disrupts this binary by designing the TICC and TIAC to operate as a complementary, multi-tiered dispute resolution ecosystem.

Since its launch in 2019, TIAC has established itself as a highly attractive arbitration forum, boasting zero administrative fees, opt-in cybersecurity protocols for technology disputes, and innovative cross-institutional rules with the Hong Kong International Arbitration Centre (HKIAC) [15]. Yet, arbitration possesses inherent structural limitations: it requires explicit consent from all parties, lacks native coercive power to enforce interim injunctions against third parties, and struggles with complex multi-party disputes where privity of contract is fractured [16].

This is precisely where the TICC provides an institutional supplement. As Diana Bayzakova, Director of TIAC, has observed, the TICC and TIAC provide a "menu of options" for investors [17]. Analytically, the TICC acts as the coercive backbone of the TIAC. When an arbitral tribunal requires the freezing of assets, the compulsion of third-party evidence, or expedited enforcement of an award under the 1958 New York Convention, the TICC – staffed by judges who inherently understand the mechanics of international arbitration – serves as a highly reliable, pro-arbitration supervisory court [18].

By agglomerating these services within the "Enterprise Uzbekistan" hub, the state ensures that commercial parties are not forced to choose between the confidentiality of arbitration and the coercive power of litigation; they can seamlessly access both. This diagonal synergy transforms Tashkent from a mere geographical location into a comprehensive, one-stop legal hub capable of competing with established jurisdictions like Dubai and Singapore.

**III. Conclusion**

The establishment of the Tashkent International Commercial Court (TICC) within the "Enterprise Uzbekistan" hub marks a watershed moment in the modernization of Central Asian private international law. As this research has analytically demonstrated, while statutory reforms – such as the 2021 Law on International Commercial Arbitration and the draft 2024 Law on Investment and Investment Activities – have laid the textual groundwork for party

autonomy, they are inherently insufficient without a sophisticated institutional apparatus to enforce them. Traditional domestic economic courts, burdened by historical state-centric paradigms and a blunt application of the "public order" exception (Article 1164 of the Civil Code), often struggle to accommodate the complex choice-of-law demands of modern digital and transnational commerce [19].

By operating as an autonomous enclave applying English common law principles, the TICC bypasses these domestic judicial bottlenecks, offering international investors the predictability and neutrality they demand [20].

However, the proliferation of international commercial courts (ICCs) is not without profound theoretical risks. Critics rightly caution that ICCs can occasionally serve as "trojan horses" that commodify justice, acting as mere "whitewashing" tools to attract foreign direct investment (FDI) while leaving the broader domestic judicial system unreformed and vulnerable [21]. To avoid the trap of becoming a mere "caviar court" isolated from the host nation [22], Uzbekistan has strategically positioned the TICC not as a permanent exception, but as a "legal laboratory." The ultimate goal is to pilot advanced Anglo-American procedural mechanisms – such as extensive disclosure, cross-examination, and robust party autonomy – with the intent of gradually exporting these best practices into the broader Uzbek legal ecosystem [23].

Coupled with the "diagonal co-opetition" offered by the Tashkent International Arbitration Centre (TIAC), the TICC ensures that party autonomy is elevated from a mere theoretical right to an enforceable commercial reality. Ultimately, this institutional synergy transforms Uzbekistan into a highly competitive, rule-of-law-driven destination for global digital and commercial investment.

**IV. Recommendations**

To fully realize the potential of the TICC and safeguard the equitable application of party autonomy in Uzbekistan, the following doctrinal and institutional recommendations are proposed:

**Refining the Draft 2024 Investment Law to Protect Regulatory Space:** The government should carefully recalibrate the substantive protections offered in the draft 2024 Law on Investment and Investment Activities. Specifically, the inclusion of broad "Fair and Equitable Treatment" (FET) and "indirect expropriation" standards in domestic law risks triggering unintended liabilities and restricting the state's right to regulate in the public interest [24]. It is recommended to align the domestic statutory language strictly with the newly developed Model BIT, which limits FET to the denial of justice and excludes non-discriminatory public welfare measures from the definition of indirect expropriation.

**Institutionalizing the "Good Faith" Test to Police Autonomy Abuse:** The TICC should proactively develop a sophisticated jurisprudence that

prevents the weaponization of choice-of-law clauses by dominant parties in asymmetric contracts (e.g., franchise or distribution networks). Rather than utilizing the blunt instrument of "public order," TICC judges should be empowered to apply a "Good Faith Test"– rooted in Article 9 of the Civil Code and international soft law – to strike down choice-of-law clauses that lack a legitimate commercial nexus and are designed solely to evade mandatory equitable protections.

**Formalizing Knowledge Transfer to the Domestic Judiciary:** To mitigate the risk of creating a fractured, two-tiered justice system, the Supreme Court of Uzbekistan and the TICC must establish formal, institutionalized mechanisms for knowledge transfer. The TICC should not remain an isolated enclave; its procedural efficiencies (e.g., electronic case management, advanced evidentiary rules) and substantive interpretations of commercial law must systematically inform the continuing education of judges in the national Economic Courts.

**Promoting Integrated Dispute Resolution Clauses:** Legal practitioners and the "Enterprise Uzbekistan" directorate should encourage commercial actors to utilize integrated, multi-tiered dispute resolution clauses. By drafting contracts that seamlessly combine TIAC arbitration with the supervisory, coercive, and enforcement backing of the TICC, parties can fully leverage the "one-stop-shop" synergy of Uzbekistan's newly engineered dispute resolution ecosystem [W. Gu & J. Tam, 2021, The Global Rise of International Commercial Courts: Typology and Power Dynamics, Chicago Journal of International Law].

## References

1. Hague Conference on Private International Law, 2015, Principles on Choice of Law in International Commercial Contracts, www.hcch.net

2. G. Normurodova, 2025, Application of the 1958 New York Convention in the Republic of Uzbekistan, World Bulletin of Management and Law

3. Presidential Decree No. UP-233, 2025, About the organization of activities of the International center of digital technologies, https://cis-legislation.com/document.fwx?rgn=172134

4. Resolving International Disputes in Uzbekistan: The Tashkent International Commercial Court, 2025, https://invest-in-uzbekistan.org

5. U. Khayitmurodov, 2024, Strengthening the Legal Status of Investors in Uzbekistan Through Improving Dispute Resolution Mechanisms, European Journal of Emerging Technology and Discoveries

6. T. R. Snider et al., 2021, Uzbekistan Adopts Law on International Commercial Arbitration, Kluwer Arbitration Blog

7. W. Gu & J. Tam, 2021, The Global Rise of International Commercial Courts: Typology and Power Dynamics, Chicago Journal of International Law

8. Digital hub Enterprise Uzbekistan to operate under English law - Gazeta.uz, 2025, https://www.gazeta.uz
9. W. Gu & J. Tam, 2021, The Global Rise of International Commercial Courts: Typology and Power Dynamics, Chicago Journal of International Law
10. M. Kenzhaliyev, 2024, Perspectives of the Court of the Astana International Financial Centre, https://doi.org/10.1017/asjcl.2023.37
11. Milton Ditman Law Firm, 2025, An international digital technology center is being established in Uzbekistan, https://www.milditman.com
12. Tashkent Times, 2025, Tashkent International Commercial Court to open in Uzbekistan, https://tashkenttimes.uz
13. Hague Conference on Private International Law, 2015, Principles on Choice of Law in International Commercial Contracts, www.hcch.net
14. W. Gu & J. Tam, 2021, The Global Rise of International Commercial Courts: Typology and Power Dynamics, Chicago Journal of International Law
15. Tashkent International Arbitration Centre, 2024, Media, https://www.tiac.uz/media
16. L. C. Alcolea, 2022, The Rise of the International Commercial Court: A Threat to the Rule of Law? https://doi.org/10.1093/jnlids/idac022
17. Tashkent Times, 2025, Tashkent International Commercial Court to open in Uzbekistan, https://tashkenttimes.uz
18. G. Normurodova, 2025, Application of the 1958 New York Convention in the Republic of Uzbekistan, World Bulletin of Management and Law
19. OECD, 2025, Roadmap for Sustainable Investment Policy Reforms in Uzbekistan, https://doi.org/10.1787/20865f29-en
20. Presidential Decree No. UP-233, 2025, About the organization of activities of the International center of digital technologies, https://cis-legislation.com/document.fwx?rgn=172134
21. L. C. Alcolea, 2022, The Rise of the International Commercial Court: A Threat to the Rule of Law? https://doi.org/10.1093/jnlids/idac022
22. M. Kenzhaliyev, 2024, Perspectives of the Court of the Astana International Financial Centre, https://doi.org/10.1017/asjcl.2023.37
23. Resolving International Disputes in Uzbekistan: The Tashkent International Commercial Court, 2025, https://invest-in-uzbekistan.org
23. OECD, 2025, Roadmap for Sustainable Investment Policy Reforms in Uzbekistan, https://doi.org/10.1787/20865f29-en