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## **CONTRACT ENFORCEMENT AND GOOD FAITH OBLIGATIONS: A COMPARATIVE STUDY OF UZBEKISTAN, THE UNITED STATES, AND THE EUROPEAN UNION**

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### **Abstract**

Few principles in commercial law are as deceptively simple, or as genuinely contested, as good faith. Every major legal system acknowledges it in some form. None of them quite agrees on what it means, when it applies, or how far it reaches. This article examines that disagreement across three legal systems that could hardly be more different in origin and trajectory: the Republic of Uzbekistan, a transition economy that has been systematically modernizing its civil and commercial law framework since 2017; the United States, where good faith sits uneasily between a common law tradition that prizes freedom of contract and a commercial code that quietly imposes it anyway; and the European Union, which has made good faith a cornerstone of its harmonized contract law project while member states continue to apply it in their own ways. The comparison is not offered as an exercise in legal tourism. It is motivated by a practical question that foreign investors, commercial counsel, and Uzbek reform architects are increasingly asking: as Uzbekistan integrates into global commercial networks, how does its developing contractual framework measure up, and where do the gaps remain?

**Keywords:** Good faith; contract enforcement; comparative commercial law; Uzbekistan Civil Code; UCC Article 1; EU Directive 2011/83; UNIDROIT Principles; transition economy; freedom of contract; civil law; common law; precontractual liability; *pacta sunt servanda*



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## **I. Introduction**

Ask a contract lawyer in Tashkent, New York, and Brussels what good faith means in their jurisdiction, and you will get three genuinely different answers. Not superficially different, the way legal systems often dress up similar ideas in different terminology, but substantively different in ways that affect how contracts are drafted, what duties arise before a deal is signed, and what a court will do when one party behaves badly without technically breaching any specific term.

That divergence matters increasingly as Uzbekistan opens its economy to international trade and investment. Since President Shavkat Mirziyoyev launched an ambitious reform program in 2017, the country has moved with notable speed to modernize its legal infrastructure.<sup>1</sup> New laws on competition, electronic commerce, corporate governance, and investment have followed one another in rapid succession. In February 2025, amendments to the Civil Code formally introduced corporate agreements, bringing Uzbekistan's framework closer to international standards observed in the UK, EU, and Singapore.<sup>2</sup> The World Bank has recognized contract enforcement reforms as one of the standout features of Uzbekistan's business environment improvements.<sup>3</sup>

Yet modernization is not the same as convergence, and convergence is not always the right goal. Uzbekistan's legal system is rooted in the civil law tradition, specifically the Soviet-influenced civil codes that drew on German and French models. That heritage shapes how good faith is understood at a foundational level, in ways that are both an asset and a source of confusion when Uzbek businesses engage with American or European counterparts operating under very different assumptions about what parties owe each other during and after negotiations.

This article works through the comparison systematically. Part II examines the concept of good faith in each of the three systems: its doctrinal basis, its scope, and the controversies it generates. Part III focuses on contract enforcement mechanisms, asking not just what the law says but how reliably it is applied. Part IV addresses precontractual liability, an area where the differences between the systems are sharpest and most consequential for international commercial practice. Part V draws practical lessons for counsel advising on cross-border



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transactions involving Uzbek parties. Part VI offers a frank assessment of where Uzbekistan's reform agenda still has work to do.

## **II. Good Faith: Three Systems, Three Answers**

### **A. Uzbekistan: Good Faith as a General Principle**

Uzbekistan's Civil Code, originally enacted in 1996 and substantially amended over subsequent decades, treats good faith as a foundational principle of civil relations rather than a specific contractual duty.<sup>4</sup> Article 8 of the Code establishes that participants in civil legal relations must act in good faith, and courts are empowered to refuse protection to a person who has abused their rights or acted in bad faith. This is not a narrow, transaction-specific duty. It is closer to a general obligation of honest and fair dealing that pervades civil relationships from formation through performance and beyond.

What this means in practice is somewhat less clear than the statutory language suggests. Uzbek civil law, like many systems derived from the Soviet tradition, has historically been more comfortable with general principles than with the detailed, context-specific elaboration of those principles through case law that characterizes common law jurisdictions. Judicial reasoning in Uzbek economic courts tends to be terse by Western standards, and the body of published commercial case law available to practitioners is limited compared to, say, the reported decisions of English or German commercial courts.<sup>5</sup>

That said, there are meaningful specific applications. Article 451 of the Uzbek Civil Code addresses changed circumstances, allowing contract modification or dissolution where circumstances have changed so materially that the parties would not have concluded the contract had they foreseen the change, provided the interested party could not have overcome the changed circumstances with the degree of *good faith and attentiveness* required by the nature of the contract.<sup>6</sup> The explicit embedding of good faith in the changed circumstances doctrine is significant: it ties the legal standard for relief to behavioral expectations rather than purely objective events, a nuance that has real implications for how courts evaluate force majeure and hardship claims.

The recent reform trajectory suggests a deliberate effort to deepen and operationalize good faith principles in ways that create more predictability for



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commercial parties. The 2025 amendments introducing corporate agreements, for instance, create explicit governance frameworks for shareholder obligations that were previously left to general good faith principles, with uncertain enforcement results.<sup>7</sup> Whether the courts are developing the interpretive sophistication to apply these frameworks consistently remains an open question that practitioners in Tashkent will answer before academic commentators do.

### **B. The United States: Good Faith Through the Back Door**

American contract law has a complicated relationship with good faith that is worth understanding in some depth, because it confuses foreign lawyers with some regularity. The starting point is the common law tradition's deep commitment to freedom of contract and what scholars sometimes call the "objective theory" of contracts: courts enforce what parties agreed to, not what they ought to have agreed to, and they are generally reluctant to imply duties that the parties did not expressly undertake.

Against that backdrop, the Uniform Commercial Code's imposition of a duty of good faith in the performance and enforcement of every contract within its scope initially struck many common lawyers as a significant intrusion.<sup>8</sup> Article 1-304 states plainly that every contract within the UCC imposes an obligation of good faith in its performance and enforcement. The UCC defines good faith as honesty in fact and the observance of reasonable commercial standards of fair dealing, a definition that blends subjective and objective elements in ways that courts have continued to interpret unevenly.

The crucial limitation is that the UCC's good faith obligation applies to performance and enforcement, not to negotiation or formation. A party negotiating a commercial contract in the United States is, in principle, free to walk away without explanation, negotiate simultaneously with competitors, and decline to disclose information the other party would dearly like to know, all without incurring liability for breach of good faith. The doctrine of *Texaco, Inc. v. Pennzoil, Co.* notwithstanding, American courts have been notably reluctant to impose precontractual liability for bad faith negotiations.<sup>9</sup>

The Restatement (Second) of Contracts, which governs contracts outside the UCC's scope, similarly includes good faith as an implied covenant in every



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contract, but courts have interpreted this covenant narrowly, generally refusing to use it as a vehicle for importing fairness obligations that the parties did not themselves create.<sup>10</sup> The practical result is a system where good faith constrains how parties perform contracts they have made, but offers limited protection for parties who are deceived, strung along, or treated unfairly in the negotiating process.

### **C. The European Union: Good Faith as Constitutional Value**

The EU's approach to good faith in commercial contracts is, in comparative terms, the most ambitious and arguably the most contested. The Directive on Unfair Terms in Consumer Contracts (93/13/EEC) makes good faith a central criterion for assessing whether contractual terms are enforceable, and the broader project of European private law harmonization, reflected in instruments like the Principles of European Contract Law (PECL) and the Draft Common Frame of Reference, treats good faith as a general principle with broad application across the lifecycle of a commercial relationship.<sup>11</sup>

The practical challenge is that the EU is not a single legal system. It is a family of legal systems that have been partially, and imperfectly, harmonized. German law's concept of *Treu und Glauben* under Section 242 of the BGB is one of the most expansive good faith doctrines in any major legal system, reaching into precontractual relationships, interpretation, performance, and even post-contractual obligations.<sup>12</sup> French law's *bonne foi*, as reformed by the 2016 Ordonnance on contract law, is similarly broad, explicitly extending to the negotiation phase.<sup>13</sup> English law, even post-Brexit, remains notably more constrained, with courts resisting general good faith obligations in commercial contracts as inconsistent with the certainty that commercial parties require.

What the EU has achieved is a floor, not a ceiling. The harmonized instruments establish minimum good faith standards that member states must meet, while leaving considerable room for national law to go further. For businesses operating across borders within the EU, this creates genuine complexity: a contract governed by German law carries substantially different implied obligations than one governed by English law, even if both are nominally EU-compliant. For Uzbek businesses engaging with European counterparts,



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understanding which country's law governs the contract is not a formality. It materially affects what the parties owe each other

### **III. Contract Enforcement: From Doctrine to Reality**

#### **A. Uzbekistan: Reform in Progress**

Uzbekistan's contract enforcement challenges have been well-documented by international observers, and the government has acknowledged them directly in its reform agenda. The World Bank's Doing Business reports noted improvements in Uzbekistan's enforcement framework following the introduction of voluntary mediation incentives, the establishment of financial incentives for parties to attempt pre-litigation settlement, and the publication of performance metrics for economic courts.<sup>14</sup> In 2023, amendments to the Economic Procedural Code further strengthened the mediation framework, reflecting a conscious policy choice to reduce court caseloads by making out-of-court resolution more attractive.

The results have been genuinely encouraging in some respects. The economy courts, which handle commercial disputes between legal entities, have improved procedural timelines meaningfully. Foreign investors surveyed by the U.S. State Department have noted increasing predictability in commercial dispute resolution, at least in Tashkent and the larger commercial centers.<sup>15</sup>

But candor requires acknowledging what the optimistic assessments leave out. Contract enforcement against state-owned enterprises and government agencies remains a different matter from enforcement between private parties. The U.S. State Department's 2025 Investment Climate Statement notes that while legislation protects private property against baseless expropriation, those who have lost property often allege that compensation falls significantly below fair market value.<sup>16</sup> Informal expectations and relationships continue to influence commercial outcomes in ways that do not appear in statutory frameworks. These are not unique to Uzbekistan, many transition economies share them, but they matter for any honest assessment of how good faith obligations actually operate in practice.



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## **B. The United States: Strength and Fragmentation**

The United States has one of the world's most sophisticated commercial litigation systems and one of its most fragmented. Federal courts are highly competent venues for complex commercial disputes, with experienced judges, well-developed discovery procedures, and a deep body of commercial case law. State commercial courts in major jurisdictions, particularly Delaware, New York, and California, offer specialized expertise in corporate and commercial matters that rivals anything available in Europe.

The fragmentation comes from the federal structure. Contract law in the United States is primarily state law, and while the UCC has achieved substantial uniformity in the area of commercial transactions, significant variations remain across jurisdictions in matters ranging from parol evidence rules to the scope of implied duties. A contract that would be enforced in one way under New York law might produce a different result under California or Texas law, a reality that makes choice-of-law provisions in commercial contracts not a legal formality but a substantive business decision.<sup>17</sup>

For international parties, the U.S. system's greatest strength is its reliability: when a commercial judgment is entered by a competent court, it will be enforced. Its greatest challenge is cost: U.S. commercial litigation is among the most expensive in the world, and the discovery process, with its extensive document production obligations, can impose burdens on commercial parties that dwarf the underlying amounts in dispute. Many sophisticated commercial parties now include arbitration clauses in their U.S.-related contracts precisely to avoid the discovery process, a trend that has produced its own set of complications around arbitral appeals and enforcement.

## **C. The European Union: Harmonized Standards, Diverse Enforcement**

The EU presents a paradox in commercial enforcement. On paper, the harmonized framework of EU commercial law, combined with the Brussels I Regulation on jurisdiction and enforcement of judgments, creates a remarkably integrated commercial space.<sup>18</sup> A judgment obtained in a German court is, in principle, enforceable across the EU without re-litigation on the merits. EU member states have made substantial investments in commercial court capacity,



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and several, notably Germany, the Netherlands, and France, have established dedicated English-language commercial chambers specifically to attract international disputes.

The gap between harmonized doctrine and national enforcement reality remains wider than EU institutions would prefer. Enforcement timelines vary dramatically across member states. Insolvency proceedings in some jurisdictions take years longer than in others. The quality of commercial judicial reasoning is, frankly, uneven. These variations matter enormously for commercial parties whose contractual rights may be worth very different amounts depending on which national court ends up adjudicating their dispute.

#### **IV. The Precontractual Gap: Where the Systems Diverge Most Sharply**

Of all the areas where the three systems differ, precontractual liability, the question of what duties arise between parties who are negotiating but have not yet concluded a contract, is where the practical consequences of those differences are most acute. It is also, somewhat counterintuitively, the area where Uzbekistan's civil law tradition may offer advantages that its common law counterparts lack.

Civil law systems, including Uzbekistan's, have long recognized the concept of *culpa in contrahendo*, liability for fault in contracting, which imposes duties of good faith, disclosure, and fair dealing on parties engaged in negotiations.<sup>19</sup> A party that enters negotiations without genuine intent to conclude a contract, or that breaks off negotiations in bad faith after inducing the other party to invest substantially in the relationship, can face liability even though no contract was ever formed. This principle creates a meaningful legal environment around the negotiating process, not just around the concluded deal.

American law, as noted above, is conspicuously reluctant to go there. The doctrine of promissory estoppel provides some relief in cases of clear detrimental reliance on a specific promise, but courts have consistently declined to impose general precontractual good faith obligations on commercial parties.<sup>20</sup> The theoretical justification, that sophisticated parties are capable of protecting themselves through letters of intent and exclusivity agreements, has some force. The practical reality is that many commercial negotiations do not produce such



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protections, and parties who invest substantially in a transaction that a counterpart walks away from capriciously have limited legal recourse.

The EU occupies a middle ground that is evolving. The UNIDROIT Principles of International Commercial Contracts, which have influenced European contract law development, explicitly impose a duty of good faith in international trade, including during negotiations.<sup>21</sup> Several EU member states have gone further in their national law, with Germany's precontractual liability doctrine under Section 311(2) BGB being among the most developed in the world. The 2016 French contract law reform explicitly extended good faith obligations to the negotiation phase for the first time in French codified law,<sup>22</sup> a significant development that brought France's approach closer to Germany's and, interestingly, closer to Uzbekistan's than to the United States'.

## **V. Practical Lessons for Cross-Border Commercial Counsel**

The doctrinal comparison is interesting in its own right, but its value lies in what it tells practitioners advising clients on cross-border transactions. Several lessons stand out.

First, choice of law is a substantive decision, not a boilerplate choice. A Uzbek company entering a significant commercial agreement with an American counterpart should think carefully about whether to negotiate for Uzbek law, U.S. (and which state) law, or a neutral third-country law. The answer depends partly on where disputes are likely to be litigated, partly on which system offers more favorable implied duties for that party's position, and partly on the practical enforceability of any resulting judgment. These are not questions with generic answers.<sup>23</sup>

Second, sophisticated contracting can close many of the gaps between systems. Parties who understand that they are operating across legal traditions with different baseline assumptions about good faith, disclosure, and precontractual duty can address those differences explicitly in their contracts: detailed representations and warranties, express duty-to-negotiate clauses, confidentiality agreements that cover negotiation-phase information, and carefully drafted material adverse change provisions. The more explicit the



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contract, the less it depends on implied duties whose content varies by jurisdiction.

Third, international arbitration remains the most reliable dispute resolution mechanism for significant cross-border commercial disputes involving Uzbek parties. Uzbekistan is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which means that arbitral awards rendered in any of the 170+ member states are, in principle, enforceable in Uzbek courts.<sup>24</sup> The Tashkent International Arbitration Centre, established in 2018, has been developing its capacity as a regional venue, though for the largest and most complex international disputes, parties continue to favor established centers in London, Stockholm, and Singapore.

Fourth, the gap between Uzbekistan's formal legal framework and informal enforcement reality deserves serious attention from foreign investors who may be accustomed to environments where the written law reliably predicts the outcome. The ongoing reforms are genuine and the direction of change is positive, but the U.S. State Department's Investment Climate Statements have consistently noted that informal relationships and state involvement in commercial life create unpredictability that statutory frameworks alone cannot eliminate.<sup>25</sup>

## **VI. An Honest Assessment: Where Uzbekistan Stands and Where It Needs to Go**

Uzbekistan's legal reform story is, in comparative perspective, genuinely impressive. A country that as recently as 2016 ranked among the most difficult business environments in Central Asia has, in less than a decade, enacted competition law, electronic commerce legislation, modernized corporate governance rules, and a new Labor Code, while achieving 6.5 percent GDP growth and \$12 billion in foreign direct investment in 2024 alone.<sup>26</sup> The direction of travel is clear, and the political commitment to reform at the highest level of government appears genuine.

That said, the comparison with the U.S. and EU frameworks reveals several areas where the gap remains meaningful. The most significant is judicial capacity. Uzbekistan's economic courts have improved procedurally, but the



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development of a sophisticated commercial jurisprudence, one that can handle complex disputes involving good faith, implied duties, and precontractual liability with the nuance those concepts require, takes decades, not years. Court decisions remain terse and inconsistently reasoned by international standards. The body of published precedent available to counsel and investors is thin. Until the courts develop both the capacity and the culture of detailed legal reasoning that characterizes mature commercial jurisdictions, the formally modern legal framework will continue to rest on an enforcement foundation that cannot fully support it.

The second gap is in legal education and the private legal profession. Complex commercial law requires complex commercial lawyers, people trained to think comparatively, to draft with precision, and to advise on the interaction between Uzbek law and the foreign frameworks their clients operate under. That profession is developing, but it is young and unevenly distributed. Tashkent has a growing number of firms capable of handling sophisticated international transactions. Outside the capital, the picture is different.

Neither of these gaps reflects badly on Uzbekistan's reformers, who are working with impressive energy and sophistication. They reflect the structural realities of legal development in a transition economy. The formal law can be written relatively quickly. The institutions, culture, and human capital required to make it work take much longer. Foreign counsel and investors who understand this distinction will engage with Uzbekistan's legal system more effectively, and more fairly, than those who treat the statute books as the whole story.

The comparative exercise also yields a less obvious conclusion: Uzbekistan's civil law tradition, sometimes seen as a handicap relative to the more commercially sophisticated common law world, actually offers certain advantages in the good faith area. The foundational commitment to good faith as a general principle of civil relations is, in some respects, more coherent and more protective than the patchwork of implied covenants and limited precontractual doctrines that American commercial law has assembled over time. The challenge is less about adopting the right principles, which the Uzbek Civil Code already contains, than about building the institutional machinery to apply them consistently and transparently.



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