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Thesis: Rebooting Arbitration: A New National Framework for E-Commerce Disputes

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Abstract

The rapid expansion of e-commerce has exposed a critical mismatch between existing arbitration frameworks and the realities of the digital marketplace. Traditional arbitration systems, designed for high-value B2B disputes, prove inadequate for the low-value, high-volume transactions of online commerce. This paper examines these incompatibilities through Uzbekistan's regulatory landscape, identifying an "Arbitration Gap" between the booming digital economy — marked by approximately 150% growth between 2020 and 2023 — and the outdated Law "On Arbitration Courts" (2018). Key failures include ambiguous treatment of clickwrap agreements, prohibitive fees, and mandatory physical hearings. The paper also analyzes the power imbalance in non-negotiated arbitration clauses and the Enforcement Paradox arising from conflicts between digital procedures and the 1958 New York Convention. In response, a five-pillar national micro-arbitration framework is proposed, incorporating efficiency standards, digital-first procedures, proportional processes, consumer safeguards, and limited grounds for award challenges.

Keywords

E-commerce dispute resolution; micro-arbitration; ODR; Uzbekistan arbitration law; clickwrap agreements; consumer protection; New York Convention; enforcement paradox; digital economy; arbitration reform; de lege ferenda

Annotatsiya



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Elektron tijoratning jadal rivojlanishi mavjud arbitraj tizimlarining raqamli bozor voqeligiga mos kelmasligini namoyon etdi. An'anaviy arbitraj mexanizmlari yuqori qiymatli B2B nizolar uchun mo'ljallangan bo'lib, onlayn savdoga xos kichik qiymatli va ommaviy tranzaksiyalar uchun muvofiq emas. Ushbu maqolada mazkur nomuvofiqliklar O'zbekiston huquqiy muhiti misolida tahlil qilinib, 2020–2023 yillarda taxminan 150 foizga o'sgan raqamli iqtisodiyot va "Arbitraj sudlari to'g'risida"gi qonun (2018) o'rtasidagi "Arbitraj bo'shlig'i" ochib beriladi. Asosiy kamchiliklar: "klikrap" shartnomalarining noaniq maqomi, taqiqlovchi to'lov tuzilmasi va majburiy jismoniy eshituvlar. Bundan tashqari, muzokaraga ochiq bo'lmagan arbitraj shartlaridagi kuch nomutanosibli va 1958 yilgi Нью-Йорк Konventsiyasi bilan ziddiyatdan kelib chiqadigan "ijro etish paradoksi" tahlil qilinadi. Javob sifatida besh ustunli milliy mikro-arbitraj tizimi taklif etiladi: samaradorlik standartlari, raqamli ustuvor tartib-taomillar, mutanosib jarayonlar, iste'molchilarni himoya mexanizmlari va qarorga e'tirozning cheklangan asoslari.

Kalit so'zlar: Elektron tijorat nizolarini hal etish; mikro-arbitraj; ODR; O'zbekiston arbitraj qonunchiligi; klikrap shartnomalar; iste'molchilarni himoya qilish; Нью-Йорк Konventsiyasi; ijro etish paradoksi; raqamli iqtisodiyot; arbitraj islohoti; de lege ferenda

Introduction

Our national arbitration laws are failing the digital world, and we need to talk about it. They were engineered for a bygone era of **high-value, business-to-business (B2B)** contracts, featuring complex negotiations and towering financial stakes. But when you try to force this "20th-century toolkit" onto the reality of **e-commerce**—a torrent of low-value, high-volume transactions—the result isn't justice; it's a breakdown.

This paper doesn't just critique; it issues a challenge. Simply shoehorning these outdated frameworks is profoundly ineffective. Instead, we must undertake a



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fundamental **reboot**. We must build entirely new, national "**micro-arbitration**" **systems** designed, from the ground up, for the digital marketplace. These systems must be lightning-fast, genuinely affordable, and utterly accessible—the non-negotiable foundations for trust in the global digital economy

The Uzbek Arbitration Gap: A Case Study in Mismatch

Uzbekistan, in particular, is standing at a critical juncture. With the ambitious "Digital Uzbekistan-2030" strategy accelerating growth and internet penetration now topping 28 million users, the nation's e-commerce sector is booming. Annual transaction volumes, impressively, skyrocketed by approximately 150% between 2020 and 2023.

Yet, this rapid digital expansion has run headlong into a regulatory wall. The existing Law "On Arbitration Courts" (2018) and the Civil Procedure Code remain stubbornly geared toward traditional commercial disputes, creating a massive "**Arbitration Gap**" for digital commerce.

The current law is rife with archaic incompatibilities that make it spectacularly unsuitable for e-commerce claims:

- **The Clickwrap Conundrum:** Article 12 requires written arbitration agreements, immediately creating frustrating ambiguity around the **clickwrap and browsewrap agreements** that form the backbone of all online transactions.

- **Prohibitive Costs:** Article 35's fee structure, rooted in traditional case complexity, is prohibitively expensive for small-value claims. When the typical e-commerce purchase runs between 200,000–500,000 UZS, but average arbitration costs can hit 500,000–2 million UZS, pursuing a legitimate claim becomes **economically irrational**. Why spend a fortune to fight over a pittance?

- **The Physical Hearing Anomaly:** Article 28's requirement for physical hearings flatly **contradicts** the digital nature of e-commerce evidence and needlessly inflates costs



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for parties in different regions. For example, a consumer in Samarkand disputing a Tashkent-based merchant faces a significant challenge just to appear.

The Core Failure: A Sledgehammer for a Picture Nail

The root of this systemic failure lies in an economic and procedural **incompatibility**. Traditional arbitration, as written into most national laws, is akin to using a **sledgehammer to hang a picture**.

For the average consumer disputing a \$50 online purchase, the path to justice is blocked by daunting procedures and the eye-watering cost barriers of legal representation, institutional fees, and arbitrator charges, which can easily total thousands of dollars. This isn't just inefficient; it's a justice system that is theoretically available but practically useless for everyday online transactions.

E-commerce evidence—an order confirmation, a tracking number, a few product photos—is a simple digital paper trail. Forcing this straightforward evidence through a complex, months-long process involving live hearings and formal discovery is a monumental **failure of design**. The result is a vacuum where consumer rights are theoretically protected but, in practice, wholly unenforceable.

Legal Fictions and the Enforcement Paradox

The problem is compounded by two profound legal realities that general arbitration law simply ignores:

1. The Power Imbalance: An Uneven Playing Field

E-commerce arbitration clauses aren't negotiated; they are simply **imposed** in non-negotiable "clickwrap" agreements. When national courts enforce these clauses under standard arbitration law, they operate on a dangerous legal fiction: pretending a consumer has equal bargaining power with a global e-commerce platform.



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These contracts routinely contain one-sided, abusive terms—like mandating arbitration in a distant, foreign country or demanding consumers waive their right to join class actions. This strategy allows businesses to craft a dispute resolution system that actively **deters claims**, shielding them from accountability for widespread, small-scale issues that affect countless users. Consumers lack meaningful protection against potentially unfair terms.

2. The Enforcement Paradox: Uncertainty Stifles Innovation

Even when we simplify the process, we encounter the **Enforcement Paradox**. While the 1958 New York Convention is critical for making cross-border arbitration awards enforceable, its due process requirements can undermine the very innovations we need. Uzbekistan is a party, but concerns linger: Would a streamlined, documents-only digital procedure satisfy the due process rights under Article V of the Convention, specifically a party's right to present their case?

This creates a self-defeating **catch-22**: E-commerce arbitration must be streamlined to be affordable, but this streamlining risks a court later ruling the process violated a party's right to be heard. This legal uncertainty paralyzes innovation and actively discourages the creation of the online dispute resolution platforms we desperately need.

The Solution: Five Pillars of Micro-Arbitration

The answer isn't to abandon arbitration, but to fundamentally **reinvent it** for its new digital context. We need proactive national legislation to create specialized **micro-arbitration frameworks**. My proposal is anchored in five essential pillars:

1. **Mandatory Efficiency**: The framework must impose **strict deadlines** (e.g., a 60-day resolution cap) and clear cost limits. Crucially, the business should bear the primary cost of arbitration fees in consumer cases, eliminating the financial barrier for the individual.



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2. **Digital-First Procedures:** The law must legally validate a **fully online process** as the default—from filing to evidence submission to the final award. Physical process is the exception, not the rule.

3. **Proportionality in Process:** For claims below a set financial threshold, the procedure must be **primarily documents-only**. This replaces the expensive formality of hearings with a swift, evidence-based review that genuinely matches the nature of the dispute.

4. **Built-In Consumer Safeguards:** The law must be a shield for the weaker party. It must actively **invalidate abusive terms**, such as clauses requiring unfairly distant arbitration venues, and mandate total transparency in the rules.

5. **Finality and Certainty:** The grounds for challenging a micro-arbitration award in national courts must be **extremely narrow**. This ensures the process is a quick, final solution—a true end to the dispute, not just the starting whistle for a new litigation battle.

Conclusion

The dynamism of e-commerce has laid bare the rigidity of our current dispute resolution laws. The "Arbitration Gap" is a fundamental threat to the trust and fairness essential for the digital economy. We must stop trying to force the fast-paced, consumer-driven world of online transactions into a legal framework designed for a different era. The responsibility to close this gap belongs to national governments.

By enacting a dedicated micro-arbitration framework, we can transform the system from one that exists only in theory to one that delivers **justice in practice**. It's time to stop tinkering and start building a system as accessible, efficient, and modern as the e-commerce marketplace it serves.

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