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THE "SPLIT FEE ARRANGEMENT" IN PRIVATE EMPLOYMENT AGENCY CONTRACTS: JUSTIFYING AN INDEPENDENT CONTRACT TYPE IN UZBEK CIVIL LAW

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Abstract. This article examines whether the split fee arrangement, a contractual mechanism under which two or more professionals divide a single fee owed by a client in exchange for referral, joint work, or shared responsibility, can be justified as an independent contract type within the civil law system of the Republic of Uzbekistan. Using a doctrinal and comparative method, the article analyzes the freedom of contract principle codified in the Civil Code of the Republic of Uzbekistan, tests the split fee arrangement against existing nominate contracts such as agency, commission, and paid services, and compares regulatory conditions developed in common law jurisdictions, in particular Rule 1.5(e) of the American Bar Association's Model Rules of Professional Conduct. The article concludes that because contract law, unlike property law, is not bound by a closed list (numerus clausus) of permissible forms, Uzbek civil law can accommodate the split fee arrangement as an innominate, sui generis contract, provided it carries its own essential terms: a defined subject matter, a division formula, an allocation of responsibility between the professionals, and a mandatory disclosure and consent duty toward the client.

Keywords: split fee arrangement, fee splitting, innominate contract, freedom of contract, Civil Code of Uzbekistan, sui generis contract, numerus clausus, advocate ethics

1. Introduction

Professional service markets rarely operate as a set of isolated bilateral relationships between one provider and one client. Advocates refer matters outside their competence to colleagues, consultants bring in specialists for discrete portions of a mandate, and firms collaborate on complex disputes that no single practitioner could carry alone. In each of these situations, the client typically pays one fee, and the professionals involved must decide, among themselves, how that single fee will be divided. This division is what the practitioner literature commonly calls a split fee arrangement or fee sharing agreement: a contract, separate from the underlying contract with the client, that allocates a previously agreed fee between two or more professionals according to their respective contribution, referral role, or assumption of responsibility.

In jurisdictions built on the common law tradition, the split fee arrangement (particularly among lawyers) is a familiar, if carefully regulated, feature of practice. It is treated as a bargain between professionals that must satisfy conditions of proportionality or joint responsibility, client consent, and overall reasonableness of the combined fee (American Bar Association, 2020). The Uzbek legal market, by contrast, has developed the same practical need for fee division through referrals and joint mandates, yet the Civil Code of the Republic of Uzbekistan (1996a, 1996b) does not name the split fee arrangement among its enumerated (nominate) contracts. Part Two of the Code sets out detailed rules for agency (topshiriq), commission (komissiya), and paid services, but none of these named contracts was drafted with the division of a single fee between two independent professionals in mind.

This gap raises a genuine doctrinal question rather than a merely terminological one. If Uzbek civil law is understood, as some practitioners informally assume, to regulate only the contracts it expressly names, then split fee agreements would rest on uncertain legal footing: enforceable, if at all, only by loose analogy to agency or services contracts that do not fit their structure. If, however, Uzbek civil law follows the broader civilian tradition of freedom of contract, under which parties may create contracts unknown to the Code so long as they do not contradict the law, then the split fee arrangement can be justified as an independent, sui generis contract type with its own defining features. This article argues for the second position.

The remainder of the article proceeds as follows. Section 2 sets out the doctrinal and comparative method used to test this claim. Section 3 presents the results of that analysis: the constitutional and codified basis for freedom of contract in Uzbekistan, the inadequacy of the closest nominate contracts, the comparative conditions developed abroad for legitimate fee splitting, and the theoretical argument that contract law, unlike property law, carries no numerus clausus. Section 4 discusses the practical consequences of this finding, proposes essential elements for a split fee arrangement recognized under Uzbek law, and identifies the safeguards needed to prevent abuse. Section 5 concludes.

2. Methods

This article uses a doctrinal legal method supplemented by comparative analysis, which is the customary approach for questions of contract typology in civil law scholarship. Three sources were examined. First, the primary legislative text of the Civil Code of the Republic of Uzbekistan, Part One (1996a) and Part Two (1996b), was reviewed for its general provisions on freedom of contract and for the definitions of the nominate contracts most likely to be confused with, or stretched to cover, a split fee arrangement: agency, commission, and paid services. The Law of the Republic of Uzbekistan “On the Bar” (1996) was reviewed as the specialized framework governing advocates' fees and professional conduct.

Second, a comparative reference point was drawn from the United States, where the American Bar Association's Model Rules of Professional Conduct, Rule 1.5(e), articulates conditions under which lawyers who are not in the same firm may divide a fee (American Bar Association, 2020). This comparison is used not to import foreign law directly, but to identify the functional conditions that legal systems generally attach to fee division once it is permitted, namely proportionality or joint responsibility, informed client consent, and reasonableness of the aggregate fee (Overture Law, 2023; Clio, 2025).

Third, the article draws on contract theory literature addressing the numerus clausus principle, that is, the idea that a legal system may limit the number of standardized forms it will recognize and enforce (Merrill & Smith, 2000; Hansmann & Kraakman, 2002). This literature is used to test whether the same closed list logic that governs property rights in civil law systems also governs contract types, or whether contract law instead remains open to innominate arrangements.

The analysis proceeds by (a) identifying the general provision on freedom of contract in the Civil Code, (b) testing the split fee arrangement against the definitional elements of the closest nominate contracts to determine whether any of them adequately captures its structure, (c) comparing the conditions attached to fee splitting in a jurisdiction where the practice is expressly regulated, and (d) synthesizing these findings into a set of criteria for recognizing the split fee arrangement as an independent contract type under Uzbek law.

3. Results

3.1 Freedom of Contract and the Innominate Contract Doctrine

The Civil Code of the Republic of Uzbekistan, Part One, opens with a declaration that civil legislation rests on the equality of participants, the inviolability of property, and freedom of contract, and that citizens and legal entities acquire and exercise their civil rights by their own will and in their own interest, being free to establish their rights and obligations on the basis of a contract and to determine any terms of the contract that do not contradict the legislation (Civil Code of the Republic of Uzbekistan, Part One, 1996a). This provision performs the same function that the doctrine of innominate contracts performs in other civilian systems: it confirms that the list of contracts named in the special part of the Code is illustrative rather than exhaustive, and that parties may lawfully create contract types the legislator did not anticipate, provided the resulting arrangement does not contradict a mandatory rule (compare the general civilian treatment of innominate contracts, which are governed by the parties' stipulations, the general principles of the civil code, the rules of the most analogous nominate contract, and established custom). Nothing in the structure of the Uzbek Civil Code suggests that this freedom is limited to variations on named contracts; the text speaks broadly of any terms not contradicting the law.

3.2 The Inadequacy of the Closest Nominate Contracts

A split fee arrangement could, in principle, be forced into one of three existing nominate contracts under Part Two of the Civil Code, but each mapping is imperfect. The agency contract (topshiriq shartnomasi) governs a relationship in which one party acts on behalf of, and in the interest of, another; it does not address a horizontal division of compensation between two professionals who each act, in their own capacity, toward a shared client. The commission contract (komissiya shartnomasi) similarly presumes a principal and commission agent structure oriented around transactions with third parties, not a division of a single professional fee. The contract for paid services describes the rendering of a service in exchange for payment from the party ordering it, but it does not by itself regulate how that payment, once received by one professional, is to be shared with a second professional who contributed a referral, partial performance, or joint responsibility. In each case, the nominate contract regulates the relationship between a professional and the client; none of them was drafted to regulate the relationship between two professionals regarding a fee owed by a common client. This mismatch is precisely the situation in which the innominate contract doctrine discussed above is meant to operate.

3.3 Comparative Conditions for Legitimate Fee Division

Where legal systems have expressly regulated fee splitting, they converge on a small set of conditions rather than treating the practice as freely negotiable in every respect. Under Rule 1.5(e) of the American Bar Association's Model Rules of Professional Conduct, a division of a fee between lawyers who are not in the same firm is permitted only if the division is proportional to the services each lawyer performed, or each lawyer assumes joint responsibility for the representation, if the client agrees to the arrangement and the share each lawyer will receive, with that agreement confirmed in writing, and if the total fee charged to the client remains reasonable (American Bar Association, 2020). Practitioner commentary distinguishes a pure referral fee, paid for connecting a client to counsel who then does the work, from a broader fee sharing agreement structured as a joint venture between professionals who divide labor and payment in proportion to their respective contribution (Overture Law, 2023). Guidance aimed at practicing lawyers likewise stresses that the client must be told who will handle the matter, how the fee will be divided, and that the division will not increase the total amount the client pays (Clio, 2025). Ethical commentary further cautions that fee splitting arrangements carry a structural risk of conflicts of interest, particularly when a referring professional has no ongoing responsibility for the quality of the work performed, which is why joint responsibility or proportionality operates as a substantive, not merely formal, safeguard (Robinson, 2020). These conditions are not specific to any single legal family; they respond to the same underlying problem, namely that a client who did not select or negotiate with the second professional deserves protection against an arrangement made behind their back.

3.4 The Absence of a Numerus Clausus in Contract Law

Civilian legal systems generally apply a closed list, or numerus clausus, to property rights: courts will enforce as property only those interests built from a limited set of recognized forms, because third parties who never negotiated with the original owner still need to be able to rely on a small, standardized menu of possible entitlements (Merrill & Smith, 2000). This standardization logic exists to protect third parties from the information costs of an unlimited variety of property forms (Hansmann & Kraakman, 2002). Contract law rests on a different premise. A contract binds only the parties to it; it does not, in the same way, impose information costs on strangers to the transaction, which is why civilian systems that maintain a strict numerus clausus for property nonetheless leave contract types open to the parties' will. The general freedom of contract provision in the Uzbek Civil Code, Part One (1996a), reflects exactly this distinction: it constrains the terms of a contract only by reference to what the legislation prohibits, not by reference to a fixed catalogue of permissible contract names. The absence of a numerus clausus in contract law, contrasted with its presence in property law, therefore supplies the doctrinal foundation for treating the split fee arrangement as a legitimate innominate contract rather than as an unregulated or merely tolerated practice.

4. Discussion

4.1 Toward a Sui Generis Contract Type

The results above support classifying the split fee arrangement as an independent, sui generis contract type under Uzbek civil law rather than as a variant of agency, commission, or paid services. Its subject matter, the division of a fee already owed by a client for defined professional work, does not coincide with the subject matter of any nominate contract in Part Two of the Civil Code, and forcing it into one of those categories would either strip out its defining feature (the horizontal division between professionals) or import obligations, such as an agent's duty to act in the name of a principal, that do not fit the relationship. Recognizing the split fee arrangement as its own contract type, governed first by the parties' stipulations and, residually, by the general provisions of the Civil Code and by analogy to the closest nominate contracts, gives practitioners and courts a coherent framework rather than an uneasy fit with rules drafted for a different relationship.

4.2 Proposed Essential Elements

Drawing on the comparative conditions identified in Section 3.3, a split fee arrangement recognized under Uzbek law should, at minimum, specify: the underlying matter or service to which the shared fee relates; the formula for dividing the fee, expressed either as proportional to each professional's contribution or accompanied by an assumption of joint responsibility for the work; the allocation of liability toward the client, whether joint and several or several in proportion to each professional's role; and a written disclosure to, and consent from, the client covering the existence of the arrangement, the identity of each professional involved, and confirmation that the division does not increase the total fee the client pays. A written form requirement is appropriate given the sums involved and the need for evidentiary certainty between professionals who may not otherwise document their relationship.

4.3 Risks and Safeguards

Recognizing the split fee arrangement as an independent contract type does not mean recognizing it without limits. The comparative material reviewed above shows that legal systems permitting fee splitting simultaneously restrict it, precisely because an unrestricted power to divide fees invites conflicts of interest, disguised commissions for referrals unconnected to any real contribution, and pressure on professionals to refer clients based on the size of the referral fee rather than the client's interest (Robinson, 2020). For Uzbek advocates specifically, any split fee arrangement should be read together with the professional obligations set out in the Law of the Republic of Uzbekistan “On the Bar” (1996), which governs the conditions under which advocates may practice and the standards to which their conduct is held. A split fee arrangement that is not disclosed to the client, that is not proportional to any real contribution and not accompanied by joint responsibility, or that inflates the total amount paid by the client beyond what a single professional would reasonably charge, should not be enforced, regardless of how the parties label it. Recognizing the contract type and policing its abuse are complementary tasks, not competing ones.

4.4 Limitations and Directions for Further Research

This article is doctrinal in method and does not present empirical data on the frequency or terms of split fee arrangements currently used, formally or informally, within the Uzbek legal and professional services market. Future research could survey practicing advocates and law firms to assess how fee division is currently documented, whether disputes over undisclosed or disproportionate fee splits have reached the courts, and whether the Chamber of Advocates of the Republic of Uzbekistan would consider issuing interpretive guidance analogous to Rule 1.5(e) of the American Bar Association's Model Rules of Professional Conduct. A comparative study extending beyond the United States to other civil law jurisdictions that have addressed fee splitting expressly would also strengthen the doctrinal case developed here.

5. Conclusion

The split fee arrangement is not named among the contracts set out in Part Two of the Civil Code of the Republic of Uzbekistan, but the absence of a name does not mean the absence of legal footing. The general freedom of contract provision in the Code, read together with the civilian understanding that contract law, unlike property law, carries no closed list of permissible forms, supports treating the split fee arrangement as an independent, innominate contract type. Recognizing it in this way, subject to essential terms covering the division formula, the allocation of responsibility, and mandatory client disclosure and consent, gives Uzbek practitioners a doctrinally sound basis for a practice that already exists in fact, while preserving the safeguards that comparative experience shows are necessary to protect clients from its misuse.

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