

# Establishment of a Convention Order Including, if Necessary, Establishment of Parentage

---

## I. Incoming Application through Central Authority

### WHO MAY APPLY?

- Only the obligee may seek establishment of child support when there is no existing child support order, including, if necessary, determination of parentage.
- Applicant must be a resident of the Convention country from which the application is sent.

### WHEN IS APPLICATION APPROPRIATE?

- An establishment application is appropriate when there is no existing child support order.
- An establishment application is also appropriate when a foreign support order exists but cannot be recognized in the U.S.

### FORM REQUIREMENTS

- The Hague Child Support Convention requires a transmittal form and an application for establishment. A Convention country may note in its Hague Convention Country Profile what form must be used for the application. The U.S. Country Profile requests that Convention countries use the Application for Establishment of a Decision recommended by the Hague Conference when sending an application to the U.S.
- A Convention country may note in its Hague Convention Country Profile if other documents should be sent with the Application for Establishment. The U.S. Country Profile requests that an applicant include:
  - A birth certificate for each child for whom support is sought,
  - Financial information about the creditor and debtor,
  - Evidence supporting the obligation to provide support, and
  - Any additional documents or information required by the forum state's laws, support guidelines, and procedures.

### APPLICABLE LAW

- Apply Articles 1 through 4 of UIFSA 2008. The law of the requested state, **not** the requesting Convention country, applies to the following:
  - Determination of a support duty,
  - Duration of support, and
  - Application of state child support guidelines. (§§ 303 and 402).
- If parentage has been previously determined "by or pursuant to law," UIFSA precludes the respondent from pleading nonparentage as a defense to an application for a support order. (§ 315)
  - The law of the issuing foreign country may provide for a determination of parentage based on certain specific acts of the obligor, such as voluntarily acknowledging parentage as a substitute for a decree. The responding tribunal must give effect to such an act if it is recognized as determinative in the foreign country. A collateral attack cannot be made in the UIFSA proceeding.
  - In contrast, a challenge to an alleged final order of a tribunal, based on a fundamental constitutional defect in the parentage decree, is permissible in the UIFSA proceeding. "For example, a responding tribunal may find that another tribunal acted unconstitutionally by denying a party due process due to a failure of notice and opportunity to be heard, or a lack of personal jurisdiction over a party who did not answer or appear." ULC Comment to section 315.
- The tribunal may not require a security, bond, or deposit to guarantee the payment of costs and expenses in a Convention proceeding (§ 704(d)).

## Establishment of a Convention Order Including, if Necessary, Establishment of Parentage

---

### PROCEDURAL ISSUES

- UIFSA § 311 requires the filing of a petition or similar pleading in a proceeding to establish a support order or to determine parentage. Courts and state IV-D agencies are encouraged to work together to determine whether the Convention application is a sufficient pleading or whether the court requires the agency to file a separate petition or similar pleading to which the application is attached.
- If a separate pleading is required, the IV-D agency will complete and sign the Uniform Support Petition used in intergovernmental cases, *available at* <https://www.acf.hhs.gov/css/resource/uifsa-intergovernmental-child-support-enforcement-forms>.
- UIFSA § 316 authorizes the admissibility into evidence of an affidavit, document substantially complying with federally mandated forms, or a document incorporated by reference in them, which would not be excluded under the hearsay rule if given in person, if such documents are given under penalty of perjury. Convention forms are not given under penalty of perjury. Instead the requesting Central Authority attests that the application complies with the Hague Child Support Convention and is complete. The U.S. Country Profile directs Convention applicants to use Convention forms when sending applications to the U.S. If sworn documents or documents given under penalty of perjury are required, the tribunal should allow for a continuance to obtain such documents. This may be complicated by the lack or expense of notaries in the foreign country, or by the country's requirement that the request comply with the Hague Evidence Convention.
- UIFSA § 316 has additional special rules regarding evidence and procedures:
  - The tribunal may not require the physical presence of the nonresident applicant.
  - The tribunal must permit a party or witness residing outside the state to testify by telephone, audiovisual means, or other electronic means.
    - Some Convention countries may require compliance with the Hague Evidence Convention in order for one of their residents to present evidence in a U.S. judicial proceeding.
  - The tribunal cannot exclude documents from evidence on an objection based solely on the means of transmission.
- UIFSA § 317 authorizes communication with a foreign tribunal about its laws; the legal effect of a decree, decision, or order; or the status of a proceeding.
- UIFSA § 318 authorizes a U.S. tribunal to assist a tribunal of another country with the discovery process.

## II. Direct Request to a Tribunal

### WHO MAY APPLY; PROCEDURAL DIFFERENCES

- Both the obligee and the obligor may make a direct request to a tribunal for establishment of a support order or a determination of parentage.
- State law applies to the proceeding (§ 705(a)); the state IV-D agency will not be involved (§ 705(d)).
- The UIFSA requirements in § 705(c) concerning limitation on requirements for bonds or deposits to guarantee the payment of expenses, and the Convention requirement for limited free legal assistance, do not apply in a direct request for establishment.

## III. Cooperation between Central Authorities

- The Convention requires administrative cooperation between Central Authorities.
- In the U.S., the Central Authority is the federal Office of Child Support Enforcement (OCSE), with state child support agencies also acting as designated Central Authorities for case processing. To contact OCSE International, email [ocseinternational@acf.hhs.gov](mailto:ocseinternational@acf.hhs.gov) or call 202.401.5722. See also <https://www.acf.hhs.gov/css/partners/international>.
- In its Central Authority capacity, your state child support agency can assist in communications with the requesting Central Authority in the Convention country and facilitate the obtaining of documentary or other evidence.