

Recognition and Enforcement of a Foreign Support Agreement

I. Incoming Application through Central Authority

WHO MAY APPLY?

- Either the obligee or the obligor may file an application for recognition and enforcement of a foreign support agreement.
- The applicant must be a resident of the Convention country from which the application is sent.

WHEN IS APPLICATION APPROPRIATE?

- Certain authentic instruments and private agreements are within the scope of the Hague Child Support Convention. These are termed maintenance arrangements in the Convention, but defined as “foreign support agreements” under UIFSA 2008 § 701(6). To qualify under U.S. law, it must be an agreement in a record that meets all three of the following criteria:
 - It must be enforceable as a support order in the country of origin;
 - It must have been formally drawn up or registered as an authentic instrument by a foreign tribunal, or authenticated by, or concluded registered, or filed with a foreign tribunal; and
 - It must be subject to review and modification by the foreign tribunal.
- NOTE: A foreign tribunal is a tribunal of a “foreign country” as defined in UIFSA § 201.
- If an agreement is enforceable only as a contract, it does not fall within the scope of UIFSA § 710.

FORM REQUIREMENTS

- The Hague Child Support Convention requires a transmittal form and an application for recognition or recognition and enforcement.
- UIFSA § 710(b) lists the documents that must accompany an application request for registration of a foreign support agreement.
 - A complete text of the foreign support agreement, and
 - A record stating that the foreign support agreement is enforceable as an order in the issuing country.

APPLICABLE LAW

- The Hague Child Support Convention requires recognition and enforcement of a foreign support agreement providing support up to the age of 21, even if the age of majority under state law is lower.
- The law of the responding state governs:
 - Introduction of evidence, and
 - Enforcement procedures and remedies (UIFSA § 604(c)).
- The tribunal may not require a security, bond, or deposit to guarantee the payment of costs and expenses in a Convention proceeding (UIFSA § 704(d)).
- The enforcement proceeding must be suspended during the pendency of a challenge to or an appeal of the agreement in a tribunal of another state or foreign country that has jurisdiction to hear challenges to the agreement.

REGISTRATION PROCEDURES

- Apply Article 6 of UIFSA, provided there is no conflict with Article 7. That means the registering tribunal should cause the foreign support agreement to be filed as an order of a tribunal of another state or a foreign support order, together with one copy of the documents and information. The foreign support agreement is registered when it is filed in the registering tribunal. Upon registration, the registering tribunal must promptly notify the nonregistering party, in accord with UIFSA § 605, including providing a copy of the registered foreign support agreement and the accompanying documents/information. If the nonregistering party contests the validity or enforcement of the registered foreign support agreement, the registering tribunal must schedule the matter for hearing and give notice to the parties (UIFSA § 606).
- The tribunal may vacate the registration, on its own motion, only if recognition and enforcement of the foreign support agreement would be manifestly incompatible with public policy (UIFSA § 710(c)). Such a decision should be rare.
 - This is an *ex officio* preliminary review by the tribunal without any participation by the applicant or respondent (§ 706(d)). Unlike the *ex officio* review of a support order, however, UIFSA does not expressly mention failure to observe due process.

Recognition and Enforcement of a Foreign Support Agreement

- The tribunal must recognize and enforce a registered Convention foreign support agreement unless there is a timely challenge and the contesting party proves one of the four grounds for which a tribunal may refuse recognition and enforcement. UIFSA §§ 710(d)(1) - (4):
 - Recognition and enforcement of the agreement is manifestly incompatible with public policy.
 - Due process considerations have little or no relevance when an agreement is entered into by the parties. However, the public policy defense may be raised where the parties have a great discrepancy in negotiating power or the agreement is reached through duress.
 - The agreement was obtained by fraud or falsification.
 - The agreement is incompatible with a support order involving the same parties and having the same purpose in the registering state, another U.S. state, or a foreign country if such order is entitled to recognition and enforcement under UIFSA.
 - A record transmitted under § 710(b) lacks authenticity or integrity.
- Issues of personal jurisdiction over the parties, and considerations of the lack of notice or opportunity to be heard, will not arise with respect to the agreement, given its voluntary nature.

PROCEDURAL ISSUES

- UIFSA requires the complete text of the foreign support agreement; an abstract or extract is not acceptable.
- Where the registered foreign support agreement provides for child support that continues beyond age 21, there is no obligation on the Central Authority to provide assistance other than for the period that is within the scope of the Hague Child Support Convention (i.e., to age 21). Beyond that, the applicant may need to retain private counsel and make a direct request to the tribunal for enforcement under UIFSA § 705.
- UIFSA § 316 has 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

- The Hague Child Support Convention allows the obligee or obligor to make requests directly to the tribunal. The petitioner may appear *pro se* or through private representation. Such cases do not involve any services by the state IV-D agency as the Central Authority.
 - A direct request may be used where the applicant seeks recognition and enforcement of a foreign support agreement for a child over 21 or of a spousal support only agreement.
 - A petitioner may also make a direct request to enforce a foreign support agreement for support of a “vulnerable person” beyond age 21 where the agreement was made before the person reached age 21 and the agreement provides for support beyond age 21 because of the person’s impairment. The Convention defines the term “vulnerable persons” as individuals who are not able to support themselves due to a physical or mental impairment, Art. 37 of Hague Child Support Convention.
- State law applies to the proceeding (UIFSA § 705(a)).
- The UIFSA requirements in § 705(c) concerning limitation on requirements for bonds or deposits to guarantee the payment of expenses, and the Hague Child Support Convention requirement for limited free legal assistance, do not apply in a direct request for recognition and enforcement.

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 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.