

Modification

I. Incoming Application through Central Authority

WHO MAY APPLY?

- An obligee or obligor may file a Convention application for modification of an existing **support order** for a child under age 21 (UIFSA § 704(b)(5) and (6); § 704(c)(2) and (3)).
 - Neither the Convention nor UIFSA have provisions that would permit modification of a registered **foreign support agreement** in the U.S. (UIFSA § 711 refers to modification of orders only, and does not include foreign support agreements.)
- Applicant must be a resident of the Convention country from which the application is sent.

WHEN IS AN APPLICATION APPROPRIATE?

- An application for modification is appropriate when the party seeks:
 - Modification of an order issued by or registered in the requested U.S. tribunal;
 - Modification of an order issued by a tribunal in another U.S. state;
 - Modification of an order issued in another Convention country; or
 - Modification of an order issued in a non-Convention “foreign country,” as that term is defined by UIFSA § 102(5).
- The order must be enforceable in the issuing country (§ 706(b)(2)).

ARE THERE LIMITATIONS ON MODIFICATION JURISDICTION?

- The obligor must seek modification in the issuing country if the obligee remains “habitually resident” there unless:
 - The obligee submits to the jurisdiction of the U.S. tribunal, either expressly or by defending on the merits of the case without objecting to the tribunal’s jurisdiction at the first opportunity.
 - The foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order under its internal law (§ 711(a)).
- Neither UIFSA nor the Convention define “habitually resident.”

FORM REQUIREMENTS

- The Hague Child Support Convention requires a transmittal form and an application for modification.
- U.S. Country Profile advises other Convention countries that the applicant must provide information about the basis for the modification request and any information needed to apply the relevant state child support guidelines.
- To modify an order issued by the requested state, registration is not required.
- If the applicant wants to modify the order of a Convention country, a foreign country that is not a Convention country, or another U.S. state, the tribunal must first recognize or register the order before modifying it.
 - To modify a Convention order, the applicant must include documents required for recognition of the order under UIFSA § 706:
 - Complete text of the support order (or abstract or extract drawn up by the issuing foreign tribunal as permitted by state law);
 - Statement of Enforceability of a Decision;
 - Statement of Proper Notice if the respondent did not appear and was not represented in the proceedings in the issuing country; and
 - As applicable or necessary, a record of arrears, a record showing any required automatic adjustments, and a record showing the extent the applicant received free legal assistance in the issuing country.
 - To modify an order issued by a foreign country that is not a Convention country or by another U.S. state, the applicant will need to include documents required for registration of the order under UIFSA § 602:
 - Letter of transmittal;
 - Two copies, including one certified copy, of the order;
 - Sworn statement showing arrearage, if any;
 - Locate, income, and asset information about the obligor; and
 - Name and address of the obligee and person to whom payments should be remitted.

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APPLICABLE LAW

- Tribunal is bound by findings of fact on which the issuing country based its jurisdiction and cannot review the merits of the decision.
- Requested tribunal will use domestic law when considering the modification application. Law of the responding state governs:
 - Requirements for modification, including jurisdiction.
 - Available defenses.
 - Child support guidelines.
 - Introduction of evidence.
- If the order was issued by another U.S. state, the law of the issuing state determines non-modifiable terms. (§ 611). That means a tribunal may not modify the duration of the obligation unless allowed under the law of the issuing state.
 - Although UIFSA § 611 is specific to state support orders, UIFSA's choice of law rules in § 604 apply to an order issued by either a state or a foreign country. They provide that the law of the issuing state or foreign country governs the nature, extent, amount, and duration of current payments under a registered support order. Accordingly, duration of a registered support order issued by a foreign country is governed by the law of the issuing country.

MODIFICATION PROCEDURES

Application to Modify Order Issued by the Responding State

- Follow UIFSA Articles 1 through 3, as well as § 611(f).
- Determine whether the tribunal has continuing, exclusive jurisdiction to modify its order (CEJ) under UIFSA § 205:
 - Tribunal has CEJ if the order controls current child support and, at the time of filing, the request for modification is the residence of the obligor, obligee or child for whose benefit the order is issued (§ 205(a)(1)); or
 - The parties consent in a record or in open court that the tribunal may continue to exercise its jurisdiction to modify its order.
 - If tribunal does not have CEJ, UIFSA § 611(f) authorizes retention of modification jurisdiction when one party resides outside the U.S and one party resides in another U.S. state:
 - Jurisdiction to modify is not exclusive; a party may use § 611(f) but is not required to do so.
 - Consent not required.
 - Applicable when either party remains in U.S.
 - Permits application of UIFSA and provides a forum in the United States, eliminating the requirement to seek modification, or “play away,” in a foreign country.

Application to Modify Order Issued by Another U.S. State

- Follow UIFSA articles 1 through 6.
- The order must be registered under Article 6. Article 7 does not apply.
 - The order is registered when it is filed in the registering tribunal. When the order is registered, the registering tribunal must promptly notify the nonregistering party, in accord with § 605, including providing a copy of the registered order and the documents/information accompanying the order.
 - Grounds for challenging the validity or enforcement of a registered support order issued by another state or a non-Convention foreign country are listed in § 607.
- The responding tribunal may modify the other state's order if the order has been properly registered and the criteria of § 611(a) are met:
 - The issuing tribunal does not have continuing, exclusive jurisdiction to modify its order; and
 - The petitioner is a nonresident of the requested state.
- The responding tribunal may also modify a properly registered order if all parties file consents in the issuing tribunal for the responding tribunal to modify the order and assume CEJ (§ 611(a)(2)).

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Application to Modify Order Issued by Another Convention Country

- Follow UIFSA Articles 1 through 7.
- The order must be registered. Follow Article 6 procedures, unless there is a conflict with Article 7.
- For registration and modification of a Convention order, specific requirements in Article 7 include the following:
 - Required documents (§ 706).
 - Procedure (§§ 706-709).
 - Limitation on authority to modify Convention support order if the obligee remains a resident of the foreign country where the support order was issued (§ 711).
- For Convention cases only, the tribunal may vacate the registration on its own motion, if recognition and enforcement of the order would be manifestly incompatible with public policy. Such a decision should be extremely rare. The Uniform Law Commission's official comments to § 706(d) offer the following: "Perhaps an example could be that the court might reject an application to establish support from a biological parent whose rights had been terminated and the child was subsequently adopted."
 - This is an *ex officio* preliminary review by the tribunal without any participation by the applicant or respondent (§ 706(d)).
 - The tribunal must promptly notify both parties of an order to vacate the registration, allowing parties to appeal the decision (§ 706(e)).
- Any contest to the validity or enforcement of the registered support order follows §§ 605 – 608 except as otherwise provided in Article 7. Article 7 provisions, applicable only to Convention cases, include:
 - The party contesting the registered Convention support order has 30 days after notice to file a contest, which is extended to 60 days if the contesting party does not reside in the U.S. (§ 707(b)).
 - The Convention order is enforceable if not timely contested by the nonregistering party (§ 707(c)).
 - A challenge or appeal does not stay enforcement of the order unless there are exceptional circumstances (§ 707(g)).
- In a contest of a registered Convention order, the tribunal may not review the merits of the registered order. The tribunal is also bound by the findings of fact on which the foreign tribunal based its jurisdiction (§ 707(e)).
- The tribunal must recognize and enforce a registered Convention support order unless there is a timely challenge and the contesting party proves one of the limited grounds for which a tribunal may refuse recognition and enforcement. § 708(b)(1) - (10):
- The only grounds on which a tribunal may refuse recognition and enforcement are:
 - Recognition and enforcement of the order is manifestly incompatible with public policy, including a failure of the issuing tribunal to observe minimum standards of due process. This is expected to have limited applicability. Possible examples include:
 - A failure to provide notice and an opportunity to be heard.
 - Decision rendered against an unrepresented minor.
 - Proof of cognitive disability or limited language proficiency that created an incapacity to understand and participate in the proceedings.
 - The issuing tribunal lacked personal jurisdiction consistent with § 201 (UIFSA long-arm provision).
 - U.S. requires personal jurisdiction over the obligor to establish a support order. *Kulko v. Superior Court*, 436 U.S. 84 (1978). In contrast, most Convention countries base support jurisdiction on the residence of the obligee and child in that country.
 - The Hague Child Support Convention reconciles these different approaches by allowing a country to make a reservation to child-based jurisdiction. The U.S. made such a reservation.
 - If recognition is challenged based on lack of personal jurisdiction, the tribunal must determine whether the facts of the case support a basis for jurisdiction under UIFSA § 201 under the same circumstances. If so, the tribunal must recognize the order even if the issuing foreign tribunal used creditor-based jurisdiction.

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- The order is not enforceable in the issuing country.
 - The order does not have to be enforceable in the requesting country, only in the issuing country. A representative of a competent authority in the issuing country must complete the Statement of Enforceability of a Decision required with the application.
- The order was obtained by procedural fraud.
- A record transmitted under § 706 lacks authenticity or integrity.
 - The court may require a complete certified copy of the order if there is a question of the order's authenticity.
- A pending proceeding between the same parties and having the same purpose was filed first in the tribunal.
- The order is incompatible with a more recent support order, which is entitled to recognition and enforcement.
- Alleged arrears have been paid in full or part.
- If the respondent neither appeared nor was represented in the proceeding in the issuing foreign country, the respondent did not have proper notice and an opportunity to be heard.
 - Note that under some administrative systems, such as New Zealand and Australia, the due process opportunity is available after the decision is rendered by providing notice of the decision and an opportunity to appeal on matters of fact or law.
- The order was made in violation of § 711 (limitation on modification proceedings if the creditor remains a resident of the issuing foreign country).
- Because of the limited grounds under § 708, a respondent cannot challenge the recognition of a registered Convention order on the basis of nonparentage.¹ The respondent may challenge the order on the basis of lack of personal jurisdiction, but a collateral attack on the merits of the parentage determination is not a ground for the tribunal to refuse recognition and enforcement of the order (§ 707(e)).
- Should the tribunal not modify a Convention child support order because the order is not recognized in the requested state, UIFSA § 708(c) applies. If the order was not recognized because:
 - The issuing tribunal lacked personal jurisdiction consistent with § 201;
 - The order was obtained by procedural fraud; or
 - Where the respondent neither appeared nor was represented in the proceeding in the issuing foreign country, the respondent did not have proper notice and an opportunity to be heard; then the tribunal may not dismiss the proceeding without allowing a reasonable time for a party to request the establishment of a new support order.
- The tribunal will use its own laws and procedures to establish a support order, applying UIFSA Articles 1 through 6.

Application to Modify Order Issued by a Non-Convention Country

- The Convention allows an applicant to request modification of an existing support order issued by a country that is not a party to the Convention.
 - Although there is no requirement in the Convention that a Contracting State issued the decision being modified, the order must be one that falls within the scope of the Convention (i.e., child support up to age 21).
 - The applicant must reside in the Convention country that is transmitting the application.
- Each Convention country may determine whether or not modification is allowed.
- U.S. will only allow modification of non-Convention order if:
 - Issuing jurisdiction is a foreign country, as defined by UIFSA; and
 - Order is entitled to recognition.
- For a non-Convention country to meet UIFSA's definition of foreign country, issuing country must be:
 - A foreign reciprocating country (FRC),
 - A country that is party to a reciprocal arrangement with the requested state, or
 - A country that has been determined by the requested state to have substantially similar laws to UIFSA. (§ 102(5)).

¹ In addition, UIFSA § 315 applies, which precludes pleading nonparentage as a defense where "parentage of a child has been previously determined by or pursuant to law..."

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- For the order to be entitled to recognition, a party must register the order under Article 6 of UIFSA. The tribunal must decide whether the order is recognized as a valid enforceable order before proceeding with modification.
- If recognized, the tribunal has modification jurisdiction if the requirements of UIFSA § 615 are met:
 - Does the foreign country that issued the order lack or refuse to exercise jurisdiction to modify its own order?
 - Does the registering tribunal have personal jurisdiction over the parties?
- If the non-Convention order cannot be recognized for modification, a tribunal may be able to establish a new order if so requested by the initiating Central Authority.
 - The tribunal must have jurisdiction over both parties.
 - State law must permit establishment of a new order.
 - If a new order is established, there will be two orders: the original foreign order that was not recognized, and the newly established U.S. order.
 - A party may seek recognition of the U.S. order in the foreign country in order to address any issues associated with two distinct orders.

PROCEDURAL ISSUES

- 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 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 (§ 705(d)).
- State law applies to the proceeding (§ 705(a)). The direct request will be governed under Articles 1 through 6 of UIFSA.
- Unless the party is requesting modification of an order issued by the responding tribunal, the party must first register the order for modification. If the order is from another U.S. state or a foreign country that is not a Convention country, the provisions of § 602 apply to the registration. If the order is from a Convention country, § 706 applies.
- 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.

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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.