

## Recognition and Enforcement

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### I. Incoming Application through Central Authority

#### WHO MAY APPLY?

- An obligee may seek recognition and enforcement of an existing Convention order for support of a child under age 21.
  - The Hague Child Support Convention allows a Contracting State to make a reservation to limit the obligation to recognize and enforce a child support order to age 18. The U.S. did not make such a reservation.
- Recognition and enforcement of spousal support is within the mandatory scope requiring Central Authority services, **if** the spousal support is in conjunction with child support.
- An obligee also may seek recognition only. That may occur if the creditor is currently satisfied with the debtor's payment but wants to have the order registered in the event enforcement is later needed.
- An obligor may only request recognition of a Convention support order to suspend or limit the enforcement of an existing support order issued by or already registered in the requested tribunal.
- The applicant must be a resident of the Convention country from which the application is sent.

#### WHEN IS AN APPLICATION APPROPRIATE?

- An application for recognition or for recognition and enforcement is appropriate when there is a support order issued by a Convention country, which means:
  - The requesting Convention country,
  - A different Convention country, or
  - A state within the United States (since the U.S. is a Convention country).
- The Convention order must be enforceable in the issuing country (§ 706(b)(2)).

#### FORM REQUIREMENTS

- The Hague Child Support Convention requires a transmittal form and an application for recognition or recognition and enforcement.
- UIFSA § 706(b) lists the documents that must accompany a request for registration of a Convention order. These document requirements differ from those required to register a state or foreign support order under Article 6 of UIFSA.
  - The text of the order, or an abstract or extract of the order, if acceptable in the registering state. Your UIFSA law will note whether an abstract is acceptable in lieu of the full text of the order. Only one copy of the order is required. The copy does not need to be certified.
  - A record stating that the order is enforceable in the issuing country.
  - A record attesting to proper notice and an opportunity to be heard if the respondent did not appear and was not represented in the issuing country.
  - A record of arrears. There is no requirement for a sworn statement of arrears.
  - A record showing a requirement for automatic adjustments to the support amount, if any, and information necessary to make the calculations.

#### APPLICABLE LAW

- The Hague Child Support Convention requires recognition and enforcement of a Convention order providing support up to the age of 21, even if the age of majority under state law is less than age 21.
  - That has always been a requirement of UIFSA in interstate cases.
- The law of the issuing foreign country governs (§ 604):
  - Nature, extent, amount, and duration of current support payments;
  - Computation and payment of arrears, including accrual of interest; and
  - Existence and satisfaction of other support obligations.
- The law of the responding state governs:
  - Introduction of evidence, and
  - Enforcement procedures and remedies (§ 604(c)).
- The law of the issuing foreign country or the responding state governs the statute of limitations for enforcing arrears, whichever is longer (§ 604(b)).

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### REGISTRATION PROCEDURES

- Apply Article 6 of UIFSA, provided there is no conflict with Article 7. That means, the registering tribunal should cause the order 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 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.
- Article 7 of UIFSA governs required documents, as noted above, rather than Article 6.
- 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 could include:
    - A failure to provide notice and an opportunity to be heard;
    - Decision rendered against an unrepresented minor; or
    - Proof of cognitive disability or limited language proficiency 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. has 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. For example, do the facts establish the respondent had intercourse in the issuing country that resulted in conception of the child? If there is a long-arm basis for jurisdiction under UIFSA, the tribunal must recognize the order even if the issuing foreign tribunal used creditor-based jurisdiction.
  - 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.

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- 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 and enforcement of a registered Convention order on the basis of nonparentage.<sup>1</sup>
  - 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.
- There are four possible outcomes following a contest:
  - The tribunal recognizes and enforces the Convention support order.
  - The tribunal refuses to recognize and enforce the Convention support order.
  - The tribunal does not recognize and enforce the Convention support order in its entirety but enforces part of the order, for example where there is a dispute about arrears, the tribunal may enforce current support while the arrears challenge is under review (§ 709).
  - The tribunal does not recognize the Convention support order under certain specified grounds and, as a consequence, cannot dismiss the proceeding without allowing a reasonable time for a party to request the establishment of a new Convention support order (§ 708(c)). Those grounds are:
    - 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.
- If the tribunal must allow a reasonable time for the party to request establishment of a new order, the tribunal will use its own laws and procedures to establish a support order, applying UIFSA Articles 1-6.
- If the Convention application seeks enforcement of a support order issued by the requested tribunal, no registration is required. Enforcement will proceed under state law.
- If the Convention country seeks recognition and enforcement of a U.S. order not issued by the requested state, UIFSA Articles 1-6 apply, not Article 7.

### PROCEDURAL ISSUES

- Where the registered order 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.
- Arrears that accrued before age 21 continue to be enforceable. The statute of limitations will be the longer of the limitation provided for in the country that issued the order or the law of the forum.

<sup>1</sup> 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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- UIFSA § 316 authorizes the admissibility into evidence of an affidavit, a 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. The United States implemented this provision in § 705 of UIFSA (2008).
  - A direct request may be used where the applicant seeks recognition and enforcement of a support order even for a child over 21 or of a spousal support only order.
  - A petitioner may also make a direct request to enforce an order for support of a “vulnerable person” beyond age 21 where the order was issued before the person reached age 21 and the order 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 (§ 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 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](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.