

Hague Child Support Convention: Judicial Guide

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1. Introduction

1.1 Purpose of this Guide

The Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance, known as the Hague Child Support Convention (Convention), came into force in the United States on January 1, 2017. While the Convention is the “law of the land” and binding on the states,¹ it is not a “self-executing” treaty.² Although treaties are generally implemented through federal legislation, as family law is traditionally a state matter, the Convention was implemented in the U.S. through state law, the Uniform Interstate Family Support Act (UIFSA) 2008.³ To ensure consistent application of the Convention, Congress directed that all states enact UIFSA 2008.⁴ Once every U.S. state had enacted UIFSA 2008, the President signed the U.S. instrument of ratification and deposited this instrument on September 7, 2016, with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depository for the Hague Conference.

UIFSA has been the state law governing intergovernmental child support since the “Welfare Reform” federal legislation in 1996 required that all states enact the 1996 version of the uniform state law.⁵ The UIFSA 2008 amendments integrate the appropriate provisions of the Convention into state law and enhance the handling of all international cases.

This *Hague Child Support Convention: Judicial Guide* is written as a guide for judges, judicial officers, administrative hearing officers, and others who will be dealing with applications and requests under the new Convention. The initial sections of this Guide provide an overview of matters common to all cases under the Convention, including scope, evidentiary provisions, and translation requirements. The remaining sections are organized by type of application, including recognition and enforcement, establishment, modification, and provisions related to requests for specific measures (i.e., limited services).

¹ U.S. Constitution art. VI, cl.2.

² “If a treaty is deemed to be ‘self-executing,’ the treaty itself becomes federal law and preempts any conflicting state law. To appreciate the difficulty inherent in determining whether a treaty is ‘self-executing,’ see *Medellin v. Texas*, 552 U.S. 491 (2008).” Battle Rankin Robinson, Integrating an International Convention into State Law: The UIFSA Experience *Family Law Quarterly*, Vol. 43, No. 1, Spring 2009, at 63.

³ Battle Rankin Robinson, “The Beginner’s Guide to International Support,” 33 Delaware Lawyer 22 (Winter 2015/2016) at 23.

⁴ Subsection 301(f)(3)(A) of Pub. L. 113-183, the Preventing Sex Trafficking and Strengthening Families Act of 2014 (hereinafter referred to as the Strengthening Families Act).

⁵ The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), in section 321, amended 42 U.S.C. § 666 to add a new subsection (f) requiring all states to enact UIFSA 1996 by January 1, 1998. See Pub. L. 104-193, 110 Stat. 2105 (1996). UIFSA was first developed in 1992, but at that time there was no requirement that states enact it. It was amended in 1996.

This Guide does not cover the Convention procedures and requirements for IV-D child support agencies⁶ in their processing of Convention cases. Other resources focus on those entities. (See, for example, a nine-part training curriculum for state child support agencies, *International Case Processing under UIFSA 2008*.⁷) Instead, this Guide provides information specifically focusing on tribunals and the UIFSA 2008 provisions they will need to apply in Convention and other international child support cases.⁸

1.2 History of the Hague Child Support Convention

Negotiations for the Hague Child Support Convention began in 2003 and involved 55 member countries, 15 observer countries, and nongovernmental organizations. At that time, there were a number of international instruments in effect, including the 1956 New York Convention and two Hague Conventions dating from 1958 and 1973. The U.S. could not be a party to any of these international multilateral agreements. The largest problem was a legal one. Most countries follow creditor- or child-based jurisdiction, which allows the establishment of a child support order in the country where the creditor or child lives – regardless of any contacts of the debtor with that country. In contrast, the U.S. requires that there also be minimum contacts between the debtor and the forum. The relevant case is *Kulko v. Superior Court*, 436 U.S. 84 (1978). The U.S. could not join a treaty requiring recognition of support orders based solely on creditor- or child-based jurisdiction.

When negotiations concerning a new child support Convention started, international cases in the U.S. were managed primarily under federal level bilateral agreements,⁹ and state reciprocal arrangements with other countries.¹⁰ Additionally, since 1968 many states had child support legislation that recognized orders from foreign jurisdictions that had substantially similar child support laws and procedures.¹¹ Finally, tribunals could recognize foreign orders on a case-by-case basis based on the principle of comity.

⁶ State child support enforcement agencies established and operating in accord with Title IV, Part D of the Social Security Act, known throughout the country as “IV-D agencies.” Title IV, Part D, Social Security Act, 42 U.S.C. §§ 651 *et seq.*

⁷ <https://www.acf.hhs.gov/css/resource/training-international-case-processing>; See also, *Practical Handbook for Caseworkers under the 2007 Hague Child Support Convention*, Permanent Bureau, Hague Conference on Private International Law (2013), [Practical Handbook]. <https://assets.hcch.net/docs/5f160c92-b560-4b7f-b64c-8423f56c6292.pdf>

⁸ Many Convention provisions are not addressed by UIFSA because they deal with administrative responsibilities of the Central Authority under the Convention. For example see, *Specific Measures*, chapter 6 of this Guide.

⁹ The 1996 PRWORA legislation authorized the U.S. Department of State, with the concurrence of HHS, to declare a country as a foreign reciprocating country if it met certain requirements. 42 U.S.C. § 659a.

¹⁰ Individual states “may enter into reciprocal arrangements for the establishment and enforcement of support obligations with foreign countries that are not the subject of a declaration pursuant to subsection (a), to the extent consistent with Federal law.” 42 U.S.C. § 659a(d).

¹¹ Uniform Reciprocal Enforcement of Support Act (1950) (amended 1952 & 1958, revised 1968), 9B U.L.A. 553 (1987) (superseded by UIFSA (1992)), 9 Pt. 1B U.L.A. 393 (1999).

The U.S. delegation, headed by the Department of State, and including members from the Department of Health and Human Services' (HHS) Office of Child Support Enforcement and Office of the General Counsel, and other experts, was a well-coordinated team of diplomats and policy officials, scholars, and expert practitioners. Certain key outcomes were critical for the U.S. These included the following:

- The mandatory scope of the Convention must be limited to child support and spousal support orders when combined with child support.
- The Convention must permit a country to refuse recognition and enforcement of an order that could not have been entered in the U.S. (e.g., an order based solely on the residence or nationality of the creditor or child).
- The scope must include the establishment of new orders, including, where necessary, the determination of parentage.
- Services must be provided on a cost-free or virtually cost-free basis to the creditor.
- The Convention must include provisions to address practical issues such as timeframes for responses, and the possibility of developing standardized forms and procedures.
- The Convention must include a streamlined and efficient process for recognition and enforcement of orders so that a tribunal will not be allowed to review another country's order on the merits, and there are only limited defenses to the recognition and enforcement of an order.

All of these are reflected in the final version of the Convention, which the U.S. was the first country to sign, on November 23, 2007, indicating its commitment to work toward ratification in the U.S. Immediately following the signing, the Uniform Law Commission (ULC) convened a committee to draft amendments to the existing UIFSA. The objective was to limit revisions to only those necessary to integrate applicable provisions of the Convention into state law. These treaty provisions are contained in a new Article 7 of UIFSA 2008. In addition, the 2008 amendments make other changes to UIFSA that apply to cases involving foreign countries that are not parties to the Convention.

1.3 Implementing the Convention in the U.S.

As noted earlier, the Convention is unusual in that it is implemented in the U.S. through state law. UIFSA 2008 is that law. There are many resources on both the treaty and UIFSA 2008. The Hague Conference has published an *Explanatory Report* and a *Practical Handbook*, accessible on the Child Support Section of the Conference's website, <https://www.hcch.net>. Similarly available on the Conference website, each country that has ratified or signed the Convention will complete a Country Profile, which provides information on its laws, procedures, and child support services, http://hcch.cloudapp.net/smartlets/sfjsp?interviewID=hcchcp2012&t_lang=en.

There are also extensive explanatory comments to UIFSA 2008, prepared by the ULC Reporter for UIFSA, Professor John Sampson of the University of Texas School of Law. These comments, along with the complete text of UIFSA 2008, appear on the ULC’s website, www.uniformlaws.org. In addition there are two editions of the *Family Law Quarterly* devoted to UIFSA 2008.¹²

The application of UIFSA 2008 to international cases is set out in §§ 105 and 702. Section 105 provides the tribunal with a “road map” for applying UIFSA 2008 provisions to residents of a foreign country and to foreign support proceedings. Articles 1 – 6, as applicable, apply to a support proceeding involving a foreign support order, a foreign tribunal, or an obligee, obligor, or child residing in a foreign country. UIFSA 2008 defines “foreign country” as:

- A federally designated foreign reciprocating country;
- A country that has established a state reciprocal arrangement;
- A country that has laws and procedures substantially similar to UIFSA; and
- A country in which the Hague Child Support Convention is in force with respect to the U.S.

By adding the words “or a foreign country” in various places in Articles 1 – 6, the Act makes it clear that those provisions will apply to both Convention and non-Convention matters.

However, §§ 105(c) and 702 direct that Article 7 applies exclusively to a proceeding under the Convention. That means if an application or direct request is initiated under the Convention,¹³ the tribunal needs to first check Article 7 for direction regarding the establishment, enforcement, and modification of an order. Tribunals should apply Articles 1 – 6 only to matters not covered in Article 7. In the event of a conflict between an Article 7 provision and Articles 1 – 6, Article 7 prevails.

Finally, under § 105(b) a tribunal requested to recognize and enforce a support order on the basis of comity may use the substantive law and procedural provisions of Articles 1 - 6, but is not required to do so.

¹² *Family Law Quarterly*, Vol. 43, No. 1 (Spring 2009), and Vol. 49, No. 2 (Summer 2015). The 2009 FLQ is titled *Symposium on International Enforcement of Child Support* and contains excellent articles on the Hague Child Support Convention and how the Convention was implemented in the U.S. It includes the text of UIFSA 2008 and the Reporter’s original commentary. The 2015 FLQ article, *Integrating UIFSA (2008) with the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance*, also contains the text and includes updated official comments, along with the Reporter’s unofficial annotations to UIFSA (2008). Citations to both official and unofficial comments are to John J. Sampson and Barry J. Brooks.

¹³ As of May 1, 2018, the Convention is in force in 35 countries. This includes all European Union countries with the exception of Denmark. For a current list of Convention countries, see <https://www.hcch.net/en/instruments/conventions/status-table/?cid=131>.

2. International Cases under the Hague Child Support Convention: Matters Common to All Applications

2.1 Terminology

The following section provides an overview of the terms and concepts that have been introduced or modified in UIFSA 2008 to integrate the treaty into American law and practice and to enhance procedures involving foreign countries that are not parties to the Convention.

Application and Direct Request: An application is a “request under the Convention by an obligee or obligor, or on behalf of a child, made through a central authority for assistance from another central authority” (§ 701(1)). Article 7 of UIFSA 2008 applies to all Convention applications.

A direct request is a pleading filed by an individual directly in a tribunal “in a proceeding involving an obligee, obligor, or child residing outside the United States” (§ 701(4)). In an incoming direct request to a U.S. tribunal, the petitioner is not entitled to assistance from the state’s Central Authority (IV-D agency), but may be eligible for limited legal assistance if seeking recognition and enforcement of a Convention support order (§§ 705(c) and (d)). A direct request may also be to establish or enforce an order or seek action that is not within the mandatory scope of the Convention. For example, the individual could make a direct request to the U.S. tribunal for establishment of spousal support only or a father could seek an order establishing paternity. The out-of-country petitioner in direct request cases will be *pro se* or represented by a private attorney.

Convention References: Articles 10 (Available applications); Article 37 (Direct requests to competent authorities)

Central Authority: The Central Authority is the public body designated to carry out the duties of administrative cooperation and assistance under the Convention (§ 701(2) UIFSA 2008). The U.S. Central Authority is the Department of Health and Human Services, and the Secretary of HHS is authorized and empowered to perform all lawful acts as may be necessary to execute the functions of the Central Authority.¹⁴ The Secretary has in turn delegated responsibility to the Office of Child Support Enforcement (OCSE) as the entity within HHS which serves as the Central Authority.¹⁵ OCSE has, in turn, designated state IV-D agencies as “public bodies” to perform the majority of specific Central Authority functions under Convention Article 6, which are case processing functions.¹⁶

Convention References: Article 4 (Designation of Central Authorities); Article 5 (General functions of Central Authorities); Article 6 (Specific functions of Central Authorities)

Convention Support Order: A support order issued by a Convention country. This term is narrower than a foreign support order and excludes support orders from non-Convention countries, or support orders entitled to comity (§ 701(3)).

Creditor: A Creditor is an individual to whom support is owed or is alleged to be owed. When the Convention refers to a creditor, it is referring to the individual entitled to receive support – the person in the U.S. that most states would refer to as the obligee. In some cases, the creditor may be a public body (§ 102(16)(D)).

Debtor: A Debtor is an individual who owes or is alleged to owe support. When the Convention refers to a debtor, it is the individual responsible for payment of support. UIFSA uses the term obligor (§ 102(17)(D)).

Foreign Country: Prior versions of UIFSA included qualified foreign countries within the definition of “state.” “In UIFSA 2008, the legal fiction that a foreign nation is the equivalent of an American state was eliminated, and there are now new definitions of ‘state,’ ‘foreign country,’ ‘foreign tribunal,’ and ‘foreign support order.’”¹⁷

Note carefully that only certain foreign nations fall within the act’s definition. Section 102(5) defines “foreign country” (including a political subdivision of a country) as one of the following:

- A federally declared foreign reciprocating country.¹⁸

¹⁴ Executive Order 13752, 81 Fed. Reg. 90,181 (Dec. 8, 2016).

¹⁵ 42 U.S.C. § 659a and Executive Order 13752, 81 Fed. Reg. 90,181 (Dec. 8, 2016).

¹⁶ Notice Designating State Title IV-D Child Support Agencies as “Public Bodies,” 82 Fed. Reg. 850 (Jan. 4, 2017), <https://www.gpo.gov/fdsys/pkg/FR-2017-01-04/pdf/2016-31895.pdf>.

¹⁷ Robinson, *supra* note 2 at 68-69.

¹⁸ Since 1996, federal law has authorized the Department of State, with the concurrence of the Department of Health and Human Services (HHS), to declare a country as a “foreign reciprocating country” (FRC) for child support purposes, if it met certain requirements. (See, 42 U.S.C. § 459a.) In order for the U.S. to establish a country as a foreign reciprocating country, that country must have in effect procedures available to U.S. residents for the: establishment of paternity; establishment of support orders

- A country with which a state has a reciprocal arrangement.¹⁹
- A country with laws and procedures substantially similar to UIFSA 2008.
- A country in which the Hague Child Support Convention is in force with respect to the U.S.

Foreign Support Agreement: The definition of foreign support agreement in § 701(6) integrates the Convention provisions regarding a “maintenance arrangement” under the Convention into UIFSA 2008.²⁰ For a foreign support agreement to be recognized, it must be enforceable as a support order in the foreign country of origin; it must have been formally drawn up or registered as an authentic instrument or authenticated by, or concluded, registered, or filed with a foreign tribunal; and it must be subject to review and modification by a foreign tribunal. Section 710 contains the requirements for recognition and enforcement of a foreign support agreement.

Convention References: Article 3 (Definitions); Article 30 (Maintenance arrangements)

Outside this State: The phrase “outside this state” (§ 102(18)) means a location in another state or a country, regardless of whether the country is or is not a “foreign country.” It is used when the application of a provision is to be as broad as possible, for example in UIFSA’s special evidentiary provisions §§ 316 - 318.

Requesting and Requested State: These terms are used in the Convention to refer, respectively, to the Contracting State that either requests or receives a request for assistance from another Contracting State. The equivalent terminology in UIFSA is initiating state and responding state.

Convention Reference: Article 12 (Transmission, receipt, and processing of applications)

State: UIFSA 2008 § 102(26) defines “state” (*lower case “s”*) as: a U.S. state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands or any territory or insular possession under the jurisdiction of the U.S., and an Indian nation or tribe. In reference

for children and custodial parents; and enforcement of support orders for children and custodial parents, including procedures for collection and distribution. Procedures must be available to U.S. residents at no cost, and the country must have a central authority for oversight and communication. The U.S. has bilateral arrangements with four countries – Australia, El Salvador, Israel and Switzerland – and 12 of the 13 Canadian provinces and territories – all but Quebec. The remaining FRCs became Convention countries once the Convention came into force in the U.S.

¹⁹ Section 459A(d) of the Social Security Act permits states to enter into reciprocal arrangements with countries that are not the subject of a federal declaration. Federal bilateral arrangements take precedence over any state reciprocal arrangement. At the state level, this is implemented through § 308(b) UIFSA (2008). A similar provision was in the Revised Uniform Reciprocal Enforcement of Support Act, the 1968 precursor to UIFSA. See Marilyn Ray Smith, “Child Support at Home and Abroad: Road to The Hague,” *Family Law Quarterly*, Vol. 43, No. 1 (Spring 2009), for a history of these agreements.

²⁰ Also see § 710. It is important to note that such an agreement between the parties in the U.S. would be treated as a contract, but, if the foreign agreement was enforceable only as a contract in the issuing country, it would not fall within the scope of the Convention.

to international child support cases under the Convention, the capitalized term “State” is used to refer to a country or sovereign State, not to a sub-unit of a country such as a state within the U.S., or a Canadian province or territory. A country that has ratified, accepted, or approved the Convention is also called a Contracting State or a Convention country.

Convention References: Article 46 (Non-unified legal systems – interpretation); Article 61 (Declarations with respect to non-unified legal systems)

2.2 Scope of the Convention

2.2.1 Requirement for Central Authority to Ensure Application is within the Scope of the Convention

Under the Convention, both the requesting and requested Central Authorities must review an application to ensure that it is within the scope of the Convention and complete. In the U.S., the state IV-D agency, in its role as the Central Authority, is the public body conducting this review, which must be completed before the application is sent to another country or before it is filed with the tribunal in the U.S.

The Convention provides the following limitations on the requested Central Authority review.

- It may not reject an incoming application solely because additional documents or information are needed. It may ask the requesting Central Authority for additional information or documentation.²¹
- It may refuse to process an application only if it is manifest that Convention requirements are not fulfilled. According to the Convention’s *Explanatory Report*, “manifest” means clear on the face of the documents that the requirements are not fulfilled.²² The stringent standard recognizes that the

²¹ Moreover, federal regulations governing IV-D agencies require the agency to continue processing the case to the extent possible. 45 C.F.R. 303.7(b)(3) and (d)(2)(iii).

²² Alegria Borrás and Jennifer Degeling, *Convention of 22 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance: Explanatory Report*, available on the Hague Conference website at www.hcch.net under the “Child Support / Maintenance Section” (hereinafter “*Explanatory Report*” or “*E.R.*”) para. 345. The *Explanatory Report* provides the following explanation of the limits and application of Article 12(8), which is inspired by Article 27 of the 1980, Hague Child Abduction Convention: “The test for ‘manifest that the requirements of the Convention are not fulfilled’ covers the situation where the Convention process is abused. For example, a requested Central Authority may refuse to process an application if a previous application by the same party concerning the same debtor had already been processed, and had failed on a specific ground; a subsequent application on the same grounds with no change of circumstances would be properly refused. At the same time, it was clear that experts did not want to retain ‘being without foundation’ as the test for refusal of an application. This would have given the requested Central Authority a wider discretion to refuse the application. It will be a matter for the requested Central Authority to determine whether it is manifest that the requirements of the Convention are not fulfilled.”

requesting Central Authority should have already reviewed the application to ensure that it complies with the Convention.

- It must promptly inform the requesting Central Authority of reasons for any refusal to process the application.

Convention Reference: Article 12 (Transmission, receipt, and processing of applications)

2.2.2 Mandatory Scope of the Convention

The Convention applies to the following:

- a) Maintenance obligations arising from a parent-child relationship²³ towards a child under the age of 21;²⁴
- b) Recognition and enforcement or enforcement of a decision for spousal support when the application is made with a claim within the scope of subparagraph (a); and
- c) With the exception of Chapters II (Administrative Cooperation) and III (Applications through Central Authorities) to spousal support.

There was early agreement that the mandatory scope of the Convention would cover enforcement of child support although there was considerable discussion on what age should be within the mandatory scope. Ultimately, the decision was to cover recognition and enforcement of a foreign child support order up to age 21, with a very limited exception related to direct requests.²⁵

If a country wants to limit the scope to recognition and enforcement of orders for children only up to age 18, it must do so by a reservation. A reservation is a unilateral statement made by a country, when ratifying a treaty, where it says it is taking exception to incorporating the legal effect of a certain provision of the treaty. The 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.

²³ The Convention also covers the establishment of parentage, if necessary to establish a child support obligation. See Convention Article 2(4) (provisions “shall apply regardless of the marital status of the parents”), Article 6(2) *h*) (Specific Functions of Central Authorities), Article 10(1) *c*) (Available applications).

²⁴ The *Explanatory Report* provides the following: “[Article 2] sub-paragraph a) describes the core maintenance obligations to which the whole of the Convention applies and these are maintenance obligations arising from a parent-child relationship towards a person under the age of 21 years. There are no doubts on this point, accepted by all delegations. The effect of the reference to the age of 21 years is different from that in the UN Convention on the Rights of the Child. It does not mean that States are obliged to modify internal rules if the limit for according maintenance in respect of children is below 21 years. Nor does it mean that States are obliged to modify the age of majority. Paragraph 1 merely fixes the scope of application of the Convention. The main effect of this is that there is an obligation under the Convention to recognise and enforce a foreign decision made in favour of a child up to the age of 21 years and to provide administrative assistance, including legal assistance, in respect of maintenance towards such persons.” *E.R.*, *supra* note 21, para. 46.

²⁵ Article 37(3). The limited exception is that a direct request to a tribunal on behalf of a vulnerable person could be made for recognition and enforcement of an order for maintenance for a child over age 21, where the order was made before the child was 21 years of age. The extension only applies in very narrow circumstances. The *Explanatory Report* states: “The extension applies only: (a) in the case of a direct request for recognition and enforcement of a maintenance decision in favour of a vulnerable person; (b) where the original decision was rendered at a time when the vulnerable person was still a child within the meaning of Article 2(1) *a*); and (c) where the original decision provided for maintenance beyond childhood by reason of an impairment.” *E.R.*, *supra* note 21, para.603.

Conversely a Contracting State can make a declaration to extend the application of the Convention “to any maintenance obligation arising from a family relationship, parentage, marriage or affinity, including in particular obligations in respect of vulnerable persons.”²⁶ The U.S. did not make such a declaration.

Under the Convention, Central Authorities are only required to provide assistance under Chapter II (Administrative Cooperation) and in relation to applications under Chapter III (Applications through Central Authorities). In the U.S. these are applications that a IV-D agency must transmit, receive, and initiate proceedings on, as appropriate.

Convention References: Article 2 (Scope); Article 62 (Reservations); Article 63 (Declarations)

2.2.3 Children over the Age of Majority

The definitions of child and child support order in § 102 UIFSA 2008 refer to the “age of majority” as defined by local law. The Convention requires recognition and enforcement of an order from another Convention country providing support up to the age of 21, even if the age of majority under state law is less than age 21. This is consistent with the position UIFSA has taken on interstate cases since its inception. Note the addition of the terms “state or foreign country” in § 604(a)(1) UIFSA 2008, which provides 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.

While the scope of the Convention extends to recognition and enforcement of maintenance obligations for children up to age 21, state law will apply with respect to determination of eligibility for the purposes of establishment of an order. Therefore, if the law of the particular state where the application is being heard does not require support obligations for children beyond the age of 18, the tribunal will not be obliged to establish a child support order for a 19 year old.²⁷

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 Convention (i.e. to age 21). Beyond that, the applicant may need to retain private counsel and to make a “Direct Request” under Article 37.²⁸

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.

Convention References: Article 2 (Scope); Article 32(5) (Limitations)

²⁶ See Convention Article 2(3).

²⁷ *E.R.*, *supra* note 21, para. 46.

²⁸ See Convention Article 37. Also, a decision for the support of a “vulnerable person” beyond age 21 may continue to be enforced, in the circumstances set out in Article 37(3). See note 26

2.2.4 Spousal Support

Recognition and enforcement of spousal support is within the mandatory scope requiring Central Authority assistance, if the spousal support is in conjunction with child support, although the two types of support may be set out in separate decisions or orders.²⁹

If the application is related to spousal support only, it is still within the scope of the Convention. However, Chapters II and III of the Convention dealing with administrative cooperation and Central Authorities do not apply unless a Contracting State makes a declaration under Article 63. The U.S. did not make such a declaration.

If a claimant wishes to establish an order for spousal support only, under § 705 UIFSA 2008 the individual must make a direct request to a tribunal. The IV-D agency will not be involved in that proceeding.

Similarly, a claimant seeking enforcement of an order for spousal support only (without a child support order) could make a direct request to the tribunal for assistance, and the matter would proceed under state law, Articles 1 – 6 of UIFSA 2008.

Convention Reference: Article 2 (Scope)

2.3 Applications

UIFSA 2008 §§ 704 (b) and (c) set out the applications that an obligee or obligor may bring under the Convention. Although the U.S. delegation urged that the same applications and services be available to both creditors and debtors, that position was ultimately not successful. Under UIFSA, the following applications must be available to an obligee under the Convention:

- Recognition or recognition and enforcement of a foreign support order;
- Enforcement of a support order issued or already recognized by the responding state;
- Establishment of a support order if there is no existing order, including determination of parentage (if necessary);
- Establishment of a support order if recognition of a foreign support order is refused under § 708(b)(2), (4), or (9);
- Modification of a support order of a tribunal of the responding state; and
- Modification of a support order issued by a tribunal of another state or a foreign country.

²⁹ E.R., *supra* note 21, para. 47.

The following applications must be available to an obligor under the Convention:

- Recognition of an order suspending or limiting enforcement of an existing support order of the responding state;
- Modification of a support order of a tribunal of the responding state; and
- Modification of a support order issued by a tribunal of another state or a foreign country.

Under the Convention and Article 7 of UIFSA, there is no application available to a debtor through a Central Authority to establish a support order or to determine parentage.³⁰

In order to receive services of a Central Authority under the Convention, the applicant must transmit the application through the Central Authority of the Contracting State in which the applicant resides to the Central Authority of the requested State.

Convention References: Article 10 (Available applications); Article 36 (Public bodies as applicants)

2.4 Documents and Evidence

2.4.1 Role of IV-D Agency

As noted earlier, in its role in the U.S. to receive applications, the IV-D agency will review incoming applications to ensure they contain the needed documents. If additional documents are needed, the agency will request them but will continue to process the application to the extent possible. An application may not be rejected solely on the basis that additional documents are required. A requested Central Authority may reject an application because of lack of documents only if the requesting Central Authority has failed to provide the information within three months of the request; even then, the decision is a discretionary one. The emphasis of the Convention is on administrative cooperation.

Convention References: Article 12 (Transmission, receipt, and processing of applications); Article 23 (Procedure for recognition and enforcement); Article 25 (Documents)

2.4.2 Convention Rules Related to Evidence

The Convention is very clear, in Articles 27 and 28, that the tribunal is bound by findings of fact on which the issuing State based its jurisdiction and cannot review the merits of the decision.

³⁰ Such an application could potentially be made under Article 37, Direct Requests, but no Central Authority services would be provided.

However, the Convention does not have any specific evidentiary provisions such as in §§ 316 - 318 of UIFSA. Introduction of evidence is governed by the law of the requested Convention country.

2.4.3 Application of UIFSA Special Rules of Evidence

The special rules of evidence and procedure in §§ 316 - 318 UIFSA 2008 have broad application to all international cases. The Official Comments to § 316 note, "...the special rules of evidence and procedure are applicable to a party or witness 'residing outside the state,' substituting for 'residing in another state.' This is the broadest application possible because the utility of these rules is not limited to parties in other states but extends to an individual residing anywhere."³¹

Convention References: Article 13 (Means of communication); Article 14 (Effective access to procedures); Article 29 (Physical presence of child and applicant not required)

2.4.4 Convention Forms

The Hague Convention forms were designed to work in different types of legal systems, be easily translated, and be electronically transmitted. Therefore, they include checkboxes and standard text. Unlike the U.S. intergovernmental child support forms, the Hague forms are attested to, but are not sworn to under penalty of perjury. Instead the requesting Central Authority attests that the application complies with the Convention and is complete. The tribunal may decide whether to accept such documents into evidence or whether sworn documentation is required in a particular circumstance, such as an application for establishment of an order that includes a series of factual assertions.

The Convention includes two forms that must be used by all Convention countries. A Transmittal form (Annex I) must accompany each application, and, within six weeks of receipt of an application, the requested Central Authority must acknowledge receipt of the application, using the mandatory Acknowledgement form (Annex II) to the Convention. In addition to the required forms, there are forms recommended by the Hague Conference for use in cases under the Hague Child Support Convention. The U.S. and most other Convention countries, in their Country Profile, have requested use of these Hague recommended forms. The forms include an application for each type of Convention application, a Statement of Enforceability of a Decision, an Abstract or Extract of a Decision, a Statement of Proper Notice, a Financial Circumstances Form, and a Status Report for each type of application.

<https://www.acf.hhs.gov/css/resource/hague-child-support-convention-forms>.

UIFSA recognizes that child support enforcement proceedings might have the unintended consequence of putting a child or party at risk of domestic violence. Section 312 authorizes confidentiality in instances where there is a risk of domestic violence or child abduction. Where a party has made such an allegation in an affidavit or pleading

³¹ Sampson and Brooks, *supra* note 11 at 257.

under oath, the identifying information must be sealed and may not be disclosed to the other party or to the public until a hearing is held by the tribunal that determines what, if any, of the personally identifiable information (PII) may be disclosed. OCSE's recent revisions to the federal Intergovernmental Child Support Enforcement Forms facilitate the sealing of PII through adoption of a new form, Personal Information Form for UIFSA § 311, which segregates to a separate form the identifying information required to be included in the petition or accompanying documents. The top line of the form indicates if a nondisclosure affidavit or pleading is attached.

<https://www.acf.hhs.gov/css/resource/uifsa-intergovernmental-child-support-enforcement-forms>

The Convention application forms similarly allow for confidential information to be segregated on a separate form if there is a risk of harm. Article 40 prohibits the disclosure or confirmation of information gathered or transmitted in circumstances where the Central Authority determines that it would jeopardize the health, safety, or liberty of a person. A determination to this effect by one Central Authority must be taken into account by another Central Authority, particularly in cases of family violence.³²

2.4.5 Obtaining Testimony

UIFSA § 316(a) provides that the physical presence of a nonresident party cannot be required in the forum state. Section 316(f) provides an alternative means for testimony by a nonresident party or witness. Unlike UIFSA 1996, UIFSA 2008 contains a requirement that a tribunal must permit a party or witness residing out of the state to testify by telephone, audiovisual, or other electronic means. The tribunal has a duty to cooperate with other tribunals in determining the appropriate location for any deposition or testimony. Judges may be familiar with this rule as “outside the state” means another U.S. state as well, and not just parties or witnesses residing in Convention countries.

Section 316 also addresses the requirement for sworn evidence. Subsection (f) allows the nonresident witness or party testifying by telephone, audiovisual means, or other electronic means to provide testimony under penalty of perjury, replacing the need for sworn testimony under oath.

Convention References: Article 29 (Physical presence of applicant or child); Article 13 (Means of communication)

2.4.6 Verification of Witnesses

Where witnesses are not present before the tribunal, and are testifying by telephone, or through an audiovisual means, verification of the person's identity can be

³² The words “taken into account” allow a certain flexibility to the Central Authority in the requested State. It is not bound by the determination made by the Central Authority in the requesting State.” *E.R.*, *supra* note 20, para. 611.

done by an official outside the state such as a notary or agency representative. The party before the tribunal may also be able to verify the witness' identity.

Convention Reference: Article 13 (Means of communication)

2.4.7 Documentary Evidence

Obtaining and using documents from witnesses or parties outside the state is also streamlined under UIFSA 2008. Under § 316(b), affidavits, documents substantially complying with the federally mandated forms (which now include Convention forms), and documents incorporated by reference into any of them, can be admitted in evidence, if signed under penalty of perjury, and if such evidence would not be excluded as hearsay if given in person.

Similarly, § 316(e) provides that documents transmitted from outside the state to a tribunal by telephone, telecopier, or other electronic means that do not provide an original record, may not be excluded from evidence on an objection based on the means of transmission.

Convention Reference: Article 13 (Means of communication)

2.4.8 Certified Copies of Orders

There is no requirement for a certified copy of an order to be provided with an application for recognition and enforcement of the order. The requirement under § 706(a) is for the complete text of the order or an abstract or extract, if permitted by state law. However, the respondent is entitled to challenge the registration and enforcement on the basis that the record lacks integrity or authenticity and the tribunal may request a complete certified copy of the document (§ 708(b)(5)).

Convention Reference: Article 25(2) (Documents)

2.4.9 Communication between Tribunals

Section 317 authorizes a state tribunal to communicate with a tribunal "outside this state." "Outside this state" means a tribunal of another state (as defined by UIFSA), a foreign country, or a foreign nation that is not defined as a foreign country under UIFSA. In other words, any place other than within the state where the tribunal is located. The communication can be about the laws, legal effect of an order, or status of a proceeding.

Section 317 explicitly authorizes a tribunal to communicate with a tribunal of another state, foreign country, or foreign nation that does not meet UIFSA's definition of a foreign country.

2.4.10 Requests to a Tribunal from another State

Where an application or other litigation is proceeding in another state or foreign country, § 318 authorizes a tribunal to help a tribunal of another state, foreign country, or foreign nation with the discovery process. The Central Authority is required by the

Convention to take “all appropriate measures” to “facilitate the obtaining of documentary or other evidence.”

Convention References: Article 6 (Functions of Central Authorities); Article 7 (Requests for specific measures)

2.4.11 Limits on Challenging Evidence

If there is a challenge to the admissibility of any evidence, forum law governs.

UIFSA 2008 § 707(e) provides, however, that the tribunal is bound by the findings of fact on which the tribunal based its jurisdiction, and that the tribunal may not review the merits of the order. Section 708 limits the available defenses to contest registration and enforcement of a Convention order. Other provisions of Articles 1 - 6 may apply to the extent that they do not conflict with Article 7. For instance, §§ 605 – 608 apply generally to the contest of a registered support order. For example, either party may present or may contest evidence respecting arrearages and payments. The tribunal would address this in the same manner as a similar allegation respecting enforcement of a state order.

Convention References: Article 23 (Procedure on application for recognition and enforcement); Article 22 (Grounds for refusing recognition and enforcement); Article 27 (Findings of fact); Article 28 (No review of the merits)

2.4.12 Abstract or Extract of a Decision

The ability to use an abstract or an extract of a decision in Convention cases is an important step in reducing the translation costs associated with international child support case processing.³³

Most states have enacted UIFSA 2008 with the bracketed language in § 706(b)(1), which requires a request for registration of a Convention order to be accompanied by a complete text of a support order “or an abstract or extract of the support order.”³⁴ The abstract or extract must be drawn up by the issuing foreign tribunal. UIFSA recognizes the Abstract form recommended by the Hague Conference as an acceptable form.

Convention Reference: Article 25 (Documents); Article 57 (Provision of information concerning laws, procedures, services)

³³ *E.R.*, *supra* note 21, para. 543.

³⁴ UIFSA (2008) § 706(b)(1) allows each state to determine whether it will accept an abstract or extract of the support order being registered, rather than the complete text of the order. Only eight states did not include the bracketed language and, therefore, require the “complete text of the support order”: Connecticut, Delaware, Iowa, Kansas, Maryland, Missouri, New Hampshire, and South Carolina.

2.4.13 Hague Evidence Convention

The issue of the applicability of both the Hague Evidence Convention and the Hague Service Convention was the subject of much discussion during the negotiation of the child support Convention.³⁵ It is possible that in taking steps authorized under UIFSA 2008, the tribunal or practitioners may encounter issues about the applicability of the 1970 Hague Evidence Convention. Officials in some foreign countries may suggest that matters should proceed in their jurisdiction using the Evidence Convention, rather than using child support mechanisms encouraged under UIFSA 2008.³⁶

Case law is clear that in the U.S., the Hague Evidence Convention is not the exclusive means to facilitate production of documents or other evidence in an international case.³⁷ Furthermore, whether the Hague Evidence Convention is applicable at all may turn on whether the actions being taken can be considered to be an “evidentiary proceeding.” Paragraph 168 of the *Explanatory Report* notes:

The term “evidence” should be interpreted broadly. It could be any data that is publicly available in the requested State or it could be a document obtainable upon request, or it could be evidence that can only be obtained through a judicial process.³⁸

It is only with respect to the third category, evidence that can only be obtained through a judicial process that the Evidence Convention would appear to have any applicability. In most situations, where requests for documents or public information are made, the requests may be preliminary to even filing an action, and clearly would not be a part of an evidentiary proceeding. For example, requesting assistance in locating a party or in verifying identity and obtaining genetic material for a DNA test, prior to filing an application for establishment of a support order, should not be considered to be an evidentiary proceeding. It could also be argued that, at the discovery stage of a proceeding, production of materials that may or may not ever be introduced as evidence would not warrant application of the Evidence Convention.

Convention Reference: Article 50 (Relationship with prior Hague Conventions on service of documents and taking of evidence)

³⁵ Robert Keith, “Ten Things Practitioners Should Know About the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance” *Family Law Quarterly*, 51 Fam. L. Q. 255, 283 (2017).

³⁶ For example, Switzerland may not allow a party residing in their country to participate in a telephonic hearing, which they consider an act of a foreign authority on their territory, unless authorized by the Central Authority under the Evidence Convention.

³⁷ *Societe Nationale Industrielle Aerospatiale et al. v. U.S. District Court for the Southern District of Iowa*, 482 U.S. 522 (1987).

³⁸ *E.R.*, *supra* note 21, para. 168.

2.5 Currency Conversion

An initiating tribunal is required, if asked by the responding tribunal in another country, to specify the amount of support sought and to convert that amount into the equivalent amount in a foreign currency at the applicable official or market exchange rate as publicly reported (§ 304(b)). If acting as the responding tribunal, the tribunal must convert the amount stated in a foreign currency to an equivalent amount in U.S. currency, in order to enforce the order, a judgment, or arrears, or to modify the order (§ 305(f)).

UIFSA 2008 uses the terms “applicable official or market exchange rate” to allow states and tribunals to determine the exchange rate used and the frequency of the conversion. The key element is that the amount should be an “equivalence,” suggesting that the currency conversion may need to be completed at appropriate intervals to account for exchange rate fluctuations.

There is no federal rule regarding what date should be used for converting the amount stated in the foreign currency to U.S. dollars.³⁹ State law and procedure apply. It is important to note that the conversion of a foreign support amount into U.S. dollars is not a modification of the order. It is simply a conversion for the purposes of enforcement. The obligor continues to owe the full amount set out in the currency used in the order, and, if there is a discrepancy, it should be resolved in the issuing country.

Convention Reference: Article 6 (Specific functions of Central Authorities)

2.6 Translation

Any outgoing application and related documents on a Convention case must be provided in their original language and accompanied by a translation into an official language of the requested State or another language that the requested State has declared it will accept. (See the OCSE website for translated versions of the Hague Convention forms: <https://www.acf.hhs.gov/css/resource/hague-child-support-convention-forms>.)

³⁹ OCSE-PIQ-04-01, Processing Cases with Foreign Reciprocating Countries (March 31, 2004), Question/Response 6. <https://www.acf.hhs.gov/css/resource/processing-cases-with-foreign-reciprocating-countries>. See also, Barry J Brooks, Assistant Attorney General, Child Support Division, Office of the Attorney General of Texas, *International Family Support: Currency Conversion*, for both a legal history of currency conversion issues before U.S. courts and practical recommendations for handling currency conversion issues in UIFSA cases. The author suggests that judges, attorneys and child support agencies use “U.S. dollar equivalence” language for current and arrears amounts when foreign support orders are registered. “The most important aspect of obtaining enforcement of a foreign support order is to assure that nothing in the US order can be construed as an impermissible ‘modification’ of the support amount or a ‘fixing’ of the currency exchange. A statement by the tribunal that all US dollar recitations are an equivalence should make this clear.” Paper is available on the website of the Eastern Regional Interstate Child Support Association (ERICSA) at <https://ericosa.org/sites/default/files/Board%20Documents/InterGov%20Committee/Barry%20Brooks%20Currency%20Conversion%20paper.pdf>

Communications between tribunals related to *outgoing* Convention cases should be in the language of the requesting State, or in either English or French. A country may make a reservation to the use of either English or French and, accordingly, the U.S. made a reservation objecting to the use of French for communications related to *incoming* cases.

Convention References: Article 44 (Language requirements); Article 62 (Reservations)

2.7 Cost Free Services

Section 704(d) UIFSA 2008 prohibits a tribunal from requiring a security, bond, or deposit in order to guarantee the payment of costs and expenses of a Convention proceeding. The Convention requires that applicants be provided with effective access to procedures, including enforcement and appeal procedures, for applications under the Convention.

Effective access may include free legal assistance. Legal assistance means the assistance necessary to enable applicants to know and assert their rights and to ensure that their applications are fully and effectively dealt with in the requested State.⁴⁰ Legal assistance can be provided through the provision of legal advice, but it may also involve the provision of assistance in bringing a case before an administrative tribunal, legal representation, and exemption from costs of the proceedings. Legal assistance does not imply an attorney-client relationship. The type of assistance required will depend on the procedures used in a state for child support applications.

Free legal assistance, where necessary, must be provided to an obligee in an application concerning child support for a child under 21. However, unless the application is for recognition, recognition and enforcement, or establishment after a refusal to recognize an order under Article 20(4), there are some permissible restrictions on the requirement to provide free legal assistance.

If the application is for establishment or modification, the requirement to provide free legal assistance to an obligee may be subject to a merit test.⁴¹ If free legal assistance is refused, the obligee may still proceed with the case if he or she chooses to do so.

⁴⁰ Convention Article 3 c).

⁴¹ The *Explanatory Report* states: "In many countries, free legal assistance (including legal advice or legal representation) is provided to citizens or residents who satisfy a means and merits test. A 'means test' examines the financial means of a person, which may include income and / or assets, to determine if their financial means are sufficiently low to enable them to qualify for a grant of free legal assistance. 'Merits' in this context does not refer to the merits of the person as an individual but to her / his legal claim. A 'merits test' examines the prospects of success and the worthiness of any legal proceedings for which a person may be granted free legal assistance. If prospects of success are poor, a grant of aid is unlikely to be made, even if the person qualifies for aid under the 'means test.' The purpose of the means and merits test is to ensure that limited public funds for legal aid and representation are used for the most deserving or needy cases which have a good chance of success." *E.R.*, *supra* note 21, para. 405.

There is no requirement to provide free legal assistance to an obligor, other than in the very limited circumstances where the obligor benefited from free legal assistance in the issuing State. In that case, the obligor would be entitled to free legal assistance in the requested State, at least to the same extent as provided under State law, in the same circumstances.⁴²

Convention References: Article 8 (Central Authority costs); Article 14 (Effective access to procedures); Article 15 (Free legal assistance for child support applications); Article 17 (Applications not qualifying under Article 15 or Article 16).

⁴² Convention Article 17 b).

3. Recognition and Enforcement

3.1 Overview

An application for recognition or for recognition and enforcement is made in circumstances where there is an existing Convention support order. In the majority of cases, the obligee will seek recognition and enforcement of the support order. However, the Convention – and UIFSA 2008 – allow a creditor to 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 case enforcement is later needed. A debtor may only request recognition of a Convention support order to suspend or limit the enforcement of an existing support order in the requested State.

To the extent there is no conflict with Article 7, the registering tribunal will apply Article 6 of UIFSA.⁴³ 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 notify the nonregistering party.

At this point, Articles 6 and 7 diverge. Several § 602(a) requirements are modified by Article 7. In lieu of two copies (one certified) of the order being registered, for Convention cases, only the text or abstract of the order is required. Similarly, only a record of arrears is required, not a sworn statement of arrears.

Section 706(b) lists the documents that must accompany a request for registration of a Convention order.⁴⁴

- Text of order, or an abstract or extract of order, if acceptable in registering state.
- Record stating that order is enforceable in issuing country.
- Record attesting to proper notice and opportunity to be heard if respondent did not appear and was not represented in issuing country.
- Record of arrears.
- Record showing a requirement for automatic adjustments to the support amount, if any, and information necessary to make the calculations.

Additionally, § 706(d) provides a new basis upon which the tribunal can vacate the registration on its own motion. See section 3.5 of the Guide. Section 707 governs timeframes for contesting the registered order; and the tribunal is governed by § 708

⁴³ § 706(a).

⁴⁴ It is important to note that this is an exhaustive list of the documents and information that may be required in an application for recognition or recognition and enforcement. No other documents may be required. *E.R.*, *supra* note 21, para. 301.

regarding the limited grounds on which it may refuse to recognize and enforce a registered Convention support order. Section 709 addresses partial enforcement of a registered order.

If the state issued its own support order or has already recognized a Convention order, and the obligee is seeking enforcement of that order, there is no need to proceed with recognition and the applicant will complete an Application for Enforcement of a Decision Made or Recognized in the Requested State. This application may be a basis for administrative enforcement, but will not come before a tribunal unless required by a particular enforcement method.

Convention References: Article 11 (Application contents); Article 22 (Grounds for refusing recognition and enforcement); Article 23 (Procedure on an application for recognition and enforcement); Article 25 (Documents)

3.2 Role of IV-D Agency

The Convention requires the IV-D agency, as the requested Central Authority, to complete certain reviews prior to registering the incoming order with the tribunal. These include checking the following:

- The application complies with the requirements of the Convention. Generally this is an examination to determine the application is within the scope of the Convention;
- The required documents are included. If documents are not provided, the IV-D agency cannot reject the application, but must request the additional documents before forwarding the matter to the tribunal;
- The application has been sent by a Central Authority of a Convention country in which the applicant resides;
- That the party bringing the application is a permitted applicant under the Convention; and
- That the order to be registered was issued in a Convention country.

The incoming application may only be rejected if it is manifest that the requirements of the Convention are not met.⁴⁵ If further documents are required, the application may not be rejected unless the requested documents are not provided within three months.

⁴⁵ In most instances, the IV-D agency review will be a pro forma evaluation to determine whether the requirements listed have been satisfied. The review by the requested Central Authority will, however, also consider whether the Convention process has been abused. See *E.R. supra* note 21, para. 345.

After the review, if the agency is satisfied that the application fulfills the requirements of the Convention, the IV-D agency will send the application to the tribunal for registration.

Convention Reference: Article 12 (Transmission, receipt and processing of applications and cases through Central Authorities)

3.3 Role of the Tribunal

In § 103, a state legislature designates the state’s UIFSA tribunal or tribunals, as well as the UIFSA support enforcement agency or agencies. These entities are tasked by state law with fulfilling the duties described in UIFSA 2008.

Upon receipt of a registration request, the registering tribunal shall 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, regardless of their form.”⁴⁶ Once filed, the order is registered.⁴⁷ These UIFSA 2008 procedures comport with the Convention’s requirement that “the responsible authorities must act ‘promptly’ or ‘without delay’ in registering or declaring enforceable the decision.”⁴⁸

Convention Reference: Article 23(2) (Procedure on an application for recognition and enforcement)

3.4 Notice of Registration

Section 706(e) UIFSA 2008 requires the tribunal to “promptly” notify both parties of the decision to register the order or, where the tribunal has vacated the registration pursuant to its *ex officio* review (see below), to “promptly” notify both parties of the order vacating registration. This notification allows the parties to contest the registration or appeal the vacating of the registration.

Convention Reference: Article 23(5) (Procedure on an application for recognition and enforcement)

3.5 Ex Officio Review

For Convention cases only, under § 706(d), the tribunal may vacate the registration on its own motion, if recognition and enforcement of the order would be manifestly incompatible with public policy. This is an *ex officio* preliminary review by the tribunal without any participation by the applicant or respondent.

This new process, permitted by the Convention under Article 22 a), is noted to be “in tension with the core UIFSA policy of requiring recognition.”⁴⁹ Importantly, the *ex officio* review is not a review of the merits of the decision. This is not permitted under

⁴⁶ § 602(b).

⁴⁷ § 603(a).

⁴⁸ Convention Article 23(2) a); *E.R.*, *supra* note 21, para. 497.

⁴⁹ Sampson and Brooks, *supra* note 11, Comment to § 706(d) at 313-314.

§ 707(e). Additionally, UIFSA is explicit, the tribunal is “bound by the findings of fact on which the foreign tribunal based its jurisdiction.”

“Neither the Convention nor UIFSA 2008 provides much instruction about what would cause an order to be ‘manifestly incompatible with public policy’ and it is not clear what the treaty negotiators had in mind.”⁵⁰ Nonetheless, the review is expected to be more than a superficial review of the incoming documents. The tribunal, at a minimum, should review the incoming order and supporting documents. It has been suggested that since the tribunal acts within its own largely undefined authority, the review may be *de minimus* or it could be more detailed, as the circumstances warrant.⁵¹

The refusal to register the order for enforcement must be based on a finding that the decision is manifestly incompatible with public policy (“*ordre public*”).⁵² The expectation is that this would only apply under “certain exceptional circumstances.”⁵³

The *Explanatory Report* to the Convention notes that a systematic policy exception (for example, “to refuse to recognize and enforce child support orders on the basis that, under its law, a father has no obligation to maintain a child born out of wedlock”⁵⁴) is not permitted.

A possible example of circumstances where the recognition and enforcement of an order might lead to an intolerable result is one where:

Pursuant to Article 22 a), the public policy exception, a U.S. competent authority could decline to recognize and enforce a decision against a left-behind U.S. parent in an abduction case where the child had been wrongfully taken or retained, on the grounds that recognition and enforcement of such decision would be manifestly incompatible with the U.S. public policy of discouraging international parental child abduction.⁵⁵

The ULC’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.”⁵⁶ The ability of the tribunal to discern this information from simply reviewing

⁵⁰ Robinson, *supra* note 3 at 26.

⁵¹ Keith, *supra* note 35 at 261; *E.R.*, *supra* note 21, para. 344-345.

⁵² § 708(b)(1).

⁵³ Sampson and Brooks, *supra* note 11, Comment to § 706(d) at 313-314.

⁵⁴ *E.R.*, *supra* note 21, para. 479.

⁵⁵ Department of State transmittal to the United States Senate; Treaty Doc 110-21, Senate, 110th Congress, 2nd Session; “In its application of this provision, the competent authority should verify whether the recognition and enforcement of a specific decision would lead to an intolerable result in the State addressed. A discrepancy of any kind with the internal law is not sufficient to use this exception. Verifying whether a decision is contrary to public policy should not serve as a pretext for embarking on a general review on the merits, something which is expressly forbidden under the Convention (see Art. 28 and para. 548 of this Report).” *E.R.*, *supra* note 21, para. 478.

⁵⁶ Sampson and Brooks, *supra* note 11, Comment to § 706(d) at 314; Robinson, *supra* note 3 at 26-27.

the documents filed may be questioned, however this type of information may be disclosed in the order itself, or indirectly referenced in the accompanying documents.⁵⁷

As noted above, the parties must be given notice if the tribunal decides to vacate the registration under this process.

The *ex officio* review on public policy grounds under § 706(d) should be distinguished from the public policy defense that a respondent may raise under § 708(b) (see 3.7.1, below).

Convention References: Article 22 (Grounds for refusing recognition and enforcement); Article 27 (Findings of fact); Article 28 (No review of the merits)

3.6 Contesting Registration of a Decision

Pursuant to § 707(a) UIFSA 2008, the procedures set out in §§ 605 – 608 UIFSA 2008 generally apply to a contest of a registered Convention order. However, under § 707 UIFSA 2008, there are some important differences between contesting a registration of a Convention order and a non-Convention order.

The time for contesting the registration of a Convention order is longer than that allowed for contest of non-Convention orders. If the party to be notified is in the U.S., under § 707(b) UIFSA 2008 the party has 30 days, rather than 20 days, to contest. If the party to be notified is outside the U.S., he or she has 60 days to contest the registration.

The Convention order is enforceable if it is not contested within the specified timeframes (§ 707(c)). A challenge or appeal, if brought, does not stay the enforcement of the registered order, unless there are exceptional circumstances (§ 707(g)).

Convention Reference: Article 23(6) (Procedure on an application for recognition and enforcement)

3.7 Grounds to Contest Registration

There are only very limited grounds for contesting recognition and enforcement of a Convention order. These are set out in § 708(b) UIFSA 2008. The recognition and enforcement of a registered order may be refused if the tribunal finds one or more of the following grounds is established.

- (1) Recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard;

⁵⁷ See discussion on “*Ex Officio* Review” in Robert Keith, “What the Trial Judge Needs to Know About the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance” 69 *Juv. & Fam. Ct. J.* 5, 7 (2018).

- (2) The issuing tribunal lacked personal jurisdiction consistent with § 201;
- (3) The order is not enforceable in the issuing country;
- (4) The order was obtained by fraud in connection with a matter of procedure;
- (5) A record transmitted in accordance with § 706 lacks authenticity or integrity;
- (6) A proceeding between the same parties and having the same purpose is pending before a tribunal of the state and that proceeding was the first to be filed;
- (7) The order is incompatible with a more recent support order involving the same parties and having the same purpose if the more recent support order is entitled to recognition and enforcement under the [act] in the state;
- (8) Payment, to the extent alleged arrears have been paid in whole or in part;
- (9) In a case in which the respondent neither appeared nor was represented in the proceeding in the issuing foreign county;
 - (A) if the law of that country provides for prior notice of the proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or
 - (B) if the law of that country does not provide for prior notice of the proceedings, the respondent did not have proper notice of the order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal.
- (10) The order was made in violation of § 711.

UIFSA's official comments offer the following explanation of the bases for § 708(b):

Subsection (b) combines provisions from four separate articles in the Convention. These articles provide an extensive number of specific reasons for a tribunal or a support enforcement agency of one Convention country to refuse to recognize a child support order from another Convention country. For this act to be consistent with the Convention, it is necessary to identify the potential defects of a support order from a Convention country in which a defendant might raise a challenge based on lack of jurisdiction, due process, or enforceability of an order for arrearages. The majority of these defects are arguably self-explanatory,

and almost all are subject to factual dispute to be resolved by the tribunal...⁵⁸

These grounds are described further below.

Convention References: Article 23(7) and (8) (Procedure on an application for recognition and enforcement); Article 22 (Grounds for refusing recognition and enforcement)

3.7.1 Manifestly Incompatible with Public Policy

The public policy exception is expected to have very limited applicability;⁵⁹ and, if raised as a defense by a respondent, it is most likely to be founded on a failure to “observe minimal standards of due process.”

The Chair of the Drafting Committee for the UIFSA 2008 amendments noted that, when public policy is raised as a defense:

Guidance on the meaning of this term was provided on the floor of the ULC during debate on the 2008 amendments... (S)everal commissioners suggested that UIFSA (2008) should be amended to provide expressly for due process protections. Thus, the provision in section 708(b)(1), which originally tracked the Convention language precisely, was amended....⁶⁰

Section 708(b)(1) now reads: “[R]ecognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard.” In the U.S. it appears to be clear that the public policy consideration, when raised by the respondent as a defense, should focus upon the due process rights that were afforded to the parties in the issuing country.⁶¹ The determination of the “minimum standards of due process” and “notice and an opportunity to be heard” are matters that fall within the general common law jurisprudence. Due process as provided in § 708(b)(1) goes beyond the requirement for notice and an opportunity to be heard or to challenge an order, as set out in subsection (b)(9). A tribunal will be familiar with the types of situations where minimum standards of due process are not met. These could include decisions rendered against unrepresented minors or where proof of cognitive

⁵⁸ Sampson and Brooks, *supra* note 11, Comment to § 708(b) at 317.

⁵⁹ Keith, *supra* note 35 at 263-266.

⁶⁰ Robinson, *supra* note 2, fn 31 at 70-71.

⁶¹ See, *infra* section 3.7.1 for further examples noting this distinction when public policy is raised as a defense rather than considered during the ex officio review.

disability or limited language proficiency created an incapacity to understand and participate in the proceedings.⁶²

Convention Reference: Article 22 a) (Grounds for refusing recognition and enforcement)

3.7.2 Lack of Personal Jurisdiction

Consistent with established constitutional law, the U.S. requires personal jurisdiction over a debtor in order to establish a support order.⁶³ For the overwhelming majority of Convention countries, however, support jurisdiction is based on the residence of the obligee and child. “The Convention reconciles these two very different approaches by allowing a country to make a reservation to child-based jurisdiction.”⁶⁴ The U.S. has made a reservation under the Convention respecting recognition of an order based on the habitual residence of the obligee or child, or the nationality of one of the parties.

If the respondent timely challenges the registered Convention order pursuant to § 708 (b)(2), the court must “undertake a determination of whether the [eight] jurisdictional bases of Section 201 would have been applicable if that had been raised in the foreign tribunal. If so, the order is enforceable in this country, notwithstanding that the foreign tribunal based its decision on jurisdiction on the fact that the child or the obligee resided in that forum.”⁶⁵ In other words, if the facts of the case support a basis for jurisdiction under § 201 of UIFSA, such that the order could have been entered under the same circumstances in the U.S., then the tribunal must recognize the order even if the issuing foreign tribunal used creditor-based jurisdiction.

The Hague recommended form, Application for Recognition or Recognition and Enforcement, will provide the necessary information, in most cases, to establish the factual bases for jurisdiction over the respondent.⁶⁶ There are checkboxes in section 7 of the form where the applicant can indicate the bases for recognition and enforcement. They include criteria similar to those under § 201 UIFSA 2008 sufficient to support long-arm jurisdiction. There is also a checkbox that is particularly relevant to a tribunal in the U.S. It allows the applicant to specify factual circumstances in which the law of the requested country would confer or would have conferred jurisdiction on its authorities to make such a decision.

If the Convention support order cannot be recognized and enforced because no nexus between the respondent and the forum can be found, the tribunal is required to

⁶² *Id.*

⁶³ *Kulko v. Superior Court*, 436 U.S. 84 (1978); *Vanderbilt v. Vanderbilt*, 354 U.S. 416 (1957).

⁶⁴ Robinson, *supra* note 3 at 25.

⁶⁵ Sampson and Brooks, *supra* note 11, Comment to § 708(2) at 320 – 321.

⁶⁶ See discussion of forms in section 2.4.4 of this Guide.

allow a reasonable time for the applicant to seek the establishment of a new support order. See § 708(c). This is discussed further below.

Convention Reference: Article 20(3) and (4) (Bases for recognition and enforcement)

3.7.3 Enforceability in Issuing Country

In order to be entitled to recognition, the Convention order must be enforceable in the issuing country (§ 706(b)(2)). The required documentation for the application includes a Statement of Enforceability of a Decision. The tribunal is not expected to look behind that certification, unless enforceability is raised as a defense under § 708(b)(3).⁶⁷ It will be up to the respondent to establish that the decision is unenforceable in the issuing country.

Importantly, the order does not have to be enforceable in the requesting country. If the order was issued by a different Convention country, a representative of a competent authority in that country must complete the Statement of Enforceability.⁶⁸

Convention References: Articles 20(6) (Bases for recognition and enforcement), Article 25(1) b) (Documents)

3.7.4 Procedural Fraud

Non-recognition on the grounds that the decision was obtained by fraud in connection with a matter of procedure (§ 708(b)(4)) is well-recognized by courts. The *Explanatory Report* emphasizes that “[f]raud is deliberate dishonesty or deliberate wrongdoing.” Cited examples include “where the plaintiff deliberately serves [the pleading]...to the wrong address, or where the party seeks to corrupt the authority, or conceals evidence....”⁶⁹ Noting that cases of fraud are not necessarily covered by the public policy exception set out in Convention Article 22 a), procedural fraud “presupposes the presence of a subjective element of wilful misrepresentation or fraudulent machinations, not simply a mistake or negligence, on the part of the party seeking recognition and enforcement.”⁷⁰

3.7.5 Challenge to the Authenticity or Integrity of a Record

Although the initial transmission of an application for recognition and enforcement does not require provision of certified copies of any documents, including the order, under § 708 a challenge or appeal may be brought on the basis of the authenticity or integrity of a document.⁷¹ In the event that there is a challenge on this basis, an appropriate response from the tribunal is to initiate a request for a complete copy of the document, certified by the competent authority, to be provided by the

⁶⁷ Keith, *supra* note 35 at 268, IV. Statement of Enforceability.

⁶⁸ *E.R.*, *supra* note 21, para. 240.

⁶⁹ *E.R.*, *supra* note 21, para. 480.

⁷⁰ *E.R.*, *supra* note 21, para. 481.

⁷¹ § 708(b)(5).

requesting country. The *Explanatory Report* notes that if a certified copy of a document is transmitted at the first stage, with the Application, it should not be the basis of such a challenge.⁷²

Convention References: Article 23(7) c) (Procedure on an application for recognition and enforcement); Article 25(2) (Documents)

3.7.6 Pending Proceeding

If there are proceedings between the same parties and having the same purpose pending before a tribunal in the requested state, and that proceeding was the first to be filed, § 708(b)(6) provides grounds to refuse recognition and enforcement. The *Explanatory Report* emphasizes the limitation that the duplicate proceedings must be for the same purpose, maintenance. “In maintenance, the ‘cause of action’ is always the same (i.e. maintenance), the only difference is whether the request is for maintenance, or for its modification, or, if the action is introduced by the debtor, for a declaration about the nonexistence of an obligation to pay maintenance.”⁷³ The law of the requested state controls when a proceeding is deemed pending.

3.7.7 Incompatible Order

Cases with conflicting decisions offer another basis to challenge recognition of an order. Section 708(b)(7) requires that the conflicting order not only be between the parties and have the same purpose, but also that the conflicting order be more recent and entitled to recognition and enforcement – in UIFSA-terms, it would be the controlling order. If the more recent order was not issued by a tribunal in the requested state, “it is necessary for this decision to fulfill the conditions to be recognized or enforced in the State addressed.”⁷⁴

3.7.8 Full or Partial Payment

A respondent may challenge the registration on the basis of full or partial payment of the arrears under the order (§ 708(b)(8)). A dispute about the integrity of the document establishing arrears would fall under § 708(b)(5). However, the tribunal should note that § 316(c) UIFSA 2008 allows a custodian of the record of child support payments to certify and forward a copy that can be introduced as evidence of the facts asserted in it. This record is admissible to show whether payments were made, and, if included in the order transmitted for recognition, the tribunal is bound by the findings of fact made by the foreign tribunal.

Convention Reference: Article 23(8) (Procedure on an application for recognition and enforcement)

⁷² *E.R.*, *supra* note 21, para. 510.

⁷³ *E.R.*, *supra* note 21, para. 483.

⁷⁴ *E.R.*, *supra* note 21, para. 485.

3.7.9 Due Process Where Respondent Neither Appeared nor was Represented in Foreign Proceeding

Subsection 708(b)(9)(B) addresses the most fundamental due process requirements that the respondent must have the opportunity to appear or be represented. Under some administrative systems, such as in New Zealand and Australia, the due process opportunity is available after the decision is rendered by providing the respondent notice of the decision and an opportunity to appeal on matters of fact or of law.

Convention Reference: Article 22 e) (Grounds for refusing recognition and enforcement)

3.7.10 Modification in Violation of § 711

Under the Convention, a proceeding to modify an order “cannot be brought by a debtor in any other Contracting State as long as the creditor remains habitually resident in the State where the decision was made.”⁷⁵ This provision is codified in § 711 UIFSA 2008. An order made in violation of this provision should not be recognized. The term “habitual residence” is not defined in the Convention. The expectation is that the meaning of the term will be determined on a case-by-case basis by the practice and case law of each jurisdiction. State law will apply to the determination of whether a party is habitually resident in a state or country where the order was issued.

Importantly, case law from the 1980 Hague Child Abduction Convention should not be used in determining the meaning of the term under the Hague Child Support Convention, as the two have very different public policy purposes. In the former Convention, the term should be interpreted restrictively so as to limit “forum shopping,” whereas in the 2007 Child Support Convention, the term should be less restrictively interpreted to provide a means for child support to be more easily obtained.⁷⁶

Convention Reference: Article 18(1) (Limit on proceedings)

3.7.11 Challenge to Parentage

The respondent cannot challenge the recognition and enforcement of the order on the basis of nonparentage. Section 708 expressly states that a tribunal may refuse recognition and enforcement only on the grounds listed in subsection (b). Further, § 315 UIFSA 2008 provides: “A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under this [act].” The official comments to § 315 explain: “If a collateral

⁷⁵ Article 18(1); Habitual residence is also listed as a jurisdictional basis at Article 20(1) c), but the U.S. has taken a reservation in respect of that paragraph.

⁷⁶ See discussion “*Two systems: direct and indirect jurisdiction*” in Sampson and Brooks, *supra* note 11, Comment to § 708(b)(2) at 321.

attack on a parentage decree is permissible under the law of the issuing jurisdiction, such a proceeding must be pursued in that forum and not in a UIFSA proceeding.”⁷⁷

3.8 Applicable Law – Proceeding to Challenge Registration

If the respondent challenges the registration of a Convention support order, the respondent has the burden of proving one of the allowable grounds. UIFSA’s general choice of law rules apply to Convention cases. The law of the country that issued the registered order governs the nature, extent, amount, and duration of current support payments, as well as the computation of arrears and accrual of interest on the arrears, and the existence and satisfaction of other obligations under the support order. The Country Profile of each Convention country provides information about the duration of child support under the law of that country.

Many countries extend parents’ support obligations beyond 21 – perhaps until the child has finished schooling or is self-sufficient. As discussed in section 2.2.2, however, the mandatory scope of the Convention requires recognition and enforcement of a current child support order only until the child turns 21. Countries may make a reservation limiting enforcement to orders for children under age 18, but the U.S. did not make such a reservation.

UIFSA’s choice of law rules provide that the duration of current support is governed by the law of the issuing state or foreign country. This is true regardless of whether the duration is longer (or shorter) than the duration of the registering state. One distinction in Hague Convention cases is that there is no Convention or federal requirement that the IV-D agency, acting as a Central Authority under the Convention, continue to provide services to enforce an order for current support after the child turns 21. Thus, whereas the order may continue to have force and effect in the issuing country beyond the age of 21, and it may indeed be enforceable in the U.S. as well, the creditor may have to employ private counsel to seek enforcement in the U.S.

The law of the responding state, where the challenge is being heard, will govern enforcement procedures and remedies. Limitation on the enforcement of arrears will be governed by the longer of the period provided under the law of the issuing country or the law of the responding state. Thus, collection of arrears by the Central Authority may in some circumstances continue to be within the scope of the Convention, even though there is no ongoing responsibility of the Central Authority to enforce current support after the child turns 21.

Convention References: Article 10(3) (Available applications); Article 32(4) and (5) (Enforcement under internal law)

⁷⁷ Sampson and Brooks, *supra* note 11, Comment to § 315 at 255.

3.9 Possible Outcomes

Unless the respondent is able to successfully challenge the registration, the tribunal will recognize and enforce the registered Convention support order. It is also possible for the tribunal to sever the order and partially enforce it (§ 709). For example, if there is a dispute about arrears, the tribunal can recognize and enforce the order with regard to current support, while the challenge about arrears is under review.⁷⁸

Convention Reference: Article 21 (Severability and partial recognition and enforcement)

3.9.1 Establishment of a Support Order Where Existing Order is Not Recognized

The Convention and UIFSA provide for the establishment of a new order if the foreign order cannot be recognized for certain reasons. Pursuant to § 708(c) UIFSA 2008, the tribunal cannot dismiss the application but must instead allow a reasonable time for the party to request establishment of a new order if the order is not recognized because:

- The issuing tribunal lacked personal jurisdiction consistent with § 201 of UIFSA;
- The order was obtained by fraud in connection with a matter of procedure; or
- In a case where the respondent neither appeared nor was represented in the proceeding in the issuing foreign country, the respondent did not have notice of the proceedings and an opportunity to be heard or, where notice was not required prior to making the order, the respondent did not have an opportunity to be heard in a challenge or appeal on fact or law before a tribunal.

If recognition and enforcement is refused for one of these reasons, then the IV-D agency must take all “appropriate measures” to request establishment of a support order if the application was received from a Central Authority. No separate application for establishment is required.

The tribunal will use its own laws and procedures to establish a support order. Articles 1 - 6 of UIFSA 2008 will apply to the application.

Convention Reference: Article 20(4) and (5) (Bases for recognition and enforcement)

3.10 Recognition and Enforcement of an Order Made in another U.S. State

If a Convention country seeks recognition and enforcement of a U.S. order not issued by the requested state, the applicable UIFSA 2008 provisions are Articles 1 – 6, not Article 7. That is because Articles 1 – 6 apply to orders issued by U.S. states, even if the application was initiated by a Convention country.

⁷⁸ Sampson and Brooks, *supra* note 11, Comment to § 709 at 322.

3.11 Direct Request for Recognition and Enforcement

The Convention allows a creditor or debtor to make certain requests directly to a competent authority in the Contracting State. In other words, the individual can file directly in a tribunal. Such cases do not involve any services of the Central Authority. In the U.S., such cases filed directly with a court would not receive any IV-D services. Sections 705 and 710 of UIFSA 2008 address direct requests to a tribunal under the Convention.

If a petitioner files a direct request for recognition and enforcement of a Convention support order or foreign support agreement, §§ 706 – 713 apply to the proceeding. In addition, § 705(c) provides that: (1) a guarantee of the payment of costs may not be required; and (2) if an individual has benefited from free legal assistance in a Convention country, that individual is entitled to free legal assistance if it is available under similar circumstances in the requested state.⁷⁹

The Convention and UIFSA specifically note that the tribunal may use simplified, expeditious rules for enforcement of a foreign support order or foreign support agreement (for example, *pro se* procedures).⁸⁰ It is expected that in most cases, unless such simplified procedures are available for recognition and enforcement, the individual applicant will require representation by private counsel for the application.⁸¹

Convention Reference: Article 37 (Direct requests to competent authorities)

3.12 Outgoing Application for Recognition and Enforcement

Although outgoing applications for recognition and enforcement will be handled almost exclusively by the IV-D agency, the tribunal should be aware that there are certain requirements for Convention cases that will indirectly affect the work of the tribunal. Because a U.S. order is entitled to recognition and enforcement in a Convention country only if its jurisdictional basis is recognized under the Convention, it is important that the U.S. tribunal include clear findings about the bases for jurisdiction over both parties, including the residence of the parties. Also, because a valid ground for challenging recognition is lack of notice or an opportunity for a hearing or challenge, the U.S. tribunal should also include findings concerning service of notice to the respondent, and the respondent's opportunity to challenge the order, especially if there was a default order made in the absence of the respondent or the appearance of counsel for the respondent.

In addition, the tribunal should be aware that although a certified copy of the order is not initially required in an outgoing application (unless the receiving country has

⁷⁹ Convention Article 17 b).

⁸⁰ Convention Article 52 b) requires that any simplified procedures for recognition and enforcement include the protections in Articles 23 and 24 regarding notice and the opportunity to be heard.

⁸¹ Sampson and Brooks, *supra* note 11, Comment to § 705(c) at 311.

specifically indicated it requires one), the tribunal must provide one if it is later requested by the other country.⁸²

Convention References: Article 11 (Application contents); Article 25 (Documents)

3.13 Recognition and Enforcement of a Foreign Support Agreement

Certain authentic instruments and private agreements are within the ambit of the Convention. These are termed maintenance arrangements in the Convention, but defined as “foreign support agreements” under UIFSA 2008 to make the process “more readily understandable for [the] U.S. bench and bar.”⁸³ The inclusion of maintenance arrangements supports the growing movement towards alternative methods of dispute resolution, and provides a method for recognition and enforcement of private agreements and authentic instruments that might result from these dispute resolution systems.⁸⁴

Convention Reference: Article 30 (Maintenance arrangements)

3.13.1 Requirements for Agreement to be Recognized

Section 701(6) UIFSA 2008 sets out the requirements for the type of agreement that may be recognized in the U.S. It must be an agreement in a record that meets all three of the following criteria:⁸⁵

- 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 a foreign tribunal.⁸⁶

The definition includes a maintenance arrangement or authentic instrument under the Convention.

The essence of the foreign support agreement, therefore, is that it is an agreement negotiated by the parties that has been the subject of some type of official process of authentication so that it is enforceable as a support order in the country of origin.⁸⁷ The application for recognition and enforcement of a foreign support agreement

⁸² As a practical matter, a complete text of the decision, whether certified or not, will be required unless a foreign country has elected to accept abstracts or extracts of orders.

⁸³ Sampson and Brooks, *supra* note 11, Comment to § 710 at 323.

⁸⁴ *E.R.*, *supra* note 21, para. 552.

⁸⁵ § 701(6).

⁸⁶ This is not a Convention rule, but is a condition for recognition of the agreement in the United States. See Keith, *supra* note 35 at 273, fn 106. It does not appear the agreement can be modified in this country. The agreement is in the form of a contract but it must be enforceable as if it were a decision. There should be a Statement of Enforceability from the issuing country. Keith, *supra* note 35 at 271.

⁸⁷ Keith, *supra* note 35 at 270, V. Foreign Support Agreements.

must include the complete text of the agreement as well as a “record stating that the foreign support agreement is enforceable as an order of support in the foreign country.”⁸⁸

Convention Reference: Article 30 (Maintenance arrangements)

3.13.2 Challenges to Recognition of a Foreign Support Agreement

Although the recognition of a foreign support agreement is generally similar to the recognition of a foreign support order, there are some important differences.

There are only four bases for refusing recognition and enforcement that apply to foreign maintenance agreements. The first is incompatibility with public policy (§ 710(d)(1)). This is discussed further below. The second ground is “fraud or falsification” (§ 710(d)(2)), and the third ground is that the agreement would be incompatible with an order involving the same parties and having the same purpose (§ 710(d)(3)). Finally, recognition may be refused if the tribunal finds that the record lacks authenticity or integrity (§ 710(d)(4)).

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.

Unlike the recognition process for child support orders, there is no equivalent provision to delay the dismissal of an application for recognition of an agreement in order to permit time for an application for establishment to be made. However, proceedings will be stayed during a challenge or appeal pending “in another state or foreign country.”⁸⁹

Although there are only four possible challenges to the recognition and enforcement of a foreign maintenance arrangement explicitly set out in UIFSA 2008, other possible defenses may be available.⁹⁰ The Convention provides that provisions of the Convention for recognition and enforcement of orders will apply *mutatis mutandis* to the recognition and enforcement of a maintenance arrangement.⁹¹ Therefore, for example, there is certainly the possibility of a challenge to the recognition and

⁸⁸ § 710(b)(1) and (2).

⁸⁹ § 710(e).

⁹⁰ Keith, *supra* note 35 at 272.

⁹¹ “Usually an application is for both recognition and enforcement, which is the subject matter of Article 23. But it is also possible that the applicant asks only for recognition, although this is unusual in matters of maintenance. In this case, Article 26 provides for the application of *mutatis mutandis* of Chapter V. The use of the expression ‘*mutatis mutandis*’ creates some uncertainty. It is clear that the requirement that the decision be enforceable (Art. 23(2)) is replaced by a requirement that this decision ‘has effect’ in the State of origin. Beyond this, uncertainty arises from the difficulty of translating in simple terms the Latin expression ‘*mutatis mutandis*’. It means changing those provisions which can be and need to be changed, taking into account the differences between recognition and enforcement. It implies also making changes which are necessary to make sense. Put simply, the provision applies, with the necessary changes.” *E.R.*, *supra* note 21, para. 546.

enforcement of a foreign maintenance agreement based on payment or fulfilment of the debt.

Convention Reference: Article 30(5) (Maintenance arrangements)

3.13.3 Challenge to a Foreign Support Agreement Based on Public Policy

As noted above, the explicit additional language added in UIFSA 2008, “minimum standards of due process,” is an important clarification of the public policy exception to recognition of an order. The public policy review, in that context, will likely focus on procedural and substantive due process concerns. However, no similar explanatory due process language was added to the public policy review provisions respecting recognition of foreign support agreements. It has been suggested that:

While there are strong arguments for the narrowest interpretation of the public policy defense at UIFSA 2008 subsection 708(b)(1) when challenging a decision, those arguments may not hold up so well when challenging a private agreement negotiated between the parties – although there may be fewer challenges.⁹²

An argument could be made for a closer examination of privately negotiated agreements that are not subject to judicial oversight, under public policy grounds.

Convention Reference: Article 30 (Maintenance arrangements)

⁹² Keith, *supra* note 35 at 275. (Footnotes omitted.) See also discussion on “The *Ordre Public* Exception Applied to a “Foreign Support Agreement” in Keith, *supra* note 57 at 12.

4. Establishment of a Convention Order Including, Where Necessary, Establishment of Parentage

4.1 Overview

Under § 704(b)(3) UIFSA 2008, an obligee may seek establishment of a child support order where there is no existing child support order, including, if necessary, determination of parentage. An obligor who wishes to establish parentage, a child support order, or both will not be able to use the Convention processes, and will have to proceed under domestic law where jurisdiction can be established.

In an establishment proceeding, the Convention requires countries to send a Transmittal Form and an Application for Establishment of a Decision. The Transmittal is a standardized Convention form required to accompany all applications. Every Convention country may specify by declaration any other documents that must accompany an application to establish a support order. Such information is noted in the Country Profile as well as the Status Table on the Child Support section of the Hague Conference website. In addition to documents required by declaration, a country may note in its Country Profile other documents a requesting State should send with an Application for Establishment.

The U.S. did not make any declaration regarding required documents for establishment proceedings. However, the U.S. Country Profile requests that Convention countries use the Application for Establishment developed by the Convention Forms Working Group when sending a Convention case to the U.S. The U.S. Country Profile also states that the applicant should include:

- A birth certificate for each child for whom support is sought,
- Financial information about the creditor and debtor,⁹³ and
- Evidence supporting the obligation to provide support.

The U.S. Country Profile notes that individual states may require additional documents and information based on their state laws, support guidelines, and procedures. It directs countries to the appropriate sections of the [Intergovernmental Reference Guide \(IRG\)](#) for state-specific information.

Note that § 311 UIFSA 2008 requires the filing of a petition or similar pleading in a proceeding to establish a support order or to determine parentage. OCSE encourages IV-D agencies to work with their tribunals to determine whether the Convention application is a sufficient pleading or whether the tribunal requires the agency to file a separate petition or similar pleading to which the application is attached. If a separate pleading is needed, it appears appropriate for a representative of the IV-D agency to

⁹³ Article 11 of the Convention requires that, as appropriate, and to the extent known, the application must include the financial circumstances of both the obligor and obligee. The Convention form that provides such information is the Financial Circumstances Form.

complete and sign the Uniform Support Petition used in intergovernmental cases. <https://www.acf.hhs.gov/css/resource/uifsa-intergovernmental-child-support-enforcement-forms>.

Convention References: Article 10 (Available applications); Article 40 (Non-disclosure of information)

4.2 Role of IV-D Agency

The IV-D agency is responsible for the initial receipt and processing of the application.

The Convention requires the IV-D agency, as the requested Central Authority, to complete certain reviews prior to filing the application and documents with the tribunal. These include checking the following:

- The application complies with the requirements of the Convention. Generally this is an examination to determine the application is within the scope of the Convention;
- The required documents are included. If documents are not provided, the IV-D agency cannot reject the application, but must request the additional documents before forwarding the matter to the tribunal;
- The application has been sent by a Central Authority of a Convention country in which the applicant resides;
- That the party bringing the application is a permitted applicant under the Convention; and
- There are no apparent barriers to establishment under UIFSA or state laws. For example, barriers might include situations where another person has been found to be the parent, where the statute of limitations has run, or where the respondent's parental rights have been terminated.

The IV-D agency may only refuse to process the application if it is manifest that the application does not meet the requirements of the Convention. In order to meet this threshold, the failure to meet the Convention requirements must be evident on the face of the documents.

After the review, if the agency is satisfied that the application fulfills the requirements of the Convention, the IV-D agency will send the application to the tribunal for registration.

Convention Reference: Article 12 (Transmission, receipt, and processing of applications and cases through Central Authorities)

4.3 Role of the Tribunal

4.3.1 Applicable Law – General UIFSA 2008 Provisions

The tribunal will apply Articles 1 – 4 of UIFSA 2008, which are the provisions related to establishment of parentage and support. In addition, there are two provisions of Article 7 that are directly applicable to an establishment application. Section 704(d) UIFSA 2008 provides that the tribunal may not require a security, bond, or deposit to guarantee the payment of costs and expenses in a Convention proceeding. And, under § 712, any information that is gathered or transmitted in a Convention proceeding may only be used for the purpose for which it was gathered or transmitted.

Convention References: Article 14 (Effective access to procedures); Article 38 (Protection of personal data)

4.3.2 Determination of Parentage

Section 303 UIFSA 2008 provides that the responding tribunal must apply its state law to the establishment proceeding, including the determination of the duty of support and the amount payable. Section 402 provides for the determination of parentage. If parentage has been previously determined “by or pursuant to law,” § 315 precludes the respondent from pleading nonparentage as a defense to an application for a support order.

Convention References: Article 2 (Scope); Article 6 (Specific functions of Central Authorities); Article 10 (Available applications); Article 11 (Application contents); Article 27 (Findings of fact); Article 28 (No review of the merits)

4.3.3 Documents and Evidence

Section 316 UIFSA 2008 governs the admissibility of evidence in the establishment application. Importantly for establishment applications, the tribunal cannot require the physical presence of the nonresident applicant. If the testimony of the applicant or a witness is required, the tribunal must permit that person to testify by telephone, audiovisual means, or other electronic means (§ 316(f)). The tribunal must cooperate with other tribunals in the designation of the location for the deposition or testimony.

If documentary evidence is required and is transmitted electronically, the tribunal cannot exclude the documents from evidence on an objection based solely on the means of transmission (§ 316(e)).

A tribunal may request assistance from a foreign tribunal with matters such as the facilitating of discovery (§ 318). Similarly, if the tribunal requires information as to the laws, legal effect of a decree, decision, or order, or the status of a proceeding, the tribunal may communicate with a foreign tribunal to obtain that information (§ 317). The

official Commentary notes that “[b]road cooperation by tribunals is strongly encouraged in order to expedite establishment and enforcement of a support order.”⁹⁴

Convention References: Article 13 (Means of communication); Article 29 (Physical presence of the child or the applicant not required)

4.3.4 Applicable Law

The law of the requested state applies in the application for establishment. State law therefore applies to the following:

- Determination of a support duty;
- Duration of support; and
- Application of state child support guidelines.

Importantly, state law will apply with respect to the length of the duty to support a child. Although the mandatory scope of the Convention covers children up to age 21, it does not require modification of internal laws concerning the age of majority and the duty to support children beyond that age.⁹⁵

Therefore, the tribunal is not required to establish an order for support of a child beyond the age of majority in that state. Note that this contrasts with the duty to recognize and enforce a current foreign child support order to age 21, regardless of the age of majority in the state, if required by the foreign order (§ 604(a)).

4.3.5 Establishment of an Order Where Recognition of an Existing Order Is Refused

An establishment application may also be brought in circumstances where a foreign order exists but cannot be recognized. This can arise where the incoming application was for recognition and enforcement of a Convention order (§ 708(c)), or where the incoming application was for modification of an existing order, but the order cannot be recognized (§ 711(b)).

As noted earlier, under § 708(c) UIFSA 2008, a tribunal may refuse to recognize a Convention order where the tribunal determines that:

- The issuing tribunal lacked personal jurisdiction consistent with § 201;

⁹⁴ Sampson and Brooks, *supra* note 11, Comment to § 318 at 260.

⁹⁵ *E.R.*, *supra* note 21, para. 46.

- The order was obtained by fraud in connection with a matter of procedure; or
- In a case where the respondent neither appeared nor was represented in the foreign proceeding, the respondent did not have proper notice and an opportunity to be heard, or if no prior notice was required, the respondent did not have proper notice of the order and an opportunity to challenge the order.⁹⁶

In these circumstances, the IV-D agency is responsible for taking “appropriate measures” to request establishment of a support order. No new application from the applicant is required if the order cannot be recognized because the foreign tribunal lacked personal jurisdiction over the respondent.⁹⁷ Where additional documents or evidence may be required for the establishment application, the IV-D agency will take the necessary steps to obtain the necessary information. If a new application is warranted, the tribunal will not dismiss the proceeding without allowing reasonable time for the party to request establishment of a new order.⁹⁸

In most respects, an application for establishment of a child support order in these circumstances will proceed in the same manner as a regular application for establishment of an order. State law will govern.

Convention Reference: Article 20(4) (Establishment if decision cannot be recognized)

4.3.6 Application Outcomes

A tribunal will issue an order in accordance with state law. Once the tribunal establishes an order, the order becomes the controlling order in the U.S. If a party subsequently wants the order recognized and enforced in another Convention country, the party must file an application for recognition and enforcement to be transmitted to that country. The applicant may request the U.S. tribunal to complete a Statement of Enforceability, Statement of Proper Notice, or both to accompany the application.

⁹⁶ See discussion in section 3.7.9 of this Guide.

⁹⁷ The most likely reason for the tribunal to reject a foreign order will be that jurisdiction was based solely upon the residence of the creditor or the child. Under the Convention, the U.S. is obliged to take all appropriate measures to establish a new decision for the benefit of the creditor under such circumstances.

⁹⁸ If an order is rejected because it was obtained by fraud or there was a lack of proper notice to the respondent and an opportunity to be heard, the IV-D agency will advise the requesting country of the reasons for refusal to recognize the order. The requesting country may submit a new application if it determines that the claim for support is meritorious.

4.3.7 Direct Request to a Tribunal for Establishment of an Order

A creditor or debtor can also 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)). In such a case, the IV-D agency will not be involved in the proceeding (§ 705(d)).

The provisions in § 705(c) concerning limitation on requirements for bonds or deposits to guarantee the payment of expenses, and the requirement for limited free legal assistance, do not apply in a direct request for establishment. The applicability of those provisions is limited to direct requests for recognition and enforcement of support orders.

Convention Reference: Article 37 (Direct requests to competent authorities)

5. Modification of an Order

5.1 Overview

An application for modification of a child support order may be appropriate when there is an existing support order. Either an obligee or an obligor may apply for modification of a support order; however, the Convention limits the ability of a debtor to seek a modification if the creditor is habitually resident in the Convention country that issued the support order. The restrictions and exceptions are set out in § 711 UIFSA 2008 and discussed in section 5.2.1.

Four types of modification applications may come before a tribunal. Because each will require the tribunal to take into account slightly different considerations, they are dealt with separately in this chapter (section 5.4.2). However, there are also common procedures that apply in all situations.

Either an obligor or obligee may make an application concerning any of the following:

- Modification of an order issued by or registered in the requested U.S. state 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.⁹⁹

State law, including jurisdictional requirements, will apply to the modification application.

Convention References: Article 10 (Available applications); Article 18 (Limit on proceedings)

5.2 Scope of the Convention Concerning Modification

Applications by either the obligee or the obligor to modify a child support order made by the requested tribunal, a tribunal of another state, or a tribunal of a foreign country are within the scope of the Convention and are included in § 704 UIFSA 2008.

The scope of the Convention is slightly broader for modification than for recognition and enforcement. The Convention only permits recognition and enforcement

⁹⁹ UIFSA §102(5) defines “foreign country” (including a political subdivision of a country) as one of the following: a) a federally declared foreign reciprocating country; b) a country with which a state has a reciprocal arrangement; c) a country with laws and procedures substantially similar to UIFSA 2008; d) a country in which the Hague Child Support Convention is in force with respect to the U.S. (See discussion in Chapter 2 of this Guide.)

of orders issued by a Convention country, but the Convention does not limit modification to orders issued in a Convention country. However, whether or not the non-Convention order can be modified in the requested country will be a matter of internal law in that jurisdiction.

For either an application for recognition and enforcement or for modification, the applicant must reside in a Convention country¹⁰⁰ and the application must come through the Central Authority in the requesting country in order for the applicant to receive services from the IV-D agency under Article 7 of UIFSA. The petitioner may, of course, send a direct request to the tribunal, but in that event the IV-D agency is not involved. Direct requests are discussed further below.

Convention Reference: Article 10 (Available applications)

5.2.1 Restrictions on Applications Brought by a Debtor/Obligor

The Convention generally prohibits the debtor from seeking a modification in any Convention country other than the issuing country, if the creditor is habitually resident in the Convention country that issued the support order.¹⁰¹ The rule should be familiar to U.S. judges; it is similar to the UIFSA concept of continuing, exclusive jurisdiction to modify (CEJ). However, unlike §§ 205 and 611 UIFSA 2008, “the protection against modification is accorded only to the obligee, not the obligor.”¹⁰² There is no limitation on where a creditor may seek modification.

Section 711(a) of UIFSA sets out the two exceptions under the Convention where the tribunal may modify a Convention order even though the obligee remains a resident of the foreign country that issued the order. The first is where 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 available opportunity.

The second exception is where the foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order under its internal law. The example provided in the *Explanatory Report* is where the country of origin is unable to exercise jurisdiction to modify its decision because its laws require the debtor to reside in the forum for modification proceedings to be brought.¹⁰³ Note that the

¹⁰⁰ The Convention does not define “residence.” The only guidance in the Convention is in Article 9, which states, “residence excludes mere presence.” The *Explanatory Report* notes that, “on the other hand, ‘habitual residence’ is not required; the intention behind the use of simple ‘residence’ is to provide easier access to the Central Authorities and to ensure that it is as easy as possible to apply for the international recovery of child support.” *E.R.*, *supra* note 21, para. 228.

¹⁰¹ Convention Article 18; “The rule in Article 18(1)... operates by prohibiting the debtor from seizing another jurisdiction to modify a decision or obtain a new decision where the original decision has been made in a Contracting State in which the creditor is habitually resident.” *E.R.*, *supra* note 21, para. 415.

¹⁰² Sampson and Brooks, *supra* note 11, Comment to § 711 at 325.

¹⁰³ *E.R.*, *supra* note 21, para. 426.

exception is not intended to apply where the issuing country has the authority, but has declined to modify the order because of lack of merit.¹⁰⁴

By definition, if the incoming application to the U.S. is from the obligee, the first exception is met: the obligee is submitting to the tribunal's jurisdiction by requesting modification. If the obligor is the applicant, the tribunal is precluded from modifying the order if the obligee is habitually resident in the issuing Convention country unless one of the two exceptions in § 711(a) of UIFSA is met. Although § 711(a) uses "remains a resident" rather than "remains habitually resident," this should not be construed as a material difference, and both would certainly exclude temporary physical presence.¹⁰⁵

Convention References: Article 18 (Limit on proceedings)

5.3 Role of the IV-D Agency

In order to modify an order from another jurisdiction, it will be necessary to register the order so that it can be recognized for modification in the requested state. A requesting Central Authority will transmit the Application for Modification to the appropriate IV-D agency. The Convention requires the IV-D agency, as the requested Central Authority, to complete certain reviews prior to registering the incoming order with the tribunal for modification. These include checking the following:

- The application complies with the requirements of the Convention. Generally this is an examination to determine the application is within the scope of the Convention;
- The required documents are included. If documents are not provided, the IV-D agency cannot reject the application, but must request the additional documents before forwarding the matter to the tribunal;
- The application has been sent by a Central Authority of a Convention country in which the applicant resides; and
- That the party bringing the application is a permitted applicant under the Convention.

The incoming application may only be rejected if it is manifest on the face of the documents that the requirements of the Convention are not met. This might include, for example, an application to modify an order that was previously refused, where there has been no change in circumstances.¹⁰⁶

¹⁰⁴ *Id.*

¹⁰⁵ Sampson and Brooks, *supra* note 11, Prefatory Note "Drafting Principles for UIFSA (2008)," (purpose is to integrate Convention text into text of UIFSA).

¹⁰⁶ *E.R.*, *supra* note 21, para. 345.

After the review, the IV-D agency will send the order to the tribunal for registration for modification. If the order to be modified is from the requested state, registration may not be necessary for modification.

Convention Reference: Article 6 (Functions of Central Authorities); Article 10 (Available applications); Article 12 (Transmission of applications)

5.4 Role of the Tribunal

5.4.1 Applicable Law

The Convention is very clear, in Articles 27 and 28, that the tribunal is bound by findings of fact on which the issuing country based its jurisdiction and cannot review the merits of the decision.¹⁰⁷

The requested tribunal will use domestic law, including domestic jurisdictional requirements, when considering the modification application.¹⁰⁸ Thus, state law will govern the availability of any defenses to modification, as well as the application of child support guidelines.

If the order was issued by another U.S. state, § 611 UIFSA 2008 provides that a tribunal may not modify any aspect of a child support order that may not be modified under the law of the issuing state, including duration of the obligation. Although § 611 is specific to state support orders, the Comment to § 616 UIFSA 2008 provides that, presumably, the general law of a state regarding modification of a child support order will apply to modification of a foreign support order.¹⁰⁹

U.S. law applies to any modification application that seeks modification of the arrears. When an order is registered in the U.S., it is treated like any other judgment, and arrears generally are not subject to retroactive modification. While modification of arrears may be possible in other Convention countries, in the U.S., every child support installment is a judgment by operation of law as it comes due and is not subject to retroactive modification.¹¹⁰

¹⁰⁷ The tribunal should ensure that the basis of its jurisdiction to modify is clear in the final modified order. The modified order may need to be recognized and enforced in another jurisdiction in the future.

¹⁰⁸ Article 10(3); “Furthermore, the applications in Article 10(1) c) to f) and (2) b) and c) will be subject to the jurisdictional rules of the requested State. Thus it is possible that in some circumstances one of the applications in Article 10(1) c) to f) will not be available to certain persons because of the jurisdictional rules.” *E.R.*, *supra* note 21, para. 275.

¹⁰⁹ Sampson and Brooks, *supra* note 11, Comment to § 616 at 303. The Unofficial Annotation comments to this section added, “it was necessary to add Section 616 in 2008 to specify that foreign support orders being processed from other foreign countries would continue to use the general rules of UIFSA.”

¹¹⁰ 42 U.S.C. § 666(a)(9) is a IV-D state plan requirement which precludes modification of a support order for any period prior to the date of filing the request for modification and notice to the other party. Each state must have: “Procedures which require that any payment or installment of support under any child support order, whether ordered through the State judicial system or through the expedited processes required by paragraph (2), is (on and after the date it is due)—

Article 32(5) of the Convention provides that the limitation period for which the arrears may be enforced is determined by either “the law of the state of origin of the decision or by the law of the State addressed, whichever is longer. The limitation rule applies only to arrears and not to retroactive maintenance.”¹¹¹ The § 604(b) UIFSA 2008 requirement conforms to the Convention.

Convention References: Article 10 (Available applications); Article 32 (Enforcement under internal law)

5.4.2 Incoming Applications from a Convention Country for Modification of an Order

The following sections describe four different situations where a tribunal may be asked to modify an existing order. State and federal law apply as with any other order within the court’s jurisdiction. The requirements and applicable state law are slightly different for each of the four situations discussed below, depending upon where the existing order was issued.¹¹²

Section 205(a) addresses when a tribunal of the requested state has subject matter jurisdiction to modify its own child support order. Sections 609 - 614 address registration and modification of a child support order of another U.S. jurisdiction. Sections 615 - 616 address registration and modification of a foreign child support order that is an order of a tribunal of a foreign country as defined by UIFSA (§ 102(5) - (7)).

5.4.2.1 Incoming Convention Application to Modify an Order Issued by the Responding State

If the order to be modified was issued by the state in which the tribunal is located, the general provisions of UIFSA Articles 1 - 6 apply. Article 7 does not.

The responding tribunal must first determine whether it has continuing, exclusive jurisdiction to modify the order as provided in § 205. UIFSA 2008 § 205 is “perhaps the most crucial provision in UIFSA,”¹¹³ as it is essential to accomplishing UIFSA’s key precept of ensuring only one child support order governs current support at any one

(A) a judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced,

(B) entitled as a judgment to full faith and credit in such State and in any other State, and

(C) not subject to retroactive modification by such State or by any other State;

except that such procedures may permit modification with respect to any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given, either directly or through the appropriate agent, to the obligee or (where the obligee is the petitioner) to the obligor.”

¹¹¹ *E.R.*, *supra* note 21, para. 579. The difference between “arrears” and “retroactive maintenance” is that retroactive maintenance means maintenance for periods prior to the application for a decision while arrears refers to the unpaid maintenance for periods after the decision. *E.R.*, *supra* note 21, para. 436.

¹¹² “The bases on which modification are allowed are governed by the law of the requested State” *E.R.*, *supra* note 21, para. 260.

¹¹³ Sampson and Brooks, *supra* note 11 at 224.

time.¹¹⁴ The issuing state tribunal “has and shall exercise continuing, exclusive jurisdiction to modify its [controlling] child-support order” so long as either individual party or the child continues to reside in the issuing state.¹¹⁵ No other state may modify that controlling child support order absent consent of the individual parties. Dating from UIFSA’s initial passage in 1992, this one-order/one-time principle marked an end to the multiple order world created by the predecessor interstate support statutes, the Uniform Reciprocal Enforcement of Support Act (URESAs) and the Revised Uniform Reciprocal Enforcement of Support Act (RURESAs).

Continuing, exclusive jurisdiction to modify is tested at the time of filing of the modification request (§ 205(a)(1)). If the respondent in the application to modify resides in the responding state, the tribunal has continuing, exclusive jurisdiction to modify the order.

The tribunal that issued the original order will also have continuing, exclusive jurisdiction to modify even if neither individual party, nor the child, still reside in the state where the parties consent in a record or in open court that the tribunal may continue to exercise its jurisdiction (§ 205(a)(2)). So even if none of the parties or the child now lives in the issuing state, if the applicant and respondent both agree to that tribunal continuing to exercise jurisdiction, the application may proceed.

If the tribunal does not have continuing, exclusive jurisdiction pursuant to § 205, § 611(f) UIFSA 2008 may apply in an international case to provide a jurisdictional basis for the tribunal to proceed. This section was added in 2008 to ensure that there would still be an available U.S. forum to seek modification if neither party continues to reside in the issuing state and one party resides outside the U.S. Otherwise, a U.S. resident with an order from a state where no one resided would be compelled to “play away” seeking jurisdiction in the country where the respondent resides. Under this section, the tribunal that issued the order may have continuing jurisdiction if one party resides outside the U.S. and one party resides in another U.S. state. Note that jurisdiction to modify under § 611(f) is continuing but not exclusive. The applicant has the option to pursue modification in the state that issued the order, but may also pursue a modification where the other party resides.¹¹⁶

Convention Reference: Article 10 (Available applications)

5.4.2.2 Incoming Convention Application to Modify an Order Issued by Another U.S. State

If the order to be modified was issued by a different U.S. state, Articles 1 - 6 of UIFSA 2008 apply. Article 7 does not.

¹¹⁴ For a brief history of this change to a one-order precept, see Margaret Campbell Haynes and Susan Friedman Paikin, “Reconciling’ FFCCSOA and UIFSA,” *Family Law Quarterly*, Vol. 49, No. 2 (Summer 2015) at 332-335.

¹¹⁵ UIFSA 2008 § 205(a)(1).

¹¹⁶ Note that § 611(f) applies regardless of whether or not the party outside the U.S. resides in a UIFSA-defined foreign country.

The responding state is an appropriate forum if the other state's order has been properly registered in the state under Article 6 and the three criteria of § 611(a) are met.

First and foremost, absent consent, a tribunal may not modify another state's order if the issuing tribunal has continuing, exclusive jurisdiction to modify its order. Thus, the initial question is whether, as of the time the modification action is filed, either individual party or the child reside in the issuing state (§ 611(a)(1)(A)).

Second, once the tribunal has determined there is no other state with continuing, exclusive jurisdiction, § 611(a)(1)(B) UIFSA 2008 sets out the so-called "play-away" rule.¹¹⁷ A petitioner who is a nonresident of the requested state must register the order and seek modification of the registered order in the state where the respondent resides.

The third criterion for a requested tribunal to assume jurisdiction to modify is set out in § 611(a)(1)(C): the respondent must be subject to the personal jurisdiction of the responding state.

UIFSA also permits the parties to consent to another state assuming modification jurisdiction even when the issuing state retains continuing, exclusive jurisdiction to modify.

Pursuant to § 611(a)(2), the requested tribunal may exercise jurisdiction to modify an order registered in the state if:

- The responding state is the residence of the child or either party is subject to the personal jurisdiction of the tribunal (§ 611(a)(2)), and
- All of the individual parties have filed consents in a record in the **issuing** tribunal for the responding tribunal to modify the order and assume continuing, exclusive jurisdiction.¹¹⁸

If the responding tribunal exercises modification jurisdiction under § 611, its state law will apply with regard to the availability of, procedures for, and defenses to modification, and state child support guidelines will similarly apply.

¹¹⁷ Sampson and Brooks, *supra* note 11, Comment to § 611 at 294 notes, "The play-away rule achieves rough justice between the parties in the majority of cases by preventing ambush in a local tribunal."

¹¹⁸ Since the advent of UIFSA the issue of what act or filing constitutes consent has been litigated throughout the country. Most courts have interpreted the consent requirement to be an express consent. See, e.g., *Stone v. Davis*, 148 Cal. App. 4th 596 (2007) (Noting that its holding is consistent with those of other states which have addressed this matter, the court held "that a written consent filed with the issuing court is required to transfer continuing, exclusive jurisdiction to another state, [citations to Alabama, New Jersey, and South Dakota reported cases omitted.]" Implied consent is not sufficient. Similarly, transferring custody litigation to the child's new home state in accord with the jurisdictional rules of UCCJEA, does not constitute implied consent to transfer the child support order to that state for modification. See, e.g., *Fox v. Fox*, 7 S.W.3d 339 (Ark. Ct. App. 1999) (Chancellor exceeded his authority in earlier modifying the child-support order because the Uniform Child Custody Jurisdiction Act does not confer jurisdiction to decide issues of child-support); *Lamb v. Lamb*, 707 N.W.2d 423 (Neb. App. 2005) (Nebraska Child Custody Jurisdiction Act did not confer subject matter jurisdiction upon a Nebraska court to modify a child support order issued by another state.)

Section 611(c) contains a critical exception to application of local law. It provides that the law of the issuing state governs non-modifiable terms of the order, and that such terms may include duration of support. That means the original timeframe for support is not modifiable unless the law of the issuing state permits it. Subsection 611(d) reinforces this point, providing that the law of the initial controlling order governs the duration of the support obligation. Under most state laws, the duration of the child support obligation remains fixed, and, if the obligor fulfills his or her duty of support under the law of the state that issued the original order, the tribunal of another state cannot extend the support obligation even by issuing a new successive order.

5.4.2.3 Incoming Convention Application to Modify an Order Issued by a Convention Country

If there is an application to modify an order issued by a Convention country, the U.S. tribunal may have subject matter jurisdiction, and may proceed to modify so long as it has personal jurisdiction over the respondent and there is no violation of § 711.

As discussed above in section 5.2.1, § 711 prohibits modification of a Convention order where the obligee remains a resident of the foreign country where the support order was issued, unless one of two exceptions apply. The term “resident” is not defined, but this section parallels Article 18 of the Convention, which prohibits the debtor from bringing a proceeding to modify in any other Convention country if the creditor remains “habitually resident” in the issuing country. Clearly “residence” in § 711 means more than mere physical presence.

The first exception permits the obligee to submit 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 available opportunity (§ 711(a)(1)). If the modification application is initiated by the obligee, this condition will be met. If the modification application is brought by the obligor, and the obligee continues to reside in the foreign country where the order was issued, unless the obligee consents to the tribunal taking jurisdiction, the obligor will have to establish that the second exception applies.

The second exception applies if the foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order (§ 711(a)(2)). Importantly, this exception does not apply if the modification could not proceed or was refused in the issuing State on the merits. This exception provides an avenue for modification in a situation where the obligor cannot bring the modification in the issuing tribunal because it cannot or will not exercise jurisdiction. The example provided in the *Explanatory Report* is one where the issuing tribunal requires, as a condition of jurisdiction to modify, that the obligor be resident in that country.¹¹⁹

¹¹⁹ *E.R. supra* note 21, para 426.

Before the responding tribunal can modify the Convention order, it must first recognize it as an order that the U.S. can enforce.¹²⁰

Article 7 governs recognition and enforcement of a Convention support order. The provisions of §§ 706 - 709 apply to the registration.

If the order cannot be recognized in the state, § 708(c) applies (see discussion at 4.3.5). The tribunal should not dismiss the application, but should allow a reasonable time for the requesting party to request establishment of a new Convention order.

If a new order is established, that order will not necessarily affect the validity of the prior order in the foreign country. In order to avoid the issues associated with the existence of multiple orders, it may be prudent for the obligee or obligor to seek recognition of the newly established U.S. child support order in the foreign country.¹²¹

Convention References: Article 10 (Available applications); Article 18 (Limit on proceedings)

5.4.2.4 Incoming Convention Application to Modify an Order Issued by a Non-Convention Country

An application for modification may also be appropriate when there is 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 the decision being modified be from a Contracting State, it must be one that falls within the scope of the Convention, i.e., child support up to age 21.

Section 704 of UIFSA 2008 authorizes an application to modify an order issued by a foreign country. Not all countries fall within the UIFSA definition of “foreign country” (§ 102). See terminology section 2.1.

The order to be modified will have to be registered for modification. Registration will proceed under Article 6, not Article 7, as the order is not from a Convention country.

The tribunal will only have jurisdiction to modify the foreign order if the conditions set out in § 615 are met. This section allows a tribunal in a state to assume jurisdiction if the foreign tribunal lacks jurisdiction or refuses to exercise jurisdiction to modify its child support order. The consent of the parties otherwise required under § 611 is not necessary, and there are no restrictions on the residence of the individual seeking modification, provided that the U.S. tribunal has personal jurisdiction over both of the parties.

The tribunal has personal jurisdiction over the petitioner based on the foreign applicant’s submission to the tribunal’s jurisdiction by filing the petition. The tribunal

¹²⁰ *E.R.*, *supra* note 21, *para* 263. “In any event, the original decision to be modified would need to be entitled to recognition in the requested State if modification is to occur.”

¹²¹ Sampson and Brooks, *supra* note 11, Comment to § 615 at 302.

must also have personal jurisdiction over the respondent, which will usually be based on the respondent's legal residence in that state.

The Comment to § 615 notes that: "The ability of a state tribunal to modify when the foreign country refuses to exercise its jurisdiction should be invoked with circumspection, as there may be a cogent reason for such refusal."¹²² If necessary, the tribunal may use § 317 to communicate with the foreign tribunal to verify the reason that the foreign tribunal refused to exercise jurisdiction to modify its own order. In any event, the refusal to exercise jurisdiction should not be confused with a tribunal's decision not to modify based upon the merits.

Whether the order can be modified at all will be determined by state law.¹²³

If the non-Convention order cannot be recognized for modification, it may be possible for the tribunal to establish a new order if so requested by the initiating Central Authority. In that event, if the tribunal has jurisdiction over both parties, a new order could be established if permitted under state law. If a new order is established, there will be two orders in existence, the original foreign order that was not recognized, and the newly established U.S. order. Recognition of the U.S. order in the Convention or foreign country may address any issues associated with the existence of the two distinct orders.

Convention Reference: Article 10 (Available applications); Article 18 (Limit on proceedings)

5.4.3 Required Documents

In addition to the Transmittal and Application for Modification, the Country Profile for the U.S. indicates 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. 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. If the applicant wants to modify a Convention order, the applicant will need to include documents required for recognition of the order under § 706 UIFSA 2008. In the case of 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 2008 § 602.

Convention References: Article 11 (Application contents); Article 25 (Documents)

5.4.4 Evidence

The special rules of evidence and procedure in §§ 316 - 318 UIFSA 2008 apply to these cases. Subsection 316(a) provides that the physical presence of a nonresident party cannot be required in the forum state. Subsection 316(f) provides an alternative

¹²² Sampson and Brooks, *supra* note 11, Comment to § 615 at 302.

¹²³ *E.R.*, *supra* note 21, *para* 263 "The bases on which modification is allowed are governed by the law of the requested State."

means for testimony by a nonresident party or witness. Section 316 also addresses the requirement for sworn evidence. Subsection (f) allows evidence or testimony to be provided under penalty of perjury, replacing the need for sworn testimony under oath.

Obtaining and using documents from witnesses or parties outside the state is also streamlined under UIFSA 2008. Under § 316(b), affidavits, documents substantially complying with the federally mandated forms (which include Convention forms approved by the federal Office of Management and Budget), and documents incorporated by reference into any of them, which would not be excluded as hearsay if given in person, are admissible in evidence if completed by a person outside the state and given under penalty of perjury.

Similarly, where documents from outside the state are transmitted to a tribunal by telephone, telecopier, or other electronic means that do not provide an original record, pursuant to § 316(e) those documents may not be excluded from evidence based on an objection as to the means of transmission.

Section 317 authorizes a state tribunal to communicate with a tribunal “outside this state.” “Outside this state” means a tribunal of another state (as defined by UIFSA), a foreign country, or a foreign nation that is not defined as a foreign country under UIFSA, i.e., any place other than the state where the tribunal is located. The communication can be about the laws, legal effect of an order, or status of a proceeding. Section 317 also explicitly authorizes a tribunal to communicate with a tribunal of another state, foreign country, or foreign nation that does not meet UIFSA’s definition of a foreign country.

For a comprehensive discussion of provisions related to evidence in Convention applications, see section 2.4 of this Guide.

Convention References: Article 6 (Functions of Central Authority); Article 13 (Means of communication); Article 14 (Effective access to procedures); Article 29 (Physical presence of the child or the applicant not required)

5.4.5 Application Outcomes

If the modification application is successful, a modified order will be issued. If the tribunal assumed jurisdiction from another state pursuant to § 611, the modified order is now the controlling order. UIFSA 2008 § 614 requires “the party obtaining the modification” to file a certified copy of the order with the original issuing tribunal and with the tribunal in each state where the original order had been registered. The IV-D agency is responsible for completing this requirement on behalf of a requesting Central Authority. It is good practice to include a provision in the order explicitly stating that the tribunal is assuming responsibility for the controlling child support order.¹²⁴

¹²⁴ “Neither the parties nor other tribunals should have to speculate about the effect of the action.” Sampson and Brooks, *supra* note 11, Comment to § 611 at 296.

In the case of a modification of a foreign order pursuant to § 615(b), in the U.S., the modified order becomes the controlling order. If a Convention order is modified pursuant to § 711, the modified order will become the controlling order in the U.S. for UIFSA purposes.

If the modification application could not proceed because the order was not recognized, and a new order was established, the new order will be the controlling order under UIFSA.

Convention References: Article 10 (Available applications)

5.5 Modification of a Foreign Support Agreement

Foreign support agreement is defined at § 701(6). It is an agreement of the parties, formally drawn and in a record that has been “authenticated by, or concluded, registered or filed with a foreign tribunal.”¹²⁵ Most importantly, the agreement must be enforceable as a support order in the country where the agreement was made.¹²⁶

The definition of a maintenance arrangement in Article 3 e) of the Convention includes a requirement that the arrangement “may be the subject of review and modification by a competent authority.” UIFSA’s definition of a foreign support agreement includes the requirement that it “may be reviewed and modified by a foreign tribunal” at § 701(6)(A)(iii). Thus, it is clear that, the agreement must be susceptible to modification, and the proper forum is the competent authority in the country where the agreement was made and authenticated.

Neither the Convention nor UIFSA have provisions that would permit modification of a registered foreign support agreement in the U.S. UIFSA 2008 § 711 refers to modification of orders only, and does not include foreign support agreements. Similarly, Article 30(2) of the Convention provides that “maintenance arrangements,” as they are referred to in the Convention, may be treated as “decisions” for purposes of applications for recognition, recognition and enforcement, and enforcement. There is no provision in the Convention or under UIFSA for an application for modification of a foreign support agreement.

Thus, if a party wants to modify the foreign support agreement, the appropriate procedure is for the party to seek modification in the country where the agreement was concluded, and where it is subject to review and modification by a competent authority.¹²⁷

Convention References: Article 3 (Definitions); Article 30 (Maintenance arrangements)

¹²⁵ § 701(6)(A)(ii)(II).

¹²⁶ See discussion in section 3.10 of this Guide.

¹²⁷ Keith, *supra* note 35 at 273.

5.6 Direct Request for Modification

The Convention allows a creditor or debtor to make certain requests directly to a competent authority in the Contracting State. In other words, the individual can file directly to a tribunal. Such cases do not involve any services of the Central Authority. Thus, in the U.S., such cases filed directly with a court would not receive any IV-D services. Section 705 UIFSA 2008 addresses direct requests to a tribunal under the Convention. Section 705(a) makes it clear that, in such a proceeding, the law of the state applies. The direct request would therefore be governed under Articles 1 – 6 of UIFSA.¹²⁸

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.

See section 3.12 of this Guide for further information respecting direct registration of foreign orders, including Convention orders.

Convention Reference: Article 37 (Direct requests to competent authorities)

¹²⁸ Section 705(c)(1) and (2) will apply indirectly however, as the foreign order will have to be registered before it can be modified.

6. Specific Measures

6.1 Overview

A request for specific measures is a request for limited assistance and does not require a Convention application. It is made from one Central Authority to another Central Authority. There are two types of requests for specific measures permitted under the Convention. The first type, provided under Article 7(1), requires that the requested Central Authority take appropriate measures if it is satisfied they are necessary to assist an applicant in making an application under the Convention or in determining whether an application should be made.

The second type of request, provided for in Article 7(2), encourages a requested Central Authority to also provide assistance where there is an “international element” to a domestic case. In the latter instance, there may never be an application for services under the Convention, but the tribunal may be able to establish an order or initiate enforcement measures on its own. The two types are discussed below.

The U.S. was a strong advocate for the inclusion of these provisions in negotiating the terms of the Convention. Such administrative assistance may greatly expedite proceedings and even eliminate the need for formal applications for services under the Convention. In essence, they provide a means for a potential applicant to determine whether a Convention application should be initiated at all; and, if so, they can assist applicants in obtaining the necessary information (such as location of the obligor) or evidence needed (such as genetic test results or a paternity acknowledgement) to proceed with the application or the establishment of an order in this country. In some cases, such assistance from the Central Authority in another country may permit the applicant to proceed in the domestic forum without initiating an international application at all.

Convention Reference: Article 7 (Requests for specific measures)

6.2 Scope

There are two distinct types of specific measures provided for under the Convention. One is mandatory and the other is discretionary. In both, the request for assistance is made from one Central Authority to another Central Authority. In the U.S. it will be the state’s IV-D agency that can make a request to or that will respond to a request from the Central Authority of another Convention country.

The assistance that can be requested and the response from the requested Central Authority will depend upon whether the request falls within Article 7(1) or 7(2) of the Convention.

Article 7(1) lists two possible situations in which a request for specific measures might be made by a Central Authority. The first is a request that is preliminary to a Convention application. For example, a request may be warranted to verify that the

debtor resides in the country to which the requesting Central Authority intends to send an application for recognition and enforcement of a support order. The second is a request for assistance that will help determine whether an application will be filed in the future. For example, the request could be for information about the debtor's income that will allow the requesting Convention country to establish a support order that it will later seek to have recognized and enforced in the requested Convention country.

Potential services that can be requested under Article 7(1) specifically include:

- Locating either the obligor or obligee;
- Obtaining information concerning the income and financial circumstances of the obligor or obligee, including location of assets;
- Obtaining documentary or other evidence;
- Establishing parentage where necessary for the recovery of support;
- Instituting proceedings to obtain any provisional measures¹²⁹ that are territorial in nature and necessary to secure the outcome of a pending support application; and
- Serving documents.

A request for assistance under Article 7(1) must provide sufficient information for the requested Central Authority to determine that there is a Convention application pending or being considered, and that the assistance sought is required either for the application to proceed, or to determine if the application should be brought at all. If the reasons supporting either of these requests are satisfactorily set forth, then the requested Central Authority is required to provide appropriate assistance, in accordance with its internal law and resources.¹³⁰

The second type of request is for assistance with a domestic child support case pending in the requesting State having an "international element." Article 7(2) may apply even if both the debtor and creditor live in the requesting State. Importantly, the requested assistance under Article 7(2) is not limited to the six measures specified in Article 7(1).¹³¹ Given the open-ended nature of available requests, when a request is submitted under Article 7(2), the requested Central Authority has discretion in deciding whether to take the requested specific measures.

¹²⁹ Provisional measures include measures to prevent the dissipation of assets, or measures to prevent the debtor leaving the jurisdiction to avoid legal proceedings, *E.R.*, *supra* note 21, para. 176. An example would be freezing assets in a financial account.

¹³⁰ *E.R.*, *supra* note 21, para. 204.

¹³¹ As noted by a member of the U.S. delegation to the Convention, "It is a wide-open question as to what services, beyond those delineated under Article 7(1) might be requested pursuant to Article 7(2)." Keith, *supra* note 35 at 282.

Perhaps, “[t]he greatest potential utility of Article 7 is in enabling a tribunal in the United States that has personal jurisdiction over a debtor (possibly long-arm jurisdiction [under § 201 UIFSA 2008]), to obtain a support order in the United States.”¹³² A subsequent application may then be made for recognition and enforcement of the U.S. order in the Convention country where the debtor resides.

Convention References: Article 6 (Specific functions of Central Authorities); Article 7 (Requests for specific measures)

6.3 Role of the Tribunal – Incoming Requests for Specific Measures

In the U.S., if a IV-D agency receives a request for specific measures, it may ask the tribunal for assistance in meeting the request. For example, a IV-D agency may ask the tribunal to help provide sworn testimony or other requested information or evidence, based on resources available and state law.¹³³

The issue of costs may arise. As a general rule, services on Convention cases are to be provided on a cost-free basis. However, the Convention does permit a Central Authority to charge for “exceptional costs” and certain services that may require the assistance of a body other than the Central Authority.¹³⁴

In any situation where the Central Authority intends to charge for the assistance, the Central Authority must obtain prior consent of the applicant to the provision of those services at such cost.¹³⁵

Convention References: Article 7 (Requests for specific measures); Article 8 (Central Authority costs)

6.4 Role of the Tribunal – Outgoing Requests for Specific Measures

Tribunals may find these Convention provisions helpful to provide a structure for using UIFSA’s enhanced evidentiary provisions. In addition to direct communications with a foreign judge about the law or the legal effect or status of an order or a proceeding in the issuing country (§ 317), the special rules of evidence and assistance with discovery in §§ 316 and 318 may be greatly facilitated through the intervention of the Central Authorities in both countries. Such assistance might include, for example, obtaining testimony or documentary evidence through a foreign tribunal or assistance with genetic testing.

There may be circumstances when the tribunal thinks it would be helpful for the IV-D agency to make an Article 7(2) specific measures request because it will help in a

¹³² Keith, *supra* note 35 at 281. (Footnote omitted.)

¹³³ *E.R.*, *supra* note 21, para. 204.

¹³⁴ The *Explanatory Report* notes that while a Central Authority cannot charge for its own services, if the assistance required the use of another body, it might be possible to charge for those costs, in some circumstances. *E.R.*, *supra* note 21, para. 216.

¹³⁵ Article 8(3)

domestic case. The request must originate with the state IV-D agency and be a IV-D case. Conversely, if the court's assistance is needed by a foreign tribunal, and a request is made under the Convention, it will be made through the IV-D agency and not directly to the tribunal.

Whether the request for assistance arises in the context of a pending domestic case or a potential Convention application, it is essential that the reasons for the request for assistance are provided as part of the request. The requested Central Authority must be satisfied that the measures are necessary and it will make the ultimate determination as to what assistance is appropriate under its laws and procedures.

Convention Reference: Article 7 (Requests for specific measures)

7. Judicial Guide Resources

UIFSA, the Hague Convention, and International Child Support

Uniform Interstate Family Support Act (UIFSA) 2008

http://www.uniformlaws.org/shared/docs/interstate%20family%20support/UIFSA_2008_Final_Amended%202015_Revised%20Prefatory%20Note%20and%20Comments.pdf

The following articles discuss UIFSA, the Hague Child Support Convention, and international child support:

Barry J. Brooks, “International Family Support: Currency Conversion” available at Eastern Regional Interstate Child Support Association (ERICSA) at

<https://ericisa.org/sites/default/files/Board%20Documents/InterGov%20Committee/Barry%20Brooks%20Currency%20Conversion%20paper.pdf>

Mary Helen Carlson, “United States Perspective on the New Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance”, *Family Law Quarterly*, Vol. 43, No. 1 (Spring 2009).

William Duncan, “The New Hague Child Support Convention: Goals and Outcomes of the Negotiations”, *Family Law Quarterly*, Vol. 43, No. 1 (Spring 2009).

John Greacen, Greacen Associates, LLC, “*Remote Appearances of Parties, Attorneys and Witnesses: A Review of Current Court Rules and Practices*” at

<https://www.srln.org/system/files/attachments/SRLN%20Remote%20Appearances%20Court%20Rules%20and%20Practices%20Report%204-2-17.pdf>

Margaret Campbell Haynes and Susan Friedman Paikin, “‘Reconciling’ FFCCSOA and UIFSA,” *Family Law Quarterly*, Vol. 49, No. 2 (Summer 2015).

Robert Keith, “What the Trial Judge Needs to Know About the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance” 69 *Juv. & Fam. Ct. J.* 5 (2018).

Robert Keith, “Ten Things Practitioners Should Know About the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance” *Family Law Quarterly*, 51 *Fam. L. Q.* 255 (2017).

Battle Rankin Robinson, “The Beginner’s Guide to International Support,” 33 *Delaware Lawyer* 22 (Winter 2015/2016).

Battle Rankin Robinson, “Integrating an International Convention into State Law: The UIFSA Experience,” *Family Law Quarterly*, Vol. 43, No. 1 (Spring 2009).

John J. Sampson and Barry J. Brooks, “Integrating UIFSA (2008) with the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance,” *Family Law Quarterly*, Vol. 49, No. 2 (Summer 2015).

Marilyn Ray Smith, “Child Support at Home and Abroad: Road to The Hague,” *Family Law Quarterly*, Vol. 43, No. 1 (Spring 2009).

Symposium on International Enforcement of Child Support, *Family Law Quarterly*, Vol. 43, No. 1 (Spring 2009).

Federal Statutes and Regulations

Full Faith and Credit, 28 USC 1738B

<http://www.gpo.gov/fdsys/pkg/USCODE-2011-title28/pdf/USCODE-2011-title28-partV-chap115-sec1738B.pdf>

Title IV, Part D of the Social Security Act, 42 USC 651 et seq.

<http://uscode.house.gov/browse/prelim@title42/chapter7/subchapter4/partD&edition=prelim>

Child Support Regulations, 45 CFR 301 et seq.

<http://www.ecfr.gov/cgi-bin/text-idx?SID=afdbb7c320c166a6e876fd2db51fe66f&tpl=/ecfrbrowse/Title45/45chapterIII.tpl>

List of countries determined to be foreign reciprocating countries for the purpose of the enforcement of family support obligations, <http://www.gpo.gov/fdsys/pkg/FR-2014-08-20/pdf/2014-19794.pdf>

Notice Designating State Title IV-D Child Support Agencies as “Public Bodies” under the Convention, 82 Fed. Reg. 850 (Jan. 4, 2017), <https://www.gpo.gov/fdsys/pkg/FR-2017-01-04/pdf/2016-31895.pdf>

For a comprehensive history and detailing of child support legislation, see also: Office of Child Support Enforcement, *Essentials for Attorneys in Child Support Enforcement* (3rd Edition 2002), Appendix A, <https://www.acf.hhs.gov/css/resource/essentials-for-attorneys-in-child-support-enforcement-3rd-edition>

Resources Available from the Office of Child Support Enforcement

OCSE International Main Page (including the list of Hague Convention Countries and Foreign Reciprocating Countries): <https://www.acf.hhs.gov/css/partners/international>

OMB-approved Hague Child Support Convention Forms

<https://www.acf.hhs.gov/css/resource/omb-approved-hague-child-support-convention-forms>

Intergovernmental Reference Guide (IRG), Policy Profiles and Contacts

<https://www.acf.hhs.gov/css/resource/irg>

IM-15-01: Uniform Interstate Family Support Act (2008) and Hague Treaty Provisions

<https://www.acf.hhs.gov/css/resource/uniform-interstate-family-support-act-2008-and-hague-treaty-provisions>

IM-16-02: 2008 Revisions to the Uniform Interstate Family Support Act

<https://www.acf.hhs.gov/css/resource/2008-revisions-to-the-uniform-interstate-family-support-act>

DCL-16-11: U.S. Ratification of Hague Child Support Convention

<https://www.acf.hhs.gov/css/resource/us-ratification-of-hague-child-support-convention>

DCL-16-12: Pending Effective Date of the Hague Child Support Convention and Resources

<https://www.acf.hhs.gov/css/resource/pending-effective-date-of-the-hague-child-support-convention-and-resources>

Caseworker Training Resources for the 2007 Hague Convention

<https://www.acf.hhs.gov/css/resource/training-international-case-processing>

OCSE-PIQ-04-01: Processing Cases with Foreign Reciprocating Countries (March 31, 2004),

<https://www.acf.hhs.gov/css/resource/processing-cases-with-foreign-reciprocating-countries>

Intergovernmental Child Support Enforcement Forms

<https://www.acf.hhs.gov/css/resource/uifsa-intergovernmental-child-support-enforcement-forms>

Resources Available from the Hague Conference on Private International Law

Text of the Convention

<https://www.hcch.net/en/instruments/conventions/full-text/?cid=131>

Main Child Support Page

<https://www.hcch.net/en/instruments/conventions/specialised-sections/child-support>

Country Profiles

<http://hcch.cloudapp.net/smartlets/sfjsp?interviewID=hcchcp2012>

Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations
<https://www.hcch.net/en/instruments/conventions/full-text/?cid=133>

Mandatory and Recommended Forms

- Annex 1 (Transmittal Form under Article 12(2))
<https://www.hcch.net/en/publications-and-studies/details4/?pid=4224>
- Annex 2 (Acknowledgement Form under Article 12(3))
<https://www.hcch.net/en/publications-and-studies/details4/?pid=4225>
- Recommended Forms
<https://assets.hcch.net/docs/7b1c5829-81a6-46f5-902e-d59b572dff8a.pdf>

Practical Handbook for Caseworkers under the 2007 Hague Child Support Convention, Permanent Bureau, Hague Conference on Private International Law (2013).
<https://assets.hcch.net/docs/5f160c92-b560-4b7f-b64c-8423f56c6292.pdf>

For a current list of Convention countries, see
<https://www.hcch.net/en/instruments/conventions/status-table/?cid=131>

Alegria Borrás and Jennifer Degeling, “Convention of 22 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance: Explanatory Report” (2013).
<https://www.hcch.net/en/publications-and-studies/details4/?pid=4909>

Other Conventions Concerning Child Support

Hague Convention on the Recognition and Enforcement of Decisions Relating to Maintenance of Obligations (1973)
<https://www.hcch.net/en/instruments/conventions/full-text/?cid=85>

Hague Convention on the Law Applicable to Maintenance Obligations (1973)
http://www.hcch.net/index_en.php?act=conventions.text&cid=86

Inter-American Convention on Support Obligations (1989)
<http://www.oas.org/juridico/english/treaties/b-54.html>

Convention on the Recovery Abroad of Maintenance, New York, 20 June 1956
<https://www.hcch.net/en/instruments/conventions/publications1/?dtid=45&cid=131>

Other Private International Law Conventions

Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters
<https://www.hcch.net/en/instruments/conventions/full-text/?cid=82>

Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters

<https://www.hcch.net/en/instruments/conventions/full-text/?cid=17>

Other Useful Links

United States Department of State – Private International Law

<https://www.state.gov/s//family/index.htm>