

Hague Convention: first steps towards implementation overseas

Recovery of Maintenance in the
European Union and Worldwide
Heidelberg Conference 5 – 8 March 2013

UIFSA: The Implementing Legislation in the US for the Hague Convention

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Current Status of U.S. Ratification of Convention

Before the Treaty can enter into force for the United States:

- The Congress must adopt, and there must be enacted, implementing federal legislation for the Treaty. That legislation will require state enactment of UIFSA 2008 as a condition of receiving federal funds.
- All states must enact UIFSA 2008 by the effective date noted in the legislation.
- The President must sign the instrument of ratification for the Treaty.
- THEN: United States will be able to deposit its instrument of ratification.

What is UIFSA?

- Uniform Interstate Family Support Act
 - Child support
 - Spousal support
 - Gov't and private cases
- Every US state, District of Columbia, Puerto Rico, Virgin Islands, and Guam have enacted.
- Tribes are not required to enact UIFSA.

How Uniform is UIFSA?

- It has been amended several times, so states have different versions.
- All versions have the key concept of one controlling support order.
 - Determination of controlling order in old cases
 - Continuing, exclusive jurisdiction (CEJ) that limits modification

UIFSA 2008

- Implements the Hague Convention
- Addresses international cases in general
- Builds on UIFSA 2001

Keep in Mind . . .

- Hague Convention is not exclusive remedy for international orders.
 - UIFSA already contained provisions re: bilateral agreements and state reciprocity arrangements.
 - A tribunal may also recognize a foreign order on basis of comity.
- Some UIFSA concepts – CEJ and DCO – do not fit neatly in international arena.
- No state has UIFSA 2008 in effect although numerous states have enacted UIFSA 2008 and are “on hold” until US becomes a contracting party to the Convention.

Hague–Related Provisions within UIFSA 2008

- New definition of “foreign country”
 - UIFSA 2008 has separate definition that includes many, but not all, foreign countries:

Definition of Foreign Country

A country, including a political subdivision thereof, other than the United States, that authorizes the issuance of support orders and:

- (A) has been declared under US law to be a **foreign reciprocating country**;
- (B) Has established a **state reciprocal arrangement** for child support;
- (C) Has **law or procedures** for the issuance and enforcement of support orders which are **substantially similar to UIFSA** procedures; or
- (D) In which the **Convention is in force with respect to the United States.**

Other Definitions

- “State” – a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession under US jurisdiction. Term includes an Indian nation or tribe.

Road Map

SECTION 105. APPLICATION OF ACT TO RESIDENT OF FOREIGN COUNTRY AND FOREIGN SUPPORT PROCEEDING.

(a) A tribunal of this state shall apply Articles 1 through 6 and, as applicable, Article 7, to a support proceeding involving:

- a foreign support order;
- a foreign tribunal; or
- an obligee, obligor, or child residing in a foreign country.

Road Map

- (b) A tribunal of this state that is requested to recognize and enforce a support order on the basis of comity may apply the procedural and substantive provisions of Articles 1 through 6.
- (c) Article 7 applies only to a support proceeding under the Convention. In such a proceeding, if a provision of Article 7 is inconsistent with Articles 1 through 6, Article 7 controls.

Article 7

- Application solely to proceedings under the Hague Convention
- Definitions
 - Central Authority
 - Secretary of US Dept of Health and Human Services with delegated functions to state child support agencies
- Foreign support agreements (maintenance arrangements)
- Procedure for registration, recognition and enforcement
- Limited modification

Child Support

UIFSA provides for:

- Paternity establishment
- Support establishment
- Support enforcement
- Support modification

Paternity Establishment

- Use recommended Hague forms.
- Send supporting documents such as genetic test results.
- If child born out of wedlock and there is no paternity determination or existing support order, US tribunal must establish parentage before it can establish a support order.
- US child support agencies can help coordinate international genetic testing.
- US tribunal will apply the law of the state conducting the hearing.

Support Establishment

- Use recommended Hague forms.
- Send supporting documents such as financial affidavit. State may require petitioner to complete state affidavit form.
- US tribunal will apply the law of its state.
 - Child support guidelines
 - Retroactive support

Support Enforcement

- Use recommended Hague forms.
- Send supporting documents such as payment record.
- US tribunal will apply the law of its state as far as enforcement methods. Every US state has laws providing for:
 - Income withholding
 - Suspension of drivers' , professional, and recreational licenses
 - Seizure of lottery winnings and other lump sums
 - Interception of state income tax refund
 - Seizure of accounts at financial institutions
 - Liens on personal and real property

Enforcement Provisions in UIFSA

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- Direct income withholding only for support orders issued by a state. *No longer requires US employers to honor DIW order/notice from foreign countries.*
- Administrative enforcement available for foreign support orders.

Registration for Enforcement

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- Procedure for Hague Foreign Support Orders
 - New Article 7
- Major differences with registration for enforcement of domestic orders and orders from Non-Hague foreign countries – documents required, time frames, defenses

Documents

Hague Foreign Support Orders

- Transmittal Letter
- Complete text of order [or abstract by issuing foreign tribunal]
- Record that order is enforceable in issuing country
- If default order, a record attesting to due process re: notice & opportunity to be heard
- Record re: arrears
- Record re: automatic adjustment of support
- If necessary, a record re: receipt of free legal assistance in issuing country

Time Frames

- Non-Hague Foreign Support Orders
 - Within [**20**] days after notice of registration
- Hague Foreign Support Orders
 - Not later than **30** days after notice of registration
 - Not later than **60** days after notice if contesting party does not reside in US

Defenses – Hague Foreign Support Orders

- Recognition and enforcement of order is manifestly incompatible with public policy, including failure of issuing tribunal to observe minimum standards of due process;
- Issuing tribunal lacked personal jurisdiction consistent with US law;
- Order is not enforceable in issuing country;
- Order was obtained by procedural fraud;
- Record transmitted with the application for recognition and enforcement lacks authenticity or integrity;

Defenses (contd)

- Proceeding between same parties with same purpose is pending before tribunal of this state and that proceeding was filed first;
- Order is incompatible with a more recent order involving same parties with same purpose if more recent support order is entitled to recognition & enforcement under UIFSA;
- Full or partial payment has been made;
- If default order, there was a lack of due process re: notice & opportunity to be heard; or
- Order was made in violation of UIFSA Section 711 (limitation on modification)

Non-Recognition of Hague Order

If a tribunal does not recognize a Convention support order because

- There was a lack of personal jurisdiction
- There was procedural fraud
- A proceeding between same parties with same purpose is pending before a tribunal of that state and that proceeding was filed first
- The order is a default order but the notice and opportunity to challenge did not satisfy due process

Non-Recognition of Hague Order

THEN

- the tribunal may not dismiss the proceeding without allowing a reasonable time for a party to request the establishment of a new Convention support order.
- *and* the [governmental entity] must take all appropriate measures to request a child-support order for the obligee if the application for recognition and enforcement was received through the Central Authority system.

Support Modification

- Use recommended Hague forms.
- Send supporting documents such as financial affidavit. State may require petitioner to complete state affidavit form.
- US tribunal will apply law of the issuing country with regard to nonmodifiable terms (e.g., duration of support)
- US tribunal will apply the law of its state regarding threshold for modification and child support guidelines
- US tribunal will also likely apply UIFSA CEJ rules

Modification of US Child Support Order

A US tribunal retains jurisdiction to modify an order it has issued if:

- (1) one party resides in another US state (as defined by UIFSA); and
- (2) the other party resides outside the United States.

Modification of Foreign Child Support Order

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- Procedure for registration & modification of foreign support orders from non-Convention foreign countries
 - Except as otherwise provided. . ., if a foreign country lacks or refuses to exercise jurisdiction to modify its child-support order pursuant to its laws, a state may assume jurisdiction to modify the child-support order and bind all individuals subject to the personal jurisdiction of the tribunal whether the consent to modify the order has been given or whether the individual seeking modification is a resident of the state or of the foreign country.

Modification of Hague Child Support Order

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- Procedure for registration & modification of foreign support orders from Hague country
 - Register using new Article 7

UIFSA Evidentiary Provisions

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- May receive testimony by telephone, audio-visual means, and other electronic means
- May receive documentary evidence by telephone, fax, and other electronic means
- May communicate with a tribunal outside the state
- May obtain discovery through a tribunal outside the state

Translation

- Incoming cases
 - Section 713 of UIFSA – record must be in original language, accompanied by an English translation.

Services by Support Enforcement Agency

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- State legislature may choose between 2 alternatives:
 - *Must*, upon request, provide services to all petitioners
 - *Must*, upon request, provide services to a petitioner residing in a state or requesting services thru a Central Authority (Hague or bi-lat case) AND *may*, upon request, provide services to an individual petitioner not residing in a state (all other foreign cases)

Status of Bilateral Agreements

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- The U.S. currently has bilateral reciprocity agreements with 15 countries and 12 Canadian Provinces.
- Most recent are with Israel and Prince Edward Island.
- Convention does not affect any bilateral agreements.

U.S. Resources on International Child Support

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- OCSE has published Caseworker Guides for specific FCR countries.
<http://www.acf.hhs.gov/programs/css/international/>
- State Department has information on enforcing child support orders abroad.
http://travel.state.gov/law/family_issues/support_issues/support_issues_582.html
- NCSEA has FAQs on international child support enforcement.
<http://www.ncsea.org/resources-info/international-child-support/>

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