

INTERNATIONAL FAMILY SUPPORT: CURRENCY CONVERSION

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The issue of how to approach currency conversion in international cases has existed as long as there have been international trade and commerce. Historically, the debate was between “breach date” and “judgment date.” However, a developing approach using “payment date” is perhaps the better approach for family support obligations. The three approaches are summarized in a Note to § 823 of the Restatement (Third) of Foreign Relations Law:

d. Alternative conversion rules. Under Subsection (2), and Comment c, a judgment in dollars should be given on the basis of conversion at whichever date would serve the ends of justice in the circumstances.

(1) Breach date. When the breach date is applied for conversion of foreign obligations, Comment c, an obligation to pay a sum of money is convertible as of the date it was payable; an obligation to deliver goods or perform services is convertible as of the last date on which the obligation could be performed in compliance with the agreement on which it was based, or the date on which default was declared. For an obligation not arising out of contract, such as a tort or ships' collision, the date for conversion is the date of the event giving rise to the claim. When a judgment is based on multiple obligations, conversion should be made separately in respect of each obligation.

(ii) Judgment date. When the judgment date rule is applied for conversion of foreign obligations, the obligation is convertible into dollars as of the date on which the judgment is rendered, regardless of the duration of any appeal.

(iii) Payment date. When judgment is given in a foreign currency, it may be paid in that currency within the normal time for payment of judgments, or in the dollar equivalent on the date of payment.

In addition to UIFSA, the National Conference of Commissioners of Uniform State Laws (NCCUSL) promulgated the Uniform Foreign-Money Claims Act, which also adopts the “payment date” approach, although termed “conversion date:”

SECTION 7. JUDGMENTS AND AWARDS ON FOREIGN-MONEY CLAIMS; TIMES OF MONEY CONVERSION; FORM OF JUDGMENT.

(a) Except as provided in subsection (c), a judgment or award on a foreign-money claim must be stated in an amount of the money of the claim.

(b) A judgment or award on a foreign-money claim is payable in that foreign money or, at the option of the debtor, in the amount of United States dollars which will purchase that foreign money on the conversion date at a bank-offered spot rate.

(c) Assessed costs must be entered in United States dollars.

(d) Each payment in United States dollars must be accepted and credited on a judgment or award on a foreign-money claim in the amount of the foreign money that could be purchased by the dollars at a bank-offered spot rate of exchange at or near the close of business on the conversion date for that payment.

Child support cases, especially with unpaid support, present some rather unique issues related to the fact the support obligation is not a one-time event.

- Ongoing support. Obviously, for prospective support, there has been no breach date nor has there been a judgment date. Whether by judicial or administrative process, whenever an amount of child support stated in a foreign currency is “restated” in U.S. dollars, it must be considered an equivalence. Otherwise, the obligor will almost always be either underpaid or overpaid at the time the obligation ends. Thus, to achieve the objective of making both the obligor and obligee whole over time, the payment date should be utilized.
- Unpaid support. The foreign currency amount used in the arrears judgment should have been derived by subtracting the foreign currency amount received on the “payment date” from the foreign currency amount accrued on that date. Considering the arrears to be paid in full when based on the payment date is the best way to assure both obligor and obligee are made whole, while acknowledging that fluctuations over time will have an adverse impact on at least one of the parties.

To establish the requirements necessary for effective enforcement, the U.S. court will obviously need to set a fixed U.S. dollar equivalence. To measure compliance with the order, the focus must be on the timely payment of the U.S. dollar equivalence. However, the court and parties must not lose sight of the fact that the obligation is not paid in full until the final payment equates to the total amount of foreign currency due on that payment date. An obligor can make each and every payment of current support and a payment on the arrears when due and still be under or over paid. Obviously, an obligor who pays the stated equivalence should not be punished or held in contempt if the rate of exchange on the payment date does not cover the full amount of order currency due on that date.

It is immutable that income withholding is the best mechanism for the enforcement of ongoing support and one of the best for obtaining payments towards any arrears. Thus, it makes legal and financial sense to give the obligor credit for the amount of foreign currency that is applied to the official payment record of the order-issuing country on the date the currency is posted, i.e., payment date.

The challenge becomes to keep the closest exchange approximation in effect at all times. Both administrative and judicial processes used to collect support will need the flexibility to implement periodic adjustments. These must be accomplished not in the context of a “modification” but rather a “re-conversion.” To the extent the payments are resulting in a shortfall, this can be resolved by utilizing the enforcement processes currently in place for increasing payments on “arrears.” To the extent the payments are resulting in an overage, the same basic principle will have the obligor “pre-paid” and the total support obligation may end prior to the child being emancipated.

The task of setting a converted amount for payments towards arrears should utilize existing intrastate and interstate processes. Virtually all states have an administrative mechanism for adjusting the amount paid towards arrears. Some states use an annual “super notice.” Other states have a periodic review process and some of those review processes are linked to new employment information. The common feature of all the approaches is that they provide the obligor with due process through some type of contest process.

A couple of examples can illustrate the conundrum in a varying exchange rate environment. Both examples start with an order issued in euros (€) five years ago in the amount of €200 per month due the first day of the month. An agreed resolution was achieved December 25 of last year stipulating that the arrears as of December 5 were €500. In both examples, the obligor fully pays the ongoing support and fully complies with the agreement regarding payment of the arrears. The only variable is the change in the exchange rate. The approach is to use the “payment date” and for simplicity it is assumed the date the dollars are paid is the date the euro equivalence is applied. Admittedly, this makes the payment date the same as the conversion date. Obviously, this will seldom occur in the normal processing of payments; however, the operative conditions shown below will still exist.

The examples are short for illustrative purposes; however, they clearly demonstrate problems that will exacerbate over time.

Example 1					
On December 25, € 1 = \$ 1.20					
Ongoing support of € 200 = \$ 240					
Arrears of € 500 = \$ 600 to be paid in 5 months @ \$ 120					
Total \$ to be paid per month = \$ 360					
Date	\$ paid	€ 1 = \$	€ credit	€ to arrears	\$ 240 = €
1/1	360	1.22	295.08	95.08	196.72
2/1	360	1.25	288.00	88.00	192.00
3/1	360	1.28	281.25	81.25	187.50
4/1	360	1.30	276.92	76.92	184.62
5/1	360	1.32	272.73	72.73	181.82
Totals	1800		1413.98	413.98	942.46
Total € owed			1500.00	500.00	1000.00

In this example, the value of the dollar is declining relative to the euro; that is, it takes more dollars to purchase the same, fixed amount of euros. This example shows that even full compliance with the dollar equivalence will leave a euro shortfall of € 86.02 or an additional \$ 65.17 on 5/1. It should be noted that even if no arrears were owed to start and all dollar equivalent payments were made, there is still a shortfall of € 57.54 (\$ 43.59.) on 5/1.

This situation is the circumstance discussed above where a U.S. enforcing agency could use existing enforcement remedies to increase the amount of dollars paid towards the arrears to ensure the gap caused solely by the exchange rate does not widen.

Example 2					
On December 25, € 1 = \$ 1.40					
Ongoing support of € 200 = \$ 280					
Arrears of € 500 = \$ 700 to be paid in 5 months @ \$ 140					
Total \$ to be paid per month = \$ 420					
Date	\$ paid	€ 1 = \$	€ credit	€ to arrears	\$ 280 = €
1/1	420	1.38	304.35	104.35	202.90
2/1	420	1.34	313.43	113.43	208.96
3/1	420	1.35	311.11	111.11	207.41
4/1	420	1.32	318.18	118.18	212.12
5/1	420	1.30	323.08	123.08	215.38
Totals	2100		1570.15	570.15	1046.77
Total € owed			1500.00	500.00	1000.00

In this example, the value of the dollar is increasing relative to the euro; that is, it takes fewer dollars to purchase the same, fixed amount euros. As a result, the obligor is overpaid using the same time period as Example 1.

The last aspect of the practical implementation to be discussed is the wording that should be used to accomplish the currency conversion. What must be avoided is any suggestion that the tribunal is to substitute a dollar amount for the foreign currency amount. Particularly with respect to ongoing support, any attempt to “fix” the exchange rate should be viewed as an attempt to impose an impermissible modification on the order.

When no conversion to dollars is provided, the default should be “document preparation” date. However, this does have some pitfalls. Caution must be taken when the computation date is different from the document preparation date. The examples below use the values in Example 1 above and posit that the document is being prepared on 9/1 using data provided with a calculation date of 12/25.

Using the UIFSA registration process as a model, the following paragraphs are suggestions for possible use.

NOTICE OF REGISTRATION OF FOREIGN SUPPORT ORDER (UIFSA)

¶ The amount of the alleged arrearage is € 900 (euros) having a United States of America Dollar equivalence of \$ 1080 as of 12/25/YYYY.

OR

¶ The amount of the alleged arrearage is € 900 (euros) as of 12/25/YYYY having a United States of America Dollar equivalence of \$ 1260 as of 9/1/YYYY.

MOTION FOR ENFORCEMENT (UIFSA)

PRIOR ORDERS

¶ On 1/10/99 a tribunal ordered Obligor to pay regular child support of € 200 (Euros) monthly, beginning 1/1/99, and monthly thereafter. The amount and frequency of Obligor's child support obligation remains unchanged.

CHILD SUPPORT ARREARAGE

¶ Obligor failed to pay court ordered child support. The amount of the alleged arrearage is € 900 (Euros) having a United States of America Dollar equivalence of \$ 1080 as of 12/25/YYYY.

OR

¶ Obligor failed to pay court ordered child support. The amount of the alleged arrearage is € 900 (Euros) as of 12/25/YYYY having a United States of America Dollar equivalence of \$ 1260 as of 9/1/YYYY.

[NOTE: Using the same “as of” dates in the enforcement pleading presupposes the Registration documents are prepared at the same time as the Motion. If there is a significant time gap between the filings, the best practice is to seek an updated arrears calculation and use that date in the

remedy pleading. In either situation, the pleadings should recite the support in the currency of the order along with an alleged dollar equivalence.]

ARREARAGE JUDGMENT

- ¶ The Court should confirm and enter judgment for the child support arrearage and accrued interest and order income withholding to liquidate the judgment.

[NOTE: The request for confirmation of the arrearage is combined with the request in the next paragraph for the tribunal to convert the current and arrears amounts into equivalent U.S. dollars. At this point, the concepts of “judgment date” and “payment date” are merged. The tribunal in setting an equivalence must operate as if the prospective support and arrears amount is to be paid on the date of judgment. Using this approach, the amounts found most likely will be different than those used when the Registration or Enforcement pleadings were prepared.]

EXCHANGE RATE

- ¶ The Tribunal should find the United States of America Dollar equivalence of any foreign currency ordered payable by an appropriate foreign tribunal pursuant to [UIFSA § 305(f)]. The Tribunal should make all further monetary findings in United States of America Dollars based on the finding of United States of America Dollar equivalence.

[NOTE: Logistically, unless Internet access is available immediately prior to or at court, it is impractical to use the conversion rate on the hearing date in setting the current support equivalence. Still, the best practice is to use the most recent information available. Fortunately, UIFSA 2001 § 102(15) provides the mechanism:

(15) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

This definition fits perfectly with the ability to print an Internet page. The use of Internet sites to obtain currency conversion information is permissible based upon UIFSA 2001 § 305(f):

(f) If requested to enforce a support order, arrears, or judgment or modify a support order stated in a foreign currency, a responding tribunal of this State shall convert the amount stated in the foreign currency to the equivalent amount in dollars under the applicable official or market exchange rate as publicly reported.

The Internet site should be considered a source of a market exchange rate that is publicly reported. The copy of the conversion computations along with web page prints showing the rate used should be submitted to the court as a “commercial publication” admissible under a state rule comparable to the Federal Rules of Evidence, Rule 803(17).]

ORDER ENFORCING CHILD SUPPORT OBLIGATION (UIFSA)

PRIOR ORDERS

The Court FINDS that on 1/10/99 a tribunal ordered Obligor to pay regular child support of € 200 (Euros), monthly, beginning 1/1/99 and monthly thereafter. The Court finds that the United States of America legal tender equivalent of the prospective child support ordered payable in foreign currency by the support ordering tribunal in this cause is \$ 250.00.

All further monetary findings regarding the support obligation, including prospective support and arrears, are stated in United States of America Dollar equivalency.

[NOTE: The most important aspect of obtaining enforcement of a foreign support order is to assure that nothing in the U.S. 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 U.S. dollar recitations are equivalences should make this clear. However, an attorney may want to repeat the approach of stating the order amount in the foreign currency with the dollar equivalency. The equivalency language should make clear that it applies to every payment recitation including the periodic payment on arrears. The only exception, noted above, is that court costs and fees incurred in the U.S. court should be stated in U.S. dollars only.]

JUDGMENT ON ARREARS

The Court FINDS and confirms that Obligor is in arrears in the amount of \$ 1,150.49 as of _____, 20____. This includes all unpaid child support and any balance owed on previously confirmed arrearage or retroactive support judgments as of the specified date, but does not include application of any child support paid on that date. The judgment for this amount is a cumulative judgment.

Court GRANTS and RENDERS judgment against Obligor and in favor of Obligee in the amount of \$ 1,150.49, with interest at the rate provided by the law of the jurisdiction that issued the controlling order, for collection and distribution according to law.

[NOTE: Like an interstate case, the law of the issuing tribunal determines the interest rate and methodology.]

The sites below have “publicly reported market exchange” rate information and provide historical rates as well as conversion calculators.

www.oanda.com

www.fxtop.com

CONCLUSION

The problem with converting the support obligation in one currency into another currency has no “perfect” solution that will completely satisfy the competing interests of the creditor and debtor. The prevailing approach should be that satisfaction of the debt is to be based upon payment of the amount of “local” currency needed to obtain the amount owed as of the date the support is actually paid. This solution requires recognition that the exchange rate will vary over time and the amount to be paid in the currency of the enforcing forum must be stated as an equivalent to the currency ordered by the establishing forum.