

International Practice Group
Client Update

NOVEMBER 14, 2008

Uniform Law Commission Promulgates New Act for Obtaining Foreign Testimony

The Uniform Law Commission has adopted a new act that will provide parties involved in international disputes in state courts some relief from the difficulties often involved in obtaining sworn statements from witnesses located abroad. The Uniform Unsworn Foreign Declarations Act will permit, subject to certain conditions and limited exceptions, unsworn declarations by witnesses located outside the United States to be used in state court proceedings. Currently, federal law (28 U.S.C. §1746) allows the use of unsworn foreign declarations that meet certain statutory requirements. State courts, however, have generally refused to apply the federal statute to state proceedings. Although a number of states already have statutes allowing for the use of unsworn foreign declarations, the statutes are not uniform and often are limited to particular types of litigations or proceedings, or to specific factual situations. The Act is meant to create a uniform system that eliminates the inconsistencies, limitations and gaps that exist under current state laws.

The first, and most important, requirement under the Act is that the declarant be physically located outside the boundaries of the United States at the time the statement is made. The Act applies to a person located outside the U.S. whether or not the location is subject to the jurisdiction of the United States. However, it does not apply to a declarant who is located on property within the United States even if the property is subject to the jurisdiction of another country. In addition to the geographical requirements, the declaration must affirm that the statements were made under penalty of perjury, and must be signed and dated by the declarant. The Act allows the unsworn declaration to be used in civil, criminal and regulatory proceedings, in lieu of affidavits, verifications or other sworn court filings. However, the unsworn declarations may not be used for a deposition or certain oaths, including oaths of office, real estate declarations and oaths relating to self-proving wills.

Obtaining an affidavit from witnesses located abroad can be both costly and time-consuming. The process has been exacerbated in recent years, since access to United States embassies and consulates has become more difficult in the wake of September 11th as a result of increased security procedures or closings. By eliminating the need for a sworn or notarized affidavit, the Uniform Act should help reduce the cost and increase the efficiency of the international dispute resolution process.

The full text of the Uniform Unsworn Foreign Declarations Act is available at http://www.law.upenn.edu/bll/archives/ulc/cufda/2008am_approved.htm. More information about obtaining a statement from a witness outside the United States and international discovery is available at www.proskauerguide.com.

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