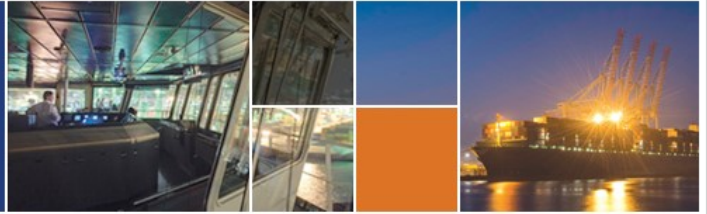




STEAMSHIP MUTUAL

Comprehensive Cover. Exceptional Service.



## Dubai Court Issues Landmark Judgment

September 2015

*In a recent landmark judgment handed down by the Dubai Court of Appeal, Holman Fenwick Willan's (HFW) Middle East shipping team, including Partner Yaman Al Hawamdeh and Associate Anas Al Tarawneh, has successfully obtained a judgment ordering the recognition and enforcement of a London arbitration award in the UAE. This judgment is of particular significance as it confirms that UAE courts should consider the validity of the underlying arbitration clause in the context of the New York Convention and the foreign law governing the contract. The judgment is also the first of its kind ordering the recognition and enforcement of a foreign arbitral award made on the basis of an unsigned charterparty.*



### Historical background

In 2006, the UAE ratified the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) without reservations. In principle, therefore, the UAE courts should recognise foreign arbitral awards that satisfy the conditions set out under the New York Convention as binding and enforceable.

Before the UAE ratified the New York Convention, enforcement of foreign arbitral awards was dealt with in the same manner as foreign courts' judgments under the UAE Civil Procedures Law (CPL). This allowed the UAE courts to set aside foreign arbitral awards on various grounds set out under the CPL. These grounds mostly related to the lack of reciprocity between the UAE and the country where the award was made.

As a result, the UAE courts inherited a considerable number of negative precedents in relation to the enforcement of foreign arbitral awards. These precedents suggested that foreign arbitral awards may not be enforced in the UAE.

Since the New York Convention has come into force, it has taken several years for the first case to proceed through the UAE courts system. In 2010, the Fujairah Court of First Instance ordered enforcement of a foreign award in the UAE under the New York Convention. This was a default judgment and many grounds which were traditionally used to challenge the recognition and enforcement of foreign arbitral awards were not raised.

The UAE courts have recently delivered a few judgments which adopted a more flexible and arbitration friendly stand with regards to the enforcement of foreign arbitral awards. However, in a more recent striking development, the Dubai Court of Cassation declined the recognition and enforcement of a foreign arbitral award on the basis that it lacked jurisdiction under the CPL to consider the underlying dispute. This was despite the fact that many legal experts considered the presence of assets in the UAE, against which enforcement was sought should be sufficient under the New York Convention to give local courts jurisdiction. This approach creates uncertainty as to whether the UAE courts would apply the conditions set out under the CPL rather than those laid down under the New York Convention.

### Brief background of the case

A Hong Kong based shipping company (the Claimant), in its capacity as the disponent owner of a vessel, entered into a time charterparty with a Dubai based company (the Defendant). Under the charterparty, the Defendant hired the vessel for a period of between 59 to 62 months. The charterparty contained an arbitration clause which provided for adhoc arbitration in London, and was governed by English law. The Claimant and the Defendant negotiated and fixed the terms of the charterparty by email exchanges, although as often occurs in the business the parties never actually signed a physical copy of the charterparty or the arbitration clause (English law pragmatically allows for a binding contract to be formed by exchange of electronic email transmissions alone).

A dispute arose between the parties and subsequently, the Claimant commenced arbitration proceedings in London. The arbitral tribunal handed down three arbitration awards between 2011 and 2013, all in favour of the Claimant. The Claimant was represented in the arbitration by HFW's Shanghai team, including Partner Julian Davies and Senior Associate Trevor Fox.

In January 2014, the Claimant brought proceedings before the Dubai Court of First Instance, requesting the court to recognise and enforce one of the three awards pursuant to the New York Convention. The proceedings were fully defended by the Dubai based Defendant. The Claimant was represented in Dubai by HFW Partner Yaman Al Hawamdeh and Associate Anas Al Tarawneh.

### Dubai Court of First Instance and Court of Appeal judgments

In March 2014, the Dubai Court of First Instance rejected the application to recognise and enforce the London arbitral award. The court concluded that no valid arbitration agreement was concluded between the parties, on the basis that:

1. The emails exchanged by the parties suggested that a charterparty was to be drafted and signed by the parties.
2. The supporting documents submitted by the Claimant did not include any evidence confirming that the charterparty was signed by the parties.

Previously, irrespective of the position under the New York Convention and the governing law of the contract, this type of defence could gain traction under the CPL, which sets out the grounds for invalidating local arbitral awards, and therefore there was some precedent for the decision.

The Court of First Instance did indeed rely on the CPL, and made its ruling without reference to the New York Convention. This is despite the fact that the underlying charterparty was subject to English law (and therefore the validity of the arbitration clause should be considered in the context of English, not UAE law); and the recognition and enforcement of foreign arbitral awards should have been dependent on the New York Convention, not the CPL. The Claimant, therefore challenged the Court of First Instance judgment before the Dubai Court of Appeal.

In May 2015, the Dubai Court of Appeal handed down its judgment in which it overturned the Court of First Instance judgment, and ordered the recognition and enforcement of the Claimant's London arbitration award. The court's judgment recognised that, as a matter of New York Convention and English law, the parties had agreed to arbitration in their email exchanges, and therefore the award should be recognised in accordance with the New York Convention. The judgment also confirmed that foreign arbitral awards should be recognised and enforced provided that such recognition and enforcement does not contradict UAE public policy, and provided also that the subject matter is capable of settlement by arbitration.

This judgment is of particular significance as it confirms that UAE courts should consider the validity of the underlying arbitration clause in the

This judgment is of particular significance as it confirms that UAE courts should consider the validity of the underlying arbitration clause in the context of the New York Convention and the foreign law governing the contract. The judgment is also the first of its kind ordering the recognition and enforcement of a foreign arbitral award made on the basis of an unsigned charterparty.

Whilst the Court of Appeal judgment is currently under appeal, it nevertheless sets a very encouraging precedent in the UAE which supports the aim and the spirit of the New York Convention.

We are grateful to Yaman Al Hawamdeh, Partner and Anas Al Tarawneh, Associate of Holman Fenwick Willan, for this article.