

# Jurisdiction challenge to Arbitration for lack of capacity

James Leabeater represented the successful respondent, CMSA, in resisting a challenge to the jurisdiction of an arbitral tribunal brought under section 67 of the Arbitration Act 1996. CMSA had agreed to construct and supply ESSA, a Mexican state owned salt mine, with a self-unloading salt barge as part of an attempt to modernise ESSA's transportation systems. The contract was subject to English law and LMAA arbitration. ESSA reneged on the contract and failed to pay instalments due. CMSA terminated the contract and claimed unpaid instalments by way of arbitration.

Having initially ignored the arbitration, ESSA advanced a defence that the contract had been procured by bribery. The tribunal rejected ESSA's defence and found for CMSA. ESSA then sought to challenge the award saying that, as a matter of Mexican law, the contract and its arbitration clause were outside ESSA's capacity and that therefore the tribunal had lacked jurisdiction, relying on the Court of Appeal's decision in *Haugesund Kommune et al. v Depfa ACS Bank* [2012] QB 549.

Mr Justice Andrew Baker, sitting in the Commercial Court, dismissed the challenge, holding that ESSA did not lack capacity and that in any event ESSA had failed to challenge jurisdiction early enough. The judgment, which includes consideration of the correct construction of sections 31 and 73 of the Arbitration Act 1996 and comments on the way in which parties should prepare for a challenge under section 67, can be seen [here](#).

James Leabeater, who appeared alone in the arbitration, was led by Huw Davies QC of Essex Court Chambers for the Commercial Court hearing, and was instructed by Haynes & Boone CDG LLP.