

DUARTE GORJÃO HENRIQUES

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I - PERFIL

Duarte Gorjão Henriques é advogado e árbitro em Lisboa. Desde 1990 exerce a sua atividade como advogado e árbitro em diversos processos de contencioso e arbitragem relacionados com litígios de investimentos, banca e finanças, comercial, societário, distribuição, propriedade intelectual, seguros e construção.

Duarte G. Henriques é também especialista em “third-party funding”, aconselhando clientes na obtenção e contratação de financiamento para os litígios dos seus clientes.

Tem servido como árbitro único, árbitro presidente ou co-árbitro num vasto número de tribunais arbitrais nacionais e internacionais, tanto institucionais como “ad hoc”. Duarte Gorjão Henriques também presta serviços em contencioso nacional e internacional, trabalhando numa base regular com outras sociedades de advogados internacionais.

Como advogado, Duarte Gorjão Henriques tem prestado serviços para bancos e instituições financeiras, seguradoras, empresas tecnológicas e construtoras, tanto em contencioso como em arbitragem.

Duarte Gorjão Henriques está admitido na lista de árbitros de uma série de instituições nacionais e internacionais tais como o China International Economic and Trade Arbitration Commission (CIETAC), o Hong Kong International Arbitration Centre (incluindo o painel de litígios de propriedade intelectual), o Singapore International Arbitration Centre (reserve panel), o Korean Commercial Arbitration Board, o Silicon Valley Arbitration and Mediation Centre, o International Distribution Institute, o Centro de Arbitragem Comercial da Câmara de Comércio de Indústria Portuguesa, o Arbitrate e o Tribunal Arbitral da Propriedade Imobiliária.

Duarte Gorjão Henriques é membro de várias associações internacionais de arbitragem, incluindo a ASA, LCIA, IBA, ICC e ICCA, tendo sido também

membro da ICC Task Force on Financial Institutions and International Arbitration e da Task Force on Third-Party Funding in International Arbitration of the International Council for Commercial Arbitration (ICCA) & Queen Mary University of London Law School - London.

Duarte Gorjão Henriques publica regularmente artigos sobre arbitragem internacional e nacional.

II - EXPERIÊNCIA - LISTAS DE ÁRBITROS - MEMBRO DE INSTITUIÇÕES

ADVOGADO - 1990 - PRESENTE

Duarte Gorjão Henriques tem inscrição na Ordem dos Advogados de Portugal, sendo titular da cédula profissional nº 88301 desde Dezembro de 1990, tendo exercido sem interrupções ou suspensões e sem qualquer sanção ou reserva deontológica ou profissional.

COMISSÕES E TASK FORCES

ICC Commission on Arbitration and ADR

Task Force on Third-Party Funding in International Arbitration (ICCA & QMUL)

Task Force on Financial Institutions and International Arbitration (ICC Paris)

Task Force on "The Revision of the Rules of ICC as Appointing Authority in UNCITRAL or other Ad Hoc Arbitration Proceedings" (ICC Paris)

Comité de Arbitragem da ICC Portugal

Membro do Grupo de Trabalho das Regras de Praga

LISTAS DE ÁRBITROS

Silicon Valley Arbitration & Mediation Centre

International Distribution Institute

CAMARB – Câmara de Mediação e Arbitragem Empresarial-Brasil

Korean Commercial Arbitration Board

Kuala Lumpur Regional Centre for Arbitration (KLRCA)

China International Economic and Trade Arbitration Commission (CIETAC)

Hong Kong International Arbitration Centre (HKIAC) - Panel of Arbitrators for Intellectual Property Disputes

Hong Kong International Arbitration Centre (HKIAC)

Singapore International Arbitration Centre (Reserve Panel of Arbitrators)

Shenzhen Court of International Arbitration

Permanent Arbitration Court at the Croatian Chamber of Economy

WIPO List of Arbitrators

British Columbia International Commercial Arbitration Centre

Arbitral Tribunal of the International Film and Television Alliance (IFTA)

Arbitrare Arbitration Centre for trademarks, patents, .pt domain names, corporate names, generic drugs (Lisbon, Portugal)

Centro de Arbitragem Comercial da Câmara de Comércio e Indústria Portuguesa

MEMBRO DE INSTITUIÇÕES ARBITRAIS

Associação Portuguesa de Arbitragem

London Court of International Association European Users' Council

International Bar Association

ICCA - International Council for Commercial Arbitration

International Arbitration Institute - Paris

ASA - Swiss Arbitration Association

Toronto Commercial Arbitration Society

Comité Brasileiro de Arbitragem

German Institution of Arbitration (DIS) - Deutsche Institution für
Schiedsgerichtsbarkeit e.V. (DIS)

Association for Domestic and International Arbitration (AFA - Paris)

III - HABILITAÇÕES LITERÁRIAS

LICENCIATURA EM DIREITO

Faculdade de Direito da Universidade de Lisboa - 1988

PÓS-GRADUAÇÕES

Contabilidade, Análise Financeira e Avaliação de Empresas - Universidade Nova de
Lisboa 1998

Direito Comercial Internacional (Contratos e Arbitragem Internacional) - Faculdade
de Direito da Universidade de Lisboa - 2004-2005

FORMAÇÃO ADICIONAL

Advanced Training PIDA - Advanced Training in International Commercial Arbitration - ICC Paris
2013

Advanced Practice Seminar - Swiss Arbitration Association (ASA) - Como, Italy 2014

Advanced Practice Seminar - Swiss Arbitration Association (ASA) - Badenweiler, Germany, 2015

Advanced Practice Seminar - Swiss Arbitration Association (ASA) - Frankfurt, Germany, 2018

IV - PUBLICAÇÕES

1. *Motivation of arbitral awards: a few notes* - Young Arbitration Review, July 2013, on-line edition (www.yar.com.pt)
2. *Fundamentação de laudos arbitrais no direito português: Algumas notas* - Rev. Arb. Med., Vol. 10, No. 39, at 155 (2013)
3. *Arbitrability of disputes in computer program rights under the Portuguese Law: General Overview* - Romanian Arbitration Journal, year 10, nr. 1, jan-mar 2016, vol. 37, at 22
4. *Notas sobre a Arbitrabilidade de Litígios no Âmbito dos Direitos sobre Programas de Computador* - THEMIS Revista da Faculdade de Direito da UNL, Ano XII, N^os24/25, 2013, at. 233-293
5. *Asymmetrical arbitration clauses under the Portuguese Law* - Young Arbitration Review, October 2013, on-line edition (www.yar.com.pt)
6. *Cláusulas Arbitrais Assimétricas: uma perspectiva portuguesa* - Rev. Arb. Med., Vol. 11, No. 41, at 45 (2014)
7. *A Convenção de Nova Iorque sobre o Reconhecimento e Execução de Sentenças Arbitrais de 1958 na Jurisprudência Portuguesa* (2013)
8. *The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 in the Portuguese Case Law* - Romanian Arbitration Journal, year 8, nr. 4, oct-dec 2014, vol. 32, at 29
9. *The Extension of Arbitration Agreements: A "Glimpse" of Connectivity* - ASA Bulletin, Volume 32, No. 1, 2014, p. 18.
10. *Dealing with the "BUTs" of "BATs" within the Portuguese jurisdiction*, - Young Arbitration Review, April 2014, on-line edition (www.yar.com.pt)
11. *A extensão da convenção de arbitragem no quadro dos grupos de empresas e da assunção de dívidas: um vislumbre de conectividade*, Revista da Ordem dos Advogados, year 74, nr. 1, jan-mar 2014, at. 141-179.
12. *Lidando com os BUTs dos BATs no direito português*, Rev. Arb. Med., Vol. 11, No. 42, at 213 (2014).
13. *I Will Not Go That Way: What The International Public Policy Of The Portuguese State Is Not*, in MEALEY'S International Arbitration Report Vol. 30, #2 February 2015

14. *Pathological arbitration clauses, good faith and the protection of legitimate expectations*, *Arbitration International* 31(2) 349 (2015)
15. *Arbitrability Of Copyrights In Portugal*, in MEALEY'S *International Arbitration Report* Vol. 30, #5 May 2015
16. *Arbitraje de Disputas Tributarias en Portugal Y Reflexiones Sobre Su Posible Implantación en España*, *Spain Arbitration Review*, No. 23/2015, at 95
17. *Arbitration in Portugal*, in *Practical Law - Thomson Reuters*, July 2015
18. *The role of good faith in arbitration: are arbitrators and arbitral institutions bound to act in good faith?*, in 33 *ASA BULLETIN* 3/2015 (SEPTEMBER)
19. *Regras para Nomeação de Árbitros. O exemplo do Centro de Arbitragem Comercial da Câmara de Comércio e Indústria Portuguesa*, with José-Miguel Júdice, *Revista de Arbitragem e Mediação*, vol. 46, ano 12, p. 241-254, São Paulo, Ed. RT, jul-set 2015
20. *“Third Party Funding” ou o Financiamento de Litígios por Terceiros em Portugal - Revista do Ordem dos Advogados* III/IV 2015
21. *Arbitration in Swaps: the Portuguese experience*, with Prof. Paula Costa e Silva, *Arbitration International*, 2016, 0, 1-25 -- doi: 10.1093/arbint/aiv014
22. *Arbitral awards modifying arbitral awards? The principle of "equilibrium" of arbitral awards* - *European International Arbitration Review*, Vol. 4:2
23. *Tax Arbitration in Portugal*, with Dr. Werner Muller - *Schieds VZ* 2016, November
24. *Third Party Funding: a Protected Investment?*, *Spain Arbitration Review*, nr. 30, 2017
25. *Third-Party Funding: In Search of a Definition*, *American Review of International Arbitration*, 2018
26. *Report on Third Party Funding for the Vienna Arbitration Days (2017)*, with Nefeli Lamprou, *Austrian Yearbook on International Arbitration* 2018

27. *A Proibição de Excesso e a Ordem Pública Internacional de Portugal*, Revista de Arbitragem e Mediação—RARb, vol. 56. ano 17, São Paulo: Ed. RT, jan.-mar. 2018

28. *Portugal e as IBA Guidelines: Desinvestir na virtude?*, Revista de Direito Comercial, www.revistadedireitocomercial.com, 2018; Revista da Ordem dos Advogados, I/II 2018.

29. *Penalty Clauses in International Arbitration: a comparative snapshot*, World Arbitration and Mediation Review – Florida International University, 2018.

30. Cláusulas Penales en Arbitraje Internacional: Una Introducción Comparativa, a publicar

31. The Prague Rules: Competitor, Alternative or Addition to the IBA Rules on the Taking of Evidence in International Arbitration?, in ASA Bull. 2/2018, 351 et seq.

32. A Regulação de Third-Party Funding, in XI Congresso do Centro de Arbitragem Comercial, Intervenções, Almedina, 2018

33. Arbitrating Disputes in Third-Party Funding: A Parallel With Arbitration in the Financing Sector, The International Journal of Arbitration, Mediation and Dispute Management, Volume 85 Issue 2 May 2019

34. “The Prague Rules: A Regression or a Step Towards More Efficiency?”, New York Dispute Resolution Lawyer, Vol. 12 No. 1 (Spring 2019), New York State Bar Association

35. Penalty Clauses in International Arbitration: A Comparative Snapshot - WAMR 2017 - Vol. 11, No. 4

36. The Prague Rules on the Efficient Conduct of Proceedings in International Arbitration - Romanian Arbitration Journal, Year 13, Nr. 2/2019 (April-June 2019)

- Contribuição para “New York Convention Guide Project” (www.newyorkconvention1958.org)

Lexis-Nexis Practical Notes:

- Enforcing arbitral awards in Portugal
- State immunity and arbitration in Portugal
- Interim remedies in support of arbitration in Portugal
- The IBA Guidelines on Conflicts of Interest: Portuguese courts differ

V - ARBITRAL EXPERIENCE - SELECTED (ENGLISH)

(Summary of cases and Brief description of the disputes)

(The amounts in dispute ranged between € 10,000 and €380,000,000)

- 2001 Dispute concerning an agreement for the sale of shares and subsequent determination of the price. (Counsel)
- 2002 Dispute concerning the interpretation of a clause contained in a lease agreement and subsequent determination of the rents. (Counsel)
- 2004 Dispute concerning an agreement for the management of a portfolio of assets.
(Counsel)
- 2005 Dispute concerning a breach of a company management agreement and a jointly employment contract. (Counsel)
- 2005 Dispute concerning an insurance policy covering all risks of a warehouse of computer and mobile phone hardware. (Counsel)
- 2006 Dispute concerning a breach of an agreement for the provision of a software solution and subsequent determination of property over the results of such work carried out on commission, involving also a distribution of software agreement (Counsel)
- 2006 Dispute concerning a contract for the construction of a building on a “turn key basis”.
(Counsel)
- 2008 Dispute concerning an abusive resolution to increase the stock capital of a company. (Counsel)
- 2011 Dispute concerning a claim for the restitution of cash injection from a shareholder. (Counsel)
- 2011 Dispute concerning a breach of an agreement for the provision of a software solution and intellectual property infringement, involving also a distribution of software agreement. (Sole Arbitrator)
- 2012 Dispute concerning a breach of an agreement for the provision of a software solution and intellectual property infringement. (Sole-Arbitrator)
- 2012 Dispute concerning a purchase and sale of shares agreement. (Co-Arbitrator)

- 2012 Dispute concerning a breach of a software distribution agreement. (Co-Arbitrator)
- 2013 Dispute related to a company's name registration. (Counsel)
- 2014 Dispute concerning a purchase and sale of shares agreement and shareholders agreement. (Counsel)
- 2014 Dispute concerning the manufacturing and delivery of industrial machinery (Counsel)
- 2014 Several arbitration disputes (16) related to tax law against the Portuguese State. (Counsel)
- 2015 Several arbitration disputes (10) related to tax law against the Portuguese State (Counsel)
- 2015 Dispute concerning industrial property rights related to reference medicines and generic medicines (Co-Arbitrator)
- 2015 Dispute concerning patents and application for patent protection. Dispute against Patent Office. (Sole Arbitrator)
- 2016 Several arbitration disputes (4) related to tax law against the Portuguese State (Counsel)
- 2016 Dispute concerning industrial property rights related to reference medicines and generic medicines (Co-Arbitrator)
- 2016 Dispute related to the "GoPro.pt" web-domain name (Sole-Arbitrator)
- 2016 Disputes (2) related to real estate property (Co-Arbitrator)
- 2016 Enforcement of PCA Investment Arbitration Award
- 2016 Dispute related to a distribution agreement (Chair)
- 2017 Dispute related to a distribution agreement (Chair)
- 2017 Dispute against a Caribbean State - Investment Arbitration (counsel)
- 2018 Dispute against a South-American State - Investment Arbitration (counsel)
- 2019 Dispute between two Brazilian companies related to a shareholders' agreement