

DUARTE G. HENRIQUES

CONTACT DETAILS

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I - PROFILE

Duarte Henriques is a lawyer and arbitrator based in Lisbon - Portugal, and partner at BCH Lawyers. Since 1990, he has acted as both counsel and arbitrator in a number of litigation and arbitration cases related to investment disputes, banking & finance, corporate, commercial, distribution and construction disputes. Duarte Henriques has a strong experience in advising and securing “third-party funding” for clients.

He serves as sole arbitrator, chair or member of tribunals in domestic and international arbitration proceedings, and as counsel in domestic and international arbitration proceedings, both institutional and ad hoc. Duarte Henriques also provides services in domestic and international litigation, and regularly works with other international law firms in dispute resolution.

As partner of BCH, Duarte Henriques advises major banking and finance institutions, insurance companies, and technology / software solution providers in litigation and arbitration disputes.

Duarte Henriques is listed as arbitrator in a number of institutions, including the China International Economic and Trade Arbitration Commission (CIETAC), the Hong Kong International Arbitration Centre (including the panel for IP Disputes), the Singapore International Arbitration Centre (reserve panel), the Korean Commercial Arbitration Board, the Silicon Valley Arbitration and Mediation Centre, and the International Distribution Institute.

He is a member of a number of international associations, including the Russian Arbitration Association, LCIA, IBA, ICC, and ICCA.

Duarte Henriques is a member of the ICC Task Force on Financial Institutions and International Arbitration and of the 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.

He has written numerous articles on Portuguese and International arbitration.

II - EXPERIENCE - LISTINGS - MEMBERSHIPS

LAWYER - 1990 - PRESENT

Duarte Henriques is a lawyer admitted to the Portuguese Bar Association in 1990, holding professional licence nr. 8830L, without any interruption or suspension, and with no disciplinary, ethical or deontological sanctions or reserves.

COMMISSIONS AND TASK FORCES

ICC Commission on Arbitration and ADR

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

Arbitration Committee of ICC Portugal

ARBITRAL INSTITUTIONS LISTINGS

Silicon Valley Arbitration & Mediation Centre

International Distribution Institute

Korean Commercial Arbitration Board

Kuala Lumpur Regional Centre for Arbitration (KLRCA)

China International Economic and Trade Arbitration Commission (CIETAC)

SIAC - Singapore International Arbitration Centre (reserve panel)

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)

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).

MEMBERSHIPS

Portuguese Arbitration Association

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

Brazilian Committee of Arbitration

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

Association for Domestic and International Arbitration (AFA - Paris)

III - EDUCATION

LAW DEGREE

Law Degree - Faculty of Law of the University of Lisbon 1988

POST-GRADUATION QUALIFICATION

Accounting, financial analysis and business assessment - University Nova of Lisbon 1998

POST-GRADUATION QUALIFICATION

International Trade Law (Contracts and International Arbitration) - Faculty of Law of the University of Lisbon 2004-2005

ADVANCED TRAINING

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

IV - PUBLICATIONS

- 'Motivation of arbitral awards: a few notes' – Young Arbitration Review, July 2013, on-line edition (www.yar.com.pt)

- 'Fundamentação de laudos arbitrais no direito português : algumas notas," Rev. Arb. Med., Vol. 10, No. 39, at 155 (2013)
- '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
- '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°s24/25, 2013, at. 233-293.
- 'Asymmetrical arbitration clauses under the Portuguese Law' - Young Arbitration Review, October 2013, on-line edition (www.yar.com.pt)
- 'Cláusulas Arbitrais Assimétricas: uma perspectiva portuguesa' - Rev. Arb. Med., Vol. 11, No. 41, at 45 (2014)
- '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
- 'A Convenção de Nova Iorque sobre o Reconhecimento e Execução de Sentenças Arbitrais de 1958 na Jurisprudência Portuguesa' – www.arbitragem.pt (2013)
- The Extension of Arbitration Agreements: A "Glimpse" of Connectivity? – ASA Bulletin, Volume 32, No. 1, 2014, at. 18.
- Dealing with the "BUTs" of "BATs" within the Portuguese jurisdiction - Young Arbitration Review, April 2014, on-line edition (www.yar.com.pt)
- '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.
- 'Lidando com os BUTs dos BATs no direito português', Rev. Arb. Med., Vol. 11, No. 42, at 213 (2014).
- '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

- *Pathological arbitration clauses, good faith and the protection of legitimate expectations*, *Arbitration International* 2015, doi: 10.1093/arbint/aiv016
- *Arbitrability Of Copyrights In Portugal*, in MEALEY'S *International Arbitration Report* Vol. 30, #5 May 2015
- *Arbitraje de Disputas Tributarias en Portugal Y Reflexiones Sobre Su Posible Implantación en España*, *Spain Arbitration Review*, No. 23/2015, at 95
- "Practice note on arbitration in Portugal", *Practical Law - Thomson Reuters*, July 2015
- '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)
- *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
- "Third Party Funding" ou o Financiamento de Litígios por Terceiros em Portugal – "Revista da Ordem dos Advogados", III/IV 2016
- "Arbitration in Swaps: the Portuguese experience", with Prof. Paula Costa e Silva, *Arbitration International*, 2016, *Arbitration International*, 2016, 0, 1–25 -- doi: 10.1093/arbint/aiv014
- "Tax Arbitration in Portugal", with Dr. Werner Muller, *Schieds VZ*, 2016 November
- "Third Party Funding: a Protected Investment?", *Spain Arbitration Review*, nr. 30, 2017
- *Report on Third Party Funding for the Vienna Arbitration Days (2017)*, with Nefeli Lamprou, *Austrian Yearbook on International Arbitration* 2018
- "Third-Party Funding: In search of a Definition", *American Review of International Arbitration*, 2018
- "A Proibição de Excesso e a Ordem Pública Internacional de Portugal", forthcoming

- "Portugal e as *IBA Guidelines: Desinvestir na virtude?*", forthcoming

- Contributor, 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

(Summary of cases and Brief description of the disputes)

- 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)