



ANA GERDAU DE BORJA MERCEREAU

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NATIONALITY: Brazilian and German
LANGUAGES: Portuguese, English, French and Spanish
ADMISSION: Brazil, Portugal and Paris (Directive 98/5/EC)
OFFICE: Paris

Ana Gerda de Borja Mercereau is a senior associate at Derains & Gharavi (Paris).

Since 2009, Ana has practiced international and domestic arbitration and has acted in proceedings related to arbitration such as annulment and recognition and enforcement proceedings before State courts. She has acted as counsel representing clients from Latin America, Portuguese and Spanish speaking jurisdictions, especially Brazil and Spain. She has been particularly active in the sectors of retail distribution, industrials, construction and engineering, energy (renewables and oil & gas), transportation, real estate, mining and shipping.

She has also acted as a sole arbitrator under the ICC Rules in a construction/shipping dispute and under the Swiss Rules in a shipping dispute dealing with demurrage claims, conducted in French and English and seated in Paris and Zurich, respectively. She has also acted as co-arbitrator in an ICC construction dispute seated in Porto, conducted in Portuguese. As secretary to arbitral tribunals, she has been involved in some of the largest international arbitrations including investor-State arbitrations, which enables her to deal as arbitrator with no difficulty with complex procedural and substantive matters.

In her experience as counsel, arbitrator and secretary to arbitral tribunals, Ana has dealt with a myriad of applicable laws in the civil law and common law systems, including Brazilian law, Spanish law, Mexican law, Chilean law, French law, English law, Swiss law, Italian law, Algerian law, Qatari law, New York law and international law. Her cases were conducted in Portuguese, Spanish, French and English under the ICSID, the ICC, the LCIA-MIAC, and the ICDR/AAA rules, and under Brazilian institutions' rules (CAM-CCBC, CCMA CIESP/FIESP, CAMARB, Câmara FGV, CAM-BM&FBOVESPA, AMCHAM-Brazil and CMA from São Paulo's Instituto de Engenharia).

She co-leads Track 5 of the Task Force dealing with corruption in international arbitration as a member of the ICC Commission on International Arbitration and ADR. Ana is one of the founders of the Rising Arbitrators Initiative and of the Lusophones' Arbitration Club, a former deputy chair of CIARB's YMG Global Steering Committee and a former CIARB European Branch YMG Representative.

She has been appointed to the panels of arbitrators of ARBITAC, Câmara do Mercado (CAM B3), CAMARB, CAM-CCBC and CBMA (Brazil), of the Arbitration Centre of the Lima Chamber of Commerce and of the Centre of Arbitration Amcham Perú (Peru) and of the Arbitration Centre of the Portuguese Chamber of Commerce and Industry (Portugal).

Ana holds a Ph.D. and an LL.M. from the University of Cambridge and is admitted to the Bars of Brazil (São Paulo) and Portugal (Porto) and is registered with the Paris Bar (Directive 98/5/EC).

EXPERIENCE AS COUNSEL

- Represented a Spanish client in ICC emergency and main arbitration proceedings, successfully confirming in the main proceedings anti-suit measures in favour of arbitration granted in the emergency proceedings, combined with *astreintes* (penalty for non-compliance) against the opposing party.
- Represented a Brazilian investor in an ICC arbitration in relation to the sale of participating interest in a concession agreement for the exploration, development and production of oil and gas.
- Represented a Brazilian investor in an ICC arbitration in relation to a share purchase agreement and to a shareholders' agreement against its Italian partner.
- Represented a Brazilian shareholder in two ICC arbitrations in relation to the shareholders' agreement against their French partner in the retail distribution sector.
- Represented a Brazilian commodity player in an ICDR arbitration against its Swiss trade partner in relation to the breach of a purchase and sale agreement of gasoline components.
- Represented a Brazilian investor in a CAM CIESP/FIESP arbitration against an Italian company in relation to a built-to-suit contract.
- Represented a UK investor in a CAM-CCBC arbitration following an M&A transaction in the advertising sector.
- Represented a Brazilian client against a US investor in a CAM-CCBC dispute in relation to a market development agreement.
- Represented a Scandinavian minority shareholder in two CAM B3 arbitrations against their former partners in relation to a share purchase agreement, a shareholders' agreement and a call option agreement in the renewable energy sector concerning the acquisition of various assets such as hydropower plants, onshore wind farms, and a thermal power plant utilizing sugar cane bagasse.
- Represented a Brazilian client in a CAM-CCBC arbitration in relation to the construction of a power plant.
- Represented a Brazilian client in a family dispute involving real estate in the central States of Brazil.
- Represented a Brazilian client in a FGV arbitration in relation to power purchase agreements in the free market.
- Represented a Brazilian client in a CAM-CCBC arbitration against its business partner in a real estate project.
- Represented a Brazilian client in a CAMARB arbitration in relation to a deal in the automobile insurance sector.
- Represented a Brazilian client in a CAM-CCBC arbitration in relation to the cancellation of a contract for the sale and purchase of iron ore.
- Represented minority shareholders in a CAM-CCBC arbitration in relation to the violation of a share purchase agreement and shareholders' agreement.
- Represented a Brazilian investment fund in a CAM-CCBC arbitration in relation to a memorandum of understanding in the mining sector.

EXPERIENCE AS ARBITRATOR, AD HOC COMMITTEES AND SECRETARY TO ARBITRAL TRIBUNALS

- Sole arbitrator in expedited proceedings seated in Zurich under the Swiss rules in the metals/maritime sectors.
- Sole arbitrator appointed by the ICC in an arbitration in relation to a contract for the surveyance of a ship's construction.
- Co-arbitrator in an ICC arbitration seated in Portugal in the construction sector.
- Member and chair of ad hoc committees appointed by CAM-CCBC (Brazil) deciding on a challenge against an arbitrator and on a challenge against the whole arbitral tribunal.
- Member of an ad hoc committee appointed by CAMARB (Brazil) deciding on the challenge against an arbitrator.
- Assistant to the president of the arbitral tribunal in an ICSID arbitration (ICSID Case No. ARB/15/40) in relation to investment in solar plants.
- Assistant to the president of the arbitral tribunal in ICSID revision proceedings (ICSID Case No. ARB/13/1) in relation to investment in energy ships.
- Assistant to the president of the arbitral tribunal in an ICSID arbitration (ICSID Case No. ARB/20/12) in relation investment in the real estate sector.
- Administrative secretary appointed by the arbitral tribunal in an ICC arbitration in relation to a contract in the aerospace sector.
- Administrative secretary appointed by the arbitral tribunal in an ICC arbitration in relation to a sponsorship agreement.
- Administrative secretary appointed by the arbitral tribunal in an ICC arbitration in relation to the construction of airport facilities.
- Administrative secretary appointed by the sole arbitrator in an MIAC-LCIA arbitration in relation to contracts in the fishing sector.
- Administrative secretary appointed by the arbitral tribunal in an ICC arbitration in relation to offshore EPCI and drilling works contracts for gas storage.
- Administrative secretary appointed by the arbitral tribunal in an ICC arbitration in relation to gas storage, delivery, and liquefaction contracts.
- Administrative secretary appointed by the arbitral tribunal in an ICC arbitration in relation to EPC and asset management contracts in the solar sector.
- Administrative secretary appointed by the arbitral tribunal in an ICC arbitration relating to an accident in the industrials sector.
- Administrative secretary appointed by the arbitral tribunal in an ICC arbitration in relation to a share purchase agreement in the debt recovery and real estate sector.
- Administrative secretary appointed by the arbitral tribunal in an ICC arbitration in relation to the exploration and commercialisation of metals.

PROFESSIONAL EXPERIENCE

Since Jan. 2018: Associate, Derains & Gharavi (Paris)

2015 - 2017: Associate, International Arbitration, Cleary Gottlieb Steen & Hamilton (Paris)

2010 – 2015: Associate, International and Domestic Arbitration, Professor Wald's law firm (São Paulo)

2009 – 2010: Associate, International and Domestic Arbitration, BKBG (São Paulo)

ACADEMIC POSITION

2017 Lecturer in Private International Law (Prof. Bernard Haftel's course) at the University of Paris-XIII

EDUCATION

- 2010 PhD in law, under the supervision of James Crawford, thesis: « Regional Economic Community Rules and Investment Treaty Arbitration: The EU Experience and its Relevance for the Andean Community », from the University of Cambridge
- 2006 LL.M. in international law from the University of Cambridge
- 2005 LL.B. from the University of *Federal do Rio Grande do Sul*, Porto Alegre

MEMBERSHIPS

- Member of the panel of arbitrators of ARBITAC (Brazil)
- Member of the panel of arbitrators of Câmara do Mercado (CAM B3) (Brazil)
- Member of the panel of arbitrators of CAMARB (Brazil)
- Member of the panel of arbitrators of CAM-CCBC (Brazil)
- Member of the panel of arbitrators of CBMA (Brazil)
- Member of the panel of arbitrators of the Arbitration Centre of the Lima Chamber of Commerce (Peru)
- Member of the panel of arbitrators of the Centre of Arbitration Amcham Perú (Peru)
- Member of the panel of arbitrators of the Arbitration Centre of the Portuguese Chamber of Commerce and Industry (Portugal)
- Co-founder of the Rising Arbitrators Initiative (RAI) and former co-chair of its Executive Committee
- Co-founder of the Lusophones' Arbitration Club (CAL)
- Fellow of the Chartered Institute of Arbitrators, FCIArb
- Member of the ICC Commission on Arbitration and ADR
- Member of the Brazilian Arbitration Committee (CBar)
- Member of the French Arbitration Committee (CFA)
- Member of the Club Español e Iberoamericano del Arbitraje (CEIA)
- Member of the Dispute Resolution Board Foundation (DRBF)
- Member of the ICC Brazil
- Member of the ICC Task Force on Corruption in International Arbitration (since 2019)
- Member of the ICC Task Force for the revision of ADR, Expert and Dispute Board rules (2012-2014)

PUBLICATIONS

- “O Árbitro de Emergência e o Caso das Anti-Suit Injunctions a Favor da Arbitragem” (with LF Yokota) in *Arbitragem, Mediação e Outros Métodos Alternativos de Resolução de Conflitos: Estudos em Homenagem ao Doutor Frederico José Straube* (eds A M Cunha Guimarães, A F Nascimbeni et al). São Paulo, Quartier Latin (2023)
- “Medidas Cautelares Anteriores à Constituição do Tribunal Arbitral: Aparentamentos sobre Competência, Escopo e Execução?” in *Arbitragem e Poder Judiciário: Estudos sobre a interação entre as jurisdições arbitral e estatal*. São Paulo, Migalhas (2023) (with LF Yokota)
- “Pedido de Esclarecimentos” in *Lei de Arbitragem Comentada - Lei nº 9.307/1996* (eds A C Weber, F de Cerqueira Leite). São Paulo, RT/Thomson Reuters (2023) (with I Monnerat Mendes)
- « La responsabilité sociale des entreprises et l'arbitrage d'investissement », in Cerqueira, G. et al, *Études en l'honneur du Professeur Iacyr de Aguiar Vieira* (Société de législation comparée, 2022)
- “O Profissionalismo do Árbitro” in *A Função do Árbitro no Brasil* (eds B Guandalini, C E Stefen Elias) Lisboa, Almedina (2022) (with Y Derains)
- “Arbitragem e Contrato” in *Curso de Arbitragem* (eds D Levy, G Setoguti) São Paulo, RT/Thomson Reuters (2edn 2021)
- “Is Corporate Social Responsibility There to Stay in International Arbitration?” (TDM Special Issue 2019)

- "La corruption et l'arbitrage", in *Un demi-siècle africain d'arbitrage d'investissement*. Paris, LGDJ (2019)
- "Prise en compte des droits de l'homme et de l'environnement dans les traités bilatéraux d'investissement" in "La protection des investissements étrangers : vers une réaffirmation de l'État ?", *Actes du Colloque du 2 juin 2017*, A. Pedone, 2018
- "Caso Valeri Belokon v. Kyrgyz Republic : the standard of proof applying to corruption allegations" (comentário) in *Revista de Arbitragem e Mediação* no. 56 (2018)
- "Instalment Contracts and Fundamental Breach in the CISG : A Brazilian Perspective", in I. Schwenzer, C. Pereira, and L. Tripodi (eds), "CISG and Latin America", Eleven Publishing (2016)
- *Investment Protection in Brazil*, with D. Levy and A. Pucci, Kluwer (2014)
- "Brazil as 'La Belle of the Ball': The Brazilian Courts' Pro-Arbitration Stance (2011-2012)" (with A. Wald and M. Vieira) in *The Paris Journal of International Arbitration/Les Cahiers de l'Arbitrage* 2013-2