

Online Sports Betting in Brazil and conflict solution clauses

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Abstract: Sports betting sites are now a reality in Brazil. According to Exame¹ magazine, in 2018, it moved around 2 billion reais per year, and with the imminent regulation of Act n. 13.756 /2018, it should move approximately 8 billion reais annually. Online gambling will only reach the peak of its market, according to Rohan Miller,² when consumers' risk perception is reduced or neutralized. Questions such as who to look for if something goes wrong and which laws apply in the event of a conflict should be answered clearly by the betting sites' Terms of Service (EULAs). Therefore, this article's general objective will be to analyze the methods of conflict resolution included in the Terms of Use of the 9 (nine) main sports betting sites used by Brazilians, namely: 1. Bet365; 2. SportingBet; 3. Betboo; 4. Betway; 5. Rivalo. 6. 22Bet; 7. Betmotion; 8. Bumbet; 9. Bet9. As a specific objective, we will analyze the mediation and arbitration procedures as well as the statistics of two ODR (Online Dispute Resolution) service sites used by the betting sites: the e-Commerce Online Gaming Regulation and Assurance (e-Cogra - online mediation service) and Independent Betting Adjudication Service

¹ Retrieved from <https://exame.com/blog/esporte-executivo/futebol-sites-de-apostas-ja-sao-maioria-dos-patrocinios-na-elite-nacional/>. Accessed on 02.11.2020.

² MILLER, Rohan. The Need for Self-Regulation and Alternative Dispute Resolution to Moderate Consumer Perceptions of Perceived Risk with Internet Gambling. *UNLV Gaming Research & Review Journal*, v. 10, n. 1, p. 52, 2006.

(IBAS online arbitration service). Both legally based in England. We could realize that the Brazilian bettor, as a rule, does not read the terms of service and is unaware of the conflict resolution clause provided by the website. Besides, through data analysis from eCOGRA and IBSA, we can state that Brazilian gamblers who access ODR service providers are very rare both because they are unaware and because of linguistic difficulties. Also, the chances of success in resolving conflicts in favor of the consumer through mediation are greater than through online arbitration. In short, we can say that the model established by the UK Gambling Act and the Great Britain Gambling Commission is a model that guarantees the fundamental principles of both mediation and arbitration (impartiality, due process, and easy access). The fact that arbitration and mediation are not binding on bettors under any circumstances also guarantees the parties equal treatment.

Keywords: Sports Betting; Online Dispute Resolution; Brazil; Mediation; Arbitration

Summary: 1 Introduction – 2 Literature review – 3 Methodology – 4 The sports betting sites used in Brazil and their conflict resolution clauses – 5 Sporting betting sites Online Dispute Resolution (ODR) providers – 6 Conclusion – References

1 Introduction

Sports betting sites are now a reality in Brazil. According to Exame magazine,³ in 2018, it moved around 2 billion reais per year, and with the imminent regulation of Law 13.756/2018, it should move approximately 8 billion reais annually. Between 2018 and 2020, the sports betting market in Brazil went up from 2 billion reais to 7 billion reais.⁴ There are currently two federal decree drafts⁵ to be approved to regulate the 2018 Act.

Online gambling will only reach the peak of its market, according to Rohan Miller,⁶ when consumers' risk perception is reduced or neutralized. Questions such as who to look for if something goes wrong and which laws apply in the event of a conflict should be answered clearly by the betting sites' Terms of Service.

Therefore, this article's general objective will be to analyze the methods of conflict resolution included in the Terms of Use of the 9 (nine) main sports betting sites used by Brazilians, namely: 1. Bet365; 2. SportingBet; 3. Betboo; 4. Betway; 5. Rivalo. 6. 22Bet; 7. Betmotion; 8. Bumbet; 9. Bet9. As a specific objective, we will analyze the mediation and arbitration procedures as well as the statistics of two ODR (Online Dispute Resolution) service sites used by the betting sites: *the e-Commerce Online Gaming Regulation and Assurance (e-Cogra - online*

³ Retrieved from <https://exame.com/blog/esporte-executivo/futebol-sites-de-apostas-ja-sao-maioria-dos-patrocinios-na-elite-nacional/>. Accessed on 02.11.2020.

⁴ Retrieved from <https://revistacapitaleconomico.com.br/entenda-o-crescimento-do-mercado-de-apostas-esportivas-no-brasil/>. Accessed on 20.06.2022.

⁵ See, for example, the decree proposed in 2020: https://www.gamesbras.com/u/archivos/2020/2/18/2002_18_economia_secap_apostas_quota_fixa_minuta_decreto_11fevereiro2020.pdf. Accessed on 20.06.2022.

⁶ MILLER, Rohan. The Need for Self-Regulation and Alternative Dispute Resolution to Moderate Consumer Perceptions of Perceived Risk with Internet Gambling. *UNLV Gaming Research & Review Journal*, v. 10, n. 1, p. 52, 2006.

mediation service) and *Independent Betting Adjudication Service (IBAS - online arbitration service)*. Both legally based in England.

2 Literature review

At the present time there is significant number of papers on the topic of gambling and sports betting. Authors analyze this area from different perspectives. Due to the risk nature of this area the topic is quite interesting also for legal research.⁷

There are many papers devoted to the regulation of online sport's betting and gambling. Thus, Holden consider USA regulation on sports gambling⁸; Rohsler considers legal and philosophical aspect of gambling in general.⁹ At the same time national peculiarities of the overcoming the issues of the online sports betting and the ways to resolve disputes arising from it are not considered enough.

Republic of Brazil is the country where sport is extremely popular. Sport's disputes are quite wide spread. That is why analysis of the national peculiarities of online sport's betting and the possibilities to resolve issues arising from it is highly important.

At the same time, papers on the topic consider mostly published in Portuguese, that doesn't allow international community to understand defined peculiarities of Brazilian sport's betting and dispute resolution. Those ones that published in English consider online sport's betting regulation in general.¹⁰

3 Methodology

To achieve the goals of the article authors applied a set of methods, which included the comparative legal and systemic method, as well as the method of content analysis.

Comparative legal analysis allowed to us to find the peculiarities of the Brazilian sports betting regulation and dispute resolution in comparison with UK regulation. It also allowed us to compare the law that is applied if dispute arose from the sports bet (depending on the sports betting website).

⁷ CAHALI, Francisco José. *Curso de arbitragem, mediação, conciliação, tribunal multiportas*. 7. ed. São Paulo: Thompson Reuters Brasil, 2018. p. 180-181; MILLER, Rohan. The Need for Self-Regulation and Alternative Dispute Resolution to Moderate Consumer Perceptions of Perceived Risk with Internet Gambling. *UNLV Gaming Research & Review Journal*, v. 10, n. 1, p. 52, 2006.

⁸ HOLDEN, J. A short treatise on sports gambling and the law: how America regulates its most lucrative vice. *Wisconsin Law Review*, n. 2. p. 907, 2020.

⁹ ROHSLER C. *et al. Gambling Law Review*. 2nd ed. UK: Law Business Research, 2019. p. 401.

¹⁰ MAIA, L., PICCI, F. The Gambling Law Review: Brazil. *The Law Reviews*, 2022.

Systemic method gave the opportunity to consider online sport's betting and gambling in Brazil as a system with national peculiarities.

Content analyses of the sports betting sites allowed us to detect the applicable law and conflict resolution clauses.

4 The sports betting sites used in Brazil and their conflict resolution clauses

Article 14, IV of Act nº 13.756/2018 opens the flank for the country's sports lottery, conceptualizing it as a lottery of sports predictions, that is, a lottery in which the bettor tries to predict the outcome of sporting events.

Bets, under the terms of article 29 § 1 of the Law, will follow the fixed-rate model. That is verbatim, a betting system related to real sporting events, in which it is defined, at the bet's moment, how much the bettor can earn in case of a correct prognosis.

As a comparison, in Europe, Great Britain is the region with the most massive volume of bets approved the Gambling Act of 2005. This diploma allowed the possibility of online (remote) betting in its Section 4 (1).¹¹ Online sports betting in Great Britain, in 2017, represented 56% of the total bets and exceeded a volume of 31 billion Euros.¹²

The Brazilian Act (pending regulation by the Ministry of Economy) establishes in the headline of article 29 that the lottery modality of fixed-rate bets is an exclusive public service of the Union, and item II (paragraphs A to F) of article 30¹³ establishes the destination of the earnings from the collection of such bets in percentages.

¹¹ Section 4 - Remote gambling (1) In this Act "remote gambling" means gambling in which persons participate by the use of remote communication. (2) In this Act "remote communication" means communication using— (a)the internet, (b)telephone, (c)television, (d)radio, or (e)any other kind of electronic or other technology for facilitating communication. (3)The Secretary of State may by regulations provide that a specified system or method of communication is or is not to be treated as a form of remote communication for the purposes of this Act (and subsection (2) is subject to any regulations under this subsection). Retrieved from <http://www.legislation.gov.uk/ukpga/2005/19/section/4>. Accessed on 02.11.2020.

¹² Retrieved from <https://www.sportsbusinessdaily.com/Journal/Issues/2018/04/16/World-Congress-of-Sports/Research.aspx>. Accessed on 18.11.2020.

¹³ Art. 30. The earnings from the collection of the fixed-rate betting lottery will be allocated as follows: II - in virtual media: a) 89% (eighty-nine percent), at least, for the payment of prizes and payment income tax on the award; b) 0.25% (twenty-five hundredths percent) for social security; c) 0.75% (seventy-five hundredths percent) for the executing entities and executing units of the public school units for early childhood education, elementary school and high school that have achieved the goals established for the results of the national evaluations of primary education, as per the act of the Ministry of Education; d) 1% (one percent) for the FNSP; e) 1% (one percent) for sports entities of the football modality that assign the rights to use their denominations, their brands, their emblems, their hymns, their symbols and the like for publicizing and executing the fixed-odds betting lottery; f) A maximum of 8% (eight percent) to cover the cost and maintenance expenses of the agent operating the fixed-rate lottery. Retrieved from http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2018/Lei/L13756.htm#art47. Accessed on 02.11.2020.

In the table below we list the following information: 1. Website name; 2. Country of headquarters; 3. Applicable law; 4. Conflict resolution clause; 5. Mediation or arbitration provider (in case of conflict resolution clause).

(Continua)

Website	Country of Headquarters	Applicable law	Conflict resolution clause	Mediation or arbitration Provider
Bet365	Great Britain	English and Welsh	Negotiation followed by online arbitration (IBAS -Neg-Arb)	Independent Betting Adjudication Service (IBAS) or Online Dispute Resolution (ODR). The bettor can also forward a complaint to the Malta Gambling Authority (Malta Gaming Authority [MGA])
SportingBet	Gibraltar	Gibraltar	Negotiation and Choice of Court Clause (bettor's home court) and IBAS for U.K Residents	IBAS (for U.K residents)
Betboo	Gibraltar	Gibraltar	Negotiation followed by online mediation (Neg-Med)	eCOGRA
Betway	Malta	Malta	Negotiation followed by online mediation (Neg-Med)	eCOGRA (for non-UK residents)
Rivalo	Curaçao	Curaçao	Negotiation. The Terms of Use are silent if the company is unable to resolve the conflict internally ¹⁴	None

¹⁴ The Terms of Use of the betting site only mention that the case will be referred to the management. However, it does not elect any form of external and impartial conflict resolution. Let's see: XVI. Complaints - Rivalo makes every effort to make using www.rivalo.com as pleasant as possible. However, it may happen that a customer is dissatisfied with the service offered. In such a case, the customer is entitled to contact the Rivalo support department or send an email to meajude@rivalo.com. In general, the complaint will be processed within 48 hours and if applicable forwarded to management. Retrieved from https://www.rivalo.com/pt/terms-conditions/#agb_XVI. Accessed on 02.11.2020.

(Conclusão)

Website	Country of Headquarters	Applicable law	Conflict resolution clause	Mediation or arbitration Provider
22Bet	Cyprus	Cyprus	Negotiation and Choice of Court Clause (Cyprus)	None
Betmotion	Curaçao	Curaçao	Negotiation and Choice of Court Clause (Curacao)	None
Bumbet	Curaçao/Malta	Curaçao	No information	No information
Bet9	Curaçao	Curaçao	Choice of Court Clause (Curacao)	None

As we can see, the sports betting sites used in Brazil are owned by companies established abroad and that, in turn, do not offer any guarantee to customers. They even transfer the responsibility for knowing the legality of betting in their countries of residence to bettors. One can acknowledge this statement by reading paragraph 1.6.5 of the Bet9 website EULA, verbatim: “The Player is only recommended to participate in events and games where these are legal under the laws that apply in the jurisdiction where the player is connected. The player must understand and accept that Bet9 is unable to provide the player with any legal advice or legal guarantees”.¹⁵

The sites that direct their conflicts through the choice of court clauses in Curaçao and Cyprus, as we have seen, ultimately make it impossible to resolve disputes between the betting site and Brazilian bettors if there is no initial solution by direct negotiation between the parties.

Of the 9 (nine) terms of use of sports betting sites analyzed, 4 (four) establish a multi-tiered clause where negotiation is followed by arbitration (neg-arb) at IBAS or negotiation followed by mediation (neg-med) at e-COGRA. Therefore, the conflict will be resolved by mediation or arbitration (after frustrated prior and mandatory bargaining). Two virtual mediation and arbitration institutions (Online Dispute Resolution Services) based in England are used: *e-Commerce Online Gaming Regulation and Assurance* (e-Cogra)¹⁶ and *Independent Betting Adjudication*

¹⁵ Retrieved from https://11bet9.com/info/terms_and_conditions. Accessed on 20.06.2022.

¹⁶ E-COGRA also works as a certifying institution for betting sites in general, establishing a standard of operation to guarantee a fair game. The company claims that the majority of its employees have previous professional experience in BIG 4 audit companies. Of the current sports betting sites in the present study, only BETWAY has a SAFE AND FAIR seal. The ODR service provider maintains on its website a list of online casinos and sports betting sites (among other modalities), consolidated with the SAFE AND FAIR stamps. Retrieved from https://www.ecogra.org/srs/holders_safe_fair_seals.php. Accessed on 02.03.2020.

Service (IBAS). The Great Britain Gambling Commission approves both under local regulations. The arbitration and mediation services provided are free of charge for bettors since the operating companies pay monthly fees.

At least 4 (four) of the betting sites refer to the resolution of conflicts in their Terms of Use to Online Dispute Resolution (ODR). The service providers are regulated by British law and are responsible for inspecting the betting sites' impartiality and seriousness through regular audits (case of e-COGRA).

5 Sporting betting sites Online Dispute Resolution (ODR) providers

ODR providers play crucial part in modern dispute resolution.¹⁷ As mentioned, there are two primary Online Dispute Resolution providers for online betting sites (not only sports betting, but mainly virtual casinos): e-COGRA and IBAS.

E-COGRA offers online mediation services between bettors and operators and points out in its regulation that: “eCOGRA will use its reasonable efforts to resolve the dispute through reference to the Operator’s terms and conditions and a process of non-binding mediation between the Player and Operator. The process will follow eCOGRA’s standard practice which may be varied by eCOGRA at any time at its discretion. The process does not restrict a Player’s right to bring proceedings against the Operator in any court of competent jurisdiction before or following eCOGRA’s proposed resolution of the dispute. The proposed resolution may be different from an outcome determined by a court applying legal rules”.¹⁸

IBAS, on the other hand, is an arbitral institution that renders non-binding arbitration awards. The British dispute resolution service provider claims to avoid and minimize red tape, that is, inaccessibility to the service, since it is exempt from fees. The arbitration is entirely text-based. There are no hearings. The arbitration procedure is conducted in seven steps,¹⁹ and the award is posted on the website for the parties simultaneously for fairness purposes. There is still the possibility of an internal appeal against the decision. IBAS also stresses that the party should present the facts in the best possible way and leave aside the concern with rhetoric and good presentation.²⁰ In our view, such a statement aims to make

¹⁷ FERREIRA, D., GIOVANNINI, C., GROMOVA, E., DA ROCHA SCHMIDT, G. Arbitration Chambers and trust in technology provider: impacts of trust in technology intermediated dispute resolution proceedings. *Technology in Society*, n. 68, 101872, 2022.

¹⁸ See item 14 of the institution rules. Retrieved from <https://ecogra.org/products-services/alternative-dispute-resolution>. Accessed on 20.06.2022.

¹⁹ See the seven procedure steps at <https://www.ibas-uk.com/how-ibas-works/>. Accessed on 18.11.2020.

²⁰ “Adjudications are not made on the basis of which party makes a better presentation of their case. Gambling operators and their customers do not need to be concerned about the quality of presentation or writing skills. It is the role of IBAS to identify relevant issues; therefore adjudications are always based

the consumer more comfortable to represent himself without seeking help from a lawyer. That fact, without a shadow of a doubt, makes the service more accessible.

It is interesting to observe clause 19²¹ of the IBAS Terms of Use. The clause states clearly that the arbitration will not be binding on the bettor. He may seek help from the Judiciary after the arbitration award. However, the arbitration will be binding to the operator for amounts up to 10,000 Pounds. The arbitration will not be binding for the operator for disputes that surpass 10,000 pounds. The same dynamic occurs in the mediation procedure carried out by e-COGRA. The agreement reached in mediation is binding only for the operator and for values up to 10,000 Pounds.

Regarding the non-binding arbitration provided for in clause 19 of the IBAS Terms of Use, we identified an apparent conflict with the Terms of Use of a betting site that uses the service: Bet365. In its dispute resolution clause, Bet365 states that the decisions rendered by IBAS will be final and binding, verbatim: "If bet365 is unable to resolve the dispute, either party will have the right to refer the dispute to arbitration, such as the Independent Betting Adjudication Service (IBAS) or Online Dispute Resolution (ODR), whose decisions will be final (except in the event of an obvious error), with all parties involved being subject to full representation. Betting conflicts will not result in litigation, legal suits, or opposition to bookmaker licenses (including distant operator licenses or personal licenses) unless bet365 is unable to implement the decision rendered by the responsible organizations".²²

We are facing a pathological arbitration clause (defective because it is contradictory),²³ which goes against the elected chamber's arbitration regulation. In our view, by establishing an arbitration clause electing a particular institution for conflict resolution, the operator is endorsing the institution's arbitration rules. Therefore, the understanding of non-binding arbitration provided for in the IBAS terms of use should prevail in this case.

In the event of a factual error or error of interpretation of the procedural rules, there is the possibility of award review. Nonetheless, the request for review has a deadline of 40 (forty) days from the panel's award notification. The IBAS Chief Executive will analyze its admissibility under Clause 21²⁴ of the Terms of Use.

on the facts of a case and not on either of the parties' rhetoric. We only ask that statements submitted cover as many facts as you consider relevant to your dispute". Retrieved from <https://www.ibas-uk.com/how-ibas-works/>. Accessed on 18.11.2020.

²¹ See clause 19 in IBAS Terms of Use, verbatim: At the conclusion of IBAS's adjudication process, the IBAS Panel will issue a ruling in writing which IBAS will notify simultaneously to the Customer and Operator. IBAS rulings shall be legally non-binding on the Consumer but binding on the Operator unless the value of the dispute exceeds £10,000. Retrieved from <https://www.ibas-uk.com/how-ibas-works/terms-of-use/>. Accessed on 20.06.2022.

²² Retrieved from <https://help.bet365.com/br/terms-and-conditions>. Accessed on 20.06.2022.

²³ CAHALI, Francisco José. *Curso de arbitragem, mediação, conciliação, tribunal multiportas*. 7. ed. São Paulo: Thompson Reuters Brasil, 2018. p. 180-181.

²⁴ 21. IBAS may, in its absolute discretion, undertake a review of a ruling which it has issued but then only in exceptional circumstances and provided that a request for review is received within 40 days of the notifying

In 2019 IBAS awarded damages of 634.426 pounds and received 6.282 arbitration requests²⁵ (many rejected for not meeting the conditions of the Institution). Its list of arbitrators is currently composed of 15 (fifteen) arbitrators²⁶ of varied professional backgrounds (some are sports journalists). From the years 2018 and 2019, the vast majority of complaints are from consumers from Great Britain vis-à-vis operators from the same location (total of 5.235) while only 1.052, a volume five times smaller, originated from foreign consumers against Britain websites. In the same period (2018-2019), 3.196 applications were accepted for arbitration. Of this total, 1.776 cases were rendered in favor of operators, and only 362 cases were rendered in favor of the consumer (an 11.3% success rate for bettors).²⁷ A total of 1.058 cases ended in settlement. In addition to these, a total of 2.039 applications were rejected for non-compliance with the terms of use.

E-COGRA, in turn, in its first 10 (ten) years of operation (2005-2014),²⁸ had a total number of 7.169 with 1.775 complaints being classified as invalid because they did not comply with the standards established in the institution's regulations. Of the 5.394 (75%) mediated complaints, 2.492 (46%) favored the bettor.²⁹ In 2015/2016³⁰ the institution received 359 complaints, 455 in 2016/2017, 895 in 2017/2018, and 951 in 2018/2019. Thus, from 2015/2016 to 2018/2019 there was an increase of 165% in the number of complaints. All of these disputes over the past four years refer to domestic disputes, that is, involving only bettors from Great Britain (Historically, according to information obtained from e-COGRA, less than ten Brazilians used the company's services). Between 2018/2019, 61% of mediations resulted in an agreement in favor of the operator, 32% were operator concessions in favor of the bettor (Conceded by operator [either as a goodwill gesture or admission of fault] or compromise agreed with the player). Only 7% of the agreements were considered favorable to the bettor (Ruled in favor of the

of the decision to the parties. The decision to review will rest solely with the Chief Executive and will only be undertaken if there is compelling evidence to suggest that a ruling may have been wrong, for example, if it is clear that the Panel has adjudicated upon the basis of factually incorrect information or if it appears that there has been an obvious misinterpretation of the relevant rules. The parties will be informed as soon as reasonably practical of a decision to refuse a review and in the event of a review being undertaken, IBAS will notify the parties of the outcome of the review simultaneously. Retrieved from <https://www.ibas-uk.com/how-ibas-works/terms-of-use/>. Accessed on 18.11.2020.

²⁵ Retrieved from <https://www.ibas-uk.com/>. Accessed on 18.11.2020.

²⁶ See at <https://www.ibas-uk.com/about-us/adjudication-panel/>. Accessed on 18.11.2020.

²⁷ See the detailed statistics at the IBAS Comparative Annual Statistical Reporting 2017-2019. Retrieved from <https://www.ibas-uk.com/media/1082/2017-19-annual-adr-report-comparisons.pdf>. Accessed on 18.11.2020.

²⁸ The company was founded in 2003, nevertheless was approved by the *United Kingdom Accreditation Service (UKAS) ISO* in 2005.

²⁹ Retrieved from <https://www.ecogra.org/ata/newsItem.php?code=p800osr2-3k56-0282-2589-y53fs5hd9y3t>. Accessed on 02.03.2020.

³⁰ Statistics for the period from October 1st to September 30th of the following year. We obtained the numbers and statistics for the last four years directly from the company through an e-mail request.

consumer). In other words, in 39% of complaints, the bettor obtained a reasonable agreement in mediation.³¹

E-COGRA classifies complaints into 10 (ten) categories (considering various types of games and not just sports betting). The three main reasons for complaints are: 1. Bonuses & Promotions; 2. Responsible Gambling; 3. Deposits and Withdrawals.

The two main reasons for e-COGRA's rejection of complaints are respectively: 1. Incompatibility of the complaint with the regulation of the *Gambling Commission* of Great Britain; 2. The bettor has not exhausted the negotiation process with the operator company previously.

Both e-COGRA and IBAS condition their actions to previous significant negotiation³² attempts carried out by both the operator and the consumer. The conflict resolution providers also establish a limitation period of 1 (one) year from the date of the company's notification for the bettor to file his complaint.

It is worth mentioning that only companies that have a license from the Gambling Commission of Great Britain or another license accepted by IBAS and e-COGRA, for example, will be able to use the company's conflict resolution service. Due to *The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015*³³ in Great Britain, the aforementioned virtual arbitration and mediation providers are fair and impartial. In *Section 9 (4)*, such regulation only authorizes arbitration or virtual mediation providers established in Great Britain. In the application to become a licensed provider, there are several

³¹ ADR service providers are required by law to produce an annual report on their activities under Schedule 5 of *The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015*, see the requirements of the report: SCHEDULE 5 Information to be included in an ADR entity's annual activity report a) the number of domestic disputes and cross-border disputes the ADR entity has received; b) the types of complaints to which the domestic disputes and cross-border disputes relate; c) a description of any systematic or significant problems that occur frequently and lead to disputes between consumers and traders of which the ADR entity has become aware due to its operations as an ADR entity; d) any recommendations the ADR entity may have as to how the problems referred to in paragraph (c) could be avoided or resolved in future, in order to raise traders' standards and to facilitate the exchange of information and best practices; e) the number of disputes which the ADR entity has refused to deal with, and percentage share of the grounds set out in paragraph 13 of Schedule 3 on which the ADR entity has declined to consider such disputes; f) the percentage of alternative dispute resolution procedures which were discontinued for operational reasons and, if known, the reasons for the discontinuation; g) the average time taken to resolve domestic disputes and cross-border disputes; h) the rate of compliance, if known, with the outcomes of the alternative dispute resolution procedures; i) the co-operation, if any, of the ADR entity within any network of ADR entities which facilitates the resolution of cross-border disputes. Retrieved from <https://www.legislation.gov.uk/ukxi/2015/542/contents/made>. Accessed on 18.11.2020.

³² See, for example, IBAS terms of use: 3. IBAS reserves the right to refuse to adjudicate on a Dispute at any time if: (a) IBAS considers that the Customer and Operator have failed to make reasonable efforts to resolve the Dispute.

See also e-Cogra rules: 2. Players must ensure that they have followed the operator's internal complaints procedure and that all reasonable attempts have been made to negotiate a solution with the operator before submitting an ADR dispute form.

³³ Retrieved from <http://www.legislation.gov.uk/ukxi/2015/542/contents/made>. Accessed on 18.11.2020.

requirements under *Schedule 2*.³⁴ *Schedule 3* of the same regulation sets out the conditions that must be complied for approval of the ODR service by the Gambling Commission, such as expertise, independence, impartiality, procedures for conflicts of interest, transparency, efficiency, equality of parties, and fairness. In other words, principles that are also established in the Brazilian Arbitration Act (Act nº. 9.307/96 - articles 13 and 21) and the *English Arbitration Act* of 1996.

In short, the four sports betting sites that elect *Online Dispute Resolution* (arbitration at IBAS and mediation at e-COGRA) as a way of resolving conflicts in such chambers, in fact, offer their consumers a viable and fair service for resolving eventual disputes. Feasible because it is free and fair because British regulation guarantees impartiality and accessibility to the service. For Brazilians, the main obstacle, in our view, is the mastery of the English language for more effective and conscious participation in the mediation or arbitration procedure since there is no translation.

On the other hand, betting sites that elect the Judiciary from where they are legally established are just trying to make cross-border conflict resolution unfeasible (typical of the online environment). Two websites, in turn, Rivalo and Bumbet, do not have a conflict resolution clause. That is, they do not establish either a choice of court clause or dispute resolution clause.

Therefore, after analyzing the conflict resolution clauses in the terms of use of sports betting sites used by Brazilians, we suggest using websites that refer to ODR service providers. The odds of bettors' success increase in case of conflict. More so, they will know who to look for in an eventful dispute.

6 Conclusion

In Brazil, we have to wait if the regulation of Act 13.756 / 2018 will bring in its core a Commission similar to the Great Britain Gambling Commission. It would be good news if Brazil regulated conflict resolution providers' licensing for sports betting sites and other betting modalities hosted in Brazil. Considering the Federal Decree drafts for 2019 and 2020, this seems unlikely. The conflict mediation site

³⁴ SCHEDULE 2 - Information that an ADR applicant must supply - a) the ADR applicant's name, contact details and website address; b) information regarding the structure and funding of the ADR applicant, including such information as the competent authority may require regarding its ADR officials, their remuneration, term of office and by whom they are employed; c) the rules of the alternative dispute resolution procedure to be operated by the ADR applicant; d) any fees to be charged by the ADR applicant; e) where the ADR applicant already operates an alternative dispute resolution procedure, the average length of the alternative dispute resolution procedure; f) the language in which the ADR applicant is prepared to receive initial complaint submissions and conduct the alternative dispute resolution procedure; g) a statement as to the types of disputes covered by the alternative dispute resolution procedure operated by the ADR applicant; h) the grounds, if any, on which the ADR applicant may refuse to deal with a dispute; i) a reasoned statement which sets out how the ADR applicant complies, or proposes to comply, with the requirements set out in Schedule 3. Retrieved from <https://www.legislation.gov.uk/uksi/2015/542/contents/made>. Accessed on 18.11.2020.

consumer.gov.br, or a similar site endorsed (licensed) by the Federal Government yet to be created for the area, could serve as a certifying and supervising institution for the betting services such as e-COGRA in Britain. According to the Federal Decree draft of 2020, hardware and software certification companies must be accredited by the Brazilian Ministry of Economy.

In short, the consumer, when accepting to place a bet on sports betting sites or any other modality of online betting games, should READ the Terms of Use (Terms of Service or General Terms and Conditions). Otherwise, they will also be betting on the possibility of never solving their eventual disputes.

Also, when opting for negotiation followed by mediation, the bettors' chances are statistically higher for the conflict's satisfactory resolution (see the rate of around 40% and 50% of agreements favorable to the e-COGRA bettor). However, according to data provided by IBAS, the success rate of consumers in arbitrations of this type is only 11%, similar if we consider in isolation only the status of mediation agreements in favor of consumers, that is, without a concession from operators (percentage 7% in 2018-2019 on e-COGRA). Therefore, knowing the procedure for resolving any conflict is essential for hiring any service, including betting. After all, one should never play BlackJack blindfolded.

References

- CAHALI, Francisco José. *Curso de arbitragem, mediação, conciliação, tribunal multiportas*. 7. ed. São Paulo: Thompson Reuters Brasil, 2018. p. 180-181.
- FERREIRA, D.; GIOVANNINI, C.; GROMOVA, E.; DA ROCHA SCHMIDT, G. Arbitration Chambers and trust in technology provider: impacts of trust in technology intermediated dispute resolution proceedings. *Technology in Society*, n. 68, 101872, 2022.
- HOLDEN, J. A short treatise on sports gambling and the law: how America regulates its most lucrative vice. *Wisconsin Law Review*, n. 2. p. 907, 2020.
- MAIA, L.; PICCI, F. The Gambling Law Review: Brazil. *The Law Reviews*, 2022.
- MILLER, Rohan. The Need for Self-Regulation and Alternative Dispute Resolution to Moderate Consumer Perceptions of Perceived Risk with Internet Gambling. *UNLV Gaming Research & Review Journal*, v. 10, n. 1, p. 52, 2006.
- ROHSLER C. *et al. Gambling Law Review*. 2nd ed. UK: Law Business Research, 2019. 401 p.

Websites

- <https://exame.com/blog/esporte-executivo/futebol-sites-de-apostas-ja-sao-maioria-dos-patrocinios-na-elite-nacional/>
- <http://www.legislation.gov.uk/>
- <https://www.sportsbusinessdaily.com/Journal/Issues/2018/04/16/World-Congress-of-Sports/Research.aspx>

<http://www.planalto.gov.br>

<https://revistacapitaleconomico.com.br/entenda-o-crescimento-do-mercado-de-apostas-esportivas-no-brasil/>

https://www.gamesbras.com/u/archivos/2020/2/18/200218_economia_secap_apostas_quota_fixa_minuta_decreto_11fevereiro2020.pdf

<https://www.ecogra.org/>

<https://www.ibas-uk.com/>

<https://help.bet365.com/br/terms-and-conditions>

<https://help.sportingbet.com/pt-br/general-information/legal-matters>

<https://help.br.betboo.com/pt-br/general-information/legal-matters/general-terms-and-conditions>

<https://betway.com/pt/promotions/terms-and-conditions/>

<https://www.rivalo.com/pt/terms-conditions/>

<https://m.22bet.com/pt/information/rules/>

<https://www.betmotion.com/br/termos-condicoes>

<https://www.bumbet.com/bumbet-termos-e-condicoes>

https://www.bet9.com/info/terms_and_conditions

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