

- (c) habitual residence; or
 - (d) mailing address.
- (2) If delivery cannot be effected according to sub-section (1) after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to –
 - (a) the addressee's last known place of business;
 - (b) habitual residence;
 - (c) mailing address by registered letter; or
 - (d) any other means which provides a record of the attempt to deliver it.
- (3) A written communication is deemed to have been received on the day it is so delivered.

7 Waiver of right to object

A party who knows that any provision of this Act from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided therefore, within such period of time, shall be deemed to have waived his right to object.

PART 3 – ARBITRATION AGREEMENT

8 Arbitration agreement

- (1) An arbitration agreement is –
 - (a) an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not;
 - (b) may be in the form of an arbitration clause in a contract or in the form of a separate agreement; and
 - (c) shall be in writing.
- (2) An arbitration agreement is in writing if –
 - (a) its content is recorded in any form; and
 - (b) it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.
- (3) The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference.

- (4) The reference in a contract to any document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract.

9 Arbitration agreement and substantive claim before court

- (1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.
- (2) Where an action referred to in sub-section (1) has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.
- (3) If the court refuses to refer the parties to arbitration, any provision of the arbitration agreement that an award is a condition precedent to the bringing of legal proceedings in respect of any matter shall have no effect in relation to those proceedings.
- (4) If the court refers the parties to arbitration under sub-section (1), it shall make an order staying the legal proceedings in that action.

10 Death, bankruptcy or winding up of party to arbitration agreement

- (1) Unless otherwise agreed by the parties, an arbitration agreement shall not be discharged by the death, bankruptcy or winding up of a party, and may be enforced by or against the representatives of that party.
- (2) Sub-section (1) does not affect the operation of any law under which the death of a person extinguishes a cause of action.

11 Arbitration agreement and interim measures by court

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.

PART 4 – COMPOSITION OF ARBITRAL TRIBUNAL

12 Number of arbitrators

The parties are free to determine the number of arbitrators and failing such determination, the number of arbitrators shall be three.

13 Appointment of arbitrators

- (1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.
- (2) The parties are free to agree on rules of procedure in appointing the arbitrator or arbitrators, subject to the provisions of sub-sections (4) and (5).
- (3) When failing to agree under sub-section (2) –
 - (a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator;
 - (b) if a party fails to appoint the arbitrator under sub-paragraph (a) within 30 days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within 30 days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority; and
 - (c) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority.
- (4) Where, under an appointment rules of procedure agreed upon by the parties –
 - (a) a party fails to act as required under such procedure; or
 - (b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure; or
 - (c) a third party, including an institution, fails to perform any function entrusted to it under such procedure,any party may request the court or other authority to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.
- (5) The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.