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Short Title: International Commercial Arbitrations.

(Public)

Sponsors:

Referred to:

April 19, 1991

A BILL TO BE ENTITLED

AN ACT TO PROVIDE SPECIAL RULES FOR INTERNATIONAL COMMERCIAL ARBITRATIONS.

The General Assembly of North Carolina enacts:

Section 1. Article 45 of Chapter 1 of the General Statutes is amended by adding a new Article to read:

**"ARTICLE 45B.**

**"INTERNATIONAL COMMERCIAL ARBITRATION.**

**"§ 1-567.30. Preamble and short title.**

It is the policy of the State of North Carolina to promote and facilitate international trade and commerce, and to provide a forum for the resolution of disputes that may arise from participation therein. Pursuant to this policy, the purpose of this act is to encourage the use of arbitration as a means of resolving such disputes, to provide rules for the conduct of arbitration proceedings, and to assure access to the courts of this State for legal proceedings ancillary to such arbitration. This act shall be known as the North Carolina International Commercial Arbitration Act.

**"§ 1-567.31. Scope of application.**

(a) This Article applies to international commercial arbitration, subject to any applicable international agreement in force between the United States of America and any other nation or nations, or any federal statute.

1       (b) The provisions of this Article except G.S. 1-567.38 and G.S. 1-567.39, apply  
2 only if the place of arbitration is in this State.

3       (c) An arbitration is international if:

4           (1) The parties to the arbitration agreement have their places of business in  
5 different nations when the agreement is concluded; or

6           (2) One or more of the following places is situated outside the nations in  
7 which the parties have their places of business:

8               a. The place of arbitration if determined pursuant to the arbitration  
9 agreement;

10              b. Any place where a substantial part of the obligations of the  
11 commercial relationship is to be performed; or

12              c. The place with which the subject matter of the dispute is most  
13 closely connected; or

14           (3) The parties have expressly agreed that the subject matter of the  
15 arbitration agreement relates to more than one nation.

16       (d) For the purposes of subsection (c) of this section:

17           (1) If a party has more than one place of business, the place of business is  
18 that which has the closest relationship to the arbitration agreement;

19           (2) If a party does not have a place of business, reference is to be made to  
20 the party's domicile.

21       (e) An arbitration is deemed commercial for the purposes of this Article if it  
22 arises out of a relationship of a commercial nature, including, but not limited to the  
23 following:

24           (1) A transaction for the exchange of goods and services;

25           (2) A distribution agreement;

26           (3) A commercial representation or agency;

27           (4) An exploitation agreement or concession;

28           (5) A joint venture or other related form of industrial or business  
29 cooperation;

30           (6) The carriage of goods or passengers by air, sea, land, or road;

31           (7) A contract or agreement relating to construction, insurance, licensing,  
32 factoring, leasing, consulting, engineering, financing, or banking;

33           (8) The transfer of data or technology;

34           (9) The use or transfer of intellectual or industrial property, including  
35 trade secrets, trademarks, trade names, patents, copyrights, and  
36 software programs;

37           (10) A contract for the provision of any type of professional service,  
38 whether provided by an employee or an independent contractor.

39       (f) This Article shall not affect any other law in force by virtue of which certain  
40 disputes may not be submitted to arbitration or may be submitted to arbitration only  
41 according to provisions other than those of this Article.

42       (g) This Article shall not apply to any agreement providing explicitly that it shall  
43 not be subject to the North Carolina International Commercial Arbitration Act. This

1 Article shall not apply to any agreement executed prior to the date of enactment of this  
2 Article.

3 **"§ 1-567.32. Definitions and rules of interpretation.**

4 (a) For the purposes of this Article:

5 (1) 'Arbitral award' means any decision of an arbitral tribunal on the  
6 substance of a dispute submitted to it, and includes an interlocutory, or  
7 partial award;

8 (2) 'Arbitral tribunal' means a sole arbitrator or a panel of arbitrators;

9 (3) 'Arbitration' means any arbitration whether or not administered by a  
10 permanent arbitral institution;

11 (4) 'Party' means a party to an arbitration agreement;

12 (5) 'Superior court' means the superior court of any county in this State  
13 selected pursuant to G.S. 1-567.36.

14 (b) Where a provision of this Article, except G.S. 1-567.58, leaves the parties  
15 free to determine a certain issue, such freedom includes the right of the parties to  
16 authorize a third party, including an institution, to make that determination.

17 (c) Where a provision of this Article refers to the fact that the parties have agreed  
18 or that they may agree or in any other way refers to an agreement of the parties, such  
19 agreement includes any arbitration rules referred to in that agreement.

20 (d) Where a provision of this Article, other than in G.S. 1-567.55(1) and G.S. 1-  
21 567.62(b)(1), refers to a claim, it also applies to a counterclaim, and where it refers to a  
22 defense, it also applies to a defense to such counterclaim.

23 **"§ 1-567.33. Receipt of written communications or submissions.**

24 (a) Unless otherwise agreed by the parties, any written communication or  
25 submission is deemed to have been received if it is delivered to the addressee personally  
26 or if it is delivered at the addressee's place of business, domicile or mailing address and  
27 the communication or submission is deemed to have been received on the day it is so  
28 delivered. Delivery by facsimile transmission shall constitute valid receipt if the  
29 communication or submission is in fact received.

30 (b) If none of the places referred to in subsection (a) can be found after making  
31 reasonable inquiry, a written communication or submission is deemed to have been  
32 received if it is sent to the addressee's last known place of business, domicile or mailing  
33 address by registered mail or any other means which provide a record of the attempt to  
34 deliver it.

35 (c) The provisions of this Article do not apply to a written communication or  
36 submission relating to a court, administrative or special proceeding.

37 **"§ 1-567.34. Waiver of right to object.**

38 A party who knows that any provision of this Article or any requirement under the  
39 arbitration agreement has not been complied with and yet proceeds with the arbitration  
40 without stating an objection to such noncompliance without undue delay or, if a time  
41 limit is provided therefor, within that period of time, shall be deemed to have waived  
42 any right to object.

43 **"§ 1-567.35. Extent of court intervention.**

1 In matters governed by this Article, no court shall intervene except where so  
2 provided in this Article or applicable federal law or any applicable international  
3 agreement in force between the United States of America and any other nation or  
4 nations.

5 **"§ 1-567.36. Venue and jurisdiction of courts.**

6 (a) The functions referred to in G.S. 1-567.41(c) and (d), 1-567.43(a), 1-  
7 567.44(b), 1-567.46(c), and 1-567.57 shall be performed by the superior court in:

8 (1) The county where the arbitration agreement is to be performed or was  
9 made;

10 (2) If the arbitration agreement does not specify a county where the  
11 agreement is to be performed and the agreement was not made in any  
12 county in the State of North Carolina, the county where any party to  
13 the court proceeding resides or has a place of business;

14 (3) In any case not covered by subdivisions (1) or (2) of this subsection, in  
15 any county in the State of North Carolina.

16 (b) All other functions assigned by this Article to the superior court shall be  
17 performed by the superior court of the county in which the place of arbitration is  
18 located.

19 **"§ 1-567.37. Definition and form of arbitration agreement.**

20 (a) An 'arbitration agreement' is an agreement by the parties to submit to  
21 arbitration all or certain disputes which have arisen or which may arise between them in  
22 respect of a defined legal relationship, whether or not contractual. An arbitration  
23 agreement may be in the form of an arbitration clause in a contract or in the form of a  
24 separate agreement.

25 (b) The arbitration agreement shall be in writing. An agreement is in writing if it  
26 is contained in a document signed by the parties or in an exchange of letters, telex,  
27 telegrams, facsimile transmission, or other means of telecommunication which provide  
28 a record of the agreement, or in an exchange of statements of claim and defense in  
29 which the existence of an agreement is alleged by one party and not denied by another.  
30 The reference in a contract to a document containing an arbitration clause constitutes an  
31 arbitration agreement provided that the contract is in writing and the reference is such as  
32 to make that clause part of the contract.

33 (c) Such arbitration agreement shall be valid, enforceable and irrevocable, except  
34 with the consent of all the parties, without regard to the justiciable character of the  
35 controversy.

36 **"§ 1-567.38. Arbitration agreement and substantive claim before court.**

37 (a) When a party to an international commercial arbitration agreement as defined  
38 in this Article commences judicial proceedings seeking relief with respect to a matter  
39 covered by the agreement to arbitrate, any other party to the agreement may apply to the  
40 superior court for an order to stay the proceedings and compel arbitration.

41 (b) Arbitration proceedings may begin or continue, and an award may be made,  
42 while an action described in subsection (a) is pending before the court.

43 **"§ 1-567.39. Interim relief and the enforcement of interim measures.**

1       (a) In the case of an arbitration where the arbitrator or arbitrators have not been  
2 appointed, or where the arbitrator or arbitrators are unavailable, a party may seek  
3 interim relief directly from the superior court as provided in subsection (c).  
4 Enforcement shall be granted as provided by the law applicable to the type of interim  
5 relief sought.

6       (b) In all other cases, a party shall seek interim measures under G.S. 1-567.47  
7 from the arbitral tribunal and shall have no right to seek interim relief from the superior  
8 court, except that a party to an arbitration governed by this Article may request from the  
9 superior court enforcement of an order of an arbitral tribunal granting interim measures  
10 under G.S. 1-567.47.

11       (c) In connection with an agreement to arbitrate or a pending arbitration, the  
12 superior court may grant, pursuant to subsection (a) of this section:

13           (1) An order of attachment or garnishment;

14           (2) A temporary restraining order or preliminary injunction;

15           (3) An order for claim and delivery;

16           (4) The appointment of a receiver;

17           (5) Delivery of money or other property into court;

18           (6) Any other order that may be necessary to ensure the preservation or  
19 availability either of assets or of documents, the destruction or absence  
20 of which would be likely to prejudice the conduct or effectiveness of  
21 the arbitration.

22       (d) In considering a request for interim relief or the enforcement of interim  
23 measures, the court shall give preclusive effect to any finding of fact of the arbitral  
24 tribunal in the proceeding, including the probable validity of the claim that is the subject  
25 of the interim relief sought or the interim measures granted.

26       (e) Where the arbitral tribunal has not ruled on an objection to its jurisdiction, the  
27 court shall not grant preclusive effect to the tribunal's findings until the court has made  
28 an independent finding as to the jurisdiction of the arbitral tribunal. If the court rules  
29 that the arbitral tribunal did not have jurisdiction, the application for interim relief or the  
30 enforcement of interim measures shall be denied. Such a ruling by the court that the  
31 arbitral tribunal lacks jurisdiction is not binding on the arbitral tribunal or subsequent  
32 judicial proceedings.

33       (f) The availability of interim relief under this section may be limited by prior  
34 written agreement of the parties.

35 **"§ 1-567.40. Number of arbitrators.**

36 There shall be one arbitrator unless the parties agree on a greater number of  
37 arbitrators.

38 **"§ 1-567.41. Appointment of arbitrators.**

39       (a) A person of any nationality may be an arbitrator.

40       (b) The parties may agree on a procedure of appointing the arbitrator tribunal  
41 subject to the provisions of subsections (d) and (e) of this section.

42       (c)           (1) If an agreement is not made under subsection (b) of this  
43 section, in an arbitration with three arbitrators, each party shall  
44 appoint one arbitrator, and the two arbitrators thus appointed shall

1 appoint the third arbitrator; if a party fails to appoint the arbitrator  
2 within 30 days of receipt of a request to do so from the other party,  
3 or if the two arbitrators fail to agree on the third arbitrator within 30  
4 days of their appointment, the appointment shall be made, upon  
5 request of a party, by the superior court.

6 (2) In an arbitration with a sole arbitrator, if the parties are unable to agree  
7 on the arbitrator, a sole arbitrator shall be appointed, upon request of a  
8 party, by the superior court.

9 (3) In an arbitration involving more than two parties, if no agreement is  
10 reached under subsection (b) of this section, the superior court, on  
11 request of a party, shall appoint one or more arbitrators, as provided in  
12 G.S. 1-567.40.

13 (d) The superior court, on request of any party, may take the necessary measures,  
14 unless the agreement on the appointment procedure provides other means for securing  
15 the appointment, if, under an appointment procedure agreed upon by the parties:

16 (1) A party fails to act as required under such procedure; or

17 (2) The parties, or two arbitrators, are unable to reach an agreement  
18 expected of them under such procedure; or

19 (3) A third party, including an institution, fails to perform any function  
20 entrusted to it under such procedure.

21 (e) A decision of the superior court on a matter entrusted by subsection (c) or (d)  
22 of this section shall be final and not subject to appeal.

23 (f) The superior court, in appointing an arbitrator, shall consider:

24 (1) Any qualifications required of the arbitrator by the agreement of the  
25 parties;

26 (2) Such other considerations as are likely to secure the appointment of an  
27 independent and impartial arbitrator;

28 (3) In the case of a sole or third arbitrator, the advisability of appointing  
29 an arbitrator of a nationality other than those of the parties.

30 (g) The parties may agree to employ an established arbitration institution to  
31 conduct the arbitration. If they do not so agree, the superior court may in its discretion  
32 designate an established arbitration institution to conduct the arbitration.

33 (h) Unless otherwise agreed, an arbitrator shall be entitled to compensation at an  
34 hourly or daily rate which reflects the size and complexity of the case, and the  
35 experience of the arbitrator. If the parties are unable to agree on such a rate, the rate  
36 shall be determined by the arbitral institution chosen pursuant to subsection (g) of this  
37 section or by the arbitral tribunal, in either case subject to the review of the superior  
38 court upon the motion of any dissenting party.

39 **§ 1-567.42. Grounds for challenge.**

40 (a) Except as otherwise provided in this Article, all persons whose names have  
41 been submitted for consideration for appointment or designation as arbitrators, or who  
42 have been appointed or designated as such, shall make a disclosure to the parties within  
43 15 days of such submission, appointment, or designation of any information which

1 might cause their impartiality to be questioned including, but not limited to, any of the  
2 following instances:

3 (1) The person has a personal bias or prejudice concerning a party, or  
4 personal knowledge of disputed evidentiary facts concerning the  
5 proceeding;

6 (2) The person served as a lawyer in the matter in controversy, or the  
7 person is or has been associated with another who has participated in  
8 the matter during such association, or has been a material witness  
9 concerning it;

10 (3) The person served as an arbitrator in another proceeding involving one  
11 or more of the parties to the proceeding;

12 (4) The person, individually or as a fiduciary, or such person's spouse or  
13 minor child residing in such person's household, has a financial  
14 interest in the subject matter in controversy or in a party to the  
15 proceeding, or any other interest that could be substantially affected by  
16 the outcome of the proceeding;

17 (5) The person, his or her spouse, or a person within the third degree of  
18 relationship to either of them, or the spouse of such a person meets any  
19 of the following conditions:

20 a. The person is or has been a party to the proceeding, or an  
21 officer, director, or trustee of a party;

22 b. The person is acting or has acted as a lawyer in the proceeding;

23 c. The person is known to have an interest that could be  
24 substantially affected by the outcome of the proceeding;

25 d. The person is likely to be a material witness in the proceeding;

26 (6) The person has a close personal or professional relationship with a  
27 person who meets any of the following conditions:

28 a. The person is or has been a party to the proceeding, or an  
29 officer, director, or trustee of a party;

30 b. The person is acting or has acted as a lawyer or representative  
31 in the proceeding;

32 c. The person is or expects to be nominated as an arbitrator or  
33 conciliator in the proceeding;

34 d. The person is known to have an interest that could be  
35 substantially affected by the outcome of the proceeding;

36 e. The person is likely to be a material witness in the proceeding.

37 (b) The obligation to disclose information set forth in subsection (a) of this  
38 section is mandatory and cannot be waived as to the parties with respect to persons  
39 -serving either as sole arbitrator or as the chief or prevailing arbitrator. The parties may  
40 otherwise agree to waive such disclosure.

41 (c) From the time of appointment and throughout the arbitral proceedings, an  
42 arbitrator shall disclose to the parties without delay any circumstances referred to in  
43 subsection (a) of this section which were not previously disclosed.

1 (d) Unless otherwise agreed by the parties or the rules governing the arbitration,  
2 an arbitrator may be challenged only if circumstances exist that give rise to justifiable  
3 doubts as to his or her independence or impartiality, or as to his or her possession of the  
4 qualifications upon which the parties have agreed.

5 (e) A party may challenge an arbitrator appointed by it, or in whose appointment  
6 it has participated only for reasons of which it becomes aware after the appointment has  
7 been made.

8 **"§ 1-567.43. Challenge procedure.**

9 (a) The parties may agree on a procedure for challenging an arbitrator, subject to  
10 the provisions of subsection (c) of this section.

11 (b) If there is no agreement under subsection (a) of this section, a party  
12 challenging an arbitrator shall, within 15 days after becoming aware of the constitution  
13 of the arbitral tribunal or after becoming aware of any circumstance referred to in G.S.  
14 1-567.42(a), send a written statement of the reasons for the challenge to the arbitral  
15 tribunal. Unless the challenged arbitrator withdraws or the other party agrees to the  
16 challenge, the arbitral tribunal shall decide on the challenge.

17 (c) If a challenge under any procedure agreed upon by the parties or under the  
18 procedure of subsection (b) of this section is not successful, the challenging party may,  
19 within 30 days after having received notice of the decision rejecting the challenge,  
20 request the superior court to decide on the challenge, which decision shall be final and  
21 subject to no appeal. While such a request is pending, the arbitral tribunal, including the  
22 challenged arbitrator, may continue to conduct the arbitral proceedings and make an  
23 award.

24 **"§ 1-567.44. Failure or impossibility to act.**

25 (a) The mandate of an arbitrator terminates if the arbitrator becomes unable to  
26 perform the arbitrator's functions or for other reasons fails to act without undue delay or  
27 the arbitrator withdraws or the parties agree to the termination.

28 (b) If a controversy remains concerning any of the grounds referred to in  
29 subsection (a) of this section, a party may request the superior court to decide on the  
30 termination of the mandate. The decision of the superior court shall be final and not  
31 subject to appeal.

32 (c) If under this section or under G.S. 1-567.43, an arbitrator withdraws or  
33 otherwise agrees to the termination of his or her mandate, no acceptance of the validity  
34 of any ground referred to in this section or G.S. 1-567.43(b) shall be implied in  
35 consequence of such action.

36 **"§ 1-567.45. Appointment of substitute arbitrator.**

37 (a) Where the mandate of an arbitrator terminates for any reason, a substitute  
38 arbitrator shall be appointed according to the rules that were applicable to the  
39 appointment of the arbitrator being replaced.

40 (b) Unless otherwise agreed by the parties:

41 (1) Where the number of arbitrators is less than three and an arbitrator is  
42 replaced, any hearings previously held shall be repeated;

43 (2) Where the presiding arbitrator is replaced, any hearings previously  
44 held shall be repeated;



1           (3) Where the number of arbitrators is three or more and an arbitrator  
2 other than the presiding arbitrator is replaced, any hearings previously  
3 held may be repeated at the discretion of the arbitral tribunal.

4           (c) Unless otherwise agreed by the parties, an order or ruling of the arbitral  
5 tribunal made prior to the replacement of an arbitrator under this section is not invalid  
6 because there has been a change in the composition of the tribunal.

7 **"§ 1-567.46. Competence of arbitral tribunal to rule on its jurisdiction.**

8           (a) The arbitral tribunal may rule on its own jurisdiction, including any  
9 objections with respect to the existence or validity of the arbitration agreement. For that  
10 purpose, an arbitration clause which forms a part of a contract shall be treated as an  
11 agreement independent of the other terms of the contract. A decision by the arbitral  
12 tribunal that the contract is null and void shall not entail **ipso jure** the invalidity of the  
13 arbitration clause, unless the arbitral tribunal finds that the arbitration clause was  
14 obtained by fraud, whether in the inducement or in the factum.

15           (b) A plea that the arbitral tribunal does not have jurisdiction shall be raised not  
16 later than the submission of the statement of defense. However, a party is not precluded  
17 from raising such a plea by the fact that the party has appointed, or participated in the  
18 appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of  
19 its authority shall be raised as soon as the matter alleged to be beyond the scope of its  
20 authority is raised during the arbitral proceedings. In either case, the arbitral tribunal  
21 may admit a later plea if it considers the delay justified.

22           (c) The arbitral tribunal may rule on a plea referred to in subsection (b) of this  
23 section either as a preliminary question or in an award on the merits. If the arbitral  
24 tribunal rules as a preliminary question that it has jurisdiction, after having received  
25 notice of that ruling, any party may request the superior court to decide the matter. The  
26 decision of the superior court shall be final and not subject to appeal. While such a  
27 request is pending, the arbitral tribunal may continue the arbitral proceedings and make  
28 an award.

29 **"§ 1-567.47. Power of arbitral tribunal to order interim measures.**

30           Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a  
31 party, order any party to take such interim measure of protection as the arbitral tribunal  
32 may consider necessary in respect of the subject matter of the dispute, including an  
33 interim measure analogous to any type of interim relief specified in G.S. 1-567.39(c).  
34 The arbitral tribunal may require any party to provide appropriate security, including  
35 security for costs as provided in G.S. 1-567.61(h)(2), in connection with such measure.

36 **"§ 1-567.48. Equal treatment of parties.**

37           The parties shall be treated with equality and each party shall be given a full  
38 opportunity to present its case.

39 **"§ 1-567.49. Determination of rules of procedure.**

40           (a) Subject to the provisions of this Article, the parties may agree on the  
41 procedure to be followed by the arbitral tribunal in conducting the proceedings.

42           (b) If there is no agreement under subsection (a) of this section, the arbitral  
43 tribunal may, subject to the provisions of this Article, conduct the arbitration in such  
44 manner as it considers appropriate. The power conferred upon the arbitral tribunal

1 includes the power to order such discovery as it deems necessary and to determine the  
2 admissibility, relevance, materiality, and weight of any evidence. Evidence need not be  
3 limited by the rules of evidence applicable in judicial proceedings, except as to  
4 immunities and privilege. Each party shall have the burden of proving the facts relied  
5 on to support its claim, setoff, or defense.

6 **"§ 1-567.50. Place of arbitration.**

7 (a) The parties may agree on the place of arbitration. If the parties do not agree,  
8 the place of arbitration shall be determined by the arbitral tribunal having regard to the  
9 circumstances of the case, including the convenience of the parties.

10 (b) Notwithstanding the provisions of subsection (a) of this section, the arbitral  
11 tribunal may, unless otherwise agreed by the parties, meet at any place it considers  
12 appropriate for consultation among its members, for hearing witnesses, experts or the  
13 parties, or for inspection of goods, other property, or documents.

14 **"§ 1-567.51. Commencement of arbitral proceedings.**

15 Unless otherwise agreed by the parties, the arbitral proceedings in respect of a  
16 particular dispute shall commence on the date on which a request for that dispute to be  
17 referred to arbitration is received by the respondent.

18 **"§ 1-567.52. Language.**

19 (a) The parties may agree on the language or languages to be used in the arbitral  
20 proceedings. If the parties do not agree, the arbitral tribunal shall determine the  
21 language or languages to be used in the proceedings. This agreement or determination,  
22 unless otherwise specified therein, shall apply to any written statement by a party, any  
23 hearing and any award, decision, or other communication by the arbitral tribunal.

24 (b) The arbitral tribunal may order that any documentary evidence shall be  
25 accompanied by a translation into the language or languages agreed upon by the parties  
26 or determined by the arbitral tribunal.

27 (c) The arbitral tribunal may employ one or more translators at the expense of the  
28 parties.

29 **"§ 1-567.53. Statements of claim and defense.**

30 (a) Within the period of time agreed by the parties or determined by the arbitral  
31 tribunal, the claimant shall state the facts supporting its claim, the points at issue and the  
32 relief or remedy sought, and the respondent shall state its defenses and counterclaims or  
33 setoffs in respect of these particulars, unless the parties have otherwise agreed as to the  
34 required elements of such statements. The parties may submit with their statements all  
35 documents they consider to be relevant or may add a reference to the documents or  
36 other evidence the party will submit.

37 (b) Unless otherwise agreed by the parties, either party may amend or  
38 supplement a claim or defense during the course of the arbitral proceedings, unless the  
39 arbitral tribunal considers it inappropriate to allow such amendment having regard to the  
40 delay in making it.

41 (c) If there are more than two parties to the arbitration, each party shall state its  
42 claims, setoffs, and defenses as provided in subsection (a) of this section.

43 **"§ 1-567.54. Hearings and written proceedings.**

1 (a) Unless otherwise agreed by the parties, the arbitral tribunal shall decide  
2 whether to hold oral hearings for the presentation of evidence or for oral argument, or  
3 whether the proceedings shall be conducted on the basis of documents and other  
4 materials. Unless the parties have agreed that no hearings shall be held, the arbitral  
5 tribunal shall hold such hearings at an appropriate stage of the proceedings, if so  
6 requested by a party.

7 (b) The parties shall be given sufficient advance notice of any hearing and of any  
8 meeting of the arbitral tribunal for the purposes of inspection of goods, other property,  
9 or documents.

10 (c) All statements, documents, or other information supplied to the arbitral  
11 tribunal by one party shall be served on the other party and any expert report or  
12 evidentiary document on which the arbitral tribunal may rely in making its decision  
13 shall be served on the parties. The arbitral tribunal shall direct the timing of such  
14 service to protect the parties from undue surprise.

15 (d) Unless otherwise agreed by the parties, all oral hearings and meetings in  
16 arbitral proceedings shall be held **in camera**. Confidential information disclosed during  
17 the proceedings by the parties or by witnesses shall not be divulged by the arbitrator or  
18 arbitrators. Unless otherwise agreed by the parties, or required by applicable law, the  
19 arbitral tribunal and the parties shall keep confidential all matters relating to the  
20 arbitration and the award.

21 (e) The parties may agree on:

22 (1) The attendance of a court reporter,

23 (2) The creation of a transcript of proceedings, or

24 (3) The making of an audio or video record of proceedings, at the expense  
25 of the parties.

26 Any party may provide for any of the actions specified in subdivisions (1)  
27 through (3) of this subsection at that party's own expense.

28 (f) After asking the parties if they have any further testimony or evidentiary  
29 submissions and upon receiving negative replies or being satisfied that the record is  
30 complete, the arbitral tribunal may declare the hearings closed. The arbitral tribunal  
31 may reopen the hearings, upon terms it considers just, at any time before the award is  
32 made.

33 **§ 1-567.55. Default of a party.**

34 Unless otherwise agreed by the parties, where, without showing sufficient cause:

35 (1) The claimant fails to submit a statement of claim in accordance with  
36 G.S. 1-567.53(a), the arbitral tribunal shall terminate the proceedings;

37 (2) The respondent fails to submit a statement of defense in accordance  
38 with G.S. 1-567.53(c), the arbitral tribunal shall continue to conduct  
39 the proceedings without treating such failure in itself as an admission  
40 of the claimant's allegations;

41 (3) Any party fails to appear at a hearing or to produce documentary  
42 evidence as directed by the arbitral tribunal, the arbitral tribunal may  
43 continue to conduct the proceedings and make the award on the  
44 evidence before it.

1 **"§ 1-567.56. Expert appointed by arbitral tribunal.**

2 (a) Unless otherwise agreed by the parties, the arbitral tribunal:

3 (1) May appoint one or more experts to report to it on specific issues to be  
4 determined by the arbitral tribunal;

5 (2) May require a party to give the expert any relevant information or to  
6 produce, or to provide access to, any relevant documents, goods, or  
7 other property for the expert's inspection.

8 (b) Unless otherwise agreed by the parties, if a party so requests or if the arbitral  
9 tribunal considers it necessary, the expert shall, after delivery of his written or oral  
10 report, participate in an oral hearing where the parties have the opportunity to question  
11 the expert and to present expert witnesses on the points at issue.

12 **"§ 1-567.57. Court assistance in obtaining discovery and taking evidence.**

13 (a) The arbitral tribunal or a party with the approval of the arbitral tribunal may  
14 request from the superior court assistance in obtaining discovery and taking evidence.  
15 The court may execute the request within its competence and according to its rules on  
16 discovery and taking evidence, and may impose sanctions for failure to comply with its  
17 orders. A subpoena may be issued as provided by G.S. 8-59, in which case the witness  
18 compensation provisions of G.S. 6-51, 6-53, and 7A-314 shall apply.

19 (b) If the parties to two or more arbitration agreements agree, in their respective  
20 arbitration agreements or otherwise, to consolidate the arbitrations arising out of those  
21 agreements, the superior court, on application by one party with the consent of all the  
22 other parties to those arbitration agreements, may:

23 (1) Order the arbitrations to be consolidated on terms the court considers  
24 just and necessary;

25 (2) If all the parties cannot agree on an arbitral tribunal for the  
26 consolidated arbitration, appoint an arbitral tribunal as provided by  
27 G.S. 1-567.41; and

28 (3) If all the parties cannot agree on any other matter necessary to conduct  
29 the consolidated arbitration, make any other order it considers  
30 necessary.

31 **"§ 1-567.58. Rules applicable to substance of dispute.**

32 (a) The arbitral tribunal shall decide the dispute in accordance with such rules of  
33 law as are chosen by the parties as applicable to the substance of the dispute. Any  
34 designation of the law or legal system of a given country or political subdivision thereof  
35 shall be construed, unless otherwise expressed, as directly referring to the substantive  
36 law of that country or political subdivision and not to its conflict of laws rules.

37 (b) Failing any designation by the parties, the arbitral tribunal shall apply the law  
38 determined by the conflict of laws rules which it considers applicable.

39 (c) The arbitral tribunal shall decide **ex aequo et bono** (on the basis of  
40 fundamental fairness), or as **amiable compositeur** (as an 'amicable pompounder'), only  
41 if the parties have expressly authorized it to do so.

42 (d) In all cases, the arbitral tribunal shall decide in accordance with the terms of  
43 the contract and shall take into account the usages of the trade applicable to the  
44 transaction.

1 **"§ 1-567.59. Decision making by panel of arbitrators.**

2 Unless otherwise agreed by the parties, in arbitral proceedings with more than one  
3 arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its  
4 members. However, questions of procedure may be decided by a presiding arbitrator, if  
5 authorized by the parties or all members of the arbitral tribunal.

6 **"§ 1-567.60. Settlement.**

7 (a) An arbitral tribunal may encourage settlement of the dispute and, with the  
8 agreement of the parties, may use mediation, conciliation, or other procedures at any  
9 time during the arbitral proceedings to encourage settlement.

10 (b) If, during arbitral proceedings, the parties settle the dispute, the arbitral  
11 tribunal shall terminate the proceedings and, if requested by the parties and not objected  
12 to by the arbitral tribunal, record the settlement in the form of an arbitral award on  
13 agreed terms.

14 (c) An award on agreed terms shall be made in accordance with the provisions of  
15 G.S. 1-567.61 and shall state that it is an arbitral award. Such an award shall have the  
16 same status and effect as any other award on the substance of the dispute.

17 **"§ 1-567.61. Form and contents of award.**

18 (a) The award shall be made in writing and shall be signed by the arbitrator or  
19 arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the  
20 majority of all members of the arbitral tribunal shall suffice, provided that the reason for  
21 any omitted signature is stated.

22 (b) The award shall not state the reasons upon which it is based, unless the  
23 parties have agreed that reasons are to be given.

24 (c) The award shall state its date and the place of arbitration as determined in  
25 accordance with G.S. 1-567.50. The award shall be considered to have been made at  
26 that place.

27 (d) After the award is made, a copy signed by the arbitrator or arbitrators in  
28 accordance with subsection (a) of this section shall be delivered to each party.

29 (e) The award may be denominated in foreign currency, by agreement of the  
30 parties or in the discretion of the arbitral tribunal if the parties are unable to agree.

31 (f) Unless otherwise agreed by the parties, the arbitral tribunal may award  
32 interest.

33 (g) The arbitral tribunal may award specific performance in its discretion to a  
34 party requesting an award of specific performance.

35 (h) (1) Unless otherwise agreed by the parties, the awarding of  
36 costs of an arbitration shall be at the discretion of the arbitral  
37 tribunal.

38 (2) In making an order for costs, the arbitral tribunal may include as costs:

39 a. The fees and expenses of the arbitrator or arbitrators, expert  
40 witnesses, and translators;

41 b. Fees and expenses of counsel and of the institution supervising  
42 the arbitration, if any; and

43 c. Any other expenses incurred in connection with the arbitral  
44 proceedings.

- 1           (3) In making an order for costs, the arbitral tribunal may specify:  
2           a. The party entitled to costs;  
3           b. The party who shall pay the costs;  
4           c. The amount of costs or method of determining that amount; and  
5           d. The manner in which the costs shall be paid.

6 **"§ 1-567.62. Termination of proceedings.**

7           (a) The arbitral proceedings are terminated by the final award or by an order of  
8 the arbitral tribunal in accordance with subsection (b) of this section.

9           (b) The arbitral tribunal shall issue an order for the termination of the arbitral  
10 proceedings if:

11           (1) The claimant withdraws the claim, unless the respondent objects to the  
12 order and the arbitral tribunal recognizes a legitimate interest on the  
13 respondent's part in obtaining a final settlement of the dispute;

14           (2) The parties agree on the termination of the proceedings; or

15           (3) The arbitral tribunal finds that the continuation of the proceedings has  
16 for any other reason become unnecessary or impossible.

17           (c) Subject to the provisions of G.S. 1-567.63, the mandate of the arbitral tribunal  
18 terminates with the termination of the arbitral proceedings.

19 **"§ 1-567.63. Correction and interpretation of awards; additional awards.**

20           (a) Within 30 days of receipt of the award, unless another period of time has  
21 been agreed upon by the parties:

22           (1) A party may request the arbitral tribunal to correct in the award any  
23 computation, clerical or typographical errors or other errors of a  
24 similar nature;

25           (2) A party may request the arbitral tribunal to give an interpretation of a  
26 specific point or part of the award.

27 If the arbitral tribunal considers such request to be justified, it shall make the  
28 correction or give the interpretation within 30 days of receipt of the request. Such  
29 correction or interpretation shall become part of the award.

30           (b) The arbitral tribunal may correct any error of the type referred to in  
31 subsection (a) on its own initiative within 30 days of the date of the award.

32           (c) Unless otherwise agreed by the parties, within 30 days of receipt of the  
33 award, a party may request the arbitral tribunal to make an additional award as to claims  
34 presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal  
35 considers the request to be justified, it shall make the additional award within 60 days  
36 after the date of receipt of the request.

37           (d) The arbitral tribunal may extend, if necessary, the period within which it shall  
38 make a correction, interpretation, or an additional award under subsection (a) or (c).

39           (e) The provisions of G.S. 1-567.61 shall apply to a correction or interpretation  
40 of the award or to an additional award made under this section.

41 **"§ 1-567.64. Modifying or vacating of awards.**

42 Subject to the relevant provisions of federal law or any applicable international  
43 agreement in force between the United States of America and any other nation or  
44 nations, an arbitral award may be vacated by a court only upon a showing that the award

1 is tainted by illegality, or substantial unfairness in the conduct of the arbitral  
2 proceedings. In determining whether an award is so tainted, the superior court shall  
3 have regard to the provisions of this Article, and of G.S. 1-567.13 and G.S. 1-567.14,  
4 but shall not engage in **de novo** review of the subject matter of the dispute giving rise to  
5 the arbitration proceedings.

6 **"§ 1-567.65. Confirmation and enforcement of awards.**

7 Subject to the relevant provisions of federal law or any applicable international  
8 agreement in force between the United States of America and any other nation or  
9 nations, upon application of a party, the superior court shall confirm an arbitral award,  
10 unless it finds grounds for modifying or vacating the award under G.S. 1-567.64. An  
11 award shall not be confirmed unless the time for correction and interpretation of awards  
12 prescribed by G.S. 1-567.63 shall have expired or been waived by all the parties. Upon  
13 the granting of an order confirming, modifying, or correcting an award, judgment or  
14 decree shall be entered in conformity therewith and enforced as any other judgment or  
15 decree. The superior court may award costs of the application and of the subsequent  
16 proceedings.

17 **"§ 1-567.66. Applications to superior court.**

18 Except as otherwise provided, an application to the superior court under this Article  
19 shall be by motion and shall be heard in the manner and upon the notice provided by  
20 law or rule of court for the making and hearing of motions. Unless the parties have  
21 agreed otherwise, notice of an initial application for an order shall be served in the  
22 manner provided by law for the service of a summons in an action.

23 **"§ 1-567.67. Appeals.**

24 (a) An appeal may be taken from:

- 25 (1) An order denying an application to compel arbitration made  
26 under G.S. 1-567.38;
- 27 (2) An order granting an application to stay arbitration made under  
28 G.S. 1-567.38;
- 29 (3) An order confirming or denying confirmation of an award;
- 30 (4) An order modifying or correcting an award;
- 31 (5) An order vacating an award without directing a rehearing; or
- 32 (6) A judgment or decree entered pursuant to the provisions of this  
33 Article.

34 (b) The appeal shall be taken in the manner and to the same extent as from orders  
35 or judgments in a civil action.

36 **"§ 1-567.68. Severability.**

37 In the event any provision of this act is held to be invalid, the court's holding as to  
38 that provision shall not affect the validity or operation of other provisions of the act; and  
39 to that end the provisions of this act are severable."

40 Sec. 2. This act is effective upon ratification.