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Short Title: International Commercial Arbitrations.

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Sponsors:

Referred to:

April 19, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE SPECIAL RULES FOR INTERNATIONAL COMMERCIAL
3 ARBITRATIONS.

4 The General Assembly of North Carolina enacts:

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

7 **"ARTICLE 45B.**
8 **"INTERNATIONAL COMMERCIAL ARBITRATION.**

9 **"§ 1-567.30. Preamble and short title.**

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

17 **"§ 1-567.31. Scope of application.**

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

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

- 1 (c) An arbitration is international if:
2 (1) The parties to the arbitration agreement have their places of business in
3 different nations when the agreement is concluded; or
4 (2) One or more of the following places is situated outside the nations in
5 which the parties have their places of business:
6 a. The place of arbitration if determined pursuant to the arbitration
7 agreement;
8 b. Any place where a substantial part of the obligations of the
9 commercial relationship is to be performed; or
10 c. The place with which the subject matter of the dispute is most
11 closely connected; or
12 (3) The parties have expressly agreed that the subject matter of the
13 arbitration agreement relates to more than one nation.
14 (d) For the purposes of subsection (c) of this section:
15 (1) If a party has more than one place of business, the place of business is
16 that which has the closest relationship to the arbitration agreement;
17 (2) If a party does not have a place of business, reference is to be made to
18 the party's domicile.
19 (e) An arbitration is deemed commercial for the purposes of this Article if it
20 arises out of a relationship of a commercial nature, including, but not limited to the
21 following:
22 (1) A transaction for the exchange of goods and services;
23 (2) A distribution agreement;
24 (3) A commercial representation or agency;
25 (4) An exploitation agreement or concession;
26 (5) A joint venture or other related form of industrial or business
27 cooperation;
28 (6) The carriage of goods or passengers by air, sea, land, or road;
29 (7) A contract or agreement relating to construction, insurance, licensing,
30 factoring, leasing, consulting, engineering, financing, or banking;
31 (8) The transfer of data or technology;
32 (9) The use or transfer of intellectual or industrial property, including
33 trade secrets, trademarks, trade names, patents, copyrights, and
34 software programs;
35 (10) A contract for the provision of any type of professional service,
36 whether provided by an employee or an independent contractor.
37 (f) This Article shall not affect any other law in force by virtue of which certain
38 disputes may not be submitted to arbitration or may be submitted to arbitration only
39 according to provisions other than those of this Article.
40 (g) This Article shall not apply to any agreement providing explicitly that it shall
41 not be subject to the North Carolina International Commercial Arbitration Act. This
42 Article shall not apply to any agreement executed prior to the date of enactment of this
43 Article.
44 **"§ 1-567.32. Definitions and rules of interpretation.**

1 (a) For the purposes of this Article:

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

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

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

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

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

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

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

17 (d) Where a provision of this Article, other than in G.S. 1-567.55(1) and G.S. 1-
18 567.62(b)(1), refers to a claim, it also applies to a counterclaim, and where it refers to a
19 defense, it also applies to a defense to such counterclaim.

20 **"§ 1-567.33. Receipt of written communications or submissions.**

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

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

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

34 **"§ 1-567.34. Waiver of right to object.**

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

40 **"§ 1-567.35. Extent of court intervention.**

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

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

2 (a) The functions referred to in G.S. 1-567.41(c) and (d), 1-567.43(a), 1-
3 567.44(b), 1-567.46(c), and 1-567.57 shall be performed by the superior court in:

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

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

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

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

15 **"§ 1-567.37. Definition and form of arbitration agreement.**

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

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

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

32 **"§ 1-567.38. Arbitration agreement and substantive claim before court.**

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

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

39 **"§ 1-567.39. Interim relief and the enforcement of interim measures.**

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

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

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

8 (1) An order of attachment or garnishment;

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

10 (3) An order for claim and delivery;

11 (4) The appointment of a receiver;

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

13 (6) Any other order that may be necessary to ensure the preservation or
14 availability either of assets or of documents, the destruction or absence
15 of which would be likely to prejudice the conduct or effectiveness of
16 the arbitration.

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

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

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

30 **"§ 1-567.40. Number of arbitrators.**

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

33 **"§ 1-567.41. Appointment of arbitrators.**

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

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

37 (c) (1) If an agreement is not made under subsection (b) of this
38 section, in an arbitration with three arbitrators, each party shall
39 appoint one arbitrator, and the two arbitrators thus appointed shall
40 appoint the third arbitrator; if a party fails to appoint the arbitrator
41 within 30 days of receipt of a request to do so from the other party,
42 or if the two arbitrators fail to agree on the third arbitrator within 30
43 days of their appointment, the appointment shall be made, upon
44 request of a party, by the superior court.

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

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

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

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

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

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

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

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

19 (1) Any qualifications required of the arbitrator by the agreement of the
20 parties;

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

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

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

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

34 **"§ 1-567.42. Grounds for challenge.**

35 (a) Except as otherwise provided in this Article, all persons whose names have
36 been submitted for consideration for appointment or designation as arbitrators, or who
37 have been appointed or designated as such, shall make a disclosure to the parties within
38 15 days of such submission, appointment, or designation of any information which
39 might cause their impartiality to be questioned including, but not limited to, any of the
40 following instances:

41 (1) The person has a personal bias or prejudice concerning a party, or
42 personal knowledge of disputed evidentiary facts concerning the
43 proceeding;

- 1 (2) The person served as a lawyer in the matter in controversy, or the
2 person is or has been associated with another who has participated in
3 the matter during such association, or has been a material witness
4 concerning it;
- 5 (3) The person served as an arbitrator in another proceeding involving one
6 or more of the parties to the proceeding;
- 7 (4) The person, individually or as a fiduciary, or such person's spouse or
8 minor child residing in such person's household, has a financial
9 interest in the subject matter in controversy or in a party to the
10 proceeding, or any other interest that could be substantially affected by
11 the outcome of the proceeding;
- 12 (5) The person, his or her spouse, or a person within the third degree of
13 relationship to either of them, or the spouse of such a person meets any
14 of the following conditions:
- 15 a. The person is or has been a party to the proceeding, or an
16 officer, director, or trustee of a party;
- 17 b. The person is acting or has acted as a lawyer in the proceeding;
- 18 c. The person is known to have an interest that could be
19 substantially affected by the outcome of the proceeding;
- 20 d. The person is likely to be a material witness in the proceeding;
- 21 (6) The person has a close personal or professional relationship with a
22 person who meets any of the following conditions:
- 23 a. The person is or has been a party to the proceeding, or an
24 officer, director, or trustee of a party;
- 25 b. The person is acting or has acted as a lawyer or representative
26 in the proceeding;
- 27 c. The person is or expects to be nominated as an arbitrator or
28 conciliator in the proceedings;
- 29 d. The person is known to have an interest that could be
30 substantially affected by the outcome of the proceeding;
- 31 e. The person is likely to be a material witness in the proceeding.
- 32 (b) The obligation to disclose information set forth in subsection (a) of this
33 section is mandatory and cannot be waived as to the parties with respect to persons
34 -serving either as sole arbitrator or as the chief or prevailing arbitrator. The parties may
35 otherwise agree to waive such disclosure.
- 36 (c) From the time of appointment and throughout the arbitral proceedings, an
37 arbitrator shall disclose to the parties without delay any circumstances referred to in
38 subsection (a) of this section which were not previously disclosed.
- 39 (d) Unless otherwise agreed by the parties or the rules governing the arbitration,
40 an arbitrator may be challenged only if circumstances exist that give rise to justifiable
41 doubts as to his or her independence or impartiality, or as to his or her possession of the
42 qualifications upon which the parties have agreed.

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

4 **"§ 1-567.43. Challenge procedure.**

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

7 (b) If there is no agreement under subsection (a) of this section, a party
8 challenging an arbitrator shall, within 15 days after becoming aware of the constitution
9 of the arbitral tribunal or after becoming aware of any circumstance referred to in G.S.
10 1-567.42(a), send a written statement of the reasons for the challenge to the arbitral
11 tribunal. Unless the challenged arbitrator withdraws or the other party agrees to the
12 challenge, the arbitral tribunal shall decide on the challenge.

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

20 **"§ 1-567.44. Failure or impossibility to act.**

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

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

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

32 **"§ 1-567.45. Appointment of substitute arbitrator.**

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

36 (b) Unless otherwise agreed by the parties:

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

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

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

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

4 **"§ 1-567.46. Competence of arbitral tribunal to rule on its jurisdiction.**

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

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

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

26 **"§ 1-567.47. Power of arbitral tribunal to order interim measures.**

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

33 **"§ 1-567.48. Equal treatment of parties.**

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

36 **"§ 1-567.49. Determination of rules of procedure.**

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

39 (b) If there is no agreement under subsection (a) of this section, the arbitral
40 tribunal may, subject to the provisions of this Article, conduct the arbitration in such
41 manner as it considers appropriate. The power conferred upon the arbitral tribunal
42 includes the power to order such discovery as it deems necessary and to determine the
43 admissibility, relevance, materiality, and weight of any evidence. Evidence need not be
44 limited by the rules of evidence applicable in judicial proceedings, except as to

1 immunities and privilege. Each party shall have the burden of proving the facts relied
2 on to support its claim, setoff, or defense.

3 **"§ 1-567.50. Place of arbitration.**

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

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

11 **"§ 1-567.51. Commencement of arbitral proceedings.**

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

15 **"§ 1-567.52. Language.**

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

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

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

26 **"§ 1-567.53. Statements of claim and defense.**

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

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

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

40 **"§ 1-567.54. Hearings and written proceedings.**

41 (a) Unless otherwise agreed by the parties, the arbitral tribunal shall decide
42 whether to hold oral hearings for the presentation of evidence or for oral argument, or
43 whether the proceedings shall be conducted on the basis of documents and other
44 materials. Unless the parties have agreed that no hearings shall be held, the arbitral

1 tribunal shall hold such hearings at an appropriate stage of the proceedings, if so
2 requested by a party.

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

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

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

17 (e) The parties may agree on:

18 (1) The attendance of a court reporter,

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

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

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

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

29 **"§ 1-567.55. Default of a party.**

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

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

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

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

41 **"§ 1-567.56. Expert appointed by arbitral tribunal.**

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

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

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

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

8 "**§ 1-567.57. Court assistance in obtaining discovery and taking evidence.**

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

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

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

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

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

27 "**§ 1-567.58. Rules applicable to substance of dispute.**

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

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

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

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

41 "**§ 1-567.59. Decision making by panel of arbitrators.**

42 Unless otherwise agreed by the parties, in arbitral proceedings with more than one
43 arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its

1 members. However, questions of procedure may be decided by a presiding arbitrator, if
2 authorized by the parties or all members of the arbitral tribunal.

3 **"§ 1-567.60. Settlement.**

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

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

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

14 **"§ 1-567.61. Form and contents of award.**

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

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

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

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

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

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

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

32 (h) (1) Unless otherwise agreed by the parties, the awarding of
33 costs of an arbitration shall be at the discretion of the arbitral
34 tribunal.

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

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

38 b. Fees and expenses of counsel and of the institution supervising
39 the arbitration, if any; and

40 c. Any other expenses incurred in connection with the arbitral
41 proceedings.

42 (3) In making an order for costs, the arbitral tribunal may specify:

43 a. The party entitled to costs;

44 b. The party who shall pay the costs;

- 1 c. The amount of costs or method of determining that amount; and
2 d. The manner in which the costs shall be paid.

3 **"§ 1-567.62. Termination of proceedings.**

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

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

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

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

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

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

16 **"§ 1-567.63. Correction and interpretation of awards; additional awards.**

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

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

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

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

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

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

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

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

38 **"§ 1-567.64. Modifying or vacating of awards.**

39 Subject to the relevant provisions of federal law or any applicable international
40 agreement in force between the United States of America and any other nation or
41 nations, an arbitral award may be vacated by a court only upon a showing that the award
42 is tainted by illegality, or substantial unfairness in the conduct of the arbitral
43 proceedings. In determining whether an award is so tainted, the superior court shall
44 have regard to the provisions of this Article, and of G.S. 1-567.13 and G.S. 1-567.14,

1 but shall not engage in **de novo** review of the subject matter of the dispute giving rise to
2 the arbitration proceedings.

3 **"§ 1-567.65. Confirmation and enforcement of awards.**

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

14 **"§ 1-567.66. Applications to superior court.**

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

20 **"§ 1-567.67. Appeals.**

21 (a) An appeal may be taken from:

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

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

33 **"§ 1-567.68. Severability.**

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

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