

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 695\*

Short Title: International Commercial Arbitrations.

(Public)

Sponsors: Senator Ballance.

Referred to: Judiciary I.

April 18, 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.

23 (c) An arbitration is international if:

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

- 1           (1) 'Arbitral award' means any decision of an arbitral tribunal on the  
2 substance of a dispute submitted to it, and includes an interlocutory, or  
3 partial award;  
4           (2) 'Arbitral tribunal' means a sole arbitrator or a panel of arbitrators;  
5           (3) 'Arbitration' means any arbitration whether or not administered by a  
6 permanent arbitral institution;  
7           (4) 'Party' means a party to an arbitration agreement;  
8           (5) 'Superior court' means the superior court of any county in this State  
9 selected pursuant to G.S. 1-567.36;

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

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

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

19 **"§ 1-567.33. Receipt of written communications or submissions.**

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

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

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

32 **"§ 1-567.34. Waiver of right to object.**

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

38 **"§ 1-567.35. Extent of court intervention.**

39       In matters governed by this Article, no court shall intervene except where so  
40 provided in this Article or applicable federal law.

41 **"§ 1-567.36. Venue and jurisdiction of courts.**

42       (a) The functions referred to in G.S. 1-567.41(c) and (d), 1-567.43(a), 1-  
43 567.44(b), 1-567.46(c), and 1-567.57 shall be performed by the superior court in:

- 1           (1) The county where the arbitration agreement is to be performed or was  
2 made;  
3           (2) If the arbitration agreement does not specify a county where the  
4 agreement is to be performed and the agreement was not made in any  
5 county in the State of North Carolina, the county where any party to  
6 the court proceeding resides or has a place of business;  
7           (3) In any case not covered by subsections (i) or (ii) of this paragraph, in  
8 any county in the State of North Carolina.

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

12 **"§ 1-567.37. Definition and form of arbitration agreement.**

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

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

26 **"§ 1-567.38. Arbitration agreement and substantive claim before court.**

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

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

33 **"§ 1-567.39. Interim relief and the enforcement of interim measures.**

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

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

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

3           (1) An order of attachment or garnishment;

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

5           (3) An order for claim and delivery;

6           (4) The appointment of a receiver;

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

8           (6) Any other order that may be necessary to ensure the preservation or  
9 availability either of assets or of documents, the destruction or absence  
10 of which would be likely to prejudice the conduct or effectiveness of  
11 the arbitration.

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

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

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

25 **"§ 1-567.40. Number of arbitrators.**

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

28 **"§ 1-567.41. Appointment of arbitrators.**

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

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

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

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

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

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

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

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

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

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

12           (1) Any qualifications required of the arbitrator by the agreement of the  
13 parties;

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

16           (3) in the case of a sole or third arbitrator, the advisability of appointing an  
17 arbitrator of a nationality other than those of the parties.

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

21 **"§ 1-567.42. Grounds for challenge.**

22       (a) Except as otherwise provided in this Article, all persons whose names have  
23 been submitted for consideration for appointment or designation as arbitrators, or who  
24 have been appointed or designated as such, shall make a disclosure to the parties within  
25 15 days of such submission, appointment or designation of any information which  
26 might cause their impartiality to be questioned including, but not limited to, any of the  
27 following instances:

28           (1) The person has a personal bias or prejudice concerning a party, or  
29 personal knowledge of disputed evidentiary facts concerning the  
30 proceeding;

31           (2) The person served as a lawyer in the matter in controversy, or the  
32 person is or has been associated with another who has participated in  
33 the matter during such association, or has been a material witness  
34 concerning it;

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

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

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

- 1           a. The person is or has been a party to the proceeding, or an  
2           officer, director, or trustee of a party;  
3           b. The person is acting or has acted as a lawyer in the proceeding;  
4           c. The person is known to have an interest that could be  
5           substantially affected by the outcome of the proceeding;  
6           d. The person is likely to be a material witness in the proceeding;  
7       (6) The person has a close personal or professional relationship with a  
8       person who meets any of the following conditions:  
9           a. The person is or has been a party to the proceeding, or an  
10          officer, director, or trustee of a party;  
11          b. The person is acting or has acted as a lawyer or representative  
12          in the proceeding;  
13          c. The person is or expects to be nominated as an arbitrator or  
14          conciliator in the proceedings;  
15          d. The person is known to have an interest that could be  
16          substantially affected by the outcome of the proceeding;  
17          e. The person is likely to be a material witness in the proceeding.  
18       (b) The obligation to disclose information set forth in subsection (a) of this  
19       section is mandatory and cannot be waived as to the parties with respect to persons  
20       -serving either as sole arbitrator or as the chief or prevailing arbitrator. The parties may  
21       otherwise agree to waive such disclosure.  
22       (c) From the time of appointment and throughout the arbitral proceedings, an  
23       arbitrator shall disclose to the parties without delay any circumstances referred to in  
24       subsection (a) of this section which were not previously disclosed.  
25       (d) Unless otherwise agreed by the parties or the rules governing the arbitration,  
26       an arbitrator may be challenged only if circumstances exist that give rise to justifiable  
27       doubts as to his or her independence or impartiality, or as to his or her possession of the  
28       qualifications upon which the parties have agreed.  
29       (e) A party may challenge an arbitrator appointed by it, or in whose appointment  
30       it has participated only for reasons of which it becomes aware after the appointment has  
31       been made.  
32       **§ 1-567.43. Challenge procedure.**  
33       (a) The parties may agree on a procedure for challenging an arbitrator, subject to  
34       the provisions of subsection (c) of this section.  
35       (b) If there is no agreement under subsection (a) of this section, a party  
36       challenging an arbitrator shall, within 15 days after becoming aware of the constitution  
37       of the arbitral tribunal or after becoming aware of any circumstance referred to in G.S.  
38       1.567.42(a), send a written statement of the reasons for the challenge to the arbitral  
39       tribunal. Unless the challenged arbitrator withdraws or the other party agrees to the  
40       challenge, the arbitral tribunal shall decide on the challenge.  
41       (c) If a challenge under any procedure agreed upon by the parties or under the  
42       procedure of subsection (b) of this section is not successful, the challenging party may,  
43       within 30 days after having received notice of the decision rejecting the challenge,  
44       request the superior court to decide on the challenge, which decision shall be final and

1 subject to no appeal. While such a request is pending, the arbitral tribunal, including the  
2 challenged arbitrator, may continue to conduct the arbitral proceedings and make an  
3 award.

4 **"§ 1-567.44. Failure or impossibility to act.**

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

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

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

16 **"§ 1-567.45. Appointment of substitute arbitrator.**

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

20 (b) Unless otherwise agreed by the parties:

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

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

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

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

31 **"§ 1-567.46. Competence of arbitral tribunal to rule on its jurisdiction.**

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

39 (b) A plea that the arbitral tribunal does not have jurisdiction shall be raised not  
40 later than the submission of the statement of defense. However, a party is not precluded  
41 from raising such a plea by the fact that the party has appointed, or participated in the  
42 appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of  
43 its authority shall be raised as soon as the matter alleged to be beyond the scope of its



1 authority is raised during the arbitral proceedings. In either case, the arbitral tribunal  
2 may admit a later plea if it considers the delay justified.

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

10 **"§ 1-567.47. Power of arbitral tribunal to order interim measures.**

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

17 **"§ 1-567.48. Equal treatment of parties.**

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

20 **"§ 1-567.49. Determination of rules of procedure.**

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

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

30 **"§ 1-567.50. Place of arbitration.**

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

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

38 **"§ 1-567.51. Commencement of arbitral proceedings.**

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

42 **"§ 1-567.52. Language.**

43 (a) The parties may agree on the language or languages to be used in the arbitral  
44 proceedings. If the parties do not agree, the arbitral tribunal shall determine the

1 language or languages to be used in the proceedings. This agreement or determination,  
2 unless otherwise specified therein, shall apply to any written statement by a party, any  
3 hearing and any award, decision or other communication by the arbitral tribunal.

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

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

9 **"§ 1-567.53. Statements of claim and defense.**

10 (a) Within the period of time agreed by the parties or determined by the arbitral  
11 tribunal, the claimant shall state the facts supporting its claim, the points at issue and the  
12 relief or remedy sought, and the respondent shall state its defense in respect of these  
13 particulars, unless the parties have otherwise agreed as to the required elements of such  
14 statements. The parties may submit with their statements all documents they consider to  
15 be relevant or may add a reference to the documents or other evidence the party will  
16 submit.

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

21 **"§ 1-567.54. Hearings and written proceedings.**

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

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

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

36 (d) Unless otherwise agreed by the parties, all oral hearings and meetings in  
37 arbitral proceedings shall be held **in camera**.

38 (e) The parties may agree on:

39 (1) The attendance of a court reporter,

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

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

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

**"§ 1-567.55. Default of a party.**

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

- (1) The claimant fails to submit a statement of claim in accordance with G.S. 1-567.53(a), the arbitral tribunal shall terminate the proceedings;
- (2) The respondent fails to submit a statement of defense in accordance with G.S. 1-567.53(c), the arbitral tribunal shall continue to conduct the proceedings without treating such failure in itself as an admission of the claimant's allegations;
- (3) Any party fails to appear at a hearing or to produce documentary evidence as directed by the arbitral tribunal, the arbitral tribunal may continue to conduct the proceedings and make the award on the evidence before it.

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

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

- (1) May appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;
- (2) May require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for the expert's inspection.

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

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

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

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

- (1) Order the arbitrations to be consolidated on terms the court considers just and necessary;
- (2) If all the parties cannot agree on an arbitral tribunal for the consolidated arbitration, appoint an arbitral tribunal as provided by G.S. 1-567.41; and
- (3) If all the parties cannot agree on any other matter necessary to conduct the consolidated arbitration, make any other order it considers necessary.

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

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

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

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

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

14 **"§ 1-567.59. Decision making by panel of arbitrators.**

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

19 **"§ 1-567.60. Settlement.**

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

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

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

30 **"§ 1-567.61. Form and contents of award.**

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

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

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

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

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

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

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

5 (h) (1) Unless otherwise agreed by the parties, the awarding of  
6 costs of an arbitration shall be at the discretion of the arbitral  
7 tribunal.

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

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

11 b. Fees and expenses of counsel and of the institution supervising  
12 the arbitration, if any; and

13 c. Any other expenses incurred in connection with the arbitral  
14 proceedings.

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

16 a. The party entitled to costs;

17 b. The party who shall pay the costs;

18 c. The amount of costs or method of determining that amount; and

19 d. The manner in which the costs shall be paid.

20 **"§ 1-567.62. Termination of proceedings.**

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

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

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

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

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

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

33 **"§ 1-567.63. Correction and interpretation of awards; additional awards.**

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

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

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

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

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

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

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

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

12 **"§ 1-567.64. Severability.**

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

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