
SENATE BILL 5227

State of Washington 64th Legislature 2015 Regular Session

By Senators Baumgartner, O'Ban, Dammeier, and Fain

Read first time 01/15/15. Referred to Committee on Law & Justice.

1 AN ACT Relating to international commercial arbitration; and
2 adding a new chapter to Title 7 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** SCOPE OF APPLICATION. (1) This chapter
5 applies to international commercial arbitration, subject to any
6 agreement between the United States and any other country or
7 countries.

8 (2) The provisions of this chapter, except sections 9, 10, 26,
9 27, 28, 46, and 47 of this act, apply only if the place of
10 arbitration is in the territory of this state.

11 (3) An arbitration is international if:

12 (a) The parties to an arbitration agreement have, at the time of
13 the conclusion of that agreement, their places of business in
14 different countries;

15 (b) One of the following places is situated outside the country
16 or countries in which the parties have their places of business:

17 (i) The place of arbitration if determined in, or pursuant to,
18 the arbitration agreement; or

19 (ii) Any place where a substantial part of the obligations of the
20 commercial relationship is to be performed or the place with which
21 the subject matter of the dispute is most closely connected; or

1 (c) The parties have expressly agreed that the subject matter of
2 the arbitration agreement relates to more than one country.

3 (4) For the purposes of subsection (3) of this section:

4 (a) If a party has more than one place of business, the place of
5 business is that which has the closest relationship to the
6 arbitration agreement; and

7 (b) If a party does not have a place of business, reference is to
8 be made to the party's habitual residence.

9 (5) This chapter shall not affect any other law of this state by
10 virtue of which certain disputes may not be submitted to arbitration
11 or may be submitted to arbitration only according to provisions other
12 than those of this chapter.

13 NEW SECTION. **Sec. 2.** DEFINITIONS AND RULES OF INTERPRETATION.

14 (1) For the purpose of this chapter:

15 (a) "Arbitration" means any arbitration whether or not
16 administered by a permanent arbitral institution.

17 (b) "Arbitral tribunal" means a sole arbitrator or a panel of
18 arbitrators.

19 (c) "Commercial" means matters arising from all relationships of
20 a commercial nature, whether contractual or not, including, but not
21 limited to, any of the following transactions:

22 (i) A transaction for the supply or exchange of goods or
23 services;

24 (ii) A distribution agreement;

25 (iii) A commercial representation or agency;

26 (iv) An exploitation agreement or concession;

27 (v) A joint venture or other related form of industrial or
28 business cooperation;

29 (vi) The carriage of goods or passengers by air, sea, rail, or
30 road;

31 (vii) Construction;

32 (viii) Insurance;

33 (ix) Licensing;

34 (x) Factoring;

35 (xi) Leasing;

36 (xii) Consulting;

37 (xiii) Engineering;

38 (xiv) Financing;

39 (xv) Banking;

1 (xvi) The transfer of data or technology;
2 (xvii) Intellectual or industrial property, including trademarks,
3 patents, copyrights, and software programs; and
4 (xviii) Professional services.

5 (d) "Court" means a body or organ of the judicial system of this
6 state.

7 (2) Where a provision of this chapter, except section 39 of this
8 act, leaves the parties free to determine a certain issue, such
9 freedom includes the right of the parties to authorize a third party,
10 including an institution, to make that determination.

11 (3) Where a provision of this chapter refers to the fact that the
12 parties have agreed, that they may agree, or in any other way refers
13 to an agreement of the parties, such agreement includes any
14 arbitration rules referred to in that agreement.

15 (4) Where a provision of this chapter, other than in sections
16 36(1) and 43(2)(a) of this act, refers to a claim, it also applies to
17 a counter-claim, and where it refers to a defense, it also applies to
18 a defense to such counter-claim.

19 NEW SECTION. **Sec. 3.** INTERNATIONAL ORIGIN AND GENERAL
20 PRINCIPLES. (1) In the interpretation of this chapter, regard is to
21 be had to its international origin and to the need to promote
22 uniformity in its application and the observance of good faith.

23 (2) Questions concerning matters governed by this chapter which
24 are not expressly settled in it are to be settled in conformity with
25 the general principles on which this chapter is based.

26 NEW SECTION. **Sec. 4.** RECEIPT OF WRITTEN COMMUNICATIONS. (1)
27 Unless otherwise agreed by the parties:

28 (a) Any written communication is deemed to have been received if
29 it is delivered to the addressee personally or if it is delivered at
30 the addressee's place of business, habitual residence, or mailing
31 address. If none of these can be found after making a reasonable
32 inquiry, a written communication is deemed to have been received if
33 it is sent to the addressee's last-known place of business, habitual
34 residence, or mailing address by registered letter or any other means
35 which provides a record of the attempt to deliver it; and

36 (b) The communication is deemed to have been received on the day
37 it is so delivered.

1 (2) The provisions of this section do not apply to communications
2 in court proceedings.

3 NEW SECTION. **Sec. 5.** WAIVER OF RIGHT TO OBJECT. A party who
4 knows that any provision of this chapter from which the parties may
5 derogate or any requirement under the arbitration agreement has not
6 been complied with and yet proceeds with the arbitration without
7 stating the party's objection to such noncompliance without undue
8 delay or, if a time limit is provided therefore, within such period
9 of time, shall be deemed to have waived the party's right to object.

10 NEW SECTION. **Sec. 6.** EXTENT OF COURT INTERVENTION. In matters
11 governed by this chapter, no court shall intervene except where so
12 provided in this chapter.

13 NEW SECTION. **Sec. 7.** COURT AUTHORITY FOR CERTAIN FUNCTIONS OF
14 ARBITRATION ASSISTANCE AND SUPERVISION. (1) The functions referred to
15 in sections 12 (3) and (4), 14(3), 15, 17(3), and 45(2) of this act
16 shall be performed by the superior court of the county in which the
17 agreement to arbitrate is to be performed or was made.

18 (2) If the arbitration agreement does not specify a county where
19 the agreement to arbitrate is to be performed and the agreement was
20 not made in any county in the state of Washington, the functions
21 referred to in sections 12 (3) and (4), 14(3), 15, 17(3), and 45(2)
22 of this act shall be performed in the county where any party to the
23 court proceeding resides or has a place of business.

24 (3) In any case not covered by subsections (1) or (2) of this
25 section, the functions referred to in sections 12 (3) and (4), 14(3),
26 15, 17(3), and 45(2) of this act shall be performed in any county in
27 the state of Washington.

28 NEW SECTION. **Sec. 8.** DEFINITION AND FORM OF ARBITRATION
29 AGREEMENT. (1) For the purposes of this chapter, "arbitration
30 agreement" is an agreement by the parties to submit to arbitration
31 all or certain disputes which have arisen or which may arise between
32 them in respect of a defined legal relationship, whether contractual
33 or not. An arbitration agreement may be in the form of an arbitration
34 clause in a contract or in the form of a separate agreement.

35 (2) The arbitration agreement shall be in writing.

1 (3) An arbitration agreement is in writing if its content is
2 recorded in any form, whether or not the arbitration agreement or
3 contract has been concluded orally, by conduct, or by other means.

4 (4) The requirement that an arbitration agreement be in writing
5 is met by an electronic communication if the information contained
6 therein is accessible so as to be useable for subsequent reference.
7 For the purposes of this section, "electronic communication" means
8 any communication that the parties make by means of data messages;
9 and "data message" means information generated, sent, received, or
10 stored by electronic, magnetic, optical, or similar means, including,
11 but not limited to, electronic data interchange (EDI), electronic
12 mail, telegram, telex, or telecopy.

13 (5) An arbitration agreement is in writing if it is contained in
14 an exchange of statements of claim and defense in which the existence
15 of an agreement is alleged by one party and not denied by the other.

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

20 NEW SECTION. **Sec. 9.** ARBITRATION AGREEMENT AND SUBSTANTIVE
21 CLAIM BEFORE COURT. (1) A court before which an action is brought in
22 a matter which is the subject of an arbitration agreement shall, if a
23 party so requests not later than when submitting the party's first
24 statement on the substance of the dispute, refer the parties to
25 arbitration unless it finds that the agreement is null and void,
26 inoperative, or incapable of being performed.

27 (2) Where an action referred to in subsection (1) of this section
28 has been brought, arbitral proceedings may nevertheless be commenced
29 or continued, and an award made, while the issue is pending before
30 the court.

31 NEW SECTION. **Sec. 10.** ARBITRATION AGREEMENT AND INTERIM
32 MEASURES BY COURT. It is not incompatible with an arbitration
33 agreement for a party to request, before or during arbitral
34 proceedings, from a court an interim measure of protection and for a
35 court to grant such measure.

36 NEW SECTION. **Sec. 11.** NUMBER OF ARBITRATORS; IMMUNITY. (1) The
37 parties are free to determine the number of arbitrators.

1 (2) Failing such determination, the number of arbitrators shall
2 be three.

3 (3) An arbitrator has the immunity of a judicial officer from
4 civil liability when acting in the capacity of arbitrator under any
5 statute or contract. The immunity afforded by this section shall
6 supplement, and not supplant, any otherwise applicable common law or
7 statutory immunity.

8 NEW SECTION. **Sec. 12.** APPOINTMENT OF ARBITRATORS. (1) No person
9 shall be precluded by reason of the person's nationality from acting
10 as an arbitrator, unless otherwise agreed by the parties.

11 (2) The parties are free to agree on a procedure of appointing
12 the arbitrator or arbitrators, subject to the provisions of
13 subsections (4) and (5) of this section.

14 (3) Failing such agreement:

15 (a) In an arbitration with three arbitrators, each party shall
16 appoint one arbitrator, and the two arbitrators thus appointed shall
17 appoint the third arbitrator; if a party fails to appoint the
18 arbitrator within thirty days of receipt of a request to do so from
19 the other party, or if the two arbitrators fail to agree on the third
20 arbitrator within thirty days of their appointment, the appointment
21 shall be made, upon request of a party, by the court specified in
22 section 7 of this act; and

23 (b) In an arbitration with a sole arbitrator, if the parties are
24 unable to agree on the arbitrator, the arbitrator shall be appointed,
25 upon request of a party, by the court specified in section 7 of this
26 act.

27 (4) Where, under an appointment procedure agreed upon by the
28 parties:

29 (a) A party fails to act as required under such procedure;

30 (b) The parties, or two arbitrators, are unable to reach an
31 agreement expected of them under such procedure; or

32 (c) A third party, including an institution, fails to perform any
33 function entrusted to it under such procedure;

34 Any party may request the court specified in section 7 of this
35 act to take the necessary measure, unless the agreement on the
36 appointment procedure provides other means for securing the
37 appointment.

38 (5) A decision on a matter entrusted by subsection (3) or (4) of
39 this section to the court specified in section 7 of this act shall be

1 subject to no appeal. The court, in appointing an arbitrator, shall
2 have due regard to any qualifications required of the arbitrator by
3 the agreement of the parties and to such considerations as are likely
4 to secure the appointment of an independent and impartial arbitrator
5 and, in the case of a sole or third arbitrator, shall take into
6 account as well the advisability of appointing an arbitrator of a
7 nationality other than those of the parties.

8 NEW SECTION. **Sec. 13.** GROUND FOR CHALLENGE. (1) When a person
9 is approached in connection with the person's possible appointment as
10 an arbitrator, the person shall disclose any circumstances likely to
11 give rise to justifiable doubts as to the person's impartiality or
12 independence. An arbitrator, from the time of the arbitrator's
13 appointment and throughout the arbitral proceedings, shall without
14 delay disclose any such circumstances to the parties unless they have
15 already been informed of them by the arbitrator.

16 (2) An arbitrator may be challenged only if circumstances exist
17 that give rise to justifiable doubts as to the arbitrator's
18 impartiality or independence, or if the arbitrator does not possess
19 qualifications agreed to by the parties. A party may challenge an
20 arbitrator appointed by the party, or in whose appointment the party
21 has participated, only for reasons of which the party becomes aware
22 after the appointment has been made.

23 NEW SECTION. **Sec. 14.** CHALLENGE PROCEDURE. (1) The parties are
24 free to agree on a procedure for challenging an arbitrator, subject
25 to the provisions of subsection (3) of this section.

26 (2) Failing such agreement, a party who intends to challenge an
27 arbitrator shall, within fifteen days after becoming aware of the
28 constitution of the arbitral tribunal or after becoming aware of any
29 circumstance referred to in section 13(2) of this act, send a written
30 statement of the reasons for the challenge to the arbitral tribunal.
31 Unless the challenged arbitrator withdraws from the arbitrator's
32 office or the other party agrees to the challenge, the arbitral
33 tribunal shall decide on the challenge.

34 (3) If a challenge under any procedure agreed upon by the parties
35 or under the procedure of subsection (2) of this section is not
36 successful, the challenging party may request, within thirty days
37 after having received notice of the decision rejecting the challenge,
38 the court specified in section 7 of this act to decide on the

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

4 NEW SECTION. **Sec. 15.** FAILURE OR IMPOSSIBILITY TO ACT. (1) If
5 an arbitrator becomes *de jure* or *de facto* unable to perform the
6 arbitrator's functions or for other reasons fails to act without
7 undue delay, the arbitrator's mandate terminates if the arbitrator
8 withdraws from the arbitrator's office or if the parties agree on the
9 termination. Otherwise, if a controversy remains concerning any of
10 these grounds, any party may request the court specified in section 7
11 of this act to decide on the termination of the mandate, which
12 decision shall be subject to no appeal.

13 (2) If, under this section or section 14(2) of this act, an
14 arbitrator withdraws from the arbitrator's office or a party agrees
15 to the termination of the mandate of an arbitrator, this does not
16 imply acceptance of the validity of any ground referred to in this
17 section or section 13(2) of this act.

18 NEW SECTION. **Sec. 16.** APPOINTMENT OF SUBSTITUTE ARBITRATOR.
19 Where the mandate of an arbitrator terminates under section 14 or 15
20 of this act or because of the arbitrator's withdrawal from office for
21 any other reason or because of the revocation of the arbitrator's
22 mandate by agreement of the parties or in any other case of
23 termination of the arbitrator's mandate, a substitute arbitrator
24 shall be appointed according to the rules that were applicable to the
25 appointment of the arbitrator being replaced.

26 NEW SECTION. **Sec. 17.** COMPETENCE of ARBITRAL TRIBUNAL TO RULE
27 ON ITS OWN JURISDICTION. (1) The arbitral tribunal may rule on its
28 own jurisdiction, including any objections with respect to the
29 existence or validity of the arbitration agreement. For that purpose,
30 an arbitration clause which forms part of a contract shall be treated
31 as an agreement independent of the other terms of the contract. A
32 decision by the arbitral tribunal that the contract is null and void
33 shall not entail *ipso jure* the invalidity of the arbitration clause.

34 (2) A plea that the arbitral tribunal does not have jurisdiction
35 shall be raised not later than the submission of the statement of
36 defense. A party is not precluded from raising such a plea by the
37 fact that the party has appointed, or participated in the appointment

1 of, an arbitrator. A plea that the arbitral tribunal is exceeding the
2 scope of its authority shall be raised as soon as the matter alleged
3 to be beyond the scope of its authority is raised during the arbitral
4 proceedings. The arbitral tribunal may, in either case, admit a later
5 plea if it considers the delay justified.

6 (3) The arbitral tribunal may rule on a plea referred to in
7 subsection (2) of this section either as a preliminary question or in
8 an award on the merits. If the arbitral tribunal rules as a
9 preliminary question that it has jurisdiction, any party may request,
10 within thirty days after having received notice of that ruling, the
11 court specified in section 7 of this act to decide the matter, which
12 decision shall be subject to no appeal. While such a request is
13 pending, the arbitral tribunal may continue the arbitral proceedings
14 and make an award.

15 NEW SECTION. **Sec. 18.** POWER OF ARBITRAL TRIBUNAL TO ORDER
16 INTERIM MEASURES. (1) Unless otherwise agreed by the parties, the
17 arbitral tribunal may, at the request of a party, grant interim
18 measures.

19 (2) An interim measure is any temporary measure, whether in the
20 form of an award or in another form, by which, at any time prior to
21 the issuance of the award by which the dispute is finally decided,
22 the arbitral tribunal orders a party to:

23 (a) Maintain or restore the status quo pending determination of
24 the dispute;

25 (b) Take action that would prevent, or refrain from taking action
26 that is likely to cause, current or imminent harm or prejudice to the
27 arbitral process itself;

28 (c) Provide a means of preserving assets out of which a
29 subsequent award may be satisfied; or

30 (d) Preserve evidence that may be relevant and material to the
31 resolution of the dispute.

32 NEW SECTION. **Sec. 19.** CONDITIONS OF GRANTING INTERIM MEASURES.

33 (1) The party requesting an interim measure under section 18(2) (a),
34 (b), and (c) of this act shall satisfy the arbitral tribunal that:

35 (a) Harm not adequately reparable by an award of damages is
36 likely to result if the measure is not ordered, and such harm
37 substantially outweighs the harm that is likely to result to the

1 party against whom the measure is directed if the measure is granted;
2 and

3 (b) There is a reasonable possibility that the requesting party
4 will succeed on the merits of the claim. The determination on this
5 possibility shall not affect the discretion of the arbitral tribunal
6 in making any subsequent determination.

7 (2) With regard to a request for an interim measure under section
8 18(2)(d) of this act, the requirements in subsection (1)(a) and (b)
9 of this section shall apply only to the extent the tribunal considers
10 appropriate.

11 NEW SECTION. **Sec. 20.** APPLICATION FOR PRELIMINARY ORDERS AND
12 CONDITIONS FOR GRANTING PRELIMINARY ORDERS. (1) Unless otherwise
13 agreed by the parties, a party may, without notice to any other
14 party, make a request for an interim measure together with an
15 application for a preliminary order directing a party not to
16 frustrate the purpose of the interim measure requested.

17 (2) The arbitral tribunal may grant a preliminary order provided
18 it considers that prior disclosure of the request for the interim
19 measure to the party against whom it is directed risks frustrating
20 the purpose of the measure.

21 (3) The conditions defined under section 19 of this act apply to
22 any preliminary order, provided that the harm to be assessed under
23 section 19(1)(a) of this act is the harm likely to result from the
24 order being granted or not.

25 NEW SECTION. **Sec. 21.** SPECIFIC REGIME FOR PRELIMINARY ORDERS.

26 (1) Immediately after the arbitral tribunal has made a determination
27 in respect of an application for a preliminary order, the arbitral
28 tribunal shall give notice to all parties of the request for the
29 interim measure, the application for the preliminary order, the
30 preliminary order, if any, and all other communications, including by
31 indicating the content of any oral communication, between any party
32 and the arbitral tribunal in relation thereto.

33 (2) At the same time, the arbitral tribunal shall give an
34 opportunity to any party against whom a preliminary order is directed
35 to present its case at the earliest practicable time.

36 (3) The arbitral tribunal shall decide promptly on any objection
37 to the preliminary order.

1 (4) A preliminary order shall expire after twenty days from the
2 date on which it was issued by the arbitral tribunal. However, the
3 arbitral tribunal may issue an interim measure adopting or modifying
4 the preliminary order after the party against whom the preliminary
5 order is directed has been given notice and an opportunity to present
6 its case.

7 (5) A preliminary order shall be binding on the parties but shall
8 not be subject to enforcement by a court. Such a preliminary order
9 does not constitute an award.

10 NEW SECTION. **Sec. 22.** MODIFICATION, SUSPENSION, TERMINATION.

11 The arbitral tribunal may modify, suspend, or terminate an interim
12 measure or a preliminary order it has granted upon application of any
13 party or, in exceptional circumstances and upon prior notice to the
14 parties, on the arbitral tribunal's own initiative.

15 NEW SECTION. **Sec. 23.** PROVISION OF SECURITY. (1) The arbitral

16 tribunal may require the party requesting an interim measure to
17 provide appropriate security in connection with the measure.

18 (2) The arbitral tribunal shall require the party applying for a
19 preliminary order to provide security in connection with the order
20 unless the arbitral tribunal considers it inappropriate to do so.

21 NEW SECTION. **Sec. 24.** DISCLOSURE. (1) The arbitral tribunal may

22 require any party promptly to disclose any material change in the
23 circumstances on the basis of which the measure was requested or
24 granted.

25 (2) The party applying for a preliminary order shall disclose to
26 the arbitral tribunal all circumstances that are likely to be
27 relevant to the arbitral tribunal's determination whether to grant or
28 maintain the order, and such obligation shall continue until the
29 party against whom the order has been requested has had an
30 opportunity to present its case. Thereafter, subsection (1) of this
31 section shall apply.

32 NEW SECTION. **Sec. 25.** COSTS AND DAMAGES. The party requesting

33 an interim measure or applying for a preliminary order shall be
34 liable for any costs and damages caused by the measure or the order
35 to any party if the arbitral tribunal later determines that, in the
36 circumstances, the measure or the order should not have been granted.

1 The arbitral tribunal may award such costs and damages at any point
2 during the proceedings.

3 NEW SECTION. **Sec. 26.** RECOGNITION AND ENFORCEMENT. (1) An
4 interim measure issued by an arbitral tribunal shall be recognized as
5 binding and, unless otherwise provided by the arbitral tribunal,
6 enforced upon application to the superior court, irrespective of the
7 country in which it was issued, subject to the provisions of section
8 27 of this act.

9 (2) The party who is seeking or has obtained recognition or
10 enforcement of an interim measure shall promptly inform the court of
11 any termination, suspension, or modification of that interim measure.

12 (3) The court of the state where recognition or enforcement is
13 sought may, if it considers it proper, order the requesting party to
14 provide appropriate security if the arbitral tribunal has not already
15 made a determination with respect to security or where such a
16 decision is necessary to protect the rights of third parties.

17 NEW SECTION. **Sec. 27.** GROUNDS FOR REFUSING RECOGNITION AND
18 ENFORCEMENT. (1) Recognition or enforcement of an interim award may
19 be refused only:

20 (a) At the request of the party against whom it is invoked if the
21 court is satisfied that:

22 (i) Such refusal is warranted on the grounds set forth in section
23 47(1)(a) (i), (ii), (iii), or (iv) of this act;

24 (ii) The arbitral tribunal's decision with respect to the
25 provision of security in connection with the interim measure issued
26 by the arbitral tribunal has not been complied with; or

27 (iii) The interim measure has been terminated or suspended by the
28 arbitral tribunal or, where so empowered, by the court of the state
29 in which the arbitration takes place or under the law of which that
30 interim measure was granted; or

31 (b) If the court finds that:

32 (i) The interim measure is incompatible with the powers conferred
33 upon the court unless the court decides to reformulate the interim
34 measure to the extent necessary to adapt it to its own powers and
35 procedures for the purposes of enforcing that interim measure and
36 without modifying its substance; or

1 (ii) Any of the grounds set forth in section 47(1)(b) (i) or (ii)
2 of this act apply to the recognition and enforcement of the interim
3 measure.

4 (2) Any determination made by the court on any ground in
5 subsection (1) of this section shall be effective only for the
6 purposes of the application to recognize and enforce the interim
7 measure. The court where recognition or enforcement is sought shall
8 not, in making that determination, undertake a review of the
9 substance of the interim measure.

10 NEW SECTION. **Sec. 28.** COURT ORDERED INTERIM MEASURES. A court
11 shall have the same power of issuing an interim measure in relation
12 to arbitration proceedings, irrespective of whether their place is in
13 the territory of this state, as it has in relation to proceedings in
14 courts. The court shall exercise such power in accordance with its
15 own procedures in consideration of the specific features of
16 international arbitration.

17 NEW SECTION. **Sec. 29.** EQUAL TREATMENT OF PARTIES. The parties
18 shall be treated with equality, and each party shall be given a full
19 opportunity of presenting its case.

20 NEW SECTION. **Sec. 30.** DETERMINATION OF RULES AND PROCEDURE. (1)
21 Subject to the provisions of this chapter, the parties are free to
22 agree on the procedure to be followed by the arbitral tribunal in
23 conducting the proceedings.

24 (2) Failing such agreement, the arbitral tribunal may, subject to
25 the provisions of this chapter, conduct the arbitration in such
26 manner as it considers appropriate. The power conferred upon the
27 arbitral tribunal includes the power to determine the admissibility,
28 relevance, materiality, and weight of any evidence.

29 NEW SECTION. **Sec. 31.** PLACE OF ARBITRATION. (1) The parties are
30 free to agree on the place of arbitration. Failing such agreement,
31 the place of arbitration shall be determined by the arbitral tribunal
32 having regard to the circumstances of the case, including the
33 convenience of the parties.

34 (2) Notwithstanding the provisions of subsection (1) of this
35 section, the arbitral tribunal may, unless otherwise agreed by the
36 parties, meet at any place it considers appropriate for consultation

1 among its members, for hearing witnesses, experts, or the parties, or
2 for inspection of goods, other property, or documents.

3 NEW SECTION. **Sec. 32.** COMMENCEMENT OF ARBITRAL PROCEEDINGS.
4 Unless otherwise agreed by the parties, the arbitral proceedings in
5 respect of a particular dispute commence on the date on which a
6 request for that dispute to be referred to arbitration is received by
7 the respondent.

8 NEW SECTION. **Sec. 33.** LANGUAGE. (1) The parties are free to
9 agree on the language or languages to be used in the arbitral
10 proceedings. Failing such agreement, the arbitral tribunal shall
11 determine the language or languages to be used in the proceedings.
12 This agreement or determination, unless otherwise specified therein,
13 shall apply to any written statement by a party, any hearing, and any
14 award, decision, or other communication by the arbitral tribunal.

15 (2) The arbitral tribunal may order that any documentary evidence
16 shall be accompanied by a translation into the language or languages
17 agreed upon by the parties or determined by the arbitral tribunal.

18 NEW SECTION. **Sec. 34.** STATEMENT OF CLAIM AND DEFENSE. (1)
19 Within the period of time agreed by the parties or determined by the
20 arbitral tribunal, the claimant shall state the facts supporting its
21 claim, the point at issue, and the relief or remedy sought, and the
22 respondent shall state its defense in respect of these particulars,
23 unless the parties have otherwise agreed as to the required elements
24 of such statements. The parties may submit with their statements all
25 documents they consider to be relevant or may add a reference to the
26 documents or other evidence they will submit.

27 (2) Unless otherwise agreed by the parties, either party may
28 amend or supplement its claims or defenses during the course of the
29 arbitral proceedings, unless the arbitral tribunal considers it
30 inappropriate to allow such amendment having regard to the delay in
31 making it.

32 NEW SECTION. **Sec. 35.** HEARINGS AND WRITTEN PROCEEDINGS. (1)
33 Subject to any contrary agreement by the parties, the arbitral
34 tribunal shall decide whether to hold oral hearings for the
35 presentation of evidence or for oral argument, or whether the
36 proceedings shall be conducted on the basis of documents and other

1 materials. However, unless the parties have agreed that no hearings
2 shall be held, the arbitral tribunal shall hold such hearings at an
3 appropriate stage of the proceedings, if so requested by a party.

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

7 (3) All statements, documents, or other information supplied to
8 the arbitral tribunal by one party shall be communicated to the other
9 party. Any expert report or evidentiary document on which the
10 arbitral tribunal may rely in making its decision shall be
11 communicated to the parties.

12 NEW SECTION. **Sec. 36.** DEFAULT OF A PARTY. Unless otherwise
13 agreed by the parties, if, without showing sufficient cause:

14 (1) The claimant fails to communicate its statement of claim in
15 accordance with section 34(1) of this act, the arbitral tribunal
16 shall terminate the proceedings;

17 (2) The respondent fails to communicate its statements of defense
18 in accordance with section 34(1) of this act, the arbitral tribunal
19 shall continue the proceedings without treating such failure in
20 itself as an admission of the claimant's allegations; and

21 (3) Any party fails to appear at a hearing or to produce
22 documentary evidence, the arbitral tribunal may continue the
23 proceedings and make the award on the evidence before it.

24 NEW SECTION. **Sec. 37.** EXPERT APPOINTED BY ARBITRAL TRIBUNAL.

25 (1) Unless otherwise agreed by the parties, the arbitral tribunal:

26 (a) May appoint one or more experts to report to it on specific
27 issues to be determined by the arbitral tribunal; and

28 (b) May require a party to give the expert any relevant
29 information or to produce, or to provide access to, any relevant
30 documents, goods, or other property for the expert's inspection.

31 (2) Unless otherwise agreed by the parties, if a party so
32 requests or if the arbitral tribunal considers it necessary, the
33 expert shall, after delivery of the expert's written or oral report,
34 participate in a hearing where the parties have the opportunity to
35 put questions to the expert and to present expert witnesses in order
36 to testify on the points at issue.

1 NEW SECTION. **Sec. 38.** COURT ASSISTANCE IN TAKING EVIDENCE;
2 CONSOLIDATION. (1) The arbitral tribunal or a party with the approval
3 of the arbitral tribunal may request from the superior court
4 assistance in taking evidence. The court may execute the request
5 within its competence and according to its rules on taking evidence.

6 (2) When the parties to two or more arbitration agreements have
7 agreed in their respective arbitration agreements or otherwise, the
8 superior court may, on application by one party with the consent of
9 all other parties to those arbitration agreements, do one or more of
10 the following:

11 (a) Order the arbitration proceedings arising out of those
12 arbitration agreements to be consolidated on terms the court
13 considers just and necessary;

14 (b) Where all parties cannot agree on an arbitral tribunal for
15 the consolidated arbitration, appoint an arbitral tribunal in
16 accordance with section 12(4) of this act; and

17 (c) Where the parties cannot agree on any other matter necessary
18 to conduct the consolidated arbitration, make any other order it
19 considers necessary.

20 NEW SECTION. **Sec. 39.** RULES APPLICABLE TO SUBSTANCE OF DISPUTE.
21 (1) The arbitral tribunal shall decide the dispute in accordance with
22 such rules of law as are chosen by the parties as applicable to the
23 substance of the dispute. Any designation of the law or legal system
24 of a given state shall be construed, unless otherwise expressed, as
25 directly referring to the substantive law of that state and not to
26 its conflict of laws rules.

27 (2) Failing any designation by the parties, the arbitral tribunal
28 shall apply the law determined by the conflict of laws rules which it
29 considers applicable.

30 (3) The arbitral tribunal shall decide *ex aequo et bono* or as
31 *amiable compositeur* only if the parties have expressly authorized it
32 to do so.

33 (4) In all cases, the arbitral tribunal shall decide in
34 accordance with the terms of the contract and shall take into account
35 the usages of the trade applicable to the transaction.

36 NEW SECTION. **Sec. 40.** DECISION MAKING BY PANEL OF ARBITRATORS.
37 In arbitral proceedings with more than one arbitrator, any decision
38 of the arbitral tribunal shall be made, unless otherwise agreed by

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

4 NEW SECTION. **Sec. 41.** SETTLEMENT. (1) If, during arbitral
5 proceedings, the parties settle the dispute, the arbitral tribunal
6 shall terminate the proceedings and, if requested by the parties and
7 not objected to by the arbitral tribunal, record the settlement in
8 the form of an arbitral award on agreed terms.

9 (2) An award on agreed terms shall be made in accordance with the
10 provisions of section 42 of this act and shall state that it is an
11 award. Such an award has the same status and effect as any other
12 award on the merits of the case.

13 NEW SECTION. **Sec. 42.** FORM AND CONTENTS OF AWARD. (1) The award
14 shall be made in writing and shall be signed by the arbitrator or
15 arbitrators. In arbitral proceedings with more than one arbitrator,
16 the signatures of the majority of all members of the arbitral
17 tribunal shall suffice, provided that the reason for any omitted
18 signature is stated.

19 (2) The award shall state the reasons upon which it is based,
20 unless the parties have agreed that no reasons are to be given or the
21 award is an award on agreed terms under section 41 of this act.

22 (3) The award shall state its date and the place of arbitration
23 as determined in accordance with section 31(1) of this act. The award
24 shall be deemed to have been made at that place.

25 (4) After the award is made, a copy signed by the arbitrators in
26 accordance with subsection (1) of this section shall be delivered to
27 each party.

28 NEW SECTION. **Sec. 43.** TERMINATION OF PROCEEDINGS. (1) The
29 arbitral proceedings are terminated by the final award or by an order
30 of the arbitral tribunal in accordance with subsection (2) of this
31 section.

32 (2) The arbitral tribunal shall issue an order for the
33 termination of the arbitral proceedings when:

34 (a) The claimant withdraws its claim, unless the respondent
35 objects thereto and the arbitral tribunal recognizes a legitimate
36 interest on the respondent's part in obtaining a final settlement of
37 the dispute;

1 (b) The parties agree on the termination of the proceedings; or
2 (c) The arbitral tribunal finds that the continuation of the
3 proceedings has for any other reason become unnecessary or
4 impossible.
5 (3) The mandate of the arbitral tribunal terminates with the
6 termination of the arbitral proceedings, subject to the provisions of
7 sections 44 and 45(4) of this act.

8 NEW SECTION. **Sec. 44.** CORRECTION AND INTERPRETATION OF AWARD;
9 ADDITIONAL AWARD. (1) Within thirty days of receipt of the award,
10 unless another period of time has been agreed upon by the parties:

11 (a) A party, with notice to the other party, may request the
12 arbitral tribunal to correct in the award any errors in computation,
13 any clerical or typographical errors, or any errors of similar
14 nature;

15 (b) If so agreed by the parties, a party, with notice to the
16 other party, may request the arbitral tribunal to give an
17 interpretation of a specific point or part of the award; and

18 (c) If the arbitral tribunal considers the request to be
19 justified, it shall make the correction or give the interpretation
20 within thirty days of receipt of the request. The interpretation
21 shall form part of the award.

22 (2) The arbitral tribunal may correct any error of the type
23 referred to in subsection (1)(a) of this section on its own
24 initiative within thirty days of the date of the award.

25 (3) Unless otherwise agreed by the parties, a party, with notice
26 to the other party, may request, within thirty days of receipt of the
27 award, the arbitral tribunal to make an additional award as to claims
28 presented in the arbitral proceedings but omitted from the award. If
29 the arbitral tribunal considers the request to be justified, it shall
30 make the additional award within sixty days.

31 (4) The arbitral tribunal may extend, if necessary, the period of
32 time within which it shall make a correction, interpretation, or an
33 additional award under subsection (1) or (3) of this section.

34 (5) The provisions of section 42 of this act shall apply to a
35 correction or interpretation of the award or to an additional award.

36 NEW SECTION. **Sec. 45.** APPLICATION FOR SETTING ASIDE AS
37 EXCLUSIVE RECOURSE AGAINST ARBITRAL AWARD. (1) Recourse to the
38 superior court against an arbitral award may be made only by an

1 application for setting aside in accordance with subsections (2) and
2 (3) of this section.

3 (2) An arbitral award may be set aside by the superior court only
4 if:

5 (a) The party making the application furnishes proof that:

6 (i) A party to the arbitration agreement referred to in section 8
7 of this act was under some incapacity, or the said agreement is not
8 valid under the law to which the parties have subjected it or,
9 failing any indication thereon, under the law of this state;

10 (ii) The party making the application was not given proper notice
11 of the appointment of an arbitrator or of the arbitral proceedings or
12 was otherwise unable to present its case;

13 (iii) The award deals with a dispute not contemplated by or not
14 falling within the terms of the submission to arbitration, or
15 contains decisions on matters beyond the scope of the submission to
16 arbitration, provided that, if the decisions on matters submitted to
17 arbitration can be separated from those not so submitted, only that
18 part of the award which contains decisions on matters not submitted
19 to arbitration may be set aside; or

20 (iv) The composition of the arbitral tribunal or the arbitral
21 procedure was not in accordance with the agreement of the parties,
22 unless such agreement was in conflict with a provision of this
23 chapter from which the parties cannot derogate, or, failing such
24 agreement, was not in accordance with this chapter; or

25 (b) The court finds that:

26 (i) The subject matter of the dispute is not capable of
27 settlement by arbitration under the law of this state; or

28 (ii) The award is in conflict with the public policy of this
29 state.

30 (3) An application for setting aside may not be made after three
31 months have elapsed from the date on which the party making that
32 application had received the award or, if a request had been made
33 under section 44 of this act, from the date on which that request had
34 been disposed of by the arbitral tribunal.

35 (4) The court, when asked to set aside an award, may, where
36 appropriate and so requested by a party, suspend the setting aside
37 proceedings for a period of time determined by it in order to give
38 the arbitral tribunal an opportunity to resume the arbitral
39 proceedings or to take such other action as in the arbitral
40 tribunal's opinion will eliminate the grounds for setting aside.

1 NEW SECTION. **Sec. 46.** RECOGNITION AND ENFORCEMENT. (1) An
2 arbitral award, irrespective of the country in which it was made,
3 shall be recognized as binding and, upon application in writing to
4 the superior court, shall be enforced subject to the provisions of
5 this section and of section 47 of this act.

6 (2) The party relying on an award or applying for its enforcement
7 shall supply the original award or a copy thereof. If the award is
8 not made in English, the court may request the party to supply a
9 translation thereof into English.

10 NEW SECTION. **Sec. 47.** GROUNDS FOR REFUSING RECOGNITION OR
11 ENFORCEMENT. (1) Recognition or enforcement of an arbitral award,
12 irrespective of the country in which it was made, may be refused
13 only:

14 (a) At the request of the party against whom it is invoked, if
15 that party furnishes to the competent court where recognition or
16 enforcement is sought proof that:

17 (i) A party to the arbitration agreement referred to in section 8
18 of this act was under some incapacity, or the said agreement is not
19 valid under the law to which the parties have subjected it or,
20 failing any indication thereon, under the law of the country where
21 the award was made;

22 (ii) The party against whom the award is invoked was not given
23 proper notice of the appointment of an arbitrator or of the arbitral
24 proceedings or was otherwise unable to present its case;

25 (iii) The award deals with a dispute not contemplated by or not
26 falling within the terms of the submission to arbitration, or
27 contains decisions on matters beyond the scope of the submission to
28 arbitration, provided that, if the decisions on matters submitted to
29 arbitration can be separated from those not so submitted, that part
30 of the award which contains decisions on matters submitted to
31 arbitration may be recognized and enforced;

32 (iv) The composition of the arbitral tribunal or the arbitral
33 procedure was not in accordance with the agreement of the parties,
34 or, failing such agreement, was not in accordance with the law of the
35 country where the arbitration took place; or

36 (v) The award has not yet become binding on the parties or has
37 been set aside or suspended by a court of the country in which, or
38 under the law of which, that award was made; or

39 (b) The court finds that:

1 (i) The subject matter of the dispute is not capable of
2 settlement by arbitration under the law of this state; or

3 (ii) The recognition or enforcement of the award would be
4 contrary to the public policy of this state.

5 (2) If an application for setting aside or suspension of an award
6 has been made to a court referred to in subsection (1)(a)(v) of this
7 section, the court where recognition or enforcement is sought may, if
8 it considers it proper, adjourn its decision and may also, on the
9 application of the party claiming recognition or enforcement of the
10 award, order the other party to provide appropriate security.

11 NEW SECTION. **Sec. 48.** Sections 1 through 47 of this act
12 constitute a new chapter in Title 7 RCW.

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