PAYMENTS CANADA

RULE A9

ARBITRATION

2024 CANADIAN PAYMENTS ASSOCIATION

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TABLE OF CONTENTS

IMPLEMENTED 3

AMENDMENTS PRE-NOVEMBER 2003 3

AMENDMENTS POST-NOVEMBER 2003 3

INTRODUCTION 4
DEFINITIONS 4
NON-LIABILITY OF ARBITRATION BOARD 4
PROCEDURE 4
INITIATION 4
LEGIBLE FORM 5
COPY TO OTHER PARTIES 5
NOTICE TO OTHER PARTIES 5
RESPONSE 5
IDEM 5
CONFLICT AND ASSISTANCE 5
DECISION, MAJORITY VOTE AND BINDING EFFECT 6
ORDER TO PAY 6
COSTS OF ARBITRATION 6
TIME OF DECISION 6
RECORD OF DECISION 6
APPEAL AND NEW FACTS 6

IMPLEMENTED

September 21, 1988

AMENDMENTS PRE-NOVEMBER 2003

September 29, 1994, November 23, 1995, March 4, 1999, and November 25, 2002.

AMENDMENTS POST-NOVEMBER 2003

1. Amendments to reflect consistency with the new CPA Payments Items and ACSS By-law, approved by the Board November 27, 2003, effective January 27, 2004.
2. Amendment to replace references to “General Manager” with “President”, consequential to amendments to the Canadian Payments Act (Bill C-37) that came into effect on March 1, 2010.
3. Amendments to replace operational committee names (‘National Clearings Committee’ to ‘Senior Operational Committee’) to reflect the restructuring of operational committees. Approved by the Board December 1, 2016, effective January 3, 2017.
4. Amendments to accommodate the ACSS clean-up exercise, approved by the Board September 26, 2024, effective November 25, 2024.

Introduction

1. This Rule outlines the procedures whereby disputes which involve Members, and which concern the Clearing and Settlement of a Payment Item may, by mutual agreement, be submitted to Arbitration before the Arbitration Board.

Definitions

2. In this Rule,
   a. "Arbitration Board" means one or three knowledgeable persons chosen by the parties;
   b. "Report" means a written document prepared by the Arbitration Board setting out the Arbitration decision in full detail and the reasons therefore; and
   c. "Submission for Arbitration" means the document submitted by a Member involved in a dispute to the President which includes the following information:
      i. the names of the parties involved;
      ii. a statement of the issue in dispute;
      iii. a statement of the facts surrounding the dispute;
      iv. any documentary evidence supporting the claim;
      v. the relief sought; and
      vi. any other information or arguments which may be considered relevant.

Non-Liability of Arbitration Board

3. The members of the Arbitration Board will have no liability whatsoever, whether for acts or omissions or with respect to any other matter, arising from an Arbitration. By their submission, the parties expressly agree to this and further expressly agree to indemnify the members of the Arbitration Board and save them harmless from any and all claims which should arise in connection therewith.

Procedure

4. Subject to the requirement that the Arbitration process be fair and efficient and that all relevant information be properly considered, the Arbitration procedure as set out under sections 5 to 10 must be followed.

Initiation

5. To initiate Arbitration, a Member involved in a dispute must give its Submission for Arbitration to the President.

Legible Form

6. The Submission for Arbitration and the copies of any supporting documentation must be clear and in legible form.

Copy to Other Parties

7. The Member(s) requesting Arbitration must provide a copy of the Submission for Arbitration to all the parties directly involved.

Notice to Other Parties

8. The President will give a written notice to the other party(ies) that a Submission for Arbitration has been received.

Response

9. The other party(ies) agreeing to Arbitration must prepare a written response outlining the information it has in respect of the matters set out in the Submission for Arbitration.

Idem

10. The other party(ies) must provide its (their) written response to the President and a copy thereof to the party initiating the Arbitration no later than 30 calendar days after the date of the notice provided pursuant to section 8.

Conflict and Assistance

11. a. Where the Arbitration Board is unable to sufficiently reconcile any conflicting information provided by the parties, the Arbitration Board may require further evidence from those parties.
    b. The Arbitration Board may also call on operational, legal or other expertise from the Association, Members or outside sources, and relevant fees must be included in the costs of the Arbitration pursuant to section 14.
    c. Where the Arbitration Board has obtained further evidence or information pursuant to subsections (a) or (b), or believes that its decision may depend on sections of the Association rules, by-laws, or the *Canadian Payments Act* that have not been cited by the parties, the Arbitration Board must give notice of such evidence, information or sections to the parties, who will have an opportunity to challenge the evidence or information obtained by the Arbitration Board or make submissions on those sections.

Decision, Majority Vote and Binding Effect

12. a. The Arbitration Board must make its decision based on the submissions provided by the parties and any evidence or information obtained pursuant to section 11. The decision must be in accordance with the law (including the *Canadian Payments Act*, the Association by-laws and rules).
    b. The decision must be the result of a majority vote.
    c. Subject to section 17, the decision of the Arbitration Board will be final and binding on the parties.

Order to Pay

13. The Arbitration Board may order payment by one or more of the parties of the amount of the Item(s) in Dispute, any interest claimed and any costs allocated pursuant to section 14. The Arbitration Board must not order the payment of any indirect, consequential, punitive or any other damages. Subject to section 17, the order will be binding on the parties and payment must be made within 5 Business Days after the Report was given to the parties notwithstanding any appeal.

Costs of Arbitration

14. The expenses incurred by the parties must be borne by themselves. The fees and expenses of the Arbitration Board, including those incurred pursuant to subsection 11(b), must be considered costs of the Arbitration and apportioned to the parties in such a manner as the Arbitration Board considers equitable.

Time of Decision

15. The Report must be given to the parties no later than 60 calendar days after the date on which the President has received all submissions and information pursuant to sections 7, 9, 10 and 11. The Report will set out any order to pay pursuant to section 13.

Record of Decision

16. The Report, which must serve as a precedent to be considered in any future dispute and resulting decision, must be recorded, filed with the Association and tabled with the Association Board of Directors and the Senior Operational Committee.

Appeal and New Facts

17. Any decision may be:
    a. appealed to a court of competent jurisdiction on the ground of error of law or manifest error of fact; and

b. reconsidered by an Arbitration Board, within a reasonable time after a new fact, which would materially affect the outcome, has been discovered and notice thereof given to the Arbitration Board.