

FINANCING AGREEMENT

between

THE EUROPEAN ECONOMIC COMMUNITY

and

THE ASSOCIATION OF SOUTH-EAST ASIAN NATIONS
(ASEAN)

ASEAN-EEC Regional
Aquaculture Development and
Coordination Programme
(AADCP)



FINANCING AGREEMENT

The Commission of the European Communities, hereinafter referred to as "THE COMMISSION", acting for and on behalf of the European Economic Community (EEC), hereinafter referred to as "THE COMMUNITY",

of the one part, and

The Association of South-East Asian Nations (ASEAN), hereinafter referred to as "THE RECIPIENT",

of the other part,

HAVE AGREED AS FOLLOWS :

The measures referred to in Article 1 below shall be executed and financed out of the budget resources of THE COMMUNITY in accordance with the provisions set out herein.

This agreement comprises provisions, entitled "General Conditions", which are of general effect and provisions, entitled "Special Conditions" and "Technical and Administrative Provisions" (Annex A), which apply specifically to the project referred to in Article 1 below.

The Special Conditions and Technical and Administrative Provisions amend or supplement the General Conditions and in the event of conflict prevail over the latter.

...

SPECIAL CONDITIONSARTICLE 1 - NATURE AND SUBJECT

As part of its 1986 aid programme, THE COMMUNITY shall contribute, by way of grant, towards the financing of the following project :

Project No : ALA/86/4

Title : ASEAN-EEC Regional Aquaculture Development and Coordination Programme (AADCP)

hereinafter referred to as "THE PROJECT".

ARTICLE 2 - COMMITMENT OF THE COMMUNITY

The commitment of THE COMMUNITY is fixed at 6,770,000 ECU (Six Million Seven Hundred and Seventy thousand ECU), hereinafter referred to as "THE EEC GRANT".

ARTICLE 3 - ADDRESSES

Correspondence relating to the performance of this Agreement, stating THE PROJECT'S number and title, shall be addressed to the following :

a) for THE COMMUNITY:

Commission of the European Communities,
Directorate General for External Relations,
Rue de la Loi, 200,
B-1049 Brussels

Telegraphic address : COMEUR BRUXELLES
Telex : 21877 COMEU B

b) for THE RECIPIENT:

ASEAN Secretariat
70-A Jalan Sisingamangaraja
Jakarta
INDONESIA

Telegraphic address : ASEANSEC Jakarta
Telex : 47213 ASEAN JKT, 47214 ASEAN JKT

ARTICLE 4 - NUMBER OF COPIES

This Agreement is drawn up in the English language in two copies each being equally valid.

ARTICLE 5 - ENTRY INTO FORCE

This Agreement shall enter into force on the date that it has been signed by both parties.

The Annexes shall be deemed an integral part of this Agreement.

Done at Brussels,
this 28 August 1987

THE COMMUNITY

THE RECIPIENT

Annex A - Technical and Administrative Provisions
Annex B - Arbitration

GENERAL CONDITIONSTITLE I: FINANCING OF PROJECTSARTICLE 1 - COMMITMENT OF THE COMMUNITY

The commitment of THE COMMUNITY, the amount of which is laid down in the Special Conditions, shall determine the limit within which commitment and execution of payments shall be carried out, within the framework of duly approved contracts and estimates.

Any expenditure over and above the commitment of THE COMMUNITY shall be borne by THE RECIPIENT.

ARTICLE 2 - COMMITMENT OF THE RECIPIENT

Where project execution depends on financial commitments out of the own resources of THE RECIPIENT, as laid down in Annex A, the disbursement of the EEC Grant, in accordance with the schedule fixed in Annex A, shall be conditional upon performance of the obligations incumbent on THE RECIPIENT.

ARTICLE 3 - DISBURSEMENT

Within the limit set on the EEC Grant, requests for funds shall be presented by THE RECIPIENT in accordance with the schedule laid down in Annex A and on presentation of documentary evidence relating to payments made in respect of THE PROJECT.

However, supplies contracts and study contracts may provide for direct payment by THE COMMISSION to the contractors. Each contract shall lay down the rate and time of such payments, together with the documentary evidence to be produced.

Further, in projects executed on the basis of prepared estimates, a first payment instalment which, save where Annex A otherwise provides, shall not exceed 20% of the amount of the estimate approved by THE COMMISSION, may be made in favour of THE RECIPIENT in order to facilitate the launching of THE PROJECT. Other payment instalments shall be made available, at the request of THE RECIPIENT, on presentation of documentary evidence relating to payments made.

TITLE II: CONCLUSION OF CONTRACTSARTICLE 4 - CONCLUSION

The procedure to be followed prior to conclusion of works and supplies contracts, and prior to conclusion of technical cooperation contracts, shall be laid down in Annex A, following the principles set out below.

ARTICLE 5 - PROCUREMENT

1. For those operations for which THE COMMUNITY is the sole source of external aid, participation in invitations to tender and contracts shall be open on equal terms to all natural persons, firms and companies falling within the scope of the Treaty establishing the European Economic Community and to all natural persons, firms and companies of THE RECIPIENT.

Such participation may also be extended to other developing countries receiving Community aid under the programme referred to in Article 1 of the Special Conditions and the two previous programmes.

2. The same rules shall apply in cases where THE COMMUNITY co-finances with other agencies.

In cases of co-financing, participation by third countries in the contracts, tendering procedures and other procedures for the award of contracts, may be allowed only after case-by-case examination within THE COMMUNITY.

ARTICLE 6 - EQUALITY OF CONDITIONS

THE COMMISSION and THE RECIPIENT shall take the measures necessary to ensure equality of conditions for participation in the contracts, tendering procedures and other procedures for the award of contracts financed by THE COMMUNITY.

To this end, steps will be taken in particular to ensure that:

- (a) there is prior publication of invitations to tender simultaneously in the Official Journal of the European Communities and the Official Gazette of THE RECIPIENT, or by any other suitable means of advertisement;
- (b) adequate time limits are introduced by mutual agreement for the submission of tenders;
- (c) any discriminatory practice or technical specification such as might prejudice the participation under equal conditions of all natural and legal persons of the states entitled to participate by virtue of Article 5 shall be eliminated;
- (d) General Conditions of Contract shall be drawn up in conformity with the models in international use, such as the General Conditions of Contract applicable in Developing Countries receiving EEC Aid.

ARTICLE 7 - AWARD OF WORKS AND SUPPLIES CONTRACTS

THE COMMISSION and THE RECIPIENT shall ensure that for every operation, Article 6 hereof is respected and that the offer selected is economically the most advantageous, particularly in view of the qualifications and guarantees offered by the tenderers, the nature and conditions for execution of the work or supplies, the price of the services, their cost of utilization and technical value.

Results of the invitations to tender shall be published in the Official Journal of the European Communities as quickly as possible.

ARTICLE 8 - TECHNICAL COOPERATION CONTRACTS

1. Technical cooperation contracts shall be concluded by mutual agreement or when technical, economic or financial reasons so justify, following invitation to tender.

2. For each technical cooperation project, one or more candidates shall be selected on the basis of criteria guaranteeing their qualifications, experience and independence and taking into account their availability for the project in question.

3. Contracts shall be drawn up, negotiated and concluded either by THE RECIPIENT or by THE COMMISSION when Annex A so provides.

4. Where contracts are drawn up, negotiated and concluded by THE RECIPIENT, THE COMMISSION shall select one or more candidates on the basis of the criteria laid down in paragraph 2.

When there is a mutual agreement procedure and THE COMMISSION has selected several candidates, THE RECIPIENT shall freely choose the candidate with which it proposes to conclude the contract from among those put forward.

When there is recourse to a tendering procedure, the contract shall be awarded to the candidate which has submitted the offer which is acknowledged by THE RECIPIENT and THE COMMISSION to be economically the most advantageous.

TITLE III - EXECUTION OF CONTRACTS

ARTICLE 9 - ESTABLISHMENT AND RIGHT OF INSTALLATION

Natural and legal persons taking part in works, supplies or services contracts shall benefit, under equal conditions, from a provisional right of residence and installation if the nature of the contract so justifies. The said right shall be acquired only for the benefit of the technical staff necessary to carry out studies preparatory to drawing up tenders; it shall continue until expiry of one month following the nomination of the successful tenderer.

The tenderer to whom the contract has been awarded shall enjoy similar rights throughout the period of execution of the contract and until expiry of one month following final acceptance.

Natural and legal persons who have established themselves for the purpose of executing works, supplies or services shall enjoy the absolute freedom, if they so desire, to re-export materials imported by them into the state of THE RECIPIENT for the purpose of execution.

ARTICLE 10 - ORIGIN OF MATERIALS AND SUPPLIES

Save when otherwise authorized by THE COMMUNITY, materials and supplies required for execution of contracts must originate in the states entitled to participate by virtue of Article 5.

ARTICLE 11 - IMPORT AND EXCHANGE CONTROL

THE RECIPIENT hereby undertakes to grant the import permits and exchange control permits necessary to execute THE PROJECT. It equally undertakes to apply the national regulations in the field of exchange control without discrimination among the states entitled to participate by virtue of Article 5.

ARTICLE 12 - TAX REGULATIONS

Taxes, customs and import duties shall be excluded from the financing of THE COMMUNITY.

ARTICLE 13 - PAYMENT PROCEDURES

1. For contracts financed by THE COMMUNITY, tenders shall be drawn up and payments made, either in European Currency Units (ECU), or in the currency of THE RECIPIENT, or in the currency of the state where the tenderer has his registered place of business, or in the currency of the state where the supplies were produced.

2. When tenders are drawn up in ECU, payments relating thereto shall be made, as appropriate, in the currency named in the contract, on the basis of the equivalent value of the ECU on the day preceding payment.

3. THE COMMISSION shall take all measures necessary to ensure execution of payments due to contractors within the shortest possible time.

ARTICLE 14 - DISPUTES BETWEEN THE RECIPIENT AND THE CONTRACTOR

Disputes arising between THE RECIPIENT and the contractor during performance of a contract financed by THE COMMUNITY shall be settled definitively in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce.

TITLE IV - COLLABORATION BETWEEN THE COMMISSION AND THE RECIPIENTARTICLE 15 - FOLLOW-UP OF EXECUTION

1. THE COMMISSION shall have the right to send its own agents or duly authorized representatives to carry out any technical or financial mission or audit that it considers necessary to follow the execution of THE PROJECT.

THE RECIPIENT hereby undertakes to supply all information and documents which shall be requested of it, and to take all suitable measures to facilitate the work of persons instructed to carry out audits or inspections. It shall be kept informed of the visit of the officials referred to above.

2. THE RECIPIENT shall :

- (a) maintain records and accounts adequate to identify the works, supplies or services financed under this Agreement in accordance with sound accounting procedures;
- (b) ensure that representatives of THE COMMISSION have the right to inspect all relevant documentation and accounts pertaining to items financed under this Agreement, and assist the Court of Auditors of the European Communities to carry out audits relating to the utilization of the EEC GRANT.

ARTICLE 16 - FOLLOW-UP OF PROJECT

THE COMMISSION shall follow the execution of THE PROJECT may request any explanation and, where necessary, may agree, with the consent of THE RECIPIENT, on a new project orientation which is agreed to be better adapted to the objectives in view.

THE RECIPIENT shall make reports to THE COMMISSION following the time-schedule laid down in Annex A, throughout the period of project execution and after completion thereof.

Where there is a failure to carry out an obligation set out in this Agreement, which has not been the subject of remedial measures taken in due time, THE COMMISSION may suspend the financing of THE PROJECT.

TITLE V : GENERAL AND FINAL PROVISIONS

ARTICLE 17 - RENUNCIATION BY THE RECIPIENT

THE RECIPIENT may, with the agreement of THE COMMISSION, renounce in whole or in part the execution of THE PROJECT.

An exchange of letters shall set out the details of the said renunciation.

ARTICLE 18 - AMENDMENT

Any amendment to this Agreement must be agreed between the parties hereto and shall only be adopted after approval in writing by the parties.

ARTICLE 19 - CONSULTATION - DISPUTES

1. Any question relating to execution or interpretation of this Agreement which has not been resolved by application of the provisions herein shall be the subject of consultation between THE RECIPIENT and THE COMMISSION.

2. Any dispute relating to this Agreement which cannot be resolved by applying paragraph 1 of this Article shall be settled according to the arbitration procedure referred to in the Annex hereto (Annex B).

ARTICLE 20 - NOTICES - ADDRESSES

Any notice and any agreement between the parties provided for herein must be the subject of a written communication referring explicitly to the number and title of THE PROJECT. Such notices or agreements shall be made by letter sent to the party authorized to receive the same, and sent to the address notified by the said party. In case of urgency, telegraphic or telex communications shall be permitted and deemed to have been validly served, provided that they are confirmed immediately by letter.

The addresses are set out in the Special Conditions.

ANNEX A

TECHNICAL AND ADMINISTRATIVE PROVISIONS

<u>Recipient</u>	:	The Association of South-East Asian Nations (ASEAN)
<u>Project Title</u>	:	ASEAN-EEC Regional Aquaculture Development and Coordination Programme (AADCP)
<u>Executing Agency</u>	:	Department of Fisheries, Thailand
<u>Project No.</u>	:	ALA/ASN/8604

CHAPTER 1 - PROJECT DEFINITION

1.1 Overall objectives, location

The project is intended to promote the development of the aquaculture sector in ASEAN through the strengthening of applied research, development and training services throughout the region, through the promotion of longterm regional cooperation within ASEAN in these fields, and through the strengthening of cooperative links between EEC and ASEAN institutions active in these areas.

Project activities will take place throughout the ASEAN region, with individual components implemented by institutes in each ASEAN participating country, under the overall guidance and management of a Project Coordinating Office to be established within the Department of Fisheries in Bangkok.

1.2 Main aims to be achieved

The project will provide technical and financial support for the execution and coordination of the ASEAN Aquaculture Development and Coordination Programme (AADCP). This programme will comprise five principal components, in addition to the overall coordination and management task. Each component will be executed by one or more specific aquaculture research or development centres in the ASEAN region, in close cooperation with a "twinning" EEC institute having complementary expertise in aquaculture research, training or development, and under the overall guidance and management of the Project Coordination Office in Bangkok.

These five principal components are as follows (with the name of the lead country in brackets) :

- coastal zone aquaculture assessment (Indonesia);
- lake and reservoir aquaculture resource evaluation and management (Malaysia);
- aquaculture training and extension work (Philippines);
- mariculture technologies, including fish feed and post-harvest aspects (Singapore);
- fish and crustacean genetics (Thailand).

1.3 Costs and Financing

The total cost of the project is estimated at 9 320 000 ECU, of which 6 770 000 ECU will be covered by the EEC grant. Thailand, as the host country, will provide various cash and kind inputs required for project coordination as well as for the implementation of their project component, while the other ASEAN participating countries shall provide similar inputs required for the implementation of their respective project components; the total ASEAN contribution has been estimated at 2 550 000 ECU.

CHAPTER 2 - PROJECT COMPOSITION

2.1.1 Project components

The five principal project components, in addition to the coordination and management task, are as follows :

- the development of coastal-zone assessment methodology for brackish-water aquaculture, including site-survey technology and ecological and socio-economic studies, to be undertaken by the Brackishwater Aquaculture Development Centre, Jepara, Indonesia;
- the development of lake and reservoir assessment methodology for fish production, including survey technology and the development of management systems, to be undertaken by the Freshwater Fisheries Research Station, Melaka, Malaysia;
- the development and strengthening of training and extension methodology in the field of applied aquaculture development, to be undertaken by the National Freshwater Fisheries Centre, Muñoz, Nueva Ecija, Philippines, in cooperation with the Brackishwater Aquaculture Demonstration and Training Centre, Pagbilao, Quezon, Philippines;
- the development of mariculture technologies, including fish-feed, post-harvest handling and technology transfer, to be undertaken by the Marine Aquaculture Section, Changi Point, Singapore;
- applied research in fish and crustacean genetics, including the development of faster-growing and disease-resistant strains, to be undertaken by the National Inland Fisheries Institute, Bangkok, Thailand, in cooperation with the National Institute for Coastal Aquaculture, Songkhla, Thailand.

2.1.2 Project inputs

The inputs required for the various project components and for the coordination and management task are as follows :

for the Project Coordination Office :

- Professional staff, including the services of a Programme Director and of a full-time Technical Officer, as well as of administrative and support staff;
- Technical assistance and additional professional services, amounting to up to 200 man/months in total, of which up to 75 man/months of expatriate technical assistance (including some 53 man/months for the services of the Programme Coordinator), plus up to 125 man/months of local technical assistance and additional professional services;
- Physical facilities, operating costs, and travel and coordination costs, including two interregional programme workshops;

for the specific project components :

- staff exchange and inter-institute secondments, including some 250 man/months between ASEAN and EEC institutions and some 90 man/months among ASEAN institutions;
- training, including shorter-term local training courses to a total of some 660 man/months, plus a total of 10 overseas Masters' scholarships (2 per component);
- interregional seminars, to a total of 10 (2 per component);
- equipment for joint research work, including such items as scientific and laboratory equipment, harvesting and feed equipment, pond, tank, cage and hatchery equipment (and minor associated works), and a small number of boats and vehicles;
- operating costs and materials for joint research work, including such items as feed, fry, chemicals, transportation, and operation and maintenance costs;
- physical facilities and staff.

2.2 Financial and other contributions

- 2.2.1 The EEC grant will cover the entire cost of technical assistance, of staff exchange and secondments, and of equipment, plus a proportion of coordination costs (including the salaries of additional professional staff and all off-shore costs), and a proportion of the training, seminar and operating costs of specific project components.
- 2.2.2 Thailand as host country will provide the physical and support facilities for the Project Coordination Office (including office space and utilities), and the services of the Programme Director and support staff, in addition to those items mentioned under 2.2.3 below relating to the individual project components to be executed in Thailand.
- 2.2.3 Each participating ASEAN country will provide all physical and support facilities required for the execution of their respective project components, including professional and support personnel, as well as covering a proportion of training and seminar costs, and fifty percent of the operating costs, relating to the implementation of their component.

2.3 Time schedule

The project will be implemented over a period of five years commencing in the second half of 1987.

2.4 Implementing authorities

The project will be managed by the Project Coordination Office to be established within the Department of Fisheries, Thailand, and implemented by the individual ASEAN participating institutes, under the overall direction of a Project Steering Committee to be established by the ASEAN Committee on Food, Agriculture and Forestry.

The Programme Director will be appointed by the Project Steering Committee (PSC) on the nomination of the host country, and will be responsible to the PSC for the establishment of the Project Coordination Office (PCO) and for the overall management and implementation of the project.

The Programme Coordinator will be nominated and appointed by the Commission after having obtained the agreement of the PSC, and will be responsible to the Programme Director for the day-to-day direction and management of the project. He shall be supported in these duties by a full-time Technical Officer to be appointed by the Programme Director with the agreement of the PSC.

Individual project components shall be implemented jointly by the ASEAN and EEC institutes responsible for each component, within the framework of the agreed workplans established under Article 2.6 below, and under the overall guidance and direction of the PCO.

2.5 Cost estimates

The cost breakdown of the project is shown below :

EEC contribution

Technical assistance	1 130 000	ECU
Staff exchange & secondments	790 000	
Equipment, materials & supplies	2 000 000	
Training, seminars & workshops	1 750 000	
Coordination & operating costs	<u>1 100 000</u>	
Total	6 770 000	ECU

ASEAN contribution

Professional staff	1 170 000	ECU
Training	240 000	
Coordination & operating costs	<u>1 140 000</u>	
Total	2 550 000	ECU

2.6 Implementation procedures

2.6.1 General

- 2.6.1.1 To initiate the project, the Programme Director shall prepare an inception workplan which will cover the general scope and activities of the project during the first year, and provide a broad allocation of total funding among the different project components.

On the basis of this inception workplan, the individual participating ASEAN institutes shall, in coordination with the cooperating EEC institutes, prepare detailed workplans for their specific project components, showing clearly the objectives, targets and time schedules of each programme as well as detailed estimates of the services and supplies required.

The Programme Director shall then utilise these component workplans to prepare a detailed consolidated workplan for the project as a whole, including detailed cost estimates, procurement procedures and schedules, and cash flows, and including also the objectives, targets and overall schedules of the project as a whole, of its individual components, and of PCO activities.

This consolidated workplan shall be submitted for the approval of the PSC and of the Commission within 9 months of the establishment of the PCO.

2.6.1.2 At the end of the first and subsequent years of project implementation, the Programme Director shall provide the PSC and the Commission with an annual report on project achievements and with an updated workplan for their agreement.

2.6.1.3 Within the framework of these agreed workplans, the Programme Director shall be responsible for :

- preparing tender documents, obtaining tenders and quotations and placing orders after tender evaluation;
- certifying acceptance of works and supplies and certifying payment orders;
- negotiating and concluding contracts for technical assistance services, seminars, workshops and training actions, and certifying payment under these contracts;
- submitting half-yearly progress reports to the PSC and the Commission concerning the activities of the project as a whole, of each project component, and of the PCO.

2.6.1.4 Each participating ASEAN and EEC institution shall jointly submit quarterly progress reports to the Programme Director concerning the activities undertaken within their specific component.

2.6.2 Financial

2.6.2.1 The project shall establish an external account with a local bank to receive project funds provided by the EEC. This account shall be used only for this purpose, and shall be audited by the Office of the Auditor-General, Thailand, whose reports shall be submitted to the PSC and the Commission.

2.6.2.2 On the basis of the agreed inception and consolidated workplans established under article 2.6 above, an advance payment of EEC funds equivalent to one half of the estimated expenditure to be incurred in the region during the first year of project implementation shall be paid by the Commission at the request of the Programme Director.

This advance may be paid in two instalments in line with the requirements of the inception and consolidated workplans respectively.

2.6.2.3 Requests for further transfers of EEC funds shall be made on the basis of audited statements of account provided by the Programme Director to the Commission Delegation in Bangkok.

To ensure that adequate funds are at the project's disposal, unaudited financial statements may be made quarterly. These unaudited statements will be reconciled with the next audited report.

2.6.2.4 At the beginning of the second and subsequent years of project implementation, the advance made under Article 2.6.2.2 above shall be increased (through the provision of a supplementary advance) or decreased (through recovery from subsequent payment requests) so as to be reconstituted at a level equivalent to one-half of the estimated expenditure for that year. The advance thus reconstituted and outstanding at the beginning of the final year of implementation shall then be recovered by deduction from subsequent payment requests in such a fashion as to ensure that it is fully recovered prior to the termination of the project.

2.6.2.3 For those expenditures involving direct payment to European suppliers of goods or services, the Programme Director may request the Commission to make payment directly.

2.6.3 Procurement

The procurement of services or supplies made by international tender and utilising EEC funds shall be made in accordance with the appropriate General Conditions of Contract provided by the Commission.

Equipment, works and supplies funded under the EEC grant shall be procured by international or local tender, international or local calls for quotation, or mutual agreement. The precise choice of procedures to be followed for different categories and sizes of purchases will be established in the agreed workplans referred to in Article 2.6 above.

Technical assistance and cooperating EEC institutes : The Programme Coordinator will be nominated by the Commission for the agreement of the PSC. Other longterm and shortterm technical assistance services required for the project shall be recruited on a mutual agreement basis following selection from a short-list of qualified firms or individuals to be provided by the Commission. EEC institutes which will cooperate with ASEAN institutes in the execution of specific project components will be nominated by the Commission for the agreement of the PSC.

Other items of expenditure (including training activities, workshops and seminars, coordination costs etc.) shall be made in accordance with detailed administrative and financial procedures to be established in the agreed workplans provided for under Article 2.6.

CHAPTER 3 - SPECIAL CONDITIONS

3.1 A detailed independent evaluation of project achievements shall be carried out at the beginning of the fourth year of project implementation, for the consideration of the PSC and the Commission. This evaluation shall be updated and completed during the final year of implementation.

ANNEX B

ARBITRATION

- A. Any dispute between the parties to the Agreement which is not settled by applying the procedures laid down in Article 19 of the Agreement, shall be submitted to arbitration by an Arbitral Tribunal as hereinafter provided.
- B. The parties to such arbitration shall be THE RECIPIENT on the one side and THE COMMISSION on the other side.

The Arbitral Tribunal shall consist of three arbitrators appointed as follows :

- one arbitrator shall be appointed by THE RECIPIENT;
- a second arbitrator shall be appointed by THE COMMISSION;
- the third arbitrator (hereinafter sometimes called "THE UMPIRE") shall be appointed by agreement of the parties or, if they shall not agree, by the Secretary-General of the United Nations.

If either side fail to appoint an arbitrator, such arbitrator shall be appointed by THE UMPIRE.

Should any arbitrator appointed in accordance with this section resign, die or become unable to act, another arbitrator shall be appointed in the same manner as the arbitrator whose place he takes; such successor shall have all the powers and duties of the original arbitrator.