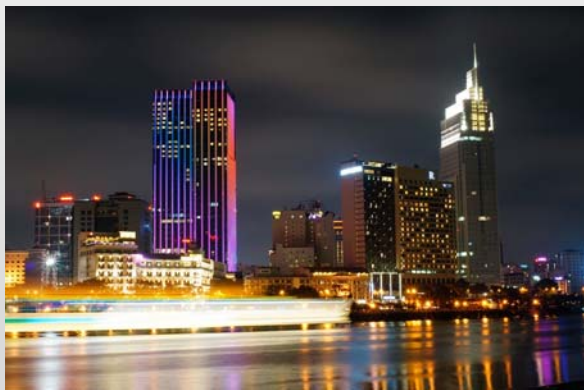




**GLOBAL VIETNAM  
LAWYERS**



**LEGAL NEWSLETTER**

**Issue No.1 | September 2019**



# MAIN CONTENTS

- ▼ Introduction about Global Vietnam Lawyers
- ▼ Remarkable regulations
- ▼ Article
- ▼ Reading for you
- ▼ Monthly legal update



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## **A NEW LEADING LAW FIRM IS BORN**



**We are proud to present GLOBAL VIETNAM LAWYERS (GV LAWYERS) to the international community of law practitioners.**

GV LAWYERS has been lately established by a group of dedicated and experienced lawyers who have started and advanced their careers with the most prominent law firms in Viet Nam, the latest one in the list being Phuoc & Partners (P&P).

GV LAWYERS start operating on 01 September 2019. Our Board of Partners includes: Mr. Nguyen Gia Huy Chuong, Managing Partner; Mr. Dinh Quang Thuan, Partner; Mr. Tran Thanh Tung, Partner; Mr. Luong Van Ly, Partner; Mr. Nguyen Duc Hieu, Partner; Mr. Le Quang Vy, Partner; Ms. Nguyen Van Quynh, Partner; and Mr Hoang Quoc Nhat Trung, Partner. Chuong was formerly Managing Partner and Thuan, Tung, Ly, Hieu, Vy, Quynh and Trung Partners at P&P.

They are all well-known and appreciated in the profession for the contributions they have made over the past 15 years to the success of their respective clients. They have also been recipients of the most prestigious international awards including Asialaw Leading Lawyers, Highly Recommended Asialaw, ALB, the Legal500, IFLR10000, Chamber&Partners, etc.



We are strongly committed to serving our clients, both local and foreign, with the best expertise in Viet Nam's laws and in line with the globally accepted standards of involvement, professionalism, and moral probity. Our ultimate target is making Viet Nam a safer place for them to make money. To our business partners we pledge loyal and long-term cooperation in order to achieve the jointly determined targets.

We are proud of the professional achievements of each member of our team and trust that we are the best advisors and counsels our clients may have. GV LAWYERS has offices located in three big cities as Ha Noi, Da Nang and Ho Chi Minh city and officially started its operation on 01 September 2019 with the rejoice of all staff members along with the trust and congratulation from other law firms.



## Remarkable regulations

# GUIDING FOREIGN EXCHANGE CONTROL FOR FDI ACTIVITIES

On 26 June 2019, the State Bank of Viet Nam issued Circular No. 06/2019/TT-NHNN on guiding foreign exchange control for foreign direct investment (FDI) activities. Accordingly, Circular 06 features some key points as follows:

### Foreign direct investment activities in Vietnam

According to Circular 06, foreign direct investment activities in Vietnam include: Contribute investment capital;

- Open and use direct investment capital accounts in foreign currencies and in Vietnamese dong;
- Transfer money to conduct investment preparation activities;
- Remit capital, profits and lawful income overseas; and
- Transfer investment capital, and transfer investment projects.

### Entities entitled to open direct investment capital accounts

Enterprises with foreign direct investment capital; Foreign investors engaging in business cooperation contracts (BCC); and foreign investors engaging in PPP projects.

### Transferring money to conduct investment preparation activities

Foreign investors are allowed to transfer money from overseas or from a foreign account in a foreign currency or Vietnamese dong which has been opened at a licensed credit institution in Vietnam, for paying all legitimate costs in the preparation period of their investments in Vietnam.

### Remitting capital, profits and lawful revenue overseas

- Foreign investors must use their direct investment accounts to transfer overseas those amounts.
- Foreign direct investment enterprises which must close their direct investment capital accounts due to dissolution, bankruptcy, etc. are permitted to use their payment accounts in foreign currencies or Vietnamese dong to conduct procedures for remitting capital and other lawful revenue overseas.

Circular No. 06/2019/TT-NHNN will take effect from 06 September 2019 and supersede Circular No. 19/2014/TT-NHNN dated 11 August 2014.



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## Remarkable regulations

# REGULATIONS ON THE RULE OF ORIGIN

On 30 July 2019, the Ministry of Industry and Trade issued Circular No. 12/2019/TT-BCT regulating the rules of origin in the Framework Agreement on Comprehensive Economic Co-operation between the Association of South East Asian Nations and the People's Republic of China. Circular 12 takes effect from 12 September 2019 and has the following new points:

### Regarding the rule of origin

Goods are considered to have origins if produced only from origin materials; besides the criterion "Regional value content" (RVC), the general rule also applies to origin criteria for converting commodity codes at level of 4 digits (CTH); regulations on De Minimis (the proportion of raw materials does not meet the criteria for change in tariff classification-reporter); identical and interchangeable.

### Regarding C/O (Form E)

- C/O (Form E) will be issued prior to or at the time of shipment. In exceptional cases where the C/O (Form E) has not been issued at the time of shipment or no later than 3 days from the date of shipment, at the request of the exporter, the C/O (Form E) will be issued retroactively in accordance with the laws and regulations of the exporting member country. The C/O (Form E) issued retroactively within 12 months from the date of shipment must be marked in Box 13 "ISSUED RETROACTIVELY".
- If the goods originate from an exporting member country and do not exceed USD200 in FOB value, the C/O (Form E) will be waived and the use of a simplified declaration by the exporter that the products in question originated in the exporting member country will be accepted. Waivers will not be applicable if it is established by the customs authorities of the importing country that the importation of a series of shipments may be arranged for the purpose of avoiding the submission of a C/O (Form E).

### Regarding the time limit for giving feedback and verifying origins of goods

In case the agency or organization granting C/O of the exporting country fails to respond within 90 days after the date of receipt of the verification request from the customs authorities of the importing country, the agency or organization granting C/O may submit a written request for an extension of 90 days.



**Also related to the rules of origin.** The Ministry of Industry and Trade issued Circular 13/2019/TT-BCT dated 31 July 2019 on amending and supplementing some articles of Circular No. 20/2014/TT-BCT implementing the rules of origins in the ASEAN - South Korea Free Trade Agreement.

Accordingly, the procedures for issuance and verification of Certificates of Origin (C/O) - Form AK of Vietnam will be implemented as per Decree No. 31/2018/ND-CP of the Government detailing the Law on Foreign Trade Management in terms of origins of goods; Circular No. 05/2018/TT-BCT of the Ministry of Industry and Trade on rules of origin; Annex V issued in attachment to Circular No. 20/2014/TT-BCT.

Besides, Circular No. 13/2019/TT-BCT abolishes Annex II issued in attachment to Circular No. 20/2014/TT-BCT and replaces it with a new Annex issued in attachment to this Circular.

Circular No. 13/2019/TT-BCT takes effect from 13 September 2019.



## Remarkable regulations

# DECREE 54/2019/ND-CP ON THE BUSINESS OF KARAOKE AND DANCE HALL SERVICES

Decree 54/2019/ND-CP ("Decree 54") on the business of karaoke and dance hall services enacted as of 19 June, 2019 by the Government has officially come into effect since 1 September, 2019. Decree 54 has the following points of interest:

### Subjects of application

Accordingly, Decree 54 specifies the subjects of application including enterprises, Vietnamese and foreign household businesses (hereinafter referred to as "enterprises, household businesses"), which operate karaoke and dance hall services; other agencies, organizations, individuals involved in the business of karaoke and dance hall services.

### Further attention required to be paid to the conditions for karaoke service business

Enterprises or household businesses that are established in accordance with law need to ensure the conditions for protection from fire and explosion, public security and order as provided for by Decree No. 96/2016/ND-CP dated July 01, 2016 of the Government on the conditions for security and order with regard to some conditional business lines.

Besides, the singing rooms of a karaoke service operating establishment (i) must have a usable area of 20 square meters or more, excluding the auxiliary works; and (ii) ensure no door locks or alarming devices (except for explosion/fire alarm) are installed therein.

### Further attention required to be paid to the conditions for dance hall service business

Decree 54 updates some notable points for enterprises and household businesses established in accordance with law to comply with and ensure the conditions for protection from fire and explosion, security and order as stated in Decree No. 96/2016/ND-CP dated July 01, 2016 of the Government on the conditions for public security and order with regard to some conditional business lines.

In addition, this Decree 54 also refers to the following conditions: (i) the usable area of a dance hall must be 80 m<sup>2</sup> or more, excluding the auxiliary works; (ii) ensuring no door locks or alarming devices (except explosion/fire alarm) are installed therein; (iii) the dance hall must be located at least 200 meters away from schools, hospitals, religious establishments, cultural and historical heritage.

### Abolishing Clause 7, Article 32 of the Regulations on cultural activities and business of public cultural services, issued together with Decree 103/2009/ND-CP.

Decree 54/2019/ND-CP takes effect with Article 7 of this Decree specifically stipulating that enterprises and household businesses that do the business of karaoke service will not be allowed to operate from 0:00 to 8:00, and after this time frame, their operation may return to normal.

As such, this is considered a new replacement for Clause 7, Article 32 and Clause 2, Article 37 providing that the owner of a karaoke service establishment must comply with the following regulations: not operating after 12pm to 8am; (ii) except for the cases where dance halls, karaoke rooms in tourist accommodation establishments that are rated 4 or more stars or high class may operate after 12pm but not past 2 am, as prescribed by the Regulations on cultural activities and public cultural service business issued together with Decree 103/2009/ND-CP.

In addition, there is a new content in Decree 54 noting that enterprises and household businesses that do the business of dance hall service are not responsible for not providing dance hall services for minors under 18 years old.





## Remarkable regulations

**RESOLUTION 05/2019/NQ-HDTP GUIDING THE APPLICATION OF THE 2015 PENAL CODE WITH RESPECT TO ARTICLE 214 ON THE FRAUD OF SOCIAL INSURANCE AND UNEMPLOYMENT INSURANCE; ARTICLE 215 ON HEALTH INSURANCE FRAUD AND ARTICLE 216 ON EVADING PAYMENT OF SOCIAL INSURANCE, HEALTH INSURANCE, UNEMPLOYMENT INSURANCE FOR EMPLOYEES.**

As of 15 August, 2019, the Council of Justices of the Supreme People's Court enacted Resolution 05/2019/NQ-HDTP ("Resolution 05") guiding the application of the 2015 penal code with respect to Article 214 on the fraud of social insurance (SI) and unemployment insurance (UI); Article 215 on health insurance (HI) fraud and Article 216 on evading payment of SI, HI, UI for employees. Resolution 05 features some notable contents as follows:

### Examining criminal liability in specific circumstances

The 2015 Penal Code has added three crimes including SI and UI fraud; HI fraud; Evading payment of SI, HI, UI for employees. This additional update provides a legal basis for handling criminal responsibility for social insurance violations.

In order to provide guidance on the application of the law and improve the contents which are still qualitative, general and contain many different interpretations, not yet uniformly settled by Articles 214, 215 and 216 in the 2015 Penal Code on the offenses listed above, Resolution 05 specifies cases of penal liability examination in its Article 4 as follows:

- In case a person commits many times of the same act specified in Articles 214 and 215 of the Penal Code, causing damage to SI, HI and UI fund and with such act has never been sanctioned for administrative violations ("AV") and the statute of limitations for penalizing AV or examining penal liability ("PL") has not expired; If the total amount of the damage cases is equal to or exceeds the minimum level for examining PL in accordance with the Penal Code, the person who commits many times of the same acts must be examined for PL for the corresponding crime according to the total amount of appropriations if acts are committed continuously and consecutively.
- In case a person commits a criminal act while appropriating SI, HI and UI premiums and causing damage, and if the appropriated insurance amount and the damage amount belong to a basic penalty frame, then the offender will be examined for PL under such basic penalty frame.
- If the appropriated insurance amount and the damage amount belong to different penalty frames, the offender shall face a PL examination under the higher penalty frame.
- If the appropriated insurance amount and the damage amount belong to the aggravating same penalty frame, then the offender shall face a PL examination under both aggravating circumstances.
- If a person forges documents of SI, HI and UI or HI cards to appropriate SI, HI and UI payment or causes damage, apart from facing a PL examination for the respective offense prescribed in Articles 214 or 215 of the Penal Code, the offender will also face a PL examination for forging stamps and documents of organizations; using fake stamps or documents of organizations as prescribed in Article 341 of the Penal Code if there are sufficient constituent elements of crime.



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## READING FOR YOU

### New Year's holiday may be increased by one more day

**RESOLUTION 05/2019/NQ-HDTP GUIDING THE APPLICATION OF THE 2015 PENAL CODE WITH RESPECT TO ARTICLE 214 ON THE FRAUD OF SOCIAL INSURANCE AND UNEMPLOYMENT INSURANCE; ARTICLE 215 ON HEALTH INSURANCE FRAUD AND ARTICLE 216 ON EVADING PAYMENT OF SOCIAL INSURANCE, HEALTH INSURANCE, UNEMPLOYMENT INSURANCE FOR EMPLOYEES.**

#### Timely guidance meets practical needs and fight against insurance offences

In the context of economic integration, there still exist many individuals and enterprises that have acts of debt, evasion and fraud in the fields of SI, HI and UI that can cause serious consequences to SI agencies or other organizations and individuals.

Resolution 05 has detailed guidance on handling acts of evading payment of SI, HI and UI for employees committed prior to 00:00 on 1 January, 2018 that shall not face a criminal prosecution as prescribed in Article 216 of the 2015 Penal Code but the following measures shall be taken:

- If he/she has not faced a penalty for administrative violation and the prescriptive period for penalty for administrative violation has not expired, the competent authority may consider imposing an administrative penalty.
- If he/she has incurred a penalty for administrative violation but he/she knowingly evades and delays the enforcement, the prescriptive period for enforcement of the decision on penalty for administrative violation shall be determined as prescribed in Clause 2 Article 74 of the Law on Penalties for Administrative Violations. Accordingly, the enforcement and coercive enforcement of such decision on penalty for administrative violation shall conform to law on enforcement and coercive enforcement of decisions on penalty for administrative violations.
- If the act causes damage to employees, social insurance agencies or other organizations and individuals, the damaged party may file a tort claim against the violating party as prescribed in the law on civil procedures.

At the same time, related to the said content, Resolution 05 also specifies that the penalties for administrative violations imposed on those who evaded paying social insurance, health insurance or unemployment insurance for employees workers prior to 00:00 as of January 1, 2018 shall not be regarded as a basis for a penal liability examination as prescribed in Article 216 of the Penal Code.

This Resolution was passed by the Council of Judges of the Supreme People's Court on June 25, 2019, and takes effect from September 1, 2019.

The Labor Code may be amended by adding one more day off to the New Year's Holiday to "fit the development needs".

Mr. Le Dinh Quang, Deputy Head of the Labor Relations Department (Vietnam General Confederation of Labor) said that there are three reasons for the General Confederation to propose this amendment as Vietnam has a total of ten public holidays and new year holidays per year, fewer than other countries and regions. Meanwhile, the 48-hour work week in Vietnam is considered higher than those in other countries in the world. Vietnam currently has 12 annual leave days, but the international convention in which we are a party requires an annual leave of 21 days.



On September 9, Vietnam General Federation of Labor agreed to amend the Labor Code by adding one more day to the New Year's Holiday. "The proposed date is the last day of the year (December 31), bringing the total days off in the New Year holiday to two days", said Mr. Quang.

Regarding the reason Vietnam chooses to add an extra day off to the New Year's Holiday, Mr. Le Dinh Quang said that this option is in line with the global trend. "Currently there are many foreign workers in the country and many workers are working for foreign companies so the addition of such a day off is suitable for the development needs," Mr. Quang explained.

Mr. Ha Tat Thang, Head of the Bureau for Safe Work (Ministry of Labour - Invalids and Social Affairs) said that the proposal of the Vietnam General Confederation of Labor will be submitted to the Office of the National Assembly and the Prime Minister prior to implementation.

Earlier, the draft of the Labor Code (amended) supplemented a public holiday on July 27 to pay tribute to people with meritorious services. However, during the discussion in the 7th session of the XIV National Assembly, many deputies of the National Assembly said that the day of July 27 was inappropriate. Later, Mr. Dao Ngoc Dung (Minister of Labor, Invalids and Social Affairs) on behalf of the Government withdrew this proposal.

and SOCIAL AFFAIRS) ON BEHALF OF THE GOVERNMENT WITHDREW

**Gia Chinh**

(Translation by GV Lawyers)

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Article by Lawyer Tran Huu Tien titled: **"Don't Leave Court Judgment Unenforced"** published in Saigon Economic Times on 29 August, 2019, Issue No. 35.2019 (1,498)

### Practical difficulties

From the writer's perspective, such administrative penalties of up to several million VND do not seem adequately deterrent, especially in cases where judgment enforcement is involved in a great value as many times as a certain fine, or directly affects such benefits as child custody, support, housing and land reclamation, etc. Drawing a comparison on benefits between failure to serve a sentence and paying a certain fine, the judgment debtor in many cases will be willing to pay the said administrative fine rather than enforce the judgment or extend the time of doing the same.

Naturally, if the judgment debtors continue to commit any violation, the civil judgment enforcement agencies may consider requesting the competent authorities to apply stricter sanctions by examining the criminal liability. In fact, the criminal handling of legal noncompliance is not a new issue in the law. Article 304 of the Penal Code 1999 has provided for the Crime of noncompliance with judgments.

Subsequently, Article 380 of the 2015 Penal Code made positive amendments to clarify which criminal penalties can be applied. However, up to now, the relevant legal documents have not yet provided specific guidance on how the judgment enforcement agency should conduct a request to investigate penal liability for noncompliance with judgments.

While the administrative penalty is still inadequate, the application of stronger sanctions (criminal penalties) to non-enforcers is not common. By chance, this triggers a mentality to disregard judgment enforcement, delay, evade and even oppose judgment enforcement.

### It takes an iron fist for the enforcement of justice

As aforesaid, the enforcement of effective civil judgments and decisions in Vietnam is facing difficulties when regulations on penalties for noncompliance are insufficiently deterrent or still hard to apply. Given the fact that regulations on handling administrative violations in the field of civil judgment enforcement have been issued for a long time (since 2013), it is asked whether lawmakers should consider updating, amending regulations and supplementing appropriately to give the "fair and reasonable" rate of a particular fine.

On the other hand, the additional provision of the written guidelines and instructions to the judgment enforcement agencies and other relevant competent on coordination of their duties when handling acts of noncompliance with judgments is also necessary and should be early implemented to ensure effective prosecution of noncompliance with judgments and avoid omitting crimes and offenders.

While Vietnam is being entangled by such traditional methods as fines and imprisonment, there are so many countries around the world that have been making "open" approaches to enforcing court decisions. In some US states like Michigan, their citizens who do not serve a sentence face the risk of having their driver's license suspended until a full sentence is served. In other countries, failure to comply with a sentence may result in restrictions on the use of certain types of public services and utilities.

It is hereby thought that we should also consider making appropriate adjustments for the purpose of ensuring the supremacy of the law.

It is told that a civil judgment enforcement agency in Ho Chi Minh City forcibly "gives up" in enforcing a court judgment against a businesswoman. Despite its service of the notice of coercive enforcement against her, the female entrepreneur looks ignorant and uncooperative while remaining unconcerned. It is likely that the court judgments can be nullified in reality.

In light of the bigger picture, based on the statistics of the General Department of Civil Judgment Execution (), out of a total of 914,083 cases to be enforced and 711,990 cases with separate enforcement conditions in 2018, only about 38.35% is done with enforcement. In other words, nearly 62% of verdicts in the past year have not been fully implemented. The question is how the verdicts as symbols of justice can be fully enforced.

In principle of the Civil Procedure Law, once a civil court judgment or decision takes legal effect, all concerned agencies, organizations and individuals are obliged to respect and strictly adhere to. For an unenforced judgment or decision, the civil judgment enforcement agency, according to its duties and functions, will organize the judgment enforcement based on the petition of the judgment creditor or as deemed necessary. At that time, other relevant agencies, organizations and individuals must also be responsible for fulfilling the requirements by civil judgment enforcement agencies as prescribed.

Under the Law on Civil Judgment Enforcement (in Articles 162 and 165), the act of intentionally failing to comply with judgments or decisions and failing to voluntarily observe decisions on judgment enforcement may be administratively sanctioned or examined for penal liability. Administrative fines are applied from 500,000 to VND 5,000,000 depending on the type and severity of the acts, as prescribed in Decree No. 110/2013/ND-CP dated September 24, 2013 of the Government stipulating sanctions against administrative violations in the field of judicial supplementation, judicial administration, marriage and family, civil judgment enforcement, corporate and cooperative bankruptcy (amended by Decree No. 67/2015 of August 14, 2015 of the Government).

Pursuant to Article 380 of the 2015 Criminal Code, if you can favorably enforce the judgment but you do not comply with the effective court judgment or decision despite the fact that you are already subject to statutory coercion or suffer administrative sanction for this noncompliance, you shall be sentenced to between three months and five years of imprisonment (depending on the case) and may be fined between VND 5-50 million.

In a nutshell, the Vietnamese law requires the judgment debtor to be responsible for observing a valid court judgment or decision. In case of failure to serve their sentences, the judgment debtors may be subject to a fine or imprisonment depending on the behavior.

# MONTHLY LEGAL UPDATE



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No.	DOCUMENT TITLE	ISSUANCE DATE	EFFECTIVE DATE
<b>GOVERNMENT</b>			
1	Decree No. 71/2019 /ND-CP on stipulating sanctions against administrative violations in the field of chemicals and industrial explosive materials	30/08/2019	15/10/2019
2	Decree No. 69/2019/ND-CP prescribing the use of public assets to make payments to investors in implementing construction investment projects in the form of build-transfer contracts	15/08/2019	01/10/2019
3	Decree No. 68/2019/ND-CP on management of construction investment costs	14/08/2019	01/10/2019
<b>THE STATE BANK OF VIET NAM</b>			
1	Circular No. 14/2019/TT-NHNN on amending and supplementing a number of articles of the Circulars on the periodic reporting regime of the State Bank	30/08/2019	15/10/2019
2	Circular No. 13/2019/TT-NHNN on amending and supplementing a number of articles of the Circulars related to the licensing, organization and operation of credit institutions and foreign bank branches	21/08/2019	05/10/2019
3	Circular No. 11/2019/TT-NHNN on stipulating special control over credit institutions	02/08/2019	01/10/2019

No.	DOCUMENT TITLE	ISSUANCE DATE	EFFECTIVE DATE
<b>SUPREME PEOPLE'S COURT JUSTICE COUNCIL</b>			
1	Resolution No. 05/2019/NQ-HDTP guiding Article 214 on the crime of fraud in social and unemployment insurance, Article 215 on the crime of fraud in health insurance and Article 216 on the crime of evasion of social, health and unemployment insurance premiums for employees of the Criminal Code	15/08/2019	01/09/2019
<b>MINISTRY OF FINANCE</b>			
1	Circular No. 57/2019/TT-BTC providing the mechanism for dealing with the risks of credit guarantee funds for small and medium enterprises	26/08/2019	15/10/2019
2	Circular No. 50/2019/TT-BTC on guiding the auction of shares together with receivable debts of state-owned enterprises with the function of buying, selling and handling debts	08/08/2019	08/08/2019
3	Circular No. 49/2019 / TT-BTC on guiding the management and use of the State budget to support the development of human resources for small and medium enterprises	08/08/2019	23/09/2019
4	Circular No. 47/2019/TT-BTC on providing for the rates, the regime of collection, submission, management and use of the fees for provision of corporate information and enterprise registration fees.	05/08/2019	20/09/2019
5	Circular No. 55/2019/TT-BTC on guiding the handover, admission and handling of debts and assets already excluded from enterprises' value upon transformation of ownership of State enterprises	21/08/2019	21/08/2019



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