

COMMUNITY PROVISIONS (WIRE TRANSFERS) (JERSEY) REGULATIONS 2007

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COMMUNITY PROVISIONS (WIRE TRANSFERS) (JERSEY) REGULATIONS 2007

THE STATES, in pursuance of Article 2 of the European Communities Legislation (Implementation) (Jersey) Law 1996¹ and having regard to Regulation EC No. 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds, have made the following Regulations –

Commencement [see endnotes]

Interpretative provisions

1 Interpretation

In these Regulations –

"act of terrorism" has the meaning assigned by Regulation 3;

"Agent of the Impôts" has the same meaning as in the Customs and Excise (Jersey) Law 1999²;

"batch file transfer" means several individual transfers of funds which are bundled together for transmission;

"designated officer" means a person who is, for the purposes of these Regulations, designated under Regulation 16(1) or (2) or a designated officer under Regulation 16(3);

"electronic money" means monetary value as represented by a claim on the issuer which is –

- (a) stored on an electronic device;
- (b) issued on receipt of funds of an amount not less in value than the monetary value issued; and
- (c) accepted as means of payment by undertakings other than the issuer;

"intermediary payment service provider" means a payment service provider which is neither that of the payer nor that of the payee and which participates in the execution of transfers of funds;

"Jersey Financial Services Commission" means the Commission established under the Financial Services Commission (Jersey) Law 1998;

"money laundering" has the meaning assigned by Regulation 2;

"Money Laundering Order" means the Money Laundering (Jersey) Order 19994;

"officer of the Impôts" has the same meaning as in the Customs and Excise (Jersey) Law 1999⁵;

"payee" means a person who is the intended final recipient of transferred funds;

"payer" means a person who is an account holder who allows a transfer of funds from an account or, where there is no account, a person who places an order for a transfer of funds;

"payment service provider" means a person whose business includes the provision of transfer of funds services;

"public notice" means -

- (a) a notice published in the Jersey Gazette; or
- (b) a notice whose contents are brought to the attention of the public by the taking of other reasonable steps for that purpose;

"terrorist financing" has the meaning assigned by Regulation 3;

"transfer of funds" means any transaction carried out on behalf of a payer through a payment service provider by electronic means with a view to making funds available to a payee at a payment service provider, irrespective of whether the payer and the payee are the same person;

"unique identifier" means a combination of letters, numbers or symbols, determined by a payment service provider in accordance with the protocols of the payment and settlement system or messaging system used to effect a transfer of funds by the provider;

"United Kingdom" includes any country or territory (other than Jersey) –

- (a) with which the United Kingdom has an agreement that it has been authorized to conclude under Article 17 of Regulation (EC) No. 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds; or
- (b) in respect of which transfers of funds between that country or territory and the United Kingdom are provisionally treated as transfers of funds within the United Kingdom pursuant to that Regulation.

2 Meaning of "money laundering"

(1) For the purposes of these Regulations, money laundering means –

- (a) the intentional conversion or transfer of property, knowing that the property is derived from criminal activity or participation in criminal activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of criminal activity to evade the legal consequences of the person's action;
- (b) the intentional concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that the property is derived from criminal activity or from participation in criminal activity;
- (c) the intentional acquisition, possession or use of property, knowing, at the time of receipt, that the property was derived from criminal activity or from participation in criminal activity;
- (d) intentional participation in, association to commit, attempts to commit and aiding, abetting, facilitating or counselling the commission of, any of the actions mentioned in sub-paragraphs (a) to (c).

whether or not the activities that have generated the property to be laundered were carried out in Jersey or any other country or territory.

(2) In this Regulation –

"criminal activity" means any kind of criminal involvement in the commission of a serious crime;

"criminal organization" means a structured association, established over a period of time, of more than 2 persons, acting in concert with a view to committing offences which are punishable by imprisonment or detention for 4 years or more, whether such offences are an end in themselves or a means —

- (a) of obtaining material benefits; and
- (b) where appropriate, of improperly influencing the operation of public authorities;

"drug offence" means an offence under the Misuse of Drugs (Jersey) Law 1978⁶ or an offence of a similar kind under an enactment of another country or territory;

"property" means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments in any form, including electronic or digital, evidencing title to or an interest in such assets;

"serious crime" includes -

- (a) any act of terrorism and any act related to an act of terrorism;
- (b) any drug offence;
- (c) the activities of a criminal organization;
- (d) fraud, as defined in Article 1(1) and Article 2 of the Convention on the Protection of the European Communities' Financial Interests

signed on 26 July 1995, that is serious fraud within the meaning of the Convention;

- (e) corruption;
- (f) an offence which is punishable by imprisonment or detention for more than 12 months.

3 Meaning of "terrorist financing" and "acts of terrorism"

(1) For the purposes of these Regulations –

"structured group" means a group that –

- (a) is not randomly formed for the immediate commission of an offence; and
- (b) has formally defined roles for its members, continuity of its membership or a developed structure;

"terrorist financing" means the provision or collection of funds, by any means, directly or indirectly, with the intention that they be used, or in the knowledge that they are to be used, in full or in part, to carry out an act of terrorism or acts related to an act of terrorism;

"terrorist group" means a structured group of more than 2 persons, established over a period of time and acting in concert to commit terrorist offences.

- (2) For the purposes of these Regulations, any of the following acts is an act of terrorism, where the act is committed with any of the relevant aims
 - (a) an attack upon a person's life which may cause death;
 - (b) an attack upon the physical integrity of a person;
 - (c) kidnapping or hostage taking;
 - (d) causing extensive destruction to
 - (i) a government or public facility,
 - (ii) a transport system,
 - (iii) an infrastructure facility, including an information system,
 - (iv) a fixed platform located on the continental shelf, or
 - (v) a public place or private property,

likely to endanger human life or result in major economic loss;

- (e) seizure of aircraft, ships or other means of public or goods transport;
- (f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons;
- (g) release of dangerous substances, or causing fires, floods or explosions, the effect of which is to endanger human life;
- (h) interfering with or disrupting the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life;

- (i) threatening to commit any of the acts listed in sub-paragraphs (a) to (h);
- (j) inciting, aiding or abetting any of the acts listed in subparagraphs (a) to (i);
- (k) attempting to commit any of the acts listed in sub-paragraphs (a) to (h), other than an act of possession referred to in sub-paragraph (2)(f).
- (3) The relevant aims are
 - (a) the aim of seriously intimidating a population;
 - (b) the aim of unduly compelling a government or international organization to perform or abstain from performing an act;
 - (c) the aim of seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization.
- (4) For the purposes of these Regulations, any of the following shall be an act related to an act of terrorism
 - (a) directing a terrorist group;
 - (b) participating in the activities of a terrorist group, including by supplying information or material resources, or by funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the terrorist group;
 - (c) theft, or extortion, with a view to committing a terrorist act;
 - (d) drawing up false administrative documents with a view to committing an act specified in sub-paragraph (b) or paragraph (2)(a) to (h);
 - (e) inciting, aiding or abetting an act referred to in sub-paragraphs (a) to (d);
 - (f) attempting to commit an act referred to in sub-paragraph (c) or (d).

4 What constitutes complete information on the payer

For the purposes of these Regulations, a reference to complete information on the payer is a reference to the payer's name, address and account number, except that -

- (a) the payer's address may be substituted with the payer's date and place of birth, customer identification number or national identity number;
- (b) if the account number of the payer does not exist, the payer's payment service provider shall substitute it by a unique identifier, which allows the transaction to be traced back to the payer.

5 Application of Regulations

- (1) These Regulations shall apply to transfers of funds, in any currency, which are sent or received by a payment service provider established in Jersey.
- (2) Despite paragraph (1), these Regulations shall not apply to transfers of funds that are exempt.
- (3) A transfer of funds is exempt when it is carried out using a credit or debit card, if
 - (a) the payee has an agreement with the payment service provider permitting payment for the provision of goods and services; and
 - (b) a unique identifier, allowing the transaction to be traced back to the payer, accompanies the transfer of funds.
- (4) A transfer of funds is exempt if
 - (a) the transfer is carried out using electronic money;
 - (b) the amount transacted is EUR 1,000 or less; and
 - (c) where the device on which the electronic money is stored
 - (i) cannot be recharged, the maximum amount stored in the device is no more than EUR 150, or
 - (ii) can be recharged, a limit of EUR 2,500 is imposed on the total amount transacted in a calendar year, except if an amount of EUR 1,000 or more is redeemed in that same calendar year by the bearer of the device.
- (5) Without prejudice to paragraph (4), a transfer of funds is exempt if it is carried out by means of a mobile telephone or any other digital or information technology device, if
 - (a) the transfer is pre-paid and does not exceed EUR 150; or
 - (b) the transfer is post-paid and the following conditions are met
 - the payee has an agreement with the payment service provider permitting payment for the provision of goods and services.
 - (ii) a unique identifier, allowing the transaction to be traced back to the payer, accompanies the transfer of funds,
 - (iii) the payment service provider of the payee is subject to the requirements of Article 2(1) of the Money Laundering Order or an Order made under Article 37 of the Proceeds of Crime (Jersey) Law 1999 in substitution for that Order, Article 34D of the Proceeds of Crime (Jersey) Law 1999⁷ and Article 21 of the Terrorism (Jersey) Law 2002⁸ or a provision, of an enactment of the United Kingdom, that imposes a similar requirement.⁹
- (6) A transfer of funds is exempt if
 - (a) the payer withdraws cash from the payer's own account;
 - (b) there is a debit transfer authorization between 2 parties permitting payments between them through accounts, provided a unique

- identifier accompanies the transfer of funds to enable the transaction to be traced back;
- (c) it is made using cheques that have been truncated;
- (d) it is a transfer to public authorities for taxes, fines or levies within Jersey or the United Kingdom; or
- (e) both the payer and the payee are payment service providers acting on their own behalf.

Obligations of payment service provider of payer

6 General requirements regarding information and record keeping

- (1) The payment service provider of the payer shall ensure that transfers of funds are accompanied by the complete information on the payer.
- (2) The payment service provider of the payer shall, before transferring funds, verify the complete information on the payer on the basis of documents, data or information obtained from a reliable and independent source.
- (3) In the case of a transfer from an account, the complete information on a payer shall be deemed to have been verified if the payment service provider of the payer has complied with the requirements of Article 2(1) of the Money Laundering Order, if any, or the requirements, or any provisions, relating to the information that a payment service provider shall obtain and have verified in respect of customers, in an Order made under Article 37 of the Proceeds of Crime (Jersey) Law 1999 in substitution for that Order, that apply in relation to the payer.¹⁰
- (4) In the case of a transfer of funds not made from an account, the complete information on the payer shall be deemed to have been verified by a payment service provider of the payer if
 - (a) the transfer consists of a transaction of an amount of EUR 1,000 or less:
 - (b) the transfer is not a transaction that is carried out in several operations that appear to be linked and that together comprise an amount of more than EUR 1,000; and
 - (c) the payment service provider of the payer does not suspect that the payer is engaged in money laundering or terrorist financing.
- (5) The payment service provider of the payer shall keep for 5 years records of complete information on the payer that accompanies a transfer of funds.

7 Exception for transfers of funds within Jersey or to or from the United Kingdom

(1) Despite Regulation 6(1), if the payment service provider of the payer is situated in Jersey and the payment service provider of the payee is

situated in Jersey or the United Kingdom, the transfer of funds shall only be required to be accompanied by –

- (a) the payer's account number; or
- (b) a unique identifier allowing the transaction to be traced back to the payer.
- (2) However, if the payment service provider of the payee so requests, the payment service provider of the payer shall, within 3 working days after the day on which the provider receives the request, make the complete information on the payer available to the payment service provider of the payee.

8 Exception for batch transfers to payees outside Jersey or the United Kingdom

Regulation 6(1) shall not apply in the case of a batch file transfer from a single payer, where some or all of the payment service providers of the payees are situated outside Jersey and the United Kingdom, if –

- (a) the batch file contains the complete information on the payer; and
- (b) the individual transfers bundled together in the batch file carry the account number of the payer or a unique identifier.

Obligations of payment service provider of payee

9 Requirement to detect missing or incomplete information

- (1) The payment service provider of the payee shall detect that fields within the messaging or payment and settlement system used to effect the transfer in respect of the information on the payer have been completed in accordance with the characters or inputs admissible within the conventions of that messaging or payment and settlement system.
- (2) The payment service provider of the payee shall have effective procedures in place in order to detect
 - (a) in respect of transfers of funds where the payment service provider of the payer is situated in Jersey or the United Kingdom that the information required by Regulation 7 is missing;
 - (b) in respect of transfers of funds where the payment service provider of the payer is situated outside Jersey or the United Kingdom that there is not complete information on the payer.
- (3) Despite paragraph (2), in the case of batch file transfers where the payment service provider of the payer is situated outside Jersey or the United Kingdom, complete information on the payer is required only in the batch file and not in the individual transfers bundled together in it.

10 Action where information missing or incomplete

- (1) If the payment service provider of the payee becomes aware that information on the payer required by these Regulations is missing or incomplete when receiving transfers of funds, the payment service provider of the payee shall
 - (a) reject the transfer;
 - (b) ask for the complete information on the payer; or
 - (c) take another action that is specified to be required for the purposes of this Regulation by an Order made by the Minister for Treasury and Resources.
- (2) However, a person is not required to comply with paragraph (1) if to do so would contravene any other provision of an enactment.
- (3) If the payment service provider of a payer regularly fails to supply the information on the payer required by these Regulations, the payment service provider of the payee shall report that fact to a designated officer and the Jersey Financial Services Commission.
- (4) If the payment service provider of a payer regularly fails to supply the information on the payer required by these Regulations, the payment service provider of the payee shall take steps to attempt to ensure that the payment service provider of the payer complies with the requirements as to supply of information set out in these Regulations, which steps may include
 - (a) issuing warnings to the payment service provider of the payer; and
 - (b) setting deadlines for the payment service provider of the payer to comply with the requirements as to supply of information set out in these Regulations.
- (5) If after the payment service provider of the payee has taken steps under paragraph (4) in relation to a payment service provider of the payer, the requirements as to supply of information set out in these Regulations are still not regularly complied with by the payment service provider of the payer, the payment service provider of the payee shall either
 - (a) reject any future transfers of funds from that payment service provider; or
 - (b) decide whether or not to restrict or terminate its business relationship with that provider, either with respect to transfer of funds services or with respect to any mutual supply of services.

11 Requirement to report in certain circumstances where missing or incomplete information makes transaction suspicious

(1) Missing or incomplete information shall be a factor in the assessment of a payment service provider of the payee as to whether a transfer of funds, or any related transaction, is –

- (a) for the purposes of Article 34D of the Proceeds of Crime (Jersey) Law 1999, to be regarded as suspicious and whether accordingly a disclosure is required to be made under that Article;
- (b) for the purposes of Article 9 of the Money Laundering Order, to be regarded as suspicious and whether accordingly a report is required to be made in accordance with internal reporting procedures that are required under that Article; and
- (c) for the purposes of Article 21 of the Terrorism (Jersey) Law 2002, to be regarded as suspicious and whether accordingly a disclosure is required to be made under that Article.¹¹
- (2) A person shall be guilty of an offence if
 - (a) the person is a payment service provider of a payee or is in the employment of a payment service provider of a payee;
 - (b) there is missing or incomplete information on the payer in relation to a transfer of funds;
 - (c) in whole or in part because of the information being missing or incomplete information being provided
 - (i) the person knows, or suspects, that a person is engaged in money laundering or terrorist financing, or
 - (ii) there are reasonable grounds for the person to suspect that a person is engaged in money laundering or terrorist financing; and
 - (d) the person fails to report his or her knowledge or suspicion, or the grounds for suspicion, to a designated officer, as soon as practicable after the person had the knowledge, suspicion or reasonable grounds for suspicion.
- (3) It is a defence to a charge of committing an offence under paragraph (2) that the person had a reasonable excuse for not reporting to a designated officer the person's knowledge or suspicion or the grounds for suspicion.
- (4) Where a person, under paragraph (2), discloses to a designated officer
 - (a) the person's knowledge or suspicion, or the grounds for suspicion, that another person is engaged in money laundering or terrorist financing; or
 - (b) any information or other matter on which that knowledge or suspicion, or the grounds for suspicion, are based,

the disclosure shall not be treated as a breach of any restriction imposed by enactment, contract or otherwise.

- (5) Without prejudice to paragraph (3) or (4), in the case of a person who was in employment at the relevant time, it is a defence to a charge of committing an offence under this Regulation that the person disclosed the information or other matter in question to the appropriate person in accordance with the procedure established by the person's employer for the making of such disclosures.
- (6) A disclosure to which paragraph (5) applies shall not be treated as a breach of any restriction imposed by enactment, contract or otherwise.

- (7) Paragraph (2) does not make it an offence for a professional legal adviser to fail to disclose any information or other matter which has come to him or her in privileged circumstances.
- (8) For the purposes of this Regulation, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated, or given, to the legal adviser
 - (a) by, or by a representative of, a client of the legal adviser in connection with the giving by the adviser of legal advice to the client:
 - (b) by, or by a representative of, a person seeking legal advice from the adviser; or
 - (c) by any person
 - (i) in contemplation of, or in connection with, legal proceedings, and
 - (ii) for the purpose of those proceedings.
- (9) No information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.

12 Record-keeping by payment service provider of the payee

The payment service provider of the payee shall keep for 5 years records of any information received on the payer.

Obligations of intermediary payment service provider

13 Intermediary payment service provider to send information with transfer

An intermediary payment service provider shall ensure that all received information on the payer that accompanies a transfer of funds is sent with the transfer.

14 Duties of intermediary payment service provider in case of technical limitations

- (1) This Regulation applies where the payment service provider of the payer is situated outside Jersey and the United Kingdom and the intermediary payment service provider is situated within Jersey.
- (2) If this Regulation applies, an intermediary payment service provider may use to send a transfer to the payment service provider of the payee a system with technical limitations which prevents the information on the payer from accompanying the transfer of funds.
- (3) However, if, when receiving a transfer of funds, the intermediary payment service provider becomes aware that information on the payer required under these Regulations is incomplete, the provider may only

- use a payment system with technical limitations if the condition in paragraph (4) is complied with.
- (4) The condition is that the intermediary payment service provider (either through a payment or messaging system, or through another procedure, that is accepted or agreed between both the intermediary payment service provider and the payment service provider of the payee) informs the payment service provider of the payee that the information is incomplete.
- (5) An intermediary payment service provider who uses a system with technical limitations shall, if the payment service provider of the payee requests, within 3 working days after the day on which the intermediary payment service provider receives the request, make available to the provider all the information on the payer that the intermediary payment service provider has received, whether or not the information is complete.
- (6) An intermediary payment service provider which has used a system with technical limitations which prevents the information on the payer from accompanying the transfer of funds shall keep for 5 years records of all information on the payer that it has received.

Regulatory and enforcement powers12

14A 13

14B 14

14C Offences¹⁵

- (1) A payment service provider of the payer who fails to comply with any requirements of
 - (a) Regulation 6(1) (read with Regulations 7(1) and (2) and 8);
 - (b) Regulation 6(2) (read with Regulations 6(3) or 6(4), as the case requires);
 - (c) Regulation 6(5); or
 - (d) Regulation 7(2),

shall be guilty of an offence.

- (2) A payment service provider of the payee who fails to comply with any requirements of
 - (a) Regulation 9;
 - (b) Regulation 10(1) (read with Regulation 10(2)); or
 - (c) Regulations 10(3) or 12,

shall be guilty of an offence.

- (3) An intermediary payment service provider who fails to comply with any requirements of
 - (a) Regulation 13;

- (b) Regulation 14(3) (read with Regulation 14(4)); or
- (c) Regulation 14(5) or (6),
- shall be guilty of an offence.
- (4) In deciding whether a person has committed an offence under this Regulation, the court shall take into account whether the person followed any relevant guidance that applies to the person and which was at the time issued, adopted or approved by the Jersey Financial Services Commission.
- (5) A person shall not be guilty of an offence under this Regulation if he or she took all reasonable steps, and exercised all due diligence, to avoid committing the offence.

14D Penalty for offences¹⁶

- (1) A person who commits an offence under Regulation 11(2) shall be liable to imprisonment for 5 years and a fine.
- (2) A person who commits an offence under Regulation 14C shall be liable to imprisonment for 2 years and a fine.

Concluding provisions

15 Co-operation

- (1) A power under any of the specified enactments for a person to require another person to provide information to the person shall be taken to include the power to require a payment service provider to provide to the person
 - (a) the information in relation to a payer that has accompanied a transfer of funds by or to the provider and that the provider is required to keep by these Regulations; and
 - (b) any records in relation to a payer that the payment service provider is required to keep by these Regulations.
- (2) Subject to any other enactment, any information to which paragraph (1) relates that is provided to a person under a specified enactment by virtue of the operation of paragraph (1) may only be used for the purposes of preventing, investigating or detecting money laundering or terrorist financing.
- (3) For the purposes of this Regulation, the specified enactments are
 - (a)
 - (b) the Proceeds of Crime (Jersey) Law 1999¹⁷;
 - (c) the Terrorist Asset-Freezing (Jersey) Law 2011¹⁸;
 - (d) the Al-Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order 2002¹⁹; and

2007

(e) the Terrorism (Jersey) Law 2002²⁰.²¹

16 Designated officers

- (1) The Chief Officer of the States of Jersey Police Force may, by public notice, designate one or more officers of that Force for the purposes of these Regulations.
- (2) The Agent of the Impôts may, by public notice, designate one or more officers of the Impôts for the purposes of these Regulations.
- (3) If no person is designated under paragraph (1) or (2), the Chief Officer of the States of Jersey Police Force and the Agent of the Impôts shall, respectively, be designated officers for the purpose of these Regulations.

17 Citation

These Regulations may be cited as the Community Provisions (Wire Transfers) (Jersey) Regulations 2007.

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement
Community Provisions (Wire	R&O.88/2007	23 July 2007
Transfers) (Jersey) Regulations		
2007		
Community Provisions (Wire	R&O.176/2007	12 December 2007
Transfers) (Amendment) (Jersey)		
Regulations 2007		
Proceeds of Crime and Terrorism	L.7/2014	4 August 2014
(Miscellaneous Provisions)		(R&O.102/2014)
(Jersey) Law 2014		
Financial Regulation	L.40/2014	21 November 2014
(Miscellaneous Provisions No. 2)		
(Jersey) Law 2014		

Table of Renumbered Provisions

Original	Current
17(1)	17
17(2)	Spent, omitted

Table of Endnote References

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chapter 17.245
                       chapter 24.660
                       chapter 13.250
                       chapter 08.780.30
                       chapter 24.660
                       chapter 08.680
                       chapter 08.780
                       chapter 17.860
<sup>9</sup> Regulation 5(5)
                       amended by R&O.176/2007, L.7/2014
<sup>10</sup> Regulation 6(3)
                       amended by R&O.176/2007
<sup>11</sup> Regulation 11(1) amended by L.7/2014
<sup>12</sup> Cross heading
                       inserted by R&O.176/2007
<sup>13</sup> Article 14A
                       repealed by L.40/2014
<sup>14</sup> Article 14B
                       repealed by L.40/2014
<sup>15</sup> Article 14C
                       inserted by R&O.176/2007
<sup>16</sup> Article 14D
                       inserted by R&O.176/2007
                       chapter 08.780
18
                       chapter 17.861
19
                       chapter 17.910.16
                       chapter 17.860
<sup>21</sup> Regulation 15(3) amended by L.7/2014
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