

***Improvement of Law on Anti-Money Laundering through Vietnamese
Commercial Banking System in Vietnam - Some Lessons from some ASEAN
Countries' Anti-Money laundering Law***

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1. The formation of legal and regulatory system on prevention from, combating against money laundering through commercial banking systems in Vietnam

1.1. Demand of building legal and regulatory system on prevention from, combating against money laundering in Vietnam

Nowadays, money laundering activities become more complex, sophisticated, and money laundering crimes target commercial banking systems as financial intermediaries. As a member of Asia/Pacific Group on Money laundering (“APG”), Vietnam actively participates in preventing money laundering with international communities. However, application of preventing money laundering in Vietnam is still limited.

In Vietnam, corruption and money laundering are the hot topics and national concerns. One of the solutions to stop corruption is preventing money laundering activities through commercial banking systems. In recent years, there are many scandals related to money laundering activities through Vietnamese banking systems. According to a report provided by Financial Action Task Force (“FATF”), Vietnam is listed as a potential target for money laundering crimes because of Vietnamese economy’s extraordinary growth. Participating in bilateral and multilateral activities and international organizations not only brings a lot of opportunities but also faces many challenges.

Although Vietnamese government has inserted guidance and anti-money laundering regulatory system on 1999 Criminal Code, 2009 amended version, The Law on the State Bank of Viet Nam on 2010, the Law on Credit Institutions on 2010, and the Law on Prevention of money laundering Law of Prevention on 2012, a lot of issues need to be reevaluated and resolved. Legal and regulatory systems on preventing money laundering activities are not unified. Investigating, accounting, and customer information systems are limited, and major of trading activities are unofficial and by cash. All of the above factors make the control of trading activities more and more difficult. Therefore, in order to prevent money laundering, reevaluating and unifying existing legal and regulatory systems are necessary and urgent.

In Asean countries, legal and regulatory systems get more attention from governments and become more specific and effective. However, the actual application of prevention on domestic and international anti-money laundering activities is the topic that Vietnamese legal specialists mainly focus on. For example, Vietnamese legal specialists focus on Thailand government’s investigation of 16 individuals relating to money laundering, tax abusing scandal that was publicly published by Panama Paper on April 4th, 2016 and Thailand government’s report on April 9th, 2016. Legal and regulatory systems in Singapore, Indonesia, and Thailand are similar with legal systems from countries that have effective money laundering preventions such as United Kingdom, France, and United States. Also, economic and social conditions of Asean countries have similarity with Vietnam. Furthermore, as a member of Asean organization since March 31st, 2016, it is necessary to understand other members’ legal and regulatory systems. Therefore, studying and understanding Asean countries’ legal systems and their applications are essential and urgent.

1.2. Legal methods for limited money laundering through commercial banking system

In order to limit and control money laundering, international standards, international legal instruments and national laws must be considered and used worldwide, including Vietnam and other ASEAN countries.

The first legal instrument is the 40 and IX Recommendations released by the Financial Action Task Force (“FATF”) in 2012. The recommendations introduce two main points: a) establishing a legal basis to identify, trace, isolate and confiscate illegal money laundering and terrorism, b) providing solutions to prevent money laundering and terrorism financing. These recommendations have been amended with 40 new recommendations/ benchmarks to establish a comprehensive guidance and framework. From here, FATF members can use these recommendations as a guidance to establish their own legal system and modify to fit into their economic conditions.

The second legal instruments are the United Nations (“UN”) Convention against money laundering and financing of terrorism, the 2000 Palermo Convention against transnational organized crime, and the 1999 international Convention for the suppression of the financing of terrorism. These conventions require the member countries to establish legal and regulatory systems on prevention of money laundering.

The third legal instruments are the guidelines of the Basel Committee on Banking Supervision. One of these guidelines’ emphases is commercial banks’ anti-money laundering compliance. The Basel committee pays a very close attention on the compliance risk because of its tremendous impact on the legal system of each country and the internal regulations of each commercial bank. Indeed, the Basel committee provides policies and procedures on preventing and detecting money laundering and cross-border banking.

The fourth legal instrument is the national legal and regulatory system of prevention on money laundering and other relating laws such as the Law on State Bank (the Central Bank Law), the Law on Credit Institutions (Banking Law), Criminal Law, Investment Law, etc. Vietnam and other ASEAN countries have issued the necessary legal documents to concretize the recommendations and international commitments mentioned above.

2. Basic content and assessment of law enforcement against money laundering through Vietnamese commercial banks comparing to other ASEAN countries’ laws

2.1. Basic concept of anti-money laundering

Under Article 4, Clause 1 in the Anti-Money Laundering Code (2012), laundering is individual or organization’s behaviors seek to legitimize the origin of proceeds of crime, including:

- The action is defined in the Criminal Code
- Support and assist organizations and individuals whom evade liability by legalizing assets derived from criminal activities;

- Possess property (knowing that property is crime-related) to legalize the origin of property.

Thus, it indicates that the sources of dirty money are varied, but they often have a common characteristic: results of illegal activities such as smuggling, embezzlement, fraud, such as:

- Receive money from corruption, bribery, embezzlement of National executive leaders, local
- Taking advantage of political positions and status in the state apparatus to receive insider information of incoming policies, planning, etc. in order to profit.
- Insider trading
- Cash acquired from transfer pricing activities, extortion, organized gambling, etc.

The term “laundering” is important as a basis for understanding the subject, defining the implementation of obligations and responsibilities involved. This term basically meets the general standards of the international treaties to which Vietnam is engaged (the UN Convention against Trafficking in narcotics¹, the Convention against organized crime transnational²) and in line with the concept set out in the international standards on combating money laundering³.

2.2. Anti-money laundering system and mechanisms for coordination among active agencies in anti-money laundering

Before the Money laundering Prevention Act was enacted in 2013, Vietnamese government issued Decree No. 74/2005/ND-CP dated 06/07/2005 of the Government on the prevention from, combating against money laundering. According to this Decree, the Governor State Bank of Vietnam issued the Decision⁴ on the establishment of information center prevention of money laundering, later upgraded to Anti-Money Laundering Administration (“AMLA”). According to the international standards, The AMLA plays a role as a financial intelligence unit, under the Banking Inspectorate and Supervision Department of the State Bank of Vietnam (“SBV”). The AMLA collects, analyzes, and delivers information relating to money laundering. Furthermore, to adapt new situations, the Anti-Money Laundering Steering Committee (“AMLSC”), under a Deputy Prime Minister has been established⁵. This is a joint organization, in which members are representatives of 14 Line ministries, that assists the Prime Minister to administer and co-ordinate combating money laundering activities in the territory of Vietnam, under supervision of the SBV. The structure and placement of the AMLSC show the main goal of the Vietnam government in this period is to control, prevent from, and combat against money laundering through financial institutions system. However, it has not yet identified control objectives and monitored anti-money laundering activities in a comprehensive manner.

Comparing to Singapore, Vietnam establishes the AMLSC earlier. According to the

¹The Vienna Convention (1988)

²The Palermo Convention (2000)

³The FATF Forty Recommendations (2012)

⁴Decision No. 1002-QD-NHNN of the State Bank of Vietnam (SBV), dated July 8th, 2015

⁵Decision No. 470/QD-TTg of the Prime Minister, dated March 2nd, 2011

Monetary Authority of Singapore's ("MAS") announcement on June 13th, 2016⁶, Singaporean government will establish specialized agencies to combat money laundering and strengthen the ability of law enforcement to prevent money laundering bank on August 1st, 2016. This is the result of the fact that the MAS requests Bank for International Settlements ("BIS"), headquartered in Basel, Switzerland to close its branches in Singapore due to serious violations of regulations on anti-money laundering.

In Thailand, the Anti-Money Laundering Office ("AMLO") is an independent organization and separate from the executive authorities. Anti-money laundering law of Thailand⁷ defines the AMLO as "an agency that does not work under the Prime Minister, Ministers or Deputy". Moreover, the AMLO's functions and duties are clearly defined⁸ and are recognized in the Anti-Money Laundering Act, the highest level of legal documents.

To enforce the anti-money laundering law, the AMLA has
 - Received and processed reports on suspicious transactions (Suspicious Transaction Report- STR) that commercial banks reported. According to statistics provided by the SBV Banking Supervision Agency, suspicious transactions increase from 360 cases in 2011 to 1351 cases in 2015.

Table 1. STR 2011-2015

	2011	2012	2013	2014	2015
State commercial banks	121	252	314	422	329
Commercial bank	185	189	267	297	869
State bank branches	54	32	90	91	153
Total	360	473	671	810	1351

Source: SBV Banking Supervision Agency
 (State commercial banks are listed in Table 1 is 100% owned by government and commercial banks that government holds dominant shares)

The increase of suspicious transactions reported over the years shows not only the positive sign of Vietnam economy, but also the efforts of the anti-money laundering related departments. Compared to 2005-2010 period, the number of suspicious transactions (2005-2010) reported very small. According to the supervision of the State Bank, the period of 2005-2010 shows only 474 reports in total, which only equals to total cases in year 2011 of 2011-2015.

After receiving the report, AMLA analyzes, filters information and gives proper solution in accordance with internal procedures. In the end of the analysis, the results can be stored at AMLA (if no suspicious sign is found) or transfer to the investigation agency (if there are sufficient evidence found), or to more specialized agencies such as customs department or inspection agencies. Below is the report of 2011-2013

⁶MAS Sets Up Dedicated Departments to Combat Money Laundering and Strengthen Enforcement, <http://www.mas.gov.sg/>

⁷Article 40 of Anti-Money Laundering Act B.E 2542 (1999); Article 9 of Anti-Money Laundering Act (No.4) B.E 2556 (2013); Article 34 of Anti-Money Laundering Act (No.5) B.E 2558 (2015)

⁸Anti-Money Laundering Act B.E 2542 (1999) is amended multiple time to adapt to new and complex situation. For instance, Chapter V - Anti-Money Laundering Office is amended to clarify the duties and responsibilities of the AMLO. For further information, see Anti-Money Laundering Act (No.2) B.E 2551 (2008); Anti-Money Laundering Act (No.4) B.E 2556; Anti-Money Laundering Act (No.5) B.E 2558 (2015)

processed case provided by SBV Banking Supervision Agency:

Table 2. Processed STR 2011-2013

Department/Year	2011	2012	2013
Police Department	232	160	201
Inspection agency	5	5	38
Total	237	165	239

Source: SBV Banking Supervision Agency

- For large currency transaction reports (“CTRs”) and electronic funds transfers (“EFT”) report, these are some of the money laundering methods used by crimes that commercial banks have to report to AMLA. Data listed in Table 2 shows detailed and accurate numbers of transactions reported. This can be explained by the automatic reporting systems that were set up at commercial banks. Results of 2011-2015 are as follows:

Table 3. Total large CTR and EFT 2011-2015

Year	CTR	EFT
2011	15.885.465	5.051.079
2012	22.567.247	3.667.848
2013	22.195.553	3.159.938
2014	29.451.279	3.478.916
2015	30.305.708	2.628.968

Source: SBV Banking Supervision Agency

Not only represent the professional activities of domestic anti-money laundering, AMLA also coordinates and provides information to domestic and international agencies to prevent from and combat against money laundering and terrorism financing.

Memorandum of Understanding (MoU) between AMLA and Interpol Vietnam Office, Ministry of Public Security (“MPS”) 2009, Memorandum of Understanding between AMLA and the General Administration of Customs, the General Security I - MPS 2014, the General Department of Taxation 2015. In 2011-2015, the amount of information being exchanged with police agencies increases steadily: 2011: 38; 2012: 52; 2013: 51; 2014, 2012, 2015: 116 (Source: SBV Banking Supervision Agency).

AMLA has signed many MoU with equivalent agencies in many countries such as Russia, Taiwan, Australia, the UK, Singapore, China, Hong Kong, Japan, Indonesia (2010); Malaysia (2009); Laos (2011); Cambodia (2012); South Korea (2013); Thailand (2013); Japan (2013); Bangladesh (2014). AMLA also continues to negotiate and exchange information with the United States, France, the Netherlands, Germany, Belgium, Switzerland, Austria, India, and Canada⁹. AMLA also received and responded to many requests from foreign partners, of which most are Japan (20 requests/ 14 responses); Korea (12 requests/ 7 responses)¹⁰; both occur in 2013-2015.

⁹ Reference: <http://www.sbv.gov.vn> (Accessed 16.06.2016); <http://infonet.vn/ngan-hang-nha-nuoc-hop-tac-quoc-te-ve-dao-tao-va-trao-doi-thong-tin-pcrt-post181357.info> (Accessed 16.06.2016)

¹⁰Source: SBV Banking Supervision Agency

Compare to the requirements of the Financial Action Task Force against money laundering, AMLA is fully implementing missions of this model.

2.3. Money laundering through commercial banks by receives services of commercial banking

Due to high demand of capital trading, transactions through commercial banking systems increase significantly. According to AMLA, SWIFT and some other official capital and money channels transfer to Vietnam 8,522 thousand billion VND through 156,430 transactions, and value of electronic money transferred abroad is 6,758 trillion through 621,885 transactions in 2015. Data in Table 3 shows the increase in number of transactions is proportional to international money laundering probability. International organizations of anti-money laundering warned that methods of money-laundering through commercial banks are more complex and difficult to detect. Clients can conceal money and use sophisticating technical methods such as multi-tier transactions to avoid bank staffs' attention. This sophisticating technique can be used in money transfer or the L/C mentioned above.

Commercial banks provide ATM services, which reduces cash payments from 16.36% of total payments in 2007 to 12% in 2015¹¹ with 96.2 million issued ATM cards (increases 210% from 2011), and 30% of adults has a bank account. This is a significant achievement in the field of banking business, but it also increases the likelihood of money laundering activities through deposit and withdrawal by credit card due to limited controls.

For bank's letter of credit (L/C) service, the accompanying documents of the L/C are difficult to forge, but commercial contracts can be fake, which is a risk to the transactions that the bank accepts to guarantee.

For international transfer of payment service, commercial banks in Vietnam are required to fill the questionnaire table and "Know your customer" (KYC), which are requested by correspondent banks for international anti-money laundering. Based on the results provided by Vietnamese commercial banks, correspondent banks evaluate the risk level and integrity of the transaction, and then determine transaction fee. If it has a high risk, the transaction fee will be very high or the correspondent bank can even deny the transaction, which leaves Vietnamese commercial bank with no benefits or revenue from transferring payments. Therefore, Vietnamese commercial banks may pass on or even lie when filing the questionnaire table in order to make the correspondent banks accept transactions. This is also a sign of money laundering because of the incompliance of commercial banks.

Transferring small money through Western Union or MoneyGram may also appear the similar issue of determining sources of income.

Regarding this compliance issue, Decree No. 96/2014 /ND-CP 17.10.2014 stipulates sanctions in money laundering¹², however, monitoring commercial banks' compliance

¹¹Source: State Bank of Vietnam

¹²Articles no 43, Decree No. 96/2014 / ND-CP 17.10.2014 stipulates sanctions in money laundering "The fines of VND 20,000,000 – 40,000,000 shall be applied to the failure of reviewing the clients and

in this area certainly does not take place regularly.

2.4. How to identify the risk of money laundering through commercial banks

The identification of the risk of money laundering through the commercial banks should be implemented through precautionous and provisional methods.

a. Precautionous method is a method that reporting entities (commercial banks) have to do to be able to timely detect and prevent money laundering signs by timely reporting and providing information to the competent authorities; recognizing and updating customer information; building internal policies and reporting specific transactions.

Recognizing and updating customer information:

Money Laundering Prevention Act 2012 provides situations in which bank has to identify customer, store, and update customer information. The noteworthy point is that the requirements on customer classification are based on the degree of risk of money laundering. For example, there will be a special monitoring mechanism for certain transactions from individuals that have political influence, correspondent-banking relations. This group of customers has a high risk of money laundering or terrorism financing. For these risky cases, banks may have to apply the additional procedures¹³ that comply with international standards on anti-money laundering, and terrorism financing.

Regarding requirements of updating client information, article no. 9 of the Law on Anti-money Laundering (2012) defines and lists all requirements and restrictions on collecting, and updating client information. However, commercial banks have not fully implemented this regulation practically, especially customer sensitive information such as occupation, social title, telephone number, and current address. This type of information is often difficult to complete and be accurate. Furthermore, updating information relating to genders (change in gender) might be difficult as well when Civil Code 2015 becomes lawful to recognize the right to change sex. This new code will make identification of the customer's appearance absolutely confusing and volatile. Prevailing Vietnam laws have not provided guidance on this issue. Internationally, other ASEAN countries that permit change in genders need to have restrictions, laws, and guidance regarding this issue¹⁴.

Building internal regulation system and policy against money laundering:

The content of internal policy is very important because the commercial bank systems are the one that approach and identify signs of money laundering. Money Laundering Prevention Act (2012)¹⁵ requires the commercial banks to issue internal regulations and policies on prevention of money laundering. The regulations/policies must

related parties named in black lists before establishing relationships with them or providing banking services to them"

¹³Articles no. 13, 14, 15 - Vietnam Anti-Money Laundering Law (2012)

¹⁴Source: According to recommendation provided by FATF, Thailand, Laos, Cambodia need to continue building legal framework and regulations against anti-money laundering, and terrorism financing (<http://www.fatf-gafi.org/media/fatf/documents/FATF%20Public%20statement%2022%20June%202012.pdf>),

Accessed 15.6.2016

¹⁵Article 20, Clause 1, Vietnam Law on Money Laundering Prevention 2012

include the following details: policies of accepting customer based on level of risk, approval/acceptance, and required documents for opening a new account; process of review, procedure of detection and reporting suspicious transactions, information security; reporting system, information center, and other regulations.

Regime of reporting and handling¹⁶:

Commercial banks are responsible for reporting information regarding prevention and combating against money laundering: large transactions (more than 300 million per day if the transaction is in cash, gold or foreign exchange transactions), report suspicious transactions, and report activities of money laundering for terrorist financing.

b. Provisional methods are methods that banks use to prevent adverse consequences such as dispersing the individuals and organizations' assets or carrying out transactions with money laundering or criminal signs

First method is delaying transactions. Commercial banks have to apply the delaying transaction methods when the involving parties are listed under blacklists or there is a reason to believe the requested transaction is related to criminal activities. The banks also have to immediately report in writing document to competent authorities. Note that the delay time of three business days is a form of temporary freezing method before an official decision of the authorities.

Second method is account blockading. Commercial banks freeze account after receiving decision from competent authorities such as People District Judge, Military District Judge, Chief of the Supreme People's Procuracy of Vietnam/ Chief of the Central Military Procuracy, Heads of investigation agencies. When conducting account blockade, commercial banks should immediately report to the State Bank of Vietnam regarding this decision.

The third method is sealing or taking account into custody. Commercial banks perform sealing and taking account into custody following competent authority's decision, which is also needed to report to the State Bank of Vietnam at the time.

3. Contents to be amended and supplemented to improve the law on the practical basis and experience from other Asean countries

3.1 Not yet written additional signs of money laundering the non-transparency of transactions

As mentioned above, the legal and regulatory framework of prevention from money laundering is primarily prescribed in Vietnam anti-money laundering law and each circumstance is prescribed in some relevant laws such as the Law on Credit Institutions; Anti-Corruption Law. However, it should be noted that the signs and measures to implement anti-money laundering are mainly prescribed in anti-money laundering law, and AMLA is the party to execute. Compared to Singapore, Thailand, and Indonesia, which have established anti-money laundering agencies in accordance with the Law on anti-money laundering, specific legal positions may be different.

¹⁶Article 21,22, Clause 1, Vietnam Law on Money Laundering Prevention 2012

Indonesian Financial Transaction Reports and Analysis Centre (“PPATK”) has a relative independence from the Central Bank of Indonesia (“BI”) according to Law of the Republic of Indonesia Number 8 year 2010 on combating money laundering, and was amended in 2002¹⁷. However, there are some following groups of transactions which may bear signs of suspicious signs of money laundering but not mentioned in the law governing:

Firstly, some may argue that money laundering does not only include provisions for individuals involving granting credit and investing in commercial banks which are expanding based not only on biological but also on mutual benefit relationships. In banking field, to reduce credit risks as well as operational risks, the State Bank issued Circular 36/2014/TT-NHNN dated 11/20/2014, amended) which specifically provisioned involving individuals¹⁸. There are two specific groups: one relating to an organization and the other relating to individual selves. The Circular content is consistent with that of Basel II and Basel III. However, they have not been recorded in the Enterprise Law of Vietnam in 2014. Despite having more specific regulations about involved people in Clause 17 Article 4, they are not sufficiently described as in Circular 36/2014/TT-NHNN 11/20/2014, amended. Therefore, we need to uniform the legal system on the issue of involving individuals. This then will be utilized to establish implementing the prevention of money laundering through transactions between groups of people.

Secondly, there have been no regulations on controlling the source of income. Although Vietnam has attempted to limit cash usage, cash utilization rate remains high, which shows inability to control the legitimacy of capital transactions and transferring funds. By using cash to purchase assets with high value, real estate transactions can use foreign currency or gold as means of payments which are approved widely. Since the transfer of ownership of registered real estate assets are legitimate regardless of the form of payment, unverified incomes which have been not classified as legal or not will become legal properties. Thus, there must be provisions which acknowledge possessions of a certain property is formed from transferring or purchasing only if the assignee can prove the source of payment is legal and paid through payment intermediaries.

3.2. Forms of money laundering in the commercial banks through unmonitored and unreported investment activities

Investment activities in commercial banks attract interest from investors whose purposes are different, including those who hold shares of commercial banks from illegal funds. Vietnam is one of the high risk countries where money laundering is likely to occur although there has not been any official investigation or surveys regarding scope of money laundering. At the summit leaders of Asian banks 17th (The Asian Banker Summit 2016) by the State Bank and The Asian Banker held from May 10th to 12th, 2016, Governor of State Bank of Vietnam stated that: "In the incoming

¹⁷Similar to Thailand, Indonesia government established Law on Anti-Money Laundering early (Law of the Republic of Indonesia Number 15 Year 2002 concerning the crime of Money Laundering Act and Law of the Republic of Indonesia Number 8 Year 2010 concerning Anti-Money Laundering Act)

¹⁸Article3, Clause 15, Circular 36/2014/TT-NHNN, November 20, 2014, stipulating minimum safety limit and ratios for transactions performed by credit institutions and branches of foreign banks (has amended)

reforming period, I look forward to seeing foreign investors participate more actively in the process of restructuring the banks in the country. I believe that this period will bring greater opportunities to all of us"¹⁹. Thus, the possibilities can occur are:

- The acquisition of shares of the joint-stock commercial bank with good prices (high prices) to become the largest shareholder and resell for a discount (withdrawal). The objective of the acquisition of shares is not towards operational profitability but to move illegally-sourced money to legitimate sources of income (partial recovery of capital investment). This may occur more frequently in Vietnam since operational restructuring commercial banks here are rushing.
- Receiving the transfer of shares from major shareholders to ensure compliance with the Law on Credit Institutions on shareholding limits. Receiving money/funds from foreign companies with fake business names and addresses is also a sign of international money laundering.
- Identification of investment with suspicious signs or "multilayer-cover" (forging owners or holders)

From Panamaprofile, we found that investing activities by illegal income on commercial banks possibly can happen if Vietnam does not have legal measures to identify this kind of investment. The layering can be executed under different ways. Money can be transferred abroad in cash. Forging investments under foreigners' name, which can carry out the real investors' plan by manipulating money transaction.

3.3 Money laundering by providing or receiving other activities of commercial banks

- When commercial banks are trusted to operate investment trusts. Individuals may use investment agreements, investment management trust agreements with commercial banks to invest, and trade securities. Organizations, including credit institutions, have investment management trust agreements with commercial banks to invest into those banks or other banks. Individuals' incoming funds may be illegal but income from investment management trust activities is legitimate. Individuals may open checking accounts at commercial banks for security trading activities, which make it difficult to control sources of money for stock trading.

- When commercial banks providing payment services to customers with suspicious signs

Article 22 Clause 6 of the Law on Anti-money laundering 2012 requires mandatory reports on suspicious transactions in gambling and rewards. However, the new regulations only touched the surface transactions that are legal in the beginning. "Request transfer money from gambling in casino without referring to the illegal act of gambling itself". If compared to Singapore's provisions of this issue, Singapore government has many laws (which is not only a provision) relating to gambling and the Law on payment instruments to identify and remove those proposals from the illegal income from gambling.

- Laws to handle money laundering through casing, especially for transboundary

¹⁹: Source: Speech by the Governor of the State Bank at Summit Central Bank leaders of the 17th Asian countries <http://www.sbv.gov.vn/>

casings (dirty money from Vietnam, hiring foreigners to forge contributing capital and purchasing shares in commercial banks)

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