

DISTRICT COURT (AMENDMENT) BILL 1996
COMMENTS OF THE HONG KONG BAR ASSOCIATION

1. Purpose of the Bill

1.1 We assume that the general purpose of the Bill is to improve the administration of civil justice. We are concerned that the government sees the purpose as the relief of the pressure currently upon the High Court, which is something different. The Bill will certainly divert a large number of cases from the High Court to the District Court (for example we estimate that a very high percentage of personal injuries cases - between 50% and 90% will be diverted to the District Court), but that alone will not lead to better justice: all the progress that has been achieved in the last 4 years since the creation of the Personal Injuries List and the Personal Injuries Judge will be lost. In relation to non personal injuries cases the wholesale diversion of cases will only achieve cosmetic improvements in that the problem of delays in the disposal of cases will be transferred from the High Court to the District Court.

1.2 Better and more efficient justice will be delivered by the proposals in the Bill if, but only if, they are combined with:

- (1) the adoption by the District Court of a comprehensive code of civil procedure, in particular a procedure for summary judgment;
- (2) the appointment of additional District Judges, experienced and competent in civil matters; and
- (3) a much strengthened registry of the court.

2. New rules of procedure

2.1 The proposed amendments originated in the recommendations of a working party under the chairmanship of Mr. Justice Kempster which reported in June 1993. That working party's proposals included the adoption of a new set of procedural rules. Many of the Bill's clauses are designed to underpin those new rules and therefore assume that the new rules will be adopted. We understand, however, that the District Court Rules Committee has yet to meet even to consider the new rules, let alone adopt them. Consequently, it is essential that the proposed new Ordinance and new rules be considered as a package, ideally first by the District Court Rules Committee and later by Legco. To present only the draft Bill to Legco is a potentially misleading half-measure and unless a comprehensive code of procedure is implemented, the wholesale diversion of cases to the District Court will lead not only to delays but also to a far less efficient system of justice.

3. Additional judges

3.1 It must be remembered that the court's jurisdiction is concurrent with that of the High Court, and is not exclusive. If litigants and practitioners perceive that standards in the District Court do not match those in the High Court, they will continue to prefer the latter. Consequently, the Bill would fail in its aim of transferring work from the High Court to the District Court unless the District Court bench is brought up to strength to deal with the additional workload. There must be a proper evaluation of this need after a soundly-based prediction is made as to the trials and pre-trial procedural (interlocutory) appeals likely to be heard in the District Court instead of the High Court as a result of the enactment of the Bill. Further, the judges must be properly qualified by experience to deal with civil matters. Judges whose practice and judicial experience have been wholly in crime are unlikely to be able to deal properly with civil matters except after on-the-job training at the expense of litigants.

Perhaps a pool of District Judges dealing with civil cases, instead of or as well as criminal cases, could be established. As matters stand those District Court Judges (and even in some instances Magistrates) with some civil experience are taking turns to sit as acting Masters of the High Court so that their collective civil experience is largely lost to the District Court.

4. The Registry

4.1 Arrangement must be made to ensure that there is appointed an adequately qualified and experienced District Court Registrar and a sufficient number of adequately qualified Assistant Registrars (Masters) to take on the additional workload of pre-trial procedural (interlocutory) applications: Mr. Justice Kempster's working party recommended that this be done before any increase in the court's jurisdiction take effect. That will require, in particular, a sound assessment to be made of the likely volume of interlocutory work which will be transferred from the High Court to the District Court as a result of the enactment of the Bill. One possibility is to ensure that the Supreme Court Registry has a sufficient number of Masters to serve both Courts, and for the Masters to work from time to time in whichever court they are needed most; that could be done within the framework of s.15(4) of the District Court Ordinance. This theme is developed further below.

4.2 There will obviously be an exponential increase in the routine work of the Registry (receipt of documents for filing and so on) once the proposals take effect. If the Registry is not given sufficient additional resources, the result will be a backlog in the handling of cases similar to that which has built up in the Supreme Court in respect of non personal injuries cases. The backlog which existed for many years in personal injuries cases was only resolved by the creation of a Personal Injuries Judge who with the support of personal injuries practitioners brought in a sophisticated Personal Injuries Practice Direction and took a robust approach to case management with the result that the back log has

now been significantly reduced and personal injuries practice and procedure become sophisticated and streamlined to the extent where delays are now no longer possible. It would be disastrous to remove between 50% and 90% of the personal injuries cases from the High Court, when there now exists in the High Court a pool of judges with personal injuries expertise who are familiar with modern concepts of case management to the District Court which has no proper code of civil procedure and which does not have a pool of judges who formerly were solicitors or barristers or government counsel with civil expertise. Those who do have any civil experience invariably act as Masters in the High Court. If a large percentage of cases are diverted from the High Court to the District Court many litigants will no longer benefit from the acquired expertise of the Personal Injuries Judges and new streamlined procedures operating in the High Court.

5. Increase in Jurisdiction

- 5.1 At the heart of the proposals is the increase in jurisdictional limits. The Bar generally favours an increase in limits to reflect inflation since 1988. We previously accepted that the limits for money claims should rise from \$120,000 to \$300,000 in accordance with inflationary increases between 1988 and 1996. We accept that further increases are necessary to reflect inflation since 1996. The appropriate increase since 1996 is about 15%. Therefore we support an increase of \$300,000 plus 15% to \$345,000 say \$350,000 in round figures.
- 5.2 No increase over and above inflation should be contemplated unless a proper registry in the District Court is established. This inevitably means substantial expense in that more clerical and administrative staff in addition to masters will be required. Space will have to be found in the District Court for the extra staff. We do not believe that the District Court as currently constituted can possibly cope with even an inflationary increase in the jurisdictional limits and the probable result will be delays, increased costs and complaints. If a substantial

increase is implemented then that will have concomitant effect on delays, costs etc.

5.3 We also have reservations about the increases proposed for possession and title cases and for equity cases.

6. Personal Injuries Cases

6.1 In actions which include a claim for damages for personal injuries or death the proposed increase is larger, to \$600,000, double the limit for other money claims. This proposal originated from the report of the working party in 1993.

6.2 However, we oppose a separate and higher limit for personal injury cases. In our view there is no good reason to differentiate or distinguish between personal injuries cases and other civil cases and to do so is demeaning to the victims of accidents and the ability of District Judges trying the cases. The jurisdictional limit has always been the same for personal injuries cases and non personal injuries cases and no good reasons exist or have been put forward to support a different approach. The only reason we can discern is that previously there was a perception that District Court Judges sitting as Deputy High Court Judges tended to hear personal injuries cases. The injustice caused by this tendency (if it was true) was corrected by the creation of the Personal Injuries Judge and Personal Injuries Judge some 4 years ago and since then there have been two specialist Personal Injuries Judges working in tandem which has contributed much to the speeding up of and elimination of delays in such cases.

- 6.3 The preparation and conduct of personal injuries litigation has changed completely since the Kempster Report and the needs which prompted such a novel approach then no longer apply today if indeed they ever were justified. There is now a dedicated Personal Injuries List with 2 Personal Injuries Judges dedicated to the case management of personal injuries cases and in particular the reduction of costs, the shortening of trials and the elimination of delays.
- 6.4 Since the Working Party's report, a New Personal Injuries Practice Direction has come into effect which is designed to further improve the handling of and speed up personal injuries cases. Increasing the jurisdictional limit of the District Court beyond \$350,000 will mean that a very large percentage of personal injuries cases will now be dealt with in the District Court which does not have specialist personal injuries judges, no code of civil procedure, no masters and no personal injuries practice directions. The result will be increased costs and delays.
- 6.5 The Bar opposes a separate and higher limit for civil claims which happen to contain an element of personal injury. The distinction is arbitrary: the claim in respect of injuries could be subsidiary to a claim for property damage, or for consequential financial loss, or for damage to reputation, yet it would still attract the higher limit. There is no special experience amongst District Judges that would justify separate treatment for personal injury cases. On the contrary, the High Court has recently developed a personal injuries list with a judge dedicated to dealing with procedural aspects of personal injury actions and cases there are coming to trial relatively quickly and being tried by one of two specialist judges. The High Court is now taking an active role in speeding up the processing of personal injury cases and encouraging their settlement. These developments have occurred since the working party considered the matter. Ironically the implementation of the proposal now, after the change of circumstances in the High Court, would detrimentally affect litigants in that their cases would be heard by more junior and less experienced judges and

would not necessarily come to trial more quickly. One of the arguments that impressed the working party was that personal injury cases in the High Court were commonly heard by District Judges, temporarily acting as High Court judges, anyway, but this is no longer the case.

6.6 It might be thought that the jurisdiction of the District Court over employees' compensation claims would give District Judges some affinity with personal injury actions. The views of experienced practitioners, however, suggest that this is not so and that some District Judges (and particularly those who have only experience in criminal cases which is a significant number) have difficulty in deciding contested employees' compensation cases. The great majority of Employees' Compensation claims are simple (as evidenced by the time spent on them) and are settled before trial but with the increase in the amount of compensation more and more difficulties are being experienced. There is in fact a good deal of dissatisfaction with Employees Compensation Practice and Procedure. A study of the resolution of complex Employees' Compensation cases, often resulting in appeals to the Court of Appeal, will give an insight of the likely public dissatisfaction of District Court's exercise of any substantially increased jurisdiction.

6.7 It might be said that costs could be saved in smaller personal injury claims because counsel need not be instructed for appearances in the District Court but this is illusory because the decision to instruct counsel is not usually governed by the size of the claim but by the complexity of the issues in the case. It should not be assumed that personal injury actions are simple: they can involve quite complex and technical matters; expert evidence is common; citation of large numbers of authorities is not unusual.

- 6.8 In the typical personal injury case the injured party will have received employees' compensation from his employer. This compensation must be deducted from the common law compensation. Since the proposed \$600,000 limit refers to the net claim (i.e. after that deduction), the District Court would be hearing cases in which the gross claim is much more than \$1 million; indeed, because of a recent upward revision of employees compensation amounts, the gross claim could be as high as \$2 million.
- 6.9 High Court personal injury actions are often heard with an associated action by insurers of a defendant employer seeking recovery, from other parties, of the employees' compensation that the employer has paid to the plaintiff employee. It is obviously convenient that the associated action be heard by the same judge who hears the personal injury action, but if the claim in that associated action exceeds \$350,000, it will be outside the District Court's jurisdiction. These recovery actions can involve very large amounts and quite complex points.
- 6.10 Many personal injury actions become assessments of damages, liability being conceded by the defendant (usually an insurer) at or before trial. Assessments of damages are almost a separate species of case, often involving technical matters and difficult points concerning the law of damages. We are not confident that the District Court possesses the expertise to deal with these, whereas in the High Court the Masters have built up experience of them.
- 6.11 A similar expansion of the jurisdiction of the County Court over personal injury claims which has occurred in England is not thought by all to have been a success.

6.12 We would suggest that a proposal of the Working Party, which does not appear in the Bill, should be adopted: this is that the financial jurisdictional limits be alterable without recourse to amendment of the Ordinance. The Working Party suggested that the limits be changed by resolution of the Legislative Council. We think that it would be more appropriate to give that power to the Chief Justice. This would not only facilitate the future amendment of those limits to reflect changes in conditions but would also enable the proposed higher limit on jurisdiction for personal injury cases to be postponed pending a review of (1) the effectiveness of the treatment of these cases by the High Court and (2) the abilities of the District Court to deal with the flood of cases that would follow a higher limit to a standard which the users of the Court have the right to expect. If, upon a proper assessment, it is then thought that the jurisdictional limit for personal injury cases ought to be increased, it can be, to the appropriate amount. To effect these changes from the outset would be premature.

7. Possession and Title cases

7.1 The rateable value jurisdictional limits in actions for possession of land or where title to land is in question are proposed to be increased from \$100,000 to \$500,000. Whilst it is appreciated that rental values (upon which rateable values are based) have escalated faster than consumer prices during the last eight years, this increase is very large indeed. It would bring within the District Court's jurisdiction shops, offices and factories capable of being rented at the time of the last property revaluation (several years ago) at \$40,000 per month. It has to be asked whether there will be available in the District Court sufficient judicial and administrative expertise in land and title matters to justify such an extensive jurisdiction and to prevent delays.

7.2 There is a specialist court for such matters, namely the Lands Tribunal. The Tribunal has exclusive jurisdiction in certain tenancy matters, and a jurisdiction to order possession in certain cases which is concurrent with that of the High Court and the District Court. The Tribunal is composed of presiding officers of District Judge status all of whom have special knowledge. It seems anomalous for the District Court to retain jurisdiction for landlord and tenant disputes. We would recommend that further consideration be given to transferring all that jurisdiction to the Lands Tribunal.

8. Equity Matters

8.1 Similarly in regard to the increase in the Court's equity jurisdiction in the proposed new section 37(1) (a) (c) (e) (f), it has to be asked whether the Court will be able to provide the desired level of expertise and administration.

8.2 On the other hand, if the jurisdiction for money claims is to be raised to \$350,000 the limit under the proposed section 37(1) (b), (d) and (9) should be that amount.

9. Transferred Cases and Costs

9.1 Whilst supporting the idea of both the High Court and the District Court having wide powers to transfer cases between them and to deal with transferred cases, we must express doubt as to whether one of the objectives of these powers and of the Bill as a whole - to relieve the pressure upon the High Court - will be attained. This is because a great number of High Court writs are issued on behalf of credit-card and finance companies against borrowers upon contracts that contain provisions for costs to be payable by the borrower on an indemnity basis and to be recoverable as a debt. Unless there is a financial penalty for such companies and their solicitors if they use the High Court, they will

probably continue to do so. Therefore statutory power would have to be given to judges and registrars to override contractual costs provisions if this objective is not to be frustrated.

9.2 Similarly, the objective of relieving the burden upon the High Court will not be achieved if it becomes quicker to obtain a hearing in the High Court than in the District Court. That is why it is so important that the new District Court be given more and better judges, more registrars, more support staff and other resources, and a full set of procedural rules.

10. The Broader Question

10.1 The broader question is whether we should have a "District" Court exercising a substantial civil jurisdiction. The District Courts stopped operating in the districts of Hong Kong some time ago. Many do not agree with its centralisation in Wanchai. Be that as it may, we suggest that the current civil arm of the District Court has atrophied to an extent to be almost non- functional. Of course, the specialist tribunals are busy: Land, Employees' Compensation and Family. But the general civil case we suggest is more the exception than the rule. Without the cases, the District Court judges cannot increase their experience in these matters.

10.2 If we accept that the proposals are beneficial then we should ask ourselves how best to implement them: injecting funds, time and energy to make a "new" Civil District Court with its own registry, experienced civil judges? Is the creation worth the cost and effort? Surely other solutions have to be considered. Creating another tier of judges in the High Court exercising a lesser jurisdiction is a real possibility that might to be considered. Expanding the registry there with new masters who could sit as "junior" judges will surely be less costly and provide better justice than creating a duplicate registry in Wanchai with cases being heard by judges with lesser civil experience.

10.3 If the public is to be better served then the District Court should return to the Districts. If it remains in Wanchai, then it appears to be a waste of funds to create a new civil court there instead of enlarging the Registry of the High Court and creating a new tier of judges there.

**THE LAW SOCIETY OF HONG KONG'S SUBMISSIONS ON
THE DISTRICT COURT (AMENDMENT) BILL 1996**

1. Generally

The Society generally endorses the provisions in the Bill. The Legislative Council's brief states that the amended District Court Rules will be ready shortly and practitioners would like to have sight of these as soon as possible. The Society would like, wherever possible, for these to track those of the Supreme Court, e.g. there should be provision for automatic strike-out and summary judgments.

2. The general jurisdiction of the District Court

The Administration propose to increase the general jurisdiction of the District Court from the current \$120,000 to \$300,000, and a new sub-section (b) has been introduced to enable the court to determine actions for personal injuries provided the amount of the plaintiff's claim does not exceed \$600,000.

The Law Society reviewed and presented submissions on the Report prepared by Mr. Justice Kempster's Working Party (published in June 1993) and was consulted on the draft District Court (Amendment) Bill 1996 in February and also on the 5th draft in June 1996.

The Law Society has consistently stated that the proposed jurisdictional level is too low, indeed, the Society is of the view that the District Court's general jurisdiction should be increased to \$1,000,000 for all civil claims other than personal injury where the jurisdiction should be \$2,000,000.

3. Review of the historical development of the District Court, its jurisdiction and its financial limits

In 1953 the District Court was established as a court of record with limited civil and criminal jurisdiction as a solution to the increased volume of civil and criminal litigation which could not be adequately and rapidly dealt with by the then establishment of judges and magistrates.

The jurisdiction of the District Court in its civil jurisdiction (under Part III S. 14 and its reference to the First Schedule) was "....all the summary jurisdiction exercised by the Supreme Court".

In 1962 the Civil and Criminal provisions under the District Court Ordinance were combined and the first financial limit of HK\$5,000 was set. The subsequent increases in the court's financial limits are tabulated below:

Ordinances or legal notice	Financial Limit HKS		
22 of 1962 Section 3	5,000		
35 of 1966 Section 2	10,000		
68 of 1973 Section 2	20,000		
79 of 1981 Section 2 Administration of justice (Miscellaneous Amendments) (1) Increased Financial limits (2) Conferred additional jurisdiction relation to causes in Merchant Shipping. matrimonial. Property, legitimacy and adoption.	40,000		
L.N 387 of 1983	60,000		
49 of 1988 Section 4 Administration of justice (Miscellaneous Amendments)	Section	Amount deleted	Amount Substituted
	32(1) & (2)	60,000	120,000
	33(1)	"	"
	34(1)	"	"
	37(1)	"	"
	41	"	"
	52(1)(a) & (d)	"	"
	35	45,000	100,000
	36	"	"
	37(3)	"	"
	52(1)(c)	"	"
	69(3)	"	"

4. Review of increases in the Employees' Compensation Ordinance ("ECO")

The level of compensation in the ECO has been reviewed and increased 7 times since 1983 the last one taking place on 1 January 1996. The percentage of increase from 1983 to date ranges from 800% to 368% while the level of increase for the period 1988 to date ranges from 338% to 125%.

The proposed increase will be equivalent to an increase of 150% from the 1988 jurisdiction of \$120,000 therefore, based on the increases in the ECO jurisdiction it is submitted that the level of increase of the District Court's general jurisdiction should be increased to at least \$561,600 (\$120,000 @ 368%). First to keep pace with increases in the ECO, the District Court's jurisdiction should therefore be at least \$600,000 rather than reduced as there is at present no mechanism for a bi-annual review.

Appendices 1 and 2 show the increases in the ECO for the period pre 1983 to date, and the percentage increases respectively.

5. Personal Injuries

There is an argument that the level for personal injury cases could be higher, say \$2,000,000 given the recent judgment in Chan Pui Ki v Leung On & Kowloon Motor Bus Company.

The argument for increasing the personal injuries jurisdiction in the District Court to say \$2,000,000 is that, currently the jurisdiction under the ECO is \$1.728m, and for fatal accidents is \$1.512m. These cases are already being heard by District Court judges and it is illogical to put forward proposals which will enable District Court judges to hear cases involving \$1.728m under ECO, but bar them from adjudicating on the common law claims if the claim exceeds the current proposal of \$600,000.

6. Small Claims Tribunal

The Administration sought the Society's views on the draft Small Claims (amendment) Bill 1997. The Administration did not put forward any proposal to increase the jurisdiction of the Tribunal which is currently set at \$15,000. The Society recommended the Tribunal's jurisdiction be increased to \$50,000. This figure is a realistic assessment of the general public's purchasing power given the economy's expansion since 1988. Indeed, if the percentage increase of the ECO is used, the jurisdiction should be increased to at least \$70,000 (\$15,000 X 368%). The proposed increase in the Tribunal's jurisdiction will assist consumers in their search for a cost effective search for justice on relatively small sums as neither branch of the profession has any rights of audience before the Tribunal.

7. The Consumer

The Society is concerned that its recommendation substantially to increase the District Court's jurisdiction is viewed by some as a "back door attempt to extend solicitors' rights of audience". The Society's proposals will enable consumers, particularly those in the "sandwich class", who might not qualify for Legal Aid, to conduct their claims in a cheaper and more cost effective manner in the District Court. It is the consumer who will have the benefit of potential savings in costs and a wider choice. The litigant still has the right to instruct counsel but with the increased limits has the choice not to do so.

8. Family Law Court

There are at present 4-5 judges who have been assigned to sit as Family Court judges. In addition, other District Court judges often sit in the Family Court to cover for their colleagues who are on leave, or deputy District Court judges who sit in the Family Court, and these judges, more often than not, deal with applications in excess of \$1m. Indeed, if a divorcing couple own a modest matrimonial home the chances are the judge will adjudicate on property valued at between \$3m to \$5m.

9. The Society considers the Administration's proposals with wide discrepancies in the District Court's jurisdiction to be illogical and unjustified. Already, the District Court judges have the ability to adjudicate on general civil cases of at least \$1m. A substantial number of the District Court Judges sit as deputy High Court judges on a regular basis and hear running list cases involving millions of dollars. Indeed, it would be sensible to give the District Court judges consistent experience in dealing with larger sums in order to equip them to deal with the increased jurisdiction of the High Court.

10. Common Law Jurisdiction

The Society conducted research of other common law jurisdictions within the region (including England & Wales) to ascertain the general jurisdiction of their lower courts.

The findings showed that Hong Kong's proposed increase is in fact out of line with the general jurisdictional levels of lower courts within the region. A table outlining the jurisdictional levels is attached at Appendix 3.

There is no logical argument for the Administration's proposal that the current jurisdiction be increased to only \$300,000. It is noted that the Administration has estimated that some 2,700 additional cases will come before the District Court annually as a result of the implementation of the proposals but it is not expected that all of these cases will result in trials. Indeed, the reason why many cases have been commenced in the High Court can be traced to the fact that the District Court does not, at present, have any procedure for summary judgment. In this respect many of the High Court writs issued by credit card companies should be disposed of by summary procedure in the District Court and the argument on resource implications should be viewed in that light.

11. Given the massive increase in the economic activity and standard of living in Hong Kong since 1953 the financial limits should be far higher than those proposed if the District Court is truly to assume its intended role as envisaged in 1953 and the subsequent additional roles envisaged since its establishment.

12. Costs

Solicitors acting for a plaintiff would no doubt prefer a lower financial limit because they would be able to recover full party and party costs from the defendant in the High Court. A lower financial limit would prejudice the plaintiff because the cost of litigation compared to the claim would be much higher in view of the current rule that litigants in the District Court can only recover 2/3 of the taxed costs of the High Court.

Defendants and the Legal Aid Department on the other hand, would prefer a higher financial limit because they would enjoy the benefit of the 2/3 rule on costs in the District Court (particularly in personal injury cases).

A further argument for a higher limit is the proposed provision under Section 39 which, in effect, allows unlimited jurisdiction where the parties agree to the Court's jurisdiction.

13. Equity Jurisdiction S.37

The Society would welcome a uniform financial limit because it would avoid multiplicity of actions where various causes of action fall into different categories within the Ordinance. In such a case the Court is likely to transfer the matter to the High Court particularly in light of its duty to avoid multiplicity of legal proceedings, under Section 48(4). There should be uniformity of jurisdiction (save for sections 35, 36 and 37(3) which deal with property). The Society re-iterates its submissions that the Equity jurisdiction (Section 37) should be uniform and set at \$1,000,000.00.

14. Bi-Annual Review

The last amendment to the jurisdictional level of the District Court took place in 1988 some 8 years ago. The Society re-iterates its submission that some mechanism should be introduced whereby a bi-annual review can be held so that the jurisdiction of the District Court can be raised without the necessity of passing new legislation. It is noted that the financial limits under the ECO are reviewed bi- annually.

15. Section 69: Relief against forfeiture by action for non-payment of rent

15.1 S.69(2): under the present rules of the District Court there is no form of Acknowledgement of the Writ. Rule 20(a) requires the plaintiff to file the original Writ within 3 days of service with an endorsement as to service. The form of Writ for immovable property (Form 6) warns the defendant that judgment may be entered unless he either admits the claim or files a defence within 14 days.

- 15.2 S.69(9): if there is to be an amendment to the rules of the District Court allowing for a form of acknowledgment of service this would enable the court to grant summary judgment. This would be welcomed.
- 15.3 S69(9)(): there is no provision to file a notice of intention to defend under the existing District Court rules.
16. Rules for Commencing Proceedings for Estates of Deceased Persons
- 16.1 S72A(a) it is suggested that inserting the words "by or" after "proceedings to be commenced..." (first line) would make this subsection consistent with 72A(b) and 72A(c).
- 16.2 Order 15 rule 6A in the White Book is different from the Hong Kong rules of the Supreme Court in that it excludes the word "by or". This makes the Hong Kong rules far more useful to plaintiffs.

THE LAW SOCIETY OF HONG KONG
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