

**CA Final – Corporate & Allied Laws
November 2015**

Question no. 1 is compulsory.

Candidates are required to answer any five questions from the remaining six questions.

Question 1(a)

Star Ltd. declared and paid dividend in time to all its equity holders for the financial year 2014-15, except in the following two cases:

(i) Mrs. Sheela, holding 250 shares had mandated the company to directly deposit the dividend amount in her bank account. The company accordingly remitted the dividend but the bank returned the payment on the ground that there was difference in surname of the payee in the bank records. The company, however, did not inform Mrs. Sheela about this discrepancy.

(ii) Dividend amount of Rs. 50,000 was not paid to Mr. Mohan, deceased, in view of court order restraining the payment due to family dispute about succession.

You are required to analyse these cases with reference to provisions of the Companies Act, 2013 regarding failure to distribute dividends. (4 Marks)

Answer 1(a)

(i) Mrs. Sheela has directed company to deposit dividend into her bank account. Accordingly, company has remitted dividend to her bank account but bank returned payment on ground of difference in surname. It is not fault of company, if payment is made as per name available in record of company but company should inform the Mrs. Sheela about returned of dividend payment.

(ii) Accordingly, it can be said that company is not liable for failure to distribute dividend within period of 30 days in case of Mr. Mohan because court has issued restraining order.

Question 1(b)

You are working as the Finance Head of Super Energy Ltd. The company is in advance stage of finalising projects of wind power generation, which will considerably improve the operational and financial strengths of the company. You have got some information that one of the directors of the company, who is involved in the project, is indulged in trading of shares of the company.

Write a note for internal circulation explaining insider trading of securities and consequences of contravention of the relevant provisions of the Companies Act, 2013. (4 Marks)

Answer 1(b)

Please refer the paragraph no. 11 of Chapter no. 4 – Board Meeting & Power of Board.

Question 1(c)

RPS Ltd. got its shares listed with a Stock Exchange. It has been regularly paying the listing fees. Certain information about shareholding pattern etc. was asked by the Stock Exchange, which the company could not supply in the prescribed time. It was then given a further opportunity to furnish the desired information along with supporting document, but in vain, as the company did not maintain any record. What are the penalties leviable against the company under the Securities Contracts (Regulation) Act, 1956 for the failure to furnish the information? (4 Marks)

Answer 1(c)

As per Section 23A of Securities Contract Regulation Act, 1956, if any person, who is required:

- to furnish any information, document, books, returns or report to a recognised stock exchange, fails to furnish the same within the time specified; or
- to maintain books of account or records, as per the listing agreement or as per act, fails to maintain the same,

shall be liable to a penalty of not be less than one lakh rupees but which may extend to Rs. 1 lakh for each day during which such failure continues subject to a maximum of Rs. 1 crore.

Question 1(d)

Shareholders of Hide and Seek Ltd. are not satisfied about performance of the company. It is suspected that some activities being run in the name of the company are not in the interest of the company or its members. 101 out of total 500 shareholders of the company have made an application to the Central Government to appoint an inspector to carry out investigation and find out the true picture.

With reference to the provisions of the Companies Act, 2013, mention whether the shareholders' application will be accepted? Elaborate. (4 Marks)

Answer 1(d)

In the above case, 101 out of 500 shareholders made an application to Central Government. Central Government may order for investigation when members of company have passed special resolution and applied to it. Alternatively, Central Government may order for investigation in public interest. Facts in question do not support either about passing of special resolution or involvement of public interest. Therefore, application will not be accepted.

Question 1 (e)

One of the Objects Clauses of the Memorandum of Association of Info Company Limited conferred upon the company power to sell its undertaking to another company with identical objects. Company's Articles also conferred upon the directors whereby power was conferred upon them to sell or otherwise deal with the property of the company. At an Extraordinary General Meeting of the company, members passed an ordinary resolution for the sale of its assets on certain terms and authorized the directors to carry out the sale. Directors refused to comply with the wishes of the members where upon it was contended on behalf of the members that they were the principals and directors being their agents, were bound to give effect to their (members') decisions. Examining the provisions of the Companies Act, 2013 answer the following:

(I) Whether the contention of members against the non-compliance of members' decision by the directors is tenable?

(II) Whether it is possible for the members usurp the powers, which by the Articles are vested in the directors by passing a resolution in the general meeting? (4 Marks)

Answer 1(e)

(i) Contention of shareholders is not proper. Shareholders cannot make proposal for sale of an undertaking on their own and impose upon Board to implement it. Shareholders cannot approve proposal for sale of undertaking independently. It is for the Board to approve a proposal of sale of undertaking and then get the members to approve it by special resolution.

(ii) Members cannot by resolution passed by a majority or even unanimously supersede the powers of directors or instruct them how they shall exercise their powers.

Question 2(a)

The auditor of Organic Foods Ltd. accepted the Certificate from Mr. Rohan who is the manager, a person of knowledge, competence and high reputation, as to the value of the stock in trade. The valuation of stock referred to above was found to be grossly overstated for several years in the balance sheets of the company. As a result of the over valuation, dividends were paid out of capital. The Auditor did not examine the books of account very minutely. If they had done so and compared the amount of stock at the beginning of the year, with the purchases and sales during the year, they would have noticed the over valuation. The company subsequently went into liquidation and the auditors were sued to make good the loss caused by the wrongful payment of dividends based on the balance sheets figures. Based on the above facts, you are required to decide, with reference to the provisions of the Companies Act, 2013 and the decided case laws, the following issues:

(I) Whether the Auditors of the company will be liable for the loss caused to the company by the wrongful payment of dividends based on the Balance Sheets duly audited by the Auditors.

(II) What are the statutory duties of the Auditors in this regard? (8 Marks)

Answer 2(a)

Section 143 of Companies Act, 2013, prescribes duties of an auditor of company. Statutory auditor is required to make report to the members of the company on the accounts examined by him and on financial statement of the company along with every document annexed to it. The auditor has duty towards members of company to state that whether accounts give a true and fair view of affairs of company at the end of financial year.

It is duty of statutory duty of auditor to report members of company, if during course of his audit work, he has discovered any illegal or fraud or violation of applicable accounting standards by company. Auditor stands in fiduciary position in relation to the shareholders. He must act in the best interest of company as well as shareholders of company. In case, if there arises any suspicion or probe, he is required to go to bottom of transaction. In normal circumstances, he is justified in believing expert and experienced servants of company. He cannot be assumed detective or investigation officer.

Based on the above proposition in the case of Kingston Mill Co., it was held that Auditor can be held liable and it is not duty of auditor to take stock.

Question 2(b)

Best Plastics Limited is being wound up by the Court. The Official Liquidator after realization of the assets has an amount of Rs. 28 lakhs in his hand towards payment of creditors of the company.

Details of creditors are as follows:

i.	Secured Creditors	Rs. 20 Lakhs
ii.	Workers' wages	Rs. 15 lakhs
iii.	Income Tax Payable	Rs. 2 Lakhs
iv.	Unsecured Creditors	Rs. 40 Lakhs

Since the available amount in the hands of Liquidator is only Rs. 28 lakhs, which is insufficient to meet the claims of all the above creditors, explain the procedure you would follow for payment of the above in accordance with the provisions of the Companies Act, 1956, assuming that the company has created a charge on all the assets of the company in favour of secured creditors. (4 Marks)

Answer 2(b)

Please refer answer to question no. 6 of Chapter no. 12 – Winding up

Question 2(c)

ABC Limited has on its Board, four Directors viz. W, X, Y and Z. In addition, the company has Mr. D as the Managing Director. The company also has a full time Company Secretary, Mr. Wise, on its rolls. The financial statements of the company-Balance Sheet and Statement of Profit & Loss and the Board's Report for the year ended 31st March 2015 were authenticated by two of the directors, Mr. X and Y under their signatures. Referring to the provisions of the companies Act, 2013:

(i) Examine the validity of the authentication of the Balance Sheet and Statement of Profit & Loss and the Board's Report.

(ii) What would be your answer in case the company is a One Person Company (OPC) and has only one Director, who has authenticated the Balance Sheet and Statement of Profit & Loss and the Board's Report? (4 Marks)

Answer 2(c)

(i) Accordingly, financial statement and Board's report should be signed by Mr. D, Managing Director. Financial statement should be signed by Mr. Wise, Company Secretary of company. In the given case, two directors, Mr X, and Mr. Y, signed it. Authentication is not as per provisions of Companies Act, 2013.

(ii) Authentication of Financial Statement and Board's Report by one director in case of OPC is valid.

Question 3(a)(i)

In the annual general meeting of XYZ Ltd, while discussing on the matter of retirement and reappointment of director Mr. X, allegations of fraud and financial irregularities were levelled against him by some members. This resulted into chaos in the meeting. The situation was normal only after the chairman declared about initiating an inquiry against the director. Mr. X, however, could not be re-appointed in the meeting. The matter was published in the newspapers next day. On the basis of such news, whether the court can take cognizance of the matter and take action against the director on its own? Justify your answer with reference to the provisions of the Companies Act, 2013. (4 Marks)

Answer 3(a)(i)

Court cannot take cognizance of the matter on its own or on the basis of published information in newspaper. Please refer paragraph no. 15 of Chapter no. 11 – Foreign Company, Government Company, Power, Punishment & Misc. Provisions.

Question 3(a)(ii)

CB Ltd., an unlisted company, having a paid up equity share capital of Rs. 6 crore consisting of 60 lakh equity shares of Rs. 10 each, proposes to reduce the denomination of equity shares to Rs. 2 per share and make an initial public offer at a premium of Rs. 98 per share. Examine whether it is possible for the company to go ahead with these proposals under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements), Regulations, 2009? (4 Marks)

Answer 3(b)(ii)

Please refer the answer of question no. 27 of Chapter no. 15 – SEBI Act, 1992.

Question 3(b)

Queens Limited is a company listed at Bombay Stock Exchange. Company's Articles empower the Board of Directors to appoint additional director. The Board of Directors, therefore, appoints Mr. K, as the additional, director. It may, however, be pointed out that earlier, the proposal to appoint Mr. K, as a director on the Company's Board was rejected by the members at the company's Annual General Meeting. Examining the provisions of the Companies Act, 2013, answer the following:

- (i) Whether Mr. K's appointment as additional director by the Board of Directors is valid?
- (ii) Whether the Company's Annual General Meeting can appoint Mr. K as the additional director when the proposal to appoint comes before the meeting for the first time?
- (iii) In case the AGM of the company is not held within the stipulated time, decide whether Mr. K who was appointed by the Board as additional director, for the first time, can continue to act as a director? (8 Marks)

Answer 3(b)

- (i) Mr. K's appointment as additional director by Board is not valid because a person whose proposal to appoint as director was rejected by members' at AGM.
- (ii) Company's AGM can appoint Mr. K as additional director, if Board is unable to appoint additional director.
- (iii) Additional director holds office up to date of next AGM. If AGM is not held, he is deemed to vacate his office on last day on which AGM should have been held. Hence, Mr. K cannot continue as director.

Question 4(a)

Elaborate the provisions of the Companies Act, 2013 regarding Notice of Board Meeting. Draft a notice for the first meeting of the Board of Directors of India Timber Ltd. (8 Marks)

Answer 4(a)

Please refer the paragraph no. 15-16 of Chapter no. 4-Board Meeting and its power to know about provisions relating to notice of Board Meeting.

India Timber Ltd
Address
(CIN:_____)

Notice of the First Board Meeting

To
 The Director
 India Timber Ltd

Dear Sir/Madam,

Notice is hereby given that first Board Meeting of the Board of Directors will be held on _____ day, the ____ (date), ____ (month), ____ (year) at _____ (time) at the Registered office of company at (address) to discuss and transact following businesses:

1. To Elect the Chairman of the Meeting
2. To grant leave of absence, if any, to the Directors of the Company
3. To authorize an officer of the Company to sign the contracts or any other document or proceedings requiring authentication by a Company as per Section 21 of Companies Act 2013
4. To take note of the printing of new stationery and painting of new name plates as per the requirement of Section 12(3)
5. To take note of the duties of Directors under Section 166 read with relevant rules of Companies Act, 2013
6. To take note of general disclosure of interest of Directors under section 184(1) in Form MBP-1
7. To authorize Mr. _____ to keep safe custody of Form MBP -1
8. To appoint an Officer in Default
9. To authorize Mr. _____ to keep in custody the Statutory Registers as per new Companies Act, 2013 at the registered office of the company
10. To authorize Mr. _____ to e-file MGT-14 in respect of resolutions passes under Section 179(3) read with Companies (Management and Administration) Rules, 2014
11. Authorization To File E-Forms With Ministry Of Corporate Affairs
12. To discuss any other matter with permission of the Chair
13. To Vote of Thanks

You are requested to make it convenient to attend Board Meeting.

Place: _____

For, India Timber Ltd

Date: _____

(Managing Director)

DIN:

Question 4(b)(A)

DJA Company Limited, incorporated under the provisions of Companies Act, 2013, has two subsidiaries - AJD Limited and AMR Limited. All the three companies have prepared their financial statements for the year ended 31st March 2015. Examining the provisions of the Companies Act, 2013, answer the following:

(i) In what manner the subsidiaries - AJD Limited and AMR Limited shall prepare their Balance Sheet and Profit & Loss Account?

(ii) What would be your answer in case the DJA Limited - the holding company, is not required to prepare consolidated financial statements under the Indian Accounting Standards?

(iii) What shall be your answer in case one of the subsidiary company's financial statements does not comply with the Accounting Standards?

(iv) To what extent is the Central Government empowered to exempt a company from preparing the financial statements in compliance with the Indian Accounting Standards? (4 Marks)

Answer 4(b)(A)

The provisions of Companies Act, 2013 are applicable to the preparation, adoption and audit of financial statements of holding company shall similarly apply to consolidated financial statement. Please refer the paragraph no. 7 & 8 of Chapter no. 1 – Accounts and Audit.

Question 4(b)(B)

Mr. S, a member of MN Ltd., obtained an order from the Securities and Exchange Board of India (SEBI) against the company. But the company failed to redress the grievance of Mr. S within the time fixed. Consequently, SEBI imposed penalty on the company. The company, however, did not pay the penalty also. State how the penalty can be recovered from the company? (4 Marks)

Answer 4(b)(B)

Please refer the answer of question no. 9 of Chapter no. 15 – SEBI Act, 1992

Question 5

A and B were appointed as first directors on 4th April, 2014 in Sun Glass Ltd. Thereafter, C, D and E were appointed as directors on 6th July, 2014 and F, G and H were also appointed as directors on 7th August, 2014 in the company. In the Annual General meeting (AGM) of the company held after the above appointments, A and B were proposed to be retired by rotation and reappointed as directors.

At the AGM, resolution for A's retirement and reappointment was passed. However, before the resolution for 'E' could be taken up for consideration, the meeting was adjourned. In the adjourned meeting also, the said resolution could not be taken up and the meeting was ended without passing the resolution for B's retirement and reappointment.

In the light of above and with reference to relevant provisions of the Companies Act, 2013, answer the following:

(i) Whether proposals for retirement by rotation and reappointment of A and B only were sufficient?

(ii) What will be the status of B as a director in the company? (8 Marks)

Answer 5(a)

(i) Please refer paragraph no. 8 of Chapter no. 5 – Director

(ii) The vacancy caused by the retirement of a director by rotation should be filled up at the same meeting or at an adjourned meeting. At the adjourned meeting, the vacancy is not filled in nor it is expressly provided not to fill in the vacancy, then the retiring director shall be deemed to be reappointed but in the following cases, retiring director will not be deemed to be reappointed:

- At any previous meeting, a resolution for the appointment of director was put to vote, but was lost.
- If retiring director has expressed his unwillingness to continue in writing.
- If retiring director is not disqualified

Applying above provision, Mr. B is deemed to be reappointed.

Question 5(b)

Robertson Ltd. is a company registered in Thailand. Although, it has no place of business established in India, yet it is doing online business through telemarketing in India. Whether it will be treated as a Foreign Company under the Companies Act, 2013? Explain. (4 Marks)

Answer 5(b)

Foreign Company must have following features:

- It must be incorporated outside India; and
- It should have place of business in India.

Place of business may be either in its own or through agent or may even be through electronic mode.

Therefore, company registered in Thailand and doing business in India through telemarketing (i.e., electronic mode) is foreign company under Companies Act, 2013.

Question 5(c)

(i) The mango producers in Lucknow have entered into an arrangement among them whereby they have decided not to sell the mango below certain price. This arrangement has been made in writing but not intended to be enforced by any legal proceedings. Referring to the provisions of the Competition Act, 2002, examine whether the said arrangement shall fall within the jurisdiction of the term 'agreement' within the meaning of the said Act.

(ii) The coconut producers in Tirunelveli (Tamil Nadu) have formed an association to control the production of coconuts. Referring to the provisions of the Competition Act, 2002, examine whether the said association to control the production of coconuts shall fall within the jurisdiction of the term 'Cartel' under the provisions of the said Act. (4 Marks)

Answer 5(c)

(i) As per Section 2(b) of Competition Act, 2002, "Agreement" includes any arrangement or understanding or action in concert:

- Whether or not, such arrangement, understanding or action is formal or in writing or
- Whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings

Applying above definition in the given case, it can be said that arrangement among mango producers not to sell mango below a certain price shall amount to an agreement within meaning of Competition Act, 2002. Arrangement need not to be in writing.

(ii) 'Cartel' includes an association of producers, sellers, distributors, traders or service providers who, by an agreement amongst themselves, limit, control, or attempt to control the production, distribution, sale or price of, or trade in goods or provision of services. – Section 2(c)

Accordingly, an association formed to control the production of coconuts shall be considered as cartel.

Question 6(a)

Ideal Producer Co. Ltd. was incorporated on 1st April, 2009. Its paid up capital of Rs. 10 Lakh consists of 1 lakh equity shares of Rs. 10 each held by 100 individuals. There are six directors on its Board. Referring to the provisions of the Companies Act, 1956, answer the following:

(i) What is the quorum for the Annual General Meeting?

(ii) What is the quorum for the Board Meeting?

(iii) The Board of Directors wants to co-opt one expert in the field of agronomics, as Director on its Board. Whether is it permissible?

(iv) Is it obligatory for this company to have internal audit of its accounts for Financial Year 2015-16? (8 Marks)

Answer 6(a)

(i) The quorum of general meetings shall be 1/4th of the total number of members. Articles may provide for a larger quorum. In the given case, Producer Company has 100 members. Therefore, quorum shall be 25 members.

(ii) Quorum for Board Meeting in case of Producer Company shall be $\frac{1}{3}^{\text{rd}}$ of total strength of directors subject to minimum 3 directors. – Section 581 V of Companies Act, 1956. In the given case, quorum shall be three directors.

(iii) Board of Directors of Producer Company may appoint expert directors and additional director not exceeding $\frac{1}{5}^{\text{th}}$ of the total number of directors. Company has 6 directors. Appointment of one more director as expert director will be within limit. It is permissible.

(iv) As per Section 581 ZF of Companies Act, 1956, every producer company shall carry out internal audit by Chartered Accountant.

Question 6(b)

(i) Mr. Gambler has been arrested for a cognizable and non-bailable offence punishable for a term of imprisonment for more than three years under the Prevention of Money Laundering Act, 2002. He seeks your advise as to how can he be released on bail. Advise him.

(ii) What is the object of Constituting Panel for Mediation and Conciliation under the Companies Act, 2013? Who can file application for mediation and conciliation? (4 Marks)

Answer 6(b)

(i) Please refer paragraph no. 11 of Chapter no. 22 – Prevention of Money Laundering Act, 2002.

(ii) Please refer paragraph no. 23 of Chapter no. 11 – Foreign Co., Government Co., Punishment and Misc. Provisions

Question 7(a)

India Exports Limited engaged in the export of software products to U.S. One party in U.S. to whom the company exported certain products failed to pay the amount due for these exports resulting into non-repatriation of amount to India. The Adjudicating Authority on coming to know about this, levied a penalty on India Exports Limited under the provisions of Foreign Exchange Management Act, 1999.

The company seeks your advice as to which authority, to whom it can make an appeal against the decision of Adjudicating Authority. State also, the time limit within which the appeal can be lodged. (4 Marks)

Answer 7(a)

If adjudicating authority is an officer below the rank of Director of the Enforcement, appeal will lie to Special Director (Appeals) and where adjudicating authority is Director of Directorate of Enforcement, then the appeal shall lie directly to the Appellate Tribunal. Please refer paragraph Nos. 34 and 35 of chapter no. 16 to know about time limit and other rules in this regard.

Question 7(b)

What do you understand by 'public interest'? Explain, giving suitable examples, about its relevance under the Companies Act, 1956. (4 Marks)

Answer 7(b)

The word "Public interest" is used at several places in Companies Act, 1956 but it is not defined. In the case of *Shri Kishan vs. State of Rajasthan* (1955), Court has held that the word "Public interest" is not defined under Act. It is very wide expression and includes economic welfare of community and welfare of labour.

Section 250 of Companies Act, 1956, where CLB can restraint in change in Board of Directors of company if such change is against public interest. Please refer paragraph no. 18 of Chapter no. 3 – Inspection and investigation.

In the matter of reconstruction or amalgamation of company, court cannot sanction scheme unless the Court has received a report from the Registrar that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest. – Section 394 of Companies Act, 1956

As per Section 396 of Companies Act, 1956, Central Government can prepare scheme of Amalgamation between two or more companies in public interest. Please refer paragraph no. 9 of Chapter no. 10– Compromise, Arrangement & Amalgamation

As per Section 397 of Companies Act, 1956, member can apply and get remedy against oppression, if it is established that the affairs of the company are being conducted:

- In manner oppressive to any member, or
- In a manner prejudicial to public interest

Question 7(c)

Under Section 31 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, certain situations have been specified in which the provisions of this Act is not applicable. You are required to mention any four of such situations. (4 Marks)

Answer 7(c)

Please refer paragraph no. 14 of Chapter no. 21 – Securitisation Act, 2002.

Question 7(d)

Explain the usefulness of following terms in interpreting/construing statute:

(i) Preamble

(ii) Use of Foreign Decisions (4 Marks)

Answer 7(d)

(i) Please refer paragraph no. 17 of Chapter no. 18 – Interpretation of Statute.

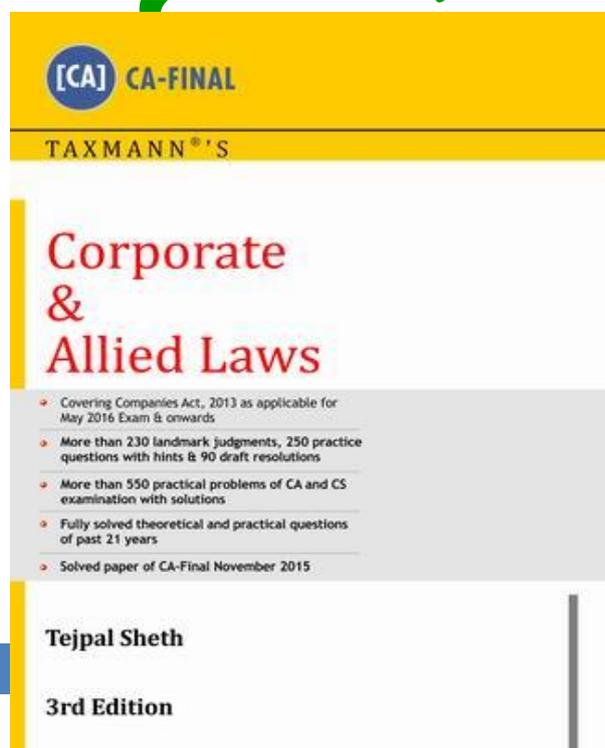
(ii) Please refer paragraph no. 18 of Chapter no. 18 – Interpretation of Statute.

Question 7(e)

Bharat Insurance Company issued a policy having sum assured of Rs. 5 lakhs on the life of Ms. Nirmala. While obtaining education loan of Rs. 4 lakh for higher studies, Ms. Nirmala assigned the above insurance policy in favour of the Bank providing the loan. Who, in this case, will be called the 'Policy Holder' under the Insurance Act, 1938 and why? Explain. (4 Marks)

Answer 7(e)

As per Section 2(2) of Insurance Act, 1938, policy holder includes a person to whom the whole of the interest of policy holder in the policy is assigned once and for all, but does not include an assignee thereof whose interest in the policy is defeasible or is for the time being subject to any condition. In the given case, policy is assigned for obtaining education loan. Here, Ms. Nirmala in favour of Bank assigns interest for time being as security. Ms. Nirmala remains policyholder.



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