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United Arab Emirates

ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS

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This country-specific Q&A provides an overview of enforcement of judgments in civil and commercial matters laws and regulations applicable in United Arab Emirates.

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UNITED ARAB EMIRATES

ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS





1. What international conventions, treaties or other arrangements apply to the enforcement of foreign judgments in your jurisdiction and in what circumstances do they apply?

The two most significant international treaties concerning the enforcement of civil judgments, which the UAE is a party to are:

 The Riyadh Arab Agreement of Judicial Cooperation 1983 (Federal Decree No. 53/1999) (the "Riyadh Convention")

The signatories are the UAE, Jordan, Bahrain, Tunisia, Egypt, Algeria, Djibouti, Saudi Arabia, Sudan, Syria, Somalia, Iraq, Oman, Palestine, Qatar, Kuwait, Lebanon, Libya, Morocco, Mauritania and Yemen.

 The GCC Convention for the Execution of Judgments, Delegations and Judicial Notifications 1996 (the "GCC Convention")

The signatories to the GCC Convention are the UAE, Bahrain, Saudi Arabia, Oman, Qatar and Kuwait.

The GCC Convention and the Riyadh Convention confirm each signatory's agreement to enforce the judgments issued in the Courts of the other countries (Article 1 of the GCC Convention and Article 25 of the Riyadh Convention). They each set out limited grounds upon which courts in the reciprocal jurisdictions can refuse to enforce a judgment and expressly stipulate that enforcing courts cannot review the merits of a judgment.

Separately, the UAE has entered into agreements with individual countries to establish reciprocal enforcement rights, including with the following countries (with the statute enacting the agreement in the UAE provided in brackets in each case):

• Afghanistan (Federal Decree No. 23 / 2009)

- Algeria (Federal Decree No. 12/1984)
- Azerbaijan (Federal Decree No. 37/2007)
- China (Federal Decree No. 55/2004)
- Egypt (Federal Decree No. 83/2000)
- France (Federal Decree No. 31/1992)
- India (Federal Decree No. 33/2000)
- Jordan (Federal Decree No. 106/1999)
- Kazakhstan (Federal Decree No. 117 / 2009)
- Kyrgyzstan (Federal Decree No. 113/2015)
- Morocco (Federal Decree No. 57/2006)
- Nigeria (Federal Decree No. 40/2018)
- Pakistan (Federal Decree No. 12/2005)
- Somalia (Federal Decree No. 95/1982)
- Sudan (Federal Decree No. 8/2005)
- Syria (Federal Decree No. 12/1980)
- Tajikistan (Federal Decree No. 69/2007)
- United Kingdom (Federal Law No. 38/2007)
- Ukraine (Federal Decree No. 139/2013)

Following the English Court decision in Lenkor Energy Treading DMCC v Puri [2021] EWCA Civ 770, on 13 September 2022, the International Cooperation Department of the UAE Ministry of Justice, issued a directive to the Courts confirming the reciprocity between the United Kingdom and the UAE in relation to mutual enforcement of judgements.

DIFC and ADGM

With regards to enforcement in the DIFC, the DIFC Court of First Instance is required to comply with the terms of any treaty in which the UAE has entered into for the mutual enforcement of judgments, orders or awards pursuant to Article 24 (2) of the DIFC Court law no. 10 of 2004 (the "DIFC Courts Law") which states "Where the UAE has entered into an applicable treaty for the mutual enforcement of judgments, orders or awards, the Court of First Instance shall comply with the terms of such treaty."

Similarly, the Abu Dhabi Global Markets (the "ADGM") is required to comply with the terms of UAE treaties. Article

170 of the ADGM Courts, Evidence, Judgements, Enforcement and Judicial Appointments Regulations 2015 (the "ADGM Enforcement Regulations") provides that "where the UAE has entered into an applicable treaty with a foreign country for the mutual recognition and enforcement of judgments, the Courts shall comply with the terms of such treaty and recognise and enforce judgments rendered by that foreign country....'.

This would include the GCC Convention and the Riyadh Convention. Whilst we would expect the DIFC and ADGM Courts would also apply the terms of the other country-specific agreements for mutual recognition and enforcement of judgments to which the UAE is a party, the position should be verified in each case as neither the DIFC nor the ADGM Courts are strictly bound by any broader obligation to this effect.

However, the DIFC Courts have also entered into a memoranda of guidance for enforcement of judgments with courts in various countries. This includes fellow common law jurisdictions (e.g., the Commercial Court of England & Wales, the Supreme Court of New South Wales, High Court of Kenya, Federal Courts of Australia and United States District Court for the Southern District of New York) as well as certain civil law jurisdictions (e.g., the Supreme Court of Kazakhstan and the Supreme Court of Korea).

2. What, if any, reservations has your jurisdiction made to such treaties?

Both the GCC Convention and Riyadh Convention have been ratified without reservations in the UAE and are deemed part of the applicable domestic laws of the UAE.

3. Can foreign judgments be enforced in your jurisdiction where there is not a convention or treaty or other arrangement, e.g. under the general law?

If there is no applicable convention or treaty, Article 222 of chapter 4 of the Federal Decree-Law No. 42/2022 on the Promulgation of the Civil Procedure Law (the Decree-Law) applies.

Article 222(1) of the Decree-Law provides that judgments and orders issued in a foreign state can be enforced in the UAE under the same conditions of the enforcement of judgments and orders that apply in the jurisdiction that issued the judgment or order. This in practice turn means that the UAE Courts will only enforce a judgment where there is reciprocity of enforcement between the UAE and the relevant

jurisdiction in which the judgment was handed down.

Default foreign judgments and those handed down ex parte will not be enforceable in the UAE under this regime. Similarly, the UAE local courts will not enforce judgments or orders for specific performance or injunctive relief as these remedies are not generally available in the UAE.

In the DIFC, pursuant to Article 24(1)(a) of the DIFC Courts Law and Article 7(4) of the Judicial Authority Law, the Court of First Instance has jurisdiction to ratify any judgment, order or award of any recognised foreign court subject to the relevant criteria described in the response to question 4 below.

In the ADGM, pursuant to Article 171(1) of the ADGM Enforcement Regulations, the ADGM Courts, through a decision made by the Chief Justice, can consider "recognised foreign courts" and therefore, recognise/enforce the judgements in accordance with the rules provided under the ADGM Enforcement Regulations:

"if, in the case of any foreign country which is not a party to an applicable treaty, the Chief Justice is satisfied that substantial reciprocity of treatment will be assured as regards the recognition and enforcement in that foreign country of the judgments of the Courts, the Chief Justice, after consulting the Chairman of the Board, may by order direct that the courts of that foreign country be recognised foreign courts."

4. What basic criteria does a foreign judgment have to satisfy before it can be enforced in your jurisdiction? Is it limited to money judgments or does it extend to other forms of relief?

Article 222 (2) of the Decree-Law lists the criteria that foreign judgments must satisfy in order that they can be enforced in the UAE. Those criteria include the following:

- the UAE courts did not have exclusive jurisdiction to hear the dispute in question;
- The judgment must have been issued by a court that had jurisdiction to hear the dispute, subject to the rules of international jurisdiction in that country;
- The judgment must have acquired the legal effects of res judicata in accordance with the law of the court issuing it;
- It must not conflict with a judgment rendered by the UAE courts; and
- It must not conflict with the UAE rules of

public policy or morals.

Foreign monetary judgment, monetary orders and deeds of settlements that were ratified by a foreign court can be enforced in the UAE. As noted above, the UAE onshore courts do not normally enforce non-monetary judgments (e.g., injunctive reliefs) as such remedies are not typically recognised or granted by the onshore courts.

The DIFC Courts will recognise and enforce a foreign judgment subject to the following conditions:

- The foreign judgment must be final and conclusive, however, there is a general presumption that a foreign judgment is conclusive;
- The DIFC Courts will not enforce certain types of foreign judgment, such as judgments ordering the payment of taxes, fines or penalties; and
- The foreign court must have had jurisdiction, according to the DIFC Rules on the Conflict of Laws, to determine the dispute.

Similarly, the ADGM Courts will recognise and enforce judgements of recognised courts subject to the following conditions:

- it is either final and conclusive as between the judgement debtor and judgement creditor; or
- requires the judgement debtor to make an interim payment to the judgement creditor.

5. What is the procedure for enforcement of foreign judgments pursuant to such conventions, treaties or arrangements in your jurisdiction?

A judgment creditor should check the terms of any applicable treaties or conventions to understand whether a special process applies.

Broadly speaking, the process is the same as the ordinary execution process for a foreign judgment, but specific documentation may be required to be filed with the application. For example, where the Riyadh Convention applies (see question 1 for the signatory countries), a judgment creditor must provide specific documents (see Article 34 of the Riyadh Convention).

6. If applicable, what is the procedure for enforcement of foreign judgments under the general law in your jurisdiction?

The process for enforcement of a foreign judgment is set out in Chapter 4 of the Decree-Law which provides that it should be done through the execution court.

Execution courts are courts that are specifically set up in each Emirate for the purposes of enforcing substantive judgments passed so long as those judgments are enforceable (e.g., final and conclusive judgments, or where judgments provide for the expedited enforcement of a judgment). A party seeking enforcement of a judgment should approach the execution court.

Assuming the criteria for enforcing a foreign judgment are met, the judgment creditor should submit an application to the execution judge seeking enforcement of the foreign judgment and requesting that the judgment be affixed with the "writ of execution".

Once a favourable decision is issued, the judgment debtor would be served with the order and ordered to settle the judged amount within 7 days. Following the expiry of the 7-day period, if no payment is made the judgment creditor will have the right to seek addressing the relevant banks and UAE authorities to have the judgment enforced against the judgment debtor's assets in the jurisdiction. The judgment creditor can request the execution court to address authorities across the UAE in jurisdictions beyond the execution court overlooking the enforcement process. The execution court in question would then have the discretion to either directly address authorities beyond its local jurisdiction or to deputise execution courts in which jurisdiction the action is required to be taken. The Judgment debtor can challenge the enforcement process.

In the DIFC, Article 7(6) of the DIFC Courts Law requires that judgments rendered outside the DIFC be recognised and enforced within the DIFC in accordance with the procedure prescribed in the Rules of the DIFC Courts. An enforcement application must be filed with the DIFC Courts' Enforcement Division and the exact procedure to be followed will depend on the type of assets that the judgment creditor is seeking to enforce against.

It is worth noting that, previously, claimants and judgment creditors could seek to use the DIFC as a "conduit" jurisdiction, whereby they would seek a judgment from the DIFC Courts ratifying a foreign judgment and use that to more quickly obtain an enforcement order from the local onshore UAE Courts. However, this is no longer a quicker or necessarily effective route since the establishment of the Joint Judicial Tribunal for the Dubai Courts and DIFC Courts in 2016, which is tasked with deciding conflicts between the two courts.

In the ADGM, Article 298(1) and (3) of the ADGM

Enforcement Regulations requires that a party seeking to enforce a judgement must first submit an application for registration of the foreign judgement. Once a judgement is recognised, an application for enforcement may be filed in accordance with the ADGM Enforcement Regulations.

ADGM Courts cannot be used as a "conduit" jurisdiction, the ADGM guide to amendments to Article 13 of the Abu Dhabi Law No. 4 of 2013, on the jurisdiction of the ADGM Courts clearly provides "Put simply, parties cannot use ADGM for the enforcement of non-ADGM judgments and awards in other jurisdictions – the limited exception being where the originating judgment comes from another court within the Emirate."

7. What, if any, formal requirements do the courts of your jurisdiction impose upon foreign judgments before they can be enforced? For example, must the judgment be apostilled?

The UAE onshore court requires the following requirements to be fulfilled before filing the application:

- All the documents must be submitted in Arabic.
- An original version of the judgment to be fully attested up to the UAE Embassy in the country of origin. That document should then be attested by the UAE Ministry of Foreign Affairs and Ministry of Justice before being submitted to court.

In the DIFC, the formal requirements for enforcement will depend on what assets the judgment creditor is trying to enforce against. The appropriate form will need to be filed with the DIFC Enforcement Division along with the relevant supporting evidence (e.g., an affidavit).

8. How long does it usually take to enforce or register a foreign judgment in your jurisdiction? Is there a summary procedure available?

In theory, a decision should be issued in relation to the enforcement of foreign judgments within 5 working days. However, in practice, this is entirely subject to the execution court of jurisdiction where the process could take anywhere between 5 – 20 working days for a decision to be issued by the competent UAE onshore Court. There is no summary procedure; however, a decision is issued ex parte (i.e. without serving the judgment debtor with the application filed). This is just

as a first step.

In the DIFC, once the court issues an order enforcing or recognising the award, this must be served on the judgement debtor. The judgement debtor will then have 14 days after service to file an application to set aside the order.

If the judgement debtor does not file an application to contest the recognition and enforcement of the award, then it can be enforced after the 14 day period has lapsed. However, if they do file an application to contest, then it may take time to enforce the award as it will not be recognised until after the application has been considered and disposed of by the DIFC courts.

Similarly, in the ADGM, the registration order must be served on the judgement debtor within 21 days after the date of issuing of the order or within such other period as the Court may order otherwise. The judgement debtor will then have a specific amount of time (specified by the ADGM courts in the registration order) to file an application contesting recognition and enforcement.

If such an application is filed, then the judgement will not be recognised until after the application has been considered and disposed of by the ADGM courts. Depending on the time this takes, it can increase the time it takes to enforce the judgement.

9. Is it possible to obtain interim relief (e.g. an injunction to restrain disposal of assets) while the enforcement or registration procedure takes place?

In the UAE onshore Courts, the equivalent of a freezing injunction is an "attachment order" by which the assets of judgment debtors are frozen by the courts. It is possible to obtain an attachment order in support of foreign proceedings.

The UAE onshore Court sets a high threshold for granting attachment orders, where applicants must present the following:

- Bona fide evidence that the debt is payable which in this case would be the foreign judgment issued;
- Evidence that there is an urgent risk and serious fear of dissipation of assets, for example;
 - If the judgment debtor does not have a stable residence in the UAE.
 - if the judgment creditor, based on serious evidence, fears that the debtor would flee the country or

dissipate their assets.

- if the debt securities are at risk of being lost.
- For a lessor, against each the tenant or the sub-tenant, on the movables and proceeds of the leased premises as a guarantee for the preferential right legally prescribed for the lessor and where movables and proceeds were moved without the lessor's knowledge, unless thirty days have lapsed from the date of their movement, or unless amounts of money sufficient to guarantee the preferential right prescribed for the lessor remained in the leased premises.
- For an employee, where it is impossible to settle their dues as determined by the law governing the relationship with the employer, in order to secure payment of the employees' dues after being temporarily evaluated by the competent administrative authority.

Unless these conditions are evidenced, the UAE onshore Court is unlikely to issue an attachment order.

Articles 22(2) and 32(2) of the DIFC Courts Law No. 10 of 2004 gives the DIFC Courts the power to order a freezing injunction in support of enforcement proceedings, they provide:

Article 32(2): The DIFC Court has the power to make orders and give directions as to the conduct of any proceedings before the DIFC Court that it considers appropriate, including:

. . .

interim or interlocutory orders;

Article 22(2): "The Court of First Instance may order an injunction restraining a person from engaging in conduct or requiring a person to do an act or thing or other order the Court considers appropriate."

The DIFC Courts follow the common law requirements for a freezing injunction.

Similarly, Part 10 of the ADGM Court Procedure Rules 2016 provides that a party can apply for an interim injunction, such as a freezing order, to protect the assets against which it anticipates being able to enforce.

10. What is the limitation period for enforcing a foreign judgment in your jurisdiction?

The Decree-Law has recently introduced a limitation

period of 15 years during which a judgment must be enforced.

In the ADGM, section 173 of the ADGM Enforcement Regulations provides that the judgement creditor has six years "from the date of the judgement, or where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceeding, to register the judgment."

There is no statutory law on this point in the DIFC.

11. On what grounds can the enforcement of foreign judgments be challenged in your jurisdiction?

In the UAE onshore Court, either party can apply to challenge the decision issued by the execution judge by filing an appeal within 30 days, from the day on which the decision was issued or from when service was completed, as applicable. Such appeals would look at the following issues:

- Whether the foreign courts had jurisdiction over the dispute and the UAE Courts did not have exclusive jurisdiction to hear it;
- That the parties to the dispute were duly served with the applicable documents and represented in the foreign court proceedings;
- That the foreign judgment has acquired the legal effects of res judicata; and
- That the judgment does not conflict with a judgment previously issued by the UAE Courts, the public policy or morals.

In the DIFC, a foreign judgment may be challenged on limited grounds only including:

- where the judgment was obtained by fraud;
- where the judgment is contrary to public policy; and
- where the proceedings were conducted in a manner which the DIFC Courts regard as contrary to the principles of natural justice.

The foreign judgment may not ordinarily be challenged on the merits or substantive grounds or on the basis that it contains an error of fact or law.

Pursuant to Article 1175(1)(a), the ADGM Courts will set aside a foreign judgement and refuse enforcement if the judgement debtor 0or any party against whom the registered judgement may be enforced submits an application satisfying the Court of First Instance that:

• the judgement is not a judgement to which

the ADGM Enforcement Regulations apply or was registered in contravention of such regulations;

- the original court had no jurisdiction in the circumstances of the case:
- where it was given in default, if the judgment debtor was not duly served with the documents which instituted the proceedings or with an equivalent document, in accordance with the law of the country of the original court, in sufficient time to enable him to arrange for his defence;
- the judgement was obtained by fraud;
- the rights under the judgement are not vested in the applicant; or
- enforcing the judgement would be contrary to public policy of Abu Dhabi or the ADGM.

12. Will the courts in your jurisdiction reconsider the merits of the judgment to be enforced?

The UAE onshore Courts, DIFC Courts and ADGM Courts should not reconsider the merits of a judgment sought to be enforced. The UAE Courts should only consider whether the foreign courts had jurisdiction over the dispute and confirm that the UAE Courts did not have exclusive jurisdiction to hear it.

13. Will the courts in your jurisdiction examine whether the foreign court had jurisdiction over the defendant? If so, what criteria will they apply to this?

The DIFC Courts should ensure that the court that issued the judgment had jurisdiction to determine the dispute. The DIFC Courts should assume that the foreign court had jurisdiction in circumstances where the defendant was:

- present in the jurisdiction when the proceedings commenced;
- a party to the proceedings; and
- otherwise submitted to the jurisdiction of the relevant court (that is, by filing a defence or party agreement).

In the ADGM, the party against whom the enforcement is being sought, can apply to the Court of First Instance requesting that the judgement should be set aside on the grounds that the original court had no jurisdiction in the circumstances of the case. The ADGM Courts will then consider the application and if it is satisfied that the original court had no jurisdiction, it will set aside the

enforcement.

14. Do the courts in your jurisdiction impose any requirements on the way in which the defendant was served with the proceedings? Can foreign judgments in default be enforced?

The UAE onshore Courts require judgment creditors to have been duly served with the applicable documents and represented in the proceedings. Thus, rendering default judgment and ex parte judgment technically unenforceable by the UAE onshore Courts.

In the ADGM, if the judgement debtor satisfies the Court of First Instance that the judgement was given in default, and the judgement debtor was not duly served in accordance with the law of the country of the original court, the judgement will not be enforced.

15. Do the courts in your jurisdiction have a discretion over whether or not to recognise foreign judgments?

Only to the extent that a foreign judgment does not meet the criteria for an enforceable judgment, as set out in question 4 above, or if there are valid grounds upon which the judgment debtor can challenge the award.

16. Are there any types of foreign judgment which cannot be enforced in your jurisdiction? For example can foreign judgments for punitive or multiple damages be enforced?

The UAE Courts will not recognise and enforce default foreign judgments and those handed down ex parte. Similarly, the UAE local Courts will not enforce judgments or orders for specific performance or injunctive relief as these remedies are not generally available in the UAE.

In the DIFC, the courts have jurisdiction to ratify any judgment, order or award of any recognised foreign court and will do so as long as it meets the criteria set out in question 4 above (and where there are no grounds to challenge it).

Similarly, the ADGM courts will recognise and enforce any judgement, order or award of a recognised foreign court as long as it satisfied the criteria set out in question 4 are above are met (and where there are no grounds to challenge it).

17. Can enforcement procedures be started in your jurisdiction if there is a pending appeal in the foreign jurisdiction?

Enforcement procedures should not be started in the UAE onshore Courts, DIFC Court or ADGM Court unless the foreign judgment sought to be enforced has acquired the power of res judicata.

18. Can you appeal a decision recognising or enforcing a foreign judgment in your jurisdiction?

Yes, parties can appeal decisions enforcing a foreign judgment handed down by the UAE onshore courts, the DIFC Court of First Instance and the ADGM Court of First Instance.

19. Can interest be claimed on the judgment sum in your jurisdiction? If so on what basis and at what rate?

The UAE onshore Courts will not award interest on the damages award but will apply any interest awarded by foreign courts (the interest rate, if applicable, will be governed by the laws of the jurisdiction that issued the judgment). If the foreign judgment did not include interest, the judgment creditor cannot seek interest to be awarded. The UAE execution court's power is limited to enforcing a foreign judgment and affixing it with the writ of execution.

The DIFC Courts will also recognise and enforce interest awarded under a foreign judgment. Once the DIFC Courts enter judgment recognising and enforcing the foreign judgment, post-judgment interest is determined in accordance with DIFC law.

The ADGM Courts will also recognise and enforce interest awarded under a foreign judgement, Practice Direction 10 provides that "an applicant seeking an order for the recognition or enforcement of an award of interest which relates to the period after the date of the award must provide the following:

- Whether simple or compound interest was awarded;
- Where rests were provided for, specify them;
- the rate or rates of interest claimed; and
- the period or periods for which each rate of interest is claimed."

20. Do the courts of your jurisdiction require a foreign judgment to be converted into local currency for the purposes of enforcement?

In relation to enforcement applications before the UAE onshore Courts, the value of the claim must be converted into UAE Dirhams. There is no equivalent requirement for enforcement in the DIFC or ADGM and so a monetary judgment does not need to be converted into UAE Dirhams.

21. Can the costs of enforcement (e.g. court costs, as well as the parties' costs of instructing lawyers and other professionals) be recovered from the judgment debtor in your jurisdiction?

In the UAE onshore Courts, the judgment creditor can only claim the court fees paid in the UAE in the enforcement application. Lawyers' fees, additional interest and other professional fees cannot be claimed. In the DIFC and ADGM, the Rules of the DIFC Courts and Part 24 of the ADGM Court Procedure Rules 2016, each prescribe the level of costs that a judgment creditor is entitled to recover associated with an enforcement process.

22. Are third parties allowed to fund enforcement action in your jurisdiction? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

UAE law is silent on the funding of an enforcement action. Generally, no-win-no-fee arrangements and agreements whereby a lawyer is rewarded by way of a share of the proceeds are prohibited in onshore UAE proceedings.

In the DIFC, Practice Direction No. 2 of 2017 created rules regarding third-party funding. Similarly, in the ADGM, third party funding is governed by the Litigation Funding Rules 2019 ("ADGM Funding Rules").

Both the DIFC and ADGM provide that a party is required to disclose that it has received third-party funding and the identity of the funder.

DIFC Courts Order No.4 of 2019 established a Mandatory Code of Conduct for Legal Practitioners in the DIFC Courts and created certain additional obligations for legal practitioners, including in the case of third-party funding. It specifically prohibits lawyers from being swayed from their duties to the client by any instructions or interest of a funder. Third party funders can be liable for adverse costs. A similar provision is included in Article 9 of the ADGM Funding Rules.

23. What do you think will be the most significant developments in the enforcement process in your jurisdiction in the next 5 years?

We are not aware of any prospective amendments to the Decree-Law or the general enforcement landscape in the UAE at this time.

24. Has your country ratified the Hague Choice of Courts Convention 2005? If not, do you expect it to in the foreseeable future?

The UAE is not a signatory to the Hague Choice of Courts Convention 2005, and we do not anticipate the UAE taking this step in the foreseeable future.

25. Has your country ratified the Hague Judgments Convention 2019? If not, do you expect it to in the foreseeable future?

The UAE is not a signatory to the Hague Judgments Convention 2019, and we do not anticipate the UAE taking this step in the foreseeable future.

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