

Acceptance of Deposits under Companies Act, 2013

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- Vinod Kothari and Company, company secretaries, is a firm with more than 35 years of vintage
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Meaning of “Deposit” under Companies Act, 2013



Meaning of Deposits – Sec 2(31) of the Companies Act, 2013

Section 2(31) defines deposit as, "*deposit*" includes ***any receipt of money*** by way of ***deposit or loan*** or in any other form ***by a company***, but ***does not include*** such categories of ***amount as may be prescribed*** in consultation with the Reserve Bank of India

Deposit is defined u/s 2(31) to mean-

- Any receipt of money;
- By way of deposit or loan or any other form;
- By a company;
- But excludes certain categories of receipts (exclusion is provided in rule 2(1)(c) of Acceptance of Deposits Rules, 2014)

Pertinent questions:

- Does the term “deposit” include non-monetary consideration or only monetary receipts?
- Whether receipt of money from sale of goods/services are also deposit?
- Whether a receipt of money is presumed to be a deposit unless covered under the exclusions in the Rules?
- Whether the provisions related to “deposit” under CA, 2013 is applicable to:
 - NBFCs and HFCs?
 - LLPs?



What is not a “deposit”?



What is not a deposit? [Rule 2 (1) (c)] [1/4]

- Amount received from CG/SG/local authority/ statutory authority, or any other source whose repayment is guaranteed by CG/SG
- Amt. received from foreign national, foreign Govt., International banks, foreign body corporates or PROI subject to the provisions of FEMA
 - ECB guidelines or FDI, as the case may be, to be followed
- Any amt. received from banking companies, SBI or any of its subsidiaries or banking institutions identified by CG or Co-operative banks
- Any amt received as loan or financial assistance from PFIs or Insurance companies or Scheduled banks
- Any amt. received against issue of CP or any other instruments issued as per guidelines or RBI
 - to meet short term financial needs
- Amount accepted by Nidhi company in accordance with the rules made under section 406 of the Act
- any amount received by way of subscription in respect of a chit under the Chit Fund Act, 1982
- Amount received by a company from any other company
 - money received from LLP is not excluded
 - money from foreign company having place of business in India
- Any amt received or held pursuant to an offer made in accordance with the provisions of the Act towards subscription to any securities, including share application money or advance towards allotment of securities pending allotment, so long as such amount is **appropriated only against the amount due on allotment of the securities applied for-**
 - If securities for which advance / money is received is not allotted within 60 days from the date of receipt of application money/advance, entire amount should be refunded within next 15 days
 - any adjustment of the amount for any other purpose shall not be treated as refund
 - Compliance in case of share warrants?

What is not a deposit? [Rule 2 (1) (c)] [2/4]

- Any amount received from a person who, at the time of the receipt of the amount, was **a director of the company or a relative of the director of the Private company**
 - At the time of giving the money, the director or his relative, as the case may be, has to give declaration that amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others
 - Company to make disclosure of money so received in Board's report
- Amount received from an employee of a company **not exceeding his annual salary** under a contract of employment with the company in the nature of non-interest bearing security deposit
- any amount received from AIF, Domestic Venture Capital Funds, Infrastructure Investment Trusts, Real Estate Investment Trusts and Mutual Funds registered with the SEBI
- Any amount brought in **by the promoters** of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank
 - pursuant to stipulation imposed by lending institutions
 - loan given by promoter or their relatives
 - exemption is available till the loan of bank/ PFI is repaid
- an amount of twenty five lakh rupees or more received by a start-up company, by way of a convertible note in a single tranche, from a person
 - **'Convertible note'** means an instrument evidencing receipt of money initially as a debt, which is repayable at the option of the holder, or which is convertible into such number of equity shares of the start-up company upon occurrence of specified events and as per the other terms and conditions agreed to and indicated in the instrument

What is not a deposit? [Rule 2 (1) (c)] [3/4]

- Amount received in the course of, or for the purposes of, the business of the company
 - (a) advance received for supply of goods or services should be **appropriated within 365 days from the date of receipt of advance**
 - (i) **If Not appropriated within 365 days?**
 - (ii) **Whether actual delivery is important?**
 - (b) Advance received **in connection with consideration for immovable property** under agreement or arrangement
 - (i) provided such advance is adjusted against the consideration as per agreement
 - (c) **Security deposit for performance of contract** for supply of good or provision of services
 - (d) Advance received against long term supply of capital goods except for immovable property
 - (i) **Capital goods is defined under GST Law. This may include research projects, manufacturing projects, etc. So, any amount received under long term projects other than against immovable properties, shall not be treated as deposits.**
 - (e) Amt. received as advance towards consideration for **providing future services in the form of a warranty or maintenance** contract as per written agreement or arrangement, if the period for providing such services does not exceed the period prevalent as per common business practice or five years, from the date of acceptance of such service whichever is less;
 - (f) Advance received and as allowed by sectoral regulator
 - (g) Advance for **subscription towards publication** to be adjusted against receipt of such publications whether in print or in electronic to be adjusted against receipt of such publications
- **What if the aforesaid advance becomes refundable (whether with or without interest), due to the reasons that the company accepting the money does not have necessary permission or approval?**

What is not a deposit? [Rule 2 (1) (c)] [4/4]

Type of debenture/bond	Whether secured/unsecured?	Whether exempt?
CCDs (convertible within 10 years)	Unsecured	Yes
	Secured; 1st charge / pari passu with 1st charge	Yes
	Secured; Inferior charge	Yes
NCDs	Unsecured but listed	Yes
	Unsecured and unlisted	No
	Secured; 1st charge / pari passu with 1st charge	Yes
	Secured; Inferior charge	No
OCDs	Unsecured but listed	Yes
	Unsecured and unlisted	No
	Secured; 1st charge / pari passu with 1st charge	Yes
	Secured; Inferior charge	No

Meaning of 'Appropriation'

- Advance for supply for goods is under exclusion list. However, will be treated as deposit-
 - If not appropriated towards supply of goods/ services
 - within 365 days from date of acceptance of advance
 - will be deemed as deposit, within 15 days from the date of expiry of 365 days
 - If agreement is not duly registered
 - In case of advance received for sale of immovable property
- **'Appropriation'** means setting aside or allocating the received advance against the identified supply of goods or provision of services
 - Does it have to do with the actual supply of goods or services, or the identification of the amount with a specific contract for supply of goods or services?
 - Evidently, MCA cannot regulate commercial contracts for supply of goods or services

Whether loan received from an HUF will be treated as deposit?

- Rule 2 (1) (c) (viii) excludes amount received from directors and in case of private limited companies, also from the relative of directors
- Term 'relative' defined u/s 2 (77) of CA, 2013 with reference to any person includes anyone who is related to another if they are members of a HUF.
- Under IT Act, HUF is treated as a separate entity
- For the purpose of prosecution, it has been held that an HUF is not a legal entity distinct and separate from that of the members who constitute it.
- For the purpose of Companies Act as well, it would be fair to assume that HUF is no different from its constituents and that the money that flows from any coparcener is money given by HUF.

Considering the assumptions, following cases w.r.t. acceptance of deposits by a private co. to be evaluated:

1. coparcener of the HUF is director of the private company- **all the members of HUF will be regarded as relative of director**
2. coparcener is the shareholder of the private company but does not hold directorship- **limit on amount received 100% or 35%, as the case may be**
3. HUF is the shareholder of the private company through the Karta and no coparcener holds directorship.- **limit on amount received 100% or 35%, as the case may be**
4. Neither the HUF nor the coparcener holds shares of the company nor any of the coparceners hold directorship in the company- **amount cannot be accepted**

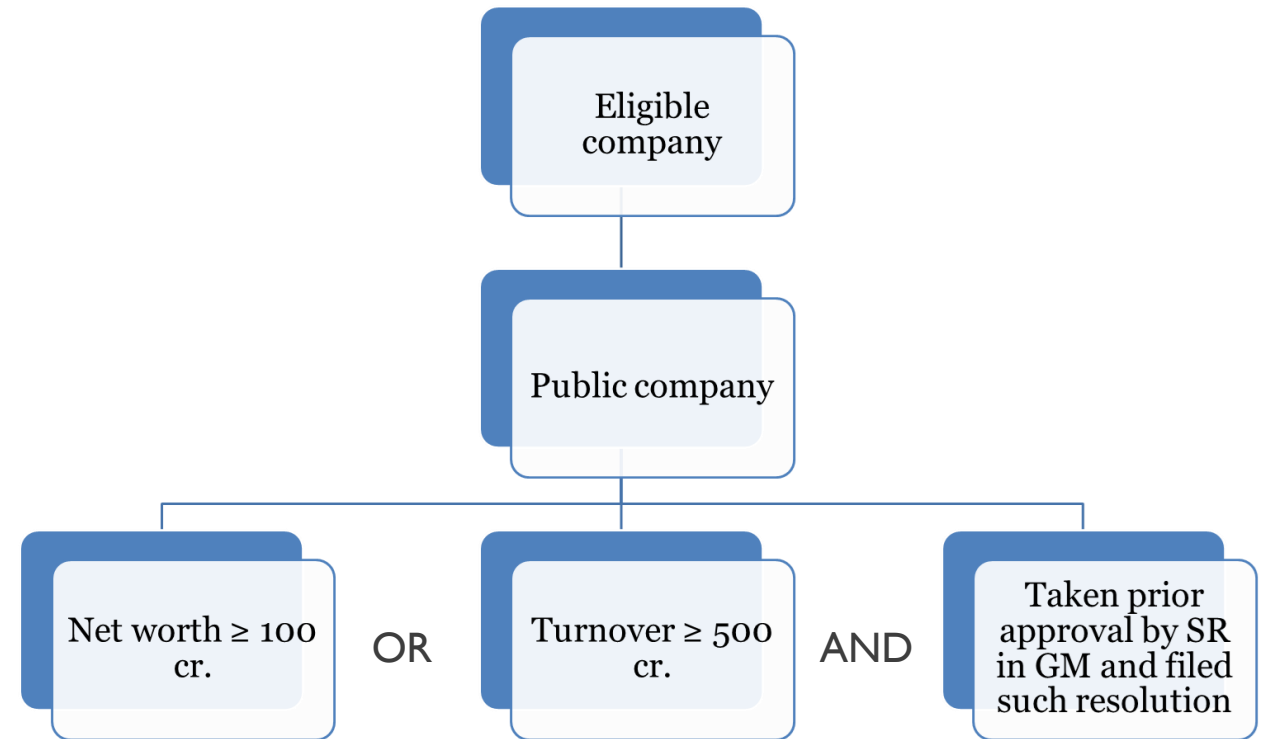


Prohibition on acceptance of deposit from public



Public deposit only by Eligible public company

- Sec 73(1) reads,
 - *On and after the commencement of this Act, **no company shall invite, accept or renew deposits under this Act from the public except in a manner provided under this Chapter.***
- Notwithstanding sec 73(1), sec 76(1) allows **eligible companies** to accept deposit from public (within the limits specified), subject to compliance with sec 73(2).
 - From members - upto 10% of net worth
 - From public upto 25% of net worth



Other requirements have to be complied:

- credit rating (every year),
- deposit in deposit repayment reserve account etc.
- creation of security including creation of charge within 30 days of acceptance of deposits
- Filing of circular for advertisement in Form DPT-I

Acceptance of deposit in a nutshell

Type of company	From members	From directors	From relative of directors	From public/others
Private company	<ul style="list-style-type: none"> 100% of (PUSC + FR + SP); No limit if pvt co. is not: <ol style="list-style-type: none"> an associate or subsidiary; borrowings < twice of PUSC or 50 cr, whichever is less; and Not defaulted in repayment of borrowings 	Exempt deposit: Any amount out of the owned funds of the director or his relative. Declaration to this effect is to be submitted in writing and necessary disclosure to be made by the co. in Board's report.		Nil
Public company (other than eligible company)	35% of (PUSC + FR + SP)	Exempt deposit (see above)	Nil	Nil
Eligible company	10% of (PUSC + FR + SP)	Exempt deposit (see above)	25% of (PUSC+FR+SP)	
Start-up (pvt. co)	No limit for start-up for 10 years from the date of its incorporation	Same as pvt. co. (see above)		Nil

For the purpose of CA, 2013, start up company means a private company incorporated under the Companies Act, 2013 (18 of 2013) or the Companies Act, 1956 (1 of 1956) and recognised as start-up in accordance with the notification issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry



Other requirements - Deposit Rules



Restrictions under rule 3 on acceptance of deposit

- Rule 3 lays down certain restrictions on acceptance of deposits by companies.
 - Companies shall not accept / renew deposits repayable on demand or upon receiving a notice within a period of less than 6 months or more than 36 months from the date of acceptance / renewal.
 - The company may accept / renew deposits for less than 6 months, if
 - Such deposits do not exceed 10% of aggregate share capital, free reserves and securities premium account
 - Minimum tenure of be 3 months.
 - In case of joint deposit holders, maximum number shall not exceed 3.

Circular or circular by way of advertisement – Rule 4

Requirements to be followed by companies in case of issue of acceptance of deposits from members:

- Issue circular [DPT-1] to the members, duly signed by BoD
 - financial position of the company
 - credit rating
 - number of depositors
 - amt. due towards previous deposits, if any
 - whether secured or unsecured
 - Attach certificate from auditor that Co. has not defaulted in repayment of deposit
- Circular should also be published in 2 newspapers and be posted on website of Co.
- Signed circular to be delivered to ROC at least 30 days before the dt. of issue
- A circular or circular in the form of advertisement issued in accordance with section 73(2) or section 76 shall be valid until
 - Expiry of 6 months from closure of financial year in which issued or
 - Date on which financial statements laid before company in general meeting or
 - Latest day on which the meeting should have been held as per the Act,
 - whichever is earlier.

Exemption to private Limited companies if deposit from members does not exceed 100% of net worth and co. has filed DPT-3

Creation of security – Rule 6

- Company u/s 73(2) and every eligible company inviting secured deposits shall provide for security , at least for an amount remaining unsecured by the deposit insurance provided.
 - By way of charge on assets referred to in balance sheet, excluding intangible assets.
 - The amount of such deposits and interest payable thereon, shall not exceed the market value of such assets as assessed by a registered valuer.
- The amount of deposits accepted and the interest payable thereon shall be secured either by way of deposit insurance and/or by way of charge on assets.
- Security to be created in favor of a deposit trustee on a specific moveable property or immovable property of the Company.

Appointment of Deposit Trustee – Rule 6

- Company needs to appoint deposit trustees before inviting **secured deposits**.
 - Written consent to be obtained from trustees
 - Deposit trust deed in DPT-2 to be executed at least 7 days before issuing circular/advertisement.
- A person, including a company providing trusteeship services, cannot be appointed as trustee if such person
 - Is a director, KMP, officer or employee of the company, or of its holding, subsidiary or associate company or a depositor in the company or is related to any such person;
 - Is indebted to the company, or its subsidiary, holding or associate company or a subsidiary of such holding company.
 - Has any material pecuniary relation with the company;
 - Has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interests thereon.

Creation of deposit redemption reserve – Rule 13

- Applicable to every Company raising member deposits & eligible companies.
- Company to park, on or before 30th day of April each year, a sum of at least 20% of the amount of deposits, whether secured or unsecured, maturing during the following financial year
 - in deposit repayment reserve account with any scheduled bank, free from charge or lien;
- The money so parked can be utilized only for the purpose of repayment of deposits
- The amount remaining deposited shall not at any time fall below 20% of the amount of deposits maturing until current and next financial year.



Practical concerns



Practical concerns - Classification of certain receipts as deposit or exempt deposit

- School is registered as a sec 8 company - Student enrolled and paid fees in advance, whether deposit?
- if a car manufacturing Company receives money and gives a warranty of 10 years on cars, whether it would be able to claim this exemption?
- Advance received against construction or real estate projects, whether deposit?
- Security deposit received by a company engaged in the business of letting out properties, whether deposit?
 - received to secure potential obligation of counterparty, hence, should not be deposit
- Advance received for research projects, whether deposit?
- Amount received for newspaper subscriptions for a year, will be treated as deposit?
- Advance received by the company engaged in jewellery business, whether deposit?
- Advances received by the hospitality companies who provide holidays on timeshare basis, but do not provide services within 365 days, whether deposit?
- Money received from holding company by subsidiary against issue of securities, whether deposit?
- If company takes money from director, later remove him, whether deposit?
- Debentures issued to company and company transfers the same to individual, whether deposit?
- If a start up company receives Rs. 25 lakhs from a person, whether that will be treated as deposit?



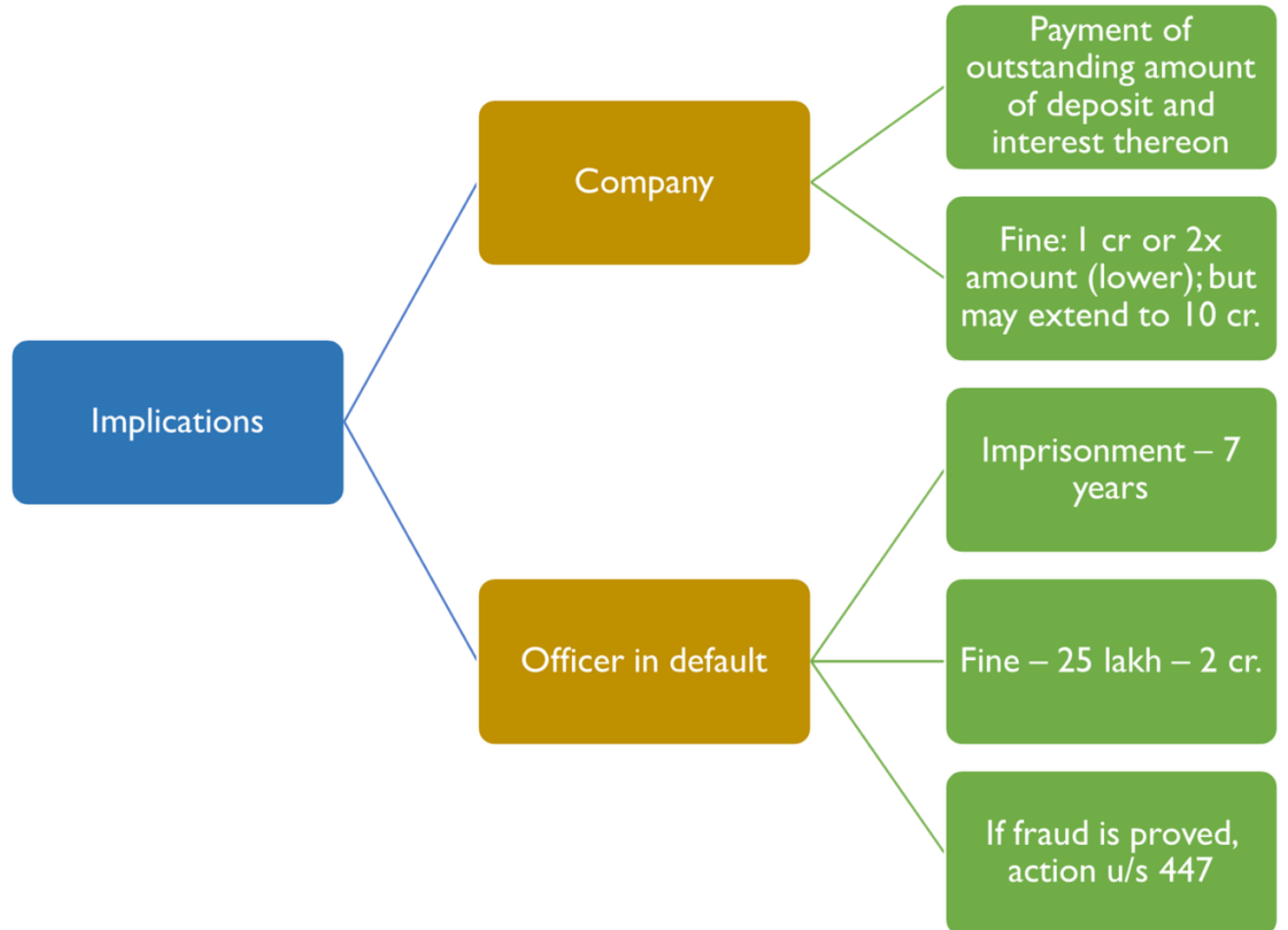
Punishment for contravention of deposit provisions



Punishment for contravention of deposit provisions

Nature of contravention:

- acceptance or invitation to accept deposit in contravention of section 73 or 76 or rules made thereunder or
- failure of repayment of deposit or part thereof or any interest due thereon
 - within the time specified under sec 73 or 76 or rules made thereunder or such further time as may be allowed by the Tribunal under section 73
- **Imprisonment and fine= Non Compoundable**





DPT-3 filing and disclosure in financial statements



Filing of form DPT -3

Requirement:

- **Rule 16** - DPT - 3 to be filed **by all cos.** to which these rules apply, except Govt. Companies and NBFCs/ HFCs
- This form is for filing:
 - return of deposit or
 - particulars of transaction not considered as deposit or both by every company other than Government company
- To be filed on or before 30th June every year
- Information as on 31st March, duly audited by the auditor to be submitted
- Statutory auditor to certify that the amount specified in '*Particulars of deposits*' and '*Particulars of liquid assets*' is correct and in line with the relevant provisions of the Companies Act, 2013.

Additional information with respect to particulars of “exempted deposits”

The revised format requires reporting of the following with respect to the “exempted deposits” received by the company:

Particulars	Details of loan (in INR)				Ageing of loan (in Years)			
	Opening balance	Additional loan during the year	Repaid during the year	Any other adjustment	Closing balance	Loans outstanding for less than or equal to 1 year	Loans outstanding for more than 1 year and less than 3 years	Loans outstanding for more than 3 years
	(I)	(II)	(III)	(IV)	(V)	(VI)	(VII)	(VIII)

- The term “loan” seemingly has been used in a generic sense for receipt of money in any form, within the meaning of exempted deposits.
- The erstwhile format required disclosure of only the “closing balance” as at the end of FY.
- The revised format issued pursuant to Companies (Acceptance of Deposit) Amendment Rules, 2022 requires disclosure of
 - the complete movement of funds, beginning with the opening balance, any addition/ repayment during the year, other adjustments, if any, (this may include writing-off of the liabilities, change in terms etc), along with the closing balance.
 - Additionally, the aging schedule of these loans is required to be provided in the form itself.

Disclosure in financial statements - Rule 16A

Company other than Pvt. Co.

- Disclosure by way of notes, money received from director

Private Company

- Disclosure by way of notes, money received from directors or from relatives of directors

Reporting in terms of CARO

- Para 3(v) of Companies (Auditor's Report) Order, 2020 provides that the auditor's report on the accounts of a company to which this Order applies shall include the following statement in relation to “deposit”:

“(v) in respect of deposits accepted by the company or amounts which are deemed to be deposits, whether the directives issued by the Reserve Bank of India and the provisions of sections 73 to 76 or any other relevant provisions of the Companies Act and the rules made thereunder, where applicable, have been complied with, if not, the nature of such contraventions be stated; if an order has been passed by Company Law Board or National Company Law Tribunal or Reserve Bank of India or any court or any other tribunal, whether the same has been complied with or not”

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