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## International Offshore Financial Centres, Andorra, Bahamas, Barbados, etc., [TOPIC 3] What is an IOFC?

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**3.1** It is impossible to provide a concise or exhaustive definition of what exactly constitutes an IOFC. Whether a particular jurisdiction should be regarded as an IOFC is frequently a question of degree rather than a matter of principle. While many countries, especially those properly regarded as tax havens, provide international organisations with such a range of tax-planning opportunities that all professional tax advisers would agree to regard them as IOFCs, other jurisdictions have far fewer features capable of exploitation in international tax planning and advisers may disagree as to whether they ought to be regarded as IOFCs.

**3.2** Many IOFCs may fairly be described as "tax havens" due to their extraordinary low income tax rates. Such tax havens are typically very small countries which have in some cases deliberately created a virtually tax-free environment to encourage the use of the jurisdiction as a conduit in international transactions. However, many other IOFCs are major commercial centres with high rates of tax and sophisticated taxation systems. These latter types of country usually qualify as IOFCs due to peculiarities of their legal and taxation systems which permit them to be effectively used in international tax planning despite the fact that they have high internal tax rates. Switzerland is probably the best-known example of a highly sophisticated regime which, through a confluence of historical, commercial and legal factors, has become a leading IOFC. Factors such as political, economic and currency stability, banking secrecy laws and the exemption from tax of profits repatriated from foreign subsidiaries and branches, have combined to make Switzerland into an IOFC despite the fact that its federal, cantonal and municipal tax rates often aggregate to over 40%.

**3.3** Any country which offers advantages in international tax planning either as a conduit or a repository for the funds of an international organisation may in some sense merit consideration as an IOFC. However, in selecting countries for inclusion in this Manual, priority has been given to those countries which are most commonly used for such purposes and which offer the international tax planner the facility of accumulating or "parking" income in the hands of corporations registered or resident in their jurisdictions without creating significant tax liabilities.

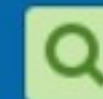
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## International Offshore Financial Centres, Andorra, Bahamas, Barbados, etc., [TOPIC 4] Why and how IOFCs are used

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**4.1** The central weakness of bilateral tax planning is its lack of flexibility. If all transactions between a parent company and its offshore operating subsidiary occur directly between those two entities, then it is inevitable that all group profits will be taxable at either the rate applicable in the jurisdiction of the operating subsidiary or its parent company. Indeed, the impact of withholding taxes and anomalies between the two taxation regimes involved will often result in an effective tax burden higher than the corporate tax rate prevailing in either jurisdiction. This type of difficulty occurs with particular frequency if it is desired to shift or repatriate profits back to the parent company.

**4.2** It is generally acknowledged that a major problem which exists between most countries' tax regimes is that inconsistencies often give rise to unfair or oppressive tax liabilities for corporations operating on an international basis. In response to the effects of this problem, there has been the development of a tax treaty network between states which seeks to alleviate existing inconsistencies. Tax treaties, however, are only bilateral agreements and accordingly do not apply to each and every state. Indeed, a number of countries have either no treaties or a very limited number of treaties, thereby still leaving the problem relatively unsolved.

**4.3** Problems of double taxation are alleviated, albeit usually imperfectly, in many jurisdictions by the availability of unilateral tax credit relief for income which has already been taxed in a foreign jurisdiction. However, even when such relief is available, the combined effects of income tax and withholding tax may result in an unacceptably high tax burden, exceeding the income tax rate applicable in both the jurisdiction in which the income is generated and that to which it is repatriated.

**4.4** A major response to the tax costs frequently generated by international investment has been the increasing use of IOFCs. Some countries have unintentionally turned into IOFCs due to peculiarities in the development of their taxation systems, while others have consciously adopted specific tax regimes designed to encourage international organisations to create a presence in the jurisdiction in connection with minimising global tax liabilities. This is generally achieved by providing special concessionary tax rates to international corporations. It is perhaps ironical in that the very quirks and anomalies existing between various tax regimes which give rise to tax inequities can be exploited to enable IOFCs to operate so effectively.

**4.5** The interposition of one or more IOFC intermediaries between the parent company and its offshore subsidiary multiplies several times over the number of tax planning options available to a corporate group. While bilateral tax planning tends to limit one to the fact that every action has an equal and opposite reaction (eg if a royalty is paid by an offshore subsidiary, it is derived by that subsidiary's parent), this rule ceases to apply once an IOFC is introduced to

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## International Offshore Financial Centres, Andorra, Bahamas, Barbados, etc., [TOPIC 5] Special IOFC concessions for foreign owned corporations

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**5.1** The attractiveness of IOFCs from an international tax planning stance lies in the concessional treatment which those jurisdictions generally grant to foreign owned companies or companies having foreign sourced income.

**5.2** Generally speaking, a company which is established in an IOFC jurisdiction, which is owned by non-residents of that jurisdiction and which derives income from foreign sources, will qualify for concessional treatment both in respect of its liability for taxation and also in respect of its structure.

**5.3** Not all IOFCs permit non-residents to establish companies within their jurisdiction. Alternatively, however, they do permit foreign corporations to use their jurisdictions for central management and control purposes. An example of this is in the case of Monaco, which does not permit non-residents of that country to establish a company under its jurisdiction. Monaco does, however, permit a foreign company incorporated, say, in the United Kingdom to set up its central management and control there, and that company will then qualify for the concessional treatment available.

**5.4** Conversely, some IOFCs specifically facilitate the incorporation of non-resident owned companies within their jurisdictions. Such companies are typically subject to minimum control and reporting requirements in the IOFC, which may not regard them as being "resident" in the IOFC for taxation purposes, despite their incorporation within the jurisdiction. As a result, the residency of such "briefcase" companies can be readily altered through the appointment of directors resident in an appropriate jurisdiction.

**5.5** Some of the more common concessions available to qualifying corporations will generally include:

- a** extensively reduced levels of corporate tax rates on foreign income and capital gains;
- b** exemption from local taxes, if any;
- c** exemption from exchange control requirements;
- d** special treaties or "understandings" with other non-IOFC countries which give rise to special concessions (eg Netherlands/Netherlands Antilles);
- e** exemption from debt/equity requirements;

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## International Offshore Financial Centres, Andorra, Bahamas, Barbados, etc., [TOPIC 6] Selecting an IOFC

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**6.1** Not all IOFCs afford the same treatment to foreign owned or incorporated companies. Indeed, the effectiveness of a specific tax strategy will depend largely on the selection of a jurisdiction which best suits the particular activities to be undertaken by the entity resident or incorporated in the IOFC.

**6.2** Some of the more common concessions available to foreign corporations are outlined in [TOPIC 5](#).

**6.3** There is a multitude of factors to be taken into consideration by a corporation when selecting the most suitable IOFC for its purposes. However, from a tax perspective, some key factors to be considered are outlined below and the significance of these points will be highlighted throughout this Manual.

- a Can non-residents establish a company in the jurisdiction and, if so, will it attract any particular tax treatment?
- b If non-residents are not permitted to establish a company in the jurisdiction, can a foreign-established company maintain its central management and control in the IOFC jurisdiction and, if so, is there any particular tax treatment?
- c Can funds be accumulated or "parked" in the jurisdiction without affecting the concessional status of the foreign corporation?
- d Are there any problems associated with transferring funds into and out of the jurisdiction and, more particularly, are there any problems in repatriating capital or profits to shareholders?
- e Is any particular treatment afforded to various types of income (eg do royalties attract tax at full rates whilst interest and dividends receive concessional rates)?
- f Do any withholding taxes apply to foreign corporations?
- g Are there any restrictions on foreign shareholders?
- h Do any tax treaty arrangements exist between the IOFC and other foreign countries?

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## International Offshore Financial Centres, Bahamas, [BHS ¶1-001] Bahamas: Snapshot — Foreign investment and international tax planning

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### GENERAL FEATURES

The following table summarises general features of the Bahamas. For more detailed information, see [BHS ¶1-010](#) and [BHS ¶1-070](#).

<b>Location</b>	Caribbean; south and east of Florida, United States
<b>Legal system</b>	English common law
<b>Language(s)</b>	English
<b>Exchange controls</b>	Liberal
<b>Banking secrecy</b>	Available
<b>Currency</b>	Bahamian Dollar (BAH)
<b>Tax treaties</b>	No tax treaties. Tax information exchange agreements (TIEAs) with more than 30 countries

### COMPANIES

The following table summarises the treatment of foreign-owned companies in the Bahamas. The information relates to the type of company most commonly used by foreigners for investment and international tax planning purposes. For more detailed information, see [BHS ¶1-030](#) and [BHS ¶1-060](#).

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## International Offshore Financial Centres, Bahamas, [BHS ¶1-010] Introduction to the Bahamas

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The following is a summary of relevant features of the Bahamas as an offshore financial centre.

**(a) Location.** The Commonwealth of the Bahamas is an archipelago of some 700 islands and 2,000 cays and rocks, lie between latitudes 20° to 27° north and longitudes 72° to 79° west, 50 miles east of the United States mainland — Florida — and extend 750 miles southward, to within 50 miles of Haiti and Cuba.

The Bahamas covers a distance of some 750 miles from northwest to southeast, and consists of 30 inhabited islands with a total land area of approximately 5,500 square miles. The islands are low and flat and comprise mainly calcareous sand. The largest of the islands is Andros, which is approximately 2,300 square miles in area.

The population of the Bahamas was estimated to be 389,410 at mid-2020. Ninety percent of the population resides on three of the 18 islands and cays. New Providence, with only 80 square miles and where the capital Nassau is located, accounts for almost 70% of the population, while Grand Bahama and Abaco account for 15.5% and 4.3% respectively. About 10.2% are scattered throughout the other islands and cays. Nassau is the tourism and financial hub of the country.

The climate of the islands is subtropical to tropical. During the winter, the temperature seldom falls below 60°F and averages 75°F during the day. By contrast, in the summer temperatures generally are 78°F or lower at night and seldom exceed 90°F during the day.

**(b) Political factors.** The Bahamas was discovered in 1492 by Christopher Columbus and claimed for Great Britain in the 17th century when the first settlers arrived from that country. Except for a brief period in the 18th century, Great Britain remained in control of the Bahamas until the early 1960s. As a British colony for over 325 years, the country lacked the political and economic power to administer its own external defence and internal affairs. In 1964 the Bahamas was granted internal self-determination (self-government).

In 1972 a constitutional conference was held in London to draft an independence constitution. On 10 July 1973 the Commonwealth of the Bahamas became independent within the Commonwealth of Nations, assuming the responsibility of administering its own economic and political affairs. Like Canada, Australia, New Zealand and other Commonwealth countries, the Bahamas retains Queen Elizabeth II as Head of State.

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## International Offshore Financial Centres, Bahamas, [BHS ¶1-020] Bahamas: Banking and exchange controls

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Exchange control is administered by the Central Bank of the Bahamas. For exchange control purposes, the countries of the world are divided into two categories: the Bahamas and the rest of the world. The Central Bank has the authority to determine all questions of residency.

Resident individuals are either citizens of the Bahamas or citizens of other countries who have been so designated by the bank.

Companies too may be designated resident and non-resident. Resident companies operate in the Bahamas. The shares of such companies may be owned entirely by residents or in combination with non-residents. Resident companies maintain operating accounts in Bahamian currency but, subject to Central Bank permission, they may open and maintain bank accounts in foreign currencies, depending on the activities in which they are engaged.

Non-resident companies may conduct their business either outside or entirely within the Bahamas, with non-resident companies or individuals in foreign currencies. The management and direction of the affairs of such companies may be outside or within the Bahamas and they are free to deal with their foreign assets as they choose. Once a company is designated non-resident, it can, without Central Bank permission or restriction, open and maintain foreign currency bank accounts. Non-resident companies are required to convert into Bahamian dollars sufficient foreign currency to meet their operating expenses within the Bahamas. For exchange control exemption for 40 years for international business companies (IBCs) see [BHS ¶1-060](#).

Direct investment works as follows:

**(a) Non-residents.** Prior permission from the Central Bank is required for non-residents to invest (ie in business, property, etc) in the Bahamas. If the non-resident investment is made with foreign currency which is converted to Bahamian dollars it is accorded "approved status", which facilitates the investor's repatriation of income and capital gains which may accrue from the investment. For IBCs see [BHS ¶1-060](#).

**(b) Permission for companies resident** in the Bahamas to extend their business outside the Bahamas depends largely on the probability of a good return to the Bahamas via increased income of foreign currency and/or increased exports. Direct investment outside the Bahamas must be an extension of an existing business within the Bahamas. Foreign currency to finance such investment is normally purchased through the investment currency market with a 25% premium attached.

**(c) Reputation.** Over the years the Bahamas has gained the reputation of being one of the largest and one of the most reputable offshore financial centres in

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## International Offshore Financial Centres, Bahamas, [BHS ¶1-030] Bahamas: Companies

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**(a) Incorporation.** The Companies Act 1992, which came into effect on 1 August 1992, repeals the Companies Act (Chapter 279) 1866 and the Foreign Companies Act (Chapter 280) 1891 and makes substantial changes in the incorporation and operation of companies. Under the new Act, companies may carry on business with individuals resident in the Bahamas and may also carry on from within the Bahamas banking or trust business and insurance and re-insurance.

**(1) Company formation.** In order to incorporate a company in the Bahamas a memorandum of association must be filed with the Registrar General. The memorandum must be signed by at least two subscribers in the presence of at least one witness. Each subscriber is required to subscribe for at least one share each. A non-resident subscriber or nominee is required to obtain Exchange Control permission. The capacity of persons incorporating must be submitted with the memorandum in the form of a declaration signed by a counsel and attorney. Articles of association may be filed with the memorandum of association or within six months thereafter and signed and witnessed by one other person.

A company may merge or consolidate with another company or companies. Articles of merger or consolidation must be submitted to the Registrar. A company may also merge with a subsidiary. The parent company must file articles of merger with the Registrar. A company intending to reorganise or reconstruct itself must submit articles of arrangement with the Registrar.

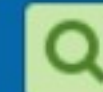
**(2) Private and public companies.** A private company is a company which is not a public company. All companies already in the register will continue to exist as private companies unless they wish to continue as public companies.

A public company is defined as a company whose shares or any class of whose shares are intended for distribution to the public. After incorporation, the public company may start business or seek to secure credit after:

- (i) shares have been allotted to at least the minimum subscription
- (ii) every director has paid the company for his or her shares a proportion equal to that payable on application and allotment of the shares offered for public subscription or payable in cash, and
- (iii) the secretary of one of the directors has signed a statutory declaration that the requirements with respect to the first allotment of shares



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## International Offshore Financial Centres, Bahamas, [BHS ¶1-060] Bahamas: Non-residents and non-resident offshore companies

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**(a) International business companies (IBCs).** The Bahamas' International Business Companies Act 2000 (the IBC Act) replaced the earlier International Business Companies Act 1989, which was effective from 15 January 1990.

This legislation was created and moulded with the intention of producing a modern facility to provide for the simple incorporation of the international business company (IBC) with the power and ability to enable a natural person or group of persons to do through the vehicle of a corporate entity anything which an individual person may do or wish to do within the laws of the Bahamas. Reservation of company names may be facilitated by facsimile transmission through a local licensed financial service provider. A Bahamian IBC may be incorporated within 24 hours and this must be done by the local licensed financial service provider as required by relevant legislation.

Amendments made to the IBC Act in August 2004 include:

- the continuation of an international business company as a Bahamian company under the Companies Act, an arrangement that does not exist elsewhere
- an IBC is now able to register its mortgages and charges for shares with the Registrar of Companies
- an IBC can now be licensed as an external insurance company, and
- provisions that allow for the protection of the assets of a company for the benefit of the company and its creditors and shareholders. Protection is also provided for minority shareholders.

Amendments made to the IBC Act in September 2013 include:

- allowing an IBC to apply to the Registrar to be registered as a segregated accounts company, and

- extending the exemption period for all taxes and exchange controls to 40 years

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## International Offshore Financial Centres, Bahamas, [BHS ¶1-064] Bahamas: Establishment of international insurance companies

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An offshore (international) insurance company is an insurance company incorporated in the Bahamas under the Companies Act 1992. The company is licensed under the Bahamas insurance legislation (the Insurance Act 2005 or the External Insurance Act 1983) and manages its business from the Bahamas, but insures only risks located outside the Bahamas. The subject risks may be related or unrelated to the shareholders of the offshore insurance company.

In order to qualify for registration as an external insurer under the External Insurance Act, it is necessary to demonstrate (inter alia) that the offshore or captive insurer will be accepting BAH500,000 or more in insurance premiums from an affiliated company (related business). All other applicants will be accommodated under the Insurance Act as non-resident insurers.

Applicants wanting to establish an international insurance company in the Bahamas are advised of the following steps:

- (1) Conduct a feasibility study (reference to tax considerations, reinsurance cost, fronting arrangements required, etc).
- (2) Contact and arrange to visit the Registrar of Insurance Companies in Nassau to discuss and be advised on the proposed venture.
- (3) Prepare a comprehensive business plan.
- (4) Submit resumes and three references for each director, officer and shareholder, one of which should be from both an insurer and a broker. In addition, evidence of the lack of a criminal record is required.
- (5) Visit the Bahamas to select an underwriting manager, lawyer, auditor and banker.
- (6) Provide local lawyer with all the requisite application material together with three alternative corporate names.
- (7) The lawyer will then commence the procedures necessary to incorporate the company and submit the application to the Registrar.

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## International Offshore Financial Centres, Bahamas, [BHS ¶1-070] Bahamas: Tax treaty arrangements

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**(a) Double tax treaties.** Since the Bahamas do not levy direct taxes, there are no double tax treaties between the Bahamas and other countries.

**(b) Tax information exchange agreements (TIEAs).** The Bahamas has signed TIEAs with the following countries, based on the OECD model convention (date of signature in parentheses):

Argentina (3 December 2009)

Aruba (8 August 2011)

Australia (30 March 2010)

Belgium (7 December 2009)

Canada (17 June 2010)

China (1 December 2009)

Czech Republic (6 March 2014)

Denmark (10 March 2010)

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France (7 December 2009)

Georgia (4 November 2016)

Germany (9 April 2010)

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## International Offshore Financial Centres, Bahamas, [BHS TOPIC 8] Financing the Bahamas entity

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**8.1** There are many advantages of using a Bahamian international business company (IBC) registered under the International Business Companies Act. For a discussion of the main features of an IBC see [BHS ¶1-060](#). The discussion below deals with Bahamian companies other than IBCs unless expressly mentioned otherwise.

**8.2** Provided the non-resident offshore company obtains designation from the Central Bank of the Bahamas as such, there are no restrictions on the repatriation of capital loans to the home country.

An increase or modification of capital can be affected by a simple resolution of the shareholders if authorised in the articles. The Supreme Court, however, must confirm a reduction of capital.

For IBCs, shares may be issued as no par value, registered or fractional shares — see [BHS ¶1-060](#). Thus an IBC may be a more flexible entity to utilise in comparison with other Bahamian companies when complicated financing and share capital arrangements are required to overcome home country tax requirements.

**8.3** There are no restrictions on non-resident offshore companies paying interest on foreign loans. There are no taxes payable on any such payments. Exchange control permission is only required to convert Bahamian dollars to other foreign currency (except for IBCs).

**8.4** There are no restrictions on the payment of dividends to non-resident shareholders and no exchange control permission is needed. There are no taxes of any kind payable in the Bahamas on any such payments.

There is no accumulated profit tax in the Bahamas for offshore companies. Profits may be accumulated freely without the requirement that dividends be paid to shareholders.

### 8.5

**8.5.2** Concessional treatment is available to non-resident offshore companies in the Bahamas — see [BHS ¶1-010\(f\)](#) and [BHS ¶1-060\(a\)](#).

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## International Offshore Financial Centres, Bahamas, [BHS TOPIC 9] Bahamas holding companies

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### 9.4

**9.4.1** *Deferral of tax on dividends.* Profits of a non-resident offshore company and an IBC can be “parked” in the company. Generally, a foreign government will not tax a Bahamian company until such company declares a dividend. By not declaring a dividend and by not being subject to any Bahamian direct taxes, it is possible to accumulate profits in the Bahamas.

**9.4.2** *Deferral of tax on capital gains.* There are no capital gains taxes in the Bahamas.

**9.4.3** *Exchange control freedom.* Once a company has applied for and has been granted non-resident status, further exchange control permission is not required for it to conduct its business either entirely outside or within the Bahamas. For IBCs, there is an exemption from exchange controls for 40 years.

**9.5** The Bahamas is not a party to tax treaties with any country.

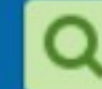
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## International Offshore Financial Centres, Bahamas, [BHS TOPIC 10] Bahamas finance companies

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**10.1** Non-resident companies may conduct their business either outside or entirely within the Bahamas, with non-resident companies or individuals, in foreign currency. Furthermore, they are free to deal with their assets as they choose. They can, without Central Bank approval or restrictions, open and maintain foreign currency bank accounts.

**10.2** There is no taxation of non-resident income.

**10.3** The Bahamas is not a party to any taxation agreement with any country and there are no direct taxes payable in the Bahamas.

**10.5** There are no debt/equity requirements for non-resident offshore companies in the Bahamas.

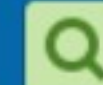
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## International Offshore Financial Centres, Bahamas, [BHS TOPIC 23] Bahamas trusts

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**23.1** The Bahamian trust has been an extremely popular "vehicle" to shelter income and gains of non-residents. Bahamian trust law has facilitated this use and has led to the establishment of a number of trustee companies which provide, in addition to their usual trustee services, a number of technical investment services involving banking and foreign exchange, capital and money market services.

The Trust (Choice of Governing Law) Act 1989 now provides protection from inheritance disputes and claims against Bahamian trusts for settlors who are resident in civil law jurisdictions.

The Fraudulent Dispositions Act 1991 allows persons to create an asset protection trust while still preserving the ability of creditors to void a settlement where it is intended to defraud.

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