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Improving the Legal Framework Governing the Board of Directors and the Director/General Director in Vietnamese Joint-Stock Companies

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Abstract:

The Board of Directors (BOD) and the Director/General Director constitute the two core governance bodies in Vietnamese joint-stock companies, playing a decisive role in corporate management and operational efficiency. The Law on Enterprises 2020 has expanded corporate autonomy in designing governance structures; however, its implementation has revealed several legal ambiguities and practical challenges. Key issues include the lack of a clear delineation of powers between the Board of Directors and the Director/General Director; insufficiently specific provisions governing the dismissal and removal of board members; inadequacies in the legal framework for monitoring transactions involving potential conflicts of interest; legal uncertainties concerning the appointment and dismissal of externally hired Directors/General Directors; and governance risks arising from the model of multiple legal representatives. By examining the current legal framework and its practical implementation, this article identifies the principal shortcomings of Vietnam's corporate governance regulations applicable to joint-stock companies and proposes recommendations for legal reform. These recommendations aim to strengthen corporate governance, enhance transparency and accountability, promote a balanced allocation of managerial powers, and better safeguard the legitimate rights and interests of both companies and their shareholders.

Keywords — **Board of Directors; Director/General Director; joint-stock company; corporate governance; Law on Enterprises 2020; Vietnamese corporate law.**

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I. INTRODUCTION

Joint-stock companies (JSCs) represent one of the most significant forms of business organizations in Vietnam due to their strong capital-raising capacity, flexible governance structure, and substantial contribution to economic development. The effectiveness of a joint-stock company largely depends on the quality of its corporate governance, in which the Board of Directors (BOD) and the Director/General Director serve as the two principal governing bodies. While the Board of Directors is responsible for formulating corporate strategy, making major business decisions, and supervising the company's operations, the Director/General Director manages the company's day-to-day business activities and implements the resolutions adopted by the Board. Accordingly, a clear allocation of powers and responsibilities, together with an effective system of checks and balances between these two governance bodies, is essential for enhancing corporate governance and safeguarding the legitimate rights and interests of shareholders.

Vietnam's Law on Enterprises 2020 introduced significant reforms aimed at strengthening corporate autonomy in designing governance structures, expanding the decision-making powers of both the Board of Directors and the Director/General Director, and aligning Vietnamese corporate governance with internationally recognized standards. These reforms reflect the approach embodied in the G20/OECD Principles of Corporate Governance (2023), particularly with respect to board accountability, transparency, and internal oversight mechanisms. Nevertheless, after more than five years of implementation, several legal ambiguities and practical shortcomings have become evident. These include the absence of clear statutory criteria for distinguishing the respective powers of the Board of Directors and the Director/General Director; insufficiently specific provisions governing the dismissal and removal of board members; weaknesses in the regulation of transactions involving potential conflicts of interest; inconsistencies between the Law on Enterprises and the Labour Code regarding the employment of externally hired Directors/General Directors; and legal risks arising from the recognition of multiple legal representatives. These shortcomings not only undermine the effectiveness of corporate governance but also increase the likelihood of internal disputes, raise governance costs, and weaken the protection of shareholders' interests.

Against this background, this article examines the legal framework governing the Board of Directors and the Director/General Director under Vietnam's Law on Enterprises 2020. It identifies the principal legal shortcomings revealed through practical implementation and proposes recommendations for improving the legal framework with a view to strengthening corporate governance, enhancing transparency and accountability, and reinforcing the system of checks and balances within Vietnamese joint-stock companies.

II. LEGAL FRAMEWORK GOVERNING THE BOARD OF DIRECTORS AND THE DIRECTOR/GENERAL DIRECTOR UNDER THE LAW ON ENTERPRISES 2020

Under Vietnam's Law on Enterprises 2020, a joint-stock company (JSC) is a legal entity whose charter capital is divided into equal shares, with shareholders bearing liability only to the extent of their capital contributions. Vietnamese law recognizes two alternative corporate governance models; however, both require the establishment of a Board of Directors (BOD) and a Director/General Director, which serve as the company's principal governance and executive bodies.

A. Legal Framework Governing the Board of Directors

Article 153(1) of the Law on Enterprises 2020 designates the Board of Directors (BOD) as the governing body of a joint-stock company, authorizing it to exercise all corporate rights and obligations on behalf of the company except those reserved for the General Meeting of Shareholders (GMS). As the central governance body, the Board plays a pivotal role in formulating corporate strategy, making major business decisions, and supervising the company's executive management [1, p.217]. Accordingly, the Board exercises broad managerial authority over corporate affairs while remaining subject to the statutory powers of the GMS.

The powers and responsibilities of the Board of Directors are comprehensively regulated under Article 153 of the Law on Enterprises 2020. These include, among others, determining the company's development strategy, approving medium-term development plans and annual business plans, deciding on the organizational structure, appointing and dismissing the Director/General Director and other senior managers, approving investment projects and business plans within its competence, and supervising the performance of the Director/General Director and other executives. The Board is also responsible for ensuring that the company's operations comply with applicable laws, the Company Charter, and resolutions adopted by the General Meeting of Shareholders. This allocation of responsibilities reflects the principle of separating strategic oversight from executive management, which is widely recognized as a fundamental element of modern corporate governance [2].

With respect to its organizational structure, Article 154 of the Law on Enterprises 2020 provides that the Board of Directors shall consist of between three and eleven members, each serving a term of no more than five years, with eligibility for re-election without limitation on the number of terms. Board members may be either shareholders or non-shareholders, depending on the provisions of the Company Charter. This flexible approach enables joint-stock companies to appoint individuals possessing the expertise and managerial experience necessary to enhance the quality and effectiveness of corporate governance.

Another notable improvement introduced by the Law on Enterprises 2020 is the strengthening of directors' fiduciary obligations [3, p.31]. Under Article 165, members of the Board of Directors are required to perform their duties honestly, prudently, and in the best interests of the company. They are prohibited from abusing their position or exploiting corporate information, business opportunities, or trade secrets for personal gain or for the benefit of other organizations or individuals. In addition, the Chairperson of the Board of Directors is responsible for organizing and coordinating the Board's activities while ensuring effective cooperation between the Board, the Director/General Director, the Board of Supervisors (where applicable), and other governance bodies within the company.

Although Vietnam's corporate governance framework has increasingly incorporated internationally recognized governance principles, it continues to reflect characteristics of a transition economy and civil law jurisdiction. Consequently, examining the legal relationship between the Board of Directors and the Director/General Director is not only essential for improving Vietnam's corporate governance regime but also contributes to comparative corporate governance scholarship concerning emerging economies.

B. Legal Framework Governing the Director/General Director

Article 162(2) of the Law on Enterprises 2020 (LOE 2020) provides that the Director/General Director is responsible for managing the company's day-to-day business operations, acting under the supervision of the Board of Directors (BOD) and remaining accountable to both the Board and the law for the performance of his or her assigned powers and duties.

While the Board of Directors performs the company's strategic and supervisory functions, the Director/General Director is responsible for implementing corporate strategies, business plans, and management decisions in the company's daily operations. Accordingly, Vietnamese corporate law establishes a relatively comprehensive legal framework defining the legal status, powers, duties, and responsibilities of the Director/General Director within a joint-stock company.

Under the LOE 2020, the Director/General Director may be appointed by the Board of Directors from among its members or recruited externally. The term of office may not exceed five years, although reappointment for an unlimited number of terms is permitted. This flexible appointment mechanism enables joint-stock companies to select executives whose qualifications and managerial experience best correspond to their governance needs and long-term business strategies, thereby promoting greater professionalism in corporate management.

The LOE 2020 further requires that the Director/General Director must not fall within any category of persons prohibited from managing enterprises under Vietnamese law. In addition, he or she must possess appropriate professional qualifications and managerial experience relevant to either business administration or the company's business sector, while also satisfying any additional requirements prescribed by the Company Charter. For subsidiaries of state-owned enterprises, the law imposes stricter eligibility requirements to minimize conflicts of interest and ensure the effective management of state capital.

Regarding managerial authority, Article 162 of the LOE 2020 authorizes the Director/General Director to implement resolutions and decisions of the Board of Directors, manage the company's day-to-day business operations, execute business plans and investment projects, appoint or dismiss managers within his or her delegated authority, enter into contracts on behalf of the company, and perform other powers and duties prescribed by law, the Company Charter, or resolutions of the Board of Directors. In exercising these powers, the Director/General Director is required to act honestly, prudently, and in the best interests of the company, while remaining loyal to both the company and its shareholders. The law also expressly prohibits the misuse of managerial authority, confidential information, business opportunities, or trade secrets for personal benefit or for the benefit of third parties.

These fiduciary obligations constitute an important legal mechanism for controlling executive power and provide a basis for determining the personal liability of the Director/General Director where losses are caused to the company or its shareholders.

Furthermore, the Director/General Director is required to report regularly to the Board of Directors regarding the company's management and operations and to provide all information and documents necessary for the Board and, where applicable, the Board of Supervisors (BOS) to perform their supervisory functions. This reporting mechanism is intended to strengthen internal corporate oversight, prevent abuses of managerial authority, and ensure that executive management remains consistent with the strategic direction established by the General Meeting of Shareholders and the Board of Directors.

Although the LOE 2020 reflects the influence of internationally recognized corporate governance principles, including those embodied in the G20/OECD Principles of Corporate Governance (2023), important legal gaps remain concerning the allocation of managerial authority, the regulation of conflict-of-interest transactions, and the legal framework governing multiple legal representatives. These issues are examined in greater detail in the following section.

III. LEGAL CHALLENGES IN THE IMPLEMENTATION OF THE LAW GOVERNING THE BOARD OF DIRECTORS AND THE DIRECTOR/GENERAL DIRECTOR IN JOINT-STOCK COMPANIES

A. Legal Challenges Relating to the Operation of the Board of Directors

One of the shortcomings of the Law on Enterprises 2020 (LOE 2020) concerns the legal framework governing the dismissal, removal, replacement, and appointment of members of the Board of Directors (BOD). Under Article 160, a board member who submits a resignation letter does not automatically cease to hold office; instead, the resignation becomes effective only after it has been accepted and the General Meeting of Shareholders (GMS) adopts a resolution on the member's dismissal. However, the LOE 2020 does not specify which corporate body has the authority to accept a board member's resignation before the matter is submitted to the GMS. Based on the legislative structure of Article 160, it may be inferred that the Board of Directors is responsible for accepting the resignation, while the GMS formally dismisses the board member. Nevertheless, this interpretation is not expressly provided by law, creating legal uncertainty in practice.

Article 160(3) of the LOE 2020 further authorizes the GMS to replace, dismiss, or remove members of the Board of Directors whenever it considers such action "necessary." However, the statute provides no criteria for determining when such necessity exists. The absence of objective standards grants the GMS considerable discretion and creates uncertainty in corporate governance. In practice, this ambiguity may expose the dismissal mechanism to abuse, particularly in companies experiencing conflicts among shareholder groups, thereby undermining the stability and effectiveness of board governance.

Another significant concern relates to the regulation of transactions involving potential conflicts of interest. Article 167 of the LOE 2020 requires certain contracts and transactions between the company and related parties to obtain prior approval from either the Board of Directors or the General Meeting of Shareholders, depending on their nature and value. In particular, transactions involving loans, lending arrangements, or the sale of assets exceeding 10% of the company's total assets, as reported in the most recent financial statements, and conducted with a shareholder holding at least 51% of the voting shares or that shareholder's related persons, must be approved by the GMS. This mechanism is intended to prevent controlling shareholders from exploiting their position for private benefit at the expense of the company and minority shareholders.

Nevertheless, the existing framework remains vulnerable to circumvention. A controlling shareholder or related party may divide a single high-value transaction into several smaller contracts executed at different times, each falling below the statutory 10% threshold. Although each individual contract would not require approval by the GMS, the aggregate value of the transactions could substantially exceed the threshold, thereby defeating the legislative purpose of protecting the company against conflicts of interest. The absence of an anti-avoidance mechanism based on the cumulative value of related transactions therefore weakens the effectiveness of the current approval regime.

A further governance concern arises from Article 156 of the LOE 2020, which permits the Chairperson of the Board of Directors to concurrently serve as the Director/General Director, except in public companies and joint-stock companies in which the State holds more than 50% of the charter capital or voting shares. Although this arrangement may improve managerial efficiency in certain circumstances, it also concentrates strategic and executive authority in a single individual. As the Board of Directors is legally responsible for supervising the Director/General Director, the concurrent holding of both positions inevitably weakens the effectiveness of internal oversight and increases the risk of excessive concentration of corporate power. This concern is consistent with international corporate governance scholarship, which has repeatedly emphasized that CEO duality may reduce board independence and impair the Board's monitoring function.

Moreover, Article 162(1) authorizes the Board of Directors to appoint either one of its own members or an external individual as the Director/General Director. However, where the Chairperson of the Board simultaneously serves as the Director/General Director, uncertainty may arise regarding the legal basis for concluding the employment relationship between the company and that individual. In practice, confusion has occasionally arisen as to whether the relationship should be governed by an employment contract or by another legal arrangement, such as an authorization agreement. This legal ambiguity may create practical difficulties in determining the rights, obligations, and liabilities of the parties involved.

B. Legal Challenges Relating to the Director/General Director

- The Director/General Director's Authority under Article 162(2)

One of the major legal gaps in the Law on Enterprises 2020 (LOE 2020) is the absence of a clear delineation of authority between the Board of Directors (BOD) and the Director/General Director. Although Article 162 authorizes the Director/General Director to decide matters relating to the company's "day-to-day business operations," the law provides no statutory definition of this concept. This ambiguity creates considerable practical difficulties in determining decision-making authority over transactions that involve substantial financial value or significant business risks but occur on a routine basis. Where the Company Charter does not establish clear criteria or monetary thresholds, disputes concerning the respective powers of the Board of Directors and the Director/General Director are likely to arise. More importantly, this legal uncertainty may enable executives to exceed their managerial authority by entering into transactions beyond the effective supervision of the Board. As a consequence, both shareholders' interests and the company's financial security may be seriously affected.

- Legal Issues Concerning the Appointment of an Externally Hired Director/General Director

Article 162(1) of the LOE 2020 authorizes the Board of Directors to appoint either one of its own members or an external individual as the Director/General Director. However, the legal framework governing the appointment and dismissal of an externally hired Director/General Director remains insufficiently coordinated. In practice, where the Board seeks to dismiss or terminate the employment of a Director/General Director due to poor managerial performance, conflicts frequently arise between the provisions of the Law on Enterprises and those of the Labour Code. Requirements relating to the lawful grounds for unilateral termination of an employment contract, statutory notice periods, and compensation obligations often make the replacement of senior executives legally complex, time-consuming, and costly. As a result, the company's ability to respond promptly to ineffective management is reduced, thereby diminishing both managerial flexibility and the overall effectiveness of corporate governance.

- Legal Risks Arising from the Multiple Legal Representative Model

The Law on Enterprises 2020 permits a joint-stock company to have one or more legal representatives, thereby allowing enterprises to adopt a governance structure that best suits their organizational size and operational needs. Nevertheless, this flexibility also gives rise to legal risks where the Company Charter fails to define clearly the scope of representation and the allocation of authority among multiple legal representatives.

In practice, many joint-stock companies designate both the Chairperson of the Board of Directors and the Director/General Director as legal representatives. Where the Company Charter merely specifies their titles without clearly defining their respective authority to execute contracts, the monetary limits of transactions, or the business matters for which each representative is responsible, overlapping authority is likely to occur. Under such circumstances, the Director/General Director may conclude transactions on behalf of the company that are inconsistent with the strategic direction or policies adopted by the Board of Directors. From the perspective of a bona fide third party, however, such transactions may nevertheless remain legally binding provided that they are executed by a duly registered legal representative in accordance with applicable law. Consequently, the company may still be required to perform the obligations arising from those transactions, even though no internal consensus had been reached or no prior approval had been granted by the Board of Directors.

IV. RECOMMENDATIONS FOR IMPROVING THE LEGAL FRAMEWORK GOVERNING THE BOARD OF DIRECTORS AND THE DIRECTOR/GENERAL DIRECTOR

A. Recommendations for Improving the Legal Framework Governing the Board of Directors

The Board of Directors (BOD) serves as the central governing body of a joint-stock company and plays a decisive role in ensuring effective corporate governance and business performance. However, practical implementation of the Law on Enterprises 2020 (LOE 2020) has revealed several shortcomings in the legal framework governing the Board of Directors, particularly with respect to the allocation of powers, the independence of the Board, and directors' legal responsibilities. Accordingly, further legislative reform should focus on the following recommendations.

- Improving the Rules on the Joint Liability of Board Members

Article 136 of the LOE 2020 should be amended to ensure consistency with Article 153(4). Specifically, Article 136 should provide that only those members of the Board of Directors who voted in favor of an unlawful resolution concerning the repurchase of shares or the payment of dividends should bear joint liability where shareholders fail to return the money or assets unlawfully received by them. Conversely, board members who voted against such unlawful resolutions should not be jointly liable for the company's debts or other obligations arising from those resolutions.

This proposed amendment is consistent with the fundamental principle of legal responsibility, according to which a person should be held liable only for his or her own unlawful conduct. Since board members who opposed an unlawful resolution neither participated in nor approved the wrongful act, imposing joint liability upon them would be inconsistent with the principle of individual legal responsibility.

- Improving the Rules on the Dismissal, Removal, Replacement, and Appointment of Board Members

Article 160(3) of the LOE 2020 currently authorizes the General Meeting of Shareholders (GMS) to replace members of the Board of Directors whenever it considers such replacement "necessary." However, the statute does not specify the circumstances under which such necessity exists.

The author therefore proposes that Article 160(3) be amended to provide that:

"Where a member of the Board of Directors breaches his or her statutory or fiduciary duties, causes damage, or is likely to cause damage to the company, the General Meeting of Shareholders shall have the authority to replace, dismiss, or remove that member."

Such an amendment would establish clearer legal criteria for the exercise of the GMS's authority while reducing the risk of arbitrary or abusive use of the dismissal mechanism.

- Improving the Rules on Filling Vacancies on the Board of Directors

Article 160(4)(a) of the LOE 2020 should also be amended to ensure consistency with Article 140(2). Specifically, Article 160(4)(a) should provide that:

"Where the number of members of the Board of Directors falls by more than one-third of the number prescribed in the Company Charter, the Board of Directors shall convene a meeting of the General Meeting of Shareholders within 30 days from the date on which the number of board members falls below that threshold."

This amendment would ensure consistency between the statutory provisions governing the time limit for convening a meeting of the General Meeting of Shareholders where the number of board members has significantly decreased. It would also facilitate the uniform interpretation and application of the law.

Furthermore, given that the Board of Directors is the highest managerial body of a joint-stock company, any reduction of more than one-third of its members may adversely affect its ability to perform its governance functions effectively. Accordingly, regardless of whether the remaining number of directors still satisfies the statutory minimum, the Board should be required to convene a meeting of the General Meeting of Shareholders as soon as possible in order to restore the Board's full operational capacity.

B. Recommendations for Improving the Legal Framework Governing the Director/General Director

The Director/General Director is responsible for managing the day-to-day business operations of a joint-stock company and plays a pivotal role in implementing the resolutions and decisions adopted by the General Meeting of Shareholders (GMS) and the Board of Directors (BOD). Although the Law on Enterprises 2020 (LOE 2020) provides a relatively comprehensive legal framework governing the qualifications, powers, and duties of the Director/General Director, practical implementation has revealed several shortcomings that warrant further legislative refinement.

- Clarifying the Qualifications and Eligibility Requirements for the Director/General Director

Pursuant to Article 162(5) of the LOE 2020, the Director/General Director must have full legal capacity, must not fall within any category of persons prohibited from managing enterprises under Vietnamese law, and must satisfy any additional qualifications and conditions prescribed by the Company Charter. While this provision grants companies considerable autonomy in determining the qualifications of their chief executives, it has also resulted in considerable inconsistency in practice. In many joint-stock companies, the eligibility requirements for the Director/General Director are formulated only in general terms and fail to establish meaningful standards regarding professional qualifications, managerial experience, or professional ethics. Such deficiencies may adversely affect the quality of corporate governance and the company's operational performance. Introducing mandatory minimum qualification standards would help ensure the competence of senior executives while also aligning Vietnamese corporate law with the modern trend toward strengthening the accountability of senior management.

- Clarifying the Scope of the Director/General Director's Authority

To address the legal uncertainty arising from Article 162(2) of the LOE 2020, more detailed implementing regulations should be adopted to clarify the meaning of the term "day-to-day business operations" within the authority of the Director/General Director. In particular, the law should establish objective criteria based on the value of corporate assets. For example, transactions whose value equals or exceeds 10% of the company's total assets should be excluded from the scope of day-to-day management, irrespective of how frequently such transactions occur. At the same time, the law should introduce a default rule under which, where the Company Charter contains no relevant provisions or fails to define the scope of managerial authority with sufficient clarity, any transaction exceeding the prescribed threshold must be subject to prior approval by the Board of Directors. Such an approach would reduce the risk of managerial abuse of power while strengthening financial oversight and safeguarding the company's interests.

- Improving the Legal Framework Governing the Monitoring and Supervision of the Director/General Director

The Law on Enterprises 2020 (LOE 2020) provides that the Director/General Director is subject to the supervision of the Board of Directors (BOD) and is accountable to the Board for the performance of his or her powers and duties (Article 162(2)). However, the law does not specify the mechanisms, methods, or frequency of such supervision, nor does it establish clear legal consequences where the Board fails to discharge its supervisory responsibilities. Accordingly, the author proposes that Article 153(2)(k) of the LOE 2020 be supplemented with the following provision:

"The Director/General Director shall be required to submit both periodic and ad hoc reports on the management and operation of the company."

In addition, the LOE 2020 should expressly define the supervisory responsibilities of the Board of Directors with respect to the activities of the Director/General Director, thereby enhancing transparency and improving the effectiveness of corporate governance in joint-stock companies.

- Improving the Legal Framework Governing the Legal Liability of the Director/General Director for Breaches of Duty

Article 165(1) of the LOE 2020 requires the Director/General Director to perform his or her duties with loyalty, due care, and in the best interests of the company and its shareholders. However, the law does not clearly define the criteria for determining the seriousness of a breach of these duties or the mechanism for awarding compensation where the Director/General Director causes damage to the company or its shareholders. Accordingly, the law should be amended to clarify the circumstances constituting breaches of the duties of loyalty and due care, while also improving the legal framework governing compensation for damages and the personal liability of the Director/General Director, particularly in cases involving abuse of authority or conflicts of interest.

- Improving the Legal Framework Governing the Termination of Employment Contracts with the Director/General Director

To address the inconsistency between the Law on Enterprises 2020 and the Labour Code 2019 with respect to externally hired Directors/General Directors, implementing regulations should clarify that a decision of the Board of Directors to dismiss or remove a Director/General Director on the ground of ineffective management, in accordance with the LOE 2020, constitutes a lawful basis for the automatic termination of the corresponding employment contract. At the same time, the law should distinguish between compensation arising from the termination of an employment contract and remuneration or contractual compensation payable under an executive management agreement. Such an approach would enable the Board of Directors to replace senior executives in a timely and flexible manner without being unduly constrained by the ordinary legal requirements governing unilateral termination of employment contracts.

V. CONCLUSIONS

The Board of Directors (BOD) and the Director/General Director are the two core governance bodies within the corporate governance structure of Vietnamese joint-stock companies, playing a decisive role in ensuring effective management, executive administration, and the sustainable development of enterprises. Based on an analysis of the Law on Enterprises 2020 (LOE 2020) and its practical implementation, this article demonstrates that the current legal framework continues to exhibit several shortcomings. These include the lack of a clear allocation of authority between the Board of Directors and the Director/General Director; insufficiently specific provisions governing the dismissal and removal of board members; an inadequate mechanism for controlling transactions involving potential conflicts of interest; legal difficulties relating to the appointment and dismissal of externally hired

Directors/General Directors; and legal risks arising from the multiple legal representative model.

On this basis, the article proposes a number of legislative recommendations aimed at improving the LOE 2020 by clarifying the allocation of powers and responsibilities among corporate governance bodies, strengthening mechanisms for internal oversight and accountability, enhancing transparency, and improving the effectiveness of corporate governance in Vietnamese joint-stock companies. It is expected that these recommendations will contribute to the further development of Vietnam's corporate governance framework while supporting enterprise development and deeper economic integration.

Future research may extend this study by examining the legal framework governing the organization and operation of joint-stock companies in conjunction with its practical implementation in Hanoi, thereby providing empirical evidence to support future legislative reforms.

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