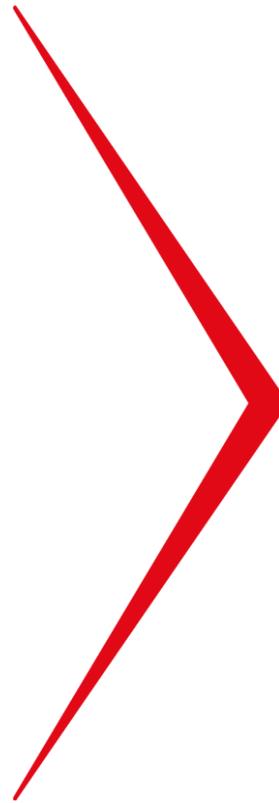
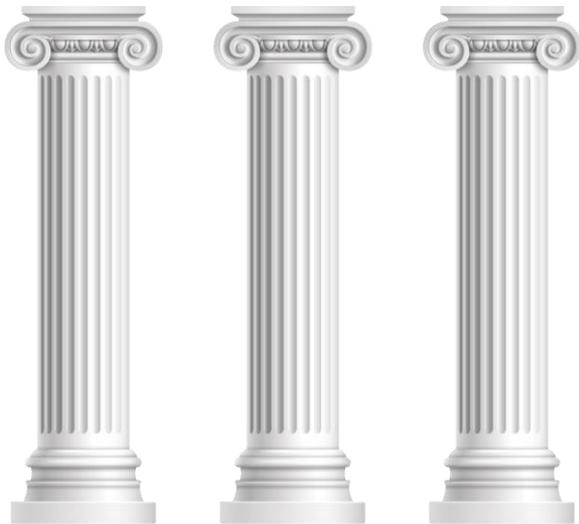


Business & Management



**Bribery and
corruption update**

28 February 2018

The webinar will begin shortly...

Business & Management
20 minute lunch



corporatepartnerships@moneycorp.com



Webinar

Bribery and corruption

Practical steps to reduce your business risk

Patrick Rappo
Partner, Steptoe & Johnson
Director, Fraud Advisory Panel

Wednesday 28 February 2018



Partner
Steptoe & Johnson

Purpose of today's webinar

- Provide an overview of UK bribery and corruption law
- Highlight some examples of recent enforcement action
- Outline some practical steps to reduce the likelihood of your business breaking the law



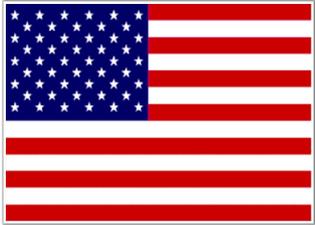
Who we are

- We are the UK's leading anti-fraud charity and voice of the counter fraud community.
- We work to improve fraud resilience across the UK and around the world by championing best practice and (where appropriate) law reform.
- Our members cover the full spectrum of counter fraud professionals.

Working together to defeat fraud

Overview of the Bribery Act 2010

- Not retrospective – Only cases after 1 July 2011
- ‘Active’ and ‘passive’ bribery is illegal
- ‘Public sector’ and ‘private sector’ bribery is illegal
- Corporate offence of ‘failure to prevent bribery’
- Company is responsible for bribes by employees/subsidiaries/agents
- Jurisdiction extends to non-UK corporates who carry on business or part of a business in the UK
- Incentivises compliance, co-operation, self-reporting and settlements.



US Foreign Corrupt Practices Act

First foreign bribery statute enacted 1977

Covers public sector bribery

Facilitation payments exempt

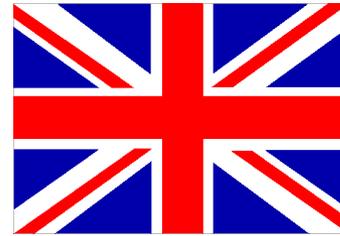
Respondeat superior

DoJ/SEC Resource Guide

No compliance programme defence

Significant enforcement

US\$bn fines



UK Bribery Act

Effective July 2011

Covers both public and private sector

Facilitation payments not exempt

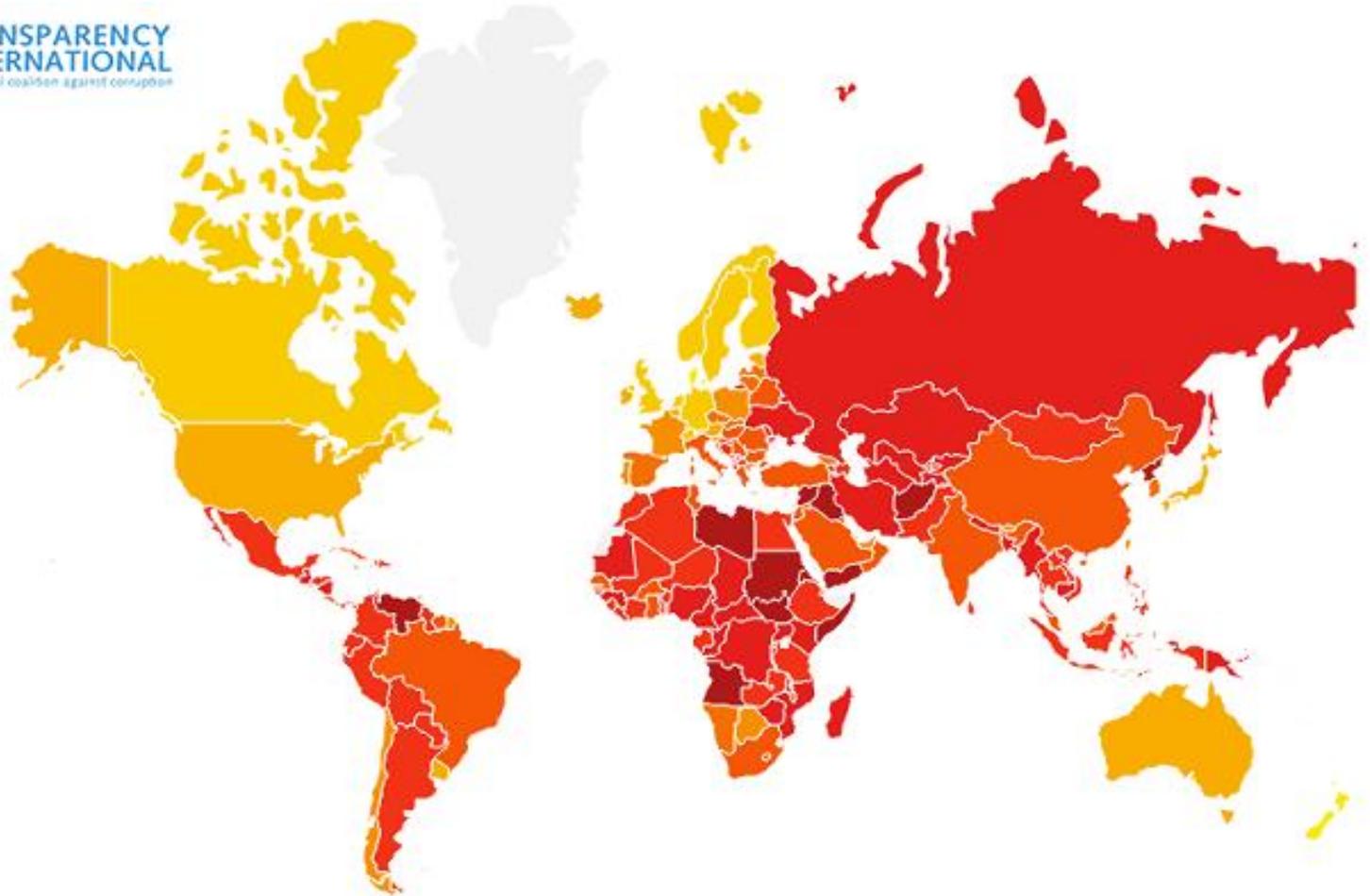
Directing mind & strict liability

MoJ guidance

Adequate procedures defence

Limited enforcement / convictions /
fines (but increasing ...)

Rolls Royce £497m





SFO agrees first UK DPA with Standard Bank

Sweett Group PLC sentenced
and ordered to pay £2.25m

Enforcement trends

- Incentives for whistle-blowers
- International co-operation (intel & info-sharing)
- Global investigations / prosecutions / settlements
- Scrutiny of gatekeepers and enablers
- Similar international legal & procedural changes
 - AML – FATF, EU 4th ML Directive: POCA
 - ABC – OECD
 - Asset recovery – Criminal Finances Act 2017
- Incentives for self reporting & settlements

Rolls-Royce apologises after £671m bribery settlement

The Criminal Finances Act 2017 overhauls the UK anti-money laundering and confiscation regime and makes it much easier for authorities to prosecute tax evasion. This guide provides a general overview of the legislation for those who are new to the subject.

INTRO
AN INTRODUCTION TO UK LEGISLATION | DECEMBER 2017

Criminal Finances Act 2017

INTRODUCTION
The Criminal Finances Act 2017 (CFA 2017) is the most comprehensive piece of UK legislation to date, covering a wide range of areas including money laundering, tax evasion, and corporate crime. It is a landmark piece of legislation that will have a significant impact on the way in which businesses and individuals operate in the UK.

WHAT IS THE CFA?
The CFA 2017 is a comprehensive piece of legislation that covers a wide range of areas including money laundering, tax evasion, and corporate crime. It is a landmark piece of legislation that will have a significant impact on the way in which businesses and individuals operate in the UK.

WHY IS AN OFFENCE COMMITTED?
An offence is committed under the CFA 2017 if a person is found to have committed a prohibited act, such as money laundering, tax evasion, or corporate crime. The CFA 2017 sets out the conditions that must be met for an offence to be committed, and provides for a range of penalties for those who are found to have committed an offence.

WHO DOES IT APPLY TO?
The CFA 2017 applies to a wide range of individuals and entities, including individuals, companies, and other legal entities. It applies to both UK and non-UK citizens, and to both UK and non-UK entities.

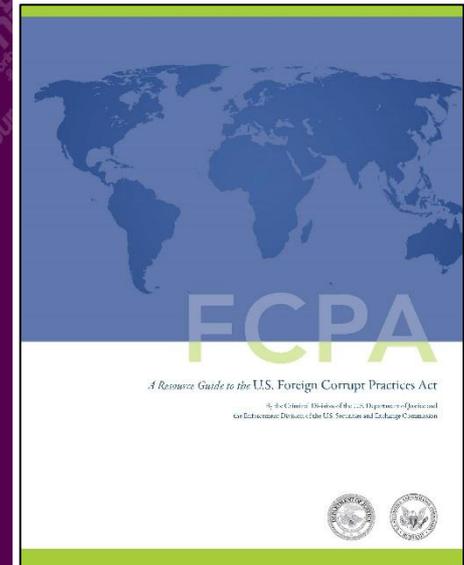
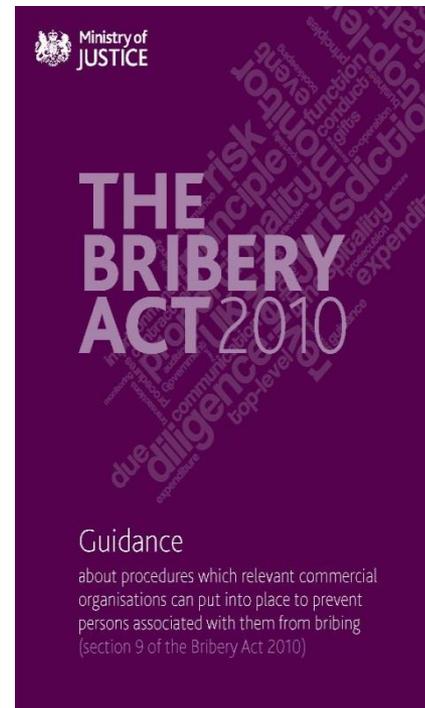
WHICH IS BEST FOR THE UK?
The CFA 2017 is a landmark piece of legislation that will have a significant impact on the way in which businesses and individuals operate in the UK. It is a comprehensive piece of legislation that covers a wide range of areas including money laundering, tax evasion, and corporate crime. It is a landmark piece of legislation that will have a significant impact on the way in which businesses and individuals operate in the UK.

REASONABLE PROCEDURES TO PREVENT TAX EAVASION
The CFA 2017 requires companies to implement reasonable procedures to prevent tax evasion. These procedures should be designed to prevent the company from being liable for an offence under the CFA 2017. The CFA 2017 sets out the conditions that must be met for a company to be able to rely on its reasonable procedures as a defence to an offence.

CONSEQUENCES OF OFFENCES
The CFA 2017 sets out a range of penalties for those who are found to have committed an offence. These penalties include fines, imprisonment, and disqualification. The CFA 2017 also provides for a range of other consequences, including the confiscation of assets and the freezing of assets.

THE RISKS OF NON-COMPLIANCE
The CFA 2017 sets out a range of risks for those who do not comply with its provisions. These risks include the risk of being found to have committed an offence, the risk of being fined or imprisoned, and the risk of having assets confiscated or frozen. The CFA 2017 also sets out a range of other risks, including the risk of reputational damage and the risk of being excluded from certain markets.

Adequate procedures to prevent bribery



Visit:
www.justice.gov.uk and www.justice.gov

Corruption indicators

- Abnormal cash payments, high commission payments
- Inflated invoice prices, unexplained expenses
- Lavish gifts & hospitality, overseas trips, payment of education fees
- Payments to offshore accounts, payments to 3rd party countries
- Urgent or advance payments for bringing forward orders
- Agents with little or no subject knowledge
- Agents or intermediaries with government connections / local expertise
- Lack of evidence of work done by agents
- Limited due diligence or independent oversight of selection process, work carried out, or of value for money
- Bypassing normal tendering or contract procedures

Practical steps to reduce the likelihood of your business breaking the law

Prevent

- Regularly risk assess, mitigate, review and update
- Create a culture of compliance

Detect

- Train/incentivise staff, agents and intermediaries to be ethical and report internally
- Audit, audit, audit – companies must investigate quickly/promptly

Remediate

- Encourage early liaison with compliance / external experts
- Build a positive/proactive relationship with prosecutors/regulators – consider self-reporting to authorities

Free resources at www.fraudadvisorypanel.org

Any commercial organisation formed, or carrying out business, in the UK is now expected to have policies and procedures in place to **prevent bribery and corruption**. This guide explains what these are and how you can implement them.



Adequate procedures to prevent bribery and corruption

WHAT ARE ADEQUATE PROCEDURES?

Any commercial organisation, namely any incorporated body or partnership formed, or carrying out business, in the UK is now expected to have adequate procedures in place to avoid falling foul of the **Bribery Act 2010**.

The UK Ministry of Justice has published guidance on the Bribery Act 2010 to help organisations design and implement these procedures using a risk-based approach which recognises that the threat from bribery and corruption varies across jurisdictions, business sectors, business partners and transactions.

The guidance is based around six principles to enable flexible and proportionate procedures to be put in place depending on the size of the company and its exposure to situations where bribery or the expectation of financial incentive or reward are recognised as high risks.

Following the guidance can reduce the risks associated with any bribery and/or fraud and/or financial crime.

WHY ARE THEY IMPORTANT?

Under the Bribery Act 2010 a commercial organisation with no or no adequate procedures in place to avoid falling foul of an offence (an 'associated person') may be liable for an offence if a person performing services for or on its behalf (a 'bribe payer') or a person in order to obtain or retain business or gain an

advantage. However, an organisation has a defence if it can prove that it had adequate procedures in place to prevent such conduct.

A commercial organisation is defined as: a body or partnership incorporated or formed in the UK irrespective of where it carries on its business, or a body or partnership incorporated or formed outside the UK that carries on a business or part of a business in the UK.

THE SIX PRINCIPLES

Principle 1: proportionate procedures
Anti-bribery procedures should be proportionate to the size, nature and the nature, scale and complexity of the organisation's activities. They should be clear, practical, accessible, effectively implemented and enforced.

Principle 2: top-level commitment
Senior management (as a board of directors, the owners, or any other equivalent body or person) is committed to and active in promoting bribery prevention, including the way in which the practice is never acceptable.

Principle 3: risk assessment
The organisation makes regular, well-informed and clear

documented assessments of the bribery and/or external bribery risks it faces.

Principle 4: due diligence
The organisation applies due diligence procedures to people who perform, for or on its behalf, or a means of mitigating and controlling identified risk.

Principle 5: communication (including training)
Through internal or external communication and training, management seeks to ensure that prevention is embedded and understood throughout the organisation.

Principle 6: monitoring and review
Anti-bribery procedures are monitored and reviewed so that they can be improved where necessary.

CREATING A COMPLIANT POLICY

It is important to have a written policy which sets out your organisation's commitment to the anti-bribery and corruption, and the responsibility for its prevention, detection, investigation and response. It should also communicate an important message to staff and third parties that such behaviour is unacceptable and will not be tolerated. The policy should: permit the anti-bribery practice to be set out in public materials; be consistent with the conduct of employees and representatives; and address each of the six principles.

Furthermore, it must inform all commercial representatives and demonstrate that the business has thought carefully about bribery and has done its best to address and overcome any risks.

CREATING AN ANTI-BRIBERY FRAMEWORK AND CONDUCTING CORRUPTION-RISK FREE BUSINESS

People
Your anti-bribery policy should be supported by the most senior or senior manager appointed with overall responsibility for it. The policy should be communicated throughout the organisation and to business partners, potential partners and third parties involved in contracts that is particularly important for overseas employees, agents, joint venture partners or suppliers, especially those working in high-risk countries.

Invest adequate resources in training
It should be focused on employees offering frontline services or interacting directly with business partners or third parties (ie those who work in the high-risk areas, not necessarily from the top of an organisation down and regularly refreshed and updated to reflect the changing risk profile of the organisation). There also needs to be a simple, safe way to report any public materials, suspected or actual bribery that all staff members and representatives have access to and to act on.

UK anti-bribery legislation is among the strictest in the world and imposes serious sanctions upon those who fall foul of its wide-ranging powers. This guide provides an overview of the legislation for those who are new to the subject.



Bribery and corruption

WHAT IS BRIBERY AND CORRUPTION?

Definitions of bribery and corruption vary. Some of the most commonly used international definitions are provided by Transparency International in the Anti-Corruption Best Practice Guide (July 2009).

Bribery

The offering, promising, giving, accepting or soliciting of an advantage on an incentive for an action which is illegal, unethical or a breach of trust (payments can take the form of gifts, loans, fees, rewards or other advantages, travel, services, hospitality, etc).

Corruption

The abuse of entrusted power for personal gain. Corruption can be identified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs.

OVERVIEW OF THE LAW

The Bribery Act 2010 is the UK's main anti-bribery and corruption legislation. It creates four offences: offering a bribe, accepting a bribe, bribing a foreign public official and receiving a bribe improperly.

The Act applies to England and Wales, Northern Ireland and Scotland, and covers a broad range or received in the UK and abroad.

The Act came into force on 1 July 2010 and is not retrospective. This means that any misconduct committed before this date is governed by the old regime comprising the common law offence of bribery, the Public Bodies Corrupt Practices Act 1988, the Prevention of Corruption Act 1906, and the Anti-Fraud (Crime and Security) Act 2001.

WHO DOES IT APPLY TO?

The legislation applies to individuals, namely UK nationals and those with a close connection to the UK, and companies which are incorporated in the UK. The 'failure to prevent bribery' offence only applies to organisations, including those incorporated elsewhere if they carry on business or part of a business in the UK.

WHEN IS AN OFFENCE COMMITTED?

A bribery offence is committed in the following circumstances: when a person gives, promises or offers a bribe to another person in the UK or abroad with the intention to induce a person to perform a relevant function improperly (s.1, s.2).

When a person requests, agrees to receive or accepts a bribe from another person in the UK or abroad with the intention that a relevant function should be performed improperly (s.2, s.3).

When a commercial organisation fails to prevent bribery by 'associated persons' namely persons performing services for or on behalf of the organisation (s.7, s.8).

The improper performance referred to in the s.1 and s.2 offence means any performance which amounts to a breach of an expectation that a person will act impartially and in good faith. The performance standard is commonly referred to as what a reasonable person in the UK would expect in relation to a performance, activity or function.

When a person bribes a foreign public official, with the intention to influence that person in their capacity as a key public official, and with the intention to obtain or retain business, or an advantage in the conduct of business, the official can hold a legislative, executive or judicial function, exercise a public function on behalf of the state or territory, or be an official or agent of an international public organisation (s.4, s.6).

The six offences do not require an intention of improper performance, merely an intention to influence the public official in order to obtain a business advantage. It is a stricter offence than s.2.

Companies can be liable under s.7 for the actions of overseas-based employees, agents, joint venture partners or suppliers to overseas operations, and these associated persons can be individuals or legal persons, such as an incorporated or unincorporated body.

The associated person must either bribe a person or bribe a foreign public official or does

ensure that no individual is responsible for the entire due diligence process from start to finish.

Directors and/or trustees (on the sale of a firm's) due diligence strategy and the policy and procedures which underpin it.

Managers and employees (on different departments) performance of due diligence enquiries with a separate member of staff making the final decision whether to enter into a relationship with them.

Independent assurance on the nature of the business relationships, and not be seen as an optional 'tick-box' a basic standard form for staff to use can help do this.

It is most important to have a written policy on due diligence. It should set out: the activities that will be conducted and who will perform them;

the person(s) with final decision-making authority on whether to transact with a third party.

It is important to note that some professions and sectors are required to conduct due diligence as part of their UK or any industry, statutory or regulatory obligations that need to be complied with.

The frequency of ongoing monitoring and the frequency of relationship and agreement reviews.

It should also set out the types of negative information that might result. In most

Whenever an organisation transacts with a third party there may be a risk of being exposed to financial and reputational losses resulting from fraudulent conduct or unethical behaviour. This guide explains how to conduct basic **due diligence on UK-based third parties**.



Due diligence on UK-based third parties

WHAT IS DUE DILIGENCE?

Due diligence is the process of undertaking an enquiry into a third party (such as a customer, supplier, agent or distributor) to ascertain any risks that may arise in transacting or dealing with that particular party.

Due diligence is more than simply obtaining documentary or electronic evidence of a customer or supplier's identity and proof of address. It is about understanding the nature of the third party's business and your relationship with them.

WHY IS IT IMPORTANT?

Conducting due diligence is important to help protect against losses due to fraud, reputational damage through dealing with unscrupulous third parties and credit risk.

Effective due diligence serves as a line of defence against these risks and can illustrate efforts by those with a consistent interest. It should form part of your fraud prevention strategy.

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specific enquiries or a refusal to transact or deal with a particular party.

It is essential to ensure that the policies and procedures that may support your business (eg a sales agent or distributor). The process should be applied consistently as part of business as usual procedures, regardless of the nature of the business relationships, and not be seen as an optional 'tick-box' a basic standard form for staff to use can help do this.

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The most obvious time to perform due diligence checks is before you conduct business with a third party for the first time - even if they have been introduced by a trusted individual or organisation.

The second, less obvious time is when any changes are made to high-risk transactions areas such as details of supplier bank accounts or customer addresses - regardless of the length of the relationship. This is because a fraudster may try to intercept payments or goods by impersonating a legitimate person or organisation.

It is good practice to check each and every customer, supplier or other third party that may support your business (eg a sales agent or distributor). The process should be applied consistently as part of business as usual procedures, regardless of the nature of the business relationships, and not be seen as an optional 'tick-box' a basic standard form for staff to use can help do this.

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It should also set out the types of negative information that might result. In most

Due diligence should be viewed as an ongoing process rather than as a one-off check.

When should due diligence checks be performed? Due diligence should be viewed as an ongoing process rather than as a one-off check.

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www.icaew.com/lunchmar

Presentation skills

21 March 10:00

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Brexit update

27 March 12:30

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Companies House update

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