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Taxes

Chamber of deputies acting under a state of legislative emergency

On 1 March 2020, a state of emergency was declared for 30 days. Along with other measures, the chamber of deputies approved the suspension of the electronic reporting of sales (ERS), deferments/waivers of social security and health insurance payments, and carer's allowances for employees. The bills are yet to be debated by the senators, who are ready to do so once they are delivered to them.



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On 24 March 2020, the chamber debated several governmental bills under a state of legislative emergency, allowing their passage within a single day. The bills still must be approved by the senate and signed by the president.

The governmental bill awarding carer's allowances to employees for the entire time that schools remain closed was passed with minor amendments, e.g., allowing parents to alternate in the care for their children. We informed you about this bill previously.

Via a separate bill, electronic reporting of sales was suspended for the duration of the state of emergency and three months after its end.

The amendment to the Act on Public Health Insurance Premiums will bring the following changes for the self-employed:

- extension of the deadline for filing annual statements of income, expense and prepayments for 2019 until 3 August 2020;
- waiver of penalties for late payment of premium/prepayments for March to August 2020; the penalty for late payment of premium/prepayment will be charged from 22 September at the earliest;
- cancellation of the duty to pay minimum premium prepayments (CZK 2 352 per month);
- if the self-employed have been assessed monthly prepayments higher than the minimum, for the period from March to August 2020 they shall only pay the amount in excess of the minimum prepayment. All amounts will then be settled within 8 days from filing the statement for 2020.

The act regulating social security premiums will bring the following changes for the self-employed:

- cancellation of the duty to pay monthly prepayments for pension insurance premiums and state employment policy contributions, regardless of the amount of monthly prepayments assessed;
- reduction of pension insurance premiums and state employment policy contribution payments for 2020 by CZK 2 544 for a person's primary activity/CZK 1 018 for their secondary activity per each month in which the independent gainful activity was carried out for at least a part of the month;

in the annual statement of income, expense and prepayments for 2020, the minimum prepayments of pension insurance premium and state employment policy contribution that have been waived (those for March to August) will be deducted, in addition to prepayments actually paid in 2020 (those for January, February and September to

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The acts will enter into effect upon their promulgation in the Collection of Laws. We will inform you about these changes in more detail in future issues.

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COVID-19: Tax Liberation Package II

On 24 March 2020, the Ministry of Finance published Financial Bulletin 5/2020, specifying other measures to mitigate the impact of the COVID-19 pandemic (Tax Liberation Package II). Measures that must be in form of laws have already been or will be submitted to the Chamber of Deputies.



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Waiver of income tax prepayments for June
The Ministry of Finance decided on a general waiver of income tax prepayments payable on 15 June 2020, without an obligation to file an application. This only applies to taxpayers using calendar years as taxable periods.

Please note that individual applications for the waiver of income tax prepayments payable on 15 September and 15 December may also be filed, but only where justified. The same applies to fiscal years.

Waivers relating to immovable property acquisition tax
The general waiver of a penalty for the late filing of an immovable property acquisition tax return and of default interest for the late payment of this tax, or its prepayment, applies to all tax returns with a filing deadline between 31 March and 31 July 2020. This involves immovable property acquired and entered in the Real Estate Register after 1 December 2019 if a tax return is submitted and the tax paid before 31 August 2020. Accordingly, it will be possible to file immovable property acquisition tax returns and pay the relevant tax, or its prepayment, until 31 August 2020. The general waiver also applies to interest on the deferred amount.

Waiver of penalties for the late filing of VAT returns
If a penalty relating to a VAT ledger statement has been waived based on an individual application filed in connection with the coronavirus pandemic (i.e. a penalty other than the basic penalty of CZK 1,000 to which the general waiver applies), the penalty for the late filing of a VAT return for the same period shall also be waived automatically, on the condition that the payer files a VAT return no later than on the date a late VAT ledger statement is submitted.

Waiver of selected administrative fees applicable to customs
The tax liberation package also allows for a general waiver of selected administrative fees applicable to the customs area, in particular the administrative fee associated with the application for a refund of taxes on import or with the waiver of a customs duty underpayment, or the administrative fee associated with the application for relief from tax or customs duty pursuant to the Union Customs Code. The waiver applies to all applications filed in the period started on the decision's effective date, i.e. 24 March 2020, and ended 31 July 2020.

Tax relief measures proposed by the Ministry of Finance that are yet to be discussed by parliament:

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Suspended obligation to electronically report sales (ERS)
The suspension applies to all entities falling to all ERS phases over the period of emergency measures and over the following three months. This means that no taxpayer will have to report their sales using the ERS system and no monitoring will be performed.

The Ministry of Finance's proposal was approved by the deputies on 24 March 2020 and is now heading to the senate.

Introduction of a 'loss carry-back' concept (tax losses to be utilised on a retrospective basis) for 2020
If taxpayers recognised a tax liability for 2018 or 2019 and plan to report a tax loss for 2020, they may deduct this loss from the tax bases for 2018 and 2019, giving rise to a refund of income tax.

The retrospective utilisation of tax losses will be possible through an additional income tax return filed for the 2018 and 2019 taxable periods. Simultaneously, the tax overpayment will be refunded to the taxpayer's account based on the taxpayer's application.

Currently, this is only a proposal of the Ministry of Finance that has not yet been submitted to the Chamber of Deputies. The final version of this measure may therefore change during the legislative process.

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Antivirus programme and further state support for employers and others

The government has adopted several measures to support employers, employees and the self-employed in the coronavirus pandemic. The aim is to ensure that employers do not have to lay off employees. The government also wants to help employed and self-employed parents of young children now that schools are closed. New governmental measures are being adopted in quick succession, and continuously specified by the authorities. To make it easier for employers to understand their duties towards their employees and the options they may use to at least partly stabilise their operations, we have prepared a brief summary of these measures.



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Antivirus programme

The first version of the Antivirus programme was passed by the government on 19 March 2020. It aims to protect jobs with employers directly affected by governmental measures comprising shutdown of some operations to prevent the spreading of the coronavirus infection (Regimes A-B). This Monday, 23 March 2020, the government allowed *Kurzarbeit,* extending the Antivirus programme also to entities indirectly affected by the measures (Regimes C-E). The government defined a total of five regimes, covering the following situations:

Regime A – Employee quarantine. Wage compensation shall be paid to employees in the amount of 60% of their average assessment base. Employers will receive a contribution in the full amount of the wage compensating paid.

Regime B – Impossibility to assign work to employees due to extraordinary measures adopted by the government. Employers have been ordered to close their premises by the government's resolution on adopting emergency measures in connection with the COVID-19 infection. Wage compensation shall be payed to employees in the amount of 100% of their wage. Employers will receive a contribution in the amount of 80% of the wage compensation paid.

Regime C – Impossibility to assign work to employees due to a significant portion of employees being quarantined or caring for a child. This means at least 30% of employees of a company/ operation/plant/shop or other organisational unit, depending on the employer's circumstances. Wage compensation shall be payed to employees in the amount of 100%. Employers will receive a contribution in the amount of 80 % of the wage compensation paid.

Regime D – Limited availability of inputs (raw materials, products, services) necessary for the employer's activity due to quarantine (or generally a production stoppage) at their suppliers, including foreign ones. The Ministry of

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Labour and Social Affairs has announced on their website that this means, e.g., agreements on proving the origin of inputs, prohibitions of certain actions, or other measures supportably affecting supplies to the employer. Wage compensation shall be payed to employees in the amount of 80%. Employers will receive a contribution in the amount of 50% of the wage compensation paid.

Regime E – Limited demand for employer's services, goods or other products due to quarantine measures in the employer's market (in the Czech Republic and abroad). Wage compensation shall be payed to employees in the amount of at least 60%. Employers will receive a contribution in the amount of 50% of the wage compensation paid.

The compensation will be provided to employers whose business activity is affected as a result of the pandemic. It will be provided as a contribution fully or partly covering the wage compensation that the employees are entitled to due to obstacles to work, as long as such obstacles to work may be subsumed under one of the above regimes (A-E), and if it can simultaneously be proven that the obstacle occurred as result of COVID-19.

The contribution will be provided by the Czech Labour Office, upon application by the employer. Employers shall apply for a refund of wage compensations paid after the end of the reporting period, i.e., after the end of the month for which they have applied for contributions. No further details on drawing this support nor the application form have been released yet; we expect them to be published within the next couple of days.

The question remains for how long the Czech Labour Office will provide the contribution. According to the Ministry of Labour and Social Affairs' information currently available, the amount and duration of the contribution will depend on the cause of the obstacle to work, while it shall be assessed on an individual basis for each employee. The previous governmental resolution (of 19 March 2020), when Regimes C-E have not yet been approved, had stated that the compensation shall be provided for 10 days of the obstacle to work's existence for a specific employee; however, the subsequent governmental resolutions no longer mention this or any other deadline. The government has also appointed the minister of labour and social affairs to prepare a common methodology for both parts of the Employment Support Programme and to submit it to the government for approval. We expect this methodology to clarify the Antivirus programme's issues that remain open.

Change in the regime of obstacles to work for employees of shutdown operations

On 23 March, the government adopted a resolution acknowledging the extraordinary measures adopted on the same date by the Ministry of Health under to the Public Health Protection Act, extending the prohibition of retail sales of goods, sale of services and some other activities (restaurants, spas, hairdressers) until 1 April 2020. The original prohibition was declared by the government under the Crisis Act. Unimportant as it may seem, this difference may, in our opinion, fundamentally change the view of the obstacles to work for employees of the affected shops/facilities. According to the governmental regulations' current interpretations (as summarised here), which we, however, do not fully agree with, employees who cannot perform work as a result of these measures are classified into Regime B, i.e. obstacles to work under Section 208 of the Civil Code, and shall receive a 100% wage compensation from the employer.

However, it is to be noted that the Labour Code itself explicitly regulates the situation when employers are forced to shut down or limit their operations due to extraordinary measures: Section 347(4) stipulates that, beyond the definition of quarantine as per the Public Health Protection Act, for the purposes of the Labour Code, quarantine shall also mean extraordinary measures taken in an epidemic or under the threat of its occurrence pursuant to the Public Health Protection Act involving the prohibition or limitation of contact between groups of individuals suspected of being infected and other individuals, and the prohibition of or duty to perform certain other activities in dealing with an epidemic or the threat of its occurrence, provided that these prohibitions, limitations or duties prevent an employee from the performance of work. It is therefore possible that as a result of the extraordinary measures adopted by the Ministry of Health on Monday, for some employees of the affected operations at least the obstacles to work will be from now on (a possibility of retrospective reclassification is yet to be investigated) viewed as a quarantine under Regime A, rather than another obstacle to work under Regime B.

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Carer's allowance

On 19 March, the government passed a motion to change the rules concerning the entitlement to carer's benefits during the extraordinary measures; we covered this in the previous special issue.

The bill has now been passed by the chamber of deputies with the following changes from the last covered version:

- carer's allowance will also be paid to those who care for an older, handicapped child attending a school;
- two carers may alternate in caring, as needed. So far, two carers could only swap once. The draft mitigates this rule to better suit the extended time of drawing the allowance, i.e. for as long as the care for a child is necessary because of extraordinary measures adopted in an epidemic. Carers may now alternate in caring for a child, with an unlimited number and manner of such swaps.

The effect of extraordinary measures on occupational safety and health protection

Extraordinary measures also affect occupational safety and health protection; their most current effects are:

During the state of emergency, it is possible to substitute with an affidavit:

- a health card under Section 19 (2) of the Public Health Protection Act
- an assessment of a job applicant's suitability under the Act on Specific Medial Services of employees whose employment originates after this measure has been announced.

Furthermore, during the state of emergency, it is not necessary to carry out periodical medical check-ups.

Other occupational medical checks-ups (mainly unscheduled examinations or exit medical assessments) and other occupational medical services should continue. However, it is advisable to contact the occupational medical services provider and check the conditions under which they operate during the extraordinary measures.

The Ministry of Health has also issued an opinion on providing employees with masks: it states that the employer is under no obligation to provide employees with masks or other forms of respiratory tract protection at the workplace. This means that sanctions for breaches of the duty to wear masks by employees should not be governed by the Labour Code, but by the Public Health Protection Act and the Crisis Act.

We are continuously monitoring the situation. If you have any questions, please contact us.

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Validity of issued A1 certificates in the context of COVID-19 pandemic

The Czech Social Security Administration (CSSZ) has announced that migrating persons and their employers do not have to report to their local CSSZ a temporary change in circumstance (home office) in the Czech Republic or abroad.



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With the temporary restriction of free movement of persons due to the COVID-19 pandemic, some employees and self-employed have been temporarily forced to carry out their gainful activity in the territory of the EU member state where they reside (home office), which may differ from the state where they had been carrying their gainful activity before the COVID-19 pandemic. The CSSZ has now confirmed that this does not constitute a change in circumstances relevant in terms of a change in the state where the person is insured for social security purposes.

Migrating persons (employees, self-employed) and employers thus do not have to report such temporary changes in circumstances (home office in the Czech Republic or abroad) to the local CSSZ; also, they do not have to return the previously issued certificates of being covered by Czech social security regulations (Certificate of Applicable Legislation, or A1 certificates), as long as they resume their gainful activity in the territory of several EU member states once the emergency measures are lifted.

According to information published by the CSSZ, a similar approach should also be applied by the institutions of our neighbouring states, i.e. Slovakia, Poland, Germany and Austria, as well as by France, Belgium, Luxembourg and Switzerland.

The above applies to social security and health insurance areas that are harmonised within the EU.

However, this does not apply to income tax, where the fact that employees or self-employed work in the home-office regime in the state of their residence might have tax implications for both the employer and the employee or self-employed. Therefore, we recommend a prudent approach in this area.

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State of emergency and its effect on employing foreigners

The state of emergency declared in the Czech Republic has brought several measures affecting not only Czech citizens, but also foreigners staying in our territory. In the previous series of articles, we informed about measures connected with the closing of the borders; now we summarise other effects of the current situation.



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Validity of permits and visas
By the governmental resolution of 13 and 18 March, the validity of work permits and visas issued before the state of emergency was declared have been automatically extended if their validity were otherwise to expire within 60 days after the end of the state of emergency; they will only expire on the 60th day after the state of emergency has ended. The extended validity is conditional upon a foreigner's valid employment with a Czech employer throughout the state of emergency. Hence, this does not apply to foreigners temporarily posted in the Czech Republic by their foreign employer, as they do not have a direct employment relationship with a Czech entity. A similar rule was also adopted for agency employees.

Closing the borders of Schengen?
Although the EU announced its intention to close the Schengen Area borders for 30 days already last week, so far, they have only issued a recommendation to the member states on how to proceed with border checks. Priorities are to ensure safety, to maintain the free movement of goods and services, and, above all, to consistently check and medically examine persons crossing the external border. The EU also confirmed the individual member states' power to temporarily regulate entry to their territory, including border checks.

Change of employer
By the governmental resolution of 19 March, the rules for employee card holders who decide to change their employer have been loosened. Under the Foreign Nationals' Residence Act, employee card holders may apply with the Ministry of Internal Affairs' Asylum and Migration Department for consent with them changing their employer no earlier than 6 months after their first card was issued, with some exceptions. Now it is possible to apply for such consent even before such 6 months elapse.

Another important change is in some specific cases the shortening of the period of the obligatory prior notice that employees must give of their intention to change an employer. Under normal circumstances, foreigners must notify the Ministry of Internal Affairs' Asylum and Migration Department of their planned employer change no later than 30 days in advance; during this time, the department will inform the foreigner and the future employer whether the conditions for such change have been met. Now, if the future employer is carrying out emergency measures or contributing to them, it suffices that the change of an employer is announced to the department on the date when the foreigner has started their new job. The conditions are deemed complied with upon giving the notice. Employers carrying out emergency measures may include, for instance, companies manufacturing medical

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supplies.

Filing applications in the Czech Republic/approval deadlines
The Ministry of Internal Affairs' Asylum and Migration Department currently does not allow for applications in foreign national's matters (such as applications to extend residency permits) to be filed physically at its offices; a recommendation has been issued for foreigners to use postal services. This recommendation also covers applications that under the law foreigners should be filing in person. Furthermore, due to the current circumstances, delays in approving the applications already filed are to be expected. All appointments made with the department after 16 March have been automatically cancelled, and, as the department's activity is now limited to the most urgent cases and activities, mostly will be rescheduled for after the end of the state of emergency.

Waiver of deadlines
Although delays in the state authorities' approval of applications are to be expected, this does not mean that all deadlines have automatically been extended. The department has already announced that each application will be reviewed on an individual basis, while taking into account the difficulty of undertaking certain acts in person, as well as the worsened accessibility of postal services. Once the state of emergency ends, applicants will have 15 days to apply for a waiver of the missed deadline; together with the application, they should also undertake the acts whose deadline they have missed. The department at the moment expects to waive the missed deadline for acts that foreigners can undertake in person at one of the department's offices or by post; it will, however not waive deadlines for individuals who can use a data box – either their own or that of an authorised representative.

Cross-border workers (commuters)
Cross-border worker traveling to work from/to the Czech Republic to/from the neighbouring states have been a hot topic. The authorities defined this category as workers who cross borders on a regular basis for the purpose of carrying out an economic activity, initially within 50 km from the state border, and now within 100 km. Cross-border worker status is only awarded to persons who cross the border several times a week, not those who stay in the Czech Republic for a whole week and only return to their home countries for the weekend. When crossing the border, these workers have to prove their compliance with these conditions by a certificate issued by their employer. From 21 March, they also must carry a cross-border worker's booklet and produce it every time when crossing the border.

However, the situation of cross-border workers continues to develop dynamically: from 26 March, persons crossing the border with Germany and Austria will no longer be required to do so frequently; instead, they will be required to cross the border in 21-day intervals, with an obligatory two-week quarantine in between. On the other hand, they will be allowed to travel further than 100 km from the state border.

Updated list of high-risk countries
On 23 March 2020, the list of countries with a high risk of COVID-19 infection, maintained by the Ministry of Health, was updated. Australia, Israel, Canada, Malaysia, Portugal and the USA have been added to the list. As at same date, South Korea and China were removed from the list. Travellers returning from high risk countries must undergo an obligatory two-week quarantine.

Please note that the situation is developing constantly, and the above only summarises the most important measures affecting foreigners. If you need assistance in a specific situation, our immigration services team is available to you.

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Legal

How to conclude distance contracts

During a country-wide lockdown, distance contracting becomes more relevant than ever. Below we summarise the most common approaches and their pitfalls.



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Do I really need a contract in writing?

Contracts are concluded in many ways: in writing, orally (“*Here’s some money, please go to the store for me.*” *“OK.”*) and even implicitly (placing groceries on the conveyor belt, paying for them and taking them away.) While the written form of contracts is recommended, because it documents and provides evidence, we should keep in mind that the law only prescribes the written form in specific cases. The most common ones are: a general power of attorney; acts whereby corporate entities are founded (such as the memorandum of association of a limited liability company); employment contracts and notices of termination, and transfers of real property. This means that in most cases including common supplier-customer relations, a written form is not obligatory.

It is also necessary to differentiate between the form of the contract (meaning its content) and the requirements for its signature.

What does ‘in writing’ exactly mean?

The legal definition of the written form is currently insufficient. The Civil Code (Section 562) stipulates that the written form is also maintained when juridical acts are made by electronic or other technical means enabling their contents to be captured and the acting person to be identified. The relationship with the provisions of Section 561 remains unclear, under which the validity of a juridical act made in the written form requires the signature of the acting person. A signature may be substituted by mechanical means, where it is usual to do so. Another legal regulation provides how a document can be electronically signed when making juridical acts by electronic means.

From this sketchy regulation, it may seem that if content is captured sufficiently (e.g., by the text of an email) and the acting person is identified (e.g. by their signature in the ‘name and surname’ format, possibly also by their office within the company, its registered office and corporate ID), this would constitute a juridical act in writing. Yet, case law has so far been rather sceptical in this respect, mainly as regards the signature (leaving aside legal curiosities such as a gift agreement of an apartment in form of a comics – which was, by the way, accepted by the real estate register as a written contract).

How can contracts be signed?

As regards the pure ‘paper form’, there are two types of signatures: a ‘common‘ handwritten signature, and a verified one; the latter is only required by law in specific cases, such as powers of attorney in the form of public deeds (typically used for making substantial changes to a business corporation), or deeds for entering rights *in rem* to real property in the real estate register.

As regards electronic juridical acts, the situation is more complex. Effective 1 July 2016, eIDAS regulations distinguish between a **simple electronic signature** (e.g., the common signature in an email), an **advanced electronic signature** (ensuring the integrity of the document) and a **qualified electronic signature**, based on a qualified

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certificate ensuring the signing person's identity and equalling a handwritten signature. Unfortunately, not even this signature is generally viewed as the digital equivalent of a verified handwritten signature. And to make things even more complicated, the Czech Act on Trust Services for Electronic Transactions and the new Act on Right to Digital Services also add a **recognised electronic signature** to it, while from the perspective of the mentioned eIDAS, this may be either an advanced or a qualified electronic signature, depending on the circumstances.

To conclude: meeting the above outlined requirements for a sufficiently qualified electronic signature is rather demanding in practice, and in some cases (e.g., when concluding an employment contract, to give an illustrative example) evenly impossible; and the solutions are not the most practical or efficient, anyway.

What to do, then?

One should assess the statutory requirements for the form of the contract being concluded and for its signing. For common commercial contracts, it should be no problem to agree with the counterparty on the ideal form of a contract. While doing so, remember to also cover any subsequent communication and possible changes to the contract (e.g., whether an amendment may be concluded by email, whether email communication shall be considered by the parties as the written form, or whether some acts should be limited to concrete persons and/or communication channels, including specific applications). Analogously, it will often suffice to exchange a scan of the signed contract via common communication channels (typically, email).

Where the qualified verification of an electronic juridical act is required, it is advisable to proceed with prudence. Sadly, the legislators have not kept up with technical progress in this respect, which is especially painful under the current extraordinary circumstances.

Of course, if in doubt, there is still the good old paper form with handwritten signatures, delivered by post or courier. Even then, however, you cannot be 100 percent sure that it has indeed been signed by the desired person.

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Tips and tricks

State of emergency – other possible implications

The government's declaration of a state of emergency on 12 March 2020 has raised procedural doubts, and an action for its annulment has already been brought. It is thus possible that in fact, no state of emergency was formally declared, therefore no emergency measures could have been adopted based on it. Furthermore, the initially issued governmental regulations were subsequently cancelled and replaced by emergency measures of the Ministry of Health.

The issue of the legitimacy of the declaration of a state of emergency, and of the subsequent measures, also affects the possibility of claiming damages from the state. We are monitoring the issue closely and will present a more detailed analysis to you soon.

Possible suspension of deadlines during the state of emergency

The presidents of the regional courts have called upon the Ministry of Justice to adopt a legislative measure retrospectively suspending the running of deadlines under both substantive and procedural law, as at the time of declaring the state of emergency. The reason is that proper court proceedings, including, e.g., the parties' possibility to inspect court files, have now been substantially limited, if not rendered impossible.

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