



# ICLG

The International Comparative Legal Guide to:

## **Litigation & Dispute Resolution 2018**

**11th Edition**

A practical cross-border insight into litigation and dispute resolution work

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## EDITORIAL

Welcome to the eleventh edition of *The International Comparative Legal Guide to: Litigation & Dispute Resolution*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of litigation and dispute resolution.

It is divided into two main sections:

One general chapter. This chapter provides an overview of legal privilege in litigation, particularly from a UK perspective.

Country question and answer chapters. These provide a broad overview of common issues in litigation and dispute resolution in 40 jurisdictions, with the USA being sub-divided into eight separate state-specific chapters.

All chapters are written by leading litigation and dispute resolution lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Greg Lascelles and Tom Jackson of Covington & Burling LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at [www.iclg.com](http://www.iclg.com).

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# Angola

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## I. LITIGATION

### 1 Preliminaries

#### 1.1 What type of legal system has your jurisdiction got? Are there any rules that govern civil procedure in your jurisdiction?

Angola has a civil law legal system, the primary source of law being the statutes. Consequently, there is no system of precedent and case law, as much as legal writing, which are viewed as secondary sources of law.

Additionally, in certain areas of law, traditional customary law still plays a role.

Civil procedure is mainly regulated by the Angolan Code on Civil Procedure (“CCP”).

#### 1.2 How is the civil court system in your jurisdiction structured? What are the various levels of appeal and are there any specialist courts?

The Angolan court system is governed by the Constitution of the Angolan Republic and the Law on Judiciary Organization, Law 2/2015 dated February 2<sup>nd</sup> 2015.

The Angolan Judicial Power comprises the Constitutional Court, the Judicial High Council, the Audit Court, the Military Court and the Ordinary Courts, the latter of which are organised by case matter, value, rank and territory.

Law 2/2015 provides for the setting-up of 60 Districts Courts (to replace the existing Provincial and District Courts), five Regional Courts of Appeal and the Supreme Court yet, to date, not all these courts have been set up and/or are yet functioning.

#### 1.3 What are the main stages in civil proceedings in your jurisdiction? What is their underlying timeframe (please include a brief description of any expedited trial procedures)?

Judicial suits are classified under the CCP as common or special. Common cases are then sub-divided into ordinary, summary or simplified proceedings, depending on their economic value (“*alçada*”). Summary and simplified proceedings are foreseen for cases dealing with claims of a lower economic value and will typically provide for shorter periods for filings to be made and/or circumvent certain procedural stages.

Proceedings are divided into a written stage (in which written pleadings are filed alongside documentary evidence), and an oral stage which comprehends both a preliminary hearing and the evidentiary hearing itself.

As to timeframes, although the law provides for precise timelines for both parties and the court to render pleadings and/or decisions/judgments, only the ones imposed on parties are binding. Hence, it is not possible to foresee how long a case will take to be ruled on in definite before Angolan courts.

#### 1.4 What is your jurisdiction’s local judiciary’s approach to exclusive jurisdiction clauses?

The CCP expressly provides for such sort of clauses so long as they do not override matters that are of the Angolan Courts’ exclusive jurisdiction to begin with (e.g. disputes over immoveable assets located in Angola) and they are entered into in relation to disposable rights.

#### 1.5 What are the costs of civil court proceedings in your jurisdiction? Who bears these costs? Are there any rules on costs budgeting?

The amount to be borne as judicial costs by the parties to civil proceedings is established for in the law. In principle, each party bears its own costs during the proceedings and pays an advance on costs throughout. The final costs are set when proceedings are over, i.e. with the court’s final judgment (the case’s complexity and length, specific expenses and party conduct being taken into account).

As to liability for costs, the rule is that the losing party bears the costs in proportion to his/her loss.

There are no rules on cost budgeting.

#### 1.6 Are there any particular rules about funding litigation in your jurisdiction? Are contingency fee/conditional fee arrangements permissible?

The law allows for litigation to be funded/paid for by a third party though there are no particular rules on the matter. It should be added that in Angola, this traditionally does not take place.

According to Angolan law, attorneys are not allowed to be paid exclusively on the basis of contingency.

**1.7 Are there any constraints to assigning a claim or cause of action in your jurisdiction? Is it permissible for a non-party to litigation proceedings to finance those proceedings?**

Parties are generally free to assign their claims and causes for action so long as formal requirements are abided by. However, some rights are considered inalienable and consequently, cannot be assigned. The law allows for litigation to be funded/paid for by third parties.

**1.8 Can a party obtain security for/a guarantee over its legal costs?**

No, a party cannot obtain security for a guarantee over its legal costs in Angola.

## 2 Before Commencing Proceedings

**2.1 Is there any particular formality with which you must comply before you initiate proceedings?**

There is no particular formality with which parties must comply before initiating proceedings.

**2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?**

The general period of limitation is 20 years. However, depending on the precise subject-matter at stake, limitation periods may vary. Such periods can be of five years (this is the case, for instance, with leases and rentals or company dividends), three years (when non-contractual liability is in place), two years (e.g. commercial credits contracted with a non-commercial party) or even six months (as can occur with credits related to accommodation).

These limitation periods are viewed as a matter of substantive law and they will run from the moment the underlying right is allowed to be exercised/acted on or from the moment the relevant fact from which the right derives, is verified. Again, the way the period is calculated will vary according to the corresponding subject-matter/kind of liability.

## 3 Commencing Proceedings

**3.1 How are civil proceedings commenced (issued and served) in your jurisdiction? What various means of service are there? What is the deemed date of service? How is service effected outside your jurisdiction? Is there a preferred method of service of foreign proceedings in your jurisdiction?**

In order to launch civil proceedings, the Claimant must file a Statement of Claim ("SoC") with the Court with an exposition on its underlying factual and legal reasoning, the resulting claim and an indication as to the claim's economic value. Judicial costs (an initial fee) indexed to the claim's value must be paid with the SoC's filing. As soon as the SoC has been filed, the court clerk will verify that all necessary formal requisites have been met; summoning of the Defendant to the proceedings follows.

Service under Angolan law is, as a rule, carried out personally and not by post; in addition, personal service is exclusively carried out by judicial clerks/officials, i.e. the law does not allow for service to be rendered by attorneys or any other service agents. If the Defendant is a company, service will be carried out before its legal representative at the company's headquarters or in the absence of the latter, before any company employee.

When the Defendant is someone living abroad, service will be carried out in accordance with the provisions set forth in International Treaties and/or Conventions to which Angola is a party and in the absence of the latter, by registered courier with acknowledgment of receipt or via diplomatic means.

**3.2 Are any pre-action interim remedies available in your jurisdiction? How do you apply for them? What are the main criteria for obtaining these?**

To ensure the outcome of the proceedings when the effectiveness of a possible favourable ruling is at risk, the Claimant may request the adoption of interim remedies. Such measures may be requested before or after the main claim has been filed and will lead to independent and separate proceedings from the main proceedings with a separate court order.

In general, when requesting interim remedies, the applicant must demonstrate the following requirements are met: (i) *fumus boni iuris* – *prima facie* case, the applicant must show that he has a justifiable claim on the merits against its counterpart; (ii) *periculum in mora* – circumstances giving rise to urgency; and (iii) the damage that the applicant wants to avoid must not exceed the damage caused by the interim measure to the counterpart.

As to the remedies that may be requested, Angolan law provides for an array of specified (such as provisional alimony, restitution of possession, lien on assets and preventive arrest, amongst others) and unspecified remedies.

**3.3 What are the main elements of the claimant's pleadings?**

Please see question 3.1 above. In addition, the Claimant must also identify the specific court before which the suit is launched and file all documentary evidence alongside its claim.

**3.4 Can the pleadings be amended? If so, are there any restrictions?**

Pleadings may be amended by either party under specific circumstances alone.

**3.5 Can the pleadings be withdrawn? If so, at what stage and are there any consequences?**

The Defendant may withdraw its claim or give up on its pleadings all together. In cases where there is a mere withdrawal of the suit but the pleadings have not been waived, the Defendant must agree to same. On the other hand, if there is a withdrawal of the pleadings all together, the Claimant's underlying rights are considered extinguished.



## 4 Defending a Claim

### 4.1 What are the main elements of a statement of defence? Can the defendant bring a counterclaim(s) or defence of set-off?

In its Statement of Defence “SoD”, the Defendant must offer all factual and legal grounds which make up its defence alongside all evidentiary documents to support it. Counterclaims may also be filed by the Defendant with its SoD so long as its grounds emerge from the facts and grounds of the SoC. Much like what is imposed for a SoC, all factual and legal grounds must be set out therein, again accompanied by all evidentiary documents to support it. Set-off claims are allowed so long as in accordance with the underlying legal requirements.

### 4.2 What is the time limit within which the statement of defence has to be served?

Generally, the time limit to file a SoD is that of 20 days from the date service is considered to have been rendered.

### 4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on or share liability by bringing an action against a third party?

In its SoD, the Defendant may argue lack of standing (“*ilegitimidade passiva*”), if it considers itself to have been wrongly sued. If the court rules in favour of the Defendant on this issue (either at the preliminary hearing/preliminary decision (“*despacho saneador*”) or in the final judgment), the claim will be dismissed.

Under certain circumstances, a Defendant may summon a third party to join ongoing proceedings as a means to pass on or share liability.

### 4.4 What happens if the defendant does not defend the claim?

When no SoD is filed by a Defendant that is considered properly summoned to proceedings, its silence will be perceived as a direct confession of the facts claimed against him. The attorneys representing each party will then be granted 10 days to offer their closing arguments and a Default Judgment will follow.

### 4.5 Can the defendant dispute the court’s jurisdiction?

Yes. However, this must be done within the SoD.

## 5 Joinder & Consolidation

### 5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

There are several cases in which a third party may join ongoing proceedings. This will happen at the request of Claimant or the Defendant or even at the third party’s own initiative.

This joinder may occur when the third party has the same interest as one of the parties in the proceedings or when the Defendant claims to have a right of return against a third party. Additionally, a third

party may intervene in proceedings as a mere assistant (as opposed to acting as a party) as means to support one of the parties. This will only be allowed when the third party has a legal interest in the final outcome of the proceedings.

### 5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

When several lawsuits are pending but could have originally been filed in a single lawsuit based on the fact that the cause of action is the same and unique or because the claims are dependent of each other, the Court may order that they be consolidated, upon request, and so long as it deems there is no inconvenience to that effect.

### 5.3 Do you have split trials/bifurcation of proceedings?

The CCP does not explicitly provide for split trials or bifurcation of proceedings.

## 6 Duties & Powers of the Courts

### 6.1 Is there any particular case allocation system before the civil courts in your jurisdiction? How are cases allocated?

Cases are allocated according to territorial jurisdiction, subject-matter, type of lawsuit and economic value.

### 6.2 Do the courts in your jurisdiction have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

The courts management powers are, to a certain extent, limited by the law’s express provisions on case management. Notwithstanding, courts have the power to carry out or order certain measures deemed necessary to unveil the truth. Courts may also remove obstacles that hinder the normal course of the case.

As to interim applications, parties may, under certain circumstances and within certain deadlines, file additional written statements, modify their claims or the causes of action throughout proceedings, subject to certain limitations.

### 6.3 What sanctions are the courts in your jurisdiction empowered to impose on a party that disobeys the court’s orders or directions?

Courts may impose sanctions on a party for unlawful litigation, for modifying or omitting facts essential to the proceedings or for making an unacceptable use of the lawsuit. Sanctions may consist on the payment of a fine and/or a compensation to the other party.

### 6.4 Do the courts in your jurisdiction have the power to strike out part of a statement of case or dismiss a case entirely? If so, at what stage and in what circumstances?

A case may be dismissed at a preliminary stage under specific circumstances such as the court’s lack of jurisdiction to rule on the

underlying subject-matter, parties' lack of legal standing or relevant legal capacity, or when the claim is clearly unfounded.

A case may also be dismissed after the submission of the parties' claims and/or defences on procedural grounds.

#### **6.5 Can the civil courts in your jurisdiction enter summary judgment?**

The Judge presiding over the case may find that they are able to decide on the merits of a case without going to trial either because the merits of the case are solely based on legal grounds or when this is not the situation, when he/she finds that the proceedings already contain all the necessary elements for a judgment to be passed.

#### **6.6 Do the courts in your jurisdiction have any powers to discontinue or stay the proceedings? If so, in what circumstances?**

Courts have the power to discontinue the proceedings upon desertion, withdrawal, confession or settlement, if the proceedings are devoid of purpose or when the Claimant has not paid the legally due judicial costs.

Proceedings will be stayed: (i) when one of the parties dies or is extinguished; (ii) when the lawyer representing one of the parties dies or becomes unable to continue representation when such representation is mandatory; (iii) when another suit with direct influence on the one in course is pending; or (iv) when the presiding Judge finds there is a justified reason to order such suspension.

## **7 Disclosure**

#### **7.1 What are the basic rules of disclosure in civil proceedings in your jurisdiction? Is it possible to obtain disclosure pre-action? Are there any classes of documents that do not require disclosure? Are there any special rules concerning the disclosure of electronic documents or acceptable practices for conducting e-disclosure, such as predictive coding?**

Under the CCP, parties are bound to file their evidentiary documents alongside their written filings. Should they fail to file their documents with their written statements, they may still do this at a later stage, yet subject to court approval and sanctioning for the delay.

Parties may request their counterparts to disclose documents that are in the latter's possession; to the furthest extent possible, the requesting party will identify the envisaged documents and inform the court of the facts they are intended to prove.

Before commencing proceedings, parties may apply for the disclosure of specific documents if there is a founded concern that such disclosure will otherwise become impossible.

The CCP does not provide for any specific rules concerning the disclosure of electronic documents.

#### **7.2 What are the rules on privilege in civil proceedings in your jurisdiction?**

Witnesses and third parties may refuse to disclose information or provide evidence on the basis of marital or other family linked privileges, client-attorney privileges, bank secrecy privileges that are recognised by the law.

Documents may also be considered privileged if their disclosure is found to violate professional secrecy rules or cause serious damage to the honour, consideration, property of a given person or one of his/her relatives.

However, under certain circumstances, some of the above-listed privileges may be set aside so long as judicially determined or authorised by the relevant professional authority.

#### **7.3 What are the rules in your jurisdiction with respect to disclosure by third parties?**

Parties may request that documents held by third parties be disclosed within the proceedings; to the furthest extent possible, the requesting party will again identify the envisaged documents and inform the court of the facts they are intended to prove.

#### **7.4 What is the court's role in disclosure in civil proceedings in your jurisdiction?**

The Court may, on its own initiative, or following the request of one of the parties, request that certain information, specialised opinions, photographs, drawings, objects and any document necessary to the clarification of the truth be disclosed/brought before it.

Should parties refrain from filing the requested documents, said option may result in reverting the rules on the burden of proof, lead to the determination of fines and/or the adoption, by the court, of coercive measures to guarantee proper filing.

The court will also decide on whether to waive certain privileges, if so requested.

#### **7.5 Are there any restrictions on the use of documents obtained by disclosure in your jurisdiction?**

No such rules exist.

## **8 Evidence**

#### **8.1 What are the basic rules of evidence in your jurisdiction?**

When it comes to evidence, the general rule under Angolan law is that the burden of proof lies with the person claiming certain facts to be true. There are, however, exceptions to this rule, such as the following:

- (i) when discussing and determining contractual liability, whereupon it will fall to the Claimant to claim and prove that there was a contractual breach, the Defendant will be encumbered to prove that such breach occurred to no fault of his own; and
- (ii) when the suit launched by the Claimant is intended to obtain a negative determination on the existence of a given situation/reality ("*ação de simples apreciação negativa*"). In these cases, it will fall to the Defendant to prove that the reality is not the one described.

Additionally, the burden of proof may, under specific circumstances, be reverted. This is the case when parties enter into agreements to that effect or when it is shown that the counterpart willingly/with fault, made it impossible for certain evidence to be made/produced.

## 8.2 What types of evidence are admissible, which ones are not? What about expert evidence in particular?

The following types of evidence are available under the CCP:

- (i) Evidence by party confession.
- (ii) Documentary evidence.
- (iii) Expert evidence.
- (iv) Judicial inspections.
- (v) Witness statements.

## 8.3 Are there any particular rules regarding the calling of witnesses of fact? The making of witness statements or depositions?

A party may summon up to 20 witnesses to be heard on the facts under discussion. However, no more than five witnesses may be heard on each fact.

In the event the Defendant files a counterclaim, each party may call up to an additional 20 witnesses to be heard on the matter of the counterclaim and/or its defence.

As a rule, witnesses will offer their testimonies in person before the court. They will merely be allowed to file written statements when the conditions for pre-trial testimonies are met or when they live outside the district where the hearing is to take place.

A given class of people (who exercise public-authority roles) may be heard by the court at their own homes or professional residence.

Additionally, the court may, of its own accord, summon a given witness to be heard when the need to hear such person becomes obvious from other testimonies.

## 8.4 Are there any particular rules regarding instructing expert witnesses, preparing expert reports and giving expert evidence in court? Are there any particular rules regarding concurrent expert evidence? Does the expert owe his/her duties to the client or to the court?

Parties may agree on the appointment of one or three experts. If parties do not previously agree on the appointment of experts, the court will appoint one expert. It then falls to each party to appoint their own.

Experts may be impeached based on the same grounds available to impeach judges, i.e. when they have a self-interest in the cases' outcome or enjoy a special relationship with one of the parties.

There are no particular rules regarding concurrent expert evidence.

# 9 Judgments & Orders

## 9.1 What different types of judgments and orders are the civil courts in your jurisdiction empowered to issue and in what circumstances?

Courts in Angola may rule with recourse to: (i) orders ("*despachos*"), which are judicial acts aimed at boosting the proceedings and/or rule on incidental matters; (ii) judgments ("*sentenças*"), which are Court Rulings on the merits and may also take the form of Consent judgments; and (iii) awards ("*acórdãos*"), which are decisions issued by the Higher Courts.

## 9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

The local courts' powers to render judgments on any matter are always subject to the precise terms and limits of the underlying claims brought before them. Courts may rule on damages (direct or indirect and/or patrimonial/moral) so long as thus requested, the same being said of interest which may be computed in accordance to a specific agreed rate or at the legal default rate. As to costs, the rule is that they must be borne in proportion to each party's liability.

## 9.3 How can a domestic/foreign judgment be recognised and enforced?

The CCP expressly provides that, without prejudice to what is foreseen in International Treaties and Conventions to which Angola is a party to, no foreign judgment/award may produce effects in the territory without prior review by the Angolan courts. As a consequence, it falls to the Supreme Court to confirm that:

- (i) there are no doubts as to the judgment's authenticity;
- (ii) there is evidence to the fact that the relevant judgment has already transited *in rem* according to the law of the country of its issuance;
- (iii) there is evidence that the judgment was rendered by a court with jurisdiction to rule the relevant case as per the Angolan's conflict of jurisdiction rules;
- (iv) the resolution of the same dispute is not pending with the Angolan courts;
- (v) no final and binding ruling has been rendered by Angolan courts on the very same matter;
- (vi) there is evidence that the Defendant was duly summoned to the proceedings;
- (vii) the judgment contains no decisions contrary to the Angolan principles of public policy; and
- (viii) having been rendered against an Angolan party, the judgment contains no decisions offensive to the Angolan private law (should this law be an applicable law to the situation according to the Angolan conflict-of-law rules).

The request for recognition must be filed alongside a copy of the judgment to be reviewed, certified by the Court of origin stating that it is final and binding together with a translated version of same into Portuguese language.

Only after the judgment/award has been reviewed may enforcement proceedings be instituted with the Angolan Courts.

## 9.4 What are the rules of appeal against a judgment of a civil court of your jurisdiction?

First instance judgments may generally be appealed on factual and legal grounds so long as the appealed judgment has been rendered in a suit with a value higher than the one set for the jurisdiction of the lower court; the second instance is, however, limited to legal arguments.



## 10 Settlement

### 10.1 Are there any formal mechanisms in your jurisdiction by which parties are encouraged to settle claims or which facilitate the settlement process?

Courts themselves are bound to enable settlements between opposing parties, yet there are no formal mechanisms to this effect.

## II. ALTERNATIVE DISPUTE RESOLUTION

### 1 General

#### 1.1 What methods of alternative dispute resolution are available and frequently used in your jurisdiction? Arbitration/Mediation/Expert Determination/Tribunals (or other specialist courts)/Ombudsman? (Please provide a brief overview of each available method.)

Angolan law provides for arbitration and mediation as alternative dispute resolution mechanisms.

#### 1.2 What are the laws or rules governing the different methods of alternative dispute resolution?

The primary domestic source of law relating to arbitration is the Voluntary Arbitration Law ("VAL"), Law 16/03, dated July 25<sup>th</sup> 2003 which governs both domestic and international arbitration.

As to mediation, it is foreseen in Law No. 12/16, dated August 12<sup>th</sup> 2016.

#### 1.3 Are there any areas of law in your jurisdiction that cannot use Arbitration/Mediation/Expert Determination/Tribunals/Ombudsman as a means of alternative dispute resolution?

According to Article 1(1) of the VAL, any dispute relating to disposable rights which are not exclusively submitted by law to a judicial court or compulsory arbitration, may be referred to arbitration. The same rule applies to mediation.

#### 1.4 Can local courts provide any assistance to parties that wish to invoke the available methods of alternative dispute resolution? For example, will a court – pre or post the constitution of an arbitral tribunal – issue interim or provisional measures of protection (i.e. holding orders pending the final outcome) in support of arbitration proceedings, will the court force parties to arbitrate when they have so agreed, or will the court order parties to mediate or seek expert determination? Is there anything that is particular to your jurisdiction in this context?

Once the parties have agreed to resort to arbitration, the intervention of the judicial court is limited to those instances set forth in the

VAL aimed at assisting the arbitration proceedings. In the event, however, that parties lodge judicial proceedings in breach of an arbitration agreement, the Defendant in the same may rely on the latter and request that the proceedings be dismissed accordingly.

Should judicial proceedings be launched in breach of a mediation agreement, the Defendant may rely on the same to request the court to suspend proceedings so that the envisaged mediation may occur.

#### 1.5 How binding are the available methods of alternative dispute resolution in nature? For example, are there any rights of appeal from arbitration awards and expert determination decisions, are there any sanctions for refusing to mediate, and do settlement agreements reached at mediation need to be sanctioned by the court? Is there anything that is particular to your jurisdiction in this context?

An appeal on the merits is admissible for domestic arbitration provided that parties have not waived such right of appeal. For international arbitration, the rule is that awards are final and binding upon the parties and will not be subject to appeal, unless otherwise agreed.

As to agreements attained via mediation, they will be directly enforceable so long as the legal pre-requirements to that effect have been abided by the parties.

## 2 Alternative Dispute Resolution Institutions

### 2.1 What are the major alternative dispute resolution institutions in your jurisdiction?

Decree No. 4/06, of February 27<sup>th</sup> 2006, is aimed at promoting institutional arbitration in Angola and deals with licensing procedures for the incorporation of arbitration institutions. According to said Decree, the Minister of Justice is the entity empowered to authorise the incorporation of arbitration institutions in Angola.

Currently, the following arbitration institutions have been authorised: (i) Iuris SA; (ii) Harmonia – Integrated Centre for the Study and Resolution of Conflicts; (iii) CEFA Arbitration Centre; (iv) Angolan Centre for the Arbitration of Disputes ("CAAL"); (v) Angolan Centre for Mediation and Arbitration ("CMA"); (vi) Centre for the Extrajudicial Resolution of Disputes ("CREL"); and (vii) Arbitration Centre of the Centre for Strategic Studies of Angola ("CEEAA").

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