



Migration Legislation Amendment (Hong Kong) Regulations 2021

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 28 October 2021

David Hurley
Governor-General

By His Excellency's Command

Alex Hawke
Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

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1 Name

This instrument is the *Migration Legislation Amendment (Hong Kong) Regulations 2021*.

2 Commencement

(1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	30 October 2021
2. Schedule 1	Immediately after the commencement of the <i>Migration Amendment (Hong Kong Passport Holders) Regulations 2020</i> .	9 July 2020
3. Schedule 2	Immediately after the commencement of Schedule 3 to the <i>Migration Amendment (New Skilled Regional Visas) Regulations 2019</i> .	5 March 2022
4. Schedule 3	5 March 2022.	5 March 2022

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

(2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Migration Act 1958*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—British National (Overseas) passport holders

Migration Regulations 1994

1 Regulation 1.03

Insert:

British National (Overseas) passport means a passport issued by the United Kingdom of Great Britain and Northern Ireland to a person who is identified in the passport as having a form of British nationality described as British National (Overseas).

2 Subclause 482.511(1) of Schedule 2 (paragraph (b) of table item 2, column 1)

Repeal the paragraph, substitute:

(b) on the date of grant of the visa, holds:

- (i) a Hong Kong passport in a class specified under subclause (2) of this clause; or
- (ii) a British National (Overseas) passport;

3 Subclause 482.511(1) of Schedule 2 (paragraphs (b) and (c) of table item 5, column 1)

Repeal the paragraphs, substitute:

(b) on the date of grant of the primary visa, the primary applicant holds:

- (i) a Hong Kong passport; or
- (ii) a British National (Overseas) passport; and

(c) if:

- (i) the primary visa is a Subclass 482 (Temporary Skill Shortage) visa granted on or after 9 July 2020; and
- (ii) on the date of grant of the primary visa, the primary applicant holds a Hong Kong passport and does not hold a British National (Overseas) passport;

the Hong Kong passport is, on the date of grant of the primary visa, in a class specified under subclause (2) of this clause;

4 In the appropriate position in Schedule 13

Insert:

Part 101—Amendments made by the Migration Legislation Amendment (Hong Kong) Regulations 2021

Division 1—Amendments made by Schedule 1

10101 Subclass 457 visas

- (1) This clause applies to a Subclass 457 (Temporary Work (Skilled)) visa if:
 - (a) the visa is in effect on or after 9 July 2020 (whether the visa was granted before, on or after 9 July 2020); and
 - (b) the visa is granted on the basis that the holder satisfied the primary criteria for the grant of the visa; and

- (c) on the date of grant of the visa, the holder holds a British National (Overseas) passport.

(2) This clause also applies to a Subclass 457 (Temporary Work (Skilled)) visa if:

- (a) the visa is in effect on or after 9 July 2020 (whether the visa was granted before, on or after 9 July 2020); and
- (b) the visa is granted on the basis that the holder satisfied the secondary criteria for the grant of the visa as a member of the family unit of a person (the **primary applicant**) who satisfied the primary criteria for the grant of a Subclass 457 (Temporary Work (Skilled)) visa (the **primary visa**); and
- (c) on the date of grant of the primary visa, the primary applicant holds a British National (Overseas) passport.

(3) Despite former clause 457.511 of Schedule 2 to these Regulations, a visa to which this clause applies is a temporary visa permitting the holder to:

- (a) travel to, and enter, Australia on multiple occasions; and
- (b) remain in Australia;

during the period that:

- (c) starts when the visa comes into effect; and
- (d) ends on 8 July 2025.

10102 Subclass 482 visas granted before 9 July 2020

- (1) This clause applies to a Subclass 482 (Temporary Skill Shortage) visa if:

- (a) the visa was granted before 9 July 2020; and
- (b) the visa was granted on the basis that the holder satisfied the primary criteria for the grant of the visa; and
- (c) on the date of grant of the visa, the holder held a British National (Overseas) passport; and
- (d) the visa did not cease to be in effect before 9 July 2020.

(2) This clause also applies to a Subclass 482 (Temporary Skill Shortage) visa (the **secondary visa**) if:

- (a) the secondary visa was granted before 9 July 2020; and
- (b) the secondary visa was granted on the basis that the holder satisfied the secondary criteria for the grant of the visa as a member of the family unit of a person (the **primary applicant**) who satisfied the primary criteria for the grant of one of the following visas (the **primary visa**):

- (i) a Subclass 457 (Temporary Work (Skilled)) visa;
- (ii) a Subclass 482 (Temporary Skill Shortage) visa; and

- (c) on the date of grant of the primary visa, the primary applicant held a British National (Overseas) passport; and
- (d) the secondary visa did not cease to be in effect before 9 July 2020.

(3) Despite clause 482.511 of Schedule 2 to these Regulations, a visa to which this clause applies is a temporary visa permitting the holder to:

- (a) travel to, and enter, Australia on multiple occasions; and
- (b) remain in Australia;

during the period that:

- (c) started when the visa came into effect; and
- (d) ends on 8 July 2025.

10103 Subclass 482 visas granted on or after 9 July 2020

The amendments of clause 482.511 of Schedule 2 to these Regulations made by Schedule 1 to the *Migration Legislation Amendment (Hong Kong) Regulations 2021* apply to a Subclass 482 (Temporary Skill Shortage) visa granted on or after 9 July 2020, whether the application for the visa was made before, on or after 9 July 2020.

10104 Subclass 485 visas granted before 9 July 2020

- (1) This clause applies to a Subclass 485 (Temporary Graduate) visa if:
 - (a) the visa was granted before 9 July 2020; and
 - (b) the visa was granted on the basis that the holder satisfied the primary criteria for the grant of the visa; and
 - (c) on the date of grant of the visa, the holder held a British National (Overseas) passport; and
 - (d) the visa did not cease to be in effect before 9 July 2020.
- (2) This clause also applies to a Subclass 485 (Temporary Graduate) visa (the *secondary visa*) if:
 - (a) the secondary visa was granted before 9 July 2020; and
 - (b) the secondary visa was granted on the basis that the holder satisfied the secondary criteria for the grant of the visa as a member of the family unit of a person (the *primary applicant*) who satisfied the primary criteria for the grant of a Subclass 485 (Temporary Graduate) visa (the *primary visa*); and
 - (c) on the date of grant of the primary visa, the primary applicant held a British National (Overseas) passport; and
 - (d) the secondary visa did not cease to be in effect before 9 July 2020.
- (3) Despite clause 485.511 of Schedule 2 to these Regulations, a visa to which this clause applies is a temporary visa permitting the holder to:
 - (a) travel to, and enter, Australia on multiple occasions; and
 - (b) remain in Australia;during the period that:
 - (c) started when the visa came into effect; and
 - (d) ends on 8 July 2025.

10105 Subclass 485 visas granted on or after 9 July 2020 and before 3 November 2021

- (1) This clause applies to a Subclass 485 (Temporary Graduate) visa if:
 - (a) the visa is granted:
 - (i) on or after 9 July 2020; and
 - (ii) before 3 November 2021; and
 - (b) the visa is granted on the basis that the holder satisfied the primary criteria for the grant of the visa (other than the criteria in clause 485.232 or 485.233 of Schedule 2); and
 - (c) on the date of grant of the visa, the holder holds a British National (Overseas) passport.

- (2) This clause also applies to a Subclass 485 (Temporary Graduate) visa (the **secondary visa**) if:
 - (a) the secondary visa is granted:
 - (i) on or after 9 July 2020; and
 - (ii) before 3 November 2021; and
 - (b) the secondary visa is granted on the basis that the holder satisfied the secondary criteria for the grant of the visa as a member of the family unit of a person (the **primary applicant**) who satisfied the primary criteria for the grant of a Subclass 485 (Temporary Graduate) visa (the **primary visa**) (other than the criteria in clause 485.232 or 485.233 of Schedule 2); and
 - (c) on the date of grant of the primary visa, the primary applicant holds a British National (Overseas) passport.
- (3) Despite Division 485.5 of Schedule 2, a visa to which this clause applies is a temporary visa permitting the holder to:
 - (a) travel to, and enter, Australia on multiple occasions; and
 - (b) remain in Australia;during the period that:
 - (c) starts when the visa comes into effect; and
 - (d) ends at the end of the period of 5 years starting when the visa comes into effect.

Schedule 2—Pathways to permanent residence

Part 1—Subclass 189 visas

Migration Regulations 1994

1 After subitem 1137(4G) of Schedule 1

Insert:

Hong Kong stream

(4H) Subitems (4J) to (4M) set out the requirements for:

- (a) an applicant (a **primary HK applicant**) seeking to satisfy the primary criteria for the grant of a Subclass 189 (Skilled—Independent) visa in the Hong Kong stream; or
- (b) an applicant (a **secondary applicant**) seeking to satisfy the secondary criteria for the grant of a Subclass 189 (Skilled—Independent) visa, whose application is:
 - (i) combined with the application of a primary HK applicant; or
 - (ii) sought to be combined with such an application before a decision is made in relation to that application.

Note: A member of the family unit of a primary HK applicant may apply for the grant of a Subclass 189 (Skilled—Independent) visa, seeking to satisfy the secondary criteria. However, the application by the member of the family unit must be made before a decision is made in relation to the application by the primary HK applicant.

(4J) Visa application charge—first instalment (payable at the time the application is made):

First instalment—visas in the Hong Kong stream etc.

Item	Component	Amount
1	Base application charge	\$4,115
2	Additional applicant charge for an applicant who is at least 18	\$2,055
3	Additional applicant charge for an applicant who is less than 18	\$1,030

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

(4K) Visa application charge—second instalment (payable before grant of visa):

Second instalment—visas in the Hong Kong stream etc.

Item	Applicant	Amount
1	Applicant who: (a) was at least 18 at the time of application; and (b) is assessed as not having functional English	\$4,885

Second instalment—visas in the Hong Kong stream etc.

Item	Applicant	Amount
2	Any other applicant	Nil

(4L) Other:

- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for the purposes of this item under subregulation 2.07(5).
- (b) An application must be made on or after 5 March 2022.
- (c) The applicant may be in or outside Australia, but not in immigration clearance.
- (d) The applicant must not nominate the Points-tested stream or the New Zealand stream.
- (e) A primary HK applicant:
 - (i) must hold a Hong Kong passport or a British National (Overseas) passport; and
 - (ii) must hold a visa to which subitem (4M) applies; and
 - (iii) must have held that visa for at least 4 years.
- (f) An application by a secondary applicant may be made at the same time, and combined with, an application by a primary HK applicant.

(4M) For the purposes of subparagraph (4L)(e)(ii), this subitem applies to a visa that:

- (a) is:
 - (i) a Subclass 457 (Temporary Work (Skilled)) visa; or
 - (ii) a Subclass 482 (Temporary Skill Shortage) visa; or
 - (iii) a Subclass 485 (Temporary Graduate) visa; and
- (b) was granted on the basis that the applicant satisfied the primary criteria for the grant of the visa; and
- (c) either:
 - (i) was granted before 9 July 2020 and does not permit the holder to travel to, enter or remain in Australia after 8 July 2025; or
 - (ii) was granted on or after 9 July 2020 and permits the holder to travel to, enter and remain in Australia during the period of 5 years starting when the visa came into effect.

2 Division 189.2 of Schedule 2 (note to the heading)

After:

For a Subclass 189 visa in the New Zealand stream, the criteria in Subdivisions 189.21 and 189.23 are the primary criteria.

insert:

For a Subclass 189 visa in the Hong Kong stream, the criteria in Subdivisions 189.21 and 189.24 are the primary criteria.

3 At the end of Division 189.2 of Schedule 2

Add:

189.24—Criteria for Hong Kong stream

Note: These criteria are only for applicants seeking to satisfy the primary criteria for a Subclass 189 visa in the Hong Kong stream.

189.241

The applicant complied substantially with the conditions to which the following visas were subject:

- (a) the Subclass 457 (Temporary Work (Skilled)) visa, Subclass 482 (Temporary Skill Shortage) visa or Subclass 485 (Temporary Graduate) visa held by the applicant at the time of application;
- (b) any subsequent bridging visa held by the applicant.

189.242

The applicant had been usually resident in Australia for a continuous period of at least 4 years immediately before the date of the application.

189.243

- (1) The applicant satisfies public interest criterion 4007.
- (2) Each member of the family unit of the applicant who is an applicant for a Subclass 189 visa satisfies public interest criterion 4007.
- (3) Each member of the family unit of the applicant who is not an applicant for a Subclass 189 visa satisfies public interest criterion 4007, unless it would be unreasonable to require the member to undergo assessment in relation to the criterion.

4 Subclause 189.312(5) of Schedule 2

After “New Zealand stream”, insert “or the Hong Kong stream”.

5 Subclause 189.313(1) of Schedule 2

After “Points-tested stream”, insert “or the Hong Kong stream”.

Part 2—Subclass 191 visas

Migration Regulations 1994

6 Subitem 1139(2) of Schedule 1

Repeal the subitem, substitute:

(2) Visa application charge:

(a) first instalment (payable at the time the application is made):

(i) for:

(A) an applicant (a *primary Regional Provisional applicant*) seeking to satisfy the primary criteria for the grant of a Subclass 191 (Permanent Residence (Skilled Regional)) visa in the Regional Provisional Visas stream; or

(B) an applicant (a *secondary Regional Provisional applicant*) seeking to satisfy the secondary criteria for the grant of a Subclass 191 (Permanent Residence (Skilled Regional)) visa whose application is combined, or sought to be combined, with an application of a primary Regional Provisional applicant:

First instalment—visas in the Regional Provisional Visas stream etc.

Item	Component	Amount
1	Base application charge	\$425
2	Additional applicant charge for an applicant who is at least 18	\$210
3	Additional applicant charge for an applicant who is less than 18	\$110

(ii) for:

(A) an applicant (a *primary HK applicant*) seeking to satisfy the primary criteria for the grant of a Subclass 191 (Permanent Residence (Skilled Regional)) visa in the Hong Kong (Regional) stream; or

(B) an applicant (a *secondary HK applicant*) seeking to satisfy the secondary criteria for the grant of a Subclass 191 (Permanent Residence (Skilled Regional)) visa whose application is combined, or sought to be combined, with an application of a primary HK applicant:

First instalment—visas in the Hong Kong (Regional) stream etc.

Item	Component	Amount
1	Base application charge	\$4,115
2	Additional applicant charge for an applicant who is at least 18	\$2,055
3	Additional applicant charge for an applicant who is less than 18	\$1,030

Note 1: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Schedule 2 Pathways to permanent residence**Part 2** Subclass 191 visas

Note 2: Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

(b) second instalment (payable before grant of visa):

Second instalment		
Item	Applicant	Amount
1	Primary HK applicant or secondary HK applicant: (a) who was at least 18 at the time of application; and (b) who is assessed as not having functional English	\$4,885
2	Any other applicant	Nil

7 Paragraph 1139(3)(c) of Schedule 1

Repeal the paragraph, substitute:

- (ba) An application by a primary Regional Provisional applicant or a secondary Regional Provisional applicant must be made on or after 16 November 2022.
- (bb) An application by a primary HK applicant or a secondary HK applicant:
 - (i) must be made on or after 5 March 2022; and
 - (ii) must not nominate the Regional Provisional Visas stream.
- (c) A primary Regional Provisional applicant:
 - (i) must hold a regional provisional visa; and
 - (ii) must have held that regional provisional visa for at least 3 years.
- (ca) A primary HK applicant:
 - (i) must hold a Hong Kong passport or a British National (Overseas) passport; and
 - (ii) must hold a visa to which subitem (3A) applies; and
 - (iii) must have held that visa for at least 3 years.

8 After subitem 1139(3) of Schedule 1

Insert:

- (3A) For the purposes of subparagraph (3)(ca)(ii), this subitem applies to a visa that:
 - (a) is:
 - (i) a Subclass 457 (Temporary Work (Skilled)) visa; or
 - (ii) a Subclass 482 (Temporary Skill Shortage) visa; or
 - (iii) a Subclass 485 (Temporary Graduate) visa; and
 - (b) was granted on the basis that the applicant satisfied the primary criteria for the grant of the visa; and
 - (c) either:
 - (i) was granted before 9 July 2020 and does not permit the holder to travel to, enter or remain in Australia after 8 July 2025; or
 - (ii) was granted on or after 9 July 2020 and permits the holder to travel to, enter and remain in Australia during the period of 5 years starting when the visa came into effect.

9 Division 191.2 of Schedule 2

Repeal the Division, substitute:

191.2—Primary criteria

Note 1: The primary criteria for the grant of a Subclass 191 visa include criteria set out in streams.

For a Subclass 191 visa in the Regional Provisional Visas stream, the criteria in Subdivisions 191.21 and 191.22 are the primary criteria.

For a Subclass 191 visa in the Hong Kong (Regional) stream, the criteria in Subdivisions 191.21 and 191.23 are the primary criteria.

The primary criteria must be satisfied by at least one member of a family unit. The other members of the family unit who are applicants for a Subclass 191 visa need satisfy only the secondary criteria in Division 191.3.

Note 2: All criteria must be satisfied at the time a decision is made on the application.

191.21—Common criteria

Note: These criteria are for all applicants seeking to satisfy the primary criteria for a Subclass 191 visa.

191.211

- (1) The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4010, 4020 and 4021.
- (2) If the applicant had turned 16 at the time of application, the applicant satisfies public interest criterion 4019.
- (3) Each member of the family unit of the applicant who is an applicant for a Subclass 191 visa satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4010, 4020 and 4021.
- (4) Each member of the family unit of the applicant who:
 - (a) is an applicant for a Subclass 191 visa; and
 - (b) had turned 16 at the time of application;satisfies public interest criterion 4019.
- (5) Each member of the family unit of the applicant who:
 - (a) is an applicant for a Subclass 191 visa; and
 - (b) has not turned 18;satisfies public interest criteria 4015 and 4016.
- (6) Each member of the family unit of the applicant who is not an applicant for a Subclass 191 visa:
 - (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
 - (b) satisfies public interest criterion 4007, unless it would be unreasonable to require the person to undergo assessment in relation to that criterion.

191.212

- (1) The applicant satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is an applicant for a Subclass 191 visa satisfies special return criteria 5001, 5002 and 5010.

191.22—Criteria for Regional Provisional Visas stream

Note: These criteria are only for applicants seeking to satisfy the primary criteria for a Subclass 191 visa in the Regional Provisional Visas stream.

191.221

- (1) The applicant complied substantially with the conditions (other than condition 8579) to which the following visas were subject:
 - (a) the regional provisional visa held by the applicant at the time of application;
 - (b) any subsequent bridging visa held by the applicant.
- (2) The applicant complied with condition 8579 to which the regional provisional visa held by the applicant at the time of application was subject unless the applicant is included in a class of persons specified in an instrument under subclause (3).
- (3) The Minister may, by legislative instrument, specify a class of persons for the purposes of subclause (2).

191.222

- (1) The applicant has provided copies of notices of assessment, and any notices of amended assessments, given to the applicant under the *Income Tax Assessment Act 1936* in relation to 3 relevant income years for the applicant.
- (2) The applicant's taxable income for each of those relevant income years is at least equal to the amount specified in an instrument under subclause (3) in relation to the applicant.
- (3) The Minister may, by legislative instrument, specify an amount for the purposes of subclause (2) in relation to all applicants or different classes of applicants.
- (4) Subclause (1) is satisfied in relation to a copy of a notice even if the copy does not include the applicant's tax file number within the meaning of Part VA of the *Income Tax Assessment Act 1936*.

191.23—Criteria for Hong Kong (Regional) stream

Note: These criteria are only for applicants seeking to satisfy the primary criteria for a Subclass 191 visa in the Hong Kong (Regional) stream.

191.231

- (1) The applicant complied substantially with the conditions to which the following visas were subject:
 - (a) the Subclass 457 (Temporary Work (Skilled)) visa, Subclass 482 (Temporary Skill Shortage) visa or Subclass 485 (Temporary Graduate) visa held by the applicant at the time of application;
 - (b) any subsequent bridging visa held by the applicant.
- (2) During the 3 years ending immediately before the date of application, the applicant did not live, work or study in a part of Australia that was not a designated regional area unless the applicant is included in a class of persons specified in an instrument under subclause (3).

(3) The Minister may, by legislative instrument, specify a class of persons for the purposes of subclause (2).

191.232

The applicant had been usually resident in Australia for a continuous period of at least 3 years immediately before the date of the application.

Part 3—Definition of member of the family unit

Migration Regulations 1994

10 Subregulation 1.12(5) (table item 9)

Repeal the item, substitute:

9	Subclass 189 (Skilled—Independent) visa in the Hong Kong stream	Any of the following visas: (a) Subclass 457 (Temporary Work (Skilled) visa; (b) Subclass 482 (Temporary Skill Shortage) visa; (c) Subclass 485 (Temporary Graduate) visa
10	Subclass 191 (Permanent Residence (Skilled Regional)) visa in the Regional Provisional Visas stream	Any of the following visas: (a) Subclass 491 (Skilled Work Regional (Provisional)) visa; (b) Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa
11	Subclass 191 (Permanent Residence (Skilled Regional)) visa in the Hong Kong (Regional) stream	Any of the following visas: (a) Subclass 457 (Temporary Work (Skilled) visa; (b) Subclass 482 (Temporary Skill Shortage) visa; (c) Subclass 485 (Temporary Graduate) visa

Part 4—Transitional provisions

Migration Regulations 1994

11 At the end of Part 101 of Schedule 13

Add:

Division 2—Amendments made by Schedule 2

10106 Subclass 457 visa holders

- (1) The requirement in subparagraph 1137(4L)(e)(iii) of Schedule 1 does not apply in relation to a Subclass 457 (Temporary Work (Skilled)) visa granted on or after 9 July 2020.
- (2) For the purposes of determining whether subitem 1137(4M) or 1139(3A) of Schedule 1 applies to a Subclass 457 (Temporary Work (Skilled)) visa, disregard paragraph 1137(4M)(c) or 1139(3A)(c) of that Schedule (whichever is applicable) if:
 - (a) the visa was granted on or after 9 July 2020; and
 - (b) clause 9001 or 10101 of this Schedule applies to the visa.

Schedule 3—Commencement of Schedule 3 to the Migration Amendment (New Skilled Regional Visas) Regulations 2019

Home Affairs Legislation Amendment (2019 Measures No. 1) Regulations 2019

1 Part 2 of Schedule 3 (heading)

Omit “16 November 2022”, substitute “5 March 2022”.

Migration Amendment (New Skilled Regional Visas) Regulations 2019

2 Subsection 2(1) (table item 3)

Repeal the item, substitute:

3. Schedule 3	5 March 2022.	5 March 2022
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