

**Explanatory Note on
Licensing Requirements for
Employees of Authorized Insurers
under Regulatory Regime for
Insurance Intermediaries**

Insurance Authority

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1. Introduction

- 1.1. This Explanatory Note (“Note”), which includes a set of frequently-asked questions (“FAQs”) (see paragraph 4), is issued by the Insurance Authority (“IA”) to provide guidance on the licensing requirements and relevant exemptions in relation to employees of authorized insurers under the regulatory regime for insurance intermediaries stipulated in the Insurance Ordinance (Cap. 41) (“the Ordinance”).
- 1.2. Under section 64G of the Ordinance, a person must not carry on a regulated activity, or hold out that the person is carrying on a regulated activity, in the course of the person’s business or employment, or for reward unless the person is a licensed insurance intermediary or is exempt under the Ordinance.
- 1.3. The regulatory regime for insurance intermediaries is activity-based and applies to any person carrying on a regulated activity. Accordingly, an employee of an authorized insurer who carries on a regulated activity (e.g. direct sales staff who give advice on the coverage of a particular insurance product to an existing or potential policy holder) or holds out that he/she is carrying on a regulated activity, would need to be licensed unless an exemption applies¹. Relevant exemptions are set out in section 123 of the Ordinance. In addition, an exemption may be granted by the IA under section 79 of the Ordinance.
- 1.4. Although an authorized insurer is exempt from the licensing requirement under section 78(1) of the Ordinance, such exemption does not extend to the insurer’s employees. Section 78(1) of the Ordinance exempts an authorized insurer from becoming a licensed insurance intermediary in order to carry on any regulated activity or hold out that it is carrying on any regulated activity. Section 78(2), however, states that the exemption in Section 78(1) does not extend to the insurer’s agent. As a matter of a law, an employee is an agent of his/her employer. By reason of section 78(2), therefore, section 78(1) would not exempt employees of authorized insurers from the regulatory regime.
- 1.5. This Note is not intended to be a comprehensive guide and does not constitute legal advice. Authorized insurers and their employees are advised to seek professional advice if they have any question relating to the application or interpretation of the relevant provisions of the Ordinance.

¹ Certain of the exemptions in section 123 of the Ordinance only apply to employees of authorized insurers, precisely because employees of authorized insurers fall within the licensing regime’s scope.

- 1.6. This Note does not have the force of law and should not be interpreted in a way that would override the provision of any law. The IA reserves the right to review and update this Note from time to time.
- 1.7. Unless otherwise specified, words and expressions in this Note shall have the same meanings as given to them in the Ordinance.

2. General Description of the Activity-Based Regime

2.1. The regulatory regime for insurance intermediaries is an activity-based regime that requires the licensing of all persons carrying on or holding themselves out as carrying on “regulated activities” unless an exemption applies.

Regulated Activity, Material Decision & Regulated Advice

2.2. The scope of “regulated activity” is set out in section 3A of, and Schedule 1A to, the Ordinance.

2.3. A “regulated activity” includes any of the following acts:

- a) negotiating or arranging a contract of insurance;
- b) inviting or inducing, or attempting to invite or induce, a person to enter into a contract of insurance;
- c) inviting or inducing, or attempting to invite or induce, a person to make a material decision;
- d) giving regulated advice.

2.4. In this connection, a “material decision” refers to a decision made, and “regulated advice” refers to an opinion given, in relation to any of the following matters (“insurance matters”):

- a) the making of an application or proposal for a contract of insurance;
- b) the issuance, continuance or renewal of a contract of insurance;
- c) the cancellation, termination, surrender or assignment of a contract of insurance;
- d) the exercise of a right under a contract of insurance;
- e) the change in any term or condition of a contract of insurance;
- f) the making or settlement of an insurance claim.

Factors to which the IA may have regard

2.5. In determining whether a decision constitutes a material decision, the IA will generally have regard to the following matters:

- a) whether the decision relates to a particular contract of insurance;
- b) whether the decision relates to an insurance matter; and
- c) whether the decision is made by a person in his/her/its capacity as an existing or potential policy holder.

Note: A policy holder includes a claimant², i.e. a person who makes an insurance claim.

2.6. In determining whether an opinion constitutes regulated advice, the IA will generally have regard to the following matters:

- a) whether the opinion relates to a particular contract of insurance;
- b) whether the opinion relates to an insurance matter;
- c) whether the opinion is given to a person in his/her/its capacity as an existing or potential policy holder; and
- d) whether only factual information is given.

As additional guidance, the IA generally takes the view that for an opinion to be regulated advice, it would need to go beyond the mere provision of information on the contract of insurance or insurance matter. Regulated advice would generally relate to the provision of a recommendation to the existing or potential policy holder on the contract of insurance or insurance matter, or be a statement made with a view to the policy holder placing reliance on that statement in respect of the contract of insurance or insurance matter. The IA would always assess this objectively, taking account of the specific context in which the opinion is rendered.

Categories of Licence

2.7. Where a person wishes to carry on any regulated activity, the person is required to obtain a licence granted by the IA, unless an exemption applies. There are five categories of licensed insurance intermediaries under the Ordinance as follows:

- a) Licensed insurance agency
- b) Licensed individual insurance agent
- c) Licensed technical representative (agent)
- d) Licensed insurance broker company
- e) Licensed technical representative (broker)

Employees of Authorized Insurers

2.8. Under the activity-based regulatory regime for insurance intermediaries, an authorized insurer's employee who carries on a regulated activity is required to be licensed as a licensed individual insurance agent unless he/she is

² Under section 2 of the Ordinance, a policy holder includes a person to whom, under a policy, a benefit is due.

exempt.

2.9. The table below summarizes some of the typical circumstances under which an authorized insurer's employee may qualify for an exemption from the licensing requirements under sections 79 and 123 of the Ordinance.

Exemption Provision	Conditions for Exemption
Section 79(3)(a)	The IA has granted an exemption to the employee concerned.
Section 123(2)	The carrying on of the regulated activity concerned only involves the discharge of clerical or administrative duties for the insurer concerned.
Section 123(3)(a)	The insurer concerned is authorized to carry on in or from Hong Kong reinsurance business only.
Section 123(3)(b)	The insurer concerned is a captive insurer.
Section 123(4)	The carrying on of the regulated activity concerned only involves the discharge of any of the following duties for the insurer concerned: a) to make an assessment of the risks to be accepted by the insurer under a contract of insurance; b) to determine the terms and conditions of a contract of insurance to be issued by the insurer; c) to process any claim lodged under a contract of insurance issued by the insurer.

2.10. The exemptions under section 123(3)(a), (3)(b) and (4) of the Ordinance are only applicable to employees of an authorized insurer³. If the insurer wishes to claim an individual as its employee so as to enable him/her to qualify for any of such exemptions, the insurer should ensure that it has a valid employment relationship with the individual. Whether an individual is an employee of the insurer is both a matter of fact and a matter of law, which will depend on various factors, such as degree of control of the insurer over the individual and the intention of the parties. In this connection, relevant factors that the IA may consider include but are not limited to the following:

³ By contrast, the exemption under Section 123(2) of the Ordinance is available to any "person" (i.e. not only an employee of an authorized insurer) provided the person's activity is within the scope of the exemption. Similarly, it is open to any "person" (i.e. not only an employee of an authorized insurer) to apply for an exemption to be granted under 79(3)(a) of the Ordinance. Since this Explanatory Note only relates to employees of authorized insurers, however, these exemptions are only discussed herein as they apply to such employees.

- a) whether the insurer is required to take out compulsory insurance for employees (e.g. employees' compensation insurance in Hong Kong) for the individual;
- b) whether the insurer is required to make regular contributions to a retirement or pension scheme (e.g. mandatory provident fund (MPF) or MPF exempted occupational retirement scheme in Hong Kong) for the individual; and
- c) whether the insurer is required to submit any tax return for the individual to the relevant tax authority (e.g. employer's return of remuneration and pensions required by the Inland Revenue Department in Hong Kong).

2.11. Besides its local employees in Hong Kong, employees of an authorized insurer also include its employees working at its overseas head office or branch offices (where applicable). Where such overseas employees come to Hong Kong to carry on regulated activities as an agent of the insurer in Hong Kong, they would generally not be required to be licensed if the relevant conditions for exemption under section 123 of the Ordinance are met or other exemption applies.

2.12. For the avoidance of doubt, the exemptions under section 123(3)(a), (3)(b) and (4) of the Ordinance are not applicable to an employee of an authorized insurer's related company (e.g. holding company, subsidiary or associate company).⁴

2.13. Whether an authorized insurer's employee is required to be licensed or may be exempt must be determined on a case-by-case basis, depending on the facts and circumstances of each individual case. The IA will apply a substance over form approach in considering whether an employee carries on a regulated activity and whether the performance of the duties by the employee meets any of the conditions for exemption, regardless of his/her job title.

⁴ However, other exemptions under section 123 of the Ordinance, such as the exemption in section 123(2) relating to the discharge of clerical or administrative duties, may be available depending on the scope of activities being carried on by the employee of the authorized insurer's related company (see also footnote 3).

3. Exemptions

3.1. Below is an elaboration on the exemptions under sections 79 and 123 of the Ordinance.

Employees Responsible for Underwriting or Risk Assessment

3.2. Under section 123(4)(a) and (b) of the Ordinance, an authorized insurer's employee is not required to be licensed to carry on a regulated activity if the activity, in relation to a contract of insurance, only involves the discharge of duties to make an assessment of the risks to be accepted by the insurer under the contract, or to determine the terms and conditions of the contract to be issued by the insurer. An insurer's employee responsible for such duties is usually called an underwriter⁵. An underwriter's main duties include analysis of risks, determination of premium to be charged, provision of an insurance quote, determination of policy terms, and placement of reinsurance.

3.3. For the purpose of making an assessment of the risks associated with an insurance policy and/or determining the premium, terms and conditions of an insurance policy, an underwriter may interact with the existing or potential policy holder to discuss matters in relation to the insurance policy. For instance, the underwriter may:

- a) collect background information directly from the policy holder;
- b) explain specific terms and conditions added to the policy to the policy holder and how such terms and conditions meet the needs and objectives of the policy holder;
- c) negotiate the premium rates, terms and conditions with the policy holder; and
- d) advise or make recommendations to the policy holder about risk management or loss prevention and control measures which form the basis of risk assessment as well as determination of premium and terms and conditions.

3.4. The above activities of an underwriter may constitute regulated activities. Nonetheless, these activities are integral parts of an underwriter's duties in relation to risk assessment and/or determination of premium, policy terms and conditions. For this reason, the underwriter when performing these activities will likely be exempt from licensing by virtue of section 123(4)(a) and/or (b).

⁵ An underwriter is a person who decides whether or not to accept an application for insurance cover and/or on what terms and conditions, by assessing the risk which is the subject matter of the proposed insurance.

- 3.5. Whether an employee is discharging duties in relation to risk assessment or determination of premium and policy terms and conditions is a matter of fact. This should be determined objectively, taking account of all relevant circumstances and factors. Such factors may include whether the employee has “underwriting authority”, namely authority granted by the authorized insurer authorizing the employee to assess and/or agree the terms and conditions (including premium) of a contract of insurance on behalf of the insurer and to enter into the contract on those terms and conditions.

Employees Responsible for Claims Handling

- 3.6. Under section 123(4)(c) of the Ordinance, an authorized insurer’s employee is not required to be licensed to carry on a regulated activity if the activity only involves the discharge of duties to process any claim lodged under a contract of insurance issued by the insurer. There are different levels of insurance claims handling officers and their duties are to manage insurance claims from the start through to settlement. They may be involved in loss adjusting activities and claims investigations and hence their job titles may be loss adjusters or claims examiners.
- 3.7. For the purpose of processing an insurance claim, a claims handling officer may interact with the policy holder to discuss matters in relation to the claim. For instance, a claims handling officer may:
- a) provide advice to the policy holder on the procedures of making a claim;
 - b) collect information from the policy holder required to process the claim;
 - c) interview the policy holder to investigate a potentially fraudulent claim; and
 - d) explain to the policy holder the results of the claims and, in case of declinature, the reasons for refusal of the claim.
- 3.8. The above activities of a claims handling officer may constitute regulated activities. Nonetheless, these activities would, in general, be considered as the discharge of duties to process an insurance claim. Hence, the claims handling officer when performing these activities will likely be exempt from licensing by virtue of section 123(4)(c) of the Ordinance.
- 3.9. Whether an employee is discharging duties in relation to the processing of insurance claims is a matter of fact. This should be determined objectively,

taking account of all relevant circumstances and factors. Such factors may include whether the employee has “claims authority”, namely authority granted by the authorized insurer authorizing the employee to assess and/or agree the amounts and terms and conditions for settlement of insurance claims on behalf of the insurer.

Employees Whose Duties are Clerical or Administrative

- 3.10. Under section 123(2) of the Ordinance, an authorized insurer’s employee is not required to be licensed to carry on a regulated activity if carrying on that activity only involves the discharge of clerical or administrative duties for the insurer.
- 3.11. There are many different types of tasks that are clerical or administrative duties. Where an authorized insurer’s employee has interaction with an existing or potential policy holder when carrying out his/her duties and such duties are clerical or administrative in nature, the employee will likely be exempt from licensing by virtue of section 123(2) of the Ordinance.

Section 79 Exemption

- 3.12. Under section 79 of the Ordinance, a person may apply to the IA for an exemption from any provision under Part X of the Ordinance. If an authorized insurer’s employee wishes to apply for exemption from the requirement of becoming a licensed individual insurance agent for carrying on regulated activities, he/she may lodge an application with the IA together with the prescribed fee and necessary information and documents. Each application will be considered on its own merits. The factors the IA will take into account include the background of the applicant, nature of the regulated activities to be carried out by the applicant, reasons for not applying for a licence, whether the interest of existing and potential policy holders will be prejudiced, etc. An exemption granted may be subject to conditions imposed by the IA and valid for a specified period only.

4. FAQs

4.1. The following FAQs are for general reference only and aim to illustrate examples of circumstances under which an authorized insurer's employee may or may not be required to be a licensed individual insurance agent. If the factual circumstances are different or subject to other factors, the analysis and answer may be different. Each case should therefore be assessed on its own circumstances.

Q1: In respect of a construction policy or a group life/medical policy, an underwriter of the authorized insurer has a duty to discuss with the existing or potential policy holder the coverage of the policy and exclusions to be added. Is the underwriter required to be licensed?

A1: Negotiation with existing or potential policy holders regarding the coverage and exclusions under an insurance policy is likely to be regarded as a regulated activity. Nonetheless, where such activities of the underwriter are carried out for the purpose of making an assessment of the risks to be accepted by the insurer under a contract of insurance or determining the terms and conditions of a contract of insurance to be issued by the insurer, the underwriter will likely be exempt from the licensing requirement.

Q2: An authorized insurer has an in-house risk consultant who has a duty to visit the insured premises to assess risk exposures and give recommendations on risk mitigation measures. Is the risk consultant required to be licensed?

A2: Assessment of risk exposure and insurability of a risk location is not likely to be regarded as a regulated activity. However, if the risk consultant has any discussion with the existing or potential policy holder which may have influence on the latter's decision on whether or not he/she/it will enter into a contract of insurance, the opinion or recommendation given by the risk consultant during the discussion is likely to be regarded as regulated advice. Nonetheless, where such activities of the risk consultant are carried out for the purpose of making an assessment of the risks to be accepted by the insurer under a contract of insurance or determining the terms and conditions of a contract of insurance to be issued by the insurer, the risk consultant will likely be exempt from the licensing requirement.

Q3: For specialized insurance business, an authorized insurer employs a person with specific specialist expertise (for example, a qualified lawyer, a qualified engineer, or a qualified pilot etc.) to take on a role as an underwriter. Is this person required to be licensed?

A3: If an employee of an authorized insurer carries on regulated activities in the course of his/her employment, where such activities are carried out for the purpose of making an assessment of the risks to be accepted by the insurer under a contract of insurance or determining the terms and conditions of a contract of insurance to be issued by the insurer, the employee will likely be exempt from the licensing requirement.

Q4: Is a staff member of the Underwriting Department required to be licensed to discharge duties such as preparation of quotation, review of policy wording for ensuring compliance with underwriting guidelines, update of underwriting guidelines and arrangement of reinsurance?

A4: Preparation of quotation, review of policy wording, update of underwriting guidelines and arrangement of reinsurance are unlikely to be regarded as regulated activities. Hence, the staff member who performs the relevant duties is not required to be licensed.

Q5: A claims handling officer of the Claims Department has a duty to visit an insured at the hospital and to discuss the medical treatment involved and surgical and other fees incurred (or to be incurred), in order to ascertain whether his/her potential hospitalization claim is covered under the medical policy issued by the authorized insurer and, if so, the amount covered. Is the claims handling officer required to be licensed?

A5: The claims handling officer may enquire about the insured's health condition and discuss with him/her the surgery recommended by the doctor. During the discussion, the claims handling officer may give an opinion to the insured on the eligibility to claim under the insurance policy. Such opinion is likely to be regarded as regulated advice. Nonetheless, where such activities of the claims handling officer are carried out for the purpose of processing an insurance claim, he/she will likely be exempt from the licensing requirement.

Q6: Where there is an insurance claim dispute, the Claims Manager of the authorized insurer has a duty to attend a meeting with the policy holder to explain the relevant policy terms and conditions and the basis of the relevant adjustment applied to the quantum of the claim, e.g. depreciation. Is the Claims Manager required to be licensed?

A6: During the meeting, the Claims Manager may discuss the assessment conducted by the surveyor appointed by the insurer and give opinion on the circumstances leading to refusal of the insurance claim by making reference to the relevant policy terms and conditions. The giving of opinion by the Claims

Manager is likely to be regarded as a regulated activity. Nonetheless, where such activity is carried out for the purpose of processing of an insurance claim, the Claims Manager will likely be exempt from the licensing requirement.

Q7: Is a staff member of the Claims Department required to be licensed to discharge duties such as maintenance of Claims Registers, claims data input, liaison with loss adjusters and seeking claims recovery from third parties or reinsurers?

A7: Maintenance of Claims Registers, claims data input, liaison with loss adjusters and handling of claims recovery are unlikely to be regarded as regulated activities. Hence, the staff member performing these duties is not required to be licensed.

Q8: An existing or potential policy holder may call an authorized insurer's Customer Service hotline to enquire about an insurance policy or claim. Can an unlicensed staff member answer such enquiries?

A8: If the staff member expresses any view, advice or opinion when answering an enquiry, he/she may potentially carry on a regulated activity and hence should be licensed. During the telephone conversation, he/she may give a view, advice or opinion relating to insurance matters, which may constitute regulated advice or an invitation or inducement to a person to enter into an insurance contract or to make a material decision, for instance:

- a) whether or not to procure an insurance product;
- b) whether or not to renew an insurance policy;
- c) whether or not to surrender a life policy;
- d) whether or not to lodge a claim under an insurance policy;
- e) whether or not to accept settlement of an insurance claim.

Even if the staff member strictly follows a script in responding to the enquirer, this does not necessarily mean that the staff member will avoid the need to be licensed. In practice, if the script has already contained some pre-set view, advice or opinion relating to insurance matters, the purpose of which is to invite or induce a person to enter into an insurance contract or to make a material decision, the staff member may still be considered as carrying on a regulated activity and a licence will be required.

Nonetheless, when answering the enquiry, if the staff member merely provides factual information, the giving of such answers by him/her is unlikely to be regarded as a regulated activity. Hence, in these circumstances, the staff member would not be required to be licensed. Such factual information may include:

- a) basic information relating to an insurance product or pertaining to an insurance policy issued by the insurer (e.g. terms and conditions, exclusions, payment term, payment method, premium amount, expiry date, sum insured and deductible); and
- b) basic information relating to procedures (e.g. procedures and forms for application, claims and policy administration, e.g. change of beneficiary of a life policy).

However, the staff member should be mindful when answering the enquiry, of giving an answer which may go beyond the mere provision of information and may be viewed objectively as influencing a policy holder's decision on insurance matters (thereby constituting regulated activity).

Q9: Is a staff member of the Policy Administration Department required to be licensed if he/she is required to discharge duties such as printing and mailing of insurance policies, issue of renewal and premium reminders, and update of policy holders' details upon receipt of notification of changes?

A9: Printing and mailing of insurance policies and update of policy holders' details are unlikely to be regarded as regulated activities. Hence, the staff member is not required to be licensed.

After issue of renewal notice, the staff member may contact the policy holder solely for the purpose of following up the renewal of the policy without providing any view, advice or opinion. While such interaction with the policy holder may potentially be interpreted as "the act of inviting or inducing, or attempting to invite or induce, a person to enter into a contract of insurance" which is a regulated activity, if the duties involved in the interaction are purely clerical or administrative, the staff member will likely be exempt.

Q10: An in-house legal counsel of an authorized insurer has a duty to give an opinion on matters in relation to a contract of insurance or an insurance claim to the senior management, or a senior manager of Underwriting Department or Claims Department of the insurer. Is the legal counsel required to be licensed?

A10: The opinion given by the legal counsel on matters in relation to a contract of insurance or an insurance claim to his/her senior management or colleagues is unlikely to be regarded as regulated advice. Hence the legal counsel is not required to be licensed.

Q11: An authorized insurer organizes an in-house training session for its sales

staff and insurance intermediaries to brief them the features of a new insurance product. Is the staff conducting the product training required to be licensed?

A11: Firstly, the mere provision of factual information is unlikely to be regarded as a regulated activity. Secondly, even if the trainer expresses any view or opinion on the insurance product during the training course, his/her giving of such view or opinion is unlikely to be regarded as a regulated activity if the purpose of the training is to teach attendees knowledge relating to the product. Generally, if it is reasonably expected that the attendees will not make use of or rely on the information provided by the trainer to buy (or not to buy) the product for themselves, it is unlikely that the trainer will be carrying on a regulated activity during the training session.

Q12: A senior manager of an authorized insurer who is an experienced insurance practitioner is invited by an education institute to give a presentation on a specific type of insurance product in an educational seminar. Is the senior manager required to be licensed?

A12: Generally speaking, if the subject of the presentation is not related to a particular insurance product, the presentation is unlikely to be regarded as a regulated activity. Even if the presentation is related to a particular insurance product, the speaker is unlikely to be considered to be carrying on a regulated activity if in the context of the presentation he/she limits himself/herself to providing factual information and generic and academic views, and he/she does not suggest or recommend the attendees to buy (or not to buy) the product.

Q13: An underwriting expert stationed at an authorized insurer's regional hub office may occasionally come to Hong Kong to provide technical support to the insurer's local underwriters for assessment of complex insurance risk coverage. Is the overseas expert required to be licensed?

A13: If the overseas expert works with the insurer's employees only and does not have any interaction with any existing or potential policy holders of the insurer, he/she is not required to be licensed.

However, if the overseas expert meets with the policy holders and gives an opinion on risk assessment or terms and conditions of an insurance policy to them, the opinion is likely to be regarded as regulated advice. If so, the expert's act is likely to be regarded as a regulated activity. If he/she is an employee of the insurer's overseas head office or branch office, he/she may be exempt from the licensing requirement by virtue of section 123(4)(a) and/or (b) of the Ordinance, in a situation where he/she is performing the regulated

activity in the discharge of his/her underwriting duties. Otherwise, he/she does not qualify for such exemption and he/she may apply to the IA for exemption from the licensing requirement under section 79 of the Ordinance.

Q14: An employee of an authorized insurer (other than an underwriter or claims handling officer to whom the exemption in section 123(4) of the Ordinance would apply) needs to deal with licensed insurance broker companies or their licensed technical representatives (broker) when discharging his/her duties. Is the employee required to be licensed?

A14: This very much depends on the scope of the activities carried out by such employee and the specific context in which those activities are carried out. The answer will always be situation specific, but broadly we would state as follows:

Assume a situation where the licensed insurance broker interacts with the employee of the authorized insurer to negotiate or arrange a contract of insurance on behalf of a potential policy holder. As part of this process, the employee expresses to the broker views or opinions on the premium or coverage under the insurance policy. As the broker is acting as the agent of the potential policy holder during the course of the negotiation or arrangement, the employee's views or opinions would be considered as being expressed to the policy holder. Hence, in this context, the employee may be carrying on a regulated activity and may be required to be licensed.

However, in other situations, the interactions between the employee of the authorized insurer and a licensed insurance broker would not require the employee to be licensed. The following are examples of such situations:

- Where the employee provides training on the new product features of the authorized insurer's product to the licensed technical representatives (broker) of the licensed insurance broker company. (See answer 11).
- Where the employee's dealings with the licensed insurance broker involve only the discharge of clerical or administrative duties, such as providing the broker with product brochures or other marketing materials. (This would unlikely be regulated activity and, even if it were, would fall within the exemption under section 123(2) of the Ordinance).

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