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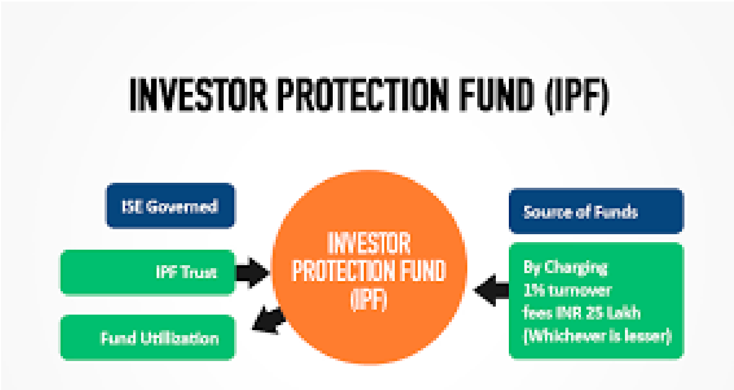

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INVESTOR PROTECTION: NEED AND REGULATORY

Edited By:

1) **Saumya Tripathi**
   (Editor)
   Saumya.judicateme@gmail.com
   +91 9044382618

2) **Ritika Sharma**
   (Student Editor)

Publisher Details:

1) Saumya Tripathi
   +91 9044382618
   Address: Vikas Nagar, Lucknow
   Email Address: Saumya.judicateme@gmail.com

INVESTOR PROTECTION: NEED AND REGULATORY

*By, **Udya Raghavan (Research Scholar)***
*From, **LNCT University, Bhopal***

1. ABSTRACT

An investor is a person who allocates capital with the expectation of a future financial return. Type of investments include: equity, debt, securities, commodities, etc. This definition makes no distinction between those in the primary and secondary markets. That is, someone who provides a business with capital and someone who buys a stock are both investors. An investor who owns a stock is a shareholder.

Investors and Investments are two veins of any economy which infuse money in the market for capital formation every time. These two determine the level of activity in the securities market as well as the level of activity in the economy.

The term "investor protection" defines the entity of efforts and activities to observe, safeguard and enforce the rights and claims of a person in his role as an investor. This includes advice and legal action. The assumption of a need of protection is based on the experience that financial investors are usually structurally inferior to providers of financial services and products due to lack of professional knowledge, information or experience. Countries with stronger investor protections tend to grow faster than those with poor investor protections. Investor protection includes accurate financial reporting by public companies so the investors can make an informed decision. Investor protection also includes fairness of the market which means all participants in the market have access to the same information.

Investor protection is one of the most important elements of a thriving securities market or other financial investment institution. Investor protection focuses on making sure that investors are fully informed about their purchases, transactions, affairs of the company that they have invested in and the like.

2. NEED FOR INVESTOR PROTECTION

An investor has three objectives while investing his surplus money, namely safety of invested money, liquidity position of invested money, and return on investment in selected securities. Normally, an investor desires to have safety of his invested funds, liquidity of his investments and a good return with minimum risk. An investor can be classified as individual or professional who manages the funds on behalf of others. The investors fear that there is no protection for their investments and immediate return as dividend. The disclosure of information relating to the issue of securities, market operations, grievance redressal mechanism etc., is there but there is no regulator to give assurance relating to the return on investment and capital appreciation.

In India, The Securities and Exchange Board of India (SEBI) has been mandated to protect the interests of investors in securities and to promote the development and regulate the securities market so as to establish a dynamic and efficient Securities Market contributing to Indian Economy.

In spite of the legislative measures, there are fraudulent companies, which are cheating the investors. For example, in India around 9600 listed companies are available for trade in Bombay Stock Exchange and National Stock Exchange of India Ltd., but only 2500 company shares are traded in Bombay Stock Exchange and nearly 800 company shares are actively traded in National Stock Exchange, most of companies are traded only in the penny stock level. The remaining companies are enjoying benefit from the legal provisions of corporate veil from the Companies Act 1956. Recently the Central Government has identified nearly 229 companies which were vanished. The Government also was unable to trace some companies' managerial persons, proper communication address etc., and the Department of Company affairs filed a prosecution against 75 companies through the Registrar of Companies. Most of the vanished companies tapped capital from the market and collected funds from the public through issue of shares / debentures at the time of Capital Market boom period during early 1990s. Some of the companies took advantage of the market conditions but later defaulted in their commitments made to the public while mobilizing funds. Some of these companies are not even traceable; the public has thus been cheated of their hard-earned money.

The growth in the numbers of investors in India is rapidly increasing day by day. In turn, numbers of transactions are also increasing. Then there are more chances of imposture, Misleading, Ponzi Schemes, Pump and Dump, Off Shore Investing, and prima bank to harm the investors. A small individual Investor may not be aware to protect himself from above mal practices.

As a result, there occurs a need of organization/institution, which protect the interest of investors, help them to regain confidence in the capital market and gives them adequate knowledge to take informed investment decision.

3. LEGAL FRAMEWROK FOR INVESTOR PROTECTION

❖ Companies Act, 2013

It deals with the issue, allotment, and transfer of securities, as well as various aspects relating to company management. It provides the standard of disclosure in public issues of capital, particularly in the fields of company management and projects, information about other listed companies under the same management, and the management's perception of risk factors. It also regulates underwriting, the use of premium and discounts on issues, rights, and bonus issues, the payment of interest and dividends, the supply of annual reports, and other information.

❖ Sebi Act, 1992

The SEBI Act, 1992 was enacted to empower SEBI with statutory powers for:

(a) Protecting the interests of investors in securities,

(b) Promoting the development of the securities market, and

(c) Regulating the securities market. Its regulatory jurisdiction extends over corporate in the issuance of capital and transfer of securities, in addition to all intermediaries and persons associated with the securities market.

It can conduct enquiries, audits, and inspection of all concerned, and adjudicate offences under the Act. It has the powers to register and regulate all market intermediaries, as well as to penalize them in case of violations of the provisions of the Act, Rules, and Regulations made there under. SEBI has full autonomy and the authority to regulate and develop an orderly securities market.

It provides for following penal provisions:

SECTION	SUBJECT MATTER	AMOUNT OF PENALTY
15 A	Failure to furnish information or return	Rupees one lakh each day till the default continues or one crore, whichever is less.
15 B	Failure of any person to enter into agreement with client	Rupees one lakh each day till the default continues or one crore,

		whichever is less.
15 C	Failure to redress investor's grievances	Rupees one lakh each day till the default continues or one crore, whichever is less.
15 D	Prescribed default in relation to Mutual Funds/ Collective Investment scheme	Rupees one lakh each day till the default continues or one crore, whichever is less.
15 E	Failure to observe rules and regulations by asset management company	Rupees one lakh each day till the default continues or one crore, whichever is less.
15 F	Default in case of stock brokers. E.g., Failure to issue contract note, failure to deliver securities, over charging of securities etc.	In case of overchargin g, rupees one lakh or five times the overchargin g whichever is higher. For other defaults, rupees one lakh each day till the default continues or one crore, whichever is less.
15 G	Insider Trading	Rupees twenty-five crores or three times the profit, whichever is higher.
15 H	Failure in relation to take over code. E.g., failure to disclose aggregate shareholding , failure to make public offer, failure to make consideratio n, etc.	Rupees twenty-five crores or three times the profit, whichever is higher.
15 HA	Fraudulent and unfair	Rupees twenty-five crores or

	trade practices	three times the profit, whichever is higher.
15 HB	Where no separate penalty is provided for any violation.	Rupees twenty-five crores or three times the profit, whichever is higher.

❖ Securities Contracts (Regulation) Act, 1956

This Act provides for the direct and indirect control of virtually all aspects of securities trading and the running of stock exchanges, and aims to prevent undesirable transactions in securities. It gives the Central Government regulatory jurisdiction over:

(a) Stock exchanges through a process of recognition and continued supervision,

(b) Contracts in securities, and

(c) The listing of securities on the stock exchanges.

As a condition of recognition, a stock exchange complies with the conditions prescribed by the Central Government. Organized trading activity in securities takes place on a specified recognized stock exchange. The stock exchanges determine their own listing regulations, which have to conform to the minimum listing criteria set out in the Rules.

❖ Depositories Act, 1996

The Depositories Act, 1996 provides for the establishment of depositories in securities with the objective of ensuring free transferability of securities with speed, accuracy, and security by:

(a) Making securities of public limited companies freely transferable, subject to certain exceptions.

(b) Dematerializing the securities in the depository mode.

(c) Providing for the maintenance of ownership records in a book entry form.

In order to streamline the settlement process, the Act envisages the transfer of ownership of securities electronically by book entry, without making the securities move from person to person. The Act has made the securities of all public limited companies freely transferable, restricting the company's right to use discretion in effecting the transfer of securities, and the transfer deed and other procedural requirements under the Companies Act have been dispensed with.

AUTHORITIES AND TYPES OF GRIEVANCES

Reserve Bank of India- is India's Central Banking Institution, which controls the Monetary Policy of the Indian Rupee. It looks into grievances against banking and non-banking official companies.

Ministry of Corporate Affairs- It is charged with administering The Companies Act, 2013 and other acts related to Indian private sector. It is responsible mainly for regulation of Indian enterprises in Industrial and Services sector. it takes up grievances against unlisted companies.

Also, in case of other types of companies, takes up grievances in relation to oppression and mismanagement, corporate restructuring like mergers etc.

Insurance Regulatory and Development Authority- It is an agency of Government of India for insurance sector supervision and development looks into grievances against insurance sector, brokers, agents, etc.

Forward Markets Commission for Commodities Exchange- is the chief regulator of commodity futures markets in India. looks into grievances relating to commodities market.

Pension Fund Regulatory Development Authority- To be a model Regulator for promotion and development of an organized pension system to serve the old age income needs of people on a sustainable basis.it takes up grievances against pension funds.

Competition Commission of India-is a body of the Government of India responsible for enforcing The Competition Act, 2002 throughout India and to prevent activities that have an adverse effect on competition in India. it checks abuse of dominant position, anti- competitive practices.

Securities Exchange Board of India- is the regulator for the securities market in India. It was established in the year 1988 and given statutory powers on 12 April 1992 through the SEBI Act, 1992. looks into investor grievances.

Telecom Regulatory Authority of India-is the independent regulator of the telecommunications business in India looks into grievances in telecom sector.

4. INVESTOR RIGHTS AND RESPONSIBILITIES

4.1 Rights

4.1.1 Shareholder

- To receive the share certificates, on allotment or transfer (if opted for transaction in physical mode) as the case may be, in due time. Now in IPO, investors will be allotted shares in dematerialized mode only and subsequently they can rematerialize the allotted shares.
- To receive copies of the Annual Report containing the Balance Sheet, the Profit & Loss account and the Auditor's Report.
- To participate and vote in general meetings either personally or through proxy.

- To receive dividends in due time once approved in general meetings.
- To inspect the statutory registers at the registered office of the company.
- To receive corporate benefits like rights, bonus, etc. once approved.
- To apply to Company Law Board (CLB) to call or direct the Annual General Meeting with requisite number of shareholders.
- To inspect the minute books of the general meetings and to receive copies thereof.
- To proceed against the company by way of civil or criminal proceedings.
- To apply for the winding up of the company with requisite number of shareholders.
- To receive the residual proceeds in case of winding up.
- To receive offer to subscribe to rights shares in case of further issues of shares.
- To receive offer in case of takeover or buyback under SEBI Regulations.

Besides the above rights, which one enjoy as an individual shareholder, they also enjoy the following rights as a group:

- To requisite an Extra-ordinary General meeting.
- To demand a poll on any resolution.
- To demand a poll on any resolution.
- To apply to Company Law Board (CLB) to investigate the affairs of the company.
- To apply to CLB for relief in cases of oppression and/or mismanagement.

4.1.2 Debenture Holder

- To receive interest/redemption in due time.
- To receive a copy of the trust deed on request.
- To apply before the CLB in case of default in redemption of debentures on the date of maturity.
- To apply for winding up of the company if the company fails to pay its debt.
- To approach the Debenture Trustee with your grievance.

These are rights are not absolute because there are multiple facets attached to them and some may be realized and some may not.

4.2 Responsibilities

While we have so many rights as a stakeholder in the company that should not lead anybody to complacency; because we have also certain responsibilities to discharge. However, these are not statutory liabilities:

- To be specific.
- To remain informed.
- To be vigilant.
- To participate and vote in general meetings.
- To exercise your rights on your own or as a group.

5. FINANCIAL EDUCATION

Various initiatives have been taken up by different authorities to provide financial education through various ways so as to educate the investor and help him save from scams and frauds.

5.1 Investors Protection Fund (IPF)

The Government has established an Investor Education and Protection Fund (IEPF) under Sec. 205 C of the Companies Act, 1956 under which unclaimed funds on account of dividends, matured deposits, matured debentures, share application money etc. are transferred through the IEPF to the Government by the company on completion of seven years. The Government is required to utilize this amount through an Investor Education and Protection Fund. For this purpose, the proceeds from the companies are credited to the Consolidated Fund of India through this fund. The Fund may then be entrusted with full-fledged responsibility to carry out activities for education of investors and protection of their rights.

BSE is the first Exchange to have set up the 'Stock Exchange Investors Protection Fund (IPF) in the interest of the customers of the defaulter members of the Exchange. This fund was set up on 10th July, 1986 and has been registered with the Charity Commissioner, Government of Maharashtra as a Charitable Fund. The maximum amount of Rs. 10,00,000 payables to an investor from Investor Protection Fund in the event of a default by a Trading Member has been revised to Rs. 15,00,000; which shall be applicable to the clients of the Trading Member of the Exchange, who will be declared Defaulter after 5th December, 2009.

BSE is the only Exchange in India, which offers the highest compensation of Rs.15lacs in respect of the approved claims of any Investor against the defaulter Trading Members of the Exchange.

6. SEBI INITIATIVES

6.1 Investor Awareness Campaign

The major thrust has been on educating and informing the small investors which is clearly evident from the motto that 'An informed investor is a safe investor'. Keeping complete faith on the above all endeavors have been made in this direction including announcing the year 2003 as the

'JaagteRaho' year and awareness and organized more than 1000 investor conference, exhibitions, mela, seminars, Union Budget meetings and public meetings for small investors all over India.

6.2 Advertisement

SEBI has prepared simple "dos and don'ts" for investors relating to various aspects of the securities market.

General Do's and Don'ts for Investors

6.2.1 Do's

1. Always deal with the intermediaries registered with SEBI/ stock exchanges.
2. Always keep copies of all investment documentation (e.g., application forms, acknowledgement slips, contract notes).
3. Always keep copies of documents you are sending to companies etc.
4. Send important documents by reliable mode / registered post to ensure deliver.
5. Ensure that you receive contract note at the end of the day/ account statements for every transaction.
6. Ensure that you have money before you buy.
7. Always settle the dues through the normal banking channels with the market intermediaries.
8. Ensure that you have are holding securities before you sell.
9. Follow up diligently and promptly e.g. If you do not receive the required documentation within a reasonable time, contact the concerned person i.e., the Trading Member, Company etc. immediately.
10. Give clear and unambiguous instruction to your Trading Member /agent/ depository participant.
11. Mention clearly whether you want to transact in physical mode or demat.
12. Investors should take informed investment decision without being influenced by misleading recommendations given in the public media such as newspapers, electronic media, website etc. verify all the claims made in such advertisements.
13. Before placing an order with the market intermediaries, please check about the credentials of the companies, its management, fundamentals and recent announcements made by them and various other disclosures made under various regulations. The sources of information are the websites of Exchanges and companies, databases of data vendor, business magazines etc.
14. Adopt trading / investment strategies commensurate with your risk-bearing capacity as all investments carry some risk, the degree of which varies according to the investment strategy adopted.
15. Carry out due diligence before registering as client with any intermediary. Carefully read and understand the contents stated in the Risk Disclosure Document,

which forms part of the investor registration requirement for dealing through brokers.

16. Be cautious about stocks which show a sudden spurt in price or trading activity, especially low-priced stocks.

17. There are no guaranteed returns on investment in the stock market.

18. Lodge your complaint or Arbitration Application against the Trading Member, at the concerned Regional Arbitration Centre, by confirming geographical jurisdiction.

The period consumed in redressal of complaint thru IGRC services will not be considered while measuring period of ‘limitation’ in filing arbitration application provided the complaint and / or arbitration application is / are filed at the concerned Regional Arbitration Centre.

19. Lodge your complaint against a company listed on BSE, at the concerned Regional Arbitration Centre, by confirming geographical jurisdiction. Please use your address for deciding the geographical jurisdiction. This will enable to process the complaint expeditiously.

6.2.2 Don’ts

1. Don’t deal with unregistered Trading Members/ sub-brokers, intermediaries.

2. Don't execute any documents with any intermediary without fully understanding its terms and conditions.

3. Don’t file your grievance/s and / or arbitration application against trading member, in the Regional Arbitration Centre having no geographical jurisdiction over the matter.

The Exchange redresses investors’ complaints through arbitration and IGRC mechanism, which are quasi-judicial in nature. The period consumed in redressal of complaint thru IGRC will not be considered while measuring period of ‘limitation’ in filing arbitration application provided the complaint is filed at the concerned Regional Arbitration Centre.

4. Don’t file your grievance /s against companies listed on BSE, in the Regional Arbitration Centre having no geographical jurisdiction over the matter, for its expeditious redressal.

5. Don’t forgo taking due documents of transactions, in good faith even from people whom you know.

6. Don’t fall prey to promise of unrealistic high returns.

7. Don’t get misled by companies showing approval / registrations from Government agencies as the approvals could be for certain other purposes and not for the securities you are buying.

8. Don’t transact based on rumors generally called ‘tips’.

9. Don't leave the custody of your Demat Transaction slip book in the hands of any intermediary.

10. Don’t forget to take note of risks note of risks involved in the investment.

11. Don't get misled by guarantees of repayment of your investments through post-dated cheques.

12. Don't hesitate to approach concerned persons and then the appropriate Authorities.

13. Don't get swayed by promises of high returns.

14. Don't get carried away with advertisements about the financial performance of companies in print and electronic media.

15. Don't blindly follow media reports on corporate developments, as some of these could be misleading.

16. Don't blindly imitate investment decisions of others who may have profited from their investment decisions.

6.3 Educative Materials

SEBI has prepared a standardized reading material and presentation material for the workshops.

6.4 All India Radio

With regard to educating investors through the medium of radio,

SEBI Officials regularly participate in programmes aired by All India Radio.

6.5 Website Dedicated to Investor Education

6.6 Cautionary Message on Television

With a view to use the electronic media to reach out to a larger number of investors, a short cautionary message, in the form of a 40 seconds film, has been prepared and the same is being aired on television.

7. SEBI (Investor Protection and Education Fund) Regulations, 2009

Under this regulation a fund called the Investor Protection and Education Fund has been established by SEBI on 23rd July, 2007, by the order made by the Board under section 11 of the Act.

The fund is established by SEBI to achieve its objective: to protect the interest of investors.

Amounts to be credited to the fund:

The following amounts shall be credited to the Fund: -

(a) contribution as may be made by the Board to the Fund;

(b) grants and donations given to the Fund by the Central Government, State

(c) Government or any other entity approved by the Board for this purpose

(d) security deposits, if any, held by stock exchanges in respect of public issues and rights issues, in the event of de-recognition of such stock exchanges

(e) amounts in the Investor Protection Fund and Investor Services Fund of a stock exchange, in the event of de-recognition of such stock exchange;

(f) interest or other income received out of any investments made from the Fund;

(g) such other amount as the Board may specify in the interest of investors.

Utilization of Fund:

The Fund shall be utilized for the purpose of protection of investors and promotion of investor education and awareness.

The Fund may also be used for the following purposes, namely: -

(a) educational activities including seminars, training, research and publications, aimed at investors;

(b) awareness programmes including through media - print, electronic, aimed at investors;

(c) funding investor education and awareness activities of Investors' Associations recognized by the Board;

(d) aiding investors' associations recognized by the Board to undertake legal proceedings in the interest of investors in securities that are listed or proposed to be listed.

(e) refund of the security deposits which are held by stock exchanges and transferred to the Fund consequent on derecognition of the stock exchange

(f) expenses on travel of members of the Committee, who are not officials of the Board, and special invitees to the meetings of the Committee, in connection with the work of the Committee;

(g) salary, allowances and other expenses of office of Ombudsman;

(h) and such other purposes as may be specified by the Board.

8. SEBI Complaint Redressal System (SCORES)

SCORES facilitates to lodge your complaint online with SEBI and subsequently view its status.

SEBI is contemplating the taking up the arbitration route to redress investor grievances.

It was recognized that the civil courts in the country were loaded with cases and therefore, complaints pertaining to investor grievances took years to be resolved. Since cases under arbitration should be resolved by four months, SEBI thinks in terms of setting up arbitration panels to resolve complaints.

Complaints to be taken up with SEBI's Investor Information Centre

- Complaints related to securities traded/listed with the exchanges.
- Complaints regarding the trades effected in the exchange with respect to the companies listed on it or by the members of the exchange.
- Issue of duplicate share certificates.
- Complaints to be taken up with Department of Company Affairs/

concerned Registrar of Companies (ROC):

- Complaints against unlisted companies.
- Complaints regarding on-receipt of annual report, AGM Notice.
- Fixed deposit in manufacturing companies
- Forfeiture of shares

Grievances undertaken by SEBI:

In the event of grievance first the concerned company/ intermediary against whom you there is a grievance has to be approached. However, if not satisfied with their response one, should know whom to turn to, to get your grievance redressed. SEBI takes up grievances related to issue and transfer of securities and non-payment of dividend with listed companies. In addition, SEBI also takes up grievances against the various intermediaries registered with it and related issues.

SEBI Informal Guidance Scheme 2003

This scheme is meant for companies, intermediaries, acquirer etc.

The informal guidance may be sought for and given in two forms:

1. No-action letters: in which a Department of SEBI indicates that the Department would or would not recommend any action under any Act, Rules, Regulations, Guidelines, Circulars or other legal provisions administered by SEBI to the Board if the proposed transaction described in a request made under para 6 is consummated.
2. Interpretive letters: in which a Department of SEBI provides an interpretation of a specific provision of any Act, Rules, Regulations, Guidelines, Circulars or other legal provision being administered by SEBI in the context of a proposed transaction in securities or a specific factual situation.

SEBI may dispose of the request as early as possible as and, in any case, not later than 60 days after the receipt of the request. The Department may give a hearing or conduct an interview if it feels necessary to do so. The requestor shall be entitled only to the reply. The internal records or views of SEBI shall be confidential.

SEBI may not respond to the following types of requests:

(a) those which are general and those which do not completely and sufficiently describe the factual situation;

(b) those which involve hypothetical situations;

(c) those requests in which the requestor has no direct or proximate interest;

(d) where the applicable legal provisions are not cited;

(e) where a no-action or interpretive letter has already been issued by that or any other Department on a substantially similar question involving substantially similar facts, as that to which the request relates;

(f) those cases in which investigation, enquiry or other enforcement action has already been initiated;

(g) those cases where connected issues are pending before any Tribunal or Court and on issues which are sub judice; and,

(h) those cases where policy concerns require that the Department does not respond.

SEBI shall not be under any obligation to respond to a request for guidance made under this scheme, and shall not be liable to disclose the reasons for declining to answer the request.

9. CONCLUSION

The Financial markets that we have constructed are now so complex and the speed of transaction so fast that apparently isolated actions and even minor transactions can have catastrophic consequences.

In India, the worries for the investors in the securities market are shortage of application forms, preferential allotment to the financial institutions, miss-statements, concealment of facts and pushing the issue through advertisement, fraudulent company management, price volatility, price manipulation, insider-trading, unfair trade practices of brokers and sub-brokers, increasing the number of vanishing companies, lack of commitment for the corporate entities, stock market scams, price rigging, insider- trading, lack of professional expertise, defaults committed by brokers, multiplicity of number of investor complaints, absence of genuine investors, price rigging before issue, prevalence of insider-trading, lack of liquidity, scarcity of floating securities, lack of transparency, high volatility in the secondary market, dominance of public sector and financial institutions.

The investors need protection from the various malpractices and unfair practices made by the corporate and intermediaries. As the individual investors community and the investment avenues are on the rise, it is interesting to know how the investors shall be protected through various legislations. Securities market in general are to be regulated to improve the market operations in fair dealings and easy to access the market by corporate and investors. The present positive attitude of investors is heartening though investor sentiments have been shaken by the various scandals. Even though, there are various opportunities available for investment, investors are scared of investing in corporate. In this situation, the individual investors protection becomes necessary to sustain the economic development of all countries. To achieve the desired level of economic growth is dependent upon investor's protection availability of the concerned country.

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