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Liechtenstein

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Introduction

As of the end of 2022, there were 12 banks, two e-money institutions and one payment institute licensed in Liechtenstein and subject to the prudential supervision of the Liechtenstein Financial Markets Authority (*Finanzmarktaufsicht* – "**FMA**"). Traditionally, Liechtenstein banks' core business activities are private banking and asset management for local and international private and institutional clients. At the end of 2022, Liechtenstein banks and their group companies managed client assets in the amount of 411.4 billion Swiss francs.

The three largest Liechtenstein banks are LGT AG, Liechtensteinische Landesbank AG, and VP Bank AG. The latter two are publicly listed and their shares traded on the SIX Swiss Exchange. LGT AG, on the other hand, remains privately owned by the Liechtenstein Princely family.

In recent years, Liechtenstein banks and the financial sector as a whole have increased efforts to implement and comply with high standards of anti-money laundering and anti-terrorist financing. In June 2022, MONEYVAL issued its fifth country report on Liechtenstein with good results.

Recent developments in the field of private banking and wealth management have led to a consolidation amongst existing Liechtenstein banks, not least to spread the increasing regulatory burden; others have expanded their business outside of Liechtenstein.

At the same time, the Liechtenstein government has continued its efforts to improve the regulatory framework to attract fintech start-ups and innovative financial service providers.

With its AAA-rating from Standard & Poor's (confirmed in 2023) and full market access to the European single market through its membership in the European Economic Area ("**EEA**"), Liechtenstein remains an attractive wealth management centre in the heart of Europe.

Regulatory architecture: Overview of banking regulators and key regulations

Supervisory bodies

Liechtenstein banks are supervised by a single regulator: the FMA. The FMA is responsible for both prudential supervision and consumer protection.

Based on the Currency Treaty with Switzerland, the official currency in Liechtenstein is the Swiss franc, and the Swiss National Bank (*Schweizer Nationalbank* – "**SNB**") functions as the central bank for Liechtenstein. Swiss provisions on monetary, credit and currency policy therefore apply directly in Liechtenstein and the SNB has the power to enforce these provisions in relation to Liechtenstein banks. Liechtenstein banks also have reporting obligations to the SNB.

Liechtenstein is a member of the EEA, which comprises the members of the European Union ("**EU**") as well as Iceland, Norway and Liechtenstein. EU directives and regulations that have been incorporated into the EEA Agreement have to be implemented or applied directly, as the case may be, by Liechtenstein.

In particular, Regulation (EU) 1093/2010 establishing the European Banking Authority ("**EBA**") has been incorporated into the EEA Agreement and therefore has direct effect in Liechtenstein. The EBA is one of three EU supervisory authorities that have been created to strengthen oversight of cross-border groups and establish a European single rulebook applicable to all financial institutions in the EU internal market. EU legislation can confer power upon the EBA to take measures with binding effect in an EU Member State or on banks having their seat in the EU. The particular institutional set-up of the EEA Agreement made it necessary to incorporate the Regulation with amendments in this respect. Measures taken by the EBA can have no direct effect in Iceland, Norway and Liechtenstein and are not binding on banks having their seat in these EEA Member States. Instead, the European Free Trade Association ("**EFTA**") Surveillance Authority will adopt decisions with binding effect on the basis of drafts prepared by the EBA, which drafts were requested by the EFTA Surveillance Authority or were initiated by the EBA itself. Guidelines or recommendations issued by the EBA have to be applied by Liechtenstein banks if the FMA notifies the EBA within two months of their publication that it intends to comply with them.

Furthermore, Liechtenstein is obliged to comply with Regulation (EU) 1092/2010 on the financial supervision of the EU at macro level and establishing a European Systemic Risk Board ("**ESRB**"). In particular, the Regulation provides for the creation of the ESRB. The ESRB is an unincorporated body with responsibility for macroprudential oversight of the EEA financial system with the aim of contributing to the prevention or mitigation of systemic risks to financial stability in the EEA stemming from developments within the financial system. In carrying out its tasks, the ESRB is empowered, in particular, to make recommendations on remedies to identified risks. EEA Member States must comply with these recommendations.

On a national level, the FMA, the Liechtenstein government and the recently established Financial Stability Council are responsible for monitoring financial stability and implementing macroprudential policy.

Key legislation

EEA Member States have to implement EEA-relevant EU legislation that has been incorporated into the EEA Agreement by a corresponding decision of the EEA Joint Committee. One of these EEA-relevant legal areas is financial services. For this reason, Liechtenstein banking regulation is largely based on EU legislation.

The key laws applicable to banks are:

- The Banking Act (*Bankengesetz* – "**BankG**"; LGBl. 1992/108) and the Banking Ordinance (*Bankenverordnung* – "**BankV**"; LGBl. 1994/022), which set out the requirements for the pursuit of banking activities and provision of the investment and ancillary services listed in Annex I, Sections A and B of the Markets in Financial Instruments Directive (Directive 2014/65 – "**MiFID II**") in Liechtenstein. The main banking activities include deposit-taking, lending, custody of securities, payment transfer services, the assumption of guarantees, surety and similar liabilities as well as trading in foreign currencies.
  Undertakings require a licence issued by the FMA in order to take up an activity or service covered by the BankG on a professional basis in Liechtenstein. Banks or

investment firms having their seat in another Member State of the EEA may pursue activities covered by the fourth Capital Requirements Directive (2013/36/EU – "**CRD IV**") or MiFID II in Liechtenstein either on a cross-border basis or through a Liechtenstein branch if they have been licensed for such activities in their home Member State. The BankG and BankV contain detailed provisions regarding formal and material requirements for obtaining and retaining a banking licence, licensing procedures, ongoing supervision by the FMA and sanctions.

The BankG and BankV implement several EU directives in the area of banking and investment services regulation into Liechtenstein law, including the CRD IV and MiFID II. Important EU regulations such as the Capital Requirements Regulation (575/2013 – "**CRR**") and the Markets in Financial Instruments Regulation (600/2014 – "**MiFIR**") apply directly in Liechtenstein.

Furthermore, several acts related to the provision of financial services are of particular relevance to Liechtenstein banks:

- The Due Diligence Act (*Sorgfaltspflichtsgesetz*; LGBl. 2009/047) and the Due Diligence Ordinance (*Sorgfaltspflichtsverordnung*; LGBl. 2009/098), which implement the recommendations of the Financial Action Task Force to combat money laundering and terrorist financing as well as EU anti-money laundering directives in force in the EEA.
- The Bank Recovery and Resolution Act (*Sanierungs- und Abwicklungsgesetz* – "**SAG**"; LGBl. 2016/493) and the Bank Recovery and Resolution Ordinance (*Sanierungs- und Abwickungsverordnung*; LGBl. 2016/509), which implement the EU Bank Recovery and Resolution Directive (2014/59/EU – "**BRRD**"), as amended by Directive 2019/879/EU ("**BRRD II**"). The SAG applies to Liechtenstein banks and other financial institutions and establishes a framework for the recovery or orderly resolution of failing banks. It grants wide powers to the FMA in its capacity as the national resolution authority.
- The EU Market Abuse Regulation (596/2014 – "**MAR**"). The Liechtenstein implementing provisions have been adopted in the EEA Market Abuse Regulation Implementation Act (*EWR-Marktmissbrauchsverordnung-Durchführungsgesetz*; LGBl. 2020/155).
- The Payment Services Act (*Zahlungsdienstegesetz*; LGBl. 2019/213) and the Payment Services Ordinance (*Zahlungsdiensteverordnung*; LGBl. 2019/233), which implement the Second EU Payment Services Directive (2015/2366). They contain provisions regarding the formal and material requirements for the provision of payment services in Liechtenstein and the rights and obligations of payment service providers and their customers.
- The E-Money Act (*E-Geldgesetz*; LGBl. 2011/151) and the E-Money Ordinance (*E-Geldverordnung*; LGBl. 2011/158), which implement the EU E-Money Directive (2009/110/EC). They contain provisions regarding the formal and substantial requirements for issuing e-money on a professional basis as well as the rights and obligations of e-money institutions and their customers.
- The Foreign Account Tax Compliance Act (*Gesetz vom 4. Dezember 2014 über die Umsetzung des FATCA-Abkommens zwischen dem Fürstentum Liechtenstein und den Vereinigten Staaten von Amerika* – "**FATCA**"; LGBl. 2015/007), which transposes the Intergovernmental Agreement between Liechtenstein and the United States of America to Improve International Tax Compliance and to Implement FATCA into Liechtenstein law. It requires Liechtenstein banks and other financial institutions to report to the Internal Revenue Service information about financial accounts held by US persons. The Agreement signed by Liechtenstein follows Model 1 according to which taxpayer information is exchanged between national tax authorities.

- The Act on International Automatic Information Exchange in Tax Matters (*Gesetz über den automatischen Informationsaustausch in Steuersachen*; LGBl. 2015/355) and the Ordinance on International Automatic Information Exchange in Tax Matters (*Verordnung über den automatischen Informationsaustausch in Steuersachen*; LGBl. 2015/358), which implement the automatic exchange of financial account information in tax matters developed by the OECD.
- Regulation (EU) 1286/2014 on basic information sheets for packaged investment products for retail investors and insurance investment products ("**PRIIPs Regulation**"), which is directly applicable in Liechtenstein due to a national provision. The implementing provisions were adopted in the PRIIP Implementing Act (*PRIIP-Durchführungsgesetz*; LGBl. 2016/513) and the PRIIP Implementation Ordinance (*PRIIP-Durchführungsverordnung*; LGBl. 2017/232). The PRIIPs Regulation has yet to be incorporated into the EEA Agreement but has been applicable in Liechtenstein on a unilateral basis since 1 January 2018.
- The Beneficial Owner Register Act (*Gesetz über das Verzeichnis wirtschaftlicher*; LGBl. 2019/008), which has provided for a register of beneficial owners of Liechtenstein entities and trusts into which all beneficial owners or controlling persons of Liechtenstein entities and trusts shall be entered.
- The Cyber-Security Act (*Cyber-Sicherheitsgesetz*; LGBl. 2023/269), which determines measures in order to achieve a high level of security for network and information systems.
- In addition, banks and e-money institutions have to observe guidelines (*Wegleitungen*), directives (*Richtlinien*) and communications (*Mitteilungen*) issued by the FMA, as well as the guidelines and recommendations issued by the EBA with which the FMA complies.

Recent regulatory themes and key regulatory developments in Liechtenstein

Noteworthy legal and regulatory developments in 2022 and 2023 include the following:

Sustainability in the financial services sector

Liechtenstein has implemented the Delegated Directive (2021/1269/EU) regarding the integration of sustainability factors into the product governance obligations into the BankV. The law entered into force in September 2022.

Furthermore, Commission Delegated Regulation (EU) 2022/1288, which sets out regulatory technical standards for sustainability-related disclosures in the financial sector pursuant to the Disclosure Regulation, has directly applied in Liechtenstein since 1 January 2023.

General and specific framework for securitisation

The Securitisation Regulation (2017/2402) lays down a general framework for securitisation and creates a specific framework for simple, transparent and standardised securitisation. The provisions have been enacted in the EEA Securitisation Implementation Act (*EWR-Verbriefungs-Durchführungsgesetz*; LGBl. 2020/504). The law entered into force on 1 November 2022.

European covered bonds

Liechtenstein has legally defined the requirements regarding the issue of covered bonds. The Liechtenstein Act on European Covered Bonds (*Gesetz über Europäische gedeckte Schuldverschreibungen*; LGBl. 2023/142) implements Directive (EU) 2019/2162 on the issue of covered bonds and covered bond public supervision. The law entered into force on 1 May 2023. In addition, Liechtenstein has implemented a Regulation on European

Covered Bonds (*Verordnung über Europäische gedeckte Schuldverschreibungen*; LGBl. 2023/170), which entered into force on 1 May 2023. Furthermore, Liechtenstein amended Art. 3 para. 3 lit g of the BankG in order to define the "issue of covered bonds in accordance with EUGSVG" as banking business pursuant to the BankG.

Restructuring of credit institutions and investment firms

Along with the Implementing Directive (BRRD) establishing a framework for the recovery and resolution of credit institutions and investment firms and BRRD II as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms, Liechtenstein has amended the SAG as well as the BankG regarding capital requirements of credit institutions and investment firms in relation to restructuring processes. The amendments to the SAG and BankG entered into force on 1 May 2023.

Cybersecurity

In order to define measures to achieve a high level of security of network and information systems of providers of essential services in the banking sector, the Liechtenstein Cyber-Security Act entered into force on 1 July 2023 and then, on 6 September 2023, the Liechtenstein Cyber-Security Regulation (*Cyber-Sicherheitsverordnung*; LGBl. 2023/359) entered into force. The Cyber-Security Regulation includes regulations regarding the banking and financial market infrastructures sector. The law implements Directive (EU) 2016/1148 and executes Regulation (EU) 2021/887.

Upcoming changes

Several European legal acts relevant to the banking sector are pending entry into force in Liechtenstein:

- The Securities Financing Transactions Regulation (2015/2365) ("**SFTR**"). The provisions requiring national implementation have been enacted in the EEA Securities Financing Transactions Implementation Act (*EWR-Wertpapierfinanzierungsgeschäfte-Durchführungsgesetz*; LGBl. 2019/362). The FMA has published guidelines for the implementation of the SFTR. The Implementing Act and the FMA guidelines will enter into force in Liechtenstein once the SFTR has entered into force in the EEA.
- The Payment Accounts Directive (2014/92/EU – "**PAD**"). Liechtenstein will implement PAD in separate legal acts, the Payment Account Act (*Zahlungskontengesetz*) and the Payment Account Ordinance (*Zahlungskontenverordnung*). They will enter into force once PAD has been incorporated into the EEA Agreement.
- European crowdfunding: Liechtenstein has implemented Regulation 2023/1503 on European Crowdfunding Service Providers (*EWR-Schwarmfinanzierungs-Durchführungsgesetz*; LGBl. 2023/414). The law will enter into force once the Regulation is incorporated into the EEA Agreement.
- Regulation (EU) 2022/858 ("**MICAR**") was incorporated into the EEA Agreement on 5 July 2023. Upon entry into force of the EEA Joint Committee Decision, MICAR will become directly applicable in Liechtenstein. However, specific provisions of MICAR require direct implementation into Liechtenstein law and certain provisions of the BankG will be amended for this purpose.
- Banks and investment firms have been subject to the same supervisory regime for a long time. However, the risks of banks and investment firms diverge substantially. In order to overcome any uncertainties and difficulties, an independent supervisory regime for investment firms was developed on a European level. Regarding the implementation of Directive (EU) 2019/2034 and execution of Regulation (EU) 2019/2033, Liechtenstein

is envisaging a comprehensive revision of the BankG as well as the adoption of an Investment Firms Act (*Wertpapierfirmengesetz* – "**WPFG**") and an Investment Services Act (*Wertpapierdienstleistungsgesetz* – "**WPDG**").

Bank governance and internal controls

General

The key requirements for the governance of banks are set out in the BankG and BankV and the directly applicable EU law, such as the CRR, which is implemented into Liechtenstein by virtue of the EEA Register.[1] In addition, the FMA complies with relevant guidelines and recommendations of the EBA.

A Liechtenstein bank shall have: (a) a board of directors for ultimate direction, supervision and control; (b) a management board responsible for the operational management consisting of at least two members, who shall exercise joint responsibility for their activities and may not simultaneously be members of the board of directors; (c) an internal audit, which shall report directly to the board of directors; (d) a risk management system independent of the operational business; and (e) adequate procedures for employees to report violations of the BankG, CRR and MiFIR as the case may be.

The division of responsibilities between the board of directors and the management board must ensure proper supervision of business conduct. Banks and investment firms shall ensure that the members of the board of directors and the management board have the necessary knowledge, skills, and experience ("fit and proper") to collectively understand the activities of the bank, including the related risks. The composition of the management board and the board of directors reflects an appropriately broad range of experience. All members of the board of directors and the management board shall commit sufficient time to performing their functions and prove this to the FMA upon request. Each member of the board of directors shall: (a) act with honesty, integrity and impartiality; the fact that a person is a member of a related company or legal entity does not in itself constate an impediment to acting with impartiality; (b) effectively monitor, evaluate and, if necessary, challenge the decisions of the management; and (c) monitor and supervise management decision-making.

Board of directors

The board of directors of a Liechtenstein bank is responsible for the overall direction, supervision and control of the bank. The board of directors has non-transferable responsibilities such as: (i) stipulating the internal organisation and issuing internal regulations for corporate governance, business conduct and risk strategy, in particular by ensuring a division of responsibilities and implementation of measures to prevent conflicts of interest, as well as their regular review and amendment; (ii) stipulating the accounting system, financial control and financial planning; (iii) appointment and removal of the management board; (iv) supervising the management board in respect of the development of the business as well as their compliance with laws and regulations; (v) compiling business reports and approving interim financial statements, preparing the general meeting of shareholders and executing its resolutions; (vi) monitoring disclosure and communication; and (vii) regular monitoring and review of the suitability and implementation of the bank's strategic objectives in the provision of investment services, ancillary services and investment activities, the effectiveness of the bank's business regulations and the appropriateness of the bank's policy regarding the provision of services to clients, and taking the necessary steps to remedy any shortcomings.

The board of directors has to consist of at least three members. If the board of directors consists of five or more members, it may delegate responsibilities not expressly reserved by

law to a committee composed of at least three board members. Banks of material significance for the national economy have to set up – in addition to the standard committees – a risk committee, remuneration committee, nomination committee, and an audit committee.

Management board

The management board of a bank is responsible for the business operation and has to consist of at least two members with adequate experience and qualifications ("fit and proper"). Members of the management board may not, at the same time, be members of the board of directors of the same bank.

Remuneration

Liechtenstein banks are required to stipulate and implement sound remuneration policies pursuant to the requirements set out in the CRR and Annex 4.4 BankV as well as relevant Level II and Level III acts issued by the European Commission or the EBA, such as the EBA guidelines on sound remuneration policies (EBA/GL/2021/04) and remuneration policies and practices related to the sale and provision of retail banking products and services (EBA/GL/2016/06). Banks of material significance have to set up a remuneration committee consisting of members of the board of directors.

Further bodies

Banks also need to have an internal audit department that reports directly to the board of directors of the bank. For the sake of clarity, the business operations of a Liechtenstein bank shall be examined and audited every year by an external, independent audit company, which shall be acknowledged by the FMA.

Furthermore, banks shall have a risk management system independent of the operational business, a dedicated compliance department, and appropriate procedures by which employees can report violations of the BankG, CRR and MiFIR. Personnel charged with key functions need to have a good repute as well as adequate experience and professional qualifications. Banks and investment firms must report or submit to the FMA the key functions and the personnel charged with key functions.

Place of management

The effective place of management of a bank has to be in Liechtenstein. For this reason, the FMA requires the members of the management board to effectively work in and from Liechtenstein. In addition, a bank has to demonstrate in the licensing process that it will have sufficient substance in the form of office space and key personnel employed in Liechtenstein to be able to effectively operate its business in and from Liechtenstein.

Outsourcing

Banks and investment firms may enter into agreements with third parties for the outsourcing of processes, services or activities. Outsourcing must be in line with Art. 14a BankG and must comply with the relevant guidelines of the EU supervisory authorities. Banks may outsource certain functions without the prior approval of the FMA if the outsourcing guidelines pursuant to Art. 34b BankV are observed. Outsourcing of internal auditing is only permitted with the approval of the FMA. Other functions defined as key functions pursuant to Art. 35 BankV may be outsourced, but only after prior notification to the FMA.

The overall direction, supervision and control of the bank by the board of directors and the core management duties may not be outsourced. The bank is required to act with due diligence when selecting and instructing an outsourcing provider, and has to have appropriate resources to adequately monitor the outsourcing provider on a continuing basis.

Bank capital requirements

A bank must have a fully paid-up capital of at least 10 million Swiss francs or the equivalent in euros or US dollars at the time of its authorisation.

In the case of investment firms, the minimum capital must amount to at least 730,000 Swiss francs or the equivalent in euros or US dollars. The FMA has the power to reduce the amount of the initial capital in certain cases, taking into account the nature and scope of the intended business of a bank or investment firm. Pursuant to Art. 24 para. 2 BankG, the initial capital may not be less than 1 million Swiss francs or the equivalent in euros or US dollars in the case of banks. It must be apparent from the business plan at the time of authorisation that the bank's or investment firm's own funds will not fall below the initial capital after taking up business.

Rules governing banks' relationships with their customers and other third parties

General

In Liechtenstein, there is no law that exclusively governs the relationship between banks on the one hand and customers and other third parties on the other hand. In fact, the general rules and provisions on contracts and legal transactions, which are laid down in the Liechtenstein Civil Code (*Allgemeines Bürgerliches Gesetzbuch* – "**ABGB**"; LGBl. 1003/001), shall be applicable to the relationship between banks, customers and other third parties, too.

From the various types of contracts laid down in the ABGB, the contract of mandate is probably deployed most often in the banking business. Pursuant to § 1009 ABGB, the agent is obliged to procure the transaction diligently and honestly in accordance with his promise and the granted power of attorney and – with the exception of § 1009a ABGB – to transfer all benefits arising out of the transaction to the principal. Although the agent has been granted a limited power of attorney, he is entitled to use all means that are necessarily connected with the nature of the transaction or conform to the declared intention of the principal. If he exceeds the limitations of the power of attorney, he is liable for the consequences.

If, however, the agent is a bank, an investment firm or an asset management company, it may, except in the case of independent investment advice and portfolio management, assume that the principal has waived his right to be transferred any fees, commissions or grants received or still to be received by the agent from third parties, provided that: (a) the agent has complied with all of its disclosure obligations prior to the conduct of business; and (b) the principal has instructed the agent to carry out the transaction after such disclosure. Furthermore, the agent is obliged to point out the mentioned legal consequences in its General Terms and Conditions or other pre-formulated terms and conditions of business, as the case may be (*cf.* § 1009a ABGB).

Having said that, Liechtenstein banks usually have their own General Terms and Conditions on which they would base any relationship with their customers. In order to be valid and applicable, General Terms and Conditions need to meet certain criteria. Firstly, unusual provisions used by the bank in General Terms and Conditions (or standard contract forms) do not become part of the contract if they are detrimental for the customer and the customer would not have to expect these provisions due to the circumstances, in particular due to the formal appearance of the contract, unless the bank expressly made the customer aware thereof (*cf.* § 864a ABGB). Furthermore, a contractual provision contained in General Terms and Conditions that does not determine either of the mutual main obligations is void in any event if it causes a substantial imbalance of the contractual rights and obligations to the detriment of the customer when considering all circumstances of the case (*cf.* § 879 para. 3 ABGB).

Furthermore, certain provisions laid down in the Consumer Protection Act (*Konsumentenschutzgesetz* – "**KSchG**"; LGBl. 2002/164) shall be considered as well. The KSchG, which per definition contains more favourable provisions for customers, supersedes provisions of the ABGB that were otherwise applicable amongst individuals.

Cross-border banking activities

As a principle, a bank shall be entitled to take up its business in Liechtenstein only on the basis of a licence issued by the FMA.

Yet, under the freedom to provide services, a bank having its seat in one of the countries of the EEA may also take up its banking activity in Liechtenstein provided the competent authority of its home Member State has notified the FMA prior to its first-time activity in Liechtenstein (passport).

A bank outside the EEA may provide banking services in Liechtenstein only through a branch in Liechtenstein. The establishment of such branch shall be subject to a licence that shall be issued by the FMA.

Other than that, banks from third countries may not provide any banking services in Liechtenstein unless on a "reverse solicitation" basis, although the criteria for such "reverse solicitation" are not entirely clear.

Conciliation board

By virtue of the ordinance of 27 October 2009 on the extrajudicial conciliation board in the financial services sector (*Verordnung vom 27. Oktober 2009 über die aussergerichtliche Schlichtungsstelle im Finanzdienstleistungsbereich*; LGBl. 2009/279), the Liechtenstein legislator has introduced an extrajudicial conciliation board that supersedes the previously existing bank ombudsman.

The conciliation board may be called upon – amongst others – to settle disputes between customers and banks about the services provided by the bank. The conciliation board acts as a mediator to resolve complaints submitted by customers. The conciliation board is not a court of law. Also, it does not have authority to make judicial rulings. In fact, it shall encourage discussions between the disputing parties and lead them to a mutually acceptable solution; however, neither the bank nor the customers are bound to accept any generated solution. In fact, they are free to take further legal measures, as the case may be.

* * *

Endnote

1. https://www.llv.li/de/landesverwaltung/stabsstelle-ewr

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