



# Chapter 8

REAL ESTATE

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This chapter describes the legal framework in Thailand that governs the rights of use, right of possession and various forms of ownership of immovable property, types of documents representing land rights, certain transactions relating to immovable property including the transfer and leasing of immovable property, a sample of real estate transactions, and points to note on immovable property investment schemes including real estate development for foreign investors.

### (1) Overview of Immovable Property Law in Thailand

The Thai Civil and Commercial Code (the “CCC”), the Land Code, B.E. 2497 (1954) as amended, and various secondary laws issued thereunder (the “Land Code”) are the main regulatory texts for immovable property in Thailand.

The definition of immovable property and general principles regarding ownership, possession and utilization of immovable property are found in the CCC. Under the CCC, immovable property means “land and property permanently fixed to land or forming a component part therewith and also includes real rights in relation to the land, or the properties fixed to land, or the properties which form component parts thereof.”

The Land Code defines terms regarding land for the purpose of the issuance of documents representing each specific type of land and the rights attached thereto.

There are different types of title documents representing land rights under the Land Code due to the complexity of the legislation regarding land. In summary, a registration system over immovable properties were created after the enactment of the Land Code in order to recognize a civil right to own and utilize land. The Land Department, Ministry of Interior, is authorized to carry out execution of the laws under the Land Code.

### (2) Types of Evidence or Certificates of Immovable Properties in Thailand

#### A. Classification of the Land in Thailand: State Land and Private Land

##### (i) State Land

State land includes land which is in possession of private persons or entities as permitted by law, as the occupiers of such land have no absolute ownership. However, land which is not owned but occupied by any person with certain evidence of occupation will not be included as state land.

Based on use, state land is categorized as follows:

- 1) Publicly used land: Land that is commonly used by the public, e.g., roads, rivers, beaches;
- 2) Waste land: Land that is abandoned or not in use by any person, including the government;
- 3) Treasury land: Land that is being used and owned by the government for the benefit of governmental administration, e.g., governmental offices and military bases. The Ministry of Finance through the Treasury Department is authorized to manage and benefit from treasury land;
- 4) Land owned by other governmental agencies: Land that is under the control and management of governmental agencies, such as the Ports Authority of Thailand, local

administrative authorities, or municipalities in each province, without control of the central government. The governmental agencies are authorized to own land for their own benefit; and

- 5) Land reserved by government: Land that is reserved by the government for certain purposes, such as, exploration of natural resources and for environmental protection.

(ii) Private Land

Private land can either be freehold land or land with right of possession.

- 1) Freehold land: Land that is freely owned by private owners. Title to freehold land is represented by land title documents, which is the most secure and marketable title document in Thailand; and
- 2) Land with a right of possession: Owners of this category of land are permitted to use or occupy land for specific purposes and under certain conditions as described by the relevant laws. It is generally recognized as marketable land as some forms of title documents of this type of land can be upgraded to land title deeds.

## B. Certificates for Land Rights

The following certificates for land rights are stipulated in the Land Code. These certificates are issued by the relevant land office.

(i) Land Title Deeds

The land title deed is called “NS4” (Nor Sor four) or a “*Chanote*” in Thai and is issued under the Torrens System, as a certificate of complete private ownership of the land that grants the holder with full rights over the land, to deal with or to use the land to the exclusion of others. Apart from ownership, a land title deed also shows its land survey status, as well as encumbrances over land, e.g., mortgages, leases, servitudes, or easements.

The person whose name appears on the certificate as the owner of the land may transfer, sell, dispose of, and mortgage the land upon registration with the relevant local land office. Any transaction in connection with the title deed land (except a lease for a period of three years or less) must be registered with the land office and will be shown on the back of the title deed. The title deed is equivalent to a freehold land title.

(ii) Certificates of Utilization

There are two types of certificates of utilization, which are “NS3” (Nor Sor three) and “NS3G” (Nor Sor three Gor) (a “**Certificate of Utilization**”).

a. *NS3*

The NS3 certifies land use rights but does not certify ownership rights. An NS3 includes a certificate that is issued when boundaries are not finalized because no aerial survey photo of the land is available, so that the specific position of the land is not identified. A possessor of land represented by an NS3 can freely transfer and offer the land as collateral.

*b. NS3G*

An NS3G certifies the usage of land by the land holder. In practical terms, this title confers the same benefits as a title deed and boundaries are finalized based on land surveys.

The person whose name appears on an NS3G may transfer, sell, dispose of and mortgage the land upon registration with the relevant local land office. Any transaction in connection with an NS3G (except for a lease for a period of three years or less) must be registered with the land office and will be shown on the back of the Certificate of Utilization.

An NS3G is registered the same manner as a land title deed. However, in the case of a transaction concerning NS3 land that requires registration with the relevant land office, the transaction must be published 30 days in advance, during which any interested person may object to the transaction.

*c. Claim Certificates*

A claim certificate is called an "SK1" (Sor Kor one) and is issued based on a claim to protect persons occupying land before the effective date of the Land Code. This certificate was issued based on transitional provisions in the Land Code and new SK1 certificates are currently not issued. An SK1 can be upgraded to a title deed or a Certificate of Utilization (depending on where the land is located and provided that a final court decision that the SK1 holder is lawfully possessing and utilizing that land).

An SK1 is not considered a certificate of ownership of land and an SK1 holder is not entitled to attach encumbrances over SK1 land. In the case of any disputes arising over rights to a plot of SK1 land, the SK1 certificate is required to prove possession and, therefore, the person whose name appears in the SK1 certificate will be in a stronger position. Nonetheless, evidence regarding the true possession of the land is required. A possessor of land represented by an SK1 certificate is prohibited to transfer rights granted under the SK1 certificate.

## **C. Ownership Rights for Buildings**

(i) Buildings

Unlike land, government authorities do not issue title documents for buildings or constructions.

If the ownership of a building is unclear, the law will assume that the landowner is the owner of the buildings constructed on that land, unless the construction was carried out by another person with the consent of the landowner or with the right to construct. Therefore, to verify the ownership of a building in Thailand, the details that are considered, are as follows:

- 1) a construction permit (in practice, a construction permit is prima facie evidence of ownership of a building);
- 2) the official land and building sales contract or official building sales contract (in the case of a building only) registered with the competent land office; and/or
- 3) the assumption under the law that the owner of the land is the owner of the building.

Entering any transaction over a building (e.g., purchases, sales and/or mortgages) requires the registration of the transaction with the land office (i.e., ownership transfer or creation of encumbrances). If a transaction requires registration of buildings separate from the land, the transaction must be published 30 days in advance, during which any interested person may object to the transaction.

(ii) Condominiums

Under the Condominium Act, B.E. 2522 (1979) (the “**Condominium Act**”), as amended, condominiums can be divided into separate parts of ownership comprising private property and common property. One can own strata title ownership of a condominium unit in a condominium building. The Land Department is the government authority responsible for the registration thereof and issuance of certificates of condominiums as evidence of ownership (similar to land title deeds), including all other registrations in relation to the condominium including sales and purchases, transfers, and mortgages.

### (3) Immovable Property Transactions

In consideration of the basic rights related to immovable property, this section will describe the crucial elements regarding these rights when conducting actual transactions.

#### A. Transfer of Immovable Property

The flow of general procedures when acquiring land through sales in Thailand is described below:

(i) Overview of Land Acquisition Procedures and Land Due Diligence

It is necessary to first confirm the contents of the various title documents related to the registry of land and to check the types of rights, land applications and use conditions, limitations on rights, information on the owners, usufruct rights and collateral, and any other matters that may cause a burden on the land.

Prior to the purchase of a plot of land, due diligence research at the relevant local authorities, including the land office is highly recommended to verify: (i) the ownership over the land title deed; (ii) encumbrances over the land; (iii) validity of the issuance of the land title documents; and (iv) whether the land is located in any restricted areas according to specific laws, including the town planning and infrastructural construction plans. Another risk factor in connection with real estate development is the possibility of expropriation of land along certain routes for the construction of public infrastructures. Relevant government sectors can exercise their rights of expropriation in the form of a “Royal Decree”.

(ii) Entering Contracts to Sell, Official Sales Contracts, and Registration Procedures for Immovable Property Transfers

In addition to the agreement to sell land and the sales price of the land, other items that should be considered in land transactions include representations and warranties related to the contracting parties and land rights, prerequisites for sales payments, and undertakings on matters such as the acquisition of necessary permits and licenses. Under the CCC, the sales contracts for immovable property are not valid unless they are in writing and registered. Thus, when transferring land, both parties will sign a standard format official sales contract in the presence of a registrar at the relevant land office and submit a registry application.

The time required to complete a registry is normally within one business day, excluding cases in which prior public announcements are required for registry, or cases in which there are imperfections in the application documents.

When transferring buildings, it is necessary for the contracting parties to sign an official sales contract at the land office in the same manner as transferring land. However, there will be no title deeds issued for buildings alone. Instead, a recording system has been adopted for the registration of sales contracts for building transfers at the relevant land office.

## B. Leasing of Immovable Property

### (i) Leases under the CCC

The duration of a lease for land or a building cannot exceed 30 years as a general rule, and if a longer period is agreed, the period will be reduced to 30 years. In consideration of this limitation, the parties may have an agreement for renewal after the completion of the initial 30-year period if requested by either party.

If a lease period for immovable property is over three years, registration with the relevant land office is necessary. A lease is only enforceable for three years without registration and may not be enforceable against an heir of the lessor (i.e., it provides rights of a personal nature between the lessor and the lessee rather than real property rights). If the lessor sells or transfers the ownership of the leased property to a third party, the lease is binding on the transferee of the land who assumes all rights and obligations of the lessor and effectively becomes a new lessor in place of the original lessor. However, an option to renew a lease (or to purchase the land) is not a real property interest under Thai law and is not registrable with the land office.

### (ii) Leases under the Act on Leases of Immovable Property for Commercial and Industrial Purposes

Commercial and industrial immovable property can be leased for up to 50 years under the Lease of Immovable Property for Commercial and Industrial Purposes Act, B.E. 2542 (1999) (the “**Lease of Immovable Property for Commercial and Industrial Purposes Act**”), if certain requirements under subordinate laws of this act are fulfilled, for example, the commercial property investment cost meets a minimum amount of Baht 20,000,000, the purpose of the lease is for commercial or industrial purposes (residential leases do not qualify), the industrial property is for a project that is eligible for investment promotion from the Board of Investment.

The 50-year lease can be used as a security for a mortgage and can be inherited and transferred or sublet to a third party without consent from the lessor. The 50-year lease must be made in writing and registered with the authorities, or the lease is void.

In May 2018, the Eastern Special Development Zone Act, B.E. 2561 (2018) (the “**EEC Act**”) came into force and allows a 50-year lease or sub-lease of land or immovable property within the special development zone (Eastern Economic Corridor, or the “**EEC**”) with another 49-year period for renewal from expiration of the initial lease term. Note that only certain businesses in “**Targeted Industries**” specified by the government, i.e., digital, aviation, smart electronics, etc., are eligible to lease land and to operate their businesses in the EEC. Please see Chapter 7 (*Public Private Partnership*) for more details.

### C. Sap-Ing-Sith<sup>1</sup>

Sap-Ing-Sith is the new type of right to use immovable property according to the Sap-Ing-Sith Act, B.E. 2562 (2019). Although Sap-Ing-Sith is similar to leasehold rights, there are several key differences, as the purposes of Sap-Ing-Sith is to bypass certain restrictions and limitations of ordinary leases under the CCC and leases under the Lease of Immovable Property for Commercial and Industrial Purposes Act.

*A Sap-Ing-Sith must be made in writing and registered with the relevant land office, which will issue a Sap-Ing-Sith certificate. The maximum duration for Sap-Ing-Sith rights is 30 years. Sap-Ing-Sith rights can only be registered over land represented by a title deed, land with buildings constructed on land represented by a title deed, and condominium units under the Condominium Act. Only the owner of those categories of immovable property can register a Sap-Ing-Sith in favor of another person (the “Sap-Ing-Sith Holder”).*

*Sap-Ing-Sith rights are transferrable, inheritable, and can be used as security for a mortgage. A Sap-Ing-Sith Holder also has the right to alter the Sap-Ing-Sith property without the consent of the owner, and the ownership of those newly added or constructed parts of the Sap-Ing-Sith property belong to Sap-Ing-Sith Holder for the duration of the Sap-Ing-Sith. Further, the Sap-Ing-Sith Holder is liable to the Sap-Ing-Sith property as if they were the owner, except for the right to follow and recover the property from any person not entitled to seize Sap-Ing-Sith property, and the right to prevent any unlawful interference with Sap-Ing-Sith property, from which the owner of the Sap-Ing-Sith property remains liable.*

In November 2020, secondary regulations in relation to the registration process under the Sap-Ing-Sith Act were issued. The official fees for registration of the establishment of a Sub-Ing-Sith and issuance of its deed are Baht 20,000 and Baht 10,000, respectively. The official fee for the registration of the transfer of Sap-Ing-Sith is 2% of the assessed price, which is the same as the fees for real property transfers. It is anticipated that Sap-Ing-Sith will become a new productive mechanism in addition to currently available investment structures for foreigners undertaking real estate development projects in Thailand.

### D. Proprietary Rights

Proprietary rights or real rights means the rights with respect to the land that survives the transfer of ownership. The effectiveness and the release or discharge of such property rights would require registration with the land authority.

Proprietary rights are mainly provided and governed by the provisions of the CCC as follows:

- (i) Servitude: The concept of servitude involves one land (servient land) being subject to certain burdens, for the benefits of another plot of land (dominant land), e.g., access to a public road;
- (ii) Superficies: Under superficies, the owner of the land grants the right to another person to own the structures or plantations on or beneath the land;
- (iii) Usufruct: The owner of the land may grant the usufruct to any person to occupy or take the benefits from the land; and
- (iv) Charge on immovable property: The land may be subject to a charge entitling the beneficiary to a periodical performance or specified use and various benefits.

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<sup>1</sup> “Sap-Ing-Sith” is a Thai word which literally means “the property which adheres to rights”.

## E. Official Fees and Applicable Tax

The official fees and general tax rate for common transactions relating to land are as follows:

[Table 8-1] Official Fees and Applicable Tax

Transaction	Registration fees	Tax and duties	Responsible party
<b>Sale</b>	2% of the assessed price <sup>2</sup>	<p><b>Withholding tax:</b> progressive rate between 5-35% on the assessed price after deduction with expenses depending on number of years in case of an individual; or 1% of the assessed price or sale price, whichever is higher for a corporate entity;</p> <p><b>Specific Business Tax (SBT) and Local Tax:</b> 3.3% of the assessed price or sale price, whichever is higher; and</p> <p><b>Stamp Duty (if not subject to SBT):</b> 0.5% of the assessed price or sale price, whichever is higher.</p>	<p>Under the law, the parties will be equally liable for the registration fees while tax and stamp duty will be the responsibility of the seller.</p> <p>By market practice, the buyer is usually responsible for registration fees, while the seller is usually responsible for applicable taxes and duties.</p>
<b>Lease</b>	1% of rental fees throughout the term of lease	<b>Stamp Duty:</b> 0.1% of rental fees throughout the term of lease (lease of land for agriculture is exempted)	<p>Under the law, the parties will be equally liable.</p> <p>By market practice, the lessee is usually responsible.</p>
<b>Mortgage</b>	1% of mortgage amount but not more than Baht 200,000	None	<p>Under the law, the parties will be equally liable.</p> <p>By market practice, the mortgagor is usually responsible.</p>
<b>Servitude, Superficies, Usufruct, Charge on immovable property</b>	<b>With Consideration:</b> 1% of such consideration	<b>Stamp Duty:</b> 0.5% of such consideration	Official fees for these registrations are normally subject to negotiation between the parties. However, it is common to find that such fees are often borne by the recipient of rights.
	<b>Without consideration:</b> Baht 50 per plot	None	

<sup>2</sup> "Assessed price" means the value of the property as assessed by the Treasury Department and announced by the Land Department (typically can be substantially lower than the market value).



#### (4) Real Estate Development

There is a wide range of businesses that involve immovable property, including factory operations and development of residential and commercial immovable property. To operate a business that utilizes immovable property, the operator must also apply for and obtain all relevant licenses and approvals applicable to the ownership and construction of each type of immovable property.

Under Thai laws, construction activities are governed by the Building Control Act, B.E. 2522 (1979) (the “**Building Control Act**”). In addition, regulations issued by each municipality also cover construction in each area. If buildings, as defined under the Building Control Act, are to be constructed in an area governed by the Building Control Act, the operator must apply for a construction license with the relevant local administrative office.

Real estate development projects in Thailand vary between various types of residential and non-residential forms and purposes. Prior permission for construction is critical to verify whether the project land is eligible for development under the town planning laws.

Moreover, project developers may be required to prepare, as a prerequisite step, an environmental impact assessment report or initial environmental examination report or any other report for approval from the relevant governmental agency if the project is specified under the relevant regulations. Commencement of construction before the approval of the environmental report (if required) can result in significant fines.

#### (5) Acquisition of Immovable Property and Immovable Property Businesses by Foreign Investors

Land ownership by foreigners (defined to include foreign national, entity incorporated under foreign laws and Thai entities with foreign ownership of over 49% of shares of the registered capital or having a majority of shareholders being foreigners) is not permitted in Thailand as a general rule. Violations will result in a fine or imprisonment, or both.

However, there are exceptions to such restrictions as described below.

- In terms of ownership of land for residential purposes, it is possible to acquire up to one rai (1,600 square meters) of land after receiving permission from the authorities as long as certain requirements are fulfilled, such as an investment of at least Baht 40,000,000 for certain businesses in Thailand;
- Based on the Investment Promotion Act, B.E. 2520 (1977), the Board of Investment of Thailand (the “**BOI**”) can permit the acquisition of land ownership rights by “foreigners” subject to the BOI requirements;
- Based on the Act on Industrial Estate Authority of Thailand, B.E. 2522 (1979), the Industrial Estate Authority of Thailand (the “**IEAT**”) can permit the acquisition of ownership rights for land within industrial estates by foreigners subject to the IEAT’s requirements;
- Foreigners that have been granted petroleum exploration rights under the Petroleum Act, B.E. 2514 (1971), can acquire the land ownership rights necessary for operations;
- Based on the EEC Act, approved business operators can own land within the promoted zone; and
- Foreigners who are inheritors can inherit land after receiving permission from the authorities.

In the same manner as the foreign capital restrictions based on the Foreign Business Operations Act, B.E. 2542 (1999) (the “**FBOA**”), explained in Chapter 1 (*Business Establishment*), there are various practical schemes to avoid the application of foreign capital restrictions on the acquisition of land. An appointment of a nominee for foreigners to effectively acquire land is prohibited, and if any such

transaction occurs, the authorities have the ability to order a transfer of land ownership rights.

While there are restrictions on the acquisition and holding of land by “foreigners”, there are no such restrictions on buildings. However, for condominiums, under the Condominium Act, ownership by foreigners is permitted for up to 49% of the total salable space of a particular condominium. Note that approved business operators under the EEC Act may own condominium units in excess of the foreign ownership restrictions under the Condominium Act.

## **(6) Land and Buildings Tax**

### **A. General Provisions**

The Land and Buildings Tax Act, B.E. 2562 (2019) (the “**Land and Buildings Tax Act**”) came into effect on 13 March 2019 to repeal and replace laws on House and Land Tax and Local Maintenance Tax on the same date. Tax collection under the Land and Buildings Tax Act has been effective since 1 January 2020. Taxable properties under the Land and Buildings Tax Act are land, buildings, and condominium units. Certain properties are exempt from collections of taxes under the Land and Buildings Tax Act, e.g., state property used for the public's interest, the properties of embassies, private properties used for the benefit of the public, etc.

The tax base for taxable properties is calculated from the total value of properties according to the official property's appraised value<sup>3</sup>, which complies with the value used for the calculation of land or building registration fees under the Land Code. The Land and Buildings Tax Act imposes different ceiling tax rates depending on the purpose of use of a property. The purposes can be categorized into four groups as follows:

- (i) agricultural purposes, i.e., rice planting, farming, animal domestication, aquaculture, and others to be defined in Ministerial Regulations (a ceiling tax rate of 0.15%);
- (ii) residential purposes (a ceiling tax rate of 0.3%);
- (iii) purposes other than (a) and (b), e.g., commercial and industrial (a ceiling tax rate of 1.2%); and
- (iv) unutilized land and buildings (a ceiling tax rate of 1.2%).

The owner or the occupant of land or building, on the 1<sup>st</sup> of January of each year, has the duty to pay tax on such year. Tax payment under the Land and Buildings Tax Act is made to the local government office where the properties are located within April of each year.

## **(7) Recent Updates**

### **A. Delay of the New Bangkok Town Plan**

The current version of the Bangkok town plan was implemented and was due to expire in 2018; however, its expiration date has been extended until the issuance of a new plan. According to the 2021 annual report of the Department of City Planning and Urban Development of the Bangkok Metropolitan Authority, the new Bangkok town plan may come into effect in 2024. In summary, the material changes to the current Bangkok town plan is to connect the city center to suburban areas (e.g., by mass transit), which would make these areas within daily commuting distances.

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<sup>3</sup> In cases there are many plots of land connecting to one another and such plots of land are owned by the same person, the tax base is calculated based on the combined values of all the connected plots of land. This provision is to prevent any subdivision of land where people attempt to lower the price of properties to avoid tax collections.

## **B. Reduction of Official Fees Relating to Real Estate Registrations**

The government has implemented measures for the reduction of official fees relating to real estate registrations as follows:

- (i) Effective from 18 January 2022 to 31 December 2022, in cases of Thai individual purchasers, the registration fee for sale and mortgage registration is reduced to 0.01% for (i) residential assets, i.e., single houses, detached houses and row houses; (ii) commercial buildings; (iii) land and the aforesaid buildings; and (iv) condominium units, having assessed prices, purchase prices and mortgages having a value not exceeding Baht 3,000,000. In such cases, the registration of sales and mortgages must be done at the same time; and
- (ii) Effective from 18 January 2022 to 31 December 2026, registration fees for the transfer and mortgage of real estate property (including condominium unit) in case of debt restructuring according to the relevant regulations of the Bank of Thailand is reduced to 0.01%.

In addition to the above-mentioned reductions of official fees, on 12 July 2022, the Cabinet has resolved a draft notification by the Ministry of Interior regarding criteria for special reductions of official fees for the registration of rights and transactions relating to the transfer and mortgage of real estate properties in connection with the Land Bank Administration Institute's (a public organization) transactions to 0.01% of the assessed price. Once enacted, the reduction is expected to be effective from the following day after publication in the government gazette until 7 June 2025.

## **C. Proposed Changes to Foreign Ownership of Land and Condominium Units**

The Cabinet approved resolutions in September 2021 relating to various measures to attract foreign investments including: (i) relaxing the 49% foreign condominium ownership ratio restriction; (ii) extending lease terms from 30 years under the CCC to 50 years for leases of houses in housing projects under the Land Lease for Commercial and Industrial Act, B.E. 2542 (1999); and (iii) approving foreign ownership of residential land not exceeding 1 Rai (1,600 square meters). However, in January 2022, the COVID-19 economics impact administration committee resolved not to proceed measures (i) and (ii), but will consider proceeding with (iii) by issuing a ministerial regulation prescribing details of investment for the purpose of approving foreign ownership of residential land. At present, there has not been a ministerial regulation issued. A recent statement by the Ministry of Interior states that the regulation would require a foreigner to invest at least Baht 40,000,000 and maintain the investment for not less than three years in specified businesses. However, further details of the potential regulation are undisclosed and in the drafting process.

## **D. BOI Promotions for Foreign Land Ownerships for Office and Residential Purposes**

On 8 August 2022, the BOI has issued a notification no. 6/2565 re: criteria for approval for investment promoted foreign entity to own land for office and residential purposes. Under such notification, a foreign entity receiving BOI investment promotions and having at least Baht 50,000,000 registered and paid-up capital can own land for office and residential purposes under the following conditions:

- (i) Land for office of the promoted project – not more than 5 Rai (8,000 square meters);
- (ii) Land for resident of management personnel or specialists - not more than 10 Rai (16,000 square meters);
- (iii) Land for resident of workers - not more than 20 Rai (32,000 square meters).

The land used for office and residential purposes can be located in the same or different locations and must

be used by the promoted entity only. In other words, the promoted entity cannot use the land for commercial purposes, e.g., sale or lease of the land, office or residence. In case the investment promotions are cancelled, the foreign entity must dispose the land within one year. The notification is effective from 13 June 2022 without expiry date.

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