

# Financing a Chinese Company Through the TSX

TSX Roadshow June, 2009

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# Agenda

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- 1. Introduction & Update**
- 2. Success Story**
- 3. Direct Listing**
- 4. Indirect Listing**
- 5. Restructuring Issues**
- 6. General Comments**
- 7. Managing a listed company**
- 8. Maximizing value**

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# Blake, Cassels & Graydon LLP

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- **Over 150 years old; over 560 lawyers**
- **5 offices in Canada, 2 in the US, 1 each in London and Beijing (for over 10 years)**
- **Ranked #1 by Bloomberg and Thomson for M&A transactions in Canada for 2007 and first half of 2008**
- **Ranked #2 by Bloomberg among Canadian law firms for Canadian as adviser to issuers on Canadian equity offerings & on Canadian Eqty/Equ/Pfd in 2008**
- **Proven track record with the TSX and on working with Chinese clients on the TSX**
- **Awarded “Law Firm of the Year: Canada” by Practical Law Company (PLC), and “Canadian Law Firm of the Year” by Chambers & Partners**

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# Blakes & the TSX

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- 87 equity financing in Canada during the first 3 months of 2009
- Blakes led all Canadian law firm by acting on 23 of them

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# Blakes & Chinese Companies on the TSX

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- **Having worked on over a dozen Chinese listings**
- **Industries include Mining, Energy, Chemical Fertilizer, Wind Power Generation, Infrastructure, Manufacturing of Industrial Products, Tourism & Recreation, Pharmaceuticals, etc.**
- **The market capitalization of at least two of these companies exceeded the Cdn\$1 Billion level by early 2008.**
- **Worked with at least two successful listings since the downturn.**

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# Success Story: Hanfeng

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- 1. Originated in Dalian**
- 2. Horticultural Technology**
- 3. Started at the TSX Venture Exchange, graduating to the main board**
- 4. Numerous rounds of financing totaling into the 100 Millions**
- 5. Market Capital of over \$1,000,000,000**
- 6. Allows additional debt financing to expand business**
- 7. AGM in Nanjing in 2006; numerous Board meetings in China**
- 8. Raised another \$80+ Million in April, 2007**
- 9. Leader in "Slow Release" technology in China (acquired in Canada)**

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# Direct Listing

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- 1. General**
- 2. Company Limited by Shares**
- 3. Policies: State Industry; Foreign Investment; Fixed Asset Investment, etc.**
- 4. Asset, Profitability, Fund Raised**
- 5. Management & Governance**
- 6. Foreign Currency**
- 7. CSRC, NDRC & MofCom**

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# Indirect Listing: China Requirements

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- 1. Application for Establishment of SPV**
- 2. Acquisition of Domestic Company by SPV**
- 3. Listing of SPV Shares**

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# Establishment of SPV

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- 1. NDRC &/or State Council Approval**
- 2. Ministry of Commerce Approval**

**Criteria based on State Interest, Development Goals & Interests, Ability of the Chinese Company, Host Country Environment & Risks, etc.**

- 3. SAFE Registration - Establishment of SPV and Shareholding by PRC Residents**

**Documents 2005[75] & 2007[106]**

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# Acquisition of Domestic Company

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- 1. Preliminary or In-Principle Approval by MofCom, subject to successful listing of SPV in one year**
- 2. Related to general foreign investment review & approval**

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# Listing of SPV

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- 1. CSRC Review & “Preliminary” Approval – 12 months time limit to list**
- 2. Company Criteria**  
Property Right, Business System, Capability of Sustainable Operation, Corporate Governance & Management, Clean Record
- 3. Listing Jurisdiction Criteria**  
Legal & Supervision System, Cooperation Agreement & Relationship with CSRC

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# Restructuring Issues

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- 1. Conversion to Foreign Invested Enterprise**
- 2. NRDC, MofCom, approval Ministry**
- 3. Industrial Sector**
- 4. Follow-up Licensing**

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# Notice 106 Issues

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- **Extends beyond related companies**
- **Captures arrangements in place before 2006(10), SPV and otherwise**
- **May capture control through contracts as well**
- **Widens burden of compliance – from domestic shareholder to domestic operating company & offshore holding company**

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# In Canada Issues

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- 1. The Regulators**
- 2. The Exchange**
- 3. Advisors**
  - Lawyers
  - Accountants
  - Investment Bankers
  - Investment Relation Advisors
- 4. Application Process**
- 5. Ongoing Process**

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# Who Does What?

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- **The Two Authorities:**
- **Provincial Government Securities Regulators**
  - Corporate finance regulation, such as clearance of prospectuses, rules on private placement investors
  - Public company continuous disclosure
- **Stock Exchanges (TSX & TSX Venture)**
  - Initial listing approval based on their listing standards
  - Approval of ongoing matters affecting listed capital, such as stock option plans

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# First Steps

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1. Preliminary discussion of corporate objectives with existing key shareholders
2. Information gathering and assessing the marketability of your company's story
3. Assemble a team of advisors with relevant experience: securities lawyer, underwriter, financial advisor/underwriter, auditor, investor relations
4. A company works with advisors to determine the most suitable way to list

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# First Steps

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5. Lawyers - prepare listing application and any stock offering documents
6. Auditors – audit and review financial statements in offering documents, reconcile to Canadian GAAP if needed
7. Investment Bankers - raise public or private financing, may sponsor application
8. Investor Relations - develop marketing plan

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# Benefits of Listing in Canada

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**Over US\$18 billion in equity raised on the TSX in 2007**

- Lower cost than USA or Hong Kong – investors from USA and Europe invest in TSX listed companies
- TSX encouraging international listings
- Stepping Stone to listing on NASDAQ, NYSE or LSE
- Large Chinese population including investment professionals
- Stable political relationship between China and Canada
- Canadian investment community is increasing commitment to China

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# Who should list in Canada?

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## Growth companies with a need for expansion capital

- Market capitalization of between \$50 million to \$500 million
  - If over \$500 million list directly on NASDAQ, NYSE or HKSE
- Growing Revenues and profits
  - Minimum of \$10 million revenue and \$1 million profit
  - One exception is natural resource companies
- Need for capital to accelerate growth
- Focused business plan – with market leading position or competitive advantage
- International connection – North American suppliers or customers

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# Costs of listing a company

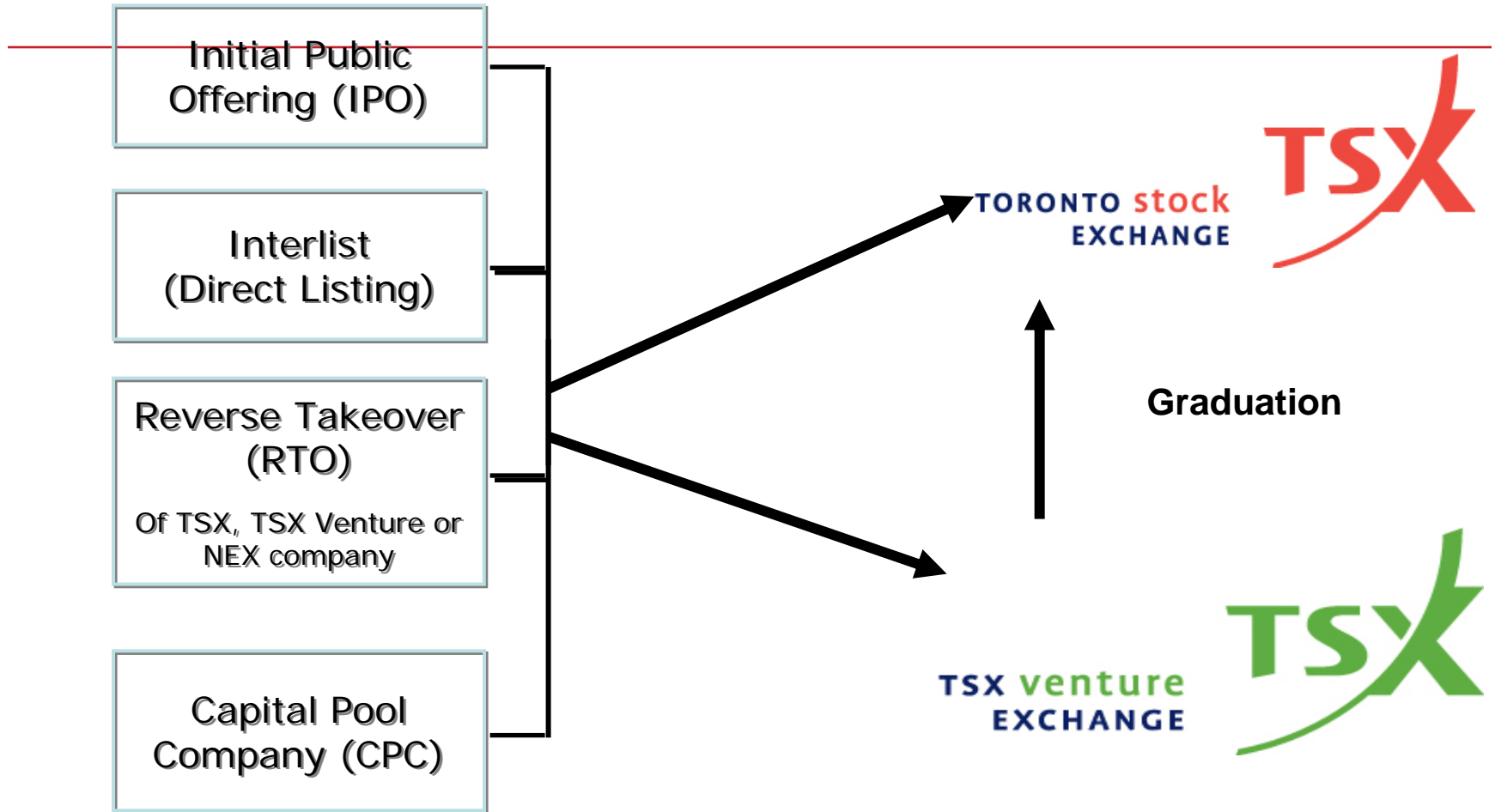
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## Initial listing costs

- Accounting – 3 years audited statements
- Legal – advice and assistance with listing applications and disclosure documents cost varies with method of listing
- Brokerage/Investment Banking Firm for sponsorship and advice
- Acquire listed company management expertise – employees and consultants
- Senior management time
- Total costs range from \$450,000 to over \$1,500,000

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# Four Routes to Listing



(Source: TSX)

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# General Listing Requirements

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## 1. Financial Requirements

- Requirements vary significantly depending on the stage of advancement of the business
- Some categories require earnings and cash flow, but companies without earnings can list by meeting other financial requirements

## 2. Project Requirements (resource companies)

- List full range from early stage exploration through to profitable operations
- Specific requirements designed for projects at different stages, reflect our understanding of resource businesses

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# General Listing Requirements

|   | TSX Venture  | TSX  |
|---|--|--|
| <b>3. Distribution of Shares to Public</b>    | 200 public shareholders<br>500,000 shares publicly held<br>Min \$500,000 in public<br>Min 20% public float   | 300 public shareholders<br>1,000,000 shares publicly held<br>Min \$4,000,000 in public |
| <b>4. Management &amp; Board of Directors</b> | <ul style="list-style-type: none"> <li>• Relevant, experience &amp; expertise appropriate to the business</li> <li>• Adequate relevant public company experience</li> <li>• Two independent directors</li> </ul>                     |  |
| <b>5. Sponsorship</b>                         | <ul style="list-style-type: none"> <li>• Letter from recognized broker/dealer commenting on company's ability to meet obligations as a public company</li> <li>• Generally required as evidence of thorough due diligence</li> </ul> |  |

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# General Listing Requirements

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- **Requirements essentially the same for IPO or RTO**
- **Must be met at the time of listing, so funds raised and other changes that will occur concurrent with listing, will contribute to meeting the listing requirements**

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# Listing Application

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## **Very detailed description of the company, including:**

- history, business, structure, management
- equity and debt capital
- past share issues
- stock options, warrants and convertible
- dividend policy
- shareholder breakdown (by holdings)

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# Listing - Financial Data

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- **Usually 3 years of audited financial statements required**
- **Audited financial statements, in Canadian or U.S. accounting principles (GAAP)**
- **If for a foreign company, may be in International Financial Reporting Standards or other acceptable accounting principles of certain foreign jurisdictions (which include Hong Kong, but not PRC yet)**

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# Listing - Other Data

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- **Copies of material contracts**
- **Detailed Personal Information Forms for every individual officer, director or individual who beneficially owns or controls more than 10% of the voting rights of the Applicant**

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# Listing – Mining or Oil & Gas

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- **Mining companies and Oil and Gas companies provide reports on significant properties, prepared by independent mining or petroleum engineer or geologist acceptable to the Exchange**
- **Mining companies provide data to support reserve/resource estimates**
- **\*New reporting obligations with MofCom & MLR (Order 2008-4 effective 2008-08-20)**

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# Listing - Tech or R&D

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- **Technology companies and R&D companies provide projected sources and uses of funds statement**

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# Timing - Prospectus and Listing

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- **Prospectus process runs in parallel with TSX listing application**
- **TSX review typically 6-8 weeks**
- **Prospectus preparation and clearance typically takes 3 months**
- **If RTO, convening shareholders meeting takes 60 days. Information circular may take 6 weeks to prepare and must be mailed 25 days before meeting.**

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# Factors for Successful Listing

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- **Quality management team with relevant experience**
  - Technical, financial, public markets
- **Solid business plan**
  - Sound assets with strong growth potential
- **Good corporate governance**
  - Fairness, transparency and accountability
- **Transparent and quality public disclosure**
  - Financials, strategy, and business events (good and bad)
- **Good liquidity**
  - Ability to trade, not too tightly held

The logo for Blakes, featuring the word "Blakes" in a stylized, cursive script font.

# Ongoing costs

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## Regulatory and Marketing Expense

- Continuous disclosure – financial statements (audit fees), annual reports, material changes
- Listing and filing fees, ongoing legal advice
- Financial reporting on internal controls
- Investor relations
- Management expertise and consulting
- Legal liability – insurance
- Cost of capital – transaction costs
- Total incremental annual costs range from \$400,000 to over \$2,000,000

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# Managing a listed company

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## Challenges for a Chinese Company

- Capital markets and investor relations - China opportunity and China risk
- Identifying management and directors with knowledge of both China and North America – internal training
- Due diligence - differences in legal system and business practices
- Communications – language and culture, translation cost and time
- Timely flow of financial and operating information
- Implementing internal controls and updating accounting systems for public company standards – global issue

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# Maximizing Value

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## 1. Board of Directors

- Knowledge of China and international business
- Industry expertise and knowledge
- Experience with listed companies and capital markets
- Reputation and track-record
- Relationships and business networks
- Corporate governance
- Hire and Fire the CEO

## 2. Senior management

- Lead by CEO – assigns roles and responsibilities to President, CFO and Corporate Secretary
- Need management and advisors with experience in capital markets, regulatory environment, and GAAP

## 3. Board of Directors and CEO set strategy for company

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# Maximizing Value

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## 4. Investor Relations

- Clear IR strategy and message consistent with operating strategy and capital needs
- Needs to be delivered to the market by senior management with support from the board of directors
- Continuous disclosure through press releases, quarterly and annual conference calls to review financial releases, website and road shows
- Build trust and credibility with investment community
  - ❑ Full disclosure of good news and bad news and any changes in strategy
  - ❑ Under-promise and over-deliver
  - ❑ requires accurate financial forecasting and operating execution

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# Maximizing Value

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## 5. Access to Capital

- Need to hire and build relationships with investment banks that have market power and credibility
- Investment bank conducts due diligence on the company to assess investment opportunity and legal issues and then assists company to sell the investment to investors
- Need to build relationships with investors and banks continually identify new sources and provide decision makers time to get to know company and management

## 6. Sources of equity – two broad categories

- Institutional investors in Canada, USA, Europe can invest \$500,000 to over \$100 million in a public company
- Retail investors are individuals almost always represented by a stock broker – as a group very powerful, can account for over 50% of a large financing and daily trading volume

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# Maximizing Value

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## 7. Sources of debt

- Commercial banks – Chinese and international
- Corporate bonds and debentures – sold to institutional and retail investors by investment banks, generally higher interest but require less security

## 8. Corporate governance and compliance with reporting and regulatory requirements

- Hire legal and accounting professionals who have knowledge of China and North America
- Corporate governance is a big issue for investors – Chinese companies need to recruit independent North American directors with strong reputation and track records
- Failure to comply with reporting and regulatory requirements can be costly and damage the value of the listed company

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# A Successful Listing

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## Listing ceremonies in the TSX Media Centre



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**Thank you**  
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**Blake, Cassels & Graydon LLP**

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