

THE GOVERNMENT

SOCIALIST REPUBLIC OF VIETNAM

Independence - Freedom – Happiness

No. 36/2018/ND-CP

Hanoi, March 11, 2018

DECREE

ON GUIDELINES FOR LAW ON SUPPORT FOR SMALL AND MEDIUM-SIZED ENTERPRISES

Pursuant to Law on Government Organization dated June 19, 2015;

Pursuant to Law on support for small and medium-sized enterprises dated June 12, 2017;

At the request of the Minister of Planning and Investment;

The Government promulgates a Decree on guidelines for Law on support for small and medium-sized enterprises.

Chapter I

GENERAL PROVISIONS

Article 1. Scope

This Decree provides guidelines for Law on support for small and medium-sized enterprises (hereinafter referred to as SMEs), including: Article 4; Clause 1 and Clause 2 Article 14; Article 15; Clause 2 Article 16; Article 17 and Article 19.

Article 2. Regulated entities

1. Enterprises which are incorporated and operating in accordance with law on enterprises, meeting criteria for SMEs as prescribed in Article 6 of this Decree.
2. Entities relating to support for SMEs.

Article 3. Interpretation of terms

1. Scheme: A set of interrelated activities, using resources aiming at supporting SMEs which are expected to develop in single or multiple fields, sectors, areas in one or more stages.
2. Authority in charge of Scheme: means a body dedicated to support SMEs (hereinafter referred to as SME supporting body) which is assigned by the competent authority to formulate,

implement, cooperate, oversee, evaluate and take the whole responsibility for the Scheme as prescribed in Clause 1 of this Article.

3. SMEs support website: means an accessing point on the Internet (www.business.gov.vn) to support SMEs through integration of information, services and applications intended for SMEs' operation.

4. Consultant network: means a group of consultants and consultancies specialized in a broad range of fields meeting the need of SMEs, recognized by regulatory agencies on the basis of publicly-announced criteria for support for SMEs.

Article 4. Rules for support

1. The support for SMEs which are considered as creative startups and participating in industrial clusters and value chains funded by state budget shall be provided according to the Scheme prescribed in Article 5 of this Decree.

2. The support related to information, consultancy, and human resource development for SMEs; support for SMEs converted from household businesses shall be provided in accordance with annual budget estimates. In case of mid-term or long-term support objectives, the support related to information, consultancy, and human resource development for SMEs; support for SMEs converted from household businesses shall be provided in accordance with the Scheme as prescribed.

3. According to potential resources, the supporting bodies shall decide number of SMEs to be supported, provided that:

a) Women-owned SMEs and SMEs employing more female workers and submitting qualified applications shall be provided support first;

b) SMEs submitting qualified applications first shall be provided support first.

Article 5. Scheme

The Scheme shall contain: Objectives; eligible entities and support requirements; procedures for selection; detailed support; resources; mechanism for management, overseeing and evaluation of result; duration of operation; others (if any).

Chapter II

DETERMINATION OF SMES

Article 6. Criteria for determining SMEs

SMEs are classified by size, including microenterprises, small enterprises and medium-sized enterprises.

1. A microenterprise in the sector of agriculture, forestry and aquaculture and industry and construction has an annual average of 10 employers or fewer who have make contributions to social insurance and total annual revenue is not more than VND 3 billion or total capital is not more than VND 3 billion.

A microenterprise in the trade and service sector has an annual average of 10 employers or fewer and total annual revenue is not more than VND 10 billion or total capital is not more than VND 3 billion.

2. A small enterprise in the sector of agriculture, forestry and aquaculture and industry and construction has an annual average of 100 employers or fewer who have make contributions to social insurance and total annual revenue is not more than VND 50 billion or total capital is not more than VND 20 billion, other than the microenterprise prescribed in Clause 1 of this Article.

A small enterprise in the trade and service sector has an annual average of 50 employers or fewer who have make contributions to social insurance and total annual revenue is not more than VND 100 billion or total capital is not more than VND 50 billion, other than the microenterprise prescribed in Clause 1 of this Article.

3. A medium-sized enterprise in the sector of agriculture, forestry and aquaculture and industry and construction has an annual average of 200 employers or fewer who have make contributions to social insurance and total annual revenue is not more than VND 200 billion or total capital is not more than VND 100 billion, other than the microenterprise small enterprise prescribed in Clause 1 and Clause 2 of this Article.

A medium-sized enterprise in the trade and service sector has an annual average of 100 employers or fewer who have make contributions to social insurance and total annual revenue is not more than VND 300 billion or total capital is not more than VND 100 billion, other than the microenterprise and small prescribed in Clause 1 and Clause 2 of this Article.

Article 7. Determination of business lines of SMEs

Business lines of SMEs are determined in accordance with regulations and laws on economic sector system and special law.

If a SME operates in multiple fields, its business lines shall be determined in the sector that it earns the highest revenue. If the sector in which the highest revenue is unidentifiable, its business lines shall be determined in the sector that it employs the most workers.

Article 8. Determination of annual average number of SMEs' workers making contributions to social insurance

1. Number of workers contributing social insurance is total number of workers that an enterprise manages, employs and pays salaries and makes matching contributions to social insurance in accordance with law on social insurance.

2. Annual average number of workers contributing social insurance shall be considered as total workers contributing social insurance in a year divided by (:) number of months in the year, being determined in the social insurance payment documents of the preceding year that the enterprise submitted to the social security agency.

If the enterprise has operated for under 1 year, the average number of workers contributing social insurance shall be determined as total number of workers make contributions to social insurance in operating months divided by (:) number of operating months.

Article 9. Determination of total capital of SMEs

Total capital being determined in the balance sheet on the financial statement of the preceding year which the enterprise submits to the tax authority.

If the enterprise has operated for less than 1 year, total capital shall be determined in its balance sheet at the end of the quarter closely to the time that the enterprise applies for support.

Article 10. Determination of total revenue of SMEs

Total annual revenue means total revenue from goods sold and services rendered, being determined in the financial statement of preceding year which the enterprise submits to the tax authority.

If the enterprise has operated for less than 1 year or over 1 year but has not generated revenue, the enterprise is determined whether a SME according to criteria for total capital prescribed in Article 9 of this Decree.

Article 11. Determination and declaration

1. An enterprise, deemed as a SME, shall self-assess and declare that it qualifies as a microenterprise, small enterprise, or medium-sized enterprise using the form in Appendix issued herewith and submit it to the SME supporting body. The SME shall take legal responsibility for its declaration.

2. If the enterprise deems itself that the declaration is incorrect, it shall make an adjustment and make the declaration again. The re-declaration shall be made before the enterprise enjoys the support.

3. If the enterprise deliberately makes an untruthful declaration to enjoy the support, it shall take legal responsibility and reimburse all funding received.

Chapter III

SUPPORT ON INFORMATION, CONSULTANCY AND HUMAN RESOURCE DEVELOPMENT

Article 12. Support on information

A SME is entitled to access to information prescribed in Clause 1 Article 14 of Law on support for SMEs, free of charge, on the SMEs support website under management of the Ministry of Planning and Investment and website of ministries, ministerial-level agencies, People's Committees of provinces and central-affiliated cities (hereinafter referred to as provinces).

Article 13. Support on consultancy

1. A SME is entitled to access to the consultant network on the SMEs support website, website of ministries, ministerial-level agencies to select suitable consultants, consultancies and consultancy services.

2. The SME shall submit an application for support on consultancy to the SME supporting body. The application for support on consultancy is required for the SME authority to consider providing consultancy services for the SME. The application includes:

a) A self-declaration of microenterprise, small enterprise or medium-sized enterprise using the form in Appendix issued herewith;

b) A copy of business registration certificate;

c) An agreement on consultancy services entered into between the enterprise and a consultant or consultancy that has joined the consultant network.

3. The SME is provided support on consultancy services (excluding advice on administrative procedures as prescribed in special law) in the consultant network.

a) A microenterprise is covered 100% of consultancy contract value, but not exceeding VND 3 million per year;

b) A small enterprise is covered 30% of consultancy contract value, but not exceeding VND 5 million per year;

c) A medium-sized enterprise is covered 10% of consultancy contract value, but not exceeding VND 10 million per year;

d) A SME converted from household business, a creative SME startup, or a SME participating in industrial cluster or value chain qualifies for remission of consultancy fee as prescribed in Chapter IV of this Decree.

4. Consultant network

a) The consultant network concludes consultants who have worked in accordance with special law and new consultants, provided that the rules below are observed: In case of individuals, the consultant must have professional qualifications, experience, level of education in conformity

with the need of SMEs; in case of organizations, the consultancy must meet the requirements in accordance with special law and in conformity with the need of SMEs;

b) Application for membership of consultant network: In case of a consultant, the application includes: Curriculum vitae; training certificate; experience record; documents issued by competent authorities (applied to conditional industries); in case of a consultancy: establishment license; experience record, documents of consultants in the consultancy and documents issued by competent authorities (applied to conditional industries);

c) The consultant or consultancy submits the application prescribed in Point b of this Clause to the authority in charge affiliated to the ministry or ministerial-level agency which is designated to initiate a consultant network. The authority in charge shall consider granting membership to the applicant and publish it on its website within 10 working days.

Article 14. Support on development of human resources

1. Training in startup and business administration.

a) The state budget shall cover at least 50% of total expenses that SMEs likely incur in a training course in startup and business administration;

b) Trainees of SMEs in severely disadvantaged areas or women-owned SMEs shall be eligible for being offered free tuition fees.

2. Vocational training

Trainees of SMEs in a training course at elementary level or lasting for fewer than 3 months shall be eligible for being offered free tuition fees. Remaining costs shall be agreed by the SMEs and workers. A trainee must meet the following criteria:

a) He/she has worked in the SME for at least 06 consecutive months;

b) He is up to 50 years of age and she is up to 45 years of age.

3. Training at premises of SMEs

a) A SME in the sector of production and processing may have its 50% of expenses incurred in a training course at its premises covered, but not exceeding once a year;

b) A training course at the SME's premises shall have at least 10 trainees.

Chapter IV

SUPPORT FOR SMES CONVERTED FROM HOUSEHOLD BUSINESSES, CREATIVE STARTUPS AND SMES PARTICIPATING IN INDUSTRIAL CLUSTERS OR VALUE CHAIN

Section 1. Support for SMEs converted from household businesses

Article 15. Consultancy and guidelines for application and procedures for enterprise establishment

1. When a household business applies for conversion to an enterprise, the People's Committee of province shall assign a body to provide consultancy and guidelines free of charge (hereinafter referred to as guiding body) as follows:

a) Procedures and application for registration of enterprise establishment

b) Procedures and application for certificate of eligibility for business applied to conditional industries (if any).

2. Application for consultancy and guidelines as provided in Clause 1 of this Article includes:

a) A copy of business registration certificate of the household business;

b) A copy of TIN registration certificate;

c) Copies of documents certifying payment of license fees, other taxes and amounts payable to state budget (if any), tax declaration within 1 year before conversion.

3. Procedures for registration of consultancy and guidelines free of charge:

a) The owner of household business shall submit an application prescribed in Clause 2 of this Article to the guiding body as specified in the Clause 1 of this Article;

b) Within 03 working days from the date of receipt, the guiding body shall provide consultancy and guidelines free of charge as prescribed in Clause 1 of this Article.

Article 16. Support on enterprise registration and information disclosure

A SME converted from a household business which submits a qualified application as required in Clause 2 Article 15 of this Decree shall be exempt from fee for initial enterprise registration charged by the business registration authority; and be exempt from fee for disclosure of initial enterprise registration on the national business registration portal.

Article 17. Support on appraisal and issuance of initial business license

1. A SME converted from a household business, engaging in conditional industry, is exempt from fee for appraisal and issuance of initial business license.

2. A SME converted from a household business, keep engaging in conditional industry without changing the scope of operation, and is still required to apply for re-issuance of business to the

competent authority. The competent authority shall re-issue a business license within 3 working days from the date of receipt.

If the SME converted from household business solely change the scope of operation and keep engaging in the conditional industry, the competent authority shall provide consultancy and guidelines free of charge in terms of procedures for initial issuance of license.

Article 18. Support on license fees

The SME converted from household business shall be exempt from license fee within 3 years from the date on which the initial business registration certificate is issued.

Article 19. Support on consultancy and guidelines for administrative taxation procedures and accounting regulations

1. The SME converted from household business shall be eligible for free consultancy in terms of administrative taxation procedures and accounting regulations within 3 years from the date on which the initial business registration certificate is issued.

2. People's Committees of provinces shall assign guiding bodies to provide consultancy and guidelines associated with administrative taxation and accounting regulations prescribed in Clause 1 of this Article free of charge.

Section 2. SUPPORT FOR CREATIVE SME STARTUPS

Article 20. Options for selecting creative SME startup joining the Scheme

A creative SME startup prescribed in Clause 2 Article 3 of Law on support for SMEs which meets conditions as specified in Clause 1 Article 17 of Law on support for SMEs may be selected to join the Scheme using one of the options below:

1. It is invested and provided the following:

a) Common working areas prescribed in Article 12 of Law on support for SMEs;

b) Creative startup supporting organizations, service providers, technical organizations, incubators, business promotion organizations that meet the following criteria: The head has at least 1 year's experience in investment and finance advising and enterprise development support; the organization prescribed in Point b has operated and provided services, at least 1 year, for at least 10 creative startups and has invested or has appealed for investment worth at least VND 1 billion in creative SME startups in Vietnam;

c) Creative startup fund prescribed in Article 18 of Law on support for SMEs.

2. It has won national and international awards for creative startup or innovative and creative products and projects.

3. It has been issued with initiative or patent certificates.
4. It has been issued with science and technology enterprise certificate or high technology enterprise certificate.
5. It has been selected directly by the council.

The council is established by the authority in charge of Scheme and it operates according to the following rules:

- a) The number of council's members and working regulations shall be determined by the authority in charge of Scheme
- b) At least a half of council members are representatives from domestic and international independent consultants, related associations and other individuals;
- c) Council members being representatives of regulatory agencies work as part-time job;
- d) The council operates continuously throughout the duration of the Scheme and self-dissolves upon completion of the Scheme.

Article 21. Detailed support for creative startups

1. Support on consultancy on intellectual property; intellectual property utilization and development:

- a) Cover 100% price of contract for consultancy on establishment, transfer, and protection of intellectual property rights;
- b) Cover 100% price of contract for consultancy on formulation and implementation of intellectual property policies and strategies;
- c) Cover 100% price of contract for consultancy on designs, protection registration and utilization of brand names, industrial designs, and patents;
- d) Cover 100% price of contract for consultancy on intellectual property associated with geographical indication.

2. Support on procedures for technical regulations and standards, quality measurement; testing and improvement of new products and business model:

- a) Provide information on system of domestic and international standards and regulations, free of charge, related to the lines of business of the creative startups;
- b) Cover 100% price of contract for consultancy on basic standard formulation;

c) Reduce 50% of fee for testing measurement instruments; reduce 50% of fee for survey, calibration, and inspecting of measurement instruments and standards; reduce 50% expenses associated with quantitative conformity mark of pre-packed goods in conformity with technical requirements of measurement but not exceeding VND 10 million per testing and not exceeding once a year;

d) Cover 100% of price of contract for consultancy enabling creative startups to carry out measurement itself;

dd) Reduce 50% of fee for testing of goods quality at the testing system in regulatory agencies but not exceeding VND 10 million per testing and not exceeding once a year.

3. Support on technology applications and transfers

Cover 50% price of contract for high technology applications and contract for technology transfers but not exceeding VND 100 million per contract and up to one contract per year.

4. Support on training, information, trade promotion, and commercialization:

a) Cover 50% expenses associated with intensive training in: Product development; product commercialization; appealing for investment; market development; connecting startup network with scientific researchers. The supported expenses do not exceed VND 20 million per training course and up to 1 training course per year;

b) Free access to information and database of patents, technology and research findings;

c) Cover 100% expenses associated with stalls in domestic and international trade fairs; give the creative startups priority to participate in trade promotion programs funded by state budget;

d) Free access to information and communication in terms of connection with creative startup network, attract investment from creative startup funds.

5. Support on technical facilities, incubators, and common working areas:

a) Cover 100% expenses associated with using equipment at technical facilities that support SMEs;

b) Cover 50% of expenses but not exceeding VND 5 million per month for a creative SME startup associated with fee for participation in incubators, common working areas intended for creative startups.

Section 3. SUPPORT FOR SMEs PARTICIPATING IN INDUSTRIAL CLUSTERS AND VALUE CHAIN

Article 22. Criteria for selecting industrial cluster and value chain

An industrial cluster or value chain in manufacturing or processing sector is eligible for SMEs support if it meets one of the following criteria:

1. It makes a high contribution to gross domestic product (GDP) of the country or administrative divisions.
2. It creates jobs for unemployed people.
3. It creates high added value.
4. It has a high density of participants.

Article 23. Options for selecting SME startup participating in industrial clusters and value chain to join the Scheme

A SME participating in industrial cluster or value chain prescribed in Clause 2, Clause 7 Article 3 of Law on support for SMEs operating in manufacturing and processing sector which meet conditions as specified in Clause 1 Article 19 of Law on support for SMEs may be selected to join the Scheme using one of the options below:

1. It has entered into cooperation contracts with leading enterprises in the industrial cluster or value chain.
2. It has a contract for joint purchase of input materials.
3. It has a contract for joint sale of products.
4. It has conducted branding and use of regional brand name.

Article 24. Detailed support for SMEs participating in industrial clusters and value chain

1. Cover 50% expenses associated with training courses in advancement of engineering in specialized production but not exceeding VND 30 million per 01 training course for an enterprise and up to 01 training course per year.
2. Support on business association:
 - a) Cover 100% price of contract for consultancy on promoting association in industrial cluster or value chain;
 - b) Cover 100% price of contract for consultancy on planning projects on business association to promote market development and enhance the value of goods.
3. Support on development of brand names and market expansion:

- a) Cover 100% expenses associated with stalls in domestic and international trade fairs; give the creative startups priority to participate in trade promotion programs funded by state budget;
- b) Cover 100% price of contract for consultancy on brand names, trade names, geographical indications, and business secret;
- c) Cover 100% price of contract for seeking information, promoting products, developing brand name of value chain and industrial cluster but not exceeding VND 20 million per contract and up to one contract per year.

4. Consultancy on technical regulations and standards, quality measurement:

- a) Provide information on system of domestic and international standards and regulations, free of charge, related to the lines of business of SMEs participating in industrial cluster and value chain;
- b) Cover 100% price of contract for consultancy on basic standard formulation;
- c) Reduce 50% of fee for testing measurement instruments; reduce 50% of fee for survey, calibration, and inspecting of measurement instruments and standards; reduce 50% expenses associated with quantitative conformity mark of pre-packed goods in conformity with technical requirements of measurement but not exceeding VND 10 million for every testing and up to once a year;
- d) Cover 100% of price of contract for consultancy enabling enterprises to carry out measurement itself.

5. Support on procedures for pilot production, survey and certification of quality:

- a) Cover 100% expenses associated with testing, survey and certification of product quality;
- b) Support on goods quality laboratories of SMEs participating in industrial cluster and value chain;
- c) Reduce 50% of fee for testing of goods quality at the testing system in regulatory agencies but not exceeding VND 10 million for every testing and not exceeding once a year;
- d) Cover 50% expenses associated with contract for ordering institutes and schools to research to develop products but not exceeding VND 30 million per testing and up to once a year.

Chapter V

IMPLEMENTATION

Article 25. Responsibilities of ministries, ministerial-level agencies, Governmental agencies

1. The Ministry of Planning and Investment which is responsible for assisting the Government in performing the unified state management of assistance to the support for SMEs shall:

- a) Formulate and issue legislative documents on support for SMEs or request competent authorities to issue them;
- b) Offer opinions about detailed support for SMEs and Scheme of ministries, ministerial-level agencies, Governmental agencies, the People's Committees of provinces and relevant entities;
- c) Consolidate plans for support for SMEs and Scheme as prescribed in Law on support for SMEs and this Decree;
- d) Allocate investment capital for support for SMEs and Scheme as prescribed in Law on public investment and Law on state budget and appeal for, mobilize other sources of funds to support SMEs as per the law;
- dd) Cooperate with the Ministry of Finance in preparing estimates and allocating funds for current expenditures on support for SMEs;
- e) Manage and maintain operation of SMEs support website; publish information about support for SMEs as prescribed in Points a, b Clause 1 Article 14 of Law on support for SMEs on the SMEs support website;
- g) Provide guidelines for training in startup and business administration, training at premises of SMEs prescribed in Clause 1, Clause 3 Article 14 of this Decree; provide online training programs and by other means of mass media for SMEs; provide guidance on operation regulation of consultant network prescribed in Article 13 of this Decree; inspect the consultancy of consultant network of ministries and ministerial-level agencies as prescribed in Clause 3 Article 13 of this Decree.

2. The Ministry of Finance shall:

- a) Carry out support for SMEs according to estimates of recurrent expenditures consolidated by the Ministry of Planning and Investment, allocate funds for recurrent expenditures on support for SMEs and Scheme as prescribed in Law on state budget;
- b) Provide guidelines for financial regulations on consultancy for SMEs prescribed in Article 13 of this Decree, guidelines for management and use of state budget regarding human resource development of SMEs prescribed in Article 14 of this Decree;
- c) Provide guidelines for management and use of state budget regarding support for Scheme approved by competent authority;
- d) Set forth polices on remission of corporate income tax and land levy for a definite term granted to SMEs converted from household business;

dd) Take charge and cooperate with the State Bank of Vietnam in providing guidance on funds for interests of loans taken out by creative SME startups, SMEs participating in industrial cluster and value chain.

3. The Ministry of Labor, War Invalids and Social Affairs shall provide guidelines for support on vocational training provided for workers in SMEs prescribed in Clause 2 Article 14 of this Decree.

4. Ministries, ministerial-level agencies, Governmental agencies, within their competence, shall:

a) Formulate and implement the Scheme for creative SME startups; SMEs participating in industrial cluster and value chain under their management;

b) Publish information as prescribed in Points a and b Clause 1 Article 14 of Law on support for SMEs on the website of ministries, ministerial-level agencies and forward them to the Ministry of Planning and Investment for publishing on SME support website;

c) Set up criteria and recognition of members in consultant network in labor sector; publish consultant network on its website and forward it to the Ministry of Planning and Investment for publishing on SME support website; assign the authority in charge affiliated to ministries and ministerial-level agencies to manage, inspect and provide consultancy for SMEs.

Article 26. Responsibilities of People's Committee of province

1. Formulate, amend and promulgate policies on support for SMEs as per the law.

2. Ensure sources of funds from local budget to carry out support for SMEs and Scheme as prescribed in Law on support for SMEs and this Decree.

3. Plan and carry out support for SMEs converted from household business; plan and implement the Scheme for creative SME startups; SMEs participating in industrial cluster and value chain in the province.

4. Assign the authority in charge to provide guidelines for household business applying for conversion to enterprises as prescribed in this Decree.

5. Send annual reports on support for SMEs in the province to the Ministry of Planning and Investment and related agencies.

Article 27. Responsibilities of authority in charge of Scheme

1. Formulate a Scheme and submit it to the competent authority for approval, in particular:

a) The Ministry or ministerial-level agency forwards it to the Prime Minister for approval with the consent of the Ministry of Planning and Investment and the Ministry of Finance;

b) The People's Committee of province consults the Ministry of Planning and Investment to ensure the consistency in support objectives, and then submit it to the People's Council of province for approval before initiating the Scheme;

c) Determine maximum amounts associated with support on covering 100% price of consultancy contracts prescribed in Articles 21, 24 of this Decree according to support resources and conditions of the sector.

2. Formulate regulations on cooperation, supervision and evaluation of the Scheme.

3. Set up a council to select participants of the Scheme for creative SME startups as prescribed in Clause 5 Article 20 of this Decree.

4. Implement and oversee the implementation of the Scheme.

5. Send annual reports on implementation of the Scheme to competent authorities and the Ministry of Planning and Investment.

Chapter VI

IMPLEMENTATION

Article 28. Transitional regulations

From the effective date of this Decree, any support for SMEs arising before the effective date of this Decree shall be carried out in conformity with the approved program or plan and enjoy new incentives as prescribed in this Decree.

Article 29. Entry in force

This Decree comes into force as of the date on which it is signed and supersedes the Government's Decree No. 56/2009/ND-CP dated June 30, 2009 on support for the development of SMEs.

Article 30. Implementation

1. The Ministry of Planning and Investment shall cooperate with ministries, ministerial-level agencies, Governmental agencies, and People's Committees of provinces in implementing this Decree and send annual reports to the Prime Minister.

2. Ministers, heads of ministerial-level agencies, heads of government-attached agencies and chairmen of provincial-level People's Committees shall implement this Decree./.

ON BEHALF OF THE

**GOVERNMENT
PRIME MINISTER**

Nguyen Xuan Phuc

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