



A HANDBOOK FOR MERGER & ACQUISITION IN CHINA



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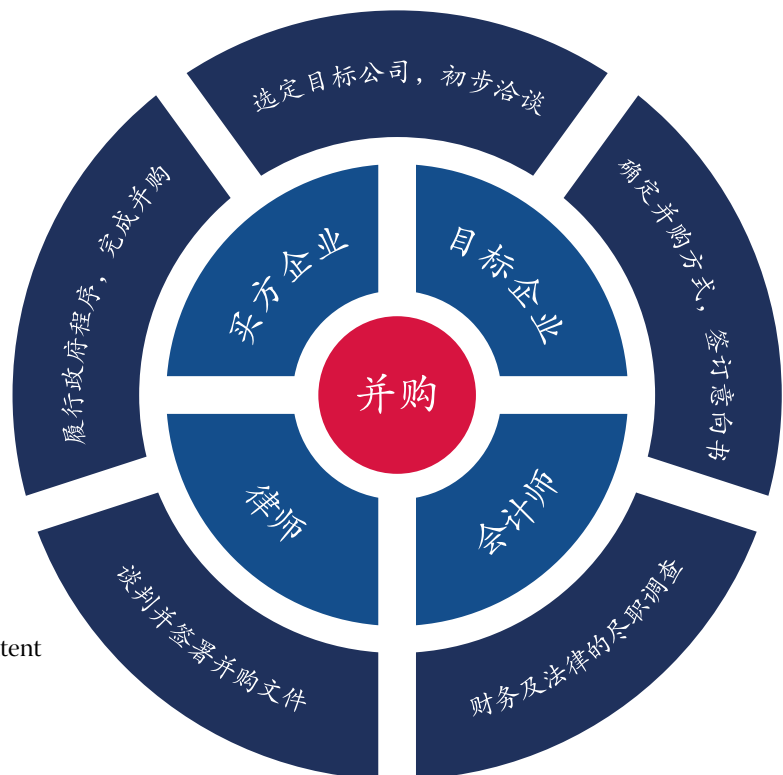
SINCERITY

A merger and acquisitions procedure, M&A, involves legal and regulatory challenges, and potential legal and financial risk. In this article we outline the key stages involved in M&A transactions, procedures to be paid attention to, and detail some of the services we provide clients in order to minimize any risks, stay compliant with Chinese laws and regulations, and maximize investment return.

为了协助我们的客户在并购过程中避免可能出现的法律和财务风险、严格遵守中国的相关法律法规，并使客户的利益在并购过程中得到最大限度的保障，我们在此将并购过程中需要重点关注的问题以及我们在这些环节中为客户提供的专业服务作如下介绍：

Part I A General Timeline of Key Stages in a M&A Transaction

第一部分 并购流程



Identify the target company

选定目标公司

Initialize contact with the target company

与目标公司初步接洽

Identify the mode of M&A, and sign a letter of intent

确定并购方式，并签订意向书

Perform Legal and Finance Due Diligence

尽职调查

Compile documents required for M&A

制作并购文件

Negotiate and sign M&A documents

谈判并签署并购文件

Complete government procedures, thus completing the M&A project

履行政府程序并完成并购

Part 2 Key stages in an M&A procedure, and where we offer the benefit of our professional services and experienced team

第二部分 并购过程中需重点关注的主要环节及我们的专业服务

I) Preparing for the M&A transaction 并购交易的前期工作

I)-1 Investment demand: Identify the target company I)-1 根据投资需求选定目标公司

The first key step of any M&A process is identifying the target company based on investment demand. This first stage is an opportunity to gain a thorough understanding of key areas in the target company's business including operational status, financial standing, and equity structure. Having an early and detailed understanding of the target company's business, finances and legal obligations creates a good foundation for a smooth M&A transaction.

选择适应投资需求的目标公司是整个并购程序的第一步，也是很关键的一步。对目标公司的正确选择，是后续的并购程序能够顺利进行的基本保障。一般而言，在选择目标公司时，应对目标公司在所处行业中的业绩、运营状况、财务信息、股权结构等进行初步了解，以判断是否需要继续进行并购交易。

During this preliminary stage we work with clients in identifying, out of a set of potential target companies, the most appropriate target for any M&A based on the investment demand of the client. This can involve us performing a full background check (registration details, equity structure, shareholders, staff and management team, and other significant stakeholders in the company) and industry analysis, and often involves working with our information channels and industry partners, to ensure clients have a full and thorough understanding of the target company before contact is instigated.

我们拥有良好的信息渠道及合作伙伴，可以根据客户的投资需求寻找合适的目标公司供客户选择，也可对投资方提供的候选目标公司进行背景调查（包括目标公司的注册信息、股权情况、股东及高管的信息、财务报表等相关信息，并对目标公司所在的行业进行分析），以便客户在与目标公司进行初步接洽前获得目标公司的相关基本信息。

I)-2 Initial contact with the target company, identifying the mode of the M&A, and signing the letter of intent I)-2 与目标公司进行初步接洽，确定并购方式，并签订意向书

M&A means merger and acquisition. China's laws and regulations broadly split M&A into mergers (including consolidation by merger and merger by incorporation) and acquisitions (including equity acquisition and asset acquisition). When undertaking initial contact with the target company, the investor should identify the mode of M&A so as to ensure the M&A process drives towards a clear goal and principle.

并购，指合并与收购。依据相关中国法律法规，合并一般包括吸收合并与新设合并两种形式；收购一般包括股权收购与资产收购两种形式。在与目标公司进行初步接洽时，投资方应根据实际情况及市场前景，明确并购方式，以便使并购程序能够按照清晰的目标和原则进展下去。

A typical letter of intent will include a clause indicating the letter is without legal binding force. In our experience successful M&A transactions also include a clear outline of the entire M&A process within the letter of intent, which while without legally binding force, illustrates a clear plan and structure resulting in a smooth, well understood, and well planned transaction. 依照商业惯例，并购项目意向书的签约双方一般都会约定意向书的大部分条款不具有法律约束力。然而，一份完善的并购项目意向书可以为整个并购过程提供清晰的轮廓和结构，从而促进并购项目的顺利进行。

During this stage we provide legal and financial opinion and advice to help clients better identify the mode of the M&A, outline the framework of the M&A, specific content of the letter of intent, and provide co-ordination during initial contact with the target company.

作为专业的法律和财务顾问，我们可以根据客户的需求，为客户确定并购方式及项目意向书的框架和具体内容提供法律和财务方面的专业意见，并在客户与目标公司进行初步接洽和谈判时提供协助。

II) Performing legal and financial due diligence on the target company

对目标公司进行法律及财务尽职调查

Once mutual agreement with the target company has been achieved, a legal and due diligence process should be launched, building on and extending the initial target company research in step 1. Good due diligence means the investor can achieve a clear and thorough understanding of the target company's equity structure, history, assets and liabilities, legal risks, operations, legal compliance, organizational structure, staff compensation details, social benefit payments and obligations, and other key business information. A clear and thorough understanding of the target company is more likely to result in a successful M&A and good investment outcome.

在与目标公司就并购事项达成共识后，对目标公司进行全面的法律及财务尽职调查是非常必要的。通过尽职调查，投资方可以清楚的了解目标公司的股权结构、历史沿革、资产负债、法律风险、整体运营、法律合规、组织结构、员工工资、社保缴纳等情况，以弥补投资方在信息获知上的不平衡。

Companies that do not undertake a full due diligence investigation of the proposed investment at this stage face huge risk later in the M&A process, or after the merger or acquisition is completed, in areas ranging from asset value and debt obligations, legal and compliance, to labor force issues.

在实践中，不充分的尽职调查，尤其是没有对目标公司的资产负债、法律风险、员工情况、法律合规等问题进行彻底的、深入的检查和分析的尽职调查，将会给投资方带来巨大的风险。

We have extensive experience in performing due diligence work. Our due diligence and client communication at this stage focuses on ensuring clients have a full understanding of the target company's financial and legal standing and risks, allowing our client to make an informed decision on continuing the M&A transaction, halting it, or amending conditions.

我们的法律和财务团队在对目标公司开展尽职调查方面有着丰富的经验，能够协助客户深层次的了解目标公司的状况和风险，以便使客户对是否继续进行并购交易及是否修改并购条件作出明确的判断。

III) Compiling specific M&A agreement and related documents according to the selected mode of M&A, negotiation with the target company, and concreting the content of the M&A documents.

根据并购方式制作相应的并购协议及相关文件，与目标公司谈判并最终确定并购文件的内容

Depending on the mode of M&A chosen, required documentation may vary. Typical documentation includes may include an equity (asset) transfer agreement, joint venture contract, or articles of association. If related to an infrastructure concession project (such as a BOT project), a concession agreement should be signed with related government departments. The soul of the M&A process lies in the documentation with this documentation determining whether each party's interest can be guaranteed and balanced

根据并购方式的不同，并购协议及相关文件会有很大的变化，大致包括股权（资产）转让协议、合资经营合同、公司章程等，如果涉及特许经营行业，还要与相应的政府部门签订特许经营权协议。并购文件是整个并购的灵魂，它决定着并购各方的利益是否能够得到保障和平衡，以及并购后的企业是否能够顺利运营。

We work with clients in drafting M&A documents and producing legal and financial advice for major items in the documentation. We assist in negotiation with the target company, working with and amending documentation with the aim of maximizing clients' interest and helping the M&A process complete smoothly.

我们的专业团队在这一阶段将根据客户的需求，为客户起草相应的并购文件，对并购文件的重要条款和内容提出法律和财务意见，协助客户与目标公司进行谈判，并针对谈判的结果对并购文件进行修改，以形成最大限度的保障客户利益、促使并购顺利完成的并购文件。

IV) Government procedures in accordance with specific mode of M&A, China's related laws and regulations, and completing the M&A process.

根据并购方式及中国相关法律法规履行相应的政府程序以完成并购

Immediately after signing the M&A documents, in order to complete the M&A, the parties of the new company must implement related government procedures based on the mode of M&A specified. M&A procedures in China are varied, and depend on the mode of M&A chosen. Any legal non-compliance or regulations ignored or overlooked create a potential liability for the new company and worsen the interest of the investor. It is crucial to strictly comply with related laws and regulations in completing the government procedural part of the M&A process.

在签署并购文件后，并购各方应根据并购方式及相关的法律法规履行相应的政府程序，以使并购得以顺利完成。在中国，并购项目应履行的政府程序比较繁琐，不同的并购方式所对应的政府程序也会有很大差异，若在履行政府程序时出现法律瑕疵，将会对并购后的企业产生潜在的风险，甚至有可能使投资方的利益失去保障。因此，严格依照相关法律法规履行并购项目的政府程序是非常关键的。

Our team oversees procedures including government approval, documentation changes, filing, and registration. Our goal is to ensure the M&A project runs smoothly and legally, and for the benefit of the investor.

我们的专业团队将协助客户履行相关的政府审批、登记、变更、备案等程序，使并购项目严格依法进行，进而保障客户的投资利益。

Part 3 Tax Implication in Merger and Acquisition

第三部分 并购中的税务影响

The section above described two types of M&A; these types result in different tax treatments. Below we outline taxes involved in M&A processes, tax rates, and available tax incentives.

如上文我们所讲到的，目前存在两种并购的方式——权益并购与资产并购。与之相对应，两种并购方式之下的税务影响以及涉及的税种均不相同。在本部分中，我们尝试着简单介绍在两种并购方式之下有可能需要考虑的税种，税率，可能存在的任何税务优惠。

I) Taxes Potentially Involved in M&A 并购过程中涉及的税种

I)-1 Corporate Income Tax ("CIT")

I)-1 企业所得税

The China tax authority issued a new CIT law and corresponding implementation rules at the end of 2007, effective since 1st January 2008. Any transactions after 1st January 2008 are managed and controlled under the new tax regime. Under the new regime the standard CIT tax rate is 25%, while new and high technology enterprises, and environmental protection enterprises, are allowed to enjoy a lower tax rate of 15%.

中国税务机关在2007年底出台了新的企业所得税法和配套的实施细则，该法及实施细则于2008年1月1日施行。因此，在2008年1月1日之后发生的并购交易下的企业所得税问题均应受该法律制约。根据新法，企业所得税的标准税率为25%。对于高新技术企业，环保企业，在申请成功之后可以享受15%的优惠税率。

I)-2 Turn-over Tax

I)-2 流转税

Under China's tax structure, there are three turn-over taxes: Value Added Tax ("VAT"), Business Tax ("BT") and consumption Tax ("CT"). We demonstrate how they're implemented for M&A transactions in the sections below.

在中国的现行税制下，流转税共分为三种：增值税，营业税和消费税。我们将在下面章节中详细解释流转税在并购交易中的作用。

I)-3 Withholding Tax

I)-3 预提所得税

Withholding tax is a special tax applied to enterprises that have not established a legal entity in China, but benefit from income from China related business, or enterprises that have established a legal entity but generate income from business in China with no relationship to the established entity. The standard rate of withholding tax is 20%, with the rate reduced to 10% as an incentive rate in the new tax regime.

预提所得税是一个较为特殊的税种，主要用来约束以下两种情况中的所得：

在中国未设立机构而产生了来源于中国境内的所得，或者虽然设立了机构，但是产生自中国境内的所得与该机构并无关系。

预提所得税的标准税率为20%。但是税法也同时规定，预提所得税可以享受10%的优惠税率。

I)-4 Stamp Duty

I)-4 印花税

Both the purchaser and the acquired target company are required to pay stamp duty, usually applied at a rate of 0.03% to 0.05% of total transferred equity/assets value.

并购双方均需缴纳0.03%至0.05%的印花税。该印花税的税基为并购交易中转让的股权/资产价值。

I)-5 Other Relevant Taxes—Land Appreciation Tax

I)-5 其他相关税种—土地增值税

If land use rights are to be transferred during the transaction a 30% to 60% progressive tax rate is applied.

在并购交易中，如果存在土地使用权的转让，则需要使用30%到60%的累进税率，为了便于理解，我们准备了一个实例。

The detailed tax table

Rank	Ratio between value added and deductible amount	Tax rate	Speedy deduction ratio
1	Less than 50%	30%	0
2	50% to 100%	40%	5%
3	100% to 200%	50%	15%
4	Greater than 200%	60%	35%

级次	增值额与扣除项目金额的比率	税率	速算扣除数
1	不超过50%的部分	30%	0
2	超过50%至100%的部分	40%	5%
3	超过100%至200%的部分	50%	15%
4	超过200%的部分	60%	35%

An example to explain calculation:

实例：

Company A transfers the land use right to a foreign company through an asset deal. The original cost for purchasing the land use right is RMB10 million, with RMB3 million of relevant land development costs, the selling price of the land use rights is RMB35 million.

公司A，通过一次资产并购将土地使用权转让给一家外国公司。该土地使用权的原始成本是1000万人民币，后续开发费用为300万人民币。该土地使用权的售价为3500万人民币。

Step One: Calculate the ratio between the value added amount and deductible amount.

步骤一，计算增值额与扣除项目金额的比率

$RMB(35-10-3) \text{ million} = RMB 22 \text{ million}$

$Deductable \text{ amount} = RMB13 \text{ million}$

$Ratio = 22/13 * 100\% = 169\%$

Step Two: Identify related tax rate and speedy deduction ratio

步骤二，找到相应得税率与速算扣除数

Per above tax rate table, the tax rate is 50%, and the speedy deduction ratio is 15%.

根据上表可知，对应的税率为50%，速算扣除率为15%。

Step Three: Calculate the tax

步骤三，计算土地增值税

$RMB 22 \text{ million} * 50\% - RMB 13 \text{ million} * 15\% = RMB 9.05 \text{ million}$

II) Different Tax Likely to be Involved in an M&A Transaction

不同的并购模式下可能影响的税种

II)-1 Asset Deal

II)-1 资产性并购

II)-1-1 For the acquired target company

II)-1-1 对于被并购的公司而言

Under the asset deal the tax will be considered by the acquired target company ("Seller"), the table below gives a detailed breakdown of relevant tax types:

在资产性并购的条件下，被并购公司应考虑以下税收影响：

Sold Assets (for seller)	Relevant Taxes
Land and Building	Land Appreciation Tax (Listed in section above) 5% Business Tax
Intangible Assets	5% Business Tax
Inventory	17% Value Added Tax
Inventory (Goods subject to Consumption Tax)	Various CT tax rate
Second hand equipment (Where sale price is greater than the original value)	2% Value Added Tax
Second hand vehicles (Where sale price is greater than the original value)	2% Value Added Tax

被收购的资产（卖方）	涉及的税种
土地建筑物	土地增值税（见上表所列） 5%的营业税
无形资产	5%的营业税
存货	17%的增值税
应消费税的存货	不同税率的消费税
二手设备（卖价高于原始采购价）	2%的增值税
二手车辆（卖价高于原始采购价）	2%的增值税

II)-1-2 For the acquirer there are no turn-over taxes involved.

II)-1-2 对于采购方而言，并不涉及任何流转税。

II)-1-3 For both parties, Stamp Duty should be considered.

II)-1-3 双方均需考虑上文所提及之印花税

II)-2 Equity Deal

II)-2 权益性并购

Both parties should pay 0.05% stamp duty on the consideration amount or value of transfer of stock, whichever is higher.
双方均需考虑上文提及之印花税。

About Financial Due-diligence Service of Brook & Partners

关于翰华的财务尽职调查服务

In M&A project, it is necessary to check the overall legal and debts status of the company which is to be merged or acquired (the "Target Company") so as to find out whether the assets to be purchased are free from any risks, and to find out whether the assets deal will be impeded by creditors of the Target Company. Therefore, Brook & Partners provides service to our clients to conduct due diligence review from a financial perspective on the following issues:

- 1) By assisting the acquirer to understand the target business and therefore increasing the likelihood of the deal achieving its objectives;
- 2) By helping clients (to be consistent, you/acquirer) to identify the profit drivers, improve clients' understanding of all the relevant issues so that informed decisions can be made;
- 3) By highlighting key issues to be considered;
- 4) By providing assistance to negotiate purchase consideration.

在企业并购项目中，检查目标公司的资产及债务状况以及其运营能力对整个交易至关重要，资产是否安全，债务是否完整都与交易是否成功息息相关。

为了使整个交易流程更为顺畅，翰华企业并购服务团队将从财务方面提供以下支持服务：

- 1 协助购买方认知目标企业的运营环境，从而使得并购目标更为清晰易行；
- 2 协助购买方辨别目标企业的利润构成，从而助力购买方进行并购决断；
- 3 指明关注的影响交易进行的问题与事项，协助双方沟通与解决；
- 4 协助双方就共同认可的估值基础进行谈判。

About the Service Team of Transaction Service

关于翰华服务团队

Mark Ma

Mark Ma is a partner in the Brook & Partners Beijing office. He is responsible for the company's overall marketing and is also a core member of the risk control & service quality assessment team.

After graduating from university, Mark Ma started his professional career at Deloitte and Touche. At Deloitte, Mark worked as a tax consultant, providing advisory and planning services relating to expatriate individual income tax, corporate income tax and turnover taxes. He established a solid understanding of the China tax regime and China accounting standards. In 2003, Mark joined Motorola China to be an internal auditor, focus on Sarbanes Oxley Act section 404 compliance projects. At the time Mark was one of the first professionals in mainland China to be actively involved in SOX act compliance issues. He also won a Bravo Award at Motorola China in 2003.

Mark subsequently joined KPMG's Beijing office in the Risk Advisory department as an associate and senior accountant. He was engaged in SOX compliance services, internal audit services and internal control review services. During this period, Mark learnt KPMG's methodologies, establishing a sound understanding of risk management, internal control, process restructuring and SOX Act compliance requirements. The clients he served in this period included Tower, Lucent China, Cisco and Cummins China.

Mark was also a key management team member and department head of a UK based consulting firm. He was mainly responsible for engagement negotiation, new client development and overall project control.

Mark is a co-founder and key management team member of Brook & Partners. He is responsible for new market research and development, new client development and engagement management. He is also one of the leading members of the risk advisory service project team at Brook & Partners. His clients include Vaisala China, Bimbo China, Rich Products, Balfour Railway and Valence Energy.

Mark Ma is part-time lecturer of BPP professional, UK. His lecture topics include: Corporate Governance, SOX Act Compliance, Complete Risk Management and Process Restructuring. He is also the author of two accounting books published in 2009 and 2010. Mark earned his BA degree from Tianjin University of Finance & Economics. He is a member of ACCA and speaks both Mandarin and English.

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马津先生

马津先生是翰华咨询北京办公室合伙人。他主要负责公司的市场推广与拓展，他亦为公司风险控制与服务质量评估小组的核心成员。

大学毕业以后，马津先生加入德勤会计师事务所税务部。作为一名税务顾问，马先生专注于为外商投资企业及外国企业提供个人所得税，企业所得税和流转税的咨询与筹划服务。在这一期间，马先生逐步建立了对中国税收框架的深刻理解。2003年，马先生加入摩托罗拉中国，作为内部审计团队的一员，马先生全程参与了摩托罗拉萨班斯法案第404条款的遵循项目，马先生是中国大陆最早接触及参与萨班斯法案遵循项目的专业人士之一。他亦因在项目中的杰出表现，获颁2003年度摩托罗拉中国Bravo奖。

在此之后，马先生加入毕马威北京办公室风险管理服务，作为审计师及高级审计师，马先生主要专注于为大型跨国公司提供风险管理，内部控制及萨班斯法案遵循等专业服务。在此期间，马先生系统的学习了毕马威的方法论，建立了对风险管理，内部控制的优化与提升，以及流程再造的深刻认知。在此期间马先生服务过的代表客户包括：塔奥中国，朗讯中国，思科以及康明斯。

加入翰华咨询之前，马先生还曾服务于一家英国的管理咨询公司，担任高级经理及部门主管职务，主要负责项目的接洽，新客户的开拓与发展以及项目的全程管理。

马先生是翰华咨询的联合创始合伙人及翰华管理团队的核心成员。他主要负责新市场的拓展，新客户关系的搭建，以及项目管理。他亦是翰华风险管理服务的主管合伙人之一。他的代表客户包括维萨拉中国，宾堡中国，唯益食品，保富铁路以及Valence能源。

马先生是英国BPP专业教育的兼职讲师，主讲公司治理，萨班斯法案的遵循，全面风险管理及流程再造。马先生在2009年及2010年亦撰写出版了两本会计方面的书籍。

马先生拥有管理学学士学位，是英国特许公认会计师。

马先生的工作语言为中文及英语。

Shirley Han Director

Shirley is director of Brook & Partners China, focusing on audit & assurance service, internal audit service and financial due-diligence service in M&A projects.

Shirley owned over 10 years professional service experiences. After graduation, she joined Deloitte as a junior and senior auditor, providing audit service to multinational enterprises and leading local enterprises, the clients she served include: Toyota, Panasonic, CRTB, Omron, Saint-gobain group, VW water group and Valeo group.

After that, Shirley joined Salustro CPA as a project manager, which has been combined by KPMG.

Before joining Brook & Partners, Shirley is senior manager of a leading venture capital & investment firm, providing financial advisory service in M&A projects and Asia market and US market IPO projects.

Shirley earned B.A and could speak fluent Mandarin and English.

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Director

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韩丹 总监

韩丹女士是翰华企业并购服务总监。她所擅长的专业领域包括，财务报表审计，内部审计的外包与分包，企业并购项目下的财务尽职性调查。

韩女士拥有超过10年的专业服务经验，大学毕业后，韩女士加入德勤华永会计师事务所，担任审计助理及高级审计师。在此期间，韩女士主要为外商投资企业提供财务报表的审计服务，积累了丰富的实务经验。她所涉及的行业包括电器制造，汽车制造及医疗设备等，代表客户包括丰田汽车、松下电器、华润啤酒、欧姆龙贸易、法国圣戈班集团、威利亚水务集团及法雷奥汽车。

韩女士随后加入了萨理德中瑞会计师事务所，继续为客户提供鉴证服务，财务咨询及并购指导服务。

在加入翰华之前，韩女士还曾服务于一家国内居领先地位的投资咨询公司，担任财务分析部高级经理，专职为客户提供并购交易下的财务咨询服务及在亚洲或美国市场首次上市发行项目中的财务咨询服务。

韩女士拥有管理学学士学位，工作语言为中文及英语。



Transaction Service:

Initial Negotiation;
Financial Due-diligence;
Legal Due-diligence;
Tax Due-diligence;
Post Transaction Legal & Financial Service.

A c c o u n t a n t s & F i n a n c i a l C o n s u l t a n t



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