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Country Question and Answer Chapters:

Korea

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1 Marine Casualty

1.1 In the event of a collision, grounding or other major casualty, what are the key provisions that will impact upon the liability and response of interested parties? In particular, the relevant law / conventions in force in relation to:

(i) Collision

The provisions of the Korean Commercial Act ("KCA") pertaining to collisions between vessels (Articles 876–881) are applicable to "collisions between sea-going vessels or collisions between sea-going vessels and vessels of inland navigation" (Article 876). The KCA categorises collision into four cases according to the cause of the collision, and prescribes the rule on liability of the relevant parties (i.e., the owners of the vessels involved in the collision) for each case. The four categories include: (i) collision due to *force majeure*; (ii) collision due to fault of one party; (iii) collision due to fault of both parties; and (iv) collision due to the fault of the pilot. Under the KCA, a statutory time bar of two years from the date of the collision is applicable to claims for damages arising from collision between vessels (Article 881). It is possible for the parties to extend the time bar by mutual consent.

For cases of collisions which do not fall within the scope of the KCA (e.g., collisions between vessels of inland navigation, or collisions between a vessel and a dock), the general tort principle under the Korean Civil Code (Article 750) will be applicable instead of the abovementioned provisions of the KCA (i.e., Articles 876–881).

On the other hand, it may be noted that Article 12 of the Seafarers' Act imposes responsibility on masters of the vessel involved in the collision to take all necessary measures to rescue human lives and the vessel, and to provide the other vessel involved in the collision with the following information: name of the vessel; owner of the vessel; port of registry; port of departure; and port of arrival.

As for the international conventions related to collisions of vessels, the Convention on the International Regulations for Preventing Collisions at Sea 1972 is currently in effect in the Republic of Korea (hereinafter referred to as "Korea"). On the other hand, Korea is not a party to the International Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels (the "1910 Collision Convention"). Nevertheless, the provisions of the KCA related to collision are influenced by the 1910 Collision Convention.

(ii) Pollution

The Compensation for Oil Pollution Damage Guarantee Act prescribes the liability of owners of the oil tanker which contributed to oil pollution.

Another Act relevant to marine pollution is the Marine Environment Management Act, which restricts the discharge of waste, oil and noxious liquid substance from vessels (Article 22). The Minister of Oceans and Fisheries shall impose charges/fees for acts of discharging pollutants from the vessels exceeding the limit prescribed by the Enforcement Decree for the Act (Article 19).

The relevant international conventions currently in force in Korea include the International Convention on Civil Liability for Oil Pollution Damage 1969 and its 1992 Protocol, the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 and its 1992 and 2003 Protocols, and the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001.

(iii) Salvage / general average

Salvage

A section in the KCA exclusively addresses the issue of salvage (Articles 882–895). Korea is not a party to any international conventions on salvage, but the provisions in the KCA (e.g., the Articles on special compensation and salvage contracts) are generally interpreted as an implementation of major aspects of the International Convention on Salvage 1989.

General Average

The KCA has a section devoted to general average (Articles 865–875), which is mostly based on the York-Antwerp Rules of General Average 1950. It may be said that the provisions of the KCA are outdated in comparison with the York-Antwerp Rules of General Average 1994. In practice, the provisions of the KCA are seldom applied, as the relevant contracts such as time charterparties of the vessels generally contain a provision applying the York-Antwerp Rules of General Average 1994.

(iv) Wreck removal

There are multiple statutes in Korea that regulate wreck removal. Firstly, the Act on Vessels Entering and Departing Port provides that masters, owners or occupants of any object that causes or may cause a hindrance to vessels' navigation (which includes shipwreck) are obliged to remove such object or bear the costs and expenses for its removal (Article 40). Secondly, the Public Waters Management and Reclamation Act prohibits the act of abandoning or leaving the vessel in derelict condition on public waters, which includes the sea, seashores and state-owned rivers and lakes (Article 5). This Act also consists of provisions on shipwreck removal (Article 6). Thirdly, the Maritime Safety Act mandates that the master, owner, and operator of the vessel which created obstacles to navigation shall inform other vessels of the obstacles and remove the obstacles, which includes shipwreck removal (Article 28). Fourthly, the Marine Environment Management Act dictates that a master of a

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vessel which causes pollutants to be emitted into the sea is obliged to report to the relevant authority, prevent further emission, remove the emitted pollutants, and bear the costs and expenses of such operation (Articles 63–65), which will be applicable in case of the shipwreck emitting pollutants.

(v) Limitation of liability

General Limitation

While Korea has not ratified the Convention on Limitation of Liability for Maritime Claims ("LLMC"), the level of the shipowners' global limitation matches the 1976 LLMC levels. Also, Korea adopted a substantial part of the LLMC Protocol 1996 for limitation levels in respect of passenger claims (Articles 769–776 of the KCA). In accordance with Article 776 of the Act, a special act titled "the Act on the Procedure for Limiting the Liability of Shipowners, etc." was enacted to set out the procedures for limiting liability.

Package Limitation

Although Korea has not ratified the Hague-Visby Rules, package limitation under the KCA is identical to that of the Hague-Visby Rules. The carrier's liability is limited to 666.67 special drawing rights ("SDRs") per package/unit or 2 SDRs per kilogram, whichever is higher (Article 797).

Oil Pollution

The Compensation for Oil Pollution Damage Guarantee Act limits the liability of the owners of the oil tanker which caused pollution (Article 8), and the limitation amount is identical to that of the 1992 Civil Liabilities Convention. The Act also establishes a special procedure for the owners/insurers of the oil tanker to secure such a limitation on their liability (Article 32).

(vi) The limitation fund

The constitution of and distribution from the limitation fund is regulated by the Act on the Procedure for Limiting the Liability of Shipowners, etc. (Articles 11–15, 27 and 65–79) and, in the case of the oil tanker which caused pollution, by the Compensation for Oil Pollution Damage Guarantee Act (Articles 21–31 and 34).

1.2 What are the authorities' powers of investigation / casualty response in the event of a collision, grounding or other major casualty?

In the event of a collision, the relevant authorities (which include the Korean Coast Guard and the Ministry of Oceans and Fisheries) may order the master or shipowner to take necessary measures to quickly control the marine accident and secure the safety of marine traffic (Article 43 of the Maritime Safety Act). Also, in the event that there exist obstacles to navigation due to such marine accident, the relevant authorities may order the master, shipowner or ship operator to remove such obstacles to navigation. If such orders are not complied with, the authorities may directly remove the obstacles to navigation and the costs shall be borne by the responsible party (Article 28 and 29 of the Maritime Safety Act).

There are similar provisions in the Marine Environment Management Act (Articles 64 and 68), which applies to pollution arising from marine accidents.

As for investigation, the Maritime Safety Tribunals are established under the jurisdiction of the Minister of Oceans and Fisheries pursuant to the Act on the Investigation of and Inquiry into Marine Accident. The Tribunals have investigators, who have authority to conduct investigation matters, including summoning and questioning relevant parties and inspecting ships (Articles 16 and 37 of the Act on the Investigation of and Inquiry into Marine Accident). In addition, when the marine accident constitutes a criminal case (for example, personal injury or death, sinking of ship, pollution, breach of crew/vessel regulations, etc.), the Korea Prosecutors' Office will have the authority to investigate the matter, with the preliminary investigation generally conducted by the Korea Coast Guard.

2 Cargo Claims

2.1 What are the international conventions and national laws relevant to marine cargo claims?

Korea is not a party to the Hague Rules or Hague-Visby Rules, but the KCA adopts substantial parts of the Hague Rules and Hague-Visby Rules regarding carriage of cargo.

2.2 What are the key principles applicable to cargo claims brought against the carrier?

It can be said that the Korean law position in this respect is generally similar to that in the Hague-Visby Rules. The carrier is responsible to conduct due care for carriage of the cargo, and shall be liable for damages, loss and/or delay unless the carrier proves that he has conducted due care or there is an indemnity event (navigational accident or peril, *force majeure*, insufficiency of packing, latent defect, etc.).

2.3 In what circumstances may the carrier establish claims against the shipper relating to misdeclaration of cargo?

There is no specific provision in the KCA about the carrier's claim against the shipper relating to misdeclaration of cargo. However, Article 853-(3) of the KCA stipulates that: "A shipper shall be deemed to have certified to a carrier the correctness of the kind, weight or volume of cargo, and the classification, number and mark of packing notified in writing by the shipper."

While there are not clearly established precedents, our view is that misdeclaration of cargo should be treated pursuant to the general principles. First, the carrier's claim against the shipper relating to misdeclaration of cargo will be established pursuant to the provisions of the contract of carriage, including the terms and conditions of the bill of lading. In the event that there are no such clear provisions, terms and/or conditions in the contract of carriage, Article 853-(3) of the KCA will apply, and misdeclaration of cargo is likely to be deemed as a breach by the shipper in light of Article 853-(3). Therefore, the carrier may establish claims against the shipper for such breach, provided that the carrier has suffered damages due to the breach, and they are reasonably linked.

3 Passenger Claims

3.1 What are the key provisions applicable to the resolution of maritime passenger claims?

The KCA deals with maritime passenger claims in Articles 817–826. Under these provisions, a carrier is liable for the death or personal injury of passengers, unless the carrier is able to show that the carrier or its employees were not negligent. To determine the quantum of damages, the court shall take into account the conditions of the victim and the victim's family (Articles 148 and 826).

Korea is not a party to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, or its Protocols.

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4 Arrest and Security

4.1 What are the options available to a party seeking to obtain security for a maritime claim against a vessel owner and the applicable procedure?

Under Korean law, a creditor who has a pecuniary claim against a debtor may apply for pre-judgment attachment of an asset owned by the debtor. Therefore, a party may apply for pre-judgment attachment of a vessel insofar as (i) he has a pecuniary claim against the shipowner, and (ii) there is a need for securing his claim (generally, the fact that the debtor has failed to pay the claim, and no other easily attachable assets owned by the debtor will *prima facie* demonstrate such need). It is not required that the creditor's claim be of a maritime nature, or related to the vessel, provided that the debtor is the owner of the vessel.

The creditor will first make an application to the court for pre-judgment attachment of the vessel. The application process will generally proceed *ex parte*, i.e. based on the creditor's application only, without summoning the debtor, unless the court sees a special need otherwise. After reviewing the application documents, if the court finds that the above two requirements have been *prima facie* proved, the court will order the creditor to post counter-security. The extent of counter-security will ultimately depend on all relevant circumstances, including how well the creditor's claim and the need for security have been substantiated. Generally, for the pre-judgment attachment of a ship, the court will require the creditor to post counter-security in the region of 10 per cent of the claim amount, which can generally be paid either in cash or in the form of surety bonds issued by the Seoul Guarantee Insurance Company. If the creditor complies with the order and posts counter-security accordingly, the court will issue the pre-judgment attachment decision.

One thing to note is that under Korean law, the court has jurisdiction only when the vessel is within the jurisdiction area. Therefore, the Korean court will not grant the pre-judgment attachment unless the vessel has entered and is staying within the port area.

4.2 Is it possible for a bunker supplier (whether physical and/or contractual) to arrest a vessel for a claim relating to bunkers supplied by them to that vessel?

Yes, bunker suppliers are able to arrest a vessel for claims relating to bunkers supplied by them to that vessel, but the method differs between bunker suppliers who hold a maritime lien over the vessel and those who do not.

The general rule under the Act on Private International Law is that the law of the ship's nationality governs the existence and priority of maritime liens. Therefore, if the law of the country where the vessel is registered recognises a maritime lien for a bunker supplier's claim relating to bunkers supplied to the vessel, then the bunker supplier may arrest the vessel in Korea by applying for the court's decision for commencement of judicial auction sale of the vessel based on the maritime lien. Our maritime team has successfully arrested vessels registered in Panama to secure claims of bunker suppliers, as the laws of Panama recognise maritime liens for the supply of bunkers.

However, the laws of Korea do not recognise maritime liens for claims related to bunkers supplied to a vessel. Therefore, under Korean law, a bunker supplier may arrest a vessel only when the requirements set out in question 4.1 above are satisfied. This means the bunker supplier has to file an application to the court for a pre-judgment attachment order, by showing that the bunker supplier has a monetary claim against the owner of the vessel.

4.3 Where security is sought from a party other than the vessel owner (or demise charterer) for a maritime claim, including exercise of liens over cargo, what options are available?

Under Korean law, the creditor may seek security by way of exercising a possessory lien over the cargo.

Korean law acknowledges three types of possessory lien. Firstly, there is a carrier's possessory lien – a carrier is entitled not to deliver the cargo unless the freight, demurrage, incidental expenses, etc. are paid, and may apply for auction of the cargo in order to receive payment (Articles 807 and 808 of the Korean Commercial Act).

Secondly, there is a general possessory lien provided in the Korean Civil Act – if the possessor of a property belonging to another person has any claim arising in respect of such property, and if payment of the claim is due, he may retain possession of the property until the claim is satisfied, and may apply for auction of the property in order to receive payment of his claim (Articles 320 and 322 of the Korean Civil Act). It may be noted that in these first two categories, the property possessed/retained need not belong to the debtor.

Thirdly and lastly, there is a mercantile possessory lien provided for in the Korean Commercial Act – if a claim that has arisen from a commercial activity between merchants has become due, the creditor may, until he/she obtains performance thereof, retain the property belonging to the debtor that has come into his/her possession through a commercial activity with the debtor. However, this shall not apply in cases where there are other agreements between the parties (Article 58 of the Korean Commercial Act). As set out in the provision, this mercantile possessory lien may be exercised on the property belonging to the debtor only.

If the respective requirements for any possessory lien are satisfied, the creditor may seek security by exercising such possessory lien on the relevant property.

4.4 In relation to maritime claims, what form of security is acceptable; for example, bank guarantee, P&I letter of undertaking.

Under Korean law, security shall be deposited in the form of cash or securities recognised by the court, or a guarantee insurance policy as prescribed by the Supreme Court Regulations (Article 122 of the Civil Procedure Act of Korea). In practice, the Korean court accepts security in the form of cash or a bond issued by the Seoul Guarantee Insurance Company. One exception would be the limitation of liability proceeding, in which the applicant may file a motion requesting permission from the court to accept a deposit guarantee bond issued by a guarantor instead of a cash deposit (Article 13 of the Act on the Procedure for Limiting the Liability of Shipowners, etc.). The court generally accepts deposit guarantee bonds issued by protection and indemnity ("P&I") clubs.

5 Evidence

5.1 What steps can be taken (and when) to preserve or obtain access to evidence in relation to maritime claims including any available procedures for the preservation of physical evidence, examination of witnesses or pre-action disclosure?

The Civil Procedure Act of Korea provides that, when deemed that, unless an examination of evidence is conducted in advance, there exist situations which cause any use of the relevant evidence to be

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difficult, the court may, upon motion of the parties, examine the evidence (Article 375). This procedure is called the "preservation of evidence" (Section 8 in Chapter 3 of the Civil Procedure Act of Korea), and the party may file a motion at any time necessary, either before or after filing the civil suit.

The preservation of evidence procedure is also available in the Maritime Safety Tribunals proceeding – where an investigator, a person involved in a marine accident, or an inquiry counsel deems it impracticable to admit material as evidence unless such material is preserved as evidence, and files an application for the preservation of evidence, the competent Tribunal may conduct an inspection or hear expert opinions even before a request for inquiry is filed (Article 35 of the Act on the Investigation of and Inquiry into Marine Accident).

5.2 What are the general disclosure obligations in court proceedings?

In Korean law, there is no particular process that corresponds to disclosure obligations in the common law system. Parties in court proceedings bear their respective burden of proof to submit arguments and supporting evidence. As for documentary evidence, a party can file a motion for disclosure of documents possessed by the counter-party, and the court may order the counter-party to produce documents if the court finds such a motion to be reasonable (Articles 344 and 347 of the Civil Procedure Act).

6 Procedure

6.1 Describe the typical procedure and timescale applicable to maritime claims conducted through: i) national courts (including any specialised maritime or commercial courts); ii) arbitration (including specialist arbitral bodies); and iii) mediation / alternative dispute resolution.

National Courts

There is no specialised maritime court in Korea exclusively hearing maritime cases. In a general court system, a civil action is commenced by filing a complaint with the court. Once the complaint has been submitted by the plaintiff, service of the complaint will be made on the defendant. The answer shall be filed within 30 days from the date the defendant received the complaint, or a default judgment may be rendered in favour of the plaintiff. The court generally holds two to five hearings per case at roughly one-month intervals until the court decides that the case is mature enough to render a judgment. The court generally delivers the judgment within two to four weeks from the closing of hearings. The authentic copy of the judgment is delivered to all the parties. The parties may lodge an appeal within two weeks from the delivery of the first instance court judgment. If the two-week period lapses without any final appeals being filed by the parties, judgment becomes final and conclusive. The appellate proceedings are similar to the proceedings at the court of first instance. The parties may lodge a final appeal within two weeks from the delivery of the appellate court judgment. If the two-week period lapses without any final appeals being filed by the parties, the appellate court judgment becomes final and conclusive. Unless there are special circumstances, the Supreme Court does not hold a hearing, while the parties are allowed to present and exchange written submissions only. In general, only issues of law (as opposed to issues of fact) can be adjudicated at the Supreme Court. As the Supreme Court is the court of final appeal, its judgment is confirmed and enforceable on delivery.

Arbitration

There is no arbitration board solely dedicated to maritime cases in Korea. The Korean Commercial Arbitration Board deals with general commercial matters, including maritime cases.

To commence arbitration proceedings, the Claimant must submit the Request for Arbitration. The Secretariat will notify the Respondent, who has 30 days to submit an Answer. A tribunal will be constituted by the parties or the Secretariat and the tribunal will hold hearings. Once the hearings have been concluded, an award is rendered by the tribunal. The Secretariat delivers the award to the parties, which has the same effect as a final and conclusive judgment of the court. The parties cannot appeal the arbitral awards to the court – only the setting aside of awards may be granted upon certain requirements.

Mediation

The parties may apply for mediation to the court before or after filing a complaint for the litigation proceeding. Also, the court may refer the case to mediation at its discretion, before or during the litigation process. At the mediation proceedings, a court-appointed mediator will hear the parties' positions. If the parties reach a settlement in the mediation proceedings, the record of the mediation will have the same effect as a final and conclusive judgment rendered by the court. Even when the parties fail to bridge the gap between their positions in the mediation proceedings, the mediator may issue a compulsory mediation decision if the mediator believes the case will be better resolved by mediation. The compulsory mediation decision will become final and conclusive, as long as none of the parties files an objection to the mediator's decision within two weeks. If one of the parties files an objection within two weeks, the compulsory mediation decision is void and the case will be referred to the litigation proceedings at the court.

6.2 Highlight any notable pros and cons related to your jurisdiction that any potential party should bear in mind.

Pros

The Korean dispute resolution system is one of the most efficient and digitised systems in the world. In *Doing Business* ("DB"), issued annually by the World Bank Group, Korea was ranked first in the world under the category "Enforcing Contracts" for two consecutive years (2017 and 2018). The ranking was determined by taking into consideration various factors including the time and cost of litigation, and the quality of the judicial process (including court automation and alternative dispute resolution). According to the DB index, the time required to resolve a dispute (i.e., counted from the moment the plaintiff files the lawsuit in court until payment) in Korea is 290 days, which is nearly two times shorter than the average time required for dispute resolution in the OECD high-income countries (577.8 days). The Korean E-Court system allows for electronic filing of civil, commercial, administrative and family-affairs cases. The computerisation of the Korean court system provides users with 24/7 access to registries, case information, court documents and case law.

Cons

Under the Civil Procedure Act, when a foreign national or corporation with no domicile, place of business or office in Korea files a lawsuit in a Korean court, the court, at the defendant's request, shall order the foreign national or corporation to furnish security for the court costs (Article 117(1)). The defendant may refuse to respond/participate in the court proceedings until the plaintiff provides the security for the court costs (Article 119). In the event that the plaintiff fails to comply with such an order of the

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court, the court can dismiss the case without giving the plaintiff a hearing. It may be said that such a requirement to deposit security for court costs imposes a burden on foreign entities filing suit in Korean courts; however, our understanding is that many countries have a similar system.

7 Foreign Judgments and Awards

7.1 Summarise the key provisions and applicable procedures affecting the recognition and enforcement of foreign judgments.

A final and conclusive foreign judgment will be recognised in Korea, only when the following requirements are met: (i) the international jurisdiction of such foreign court is recognised under the principle of international jurisdiction pursuant to the statutes or treaties of Korea; (ii) the defendant has been lawfully served (excluding service by public notice) with a written complaint or a document to the same effect, the notification of the date of the hearing or order, and was allowed sufficient time to defend the case, or the defendant responded to/participated in the lawsuit even without having been served such documents; (iii) recognition of such final judgment does not violate the public policy of Korea in light of the contents of such final judgment, etc. and judicial procedures; and (iv) there is a mutual guarantee, or the standards by which foreign judgments are recognised and enforced in that foreign country are not significantly different in major aspects from the standards in Korea and are not excessively onerous in comparison (Article 217(1) of the Civil Procedure Act).

In order to enforce a foreign judgment in Korea, one must obtain an "execution judgment" from a court of Korea through a separate lawsuit. Such a suit will be dismissed if the foreign judgment is not final and conclusive, or lacks the requirements enumerated in Article 217(1) of the Civil Procedure Act specified above (Article 26 and 27 of the Civil Execution Act).

7.2 Summarise the key provisions and applicable procedures affecting the recognition and enforcement of arbitration awards.

Korea is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"). Korea enforces arbitral awards issued in a New York Convention Member State, pursuant to the New York Convention (Article 39(1) of the Arbitration Act). The party seeking recognition or enforcement of a foreign arbitral award must file a separate complaint to the court for a recognition judgment or an enforcement judgment (Article 37(1) of the Arbitration Act).

With regard to arbitral awards issued from a non-contracting state of the New York Convention, the party seeking recognition or enforcement of the arbitral award must file a separate complaint to the court for a recognition judgment or an enforcement judgment, in accordance with Article 217 of the Civil Procedure Act and Articles 26 and 27 of the Civil Enforcement Act, as explained in detail in question 7.1 above.

8 Updates and Developments

8.1 Describe any other issues not considered above that may be worthy of note, together with any current trends or likely future developments that may be of interest.

There is growing consensus calling for the establishment of a specialised maritime court in Korea. In 2017, four bills purporting to establish a maritime court were proposed and put before the National Assembly. It is yet to be determined if such efforts will materialise into the actual establishment of a maritime court in the near future.

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JIPYONG's Shipping and Maritime Practice is one of Korea's leading maritime law practice groups, and the team's experience extends across the full spectrum of shipping, maritime, international trade, insurance and aviation law.

The team's capabilities and experience include: accidents at sea, including collisions, sinking, oil spillage, fires and explosions; bills of lading; cargo loss and damage; attachments and arrests; bankruptcy and rehabilitation; charterparties and contracts of affreightment; negotiation and dispute resolution; environmental and pollution issues; enforcement of maritime liens and ship mortgages; ship sale and purchase contracts; shipbuilding and ship repair contracts; international trade and commodities; P&I club defence; and general long-term insurance matters. The team handles a variety of instructions from shipowners, charterers, shipyards, cargo owners, P&I clubs and maritime insurers.

The Shipping and Maritime Team also regularly counsels major Korean and foreign air carriers in aviation matters. The team has experience in handling major air disasters involving multi-district litigations and international law. The team has been retained to defend major domestic airlines in numerous cases involving cargo and baggage claims, delays, denied boarding and turbulence.

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- Private Equity
- Product Liability
- Project Finance
- Public Investment Funds
- Public Procurement
- Real Estate
- Securitisation
- Telecoms, Media & Internet
- Trade Marks
- Vertical Agreements and Dominant Firms

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