



**DEVELOPMENT BANK OF SOLOMON ISLANDS
BILL 2018**

(NO. 7 OF 2018)





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Entitled

AN ACT TO ESTABLISH THE DEVELOPMENT BANK OF SOLOMON ISLANDS, TO REPEAL THE DEVELOPMENT BANK OF SOLOMON ISLANDS ACT (CAP. 50), AND FOR RELATED PURPOSES

ENACTED BY THE NATIONAL PARLIAMENT OF SOLOMON ISLANDS.

DEVELOPMENT BANK OF SOLOMON ISLANDS BILL 2018

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DEVELOPMENT BANK OF SOLOMON ISLANDS BILL 2018

PART 1 PRELIMINARY MATTERS

1 Short title

This Act may be cited as the *Development Bank of Solomon Islands Act 2018*.

2 Commencement

This Act commences on the day appointed by the Minister by notice in the *Gazette*.

3 Definitions

In this Act:

“appointed member” means Board member appointed under section 11(1)(b) (that is, a member other than the Chief Executive Officer);

“Bank” means the Development Bank of Solomon Islands established by section 4;

“Board” means the Board of the Bank established by section 10;

“Board member” means a member of the Board mentioned in section 11(1);

“CBSI” means the Central Bank of Solomon Islands continued in existence by section 3 of the *Central Bank of Solomon Islands Act 2012*;

“chairperson” means the chairperson of the Board appointed under section 12;

“Chief Executive Officer” means the Chief Executive Officer of the Bank appointed under section 27;

“deputy chairperson” means the deputy chairperson of the Board appointed under section 12;

“Investment Corporation” means the Investment Corporation of Solomon Islands established under section 3 of the *Investment Corporation of Solomon Islands Act* (Cap. 143);

“shareholder” means a person who holds shares in the Bank.

PART 2 ESTABLISHMENT, FUNCTIONS AND POWERS

4 Establishment of Bank

- (1) The Development Bank of Solomon Islands is established.
- (2) The Bank is a body corporate with perpetual succession.

5 Purpose of the Bank

The purpose of the Bank is to facilitate the economic and social development of Solomon Islands within the overall development plans and strategies of the Government, with particular emphasis on the following:

- (a) the participation of Solomon Islanders in economic development;
- (b) rural development;
- (c) stimulating processing and industrial activities that may strengthen the economic independence of Solomon Islands;
- (d) assisting industries that are new to Solomon Islands;
- (e) promoting export and import substitution activities that encourage external trade;
- (f) encouraging modernisation and the use of technology in business.

6 Functions of the Bank

The Bank has the following functions:

- (a) to provide assistance to new and existing enterprises (including individuals, partnerships, co-operatives and companies) by making loans;

- (b) to assist in the promotion, establishment, maintenance or development of any industry;
- (c) any other functions conferred on it by this or any other Act.

7 Powers of the Bank

- (1) The Bank has power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.
- (2) Without limiting subsection (1), the Bank may do any of the following:
 - (a) acquire, hold and dispose of securities;
 - (b) underwrite the issue of securities;
 - (c) acquire and dispose of property;
 - (d) draw, accept, endorse or discount bills of exchange;
 - (e) make land, premises, machinery, plant, equipment and materials available for use by other persons;
 - (f) provide services to enterprises and industries in relation to finance, management and administration;
 - (g) accept deposits.

8 Operating principle

In exercising its powers and performing its functions, the Bank is to be guided by accepted banking principles and aim to be commercially viable.

9 Directions by Minister

- (1) The Minister, after consulting the Board and CBSI, may give the Board policy directions of a general nature in relation to the performance of the functions of the Bank.
- (2) A direction of the Minister must be:
 - (a) consistent with this Act; and
 - (b) consistent with the Government's development strategies and

plans; and

- (c) accompanied by a comprehensive written justification for the direction.
- (3) Without limiting subsection (1), the Minister may give the Board directions about the sectors or types of enterprise that the Bank should target in its activities.
- (4) To avoid doubt, the Minister must not make directions in relation to the approval of specific loans.

PART 3 BOARD AND STAFF

Division 1 Board

10 Powers and functions

- (1) The Board of the Bank is established as its governing body.
- (2) The Board is responsible for ensuring that powers and functions of the Bank are exercised and performed in an efficient and effective manner, and in accordance with this Act.
- (3) Anything done by or with the authority of the Board is taken to have been done by the Bank.

11 Membership

- (1) The Board consists of the following members:
 - (a) the Chief Executive Officer;
 - (b) 8 other members appointed by the Minister by *Gazette* notice.
- (2) The Minister must appoint each appointed member in accordance with the nomination of a nominating committee consisting of 3 members appointed by the Minister acting on the advice of the Board.
- (3) Before nominating a person for membership, the nominating committee must call for applications for membership by publishing an advertisement in a newspaper circulating throughout Solomon

Islands (and in any other way considered desirable).

(4) After considering the applications received, the nominating committee may nominate a person for membership if the person meets the following eligibility criteria:

- (a) the committee is satisfied that the person:
 - (i) is a person of high integrity and is capable of exercising diligence, sound judgment, confidentiality and impartiality in the performance of their functions; and
 - (ii) has significant knowledge and experience relevant to the operations of the Bank; and
 - (iii) has the physical and mental capacity to perform his or her functions as a Board member;
- (b) the person is not any of the following:
 - (i) a staff member of the Bank;
 - (ii) a director, company secretary or executive officer of a body corporate supervised by CBSI;
 - (iii) a member of Parliament;
 - (iv) a person with an outstanding loan with the Bank or who is a director, executive officer or shareholder of a body corporate that has an outstanding loan with the Bank;
 - (v) an undischarged bankrupt in Solomon Islands or elsewhere;
 - (vi) a person convicted:
 - (A) in Solomon Islands, of an offence carrying a potential penalty of at least 6 months imprisonment; or
 - (B) elsewhere, of an offence that would be an offence carrying a potential penalty of at least 6 months imprisonment if committed in Solomon Islands;
 - (vii) disqualified, in Solomon Islands or elsewhere, from acting

as a director or executive officer of a body corporate.

12 Chairperson and deputy chairperson

- (1) The Minister must appoint, from among the appointed members, a chairperson and a deputy chairperson of the Board.
- (2) To avoid doubt, the Chief Executive Officer is not eligible for appointment as the chairperson or deputy chairperson.

13 Term of office

- (1) An appointed member holds office for 3 years.
- (2) A person may be re-appointed for a further single term of up to 3 years, but the procedure for appointment specified in section 11 must be complied with before the person is re-appointed.

14 Vacation of office

- (1) A person who is an appointed member ceases to be a member if:
 - (a) the person resigns by giving written notice to the Minister; or
 - (b) the person's term of office comes to an end and the person is not reappointed; or
 - (c) the person ceases to be eligible for appointment under section 11(4)(b); or
 - (d) the person applies for a loan from the Bank; or
 - (e) the person's appointment is terminated under section 15.
- (2) The exercise of a power or the performance of a function by the Board is not affected only by a vacancy in its membership.

15 Termination of appointment

- (1) The Minister may terminate the appointment of a person who is an appointed member:
 - (a) on the ground of misbehaviour or misconduct; or

- (b) on the ground of physical or mental incapacity to satisfactorily perform the duties of the office; or
 - (c) if the Minister is satisfied the person has failed to comply with section 24; or
 - (d) if the person is absent from 3 consecutive meetings of the Board without leave granted by either the chairperson or the Board.
- (2) A termination of appointment must be made by *Gazette* notice.

16 Remuneration

A Board member is entitled to remuneration and allowances determined by the Minister.

17 Procedures

Subject to this Act, the Board may determine its own procedures.

18 Secretary

There is to be a Secretary to the Board, who is a staff member of the Bank.

19 Meetings

The chairperson may convene a meeting of the Board at any time, but must convene a meeting:

- (a) at least 6 times each year; and
- (b) if at least 4 Board members request a meeting in writing.

20 Quorum at meetings

The quorum for a meeting of the Board is 5 Board members.

21 Presiding member at meetings

A meeting of the Board must be presided over by:

- (a) the chairperson; or

- (b) in the absence of the chairperson, the deputy chairperson; or
- (c) in the absence of the chairperson and the deputy chairperson, another member elected by the members present.

22 Decisions of the Board

- (1) A decision at a meeting of the Board is determined by the majority vote of Board members present and voting.
- (2) If there is an equality of votes, the member presiding at the meeting has a casting vote.
- (3) The Board may also make a decision without holding a meeting, by written resolution.
- (4) A written resolution made without holding a meeting must be recorded in the minutes of the next meeting.

23 Minutes of meetings

The Secretary must keep accurate and detailed minutes of Board meetings, including reasons for all decisions.

24 Disclosure of interest in matter being considered

- (1) A Board member has a personal interest in a matter if the member:
 - (a) has a direct or indirect financial interest in the matter; or
 - (b) has a personal, professional, commercial or other relationship with a person and the nature of the relationship is likely to, or may reasonably be regarded as likely to, inhibit or prevent the member from exercising independent judgment about the matter.
- (2) A Board member who has a personal interest in a matter being considered or about to be considered by the Board must disclose the following to the other members as soon as practicable after the relevant facts come to the member's knowledge:
 - (a) the nature and extent of the interest;
 - (b) how the interest relates to the matter being considered, or about to be considered, by the Board.

- (3) If the relevant facts come to the member's knowledge at a time when the Board is not meeting, the member must:
 - (a) make the disclosure by written notice to each other member;
and
 - (b) table a copy of the notice at the next meeting of the Board.
- (4) The disclosure must be recorded in the minutes of the meeting at which, or before which, the disclosure is made.
- (5) The member need not disclose an interest if the interest is an interest shared with the public generally or a section of the public.
- (6) If a Board member has a personal interest in a matter that is required to be disclosed:
 - (a) the member must not take part in any deliberation or decision of the Board about the matter; and
 - (b) if the member fails to disclose the interest, the member's vote on the matter is invalid.

Division 2 Staff

25 Staff of the Bank

The staff of the Bank consists of:

- (a) the Chief Executive Officer; and
- (b) the other staff appointed under section 29.

26 Status of staff

The staff of the Bank are not public officers but are employees of the Bank.

27 Chief Executive Officer – powers, functions and appointment

- (1) The Chief Executive Officer of the Bank has the following powers and functions:
 - (a) to manage the Bank on a day to day basis;

- (b) the other powers and functions conferred on him or her by this or any other Act.
- (2) The Chief Executive Officer is appointed by, responsible to, and subject to the directions of, the Board.
 - (3) Before appointing a person to be Chief Executive Officer, the Board must call for applications for the position by publishing an advertisement in a newspaper circulating throughout Solomon Islands (and in any other way considered desirable).
 - (4) After considering the applications received, the Board may appoint a person if the person meets the following eligibility criteria:
 - (a) the person:
 - (i) is a person of high integrity and is capable of exercising diligence, sound judgment, confidentiality and impartiality in the performance of their functions; and
 - (ii) has significant knowledge and experience relevant to the operations of the Bank; and
 - (iii) has the physical and mental capacity to perform his or her functions as Chief Executive Officer; and
 - (iv) subject to subsection (7), is under the age of 60;
 - (b) the person is not any of the following:
 - (i) a director, company secretary or executive officer of a body corporate supervised by CBSI;
 - (ii) a person with an outstanding loan with the Bank or who is a director, executive officer or shareholder of a body corporate that has an outstanding loan with the Bank;
 - (iii) an undischarged bankrupt in Solomon Islands or elsewhere;
 - (iv) a person convicted:
 - (A) in Solomon Islands, of an offence carrying a potential penalty of at least 6 months imprisonment;

or

(B) elsewhere, of an offence that would be an offence carrying a potential penalty of at least 6 months imprisonment if committed in Solomon Islands.

- (5) The Chief Executive Officer:
- (a) holds office for the term of up to 3 years specified in the instrument of appointment; and
 - (b) is eligible for re-appointment for up to 2 further terms, provided the procedure for appointment specified in subsections (3) and (4) is complied with.
- (6) The Chief Executive Officer's term of office must not extend beyond the date on which he or she will turn 60.
- (7) However, the Board may decide to re-appoint a person as Chief Executive Officer whose term has expired because the person has turned 60, if the Board is satisfied that the person continues to be capable of performing his or her functions effectively.

28 Chief Executive Officer – termination

- (1) The person appointed to be Chief Executive Officer ceases to hold office if:
- (a) the person resigns by giving written notice to the Board; or
 - (b) the person's term of office comes to an end and the person is not reappointed; or
 - (c) the person ceases to be eligible for appointment under section 27(4)(b); or
 - (d) the person applies for a loan from the Bank; or
 - (e) the person's appointment is terminated under subsection (2).
- (2) The Board may terminate the appointment of the Chief Executive Officer:
- (a) on the ground of misbehaviour or misconduct; or

- (b) on the ground of physical or mental incapacity to satisfactorily perform the duties of the office.

29 Other staff

- (1) The Chief Executive Officer may appoint the staff the Chief Executive Officer considers necessary for the Bank to effectively perform its functions.
- (2) The recruitment of staff must be by way of open competition and a transparent process.
- (3) The terms and conditions of employment for staff are determined by the Board.

PART 4 FINANCIAL MATTERS

30 Authorised share capital

The authorised share capital of the Bank is \$100 million, divided into 100 million shares of \$1 each.

31 Increase in share capital

- (1) The Board may increase the share capital of the Bank with the approval:
 - (a) by ordinary resolution, of the shareholders; and
 - (b) of the Minister.
- (2) The Board must publish details of any increase in the Gazette.

32 Allotment and transfer of shares

- (1) Subject to subsection (2), the Board may allot share capital of the Bank to any person with the approval of the Minister, which must be given on the recommendation of the Board.
- (2) The Investment Corporation:
 - (a) is the shareholder on behalf of the Government; and
 - (b) must be allotted the part of the share capital the Minister directs,

which must be at least 51%; and

(c) must at all times hold at least 51% of the share capital.

33 Limited liability of shareholders

The liability of shareholders is limited to the amount, if any, unpaid on shares held by them.

34 Rules and regulations relating to shares and shareholders

- (1) The Board may make rules under section 46 in relation to the following matters:
 - (a) the way shares are allotted and issued;
 - (b) the transfer or transmission of shares;
 - (c) the manner and time of payment for shares, calls on shares, the maintenance of a register of holders of shares and the legal effect of entries in the register or of the non-inclusion of any matter in the register;
 - (d) the rights of the Bank in relation to shares (including the circumstances in which the Bank may have a lien on shares) and the forfeiture of shares;
 - (e) the declaration and payment of dividends.
- (2) Rules providing for the matters mentioned in subsection (1) bind the Bank and shareholders to the same extent as if they had been signed by each shareholder, and contained covenants on the part of each shareholder to observe the rules.
- (3) The Minister may make regulations under section 45 prescribing requirements for holding, and procedures for, meetings of shareholders.

35 Funds of the Bank

The funds of the Bank consist of the following:

- (a) the share capital of the Bank;
- (b) amounts payable to the Bank by way of prescribed fees and

interest;

- (c) proceeds from the disposal of the Bank's property;
- (d) proceeds of investments made by the Bank;
- (e) amounts received by way of grant.

36 Raising loans

- (1) The Bank may raise loans and issue long-term securities for the purpose of carrying out its functions, subject to any limitations and conditions approved by the Minister.
- (2) The Bank may borrow, by way of overdraft or a short-term loan, an amount (not exceeding the amount approved by the Minister) that the Bank requires temporarily to meet its obligations.
- (3) The Bank may secure the repayment of a loan raised or amount borrowed, and any related interest, by mortgage, debenture or other charge on the assets of the Bank.
- (4) Subject to any other law relating to the giving of guarantees:
 - (a) the Minister may, on behalf of the Government, guarantee the payment of a loan raised or amount borrowed and any related interest; and
 - (b) any amount required to fulfil the guarantee is a charge on the Consolidated Fund.

37 Investments

The Bank may:

- (a) invest money not immediately required to meet its obligations on the terms and conditions approved by the Minister; and
- (b) after consulting the Minister, realise an investment.

38 Bank accounts

The Bank may maintain the bank accounts, in Solomon Islands or elsewhere, that it requires, and all money received by the Bank must be paid into the accounts.

39 Estimates of annual income and expenditure

- (1) The Board must, at least 2 months before the start of each financial year, prepare estimates of the income and expenditure, including capital expenditure, of the Bank for that year.
- (2) The Board must, as soon as practicable, give the Minister a copy of the estimates.

40 Accounts and audits

- (1) The Bank must:
 - (a) keep proper accounts and records of all its transactions; and
 - (b) must prepare for each financial year a statement of account in accordance with generally accepted accounting principles and practices and in a form approved by the Auditor-General.
- (2) The accounts and statement of accounts of the Bank for each financial year must be audited by a person appointed by the Board with the approval of the Auditor-General.
- (3) As soon as practicable after the accounts and statement of accounts for each financial year have been audited, the Board must give the Minister a copy of the statement of account and a copy of the auditor's report.
- (4) The Minister must table a copy of the statement and report at the next sitting of Parliament after receiving it.
- (5) The Minister may, after consulting CBSI, direct that a special audit of the Bank's accounts be conducted by a specified auditor at any time.

41 Tax exemption

The income and revenue of the Bank is not subject to taxation under any law of Solomon Islands.

PART 5 MISCELLANEOUS MATTERS

42 Annual Report

- (1) The Board must, within 3 months after the end of each financial year, prepare and give to the Minister a report on the operations of the Bank during the previous financial year.
- (2) The report must include each direction made by the Minister under section 9.
- (3) The Minister must table a copy of the report at the next sitting of Parliament after the Minister receives it.

43 Confidentiality of information

- (1) A person commits an offence if the person:
 - (a) obtains information while exercising a power or performing a function as any of the following:
 - (i) a Board member;
 - (ii) the Chief Executive Officer;
 - (iii) a staff member of the Bank; and
 - (b) engages in conduct that results in the disclosure of the information to a person other than a person mentioned in paragraph (a).

Maximum penalty: 50,000 penalty units or imprisonment for 5 years, or both.

- (2) Subsection (1) does not apply if the person discloses the information:
 - (a) for the exercise of the person's powers or the performance of the person's functions; or
 - (b) for the administration of this Act; or
 - (c) for legal proceedings arising out of the operation of this Act; or
 - (d) with the consent of the person to whom the information relates.

44 Protection from liability

A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as:

- (a) a Board member; or
- (b) the Chief Executive Officer; or
- (c) a staff member of the Bank.

45 Regulations

- (1) The Minister may make regulations under this Act.
- (2) The Board, having consulted CBSI, may make recommendations to the Minister about the regulations it considers necessary or desirable to regulate its operations.
- (3) The Minister must not make regulations about matters in relation to which the Board has power to make rules under section 46.

46 Rules

- (1) The Board, having consulted the Minister, may make rules prescribing:
 - (a) the form and manner of applications to the Bank for loans, guarantees or other assistance; and
 - (b) any fees to be paid in connection with such an application; and
 - (c) the interest payable on loans made by the Bank;
 - (d) the form and matter in which the receipt of money from the Bank must be acknowledged; and
 - (e) the form and the terms and conditions of instruments securing or evidencing loans made by the Bank; and
 - (f) the procedures to be followed by the Bank in exercising a power of sale; and
 - (g) the way in which documents must be given to the Bank; and

- (h) matters relating to good governance and ethical conduct; and
 - (i) anything else required or permitted to be prescribed by rules under this Act.
- (2) Rules made by the Board are not subsidiary legislation for the purpose of the *Interpretation and General Provisions Act* (Cap. 85).

PART 6 REPEALS, CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL MATTERS

Division 1 Repeals and consequential amendments

47 Repeal of Act

The *Development Bank of Solomon Islands Act* (Cap. 50) is repealed.

48 Amendment of Financial Institutions Act 1998

- (1) Section 34(2) of the *Financial Institutions Act 1998* is amended by deleting “Development Bank of Solomon Islands,”.
- (2) Section 34 of the Act is amended by inserting the following new subsection after subsection (2):
- “(3) This Act applies (to the extent possible) to the Development Bank of Solomon Islands as if it were a licensed financial institution.”

Division 2 Transitional matters

49 Interim Board members

- (1) Despite sections 11, 12 and 13, for a period of 6 months after this Act commences, the Board consists of the following members (the “*interim Board members*”):
 - (a) the Permanent Secretary of the Ministry responsible for finance, as chairperson;
 - (b) the Permanent Secretary of the Ministry responsible for development planning and aid coordination;

- (c) the Permanent Secretary of the Ministry responsible for commerce;
 - (d) 5 other persons appointed by the Minister.
- (2) During their term of office, the interim Board members:
- (a) have all the powers and functions of Board members under this Act; and
 - (b) must appoint the first Chief Executive Officer of the Bank.

DEVELOPMENT BANK OF SOLOMON ISLANDS BILL 2018

OBJECTS AND REASONS

The object of this Bill is to establish the Development Bank of Solomon Islands, to replace the Development Bank of Solomon Islands. The principal objective of the reform is to develop a legal regime that is in conformity with good governance and banking international best practices, provides transparency and accountability over directions made by the Minister and provides a framework for the general operations of the Bank that is relevant to the country context.

The Bill repeals the *Development Bank of Solomon Islands Act* (Cap. 50). This legislation did not effectively regulate the operations of that Bank. It did not fully support and enforce the evolving good governance practices in banks, and the Minister's power to interfere with the operations of the Bank was too broad. The Bill provides an effective governance platform for the prudent running of the new Bank, including by ensuring transparency and robustness in the selection of Board members and the executive management of the Bank. It also limits the Minister's power to give directions, and requires all such directions to be reported to Parliament.

The Bill provides a strong framework for a Bank that will facilitate the economic development and independence of Solomon Islands.

HON. MANASSEH SOGAVARE
MINISTER FOR FINANCE AND TREASURY

DEVELOPMENT BANK OF SOLOMON ISLANDS BILL 2018

EXPLANATORY MEMORANDUM

PART 1 provides for preliminary matters such as the short title of the Act, the commencement date and definitions.

PART 2 establishes the new Development Bank of Solomon Islands and provides for its functions and powers. The Bank is established for the purpose of facilitating the economic and social development of Solomon Islands, with an emphasis on rural development, new industries, modernisation, and economic independence. The Bank has all the powers of a body corporate. The Minister is able to give the Bank policy directions of a general nature in accordance with the Government's development strategies, such as directions in relation to the industries the Bank should target in its lending activities.

PART 3 deals with the governance and staffing of the Bank.

Division 1 establishes a Board consisting of the Chief Executive Officer of the Bank and 8 other appointed members. The Minister has the power of appointment but this power must be exercised in accordance with nominations made by a nominating committee. The nominating committee is required to advertise vacancies in Board membership, and can only nominate a person for appointment if they meet specified eligibility criteria. The Division also establishes the basic procedures of the Board, and requirements for disclosure of interests. The Board is empowered to determine the remainder of its procedures.

Division 2 deals with arrangements for staffing the Bank. The Bank has its own staff, appointed by the Chief Executive Officer. The Chief Executive Officer is appointed by, and reports to the Board, and is also a member of the Board. The Board is required to advertise the position before appointing a person, and can only appoint a person if they meet specified eligibility criteria. Other staff must also be recruited by way of open competition.

PART 4 provides for matters relating to the finances of the Bank. The initial share capital of the Bank is \$100 million, of which 51% must be held at all times by the Investment Corporation of Solomon Islands on behalf of the government. The Bank receives interest on loans and fees associated with loan applications. It is able to take out loans itself and make investments. The Board is required to provide the Minister with estimates of its income and expenditure for each financial year, and keep accounts which must be audited each year. The

auditor's report is required to be tabled in Parliament. The Minister also has the power to order an audit at any time.

PART 5 deals with miscellaneous matters such as annual reporting requirements, confidentiality requirements, regulations and rules. The Board is empowered to make rules prescribing fees and procedural matters, and the Minister is empowered to make regulations in relation to other matters.

PART 6 includes repeals, consequential amendments and transitional matters.

Division 1 repeals the *Development Bank of Solomon Islands Act (Cap. 50)*. It also makes a consequential amendment to the *Financial Institutions Act 1998* so that the Act applies to the Bank, and the Central Bank has prudential authority over the Bank.

Division 2 provides for the membership of the Board for an interim period of 6 months after the new Act commences. The interim Board has all the powers of the normal Board, but is specifically required to appoint the first Chief Executive Officer, in order to ensure the Bank has the management structure in place to begin operations.

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