

LEGAL ASPECTS OF CONTRACT FARMING UNDER
THE THAI CONTRACT FARMING PROMOTION
AND DEVELOPMENT ACT B.E. 2560 (2017) *

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Abstract

This article aims for a solution to prevent unfair practices in a contract farming agreement under the Contract Farming Promotion and Development Act B.E. 2560 (2017) which is the first specific law on contract farming in Thailand. This law was implemented to build fair deals in good faith for contract farming between the agricultural business and farmers. Along with the study of a legal framework on the current agricultural law in Thailand, the author will look at laws of the United States and the United Kingdom which are more protective of the farmer's side of agricultural agreements.

Contract farming is an important part of the economy in many countries. In Thailand, it began in 1987 with no specific legislation to support and enforce the agreements. The laws related to contract farming

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were the Thai Civil and Commercial Code under section 587 hire of work,¹ the Unfair Contract Terms Act,² and the Regulations of the Ministry of Agriculture and Cooperatives.

This article argues that the Contract Farming Promotion and Development Act B.E. 2560 (2017) still needs improvement to prevent unfair agriculture agreements between the parties. There is no standard framework or formulation to limit and regulate the contractual outline. The current act and the diversity and complexity of the agricultural production contracts leads to the situation in which agricultural business operators could exploit farmers.

Keywords: Contract Farming, Agricultural Business Operator, Farmer, Agricultural

¹ Pathaichit Eagjariyakorn, Kham Athibai Chang Raengngan Chang Tham Khong Rap Khon [Hire of services Hire of work Carriage] (9th edn, Winyuchon 2009) (ไพฑูริต์ เอกจริยกร, คำอธิบายจ้างแรงงาน จ้างทำของ รับขน (พิมพ์ครั้งที่ 9, วิญญูชน 2552)).

² Unfair Contract Terms Act, B.E. 2540 (1997).

1. Introduction

1.1 General aspects of the contract farming

The nature of agriculture has changed significantly over the last decades. Contract farming got more popular but it needs fairer agreements between agricultural business operators and farmers. Those agreements regulate the terms of promotion and production factors such as animal species, seeds, food, fertilizer, drugs, and chemical substances, as well as interdictions or restrictions regarding the purchase price yield or purchase guarantee under current conditions. As it stands, farmers entering into contract farming often face unfair conditions due to a framework that allows exploitation by agricultural business operators.

The government enacted the specific law of contract farming to promote and develop agriculture on 23 September 2017, namely the Contract Farming Promotion and Development Act B.E. 2560 (2017). The Act is a good start in solving problems. However it alone is not enough to solve all the issues. Contract farming with large private companies such as Charoen Pokphand (CP)³ has to ensure that the farmers get a fair income. In this article, the author aims to develop a legal framework that effectively improves the quality of life of farmers since there are a lot of farmers who are caught up in debt and poverty.⁴ Farmers are more likely to take the risks from external factors that are out of their control such as natural disasters and epidemics which prevent them from delivering the goods defined by the contract.

³ Charoen Pokphand Foods, 'Response to the Myth of Contract Farming' (A Means for Job Security and Sustainability for Thai Farmers, 07 April 2015) <<https://www.cpfworldwide.com/en/media-center>> accessed 10 December 2021.

⁴ Somporn Isvilanonda, Kan Nam Khwamru Dan Setthasat Kasettakon Ma Wikhro Panha Kasettakon Thai Warasan Setthasat Kaset Mahawiththayalai Kasetsat (2550) [Applying Knowledge of Agricultural Economics to Analyze Problems of Thai Farmers] (2550) (สมพร อิศวิลานนท์, การนำความรู้ด้านเศรษฐศาสตร์เกษตรกรรมมาวิเคราะห์ปัญหาเกษตรกรไทย วารสารเศรษฐศาสตร์เกษตร มหาวิทยาลัยเกษตรศาสตร์ (2550)).

1.2 Background and issues

Contract farming is a system for agricultural production to operate under an agreement between the agricultural business operator and the farmer. It sets the conditions on the production and marketing of the commodity under the agreement by predetermining the price and the quality expected. The arrangement also invariably involves the purchase and the provision of a degree of production support. For example, the agricultural business operator will supply intellectual inputs and provides technical advice to the farmers. The basis of such an agreement is a commitment on the farmer's part to provide a specific commodity in specified quantities and quality.

The current problem in contract framing concerns inequality between the parties. The distribution of risks, the share of benefits, and bargaining power are often unequal per definition at the expense of the farmers. This is leading more and more to an unhealthy acceptance of unfair terms and conditions in the industry. It becomes even more critical when external factors like droughts or sicknesses prevent the fulfilment of the contracted requirements which can create massive economic backlashes that jeopardize the farmer's business.

2. General concepts underlying contract farming

2.1 The role of contract farming

Agriculture has been the economic base of Thailand for a long time. Contract farming has been implemented and promoted to help develop the agricultural sector and mitigate fluctuation in market prices and income for farmers. Thailand is an agricultural country with very successful commodity products. Agricultural cultivation of plants and other products is the foundation of many people's lives.

2.2 The history of the agricultural agreement

The agricultural agreement first appeared in the ancient Greek⁵ era, commonly observed in the form of paying rent or debt according to a portion of the defined output of the agreed crop. In China it has been recorded since the first century. In the United States, in the late nineteenth century contract farming was introduced in the form of paying land rental with crops produced on land. The contract-bound farming activity with the owner of this land developed from the feudal system in the first half of the twentieth century making the agreement with farmers started in the colonial country. Agricultural agreements are often proposed by public and private sectors to assist farmers in earning and increasing economic returns and helping farmers reach their capital sources.⁶

2.3 The development of contract farming

The unfair risk distribution between the parties and the inequality in sharing the benefits and law enforcement have led to a situation where big companies have more power than farmers who are being handicapped under the contract. The main negotiating power is with the agribusiness operator. A farmer must agree on things that are not totally in his control, such as the outcome of the product, and the risks are on the farmer's side. Drought, sickness, flood, earthquake, or electric blackout can prevent the farmer from fulfilling the contract.

The contract frequently predetermines a price and quality including a delivery schedule. The arrangement also invariably involves the purchase in providing a degree of production support. For example, the agricultural business operator will supply inputs and provide technical advice to the farmers. The basis of such agreement is a commitment of the farmers to

⁵ Signe Isager and Jens Erik Skydsgaard, *Ancient Greek Agriculture* (1st edn, London and New York Press 1992) 248.

⁶ Erkan Rehber, 'Contract Farming in Practice: An Overview' (2007) <<https://ideas.repec.org/p/ags/ucozrr/290069.html>> accessed 07 June 2022.

deliver a defined number of products following the company's needs and quality standards.

2.4 Advantages and disadvantages of contract farming

Contract Farming has not only possible benefits for both agricultural business operators and farmers but also serious problems. The advantages of contract farming are varied. For instance, farmers have a more productive sale, and the raw materials can be fed into the production process with a guaranteed price. Farmers receive knowledge from the agricultural business operators to reduce production costs. The agricultural business operator's supply of raw materials and inputs may include financial support. It increases the efficiency of sharing from the company because of the raw materials cost control can be predicted by the marketing plan. The company also minimises costs because of the large production scale. The products meet the standards set by the agricultural business operators and meet the needs of the market. Also the consumers benefits from higher product quality and lower prices.

On the other hand, the investments per farm are quite high compared to the upcoming revenue which returns take many years. The contract farming agreement often penalizes farmers in term of return, risk, and fairness. Due to the high risk, farmers are also more vulnerable to loss of productivity including operating expenses such as electricity bill, fertilizer, and etc. Also, the agreement does not clearly calculate the revenue from the production. Hence, farmers cannot predict the exact profit from the investment.

3. Contract farming concepts in foreign countries

Agricultural law refers to the law that deals with agricultural infrastructure. It pertains to agricultural production, marketing, and distribution, the aims of which are to ensure the efficient production and distribution of foods and fibers. Since the industry is so broad in the scope, the laws and regulations in this area of law are extremely complex.

Agricultural law often overlaps with other laws such as labor laws, environmental laws and commercial laws.

3.1 The United States of America

The legislation in the United States is divided into two levels, the law of the federation which is applicable throughout the country (Federal Laws) and the laws of the state which are applicable within the state itself (State Laws). The tenth amendment is the basis for states being able to enact their agricultural laws if those laws are not in contravention with federal laws and regulations.

The following laws and acts are considered as the main regulations overseen by the United States Department of Agriculture (USDA): The Packers and Stockyards Act 1921 (P&S Act)⁷ and the Iowa Model Producer Protection Act.⁸

The P&S Act have determined that the Grain Inspection, Packers and Stockyards Administration (GIPSA) is the main unit of authority to issue regulatory requirements and to oversee the benefits of the farmer. The P&S Act defines a rigorous method of administrative remedies to ensure that the farmers will receive payment for poultry and poultry yields when delivered. The payment guarantee fund by GIPSA will take the money from the insurance fund if the Ministry of Agriculture has received a complaint from the farmer who has not received the remuneration from the company within the time required. Concerning the poultry, the merchant has placed a legitimate trust with GIPSA, which has the effect that the company's assets shall not be applied to any transaction until the farmer receives a full repayment. This protects the farmer when the company cannot settle all debts or later files for bankruptcy. The US way of enforcement is the

⁷ Packers and Stockyards Act 1921, United States Department of Agriculture (15 August 1921) 7 US Code § 181-229.

⁸ Producer Protection Act 2000, Section 4a – also e.g., in Minnesota Act section 17.91(2)

application of Statutory Trust.⁹ The trust is used with a poultry merchant company with an annual turnover or an annual average turnover of not less than 100,000 USD unless the Ministry of Agriculture has reason to believe that the company is unlikely to pay compensation or cannot pay the remuneration to the farmers on the schedule stated in the contract. The local courts can be requested to prohibit the company's operation as "poultry merchant" according to the definition of the P&S Act until the end of the settlement.

3.2 The United Kingdom

Contract farming has been utilized in the United Kingdom (UK) to respond to landowners who want to have several tenants under the Agricultural Property Act.¹⁰ Contract farming agreements use the terms landowners and agricultural tenants and besides standard rental conditions, define the required farmer's skills and equipment. The terms of contract farming may be used loosely in flexible agreements.

The UK has a land registration system since 1862. In 1925, the intention was that all lands should be registered at the land registry and registration would be the only way to prove land ownership. Land registration lists confirm the ownership and also provides details of the rights of the administrator and the liabilities attached to the land. Those who want to receive land or land rights will conduct a detailed examination of the land registration. The agricultural lease agreement is subject to two separate legal systems, depending on whether it has been leased before or after 1995. A lease received before 12 July 1984 has the right to inherit, which may result in a farmers Model per holding on Land Registration Act, 1925.¹¹

⁹ 7 US Code § 202 (a).

¹⁰ Agricultural Property Act 1947, 10 & 11 GEO.6. CH48.

¹¹ Land Registration Act 1925, 15 GEO. 5. CH21.

Contract farming is a joint venture between landowners and farmers (contractors). Both parties maintain a business identity and trade for tax and VAT benefit purposes. Contract farming defines the duties of landowners and farmers, including revenue sharing and expenses.¹² Each party has different investment factors, sharing of costs of various inputs and surpluses. The contract farming agreements (CFAs) are mostly used on the farmland, but it can also work for milk and some other livestock companies.¹³

The main benefit of contract farming in the UK is that the farmer can save physical farm work and working capital for labor and equipment. The agreement is also attractive to a new jointer who wants to invest in farmland. Besides, the agreement could generate higher and more stable income than in-hand farming as a farmer benefits from the contractor's lower labor and machinery costs and experience. The contractor's farms have more land without the requirement to buy it and enter a tenancy agreement which require both higher levels of work and long-term capital, including risks. The farmers' overall return under a CFA can be comparable to or better than one under an in-hand farming operation as significant capital is released from investment in machinery and others. A contractor's costs are invariable and less than the farms existing overheads due to economy of scales.¹⁴

¹² Richard Means, 'Strutt & Parker Contract Farming Agreement' (13 June 2018) <<https://farming.co.uk/news/strutt-parker-contract-farming-agreement-survey---latest-results-revealed-at-cereals-2018>> accessed 10 December 2021.

¹³ Charlotte Cunningham, 'Contract Farming Agreements Could Pay Different Rates for Different Crops' (Crop Production Magazine, 10 June 2020) <<https://www.cpm-magazine.co.uk/2020/06/10/contract-farming-agreements-could-pay-different-rates-for-different-crops>> accessed 11 December 2021.

¹⁴ GOV UK, 'Future Farming: Overview How Farming Is Changing' (23 June 2021) <<https://defrafarming.blog.gov.uk/2021/06/23/how-farming-is-changing>> accessed 11 December 2021.

4. Regulations of contract farming under Thai laws

Thailand has no specific law to enforce contract farming in the agricultural system. The general law is the Civil and Commercial Code (CCC) in the case of agriculture agreements. This is due to an agreement in the agricultural system which is assembled from the labor contract, hire contract and trading contracts. It is complex and difficult to analyse the value and cost of producing agricultural products or services. As a result, minor farmers have less bargaining power in contracting than agricultural business operators, who use contract templates to their advantage. This results in a risk of farmers complying with the conditions specified in the contract, like full responsibility for uncontrollable conditions such as weather. Therefore, it is necessary to amend the Contract Farming Promotion and Development Act B.E. 2560 (2017) to ensure equality for all parties.

4.1 The Contract Farming Promotion and Development Act B.E. 2560 (2017)

The Contract Farming Promotion and Development Act B.E. 2560 (2017) aims to promote and develop a fair agreement by focusing on protecting farmers who are less versed in entering a contract farming agreement with agricultural business operators. The act was created to ensure fairness between the contracting parties and to help to cooperate and develop the production potential, resulting in the development of income and the knowledge of the essential technology. If the parties entered a farming contract before the effective date of this law (23 September 2017), the act will not be applicable. Specific rules and ways of mediations or dispute resolutions are specifically contracted but must comply with the regulations of the Contract Farming Promotion and Development Act.

In contract farming by placing the rules and measures to govern the contracting process, the agricultural business operators are committed to drafting the contract and providing the documents to the farmers in

advance. The contracts define an agricultural system of manufacturing, production, and services, that agricultural business operators and farmers have to agree.

4.1.1 Definition of contract farming

Contract farming refers to a system of production of agricultural products or services arising from contracts to produce agricultural products or services of the same type between one agricultural business operator and ten or more natural persons who do agriculture or with agricultural cooperatives or farmers groups. According to cooperative law or community enterprises or community organization networks under the law on promotion of community enterprises, in which the other agricultural occupation has conditions for production, sale or employment of agricultural products or services, farmers agree to sell or contract to produce agricultural products. This goes under the quantity, quality, price or period specified and the agribusiness operator agrees to purchase such products or pay the compensation as specified in the contract by the agricultural business operator participating in the process products such as determining methods of production breeding or production factors for farmers.

If a contract is required to produce agricultural products or services between the agricultural business operator and natural persons who are less than ten, but not less than two, the agricultural system must be adopted under this Act¹⁵ to enact a royal decree.

4.1.2 The setup of a committee

The committee for the Contract Farming Promotion and Development Act B.E. 2560 (2017), which has the primary responsibility of overseeing and enforcing this law, considers that due to the composition of

¹⁵ Contract Farming Promotion and Development Act 2017, Section 4, Government Gazette, 26 May 2017.

the legal committee, it usually focuses on government agencies, private sector and agriculture but it seems that the proportion is not balanced as it should be. It is a weakness of the committees not having members from the farmer side.

4.1.3 The registration of the agricultural business operator

In the past, problems from the traditional concept of contract farming were created since each party must be cautious in preserving their interests. The law system or other sectors cannot interfere with the business which leads to a problem with monopolies. The registration has changed its original frame. Duties of the agribusinesses operator in any area can now be determined so that all farmers can work under the law and can be tracked and monitored. This method will help to count the number of counterparts in the system which will make it easier to help farmers in the system. By defining contract standards, the agribusinesses operator often poses a risk to farmers through contract terms such as requiring farmers to invest in everything or force them to purchase materials where the company also has the same power to set prices. Some issues can also arise from the location. The agribusinesses operator is not responsible for environmental issues. Thailand should work toward sustainability, supporting initiatives initiated by the sustainable agriculture Initiative and promote resource management by involving the public in the implementation and monitoring of those projects. It should be ensured that all plans and projects are supported by research. Since research is vital for long-term success, it should be executed frequently and built upon past results. Conducting agricultural zoning can ensure that crop production meets the needs of the market.¹⁶ It is also vital that the farmland receives enough water for the

¹⁶ Surasak Boonrueang, Kaset Yangyuen Khosangket Kiaokap Kotmai Kaset Phantha Sanya Phorobo Songsoem Lae Phatthana Rabop Kaset Phantha Sanya 2560 [Sustainable Agriculture Observations on the Contract Farming Promotion and Development Act 2017] (สุรศักดิ์ บุญเรือง, เกษตรยั่งยืน ข้อเสนอเกี่ยวกับกฎหมายเกษตรพันธ

plant to enhance growth in the area. Cooperatives must be capable and effective, and members should work together to achieve and utilize knowledge, technology, and agricultural inputs. Enhancing the capabilities of government officials can result in pride and dignity to work for a mutual benefit the same as providing public agencies with efficient and transparent services.¹⁷

4.1.4 Agreement on contract farming

The agricultural business operator is obliged to make a contract in writing and must deliver a copy of the agreement to the farmer on the day of signing. The contract must use wording that is easy to understand for every Thai.

This law has been enacted to protect farmers under the agreement by prohibiting a contract that is disproportionately advantageous to the contractor and unfair to farmers (Section 26). If this principle is violated or prohibited terms are found therein, such agreements or conditions would be ineffective. A good thing is that certain aspects such as forcing the farmers to deliver despite of force majeure cannot be included in the contracts.

It is prohibited to divide contracts between agricultural business operators and farmers or do any other action that makes the contract not to comply with the Contract Farming Promotion and Development Act. If a contract is made in such a manner, it shall be deemed that the contract is in the agricultural system (Section 25).

สัญญา พ.ร.บ. ส่งเสริมและพัฒนาระบบเกษตรพันธสัญญา พ.ศ.2560). <<https://thailaw4green.wordpress.com/?รื้อสั้งเกตุเกี่ยวกับกฎหมายเกษตรพันธสัญญา>> accessed on 11 December 2021.

¹⁷ Thai Agricultural Standard TAS 6914-2017, The Royal Gazette, Announcement and General Publication, Vol. 134, 28 November 2017.

4.1.5 Dispute resolution of contract farming

This law requires the use of a dispute mediation process before the use of another method of dispute resolution or the litigation method in court. If one or more parties decide to use the mediation process, the counterparty must enter the dispute mediation process.

The dispute mediation committee shall make a compromise agreement between the parties which is binding for both parties. If the parties cannot agree, the dispute mediation committee shall decide over the disputes. This does not disqualify the parties that will bring the dispute to arbitration or bring the case to court. In the case of farmers who were damaged by contractual practices in many covenants, agricultural systems and farmers can request group-based litigation for the dispute mediation committee to notify the Department of Rights and Liberties to coordinate for further legal proceedings.

4.1.6 Penalties

To effectively enforce the law, there are penalties of up to 300,000 Baht for non-compliances with the laws.

5. Conclusions and recommendations

Contract farming is a form of a contemporary agriculture agreement with a combination of employment contracts, sale contracts, outsourcing and product sales or agricultural services. It is usually found to be disadvantageous towards farmers and does not achieve fairness. Existing laws could not be applied efficiently because the contract between the agricultural business operator and the farmer is not based on equality. The agricultural business operator has superior bargaining power and often has a contract preparation department, which can use adhesion contracts that take advantage of the farmer's lack of knowledge and understanding of the contract. Therefore, it is necessary to have a specific legal framework that promotes and creates fairness between contracting parties in the agricultural system.

Sections 21 and 26 of the Contract Farming Promotion and Development Act B.E. 2560 (2017) are provisions that intend to promote and create fairness between parties in the agricultural system. Additionally, we should follow and adopt international agreements as the food processing agreement of the United Nations (UN), Food and the Agriculture Organization (FAO) for the trust and cooperation between entrepreneurs and farmers. This can create confidence, business strength and promotes the competitiveness of the commercial market of the agricultural system in Thailand.

5.1 Conclusions

5.1.1 Advantages of the Contract Farming Promotion and Development Act B.E. 2560 (2017)

The benefits of the Contract Farming Promotion and Development Act B.E. 2560 (2017) to promote and develop a sustainable agricultural system are going in the right direction. The legal support and contractual protection that were built cooperated and developed the potential for production, productivity and agricultural services between farmers, agricultural business operators and related sectors. In the process of efficient production to reduce market risk, standard production technology has been transmitted to farmers, resulting in the creation of the revenue stability for farmers. Businesses can be more productive, have higher professional know-how and can standardize for a set period which is the first step towards sustainable development in the agricultural industry of Thailand. The contract is clear and transparent and protects the parties. It also protects the parties from discrimination, dishonesty and unfair terms. The overall goal is to reduce conflicts arising from contracts and to reduce the court's burden to handle disputes. This makes contract farming faster and more flexible than the dispute resolution process in the court, including the protection measures under the contract during the dispute resolution process.

5.1.2 Disadvantages of the Contract Farming Promotion and Development Act B.E. 2560 (2017)

As things currently stand, contract farming is not fair towards the farmers. Contracts lack fairness regarding the partnership and are untransparent. With the development of the audit system to follow the contract as well as the development of relevant legal frameworks, it also shows that agricultural production is barring natural risks. The farmer almost exclusively bears the risk in cases where goods are damaged. The business partners' risk is minimal except for the business owner's liability in the contract and his status to be an authorized party to acquire and prohibit the farmers from selling to others. The business owner has the authority to force the trade by the set price. This leads to an unbalanced structure. Another factor that contributes to the inequality is the farmers lack the power to negotiate in all aspects, from the agreement to the production contract, price, production factor, purchase price and yield. Established businesses often use premade contracts by defining the conditions of the contract in advance which leads to the farmer's disadvantage.

5.2 Recommendations

5.2.1 Support all farmers to ensure fair contracts

Within the framework of the Contract Farming Promotion and Development Act B.E. 2560 (2017) policies and regulations, the author would advise the government to support smaller farmers in their contract farming arrangements. This should play a role in regulating general market payment terms. The farmers' lack of knowledge on market prices and agricultural trends is negatively influencing the farmers' negotiation of fair prices. Like previously discussed, they have weaker negotiating power. In isolated situations, governments may choose to set prices for the farmers, and they should be given access to market price information and trends to help farmers assess whether contract terms and conditions are appropriate. The law should be more specific regarding the contract type to close the

loopholes and prevent farmers from being exploited by the often more versed business operator.

The limitation of the Contract Farming Promotion and Development Act, to be valid for certain products or services only is an issue to be resolved in future amendments. Also, the limit of 10 natural persons as contract partners (Section 4, paragraph 1), should be removed. The act should be mandatory for any contract between an agricultural business operator and a farmer. This would also remove the mentioned necessity to create a new decree for such cases (Section 4, paragraph 2). The act should also be applied to all agricultural business operators no matter if they are registered or not. Possibly a fine can be applied if the operator does not follow his duty to register.

This lack of coverage is one of the main arguments to support the author's hypothesis that the act is currently insufficient.

5.2.2 Establish a government agency to ensure fairness

In practice, the Office of the Secretary of Agriculture is responsible for this Act and should engage with farmers frequently to minimise the disputes and improve the effectiveness of development and promotion the contract farming.

In Thailand, contract farming should consider using the U.S. model which is based on a much longer experience and for example look at the USDA duties, which includes reporting legal problems to the congress.

5.2.3 Develop proven standard contracts for common cases

To improve the law and to generate appropriate measures to protect farmers, the law should be revised in the future. Standard contracts should be enforced in contract farming. The government should determine most of the content of the contract to distribute the risk of the parties equally. The standard contract form should be fair for both parties. A government agency should be established to be responsible for inspecting

and certifying the production contract for accuracy, transparency, and fairness for all parties.

5.2.4 Close legal loopholes and ensure adequate penalties

In the case of a dispute between the contract parties, the commission may be asked to mediate. This is generally a solid approach but the commission has limited power. The penalties under this act are of criminal nature, but depending on the case the fine will not exceed three hundred thousand baht which is not sufficient to prevent violations. This opens loopholes for agribusiness operators to exploit farmers. This leads to the act being an insufficient framework to solve the dispute between agribusiness operator and farmers.

5.2.5 Promote the UK style joint venture operations

UK style joint ventures are objectively fairer when the agricultural business operators and farmers share the benefits and risks of the operation. This should also be promoted in the Thai Act.

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