

AN ACT AUTHORIZING THE GOVERNOR-GENERAL TO EXECUTE A CERTAIN MEMORANDUM OF AGREEMENT WITH THE MANILA RAILROAD COMPANY AND THE MANILA RAILWAY COMPANY (1906), LIMITED, MAKING APPR...

Act No. 2574., February 04, 1916

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By authority of the United States, be it enacted by the Philippine Legislature, that:

SECTION 1. The Governor-General, on behalf of the Legislature of the Philippine Islands, is hereby authorized to execute the following memorandum of agreement with the Manila Railroad Company, a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, and the Manila Railway Company (1906), Limited, a company incorporated under the English Companies' Acts as a company limited by shares, to wit:

"MEMORANDUM OF AGREEMENT between the Manila Rail-road Company, a corporation organized under the laws of the State of New Jersey and duly authorized to do business in the Philippine Islands (herein referred to as the 'Railroad Company'), the Manila Railway Company (1906), Limited, a company incorporated under the English Companies' Acts as a company limited by shares and also duly authorized to do business within the Philippine Islands (herein referred to as the 'Construction Company'), and the Government of the Philippine Islands (herein referred to as the 'Government').

"WITNESSETH, THAT

"Whereas under the provisions of Act Numbered Nineteen hundred and five of the Philippine Legislature and a contract in accordance therewith executed between the Government and the Railroad Company, the Government has guaranteed until maturity the due and punctual payment by the Railroad Company of interest at the rate of four per centum per annum upon first lien bonds with respect to the lines of railway therein designated as the southern lines issued in the amounts and for the purposes specified in paragraph four of said contract; and

"Whereas the Government, by reason of said contract of guaranty and under the provisions of law whereby such guaranty is authorized, is compelled through various agencies created for that purpose to inspect and supervise the construction and equipment of the lines designated in said Act Numbered Nineteen hundred and five as the southern lines of the Railroad Company in order to protect itself under said contract of guaranty; and

"Whereas the Railroad Company, on the twenty-eighth of January, nineteen hundred and ten, entered into a contract with the Construction Company whereby among other things it was agreed that the latter company should construct and equip all such portions of the northern lines and southern lines of the Railroad Company as said lines are designated in said Act Numbered Nineteen hundred and five, including telegraph, telephone and electrical transmission lines thereupon as then remained to be constructed and receive in payment therefor securities of the Railroad Company as therein specified; and

"Whereas under and by virtue of the provisions of Acts Numbered Two thousand and eighty-three and

Twenty-four hundred and sixty-five of the Philippine Legislature'and Two thousand and eighty-eight of the Philippine Commission the Government has loaned to the Railroad Company from the so-called gold standard fund the sum of five million six hundred and thirty-seven thousand pesos in order to assist the Railroad Company in the construction and equipment of said southern lines; and

"Whereas the Railroad Company has reloaned to the Construction Company the moneys loaned to it by the Government from the gold standard fund, as hereinbefore recited, in order to assist the Construction Company to carry out its said contract of the twenty-eighth of January, nineteen hundred and ten, said loans by the Railroad Company to the Construction Company being on the terms and conditions set forth in a contract dated January fourteenth, nineteen hundred and thirteen; and

"Whereas the Construction Company has purchased construction stores and materials and has performed construction work under the said contract of January twenty-eight, nineteen hundred and ten, in an amount in excess of its indebtedness to the Railroad Company by reason of said loans and all other loans made by the Railroad Company to it; and

"Whereas the outstanding stock of the Railroad Company consists of common stock of a par value of two million one hundred and thirty thousand and seven hundred dollars and seven per cent cumulative preferred stock of a par value of three million six hundred and fifty-two thousand eight hundred dollars, all of which is owned by the Construction Company; and

"Whereas the funded indebtedness of the Railroad Company consists of four million three hundred and thirty thousand dollars northern lines first mortgage six per cent gold bonds, seven million seven hundred and sixteen thousand dollars northern lines second mortgage seven per cent gold bonds, all of which are owned by the Construction Company, and ten million five hundred and seventy-five thousand dollars southern lines first mortgage four per cent gold bonds, many of which are also owned by the said Construction Company; and

"Whereas all the outstanding stock of the Railroad Company and all its northern lines bonds have been pledged by the Construction Company with the Merchants Trust Limited of London as security for certain a and b debenture bonds of the Construction Company; and

"Whereas by reason of the European wars the Construction Company is unable to proceed further with its contract of January twenty-eight, nineteen hundred and ten, in the construction and equipment of such portions of the northern and southern lines of the Railroad Company as remain to be constructed and equipped; and

"Whereas it is the desire of all parties hereto that the accounts between the Railroad Company and the Construction Company be liquidated, and that the Government, through the acquisition of all the outstanding stock of the Railroad Company, acquire the management and control thereof, and that the payment of the southern lines four per cent bonds of the Railroad Company be more fully ensured by the establishment and maintenance of a sinking fund sufficient to pay off said bonds at their maturity all in the manner and upon the terms and conditions outlined in this agreement; and

"Whereas it is the desire of the Government upon acquiring the stock of the Railroad Company to make substantial changes in the management and operation thereof in order to effect certain proposed economies therein, and the Railroad Company and the Construction Company concede to the Government the right so to do; and

"Whereas there are no contracts of employment between the Railroad Company and its officers, general manager, or counsel which cannot be cancelled forthwith, but there are certain written contracts of employment between the Railroad Company and certain of its employees in usual and customary forms, a specimen copy of which has been

exhibited to all the parties hereto, and others of said employees are now serving or continuing to serve without the formal execution or renewal of such written contracts, to each of which contracts reference is hereby made for the exact terms and conditions therein contained and the rights of the parties thereunder; and

"Whereas the negotiations between the parties hereto have resulted in the agreement herein outlined, which His Excellency, the Governor-General, has accepted subject to the approval of the Legislature of the Philippine Islands, and which Mr. Horace L. Higgins, as president of the Railroad Company and as attorney-in-fact of the Construction Company, has been duly authorized, by cables recently transmitted and exhibited to the Governor-General, to execute on behalf of the Railroad Company and the Construction Company, respectively but which agreement is to be subject also to the approval and consent of the Merchants Trust Limited, trustees for the holders of said a and b debenture bonds of the Construction Company, and of the shareholders of the Construction Company should their consent and approval be necessary or advisable:

"Now, therefore, in consideration of the premises, and of the mutual promises herein contained, and of the benefits to accrue to each of the parties hereto, and of other valuable considerations the receipt whereof by each is hereby acknowledged, the parties hereto hereby respectively agree:

"One. The maturity of the southern lines four per cent bonds shall be extended for twenty years, that is to say to May first, nineteen hundred and fifty-nine, as to those holders of said bonds consenting thereto, provided that the consent of Congress to such extension and to the extension for a like term of the guaranty by the Government of the interest on said bonds can be secured, in which event the Construction Company will consent to such extension as to all bonds then held by it.

"Two. The Railroad Company will establish a sinking fund from funds available for such purpose, if any, to be deposited with the Insular Treasurer in annual installments payable on May first, nineteen hundred and seventeen, and thereafter on May first of each succeeding year. Unless and until the parties hereto agree upon a graduated scale of payments, the first three of said annual installments shall be five hundred thousand pesos each, and thereafter said annual installments shall be sufficient to enable the Railroad Company to pay off upon their maturity in nineteen hundred and thirty-nine all the southern lines four per cent bonds issued and to be issued, provided that if the consent of Congress to the extension of the maturity of said bonds and of the Government's guaranty of interest, as aforesaid, has been or shall at any time be secured then the amount of said annual installments shall be sufficient to pay off upon their maturity in nineteen hundred and fifty-nine those southern lines four per cent bonds, the holders of which consent to such extension, and only such consenting bondholders shall thereafter participate in any of the benefits of said sinking fund.

"Three. All holders of said bonds shall be given an opportunity to signify their consent to such extension and to participate in the benefits of the sinking fund. Such holders as desire to consent to said extension shall surrender their bonds to the Railroad Company for the endorsement thereon of such extension so as to bind subsequent holders. In case any of, such bondholders shall withhold their consent, the Railroad Company and the Government jointly and severally bind themselves to preserve the lien of the mortgage and protect the security of the consenting bondholders, notwithstanding that the bonds of such non-consenting bondholders may become due and payable on the first day of May, nineteen hundred and thirty-nine; and if the Railroad Company or the Government should fail adequately so to do, any of the consenting bondholders may themselves take such steps as may be necessary to protect their interests. Any expense on the part of the consenting bondholders in so doing shall be a charge on the property of the Railroad Company of equal priority with said bonds, and said sinking fund shall thereupon be increased by annual payments sufficient to pay off such expense and interest thereon at maturity of said bonds on May first, nineteen hundred and fifty-nine.

"Four. The Government, by a continuing annual appropriation or in such other lawful manner as may hereafter be agreed upon, will loan to the Railroad Company an amount sufficient to maintain the sinking fund at the required figure. All loans so made by the Government shall bear interest at the rate of four per cent per annum and shall constitute a lien on the property of the Railroad Company subject only to liens or mortgages existing on said property at the time such loans are made.

"Five. Such portion of said sinking fund as shall have been deposited by the Railroad Company shall be invested only in the purchase of said southern lines four per cent bonds at the market value on the date of purchase, but at a price not above their par value, provided that funds loaned by the Government to the Railroad Company for the purpose of maintaining said sinking fund may be invested for the benefit of said sinking fund, in the discretion of the Governor-General. All bonds purchased by said fund shall be forthwith canceled.

"Six. Upon the maturity of the four per cent bonds for which a sinking fund is created the fund shall be applied in paying off such of the bonds as have not been purchased and canceled. All loans made by the Government for the purpose of maintaining said sinking fund and the interest thereon shall thereupon become immediately due and payable and the lien of the Government securing the same shall become immediately enforceable.

"Seven. The Government shall purchase all the capital stock of the Railroad Company now outstanding for the sum of eight million pesos, Philippine currency, in cash payable fifty-one per cent upon the date of the sale, and the balance within eighteen months thereafter with interest thereon at five per cent per annum said balance to be evidenced by paper, which can be discounted with banks and shall be issued by such parties as may hereafter be lawfully agreed upon.

"Eight. The Construction Company will transfer said m, stock to the Government in proper proportion of preferred and common shares as and when the payment therefor is received.

"Nine. The net amount due to the Construction Company from the Railroad Company on September thirtieth, nineteen hundred and fifteen, as appears from the books of the two companies is acknowledged to be approximately nine million seven hundred and thirty thousand six hundred and fifty pesos, exclusive of moneys advanced and liabilities incurred by the Construction Company for stores and materials, shipped and unshipped and not yet received, for and on account of the Railroad Company, which, when properly verified, shall be added thereto, said amount being also subject to the adjustment of exchange, interest and other items which ordinarily are adjusted at periodic or irregular intervals and which consequently have not yet been entered in the books of the respective companies.

"It is agreed that all accounts between the Railroad Company and the Construction Company shall be adjusted as of the thirty-first of December, nineteen hundred and fifteen, and entered in the books of the respective companies, that the books of the Railroad Company shall be closed as of said date, that proper trial balances and balance sheets shall be prepared showing the status of the accounts between the Railroad Company and the Construction Company, a certified copy of which shall be furnished to each of the parties hereto, and that the net amount then due to the Construction Company from the Railroad Company, including said expenses and liabilities incurred by the Construction Company for said stores and materials, shall be definitely ascertained. All said accounts and the adjustment thereof and the net amount due to the Construction Company ascertained therefrom shall be examined, checked and certified by auditors of the Government and of the Railroad and Construction Companies. All disputes regarding these accounts and any additions to be made thereto under this agreement shall be settled by arbitration in the usual manner.

"The net balance due to the Construction Company on December thirty-first, nineteen hundred and fifteen, as thus ascertained, shall be accepted by the parties as correct, provided that an inventory shall be made of ten per cent

of those certain construction stores and materials, in stock, not issued up to the date of the sale for construction purposes, which constitute part of said indebtedness of the Railroad Company to the Construction Company, to ascertain if said stores and materials are actually on hand on December thirty-first, nineteen hundred and fifteen; if said inventory shows that the stores and materials actually on hand do not vary in overage or shortage by more than ten per cent from the amounts thereof which should be on hand, as shown by the books, then the book figures of such indebtedness shall be accepted, but if such variation indicated by said inventory shall be greater than ten per cent then a complete inventory shall be taken of all such construction stores and materials, and said net balance shall be increased or diminished as said complete inventory may disclose an overage or shortage in the total amount of said construction stores and materials.

"Subject to such changes as may occur in the usual course of business between December thirty-first, nineteen hundred and fifteen, and the date of the sale, the said net balance due to the Construction Company shall, without deduction, be paid in the manner hereinafter set forth.

"Ten. The two agreements between the Railroad Company and the Construction Company one dated the the first day of January, nineteen hundred and seven, and the other dated the twenty-eighth day of January, nineteen hundred and ten, and the further agreement supplementing the same, dated the fourteenth day of January, nineteen hundred and thirteen, shall be terminated and cancelled as of the date of the sale.

"Eleven. The Railroad Company shall refund at par and cancel all its outstanding four million three hundred and thirty thousand dollars first mortgage six per cent bonds and seven million seven hundred and sixteen thousand dollars second mortgage seven per cent bonds and issue in lieu thereof new bonds maturing at the expiration of forty years from the date of the sale and bearing interest at five per cent per annum, which shall be secured by a first mortgage on the northern lines and by a mortgage on the southern lines subject only to said southern lines four per cent mortgage and the lien of the Government for the payment of interest guaranteed thereunder; provided that said five per cent bonds may be divided into classes having different priorities or may be divided into two issues secured by first and second mortgages, or may be issued under the existing first and second mortgages, modified accordingly, as the Construction Company may elect. The Construction Company shall surrender for cancellation all said first mortgage six per cent and second mortgage seven per cent bonds and shall accept, in exchange therefor, said new five per cent bonds of an equal par value. The issue of new five per cent bonds shall not exceed in the aggregate the principal amount of thirteen million two hundred and thirty-six thousand dollars.

"Twelve. The net balance due to the Construction Company on the date of the sale, ascertained as above provided, shall be paid by bonds of the Railroad Company of an equal par value as follows: one million one hundred and ninety thousand dollars by said new five per cent bonds and one million seven hundred and forty thousand dollars by southern lines four per cent bonds, all (including six hundred and ninety thousand dollars of said southern lines four per cent bonds now held by the Government as security for certain loans heretofore made by the Government to the Railroad Company) to be issued and certified and delivered to the Construction Company upon the date of the sale, the remainder by southern lines four per cent bonds as and when first issued. The Construction Company agrees to accept said bonds in lieu of the stock and bonds which it is or would be entitled to receive under said agreements of January first, nineteen hundred and seven, and January twenty-eighth, nineteen hundred and ten. Interest up to the date of the sale due the Construction Company as holder of the first mortgage six per cent bonds and second mortgage seven per cent bonds of the Railroad Company, although included in the net balance, shall, however, be paid in cash.

"Thirteen. Until fully paid the net balance due the Construction Company shall be evidenced by notes of the

Railroad Company bearing interest at four per cent which, principal and interest, shall be paid off and cancelled by the delivery to the Construction Company of an equal par value of southern lines four per cent bonds as and when first issued. All of such bonds hereafter issued by the Railroad Company shall be delivered to the Construction Company until said balance and notes are paid off, notwithstanding the right of the Government under certain existing contracts between it and the Railroad Company to hold said bonds as additional security for loans to the Railroad Company.

"Fourteen. The Construction Company shall upon the date of the sale be released from all liability to the Railroad Company or to the Government except as herein otherwise provided and particularly from all claims or liabilities based on or arising out of said agreements and supplementary agreement dated respectively January first, nineteen hundred and seven, January twenty-eighth, nineteen hundred and ten, and January fourteenth, nineteen hundred and thirteen.

"Fifteen. The Government agrees to waive any defaults existing on the date of the sale on the part of the Railroad Company in complying with any of the conditions or requirements of the various concessions granted to it by the Government, and the Government agrees that thereafter it will take no steps to forfeit any concession or franchise because of any default thereunder on the part of the Railroad Company.

"All bonds heretofore executed as a guaranty for the performance of the obligations of the concessions shall be 8V cancelled and returned.

"Sixteen. The Government and the Railroad Company shall be released from all claims on the part of the pS Construction Company except those hereby continued or created, and excepting, always, the obligations set forth in the various bonds and mortgages, it being expressly understood and agreed that the Construction Company does not waive any rights which it may have as holder of any of the bonds of the Railroad Company.

"Seventeen. Immediately upon acquiring a majority of the stock of the Railroad Company the Government, as majority stockholder, shall have the right to change the personnel of the board of directors and to nominate new directors and officers of the Railroad Company including its general manager, and counsel, and the Construction Company, as present majority stockholder agrees to procure the resignation of said officials if requested by the Government so to do, and will undertake to hold the Railroad Company harmless from any such change, provided that so long as the Construction Company shall continue to hold any of the stock of the Railroad Company it shall be entitled to have a substantial minority representation on the board of directors and executive committee, if any, of the Railroad Company.

In order more fully to ensure to the Government the foregoing rights, the Railroad Company and the Construction Company jointly and severally represent that there are no existing contracts of employment between the Railroad Company and its officers, agents or employees, other than those hereinbefore referred to, which will hinder or prevent the Government from effecting such changes in management or operation as it may desire, but nothing; herein contained shall affect any of the said contracts of employment between the Railroad Company and its employees it being the intention of the parties hereto that the Railroad Company shall continue to have the same discretionary rights with respect thereto under the new management as it now has.

"The Construction Company will consent to the transfer of the principal office of the Railroad Company to Manila in any lawful manner which the Government may elect.

"Eighteen. The Government agrees that the time for completing the construction of the lines of railway of the Railroad Company shall be extended for such time as may be prudently necessary and the time for payment of the loans made by the Government to the Railroad Company from the gold standard fund of the Philippine Islands

shall be extended for as long a time as the Governor-General may lawfully extend the same, and in case legislative permission can be secured the time for the payment of said loans shall be further extended for such time as may be prudently necessary.

"Nineteen. The points here outlined shall be embodied in' an agreement of sale the execution of which shall be dependent upon legislative action necessary or proper to enable the Government and the Railroad Company to carry out the agreement, and it is understood that the agreement herein set forth shall be subject to the assent of the Trustees of the a and b debenture bonds of the Construction Company, and of its share-holders should their consent be necessary or advisable. In said agreement of sale the parties shall fix a date when the accounts between the Railroad Company and the Construction Company shall be finally liquidated, when all payments and transfers provided for shall be made, and which shall be considered as the date of the sale for the purposes of this agreement.

"Twenty. The parties will execute such further instruments as may be necessary to carry out this agreement.

"In witness whereof, this memorandum of agreement is executed in triplicate on this eighteenth day of December, nineteen hundred and fifteen, witness the hand of Francis Burton Harrison, Governor-General, and the great seal of the Government of the Philippine Islands, and that of Horace L. Higgins, president of the Manila Railroad Company, with the corporate seal of the latter, and attorney-in-fact of the Manila Railway Company (1906) Limited, thereunto duly authorized.

"THE; GOVERNMENT OF THE PHILIPPINE ISLANDS,

"BY FRANCIS BURTON HARRISON,

"Governor-General of the Philippine Islands.

"ATTEST: S. FERGUSON,

"Acting Executive Secretary.

"MANILA RAILROAD COMPANY,

"BY HORACE L. HIGGINS,

"As its president.

"ATTEST: P. A. ALEXANDER,

"Assistant secretary.

"MANILA RAILWAY COMPANY (1906), LTD.,

"By HORACE L. HIGGINS,

"As its attorney-in-fact.

"Witness: P. A. ALEXANDER.

"PHILIPPINE ISLANDS,

"City of Manila, ss:

"In the city of Manila, Philippine Islands, on this 18th day of December, 1915, personally appeared before me Francis Burton Harrison, Governor-General of the Philippine Islands, and Horace L. Higgins, to me known to be the persons who executed the foregoing[^] instrument, and acknowledged that they executed the same in their respective official capacities. The cedula certificates of the parties were exhibited to me being numbered respectively F-I and F-1797660, issued at Manila and Caloocan, and dated January 2, 1915, and February 1, 1915, respectively.

"M. DE YRIARTE,

"Ex officio notary public.

" (Register No. 48, page 57.)

"I, Samuel Ferguson, Acting Executive Secretary for the Philippine Islands, do hereby certify that M. de Yriarte, who took the annexed acknowledgment, was at the time of taking the same a duly qualified notary public in and for the city of Manila, P. L., and authorized to take the same, that the same is executed in accordance with the laws of the Philippine Islands; that I am acquainted with the signature and seal of said notary, and that the signature and seal affixed to the said acknowledgment are his genuine signature and seal.

"In witness whereof, I have hereunto set my hand and caused the great seal of the Government of the Philippine Islands to be affixed at Manila, Philippine Islands, this eighteenth day of December, 1915;

"S. FERGUSON,

"Acting Executive Secretary of the Philippine Islands."

Provided, however, That the Government of the Philippine Islands in ratifying and confirming said memorandum of agreement assumes no obligation either to pay in cash the interest balance due from the Manila Railroad Company to the Manila Railway Company (1906) Limited in accordance with the last sentence of the twelfth paragraph of said memorandum of agreement, or to lend to the Manila Railroad Company an amount sufficient to enable that company to make said payment in cash.

SEC. 2. The Governor-General or his representative thereunto by him duly authorized is hereby empowered to execute such other and further contracts or agreements as may be necessary or convenient in order to carry into effect said memorandum of agreement set forth in section one hereof.

SEC. 3. Upon the acquisition by the Government of the Philippine Islands of any or all of the stock of the Manila Railroad Company in accordance with said memorandum of agreement, the Governor-General or his duly authorized representative shall have the power to vote said stock at all stockholders' meetings of said The Manila Railroad Company for and in behalf of the Government of the Philippine Islands.

SEC. 4. After the acquisition of any or all of the stock of the Manila Railroad Company in accordance with said memorandum of agreement, the Governor-General shall annually, and at such other periods as may be provided either by law or by his order require full and complete reports of finances and operation to be made to him by those persons charged with the operation of the Manila Railroad Company, including an itemized account of all moneys received and expended, which said reports shall be, by the Governor-General, transmitted to the Legislature.

SEC. 5. For the purpose of carrying out the provisions of said memorandum of agreement, the Insular Treasurer, with the authorization of the Governor-General, is hereby authorized, within the limit of the eighty per cent already authorized for investment from the gold standard fund as at present constituted by Act Numbered Two thousand eighty-three, as amended, to invest from the said fund four million and eighty thousand pesos for the purpose of purchasing fifty-one per cent of the outstanding stock of the Manila Railroad Company, in accordance with paragraph seven of said memorandum of agreement set forth in section one hereof: Provided however, That the repayment of the sums so invested from the gold standard fund as herein contemplated shall be guaranteed by all the resources of the Philippine Government and shall be repaid to the gold standard fund from the proceeds of such bond issues therefor as may be authorized by the Congress of the United States and the Philippine Legislature: And provided, further, That in the event that within two years funds shall not be available by reason of the bond issue authorized by the Congress of the United States and the Philippine Legislature, as in the next preceding proviso contemplated, the gold standard fund shall be reimbursed for the entire investment herein

authorized from any funds available in the Insular Treasury, and the transaction herein authorized from the proceeds of the gold standard fund shall be considered as temporary in nature.

SEC. 6. The Insular Treasurer, with the approval of the Governor-General, is further hereby authorized to lend to the Manila Railroad Company from time to time out of the public works bonds sinking fund, friar lands bonds sinking fund, and the insurance fund, such sums as may be necessary in order to enable the said The Manila Railroad Company to comply with the provisions of paragraph second of said memorandum of agreement, said loans to bear interest at the rate of four per cent per annum and to constitute a lien on the property of the said The Manila Railroad Company, subject only to such liens or mortgages as exist on said property at the time such loans are made, all in accordance with paragraph four of said memorandum of agreement.

SEC. 7. The Governor-General is hereby authorized to extend the period of guarantee by the Government of the Philippine Islands of the interest on bonds issued in accordance with the provisions of Act Numbered Nineteen hundred and five of the Philippine Legislature for the construction of the southern lines of the Manila Railroad Company to May first, nineteen hundred and fifty-nine, provided Congressional authority for said extension can be secured.

SEC. 8. After the payment by the Government of all common and preferred stock, amounting to eight million pesos, according to the memorandum of agreement, the Governor-General shall submit the draft of an Act for the administration of the railroad to the Philippine Legislature, which latter shall determine such form of administration of said railroad as may be the most advisable, in the public interest.

SEC. 9. This Act shall take effect on its passage.

Enacted, February 4, 1916.

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