

# A Transformative Approach for Ombudsman Requirements in Malaysia

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## ABSTRACT

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*In 2016, the Ombudsman for Financial Services (OFS) was established in Malaysia as the official scheme operator of the ombudsman. It operates as an alternative dispute resolution (ADR) platform for consumers and financial service providers, attempting to obtain satisfactory outcomes for all parties while adhering to transparency and accountability. However, no standard measurement or explicit criterion is indicated in the legislation for the certification or qualification of an ombudsman officer. This lack of standardisation raises concerns about the competency and skill of the individuals working as ombudsman officers, thereby weakening the OFS's efficacy in resolving financial issues. This paper seeks to fill this gap by investigating several other ADR officers' current procedures and qualifications in Malaysia. This paper aims to establish prospective benchmarks and best practices for ombudsman officers in Malaysia by researching the qualifications and procedures of ADR officials in the present institution. This will help to develop a more comprehensive structure for certifying and qualifying individuals for the role, thereby improving the OFS's credibility and efficacy in resolving financial disputes. This paper employs library-based research, a statutory approach, and a comparative method to examine existing frameworks and find best practices. The primary findings from evaluating other ADR institutions can assist in identifying potential gaps or areas for improvement in the current system, enabling the establishment of a more complete and powerful ombudsman system. The practical implications of this paper are essential for policymakers and stakeholders in enhancing the certification and qualification process for individuals in the ombudsman role. Overall, having a legislative necessity for an ombudsman officer is critical for fostering justice and resolving problems in financial disputes, enhancing trust and confidence among consumers.*

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## 1. INTRODUCTION

The Alternative Dispute Resolution (ADR) mechanism in Malaysia offers various methods of resolving disputes outside the traditional court system. It cannot be denied that those who feel dissatisfied can go to a court of justice to settle any kind of dispute. However, ADR provides an alternative avenue that is often quicker, more cost-effective, and less formal than litigation (Ahmad et al., 2022). By opting for ADR, individuals and businesses can maintain a level of control over the resolution process and potentially preserve relationships that may be strained through a court battle. This is also agreed by Raja Abdul Aziz & Abdul Hamid (2017), who highlighted the fact that the court is the main platform to resolve disputes, but not for financial disputes. With so many disadvantages of the judicial process, financial consumers avoid the formal legal system and prefer to seek an alternative resolution that better serves the business and financial worlds. Multiple ADR mechanisms exist to support the justice system, including arbitration, mediation, adjudication, conciliation, negotiation, and the ombudsman. All these mechanisms promote social harmony, which may legally and peacefully settle any dispute. This is because ADR depends on the cooperation given by both parties, their consent, and mutual agreement between them (Syed A Rahman & Mokhtar, 2017).

In Malaysia, the Asian International Arbitration Centre, the Malaysian Mediation Centre, and the *Sulh* Council in Syariah Court are among the established ADR institutions that have played a crucial role in easing the burden on the court system and promoting faster and more cost-effective resolution of disputes (Abdul Hak et al., 2020; Labanieh et al., 2019; Safei & Chua Abdullah, 2023). Another institution, the Ombudsman for Financial Services (OFS), was introduced as the first official scheme operator of the ombudsman explicitly deals with financial disputes (Mohd Zain et al., 2022). Since 2016, the OFS has ensured a fair and impartial resolution of financial disputes, providing individuals and businesses with a reliable avenue to seek redress.

In developing a more comprehensive structure for certifying and qualifying ombudsman officers, this paper explores the legal requirements for the appointment of an ombudsman to deal with financial disputes. It is a significant step towards promoting consumer protection and maintaining the integrity of the financial sector. This paper looks into other ADR institutions that provide specific criteria and qualifications for the dispute resolution officer in the relevant legislation. These criteria and qualifications ensure that the dispute resolution officer possesses the skills and expertise to handle financial disputes effectively.

### ***1.1 Problem Statement***

The development of the ombudsman scheme in Malaysia can be seen through primary legislation, such as the Financial Services Act 2013 and the Islamic Financial Services Act 2013 (Mohamad & Hassan, 2019). These two-parent laws are supported by their subsidiary legislation, the Financial Services (Financial Ombudsman Scheme) Regulation 2015. It contains many provisions relating to implementing the ombudsman in handling financial disputes (Bank Negara Malaysia, 2015).

Nevertheless, the current legislation does not provide specific provisions to standardise requirements for the appointment of an ombudsman. The qualification to be an ombudsman is absent since no explicit provision states the criteria that must be fulfilled before being chosen by the board of directors. As far as the study is concerned, there are no specific requirements for the certification or qualification of an ombudsman officer in Malaysia. In any related legislation, there are no proper guidelines to determine the fit and appropriate criteria for

being appointed as an ombudsman officer. The ombudsman needs to have several requirements so that the ombudsman services can increase confidence and trustworthiness among financial consumers. It is mentioned in Regulation 4(1)(a) that OFS shall have qualified, experienced, and expert officers in resolving disputes, but no details are provided even in the Term of Reference (TOR). Even the constitution of OFS does not provide the qualification but rather the disqualification requirement to be an ombudsman. The absence of specific guidelines for the ombudsman has created an unclear entry path for this critical position as the third party during the dispute hearing process.

The annual report published by OFS emphasises that the institution must deal with thousands of cases every year. For instance, in 2019, OFS handled 1,380 cases, of which 1,047 were registered, and 333 were brought forward from the previous year. While 944 cases were disposed of in 2019, 436 were carried forward to 2020 (OFS, 2019). Most of the time, the financial services provider failed to fulfil the 6th Principle of the Fair Treatment of Financial Consumers published by the Central Bank of Malaysia, resulting in the financial consumers bringing the matter before the OFS (Central Bank of Malaysia, 2019). In handling all the registered disputes, OFS needs a reliable officer to comprehensively understand the products and services provided by the financial industry. If not, they may decide cases beyond their capabilities, resulting in unfair and inconsistent outcomes.

The ombudsman officer and the case managers are essential human resources for the OFS institution; therefore, qualified people must be capable and credible in carrying out their duties. In addition, it is sad to note that the data recorded shows that up until 2022, the OFS currently consists of only two Ombudsman officers, fifteen case managers, and seven support staff to deal with thousands of cases. As financial products evolve rapidly, the number of cases may also increase; thus, the human capital of OFS must increase, with the necessary skillsets to deal with emerging issues among Malaysians.

This research explores the significance of having the standard and relevant legal requirements for appointing an ombudsman in the current regulation. By examining the existing legal framework, this research aims to shed light on the potential implications of a lack of standardised and relevant legal requirements for the appointment of an ombudsman. Understanding the significance of such requirements can enhance transparency, accountability, and effectiveness in ombudsman institutions in Malaysia, particularly OFS. The other ADR regulations in Malaysia can provide insights into the importance of having standardised and relevant legal requirements for the appointment of officers as the middle person.

Therefore, this study's research questions primarily concern how important it is to include a standard minimum requirement for an ombudsman in regulations, how officers are appointed in other ADR regulations, and what can be done to improve the current legal system for choosing an ombudsman ~~improved~~. By looking into these questions, the study intends to find out how other ADR laws choose officers and how important it is to include the standard minimum requirement of an ombudsman in the rules. In the end, the study seeks to come up with suggestions for the regulators to improve the existing legal framework related to selecting an ombudsman. The ombudsman should possess expertise in financial matters and be independent of undue influence, ensuring their decisions are unbiased and in line with the law. Additionally, clear guidelines should be established regarding the ombudsman's

jurisdiction, powers, and procedures to ensure a fair and efficient resolution process for all parties involved.

## 2. LITERATURE REVIEW

Throughout human history, there have been multiple ways to resolve disputes. In addition to the court proceeding as the traditional method, the common ADR mechanisms are mediation and arbitration, followed by other forms, including judicial settlement conferences and ombudsman, to name a few (Abdul Hamid & Nik Mohammad, 2016). In other words, nowadays, people develop a better alternative platform to resolve disputes and problems than the traditional court system.

Historically, the ADR concept can be said to be as ancient as the culture of the Malaysian people since it has been informally practised by multi-race, multi-cultural and multi-religious societies (Syed A. Rahman & Mokhtar, 2017) which has been a practice for a long time. Oseni and Ahmad also proved that the ADR concept had been introduced informally into the culture of the Malaysian races; hence, it is not alien to the people when applied formally. Malaysians accept the concept of ADR very well, as it can suit the needs of the people while still upholding justice in different circumstances (Oseni & Ahmad, 2016). The most common ADR methods in the Malaysian legal system are arbitration, mediation, conciliation and adjudication (Dhillon & Ling, 2015). After the enactment of the Arbitration Act in 2005, Malaysians started to admit the importance of resolving disputes through the arbitrator, which led to the introduction of the Mediation Act in 2012 for mediation services (Abraham, 2000).

In Malaysia, the adjudication process is managed by the Asian International Arbitration Centre (AIAC), which handles disputes within the jurisdiction of the Construction Industry Payment and Adjudication Act 2012 (CIPAA 2012). The adjudication process involves disputes in the construction industry due to its inherent nature, which is very complex, involves relatively long project durations, and is subject to many uncertainties. Having CIPAA 2012 helps facilitate regular and timely payment and provides remedies for the recovery of payment in construction industry dispute resolution (Mazani et al., 2019). On the other hand, mediation operates under the Malaysian Mediation Centre (MMC), which helps and provides guidance toward fair settlements for all the parties involved (Dhillon & Ling, 2015). Typically, people use mediation services in almost all forms of interpersonal conflict in present-day Malaysian society. The existence of mediation services helps society deal with their disputes in every matter, except constitutional disputes and criminal matters, as provided by the MMC. While Malaysia is practising Islamic principles in certain circumstances, the *Majlis Sulh* Unit (Sulh Council) is among the ADR mechanisms that have been officially established within the administration of the Syariah Court by the Syariah Judiciary Department (Abdul Hak et al., 2020). It has been enacted in section 99 of the Syariah Court Civil Procedure Federal Territory Act 1998, which provides that the parties to any proceedings may, at any stage of the proceedings, hold Sulh to settle their dispute following such rules as may be prescribed or, in the absence of such rules, under Islamic Law. Sulh Council is necessary to deal with disputes relating to Muslims, especially those with marital discord or family disputes (Abdul Hamid & Nik Mohammad, 2016).

The recent legal developments of ADR in Malaysia indicate that the ombudsman has been implemented in dealing with financial disputes. Generally, an ombudsman is a person who can handle and resolve problems fairly and expeditiously outside the courts or other legal procedures. Many countries have developed ombudsmen to resolve disputes, especially in financial matters (INFO Network, 2007). Undoubtedly, the financial ombudsman exists to

support improvements and reduce disputes in the financial business with the consumers, resolving when they failed to resolve themselves and, subsequently, reducing the burden on the court cases (David & Francis, 2012). Aside from having OFS as the first and sole institution that operates to deal with financial disputes, the ombudsman has also been successfully introduced in the higher educational institutions, as discussed by Atikah et al. (2023) and the Integrity and Ombudsman Unit Sarawak (UNIONS) under the Premier Department of Sarawak (Zulkarnain et al., 2024).

After all, since adjudication, mediation, *sulh*, and the ombudsman are currently considered the preferred methods of ADR in Malaysia, this research would like to explore the legal requirement of appointing officers to handle ADR cases. Specifically, this research focuses on whether the current ombudsman scheme in Malaysia adequately meets the legal requirements and if any improvements or modifications are necessary.

### **3. METHODOLOGY**

This research employs qualitative research, which triangulates the data obtained from the library-based research with doctrinal legal research. The primary sources of laws and regulatory instruments in Malaysia are the Financial Services Act 2013, Islamic Financial Services Act 2013, Financial Services (Financial Ombudsman Scheme) Regulations 2015, and the other ADR legislations such as the Construction Industry Payment and Adjudication Act 2012, Mediation Act 2012, and Syariah Court Civil Procedure (Federal Territories) Act 1998. The library research is conducted using information from the online databases of Current Law Journal, LexisNexis, Scopus, and Wiley Online Library. By using several keywords such as "Criteria", "Qualification", "ADR Institution", "Ombudsman", and "Legislation", a comprehensive literature review of the selected materials, including journal articles is analyzed to provide a thorough understanding of the topic. This method ensures that the research is based on up-to-date and credible sources, contributing to a well-rounded analysis of the subject matter. Then, a comparative study is conducted to draw significant lessons from other ADR mechanisms. By comparing different ADR mechanisms, the research aims to identify best practices and potential areas for improvement in the implementation of Ombudsman services.

### **4. DATA ANALYSIS AND RESULT**

#### ***4.1 Relevant Regulation of Ombudsman in Malaysia***

Since 2016, the establishment of the OFS has been an excellent resolution platform for financial consumers to lodge their related financial disputes with the current amount of 221 registered financial services providers (Mohd Zain et al., 2022). This is following to the introduction of the financial ombudsman scheme in the two existing parent laws, namely the Financial Services Act (FSA) 2013 and the Islamic Financial Services Act (IFSA) in 2013. The government introduces explicitly a scheme to deal with the financial disputes between financial consumers and their financial service providers. In addition, the enactment of the subsidiary legislations, namely the Financial Services (Financial Ombudsman Scheme) Regulations 2015 and the Islamic Financial Services (Financial Ombudsman Scheme) Regulations 2015, strengthened the implementation of the financial ombudsman scheme (Engku Ali & Oseni, 2017). Then, the Term of References (TOR) is also explicitly developed by the OFS so that it could set out the scope of the scheme, the terms of membership, the types of disputes, the award that the ombudsman may grant, and the procedures and timeframe for a dispute to be heard by the OFS.

In appointing the ombudsman, 2015 Regulation has stated in Regulation 4(1)(a) that the scheme operator, which is OFS in Malaysia, can operate the financial ombudsman scheme in a fair and timely manner, including having officers who are qualified, experienced, and experts in resolving disputes. In other words, the OFS in Malaysia needs to be equipped with a team of skilled professionals with the knowledge and expertise to handle and resolve financial disputes effectively. This ensures that individuals seeking assistance from the scheme can expect high competency and efficiency in addressing their concerns. OFS shall have qualified, experienced, and expert officers in resolving disputes. Nevertheless, there is no specific definition of 'qualified, experienced, and experts' in any part of the regulation to discuss the ombudsman appointment. On the other hand, Paragraph 4(1)(b) and Regulation 8 may provide provisions that state that the board of directors of the OFS shall consist of people who fulfil the fit and proper criteria set out in the Second Schedule. The Second Schedule lists the details related to the fit and proper qualification to be on the OFS board of directors.

Furthermore, the paper examines the constitution of the OFS, which preserved the written Memorandum of Association (MOA) and Article of Association (AOA) from the previous Companies Act of 1965. This is allowed per Section 34(c) and Section 619(3) of the Companies Act of 2016. Under Article 55(b), the clause highlighted the grounds for disqualification of the ombudsman that make him no longer suited, qualified, or capable of holding the office of an ombudsman and, therefore, may be terminated by the board. These provisions ensure that the constitution of the OFS remains consistent with the legal framework established by the Companies Act of 2016. In other words, there are clear criteria outlines for potential termination stated in the constitution.

Since the appointment of an officer also falls under the purview of the OFS constitution, it is essential to have provisions that highlight the fit and proper criteria of an ombudsman officer to maintain the accountability and integrity within the OFS. These provisions maintain the integrity of the OFS and ensure that the ombudsman officer is well-suited for the role and can effectively carry out their duties. By outlining clear criteria for termination and appointment, the constitution of the OFS establishes a transparent and accountable process for selecting and evaluating ombudsman officers.

#### ***4.2 The Appointment of Officers in Other ADR Mechanisms***

Considering the other ADR mechanism, section 4 of the CIPAA 2012 highlights the competency standard and criteria of the adjudicator. Among others, the person must have seven years of working experience and hold a Certificate in Adjudication from an institution recognised by the Minister. Furthermore, he is not an undischarged bankrupt and has not been convicted of any criminal offence. While the adjudication mechanism provides strict requirements, it may establish an institution that satisfies many of its clients and is the most widely used dispute-resolution method in the Malaysian construction industry (Mazani et al., 2019).

On the other hand, sections 7(2) and (7) of the Mediation Act 2012 state that the mediator should have the relevant qualifications, related knowledge or experience in mediation acquired through training or proper tertiary education and is required to fulfil the mediation institution requirements (Dhillon & Ling, 2015), other requirements are also stated on the MMC websites, whereby those who are neutral, impartial, independent, and accredited by MMC and who may be either an advocate or solicitor had a valid practising certificate for the time being appointed by MMC as a mediator. These requirements indicate that a mediator is a highly fit person who can mediate to resolve the disputing matters.

The Sulh officer must be someone with a Degree in Syariah from any local or international university or a Diploma in Administration of Islamic Judiciary from IIUM or UKM or hold a Certificate for Conducting Mediation from Mediation Consultants recognised by JKSM (Abdul Hamid & Nik Mohammad, 2016; Wan Mohd Fadzli, 2018). Recently, 99 participants from USIM enrolled in the Sulh-Mediation Skills Certificate programme, which lasted five (5) days and qualified them as sole mediators (Mohamed Yunus, 2023). This means that to be a *Sulh* officer, a person must have a professional certificate, training, education, and knowledge, especially when dealing with human relationships. This is agreed by Ramli et al., (2022) since the roles and competency of the selected officers can influence the success of mediation in the *sulh* sessions.

The table below summarises the qualifications for appointing the relevant independent third party for each mechanism.

Table 1: The Selected ADR Mechanism in Malaysia to Be Referred to Ombudsman

ADR Mechanism	Adjudication	Mediation	Sulh Council
<b>The Operating Institution</b>	AIAC	MMC	Syariah Courts
<b>Legislation</b>	Construction Industry Payment and Adjudication Act 2012	Mediation Act 2012	Syariah Court Civil Procedure (Federal Territories) Act 1998
<b>Independent Third Party</b>	Adjudicator	Mediator	<i>Sulh</i> Officer
<b>Qualification</b>	<ol style="list-style-type: none"> <li>Seven years of working experience</li> <li>A holder of a Certificate in Adjudication from an institution recognised by the Minister</li> <li>Not an undischarged bankrupt</li> <li>Not been convicted of any criminal offence</li> </ol>	<ol style="list-style-type: none"> <li>Have the relevant qualifications, related knowledge, or experience in mediation</li> <li>Training or proper tertiary education</li> <li>Fulfil the mediation institution requirements</li> <li>A neutral, impartial, independent, and accredited by MMC</li> <li>An advocate and solicitor holding a valid practising certificate</li> </ol>	<ol style="list-style-type: none"> <li>The minimum qualification in the education level of Degree in Syariah from any local or international university</li> <li>Alternatively, having a Diploma in Administration of Islamic Judiciary from IIUM or UKM</li> <li>Alternatively, having a Certificate for Conducting Mediation from Mediation Consultants recognised by JKSM, such as a Sulh-Mediation Skills Certificate by USIM-JKSM</li> </ol>

Sources: (Abdul Hamid & Nik Mohammad, 2016; Dhillon & Ling, 2015; Mazani et al., 2019; Mohamed Yunus, 2023; Wan Mohd Fadzli, 2018)

**5. DISCUSSION AND STUDY IMPLICATIONS**

From the above finding, the paper highlighted that the current ombudsman scheme in Malaysia did not adequately meet the legal requirements, and some improvements or modifications are necessary. This research found that the current legislation for the ombudsman, either in the 2015 Regulation or the OFS Constitution itself, does not provide an explicit provision to specify the requirements for the appointment of an ombudsman. This lack of clarity regarding the appointment of an ombudsman could lead to potential challenges and inconsistencies in the selection process. As the ombudsman is an essential figure in resolving disputes between financial consumers and their service providers, it is crucial to have a clear and comprehensive framework in place for their appointment. Without such

provisions, there may be ambiguity and potential challenges in ensuring a fair and transparent selection process based on merit. Additionally, a lack of clarity regarding the qualifications and responsibilities of an ombudsman could undermine their effectiveness in addressing consumer grievances and maintaining trust in the financial sector. Therefore, policymakers must address this issue and establish a comprehensive framework outlining the qualifications and procedures for appointing an ombudsman.

From the Islamic perspective, the Muhtasib (Ombudsman in the modern world) must have high qualifications and be wise, mature, pious, well-poised, sane, free, just, empathic, and a learned scholar (faqih) (Ahmad et al., 2022). These qualifications ensure that the ombudsman has the knowledge and expertise to handle complex financial disputes and make fair and informed decisions. Therefore, the financial ombudsman scheme in Malaysia also need to have these criteria in the relevant legislation to ensure the appointment of qualified individuals who can effectively address financial grievances and uphold justice in the system.

Compared to the abovementioned ADR institution, which explicitly states their qualifications for appointing anyone fit and proper for the position, OFS should similarly provide a high-quality standard as a requirement to be appointed as an ombudsman officer. This will help maintain the credibility and integrity of the financial ombudsman scheme in Malaysia, ensuring that only competent individuals are entrusted with resolving complex financial disputes. Based on the objectives of OFS to dispose of matters swiftly, efficiently, and effectively, the staff's qualifications, experience, and relevant personal qualities need to be emphasised. The OFS staff, particularly the ombudsman officer and the case manager, should have relevant qualifications and experience in the relevant field to ensure they thoroughly understand financial regulations and practices. Additionally, possessing strong analytical and problem-solving skills will enable them to effectively navigate complex financial disputes and provide fair resolutions for all the parties involved. By prioritising these qualifications and experiences, the OFS can uphold its commitment to delivering efficient and effective resolutions, ultimately enhancing trust in the financial ombudsman scheme in Malaysia. As a result, it is crucial to review and revise the existing legislation procedure to ensure that it clearly outlines the role and responsibilities of the ombudsman in the dispute resolution process.

## **6. CONCLUSION AND RECOMMENDATION**

The OFS institution has made remarkable strides in providing a platform for financial consumers to file their complaints, as one of the relevant ADR mechanisms in Malaysia. Individuals can effectively address and resolve their concerns with an expert ombudsman or case manager. Introducing the financial ombudsman scheme in the legislation has also significantly improved the accessibility and efficiency of the complaint resolution process for financial consumers in Malaysia. While the other ADR mechanisms consider accommodating the relevant qualifications under their existing laws, the OFS should have a supportive legislative framework for appointing the expert ombudsman.

This research would recommend to the policymaker or the regulator the following model clauses for having a clear and specific qualification for appointing an ombudsman in the 2015 Regulations or amendment in the OFS Constitution. Among others, the ombudsman must have a minimum requirement of a legal certificate in law degree and be a holder of a professional certificate in financial services and products. Alternatively, he or she may have a bachelor's degree in psychology, administration, or business, which may help him or her to understand the problem related to their field. In other words, a person with legal, financial



planning, finance/business, or dispute resolution qualifications would be well-equipped to handle complex issues.

Moreover, possessing the qualities of wisdom, maturity, poise, and sanity is crucial for maintaining professionalism and objectivity in the role of an ombudsman. Additionally, having traits like independence, fairness, effectiveness, openness, transparency, and accountability align perfectly with the principles of an ombudsman. Additionally, the ombudsman should have at least five years of experience in the legal and financial sectors to ensure they possess the necessary expertise and knowledge. These qualities enable effective communication with diverse customers and facilitate the identification of underlying problems through attentive listening and thoughtful questioning.

In conclusion, this research has established the significance of the urgent need to have qualified ombudsman officers for a better and more effective resolution in Malaysia. Inserting specific criteria and qualifications for appointing an ombudsman officer in the legal framework helps enhance its effectiveness.

### ***6.1 Study Limitation***

The research's limitation is that it focused solely on the role and qualifications of an ombudsman in the financial sector. It did not explore an ombudsman's potential impact or effectiveness in other industries or sectors. Additionally, the research did not investigate other countries' jurisdictions system to see if the qualifications and skills required for ombudsmen in the financial sector are consistent globally.

### ***6.2 Suggestion for Future Research***

Some suggestions for future research include examining the role of an ombudsman in various industries and sectors to determine if the same qualifications and skills are necessary across the board. In addition, it would be valuable to explore how different regulatory frameworks and cultural contexts influence the necessary expertise and knowledge in different countries.

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The contributions of MIMZ in conceptualising and writing the original draft were instrumental in shaping the content of the manuscript. The validation, review, and editing of the final draft by NER and III further enhanced the quality and accuracy of the paper. The unanimous approval of all authors on the final manuscript reflects their collective agreement on its completeness and readiness for publication.

## **CONFLICT OF INTEREST**

None declared.

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