

## **WEEKLY CORPORATE UPDATES**

*Saturday 10<sup>th</sup> February, 2024*

(Curated & compiled by)

### **Team Indiacorp Law**

**Headed by:**

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## MCA UPDATES

*2, 00,395 Incorporations have happened from 1st April 23 to 1st Feb 24 as compared to 1, 73,740 Incorporations for the same period in previous year. 47,807 LLPs have been incorporated from 01st Apr 2023 to 31st Jan 2024 as against 36,247 LLPs incorporated during the entire FY 22-23. This the highest number of LLP incorporation on MCA21 portal for any of the previous financial years*

*Dated: 07<sup>th</sup> February, 2024*

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Related Link: <https://www.mca.gov.in/content/mca/global/en/home.html>

***Relaxation of additional fees and extension of last date of filing of Form No. LLP BEN-2 and LLP Form No. 4D under the Limited Liability Partnership Act, 2008- regarding.***

*Dated: 07<sup>th</sup> February, 2024*

*The Ministry of Corporate Affairs has notified Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023 vide G.S.R. No. 832(E) dated 09.11.2023 and prescribed E-form LLP BEN-2 to file Return to the Registrar in respect of declaration under section 90 of the Companies Act, 2013. Similarly, The Ministry of Corporate Affairs has notified Limited Liability Partnership (Third Amendment) Rules, 2023 vide G.S.R. No. 803(E) dated 27.10.2023 and prescribed E-form LLP Form no. 4D to file Return to the Registrar in respect of declaration of beneficial interest in contribution received by the LLP. In view of transition of MCA-21 from version-2 to version-3 and to promote compliance on part of reporting Limited Liability Partnerships, it is informed that such LLPs may file Form LLP BEN-2 and LLP Form No. 4D, without payment of any additional fees, upto 15.05.2024. The two forms shall be made available in version-3 for filing purposes w.e.f 15.04.2024. This issues with approval of the competent authority.*

Related Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=yOp%252BjI5XJk7frEKhyroorQ%253D%253D&type=open>

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## THE GAZETTE OF INDIA EXTRAORDINARY

Dated: 06<sup>th</sup> February, 2024

*In exercise of the powers conferred by sub-sections (1) and (2) of section 396 of the Companies Act, 2013 (18 of 2013), the Central Government hereby establishes a Central Processing Centre at Indian Institute of Corporate Affairs, Plot No. 6,7,8, Sector 5, IMT Manesar, District Gurgaon (Haryana), Pin Code- 122050 having territorial jurisdiction all over India, for the purpose of the provisions of the said section. The Central Processing Centre shall process and dispose off e-forms filed along with the fee as provided in the Companies (Registration of Offices and Fees) Rules, 2014. The jurisdictional Registrar, other than Registrar of the Central Processing Centre, within whose jurisdiction the registered office of the company is situated shall continue to have jurisdiction over the companies whose e-forms are processed by the Registrar of the Central Processing Centre in respect of all other provisions of the Companies Act, 2013 and the rules made thereunder This notification shall come into force from the 6 th February, 2024.*

Related Link :

<https://www.mca.gov.in/bin/dms/getdocument?mds=FrgS%252FjRXtmK%252BHpwLI3BHRQ%253D%253D&type=open>

### SEBI UPDATES

## SEBI issues guidelines for use of simple, clear language in draft offer documents to ensure timely processing

Dated: 07<sup>th</sup> February, 2024

*The guidelines were issued in order to ensure completeness of the offer document for investors and to provide greater clarity and consistency in disclosures for timely processing.*

*The Securities and Exchange Board of India (SEBI) has issued guidelines for returning draft offer documents and their resubmission, emphasizing the importance of clear, concise, and intelligible disclosures for the vibrancy of the primary market. The guidelines state that draft offer documents may be returned if they fail to meet specified requirements, including:*

- 1. Ensuring the document is drafted in simple language with visual representation of data, using short sentences, clear words, active voice, and avoiding multiple negatives.*
- 2. Presenting information in a clear, concise, and intelligible manner, with descriptive headings, avoidance of legal and technical jargon, and clarification of complex terms.*
- 3. Avoiding complex presentations, vague explanations, repetitions, and inconsistencies in data.*

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4. Ensuring risk factors are clearly worded to convey risks to investors without ambiguity.

If the draft offer document needs substantial revisions, lacks key disclosures, or is not clearly understandable without reference to general rules and regulations, it may be returned. However, there is no fee for resubmission in such cases. The issuer and lead manager(s) must address the deficiencies before resubmitting the document, ensuring compliance with regulatory provisions and laws.

Related Link: <https://www.barandbench.com/news/sebi-guidelines-simple-clear-language-in-draft-offer-documents-timely-processing>

## RBI UPDATES

### Monetary Policy Statement, 2023-24 Resolution of the Monetary Policy Committee (MPC) February 6 to 8, 2024

Dated: 07<sup>th</sup> February, 2024

On the basis of an assessment of the current and evolving macroeconomic situation, the Monetary Policy Committee (MPC) at its meeting today (February 8, 2024) decided to:

- Keep the policy repo rate under the liquidity adjustment facility (LAF) unchanged at 6.50 per cent.

Consequently, the standing deposit facility (SDF) rate remains unchanged at 6.25 per cent and the marginal standing facility (MSF) rate and the Bank Rate at 6.75 per cent.

- The MPC also decided to remain focused on withdrawal of accommodation to ensure that inflation progressively aligns to the target, while supporting growth.

These decisions are in consonance with the objective of achieving the medium-term target for consumer price index (CPI) inflation of 4 per cent within a band of +/- 2 per cent, while supporting growth.

#### Assessment and Outlook

2. Global growth is likely to remain steady in 2024 after a surprisingly resilient performance in a turbulent year gone by. Inflation is edging down from multi-decade highs, with intermittent upticks. Financial market sentiments have been fluctuating with changing views about an early pivot by central banks in advanced economies (AEs). The likelihood of lower interest rates has spurred rallies in equity markets, although uncertainty about the timing of interest rate reduction is reflected in bidirectional movements in the US dollar and sovereign bond yields. Emerging market economies (EMEs) are facing currency fluctuations amidst volatile capital flows.

3. Domestic economic activity is strengthening. As per the first advance estimates (FAE) released by the National Statistical Office (NSO), real gross domestic product (GDP) is expected to grow by 7.3 per cent, year-on-year (y-o-y) in 2023-24, underpinned by strong investment activity. On the supply side, gross value added (GVA) expanded by 6.9 per cent in 2023-24, with manufacturing and services sectors as the key drivers.

4. Looking ahead, recovery in rabi sowing, sustained profitability in manufacturing and underlying resilience of services should support economic activity in 2024-25. Among the key drivers on demand side, household consumption

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is expected to improve, while prospects of fixed investment remain bright owing to upturn in the private capex cycle, improved business sentiments, healthy balance sheets of banks and corporates; and government's continued thrust on capital expenditure. Improving outlook for global trade and rising integration in global supply chain will support net external demand. Headwinds from geopolitical tensions, volatility in international financial markets and geoeconomic fragmentation, however, pose risks to the outlook. Taking all these factors into consideration, real GDP growth for 2024-25 is projected at 7.0 per cent with Q1 at 7.2 per cent; Q2 at 6.8 per cent; Q3 at 7.0 per cent; and Q4 at 6.9 per cent (Chart 1). The risks are evenly balanced.

5. From its October 2023 trough of 4.9 per cent, CPI inflation increased successively in the next two months to 5.7 per cent by December. Food inflation, primarily y-o-y vegetable price increases, drove the pick-up in headline inflation, even as deflation in fuel deepened. Core inflation (CPI inflation excluding food and fuel) softened to a four-year low of 3.8 per cent in December.

6. Going forward, the inflation trajectory would be shaped by the evolving food inflation outlook. Rabi sowing has surpassed last year's level. The usual seasonal correction in vegetable prices is continuing, though unevenly. Yet considerable uncertainty prevails on the food price outlook from the possibility of adverse weather events. Effective supply side responses may keep food price pressures under check. The continuing pass-through of monetary policy actions and stance is keeping core inflation muted. Crude oil prices, however, remain volatile. Manufacturing firms covered in the Reserve Bank's enterprise surveys expect some softening in the growth of input costs and selling prices in Q4:2023-24, while services and infrastructure firms expect higher input cost pressures and growth in selling prices. Taking into account these factors, CPI inflation is projected at 5.4 per cent for 2023-24 with Q4 at 5.0 per cent. Assuming a normal monsoon next year, CPI inflation for 2024-25 is projected at 4.5 per cent with Q1 at 5.0 per cent; Q2 at 4.0 per cent; Q3 at 4.6 per cent; and Q4 at 4.7 per cent (Chart 2). The risks are evenly balanced.

Related Link: [https://rbi.org.in/Scripts/BS\\_PressReleaseDisplay.aspx?prid=57275](https://rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=57275)

## Statement on Developmental and Regulatory Policies

Dated: 08<sup>th</sup> February, 2024

Summary of Developmental and Regulatory Policy Measures:

### I. Financial Markets

1. **Review of Electronic Trading Platforms (ETPs):** The regulatory framework for ETPs is under review due to increased integration of onshore forex markets with offshore markets and advancements in technology. Market makers seek access to offshore ETPs offering INR products.
2. **Hedging Gold Price Risk in IFSC:** Resident entities are now permitted to hedge gold price risk in the over-the-counter (OTC) segment in the International Financial Services Centre (IFSC), providing more flexibility and easier access to derivative products.

### II. Regulations

3. **Key Fact Statement (KFS) for Retail and MSME Loans:** Mandating all regulated entities (REs) to provide a Key Fact Statement (KFS) to borrowers for retail and MSME loans, enhancing transparency and disclosure regarding loan agreements.

### III. Payment Systems and Fintech

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4. **Enhancing AePS Security:** Proposals to streamline onboarding processes for AePS touchpoint operators and implement additional fraud risk management requirements to enhance the security of Aadhaar Enabled Payment System (AePS) transactions.
5. **Principle-based Framework for Digital Payment Authentication:** Adoption of a principle-based framework for authentication of digital payment transactions to facilitate the use of alternative authentication mechanisms beyond SMS-based One Time Passwords (OTP).
6. **Introduction of Programmability and Offline Functionality in CBDC Pilot:** Proposed introduction of programmability and offline functionality in the Central Bank Digital Currency (CBDC) Retail (CBDC-R) pilot, enabling additional use cases and transactions in areas with poor internet connectivity.

These measures aim to enhance transparency, security, and efficiency in financial markets, regulations, and payment systems, fostering greater access and ease of operation for market participants and consumers alike.

Related Link: [https://www.rbi.org.in/Scripts/BS\\_PressReleaseDisplay.aspx?prid=57276](https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=57276)

## NCLT UPDATES

*Can on the basis that Trademark was hypothecated for a bigger amount and has been assigned for lesser amount be declared Undervalued Transaction | Whether NCLT has jurisdiction to decide the issue of Trademark – Gloster Cables Ltd. Vs. Fort Gloster Industries Ltd. and Ors. – NCLAT New Delhi*

Dated: 06<sup>th</sup> February, 2024

In this case, the dispute revolves around the ownership of a registered trademark, with jurisdiction vested in the District Court under Section 134 of the Trademark Act, 1999.

**A. Jurisdiction of Adjudicating Authority:**

The Adjudicating Authority's jurisdiction is governed by Section 60(5)(c) of the Code, allowing it to entertain questions of law or facts related to insolvency resolution or liquidation proceedings. In the present case, the resolution plan filed by the Resolution Professional (RP) has raised questions regarding the ownership of the registered trademark, an asset of the Corporate Debtor. The Adjudicating Authority had jurisdiction as the matter pertained to insolvency resolution, although not challenged by the Appellant initially.

**B. Assignment of Trademark:**

The Appellant obtained title to the trademark through a supplemental trademark agreement executed on 15.07.2008, where the Corporate Debtor assigned the registered trademark to the Appellant, subject to conditions specified in the agreement.

**C. Assignment of Trademark on Undervalued Transaction:**

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Sections 43 and 45 of the Code delineate the RP's obligations regarding undervalued transactions. The RP must form an opinion (Section 43) or examine and determine (Section 45) if transactions were undervalued during the relevant period. The Supreme Court, in the case of *Anuj Jain IRP for Jaypee Infratech Ltd. v. Axis Bank Ltd.*, emphasized the need for specific material facts in applications under Sections 45/46/47 or Section 66 of the Code.

In this case, the CoC was informed during its 5th meeting that the forensic audit found no preferential, undervalued, fraudulent, or wrongful trading transactions. The mere fact that the trademark was hypothecated for a higher amount and later assigned for a lesser amount does not necessarily constitute an undervalued transaction. Insufficient material before the Adjudicating Authority precludes the declaration of such a transaction as undervalued. In summary, the finding regarding the trademark assignment being an undervalued transaction is reversed as it does not comply with legal requirements.

Related Link: <https://ibclaw.in/gloster-cables-ltd-vs-fort-gloster-industries-ltd-and-ors-nclat-new-delhi/>

## **Whether advance paid on the basis of oral agreement for Share Purchase is Financial Debt as per the provisions of IBC – Jushya Realty Pvt. Ltd. Vs. Ninety Properties Pvt. Ltd. – NCLAT New Delhi**

Dated: 07<sup>th</sup> February, 2024

The appellate tribunal examined whether the amount of Rs. 1.25 crores paid by the Appellant to the ex-Director of the Corporate Debtor constituted a financial debt as defined in the Insolvency and Bankruptcy Code (IBC), and whether the section 7 application filed regarding the purported financial debt deserved to be admitted. Here's a summary of the decision:

A. Definition of "financial debt" as per section 5(8) of IBC:

The tribunal noted that the definition of "financial debt" under section 5(8) of the IBC is exhaustive and includes debts disbursed against the consideration for the time value of money. It highlighted that while the clauses under section 5(8) do not explicitly mention oral purchase agreements, clause (f) suggests that any amount raised under transactions with the commercial effect of borrowing could be considered financial debt.

B. Present Case:

The tribunal found that the appellant failed to provide any documents showing the existence of a Share Purchase Agreement or evidence of the transaction being a borrowing. It concluded that the transaction of Rs. 1.25 crores did not qualify as repayment of a financial debt. Additionally, no default date was established, further undermining the claim of financial debt.

The tribunal stated that it was unnecessary to delve further into the nature of the contract, whether written or otherwise. It emphasized that if the transaction was related to the purchase of a specific property in December 2014, the appellant should have asserted its rights within the stipulated three-year period. Filing for enforcement through the IBC was deemed an incorrect legal course of action.

C. Ratio laid down in *Sanjay D. Kakade vs. HDFC Ventures Trustee Company Ltd.*

The tribunal noted a case where a written Share Subscription and Shareholders Agreement were considered proof of financial debt. However, it concluded that the circumstances of the present case differed, and thus the precedent did not apply.

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*In summary, the appellate tribunal dismissed the section 7 application, ruling that the transaction in question did not constitute a financial debt under the IBC, and the legal action taken was inappropriate given the nature of the contract.*

*Related Link: <https://ibclaw.in/jushya-realty-pvt-ltd-vs-ninety-properties-pvt-ltd-nclat-new-delhi/>*

## ***Preference Shareholders as Financial Creditors -Only where investors' exit includes fixed return on investment?***

*Dated: 06<sup>th</sup> February, 2024*

*Sanjay D Kakade, the promoter of Kakade Estate Developers, was involved in a dispute with investors, including IL&FS Trust Company Ltd, over an exit consideration outlined in a binding term sheet. The investors-initiated insolvency proceedings under Section 7 of the IBC after the exit consideration was not paid, leading to the National Company Law Tribunal (NCLT) admitting the Corporate Debtor into insolvency.*

*Sanjay Kakade challenged the admission order before the National Company Law Appellate Tribunal (NCLAT), contending that the transaction was not a commercial borrowing for the time value of money and thus did not constitute a financial debt under Section 5(8)(f) of the IBC.*

*The investors argued that the investment, coupled with the exit consideration and the Consent Award, constituted a financial debt against the Corporate Debtor, making them financial creditors.*

*The NCLAT, referring to the Supreme Court's judgment in Pioneer Urban Land & Infrastructure Ltd. v. Union of India, determined that the transaction indeed had the commercial effect of a borrowing, satisfying the conditions of Section 5(8)(f) of the IBC. The exit consideration provided a return on investment with a time value of money component, further supporting the classification of the investment as a financial debt.*

*The NCLAT distinguished its earlier judgment in Raj Singh Gehlot v Vistra (ITCL) India Ltd., where it was held that an investment made under a Share Subscription and Shareholders Agreement might not constitute a financial debt unless it involved disbursement of funds with an interest element.*

*Based on the reasoning that the debt qualified as a financial debt and the investors as financial creditors, the NCLAT upheld the NCLT's decision to admit the Corporate Debtor into insolvency, dismissing Sanjay Kakade's appeal.*

*Related Link: <https://ibclaw.in/preference-shareholders-as-financial-creditors-only-where-investors-exit-includes-fixed-return-on-investment-sanjana-muraleedharan-senior-associate-keystone-partners-bengaluru/>*

### **IBC UPDATES**

## ***Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2024***

*Dated: 02<sup>nd</sup> February, 2024*

#### **Concerns:**

*M/s Indiacorp Law, Advocates & Solicitors, Noida&Jangpura Extension (New Delhi)*



The Insolvency and Bankruptcy Board of India has issued amendments to the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016. Here's a summary of the key points:

1. **Title and Effective Date:** The amendments are named the Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2024. They come into effect upon publication in the Official Gazette.
2. **Resignation of Insolvency Professionals:** A new clause (22A) is added allowing insolvency professionals to resign from their assignments. However, such resignation needs approval from the committee of creditors, consultation committee, debtor, or creditor, depending on the context. The resignation also requires approval from the Adjudicating Authority. The professional must continue duties until the Adjudicating Authority approves the resignation.
3. **Engagement of Partners or Directors:** Clause 23B now includes an explanation clarifying that insolvency professional entities can involve their partners or directors for tasks related to assignments, excluding valuation and audit work.
4. **Provision of Services by Insolvency Professional Entities:** Clause 23C includes a new explanation stating that insolvency professional entities can offer services, except for valuation and audit, for assignments undertaken by their partners or directors.

These amendments aim to streamline the processes and responsibilities of insolvency professionals under the Insolvency and Bankruptcy Code, 2016.

Related Link: <https://ibclaw.in/ibbi-insolvency-professionals-amendment-regulations-2024/>

## **IBBI (Voluntary Liquidation Process) (Amendment) Regulations, 2024**

Dated: 02<sup>nd</sup> February, 2024

The amendments outlined in the provided document pertain to the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017. Here's a summary of the key changes:

1. **Amendment Title and Effective Date:** The amendments are titled "Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Amendment) Regulations, 2024" and become effective upon their publication in the Official Gazette.
2. **Changes to Regulation 3:**
  - Substantial modifications are made to the requirements for the affidavit that must accompany the application for voluntary liquidation.
  - Additional provisions are included to ensure that the corporate person has made sufficient provisions to meet pending obligations arising from ongoing matters.
3. **Changes to Regulation 8:**
  - The word "Annual" is omitted from sub-regulation (1), clause (b).
4. **Changes to Regulation 37:**
  - Substantial modifications are made to sub-regulation (2) regarding the timeline and procedures for holding meetings of contributories.

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- The liquidator is required to file a Status Report with the Board within seven days of the meeting of contributories.
5. *Changes to Regulation 39:*
- Sub-regulation (7) is entirely substituted with new provisions regarding the withdrawal of amounts deposited into the Corporate Voluntary Liquidation Account.
  - Stakeholders can apply for withdrawal of amounts, and the liquidator is responsible for verifying claims and requesting the Board for release of funds.
  - Sub-regulation (8) references the new provisions for withdrawal of amounts deposited in the Corporate Voluntary Liquidation Account.

*These amendments aim to enhance the voluntary liquidation process, ensuring transparency, accountability, and timely distribution of assets to stakeholders involved in the process.*

Related Link: <https://ibclaw.in/ibbi-voluntary-liquidation-process-amendment-regulations-2024/>

## **IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) (Amendment) Regulations, 2024**

*Dated: 02<sup>nd</sup> February, 2024*

*The provided text outlines amendments to the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019. Here's a brief summary:*

1. **Title and Commencement:** *The amendments are titled the "Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) (Amendment) Regulations, 2024." They come into effect upon publication in the Official Gazette.*
2. **Changes to Regulation 4 (Explanation):** *In regulation 4 of the principal regulations, several adjustments are made in sub-regulation (1), Explanation, clause (i):*
  - (i) *Sub-clause (a) sees the insertion of the word "and" after "guarantor;"*
  - (ii) *Sub-clause (b) replaces the semicolon with a period.*
  - (iii) *Sub-clause (c) is removed.*
3. **Addition of Regulation 17A (Meeting of Creditors):** *After regulation 17 in the principal regulations, a new regulation 17A is inserted:*
  - *This regulation mandates the resolution professional to present the repayment plan mentioned under section 105 in a creditors' meeting for consideration.*
  - *It specifies that if no repayment plan is received within the timeframe stipulated in section 106, the resolution professional must notify this during a meeting of creditors.*

*These amendments likely aim to streamline the insolvency resolution process for personal guarantors to corporate debtors and enhance clarity in procedures.*

Related Link: <https://ibclaw.in/ibbi-insolvency-resolution-process-for-personal-guarantors-to-corporate-debtors-amendment-regulations-2024/>

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## *Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) (Amendment) Regulations, 2024*

*Dated: 02<sup>nd</sup> February, 2024*

*The provided text outlines amendments to the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019. Here's a summary:*

- 1. Title and Commencement: The regulations are titled as the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) (Amendment) Regulations, 2024, and they come into effect upon their publication in the Official Gazette.*
- 2. Amendments to Regulation 3:*
  - In regulation 3, sub-regulation (1), within the explanation:*
    - Clause (a) sees the insertion of the word "and" after "guarantor;".*
    - Clause (b) undergoes a substitution, replacing the "; and" with a period ".".*
    - Clause (c) is omitted.*
- 3. Amendments to Regulation 5:*
  - In regulation 5, sub-regulation (1), the proviso clause (c) is omitted.*

*These amendments reflect changes to the original regulations, refining and adjusting certain clauses and provisions within the framework governing bankruptcy processes for personal guarantors to corporate debtors in India.*

*Related Link: <https://ibclaw.in/ibbi-bankruptcy-process-for-personal-guarantors-to-corporate-debtors-amendment-regulations-2024/>*

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