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India

**GUIDELINES FOR INTERMEDIARIES AND DIGITAL MEDIA ETHICS CODE**

2021年2月25日、インド政府は新たな情報技術に関する規則を公表した。同規則は、オンラインメディアやソーシャルメディア事業者に対して遵守すべき義務や倫理規定を定めており、オンラインコンテンツが適切に管理・運用されることを企図するものである。本稿では同規則の内容について概説する。

**Introduction**

On 25 February 2021, the Government India notified the new Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (“**New Intermediary Rules**”) under the Information Technology Act, 2000 (“**IT Act**”) in supersession of the Information Technology (Intermediary Guidelines) Rules, 2011. The New Intermediary Rules impose additional obligations on intermediaries, in particular, social media intermediaries and aim to regulate online content by prescribing a code of ethics. The New Intermediary Rules will be jointly administered by the Ministry of Electronics and Information Technology (**MeitY**) which will regulate obligations on intermediaries and the Ministry of Information and Broadcasting (**MIB**) which will administer the code of ethics and related procedures applicable to publishers of digital content. The key provisions of the New Intermediary Rules are summarized below.

**Key Provisions**

1. **Applicability:** In addition to Intermediaries regulated by the 2011 Rules, the New Intermediary Rules also extend to publishers of news and current affairs content (which will include online papers, news portals, news aggregators and agencies, but exclude physical newspapers, their online equivalent and individuals or users who do not transmit content in course of systematic business or professional or commercial activity) (“**News Publishers**”) and publishers of online curated content (which will include entities which perform a significant role in determining the content and provide users with curated content over the internet, but exclude entities or users who are not transmitting such curated content in the course of systemic business, professional or commercial activity) (“**Content Publishers**”).
2. **Social Media Intermediaries:** A social media intermediary (“**SMI**”) is defined to mean an intermediary that primarily or solely provides means for online interaction between two or more users and allows them to create, upload, share or access information using its services. Where an SMI has more than five million registered users, it will be regarded as a significant SMI (“**SSMI**”). SSIMs are subject to additional requirements under the New Intermediary Rules.

3. **Obligations of Intermediaries:** In addition to the obligations applicable to Intermediaries under the previous legal regime (such as the requirement to prominently publish the terms of use, privacy policy and user agreement), the New Intermediary Rules prescribe the following additional requirements:
- (i) annually notify its users of changes to its policies;
  - (ii) put in place user terms restricting content which is patently false, misleading, inconsistent with or contrary to the laws of India;
  - (iii) remove content notified to be in violation of any law within 36 hours of a court or government order;
  - (iv) take all reasonable measures to remove sexual content or morphed images, within 24 hours of a complaint;
  - (v) constitute a grievance redressal mechanism and acknowledge receipt of user complaints within 24 hours and resolve disputes within 15 days;
  - (vi) retain details pursuant to takedowns and account removals for a period of 180 days; and
  - (vii) provide information or assistance to the Government within 72 hours for the purposes of verifying the identity of a user or for the prevention, detection, investigation, or prosecution of offences.
4. **Additional Obligations of SSIMs:** SSIMs are subject to the following additional obligations and must comply with these within the next 3 months:
- (i.) appoint Indian resident employees as Chief Compliance Officer (responsible for adhering to the IT Act and the New Intermediary Rules), Grievance Redressal Officer (to address user complaints) and Nodal Officer (for coordination with law enforcement agencies);
  - (ii.) have a physical contact address in India to receive communication;
  - (iii.) in case of SSIMs primarily providing messaging services - enable the identification of the first originator of information if required by an order passed by a court or competent authority;
  - (iv.) enable voluntary verification of users and provide an identification mark for verified users;
  - (v.) endeavour to use automated tools to proactively identify and remove unlawful content, including content depicting rape and child sexual abuse in any form;
  - (vi.) implement appropriate mechanisms for grievance redressal and enable the tracking of the status of complaints;
  - (vii.) publish monthly compliance reports indicating details of complaints received, action taken thereon, and information removed or disabled access to as a result of proactive monitoring using automated tools; and
  - (viii.) clearly indicate any exclusive, targeted or sponsored content.
5. **Code of Ethics:** All News Publishers, Content Publishers and Intermediaries which primarily enable the transmission of such content are now required to comply with the prescribed Code of Ethics. News Publishers are required to comply with the Norms of Journalistic Conduct of the Press Council of India under the Press Council Act, 1978, the Programme Code under section 5 of the Cable Television Networks regulation) Act, 1995 and other prohibitions provided under any other laws. Content Publishers are required to ensure that they do not transmit illegal content, avoid certain categories of content, and comply with detailed guidance around classification of content into specific categories. Content Publishers must also put in place age verification mechanisms to restrict access to adult or age restricted content. The obligations of intermediaries are limited to the requirement of registration of News Publishers with the MIB, and the inclusion of a visible verification mark upon registration. Further, intermediaries are required to comply with blocking or removal directions issued by the MIB.

6. **Obligations of Publishers:** Publishers who operate (including by having any physical presence) in India or generate content (available in India) targeting Indian users in a systematic manner are required to provide specified information (such as details of the entity) to the MIB within 30 days of publication of the New Intermediary Rules and publish monthly compliance reports setting out details of grievances received and action taken.
7. **Grievance Redressal Mechanism for Publishers:** The New Intermediary Rules establish a three-tier grievance redressal mechanism for Publishers:
- (i) At the first level, publishers shall regulate themselves by appointing a grievance redressal officer and establishing a grievance redressal mechanism. Additionally, Content Publishers will be required to self-certify their content into different categories.
  - (ii) At the second level, self-regulating and independent body/bodies shall be established by the publishers to oversee the adherence to the Code of Ethics by the entity. Such self-regulating body will have to be headed by an eminent person such as a retired judge of the High Court/Supreme Court and be registered with the MIB.
  - (iii) At the third level, the MIB shall establish an oversight mechanism by constituting an interdepartmental committee of government officials to regulate the publication of digital content.

## **Conclusion**

The New Intermediary Rules have been introduced to increase accountability of Intermediaries and regulate the publication and transmission of online content. The Rules lay down stringent requirements that must be complied by social media intermediaries, particularly significant social media intermediaries such as WhatsApp or Facebook thereby substantially increasing compliance costs. Intermediaries operating in India or proposing to enter the Indian market must take note of the above provisions and ensure that they are fully compliant with the New Intermediary Rules, failing which they shall lose the safe harbour protection under the IT Act, providing immunity from legal prosecution for any content posted on their platforms.

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Vietnam

## **SUMMARY OF GUIDELINES UNDER THE NEW LABOUR CODE**

ベトナムでは、新しい労働法（法律第 45/2019/QH14 号）が 2021 年 1 月 1 日に施行され、その細則を定める政令・通達も公布された。本稿では、新労働法の施行細則のうち、実務的に関心が高いと思われる点をご紹介します。

The new Labour Code of Vietnam (Law No. 45/2019/QH14) came into effect on January 1, 2021. The Government issued decrees and circulars providing guidelines for the implementation of some provisions of the new Labour Code. Set out below is a summary of the new important guidelines issued under the Labour Code.

### **1. Foreigners Working in Vietnam**

Decree No. 152/2020/NĐ-CP dated December 30, 2020 (“**Decree 152**”) provides some major amendments to the regulations on foreigners working in Vietnam as follows:

**Conditions to qualify as foreign experts and technicians working in Vietnam**

- Under Article 3 of Decree 152, a foreign worker who has a document certifying that he/she is an expert of an overseas agency, organization, or enterprise is no longer considered as a foreign expert. Instead, a foreign expert means a foreign worker who:
  - Having a university degree or higher or the equivalent and having at least 3 year’s working experience in the specialty in which he/she was trained in conformity with his/her expected working position in Vietnam (*same with previous regulations*); or
  - Having at least 5 years working experience and a practicing certificate in conformity with his/her expected working position in Vietnam.
- Article 3 of Decree 152 also adds “having at least 5 years working experience suitable for his/her expected working position in Vietnam” as a new circumstance under which a foreign employee would be eligible to be recognized as a technician.
- Moreover, a foreign worker who comes to work in Vietnam as an expert, a technician, and so on in form of performing an intra-company transfer program has to be recruited by the foreign company at least 12 consecutive months before the transfer date instead of 12 months as previously regulated (Article 3).

**The case in which foreigners working in Vietnam are not requested to have a work permit (“WP”)**

Under the previous regulations, the owners or the capital contributing members of a limited liability company and the members of the board of management (BOM) of a joint-stock company are exempted from WP requirements. The new Labour Code adds the condition that these persons must have a capital contribution value as stated by Government (Article 154). Decree 152 clarified the capital contribution value is VND 3 billion and more (Article 7).

Besides, according to previous regulations (Decree 11/2016/NĐ-CP), a foreigner who comes to Vietnam to work as an expert, manager, chief executive director, or technician for under 30 days and for a total accumulated working period under 90 days per year is exempted from WP requirements. However, Decree 152 further limits the number of times those foreigners can enter Vietnam, to no more than 3 times per year (Article 7).

**The case in which application for confirmation of WP exemption is not requested**

In principle, foreign workers who are not required to have WP, with some exemptions (those who stay in Vietnam for under 3 months to offer services for sale; those who enter Vietnam to hold the positions of experts, managers, chief executive officers or technicians for under 30 days and an accumulated working period of under 90 days per year; those who stay in Vietnam for under 3 months to deal with complicated technical or technological problems; relatives of members who are executing their functions in foreign missions in Vietnam upon the approval of the Ministry of Foreign Affairs), must be confirmed by a competent authority for the WP exemption. Decree 152 sets out certain new situations under which foreigners working in Vietnam are not requested to apply for a confirmation of WP exemption as follows:

- A foreign lawyer issued with a certificate to practice law in Vietnam under the Law on Lawyers.
- Foreigner who is married to a Vietnamese and living in the territory of Vietnam.
- Foreigner who is an owner or capital contributing member of a limited liability company with a capital contribution of VND 3 billion or more.
- Foreigner who is chairperson of BOM, or BOM member of a joint stock company with a capital contribution of VND 3 billion or more.

**Issuance, extension, and re-issuance of WP**

Article 155 of the new Labour Code adds a new procedure called "Extension" of WP. Decree 152 clarifies its applicable circumstances and dossiers. Accordingly, in case a foreigner continues to work in Vietnam after the expiration of the two-year of WP, he/she must "extend" the WP instead of the “re-issue”. WP can be extended for one time for a maximum period of 2 years, which means that after 4 years working in Vietnam, foreign workers must apply for a new WP by WP

issuance procedure. The foreign worker does not need to leave Vietnam but he/she also has to submit a Criminal Record Certificate and the document certificate that he/she is a manager, executive, expert or technical.

## **2. The Notice Period Before Unilaterally Terminating the Labour Contract in Special Works and Lines of Business**

Decree 145/2020/NĐ-CP date December 14, 2020 (“**Decree 145**”) adds a new regulation that stipulates the special works and lines of business and prior notice period upon unilateral termination of employment contracts prescribed in Article 35.1.d and Article 36.2.d of the new Labour Code. Special works and lines of business include enterprise managers defined by the Law on Enterprises, the Law on Management and Use of State Investment in Enterprises.

When an employee in the special works and lines of business or his/her employer unilaterally terminates the employment contract, prior notice shall be:

- At least 120 days before the termination date if the employment contract has an indefinite term or a term of at least 12 months;
- At least one-fourth of the employment contract duration if the duration is less than 12 months.

## **3. Definition of Sexual Harassment at the Workplace**

Under the new Labour Code, sexual harassment at the workplace shall be subjected to dismissal and the internal labour regulations must have provisions dealing with sexual harassment at the workplace. However, with the definition of sexual harassment in Article 3.9 of the new Labour Code, it is difficult to verify whether an act is considered sexual harassment or not.

Article 84 of Decree 145 provides a more clear concept that sexual harassment may occur in form of a request, demand, suggestion, threat, use of force to have sex in exchange for any work-related interests; or any sexual acts that thus creates an insecure and uncomfortable work environment and affects the mental, physical health, performance and life of the harassed person.

Besides, sexual harassment at the workplace includes:

- Actions, gestures, physical contact with the body of a sexual or suggestive nature;
- Verbal sexual harassment: sexual or suggestive comments or conversations in person, by phone, or through electronic media
- Non-verbal sexual harassment: body language; display, description of sex or sexual activities whether directly or through electronic media.

In addition, the “workplace” mentioned in Article 3.9 of the new Labour Code is defined that any location where the employee works in reality as agreed or assigned by the employer, including the work-related locations or spaces such as social activities, conferences, training sessions, business trips, meals, phone conversations, communications through electronic media, on shuttles provided by the employer and other locations specified by the employer.

## **4. Annual Leave**

Decree 145 adds several new regulations relating to calculating annual leave days and salary during annual leave and other paid leave days that more favorable for employees as follows:

- Under Decree 145, a working period of less than one month is also used as a basis for calculating annual leave. Article 66.2 of Decree 145 states that in case an employee has an incomplete month of work, it will be considered a complete month (01 month) if the total working days and paid leave days (holidays, annual leave, personal leave prescribed in Article 112, Article 113, Article 114 and Article 115 of the new Labour Code) make up of at least 50% of the normal working days of the month.

- Article 113.3 of the new Labour Code states that employees shall be paid in compensation for the unused annual leave days in case of employment termination or job loss. Article 67 of Decree 145 stipulates the basis for paying salary for unused annual leave days. Instead of paying the average salary according to the labour contract of the preceding 06 months before employment termination or job loss (in case the employee has been working for full 06 months) or the average salary according to the labour contract of the whole working time (in case the employee has been working for less than 06 months), the salary as the basis for paying for unused annual leave days is the salary written in his/her labour contract of the month preceding the month in which the employee retires or loses his/her job.

## 5. **Benefits for female employees**

Same with previous regulations, the new Labour Code stipulates that a female employee in her menstruation period is entitled to a 30-minute break in every working day, and a female employee nursing a child under 12 months of age is entitled to a 60-minute break in every working day with full wage as stated in the labour contract. Decree 145 adds more favorable regulations for female workers, accordingly, in case the female employee does not need to rest and the employer allows her to work, she will be entitled to, in addition to the salary mentioned above, an extra salary that corresponds to the amount of work done by her during the rest period to which she is entitled.

Moreover, Decree 145 has a regulation that encourages employers to provide dedicated rooms for milking and breast-milk storage in the workplace if possible. In case the employer has 1000 female employees or more, a room for milking and breast-milk storage is mandatory.

## **Conclusion**

The new Guidelines and Labour Code provide greater clarity on several aspects relating to labour conditions. Employers must take note of these new guidelines and make necessary changes to their internal labour regulations.

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## Thailand

## SUMMARY OF KEY LICENSES AND REQUIREMENTS CONCERNING ELDERLY CARE SERVICES

タイにおいても高齢化が進みつつあり、今後、介護サービスの需要の高まりに応じて、介護関連事業における投資機会が増えていくことが見込まれている。本稿では、介護施設事業及び訪問介護事業に関する法規制について、近時の法改正動向を含めて解説する。また、介護施設事業に関するタイ投資奨励委員会の投資恩典についても紹介する。

### Introduction

According to the data published by the Department of Older Persons under the Ministry of Social Development and Human Security of Thailand, as of 31 December 2020, 17.57% of Thai population are above 60 years old and it can be expected that the proportion will gradually increase. Given Thailand's transformation to an aged society, the demand for care services to elderly persons, ranging for assisted living to residency in care homes, will become higher. The growth of this new demand due to the demographic change opens a new investment opportunity in elderly care services such as care facilities and home care service, etc.

From legal aspect, several laws concerning the operation of care services for elderly persons have been announced in the recent years by Thai authority. This article provides a brief summary of material licenses required to operate care services for elderly persons in Thailand and also incentives granted to the eligible businesses.

#### I. Licenses and Requirement

Key licenses and requirements to operate care services for elderly persons in Thailand are as follows:

##### ➤ **Licenses to operate Care Facility under the Health Business Establishment Act B.E. 2559 (2016) (the "HBE Act")**

The HBE Act is the master law regulating health or beauty business which does not provide medical treatment to customers e.g. spa, massage and another business as will be further announced by the Ministry of Public Health (the service provider under the HBE, a "**Health Business Establishment**"). Under the said Act, the operators of the Health Business Establishment are required to obtain the license from the Division of Health Business Establishment, the Department of Health Service Support under the Ministry of Public Health (the "**DHSS**") and comply with the standard imposed under the HBE Act.

Regarding the elderly care service, the Ministry Regulation dated 20 July 2020 (effective from 27 January 2021) (the "**Care Facility Regulation**") issued under the HBE Act designates "care business of elderly persons or persons who have dependent conditions" as a type of Health Business Establishment under the HBE Act and thus requires the license for the business operation (the "**Care Facility License**"). Under the Care Facility Regulation, businesses which fall within the scope of "care business of elderly persons and persons who have dependent conditions" include "business of providing services related to caring, supporting, rehabilitating or assisting activities during the day, assisting daily routine or providing a place to reside or care for elderly persons or persons who have dependent conditions, but excluding medical facilities as defined under the law concerning medical facilities<sup>1</sup>" (collectively, the "**Care Facilities**"). Overall, the Care Facilities under the Care Facility Regulation must arrange the supporting and rehabilitating activities for elderly persons. Furthermore, the types of Care Facility License can be categorized into 3 depending on type of stay and conditions of elderly persons in the Care Facilities, as follows:

**Type 1:** a daycare facility without overnight stay which provides care service for elderly persons or persons who

1 Under the Medical Facilities Act B.E. 2541 (1998), a "medical facility" means "a place including a vehicle provided for healing arts practices under the law on healing arts practices, medicine profession practices under the law on medicine profession, nursing and midwifery practices under the law on nursing and midwifery profession, dental profession practices under the law on dental profession, physical therapy profession practices under the law on physical therapy profession, technological medicine profession practices under the law on technological medicine, or traditional Thai medicine profession practices and applied traditional Thai medicine profession practices under the law on traditional Thai medicine profession, or another medical and health professions under the laws governing such profession in which it is normally conducted regardless of payment or non-payment."

have dependent conditions;

**Type 2:** a facility with residential area for long term stay which provides care service for elderly persons who are still capable to perform normal routine; and

**Type 3:** a facility with rooms for overnight stay which provides care and assisting services for the elderly persons or persons who have dependent conditions, especially for those who are not capable to perform normal routine by themselves.

The Care Facilities which can apply for the Care Facility License must comply with the minimum standard required under the Ministerial Regulation as follows:

- (i.) Location standard e.g. the adjustment of fixtures inside the Care Facilities must allow full accessibility to wheelchair;
- (ii.) Safety standard e.g. fire extinguishers and ready-to-use first aid kits must be installed inside the Care Facilities; and
- (iii.) Service standard e.g. the records of its residents must be prepared and the evaluation of communication capacity of the resident must be made once in every 3 months, clean and safe food must be provided, etc.

In addition to the Care Facility License, the Care Facilities which provide residential area for long term stay or rooms for overnight stay are required to have an administrator who must be stationed to oversee the day-to-day operation of the Facilities. Such administrator requires a license under the HBE Act to work in the said Facilities. In order to obtain the administrator's license, the applicant must be at least 20 years old and must have obtained a certificate showing that he/she has passed a health service training course which is accredited by the DHSS as well as the evaluation test. Care givers who provide the service to elderly inside in the Facilities must also register himself/herself and pass the evaluation under the criteria designated by the DHSS.

➤ **License to operate health-hazardous activities under the Public Health Act B.E 2535 (1992) (the "Public Health Act")**

In addition to the establishment of the Care Facilities as mentioned above, elderly care services can also be provided by sending care givers directly to each elderly person's home (the "**Home Care Service**"). In such case, in addition to the Care Facilities License, the operators of Home Care Service must obtain the license to engage in health-hazardous business from local governments (the "**Hazardous Business License**").

Under the Public Health Act, certain businesses which involve close contact to human health or use chemical substances can be categorized as "health-hazardous businesses" by the Ministry of Public Health. Such announcement is the master list of regulated businesses and each local government in Thailand has the authority to announce the businesses within the said list as health-hazardous businesses in their areas. Once such announcement has been made, the operators of such activities in the area must obtain the Hazardous Business License from the local government.

In this regard, Home Care Service has been included in the master list of health-hazardous activities under the Notification of Ministry of Public Health re: Health-hazardous activities dated 3 June 2015. Whether or not the operation of Home Care Service will be deemed as subject to the Hazardous Business License will depend on the ordinance in each local municipality. In case of Bangkok, the operation of Home Care Service has been declared health-hazardous business under the Bangkok Ordinance re: Health hazardous business B.E. 2561 (2018) and thus the provision of Home Care Service in Bangkok area is subject to the Hazardous Business License.

The standard for Home Care Service under the Hazardous Business License will be announced by each local government. Regarding the details of such standard, the Public Health Committee under Ministry of Public Health has announced the recommendation for regulation of Home Care Service Business on 24 September 2010 and local governments which already announced their standards referred to this recommendation as the model regulation. The standard includes minimum qualification of care givers and standard of assistance which must be provided to the elderly persons during the Home Care Service, for examples, the care giver shall give assistance to the elderly person during his/her daily routine which is suitable and safe for the age of such elderly persons and must observe



the change in the elderly person's behavior and report his/her condition daily to relatives etc.

➤ **Foreigner Business License under the Foreign Business Act B.E. 2542 (1999) (the "FBA")**

A foreign company (i.e. a company in which less than half the shares are owned by Thai companies or persons) which is registered in Thailand and intends to provide elderly care services both in the form of Care Facilities and/or Home Care Service will be subject to the foreign business license (the "FBL") for service business under the List Three (21) annexed to the FBA. The criteria for granting the FBL will be determined by the competition against Thai business and contribution of technology and know-how to Thai employees or business. A foreign company who has been granted the FBL must bring in to Thailand the minimum capital in the amount of at least 3,000,000 THB (approximately 97,000 USD) or 25% of average estimation expense for 3 years of business, depending on whichever is higher.

➤ **Other Licenses**

In addition to the licenses mentioned above, the Care Facilities and Home Care Service can be subject to other licenses depending on accessory services provided. For example, if the Care Facilities are involved in the provision of transportation or pick-up service for the residents with fees, such activity can be subject to the transport license under the Land Transport Act B.E. 2522 (1979). Foreign staff who work inside the facilities such as interpreters or administrative staff, etc. are also required to obtain work permits and visas under immigration laws.

**II. Business incentives granted by the Board of Investment of Thailand (the "BOI")**

The Care Facilities under the HBE Act can be eligible for tax and non-tax benefits granted by the BOI. Under the recently announced BOI Notification No. Sor. 1/2564 re: additional amendment of the eligible business category for investment promotion under the Announcement of the BOI No. 2/2557 dated 13 January 2021, the applicant of the BOI promotions must fulfill the following qualifications:

- (i) The business must fall in the scope of the Care Facilities under the HBE Act;
- (ii) The Care Facilities must have at least 50 beds for the service;
- (iii) The care service must be under the scope of Type 3 Care Facilities License i.e. a facility with rooms for overnight stay to provide care and assisting service for elderly persons or persons who have dependent conditions and are not capable to perform normal routine by themselves;
- (iv) At least 51% of shares in the applicant company must be held by Thai nationality persons or entity; and
- (v) The applicant must receive the Care Facilities License under the HBE Act in order to receive corporate tax exemption.

The company who receives BOI promotion will be granted (i) exemption of corporate income tax for 3 years, (ii) exemption of import duties for machinery, and (iii) other non-tax incentives such as permission to bring into Thailand skilled workers and experts to work in the promoted business, etc.

It must be noted that the BOI promotion for Care Facilities will be granted to Thai company having the majority of shares held by Thai nationality persons or entity only. Therefore, foreign investors who would like to invest in the Care Facilities business under the BOI promotion may be required to partner with Thai companies. Still, BOI promotion can benefit foreign investors because it gives special permission to bring in foreign personnel.

**Conclusion**

Despite the increase in aged population, Thailand's population growth is declining. According to the study of the Office of the National Economic and Social Development Council in January 2020, the population in Thailand in children age started to decline from 2020 and will continue so. The ratio of working age population is expected to decrease from 65% in 2020 to 56% in 2040. With the reduction of working age population, care services for elderly persons allow both elderly persons and their family to seek alternative for assisted living and relieving the burden of relatives. The recent enactment of the Care Facility Regulation and the BOI's incentives show that the focus on the said business in Thailand is still in the initial state and business entrepreneurs in developed countries who are well-experienced with

aged society may consider bringing in their know-how when investing in Thailand.

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