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Leasing and its Applicability in the National Scenario

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Summary

This article provides information from a study on the financial operation known as *Leasing*. It explains the origin of this commercial leasing process, covering historical events that can be considered the origins of the model's concept, up to the key events that shaped its global adoption. Following this, the article addresses the operation in Brazil, how it arrived in the country, and its regulation through laws and resolutions. Understanding its origin and regulation, it discusses how the method works, the types of *leasing* used, and how they are applied, showing all phases from beginning to end.

Keywords: *Leasing*; Financial Leasing; Lessor; Lessee.

Abstract

This article presents information from a study conducted on the financial operation known as Leasing. It explains the origin of this process of Commercial Leasing, covering historical facts that can be considered the origins of the model's concept, up to the key events that shaped its use worldwide. Following this, it addresses this operation in Brazil, how it arrived in the country, and how it was regulated through laws and resolutions. Understanding its origin and regulation, it discusses how the method works, the types of Leasing used, and how they are applied, showing all phases from beginning to end.

Keywords: Leasing; Commercial Leasing; Lessor; Lessee.

Introduction

This article aims to understand the mechanism of Leasing.

known as *Leasing* in the Brazilian context, showing its use abroad in some countries and in its country of origin.

Originating in the United States of America, *leasing* comes from the word *lease*, which...

According to the Cambridge dictionary, it has the meaning of rental and/or leasing, along with the suffix

The prefix "*ing*" indicates the gerund, thus having the meaning of lease.

Leasing is viewed as a means of commercial leasing and its particularities .

These differ from other, more occasionally used methods. In this one, an institution acquires an asset and leases it to...

An individual, whether a natural person or a legal entity, has three options at the end of the contract:

return the property to the lessor, renew the lease agreement, or purchase the property for its value.

residual.

And it is from this point that we will delve deeper into this topic. Bearing in mind that it is not about...

of a method as popular as financing, for example.



Leasing *throughout* history

To better understand what *leasing* is , we will delve into its history and... emergence, passing through events that share similarities in their method of action, until we arrive at where its creation and naming actually took place, and from there, its evolution to how it is used today.

Leasing has its origins in events dating back many years before Christ, *more* Precisely in the year 2000 BC we have the first record of what may relate to the use of *leasing* in society. This occurred in the Sumerian civilization, where it was reported in their cuneiform writings a a type of lease granted by the priests who owned the mines to men of lower castes so that these entities carried out their activities, which is very similar to *leasing*, since the latter aims to... Leasing a specific asset, with the difference that the lessee chooses whether or not to keep the asset. Return or renew the lease.

Following the timeline, we move on to Babylon in the year 1800 BC, where various Scholars say that there are some clauses regarding *leasing* in the Code of Hammurabi. (CLARK, 1978).

It is in ancient Greece, in Aristotle's work Politics, that we find a story that, according to... Carlos Patrício Samanez (1991, p. 14) states that it is "a controversial fact that some consider an authentic "Lease operation," where a story about Thales of Miletus is told. Aristotle recounts the following:

It will also be good to collect the scattered maxims that have served some to enrich themselves, such as This refers to the account of Thales of Miletus. It is one of the general speculations aimed at achieving... fortune, but attributed to him because of his wisdom. As they criticized him for his poverty and They mocked his useless philosophy, but his knowledge of the stars allowed him to predict that there would be an abundance of olives. Having gathered all the money he could, he rented, before the end of the In winter, he acquired all the oil presses of Miletus and Chios. He got them at a good price, because No one had offered better, and he had given some advance payment. After the harvest, many people They both showed up at the same time to get the printing presses, and he rented them for whatever price he wanted. Having earned a lot of money, he showed his friends that it was very easy for philosophers. He wanted to get rich, but they didn't care about that. That's how he showed his wisdom. (ARISTOTLE, 1913. p. 26)

In this case, the similarity to *leasing* stems from the fact that Tales rented all the printing presses. of oil before the harvest season, after this, when the season arrived, he rented the equipment for the Based on this, we can draw an analogy to commercial leasing, where Thales was the... The lessor and the people who needed the equipment were the lessees.

It was quite some time later that we found what would actually become a kind of The true origin of *leasing*, going beyond the simple idea of renting, dates back to the 1700s in the United States. In America, long-term leases were introduced by English colonists in the cities of



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Philadelphia and Baltimore. And some time later the Dutch introduced the idea to New York City.

During the 19th century, there was a slight expansion of *leasing*, however with very specific applications. Limited. And it is during the Second World War that we find the birthplace of the idea of what *Leasing* is. modern. Since in 1941 a law called *the Lend-Lease Act was passed*, which aimed to help the Allied countries (AFFONSO, 1969). Through this, the USA leased equipment. The war equipment was intended for the Allies, and at the end of the war, they would decide whether to keep it permanently. or they would return them. Despite this fact being exactly the idea behind the Leasing system. Mercantil cannot be considered its true origin, since this action was a kind of aid between countries given the critical moment the world is experiencing.

The origin, accepted by most scholars, is in the 1950s. specifically in the year 1952. Where the method was conceived by Booththe Junior, with the idea of to increase its production without having the financial means to do so. Boothe owned a It was a food factory in California and had a contract with the US Army, however... The demand to be met was much greater than its supply capacity, and in order to meet it... The contractor sought an alternative means that could satisfy its demands. To this end, Boothe He sought out a financial institution that could help him, which in this case was a bank. Because Since he did not have the necessary capital to purchase the machinery, he made an agreement. with the bank, so that they could purchase the equipment in their own name, which was of interest to lessee and then provide it through a periodic payment made by Boothe. Due to the success of this idea, he founded the US *Leasing* Company, which was a company intended... to equipment rental (WALD, 1971).

After this, the practice was refined and became known throughout the world. In the 1960s, the model was implemented in Europe, becoming very successful in countries such as England, France and Germany. In Latin America, it began in Venezuela and Mexico. In Brazil, however, the... My first contact with this model was in the 1950s, with a company located in São Paulo. called RENT-A-MAQ (MEIRELLES, 1978).

***Leasing* in Brazil – Commercial Leasing**

In Brazil, the Leasing model was only truly implemented in the past year. In the 1960s, there was an initiative by pioneering groups to introduce this method in Brazil. When it was introduced, it had no standards to regulate it with regard to operations management. especially because of the tax aspect, since this was one of the biggest benefits of *leasing*, the which ultimately hindered the "explosion of a sector recognized as full of potential" (SAMANEZ, 1991). Thus, from the 1970s onwards, *leasing* began to be properly



Year V, v.2 2025 | Submission: December 12, 2025 | Accepted: December 15, 2025 | Publication: December 16, 2025

regulated by the Federal Agency, which ultimately led to more discipline in the sector and

This ultimately facilitated its growth within a legal framework, albeit through this means.

The regulation was primarily aimed at regulating the tax aspect.

However, before we delve into the national law that was applied to the *leasing model*, it is

To better understand the types of *leasing*, there are two: operating *leasing* and...

Financial *leasing*, and in addition to these, there are special characteristics that arise in operations, which are

These include *Lease-Back*, Real Estate *Leasing*, Export *Leasing*, Import *Leasing*, etc.

- Operating *Lease*

It is a *leasing* model that typically involves two parties: the lessor and the lessee.

That is, the lessor is the supplier and owner of the asset that the lessee requests. This is a type of *leasing*.

It basically includes the rental of movable goods, often for short periods, such as...

For example: industrial machinery, automobiles, telephone services, etc. In other words, this model has...

This has a direct relationship with the productive capacity of this asset or service, and therefore can be cancelled.

any time, provided that 30 days' notice is given. Because rent payments do not reduce the amount.

The price of the asset at the end of the contract, unlike financial *leasing*.

The main characteristics of operating *leases*, according to Samanez (1991, p. 16)

they are:

- a) During the contract term, the rent paid does not cover almost the entirety of the... amortization and interest arising from the acquisition of the equipment by the lessor, such as This occurs in financial *leasing*. One of the characteristics that differentiates it from simple leasing. It is the existence of the option to purchase, relocate, and return the equipment at the end of the contract.
- b) The operating lessor assumes responsibility for the maintenance and repairs of leased asset, primarily aimed at maintaining the perfect functional condition of the equipment, which may be leased to another party if there is no interest in renewing the contract. either by renting or by purchasing.
- c) Operating leases do not involve the lessee in irresistible commitments, forcing them to continue leasing equipment that they no longer need.
- d) The lessor bears the risks arising from the right of ownership, especially in which relates to technological obsolescence and market conditions. secondary of used equipment.

The lessor assumes responsibility for providing technical assistance for the maintenance of the equipment and therefore, operational rental companies, due to their nature and functions, do not

It can be considered a financial institution.

• Financial *Leasing*

It's the model where the lessor is, so to speak, the company specializing in leasing .

The financial model is primarily composed of three agents: the supplier, the lessor, and the...

lessee. First, the lessee goes to the lessor to propose the *lease*, and from there the...

The lessor, based on the lessee's specifications, finds the supplier of the goods in question and carries out...

its acquisition. Having the asset as its property, the lessor therefore leases it to

The lessee, through a financial lease, in this transaction, the amount paid by

Leases with periodic payments serve as amortization of the price of the asset, which has been increased by...

interest, and, at the end of the payment period, the lessee can choose to buy outright, paying

either receive the remaining balance after the payments have been deducted, or return the item.

According to Samanez (1991, p. 17), this leasing model differs from conventional financing and leasing, for the following reasons:

- During the lease period, ownership of the property belongs to the lessor, while
The tenant has possession of the property;
- The operation provides tax advantages to the lessee, since it can
Deduct as an expense the total amount of consideration, including principal and interest;
(...)
- The consideration for a lease should not be mere rent, but should include amortization.
of good;
- the goods acquired by the lessor to specifically fulfill the intention of
tenant;
- to allow the lessor to recover the invested amount in a single contract.

It is understood, therefore, that Leasing is an operation of Financing of fixed assets that is labeled or appears to be a rental.

According to Samanez (1991, p. 18), we can identify some characteristics of *Leasing*.

Financial terms such as:

- a) It is produced by a basic, *non-cancellable contract*, the term of which is determined by the economically useful life of the leased asset, which is, in some ways, shorter than the expected.
- b) Since it is linked to a financial transaction, the risk of obsolescence is not... assumed solely by the lessor, as in operating *leases* , with part or all of it falling on the lessor. the entirety of this burden falls on the lessee.
- c) The lessor recovers the value of the investment during the term of the contract; thus, the The residual value of the asset for the purchase option may have little relevance, setting up an operation very similar to a loan for the purchase of fixed assets.
- d) The intervention of a financial institution is fundamental, giving the operation a predominantly financial in nature.



Year V, v.2 2025 | Submission: December 12, 2025 | Accepted: December 15, 2025 | Publication: December 16, 2025

(e) The lessee is responsible for the ongoing administration of the property, bearing the costs of: maintenance, tax expenses, insurance and other charges directly related to the equipment.

Taking this into account, we can now delve a little deeper into the evolution of *Leasing* as a whole in Brazil.

In 1974, Law No. 6,099 of September 12, 1974, was created. It is from this point that the term "*leasing*" originated. It also became known as Leasing, due to the law prohibiting foreign words.

in the legal instrument. (FERREIRA, 2009). Law No. 6,099, which was later amended by Law No.

Law 7.132 of October 26, 1983, defines itself as a law that "provides for the tax treatment of Leasing and takes other measures." Leasing is defined in

first paragraph as:

"Article 1 -

Sole paragraph - For the purposes of this Law, a lease agreement is considered to be a transaction...

legal transaction carried out between a legal entity, acting as lessor, and a natural person or

legal entity, in the capacity of lessee, whose purpose is the leasing of goods.

acquired by the lessor, according to the lessee's specifications and for its own use.

of this." (Law No. 7.132/83 Article 1, sole paragraph).

That is, the lessor buys the desired asset from the lessee, and the lessee leases it back with an option to buy.

Finally. The Law also defines in its article 11 that the consideration paid or credited by

Contractual obligations under a lease agreement are considered as an operating cost or expense.

of the lessee legal entity.

Therefore, the financial nature of the operation is evident in Article 7 of the Law, where it is...

determined that, according to the rules established by the National Monetary Council, all

Leasing operations are subject to the control and supervision of the Central Bank.

from Brazil.

The purpose of this law, as already mentioned, was primarily to address the tax aspect.

Regarding *leasing* operations, under what conditions could a lease be...

to benefit from the tax treatment, but without restricting the practice outside of those conditions. So,

To better understand the essence of what this Law expresses, we can say that the main points...

The provisions are found, in particular, in articles 3, 11, 12 and 14, which state:

the) "The following will be considered as operating costs or expenses of the lessee legal entity"

consideration paid or credited under the lease agreement." (art. 11)

b) "The assets intended for..." will be recorded in a special fixed asset account of the lessor.

"a commercial lease." (art. 3º)

w) "Depreciation quotas for the following will be accepted as costs for leasing legal entities"

purchase price of leased property, calculated according to the useful life of the property." (art. 12)

d) "The following will not be deductible for the purposes of determining taxable income for income tax purposes:



Year V, v.2 2025 | Submission: December 12, 2025 | Accepted: December 15, 2025 | Publication: December 16, 2025

The difference between the residual book value of the leased asset and its sale price, when from the exercise of the purchase option.” (art. 14)

After the creation of Law 6.099/74 and the granting of control and oversight powers to the Bank Central do Brasil, this on November 17, 1975, through Resolution No. 351, issued the regulation governing leasing operations and defining the competence of companies that would be eligible to carry out this type of operation. Later revoked, today the resolution that addresses this is number 2.309/96. With regard to those who are authorized to practice... Regarding Leasing, the Resolution states the following:

CHAPTER II

On the Constitution and Operation of Leasing Companies

Article 3. The formation and operation of legal entities whose purpose is...

The main activity of this company is the practice of leasing operations, known as

Leasing companies require authorization from the Central Bank of Brazil.

Article 4. Leasing companies must adopt the legal form of companies.

anonymous and, where applicable, the same conditions established for the

Operation of financial institutions under Law No. 4,595, of December 31, 1964, and subsequent legislation.

relating to the National Financial System, and must be included in its

The term "Arrendamento Mercantil" (Commercial Leasing) is used in the company's name.

Sole paragraph. The expression "Arrendamento Mercantil" in the company name or corporate name is

exclusive to the companies referred to in this article.

Finally, this Resolution aimed to regulate various characteristics of *Leasing*, giving a better idea of how to proceed with certain matters. Thus, their guidelines The basic principles are aimed at defining the characteristics of lease agreements. Leasing operations, operational limits, and accounting standards.

The Applicability of **Leasing Operations in Brazil**

To understand the applicability of *leasing* in the national context, we must first discuss... A little about the types of financial *leasing* operations in Brazil.

In Brazil, there are various modalities:

a) *Leasing* of movable property

These are items classified as movable assets by companies, such as vehicles, machines, equipment, computers, facilities, etc.

b) Real estate *leasing*

These are transactions related to real estate involving land, with or without buildings. be it of any type, from its initial phase to the final phase.

w) *Sale and lease-back*



Year V, v.2 2025 | Submission: December 12, 2025 | Accepted: December 15, 2025 | Publication: December 16, 2025

A literal translation of this phrase would be "Sell and lease/rent back," and that's what this action is about.

It's when the seller of the goods themselves sells them to a company...

Leasing means the property is leased back to the former owner, as there is an option to buy at the end of the lease.

Under the contract, the normal outcome is that the property ends up back with its original owner. This operation, of

From the customer's point of view, it's basically a way to raise money quickly, within a certain period.

short-term, being used as a source of working capital.

d) Import *Leasing* (*International Leasing*)

These are operations where the equipment is foreign and there is no similar domestic option, since this

The equipment would be manufactured abroad, so it is leased to companies domiciled in Brazil, for

Leasing companies , or companies authorized to engage in leasing, manufacturers or suppliers based abroad.

and) *Leasing* for individuals

This method allows *leasing* operations to be carried out with individuals, however it is

primarily aimed at self-employed professionals working in the service sector, with a view to

that the tax benefits that come with Leasing can only be realized for

Individuals who possess the "Cash Book" required for individuals, such as Drivers

Self-employed individuals, doctors, lawyers, etc.

f) Agricultural *Leasing*

It has the same characteristics as *leasing* for individuals, as mentioned above, however...

In this case, it is intended for rural producers. For this purpose, an exception was made in the legislation regarding

In addition to the permitted payment period, payment intervals exceeding six months were granted for

It can adapt to agricultural operations that generate annual revenue.

g) Subleasing

This type of operation allows *leasing* companies domiciled in Brazil to...

They can carry out *leasing* operations with entities abroad by subleasing the asset.

In this way, smaller companies will be able to access foreign equipment, considering that

These companies have little infrastructure to carry out international marketing. Therefore, in cases such as

In these cases, the legislation allows for a partnership between the leasing entity abroad and the

Tenant company located in Brazil.

h) Assignment of *leasing* contracts or credit rights abroad.

The assignment of *Leasing* contracts executed in Brazil or even of their rights is foreseen.

Credit lines for entities domiciled abroad, which ultimately generates and expands business.

international opportunities for Brazil (SAMANEZ, 1991).

With so many leasing options available, it would be pointless if there weren't advantages.

One of the great advantages of using *leasing* is in the tax area. From this point of view, *leasing*

It basically offers four advantages, namely: the total tax deductibility of



Counter-performance, accelerated depreciation, non-immobilization, and debt ratios.

The full tax deductibility of consideration means that payments made by the lessee – referred to as consideration – should be fully deductible as an expense. That is conferred by Law No. 6,099 itself.

Accelerated depreciation is the advantage given to leasing companies of being able to accelerate depreciation. The depreciation of a given asset, compared to its useful life. For example, if a car has a useful life of 5 years, and its depreciation is 20% per year under a Leasing agreement. This depreciation can increase to 50% per year, thus allowing for an operation of Two-year *lease*. This advantage results in lower interest rates for companies, because due to the accelerated depreciation of the asset.

The lack of immobilization means that monetary correction for assets is no longer applied. components of a given Permanent Asset (of which the Property, Plant and Equipment is a part), in this way, Inflationary profits are not increased. These goods are typically subject to monetary correction according to our tax legislation.

Debt ratios, due to the fact that it does not have the characteristics of a financial transaction. In conventional terms, *leasing* is not considered a debt liability for companies, only requiring registration with... offsetting accounts. This advantage stems from the fact that Financial *Leasing* does not appear as This would create a liability on the lessee's balance sheet. This would cause financial leverage for the lessee. This would increase the firm's borrowing capacity and improve its financial ratios and its profitability. (BREALEY & MYERS 1988.)

Finally, we will discuss the operational aspects of *leasing*, understanding how it works. a more practical way and to better understand its operational structure through a kind of timeline.

Compared to financed purchases, or even cash purchases, financial *leasing* can offer... Several operational advantages. It has a good line of credit offered by banks. For developers, in addition to being a great long-term financing option for acquiring assets, The model allows you to adjust the financing term to the economic useful life of the asset. It allows Financing 100% of the asset's value. Because it is a very well-structured model, This ends up making things much easier for tenants, because since it's an operation that's easy to control, it ends up... generating savings in time and personnel who would otherwise be involved in accounting and control aspects. relating to fixed assets, depreciation, monetary correction, etc., resulting in savings with all these services that would have to be performed in the case of another type of financing.

However, there are situations where *leasing* would not actually be the most suitable financial operation. to take place. For example, in the case of a company with negative or very low profitability, where There is no expectation of this situation changing in the short term; it makes no sense to think about obtaining the advantages.



Year V, v.2 2025 | Submission: December 12, 2025 | Accepted: December 15, 2025 | Publication: December 16, 2025

Tax authorities. Another example would be using financial *leasing* to finance assets whose lifespan...

The economic impact is less than the minimum permitted term. In the specific case of Financial *Leasing*, no.

There is a possibility of breach of contract, even considering the characteristics and legislation in force.

The only remaining possibility would be to transfer it to a second tenant with a new analysis of...

credit or under the sole responsibility of the first.

The operational system of Financial *Leasing* can be divided into six phases, according to Samanez (1991, p. 30). These are:

- Equipment selection.

The choice of equipment is up to the lessee in conjunction with the supplier to ensure that their needs are met.

needs, as well as all negotiations involving prices and payment terms, delivery,

Installation, technical assistance, and other commercial aspects related to the purchase of the equipment.

The lessor assumes the role of financier, without getting involved in the commercial risk, only in the risk of credit.

- Negotiation and proposal of the transaction.

At this stage, the tenant is looking for a tenant to finalize the details and

Operating conditions. Here, the equipment specifications, deadline, and cost are provided.

consideration, residual value, insurance, taxes, and others. With these elements already defined, the

The lessee formalizes their intention to lease through a Letter of Intent.

- Credit and Contract Analysis.

Credit analysis follows the same criteria used in a loan transaction.

medium and long term. This phase does not necessarily come immediately after the phase mentioned above; they occur

often simultaneously for a specific operation. The most common is the Society of

Leasing involves setting a credit limit for a specific client, which will reduce the time spent.

at this stage.

In resolution no. 2309, from the Central Bank of Brazil, everything is expressed in its chapter IV.

which must be agreed upon by the parties, otherwise the contract will be considered null and void. The provisions to

The requirements to be met are outlined in articles 7 through 10.

- Purchase and delivery of the equipment.

After the contract is signed, the Leasing Company issues a

Authorization for invoicing to the supplier. Then the sales invoice is issued, which includes the...

Leasing company as buyer. The property is delivered to the lessee along with the invoice.

of simple remittance issued by the supplier or lessor, depending on the situation. The lessee

receives the goods and issues a Letter of Acceptance stating that the goods were received in perfect condition.

It has been agreed upon and authorizes the lessor to make the payment established in the invoice to

supplier.



Year V, v.2 2025 | Submission: December 12, 2025 | Accepted: December 15, 2025 | Publication: December 16, 2025

•Lease period.

The lease period begins after the Acceptance Letter is issued, and the

The lessee shall use the property in accordance with its corporate purpose, complying with the conditions established in contract. For the lessor, the asset becomes part of their assets as a Leased Asset.

• Termination of the contract.

Before the contract expires, the lessee must exercise their option to purchase.

to return or renew the contract. To analyze these options, we need to see if the contract established the Guaranteed Residual Value (VRG).

When this clause exists, it is usually where these three customer options are based, this being... considered as a pure Financial *Leasing* operation , without any commercial risk for the lessor. In this case, the VRG is usually the price of the purchase option, or the principal, based on the contract renewal, or the amount that must be determined by the lessor upon return of the asset, where the lessee must supplement or receive the difference if the sale of the asset is of a lower value. lower or higher than the established VRG (Residual Guaranteed Value). In such cases, it is common for the lessor to request the... The full value of the VRG (Residual Guaranteed Value) will be paid to the lessee, and after the sale, the money will be transferred entirely to the... the lessee at the time of the sale, thus making the difference greater or lesser. added to the customer's account.

When no Guaranteed Residual Value is established in the contract, no settlement is made. supplementary information from the lessor regarding the return option. However, the contract must stipulate a value-basis to be considered in case the purchase or renewal option is used. Several times The value is set at the market value, and the lessor and lessee must agree on it at the end of the lease. contract.

Considering all these possibilities, the *Leasing* contract is terminated.

Final considerations

In conclusion, we can say that the Leasing market is... from a very interesting segment as a financing alternative. Because as we have seen, this It offers various options to the lessee and the company that specializes in this type of business. From... Originating in the US, and eventually reaching Europe and Latin America, this model became a means which could lead to the growth of companies, since it would no longer be necessary to to deplete capital, allowing the use of reserves for other purposes, such as working capital, for example.

So we saw that in Brazil, the model was implemented around the 1960s, with the Legislation introduced in 1974, which began to regulate it throughout the country. After studying its In this historical context, we delve a little deeper into what *leasing* is and its various operations.



Year V, v.2 2025 | Submission: December 12, 2025 | Accepted: December 15, 2025 | Publication: December 16, 2025

and forms. It was found that this financial operation, although it can be used by people

In some situations, individuals have proven to be much more favorable to legal entities, especially

Companies can more easily enjoy the advantages that *leasing* has to offer.

as a form of financing. Also because of the opportunity to have equipment.

which would possibly not be possible in the case of conventional financing.

Finally, we conclude the article with the understanding that despite having its advantages and

Despite its disadvantages, *leasing* is a very interesting method of commercial leasing because...

to be able to combine the rental, financing, and purchase and sale models into one. Doing

making it a viable alternative for those who need a particular good and

They do not have the full amount, or even those who cannot obtain financing in their own name,

Among other reasons, this makes *leasing* an excellent option.

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