U.S. Semiconductor Regulation Restrictions on U.S.-Person Activity

On October 7, 2022, the Bureau of Industry and Security (BIS) released issued a new and massive set of export controls designed to prevent the export of integrated circuits (ICs) or chips to China.

The new regulations put into place restrictions on U.S.-person "support" for the "development" or "production," of certain ICs. This leaves U.S. persons, including dual nationals, who are personnel of Chinese companies, in a state of uncertainty. For that reason, we summarizing some general rules that should help U.S. persons working for or with Chinese companies in the semiconductor industry.

We note that this is not legal advice. If there are any questions on a specific activity or set of facts, please contact us.

Prohibited U.S.-Person Activities

U.S. Persons may require a license to provide information, or facilitate the provision of information—even if that information is not subject to the EAR—if that information is for the development or production of *any* ICs at a fabrication facility producing any of the following ("HPC Facilities"):

- Logic integrated circuits using a non-planar architecture or with a "production" technology node of 16/14 nanometers or less;
- NOT-AND (NAND) memory integrated circuits with 128 layers or more; or
- Dynamic random-access memory (DRAM) integrated circuits using a "production" technology node of 18 nanometer half-pitch or less.

If the Company is not certain what type of ICs are produced at a facility, there may be a lesser restriction. However, as a best practice, we recommend the Company obtain certifications that a facility is not producing HPCs before it allows U.S. persons to deal with that facility.

U.S. Persons May

- ✓ Perform development or production activities not directly related to the provision or servicing of HPCs for HPC Facilities.
- ✓ Passively receive news about the company's sales of non-planar transistor devices at or below the 14nm node.
- ✓ Participate in calls and meetings with customers or suppliers regarding ICs above the 14nm node.
- ✓ Participate in research and development of ICs below the 14nm node in the U.S. without sharing that information with China or Chinese persons.
- ✓ Hold patents and other intellectual property for chips of all specifications that were issued prior to October 12, 2022.
- ✓ Hold ownership stake and voting rights in the Company.
- ✓ Conduct administrative or clerical activities (e.g., arranging for shipment or preparing financial documents) related to HPC facilities.
- ✓ Execute strategic decisions with respect to company management, recruiting and hiring, and other business decisions.
- ✓ Call us anytime if they are uncertain about any particular activity.

U.S. Persons May Not (. . . without a license)

- ✗ Direct, decide, or otherwise facilitate the production of non-planar transistor devices at or below the 14nm node (e.g., authorizing the shipment, transmittal, or in-country transfer; conducting the delivery; servicing, including maintaining, repairing, overhauling, or refurbishing).
- ✗ Participate in calls and meetings with customers or suppliers regarding chips above the 14nm node *where that information will be used to produce chips at a HPC facility*.*
- ✗ Share controlled technology regarding ICs or with persons in China or Chinese nationals without appropriate authorizations.

**NB*: It does not matter that no one on the call is *at* an HPC facility, the issue will be whether the information will be used at such a facility.

Annex of Defined Terms

Development	Development is related to all stages prior to serial production, such as: design, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, layouts.
High Performance Chip Facilities	A semiconductor fabrication facility in China that is actually fabricating: → Logic integrated circuits using a non-planar architecture or with a "production" technology node of 16/14 nanometers or less; → NOT-AND (NAND) memory integrated circuits with 128 layers or more; or → Dynamic random-access memory (DRAM) integrated circuits using a "production" technology node of 18 nanometer half-pitch or less Subsequent steps at facilities, such as assembly, test, and/or packaging facilities, that do not alter the technology levels are not covered. If a company campus has multiple buildings, each building is considered to be a separate facility. Buildings that fabricate both HPCs and other unrestricted chips will be subject to the new controls.
Production	Production means all production stages, such as: product engineering, manufacture, integration, assembly (mounting), inspection, testing, quality assurance.
U.S. Person	Any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person physically located in the United States regardless of nationality or residence.
Support	Shipping or transmitting from one foreign country to another foreign country any item not subject to the EAR you know will be used in or by any of the end uses or end users, including the sending or taking of such item to or from foreign countries in any manner; transferring (in-country) any item not subject to the EAR you know will be used in or by any of the end uses or end users; facilitating such shipment, transmission, or transfer (in-country); or performing any contract, service, or employment you know may assist or benefit any of the end uses or end users, including, but not limited to: Ordering, buying, removing, concealing, storing, using, selling, loaning, disposing, servicing, financing, transporting, freight forwarding, or conducting negotiations in furtherance of.