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# Hughes Hubbard & Reed

## U.S. Commerce Department's Bureau of Industry and Security Rule Regarding Advanced Computing Chips

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**October 18, 2023** – On October 17, 2023, the U.S. Department of the Commerce's Bureau of Industry and Security ("BIS") released three rules modifying and reinforcing the export controls it previously released on October 7, 2022. As these interim rules have different implementation dates, the October 7, 2022 export controls remain in effect until superseded on the effective dates outlined below. Below, we provide a brief overview of the three new rules:

### **1. Advanced Computing Chips Interim Final Rule (AC/S IFR)**

The AC/S IFR retains the stringent People's Republic of China (PRC)-wide (including Hong Kong) licensing requirements imposed in the October 7, 2022 rule and makes two categories of updates: 1) it adjusts the parameters that determine whether an advanced computing chip is restricted and 2) imposes new measures to address risks of circumvention of the controls.

The AC/S IFR removes the "interconnect bandwidth" parameter for identifying restricted chips under Export Control Classification Number 3A090 and restricts the export of chips if they exceed either 1) the preexisting performance threshold set in the October 7, 2022 rule or 2) a new "performance density threshold," which is designed to prevent the technical workaround of "simply purchasing a larger number of smaller datacenter AI chips which, if combined, would be equally powerful as restricted chips."

The AC/S IFR also requires a notification for the export of certain additional chips with performance just below the restricted threshold. Under the new "License Exception Notified Advanced Computing ("NAC")," following receipt of notification for exports and reexports to the PRC and Macau—and 21 other countries for which the U.S. maintains an arms embargo—the U.S. government will determine within 25 days whether the transaction may proceed under the license exception or require a license. BIS is also introducing an exemption that will permit the export of chips for consumer applications.

Additionally, the AC/S IFR introduced a number of measures to prevent circumvention, including the following:

- Establishes a worldwide licensing requirement for export of controlled chips to any company that is headquartered in any of the 22 countries subject to a U.S. arms embargo (including the PRC) or Macau, or whose ultimate parent company is headquartered in those countries, to prevent firms from countries of concern from securing controlled chips through their foreign subsidiaries and branches.
- Creates new red flags and additional due diligence requirements to help foundries identify restricted chip designs from countries of concern. This will assist foundries in assessing whether foreign parties are attempting to circumvent the controls by illicitly placing order for the foundries to fabricate restricted chips.
- Expands licensing requirements for export of advanced chips, with a presumption of denial, to all 22 countries to which the United States maintains an arms embargo, (including the PRC) and Macau.
- Imposes licensing requirements for export of advanced chips, with a presumption of approval, to these same additional countries, in response to reporting that countries of concern have used third countries to divert or access restricted items. This will provide greater visibility for compliance monitoring and enforcement.
- Creates a notification requirement for a small number of high-end gaming chips to increase visibility into shipments and prevent their misuse to undermine U.S. national security.
- Includes a request for public comments on multiple topics, including risks associated with infrastructure as a service (IaaS) providers, the application of controls on deemed exports and deemed reexports, additional compliance guidance that could be provided to foundries receiving chip designs, and how to more precisely define key terms and parameters in the regulation.

This rule will become effective on November 17, 2023, and the deadline for public comments is 60 days from the date the rule is put on public display (December 18, 2023).

## **2. Export Controls on Semiconductor Manufacturing Items Interim Final Rule (SME IFR):**

Under the SME IFR, BIS made the following key changes to the October 7, 2022 rule: 1) BIS imposed controls on additional types of semiconductor manufacturing equipment; 2) refined and better focused the U.S. persons restrictions while codifying previously existing agency guidance to ensure U.S. companies cannot provide support to advanced PRC semiconductor manufacturing while avoiding unintended impacts; and 3) expanded license requirements for semiconductor manufacturing equipment to apply to the 21 other countries for which the U.S. maintains an arms embargo, in addition to the PRC and Macau.

The SME IFR is effective November 17, 2023, except for the temporary general license (TGL), which is effective upon publication in the Federal Register. Comments are due December 18, 2023. The TGL provides semiconductor manufacturing equipment (SME) producers in the United States and Country Groups A:5 and A:6 countries additional time to identify alternative sources of supply outside of arms-embargoed countries, or to acquire individually validated licenses.

## **3. Additions to the Entity List Final Rule**

BIS added two Chinese entities and their subsidiaries to its Entity List. These 13 entities are involved in the development of advanced computing chips and were found to be engaged in activities contrary to U.S. national security and foreign policy interests.

These entities have also been designated with a footnote 4 designation. The footnote 4 designation will restrict exports, reexports, or transfers (in country) to these entities or when these entities are a party to the transaction under the Entity List Foreign Direct Product Rule implemented in the October 7, 2022 export controls. Foundries producing chips for these listed parties will need a BIS license before the foundries may send such chips to these entities or parties acting on behalf of these entities as a result of applying the "footnote 4" Entity List foreign direct product rule designation.

These entities include:

- Beijing Biren Technology Development Co., Ltd.;
- Guangzhou Biren Integrated Circuit Co., Ltd.;
- Hangzhou Biren Technology Development Co., Ltd.;
- Light Cloud (Hangzhou) Technology Co., Ltd.;
- Moore Thread Intelligent Technology (Beijing) Co., Ltd.;
- Moore Thread Intelligent Technology (Chengdu) Co., Ltd.;
- Moore Thread Intelligent Technology (Shanghai) Co., Ltd.;
- Shanghai Biren Information Technology Co., Ltd.;
- Shanghai Biren Integrated Circuit Co., Ltd.;
- Shanghai Biren Intelligent Technology Co., Ltd.;
- Superburning Semiconductor (Nanjing) Co., Ltd.;
- Suzhou Xinyan Holdings Co., Ltd.; and
- Zhuhai Biren Integrated Circuit Co., Ltd.

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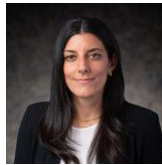
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