

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM 20-F

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2009

Commission file number 1-31994

**Semiconductor Manufacturing International Corporation**

(Exact name of Registrant as specified in its charter)

(Translation of Registrant's name into English)

**Cayman Islands**

(Jurisdiction of incorporation or organization)

**18 Zhangjiang Road, Pudong New Area, Shanghai, China 201203**

(Address of principal executive offices)

**Mr. Gary Tseng, Chief Financial Officer**

**Telephone: (8621) 3861-0000**

**Facsimile: (8621) 3895-3568**

Securities registered or to be registered pursuant to Section 12(b) of the Act.

<u>Title of each class</u>	<u>Name of each exchange on which registered</u>
Ordinary Shares, par value US\$0.0004	The Stock Exchange of Hong Kong Limited*
American Depositary Shares	The New York Stock Exchange, Inc.

Securities registered or to be registered pursuant to Section 12(g) of the Act.

None  
(Title of Class)

Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act.

None  
(Title of Class)

Indicate the number of outstanding shares of each of the issuer's classes of capital or ordinary shares as of the close of the period covered by the annual report.

As of December 31, 2009, there were 22,375,886,604 ordinary shares, par value US\$0.0004 per share, outstanding, of which 2,969,131,050 ordinary shares were held in the form of 59,382,621 ADSs. Each ADS represents 50 ordinary shares.

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

If this report is an annual or transition report, indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15 (d) of the Securities Exchange Act of 1934. Yes  No

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Securities Exchange Act of 1934 (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Indicate by check mark which basis of accounting the registrant has used to prepare the financial statements included in this filing:

U.S. GAAP

International Financial Reporting Standards as issued  
by the International Accounting Standards Board

Other

If this is an annual report, indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Securities Exchange Act of 1934). Yes  No

\* Not for trading, but only in connection with the listing of American Depositary Shares on the New York Stock Exchange, Inc.

CAUTIONARY STATEMENT FOR PURPOSES OF THE “SAFE HARBOR” PROVISIONS OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995

Item 1. Identity of Directors, Senior Management and Advisers	6
Item 2. Offer Statistics and Expected Timetable	6
Item 3. Key Information	6
Item 4. Information on the Company	26
Item 4A. Unresolved Staff Comments	57
Item 5. Operating and Financial Review and Prospects	58
Item 6. Directors, Senior Management and Employees	84
Item 7. Major Shareholders and Related Party Transactions	107
Item 8. Financial Information	110
Item 9. The Offer and Listing	113
Item 10. Additional Information	115
Item 11. Quantitative and Qualitative Disclosures About Market Risk	125
Item 12. Description of Securities Other Than Equity Securities	127
PART II	
Item 13. Defaults, Dividend Arrearages, and Delinquencies	128
Item 14. Material Modifications to the Rights of Security Holders and Use of Proceeds	128
Item 15. Controls and Procedures	129
Item 16A. Audit Committee Financial Expert	130
Item 16B. Code of Ethics	130
Item 16C. Principal Accountant Fees and Services	130
Item 16D. Exemptions from the Listing Standards of Audit Committees	131
Item 16E. Purchases of Equity Securities by the Issuer and Affiliated Purchasers	131

Item 16F. Change in Registrant Certifying Accountant	131
Item 16G. Corporate Governance	131
PART III	
Item 17. Financial Statements	132
Item 18. Financial Statements	132
Item 19. Exhibits	133
SIGNATURES	134

CAUTIONARY STATEMENT FOR PURPOSES OF THE “SAFE HARBOR” PROVISIONS OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995

This annual report contains, in addition to historical information, “forward-looking statements” within the meaning of the “safe harbor” provisions of the U.S. Private Securities Litigation Reform Act of 1995. These forward-looking statements are based on SMIC’s current assumptions, expectations and projections about future events. SMIC uses words like “believe,” “anticipate,” “intend,” “estimate,” “expect,” “project” and similar expressions to identify forward looking statements, although not all forward-looking statements contain these words. These forward-looking statements are necessarily estimates reflecting the best judgment of SMIC’s senior management and involve significant risks, both known and unknown, uncertainties and other factors that may cause SMIC’s actual performance, financial condition or results of operations to be materially different from those suggested by the forward-looking statements including, among others, risks associated with cyclicalities and market conditions in the semiconductor industry, intense competition, timely wafer acceptance by SMIC’s customers, timely introduction of new technologies, SMIC’s ability to ramp new products into volume, supply and demand for semiconductor foundry services, industry overcapacity, shortages in equipment, components and raw materials, availability of manufacturing capacity and financial stability in end markets.

Except as required by law, SMIC undertakes no obligation and does not intend to update any forward-looking statement, whether as a result of new information, future events or otherwise.

**ADDITIONAL INFORMATION**

References in this annual report to:

- “Average selling price of wafers” are to simplified average selling price which is calculated as total revenue divided by total shipments.
- “China” or the “PRC” are to the People’s Republic of China, excluding for the purpose of this annual report, Hong Kong, Macau and Taiwan;
- “Company” or “SMIC” are to Semiconductor Manufacturing International Corporation;
- “EUR” are to Euros;
- “global offering” are to the initial public offering of our ADSs and our ordinary shares, which offering was completed on March 18, 2004;
- “HK\$” are to Hong Kong dollars;
- “NYSE” or “New York Stock Exchange” are to the New York Stock Exchange, Inc.;
- “Rmb” or “RMB” are to Renminbi;
- “SEC” are to the U.S. Securities and Exchange Commission;
- “SEHK”, “HKSE” or “Hong Kong Stock Exchange” are to The Stock Exchange of Hong Kong Limited; and
- “US\$” or “USD” are to U.S. dollars.

All references in this annual report to silicon wafer quantities are to 8-inch wafer equivalents, unless otherwise specified. Conversion of quantities of 12-inch wafers to 8-inch wafer equivalents is achieved by multiplying the number of 12-inch wafers by 2.25. When we refer to the capacity of wafer fabrication facilities, we are referring to the installed capacity based on specifications established by the manufacturers of the equipment used in those facilities. References to key process technology nodes, such as 0.35 micron, 0.25 micron, 0.18 micron, 0.15 micron, 0.13 micron, 90 nanometer, and 65 nanometer and 45 nanometer include the stated resolution of the process technology, as well as intermediate resolutions down to but not including the next key process technology node of finer resolution. For example, when we state “0.25 micron process technology,” that also includes 0.22 micron, 0.21 micron, 0.20 micron and 0.19 micron technologies and “0.18 micron process technology” also includes 0.17 micron and 0.16 micron technologies;. References to “U.S. GAAP” mean the generally accepted accounting principles in the United States. Unless otherwise indicated, our financial information presented in this annual report has been prepared in accordance with U.S. GAAP.

All references to our ordinary shares in this annual report gives effect to the 10-for-1 share split we effected in the form of a share dividend immediately prior to the completion of the global offering. All references to price per ordinary share and price per preference share reflect the share split referenced above.

The “Glossary of Technical Terms” contained in Annex A of this annual report sets forth the description of certain technical terms and definitions used in this annual report.

## PART I

### Item 1. Identity of Directors, Senior Management and Advisors

Not applicable.

### Item 2. Offer Statistics and Expected Timetable

Not applicable.

### Item 3. Key Information

#### Selected Consolidated Financial Data

The selected consolidated financial data presented below as of and for the years ended December 31, 2007, 2008 and 2009 are derived from, and should be read in conjunction with, and are qualified in their entirety by reference to, our audited consolidated financial statements, including the related notes, included elsewhere in this annual report. The selected consolidated financial data as of and for the years ended December 31, 2005 and 2006 is derived from our audited consolidated financial statements not included in this annual report. The selected consolidated financial data presented below has been prepared in accordance with U.S. GAAP.

	For the year ended December 31,				
	2005	2006	2007	2008	2009
(in US\$ thousands, except for share, ADS, percentages, and operating data)					
<b>Statement of Operations Data:</b>					
Sales	\$ 1,171,319	\$ 1,465,323	\$ 1,549,765	\$ 1,353,711	\$ 1,070,387
Cost of sales <sup>(1)</sup>	1,105,134	1,338,155	1,397,038	1,412,851	1,184,589
Gross (loss) profit	66,185	127,168	152,727	(59,140)	(114,202)
Operating expenses (income):					
Research and development	78,865	94,171	97,034	102,240	160,754
General and administrative	35,701	47,365	74,490	58,841	215,566
Selling and marketing	17,713	18,231	18,716	20,661	26,566
Litigation settlement	—	—	—	—	269,637
Amortization of acquired intangible					
assets	20,946	24,393	27,071	32,191	35,064
Impairment loss of long-lived assets	—	—	—	106,741	138,295
Loss (gain) from sale of plant and					
equipment and other fixed assets	—	(43,122)	(28,651)	(2,877)	3,832
Total operating expenses, net	153,225	141,038	188,659	317,797	849,714
Loss from operations	(87,040)	(13,870)	(35,932)	(376,937)	(963,917)
Other income (expenses):					
Interest income	11,356	14,916	12,349	11,542	2,591

For the year ended December 31,

	2005	2006	2007	2008	2009
(in US\$ thousands, except for share, ADS, percentages, and operating data)					
Interest expense	(38,784)	(50,926)	(37,936)	(50,767)	(24,699)
Change in the fair value of commitment to issue shares and warrants	—	—	—	—	(30,101)
Foreign currency exchange gain (loss)	(3,355)	(21,912)	11,250	3,230	4,180
Other, net	4,462	1,821	2,238	7,429	4,626
Total other expense, net	(26,322)	(56,101)	(12,100)	(28,566)	(43,403)
Loss before income tax	(113,362)	(69,971)	(48,032)	(405,503)	(1,007,319)
Income tax benefit (expense)	(285)	24,928	29,720	(26,433)	46,624
Loss from equity investment	(1,379)	(4,201)	(4,013)	(444)	(1,782)
Net loss before cumulative effect of a change in accounting principle	(115,026)	(49,244)	(22,324)	(432,380)	(962,478)
Cumulative effect of a change in accounting principle	—	5,154	—	—	—
Net loss	(115,026)	(44,090)	(22,324)	(432,380)	(962,478)
Accretion of interest to non-controlling interest	251	(19)	2,856	(7,851)	(1,060)
Loss attributable to Semiconductor Manufacturing International Corporation	(114,775)	(44,109)	(19,468)	(440,231)	(963,537)
Loss per share, basic	\$ (0.00)	\$ (0.00)	\$ (0.00)	\$ (0.02)	\$ (0.04)
Loss per share, diluted	\$ (0.00)	\$ (0.00)	\$ (0.00)	\$ (0.02)	\$ (0.04)
Shares used in calculating basic loss per share <sup>(2)(3)</sup>	18,184,429,255	18,334,498,923	18,501,940,489	18,682,544,866	22,359,237,084
Ordinary shares used in calculating diluted loss per share <sup>(2)</sup>	18,184,429,255	18,334,498,923	18,501,940,489	18,682,544,866	22,359,237,084
Loss per ADS, basic <sup>(3)</sup>	\$ (0.32)	\$ (0.12)	\$ (0.05)	\$ (1.18)	\$ (2.15)

For the year ended December 31,

	2005	2006	2007	2008	2009
(in US\$ thousands, except for share, ADS, percentages, and operating data)					
Loss per ADS, diluted <sup>(3)</sup>	\$ (0.32)	\$ (0.12)	\$ (0.05)	\$ (1.18)	\$ (2.15)
ADS used in calculating basic loss per ADS <sup>(3)</sup>	363,688,585	366,689,978	370,038,810	373,650,897	447,184,742
ADS used in calculating diluted loss per ADS <sup>(3)</sup>	363,688,585	366,689,978	370,038,810	373,650,897	447,184,742
<b>Other Financial Data:</b>					
Gross margin	5.70%	8.70%	9.90%	-4.40%	-10.67%
Operating margin	-7.40%	-0.90%	-2.30%	-27.80%	-90.05%
Net margin	-9.80%	-3.00%	-1.30%	-32.50%	-89.92%
<b>Operating Data:</b>					
Wafers shipped (in 8" equivalents)					
Total	1,347,302	1,614,888	1,849,957	1,611,208	1,376,663
ASP <sup>(4)</sup>	869	907	838	840	778

(1) Including amortization of deferred stock compensation for employees directly involved in manufacturing activities.

(2) Anti-dilutive preference shares, options and warrants were excluded from the weighted average ordinary shares outstanding for the diluted per share calculation.

(3) Fifty ordinary shares equals one ADS.

(4) Total sales/total wafers shipped.

## As of December 31,

	2005	2006	2007	2008	2009
--	------	------	------	------	------

(in US\$ thousands)

**Balance Sheet Data:**

Cash and cash equivalents	\$ 585,797	\$ 363,620	\$ 469,284	\$ 450,230	\$ 443,463
Restricted cash	—	—	—	6,255	20,360
Short-term investments	13,796	57,951	7,638	19,928	—
Accounts receivable, net of allowances	241,334	252,185	298,388	199,372	204,290
Inventories	191,238	275,179	248,310	171,637	193,705
Total current assets	1,047,465	1,049,666	1,075,302	926,858	907,058
Prepaid land use rights	34,768	38,323	57,552	74,293	78,112
Plant and equipment, net	3,285,631	3,244,401	3,202,958	2,963,386	2,251,614
Total assets	4,586,633	4,541,292	4,708,444	4,270,622	3,524,077
Total current liabilities	896,038	677,362	930,190	899,773	1,031,523
Total long-term liabilities	622,497	817,710	730,790	578,689	661,472
Total liabilities	1,518,535	1,495,072	1,660,980	1,478,462	1,692,995
Noncontrolling interest	38,782	38,800	34,944	42,795	34,842
Equity:					
Ordinary shares, \$0.0004 par value, 50,000,000,000 shares authorized 18,301,680,867, 18,432,756,463, 18,558,919,712, 22,327,784,827 and 22,375,886,604 shares issued and outstanding at December 31, 2005, 2006, 2007, 2008 and 2009 respectively	7,320	7,373	7,424	8,931	8,950
Additional paid-in capital	3,291,440	3,288,765	3,313,376	3,489,382	3,499,723
Accumulated other comprehensive loss (income)	139	92	(2)	(439)	(386)
Deferred share-based compensation	(24,882)	-	-	-	-
Accumulated deficit	(244,701)	(288,810)	(308,279)	(748,509)	(1,712,047)
Total equity	\$ 3,029,316	\$ 3,007,420	\$ 3,012,519	\$ 2,749,365	\$ 1,796,240

## For the year ended December 31,

	2005	2006	2007	2008	2009
--	------	------	------	------	------

(in US\$ thousands, except percentages)

**Cash Flow Data:**

Net loss	\$ (115,026)	\$ (44,090)	\$ (22,324)	\$ (432,380)	\$ (962,478)
Adjustments to reconcile net loss to net cash provided by operating activities:					
Depreciation and amortization	769,472	919,616	706,277	761,809	748,185
Net cash provided by operating activities	648,105	769,649	672,465	569,782	283,566
Purchases of plant and equipment	(872,519)	(882,580)	(717,171)	(669,055)	(217,269)
Net cash used in investing activities	(859,652)	(917,369)	(642,344)	(761,713)	(211,498)
Net cash provided by (used in) financing activities	190,364	(74,440)	75,637	173,314	(78,902)
Net increase (decrease) in cash and cash equivalents	\$ (21,376)	\$ (222,177)	\$ 105,664	\$ (19,054)	\$ (6,767)

## **Risk Factors**

### **Risks Related to Our Financial Condition and Business**

*We may not be able to achieve or maintain a level of profitability, primarily due to our high fixed costs and correspondingly high levels of depreciation expenses.*

Our losses from operations totaled \$376.9 million in 2008 and \$963.9 million in 2009. We may not be able to achieve or maintain profitability on an annual or quarterly basis, primarily because our business is characterized by high fixed costs relating to equipment purchases, which result in correspondingly high levels of depreciation expenses. We will continue to incur high capital expenditures and depreciation expenses as we equip and ramp up additional fabs, expand our capacity at our existing fabs and construct new fabs.

*The cyclical nature of the semiconductor industry and periodic overcapacity in the industry make our business and operating results particularly vulnerable to economic downturns, such as the global economic crisis.*

The semiconductor industry has historically been highly cyclical and, at various times, has experienced significant downturns characterized by fluctuations in end-user demand, reduced demand for integrated circuits, rapid erosion of average selling prices and production overcapacity. Companies in the semiconductor industry have expanded aggressively during periods of increased demand in order to have the capacity needed to meet expected demand in the future. If actual demand does not increase or declines, or if companies in the industry expand too aggressively in light of the actual increase in demand, the industry will generally experience a period in which industry-wide capacity exceeds demand, as was the case in the first quarter of 2009.

An erosion of global consumer confidence amidst concerns over declining asset values, inflation, energy costs, geopolitical issues, the availability and cost of credit, rising unemployment, and the stability and solvency of financial institutions, financial markets, businesses and sovereign nations could have an adverse effect on our results of operations.

Adverse economic conditions could cause our expenses to vary materially from our expectations. The failure of financial institutions could negatively impact our treasury operations, as the financial condition of such parties may deteriorate rapidly and without notice in times of market volatility and disruption. Other income and expense could vary materially from expectations depending on changes in interest rates, borrowing costs and currency exchange rates. Economic downturns may also lead to restructuring actions and associated expenses.

During periods when industry-wide capacity exceeds demand, as was the case in the first quarter of 2009, our operations are subject to more intense competition, and our results of operations are likely to suffer because of the resulting pricing pressure and capacity underutilization. Severe pricing pressure could result in the overall foundry industry becoming less profitable, at least for the duration of the downturn, and could prevent us from achieving or maintaining profitability. We expect that industry cyclicality will continue. In addition, a slowdown in the growth in demand for or the continued reduction in selling prices of, devices that use semiconductors may decrease the demand for our services and reduce our profit margins. If we cannot take appropriate or effective actions in a timely manner during the current and any future economic downturns, such as reducing our costs to sufficiently offset declines in demand for our services, our business and operating results may be adversely affected. A prolonged period of economic decline could have a material adverse effect on our results of operations. Economic uncertainty also makes it difficult for us to make accurate forecasts of revenue, gross margin and expenses.

*The impact of deteriorating economic conditions on our customers and suppliers could adversely affect our business.*

Customer financial difficulties have resulted, and could result in the future, in increases in bad debt write-offs and additions to reserves in our receivables portfolio. In particular, our exposure to certain financially troubled customers could have an adverse effect on our results of operations. In addition, we depend on suppliers of raw materials, such as silicon wafers, gases and chemicals, and spare equipment parts, in order to maintain our production processes. Our business may be disrupted if we are unable to obtain these raw materials from our suppliers-and our suppliers from their suppliers-due to the insolvency of key suppliers who may be unable to obtain credit.

***Demand instability for foundry services may result in a lower rate of return on investments than previously anticipated and our business and operating results may be adversely affected.***

Until the onset of the global economic crisis, the demand for foundry services by IDMs, fabless semiconductor companies and systems companies had been increasing in recent years. We made significant investments in anticipation of the continuation of this trend. A reversal of this trend will likely result in a lower rate of return on our investments than anticipated. For example, some IDMs may change their strategy and target greater internal production, and consequently they have reduced their outsourcing of wafer fabrication. During industry downturn, these IDMs may allocate a smaller portion of their fabricating needs to foundry service providers and perform a greater amount of foundry services for system companies and fabless semiconductor companies in order to maintain their equipment's utilization rates. As a result, our business and operating results may be adversely affected.

***Our results of operations may fluctuate from year to year, which may make it difficult to predict our future performance which may be below our expectations or those of the public market analysts and investors in these periods.***

Our sales, expenses, and results of operations may fluctuate significantly from year to year due to a number of factors, many of which are outside our control. Our business and operations are subject to a number of factors, including:

- our customers' sales outlook, purchasing patterns and inventory adjustments based on general economic conditions or other factors;
- the loss of one or more key customers or the significant reduction or postponement of orders from such customers;
- timing of new technology development and the qualification of this technology by our customers;
- timing of our expansion and development of our facilities;
- our ability to obtain equipment and raw materials; and
- our ability to obtain financing in a timely manner.

Due to the factors noted above and other risks discussed in this section, many of which are beyond our control, you should not rely on year-to-year comparisons to predict our future performance. Unfavorable changes in any of the above factors may adversely affect our business and operating results. In addition, our operating results may be below the expectations of public market analysts and investors in some future periods.

***If we are unable to maintain high capacity utilization, optimize the technology and product mix of our services or improve our yields, our margins may substantially decline, thereby adversely affecting our operating results.***

Our ability to achieve and maintain profitability depends, in part, on our ability to:

- maintain high capacity utilization, which is the actual number of wafers we produce in relation to our capacity;
- optimize our technology and product mix, which is the relative number of wafers fabricated utilizing higher margin technologies as compared to commodity and lower margin technologies; and
- continuously maintain and improve our yield, which is the percentage of usable fabricated devices on a wafer.

Our capacity utilization affects our operating results because a large percentage of our costs are fixed. In general, more advanced technologies sell for higher prices and higher margins. Therefore, our technology and product mix has a direct impact upon our average selling prices and overall margins. Our yields directly affect our ability to attract and retain customers, as well as the price of our services. If we are unable to maintain high capacity utilization, optimize the technology and product mix of our wafer production and continuously improve our yields, our margins may substantially decline, thereby adversely affecting our operating results.

***Our continuing expansion may present significant challenges to our management and administrative systems and resources, and as a result, we may experience difficulties managing our growth, which may adversely affect our business and operating results.***

Since our inception in 2000, we have grown rapidly. Our wafer shipment and sales grew from zero in 2000 to 1,376,663 wafers and US\$1.1 billion in 2009. During this period, we commenced commercial production at two 8-inch fabs (which includes our Shanghai mega fab and Tianjin fab) and one 12-inch mega fab in Beijing, and the range of process technologies we offered grew significantly. We have also undertaken management contracts to manage the operations of wafer manufacturing facilities in Chengdu and Wuhan, China. In addition, we are equipping our new 8-inch fab in Shenzhen. At December 31, 2000, we had 122 employees; and at December 31, 2009, we had 10,307 employees. We may hire a significant number of additional employees as for our fabs in, Beijing, and Shenzhen to meet future increases in production capacity. This expansion, as well as our participation in a joint venture with Toppan Printing Co., Ltd. in Shanghai and a joint venture with United Test and Assembly Center Ltd. to establish an assembly and testing facility in Chengdu, and the management of wafer manufacturing facilities in Chengdu and Wuhan, China, have presented, and continue to present, significant challenges for our management and administrative systems and resources. If we fail to develop and maintain management and administrative systems and resources sufficient to keep pace with our planned growth, we may experience difficulties managing our growth and our business and operating results could be adversely affected.

***If we lose one or more of our key personnel without obtaining adequate replacements in a timely manner or if we are unable to retain and recruit skilled personnel, our operations could become disrupted and the growth of our business could be delayed or restricted.***

Our success depends on the continued service of our key executive officers, and in particular, David NK Wang, our President and Chief Executive Officer. We do not carry key person insurance on any of our personnel. If we lose the services of any of our key executive officers, it could be very difficult to find, relocate and integrate adequate replacement personnel into our operations, which could seriously harm our operations and the growth of our business.

We will require an increased number of experienced executives, engineers and other skilled employees in the future to implement our growth plans. There is intense competition for the services of these personnel in the semiconductor industry. In addition, we expect demand for skilled and experienced personnel in China to increase in the future as new wafer fabrication facilities and other similar high technology businesses are established there. If we are unable to retain our existing personnel or attract, assimilate and retain new experienced personnel in the future, our operations could become disrupted and the growth of our business could be delayed or restricted.

***Our customers generally do not place purchase orders far in advance, which makes it difficult for us to predict our future sales, adjust our production costs and efficiently allocate our capacity on a timely basis and could therefore have an adverse effect on our business and operating results.***

Our customers generally do not place purchase orders far in advance of the required shipping dates. In addition, due to the cyclical nature of the semiconductor industry, our customers' purchase orders have varied significantly from period to period. As a result, we do not typically operate with any significant backlog, which makes it difficult for us to forecast our sales in future periods. Also, since our cost of sales and operating expenses have high fixed cost components, including depreciation and employee costs, we may be unable to adjust our cost structure in a timely manner to compensate for shortfalls in sales. Our current and anticipated customers may not place orders with us in accordance with our expectations or at all. As a result, it may be difficult to plan our capacity, which requires significant lead time to ramp-up and cannot be altered easily. If our capacity does not match our customer demand, we will either be burdened with expensive and unutilized overcapacity or unable to support our customers' requirements, both of which could have an adverse effect on our business and results of operations.

***Our sales cycles can be long, which could adversely affect our operating results and cause our income stream to be unpredictable.***

Our sales cycles, which measure the time between our first contact with a customer and the first shipment of product orders to the customer, vary substantially and can last as long as one year or more, particularly for new technologies. Sales cycles to IDM customers typically take relatively longer since they usually require our engineers to become familiar with the customer's proprietary technology before production can commence. In addition, even after we make the initial product shipments, it may take the customer several more months to reach full production of that product using our foundry services. As a result of these long sales cycles, we may be required to invest substantial time and incur significant expenses in advance of the receipt of any product order and related revenue. Orders ultimately received may not be in accordance with our expectation with respect to product, volume, price or other terms, which could adversely affect our operating results and cause our income stream to be unpredictable.

***We must consistently anticipate trends in technology development or else we will be unable to maintain or increase our business and operating margins.***

The semiconductor industry is developing rapidly and the related technology is constantly evolving. If we are unable to anticipate the trends in technology development and rapidly develop and implement new and innovative technology that our customers require, we may not be able to produce sufficiently advanced products at competitive prices. As the life cycle for a process technology matures, the average selling price falls. Accordingly, unless we continually upgrade our capability to manufacture new products that our customers design, our customers may use the services of our competitors instead of ours and the average selling prices of our wafers may fall, which could adversely affect our business and operating margins.

***Our sales are dependent upon a small number of customers and any decrease in sales to any of them could adversely affect our results of operations.***

We have been dependent on a small number of customers for a substantial portion of our business. For the year ended December 31, 2009, our five largest customers accounted for 60.0% of our total sales. We expect that we will continue to be dependent upon a relatively limited number of customers for a significant portion of our sales. Sales generated from these customers, individually or in the aggregate, may not reach or exceed our expectations or historical levels in any future period. Our sales could be significantly reduced if any of these customers cancels or reduces its orders, significantly changes its product delivery schedule, or demands lower prices, which could have an adverse effect on our results of operations.

***Since our operating cash flows will not be sufficient to cover our planned capital expenditures, we will require additional external financing, which may not be available on acceptable terms or at all. Any failure to raise adequate funds in a timely manner could adversely affect our business and operating results.***

In 2009, our capital expenditures totaled approximately US\$189.9 million and we currently expect our capital expenditures in 2010 to total approximately US\$335 million to be adjusted based on market conditions. These capital expenditures will be used primarily to expand our operations at our mega-fab in Beijing and 8-inch fab in Shenzhen. In addition, our actual expenditures may exceed our planned expenditures for a variety of reasons, including changes in our business plan, our process technology, market conditions, equipment prices, customer requirements or interest rates. Future acquisitions, mergers, strategic investments, or other developments also may require additional financing. The amount of capital required to meet our growth and development targets is difficult to predict in the highly cyclical and rapidly changing semiconductor industry.

Our operating cash flows may not be sufficient to meet our capital expenditure requirements in 2010. If our operating cash flows are insufficient, we plan to fund the expected shortfall through bank loans. If necessary, we will also explore other forms of external financing. Our ability to obtain external financing is subject to a variety of uncertainties, including:

- our future financial condition, results of operations and cash flows;
- general market conditions for financing activities of semiconductor companies;
- our future stock price; and
- our future credit rating.

External financing may not be available in a timely manner, on acceptable terms, or at all. Since our capacity expansion is a key component of our overall business strategy, any failure to raise adequate funds could adversely affect our business and operating results.

***The construction and equipping of new fabs and the expansion of existing fabs are subject to certain risks that could result in delays or cost overruns, which could require us to expend additional capital and adversely affect our business and operating results.***

We plan to continue to expand our business through the development of new fabs. There are a number of events that could delay these expansion projects or increase the costs of building and equipping these or future fabs in accordance with our plans. Such potential events include, but are not limited to:

- shortages and late delivery of building materials and facility equipment;
- delays in the delivery, installation, commissioning and qualification of our manufacturing equipment;
- seasonal factors, such as a long and intensive wet season that limits construction;
- labor disputes;
- design or construction changes with respect to building spaces or equipment layout;
- delays in securing the necessary governmental approvals and land use rights; and
- technological, capacity and other changes to our plans for new fabs necessitated by changes in market conditions.

As a result, our projections relating to capacity, process technology capabilities or technology developments may significantly differ from actual capacity, process technology capabilities or technology developments.

Delays in the construction and equipping or expansion of any of our fabs could result in the loss or delayed receipt of earnings, an increase in financing costs, or the failure to meet profit and earnings projections, any of which could adversely affect our business and operating results.

***If we cannot compete successfully in our industry, particularly in China, our results of operations and financial condition will be adversely affected.***

The worldwide semiconductor foundry industry is highly competitive. We compete with other foundries, such as TSMC, United Microelectronics Corporation, or UMC, and GlobalFoundries, as well as the foundry services offered by some IDMs, such as IBM. We also compete with smaller semiconductor foundries in China, Korea, Malaysia and other countries. Some of our competitors have greater access to capital and substantially higher capacity, longer or more established relationships with their customers, superior research and development capability, and greater marketing and other resources than we do. As a result, these companies may be able to compete more aggressively over a longer period of time than we can.

Our competitors have established operations in mainland China in order to compete for the growing domestic market in China. TSMC has commenced commercial production at its fab in China, and UMC has established a relationship with a fab in commercial production in China. We understand that the ability of these fabs to manufacture wafers using certain more advanced technologies is subject to restrictions by the home jurisdiction of TSMC and UMC. Such restrictions could be reduced or lifted at any time, which may lead to increased domestic competition with such competitors and adversely affect our business and operating results.

Our ability to compete successfully depends to some extent upon factors outside of our control, including import and export controls, exchange controls, exchange rate fluctuations, interest rate fluctuations and political developments. If we cannot compete successfully in our industry or are unable to maintain our position as a leading foundry in China, our results of operations and financial condition will be adversely affected.

***We may be unable to obtain in a timely manner and at a reasonable cost the equipment necessary for our business and therefore may be unable to achieve our expansion plans or meet our customers' orders, which could negatively impact our competitiveness, financial condition and results of operations.***

The semiconductor industry is capital-intensive and requires investment in advanced equipment that is available from a limited number of manufacturers. The market for equipment used in semiconductor foundries is characterized, from time to time, by significant demand, limited supply and long delivery cycles. Our business plan depends upon our ability to obtain our required equipment in a timely manner and at acceptable prices. During times of significant demand for the types of equipment we use, lead times for delivery can be as long as one year. Shortages of equipment could result in an increase in equipment prices and longer delivery times. If we are unable to obtain equipment in a timely manner and at a reasonable cost, we may be unable to achieve our expansion plans or meet our customers' orders, which could negatively impact our competitiveness, financial condition, and results of operations.

***We expect to have an ongoing need to obtain licenses for the proprietary technology of others, which subjects us to the payment of license fees and potential delays in the development and marketing of our products.***

While we continue to develop and pursue patent protection for our own technologies, we expect to continue to rely on third party license arrangements to enable us to manufacture certain advanced wafers. As of December 31, 2009, we had been granted nine hundred sixty two patents worldwide, of which, fifty seven are in Taiwan, ninety one are in the U.S., and eight hundred fourteen are in China, whereas we believe our competitors and other industry participants have been issued numerous patents concerning wafer fabrication in multiple jurisdictions. Our limited patent portfolio may in the future adversely affect our ability to obtain licenses to the proprietary technology of others on favorable license terms due to our inability to offer cross-licensing arrangements. The fees associated with such licenses could adversely affect our financial condition and operating results. They might also render our services less competitive. If for any reason we are unable to license necessary technology on acceptable terms, it may become necessary for us to develop alternative technology internally, which could be costly and delay the marketing and delivery of key products and therefore have an adverse effect on our business and operating results. In addition, we may be unable to independently develop the technology required by our customers on a timely basis or at all, in which case our customers may purchase wafers from our competitors.

***We may be subject to claims of intellectual property rights infringement owing to the nature of our industry, our limited patent portfolio and limitations of the indemnification provisions in our technology license agreements. These claims could adversely affect our business and operating results.***

There is frequent intellectual property litigation, involving patents, copyrights, trade secrets, mask works and other intellectual property subject matters, in our industry. In some cases, a company can avoid or settle litigation on favorable terms because it possesses patents that can be asserted against the plaintiff. The limited size of our current patent portfolio will not likely place us in such a bargaining position. Moreover, some of our technology license agreements with our major technology partners do not provide for us to be indemnified in the event that the processes we license pursuant to such agreements infringe third party intellectual property rights. We could be sued for allegedly infringing one or more patents as to which we will be unable to obtain a license and unable to design around. As a result, we would be foreclosed from manufacturing or selling the products which are dependent upon such technology, which could have a material adverse effect on our business. We may litigate the issues of whether these patents are valid or infringed, but in the event of a loss we could be required to pay substantial monetary damages and be enjoined from further production or sale of such products.

***If our relationships with our technology partners deteriorate or we are unable to enter into new technology alliances, we may not be able to continue providing our customers with leading edge process technology, which could adversely affect our competitive position and operating results.***

Enhancing our process technologies is critical to our ability to provide high quality services for our customers. We intend to continue to advance our process technologies through internal research and development efforts and technology alliances with other companies. Although we have an internal research and development team focused on developing new process technologies, we depend upon our technology partners to advance our portfolio of process technologies. We currently have joint technology development arrangements and technology sharing arrangements with several companies and research institutes. If we are unable to continue our technology alliances with these entities, or maintain on mutually beneficial terms any of our other joint development arrangements, research and development alliances and other similar agreements, or are unable to enter into new technology alliances with other leading developers of semiconductor technology, we may not be able to continue providing our customers with leading edge process technology, which could adversely affect our competitive position and operating results.

***Global or regional economic, political and social conditions could adversely affect our business and operating results.***

External factors such as potential terrorist attacks, acts of war, financial crises, global economic crisis, natural disaster, or geopolitical and social turmoil in those parts of the world that serve as markets for our products could significantly adversely affect our business and operating results in ways that cannot presently be predicted. These uncertainties could make it difficult for our customers and us to accurately plan future business activities. More generally, these geopolitical, social and economic conditions could result in increased volatility in worldwide financial markets and economies that could adversely impact our sales. We are not insured for losses and interruptions caused by terrorist acts or acts of war. Therefore, any of these events or circumstances could adversely affect our business and operating results.

***The recurrence of an outbreak of the H5N1 strain of flu (Avian Flu), Severe Acute Respiratory Syndrome (SARS), or an outbreak of any other similar epidemic could, directly or indirectly, adversely affect our operating results.***

Past outbreaks of the H1N1 virus, commonly known as swine flu, in North America and Europe caused governments to take measures to prevent spread of the virus. In addition, there have been reports of swine flu cases in Asia. The spread of epidemics could negatively affect the economy. For example, past occurrences of epidemics such as SARS have caused different degrees of damage to the national and local economies in China. If any of our employees are identified as a possible source of spreading the H1N1 virus, the Avian Flu or any other similar epidemic, we may be required to quarantine employees that are suspected of being infected, as well as others that have come into contact with those employees. We may also be required to disinfect our affected premises, which could cause a temporary suspension of our manufacturing capacity, thus adversely affecting our operations. A recurrence of an outbreak of the H1N1 virus or a recurrence of an outbreak of SARS, Avian Flu or other similar epidemic could restrict the level of economic activities generally and/or slow down or disrupt our business activities which could in turn adversely affect our results of operations.

***Exchange rate fluctuations could increase our costs, which could adversely affect our operating results and the value of our ADSs.***

Our financial statements are prepared in U.S. dollars. Our sales are generally denominated in U.S. dollars and our operating expenses and capital expenditures are generally denominated in U.S. dollars, Japanese Yen, Euros and Renminbi. Although we enter into foreign currency forward exchange contracts, we are still affected by fluctuations in exchange rates between the U.S. dollar and each of the Japanese Yen, the Euro and the Renminbi. Any significant fluctuations among these currencies may lead to an increase in our costs, which could adversely affect our operating results. See “-Risks Related to Conducting Operations in China - Devaluation or appreciation in the value of the Renminbi or restrictions on convertibility of the Renminbi could adversely affect our business and operating results” for a discussion of risks relating to the Renminbi.

Fluctuations in the exchange rate of the Hong Kong dollar against the U.S. dollar will affect the U.S. dollar value of the ADSs, since our ordinary shares are listed and traded on the Hong Kong Stock Exchange and the price of such shares are denominated in Hong Kong dollars. While the Hong Kong government has continued to pursue a pegged exchange rate policy, with the Hong Kong dollar trading in the range of HK\$7.7498 to HK\$7.7596 per US\$1.00 for 2009, we cannot assure you that such policy will be maintained. Exchange rate fluctuations also will affect the amount of U.S. dollars received upon the payment of any cash dividends or other distributions paid in Hong Kong dollars and the Hong Kong dollar proceeds received from any sales of ordinary shares. Therefore, such fluctuations could also adversely affect the value of our ADSs.

***If we fail to maintain an effective system of internal control over financial reporting, we may not be able to accurately report our financial results or prevent fraud and, because of the inherent limitation of internal control over financial reporting, material misstatements due to error or fraud may not be prevented or detected on a timely basis.***

We are subject to reporting obligations under the United States securities laws. The SEC, as required by Section 404 of the Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act, adopted rules requiring public companies to include a management report on such company’s internal controls over financial reporting in its annual report, which contains management’s assessment of the effectiveness of the company’s internal controls over financial reporting. In addition, an independent registered public accounting firm must attest to the effectiveness of the company’s internal controls over financial reporting. Our management has concluded that our internal controls over our financial reporting as of December 31, 2009 were not effective due to a material weakness identified in Report by Management on Internal Control over Financial Reporting. We cannot assure you that in the future we or our independent registered public accounting firm will not identify additional material weaknesses during the Section 404 of the Sarbanes-Oxley Act audit process or for other reasons. In addition, because of the inherent limitations of internal control over financial reporting, including the possibility of collusion or improper management override of controls, material misstatements due to error or fraud may not be prevented or detected on a timely basis. As a result, if we fail to maintain effective internal controls over financial reporting or should we be unable to prevent or detect material misstatements due to error or fraud on a timely basis, investors could lose confidence in the reliability of our financial statements, which in turn could harm our business and negatively impact the trading price of our securities. Furthermore, we have incurred and expect to continue to incur considerable costs and to use significant management time and other resources in an effort to comply with Section 404 and other requirements of the Sarbanes-Oxley Act.

***We have twice settled pending litigation with TSMC at a substantial cost to us, and, if we materially breach our 2009 settlement agreement with TSMC (or certain related documents), we could be required to pay substantial liquidated damages in addition to the money damages or other remedies TSMC may be entitled to in connection with such material breach.***

Taiwan Semiconductor Manufacturing Company, Limited (“TSMC”) has brought legal claims against us and our personnel on several occasions since 2002. On January 31, 2005, we entered into a settlement agreement with TSMC and agreed to pay them \$175 million in installments over a period of six years (the 2005 “Settlement Agreement”).

On August 25, 2006, TSMC filed a new lawsuit against us and certain of our subsidiaries in the Superior Court of the State of California for alleged breach of the 2005 Settlement Agreement between us and TSMC, alleged breach of promissory notes and alleged trade secret misappropriation by us. We filed counterclaims against TSMC in the same court in September 2006 and also filed suit against TSMC in Beijing in November 2006. We settled these 2006 lawsuits with TSMC (the “Settled Actions”) on November 9, 2009 with a settlement agreement (the “2009 Settlement Agreement”) which replaced the 2005 Settlement Agreement.

Under the terms of the 2009 Settlement Agreement, our obligation to make the remaining payments of approximately US\$40 million under the 2005 Settlement Agreement was terminated, but we agreed to pay TSMC an aggregate of US\$200 million over a period of four years and committed, subject to certain terms and conditions, to issue TSMC 1,789,493,218 of our shares and one or more warrants exercisable within three years of issuance to subscribe for an aggregate of 695,914,030 of our shares, subject to adjustment, at a purchase price of HK\$1.30 per share, subject to adjustment. See “Item 10 – Additional Disclosure – Other Contracts” for a more detailed description of the share and warrant issuance agreement entered into by us and TSMC in connection with the 2009 Settlement Agreement and the warrant agreement to be entered into (subject to receipt of required government and regulatory approvals) between us and TSMC in connection with the 2009 Settlement Agreement. In addition, the 2009 Settlement Agreement terminated that certain patent cross license agreement that was entered into in connection with the 2005 Settlement Agreement under which we had previously cross-licensed patent portfolios with TSMC (the “2005 Patent Cross-License”).

Under the 2009 Settlement Agreement, both parties released the other from all claims arising out of or related to claims and counterclaims that were or could have been brought in the Settled Actions, but this release does not apply to claims of breach of the 2009 Settlement Agreement. In addition, each party covenanted not to sue the other for misappropriation or infringement of intellectual property rights, but this covenant not to sue did not extend to claims for breach of the 2009 Settlement Agreement or claims for patent or trademark infringement.

Further, the 2009 Settlement Agreement provides that if we materially breach the 2009 Settlement Agreement or certain related documents and fail to cure that breach within 30 days after notice from TSMC, that we will pay TSMC liquidated damages, in addition to any damages arising from such breach, in the amount of US\$44 million plus a royalty equal to 5% of our gross revenues derived from foundry services in respect of our 90nm and larger manufacturing processes for 20 years from the date of the breach.

There can be no assurance that TSMC will not sue us again in the future. For example, TSMC is not prohibited under the 2009 Settlement Agreement from bringing infringement claims against us which could not have been brought in the Settled Actions. Further, we are subject to several obligations under the 2009 Settlement Agreement, including obligations to protect the confidentiality of certain information, and TSMC could, in the future, allege a breach by us of the 2009 Settlement Agreement. If TSMC were successful in a claim of material breach by us of the 2009 Settlement Agreement (or certain related documents), we have agreed to pay substantial liquidated damages as described above.

TSMC is a competitor of ours and has substantially greater resources than we do to investigate and pursue legal actions. If TSMC successfully brings additional legal actions against us, we could be subject to significant penalties which could include monetary payments and/or injunctive relief such as requirements to discontinue sales of products.

The occurrence of any of these events could have a material adverse effect on our business and operating results and, in any event, the cost of litigation could be substantial.

## **Risks Related to Manufacturing**

*Our manufacturing processes are highly complex, costly and potentially vulnerable to impurities and other disruptions, which could significantly increase our costs and delay product shipments to our customers.*

Our manufacturing processes are highly complex, require advanced and costly equipment, demand a high degree of precision and may have to be modified to improve yields and product performance. Dust and other impurities, difficulties in the fabrication process or defects with respect to the equipment or facilities used can lower yields, cause quality control problems, interrupt production or result in losses of products in process. As system complexity has increased and process technology has become more advanced, manufacturing tolerances have been reduced and requirements for precision have become even more demanding. As a result, we may experience production difficulties, which could significantly increase our costs and delay product shipments to our customers.

*We may have difficulty in ramping up production, which could cause delays in product deliveries and loss of customers and adversely affect our business and operating results.*

As is common in the semiconductor industry, we may experience difficulty in ramping up production at new or existing facilities, such as our Beijing mega-fab in which we expect to add a significant amount of new equipment. This could be due to a variety of factors, including hiring and training of new personnel, implementing new fabrication processes, recalibrating and re-qualifying existing processes and the inability to achieve required yield levels.

In the future, we may face construction delays or interruptions, infrastructure failure, or delays in upgrading or expanding existing facilities or changing our process technologies, which may adversely affect our ability to ramp up production in accordance with our plans. Our failure to ramp up our production on a timely basis could cause delays in product deliveries, which may result in the loss of customers and sales. It could also prevent us from recouping our investments in a timely manner or at all, and adversely affect our business and operating results.

*We have formed joint ventures that, if not successful, may adversely impact our business and operating results.*

In July 2004, we announced an agreement with Toppan Printing Co., Ltd., to establish Toppan SMIC Electronics (Shanghai) Co., Ltd., a joint venture in Shanghai, to manufacture color filters and micro-lenses for CMOS image sensors. In May 2005, we announced an agreement with United Test and Assembly Center Ltd. to establish a joint venture in Chengdu to provide assembly and testing services for memory and logic devices.

The results of the joint ventures are reflected in our operating results to the extent of our ownership interest, and losses of the joint ventures could adversely impact our operating results. For example, as a result of our ownership of Toppan SMIC Electronics (Shanghai) Co., Ltd., we recorded a loss of US\$ 1.8 million in 2009. Integration of assets and operations being contributed by each partner will involve complex activities that must be completed in a short period of time. The joint ventures are likely to continue to face numerous challenges in commencing their operations and operating successfully. The business of the joint ventures will be subject to operational risks that would normally arise for these types of businesses pertaining to manufacturing, sales, service, marketing, and corporate functions. Competition in the CMOS image sensor market and semiconductor assembly and testing industry will involve challenges from well-established companies with substantial resources and significant market share.

If the joint ventures are not successful or less successful than we anticipate, we may incur higher costs for performing assembly and testing services through our current partners or for manufacturing color filters and micro-lenses, which typically require mature technologies and thus command a lower wafer price and generate lower margins, at our existing fabs. Either result may adversely affect our business and operating results.

***If we are unable to obtain raw materials and spare parts in a timely manner, our production schedules could be delayed and our costs could increase.***

We depend on suppliers of raw materials, such as silicon wafers, gases and chemicals, and spare equipment parts, in order to maintain our production processes. To maintain operations, we must obtain from our suppliers sufficient quantities of quality raw materials and spare equipment parts at acceptable prices and in a timely manner. The most important raw material used in our production is silicon in the form of raw wafers. We currently purchase approximately 76% of our overall raw wafer requirements from our top three raw wafer suppliers. In addition, a portion of our gas and chemical requirements currently must be sourced from outside China. We may not be able to obtain adequate supplies of raw materials and spare parts in a timely manner and at a reasonable cost. In addition, from time to time, we may need to reject raw materials and parts that do not meet our specifications, resulting in potential delays or declines in output. If the supply of raw materials and necessary spare parts is substantially reduced or if there are significant increases in their prices, we may incur additional costs to acquire sufficient quantities of these parts and materials to maintain our production schedules and commitments to customers.

***Our production may be interrupted, limited or delayed if we cannot maintain sufficient sources of fresh water and electricity, which could adversely affect our business and operating results.***

The semiconductor fabrication process requires extensive amounts of fresh water and a stable source of electricity. As our production capabilities increase and our business grows, our requirements for these resources will grow substantially. While we have not, to date, experienced any instances of the lack of sufficient supplies of water or material disruptions in the electricity supply to any of our fabs, we may not have access to sufficient supplies of water and electricity to accommodate our planned growth. Droughts, pipeline interruptions, power interruptions, electricity shortages or government intervention, particularly in the form of rationing, are factors that could restrict our access to these utilities in the areas in which our fabs are located. In particular, our fab in Tianjin and our Beijing mega-fab are located in areas that are susceptible to severe water shortages during the summer months. If there is an insufficient supply of fresh water or electricity to satisfy our requirements, we may need to limit or delay our production, which could adversely affect our business and operating results. In addition, a power outage, even of very limited duration, could result in a loss of wafers in production and a deterioration in yield.

***Our operations may be delayed or interrupted due to natural disasters which could adversely affect our business and operating results.***

We depend on suppliers of raw materials, such as silicon wafers, gases and chemicals, and spare equipment parts, in order to maintain our production processes in addition to requiring extensive amounts of fresh water and a stable source of electricity. The occurrence of natural disasters such as earthquakes may disrupt this required access to goods and services provided by our suppliers as well as access to fresh water and electricity. As a result, our production could be limited or delayed due to the disruption of access to required supplies, in addition to possible damage caused to our manufacturing equipment and related infrastructure, which could adversely affect our business and operating results.

***We are subject to the risk of damage due to fires or explosions because the materials we use in our manufacturing processes are highly flammable. Such damage could temporarily reduce our manufacturing capacity, thereby adversely affecting our business and operating results.***

We use highly flammable materials such as silane and hydrogen in our manufacturing processes and are therefore subject to the risk of loss arising from explosions and fires. While we have not, to date, experienced any explosion or fire due to the nature of our raw materials, the risk of explosion and fire associated with these materials cannot be completely eliminated. Although we maintain comprehensive fire insurance and insurance for the loss of property and the loss of profit resulting from business interruption, our insurance coverage may not be sufficient to cover all of our potential losses due to an explosion or fire. If any of our fabs were to be damaged or cease operations as a result of an explosion or fire, it could temporarily reduce our manufacturing capacity, which could adversely affect our business and operating results.

***Our Beijing mega-fab is located in an area that is susceptible to seasonal dust storms, which could create impurities in the production process at these facilities and require us to take additional measures or spend additional capital to further insulate these fabs from dust, thereby adversely affecting our business and operating results.***

The location of our Beijing mega-fab makes it susceptible to seasonal dust storms, which could cause dust particles to enter the buildings and affect the production process. Although we are constructing precautionary filtration systems, these may not adequately insulate the Beijing mega-fab against dust contamination. If dust were to affect production in the Beijing mega-fab, we could experience quality control problems, losses of products in process and delays in shipping products to our customers. In addition, we may have to spend additional capital to further insulate the Beijing mega-fab from dust if our current precautionary measures are insufficient. The occurrence of any of these events could adversely affect our business and operating results.

***Our operations may be delayed or interrupted and our business could suffer as a result of steps we may be required to take in order to comply with environmental regulations.***

We are subject to a variety of Chinese environmental regulations relating to the use, discharge and disposal of toxic or otherwise hazardous materials used in our production processes. Any failure or any claim that we have failed to comply with these regulations could cause delays in our production and capacity expansion and affect our company's public image, either of which could harm our business. In addition, any failure to comply with these regulations could subject us to substantial fines or other liabilities or require us to suspend or adversely modify our operations.

## **Risks Related to Conducting Operations in China**

***Our business is subject to extensive government regulation and benefits from certain government incentives, and changes in these regulations or incentives could adversely affect our business and operating results.***

The Chinese government has broad discretion and authority to regulate the technology industry in China. China's government has also implemented policies from time to time to regulate economic expansion in China. The economy of China has been transitioning from a planned economy to a market-oriented economy. Although in recent years the Chinese government has implemented measures emphasizing the utilization of market forces for economic reform, the reduction of state ownership of productive assets, and the establishment of sound corporate governance in business enterprises, a substantial portion of productive assets in China is still owned by the Chinese government. In addition, the Chinese government continues to play a significant role in regulating industrial development. It also exercises significant control over China's economic growth through the allocation of resources, controlling payment of foreign currency-denominated obligations, setting monetary policy, and providing preferential treatment to particular industries or companies. New regulations or the readjustment of previously implemented regulations could require us to change our business plan, increase our costs or limit our ability to sell products and conduct activities in China, which could adversely affect our business and operating results.

In addition, the Chinese government and provincial and local governments have provided, and continue to provide, various incentives to domestic companies in the semiconductor industry, including our company, in order to encourage the development of the industry. Such incentives include tax rebates, reduced tax rates, favorable lending policies, and other measures. Any of these incentives could be reduced or eliminated by governmental authorities at any time. For example, in the past, the Chinese government announced that by April 1, 2005, the preferential value-added tax policies, which previously entitled certain qualified companies to receive a refund of the amount exceeding 3% of the actual value-added tax burden relating to self-made integrated circuit product sales, would be eliminated. While we have not previously benefited materially from such preferential value-added tax policies, any reduction or elimination of other incentives currently provided to us could adversely affect our business and operating results.

***Because our business model depends on growth in the electronics manufacturing supply chain in China, any slowdown in this growth could adversely affect our business and operating results.***

Our business is dependent upon the economy and the business environment in China. In particular, our growth strategy is based upon the assumption that demand in China for devices that use semiconductors will continue to grow. Therefore, any slowdown in the growth of consumer demand in China for products that use semiconductors, such as computers, mobile phones or other consumer electronics, could have a serious adverse effect on our business. In addition, our business plan assumes that an increasing number of non-domestic IDMs, fabless semiconductor companies and systems companies will establish operations in China. Any decline in the rate of migration to China of semiconductor design companies or companies that require semiconductors as components for their products could adversely affect our business and operating results.

***Limits placed on exports into China could substantially harm our business and operating results.***

The growth of our business will depend on the ability of our suppliers to export, and our ability to import, equipment, materials, spare parts, process know-how and other technologies and hardware into China. Any restrictions placed on the import and export of these products and technologies could adversely impact our growth and substantially harm our business. In particular, the United States requires our suppliers and us to obtain licenses to export certain products, equipment, materials, spare parts and technologies from that country. If we or our suppliers are unable to obtain export licenses in a timely manner, our business and operating results could be adversely affected.

In July 1996, thirty-three countries ratified the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, which established a worldwide arrangement to restrict the transfer of conventional arms and dual-use goods and technologies. Under the terms of the Wassenaar Arrangement, the participating countries, including the United States, have restricted exports to China of technology, equipment, materials and spare parts that potentially may be used for military purposes in addition to their commercial applications. To the extent that technology, equipment, materials or spare parts used in our manufacturing processes are or become subject to the restrictions of the arrangement, our ability to procure these products and technology could be impaired, which could adversely affect our business and operating results. There could also be a change in the export license regulatory regime in the countries from which we purchase our equipment, materials and spare parts that could delay our ability to obtain export licenses for the equipment, materials, spare parts and technology we require to conduct our business.

***Devaluation or appreciation in the value of the Renminbi or restrictions on convertibility of the Renminbi could adversely affect our business and operating results.***

The value of the Renminbi is subject to changes in China's governmental policies and to international economic and political developments. Since 1994, the conversion of Renminbi into foreign currencies, including Hong Kong and U.S. dollars, has been based on rates set by the People's Bank of China ("PBOC"), which are set daily based on the previous day's interbank foreign exchange market rates and current exchange rates on the world financial markets. The Renminbi to U.S. dollar exchange rate experienced significant volatility prior to 1994, including periods of sharp devaluation. On July 21, 2005, the PBOC announced an adjustment of the exchange rate of the U.S. dollar to Renminbi from 1:8.27 to 1:8.11 and modified the system by which the exchange rates are determined. The central parity rate of the U.S. Dollar to Renminbi was set at 6.8282 on December 31, 2009 versus 6.8346 on December 31, 2008 by PBOC. The cumulative appreciation of the Renminbi against the U.S. dollar in 2009 was approximately 0.09%. There remains significant international pressure on the PRC government to adopt an even more flexible currency policy, which could result in a further and more significant appreciation of the Renminbi against the U.S. dollar. As a result, the exchange rate may become volatile and the Renminbi may be devalued again against the U.S. dollar or other currencies, or the Renminbi may be permitted to enter into a full or limited free float, which may result in an appreciation in the value of the Renminbi against the U.S. dollar, any of which could have an adverse affect on our business and operating results.

In the past, financial markets in many Asian countries have experienced severe volatility and, as a result, some Asian currencies have experienced significant devaluation from time to time. The devaluation of some Asian currencies may have the effect of rendering exports from China more expensive and less competitive and therefore place pressure on China's government to devalue the Renminbi. An appreciation in the value of the Renminbi could have a similar effect. Any devaluation of the Renminbi could result in an increase in volatility of Asian currency and capital markets. Future volatility of Asian financial markets could have an adverse impact on our ability to expand our product sales into Asian markets outside of China.

We receive a portion of our sales in Renminbi, which is currently not a freely convertible currency. For the year ended December 31, 2009, approximately 11.7% of our sales were denominated in Renminbi. While we have used these proceeds for the payment of our Renminbi expenses, we may in the future need to convert these sales into foreign currencies to allow us to purchase imported materials and equipment, particularly as we expect the proportion of our sales to China-based companies to increase in the future. Under China's existing foreign exchange regulations, payments of current account items, including profit distributions, interest payments and expenditures from trade may be made in foreign currencies without government approval, except for certain procedural requirements. The Chinese government may, however, at its discretion, restrict access in the future to foreign currencies for current account transactions and prohibit us from converting our Renminbi sales into foreign currencies. If this were to occur, we may not be able to meet our foreign currency payment obligations.

***China's entry into the World Trade Organization has resulted in lower Chinese tariff levels, which benefit our competitors from outside China and could adversely affect our business and operating results.***

As a result of joining the World Trade Organization, or WTO, China has reduced its average rate of import tariffs to 9.8% in 2003 and may further decrease. The import tariff for some information technology-related products has been reduced to zero. As a consequence, we expect stronger competition in China from our foreign competitors, particularly in terms of product pricing, which could adversely affect our business and operating results.

***China's legal system embodies uncertainties that could adversely affect our business and operating results.***

Since 1979, many new laws and regulations covering general economic matters have been promulgated in China. Despite this activity to develop the legal system, China's system of laws is not yet complete. Even where adequate law exists in China, enforcement of existing laws or contracts based on existing law may be uncertain and sporadic, and it may be difficult to obtain swift and equitable enforcement or to obtain enforcement of a judgment by a court of another jurisdiction. The relative inexperience of China's judiciary in many cases creates additional uncertainty as to the outcome of any litigation. In addition, interpretation of statutes and regulations may be subject to government policies reflecting domestic political changes.

Our activities in China will be subject to administrative review and approval by various national and local agencies of China's government. See "Item 4-Information on the Company-Regulation." Because of the changes occurring in China's legal and regulatory structure, we may not be able to secure the requisite governmental approval for our activities. Failure to obtain the requisite governmental approval for any of our activities could adversely affect our business and operating results.

***Our corporate structure may restrict our ability to receive dividends from, and transfer funds to, our Chinese operating subsidiaries, which could restrict our ability to act in response to changing market conditions and reallocate funds from one Chinese subsidiary to another in a timely manner.***

We are a Cayman Islands holding company and substantially all of our operations are conducted through our Chinese operating subsidiaries, Semiconductor Manufacturing International (Shanghai) Corporation, or SMIC Shanghai, Semiconductor Manufacturing International (Beijing) Corporation, or SMIC Beijing, and Semiconductor Manufacturing International (Tianjin) Corporation. The ability of these subsidiaries to distribute dividends and other payments to us may be restricted by factors that include changes in applicable foreign exchange and other laws and regulations. In particular, under Chinese law, these operating subsidiaries may only pay dividends after 10% of their net profit has been set aside as reserve funds, unless such reserves have reached at least 50% of their respective registered capital. In addition, the profit available for distribution from our Chinese operating subsidiaries is determined in accordance with generally accepted accounting principles in China. This calculation may differ from the one performed in accordance with U.S. GAAP. As a result, we may not have sufficient distributions from our Chinese subsidiaries to enable necessary profit distributions to us or any distributions to our shareholders in the future, which calculation would be based upon our financial statements prepared under U.S. GAAP.

Distributions by our Chinese subsidiaries to us may be subject to governmental approval and taxation. Any transfer of funds from our company to our Chinese subsidiaries, either as a shareholder loan or as an increase in registered capital, is subject to registration or approval of Chinese governmental authorities, including the relevant administration of foreign exchange and/or the relevant examining and approval authority. In addition, it is not permitted under Chinese law for our Chinese subsidiaries to directly lend money to each other. Therefore, it is difficult to change our capital expenditure plans once the relevant funds have been remitted from our company to our Chinese subsidiaries. These limitations on the free flow of funds between us and our Chinese subsidiaries could restrict our ability to act in response to changing market conditions and reallocate funds from one Chinese subsidiary to another in a timely manner.

## **Risks Related to Ownership of Our Shares and ADSs and Our Trading Markets**

### ***Future sales of securities by us or our shareholders may decrease the value of your investment.***

Future sales by us or our existing shareholders of substantial amounts of our ordinary shares or ADSs in the public markets could adversely affect market prices prevailing from time to time.

We cannot predict the effect, if any, of any such future sales or of the perception that any such future sales will occur, on the market price for our ordinary shares or ADSs.

### ***Holders of our ADSs will not have the same voting rights as the holders of our shares and may not receive voting materials in time to be able to exercise their right to vote.***

Holders of our ADSs may not be able to exercise voting rights attaching to the shares evidenced by our ADSs on an individual basis. Holders of our ADSs have appointed the depositary or its nominee as their representative to exercise the voting rights attaching to the shares represented by the ADSs. You may not receive voting materials in time to instruct the depositary to vote, and it is possible that you, or persons who hold their ADSs through brokers, dealers or other third parties, will not have the opportunity to exercise a right to vote.

### ***You may not be able to participate in rights offerings and may experience dilution of your holdings as a result.***

We may from time to time distribute rights to our shareholders, including rights to acquire our securities. Under the deposit agreement for the ADSs, the depositary will not offer those rights to ADS holders unless both the rights and the underlying securities to be distributed to ADS holders are either registered under the Securities Act or exempt from registration under the Securities Act with respect to all holders of ADSs. We are under no obligation to file a registration statement with respect to any such rights or underlying securities or to endeavor to cause such a registration statement to be declared effective. In addition, we may not be able to take advantage of any exemptions from registration under the Securities Act. Accordingly, holders of our ADSs may be unable to participate in our rights offerings and may experience dilution in their holdings as a result.

### ***The laws of the Cayman Islands and China may not provide our shareholders with benefits provided to shareholders of corporations incorporated in the United States.***

Our corporate affairs are governed by our memorandum and articles of association, by the Companies Law (Revised) and the common law of the Cayman Islands. The rights of shareholders to take action against our directors, actions by minority shareholders and the fiduciary responsibilities of our directors to us under Cayman Islands law are to a large extent governed by the common law of the Cayman Islands. The common law in the Cayman Islands is derived in part from comparatively limited judicial precedent in the Cayman Islands and from English common law, the decisions of whose courts are of persuasive authority but are not binding on a court in the Cayman Islands. The rights of our shareholders and the fiduciary responsibilities of our directors under Cayman Islands law are not as clearly established as they would be under statutes or judicial precedents in the United States. In particular, the Cayman Islands have a less developed body of securities laws as compared to the United States. Therefore, our public shareholders may have more difficulty protecting their interests in the face of actions by our management, directors or controlling shareholders than would shareholders of a corporation incorporated in a jurisdiction in the United States. In addition, Cayman Islands companies may not have standing to initiate a shareholder derivative action before the federal courts of the United States.

### ***It may be difficult for you to enforce any judgment obtained in the United States against our company, which may limit the remedies otherwise available to our shareholders.***

Substantially all of our assets are located outside the United States. Almost all of our current operations are conducted in China. Moreover, a number of our directors and officers are nationals or residents of countries other than the United States. All or a substantial portion of the assets of these persons are located outside the United States. As a result, it may be difficult for you to effect service of process within the United States upon these persons. In addition, there is uncertainty as to whether the courts of the Cayman Islands or China would recognize or enforce judgments of United States courts obtained against us or such persons predicated upon the civil liability provisions of the securities law of the United States or any state thereof, or be competent to hear original actions brought in the Cayman Islands or China, respectively, against us or such persons predicated upon the securities laws of the United States or any state thereof. See "Item 4 - Information on the Company - Business Overview - Enforceability of Civil Liabilities.

## **Item 4. Information on the Company**

### **History and Development of the Company**

We were established as an exempted company under the laws of the Cayman Islands on April 3, 2000. Our legal name is Semiconductor Manufacturing International Corporation. Our principal place of business is 18 Zhangjiang Road, Pudong New Area, Shanghai, China 201203, telephone number: (86) 21-3861-0000. Our registered office is located at PO Box 309, Uglan House, Grand Cayman, KY1-1104, Cayman Islands. Since our global offering, we have been listed on the New York Stock Exchange under the symbol "SMI" and the Stock Exchange of Hong Kong under the stock code "0981.HK"

In August 2000, we started construction of the first fabrication (fab) in our Shanghai mega-fab, which commenced pilot production in September 2001 and commenced commercial production in January 2002. The second fab in our Shanghai mega-fab was completed in two stages, commencing commercial production in January 2002 (for aluminum interconnects) and January 2003 (for copper interconnects). The third fab in our Shanghai mega-fab also commenced commercial production in January 2003. All the fabs comprising the Shanghai mega-fab are located in the Zhangjiang High-Tech Park. In January 2004, we completed the acquisition of an 8-inch wafer fab located in the Xiqing Economic Development Area in Tianjin, China, which commenced mass production in May 2004. We started construction of our Beijing mega-fab in the Beijing Economic and Technological Development Area in December 2002. The Beijing mega-fab consists of two 12-inch fabs and commenced commercial production in March 2005. The Beijing mega-fab is mainland China's first 12-inch fab. In January 2008, the Company announced its plan to start a new IC production project in Shenzhen with extensive support from the Shenzhen municipal government. The project broke ground in the first half of 2008.

We have entered into an agreement with Toppan Printing Co., Ltd., to establish Toppan SMIC Electronics (Shanghai) Co., Ltd., which manufactures color filters and micro-lenses for CMOS image sensors and a joint venture agreement with United Test and Assembly Center Ltd. to provide assembly and testing services in Chengdu, China focusing on memory and logic devices. We also entered into agreements to manage the operations of wafer manufacturing facilities in Chengdu and Wuhan, China. We maintain customer service and marketing offices in Japan, Europe, and the United States, as well as representative office in Hong Kong.

The foundry industry requires a significant amount of capital expenditures in order to construct, equip, and ramp up fabs. We incurred capital expenditures of US\$860 million, US\$666 million, and US\$190 million in 2007, 2008 and 2009, respectively, for these purposes. We anticipate that in 2010, we will incur approximately US\$335 million in capital expenditures to be adjusted based on market conditions, principally to expand our operations at mega-fab in Beijing. If our operating cash flows are insufficient, we plan to fund the expected shortfall through bank loans. If necessary, we will also explore other forms of external financing.

Our fabs had an aggregate capacity, as of December 31, 2009, of 162,050 8-inch wafer equivalents per month for wafer fabrication. We anticipate an increase to aggregate capacity by the end of 2010.

For additional information, see "Item 5 - Operating and Financial Review and Prospects - Factors that Impact Our Results of Operations - Substantial Capital Expenditures" and "Capacity Expansion."

## Business Overview

We are one of the leading semiconductor foundries in the world. We operate three 8-inch wafer fabrication facilities in our Shanghai mega-fab located in the Zhangjiang High-Tech Park in Shanghai, China, an 8-inch wafer fab in Tianjin, China and a 12-inch wafer fab in our Beijing mega-fab located in the Beijing Economic and Technological Development Area in Beijing, China. These fabs had an aggregate capacity as of December 31, 2009 of 162,050 8-inch wafer equivalents per month for wafer fabrication which positions us as the leading foundry in China. In addition, we have a 12-inch fab in Shanghai currently engaged primarily in research and development activities, and a 8-inch fab under construction in Shenzhen. We have also entered into agreements to manage the operations of wafer manufacturing facilities in Chengdu and Wuhan, China.

We currently provide semiconductor fabrication services using 0.35 micron to 45 nanometer process technology for the following devices:

- logic technologies, including standard logic, mixed-signal, RF and high voltage circuits;
- memory technologies, including DRAM, SRAM, Flash, and EEPROM; and
- specialty technologies, including LCOS, and CIS.

In 2009, the effect of adverse market conditions and significant changes in the Company's operation strategy lead to the Company's identification and commitment to abandon a group of long-lived assets. This group of long-lived assets is equipped with outdated technologies and no longer receives vendor support. As of December 31, 2009, this group of assets ceased to be used. As a result, the Company recorded an impairment loss of \$104,676,535 after writing down the carrying value to zero.

In the first quarter of 2008, the Company reached an agreement with our customers to completely exit the commodity DRAM business. The conversion of DRAM capacity into logic production was completed on schedule in the fourth quarter. As a result, our Beijing 300mm logic capacity has placed us in a better position to serve our global and China customers. In connection with the decision to exit the commodity DRAM business, we recorded an impairment loss of \$105.8 million on long-lived assets during the first quarter of 2008.

In addition to wafer fabrication, our service offerings include a comprehensive portfolio of intellectual property consisting of libraries and circuit design blocks, design support, mask-making, wafer probing, gold/solder bumping and redistribution layer manufacturing. We also work with our partners to provide assembly and testing services.

We have a global and diversified customer base that includes some of the world's leading IDMs and fabless semiconductor companies.

## **Our Industry**

### ***The Semiconductor Industry***

Since the invention of the first semiconductor transistor in 1947, integrated circuits have become critical components in an increasingly broad range of electronics applications, including personal computers, wired and wireless communications equipment, televisions, consumer electronics and automotive and industrial control applications. Advancements in semiconductor design techniques and process technologies have allowed for the mass production of increasingly smaller and more powerful semiconductor devices at lower costs. This has resulted in the availability and proliferation of more complex integrated circuits with higher functionality. These integrated circuits may now each contain up to millions of transistors.

The key raw material for a semiconductor foundry is a “raw wafer,” which is a circular silicon plate. Raw wafers are available in different diameters (e.g., 5-inch, 6-inch, 8-inch or 12-inch) to meet the capabilities of different equipment. A fab capable of manufacturing integrated circuits on an 8-inch raw wafer is commonly described as an 8-inch fab. A raw wafer with a larger diameter has a greater surface area and consequently yields a greater number of integrated circuit dies. One method that foundries attempt to use to maintain their competitiveness is to increase the diameter of the wafers they use in manufacturing, such as the recent trend toward developing 12-inch wafers, each of which has approximately 2.25 times the number of gross dies achievable on an 8-inch wafer. In addition, since 12-inch fabs have been constructed more recently, the equipment used in these fabs permits smaller line-width process technologies to be utilized. However, this equipment is more expensive than equipment for the fabrication of 8-inch wafers as the technology involved is more complex.

Process technologies are the set of specifications and parameters implemented for manufacturing the circuitry on integrated circuits. The transistor circuitry on an integrated circuit typically follows lines that are less than one micron wide (1/1,000,000 of a meter). The line-widths of the circuitry, or the minimum physical dimensions of the transistor gate of integrated circuits in production, is used as a general rule for classifying generations of process technology of integrated circuits. Progress in the advancement of the integrated circuit has been driven by the scaling, or downsizing, of its components, primarily the transistors. By systematically shrinking the size of the transistors, the number of allowable transistors per die increases, and thus the number of dies on a given wafer, has also increased. Our current process technology ranges from 0.35 micron to 45-nanometer.

### ***Importance of Integrated Circuits for China’s Domestic Market and China’s Emergence as a Global Electronics Manufacturing Center***

China has emerged as a global manufacturing center for electronic products that are sold both within China and abroad. In recent years, numerous international companies have established facilities in China for the manufacture of a variety of electronic products, including household appliances, computers, mobile phones, telecommunications equipment, digital consumer products and products with industrial applications. An increasing number of electronic systems manufacturers are relocating production facilities from the United States, Taiwan, and Southeast Asia to China. China is establishing itself as a favorable manufacturing location due to its well educated labor force, significantly lower costs of operations, large domestic market for semiconductors and cultural similarities and geographical proximity to Japan, Hong Kong, Taiwan, Singapore and Korea, among other factors. Such production growth represents additional potential demand for semiconductors manufactured in China.

### ***Increasing Importance of the Semiconductor Foundry Industry***

As the cost of establishing new fabrication capacity has continued to rise, foundries have progressed from simply providing manufacturing capacity to becoming key strategic partners offering research and development capabilities and manufacturing process technologies. There have historically been a limited number of semiconductor foundries in the industry due to the high barriers to entry, which include significant capital commitments, scarcity of qualified engineers and advanced intellectual property and technology requirements. Many IDMs have begun outsourcing their fabrication requirements for complex and high performance semiconductor devices to foundries in order to supplement their own internal capacities and become more cost competitive. In addition, fabless semiconductor companies have shifted from relying on the excess fabrication capacity of IDMs to utilizing independent foundries to meet the majority of their wafer production needs.

## Our Fabs

The table below sets forth a summary of our current fabs:

	Shanghai Mega-Fab	Beijing Mega-Fab	Tianjin
Number and Type of fab	(3) 8-inch fabs (1) 12-inch fab in R&D phase	(2) 12-inch fabs	(1) 8-inch fab
Pilot production commencement	September 2001	July 2004	February 2004
Commercial production commencement	January 2002	March 2005	May 2004
Wafer size	8-inch 12-inch (being equipped)	12-inch	8-inch
Production clean room size	34,610 m <sup>2</sup>	23,876 m <sup>2</sup>	8,463 m <sup>2</sup>

In addition to our Shanghai mega-fab, we have an additional fabs at our Shanghai site. A portion of one facility in Shanghai is being leased to Toppan SMIC Electronics (Shanghai) Co., Ltd., which manufactures color filters and micro-lenses for CMOS image sensors. Most of the administrative and management functions of our fabs in different locations are centralized at our corporate headquarters in the Zhangjiang High-Tech Park in the Pudong New Area of Shanghai.

Additionally, we have one 8-inch fab under construction in Shenzhen. The expansion plan for this project will be adjusted based on overall market conditions.

## Management of Fabs

We also have undertaken agreements relating to wafer manufacturing facilities in Chengdu and Wuhan, China. Under these agreements, we do not own any equity interest but will manage the operations of the facilities.

## **Our Services**

### ***Wafer Fabrication Services***

We currently provide semiconductor fabrication services using 0.35 micron to 65 nanometer technology for the following devices:

- logic technologies, including standard logic, mixed-signal, RF and high voltage circuits;
- memory technologies, including DRAM, SRAM, Flash, EEPROM and Mask ROM; and
- specialty technologies, including LCoS, and CIS.

These semiconductors are used in various computing, communications, consumer and industrial applications, such as computers, mobile telephones, digital televisions, digital cameras, DVD players, entertainment devices, other consumer electronics devices and automotive and industrial applications.

### ***Our Technologies***

We manufacture the following types of semiconductors:

- *Logic Semiconductors.* Logic semiconductors process digital data to control the operation of electronic systems. The largest segment of the logic market, standard logic devices, includes microprocessors, microcontrollers, DSPs and graphic chips. Logic semiconductors are used in communications devices, computers and consumer products, with the most advanced logic semiconductors dedicated primarily to computing applications.
- *Mixed-Signal and RF.* Analog/digital semiconductors combine analog and digital devices on a single semiconductor to process both analog signals and digital data. We make 0.35 micron to 0.13 micron mixed-signal and RF semiconductors using the CMOS process. The primary uses of mixed-signal semiconductors are in hard disk drives, wireless communications equipment and network communications equipment, while RF semiconductors are primarily used in communications devices, such as cell phones.
- *High Voltage.* High voltage semiconductors are semiconductor devices that can drive high voltage electricity to systems that require voltage of between five volts to several hundred volts. Our high voltage technologies provide solutions for display driver integrated circuits, power supplies, power management, telecommunications, automotive electronics and industrial controls.
- *Memory Semiconductors.* Memory semiconductors, which are used in electronic systems to store data and program instructions, are generally classified as either volatile memory, which lose their data content when power supplies are switched off, or non-volatile memory, which retain their data content without the need for a constant power supply. Examples of volatile memory include SRAM and DRAM, and examples of non-volatile memory include electrically erasable programmable read-only memory, or EEPROM, NAND Flash and OTP. Memory semiconductors are used in communications devices, computers and many consumer products.
- *Specialty Semiconductors.*

- *LCoS*. LCoS microdisplays are tiny, high resolution, low power displays designed for high definition televisions, projectors and other products that use or rely on displays. Compared with other display technologies, such as liquid crystal and plasma, LCoS displays have higher resolution and higher fill factor, resulting in superior images, colors and performance. LCoS process technology represents an enhancement of mixed-signal CMOS process technology with the addition of a highly reflective mirror layer.
- *CIS*. CIS devices are sensors that are used in a wide range of camera-related systems, such as digital cameras, digital video cameras, handset cameras, personal computer cameras and surveillance cameras, which integrate image-capturing capabilities onto a chip. CIS is rapidly becoming a cost-effective and low power replacement for competing charged-coupled devices, or CCDs. Since CIS devices are fabricated with CMOS technology, they are easier to produce and more cost-effective than CCDs. By combining camera functions on a chip, from the capture of photos to the output of digital bits, CMOS image sensors reduce the parts required for a digital camera system, which in turn enhances reliability, facilitates miniaturization, and enables on-chip programming. Our CIS process is based on our CIS array technology.

We are one of the leading foundries in the world in terms of the process technologies that we are capable of using in the manufacturing of semiconductors.

Fab	Month and year of commencement of commercial production of initial fab	Process technology (in microns)			
		2006	2007	2008	2009
Wafer fabrication:					
Shanghai Mega-fab (8")	January 2002	0.35/0.25/ 0.18/0.15/ 0.13/0.11/0.09	0.35/0.25/ 0.18/0.15/ 0.13/0.11/0.09	0.35/0.25/ 0.18/0.15/ 0.13/0.11/0.09	0.35/0.25/ 0.18/0.15/ 0.13/0.11
Shanghai fab (12")	—	—	—	0.09	0.11/0.09
Beijing Mega-fab (12")	March 2005	0.15/0.13/0.11/ 0.10/0.09	0.13/0.11/ 0.10/0.09	0.18/0.13/ 0.09	0.18/0.13/0.09/0.065
Tianjin fab (8")	May 2004	0.35/0.25/ 0.18/0.15	0.35/0.25/ 0.18/0.15	0.35/0.25/ 0.18/0.15	0.35/0.25/ 0.18/0.15

The following table sets forth a percentage breakdown of wafer sales by process technology for the years ended December 31, 2007, 2008, and 2009 and each of the quarters in the year ended December 31, 2009:

Process Technologies	For the		For the three months ended				For the
	year ended December 31,		March 31,	June 30,	September 30,	December 31,	year ended
	2007	2008	2009	2009	2009	2009	December 31,
							2009
	(based on sales in US\$)						
0.13 micron and below	53.10%	43.90%	38.99%	46.41%	52.75%	58.16%	51.07%
0.15 micro	2.90%	2.70%	0.79%	1.49%	2.60%	2.72%	2.12%
0.18 micron	30.50%	34.10%	31.48%	29.79%	27.84%	22.95%	27.27%
0.25 micron	0.70%	0.60%	0.37%	0.54%	0.58%	0.27%	0.44%
0.35 micron	12.80%	18.70%	28.37%	21.77%	16.23%	15.9%	19.10%
Total	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

### Manufacturing Capacity

We currently manufacture 8-inch silicon wafers based on proprietary designs provided by our customers or third party designers. Since commencing commercial production, we have the largest 8-inch wafer fabrication capacity among the semiconductor foundries in China. We have the most advanced process technology among foundries in China. In January 2003, we commenced commercial production using 0.13 micron copper interconnects process technology. We are currently one of the few fabs in China to offer 0.13 micron copper interconnects process technology and both 90 nanometer and 65 nanometer wafer fabrication process technology.

Fab	2007	2008	2009
<b>Wafer Fabrication:</b>			
Wafer fabrication capacity as of year-end <sup>(1)</sup> :			
Shanghai mega-fab	98,000	88,000	85,000
Beijing mega-fab	65,250	40,500	42,750
Tianjin fab	22,000	32,000	34,300
Total monthly wafer fabrication capacity as of year-end <sup>(1)</sup>	185,250 <sup>(3)</sup>	160,500 <sup>(3)</sup>	162,050 <sup>(3)</sup>
Wafer fabrication capacity utilization	91%	86%	75%

The following table sets forth the historical capacity of our wafer fabrication and copper interconnects fabs as December 31, 2009:

All output and capacity data is provided as 8-inch wafers or 8-inch wafer equivalents per month.

- (1) Conversion of 12-inch wafers to 8-inch wafer equivalents is achieved by multiplying the number of 12-inch wafers by 2.25.
- (2) Reflects wafers fabricated using the copper interconnects line and does not include wafers fabricated using the aluminum interconnects line. As a small number of wafers produced by our aluminum interconnects lines also utilize the copper interconnects capabilities, our reported capacity and output data for our copper interconnects line overlaps to a limited extent with such data for our aluminum interconnects line.
- (3) Mega fab structure includes copper interconnects in the total monthly capacity.

As of December 31, 2009, our aggregate wafer fabrication capacity was 162,050 8-inch wafer equivalents per month for wafer fabrication.

A key factor influencing our profit margins is our capacity utilization. Because a high percentage of our cost of sales is of a fixed nature, operations at or near full capacity have a significant positive effect on output and profitability. In 2006 our wafer fabs had an average annual utilization rate of 90%, in 2007, our wafer fabs had an average annual utilization rate of 91%, and in 2008, our wafer fabs had an average annual utilization rate of 86%. In 2009 our wafer fabs had an average utilization of 75%. Factors affecting utilization rates are the overall industry conditions, the level of customer orders, the complexity of the wafers and of the mix of wafers produced, mechanical failures and other operational disruptions such as the expansion of capacity or the relocation of equipment, and our ability to manage the production facilities and product flows efficiently. Before 2008, we had manufactured DRAM to fill our production lines when the volume demand of other products does not fully utilize our available capacity. As a result, our utilization rate has historically remained high.

We determine the capacity of a fab based on the capacity ratings given by manufacturers of the equipment used in the fab, adjusted for, among other factors, actual output during uninterrupted trial runs, expected down time due to setup for production runs and approximately one to two days of scheduled annual maintenance, and expected product mix. Because these factors include subjective elements, our measurement of capacity utilization rates may not be comparable to those of our competitors. All of our fabs currently operate 24 hours per day, seven days per week, except during periods of annual maintenance. Employees in our fabs work shifts of 12 hours each day on a two-days-on, two-days-off basis.

We have often used DRAM as the initial product to test the production capabilities at a new fab. This is because DRAM requires higher process accuracy, more precise process control and a higher degree of engineering skills and operational disciplines, and can therefore assist in early identification of any potential process, equipment or fab-related production problems. This DRAM is either manufactured on a foundry basis for our customers or sold by us to the market through our distributors under technology licensing and royalty arrangements. However, the market for DRAM devices has also been more volatile and susceptible to sudden price drops in recent years. During the first quarter of 2008, the Company reached an agreement with our customers to completely exit the commodity DRAM business. The conversion of DRAM capacity into logic production was completed on schedule in the fourth quarter of 2008. As a result, our Beijing 300mm logic capacity has placed us in a better position to serve our global and China customers. In connection with the decision to exit the commodity DRAM business, we recorded an impairment loss of \$105.8 million on long-lived assets during the first quarter of 2008.

### ***Capacity Expansion Plans***

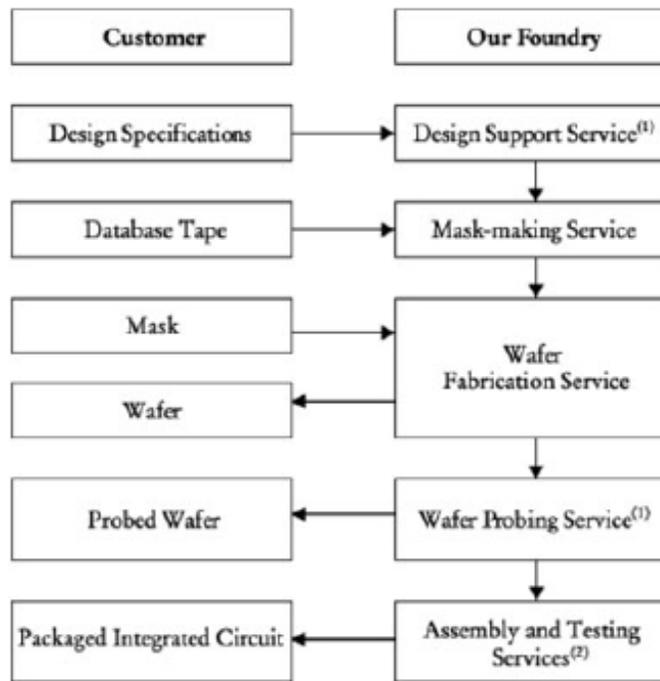
We intend to maintain our strategy of expanding capacity and improving our process technology to meet both the capacity requirements and the technological needs of our customers. Our capital expenditures in 2008 were approximately US\$666 million and our capital expenditures in 2009 were approximately US\$190 million. We currently expect that our capital expenditures in 2010 will be approximately US\$335 million to be adjusted based on market conditions, which we plan to fund through our operating cash flows and bank loans. If necessary, we will also explore other forms of external financing. We plan to use this capital primarily to expand our operations at our mega-fab in Beijing and our 8-inch fab in Shenzhen. In addition, our actual expenditures may exceed our planned expenditures for a variety of reasons, including changes in our business plan, our process technology, market conditions, equipment prices, or customer requirements. We will monitor the global economy, the semiconductor industry, the demands of our customers, and our cash flow from operations to adjust our capital expenditure plans.

We also will seek to participate in strategic partnerships to meet the demands of our customers. For example, in July 2004, we entered into an agreement with Toppan Printing Co., Ltd., to establish Toppan SMIC Electronics (Shanghai) Co., Ltd., a joint venture in Shanghai, for the manufacture of color filters and micro-lenses for CMOS image sensors. These products are increasingly being used in consumer products such as mobile phone cameras, digital cameras and automobile and home security applications. Toppan SMIC Electronics (Shanghai) Co., Ltd. commenced production in December 2005. We hold a 30% equity interest in Toppan SMIC Electronics (Shanghai) Co., Ltd.

## Our Integrated Solutions

In addition to wafer fabrication, we provide our customers with a range of complementary services, from circuit design support and mask-making to wafer level probing and testing. This range of services is supported by our network of partners that assist in providing design, probing, final testing, packaging, assembly and distribution services.

The diagram below sets forth our service model and our key points of interaction with our customers:



---

(1) A portion of this work is outsourced to our service partners.

(2) A portion of these services are outsourced to our service partners.

### ***Design Support Services***

Our design support services include providing our customers with access to the fundamental technology files and intellectual property libraries that facilitate customers' own integrated circuit design. We also offer design reference flows and access to our design center alliance, as well as layout services. In addition, we collaborate with industry leaders in electronic design automation, library and intellectual property services to create a worldwide network of expertise, resources and services that are available to implement and produce a customer's designs. As of December 31, 2009, we employed over 200 engineers devoted solely to design support services.

### ***Libraries***

As part of the necessary building blocks for our customers' semiconductor designs, we offer libraries of compatible designs for portions of semiconductors, such as standard cells, I/O and selected memory blocks, in addition to technology files. We have a dedicated team of engineers who work with our research and development department to develop, license or acquire from third parties selected key libraries early on in the development of new process technologies so that our customers can quickly design sophisticated integrated circuits that utilize the new process technologies. We also have arrangements with other providers of libraries to provide our customers with access to a broad library portfolio for their designs. In particular, we offer a portfolio of ASIC library and design kits for a wide range of tested and verified circuit applications and design-flow implementation. These include standard cell, I/O and memory compilers in 0.35 micron, 0.25 micron, 0.18 micron, 0.15 micron, 0.13 micron, 90 nanometer, and 65 nanometer process technologies. They have been developed primarily through our third party alliances, as well as by our internal research and development team, to facilitate easy design reuse and fast integration into the overall design system. We are currently developing additional libraries. Our library partners include ARM, Synopsys, Inc., VeriSilicon, and Virage Logic.

### ***Intellectual Property***

Together with the intellectual property developed by our internal design team, our alliances with intellectual property providers enable us to offer foundational designs ranging from 0.35 micron to 65 nanometer and relating to mixed-signal, embedded memory, high-speed interface, digital peripheral device controllers, and embedded processors, among others. We use our own and third party design expertise to realize the functions of these various types of intellectual property. Our intellectual property partners include ARM, MIPS, Virage, Synopsys, and Verisilicon.

### ***Design Reference Flows***

Customers implementing designs on our processes can utilize our design reference flows. These flows have been created using design tools developed by our electronic design automation partners, including Cadence Design Systems, Inc., Magma Design Automation, Inc., Mentor Graphics Corporation, and Synopsys, Inc. They include training guides and sample test cases to provide a step-by-step explanation on how the hierarchical design flow works.

### ***Design Center Alliance***

If a customer requires assistance in designing its semiconductors, we are able to recommend design partners from among our extensive design services network. This network consists of design companies that we have successfully worked with in the past. In addition, we are also able to offer our own internal design team members to help our clients to complete their designs.

### ***Mask-making Services***

Many of our foundry customers utilize our mask-making services.

While most of our mask-making services are for customers that also utilize our wafer fabrication services as part of our overall foundry service, we also produce masks for other domestic and overseas fabs as a separate revenue-generating service. Our mask shop also cooperates with our research and development department to develop new technologies and designs.

Our mask-making facility, which is located in Shanghai, includes a 3,750 square meters clean room with up to class I specifications. At present, our mask shop offers both five-inch by five-inch, six-inch by six-inch, and seven-inch round reticles. Our facility is capable of producing binary masks, optical proximity correction masks and phase shift masks. Our mask facility also offers mask repair services. As of December 31, 2009, we had 192 personnel employed in our mask shop.

We also offer a multi-project wafer service that allows the cost of manufacturing one mask set to be shared among several customers. See “Item 4 - Customers and Markets” for more details regarding this service.

Intellectual property protection is a key focus of our mask-making services. See “Intellectual Property” for more details regarding the intellectual property protection measures we have instituted in our mask facility.

### ***Wafer Probing, Assembly and Testing Services***

We have our own probing facilities in Shanghai and Beijing that provide test program development, probe card fabrication, wafer probing, failure analysis, and failure testing. We also outsource these services to our partners for those customers that request them.

Our probing facility in Shanghai occupies a clean room space of 3,000 square meters, and our probing facility in Beijing occupies a clean room space of 1,400 square meters. Both facilities are rated at class 1,000 cleanliness and are equipped with advanced testers, probers and laser repair machines for logic, memory, and mixed-signal products. The probing facility in Beijing supports testing of Beijing’s 12-inch wafers and Tianjin’s 8-inch wafers. We employ more than 198 personnel to provide these probing services. We have testing equipment for memory, logic and mixed signal applications, including some equipment that has been consigned to our Shanghai facility by our customers. This consigned testing equipment has been specially designed and built by our customers in order to probe their particular products at our facility.

Our facility with United Test and Assembly Center Ltd. is located in Chengdu, China and provides both assembly and testing services for 8-inch and 12-inch wafers. This facility focuses on memory and discrete devices. Our facility in Chengdu occupies a total area of 215,000 square meters. Construction area is 40,668 square meters, including approximately 11,000 square meters of clean room area. We have also established a network of partners that provide additional probing services, as well as assembly and testing services, for our customers that request these additional services. We have relationships with assembly and testing partners, including Amkor Assembly & Test (Shanghai) Co., Ltd. and ST Assembly Test Services Ltd., which have helped to enhance the range of services that we are able to offer our customers.

## Customers and Markets

Our customers include IDMs, fabless semiconductor companies and systems companies. The following table sets forth the breakdown of our sales by customer type for 2007, 2008 and 2009:

Customer Type	For the year ended December 31,					
	2007		2008		2009	
	Sales	Percentage	Sales	Percentage	Sales	Percentage
	(in US\$ thousands, except percentages)					
Fabless semiconductor companies	720,416	46.50%	768,707	56.80%	710,142	66.34%
Integrated device manufacturers	634,607	40.90%	341,933	25.30%	175,092	16.36%
Systems companies and others	194,742	12.60%	243,071	17.90%	185,153	17.30%
Total	1,549,765	100.00%	1,353,711	100.00%	1,070,387	100.00%

We categorize our sales geographically based on the headquarter of customer operations and is not related to shipment destination. The following table sets forth the geographical distribution of our sales and percentage of sales for 2007, 2008 and 2009:

Region	For the year ended December 31,					
	2007		2008		2009	
	Sales	Percentage	Sales	Percentage	Sales	Percentage
	(in US\$ thousands, except percentages)					
United States	657,603	42.40%	766,708	56.70%	632,047	59.05%
Europe	328,710	21.20%	92,573	6.80%	20,807	1.94%
Asia Pacific (excluding Japan and Taiwan)(1)	227,973	14.70%	269,611	19.90%	250,224	23.38%
Taiwan	183,114	11.80%	185,849	13.70%	157,624	14.73%
Japan	152,365	9.90%	38,970	2.90%	9,685	0.90%
Total	\$ 1,549,765	100.00%	1,353,711	100.00%	1,070,387	100.00%

We have a global and diversified customer base that includes IDMs. Although we are not dependent on any single customer, a significant portion of our sales is attributable to a relatively small number of our customers. Our sales could be significantly reduced if any of these customers cancels or reduces its orders, significantly changes its product delivery schedule or demands lower prices.

In the first quarter of 2008, the Company reached an agreement with our customers to completely exit the commodity DRAM business. The conversion of DRAM capacity into logic production was completed on schedule in the fourth quarter of 2008. As a result, our Beijing 300mm logic capacity has placed us in a better position to serve our global and China customers. In connection with the decision to exit the commodity DRAM business, we recorded an impairment loss of \$105.8 million on long-lived assets during the first quarter of 2008.

The following table sets forth a breakdown of our sales by application type for 2007, 2008 and 2009:

Application Type <sup>(1)</sup>	For the year ended December 31,					
	2007		2008		2009	
	Sales	Percentage	Sales	Percentage	Sales	Percentage
	(in US\$ thousands, except percentages)					
Computing	402,262	26.00%	106,184	7.80%	55,431	5.18%
Communications	695,645	44.90%	696,399	51.50%	531,876	49.69%
Consumer	323,230	20.90%	430,282	31.80%	407,775	38.10%
Others	128,628	8.20%	120,846	8.90%	75,305	7.03%
Total	\$ 1,549,765	100.00%	1,353,711	100.00%	1,070,387	100.00%

- (1) “Computing” consists of integrated circuits such as hard disk drive controllers, DVD-ROM/CD-ROM driver integrated circuits, graphic processors and other components that are commonly used in personal digital assistants and desktop and notebook computers and peripherals. “Communications” consists of integrated circuits used in digital subscriber lines, digital signal processors, wireless LAN, LAN controllers, LCD drivers, handset components and caller ID devices. “Consumer” consists of integrated circuits used for DVD players, game consoles, digital cameras, smart cards and toys.

The following table sets forth a breakdown of our sales by service type for 2007, 2008 and 2009:

Service Type	For the year ended December 31,					
	2007		2008		2009	
	Sales	Percentage	Sales	Percentage	Sales	Percentage
	(in US\$ thousands, except percentages)					
Fabrication of memory wafers	428,355	27.60%	71,935	5.30%	35,648	3.33%
Fabrication of logic wafers <sup>(1)</sup>	985,776	63.60%	1,139,535	84.20%	959,689	89.66%
Other <sup>(2)</sup>	135,634	8.80%	142,241	10.50%	75,050	7.01%
Total	\$ 1,549,765	100.00%	1,353,711	100.00%	1,070,387	100.00%

- (1) Includes copper interconnects and memory devices whose manufacturing process is similar to that for a logic device.
- (2) Includes mask-making and probing, etc.

We have customer service and marketing offices located in California, Milan, Shanghai, and Tokyo and a representative office in Hong Kong. Our Shanghai office serves China and other non-Japan Asian markets, our California office serves the North American market, and our Milan and Tokyo offices serve the European and Japanese markets, respectively. We also sell some products through sales agents in selected markets.

We also provide our customers with the ability to share costs through our multi-project wafer processing “shuttle service.” This service allows customers to share costs with other customers by processing multiple designs on a single mask set.

We provide our customers with 24-hour online access to necessary information to conduct business with us. From our technical capabilities to a customer’s order status, we provide an online solution for our customers. From wafer fabrication, wafer sorting and assembly to final testing and shipping, our data center electronically transfers data, work-in-progress tracking, yield/cycle-time reports, and quality/engineering data to customers.

Our sales cycle, meaning the time between our first contact with a customer in relation to a particular product and our first shipment of that product to the customer, typically lasts between three months to one year, depending on the type of process and product technology involved in the product we are requested to fabricate. Because of the fast-changing technology and functionality in integrated circuit design, foundry customers generally do not place purchase orders far in advance to fabricate a particular type of product. However, we engage in discussions with customers commencing in advance of the placement of purchase orders regarding customers' expected fabrication requirements. See "Risk Factors - Risks Related to Our Financial Condition and Business - Our sales cycles can be long, which could adversely affect our operating results and cause our income stream to be unpredictable."

See "Item 5 - Operating and Financial Review and Prospects - Sales" for a description of the seasonality of our business.

## **Research and Development**

Our research and development activities are principally directed toward the development and implementation of more advanced and lower cost process technology. We spent US\$97.0 million in 2007, US\$102.2 million in 2008, and US\$160.8 million in 2009 on research and development expenses, which represented 6.3%, 7.6%, and 15.0% respectively, of our sales in those respective years. Our research and development costs are partially offset by related government subsidies and include non-recurring engineering costs associated with the ramp-up of a new wafer facility. We plan to continue to invest significant amounts in research and development in 2010 for our 65 and 45 nanometer manufacturing process.

The research and development efforts were focused primarily on our logic platform and system-on-chip (SOC) applications. In June 2009, SMIC achieved Silicon Success with High Performance 45 nanometer Process. For 45 nanometer offerings, we extended the offerings to 40 nanometer and 55 nanometer. We also adopts Cadence DFM Solutions for 65-and-45-nanometer IP/Library Development and Full Chip Production.

We employ approximately 700 research and development engineers. This research and development team includes many experienced semiconductor engineers with advanced degrees from leading universities around the world, as well as top graduates from the leading universities in China. We believe this combination has enabled us to quickly bring our technology in line with the semiconductor industry technology roadmap and ensures that we will have skilled personnel to lead our technology advancement in the future.

## **Intellectual Property**

While we continue to develop and patent our own technologies, we expect to have an ongoing need to obtain licenses for the proprietary technologies of third parties to enable us to manufacture certain advanced wafers for our customers. As of 2009 year-end, we have been granted nine hundred sixty two patents, and have more than two thousand seven hundred thirty one patent applications pending worldwide. We believe our competitors and other industry participants have numerous patents concerning wafer fabrication and related technologies in multiple countries.

We implement a variety of measures to protect the intellectual property and related interests of our company, customers and technology partners. We require our employees to execute a confidential information and invention assignment agreement relating to non-competition and intellectual property protection issues prior to commencing their employment at our company. Access to customer information is granted to employees strictly on a need-to-know basis both during and after mask tooling.

We have applied for trademarks relating to our corporate logo, English trade name “SMIC”, and Chinese trade name in the United States, China, Hong Kong and Taiwan. We have been granted registration of trademarks for our corporate logo in China, English trade name in China, and Chinese trade name in Hong Kong, United States and China (except a dispute in China for certain applied product/service category). There can be no assurance that other trademarks registration will be granted.

## **Competition**

We compete internationally and domestically with dedicated foundry service providers, as well as with semiconductor companies that allocate a portion of their fabrication capacity to foundry operations. While the principal elements of competition in the wafer foundry market include technical competence, production speed and cycle time, time-to-market, research and development quality, available capacity, yields, customer service and price, we seek to compete on the basis of process technology capabilities, performance, quality and service, rather than solely on price. The level of competition differs according to the process technology involved.

Our competitors and potential competitors include other pure-play foundries such as TSMC, UMC and GlobalFoundries. TSMC has commenced commercial production at its fab in China, and UMC has established a relationship with a fab in commercial production in China. Another group of potential competitors consists of IDMs that have established their own foundry capabilities. These include Fujitsu Limited, IBM, Samsung Electronics Co., Ltd. and Toshiba. IDMs are primarily dedicated to fabricating integrated circuits for the end products of their respective affiliates. See “Risk Factors-Risks Related to Our Financial Condition and Business - If we cannot compete successfully in our industry, particularly in China, our results of operations and financial condition will be adversely affected.”

## Quality and Reliability

We have implemented quality assurance measures relating to material quality control, monitoring of our in-line processes and wafer-level reliability control at every stage of our operations from technology development to production. By combining advanced quality assurance procedures and e-commerce technology, we monitor all processes, services and materials in our mask-making, wafer fabrication and probing facilities. These quality assurance measures include inspection of incoming materials, supplier and subcontractor management, manufacturing environmental control and monitoring, in-line defect monitoring, engineering change control, calibration monitoring, chemical analysis and visual inspection. Quality assurance measures also include on-going process and product reliability monitors and failure tracking for early identification of production problems.

We incorporate reliability control in our entire production process and have adopted a system that enables us to track and record wafer-, package- and product-level reliability data throughout the development, qualification and production stages of the relevant process or device. This data enables us to identify problems at an early stage and provide an immediate diagnosis and solution, so as to further reduce our failure rate.

We achieved ISO 9001:2000 certification from the British Standards Institute with zero-defect performance for our Fab 1 in July 2002 and for our Fab 2 and Fab 3B in March 2003. The ISO 9001 quality standards were established by the International Standards Organization, an organization formed by delegates from member countries to establish international quality assurance standards for products and manufacturing processes. International Standards Organization certification is required in connection with sales of industrial products in many countries. To further enhance our quality management system, we obtained TS 16949:2002 certification from the British Standards Institute (BSI) in February 2004. This is an International Standards Organization quality management certification that relates to automobile applications and primarily measures a device's ability to handle extreme changes in temperature. In January 2005, we obtained TL9000 Quality Management System certification from BSI. This is a management certification relating to the telecommunications industry and evaluates research and development, production and installation and maintenance of communication product and services.

## Raw Materials

Our fabrication processes uses many raw materials, primarily silicon wafers, chemicals, gases, and various types of precious and other metals. Raw material costs constituted 21%, 19% and 18% of our manufacturing costs in 2007, 2008 and 2009, respectively.

The three largest components of raw material costs - raw wafers, chemicals and gases - accounted for approximately 47%, 20% and 10%, respectively, of our raw material costs in 2007, approximately 40%, 20%, and 9%, respectively, of our raw material costs in 2008, and approximately 38%, 21%, and 10%, respectively, of our raw materials in 2009. Most of our raw materials generally are available from several suppliers, but substantially all of our principal materials requirements must currently be sourced from outside China.

The most important raw material used in our production is silicon in the form of raw wafers. In 2009, we purchased approximately 76% of our overall raw wafer requirements from our three major raw wafer suppliers. The prices of our principal raw material are not considered to be volatile.

For 2009, our largest and five largest raw materials suppliers accounted for approximately 11.2% and 43.2%, respectively, of our overall raw materials purchases. For 2008, our largest and five largest raw materials suppliers accounted for approximately 8.0% and 32.3%, respectively, of our overall raw materials purchases. For 2007, our largest and five largest raw materials suppliers accounted for approximately 14.0% and 48.2%, respectively, of our overall raw materials purchases. Having made all reasonable inquiry, we are not aware of any director or shareholder (which to the knowledge of our directors own more than 5% of our issued share capital) or their respective associates, which had shareholding interests in any of our five largest suppliers. Most of our materials are imported free of value-added tax and import duties due to concessions granted to our industry in China.

## Electricity and Water

We use substantial amounts of electricity in our manufacturing process. This electricity is sourced from the Pudong Electricity Corporation (for Shanghai), the Beijing Municipal Electricity Department, the Tianjin Municipal Electricity Department, the PiXian Municipal Electricity Department (for Chengdu), and the Shenzhen PanGuShi Municipal Electricity Department. We maintain Uninterrupted Power Supply (UPS) systems and emergency back-up generators to power life safety and critical equipment and systems for emergencies.

The semiconductor manufacturing process also uses extensive amounts of fresh water. We source our fresh water for our Shanghai mega-fab from Pudong Vivendi Water Corporation Limited, for our Beijing mega-fab from Beijing Waterworks Group Co. Ltd., for our Tianjin fab from the Tianjin Municipal Water Department, for our Chengdu facility from the Xipu Water Corporation, Ltd., and for our Shenzhen facility from Grand Industrial Zone Water Company of Shenzhen. Because Beijing and Tianjin are subject to potential water shortages in the summer, our fabs in Beijing and Tianjin are equipped with back-up reservoirs. We have taken steps to reduce fresh water consumption in our fabs and capture rainwater for use at our Beijing and Tianjin facilities, and our water recycling systems in each of our fabs allow us to recycle up to 70% of the water used during the manufacturing process. The Beijing site is also equipped to use recycled/treated industrial waste water from the Beijing Economic and Technological Development Area for non-critical operations.

## Regulation

Integrated circuit industry in China is subject to substantial regulation by the Chinese government. This section sets forth a summary of the most significant Chinese regulations that affect our business in China.

### *Scope of Regulation*

The *Several Policies to Encourage the Development of Software and Integrated Circuit Industry*, or the Integrated Circuit Policies, promulgated by the State Council of The People's Republic of China on June 24, 2000, together with other ancillary laws and regulations, regulates integrated circuit production enterprises, or ICPEs. The State Council issued the Integrated Circuit Policies in order to encourage the development of the software and integrated circuits industry in China. The Integrated Circuit Policies form the basis for a series of laws and regulations that set out in detail the preferential policies relating to ICPEs. Such laws and regulations include:

- the *Notice of the Ministry of Finance, the State Administration of Taxation and the General Administration of Customs on Relevant Taxation Policy Encouraging the Further Development of the Software Industry and the Integrated Circuit Industry*, or the Integrated Circuit Notice, jointly issued by the Ministry of Finance, the State Administration of Taxation and the General Administration of Customs on September 22, 2000, as amended by the *Notice of the Ministry of Finance and the State Administration of Taxation on Approval Procedure Concerning Foreign Invested Enterprises' Implementing Enterprise Income Tax Policies of the Software and Integrated Circuit Industry*, or the Approval Notice, jointly issued by the Ministry of Finance and the State Administration of Taxation on July 1, 2005;
- the *Notice of the Ministry of Finance, the State Administration of Taxation on Taxation Policies Concerning the Tax Policies for Further Encouraging the Development of the Software and the Integrated Circuit Industry*, or the Further Development Taxation Notice, jointly issued by the Ministry of Finance and the State Administration of Taxation on October 10, 2002, as amended by *Notice of the Ministry of Finance, the State Administration of Taxation on Termination of Value-added Tax Refund Policies for Integrated Circuits*, or the Termination Notice, jointly issued by the Ministry of Finance and the State Administration of Taxation on October 25, 2004;

- the *Notice of the Ministry of Finance on Taxation Policies Concerning the Import of Self-used Raw Materials and Consumables by Part of Integrated Circuit Production Enterprises*, or the Raw Materials Taxation Notice, issued by the Ministry of Finance on August 24, 2002;
- the *Notice on Taxation Policies Concerning the Import of Construction Materials Specially used for Clean Rooms by Part of the Integrated Circuit Production Enterprises*, or the Construction Materials Taxation Notice, issued by the Ministry of Finance on September 26, 2002;
- the *Notice by the Ministry of Finance and the State Administration of Taxation on Increasing Tax Refund Rate for Export of Certain Information Technology(IT) Products*, or the Export Notice, issued by the Ministry of Finance and the State Administration of Taxation on December 10, 2004;
- the *Measures for the Accreditation of the Integrated Circuit Enterprise Encouraged by the State (For Trial Implementation)*, or the Accreditation Measures, jointly issued by the National Development and Reform Commission, the Ministry of Information Industry, the State Administration of Taxation and the General Administration of Customs on October 21, 2005; and
- the *Interim Measures for the Management of the Special Fund for the Research and Development of the Integrated Circuit Industry*, or the Fund Measures, jointly issued by the Ministry of Finance, the Ministry of Information Industry and the National Development and Reform Commission on March 23, 2005.

### ***Preferential Industrial Policies Relating to ICPEs***

ICPEs which are duly accredited in accordance with relevant laws and regulations may qualify for preferential industrial policies. Under the Integrated Circuit Policies, accreditation of ICPEs is determined by the competent examination and approval authorities responsible for integrated circuit projects after consultation with relevant taxation authorities. Under the Accreditation Measures, an integrated circuit enterprise refers to an independent legal entity duly established in the PRC (except for Hong Kong, Macao, and Taiwan) engaging in the fabrication, package, or testing of integrated circuit chips and the production of mono-crystalline silicon of six inches or above, excluding the integrated circuit design enterprise. The accreditation of ICPEs is included in the accreditation of the integrated circuit enterprises. Such accreditation is determined by the competent authorities consisting of the National Development and Reform Commission, the Ministry of Information Industry, the State Administration of Taxation and the General Administration of Customs, which jointly designate the China Semiconductor Industrial Association as the accreditation institution. Any enterprise qualified under the requirements set forth in the Accreditation Measures is entitled to apply to the China Semiconductor Association for the Accreditation of the ICPEs. The accreditation of ICPEs is annually reviewed. If the enterprise fails to apply for the annual review in time, it shall be deemed as giving up such accreditation and if the enterprise fails in the annual review, the accreditation will also be canceled.

SMIC Shanghai, SMIC Beijing, and SMIC Tianjin have been accredited as ICPEs and are entitled to the preferential industrial policies described below.

### *Encouragement of Domestic Investment in ICPEs*

Pursuant to the *Interim Provisions on Promoting Industrial Structure Adjustment*, or the Interim Provisions, issued by the State Council on December 2, 2005, and the *Catalogue for the Guidance of Industrial Structure Adjustment*, or the Guidance Catalogue, which is the basis and criteria for implementing the Interim Provisions, issued by the National Development and Reform Commission and all the State Council Institutions on December 2, 2005, the Chinese government encourages (i) the design and fabrication of large scale integrated circuits with a line width of less than 1.2 micron, (ii) the fabrication of the equipment of large scale integrated circuit and (iii) the fabrication of mixed integrated circuits. Under the Interim Provisions, imported equipment that is used for a qualifying domestic investment project and that falls within such project's approved total investment amount is exempt from custom duties and import-linked value-added tax, except for such equipment listed in the *Catalogue of Import Commodities for Domestic Investment Projects Not Entitled to Tax Exemptions*, as stipulated by the State Council and amended in 2006.

### *Encouragement of Foreign Investment in ICPEs*

Pursuant to the Integrated Circuit Policies and the *Guideline Catalogue of Foreign Investment Industries* promulgated jointly by the State Development and Reform Commission and the Ministry of Commerce on October 11, 2007, the following foreign investment categories are encouraged:

- design of integrated circuits;
- fabrication of large scale integrated circuits with a line width of less than 0.18 micron (including 0.18 micron);
- fabrication of analog and analog digital integrated circuits with a line width of less than 0.8 micron (including 0.8 micron);
- advanced packaging and testing of BGA, PGA, CSP, MCM;
- fabrication of mixed integrated circuits.

Foreign investment in such encouraged projects may enjoy preferential treatment as stipulated by the laws and regulations.

### *Preferential Taxation Policies*

#### *Preferential Value-added Tax Policy*

Under Article 1 of the Further Development Taxation Notice (October 10, 2002 No. 70 [2002] Cai-Shui), from January 1, 2002 to the end of 2010, the sale of integrated circuits (including monocrystalline silicon chips) is subject to a value-added tax levy of 17%. After the value-added tax is levied, the taxpayer is to be entitled to a refund for the portion exceeding 3% of the actual value-added tax burden. The tax refund was required to be used by the enterprise for the research and development of integrated circuits and to increase production.

Under the Termination Notice (No. 174 [2004] of the Ministry of Finance), as of April 1, 2005, implementation of Article 1 of the Further Development Taxation Notice was terminated.

Under the Export Notice (No. 200 [2004] Cai-Shui), as of November 1, 2004, the tax refund rate for exports of electronic integrated circuits and micro-assemblies is to increase from 13% to 17%.

### *Preferential Enterprise Income Tax Policies*

Under Article 42 of the Integrated Circuit Policies (No. 18 [2000] Guo-Fa), Article 2(3) of the Integrated Circuit (Notice No. 25 [2000] Cai-Shui) and Article 1 of the Notice by the Ministry of Finance and the State Administration of Taxation on Several Preferential Policies for Income Tax (No. 1 [2000] Cai-Shui), ICPEs whose total investment exceeds Rmb 8,000 million (approximately US\$967 million) or whose integrated circuits have a line-width of less than 0.25 micron are entitled to preferential tax treatment similar to that granted for foreign investment in the energy and communications industries. SMIC Shanghai, SMIC Beijing and SMIC Tianjin are entitled to a full exemption from FEIT for five years starting with the first year of positive accumulated earnings and a 50% reduction for the following five years or “five year exemption and five year reduction”.

From January 1, 2002 to the end of 2010, investors in ICPEs and integrated circuit packaging enterprises that reinvest their after-income-tax profits from ICPEs for the purpose of increasing the registered capital in the ICPEs, or to establish other ICPEs and integrated circuit packaging enterprises for a period of operation of not less than five years, are entitled to a refund of 40% of the total amount of enterprise income tax paid on the reinvested portion. If the investment is withdrawn before the period of operation reaches five years, the amount of enterprise income tax refunded shall be repaid. From January 1, 2002 to the end of 2010, domestic or foreign investors that reinvest their after income-tax profits from sources within China in order to establish ICPEs or integrated circuit package enterprises in China’s western regions for a period of operation of not less than five years are entitled to a refund of 80% of total amount of enterprise income tax paid on the reinvested portion. If the investment is withdrawn before the period of operation reaches five years, the amount of enterprise income tax refunded shall be repaid.

On March 16, 2007, the National People’s Congress, the PRC legislature, approved and promulgated a new tax law named Enterprise Income Tax Law, On December 6, 2007, the PRC State Council issued the Implementation Regulations of the Enterprise Income Tax Law, both of which became effective on January 1, 2008. The Enterprise Income Tax Law and its Implementation Regulations, or the new EIT law, FIEs and domestic companies are subject to a uniform tax rate of 25%. The new EIT law eliminates or modifies most of the tax exemptions, reductions and preferential treatments available under the previous tax laws and regulations. The State Council issued the Notice of the State Council on the Implementation of the Transitional Preferential Policies in respect of Enterprise Income Tax on December 26, 2007, enterprises that were established before March 16, 2007 and already enjoy preferential tax treatments will (i) in the case of preferential tax rates, continue to enjoy the tax rates which will be gradually increased to the new tax rates within five years from January 1, 2008 or (ii) in the case of preferential tax exemption or reduction for a specified term, continue to enjoy the preferential tax holiday until the expiration of such term. Thus, SMIC Shanghai, SMIC Beijing and SMIC Tianjin could fall into condition (ii) and may be entitled to the “five year exemption and five year reduction” as subject to the final recognition by the PRC tax authorities. While the new EIT Law equalizes the tax rates for FIEs and domestic companies, preferential tax treatment would continue to be given to companies in certain encouraged sectors and to entities classified as high and new technology enterprises supported by the PRC government, whether FIEs or domestic enterprises. According to the new EIT Law, entities that qualify as high and new technology enterprises especially supported by the PRC government are expected to benefit from a tax rate of 15% as compared to the uniform tax rate of 25%. Implementation Regulations of the Enterprise Income Tax Law, a high and new technology enterprise shall have core self-owned intellectual properties and its products shall be within the scope provided by “the high-technology field highly supported by the State”.

Under the new EIT law, dividends, interests, rent, royalties and gains on transfers of property payable by a foreign-invested enterprise in the PRC to its foreign investor who is a non-resident enterprise will be subject to a 10% withholding tax, unless such non-resident enterprise’s jurisdiction of incorporation has a tax treaty with the PRC that provides for a reduced rate of withholding tax. The Cayman Islands, where SMIC is incorporated, does not have such a tax treaty with the PRC. If SMIC is considered a non-resident enterprise, this new 10% withholding tax imposed on SMIC’s dividend income received from SMIC Shanghai, SMIC Beijing and SMIC Tianjin would reduce its net income and have an adverse effect on its operating results.

Under the new EIT law, an enterprise established outside the PRC with its “de facto management body” within the PRC is considered a resident enterprise and will be subject to the enterprise income tax at the rate of 25% on its worldwide income. The “de facto management body” is defined as the organizational body that effectively exercises overall management and control over production and business operations, personnel, finance and accounting, and properties of the enterprise. It remains unclear how the PRC tax authorities will interpret such a broad definition. Substantially the majority of management members of SMIC are based in the PRC. If the PRC tax authorities subsequently determine that SMIC should be classified as a resident enterprise, then SMIC’s worldwide income will be subject to income tax at a uniform rate of 25%, which may have a material adverse effect on SMIC’s financial condition and results of operations. Notwithstanding the foregoing provision, the new EIT law also provides that, if a resident enterprise directly invests in another resident enterprise, the dividends received by the investing resident enterprise from the invested enterprise are exempted from income tax, subject to certain conditions. Therefore, if SMIC is classified as a resident enterprise, the dividends received from our PRC subsidiary may be exempted from income tax and the dividends paid to our non-PRC shareholders and gains derived by our non-PRC shareholders from transferring our shares or ADSs may be subject to 10% withholding tax. However, it remains unclear how the PRC tax authorities will interpret the PRC tax resident treatment of an offshore company, like SMIC, having indirect ownership interests in PRC enterprises through intermediary holding vehicles.

#### *Exemption of Customs Duties and Import-related Value-added Tax*

Under the Integrated Circuit Policies (No. 18 [2000] Guo-Fa) and the Integrated Circuit Notice (No. 25 [2000] Cai-Shui), ICPEs whose total investment exceeds Rmb 8,000 million or whose integrated circuits have a line-width of less than 0.25 micron are exempt from customs duties and import-related value-added tax for the raw materials and consumables used for production purposes.

Under the Integrated Circuit Notice, integrated circuit technology, production equipment, and equipment and instruments specialized for use in fabricating integrated circuits that are imported by a duly accredited ICPE are, with the exception of commodities listed in the *Catalogue of Imported Commodities for Foreign Investment Projects Not Entitled to Tax Exemptions* and the *Catalogue of Imported Commodities for Domestic Investment Projects Not Entitled to Tax Exemptions* as stipulated by the Ministry of Finance and all the State Council Institutions and Departments and amended in 2006, exempt from customs duties and import-related value-added tax.

Under the Construction Materials Taxation Notice (No. 152 [2002] Cai-Shui), commencing January 1, 2001, the importation of construction materials, auxiliary equipment and spare parts for the production of integrated circuits, specifically for clean rooms (as listed in the annex to the Construction Materials Taxation Notice), by ICPEs whose total investment exceeds Rmb 8,000 million or whose integrated circuits have a linewidth of less than 0.25 micron is exempt from customs duties and import-related value-added tax.

#### *Preferential Policies Encouraging Research and Development*

The new EIT Law and the Implementation Regulations of the new EIT Law have provided tax incentives in relation to technologies as a means to encourage advancement and adoption of new technologies. The new EIT Law provides an additional 50% deduction of the research and development expenses incurred from the research and development of new technologies, new products, and new techniques on the basis of the actual deductions when relevant enterprise has no intangible asset to be formed and calculated into the current gains and losses. If intangible assets have been formed, they shall be amortized at 150% of the cost of the intangible assets.

### ***Legal Framework Concerning the Protection of Intellectual Property Relating to Integrated Circuits***

China has formulated various laws and regulations on intellectual property protection in respect of integrated circuits including:

- the *Patent Law of the People's Republic of China*, adopted at the fourth meeting of the Standing Committee of the Sixth National People's Congress on March 12, 1984, effective April 1, 1985 and amended by the Ninth National People's Congress on August 25, 2000 and third amended by the Eleventh People's Congress on December 27, 2008, effective October 1, 2009;
- the *Paris Convention for the Protection of Industrial Property* of the World Intellectual Property Organization, in which China became a member state as of March 19, 1985;
- the *General Principles of the Civil Law of the People's Republic of China* adopted at the fourth session of the Sixth National People's Congress on April 12, 1986, effective January 1, 1987 and revised at the thirtieth session of the Tenth National People's Congress on October 28, 2007. In this legislation, intellectual property rights were defined in China's basic civil law for the first time as the civil rights of citizens and legal persons;
- the *Copyright Law of the People's Republic of China*, adopted by the 15th meeting of the Seventh National People's Congress Standing Committee on September 7, 1990, effective June 1, 1991 and amended by the Ninth National People's Congress on October 27, 2001;
- the *Regulations for the Protection of the Layout Design of Integrated Circuits*, or the Layout Design Regulations, adopted April 2, 2001 at the thirty-sixth session of the executive meeting of the State Council, effective October 1, 2001; and
- the World Intellectual Property Organization's *Washington Treaty on Intellectual Property in Respect of Integrated Circuits*, for which China was among the first signatory states in 1990.

### ***Protection of the Layout Design of Integrated Circuits***

Under the Layout Design Regulations, layout design of an integrated circuit refers to a three dimensional configuration in an integrated circuit that has two or more components, with at least one of these being an active component, and part or all of the interconnected circuitry or the three-dimensional configuration prepared for the production of integrated circuits.

Chinese natural persons, legal persons or other organizations that create layout designs are entitled to the proprietary rights in the layout designs in accordance with the Layout Design Regulations. Foreign persons or enterprises that create layout designs and have them first put into commercial use in China are entitled to the proprietary rights in the layout designs in accordance with the Layout Design Regulations. Foreign persons or enterprises that create layout designs and that are from a country that has signed agreements with China regarding the protection of layout designs, or is a party to an international treaty concerning the protection of layout designs to which China is also a party, are entitled to the proprietary rights of the layout designs in accordance with the Layout Design Regulations.

### ***Proprietary Rights in Layout Design of Integrated Circuits***

Holders of proprietary rights in a layout design are entitled to the following proprietary rights:

- to duplicate the whole protected layout design or any part of the design that is original; and
- to make commercial use of the protected layout design, the integrated circuit containing the layout design, or commodities containing the integrated circuit.

Proprietary rights in layout designs become valid after being registered with the administrative department of the State Council responsible for intellectual property. Unregistered layout designs are not protected by the Layout Design Regulations.

The protection period of the proprietary rights in a layout design is ten years, commencing from the date of the application for registration of the layout design or the date that it is put into commercial use anywhere in the world, whichever is earlier. However, regardless of whether or not a layout design is registered, or whether or not it is put into commercial use, it is not protected after 15 years from the time of its creation.

### ***Registration of a Layout Design***

The administrative departments of the State Council responsible for intellectual property are responsible for the registration of layout designs and accepting applications for the registration of layout designs. If an application for a layout design registration is not made with the administrative department of the State Council responsible for intellectual property within two years after it has been put into commercial use anywhere in the world, the administrative department of the State Council responsible for intellectual property will not register the application. A holder of proprietary rights in a layout design may transfer the proprietary rights or give permission for other parties to use the layout design.

### ***Compulsory Licenses for Exploitation of Patents in Respect of Semiconductor Technology***

Under the Patent Law and the Implementing Regulations of the Patent Law, after three years from the date of granting the patent rights, any person or enterprise that has made good faith reasonable proposals to the holder of proprietary rights seeking a license to those rights, but has been unable to obtain such license after an extended period of time, may request the administrative department responsible for patents under the State Council to grant a compulsory license for the relevant patent. However, where a compulsory license involves semiconductor technology, the implementation of a compulsory license is restricted to public and non-commercial uses, or to uses that counteract anti-competitive actions, as determined by judicial or administrative procedures.

### ***PRC Tax for “Resident Enterprises”***

Under China’s New EIT Law, we may be classified as a “resident enterprise” of China. This classification could result in unfavorable tax consequences to us and our non-PRC shareholders. The implementing rules of the New EIT Law define de facto management bodies as “management bodies that exercises substantial and overall management and control over the production and operations, personnel, accounting, and properties” of the enterprise. Currently no official interpretation or application of this new “resident enterprise” classification is available, therefore it is unclear how tax authorities will determine tax residency based on the facts of each case.

If the PRC tax authorities determine that our Cayman Islands holding company is a “resident enterprise” for PRC enterprise income tax purposes, a number of unfavorable PRC tax consequences could follow. First, we may be subject to enterprise income tax at a rate of 25% on our worldwide taxable income as well as PRC enterprise income tax reporting obligations. Second, although under the New EIT Law and its implementing rules dividends income between qualified resident enterprises is exempted income, it is not clear what is considered a qualified resident enterprise under the New EIT Law. Finally, it is possible that future guidance issued with respect to the new “resident enterprise” classification could result in a situation in which a 10% withholding tax is imposed on dividends we pay to our non-PRC shareholders and with respect to gains derived by our non-PRC shareholders from transferring our shares or ADSs. Similarly, these unfavorable consequences could apply to our other overseas intermediary holding companies if they are classified as a PRC resident enterprises.

## ***Environmental Regulation***

Our Chinese subsidiaries are subject to a variety of Chinese environmental laws and regulations promulgated by the central and local governments concerning examination and acceptance of environmental protection measures in construction projects, the use, discharge and disposal of toxic and hazardous materials, the discharge and disposal of waste water, solid waste, and waste gases, control of industrial noise and fire prevention. These laws and regulations set out detailed procedures that must be implemented throughout a project's construction and operation phases.

A key document that must be submitted for the approval of a project's construction is an environmental impact assessment report that is reviewed by the relevant environmental protection authorities. Upon completion of construction, and prior to commencement of operations, an additional examination and acceptance by the relevant environmental authority of such projects is also required. Within one month after receiving approval of the environmental impact assessment report, a semiconductor manufacturer is required to apply to and register with the competent environmental authority the types and quantities of liquid, solid and gaseous wastes it plans to discharge, the manner of discharge or disposal, as well as the level of industrial noise and other related factors. If the above wastes and noise are found by the authorities to have been managed within regulatory levels, renewable discharge registrations for the above wastes and noise are then issued for a specified period of time. SMIC Shanghai, SMIC Beijing, SMIC Tianjin, and SMIC Chengdu have all received approval with respect to their relevant environmental impact assessment reports and discharge registrations.

From time to time during the operation of our Chinese subsidiaries, and also prior to renewal of the necessary discharge registrations, the relevant environmental protection authority will monitor and audit the level of environmental protection compliance of these subsidiaries. Discharge of liquid, solid or gaseous waste over permitted levels may result in imposition of fines, imposition of a time period within which rectification must occur or even suspension of operations.

## **Enforceability Of Civil Liabilities**

We are a Cayman Islands holding company. We are incorporated in the Cayman Islands because of the following benefits associated with being a Cayman Islands corporation:

- political and economic stability;
- an effective judicial system;
- a favorable tax system;
- the absence of exchange control or currency restrictions; and
- the availability of professional and support services.

However, the Cayman Islands have a less developed body of securities laws as compared to the United States and provides significantly less protection for investors. In addition, Cayman Islands companies may not have standing to sue before the federal courts of the United States. Substantially all of our assets are located outside the United States. In addition, most of our directors and officers are nationals and/or residents of countries other than the United States, and all or a substantial portion of our or such persons' assets are located outside the United States. As a result, it may be difficult for a shareholder to effect service of process within the United States upon us or such persons or to enforce against them or against us, judgments obtained in United States courts, including judgments predicated upon the civil liability provisions of the securities laws of the United States or any state thereof.

Conyers Dill & Pearman, our counsel as to Cayman Islands law, Slaughter and May, our counsel as to Hong Kong law, and Fangda Partners, our counsel as to Chinese law, have advised us that there is uncertainty as to whether the courts of the Cayman Islands, Hong Kong and China, respectively, would:

- recognize or enforce judgments of United States courts obtained against us or our directors or officers predicated upon the civil liability provisions of the securities laws of the United States or any state thereof, or
- be competent to hear original actions brought in each respective jurisdiction, against us or our directors or officers predicated upon the securities laws of the United States or any state thereof.

Conyers Dill & Pearman has further advised us that a final and conclusive judgment in the federal or state courts of the United States under which a sum of money is payable, other than a sum payable in respect of taxes, fines, penalties or similar charges, may be subject to enforcement proceedings as a debt in the Courts of the Cayman Islands under the common law doctrine of obligation.

## Organizational Structure

We operate primarily through three wholly owned subsidiaries in China. The chart below sets forth our significant operating subsidiaries or affiliates, including their jurisdictions of incorporation and principal activities:

Name of company	Place and date of incorporation/establishment	Attributable equity interest held	Principal Activity
Garrison Consultants Limited (“Garrison”)	Samoa April 3, 2000	100%	Consultancy services
Better Way Enterprises Limited (“Better Way”)	Samoa April 5, 2000	100%	Provision of marketing related activities
Semiconductor Manufacturing International (Shanghai) Corporation (“SMIC Shanghai” or “SMIS”)*#	PRC December 21, 2000	100%	Manufacturing and trading of semiconductor products
SMIC, Americas	United States of America June 22, 2001	100%	Provision of marketing related activities
Semiconductor Manufacturing International (Beijing) Corporation (“SMIC Beijing” or “SMIB”)*#	PRC July 25, 2002	100%	Manufacturing and trading of semiconductor products
SMIC Japan Corporation*	Japan October 8, 2002	100%	Provision of marketing related activities
SMIC Europe S.R.L.	Italy July 3, 2003	100%	Provision of marketing related activities
Semiconductor Manufacturing International (Tianjin) Corporation (“SMIC Tianjin” or “SMIT”)*#	PRC November 3, 2003	100%	Manufacturing and trading of semiconductor products
SMIC Commercial (Shanghai) Limited Company (formerly SMIC Consulting Corporation) *#	PRC September 30, 2003	100%	Operation of a convenience store
Semiconductor Manufacturing International (AT) Corporation (“AT”)*	Cayman Islands July 26, 2004	66.3%	Investment holding
Semiconductor Manufacturing International (Chengdu) Corporation (“SMIC Chengdu” or “SMICD”) *#	PRC December 28, 2004	66.3%	Manufacturing and trading of semiconductor products

<b>Name of company</b>	<b>Place and date of incorporation/establishment</b>	<b>Attributable equity interest held</b>	<b>Principal Activity</b>
Semiconductor Manufacturing International (Solar Cell) Corporation	Cayman Islands June 30, 2005	100%	Investment holding
SMIC Energy Technology (Shanghai) Corporation (“Energy Science”)*#	PRC September 9, 2005	100%	Manufacturing and trading of solar cells related semiconductor products
SMIC Development (Chengdu) Corporation*#	PRC December 29, 2005	100%	Construction, operation, management of SMICD’s living quarter, schools and supermarket
Magnificent Tower Limited	British Virgin Islands January 5, 2006	100%	Investment holding
Semiconductor Manufacturing International (BVI) Corporation (“SMIC (BVI)”)*	British Virgin Islands April 26, 2007	100%	Investment holding
SMIC AT (HK) Company Limited (“SMIC AT (HK)”)*	Hong Kong October 22, 2007	66.3%	Investment holding
SMIC Solar Cell (HK) Company Limited (“SMIC Solar Cell (HK)”)*	Hong Kong October 23, 2007	100%	Investment holding
SMIC Shanghai (HK) Company Limited (“SMIC SH (HK)”)*	Hong Kong November 1, 2007	100%	Investment holding
SMIC Beijing (HK) Company Limited (“SMIC BJ (HK)”)*	Hong Kong November 2, 2007	100%	Investment holding
SMIC Tianjin (HK) Company Limited (“SMIC TJ (HK)”)*	Hong Kong November 2, 2007	100%	Investment holding
SMIC Shanghai (Cayman) Corporation (“SMIC SH (Cayman)”)*	Cayman Islands November 8, 2007	100%	Investment holding
SMIC Beijing (Cayman) Corporation (“SMIC BJ (Cayman)”)*	Cayman Islands November 8, 2007	100%	Investment holding
SMIC Tianjin (Cayman) Corporation (“SMIC TJ (Cayman)”)*	Cayman Islands November 8, 2007	100%	Investment holding

<b>Name of company</b>	<b>Place and date of incorporation/establishment</b>	<b>Attributable equity interest held</b>	<b>Principal Activity</b>
SMIC (Wuhan) Development Corporation*#	PRC March 27, 2007	100%	Construction, operation, management of living quarter, schools
Admiral Investment Holdings Limited	British Virgin Islands October 10, 2007	100%	Investment holding
SMIC Shenzhen (Cayman) Corporation	Cayman Islands January 21, 2008	100%	Investment holding
SMIC Shenzhen (HK) Company Limited	Hong Kong January 29, 2008	100%	Investment holding
SilTech Semiconductor Corporation	Cayman Islands February 13, 2008	100%	Investment Holding
SilTech Semiconductor (Hong Kong) Corporation Limited*	Hong Kong March 20, 2008	100%	Investment holding
Semiconductor Manufacturing International (Shenzhen) Corporation*#	PRC March 20, 2008	100%	Manufacturing and trading of semiconductor products
SilTech Semiconductor (Shanghai) Corporation Limited	PRC March 3, 2009	100%	Manufacturing and trading of semiconductor products

# Companies registered as wholly-owned foreign enterprises in the *People's Republic of China*. ("PRC"), excluding for the purpose of this report, *Hong Kong, Macau, and Taiwan*.

\* For identification purposes only.

## Property, plant and equipment

### Equipment

The quality and level of technology of the equipment used in the semiconductor fabrication process are important because they dictate the limits of the process technology that we use. Advances in process technology cannot be achieved without corresponding advances in equipment technology. The principal pieces of equipment used by us to fabricate semiconductors are scanners, cleaners and track equipment, inspection equipment, etchers, furnaces, wet stations, strippers, implanters, sputterers, CVD equipment, testers and probers. We source substantially all of our equipment from vendors located in the United States, Europe and Japan.

In implementing our capacity expansion and technology advancement plans, we expect to make significant purchases of equipment required for semiconductor fabrication. Some of the equipment is available from a limited number of vendors and/or is manufactured in relatively limited quantities, and in some cases has only recently become commercially available. Our ability to obtain certain kinds of equipment from outside of China may be subject to restrictions. See “Risk Factors - Risks Related to Conducting Operations in China-Limits placed on exports into China could substantially harm our business and operating results.”

We maintain our equipment through a combination of in-house maintenance and outside contracting to our equipment vendors. We decide whether to maintain ourselves, or subcontract the maintenance of, a particular piece of equipment based on a variety of factors, including cost, complexity and regularity of the required periodic maintenance and the availability of maintenance personnel in China. Most of our equipment vendors offer maintenance services through technicians based in China.

### Property

Our corporate headquarters and our mega-fab in Shanghai occupy 367,895 square meters of land, for which we hold valid land use rights certificates. These fabs currently occupy approximately 45% of this total land area. We also hold valid land use rights for the 240,140 square meters of land that comprise our Beijing site, approximately 75% of which will be occupied by the Beijing mega-fab. In 2005, we received land use rights certificates for 215,733 square meters of land in Tianjin, which is occupied by the Tianjin fab. We own all of the buildings and equipment for our fabs, except for certain customer-owned tooling provided to our Shanghai operations for test production on a consignment basis from our customers.

Location	Size	Primary Use	Owned <sup>(1)</sup> or Leased
	(Land/Building) (in square meters)		(Land/Building)
Zhangjiang High-Tech Park, Pudong New Area, Shanghai	367,895/164,795	Wafer fabrication	owned/owned
Beijing Economic and Technological Development Area	240,140/143,017	Wafer fabrication	owned/owned
Xiqing Economic Development Area, Tianjin	215,733/61,990	Wafer fabrication	owned/owned
Shenzhen Export Processing Zone, Shenzhen Pingshan New Area, Guangdong	200,060/68,308	Wafer fabrication	owned/owned
Export Processing Zone (West Area), Chengdu	252,831/35,850	Assembly and Test	owned/owned
Japan	na/55	Marketing activities	na/leased
USA	na/743	Marketing activities	na/leased
Italy	na/280	Marketing activities	na/leased
Hong Kong <sup>(2)</sup>	na/300	Representative Office	na/owned

The following table sets forth the location, size and primary use of our real properties and whether such real properties are owned or leased.

- 
- (1) With respect to land located in China, “ownership” refers to holding a valid land use rights certificate. All land within municipal zones in China is owned by the Chinese government. Limited liability companies, joint stock companies, foreign-invested enterprises, privately held companies and individual natural persons must pay fees to be granted rights to use land within municipal zones. Legal use of land is evidenced and sanctioned by land use certificates issued by the local municipal administration of land resources. Land use rights granted for industrial purposes are limited to a term of no more than 50 years.
  - (2) In February 2006, we purchased approximately 300 square meter of property in Hong Kong through our indirect wholly-owned subsidiary, Magnificent Tower Limited, a company incorporated in the British Virgin Islands.

The construction of our 8-inch fab in Shenzhen began in 2008 in an effort to expand our production capacity and is expected to commence commercial production in 2011. We plan to gradually increase the capacity in the Shenzhen fab based on market conditions. This project will be financed through our operating cash flows as well as through external financing. See “Risk Factors - Risks Related to Our Financial Condition and Business - Since our operating cash flows will not be sufficient to cover our planned capital expenditures, we will require additional external financing, which may not be available on acceptable terms or at all. Any failure to raise adequate funds in a timely manner could adversely affect our business and operating results,” and “Risk Factors - Risks Related to Our Financial Condition and Business - The construction and equipping of new fabs and the expansion of existing fabs are subject to certain risks that could result in delays or cost overruns, which could require us to expend additional capital and adversely affect our business and operating results.”

Our right to continued use of the land is subject to our continued compliance with the land use agreement that each of our Chinese subsidiaries has executed. The Chinese government has reserved the right to revoke our land use rights for special eminent domain purposes, in which case the government will compensate us. In addition, pursuant to an amendment to its domestic bank loan agreements, SMIC Beijing and SMIC Tianjin have pledged a portion of its land use right to the lenders. See “Item 5 - Operating and Financial Review and Prospects - Liquidity and Capital Resources.”

For a description concerning our capacity, capacity utilization rate and capacity expansion plans, please see “Item 5 - Operating and Financial Review and Prospects - Factors that Impact our Results of Operations.”

## **Risk Management and Insurance**

We have been OHSAS18001 certified since September 2003. Our health and safety management philosophy is based on incident prevention, which is achieved through:

- Mandatory staff and vendor safety training;
- Compliance of equipment and facilities to safety criteria, including the Semiconductor Equipment and Materials International and Chinese National Fire Protection Association standards
- A culture of accountability, whereby managers and employees are held responsible for their own and their group's safety performance;
- Regularly scheduled audits; and
- Standard management procedures.

We have established a corporate risk management committee and at each fab, an Emergency Response Center (ERC), to respond to emergencies. The ERCs are staffed 24 hours a day and are equipped with safety and security monitoring systems such as closed circuit television, gas monitoring systems, public announcement systems, and fire alarm monitoring systems.

Each department conducts emergency drills on a regular basis in accordance with our emergency response plan to address possible emergency situations that could arise. These emergency scenarios include fires, gas leakages, chemical spills, and power losses.

We maintain insurance with respect to our facilities, equipment, and inventories. The insurance for the fabs and their equipment covers, subject to some limitations, various risks, including industrial accidents and natural disasters, generally up to their respective replacement values and loss due to business interruption. We have not made any significant claims under these insurance policies. Equipment and inventories in transit are also insured.

## **Environmental Matters**

The semiconductor production process generates gaseous chemical wastes, liquid waste, waste water, and other industrial wastes in various stages of the fabrication process. We have installed various types of pollution control equipment for the treatment of gaseous chemical waste and liquid waste and equipment for the recycling of treated water in our fabs. Our operations are subject to regulation and periodic monitoring by PRC's State Environmental Protection Bureau, as well as local environmental protection authorities, including those under the Shanghai Pudong Municipal Government, the Beijing Municipal Government, the Tianjin Municipal Government, and the Chengdu Municipal Government, which may in some cases establish stricter standards than those imposed by the State Environmental Protection Bureau. The Chinese national and local environmental laws and regulations impose fees for the discharge of waste substances above prescribed levels, require the payment of fines for serious violations, and authorize the Chinese national and local governments to suspend any facility that fails to comply with orders requiring it to cease or remedy operations causing environmental damage. No such penalties have been imposed on us or any of our subsidiaries for violations of environmental pollution.

We believe our pollution control measures are effective, complying with the requirements applicable to the semiconductor industry in China and comparable to other countries. Waste generated from our operations, including acid waste, alkaline waste, flammable waste, toxic waste, oxidizing waste, and self-igniting waste, are collected and sorted for proper disposal. Furthermore, we have in many cases implemented waste reduction steps beyond the scope of current regulatory requirements. In addition, we continuously investigate methods to lower our energy consumption, including making existing processes more efficient and reclaiming waste heat.

The ISO14001 standard is a voluntary standard and part of a comprehensive series of standards for environmental management published by the International Standards Organization. The ISO14001 standard cover environmental management principles, systems and supporting techniques. SMIC first received ISO14001 certification in August 2002.

In addition, all fabs currently in operation have been third-party certified to be compliant with the RoHS (Restriction of the use of certain Hazardous Substances in electrical and electronic equipment) Directive of the European Union, which bans the use of various chemicals determined to be harmful to the environment. Once the Shenzhen facility is in operation, it too will undergo certification for ISO14001 and RoHS compliance.

**Item 4A. Unresolved Staff Comments**

Not applicable.

## **Item 5. Operating and Financial Review and Prospects**

### **Overview**

We were founded in April 2000. In 2000 and 2001, our company was in its development stage and did not have any sales. During this period, we established our management structure, acquired land use rights, constructed, equipped and commenced the ramp-up of production at our 8-inch wafer facilities in Shanghai which are referred to as the Shanghai mega-fab, and began our research and development activities. The first fab in the Shanghai mega-fab and the portion of our second fab, commenced commercial production in January 2002. The remaining portion of our second fab and a third fab commenced commercial production in January 2003. In January 2004, we acquired an 8-inch fab in Tianjin, China, which we refer to as our Fab 7, from MCEL, a wholly owned subsidiary of Motorola. The first fab in the Beijing mega-fab commenced commercial production in March of 2005. As of December 31, 2009, we had reached total wafer fabrication capacity of 162,050 8-inch wafer equivalents per month. Our wafers shipped and sales decreased from 1,849,957 wafers and US\$1,549.8 million for 2007 to 1,611,208 wafers and US\$1,353.7 million for 2008 and decreased to 1,376,663 wafers and US\$1,070.4 million for 2009.

We manage our business and measure our results of operations based on a single operating segment. We anticipate an increase to aggregate capacity by the end of 2010 subject to market conditions. As we increase our capacity and corresponding wafer production, we benefit from economies of scale. When our capacity utilization is high, these economies of scale enable us to reduce our per wafer production cost and improve our margins. On the other hand, when our capacity utilization rate is low, our unused capacity results in higher per wafer production cost and decreased margins.

### **Factors that Impact Our Results of Operations**

#### *Cyclicality of the Semiconductor Industry*

The semiconductor industry is highly cyclical due mainly to the cyclicality of demand in the markets of the products that use semiconductors. As these markets fluctuate, the semiconductor market also fluctuates. This fluctuation in the semiconductor market is exacerbated by the tendency of semiconductor companies, including foundries, to make capital investments in plant and equipment during periods of high demand since it may require several years to plan, construct and commence operations at a fab. Absent sustained growth in demand, this increase in capacity often leads to overcapacity in the semiconductor market, which in the past has led to a significant underutilization of capacity and a sharp drop in semiconductor prices. The semiconductor industry is generally slow to react to declines in demand due to its capital-intensive nature and the need to make commitments for equipment purchases well in advance of the planned expansion.

#### *Substantial Capital Expenditures*

The semiconductor foundry industry is characterized by substantial capital expenditures. This is particularly true for our company as we have recently constructed and equipped fabs and are continuing to construct and equip new fabs. In connection with the construction and ramp-up of our capacity since our inception, we incurred capital expenditures of US\$860 million, US\$666 million, and US\$190 million in 2007, 2008, and 2009 respectively. We depreciate our manufacturing machinery and equipment on a straight-line basis over an estimated useful life of five to seven years. We recorded depreciation and amortization of US\$706.3 million, US\$761.8, and US\$748.2 million in 2007, 2008, and 2009, respectively.

The semiconductor industry is also characterized by rapid changes in technology, frequently resulting in obsolescence of process technologies and products. As a result, our research and development efforts are essential to our overall success. We spent approximately US\$97.0 million in 2007, US\$102.2 million in 2008, and US\$160.8 million in 2009 for research and development, which represented 6.3%, 7.6%, and 15.0% respectively, of our sales for 2007, 2008, and 2009. Our research and development costs are partially offset by related government subsidies and include non-recurring engineering costs associated with the ramp-up of a new wafer facility.



### ***Change in Process Mix and Technology Migration***

Because the price of wafers processed with different technologies varies significantly, the mix of wafers that we produce is among the primary factors that affect our sales and profitability. The value of a wafer is determined principally by the complexity of the process technology used to fabricate the wafer. In addition, production of devices with higher levels of functionality and greater system-level integration requires more fabrication steps, and these devices generally sell for higher prices.

Prices for wafers of a given level of technology generally decline over the relevant process technology life cycle. As a result, we and our competitors are continuously in the process of developing and acquiring advanced process technologies and migrating our customers to use such technologies to maintain or improve our profit margins. This technology migration requires continuous investment in research and development and technology-related acquisitions, and we expect to continue to spend a substantial amount of capital on upgrading our technologies.

Our initial sales after commencing commercial operations in 2002 consisted mainly of DRAM fabricated and sold on a foundry basis, as well as commodity-type DRAM fabricated using technology licensed from a third party and sold by us to distributors. This commodity-type DRAM was fabricated during our start-up phase in order to test and ramp up our facilities and train our personnel. As our business has grown and our fabs have matured, we have produced proportionately less commodity-type DRAM and more logic products and memory products utilizing more advanced technologies, which generally command a higher margin. During the first quarter of 2008, the Company reached an agreement with our customers to completely exit the commodity DRAM business. The conversion of DRAM capacity into logic production was completed on schedule in the fourth quarter. As a result, our Beijing 300mm logic capacity has placed us in a better position to serve our global and China customers. In connection with the decision to exit the commodity DRAM business, we recorded an impairment loss of \$105.8 million on long-lived assets during the first quarter of 2008.

The following table sets forth a breakdown of our sales by service type for 2007, 2008 and 2009:

Service Type	For the year ended December 31,					
	2007		2008		2009	
	Sales	Percentage	Sales	Percentage	Sales	Percentage
	(in US\$ thousands, except percentages)					
Fabrication of memory wafers	428,355	27.60%	71,935	5.30%	35,648	3.33%
Fabrication of logic wafers(1)	985,776	63.60%	1,139,535	84.20%	959,689	89.66%
Other(2)	135,634	8.80%	142,241	10.50%	75,050	7.01%
Total	<u>\$ 1,549,765</u>	<u>100.00%</u>	<u>1,353,711</u>	<u>100.00%</u>	<u>1,070,387</u>	<u>100.00%</u>

(1) Includes copper interconnects and memory devices whose manufacturing process is similar to that for a logic device.

(2) Includes mask-making and probing, etc.

### ***Capacity Utilization Rates***

Operations at or near full capacity have a significant positive effect on our profitability because a substantial percentage of our cost of sales is of a fixed nature. In 2007, 2008 and 2009, approximately 47%, 46%, and 49% respectively, of our cost of sales consisted of depreciation expenses, which are fixed costs. If we increase our utilization rates, the number of wafers we fabricate will increase, and therefore our average fixed costs per wafer will decrease. Therefore, our capacity utilization rates have a significant effect on our margins. Our utilization rates have varied from period to period due to capacity ramp-ups and fluctuations in customer orders. Our annual capacity utilization rate was 91.0% in 2007, 86.0% in 2008, and 75.0% in 2009. Factors affecting utilization rates are the overall industry conditions, the level of customer orders, the complexity of the wafers and of the mix of wafers produced, mechanical failures and other operational disruptions such as the expansion of capacity or the relocation of equipment, and our ability to manage the production facilities and product flows efficiently.

Our capacity is determined by us based on the capacity ratings for each piece of equipment, as specified by the manufacturers of such equipment, adjusted for, among other factors, actual output during uninterrupted trial runs, expected down time due to set up for production runs and maintenance, and expected product mix. Because these factors include subjective elements, our measurement of capacity utilization rates may not be comparable to those of our competitors.

### ***Yield Rates***

Yield per wafer is the ratio of the number of functional dies on that wafer to the maximum number of dies that can be produced on that wafer. A significant portion of our services, particularly our memory semiconductor wafer fabrication services, is priced on a per die basis.

We continuously upgrade the process technologies that we use. At the beginning of each technology migration, the yield utilizing the new technology is generally lower, sometimes substantially lower, than the yield under the then-current technology. This is because it requires time to stabilize, optimize and test a new process technology. We do not ship wafers to a customer until we have achieved that customer's minimum yield requirements. Yield is generally improved through the expertise and cooperation of our research and development personnel, process engineers, and equipment suppliers.

### **Critical Accounting Policies**

The methods, estimates and judgments we use in applying our accounting policies have a significant impact on the results we report in our financial statements. Some of our accounting policies require us to make difficult and subjective judgments, often as a result of the need to make estimates of matters that are inherently uncertain. Below we have summarized our accounting policies that we believe are both important to the portrayal of our financial results and involve the need to make estimates about the effect of matters that are inherently uncertain. We also have other policies that we consider to be key accounting policies. However, these policies do not meet the definition of critical accounting estimates because they do not generally require us to make estimates or judgments that are difficult or subjective.

Please see "Item 8 – Financial Information - Litigation" regarding the Accounting Treatment for the Settlement Agreement.

### ***Inventory***

Inventories are stated at the lower of cost or market. Market represents the net realizable value for finished goods and work-in-progress. Inventory cost is determined using standard cost and an allocation of the cost variances arising in the period of production, which approximates actual costs determined on the weighted average basis. We determine the standard cost of each wafer based on estimates of the materials, labor, and other costs incurred in each process step associated with the manufacture of our products. We allocate labor and overhead costs to each step in the wafer production process based on normal fab capacity, with costs arising from abnormal under-utilization of capacity expensed when incurred. The unit cost of a wafer generally decreases as fixed overhead charges, such as depreciation expense on the facility and semiconductor equipment, are allocated over a larger number of units produced.

We estimate the net realizable value for such finished goods and work-in-progress based primarily upon the latest invoice prices and current market conditions. If the market value of a good drops below its carrying value, we record a write-off to cost of sales for the difference between the carrying cost and the market value. During the years ended December 31, 2007, 2008 and 2009, the Company recorded inventory write downs of US\$22.7 million, US\$40.8 million and US\$26.3 million, respectively, to reflect a decline in the estimated market value of the inventory we held. We carry out an inventory review at each quarter-end.

## ***Depreciation and Amortization***

We operate in a capital-intensive business. We periodically review and assess the estimated useful life of our assets based on expected use by the Company, taking into account effects of obsolescence, demand, and other economic factors. The net book value of our plant and equipment, including prepaid land use rights, at December 31, 2009 was US\$2,329.7 million. Depreciation of manufacturing buildings and related improvements is provided on a straight-line basis over the estimated useful life of 25 years and commences from the date the facility is ready for its intended use. Depreciation of our manufacturing machinery and equipment, as well as our facility, machinery and equipment, is provided on a straight-line basis over the estimated useful life, commencing from the date that the equipment is placed into productive use. A 5 to 7 year useful life is used for manufacturing machinery and equipment while a 10 year useful life is used for facility, machinery and equipment. Amortization of land use rights is over the term of the land use right agreement, which ranges from 50 to 70 years. Amortization of intangible assets is computed using the straight-line method over the expected useful life of the assets ranging from 3 to 10 years. The estimated useful life and dates that the equipment is placed into productive use reflects our estimate of the periods that we intend to derive future economic benefits from the use of our plant and equipment and land use rights.

## ***Long-lived Assets***

The Company assesses the impairment of long-lived assets when events or changes in circumstances indicate that the carrying value of the assets or the asset group may not be recoverable. Factors that we consider in deciding when to perform an impairment review include, but are not limited to significant under-performance of a business or product line in relation to expectations, significant negative industry or economic trends, and significant changes or planned changes in our use of the assets. An impairment analysis is performed at the lowest level of identifiable independent cash flows for an asset or asset group. We make subjective judgments in determining the independent cash flows that can be related to specific asset group based on our asset usage model and manufacturing capabilities. We measure the recoverability of assets that will continue to be used in our operations by comparing the carrying value of the asset group to our estimate of the related total future undiscounted cash flows. If an asset group's carrying value is not recoverable through the related undiscounted cash flows, the impairment loss is measured by comparing the difference between the asset group's carrying value and its fair value, based on the best information available, including market prices or discounted cash flow analysis.

In order to remain technologically competitive in our industry, we have entered into technology transfer and technology license arrangements with third parties in an attempt to advance our process technologies. The payments made for such technology licenses are recorded as an intangible asset or as a deferred cost and amortized on a straight-line basis over the estimated useful life of the asset. We routinely review the remaining estimated useful lives of these intangible assets and deferred costs. We also evaluate these intangible assets and deferred costs for impairment whenever events or changes in circumstances indicate that their carrying amounts may not be recoverable.

We have continued to construct, acquire, and expand our manufacturing facilities since our inception. We will continue to review impairment factors as described above and, as a result, impairment charges may be necessary in the future as circumstances change.

In 2009, the effect of adverse market conditions and significant changes in the Company's operation strategy lead to the Company's identification and commitment to abandon a group of long-lived assets. This group of long-lived assets is equipped with outdated technologies and no longer receives vendor support. As of December 31, 2009, this group of assets ceased to be used. As a result, the Company recorded an impairment loss of \$104.7 million related to abandoned equipment after writing down the carrying value to zero, and recorded an impairment loss of \$5.6 million for licenses related DRAM products.

During the first quarter of 2008, the Company reached an agreement with our customers to completely exit the commodity DRAM business. The conversion of DRAM capacity into logic production was completed on schedule in the fourth quarter. As a result, our Beijing 300mm logic capacity has placed us in a better position to serve our global and China customers. In connection with the decision to exit the commodity DRAM business, we recorded an impairment loss of \$105.8 million on long-lived assets during the first quarter of 2008.

### ***Income Taxes***

Current income taxes are provided for in accordance with the laws of the relevant taxing authorities.

As part of the process of preparing financial statements, we are required to estimate our income taxes in each of the jurisdictions in which it operates. When we have net operating loss carry forwards or temporary differences in the amount of tax recorded for tax purposes and accounting purposes, we may be able to reduce the amount of tax that we would otherwise be required to pay in future periods. We recognize all existing future tax benefits arising from these tax attributes as deferred tax assets and then establish a valuation allowance equal to the extent, if any, that it is more likely than not that such deferred tax assets will not be realized. We record an income tax benefit or expense when there is a net change in our total deferred tax assets and liabilities in a period. The ultimate realization of the deferred tax assets depends upon the generation of future taxable income during the periods in which the net operating losses and temporary differences become deductible. We account for income taxes using the asset and liability method. We record a valuation allowance to reduce our deferred tax assets to the amount that we believe is more likely than not to be realized. In assessing the need for a valuation allowance, we consider all positive and negative evidence, including past performance, the general outlook of the semiconductor industry, business conditions caused by the global economic downturn, projected future taxable income and recent financial performance. Forming a conclusion that a valuation allowance is not required is difficult when there is negative evidence such as cumulative losses in recent years.

Because the determination of the amount of valuation allowance is based, in part, on our forecast of future profitability, it is inherently uncertain and subjective. Changes in market conditions and our assumptions may cause the actual future profitability to differ materially from our current expectation, which may require us to increase or decrease the amount of valuation allowance that we have recorded.

The Company has no material uncertain tax positions as of December 31, 2009 or unrecognized tax benefit which would favorably affect the effective income tax rate in future periods. The Company classifies interest and/or penalties related to income tax matters in income tax expense. As of December 31, 2009, the amount of interest and penalties related to uncertain tax positions is immaterial. The Company does not anticipate any significant increases or decreases to its liability for unrecognized tax benefits within the next 12 months.

### ***Revenue Recognition***

We manufacture semiconductor wafers for our customers based on the customers' designs and specifications pursuant to manufacturing agreements and purchase orders. We also sell certain semiconductor standard products to customers. Customers do not have any rights of return except pursuant to warranty provisions, which returns have been minimal. We typically perform tests of our products prior to shipment to identify yield of acceptable products per wafer. Occasionally, product tests performed after shipment identify yields below the level agreed with the customer. In those circumstances, the customer arrangement may provide for a reduction to the price paid or for its costs to ship replacement products. We estimate the amount of sales returns and the cost of replacement products based on the historical trend of returns and warranty replacements relative to sales and any current information regarding specific customer yield issues that may exceed historical trends. We recognize revenue upon shipment and title transfer, if all other criteria have been met. We also provide certain services such as mask making and probing and revenue is recognized when our services are completed.

The Company provides management services to certain government-owned foundries. Service revenue is recognized when persuasive evidence of an arrangement exists, service has been performed, the fee is fixed or determinable, and collectability is reasonably assured. The Company ceased its recognition of management revenue in the second quarter of 2009 due to issues of collectability. Furthermore, the Company recorded a \$115.8 million bad debt provision in 2009, of which \$93.5 million and \$21.1 million are due to long outstanding overdue debt relating primarily to management revenue for services rendered and related equipment sold, respectively.

The Company also reversed the deferred revenue of \$9 million in relation to the management service rendered.

### ***Share-based Compensation Expense***

Our share-based employee compensation plans are described in more detail under "Share Ownership". We grant stock options to our employees and we record a compensation charge for the excess of the fair value of the stock at the measurement date over the amount an employee must pay to acquire the stock. We amortize share-based compensation using the straight-line method over the vesting periods of the related options, which are generally four years.

We grant stock options to our employees and certain non-employees. Share-based compensation cost is measured at the grant date, based on the fair value of the award, and is recognized as an expense over the employee's requisite service period (generally the vesting period of the equity grant). Our total actual share-based compensation expense for the year ended December 31, 2007, 2008 and 2009 was US\$20.6, US\$11.6, and US\$10.1 million respectively.

The fair value of options and shares issued pursuant to our option plans at the grant date was estimated using the Black-Scholes option pricing model. This model was developed for use in estimating the fair value of traded options that have no vesting restrictions and are fully transferable. In addition, option-pricing models require the input of highly subjective assumptions, including the expected term of the options, the estimated forfeiture rates and the expected stock price volatility. The expected term of options granted represents the period of time that options granted are expected to be outstanding. We estimated forfeiture rates using historical data to estimate option exercise and employee termination within the pricing formula. We use projected volatility rates based upon the company's historical volatility rates. These assumptions are inherently uncertain. Different assumptions and judgements would affect our calculation of the fair value of the underlying ordinary shares for the options granted, and the valuation results and the amount of share-based compensation would also vary accordingly.

### **Inflation**

Although there can be no assurance as to the impact in future periods, we believe that, to date, inflation in China has not had a material impact on our results of operations. Inflation in China was approximately 4.8%, 5.9%, and (0.7)% in 2007, 2008, and 2009, respectively.

### **Income Tax**

As an exempted company incorporated in the Cayman Islands, we are exempt from Cayman Islands taxation. Our Chinese subsidiaries are subject to taxation pursuant to Enterprise Income Tax Law and various local income tax laws. Under relevant regulations and after approval by the local Tax Bureau, our Shanghai, Beijing and Tianjin subsidiaries are entitled to a full exemption from foreign enterprise income tax, or FEIT, for five years starting with the first year of positive accumulated earnings, and a 50% reduction for the following five years. The tax holiday enjoyed by our Shanghai subsidiary took effect in 2004 when SMIS completed its first profit-making year. As of December 31, 2009, both Beijing and Tianjin entities were in loss positions and as a result the tax holiday had not yet taken effect.

Under the FEIT Laws, SMICD was qualified to enjoy a 5-year tax holiday (2-year full exemption followed by 3-year half reduction) subsequent to its first profit-making year after utilizing all prior tax losses or 2008 in accordance with the New EIT Law. SMICD was in a loss position and the tax holiday began as of December 31, 2008 at the statutory rate of 25%.

Energy Science is a manufacturing enterprise located in the Shanghai Pudong New Area. Pursuant to the preferential tax policy granted to the Pudong New Area under the FEIT Law, Energy Science was subject to a preferential tax rate of 15% and qualified to enjoy a 5-year tax holiday (2-year full exemption followed by 3-year half reduction in FEIT rate) subsequent to its first profit-making year after utilizing all prior tax losses or 2008 in accordance with the New EIT Law. The tax holiday was triggered in 2007 and is eligible to continue until 2011. The tax rate for 2007, 2008 and 2009 was 0%, 0% and 10%, respectively and will be 11% and 12% for the remaining tax holiday through its expiry in 2011.

Our other subsidiaries are subject to their respective jurisdictions' income tax laws, including Japan, United States, and Europe. Our income tax obligations to date have been minimal.

We account for income taxes using an asset and liability approach for financial accounting and reporting for income tax purposes. Under the asset and liability method, deferred income taxes are recognized for temporary differences, net operating loss carry-forwards and credits by applying enacted statutory tax rates applicable to future years. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion or all of the deferred tax assets will not be realized. We conduct this analysis on a quarterly basis. As of December 31, 2009, the Company has recognized deferred tax assets including \$109.4 million from net operating loss carry forward and \$79.1 million from temporary difference between the tax and book base of certain fixed assets. We provided full valuation allowance on net operating loss carry forward as we believe it is more likely than not that it would not to be realized. The temporary difference generated from depreciation of fixed assets relates specially to one of the Company's subsidiaries and this subsidiary has achieved profitability in prior years and is expected to continue to be profitable based on the current forecast. We have recognized \$101.6 million valuation allowance based on the analysis on available positive and negative evidences, including profitability, utilization and production efficiency, industry cyclical risk and technology development risk.

Effective January 1, 2007, the Company prescribes a more-likely-than-not threshold for financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. This interpretation also provides guidance on de-recognition of income tax assets and liabilities, classification of current and deferred income tax assets and liabilities, accounting for interest and penalties associated with tax positions, accounting for income taxes in interim periods and income tax disclosures.

The Company has no material uncertain tax positions as of December 31, 2009 or unrecognized tax benefit which would favorably affect the effective income tax rate in future periods. The Company classifies interest and/or penalties related to income tax matters in income tax expense. As of December 31, 2009, the amount of interest and penalties related to uncertain tax positions is immaterial. The Company does not anticipate any significant increases or decreases to its liability for unrecognized tax benefits within the next 12 months.

On March 16, 2007, the National People's Congress, the PRC legislature, approved and promulgated a new tax law named Enterprise Income Tax Law. On December 6, 2007, the PRC State Council issued the Implementation Regulations of the Enterprise Income Tax Law, both of which became effective on January 1, 2008. The Enterprise Income Tax Law and its Implementation Regulations, or the new EIT law, FIEs and domestic companies are subject to a uniform tax rate of 25%. The new EIT law eliminates or modifies most of the tax exemptions, reductions and preferential treatments available under the previous tax laws and regulations. The State Council issued the Notice of the State Council on the Implementation of the Transitional Preferential Policies in respect of Enterprise Income Tax on December 26, 2007, enterprises that were established before March 16, 2007 and already enjoy preferential tax treatments will (i) in the case of preferential tax rates, continue to enjoy the tax rates which will be gradually increased to the new tax rates within five years from January 1, 2008 or (ii) in the case of preferential tax exemption or reduction for a specified term, continue to enjoy the preferential tax holiday until the expiration of such term. Thus, SMIC Shanghai, SMIC Beijing and SMIC Tianjin could fall into condition (ii) and may be entitled to the "five year exemption and five year reduction" as subject to the final recognition by the PRC tax authorities. While the EIT Law equalizes the tax rates for FIEs and domestic companies, preferential tax treatment would continue to be given to companies in certain encouraged sectors and to entities classified as high and new technology enterprises companies supported by the PRC government, whether FIEs or domestic companies. According to the new EIT Law, entities that qualify as high and new technology enterprises especially supported by the PRC government are expected to benefit from a tax rate of 15% as compared to the uniform tax rate of 25%. Implementation Regulations of the Enterprise Income Tax Law, a high and new technology enterprise shall have core self-owned intellectual properties and its products shall be within the scope provided by "the high-technology field highly supported by the State".

Under the new EIT law, dividends, interests, rent, royalties and gains on transfers of property payable by a foreign-invested enterprise in the PRC to its foreign investor who is a non-resident enterprise will be subject to a 10% withholding tax, unless such non-resident enterprise's jurisdiction of incorporation has a tax treaty with the PRC that provides for a reduced rate of withholding tax. The Cayman Islands, where SMIC is incorporated, does not have such a tax treaty with the PRC. If SMIC is considered a non-resident enterprise, this new 10% withholding tax imposed on SMIC's dividend income received from SMIC Shanghai, SMIC Beijing and SMIC Tianjin would reduce its net income and have an adverse effect on its operating results.

Under the new EIT law, an enterprise established outside the PRC with its “de facto management body” within the PRC is considered a resident enterprise and will be subject to the enterprise income tax at the rate of 25% on its worldwide income and foreign tax credit may be applicable. The “de facto management body” is defined as the organizational body that effectively exercises overall management and control over production and business operations, personnel, finance and accounting, and properties of the enterprise. It remains unclear how the PRC tax authorities will interpret such a broad definition. Substantially the majority of management members of SMIC are based in the PRC. If the PRC tax authorities subsequently determine that SMIC should be classified as a resident enterprise, then SMIC’s worldwide income will be subject to income tax at a uniform rate of 25%, which may have a material adverse effect on SMIC’s financial condition and results of operations. Notwithstanding the foregoing provision, the new EIT law also provides that, if a resident enterprise directly invests in another resident enterprise, the dividends received by the investing resident enterprise from the invested enterprise are exempted from income tax, subject to certain conditions. Therefore, if SMIC is classified as a resident enterprise, the dividends received from our PRC subsidiary may be exempted from income tax. However, it remains unclear how the PRC tax authorities will interpret the PRC tax resident treatment of an offshore company, like SMIC, having indirect ownership interests in PRC enterprises through intermediary holding vehicles.

According to Guofa [2007] No. 39 — the Notice of the State Council Concerning Implementation of Transitional Rules for Enterprise Income Tax Incentives effective from January 1, 2008, enterprises that enjoyed preferential tax rates shall gradually transit to the statutory tax rate over 5 years after the new EIT Law is effective. Enterprises that enjoyed a tax rate of 15% under the FEIT Law shall be levied rates of 18% in 2008, 20% in 2009, 22% in 2010, 24% in 2011 and 25% in 2012.

On February 22, 2008, the PRC government promulgated Caishui (2008) No. 1, the Notice of the Ministry of Finance and State Administration of Tax concerning Certain Enterprise Income Tax Preferential Policies (“Caishui No. 1”). Pursuant to Caishui No. 1, integrated circuit production enterprises whose total investment exceeds RMB8,000 million (approximately \$1,095 million) or whose integrated circuits have a line width of less than 0.25 micron are entitled to preferential tax rate of 15%. If the operation period is more than 15 years, those enterprises are entitled to a full exemption from income tax for five years starting from the first profitable year after utilizing all prior years’ tax losses and 50% reduction for the following five years. SMIS, SMIB and SMIT have met such accreditation requirements.

### **Foreign Currency Fluctuations**

Our sales are generally denominated in U.S. dollars and our operating expenses and capital expenditures are generally denominated in U.S. dollars, Japanese Yen, Euros and Renminbi. Accordingly, we are affected by fluctuations in exchange rates between the U.S. dollar and each of the Japanese Yen, the Euro and the Renminbi. See “Risk Factors - Risks Related to Conducting Operations in China - Devaluation or appreciation in the value of the Renminbi or restrictions on convertibility of the Renminbi could adversely affect our operating results” and “Risk Factors - Risks Related to Our Financial Condition and Business - Exchange rate fluctuations could increase our costs, which could adversely affect our operating results and the value of our ADSs” for a discussion of the effects on our company of fluctuating exchange rates and Item 11 - Quantitative and Qualitative Disclosures About Market Risk - Foreign Exchange Rate Fluctuation Risk” for a discussion of our efforts to minimize such risks.

## Recent Accounting Pronouncements

In August 2009, the FASB issued Accounting Standards Update (“ASU”) 2009-05, “Fair Value Measurements and Disclosures (Topic 820) — Measuring Liabilities at Fair Value” (“ASU 2009-05”). ASU 2009-05 amends accounting guidance regarding the fair value measurement of liabilities. It provides clarification that in circumstances in which a quoted price in an active market for the identical liability is not available, a reporting entity is required to measure the fair value using (1) a valuation technique that uses the quoted price of the identical liability when traded as an asset or quoted prices for similar liabilities when traded as assets or (2) another valuation technique that is consistent with the principles of Topic 820. It also clarifies that when estimating the fair value of a liability, a reporting entity is not required to include a separate input or adjustment to other inputs relating to the existence of a restriction that prevents the transfer of the liability and that both a quoted price in an active market for the identical liability at measurement date and that the quoted price for the identical liability when traded as an asset in an active market when no adjustments to the quoted price of the asset are required are Level 1 fair value measurements. The provisions of ASU 2009-05 are effective for the first reporting period (including interim periods) beginning after issuance. Early application is permitted. The adoption of ASU 2009-05 does not have a material impact on the Company’s consolidated financial position or result of operations.

In October 2009, the FASB issued ASU 2009-13, “Revenue Recognition (Topic 605) — Multiple-Deliverable Revenue Arrangements a consensus of the FASB Emerging Issues Task Force”. This guidance addresses the accounting for multiple-deliverable arrangements to enable vendors to account for products or services (deliverables) separately rather than as a combined unit. Specifically, this guidance amends the criteria for separating consideration in multiple-deliverable arrangements. This guidance establishes a selling price hierarchy for determining the selling price of a deliverable, which is based on: (a) vendor-specific objective evidence if available; (b) third-party evidence if vendor-specific objective is not available; or (c) estimated selling price if neither vendor-specific objective evidence nor third-party evidence is available. This guidance also eliminates the residual method of allocation and requires that arrangement consideration be allocated at the inception of the arrangement to all deliverables using the relative selling price method. In addition, this guidance significantly expands required disclosures related to a vendor’s multiple-deliverable revenue arrangements. This guidance is effective prospectively for revenue arrangements entered into or materially modified in fiscal years beginning on or after June 15, 2010. The Company will adopt this new guidance on January 1, 2011. The adoption of this new guidance is not expected to have a material impact on the Company’s consolidated financial position, results of operations or cash flows.

In December 2009, the FASB issued ASU 2009-17, “Consolidations (Topic 810) — Improvements to Financial Reporting by Enterprises Involved with Variable Interest Entities” (“ASU 2009-17”) (previously SFAS 167, “Amendments to FASB Interpretation No. 46(R)”). The amendments in ASU 2009-17 replace the quantitative-based risks and rewards calculation for determining which reporting entity, if any, has a controlling financial interest in a variable interest entity with an approach primarily focused on identifying which reporting entity has the power to direct the activities of a variable interest entity that most significantly impact the entity’s economic performance and (1) the obligation to absorb the losses of the entity or (2) the right to receive the benefits from the entity. ASU 2009-17 also requires additional disclosure about a reporting entity’s involvement in variable interest entities, as well as any significant changes in risk exposure due to that involvement. ASU 2009-17 is effective for annual and interim periods beginning after November 15, 2009. Early application is not permitted. The Company does not expect ASU 2009-17 to have a material impact on its consolidated financial statements.

In January 2010, the FASB issued ASU 2010-06, “Fair Value Measurements and Disclosures (Topic 820) — Improving Disclosures about Fair Value Measurements” (“ASU 2010-06”). The ASU amends ASC 820 (previously SFAS 157, “Fair Value Measurements”) to add new requirements for disclosures about (1) the different classes of assets and liabilities measured at fair value, (2) the valuation techniques and inputs used, (3) the activity in Level 3 fair value measurements, and (4) the transfers between Levels 1, 2, and 3. ASU 2010-06 is effective for the first reporting period beginning after December 15, 2009, except for the requirement to provide the Level 3 activity of purchases, sales, issuances, and settlements on a gross basis, which will be effective for fiscal years beginning after December 15, 2010, and for interim periods within those fiscal years. In the period of initial adoption, entities will not be required to provide the amended disclosures for any previous periods presented for comparative purposes. However, those disclosures are required for periods ending after initial adoption. Early adoption is permitted. ASU 2010-06 does not change the accounting treatment for fair value measurements and will change the Company’s disclosure for fair value measurements.

### *Incentives from the Chinese government*

The chart below sets forth a brief summary of the material incentives received by our Chinese subsidiaries from the Chinese government. Our Shanghai, Beijing, and Tianjin subsidiaries are qualified as integrated circuit production enterprises under the Chinese government's *Several Policies to Encourage the Development of Software and Integrated Circuit Industry*. Under these policies, any company that engages in the semiconductor industry in China and has a total investment size in excess of 8,000 million Renminbi (approximately US\$964 million) and fabricates integrated circuits that have a linewidth of less than 0.25 micron are entitled to the last three benefits listed below. For a more detailed discussion of these incentives, see "Item 4-Information on the Company-Regulation."

Incentive	SMIC Shanghai, SMIC Beijing, and SMIC Tianjin
Preferential Value-added Tax Policies.	17% VAT rate. 17% tax refund rate for exports reduced to 13% as of January 1, 2004. 13% tax refund rate for exports increased to 17% as of November 1, 2004.
Preferential Enterprise Income Tax Policies	Five-year full exemption and five-year 50% reduction upon approval from the local tax bureau.
Preferential Customs Duties and Import-related VAT Policies	Exemption from customs duties with respect to its equipment, spare parts and raw materials. Exemption from import-related VAT with respect to its equipment, spare parts and raw materials. Exemption from VAT for imported equipment will no longer apply as of July 1, 2009 and a 17% VAT rate will apply.

## Operating Results

### Sales

We generate our sales primarily from fabricating semiconductors. We also derive a relatively small portion of our sales from the mask-making, wafer probing, and other services that we perform for third parties separately from our foundry services.

In 2009, fabless semiconductor companies accounted for 66.3%, IDMs accounted for 16.4% and systems and other companies accounted for 17.3%, respectively, of our sales. Although we are not dependent on any single customer, a significant portion of our net sales is attributable to a relatively small number of our customers. In 2007, 2008, and 2009 our five largest customers accounted for approximately 60.0%, 58.2%, and 60.0% of our sales, respectively.

### Cost of sales

Our cost of sales consists principally of:

- depreciation and amortization;
- overhead, including maintenance of production equipment, indirect materials, including chemicals, gases and various types of precious and other metals, utilities and royalties;
- direct materials, which consist of raw wafer costs;
- labor, including amortization of deferred stock compensation for employees directly involved in manufacturing activities; and
- production support, including facilities, utilities, quality control, automated systems and management functions.

Our depreciation expenses attributable to cost of sales were US\$657.8 million in 2007, US\$663.1 million in 2008, and US\$575.1 million in 2009.

### Operating expenses (income)

Our operating expenses (income) consist of:

- *Research and development expenses.* Research and development expenses consist primarily of salaries and benefits of research and development personnel, materials costs, depreciation and maintenance on the equipment used in our research and development efforts, contracted technology development costs, and the costs associated with the ramp-up of new fabs but are partially offset by related government subsidies.
- *General and administrative expenses.* General and administrative expenses consist primarily of salaries and benefits for our administrative, finance and human resource personnel, commercial insurance, fees for professional services, bad debt expenses, foreign exchange gains and losses from operating activities. Foreign exchange gains and losses relate primarily to period-end translation adjustments due to exchange rate fluctuations that affect payables and receivables directly related to our operations.

- *Selling and marketing expenses.* Selling and marketing expenses consist primarily of salaries and benefits of personnel engaged in sales and marketing activities, costs of customer wafer samples, other marketing incentives and related marketing expenses.
- *Amortization of acquired intangible assets.* Amortization of acquired intangible assets consist primarily of the cost associated with the purchase of technology, licenses, and patent licenses.
- *Income from sale of plant and equipment and other fixed assets.* In 2009, the Company sold plant, equipment and other fixed assets with a carrying value of US\$5.5 million for US\$1.7 million, which resulted in a loss on disposal of US\$3.8 million.

#### ***Other income (expenses)***

Our other income (expenses) consists of:

- interest income, which has been primarily derived from cash equivalents and short-term investments and interest on share purchase receivables;
- interest expenses, net of capitalized portions and government interest subsidies, which have been primarily attributable to our bank loans and the imputed interest rate on an outstanding interest-free promissory note; and
- other income and expense items, such as those relating to the employee living quarters and school; and
- foreign exchange gains and losses relating to financing and investing activities, including forward contracts.

### **Comparisons of Results of Operations**

#### Consolidated Financial Data

The summary consolidated financial data presented below as of and for the years ended December 31, 2007, 2008, and 2009 are derived from, and should be read in conjunction with, and are qualified in their entirety by reference to, our audited consolidated financial statements, including the related notes, included elsewhere in this annual report. The summary consolidated financial data as of and for the years ended December 31, 2005 and 2006 is derived from our audited consolidated financial statements not included in this annual report. The summary consolidated financial data presented below has been prepared in accordance with U.S. GAAP.

	For the year ended December 31,				
	2005	2006	2007	2008	2009
	(in US\$ thousands, except for share, ADS, percentages, and operating data)				
<b>Statement of Operations Data:</b>					
Sales	\$ 1,171,319	\$ 1,465,323	\$ 1,549,765	\$ 1,353,711	\$ <b>1,070,387</b>
Cost of sales <sup>(1)</sup>	1,105,134	1,338,155	1,397,038	1,412,851	<b>1,184,589</b>
Gross profit (loss)	66,185	127,168	152,727	(59,140)	<b>(114,202)</b>

For the year ended December 31,

	2005	2006	2007	2008	2009
(in US\$ thousands, except for share, ADS, percentages, and operating data)					
Operating expenses (income):					
Research and development	78,865	94,171	97,034	102,240	160,753
General and administrative	35,701	47,365	74,490	58,841	215,566
Selling and marketing	17,713	18,231	18,716	20,661	26,566
Amortization of acquired intangible assets	20,946	24,393	27,071	32,191	35,064
Impairment loss of long-lived assets	—	—	—	106,741	138,295
Loss (gain) from sale of plant and equipment and other fixed assets	—	(43,122)	(28,651)	(2,877)	3,832
Litigation settlement	—	—	—	—	269,637
Total operating expenses, net	153,225	141,038	188,659	317,797	849,714
Loss from operations	(87,040)	(13,870)	(35,932)	(376,937)	(963,917)
Other income (expenses):					
Interest income	11,356	14,916	12,349	11,542	2,591
Interest expense	(38,784)	(50,926)	(37,936)	(50,767)	(24,699)
Change in the fair value of					
commitment to issue shares and warrants	—	—	—	—	(30,101)
Foreign currency exchange gain (loss)	(3,355)	(21,912)	11,250	3,230	4,180
Other, net	4,462	1,821	2,238	7,429	4,626
Total other expense, net	(26,322)	(56,101)	(12,100)	(28,566)	(43,403)
Loss before income tax	(113,362)	(69,971)	(48,032)	(405,503)	(1,007,319)
Income tax benefit (expense)	(285)	24,928	29,720	(26,433)	46,624
Loss from equity investment	(1,379)	(4,201)	(4,013)	(444)	(1,782)
Net loss before cumulative effect of a change in accounting principle	(115,026)	(49,244)	(22,324)	(432,380)	(962,478)
Cumulative effect of a change in accounting principle	—	5,154	—	—	—
Net loss	(115,026)	(44,090)	(22,324)	(432,380)	(962,478)
Accretion of interest to noncontrolling interest					
	251	(19)	2,856	(7,851)	(1,060)
Loss attributable to Semiconductor Manufacturing International Corporation					
	\$ (114,775)	\$ (44,109)	\$ (19,468)	\$ (440,231)	\$ (963,537)
Loss per ordinary share, basic	\$ (0.00)	\$ (0.00)	\$ (0.00)	\$ (0.02)	\$ (0.04)
Loss per ordinary share, diluted	\$ (0.00)	\$ (0.00)	\$ (0.00)	\$ (0.02)	\$ (0.04)
Ordinary shares used in calculating					
basic loss per ordinary share <sup>(3)</sup>	18,184,429,255	18,334,498,923	18,501,940,489	18,682,544,866	22,359,237,084
Ordinary shares used in calculating					
diluted loss per ordinary share <sup>(2)</sup>	18,184,429,255	18,334,498,923	18,501,940,489	18,682,544,866	22,359,237,084

For the year ended December 31,

	2005	2006	2007	2008	2009
(in US\$ thousands, except for share, ADS, percentages, and operating data)					
Loss per ADS, basic <sup>(3)</sup>	\$ (0.32)	\$ (0.12)	\$ (0.05)	\$ (1.18)	\$ (2.15)
Loss per ADS, diluted <sup>(3)</sup>	\$ (0.32)	\$ (0.12)	\$ (0.05)	\$ (1.18)	\$ (2.15)
ADS used in calculating basic loss					
per ADS <sup>(3)</sup>	363,688,585	366,689,978	370,038,810	373,650,897	447,184,742
ADS used in calculating diluted loss					
per ADS <sup>(4)</sup>	363,688,585	366,689,978	370,038,810	373,650,897	447,184,742

**Other Financial Data:**

Gross margin	5.70%	8.70%	9.90%	-4.40%	-10.67%
Operating margin	-7.40%	-0.90%	-2.30%	-27.80%	-90.05%
Net margin	-9.80%	-3.00%	-1.30%	-32.50%	-89.92%

**Operating Data:**

Wafers shipped (in 8" equivalents)					
Total	1,347,302	1,614,888	1,849,957	1,611,208	1,376,663
ASP <sup>(4)</sup>	869	907	838	840	778

- (1) Including amortization of deferred stock compensation for employees directly involved in manufacturing activities.
- (2) Anti-dilutive preference shares, options and warrants were excluded from the weighted average ordinary shares outstanding for the diluted per share calculation. For 2006, 2007, 2008, and 2009 basic income (loss) per share did not differ from diluted loss per share.
- (3) Fifty ordinary shares equals one ADS.
- (4) Total sales/total wafers shipped.

**Comparisons of the Years Ended December 31, 2007, 2008 and 2009**

*Year Ended December 31, 2009 Compared to Year Ended December 31, 2008*

**Sales.** Sales decreased by 20.9% from US\$1,353.7 million for 2008 to US\$1,070.4 million for 2009, primarily due to a decrease in overall wafer shipments. For the full year 2009, the overall wafer shipments were 1,376,663 units of 8-inch equivalent wafers, down 14.6% year-on-year. The average selling price of the wafers the Company shipped decreased by 7.5% from US\$840 per wafer to US\$778. Excluding DRAM revenue, the percentage of wafer revenues that used 0.13 micron and below process technology increased from 38.2% to 44.2% between these two periods.

**Cost of sales and gross profit.** Cost of sales decreased by 16.2% from US\$1,412.9 million for 2008 to US\$1,184.6 million for 2009. Out of the total cost of sales for 2009, US\$575.1 million was attributable to depreciation of plant and equipment and another \$23.5 million was attributable to amortization of deferred costs and share-based compensation costs. Out of the total cost of sales for 2008, US\$663.1 million was attributable to depreciation of plant and equipment and another \$28.4 million was attributable to amortization of deferred costs and share-based compensation costs. The Company had a gross loss of US\$114.2 million for 2009 compared to a gross loss of US\$59.1 million in 2008. Gross margins were -10.7% in 2009 compared to -4.4% in 2008. The decrease in gross margins was due to market downturn experienced in the first quarter of 2009.

**Operating expenses and loss from operations.** Operating expenses increased by 167.4% from US\$317.8 million for 2008 to US\$849.7 million for 2009 primarily due to charges related to settlement of litigation.

Research and development expenses increased by 57.2% from US\$102.2 million for 2008 to US\$160.8 million for 2009. The Company received fewer government subsidies for research & development expenses in 2009 compared to 2008.

General and administrative expenses increased by 266.4% to US\$215.6 million for 2009 from US\$58.8 million for 2008, primarily due to an increase in bad debt provision, contingent liability and legal fees.

Selling and marketing expenses increased by 28.6% from US\$20.7 million for 2008 to US\$26.6 million for 2009, due to an increase in sales and marketing activities.

As described in “Note 11. — Acquired intangible assets, net”, the amortization of acquired intangible assets increased from US\$32.2 million for 2008 to US\$35.1 million for 2009.

Additional charges were recognized under operating expense in the fourth quarter of 2009, of which \$269.6 million was related to the settlement of litigation and \$138.3 million was related to long-lived asset impairment. The total amount of the settlement litigation charge including the portion classified under non-operating expense was \$299.7 million.

**Impairment of plant and equipment.** In 2009, the effect of adverse market conditions and significant changes in the Company’s operation strategy lead to the Company’s identification and commitment to abandon a group of long-lived assets. This group of long-lived assets is equipped with outdated technologies and no longer receives vendor support. As of December 31, 2009, this group of assets ceased to be used. As a result, the Company recorded an impairment loss of \$104,676,535 after writing down the carrying value to zero.

As a result, the Company’s loss from operations was US\$963.9 million in 2009 compared to loss from operations of US\$376.9 million in 2008. Operating margin was -90.1% and -27.8%, for 2009 and 2008 respectively.

**Other income (expenses).** Other expenses increased from US\$28.6 million in 2008 to US\$43.4 million in 2009 primarily due to a change in the fair value of the commitment to grant shares and warrants in the amount of \$30.1 million related to the litigation settlement. Foreign exchange gain from non-operating activities increased from US\$3.2 million in 2008 to US\$4.2 million in 2009. Total foreign exchange gain, combining the operating and non-operating activities, was US\$7.3 million in 2009 as compared to US\$11.4 million in 2008.

**Net loss.** Due to the factors described above, the Company recorded a net loss of US\$963.5 million in 2009 compared to a net loss of US\$440.2 million in 2008.

**Sales.** Sales decreased by 12.7% from US\$1,549.8 million for 2007 to US\$1,353.7 million for 2008, primarily due to the transition of DRAM production to logic production in the Beijing fab and the sharp market downturn experienced in the fourth quarter. However, consistent with our stated strategy of focusing on the non-DRAM business, non-DRAM revenue has grown by 14.3% for the same period. The number of wafers the Company shipped decreased by 12.9%, from 1,849,957 8-inch wafer equivalents to 1,611,208 8-inch wafer equivalents, while the number of logic only wafer shipments increased by 24.9% between the two periods. The average selling price of the wafers the Company shipped remained relatively flat, with a slight increase of 0.2% from US\$838 per wafer to US\$840 per wafer. Due to the exit from the commodity DRAM business, the percentage of wafer revenues that used 0.13 micron and below process technology decreased from 53.1% to 43.9% between these two periods. However, if DRAM revenue is excluded, the percentage of wafer revenues that used 0.13 micron and below process technology increased from 24.9% to 38.2% between these two periods.

**Cost of sales and gross profit.** Cost of sales increased by 1.1% from US\$1,397.0 million for 2007 to US\$1,412.9 million for 2008. Out of the total cost of sales for 2008, US\$663.1 million was attributable to depreciation of plant and equipment and another US\$28.4 million was attributable to amortization of deferred costs and share-based compensation costs. Out of the total cost of sales for 2007, US\$657.8 million was attributable to depreciation of plant and equipment and another US\$33.8 million was attributable to amortization of deferred costs and share-based compensation costs. The Company had a gross loss of US\$59.1 million for 2008 compared to a gross profit of US\$152.7 million in 2007. Gross margins were -4.4% in 2008 compared to 9.9% in 2007. The decrease in gross margins was due to the transition of DRAM production to logic production in the Beijing fab which resulted in lower utilization, as well as the write down of DRAM inventories and the sharp market downturn experienced in the fourth quarter.

**Operating expenses and loss from operations.** Operating expenses increased by 68.4% from US\$188.7 million for 2007 to US\$317.8 million for 2008 primarily due to the impairment charge recorded in 2008 in connection with the decision to exit the commodity DRAM business. The Company received less income from the sale of equipment and fixed assets, which income was US\$28.7 million in 2007 compared to US\$2.9 million in 2008.

Research and development expenses increased by 5.4% from US\$97.0 million for 2007 to US\$102.2 million for 2008. The Company received an increase in government subsidies for research and development expenses in 2008; however, expenses associated with 45-nanometer and 65-nanometer technology development, as well as expenses incurred for the Shanghai 12-inch project, also increased in 2008.

General and administrative expenses decreased by 21.1% to US\$58.8 million for 2008 from US\$74.5 million for 2007, primarily due to a decrease in legal fees as well as a foreign exchange gain from operating activities of US\$8.2 million recorded in 2008, while a foreign exchange loss from operating activities of US\$3.1 million was recorded in 2007.

Selling and marketing expenses increased by 10.7% from US\$18.7 million for 2007 to US\$20.7 million for 2008, due to an increase in sales and marketing activities.

During the first quarter of 2008, the Company reached an agreement with certain customers to discontinue production of DRAM products and subsequently the Company decided to exit the commodity DRAM business. The Company considered these actions to be an indicator of impairment in regard to plant and equipment of the Company's Beijing facilities. The Company recorded an impairment loss of \$105.8 million during the first quarter of 2008, equal to the excess of the carrying value over the fair value of the plant and equipment utilizing a discounted cash flow approach. For the purpose of the analysis, a discount rate of 9% has been used on the expected cash flows to be generated over the remaining useful lives of primary manufacturing machinery and equipments of approximately 5 years.

As a result, the Company's loss from operations was US\$376.9 million in 2008 compared to loss from operations of US\$35.9 million in 2007. Operating margin was negative 27.8% and 2.3%, respectively, for these two years.

**Other income (expenses).** Other expenses increased from US\$12.1 million in 2007 to US\$28.6 million in 2008 primarily due to an increase in interest expense. This increase in interest expense, from US\$37.9 million in 2007 to US\$50.8 million in 2008, was primarily due to a decrease in interest subsidy. Foreign exchange gain from non-operating activities decreased from US\$11.3 million in 2007 to US\$3.2 million in 2008. Total foreign exchange gain, combining the operating and non-operating activities, was US\$11.4 million in 2008 as compared to US\$8.1 million in 2007.

**Net loss.** Due to the factors described above, the Company recorded a net loss of US\$440.2 million in 2008 compared to a net loss of US\$19.5 million for 2007.

## Liquidity and Capital Resources

The following table sets forth a condensed summary of our audited statements of cash flows for the periods indicated:

	For the year ended		
	December 31,		
	2007	2008	2009
	(in US\$ thousands)		
<b>Net cash provided by operating activities:</b>			
Net loss	\$ (22,324)	\$ (432,380)	\$ (962,478)
Depreciation and amortization	706,277	761,809	748,185
Total	672,465	569,782	283,566
<b>Net cash used in investing activities:</b>			
Purchase of property, plant and equipment	(717,171)	(669,055)	(217,269)
Total	(642,344)	(761,713)	(211,498)
<b>Net cash provided by (used in) financing activities:</b>			
Proceeds from short-term borrowings	201,658	422,575	726,897
Proceeds from long-term debt	262,248	285,930	100,946
Total	75,637	173,314	(78,902)
<b>Net increase (decrease) in cash and cash equivalents</b>	<b>\$ 105,664</b>	<b>\$ (19,054)</b>	<b>\$ (6,767)</b>

### *Operating Activities*

As of December 31, 2009, we had US\$443.5 million in cash and cash equivalents. These cash and cash equivalents are held in the form of United States dollars, Japanese Yen, European Euros, and Chinese Renminbi. Our net cash provided by operating activities in 2009 was US\$283.6 million, down by 50.2% from US\$569.8 million in 2008. The decrease in net cash provided by operating activities was primarily due to the decrease in overall wafer shipments and the slower turnover of accounts receivable resulting from the market downturn.

As of December 31, 2008, we had US\$450.2 million in cash and cash equivalents. These cash and cash equivalents are held in the form of United States dollars, Japanese Yen, European Euros, and Chinese Renminbi. Our net cash provided by operating activities in 2008 was US\$569.8 million, which was primarily due to the loss attributable to holders of ordinary shares of US\$440.2 million, a decrease of US\$76.7 million in inventories, a decrease of US\$97.8 million in accounts receivable and an increase of US\$76.8 million in accounts payable relating to the purchase of materials and inventories, and the add-back of US\$761.8 million in depreciation and amortization relating to commercial production.

As of December 31, 2007, we had US\$469.3 million in cash and cash equivalents. These cash and cash equivalents are held in the form of United States dollars, Japanese Yen, European Euros, and Chinese Renminbi. Our net cash provided by operating activities in 2007 was US\$672.5 million, which was primarily due to the loss attributable to holders of ordinary shares of US\$19.5 million, a decrease of US\$26.9 million in inventories, an increase of US\$46.2 million in accounts receivable due to an increase in sales and an increase of US\$19.9 million in accounts payable relating to the purchase of materials and inventories, and the add-back of US\$706.3 million in depreciation and amortization relating to commercial production.

### *Investing Activities*

Our net cash used in investing activities was US\$211.5 million in 2009, US\$761.7 million in 2008, and US\$642.3 million in 2007. This was primarily attributable to purchases of plant and equipment for our mega-fabs in Shanghai and Beijing, and Tianjin fab in these periods as well as costs associated with the Shanghai fab construction.

### *Financing Activities*

Our net cash used in financing activities in 2009 was US\$78.9 million. This was primarily derived from US\$726.9 million in proceeds from short-term borrowings, US\$100.9 million in proceeds from long-term debt, US\$641.3 million in the repayment of short-term borrowings, and US\$241.7 million in the repayment of long-term debt.

Our net cash provided by financing activities in 2008 was US\$173.3 million. This was primarily derived from US\$422.6 million in proceeds from short-term borrowings, US\$285.9 million in proceeds from long-term debt, US\$328.3 million in the repayment of short-term borrowings, and US\$345.8 million in the repayment of long-term debt. In addition, US\$168.1 million came from proceeds from the issuance of ordinary shares.

Our net cash used in financing activities in 2007 was US\$75.6 million. This was primarily derived from US\$201.7 million in proceeds from short-term borrowings, US\$262.2 million in proceeds from long-term debt, US\$165.7 million in the repayment of short-term borrowings, and US\$195.6 million in the repayment of long-term debt.

### *Capital Expenditures*

We incurred capital expenditures of US\$860 million, US\$666 million, and US\$190 million in 2007, 2008 and 2009, respectively. We currently expect our capital expenditures in 2010 to total approximately US\$335 million, to be adjusted based on market conditions. We have financed our substantial capital expenditure requirements through the proceeds received in our global offering, several rounds of private financing, cash flows from operations, and bank borrowings. Once a fab is in operation at acceptable capacity and yield rates, it can provide significant cash flows.

Any transfer of funds from our company to our Chinese subsidiaries, either as a shareholder loan or as an increase in registered capital, is subject to registration or approval of Chinese governmental authorities, including the relevant administration of foreign exchange and/or the relevant examining and approval authority. In addition, it is not permitted under Chinese law for our Chinese subsidiaries to directly lend money to each other. Therefore, it is difficult to change our capital expenditure plans once the relevant funds have been remitted from our company to our Chinese subsidiaries. These limitations on the free flow of funds between us and our Chinese subsidiaries could restrict our ability to act in response to changing market conditions and reallocate funds from one Chinese subsidiary to another in a timely manner.

Our cash flows from operations have historically exceeded operating income, reflecting our significant non-cash depreciation expenses. Our operating cash flows may not be sufficient to meet our capital expenditure requirements in 2010. If our operating cash flows are insufficient, we plan to fund the expected shortfall through bank loans. If necessary, we will also explore other forms of external financing.

If the current economic or market conditions deteriorate, our business, financial condition and results of operations could be materially and adversely affected. Therefore there can be no assurance that our business will generate and continue to generate sufficient cash flow to fund our liquidity needs in the future as cash flow generation may be affected by, among other factors, sales levels, capacity utilization, industry business conditions as well as global economic conditions.

## Commitments

As of December 31, 2009, we had commitments of US\$69 million for facilities construction obligations in 2010 for our Shanghai, Beijing, Tianjin, Chengdu, and Shenzhen. The Company had commitments of US\$77 million to purchase machinery and equipment for testing facility in 2010 in Chengdu and for the Shanghai, Beijing, Shenzhen and Tianjin fabs.

For additional information, see “Item 5 - Operating and Financial Review and Prospects-Factors that Impact Our Results of Operations-Substantial Capital Expenditures” and “Capacity Expansion.”

As of December 31, 2009, the Company’s outstanding long-term liabilities primarily consisted of US\$756.4 million in secured bank loans, which are repayable in installments which commenced in June 2006, with the last payment in December 2012.

*2006 Loan Facility (SMIC Shanghai).* In June 2006, SMIC Shanghai entered into a USD denominated long-term facility arrangement for US\$600.0 million with a consortium of international and PRC banks. Of this principal amount, US\$393.0 million was used to repay the principal amount outstanding under SMIC Shanghai’s bank facilities from December 2001 and January 2004. The remaining principal amount will be used to finance future expansion and general corporate requirements for SMIC Shanghai. This facility is secured by the manufacturing equipment located in the SMIC Shanghai 8-inch fabs. The Company has guaranteed SMIC Shanghai’s obligations under this facility. As of December 31, 2007, SMIC Shanghai had fully drawn down on this loan facility. The principal amount is repayable starting from December 2006 in ten semi-annual installments. As of December 31, 2009, SMIC Shanghai had repaid US\$472 million according to the repayment schedule. In 2009, the interest rate on the loan ranged from 1.18% to 3.18%. The interest expense incurred in 2009, 2008 and 2007 were US\$5.5 million, US\$17.0 million and US\$17.3 million, respectively, of which US\$0.2 million, US\$5.4 million and US\$3.3 million were capitalized as additions to assets under construction in 2009, 2008 and 2007, respectively.

The total outstanding balance of the long-term facility is collateralized by certain equipment at the original cost of US\$1,815 million as of December 31, 2009.

The long-term loan agreement entered into in June 2006 contains the following covenants:

Any of the following in respect of SMIC Shanghai would constitute an event of default during the term of the loan agreement.

Financial covenants for SMIC Shanghai including:

1. Consolidated tangible net worth of no less than US\$1,200 million;
2. Consolidated total borrowings to consolidated tangible net worth of:
  - (a) no more than 60% for periods up to and including December 31, 2008; and
  - (b) no more than 45% thereafter;
3. Consolidated total borrowings to trailing preceding four quarters EBITDA not to exceed 1.50x; and

4. Debt Service Coverage Ratio of no less than 1.5x. Debt Service Coverage Ratio means trailing four quarters EBITDA divided by scheduled principal repayments and interest expense for all bank borrowings (including hire purchases, leases and other borrowed monies) for the same period.

Financial covenants for the Company, as the guarantor, including:

1. Consolidated tangible net worth of no less than US\$2,300 million;
2. Consolidated net borrowings to consolidated tangible net worth of:
  - (a) no more than 50% for period up to and including June 30, 2009;
  - (b) no more than 40% thereafter; and
3. Consolidated net borrowings to trailing four quarters EBITDA of:
  - (a) no more than 1.50x for periods up to and including June 30, 2009; and no more than 1.30x thereafter.

SMIC Shanghai is exempted from the covenants by the lenders. Furthermore, the Company is currently working with the lenders to refinance the remainder of the USD loan and expects the completion of this restructuring in the near future from the date of this report.

*2009 USD & RMB Loan Facility.* In June 2009, SMIC Shanghai entered into the Shanghai USD & RMB loan, a new two-year loan facility in the principal amount of US\$80 million and RMB200 million with The Export-Import Bank of China. This facility is secured by the manufacturing equipment located in SMIC Shanghai's 12-inch fab. This two-year bank facility will be used to finance future expansion and general corporate needs for SMIC Shanghai's 12-inch fab. As of December 31, 2009, SMIC Shanghai had drawn down US\$70 million and RMB200 million (US\$29.3 million), respectively, on this loan facility. The principal amount is repayable on June 2011. In 2009, the interest rate on the loan ranged from 3.10% to 4.86%. The interest expense incurred in 2009 was US\$1.3 million, of which US\$0.1 million was capitalized as additions to assets under construction in 2009.

The total outstanding balance of the facilities is collateralized by certain equipment with an original cost of US\$362 million as of December 31, 2009.

*2005 Loan Facility (SMIC Beijing).* In May 2005, SMIC Beijing entered into a five year USD denominated loan facility in the aggregate principal amount of US\$600.0 million, with a syndicate of financial institutions based in the PRC. This five-year bank loan will be used to expand the capacity of SMIC Beijing's fabs. The drawdown period of this facility was twelve months from the sign off date of the agreement. This facility is secured by the manufacturing equipment located in the SMIC Beijing 12-inch fabs. The Company has guaranteed SMIC Beijing's obligations under this facility. As of December 31, 2006, SMIC Beijing had fully drawn down US\$600.0 million on this loan facility. The principal amount is repayable starting in December 2007 in six semi-annual installments. In 2008 and 2007, SMIC Beijing had repaid US\$200.0 million and US\$100.0 million respectively, according to the repayment schedule. On June 26, 2009, SMIC Beijing entered into an amendment to the syndicated loan agreement to extend the repayment date of the outstanding balance commencing from June 28, 2009 to December 28, 2011 and onwards. The amendment includes a provision for mandatory early repayment of a portion of the outstanding balance if SMIC Beijing's financial performance exceeds certain pre-determined benchmarks. The interest rate on this loan facility in 2009 ranged from 2.64% to 3.46%. The amendment has been accounted for as a modification as the terms of the amended instrument are not substantially different from the original terms. The interest expense incurred in 2009, 2008 and 2007 were US\$10.2 million, US\$25.6 million and US\$42.2 million, of which US\$0.5 million, US\$1.6 million and US\$2.3 million were capitalized as additions to assets under construction in 2009, 2008 and 2007, respectively.

The total outstanding balance of the SMIC Beijing USD syndicate loan is collateralized by certain plant and equipment at the original cost of US\$1,314 million as of December 31, 2009.

Any of the following in respect of SMIC Beijing would constitute an event of default during the term of the loan agreement:

1.  $[\text{Net profit} + \text{depreciation} + \text{amortization} + \text{financial expenses} - (\text{increase of accounts receivable and advanced payments} + \text{increase of inventory} - \text{increase in accounts payable and advanced receipts})] / \text{financial expenses} > 60\%$  (when SMIC Beijing's capacity is less than 20,000 12-inch wafers per month); and

2.  $(\text{Total liability} - \text{borrowings from shareholders, including principal and interest}) / \text{Total assets} > 50\%$  (when SMIC Beijing's capacity is less than 20,000 12-inch wafers per month).

SMIC Beijing has complied with these covenants as of December 31, 2009.

*2005 EUR Loan Facility.* On December 15, 2005, the Company entered into a EUR denominated long-term loan facility agreement in the aggregate principal amount of EUR85 million (equivalent to approximately US\$105 million) with ABN Amro Bank N.V. Commerz Bank N.V., Shanghai Branch. The draw down period of the facility ends on the earlier of (i) thirty six months after the execution of the agreement or (ii) the date which the loans have been fully drawn down. Each draw down made under the facility shall be repaid in full by the Company in ten equal semi-annual installments. SMIC Tianjin had drawn down in 2006 and SMIC Shanghai had drawn down in 2007 and 2008.

The total outstanding balance of the facility is collateralized by certain equipment with an original cost of US\$22 million for SMIC Tianjin and US\$115 million for SMIC Shanghai as of December 31, 2009.

As of December 31, 2009, SMIC Tianjin had drawn down EUR15.1 million and repaid an aggregated amount of EUR 12.1 million. As of December 31, 2009, the remaining balance is EUR3.0 million, the equivalent of US\$4.3 million. In 2009, the interest rate on the loan ranged from 0.73% to 2.75%. The interest expenses incurred in 2009, 2008 and 2007 were US\$0.2 million, US\$0.6 million and US\$0.7 million of which US\$0.03 million, US\$0.1 million and US\$0.06 million were capitalized as additions to assets under construction in 2009, 2008 and 2007, respectively.

The total outstanding balance of the facility is collateralized by certain of SMIC Tianjin's plant and equipment at the original cost of US\$22 million as of December 31, 2009.

As of December 31, 2009, SMIC Shanghai had drawn down EUR56.9 million and repaid an aggregated amount of EUR24.9 million. As of December 31, 2009, the remaining balance is EUR32.0 million, the equivalent of US\$45.9 million. In 2009, the interest rate on the loan ranged from 0.83% to 2.28%. The interest expenses incurred in 2009, 2008 and 2007 were US\$1.1 million, US\$2.1 million and US\$0.3 million, respectively, of which US\$0.03 million, US\$0.7 million and US\$0.02 million were capitalized as additions to assets under construction in 2009, 2008 and 2007, respectively.

The total outstanding balance of the facility is collateralized by certain of SMIC Shanghai's equipment at the original cost of US\$115 million as of December 31, 2009.

*2006 Loan Facility (SMIC Tianjin).* In May 2006, SMIC Tianjin entered into a loan facility in the aggregate principal amount of US\$300.0 million from a consortium of Chinese banks. This facility is secured by the manufacturing equipment located in our Tianjin fab, except for the manufacturing equipment purchased using the EUR denominated loan, and our land use rights and plant in proportion to the principal amount outstanding under this facility and the EUR denominated loan. The Company has guaranteed SMIC Tianjin's obligations under this facility. As of December 31, 2009, SMIC Tianjin had drawn down US\$259 million from the facility. The principal amount is repayable starting from February 2010 in six semi-annual installments. As of December 31, 2009, SMIC Tianjin had early repaid US\$80 million and the outstanding balance was \$179 million. In 2009, the interest rate on the loan ranged from 1.69% to 3.11%. The interest expenses incurred for the years ended December 31, 2009, 2008 and 2007 were US\$8.0 million, US\$9.1 million and US\$0.3 million, respectively, of which US\$1.55 million, US\$1.8 million and US\$0.02 million were capitalized as additions to assets under construction in 2009, 2008 and 2007, respectively.

The total outstanding balance of the facility is collateralized by certain plant and equipment with an original cost of US\$631 million as of December 31, 2009.

Any of the following in respect of SMIC Tianjin would constitute an event of default during the term of the loan agreement:

1.  $[\text{Net profit} + \text{depreciation} + \text{amortization} + \text{financial expenses} - (\text{increase of accounts receivable and advanced payments} + \text{increase of inventory} - \text{increase in accounts payable and advanced receipts})] / \text{financial expenses} < 1$ ; and

2. The ratio of total debt to total assets is more than 60% during the ramp up period of SMIC Tianjin and more than 40% after the facility is at full capacity.

SMIC Tianjin has complied with these covenants as of December 31, 2009.

*Short-term Credit Agreements.* As of December 31, 2009, the Company had nineteen short-term credit agreements that provided total credit facilities up to US\$336.9 million on a revolving credit basis. As of December 31, 2009, the Company had drawn down US\$286.9 million under these credit agreements and US\$50.0 million is available for future borrowings. The outstanding borrowings under the credit agreements are unsecured, except for the amount of US\$20.4 million, which is secured by term deposits. The interest expense incurred in 2009 was US\$11.3 million. The interest rate on the loans ranged from 1.11% to 8.75% in 2009.

Please see "Item 8 - Financial Information-Dividends and Dividend Policy" on our ability to pay dividends on our ordinary shares.

Please see "Item 11 - Quantitative and Qualitative Disclosures About Market Risk" regarding the risk of loss related to adverse changes in market prices, including foreign currency exchange rates and interest rates of financial instruments.

**Research and Development, Patents and Licenses, etc.**

Our research and development activities are principally directed toward the development and implementation of more advanced and lower cost process technology. We spent US\$97.0 million in 2007, US\$102.2 million in 2008 and US\$160.8 in 2009 on research and development expenses, which represented 6.3%, 7.6%, and 15.0%, respectively, of our sales in those respective years. Our research and development costs are partially offset by related government subsidies of US\$3.1 million, US\$56.2, and US\$30.4 million in 2007, 2008, and 2009 respectively and include non-recurring engineering costs associated with the ramp-up of a new wafer facility. We plan to continue to invest significant amounts in research and development in 2010 for our 65 and 45 nanometer manufacturing process.

The research and development efforts were focused primarily on our logic platform and system-on-chip (SOC) applications. In June 2009, SMIC achieved Silicon Success with High Performance 45 nanometer Process. For 45 nanometer offerings, we extended the offerings to 40 nanometer and 55 nanometer. We also adopts Cadence DFM Solutions for 65-and-45-nanometer IP/Library Development and Full Chip Production.

We employ approximately 700 research and development engineers. This research and development team includes many experienced semiconductor engineers with advanced degrees from leading universities around the world, as well as top graduates from the leading universities in China. We believe this combination has enabled us to quickly bring our technology in line with the semiconductor industry technology roadmap and ensures that we will have skilled personnel to lead our technology advancement in the future.



## Item 6. Directors, Senior Management and Employees

### Directors and Senior Management

Members of our board of directors are elected by our shareholders. As of May 31, 2010, our board of directors consists of seven directors and one alternate director.

Our executive officers are appointed by, and serve at the discretion of, our board of directors. The following table sets forth the names, age and positions of our directors and executive officers as of May 31, 2010.

<u>Name</u>	<u>Age</u>	<u>Position</u>
<b>Directors</b>		
Jiang Shang Zhou	63	Chairman, Independent Non-Executive Director
David N. K. Wang	63	President, Chief Executive Officer and Executive Director
Chen Shanzhi	41	Non-Executive Director
Gao Yonggang	45	Non-Executive Director
Zhou Jie	42	Non-Executive Director
Tsuyoshi Kawanishi	81	Independent Non-Executive Director
Lip-Bu Tan	50	Independent Non-Executive Director
Wang Zheng Gang	59	Alternate Director to Zhou Jie
<b>Senior Managers</b>		
Chris Chi	59	Chief Business Officer
Simon Yang	51	Chief Operating Officer
Gary Tseng	53	Chief Financial Officer
Barry Quan	58	Chief Administrative Officer
Anne Chen	48	Company Secretary, Hong Kong Representative and Chief Compliance Officer
Samuel Tsou	53	Vice President of Corporate Human Resources
Zhou Mei Sheng	52	Vice President of Technology and Operations Office
John Peng	45	Associate Vice President and General Manager of China BU

#### **Jiang Shang Zhou**

##### **Chairman of the Board, Independent Non-executive Director**

Dr. Jiang Shang Zhou has been our Director since 2006 and is currently the Chairman of our Board. Dr. Jiang is also the chairman of SMIC Shanghai, SMIC Beijing, SMIC Tianjin, SMIC Chengdu, SMIC Shenzhen and SMIC Energy Technology (Shanghai) Corporation, and has been appointed as the Chairman of Siltech Semiconductor Shanghai Corporation, and a director of Admiral Investment Holdings Limited and Semiconductor Manufacturing International (AT) Corporation.

Dr. Jiang is the Chairman of China Semiconductor Industry Association, a committee member of the Shanghai Municipal Standing Committee of Chinese People's Political Consultative Conference, a committee member of the Shanghai Municipal Advisory Committee for Decision making. Dr. Jiang was also the deputy secretary general of Shanghai Government, an officer of and a director commissioner of Shanghai State Owned Assets Placing and Investment Committee officer of the Shanghai Chemical Industrial District Lender Team Office, officer of Shanghai International Automobile City Leader Team Office and officer of the Shanghai Fuel Cell Electric Vehicles (863 major project) Leader Team Office. Dr. Jiang received his bachelor's degree from Tsinghua University in telecommunications and his master's and doctorate degree in information technology from the department of electrical engineering of the Swiss Federal Institute of Technology Zurich Communication System Group.

**David N.K. Wang**  
**President, Chief Executive Officer and Executive Director**

Dr. David N.K. Wang joined our Company as President, Chief Executive Officer and Executive Director in November 2009. Dr. Wang is a well known executive with extensive experience in the global semiconductor industry. He was the CEO of Huahong (Group) Co., Ltd. and Chairman of Huahong NEC, a subsidiary of Huahong Group between September 2005 and June 2007. Prior to joining Huahong Group, Dr. Wang was the Executive Vice President of Applied Materials and President of Applied Materials Asia. Dr. Wang was responsible for Applied Materials' business strategy, planning and execution throughout Asia with a particular focus on building infrastructure worldwide. Prior to joining Applied Materials, Dr. Wang conducted research and made a number of key breakthroughs in semiconductor technology at Bell Laboratories. Dr. Wang is a well recognized and respected innovator with more than 100 patents under his name. Dr. Wang received his Ph.D. in Materials Science and Engineering from the University of California, Berkeley.

Dr. Wang has been appointed as a director of SMIC Shanghai, SMIC Beijing, SMIC Tianjin, SMIC Chengdu, SMIC Shenzhen, Semiconductor Manufacturing International (AT) Corporation, Semiconductor Manufacturing International (BVI) Corporation, Admiral Investment Holdings Limited and Magnificent Tower Limited. He has also been appointed as a director of SMIC Shanghai (Cayman) Corporation, SMIC Beijing (Cayman) Corporation, SMIC Tianjin (Cayman) Corporation, SMIC Shenzhen (Cayman) Corporation, Semiconductor Manufacturing International (Solar Cell) Corporation, SilTech Semiconductor Corporation, and each of their subsidiaries.

**Chen Shanzhi**  
**Non-executive Director**

Dr. Chen Shanzhi has been our Director since 2009. Dr. Chen is currently the VP, CTO and CIO of China Academy of Telecommunications Technology (Datang Telecom Technology & Industry Group). He is also the Vice President of Datang Telecom Technology & Industry Holdings Co. Ltd., where he is responsible for technology and standard development, corporate IT, and strategic alliances and cooperation. Dr. Chen is a member of the expert group of the Information technology of the National High Technology Research and Development Program of China (863 Program). Dr. Chen received his Bachelor of Engineering from Xidian University, Master of Engineering from Research Institute of Ministry of Posts and Telecommunications and Ph. D. from Beijing University of Posts and Telecommunications. Dr. Chen has 18 years of experience in the field of information and communication technology where he has been involved in research and development, technology and strategy management. He has published a book and nearly 100 papers in the domestic and foreign academic conferences and publications, most of which were published by SCI and EI and many of his papers have received awards. At present, he has applied for 10 national invention patents.

**Gao Yonggang**  
**Non-executive Director**

Mr. Gao Yonggang has been our Director since 2009, and has been appointed as a director of certain of our subsidiaries, namely, SMIC Beijing, SMIC Chengdu and SMIC Shenzhen. Mr. Gao is currently the Chief Financial Officer of China Academy of Telecommunications Technology (Datang Telecom Technology & Industry Group) and the chairman of Datang Capital (Beijing) Co., Ltd. He is also a director and the Senior Vice President of Datang Telecom Technology & Industry Holdings Co., Ltd., a director of the China Accounting Society, and a member of the Central Enterprise Youth Federation. Mr. Gao has more 20 years of experience in the area of financial management and has worked as Chief Financial Officer or person in charge of finance in various industries such as retail, industrial, municipal utilities, and many different type of firm like stateowned enterprises, private, joint venture enterprises, government agencies. In November 2004, he was appointed as the Chief Financial Officer of China Academy of Telecommunications Technology by the Stateowned Assets Supervision and Administration Commission. Mr. Gao has in-depth studies in the field of financial investment where he has been involved in a number of key research projects and has many publications in these areas.

**Zhou Jie**  
**Non-executive Director**

Mr. Zhou Jie has been our Director since 2009. Mr. Zhou is an executive director and the executive vice president of Shanghai Industrial Investment (Holdings) Co. Ltd. (“SIIC”), an executive director and the executive deputy CEO of Shanghai Industrial Holdings Limited (“SIHL”). He is also a director of certain subsidiaries of SIIC and SIHL. Mr. Zhou graduated from Shanghai Jiaotong University with a master’s degree in management science and engineering. He is currently a non-executive director of Shanghai Fudan-Zhangjiang Bio-Pharmaceutical Co. Ltd.. He was the deputy general manager of the investment banking head office of Shanghai Wanguo Holdings Ltd. (now Shenyin & Wanguo Securities Co. Ltd.) and had held the positions of the chairman and general manager of Shanghai S.I. Capital Co. Ltd. He has over 10 years’ experience in investment banking and capital market operation.

**Wang Zheng Gang (Alternate Director to Mr. Zhou Jie)**

Mr. Wang Zheng Gang has been our Director since 2007 and he is currently the alternate director of Mr. Zhou Jie. Mr. Wang is the chief representative of the Shanghai Representative Office of Shanghai Industrial Holdings Limited and chairman of SIIC Management (Shanghai) Ltd. He is also the vice chairman of Bright Dairy and Food Co. Ltd, a director of Shanghai Urban Development (Holdings) Co. Ltd., Shanghai Hu-Ning Expressway (Shanghai Section) Co. Ltd., Shanghai Luqiao Development Co. Ltd, Shanghai Shengyu Highway Construction Development Co. Ltd., and Shanghai SIIC South Pacific Hotel Co. Ltd. He was the head of Shanghai Dongfeng Rubber No. 2 Factory, Principal of Shanghai Dongfeng Farm, vice chairman and general manager of Shanghai Agricultural Industrial and Commercial Corp. Ltd. and a director and general manager of SIIC Africa Enterprise Ltd. and general manager of the enterprise management department of Shanghai Industrial Investment (Holdings) Co. Ltd. He graduated from the School of Management of Fudan University with a master’s degree in economics and has over 31 years’ experience in enterprise management.

**Tsuyoshi Kawanishi**  
**Independent Non-executive Director**

Mr. Tsuyoshi Kawanishi has been our Director since 2001 and is also the Chairman of SMIC Japan Corporation. Mr. Kawanishi has more than 50 years of experience in the electronics industry with Toshiba Corporation, where he served as, among other positions, senior executive vice president and senior advisor. Mr. Kawanishi is an advisor to Accenture Ltd. and a number of private companies. Mr. Kawanishi has been proactively leading the semiconductor industry through his strong leadership as an advisor to the Semiconductor Equipment and Materials International (SEMI) and as the chairman of the SIP Consortium of Japan.

**Lip-Bu Tan**  
**Independent Non-executive Director**

Mr. Lip-Bu Tan has been our Director since 2002 and is also a director of SMIC Tianjin. Mr. Tan is the Founder and Chairman of Walden International, a leading venture capital firm managing over US\$1.9 billion in committed capital. He concurrently serves as President and Chief Executive Officer of Cadence Design Systems, Inc., and has been a member of the Cadence Board of Directors since 2004. He also serves on the Boards of Flextronics International (NASDAQ: FLEX), SINA (NASDAQ: SINA), Global Semiconductor Alliance and several other private companies. Mr. Tan received his B.S. from Nanyang University in Singapore, his MBA from the University of San Francisco, and his M.S. in Nuclear Engineering from the Massachusetts Institute of Technology.

**Senior Management**

**Chris Chi, Chief Business Officer**

Prior to joining our company as Chief Business Officer, Mr. Chi was a consultant for CSquare Consulting. Mr. Chi first joined SMIC in 2008 as Senior Vice President of Corporate Marketing & Sales. From 1981 to 2007, he held management positions with TPO Corporation, Freescale Semiconductor, UMC Europe, UMCi Ltd. Singapore, UMC, Chartered Semiconductor Manufacturing Ltd., and Rockwell International Corporation. Mr. Chi is a Ph.D. candidate in Materials Science and he received his master's degree in Materials Engineering from the University of California, Los Angeles. With more than 30 years of experience in the semiconductor industry, Mr. Chi is the holder of 5 patents.

**Simon Yang, Chief Operating Officer**

Prior to joining our company as Chief Operating Officer in 2010, Dr. Yang was the Chief Technology Officer and Senior Vice President of Operations of Chartered Semiconductor. He first joined SMIC in 2001 as the Vice President of Technology Development and Senior Vice President of Technology and Manufacturing of our Company. From December 2004 to September 2005, he was the Chief Executive Officer and President of CiWest Corporation. Dr. Yang received his PhD in Material Engineering and Master of Science in Physics from Rensselaer Polytechnic Institute, and his Bachelor of Science in Electrical Engineering from Shanghai University of Science and Technology. With more than 20 years of experience in the semiconductor industry, Dr. Yang is a holder of more than of 20 patents and published more than 30 technical articles.

**Gary Tseng, Chief Financial Officer**

Prior to joining our company in 2010 as Chief Financial Officer, in 2008, Mr. Tseng was the Chief Operating Officer at China Solar Corporation, a thin-film solar manufacturing start-up company in Shandong, China. From 2004 to 2005, he founded Digital Display Manufacturing Co., a plasma display manufacturing start-up company in Shanghai and he was the Chief Executive Officer. From 1999 to 2003, Mr. Tseng was the Chief Investment Officer and Senior Vice President of Quanta Computer Company. From 1997 to 1998, he was the Chief Financial Officer and Senior Vice President of United Microelectronics Corporation. From 1991 to 1997, he was the Chief Financial Officer and Senior Vice President of Taiwan Semiconductor Manufacturing Company Limited. From 1983 to 1991, Mr. Tseng held management positions as Finance Manager at Philips Taiwan Limited and Corporate Treasurer for all the Philips companies in Taiwan. In addition, he was the Fab Accounting Manager for Philips Semiconductor operation in the USA and Philips Semiconductor packaging operation in Taiwan. Mr. Tseng received his Master of Business Administration from University of Missouri-Columbia, Missouri in the USA and his Bachelor of Science in Accounting from National Cheng-Kong University in Taiwan. In addition, Mr. Tseng is a Certified Public Accountant, Certified Management Accountant and Certified Internal Auditor in the USA.

**Barry Quan, Chief Administrative Officer**

Mr. Quan joined our company as the Chief Administrative Officer in 2010. He was the President and Legal Representative of Applied Materials China from 2007 to 2010, where he was responsible for the overall operations of Applied China, including the completion of the Xian Technology Center, as well as driving growth strategies to meet overall objectives in China for all business units. Mr. Quan first joined Applied Materials in 1994, where he went on to serve in various legal and management roles. He had responsibilities for managing Applied's global general legal services as Corporate Vice President of Legal Affairs. In 1999, Mr. Quan was also named as Applied's first Ombudsman, where he created and implemented an ethics and compliance program worldwide. Between 2005 and 2007, Mr. Quan joined the Huahong Group in Shanghai, China as a Vice President and Chief Administrative Officer. In this role, he managed the legal, human resources, facilities, export licensing and other support functions. Mr. Quan received a bachelor of science degree in economics and finance from the University of California, Berkeley and a J.D. from St. John's University.

**Anne Chen, Company Secretary and Chief Compliance Officer**

Ms. Chen joined our company in 2001 and is our Hong Kong Representative, Company Secretary and Chief Compliance Officer. Ms. Chen is admitted as a solicitor in Hong Kong, England and Wales and Australia and was admitted as an advocate and solicitor in Singapore. She had served as a deputy adjudicator of the Small Claims Tribunal in Hong Kong in 1999 and has served as the President of the Hong Kong Federation of Women Lawyers from 2000 to 2002 and since 2008. Prior to joining us in 2001, she had been a practicing solicitor in Hong Kong since 1987.

**Samuel Tsou, Vice President of Corporate Human Resources**

Mr. Tsou first joined SMIC in 2005 and is currently the Vice President of Corporate Human Resources. Prior to joining SMIC, he held management positions with Lam Research USA, Taiwan Semiconductor Manufacturing Company Limited, Lam Research Asia, Winbond Electronics and Philips Semiconductor Holland and United Microelectronics Corporation. Mr. Tsou received his B.S. in Physics from National Taiwan University and his Master (major in Counseling and Administration) from Harvest Seminary USA.

**Zhou Mei Sheng, Vice President of Technology and Operations Office**

Dr. Zhou joined SMIC in 2010 as Vice President of Technology & Operations Office. Dr. Zhou received BSc & MS degree from Fudan University China in 1982 & 1985 respectively, and Ph.D. degree in Chemistry from Princeton University in 1990. In the earlier part of her professional career, she has lectured and researched in distinguished universities like Fudan University China, Rochester University USA and National University of Singapore. Since 1994, she has been working in semiconductor industries. In her 7 years with Chartered Semiconductor Manufacturing, Dr. Zhou worked in various modules like Etch, Clean Tech, PVD, CMP and BEOL and rose from a Senior Engineer, Manager, Deputy Director to the position of fellow, TD-BEOL AMD. In 2001, she moved to TSMC, Taiwan, leading a department in AMTD for Advanced Equipment, Exploratory Module Technology as well as the development of integrated advanced process control for < 90 nm technology. In the period of 2003–2005, Dr. Zhou served as Deputy Director in UMC, contributed to the start-up of its 12' Fab operation as well as initiating the manufacturing technology development team for the advanced 12' Wafer fab. She returned back to Chartered as AMTD Senior Director in 2005 and is responsible for the module technology development in supporting Chartered's business development & growth. Dr. Zhou has been awarded with more than 125 US. patents and published over 40 papers as co-inventor/author.

## **John Peng, Associate Vice President and General Manager of China BU**

Mr. Peng first joined SMIC in 2001 and is currently General manager of China Business Unit. Prior to joining SMIC, he was the Sr. Operation Director of Wuxi CSMC-Hi Semiconductor Company Limited and was responsible for Fab, PC&MC, Facility and IT. He was also the deputy general manager and the Fab director of Huajing MOS BU, responsible for China national 908 project AT&T (Lucent) technology transfer and built China's most advanced 6' fab in 1996. He received his Bachelor's degree in Physics from Sichuan University and his Master's degree in 1988 in Microelectronics from XiDian University.

Except as described below in "Item 10 - Additional Information - Material Contracts - Share Purchase Agreement with Datang", no shareholder has a contractual right to designate a person to be elected to our board of directors.

There are no family relationships among any of our directors and executive officers.

## **Director and Executive Compensation**

The aggregate cash compensation that we paid to all of our executive officers as of December 31, 2009 for services rendered to us and our subsidiaries during 2009 was approximately US\$1,223,022. Of this amount, we paid (i) Dr. David Wang, our president and chief executive officer approximately US\$43,032 in salary, housing allowances, other allowances and benefits in kind in 2009. In 2009, no cash compensation was provided to directors that are not employees. In December 2009, our board of directors approved certain remuneration packages (including cash fees) to our directors (subject to their acceptance).

We do not provide pension, retirement or similar benefits to our executive officers and directors except statutorily required benefits.

In 2009, we have granted options to purchase an aggregate of 7,900,000 ordinary shares under our 2004 Stock Option Plan to certain of our executive officers. Our 2004 Stock Option Plan is described below. The exercise price of the options granted to our executive officers in 2009 to purchase ordinary shares under the 2004 Stock Option Plan is US\$0.0348 per share. The expiration dates of the options are February 17, 2019.

Dr. David N. K. Wang, our President, Chief Executive Officer and Executive Director of the Company, has entered into an employment agreement and a service contract with the Company. Pursuant to the agreements, Dr. Wang will be entitled to an annual base compensation of US\$300,000 and will be granted equity awards amounting to 0.4% of the total outstanding ordinary shares of the Company on the date of grant (70% of which will be granted as share options and 30% will be granted as restricted share units). He will also be entitled to a performance bonus of US\$225,000 (payable if and when the Company achieves profitability over one fiscal year, as indicated by the Board's approved annual audited financial statements for that fiscal year).

On February 17, 2009, each of Jiang Shang Zhou, Tsuyoshi Kawanishi, Lip-Bu Tan, Richard Ru Gin Chang, (our former President, Chief Executive Officer and Executive Director who resigned on November 9, 2009) Yang Yuan Wang, (our former Independent Non-executive Director who resigned on June 23, 2009) and Edward S Yang, (our former Independent Non-executive Director who resigned on November 9, 2009) was granted an option to purchase 1,000,000 ordinary shares of our company ("Ordinary Shares") at a price per Ordinary Share of US\$0.0348. 50% percent of these options vested on February 17, 2010 and the remaining 50% will be vested on February 17, 2011. These options will expire on the earlier of February 17, 2019 or 120 days after termination of the director's service to the Board, except for the options granted to (i) Yang Yuan Wang (who resigned as an Independent Non-executive Director on June 23, 2009 but continued to act as our Honorary Chairman and Chief Scientific Advisor) which will expire after termination of his services to our company in his capacity as our Honorary Chairman and/or Chief Scientific Advisor; and (ii) Richard Ru Gin Chang (who resigned as President, Chief Executive Officer and Executive Director on November 9, 2009 but continued to act as our company's Advisor) which will expire after termination of his services to the company in his capacity as our Advisor. As of December 31, 2009, these options have not been exercised.

On April 25, 2004, the compensation committee approved a profit-sharing plan for the benefit of our employees, including our executive officers. Under our profit-sharing plan, a participant who is an employee of the company at the end of a fiscal quarter will be eligible to receive a percentage of our profits for that quarter. No compensation was received by our executive officers in 2007, 2008 and 2009 as a result of their participation in this plan.

**Board Practices**

***Board of Directors***

As of December 31, 2009, our board of directors consisted of seven directors and one alternate director. Directors may be elected to hold office until the expiration of their respective terms upon a resolution passed at a duly convened shareholders meeting by holders of a majority of our outstanding shares being entitled to vote in person or by proxy at such meeting. Our board is divided into three classes with no more than one class eligible for re-election at any annual shareholders meeting.

The Class I directors were elected for a term of three years beginning from June 2, 2008, which is the date of the 2008 annual general meeting of our shareholders. The Class II directors were elected for a term of three years beginning from June 23, 2009, the date of the 2009 annual general meeting of our shareholders. The Class III directors were elected for a term of three years beginning from June 3, 2010, which is the date of the 2010 annual general meeting of our shareholders.

The following table sets forth the names and classes of our current directors:

Class I	Class II	Class III
Gao Yonggang	Chen Shanzhi	Tsuyoshi Kawanishi
David N.K. Wang	Jiang Shang Zhou	Zhou Jie
	Lip-Bu Tan	Wang Zheng Gang (alternate director to Zhou Jie)

Please see Item 7 “Related Party Transactions - Indemnification Agreements and Service Contracts” for a description of the service contracts we have entered into with our directors.

## Committees of Our Board of Directors

Our board of directors has an audit committee and a compensation committee. The composition and responsibilities of these committees are described below.

**Audit Committee.** As of December 31, 2009, the members of the Audit Committee were Lip-Bu Tan (chairman of Audit Committee), Jiang Shang Zhou and Gao Yonggang. None of these members of the Audit Committee has been an executive officer or employee of the company or any of its subsidiaries. In addition to acting as Audit Committee member of the company, Lip-Bu Tan, one of the members of the Audit Committee, currently also serves on the audit committee of two other publicly traded companies, namely SINA Corporation and Flextronics International Ltd.. In general and in accordance with section 303A.07(a) of the Listed Company Manual of the New York Stock Exchange, the Board considered and determined that such simultaneous service would not impair the ability of Mr. Tan to effectively serve on our Audit Committee.

The responsibilities of the audit committee include, among other things:

- making recommendations to the board of directors concerning the appointment, reappointment, retention, evaluation, oversight and termination of compensating and overseeing the work of our independent auditor, including reviewing the experience, qualifications and performance of the senior members of the independent auditor team, and pre-approving all non-audit services to be provided by our independent auditor;
- approving the remuneration and terms of engagement of our independent auditor;
- reviewing reports from our independent auditor regarding its internal quality-control procedures and any material issues raised in the most recent review or investigation of such procedures and regarding all relationships between us and the independent auditor;
- pre-approving the hiring of any employee or former employee of our independent auditor who was a member of the audit team during the preceding two years;
- reviewing our annual and interim financial statements, earnings releases, critical accounting policies and practices used to prepare financial statements, alternative treatments of financial information, the effectiveness of our disclosure controls and procedures and important trends and developments in financial reporting practices and requirements;
- reviewing the planning and staffing of internal audits, the organization, responsibilities, plans, results, budget and staffing of our internal audit department and the quality and effectiveness of our internal controls;
- reviewing our risk assessment and management policies;
- reviewing any legal matters that may have a material impact and the adequacy and effectiveness of our legal and regulatory compliance procedures;
- establishing procedures for the treatment of complaints received by us regarding accounting, internal accounting controls, auditing matters, potential violations of law and questionable accounting or auditing matters; and
- obtaining and reviewing reports from management, our internal auditor and our independent auditor regarding compliance with applicable legal and regulatory requirements.

During 2009, the audit committee reviewed:

- the financial reports for the year ended December 31, 2008 and the six month period ended June 30, 2009;
- the quarterly earnings releases and any updates thereto;
- the report and management letter submitted by our outside auditors summarizing the findings of and recommendations from their audit of our financial reports;
- our budget for 2009;
- the findings and recommendations of our outside consultants regarding our compliance with the requirements of the Sarbanes-Oxley Act;
- the effectiveness of our internal control structure in operations and financial reporting integrity and compliance with applicable laws and regulations in collaboration with the Internal Audit Department and reported to our board of directors;
- the findings of our risk management committee which assesses risks relating to the company and those of the compliance office, which monitors our compliance with the corporate governance code and insider trading policy;
- the audit fees for our outside auditors; and
- our outside auditors' engagement letters

The audit committee reports its work, findings, and recommendations to the board of directors during each quarterly board meeting.

The audit committee meets in person at least on a quarterly basis and on such other occasions as may be required to discuss and vote upon significant issues affecting the audit policy of the company. The regular meeting schedule for a year is planned in the preceding year. The Company's Secretary assists the chairman of the audit committee in preparing the agenda for meetings and assists the audit committee in complying with relevant rules and regulations. The relevant papers for the audit committee meetings are dispatched to audit committee members in accordance with applicable rules and regulations governing the company. Members of the audit committee may include matters for discussion in the agenda if the need arises. Upon the conclusion of the audit committee meeting, minutes are circulated to the members of the audit committee for their comment and review prior to their approval of the minutes at the following or the subsequent audit committee meeting.

At each quarterly audit committee meeting, the audit committee reviews with the chief financial officer and our outside auditors, the financial statements for the financial period and the financial and accounting principles, policies and controls of the company and its subsidiaries. In particular, the Committee discusses (i) the changes in accounting policies and practices, if any; (ii) the going concern assumptions, (iii) compliance with accounting standards and applicable rules and other legal requirements in relation to financial reporting and (iv) our internal controls relating to financial reporting. Upon the recommendation of the audit committee, the Board will approve the financial statements.

**Compensation Committee.** As of December 31, 2009, the members of our compensation committee were Mr. Lip-Bu Tan (chairman of Compensation Committee), Mr. Tsuyoshi Kawanishi and Mr. Zhou Jie (with Mr. Wang Zheng Gang as his alternate). None of these members of the compensation committee has been an executive officer or employee of the company or any of its subsidiaries.

The responsibilities of the compensation committee include, among other things:

- approving and overseeing the total compensation package for our executive officers and any other officer, evaluating the performance of and determining and approving the compensation to be paid to our chief executive officer and reviewing the results of our chief executive officer's evaluation of the performance of our other executive officers;
- reviewing and making recommendations to our board of directors with respect to director compensation, including equity-based compensation;
- administering and periodically reviewing and making recommendations to the board of directors regarding the long-term incentive compensation or equity plans made available to the directors, employees and consultants;
- reviewing and making recommendations to the board of directors regarding executive compensation philosophy, strategy and principles and reviewing new and existing employment, consulting, retirement and severance agreements proposed for the company's executive officers; and
- ensuring appropriate oversight of our human resources policies and reviewing strategies established to fulfill our ethical, legal and human resources responsibilities.

In addition to reviewing the remuneration of the non-executive directors and the members of our management, the compensation committee reviewed and approved the granting of stock options and restricted share units pursuant to the terms of the Option Plans in 2009. The compensation committee also reviewed and approved on at least a quarterly basis any exception to the compensation guidelines and leave of absence policy of the Company.

The compensation committee reports its work, findings and recommendations to the board of directors during each quarterly board meeting.

The compensation committee meets in person at least on a quarterly basis and on such other occasions as may be required to discuss and vote upon significant issues affecting our compensation policy. The regular meeting schedule for a year is planned in the preceding year. The Company's Secretary assists the chairman of the compensation committee in preparing the agenda for meetings and assists the compensation committee in complying with relevant rules and regulations. The relevant papers for the compensation committee meeting are distributed to compensation committee members in accordance with relevant rules and regulations applicable to us. Members of the compensation committee may include matters for discussion in the agenda if the need arises. Upon the conclusion of the compensation committee meeting, minutes are circulated to the members of the compensation committee for their comment and review prior to their approval of the minutes at the following or a subsequent compensation committee meeting.

## Employees

The following table sets forth, as of the dates indicated, the number of our employees serving in the capacities indicated:

Function	As of December 31,		
	2007	2008	2009
Managers	916	1,015	1,064
Professionals <sup>(1)</sup>	4,096	4,465	4,510
Technicians	4,806	4,837	4,484
Clerical staff	287	281	249
Total <sup>(2)</sup>	<u>10,105</u>	<u>10,598</u>	<u>10,307</u>

(1) Professionals include engineers, lawyers, accountants and other personnel with specialized qualifications, excluding managers.

(2) Includes 276, 50 and 372 temporary and part-time employees in 2007, 2008 and 2009, respectively.

The following table sets forth, as of the dates indicated, a breakdown of the number of our employees by geographic location:

Location of Facility	As of December 31,		
	2007	2008	2009
Shanghai	6,292	6,632	6,460
Beijing	1,877	1,674	1,552
Tianjin	874	958	997
Chengdu	1,023	1,259	1,104
Shenzhen	—	33	154
United States	18	16	17
Europe	8	11	9
Japan	9	8	8
Hong Kong	4	7	6
Total	<u>10,105</u>	<u>10,598</u>	<u>10,307</u>

Our employees are not covered by any collective bargaining agreements.

## Share Ownership

The table below sets forth the ordinary shares beneficially owned by each of our directors and options to purchase ordinary shares as of May 31, 2010:

Name of Director	Current	Options to Purchase Ordinary Shares		Awards of Restricted
	Shareholding	Number of Options	Exercise Price	Share Units
Jiang Shang Zhou	—	16,674,388 <sup>(1)(2)</sup>	US\$0.0348 - US\$0.0995	6,717,594 <sup>(3)</sup>
David N.K. Wang	—	62,697,553 <sup>(2)</sup>	US\$ 0.0995	26,870,379 <sup>(4)</sup>
Tsuyoshi Kawanishi	—	6,134,877 <sup>(1)(5)(6)</sup>	US\$0.0348 —US\$0.1007	—
Lip-Bu Tan	—	4,634,877 <sup>(1)(6)</sup>	US\$0.0348 —US\$0.1007	—
Chen Shanzhi	—	3,145,319 <sup>(7)</sup>	US\$0.0827	—
Gao Yonggang	—	3,145,319 <sup>(7)</sup>	US\$0.0827	—
Zhou Jie	—	—	—	—
Wang Zheng Gang	—	—	—	—

Notes:

1. On February 17, 2009, each of Mr. Jiang, Mr. Kawanishi and Mr. Tan and was granted an option to purchase 1,000,000 ordinary shares at a price per ordinary share of US\$0.0348. These options will expire on the earlier of February 17, 2019 or 120 days after termination of the director's service to the Board. As at May 31, 2010, none of these options have been exercised.
2. On February 23, 2010, Mr. Jiang and Dr. Wang were granted an option to purchase 15,674,388 and 62,697,553 ordinary shares, respectively, at a price per ordinary share of US\$0.0995. These options will expire on the earlier of February 22, 2020 or 120 days after termination of the director's service to the Board. As at May 31, 2010, none of these options have been exercised.
3. On February 23, 2010, Mr. Jiang was granted an award of 6,717,594 Restricted Share Units (each representing the right to receive one ordinary share) pursuant to our 2004 Equity Incentive Plan. These Restricted Share Units shall vest over 4 years as follows: 25% of the Restricted Share Units shall vest on each anniversary of 23 February 2010.
4. On February 23, 2010, Dr. Wang was granted an award of 26,870,379 Restricted Share Units (each representing the right to receive one Ordinary Share) pursuant to our 2004 Equity Incentive Plan. These Restricted Share Units shall vest over 4 years as follows: 25% of the Restricted Share Units shall vest on each anniversary of 23 February 2010, provided that Dr. Wang has remained an employee of the Company through the applicable vesting dates.
5. On July 11, 2002, the compensation committee issued Mr. Kawanishi an option to purchase 500,000 ordinary shares pursuant to the terms of the 2001 Stock Option Plan. This option will expire on July 11, 2012. On January 15, 2004, the board issued him an option to purchase 1,000,000 ordinary shares pursuant to the terms of the 2001 Stock Option Plan. This option will expire on January 15, 2014. The exercise prices of the options are US\$0.05 and US\$0.10, respectively.
6. On February 23, 2010, each of Mr. Kawanishi and Mr. Tan was granted an option to purchase 3,134,877 ordinary shares at a price per ordinary share of US\$0.0995. These options will expire on the earlier of February 22, 2020 or 120 days after termination of the director's service to the Board. As at May 31, 2010, none of these options have been exercised.
7. Each of Mr. Chen and Mr. Gao was granted an option to purchase 3,145,319 ordinary shares at a price per ordinary share of US\$0.0827. These options will expire on the earlier of May 23, 2020 or 120 days after termination of the director's service to the Board. As at May 31, 2010, none of these options have been exercised.

The share holdings set forth above excludes shares beneficially owned by entities affiliated with our directors. Each of our directors disclaims beneficial ownership of the shares beneficially owned by such affiliated entity, except to the extent of such director's pecuniary interest therein as disclosed above.

The exercise price for our options is denominated in Hong Kong dollars. This annual report translates the Hong Kong dollar exercise prices for our options into U.S. dollars based on exchange rates that were in effect as of the applicable option grants dates

The compensation committee has issued each of our executive officers options to purchase ordinary shares pursuant to our 2001 Regulation S Stock Option Plan, 2001 Regulation S Preference Shares Stock Plan and the 2004 Stock Option Plan, as applicable, and restricted share units that represent rights to receive ordinary shares pursuant to our 2004 Equity Incentive Plan. The exercise price of the options range from US\$0.01 to US\$0.35. The options expire between September 23, 2011 and May 23, 2020. The restricted share units expire between July 26, 2014 and May 23, 2020. The majority of the options and restricted share units are subject to a four-year vesting period. Each executive officer owns less than 1% of the total outstanding shares of the company.

### ***2001 Stock Plan and 2001 Regulation S Stock Plan***

On March 28, 2001, our board of directors and shareholders adopted our 2001 Stock Plan and our 2001 Regulation S Stock Plan. Under these plans, our directors, employees and consultants are eligible to acquire ordinary shares pursuant to options. At the time of adoption, 250,000,000 post-split ordinary shares were reserved for issuance under the 2001 Stock Plan and 470,000,000 post-split ordinary shares were reserved for issuance under the 2001 Regulation S Stock Plan. On August 27, 2003, our shareholders approved an increase in the number of authorized shares reserved under the plans of 3,438,900 post-split ordinary shares, increasing the total number of authorized shares reserved under the plans to 723,438,900 post-split ordinary shares. On August 27, 2003, September 22, 2003 and December 4, 2003, our shareholders approved additional increases in the number of shares reserved under our 2001 Regulation S Stock Plan of up to 325,000,000, 21,499,990 and 235,089,480 post-split ordinary shares, respectively, which amounts were to be adjusted from time to time to equal 10% of the post-split ordinary shares issuable upon the conversion of all Series C convertible preference shares and Series D convertible preference shares then outstanding. As of December 31, 2009, there were 998,675,840 post-split ordinary shares authorized for issuance under the plans, 285,423,228 post-split ordinary shares subject to outstanding options under the plans and 398,867,596 post-split ordinary shares outstanding from the exercise of options granted under the plans. These plans terminate on December 4, 2013 but may be terminated earlier by our board of directors.

Stock options granted under the 2001 Stock Plan may be incentive stock options, or ISOs, which are intended to qualify for favorable U.S. federal income tax treatment under the provisions of Section 422 of the U.S. Internal Revenue Code of 1986, as amended, or U.S. Internal Revenue Code, or non-qualified stock options, or NSOs, which do not so qualify. Stock options granted under the 2001 Regulation S Stock Plan are NSOs. The aggregate fair market value of the ordinary shares represented by any given optionee's ISOs that become exercisable in any calendar year may not exceed US\$100,000. Stock options in excess of this limit are treated as NSOs.

The board of directors, the compensation committee, and the non-executive option grant committee administer the 2001 Stock Plan and 2001 Regulation S Stock Plan. The compensation committee selected the eligible persons above a certain compensation grade to whom options were granted and determined the grant date, amounts, exercise prices, vesting periods and other relevant terms of the stock options, including whether the options will be ISOs or NSOs. The non-executive option grant committee selected the eligible persons below a certain compensation grade to whom options were granted and determined the grant date, amounts, exercise prices, vesting periods and other relevant terms of stock options within parameters established by the compensation committee and subject to compensation committee ratification. The exercise price of ISOs granted under the 2001 Stock Plan and NSOs granted to residents of California under the 2001 Stock Plan may not be less than 100% and 85%, respectively, of the fair market value of our ordinary shares on the grant date. The exercise price of NSOs not granted to residents of California under either our 2001 Stock Plan or our 2001 Regulation S Stock Plan can be determined by the board of directors, the compensation committee or the non-executive option grant committee in their discretion.

Stock options granted under the 2001 Stock Plan and 2001 Regulation S Stock Plan may be exercised at any time after they vest, and, in certain instances, prior to vesting. Shares purchased when an option is exercised prior to vesting are subject to our right of repurchase to the extent unvested in the event of the termination of service of the optionee. In the event of the termination of service of an optionee, the unvested portion of a stock option is forfeited and the vested portion terminates six months after a termination of service due to the death or permanent disability of the optionee or 30 days after termination of service for any other reason or such longer periods as may be provided for in option agreements with our optionees. Stock options are generally not transferable during the life of the optionee.

In the event of a change of control (as defined in the plans) or a merger of our company, each outstanding stock option may be assumed or an equivalent stock option or right may be substituted by the successor corporation. In the event that no such substitution or assumption occurs, the outstanding stock options will automatically vest and become exercisable for a period of 15 days, after which the stock options will terminate.

We have not issued stock options under the 2001 Stock Plan or the 2001 Regulation S Stock Plan since the completion of the global offering.

#### ***2001 Preference Shares Stock Plan and 2001 Regulation S Preference Shares Stock Plan***

On April 12, 2001, our board of directors and shareholders adopted our 2001 Preference Shares Stock Plan and our 2001 Regulation S Preference Shares Stock Plan. Under these plans, our directors, employees and consultants were eligible to acquire Series A convertible preference shares prior to the completion of the global offering and ordinary shares upon or following the completion of the global offering, pursuant to options. At the time of adoption, 16,000,000 Series A preference shares and ten times that number of ordinary shares (on a post-split basis) were reserved for issuance under the 2001 Preference Shares Stock Plan, and 20,000,360 Series A convertible preference shares and ten times that number of ordinary shares (on a post-split basis) were reserved for issuance under the 2001 Regulation S Preference Shares Stock Plan. On August 19, 2002, our shareholders approved an increase in the number of shares issuable under the plans of 18,000,180 Series A convertible preference shares, increasing the total number of authorized shares reserved under the plans to 54,000,540 Series A convertible preference shares. On August 27, 2003, our shareholders approved a net decrease in the number of shares issuable under the plans of 343,890 Series A convertible preference shares, decreasing the total number of authorized shares reserved under the plans to 53,656,650 Series A convertible preference shares. Upon the conversion of our preference shares into ordinary shares in connection with the global offering, options granted under the 2001 Preference Shares Stock Plan and the 2001 Regulation S Preference Shares Stock Plan converted into options to purchase ordinary shares. As of December 31, 2009, there were 47,079,450 ordinary shares subject to outstanding options under the plans, and there were 400,747,130 ordinary shares outstanding from the exercise of options granted under the plans. Our board of directors has elected not to grant any further options under these plans.

Stock options granted under the 2001 Preference Shares Stock Plan may be ISOs or NSOs. Stock options granted under the 2001 Regulation S Preference Shares Stock Plan are NSOs. The aggregate fair market value of the shares represented by any given optionee's ISOs that become exercisable in any calendar year may not exceed US\$100,000. Stock options in excess of this limit are treated as NSOs.

The board of directors, the compensation committee and the non-executive option grant committee administer the 2001 Preference Shares Stock Plan and 2001 Regulation S Preference Shares Stock Plan. The compensation committee selected the eligible persons above a certain compensation grade to whom options were granted and determined the grant date, amounts, exercise prices, vesting periods and other relevant terms of the stock options, including whether the options will be ISOs or NSOs. The non-executive option grant committee selected the eligible persons below a certain compensation grade to whom options were granted and determined the grant date, amounts, exercise prices, vesting periods and other relevant terms of stock options within parameters established by the compensation committee and subject to compensation committee ratification. The exercise price of ISOs granted under the 2001 Preference Shares Stock Plan and NSOs granted to residents of California under the 2001 Preference Shares Stock Plan may not be less than 100% and 85%, respectively, of the fair market value of our Series A convertible preference shares on the grant date. The exercise price of NSOs not granted to California residents under either our 2001 Preference Shares Stock Plan or our 2001 Regulation S Preference Shares Stock Plan can be determined by the board of directors, the compensation committee or the non-executive option grant committee in their discretion.

Stock options granted under the 2001 Preference Shares Stock Plan and 2001 Regulation S Preference Shares Stock Plan may be exercised at any time after they vest, and, in certain instances, prior to vesting. Shares purchased when an option is exercised prior to vesting are subject to our right of repurchase to the extent unvested in the event of the termination of service of the optionee. In the event of the termination of service of an optionee, the unvested portion of a stock option is forfeited and the vested portion terminates six months after a termination of service due to the death or permanent disability of the optionee or 30 days after termination of service for any other reason or such longer periods as may be provided for in option agreements with our optionees. Stock options are generally not transferable during the life of the optionee.

In the event of a change of control (as defined in the plans) or a merger of our company, each outstanding stock option may be assumed or an equivalent stock option or right may be substituted by the successor corporation. In the event that no such substitution or assumption occurs, the outstanding stock options will automatically vest and become exercisable for a period of 15 days, after which the stock options will terminate.

We have not issued stock options under the 2001 Preference Shares Stock Plan or the 2001 Regulation S Preference Shares Stock Plan since the completion of the global offering.

#### ***2004 Global Equity Incentive Compensation Program***

The Company's shareholders adopted the Stock Option Plan, the EIP and the Employee Stock Purchase Plan (the "ESPP", together with the Stock Option Plan and the EIP, the "Option Plans") to attract and retain its employees.

##### **Stock Option Plan**

The following is a summary of the principal terms of the Stock Option Plan conditionally adopted by the Company by way of shareholders' resolution dated February 16, 2004 and Directors' resolutions passed on January 16, 2004. Adoption of the Stock Option Plan took effect on March 18, 2004 being the first date of dealings in the ordinary shares.

##### **Summary of the terms of the Stock Option Plan**

###### **(a) Purpose of the Stock Option Plan**

The purposes of the Stock Option Plan are to attract, retain and motivate employees and Directors of, and other service providers to the Company, to provide a means, on and after the Global Offering, of compensating them through the grant of stock options for their contribution to the Company's growth and profits, and to allow such employees, Directors and service providers to participate in such growth and profitability.

(b) Who may join

The Compensation Committee may, at its discretion, invite any employee, officer or other service provider of (including, but not limited to, any professional or other adviser of, or consultant or contractor to) the Company whether located in China, the United States or elsewhere to take up options to subscribe for ordinary shares at a price calculated in accordance with sub-paragraph (e) below. The Compensation Committee may also grant stock options to a Director who is not an employee of the Company (“Non Employee Director”).

(c) Stock Options

Stock options granted under the Stock Option Plan (“Stock Options”) shall entitle a participant (“Participant”) of the Stock Option Plan to purchase a specified number of ordinary shares or ADSs (the “Plan Shares”) during a specified period at a price calculated in accordance with sub-paragraph (e) below. Three types of Stock Options may be granted under the Plan, an Incentive Stock Option, a Non-Qualified Stock Option or a Director Option. An Incentive Stock Option is a stock option that falls within the meaning of Section 422 of the U.S. Internal Revenue Code of 1986 and may only be granted to employees of the Company and its subsidiaries from time to time. A Non-Qualified Stock Option is a stock option that is not an Incentive Stock Option. A Director Option is a Non-Qualified Stock Option granted to a Non-Employee Director.

The Company shall issue an Award Document to each Participant of the Stock Option Plan who is granted a Stock Option. The Award Document shall set out the terms and provisions of the grant of a Stock Option to a Participant including applicable vesting dates or the attainment of specified performance goals (as determined by the Compensation Committee or the Administrator (as defined below), as the case may be) by the Participant. The Company may allow a Participant to exercise his or her Stock Options prior to vesting, provided the Participant agrees to enter into a repurchase agreement in respect of the Stock Option with the Company. The Compensation Committee may also (i) accelerate the vesting of a Stock Option, (ii) set the date on which any Stock Option may first become exercisable, or (iii) extend the period during which a Stock Option remains exercisable, except that no Stock Options may be exercised after the tenth anniversary of the date of grant.

The Stock Option Plan does not provide for any payment upon application or acceptance of an option.

(d) Administration of the Stock Option Plan

The Compensation Committee shall be responsible for the administration of the Stock Option Plan. Its responsibilities include granting Stock Options to eligible individuals, determining the number of Plan Shares subject to each Stock Option, and determining the terms and conditions of each Stock Option. The Compensation Committee is not obliged to grant Stock Options to Participants in uniform terms.

Accordingly, the terms and conditions which may be imposed may vary between Participants. Any determination by the Compensation Committee in relation to the carrying out and administering of the Stock Option Plan shall be final and binding. No member of the Compensation Committee shall be liable for any action or determination made in good faith, and the members of the Compensation Committee shall be entitled to indemnification and reimbursement in the manner provided in the Articles.

The Compensation Committee may delegate some or all of its authority under the Stock Option Plan to an individual or individuals (each an “Administrator”) who may either be one or more of the members of the Committee or one or more of the officers of the Company. An individual’s status as an Administrator shall not affect his or her eligibility to participate in the Stock Option Plan. The Compensation Committee shall not delegate its authority to grant Stock Options to executive officers of the Company.

(e) Exercise Price

The exercise price per Plan Share purchasable under a Stock Option shall be fixed by the Committee at the time of grant or by a method specified by the Compensation Committee at the time of grant, but in no event shall be less than the Fair Market Value of a Plan Share on the date such Stock Option is granted.

The Fair Market Value of a Share will be the higher of (i) the closing price of the ordinary shares on the HKSE's daily quotation sheet on the applicable date of grant (which must be a business day), and (ii) the average closing price of the ordinary shares on the HKSE (as stated in the relevant daily quotation sheets of the HKSE) for the five business days immediately preceding the date of grant.

The Fair Market Value of the ADSs shall be the highest of (i) the closing price of the ADSs on the NYSE on the applicable date of grant, and (ii) the average closing price of the ADSs on the NYSE for the five business days immediately preceding the date of grant.

(f) Limit of the Stock Option Plan

At the annual general meeting of the shareholders held on June 23, 2009, the shareholders of the Company approved an increase to the number of ordinary shares reserved for issuance under the Stock Option Plan and the ESPP (the "Global Limit") from 1,317,000,000 ordinary shares of the Company to 2,434,667,733 ordinary shares of the Company.

The number of ordinary shares which may be issued pursuant to any outstanding Stock Options granted and yet to be exercised under the Stock Option Plan and all outstanding purchase rights granted under the Employee Stock Purchase Plan or other employee stock purchase plan of the Company must not exceed in aggregate 30 percent of the issued and outstanding ordinary shares in issuance from time to time.

(g) Individual Limit

The total number of ordinary shares underlying Stock Options or other options granted by the Company to, and the total number of ordinary shares that may be purchased under one or more purchase rights granted under the Employee Stock Purchase Plan or any other employee stock purchase plan granted by the Company by, a Participant (including both exercised and outstanding Stock Options) in any twelve-month period may not exceed at any time one percent (1%) (or 0.1 percent in the case of an independent Non-executive Director) of the then issued and outstanding ordinary shares unless otherwise allowed under the Listing Rules.

(h) Exercise of Option

A Stock Option shall vest, and be exercised, in accordance with the terms of the Stock Option Plan, the relevant Award Document and any rules and procedures established by the Compensation Committee for this purpose. However, the term of each Stock Option shall not exceed ten years from the date of grant.

(i) Director Options

Each non-employee Director may be granted Stock Options to purchase ordinary shares (or an equivalent of ADSs) on the terms set out in the relevant Award Document.

The Directors shall exercise all authority and responsibility with respect to Stock Options granted to Directors subject to the requirements of the Listing Rules.

All non-employee Directors' Stock Options shall only vest provided that the Director has remained in service as a Director through such vesting date. The unvested portion of a Stock Option granted to a Director shall be forfeited in full if the Director's service with the Board ends for any reason prior to the applicable vesting date.

Following termination of a non-employee Director's service on the Board, such non-employee Director (or his or her estate, personal representative or beneficiary, as the case may be) shall be entitled to exercise those of his or her Stock Options which have vested as of the date of such termination within 120 days following such termination.

(j) Termination or Lapse of Option

A Stock Option shall terminate or lapse automatically on:

(i) the expiry of ten years from the date of grant;

(ii) the termination of a Participant's employment or service with the Company for a reason set out in sub-paragraph (l) below;

(iii) save as to any contrary directions of the Compensation Committee, in the event of a complete liquidation or dissolution of the Company, all Stock Options outstanding at the time of the liquidation or dissolution shall terminate without further action by any person;

(iv) the sale or other divestiture of a subsidiary, division or operating unit of the Company (where the Participant is employed by such subsidiary, division or operating unit); and

(v) termination of the service relationship with a service provider (where the Participant is a service provider of the Company).

(k) Rights are personal to Participant

A Stock Option is personal to the Participant and shall be exercisable by such Participant or his Permitted Transferee (as defined below) only. An option shall not be transferred other than by will, by the laws of descent and distribution or pursuant to a domestic relations order. The Compensation Committee may also, at its discretion and subject to such terms and conditions as it shall specify, permit the transfer of a Stock Option for no consideration to a Participant's family members or to a trust or partnership established for the benefit of such family members (collectively "Permitted Transferees"). Any Stock Option transferred to a Permitted Transferee shall be further transferable only by will or the laws of descent and distribution or, for no consideration, to another Permitted Transferee of the Participant.

(l) Termination of employment or service

If a Participant's employment or service with the Company is terminated for the following reasons:

(i) the failure or refusal of the Participant to substantially perform the duties required of him or her as an employee or officer of, or service provider to, the Company;

(ii) any material violation by the Participant of any law or regulation applicable to any business of the Company, or the Participant's conviction of, or a plea of nolo contendere to, a felony, or any perpetration by the Participant of a common law fraud against the Company; or

(iii) any other misconduct by the Participant that is materially injurious to the financial condition, business or reputation of the Company,

Then all Stock Options granted to the Participant, whether or not then vested, shall immediately lapse.

The Compensation Committee may permit any Incentive Stock Option to convert into a Non-Qualified Stock Option as of a Participant's termination of employment for purposes of providing such Participant with the benefit of any extended exercise period applicable to Non-Qualified Stock Options when the contract of employment of the holder of Incentive Stock Option terminates.

(m) Change in control of the Company

The Compensation Committee may specify at or after the date of grant of a Stock Option the effect that a Change in Control (as defined in the Stock Option Plan) will have on such Stock Option. The Compensation Committee may also, in contemplation of a Change in Control, accelerate the vesting, exercisability or payment of Stock Options to a date prior to the Change in Control, if the Compensation Committee determines that such action is necessary or advisable to allow the participants to realise fully the value of their share options in connection with such Change in Control.

(n) Change in the capital structure of the Company

In the event of an alteration in the capital structure of the Company (which includes a capitalization issue, reduction of capital, consolidation, sub-division of Plan Shares, or rights issue to purchase Plan Shares at a price substantially below market value), the Compensation Committee may equitably adjust the number and kind of Plan Shares authorised for issuance in order to preserve the benefits or potential benefits intended to be made available under the Stock Option Plan. In addition, upon the occurrence of any of the foregoing events, the number of outstanding Stock Options and the number and kind of shares subject to any outstanding Stock Option and the purchase price per share under any outstanding Stock Option shall be equitably adjusted so as to preserve the benefits or potential benefits intended to be made available to Participants.

(o) Period of the Stock Option Plan

The Stock Option Plan shall remain in force for a period of ten years commencing on the date of Shareholders' approval of the Plan.

(p) Amendments and Termination

The Stock Option Plan may be altered, amended in whole or in part, suspended and terminated by the Board at any time provided alterations or amendments of a material nature or any change to the terms of the Stock Options granted must be approved by the shareholders of the Company, unless such alteration or amendment takes effect automatically under the terms of the Stock Option Plan. For the avoidance of doubt, any alteration or amendment pursuant to the exercise of any authority granted under the Stock Option Plan shall be deemed to take effect automatically under the terms of the Share Option Plan. Any alteration or amendment must be in accordance with the requirements of the Listing Rules or permitted by the HKSE.

If the Stock Option Plan is terminated early by the Board, no further Stock Options may be offered but unless otherwise stated in the Plan, Stock Options granted before such termination shall continue to be valid and exercisable in accordance with the Stock Option Plan.

(q) Voting and dividend rights

No voting rights shall be exercisable and no dividends shall be payable in relation to Stock Options that have not been exercised.

(r) Cancellation of Stock Options

Stock Options granted but not exercised may not be cancelled unless an offer to cancel share options has been made pursuant to Rule 13 of the Hong Kong Code on Takeovers and Mergers and the Hong Kong Securities and Futures commission has consented to such cancellation.

(s) Ranking of Ordinary Shares

The ordinary shares to be allotted upon the exercise of a Stock Option will be subject to the Articles for the time being in force and will rank pari passu with the Plan Shares in issue on the date of such allotment.

Employee Stock Purchase Plan

The following is a summary of the principal terms of the ESPP conditionally adopted by the Company by way of shareholders' resolutions dated February 16, 2004 and Directors' resolutions passed on January 16, 2004.

Summary of the terms of the ESPP

(a) Purposes of the ESPP

The purposes of the ESPP are to attract, retain and motivate employees of the Company, to provide a means of compensating the employees for their contributions to the growth and profitability by permitting such employees to purchase the ADSs of the Company at a discount and receive favorable U.S. income tax treatment on a subsequent qualifying disposition of such ADSs.

(b) Who may join

Subject to any contrary directions given by the Compensation Committee, all full-time and regular parttime employees (the "Employees") of the Company as at the first business day (the "Offering Date") of a given period specified by the Committee (the "Offering Period") shall be eligible to enroll in the ESPP. To be eligible to purchase ADSs, all Employees must maintain his or her employment status, without interruption, with the Company through the last day of each Offering Period (the "Purchase Date")

(c) Offering Period

The ESPP shall be implemented by a series of Offering Periods. An eligible Employee of the Company may elect to participate in the ESPP for any Offering Period by completing the requisite documents. The Compensation Committee shall determine the starting and ending dates of each Offering Period but no Offering Period shall be shorter than 6 months or longer than 27 months.

(d) Employees' Contributions under the ESPP

All amounts that a Participant contributes ("Contributions") shall be credited to his or her account under the ESPP. Participants must elect to have payroll deductions made on each payday during the Offering Period in a dollar amount specified in the documents submitted by him or by her. The Compensation Committee may permit Participants to make supplemental Contributions into his or her account, on such terms and subject to such limitations as the Compensation Committee may decide. Participants may, on one occasion only during an Offering Period, decrease the rate of his or her Contributions to his or her account for the Offering Period, including a decrease to zero. The Participant may restore his or her Contributions to the original level, prior to the earlier of,

(i) six months after the effective date of any such decrease; and

(ii) the end of the relevant Offering Period.

(e) Grant of Purchase Right

Each eligible Employee who elects to participate in the ESPP in any given Offering Period shall be granted on the Purchase Date, a right to purchase the Plan Shares (the "Purchase Right"). The Purchase Right of a Participant shall be calculated in accordance with the following formula:

(i) dividing (A) the product of US\$25,000 and the number of calendar years during all or part of which the Purchase Right shall be outstanding by (B) the closing price of the Plan Shares on the applicable exchange on which Plan Shares are trading (the "Fair Market Value") on the applicable exchange of the Plan Shares on the Offering Date; and

(ii) subtracting from the quotient thereof (A) the number of Plan Shares that the Employee has purchased during the calendar year in which the Offering Date occurs under the ESPP or under any other employee stock purchase plan of the Company or any subsidiary of the Company which is intended to qualify under Section 423 of the U.S. International Revenue Code of 1986 plus (B) the number of Plan Shares subject on the Offering Date to any outstanding Purchase Rights granted to the Employee under any related Plan.

If application of the above formula would result in the grant of Purchase Rights covering, in the aggregate, more than the number of Plan Shares that the Compensation Committee has made available for the relevant Offering Period, then the Compensation Committee shall adjust the number of Plan Shares subject to the Purchase Right in order that, following such adjustment, the aggregate number of Plan Shares subject to the purchase Right shall remain within the applicable limit.

All Purchase Rights outstanding at the tenth anniversary of the Plan shall remain outstanding through and may be exercised upon the relevant Purchase Date, but no additional Purchase Right shall be granted under the ESPP.

(f) Exercise of Purchase Right

Unless a Participant withdraws from the ESPP, his or her Purchase Right shall become exercisable automatically, on the Purchase Date of the relevant Offering Period for the number of Plan Shares obtained by dividing the accumulated Contributions credited to the Participant's account as of the Purchase Date by the applicable Purchase Price, being an amount not less than 85 percent of the Fair Market Value of the Plan Shares on the Offering Date or on the Purchase Date, whichever is lower (the "Purchase Price").

The Compensation Committee may credit any Contributions that have been credited to a Participant's account under the ESPP with interest. Any interest credited to a Participant's account shall not be used to purchase ADSs and shall instead be paid to the Participant at the end of the relevant Offering Period.

If any portion of a Participant's accumulated Contributions is not used to purchase ordinary shares on a given Purchase Date, the remaining amount shall be held in the Participant's account and used for the purchase of Plan Shares under the next Offering Period, unless the Participant withdraws from the next Offering Period.

The exercise of the Purchase Right granted under the ESPP is not subject to any performance target.

(g) Limit of the ESPP

At the annual general meeting of the shareholders held on June 23, 2009 the shareholders of the Company approved an increase the number of ordinary shares reserved for issuance under the Stock Option Plan and the ESPP (the "Global Limit") from 1,317,000,000 ordinary shares of the Company to 2,434,667,773 ordinary shares of the Company.

The number of ordinary shares that may be issued upon exercise of all outstanding Purchase Rights granted under the ESPP or other employee stock purchase plan of the Company or and any outstanding stock options granted under the Stock Option Plan or other stock option plan of the Company must not exceed, in the aggregate, thirty percent of the issued and outstanding ordinary shares in issuance from time to time.

(h) Period of the ESPP

The ESPP shall continue for a term of ten years from the date of its approval by the Shareholders unless terminated in accordance with sub-paragraph (i).

(i) Amendments and Termination of the ESPP

The Compensation Committee may at any time amend the ESPP in any respect or terminate the ESPP, except that, without the approval of the Company's shareholders at a meeting duly called, no amendment shall be made in relation to:

(i) increasing the number of ADSs approved for the ESPP; or

(ii) decreasing the Purchase Price per ADSs.

Any alterations or amendments of a material nature or any change to the terms of the Purchase Rights granted must be approved by the shareholders of the Company, unless such alteration or amendment takes effect automatically under the terms of the ESPP. For the avoidance of doubt, any alteration or amendment pursuant to the exercise of any authority granted under the ESPP shall be deemed to take effect automatically under the terms of the ESPP. Any amendment made to the ESPP must be in accordance with the requirements of the Listing Rules or permitted by the SEHK.

If the ESPP is terminated by the Board prior to the tenth anniversary of the date of Board approval, unless the Compensation Committee has also terminated any Offering Period then in progress, Purchase Rights granted before such termination shall continue to be valid and exercisable in accordance with, and subject to, the terms and conditions of the Plan.

Rule 17.03(9) of the Listing Rules provide that the exercise price of any share option scheme operated by listed issuers may not be lower than effectively the market price of the ordinary shares. As a result of the capital-intensive nature of the Company's business, we have traditionally relied on share options, rather than cash, as an important means of remunerating its employees. This is common in the industry and we wish to continue this practice. Accordingly, we have applied to and obtained from the SEHK a waiver from strict compliance with Rule 17.03(9) of the Listing Rules such that the Company is allowed to continue to grant options over its ADSs to its employees under the ESPP at an exercise price which is at a discount (up to 15 percent discount) to the lower of market price at the commencement of the offering period or the market price on the purchase date.

Up and until December 31, 2009, the Company has not granted any purchase right under the ESPP.

## Item 7. Major Shareholders and Related Party Transactions

### Major Shareholders

The following table sets forth information regarding the beneficial ownership as of December 31, 2009 of our ordinary shares, by each shareholder who is known by us to beneficially own 5% or more of our outstanding shares as of such date.

Name of Shareholder	2009		2008		2007	
	Number of Shares	Percentage	Number of Shares	Percentage	Number of Shares	Percentage
	Held	Held	Held	Held	Held	Held
Datang Telecom Technology & Industry Holdings Co., Ltd. (“Datang”)	3,699,094,300 <sup>(1)</sup>	16.53%	3,699,094,300	16.57%	-	-
Shanghai Industrial Investment (Holdings) Company Limited (“SIIC”)	420,008,000 <sup>(2)</sup> 1,833,269,340 <sup>(3)</sup>					
<b>Total</b>	<b>2,253,277,340</b>	<b>10.07%</b>	2,253,277,340	10.09%	2,030,265,903	10.94%
Donald Smith & Co., Inc.	1,241,358,760 <sup>(4)</sup>	5.55%	1,326,812,150	5.94%	-	-

#### Notes:

- (1) All such Shares are held by Datang Holdings (Hongkong) Investment Company Limited which is a wholly-owned subsidiary of Datang Telecom Technology & Industry Holdings Co., Ltd.
- (2) All such ordinary shares are held by SIIC Treasury (B.V.I.) Limited which is a wholly-owned subsidiary of SIIC.
- (3) All such Shares are held by S.I. Technology Production Holdings Limited (“SITPHL”) which is an indirect wholly-owned subsidiary of SIIC. SITPHL is a wholly-owned subsidiary of Shanghai Industrial Financial (Holdings) Company Limited (“SIFHCL”) which in turn is a wholly-owned subsidiary of Shanghai Industrial Financial Holdings Limited (“SIFHL”) By virtue of the SFO, SIIC and its subsidiaries, SIFHCL and SIFHL are deemed to be interested in the 1,833,269,340 Shares held by SITPHL. As at December 31, 2009, our director, Zhou Jie, is an executive director and the executive vice president of SIIC. He is also an executive director and the executive deputy CEO of Shanghai Industrial Holdings Limited. Wang Zheng Gang, alternate to Zhou Jie, is the Chief Representative of the Shanghai Representative Office of SIHL and the chairman of SIIC Management (Shanghai) Limited. It is the Company’s understanding that voting and investment control over the ordinary shares beneficially owned by SIIC are maintained by the board of directors of SIIC.
- (4) According to the Schedule 13G filed with the SEC on February 11, 2010 by Donald Smith & Co., Inc., all such shares are owned by advisory clients of Donald Smith & Co., Inc., no one of which, to the knowledge of Donald Smith & Co., Inc. owns more than 5% of the class. 1,241,368,750 ordinary shares were held in the form of 24,827,375 ADSs. Each ADS represents 50 ordinary shares.

On November 9, 2009, we entered into a share and warrant issuance agreement with Taiwan Semiconductor Manufacturing Company ("TSMC") whereupon we conditionally agreed to issue to TSMC 1,789,493,218 ordinary shares (the "New Common Shares") and a warrant (exercisable within three years of issuance) to subscribe for 695,914,030 ordinary shares of our company, subject to adjustment, at a purchase price of HK\$1.30 per share, subject to adjustment (the "Warrant Shares"). Completion of the share and warrant issuance agreement is conditional upon, amongst other things, the obtaining of governmental approvals and the Listing Committee of the Stock Exchange agreeing to grant approvals for the listing of and permission to deal in the New Common Shares and the Warrant Shares and for the issuance of the warrant. As at the latest practicable date, the transaction has not been completed and none of the New Common Shares and the Warrant Shares have been issued to TSMC.

Please see "Item 10. Additional Disclosure - Other Contracts" for a description of the share and warrant issuance agreement entered in by us and TSMC and the warrant agreement to be entered into (subject to receipt of required government and regulatory approvals) between SMIC and TSMC.

Each ordinary share is entitled to one vote on all matters upon which the ordinary shares are entitled to vote, including the election of directors. No shareholder has voting rights that are different from those of other shareholders.

As of December 31, 2009, 22,375,886,604 ordinary shares (inclusive of 59,382,621 ADS shares) of our company were outstanding. Of these ordinary shares, 2,969,131,050 shares were registered in the name of DBS Ltd. Hong Kong Branch, on behalf of J.P. Morgan Chase Bank, the depositary under the deposit agreement. J.P. Morgan has advised us that, as of December 31, 2009, these 59,382,621 ADSs, representing 2,969,131,050 ordinary shares, were held of record by nine U.S. registered holders. We have no further information as to shares held or beneficially owned by U.S. persons. Each ADS represents 50 ordinary shares.

We do not believe that we are directly or indirectly owned or controlled by another corporation, by any foreign government or by any other natural or legal person severally or jointly.

### **Related Party Transactions**

The following disclosure is for the purpose of fulfilling disclosure requirements pursuant to the rules and regulations promulgated pursuant to the U.S. Securities and Exchange Act of 1934, as amended, only, and may contain disclosure of related party transactions not required to be disclosed in our financial statements under U.S. GAAP.

### **Indemnification Agreements and Service Contracts**

*Indemnification Agreements.* Article 156 of our Articles of Association provides (amongst others) that we may indemnify any person who is made a party to any action, suit or proceeding by reason of the fact that the person is or was our director, officer, employee or agent, or is or was serving at our request as our director, officer, employee or agent at another entity, subject to certain limitations and applicable conditions.

We recognize the substantial increase in corporate litigation in general, subjecting directors, officers, employees, agents and fiduciaries to expensive litigation risks. We desire to attract and retain the services of highly qualified individuals to serve the company and, in part, in order to induce such individuals to continue to provide services to the company, we wish to provide for the indemnification and advancing of expenses of its directors as permitted by law and applicable regulations.

a. *Original Indemnification Agreements.*

On or around March 18, 2004, upon completion of the Global Offering, we entered into identical indemnification agreements with each director whose appointment as director took effect immediately upon the Global Offering, whom we refer to as the Global Offering Directors, whereby we agreed to, inter alia, indemnify our Global Offering Directors in respect of liability arising from their capacity as our directors. We refer to these indemnification agreements as, collectively, the Original Indemnification Agreements. Pursuant to the Original Indemnification Agreements, we were obliged to indemnify each Global Offering Director, to the fullest extent permitted by law, against all costs, charges, expenses, liabilities, losses and obligations incurred in connection with any threatened, pending or completed action, suit, proceeding or alternative dispute resolution mechanism, or any hearing, inquiry or investigation which might lead to any of the foregoing (an “Applicable Claim”) by reason of or arising out of any event or occurrence relating to the fact that he is or was a director of SMIC, or any of our subsidiaries, or is or was serving at our request at another corporation or enterprise, or by reason of any activity or inactivity while serving in such capacity (an “Indemnifiable Event”). Our obligation to indemnify our Global Offering Directors pursuant to the Original Indemnification Agreements was subject to certain exceptions and limitations set out therein.

b. *New Indemnification Agreements; Service Contracts.* At the annual general meeting of our shareholders on May 6, 2005, our shareholders, other than our directors, chief executive officer and their respective Associates (as defined in the HK Listing Rules) approved an amendment to the form of the Original Indemnification Agreements. As amended, we refer to the new form of Indemnification Agreements as the “New Indemnification Agreements. The New Indemnification Agreements executed by each of the directors superseded the Original Indemnification Agreements which we had previously entered into with any existing directors. The New Indemnification Agreement reflected the then new requirements under Rules 14A.35 of the HK Listing Rules to set a term of no longer than three years and a maximum aggregate annual value for each connected transaction (as defined under the HK Listing Rules). The terms of the New Indemnification Agreements were the same as the Original Indemnification Agreements, except that the New Indemnification Agreements were subject to a term of three years and an annual cap. The annual cap in relation to the New Indemnification Agreements was not to exceed a maximum aggregate annual value as disclosed in our previous announcement. For the year ended December 31, 2009, no payment was made to any director under the New Indemnification Agreements.

*Service Contracts.* The New Indemnification Agreements remained in effect until the entering into between us and our directors of amended service contracts between October 7, 2008 and November 25, 2009 which include indemnity provisions. Each of our executive officers also signed service contracts which include indemnity provisions. We refer to the service contracts we have entered into with each of our directors and executive officers collectively as the Service Contracts. The indemnification provisions contained in the Service Contracts are substantially the same as the terms of the New Indemnification Agreements, except that the Service Contracts are not subject to a maximum term or to an annual cap. The indemnification provisions set forth in the Services Contracts will continue in effect with respect to Applicable Claims relating to Indemnifiable Events regardless of whether the relevant director or executive officer continues to serve as our director or executive officer or to serve at any other enterprise at our request. Except for these indemnification provisions, the Service Contracts do not provide for benefits upon termination of service or employment.

## **Strategic Cooperation Agreement**

On December 24, 2008, upon completion of the Share Purchase Agreement pursuant to which Datang conditionally agreed to subscribe through a Hong Kong incorporated wholly owned subsidiary, and the Company conditionally agreed to allot and issue, shares representing 19.9% of the issued share capital of the Company prior to such issuance and approximately 16.6% following such issuance at a total purchase price of US\$171.8 million, the Company and Datang entered into a strategic cooperation agreement (the “Strategic Cooperation Agreement”).

Pursuant to the Strategic Cooperation Agreement, the Company intends to give priority to the production requirements of Datang, while Datang intends to give priority to engage or employ the fabrication services of the Group. In addition, the Company and Datang would share their technological research and development resources, co-operate in the development of international markets and globalization of their businesses, and make joint efforts to apply for PRC national and local projects in connection with scientific research and industrialization relating to the integrated circuit sector.

The pricing for the transactions contemplated under the Strategic Cooperation Agreement are determined based on market value. The Caps, being the maximum aggregate values of transactions under the Strategic Cooperation Agreement, are US\$50,000,000 for the period commencing on June 23, 2009 and ending on December 31, 2009, and US\$100,000,000 for the period commencing on January 1, 2010 and ending on December 23, 2010, respectively, were approved by the shareholders of the Company at its annual general meeting held on June 23, 2009.

## **Item 8. Financial Information**

### **Consolidated Statements and Other Financial Information**

Please see “Item 18. Financial Statements.”

See “Item 4 - Information on the Company - Business Overview - Customers and Markets” regarding the percentage of our sales which are exported from China.

## Litigation

Beginning in December 2003, we became subject to several lawsuits brought by Taiwan Semiconductor Manufacturing Company, Limited (“TSMC”) alleging infringement of certain patents and misappropriation of alleged trade secrets relating to methods for conducting semiconductor fab operations and manufacturing integrated circuits.

On January 31, 2005, we entered into a settlement agreement, without admission of liability, which provided for the dismissal of all pending legal actions without prejudice between the two companies (the “2005 Settlement Agreement”) and agreed to pay TSMC \$175 million in installments over a period of six years. We also entered into a patent cross license agreement with TSMC (the “2005 Patent Cross-License”).

On August 25, 2006, TSMC filed a lawsuit against us and certain of our subsidiaries in the Superior Court of the State of California, County of Alameda for alleged breach of the 2005 Settlement Agreement, alleged breach of promissory notes related to the 2005 Settlement Agreement and alleged trade secret misappropriation by us. We filed counterclaims against TSMC in the same court in September 2006 and also filed suit against TSMC in Beijing in November 2006. These lawsuits are collectively referred to below as the “Settled Actions”.

We settled the Settled Actions with TSMC on November 9, 2009, including the legal action filed in California for which a verdict was returned by the jury against SMIC on November 4, 2009, with a settlement agreement (the “2009 Settlement Agreement”) which replaced the 2005 Settlement Agreement. The 2009 Settlement Agreement resolved the Settled Actions. The Settled Actions constituted all pending litigation between us and TSMC at the time of settlement. The terms of the 2009 Settlement Agreement include the following:

- 1) Entry of judgment and mutual release of all claims that were or could have been brought in the Settled Actions;
- 2) Termination of the 2005 Settlement Agreement, including SMIC’s obligation to make remaining payments thereunder (approximately US\$40 million); and termination of the 2005 Patent-Cross License;
- 3) Payment to TSMC of an aggregate of US\$200 million (with US\$15 million paid upon execution, funded from SMIC’s existing cash balances, and the remainder to be paid in installments over a period of four years);
- 4) Commitment to issue to TSMC of 1,789,493,218 shares of SMIC and one or more a warrants exercisable within three years of issuance to subscribe for an aggregate of 695,914,030 shares of SMIC, subject to adjustment, at a purchase price of HK\$1.30 per share, subject to adjustment (referred to collectively as the “TSMC Warrant.”). Issuance of the shares and the TSMC Warrant are subject to receipt of required government and regulatory approvals;
- 5) Mutual covenants not to sue with respect to intellectual property misappropriation or infringement other than breaches of the 2009 Settlement Agreement, claims not related to the Settled Actions arising after November 9, 2009, and patent or trademark claims;
- 6) Agreement of the parties to return or destroy certain information;
- 7) Mutual covenants to preserve the confidentiality of certain information; and
- 8) An obligation of SMIC, in the event of a material breach of the 2009 Settlement Agreement or certain related documents that is uncured 30 days after notice from TSMC, to pay TSMC liquidated damages, in addition to any damages arising from such breach, in the amount of US\$44 million plus a royalty equal to 5% of SMIC’s gross revenues derived from foundry services in respect of SMIC’s 90nm and larger manufacturing processes for 20 years from the date of such breach.

Please see “Item 10. Additional Disclosure – Other Contracts” for a description of the share and warrant issuance agreement entered into by us and TSMC in connection with the 2009 Settlement Agreement and the warrant agreement to be entered into (subject to receipt of required government and regulatory approvals) between SMIC and TSMC in connection with the 2009 Settlement Agreement.

**Accounting Treatment for the 2005 Settlement Agreement:**

In accounting for the 2005 Settlement Agreement, we determined that there were several components — settlement of litigation, covenant not to sue, patents licensed by us to TSMC and the use of TSMC’s patent license portfolio both prior and subsequent to the settlement date.

We do not believe that, under the 2005 Settlement Agreement, the settlement of litigation, covenant not to sue or patents licensed by us to TSMC qualify as assets under US GAAP.

We determined that the use of TSMC’s patent license portfolio prior to and subsequent to the 2005 Settlement Agreement date qualify as assets under US GAAP. US\$16.7 million was allocated to the pre-2005 Settlement Agreement period, reflecting the amount that we would have paid for use of the patent license portfolio prior to the date of the 2005 Settlement Agreement. The remaining US\$141.3 million, representing the relative fair value of the licensed patent license portfolio, was recorded on our consolidated balance sheets as a deferred cost (“Deferred Cost”) and was amortized over a six-year period, which represents the life of the licensed patent license portfolio.

**Accounting Treatment for the 2009 Settlement Agreement:**

In accounting for the 2009 Settlement Agreement, we determined that there were three components of the 2009 Settlement Agreement:

- 1) Settlement of litigation via entry of judgment and mutual release of all claims in connection with pending litigation;
- 2) TSMC’s covenant not-to-sue with respect to alleged misappropriation of trade secrets; and
- 3) Termination of payment obligation of the remaining payments to TSMC under the 2005 Settlement Agreement of approximately US\$40 million.

We do not believe that any of the aforementioned items qualify as assets under US GAAP. Accordingly, all such items were expensed as of the settlement date. Further, all previously recorded Deferred Cost associated with the 2005 Settlement Agreement were immediately impaired and we recorded the related impairment loss of US\$27.5 million in the consolidated statements of operations. The commitment to grant the shares to TSMC and the TSMC Warrant was initially measured at fair value and is being accounted for as a derivative with all subsequent changes in fair value being reflected in the consolidated statements of operations. We recorded US\$269.6 million under operating expenses in the fourth quarter of fiscal 2009, and US\$30.1 million as non-operating expenses relating to the change in fair value of the derivative instruments. Interest expense associated with the promissory notes of US\$0.7 million was recorded in 2009.

**Contingent Liability**

In 2008, the Company entered into equipment purchase and cooperative manufacturing arrangements (the “Arrangements”) with an unrelated semiconductor manufacturer (the “Counterparty”). Such cooperative manufacturing arrangements ended in 2008 as scheduled. In 2009, the Company received notifications from the Counterparty that the Company was responsible for additional equipment relocation expenses and a portion of the losses incurred during the term of the cooperative manufacturing arrangement. The Company has contested the claims and demanded further information supporting the Counterparty’s claims. The Counterparty also filed a demand for dispute arbitration in late 2009 for a portion of the claims. The Company plans to continue its investigations and negotiations with the Counterparty. The total amount of the claims is approximately US\$45 million. The Company recorded its best estimate of the probable amount of its liability on the claims in the consolidated financial statements as of and during the year ended December 31, 2009.

## **Dividends and Dividend Policy**

At the end of 2009, the Company's accumulated deficit increased to US\$1,712.0 million from an accumulated deficit of US\$748.5 million at the end of 2008. The Company has not declared or paid any cash dividends on the ordinary shares. We intend to retain any earnings for use in the Company's business and do not currently intend to pay cash dividends on the ordinary shares. Dividends, if any, on the outstanding shares will be declared by and subject to the discretion of the Board and must be approved at the annual general meeting of shareholders. The timing, amount and form of future dividends, if any, will also depend, among other things, on:

- the Company's results of operations and cash flow;
- the Company's future prospects;
- the Company's capital requirements and surplus;
- the Company's financial condition;
- general business conditions;
- contractual restrictions on the payment of dividends by the Company to its shareholders or by the Company's subsidiaries to the Company; and
- other factors deemed relevant by the Board.

The Company's ability to pay cash dividends will also depend upon the amount of distributions, if any, received by the Company from its wholly-owned Chinese operating subsidiaries. Under the applicable requirements of Chinese Company Law, the Company's subsidiaries in China may only distribute dividends after they have made allowances for:

- recovery of losses, if any;
- allocation to the statutory common reserve funds;
- allocation to staff and workers' bonus and welfare funds; and
- allocation to a discretionary common reserve fund if approved by the Company's shareholders.

More specifically, these operating subsidiaries may only pay dividends after 10% of their net profit has been set aside as statutory common reserves and a discretionary percentage of their net profit has been set aside for the staff and workers' bonus and welfare funds. These operating subsidiaries are not required to set aside any of their net profit as statutory common reserves if such reserves are at least 50% of their respective registered capital. Furthermore, if they record no net income for a year, they generally may not distribute dividends for that year.

## **Significant Changes**

Please see the section entitled "Litigation" above.

## **Item 9. The Offer and Listing**

Our ordinary shares are principally traded on the Stock Exchange of Hong Kong under the stock code "981" Our ordinary shares began trading on the Stock Exchange of Hong Kong on March 18, 2004. Our American Depositary Shares, which began trading on the New York Stock Exchange on March 17, 2004, are traded under the symbol "SMI."

The table below sets forth the high and low closing prices on the Stock Exchange of Hong Kong and the New York Stock Exchange for the ordinary shares represented by the ADSs, since the completion of the global offering and for the most recent six months.

	Stock Exchange of Hong Kong		New York Stock Exchange(1)	
	Closing price per ordinary share		Closing price per ADS	
	High Price	Low Price	High Price	Low Price
<b>2005</b>				
First Quarter	HK\$ 1.75 *	HK\$ 1.48	US\$ 11.14	US\$ 9.35
Second Quarter	HK\$ 1.71	HK\$ 1.48	US\$ 10.93	US\$ 9.52
Third Quarter	HK\$ 1.75 *	HK\$ 1.21	US\$ 11.33 *	US\$ 7.83
Fourth Quarter	HK\$ 1.33	HK\$ 1.00 *	US\$ 8.46	US\$ 6.68 *
<b>2006</b>				
First Quarter	HK\$ 1.29 *	HK\$ 1.02	US\$ 8.38 *	US\$ 6.73
Second Quarter	HK\$ 1.21	HK\$ 1.00	US\$ 7.82	US\$ 6.36
Third Quarter	HK\$ 1.07	HK\$ 0.97	US\$ 6.88	US\$ 6.30
Fourth Quarter	HK\$ 1.03	HK\$ 0.87 *	US\$ 6.46	US\$ 5.48 *
<b>2007</b>				
First Quarter	HK\$ 1.24 *	HK\$ 0.87	US\$ 8.30 *	US\$ 5.87
Second Quarter	HK\$ 1.24	HK\$ 1.04	US\$ 7.68	US\$ 6.69
Third Quarter	HK\$ 1.18	HK\$ 0.81	US\$ 7.50	US\$ 5.30
Fourth Quarter	HK\$ 1.11	HK\$ 0.71 *	US\$ 6.72	US\$ 4.57 *
<b>2008</b>				
First Quarter	HK\$ 0.82 *	HK\$ 0.41	US\$ 4.98 *	US\$ 2.76
Second Quarter	HK\$ 0.78	HK\$ 0.44	US\$ 4.32	US\$ 2.88
Third Quarter	HK\$ 0.48	HK\$ 0.20	US\$ 2.99	US\$ 1.32
Fourth Quarter	HK\$ 0.35	HK\$ 0.11 *	US\$ 2.41	US\$ 0.89 *
<b>2009</b>				
First Quarter	HK\$ 0.39	HK\$ 0.23 *	US\$ 2.29	US\$ 1.53 *
Second Quarter	HK\$ 0.47	HK\$ 0.27	US\$ 2.96	US\$ 1.82
Third Quarter	HK\$ 0.44	HK\$ 0.37	US\$ 2.86	US\$ 2.40
Fourth Quarter	HK\$ 0.66 *	HK\$ 0.35	US\$ 3.88 *	US\$ 2.30
<b>2010</b>				
January	HK\$ 0.72	HK\$ 0.54	US\$ 4.65	US\$ 3.57
February	HK\$ 0.82	HK\$ 0.61	US\$ 5.19	US\$ 3.90
March	HK\$ 1.05	HK\$ 0.76	US\$ 6.67	US\$ 4.94
April	HK\$ 1.03	HK\$ 0.84	US\$ 6.73	US\$ 5.32
May	HK\$ 0.82	HK\$ 0.54	US\$ 5.20	US\$ 3.48
June (through June 15)	HK\$ 0.69	HK\$ 0.64	US\$ 4.00	US\$ 4.31

(1) Each ADS represents 50 ordinary shares.

\* Indicates high and low prices for the fiscal year.

At our request, trading in our shares on the Stock Exchange of Hong Kong was suspended with effect from November 4, 2009, 9:30 a.m., Hong Kong time, pending the release of our announcement regarding our entering into of the settlement agreement with Taiwan Semiconductor Manufacturing Company, Ltd. Pursuant to our application to the Hong Kong Stock Exchange, trading in our shares resumed on the Stock Exchange of Hong Kong with effect from 9:30 a.m., November 11, 2009, Hong Kong time. Also at our request, trading in our ADSs on the NYSE was suspended for a like period.

## Item 10. Additional Information

### Memorandum and Articles of Association

The section entitled “Description of Share Capital” in our IPO registration statement is incorporated by reference into this annual report.

The sections entitled “Item 10-Additional Information-Memorandum and Articles of Association” in our annual report on Form 20-F for the fiscal year ended December 31, 2004, filed with the SEC on June 26, 2005 and in our annual report on Form 20-F for the fiscal year ended December 31, 2005, filed with the SEC on June 26, 2006 are incorporated by reference into this annual report. In addition, at the annual general meeting of our shareholders held on June 2, 2008, our shareholders approved an amendment to our Articles of Association to provide that a member of our board of directors may be removed by Ordinary Resolution.

### Material Contracts

#### *Share Purchase Agreement with Datang Telecom Technology & Industry Holdings Co., Ltd.*

We entered into a Share Purchase Agreement dated November 6, 2008 with Datang Telecom Technology & Industry Holdings Co., Ltd, or Datang, pursuant to which Datang subscribed through a Hong Kong incorporated subsidiary, also referred to below as the HKCo, and we allotted and issued, 3,699,094,300 ordinary shares for a purchase price of HK\$0.36 per ordinary shares for a total purchase price of US\$171.8 million on December 24, 2008, also referred to below as the closing date.

The principal terms of the Share Purchase Agreement are as follows:

- *Right to Nominate Investor Nominees.* Datang has the right to nominate two nominees to our board, provided that the decision of our board to appoint, or propose to our shareholders for appointment, any individual nominated by Datang as a director will be made in the best interests our company and our shareholders as a whole, and we are not obliged to simply appoint any individual nominated by Datang as a director without taking into account such considerations, provided further that. (a) subject to clause (b) below, the number of Datang nominees shall decrease to one if Datang, the HKCo and the permitted transferee, collectively, hold less than 1,849,547,150 shares (as appropriately adjusted for stock splits, stock consolidation, stock dividends, recapitalizations and the like) of the our total issued nominal share capital, or Datang, together with the HKCo, holds less than 924,773,575 shares (as appropriately adjusted for stock splits, stock consolidation, stock dividends, recapitalizations and the like) of our total issued nominal share capital; and (b) the right to nominate any Datang nominee shall cease if Datang, the HKCO and the permitted transferee, collectively, hold less than 924,773,575 shares (as appropriately adjusted for stock splits, stock consolidation, stock dividends, recapitalizations and the like) of our total issued nominal share capital, or if Datang, together with HKCo, holds less than 462,386,788 shares (as appropriately adjusted for stock splits, stock consolidation, stock dividends, recapitalizations and the like) of our total nominal share capital.;
- *Right to Nominate Vice-President in Charge of TD-SCDMA.* Datang has the right to nominate a Vice-President in charge of TD-SCDMA, provided that Datang, HKCo and the permitted transferee, collectively, hold at least 924,773,575 shares (as appropriately adjusted for stock splits, stock consolidation, stock dividends, recapitalizations and the like) of our total nominal share capital from time to time, provide that Datang, together with the HKCO, holds at least 462,386,788 shares (as appropriately adjusted for stock splits, stock consolidation, stock dividends, recapitalizations and the like) of our total issued share capital from time to time, subject to the approval of our board (excluding the Datang nominees).

- *Pre-emptive Right.* Datang has the following right to purchase any new ordinary shares, any securities convertible into or exchangeable into ordinary shares or any warrants or other rights to subscribe for ordinary shares, referred to as the “Relevant Securities” (subject to the approval of our independent shareholders in order to comply with the Rules Governing the Listing of Securities on the Hong Kong Stock Exchange prior to each such purchase), in the event that we propose to issue the Relevant Securities, to enable Datang to hold after such issue (i) in the case of an offer to investors that would result in a prospective largest shareholder (other than an underwriter that is placing on our behalf the Relevant Securities in a *bona fide* capital markets transaction), one ordinary share more than the number of ordinary shares proposed to be beneficially owned by the prospective largest shareholder, unless (a) Datang and the HKCo hold less than 2,774,320,725 shares (as appropriately adjusted for stock splits, stock consolidation, stock dividends, recapitalizations and the like) of our total nominal share capital, or (b) at least two-thirds of our board (excluding Datang nominees) in good faith resolves in writing that such exercise is not in the best interests of our company and our shareholders as a whole, and (ii) in the case of the issue of Relevant Securities other than (i) above, a pro rata portion of the Relevant Securities equal to the percentage of our issued share capital then beneficially owned by Datang (together with HKCo) prior to the issuance of the Relevant Securities, provided that Datang (together with HKCo) maintains an ownership interest equal to at least 1,849,547,150 shares (as appropriately adjusted for stock splits, stock consolidation, stock dividends, recapitalizations and the like) of our total nominal share capital.
- *Lock-Up.* Datang shall not transfer any of the shares purchased under the Share Purchase Agreement without our prior written consent for a period of two years from the closing date, provided that such lock-up shall not apply to transfer of less than 1,849,547,150 of such shares (as appropriately adjusted for stock splits, stock consolidation, stock dividends, recapitalizations and the like) to a permitted transferee as defined in the Share Purchase Agreement, provided that any such permitted transferee shall be a non-PRC incorporated entity, unless Datang shall have provided to us in writing justifying the need to transfer to a PRC incorporated entity, and our board (excluding the Datang nominees) shall have determined that such transfer to a PRC incorporated entity is not expected to be prejudicial to the interests of, or have an adverse effect, on our group.
- *Standstill.* Datang shall not, except with our prior written consent, directly or indirectly, acquire any of our ordinary shares, any other security carrying voting rights and any outstanding convertible securities, options, warrants or other rights which are convertible into or exchangeable or exercisable or carrying rights of subscription for securities carrying voting rights in us (together our “**voting securities**” exceeding the lesser of thirty percent of our issued voting securities, or such other threshold that may trigger a mandatory offer obligation as set out in the Hong Kong Code on Takeovers and Mergers, at any time following the date of the Share Purchase Agreement and until the second anniversary of the closing date.

*Strategic Cooperation Agreement with Datang Telecom Technology & Industry Holdings Co., Ltd.*

We entered into a Strategic Cooperation Agreement, dated December 24, 2008, with Datang Telecom Technology & Industry Holdings Co., Ltd. The principal terms of the Strategic Cooperation Agreement are as follows:

- *Effective Period:* Two years effective from the closing date, being December 24, 2008, subject to all the cooperation pursuant to the Strategic Cooperation Agreement, complying with, among other things, the Rules Governing the Listing of Securities on the Hong Kong Stock Exchange.
- *Material Terms:* Cooperation in the areas of technology, industry, global markets and cooperative undertaking.
  - *Cooperation of technological research and development, or Technological Cooperation.* As part of our core business of providing IP design services, we intend to provide our existing research and development facilities and manpower in developing advanced logic processing technology and intellectual property bank for Datang, while Datang will provide pilot authentication products in relation to such development. The funding required for such research and development will be in accordance with the market practice and to be agreed by us and Datang. We expect this to be provided by reference to the extent of each party’s responsibilities and rights in the cooperation. We also intend to recommend the technology of Datang to third party customers.

- *Provision of fabrication services, or Production Cooperation.* As part of our core business of semiconductors fabrication, we intend to give priority to the production requirements of Datang while Datang intends to give priority to engage or employ our fabrication services provided that our price, technology and service standards are comparable to competitors and at the prevailing market value. The price for the provision of fabrication services under the Production Cooperation will be determined by reference to market price.
- *Global markets, or Market Development Cooperation.* We also intend to cooperate with Datang in the development of international markets and globalization of its business.
- *Cooperative Undertaking in relation to PRC National Scientific Research Projects, or Cooperative Undertaking.* We and Datang intend to make joint efforts to apply for PRC national and local projects in connection with scientific research and industrialization relating to the integrated circuit sector.

#### *Long-Term Loan Facilities*

SMIC Shanghai and SMIC Tianjin entered into long-term loan facilities in 2006 See Item 5 - Liquidity and Capital Resources on page 65 for a description of these long-term loan facilities.

#### *2009 Settlement Agreement*

Please also see the section entitled “Litigation” above regarding the 2009 Settlement Agreement, TSMC Share and Warrant Agreement and TSMC Warrant Agreement.

#### **Other Contracts**

##### *Management Service Contracts with Cension Semiconductor Manufacturing Corporation and Wuhan Xinxin Semiconductor Manufacturing Corporation*

We provide management services to Cension Semiconductor Manufacturing Corporation (“Cension”) and Wuhan Xinxin Semiconductor Manufacturing Corporation (“Xinxin”) which are government-owned foundries pursuant to the Operating and Management Agreement dated October 15, 2005 between us and Cension and the Operating and Management Agreement dated March 30, 2006 between us and Xinxin. Management service revenues under these agreements for 2009, 2008 and 2007 were \$6,000,000, \$33,000,000 and \$42,000,000, respectively.

In 2008 and 2007, we sold equipment with carrying value of \$7,688 and \$19,530,909 to Cension for \$175,300, and \$42,300,258, which resulted in gains on sale of \$167,612 and \$22,769,349, respectively. The Company did not sell any plant, equipment or other fixed assets to Cension in 2009.

In 2008, the Company sold equipment with carrying value of \$3,629,605 to Xinxin for \$3,944,204, which resulted in a gain on sale of \$314,599, of which \$3,944,204 was outstanding as of December 2008. In 2009, there was no such transaction.

*Transactions with Cension Semiconductor Manufacturing Corporation (“Cension”) and Elpida Memory, Inc.*

On April 10, 2007, Cension entered into an Asset Purchase Agreement with Elpida Memory, Inc., or Elpida, a Japan based memory chip manufacturer, for the purchase of Elpida’s 200mm wafer processing equipment currently located in Hiroshima, Japan for the total price of approximately \$320 million.

As part of this Asset Purchase Agreement, we provided a corporate guarantee for a maximum guarantee liability of \$163.2 million on behalf of Cension in favor of Elpida. Our guarantee liability will terminate upon full payment of the purchase price by Cension to Elpida. In return for providing the above corporate guarantee, we received a guarantee fee from Cension based on 1.5% of the guarantee amount, or \$2.4 million. Approximately \$160 million in 200mm wafer processing equipment purchased under this Asset Purchase Agreement was held as collateral under the guarantee.

We are entitled to the net profit (loss) associated with the ongoing operations of this equipment, net of a guaranteed fixed share of revenue for Elpida, during the transitional period prior to when the equipment was relocated from Hiroshima to Chengdu. Such relocation was completed in 2008.

On August 30, 2007, Cension negotiated with Elpida and subsequently reduced the purchase price to US\$309.5 million.

In April 2008, SMIC entered into an agreement with Cension to purchase approximately half of the equipment from Cension for approximately \$152 million. The equipment acquired by the Company will be used for the Company’s future expansion.

The Company ceased its recognition of management revenue in the second quarter of 2009 due to issues of collectability. Furthermore, the Company recorded a \$115.8 million bad debt provision in 2009, of which \$93.5 million and \$21.1 million are due to long outstanding overdue debt relating primarily to management revenue for services rendered and related equipment sold, respectively.

The Company also reversed the deferred revenue of \$9 million in relation to the management service rendered.

*Share and Warrant Issuance Agreement*

The share and warrant issuance agreement dated as of November 9, 2009 and entered into by us and TSMC in connection with the 2009 Settlement Agreement (the “TSMC Share and Warrant Issuance Agreement”) includes, among others, the following terms:

1) Commitment to grant to TSMC 1,789,493,218 shares of SMIC and one or more warrants exercisable within three years of issuance to subscribe for an aggregate of 695,914,030 shares of SMIC, subject to adjustment, at a purchase price of HK\$1.30 per share, subject to adjustment (referred to collectively as the “TSMC Warrant”). Issuance of the shares and the TSMC Warrant are subject to receipt of required government and regulatory approvals;

2) TSMC’s agreement that, subject to certain exceptions, it will not, except with the prior written consent of our Board of Directors, acquire any of our ordinary shares or other voting securities or securities convertible into or exchangeable for any such securities or take certain specified actions such as making a tender offer or commencing a proxy solicitation with respect to our shares, for so long as TSMC holds any of the securities to be issued to it under the 2009 Settlement Agreement and we have not become the subject of certain specified transactions related to a change of control of SMIC;

3) Pre-emptive rights in favor of TSMC which permit TSMC to purchase its pro rata portion (based on the percentage of the issued share capital of SMIC beneficially owned by TSMC) of new equity issuances by SMIC, subject to certain specified exceptions and conditions, including compliance with the rules of the Stock Exchange of Hong Kong;

4) Agreement by TSMC to vote all of the ordinary shares of SMIC held by it as recommended by our Board of Directors other than with respect to certain change of control transactions involving SMIC; and

5) An obligation of SMIC, if the conditions to the issuance of our shares and the TSMC Warrant to be issued under the 2009 Settlement Agreement have not been satisfied prior to June 30, 2010, and if requested by TSMC, to sell the shares which would otherwise have been issued to TSMC (including the shares issuable under the TSMC Warrant if the trading price for SMIC's shares exceeds the applicable exercise price for specified periods) in underwritten public offerings or share placements and to deliver the proceeds of any such offerings or placements (net of underwriters' discounts or commissions to the placement agent, as applicable) to TSMC.

#### *Warrant Agreement*

The Warrant Agreement to be entered into (subject to receipt of required government and regulatory approvals) by SMIC and TSMC in connection with the 2009 Settlement Agreement (the "TSMC Warrant Agreement") provides for adjustments to the number of shares issuable under the TSMC Warrant, the per share exercise price of the TSMC Warrant and/or the nature of the property issuable upon exercise of the TSMC Warrant including the following:

1) In the event of stock dividends, stock splits and similar transactions, the number of shares issuable under the TSMC Warrant and the per share exercise price of the TSMC Warrant will be adjusted so as to make such dividend, split or similar transaction not affect the economic value of the TSMC Warrant;

2) In the event of certain specified change of control transactions involving SMIC, the TSMC Warrant will become exercisable for the same consideration as would have been payable with respect to the shares of stock issuable under the TSMC Warrant in connection with that change of control transaction if such shares of stock had been issued prior to the change of control transaction; and

3) In the event of the issuance by SMIC following November 9, 2009, of any new shares or securities exercisable for, convertible into or exchangeable for common shares of SMIC or similar rights, for a consideration per share (as determined in accordance with certain guidelines in the Warrant Agreement) less than the then-applicable per share exercise price for the TSMC Warrant then the number of shares issuable under the TSMC Warrant will be increased by multiplying such number by a fraction (A) the numerator of which is the then applicable per share exercise price under the TSMC Warrant and (B) the denominator of which is determined by dividing (i) the sum of (x) the then-applicable per share exercise price under the TSMC Warrant multiplied by the number of shares of SMIC outstanding prior to the new issuance plus (y) the total consideration received by SMIC in the new issuance (as determined in accordance with certain guidelines in the Warrant Agreement) by (ii) the number of shares of SMIC outstanding following the new issuance.

#### **Exchange Controls**

We receive a portion of our sales in Renminbi, which is currently not a freely convertible currency. The recent changes in the foreign currency policy of Renminbi do not have an impact on our overall sales. Approximately 0.9% of our sales for the year ended December 31, 2007, approximately 5.4% of our sales for the year ended December 31, 2008, and approximately 0.16% of our sales for the year ended December, 31, 2009 were denominated in Renminbi. While we have used these proceeds for the payment of our Renminbi expenses, we may in the future need to convert these sales into foreign currencies to allow us to purchase imported materials and equipment, particularly as we expect the proportion of our sales to China-based companies to increase in the future. Under China's existing foreign exchange regulations, payments of current account items, including profit distributions, interest payments and expenditures from trade may be made in foreign currencies without government approval, except for certain procedural requirements. The Chinese government may, however, at its discretion, restrict access in the future to foreign currencies for current account transactions and prohibit us from converting our Renminbi sales into foreign currencies.

## Taxation

*The following discussion of the material U.S. federal income and Cayman Islands tax consequences of an investment in our ADSs or ordinary shares is based upon laws and relevant interpretations thereof in effect as of the date of this prospectus, all of which are subject to change, possibly with retroactive effect. This discussion does not deal with all possible tax consequences relating to an investment in our ADSs or ordinary shares, such as the tax consequences under U.S. state, local and non-U.S. tax laws.*

### United States Federal Income Taxation

Except where noted, this summary deals only with the ownership and disposition of the ADSs and ordinary shares that are held as capital assets by U.S. Holders. This summary does not represent a detailed description of the U.S. federal income tax consequences applicable to U.S. Holders that are subject to special treatment under the U.S. federal income tax laws, including:

- banks;
- dealers in securities or currencies;
- financial institutions;
- real estate investment trusts;
- insurance companies;
- tax-exempt organizations;
- persons holding ADSs or ordinary shares as part of a hedging, integrated or conversion transaction, constructive sale or straddle;
- traders in securities that have elected the mark-to-market method of accounting;
- persons liable for the alternative minimum tax;
- persons who have ceased to be U.S. citizens or to be taxed as resident aliens;
- persons who own or are deemed to own more than 10% of our voting shares; or
- U.S. persons whose “functional currency” is not the U.S. dollar.

This summary is based in part on representations by the depositary and assumes that each obligation under the deposit agreement and any related agreement will be performed in accordance with its terms. Furthermore, the discussion below is based upon the provisions of the Internal Revenue Code of 1986, as amended, or the Code, and U.S. Treasury regulations, rulings and judicial decisions thereunder as of the date hereof, and such authorities may be replaced, revoked or modified, possibly on a retroactive basis, so as to result in U.S. federal income tax consequences different from those discussed below.

A U.S. Holder that holds ADSs or ordinary shares is urged to consult its own tax advisor concerning the U.S. federal income tax consequences as well as any consequences arising under the laws of any other taxing jurisdiction (including any U.S. state or locality) or any aspect of U.S. federal gift or estate law in light of the particular circumstances of the U.S. Holder.

A U.S. Holder is a beneficial owner of ADSs or ordinary shares that is a U.S. person. A U.S. person is:

- a citizen or resident of the United States;
- a corporation or other entity taxable as a corporation created or organized in or under the laws of the United States, any state thereof, or the District of Columbia;
- an estate the income of which is subject to U.S. federal income taxation, regardless of its source; or
- a trust if it is subject to the primary supervision of a court within the United States and one or more U.S. persons have the authority to control all substantial decisions of the trust or has a valid election in effect under applicable U.S. Treasury regulations to be treated as a U.S. person.

If a partnership holds ADSs or ordinary shares, the tax treatment of a partner will generally depend on the status of the partner and the activities of the partnership. A U.S. Holder that is a partner of a partnership holding ADSs or ordinary shares is urged to consult its own tax advisors.

*ADSs or Ordinary Shares.* In general, for U.S. federal income tax purposes, a U.S. Holder of ADSs will be treated as the owner of the underlying ordinary shares that are represented by such ADSs. Deposits and withdrawals of ordinary shares in exchange for ADSs will not be subject to U.S. federal income taxation.

*Distributions on ADSs or Ordinary Shares.* Subject to the discussion under “-Passive Foreign Investment Company Rules” below, the gross amount of the cash distributions on the ADSs or ordinary shares will be taxable to a U.S. Holder as dividends to the extent of our current and accumulated earnings and profits, as determined under U.S. federal income tax principles. Subject to certain limitations, dividends paid to noncorporate U.S. Holders, including individuals, may be eligible for a reduced rate of taxation if we are deemed to be a “qualified foreign corporation” for U.S. federal income tax purposes. A qualified foreign corporation includes:

- a foreign corporation that is eligible for the benefits of a comprehensive income tax treaty with the United States that includes an exchange of information program; and
- a foreign corporation if its stock with respect to which a dividend is paid or its ADSs backed by such stock are readily tradable on an established securities market within the United States,

but does not include an otherwise qualified corporation that is a passive foreign investment company. We believe that we will be a qualified foreign corporation for so long as we are not a passive foreign investment company and the ordinary shares or ADSs are considered to be readily tradable on an established securities market within the United States. A U.S. Holder that exchanges its ADSs for ordinary shares may not be eligible for the reduced rate of taxation on dividends if the ordinary shares are not readily tradable on an established securities market within the United States. Our status as a qualified foreign corporation, however, may change.

Dividends will be includable in a U.S. Holder's gross income on the date actually or constructively received by such U.S. Holder, in the case of ordinary shares, or by the depository, in the case of ADSs. These dividends will not be eligible for the dividends-received deduction generally allowed to U.S. corporations in respect of dividends received from other U.S. corporations.

To the extent that the amount of any cash distribution exceeds our current and accumulated earnings and profits, the distribution will first be treated as a tax-free return of capital, causing a reduction in the adjusted basis of the ADSs or ordinary shares (thereby increasing the amount of gain, or decreasing the amount of loss, a U.S. Holder would recognize on a subsequent disposition of the ADSs or ordinary shares), and the balance in excess of adjusted basis will be subject to tax as capital gain.

To the extent we pay dividends on the ADSs or the ordinary shares in Hong Kong dollars, the U.S. dollar value of such dividends should be calculated by reference to the exchange rate prevailing on the date of actual or constructive receipt of the dividend, regardless of whether the Hong Kong dollars are converted into U.S. dollars at that time. If Hong Kong dollars are converted into U.S. dollars on the date of actual or constructive receipt of such dividends, the tax basis of the U.S. holder in such Hong Kong dollars will be equal to their U.S. dollar value on that date and, as a result, the U.S. Holder generally should not be required to recognize any foreign currency exchange gain or loss. Any gain or loss recognized on a subsequent conversion or other disposition of the Hong Kong dollars generally will be treated as U.S. source ordinary income or loss.

It is possible that distributions of ADSs or ordinary shares that are received as part of a pro rata distribution to all of our ordinary shareholders may not be subject to U.S. federal income tax. The basis of the new ADSs or ordinary shares so received will be determined by allocating a U.S. Holder's basis in the old ADSs or ordinary shares between the old ADSs or ordinary shares and the new ADSs or ordinary shares received, based on their relative fair market values on the date of distribution.

Dividends paid on the ADSs or ordinary shares will be income from sources outside of the United States and for tax years beginning before January 1, 2007, generally will constitute "passive income" or, in the case of certain U.S. Holders, "financial services income" and for tax years beginning after December 31, 2006, generally will constitute "passive category income" or, in the case of certain U.S. Holders, "general category income" for U.S. foreign tax credit limitation purposes.

*Sale, Exchange or Other Disposition of ADSs or Ordinary Shares.* Subject to the discussion under "-Passive Foreign Investment Company Rules" below, upon the sale, exchange or other disposition of ADSs or ordinary shares, a U.S. Holder generally will recognize capital gain or loss equal to the difference between the amount realized upon the sale, exchange or other disposition and the adjusted tax basis of the U.S. Holder in the ADSs or ordinary shares. A U.S. Holder's tax basis in an ADS or an ordinary share will be, in general, the price it paid for that ADS or ordinary share. The capital gain or loss generally will be long-term capital gain or loss if, at the time of sale, exchange or other disposition, the U.S. Holder has held the ADS or ordinary share for more than one year. Net long-term capital gains of noncorporate U.S. Holders, including individuals, are eligible for reduced rates of taxation. The deductibility of capital loss is subject to limitations. Any gain or loss that a U.S. Holder recognizes generally will be treated as gain or loss from sources within the United States for U.S. foreign tax credit limitation purposes.

*Passive Foreign Investment Company Rules.* We believe that we were not a passive foreign investment company for 2007. Based on the projected composition of our income, the timing of our anticipated capital expenditures and valuation of our assets, we do not expect to be a passive foreign investment company for 2008 and do not expect to become one in the future, although this may change.

In general, we will be deemed to be a passive foreign investment company for any taxable year in which either (i) at least 75% of our gross income is passive income or (ii) at least 50% of the value (determined on the basis of a quarterly average) of our assets is attributable to assets that produce or are held for the production of passive income. For this purpose, passive income generally includes dividends, interest, royalties, rents (other than rents and royalties derived in the active conduct of a trade or business and not derived from a related person), annuities and gains from assets that produce passive income.

If we are a PFIC in any taxable year, unless a mark-to-market election described below is made, U.S. Holders will generally be subject to additional taxes and interest charges on certain “excess” distribution we make and on any gain realized on the disposition or deemed disposition of ADSs or ordinary shares regardless of whether we continue to be a PFIC in the year of the “excess” distribution or disposition. Distributions in respect of a U.S. Holder’s ADSs or ordinary shares during the taxable year will generally constitute “excess” distributions if, in the aggregate, they exceed 125% of the average amount of distributions in respect of the U.S. Holder’s ADSs or ordinary shares over the three preceding taxable years or, if shorter, the portion of the U.S. Holder’s holding period before such taxable year.

To compute the tax on “excess” distributions or any gain, (i) the “excess” distribution or the gain will be allocated ratably to each day in the holding period; (ii) the amount allocated to the current year and any tax year before we became a PFIC will be taxed as ordinary income in the current year; (iii) the amount allocated to other taxable years will be taxable at the highest applicable marginal rate in effect for that year; and (iv) an interest charge at the rate for underpayment of taxes will be imposed with respect to any portion of the “excess” distribution or gain described under (iii) above that is allocated to such other taxable years. In addition, if we are PFIC, no distribution will qualify for taxation at the preferential rate for non-corporate holders discussed in “-Distributions on ADSs or Ordinary Shares” above.

If we are a PFIC in any year in which our ADSs or ordinary shares are “marketable”, a U.S. Holder will be able to avoid the “excess” distribution rules described above if such U.S. Holder makes a timely “mark-to-market” election with respect to its ADSs or ordinary shares. The ADSs or ordinary shares will be “marketable” as long as they remain regularly traded on a national securities exchange, such as the New York Stock Exchange or the Hong Kong Stock Exchange. If this election is made in a timely fashion, the U.S. Holder will generally recognize as ordinary income or ordinary loss the difference between the fair market value of the ADSs or ordinary shares on the last day of any taxable year and the U.S. Holder’s adjusted tax basis in the ADSs or ordinary shares. Any ordinary income resulting from this election will generally be taxed at ordinary income rates. Any ordinary losses will be deductible only to the extent of the net amount of previously included income as a result of the mark-to-market election, if any. The U.S. Holder’s adjusted tax basis in the ADSs or ordinary shares will be adjusted to reflect any such income or loss.

Alternatively, the “excess distribution” rules described above may generally be avoided by electing to treat us as a “Qualified Electing Fund,” or QEF, under Section 1295 of the Internal Revenue Code of 1986, as amended. A QEF election is available only if the U.S. Holder receives an annual information statement from the PFIC setting forth its ordinary earnings and net capital gains, as calculated for U.S. federal income tax purposes. We will not provide our U.S. Holders with the information statement necessary to make a QEF election. Accordingly, U.S. Holders will not be able to make or maintain such an election.

A U.S. Holder is urged to consult its own tax advisors concerning the availability of making a mark-to-market election or a qualified electing fund election and the U.S. federal income tax consequences of holding the ADSs or ordinary shares if we are deemed to be a passive foreign investment company in any taxable year.

*Information Reporting and Backup Withholding.* In general, unless a U.S. Holder belongs to a category of certain exempt recipients (such as corporations), information reporting requirements will apply to distributions on ADSs or ordinary shares made within the United States and to the proceeds of sales of ADSs or ordinary shares that are effected through the U.S. office of a broker or the non-U.S. office of a broker that has certain connections with the United States. Backup withholding currently imposed at a rate of 28% may apply to these payments if a U.S. Holder fails to provide a correct taxpayer identification number or certification of exempt status, fails to report in full dividend and interest income or, in certain circumstances, fails to comply with applicable certification requirements.

Any amounts withheld under the backup withholding rules may generally be allowed as a refund or a credit against a U.S. Holder's U.S. federal income tax, provided the U.S. Holder furnishes the required information to the Internal Revenue Service in a timely manner.

### **Cayman Islands Taxation**

The following summary constitutes the opinion of Conyers Dill & Pearman to the material Cayman Islands tax consequences of acquiring, owning, and transferring our ADSs and ordinary shares.

The Cayman Islands currently levy no taxes on individuals or corporations based upon profits, income, gains or appreciation and there is no taxation in the nature of inheritance tax or estate duty. You will not be subject to Cayman Islands taxation on payments of dividends or upon the repurchase by us of your ADSs or ordinary shares. In addition, you will not be subject to withholding tax on payments of dividends or distributions, including upon a return of capital, nor will gains derived from the disposal of ADSs or ordinary shares be subject to Cayman Islands income or corporation tax.

No Cayman Islands stamp duty will be payable by you in respect of the issue or transfer of ADSs or ordinary shares. However, an instrument transferring title to an ADS, if brought to or executed in the Cayman Islands, would be subject to Cayman Islands stamp duty. The Cayman Islands are not party to any double taxation treaties. There are no exchange control regulations or currency restrictions in the Cayman Islands.

We were incorporated under the laws of the Cayman Islands as an exempted company and, as such, obtained an undertaking in April 2000 from the Governor in Council of the Cayman Islands substantially that, for a period of twenty years from the date of such undertaking, no law which is enacted in the Cayman Islands imposing any tax to be levied on profit or income or gains or appreciation shall apply to us and no such tax and no tax in the nature of estate duty or inheritance tax will be payable, either directly or by way of withholding, on our ADSs or ordinary shares.

### **Documents on Display**

We are subject to the information requirements of the Securities Exchange Act of 1934, as amended. In accordance with these requirements, we file reports and other information with the Securities and Exchange Commission. These materials, including this annual report and the exhibits thereto, may be inspected and copied at the Commission's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. The public may obtain information on the operation of the Commission's Public Reference Room by calling the Commission in the United States at 1-800-SEC-0330. The Commission also maintains a website at <http://www.sec.gov> that contains reports, proxy statements and other information regarding registrants that file electronically with the Commission. In addition, material filed by us can be inspected at the offices of the New York Stock Exchange at 20 Broad Street, New York, New York 10005.

## Item 11. Quantitative and Qualitative Disclosures About Market Risk

Market risk is the risk of loss related to adverse changes in market prices, including foreign currency exchange rates and interest rates of financial instruments. We are exposed to these risks in the ordinary course of our business. Our exposure to these risks derives primarily from changes in interest rates and foreign currency exchange rates. To mitigate some of these risks, we utilize spot, forward, and derivative financial instruments.

### *Foreign Exchange Rate Fluctuation Risk*

Our revenue, expense, and capital purchasing activities are primarily transacted in U.S. dollars. However, since we have operations consisting of manufacturing, sales activities and capital purchasing outside of the U.S., we enter into transactions in other currencies. We are primarily exposed to changes in exchange rate for the Euro, Japanese Yen, and Rmb.

To minimize these risks, we purchase foreign-currency forward exchange contracts with contract terms normally lasting less than twelve months to protect against the adverse effect that exchange rate fluctuations may have on foreign-currency denominated activities. These forward exchange contracts are principally denominated in Rmb, Japanese Yen or Euros, and do not qualify for hedge accounting. As of December 31, 2009, we had outstanding foreign currency forward exchange contracts with notional amounts of US\$9 million, all of which will mature during 2010. As of December 31, 2009, the fair value of foreign currency forward exchange contracts was approximately a loss of US\$0.4 million, which is recorded in other income and other current assets.

We do not enter into foreign currency exchange contracts for speculative purposes. See “Risk Factors-Risks Related to Our Financial Condition and Business-Exchange rate fluctuations could increase our costs, which could adversely affect our operating results and the value of our ADSs” and “-Risks Related to Conducting Operations in China-Devaluation or appreciation in the value of the Renminbi or restrictions on convertibility of the Renminbi could adversely affect our business and operating results.”

	As of December 31, 2009	
	(in US\$ thousands)	
	Notional	
	Amount	
	2009	Fair Value
<b>Forward Exchange Agreement</b>		
(Receive RMB/Pay US\$)		
Contract Amount	(12,236)	(39)
(Receive EUR/Pay US\$)		
Contract Amount	21,265	(390)
Total Contract Amount	<u>9,029</u>	<u>(429)</u>

### *Cross Currency Swap Fluctuation Risk*

On December 15, 2005, the Company entered into a long-term loan facility agreement in the aggregate principal amount of EUR 85 million. The company is primarily exposed to changes in the exchange rate for the Euro.

To minimize the risk, the Company entered into cross currency swap contracts with a contract term fully matching the repayment schedule of the long-term loan to protect against the adverse effect of exchange rate fluctuations arising from foreign-currency denominated loans. The cross currency swap contract does not qualify for hedge accounting.

For the portion of the Euro long-term loan that is not covered by cross currency swap contracts, we have separately entered into foreign exchange forward contracts to minimize the currency risk. These foreign exchange forward contracts do not qualify for hedge accounting.

As of December 31, 2009, the Company had outstanding cross currency swap contracts with notional amounts of US\$24.7 million, all of which will mature in 2012. Notional amounts are stated in the U.S. dollar equivalents at spot exchange rates as of the respective dates. In 2009, we recorded a gain approximately US\$0.6 million from cross currency swap contracts in other expenses, net. As of December 31, 2009, the fair value of cross currency swap contracts were approximately US\$(0.1) million.

## Interest Rate Risk

Our exposure to interest rate risks relates primarily to our long-term debt obligations, which we generally assume to fund capital expenditures and working capital requirements. The table below presents annual principal amounts due and related weighted average implied forward interest rates by year of maturity for our debt obligations outstanding as of December 31, 2009. Our long-term debt obligations are all subject to variable interest rates. The interest rates on our U.S. dollar-denominated loans are linked to the LIBOR rate, while our EUR-denominated loans have interest rates linked to the EURIBOR rates. As a result, the interest rates on our loans are subject to fluctuations in the underlying interest rates to which they are linked.

	As of December 31,				
	2010	2011	2012	2013	2014
	(Forecast)				
	(in US\$ thousands, except percentages)				
<b>US\$ denominated</b>					
Average balance	388,792	78,924	9,506	—	—
Average interest rate	1.82%	2.40%	2.92%	—	—
<b>EUR denominated</b>					
Average balance	29,789	16,201	3,245	—	—
Average interest rate	1.21%	1.56%	1.88%	—	—
<b>Weighted average forward interest rate</b>	<b>1.82%</b>	<b>2.37%</b>	<b>2.86%</b>	<b>—</b>	<b>—</b>

## Item 12. Description of Securities Other Than Equity Securities

### American Depositary Shares

#### *Fees and Charges That An ADR Holder May Have To Pay*

Category (as defined by SEC)	Depositary Actions	Associated Fee
(a) Depositing or substituting the underlying shares	Each person to whom ADSs are issued against deposits of Shares, including deposits in respect of Share Distributions, Rights and Other Distributions (as such terms are defined in paragraph (10) of the Deposit Agreement as filed with the SEC on March 10, 2004 which we are referred to herein as the "Depositary Agreement")	\$5.00 for each 100 ADSs (or portion thereof) evidenced by the new ADRs delivered
(b) Receiving or distributing dividends	Distribution of dividends	\$.02 or less per ADS (or portion thereof)
(c) Selling or exercising rights	Distribution or sale of securities	Such fee being in an amount equal to the fee for the execution and delivery of ADSs referred to above which would have been charged as a result of the deposit of such securities
(d) Withdrawing an underlying security	Each person surrendering ADSs for withdrawal of Deposited Securities	\$5.00 for each 100 ADSs (or portion thereof) surrendered.
(e) Transferring, splitting or grouping receipts;	Transfers, combining or grouping of depositary receipts	\$1.50 per ADR
(f) General depositary services, particularly those charged on an annual basis.	Not applicable	Not applicable
(g) Expenses of the depositary	Fees and expenses incurred by the Depositary (including without limitation expenses incurred on behalf of Holders in connection with compliance with foreign exchange control regulations or any law or regulation relating to foreign investment) in delivery of Deposited Securities or otherwise in connection with the Depositary's or its Custodian's compliance with applicable law, rule or regulation.	The Company will pay all other charges and expenses of the Depositary and any agent of the Depositary (except the Custodian) pursuant to agreements from time to time between the Company and the Depositary, except (i) stock transfer or other taxes and other governmental charges (which are payable by Holders or persons depositing Shares), (ii) cable, telex and facsimile transmission and delivery charges incurred at the request of persons depositing, or Holders delivering Shares, ADRs or Deposited Securities (which are payable by such persons or Holders), (iii) transfer or registration fees for the registration of transfer of Deposited Securities on any applicable register in connection with the deposit or withdrawal of Deposited Securities (which are payable by persons depositing Shares or Holders withdrawing Deposited Securities; there are no such fees in respect of the Shares as of the date of the Deposit Agreement), and (iv) expenses of the Depositary in connection with the conversion of foreign currency into U.S. dollars (which are paid out of such foreign currency). These charges may be changed in the manner indicated in paragraph (16) of the Depositary Agreement.

*Fees and Payments Made By The Depositary To The Company*

**DIRECT PAYMENTS**

J.P. Morgan, as depositary, has agreed to reimburse certain reasonable Company expenses related to the Company's ADR Program and incurred by the Company in connection with the Program. In the year ended 2009, the depositary did not make reimbursement. The amounts the depositary reimbursed are not performance related to the fees collected by the depositary from ADR holders.

**INDIRECT PAYMENTS**

As part of its service to the Company, J.P. Morgan has agreed to waive \$120,000 annually for on-going ADR Program maintenance. The table below sets forth the fees that J.P. Morgan has agreed to waive and/or expenses that J.P. Morgan has agreed to pay in the year ended December 31, 2009.

<b>Category of Expenses</b>	<b>Amount Waived or Paid for Fiscal Year Ended December 31, 2009</b>
Third-party expenses paid directly	\$0
Fees waived	\$120,000

**PART II**

**Item 13. Defaults, Dividend Arrearages, and Delinquencies**

Not applicable.

**Item 14. Material Modifications to the Rights of Security Holders and Use of Proceeds**

Not applicable.

## **Item 15. Controls and Procedures**

### ***Disclosure Controls and Procedures***

Our Chief Executive Officer and our Chief Financial and Accounting Officer have evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934). They have concluded that as of December 31, 2009, our disclosure controls and procedures were not effective due to a material weakness below.

### ***Report By Management On Internal Control Over Financial Reporting***

The management of Semiconductor Manufacturing International Corporation (“SMIC”) is responsible for establishing and maintaining effective internal control over financial reporting. SMIC’s internal control system was designed to provide reasonable assurance to our management and board of directors regarding the reliability of financial reporting and the preparation and fair presentation of financial statements issued for external purposes in accordance with generally accepted accounting principles.

All internal control systems, no matter how well designed, have inherent limitations and may not prevent or detect misstatements. Therefore, even those systems determined to be effective can only provide reasonable assurance with respect to financial reporting reliability and financial statement preparation and presentation.

SMIC management assessed the effectiveness of internal control over financial reporting and concluded that our internal control over financial reporting was not effective as of December 31, 2009 due to a material weakness. As a result, our ability to record, process, and summarize financial reports in a manner consistent with management assertions could be adversely effected pursuant to Public Company Accounting Oversight Board Audit Standard 5. In making this assessment, we also used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria) in Internal Control — Integrated Framework.

Based on these criteria, Management identified the following material weakness: the control procedures to ensure adequate communication occurs among internal functions so that proper accounting analysis is conducted by those charged with financial reporting and accounting prior to closing the financial accounts and that all relevant information relating to non-routine transactions and significant accounting estimates known to senior management and other internal functions is communicated timely to those charged with the responsibility of financial reporting and maintaining the Company’s books and records did not operate effectively.

As a result of this material weakness, we have initiated and will continue to implement remediation measures for this material weakness including, but not limited to improving centralized documentation control, improving the internal communication procedures between senior executive management, accounting personnel, and related business owners, and strengthening policies and procedures related to the transferring of responsibilities and the handoff of personnel duties. Any failure to implement these improvements to internal controls over financial reporting may render our future assertions as ineffective and potentially impact our ability to produce reliable financial reports, effectively manage the company, prevent fraud, and could potentially harm our business and our performance.

### ***Attestation Report of the Registered Public Accounting Firm***

The effectiveness of internal control over financial reporting as of December 31, 2009 has been audited by our independent registered public accounting firm, Deloitte Touche Tohmatsu as stated in its report (See F-1).

### ***Changes In Internal Control Over Financial Reporting***

There were no changes in the design in our internal controls over financial reporting that occurred during the period covered by this annual report that have materially affected, or are reasonably likely to materially affect, our internal controls over financial reporting. As identified in Report by Management on Internal Control Over Financial Reporting, a material weaknesses was identified in our internal control as of December 31, 2009. Our plans for remediating such material weaknesses, which would constitute changes in our internal control over financial reporting prospectively, are also enumerated in that report.

## Item 16A. Audit Committee Financial Expert

Our board has determined that Mr. Lip-Bu Tan is an audit committee financial expert as defined under the applicable rules of the SEC issued pursuant to Section 407 of the Sarbanes-Oxley Act of 2002. Mr. Tan is independent as such term is defined under Section 303A.02 of the New York Stock Exchange Listed Company Manual.

## Item 16B. Code of Ethics

We have adopted a Code of Business Conduct and Ethics which is applicable to all of our employees, including our Chief Executive Officer, Chief Financial and Accounting Officer, and any other persons performing similar functions.

Our Code of Business Conduct and Ethics is available, free of charge, to any person who sends a request for a paper copy to us at Semiconductor Manufacturing International Corporation, 18 Zhangjiang Road, Pudong New Area, Shanghai, China 201203, Attention: Investor Relations.

## Item 16C. Principal Accountant Fees and Services

The following table sets forth the aggregate audit fees, audit-related fees, tax fees and all other fees we paid or incurred for audit services, audit-related services, tax services and other services rendered by our principal accountants during the fiscal years ended December 31, 2008 and December 31, 2009.

	<b>2008</b>	<b>2009</b>
Audit Fees	US\$ 1,584,925	US\$ 1,291,969
Audit-Related Fees	US\$ -	US\$ -
Tax Fees	US\$ -	US\$ -
<b>Total</b>	<b>US\$ 1,584,925</b>	<b>US\$ 1,291,969</b>

Audit fees consist of the standard work associated with U.S. GAAP and statutory audits of our annual financial statements including the review of our quarterly financial results and filings with the Securities and Exchange Commission, Hong Kong Stock Exchange and other regulators.

Audit-related fees include services relating to our compliance with the requirements of the Sarbanes-Oxley Act and services relating to our resolution of SEC related comments.

Tax services include tax compliance, tax advice, tax planning and transfer pricing with respect to the various regulations to which we are subject.

The audit committee has approved all audit-related services performed by Deloitte Touche Tohmatsu, 35/F, One Pacific Place, 88, Queensway, Hong Kong. The audit committee has also approved and will continue to consider, on a case-by-case basis, all non-audit services. According to the charter of our audit committee, before our principal accountants are engaged by us to render audit or non-audit services, the engagement, including the nature and scope of the work to be performed and the associated fees, must be approved by our audit committee. Our audit committee has not established any pre-approval policies and procedures.

**Item 16D. Exemptions from the Listing Standards of Audit Committees**

Not applicable.

**Item 16E. Purchases of Equity Securities by the Issuer and Affiliated Purchasers**

Pursuant to the terms of our 2001 Stock Plan, 2001 Preference Shares Stock Plan, 2001 Regulation S Stock Plan and 2001 Regulation S Preference Shares Stock Plan recipients of stock options to purchase our ordinary shares are entitled to early exercise their options, subject to our right of repurchase. When employees, directors, or service providers who have early exercised their options terminate their employment with us, we may repurchase the unvested shares subject to the option, at a price which is the lower of the exercise price of the option and the fair market value of our ordinary shares as of the date of repurchase. Other than repurchases of unvested shares upon termination of employment pursuant to these employee stock option plans, we have not repurchased any of our outstanding capital stock during 2009.

**Item 16F. Change in Registrant Certifying Accountant**

Not applicable.

**Item 16G. Corporate Governance**

We are incorporated under the laws of the Cayman Islands. The principal trading market for our shares is the Hong Kong Stock Exchange. We have adopted a set of corporate governance guidelines in accordance with the applicable laws, rule and regulations, including our Corporate Governance Policy and our Code of Business Conduct and Ethics, each of which are posted on our website.

Because our American Depositary Shares are registered with the United States Securities and Exchange Commission and are listed on the New York Stock Exchange, or the NYSE, we are also subject to certain U.S. corporate governance requirements, including many of the provisions of the Sarbanes-Oxley Act of 2002. However, because we are a “foreign private issuer”, many of the corporate governance rules in the NYSE Listed Company Manual, or the NYSE Standards, do not apply to us. We are permitted to follow corporate governance practices in accordance with Cayman Islands law and the Hong Kong Stock Exchange Listing Rules in lieu of most of the corporate governance standards contained in the NYSE Standards.

Set forth below is a brief summary of the significant differences between our corporate governance practices and the corporate governance standards applicable to U.S. domestic companies listed on the NYSE, or U.S. domestic issuers:

- The NYSE Standards require U.S. domestic issuers to have a nominating/corporate governance committee composed entirely of independent directors. We are not subject to this requirement, and we have not established a nominating/corporate governance committee.
- The NYSE Standards provide detailed tests that U.S. domestic issuers must use for determining independence of directors. While we may not specifically apply the NYSE tests, our board assesses independence in accordance with Hong Kong Stock Exchange Listing Rules, and in the case of audit committee members in accordance with Rule 10A-3 under the U.S. Securities and Exchange Act of 1934, as amended, and considers whether there are any relationships or circumstances which are likely to affect such director’s independence from management.
- We believe that the composition of our board and its committees and their respective duties and responsibilities are otherwise generally responsive to the relevant NYSE Standards applicable to U.S. domestic issuers. However, the charters for our audit and compensation committees may not address all aspects of the NYSE Standards. For example, NYSE Standards require compensation committees of U.S. domestic issuers to produce a compensation committee report annually and include such report in their annual proxy statements or annual reports on Form 10-K. We are not subject to this requirement, and we have not addressed this in our compensation committee charter. We disclose the amounts of compensation of our directors on a named basis and the five highest individuals on an aggregate basis in our annual report in accordance with the requirements of the Hong Kong Stock Exchange Listing Rules.
- The NYSE Standards require that shareholders must be given the opportunity to vote on all equity compensation plans and material revisions to those plans. We comply with the requirements of Cayman Islands law and the Hong Kong Stock Exchange Listing Rules in determining whether shareholder approval is required, and we do not take into consideration the NYSE’s detailed definition of what are considered “material revisions.”

The above summary is not a detailed, item-by-item analysis of the differences between our corporate governance practices and the corporate governance standards applicable to U.S. domestic issuers, but rather is intended to provide our U.S. shareholders with a brief, general summary of the significant ways that our corporate governance practices differ from those of a U.S. domestic issuer.

**Item 17. Financial Statements**

We have elected to provide the financial statements and related information specified in Item 18 in lieu of Item 17.

**Item 18. Financial Statements**

See pages F-1 to F-50.

## Item 19. Exhibits

- Exhibit 1.1 Eleventh Amended and Restated Articles of Association, as adopted at the Registrant's annual general meeting of shareholders on June 2, 2008 <sup>(1)</sup>
- Exhibit 4.1 Settlement Agreement dated January 31, 2005 by and between Semiconductor Manufacturing International Corporation and Taiwan Semiconductor Manufacturing Corporation, Ltd., including Patent License Agreement <sup>(2)</sup>
- Exhibit 4.2 English language summary of Chinese language Syndicate Loan Agreement dated May 26, 2005, between Semiconductor Manufacturing International (Beijing) Corporation, Semiconductor Manufacturing International Corporation, as guarantor, and China Development Bank, China Construction Bank, Bank of China, Agricultural Bank of China, China Merchants Bank, HuaXia Bank, China Mingsheng Bank, Bank of Communications, Bank of Beijing, Industrial and Commercial Bank of China (Asia) and CITIC Ka Wah Bank <sup>(2)</sup>
- Exhibit 4.3 Form of Indemnification Agreement, as adopted at the Registrant's annual general meeting of shareholders on May 6, 2005<sup>(2)</sup>
- Exhibit 4.4 Form of Service Contract between the Company and each of its executive officers <sup>(3)</sup>
- Exhibit 4.5 Form of Service Contract between the Company and each of its directors <sup>(3)</sup>
- Exhibit 4.6 English language summary of Chinese language Syndicate Loan Agreement dated May 31, 2006, between Semiconductor Manufacturing International (Tianjin) Corporation, Semiconductor Manufacturing International Corporation, as guarantor, and China Construction Bank, China Minsheng Bank, China Development Bank, Industrial and Commercial Bank of China, Agricultural Bank of China, Bank of China, China Merchants Bank, China Bo Hai Bank, Bank of Communications and Bangkok Bank <sup>(4)</sup>
- Exhibit 4.7 English language summary of Chinese language Syndicate Loan Agreement dated June 8, 2006, between Semiconductor Manufacturing International (Shanghai) Corporation, Semiconductor Manufacturing International Corporation, as guarantor, and ABN AMRO Bank N.V., Bank of China (Hong Kong) Limited, Bank of Communications, The Bank of Tokyo-Mitsubishi UFJ, Ltd., China Construction Bank, DBS Bank Ltd., Fubon Bank (Hong Kong) Limited, Industrial and Commercial Bank of China and Shanghai Pudong Development Bank <sup>(4)</sup>
- Exhibit 4.8 Share Purchase Agreement, dated November 6, 2008, by and between the Company and Datang Telecom Technology & Industry Holdings Limited Co., Ltd.<sup>(5)</sup>
- Exhibit 4.9 English language translation of Strategic Cooperation Agreement, dated December 24, 2008 by and between the Company and Datang Telecom Technology & Industry Holdings Co., Ltd. <sup>(6)</sup>
- Exhibit 4.10 Settlement Agreement dated November 9, 2009 by and between the Company and Taiwan Semiconductor Manufacturing Corporation, Ltd., including Share and Warrant Agreements
- Exhibit 8.1 List of Subsidiaries
- Exhibit 12.1 Certification of CEO under Section 302 of the U.S. Sarbanes-Oxley Act of 2002
- Exhibit 12.2 Certification of CFO under Section 302 of the U.S. Sarbanes-Oxley Act of 2002
- Exhibit 13.1 Certification of CEO and CFO under Section 906 of the U.S. Sarbanes-Oxley Act of 2002
- Exhibit 99.1 Consent of Deloitte Touche Tohmatsu

---

(1) Previously filed as an exhibit to the Registrant's Annual Report on Form 20F for the fiscal year ended December 31, 2007, filed June 27, 2008 and amended November 28, 2008.

(2) Previously filed as an exhibit to the Registrant's Annual Report on Form 20F for the fiscal year ended December 31, 2004, filed June 28, 2005. With respect to Exhibit 4.1, please refer to Item 8 "Litigation" in the Registrant's Annual Report on Form 20F for the fiscal year ended December 31, 2008.

(3) Previously filed as an exhibit to the Registrant's Annual Report on Form 20F for the fiscal year ended December 31, 2008, filed June 22, 2009.

(4) Previously filed as an exhibit to the Registrant's Annual Report on Form 20F for the fiscal year ended December 31, 2005, filed June 28, 2006.

(5) Previously filed as an exhibit to the Registrant's Form 6-K dated November 17, 2008. Portions of this exhibit were omitted and filed separately with the Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended, concerning confidential treatment.

(6) Previously filed as an exhibit to the Registrant's Form 6-K dated January 5, 2009. Portions of this exhibit were omitted and filed separately with the Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended, concerning



**SIGNATURES**

The registrant hereby certifies that it meets all of the requirements for filing on Form 20-F and that it has duly caused and authorized the undersigned to sign this annual report on its behalf.

SEMICONDUCTOR MANUFACTURING INTERNATIONAL  
CORPORATION

Date: June 29, 2010

By: /s/ David NK Wang

Name: David NK Wang

Title: President and Chief Executive Officer

## INDEX TO FINANCIAL STATEMENTS

<b>Contents</b>	<b>Page(s)</b>
Report of Independent Registered Public Accounting Firm	F-1
Consolidated statements of operations for the years ended December 31, 2009, 2008, and 2007	F-3
Consolidated balance sheets as of December 31, 2009, 2008, and 2007	F-4
Consolidated statements of equity and comprehensive loss for the years ended December 31, 2009, 2008, and 2007	F-6
Consolidated statements of cash flows for the years ended December 31, 2009, 2008, and 2007	F-7
Notes to the consolidated financial statements	F-9
Additional information - Financial statement Schedule I	F-48

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of Semiconductor Manufacturing International Corporation

We have audited the accompanying consolidated balance sheets of Semiconductor Manufacturing International Corporation and subsidiaries (the "Company") as of December 31, 2007, 2008 and 2009, and the related consolidated statements of operations, stockholders' equity and comprehensive loss, and cash flows for each of the three years in the period ended December 31, 2009, and the related financial statement schedule included in Schedule I. These financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and financial statement schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of Semiconductor Manufacturing International Corporation and subsidiaries as of December 31, 2007, 2008 and 2009, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2009, in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, such financial statement schedule, when considered in relation to the basic consolidated financial statements taken as whole, present fairly, in all material respects, the information set forth therein.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company's internal control over financial reporting as of December 31, 2009, based on the criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated April 26, 2010, expressed an adverse opinion on the Company's internal control over financial reporting because of a material weakness.

Deloitte Touche Tohmatsu  
*Certified Public Accountants*

Hong Kong

April 26, 2010

To the Board of Directors and Stockholders of Semiconductor Manufacturing International Corporation

We have audited Semiconductor Manufacturing International Corporation and subsidiaries' (the "Company's") internal control over financial reporting as of December 31, 2009, based on criteria established in Internal Control — Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Report by Management on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on that risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed by, or under the supervision of, the company's principal executive and principal financial officers, or persons performing similar functions, and effected by the company's board of directors, management, and other personnel to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of the inherent limitations of internal control over financial reporting, including the possibility of collusion or improper management override of controls, material misstatements due to error or fraud may not be prevented or detected on a timely basis. Also, projections of any evaluation of the effectiveness of the internal control over financial reporting to future periods are subject to the risk that the controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the company's annual or interim financial statements will not be prevented or detected on a timely basis. The following material weakness has been identified and included in management's assessment: the control procedures to ensure that adequate accounting analysis is conducted by those charged with financial reporting and accounting prior to closing the financial accounts and that all relevant information relating to non-routine transactions and significant accounting estimates known to senior management and other internal functions is communicated timely to those charged with the responsibility of financial reporting and maintaining the Company's books and records did not operate effectively. This material weakness was considered in determining the nature, timing, and extent of audit tests applied in our audit of the consolidated financial statements as of and for the year ended December 31, 2009 of the Company and this report does not affect our report on such financial statements.

In our opinion, because of the effect of the material weakness identified above on the achievement of the objectives of the control criteria, the Company has not maintained effective internal control over financial reporting as of December 31, 2009, based on the criteria established in Internal Control — Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), consolidated financial statements as of and for the year ended December 31, 2009, of the Company and our report dated April 26, 2010 expressed an unqualified opinion on those financial statements.

Deloitte Touche Tohmatsu  
*Certified Public Accountants*

Hong Kong  
April 26, 2010

**CONSOLIDATED STATEMENTS OF OPERATIONS**

(In US dollars, except share data)

	Year ended December 31,		
	2009	2008	2007
Sales	\$ 1,070,387,103	\$ 1,353,711,299	\$ 1,549,765,288
Cost of sales	1,184,589,553	1,412,851,079	1,397,037,881
Gross (loss) profit	(114,202,450)	(59,139,780)	152,727,407
Operating expenses (income):			
Research and development	160,753,629	102,239,779	97,034,208
General and administrative	215,565,907	58,841,103	74,489,877
Selling and marketing	26,565,692	20,661,254	18,715,961
Amortization of acquired intangible assets	35,064,589	32,191,440	27,070,617
Impairment loss of long-lived assets	138,294,783	106,740,667	—
Loss (gain) from sale of equipment and other fixed assets	3,832,310	(2,877,175)	(28,651,446)
Litigation settlement	269,637,431	—	—
Total operating expenses, net	849,714,341	317,797,068	188,659,217
Loss from operations	(963,916,791)	(376,936,848)	(35,931,810)
Other income (expense):			
Interest income	2,591,284	11,542,339	12,348,630
Interest expense	(24,699,336)	(50,766,958)	(37,936,126)
Change in the fair value of commitment to issue shares and warrants	(30,100,793)	—	—
Foreign currency exchange gain	4,179,986	3,229,710	11,249,889
Others, net	4,626,008	7,428,721	2,237,902
Total other expense, net	(43,402,851)	(28,566,188)	(12,099,705)
Loss before income tax	(1,007,319,642)	(405,503,036)	(48,031,515)
Income tax benefit (expense)	46,624,242	(26,432,993)	29,719,775
Loss from equity investment	(1,782,142)	(444,211)	(4,012,665)
Net loss	(962,477,542)	(432,380,240)	(22,324,405)
Accretion of interest to noncontrolling interest	(1,059,663)	(7,850,880)	2,856,258
Loss attributable to Semiconductor Manufacturing International Corporation	(963,537,205)	(440,231,120)	(19,468,147)
Loss per share, basic and diluted			
Net loss per share attributed to Semiconductor Manufacturing International Corporation	\$ (0.04)	\$ (0.02)	\$ (0.00)
Shares used in calculating basic and diluted loss per share	22,359,237,084	18,682,544,866	18,501,940,489

The accompanying notes are an integral part of these consolidated financial statements.

**CONSOLIDATED BALANCE SHEETS**

(In US dollars, except share data)

	<b>December 31,</b>		
	<b>2009</b>	2008	2007
<b>ASSETS</b>			
Current assets:			
Cash and cash equivalents	\$ 443,462,514	\$ 450,229,569	\$ 469,284,013
Restricted cash	20,360,185	6,254,813	—
Short-term investments	—	19,928,289	7,637,870
Accounts receivable, net of allowances of \$96,144,543, \$5,680,658 and \$4,492,090 at December 31, 2009, 2008 and 2007, respectively	204,290,545	199,371,694	298,387,652
Inventories	193,705,195	171,636,868	248,309,765
Prepaid expense and other current assets	28,881,866	56,299,086	31,237,755
Receivable for sale of equipment and other fixed assets	—	23,137,764	17,321,000
Assets held for sale	8,184,462	—	3,123,567
Current portion of deferred tax assets	8,173,216	—	—
<b>Total current assets</b>	<b>907,057,983</b>	926,858,083	1,075,301,622
Prepaid land use rights	78,111,788	74,293,284	57,551,991
Plant and equipment, net	2,251,614,217	2,963,385,840	3,202,957,665
Acquired intangible assets, net	182,694,105	200,059,106	232,195,132
Deferred cost, net	—	47,091,516	70,637,275
Equity investment	9,848,148	11,352,186	9,896,398
Other long-term prepayments	391,741	1,895,337	2,988,404
Deferred tax assets	94,358,635	45,686,470	56,915,172
<b>TOTAL ASSETS</b>	<b>3,524,076,617</b>	\$4,270,621,822	\$4,708,443,659
<b>LIABILITIES AND EQUITY</b>			
Current liabilities:			
Accounts payable	\$ 228,882,804	\$ 185,918,539	\$ 301,992,739
Short-term borrowings	286,864,063	201,257,773	107,000,000
Current portion of long-term debt	205,784,080	360,628,789	340,692,788
Accrued expenses and other current liabilities	111,086,990	122,173,803	150,109,963
Current portion of promissory notes	78,608,288	29,242,001	29,242,000
Commitment to issue shares and warrants relating to litigation settlement	120,237,773	—	—
Income tax payable	58,573	552,006	1,152,630
<b>Total current liabilities</b>	<b>1,031,522,571</b>	899,772,911	930,190,120

	<b>December 31,</b>		
	<b>2009</b>	2008	2007
<b>Long-term liabilities:</b>			
Non-current portion of promissory notes	<b>83,324,641</b>	23,589,958	51,057,163
Long-term debt	<b>550,653,099</b>	536,518,281	616,294,743
Long-term payables relating to license agreements	<b>4,779,562</b>	18,169,006	62,833,433
Other long term liabilities	<b>21,679,690</b>	—	—
Deferred tax liabilities	<b>1,035,164</b>	411,877	604,770
<b>Total long-term liabilities</b>	<b>661,472,156</b>	578,689,122	730,790,109
<b>Total liabilities</b>	<b>1,692,994,727</b>	1,478,462,033	1,660,980,229
<b>Noncontrolling interest</b>	<b>34,841,507</b>	42,795,288	34,944,408
<b>Commitments</b>			
<b>Equity:</b>			
Ordinary shares, \$0.0004 par value, 50,000,000,000 shares authorized, 22,375,886,604, 22,327,784,827 and 18,558,919,712 shares issued and outstanding at December 31, 2009, 2008 and 2007, respectively	<b>8,950,355</b>	8,931,114	7,423,568
Additional paid-in capital	<b>3,499,723,153</b>	3,489,382,267	3,313,375,972
Accumulated other comprehensive loss	<b>(386,163)</b>	(439,123)	(1,881)
Accumulated deficit	<b>(1,712,046,962)</b>	(748,509,757)	(308,278,637)
<b>Total equity</b>	<b>1,796,240,383</b>	2,749,364,501	3,012,519,022
<b>TOTAL LIABILITIES, NONCONTROLLING INTEREST AND EQUITY</b>	<b>\$ 3,524,076,617</b>	\$4,270,621,822	\$4,708,443,659

The accompanying notes are an integral part of these consolidated financial statements.

**CONSOLIDATED STATEMENTS OF EQUITY AND COMPREHENSIVE LOSS**

(In US dollars, except share data)

	<b>Ordinary</b>		<b>Additional paid-in</b>		<b>Accumulated other</b>		<b>Total</b>	<b>Total</b>
	<b>Share</b>	<b>Amount</b>	<b>capital</b>	<b>comprehensive</b>	<b>Accumulated</b>	<b>deficit</b>	<b>equity</b>	<b>comprehensive</b>
				<b>loss</b>				<b>loss</b>
Balance at January 1, 2007	18,432,756,463	\$7,373,103	\$ 3,288,765,465	\$ 91,840	\$ (288,810,490)		\$3,007,419,918	\$ (44,156,216)
Exercise of stock options	126,455,749	50,582	3,988,549	—	—		4,039,131	—
Repurchase of restricted ordinary shares	(292,500)	(117)	(21,383)	—	—		(21,500)	—
Share-based compensation	—	—	20,643,341	—	—		20,643,341	—
Net loss	—	—	—	—	(19,468,147)		(19,468,147)	(19,468,147)
Foreign currency translation adjustments	—	—	—	(93,721)	—		(93,721)	(93,721)
Balance at December 31, 2007	18,558,919,712	\$7,423,568	\$ 3,313,375,972	\$ (1,881)	\$ (308,278,637)		\$3,012,519,022	\$ (19,561,868)
Exercise of stock options	69,770,815	27,908	768,361	—	—		796,269	—
Issuance of ordinary shares to a stockholder	3,699,094,300	1,479,638	163,620,362	—	—		165,100,000	—
Share-based compensation	—	—	11,617,572	—	—		11,617,572	—
Net loss	—	—	—	—	(440,231,120)		(440,231,120)	(440,231,120)
Foreign currency translation adjustments	—	—	—	(437,242)	—		(437,242)	(437,242)
Balance at December 31, 2008	22,327,784,827	\$8,931,114	\$ 3,489,382,267	\$ (439,123)	\$ (748,509,757)		\$2,749,364,501	\$ (440,668,362)
Exercise of stock options	48,101,777	19,241	195,785	—	—		215,026	—
Share-based compensation	—	—	10,145,101	—	—		10,145,101	—
Net loss	—	—	—	—	(963,537,205)		(963,537,205)	(963,537,205)
Foreign currency translation adjustments	—	—	—	52,960	—		52,960	52,960
Balance at December 31, 2009	22,375,886,604	\$8,950,355	\$ 3,499,723,153	\$ (386,163)	\$ (1,712,046,962)		\$1,796,240,383	\$ (963,484,245)

The accompanying notes are an integral part of these consolidated financial statements.

**CONSOLIDATED STATEMENTS OF CASH FLOWS**

(In US dollars)

	Year ended December 31,		
	2009	2008	2007
<b>Operating activities:</b>			
Net loss	<b>\$(962,477,542)</b>	\$(432,380,240)	\$ (22,324,405)
Adjustments to reconcile net loss to net cash provided by operating activities:			
Deferred taxes	<b>(56,222,094)</b>	11,035,809	(31,234,415)
Loss (income) from sale of fixed assets	<b>3,832,310</b>	(2,877,175)	(28,651,446)
Depreciation and amortization	<b>748,185,169</b>	761,808,822	706,277,464
Non-cash interest expense on promissory notes and long-term payable relating to license agreements	<b>3,844,324</b>	6,915,567	4,762,343
Amortization of acquired intangible assets	<b>35,064,589</b>	32,191,440	27,070,616
Share-based compensation	<b>10,145,101</b>	11,617,572	20,643,341
Loss from equity investment	<b>1,782,142</b>	444,211	4,012,665
Impairment loss of long-lived assets	<b>138,294,783</b>	106,740,667	—
Litigation settlement (noncash portion)	<b>239,637,431</b>	—	—
Change in the fair value of commitment to issue shares and warrants	<b>30,100,793</b>	—	—
Allowance for doubtful accounts	<b>111,584,756</b>	1,188,568	443,245
<b>Changes in operating assets and liabilities:</b>			
Accounts receivable	<b>(95,382,736)</b>	97,827,390	(46,645,922)
Inventories	<b>(22,068,328)</b>	76,672,897	26,869,187
Prepaid expense and other current assets	<b>28,920,815</b>	(23,968,264)	(9,339,779)
Accounts payable	<b>35,788,601</b>	(76,827,049)	19,852,824
Accrued expenses and other current liabilities	<b>11,349,772</b>	(7,487)	2,982,369
Income tax payable	<b>(493,433)</b>	(600,624)	1,080,213
Other long term liabilities	<b>21,679,690</b>	—	(3,333,333)
Net cash provided by operating activities	<b>283,566,143</b>	569,782,104	672,464,967
<b>Investing activities:</b>			
Purchase of plant and equipment	<b>(217,269,234)</b>	(669,054,599)	(717,170,957)
Proceeds from government subsidy to purchase plant and equipment	<b>54,125,325</b>	4,181,922	—
Proceeds received from sale of assets held for sale	<b>1,482,716</b>	563,008	16,476,045
Proceeds from disposal of plant and equipment	<b>3,715,641</b>	2,319,597	98,128,041
Purchase of acquired intangible assets	<b>(59,096,987)</b>	(79,277,586)	(90,090,114)
Purchase of short-term investments	<b>(49,974,860)</b>	(291,007,766)	(135,241,799)
Sale of short-term investments	<b>69,903,150</b>	278,717,347	185,554,532
Change in restricted cash	<b>(14,105,371)</b>	(6,254,813)	—
Purchase of equity investment	<b>(278,103)</b>	(1,900,000)	—
Net cash used in investing activities	<b>(211,497,723)</b>	(761,712,890)	(642,344,252)

	Year ended December 31,		
	2009	2008	2007
<b>Financing activities:</b>			
Proceeds from short-term borrowings	726,897,421	422,575,386	201,658,000
Repayment of short-term borrowings	(641,291,131)	(328,317,613)	(165,658,000)
Repayment of promissory note	(15,000,000)	(30,000,000)	(30,000,000)
Proceeds from long-term debt	100,945,569	285,929,954	262,247,672
Repayment of long-term debt	(241,655,460)	(345,770,415)	(195,628,015)
Proceeds from exercise of employee stock options	215,026	796,269	4,039,131
Proceeds from issuance of ordinary shares	—	168,100,000	—
Repurchase of restricted ordinary shares	—	—	(21,500)
Redemption of noncontrolling interest	(9,013,444)	—	(1,000,000)
Net cash (used in) provided by financing activities	(78,902,019)	173,313,581	75,637,288
Effect of exchange rate changes	66,544	(437,239)	(93,721)
<b>NET (DECREASE) INCREASE IN CASH AND CASH EQUIVALENTS</b>	<b>(6,767,055)</b>	<b>(19,054,444)</b>	<b>105,664,282</b>
<b>CASH AND CASH EQUIVALENTS, beginning of year</b>	<b>450,229,569</b>	<b>469,284,013</b>	<b>363,619,731</b>
<b>CASH AND CASH EQUIVALENTS, end of year</b>	<b>\$ 443,462,514</b>	<b>\$ 450,229,569</b>	<b>\$ 469,284,013</b>
<b>SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION:</b>			
Income taxes paid	\$ 9,636,901	\$ 15,997,808	\$ 435,109
Interest paid	\$ 37,934,992	\$ 54,423,059	\$ 45,322,891
<b>SUPPLEMENTAL DISCLOSURES OF INVESTING OR FINANCING ACTIVITIES</b>			
Accounts payable for plant and equipment	\$(105,618,026)	\$ (99,592,362)	\$(138,839,513)

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

### 1. ORGANIZATION AND PRINCIPAL ACTIVITIES

Semiconductor Manufacturing International Corporation was incorporated under the laws of the Cayman Islands on April 3, 2000. As of December 31, 2009, the Company operates primarily through the following subsidiaries:

<b>Name of company</b>	<b>Place and date of incorporation/ establishment</b>	<b>Attributable equity interest held</b>	<b>Principal activity</b>
Better Way Enterprises Limited (“Better Way”)	Samoa April 5, 2000	100%	Provision of marketing related activities
Semiconductor Manufacturing International (Shanghai) Corporation (“SMIS”)*#	People’s Republic of China (the “PRC”) December 21, 2000	100%	Manufacturing and trading of semiconductor products
SMIC, Americas	United States of America June 22, 2001	100%	Provision of marketing related activities
Semiconductor Manufacturing International (Beijing) Corporation (“SMIB”)*#	PRC July 25, 2002	100%	Manufacturing and trading of semiconductor products
SMIC Japan Corporation#	Japan October 8, 2002	100%	Provision of marketing related activities
SMIC Europe S.R.L.	Italy July 3, 2003	100%	Provision of marketing related activities
SMIC Commercial (Shanghai) Limited Company (formerly SMIC Consulting Corporation)*	PRC September 30, 2003	100%	Operation of a convenience store
Semiconductor Manufacturing International (Tianjin) Corporation (“SMIT”)*#	PRC November 3, 2003	100%	Manufacturing and trading of semiconductor products
Semiconductor Manufacturing International (AT) Corporation (“AT”)#	Cayman Islands July 26, 2004	66.3%	Investment holding
Semiconductor Manufacturing International (Chengdu) Corporation (“SMICD”)*	PRC December 28, 2004	66.3%	Manufacturing and trading of semiconductor products
SMIC Energy Technology (Shanghai) Corporation (“Energy Science”)*#	PRC September 9, 2005	100%	Manufacturing and trading of solar cell related semiconductor products
SMIC Development (Chengdu) Corporation*#	PRC December 29, 2005	100%	Construction, operation, and management of SMICD’s living quarter, schools, and supermarket

1. ORGANIZATION AND PRINCIPAL ACTIVITIES (CONTINUED)

Name of company	Place and date of incorporation/ establishment	Attributable equity interest held	Principal activity
Magnificent Tower Limited	British Virgin Islands January 5, 2006	100%	Investment holding
Semiconductor Manufacturing International (BVI) Corporation (“SMIC (BVI)”)	British Virgin Islands April 26, 2007	100%	Investment holding
Admiral Investment Holdings Limited	British Virgin Islands October 10, 2007	100%	Investment holding
SMIC Shenzhen (HK) Company Limited	Hong Kong January 29, 2008	100%	Investment holding
Semiconductor Manufacturing International (Shenzhen) Corporation*	PRC March 20, 2008	100%	Manufacturing and trading of semiconductor products
SilTech Semiconductor (Shanghai) Corporation Limited*	PRC March 3, 2009	100%	Manufacturing and trading of semiconductor products

\* Companies registered as wholly foreign-owned enterprises in the People’s Republic of China (“PRC”) excluding for the purpose of this annual report, Hong Kong, Macau and Taiwan.

# Abbreviation for identification purposes

In addition to the above, the Company has a number of wholly owned subsidiaries that are dormant companies without substantive operations, in the PRC, Hong Kong, Samoa, the British Virgin Islands and Cayman Islands. Please see “Item 4-Information on the Company – Organizational Structure” for a full listing of subsidiaries.

Semiconductor Manufacturing International Corporation and its subsidiaries (hereinafter collectively referred to as the “Company” or “SMIC”) are mainly engaged in the computer-aided design, manufacturing, packaging, testing and trading of integrated circuits and other semiconductor services, as well as manufacturing and designing semiconductor masks.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

(a) **Basis of presentation**

The consolidated financial statements of the Company are prepared in accordance with accounting principles generally accepted in the United States of America (“US GAAP”).

(b) **Principles of consolidation**

The consolidated financial statements include the accounts of Semiconductor Manufacturing International Corporation and its majority owned subsidiaries. All inter-company transactions and balances have been eliminated upon consolidation.

**(c) Use of estimates**

The preparation of financial statements in conformity with US GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and revenue and expenses in the financial statements and accompanying notes. Significant accounting estimates reflected in the Company's financial statements include contingent liabilities, valuation allowance for deferred tax assets, allowance for doubtful accounts, inventory valuation, non-marketable equity investment valuation, useful lives of plant and equipment and acquired intangible assets, impairment of long-lived assets, accrued expenses, contingencies and assumptions related to the valuation of share-based compensation and related forfeiture rates.

**(d) Cash and cash equivalents**

Cash and cash equivalents consist of cash on hand and highly liquid investments which are unrestricted as to withdrawal or use, and which have maturities of three months or less when purchased.

**(e) Restricted Cash**

Restricted cash consists of bank deposits pledged against short-term credit facilities and unused government grants for fab construction.

**(f) Investments**

Short-term investments consisting primarily of debt instruments and mutual funds are classified either as held-to-maturity, available-for-sale or trading securities.

Held-to-maturity securities have been recorded at amortized cost.

Available-for-sale securities have been recorded at fair market value. Unrealized gains and losses are recorded as accumulated other comprehensive income or loss. The unrealized gains and losses are reclassified to earnings once the available-for-sale investments are settled. Unrealized losses, which are deemed other than temporary, are recorded in the statement of operations as other expenses.

Trading securities are recorded at fair value with unrealized gains and losses classified in earnings. Equity investments are recorded in long-term assets and accounted for under the equity method when the Company has the ability to exercise significant influence, but not control, over the investee or under the cost method when the investment does not qualify for the equity method. Equity method investments only include non-marketable investments.

Held-to-maturity securities, available-for-sale securities and non-marketable equity investments are evaluated for impairment annually, or more frequently if the Company identifies indicator of impairment. Investments are considered to be impaired when a decline in fair value is judged to be other than temporary, when events or circumstances are identified that would significantly harm the fair value of the investment and the fair value is significantly below cost basis and/or the significant decline has lasted for an extended period of time. If the investment is other than temporarily impaired, the investment would be written down to its fair value.

**(g) Concentration of credit risk**

Financial instruments that potentially expose the Company to concentrations of credit risk consist primarily of cash and cash equivalents, short-term investments, accounts receivable and receivable for sale of manufacturing equipment. The Company places its cash and cash equivalents with reputable financial institutions.

The Company conducts credit evaluations of customers and generally does not require collateral or other security from its customers. The Company establishes an allowance for doubtful accounts based upon estimates, factors surrounding the credit risk of specific customers and other information.

**(h) Inventories**

Inventories are stated at the lower of cost (weighted average) or market. Cost comprises direct materials, direct labor costs and those overheads that were incurred in bringing the inventories to their present location and condition.

**(i) Prepaid land use rights**

Prepaid land use rights, which all located in the PRC, are recorded at cost and are charged to income ratably over the term of the agreements which range from 50 to 70 years.

**(j) Plant and equipment, net**

Plant and equipment are carried at cost less accumulated depreciation and are depreciated on a straight-line basis over the following estimated useful lives:

Buildings	25 years
Facility, machinery and equipment	10 years
Manufacturing machinery and equipment	5–7 years
Furniture and office equipment	3–5 years
Transportation equipment	5 years

The Company constructs certain of its plant and equipment. In addition to costs under the construction contracts, external costs directly related to the construction of such facilities, including duties and tariffs, equipment installation and shipping costs, are capitalized. Interest incurred during the active construction period is capitalized, net of government subsidies received. (see Note 2(n) — “Capitalization of interest”). Depreciation is recorded at the time assets are ready for their intended use.

**(k) Acquired intangible assets**

Acquired intangible assets, which consist primarily of technology, licenses and patents, are carried at cost less accumulated amortization. Amortization is computed using the straight-line method over the expected useful lives of the assets of 3 to 10 years.

**(l) Impairment of long-lived assets**

The Company assesses the impairment of long-lived assets when events or changes in circumstances indicate that the carrying value of the assets or the asset group may not be recoverable. Factors that the Company considers in deciding when to perform an impairment review include, but are not limited to significant under-performance of a business or product line in relation to expectations, significant negative industry or economic trends, and significant changes or planned changes in our use of the assets. An impairment analysis is performed at the lowest level of identifiable independent cash flows for an asset or asset group. The Company makes subjective judgments in determining the independent cash flows that can be related to a specific asset group based on our asset usage model and manufacturing capabilities. The Company measures the recoverability of assets that will continue to be used in our operations by comparing the carrying value of the asset group to our estimate of the related total future undiscounted cash flows. If an asset group's carrying value is not recoverable through the related undiscounted cash flows, the impairment loss is measured by comparing the difference between the asset group's carrying value and its fair value, based on the best information available, including market prices or discounted cash flow analysis. (see Note 3 — "Fair Value").

**(m) Revenue recognition**

The Company manufactures semiconductor wafers for its customers based on the customers' designs and specifications pursuant to manufacturing agreements and/or purchase orders. The Company also sells certain semiconductor standard products to customers. Revenue is recognized when persuasive evidence of an arrangement exists, service has been performed, the fee is fixed or determinable and collectability is reasonably assured. Sales to customers are recognized upon shipment and title transfer, if all other criteria have been met. The Company also provides certain services, such as mask making, testing and probing. Revenue is recognized when the services are completed or upon shipment of semiconductor products, if all other criteria have been met.

Revenue is measured at the fair value of the consideration received or receivable and represents amounts receivable for goods sold and services provided in the normal courses of business, net of discounts and sales related taxes.

Customers have the right of return within one year pursuant to warranty and sales return provisions. The Company typically performs tests of its products prior to shipment to identify yield rate per wafer. Occasionally, product tests performed after shipment identify yields below the level agreed with the customer. In those circumstances, the customer arrangement may provide for a reduction to the price paid by the customer or for the costs to return products and to ship replacement products to the customer. The Company estimates the amount of sales returns and the cost of replacement products based on the historical trend of returns and warranty replacements relative to sales as well as a consideration of any current information regarding specific known product defects at customers that may exceed historical trends.

The Company provides management services to certain government-owned foundries. Service revenue is recognized when persuasive evidence of an arrangement exists, service has been performed, the fee is fixed or determinable, and collectability is reasonably assured. (see Note 21 — "Transactions With Managed Government-Owned Foundries").

**(n) Capitalization of interest**

Interest incurred during the active construction period is capitalized, net of government subsidies received. The interest capitalized is determined by applying the borrowing interest rate to the average amount of accumulated capital expenditures for the assets under construction during the period. Capitalized interest is added to the cost of the underlying assets and is amortized over the useful life of the assets. Government subsidies, capitalized interest and net interest expense are as follows:

	For the year ended December 31,		
	2009	2008	2007
Total actual interest expense (non-litigation)	\$ 41,421,385	\$ 70,735,520	\$ 72,686,950
Recorded in the consolidated statements of operations	(24,699,336)	(50,766,958)	(37,936,126)
Gross capitalized interest	16,722,049	19,968,562	34,750,824
Government subsidies	(11,617,950)	(9,308,764)	(27,083,604)
Net capitalized interest	\$ 5,104,099	\$ 10,659,798	\$ 7,667,220

**(o) Government subsidies**

The Company received the following types of government subsidies:

*(1) Reimbursement of certain interest costs incurred on borrowings*

The Company received government cash subsidies of \$11,617,950, \$9,308,764, and \$27,083,604 in 2009, 2008 and 2007, respectively, which were based on the interest expense on the Company's budgeted borrowings. The Company records government subsidies as a reduction of interest expense on an accrual basis.

*(2) Government awards*

The Company received government awards of \$31,855,697, \$56,967,187, and \$5,058,722 in the form of reimbursement of certain expenses in 2009, 2008 and 2007, respectively. These awards were recorded as reduction of expenses accordingly.

*(3) Government subsidy for fab construction*

Certain local governments provided subsidies to encourage the Company to participate and manage new plants relating to the integrated circuit industry.

In 2009, 2008 and 2007 the Company received government subsidies of \$54,125,325, \$7,324,792 and \$nil, of which \$57,257,456, \$4,181,922 and \$nil were used to offset the cost of fixed assets or construction in progress in 2009, 2008 and 2007, respectively.

**(p) Research and development costs**

Research and development costs are expensed as incurred and reported net of related government subsidies.

**(q) Start-up costs**

The Company expenses all costs incurred in connection with start-up activities, including preproduction costs associated with new manufacturing facilities and costs incurred with the formation of the new subsidiaries such as organization costs. Preproduction costs including the design, formulation and testing of new products or process alternatives are included in research and development expenses. Preproduction costs including facility and employee costs incurred in connection with constructing new manufacturing plants are included in general and administrative expenses.

**(r) Foreign currency translation**

The United States dollar (“US dollar”), the currency in which a substantial portion of the Company’s transactions are denominated, is used as the functional and reporting currency of the Company. Monetary assets and liabilities denominated in currencies other than the US dollar are translated into US dollar at the rates of exchange ruling at the balance sheet date. Transactions in currencies other than the US dollar during the year are converted into the US dollar at the applicable rates of exchange prevailing on the transaction dates. Transaction gains and losses are recognized in the statements of operations.

The financial records of certain of the Company’s subsidiaries are maintained in local currencies other than the US dollar, such as Japanese Yen, which are their functional currencies. Assets and liabilities are translated at the exchange rates at the balance sheet date. Equity accounts are translated at historical exchange rates, and revenues, expenses, gains and losses are translated using the monthly weighted average exchange rates. Translation adjustments are reported as cumulative translation adjustments and are shown as a separate component of other comprehensive income (loss) in the statements of equity and comprehensive income (loss).

**(s) Income taxes**

Current income taxes are provided for in accordance with the laws of the relevant taxing authorities.

As part of the process of preparing financial statements, the Company is required to estimate its income taxes in each of the jurisdictions in which it operates. The Company accounts for income taxes using the asset and liability method. Under this method, deferred income taxes are recognized for tax consequences in future years of differences between the tax bases of assets and liabilities and their financial reporting amounts at each year-end, based on enacted laws and statutory tax rates applicable for the difference that are expected to affect taxable income. Valuation allowances are provided if based upon the weight of available evidence, it is more likely than not that some or all of the deferred tax assets will not be realized.

The Company recognizes the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities based on the technical merits of the position.

(t) **Comprehensive income (loss)**

Comprehensive income (loss) includes such items as net loss, foreign currency translation adjustments and unrealized income (loss) on available-for-sales securities. Comprehensive income (loss) is reported in the statements of equity and comprehensive income (loss).

(u) **Fair value of financial instruments**

When available, the Company measures the fair value of financial instruments based on quoted market prices in active markets, valuation techniques that use observable market-based inputs or unobservable inputs that are corroborated by market data. Pricing information the Company obtains from third parties is internally validated for reasonableness prior to use in the consolidated financial statements. When observable market prices are not readily available, the Company generally estimates the fair value using valuation techniques that rely on alternate market data or inputs that are generally less readily observable from objective sources and are estimated based on pertinent information available at the time of the applicable reporting periods. In certain cases, fair values are not subject to precise quantification or verification and may fluctuate as economic and market factors vary and the Company's evaluation of those factors changes. See Note 3 — "Fair Value", for further details.

(v) **Share-based compensation**

The Company grants stock options to its employees and certain non-employees. Share-based compensation cost is measured at the grant date, based on the fair value of the award, and is recognized, net of expected forfeitures, as an expense over the employee's requisite service period (generally the vesting period of the equity grant).

The Company's total share-based compensation expense for the years ended December 31, 2009, 2008 and 2007 was \$10,145,101, \$11,617,572, and \$20,643,341 respectively.

(w) **Derivative financial instruments**

The Company's primary objective for holding derivative financial instruments is to manage currency and interest rate risks. The Company records derivative instruments as assets or liabilities, measured at fair value. The Company does not offset the carrying amounts of derivatives with the same counterparty. The recognition of gains or losses resulting from changes in the values of those derivative instruments is based on the use of each derivative instrument and whether it qualifies for hedge accounting.

(x) **Recently issued accounting standards**

In August 2009, the FASB issued Accounting Standards Update (“ASU”) 2009-05, “Fair Value Measurements and Disclosures (Topic 820) — Measuring Liabilities at Fair Value” (“ASU 2009-05”). ASU 2009-05 amends accounting guidance regarding the fair value measurement of liabilities. It provides clarification that in circumstances in which a quoted price in an active market for the identical liability is not available, a reporting entity is required to measure the fair value using (1) a valuation technique that uses the quoted price of the identical liability when traded as an asset or quoted prices for similar liabilities when traded as assets or (2) another valuation technique that is consistent with the principles of Topic 820. It also clarifies that when estimating the fair value of a liability, a reporting entity is not required to include a separate input or adjustment to other inputs relating to the existence of a restriction that prevents the transfer of the liability and that both a quoted price in an active market for the identical liability at measurement date and that the quoted price for the identical liability when traded as an asset in an active market when no adjustments to the quoted price of the asset are required are Level 1 fair value measurements. The provisions of ASU 2009-05 are effective for the first reporting period (including interim periods) beginning after issuance. Early application is permitted. The adoption of ASU 2009-05 does not have a material impact on the Company’s consolidated financial position or result of operations.

In October 2009, the FASB issued ASU 2009-13, “Revenue Recognition (Topic 605) — Multiple-Deliverable Revenue Arrangements a consensus of the FASB Emerging Issues Task Force”. This guidance addresses the accounting for multiple-deliverable arrangements to enable vendors to account for products or services (deliverables) separately rather than as a combined unit. Specifically, this guidance amends the criteria for separating consideration in multiple-deliverable arrangements. This guidance establishes a selling price hierarchy for determining the selling price of a deliverable, which is based on: (a) vendor-specific objective evidence if available; (b) third-party evidence if vendor-specific objective is not available; or (c) estimated selling price if neither vendor-specific objective evidence nor third-party evidence is available. This guidance also eliminates the residual method of allocation and requires that arrangement consideration be allocated at the inception of the arrangement to all deliverables using the relative selling price method. In addition, this guidance significantly expands required disclosures related to a vendor’s multiple-deliverable revenue arrangements. This guidance is effective prospectively for revenue arrangements entered into or materially modified in fiscal years beginning on or after June 15, 2010. The Company will adopt this new guidance on January 1, 2011. The adoption of this new guidance is not expected to have a material impact on the Company’s consolidated financial position, results of operations or cash flows.

In December 2009, the FASB issued ASU 2009-17, “Consolidations (Topic 810) — Improvements to Financial Reporting by Enterprises Involved with Variable Interest Entities” (“ASU 2009-17”) (previously SFAS 167, “Amendments to FASB Interpretation No. 46(R)”). The amendments in ASU 2009-17 replace the quantitative-based risks and rewards calculation for determining which reporting entity, if any, has a controlling financial interest in a variable interest entity with an approach primarily focused on identifying which reporting entity has the power to direct the activities of a variable interest entity that most significantly impact the entity’s economic performance and (1) the obligation to absorb the losses of the entity or (2) the right to receive the benefits from the entity. ASU 2009-17 also requires additional disclosure about a reporting entity’s involvement in variable interest entities, as well as any significant changes in risk exposure due to that involvement. ASU 2009-17 is effective for annual and interim periods beginning after November 15, 2009. Early application is not permitted. The Company does not expect ASU 2009-17 to have a material impact on its consolidated financial statements.

(x) **Recently issued accounting standards** (continued)

In January 2010, the FASB issued ASU 2010-06, "Fair Value Measurements and Disclosures (Topic 820) — Improving Disclosures about Fair Value Measurements" ("ASU 2010-06"). The ASU amends ASC 820 (previously SFAS 157, "Fair Value Measurements") to add new requirements for disclosures about (1) the different classes of assets and liabilities measured at fair value, (2) the valuation techniques and inputs used, (3) the activity in Level 3 fair value measurements, and (4) the transfers between Levels 1, 2, and 3. ASU 2010-06 is effective for the first reporting period beginning after December 15, 2009, except for the requirement to provide the Level 3 activity of purchases, sales, issuances, and settlements on a gross basis, which will be effective for fiscal years beginning after December 15, 2010, and for interim periods within those fiscal years. In the period of initial adoption, entities will not be required to provide the amended disclosures for any previous periods presented for comparative purposes. However, those disclosures are required for periods ending after initial adoption. Early adoption is permitted. ASU 2010-06 does not change the accounting treatment for fair value measurements and will change the Company's disclosure for fair value measurements.

(y) **Loss per share**

Basic loss per share is computed by dividing loss attributable to holders of ordinary shares by the weighted average number of ordinary shares outstanding (excluding shares subject to repurchase) for the year. Diluted loss per ordinary share reflects the potential dilution that could occur if securities or other contracts to issue ordinary shares were exercised or converted into ordinary shares. Ordinary share equivalents are excluded from the computation in loss periods as their effects would be anti-dilutive.

On January 1, 2009, the Company adopted the new accounting standard relating to noncontrolling interests (previously referred to as minority interests) that changed the accounting and reporting for noncontrolling interests in the consolidated financial statements. The noncontrolling interests as of December 31, 2009, 2008 and 2007 was comprised of redeemable convertible preferred shares in AT that were not owned by the Company. ASC810 is effective for the Company on a prospective basis, except for presentation and disclosure requirements that are applied retrospectively. The accretion of interests to noncontrolling interest are now included after "Net Loss" in the consolidated statement of operations.

### 3. FAIR VALUE

The Company defines fair value as the price that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. When determining the fair value measurements for assets and liabilities required or permitted to be recorded at fair value, we consider the principal or most advantageous market in which we would transact and we consider assumptions that market participants would use when pricing the asset or liability, such as inherent risk, transfer restrictions, and risk of non-performance.

The Company utilizes a fair value hierarchy that requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. Observable inputs are obtained from independent sources and can be validated by a third party, whereas unobservable inputs reflect assumptions regarding what a third party would use in pricing an asset or liability. A financial instrument's categorization within the fair value hierarchy is based upon the lowest level of input that is significant to the fair value measurement. The Company establishes three levels of inputs that may be used to measure fair value that gives the highest priority to observable inputs and the lowest priority to unobservable inputs as follows:

Level 1 — Quoted prices in active markets for identical assets or liabilities.

Level 2 — Inputs other than quoted market prices in active markets that are observable, either directly or indirectly.

Level 3 — Unobservable inputs to the valuation methodology that are significant to the measurement of fair value of assets or liabilities.

The Company uses valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs. The Company performs a thorough analysis of its assets and liabilities that are subject to fair value measurements and disclosures to determine the appropriate level based on the observability of the inputs used in the valuation techniques. Assets and liabilities carried at fair value are classified in the categories described above based on the lowest level input that is significant to the fair value measurement in its entirety.

#### Assets/Liabilities Measured at Fair Value on a Recurring Basis

Assets and liabilities measured on the Company's balance sheet at fair value on a recurring basis subsequent to initial recognition consisted of the following:

	Fair Value Measurements at December 31, 2009 Using			Total Gains (Losses)
	Quoted Prices in Active Markets for Identical Instruments (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	
<b>Assets:</b>				
Forward foreign exchange contracts	\$ —	\$ 54,442	\$ —	\$ 3,961,279
Interest rate swap contracts	—	—	—	104,000
Cross-currency interest swap contracts	—	503,551	—	1,086,822
Derivative assets measured at fair value	\$ —	\$ 557,993	\$ —	\$ 5,152,101
<b>Liabilities:</b>				
Forward foreign exchange contracts	\$ —	\$ 483,421	\$ —	\$ (3,835,234)
Interest rate swap contracts	—	529,712	—	(127,336)
Cross-currency interest swap contracts	—	388,913	—	(519,099)
Commitment to issue shares and warrants relating to litigation settlement		120,237,773		(30,100,793)
Derivative liabilities measured at fair value	\$ —	\$121,639,819	\$ —	\$(34,582,462)

**Assets/Liabilities Measured at Fair Value on a Recurring Basis** (continued)

	Fair Value Measurements				Total Gains (Losses)
	at December 31, 2008 Using				
	Quoted Prices in	Significant		Significant	
	Active Markets	Other	Unobservable		
	for Identical	Observable	Inputs	Inputs	
Instruments	Inputs	(Level 3)			
	(Level 1)	(Level 2)	(Level 3)		
<b>Assets:</b>					
Forward foreign exchange contracts	\$ —	\$ 665,584	\$ —	\$ 4,350,382	
Cross-currency interest swap contracts	—	873,040	—	2,324,228	
Derivative assets measured at fair value	\$ —	\$ 1,538,624	\$ —	\$ 6,674,610	
<b>Liabilities:</b>					
Forward foreign exchange contracts	\$ —	4,175,889	\$ —	(10,809,932)	
Cross-currency interest swap contracts	—	1,233,129	—	(1,670,195)	
Derivative liabilities measured at fair value	\$ —	\$ 5,409,018	\$ —	\$(12,480,127)	

We price our derivative financial instruments, consisting of forward foreign exchange contracts and interest rate swap contracts using level 2 inputs such as exchange rates and interest rates for instruments of comparable durations and profiles. (See Note 26 — “Litigation”)

**Assets Measured at Fair Value on a Nonrecurring Basis**

Description	Fair Value Measurements				Total Gains (Losses)
	at December 31, 2009 Using				
	Quoted Prices in	Significant		Significant	
	Active Markets	Other	Unobservable		
	for Identical	Observable	Inputs	Inputs	
Instruments	Inputs	(Level 3)			
	(Level 1)	(Level 2)	(Level 3)		
Long-lived assets held and used	\$ —	\$ —	\$ 28,424,849	\$ (5,269,281)	
Long-lived assets held for sale	—	—	8,184,462	(22,718,729)	
	\$ —	\$ —	\$ 36,609,311	\$(27,988,010)	

In accordance with the provisions of the Impairment or Disposal of Long-Lived Assets Subsections of FASB Codification Subtopic 360-10, long-lived assets held and used with a carrying amount of \$33.7 million were written down to their fair value of \$28.4 million, resulting in an impairment charge of \$5.3 million, which was included in earnings for the year ended December 31, 2009.

**Assets Measured at Fair Value on a Nonrecurring Basis** (continued)

In accordance with the provisions of the Impairment or Disposal of Long-Lived Assets Subsections of FASB Codification Subtopic 360-10, long-lived assets held for sale with a carrying amount of \$30.9 million were written down to their fair value less cost to sell of \$8.2 million, resulting in a loss of \$22.7 million, which was included in earnings for the year ended December 31, 2009.

Description	Fair Value Measurements at December 31, 2008 Using			Total Gains (Losses)		
	Quoted Prices in Active Markets for Identical Instruments (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)			
	Long-lived assets held and used	\$ —	\$ —		\$916,958,304	\$(105,774,000)
		\$ —	\$ —		\$916,958,304	\$(105,774,000)

In accordance with the provisions of the Impairment or Disposal of Long-Lived Assets Subsections of FASB Codification Subtopic 360-10, long-lived assets held and used with a carrying amount of approximately \$1.0 billion were written down to their fair value of approximately \$917.0 million, resulting in an impairment charge of \$105.8 million, which was included in earnings for the year ended December 31, 2008.

**Financial Instruments not Recorded at Fair Value**

Financial instruments include cash and cash equivalents, restricted cash, short-term investments, short-term borrowings, long-term promissory notes, long-term payables relating to license agreements, long-term debt, accounts payables and accounts receivables. The carrying values of cash and cash equivalents, restricted cash, short-term investments and short-term borrowings approximate their fair values based on quoted market values or due to their short-term maturities. The carrying values of long-term promissory notes, primarily consisting those associated with the 2009 litigation settlement that occurred in November 2009 (see Note 26), approximate their fair values as the interest rates used to discount the promissory notes did not fluctuate significantly between the date the notes were recorded and December 31, 2009. The Company's other financial instruments that are not recorded at fair value are not significant.

4. SHORT-TERM INVESTMENTS

As of December 31, 2008 and 2007, the Company had the following held-to-maturity security, respectively:

	Debt instruments maturing in one year			Fair value
	Amortized Cost	Gross unrealized gains	Gross unrealized losses	
December 31, 2008	\$19,928,289	\$ —	\$ —	\$19,928,289
December 31, 2007	\$ 7,637,870	\$ —	\$ —	\$ 7,637,870

The Company did not have any held-to-maturity securities or short-term investments as of December 31, 2009.

5. DERIVATIVE FINANCIAL INSTRUMENTS

The Company has the following notional amount of derivative instruments:

	December 31,		
	2009	2008	2007
Forward foreign exchange contracts	\$ 9,028,995	\$220,687,295	\$ 404,103
Interest rate swap contracts	54,000,000	—	—
Cross-currency interest rate swap contracts	24,699,730	36,731,630	51,057,531
	<b>\$87,728,725</b>	\$257,418,925	\$51,461,634

The Company purchases foreign-currency forward exchange contracts with contract terms expiring within one year to protect against the adverse effect that exchange rate fluctuations may have on foreign-currency denominated purchase activities, principally the Renminbi, the Japanese Yen and the Euro. The foreign-currency forward exchange contracts do not qualify for hedge accounting. In 2009, 2008 and 2007, gains and losses on the foreign currency forward exchange contracts were recognized in the foreign currency exchange gain. Notional amounts are stated in the US dollar equivalents at spot exchange rates at the respective dates.

Settlement currency	Notional amount	US dollar equivalents
As of December 31, 2009		
Euro	14,825,188	\$ 21,265,249
Renminbi	(83,496,523)	(12,236,254)
		\$ 9,028,995
As of December 31, 2008		
Euro	21,979,034	\$ 31,144,291
Renminbi	1,294,294,400	189,543,004
		\$ 220,687,295
As of December 31, 2007		
Renminbi	2,950,400	\$ 404,103

In 2009, 2008 and 2007, the Company entered into cross-currency interest rate swap agreements to protect against volatility of future cash flows caused by the changes in both interest rates and exchange rates associated with outstanding long-term debt that are denominated in a currency other than the US dollar. The cross-currency interest rate swap agreement does not qualify for hedge accounting. In 2009, 2008 and 2007, gains or losses on the interest rate swap contracts were recognized in the interest income or interest expense. As of December 31, 2009, 2008 and 2007, the Company had outstanding cross-currency interest rate swap contracts as follows:

Settlement currency	Notional amount	US dollar equivalents
As of December 31, 2009		
Euro	17,219,555	\$ 24,699,730
As of December 31, 2008		
Euro	25,922,110	\$ 36,731,630
As of December 31, 2007		
Euro	34,624,665	\$ 51,057,531

In 2009, the Company entered into various interest rates swap agreements to protect against volatility of future cash flows caused by the changes in interest rates associated with outstanding debt. The contracts are designated and qualify as cash flow hedges for which the effective portion of the gain or loss on the derivative is reported as a component of other comprehensive loss and reclassified into earnings in the same periods when interest payments associated with the outstanding debts occurred. The hedging relationships were highly effective and therefore no gain or losses representing hedge ineffectiveness were recorded in the earnings.

As of December 31, 2009, the Company had outstanding interest rate swap contracts with notional amounts of \$54,000,000.

The fair values of each derivative instrument are as follows:

	<b>December 31,</b>		
	<b>2009</b>	2008	2007
Forward foreign exchange contracts	<b>\$(428,979)</b>	\$(3,510,305)	\$ 530,354
Interest rate swap contracts	<b>(529,712)</b>	—	—
Cross-currency interest rate swap contracts	<b>114,638</b>	(360,089)	1,003,275
	<b>\$(844,053)</b>	\$(3,870,394)	\$1,533,629

As of December 31, 2009 and 2008, the fair value of the derivative instruments was recorded in accrued expenses and other current liabilities, and as of December 31, 2007, the fair value of these derivative instruments was recorded in prepaid expense and other current assets. The change in fair value of forward foreign exchange contracts and cross currency interest rate swap contracts were recorded as part of other income (expense) and the change in fair value of interest rate swap contracts was recorded as part of interest expense.

6. ACCOUNTS RECEIVABLE, NET OF ALLOWANCES

The Company determines credit terms ranging from 30 to 60 days for each customer on a case-by-case basis, based on its assessment of such customer's financial standing and business potential with the Company.

An aging analysis of accounts receivable, net of allowance for doubtful accounts, is as follows:

	2009	2008	2007
Current	<b>\$160,802,634</b>	\$108,109,977	\$249,489,644
Overdue:			
Within 30 days	<b>30,882,525</b>	18,211,498	39,131,577
Between 31 to 60 days	<b>1,641,710</b>	6,073,500	6,107,866
Over 60 days	<b>10,963,676</b>	66,976,719	3,658,565
	<b>\$204,290,545</b>	\$199,371,694	\$298,387,652

The change in the allowances for doubtful accounts is as follows:

	2009	2008	2007
Balance, beginning of year	<b>\$ 5,680,658</b>	\$4,492,090	\$4,048,845
Provision recorded during the year	<b>94,704,790</b>	1,301,556	487,920
Write-offs in the year	<b>(4,240,905)</b>	(112,988)	(43,675)
Balance, end of year	<b>\$96,144,543</b>	\$5,680,658	\$4,492,090

7. INVENTORIES

	2009	2008	2007
Raw materials	<b>\$ 57,279,287</b>	\$ 76,299,347	\$ 83,645,656
Work in progress	<b>102,538,543</b>	53,674,794	139,959,481
Finished goods	<b>33,887,365</b>	41,662,727	24,704,628
	<b>\$193,705,195</b>	\$171,636,868	\$248,309,765

Adjustments are recorded to write down the cost of obsolete and excess inventory to the estimated market value based on historical and forecasted demand. In 2009, 2008 and 2007, inventory was written down by \$26,296,168, \$40,818,979, and \$22,676,608 respectively, and recorded in cost of sales to reflect the lower of cost or market adjustments.

8. ASSETS HELD FOR SALE

In 2009, the Company committed to a plan to complete its exit from the DRAM market and to sell certain fixed assets having a carrying value of \$30,903,192, at the time of the decision to fully exit from the DRAM market was made. The Company began actively soliciting for potential buyers for these assets prior to December 31, 2009 and expects to sell them within the next twelve months. At December 31, 2009, the assets were classified as held for sale and were written down to \$8,184,462 representing the Company's estimate of fair value less costs to sell.

9. PLANT AND EQUIPMENT, NET

	2009	2008	2007
Buildings	\$ 293,225,129	\$ 292,572,075	\$ 283,153,927
Facility, machinery and equipment	552,373,720	534,251,063	470,434,074
Manufacturing machinery and equipment	5,398,887,677	5,367,843,256	5,035,366,468
Furniture and office equipment	74,206,691	76,210,542	67,835,774
Transportation equipment	1,890,082	1,768,949	1,750,734
	<b>6,320,583,299</b>	6,272,645,885	5,858,540,977
Construction in progress	230,867,305	348,049,839	274,505,450
Less: accumulated depreciation	(4,299,836,387)	(3,657,309,884)	(2,930,088,762)
	<b>\$ 2,251,614,217</b>	\$ 2,963,385,840	\$ 3,202,957,665

The Company recorded depreciation expense of \$746,684,986, \$760,881,076 and \$705,391,171 for the years ended December 31, 2009, 2008 and 2007, respectively.

The Company sold equipment and other fixed assets:

	2009	2008	2007
Sale price	\$ 1,698,639	\$8,136,361	\$51,375,045
Carrying value	5,530,949	5,948,053	26,920,427
(Loss)/gain	\$(3,832,310)	\$2,188,308	\$24,454,618

(See Note 2(l) — “Impairment of long lived assets” and Note 10 — “Impairment of Plant and Equipment”).

10. IMPAIRMENT OF PLANT AND EQUIPMENT

In 2009, the effect of adverse market conditions and significant changes in the Company’s operation strategy lead to the Company’s identification and commitment to abandon a group of long-lived assets. This group of long-lived assets is equipped with outdated technologies and no longer receives vendor support. As of December 31, 2009, this group of assets ceased to be used. As a result, the Company recorded an impairment loss of \$104,676,535 after writing down the carrying value to zero.

In 2008, the Company reached an agreement with certain customers to discontinue production of DRAM products and subsequently the Company decided to exit the commodity DRAM business as a whole. The Company considered these actions to be an indicator of impairment in regard to certain plant and equipment of the Company’s Beijing facilities. The Company recorded an impairment loss of \$105,774,000, equal to the excess of the carrying value over the fair value of the associated assets. The Company computed the fair value of the plant and equipment utilizing a discounted cash flow approach. For the purpose of the analysis, the Company applied a discount rate of 9% to the expected cash flows to be generated over the remaining useful lives of primary manufacturing machinery and equipment of approximately 5 years.

11. ACQUIRED INTANGIBLE ASSETS, NET

	2009	2008	2007
<b>Technology, Licenses and Patents</b>			
Cost:	<b>\$ 346,792,269</b>	\$ 323,457,444	\$322,435,363
Accumulated Amortization and Impairment:	<b>(164,098,164)</b>	(123,398,338)	(90,240,231)
Acquired intangible assets, net	<b>\$ 182,694,105</b>	\$ 200,059,106	\$232,195,132

The Company entered into several technology, patent and license agreements with third parties whereby the Company purchased intangible assets for \$23,334,825, \$1,022,081 and \$187,573,251 in 2009, 2008 and 2007, respectively.

The Company recorded amortization expense of \$35,064,589, \$32,191,440 and \$27,070,617 in 2009, 2008 and 2007 respectively. The Company will record amortization expenses related to the acquired intangible assets of \$28,481,881, \$29,689,207, \$24,817,808, \$22,523,470 and \$19,062,559 for 2010, 2011, 2012, 2013 and 2014, respectively.

In 2009, 2008 and 2007, the Company recorded impairment losses of \$5,630,236, \$966,667 and \$nil respectively, for licenses related DRAM products that are no longer in use. (See to Note 10 — “Impairment of Plant and Equipment”).

12. EQUITY INVESTMENT

	<b>December 31, 2009</b>	
	<b>Carrying Amount</b>	<b>% of Ownership</b>
<b>Equity method investment (unlisted)</b>		
Toppan SMIC Electronics (Shanghai) Co., Ltd.	<b>\$7,380,625</b>	<b>30.0</b>
<b>Cost method investments (unlisted)</b>	<b>2,467,523</b>	<b>Less than 20.0</b>
	<b>\$9,848,148</b>	

On July 6, 2004, the Company and Toppan Printing Co., Ltd (“Toppan”) entered into an agreement to form Toppan SMIC Electronics (Shanghai) Co., Ltd. (“Toppan SMIC”) in Shanghai, to manufacture on-chip color filters and micro lenses for CMOS image sensors.

In 2005, the Company injected cash of \$19,200,000 into Toppan SMIC, representing 30% equity ownership. In 2009, 2008 and 2007, the Company recorded \$1,782,142, \$444,211, and \$4,012,665, respectively, as its share of the net loss of the equity investment.

The Company assesses the status of its equity investments for impairment on a periodic basis. As of December 31, 2009, the Company has concluded that no impairment exists related to equity investment.

13. ACCOUNTS PAYABLE

An aging analysis of the accounts payable is as follows:

	2009	2008	2007
Current	<b>\$174,834,213</b>	\$126,149,360	\$223,527,856
Overdue:			
Within 30 days	<b>25,335,474</b>	26,524,678	46,571,502
Between 31 to 60 days	<b>8,269,941</b>	9,510,883	10,226,533
Over 60 days	<b>20,443,176</b>	23,733,618	21,666,848
	<b>\$228,882,804</b>	\$185,918,539	\$301,992,739

14. PROMISSORY NOTE

In 2009, the Company reached a new settlement with TSMC (Refer to Note 26 — “Litigation”). Under this agreement, the remaining promissory note of \$40,000,000 under the prior settlement agreement was cancelled. In connection with the new settlement, the Company issued twelve non-interest bearing promissory notes with an aggregate amount of \$200,000,000 as the settlement consideration. The Company has recorded a discount of \$8,067,071 for the imputed interest on the notes, which was calculated using an effective interest rate of 2.85% (which represents the Company’s average rate of borrowing for 2009) and was recorded as a reduction of the face amounts of the promissory notes. The Company repaid \$45,000,000 in 2009 of which \$15,000,000 is associated with the 2005 Settlement Agreement. The outstanding promissory notes are as follows:

Maturity	December 31, 2009	
	Face value	Discounted value
2010	<b>\$ 80,000,000</b>	<b>\$ 78,608,288</b>
2011	<b>30,000,000</b>	<b>28,559,709</b>
2012	<b>30,000,000</b>	<b>27,767,557</b>
2013	<b>30,000,000</b>	<b>26,997,375</b>
Total	<b>170,000,000</b>	<b>161,932,929</b>
Less: Current portion of promissory notes	<b>80,000,000</b>	<b>78,608,288</b>
Non-current portion of promissory notes	<b>\$ 90,000,000</b>	<b>\$ 83,324,641</b>

In 2009, 2008 and 2007, the Company recorded interest expense of \$2,070,569, \$2,532,795, and \$3,455,506, respectively, relating to the amortization of the discount.

15. INDEBTEDNESS

Short-term and long-term debts are as follows:

	2009	2008	2007
Short-term borrowings from commercial banks (a)	<b>\$286,864,063</b>	\$201,257,773	\$107,000,000
Long-term debt by contracts (b):			
Shanghai USD syndicate loan	<b>\$127,840,000</b>	\$266,050,000	\$393,910,000
Shanghai USD & RMB loan	<b>99,309,612</b>	—	—
Beijing USD syndicate loan	<b>300,060,000</b>	300,060,000	500,020,000
EUR loan	<b>50,227,567</b>	72,037,070	51,057,531
Tianjin USD syndicate loan	<b>179,000,000</b>	259,000,000	12,000,000
	<b>\$756,437,179</b>	\$897,147,070	\$956,987,531
Long-term debt by repayment schedule:			
2010	<b>\$205,784,080</b>		
2011	<b>334,995,270</b>		
2012	<b>215,657,829</b>		
Total	<b>756,437,179</b>		
Less: current maturities of long-term debt	<b>205,784,080</b>		
Non-current maturities of long-term debt	<b>\$550,653,099</b>		

(a) **Short-term borrowings from commercial banks**

As of December 31, 2009, the Company had 19 short-term credit agreements that provided total credit facilities of up to \$337 million on a revolving credit basis. As of December 31, 2009 the Company had drawn down \$287 million under these credit agreements and \$50 million is available for future borrowings. The outstanding borrowings under the credit agreements are unsecured, except for the amount of \$20.4 million, which is secured by term deposits. The interest expense incurred in 2009 was \$11,250,052, of which \$2,752,239 was capitalized as additions to assets under construction. The interest rate is variable and determined as LIBOR +1.5% to 2.75%, which ranged from 1.11% to 8.75% in 2009.

As of December 31, 2008, the Company had 10 short-term credit agreements that provided total credit facilities of up to \$268 million on a revolving credit basis. As of December 31, 2008, the Company had drawn down \$201 million under these credit agreements and \$67 million is available for future borrowings. The outstanding borrowings under the credit agreements are unsecured. The interest expense incurred in 2008 was \$9,411,024, of which \$1,103,335 was capitalized as additions to assets under construction. The interest rate is variable and determined as LIBOR +0.5% to 1.75%, which ranged from 1.18% to 8.75% in 2008.

As of December 31, 2007, the Company had 15 short-term credit agreements that provided total credit facilities of up to \$484 million on a revolving credit basis. As of December 31, 2007, the Company had drawn down \$107 million under these credit agreements and \$377 million is available for future borrowings. The outstanding borrowings under the credit agreements are unsecured. The interest expense incurred in 2007 was \$4,537,200, of which \$1,909,602 was capitalized as additions to assets under construction. The interest rate is variable and determined as LIBOR +0.7% to 1%, which ranged from 5.37% to 6.44% in 2007.

15. INDEBTEDNESS (CONTINUED)

(b) **Long-term debt**

*Shanghai USD Syndicate Loan*

In June 2006, SMIS entered into the Shanghai USD syndicate loan with an aggregate principal amount of \$600,000,000 with a consortium of international and PRC banks. The principal amount is repayable beginning December 2006 in ten semi-annual installments. The interest rate is variable and determined as LIBOR+1.00%.

The total outstanding balance of SMIS's long-term debt is collateralized by its equipment with an original cost of \$1.8 billion as of December 31, 2009.

The Shanghai USD syndicate loan contains covenants relating to the minimum consolidated tangible net worth, limits total borrowings compared to tangible net worth and EBITDA for the prior four quarters, and requires minimum debt service coverage ratios. SMIC Shanghai is exempted from the covenants by the lenders. Furthermore, the Company is currently working with the lenders to refinance the remainder of the USD loan and expects the completion of this restructuring within the near future from the date of this report.

*Shanghai USD & RMB Loan*

In June 2009, SMIS entered into the Shanghai USD & RMB loan, a two-year loan facility in the principal amount of \$80,000,000 and RMB200,000,000 (approximately \$29,309,612), respectively with The Export-Import Bank of China.

This facility is secured by the manufacturing equipment located in SMIS 12-inch fab. This two-year bank facility will be used to finance future expansion and general corporate needs for SMIS' 12-inch fab. The interest rates for US tranche and RMB tranche are variable at LIBOR+2.00% and fixed at 4.86%, respectively.

The total outstanding balance of the facilities is collateralized by its equipment with an original cost of \$362 million as of December 31, 2009.

*Beijing USD Syndicate Loan*

In May 2005, SMIB entered into the Beijing USD syndicate loan, a five-year loan facility in the aggregate principal amount of \$600,000,000, with a syndicate of financial institutions based in the PRC. The principal amount is repayable beginning December 2007 in six equal semi-annual installments. On June 26, 2009, SMIB amended the syndicated loan agreement to defer the commencement of the three remaining semi-annual payments to December 28, 2011. The amendment includes a provision for mandatory early repayment of a portion of the outstanding balance if SMIB's financial performance exceeds certain pre-determined benchmarks. The amendment has been accounted for as a modification as the terms of the amended instrument are not substantially different from the original terms. The interest rates before and after the amendment were decided by LIBOR+1.60% and LIBOR+2.20%, respectively.

The total outstanding balance of the Beijing USD syndicate loan is collateralized by its plant and equipment with an original cost of \$1.3 billion as of December 31, 2009.

The Beijing USD syndicate loan contains covenants to maintain minimum cash flows as a percentage of non-cash expenses and to limit total liabilities, excluding shareholder loans, as a percentage of total assets. SMIB has complied with these covenants as of December 31, 2009.

15. INDEBTEDNESS (CONTINUED)

(b) **Long-term debt** (continued)

*EUR Loan*

On December 15, 2005, the Company entered into the EUR syndicate loan, a long-term loan facility agreement in the aggregate principal amount of EUR 85 million with a syndicate of banks with ABN Amro Bank N.V. Commerz Bank (Nederland) N.V. as the leading bank. The proceeds from the facility were used to purchase lithography equipment to support the expansion of the Company's manufacturing facilities. The drawdown period of the facility ends on the earlier of (i) the date on which the loans have been fully drawn down; or (ii) 36 months after the date of the agreement. Each drawdown made under the facility shall be repaid in full by the Company in ten equal semi-annual installments starting from May 6, 2006. The interest rate is variable and determined as EURIBOR+0.25%.

The total outstanding balance of the facility is collateralized by certain plant and equipment with an original cost of \$22 million for SMIT and \$115 million for SMIS as of December 31, 2009.

*Tianjin USD Syndicate Loan*

In May 2006, SMIT entered into the Tianjin USD syndicate loan, a five-year loan facility in the aggregate principal amount of \$300,000,000, with a syndicate of financial institutions based in the PRC. This five-year bank loan was used to expand the capacity of SMIT's fab. The Company has guaranteed SMIT's obligations under this facility. The principal amount is repayable starting from 2010 in six semi-annual installments and the interest rate is variable and determined at LIBOR+1.25%.

The total outstanding balance of the facility is collateralized by its plant and equipment with an original cost of \$631 million as of December 31, 2009.

The Tianjin USD syndicate loan contains covenants to maintain minimum cash flows as a percentage of non-cash expenses and to limit total liabilities as a percentage of total assets. SMIT has complied with these covenants as of December 31, 2009.

15. INDEBTEDNESS (CONTINUED)

(b) Long-term debt (continued)

*Tianjin USD Syndicate Loan (continued)*

Details of the drawn down, repayment and outstanding balance of the abovementioned long-term debts are summarized as follows:

	Shanghai USD Syndicate Loan	Shanghai USD & RMB Loan	Beijing USD Syndicate Loan	EUR Loan	Tianjin USD Syndicate Loan
2009					
Drawn down	—	\$ 99,309,612	—	—	—
Repayment	\$138,210,000	—	—	\$22,694,080	\$ 80,000,000
Outstanding Balance	\$127,840,000	\$ 99,309,612	\$ 300,060,000	\$50,227,567	\$ 179,000,000
2008					
Drawn down	—	—	—	\$38,929,954	\$ 247,000,000
Repayment	\$127,860,000	—	\$ 199,960,000	\$17,950,415	—
Outstanding Balance	\$266,050,000	—	\$ 300,060,000	\$72,037,070	\$ 259,000,000
2007					
Drawn down	\$207,000,000	—	—	\$41,863,894	\$ 12,000,000
Repayment	\$ 87,510,000	—	\$ 99,980,000	\$ 8,173,357	—
Outstanding Balance	\$393,910,000	—	\$ 500,020,000	\$51,057,531	\$ 12,000,000

16. LONG-TERM PAYABLES RELATING TO LICENSE AGREEMENTS

The Company entered into several license agreements for acquired intangible assets to be settled by installment payments. Installments payable under the agreements as of December 31, 2009 are as follows:

Maturity	December 31, 2009	
	Face value	Discounted value
2010	\$23,766,666	\$23,233,386
2011	5,200,000	4,779,562
	<b>28,966,666</b>	<b>28,012,948</b>
Less: Current portion of long-term payables	23,766,666	18,562,691
Long-term portion of long-term payables	<b>\$ 5,200,000</b>	<b>\$ 4,779,562</b>

These long-term payables were interest free, and the present value was discounted using the Company's weighted-average borrowing rates ranging from 3.45% to 4.94%.

The current portion of other long-term payables is recorded as part of accrued expenses and other current liabilities.

In 2009, 2008 and 2007, the Company recorded interest expense of \$1,773,755, \$4,382,772, and \$1,511,880, respectively, relating to the amortization of the discount.

## 17. INCOME TAXES

Semiconductor Manufacturing International Corporation is a tax-exempted company incorporated in the Cayman Islands.

Prior to January 1, 2008, the subsidiaries incorporated in the PRC were governed by the Income Tax Law of the PRC Concerning Foreign Investment and Foreign Enterprises and various local income tax laws (the “FEIT Laws”).

On March 16, 2007, the National People’s Congress of China enacted a new Enterprise Income Tax Law (“New EIT Law”), which became effective January 1, 2008. Under the New EIT Law, domestically-owned enterprises and foreign invested enterprises (“FIEs”) are subject to a uniform tax rate of 25%. The New EIT Law also provides a transition period starting from its effective date for those enterprises which were established before the promulgation date of the New EIT Law and which are entitled to a preferential lower tax rate and/or tax holiday under the FEIT Law or other related regulations. Based on the New EIT Law, the tax rate of such enterprises will transition to the uniform tax rate throughout a five-year period. Tax holidays that were enjoyed under the FEIT Laws may be enjoyed until the end of the holiday. FEIT Law tax holidays that have not started because the enterprise is not tax profitable will take effect since 2008 regardless of whether the FIEs are profitable in 2008.

According to Guofa [2007] No. 39 — the Notice of the State Council Concerning Implementation of Transitional Rules for Enterprise Income Tax Incentives effective from January 1, 2008, enterprises that enjoyed preferential tax rates shall gradually transit to the statutory tax rate over 5 years after the new EIT Law is effective. Enterprises that enjoyed a tax rate of 15% under the FEIT Law shall be levied rates of 18% in 2008, 20% in 2009, 22% in 2010, 24% in 2011 and 25% in 2012.

On February 22, 2008, the PRC government promulgated Caishui Circular [2008] No. 1, the Notice of the Ministry of Finance and State Administration of Tax concerning Certain Enterprise Income Tax Preferential Policies (“Circular No. 1”). Pursuant to Circular No. 1, integrated circuit production enterprises whose total investment exceeds RMB8,000 million (approximately \$1,095 million) or whose integrated circuits have a line width of less than 0.25 micron are entitled to preferential tax rate of 15%. If the operation period is more than 15 years, those enterprises are entitled to a full exemption from income tax for five years starting from the first profitable year after utilizing all prior years’ tax losses and 50% reduction for the following five years. SMIS, SMIB and SMIT have met such accreditation requirements.

The detailed tax status of SMIC's PRC entities is elaborated as follows:

**1) SMIS**

Pursuant to the preferential tax policy available under the FEIT law as well as other related tax regulation, SMIS was subject to a preferential income tax rate of 15%. According to Circular Guofa (2000) No. 18 — New Policy Implemented for Software and Semiconductor Industries ("Circular 18") issued by the State Council of China, SMIS is entitled to a 10-year tax holiday (5-year full exemption followed by 5-year half reduction) for FEIT rate starting from the first profit-making year after utilizing all prior years' tax losses. The tax holiday enjoyed by SMIS took effect in 2004 when SMIS utilized all the accumulated tax losses.

In accordance with Guofa [2007] No. 39, SMIS was eligible to continue enjoying 10% income tax rate in 2009 and 11%, 12%, 12.5% and 12.5% in the remaining tax holiday through its expiry in 2013.

**2) SMIB and SMIT**

In accordance with the Circular 18 and Circular No. 1, SMIB and SMIT are entitled to the preferential tax rate of 15% and 10-year tax holiday (5-year full exemption followed by 5-year half reduction) subsequent to their first profit-making years after utilizing all prior tax losses. Both entities were in loss positions as of December 31, 2009 and the tax holiday has not yet taken effect.

**3) SMICD**

Under the FEIT Laws, SMICD was qualified to enjoy a 5-year tax holiday (2-year full exemption followed by 3-year half reduction) subsequent to its first profit-making year after utilizing all prior tax losses or 2008 in accordance with the New EIT Law. SMICD was in a loss position and the tax holiday began as of December 31, 2008 at the statutory rate of 25%.

**4) Energy Science**

Energy Science is a manufacturing enterprise located in the Shanghai Pudong New Area. Pursuant to the preferential tax policy granted to the Pudong New Area under the FEIT Law, Energy Science was subject to a preferential tax rate of 15% and qualified to enjoy a 5-year tax holiday (2-year full exemption followed by 3-year half reduction in FEIT rate) subsequent to its first profit-making year after utilizing all prior tax losses or 2008 in accordance with the New EIT Law. The tax holiday was triggered in 2007 and is eligible to continue until 2011. The tax rate for 2007, 2008 and 2009 was 0%, 0% and 10%, respectively and will be 11% and 12% for the remaining tax holiday through its expiry in 2011.

In 2009, the Company recorded withholding income tax expense of \$9,163,471 for license income generated from its PRC subsidiaries.

The Company's other subsidiaries are subject to respective local country's income tax laws, including those of Japan, the United States of America and European countries, whose income tax expenses for the years of 2009, 2008 and 2007 are as follows:

	2009	2008	2007
Japan subsidiary	\$ —	\$405,000	\$1,149,983
US subsidiary	252,000	223,812	163,604
European subsidiary	141,431	128,010	181,451

In 2008, the Company recorded income tax refund of \$774,744 for the service income generated in Japan.

In 2009, 2008 and 2007, the Company had minimal taxable income in Hong Kong.

The Company estimates its income taxes in each of the jurisdictions in which it operates. The Company accounts for income taxes by the asset and liability method. Under this method, deferred income taxes are recognized for tax consequences in future years of differences between the tax basis of assets and liabilities and their financial reporting amounts at each year-end, based on enacted laws and statutory tax rates applicable for temporary differences that are expected to affect taxable income. Valuation allowances are provided if based on available evidence, it is more likely than not that some or all of the deferred tax assets will not be realized.

The provision for income taxes by tax jurisdiction is as follows:

	December 31,		
	2009	2008	2007
<b>PRC</b>			
Current	\$ 40,949	\$ 15,106	\$ 19,602
Adjustments on deferred tax assets and liabilities for enacted changes in tax rate	(32,403,299)	20,542,716	(20,542,716)
Deferred	(23,818,794)	(9,506,907)	(10,691,699)
<b>Other jurisdictions</b>			
Current	\$ 9,556,902	\$15,382,078	\$ 1,495,038
Deferred	—	—	—
	<b>\$(46,624,242)</b>	<b>\$26,432,993</b>	<b>\$(29,719,775)</b>

The income (loss) before income taxes by tax jurisdiction is as follows:

	December 31,		
	2009	2008	2007
<b>PRC</b>	<b>\$ (793,668,370)</b>	<b>\$(291,664,135)</b>	<b>\$ 51,906,337</b>
<b>Other jurisdictions</b>	<b>(213,651,272)</b>	<b>(113,838,901)</b>	<b>(99,937,852)</b>
	<b>\$(1,007,319,642)</b>	<b>\$(405,503,036)</b>	<b>\$(48,031,515)</b>

Details of deferred tax assets and liabilities are as follows:

	2009	2008	2007
<b>Deferred tax assets:</b>			
Allowances and reserves	<b>\$ 13,019,352</b>	\$ 4,732,017	\$ —
Start-up costs	<b>159,707</b>	929,991	53,698
Net operating loss carry forwards	<b>109,384,792</b>	55,476,943	—
Unrealized exchange loss	<b>6,006</b>	33,228	—
Depreciation and impairment of fixed assets	<b>79,104,144</b>	59,224,163	75,886,896
Subsidy on long lived assets	<b>479,818</b>	479,817	479,817
Accrued expenses	<b>1,936,337</b>	—	—
<b>Total deferred tax assets</b>	<b>204,090,156</b>	121,479,433	76,420,411
Valuation allowance	<b>(101,558,305)</b>	(75,792,963)	(19,505,239)
<b>Net deferred tax assets — non-current</b>	<b>\$ 102,531,851</b>	\$ 45,686,470	\$ 56,915,172
<b>Deferred tax liability:</b>			
Capitalized interest	<b>(1,035,164)</b>	(411,877)	(604,770)

The Company has no material uncertain tax positions as of December 31, 2009 or unrecognized tax benefit which would favorably affect the effective income tax rate in future periods. The Company classifies interest and/or penalties related to income tax matters in income tax expense. As of December 31, 2009, the amount of interest and penalties related to uncertain tax positions is immaterial. The Company does not anticipate any significant increases or decreases to its liability for unrecognized tax benefits within the next 12 months.

As of December 31, 2009, the Company's PRC subsidiaries had net operating loss carry forward of \$1,368.3 million, of which \$117.8 million, \$174.9 million, \$271.8 million, \$341.7 million and \$462.1 million will expire in 2011, 2012, 2013, 2014 and 2015, respectively.

Under the New EIT Law, the profits of a foreign invested enterprise arising in year 2008 and beyond that will be distributed to its immediate holding company outside China will be subject to a withholding tax rate of 10%. A lower withholding tax rate may be applied if there is a favorable tax treaty between mainland China and the jurisdiction of the foreign holding company. For example, holding companies in Hong Kong that are also tax residents in Hong Kong are eligible for a 5% withholding tax on dividends under the Tax Memorandum between China and the Hong Kong Special Administrative Region. Since the Company intends to reinvest its earnings to expand its businesses in mainland China, its PRC subsidiaries do not intend to distribute profits to their immediate foreign holding companies for the foreseeable future. Accordingly, as of December 31, 2009, the Company has not recorded any withholding tax on the retained earnings of its PRC subsidiaries.

Income tax expense computed by applying the applicable EIT tax rate of 15% is reconciled to income before income taxes and noncontrolling interest as follows:

	<b>2009</b>	2008	2007
Applicable enterprise income tax rate	<b>15.0%</b>	15.0%	15.0%
Expenses not deductible for tax purpose	<b>(2.2%)</b>	(1.8%)	(0.9%)
Effect of tax holiday and tax concession	<b>(0.8%)</b>	0.0%	48.7%
Expense (credit) to be recognized in future periods	<b>(6.3%)</b>	(8.2%)	(19.2%)
Changes in valuation allowances	<b>(0.7%)</b>	(15.6%)	9.3%
Effect of different tax rate of subsidiaries operating in other jurisdictions	<b>(3.6%)</b>	(7.2%)	(33.8%)
Changes of tax rate	<b>3.2%</b>	(5.1%)	42.8%
Effective tax rate	<b>4.6%</b>	(6.5%)	61.9%

The aggregate amount and per share effect of the tax holiday are as follows:

	<b>2009</b>	2008	2007
The aggregate dollar effect	<b>\$7,979,279</b>	\$10,572	\$23,415,370
Per share effect — basic and diluted	<b>\$ 0.00</b>	\$ 0.00	\$ 0.00

## 18. NONCONTROLLING INTEREST

In 2005, AT issued Series A redeemable convertible preference shares (“Series A shares”) to certain third parties for cash consideration of \$39 million, representing 43.3% equity interest of AT. In 2007, AT repurchased 1 million Series A shares for \$1 million from a noncontrolling stockholder, and equity interest of the noncontrolling stockholders in AT decreased to 42.7% as of December 31, 2007. On January 1, 2009, the noncontrolling interest holders of AT redeemed 8 million Series A shares with a total redemption amount of \$9,013,444 and the equity interest of the noncontrolling stockholders in AT decreased to 33.7%.

At any time after January 1, 2009, if AT has not filed its initial registration statement relating its initial public offering as of such date, the holders of Series A shares (other than SMIC) shall have the right to require AT to redeem such holders’ shares upon redemption request by paying cash in an amount per share equal to the initial purchase price at \$1.00 for such Series A shares plus the product of (i) purchase price relating to the Series A shares and (ii) 3.5% per annum calculated on a daily basis from May 23, 2005. As of December 31, 2009, 38 million preferred shares are outstanding and redeemable to noncontrolling interest holders. The Series A shares are not considered participating securities and have been recorded at their redemption amount as a noncontrolling interest in the consolidated balance sheets. Adjustments to the carrying value of the Series A shares have been recorded as an accretion of interest to noncontrolling interest in the consolidated statements of operations.

The carrying value of the noncontrolling interest was recorded at the higher of the redemption value or the historical cost, increased or decreased for the noncontrolling interest’s share of net income or loss and dividend.

### Reconciliation of the Noncontrolling Interest

Balance at January 1, 2007	\$38,800,666
Redemption	(1,000,000)
Net loss	(2,856,258)
Balance at December 31, 2007	\$34,944,408
Net income	7,850,880
Balance at December 31, 2008	\$42,795,288
Redemption	(9,013,444)
Accretion of interest	1,059,663
Balance at December 31, 2009	\$34,841,507

## 19. SHARE-BASED COMPENSATION

### Stock options

The Company’s employee stock option plans (the “Plans”) allow the Company to offer a variety of incentive awards to employees, consultants or external service advisors of the Company. In 2004, the Company adopted the 2004 Stock Option Plan (“2004 Option Plan”), under the terms of which the 2004 Option Plan options are granted at the fair market value of the Company’s ordinary shares and expire 10 years from the date of grant and vest over a requisite service period of four years. Any compensation expense is recognized on a straight-line basis over the employee service period. As of December 31, 2009, options to purchase 1,096,601,080 ordinary shares were outstanding, and options to purchase 219,898,920 ordinary shares were available for future grants.

19. SHARE-BASED COMPENSATION (CONTINUED)

**Stock options** (continued)

As of December 31, 2009, the Company also has options to purchase 313,541,750 ordinary shares outstanding under the 2001 Stock Plan. The Company had not issued stock options under this plan after the IPO.

A summary of the stock option activity is as follows:

	Ordinary shares		Weighted	
	Number of	Weighted	Average	Aggregated
	options	average	Remaining	Intrinsic Value
		exercise price	Contractual	
			Term	
Options outstanding at				
January 1, 2009	1,124,155,994	\$ 0.12		
Granted	386,983,895	\$ 0.04		
Exercised	(6,453,800)	\$ 0.03		
Cancelled	(94,543,259)	\$ 0.10		
Options outstanding at				
December 31, 2009	1,410,142,830	\$ 0.10	6.21 years	\$ 18,478,165
Vested or expected to vest				
at December 31, 2009	1,398,875,834	\$ 0.10	6.15 years	\$ 16,862,913
Exercisable at December 31,				
2009	523,202,733	\$ 0.13	4.22 years	\$ 3,785,120

The total intrinsic value of options exercised in the year ended December 31, 2009, 2008 and 2007 was \$167,625, \$1,434,758 and \$5,679,680, respectively.

The weighted-average grant-date fair value of options granted during the year 2009, 2008 and 2007 was \$0.02, \$0.05 and \$0.04, respectively.

When estimating forfeiture rates, the Company uses historical data to estimate option exercise and employee termination within the pricing formula.

The fair value of each option and share grant are estimated on the date of grant using the Black-Scholes option pricing model with the assumptions noted below. The risk-free rate for periods within the contractual life of the option is based on the yield of the US Treasury Bond. The expected term of options granted represents the period of time that options granted are expected to be outstanding. Expected volatilities are based on the average volatility of our stock prices with the time period commensurate with the expected term of the options. The dividend yield is based on the Company's intended future dividend plan.

	2009	2008	2007
Average risk-free rate of return	1.18%	2.13%	3.98%
Expected term	2-4 years	1-4 years	1-4 years
Volatility rate	55.95%	46.82%	35.28%
Expected dividend yield	—	—	—

19. SHARE-BASED COMPENSATION (CONTINUED)

**Restricted share units**

In January 2004, the Company adopted the 2004 Equity Incentive Plan (“2004 EIP”) whereby the Company provided additional incentives to the Company’s employees, directors and external consultants through the issuance of restricted shares, restricted share units and stock appreciation rights to the participants at the discretion of the Board of Directors. Under the 2004 EIP, the Company was authorized to issue up to 2.5% of the issued and outstanding ordinary shares immediately following the closing of its initial public offering in March 2004, which were 455,409,330 ordinary shares. As of December 31, 2009, 53,625,777 restricted share units were outstanding and 203,443,064 ordinary shares were available for future grant through the issuance of restricted shares, restricted share units and stock appreciation rights. The RSUs vest over a requisite service period of 4 years and expire 10 years from the date of grant. Any compensation expense is recognized on a straight-line basis over the employee service period.

A summary of RSU activities is as follows:

	Restricted share units		Weighted Average	
	Number of Share Units	Weighted Average Fair Value	Remaining Contractual Term	Aggregated Fair Value
Outstanding at January 1, 2009	95,620,762	\$ 0.12		
Granted	787,797	\$ 0.04		
Exercised	(39,500,430)	\$ 0.15		
Cancelled	(3,282,352)	\$ 0.11		
Outstanding at December 31, 2009	53,625,777	\$ 0.11	7.55 years	\$ 5,827,170
Vested or expected to vest at				
December 31, 2009	43,128,948	\$ 0.10	7.81 years	\$ 4,473,686

Pursuant to the 2004 EIP, the Company granted 787,797, 41,907,100 and 40,519,720 RSUs in 2009, 2008, and 2007, respectively, most of which vest over a period of four years. The fair value of the RSUs at the date of grant was \$32,213, \$3,313,114 and \$5,631,263 in 2009, 2008, and 2007, respectively, which is expensed over the vesting period. As a result, the Company has recorded a compensation expense of \$3,370,893, \$5,644,789, and \$7,216,799 in 2009, 2008, and 2007, respectively.

Unrecognized compensation cost related to non-vested share-based compensation

As of December 31, 2009, there was \$9,469,465 of total unrecognized compensation cost related to non-vested share-based compensation arrangements granted under the 2001 Stock Plan, 2004 Stock Option Plan and 2004 EIP. The cost is expected to be recognized over a weighted-average period of 1.03 years.

20. RECONCILIATION OF BASIC AND DILUTED LOSS PER SHARE

The following table sets forth the computation of basic and diluted loss per share for the years indicated:

	2009	2008	2007
<b>Loss attributable to Semiconductor</b>			
Manufacturing International Corporation ordinary shares holders	\$ (963,537,205)	\$ (440,231,120)	\$ (19,468,147)
<b>Basic and diluted:</b>			
Weighted average ordinary shares outstanding	22,359,237,084	18,682,585,932	18,505,650,171
Less: Weighted average ordinary shares outstanding subject to repurchase	—	(41,066)	(3,709,682)
<b>Weighted average shares used in computing basic and diluted income per share</b>	<b>22,359,237,084</b>	<b>18,682,544,866</b>	<b>18,501,940,489</b>
<b>Basic and diluted loss per share</b>	<b>\$ (0.04)</b>	<b>\$ (0.02)</b>	<b>\$ (0.00)</b>

As of December 31, 2009, 2008 and 2007, the Company had 113,454,250, 189,478,507 and 147,988,221, respectively, ordinary share equivalents outstanding which were excluded in the computation of diluted loss per share, as their effect would have been anti-dilutive due to the net loss reported in such periods.

The following table sets forth the securities comprising of these anti-dilutive ordinary share equivalents for the years indicated:

	<b>December 31,</b>		
	2009	2008	2007
<b>Outstanding options</b> to purchase ordinary shares	<b>96,282,204</b>	128,361,312	72,685,282
<b>Outstanding unvested restricted share units</b>	<b>17,172,046</b>	61,117,195	75,302,939
	<b>113,454,250</b>	189,478,507	147,988,221

## 21. TRANSACTIONS WITH MANAGED GOVERNMENT-OWNED FOUNDRIES

The Company provides management services to Cension Semiconductor Manufacturing Corporation (“Cension”) and Wuhan Xinxin Semiconductor Manufacturing Corporation (“Xinxin”), which are government-owned foundries. Management service revenues under these arrangements for 2009, 2008 and 2007 were \$6,000,000, \$33,000,000 and \$42,000,000, respectively.

In 2008, and 2007, the Company sold plant, equipment and other fixed assets with carrying value of \$7,688 and \$19,530,909 to Cension for \$175,300, and \$42,300,258, which resulted in gains on sale of \$167,612, and \$22,769,349, respectively. The Company did not sell any plant, equipment or other fixed assets to Cension in 2009.

In 2008, the Company sold equipment and other fixed assets with carrying value of \$3,629,605 to Xinxin for \$3,944,204, which resulted in a gain on sale of \$314,599, of which, \$3,944,204 was outstanding as of December 31, 2008. In 2009, there was no such transaction.

On April 10, 2007, Cension entered into an Asset Purchase Agreement with Elpida Memory, Inc. (“Elpida”), a Japan based memory chip manufacturer, for the purchase of Elpida’s 200mm wafer processing equipment then located in Hiroshima, Japan for the total price of approximately \$320 million (the “Asset Purchase Agreement”).

As part of the Asset Purchase Agreement, the Company provided a corporate guarantee for a maximum guarantee liability of \$163.2 million on behalf of Cension in favor of Elpida. The Company’s guarantee liability was to terminate upon full payment of the purchase price by Cension to Elpida. In return for providing the above corporate guarantee, the Company received a guarantee fee from Cension of 1.5% of the guarantee amount, or \$2.4 million. Some 200mm wafer processing equipment purchased under the Agreement, for a total amount of \$160 million, was held as collateral under the guarantee.

The Company was entitled to the net profit (or loss) associated with the ongoing operations of this equipment, net of costs and a guaranteed profit for Elpida, during the transitional period before the equipment acquired by Cension was relocated from Hiroshima to Chengdu. Such relocation was completed in 2008.

On August 30, 2007, Cension negotiated with Elpida and subsequently reduced the purchase price to \$309.5 million.

In April 2008, SMIC entered into an agreement with Cension to purchase roughly half of the equipment from Cension for approximately \$152 million.

The Company ceased its recognition of management revenue in the second quarter of 2009 due to issues of collectability. Furthermore, the Company recorded a \$115.8 million bad debt provision in 2009, of which \$93.5 million and \$21.1 million are due to long outstanding overdue debt relating primarily to management revenue for services rendered and related equipment sold, respectively.

The Company also reversed the deferred revenue of \$9 million in relation to the management service rendered.

## 22. COMMITMENTS

### (a) Purchase commitments

As of December 31, 2009 the Company had the following commitments to purchase machinery, equipment and construction obligations. The machinery and equipment is scheduled to be delivered at the Company's facility by December 31, 2010.

Facility construction	\$ 69,012,026
Machinery and equipment	77,493,442
	\$146,505,468

### (b) Royalties

The Company has entered into several license and technology agreements with third parties. The terms of the contracts range from three to 10 years. The Company is subject to royalty payments based on a certain percentage of product sales, using the third parties' technology or license. In 2009, 2008 and 2007, the Company incurred royalty expense of \$20,836,511, \$18,867,409 and \$13,118,570, respectively, which was included in cost of sales.

The Company has entered into several license agreements with third parties where the Company provides access to certain licensed technology. The Company will receive royalty payments based on a certain percentage of product sales using the Company's licensed technology. In 2009, 2008 and 2007, the Company earned royalty income of \$498,270, \$1,192,537 and \$1,428,603, respectively, which was included in sales. Royalty income is recognized one quarter in arrears when reports are received.

### (c) Operating lease as lessor

The Company owns apartment facilities that are leased to the Company's employees at negotiated prices. The apartment rental agreement is renewed on an annual basis. The Company also leases office space to non-related third parties. Office lease agreements are renewed on an annual basis as well. The total amount of rental income recorded in 2009, 2008 and 2007 was \$ 6,331,248, \$5,818,655 and \$6,937,107, respectively, and is recorded in other income in the statement of operations.

23. SEGMENT AND GEOGRAPHIC INFORMATION

The Company is engaged principally in the computer-aided design, manufacturing and trading of integrated circuits. The Company's chief operating decision maker has been identified as the Chief Executive Officer, who reviews consolidated results of manufacturing operations when making decisions about allocating resources and assessing performance of the Company. The Company believes it operates in one segment. The following table summarizes the Company's net revenues generated from different geographic locations:

	2009	2008	2007
Total sales:			
United States	\$ 632,047,071	\$ 767,966,660	\$ 657,603,189
Europe	20,806,685	92,572,683	328,710,235
Asia Pacific*	35,625,352	40,849,450	49,217,344
Taiwan	157,624,333	185,848,747	183,113,880
Japan	9,685,012	37,706,875	152,364,336
Mainland China	214,598,650	228,766,884	178,756,304
	<b>\$1,070,387,103</b>	<b>\$1,353,711,299</b>	<b>\$1,549,765,288</b>

\* Not including Taiwan, Japan, Mainland China

Revenue is attributed to countries based on headquarter of operations.

Substantially all of the Company's long-lived assets are located in the PRC.

24. SIGNIFICANT CUSTOMERS

The following table summarizes net revenue and accounts receivable for customers which accounted for 10% or more of our accounts receivable and net sales:

	Net revenue			Accounts receivable		
	Year ended December 31,			December 31,		
	2009	2008	2007	2009	2008	2007
A	<b>22%</b>	22%	16%	<b>21%</b>	23%	14%
B	<b>14%</b>	14%	*	*	*	*
C	<b>13%</b>	13%	*	<b>11%</b>	*	*
D	*	*	18%	*	*	15%
E	*	*	*	*	*	13%
F	*	*	*	*	16%	*
G	*	*	*	*	18%	*
H	*	*	*	<b>10%</b>	*	*

	Other current assets			Receivable from sale of manufacturing equipment		
	December 31,			December 31,		
	2009	2008	2007	2009	2008	2007
F	*	50%	29%	*	83%	100%
G	*	*	*	*	17%	*

\* Less than 10%.

25. CONTINGENT LIABILITY

In 2008, the Company entered into equipment purchase and cooperative manufacturing arrangements (the “Arrangements”) with an unrelated semiconductor manufacturer (the “Counterparty”). Such cooperative manufacturing arrangements ended in 2008 as scheduled. In 2009, the Company received notifications from the Counterparty that the Company was responsible for additional equipment relocation expenses and a portion of the losses incurred during the term of the cooperative manufacturing arrangement. The Company has contested the claims and demanded further information supporting the Counterparty’s claims. The Counterparty also filed a demand for dispute arbitration in late 2009 for a portion of the claims. The Company plans to continue its investigations and negotiations with the Counterparty. The total amount of the claims is approximately US\$45 million. The Company recorded its best estimate of the probable amount of its liability on the claims in the consolidated financial statements as of and during the year ended December 31, 2009.

## 26. LITIGATION

### **Overview of TSMC Litigation:**

Beginning in December 2003, the Company became subject to several lawsuits brought by Taiwan Semiconductor Manufacturing Company, Limited (“TSMC”) alleging infringement of certain patents and misappropriation of alleged trade secrets relating to methods for conducting semiconductor fab operations and manufacturing integrated circuits.

On January 31, 2005, the Company entered into a settlement agreement, without admission of liability, which provided for the dismissal of all pending legal actions without prejudice between the two companies (the “2005 Settlement Agreement”) and agreed to pay TSMC \$175 million in installments over a period of six years.

In accounting for the 2005 Settlement Agreement, the Company determined that there were several components — settlement of litigation, covenant not to sue, patents licensed by the Company to TSMC and the use of TSMC’s patent license portfolio both prior and subsequent to the settlement date.

The Company does not believe that the settlement of litigation, covenant not to sue or patents licensed by the Company to TSMC qualify as assets under US GAAP.

The Company determined that the use of TSMC’s patent license portfolio prior and subsequent to the 2005 Settlement Agreement date qualify for assets under US GAAP. \$16.7 million was allocated to the pre-2005 Settlement Agreement period, reflecting the amount that the Company would have paid for use of the patent license portfolio prior to the date of the 2005 Settlement Agreement. The remaining \$141.3 million, representing the relative fair value of the licensed patent license portfolio, was recorded on the Company’s consolidated balance sheets as a deferred cost (“Deferred Cost”) and was amortized over a six-year period, which represents the life of the licensed patent license portfolio.

On August 25, 2006, TSMC filed a lawsuit against the Company and certain subsidiaries (SMIC Shanghai, SMIC Beijing and SMIC Americas) in the Superior Court of the State of California, County of Alameda for alleged breach of the 2005 Settlement Agreement, alleged breach of promissory notes related to the 2005 Settlement Agreement and alleged trade secret misappropriation by the Company. The Company filed counterclaims against TSMC in the same court in September 2006 and also filed suit against TSMC in Beijing in November 2006.

## 26. LITIGATION (CONTINUED)

### **Overview of TSMC Litigation:** (continued)

The Company settled all pending litigation with TSMC on November 9, 2009, including the legal action filed in California for which a verdict was returned by the jury against SMIC on November 4, 2009, with a Settlement Agreement (the “2009 Settlement Agreement”) which replaced the 2005 Settlement Agreement. The 2009 Settlement Agreement resolved all pending lawsuits between the parties and the parties have since dismissed all pending litigation between them. The terms of the 2009 Settlement Agreement include the following:

- 1) Entry of judgment and mutual release of all claims that were or could have been brought in the pending lawsuits;
- 2) Termination of SMIC’s obligation to make remaining payments under the 2005 Settlement Agreement between the parties (approximately US\$40 million);
- 3) Payment to TSMC of an aggregate of US\$200 million (with US\$15 million paid upon execution, funded from SMIC’s existing cash balances, and the remainder to be paid in installments over a period of four years);
- 4) Commitment to grant to TSMC of 1,789,493,218 shares of SMIC (representing approximately 8% of SMIC’s issued share capital as of October 31, 2009) and a warrant exercisable within three years of issuance to subscribe for 695,914,030 shares of SMIC, at a purchase price of HK\$1.30 per share. Both the shares and the warrant would allow TSMC to obtain total ownership of approximately 10% of SMIC’s issued share capital after giving effect to the share issuances and are subject to receipt of required government and regulatory approvals; and
- 5) Certain remedies in the event of breach of this settlement.

### **Accounting Treatment for the 2009 Settlement Agreement:**

In accounting for the 2009 Settlement Agreement, the Company determined that there were three components of the 2009 Settlement Agreement:

- 1) Settlement of litigation via entry of judgment and mutual release of all claims in connection with pending litigation;
- 2) TSMC’s covenant not-to-sue with respect to alleged misappropriation of trade secrets; and
- 3) Termination of payment obligation of the remaining payments to TSMC under the 2005 Settlement Agreement of approximately \$40 million.

The Company does not believe that any of the aforementioned qualify as assets under US GAAP. Accordingly, all such items were expensed as of the settlement date. Further, all previously recorded Deferred Cost associated with the 2005 Settlement Agreement were immediately impaired and the Company recorded the related impairment loss of \$27.5 million in the consolidated statements of operations. The commitment to grant shares and warrants was initially measured at fair value and is being accounted for as a derivative with all subsequent changes in fair value being reflected in the consolidated statements of operations. The Company recorded \$269.6 million under operating expenses in the fourth quarter of fiscal 2009, and \$30.1 million as non-operating expenses relating to the change in fair value of the derivative instruments. Interest expense associated with the promissory notes of \$0.7 million was recorded in 2009.

## 27. RETIREMENT BENEFIT

The Company's local Chinese employees are entitled to a retirement benefit based on their basic salary upon retirement and their length of service in accordance with a state-managed pension plan. The PRC government is responsible for the pension liability to these retired staff. The Company is required to make contributions to the state-managed retirement plan equivalent to 20% to 22.5% of the monthly basic salary of current employees. Employees are required to make contributions equivalent to 6% to 8% of their basic salary. The contribution of such an arrangement was approximately \$12,532,810, \$11,039,680 and \$7,223,644 for the years ended December 31, 2009, 2008 and 2007, respectively. The retirement benefits do not apply to non-PRC citizens. The Company's retirement benefit obligations outside the PRC are not significant.

## 28. DISTRIBUTION OF PROFITS

As stipulated by the relevant laws and regulations applicable to China's foreign investment enterprise, the Company's PRC subsidiaries are required to make appropriations from net income as determined under accounting principles generally accepted in the PRC ("PRC GAAP") to non-distributable reserves which include a general reserve, an enterprise expansion reserve and a staff welfare and bonus reserve. Wholly-owned PRC subsidiaries are not required to make appropriations to the enterprise expansion reserve but appropriations to the general reserve are required to be made at not less than 10% of the profit after tax as determined under PRC GAAP. The staff welfare and bonus reserve is determined by the Board of Directors.

The general reserve is used to offset future extraordinary losses. The subsidiaries may, upon a resolution passed by the stockholders, convert the general reserve into capital. The staff welfare and bonus reserve is used for the collective welfare of the employee of the subsidiaries. The enterprise expansion reserve is for the expansion of the subsidiaries' operations and can be converted to capital subject to approval by the relevant authorities. These reserves represent appropriations of the retained earnings determined in accordance with Chinese law. Appropriations to general reserve by the Company's PRC subsidiaries were \$nil, \$nil and \$15,640,153 in 2009, 2008 and 2007, respectively.

**ADDITIONAL INFORMATION — FINANCIAL STATEMENTS SCHEDULE I**  
**SEMICONDUCTOR MANUFACTURING INTERNATIONAL CORPORATION**  
**FINANCIAL INFORMATION OF PARENT COMPANY**  
**BALANCE SHEETS**  
(In US dollars, except share data)

	<b>December 31,</b>		
	<b>2009</b>	2008	2007
<b>ASSETS</b>			
Current assets:			
Cash and cash equivalents	33,384,536	164,107,042	6,042,030
Restricted cash	12,502,008		
Accounts receivable, net	291,073	260,331	10,970,690
Amount due from subsidiaries	367,524,590	203,326,525	21,586,283
Prepaid expense and other current assets	2,528,056	30,767,721	12,278,199
Total current assets	416,230,263	398,461,619	50,877,202
Plant and equipment, net	8,164,963	5,210,772	6,723,900
Acquired intangible assets, net	160,939,520	187,061,939	216,281,235
Deferred cost, net	-	47,091,516	70,637,275
Investment in subsidiaries	1,826,666,595	2,553,682,338	2,995,391,546
Investment in equity affiliate	7,670,044	9,452,186	9,896,398
<b>TOTAL ASSETS</b>	<b><u>2,419,671,385</u></b>	<b><u>3,200,960,370</u></b>	<b><u>3,349,807,556</u></b>
<b>LIABILITIES AND EQUITY</b>			
Current liabilities:			
Accounts payable	4,838,515	20,231,796	4,811,093
Accrued expenses and other current liabilities	72,893,883	81,367,429	34,021,253
Amount due to subsidiaries	77,516,511	61,512,045	76,762,892
Short-term borrowings	146,418,700	181,257,773	20,000,000
Current portion of promissory note	78,608,288	29,242,001	29,242,000
Current portion of long-term payables relating to license agreements	18,622,691	44,711,003	69,189,413
Commitment to issue shares and warrants relating to litigation settlement	120,237,773	-	-
Income tax payable	-	474,983	1,149,983
Total current liabilities	519,136,361	418,797,030	235,176,634
Long-term liabilities:			
Promissory notes	83,324,641	23,589,958	51,057,163
Long-term payables relating to license agreements	-	9,208,881	51,054,737
Other long term liabilities	20,970,000	-	-
Total long-term liabilities	104,294,641	32,798,839	102,111,900
<b>Total liabilities</b>	<b><u>623,431,002</u></b>	<b><u>451,595,869</u></b>	<b><u>337,288,534</u></b>
Equity:			
Ordinary shares, \$0.0004 par value, 50,000,000,000 shares authorized, 22,375,886,604, 22,327,784,827 and 18,558,919,712 shares issued and outstanding at December 31, 2009, 2008 and 2007, respectively	8,950,355	8,931,114	7,423,568
Additional paid-in capital	3,499,723,153	3,489,382,267	3,313,375,972
Accumulated other comprehensive (loss) income	(386,163)	(439,123)	(1,881)
Accumulated deficit	(1,712,046,962)	(748,509,757)	(308,278,637)
Total equity	1,796,240,383	2,749,364,501	3,012,519,022
<b>TOTAL LIABILITIES AND EQUITY</b>	<b><u>2,419,671,385</u></b>	<b><u>3,200,960,370</u></b>	<b><u>3,349,807,556</u></b>

**SEMICONDUCTOR MANUFACTURING INTERNATIONAL CORPORATION**  
**FINANCIAL INFORMATION OF PARENT COMPANY**  
**STATEMENTS OF OPERATIONS**  
(In US dollars)

	<b>Year ended December 31,</b>		
	<b>2009</b>	2008	2007
<b>Revenue</b>	20,943,735	208,459,285	12,363,023
Operating expenses:			
General and administrative expenses	111,308,433	48,818,885	61,970,384
Amortization of deferred cost and acquired intangible assets	32,965,281	51,728,389	48,049,863
Impairment loss of long-lived assets	5,630,237	966,667	
Litigation settlement	55,182,838		
<b>Total operating expenses</b>	<b>205,086,789</b>	101,513,941	110,020,247
<b>Income (loss) from operations</b>	<b>(184,143,054)</b>	106,945,344	(97,657,224)
Other income (expense):			
Interest income	399,655	571,870	1,267,478
Interest expense	(7,314,896)	(11,637,266)	(6,029,720)
Change in the fair value of commitment to issue shares and warrants	(30,100,793)		
Other income (expense), net	7,563,790	(3,889,327)	(2,610,379)
<b>Total other expense, net</b>	<b>(29,452,244)</b>	(14,954,723)	(7,372,621)
<b>Net income (loss) before income tax</b>	<b>(213,595,298)</b>	91,990,621	(105,029,845)
Income tax expense	(9,163,471)	(15,030,257)	(1,149,983)
Loss from equity investment	(1,782,142)	(444,211)	(4,012,665)
Profit (loss) from investment in subsidiaries	(738,996,294)	(516,747,273)	90,724,346
<b>Net loss</b>	<b>(963,537,205)</b>	(440,231,120)	(19,468,147)

**SEMICONDUCTOR MANUFACTURING INTERNATIONAL CORPORATION**  
**FINANCIAL INFORMATION OF PARENT COMPANY**  
**STATEMENTS OF CASH FLOWS**  
(In US dollars)

	<b>Year ended December 31,</b>		
	<b>2009</b>	2008	2007
<b>Operating activities</b>			
Net loss	(963,537,205)	(440,231,120)	(19,468,147)
<b>Adjustments to reconcile net loss to net cash provided by (used in) operating activities:</b>			
Loss (profit) from investment in subsidiaries	738,996,294	516,747,273	(90,724,346)
Loss from equity investment	1,782,142	444,211	4,012,665
Depreciation and amortization	34,357,584	51,733,790	48,381,796
Impairment loss of long-lived assets	5,630,237	966,667	-
Share-based compensation	10,145,101	11,617,572	20,643,341
Non-cash interest expense on promissory note and long-term payable relating to license agreements	2,557,329	6,208,530	4,579,116
Litigation settlement (noncash portion)	9,211,849		
Change in the fair value of commitment to issue shares and warrants	30,100,793		
Allowance for doubtful accounts	30,911,015		
<b>Changes in operating assets and liabilities:</b>			
Accounts receivable, net	(32,671)	10,710,359	(10,970,690)
Amount due from subsidiaries	(194,240,814)	(102,943,505)	117,115,344
Prepaid expense and other current assets	(2,669,420)	(18,489,522)	(3,788,061)
Accounts payable	(232,240)	1,482,771	4,811,093
Amount due to subsidiaries	16,004,466	(15,250,847)	(7,317,250)
Accrued expenses and other current liabilities	(11,978,670)	50,055,886	(5,397,776)
Other long term liabilities	20,970,000	-	(3,333,333)
Liability -T settlement	212,167,381		
Income tax payable	(474,983)	(675,000)	1,149,983
Dividend received from a subsidiary	-	47,000,000	315,000,000
<b>Net cash provided by operating activities</b>	<b>(60,331,813)</b>	119,377,065	374,693,735
<b>Investing activities:</b>			
Purchase of plant and equipment	(19,507,536)	(145,071,160)	(1,734,514)
Proceeds from sell of plant and equipment and other Asset	64,899,316	81,720,082	-
Purchases of acquired intangible assets	(41,728,828)	(75,639,710)	(87,295,157)
Investment in subsidiaries	(11,980,551)	(122,038,065)	(256,736,240)
Change in restricted cash	(12,502,008)	-	-
<b>Net cash used in investing activities</b>	<b>(20,819,606)</b>	(261,028,853)	(345,765,911)
<b>Financing activities:</b>			
Proceeds from short-term borrowing	80,464,986	418,357,773	154,383,000
Repayment of short-term debt	(115,304,059)	(257,100,000)	(165,383,000)
Repayment of promissory notes	(15,000,000)	(30,000,000)	(49,260,000)
Proceeds from exercise of employee stock options	215,026	796,269	4,039,131
Repurchase of restricted ordinary shares	-	-	(21,500)
Proceeds from issuance of ordinary shares	-	168,100,000	-
<b>Net cash provided by (used in) financing activities</b>	<b>(49,624,047)</b>	300,154,042	(56,242,369)
Effect of exchange rate changes	52,960	(437,242)	(93,720)
<b>NET DECREASE IN CASH AND CASH EQUIVALENTS</b>	<b>(130,722,506)</b>	158,065,012	(27,408,265)
<b>CASH AND CASH EQUIVALENTS, beginning of period</b>	164,107,042	6,042,030	33,450,295
<b>CASH AND CASH EQUIVALENTS, end of period</b>	33,384,536	164,107,042	6,042,030
<b>SUPPLEMENTAL DISCLOSURES OF NON-CASH INVESTING AND FINANCIAL ACTIVITIES</b>			
Inception of accounts payable for plant and equipment	(1,587,984)	(20,231,796)	(4,811,094)
Inception of long-term payable for acquired intangible assets		(9,208,881)	(51,054,737)

## Annex A

### GLOSSARY OF TECHNICAL TERMS

ASIC	Application Specific Integrated Circuit. A proprietary integrated circuit designed and manufactured to meet a customer's specific functional requirements.
Cell	A primary unit that normally repeats many times in an integrated circuit. Cells represent individual functional design units or circuits that may be reused as blocks in designs. For example, a memory cell represents a storage unit in a memory array.
CIS	CMOS Image Sensor. CIS can be used in applications such as still and video cameras and embedded cameras in mobile telephones. It is a fast growing imaging sensor technology. The fabrication of CIS is fully compatible with the mainstream CMOS process, which enables system-on-chip capability, low power consumption and low cost of fabrication.
Clean room	Area within a fab in which the wafer fabrication takes place. The classification of a clean room relates to the maximum number of particles of contaminants per cubic foot within that room. For example, a class 100 clean room contains less than 100 particles of contaminants per cubic foot.
CMOS	Complementary Metal Oxide Silicon. A fabrication process that incorporates n-channel and p-channel CMOS transistors within the same silicon substrate. Currently, this is the most commonly used integrated circuit fabrication process technology and is one of the latest fabrication techniques to use metal oxide semiconductor transistors.
CVD	Chemical Vapor Deposition. A process in which gaseous chemicals react on a heated wafer surface to form solid film.
Die	One individual chip cut from a wafer before being packaged.
Dielectric material	A type of non-conducting material used for isolation purposes between conductors, such as metals.
DRAM	Dynamic Random Access Memory. A device that temporarily stores digital information but requires regular refreshing to ensure data is not lost.
DSP	Digital Signal Processor. A type of integrated circuit that processes and manipulates digital information after it has been converted from an analog source.
EEPROM	Electrically Erasable Programmable Read-Only Memory. An integrated circuit that can be electrically erased and electrically programmed with user-defined information.
EPROM	Erasable Programmable Read-Only Memory. A form of PROM that is programmable electrically yet erasable using ultraviolet light.

FCRAM™	Fast Cycle Random Access Memory. A proprietary form of RAM developed by Fujitsu Limited.
Fill factor	The percentage of LCOS metal surface area used for light reflection as compared to the total surface area. The higher the fill factor, the more light will be reflected from a given surface area.
Flash memory	A type of non-volatile memory where data is erased in blocks. The name “flash” is derived from the rapid block erase operation. Flash memory requires only one transistor per memory cell versus two transistors per memory cell for EEPROMs, making flash memory less expensive to produce. Flash memory is the most popular form of non-volatile semiconductor memory currently available.
Gold Bumping	The fabrication process of forming gold bump termination electrodes on a finished wafer.
High voltage semiconductor	High voltage semiconductors are semiconductor devices that can drive relatively high voltage potential to systems that require higher voltage of between five volts to several hundred volts.
IDM	Integrated Device Manufacturer.
Integrated circuit	An electronic circuit where all the elements of the circuit are integrated together on a single semiconductor substrate.
Interconnect	Conductive materials such as aluminum, doped polysilicon or copper that form the wiring circuitry to carry electrical signals to different parts of the chip.
I/O	Inputs/Outputs.
LCOS	Liquid Crystal On Silicon. A type of micro-display technology.
Logic device	A device that contains digital integrated circuits that perform a function rather than store information.
Low leakage	Characteristic of a transistor that has a low amount of current leakage. Low leakage allows for power-saving. Low leakage semiconductors are primarily used in applications such as cellular telephones, calculators and automotive applications.
Mask	A glass plate with a pattern of transparent and opaque areas used to create patterns on wafers. “Mask” is commonly used to refer to a plate that has a pattern large enough to pattern a whole wafer at one time, as compared to a reticle, where a glass plate can contain the pattern for one or more dies but is not large enough to transfer a wafer-sized pattern all at once.

Mask ROM	A type of non-volatile memory that is programmed during fabrication (mask-defined) and the data can be read but not erased.
Memory	A device that can store information for later retrieval.
Micro-display	A small display that is of such high resolution that it is only practically viewed or projected with lenses or mirrors. A micro-display is typically magnified by optics to enlarge the image viewed by the user. For example, a miniature display smaller than one inch in size may be magnified to provide a 12-inch to 60-inch viewing area.
Micron	A term for micrometer, which is a unit of linear measure that equals one one-millionth (1/1,000,000) of a meter. There are 25.4 microns in one one-thousandth of an inch.
Mixed-signal	The combination of analog and digital circuitry in a single semiconductor.
MOS	Metal Oxide Semiconductor. A type of semiconductor device fabricated with a conducting layer and a semiconducting layer separated by an insulating layer.
NAND Flash	A type of flash memory commonly used for mass storage applications such as MP3 players and digital cameras.
Nanometer	A term for micrometer, which is a unit of linear measure that equals one thousandth (1/1,000) of a micron.
Non-volatile memory	Memory products that maintain their content when the power supply is switched off.
OTP	One-time programmable memory used for program and data storage, usually used in applications that require only a one-time data change.
PROM	Programmable Read-Only Memory. Memory that can be reprogrammed once after manufacturing.
RAM	Random Access Memory. Memory devices where any memory cell in a large memory array may be accessed in any order at random.
Redistribution Layer Manufacturing	The manufacturing process of fabricating additional dielectric and copper interconnect layers to redistribute the pads to new locations on a finished wafer.
Reticle	See "Mask" above.

RF	Radio Frequency. Radio frequency semiconductors are primarily used in communications devices such as cell phones.
ROM	Read-Only Memory. See “Mask ROM” above.
Scanner	An aligner that scans light through a slit across a mask to produce an image on a wafer.
Semiconductor	An element with an electrical resistivity within the range of an insulator and a conductor. A semiconductor can conduct or block the flow of electric current depending on the direction and magnitude of applied electrical biases.
Solder bumping	The fabrication processes of forming solder bump termination electrodes, which are elevated metal structures, or lead free bump termination electrodes.
SRAM	Static Random Access Memory. A type of volatile memory product that is used in electronic systems to store data and program instructions. Unlike the more common DRAM, it does not need to be refreshed.
Stepper	A machine used in the photolithography process in making wafers. With a stepper, a small portion of the wafer is aligned with the mask upon which the circuitry design is laid out and is then exposed to strong light. The machine then “steps” to the next area, repeating the process until the entire wafer has been done. Exposing only a small area of a wafer at a time allows the light to be focused more strongly, which gives better resolution of the circuitry design.
System-on-chip	A chip that incorporates functions usually performed by several different devices and therefore generally offers better performance and lower cost.
Systems companies	Companies that design and manufacture complete end market products or systems for sale to the market.
Transistor	An individual circuit that can amplify or switch electric current. This is the building block of all integrated circuits.
Volatile memory	Memory products that lose their content when the power supply is switched off.
Wafer	A thin, round, flat piece of silicon that is the base of most integrated circuits.

## EXHIBIT INDEX

Exhibit 1.1	Eleventh Amended and Restated Articles of Association, as adopted at the Registrant's annual general meeting of shareholders on June 2, 2008 <sup>(1)</sup>
Exhibit 4.1	Settlement Agreement dated January 31, 2005 by and between Semiconductor Manufacturing International Corporation and Taiwan Semiconductor Manufacturing Corporation, Ltd., including Patent License Agreement <sup>(2)</sup>
Exhibit 4.2	English language summary of Chinese language Syndicate Loan Agreement dated May 26, 2005, between Semiconductor Manufacturing International (Beijing) Corporation, Semiconductor Manufacturing International Corporation, as guarantor, and China Development Bank, China Construction Bank, Bank of China, Agricultural Bank of China, China Merchants Bank, HuaXia Bank, China Mingsheng Bank, Bank of Communications, Bank of Beijing, Industrial and Commercial Bank of China (Asia) and CITIC Ka Wah Bank <sup>(2)</sup>
Exhibit 4.3	Form of Indemnification Agreement, as adopted at the Registrant's annual general meeting of shareholders on May 6, 2005 <sup>(2)</sup>
Exhibit 4.4	Form of Service Contract between the Company and each of its executive officers <sup>(3)</sup>
Exhibit 4.5	Form of Service Contract between the Company and each of its directors <sup>(3)</sup>
Exhibit 4.6	English language summary of Chinese language Syndicate Loan Agreement dated May 31, 2006, between Semiconductor Manufacturing International (Tianjin) Corporation, Semiconductor Manufacturing International Corporation, as guarantor, and China Construction Bank, China Minsheng Bank, China Development Bank, Industrial and Commercial Bank of China, Agricultural Bank of China, Bank of China, China Merchants Bank, China Bo Hai Bank, Bank of Communications and Bangkok Bank <sup>(4)</sup>
Exhibit 4.7	English language summary of Chinese language Syndicate Loan Agreement dated June 8, 2006, between Semiconductor Manufacturing International (Shanghai) Corporation, Semiconductor Manufacturing International Corporation, as guarantor, and ABN AMRO Bank N.V., Bank of China (Hong Kong) Limited, Bank of Communications, The Bank of Tokyo-Mitsubishi UFJ, Ltd., China Construction Bank, DBS Bank Ltd., Fubon Bank (Hong Kong) Limited, Industrial and Commercial Bank of China and Shanghai Pudong Development Bank <sup>(4)</sup>
Exhibit 4.8	Share Purchase Agreement, dated November 6, 2008, by and between the Company and Datang Telecom Technology & Industry Holdings Limited Co., Ltd. <sup>(5)</sup>
Exhibit 4.9	English language translation of Strategic Cooperation Agreement, dated December 24, 2008 by and between the Company and Datang Telecom Technology & Industry Holdings Co., Ltd. <sup>(6)</sup>
Exhibit 4.10	Settlement Agreement dated November 9, 2009 by and between the Company and Taiwan Semiconductor Manufacturing Corporation, Ltd., including Share and Warrant Agreements
Exhibit 8.1	List of Subsidiaries
Exhibit 12.1	Certification of CEO under Section 302 of the U.S. Sarbanes-Oxley Act of 2002
Exhibit 12.2	Certification of CFO under Section 302 of the U.S. Sarbanes-Oxley Act of 2002
Exhibit 13.1	Certification of CEO and CFO under Section 906 of the U.S. Sarbanes-Oxley Act of 2002
Exhibit 99.1	Consent of Deloitte Touche Tohmatsu

---

(1) Previously filed as an exhibit to the Registrant's Annual Report on Form 20F for the fiscal year ended December 31, 2007, filed June 27, 2008 and amended November 28, 2008.

(2) Previously filed as an exhibit to the Registrant's Annual Report on Form 20F for the fiscal year ended December 31, 2004, filed June 28, 2005. With respect to Exhibit 4.1, please refer to Item 8 "Litigation" in the Registrant's Annual Report on Form 20F for the fiscal year ended December 31, 2008.

(3) Previously filed as an exhibit to the Registrant's Annual Report on Form 20F for the fiscal year ended December 31, 2008, filed June 22, 2009.

- (4) Previously filed as an exhibit to the Registrant's Annual Report on Form 20F for the fiscal year ended December 31, 2005, filed June 28, 2006.
- (5) Previously filed as an exhibit to the Registrant's Form 6-K dated November 17, 2008. Portions of this exhibit were omitted and filed separately with the Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended, concerning confidential treatment.
- (6) Previously filed as an exhibit to the Registrant's Form 6-K dated January 5, 2009. Portions of this exhibit were omitted and filed separately with the Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended, concerning confidential treatment.

**SETTLEMENT AGREEMENT**

This SETTLEMENT AGREEMENT (together with all Exhibits hereto, the “**Settlement Agreement**”) is made and entered into as of November 9, 2009 (the “**Effective Date**”) by and between Taiwan Semiconductor Manufacturing Company, Ltd., a Taiwanese corporation, having a place of business located at No.8 Li-Hsin Road 6, Hsin-Chu Science Park, Hsin-Chu, Taiwan, Republic of China, on behalf of itself and all of its Related Companies (Taiwan Semiconductor Manufacturing Company, Ltd. and its Related Companies, collectively “**TSMC**”), and Semiconductor Manufacturing International Corporation, an exempted company incorporated under the laws of the Cayman Islands, having a place of business located at No. 18 Zhang Jiang Road, Pudong New Area, Shanghai 201203, People’s Republic of China, on behalf of itself and all of its Related Companies, including Semiconductor Manufacturing International (Beijing) Corporation, Semiconductor Manufacturing International (Shanghai) Corporation, and SMIC Americas (Semiconductor Manufacturing International Corporation and its Related Companies, collectively “**SMIC**”). As used herein, “**Party**” refers to TSMC or SMIC, as the case may be, and “**Parties**” refers to TSMC and SMIC collectively.

WITNESSETH:

WHEREAS, the Parties are adversaries in the Pending Actions (as defined in Exhibit A-1);

WHEREAS, a verdict of liability has been rendered against SMIC in the California State Court Action and, in light of the potential for a verdict on damages against SMIC that could render SMIC insolvent, TSMC desires to structure a settlement of the California State Court Action that will insure the financial viability of SMIC and secure to TSMC a strategic investment in SMIC, as contemplated hereunder; and

WHEREAS, the Parties now desire to enter into a full, final, complete and global settlement of the Pending Actions and the underlying disputes upon the terms and conditions set forth in this Settlement Agreement, which, upon execution, shall be legally binding and enforceable as of the Effective Date.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties, intending to be legally bound, hereby covenant and agree as follows:

**1. Definitions.**

A. All capitalized terms used herein that are not otherwise defined elsewhere herein shall have the meanings set forth in Exhibit A-1 hereto.

**2. Payments.**

  
TSMC SMIC SMIC

- A. SMIC shall pay an aggregate sum of two hundred million U.S. dollars (US\$200,000,000.00) to TSMC in the following installments (each a **“Settlement Payment”**):
1. Fifteen million U.S. dollars (US\$15,000,000.00) upon execution of this Settlement Agreement;
  2. Fifteen million U.S. dollars (US\$15,000,000.00) by or before December 31, 2009;
  3. Twenty million U.S. dollars (US\$20,000,000.00) by or before March 31, 2010;
  4. Twenty million U.S. dollars (US\$20,000,000.00) by or before June 30, 2010;
  5. Twenty million U.S. dollars (US\$20,000,000.00) by or before September 30, 2010;
  6. Twenty million U.S. dollars (US\$20,000,000.00) by or before December 31, 2010;
  7. Fifteen million U.S. dollars (US\$15,000,000.00) by or before June 30, 2011;
  8. Fifteen million U.S. dollars (US\$15,000,000.00) by or before December 31, 2011;
  9. Fifteen million U.S. dollars (US\$15,000,000.00) by or before June 30, 2012;
  10. Fifteen million U.S. dollars (US\$15,000,000.00) by or before December 31, 2012;
  11. Fifteen million U.S. dollars (US\$15,000,000.00) by or before June 30, 2013; and
  12. Fifteen million U.S. dollars (US\$15,000,000.00) by or before December 31, 2013.
- B. Any Settlement Payment that is not paid when due shall bear interest until paid at the rate of 12% per annum. In the event any Settlement Payment is not paid within thirty (30) days of the date due, the maturity of all remaining Settlement Payments will accelerate and become due and payable in full within three (3) business days.

  
TSMC SMIC SMIC

- C. Except as provided in Section 2.E, SMIC's obligation to make the payments due hereunder shall be irrevocable and will be secured by a series of promissory notes provided to TSMC in the form attached as Exhibit A-2 and letters of credit as provided in Section 2.F. All amounts due hereunder shall be paid to TSMC by electronic wire transfer of immediately available funds in accordance with the instructions of, and to such accounts specified by, TSMC without deduction for withholding tax obligations, if any, which obligations SMIC shall bear. The Parties shall reasonably cooperate to minimize such withholding and to seek a refund or release of any such withheld amounts.
- D. Each Party may determine, in its sole discretion, how to allocate the payments made by SMIC to TSMC pursuant to this Settlement Agreement without any duty or obligation to consult or agree on any such allocation with the other Party.
- E. SMIC shall be relieved of its obligation to pay any remaining installments not yet due under Section 2.A and shall not be held to be in breach hereof for any such failure to pay, in the event TSMC initiates any action or proceeding in breach of Section 6 other than in response to an action or proceeding initiated by SMIC in breach of such provisions and TSMC fails to dismiss such action or proceeding within five (5) business days following receipt of written notice from SMIC of such breach.
- F. SMIC shall use its commercially reasonable efforts to secure and deliver to TSMC letters of credit securing the payment of the promissory notes to be issued pursuant to this Section 2 by a financial institution and in a form reasonably acceptable to TSMC as soon as reasonably practicable.

3. **Share Issuance.** Concurrently with the execution and delivery of this Settlement Agreement, TSMC and SMIC shall execute and deliver the Share and Warrant Issuance Agreement in the form of Exhibit B (the "**Share Issuance Agreement**").

4. **Stipulated Judgment.**

- A. As soon as practicable following the execution of this Agreement, and in no event later than the end of the first business day in California following the execution of this Agreement, the Parties shall file with the Superior Court of the State of California, County of Alameda in connection with the California State Court Action, a Stipulated Judgment entering a final judgment in favor of the TSMC plaintiffs on all claims, cross-claims and supplemental claims filed by the parties in that action (the "**Stipulated Judgment**").
- B. The Stipulated Judgment referenced in subsection A above shall be payable as follows: (i) Settlement Payments totaling two hundred million U.S. dollars (US\$200,000,000.00) payable pursuant to Section 2; and (ii) securities issuable pursuant to the Share Issuance Agreement.

  
TSMC      SMIC      RRC  
SMIC

- C. As soon as practicable following the execution of this Agreement, and in no event later than the end of the first business day in Beijing, China following the execution of this Agreement, SMIC shall file a withdrawal of appeal with the Supreme Court in the Beijing Action.

**5. Mutual Release.**

- A. Effective upon entry of the Stipulated Judgment and the dismissals of the Pending Actions pursuant to Section 4, each Party, on behalf of itself and its predecessors, successors, and permitted assigns, hereby fully and forever irrevocably and unconditionally releases and discharges the other Party and their respective predecessors, successors, and assigns, and each of their past and present employees, officers, directors, and agents from all claims, suits, demands, causes of action, judgments, losses, and liabilities of any nature, known or unknown, anywhere in the world, arising out of or related to (i) all claims and counterclaims that have been or could have been brought in the Pending Actions arising in whole or in any part prior to the Effective Date, and (ii) all claims and counterclaims based upon or relating to the appropriateness or basis of any claim or cause of action that either Party has asserted in the Pending Actions, including, without limitation, claims for malicious prosecution, sanctions, or abuse of process, provided, however, that this release expressly shall not apply to (a) the claims asserted by TSMC in the California State Court Action and addressed in the Stipulated Judgment, (b) any claims by a Party relating to any breach of this Settlement Agreement by the other Party or any breach by SMIC of the promissory notes issued hereunder, the Share Issuance Agreement, or the Stipulated Judgment and (c) the pending action against Katy Liu currently in the Hsinchu District Court, R.O.C. case number 九十二年度易字第49號.
- B. Each Party acknowledges that it has consulted with legal counsel regarding the import of Section 1542 of the California Civil Code, which provides as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR." Each Party, for itself and for its legal successors and assigns, hereby expressly, knowingly, and intentionally waives any benefit or rights it may have under Section 1542 of the California Civil Code, as well as under any other statute or common law principles of similar effect. Each Party acknowledges that it has received independent legal advice from its attorneys with respect to the waiver of the provisions of Section 1542 of the California Civil Code, and any other statute or common law principles of similar effect, and each Party acknowledges that its waiver is a material inducement and consideration for the other Party's execution of this Settlement Agreement. The Parties further agree that the releases set forth in this Settlement Agreement may not be terminated or rescinded because of any later discovery by either Party of different or additional facts or any unknown or unsuspected past claims.



TSMC SMIC RRC  
SMIC SMIC SMIC

- C. The Parties hereby expressly waive the benefits of and shall not assert the single claim doctrine discussed in *Cadence Design Systems v. Avant! Corp.*, 29 Cal. 4th 215 (2002), for purposes of defending against any claim based on unauthorized disclosure of the other Party's trade secrets after the Effective Date in breach of this Settlement Agreement.

**6. Covenants Not to Sue.**

- A. TSMC hereby covenants not to sue or bring any claim or action against SMIC based upon SMIC's acquisition, use, disclosure or exploitation of any TSMC technology or information in connection with its processes, materials, process recipes or design rules or otherwise, or alleging that SMIC has misappropriated, infringed, or otherwise violated, or is misappropriating, infringing, or otherwise violating, any trade secret or other intellectual property right of TSMC anywhere in the world; provided, however, that this covenant expressly shall not apply to (1) any claim against SMIC for a breach of this Settlement Agreement or of the Stipulated Judgment (excluding Section 8), (2) any claim or cause of action against SMIC not related to the Pending Actions arising wholly after the Effective Date, (3) any claim to the extent based on an alleged infringement of TSMC's Patent rights, and (4) any claim based on TSMC's trademark rights, including, without limitation, those current actions excluded from the Pending Actions.
- B. SMIC hereby covenants not to sue or bring any claim or action against TSMC based upon TSMC's acquisition, use, disclosure or exploitation of any SMIC technology or information in connection with its processes, materials, process recipes or design rules or otherwise, or any other SMIC information alleged to be in the possession of TSMC as of the Effective Date, or alleging that TSMC has misappropriated, infringed, or otherwise violated, or is misappropriating, infringing, or otherwise violating, any trade secret or other intellectual property right of SMIC anywhere in the world, provided, however, that this covenant expressly shall not apply to either (1) any claim against TSMC for a breach of this Settlement Agreement, (2) any claim or cause of action against TSMC not related to the Pending Actions arising wholly after the Effective Date, (3) any claim to the extent based on an alleged infringement of SMIC's Patent rights, and (4) any claim based on SMIC's trademark rights.
- C. Without derogation of the covenant not to sue pursuant to this Section 6, the Parties acknowledge and agree that this Settlement Agreement does not grant to any Party any license to, or any ownership right, title or interest whatsoever in, any technology, trade secrets or other confidential information or intellectual property of the other Party.

  
TSMC SMIC SMIC

7. **Termination of 2005 Settlement Agreement and 2005 Patent License Agreement.** As of the Effective Date, the Parties acknowledge and agree that all versions of the 2005 Settlement Agreement, the remaining payment obligations thereunder, and the 2005 Patent License Agreement shall terminate and shall be of no further force and effect, and all promissory notes of SMIC issued in connection with the 2005 Settlement Agreement are hereby cancelled.

8. **Return or Destruction of Information.**

A. Mutual Obligation.

1. Promptly following the execution of this Settlement Agreement, each Party and/or its legal counsel shall return or destroy all Documents and files that were produced by the other Party (including any documents that were delivered to its outside litigation counsel) during the Pending Actions (except that each Party's outside litigation counsel may retain one (1) copy thereof). If either Party at any time discovers any such Document described in Section 8.A.1 in its possession, custody or control, such Party will promptly identify such Document to the other Party and will thereafter promptly destroy such Document or return such Document to the other Party.

B. SMIC Obligation.

1. SMIC further covenants and agrees that promptly, but in any event no later than six (6) months from the Effective Date, SMIC shall:
  - a. use commercially reasonable good faith efforts to complete a search for all copies of all TSMC Documents in the possession, custody or control of SMIC or any of its employees and deliver to TSMC all TSMC Documents discovered during such search;
  - b. use commercially reasonable good faith efforts to complete a search of all current SMIC files (including all hard copies, hard files, electronic files, computers, servers and shared servers) for any and all Documents that currently reference or previously referenced "TSMC," "BKM 1," or "Wafertech" in their file path, properties, title or contents and deliver to TSMC all such Documents discovered during such search;
  - c. use commercially reasonable good faith efforts to complete a search of all current SMIC files (including all hard copies, hard files, electronic files, computers, servers and shared servers) for any and all copies of the Documents that were placed in escrow pursuant to Article V of the 2005 Settlement Agreement, as identified on Exhibit D (the "Escrowed Documents"), and deliver to TSMC all such Documents discovered during such search.

  
TSMC SMIC SMIC

2. The Escrowed Documents shall remain in escrow until the dismissal of the Pending Actions pursuant to Section 4. Upon such dismissal, the Parties shall instruct the escrow agent holding the Escrowed Documents to destroy the Escrowed Documents. Outside litigation counsel for each Party may retain one (1) copy of each of the Escrowed Documents.
  3. Notwithstanding the foregoing, each Party's outside litigation counsel may retain one (1) copy of such Documents delivered or destroyed pursuant to this Section 8 and shall keep such Documents confidential at all times and shall not disclose such Documents to any person; provided that a Party may use such Documents in a litigation or arbitration against it by the other Party, except to the extent such Documents are entitled to the protection of the attorney-client privilege.
  4. All Documents or materials identified or produced by SMIC (or its counsel) under this Section 8.B shall be treated as delivered solely for the purpose of resolving existing disputes. TSMC agrees that it will not use any such Documents or materials delivered by SMIC to TSMC under this Section 8.B as evidence in any legal or administrative proceeding brought by TSMC against SMIC (except as provided in Section 8.B.3) nor will it contend that the delivery of such Documents or materials is evidence of liability of any kind.
- C. Notwithstanding anything to the contrary set forth herein, SMIC shall not be required to return or destroy any documentation of SMIC's process recipes, process flows and design rules.

**9. Confidentiality.**

A. Mutual Confidentiality Obligations.

1. Each Party hereby covenants and agrees that it will treat any information, trade secrets or confidential technology of the other Party, including any information alleged to be trade secrets of a Party, in the same manner as it treats its own similar or like confidential information, but in no event with less than reasonable care, including through the use of valid and enforceable non-disclosure agreements and policies.
2. Each Party agrees that it will not, in any way, use, assign, license, sell, or transfer to a third party any trade secrets or confidential technology belonging to the other Party; provided that nothing will prohibit SMIC from using trade secrets and confidential technology of TSMC that is currently embedded in the processes, materials, process recipes, design rules or technologies of SMIC; provided that SMIC abides by the limitations on use and confidentiality obligations contained herein, including the use of valid and enforceable nondisclosure agreements and policies.

  
TSMC SMIC SMIC

- B. Third Parties. Each Party hereby covenants and agrees not to disclose, in whole or in part, any of the other Party's alleged confidential information, trade secrets or confidential technology to any third party, except for such third parties with a need to know such information for business purposes and under the same terms and conditions that such Party discloses its own like or similar confidential information to third parties, including pursuant to valid and enforceable non-disclosure agreements and policies. It is understood that TSMC does not intend to restrict SMIC's foundry business and therefore SMIC shall be permitted to disclose TSMC information to its bona fide customers (including potential customers), suppliers and vendors pursuant to this Section 9.B only if such information is embedded in its processes, materials, process recipes, or design rules or in any improvement or modification; provided that such information is disclosed pursuant to valid and enforceable nondisclosure agreements and does not, in any way, assign, license, sell, or transfer any such information to any third party.
- C. Nothing set forth in this Section 9 shall limit TSMC from using or disclosing any Documents or materials that originated from TSMC or other TSMC Documents.

**10. Confidentiality of Settlement.**

- A. The Parties agree that all provisions, terms and conditions of this Settlement Agreement (including all Exhibits hereto) shall be deemed to be the confidential information of both Parties and are and shall remain strictly confidential except to the extent disclosed pursuant to Section 10.A.1, 10.A.2, or 10.A.3. Neither Party shall disclose any such provisions, terms and conditions, in whole or in part, under any circumstances, to any person not a party hereto, except:
  - 1. With the prior written consent of the other Party;
  - 2. To the extent such disclosure may be required in judicial, administrative, or regulatory proceedings in response to a valid subpoena or as otherwise may be required by law, or rules of any applicable regulatory organization to whose jurisdiction any of the Parties is subject, but only subject to a protective order or other similar protections (as applicable);
  - 3. For the purposes of disclosure in connection with the Securities Exchange Act of 1934, as amended, the Securities Act of 1933, as amended, and the Rules Governing the Listing of Securities on The Hong Kong Stock Exchange Limited (the "**Hong Kong Stock Exchange**") and any other disclosures or reports filed with the U.S. Securities and Exchange Commission, the New York Stock Exchange (the "**NYSE**"), the Hong Kong Stock Exchange, the Securities and Futures Commission of Hong Kong, the Taiwan Stock Exchange, and comparable China, Taiwan R.O.C., and other securities authorities, where applicable, provided that each Party shall diligently seek confidential treatment for such portions of the terms of this Settlement Agreement as reasonably requested by the other Party;



The image shows three handwritten signatures in black ink. The first signature is for TSMC, the second is for SMIC, and the third is for RRC. Each signature is written above its respective name, which is printed in a small, sans-serif font.

4. By SMIC to Related Companies or their respective bona fide suppliers or customers pursuant to valid and enforceable non-disclosure agreements with respect to Sections 6, and 9.B of this Settlement as is reasonably necessary to solely assure such parties of the scope of the covenants and agreements set forth in such sections as may be pertinent to them; or
5. To either Party's accountants, auditors, legal counsel, insurers, or bankers, but only subject to an obligation of confidentiality and/or privilege (as applicable);

provided, however, that prior to any such disclosure pursuant to Sections 10.A.2 or 10.A.3, the Party seeking to make such disclosure shall notify the other Party in advance and consult with the other Party and otherwise take all reasonable actions to minimize the nature and extent of such disclosure, and in the case of Section 10.A.3, the Parties will, to the extent permissible, agree on a form of summary of terms of the Settlement Agreement and related exhibits for filing with the Hong Kong Stock Exchange, Taiwan Stock Exchange, and NYSE, in lieu of filing the Settlement Agreement and related exhibits with such authorities.

11. **No Attribution.** SMIC covenants and agrees that it will not make any statements that will suggest or imply to any third party (including but not limited to customers) that SMIC's manufacturing processes, including, without limitation, process flows, process recipes or design rules, use or are derived from TSMC processes or technology, or are "based on TSMC's processes," are "TSMC compatible," are "TSMC-like," are "T-like," or otherwise suggest a use of or a derivation from TSMC, compatibility with TSMC's processes or technology, or endorsement by TSMC. However, SMIC may state that its operations are "foundry compatible" according to generally accepted industry standards.

12. **Reservation of Rights; Other Obligations.**

- A. All rights not expressly granted by the Parties hereunder shall be expressly reserved. Without limiting the generality of the foregoing, the Parties expressly acknowledge and agree that this Settlement Agreement does not grant to any Party any express or implied licenses or, except as expressly set forth in Section 6, any express or implied covenants not to sue, and nothing contained herein shall be construed or interpreted as a grant, by implication or otherwise, of any licenses or, except as noted, any covenants not to sue.

  
TSMC SMIC SMIC

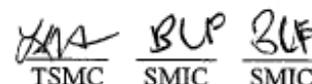
- B. Neither Party shall have any obligation to provide any technology (including, without limitation, any information or Documents), or any training or support, to the other Party in connection with any rights granted hereunder.

13. **Representations and Warranties.** Each Party represents and warrants to the other Party that:

- A. Such Party is a duly organized corporation and has the corporate power and authority to execute and deliver this Settlement Agreement and to perform its obligations hereunder;
- B. The execution, delivery and performance of this Settlement Agreement by such Party have been duly and validly authorized by all requisite corporation action. SMIC has delivered to TSMC a certificate, signed by the Board Secretary of SMIC, certifying the resolutions unanimously approved by the board of directors of SMIC authorizing the execution of this Settlement Agreement;
- C. This Settlement Agreement has been duly executed and delivered by a duly authorized officer of such Party and constitutes the valid and binding agreement of such Party enforceable in accordance with its terms;
- D. Such Party has received all consents, approvals and permits necessary for such Party to enter into this Settlement Agreement and perform its obligations hereunder, subject to those approvals specifically contemplated under the Share Issuance Agreement; and
- E. Neither the execution, delivery nor performance of this Settlement Agreement by such Party will violate (i) the organizational documents of such Party, (ii) any material agreement under which such Party is bound or (iii) any law, ordinance, rule, regulation or any judgment, writ, injunction or order of any court, governmental, administrative or regulatory authority to which such Party or its assets is subject.

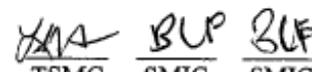
14. **Disclaimer.** Except as expressly set forth herein, each Party hereby disclaims all other warranties, express or implied, including without limitation, the warranties of merchantability, non-infringement and fitness for a particular purpose.

15. **Choice of Law.** This Settlement Agreement, its validity, interpretation, enforcement, performance and breach shall exclusively be governed by and construed in accordance with the laws of the State of California, U.S.A., without regard to principles of conflicts of law, as if this Settlement Agreement were wholly executed and wholly performed in the State of California, U.S.A., and the substantive laws of the State of California, U.S.A. shall apply to any dispute arising out of, relating to or in connection with this Settlement Agreement.

  
TSMC SMIC SMIC

16. **Dispute Resolution.**

- A. **Mediation.** Any actual or alleged breach of the provisions of Section 8 (other than Section 8.B.4) shall be exclusively addressed through mediation in accordance with and subject to the provisions of this Section 16.A. Any actual or alleged breach of the provisions of Section 9 shall first be submitted to mediation in accordance with and subject to the provisions of this Section 16.A; in the event the Parties are unable to resolve such disputed matter through mediation, either Party may submit such matter to arbitration in accordance with and subject to the provisions of Section 16.B.
1. The Party seeking the resolution of the matter in dispute (the “**Claimant**”) shall provide written notice (the “**Dispute Notice**”) to the other Party (the “**Respondent**”) identifying the matter in dispute (the “**Disputed Matter**”) and providing a statement in reasonable detail as to the basis for such dispute.
  2. Within sixty (60) days of the date of receipt of the Dispute Notice by the Respondent, representatives of the Parties shall meet at a mutually agreed venue (the “**First Meeting**”). If the Parties cannot agree on the venue for the First Meeting, the venue shall be Hong Kong. At the First Meeting, the Parties shall attempt in good faith to resolve the Disputed Matter set forth in the Dispute Notice.
  3. In the event that the Parties are unable to resolve the Disputed Matter at the First Meeting, representatives of the Parties shall continue to meet at a mutually agreed venue on a regular basis in accordance with this Section 16.A (each, an “**Additional Meeting**”). Unless the Parties otherwise agree, in writing, the Additional Meetings shall be no more frequent than once every two (2) months and no less frequent than once every four (4) months and shall continue for up to one year from the date of the Dispute Notice. If the Parties cannot agree on the venue for any Additional Meeting(s), the venue shall be Hong Kong. At each Additional Meeting, the Parties shall continue to attempt in good faith to resolve the Disputed Matter set forth in the Dispute Notice.
  4. In the event that the Parties are unable to resolve the Disputed Matter after the first two (2) Additional Meetings, upon written notice by one Party to the other Party, an independent, third party mediator that is mutually acceptable to the Parties (the “**Dispute Mediator**”) shall attend the next Additional Meetings at the shared expense of the Parties. The Parties agree that those mediators identified on Exhibit C are mutually acceptable to the Parties. The Dispute Mediator shall help the Parties to resolve the Disputed Matter.

  
TSMC      SMIC      SMIC

**B. Arbitration.**

1. Except for the payment obligations set forth in the Stipulated Judgment and Section 4 herein, and except as specifically stated otherwise in this Settlement Agreement (including Section 16.A), all disputes, controversies or claims arising out of, relating to or in connection with this Settlement Agreement, including any ancillary claims of any Party arising out of, relating to or in connection with the validity, negotiation, execution, interpretation, performance or non-performance of this Settlement Agreement (including the validity, scope and enforceability of this arbitration provision) shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (“**ICC**”). The place of the arbitration shall be Singapore and the language of the arbitration shall be English. The arbitral tribunal (the “**Tribunal**”) will be composed of three arbitrators. Each Party to the arbitration shall be entitled to appoint one arbitrator. The third arbitrator shall be chosen by the two arbitrators appointed by or on behalf of the Parties and shall act as the Chairman of the Tribunal. If the two arbitrators appointed by the Parties cannot agree on the selection of the third arbitrator within thirty (30) days of the date of confirmation by the ICC of the later of the two Party-appointed arbitrators to be confirmed, the third arbitrator shall be appointed by the ICC. The award of the Tribunal shall be final and binding upon the Parties hereto. Any challenge to the award of the Tribunal shall be brought in Singapore.
2. Within thirty (30) days after being constituted, the Tribunal shall convene a meeting (the “**Arbitration Meeting**”) with the Parties or their counsel to (1) fix the time table for submissions and discovery agreed to by the Parties; (2) set the time and place for hearings; (3) determine any procedures to be followed in the arbitration that have not already been provided for in this Settlement Agreement; and (4) discuss any other preliminary issues the Tribunal or the Parties wish to raise.
3. The Parties shall be entitled to discovery. Discovery shall consist of one or more exchange(s) of documents between the Parties and/or the taking of sworn, oral testimony, transcribed verbatim, by a court reporter prior to the final hearing (i.e., depositions). Each Party will be limited to ten (10) depositions of fact witnesses and any expert witnesses designated to testify at the hearing. No deposition shall exceed seven (7) hours. The rules governing the examination of witnesses at depositions shall be the International Bar Association Rules of Evidence. The Parties and the Tribunal shall be given written notice, at least twenty (20) days in advance, of the time and place of any deposition. In any exchange of documents, each Party shall produce all documents in its possession that are relevant to the factual issues in the case, including all documents that it intends to rely upon in the arbitration, within thirty (30) days of the receipt of a written request for such documents. Unless otherwise agreed in writing by the Parties or directed by the Tribunal, the Parties shall have one hundred eighty (180) days from the Arbitration Meeting to complete all discovery in the arbitration (the “**Discovery Completion Date**”). The Tribunal may, in its discretion, upon the request of a Party, extend the time for completion of discovery to remedy any abuse of discovery by a Party, including, for example, any failure to respond, or any untimely responses, to discovery requests. All discovery disputes not resolved by the Parties shall be resolved expeditiously by the Tribunal.



TSMC SMIC SMIC

4. The Tribunal shall conduct a final hearing in the arbitration beginning thirty (30) days following the Discovery Completion Date. Each Party will be allowed twenty (20) hours to present its case at the final hearing. The final hearing may include opening and closing statements by each of the Parties, direct, redirect and cross-examination of fact and expert witnesses, and direct, cross-examination and re-direct examination of rebuttal witnesses. Unless the Parties otherwise agree in writing to extend this period, the Tribunal will render its award within forty-five (45) days of the final hearing.
5. Notwithstanding the foregoing, the Parties acknowledge and agree that any dispute arising under the Share Issuance Agreement shall be governed by the terms of that agreement, including the arbitration provisions set forth in Section 7(a) thereof.

17. **Ancillary Proceedings.** Any Party may bring a suit, action or special proceeding for the purpose of compelling a party to arbitrate, seeking temporary or preliminary injunctive relief in aid of and pending arbitration hereunder, and/or enforcing an arbitration award. EACH PARTY HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF COURTS LOCATED IN TAIWAN, R.O.C., THE PEOPLE'S REPUBLIC OF CHINA, THE SPECIAL ADMINISTRATIVE REGION OF HONG KONG, SINGAPORE, AND THE STATE OF CALIFORNIA, U.S.A. FOR THE PURPOSE OF ANY JUDICIAL PROCEEDING BROUGHT IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION 17. The Parties acknowledge that the forum(s) designated by this Section 17 have a reasonable relation to this Settlement Agreement, and to the Parties' relationship with one another. The Parties hereby waive, to the fullest extent permitted by applicable law, any objection which they now or hereafter may have to personal jurisdiction or to the laying of venue of any such ancillary suit, action or proceeding brought in any court referred to in this Section 17 and such Parties agree not to plead or claim the same.

18. **Stipulated Recovery.** Notwithstanding anything contained herein to the contrary, the Parties agree that in the event of any material breach of this Settlement Agreement (excluding Section 8), the promissory notes issued hereunder, the Share Issuance Agreement, or the Stipulated Judgment that is not cured within thirty (30) days of SMIC's receipt of written notice of such breach, SMIC shall promptly pay to TSMC, in addition to any damages arising from such breach, (i) money damages in the amount of forty-four million U.S. dollars (US\$44,000,000.00) in reimbursement of fees and expenses incurred by TSMC in connection with the Pending Actions and (ii) royalty payments equal to five percent (5%) of SMIC's gross revenues derived from foundry services in respect of SMIC's 90nm and larger manufacturing processes during the period commencing on the date of such breach and ending on the date that is twenty (20) years from the date hereof. The Parties acknowledge and agree that such awards constitute liquidated damages and not a penalty.

  
TSMC      SMIC      SMIC

19. Miscellaneous.

- A. **Assignment.** Neither Party shall assign or otherwise transfer this Settlement Agreement or any benefits or rights hereunder, in whole or in part, without the express prior written consent of the other Party in its sole discretion. A Change of Control of SMIC occurring at any time prior to the date that is ten (10) years from the date hereof shall be deemed an assignment of this Settlement Agreement by SMIC for purposes of the preceding sentence. Any attempted assignment or transfer in contravention of the foregoing shall be null and void *ab initio*.
- B. **Binding Effect; No Intended Third Party Beneficiaries.** This Settlement Agreement shall be binding upon, inure to the benefit of and be enforceable by the Parties and their permitted successors and permitted assigns. This Settlement Agreement is not intended to, and shall not, create any rights against any Party in favor of any person or entity other than a Party, except as otherwise expressly provided for herein.
- C. **Costs.** Each Party shall pay its own costs and expenses in connection with the preparation, negotiation, and execution of this Settlement Agreement. In the event of any dispute under this Settlement Agreement, the prevailing party in the arbitration or any ancillary proceeding in respect thereof shall be entitled to recover all costs and expenses, including reasonable attorneys fees, incurred in connection therewith.
- D. **No Waiver.** The failure of a Party to insist upon strict adherence to any term of this Settlement Agreement on any occasion shall not be considered a waiver that deprives that Party of the right thereafter to insist upon strict adherence to that term or any term of this Settlement Agreement. Any waiver must be in writing and specifically state the terms of this Settlement Agreement subject to such waiver.
- E. **Construction and Voluntary Execution.** Each Party represents, agrees and acknowledges as follows: (i) such Party and its counsel have participated fully in the review and negotiation of this Settlement Agreement, and such Party has been advised of and has discussed all aspects of this Settlement Agreement thoroughly with such counsel of such Party's own choosing; (ii) such Party has had a reasonable amount of time in which to review and consider this Settlement Agreement and has read and understands all of the provisions herein; and (iii) such Party is competent to enter into this Settlement Agreement. All Parties have participated equally in the formation of this Settlement Agreement. The language of this Settlement Agreement shall not be presumptively construed against any Party, nor shall prior drafts exchanged in the course of negotiations or other parol evidence be considered in the interpretation of the Settlement Agreement. This Settlement Agreement is executed voluntarily by each of the Parties hereto without any duress or undue influence on the part of any of them. It is hereby stipulated and agreed that the Parties have, and shall be deemed to have, waived and relinquished, to the fullest extent permitted by law, any and all provisions, rights, and benefits conferred by any state, federal, or common law, or other legal doctrine that is similar, comparable, equivalent, or identical to, or which has the effect of, Section 1654 of the California Civil Code, which provides: "In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist."



TSMC SMIC RRC

- F. **Compromise.** This Settlement Agreement is a compromise of many complex issues and disputes between the Parties. The Parties may not, and each agrees that it will not, use this Settlement Agreement in any way as a measure of damages, or evidence therefor, of any claim between TSMC and SMIC or any valuation of rights granted hereunder.
- G. **Entire Agreement.** This Settlement Agreement (including, without limitation, all Exhibits hereto) represents the only agreements of the Parties with respect to the Pending Actions.
- H. **Headings.** The headings and captions are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Settlement Agreement.
- I. **Non-Agency.** Nothing in this Settlement Agreement is intended or shall be deemed to constitute a partnership, agency, employer-employee, or joint venture relationship between the Parties. Neither Party shall incur any debts or make any commitments for the other. There is no fiduciary duty or special relationship of any kind between the Parties to this Settlement Agreement. Each Party expressly disclaims any reliance on any act, word, or deed of the other Party in entering into this Settlement Agreement.
- J. **Severability.** If any provision or portion of a provision of this Settlement Agreement is held by a court of competent jurisdiction or arbitrator to be invalid under any applicable statute or rule of law, such court or arbitrator is authorized to modify such provision to the minimum extent necessary to make it valid, and the remaining provisions or portions of provisions of this Settlement Agreement shall in no way be affected or impaired thereby.
- K. **Equitable Remedies.** Each Party hereby acknowledges and agrees that the other Party will suffer irreparable harm in the event of any material breach or threatened material breach of the provisions of this Settlement Agreement and therefore shall be entitled to injunctive and other equitable relief (including, without limitation, the issuance of a temporary restraining order and/or injunction) as an appropriate remedy for such material breach or threatened material breach of the provisions of this Settlement Agreement (other than the breach or threatened breach of Section 8, as to which mediation is the exclusive remedy).

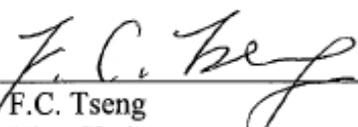
  
TSMC SMIC SMIC

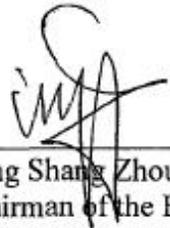
- L. **Remedies Cumulative.** The rights and remedies provided herein are cumulative and not exclusive of any rights or remedies provided by law.
- M. **Notices.** Any notice or other communication hereunder shall be sufficiently given to (1) SMIC when sent by overnight or certified mail addressed to “Chief Legal Officer, Semiconductor Manufacturing International Corporation, No. 18 Zhang Jiang Road, Pudong New Area, Shanghai 201203, People’s Republic of China”; and (2) TSMC when sent by overnight or certified mail addressed to “General Counsel, Taiwan Semiconductor Manufacturing Co., Ltd., No.8 Li-Hsin Road 6, Hsin-Chu Science Park, Hsin-Chu, Taiwan, Republic of China.” Changes to such addresses may be specified by written notice provided to the other Party.
- N. **Term.** The term of this Settlement Agreement shall commence as of the Effective Date and be non-terminable and irrevocable thereafter and all rights and benefits granted by one Party to the other hereunder may not be terminated or revoked.

IN WITNESS WHEREOF, the Parties have executed and delivered this Settlement Agreement as of the date first set forth above.

**TAIWAN SEMICONDUCTOR  
MANUFACTURING COMPANY, LTD.**

**SEMICONDUCTOR MANUFACTURING  
INTERNATIONAL CORPORATION**

By:   
Name: F.C. Tseng  
Title: Vice Chairman

By:   
Name: Jiang Shang Zhou  
Title: Chairman of the Board

By:   
Name: Richard Ru-Gin Chang  
Title: Chief Executive Officer

    
TSMC SMIC SMIC

**Exhibit A-1**

**Definitions (Section 1)**

- A. **“2005 Patent License Agreement”** means the Patent License Agreement, effective January 31, 2005, by and between Taiwan Semiconductor Manufacturing Company, Ltd. and all of its Subsidiaries (as defined in the 2005 Patent License Agreement) and Semiconductor Manufacturing International Corporation and all of its Subsidiaries (as defined in the 2005 Patent License Agreement).
- B. **“2005 Settlement Agreement”** means the Settlement Agreement, effective January 31, 2005, by and between Taiwan Semiconductor Manufacturing Company, Ltd. and all of its Related Companies (as defined in the 2005 Settlement Agreement) and Semiconductor Manufacturing International Corporation and all of its Related Companies (as defined in the 2005 Settlement Agreement).
- C. **“Additional Meeting”** has the meaning set forth in Section 16.A.
- D. **“Arbitration Meeting”** has the meaning set forth in Section 16.B.
- E. **“Change of Control”** means the occurrence of any of the following events:
- (a) any Competitor becomes the “beneficial owner” (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended, except that the Competitor will be deemed to have “beneficial ownership” of all shares that the Competitor has the direct or indirect right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of 50% or more of the total voting power of the common shares and/or other shares having the ordinary power to vote in the election of directors (**“Voting Shares”**) of Semiconductor Manufacturing International Corporation or its successor, whether such ownership is acquired through merger, consolidation, amalgamation, tender or exchange offer, open market purchases, privately negotiated purchases, or otherwise;
  - (b) any Competitor directly or indirectly acquires (in one or more transactions) all or substantially all of the assets of Semiconductor Manufacturing International Corporation (or any successor thereof) and its Subsidiaries taken as whole; or
  - (c) the merger, consolidation, or amalgamation of any Competitor with or into Semiconductor Manufacturing International Corporation (or any successor thereof) or any of its Subsidiaries as a result of which the holders of the Voting Stock of Semiconductor Manufacturing International Corporation (or any successor thereof) immediately prior to such transaction own, directly or indirectly, less than a majority of the Voting Stock of Semiconductor Manufacturing International Corporation (or such successor) or the applicable surviving entity or any direct or indirect parent company thereof immediately after such transaction.
- F. **“Claimant”** has the meaning set forth in Section 16.A.

*RSC* *BLF* *BLF*  
TSMC SMIC SMIC

- G. **“Competitor”** shall mean any entity that provides or that has the capability to provide (as in the case of an integrated device manufacturer), directly or indirectly through any Subsidiary, semiconductor wafer fabrication foundry services to third parties, other than an entity that is organized or headquartered, or whose semiconductor wafer fabrication operations are predominantly located, in the People’s Republic of China.
- H. **“Discovery Completion Date”** has the meaning set forth in Section 16.B.
- I. **“Dispute Mediator”** has the meaning set forth in Section 16.A.
- J. **“Dispute Notice”** has the meaning set forth in Section 16.A.
- K. **“Disputed Matter”** has the meaning set forth in Section 16.A.
- L. **“Documents”** means any documents, materials, information, whether in tangible or intangible form (including, without limitation, in print or in electronic form) and any and all notes, summaries, extrapolation or compilation thereof regardless of form that may contain or be based on any such documents.
- M. **“Effective Date”** has the meaning set forth in the Introduction.
- N. **“Escrowed Documents”** has the meaning set forth in Section 8.B.
- O. **“First Meeting”** has the meaning set forth in Section 16.A.
- P. **“ICC”** has the meaning set forth in Section 16.B.
- Q. **“Managed Fabricators”** means the wafer fabrication facilities currently managed by SMIC in Chengdu and Wuhan, China and any future managed wafer fabrication facility that is subject to the direct management and control of SMIC, but in each case, only for so long as under the direct management and control of SMIC.
- R. **“Party”** and **“Parties”** have the meanings set forth in the Introduction.
- S. **“Patents”** means all U.S. or foreign issued letters patent and statutory invention registrations, including all issued reissues, divisions, continuations, continuations in part, renewals, extensions and reexaminations thereof.
- T. **“Pending Actions”** means (1) the California state court action pending in the Superior Court of California for the County of Alameda, *TSMC North America v. Semiconductor Mfg Int’l Corp.*, Case No. RG 06-28611 (the **“California State Court Action”**); and (2) the Chinese court action in the Beijing High People’s Court of the People’s Republic of China, (2006) Gao Min Chu Zi No. 1575, currently on appeal to the PRC Supreme Court, 2009 Min San Chung Tse No.8 (the **“Beijing Action”**). The Pending Actions shall not include (i) the pending United States trademark action referenced as *Taiwan Semiconductor Mfg. Co., Ltd., Opposer, v. Semiconductor Mfg. Int’l (Shanghai) Corp., Applicant*, Opposition No. 91171146 (Parent) and 91171147 (Consolidated as of Feb. 4, 2008), Application Serial Nos. 78/377,294 and 78/377,300, United States Patent and Trademark Office, Trademark Trial and Appeal Board (filed Mar. 2, 2004); (ii) the pending Hong Kong trademark action referenced as *In the Matter of Opposition by Taiwan Semiconductor Mfg. Co., Ltd. to Trade Mark Application No. 300167643 in Classes 9 and 40 by Semiconductor Manufacturing International (Shanghai) Corporation* (application filed March 1, 2004, opposition filed December 21, 2004); or (iii) the pending action against Katy Liu currently in the Hsinchu District Court, R.O.C. case number 九十二年度易字第49號.

  
RSC BLF BLF  
TSMC SMIC SMIC

- U. **“Related Companies”** means, (1) with respect to TSMC, its existing Subsidiaries, and future subsidiaries under the Control of TSMC, including TSMC North America, Inc. and Wafertech, Inc.; and (2) with respect to SMIC, its existing Subsidiaries (including Semiconductor Manufacturing International (Shanghai) Corporation, Semiconductor Manufacturing International (Beijing) Corporation and SMIC Americas), SMIC Tianjin, and SMIC Shenzhen, and its Managed Fabricators, and future subsidiaries under the Control of SMIC.
- V. **“Settlement Agreement”** has the meaning set forth in the Introduction.
- W. **“Settlement Payment”** has the meaning set forth in Section 2.A.
- X. **“Share Issuance Agreement”** has the meaning set forth in Section 3.
- Y. **“SMIC”** has the meaning set forth in the Introduction.
- Z. **“Subsidiaries”** of a Party or of a third party, shall mean a corporation, company or other entity: (a) more than fifty percent (50%) of whose outstanding shares or securities (such shares or securities representing the right to vote for the election of directors or other managing authority) are, now or hereafter, owned or controlled, directly or indirectly, by a Party or third party, but such corporation, company or other entity shall be deemed to be a Subsidiary only so long as such ownership or control exists; or (b) which does not have outstanding shares or securities, as may be the case in a partnership, joint venture or unincorporated association or other entity, but more than fifty percent (50%) of whose ownership interest representing the right to (i) make the decisions for such corporation, company or other entity, or (ii) vote for, designate, or otherwise select members of the highest governing decision making body, managing body or authority for such partnership, joint venture, unincorporated association or other entity, is, now or hereafter, owned or controlled, directly or indirectly, by a Party or third party, but such corporation, company or other entity shall be deemed to be a Subsidiary only so long as such ownership or control exists.
- AA. **“Tribunal”** has the meaning set forth in Section 16.B.
- BB. **“TSMC”** has the meaning set forth in the Introduction.
- CC. **“TSMC Documents”** shall mean any Document that contains alleged TSMC confidential information, trade secrets or confidential technology.
- DD. **“Voting Shares”** has the meaning set forth in the definition of Change of Control.

RSC   BLF   BLF  
TSMC   SMIC   SMIC

*[Remainder of Page Intentionally Left Blank]*

$\frac{RSC}{TSMC}$   $\frac{BLF}{SMIC}$   $\frac{BLF}{SMIC}$

**Exhibit B**

**Share Issuance Agreement (Section 3)**

[Please see attached.]

RSC   BLF   BLF  
TSMC   SMIC   SMIC

**SHARE AND WARRANT ISSUANCE AGREEMENT**

This SHARE AND WARRANT ISSUANCE AGREEMENT (the “**Agreement**”) is made and entered into as of November 9, 2009 by and between Taiwan Semiconductor Manufacturing Company, Ltd., a Taiwanese corporation, having a place of business located at No. 8 Li-Hsin Road 6, Hsin-Chu Science Park, Hsin-Chu, Taiwan, Republic of China (the “**Acquiror**”), and Semiconductor Manufacturing International Corporation, an exempted company incorporated under the laws of the Cayman Islands, having a place of business located at No. 18 Zhang Jiang Road, Pudong New Area, Shanghai 201203, People’s Republic of China (the “**Company**”).

WITNESSETH

WHEREAS, the Acquiror and the Company are entering into that certain Settlement Agreement, dated as of even date herewith (the “**2009 Settlement Agreement**”), whereby the Company and the Acquiror are settling and resolving various litigation and disputes, as specified therein; and

WHEREAS, contemporaneously with the execution and delivery of, and as contemplated by, the 2009 Settlement Agreement, the Company and the Acquiror are entering into this Agreement pursuant to which the Company will issue and convey to the Acquiror, and the Acquiror will acquire, upon the terms and conditions stated in this Agreement (i) an aggregate of 1,789,493,218 (as the same shall be appropriately adjusted in the case of any share split, share consolidation, share dividend, recapitalization or similar action effected in respect of the Common Shares prior to the Closing Date or, if applicable, the consummation of the Share Placing or the Share Offering (each as defined in Section 6 below)) Common Shares (the “**New Common Shares**”) and (ii) a warrant exercisable for an aggregate of 695,914,030 (as the same shall be appropriately adjusted in the case of any share split, share consolidation, share dividend, recapitalization or similar action effected in respect of the Common Shares prior to the Closing Date or, if applicable, the consummation of the Warrant Placing or the Warrant Offering (as defined in Section 6 below)) Common Shares (the “**Warrant**”). Unless the context otherwise requires, “**Common Shares**” shall refer to the Company’s common shares, par value US\$0.0004 per share; “**Warrant Shares**” shall refer to the Common Shares deliverable upon the exercise of the Warrant; and “**Securities**” shall refer to the New Common Shares and the Warrant subscribed for herein, and the Warrant Shares.

RSC   BLF   BLF  
TSMC   SMIC   SMIC

NOW, THEREFORE, in consideration of the mutual promises, agreements and covenants contained herein and in the 2009 Settlement Agreement, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Acquiror hereby agree as follows:

**1. Issuance of the New Common Shares and Warrant.**

(a) **Issuance of New Common Shares and Warrant.** Subject to the satisfaction of the conditions set forth in Sections 5 below, in consideration of the execution and delivery of the 2009 Settlement Agreement by the Acquiror, and the benefits derived by the Company thereunder, the Company shall issue and convey to the Acquiror, or its permitted assignees (as provided in and subject to Section 7(k) below), and the Acquiror, or its permitted assignee (as provided in and subject to Section 7(k) below), shall acquire from the Company, on the Closing Date (as defined in Section 1(b)(i) below) the New Common Shares and the Warrant.

(b) **Closing.**

(i) **Date and Time.** The date and time of the issuance of the New Common Shares and the Warrant as contemplated hereby (the **"Closing"**) shall be 10:00 a.m., Hong Kong time, on such date as is specified by the Company and the Acquiror, which date shall be no later than the fifth Business Day after the satisfaction or waiver of the conditions to the Closing set forth in Section 5 below, at the offices of Weil, Gotshal & Manges LLP, 15 Queen's Road Central, 29/F Gloucester Tower, Central, Hong Kong or at such other time, date and location as is mutually agreed in writing by the Company and the Acquiror (with the date and time of the Closing referred to herein as the **"Closing Date"**).

(ii) **Company Deliveries.** On the Closing Date, the Company shall deliver to the Acquiror:

(1) (A) certificates in respect of the New Common Shares, duly executed on behalf of the Company and registered in the name of the Acquiror, (B) the Warrant Agreement, dated the Closing Date, duly executed on behalf of the Company, in the form attached hereto as Exhibit A (the **"Warrant Agreement"**) and (C) the Warrant, duly executed on behalf of the Company, in the form attached to the Warrant Agreement as Annex A thereof;

(2) a certified extract of the register of members of the Common Shares of the Company, reflecting Acquiror's ownership of the New Common Shares;

(3) copies of the resolutions of the board of directors of the Company (the **"Board"**) approving the entering into and execution of this Agreement, the issuance of the New Common Shares, the Warrant and all transactions contemplated herein;

(4) a certificate, executed on behalf of the Company by the Secretary of the Company and dated as of the Closing Date, as to the resolutions delivered pursuant to Section 1(b)(ii)(3) above;

(5) an opinion of Conyers Dill & Pearman, Cayman Islands counsel to the Company, in the form previously agreed by counsel to the Company and counsel to the Acquiror, covering due authorization and valid issuance of New Common Shares, Warrants and Warrant Shares, capitalization, no governmental restrictions and no conflicts with law or constitutional documents;

RSC   BLF   BLF  
TSMC   SMIC   SMIC

(6) an opinion of Slaughter and May, Hong Kong counsel to the Company, in the form previously agreed by counsel to the Company and counsel to the Acquiror, covering various matters, including the enforceability of this Agreement and the Warrant Agreement and the HKSE's approval of listing of the New Common Shares and the Warrant Shares; and

(7) an opinion of M & A Law Firm, PRC counsel to the Company, in the form previously agreed by counsel to the Company and counsel to the Acquiror, covering compliance with PRC laws.

(iii) Acquiror Deliveries. On the Closing Date, the Acquiror shall deliver to the Company the Warrant Agreement, dated the Closing Date, duly executed on behalf of the Acquiror.

**2. Acquiror's Representations and Warranties.** The Acquiror hereby represents and warrants to the Company, as of the date hereof and as of the Closing Date as if made at that time, that:

**(a) Regulation S.**

(i) The Acquiror (A) is domiciled and has its principal place of business outside the United States, (B) certifies that it is not a U.S. Person as defined under Rule 902 of Regulation S ("**Regulation S**") as promulgated by the United States Securities and Exchange Commission (the "**SEC**") under the U.S. Securities Act of 1933, as amended (the "**1933 Act**"), and is not acquiring the Securities for the account or benefit of any U.S. Person, (C) at the time of offering to the Acquiror and communication of the Acquiror's order to purchase the Securities and at the time of the Acquiror's execution of this Agreement, the Acquiror was located outside the United States, and (D) at the time of the Closing, the Acquiror, or persons acting on the Acquiror's behalf in connection therewith, will be located outside the United States.

(ii) The Acquiror has been advised and acknowledges that: (A) the Securities issued pursuant to this Agreement have not been, and when issued, will not be registered under the 1933 Act or the securities laws of any state of the United States, (B) in issuing and selling the Securities to the Acquiror pursuant hereto, the Company is relying upon the exemption from registration provided by Regulation S of the 1933 Act, and (C) it is a condition to the availability of the Regulation S safe harbor that the Securities not be offered or sold in the United States or to a U.S. Person until the expiration of a period of 40 days after the Closing Date (the "**Distribution Compliance Period**").

(iii) The Acquiror acknowledges and covenants that until the expiration of the Distribution Compliance Period (A) it and its agents or representatives have not solicited and will not solicit offers to buy, offer for sale or sell any of the Securities or any beneficial interest therein in the United States or to or for the account of a U.S. Person and (B) notwithstanding the foregoing, prior to the expiration of the Distribution Compliance Period, the Securities may be offered and sold by the holder thereof only if such offer and sale is made in compliance with the terms of this Agreement and either (X) the offer or sale is within the United States or to or for the account of a U.S. Person and pursuant to an effective registration statement, Rule 144 promulgated under the 1933 Act or an exemption from the registration requirements of the 1933 Act or (Y) the offer and sale is outside the United States and to other than a U.S. Person. The foregoing restrictions are binding upon subsequent transferees of the Securities, except for transferees pursuant to an effective registration statement. The Acquiror agrees that after the Distribution Compliance Period, the Securities may be offered or sold within the United States or to or for the account of a U.S. Person only in accordance with this Agreement and pursuant to applicable securities laws.

RSC   BLF   BLF  
TSMC   SMIC   SMIC

(iv) The Acquiror is not a “distributor” (as defined in Regulation S) or a “dealer” (as defined in the 1933 Act).

(v) The Acquiror hereby acknowledges that during the Distribution Compliance Period, no deposit of the Securities issued hereunder will be accepted into the Company’s American Depositary Shares (“**ADS**”) program, and no Securities may be offered or sold in the United States or to U.S. Persons unless such Securities are registered under the 1933 Act, or an exemption from the registration requirements of the 1933 Act is available. The Acquiror further acknowledges that, for so long as the Securities are held by affiliates of the Company (it being understood that, as used herein, “**affiliate**” shall have the meaning given to such term under Rule 144(a)(1) under the 1933 Act) or are “restricted securities” within the meaning of Rule 144(a)(3) under the 1933 Act, such Securities will not be eligible for deposit under any unrestricted depository receipt facility.

**(b) No Public Sale or Distribution.** The Acquiror is acquiring the Securities for its own account and not with a view towards, or for resale in connection with, the public sale or distribution thereof, except pursuant to sales registered or exempted under the 1933 Act or in transactions not subject thereto. The Acquiror does not presently have any agreement or understanding, directly or indirectly, with any Person to distribute any of the Securities. The Acquiror is not a broker-dealer registered with the SEC under the U.S. Securities Exchange Act of 1934, as amended (the “**1934 Act**”), or an entity engaged in a business that would require it to be so registered as a broker-dealer. “**Person**” means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization or a government or any department or agency thereof.

**(c) Reliance on Exemptions.** The Acquiror understands that the Securities are being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying upon the truth and accuracy of, and the Acquiror’s compliance with, the representations, warranties, agreements, acknowledgments and understandings of the Acquiror set forth herein in order to determine the availability of such exemptions and the eligibility of the Acquiror to acquire the Securities.

**(d) Information.** Without prejudice to the representations and warranties of the Company herein or its obligations hereunder, Acquiror has had the opportunity to inquire of the Company and its senior management regarding information the Acquiror believes is necessary for it to make an informed decision in purchasing the Securities, and the Acquiror has conducted its own investigation with respect to the Securities and the Company. The Acquiror understands that its investment in the Securities involves a high degree of risk and confirms that it is able to afford a complete loss of such investment. The Acquiror has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of prospective investment in the Securities.

RSC   BLF   BLF  
TSMC   SMIC   SMIC

(e) **No Governmental Review.** The Acquiror understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

(f) **Transfer on Resale.** The Acquiror understands that: (i) the Securities have not been and are not being registered under the 1933 Act or any United States state securities laws, and may not be offered for sale, sold, assigned or transferred within the United States or to or for the account or benefit of a U.S. Person unless (A) subsequently registered thereunder, (B) the Acquiror shall have delivered to the Company an opinion of counsel, in form, scope and substance reasonably acceptable to the Company, to the effect that such Securities to be sold, assigned or transferred may be sold, assigned or transferred pursuant to an exemption from such registration, or (C) the Acquiror provides the Company with reasonable assurance that such Securities can be sold, assigned or transferred pursuant to Rule 144 or Rule 144A promulgated under the 1933 Act, as amended, (or a successor rule thereto) (collectively, “**Rule 144**”) or Regulation S; (ii) any sale of the Securities made in reliance on Rule 144 or Regulation S may be made only in accordance with the terms of Rule 144 or Regulation S, as applicable and further, if Rule 144 or Regulation S are not applicable, any resale of the Securities under circumstances in which the seller (or the Person through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the 1933 Act) may require compliance with some other exemption under the 1933 Act or the rules and regulations of the SEC thereunder; and (iii) neither the Company nor any other Person is under any obligation to register the Securities under the 1933 Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder.

(g) **Legends.** The Acquiror understands that the certificates or other instruments representing the New Common Shares and the Warrant, until such time as the resale of such Securities has been registered under the 1933 Act, or may be resold pursuant to an exemption therefrom or in a transaction not subject thereto, shall bear any legend as required by the “blue sky” laws of any state and a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of such share certificates):

“THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS, EXCEPT AS SET FORTH BELOW. BY ITS ACQUISITION HEREOF, THE HOLDER, IF NOT A U.S. PERSON: (1) REPRESENTS THAT IT IS NOT A U.S. PERSON AND IS ACQUIRING THESE SHARES IN AN OFFSHORE TRANSACTION; (2) AGREES THAT IT WILL NOT RESELL OR OTHERWISE TRANSFER THESE SHARES EXCEPT (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, (B) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT, (C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE ACT, (D) TO AN ACCREDITED INVESTOR THAT, PRIOR TO SUCH TRANSFER, FURNISHES TO THE COMPANY A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THESE SHARES (THE FORM OF WHICH LETTER CAN BE OBTAINED FROM THE COMPANY), (E) OUTSIDE THE UNITED STATES, IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULES 904 AND 905 UNDER THE ACT, OR (F) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE ACT (IF AVAILABLE); AND (3) AGREES THAT IT WILL GIVE EACH PERSON TO WHOM THESE SHARES ARE TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. IN CONNECTION WITH ANY TRANSFER OF THESE SHARES PURSUANT TO CLAUSES (2)(C), (D) OR (F) ABOVE, THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE COMPANY SUCH CERTIFICATIONS, LEGAL OPINIONS, OR OTHER INFORMATION AS THE COMPANY MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION OR IN A TRANSACTION NOT SUBJECT TO THE REGISTRATION REQUIREMENTS OF THE ACT. AS USED HEREIN, THE TERMS ‘OFFSHORE TRANSACTION’, ‘UNITED STATES’, AND ‘U.S. PERSON’ HAVE THE MEANING GIVEN TO THEM BY REGULATION S UNDER THE ACT.”

The Acquiror understands that the Warrant shall bear the legends as set forth in the Warrant Agreement.

RSC BLK BLF  
TSMC SMIC SMIC

**(h) Organization; Authorization; Enforcement; Validity.** The Acquiror is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation and has the requisite corporate power and authority to enter into and perform its obligations under this Agreement, the Warrant Agreement, and each other agreement entered into by the parties hereto in connection with the transactions contemplated by this Agreement to which it is party (collectively, the “**Transaction Documents**”). The execution and delivery of the Transaction Documents by the Acquiror and the consummation by the Acquiror of the transactions contemplated hereby have been duly authorized by the board of directors of the Acquiror. The Transaction Documents to which the Acquiror is a party constitute, or when duly executed and delivered by the Acquiror, will constitute, the legal, valid and binding obligations of the Acquiror, enforceable against the Acquiror in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors’ rights and remedies.

RSC   BLF   BLF  
TSMC   SMIC   SMIC

**(i) No Conflicts; Consents.** The execution, delivery and performance by the Acquiror of this Agreement and the consummation by the Acquiror of the transactions contemplated hereby will not (i) result in a violation of the organizational or constitutional documents of the Acquiror, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Acquiror is a party, or (iii) assuming the receipt of all necessary consents, authorizations and approvals, result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to the Acquiror, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of the Acquiror to perform its obligations hereunder; and no authorization, approval, consent and license from any supranational, national, state, municipal, local or foreign government, any instrumentality, subdivision, court, administrative agency or commission or other governmental authority or regulatory body or instrumentality, or any quasi-governmental or private body exercising any regulatory, taxing, importing or other governmental or quasi-governmental authority (a **“Governmental Entity”**) is required for the entering into by Acquiror of this Agreement and the performance by the Acquiror of its obligations under this Agreement, except for (i) such as have already been obtained and are in full force and effect, (ii) those approvals and authorizations specifically identified in Section 5 hereof, and (iii) any antitrust approvals, filings or notifications that may be required in connection with the transactions contemplated hereby.

**(j) Prohibited Transactions.** Since the time when the Acquiror and the Company first initiated discussions related to the transactions contemplated hereby, neither the Acquiror nor any affiliate of the Acquiror nor any Person acting on behalf of or pursuant to any understanding with the Acquiror (collectively, **“Trading Affiliates”**) has, directly or indirectly, effected or agreed to effect any short sale, whether or not against the box, established any “put equivalent position” (as defined in Rule 16a-1(h) under the 1934 Act) with respect to the Common Shares, granted any other right (including without limitation, any put or call option) with respect to the Common Shares or with respect to any security that includes, relates to or derived any significant part of its value from the Common Shares or otherwise sought to hedge its position in the Common Shares (each, a **“Prohibited Transaction”**), and neither the Acquiror nor its Trading Affiliates will enter into a Prohibited Transaction after the date hereof until the transactions contemplated hereby are publicly announced.

**(k) Independence of the Acquiror from Company.** The Acquiror is independent of and is not connected or acting in concert with the Company or the directors, chief executive, or other connected persons (as such terms are defined under the Hong Kong Listing Rules) of the Company.

**(l) Acknowledgement.** The Acquiror acknowledges and agrees that the foregoing representations, warranties, covenants and acknowledgments are made by it with the intention that they may be relied upon by the Company.

RSC   BLF   BLF  
TSMC   SMIC   SMIC

**3. Representations and Warranties of the Company.** The Company represents and warrants to the Acquiror, as of the date hereof, that, except as set forth in its Public Documents (as defined in Section 3(h) below) (excluding disclosures of non-specific risks faced by the Company or its subsidiaries included in any forward-looking statement, disclaimer, risk factor disclosure or other similarly non-specific statements that are similarly predictive or forward-looking in nature; provided, however, that (i) any historical facts related to the Company or its subsidiaries and (ii) any specific exposure or effect faced by the Company or its subsidiaries emanating from specifically disclosed facts contained within any such disclosure shall be deemed disclosed for purposes of the representations and warranties set forth in this Article 3) that:

**(a) Organization and Qualification.** The Company is a corporation duly incorporated and validly existing in good standing under the laws of the jurisdiction in which it is incorporated, and has the requisite corporate power and authorization to own its properties and to carry on its business as now being conducted. The Company is duly qualified as a foreign corporation to do business and is in good standing in every jurisdiction in which its ownership of property or the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not reasonably be expected to have a Material Adverse Effect. As used in this Agreement, **“Material Adverse Effect”** means any material adverse effect on (i) the business, properties, assets, liabilities, operations, results of operations or financial condition of the Company and its subsidiaries, taken as a whole, or (ii) the authority or ability of the Company to perform its obligations under the Transaction Documents; provided, however, that for purposes of clause (i) above, in no event shall any of the following exceptions, alone or in combination with the other enumerated exceptions below, be deemed to constitute, nor shall be taken into account in determining whether there has been or will be, a Material Adverse Effect: (A) any effect resulting from compliance with the terms and conditions of, or from the announcement of the transactions contemplated by this Agreement, (B) any effect that results from changes affecting any of the industries in which the Company operates generally or the economy generally, (C) any effect that results from changes affecting general worldwide economic or capital market conditions, provided that any such changes in (B) and (C) do not substantially disproportionately affect the Company in any material respect, or (D) any change in the Company’s share price or trading volume, in and of itself, primarily resulting from any of the effects or changes described in the foregoing clauses (A), (B) or (C). Each subsidiary of the Company that is a “significant subsidiary” within the meaning of Rule 1-01(w) of Regulation S-X under the 1933 Act (individually a **“Significant Subsidiary”** and collectively the **“Significant Subsidiaries”**) has been duly organized and is validly existing in good standing under the laws of its jurisdiction of organization except to the extent that the failure to be in good standing would not reasonably be expected to have a Material Adverse Effect.

**(b) Authorization; Enforcement; Validity.** The Company has the requisite corporate power and authority to enter into and perform its obligations under the Transaction Documents and to issue the Securities in accordance with the terms hereof and thereof. The issuance of the Securities is within the scope of the general mandate granted to the Board by the Company’s shareholders at the Company’s annual general meeting held on June 23, 2009, to allot, issue, grant, distribute and otherwise deal with additional securities in the Company, not exceeding twenty percent of the issued share capital of the Company at the date of such resolution. The execution and delivery of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby, including, without limitation, the issuance of the Securities, has been duly authorized by the Board. The Transaction Documents to which the Company is a party constitute, or when duly executed and delivered by the Company, will constitute, the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors’ rights and remedies.

  
RSC BLF BLF  
TSMC SMIC SMIC

**(c) Equity Capitalization.** As at October 31, 2009, the authorized share capital of the Company consisted of (A) 50,000,000,000 Common Shares, of which as of such date 22,368,665,231 shares were issued and outstanding and (B) 5,000,000,000 Preferred Shares, of which none are issued. As of October 31, 2009, 3,020,347,823 shares were reserved for issuance pursuant to the Company's employee incentive plan and other options and warrants outstanding. There are no other agreements or commitments outstanding which call for the allotment or issue, or accords to any person the right to call for the allotment or issue, of any shares (including shares issued pursuant to securities exercisable or exchangeable for, or convertible into, or agreements relating to the issuance of Common Shares), other than the preemptive rights provisions of the Datang Agreement. With the possible exception of issuances in connection with exercises of the outstanding options and warrants referenced above and employee or consultant equity awards, there have been no further issuances of shares by the Company subsequent to October 31, 2009 and through the date hereof. All of the issued and outstanding share capital of the Company is duly authorized, validly issued and fully paid.

**(d) Issuance of Securities.**

(i) The New Common Shares are duly authorized and, when issued in accordance with the terms hereof, will be validly issued and fully paid, free of all preemptive or similar rights, taxes, liens and charges (whether arising under Cayman Islands law, the Memorandum and the Articles of Association of the Company (the "**Articles**"), any agreement or instrument to which the Company is a party or is subject, or otherwise), and restrictions on transfer other than as expressly contemplated by the Transaction Documents and under applicable securities laws, with the holders being entitled to all rights accorded to a holder of the Common Shares.

(ii) The Warrant Shares are duly authorized and, when issued in accordance with the terms of the Warrant Agreement, shall be validly issued and fully paid, free of all preemptive or similar rights, taxes, liens and charges (whether arising under Cayman Islands Law, the Articles, any agreement or instrument to which the Company is a party or is subject, or otherwise), and restrictions on transfer other than as expressly contemplated by the Transaction Documents and under applicable securities laws, with the holders being entitled to all rights accorded to a holder of the Common Shares. The Company has sufficient authorized capital to issue the Warrant Shares.

RSC   BLF   BLF  
TSMC   SMIC   SMIC

(iii) Prior to the execution and delivery of the 2009 Settlement Agreement, Datang Telecom Technology & Industry Holdings Limited (“**Datang**”) executed and delivered to the Company an irrevocable waiver of the application of the pre-emptive rights granted under Section 4(m) of that certain Share Purchase Agreement dated as of November 6, 2008, between Datang and the Company (the “**Datang Agreement**”) to the issuance of the Securities hereunder, which waiver is in full force and effect as of the date hereof.

(iv) Assuming the accuracy of each of the representations and warranties of the Acquiror set forth in Section 2 of this Agreement, the offer and issuance by the Company of the Securities is exempt from registration under the 1933 Act.

**(e) No Conflicts.** The execution, delivery and performance of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Securities) will not (i) result in a violation of the Articles, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company or any Significant Subsidiary is a party, or (iii) assuming the receipt of all necessary consents, authorizations and approvals, result in a violation of any law, rule, regulation, order, judgment or decree (including the Hong Kong Code on Takeovers and Mergers, foreign, U.S. federal and state securities laws and regulations and the rules and regulations of The Stock Exchange of Hong Kong Limited (the “**HKSE**”) or of the New York Stock Exchange (the “**NYSE**”) applicable to the Company), except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not reasonably be expected to result in a Material Adverse Effect.

**(f) Consents.** The Company is not required to obtain any consent, authorization or order of, or make any filing or registration with, (i) any court, Governmental Entity or any regulatory or self-regulatory agency or (ii) any third party pursuant to any agreement, indenture or instrument to which the Company or any Significant Subsidiary is a party in order for it to execute, deliver or perform any of its obligations under or contemplated by the Transaction Documents, except for (i) such as have already been obtained and are full force and effect, (ii) those approvals and authorizations specifically referenced in Section 5 hereof, (iii) any required filings or notifications regarding the issuance or listing of additional securities with the HKSE or the NYSE and (iv) any antitrust approvals, filings or notifications that may be required in connection with the transactions contemplated hereby. The Company is not in violation of the listing requirements of the HKSE or the NYSE and has no knowledge of any facts that would reasonably lead to delisting or suspension of its Common Shares from the HKSE or of its American depository receipts from the NYSE in the foreseeable future. As used herein, “knowledge” shall mean actual knowledge of the executive officers (as defined in Rule 405 under the 1933 Act) of the Company after due inquiry.

**(g) No Integrated Offering.** Assuming the accuracy of the Acquiror’s representations and warranties set forth in Section 2 hereof, none of the Company, any of its affiliates, or any Person acting on their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would require registration of the issuance of any of the Securities under the 1933 Act, whether through integration with prior offerings or otherwise, or cause the offering of Securities hereunder to require approval of shareholders of the Company for purposes of any applicable shareholder approval provisions, including, without limitation, under the rules and regulations of the HKSE and the NYSE. None of the Company, their affiliates and any Person acting on their behalf will take any action or steps referred to in the preceding sentence that would require registration of the issuance of any of the Securities under the 1933 Act or cause the offering of the Securities to be integrated with other offerings for purposes of any such applicable shareholder approval provisions.

*RSC* *BLF* *BLF*  
TSMC SMIC SMIC

**(h) Public Documents.** The Company has timely filed all reports, schedules, forms, statements and other documents required to be filed by it with the SEC pursuant to the reporting requirements of the 1934 Act or with the HKSE and has timely issued all announcements and circulars required to be issued by it by the HKSE or the NYSE (all of the foregoing filed or announced prior to the date of this Agreement and all exhibits included therein and financial statements, notes and schedules thereto and documents and incorporated by reference therein being hereinafter referred to as the **“Public Documents”**). As of their respective filing or issuance dates, the Public Documents complied in all material respects with the requirements of the 1934 Act and the rules and regulations of the SEC promulgated thereunder and the rules and regulations of the HKSE and the NYSE, as applicable to the respective Public Documents, and, other than as corrected or clarified in a subsequent Public Document, none of the Public Documents, at the time they were filed or issued, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

**(i) Financial Statements.** The consolidated financial statements (including any related notes thereto) included or incorporated by reference in the Public Documents fairly presented in all material respects the consolidated financial position of the Company and its consolidated subsidiaries as of the dates indicated therein and the consolidated results of their operations for the periods specified therein, other than as corrected or clarified in a subsequent Public Document. Such financial statements were prepared in material conformity with accounting principles generally accepted in the United States of America (**“GAAP”**) applied on a materially consistent basis (except as may be noted therein). The Company and its subsidiaries do not have any liabilities or obligations required under GAAP to be set forth on a consolidated balance sheet (accrued, absolute, contingent or otherwise), other than (i) liabilities or obligations reflected on, reserved against, or disclosed in the Company’s balance sheet as of June 30, 2009, (ii) liabilities or obligations that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and (iii) liabilities incurred since June 30, 2009 in the ordinary course of business consistent with past practices and any liabilities incurred pursuant to this Agreement.

**(j) Acknowledgement.** The Company acknowledges and agrees that the foregoing representations and warranties are made by it with the intention that they may be relied upon by the Acquiror and that the representations of the Acquiror set forth in Section 2(d) hereof (Information) shall in no way limit such reliance or the benefits thereof.

RSC   BLF   BLF  
TSMC   SMIC   SMIC

**4. Covenants.**

(a) **Commercially Reasonable Efforts.** Each party shall use its commercially reasonable efforts to satisfy each of the conditions to Closing set forth in Section 5 below as soon as practicable.

(b) **Regulatory Filings.** Without limiting the generality of Section 4(a) above, the Company and the Acquiror shall use their respective commercially reasonable efforts to obtain all governmental approvals required to complete the transactions contemplated by this Agreement and, as promptly as practicable after the date hereof, the Company and the Acquiror shall make all filings, notices, petitions, statements, registrations, submissions of information, application or submission of other documents required by any Governmental Entity in connection with this Agreement and the transactions contemplated hereby. The Company and the Acquiror will notify one another promptly upon the receipt of (i) any comments from any officials of any Governmental Entity in connection with any filings made pursuant hereto and (ii) any requests by any officials of any Governmental Entity for amendments or supplements to, or additional information in connection with, any filings made pursuant hereto. In addition, the Company and the Acquiror shall each use their commercially reasonable efforts to furnish such information, supply such documents, give such undertakings and do all such acts and things as may reasonably be required by any Governmental Entity in relation to or arising out of the transactions contemplated hereby.

(c) **Listing.** The Company shall use its commercially reasonable efforts to promptly secure the listing of, and permission to deal in, the New Common Shares and the Warrant Shares on the HKSE as promptly as practicable after the date hereof and shall use commercially reasonable efforts to maintain such listing of and permission to deal in such Common Shares, so long as any Common Shares shall be so listed. The Company shall pay all fees and expenses in connection with satisfying its obligations under this Section 4(c).

(d) **Fees.** Each party shall bear its own expenses in connection with the transactions contemplated hereby.

(e) **Standstill.** At any time following the date of this Agreement:

(i) Except with the prior approval of the Board, for so long as the Acquiror holds any of the Securities, the Acquiror shall not, and shall cause its controlled affiliates not to, directly or indirectly, acquire or agree to acquire any Voting Securities, except:

(1) Voting Securities acquired by way of share splits, share dividends or other distributions or offerings made available to holders of Voting Securities generally;

(2) the Securities purchased by Acquiror pursuant to this Agreement;

RSC   BLF   BLF  
TSMC   SMIC   SMIC

(3) the Warrant Shares issuable upon exercise of the Warrant; and

(4) Voting Securities acquired in compliance with Section 4(g) hereof.

**“Voting Securities”** shall mean the Common Shares of the Company, and any other security carrying voting rights in the Company and any outstanding convertible securities, options, warrants or other rights which are convertible into or exchangeable or exercisable for, or carrying rights of subscription for, securities carrying voting rights in the Company.

(ii) Except with the prior approval of the Board or as specifically permitted by Section 4(e)(i) above, for so long as the Acquiror holds any of the Securities, the Acquiror shall not, and shall cause its controlled affiliates not to:

(1) make, effect, initiate, cause or in any way participate directly or indirectly in (i) any acquisition of beneficial ownership of any Voting Securities of the Company or any Voting Securities of any subsidiary or other affiliate of the Company, (ii) any acquisition of any assets of the Company or any assets of any subsidiary or other affiliate of the Company, or (iii) any tender offer, exchange offer, merger, business combination, recapitalization, restructuring, liquidation, dissolution or extraordinary transaction involving the Company or any subsidiary or other affiliate of the Company, or involving any securities or assets of the Company or any securities or assets of any subsidiary or other affiliate of the Company;

(2) make, effect, initiate, cause or in any way participate directly or indirectly in any “solicitation” of “proxies” (as such terms are used in the rules of the SEC) to vote any Voting Securities of the Company or any subsidiary thereof, or seek to advise or influence any Person with respect to the voting of any Voting Securities of the Company or any subsidiary thereof;

(3) make any public announcement with respect to, or submit a proposal for or offer of (with or without conditions) any merger, recapitalization, reorganization, business combination or other extraordinary transaction involving the Company or any subsidiary thereof or any of their securities or assets;

(4) enter into any discussions, negotiations, arrangements or understandings with any third party with respect to any of the foregoing, or otherwise form, join or in any way engage in discussions relating to the formation of, or participate in, any “group”, as such term is interpreted under Rule 13d-5(b)(1) under the 1934 Act in connection with any of the foregoing;

(5) take any action that might require the Company to make a public announcement regarding any of the types of matters set forth in clause “(1)”, clause “(2)” or clause “(3)” of this sentence;

RSC   BLF   BLF  
TSMC   SMIC   SMIC

(6) agree or offer to take, or encourage or propose (publicly or otherwise) the taking of, any action referred to in clause “(1)”, clause “(2)”, clause “(3)”, clause “(4)”, or clause “(5)” of this sentence;

(7) assist, induce or encourage any other Person to take any action of the type referred to in clause “(1)”, clause “(2)”, clause “(3)”, clause “(4)”, clause “(5)” or clause “(6)” of this sentence;

(8) deposit any Voting Securities in a voting trust or subject them to a voting agreement or other arrangement of similar effect;

(9) enter into any discussions, negotiations, arrangement or agreement with any other Person related to any of the foregoing; or

(10) request the Company or any of its representatives, directly or indirectly, to amend or waive any provision of this Section 4(e).

(iii) The restrictions imposed by this Section 4(e) shall terminate on the earlier of such time as (A) a tender offer is made by another Person for not less than 50% of the Voting Securities where such tender offer is not subject to financing conditions and is evidenced by applicable filings with appropriate regulatory agencies and tender offer materials have been disseminated to security holders (provided that if such tender offer is not completed within six months of its commencement, the restrictions imposed by this Section 4(e) shall resume at that time and continue in full force and effect in accordance with their terms), (B) another Person acquires 50% or more of the Voting Securities, or (C) the Company enters into a definitive agreement with a Person other than a subsidiary of the Company providing for: (1) a merger, share exchange, business combination or similar extraordinary transaction as a result of which the Persons possessing, immediately prior to the consummation of such transaction, beneficial ownership of the voting securities of the Company entitled to vote generally in elections of directors of the Company, would cease to possess, immediately after consummation of such transaction, beneficial ownership of voting securities entitling them to exercise at least 50% of the total voting power of all outstanding securities entitled to vote generally in elections of directors of the Company (or, if not the Company, the surviving Person resulting from such transaction); (2) a sale, exchange or lease of all or substantially all of the assets of the Company and its subsidiaries (determined on a consolidated basis); or (3) the acquisition (by purchase, merger or otherwise) by any Person (including any syndicate or group deemed to be a “person” under Section 13(d)(3) of the 1934 Act and the rules promulgated thereunder) of beneficial ownership of voting securities of the Company entitling that Person to exercise 50% or more of the total voting power of all outstanding securities entitled to vote generally in elections of directors of the Company (provided that if such agreement is terminated, the restrictions imposed by this Section 4(e) shall resume at that time and continue in full force and effect in accordance with their terms).

RSC BLF BLF  
TSMC SMIC SMIC

**(f) Permitted Methods of Disposition.** Until such time following the Closing as the Acquiror no longer beneficially owns (as such term is used under Rule 13d-3 under the 1934 Act) any of the Securities, the Acquiror shall not offer, pledge, sell, contract to sell, sell any option or contract to purchase, enter into any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any of the Securities, or enter into any swap, hedging or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any of such Securities without the prior approval of the Board, except that the Acquiror may sell the New Common Shares and the Warrant Shares:

(i) through open market transactions through the facilities of the HKSE, provided that the amount sold through such market transactions during any three month period do not exceed (1) 1% of the total outstanding Common Shares or (2) if greater, the average weekly reported volume of trading in the Common Shares on the HKSE during the four calendar weeks preceding the last sale; or

(ii) through one or more block trades or privately arranged sales, provided that in the reasonable determination of the Acquiror (1) none of the buyers is a competitor of the Company and (2) none of the buyers would beneficially own more than 5% of the outstanding Common Shares following its purchase.

**(g) Pre-emptive Rights.** If the Company proposes, following the date hereof, to issue any new Common Shares, any securities convertible or exchangeable into Common Shares, or any warrants or other rights to subscribe for Common Shares (“**Relevant Securities**”), the Company shall notify Acquiror in writing of such proposal (an “**Issue Notice**”). The Issue Notice shall specify the number and type of Relevant Securities to be offered by the Company and the material terms of the proposed offer (including the proposed price per Relevant Security to be paid by the proposed third party purchaser(s)).

(i) Subject to Section 4(g)(vi) below, the Acquiror shall have the right to purchase such number of the Relevant Securities which are the subject of the Issue Notice so as to enable the Acquiror to hold, after the issue of the Relevant Securities, a pro rata portion of the Relevant Securities equal to the percentage of the issued share capital of the Company then beneficially owned by the Acquiror prior to the issuance of the Relevant Securities, provided that the Acquiror maintains an ownership interest equal to at least half of the New Common Shares acquired hereunder (as appropriately adjusted for share splits, share consolidation, share dividends, recapitalizations and the like), in each case upon the same terms and conditions set forth in the Issue Notice, by giving written notice to the Company of the exercise of this right within ten (10) Business Days (as defined below) of the giving of the Issue Notice. If such notice is not given by the Acquiror within such ten (10) Business Days (as defined below), the Acquiror shall be deemed to have elected not to exercise its rights under this Section 4(g) with respect to the issuance described in that specific Issue Notice. The parties acknowledge that any rights of the Acquiror to purchase the Relevant Securities pursuant to this Section 4(g) will lapse if completion thereof does not occur simultaneously with the Acquiror’s completion of the offering of Relevant Securities (or such later date as specified in Section 4(g)(vi) below) or at such other time and place as shall be mutually agreed by the Company and the Acquiror, provided that if the reason for the Acquiror’s failure to complete by the time specified above is solely due to a delay of the Governmental Entity in granting the relevant authorizations, approvals, permits, qualifications or exemptions, the Acquiror shall notify the Company in writing at least seven (7) days prior to the completion of the offering of the Relevant Securities to extend the completion date for Acquiror to a date within three (3) months or such other reasonable period as may be mutually agreed between the parties following the completion of the issue of the Relevant Securities, after such period the right of the Acquiror to purchase the Relevant Securities pursuant to this Section 4(g) shall lapse. A notice given by the Acquiror pursuant to this Section 4(g) shall be irrevocable.

RSC BLK BLF  
TSMC SMIC SMIC

(ii) Subject to Section 4(g)(i) above, the completion of the Acquiror's purchase of Relevant Securities pursuant to this Section 4(g) shall occur simultaneously with the completion of the offering of Relevant Securities. For the avoidance of doubt, the completion by the Company of the offering of the Relevant Securities shall not be affected by the timing of the completion of any issue of the Relevant Securities to the Acquiror. The Acquiror shall execute and deliver to the Company all transaction documents related to Acquiror's purchase of Relevant Securities as may be reasonably requested by the Company prior to the completion of the Acquiror's purchase of Relevant Securities. At such completion, the Acquiror shall deliver the aggregate purchase price for the Relevant Securities to be purchased by the Acquiror pursuant to this Section 4(g).

(iii) Any Common Shares issued to the Acquiror pursuant to this Section 4(g) shall be issued on the same terms and subject to the same conditions as the Relevant Securities are issued to any proposed third party purchaser(s), such terms and conditions being set out in the Issue Notice.

(iv) The provisions of Section 4(g)(i) to (iii) shall not apply to:

(1) the grant of any options, or the issue of any Relevant Securities pursuant to the exercise of share options granted (whether prior to or after the date of this Agreement), pursuant to any share purchase or share option plans of the Company in effect from time to time;

(2) the issue of any Relevant Securities pursuant to any share incentive scheme operated by the Company from time to time;

(3) the issue of any Common Shares or other securities pursuant to the conversion, exchange or exercise of any securities that were previously offered and/or issued to the Acquiror as Relevant Securities;

(4) any offer of the Relevant Securities open for a period fixed by the Board to holders of Common Shares on the register of members on a fixed record date in proportion to their then holdings of Common Shares; provided that such offer of Relevant Securities is also made to the Acquiror;

(5) an issue of Common Shares as fully paid to holders of Common Shares (including without limitation, Common Shares paid up out of distributable profits or reserves and/or share premium account issued in lieu of the whole or any part of any cash dividend and free distributions or bonus issue of Common Shares); provided that such issuance of Common Shares is also made to the Acquiror;

RSC BLF BLF  
TSMC SMIC SMIC

(6) an issue of the Relevant Securities pursuant to the acquisition of another corporation by the Company by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement; provided that such issuance is approved by the Board;

(7) an issue of the Relevant Securities to banks, equipment lessors or other financial institutions pursuant to a commercial leasing or commercial loan transaction approved by the Board;

(8) an issue of Relevant Securities in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships approved by the Board; or

(9) an issue of Relevant Securities to suppliers or third party service providers in connection with the provisions of goods or services pursuant to transactions approved by the Board.

(v) The rights set forth in this Section 4(g) shall not apply with respect to and shall expire immediately prior to a transaction that would result in a change of control (as such term is defined under the Hong Kong Takeovers Code).

(vi) The Company and Acquiror acknowledge and agree that the Acquiror's exercise of the rights in this Section 4(g) shall in all cases be subject to compliance with the rules, regulations, laws and requirements of applicable government and regulatory bodies, including the Hong Kong Listing Rules, the Hong Kong Takeovers Code, the Stock Exchange of Hong Kong Limited and the Securities and Futures Commission of Hong Kong (including, where applicable, any requirements to obtain the approval of the shareholders of the Company) ("**Applicable Law**"), and shall take such steps reasonably necessary to give effect to the rights contained in this Section 4(g) in compliance with Applicable Law, provided that all costs and expenses (including, without limitation, reasonable legal fees and expenses) incurred by the Company shall be resolved in a manner consistent with any terms agreed to by the Company and the other potential investor(s) with respect to the issuance described in the relevant Issue Notice. In the case of any issuance of Relevant Securities prior to the consummation of the Closing, the issuance of the Relevant Securities to be acquired by the Acquiror pursuant to this Section 4(g) shall be deferred until, and shall be conditioned upon, the consummation of the Closing.

**(h) Voting Rights.** The Acquiror agrees to vote all Common Shares held by the Acquiror or any controlled affiliate of the Acquiror to be voted on all matters submitted to a vote of the Company shareholders in such manner as recommended by the Board, other than in the case of any matter related to proposed Change of Control (as defined in the 2009 Settlement Agreement) of the Company, with respect to which the Acquiror and its controlled affiliates shall be free to vote in any manner they determine in their sole discretion.

RSC   BLF   BLF  
TSMC   SMIC   SMIC

(i) **Waiver of Information.** The Acquiror agrees that the Company shall not be obligated to provide the Acquiror with any information that is not otherwise publicly available, and the Acquiror waives any right to any such information.

(j) **Board Seats.** The Acquiror acknowledges that the Acquiror is not entitled to designate any member to the Board in connection with the transactions contemplated hereby.

**5. Conditions to Closing.** The consummation of the Closing shall be subject to the satisfaction of the following conditions:

(a) **Governmental Approvals.** The Acquiror and the Company shall have obtained each of the governmental authorizations and approvals identified in Schedule 5(a) hereto.

(b) **HKSE Listing.** The Company shall have obtained approval for the listing of, and permission to deal in, the New Common Shares and the Warrant Shares, and for the issue of the Warrants, from the HKSE and such approvals shall not have subsequently been revoked prior to Closing.

(c) **Absence of Prohibition.** No legislative body, court, administrative agency or commission or other governmental authority, instrumentality, agency or commission shall have enacted, issued, promulgated, enforced or entered any law or governmental regulation or order which has the effect of prohibiting the sale and issuance of the Securities.

**6. Alternative Transaction.** In the event the conditions to Closing set forth in Section 5 above have not been satisfied prior to June 30, 2010, at any time after such date, but in any event not later than the third anniversary of the date of this Agreement (such period, the “**Election Period**”), the Acquiror may elect, in its discretion, to direct the Company to effect the following transactions (the “**Alternative Transaction**”) in lieu of the issuance of the Securities to the Acquiror as contemplated hereby:

(a) **Election.** The Acquiror will provide to the Company written notice of its election to cause the Company to effect the Alternative Transaction no later than the expiration of the Election Period.

RSC   BLF   BLF  
TSMC   SMIC   SMIC

**(b) Share Placing or Share Offering.** Within 60 days of receipt of such written notice pursuant to Section 6(a), subject to reasonable deferral if, in the good faith judgment of the Board, the filing of a registration statement or the making of an application for the approval for the listing of, and permission to deal in, the Common Shares would be materially detrimental to the Company and the Board concludes, as a result, that it is in the best interests of the Company to defer the Share Placing or the Share Offering, the Company shall use all reasonable efforts to initiate, at its option, a primary, firm commitment placing involving the obtaining of subscriptions by or on behalf of the Company from institutional investors identified by the placing agent (the “**Share Placing**”) or a primary, firm commitment, fully underwritten public offering (the “**Share Offering**”), in either case, of a number of Common Shares equal to the New Common Shares and shall complete the Share Placing or the Share Offering as soon as reasonably practicable thereafter. The placing agent (in the case of a Share Placing) or the managing underwriter (in the case of a Share Offering) will be an internationally recognized investment banking firm reasonably acceptable to the Acquiror. The price at which the Common Shares will be sold to the institutional investors (in the case of a Share Placing) or the public (in the case of a Share Offering) will be such price as is recommended to the Company and the Acquiror by such investment banking firm in its professional judgment. All material terms of the Share Placing or the Share Offering, including the compensation arrangement of the placing agent or underwriters, will be subject to the approval of the Acquiror, which approval shall not be unreasonably withheld. The cash proceeds of the Share Placing or the Share Offering, net of commissions of the placing agent (in the case of a Share Placing) or the underwriters’ discounts (in the case of a Share Offering), shall be transmitted to the Acquiror by wire transfer to the account specified by the Acquiror immediately upon the consummation of the Share Placing or the Share Offering. All other expenses of the Share Placing or the Share Offering, including counsel fees and agent expenses, shall (i) in the event the Closing fails to occur due to the inability of the Acquiror to secure required approvals of the Republic of Taiwan Investment Commission of MOEA (Ministry of Economic Affairs), as contemplated by Section 5(a), be borne by the Acquiror, up to a maximum of US\$100,000, with any excess to be borne by the Company, and (ii) in all other cases, be borne entirely by the Company.

**(c) Warrant Placing or Warrant Offering.** Additionally, at any time following receipt of such written notice and prior to the expiration of the Election Period, provided that the average closing price of the Common Shares on the HKSE during the immediately preceding thirty (30) trading days (the “**Average Price**”) exceeds the per share exercise price that would then be payable under the terms of the Warrant had the Warrant been issued hereunder on the date of this Agreement (the “**Exercise Price**”), the Acquiror may deliver to the Company a written notice directing the Company to initiate, at the option of the Company, a further primary, firm commitment placing involving the obtaining of subscriptions from institutional investors identified by the placing agent (the “**Warrant Placing**”) or primary, firm commitment, fully underwritten public offering (the “**Warrant Offering**”), in either case, with respect to a number of Common Shares equal to the Warrant Shares that would have been issuable on exercise of the Warrant on such date had the Warrant been issued on the date of this Agreement. Within 60 days of receipt of such notice, the Company shall either:

(i) use all reasonable efforts to initiate, at the option of the Company, a Warrant Placing or a Warrant Offering, provided that the Warrant Offering may be reasonably deferred if, in the good faith judgment of the Board, the filing of the registration statement or the making of an application for the approval for the listing of, and permission to deal in, the Common Shares would be materially detrimental to the Company and the Board concludes, as a result, that it is in the best interests of the Company to defer the Warrant Placing or the Warrant Offering, and shall complete the Warrant Placing or the Warrant Offering as soon as reasonably practicable thereafter. The placing agent (in the case of a Warrant Placing) or the managing underwriter (in the case of a Warrant Offering) will be an internationally recognized investment banking firm reasonably acceptable to the Acquiror. The price at which the Common Shares will be sold to the institutional investors (in the case of a Warrant Placing) or the public (in the case of a Warrant Offering) will be such price as is recommended to the Company and the Acquiror by such investment banking firm in its professional judgment. All material terms of the Warrant Placing or the Warrant Offering, including the compensation arrangement of placing agent or underwriters, will be subject to the approval of the Acquiror, which approval shall not be unreasonably withheld. The cash proceeds of the Warrant Offering, net of commissions of the placing agent (in the case of a Warrant Placing) or the underwriters’ discounts (in the case of Warrant Offering) and the aggregate Exercise Price attributable to the Common Shares sold in the offering (which Exercise Price shall be payable to the Company), shall be transmitted to the Acquiror by wire transfer to the account specified by the Acquiror immediately upon the consummation of the Warrant Placing or the Warrant Offering. All other expenses of the Warrant Placing or the Warrant Offering, including counsel fees and agent expenses, shall (A) in the event the Closing fails to occur due to the inability of the Acquiror to secure required approvals of the Republic of Taiwan Investment Commission of MOEA (Ministry of Economic Affairs), as contemplated by Section 5(a), be borne by the Acquiror, up to a maximum of US\$100,000, with any excess to be borne by the Company, and (B) in all other cases, be borne entirely by the Company; or

RSC   BLF   BLF  
TSMC   SMIC   SMIC

(ii) transmit to the Acquiror, by wire transfer, a cash sum equal to the product of (A) the positive difference between the Average Price and the Exercise Price and (B) the number of Common Shares that would have been issuable on exercise of the Warrant on such date if the Warrant had been issued on the date of this Agreement.

**(d) Satisfaction of Obligations.** Upon remittance of all proceeds due and owing to the Acquiror upon consummation of the Share Placing or the Share Offering, the Company's obligations to issue the New Common Shares hereunder shall terminate and be of no further force and effect. Upon remittance of all proceeds due and owing to the Acquiror upon consummation of the Warrant Placing or the Warrant Offering or the payment to the Acquiror of the amount provided in Section 6(c)(ii) above, the Company's obligations to issue the Warrant or the Warrant Shares hereunder shall terminate and be of no further force and effect. In addition, the obligations of the Company to issue the New Common Shares or the Warrant hereunder, to the extent that such obligations have not been previously satisfied as a result of the failure of one or more conditions to the Closing hereunder, shall terminate upon the delivery of written notice of an election by the Acquiror to have the Company complete the Alternative Transactions or the expiration of the Election Period.

**7. Miscellaneous.**

**(a) Governing Law; Arbitration.** All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed in accordance with the laws of Hong Kong. Any dispute, controversy or claim arising out of or relating to this Agreement, or the interpretation, breach, termination or validity hereof, shall be submitted to arbitration upon the request of any party with notice to the other parties. The arbitration shall be conducted in Hong Kong under the auspices of the Hong Kong International Arbitration Centre (the "HKIAC") in accordance with the UNCITRAL Arbitration Rules ("UNCITRAL Rules") in effect, which rules are deemed to be incorporated by reference into this Section 7(a). There shall be three (3) arbitrators. The complainant and the respondent to such dispute shall each select one arbitrator within thirty (30) days after giving or receiving the demand for arbitration. The Chairman of the HKIAC shall select the third arbitrator, who shall be qualified to practice law in Hong Kong. If either party to the arbitration does not appoint an arbitrator who has consented to participate within thirty (30) days after selection of the first arbitrator, the relevant appointment shall be made by the Chairman of the HKIAC. The arbitration proceedings shall be conducted in English. Each party hereto shall cooperate with any party to the dispute in making full disclosure of and providing complete access to all information and documents requested by such party in connection with such arbitration proceedings, subject only to any confidentiality obligations binding on the party receiving the request. Each party irrevocably waives, to the fullest extent it may effectively do so, any objection which it may now or hereafter have to the laying of venue of any such arbitration in Hong Kong and the HKIAC, and hereby submits to the exclusive jurisdiction of HKIAC in any such arbitration. The award of the arbitration tribunal shall be conclusive and binding upon the disputing parties, and any party to the dispute may apply to a court of competent jurisdiction for enforcement of such award. Any party to the dispute shall be entitled to seek preliminary injunctive relief, if possible, from any court of competent jurisdiction pending the constitution of the arbitral tribunal.

RSC   BLF   BLF  
TSMC   SMIC   SMIC

(b) **Effect of Completion.** Without prejudice to other provisions of this Agreement, the representation, warranty, covenant or undertaking (the “**Warranties**”) contained in this Agreement shall remain in full force and effect notwithstanding Closing or the consummation of the Alternative Transaction and shall remain operative and in full force and effect until the expiration of the applicable statute of limitations, regardless of (i) any investigation, or statement as to the results thereof, made by or on behalf of the Acquiror and (ii) acceptance of the New Common Shares, Warrant, or Warrant Shares or the proceeds of the Share Placing, the Share Offering, the Warrant Placing or the Warrant Offering, except as waived or released by the party entitled to enforce such Warranties. For the avoidance of doubt, the agreements and covenants set forth in Section 4 and this Section 7 shall survive in accordance with their terms.

(c) **Waivers.** No delay or omission by any party to this Agreement in exercising any right, power or remedy provided by law or under this Agreement or any other documents referred to in it shall: (i) affect that right, power or remedy; or (ii) operate as a waiver thereof. The single or partial exercise of any right, power or remedy provided by law or under this Agreement shall not preclude any other or further exercise or any other right, power or remedy.

(d) **Remedies.** Except as otherwise expressly provided in this Agreement, the rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law.

(e) **Specific Enforcement.** The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in any court of competent jurisdiction, without bond or other security being required, this being in addition to any other remedy to which they are entitled at law or in equity.

(f) **Counterparts.** This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party. A facsimile signature shall be considered due execution and shall be binding upon the signatory thereto with the same force and effect as if the signature were an original, not a facsimile signature.

RSC   BLF   BLF  
TSMC   SMIC   SMIC

(g) **Headings.** The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement. **“Business Day”** shall mean a day that is not a Saturday, Sunday or a public holiday in Taiwan, Hong Kong or the People’s Republic of China. **“\$”** or **“dollar”** refers to United States dollars.

(h) **Severability.** If any provision of this Agreement shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of any provision of this Agreement in any other jurisdiction.

(i) **Entire Agreement; Amendments.** This Agreement and the other Transaction Documents supersede all other prior oral or written agreements between the Acquiror, the Company, their affiliates and Persons acting on their behalf with respect to the matters addressed herein. This Agreement and the other Transaction Documents and the instruments referenced herein and therein contain the entire understanding of and agreement between the parties with respect to the matters covered herein and, except as specifically set forth herein, neither the Company nor the Acquiror makes any representation, warranty, covenant or undertaking with respect to such matters. In entering into this Agreement and the other Transaction Documents, each party to such agreements acknowledges that it is not relying upon any pre-contractual statement which is not expressly set out in them. No provision of this Agreement may be amended other than by an instrument in writing signed by the Company and the Acquiror. No provision hereof may be waived other than by an instrument in writing signed by the party against whom enforcement is sought. For the purposes of this section, **“pre-contractual statement”** means any draft, agreement, undertaking, representation, warranty, promise, assurance or arrangement of any nature whatsoever, whether or not in writing, relating to the matters covered in this Agreement and/or the other Transaction Documents made or given by any person at any time prior to the date of this Agreement or the other Transaction Documents.

    RSC    BLF    BLF  
    TSMC   SMIC   SMIC

**(j) Notices.** Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); or (iii) one Business Day after deposit with an overnight courier service, in each case properly addressed to the party to receive the same. The addresses and facsimile numbers for such communications shall be:

If to the Company:

Semiconductor Manufacturing International Corporation

Address: Suite 3003, 30th Floor  
No. 9 Queen's Road Central  
Hong Kong  
Telephone: (+852) 2537-8588  
Facsimile: (+852) 2537 8206  
Attention: Anne Chen/Blondie Poon

*with a copy (for informational purposes only) to:*

Wilson Sonsini Goodrich & Rosati, P.C.

Address: Jin Mao Tower, 38F  
88 Century Boulevard  
Pudong New Area, Shanghai 200121  
People's Republic of China  
Telephone: (+86-21) 6165-1700  
Facsimile: (+86-21) 6165-1799  
Attention: Carmen Chang, Esq.

If to the Acquiror:

Taiwan Semiconductor Manufacturing Company, Ltd.

Address: No. 8 Li-Hsin Road 6, Hsin-Chu Science Park  
Hsin-Chu, Taiwan, Republic of China  
Telephone: (+886) 3-5682002  
Facsimile: (+886) 3-5678689  
Attention: General Counsel

*with a copy (for informational purposes only) to:*

Weil, Gotshal & Manges LLP

Address: 200 Crescent Court, Suite 300  
Dallas, Texas 75201  
United States of America  
Telephone: +1 (214) 746 7700  
Facsimile: +1 (214) 746 7777  
Attention: R. Scott Cohen

**(k) Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Neither party hereto shall assign this Agreement or any rights or obligations hereunder without the prior written consent of the other party hereto; provided, however, that the Acquiror may assign the right to acquire the Securities hereunder to any affiliate so long as such assignment would not reasonably be expected to impose any material delay in the consummation of the transactions contemplated hereunder. If such assignment is made, then all references herein to the Acquiror shall be deemed references to such other entity, except that all representations and warranties made herein with respect to the Acquiror as of the date of this Agreement shall be deemed representations and warranties made with respect to such other entity as of the date of such assignment.



**(1) No Third Party Beneficiaries.** This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

**(m) Further Assurances.** Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

*[Remainder of Page Intentionally Left Blank]*

RSC    BLF    BLF  
TSMC    SMIC    SMIC

IN WITNESS WHEREOF, the Acquiror and the Company have caused its respective signature page to this Share and Warrant Issuance Agreement to be duly executed as of the date first written above.

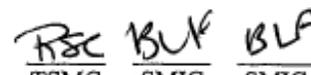
**SEMICONDUCTOR MANUFACTURING  
INTERNATIONAL CORP.**

By: \_\_\_\_\_  
Name: Jiang Shang Zhou  
Title: Chairman of the Board

By: \_\_\_\_\_  
Name: Richard Ru-Gin Chang  
Title: Chief Executive Officer

**TAIWAN SEMICONDUCTOR  
MANUFACTURING COMPANY, LTD.**

By: \_\_\_\_\_  
Name: F. C. Tseng  
Title: Vice Chairman

  
TSMC SMIC SMIC

[Signature Page to Share and Warrant Issuance Agreement]

**Schedule 5(a) – Approvals**

Republic of Taiwan Investment Commission of MOEA (Ministry of Economic Affairs)

Any required antitrust approvals, filings or notifications.

RSC   BLF   BLF  
TSMC   SMIC   SMIC

Exhibit A

Warrant Agreement

[Please see attached.]

$\frac{RSC}{TSMC}$   $\frac{BLF}{SMIC}$   $\frac{BLF}{SMIC}$

**WARRANT AGREEMENT**

This WARRANT AGREEMENT, dated as of [\_\_\_\_\_, 20\_\_] (the “**Agreement**”), is made by and between Taiwan Semiconductor Manufacturing Company, Ltd., a Taiwanese corporation having a place of business located at No. 8 Li-Hsin Road 6, Hsin-Chu Science Park, Hsin-Chu, Taiwan, Republic of China (the “**Initial Holder**”), and Semiconductor Manufacturing International Corporation, an exempted company incorporated under the laws of the Cayman Islands having a place of business located at No. 18 Zhang Jiang Road, Pudong New Area, Shanghai 201203, People’s Republic of China (the “**Company**”).

WITNESSETH

WHEREAS, the Initial Holder and the Company entered into that certain Settlement Agreement, dated November 9, 2009 (the “**2009 Settlement Agreement**”), whereby the Initial Holder and the Company settled and resolved various litigation and disputes as specified therein;

WHEREAS, in connection with the execution of the 2009 Settlement Agreement, the Initial Holder and the Company entered into that certain Share and Warrant Issuance Agreement dated November 9, 2009 (the “**Share and Warrant Issuance Agreement**”); and

WHEREAS, pursuant to the Share and Warrant Issuance Agreement, the Company proposes to issue warrants (each a “**Warrant**” and collectively, the “**Warrants**”) to initially purchase [695,914,030] validly issued and fully paid common shares, par value US\$.0004 of the Company (the “**Common Shares**, with the Common Shares deliverable upon exercise of the Warrants being referred to herein as the “**Warrant Shares**”).

NOW, THEREFORE, in consideration of the mutual promises, agreements and covenants contained herein, and for other valuable consideration, receipt of which is hereby acknowledged, the Company and the Initial Holder hereby agree as follows:

**ARTICLE I  
DEFINITIONS**

**1.1 Definitions.**

(a) Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Share and Warrant Issuance Agreement.

(b) The following terms shall have the meanings set forth below.

“**Affiliate**” means “affiliate” within the meaning of Rule 144(a)(1) under the Securities Act.



“**Agreement**” shall mean this Warrant Agreement, together with all annexes attached hereto, as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms hereof.

“**Applicable Law**” means any statute, rule, regulation, law or ordinance, or any judgment, decree or order.

“**Assignment Form**” means the assignment form attached as Annex C to a Warrant.

“**Board**” means the board of directors of the Company.

“**Business Day**” means any day that is not a Saturday or Sunday or a day on which banks are required or permitted to be closed in the State of New York, Taiwan or Hong Kong.

“**Capital Stock**” means the Common Shares, and any other shares of the Company.

“**Cash**” means money, currency or a credit balance in a demand deposit account.

“**Common Share Equivalents**” means any Capital Stock, evidence of indebtedness, Options or other securities or rights exercisable for, convertible into or exchangeable for Common Shares (including the Warrants).

“**Common Shares**” has the meaning set forth in the preamble.

“**Company**” has the meaning set forth in the preamble.

“**Delivery Date**” has the meaning given to such term in Section 4.3(a).

“**Distribution**” means, in respect of any Person, (a) the payment or making of any dividend or other distribution of Property in respect of capital stock of such Person or (b) the redemption or other acquisition of any capital stock of such Person.

“**Exchange Form**” means the exchange form attached as Annex B to a Warrant.

“**Exchange Number**” has the meaning given to such term in Section 4.2.

“**Exercise Form**” means the exercise form attached as Annex A to a Warrant.

“**Exercise Price**” means HK\$1.30 per Warrant Share, subject to change from time to time in the manner provided in Article V.

“**Expiration Time**” means 11:59 p.m., Hong Kong Time, on the date that is three (3) years after the date hereof. If such day is not a Business Day, the Expiration Time shall be extended until 11:59 p.m., Hong Kong Time on the next Business Day.

  
RSC BLF BLF  
TSMC SMIC SMIC

**“Extraordinary Event”** means the occurrence of any sale, transfer, assignment, lease, conveyance or other disposition, directly or indirectly, of all or substantially all of the property of the Company and its subsidiaries, considered as a whole, or the Company merges, consolidates or amalgamates with or into any other Person pursuant to a transaction other than a transaction in which the holders of the outstanding Capital Stock of the Company immediately prior to such transaction own, directly or indirectly, not less than a majority of the Capital Stock of the surviving person immediately after such transaction and in substantially the same proportion as before the transaction.

**“Fair Market Value”** means, with respect to Property, the fair market value of such Property as determined by the Board in good faith as of the date of determination, without discount for lack of liquidity or minority position; provided, however, that if the holder of this Warrant disputes such determination, the fair market value of such Property will be determined, at the expense of the Company, by an internationally recognized investment bank, selected by the Board, with experience in making valuations of such type. Notwithstanding the foregoing, if the Property is then Publicly Traded (or if the Property is not Publicly Traded but a derivative form thereof is Publicly Traded in the form of depositary shares or depositary receipts), then the value shall be deemed to be the average of the closing prices of such Property on such exchange (as reported by Bloomberg) or system over the five (5) trading days immediately prior to the date of determination, which shall be the Delivery Date in the case of exercise of the Warrants.

**“Fully Diluted Basis”** means the number of Common Shares that would be issued and outstanding at such time, assuming full conversion, exercise or exchange of all issued and outstanding Common Share Equivalents and Options that shall be (or may become) exchangeable for, or exercisable for or convertible into, Common Shares, including the exercise of the Warrant for the Warrant Shares.

**“Governing Documents”** means as to any Person, its memorandum and articles of association and/or other applicable constitutional, organizational or governing documents of such Person.

**“Holder”** means with respect to any Warrant, the holder of such Warrant as set forth in the Warrant Register, which as of the date hereof is the Initial Holder.

**“Initial Holder”** has the meaning set forth in the preamble.

**“Lien”** means, with respect to any Property of any Person, any mortgage or deed of trust, pledge, hypothecation, assignment, deposit arrangement, security interest, lien, charge, easement (other than any easement not materially impairing usefulness or marketability), encumbrance, preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever on or with respect to such Property (including any conditional sale or other title retention agreement having substantially the same economic effect as any of the foregoing).

**“Options”** means any warrants, options or other rights to subscribe for or to purchase (a) Capital Stock or (b) Common Share Equivalents.

RSC BLF BLF  
TSMC SMIC SMIC

“**Other Equity Securities**” means any capital stock, other than the Common Shares, Common Share Equivalents or Options.

“**Other Transaction Documents**” means the (a) the Warrant, (b) the Share and Warrant Issuance Agreement and (c) the 2009 Settlement Agreement, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“**Person**” means an individual, sole proprietorship, partnership, limited liability company, joint venture, trust, incorporated organization, association, corporation, institution, public benefit corporation, entity or government (whether federal, state, county, city, municipal or otherwise, including any instrumentality, division, agency, body or department thereof).

“**Property**” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

“**Publicly Traded**” means, with respect to any security, that such security is (a) listed on the Hong Kong Stock Exchange or (b) listed (either directly or indirectly represented by American Depositary Receipts) on the New York Stock Exchange or a similar successor organization.

“**Requisite Holders**” means, as of any date of determination, Holders holding Warrants representing a majority of the Warrant Shares that are either (a) previously issued and are then outstanding or (b) issuable upon exercise of Warrants then outstanding; provided that any Warrants or Warrant Shares held by the Company or its Affiliates shall not be counted in either the numerator or the denominator of the calculation of Requisite Holders. For the purpose of any matter applicable only to Warrants and not Warrant Shares, “**Requisite Holders**” will be Holders holding a majority of Warrants without regard to Warrant Shares.

“**Responsible Officer**” means the Chief Executive Officer, the President, the Chief Financial Officer or any executive officer of such Person.

“**Securities Act**” means the Securities Act of 1933, as amended, of the United States, or any similar United States federal statute, and the rules and regulations of the United States Securities and Exchange Commission thereunder, all as the same shall be in effect at the time.

“**Share and Warrant Issuance Agreement**” has the meaning given to such term in the preamble.

“**Transfer**” means any sale, transfer, assignment, or other disposition of any interest in, with or without consideration, any security, including any disposition of any security or of any interest therein which would constitute a sale thereof within the meaning of the Securities Act.

“**Warrant**” has the meaning set forth in the preamble.

“**Warrant Register**” has the meaning given to such term in Section 3.1(b).

“**Warrant Shares**” has the meaning set forth in the preamble.

$\frac{RSC}{TSMC}$   $\frac{BLF}{SMIC}$   $\frac{BLF}{SMIC}$

## 1.2 Rules of Construction.

The definitions in Section 1.1 shall apply equally to the singular and plural forms of the terms defined. The words “**include**”, “**includes**” and “**including**” shall be deemed to be followed by the phrase “**without limitation**”. The words “**herein**,” “**hereof**,” “**hereunder**” and other words of similar import refer to this Agreement as a whole, including the annexes hereto, as the same may from time to time be amended, restated, supplemented or otherwise modified, and not to any particular section, subsection, paragraph, subparagraph or clause contained in this Agreement. All references to sections, schedules and exhibits mean the sections of this Agreement and the schedules and exhibits attached to this Agreement, except where otherwise stated. The title of and the section and paragraph headings in this Agreement are for convenience of reference only and shall not govern or affect the interpretation of any of the terms or provisions of this Agreement. The use herein of the masculine, feminine or neuter forms shall also denote the other forms, as in each case the context may require. Where specific language is used to clarify by example a general statement contained herein, such specific language shall not be deemed to modify, limit or restrict in any manner the construction of the general statement to which it relates. Any reference to any term contained in any other agreement or other document shall be deemed to be a reference to such term in the applicable agreement or document as in effect as of the date hereof, unless the Requisite Holders have consented to any amendment of such applicable agreement since the date hereof, in which case such reference shall be deemed to be a reference to such term in the applicable agreement or document, as amended through the date of the most recent consent by the Requisite Holders. The language used in this Agreement has been chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any party. “HK\$” shall mean Hong Kong dollars and “US\$” shall mean United States dollars.

## ARTICLE II ISSUANCE OF WARRANTS AND AUTHORIZATION OF WARRANT SHARES

### 2.1 Issuance of Warrants to Initial Holder Warrant Agreement.

The Company shall issue and deliver Warrants, dated as of the date hereof, to the Holder in accordance with this Agreement and the Share and Warrant Issuance Agreement on the Closing Date (as defined in the Share and Warrant Issuance Agreement). The provisions of this Agreement shall apply to all Warrants (and, to the extent applicable, Warrant Shares), and each Holder that is not a party to this Agreement, by its acceptance of a Warrant or a Warrant Share, agrees to be bound by the applicable provisions hereof.


  
 TSMC    SMIC    SMIC

**2.2 Authorization of Warrant Shares.**

From and after the date hereof, the Company shall at all times have authorized, and keep available, free from preemptive or similar rights, taxes, and Liens and charges with the respect to the issue thereof (arising under Cayman Islands law, the Governing Documents or any agreement or instrument to which the Company is a party or subject) for the purpose of enabling it to satisfy any obligation to issue Warrant Shares, upon the exercise or exchange of the Warrants, the number of authorized but unissued Warrant Shares issuable upon exercise or exchange of all outstanding Warrants. The Company shall promptly take all actions necessary to ensure that Warrant Shares shall be duly and validly authorized and, when issued upon exercise or exchange of any Warrant in accordance with the terms hereof, shall be duly and validly issued and fully paid, free and clear of all taxes, Liens (except to the extent of any applicable provisions of this Agreement) and all preemptive or similar rights, and free of restrictions on transfer other than as expressly contemplated by the Other Transaction Documents. If any securities to be authorized for the purpose of exercise of this Warrant require approvals or registrations under applicable securities laws, the Company will use its reasonable best efforts to obtain such approvals or registrations as may be appropriate.

**2.3 No impairment.**

The Company shall not by any action, including amending its Governing Documents or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of the Holder against impairment. Without limiting the generality of the foregoing, the Company will use its best efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof as may be necessary to enable the Company to perform its obligations under this Warrant. Upon request of the Holder, the Company will at all times during the period this Warrant is outstanding acknowledge in writing, in form satisfactory to the Holder, the continuing validity of this Warrant and the obligations of the Company hereunder.

**ARTICLE III  
CERTAIN ADMINISTRATIVE PROVISIONS**

**3.1 Form of Warrant; Register.**

(a) Each Warrant issued hereunder shall be in the form of Exhibit A attached hereto (each, a “**Warrant**”) and shall be executed on behalf of the Company by a Responsible Officer of the Company. Each Warrant shall bear the legend(s) appearing on the first page of such form, except that the Company shall promptly remove any such legend from a Warrant from and after such time as all the restrictions to which such legend relates no longer apply. Upon initial issuance, each Warrant shall be dated as of the date of signature thereof by the Company. Irrespective of any adjustments in the Exercise Price or the number or kind of Common Shares or other Property issuable upon the exercise of the Warrants, any Warrants theretofore or thereafter issued may, as a matter of form, continue to express the same Exercise Price and the same number of Warrant Shares issuable upon the exercise of such Warrants as were stated in the Warrants initially issued pursuant the Share and Warrant Issuance Agreement, however such adjustments that have theretofore been made shall nevertheless be binding and effective.

(b) Each Warrant issued, exchanged or Transferred hereunder shall be registered in a warrant register (the “**Warrant Register**”) maintained at the principal office of the Company, in which register the Company shall record the name and address of the Person in whose name this Warrant has been issued, as well as the name and address of each successor and prior owner of such Warrant. The Warrant Register shall set forth (i) the number of each Warrant, (ii) the name and address of the Holder thereof, (iii) the original number of Warrant Shares purchasable upon the exercise thereof, (iv) the number of Warrant Shares purchasable upon the exercise thereof, as adjusted from time to time in accordance with this Agreement, and (v) the Exercise Price for each Warrant Share, as adjusted from time to time in accordance with this Agreement. The Warrant Register will be maintained by the Company and will be available for inspection by any Holder at the principal office of the Company or such other location as the Company may designate to the Holders in the manner set forth in Section 7.1. The Company shall be entitled to treat the Holder of any Warrant as the owner in fact thereof for all purposes and shall not be bound to recognize any equitable or other claim to or interest in such Warrant on the part of any other Person. The Company may, with the written consent of the Holder (such consent not to be unreasonably withheld), appoint a transfer agent or other agency with an office in Hong Kong to be the transfer agent and registrar for the Common Shares as the Company’s agent for the purpose of (a) maintaining the register described herein, (ii) issuing Common Shares on the exercise of this Warrant pursuant to Section 4.1, (iii) exchanging this Warrant pursuant to Section 3.2, and (iv) replacing this Warrant pursuant to Section 3.2.

### **3.2 Exchange of Warrants for Warrants.**

(a) The Holder may exchange any Warrant issued hereunder for another Warrant of like kind and tenor representing in the aggregate the right to purchase the same number and class or series of Warrant Shares that could be purchased pursuant to the Warrant being so exchanged. In order to effect an exchange permitted by this Section 3.2, the Holder shall deliver to the Company such Warrant accompanied by a written request signed by the Holder thereof specifying the number and denominations of Warrants to be issued in such exchange and, subject to the transfer restrictions contained in the Other Transaction Documents, the names in which such Warrants are to be issued. As promptly as practicable but in any event within two (2) Business Days of receipt of such a request, the Company shall, without charge, issue, register and deliver to the Holder thereof each Warrant to be issued in such exchange and make any necessary changes to the Warrant Register.

(b) Upon receipt of evidence reasonably satisfactory to the Company (an affidavit of the Holder being satisfactory) of the ownership and the loss, theft, destruction or mutilation of any Warrant, and in the case of any such loss, theft or destruction, upon receipt of an indemnity reasonably satisfactory to the Company (if the Holder is a financial institution or other institutional investor, its own indemnity agreement being satisfactory) or, in the case of any such mutilation, upon surrender of such Warrant, the Company shall, without charge, issue, register and deliver in lieu of such Warrant a new Warrant of like kind representing the same rights represented by, and dated the date of, such lost, stolen, destroyed or mutilated Warrant. Any such new Warrant shall constitute an original contractual obligation of the Company, whether or not the allegedly lost, stolen, mutilated or destroyed Warrant shall be at any time enforceable by any Person.

RSC BLK BLF  
TSMC SMIC SMIC

**3.3 Mechanics of Transfer of Warrants.**

(a) Subject to the further provisions of this Agreement, the Other Transaction Documents and applicable securities laws, each Warrant may be Transferred, in whole or in part, by the Holder thereof by delivering to the Company such Warrant accompanied by a properly completed, duly executed, Assignment Form. As promptly as practicable but in any event within two (2) Business Days of receipt of such Assignment Form, the Company shall, without charge, issue, register and deliver to the Holder thereof a new Warrant of like kind and tenor representing in the aggregate the right to purchase the same number of Warrant Shares that could be purchased pursuant to the Warrant being Transferred. Any Warrant, if properly assigned in compliance with the provisions hereof, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

(b) At the request of the Company, any Person to whom a Warrant is Transferred in accordance with this Article III shall execute and deliver to the Company the assignment form in the form of Annex C to the Warrant pursuant to which such Person agrees to become a party to, and to be bound by the terms of and entitled to the benefits under this Agreement.

**ARTICLE IV  
EXERCISE OF WARRANT; EXCHANGE FOR WARRANT SHARES**

**4.1 Exercise of Warrants; Expiration.**

(a) On any Business Day on or prior to the Expiration Time, a Holder may exercise a Warrant, in whole or in part, by delivering to the Company such Warrant accompanied by a properly completed Exercise Form and consideration in the form set forth in Section 4.1(b) in an aggregate amount equal to the product of (x) the Exercise Price and (y) the number of Warrant Shares being purchased. Any partial exercise of a Warrant shall be for a whole number of Warrant Shares only.

(b) Upon exercise of a Warrant, in whole or in part, the Holder thereof shall deliver to the Company the aggregate Exercise Price:

(i) by wire transfer of immediately available funds to a bank account designated by the Company or a certified check payable to the Company;

(ii) by surrender of a number Warrant Shares having a Fair Market Value equal to the aggregate Exercise Price; or

(iii) a combination of the methods set forth in clauses (i) and (ii).

(c) A Warrant shall terminate and become void as of the earlier of (x) the Expiration Time and (y) the date such Warrant is exercised in full.

RSC   BLF   BLF  
TSMC   SMIC   SMIC

#### 4.2 Exchange for Warrant Shares.

On any Business Day on or prior to the Expiration Time, a Holder may exchange a Warrant, in whole or in part, for Warrant Shares by delivering to the Company such Warrant accompanied by a properly completed Exchange Form. The number of Warrant Shares to be received by a Holder upon such exchange shall be equal to the number of Warrant Shares allocable to the portion of the Warrant being exchanged (the “Exchange Number”), as specified by such Holder in the Exchange Form, minus a number of Warrant Shares equal to the quotient obtained by dividing (i) the product of (x) the Exercise Price and (y) the Exchange Number by (ii) the Fair Market Value of one Warrant Share as of the Delivery Date.

#### 4.3 Issuance of Warrant Shares.

(a) **Issuance of Warrant Shares.** As promptly as practicable but in any event within two (2) Business Days following the first date on which each of the following items has been delivered to the Company (the “**Delivery Date**”): (i) an Exercise Form or Exchange Form in accordance with Section 4.1 or 4.2, (ii) the related Warrant and (iii) any required payment of the Exercise Price, the Company shall, without charge, upon compliance with the applicable provisions of this Agreement, issue to such Holder one or more stock certificates or other appropriate evidence of ownership of the aggregate number of Warrant Shares to which the Holder of such Warrant is entitled and the other securities or Property (including any Cash) to which such Holder is entitled, in such denominations, and registered or otherwise placed in, or payable to the order of, such name as may be directed in writing by such Holder. The Company shall deliver such stock certificates or evidence of ownership and any other securities or Property (including any Cash) to the Person entitled to receive the same, together with an amount in Cash in lieu of any fraction of a Warrant Share (or fractional interest in any other security), as hereinafter provided. If any securities included in the Warrant Shares are Publicly Traded, then at the request of such Holder, the Company shall use commercially reasonable efforts to cause its transfer agent to electronically transmit such securities to such Holder through the Depository Trust Company’s Deposit/Withdrawal at Custodian system or the Central Clearing and Settlement System of the Hong Kong Exchanges and Clearing Limited market system, or similar organization, as applicable.

(b) **Partial Exercise or Exchange.** If a Holder shall exercise or exchange a Warrant for less than all of the Warrant Shares that could be purchased or received thereunder, the Company shall issue, register and deliver to the Holder, as promptly as practicable but in any event within two (2) Business Days following the Delivery Date, a new Warrant evidencing the right to purchase the remaining Warrant Shares represented by such Warrants. In the case of an exchange pursuant to Section 4.2, the number of remaining Warrant Shares represented by such Warrant shall be the original number of Warrant Shares subject to the Warrant so exchanged reduced by the Exchange Number. Each Warrant surrendered pursuant to Section 4.1 or 4.2 shall be cancelled.

(c) **Fractional Shares.** The Company shall not be required to issue fractional Warrant Shares or fractional units of any other security upon the exercise or exchange of a Warrant. If any fraction of a Warrant Share or fractional unit of any other security would be issuable on the exercise or exchange of any Warrant, the Company may, in lieu of issuing such fraction of a Warrant Share or fractional unit, pay to such Holder for any such fraction an amount in Cash equal to the product of (x) such fraction and (y) the Fair Market Value for one Warrant Share or for a unit of such other security, as the case may be, as of the Delivery Date.

RSC BLF BLF  
TSMC SMIC SMIC

(d) **Record Ownership.** To the extent permitted by Applicable Laws, the Person in whose name any certificate for Warrant Shares or other evidence of ownership of any other security is issued upon exercise or exchange of a Warrant shall for all purposes be deemed to have become the holder of record of such Warrant Shares or other security on the Delivery Date, irrespective of the date of delivery of such certificate or other evidence of ownership (subject, in the case of any exercise to which Section 4.3(f) applies, to the consummation of a transaction upon which such exercise is conditioned, in which case the date of fulfillment of all conditions shall be deemed to be the date that such Holder shall for all purposes be deemed to have become a holder of record of such Warrant Shares), notwithstanding that the transfer books of the Company shall then be closed or that such certificates or other evidence of ownership shall not then actually have been delivered to such Person.

(e) **Listings.** The Company shall promptly take all action that may be necessary so that any such securities, immediately upon their issuance upon exercise or exchange of Warrants, will be listed on the Hong Kong Stock Exchange, if any other securities of the Company of the same class or type are then so listed or quoted.

(f) **Conditional Exercise or Exchange.** Any Exercise Form or Exchange Form delivered under Section 4.1 or 4.2 may condition the exercise or exchange of any Warrant on the consummation of a transaction being undertaken by the Company or the Holder of such Warrant, and such exercise or exchange shall not be deemed to have occurred except concurrently with the consummation of such transaction, except that, for purposes of determining whether such exercise or exchange is timely, it shall be deemed to have occurred on the Delivery Date. If any exercise of a Warrant is so conditioned, then, subject to delivery of the items required by Section 4.3(a) and compliance with the other terms hereof, the Company shall deliver the certificates and other evidence of ownership of other securities or other Property in such manner as such Holder shall direct as required in connection with the consummation of such transaction upon which the exercise or exchange is conditioned. If, at any time prior to the consummation of a conditional exercise or exchange, such Holder shall give notice to the Company that such transaction has been abandoned or such Holder has withdrawn from participation in such transaction, the Company shall return the items delivered pursuant to Section 4.3(a), and such Holder's election to exercise such Warrant shall be deemed rescinded.

**ARTICLE V**  
**ADJUSTMENT OF EXERCISE PRICE AND NUMBER OF WARRANT SHARES**

**5.1 General.**

The Exercise Price and the number and kind of Warrant Shares issuable upon exercise of each Warrant shall be subject to adjustment from time to time in accordance with this Article V.

RSC   BLF   BLF  
TSMC   SMIC   SMIC

**5.2 Distributions, Subdivisions and Combinations.**

If, at any time after the Closing Date, the Company shall:

- (i) make a Distribution in Common Shares;
- (ii) subdivide, split or reclassify its outstanding Common Shares into a larger number of Common Shares; or
- (iii) combine its outstanding Common Shares into a smaller number of Common Shares;

then (A) the number of Warrant Shares issuable upon exercise of each Warrant shall be adjusted so as to equal the number of Warrant Shares that the Holder of such Warrant would have held immediately after the occurrence of such event if the Holder had exercised such Warrant for Common Shares immediately prior to the occurrence of such event (or, in the case of clause (i), the record date therefor) and (B) the Exercise Price shall be adjusted to be equal to the product of (x) the Exercise Price immediately prior to the occurrence of such event and (y) a fraction (1) the numerator of which is the number of Warrant Shares issuable upon exercise of such Warrant immediately prior to the adjustment in clause (A) and (2) the denominator of which is the number of Warrant Shares issuable upon exercise of such Warrant immediately after the adjustment in clause (A); provided, that in no event shall such adjustment result in an Exercise Price per share which is less than the par value per Warrant Share. An adjustment made pursuant to this Section 5.2 shall become effective immediately after the occurrence of such event retroactive to the record date, if any, for such event. Additionally, the Exercise Price shall be adjusted in the manner contemplated by clause (B).

**5.3 Reorganizations, Mergers and Consolidations.**

If any Extraordinary Event shall be effected, then, as a condition of such Extraordinary Event, the Company shall cause lawful and adequate provision to be made whereby the registered holder of this Warrant shall thereafter have the right to purchase and receive, upon exercise hereof and the payment of the exercise price, in lieu of the Common Shares of the Company immediately theretofore purchasable and receivable upon the exercise of this Warrant, such shares of stock, securities or Property (including Cash) as may be issued or payable with respect to or in exchange for a number of Common Shares of the Company immediately theretofore purchasable and receivable upon the exercise of this Warrant had such Extraordinary Event not taken place, and in any such case appropriate provision shall be made with respect to the rights and interests of the holder of this Warrant to the end that the provisions hereof (including, without limitation, provisions for adjustments of the number of shares purchasable upon the exercise of this Warrant) shall thereafter be applicable, as nearly as may be, in relation to any shares of stock, securities or Property thereafter deliverable upon the exercise hereof. The foregoing provisions shall similarly apply to successive Extraordinary Events. The Company shall not effect any consolidation, merger or sale that constitutes an Extraordinary Event unless, prior to the consummation thereof, the successor company (if other than the Company) resulting from such consolidation or merger or the company purchasing assets in an Extraordinary Event shall assume by written instrument executed and mailed to the registered Holder at the last address of such registered Holder appearing on the books of the Company, the obligation to deliver to such registered Holder such shares of stock, securities or Property as, in accordance with the foregoing provisions, such registered Holder may be entitled to purchase or receive.

*RSC* *BLF* *BLF*  
 TSMC SMIC SMIC

#### 5.4 Adjustment upon Issuance of Common Shares or Common Share Equivalents.

If at any time or from time to time after November 9, 2009 the Company issues or sells, or is deemed to have issued or sold (including, without limitation, pursuant to any "equity appreciation right," "phantom equity" or otherwise), any Common Shares (or Common Share Equivalents, as described in Section 5.5(a)) for a consideration per share less than the Exercise Price per Common Share at the time of such issuance or sale, then forthwith upon such issue or sale, the number of Warrant Shares shall be increased by multiplying such number by a fraction (A) the numerator of which is the Exercise Price and (B) the denominator of which is determined by dividing (i) the sum of (x) the Exercise Price multiplied by the number of Common Shares outstanding immediately prior to such issue or sale plus (y) the aggregate consideration, if any, received by the Company upon such issue or sale by (ii) the number of Common Shares outstanding immediately after such issue or sale.

#### 5.5 Effect on Warrant Shares of Certain Events.

For purposes of determining the adjusted number of Warrant Shares under Section 5.4 above, the following shall be applicable:

(a) **Issuance of Common Share Equivalents.** If the Company in any manner grants or issues any Common Share Equivalents and the lowest price per Common Share for which any one Common Share or analogous economic right is issuable upon the exercise of any such Common Share Equivalent is less than the Exercise Price at the time of the granting or issuing of such Common Share Equivalent, then such Common Share will be deemed to have been issued and sold by the Company for such price per Common Share. For purposes of this paragraph, the "lowest price per share" will be equal to the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to any one Common Share or analogous economic right upon the exercise of the Common Share Equivalent (whether by conversion, exchange or otherwise) or other similar indication of the price per Common Share as of the time of granting (such as the floor value for stock appreciation rights). No further adjustment of the Warrant Shares will be made upon the actual issue of such Common Shares or upon the exercise of any rights under such Common Share Equivalents.

(b) **Change in Option Price or Conversion Rate.** If the purchase price provided for in any Common Share Equivalent, the additional consideration (if any) payable upon the issue, conversion or exchange of any Common Share Equivalent or the rate at which any Common Share Equivalent is convertible into or exercisable or exchangeable for Common Shares changes at any time, the number of Warrant Shares issuable at the time of such change will be readjusted to the number of Warrant Shares that would have been issuable at such time had such Common Share Equivalents provided for such changed purchase price, additional consideration or changed conversion rate, as the case may be, at the time initially granted, issued or sold; *provided* that if such adjustment would result in a decrease in the number of Warrant Shares then issuable, such adjustment will not be effective until 30 days after written notice thereof has been given by the Company to the Holders of the Warrants.

RSC BLF BLF  
TSMC SMIC SMIC

(c) **Treatment of Expired and Unexercised Common Share Equivalents.** Upon the expiration of any Common Share Equivalents or the termination of any right to convert or exchange any Common Share Equivalents without the exercise of such Common Share Equivalents, the number of Warrant Shares then issuable will be adjusted to the number of Warrant Shares that would have been issuable at the time of such expiration or termination had such Common Share Equivalents to the extent outstanding immediately prior to such expiration or termination, never been issued.

#### 5.6 Other Actions Affecting Equity Securities.

If at any time or from time to time the Company shall take any action affecting its capital stock (including, without limitation, the creation of equity appreciation rights or phantom equity), other than any action of a type otherwise described in this Article V, then the number of Warrant Shares issuable upon exercise of each Warrant shall be adjusted (with a corresponding adjustment to the Exercise Price) to such extent, if any, and in such manner and at such time, as the Board shall, in the good faith exercise of its reasonable business judgment, determine to be equitable in the circumstances; provided that no such adjustment shall decrease the number of Warrant Shares issuable upon exercise of such Warrant or increase the Exercise Price.

#### 5.7 Miscellaneous.

(a) **Calculation of Consideration Received.** If any Common Shares, Common Share Equivalents or Other Equity Securities are issued or sold or deemed to have been issued or sold for Cash, then the consideration received therefor shall be deemed to be the net amount received or to be received by the Company therefor. If any Common Shares, Common Share Equivalents or Other Equity Securities are issued or sold for consideration other than Cash (including in connection with any merger in which the Company issues such securities), then the amount of the consideration other than Cash received by the Company shall be the Fair Market Value of such consideration, as of the date of receipt.

(b) **Treasury Shares.** The number of Common Shares outstanding at any given time does not include Common Shares owned or held by or for the account of the Company or any Affiliate of the Company, and the disposition of any Common Shares so owned or held shall be considered an issuance of Common Shares.

(c) **Notice; Adjustment Rules.** Whenever the Exercise Price or the number of issuable Warrant Shares shall be adjusted as provided in this Article V, the Company shall provide to each Holder a statement, signed by a Responsible Officer of the Company, describing in detail the facts requiring such adjustment and setting forth a calculation of the Exercise Price and the number of issuable Warrant Shares applicable to each Warrant after giving effect to such adjustment. All calculations under this Article V shall be made to the nearest one thousandth of a cent (\$.00001) or to the nearest one-thousandth of a share, as the case may be. Adjustments pursuant to this Article V shall apply to successive events or transactions of the types covered thereby. Notwithstanding any other provision of this Article V, no adjustment shall be made to the number of issuable Warrant Shares or to the Exercise Price if such adjustment represents less than .5% of the number of issuable Warrant Shares previously required to be so issued, but any lesser adjustment shall be carried forward and shall be made at the time and together with the next subsequent adjustment which together with any adjustments so carried forward shall amount to .5% or more of the number of Warrant Shares to be so issued.

RSC BLF BLF  
TSMC SMIC SMIC

**5.8 Excluded Issuances.**

Notwithstanding any other provision of this Article V, no adjustment shall be made pursuant to this Article V in respect of (i) the issuance of Common Shares pursuant to any adjustment provided for in this Article V or (ii) securities issued upon the exercise of Warrants.

**ARTICLE VI  
COVENANTS OF THE COMPANY**

**6.1 No Avoidance; Further Assurances.**

The Company will not, by amendment of its Governing Documents or through any Extraordinary Event, reorganization, Transfer of Properties, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company. The Company shall at all times in good faith assist in the carrying out of all the provisions of this Agreement and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Holders hereunder against impairment. Each party hereto shall, without further consideration, make, execute, acknowledge and deliver such other instruments and documents, and take or cause to be taken all actions as may be necessary or appropriate in order to effect the purposes of this Warrant.

**6.2 Preemptive Rights.**

Except as otherwise provided herein or in the Other Transaction Documents, no Warrant shall entitle the holder thereof to any preemptive rights or any other rights as a shareholder of the Company, as such except for those rights as a stockholder of the Company that attach to the Warrant Shares following their issuance upon the exercise of any Warrant.

**6.3 Sale of Warrants.**

In any merger, consolidation, reorganization, repurchase or reclassification or similar transaction, in which holders of Capital Stock sell or otherwise Transfer Capital Stock held by them, the Company will use commercially reasonable efforts to cause the transaction to be structured to permit the Holders to deliver Warrants in connection with any such transaction without requirement for exercise thereof as a condition to participation and for consideration not less than the consideration such Holders would have received had such Holders exercised their Warrants immediately prior thereto, less any applicable Exercise Price, unless such arrangement would result in a material legal, tax or similar detriment to the Company, a significant counterparty to the transaction or their respective securityholders.

TSC   BLF   BLF  
TSMC   SMIC   SMIC

**ARTICLE VII  
MISCELLANEOUS**

**7.1 Notices.**

All notices and other communications provided for or permitted hereunder shall be made by hand-delivery, telecopier or overnight air courier guaranteeing next day delivery:

(i) if to the Company, to:

Semiconductor Manufacturing International Corporation

Address: Suite 3003, 30th Floor  
No. 9 Queen's Road Central  
Hong Kong

Telephone: (+852) 2537 8588

Facsimile: (+852) 2537 8206

Attention: Anne Chen/Blondie Poon

with a copy to:

Wilson Sonsini Goodrich & Rosati, P.C.

Address: Jin Mao Tower, 38F  
88 Century Boulevard  
Pudong New Area, Shanghai 200121  
People's Republic of China

Telephone: (+86-21) 6165-1700

Facsimile: (+86-21) 6165-1799

Attention: Carmen Chang, Esq.

(ii) if to the Holder, to

Taiwan Semiconductor Manufacturing Co., Ltd.

Address: No. 8 Li-Hsin Road 6, Hsin-Chu Science Park  
Hsin-Chu, Taiwan, Republic of China

Telephone: (+886) 3-5682002

Facsimile: (+886) 3-5678689

Attention: General Counsel

with a copy to:

Weil, Gotshal & Manges LLP

Address: 200 Crescent Court, Suite 300  
Dallas, Texas 75201  
United States of America

Telephone: +1 (214) 746 7700

Facsimile: +1 (214) 746 7777

Attention: R. Scott Cohen

  
RSC TSMC BLF SMIC BLF SMIC

Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); or (iii) one Business Day after deposit with an overnight courier service, in each case properly addressed to the party to receive the same. The parties may change the addresses to which notices are to be given by giving five days' prior notice of such change in accordance herewith.

**7.2 No Voting Rights; Limitation of Liability.**

Except as otherwise provided herein, no Warrant shall entitle the holder thereof to any voting rights or any other rights as a stockholder of the Company, as such. No provision hereof, in the absence of affirmative action by the Holder to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder shall give rise to any liability of such Holder for the Exercise Price of Warrant Shares acquirable by exercise hereof or as an equity holder of the Company.

**7.3 Amendments and Waivers.**

(a) **Written Document.** Any provision of this Agreement may be amended or waived, but only pursuant to a written agreement signed by the Company and the Requisite Holders; provided that no such amendment or modification shall without the written consent of each Holder affected thereby (i) shorten the Expiration Time of any Warrant, (ii) increase the Exercise Price of any Warrant, (iii) change any of the provisions of this Section 7.3(a) or the definition of "Requisite Holders" or any other provision hereof specifying the number or percentage of Holders required to waive, amend, or modify any rights hereunder or required to make any determination or grant any consent hereunder or otherwise to act with respect to this Agreement or any Warrants, (iv) change any of the provisions of Article V or (v) increase the obligations of any Holder.

(b) **No Waiver.** No failure on the part of any Holder to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege under this Agreement or the Warrants shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under this Agreement or the Warrant preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

RSC   BLF   BLF  
TSMC   SMIC   SMIC

**7.4 Remedies.**

Each Holder shall have all rights and remedies reserved for such Holder pursuant to this Agreement, all rights and remedies which such Holder has been granted at any time under any other agreement or instrument and all of the rights and remedies such Holder may have at law or in equity. The remedies provided herein are cumulative and not exclusive. Any Person having any rights under any provision of this Agreement will be entitled to enforce such rights specifically, to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law or equity. The Company acknowledges and agrees that irreparable damage would occur to the holder of this Warrant and that such Holder will not have an adequate remedy at law in the event that any of the provisions of this Warrant to be performed by the Company were not performed in accordance with their specific terms or were otherwise breached. Therefore, the Holder of this Warrant is entitled to an injunction or injunctions to prevent breaches of this Warrant by the Company and to specifically enforce the terms and provisions of this Warrant against the Company in any court of competent jurisdiction, without bond or other security being required, and appropriate injunctive relief may be applied for by such Holder and granted in connection therewith.

**7.5 Binding Effect.**

Subject to the limitations set forth in this Agreement and the Other Transaction Documents, each Holder has the right to assign or otherwise Transfer its rights under this Agreement or any Warrants or Warrant Shares held by it. The Company shall not assign its rights or obligations hereunder except in the context of an Extraordinary Transaction, as contemplated herein. This Agreement shall be binding upon and inure to the benefit of the Company, each Holder and their successors and permitted assigns.

**7.6 Counterparts.**

This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

**7.7 Governing Law; Jurisdiction and Venue.**

All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed in accordance with the laws of Hong Kong. Any dispute, controversy or claim arising out of or relating to this Agreement, or the interpretation, breach, termination or validity hereof, shall be submitted to arbitration upon the request of any party with notice to the other party. The arbitration shall be conducted in Hong Kong under the auspices of the Hong Kong International Arbitration Centre (the "HKIAC") in accordance with the UNCITRAL Arbitration Rules ("UNCITRAL Rules") in effect, which rules are deemed to be incorporated by reference into this Section 7.7. There shall be three (3) arbitrators. The complainant and the respondent to such dispute shall each select one arbitrator within thirty (30) days after giving or receiving the demand for arbitration. The Chairman of the HKIAC shall select the third arbitrator, who shall be qualified to practice law in Hong Kong. If either party to the arbitration does not appoint an arbitrator who has consented to participate within thirty (30) days after selection of the first arbitrator, the relevant appointment shall be made by the Chairman of the HKIAC. The arbitration proceedings shall be conducted in English. Each party hereto shall cooperate with any party to the dispute in making full disclosure of and providing complete access to all information and documents requested by such party in connection with such arbitration proceedings, subject only to any confidentiality obligations binding on the party receiving the request. Each party irrevocably waives, to the fullest extent it may effectively do so, any objection which it may now or hereafter have to the laying of venue of any such arbitration in Hong Kong and the HKIAC, and hereby submits to the exclusive jurisdiction of HKIAC in any such arbitration. The award of the arbitration tribunal shall be conclusive and binding upon the disputing parties, and any party to the dispute may apply to a court of competent jurisdiction for enforcement of such award. Any party to the dispute shall be entitled to seek preliminary injunctive relief, if possible, from any court of competent jurisdiction pending the constitution of the arbitral tribunal.

*RSC* *BLF* *BLF*  
TSMC SMIC SMIC

**7.8 Benefits of this Agreement.**

Nothing in this Agreement shall be construed to give to any Person other than the Company and each Holder of a Warrant or a Warrant Share any legal or equitable right, remedy or claim hereunder.

**7.9 Headings.**

The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

**7.10 Aggregation of Warrants and Warrant Shares.**

All Warrants and Warrant Shares held or acquired by any Person and its Affiliates shall be aggregated together for purposes of measuring any numerical thresholds used in determining the availability to such Person and its Affiliates, taken collectively, of rights under this Agreement and the applicability of obligations and restrictions under this Agreement.

**7.11 Operative Date.**

This Agreement shall become operative on the date hereof.

*[Remainder of Page Intentionally Left Blank]*

RSC   BLF   BLF  
TSMC   SMIC   SMIC

IN WITNESS WHEREOF, each party hereto has caused this Warrant Agreement to be duly executed and delivered by its authorized signatory, all as of the date and year first above written.

**SEMICONDUCTOR MANUFACTURING  
INTERNATIONAL CORPORATION**

By: \_\_\_\_\_  
Name: Jiang Shang Zhou  
Title: Chairman of the Board

By: \_\_\_\_\_  
Name: Richard Ru-Gin Chang  
Title: Chief Executive Officer

**TAIWAN SEMICONDUCTOR MANUFACTURING  
COMPANY, LTD.**

By: \_\_\_\_\_  
Name: F.C. Tseng  
Title: Vice Chairman

RSC   BLF   BLF  
TSMC   SMIC   SMIC

[Signature Page to Warrant Agreement]

Exhibit A to the Warrant Agreement

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES OR BLUE SKY LAWS. THESE SECURITIES MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM UNDER SAID ACT OR APPLICABLE STATE SECURITIES OR BLUE SKY LAWS.

ADDITIONALLY, THE TRANSFER OF THESE SECURITIES IS SUBJECT TO THE CONDITIONS SPECIFIED IN THE SHARE AND WARRANT ISSUANCE AGREEMENT, DATED AS OF NOVEMBER 9, 2009, AND THE WARRANT AGREEMENT, DATED AS OF [\_\_\_\_\_, 20 \_\_], AMONG THE ISSUER HEREOF AND CERTAIN OTHER SIGNATORIES THERETO. UPON THE FULFILLMENT OF CERTAIN CONDITIONS, THE ISSUER HEREOF HAS AGREED TO DELIVER TO THE HOLDER HEREOF A NEW CERTIFICATE, NOT BEARING THIS LEGEND, FOR THE SECURITIES REPRESENTED HEREBY REGISTERED IN THE NAME OF THE HOLDER HEREOF. COPIES OF SUCH AGREEMENTS MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS CERTIFICATE TO THE SECRETARY OF THE ISSUER HEREOF.

**Semiconductor Manufacturing International Corporation**

No. W - 1

[\_\_\_\_\_, \_\_, 20 \_\_]

**Common Share Purchase Warrant**

THIS CERTIFIES that, for value received, Taiwan Semiconductor Manufacturing Company, Ltd., a Taiwanese corporation (the “**Holder**”), or its assigns, is entitled to purchase from Semiconductor Manufacturing International Corporation, an exempted company incorporated under the laws of the Cayman Islands (the “**Company**”), [695,914,030] common shares, US\$.0004 par value (the “**Common Shares**”), of the Company (the “**Warrant Shares**”), at the price (the “**Exercise Price**”) of HK\$1.30 per share, at any time or from time to time during the period commencing on the date hereof and ending at 11:59 P.M. Hong Kong Time on the Expiration Time (as defined in the Warrant Agreement).

The Holder may exercise all or any part of such rights at any time or from time to time prior to the Expiration Time.

This Warrant has been issued pursuant to the Warrant Agreement dated as of [\_\_\_\_\_, 20 \_\_] (as amended, restated, supplemented or otherwise modified from time to time, the “**Warrant Agreement**”) between the Company and the Holder named therein, and is subject to the terms and conditions, and the Holder is entitled to the benefits, thereof. A copy of the Warrant Agreement is on file and may be inspected at the principal executive office of the Company. The Holder of this certificate, by acceptance of this certificate, agrees to be bound by the provisions of the Warrant Agreement. Capitalized terms used but not defined herein shall have the respective meanings given to such terms in the Warrant Agreement.

<u>RSC</u>	<u>BLF</u>	<u>BLF</u>
TSMC	SMIC	SMIC

SECTION 1. **Exercise of Warrant.** On any day on or prior to the Expiration Time, the Holder may exercise this Warrant, in whole or in part, in the manner set forth in Article IV of the Warrant Agreement.

SECTION 2. **Exercise Price and Number of Warrant Shares.** The Exercise Price and the number of Warrant Shares is subject to adjustment from time to time as set forth in the Warrant Agreement.

SECTION 3. **Exchange of Warrant.** On any day on or prior to the Expiration Time, the Holder may exchange this Warrant, in whole or in part, for Warrant Shares by delivering to the Company this Warrant accompanied by a properly completed Exchange Form in the form of Annex B attached hereto. The number of Common Shares to be received by the Holder upon such exchange shall be determined as set forth in the Warrant Agreement.

SECTION 4. **Transfer.** Subject to the limitations set forth or referred to in the Warrant Agreement, this Warrant may be Transferred by the Holder by delivery to the Company of this Warrant accompanied by a properly completed Assignment Form in the form of Annex C attached hereto.

SECTION 5. **Lost, Stolen, Mutilated or Destroyed Warrant.** If this Warrant is lost, stolen, mutilated or destroyed, the Company will issue a new Warrant of like denomination and tenor upon compliance with the provisions set forth in the Warrant Agreement.

SECTION 7. **Successors.** All of the provisions of this Warrant by or for the benefit of the Company or the Holder shall bind and inure to the benefit of their respective successors and permitted assigns.

SECTION 8. **Headings.** Section headings in this Warrant have been inserted for convenience of reference only and shall not affect the construction of, or be taken into consideration in interpreting, this Warrant.

SECTION 9. **Governing Law.** All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed in accordance with the laws of Hong Kong. Any dispute, controversy or claim arising out of or relating to this Agreement, or the interpretation, breach, termination or validity hereof, shall be submitted to arbitration upon the request of any party with notice to the other party. The arbitration shall be conducted in Hong Kong under the auspices of the HKIAC in accordance with the UNCITRAL Rules in effect, which rules are deemed to be incorporated by reference into this section. There shall be three (3) arbitrators. The complainant and the respondent to such dispute shall each select one arbitrator within thirty (30) days after giving or receiving the demand for arbitration. The Chairman of the HKIAC shall select the third arbitrator, who shall be qualified to practice law in Hong Kong. If either party to the arbitration does not appoint an arbitrator who has consented to participate within thirty (30) days after selection of the first arbitrator, the relevant appointment shall be made by the Chairman of the HKIAC. The arbitration proceedings shall be conducted in English. Each party hereto shall cooperate with any party to the dispute in making full disclosure of and providing complete access to all information and documents requested by such party in connection with such arbitration proceedings, subject only to any confidentiality obligations binding on the party receiving the request. Each party irrevocably waives, to the fullest extent it may effectively do so, any objection which it may now or hereafter have to the laying of venue of any such arbitration in Hong Kong and the HKIAC, and hereby submits to the exclusive jurisdiction of HKIAC in any such arbitration. The award of the arbitration tribunal shall be conclusive and binding upon the disputing parties, and any party to the dispute may apply to a court of competent jurisdiction for enforcement of such award. Any party to the dispute shall be entitled to seek preliminary injunctive relief, if possible, from any court of competent jurisdiction pending the constitution of the arbitral tribunal.

RSC   BLF   BLF  
TSMC   SMIC   SMIC

IN WITNESS WHEREOF, the undersigned has caused this Warrant to be executed by its duly authorized officers and this Warrant to be dated as of the date first set forth above.

**SEMICONDUCTOR MANUFACTURING  
INTERNATIONAL CORPORATION**

By: \_\_\_\_\_  
Name: Jiang Shang Zhou  
Title: Chairman of the Board

By: \_\_\_\_\_  
Name: Richard Ru-Gin Chang  
Title: Chief Executive Officer

RSC   BLF   BLF  
TSMC   SMIC   SMIC

Annex A to the Warrant

**EXERCISE FORM**

[To be signed upon exercise of a Warrant]

**TO SEMICONDUCTOR MANUFACTURING INTERNATIONAL CORPORATION:**

The undersigned, being the Holder of the attached Warrant, hereby elects to exercise the purchase right represented by such Warrant for, and to purchase thereunder \_\_\_\_\_ Common Shares of Semiconductor Manufacturing International Corporation, an exempted company incorporated under the laws of the Cayman Islands (the “**Company**”), and requests that the certificates or other evidence of ownership for such shares be issued in the name of, \_\_\_\_\_, whose address is \_\_\_\_\_.

The foregoing exercise is (check one):

\_\_\_\_\_ Irrevocable

\_\_\_\_\_ Conditioned upon the consummation of the transaction described briefly below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Name:  
Title:

RSC BLF BLF  
TSMC SMIC SMIC

Annex B to the Warrant

**EXCHANGE FORM**

*[To be signed upon exchange of a Warrant]*

**TO SEMICONDUCTOR MANUFACTURING INTERNATIONAL CORPORATION:**

The undersigned, being the Holder of the within Warrant, hereby elects to exchange, pursuant to Section 4.2 of the Warrant Agreement referred to in such Warrant, the portion of such Warrant representing the right to purchase \_\_\_\_\_ Common Shares of Semiconductor Manufacturing International Corporation, an exempted company incorporated under the laws of the Cayman Islands (the “**Company**”). The undersigned hereby requests that the certificates or evidence of ownership for the number of shares issuable in such exchange pursuant to such Section 4.2 be issued in the name of, and be delivered to, \_\_\_\_\_, whose address is \_\_\_\_\_.

The foregoing exchange is (check one):

\_\_\_\_\_ Irrevocable

\_\_\_\_\_ Conditioned upon the consummation of the transaction described briefly below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Name:

Title:

RSC BLF BLF  
TSMC SMIC SMIC

Annex C to the Warrant

**ASSIGNMENT FORM**

*[To be signed only upon transfer of a Warrant]*

For value received, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_, all of the rights represented by the within Warrant to purchase \_\_\_\_\_ Common Shares of Semiconductor Manufacturing International Corporation, an exempted company incorporated under the laws of the Cayman Islands (the “**Company**”), to which such Warrant relates, and appoints \_\_\_\_\_ attorney to transfer such Warrant on the books of the Company, with full power of substitution in the premises.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

By executing and delivering this Assignment Form to the Company, the undersigned hereby agrees to become a party to, to be bound by, and to comply with the provisions of the Warrant Agreement dated as of [\_\_\_\_\_, 20\_\_] (as amended, restated, supplemented or otherwise modified from time to time, the “**Warrant Agreement**”), among the Company and the Holders, in the same manner as if the undersigned were an original signatory to the Warrant Agreement.

The undersigned agrees that he, she or it shall be a “Holder”, as such term is defined in the Warrant Agreement.

Dated: \_\_\_\_\_

\_\_\_\_\_  
*Signature of transferee*

\_\_\_\_\_  
*Print Name of transferee*

\_\_\_\_\_  
*Address*

\_\_\_\_\_  
*Facsimile*

\_\_\_\_\_  
*Telephone*

*RSC* *BLF* *BLF*  
TSMC SMIC SMIC

**SHARE AND WARRANT ISSUANCE AGREEMENT**

This SHARE AND WARRANT ISSUANCE AGREEMENT (the “**Agreement**”) is made and entered into as of November 9, 2009 by and between Taiwan Semiconductor Manufacturing Company, Ltd., a Taiwanese corporation, having a place of business located at No. 8 Li-Hsin Road 6, Hsin-Chu Science Park, Hsin-Chu, Taiwan, Republic of China (the “**Acquiror**”), and Semiconductor Manufacturing International Corporation, an exempted company incorporated under the laws of the Cayman Islands, having a place of business located at No. 18 Zhang Jiang Road, Pudong New Area, Shanghai 201203, People’s Republic of China (the “**Company**”).

WITNESSETH

WHEREAS, the Acquiror and the Company are entering into that certain Settlement Agreement, dated as of even date herewith (the “**2009 Settlement Agreement**”), whereby the Company and the Acquiror are settling and resolving various litigation and disputes, as specified therein; and

WHEREAS, contemporaneously with the execution and delivery of, and as contemplated by, the 2009 Settlement Agreement, the Company and the Acquiror are entering into this Agreement pursuant to which the Company will issue and convey to the Acquiror, and the Acquiror will acquire, upon the terms and conditions stated in this Agreement (i) an aggregate of 1,789,493,218 (as the same shall be appropriately adjusted in the case of any share split, share consolidation, share dividend, recapitalization or similar action effected in respect of the Common Shares prior to the Closing Date or, if applicable, the consummation of the Share Placing or the Share Offering (each as defined in Section 6 below)) Common Shares (the “**New Common Shares**”) and (ii) a warrant exercisable for an aggregate of 695,914,030 (as the same shall be appropriately adjusted in the case of any share split, share consolidation, share dividend, recapitalization or similar action effected in respect of the Common Shares prior to the Closing Date or, if applicable, the consummation of the Warrant Placing or the Warrant Offering (as defined in Section 6 below)) Common Shares (the “**Warrant**”). Unless the context otherwise requires, “**Common Shares**” shall refer to the Company’s common shares, par value US\$0.0004 per share; “**Warrant Shares**” shall refer to the Common Shares deliverable upon the exercise of the Warrant; and “**Securities**” shall refer to the New Common Shares and the Warrant subscribed for herein, and the Warrant Shares.

*RSC* *BLF* *BLF*  
TSMC SMIC SMIC

NOW, THEREFORE, in consideration of the mutual promises, agreements and covenants contained herein and in the 2009 Settlement Agreement, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Acquiror hereby agree as follows:

**1. Issuance of the New Common Shares and Warrant.**

(a) **Issuance of New Common Shares and Warrant.** Subject to the satisfaction of the conditions set forth in Sections 5 below, in consideration of the execution and delivery of the 2009 Settlement Agreement by the Acquiror, and the benefits derived by the Company thereunder, the Company shall issue and convey to the Acquiror, or its permitted assignees (as provided in and subject to Section 7(k) below), and the Acquiror, or its permitted assignee (as provided in and subject to Section 7(k) below), shall acquire from the Company, on the Closing Date (as defined in Section 1(b)(i) below) the New Common Shares and the Warrant.

(b) **Closing.**

(i) **Date and Time.** The date and time of the issuance of the New Common Shares and the Warrant as contemplated hereby (the “**Closing**”) shall be 10:00 a.m., Hong Kong time, on such date as is specified by the Company and the Acquiror, which date shall be no later than the fifth Business Day after the satisfaction or waiver of the conditions to the Closing set forth in Section 5 below, at the offices of Weil, Gotshal & Manges LLP, 15 Queen’s Road Central, 29/F Gloucester Tower, Central, Hong Kong or at such other time, date and location as is mutually agreed in writing by the Company and the Acquiror (with the date and time of the Closing referred to herein as the “**Closing Date**”).

(ii) **Company Deliveries.** On the Closing Date, the Company shall deliver to the Acquiror:

(1) (A) certificates in respect of the New Common Shares, duly executed on behalf of the Company and registered in the name of the Acquiror, (B) the Warrant Agreement, dated the Closing Date, duly executed on behalf of the Company, in the form attached hereto as Exhibit A (the “**Warrant Agreement**”) and (C) the Warrant, duly executed on behalf of the Company, in the form attached to the Warrant Agreement as Annex A thereof;

(2) a certified extract of the register of members of the Common Shares of the Company, reflecting Acquiror’s ownership of the New Common Shares;

(3) copies of the resolutions of the board of directors of the Company (the “**Board**”) approving the entering into and execution of this Agreement, the issuance of the New Common Shares, the Warrant and all transactions contemplated herein;

(4) a certificate, executed on behalf of the Company by the Secretary of the Company and dated as of the Closing Date, as to the resolutions delivered pursuant to Section 1(b)(ii)(3) above;

(5) an opinion of Conyers Dill & Pearman, Cayman Islands counsel to the Company, in the form previously agreed by counsel to the Company and counsel to the Acquiror, covering due authorization and valid issuance of New Common Shares, Warrants and Warrant Shares, capitalization, no governmental restrictions and no conflicts with law or constitutional documents;

RSC   BLF   BLF  
TSMC   SMIC   SMIC

(6) an opinion of Slaughter and May, Hong Kong counsel to the Company, in the form previously agreed by counsel to the Company and counsel to the Acquiror, covering various matters, including the enforceability of this Agreement and the Warrant Agreement and the HKSE's approval of listing of the New Common Shares and the Warrant Shares; and

(7) an opinion of M & A Law Firm, PRC counsel to the Company, in the form previously agreed by counsel to the Company and counsel to the Acquiror, covering compliance with PRC laws.

(iii) Acquiror Deliveries. On the Closing Date, the Acquiror shall deliver to the Company the Warrant Agreement, dated the Closing Date, duly executed on behalf of the Acquiror.

**2. Acquiror's Representations and Warranties.** The Acquiror hereby represents and warrants to the Company, as of the date hereof and as of the Closing Date as if made at that time, that:

**(a) Regulation S.**

(i) The Acquiror (A) is domiciled and has its principal place of business outside the United States, (B) certifies that it is not a U.S. Person as defined under Rule 902 of Regulation S ("**Regulation S**") as promulgated by the United States Securities and Exchange Commission (the "**SEC**") under the U.S. Securities Act of 1933, as amended (the "**1933 Act**"), and is not acquiring the Securities for the account or benefit of any U.S. Person, (C) at the time of offering to the Acquiror and communication of the Acquiror's order to purchase the Securities and at the time of the Acquiror's execution of this Agreement, the Acquiror was located outside the United States, and (D) at the time of the Closing, the Acquiror, or persons acting on the Acquiror's behalf in connection therewith, will be located outside the United States.

(ii) The Acquiror has been advised and acknowledges that: (A) the Securities issued pursuant to this Agreement have not been, and when issued, will not be registered under the 1933 Act or the securities laws of any state of the United States, (B) in issuing and selling the Securities to the Acquiror pursuant hereto, the Company is relying upon the exemption from registration provided by Regulation S of the 1933 Act, and (C) it is a condition to the availability of the Regulation S safe harbor that the Securities not be offered or sold in the United States or to a U.S. Person until the expiration of a period of 40 days after the Closing Date (the "**Distribution Compliance Period**").

RSC   BLF   BLF  
TSMC   SMIC   SMIC

(iii) The Acquiror acknowledges and covenants that until the expiration of the Distribution Compliance Period (A) it and its agents or representatives have not solicited and will not solicit offers to buy, offer for sale or sell any of the Securities or any beneficial interest therein in the United States or to or for the account of a U.S. Person and (B) notwithstanding the foregoing, prior to the expiration of the Distribution Compliance Period, the Securities may be offered and sold by the holder thereof only if such offer and sale is made in compliance with the terms of this Agreement and either (X) the offer or sale is within the United States or to or for the account of a U.S. Person and pursuant to an effective registration statement, Rule 144 promulgated under the 1933 Act or an exemption from the registration requirements of the 1933 Act or (Y) the offer and sale is outside the United States and to other than a U.S. Person. The foregoing restrictions are binding upon subsequent transferees of the Securities, except for transferees pursuant to an effective registration statement. The Acquiror agrees that after the Distribution Compliance Period, the Securities may be offered or sold within the United States or to or for the account of a U.S. Person only in accordance with this Agreement and pursuant to applicable securities laws.

(iv) The Acquiror is not a “distributor” (as defined in Regulation S) or a “dealer” (as defined in the 1933 Act).

(v) The Acquiror hereby acknowledges that during the Distribution Compliance Period, no deposit of the Securities issued hereunder will be accepted into the Company’s American Depositary Shares (“**ADS**”) program, and no Securities may be offered or sold in the United States or to U.S. Persons unless such Securities are registered under the 1933 Act, or an exemption from the registration requirements of the 1933 Act is available. The Acquiror further acknowledges that, for so long as the Securities are held by affiliates of the Company (it being understood that, as used herein, “**affiliate**” shall have the meaning given to such term under Rule 144(a)(1) under the 1933 Act) or are “restricted securities” within the meaning of Rule 144(a)(3) under the 1933 Act, such Securities will not be eligible for deposit under any unrestricted depositary receipt facility.

**(b) No Public Sale or Distribution.** The Acquiror is acquiring the Securities for its own account and not with a view towards, or for resale in connection with, the public sale or distribution thereof, except pursuant to sales registered or exempted under the 1933 Act or in transactions not subject thereto. The Acquiror does not presently have any agreement or understanding, directly or indirectly, with any Person to distribute any of the Securities. The Acquiror is not a broker-dealer registered with the SEC under the U.S. Securities Exchange Act of 1934, as amended (the “**1934 Act**”), or an entity engaged in a business that would require it to be so registered as a broker-dealer. “**Person**” means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization or a government or any department or agency thereof.

**(c) Reliance on Exemptions.** The Acquiror understands that the Securities are being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying upon the truth and accuracy of, and the Acquiror’s compliance with, the representations, warranties, agreements, acknowledgments and understandings of the Acquiror set forth herein in order to determine the availability of such exemptions and the eligibility of the Acquiror to acquire the Securities.

*RSC* *BLF* *BLF*  
TSMC SMIC SMIC

**(d) Information.** Without prejudice to the representations and warranties of the Company herein or its obligations hereunder, Acquiror has had the opportunity to inquire of the Company and its senior management regarding information the Acquiror believes is necessary for it to make an informed decision in purchasing the Securities, and the Acquiror has conducted its own investigation with respect to the Securities and the Company. The Acquiror understands that its investment in the Securities involves a high degree of risk and confirms that it is able to afford a complete loss of such investment. The Acquiror has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of prospective investment in the Securities.

**(e) No Governmental Review.** The Acquiror understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

**(f) Transfer on Resale.** The Acquiror understands that: (i) the Securities have not been and are not being registered under the 1933 Act or any United States state securities laws, and may not be offered for sale, sold, assigned or transferred within the United States or to or for the account or benefit of a U.S. Person unless (A) subsequently registered thereunder, (B) the Acquiror shall have delivered to the Company an opinion of counsel, in form, scope and substance reasonably acceptable to the Company, to the effect that such Securities to be sold, assigned or transferred may be sold, assigned or transferred pursuant to an exemption from such registration, or (C) the Acquiror provides the Company with reasonable assurance that such Securities can be sold, assigned or transferred pursuant to Rule 144 or Rule 144A promulgated under the 1933 Act, as amended, (or a successor rule thereto) (collectively, **“Rule 144”**) or Regulation S; (ii) any sale of the Securities made in reliance on Rule 144 or Regulation S may be made only in accordance with the terms of Rule 144 or Regulation S, as applicable and further, if Rule 144 or Regulation S are not applicable, any resale of the Securities under circumstances in which the seller (or the Person through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the 1933 Act) may require compliance with some other exemption under the 1933 Act or the rules and regulations of the SEC thereunder; and (iii) neither the Company nor any other Person is under any obligation to register the Securities under the 1933 Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder.

RSC   BLF   BLF  
TSMC   SMIC   SMIC

**(g) Legends.** The Acquiror understands that the certificates or other instruments representing the New Common Shares and the Warrant, until such time as the resale of such Securities has been registered under the 1933 Act, or may be resold pursuant to an exemption therefrom or in a transaction not subject thereto, shall bear any legend as required by the “blue sky” laws of any state and a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of such share certificates):

“THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS, EXCEPT AS SET FORTH BELOW. BY ITS ACQUISITION HEREOF, THE HOLDER, IF NOT A U.S. PERSON: (1) REPRESENTS THAT IT IS NOT A U.S. PERSON AND IS ACQUIRING THESE SHARES IN AN OFFSHORE TRANSACTION; (2) AGREES THAT IT WILL NOT RESELL OR OTHERWISE TRANSFER THESE SHARES EXCEPT (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, (B) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT, (C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE ACT, (D) TO AN ACCREDITED INVESTOR THAT, PRIOR TO SUCH TRANSFER, FURNISHES TO THE COMPANY A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THESE SHARES (THE FORM OF WHICH LETTER CAN BE OBTAINED FROM THE COMPANY), (E) OUTSIDE THE UNITED STATES, IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULES 904 AND 905 UNDER THE ACT, OR (F) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE ACT (IF AVAILABLE); AND (3) AGREES THAT IT WILL GIVE EACH PERSON TO WHOM THESE SHARES ARE TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. IN CONNECTION WITH ANY TRANSFER OF THESE SHARES PURSUANT TO CLAUSES (2)(C), (D) OR (F) ABOVE, THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE COMPANY SUCH CERTIFICATIONS, LEGAL OPINIONS, OR OTHER INFORMATION AS THE COMPANY MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION OR IN A TRANSACTION NOT SUBJECT TO THE REGISTRATION REQUIREMENTS OF THE ACT. AS USED HEREIN, THE TERMS ‘OFFSHORE TRANSACTION’, ‘UNITED STATES’, AND ‘U.S. PERSON’ HAVE THE MEANING GIVEN TO THEM BY REGULATIONS UNDER THE ACT.”

The Acquiror understands that the Warrant shall bear the legends as set forth in the Warrant Agreement.

**(h) Organization; Authorization; Enforcement; Validity.** The Acquiror is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation and has the requisite corporate power and authority to enter into and perform its obligations under this Agreement, the Warrant Agreement, and each other agreement entered into by the parties hereto in connection with the transactions contemplated by this Agreement to which it is party (collectively, the “**Transaction Documents**”). The execution and delivery of the Transaction Documents by the Acquiror and the consummation by the Acquiror of the transactions contemplated hereby have been duly authorized by the board of directors of the Acquiror. The Transaction Documents to which the Acquiror is a party constitute, or when duly executed and delivered by the Acquiror, will constitute, the legal, valid and binding obligations of the Acquiror, enforceable against the Acquiror in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors’ rights and remedies.

  
TSMC SMIC SMIC

**(i) No Conflicts; Consents.** The execution, delivery and performance by the Acquiror of this Agreement and the consummation by the Acquiror of the transactions contemplated hereby will not (i) result in a violation of the organizational or constitutional documents of the Acquiror, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Acquiror is a party, or (iii) assuming the receipt of all necessary consents, authorizations and approvals, result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to the Acquiror, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of the Acquiror to perform its obligations hereunder; and no authorization, approval, consent and license from any supranational, national, state, municipal, local or foreign government, any instrumentality, subdivision, court, administrative agency or commission or other governmental authority or regulatory body or instrumentality, or any quasi-governmental or private body exercising any regulatory, taxing, importing or other governmental or quasi-governmental authority (a **“Governmental Entity”**) is required for the entering into by Acquiror of this Agreement and the performance by the Acquiror of its obligations under this Agreement, except for (i) such as have already been obtained and are in full force and effect, (ii) those approvals and authorizations specifically identified in Section 5 hereof, and (iii) any antitrust approvals, filings or notifications that may be required in connection with the transactions contemplated hereby.

**(j) Prohibited Transactions.** Since the time when the Acquiror and the Company first initiated discussions related to the transactions contemplated hereby, neither the Acquiror nor any affiliate of the Acquiror nor any Person acting on behalf of or pursuant to any understanding with the Acquiror (collectively, **“Trading Affiliates”**) has, directly or indirectly, effected or agreed to effect any short sale, whether or not against the box, established any “put equivalent position” (as defined in Rule 16a-1(h) under the 1934 Act) with respect to the Common Shares, granted any other right (including without limitation, any put or call option) with respect to the Common Shares or with respect to any security that includes, relates to or derived any significant part of its value from the Common Shares or otherwise sought to hedge its position in the Common Shares (each, a **“Prohibited Transaction”**), and neither the Acquiror nor its Trading Affiliates will enter into a Prohibited Transaction after the date hereof until the transactions contemplated hereby are publicly announced.

**(k) Independence of the Acquiror from Company.** The Acquiror is independent of and is not connected or acting in concert with the Company or the directors, chief executive, or other connected persons (as such terms are defined under the Hong Kong Listing Rules) of the Company.

**(l) Acknowledgement.** The Acquiror acknowledges and agrees that the foregoing representations, warranties, covenants and acknowledgments are made by it with the intention that they may be relied upon by the Company.

RSC   BLF   BLF  
TSMC   SMIC   SMIC

**3. Representations and Warranties of the Company.** The Company represents and warrants to the Acquiror, as of the date hereof, that, except as set forth in its Public Documents (as defined in Section 3(h) below) (excluding disclosures of non-specific risks faced by the Company or its subsidiaries included in any forward-looking statement, disclaimer, risk factor disclosure or other similarly non-specific statements that are similarly predictive or forward-looking in nature; provided, however, that (i) any historical facts related to the Company or its subsidiaries and (ii) any specific exposure or effect faced by the Company or its subsidiaries emanating from specifically disclosed facts contained within any such disclosure shall be deemed disclosed for purposes of the representations and warranties set forth in this Article 3) that:

**(a) Organization and Qualification.** The Company is a corporation duly incorporated and validly existing in good standing under the laws of the jurisdiction in which it is incorporated, and has the requisite corporate power and authorization to own its properties and to carry on its business as now being conducted. The Company is duly qualified as a foreign corporation to do business and is in good standing in every jurisdiction in which its ownership of property or the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not reasonably be expected to have a Material Adverse Effect. As used in this Agreement, **“Material Adverse Effect”** means any material adverse effect on (i) the business, properties, assets, liabilities, operations, results of operations or financial condition of the Company and its subsidiaries, taken as a whole, or (ii) the authority or ability of the Company to perform its obligations under the Transaction Documents; provided, however, that for purposes of clause (i) above, in no event shall any of the following exceptions, alone or in combination with the other enumerated exceptions below, be deemed to constitute, nor shall be taken into account in determining whether there has been or will be, a Material Adverse Effect: (A) any effect resulting from compliance with the terms and conditions of, or from the announcement of the transactions contemplated by this Agreement, (B) any effect that results from changes affecting any of the industries in which the Company operates generally or the economy generally, (C) any effect that results from changes affecting general worldwide economic or capital market conditions, provided that any such changes in (B) and (C) do not substantially disproportionately affect the Company in any material respect, or (D) any change in the Company’s share price or trading volume, in and of itself, primarily resulting from any of the effects or changes described in the foregoing clauses (A), (B) or (C). Each subsidiary of the Company that is a “significant subsidiary” within the meaning of Rule 1-01(w) of Regulation S-X under the 1933 Act (individually a **“Significant Subsidiary”** and collectively the **“Significant Subsidiaries”**) has been duly organized and is validly existing in good standing under the laws of its jurisdiction of organization except to the extent that the failure to be in good standing would not reasonably be expected to have a Material Adverse Effect.

**(b) Authorization; Enforcement; Validity.** The Company has the requisite corporate power and authority to enter into and perform its obligations under the Transaction Documents and to issue the Securities in accordance with the terms hereof and thereof. The issuance of the Securities is within the scope of the general mandate granted to the Board by the Company’s shareholders at the Company’s annual general meeting held on June 23, 2009, to allot, issue, grant, distribute and otherwise deal with additional securities in the Company, not exceeding twenty percent of the issued share capital of the Company at the date of such resolution. The execution and delivery of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby, including, without limitation, the issuance of the Securities, has been duly authorized by the Board. The Transaction Documents to which the Company is a party constitute, or when duly executed and delivered by the Company, will constitute, the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors’ rights and remedies.

RSC   BLF   BLF  
TSMC   SMIC   SMIC

(c) **Equity Capitalization.** As at October 31, 2009, the authorized share capital of the Company consisted of (A) 50,000,000,000 Common Shares, of which as of such date 22,368,665,231 shares were issued and outstanding and (B) 5,000,000,000 Preferred Shares, of which none are issued. As of October 31, 2009, 3,020,347,823 shares were reserved for issuance pursuant to the Company's employee incentive plan and other options and warrants outstanding. There are no other agreements or commitments outstanding which call for the allotment or issue, or accords to any person the right to call for the allotment or issue, of any shares (including shares issued pursuant to securities exercisable or exchangeable for, or convertible into, or agreements relating to the issuance of Common Shares), other than the preemptive rights provisions of the Datang Agreement. With the possible exception of issuances in connection with exercises of the outstanding options and warrants referenced above and employee or consultant equity awards, there have been no further issuances of shares by the Company subsequent to October 31, 2009 and through the date hereof. All of the issued and outstanding share capital of the Company is duly authorized, validly issued and fully paid.

**(d) Issuance of Securities.**

(i) The New Common Shares are duly authorized and, when issued in accordance with the terms hereof, will be validly issued and fully paid, free of all preemptive or similar rights, taxes, liens and charges (whether arising under Cayman Islands law, the Memorandum and the Articles of Association of the Company (the "**Articles**"), any agreement or instrument to which the Company is a party or is subject, or otherwise), and restrictions on transfer other than as expressly contemplated by the Transaction Documents and under applicable securities laws, with the holders being entitled to all rights accorded to a holder of the Common Shares.

(ii) The Warrant Shares are duly authorized and, when issued in accordance with the terms of the Warrant Agreement, shall be validly issued and fully paid, free of all preemptive or similar rights, taxes, liens and charges (whether arising under Cayman Islands Law, the Articles, any agreement or instrument to which the Company is a party or is subject, or otherwise), and restrictions on transfer other than as expressly contemplated by the Transaction Documents and under applicable securities laws, with the holders being entitled to all rights accorded to a holder of the Common Shares. The Company has sufficient authorized capital to issue the Warrant Shares.

*RSC* *BLF* *BLF*  
TSMC SMIC SMIC

(iii) Prior to the execution and delivery of the 2009 Settlement Agreement, Datang Telecom Technology & Industry Holdings Limited (“**Datang**”) executed and delivered to the Company an irrevocable waiver of the application of the pre-emptive rights granted under Section 4(m) of that certain Share Purchase Agreement dated as of November 6, 2008, between Datang and the Company (the “**Datang Agreement**”) to the issuance of the Securities hereunder, which waiver is in full force and effect as of the date hereof.

(iv) Assuming the accuracy of each of the representations and warranties of the Acquiror set forth in Section 2 of this Agreement, the offer and issuance by the Company of the Securities is exempt from registration under the 1933 Act.

**(e) No Conflicts.** The execution, delivery and performance of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Securities) will not (i) result in a violation of the Articles, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company or any Significant Subsidiary is a party, or (iii) assuming the receipt of all necessary consents, authorizations and approvals, result in a violation of any law, rule, regulation, order, judgment or decree (including the Hong Kong Code on Takeovers and Mergers, foreign, U.S. federal and state securities laws and regulations and the rules and regulations of The Stock Exchange of Hong Kong Limited (the “**HKSE**”) or of the New York Stock Exchange (the “**NYSE**”) applicable to the Company), except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not reasonably be expected to result in a Material Adverse Effect.

**(f) Consents.** The Company is not required to obtain any consent, authorization or order of, or make any filing or registration with, (i) any court, Governmental Entity or any regulatory or self-regulatory agency or (ii) any third party pursuant to any agreement, indenture or instrument to which the Company or any Significant Subsidiary is a party in order for it to execute, deliver or perform any of its obligations under or contemplated by the Transaction Documents, except for (i) such as have already been obtained and are full force and effect, (ii) those approvals and authorizations specifically referenced in Section 5 hereof, (iii) any required filings or notifications regarding the issuance or listing of additional securities with the HKSE or the NYSE and (iv) any antitrust approvals, filings or notifications that may be required in connection with the transactions contemplated hereby. The Company is not in violation of the listing requirements of the HKSE or the NYSE and has no knowledge of any facts that would reasonably lead to delisting or suspension of its Common Shares from the HKSE or of its American depository receipts from the NYSE in the foreseeable future. As used herein, “knowledge” shall mean actual knowledge of the executive officers (as defined in Rule 405 under the 1933 Act) of the Company after due inquiry.

RSC   BLF   BLF  
TSMC   SMIC   SMIC

**(g) No Integrated Offering.** Assuming the accuracy of the Acquiror's representations and warranties set forth in Section 2 hereof, none of the Company, any of its affiliates, or any Person acting on their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would require registration of the issuance of any of the Securities under the 1933 Act, whether through integration with prior offerings or otherwise, or cause the offering of Securities hereunder to require approval of shareholders of the Company for purposes of any applicable shareholder approval provisions, including, without limitation, under the rules and regulations of the HKSE and the NYSE. None of the Company, their affiliates and any Person acting on their behalf will take any action or steps referred to in the preceding sentence that would require registration of the issuance of any of the Securities under the 1933 Act or cause the offering of the Securities to be integrated with other offerings for purposes of any such applicable shareholder approval provisions.

**(h) Public Documents.** The Company has timely filed all reports, schedules, forms, statements and other documents required to be filed by it with the SEC pursuant to the reporting requirements of the 1934 Act or with the HKSE and has timely issued all announcements and circulars required to be issued by it by the HKSE or the NYSE (all of the foregoing filed or announced prior to the date of this Agreement and all exhibits included therein and financial statements, notes and schedules thereto and documents and incorporated by reference therein being hereinafter referred to as the "**Public Documents**"). As of their respective filing or issuance dates, the Public Documents complied in all material respects with the requirements of the 1934 Act and the rules and regulations of the SEC promulgated thereunder and the rules and regulations of the HKSE and the NYSE, as applicable to the respective Public Documents, and, other than as corrected or clarified in a subsequent Public Document, none of the Public Documents, at the time they were filed or issued, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

**(i) Financial Statements.** The consolidated financial statements (including any related notes thereto) included or incorporated by reference in the Public Documents fairly presented in all material respects the consolidated financial position of the Company and its consolidated subsidiaries as of the dates indicated therein and the consolidated results of their operations for the periods specified therein, other than as corrected or clarified in a subsequent Public Document. Such financial statements were prepared in material conformity with accounting principles generally accepted in the United States of America ("**GAAP**") applied on a materially consistent basis (except as may be noted therein). The Company and its subsidiaries do not have any liabilities or obligations required under GAAP to be set forth on a consolidated balance sheet (accrued, absolute, contingent or otherwise), other than (i) liabilities or obligations reflected on, reserved against, or disclosed in the Company's balance sheet as of June 30, 2009, (ii) liabilities or obligations that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and (iii) liabilities incurred since June 30, 2009 in the ordinary course of business consistent with past practices and any liabilities incurred pursuant to this Agreement.

*RSC* *BLF* *BLF*  
TSMC SMIC SMIC

(j) **Acknowledgement.** The Company acknowledges and agrees that the foregoing representations and warranties are made by it with the intention that they may be relied upon by the Acquiror and that the representations of the Acquiror set forth in Section 2(d) hereof (Information) shall in no way limit such reliance or the benefits thereof.

**4. Covenants.**

(a) **Commercially Reasonable Efforts.** Each party shall use its commercially reasonable efforts to satisfy each of the conditions to Closing set forth in Section 5 below as soon as practicable.

(b) **Regulatory Filings.** Without limiting the generality of Section 4(a) above, the Company and the Acquiror shall use their respective commercially reasonable efforts to obtain all governmental approvals required to complete the transactions contemplated by this Agreement and, as promptly as practicable after the date hereof, the Company and the Acquiror shall make all filings, notices, petitions, statements, registrations, submissions of information, application or submission of other documents required by any Governmental Entity in connection with this Agreement and the transactions contemplated hereby. The Company and the Acquiror will notify one another promptly upon the receipt of (i) any comments from any officials of any Governmental Entity in connection with any filings made pursuant hereto and (ii) any requests by any officials of any Governmental Entity for amendments or supplements to, or additional information in connection with, any filings made pursuant hereto. In addition, the Company and the Acquiror shall each use their commercially reasonable efforts to furnish such information, supply such documents, give such undertakings and do all such acts and things as may reasonably be required by any Governmental Entity in relation to or arising out of the transactions contemplated hereby.

(c) **Listing.** The Company shall use its commercially reasonable efforts to promptly secure the listing of, and permission to deal in, the New Common Shares and the Warrant Shares on the HKSE as promptly as practicable after the date hereof and shall use commercially reasonable efforts to maintain such listing of and permission to deal in such Common Shares, so long as any Common Shares shall be so listed. The Company shall pay all fees and expenses in connection with satisfying its obligations under this Section 4(c).

(d) **Fees.** Each party shall bear its own expenses in connection with the transactions contemplated hereby.

(e) **Standstill.** At any time following the date of this Agreement:

(i) Except with the prior approval of the Board, for so long as the Acquiror holds any of the Securities, the Acquiror shall not, and shall cause its controlled affiliates not to, directly or indirectly, acquire or agree to acquire any Voting Securities, except:

(1) Voting Securities acquired by way of share splits, share dividends or other distributions or offerings made available to holders of Voting Securities generally;

(2) the Securities purchased by Acquiror pursuant to this Agreement;

ASC   BLF   BLF  
TSMC   SMIC   SMIC

(3) the Warrant Shares issuable upon exercise of the Warrant; and

(4) Voting Securities acquired in compliance with Section 4(g) hereof.

**“Voting Securities”** shall mean the Common Shares of the Company, and any other security carrying voting rights in the Company and any outstanding convertible securities, options, warrants or other rights which are convertible into or exchangeable or exercisable for, or carrying rights of subscription for, securities carrying voting rights in the Company.

(ii) Except with the prior approval of the Board or as specifically permitted by Section 4(e)(i) above, for so long as the Acquiror holds any of the Securities, the Acquiror shall not, and shall cause its controlled affiliates not to:

(1) make, effect, initiate, cause or in any way participate directly or indirectly in (i) any acquisition of beneficial ownership of any Voting Securities of the Company or any Voting Securities of any subsidiary or other affiliate of the Company, (ii) any acquisition of any assets of the Company or any assets of any subsidiary or other affiliate of the Company, or (iii) any tender offer, exchange offer, merger, business combination, recapitalization, restructuring, liquidation, dissolution or extraordinary transaction involving the Company or any subsidiary or other affiliate of the Company, or involving any securities or assets of the Company or any securities or assets of any subsidiary or other affiliate of the Company;

(2) make, effect, initiate, cause or in any way participate directly or indirectly in any “solicitation” of “proxies” (as such terms are used in the rules of the SEC) to vote any Voting Securities of the Company or any subsidiary thereof, or seek to advise or influence any Person with respect to the voting of any Voting Securities of the Company or any subsidiary thereof;

(3) make any public announcement with respect to, or submit a proposal for or offer of (with or without conditions) any merger, recapitalization, reorganization, business combination or other extraordinary transaction involving the Company or any subsidiary thereof or any of their securities or assets;

(4) enter into any discussions, negotiations, arrangements or understandings with any third party with respect to any of the foregoing, or otherwise form, join or in any way engage in discussions relating to the formation of, or participate in, any “group”, as such term is interpreted under Rule 13d-5(b)(1) under the 1934 Act in connection with any of the foregoing;

(5) take any action that might require the Company to make a public announcement regarding any of the types of matters set forth in clause “(1)”, clause “(2)” or clause “(3)” of this sentence;

RSC   BLF   BLF  
TSMC   SMIC   SMIC

(6) agree or offer to take, or encourage or propose (publicly or otherwise) the taking of, any action referred to in clause “(1)”, clause “(2)”, clause “(3)”, clause “(4)”, or clause “(5)” of this sentence;

(7) assist, induce or encourage any other Person to take any action of the type referred to in clause “(1)”, clause “(2)”, clause “(3)”, clause “(4)”, clause “(5)” or clause “(6)” of this sentence;

(8) deposit any Voting Securities in a voting trust or subject them to a voting agreement or other arrangement of similar effect;

(9) enter into any discussions, negotiations, arrangement or agreement with any other Person related to any of the foregoing; or

(10) request the Company or any of its representatives, directly or indirectly, to amend or waive any provision of this Section 4(e).

(iii) The restrictions imposed by this Section 4(e) shall terminate on the earlier of such time as (A) a tender offer is made by another Person for not less than 50% of the Voting Securities where such tender offer is not subject to financing conditions and is evidenced by applicable filings with appropriate regulatory agencies and tender offer materials have been disseminated to security holders (provided that if such tender offer is not completed within six months of its commencement, the restrictions imposed by this Section 4(e) shall resume at that time and continue in full force and effect in accordance with their terms), (B) another Person acquires 50% or more of the Voting Securities, or (C) the Company enters into a definitive agreement with a Person other than a subsidiary of the Company providing for: (1) a merger, share exchange, business combination or similar extraordinary transaction as a result of which the Persons possessing, immediately prior to the consummation of such transaction, beneficial ownership of the voting securities of the Company entitled to vote generally in elections of directors of the Company, would cease to possess, immediately after consummation of such transaction, beneficial ownership of voting securities entitling them to exercise at least 50% of the total voting power of all outstanding securities entitled to vote generally in elections of directors of the Company (or, if not the Company, the surviving Person resulting from such transaction); (2) a sale, exchange or lease of all or substantially all of the assets of the Company and its subsidiaries (determined on a consolidated basis); or (3) the acquisition (by purchase, merger or otherwise) by any Person (including any syndicate or group deemed to be a “person” under Section 13(d)(3) of the 1934 Act and the rules promulgated thereunder) of beneficial ownership of voting securities of the Company entitling that Person to exercise 50% or more of the total voting power of all outstanding securities entitled to vote generally in elections of directors of the Company (provided that if such agreement is terminated, the restrictions imposed by this Section 4(e) shall resume at that time and continue in full force and effect in accordance with their terms).

RSC BLF BLF  
TSMC SMIC SMIC

**(f) Permitted Methods of Disposition.** Until such time following the Closing as the Acquiror no longer beneficially owns (as such term is used under Rule 13d-3 under the 1934 Act) any of the Securities, the Acquiror shall not offer, pledge, sell, contract to sell, sell any option or contract to purchase, enter into any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any of the Securities, or enter into any swap, hedging or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any of such Securities without the prior approval of the Board, except that the Acquiror may sell the New Common Shares and the Warrant Shares:

(i) through open market transactions through the facilities of the HKSE, provided that the amount sold through such market transactions during any three month period do not exceed (1) 1% of the total outstanding Common Shares or (2) if greater, the average weekly reported volume of trading in the Common Shares on the HKSE during the four calendar weeks preceding the last sale; or

(ii) through one or more block trades or privately arranged sales, provided that in the reasonable determination of the Acquiror (1) none of the buyers is a competitor of the Company and (2) none of the buyers would beneficially own more than 5% of the outstanding Common Shares following its purchase.

**(g) Pre-emptive Rights.** If the Company proposes, following the date hereof, to issue any new Common Shares, any securities convertible or exchangeable into Common Shares, or any warrants or other rights to subscribe for Common Shares (“**Relevant Securities**”), the Company shall notify Acquiror in writing of such proposal (an “**Issue Notice**”). The Issue Notice shall specify the number and type of Relevant Securities to be offered by the Company and the material terms of the proposed offer (including the proposed price per Relevant Security to be paid by the proposed third party purchaser(s)).

(i) Subject to Section 4(g)(vi) below, the Acquiror shall have the right to purchase such number of the Relevant Securities which are the subject of the Issue Notice so as to enable the Acquiror to hold, after the issue of the Relevant Securities, a pro rata portion of the Relevant Securities equal to the percentage of the issued share capital of the Company then beneficially owned by the Acquiror prior to the issuance of the Relevant Securities, provided that the Acquiror maintains an ownership interest equal to at least half of the New Common Shares acquired hereunder (as appropriately adjusted for share splits, share consolidation, share dividends, recapitalizations and the like), in each case upon the same terms and conditions set forth in the Issue Notice, by giving written notice to the Company of the exercise of this right within ten (10) Business Days (as defined below) of the giving of the Issue Notice. If such notice is not given by the Acquiror within such ten (10) Business Days (as defined below), the Acquiror shall be deemed to have elected not to exercise its rights under this Section 4(g) with respect to the issuance described in that specific Issue Notice. The parties acknowledge that any rights of the Acquiror to purchase the Relevant Securities pursuant to this Section 4(g) will lapse if completion thereof does not occur simultaneously with the Acquiror’s completion of the offering of Relevant Securities (or such later date as specified in Section 4(g)(vi) below) or at such other time and place as shall be mutually agreed by the Company and the Acquiror, provided that if the reason for the Acquiror’s failure to complete by the time specified above is solely due to a delay of the Governmental Entity in granting the relevant authorizations, approvals, permits, qualifications or exemptions, the Acquiror shall notify the Company in writing at least seven (7) days prior to the completion of the offering of the Relevant Securities to extend the completion date for Acquiror to a date within three (3) months or such other reasonable period as may be mutually agreed between the parties following the completion of the issue of the Relevant Securities, after such period the right of the Acquiror to purchase the Relevant Securities pursuant to this Section 4(g) shall lapse. A notice given by the Acquiror pursuant to this Section 4(g) shall be irrevocable.

RSC BLK BLF  
TSMC SMIC SMIC

(ii) Subject to Section 4(g)(i) above, the completion of the Acquiror's purchase of Relevant Securities pursuant to this Section 4(g) shall occur simultaneously with the completion of the offering of Relevant Securities. For the avoidance of doubt, the completion by the Company of the offering of the Relevant Securities shall not be affected by the timing of the completion of any issue of the Relevant Securities to the Acquiror. The Acquiror shall execute and deliver to the Company all transaction documents related to Acquiror's purchase of Relevant Securities as may be reasonably requested by the Company prior to the completion of the Acquiror's purchase of Relevant Securities. At such completion, the Acquiror shall deliver the aggregate purchase price for the Relevant Securities to be purchased by the Acquiror pursuant to this Section 4(g).

(iii) Any Common Shares issued to the Acquiror pursuant to this Section 4(g) shall be issued on the same terms and subject to the same conditions as the Relevant Securities are issued to any proposed third party purchaser(s), such terms and conditions being set out in the Issue Notice.

(iv) The provisions of Section 4(g)(i) to (iii) shall not apply to:

(1) the grant of any options, or the issue of any Relevant Securities pursuant to the exercise of share options granted (whether prior to or after the date of this Agreement), pursuant to any share purchase or share option plans of the Company in effect from time to time;

(2) the issue of any Relevant Securities pursuant to any share incentive scheme operated by the Company from time to time;

(3) the issue of any Common Shares or other securities pursuant to the conversion, exchange or exercise of any securities that were previously offered and/or issued to the Acquiror as Relevant Securities;

(4) any offer of the Relevant Securities open for a period fixed by the Board to holders of Common Shares on the register of members on a fixed record date in proportion to their then holdings of Common Shares; provided that such offer of Relevant Securities is also made to the Acquiror;

(5) an issue of Common Shares as fully paid to holders of Common Shares (including without limitation, Common Shares paid up out of distributable profits or reserves and/or share premium account issued in lieu of the whole or any part of any cash dividend and free distributions or bonus issue of Common Shares); provided that such issuance of Common Shares is also made to the Acquiror;

RSC BLF BLF  
TSMC SMIC SMIC

(6) an issue of the Relevant Securities pursuant to the acquisition of another corporation by the Company by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement; provided that such issuance is approved by the Board;

(7) an issue of the Relevant Securities to banks, equipment lessors or other financial institutions pursuant to a commercial leasing or commercial loan transaction approved by the Board;

(8) an issue of Relevant Securities in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships approved by the Board; or

(9) an issue of Relevant Securities to suppliers or third party service providers in connection with the provisions of goods or services pursuant to transactions approved by the Board.

(v) The rights set forth in this Section 4(g) shall not apply with respect to and shall expire immediately prior to a transaction that would result in a change of control (as such term is defined under the Hong Kong Takeovers Code).

(vi) The Company and Acquiror acknowledge and agree that the Acquiror's exercise of the rights in this Section 4(g) shall in all cases be subject to compliance with the rules, regulations, laws and requirements of applicable government and regulatory bodies, including the Hong Kong Listing Rules, the Hong Kong Takeovers Code, the Stock Exchange of Hong Kong Limited and the Securities and Futures Commission of Hong Kong (including, where applicable, any requirements to obtain the approval of the shareholders of the Company) ("**Applicable Law**"), and shall take such steps reasonably necessary to give effect to the rights contained in this Section 4(g) in compliance with Applicable Law, provided that all costs and expenses (including, without limitation, reasonable legal fees and expenses) incurred by the Company shall be resolved in a manner consistent with any terms agreed to by the Company and the other potential investor(s) with respect to the issuance described in the relevant Issue Notice. In the case of any issuance of Relevant Securities prior to the consummation of the Closing, the issuance of the Relevant Securities to be acquired by the Acquiror pursuant to this Section 4(g) shall be deferred until, and shall be conditioned upon, the consummation of the Closing.

**(h) Voting Rights.** The Acquiror agrees to vote all Common Shares held by the Acquiror or any controlled affiliate of the Acquiror to be voted on all matters submitted to a vote of the Company shareholders in such manner as recommended by the Board, other than in the case of any matter related to proposed Change of Control (as defined in the 2009 Settlement Agreement) of the Company, with respect to which the Acquiror and its controlled affiliates shall be free to vote in any manner they determine in their sole discretion.

RSC   BLF   BLF  
TSMC   SMIC   SMIC

(i) **Waiver of Information.** The Acquiror agrees that the Company shall not be obligated to provide the Acquiror with any information that is not otherwise publicly available, and the Acquiror waives any right to any such information.

(j) **Board Seats.** The Acquiror acknowledges that the Acquiror is not entitled to designate any member to the Board in connection with the transactions contemplated hereby.

**5. Conditions to Closing.** The consummation of the Closing shall be subject to the satisfaction of the following conditions:

(a) **Governmental Approvals.** The Acquiror and the Company shall have obtained each of the governmental authorizations and approvals identified in Schedule 5(a) hereto.

(b) **HKSE Listing.** The Company shall have obtained approval for the listing of, and permission to deal in, the New Common Shares and the Warrant Shares, and for the issue of the Warrants, from the HKSE and such approvals shall not have subsequently been revoked prior to Closing.

(c) **Absence of Prohibition.** No legislative body, court, administrative agency or commission or other governmental authority, instrumentality, agency or commission shall have enacted, issued, promulgated, enforced or entered any law or governmental regulation or order which has the effect of prohibiting the sale and issuance of the Securities.

**6. Alternative Transaction.** In the event the conditions to Closing set forth in Section 5 above have not been satisfied prior to June 30, 2010, at any time after such date, but in any event not later than the third anniversary of the date of this Agreement (such period, the “**Election Period**”), the Acquiror may elect, in its discretion, to direct the Company to effect the following transactions (the “**Alternative Transaction**”) in lieu of the issuance of the Securities to the Acquiror as contemplated hereby:

(a) **Election.** The Acquiror will provide to the Company written notice of its election to cause the Company to effect the Alternative Transaction no later than the expiration of the Election Period.

RSC   BLF   BLF  
TSMC   SMIC   SMIC

**(b) Share Placing or Share Offering.** Within 60 days of receipt of such written notice pursuant to Section 6(a), subject to reasonable deferral if, in the good faith judgment of the Board, the filing of a registration statement or the making of an application for the approval for the listing of, and permission to deal in, the Common Shares would be materially detrimental to the Company and the Board concludes, as a result, that it is in the best interests of the Company to defer the Share Placing or the Share Offering, the Company shall use all reasonable efforts to initiate, at its option, a primary, firm commitment placing involving the obtaining of subscriptions by or on behalf of the Company from institutional investors identified by the placing agent (the “**Share Placing**”) or a primary, firm commitment, fully underwritten public offering (the “**Share Offering**”), in either case, of a number of Common Shares equal to the New Common Shares and shall complete the Share Placing or the Share Offering as soon as reasonably practicable thereafter. The placing agent (in the case of a Share Placing) or the managing underwriter (in the case of a Share Offering) will be an internationally recognized investment banking firm reasonably acceptable to the Acquiror. The price at which the Common Shares will be sold to the institutional investors (in the case of a Share Placing) or the public (in the case of a Share Offering) will be such price as is recommended to the Company and the Acquiror by such investment banking firm in its professional judgment. All material terms of the Share Placing or the Share Offering, including the compensation arrangement of the placing agent or underwriters, will be subject to the approval of the Acquiror, which approval shall not be unreasonably withheld. The cash proceeds of the Share Placing or the Share Offering, net of commissions of the placing agent (in the case of a Share Placing) or the underwriters’ discounts (in the case of a Share Offering), shall be transmitted to the Acquiror by wire transfer to the account specified by the Acquiror immediately upon the consummation of the Share Placing or the Share Offering. All other expenses of the Share Placing or the Share Offering, including counsel fees and agent expenses, shall (i) in the event the Closing fails to occur due to the inability of the Acquiror to secure required approvals of the Republic of Taiwan Investment Commission of MOEA (Ministry of Economic Affairs), as contemplated by Section 5(a), be borne by the Acquiror, up to a maximum of US\$100,000, with any excess to be borne by the Company, and (ii) in all other cases, be borne entirely by the Company.

**(c) Warrant Placing or Warrant Offering.** Additionally, at any time following receipt of such written notice and prior to the expiration of the Election Period, provided that the average closing price of the Common Shares on the HKSE during the immediately preceding thirty (30) trading days (the “**Average Price**”) exceeds the per share exercise price that would then be payable under the terms of the Warrant had the Warrant been issued hereunder on the date of this Agreement (the “**Exercise Price**”), the Acquiror may deliver to the Company a written notice directing the Company to initiate, at the option of the Company, a further primary, firm commitment placing involving the obtaining of subscriptions from institutional investors identified by the placing agent (the “**Warrant Placing**”) or primary, firm commitment, fully underwritten public offering (the “**Warrant Offering**”), in either case, with respect to a number of Common Shares equal to the Warrant Shares that would have been issuable on exercise of the Warrant on such date had the Warrant been issued on the date of this Agreement. Within 60 days of receipt of such notice, the Company shall either:

(i) use all reasonable efforts to initiate, at the option of the Company, a Warrant Placing or a Warrant Offering, provided that the Warrant Offering may be reasonably deferred if, in the good faith judgment of the Board, the filing of the registration statement or the making of an application for the approval for the listing of, and permission to deal in, the Common Shares would be materially detrimental to the Company and the Board concludes, as a result, that it is in the best interests of the Company to defer the Warrant Placing or the Warrant Offering, and shall complete the Warrant Placing or the Warrant Offering as soon as reasonably practicable thereafter. The placing agent (in the case of a Warrant Placing) or the managing underwriter (in the case of a Warrant Offering) will be an internationally recognized investment banking firm reasonably acceptable to the Acquiror. The price at which the Common Shares will be sold to the institutional investors (in the case of a Warrant Placing) or the public (in the case of a Warrant Offering) will be such price as is recommended to the Company and the Acquiror by such investment banking firm in its professional judgment. All material terms of the Warrant Placing or the Warrant Offering, including the compensation arrangement of placing agent or underwriters, will be subject to the approval of the Acquiror, which approval shall not be unreasonably withheld. The cash proceeds of the Warrant Offering, net of commissions of the placing agent (in the case of a Warrant Placing) or the underwriters’ discounts (in the case of Warrant Offering) and the aggregate Exercise Price attributable to the Common Shares sold in the offering (which Exercise Price shall be payable to the Company), shall be transmitted to the Acquiror by wire transfer to the account specified by the Acquiror immediately upon the consummation of the Warrant Placing or the Warrant Offering. All other expenses of the Warrant Placing or the Warrant Offering, including counsel fees and agent expenses, shall (A) in the event the Closing fails to occur due to the inability of the Acquiror to secure required approvals of the Republic of Taiwan Investment Commission of MOEA (Ministry of Economic Affairs), as contemplated by Section 5(a), be borne by the Acquiror, up to a maximum of US\$100,000, with any excess to be borne by the Company, and (B) in all other cases, be borne entirely by the Company; or



(ii) transmit to the Acquiror, by wire transfer, a cash sum equal to the product of (A) the positive difference between the Average Price and the Exercise Price and (B) the number of Common Shares that would have been issuable on exercise of the Warrant on such date if the Warrant had been issued on the date of this Agreement.

**(d) Satisfaction of Obligations.** Upon remittance of all proceeds due and owing to the Acquiror upon consummation of the Share Placing or the Share Offering, the Company's obligations to issue the New Common Shares hereunder shall terminate and be of no further force and effect. Upon remittance of all proceeds due and owing to the Acquiror upon consummation of the Warrant Placing or the Warrant Offering or the payment to the Acquiror of the amount provided in Section 6(c)(ii) above, the Company's obligations to issue the Warrant or the Warrant Shares hereunder shall terminate and be of no further force and effect. In addition, the obligations of the Company to issue the New Common Shares or the Warrant hereunder, to the extent that such obligations have not been previously satisfied as a result of the failure of one or more conditions to the Closing hereunder, shall terminate upon the delivery of written notice of an election by the Acquiror to have the Company complete the Alternative Transactions or the expiration of the Election Period.

**7. Miscellaneous.**

**(a) Governing Law; Arbitration.** All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed in accordance with the laws of Hong Kong. Any dispute, controversy or claim arising out of or relating to this Agreement, or the interpretation, breach, termination or validity hereof, shall be submitted to arbitration upon the request of any party with notice to the other parties. The arbitration shall be conducted in Hong Kong under the auspices of the Hong Kong International Arbitration Centre (the "HKIAC") in accordance with the UNCITRAL Arbitration Rules ("UNCITRAL Rules") in effect, which rules are deemed to be incorporated by reference into this Section 7(a). There shall be three (3) arbitrators. The complainant and the respondent to such dispute shall each select one arbitrator within thirty (30) days after giving or receiving the demand for arbitration. The Chairman of the HKIAC shall select the third arbitrator, who shall be qualified to practice law in Hong Kong. If either party to the arbitration does not appoint an arbitrator who has consented to participate within thirty (30) days after selection of the first arbitrator, the relevant appointment shall be made by the Chairman of the HKIAC. The arbitration proceedings shall be conducted in English. Each party hereto shall cooperate with any party to the dispute in making full disclosure of and providing complete access to all information and documents requested by such party in connection with such arbitration proceedings, subject only to any confidentiality obligations binding on the party receiving the request. Each party irrevocably waives, to the fullest extent it may effectively do so, any objection which it may now or hereafter have to the laying of venue of any such arbitration in Hong Kong and the HKIAC, and hereby submits to the exclusive jurisdiction of HKIAC in any such arbitration. The award of the arbitration tribunal shall be conclusive and binding upon the disputing parties, and any party to the dispute may apply to a court of competent jurisdiction for enforcement of such award. Any party to the dispute shall be entitled to seek preliminary injunctive relief, if possible, from any court of competent jurisdiction pending the constitution of the arbitral tribunal.

RSC   BLF   BLF  
TSMC   SMIC   SMIC

**(b) Effect of Completion.** Without prejudice to other provisions of this Agreement, the representation, warranty, covenant or undertaking (the “**Warranties**”) contained in this Agreement shall remain in full force and effect notwithstanding Closing or the consummation of the Alternative Transaction and shall remain operative and in full force and effect until the expiration of the applicable statute of limitations, regardless of (i) any investigation, or statement as to the results thereof, made by or on behalf of the Acquiror and (ii) acceptance of the New Common Shares, Warrant, or Warrant Shares or the proceeds of the Share Placing, the Share Offering, the Warrant Placing or the Warrant Offering, except as waived or released by the party entitled to enforce such Warranties. For the avoidance of doubt, the agreements and covenants set forth in Section 4 and this Section 7 shall survive in accordance with their terms.

**(c) Waivers.** No delay or omission by any party to this Agreement in exercising any right, power or remedy provided by law or under this Agreement or any other documents referred to in it shall: (i) affect that right, power or remedy; or (ii) operate as a waiver thereof. The single or partial exercise of any right, power or remedy provided by law or under this Agreement shall not preclude any other or further exercise or any other right, power or remedy.

**(d) Remedies.** Except as otherwise expressly provided in this Agreement, the rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law.

**(e) Specific Enforcement.** The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in any court of competent jurisdiction, without bond or other security being required, this being in addition to any other remedy to which they are entitled at law or in equity.

**(f) Counterparts.** This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party. A facsimile signature shall be considered due execution and shall be binding upon the signatory thereto with the same force and effect as if the signature were an original, not a facsimile signature.

RSC   BLF   BLF  
TSMC   SMIC   SMIC

(g) **Headings.** The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement. “**Business Day**” shall mean a day that is not a Saturday, Sunday or a public holiday in Taiwan, Hong Kong or the People’s Republic of China. “\$” or “dollar” refers to United States dollars.

(h) **Severability.** If any provision of this Agreement shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of any provision of this Agreement in any other jurisdiction.

(i) **Entire Agreement; Amendments.** This Agreement and the other Transaction Documents supersede all other prior oral or written agreements between the Acquiror, the Company, their affiliates and Persons acting on their behalf with respect to the matters addressed herein. This Agreement and the other Transaction Documents and the instruments referenced herein and therein contain the entire understanding of and agreement between the parties with respect to the matters covered herein and, except as specifically set forth herein, neither the Company nor the Acquiror makes any representation, warranty, covenant or undertaking with respect to such matters. In entering into this Agreement and the other Transaction Documents, each party to such agreements acknowledges that it is not relying upon any pre-contractual statement which is not expressly set out in them. No provision of this Agreement may be amended other than by an instrument in writing signed by the Company and the Acquiror. No provision hereof may be waived other than by an instrument in writing signed by the party against whom enforcement is sought. For the purposes of this section, “**pre-contractual statement**” means any draft, agreement, undertaking, representation, warranty, promise, assurance or arrangement of any nature whatsoever, whether or not in writing, relating to the matters covered in this Agreement and/or the other Transaction Documents made or given by any person at any time prior to the date of this Agreement or the other Transaction Documents.

(j) **Notices.** Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); or (iii) one Business Day after deposit with an overnight courier service, in each case properly addressed to the party to receive the same. The addresses and facsimile numbers for such communications shall be:

RSC    BLF    BLF  
TSMC    SMIC    SMIC

If to the Company:

Semiconductor Manufacturing International Corporation

Address: Suite 3003, 30th Floor  
No. 9 Queen's Road Central  
Hong Kong

Telephone: (+852) 2537-8588

Facsimile: (+852) 2537 8206

Attention: Anne Chen/Blondie Poon

*with a copy (for informational purposes only) to:*

Wilson Sonsini Goodrich & Rosati, P.C.

Address: Jin Mao Tower, 38F  
88 Century Boulevard  
Pudong New Area, Shanghai 200121  
People's Republic of China

Telephone: (+86-21) 6165-1700

Facsimile: (+86-21) 6165-1799

Attention: Carmen Chang, Esq.

If to the Acquiror:

Taiwan Semiconductor Manufacturing Company, Ltd.

Address: No. 8 Li-Hsin Road 6, Hsin-Chu Science Park  
Hsin-Chu, Taiwan, Republic of China

Telephone: (+886) 3-5682002

Facsimile: (+886) 3-5678689

Attention: General Counsel

*with a copy (for informational purposes only) to:*

Weil, Gotshal & Manges LLP

Address: 200 Crescent Court, Suite 300  
Dallas, Texas 75201  
United States of America

Telephone: +1 (214) 746 7700

Facsimile: +1 (214) 746 7777

Attention: R. Scott Cohen

RSC BLF BLF  
TSMC SMIC SMIC

**(k) Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Neither party hereto shall assign this Agreement or any rights or obligations hereunder without the prior written consent of the other party hereto; provided, however, that the Acquiror may assign the right to acquire the Securities hereunder to any affiliate so long as such assignment would not reasonably be expected to impose any material delay in the consummation of the transactions contemplated hereunder. If such assignment is made, then all references herein to the Acquiror shall be deemed references to such other entity, except that all representations and warranties made herein with respect to the Acquiror as of the date of this Agreement shall be deemed representations and warranties made with respect to such other entity as of the date of such assignment.

**(l) No Third Party Beneficiaries.** This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

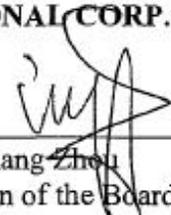
**(m) Further Assurances.** Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

*[Remainder of Page Intentionally Left Blank]*

RSC   BLF   BLF  
TSMC   SMIC   SMIC

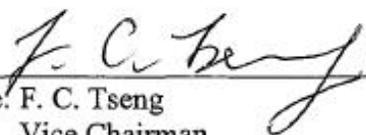
IN WITNESS WHEREOF, the Acquiror and the Company have caused its respective signature page to this Share and Warrant Issuance Agreement to be duly executed as of the date first written above.

**SEMICONDUCTOR MANUFACTURING  
INTERNATIONAL CORP.**

By:   
Name: Jiang Shang Zhou  
Title: Chairman of the Board

By:   
Name: Richard Ru-Gin Chang  
Title: Chief Executive Officer

**TAIWAN SEMICONDUCTOR  
MANUFACTURING COMPANY, LTD.**

By:   
Name: F. C. Tseng  
Title: Vice Chairman

  
TSMC

  
SMIC

  
SMIC

[Signature Page to Share and Warrant Issuance Agreement]

**Schedule 5(a) – Approvals**

Republic of Taiwan Investment Commission of MOEA (Ministry of Economic Affairs)

Any required antitrust approvals, filings or notifications.

RSC   BLF   BLF  
TSMC   SMIC   SMIC

Exhibit A

Warrant Agreement

[Please see attached.]

$\frac{RSC}{TSMC}$   $\frac{BLF}{SMIC}$   $\frac{BLF}{SMIC}$

**WARRANT AGREEMENT**

This WARRANT AGREEMENT, dated as of [\_\_\_\_\_, 20\_\_] (the “**Agreement**”), is made by and between Taiwan Semiconductor Manufacturing Company, Ltd., a Taiwanese corporation having a place of business located at No.8 Li-Hsin Road 6, Hsin-Chu Science Park, Hsin-Chu, Taiwan, Republic of China (the “**Initial Holder**”), and Semiconductor Manufacturing International Corporation, an exempted company incorporated under the laws of the Cayman Islands having a place of business located at No. 18 Zhang Jiang Road, Pudong New Area, Shanghai 201203, People’s Republic of China (the “**Company**”).

WITNESSETH

WHEREAS, the Initial Holder and the Company entered into that certain Settlement Agreement, dated November 9, 2009 (the “**2009 Settlement Agreement**”), whereby the Initial Holder and the Company settled and resolved various litigation and disputes as specified therein;

WHEREAS, in connection with the execution of the 2009 Settlement Agreement, the Initial Holder and the Company entered into that certain Share and Warrant Issuance Agreement dated November 9, 2009 (the “**Share and Warrant Issuance Agreement**”); and

WHEREAS, pursuant to the Share and Warrant Issuance Agreement, the Company proposes to issue warrants (each a “**Warrant**” and collectively, the “**Warrants**”) to initially purchase [695,914,030] validly issued and fully paid common shares, par value US\$.0004 of the Company (the “**Common Shares**, with the Common Shares deliverable upon exercise of the Warrants being referred to herein as the “**Warrant Shares**”).

NOW, THEREFORE, in consideration of the mutual promises, agreements and covenants contained herein, and for other valuable consideration, receipt of which is hereby acknowledged, the Company and the Initial Holder hereby agree as follows:

**ARTICLE I  
DEFINITIONS**

**1.1 Definitions.**

(a) Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Share and Warrant Issuance Agreement.

(b) The following terms shall have the meanings set forth below.

“**Affiliate**” means “affiliate” within the meaning of Rule 144(a)(1) under the Securities Act.



“**Agreement**” shall mean this Warrant Agreement, together with all annexes attached hereto, as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms hereof.

“**Applicable Law**” means any statute, rule, regulation, law or ordinance, or any judgment, decree or order.

“**Assignment Form**” means the assignment form attached as Annex C to a Warrant.

“**Board**” means the board of directors of the Company.

“**Business Day**” means any day that is not a Saturday or Sunday or a day on which banks are required or permitted to be closed in the State of New York, Taiwan or Hong Kong.

“**Capital Stock**” means the Common Shares, and any other shares of the Company.

“**Cash**” means money, currency or a credit balance in a demand deposit account.

“**Common Share Equivalents**” means any Capital Stock, evidence of indebtedness, Options or other securities or rights exercisable for, convertible into or exchangeable for Common Shares (including the Warrants).

“**Common Shares**” has the meaning set forth in the preamble.

“**Company**” has the meaning set forth in the preamble.

“**Delivery Date**” has the meaning given to such term in Section 4.3(a).

“**Distribution**” means, in respect of any Person, (a) the payment or making of any dividend or other distribution of Property in respect of capital stock of such Person or (b) the redemption or other acquisition of any capital stock of such Person.

“**Exchange Form**” means the exchange form attached as Annex B to a Warrant.

“**Exchange Number**” has the meaning given to such term in Section 4.2.

“**Exercise Form**” means the exercise form attached as Annex A to a Warrant.

“**Exercise Price**” means HK\$1.30 per Warrant Share, subject to change from time to time in the manner provided in Article V.

“**Expiration Time**” means 11:59 p.m., Hong Kong Time, on the date that is three (3) years after the date hereof. If such day is not a Business Day, the Expiration Time shall be extended until 11:59 p.m., Hong Kong Time on the next Business Day.

RSC BLF BLF  
TSMC SMIC SMIC

“**Extraordinary Event**” means the occurrence of any sale, transfer, assignment, lease, conveyance or other disposition, directly or indirectly, of all or substantially all of the property of the Company and its subsidiaries, considered as a whole, or the Company merges, consolidates or amalgamates with or into any other Person pursuant to a transaction other than a transaction in which the holders of the outstanding Capital Stock of the Company immediately prior to such transaction own, directly or indirectly, not less than a majority of the Capital Stock of the surviving person immediately after such transaction and in substantially the same proportion as before the transaction.

“**Fair Market Value**” means, with respect to Property, the fair market value of such Property as determined by the Board in good faith as of the date of determination, without discount for lack of liquidity or minority position; provided, however, that if the holder of this Warrant disputes such determination, the fair market value of such Property will be determined, at the expense of the Company, by an internationally recognized investment bank, selected by the Board, with experience in making valuations of such type. Notwithstanding the foregoing, if the Property is then Publicly Traded (or if the Property is not Publicly Traded but a derivative form thereof is Publicly Traded in the form of depositary shares or depositary receipts), then the value shall be deemed to be the average of the closing prices of such Property on such exchange (as reported by Bloomberg) or system over the five (5) trading days immediately prior to the date of determination, which shall be the Delivery Date in the case of exercise of the Warrants.

“**Fully Diluted Basis**” means the number of Common Shares that would be issued and outstanding at such time, assuming full conversion, exercise or exchange of all issued and outstanding Common Share Equivalents and Options that shall be (or may become) exchangeable for, or exercisable for or convertible into, Common Shares, including the exercise of the Warrant for the Warrant Shares.

“**Governing Documents**” means as to any Person, its memorandum and articles of association and/or other applicable constitutional, organizational or governing documents of such Person.

“**Holder**” means with respect to any Warrant, the holder of such Warrant as set forth in the Warrant Register, which as of the date hereof is the Initial Holder.

“**Initial Holder**” has the meaning set forth in the preamble.

“**Lien**” means, with respect to any Property of any Person, any mortgage or deed of trust, pledge, hypothecation, assignment, deposit arrangement, security interest, lien, charge, easement (other than any easement not materially impairing usefulness or marketability), encumbrance, preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever on or with respect to such Property (including any conditional sale or other title retention agreement having substantially the same economic effect as any of the foregoing).

“**Options**” means any warrants, options or other rights to subscribe for or to purchase (a) Capital Stock or (b) Common Share Equivalents.

$\frac{RSC}{TSMC}$   $\frac{BLF}{SMIC}$   $\frac{BLF}{SMIC}$

“**Other Equity Securities**” means any capital stock, other than the Common Shares, Common Share Equivalents or Options.

“**Other Transaction Documents**” means the (a) the Warrant, (b) the Share and Warrant Issuance Agreement and (c) the 2009 Settlement Agreement, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“**Person**” means an individual, sole proprietorship, partnership, limited liability company, joint venture, trust, incorporated organization, association, corporation, institution, public benefit corporation, entity or government (whether federal, state, county, city, municipal or otherwise, including any instrumentality, division, agency, body or department thereof).

“**Property**” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

“**Publicly Traded**” means, with respect to any security, that such security is (a) listed on the Hong Kong Stock Exchange or (b) listed (either directly or indirectly represented by American Depositary Receipts) on the New York Stock Exchange or a similar successor organization.

“**Requisite Holders**” means, as of any date of determination, Holders holding Warrants representing a majority of the Warrant Shares that are either (a) previously issued and are then outstanding or (b) issuable upon exercise of Warrants then outstanding; provided that any Warrants or Warrant Shares held by the Company or its Affiliates shall not be counted in either the numerator or the denominator of the calculation of Requisite Holders. For the purpose of any matter applicable only to Warrants and not Warrant Shares, “**Requisite Holders**” will be Holders holding a majority of Warrants without regard to Warrant Shares.

“**Responsible Officer**” means the Chief Executive Officer, the President, the Chief Financial Officer or any executive officer of such Person.

“**Securities Act**” means the Securities Act of 1933, as amended, of the United States, or any similar United States federal statute, and the rules and regulations of the United States Securities and Exchange Commission thereunder, all as the same shall be in effect at the time.

“**Share and Warrant Issuance Agreement**” has the meaning given to such term in the preamble.

“**Transfer**” means any sale, transfer, assignment, or other disposition of any interest in, with or without consideration, any security, including any disposition of any security or of any interest therein which would constitute a sale thereof within the meaning of the Securities Act.

“**Warrant**” has the meaning set forth in the preamble.

“**Warrant Register**” has the meaning given to such term in Section 3.1(b).

“**Warrant Shares**” has the meaning set forth in the preamble.

$\frac{RSC}{TSMC}$   $\frac{BLF}{SMIC}$   $\frac{BLF}{SMIC}$

**1.2 Rules of Construction.**

The definitions in Section 1.1 shall apply equally to the singular and plural forms of the terms defined. The words “**include**”, “**includes**” and “**including**” shall be deemed to be followed by the phrase “**without limitation**”. The words “**herein**,” “**hereof**,” “**hereunder**” and other words of similar import refer to this Agreement as a whole, including the annexes hereto, as the same may from time to time be amended, restated, supplemented or otherwise modified, and not to any particular section, subsection, paragraph, subparagraph or clause contained in this Agreement. All references to sections, schedules and exhibits mean the sections of this Agreement and the schedules and exhibits attached to this Agreement, except where otherwise stated. The title of and the section and paragraph headings in this Agreement are for convenience of reference only and shall not govern or affect the interpretation of any of the terms or provisions of this Agreement. The use herein of the masculine, feminine or neuter forms shall also denote the other forms, as in each case the context may require. Where specific language is used to clarify by example a general statement contained herein, such specific language shall not be deemed to modify, limit or restrict in any manner the construction of the general statement to which it relates. Any reference to any term contained in any other agreement or other document shall be deemed to be a reference to such term in the applicable agreement or document as in effect as of the date hereof, unless the Requisite Holders have consented to any amendment of such applicable agreement since the date hereof, in which case such reference shall be deemed to be a reference to such term in the applicable agreement or document, as amended through the date of the most recent consent by the Requisite Holders. The language used in this Agreement has been chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any party. “HK\$” shall mean Hong Kong dollars and “US\$” shall mean United States dollars.

**ARTICLE II**  
**ISSUANCE OF WARRANTS AND AUTHORIZATION OF WARRANT SHARES**

**2.1 Issuance of Warrants to Initial Holder; Warrant Agreement.**

The Company shall issue and deliver Warrants, dated as of the date hereof, to the Holder in accordance with this Agreement and the Share and Warrant Issuance Agreement on the Closing Date (as defined in the Share and Warrant Issuance Agreement). The provisions of this Agreement shall apply to all Warrants (and, to the extent applicable, Warrant Shares), and each Holder that is not a party to this Agreement, by its acceptance of a Warrant or a Warrant Share, agrees to be bound by the applicable provisions hereof.

  
TSMC SMIC SMIC

**2.2 Authorization of Warrant Shares.**

From and after the date hereof, the Company shall at all times have authorized, and keep available, free from preemptive or similar rights, taxes, and Liens and charges with the respect to the issue thereof (arising under Cayman Islands law, the Governing Documents or any agreement or instrument to which the Company is a party or subject) for the purpose of enabling it to satisfy any obligation to issue Warrant Shares, upon the exercise or exchange of the Warrants, the number of authorized but unissued Warrant Shares issuable upon exercise or exchange of all outstanding Warrants. The Company shall promptly take all actions necessary to ensure that Warrant Shares shall be duly and validly authorized and, when issued upon exercise or exchange of any Warrant in accordance with the terms hereof, shall be duly and validly issued and fully paid, free and clear of all taxes, Liens (except to the extent of any applicable provisions of this Agreement) and all preemptive or similar rights, and free of restrictions on transfer other than as expressly contemplated by the Other Transaction Documents. If any securities to be authorized for the purpose of exercise of this Warrant require approvals or registrations under applicable securities laws, the Company will use its reasonable best efforts to obtain such approvals or registrations as may be appropriate.

**2.3 No impairment.**

The Company shall not by any action, including amending its Governing Documents or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of the Holder against impairment. Without limiting the generality of the foregoing, the Company will use its best efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof as may be necessary to enable the Company to perform its obligations under this Warrant. Upon request of the Holder, the Company will at all times during the period this Warrant is outstanding acknowledge in writing, in form satisfactory to the Holder, the continuing validity of this Warrant and the obligations of the Company hereunder.

**ARTICLE III  
CERTAIN ADMINISTRATIVE PROVISIONS**

**3.1 Form of Warrant; Register.**

(a) Each Warrant issued hereunder shall be in the form of Exhibit A attached hereto (each, a “**Warrant**”) and shall be executed on behalf of the Company by a Responsible Officer of the Company. Each Warrant shall bear the legend(s) appearing on the first page of such form, except that the Company shall promptly remove any such legend from a Warrant from and after such time as all the restrictions to which such legend relates no longer apply. Upon initial issuance, each Warrant shall be dated as of the date of signature thereof by the Company. Irrespective of any adjustments in the Exercise Price or the number or kind of Common Shares or other Property issuable upon the exercise of the Warrants, any Warrants theretofore or thereafter issued may, as a matter of form, continue to express the same Exercise Price and the same number of Warrant Shares issuable upon the exercise of such Warrants as were stated in the Warrants initially issued pursuant the Share and Warrant Issuance Agreement, however such adjustments that have theretofore been made shall nevertheless be binding and effective.

RSC   BLF   BLF  
TSMC   SMIC   SMIC

(b) Each Warrant issued, exchanged or Transferred hereunder shall be registered in a warrant register (the “**Warrant Register**”) maintained at the principal office of the Company, in which register the Company shall record the name and address of the Person in whose name this Warrant has been issued, as well as the name and address of each successor and prior owner of such Warrant. The Warrant Register shall set forth (i) the number of each Warrant, (ii) the name and address of the Holder thereof, (iii) the original number of Warrant Shares purchasable upon the exercise thereof, (iv) the number of Warrant Shares purchasable upon the exercise thereof, as adjusted from time to time in accordance with this Agreement, and (v) the Exercise Price for each Warrant Share, as adjusted from time to time in accordance with this Agreement. The Warrant Register will be maintained by the Company and will be available for inspection by any Holder at the principal office of the Company or such other location as the Company may designate to the Holders in the manner set forth in Section 7.1. The Company shall be entitled to treat the Holder of any Warrant as the owner in fact thereof for all purposes and shall not be bound to recognize any equitable or other claim to or interest in such Warrant on the part of any other Person. The Company may, with the written consent of the Holder (such consent not to be unreasonably withheld), appoint a transfer agent or other agency with an office in Hong Kong to be the transfer agent and registrar for the Common Shares as the Company’s agent for the purpose of (a) maintaining the register described herein, (ii) issuing Common Shares on the exercise of this Warrant pursuant to Section 4.1, (iii) exchanging this Warrant pursuant to Section 3.2, and (iv) replacing this Warrant pursuant to Section 3.2.

### **3.2 Exchange of Warrants for Warrants.**

(a) The Holder may exchange any Warrant issued hereunder for another Warrant of like kind and tenor representing in the aggregate the right to purchase the same number and class or series of Warrant Shares that could be purchased pursuant to the Warrant being so exchanged. In order to effect an exchange permitted by this Section 3.2, the Holder shall deliver to the Company such Warrant accompanied by a written request signed by the Holder thereof specifying the number and denominations of Warrants to be issued in such exchange and, subject to the transfer restrictions contained in the Other Transaction Documents, the names in which such Warrants are to be issued. As promptly as practicable but in any event within two (2) Business Days of receipt of such a request, the Company shall, without charge, issue, register and deliver to the Holder thereof each Warrant to be issued in such exchange and make any necessary changes to the Warrant Register.

(b) Upon receipt of evidence reasonably satisfactory to the Company (an affidavit of the Holder being satisfactory) of the ownership and the loss, theft, destruction or mutilation of any Warrant, and in the case of any such loss, theft or destruction, upon receipt of an indemnity reasonably satisfactory to the Company (if the Holder is a financial institution or other institutional investor, its own indemnity agreement being satisfactory) or, in the case of any such mutilation, upon surrender of such Warrant, the Company shall, without charge, issue, register and deliver in lieu of such Warrant a new Warrant of like kind representing the same rights represented by, and dated the date of, such lost, stolen, destroyed or mutilated Warrant. Any such new Warrant shall constitute an original contractual obligation of the Company, whether or not the allegedly lost, stolen, mutilated or destroyed Warrant shall be at any time enforceable by any Person.

RSC BLK BLF  
TSMC SMIC SMIC

**3.3 Mechanics of Transfer of Warrants.**

(a) Subject to the further provisions of this Agreement, the Other Transaction Documents and applicable securities laws, each Warrant may be Transferred, in whole or in part, by the Holder thereof by delivering to the Company such Warrant accompanied by a properly completed, duly executed, Assignment Form. As promptly as practicable but in any event within two (2) Business Days of receipt of such Assignment Form, the Company shall, without charge, issue, register and deliver to the Holder thereof a new Warrant of like kind and tenor representing in the aggregate the right to purchase the same number of Warrant Shares that could be purchased pursuant to the Warrant being Transferred. Any Warrant, if properly assigned in compliance with the provisions hereof, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

(b) At the request of the Company, any Person to whom a Warrant is Transferred in accordance with this Article III shall execute and deliver to the Company the assignment form in the form of Annex C to the Warrant pursuant to which such Person agrees to become a party to, and to be bound by the terms of and entitled to the benefits under this Agreement.

**ARTICLE IV  
EXERCISE OF WARRANT; EXCHANGE FOR WARRANT SHARES**

**4.1 Exercise of Warrants; Expiration.**

(a) On any Business Day on or prior to the Expiration Time, a Holder may exercise a Warrant, in whole or in part, by delivering to the Company such Warrant accompanied by a properly completed Exercise Form and consideration in the form set forth in Section 4.1(b) in an aggregate amount equal to the product of (x) the Exercise Price and (y) the number of Warrant Shares being purchased. Any partial exercise of a Warrant shall be for a whole number of Warrant Shares only.

(b) Upon exercise of a Warrant, in whole or in part, the Holder thereof shall deliver to the Company the aggregate Exercise Price:

(i) by wire transfer of immediately available funds to a bank account designated by the Company or a certified check payable to the Company;

(ii) by surrender of a number Warrant Shares having a Fair Market Value equal to the aggregate Exercise Price; or

(iii) a combination of the methods set forth in clauses (i) and (ii).

(c) A Warrant shall terminate and become void as of the earlier of (x) the Expiration Time and (y) the date such Warrant is exercised in full.

RSC   BLF   BLF  
TSMC   SMIC   SMIC

#### 4.2 Exchange for Warrant Shares.

On any Business Day on or prior to the Expiration Time, a Holder may exchange a Warrant, in whole or in part, for Warrant Shares by delivering to the Company such Warrant accompanied by a properly completed Exchange Form. The number of Warrant Shares to be received by a Holder upon such exchange shall be equal to the number of Warrant Shares allocable to the portion of the Warrant being exchanged (the “Exchange Number”), as specified by such Holder in the Exchange Form, minus a number of Warrant Shares equal to the quotient obtained by dividing (i) the product of (x) the Exercise Price and (y) the Exchange Number by (ii) the Fair Market Value of one Warrant Share as of the Delivery Date.

#### 4.3 Issuance of Warrant Shares.

(a) **Issuance of Warrant Shares.** As promptly as practicable but in any event within two (2) Business Days following the first date on which each of the following items has been delivered to the Company (the “**Delivery Date**”): (i) an Exercise Form or Exchange Form in accordance with Section 4.1 or 4.2, (ii) the related Warrant and (iii) any required payment of the Exercise Price, the Company shall, without charge, upon compliance with the applicable provisions of this Agreement, issue to such Holder one or more stock certificates or other appropriate evidence of ownership of the aggregate number of Warrant Shares to which the Holder of such Warrant is entitled and the other securities or Property (including any Cash) to which such Holder is entitled, in such denominations, and registered or otherwise placed in, or payable to the order of, such name as may be directed in writing by such Holder. The Company shall deliver such stock certificates or evidence of ownership and any other securities or Property (including any Cash) to the Person entitled to receive the same, together with an amount in Cash in lieu of any fraction of a Warrant Share (or fractional interest in any other security), as hereinafter provided. If any securities included in the Warrant Shares are Publicly Traded, then at the request of such Holder, the Company shall use commercially reasonable efforts to cause its transfer agent to electronically transmit such securities to such Holder through the Depository Trust Company’s Deposit/Withdrawal at Custodian system or the Central Clearing and Settlement System of the Hong Kong Exchanges and Clearing Limited market system, or similar organization, as applicable.

(b) **Partial Exercise or Exchange.** If a Holder shall exercise or exchange a Warrant for less than all of the Warrant Shares that could be purchased or received thereunder, the Company shall issue, register and deliver to the Holder, as promptly as practicable but in any event within two (2) Business Days following the Delivery Date, a new Warrant evidencing the right to purchase the remaining Warrant Shares represented by such Warrants. In the case of an exchange pursuant to Section 4.2, the number of remaining Warrant Shares represented by such Warrant shall be the original number of Warrant Shares subject to the Warrant so exchanged reduced by the Exchange Number. Each Warrant surrendered pursuant to Section 4.1 or 4.2 shall be cancelled.

(c) **Fractional Shares.** The Company shall not be required to issue fractional Warrant Shares or fractional units of any other security upon the exercise or exchange of a Warrant. If any fraction of a Warrant Share or fractional unit of any other security would be issuable on the exercise or exchange of any Warrant, the Company may, in lieu of issuing such fraction of a Warrant Share or fractional unit, pay to such Holder for any such fraction an amount in Cash equal to the product of (x) such fraction and (y) the Fair Market Value for one Warrant Share or for a unit of such other security, as the case may be, as of the Delivery Date.

RSC BLF BLF  
TSMC SMIC SMIC

(d) **Record Ownership.** To the extent permitted by Applicable Laws, the Person in whose name any certificate for Warrant Shares or other evidence of ownership of any other security is issued upon exercise or exchange of a Warrant shall for all purposes be deemed to have become the holder of record of such Warrant Shares or other security on the Delivery Date, irrespective of the date of delivery of such certificate or other evidence of ownership (subject, in the case of any exercise to which Section 4.3(f) applies, to the consummation of a transaction upon which such exercise is conditioned, in which case the date of fulfillment of all conditions shall be deemed to be the date that such Holder shall for all purposes be deemed to have become a holder of record of such Warrant Shares), notwithstanding that the transfer books of the Company shall then be closed or that such certificates or other evidence of ownership shall not then actually have been delivered to such Person.

(e) **Listings.** The Company shall promptly take all action that may be necessary so that any such securities, immediately upon their issuance upon exercise or exchange of Warrants, will be listed on the Hong Kong Stock Exchange, if any other securities of the Company of the same class or type are then so listed or quoted.

(f) **Conditional Exercise or Exchange.** Any Exercise Form or Exchange Form delivered under Section 4.1 or 4.2 may condition the exercise or exchange of any Warrant on the consummation of a transaction being undertaken by the Company or the Holder of such Warrant, and such exercise or exchange shall not be deemed to have occurred except concurrently with the consummation of such transaction, except that, for purposes of determining whether such exercise or exchange is timely, it shall be deemed to have occurred on the Delivery Date. If any exercise of a Warrant is so conditioned, then, subject to delivery of the items required by Section 4.3(a) and compliance with the other terms hereof, the Company shall deliver the certificates and other evidence of ownership of other securities or other Property in such manner as such Holder shall direct as required in connection with the consummation of such transaction upon which the exercise or exchange is conditioned. If, at any time prior to the consummation of a conditional exercise or exchange, such Holder shall give notice to the Company that such transaction has been abandoned or such Holder has withdrawn from participation in such transaction, the Company shall return the items delivered pursuant to Section 4.3(a), and such Holder's election to exercise such Warrant shall be deemed rescinded.

**ARTICLE V**  
**ADJUSTMENT OF EXERCISE PRICE AND NUMBER OF WARRANT SHARES**

**5.1 General.**

The Exercise Price and the number and kind of Warrant Shares issuable upon exercise of each Warrant shall be subject to adjustment from time to time in accordance with this Article V.

RSC   BLF   BLF  
TSMC   SMIC   SMIC

**5.2 Distributions, Subdivisions and Combinations.**

If, at any time after the Closing Date, the Company shall:

- (i) make a Distribution in Common Shares;
- (ii) subdivide, split or reclassify its outstanding Common Shares into a larger number of Common Shares; or
- (iii) combine its outstanding Common Shares into a smaller number of Common Shares;

then (A) the number of Warrant Shares issuable upon exercise of each Warrant shall be adjusted so as to equal the number of Warrant Shares that the Holder of such Warrant would have held immediately after the occurrence of such event if the Holder had exercised such Warrant for Common Shares immediately prior to the occurrence of such event (or, in the case of clause (i), the record date therefor) and (B) the Exercise Price shall be adjusted to be equal to the product of (x) the Exercise Price immediately prior to the occurrence of such event and (y) a fraction (1) the numerator of which is the number of Warrant Shares issuable upon exercise of such Warrant immediately prior to the adjustment in clause (A) and (2) the denominator of which is the number of Warrant Shares issuable upon exercise of such Warrant immediately after the adjustment in clause (A); provided, that in no event shall such adjustment result in an Exercise Price per share which is less than the par value per Warrant Share. An adjustment made pursuant to this Section 5.2 shall become effective immediately after the occurrence of such event retroactive to the record date, if any, for such event. Additionally, the Exercise Price shall be adjusted in the manner contemplated by clause (B).

**5.3 Reorganizations, Mergers and Consolidations.**

If any Extraordinary Event shall be effected, then, as a condition of such Extraordinary Event, the Company shall cause lawful and adequate provision to be made whereby the registered holder of this Warrant shall thereafter have the right to purchase and receive, upon exercise hereof and the payment of the exercise price, in lieu of the Common Shares of the Company immediately theretofore purchasable and receivable upon the exercise of this Warrant, such shares of stock, securities or Property (including Cash) as may be issued or payable with respect to or in exchange for a number of Common Shares of the Company immediately theretofore purchasable and receivable upon the exercise of this Warrant had such Extraordinary Event not taken place, and in any such case appropriate provision shall be made with respect to the rights and interests of the holder of this Warrant to the end that the provisions hereof (including, without limitation, provisions for adjustments of the number of shares purchasable upon the exercise of this Warrant) shall thereafter be applicable, as nearly as may be, in relation to any shares of stock, securities or Property thereafter deliverable upon the exercise hereof. The foregoing provisions shall similarly apply to successive Extraordinary Events. The Company shall not effect any consolidation, merger or sale that constitutes an Extraordinary Event unless, prior to the consummation thereof, the successor company (if other than the Company) resulting from such consolidation or merger or the company purchasing assets in an Extraordinary Event shall assume by written instrument executed and mailed to the registered Holder at the last address of such registered Holder appearing on the books of the Company, the obligation to deliver to such registered Holder such shares of stock, securities or Property as, in accordance with the foregoing provisions, such registered Holder may be entitled to purchase or receive.

*RSC* *BLF* *BLF*  
 TSMC SMIC SMIC

#### 5.4 Adjustment upon Issuance of Common Shares or Common Share Equivalents.

If at any time or from time to time after November 9, 2009 the Company issues or sells, or is deemed to have issued or sold (including, without limitation, pursuant to any “equity appreciation right,” “phantom equity” or otherwise), any Common Shares (or Common Share Equivalents, as described in Section 5.5(a)) for a consideration per share less than the Exercise Price per Common Share at the time of such issuance or sale, then forthwith upon such issue or sale, the number of Warrant Shares shall be increased by multiplying such number by a fraction (A) the numerator of which is the Exercise Price and (B) the denominator of which is determined by dividing (i) the sum of (x) the Exercise Price multiplied by the number of Common Shares outstanding immediately prior to such issue or sale plus (y) the aggregate consideration, if any, received by the Company upon such issue or sale by (ii) the number of Common Shares outstanding immediately after such issue or sale.

#### 5.5 Effect on Warrant Shares of Certain Events.

For purposes of determining the adjusted number of Warrant Shares under Section 5.4 above, the following shall be applicable:

(a) **Issuance of Common Share Equivalents.** If the Company in any manner grants or issues any Common Share Equivalents and the lowest price per Common Share for which any one Common Share or analogous economic right is issuable upon the exercise of any such Common Share Equivalent is less than the Exercise Price at the time of the granting or issuing of such Common Share Equivalent, then such Common Share will be deemed to have been issued and sold by the Company for such price per Common Share. For purposes of this paragraph, the “lowest price per share” will be equal to the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to any one Common Share or analogous economic right upon the exercise of the Common Share Equivalent (whether by conversion, exchange or otherwise) or other similar indication of the price per Common Share as of the time of granting (such as the floor value for stock appreciation rights). No further adjustment of the Warrant Shares will be made upon the actual issue of such Common Shares or upon the exercise of any rights under such Common Share Equivalents.

(b) **Change in Option Price or Conversion Rate.** If the purchase price provided for in any Common Share Equivalent, the additional consideration (if any) payable upon the issue, conversion or exchange of any Common Share Equivalent or the rate at which any Common Share Equivalent is convertible into or exercisable or exchangeable for Common Shares changes at any time, the number of Warrant Shares issuable at the time of such change will be readjusted to the number of Warrant Shares that would have been issuable at such time had such Common Share Equivalents provided for such changed purchase price, additional consideration or changed conversion rate, as the case may be, at the time initially granted, issued or sold; *provided* that if such adjustment would result in a decrease in the number of Warrant Shares then issuable, such adjustment will not be effective until 30 days after written notice thereof has been given by the Company to the Holders of the Warrants.

$\frac{RSC}{TSMC}$   $\frac{BLF}{SMIC}$   $\frac{BLF}{SMIC}$

(c) **Treatment of Expired and Unexercised Common Share Equivalents.** Upon the expiration of any Common Share Equivalents or the termination of any right to convert or exchange any Common Share Equivalents without the exercise of such Common Share Equivalents, the number of Warrant Shares then issuable will be adjusted to the number of Warrant Shares that would have been issuable at the time of such expiration or termination had such Common Share Equivalents to the extent outstanding immediately prior to such expiration or termination, never been issued.

#### 5.6 Other Actions Affecting Equity Securities.

If at any time or from time to time the Company shall take any action affecting its capital stock (including, without limitation, the creation of equity appreciation rights or phantom equity), other than any action of a type otherwise described in this Article V, then the number of Warrant Shares issuable upon exercise of each Warrant shall be adjusted (with a corresponding adjustment to the Exercise Price) to such extent, if any, and in such manner and at such time, as the Board shall, in the good faith exercise of its reasonable business judgment, determine to be equitable in the circumstances; provided that no such adjustment shall decrease the number of Warrant Shares issuable upon exercise of such Warrant or increase the Exercise Price.

#### 5.7 Miscellaneous.

(a) **Calculation of Consideration Received.** If any Common Shares, Common Share Equivalents or Other Equity Securities are issued or sold or deemed to have been issued or sold for Cash, then the consideration received therefor shall be deemed to be the net amount received or to be received by the Company therefor. If any Common Shares, Common Share Equivalents or Other Equity Securities are issued or sold for consideration other than Cash (including in connection with any merger in which the Company issues such securities), then the amount of the consideration other than Cash received by the Company shall be the Fair Market Value of such consideration, as of the date of receipt.

(b) **Treasury Shares.** The number of Common Shares outstanding at any given time does not include Common Shares owned or held by or for the account of the Company or any Affiliate of the Company, and the disposition of any Common Shares so owned or held shall be considered an issuance of Common Shares.

(c) **Notice; Adjustment Rules.** Whenever the Exercise Price or the number of issuable Warrant Shares shall be adjusted as provided in this Article V, the Company shall provide to each Holder a statement, signed by a Responsible Officer of the Company, describing in detail the facts requiring such adjustment and setting forth a calculation of the Exercise Price and the number of issuable Warrant Shares applicable to each Warrant after giving effect to such adjustment. All calculations under this Article V shall be made to the nearest one thousandth of a cent (\$.00001) or to the nearest one-thousandth of a share, as the case may be. Adjustments pursuant to this Article V shall apply to successive events or transactions of the types covered thereby. Notwithstanding any other provision of this Article V, no adjustment shall be made to the number of issuable Warrant Shares or to the Exercise Price if such adjustment represents less than .5% of the number of issuable Warrant Shares previously required to be so issued, but any lesser adjustment shall be carried forward and shall be made at the time and together with the next subsequent adjustment which together with any adjustments so carried forward shall amount to .5% or more of the number of Warrant Shares to be so issued.

RSC   BLF   BLF  
TSMC   SMIC   SMIC

**5.8 Excluded Issuances.** Notwithstanding any other provision of this Article V, no adjustment shall be made pursuant to this Article V in respect of (i) the issuance of Common Shares pursuant to any adjustment provided for in this Article V or (ii) securities issued upon the exercise of Warrants.

**ARTICLE VI  
COVENANTS OF THE COMPANY**

**6.1 No Avoidance; Further Assurances.**

The Company will not, by amendment of its Governing Documents or through any Extraordinary Event, reorganization, Transfer of Properties, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company. The Company shall at all times in good faith assist in the carrying out of all the provisions of this Agreement and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Holders hereunder against impairment. Each party hereto shall, without further consideration, make, execute, acknowledge and deliver such other instruments and documents, and take or cause to be taken all actions as may be necessary or appropriate in order to effect the purposes of this Warrant.

**6.2 Preemptive Rights.**

Except as otherwise provided herein or in the Other Transaction Documents, no Warrant shall entitle the holder thereof to any preemptive rights or any other rights as a shareholder of the Company, as such except for those rights as a stockholder of the Company that attach to the Warrant Shares following their issuance upon the exercise of any Warrant.

**6.3 Sale of Warrants.**

In any merger, consolidation, reorganization, repurchase or reclassification or similar transaction, in which holders of Capital Stock sell or otherwise Transfer Capital Stock held by them, the Company will use commercially reasonable efforts to cause the transaction to be structured to permit the Holders to deliver Warrants in connection with any such transaction without requirement for exercise thereof as a condition to participation and for consideration not less than the consideration such Holders would have received had such Holders exercised their Warrants immediately prior thereto, less any applicable Exercise Price, unless such arrangement would result in a material legal, tax or similar detriment to the Company, a significant counterparty to the transaction or their respective securityholders.

  
TSMC SMIC SMIC

**ARTICLE VII  
MISCELLANEOUS**

**7.1 Notices.**

All notices and other communications provided for or permitted hereunder shall be made by hand-delivery, telecopier or overnight air courier guaranteeing next day delivery:

(i) if to the Company, to:

Semiconductor Manufacturing International Corporation

Address: Suite 3003, 30th Floor  
No. 9 Queen's Road Central  
Hong Kong

Telephone: (+852) 2537 8588

Facsimile: (+852) 2537 8206

Attention: Anne Chen/Blondie Poon

with a copy to:

Wilson Sonsini Goodrich & Rosati, P.C.

Address: Jin Mao Tower, 38F  
88 Century Boulevard  
Pudong New Area, Shanghai 200121  
People's Republic of China

Telephone: (+86-21) 6165-1700

Facsimile: (+86-21) 6165-1799

Attention: Carmen Chang, Esq.

(ii) if to the Holder, to

Taiwan Semiconductor Manufacturing Co., Ltd.

Address: No. 8 Li-Hsin Road 6, Hsin-Chu Science Park  
Hsin-Chu, Taiwan, Republic of China

Telephone: (+886) 3-5682002

Facsimile: (+886) 3-5678689

Attention: General Counsel

with a copy to:

Weil, Gotshal & Manges LLP

Address: 200 Crescent Court, Suite 300  
Dallas, Texas 75201  
United States of America

Telephone: +1 (214) 746 7700

Facsimile: +1 (214) 746 7777

Attention: R. Scott Cohen



Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); or (iii) one Business Day after deposit with an overnight courier service, in each case properly addressed to the party to receive the same. The parties may change the addresses to which notices are to be given by giving five days' prior notice of such change in accordance herewith.

**7.2 No Voting Rights; Limitation of Liability.**

Except as otherwise provided herein, no Warrant shall entitle the holder thereof to any voting rights or any other rights as a stockholder of the Company, as such. No provision hereof, in the absence of affirmative action by the Holder to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder shall give rise to any liability of such Holder for the Exercise Price of Warrant Shares acquirable by exercise hereof or as an equity holder of the Company.

**7.3 Amendments and Waivers.**

(a) **Written Document.** Any provision of this Agreement may be amended or waived, but only pursuant to a written agreement signed by the Company and the Requisite Holders; provided that no such amendment or modification shall without the written consent of each Holder affected thereby (i) shorten the Expiration Time of any Warrant, (ii) increase the Exercise Price of any Warrant, (iii) change any of the provisions of this Section 7.3(a) or the definition of "Requisite Holders" or any other provision hereof specifying the number or percentage of Holders required to waive, amend, or modify any rights hereunder or required to make any determination or grant any consent hereunder or otherwise to act with respect to this Agreement or any Warrants, (iv) change any of the provisions of Article V or (v) increase the obligations of any Holder.

(b) **No Waiver.** No failure on the part of any Holder to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege under this Agreement or the Warrants shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under this Agreement or the Warrant preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

RSC   BLF   BLF  
TSMC   SMIC   SMIC

**7.4 Remedies.**

Each Holder shall have all rights and remedies reserved for such Holder pursuant to this Agreement, all rights and remedies which such Holder has been granted at any time under any other agreement or instrument and all of the rights and remedies such Holder may have at law or in equity. The remedies provided herein are cumulative and not exclusive. Any Person having any rights under any provision of this Agreement will be entitled to enforce such rights specifically, to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law or equity. The Company acknowledges and agrees that irreparable damage would occur to the holder of this Warrant and that such Holder will not have an adequate remedy at law in the event that any of the provisions of this Warrant to be performed by the Company were not performed in accordance with their specific terms or were otherwise breached. Therefore, the Holder of this Warrant is entitled to an injunction or injunctions to prevent breaches of this Warrant by the Company and to specifically enforce the terms and provisions of this Warrant against the Company in any court of competent jurisdiction, without bond or other security being required, and appropriate injunctive relief may be applied for by such Holder and granted in connection therewith.

**7.5 Binding Effect.**

Subject to the limitations set forth in this Agreement and the Other Transaction Documents, each Holder has the right to assign or otherwise Transfer its rights under this Agreement or any Warrants or Warrant Shares held by it. The Company shall not assign its rights or obligations hereunder except in the context of an Extraordinary Transaction, as contemplated herein. This Agreement shall be binding upon and inure to the benefit of the Company, each Holder and their successors and permitted assigns.

**7.6 Counterparts.**

This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

**7.7 Governing Law; Jurisdiction and Venue.**

All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed in accordance with the laws of Hong Kong. Any dispute, controversy or claim arising out of or relating to this Agreement, or the interpretation, breach, termination or validity hereof, shall be submitted to arbitration upon the request of any party with notice to the other party. The arbitration shall be conducted in Hong Kong under the auspices of the Hong Kong International Arbitration Centre (the "HKIAC") in accordance with the UNCITRAL Arbitration Rules ("UNCITRAL Rules") in effect, which rules are deemed to be incorporated by reference into this Section 7.7. There shall be three (3) arbitrators. The complainant and the respondent to such dispute shall each select one arbitrator within thirty (30) days after giving or receiving the demand for arbitration. The Chairman of the HKIAC shall select the third arbitrator, who shall be qualified to practice law in Hong Kong. If either party to the arbitration does not appoint an arbitrator who has consented to participate within thirty (30) days after selection of the first arbitrator, the relevant appointment shall be made by the Chairman of the HKIAC. The arbitration proceedings shall be conducted in English. Each party hereto shall cooperate with any party to the dispute in making full disclosure of and providing complete access to all information and documents requested by such party in connection with such arbitration proceedings, subject only to any confidentiality obligations binding on the party receiving the request. Each party irrevocably waives, to the fullest extent it may effectively do so, any objection which it may now or hereafter have to the laying of venue of any such arbitration in Hong Kong and the HKIAC, and hereby submits to the exclusive jurisdiction of HKIAC in any such arbitration. The award of the arbitration tribunal shall be conclusive and binding upon the disputing parties, and any party to the dispute may apply to a court of competent jurisdiction for enforcement of such award. Any party to the dispute shall be entitled to seek preliminary injunctive relief, if possible, from any court of competent jurisdiction pending the constitution of the arbitral tribunal.

  
TSMC SMIC SMIC

**7.8 Benefits of this Agreement.**

Nothing in this Agreement shall be construed to give to any Person other than the Company and each Holder of a Warrant or a Warrant Share any legal or equitable right, remedy or claim hereunder.

**7.9 Headings.**

The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

**7.10 Aggregation of Warrants and Warrant Shares.**

All Warrants and Warrant Shares held or acquired by any Person and its Affiliates shall be aggregated together for purposes of measuring any numerical thresholds used in determining the availability to such Person and its Affiliates, taken collectively, of rights under this Agreement and the applicability of obligations and restrictions under this Agreement.

**7.11 Operative Date.**

This Agreement shall become operative on the date hereof.

*[Remainder of Page Intentionally Left Blank]*

RSC   BLF   BLF  
TSMC   SMIC   SMIC

**IN WITNESS WHEREOF**, each party hereto has caused this Warrant Agreement to be duly executed and delivered by its authorized signatory, all as of the date and year first above written.

**SEMICONDUCTOR MANUFACTURING  
INTERNATIONAL CORPORATION**

By: \_\_\_\_\_  
Name: Jiang Shang Zhou  
Title: Chairman of the Board

By: \_\_\_\_\_  
Name: Richard Ru-Gin Chang  
Title: Chief Executive Officer

**TAIWAN SEMICONDUCTOR MANUFACTURING  
COMPANY, LTD.**

By: \_\_\_\_\_  
Name: F.C. Tseng  
Title: Vice Chairman

  
RSC BLF BLF  
TSMC SMIC SMIC

[Signature Page to Warrant Agreement]

Exhibit A to the Warrant Agreement

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES OR BLUE SKY LAWS. THESE SECURITIES MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM UNDER SAID ACT OR APPLICABLE STATE SECURITIES OR BLUE SKY LAWS.

ADDITIONALLY, THE TRANSFER OF THESE SECURITIES IS SUBJECT TO THE CONDITIONS SPECIFIED IN THE SHARE AND WARRANT ISSUANCE AGREEMENT, DATED AS OF NOVEMBER 9, 2009, AND THE WARRANT AGREEMENT, DATED AS OF [\_\_\_\_\_, 20\_\_], AMONG THE ISSUER HEREOF AND CERTAIN OTHER SIGNATORIES THERETO. UPON THE FULFILLMENT OF CERTAIN CONDITIONS, THE ISSUER HEREOF HAS AGREED TO DELIVER TO THE HOLDER HEREOF A NEW CERTIFICATE, NOT BEARING THIS LEGEND, FOR THE SECURITIES REPRESENTED HEREBY REGISTERED IN THE NAME OF THE HOLDER HEREOF. COPIES OF SUCH AGREEMENTS MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS CERTIFICATE TO THE SECRETARY OF THE ISSUER HEREOF.

**Semiconductor Manufacturing International Corporation**

No. W - 1

[\_\_\_\_\_, \_\_, 20\_\_]

Common Share Purchase Warrant

THIS CERTIFIES that, for value received, Taiwan Semiconductor Manufacturing Company, Ltd., a Taiwanese corporation (the “Holder”), or its assigns, is entitled to purchase from Semiconductor Manufacturing International Corporation, an exempted company incorporated under the laws of the Cayman Islands (the “Company”), [695,914,030] common shares, US\$.0004 par value (the “Common Shares”), of the Company (the “Warrant Shares”), at the price (the “Exercise Price”) of HK\$1.30 per share, at any time or from time to time during the period commencing on the date hereof and ending at 11:59 P.M. Hong Kong Time on the Expiration Time (as defined in the Warrant Agreement).

The Holder may exercise all or any part of such rights at any time or from time to time prior to the Expiration Time.

This Warrant has been issued pursuant to the Warrant Agreement dated as of [\_\_\_\_\_, 20\_\_] (as amended, restated, supplemented or otherwise modified from time to time, the “Warrant Agreement”) between the Company and the Holder named therein, and is subject to the terms and conditions, and the Holder is entitled to the benefits, thereof. A copy of the Warrant Agreement is on file and may be inspected at the principal executive office of the Company. The Holder of this certificate, by acceptance of this certificate, agrees to be bound by the provisions of the Warrant Agreement. Capitalized terms used but not defined herein shall have the respective meanings given to such terms in the Warrant Agreement.

*RSC* *BLF* *BLF*  
TSMC SMIC SMIC

SECTION 1. **Exercise of Warrant.** On any day on or prior to the Expiration Time, the Holder may exercise this Warrant, in whole or in part, in the manner set forth in Article IV of the Warrant Agreement.

SECTION 2. **Exercise Price and Number of Warrant Shares.** The Exercise Price and the number of Warrant Shares is subject to adjustment from time to time as set forth in the Warrant Agreement.

SECTION 3. **Exchange of Warrant.** On any day on or prior to the Expiration Time, the Holder may exchange this Warrant, in whole or in part, for Warrant Shares by delivering to the Company this Warrant accompanied by a properly completed Exchange Form in the form of Annex B attached hereto. The number of Common Shares to be received by the Holder upon such exchange shall be determined as set forth in the Warrant Agreement.

SECTION 4. **Transfer.** Subject to the limitations set forth or referred to in the Warrant Agreement, this Warrant may be Transferred by the Holder by delivery to the Company of this Warrant accompanied by a properly completed Assignment Form in the form of Annex C attached hereto.

SECTION 5. **Lost, Stolen, Mutilated or Destroyed Warrant.** If this Warrant is lost, stolen, mutilated or destroyed, the Company will issue a new Warrant of like denomination and tenor upon compliance with the provisions set forth in the Warrant Agreement.

SECTION 7. **Successors.** All of the provisions of this Warrant by or for the benefit of the Company or the Holder shall bind and inure to the benefit of their respective successors and permitted assigns.

SECTION 8. **Headings.** Section headings in this Warrant have been inserted for convenience of reference only and shall not affect the construction of, or be taken into consideration in interpreting, this Warrant.

SECTION 9. **Governing Law.** All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed in accordance with the laws of Hong Kong. Any dispute, controversy or claim arising out of or relating to this Agreement, or the interpretation, breach, termination or validity hereof, shall be submitted to arbitration upon the request of any party with notice to the other party. The arbitration shall be conducted in Hong Kong under the auspices of the HKIAC in accordance with the UNCITRAL Rules in effect, which rules are deemed to be incorporated by reference into this section. There shall be three (3) arbitrators. The complainant and the respondent to such dispute shall each select one arbitrator within thirty (30) days after giving or receiving the demand for arbitration. The Chairman of the HKIAC shall select the third arbitrator, who shall be qualified to practice law in Hong Kong. If either party to the arbitration does not appoint an arbitrator who has consented to participate within thirty (30) days after selection of the first arbitrator, the relevant appointment shall be made by the Chairman of the HKIAC. The arbitration proceedings shall be conducted in English. Each party hereto shall cooperate with any party to the dispute in making full disclosure of and providing complete access to all information and documents requested by such party in connection with such arbitration proceedings, subject only to any confidentiality obligations binding on the party receiving the request. Each party irrevocably waives, to the fullest extent it may effectively do so, any objection which it may now or hereafter have to the laying of venue of any such arbitration in Hong Kong and the HKIAC, and hereby submits to the exclusive jurisdiction of HKIAC in any such arbitration. The award of the arbitration tribunal shall be conclusive and binding upon the disputing parties, and any party to the dispute may apply to a court of competent jurisdiction for enforcement of such award. Any party to the dispute shall be entitled to seek preliminary injunctive relief, if possible, from any court of competent jurisdiction pending the constitution of the arbitral tribunal.

RSC   BLF   BLF  
TSMC   SMIC   SMIC

IN WITNESS WHEREOF, the undersigned has caused this Warrant to be executed by its duly authorized officers and this Warrant to be dated as of the date first set forth above.

**SEMICONDUCTOR MANUFACTURING  
INTERNATIONAL CORPORATION**

By: \_\_\_\_\_

Name: Jiang Shang Zhou

Title: Chairman of the Board

By: \_\_\_\_\_

Name: Richard Ru-Gin Chang

Title: Chief Executive Officer

Annex A to the Warrant

**EXERCISE FORM**

*[To be signed upon exercise of a Warrant]*

**TO SEMICONDUCTOR MANUFACTURING INTERNATIONAL CORPORATION:**

The undersigned, being the Holder of the attached Warrant, hereby elects to exercise the purchase right represented by such Warrant for, and to purchase thereunder \_\_\_\_\_ Common Shares of Semiconductor Manufacturing International Corporation, an exempted company incorporated under the laws of the Cayman Islands (the “**Company**”), and requests that the certificates or other evidence of ownership for such shares be issued in the name of, and be delivered to, \_\_\_\_\_, whose address is \_\_\_\_\_.

The foregoing exercise is (check one):

\_\_\_\_\_ Irrevocable

\_\_\_\_\_ Conditioned upon the consummation of the transaction described briefly below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Name:  
Title:

RSC BLF BLF  
TSMC SMIC SMIC

Annex B to the Warrant

**EXCHANGE FORM**

*[To be signed upon exchange of a Warrant]*

**TO SEMICONDUCTOR MANUFACTURING INTERNATIONAL CORPORATION:**

The undersigned, being the Holder of the within Warrant, hereby elects to exchange, pursuant to Section 4.2 of the Warrant Agreement referred to in such Warrant, the portion of such Warrant representing the right to purchase \_\_\_\_\_ Common Shares of Semiconductor Manufacturing International Corporation, an exempted company incorporated under the laws of the Cayman Islands (the “**Company**”). The undersigned hereby requests that the certificates or evidence of ownership for the number of shares issuable in such exchange pursuant to such Section 4.2 be issued in the name of, \_\_\_\_\_, whose address is \_\_\_\_\_.

The foregoing exchange is (check one):

\_\_\_\_\_ Irrevocable

\_\_\_\_\_ Conditioned upon the consummation of the transaction described briefly below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Name:

Title:

RSC   BLF   BLF  
TSMC   SMIC   SMIC

Annex C to the Warrant

**ASSIGNMENT FORM**

*[To be signed only upon transfer of a Warrant]*

For value received, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_, all of the rights represented by the within Warrant to purchase \_\_\_\_\_ Common Shares of Semiconductor Manufacturing International Corporation, an exempted company incorporated under the laws of the Cayman Islands (the “**Company**”), to which such Warrant relates, and appoints \_\_\_\_\_ attorney to transfer such Warrant on the books of the Company, with full power of substitution in the premises.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

By executing and delivering this Assignment Form to the Company, the undersigned hereby agrees to become a party to, to be bound by, and to comply with the provisions of the Warrant Agreement dated as of [\_\_\_\_\_, 20\_\_] (as amended, restated, supplemented or otherwise modified from time to time, the “**Warrant Agreement**”), among the Company and the Holders, in the same manner as if the undersigned were an original signatory to the Warrant Agreement.

The undersigned agrees that he, she or it shall be a “Holder”, as such term is defined in the Warrant Agreement.

Dated: \_\_\_\_\_

\_\_\_\_\_  
*Signature of transferee*

\_\_\_\_\_  
*Print Name of transferee*

\_\_\_\_\_  
*Address*

\_\_\_\_\_  
*Facsimile*

\_\_\_\_\_  
*Telephone*

RSC   BLF   BLF  
TSMC   SMIC   SMIC

**Exhibit 8.1**

List of Significant Subsidiaries

<b>Name of Subsidiary</b>	<b>Jurisdiction of Incorporation</b>	<b>Names Under Which Subsidiary Does Business</b>
Semiconductor Manufacturing International (Shanghai) Corporation	PRC	Semiconductor Manufacturing International (Shanghai) Corporation
Semiconductor Manufacturing International (Beijing) Corporation	PRC	Semiconductor Manufacturing International (Beijing) Corporation
Semiconductor Manufacturing International (Tianjin) Corporation	PRC	Semiconductor Manufacturing International (Tianjin) Corporation

**EXHIBIT 12.1**

CERTIFICATIONS

I, David N.K. Wang, certify that:

1. I have reviewed this annual report on Form 20-F of Semiconductor Manufacturing International Corporation (the “Company”);
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Company as of, and for, the periods presented in this report;
4. The Company’s other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Company and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the Company’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the Company’s internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the Company’s internal control over financial reporting; and
5. The Company’s other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Company’s auditors and the audit committee of Company’s board of directors (or persons performing the equivalent function):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Company’s ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the Company’s internal control over financial reporting.

Date: June 29, 2010

/s/ David N.K. Wang

Name: David N.K. Wang

Title: Chief Executive Officer and President

**EXHIBIT 12.2**

CERTIFICATIONS

I, Gary Tseng, certify that:

1. I have reviewed this annual report on Form 20-F of Semiconductor Manufacturing International Corporation (the “Company”);
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Company as of, and for, the periods presented in this report;
4. The Company’s other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Company and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the Company’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation.
  - d. Disclosed in this report any change in the Company’s internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the Company’s internal control over financial reporting.; and
5. The Company’s other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Company’s auditors and the audit committee of Company’s board of directors (or persons performing the equivalent function):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Company’s ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the Company’s internal control over financial reporting.

Date: June 29, 2010

/s/ Gary Tseng

Name: Gary Tseng

Title: Chief Financial Officer

**EXHIBIT 13.1**

Pursuant to 18 United States Code §1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned hereby certify that, to the best of our knowledge, the annual report on Form 20-F for the fiscal year ended December 31, 2009 of Semiconductor Manufacturing International Corporation (the “Company”) filed with the Securities and Exchange Commission on the date hereof (the “Report”) fully complies with the requirements of Section 13(a), as applicable of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: June 29, 2010

/s/ David N.K. Wang

Name: David N.K. Wang

Title: Chief Executive Officer and President

/s/ Gary Tseng

Name: Gary Tseng

Title: Chief Financial Officer

The foregoing certification is being furnished solely pursuant to 18 United States Code §1350 and is not being filed as part of the Report.

**EXHIBIT 99.1**

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in Registration Statement No. 333-113797 on Form S-8 of our reports dated April 26, 2010 relating to the financial statements and financial statement schedule of Semiconductor Manufacturing International Corporation and subsidiaries (the "Company"), and the effectiveness of the Company's internal control over financial reporting (which report expresses an adverse opinion due to a material weakness on the Company's internal control over financial reporting), appearing in this Annual Report on Form 20-F of the Company for the year ended December 31, 2009.

/s/ Deloitte Touche Tohmatsu  
*Certified Public Accountant*  
Hong Kong  
June 29, 2010