UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Industry and Security
1401 Constitution Avenue, Suite 3896
Washington, DC 20230

June 9, 2023 [redacted]

[redacted]

Dear [redacted]

I am responding to your [redacted] letter requesting an advisory opinion from the Bureau of Industry and Security (BIS) pursuant to § 748.3(c) of the Export Administration Regulations (EAR, 15 CFR Parts 730 – 774) on behalf of your client, Company A, which is a wholly owned subsidiary of Company B, a corporation located in Country X which is listed in Country Group A:5 of the EAR (*see* supplement no. 1 to part 740 of the EAR).

Your letter requests confirmation that, for Country X nationals who are on temporary work assignment at Company A in the United States and who are permanent and regular employees of Company B as described in §§ 734.20(d)(2) and 750.7(a)(3) of the EAR, the following apply:

I) A BIS license to export technology and software to Company B in Country X also authorizes the release of the licensed technology and software to employees of Company B while they are on temporary rotational assignment to Company A in the United States; and

II) A BIS license to export technology and software to Company B in Country X also authorizes exports to Company B of same technology and software that is created by those Company B employees while on temporary rotational assignments to Company A in the United States.

Regulatory Analysis

Section 734.20(d)(2) of the EAR defines a permanent and regular employee as an individual who:

(i) Is permanently (i.e., for not less than a year) employed by an entity, or

(ii) Is a contract employee who:
- (A) Is in a long-term contractual relationship with the company where the individual works at the entity's facilities or at locations assigned by the entity (such as a remote site or on travel);
- (B) Works under the entity's direction and control such that the company must determine the individual's work schedule and duties;
- (C) Works full time and exclusively for the entity; and
- (D) Executes a nondisclosure certification for the company that he or she will not disclose confidential information received as part of his or her work for the entity.

Section 750.7(a)(3) of the EAR states that:

> A BIS license authorizing the release of "technology" to an entity also authorizes the release of the same "technology" to the entity's foreign persons who are permanent and regular employees (and who are not proscribed persons) of the entity's facility or facilities authorized on the license, except to the extent a license condition limits or prohibits the release of the "technology" to foreign persons of specific countries or country groups. See § 734.20 of the EAR for additional information regarding the release of "technology" authorized by a BIS license.

Therefore, with regard to question I) above, BIS confirms that a license authorizing exports, reexports, or transfers (in-country) of "technology" and "software" from Company A to Company B also authorizes the export, reexport, or transfer (in-country) of that licensed "technology" and "software" from Company A to Country X nationals on temporary rotational assignment in the United States who meet the criteria of § 734.20(d)(2) of the EAR and are permanent and regular employees of Company B. No additional deemed export license is required for these employees.

The "technology" or "software" that has been licensed for export to Company B is authorized by that license for "release" to Company B 'permanent and regular' employees, including those located in the United States, provided the "technology" or "software" is within the scope of the existing license. Any new "technology" or "software" that is either "released" to Company B employees in the United States or created in the United States that is not authorized by the existing BIS license would require a new export license or other authorization from BIS.

With regard to question II) above, BIS confirms that a license authorizing exports, reexports, or transfers (in-country) of "technology" and "software" from Company A to Company B in Country X also authorizes "technology" and "software" that is created by the Company B Country X nationals on temporary rotational assignment with Company A in the United States, provided that the "technology" or "software" created in the United States is within the scope of the existing license. Again, any new "technology" or "software" created by the Company B employees on temporary rotational assignment in the United States that is not authorized by the existing BIS license would require a new export license or other authorization from BIS.

The above responses address questions I) and II) in your letter concerning "technology" and "software" that are created and/or developed in the United States. BIS also notes that Country X-origin "software" and "technology" that was originally imported into the United States for use by Company A employees in the United States would be eligible for reexport back to Country X under License Exception Temporary exports, reexports and transfers (in-country) (TMP) (§ 740.9(b)(3) of the EAR), provided it was not altered, enhanced, or otherwise changed while in the United States. Therefore, the original, unaltered, and unenhanced Country X-origin "software" and "technology" provided to Company A may also be provided to the Company B employees on temporary rotational assignment in the United States pursuant to License Exception TMP.

In rendering this opinion, BIS has relied upon the information provided in your letter of [redacted]. Any change in the facts and circumstances, as presented in your letter and restated in this advisory opinion, may implicate different regulatory obligations, including potential licensing requirements, under the EAR. If you have questions with regard to any aspects of this advisory opinion, please contact Susan Kramer, Sr. Export Policy Analyst at Susan.Kramer@bis.doc.gov.

Sincerely,

Hillary Hess

Hillary Hess, Director
Regulatory Policy Division