

SEMICONDUCTOR MANUFACTURING INTERNATIONAL CORP

Form 6-K

December 08, 2017

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 6-K

REPORT OF FOREIGN PRIVATE ISSUER

PURSUANT TO RULE 13a-16 OR 15d-16

UNDER THE SECURITIES EXCHANGE ACT OF 1934

For the month of December, 2017

Commission File Number: 001-31994

Semiconductor Manufacturing International Corporation

(Translation of registrant's name into English)

18 Zhangjiang Road

Pudong New Area, Shanghai 201203

People's Republic of China

(Address of principal executive office)

Indicate by check mark whether the registrant files or will file annual reports under cover of Form 20-F or Form 40-F:

Form 20-F      Form 40-F

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(1):

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(7):

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Indicate by check mark whether the registrant by furnishing the information contained in this Form is also thereby furnishing the information to the Commission pursuant to Rule 12g3-2(b) under the Securities Exchange Act of 1934:

Yes      No

If "Yes" is marked, indicate below the file number assigned to the registrant in connection with Rule 12g3-2(b): n/a

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Semiconductor Manufacturing International Corporation

Date: December 07, 2017      By: /s/ Dr. Gao Yonggang  
Name: Dr. Gao Yonggang  
Title: Executive Director, Chief Financial Officer and Joint Company  
Secretary

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## SEMICONDUCTOR MANUFACTURING INTERNATIONAL CORPORATION

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(incorporated in the Cayman Islands with limited liability)

(Stock Code: 981)

## CONTINUING CONNECTED TRANSACTIONS AND DISCLOSEABLE TRANSACTIONS

### IN RELATION TO FRAMEWORK AGREEMENT

#### FRAMEWORK AGREEMENT

The Company announces that on 6 December 2017, the Company and SMNC had entered into the Framework Agreement in relation to the supply of goods, rendering of or receiving services, leasing of assets, transfer of assets, provision of technical authorisation or licensing and provision of guarantee. The Framework Agreement is for a term of three years commencing on 1 January 2018 and ending on 31 December 2020.

#### LISTING RULES IMPLICATIONS

As at the date of this announcement, China IC Fund holds approximately 15.06% interest in the Company through its wholly-owned subsidiary, Xinxin (Hongkong) Capital Co., Limited. Accordingly, it is a connected person of the Company at the issuer level pursuant to the Listing Rules. As at the date of this announcement, the registered capital of SMNC is held as to approximately 51% and 32% by the Group and China IC Fund, respectively. SMNC is therefore a connected subsidiary of the Company as defined under Rule 14A.16 of the Listing Rules and thus a connected person of the Company under the Listing Rules.

As one or more of the applicable percentage ratios in respect of the Annual Caps for Type I CCT, Type II CCT, Type III CCT, Type IV CCT and Type VI CCT (collectively, "Specific Non-Exempt CCT") is 5% or more but less than 25%, such transactions will constitute non-exempt continuing connected transactions under Chapter 14A of the Listing Rules. Accordingly, the Framework Agreement and the Specific Non-Exempt CCT are subject to the reporting, announcement and Independent Shareholders' approval requirements of Chapter 14A of the Listing Rules.

As the applicable percentage ratios in respect of the Annual Caps for Type V CCT are more than 0.1% but less than 5%, such transactions are subject to the reporting, announcement and annual review requirements, but exempt from the Independent Shareholders' approval requirement under Chapter 14A of the Listing Rules.



As the applicable percentage ratios in respect of the Annual Caps for Type IV CCT are more than 5% but less than 25%, the Type IV CCT also constitute disclosable transactions of the Company and are subject to the reporting and announcement requirements under Chapter 14 of the Listing Rules.

In accordance with the Listing Rules, the Independent Board Committee has been established to advise and provide recommendation to the Independent Shareholders on the Framework Agreement and the Specific Non-Exempt CCT (including the Annual Caps) and to advise the Independent Shareholders on how to vote.

Messis Capital Limited has been appointed by the Company as the Independent Financial Adviser to advise the Independent Board Committee and the Independent Shareholders on the Framework Agreement and the Continued Connected Transactions.

## GENERAL

At the EGM, ordinary resolutions will be proposed to the Independent Shareholders to approve the Framework Agreement and the Specific Non-Exempt CCT.

As China IC Fund is a connected person of the Company, its wholly-owned subsidiary Xinxin (Hongkong) Capital Co., Limited and its other associates (as defined in the Listing Rules) will abstain from voting on the ordinary resolution to approve the Framework Agreement and any transactions contemplated thereunder. Apart from Xinxin (Hongkong) Capital Co., Limited and other associates of China IC Fund, no other Shareholder will be required to abstain from voting on the resolutions at the EGM.

The Company expects to dispatch a circular on or before 5 January 2018 as time is needed to finalise the contents therein to the Shareholders. The circular contains, among other things,

(i) further details on the Framework Agreement; (ii) a letter from the Independent Board Committee to the Independent Shareholders; (iii) a letter from the Independent Financial Adviser containing its advice to the Independent Board Committee and the Independent Shareholders; and (iv) a notice convening the EGM.

## FRAMEWORK AGREEMENT

Reference is made to the Company's announcement dated 30 September 2016, the circular dated 18 November 2016 and the extraordinary general meeting poll results announcement dated 6 December 2016 in relation to the execution of a framework agreement (the "2016 Framework Agreement") dated 30 September 2016 between the Company (on behalf of itself and its subsidiaries, other than SMNC) and SMNC (on behalf of itself and its subsidiaries) in relation to the supply of goods and services, leasing of assets, transfer of assets and provision of technical authorisation or licensing among the parties.

As the term of the 2016 Framework Agreement will end on 31 December 2017, the Company announces that on 6 December 2017, the Company and SMNC entered into the Framework Agreement in relation to the supply of goods, rendering of or receiving services, leasing of assets, transfer of assets, provision of technical authorisation or licensing and provision of guarantee. The Framework Agreement has a term of three years commencing on 1 January 2018 and ending on 31 December 2020.



Summary of Principal Terms of the Framework Agreement

Execution date: 6 December 2017

Effective period: Commencing on 1 January 2018 and ending on 31 December 2020. Two months before the expiry date of the Framework Agreement, the parties will consider whether to renew the Framework Agreement.

Parties: (i) the Company on behalf of itself and its subsidiaries (other than SMNC); and  
(ii) SMNC on behalf of itself and its subsidiaries, if any.

Continuing Connected Transactions

Types of transactions

The Continuing Connected Transactions set out in the Framework Agreement will include the following:

1. Purchase and sale of spare parts, raw materials, photomasks and finished products;
2. Rendering of or receiving services, including, without limitation, (a) processing and testing service; (b) sales service; (c) overseas market promotion and customer service; (d) procurement service; (e) research, development and experiment support service; (f) comprehensive administration, logistics, production management and IT service; and (g) water, electricity, gas and heat provision service;
3. Leasing of assets, such as plant, office premises and equipment;
4. Transfer of assets;
5. Provision of technical authorisation or licensing by Group A to Group B, as well as the sharing of research and development costs in relation to 28-nanometer technologies; and
6. Provision of guarantee by Group A for SMNC's financing activities.

Pricing of the Continuing Connected Transactions

The price of the Continuing Connected Transactions will be determined in accordance with the following general principles (in ascending order):

- (1) the price prescribed or approved by state or local price control department (if any);
- (2) a reasonable price in accordance with the industry guided price;
- (3) the comparable local market price, which shall be determined after arm's length negotiation between both parties with reference to (a) the market price charged by independent third parties for comparable product or services at the same time and in the same region; and (b) the lowest quotation that the purchaser can obtain by way of public tender;
- (4) where there is no comparable local market price, the price based on the principle of cost plus a fair and reasonable profit rate, being the aggregate sum of (a) the actual reasonable cost; and (b) a fair and reasonable profit rate;

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(5) where none of the above general pricing principles are applicable, the price determined by other reasonable means as agreed upon by both parties on the condition that the relevant costs are identifiable and are allocated to each party involved on a fair and equitable basis.

Where general pricing principles (2) to (5) apply, to the extent possible, each of Group A and Group B will obtain at least two quotations or tenders from independent third parties before agreeing upon the applicable price.

As to the price prescribed by the state or local price control department, state-prescribed fees apply to water and electricity, which are relevant to the cost of such services and are determined by prices published from time by time by the relevant PRC government authority. Under the Pricing Law of the PRC, the PRC government may implement a state-prescribed or guidance price for specific goods and services if necessary, and such price will be promulgated in accordance with the requirements of relevant laws, regulations or administrative rules from time to time. If any state-prescribed price or guidance price becomes available to the Continuing Connected Transactions in the future, the parties will execute such price first in accordance with pricing principle (1) above.

Based on the above general principles and the actual circumstances when entering into the Framework Agreement, the parties further agree to the following specific pricing policies for the Continuing Connected Transactions. If any particular Continuing Connected Transaction is not covered by the following policies, or any of the following policies is no longer applicable, the parties will use the above general principles to determine the price for the relevant transaction.

Types of Continuing Connected Pricing policy  
Transactions

I. Purchase and sale of goods

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|--|---|
| 1. Purchase and sale of spare parts between Group A and Group B  | The market price of spare parts, with the relevant transportation fees borne by the purchaser, with reference to market price (see general pricing principle (3) above)   |
| 2. Purchase and sale of raw materials between Group A and Group B  | The market price of raw materials, with the relevant transportation fees borne by the purchaser, with reference to market price (see general pricing principle (3) above) |
| 3. Purchase of photomasks by Group B from Group A  | With reference to market price (see general pricing principle (3) above)  |
| 4. Sales of finished products by Group B to Group A, which will resell such finished products to third-party customers | With reference to market price (see general pricing principle (3) above)  |

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Types of Continuing Connected Pricing policy Transactions

II. Rendering of or receiving services

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|--|--|
| 1. Mutual rendering of processing and testing service due to Group A and Group B's production capacity limits of certain types of products | With reference to market price (see general pricing principle (3) above)   |
| 2. Provision of sales service by Group A to Group B  | Cost plus a fair and reasonable profit rate in line with the industry (see general pricing principle (4) based on allocation of the sales expenses according to the revenue from the sales plus a subsequent profit rate of 8%   |
| 3. Rendering of overseas market promotion and customer service by Group A to Group B   | Cost plus a fair and reasonable profit rate in line with the industry (see general pricing principle (4) above), based on allocation of the sales expenses according to the revenue from the sales plus a subsequent profit rate of 8%   |
| 4. Rendering of procurement service by Group A to Group B  | Cost plus a fair and reasonable profit rate in line with the industry (see general pricing principle (4) above), based on allocation of procurement department expenses according to working hours or workload plus a subsequent profit rate of 5%   |
| 5. Provision of research, development and experiment support service by Group A to Group B   | With reference to market price (see general pricing principle (3) above)   |
| 6. Rendering of comprehensive administration, logistics, production management and IT service by Group A to Group B                        | Cost plus a fair and reasonable profit rate in line with the industry (see general pricing principle (4) above), based on allocation of labour cost and relevant resources consumption according to the proportion of working hours or workload plus a subsequent profit rate of 5%, or with reference to market price provided by independent third parties |
| 7. Provision of water, electricity, gas and heat by Group A to Group B   | The price prescribed or approved by state or local price control department (if any) (see general pricing principle (1) above) or with reference to market price (see general pricing principle (3) above)   |