ASX once a 5% relevant interest in our voting shares is obtained. Further, once a shareholder owns a 5% relevant interest in us, such shareholder must notify us and the ASX of any increase or decrease of 1% or more in its holding of our voting shares or if it ceases to have relevant interest of at least 5%.

C. Material Contracts

The following are material contracts, other than contracts entered into the ordinary course of business, that we have entered into during the last two fiscal years.

Acquisition of Metal Management, Inc.

On March 14, 2008, MMI Acquisition Corporation, a wholly-owned subsidiary of Sims, merged with and into Metal Management. We issued 53,473,817 Sims ADSs to the former shareholders of Metal Management. The merger agreement is included as Exhibit 4.1 of this annual report.

Primary Credit Facilities Provided by CBA, WBC and BOA

A summary of the contracts governing Sims' primary credit facilities provided by CBA, WBC and BOA is provided above in "Item 5B Operating and Financial Review and Prospects — Liquidity and Capital Resources."

D. Exchange Controls

The Australian Banking (Foreign Exchange) Regulations and other Australian legislation and regulations control and regulate, or permit the control and regulation of, a broad range of payments and transactions involving non-residents of Australia. We are not restricted from transferring funds from Australia or placing funds to the credit of non-residents of Australia subject to:

- withholding for Australian tax due in respect of dividends (to the extent they are unfranked) and interest and royalties paid to non-residents of Australia; and
- a requirement for approval from the Reserve Bank of Australia or in some cases the Minister for Foreign Affairs for certain payments or dealings in or out of Australia to or on behalf of:
  - members of the previous government of Iraq, its senior officials and their immediate families;
  - certain supporters of the former government of the Federal Republic of Yugoslavia;
  - the Taliban or any undertaking owned or controlled directly or indirectly by the Taliban and certain other named terrorist organizations and individuals;
  - certain ministers and senior officials of the Government of Zimbabwe;
  - certain Burmese regime figures and supporters;
  - certain entities associated with North Korea; or
  - certain entities and persons associated with Iran.

This list is subject to change from time to time.

Accordingly, at the present time, remittance of dividends on our ordinary shares to the depositary is not subject to exchange controls.

Other than under the Corporations Act, the Australian Foreign Acquisitions and Takeovers Act (insofar as such laws apply) or as contained in associated Australian government policy (and except as otherwise described above), there are no limitations, either under Australian law or under our constitution on the right to hold or vote Sims ordinary shares.

E. Taxation

Australian taxation

The following discussion is a summary of certain Australian taxation implications of the ownership of ordinary shares (including American Depository Shares). The statements concerning Australian taxation set out below are based on the laws in force at the date of this annual report and the Convention between the Government of Australia and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (the Tax Treaty), and are subject to any changes in Australian law and any changes in the Tax Treaty occurring after that date.

The discussion is intended only as a descriptive summary and does not purport to be a complete analysis of all the potential Australian tax implications of owning and disposing of ordinary shares. The specific tax position of each investor will determine the applicable Australian income tax implications for that investor. We recommend each investor consult their own tax adviser concerning the implications of receiving dividends and owning and disposing of ordinary shares.

Taxation of dividends

Under the Australian dividend imputation system, Australian tax paid at the company level is imputed (or allocated) to shareholders by means of imputation credits which attach to dividends paid by the company to the shareholder. Such dividends are termed “franked dividends.”

While a company may only declare a dividend out of profits, the extent to which a dividend is franked depends in broad terms upon a company’s available franking credits and the nature of that dividend. Accordingly, a dividend paid to a shareholder may be wholly or partly franked or wholly unfranked.

Fully franked dividends paid to non-resident shareholders are exempt from Australian dividend withholding tax. Dividends that are not fully franked dividends are subject to withholding tax on the unfranked portion except to the extent that the dividend is declared to be “conduit foreign income” (in essence income and gains that have a foreign source from an Australian perspective which would include dividends received from non-Australian subsidiaries).

Dividends paid to non-resident shareholders which are not fully franked are subject to dividend withholding tax at the rate of 30% (unless reduced by a double tax treaty) to the extent they are unfranked and not paid out of conduit foreign income. In the case of residents of the United States, the rate is reduced to 15% under the Tax Treaty, provided the shares are not effectively connected with a permanent establishment or a fixed base of a non-resident in Australia through which the non-resident carries on business in Australia or provides independent personal services. Where a United States company holds directly at least 10% of the voting interest in the company paying the dividend, the withholding tax rate is reduced to 5%.

In the case of residents of the United States that have a permanent establishment or fixed base in Australia and the shares in respect of which the dividends are paid are attributable to that permanent establishment or fixed base, the dividends will not be subject to dividend withholding tax. Rather, such dividends will be taxed on a net assessment basis in Australia and, where the dividends are franked, entitlement to a tax offset against Australian income tax payable by the shareholder may arise to the extent of the franking credits.

There are rules where in certain circumstances a shareholder may not be entitled to the benefit of franking credits (i.e. the ability to claim a tax offset). The application of these rules will depend upon the shareholder’s own circumstances, including the period which the shares are held and the extent to which the shareholder is ‘at risk’ in relation to their shareholding. Shareholders will need to obtain their own advice in relation to these rules.

The company will send shareholders statements indicating the extent to which dividends are franked or paid out of conduit foreign income, and the amount of tax (if any) withheld.

A United States holder of ordinary shares (who is also not a tax resident of Australia and who does not hold ordinary shares as a business asset through a permanent establishment in Australia) with no other Australian source income is not required to file an Australian tax return.

Fully franked dividends paid to non-residents shareholders, dividends paid out of conduit foreign income or dividends subject to dividend withholding tax are not subject to any further Australian income tax.

Gain or loss on disposition of shares

The Australian income tax treatment in respect of the disposition of shares will depend on whether the investor holds the shares on capital or revenue account. This will be a question of fact and each investor will need to consider its own circumstances.

Capital Account

Under existing law, a resident of the United States disposing of shares in an Australian company will be free from capital gains tax in Australia except where:

(a) the shares are held as part of a trade or business conducted through a permanent establishment in Australia; or

(b) the shareholder and its associates hold (or have held the shares for a 12 month period during the last 24 months) an interest of 10% or more in the issued capital of the company and more than 50% of the company’s assets relate to Australian real property.

If either of the above exceptions apply, capital gains tax in Australia is payable as follows:

Individual Investor

Capital gains tax is payable on 50% of any capital gains (without adjustment for inflation indexation) on the disposal of shares acquired on or after 11:45 a.m. on September 21, 1999 and held for at least 12 months. For shares considered to be acquired for Australian tax purposes prior to 11:45 a.m. on September 21, 1999, individuals will be able to choose between the following alternatives:

- taxed on any capital gain after allowing for cost base indexation up to September 30, 1999 (essentially when indexation ceased) where the shares have been held for at least 12 months (i.e. the difference between the disposal price and the original cost indexed for inflation over the period to September 30, 1999); and
- taxed on 50% of the actual capital gain (without adjustment for inflation indexation) where the shares have been held for at least 12 months.

Normal rates of income tax would apply to capital gains so calculated.

Capital losses are not subject to indexation; they are available as deductions, but only in the form of offset against capital gains. Depending upon which of the above alternatives are chosen, capital losses may be offset against capital gains indexed to September 30, 1999 or the full nominal capital gain before the 50% reduction. Excess capital losses can be carried forward indefinitely for offset against future capital gains.

Corporate Investor

Capital gains tax is payable on any capital gains made (without adjustment for inflation indexation) on the disposal of shares considered to be acquired for Australian tax purposes on or after 11:45am on September 21, 1999. For shares acquired prior to 11:45am on September 21, 1999, a corporate investor will be taxed on any capital gain after allowing for indexation of the cost base (i.e. the difference between the disposal price and the original cost indexed for inflation over the period). The 50% discount is not applicable for corporate investors. The corporate income tax and capital gains tax rate is currently 30%.

There may be other special rules which apply to the taxation of capital gains for other types of entities.

Revenue Account

Under Australia’s domestic income tax provisions, a non-resident of Australia is taxed on profits arising on the sale of shares where that profit is on revenue account and has an Australian source. The source of profit is a question of fact and will need to be assessed by the investor. Where the gain is taxable, the Tax Treaty may apply as follows:

(a) If the United States investor holds the shares as part of a trade or business conducted through a permanent establishment in Australia, any profit on disposal would be assessable and subject to ordinary income tax. (Any losses on disposal may constitute an allowable deduction.)

(b) If the United States investor does not hold the shares as part of a trade or business conducted through a permanent establishment in Australia, then the Tax Treaty should operate to ensure that the taxing of any profits arising on the sale of shares should only occur in the United States even if the source of that profit is Australian. The only exception is if the profits are in respect of the disposal of shares which consist wholly or principally of real property situated in Australia in which case Australia will have taxing rights under the Tax Treaty.

Any taxable gain would be fully taxable, that is, there is no concession to reduce the gain for inflation or apply a discount to reduce the gain. If a gain is taxable, any capital gain on the sale should be reduced to nil under specific anti-duplication rules.

There should be no Australian stamp duty, goods and services tax or transfer taxes on the sale, disposal or exchange of ordinary shares by a U.S. shareholder.

Australia does not impose any gift, estate, death, or other duty in respect of the gift, devise or bequest of ordinary shares by a U.S. shareholder.

United States Federal taxation

The following discussion is a summary of certain United States federal income tax consequences of owning ordinary Shares or ADSs. This section is based on the U.S. Internal Revenue Code of 1986, as amended, or the Code, its legislative history, existing and proposed regulations and published rulings and court decisions, all as currently in effect, as well as the Tax Treaty. These laws are subject to change, possibly on a retroactive basis. This discussion does not address effects of any state or local tax laws. The specific tax position of each investor will determine the applicable United States federal, state and local income tax implications for that investor and we recommend each investor consult their own tax adviser concerning the implications of receiving dividends and owning and disposing of ordinary shares or ADSs. This section does not apply to you if you are not a “U.S. holder” as defined below.

For purposes of this discussion, you are a “U.S. holder” if you are a beneficial owner of shares and you are:

- a citizen or resident of the United States;
- a domestic corporation;
- an estate whose income is subject to United States federal income tax regardless of its source; or
- a trust if a United States court can exercise primary supervision over the trust’s administration and one or more United States persons are authorized to control all substantial decision of the trust.

Taxation of dividends

Under the United States federal income tax laws, and subject to the discussion below under “Passive foreign investment company,” if you are a U.S. holder, you must include in your gross income the gross amount of any dividend paid by us out of our current or accumulated earnings and profits (as determined for United States federal income tax purposes). If you are a non-corporate U.S. holder, dividends paid to you in taxable years beginning before January 1, 2011 that constitute qualified dividend income will be taxable to you at a maximum tax rate of 15% provided that you hold the shares for more than 60 days during the 121-day period beginning 60 days before the ex-dividend date and meet other holding period requirements.

As a general rule, dividends paid by a foreign corporation will not constitute qualified dividend income if such corporation is treated, for the tax year in which the dividend is paid, or the preceding tax year, as a passive foreign investment company, or a PFIC, for U.S. federal income tax purposes. We do not believe that we will be classified as a PFIC for U.S. federal income tax purposes for our current taxable year or that we were classified as a PFIC in a prior taxable year, and therefore dividends we pay with respect to our shares generally will be qualified dividend income. However, see the discussion under “Passive foreign investment company” below. The 15% reduced rate applicable to dividend distributions does not apply to tax years beginning after December 31, 2010.

You must include any Australian tax withheld from the dividend payment in this gross amount even though you do not in fact receive it. The dividend is ordinary income that you must include in income when you receive the dividend, actually or constructively. The dividend will not be eligible for the dividends-received deduction generally allowed to United States corporations in respect of dividends received from other United States corporations. The amount of the dividend distribution that you must include in your income as a U.S. holder will be the U.S. dollar value of the Australian dollar payments made, determined at the spot Australian dollar/US dollar rate on the date the dividend distribution is included in your income, regardless of whether the payment is in fact converted into U.S. dollars. Generally, any gain or loss resulting from currency exchange fluctuations during the period from the date you include the dividend payment in income to the date you convert the payment into U.S. dollars will be treated as ordinary income or loss and will not be eligible for the special tax rate applicable to qualified dividend income. The gain or loss generally will be income from sources within the United States for foreign tax credit limitation purposes. Distributions in excess of current and accumulated earnings and profits, as determined for United States federal income tax purposes, will be treated as a non-taxable return of capital to the extent of your basis in your ordinary shares and thereafter as capital gain.

Subject to certain limitations, the Australian tax withheld in accordance with the Tax Treaty and paid over to Australia will be creditable against your United States federal income tax liability. Special rules apply in determining the foreign tax credit limitation with respect to dividends that are subject to the maximum 15% rate.

Dividends will be income from sources outside the United States. Under the foreign tax credit rules, dividends paid in taxable years beginning before January 1, 2007, with certain exceptions, will be “passive” or “financial services” income, but dividends paid in taxable years beginning after December 31, 2006 will, depending on your circumstances, be “passive” or “general” income which, in either case, is treated separately from other types of income for purposes of computing the foreign tax credit.

Taxation of capital gains

Subject to the discussion below under “Passive foreign investment company,” if you are a U.S. holder and you sell or otherwise dispose of your ordinary shares or ADSs, you will recognize capital gain or loss for United States federal income tax purposes equal to the difference between the U.S. dollar value of the amount that you realize and your tax basis, determined in U.S. dollars, in your ordinary shares or ADSs. Capital gain of a non-corporate U.S. holder that is recognized before January 1, 2011 is generally taxed at a maximum rate of 15% where the holder has a holding period greater than one year.

Passive foreign investment company

Special U.S. federal income tax rules apply to U.S. holders owning shares of a PFIC. We believe that we were not a PFIC for U.S. federal income tax purposes in any prior taxable year and that we will not be classified as a PFIC for the current taxable year, but we cannot be certain whether we will be treated as a PFIC for the current year or any future taxable year. We will generally be considered a PFIC for any taxable year if either (i) at least 75% of our gross income is passive income (the “Income Test”), or (ii) at least 50% of the value of our assets (based on an average of the quarterly values of the assets during a taxable year) is attributable to assets that produce or are held for the production of passive income (the “Asset Test”). For this purpose, passive income generally includes dividends, interest, royalties, rents (other than royalties and rents 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. We will be treated as owning our proportionate share of the assets and earning our proportionate share of the income of any other corporation in which we own, directly or indirectly, 25% or more (by value) of the stock.

We must make a separate determination each year as to whether we are a PFIC. As a result, it is possible that our PFIC status will change. In particular, our PFIC status under the Asset Test will generally be determined by using the market price of our ADSs and ordinary shares, which is likely to fluctuate over time, to calculate the total value of our assets. Accordingly, fluctuations in the market price of the ADSs or ordinary shares may result in our being a PFIC. If we are classified as a PFIC for any year during which you hold ADSs or ordinary shares, we will generally continue to be treated as a PFIC for all succeeding years during which you hold ADSs or ordinary shares. However, if we cease to be a PFIC under the Income Test and the Asset Test, you may make certain elections, including the “mark-to-market” election as discussed below, to avoid PFIC status on a going-forward basis.

If we are a PFIC for any taxable year during which you hold ADSs or ordinary shares, you will be subject to special tax rules with respect to (i) any “excess distribution” that you receive and (ii) any gain you realize from a sale or other disposition (including a pledge) of the ADSs or ordinary shares, unless you make a “mark-to-market” election. Excess distributions are generally defined as distributions you receive in a taxable year that are greater than 125% of the average annual distributions you received during the shorter of the three preceding taxable years or your holding period for the ADSs or ordinary shares. Under these special tax rules: (i) the excess distribution or gain will be allocated ratably over your holding period for the ADSs or ordinary shares, (ii) the amount allocated to the current taxable year, and any taxable year prior to the first taxable year in which we were a PFIC, will be treated as ordinary income, and (iii) the amount allocated to each other year will be subject to the highest tax rate in effect for that year and the interest charge generally applicable to underpayments of tax will be imposed on the resulting tax attributable to each such year. The entire amount of any gain realized upon the sale or other disposition will be treated as an excess distribution made in the year of sale or other disposition and as a consequence will be treated as ordinary income and, to the extent allocated to years prior to the year of sale or disposition with respect to which we were a PFIC, will be subject to the interest charge described above. The tax liability for amounts allocated to years prior to the year of disposition or “excess distribution” cannot be offset by any net operating losses for such years, and gains (but not losses) realized on the sale of the ADSs or ordinary shares cannot be treated as capital, even if you hold the ADSs or ordinary shares as capital assets.

Alternatively, a U.S. holder of “marketable stock” (as defined below) in a PFIC may make a mark-to-market election for such stock of a PFIC to elect out of the tax treatment discussed above. If you make a mark-to-market election for the ADSs or ordinary shares, you will include in income each year an amount equal to the excess, if any, of the fair market value of the ADSs or ordinary shares as of the close of your taxable year over your adjusted basis in such ADSs or ordinary shares. You are allowed a deduction for the excess, if any, of the adjusted basis of the ADSs or ordinary shares over their fair market value as of the close of the taxable year. However, deductions are allowable only to the extent of any net mark-to-market gains on the ADSs or ordinary shares included in your income for prior taxable years. Amounts included in your income under a mark-to-market election, as well as gain on the actual sale or other disposition of the ADSs or ordinary shares, are treated as ordinary income. Ordinary loss treatment also applies to the deductible portion of any mark-to-market loss on the ADSs or ordinary