D. Exchange Controls

The Australian Banking (Foreign Exchange) Regulations 1959 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;
- a requirement for approval from the Reserve Bank of Australia or in some cases the Minister for Foreign Affairs and the Department of Foreign Affairs and Trade, or DFAT, for certain payments or dealings in or out of Australia to or on behalf of:
  - 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 such as Al-Qaida;
  - certain ministers and senior officials of the Government of Zimbabwe;
  - certain Burmese regime figures and supporters;
  - certain entities associated with North Korea;
  - certain entities and persons associated with the Gadhafi regime;
  - certain entities and persons responsible for or involved in human rights abuses in Syria; or
  - certain entities and persons associated with Iran; and
- sanctions with respect to financial transactions also exist in relation to certain individuals and entities in the Democratic Republic of Congo, Eritrea, Liberia, Sudan, Cote d’Ivoire, Sierra Leone, Lebanon and Somalia. These sanctions are administered by DFAT, based on the Charter of the United Nations (Dealing with Assets) Regulations 2008 (Cth).

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 2001, the Australian Foreign Acquisitions and Takeovers Act 1975, the Income Tax Assessment Act 1936 (insofar as such laws apply) or as contained in applicable 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

Commonwealth of Australia Taxation

The following discussion is a summary of the principal Australian taxation implications of the acquisition, ownership and disposition of ordinary shares or ADSs. 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 the acquisition, ownership and disposition of ordinary shares or ADSs. The specific tax position and circumstances of each holder will determine the applicable Australian income tax implications for that holder. We recommend each holder consult their own tax adviser concerning the overall tax consequences of the acquisition, ownership and disposition of ADS or ordinary shares.

Taxation of dividends

The dividend imputation system of company tax relieves double taxation on dividends paid by Australian resident corporations. Under the Australian dividend imputation system, companies are required to identify dividends paid as either franked or unfranked. Franked dividends are those paid out of profits which have borne Australian corporate tax while unfranked dividends are paid out of untaxed profits. Australian corporate tax paid at the corporate 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 is no longer restricted to only declaring dividends out of earnings and 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.

When an Australian resident individual shareholder receives a franked dividend, the shareholder receives a tax offset to the extent of the franking credits, which can be offset against the Australian income tax payable by the shareholder. An Australian resident shareholder may, in certain circumstances, be entitled to a refund of excess franking credits.

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 that 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 US, 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 US company holds directly at least 10% of the voting interest in the company paying the dividend, the withholding tax rate is reduced to 5%. This rate is reduced to 0% in certain circumstances for certain a US company holding at least 80% of the voting shares.

In the case of residents of the US 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.

We 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 US 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.

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 (as opposed to a bright line holding period test) and each investor will need to consider its own circumstances.

Capital Account

Under existing law, a resident of the US 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 market value 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:

(i) 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); or
- 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.

(ii) 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%.

Excess capital losses can only be offset against future capital gain where certain loss recoupment tests are satisfied. 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 US 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 US 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 US 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.

Australian Goods and Services tax (GST) and Australian Stamp Duty

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 US shareholder.

Australian Gift and Estate Tax

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

US Federal Taxation

The following discussion is a summary of the principal US federal income tax consequences to United States Holders ("US Holder") of the acquisition, ownership and disposition of ordinary shares or ADSs. This section is based on the US 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 and circumstances of each holder will determine the applicable US federal, state and local income tax implications for that holder and we recommend each holder consult their own tax adviser concerning the implications of the acquisition, ownership and disposal of ordinary shares or ADSs. This section does not apply to you if you are not a US holder as defined below.

For purposes of this discussion, you are a US holder if you are a beneficial owner of ordinary shares or ADSs and you are:

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

Taxation of dividends

Under the US federal income tax laws, and subject to the discussion below under “Passive foreign investment company,” if you are a US 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 US federal income tax purposes). If you are a non-corporate US holder, dividends paid to you in taxable years beginning before January 1, 2013 that constitute qualified dividend income will be taxable to you at a maximum long-term capital gains tax rate of 15% provided that the US holder holds 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 otherwise ordinary income tax rates will apply.

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 US federal income tax purposes. We do not believe that we will be classified as a PFIC for US 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. Absent new legislation extending current rates, dividends paid in taxable years beginning on or after January 1, 2013 will be subject to ordinary income tax rates.

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 US corporations in respect of dividends received from other US corporations. The amount of the dividend distribution that you must include in your income as a US holder will be the US 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 US 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 US 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 US for foreign tax credit limitation purposes. Distributions in excess of current and accumulated earnings and profits, as determined for US 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 US federal income tax liability. Special rules apply in determining the foreign tax credit limitation with respect to dividends that are subject to the maximum long-term capital gain 15% rate.

Dividends will be income from sources outside the US. 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 US holder and you sell or otherwise dispose of your ordinary shares or ADSs, you will recognize capital gain or loss for US federal income tax purposes equal to the difference between the US dollar value of the amount that you realize and your tax basis, determined in US dollars, in your ordinary shares or ADSs. Capital gain of a non-corporate US holder that is recognized before January 1, 2013 is generally taxed at preferential rates where the holder has a holding period greater than one year. There are limitations on the deductibility of capital losses.

Passive foreign investment company (PFIC)

Special US federal income tax rules apply to US holders owning shares of a Passive Foreign Investment Company (“PFIC”). We believe that its ordinary shares or ADSs will not be treated as shares of a PFIC for US federal income tax purposes in any prior taxable year or for the current taxable year, but this conclusion is a factual determination made annually and therefore may be subject to change. 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 ordinary shares and ADSs , which is likely to fluctuate over time, to calculate the total value of our assets. Accordingly, fluctuations in the market price of the ordinary shares or ADSs may result in our being a PFIC. If we are classified as a PFIC for any year during which you hold ordinary shares or ADSs, we will generally continue to be treated as a PFIC for all succeeding years during which you hold ordinary shares or ADSs. 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 ordinary shares or ADSs , 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 ordinary shares or ADSs , 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 ordinary shares or ADSs. Under these special tax rules: (i) the excess distribution or gain will be allocated ratably over your holding period for the ordinary shares or ADSs , (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 ordinary shares or ADSs cannot be treated as capital, even if you hold the ordinary shares or ADSs as capital assets.

Alternatively, a US 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 ordinary shares or ADSs, you will include in income each year an amount equal to the excess, if any, of the fair market value of the ordinary shares or ADSs as of the close of your taxable year over your adjusted basis in such ordinary shares or ADSs. You are allowed a deduction for the excess, if any, of the adjusted basis of the ordinary shares or ADSs 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 ordinary shares or ADSs 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 ordinary shares or ADSs, are treated as ordinary income. Ordinary loss treatment also applies to the deductible portion of any mark-to-market loss on the ordinary shares or ADSs, as well as to any loss realized on the actual sale or disposition of the ordinary shares or ADSs, to the extent that the amount of such loss does not exceed the net mark-to-market gains previously included for such ordinary shares or ADSs. Your basis in the ordinary shares or ADSs will be adjusted to reflect any such income or loss amounts. If you make a valid mark-to-market election, the tax rules that apply to distributions by corporations which are not PFICs would apply to distributions by us, except that the lower applicable capital gains rate for qualified dividend income discussed above under “Taxation of dividends” would not apply.

The mark-to-market election is available only for “marketable stock,” which is generally stock that is traded on a qualified exchange or other market. We have listed our ordinary shares and ADSs on the New York Stock Exchange. We believe that the New York Stock Exchange will constitute a qualified exchange or other market for this purpose. However, no assurances can be provided that our ordinary shares and ADSs will continue to trade on the New York Stock Exchange or that they will be regularly traded for this purpose.

If a non-US corporation is a PFIC, a holder of shares in that corporation may elect out of the general PFIC rules discussed above by making a qualified electing fund, or QEF, election to include its pro rata share of the corporation’s income on a current basis. You may make a QEF election with respect to us only if we agree to furnish you annually with certain tax information. However, if you hold ordinary shares or ADSs in any year in which we are a PFIC, you will be required to file Internal Revenue Service Form 8621 regarding distributions you receive on the ordinary shares or ADSs, and any gain realized on the disposition of the ordinary shares or ADSs.

The rules applicable to owning shares of a PFIC are complex, and each US holder should consult with its own tax advisor regarding the consequences of investing in a PFIC.