

# ASM International

Company profile

By Tim Steinweg, Fleur Scheele & Meike Remmers

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# Table of contents

<b>Acronyms .....</b>	<b>3</b>
<b>Introduction .....</b>	<b>4</b>
<b>1 Corporate information.....</b>	<b>7</b>
1.1 Company structure and ownership .....	7
1.2 Business strategy .....	9
<b>2 Background to and consequences of the ASM PT divestment .....</b>	<b>13</b>
2.1 Background to the divestment .....	13
2.2 Consequences of the divestment.....	14
<b>3 Corporate Social Responsibility at ASMI and ASM PT .....</b>	<b>16</b>
3.1 CSR policy and reporting .....	16
3.2 Strike at ASM PT .....	18
<b>4 Relevant international standards.....</b>	<b>19</b>
4.1 Overview of international standards.....	19
4.1.1 UN Guiding Principles on Business and Human Rights.....	19
4.1.2 OECD Guidelines.....	20
4.1.3 ILO Conventions .....	20
4.1.4 Industry Code of Conduct .....	21
4.2 Do these standards apply? .....	22
<b>5 Conclusions .....</b>	<b>23</b>
5.1 Change in ownership structure is no reason for inaction .....	23
5.2 What can be expected from ASMI? .....	24
<b>Annex 1: List of ASMI and ASM PT subsidiaries .....</b>	<b>25</b>
<b>Colophon .....</b>	<b>27</b>

## Acronyms

<b>AGM</b>	Annual General Meeting
<b>ALD</b>	Atomic Layer Deposition
<b>ASMI</b>	ASM International N.V.
<b>ASM PT</b>	ASM Pacific Technology Ltd.
<b>CEO</b>	Chief Executive Officer
<b>CSR</b>	Corporate Social Responsibility
<b>EICC</b>	Electronic Industry Citizenship Coalition
<b>ILO</b>	International Labour Organization
<b>ISO</b>	International Organization for Standardization
<b>NGO</b>	Non-governmental organisation
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>OHCHR</b>	Office of the High Commissioner for Human Rights
<b>OHS</b>	Occupational Health & Safety
<b>R&amp;D</b>	Research and development
<b>SHARPS</b>	Supporters for the Health and Rights of People in the Semiconductor industry
<b>SOMO</b>	Centre for Research on Multinational Corporations
<b>UN</b>	United Nations
<b>VBDO</b>	The Dutch Association of Investors for Sustainable Development

# Introduction

## Context

In March 2014, a short film was released entitled *Who Pays the Price? The Human Cost of Electronics*.<sup>1</sup> This nine-minute documentary touches on the occupational hazard of benzene poisoning faced by workers in the electronics supply chain in China. Benzene is a chemical that is widely used in industrial processes, but it is also a human carcinogen that is proven to cause leukaemia and other cancers affecting blood cells.<sup>2</sup>

The documentary profiles a former worker of a Chinese subsidiary of ASM Pacific Technology (ASM PT). Ming Kunpeng was diagnosed with leukaemia in May 2009 and was in a very poor mental and physical state during the making of the documentary. Six weeks after the documentary was made, he committed suicide by jumping off the roof of the hospital where he was being treated. Ming was just 26 years old when he died.

Ming had been diagnosed with 'occupational leukaemia' by the Guangdong Prevention and Treatment Centre of Occupational Diseases.<sup>3</sup> This is a rare example of a formal diagnosis whereby a medical institution directly relates the illness to benzene exposure in the workplace. While ASM PT has not publicly accepted the occupational cause of Ming's illness, the company did provide financial assistance 'on humanitarian consideration' [sic].<sup>4</sup> Hong Kong media have called this case 'the tip of the iceberg of ASM's problems'.<sup>5</sup>

In May 2013, the GoodElectronics Network raised concerns with management of the Dutch company ASM International (ASMI), which until recently had a 52% stake in ASM PT.<sup>6</sup> ASMI has its headquarters in the Netherlands. In a letter to ASMI, GoodElectronics points to the sub-standard safety measures at ASM PT in China, as workers are not informed about the hazards of the chemicals they are working with, they receive no formal training on the safe use of these chemicals and they are not provided with proper ventilation masks. The letter also argues that ASMI, as the mother company of ASM PT, has the responsibility of addressing the situation urgently.

In June 2013, ASMI responded to the letter and indicated that ASM PT was no longer a subsidiary of the company.<sup>7</sup> The letter claims that the chemicals used in the factory did not

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<sup>1</sup> H. White & L. Zhang, "Who Pays the Price? The Human Cost of Electronics", YouTube, 4 March 2014, <<https://www.youtube.com/watch?v=ns-kJ5Podjw>> (2 April 2014).

<sup>2</sup> American Cancer Society website, "Benzene", no date, <<http://www.cancer.org/cancer/cancercauses/othercarcinogens/intheworkplace/benzene>> (2 April 2014).

<sup>3</sup> Partial translation of Ming Kunpeng's medical records, translated by Lynn Zhang, 22 June 2013, on file at SOMO.

<sup>4</sup> Attachment by ASM PT to the letter by J.F.M. Westendorp, Vice President Corporate Marketing Front-end, ASMI N.V., to GoodElectronics Network, IndustriALL Global Union and FNV bondgenoten, 17 June 2013.

<sup>5</sup> H. White, unpublished video material.

<sup>6</sup> Letter from GoodElectronics Network, IndustriALL Global Union and FNV Bondgenoten to ASMI N.V., 17 May 2013, <<http://www.fnvmondiaal.nl/media/pdf/760971/1333639>> (2 April 2014).

<sup>7</sup> J.F.M. Westendorp, Vice President Corporate Marketing Front-end, ASMI N.V., letter to GoodElectronics Network, IndustriALL Global Union and FNV bondgenoten, 17 June 2013.



contain any benzene, and that the company's health and safety measures had been adequate. An additional letter by ASM PT also points to investigations by the factory's Staff Occupational Safety and Health Department and by the Shenzhen Yantian Disease Prevention and Control Centre, which showed that the benzene concentration at the factory was below detectable levels.<sup>8</sup> However, these investigations have not been made public. Also, no alternative explanation for the cause of Ming Kunpeng's disease has been provided.

## Aim and methods

Ming Kunpeng's illness and subsequent suicide has generated a lot of attention regarding the conditions in the particular factory where he worked. Since the factory where Ming worked is owned by a former subsidiary of ASMI, this publication provides context to this case by presenting a corporate profile of ASMI. The publication also provides an insight into the ownership structure of ASMI and ASM PT and gives context to the background and consequences of the ownership changes that took place in March 2013.

The ultimate aim of this report is to analyse ASMI's responsibilities for any adverse impacts at ASM PT, as stipulated in various international standards and bearing in mind the new ownership structure. Ming Kungpeng's occupational leukaemia is regarded as a warning sign pointing to a potentially broader issue of benzene poisoning at ASM PT's facilities. This report aims to assess the actions taken by ASMI to address this issue as well as measures that ASMI can be expected to implement on the basis of relevant international standards.

Information for this company profile has been gathered through desk research, on the basis of various corporate, non-governmental organisation (NGO) and media websites as well as databases including Bloomberg, LexisNexis and Orbis. The findings as presented in this report are all based on publicly available sources, as referenced throughout the report. A draft version of this report has been sent to ASMI for factual review.

## ASMI's response to review request

SOMO provided a draft version of this report to ASMI for a factual review and offered the company a period of two weeks to respond. In response to this request, ASMI indicated that it believed "the draft company profile is to a material extent based on inaccurate facts and assumptions". ASMI furthermore disagreed with the conclusions of the report. However, ASMI indicated that it was not in a position to respond in detail to the draft company profile, as a more thorough review was still underway. It therefore requested a four-week extension of the review period.

In line with its Code of Conduct, SOMO believes that it has provided ASMI with ample time to review the findings of this report and did not agree to ASMI's request for an extension. As ASMI did not specify which elements of the report were based on inaccurate facts and assumptions, the current version of the report is based on the information as available to SOMO at the time of

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<sup>8</sup> J.F.M. Westendorp, Vice President Corporate Marketing Front-end, ASM International N.V., letter to GoodElectronics Network, IndustriALL Global Union and FNV bondgenoten, 17 June 2013; Attachment by ASM PT to the letter by J.F.M. Westendorp. During the review period of this report, ASMI furthermore reacted to questions posed by the Dutch television programme *EénVandaag* by reiterating that the company never uses or has used benzene; J.F.M. Westendorp, Vice President Corporate Marketing Front-end, ASMI N.V., letter to *EénVandaag*, 31 March 2014.

writing. Any relevant comments, facts or additional documents provided by ASMI at a later date will be used to develop an updated version of this report.

Shortly before publication of this report, SOMO received a letter on behalf of ASMI.<sup>9</sup> This letter explains that ASMI's objections to the report center around the incident with Ming Kunpeng. This incident has been used as the context to this report, while ASMI argues that the occupational cause of Ming's disease is an unproven hypothesis and that no similar incidents have taken place since. As explained above, this report does not intend to evaluate any wrongdoing in this particular case, but regards it as the background to an analysis of the overall approach and responsibilities of ASMI.

## **Structure and status of the report**

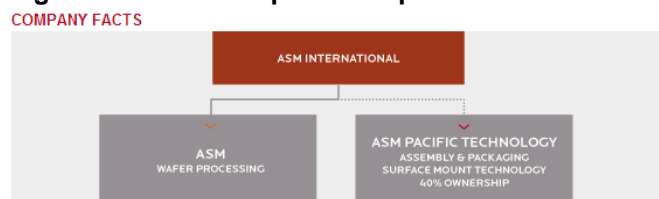
This report is structured as follows: The first chapter provides the corporate profile of ASMI, including general information, the corporate and ownership structures and an analysis of ASMI's business strategies. Chapter 2 discusses the change in ownership structure of ASM PT, the background to the sale of 12% of the shares by ASMI in March 2013, and some of the consequences of this new corporate structure. Chapter 3 gives an overview of the company's approach to Corporate Social Responsibility (CSR) by evaluating its policies as well as other controversial practices. The Chapter 4 discusses the relevant international standards regarding business and human rights, as well as standards on occupational health and safety and discusses the extent of ASMI's responsibility for adverse impacts at ASM PT. The final chapter presents a number of concluding remarks.

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<sup>9</sup> J.G. van Olst, Senior Associate Amsterdam, Stibbe, letter to T. Steinweg, SOMO, 25 april 2014



**Figure 1: ASMI's simplified corporate structure**



Source: ASMI website<sup>16</sup>

ASMI is a publicly traded company, with listings on Euronext Amsterdam, as well as on the Nasdaq Stock Market.<sup>17</sup> Arthur Del Prado continues to be the largest shareholder of the company, with a stake of almost 18%. The remaining shares are mostly held by institutional and professional investors.

**Table 1: Top 10 shareholders of ASMI**

Shareholder name	Country	Stake (%)
ARTHUR H. DEL PRADO	NL	17.96
ABERDEEN ASSET MANAGERS LIMITED	GB	9.86
ABERDEEN ASSET MANAGEMENT PLC via its funds	GB	8.79
JP MORGAN CHASE & CO	US	7.76
CAPITAL RESEARCH AND MANAGEMENT COMPANY	US	4.89
MASSACHUSETTS FINANCIAL SERVICES COMPANY	US	3.97
CAPITAL GROUP COMPANIES, INC., via its funds	US	3.66
SUN LIFE FINANCIAL INC via its funds	CA	3.60
STICHTING ADMINISTRATIEKANTOOR ASMI	NL	3.39
EMINENCE CAPITAL, LLC	US	3.38

Source: Orbis<sup>18</sup>

ASM PT is traded on the Hong Kong Stock Exchange.<sup>19</sup> As described above, ASMI holds approximately 40% of the shares in ASM PT through its wholly owned subsidiary ASM Pacific Holding B.V. The remaining shares are to a large extent held by the same institutional investors who also hold significant shares in ASMI.

<sup>16</sup> ASMI website, About, "Company Profile," no date, <<http://www.asm.com/EN/Pages/ASMataGlance.aspx>> (2 April 2014).

<sup>17</sup> ASMI International website, About ASMI, "About ASMI", no date, <<http://www.asmi-annualreport.com/2012/about-asm/about-asm>> (20 March 2014).

<sup>18</sup> Information derived from Bureau van Dijk, Orbis database, accessed 25 March 2014.

<sup>19</sup> Yahoo! Finance Singapore website, "ASM Pacific Technology Ltd.", no date, <<https://sg.finance.yahoo.com/q?s=0522.HK>> (22 April 2014).



**Table 2: Top 10 shareholders of ASM PT**

Shareholder name	Country	Stake (%)
ASM PACIFIC HOLDING B.V.	NL	40.08
ABERDEEN ASSET MANAGEMENT PLC via its funds	GB	11.54
CAPITAL GROUP COMPANIES, INC., via its funds	US	8.09
AFFILIATED MANAGERS GROUP, INC. via its funds	US	8.04
CAPITAL RESEARCH AND MANAGEMENT COMPANY	US	7.17
GENESIS FUND MANAGERS LLP	BM	5.98
JP MORGAN CHASE & CO	US	5.28
CITIGROUP INC	US	4.87
JP MORGAN CHASE BANK, NA	US	4.79
CREDIT SUISSE SECURITIES (EUROPE) LTD	GB	2.85

Source: Orbis<sup>20</sup>

Both Arthur Del Prado and his son Chuck Del Prado, the current CEO of ASMI, hold positions on the board of ASM PT.<sup>21</sup> Arthur Del Prado is CEO and Chairman of the Board, while Chuck Del Prado is a non-executive director. Peter van Bommel, ASMI's Chief Financial Officer, is also a non-executive board member.

## 1.2 Business strategy

According to its website, ASMI's mission is *"to provide our customers with the most advanced, cost-effective, and reliable products, service and global support network in the semiconductor industry and beyond"*.<sup>22</sup> It intends to achieve its mission by *"capitalizing on its technological innovations, manufacturing infrastructure and sales and support offices located close to our global customers"*.<sup>23</sup>

### Competitive environment

ASMI is active in the semiconductor capital equipment industry, which manufactures and markets machines used in the production of electronic equipment.<sup>24</sup> The semiconductor equipment industry is a technologically advanced sector, which requires continually improving technologies that allow for more computing capacity on smaller surfaces. An important driver in the industry is Moore's Law. Moore's Law states that the average number of transistors on a microchip will double every 18 to 24 months.<sup>25</sup> In order to keep up with this law, and therefore to stay competitive, companies are required to invest heavily in new technologies that allow for ever greater density of electrical signals on microscopic levels. This advancement of circuit-board technology is a key driver for the demand of new semiconductor equipment.<sup>26</sup>

<sup>20</sup> Information derived from Bureau van Dijk, Orbis database, accessed 25 March 2014.

<sup>21</sup> ASM PT website, Corporate, "Board of Directors", no date, <<http://www.asmpacific.com/asmpmt/board.html>> (2 April 2014).

<sup>22</sup> ASM website, About, Strategy & Focus Areas, "Mission & Strategy", no date, <<http://www.asm.com/EN/Pages/MissionStrategy.aspx>> (2 April 2014).

<sup>23</sup> Ibid.

<sup>24</sup> Value Line website, Research Hub, Stocks, "Industry Analysis: Semiconductor Capital Equipment", no date, <[http://www.valueline.com/Stocks/Industries/Industry\\_Analysis\\_\\_Semiconductor\\_Capital\\_Equipment.aspx](http://www.valueline.com/Stocks/Industries/Industry_Analysis__Semiconductor_Capital_Equipment.aspx)> (2 April 2014).

<sup>25</sup> ASM International, Annual Report 2013 <<http://asmi-annualreport.com/2013/userfiles/pdf/ASMI-Annual-Report-2013.pdf>> (22 April 2014), p.68.

<sup>26</sup> Value Line website, Research Hub, Stocks, "Industry Analysis: Semiconductor Capital Equipment", no date, <[http://www.valueline.com/Stocks/Industries/Industry\\_Analysis\\_\\_Semiconductor\\_Capital\\_Equipment.aspx](http://www.valueline.com/Stocks/Industries/Industry_Analysis__Semiconductor_Capital_Equipment.aspx)> (2 April 2014).

The semiconductor equipment industry is highly cyclical, with large variations of product supply and demand.<sup>27</sup> The industry clients are made up of a small number of large semiconductor companies, which order their equipment on the basis of their expectations for future demand. If this expected demand is smaller than the existing production capacity, these companies reduce the purchase of new equipment.<sup>28</sup> Industry downturns, such as the one that happened after the financial crisis of 2008, have a big impact on the reduction of demand for semiconductor devices and equipment. Semiconductor equipment companies such as ASMI are forced to quickly and effectively reduce expenses during these periods.<sup>29</sup> On the other hand, when chip producers expect higher demand than their current capacity can handle, such as during industry upturns, this can lead to abrupt increases in demand for ASMI's products. During such periods, the company needs to quickly increase manufacturing capacity and hire staff to meet customer demand, as well as being able to finance such capacity increases.

Competition in the semiconductor equipment industry is fierce, with more than a dozen companies operating on a global level. ASMI reports that it faces intense competition from its established rivals, some of which have greater resources than the company does. According to ASMI, a number of its competitors have substantially greater financial, technological, engineering, manufacturing, marketing and distribution resources.<sup>30</sup> At the same time, the industry is reliant on a select number of large customers, as the semiconductor industry is dominated by a handful of large multinational companies. ASMI reports that for its back-end processes, its ten largest customers represented 25.1% of its net sales in 2012 (75.3% for its front-end business).

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<sup>27</sup> ASM International, Annual Report 2013, <<http://asmi-annualreport.com/2013/userfiles/pdf/ASMI-Annual-Report-2013.pdf>> (22 April 2014), p.56.

<sup>28</sup> Value Line website, Research Hub, Stocks, "Industry Analysis: Semiconductor Capital Equipment", no date, <[http://www.valueline.com/Stocks/Industries/Industry\\_Analysis\\_\\_Semiconductor\\_Capital\\_Equipment.aspx](http://www.valueline.com/Stocks/Industries/Industry_Analysis__Semiconductor_Capital_Equipment.aspx)> (2 April 2014).

<sup>29</sup> ASM International, Annual Report 2013, <<http://asmi-annualreport.com/2013/userfiles/pdf/ASMI-Annual-Report-2013.pdf>> (22 April 2014), p.57.

<sup>30</sup> ASM International, Annual Report 2013, <<http://asmi-annualreport.com/2013/userfiles/pdf/ASMI-Annual-Report-2013.pdf>> (22 April 2014), p.58.

**Table 3: Core figures for ASMI and its competitors, 2012 (€ million)**

Name	Revenues	Profit	Total Assets	Employees
ASM INTERNATIONAL N.V.	612.3	40.4	1,551.2	1,503
Front-end				
APPLIED MATERIALS INC	5,400.1	5.5	8,660.7	14,500
LAM RESEARCH CORP	2,588.2	0.8	5,214.1	6,600
TOKYO ELECTRON LTD	2,662.2	40.5	4,041.6	12,201
HITACHI KOKUSAI ELECTRIC INC	705.0	35.0	917.0	5,193
JUSUNG ENGINEERING CO LTD	101.6	14.9	248.9	418
Back-end				
MITSUI & CO LTD	29,651.7	-937.2	36,114.4	45,148
SHINKO ELECTRIC INDUSTRIES	856.9	18.6	1,195.7	4,980
KULICKE & SOFFA INDUSTRIES	384.7	0.5	620.6	2,270
BE SEMICONDUCTOR INDUSTRIES	254.9	0.1	340.7	1,493
TOWA CORP	111.2	0.4	161.9	1,035
SHINKAWA LTD	75.2	-18.3	206.6	710
APIC YAMADA CORP	55.2	-4.7	59.4	477

Sources: ASMI Annual Report 2012; Bloomberg database<sup>31</sup>

### Competitive positioning

ASMI aims to position itself as a company that is able to capitalise on its technological developments, that has a global reach and that makes use of the synergies between the company's front-end and back-end businesses.<sup>32</sup>

As with all semiconductor equipment companies, ASMI spends heavily on its research and development (€ 149 million in 2012; € 75.4 million in 2013).<sup>33</sup> The challenge for ASMI is not only to develop new technologies that allow it to continue to be able to follow Moore's law, but also to turn these inventions into mainstream technologies that are used to produce high volumes of products. ASMI has successfully achieved this, for example, with the Atomic Layer Deposition (ALD) technology. In the late 1990s, ASMI acquired the Finnish company Microchemistry, which used ALD for the oil industry. After an additional eight years of research and development (R&D), ASMI was able to apply this technology reliably and effectively for semiconductor production.<sup>34</sup> The most recent financial figures indicate that this technology was the main driver for sales in the company's front-end business.<sup>35</sup>

ASMI has located its facilities in close proximity to its customers, who are mostly based in Europe, North America and Asia. According to the company's annual report, this allows the

<sup>31</sup> Bloomberg terminal, accessed 25 March 2014.

<sup>32</sup> ASM website, About, Strategy & Focus Areas, "Mission & Strategy", no date, <<http://www.asm.com/EN/Pages/MissionStrategy.aspx>> (2 April 2014).

<sup>33</sup> ASM International, Annual Report 2013, <<http://asmi-annualreport.com/2013/userfiles/pdf/ASMI-Annual-Report-2013.pdf>> (22 April 2014), p.89.

<sup>34</sup> Ibid., p.15.

<sup>35</sup> ASM International, Quarterly Report 2013 Q3, <[http://www.asm.com/en/Downloads/2013\\_Q4\\_Quarterly\\_report.pdf](http://www.asm.com/en/Downloads/2013_Q4_Quarterly_report.pdf)> (2 April 2014), p.2.

company to interact closely with its customers and to provide customer service that complements the company's marketing and sales.<sup>36</sup> Technical assistance, such as preventive maintenance and repair services, is becoming an increasingly important competitive factor. A substantial portion of ASMI's customers are based in China, which explains why the company has a large presence there.

Finally, ASMI's strategy is also reliant on the synergies of the company's front-end and back-end businesses. As stated on the company's website, the company's strategy includes leveraging the front-end and back-end technologies and manufacturing to develop products and services. The company is reluctant to reveal the exact nature of these assumed synergies, but has indicated that these synergies are in 'long-term' projects.<sup>37</sup> However, as described in the next chapter, activist investors have been unconvinced about these synergies and have suggested that the company splits up to create more shareholder value.

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<sup>36</sup> ASM International, Annual Report 2013, <<http://asmi-annualreport.com/2013/userfiles/pdf/ASMI-Annual-Report-2013.pdf>> (22 April 2014), p.79.

<sup>37</sup> ASM International, AGM Minutes 2013, <[http://www.asm.com/en/Downloads/2013\\_AGM\\_minutes\\_Dutch\\_Eng.pdf](http://www.asm.com/en/Downloads/2013_AGM_minutes_Dutch_Eng.pdf)> (2 April 2014), p.51.

## 2 Background to and consequences of the ASM PT divestment

In March 2013, ASMI issued a partial secondary placement of a 12% stake in ASM PT on the market.<sup>38</sup> The company sold a total of 47,424,500 ordinary shares to institutional and professional investors. The proceeds of this 12% divestment from ASM PT amounted to € 422 million.<sup>39</sup> Of these proceeds, 65% were used to pay out dividends to its shareholders, while 35% remained on the balance sheet of the company. A dividend of € 4.25 per share was announced.<sup>40</sup>

With this divestment, ASMI reduced its stake in ASM PT from 52% to approximately 40%. While this constitutes a minority share, ASMI still remains the largest shareholder in ASM PT (see Table 2).

### 2.1 Background to the divestment

The divestment of 12% of ASMI's shares in ASM PT should be seen in the context of longstanding disagreements with shareholders about the undervaluing of the front-end business division.<sup>41</sup> In short, shareholders raised concerns about the fact that ASMI's share of ASM PT was valued at a higher level on the Hong Kong stock exchange than the value of the whole of ASMI on the Amsterdam stock exchange. This indicates a negative market value of ASMI's front-end business and investors have argued that it would be better if the two divisions could be spun off into separate companies.

In the past, activist shareholders have called for the dismissal of CEO Chuck Del Prado, the son of founder and largest shareholder Arthur Del Prado, because of the poor performance of the front-end business.<sup>42</sup> The struggle between Hermes, Fursa and other activist shareholders ended up in court, which resulted in the Dutch Supreme Court ruling in favour of ASMI.<sup>43</sup> Chuck Del Prado remains the company's CEO.

In May 2012 at the firm's Annual Shareholder Meeting, ASMI's founder and largest shareholder, Arthur Del Prado, said for the first time that that he would be open to considering untangling the

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<sup>38</sup> ASM International website, <<http://www.asm.com/en/Pages/ASM-International-NV-raises---422-million-from-the-partial-secondary-placement-of-a-12--stake-in-ASM-PT.aspx>> (2 April 2014).

<sup>39</sup> Reuters website, "ASMI sale of shares in HK unit disappoints", 13 March 2013, <<http://www.reuters.com/article/2013/03/13/asm-divestment-idUSL6N0C55DB20130313>> (2 April 2014).

<sup>40</sup> ASM International, AGM minutes 2013, <[http://www.asm.com/en/Downloads/2013\\_AGM\\_minutes\\_Dutch\\_Eng.pdf](http://www.asm.com/en/Downloads/2013_AGM_minutes_Dutch_Eng.pdf)> (2 April 2014), p.43.

<sup>41</sup> Bloomberg Businessweek, "ASMI Shares Plunge After Plan to Cut Holding in ASM Pacific", 13 March 2013, <<http://www.businessweek.com/news/2013-03-13/asm-shares-plunge-after-plan-to-reduce-holding-in-asm-pacific>> (22 April 2014).

<sup>42</sup> The Wall Street Journal website, Technology, "Applied Materials Bids For Part of ASMI Business", 6 June 2008, <<http://online.wsj.com/news/articles/SB121275870934151823>> (2 April 2014).

<sup>43</sup> Belegger.nl website, "Hoge Raad sluit zaak ASMI", 30 March 2013, <<https://www.belegger.nl/nieuws/2615499/hoge-raad-sluit-zaak-asm.html>> (3 April 2014).



company's front-end and back-end businesses.<sup>44</sup> A spokesperson for Arthur Del Prado stated at the 2012 AGM that, while there were still some synergetic effects between the two business units, the front-end business had matured to a stand-alone business.<sup>45</sup> In his view, there were therefore no longer any pressing needs for the two business units to be kept within the same company. In the following year, Arthur Del Prado reiterated that this opinion was not only based on the undervaluing of the front-end business, but also on the logical position that two entities operating independently should also be managed as separate entities.<sup>46</sup>

In 2012, the ASMI board announced that it would commission a study to financial advisors into the "*causes of non-recognition by the markets of the value of the combined businesses of the company*".<sup>47</sup> This study was intended to identify why the front-end business was undervalued and to suggest a way forward. The study, as presented during the annual shareholder meeting in May 2013, did not identify one single dominant factor that explained the undervaluing of the company. A number of possible causes were identified, including a so-called 'holding company discount', unrealised front-end business value, and structural impediments to good corporate governance. Regarding the last cause, the study indicated that there was a market perception that the company had operated in a similar fashion over the last 40 years and that it was unwilling to change this corporate structure in the future.<sup>48</sup>

The study suggested that the best way forward was to sell between 8% and 12% of ASMI's shares in ASM PT, and this was the course taken by ASMI's management in early 2013. Other options that were discussed but rejected included a complete sale of all of ASMI's shares, a reversed takeover of ASMI by ASM PT, and the 100% acquisition of ASM PT by ASMI. All these other scenarios were deemed to be too costly and too complicated.

## 2.2 Consequences of the divestment

Since March 2013, ASMI no longer holds a majority interest in ASM PT. As a consequence, the company no longer controls ASM PT, and can no longer consolidate the earnings of this subsidiary in its financial accounts.<sup>49</sup> In the past, a large share of ASMI's reported net sales, earnings from operations and net profits were derived from the consolidation of the results of ASM PT's operations. Given that ASMI currently only holds 40.08% of the shares, it now reports its proportionate share of ASM PT's earnings as investments in its consolidated balance sheet. As a result, the company's earnings from operations is significantly reduced, although its net profits are only reduced to the extent of the reduction in ownership share in ASM PT.

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<sup>44</sup> Bloomberg website, "ASMI's Founder Del Prado is Open to Company's Breakup", 15 May 2012, <<http://www.bloomberg.com/news/2012-05-15/asmi-s-founder-del-prado-is-open-to-company-s-breakup.html>> (3 April 2014).

<sup>45</sup> ASM International, AGM minutes 2012, <[http://www.asm.com/en/Downloads/2012\\_AGM\\_minutes\\_Dutch\\_Eng.pdf](http://www.asm.com/en/Downloads/2012_AGM_minutes_Dutch_Eng.pdf)> (2 April 2014), p. 45.

<sup>46</sup> ASM International, AGM minutes 2013, <[http://www.asm.com/en/Downloads/2013\\_AGM\\_minutes\\_Dutch\\_Eng.pdf](http://www.asm.com/en/Downloads/2013_AGM_minutes_Dutch_Eng.pdf)> (2 April 2014), p. 47.

<sup>47</sup> ASM International, Annual Report 2012, <[http://www.asm.com/en/Downloads/2012\\_Annual\\_report\\_\(US\\_GAAP\).pdf](http://www.asm.com/en/Downloads/2012_Annual_report_(US_GAAP).pdf)> (2 April 2014), p. 64.

<sup>48</sup> ASM International, AGM minutes 2013, <[http://www.asm.com/en/Downloads/2013\\_AGM\\_minutes\\_Dutch\\_Eng.pdf](http://www.asm.com/en/Downloads/2013_AGM_minutes_Dutch_Eng.pdf)> (2 April 2014), p. 39.

<sup>49</sup> ASM International, Annual Report 2013, <<http://asmi-annualreport.com/2013/userfiles/pdf/ASMI-Annual-Report-2013.pdf>> (22 April 2014), p.64.

Additionally, the proceeds from the sale of the 12% are reflected in the company's 2013 net profits.

Another financial consequence of the divestment is that ASM PT is no longer obliged to pay out dividends to ASMI.<sup>50</sup> As ASMI is now only a shareholder and no longer has a controlling interest, it cannot compel the payment or amount of dividends. In the last three years, such dividends totalled approximately € 180 million, which ASMI used to pay off debts, pay dividends to its shareholders or increase its interest in ASM PT. Furthermore, while there are several directors sitting on the boards of both ASMI and ASM PT, these board members are not allowed to vote on transactions that would involve both entities. Similarly, ASMI is not allowed to vote for such transactions if it has an interest, for example, in the case of a takeover.<sup>51</sup>

**Table 4: ASMI's key financial figures for 2012 and 2013**

	2012 (€ million)	2013 (€ million)
Net sales	1,418	612.3
Earnings from operations	88	40
Net profit	40	1,025
Investments and associates	278	944
Total assets	1,499	1,551

Source: ASMI Annual Report 2012; ASMI Q4 results 2013

The divestment seems to have had a positive effect on the way investors perceive the company. While the stock price plummeted on the day of the announcement of the divestment, ASMI's stock has recovered since. Its financial figures for the last quarter of 2013 beat market estimates and analysts such as JP Morgan and Natixis have given positive reviews recently.<sup>52</sup>

At the same time, ASMI referred to the change in its corporate structure in its response to the letter by the GoodElectronics Network. The letter states: "*As a result of the partial secondary placement of shares of ASM Pacific Technology Ltd. ('ASM PT') by ASM International on 13 March 2013, ASM PT is no longer a subsidiary of ASM International*".<sup>53</sup> There are no indications in the letter that ASMI intends to take any further steps to address any negative impacts at its former subsidiary ASM PT.

<sup>50</sup> ASM International, Annual Report 2013, <<http://asmi-annualreport.com/2013/userfiles/pdf/ASMI-Annual-Report-2013.pdf>> (22 April 2014), p.65.

<sup>51</sup> Ibid.

<sup>52</sup> Bloomberg database, accessed 25 March 2014.

<sup>53</sup> J.F.M. Westendorp, Vice President Corporate Marketing Front-end, ASM International N.V., letter to GoodElectronics Network, IndustriALL Global Union and FNV bondgenoten, 17 June 2013.

## 3 Corporate Social Responsibility at ASMI and ASM PT

### 3.1 CSR policy and reporting

Corporate Social Responsibility (CSR) has only recently been addressed by ASMI. The company's 2012 annual report is the first to include a section on its corporate responsibility.<sup>54</sup> Prior to this, the company did not report publicly on its CSR performance, and the company has traditionally received low scores on various CSR-related benchmarks. It ranked #207 out of 260 in the most recent Transparency Benchmark by the Dutch Ministry of Economic Affairs, scoring only 41 points out of a possible 200.<sup>55</sup> In the 'Responsible Supply Chain Benchmark' by the Vereniging van Beleggers in Duurzaam Ondernemen (VBDO), ASMI is listed as a 'laggard' in the electronics industry.<sup>56</sup> Overall, the company scores 10 out of 52 points, ranking it 23<sup>rd</sup> out of 27 companies.

ASMI indicates that its CSR policy is in compliance with the Electronic Industry Citizenship Coalition (EICC).<sup>57</sup> However, ASMI is not an actual member of the EICC.<sup>58</sup> In addition to referring to its CSR policy, the company refers to a number of other policy documents, including a Code of Ethics, a Whistleblower Policy, an Anti-Fraud Policy and Global Employment Standards. The company also makes reference to a number of international standards by the International Organization for Standardization (ISO) and the United Nations.

It remains unclear to what extent ASMI's policies also apply to ASM PT. In its 2012 annual report, ASMI explicitly states that the corporate responsibility section of the report, including the discussion about each of the above policies, only addresses the front-end business.<sup>59</sup> For the CSR approach in the back-end business, ASMI referred to ASM PT's website, without further specifying the policies that are in place. In its 2013 annual report, no such specifications are made.<sup>60</sup>

At the same time, the company also states that: "*Our Global Employment Standards summarize our position on key human rights issues and our approach to managing our responsibility to respect human rights through our global operations and value chain*".<sup>61</sup> This seems to suggest

<sup>54</sup> ASMI International, Annual Report 2012, <[http://www.asm.com/en/Downloads/2012\\_Annual\\_report\\_\(US\\_GAAP\).pdf](http://www.asm.com/en/Downloads/2012_Annual_report_(US_GAAP).pdf)> (2 April 2014), p. 16.

<sup>55</sup> Ministerie van Economische Zaken, Transparency Benchmark 2013, [http://www.transparantiebenchmark.nl/sites/default/files/fotos/TB\\_Folder-WEB%20NL%20def.pdf](http://www.transparantiebenchmark.nl/sites/default/files/fotos/TB_Folder-WEB%20NL%20def.pdf) (2 April 2014).

<sup>56</sup> VBDO, Responsible Supply Chain Benchmark 2013, <<http://www.vbdo.nl/files/download/1301/VBDO%20Benchmark%20Verantwoord%20Ketenbeheer%20DEF2.pdf>> (2 April 2014), p.32

<sup>57</sup> ASMI International, Annual Report 2013 <<http://asmi-annualreport.com/2013/userfiles/pdf/ASMI-Annual-Report-2013.pdf>> (22 April 2014), p. 28.

<sup>58</sup> EICC website, About us, "Membership list", no date, <[http://www.eicc.info/about\\_us05.shtml](http://www.eicc.info/about_us05.shtml)> (28 March 2014).

<sup>59</sup> ASMI International, Annual Report 2012, <[http://www.asm.com/en/Downloads/2012\\_Annual\\_report\\_\(US\\_GAAP\).pdf](http://www.asm.com/en/Downloads/2012_Annual_report_(US_GAAP).pdf)> (2 April 2014), p.16.

<sup>60</sup> ASMI International, Annual Report 2013, <<http://asmi-annualreport.com/2013/userfiles/pdf/ASMI-Annual-Report-2013.pdf>> (22 April 2014).

<sup>61</sup> ASMI International website, "Labor", no date, <<http://www.asm.com/en/Pages/Labor.aspx>>, (22 April 2014).

that these standards would also apply to ASM PT, which represents a significant part of the company's value chain.

Furthermore, as will be argued later in this report, the due diligence requirements of the international standards that ASMI refers to include the identification, prevention and mitigation of adverse impacts. This responsibility also applies when a company is linked to adverse impacts, for example, through investment relations.

### **ASMI's labour and occupational health & safety standards**

ASMI has a Stop Work Policy: the right for every employee to stop work in case of any safety concern, without repercussions. ASMI also endorses a 'Safety Management by Walking Around' and a 'Good Catch' programme for all employees to proactively look for and fix hazards. On the topic of occupational illness, ASMI states that the company is committed to an innovative framework that meets or exceeds all applicable regulations in order to prevent occupational illness or injury.<sup>62</sup> ASMI also has a zero harm philosophy and a 'core value' of 'Safety First and Everywhere'.<sup>63</sup>

In ASMI's 'Global Employment Standards', the company recognises all the core labour standards, including forced labour, child labour, the freedom of association and discrimination. With regards to health and safety, the policy reads:

"ASM will provide its employees with a safe and healthy workplace in compliance with all applicable laws and regulations. Consistent with these obligations, ASM will have and will implement effective programs that encompass things such as life safety, incident investigation, chemical safety, ergonomics, and will provide safe standards of health and safety in any housing and transportation provided for our employees by the company."

Source: ASM International<sup>64</sup>

### **ASM PT's CSR reporting**

ASM PT has not published any CSR reports, nor does it address the issue in any of its four most recent annual reports.

### **ASM PT's occupational health & safety standards**

The company does have an Occupational Health and Safety Policy published on its website.<sup>65</sup> In this policy, the company indicates that it complies with legal requirements and that it has a Safety Management System. However, no further information is provided about this Safety Management System. Furthermore, the one-page policy includes wording such as "as far as is

<sup>62</sup> ASM International, Annual Report 2013, <<http://asmi-annualreport.com/2013/userfiles/pdf/ASMI-Annual-Report-2013.pdf>> (22 April 2014), p.28.

<sup>63</sup> Ibid.

<sup>64</sup> ASM International, Global Employment Standards, <[http://www.asm.com/en/Downloads/Global\\_Employment\\_Standards.pdf](http://www.asm.com/en/Downloads/Global_Employment_Standards.pdf)> (2 April 2014).

<sup>65</sup> ASM PT, Occupational Health and Safety Policy, <[http://www.asmpacific.com/ASM\\_PT/images/Policy\\_english.pdf](http://www.asmpacific.com/ASM_PT/images/Policy_english.pdf)> (2 April 2014).

reasonably practicable” and “encourage all employees to comply”.<sup>66</sup> Such phrases can limit the strength of these policies and increase the risk that an adequate response to occupational health and safety issues is not guaranteed.

The company does not indicate whether and how it applies due diligence to identify, prevent or mitigate any adverse impacts, such as the occupational leukaemia described in the introduction of this report, or any other human rights issues.

### 3.2 Strike at ASM PT

ASM PT recently received negative media attention due to a strike at one of its facilities in Shenzhen, China. In November 2013, it was announced that the Shenzhen ASM Micro Electronic Technology facility, owned by ASM PT, was to be relocated to another region.<sup>67</sup> According to the company, this relocation could not be avoided as the Shenzhen government and ASM’s landlord demanded that the factory should be moved from its current location due to redevelopment plans.<sup>68</sup>

The compensation offered to workers affected by this relocation caused dissatisfaction and led to more than 1,000 employees protesting outside the factories. According to workers quoted in news media, the redundancy packages offered by ASM PT were far lower than the legal minimum.<sup>69</sup> Also, the relocation had been announced without the consent of trade unions.<sup>70</sup>

However, the company claimed that, although many workers were actually expected to be hired back by the company at the new factory locations, all workers were demanding severance pay, and that workers seemed to be misinterpreting the law.<sup>71</sup>

After an agreement was reached on improved communication between management and workers, extra allowances and an increase of wages by 20%, the protesting workers ended their strike.<sup>72</sup> The protests by then had taken 22 days and involved almost 5,000 workers. According to the *China Labour Bulletin*, seven workers’ representatives were illegally dismissed by the company.<sup>73</sup>

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<sup>66</sup> Ibid.

<sup>67</sup> *South China Morning Post*, “1,000 workers from Hong-Kong listed firm hold rally”, 1 November 2014, <<http://www.scmp.com/news/china/article/1344838/1000-workers-hong-kong-listed-firm-hold-rally>> (28 March 2014).

<sup>68</sup> Wai Kwong Lee, ASM Pacific Technology Q3 2013 Earnings Conference Call Transcript, 31-10-2013, <<http://www.alacrastore.com/thomson-streetevents-transcripts/Q3-2013-ASM-PACIFIC-TECHNOLOGY-Earnings-Conference-Call-T5214221>> (28 March 2014).

<sup>69</sup> *South China Morning Post*, “1,000 workers from Hong-Kong listed firm hold rally”, 1 November 2014, <<http://www.scmp.com/news/china/article/1344838/1000-workers-hong-kong-listed-firm-hold-rally>> (28 March 2014); EJ Insight, “ASM Micro workers protest over redundancy packages, SCMP says”, 1 November 2013, <<https://www.ejinsight.com/chinaDigest/article/id/333885>> (28 March 2014); Ofweek, “5000 workers of ASM went on strike due to issue of compensation”, 2 November 2013, <<http://global.ofweek.com/news/5000-Workers-of-ASM-Went-on-Strike-due-to-Issue-Of-Compensation-2415>> (28 March 2014).

<sup>70</sup> *China Labour Bulletin*, “ASM workers Shenzhen get 20 percent pay increase after 22 day strike”, 26 November 2013, <<http://www.clb.org.hk/en/content/asm-workers-shenzhen-get-20-percent-pay-increase-after-22-day-strike>> (2 April 2014).

<sup>71</sup> Wai Kwong Lee, ASM Pacific Technology Q3 2013 Earnings Conference Call Transcript, 31 October 2013, <<http://www.alacrastore.com/thomson-streetevents-transcripts/Q3-2013-ASM-PACIFIC-TECHNOLOGY-Earnings-Conference-Call-T5214221>> (28 March 2014).

<sup>72</sup> *China Labour Bulletin*, “ASM Workers in Shenzhen get 20 percent pay increase after 22 day strike”, 26 November 2013, <<http://www.clb.org.hk/en/content/asm-workers-shenzhen-get-20-percent-pay-increase-after-22-day-strike>> (28 March 2014).

<sup>73</sup> Ibid.



## 4 Relevant international standards

As described in the previous chapter, it remains unclear to what extent ASMI's CSR policies apply to ASM PT. This chapter provides an analysis of ASMI's responsibility to address adverse impacts that occur at ASM PT, as stipulated in relevant international standards. Given the reported diagnosis of occupational leukaemia of an ASM PT worker, particular attention is given to international standards related to Occupational Health and Safety (OHS).

### 4.1 Overview of international standards

#### 4.1.1 UN Guiding Principles on Business and Human Rights

The United Nations 'Protect, Respect and Remedy' Framework addresses the issue of business and human rights.<sup>74</sup> It says that states have the duty to protect people against human rights violations by third parties; businesses have the duty to respect human rights; and victims of human rights abuses should have access to effective remedy. Concrete and practical recommendations for the implementation of this Framework are formulated in the 'Guiding Principles'.

In the context of ASMI's responsibility for adverse impacts at ASM PT, various foundational principles are relevant. The Guiding Principles state that all business enterprises – independent of their size, location, sector, ownership and structure – should respect human rights and should address any adverse human rights impacts in which they are involved.<sup>75</sup> The latter requires the company to take adequate measures for prevention, mitigation and remediation.<sup>76</sup> This obligation applies to any potential human rights violations that are directly linked to a company's operations, products or services by its business relationships, even if that company has not itself been engaged in any human rights violations.<sup>77</sup>

The Guiding Principles require businesses to have appropriate practices and policies in place, which include a continuous human rights due-diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights as well as processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.<sup>78</sup>

As it is clearly expressed in Principle 14, the duty to respect human rights applies to all business enterprises. This explicitly includes minority shareholdings: the relative size or percentage of the share an investor holds in a company is not in itself a factor in determining whether the Guiding Principles apply, as is explained in the United Nations Office of the High

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<sup>74</sup> Human Rights Council, Seventeenth Session, Agenda item 3, A/HRC/17/31, "Report of the Special Representative of the Secretary-General on the issue of human rights and international corporations and other business enterprises, John Ruggie. Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework", 21 March 2011, <<http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>> (26 March 2014).

<sup>75</sup> Ibid.

<sup>76</sup> Ibid., Principle 11, Principle 14 and commentary.

<sup>77</sup> Ibid., Principle 14.

<sup>78</sup> Ibid., Principle 15 and commentary.

Commissioner for Human Rights (OHCHR) Interpretative Guide and letter to SOMO of 26 April 2013.<sup>79</sup>

#### 4.1.2 OECD Guidelines

The Guidelines of the Organisation for Economic Development and Co-operation (OECD) provide non-binding principles and standards that are recommendations addressed by governments to multinational enterprises operating in or headquartered in OECD countries. The Human Rights chapter of the OECD Guidelines is closely aligned with the UN Guiding Principles. Like the UN Guiding Principles, the OECD Guidelines apply to all types of enterprises, no matter their size, sector, ownership, structure or activities. Multinationals – as well as domestic companies – should take responsibility for any adverse human rights impacts whenever they are directly linked to any abuses.

It is particularly relevant that the OECD Guidelines state that enterprises should “*avoid causing or contributing to adverse human rights impacts and address such impacts when they occur within the context of their own activities*”. As in the UN Guiding Principles, these ‘activities’ can include both actions and omissions. If adverse human right impacts occur, the enterprise should “*take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible*”. Hereby, “*leverage is considered to exist where the enterprise has the ability to effect change in the practices of an entity that cause adverse human rights impacts*”.<sup>80</sup>

#### 4.1.3 ILO Conventions

The International Labour Organization’s labour standards set out basic principles and rights at work. ILO Conventions are legally binding international treaties that may be ratified by member states. Relevant ILO Conventions and Recommendations that deal with OHS are paramount. They include:<sup>81</sup>

- OHS Convention 1981, No 155
- OHS Convention 1985, No 161
- Promotional Framework for OHS Convention 2006, No 187
- Occupational Cancer Convention, 1974, No 139
- Chemicals Convention 1990, No 170
- Benzene Convention 1971, No 136<sup>82</sup>
- Benzene Recommendation 1971, No 144.

<sup>79</sup> OHCHR letter to SOMO, 26 April 2013, <<http://www.ohchr.org/Documents/Issues/Business/LetterSOMO.pdf>>, (28 March 2014); UNCHR “The corporate responsibility to respect human rights. An interpretive guide”, 2012, <[http://www.ohchr.org/Documents/Publications/HR.PUB.12.2\\_En.pdf](http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf)> (28 March 2014).

<sup>80</sup> OECD Guidelines for Multinational Enterprises, 2011 Edition, <<http://www.oecd.org/daf/inv/mne/48004323.pdf>>, (26 March 2014).

<sup>81</sup> ILO website, Labour Standards, Conventions and Recommendations by subject and status, “Occupational safety and health”, no date, <[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12030:0::NO::#Occupational\\_safety\\_and\\_health](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12030:0::NO::#Occupational_safety_and_health)> (28 March 2014); ILO website, Labour Standards, “Occupational safety and health”, no date, <<http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/occupational-safety-and-health/lang--en/index.htm>> (28 March 2014).

<sup>82</sup> ILO website, Labour Standards, “C-136 - Benzene Convention, 1971 (no. 136)”, no date, <[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C136](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C136)> (28 March 2014).

China, the country where the worker with occupational leukaemia was based, has only ratified Conventions 155 and 170.<sup>83</sup> These include the following relevant elements that apply to employers: employers are required to ensure that processes and chemical substances under their control are 'safe and without risk to health', and to provide adequate protective clothing and equipment to prevent adverse health impacts.<sup>84</sup> Also, employers have to protect workers against chemical risks by choosing to work with chemicals, technologies and working systems that eliminate or minimise risks, and that free, well-maintained personal protective equipment and clothing is used by employees.<sup>85</sup>

#### 4.1.4 Industry Code of Conduct

The Electronic Industry Citizenship Coalition (EICC) is a coalition of electronics companies that strives for a socially, environmentally and economically responsible global electronics industry supply chain.<sup>86</sup> It has a coalition code of conduct that is to be adopted by all members of the coalition. Members are also expected to invest actively in implementation of the Code.<sup>87</sup> ASMI states that its CSR policy is based on the EICC code and that it requires its supply chain to commit to EICC tenets.<sup>88</sup>

The EICC Code of Conduct does address the use of hazardous chemicals in its paragraph entitled 'Industrial hygiene'. It states that "Worker exposure to chemical, biological and physical agents is to be identified, evaluated, and controlled. Engineering or administrative controls must be used to control overexposures. When hazards cannot be adequately controlled by such means, worker health is to be protected by appropriate personal protective equipment programs."<sup>89</sup>

The code also includes a paragraph on 'Occupational Injury and Illness', which states that: "Procedures and systems are to be in place to prevent, manage, track and report occupational injury and illness including provisions to: encourage worker reporting; classify and record injury and illness cases; provide necessary medical treatment; investigate cases and implement corrective actions to eliminate their causes; and facilitate return of workers to work."<sup>90</sup>

The Code does not include any specific statements on grievance mechanisms, compensation of workers, or on how companies need to guarantee access to remedy for workers.

<sup>83</sup> ILO website, Labour Standards, Ratification by country, "Ratifications for China", no date, <[http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:103404](http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103404)> (28 March 2014).

<sup>84</sup> ILO website, Labour Standards, "C-155, Occupational Safety and Health Convention, 1981 (no.155)", article 66, no date, <[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C155](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C155)> (28 March 2014).

<sup>85</sup> ILO Chemicals Convention, 1990 (No 170), Article 13, Operational Control, <[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C170](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C170)> (28 March 2014).

<sup>86</sup> EICC website, "About us", 4 August 2011, <[http://www.eicc.info/about\\_us.shtml](http://www.eicc.info/about_us.shtml)> (26 March 2014).

<sup>87</sup> Ibid.

<sup>88</sup> ASM International website, About, Corporate Responsibility, "Supply Chain", no date, <<http://www.asm.com/en/Pages/Supplychain.asp>> (28 March 2014).

<sup>89</sup> EICC, Code of Conduct, version 4.0, 2012, <<http://www.eicc.info/documents/EICCCodeofConductEnglish.pdf>> (26 March 2014), p. 4.

<sup>90</sup> Ibid.

## 4.2 Do these standards apply?

The key question is whether these international standards apply to ASMI with regards to adverse impacts at ASM PT, even though the latter is no longer a formal subsidiary. If ASMI is bound by these standards, concrete actions can be expected from the company to identify and prevent future potential adverse impacts and mitigate existing impacts at facilities owned and operated by ASM PT.

In a recent clarification of the UN Guiding Principles, former Special Representative of the Secretary-General John Ruggie leaves no doubt about the extent to which the Guiding Principles apply to minority shareholders: enterprises that are minority shareholders are unquestionably covered by the principles.<sup>91</sup>

In his letter to the chair of the Working Party for Responsible Business Conduct at the OECD, Ruggie explains that both the UN Guiding Principles ('GPs') as well as the OECD Guidelines for Multinational Enterprises ('GLs') apply to business enterprises that have no equity relationship with their business partners at all, such as brands that source from the Bangladeshi garment industry, or financial institutions that provide project finance to projects that may cause, or contribute to, harm. Ruggie argues, "*if the provisions of the GPs and GLs hold for 'zero shareholders' that are but one among many, surely the same principles cover enterprises that are minority shareholders*". In the same letter, Ruggie provides two more arguments setting out why minority shareholders are covered by the principles. First, the number of minority shareholders in enterprises is so high that if these did not fall under the principles, a disproportionately high number of enterprises would not need to respect the principles. According to Ruggie, this "*is decidedly not the intent of the GPs or the GLs*". Second, the role of minority shareholders in business decisions should not be underestimated: investors can have "*significant influence over the company*".<sup>92</sup>

This inevitably leads to the conclusion that both UN Guiding Principles and OECD Guidelines unambiguously apply to ASMI with regards to addressing any adverse impacts at ASM PT.

The ILO Conventions, too, provide clear guidance regarding treatment of workers and occupational health and safety. Convention 170, which has been ratified by China, suggests that employees should protect workers against the risks arising from the use of chemicals at work 'by appropriate means', such as the choice of chemicals, and the adoption of working systems and practices that eliminate or minimise this risk.<sup>93</sup> The case of Ming Kunpeng serves as a warning sign that the current working systems and practices in place at ASM PT might be insufficient to protect workers from hazardous chemicals. In line with the requirements of the UN Guiding Principles, ASMI is responsible for taking active steps to ensure that ILO Conventions 155 and 170 are not violated at ASM PT facilities.<sup>94</sup>

<sup>91</sup> John Ruggie, former UN Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, letter to Roel Nieuwenkamp, Chair of the OECD Working Party for Responsible Business Conduct, 22 October 2013.

<sup>92</sup> Idem.

<sup>93</sup> ILO website, Labour standards, "C170 - Chemicals Convention, 1990 (No.170)", no date, <[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C170](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C170)> (28 March 2014), Article 13.

<sup>94</sup> ILO website, Labour standards, "C155 - Occupational Safety and Health Convention, 1981 (No.155)", no date,

## 5 Conclusions

On the basis of the information described in the previous chapters, this final chapter draws a number of conclusions.

Occupational health and safety is a pressing issue in the semiconductor industry. Semiconductor companies such as Samsung have received vocal criticism over the large number of workers diagnosed with cancer.<sup>95</sup> Similar reports have come out at other companies as well. As the number of unreported cases is suspected to be much higher than the publicly known instances, the exposure to benzene and other hazardous chemicals can be seen as a pressing industry-wide problem.

While there are numerous known cases of semiconductor workers who have fallen ill, in most cases the occupational cause of the disease is not formerly diagnosed. Former ASM PT worker Ming Kunpeng is one of the few people diagnosed with occupational leukaemia by an independent medical institution. The diagnosis indicates that his leukaemia was caused by benzene exposure at work.

### 5.1 Change in ownership structure is no reason for inaction

This report has described in some detail the background to and consequences of the change in ownership structure of ASM PT. Before March 2013, ASMI held a majority share of 52% and therefore had a controlling interest. However, the sale of the 12% stake made ASMI a minority shareholder. This change in ownership is referred to by ASMI in its response to the GoodElectronics Network, in which the company provided no indications of planned action in response to the illness and subsequent death of Ming Kunpeng. While ASM PT did pay compensation to Ming Kunpeng and his family, ASMI has shown no signs that it is conducting due diligence on the wider OHS risks at ASM PT's facilities.

As discussed in Chapter 4, the fact that ASM PT is no longer a formal subsidiary of ASMI is no valid reason for inaction. The UN Guiding Principles unquestionably apply to investors that do not hold a controlling interest. As argued by John Ruggie, investors can and must use their leverage to ensure that human rights are respected. In the case of ASMI, it is clear that the company has great leverage over ASM PT. Not only is ASMI the largest shareholder by far, but the Del Prados, as well as other ASMI executives, hold key positions on the board of ASM PT. ASMI has a responsibility to use this leverage and identify, prevent and mitigate the risks of future cases of occupational leukaemia at ASM PT facilities, and to publicly account for its actions.

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<[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C155](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C155)> (28 March 2014).

<sup>95</sup> Stop Samsung website, "Six Years of Fighting Against Samsung Turns Father Into Labor Advocate: An Interview With Hwang Sang-ki", 11 March 2013, <<http://stopsamsung.wordpress.com/2013/03/11/six-years-of-fighting-against-samsung-turns-father-into-labor-advocate-an-interview-with-hwang-sang-ki/>> (22 April 2014).



## 5.2 What can be expected from ASMI?

The five operational principles on corporate responsibility of the UN Guiding Principles give a clear description of what can be expected from ASMI with regards to any actual or potential adverse impacts at ASM PT. ASMI has a responsibility to conduct human rights due diligence with regards to occupational leukaemia in the ASM PT factories. Current and potential adverse impacts need to be identified, prevented, mitigated and accounted for.

In order to **identify** the current and potential case(s) of benzene poisoning, ASMI needs to ensure that the root cause of workers' occupational leukaemia is identified. Whereas ASM PT describes a number of investigations undertaken to exclude possible causes, without making these public, no explanation is given to date on the source of Ming Kunpeng's illness.

The responsibility to identify current or potential impacts, as formulated in the UN Guiding Principles, involves "*meaningful consultation with potentially affected groups and other relevant stakeholders*".<sup>96</sup> ASMI needs to ensure that ASM PT employees, as well as relevant local and international labour groups, are consulted in these efforts.

Furthermore, ASMI has the responsibility to **prevent** future cases of benzene poisoning from occurring. ASMI needs to ensure that employees in ASM PT factories or workplaces are no longer exposed to benzene and other hazardous chemicals. As previously suggested by the GoodElectronics Network, ASMI can do so by:

- establishing worker-led health and safety committees
- providing full transparency, explanation and training to workers about all hazardous chemicals used in the facilities
- establishing a comprehensive health and safety programme and
- guaranteeing an immediate elimination of the use of benzene in all facilities.

Thirdly, ASMI has a responsibility to **mitigate** the impacts of occupational leukaemia. ASMI should ensure that possible cases of leukaemia and other occupational illnesses at ASM PT workers are properly diagnosed and treated at independent and specialised medical institutions. For the ASM PT factories located in Shenzhen, workers should have the option to seek treatment in nearby Hong Kong. Furthermore, adequate mitigation processes go beyond one-off payments and include a continued effort to treat diseases and offer retraining to cured former workers. Effective mitigation can be achieved through open negotiations with worker representatives and labour groups.

Finally, ASMI has the responsibility to publicly **account for** its actions. This includes public transparency about the hazardous chemicals used in all of its factories, including the disclosure of the names of the compounds that contain benzene, as well as all the breakdown products that release or generate benzene during production. Public accountability also includes releasing a due diligence report that outlines all the steps taken to identify and prevent future cases of occupational leukaemia, and periodic updates of such reports.

<sup>96</sup> Human Rights Council, Seventeenth Session, Agenda item 3, A/HRC/17/31, "Report of the Special Representative of the Secretary-General on the issue of human rights and international corporations and other business enterprises, John Ruggie. Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework", 21 March 2011, <<http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>> (26 March 2014).

## Annex 1: List of ASMI and ASM PT subsidiaries

**Table 5: List of ASMI subsidiaries**

1.	ASM EUROPE B.V.
1.1.	ASM SERVICES AND SUPPORT IRELAND LIMITED
1.2.	ASM SERVICE AND SUPPORT ISRAEL (A.S.M.S.S.I.S.) LTD
1.3.	ASM BELGIUM
1.4.	ASM GERMANY SALES B.V.
1.5.	ASM ITALIA SRL
1.6.	ASM UNITED KINGDOM SALES B.V.
2.	ASM EUROPE HOLDING B.V.
3.	ASM ION IMPLANT B.V.
4.	ASM IP HOLDING B.V.
5.	ASM MICROCHEMISTRY OY
6.	ASM NETHERLANDS HOLDING B.V.
7.	ASM PACIFIC HOLDING B.V.
7.1.	ASM PACIFIC TECHNOLOGY LIMITED*
8.	BEHEER- EN BELEGGINGSMAATSCHAPPIJ INGEBEL B.V.
9.	HAMILCAR INVESTMENTS B.V.
10.	REMBRANDT LEASE AND FINANCE B.V.
11.	ASM GERMANY SALES B.V.
12.	ASM UNITED KINGDOM SALES B.V.
13.	CVTR DEVELOPMENT B.V.
14.	ASM AMERICA INC
14.1.	ASM PACIFIC ASSEMBLY PRODUCTS INC
15.	ASM CHINA TRADING LTD
16.	ASM FRONT-END MANUFACTURING SINGAPORE PTE LTD.
17.	ASM FRONT-END SALES & SERVICES TAIWAN CO. LTD.
18.	ASM GENITECH KOREA LTD.
19.	ASM JAPAN K.K.
20.	ASM NUTOOL INC
21.	ASM SERVICES AND SUPPORT MALAYSIA SDN BHD
22.	ASM WAFER PROCESS EQUIPMENT SINGAPORE PTE LTD.
23.	ASM ITALIA SRL
24.	ASM PACIFIC TECHNOLOGY LIMITED
25.	ASM WAFER PROCESS EQUIPMENT LIMITED

Source: Orbis

\* Minority interest as of March 2013

**Table 6: List of ASM PT subsidiaries**

1.	ASM ASSEMBLY AUTOMATION LIMITED
2.	ASM ASSEMBLY MATERIALS LIMITED
3.	ASM ASSEMBLY TECHNOLOGY CO., LTD.
4.	ASM PACIFIC (HOLDING) LIMITED
5.	ASM PACIFIC (HONG KONG) LIMITED
5.1.	ASM MICROELECTRONIC TECHNICAL SERVICES (SHANGHAI) CO., LIMITED
6.	ASM TECHNOLOGY (M) SDN BHD
7.	ASM TECHNOLOGY ASIA LIMITED
8.	ASM TECHNOLOGY HONG KONG LIMITED
9.	ASM TECHNOLOGY SINGAPORE PTE LTD
10.	ASM ASSEMBLY EQUIPMENT (M) SDN. BHD.
11.	ASM ASSEMBLY EQUIPMENT BANGKOK LIMITED
12.	ASM ASSEMBLY SYSTEMS GMBH & CO. KG
12.1.	ASM ASSEMBLY SYSTEMS, LLC
13.	ASM ASSEMBLY SYSTEMS LTD
16.	ASM MATERIALS CHINA LIMITED
17.	ASM MICROELECTRONIC TECHNICAL SERVICES (SHANGHAI) CO., LIMITED
18.	ASM TECHNOLOGY (HUIZHOU) CO., LTD
19.	ASM TECHNOLOGY CHINA LIMITED
20.	EDGEWARD DEVELOPMENT LTD.
21.	EDGEWARD TRADING (SHENZHEN) LIMITED
22.	SHENZHEN ASM MICRO ELECTRONIC TECHNOLOGY CO.,LTD.
23.	ASM ASSEMBLY SYSTEMS PTE. LTD.
23.1.	ASM ASSEMBLY SYSTEMS HOLDING GMBH
23.1.1.	ASM ASSEMBLY SYSTEMS GMBH & CO. KG
23.1.2.	ASM ASSEMBLY SYSTEMS MANAGEMENT GMBH
23.1.2.1.	ASM ASSEMBLY SYSTEMS GMBH & CO. KG
23.2.	ASM ASSEMBLY SYSTEMS SINGAPORE PTE. LTD.
23.3.	ASM ASSEMBLY SYSTEMS UK HOLDING LIMITED
23.3.1.	ASM ASSEMBLY SYSTEMS SRL
23.3.2.	ASM ASSEMBLY SYSTEMS U.K. LTD.
23.4.	ASM LOGISTICS GMBH
24.	ASM ASIA LIMITED
25.	ASM ASSEMBLY SYSTEMS MANAGEMENT GMBH

Source: Orbis

# Colophon

## ASM International – Company Profile

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