

30 September 2006

The Manager
Company Announcements Office
Australian Stock Exchange Limited
20 Bridge Street
SYDNEY NSW 2000

James Hardie Industries N.V.

ARBN 097 829 895
Incorporated in The Netherlands
The liability of members is limited

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Sydney NSW 2000 Australia

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GPO Box 3935
Sydney NSW 2001 Australia

Dear Sir/Madam

To coincide with its lodgement with the United States Securities and Exchange Commission at 3pm on Friday, 29 September in Washington DC (local time), James Hardie is lodging its annual report on Form 20-F to the ASX at 8.30am on Saturday, 30 September (AEST).

As a foreign private issuer listed on the New York Stock Exchange, James Hardie must file its Form 20-F within six months after its fiscal year end. In James Hardie's case, this date is 30 September.

The appendices to the Form 20-F include the Final Funding Agreement (FFA) signed by James Hardie and the NSW Government on 1 December 2005, and associated documents. The company's announcement of 1 December 2005 entitled "James Hardie Board approves Final Funding Agreement – agreement to be signed today" included a summary of the agreement's key features, which remain substantially unchanged.

Should the remaining conditions precedent to the full implementation of the FFA be satisfied or waived, the James Hardie Board would then put the proposed asbestos compensation arrangements to shareholders for their consideration at an Extraordinary General Meeting. A detailed summary of the FFA and associated documents would be circulated to shareholders in an Explanatory Memorandum prepared in advance of the Extraordinary General Meeting.

Yours faithfully



STEVE ASHE
VICE-PRESIDENT – INVESTOR RELATIONS

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 20-F

(Mark One)

REGISTRATION STATEMENT PURSUANT TO SECTION 12(b) OR (g) OF THE SECURITIES EXCHANGE ACT OF 1934

OR

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended March 31, 2006

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

OR

SHELL COMPANY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Date of event requiring this shell company report For the transition period from _____ to _____
Commission file number 1-15240

JAMES HARDIE INDUSTRIES N.V.

(Exact name of Registrant as specified in its charter)

N/A

(Translation of Registrant's name into English)

The Netherlands

(Jurisdiction of incorporation or organization)

Atrium, 8th floor

Strawinskylaan 3077

1077 ZX Amsterdam, The Netherlands

(Address of principal executive offices)

Securities registered or to be registered pursuant to Section 12(b) of the Act:

Title of each class:

Name of each exchange on which registered:

Common stock, represented by CHESS Units of Foreign Securities
CHESS Units of Foreign Securities
American Depositary Shares, each representing five units of CHESS Units of Foreign Securities

New York Stock Exchange*
New York Stock Exchange*
New York Stock Exchange

* Listed, not for trading, but only in connection with the registered American Depositary Shares, pursuant to the requirements of the Securities and Exchange Commission

Securities registered or to be registered pursuant to Section 12(g) of the Act. None.

Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act. None.

Indicate the number of outstanding shares of each of the issuer's classes of capital or common stock as of the close of the period covered by the annual report: 463,306,511 shares of common stock at March 31, 2006.

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

If this report is an annual or transition report, indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934. Yes No

Note — Checking the box will not relieve any registrant required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 from their obligations under those Sections.

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of “accelerated filer and large accelerated filer” in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer Non-accelerated filer

Indicate by check mark which financial statement item the registrant has elected to follow. Item 17 Item 18

If this is an annual report, indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).
 Yes No

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PART I

Item 1. Identity of Directors, Senior Management and Advisers

Not Required.

Item 2. Offer Statistics and Expected Timetable

Not Applicable.

Item 3. Key Information

In this annual report, unless the context otherwise indicates, James Hardie Industries N.V., a “naamloze vennootschap,” or a Dutch public limited liability company incorporated and existing under the laws of The Netherlands, is referred to as JHI NV. JHI NV together with its direct and indirect wholly owned subsidiaries as of the time relevant to the applicable reference, are collectively referred to as the James Hardie Group. JHI NV and its current direct and indirect wholly owned subsidiaries are collectively referred to as “we,” “us,” “our,” “JHI NV and its wholly owned subsidiaries,” or the “Company.”

The term “fiscal year” refers to our fiscal year ended March 31 of such year; the term “dollars” or “\$” refers to U.S. dollars; the term “A\$” refers to Australian dollars; the term “NZ\$” refers to New Zealand dollars; the term “PHP” refers to Philippine pesos; and the term “CLP” refers to Chilean pesos. The term “msf” or “thousand square feet” refers to thousands of square feet, where a square foot is defined as a standard square foot of 5/16” thickness and the term “mmsf” or “million square feet” refers to millions of square feet, where a square foot is defined as a standard square foot of 5/16” thickness.

As a company incorporated under the laws of The Netherlands, we have listed our securities for trading on the Australian Stock Exchange, or ASX, through the use of the Clearing House Electronic Subregister System, or CHESSE, Units of Foreign Securities, or CUFS. CUFS are a form of depositary security that represents a beneficial ownership interest in the securities of a non-Australian corporation. Each of our CUFS represents the beneficial ownership of one share of common stock of JHI NV, the legal ownership of which is held by CHESSE Depositary Nominees Pty Ltd. The CUFS are listed and traded on the ASX under the symbol “JHX.”

We have also listed our securities for trading on the New York Stock Exchange, or NYSE. We sponsor a program, whereby beneficial ownership of five CUFS is represented by one American Depositary Share, or ADS, which is issued by The Bank of New York. These ADSs trade on the NYSE in the form of American Depositary Receipts, or ADRs, under the symbol “JHX.” Unless the context indicates otherwise, when we refer to ADRs, we are referring to ADRs or ADSs and when we refer to our common stock we are referring to the shares of our common stock that are represented by CUFS.

Selected Financial Data

We have included in Item 18 of this annual report the audited consolidated financial statements of JHI NV, consisting of our consolidated balance sheets as of March 31, 2006 and March 31, 2005, our consolidated statements of changes in shareholders’ equity as of March 31, 2006, March 31, 2005 and March 31, 2004, and our consolidated statements of operations and cash flows for the years ended March 31, 2006, 2005 and 2004, together with the related notes thereto. For periods prior to October 19, 2001, the effective date of our corporate restructuring (see Item 4, “Information on the Company — History and Development of the Company — Corporate Restructuring”), the consolidated financial statements represent the financial position, results of operations and cash flows of ABN 60 000 009 263 Pty Ltd, which we refer to as ABN 60, which was formerly known as James Hardie Industries Limited, which we refer to as JHIL, and its wholly owned subsidiaries. For periods after October 19, 2001, our consolidated financial statements represent the financial position, results of operations and cash flows of JHI NV and its wholly owned subsidiaries.

The consolidated financial statements included in this annual report have been prepared in accordance with accounting principles generally accepted in the United States, or “U.S. GAAP.”

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The selected consolidated financial information summarized below has been derived in part from JHI NV's financial statements. You should read the selected consolidated financial information in conjunction with JHI NV's financial statements and related notes contained in Item 18 and with the information provided in the section of this report entitled "Operating and Financial Review and Prospects" contained in Item 5. Historic financial data is not necessarily indicative of our future results and you should not unduly rely on it.

	Fiscal Years Ended March 31,				
	2006	2005	2004	2003	2002
	(In millions, except sales price per unit and per share data)				
Consolidated Statements of Operations Data:					
Net Sales					
USA Fiber Cement	\$ 1,218.4	\$ 939.2	\$ 738.6	\$ 599.7	\$ 444.8
Asia Pacific Fiber Cement(1)	241.8	236.1	219.8	174.3	141.7
Other(2)	28.3	35.1	23.5	9.6	5.2
Total net sales	<u>\$ 1,488.5</u>	<u>\$ 1,210.4</u>	<u>\$ 981.9</u>	<u>\$ 783.6</u>	<u>\$ 591.7</u>
Operating (loss) income(3)	\$ (434.9)	\$ 196.2	\$ 172.2	\$ 128.8	\$ 46.8
Interest expense	(7.2)	(7.3)	(11.2)	(23.8)	(18.4)
Interest income	7.0	2.2	1.2	3.9	2.4
Other (expense) income(4)	—	(1.3)	3.5	0.7	(0.4)
(Loss) income from continuing operations before income taxes	(435.1)	189.8	165.7	109.6	30.4
Income tax expense	(71.6)	(61.9)	(40.4)	(26.1)	(3.1)
(Loss) income from continuing operations	<u>\$ (506.7)</u>	<u>\$ 127.9</u>	<u>\$ 125.3</u>	<u>\$ 83.5</u>	<u>\$ 27.3</u>
Net (loss) income	<u>\$ (506.7)</u>	<u>\$ 126.9</u>	<u>\$ 129.6</u>	<u>\$ 170.5</u>	<u>\$ 30.8</u>
(Loss) income from continuing operations per common share — basic	\$ (1.10)	\$ 0.28	\$ 0.27	\$ 0.18	\$ 0.06
Net (loss) income per common share — basic	\$ (1.10)	\$ 0.28	\$ 0.28	\$ 0.37	\$ 0.07
(Loss) income from continuing operations per common share — diluted	\$ (1.10)	\$ 0.28	\$ 0.27	\$ 0.18	\$ 0.06
Net (loss) income per common share — diluted	\$ (1.10)	\$ 0.28	\$ 0.28	\$ 0.37	\$ 0.07
Dividends paid per share	\$ 0.10	\$ 0.03	\$ 0.05	\$ 0.08	\$ 0.05
Return of capital per share	\$ —	\$ —	\$ 0.15	\$ 0.20	\$ 0.05
Weighted average number of common shares outstanding					
Basic	461.7	458.9	458.1	456.7	438.4
Diluted	461.7	461.0	461.4	459.4	440.4
Consolidated Cash Flow Information:					
Cash flows provided by operating activities	\$ 240.6	\$ 219.8	\$ 162.6	\$ 64.8	\$ 76.6
Cash flows (used in) provided by investing activities	\$ (154.0)	\$ (149.2)	\$ (58.0)	\$ 237.9	\$ (77.2)
Cash flows provided by (used in) financing activities	\$ 116.5	\$ 28.2	\$ (87.9)	\$ (279.4)	\$ (40.8)
Other Data:					
Depreciation and amortization(5)	\$ 45.3	\$ 36.3	\$ 36.4	\$ 27.4	\$ 23.5
Adjusted EBITDA(6)	\$ (389.6)	\$ 232.5	\$ 208.6	\$ 156.2	\$ 70.3
Capital expenditures(7)	\$ 162.8	\$ 153.0	\$ 74.1	\$ 90.2	\$ 50.8
Volume (million square feet)(8)					
USA Fiber Cement	2,182.8	1,855.1	1,519.9	1,273.6	988.5
Asia Pacific Fiber Cement(1)	368.3	376.9	362.1	349.9	320.7
Average sales price per unit (per thousand square feet)					
USA Fiber Cement	\$ 558	\$ 506	\$ 486	\$ 471	\$ 450
Asia Pacific Fiber Cement(1)	A \$ 872	A \$ 846	A \$ 862	A \$ 887	A \$ 861

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	Fiscal Years Ended March 31,				
	2006	2005	2004	2003	2002
	(In millions, except sales price per unit and per share data)				
Consolidated Balance Sheet Data:					
Net current assets(9)	\$ 150.8	\$ 180.2	\$ 195.9	\$ 159.4	\$ 115.1
Total assets	\$ 1,445.4	\$ 1,088.9	\$ 971.2	\$ 851.8	\$ 968.0
Long-term debt(10)	\$ 121.7	\$ 147.4	\$ 165.0	\$ 165.0	\$ 325.0
Common stock	\$ 253.2	\$ 245.8	\$ 245.2	\$ 269.7	\$ 205.4
Shareholders' equity	\$ 94.9	\$ 624.7	\$ 504.7	\$ 434.7	\$ 370.7

- (1) Asia Pacific Fiber Cement includes all fiber cement manufactured in Australia, New Zealand and the Philippines and sold in Australia, New Zealand and Asia.
- (2) Includes fiber cement manufactured and sold in Chile (for fiscal year 2002 to July 2005 only), fiber reinforced concrete pipes manufactured and sold in the United States, fiber cement operations in Europe and a roofing pilot plant in the United States. Also includes general corporate income in fiscal year 2002 comprised primarily of rental income from subleasing office space in Sydney, Australia. Our Chilean business was sold in July 2005. Our roofing pilot plant was closed and the business ceased operations in April 2006. See Item 4, "Information on the Company — Capital Expenditures and Divestitures," Item 4 "Information on the Company — Recent Developments" and Note 14 to our consolidated financial statements in Item 18.
- (3) For fiscal years 2006 and 2005, operating (loss) income includes Special Commission of Inquiry and other related expenses of \$17.4 million and \$28.1 million, respectively. In addition, operating loss in fiscal year 2006 includes \$715.6 million related to the establishment of the asbestos provision and \$13.4 million related to the impairment of our former roofing plant.
Operating (loss) income also includes restructuring and other operating income/expenses as follows: (i) for fiscal year 2006, an \$0.8 million loss related to the disposal of our Chilean fiber cement business; (ii) for fiscal year 2005, \$6.0 million consisting of a settlement loss of \$5.3 million related to an employee retirement plan and a \$0.7 million loss on the sale of land in Sacramento, California; (iii) for fiscal year 2004, \$2.1 million expense primarily related to an increase in cost provisions for our Australian and New Zealand business; (iv) for fiscal year 2003, \$1.0 million income related to the settlement of a terminated derivative contract; and (v) for fiscal year 2002, \$12.6 million expense related to the roofing Class Action Settlement Agreement in the United States, \$7.4 million expense associated with the corporate reorganization and \$8.1 million expense related to the decrease in fair value of derivative contracts.
- (4) Consists primarily of the following: (i) for fiscal year 2005, the \$1.3 million expense consisted of a \$2.1 million impairment charge that we recorded on an investment in a company that filed a voluntary petition for reorganization under Chapter 11 of the U.S. bankruptcy code, partly offset by a \$0.8 million gain on a separate investment; (ii) for fiscal year 2004, the net gain achieved after accounting for income items, including a \$4.5 million profit on the sale of our New Zealand property, was partially offset by expense items, including \$3.2 million primarily due to a capital duty fee paid in conjunction with our Dutch corporate structure; (iii) for fiscal year 2003, investment income of \$0.7 million; and (iv) for fiscal year 2002, investment expenses of \$0.4 million.
- (5) Information for depreciation and amortization is for continuing businesses only.

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- (6) Adjusted EBITDA represents income from continuing operations before interest income, interest expense, income taxes, other nonoperating expenses, described in footnote four above, net, and depreciation and amortization charges as follows:

	Fiscal Years Ended March 31,				
	2006	2005	2004	2003	2002
	(In millions)				
Net cash provided by operating activities	\$ 240.6	\$ 219.8	\$ 162.6	\$ 64.8	\$ 76.6
Adjustments to reconcile net (loss) income to net cash provided by operating activities, net	(791.3)	(61.2)	(51.1)	62.1	(41.1)
Change in operating assets and liabilities, net	44.0	(31.7)	18.1	43.6	(4.7)
Net (loss) income	(506.7)	126.9	129.6	170.5	30.8
Loss (income) from discontinued operations	—	1.0	(4.3)	(87.0)	(3.5)
Income tax expense	71.6	61.9	40.4	26.1	3.1
Interest expense	7.2	7.3	11.2	23.8	18.4
Interest income	(7.0)	(2.2)	(1.2)	(3.9)	(2.4)
Other expense (income)	—	1.3	(3.5)	(0.7)	0.4
Depreciation and amortization	45.3	36.3	36.4	27.4	23.5
Adjusted EBITDA	<u>\$ (389.6)</u>	<u>\$ 232.5</u>	<u>\$ 208.6</u>	<u>\$ 156.2</u>	<u>\$ 70.3</u>

Adjusted EBITDA is not a measure of financial performance under U.S. GAAP and should not be considered an alternative to, or more meaningful than, income from operations, net income or cash flows as defined by U.S. GAAP or as a measure of our profitability or liquidity. Not all companies calculate Adjusted EBITDA in the same manner as we have and, accordingly, Adjusted EBITDA may not be comparable with other companies. We have included information concerning Adjusted EBITDA because we believe that this data is commonly used by investors to evaluate the ability of a company's earnings from its core business operations to satisfy its debt, capital expenditure and working capital requirements. To permit evaluation of this data on a consistent basis from period to period, Adjusted EBITDA has been adjusted for noncash charges such as goodwill and asset impairment charges, as well as nonoperating income and expense items. See our consolidated financial statements and our discussion under "Operating and Financial Review and Prospects" for further information to assist in identifying and evaluating trends in Adjusted EBITDA.

- (7) Information for capital expenditures includes both cash and credit purchases, and is for continuing businesses only.
- (8) Fiber cement volume is measured in ⁵/₁₆" thick square feet, which are referred to as standard feet.
- (9) Total current assets less total current liabilities.
- (10) Includes current portion of long-term debt.

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Risk Factors

If the conditions precedent to the Final Funding Agreement are met, our wholly owned Australian subsidiary, James Hardie 117 Pty Ltd (formerly known as LGTDD Pty Ltd), will be required to start making payments to a special purpose fund. Even if the conditions precedent to the Final Funding Agreement are not met and the Final Funding Agreement is terminated, we may negotiate an alternative settlement requiring cash settlement. Such payments will reduce funds available for capital expenditures on existing and new business opportunities, repayments of debt, payments of dividends or other distributions; may restrict our ability to access equity or debt capital markets; and will adversely affect our financial position, liquidity, results of operations and cash flows.

On December 1, 2005, we, the Government of the State of New South Wales, Australia, which we refer to as the NSW Government, and our wholly owned Australian subsidiary, James Hardie 117 Pty Ltd, which we refer to as the Performing Subsidiary, entered into a Final Funding Agreement to provide long-term funding to a special purpose fund, or SPF, that will provide compensation for Australian asbestos-related personal injury claims against certain former James Hardie companies, including ABN 60, Amaca Pty Ltd (which we refer to as Amaca) and Amaba Pty Ltd (which we refer to as Amaba), which we collectively refer to as the Former James Hardie Companies.

Our obligations to provide funding to the SPF pursuant to the Final Funding Agreement are subject to certain conditions precedent, including obtaining tax exempt status for the SPF and the approval of our lenders and shareholders. If these conditions are met, under the Final Funding Agreement as executed on December 1, 2005 we will be required to make an initial payment to the SPF on the commencement date of approximately A\$154 million and to make annual payments to the SPF, the first payment of which will also be required on the commencement date. In addition, we have also agreed that for a limited period (which currently remains subject to negotiation as a result of delays in the conditions precedent to the Final Funding Agreement being satisfied), we will provide or arrange for the provision of interim funding to the Foundation if its existing funding is exhausted prior to satisfaction of the conditions precedent to the implementation of the Final Funding Agreement. However, the amount and terms of such interim funding, and the manner in which it will be provided remain to be agreed with the Foundation. Moreover, even if the conditions precedent to the Final Funding Agreement are not met and the Final Funding Agreement is terminated, the Company has determined that it is nevertheless likely that it will make payments in respect of certain claimants who were injured by asbestos products manufactured by the Former James Hardie Companies. If we are required to make these payments or if we make payments pursuant to any alternative settlement, the funds available for capital expenditure (either with respect to our existing business or new business opportunities), repayments of debt principal, or distributions to our shareholders and for other corporate purposes will be reduced by the funding paid to the SPF or the amount of such other settlement payments, as applicable, and as a result, our financial position, liquidity, results of operations, and cash flows will be reduced or materially adversely affected.

Our obligation to make these payments could also affect or restrict our ability to access equity or debt capital markets. For example, had we not prepaid in full the outstanding amount of our US\$ non-collateralized notes prior to making the decision to record the asbestos provision, we would not have been in compliance with certain restrictive covenants pertaining to those notes. If our financial position deteriorates, we may not be able to access the capital markets to replace those notes on terms as advantageous as those that were applicable to those notes and as a result our financial position and liquidity will be materially adversely affected. See Item 4, “Information on the Company — Legal Proceedings” for additional information concerning the Final Funding Agreement.

In addition, since unexpected developments late in a fiscal year could result in material increases in the amount of the next annual payment due, we will need to be prepared to fund any such increased obligations with little or no advance notice. As a result, our cash management processes will need to take into account such contingencies and therefore may adversely affect our ability to manage our cash resources as efficiently as would be the case if the funding obligations were able to be known in advance or ascertained further in advance than is the case under the Final Funding Agreement.

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Even if the Final Funding Agreement is implemented, we may be subject to potential additional liabilities (including claims for compensation or property remediation outside the arrangements reflected in the Final Funding Agreement) because certain current and former James Hardie subsidiaries previously manufactured products that contained asbestos.

Up to 1987, two former subsidiaries of ABN 60, Amaca and Amaba, which are now owned and controlled by the Medical Research and Compensation Foundation, which we refer to as the Foundation, manufactured products in Australia that contained asbestos. In addition, prior to 1937, ABN 60, which is now owned by the ABN 60 Foundation Pty Ltd, which we refer to as the ABN 60 Foundation, manufactured products in Australia that contained asbestos. ABN 60 also held shares in companies that manufactured asbestos-containing products in Indonesia and Malaysia, and held minority shareholdings in companies that conducted asbestos-mining operations based in Canada and Southern Africa. Former ABN 60 subsidiaries also exported asbestos-containing products to various countries around the world. The SPF is designed to provide compensation only for certain claims and to meet certain related expenses and liabilities, and the legislation introduced in New South Wales in connection with the Final Funding Agreement seeks to defer all other claims against the former James Hardie subsidiaries. The funds contributed to the SPF will not be available to meet any asbestos-related claims made outside Australia, or claims made arising from exposure to asbestos occurring outside Australia, or any claim for pure property loss or pure economic loss or remediation of property. In these circumstances, it is possible that persons with such excluded claims may seek to pursue those claims directly against us. Defending any such litigation could be costly and time consuming.

Prior to 1988, a New Zealand subsidiary in the James Hardie Group manufactured products in New Zealand that contained asbestos. In New Zealand, asbestos-related disease compensation claims are managed by the state-run Accident Compensation Commission or ACC. Our New Zealand subsidiary that manufactured products that contained asbestos contributed financially to the ACC fund as required by law via payment of an annual levy. All decisions relating to the amount and allocation of payments to claimants in New Zealand are made by the ACC in accordance with New Zealand law. The Injury Prevention, Rehabilitation and Compensation Act 2001 (NZ) bars compensatory damages for claims that are covered by the legislation which may be made against the ACC Fund. However, we may be subject to potential liability if any of these claims are found not to be covered by the legislation and are later brought against us.

Apart from the funding obligations arising out of the Final Funding Agreement, it is possible that we could become subject to suits for damages for personal injury or death in connection with the former manufacture or sale of asbestos products that have been or may be filed against the Former James Hardie Companies. Although the ability of any claimants to initiate or pursue such suits is restricted by the legislation enacted by the NSW Government under the terms of the Final Funding Agreement (see Item 4, “Information on the Company — Legal Proceedings”), we cannot predict with any certainty the outcome of any future claims or allegations that may be made, how the laws of various jurisdictions may be applied to the facts or how the laws may change in the future. If a court of competent jurisdiction relying on applicable law at the time were to find JHI NV, our New Zealand subsidiary or another James Hardie Group subsidiary liable for damages connected with existing or former subsidiaries or their past manufacture of asbestos-containing products, we may incur significant liabilities in connection with any damages that may be awarded in the legal proceedings, in addition to the costs associated with defending against such claims.

We have agreed to indemnify the buyer of our former Gypsum manufacturing facilities for certain asbestos-related claims.

When we sold our former United States gypsum wallboard manufacturing facilities in April 2002, we agreed to indemnify the buyer from certain future liabilities, for a period of 30 years, arising from asbestos-related claims related to injuries to persons or property arising from our former gypsum business. See Item 10, “Additional Information — Material Contracts.”

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The Final Funding Agreement imposes certain non-monetary obligations which could materially adversely affect our financial position, results of operations, cash flows and outlook.

If the Final Funding Agreement is implemented, we will become subject to certain non-monetary obligations that could prove to be onerous or to otherwise materially adversely affect our ability to undertake proposed transactions or to pay dividends. For example, the Final Funding Agreement contains certain restrictions that would generally prohibit us from undertaking transactions that would materially adversely affect the relative priority of the SPF as a creditor, or that would materially impair our legal or financial capacity and that of the Performing Subsidiary, in each case such that we and the Performing Subsidiary would cease to be likely to be able to meet the funding obligations that would have arisen under the Final Funding Agreement had the relevant transaction not occurred. Those restrictions apply to dividends and other distributions, reorganizations of or dealings in share capital which create or vest rights in such capital in third parties, or non-arm's length transactions. While the Final Funding Agreement contains certain exemptions from such restrictions (including, for example, exemptions for arm's length dealings; transactions in the ordinary course of business; certain issuances of equity securities or bonds; and certain transactions provided certain financial ratios are met and certain amounts of dividends), implementing such restrictions could materially adversely affect our financial position, results of operations, cash flows and outlook.

The Final Funding Agreement does not eliminate the risk of adverse action being taken against us.

Even if our shareholders approve the implementation of the Final Funding Agreement and the other conditions precedent are satisfied and the Final Funding Agreement is implemented, there is a possibility that, despite certain covenants agreed to by the NSW Government in that agreement, adverse action could be directed against us by one or more of the NSW Government, the government of the Commonwealth of Australia, governments of the states or territories of Australia or any other governments, unions or union representative groups, or asbestos disease groups with respect to the asbestos liabilities of Amaba, Amaca and ABN 60. Any such adverse action could materially adversely affect our financial position, results of operations, cash flows and outlook.

We have incurred substantial costs in connection with the events leading up to, and the negotiation and settlement of, the Final Funding Agreement and may in the future continue to incur substantial costs or be subject to further legal proceedings.

In February 2004, the NSW Government established a Special Commission of Inquiry, which we refer to as the SCI, to investigate, among other matters, the circumstances in which the Foundation was established. The SCI issued its report on September 21, 2004. The SCI found that there was a significant funding shortfall. In part, this was based on actuarial work commissioned by us. As of March 31, 2006, an updated actuarial study completed by KPMG Actuaries Pty Ltd, or KPMG Actuaries, estimated that the undiscounted value of the central estimate of the asbestos-related liabilities of Amaba and Amaca was approximately A\$3.08 billion (\$2.3 billion). See Note 12 to our consolidated financial statements in Item 18 for additional information. The SCI found that the net assets of the Foundation, Amaba, Amaca and the ABN 60 Foundation were not sufficient to meet these prospective liabilities and were likely to be exhausted in the first half of 2007. The SCI's findings are not binding and if the same issues were presented to a court, the court might come to different conclusions on one or more of the issues.

If the conditions precedent to the full implementation of the Final Funding Agreement are not met or the Final Funding Agreement is terminated, it is not possible to predict what actions the NSW Government may take. In addition, in fiscal years 2006 and 2005 we incurred \$17.4 million and \$28.1 million, respectively, of expenses related to the events and negotiations leading to the signing of the Final Funding Agreement, including the SCI. We expect to continue to incur material costs associated with the Final Funding Agreement and other related matters, including costs related to: discussions with the Commonwealth Treasury and Australian Taxation Office, or ATO, on the tax exempt status of the SPF; cooperating with an ongoing investigation by the Australian Securities and Investments Commission, or ASIC, into the circumstances surrounding and leading up to the establishment of the Foundation, the corporate reorganizations in 2001 and 2003, and associated matters; providing an updated actuarial assessment of the total asbestos liabilities of the Former James Hardie Companies; and associated legal and advisory costs.

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If the conditions precedent to the full implementation of the Final Funding Agreement are not satisfied or if the Final Funding Agreement is terminated, the NSW Government may pass legislation that would seek to impose liability on us for asbestos claims.

The full implementation of the Final Funding Agreement is subject to a number of conditions precedent, including obtaining tax exempt status for the SPF and approval of our lenders and shareholders. We are currently engaged in consultation and negotiations with the NSW Government to determine whether the outstanding conditions precedent, and in particular the condition that the SPF is exempt from tax, can be satisfied, amended or resolved in a manner satisfactory to the parties to the Final Funding Agreement. If the Final Funding Agreement is not implemented or if the Final Funding Agreement is terminated, the NSW Government has indicated that it may pass or attempt to pass legislation to impose liability on us for certain asbestos claims of the former James Hardie subsidiaries. The Australian Commonwealth Government and governments of other states and territories in Australia could also seek to introduce legislation seeking to have a similar effect. However, the Company has no detailed information as to the content of any such legislation. See Item 4, "Information on the Company — Legal Proceedings." Any such legislation could materially adversely affect our financial position, results of operations, cash flows and outlook.

In addition, if the Final Funding Agreement is not implemented or if the Final Funding Agreement is terminated without a suitable alternative having been reached, our share price and access to capital markets may be adversely affected due to uncertainties surrounding our potential exposure to the asbestos-related liabilities of the Former James Hardie Companies, and any related liability which may arise by legislation which may be introduced by one or more of the Australian Commonwealth Governments, the NSW Government and other state and territory governments.

Since our revenues are primarily derived from sales in U.S. dollars and payments pursuant to the Final Funding Agreement are to be made in Australian dollars, unfavorable fluctuations in the U.S. dollar (and other currencies from which we derive our sales) compared to the Australian dollar, will require us to pay more of our revenues to discharge our obligations under the Final Funding Agreement. In addition, since our results of operations are reported in U.S. dollars, unfavorable fluctuations in the U.S. dollar compared to the Australian dollar will require us to expense the difference in the reported period in order to increase the amount of our asbestos provision on our balance sheet.

Approximately 11% and 13% of our net sales in fiscal years 2006 and 2005, respectively, were derived from sales in Australia. If we are required to make payments pursuant to the Final Funding Agreement, any such payments would be required to be made to the SPF in Australian dollars. In addition, annual payments to the SPF will be calculated based on various estimates that will be denominated in Australian dollars. To the extent that our future obligations exceed our Australian dollar cash flows, and we do not hedge this foreign exchange exposure, we will need to convert U.S. dollars or other foreign currency into Australian dollars in order to meet our obligations pursuant to the Final Funding Agreement. As a result, any unfavorable fluctuations in the U.S. dollar (the majority of our revenues is derived from sales in U.S. dollars) and other currencies from which we derive our sales compared to the Australian dollar will require us to convert more U.S. dollars and other currencies from which we derive our sales to pay the same amount of Australian denominated annual payments to the SPF.

In addition, since our results of operations are reported in U.S. dollars and the asbestos provision is based on estimated payments denominated in Australian dollars, unfavorable fluctuations in the U.S. dollar compared to the Australia dollar will significantly affect our reported results of operations since we will be required to expense any such fluctuations in the reported period in order to increase the reported value of the asbestos provision on our balance sheet. For example, due to the strengthening of the Australian dollar compared to the U.S. dollar, in the quarter ended June 30, 2006, we had to increase our asbestos provision from \$715.6 million, as of March 31, 2006, to \$742.8 million, which resulted in an expense of \$27.2 million that was recorded in that quarter.

As of March 31, 2006, we had not entered into any forward exchange contracts to mitigate this risk. Accordingly, due to the size of the asbestos provision recorded on our balance sheet, fluctuations in the exchange rate will cause unpredictable volatility in our reported results for the foreseeable future and any

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unfavorable fluctuation in U.S. dollar and the other currencies from which we derive our sales compared to the Australian dollar would have a significant negative impact on our business, earnings, results of operations and financial condition.

Continued scrutiny resulting from ongoing investigations may have an adverse effect on our business.

We are currently subject to an investigation by ASIC into the circumstances surrounding the establishment of the Foundation and associated matters. We cannot predict when this investigation will be completed or what the results of this investigation will be. It is possible that we or our current or former directors and officers will be required to pay material fines, suffer other penalties or become liable to provide indemnification payments, any of which could have a material adverse effect on our business. The results of this or other investigations could materially and adversely affect our business, financial condition, results of operations or liquidity.

Our board of directors and senior management continue to devote significant attention to seeking to implement the Final Funding Agreement and associated issues.

Our board of directors, senior management and others within our organization have devoted a significant amount of time and resources to investigating the allegations raised in the report of the SCI, producing documents to and complying with requests from governmental and regulatory authorities and others, preparing and negotiating the Final Funding Agreement, and making submissions relating to the NSW Government's review of legal and administrative costs. To the extent our board of directors and management are required to devote time and resources to dealing with such issues rather than solely focusing on conducting the business of the Company, this could adversely affect our results of operations.

Negative publicity may continue to adversely affect our business.

As a result of the events that were considered by the SCI, we have been the subject of negative publicity, both in Australia and elsewhere in the world which we believe has contributed to declines in the price of our publicly traded securities in recent years. While such negative publicity has been significantly less frequent following our entry into the Final Funding Agreement, the potential for such negative publicity to increase in the future cannot be eliminated. Any uncertainty created by future negative publicity or by the events underlying such negative publicity could have a material adverse effect on our results of operations, staff morale and the market price of our publicly traded securities and create difficulties in attracting or retaining high caliber staff.

We may have insufficient Australian taxable income to utilize tax deductions.

We may not have sufficient Australian taxable income in future years to utilize the tax deductions resulting from payments made to the SPF. Further, if as a result of making such funding payments we incur tax losses, we may not be able to fully utilize such tax losses in future years of income. Any inability to utilize such deductions or losses could adversely affect our financial position or results of operations.

Potential escalation in proven claims made against, and associated costs of, the SPF could increase our annual funding payments required to be made under the Final Funding Agreement, which may cause us to have to increase our asbestos provision in the future.

In fiscal year 2006, we recorded a provision for estimated future asbestos-related compensation payments of \$715.6 million. The amount of this asbestos provision was based, in part, on actuarially determined, anticipated (estimated), future annual funding payments to be made to the SPF on an undiscounted and uninflated basis. Future annual payments to the SPF will be based on updated actuarial assessments that are to be performed as of March 31 of each year to determine expected asbestos-related personal injury liabilities to be funded under the Final Funding Agreement for the financial year in which the payment is made and the next two financial years. Estimates of actuarial liabilities are based on many assumptions, which may not prove to be correct, and which are subject to considerable uncertainty, since the ultimate number and cost of claims are subject to the outcome of events that have not yet occurred, including social, legal and medical developments as well as future economic conditions. For instance, it is possible that the categories of payable claims could be extended to include claims that are not presently compensable or legally recognized. Further,

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estimating the future extent and pattern of asbestos-related diseases that will arise from past exposure to asbestos and the proportion of those claims that will be successful is inherently difficult and therefore could materially differ from actual results. If future proven claims are more numerous or the liabilities arising from them are larger than that currently estimated by KPMG Actuaries, it is possible that pursuant to the terms of the Final Funding Agreement, we will be required to pay higher annual funding payments to the SPF than currently anticipated and on which our asbestos provision is based. If this occurs, we may be required to increase our asbestos provision which would be reflected as a charge in our consolidated statements of operations at that date. Any such changes to actuarial estimates which require us to increase our asbestos provision could have a material adverse effect on our business, results of operations and financial condition.

We have experienced product bans and boycotts and have been subject to other measures taken in response to the events investigated by the SCI and could continue to experience product bans and boycotts in the future.

Following the release of the SCI report, the Australian Council of Trade Unions (which we refer to as the ACTU), UnionsNSW (formerly known as the Labour Council of New South Wales), and a representative of the asbestos claimants, which we collectively refer to as the Representatives, and others indicated that they would encourage or continue to encourage consumers and union members in Australia and elsewhere to ban or boycott the Company's products, to demonstrate or otherwise create negative publicity toward the Company in order to influence the Company's approach to the discussions with the NSW Government or to encourage governmental action if the discussions are unsuccessful. As previously disclosed, our financial position, results of operations and cash flows were affected by such bans and boycotts.

Pursuant to the Final Funding Agreement, the Representatives agreed to use their best endeavors to achieve forthwith the lifting of all bans or boycotts on any products manufactured, produced or sold by the Company, and the Company and the Representatives signed a deed of release in December 2005 under which the Company agreed to release the Representatives and the members of the ACTU and UnionsNSW from civil liability arising in relation to bans or boycotts instituted as a result of the events described above. However, some bans and boycotts have remained in effect. Such releases did not extend to any new bans or boycotts, if applicable, implemented after the date of the signing of the Final Funding Agreement, or to any bans or boycotts which persisted beyond January 1, 2006. If the conditions precedent to the Final Funding Agreement are not satisfied or if for any reason that agreement is not implemented, new bans or boycotts could be implemented against the Company's products. Additionally, any remaining bans or boycotts that have remained in effect may not be lifted. Any such measures, and the influences resulting from them, could have a material adverse impact on the Company's financial position, results of operations and cash flows.

The complexity and long-term nature of the Final Funding Agreement and related legislation and agreements may result in litigation as to their interpretation or one or more of the parties to the agreements may seek to renegotiate their terms.

Certain legislation, the Final Funding Agreement and related agreements which govern the implementation and performance of the Final Funding Agreement are complex and have been negotiated over the course of extended negotiation periods between various parties. There is a risk that, over the term of the Final Funding Agreement, some or all parties may become involved in disputes as to the interpretation of such legislation, the Final Funding Agreement or related agreements. We cannot guarantee that no party will commence litigation seeking remedies with respect to such a dispute, nor can we guarantee that a court will not order other remedies which may adversely affect the Company.

Due to the long-term nature of the Final Funding Agreement, unforeseen events may result in one or more of the parties to the Final Funding Agreement (including the Company) wishing to renegotiate the terms and conditions of the Final Funding Agreement or any of the related agreements. In addition, we are currently engaged in consultation and negotiation with the NSW Government to determine whether the outstanding conditions precedent (and in particular the condition that the SPF is exempt from tax) can be satisfied, amended or resolved in a manner satisfactory to the parties to the Final Funding Agreement. Any amendments to the Final Funding Agreement or related agreements in the future would require the consent of

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the Company, the NSW Government and the Asbestos Injuries Compensation Fund, or AICF, and therefore may not be achieved.

In the future, we may be unable to renew our credit facilities on their current terms or terms that are customary for other companies in our industry or who have similar credit ratings, or be able to obtain any credit facilities at all.

Our credit facilities currently consist of 364-day facilities in the amount of \$110.0 million, which mature in June 2007 and term facilities in the amount of \$245.0 million, which mature in December 2006. Upon satisfaction of the conditions precedent to the full implementation of the Final Funding Agreement, including lender approval, the maturity date of the \$245.0 million term facilities will be automatically extended until June 2010. However, if the conditions precedent to the full implementation of the Final Funding Agreement are not satisfied, we may not be able to renew our credit facilities on substantially similar terms, or at all; we may have to pay additional fees and expenses that we might not have to pay under normal circumstances; and we may have to agree to terms that could increase the cost of our debt structure. If we are unable to extend our credit facilities, or are unable to renew our credit facilities on terms that are substantially similar to the ones we presently have, we may experience liquidity issues and will have to reduce our levels of planned capital expenditures and/or take other measures to conserve cash in order to meet our future cash flow requirements.

We may be liable for costs, penalties, fees or expenses incurred by current or former directors, officers or employees of the James Hardie Group to the extent that those costs are covered by indemnity arrangements granted by the James Hardie Group to those persons.

We may be liable for costs, penalties, fees or expenses incurred by current or former directors, officers or employees of the James Hardie Group to the extent that those costs are covered by indemnity arrangements granted by the James Hardie Group to those persons. To date, with respect to the application of our indemnity obligations to proceedings of the SCI and other regulatory bodies, we have paid all legal fees and costs incurred on behalf of any current or past employee, officer or director who has been involved in any such proceeding. In addition, our indemnification obligations would generally cover costs incurred by a director or officer in responding to an ASIC investigation or any other investigation conducted by a governmental agency or a liquidator. We or a relevant subsidiary may be reimbursed under directors' and officers' insurance policies taken out by us or a relevant subsidiary. However, there is no guarantee that such insurance will cover the nature of such claims or will completely insure any claims that are covered. If such costs are not insured or substantially exceed the amount of the insurance that we maintain, our business, financial condition, results of operations and liquidity could be adversely affected.

Our subsidiary, RCI Pty Ltd, has been required to post a substantial cash deposit and may incur substantial expenses in order to pursue an appeal of an assessment by the Australian Taxation Office and, if it is unsuccessful in its appeal, our financial position, liquidity, and cash flow will be materially and adversely affected.

In March 2006, RCI Pty Ltd, a wholly owned subsidiary of the Company which we refer to as RCI, received an amended assessment from the ATO. The amended assessment is based on the ATO's calculation of RCI's net capital gains arising as a result of an internal corporate restructuring carried out in 1998. The amended assessment originally was for A\$412.0 million (\$310.0 million). After remission of general interest charges by the ATO, the total assessment was changed to A\$378.0 million (\$284.6 million), which includes: A\$172.0 million (\$129.5 million) as the primary tax after allowable credits; A\$43.0 million (\$32.4 million) in penalties (representing 25% of the primary tax); and A\$163.0 million (\$122.7 million) in general interest charges.

RCI is appealing the amended assessment and may incur substantial legal and other expenses in pursuing this appeal. On July 5, 2006, pursuant to an agreement negotiated with the ATO and in accordance with the ATO Receivable Policy, the Company made a payment of A\$189.0 million (\$140.4 million — converted using the assets and liabilities rate at June 30, 2006) being 50% of the amended assessment, and guaranteed the remaining unpaid 50% of the amended assessment, pending the outcome of the appeal of the amended assessment. The Company also agreed to pay general interest charges accruing on the unpaid balance of the

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amended assessment in arrears on a quarterly basis. The first payment of accrued general interest charges will be due October 15, 2006 in respect of the quarter ending September 30, 2006.

Even if RCI is successful in appealing the amended assessment and the amount paid to the ATO is ultimately refunded to it the requirement to initially pay 50% of the amended assessment and ongoing payments of accruing general interest charges pending the outcome of the appeal could materially and adversely affect our financial position and liquidity as the cash required to make these payments is not available during the appeals process for ordinary corporate purposes. If RCI is unsuccessful in appealing the amended assessment, RCI will be required to pay the remaining 50% of the unpaid amended assessment in which case our financial position, liquidity and cash flow will be materially and adversely affected. As of March 31, 2006 we had not recorded any liability for the amended assessment. See Item 4, "Information on the Company — Legal Proceedings" and Notes 13 and 20 to the notes to our consolidated financial statements included in Item 18 for more information.

Under the U.S.-Netherlands income tax treaty and Dutch tax law, we derive tax benefits from the group finance operations of our Netherlands-based finance subsidiary, and changes in either the treaty or laws applicable to the finance subsidiary, including the recent changes to the tax treaty, could increase our effective tax rate and, as a result, reduce our future profits and cash flows.

On December 28, 2004, the United States and The Netherlands amended the U.S.-Netherlands Income Tax Treaty (prior to amendment, the "Original U.S.-NL Treaty;" post amendment, the "New U.S.-NL Treaty"). We believe that, based on the transitional rules set forth in the New U.S.-NL Treaty, the Original U.S.-NL Treaty applied to us and to our Dutch and U.S. subsidiaries until January 31, 2006. We believe that, under the Original U.S.-NL Treaty, a 5% U.S. withholding tax applied to dividends, and no U.S. withholding tax applied to interest or royalties, that our U.S. subsidiaries paid to JHI NV or our Dutch finance subsidiary. The Original U.S.-NL Treaty had various conditions of eligibility for reduced U.S. withholding tax rates (and other treaty benefits), all of which we satisfied. If, however, we do not qualify for the benefits under the New U.S.-NL Treaty, such dividend, interest and royalty payments would be subject to a 30% U.S. withholding tax.

Companies eligible for benefits under the New U.S.-NL Treaty qualify for a zero percent U.S. withholding tax rate on dividends. However, the New U.S.-NL Treaty has a number of new, more restrictive eligibility requirements for reduced U.S. withholding tax rates and other treaty benefits. We have changed our organizational and operational structure as of January 1, 2006 to satisfy the requirements of the New U.S.-NL Treaty and believe we are eligible for benefits under the New U.S.-NL Treaty commencing on February 1, 2006. We have requested a formal ruling from the U.S. tax authorities regarding whether our recent organizational and operational changes meet the requirements of the New U.S.-NL Treaty provisions. We cannot assure you that we will receive a favorable ruling from them. Furthermore, we may not receive a formal ruling at all. As a result, we cannot guarantee that we will continue to receive the treaty benefits. If, during a tax audit or related process for a period beginning after the effective date of the amended treaty provisions, the IRS determines that these changes do not meet the new requirements, we may not qualify for treaty benefits, and our effective income tax rate could significantly increase beginning in the fiscal year that such determination is made, and we could be liable for taxes owed from the effective date of the amended treaty provisions.

We have previously concentrated our finance and treasury activities in our Dutch finance subsidiary located in The Netherlands. In addition to providing financing to our various subsidiaries, the finance subsidiary owns and develops intellectual property that it licenses to our operating subsidiaries. Under the Netherlands International Group Finance Company rules, we have obtained a ruling from the Dutch Revenue authority that allows the finance subsidiary to set aside, in a Financial Risk Reserve, or FRR, a portion of its taxable profits from financing and from licensing its intellectual property. The amounts set aside in the FRR are free of current Dutch income tax. Consequently, the finance subsidiary will generally incur a tax rate of approximately 15% to 18% on its qualifying financing and licensing income and a 29.6% statutory rate on all other income (29.6% is the Dutch statutory rate for calendar year 2006), including any amounts involuntarily released from the FRR to cover any risks (including currency, bad debt and foreign branch losses) for which

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the FRR was established. The tax rate on qualifying income may be reduced to as low as approximately 7% to 10% depending on the extent to which amounts from the FRR pay for capital expenditures of our operating companies. The Dutch revenue ruling became effective on July 1, 2001 and, when issued, was to apply for 10 years so long as we satisfied the requirements of the International Group Finance Company provisions under Dutch tax law. As discussed below, the Dutch revenue ruling is set to expire on December 31, 2010.

Under the European Union Code of Conduct on Direct Business Taxation, member states of the European Union, or EU, have agreed to eliminate harmful tax competition within the EU. Accordingly, the EU Council of Economic and Finance Ministers, a working group of EU member countries, reviewed the tax regimes of all its member countries and identified certain tax concessions the Council considered as harmfully competitive and therefore in violation of the Code of Conduct. Among the identified tax concessions is the Netherlands International Group Finance Company regime. In December 2002, The Netherlands agreed to end its International Group Finance Company regime for new entrants.

In a separate but related development, the European Commission, the executive arm of the EU, also reviewed the tax regimes of its member countries to identify tax concessions that the European Commission considered to be a form of “prohibited state aid” and, therefore, contrary to the provisions of the European Community Treaty. In February 2003, the Commission concluded that the existence of special tax concessions in certain countries, including the Netherlands International Group Finance Company regime, cannot be reconciled with EU rules regarding state aid. Accordingly, the European Commission banned certain concessionary tax regimes, including the Netherlands International Group Finance Company regime, but allowed companies then operating under that regime, including our Dutch finance subsidiary, to continue to operate under the regime until December 31, 2010. Some uncertainty exists whether, during this extended period of the International Group Finance Company regime, qualifying companies can continue to set aside profits in their FRR and defer any taxable recovery of profits from their FRR until the expiration date. Until December 31, 2010, and absent further legal developments, we intend to maintain and continue to add to the FRR of our Dutch finance subsidiary all allowable profits the subsidiary earns, and to fund capital expenditures of our operating companies with amounts from the FRR.

Although our Dutch finance subsidiary can continue to derive benefits under the Netherlands International Group Finance Company rules until December 31, 2010, we cannot guarantee that either the EU, or another relevant authority or legislative body, would not attempt to repeal the law earlier or that a court of competent jurisdiction would not invalidate it, possibly with retrospective effect.

Substantial and increasing competition in the building products industry could adversely affect our business.

Competition in the building products industry is based largely on price and, to a lesser extent, quality, performance and service. Our fiber cement products compete with products manufactured from natural and engineered wood, vinyl, stucco, masonry, gypsum and other materials as well as fiber cement products offered by other manufacturers. Some of our competitors may have greater product diversity and greater financial and other resources than we do and, among other factors, may be less affected by reductions in margins resulting from price competition.

Some of our competitors have lowered prices of their products to compete for sales. In addition, we expect our competitors to continue to expand their manufacturing capacities, to improve the design and performance of their products and to introduce new products with competitive price and performance characteristics. Increased competition by existing or future competitors could adversely impact fiber cement prices and could require us to increase our investment in product development, productivity improvements and customer service and support to compete in our markets.

Fiber cement product prices in the United States, Australia and New Zealand have fluctuated for a number of years due to the entry into the market of new producers and competition from alternative products, among other reasons, and these prices could continue to fluctuate in the future. Because of the maturity of the Australian and New Zealand markets, we believe that prices in those markets may decline and that sales volumes may not increase significantly or may decline in the future.

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Historically, increased sales volumes of our U.S. fiber cement products, the addition of proprietary products to our product mix and improved operating efficiencies have more than offset the decrease in pricing for such products in the United States. However, there may be future price decreases that we may not be able to offset with increased volume, new products or improved operating efficiencies. For instance, unanticipated technical problems could impair our efforts to commission new equipment aimed at improving operating efficiencies. Any of these factors could have a material adverse effect on our business, results of operations and financial condition.

If damages resulting from product defects exceed our insurance coverage, paying these damages could result in a material adverse effect on our business, results of operations and financial condition.

The actual or alleged existence of defects in any of our products could subject us to significant product liability claims. Although we do not have replacement insurance coverage for damages to, or defects in, our products, we do have product liability insurance coverage for consequential damages that may arise from the use of our products. Although we believe this coverage is adequate and currently intend to maintain this coverage in the future, we cannot assure you that this coverage will be sufficient to cover all future product liability claims or that this coverage will be available at reasonable rates in the future. The successful assertion of one or more claims against us that exceed our insurance coverage could require us to incur significant expenses to pay these damages. These additional expenses could have a material adverse effect on our business, results of operations and financial condition.

If one or more of our fiber cement products fail to perform as expected or contain a design defect, such failure or defect, and any resulting negative publicity, could result in lower sales and may subject us to claims from purchasers or users of our fiber cement products.

Because our fiber cement products have been used only since the early-1980s, we cannot assure you that these products will perform in accordance with our expectations over an extended period of time or that there are no serious design defects in such products. If our fiber cement technology fails to perform as expected or a product is discovered to have design defects, such failure or defects, and any resulting negative publicity, could result in lower sales of our products and may subject us to claims from purchasers or users of defective products, either of which could have a material adverse effect on our business, results of operations and financial condition.

Warranty claims resulting from unforeseen defects in our products and exceeding our warranty reserves could have a material adverse effect on our business, results of operations and financial condition.

We have offered, and continue to offer, various warranties on our products, including a 50-year limited warranty on certain of our fiber cement siding products in the United States. Although we maintain reserves for warranty-related claims and legal proceedings that we believe are adequate, we cannot assure you that warranty expense levels or the results of any warranty-related legal proceedings will not exceed our reserves. If our warranty reserves are significantly exceeded, the costs associated with such warranties could have a material adverse effect on our business, results of operations and financial condition.

We may incur significant costs in the future in complying with applicable environmental and health and safety laws and regulations. A failure to comply with or a change in these laws and regulations could subject us to significant liabilities, including, but not limited to, damages and penalties.

We are subject to U.S. federal, state, local and foreign environmental, health and safety laws and regulations governing, among other matters, our operations, including the air and water quality of our plants, and the use, handling, disposal and remediation of hazardous substances currently or formerly used by us or any of our affiliates. Under these laws and regulations, we may be held jointly and severally responsible for the remediation of any hazardous substance contamination at our or our predecessors' past or present facilities and at third-party waste disposal sites. We may also be held liable for any claims arising out of human exposure to hazardous substances or other environmental damage and our failure to comply with air, water, waste, and other environmental regulations. We will continue to be liable for any environmental problems that occurred while we owned or operated any of the three gypsum facilities that we sold in April 2002. See Item 10, "Additional Information — Material Contracts."

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In addition, many of our products contain crystalline silica, which can be released in a respirable form in connection with manufacturing practices and handling or use. The inhalation of respirable crystalline silica at certain exposure levels is known or suspected to be associated with silicosis, potentially causing lung cancer and other adverse human health effects. We may face future costs of engineering and compliance to meet new standards relating to crystalline silica if standards are made more stringent. In addition, there is a risk that claims for silica-related health effects could be made against us. We cannot assure you that we will have adequate resources, including adequate insurance coverage, to satisfy any future silica-related health effect claims. In addition, our sales could decrease if silica-related health effect claims are made against us and as a result potential users of our products decide not to use our products. Any such claims may have a material adverse effect on our financial condition. See also Risk Factor above captioned "If damages resulting from product defects exceed our insurance coverage, paying these damages could result in a material adverse effect on our business, results of operations and financial condition."

The costs of complying with environmental and health and safety laws relating to our operations or the liabilities arising from past or future releases of, or exposure to, hazardous substances or product liability matters, or our failure to comply with air, water, waste, and other existing environmental regulations may result in us making future expenditures that could have a material adverse effect on our business, results of operations or financial condition. In addition, we cannot make any assurances that the laws currently in place will not change. Also, if applicable laws or judicial interpretations related to successor liability or "piercing the corporate veil" were to change, it could have a material adverse effect on our business, results of operations and financial condition. See Item 4, "Information on the Company — Legal Proceedings."

Our business is dependent on the residential and commercial construction markets and we expect a slow down in housing construction in the markets we serve, including the U.S., Australia and New Zealand, over the short to medium term.

Demand for our products depends in large part on residential construction markets and, to a lesser extent, on commercial construction markets. The level of activity in residential construction markets depends on new housing starts and residential remodeling projects, which are a function of many factors not within our control, including general economic conditions, mortgage and other interest rates, inflation, unemployment, demographic trends, gross domestic product growth and consumer confidence in each of the countries and regions in which we operate. While residential construction in the U.S. remained relatively strong in fiscal year 2006, the National Association of Home Builders, or NAHB, and other market analysts expect the new construction single-family residential segment to slow during the remainder of calendar year 2006. We also expect the Australian and New Zealand housing markets to slow over the short to medium term. Any slow down in the markets we serve could result in decreased demand for our products and cause us to experience decreased sales and operating income. In addition, the level of activity in construction markets also depends on our ability to grow primary demand for fiber cement and convert sales of alternative materials to sales of fiber cement. Historically, in periods of economic decline, both new housing starts and residential remodeling also decline. The level of activity in the commercial construction market depends largely on vacancy rates and general economic conditions. Because residential and commercial construction markets are sensitive to cyclical changes in the economy, downturns in the economy or a lack of substantial improvement in the economy of any of our geographic markets could negatively affect operating results. Because of these and other factors, our results of operations may be subject to substantial fluctuations and the results for any prior period may not be indicative of results for any future period.

Because demand for our products in our major markets is seasonal, our quarterly results of operations may vary throughout the year.

In the United States, a large proportion of our fiber cement products are sold in the Southeastern, Southcentral and Pacific Northwest regions of the country. Demand for building products in these regions is seasonal because construction activity diminishes during the winter season. In addition, the September 2005 hurricanes that caused considerable damage along the Gulf Coast in the United States had some impact on carrier availability and transportation costs through the initial phases of the hurricane relief efforts. In Australia, New Zealand and the Philippines, demand for building products is also seasonal because, in

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Australia and New Zealand, construction activity diminishes during the summer period of December to February, and in the Philippines, construction activity diminishes during the wet season from June to September and the last half of December due to the slowdown in business activity over the holiday period. Because of these and other factors, our quarterly results of operations may vary throughout the year and the results for any quarterly period may not be indicative of results for any future period.

We may experience adverse fluctuations in the supply and cost of raw materials necessary to our business. A significant reduction or cessation of shipments from an important supplier could adversely affect our business if we are unable to secure alternative supplies within a short time or on reasonable terms.

Our fiber cement business periodically experiences fluctuations in the supply and costs of raw materials, and some of our supply markets are concentrated. For example, during fiscal year 2006 in the United States, natural gas costs increased significantly, and to a lesser extent, we also experienced increases in costs associated with electric power and some of our major material components including cement. Cellulose fiber, silica, cement and water are the principal raw materials used in the production of fiber cement. Cellulose fiber and cement have been subject to significant price fluctuations in the past. Price fluctuations or material delays may occur in the future due to lack of raw materials or suppliers. The loss or deterioration of our relationship with a major supplier, an increase in demand by third parties for a particular supplier's products or materials or delays in obtaining materials could have a material adverse effect on our business, results of operations and financial condition.

If our research and development efforts fail to generate new, innovative products or processes, our overall profit margins may decrease and demand for our products may fall, which would have an adverse effect on our results of operations and financial condition. In addition we may incur substantial expenses and write-off charges related to unsuccessful research and development efforts.

We invest significantly in research and development because we believe that such efforts are key to sustaining and growing our existing market leadership position in fiber cement. Because profit margins for fiber cement products and building products generally erode the longer a product has been on the market, innovation is particularly important. We rely on our research and development efforts to generate new products and processes to increase demand and to protect profit margins. If our research and development efforts fail to generate new, innovative products or processes, our overall profit margins may decrease and demand for our products may fall, which would have an adverse effect on our results of operations and financial condition. In addition, we may incur substantial expenses and write-offs related to unsuccessful research and development efforts.

Demand for our products is subject to changes in consumer preference.

The continued development of builder and consumer preference for our fiber cement products over competitive products is critical to sustaining and expanding demand for our products. Therefore, the failure to maintain and increase builder and consumer acceptance of our fiber cement products could have a material adverse effect on our growth strategy as well as our business, results of operations and financial condition.

We rely on only a few distributors to distribute our fiber cement products and the loss of any distributor could adversely affect our business.

Our top two distributors in the United States represented approximately 46% of our total USA Fiber Cement gross sales in fiscal year 2006. In addition, a large home center retailer accounted for approximately 12% of our total USA Fiber Cement gross sales in fiscal year 2006. Our top two distributors in Australia and our top three distributors in New Zealand accounted for approximately 28% and 65% of our total gross sales of fiber cement in Australia and New Zealand, respectively, in fiscal year 2006. We generally do not have long-term contracts with our large distributors. Accordingly, if we were to lose one or more of these distributors because our competitors were able to offer distributors more favorable pricing terms or for any other reasons, we may not be able to replace distributors in a timely manner or on reasonable terms. The loss of one or more distributors could have a material adverse effect on our business, results of operations and financial condition.

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Changes in, or failure to comply with, the laws, regulations, policies or conditions of any jurisdiction in which we conduct our business could result in, among other consequences, the loss of our assets in such jurisdiction, the elimination of certain rights that are critical to the operation of our business in such jurisdiction, a decrease in revenues or the imposition of additional taxes or other costs.

Because we own assets, manufacture and sell our products internationally, our activities are subject to political, economic, legal and other uncertainties, including:

- changing political and economic conditions;
- changing laws and policies;
- the general hazards associated with the assertion of sovereign rights over certain areas in which we conduct our business; and
- laws limiting or conditioning the right and ability of subsidiaries and joint ventures to pay dividends or remit earnings to affiliated companies.

Although we seek to take applicable laws, regulations and conditions into account in structuring our business on a global basis, changes in, or our failure to comply with, the laws, regulations, policies or conditions of any jurisdiction in which we conduct our business could result in, among other consequences, the loss of our assets in such jurisdiction, the elimination of certain rights that are critical to the operation of our business in such jurisdiction, a decrease in revenues or the imposition of additional taxes. Therefore, any change in laws, regulations, policies or conditions of a jurisdiction could have a material adverse effect on our business, results of operations and financial condition.

Our reliance on publicly available intellectual property and other proprietary information subjects us to the risk that competitors could copy our products or processes.

Our success depends, in part, on the proprietary nature of our technology, including non-patentable intellectual property such as our process technology. To the extent that a competitor is able to reproduce or otherwise capitalize on our technology, it may be difficult, expensive or impossible for us to obtain adequate legal or equitable relief. Also, the laws of some foreign countries may not protect our intellectual property to the same extent as do the laws of the United States. In addition to patent protection of intellectual property rights, we consider elements of our product designs and processes to be proprietary and confidential. To safeguard our confidential information, we rely on employee, consultant and vendor non-disclosure agreements and contractual provisions and a system of internal safeguards to protect our proprietary information. However, any of our registered or unregistered intellectual property rights may be challenged or exploited by others in the industry, which could harm our results of operations and competitive position.

We rely on a continuous power supply and availability of utilities to conduct our operations, and any shortages or interruptions could disrupt our operations and increase our expenses.

In the manufacture of our products, we rely on a continuous and uninterrupted supply of electric power, water and natural gas as well as the availability of water, waste and emissions discharge facilities. Any future shortages or discharge curtailments could significantly disrupt our operations and increase our expenses. We currently do not have backup generators to maintain power and do not have alternate sources of power in the event of a blackout. In addition, our current insurance does not provide coverage for any damages that we or our customers may suffer as a result of any interruption in our power supply. If blackouts interrupt our power supply, we would be temporarily unable to continue operations at the affected facilities. Any future interruption in our ability to continue operations at our facilities could damage our reputation, harm our ability to retain existing customers or obtain new customers and could result in lost revenue, any of which could have a material adverse effect on our business, results of operations and financial condition.

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Because we have significant operations outside of the United States and report our earnings in U.S. dollars, unfavorable fluctuations in currency values and exchange rates could have a significant negative impact on our earnings.

Because our reporting currency is the U.S. dollar, our non-U.S. operations face the additional risk of fluctuating currency values and exchange rates. Such operations may also face hard currency shortages and controls on currency exchange. Approximately 17% and 21% of our net sales in fiscal years 2006 and 2005, respectively, were derived from sales outside the United States. Consequently, changes in the value of foreign currencies (principally Australian dollars, New Zealand dollars, Philippine pesos, Euros, U.K. pounds and Canadian dollars) could significantly affect our business, results of operations and financial condition. We generally attempt to mitigate foreign exchange risk by entering, where possible, into contracts that require payment in local currency, hedging transactional risk, where appropriate, and having non-U.S. operations borrow in local currencies, particularly that of the Philippines. Although we did not have any material interest rate swaps or forward exchange contracts outstanding as of March 31, 2006, we may enter into such financial instruments from time to time to manage our market risks. There can be no assurance that we will be successful in these mitigation strategies, or that fluctuations in foreign currencies and other foreign exchange risks will not have a material adverse effect on our business, results of operations and financial condition.

Information technology systems integration issues could disrupt our internal operations, which could have significant adverse effects on our profitability.

In fiscal year 2006, we commenced our implementation of a new enterprise resource planning, or ERP, software system. Our ongoing systems integration work could cause portions of our information technology infrastructure to experience interruptions, delays or cessations of service and produce system errors. We may not be successful in timely implementing these new systems, and transitioning data and other aspects of the process could be expensive, time consuming and disruptive. Any disruptions that may occur in the implementation of this new system could adversely affect our ability to accurately and timely report the financial results of our operations and otherwise efficiently operate our business, which could have a significant adverse effect on our profitability.

Our Articles of Association and Dutch law contain provisions that could delay or prevent a change of control that may otherwise be beneficial to you.

Our Articles of Association contain several provisions that could have the effect of delaying or preventing a change of control of our ownership. Our Articles of Association generally prohibit the holding of shares of our common stock if, because of an acquisition of a relevant interest (including interests held in the form of shares of our common stock, CUFs or ADRs) in such shares, the number of shares in which a person holds relevant interests increases from 20% or below to over 20% or from a starting point that is above 20% and below 90%. However, this prohibition is subject to exceptions, including acquisitions that result from acceptance under a takeover bid as described in our Articles of Association. Although these provisions in our Articles of Association may help to ensure that no person acquires voting control of us without making an offer to all shareholders, these provisions may also have the effect of delaying or preventing a change of control that may otherwise be beneficial to you. See Item 10, “Additional Information — Key Provisions of our Articles of Association — Limitations on Right to Hold Common Stock.”

Because we are incorporated under Dutch laws, you may not be able to effectively seek legal recourse against us or our management and you may have difficulty enforcing any U.S. judgments or rulings in a foreign jurisdiction.

We are incorporated under the laws of The Netherlands. In addition, many of our directors and executive officers are residents of jurisdictions outside the United States and a substantial portion of our assets are located outside the United States. As a result, it may be difficult to effect service of process within the United States upon such persons, or to enforce outside the United States judgments obtained against such persons in U.S. courts, or to enforce in U.S. courts any judgments obtained against such persons in courts located in jurisdictions outside the United States, including actions predicated upon the civil liability provisions of the

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U.S. securities laws. In addition, it may be difficult for you to enforce, in original actions brought in courts located in jurisdictions outside the United States, rights predicated upon the U.S. securities laws.

The rights of shareholders and the responsibilities of directors under the laws of The Netherlands may not be as clearly established as under statutes or judicial precedent in existence in certain U.S. jurisdictions, and such rights under the laws of The Netherlands may differ substantially from what those rights would be under the laws of various jurisdictions in the United States. Therefore, our shareholders may have more difficulty in challenging the actions by our directors than they would otherwise as shareholders of a corporation incorporated in the United States.

The issuance of shares of common stock or the grant of options to acquire shares of common stock could dilute the value of your shares and adversely affect the price of our common stock.

Because the authority to issue shares, and to grant rights to subscribe for shares, such as options, up to the amount of our authorized share capital, has been delegated to our Supervisory Board, the issuance of such shares or rights could dilute the value of your shares and adversely affect the price of our common stock.

In addition, if we issue a large number of our equity securities, the trading price of our equity securities could decrease. We may pursue acquisitions of businesses and may issue equity securities in connection with these acquisitions, although we do not currently have specific acquisitions planned. We may also issue equity securities to satisfy other liabilities of the Company. We cannot predict the effect, if any, that future sales or issuances of our equity securities or the availability of such securities for future sale will have on our securities market price from time to time.

If we experience labor disputes or interruptions, as we have from time to time in the past, our operations may be disrupted and our business, financial condition and results of operations may be adversely affected.

As of August 31, 2006, approximately 41%, or 185, of our employees in Australia and approximately 46%, or 81, of our employees in New Zealand were represented by labor unions. Our unionized employees are covered by a range of federal and state-based agreements in Australia and other agreements in New Zealand. Two Australian labor agreements applying to our NSW operation expired in June 2006. Of these, one has been renewed for two years, expiring in June 2008. The other is still in negotiation. Negotiations over labor agreements to cover each of our two Queensland plants are continuing. Our New Zealand labor agreement expires in September 2007. We cannot assure you that any of these agreements will be renewed on reasonable terms, or at all. During the past three years, we experienced occasional strikes and work interruptions lasting up to 5 days in Australia. In the event we experience a prolonged labor dispute at any of our facilities, any strikes or work interruptions associated with such dispute could have a material adverse effect on our business, financial condition and results of operations.

Our effective income tax rate could increase and adversely affect our operating results.

We operate in multiple jurisdictions and pay tax on our income according to the tax laws of these jurisdictions. Various factors, some of which are beyond our control, determine our effective tax rate, including changes in or interpretations of tax laws in any given jurisdiction, our ability to use net operating losses and tax credit carry forwards and other tax attributes, changes in geographical allocation of income and expense, and our judgment about the realizability of deferred tax assets.

If we are classified as a “controlled foreign corporation” or a “passive foreign investment company,” our shareholders could be subject to increased tax liability as a consequence of their investment in our securities.

Our U.S. citizen and resident shareholders could incur adverse U.S. federal income tax consequences if, for federal income tax purposes, we are classified as a “controlled foreign corporation” or a “passive foreign investment company.” For information regarding these consequences, see Item 10, “Additional Information — Taxation — United States Taxation.” In addition, shareholders could be adversely affected by changes in the current tax laws, regulations and interpretations thereof in the United States and The Netherlands, including changes that could have retroactive effect.

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We may acquire or divest businesses from time to time, and this may adversely affect our results of operations and financial condition and may significantly change the nature of the company in which you have invested.

In the past, we have divested business segments. In the future, we may acquire other businesses or sell some or all of our assets or business segments. Any significant acquisition or sale may adversely affect our results of operations and financial condition and could change the overall profile of our business. As a result, the value of our shares may decrease in response to any such acquisition or sale and, upon any such acquisition or sale, our shares may represent an investment in a company with significantly different assets and prospects from the Company when you made your initial investment in us.

We expect to incur substantial accounting and legal costs in order to comply with the internal control over financial reporting requirements of Section 404 of the Sarbanes-Oxley Act of 2002, as codified by Item 308 of Regulation S-K, and we may experience a loss in investor confidence, and a decrease in the market price of our ADRs, if we are unable to so comply.

Commencing with our annual report for the fiscal year ending March 31, 2007, we will be required to comply with the internal control over financial reporting requirements of Item 308 of Regulation S-K. As part of these new rules, we will be required to include in our annual report on Form 20-F, a report containing management's assessment of the effectiveness of our internal control over financial reporting. In addition, our independent registered public accounting firm will be required to attest to and report on management's assessment of the effectiveness of our internal controls over financial reporting.

We expect to incur substantial legal and accounting costs in order to initially comply and continue to comply with the internal control over financial reporting requirements of Item 308 of Regulation S-K. In addition, if we fail to achieve and maintain the adequacy of our internal controls over financial reporting, or otherwise fail to comply with the requirements of Item 308 of Regulation S-K, we could experience a loss in investor confidence in the reliability of our financial statements, which could lead to a decrease in the market price for our ADRs and harm our business.

Forward-Looking Statements

This annual report contains forward-looking statements. We may from time to time make forward-looking statements in our periodic reports filed with or furnished to the United States Securities and Exchange Commission on Forms 20-F and 6-K, in our annual reports to shareholders, in offering circulars and prospectuses, in media releases and other written materials and in oral statements made by our officers, directors or employees to analysts, institutional investors, representatives of the media and others. Examples of forward-looking statements include:

- expectations that the conditions precedent to the Final Funding Agreement will be satisfied;
- expectations about payments to a special purpose fund for the compensation of proven asbestos-related personal injury and death claims;
- expectations concerning the Australian Tax Office amended assessment;
- expectations that our credit facilities will be extended or renewed;
- projections of our results of operations or financial condition;
- statements regarding our plans, objectives or goals, including those relating to competition, acquisitions, dispositions and our products;
- statements about our future performance; and
- statements about product or environmental liabilities.

Words such as "believe," "anticipate," "plan," "expect," "intend," "target," "estimate," "project," "predict," "forecast," "guideline," "should," "aim" and similar expressions are intended to identify forward-looking statements but are not the exclusive means of identifying such statements.

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Forward-looking statements involve inherent risks and uncertainties. We caution that a number of important factors could cause actual results to differ materially from the plans, objectives, expectations, estimates and intentions expressed in such forward-looking statements. These factors include, but are not limited to, the risk factors discussed under “Key Information — Risk Factors” beginning on page 5, and: all matters relating to or arising out of the prior manufacture of products that contained asbestos by current and former James Hardie subsidiaries; compliance with and changes in tax laws and treatments; competition and product pricing in the markets in which we operate; the consequences of product failures or defects; exposure to environmental, asbestos or other legal proceedings; general economic and market conditions; the supply and cost of raw materials; the success of research and development efforts; reliance on a small number of product distributors; compliance with and changes in environmental and health and safety laws; risks of conducting business internationally; compliance with and changes in laws and regulations; foreign exchange risks; the successful implementation of new software systems; and our successful implementation of the internal control over financial reporting requirements of Section 404 of the Sarbanes-Oxley Act of 2002, as codified by Item 308 of Regulation S-K. We caution that the foregoing list of factors is not exclusive and that other risks and uncertainties may cause actual results to differ materially from those in forward-looking statements. Forward-looking statements speak only as of the date they are made.

Item 4. Information on the Company

History and Development of the Company

Our legal name was changed to James Hardie Industries N.V. from RCI Netherlands Holdings B.V. in July 2001 when our legal form was converted from a “*besloten vennootschap met beperkte aansprakelijkheid*” (a “B.V.”), or private limited liability company, to a “*naamloze vennootschap*” (a “N.V.”), or a public limited liability company whose stock, unlike a private limited liability company, may be transferred without executing a notarial deed if such company is listed on a recognized stock exchange. We operate under Dutch law. Our corporate seat is located in Amsterdam, The Netherlands. The address of our registered office in The Netherlands is Atrium, 8th floor, Strawinskylaan 3077, 1077 ZX Amsterdam. The telephone number there is 011 31 20 301 2980. Our Company Secretary is Mr. Benjamin Butterfield who is based in The Netherlands.

Corporate Restructuring

On July 2, 1998, James Hardie Industries Limited, or JHIL, now called ABN 60, which was then a public company organized under the laws of Australia and listed on the Australian Stock Exchange, announced a plan of reorganization and capital restructuring, which we refer to as the 1998 Reorganization.

James Hardie N.V., or JHNV, was incorporated in August 1998 as an intermediary holding company, with all of its common stock owned by indirect subsidiaries of ABN 60. On October 16, 1998, the shareholders of ABN 60 approved the 1998 Reorganization. We began our restructuring in November 1998, primarily to address the structural imbalance and resulting operational, financial and commercial issues associated with the increasing significance and growth opportunities of our U.S. operations and the location of corporate management and our shareholder base in Australia. At that time, we successfully completed:

- the formation of JHNV;
- the transfer to subsidiaries of JHNV of all of our fiber cement businesses, our U.S. gypsum wallboard business, our Australian and New Zealand building systems business and our Australian windows business, all of which, except for fiber cement, were subsequently sold;
- a debt financing, consisting of an issuance of notes to U.S. purchasers, and the arrangement of an Australian credit facility; and
- the relocation of most of our senior executives and managers to our operational headquarters in the United States.

In February 2001, ABN 60, formerly known as James Hardie Industries Limited, or JHIL, established the Medical Research and Compensation Foundation, which we refer to as the Foundation, by gifting

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A\$3.0 million (\$1.7 million) in cash and transferring ownership of Amaca and Amaba to the Foundation. See “Legal Proceedings — Separation of Amaca Pty Ltd, Amaba Pty Ltd and ABN 60” for more information.

On July 24, 2001, ABN 60 announced a further plan of reorganization and capital restructuring, which we refer to as the 2001 Reorganization. On October 19, 2001, we completed our 2001 Reorganization. This restructuring was done to provide us with a more efficient financial structure in light of potential global expansion, to allow us to use our stock for acquisitions if necessary and to increase overall returns to our shareholders. The 2001 Reorganization consisted of the following:

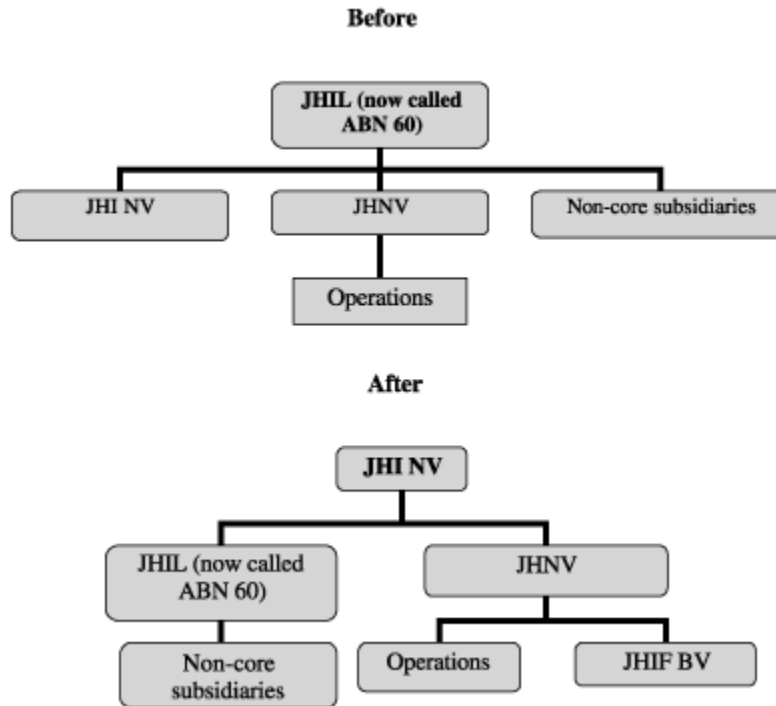
- the issuance of shares of JHI NV common stock represented by CUFS to substantially all ABN 60 shareholders in exchange for their shares of ABN 60 common stock pursuant to an approved Australian scheme of arrangement;
- the transfer by ABN 60 of all of the outstanding shares of JHNV (which directly or indirectly held substantially all of the assets of the James Hardie Group at that time) to JHI NV;
- a capital reduction and payment of a dividend by ABN 60 to its then sole shareholder, JHI NV;
- the issuance by ABN 60 of 100,000 partly-paid ordinary shares to JHI NV for a total issue price approximately equal to the market value of the James Hardie Group immediately prior to the scheme’s implementation (which equaled approximately A\$1.9 billion). There was an initial subscription price paid of A\$50 per partly-paid ordinary share (that is, for a total subscription price for such shares of A\$5 million), and the remainder was left uncalled. A partly-paid share is a share that is issued with only part of its value paid by the owner of the share. The partly-paid shares were issued by ABN 60 to enable it to call on JHI NV for funds in the future if ABN 60 needed such funds to maintain its solvency;
- the listing of the shares of JHI NV represented by CUFS on the Australian Stock Exchange and the listing of ADRs, representing CUFS, which in turn represent shares of JHI NV, on the New York Stock Exchange; and
- the establishment of a Dutch financing subsidiary, James Hardie International Finance B.V., or JHIF BV.

As a result of the share exchange, ABN 60 shareholders ceased to hold any direct interest in ABN 60 and instead became the holders of interests in JHI NV common shares, receiving substantially their same proportional ownership interests in the Company as they had in ABN 60 before exchanging their shares.

In addition, as a result of the exchange, ABN 60 and JHNV became direct subsidiaries of JHI NV.

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The 2001 Reorganization is generally depicted in the following simplified diagrams:



Following the 2001 Reorganization, JHI NV controlled the same assets and liabilities as ABN 60 controlled immediately prior to the 2001 Reorganization.

During fiscal year 2003:

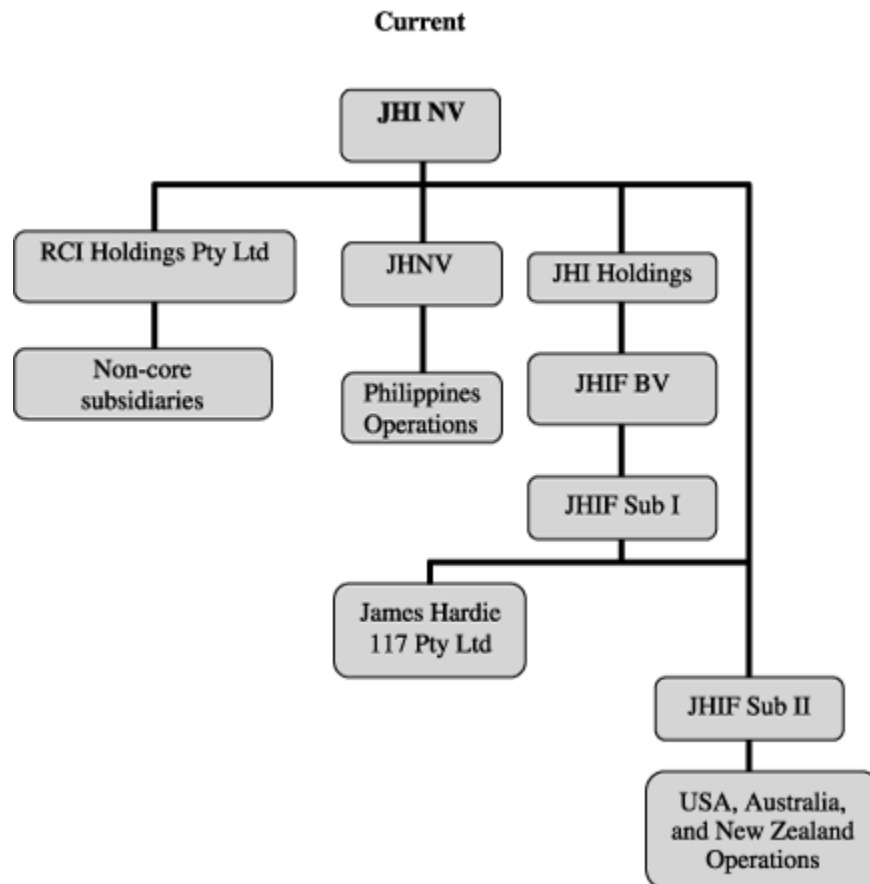
- JHI NV and ABN 60 cancelled the partly-paid shares. The decision to cancel the partly-paid shares was taken by the directors of ABN 60 who did so based on a determination that the reduction in capital would not materially prejudice ABN 60's ability to pay its creditors, including Amaba and Amaca, which, under the terms of the Deed of Covenant and Indemnity, were creditors of ABN 60 only to the extent of the limited financial obligations under that Deed. The directors of ABN 60, after due consideration of ABN 60's financial position, determined that the reduction in capital would not materially prejudice ABN 60's ability to pay its creditors;
- ABN 60 transferred control of all of its non-operating subsidiaries to RCI Holdings Pty Ltd, a wholly owned subsidiary of JHI NV, to distinguish between the operating group of companies and non-operating subsidiaries; and
- Following the consolidation of the operating assets of the James Hardie Group under JHI NV and JHNV in fiscal year 2003, the principal activity of ABN 60 was paying amounts in accordance with the Deed of Covenant and Indemnity. At that time, the cash position of the Company had improved significantly as a result of the sale of the Company's Gypsum business in the United States and the impending sale of a gypsum mine in Nevada. On March 31, 2003, following a review of all available options to address this issue and after a thorough review had been conducted to determine that the funds available to ABN 60 would be sufficient to meet the claims of all creditors, the shares in ABN 60 were transferred to a newly established company named the ABN 60 Foundation. ABN 60 Foundation was established to be the sole shareholder of ABN 60. ABN 60 is managed by independent directors and operates entirely independently of the Company.

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During fiscal year 2006, we completed a further restructuring which we believe will maximize our ability to continue paying dividends and continue realizing benefits available under the Dutch Financial Risk Reserve regime, in the event that the conditions precedent to the full implementation of the Final Funding Agreement are met. See Item 3, “Key Information — Risk Factors.”

The 2006 reorganization consisted of the following: The subsidiary that owns our United States operations issued a second series of shares to a new subsidiary of JHIF BV. Our United States operations are now partly owned by JHI NV and the new subsidiary of JHIF BV. In the event that the conditions precedent to the full implementation of the Final Funding Agreement are met, we expect that dividends paid to the new subsidiary of JHIF BV will be used to fund our ongoing obligations pursuant to the Final Funding Agreement to the SPF through James Hardie 117 Pty Ltd, which we refer to as the Performing Subsidiary, while dividends paid to JHI NV will be available for other corporate purposes.

The following is a simplified diagram of our current corporate structure:



Recent Developments

Australian Taxation Office Assessment

In March 2006, RCI, a wholly owned subsidiary of the Company, received an amended assessment from the ATO. The amended assessment is based on the ATO’s calculation of RCI’s net capital gains arising as a result of an internal corporate restructuring carried out in 1998. The amended assessment originally was for A\$412.0 million (\$310.0 million). After remission of general interest charges by the ATO the total assessment was changed to A\$378.0 million (\$284.6 million), which includes: A\$172.0 million (\$129.5 million) as the primary tax after allowable credits; A\$43.0 million (\$32.4 million) in penalties (representing 25% of the primary tax); and A\$163.0 million (\$122.7 million) in general interest charges.

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RCI is appealing the amended assessment and may incur substantial legal and other expenses in pursuing this appeal. See Item 3, “Key Information — Risk Factors.” On July 5, 2006, pursuant to an agreement negotiated with the ATO and in accordance with the ATO Receivable Policy, the Company made a payment of A\$189.0 million (\$140.4 million — converted using the assets and liabilities rate at June 30, 2006) being 50% of the amended assessment, and guaranteed the remaining unpaid 50% of the amended assessment, pending the outcome of the appeal of the amended assessment. The Company also agreed to pay general interest charges accruing on the unpaid balance of the amended assessment in arrears on a quarterly basis. The first payment of accrued general interest charges will be due October 15, 2006 in respect of the quarter ending September 30, 2006.

We believe RCI’s view of its tax position will ultimately prevail in the matter. Accordingly, as of March 31, 2006 we had not recorded a liability for the amended assessment. For more information, see Notes 13 and 20 to our consolidated financial statements included in Item 18 below.

ATO Decision on Tax Deductibility of SPF and Related Matters

On June 23, 2006, the ATO advised us that it has refused to endorse the SPF as a tax concession charity, arguing that, in its opinion, the scope of its activities under the Trust Deed and the Final Funding Agreement does not meet current legislative requirements for such an endorsement. At the time of filing this report, the Company is in further discussions with the ATO and other stakeholders, including the NSW Government, seeking to resolve this unsatisfied condition precedent to the Final Funding Agreement.

On June 29, 2006, the ATO issued a ruling to us to the effect that our contributions to the SPF would be tax deductible over the anticipated life of the arrangements in accordance with the recent “blackhole expenditure” Federal Legislation which was enacted in April 2006. The ruling issued by the ATO provides deductibility over a five-year period from the date of contribution, whereas the condition precedent in the Final Funding Agreement provides for deductibility of contributions in the year incurred.

Debt Facilities

In June 2006, our lenders agreed to extend the maturity date of our 364-day facilities in the amount of \$110.0 million from December 2006 to June 2007, and to extend the maturity date of our term facilities in the amount of \$245.0 million from June 2006 to December 2006.

Closure of Roofing Pilot Plant

We had a small-scale roofing manufacturing plant constructed in Fontana, California in 2003. Since that time, we had been undertaking production and market trials of our new roofing product in Southern California to quantify the market potential of the new product. In April 2006, we ceased our market development initiatives for Artisan® roofing and closed our roofing pilot plant. Our decision not to proceed with the roofing product was made after a review of market testing results which concluded that greater shareholder value would be created by focusing on other fiber cement growth initiatives. The closure of the roofing pilot plant resulted in an impairment charge of \$13.4 million in fiscal year 2006 and closure costs of \$1.1 million in the first quarter of fiscal year 2007.

Special Commission of Inquiry and Related Developments

On December 1, 2005, we announced that we, the NSW Government, and a wholly owned subsidiary of the Company had entered into the Final Funding Agreement to provide long-term funding to a special purpose fund that will provide compensation for Australian asbestos-related personal injury claims against the Former James Hardie Companies. Additional information about the Final Funding Agreement, the Special Commission of Inquiry, or SCI, and other related matters can be found below under the heading “Legal Proceedings,” under Item 3, “Key Information — Risk Factors,” and in Notes 12 and 20 to our consolidated financial statements included below in Item 18.

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Disposal of Chile Business

In June 2005, we approved a plan to dispose of our Chile Fiber Cement business to Compañía Industrial El Volcan S.A., which we refer to as Volcan. The sale closed in July 2005. We received net proceeds of \$3.9 million and recorded a loss on disposal of \$0.8 million, which is included in other operating expense in our consolidated statements of operations.

As part of the terms of the sale of the Chile Fiber Cement business to Volcan, we entered into a two-year take or pay purchase contract for fiber cement product manufactured by Volcan. The first and second years of the contract amount to purchase commitments of approximately \$2.8 million and \$2.1 million, respectively. As this contract qualifies as continuing involvement per Statement of Financial Accounting Standards, or SFAS, No. 144, "Accounting for the Impairment or Disposal of Long Lived Assets," the results of operations and loss on disposal of the Chile Fiber Cement business are included in our income from continuing operations.

Board and Management Changes

On June 30, 2005, Mr. W. (Pim) Vlot, an interim member of our Managing Board since October 22, 2004, resigned from the Managing Board and as Company Secretary.

On July 1, 2005, Mr. Benjamin Butterfield was appointed our Company Secretary and an interim member of the Managing Board, and on August 22, 2005 he was appointed to the Managing Board by our shareholders.

On August 22, 2005, Mr. Russell Chenu was appointed to the Managing Board by our shareholders.

On August 22, 2005, Mr. Louis Gries, an interim member of the Managing Board since October 22, 2004, was appointed to the Managing Board by our shareholders.

On September 1, 2005, Ms. Cathy Wallace joined the Company as Vice President, Human Resources.

On December 19, 2005, Mr. Donald Merklely resigned from his position as Executive Vice President Research & Development and from the Company. Mr. Mark Fisher replaced Mr. Merklely in the research & development role.

On January 19, 2006, Mr. Peter Cameron, a non-executive director, resigned from our Joint and Supervisory Boards and from our Nominating and Governance Committee for health reasons. Mr. Cameron died in February 2006.

On April 10, 2006, Mr. Grant Gustafson joined the Company as Vice President, Interiors & Business Development.

On May 9, 2006, Dr. Gregory Clark, a non-executive director, resigned from our Joint and Supervisory Boards, and from our Audit Committee and Nominating and Governance Committee.

On September 1, 2006, Mr. David Merklely resigned from his position as our Executive Vice President, Engineering and Process Development.

2006 Annual General Meeting

At the 2006 Annual General Meeting held on September 25, 2006, the following matters (in addition to certain routine matters) were approved by our shareholders. Due to the recent nature of these developments, except as set forth in this section, the disclosure in this Form 20-F generally does not reflect these recent developments.

Election of Members of the Supervisory and Joint Boards

At our Annual General Meeting on September 25, 2006, our shareholders voted to approve the re-appointment of Ms. Meredith Hellicar, Mr. Michael Gillfillan and Mr. Donald McGauchie as members of our Supervisory and Joint Boards.

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Supervisory Board Remuneration

At our Annual General Meeting on September 25, 2006, our shareholders approved an increase in the aggregate amount of remuneration payable to members of our Supervisory Board from \$650,000 per annum to a sum not to exceed the aggregate maximum amount of \$1.5 million per annum, to be divided in accordance with our Articles of Association.

Supervisory Board Share Plan

At our Annual General Meeting on September 25, 2006, our shareholders approved the replacement of our Supervisory Board Share Plan, or SBSP, with a new plan called the Supervisory Board Share Plan 2006, or SBSP 2006. The following is a brief summary of the SBSP 2006 and is qualified in its entirety by reference to the full plan which is attached as Exhibit 4.4 to this Annual Report on Form 20-F and is hereby incorporated by reference in its entirety:

- Participation by members of the Supervisory Board in the SBSP 2006 is not mandatory, and no holding lock applies to any shares acquired under the SBSP 2006;
- The SBSP 2006 allows us to issue new shares or acquire shares on the market on behalf of the participant;
- We will not provide any loans in relation to the issue or purchase of shares under the SBSP 2006;
- The number of shares issued or transferred to a member of the Supervisory Board will be determined by dividing the amount which the member elects to apply under the SBSP 2006 (net of any applicable taxes) by the market price (defined below);
- The total remuneration of a Supervisory Board member will take into account any participation in the SBSP 2006. Accordingly, the maximum amount of his or her participation will be determined by the maximum remuneration payable to them. Therefore, the maximum number of shares that may be issued under the SBSP 2006 to all participants in any single year is equal to the aggregate remuneration payable to members of the Supervisory Board pursuant to Article 25 of our Articles of Association, divided by the market price (defined below);
- Where new shares are issued under the SBSP 2006, the market price is the average of the closing prices for CUFS on the ASX during the period of five business days preceding the day of issue of the shares. Where shares are purchased on the market, the market price is the price at which the relevant CUFS are acquired;
- The SBSP 2006 is administered by the Managing Board and is governed by the laws of The Netherlands. The Managing Board may at any time vary or terminate the SBSP 2006 by resolution (subject to any applicable ASX listing rule requirements);
- Shares under the SBSP 2006 will be issued no later than three years after the passing of the resolution approving the SBSP 2006; and
- Any new member of the Supervisory Board will not be issued new shares under the SBSP 2006 until further shareholder approval is obtained pursuant to relevant ASX listing rules. However, any new member of the Supervisory Board appointed prior to the next Annual General Meeting may participate in the SBSP 2006 by the Company acquiring shares on the market (which does not require shareholder approval under ASX listing rules).

In connection with those 2006 changes to the SBSP, the Supervisory Board has resolved to introduce certain minimum shareholding requirements (which will not form part of the SBSP 2006), as follows:

- Within the six-year period up to August 2012, members of the Supervisory Board must accumulate a minimum of 1.5 times their annual remuneration (excluding fees for Committee or Deputy Chairmanship) in share ownership (either personally or through a personal superannuation or pension plan);

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- Within the six-year period up to August 2012, the Chairman must accumulate a minimum of twice her or his annual remuneration in share ownership (either personally or through a personal superannuation or pension plan);
- Newly-appointed members of the Supervisory Board will have six years from the date of joining the Supervisory Board to satisfy the minimum share ownership requirements mentioned above;
- No director will be required to apply more than 50% of their fees, on a post-tax basis, over a six-year period toward satisfying the minimum share ownership requirements mentioned above;
- Failure to comply (as determined by the Supervisory Board) with the minimum share ownership requirements mentioned above will not automatically result in a director being obliged to resign as a member of the Supervisory Board or Joint Board, but levels of director shareholding will be disclosed in our annual reports and thus our shareholders will be able to monitor such compliance; and
- The minimum share ownership requirements mentioned above will not form part of the rules of the SBSP 2006 and are subject to change by the Supervisory Board from time to time.

In connection with the SBSP 2006, at our Annual General Meeting on September 25, 2006 our shareholders also approved the issue of ordinary fully-paid shares in the Company to members of our Supervisory Board (under the SBSP 2006) in accordance with the SBSP 2006 initiated by our Chairman; and approved the participation in the SBSP 2006 by Ms. Meredith Hellicar, and Messrs. John Barr, Michael Brown, Michael Gillfillan, James Loudon, and Donald McGauchie.

Long Term Incentive Plan

At our Annual General Meeting on September 25, 2006, our shareholders voted to approve:

- the establishment of a plan, to be called the James Hardie Industries N.V. Long Term Incentive Plan 2006, which we refer to as the LTIP, to provide incentives to members of our Managing Board and to certain members of our management, which we refer to as Executives; and
- in accordance with certain LTIP rules, the issue of certain options or other rights over, or interests in, ordinary fully-paid shares in the Company, which we refer to as Shares, the issue and/or transfer of Shares under them, and the grant of cash awards to members of our Managing Board and to Executives.

At the same meeting, our shareholders approved the following in accordance with the terms of the LTIP:

- participation in the LTIP to a maximum of 1,000,000 options by Mr. Louis Gries;
- acquisition accordingly by Mr. Gries of Shares up to the stated maximum;
- participation in the LTIP to a maximum of 155,000 options by Mr. Russell Chenu;
- acquisition accordingly by Mr. Chenu of Shares up to the stated maximum;
- participation in the LTIP to a maximum of 263,000 options by Mr. Benjamin Butterfield; and
- acquisition accordingly by Mr. Butterfield of Shares up to the stated maximum.

This description of the LTIP is qualified in its entirety by reference to the full plan which is attached as Exhibit 4.5 to this Annual Report on Form 20-F and which is hereby incorporated by reference in its entirety.

Renewal of Authority for the Company to Acquire its Own Shares

At our Annual General Meeting on September 25, 2006, our shareholders voted to allow our Managing Board to be irrevocably authorized to cause the Company to acquire shares in the capital of the Company for valuable consideration within a defined price range for an 18-month period, whether as an on- or off-financial market purchase, and up to the maximum number of shares permitted by Dutch law.

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Renewal of Rights Relating to Takeover Provisions

At our Annual General Meeting on September 25, 2006, our shareholders approved the extension of the application of Articles 49.9 and 49.10 of our Articles of Association for a period of five years commencing on the passing of the resolution, subject to the confirmation of this extension by the Managing Board on the recommendation of the Joint Board, in accordance with Article 51 of our Articles of Association. These Article 49 provisions are intended, in the event of a potential change in control of the Company, to provide our shareholders with takeover protections similar to those afforded to shareholders in Australian-listed companies under the Australian Corporations Act. The purposes of Article 49 are to ensure that:

- the acquisition of control over CUFS or Shares takes place in an efficient, competitive and informed market;
- each holder of any Shares or CUFS and also the members of the Managing Board, Joint Board, and Supervisory Board know the identity of any person who proposes to acquire a substantial interest in the Company, and are given reasonable time and enough information to consider and assess the merits of a proposal to acquire a substantial interest in the Company; and
- as far as practicable, the holders of Shares or CUFS all have a reasonable and equal opportunity to participate in benefits accruing through a proposal to acquire a substantial interest in the Company.

General Overview of Our Business

Based on net sales, we believe we are the largest manufacturer of fiber cement products and systems for internal and external building construction applications in the United States, Australia, New Zealand and the Philippines. Fiber cement is currently one of the fastest growing segments of the U.S. residential exteriors industry. Based on our knowledge, experience and third-party data regarding our industry, we estimate that total U.S. industry shipments of fiber cement siding, trim, soffit and fascia were approximately 2.0 billion square feet during fiscal year 2006, an increase of approximately 17% from fiscal year 2005. Based on our knowledge, experience and third-party data, we estimate that we have 30% to 40% of the USA Interior Cement Board Market. We market our fiber cement products and systems under various Hardie brand names and other brand names such as Cemplank® siding (we also formerly marketed siding under the brand name Sentry®). We believe that, in certain applications, our fiber cement products and systems provide a combination of distinctive performance, design and cost advantages when compared to other fiber cement products and alternative products and systems that use solid wood, engineered wood, vinyl, brick, stucco or gypsum wallboard.

The sale of fiber cement products in the United States accounted for 82%, 78% and 75% of our total net sales from continuing operations in fiscal years 2006, 2005 and 2004, respectively.

Our fiber cement products are used in a number of markets, including new residential construction (single and multi-family housing), manufactured housing (mobile and pre-fabricated homes), repair and remodeling and a variety of commercial and industrial applications (stores, warehouses, offices, hotels, motels, schools, libraries, museums, dormitories, hospitals, detention facilities, religious buildings and gymnasiums). We manufacture numerous types of fiber cement products with a variety of patterned profiles and surface finishes for a range of applications, including external siding and soffit lining, internal linings, facades, fencing, pipes and floor and tile underlayments. In contrast to some other building materials, fiber cement provides durability attributes, such as strong resistance to moisture, fire, impact and termites, requires relatively little maintenance and can be used as a substrate to create a wide variety of architectural effects with textured and colored finishes. Based on our knowledge, experience and third-party data regarding our industry, we estimate that, in fiscal year 2006, we sold approximately 13% of the estimated total 11.3 billion square foot U.S. exterior siding market (includes all cladding materials as summarized by the NAHB's Siding and Exterior Wall Finish in New Construction and Repair and Remodel Reports for 2004).

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The breakdown of our net sales by operating segment for each of our last three fiscal years is as follows:

	Fiscal Year Ended March 31,		
	2006	2005	2004
	(In millions)		
Continuing Operations			
USA Fiber Cement	\$ 1,218.4	\$ 939.2	\$ 738.6
Asia Pacific Fiber Cement	241.8	236.1	219.8
Other	28.3	35.1	23.5
Total Continuing Operations	<u>\$ 1,488.5</u>	<u>\$ 1,210.4</u>	<u>\$ 981.9</u>
Discontinued Operations			
Building Systems (New Zealand)	\$ —	\$ —	\$ 2.9
Total Discontinued Operations	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 2.9</u>
Total (Continuing and Discontinued Operations)	<u>\$ 1,488.5</u>	<u>\$ 1,210.4</u>	<u>\$ 984.8</u>

Industry Overview

U.S. Housing Industry, Fiber Cement Industry and Pipe Industry

In the United States, fiber cement is principally used in the residential building industry. Such usage fluctuates based on the level of new home construction and the repair and remodeling of existing homes. The level of activity is generally a function of interest rates, inflation, unemployment levels, demographic trends, gross domestic product growth and consumer confidence. Demand for building products is also affected by residential housing starts and existing home sales, the age and size of the housing stock and overall home improvement expenditures. According to the U.S. Census Bureau, annual domestic housing starts increased from approximately 1.85 million in calendar year 2003 to approximately 2.07 million in calendar year 2005 and residential remodeling expenditures increased from approximately \$176.9 billion in calendar year 2003 to approximately \$215.0 billion in calendar year 2005.

Based on our knowledge, experience and third-party data regarding our industry, we estimate that total U.S. industry shipments of fiber cement siding, trim, soffit and fascia were approximately 2.0 billion square feet during fiscal year 2006, up approximately 17% from fiscal year 2005. The future growth of fiber cement products will depend on overall demand for building products and on the rate of penetration of fiber cement products against competing materials such as wood, engineered wood (hardboard and oriented strand board), vinyl, masonry and stucco. See Item 3, “Key Information — Risk Factors.”

In the United States, the largest application for fiber cement products is in the external siding industry. Fiber cement is one of the fastest growing segments of the siding industry. Based on our knowledge, experience and third-party data regarding our industry, we estimate that, in fiscal year 2006, we sold approximately 13% of the NAHB-estimated total 11.3 billion square foot U.S. exterior siding market (includes all cladding materials as summarized by the NAHB’s Siding and Exterior Wall Finish in New Construction and Repair and Remodel Reports for 2004). Siding is a component of every building and it usually occupies more square footage than any other building component, such as windows and doors. Selection of siding material is based on installed cost, durability, aesthetic appeal, strength, weather resistance, maintenance requirements and cost, insulating properties and other features. Different regions of the United States show a decided preference among siding materials according to economic conditions, weather, materials availability and local taste. The principal siding materials are solid wood, engineered wood, fiber cement, vinyl, masonry and stucco. Vinyl has the largest share of the siding market. In recent years, fiber cement has been gaining market share against vinyl and wood, and this is believed to be due to durability concerns and higher maintenance requirements of those products.

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In the U.S. civil construction market, large diameter pipes are used for major public infrastructure projects such as storm water, sewer, water distribution and other non-pressurized drainage applications. According to the most recent Freedonia Report on Large Diameter Pipes, in 2004 there was demand for approximately 184 million linear feet of large diameter pipes in the United States. Of this amount, approximately 46% was used for storm water and sewer applications, approximately 19% was used in drainage and irrigation applications and approximately 35% was used for a variety of other applications. According to the report, demand for large diameter pipes is expected to grow at a rate of approximately 2.4% annually.

International Fiber Cement Industry

In Australia and New Zealand, fiber cement building products are used in both the residential and commercial building industries with applications in external siding, internal walls, ceilings, floors, soffits and fences. The residential building industry represents the principal market for fiber cement products. We believe the level of activity in this industry is generally a function of interest rates, inflation, unemployment levels, demographic trends, gross domestic product growth and consumer confidence. Demand for fiber cement building products is also affected by the level of new housing starts and renovation activity. According to the Australian Bureau of Statistics, or ABS, total dwelling commencements in Australia declined from approximately 174,025 in calendar year 2002 to approximately 152,716 in calendar year 2005. Renovation activity, as measured in local currency expenditures by the ABS has increased from calendar year 2002 to calendar year 2005 for a total increase over this period of approximately 16%. According to Statistics New Zealand, new dwellings authorized in New Zealand declined from approximately 28,320 in fiscal year 2003 to 25,406 in fiscal year 2006. Residential renovation activity in New Zealand has increased from fiscal year 2003 to fiscal year 2006 for a total increase over this period of approximately 12%. The Housing Industry Association of Australia & InfoMetrics New Zealand believe new housing construction and renovation activity is expected to soften over the short to medium term in Australia and New Zealand respectively.

Fiber cement products have, across a range of product applications, gained broader acceptance in Australia and New Zealand than in the United States primarily due to earlier introduction in Australia and New Zealand. Former subsidiaries of ABN 60 developed fiber cement in Australia as a replacement for asbestos cement in the early 1980s. Asbestos sheet production ceased in the early 1980s and asbestos pipe-based production ceased in early 1987. Competition has intensified over the past decade in Australia. In addition to competition from solid wood, engineered wood, wallboard, masonry and brick, two Australian competitors have established fiber cement manufacturing facilities in Australia and fiber cement imports are also available. Competition has also intensified in New Zealand as fiber cement imports have increased with the strengthening New Zealand dollar, resulting in increasingly competitive market pricing. See Item 3, “Key Information — Risk Factors.”

Management believes that fiber cement has good long-term growth potential in some Asian markets because of the benefits of framed construction over traditional masonry construction. In addition, we believe the opportunity to replace wood-based products, such as plywood, with more durable fiber cement will be attractive to consumers in these markets.

Products

We manufacture fiber cement products in the United States, Australia, New Zealand and the Philippines. In July 2005, we sold our Chilean fiber cement business. In fiscal year 2004, we commenced our European fiber cement business by distributing our fiber cement products in the U.K. and France. Our total product offering is aimed at the building and construction markets, including new residential construction, manufactured housing, repair and remodeling and a variety of commercial and industrial building applications.

We offer a wide range of fiber cement products for both exterior and interior applications, some of which have not yet been introduced into the United States. In the United States and elsewhere, our products are typically sold as planks or flat sheets with a variety of patterned profiles and finishes. Planks are used for external siding while flat sheets are used for internal and external wall linings and floor and tile underlayments. At our Plant City, Florida facility, we manufacture fiber reinforced concrete pipes for use as large diameter

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storm water and non-pressurized drainage applications. Outside the United States, we also manufacture fiber cement products for use in other applications such as building facades, lattice, trim, fencing, decorative columns and ceiling applications. We also manufacture products used in soffit lining.

We have developed a proprietary technology platform that enables us to produce thicker yet lighter-weight fiber cement products that are generally lighter and easier to handle than traditional building products. The first application of this technology has been our Harditrim® plank. Harditrim plank is a fiber cement trim product that is used on the exterior of residential and commercial construction to replace traditional wood and engineered wood trim. Harditrim plank was launched in fiscal year 1999, with the introduction of Harditrim® HLD® plank, from our Cleburne, Texas plant and demand has been strong since that time. A new production process for manufacturing Harditrim plank was completed at the Cleburne plant and production commenced in fiscal year 2002. Additional trim capacity was added in the Peru plant in fiscal years 2004 and 2005.

We believe that our products provide certain performance, design and cost advantages. The principal fiber cement attribute in exterior applications is durability, particularly when compared to competing wood and wood-based products, while offering comparable aesthetics. Our fiber cement products exhibit superior resistance to the damaging effects of moisture, fire, impact and termites compared to wood and wood-based products, which has enabled us to gain a competitive advantage over competing products. Vinyl siding products generally have better durability characteristics than wood-based products, but typically cannot duplicate the superior aesthetics of fiber cement and lack the characteristics necessary for effectively accepting paint applications.

Our fiber cement products provide strength and the ability to imprint simulated patterns that closely resemble patterns and profiles of traditional materials such as wood and stucco. The surface properties provide a superior paint-holding finish to wood and engineered wood products such that the periods between necessary maintenance and repainting are longer. Compared to masonry construction, fiber cement is lightweight, physically flexible and can be cut using readily available tools. This makes fiber cement suitable for lightweight construction across a range of architectural styles. Fiber cement is well suited to both timber and steel framed construction.

In our interior product range, our ceramic tile underlayment products provide superior handling and installation characteristics compared to fiberglass mesh cement boards. Compared to wood and wood-based products, our products provide the same general advantages that apply to external applications. In addition, our fiber cement products exhibit less movement in response to exposure to moisture than many alternative competing products, providing a more consistent and durable substrate on which to install tiles. In internal lining applications where exposure to moisture and impact damage are significant concerns, our products provide superior moisture resistance and impact resistance to traditional gypsum wet area wallboard and other competing products.

Our USA Hardie Pipe business manufactures fiber-reinforced concrete pipes at a custom-built facility in Plant City, Florida. The pipes are used for below-ground stormwater drainage in civil and commercial construction projects and in the development of residential subdivisions. Our strategy in our USA Hardie Pipe business is to establish Hardie™ pipe as the preferred solution for stormwater applications that use pipes with diameters ranging from 12” to 36”. We believe that Hardie™ pipe offers this market significant installation and performance benefits because our product features span those offered by traditional concrete pipes and newer flexible pipes. We provide the initial crush strength of rigid pipes, combined with the lighter-weight, longer-lengths and ease of installation of flexible pipes.

We seek to emphasize the performance attributes of our products and continue to develop new products that, due to the materials used and the process technology employed in their manufacture, may be difficult for competitors to emulate. While no assurances can be given, we believe that the proprietary nature of these products, our ability to competitively source raw materials for these products and the economies of scale that are derived from their manufacture should assist our efforts to maintain our leadership and low cost competitive position. See “Research and Development.” Also see Item 3, “Key Information — Risk Factors.”

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During fiscal year 2002, we introduced James Hardie® building products with ColorPlus® technology, a new finished product available in specific lap siding, shingles, trim, and soffit products. In the years since, we have added pre-finished trim accessories, several new colors and more board profiles. With ColorPlus® pre-finished products, customers are saved the trouble or expense of finding tradesmen to finish their siding. We added a further enhancement to ColorPlus® products by fitting a laminate to all ColorPlus® pre-painted siding so it can be delivered and installed in the best possible condition.

During fiscal year 2003, we expanded our new ColorPlus® line of pre-finished exterior products with the addition of several new colors, and successfully launched a new all-weather low density trim product utilizing our new proprietary XLD® trim low density fiber cement technology. In that same year we also launched our new improved proprietary grid quarter-inch backer product EzGrid® underlayment.

During fiscal year 2004, we introduced pre-finished trim accessories to further expand our ColorPlus® collection line.

During fiscal years 2005 and 2006, after considerable market research, we re-launched the ColorPlus® collection of products with additional colors, board profiles, and pallet sizes. In addition, we expanded our manufacturing capacity and capabilities to meet increasing demand for our siding, trim and soffit products with ColorPlus® Technology.

During fiscal year 2006, we added Moldblock™ Protection to our EZGrid® underlay and Hardibacker® sheets. Additionally, in the past five years, we launched many new textures, styles and coatings in fiber cement siding products in the United States to capitalize on demand for a variety of styles among homebuilders and homeowners. In Australia and New Zealand, new products released over the past five years include EziGrid® tile underlay, Eclipsa™ eaves lining, Linea® weatherboards, ExoTec® facade panel, Hardirock® board (in Australia only) and Monotek® facade panel and ShingleSide panel (in New Zealand only).

During fiscal year 2006 in the Philippines, our HardiFlex® board (developed since 1999) competed against plywood applications in ceilings, walls and eaves; HardiFlex Senepa® boards countered timber fascia board applications; and HardiPlank® siding competed with exterior rendered systems.

More generally, during the past five years we have introduced many new textures, styles and coatings to our fiber cement siding products in North America to capitalize on homeowners' and homebuilders' demands for a variety of cladding styles. At the same time, research and development has allowed us to find the optimum balance between low maintenance and appearance.

Seasonality

Our earnings are seasonal and typically follow activity levels in the building and construction industry. In the United States, the calendar quarters ending in December and March generally reflect reduced levels of building activity depending on weather conditions. In Australia and New Zealand, the calendar quarter ending in March is usually affected by a slowdown due to summer holidays. In the Philippines, construction activity diminishes during the wet season from June through September and during the last half of December due to the slowdown in business activity over the holiday period. Also, general industry patterns can be affected by weather, economic conditions, industrial disputes and other factors. See Item 3, "Key Information — Risk Factors."

Raw Materials

All of the raw materials required in the manufacture of our fiber cement products are available from a number of sources and we have not experienced any shortages that have materially affected our operations. The principal raw materials used in the manufacture of fiber cement are cellulose fiber (wood-based pulp), silica (sand), portland cement and water.

Cellulose Fiber. Reliable access to specialized, consistent quality, low cost pulp is critical to the production of fiber cement building materials. Cellulose fiber is sourced from New Zealand, the United States, Canada, and South America (Chile) and is processed to our specifications. It is further processed

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using our proprietary technology to provide the reinforcing material in the cement matrix of fiber cement. We have developed a high level of internal expertise in the production and use of wood-based pulps. This expertise is shared with pulp producers, which have access to appropriate raw wood stocks, in order to formulate superior reinforcing pulps. The resulting pulp formulas are typically proprietary and are the subject of confidentiality agreements between the pulp producers and us. Although we have entered into contracts to hedge pulp prices in the past, we currently have none in effect. However, we continue to evaluate options on agreements with suppliers for the purchase of pulp that could fix our pulp prices over the longer-term.

Silica. High purity silica is sourced locally by the various production plants. In the majority of locations, we use silica sand as a silica source. In certain other locations, however, we process quartz rock and beneficiate silica sand to ensure the quality and consistency of this key raw material.

Cement. Cement is acquired in bulk from local suppliers and is supplied on a just-in-time basis to our manufacturing facilities. The silos at each fiber cement plant hold between one and three days of our cement requirements. During fiscal year 2006 we experienced cost increases related to increases in the price of cement. We continue to evaluate options on agreements with suppliers for the purchase of cement that could fix our cement prices over longer periods of time.

Water. We use local water supplies and seek to process all wastewater to comply with environmental requirements.

Sales, Marketing and Distribution

The principal markets for our fiber cement products are the United States, Australia, New Zealand, the Philippines, the United Kingdom, and France. In addition, we sell fiber cement products in Canada, South Korea, China, Hong Kong, Macau, Taiwan, Japan, Malaysia, Indonesia, Malta, Guam, Sri Lanka, Vietnam, Turkey, the Middle East (Iran, Israel, United Arab Emirates, Kuwait, and Saudi Arabia), Papua New Guinea and the Pacific Islands (including, for example, Fiji, New Caledonia, and Western and American Samoa), Ireland, Spain, Italy, Switzerland, Belgium, The Netherlands, Denmark, Greece, Cyprus, Norway, Finland, and Sweden. Our brand name, customer education in comparative product advantages, differentiated product range and customer service, including technical advice and assistance, provide the basis for our marketing strategy. We offer our customers support through a specialized fiber cement sales force and customer service infrastructure in the United States, Australia, New Zealand, the Philippines, Europe, and Canada. The customer service infrastructure includes inbound customer service support coordinated nationally in each country, and is complemented by outbound telemarketing capability. Within each regional market, we provide sales and marketing support to building products dealers and lumber yards and also provide support directly to the customers of these distribution channels, principally homebuilders and building contractors.

In the United States, we sell fiber cement products for new residential construction predominantly to distributors, which then sell these products to dealers or lumber yards. This two-step distribution process is supplemented with direct sales to customers as a means of accelerating product penetration and sales. Our top two U.S. distributors accounted for approximately 46% of our total USA Fiber Cement gross sales in fiscal year 2006. In addition, a large home center retailer accounted for approximately 12% of our total USA Fiber Cement gross sales in fiscal year 2006. Repair and remodel products in the United States are typically sold through the large home center retailers and specialist distributors. In Australia and New Zealand, both new construction and repair and remodel products are generally sold directly to distributor/hardware stores and lumber yards rather than through the two-step distribution process used in the United States. In the Philippines, a network of thousands of small to medium size dealer outlets sells our fiber cement products to consumers, builders and real estate developers. Physical distribution of product in each country is primarily by road or sea transport, except for in the United States where transportation is primarily by road and a small use of rail.

We maintain dedicated regional sales management teams in our major sales territories. As of August 31, 2006, the sales teams (including telemarketing staff) consisted of approximately 359 people in the United States and Canada, 71 people in Australia, 27 people in New Zealand, 28 people in the Philippines, and 28 people in Europe. We also employ one person based in Taiwan who functions as a regional export salesperson,

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and who covers markets such as South Korea, Hong Kong, Macau, China and the Middle East. Our national sales managers and national account managers, together with the regional sales managers and sales representatives, maintain relationships with national and other major accounts. Our sales force includes skilled trades people who provide on-site technical advice and assistance. In some cases, sales forces manage specific product categories. For example, in the United States, there are separate sales forces for siding products, interior products, and pipes. The interior products sales force provides in-store merchandising support for home center retailers.

We also use trade and consumer advertising and public relations campaigns to generate demand for our products. These campaigns usually explain the differentiating attributes of our fiber cement products and the suitability of our fiber cement products and systems for specific applications.

Despite the fact that distributors are generally our direct customers, we also aim to increase primary demand for our products by marketing our products directly to homeowners, architects and builders. We encourage them to specify and install James Hardie® products because of the quality and craftsmanship of our products. This “pull through” strategy, in turn, assists us in expanding sales for our distribution network as distributors benefit from the increasing demand for our products.

Geographic expansion of our fiber cement business has occurred in markets where framed construction is prevalent for residential applications or where there are opportunities to change building practices from masonry to framed construction. Expansion is also possible where there are direct substitution opportunities irrespective of the methods of construction. Our entry into the Philippines is an example of the ability to substitute fiber cement for an alternative product (in this case plywood). With the exception of our current major markets, as well as Japan and certain rural areas in Asia, Scandinavia, and Eastern Europe, most markets in the world principally utilize masonry construction for external walls in residential construction. Accordingly, further geographic expansion depends on our ability to provide alternative construction solutions and for those solutions to be accepted by the markets.

Because fiber cement products were relatively new to the Philippines, the launch of our fiber cement products in the Philippines in fiscal year 1999 was accompanied by strategies to address the particular needs of local customers and the building trade. For example, we established a carpenter training and accreditation program whereby Filipino carpenters who are unfamiliar with our products are taught installation techniques. We have also put greater emphasis on building our relationships with new home developers and builders in order to educate the market on the benefits of our products in this particular sector.

Fiber cement products manufactured in Australia, New Zealand and the Philippines are exported to a number of markets in Asia, the Pacific, and the Middle East by sea transport. A regional sales management team based in the Philippines is responsible for coordinating export sales into Asia and the Middle East. A regional sales coordinator based in New Zealand is responsible for export sales to the Pacific and Papua New Guinea.

Research and Development

We pioneered the successful development of cellulose reinforced fiber cement and, during the 1980s, progressively introduced products resulting from our proprietary product formulation and process technology. We have capitalized on our strong market positions to maintain leadership in product research and development and process technology enhancements. Our product differentiation strategy, and our quest to maintain our position as one of the low cost manufacturers of fiber cement, is supported by our significant investment in research and development activities. In fiscal year 2006, we spent \$32.1 million, or approximately 2.2% of total net sales, in research and development activities. This amount included \$3.4 million of amounts classified as selling, general and administrative expenses for U.S. GAAP purposes. In fiscal year 2005, we spent \$27.1 million, or approximately 2.2% of total net sales, in research and development activities. This amount included \$5.5 million of amounts classified as selling, general and administrative expenses for U.S. GAAP purposes. In fiscal year 2004, we spent \$26.1 million, or approximately 2.7% of total net sales, in research and development activities. This amount included \$3.5 million of amounts classified as selling, general and administrative expenses for U.S. GAAP purposes.

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We have research and development centers in Sydney, Australia and Fontana, California, where as of August 31, 2006 we employed over 110 scientists, engineers and technicians in core research and in product and process development. As of August 31, 2006, over 50% of our scientists have advanced degrees, and 45% have worked for the Company for over five years.

Our operating strength allows us to continuously re-invest in products and processes. This type of investment increased 18% to \$32.1 million in fiscal year 2006 as we looked for ways to:

- enhance our current products;
- develop new products for specific markets or applications; and
- create or improve manufacturing platforms and processes.

Over the last five years we have applied our research and development capabilities to multiple levels surrounding our products or processes. For more information on our products, see “Products” above.

Our skill in developing production processes also enables us to investigate new products and processes with relatively low-risk operations, as we did with our roofing product. In the case of roofing, which we closed in April 2006, it became clear that the costs of manufacture and potential market for the roofing product made it a less attractive investment for us than other fiber cement growth opportunities. See “Recent Developments — Closure of Roofing Pilot Plant” above for more information.

By investing in production technology, we aim to keep reducing our capital and operating costs. Over the past ten years, advances in process technology have allowed us to reduce the incremental cost of additional capacity at existing sites.

In addition, our goals are to:

- continue to lower the capital cost of each unit of production at new plants by learning from past projects and through continuing innovation in engineering;
- reduce operating costs at each plant by improving manufacturing processes, raw materials yields and machine productivity; and
- use our proprietary product formulations and process technologies to create lightweight and durable products for all climates.

Dependence on Trade Secrets and Research and Development

Our current patent portfolio is based mainly on fiber cement compositions, associated manufacturing processes and the resulting products. Our non-patent technical intellectual property consists primarily of our operating and manufacturing know-how, which is maintained as trade secret information. We have increased our abilities to effectively create, manage and utilize our intellectual property and have implemented a strategy that increasingly uses patenting, licensing, trade secret protection and joint development to protect and increase our market share. However, we cannot assure you that our intellectual property and other proprietary information will be protected in all cases. In addition, if our research and development efforts fail to generate new, innovative products or processes, our overall profit margins may decrease and demand for our products may fall. We do not materially rely on intellectual property licensed from any outside third parties. See Item 3, “Key Information — Risk Factors.”

Governmental Regulation

Environmental Regulation

Our operations and properties are subject to extensive federal, state and local and foreign environmental protection and health and safety laws, regulations and ordinances. These environmental laws, among other matters, govern activities and operations that may have adverse environmental effects, such as discharges to air, soil and water, and establish standards for the handling of hazardous and toxic substances and the handling

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and disposal of solid and hazardous wastes. In the United States, these environmental laws include, but are not limited to:

- the Resource Conservation and Recovery Act;
- the Comprehensive Environmental Response, Compensation and Liability Act;
- the Clean Air Act;
- the Occupational Safety and Health Act;
- the Emergency Planning and Community Right to Know Act;
- the Clean Water Act;
- the Safe Drinking Water Act;
- the Surface Mining Control and Reclamation Act;
- the Toxic Substances Control Act;
- the National Environmental Policy Act; and
- the Endangered Species Act,

as well as analogous state statutes and regulations. Additionally, local government agencies may impose environmental restrictions and requirements relating to air and water quality with which we must comply. Other countries also have statutory schemes relating to the protection of the environment. Some environmental laws provide that a current or previous owner or operator of real property may be liable for the costs of removal or remediation of environmental contamination on, under, or in that property. In addition, persons who arrange, or are deemed to have arranged, for the disposal or treatment of hazardous substances may also be liable for the costs of removal or remediation of environmental contamination at the disposal or treatment site, regardless of whether the affected site is owned or operated by such person. Environmental laws often impose liability whether or not the owner, operator or arranger knew of, or was responsible for, the presence of such environmental contamination. Also, third parties may make claims against owners or operators of properties for personal injuries and property damage associated with releases of hazardous or toxic substances pursuant to applicable environmental laws as well as common law tort theories, including strict liability. Environmental compliance costs in the future will depend, in part, on regulatory developments and future requirements that cannot be predicted. See Item 3, “Key Information — Risk Factors.” Also see “Legal Proceedings” below.

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Organizational Structure

JHI NV is incorporated in The Netherlands, with its corporate seat in Amsterdam.

The table below sets forth our significant subsidiaries, all of which are 100% owned by JHI NV, either directly or indirectly, as of June 30, 2006.

Name of Company	Jurisdiction of Establishment
James Hardie Aust Holdings Pty Ltd.	Australia
James Hardie Austgroup Pty Ltd.	Australia
James Hardie Australia Management Pty Ltd.	Australia
James Hardie Australia Pty Ltd.	Australia
James Hardie Building Products Inc.	United States
James Hardie Europe B.V	Netherlands
James Hardie Fibre Cement Pty Ltd.	Australia
James Hardie International Finance B.V	Netherlands
James Hardie International Finance Holdings Sub I B.V	Netherlands
James Hardie International Finance Holdings Sub II B.V	Netherlands
James Hardie International Holdings B.V	Netherlands
James Hardie N.V.	Netherlands
James Hardie New Zealand Limited	New Zealand
James Hardie Philippines Inc.	Philippines
James Hardie Research (Holdings) Pty Ltd.	Australia
James Hardie U.S. Investments Sierra Inc.	United States
N.V. Technology Holdings A Limited Partnership	Australia
RCI Pty Ltd.	Australia

Capital Expenditures and Divestitures

Capital Expenditures

The following table sets forth our capital expenditures, calculated on an accrual basis, for each year in the three-year period ended March 31, 2006.

	Fiscal Years Ended March 31,		
	2006	2005	2004
		(In millions)	
USA Fiber Cement	\$ 154.5	\$ 144.8	\$ 56.2
Asia Pacific Fiber Cement	6.6	4.1	8.4
Chile, U.S. Pipes, U.S. Roofing and Europe(1)	1.7	4.1	9.5
Total Capital Expenditures	<u>\$ 162.8</u>	<u>\$ 153.0</u>	<u>\$ 74.1</u>

- (1) In July 2005, we sold our fiber cement business located in Chile. See Note 14 to our consolidated financial statements in Item 18. In April 2006, we closed our roofing pilot plant located in Fontana, California. For more information on these two discontinued operations in Chile and California, see Item 4, "Information on the Company — Recent Developments."

The significant capital expenditure projects over the past three fiscal years in our USA Fiber Cement business include:

- the commencement of construction of a new fiber cement manufacturing plant in Pulaski, Virginia at a total estimated cost of \$98.0 million. Construction of the plant began in March 2005. The plant will

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include two manufacturing lines, each with an annual design capacity of 300 million square feet. At the end of fiscal year 2006, we completed construction on the first manufacturing line and, in April 2006, we commenced commercial production on this line. The plant produces external siding and interior backerboard products for new residential construction, repair and remodel and manufactured housing markets. As of March 31, 2006, we have incurred \$89.3 million related to the construction of our Pulaski, Virginia plant;

- the continued implementation of our ColorPlus® strategy. This strategy includes constructing additional ColorPlus® coating capacity inside our existing plants. In fiscal year 2006, we completed construction of, and commenced production on, a new ColorPlus® line at our Blandon, Pennsylvania plant. In addition, we began construction on new ColorPlus® coating lines at our Reno, Nevada and Pulaski, Virginia plants. As of March 31, 2006, we have incurred \$44.7 million related to our ColorPlus® strategy;
- the addition of a new fiber cement plant in Reno, Nevada at a cost of \$58.0 million, which occurred during fiscal years 2006, 2005 and 2004;
- the addition of a new trim line at our Peru, Illinois plant. As of March 31, 2005, we were in pre-production and in fiscal year 2006 we commenced the ramp-up of this new trim line. As of March 31, 2006, we incurred a total cost of \$58.5 million related to the construction of this new trim line. These expenditures occurred during fiscal years 2006, 2005 and 2004;
- upgrades to our Blandon, Pennsylvania plant at a cost of approximately \$17.1 million, which occurred during fiscal years 2005, 2004 and 2003; and
- the addition of a panel production line at our Waxahachie, Texas plant at a cost of \$26.5 million, which occurred during fiscal years 2004 and 2003.

In addition, in fiscal year 2006 we commenced our implementation of a new enterprise resource planning software system. As of March 31, 2006, we have incurred \$4.3 million related to this project.

In our roofing operations, we spent \$12.4 million in fiscal years 2006, 2004 and 2003 on our pilot plant in Fontana, California. This pilot plant was built to test our proprietary manufacturing technology and to provide product market testing in Southern California for a new generation of fiber cement roofing product. In April 2006, we ceased market development initiatives for our roofing product and announced the closure of our roofing plant resulting in an impairment charge of \$13.4 million in fiscal year 2006 and closure costs of \$1.1 million in the first quarter of fiscal year 2007.

In fiscal years 2006 and 2004, we spent \$3.5 million and \$2.2 million, respectively, to upgrade our fiber cement manufacturing plant at Rosehill in Sydney. In addition, in fiscal year 2004, \$1.8 million was spent at our Brisbane plant to install a coating facility.

We currently expect to spend up to approximately \$150 million for capital expenditures in fiscal year 2007. Amounts expended will include facility upgrades on capital to complete new facility construction and on capital to implement new fiber cement technologies. The expected amount of spending in fiscal year 2007 includes additional capital expenditures expected to be made on projects that were in progress during fiscal year 2006, including:

- the second manufacturing line at our Pulaski, Virginia plant, discussed above, at an estimated cost of \$12.0 million; and
- the continued implementation of our ColorPlus® strategy, discussed above, at an estimated cost of \$12.5 million.

In addition, the expected capital expenditure amount for fiscal year 2007 above includes approximately \$9.8 million related to the implementation of the new enterprise resource planning software system discussed above.

All of the above planned capital expenditures are in our USA Fiber Cement segment.

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We currently expect the level of our capital expenditures to continue to be substantial. Competitive pressures and market developments could require further increases in capital expenditures. Our financing for these capital expenditures is expected to come from our cash from our future operations and from external debt to the extent that cash from operations does not cover our capital expenditures. However, if we are unable to extend our credit facilities, or are unable to renew our credit facilities on terms that are substantially similar to the ones we presently have, we may experience liquidity issues and may have to reduce our levels of planned capital expenditures to conserve cash for future cash flow requirements. See Item 3, “Key Information — Risk Factors.”

Divestitures

Building Systems

On May 30, 2003, we sold our New Zealand Building Systems business to a third party. We recorded a gain of \$1.9 million representing the excess of net proceeds from the sale of \$6.7 million over the net book value of assets sold of \$4.8 million. The proceeds from the sale comprised cash of \$5.0 million and a note receivable in the amount of \$1.7 million. As of March 2005, the \$1.7 million note receivable had been collected in full.

Disposal of Chile Business

In June 2005, the Company approved a plan to dispose of its Chile Fiber Cement business to Volcan. The sale closed on July 8, 2005. The Company received net proceeds of \$3.9 million and recorded a loss on disposal of \$0.8 million. This loss on disposal is included in other operating expense in the Company’s consolidated statements of operations. The net proceeds from the sale were comprised of cash of \$3.1 million and a receivable of \$0.8 million. The cash proceeds were offset by cash divested of \$0.2 million. Short-term debt of \$11.9 million was repaid in full out of the gross proceeds of \$15.8 million.

As part of the terms of the sale of the Chile Fiber Cement business to Volcan, the Company entered into a two-year take or pay purchase contract for fiber cement product manufactured by Volcan. The first and second year of the contract amounts to a purchase commitment of approximately \$2.8 million and \$2.1 million, respectively. As this contract qualifies as continuing involvement, the results of operations and loss on disposal of the Chile Fiber Cement business are included in the Company’s income from continuing operations.

ABN 60

Following the establishment of the ABN 60 Foundation and transfer of shares in ABN 60 to the ABN 60 Foundation, we no longer own any shares of ABN 60. ABN 60 Foundation is managed by independent directors and operates entirely independently of us. Since that date, we have not and currently we do not control the activities of ABN 60 or ABN 60 Foundation in any way. Other than as described in Note 12 to our consolidated financial statements in Item 18, we have no economic interest in ABN 60 or ABN 60 Foundation and we have no right to dividends or capital distributions made by the ABN 60 Foundation. Apart from the express indemnity for non-asbestos matters provided to ABN 60 and a possible arrangement to fund some or all future claimants for asbestos-related injuries caused by former James Hardie Group subsidiary companies and to the potential liabilities more fully described in Notes 12 and 20 to our consolidated financial statements in Item 18, we do not believe we will have any liability under current Australian law should future liabilities of ABN 60 or ABN 60 Foundation exceed the funds available to those entities. As a result of the change in ownership of ABN 60 on March 31, 2003, we recorded a loss on disposal of \$0.4 million, representing the liabilities of ABN 60 (to the Foundation) of A\$94.6 million (\$57.2 million), the A\$94.5 million (\$57.1 million) in cash held on the balance sheet, and costs associated with the establishment and funding of the ABN 60 Foundation. Also see “Legal Proceedings” and Notes 12 and 14 to our consolidated financial statements included below in Item 18.

Under the terms of a Deed of Covenant, Indemnity and Access entered into by JHI NV and ABN 60 at or around this time, the ABN 60 Foundation was established, JHI NV agreed to indemnify ABN 60 for any

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non asbestos-related legal claims made on ABN 60 in relation to any acts or omissions of ABN 60 or its directors and officers, which occurred prior to the transfer of ABN 60 to the ABN 60 Foundation. The indemnity is uncapped and the term of the indemnity is in perpetuity. We believe that the likelihood of any material non asbestos-related claims occurring which would result in a call on this indemnity is remote. As such, we have not recorded a liability for the indemnity. We have not pledged any assets as collateral for such indemnity.

Also under the terms of that Deed of Covenant, Indemnity and Access, Amaca, Amaba and ABN 60 agreed to indemnify JHI NV and its related corporate entities for past and future asbestos-related liabilities incurred by them as a result of the acts or omissions of ABN 60 prior to establishing the ABN 60 Foundation. Amaca and Amaba provided similar indemnities under the Deed of Covenant and Indemnity entered into with ABN 60, which included indemnities in favor of JHI NV and its related entities. Amaca, Amaba and ABN 60's obligation to indemnify JHI NV and its related entities includes asbestos-related claims that may arise associated with the manufacturing activities of those companies.

Our liability under or in connection with the indemnities described above may potentially be mitigated or otherwise affected by the releases from civil liability described below under the heading "Releases from Civil Liability." However, we have taken the view to date that such legislation does not ameliorate our liability with respect to those indemnities.

Property, Plant and Equipment

Over the past several years, we have built significant production capacity in the United States in an effort to ensure that we will be able to meet expected increases in demand for our products and improve our operating efficiencies. As part of our facilities investment strategy, we have constructed a plant for flat sheet and trim products in Illinois and upgraded and expanded our existing plants in Illinois, Texas, California and Pennsylvania. In addition, we entered into a long-term lease arrangement in fiscal year 2001 for our Waxahachie, Texas plant and upgraded the existing first line, replaced the existing second line and completed construction on a new panel production line at this fiber cement plant in fiscal years 2001, 2002 and 2004, respectively. In fiscal year 2002, we also acquired the operating assets of Cemplank, Inc., which included a fiber cement plant at Blandon, Pennsylvania and a fiber cement plant at Summerville, South Carolina, and, in fiscal year 2003, we purchased the property on which these plants are located. In fiscal year 2004, we completed upgrades to our Blandon, Pennsylvania plant. In addition, we started construction on our new green-field plant in Reno, Nevada in fiscal year 2004 and our new trim line at our Peru, Illinois plant. In fiscal year 2005, we completed our ninth plant in Reno, Nevada and began pre-production at our new trim line in Peru, Illinois. In addition, in March 2005 we began building our tenth USA Fiber Cement manufacturing plant, located in Pulaski, Virginia. The Pulaski plant will feature two manufacturing lines, each with an annual design capacity of 300 million square feet. At the end of fiscal year 2006, we completed construction of one of the two planned production lines at the Pulaski plant, and in April 2006 this line commenced commercial production. At the end of fiscal year 2006, we also completed construction of, and commenced production on, a new ColorPlus® product line at our Blandon, Pennsylvania plant.

Our management estimates that our ten manufacturing plants are among the largest and lowest cost fiber cement manufacturing plants in the United States. Once our manufacturing plant in Pulaski, Virginia is completely constructed, it will be our largest fiber cement manufacturing plant in the world. Our management believes that the location of our plants in California, Texas, Florida, Illinois, Washington, Pennsylvania, South Carolina, Nevada and Virginia positions us near high growth markets in the United States while minimizing our transportation costs for product distribution and raw material sourcing.

In fiscal year 2002, we closed our fiber cement plant in Western Australia and have been meeting demand from our remaining facilities. The remaining plants in Australia have also been upgraded over recent years to improve output and productivity. In fiscal years 2006 and 2004, A\$4.6 million (\$3.5 million) and A\$3.2 million (\$2.2 million), respectively, was spent to upgrade the fiber cement manufacturing plant at Rosehill in Sydney. The purpose of the upgrade at our Rosehill plant in fiscal year 2006 was to improve production line efficiencies in order to increase productivity and cost savings. In addition, we spent

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A\$2.6 (\$1.8 million) in fiscal year 2004 at our Brisbane plant to install a coating facility. We believe that the facility has added value to our basic product range.

In New Zealand, our fiber cement production line was upgraded in fiscal year 2001 at a cost of NZ\$1 million (\$1 million). The upgrades have enabled this plant to produce new siding and internal lining fiber cement products.

Also during fiscal year 2006, we undertook an initiative to locally manufacture low density products (currently all of our manufacturing in this area is conducted in New Zealand) and, in doing so, we incurred costs of A\$0.7 million (\$0.5 million) during fiscal year 2006 and an additional A\$0.7 million (\$0.5 million) during the first quarter of fiscal year 2007. We undertook this project to reduce associated freighting costs and better service the local growing market for our products in Queensland. This project was completed in June 2006 and its first commercial run of product occurred in July 2006.

In March 2001, our fiber reinforced concrete pipe plant at Plant City, Florida commenced operations. Built at a total cost of \$33.7 million, the plant produces drainage pipes and has an annual production capacity of 100,000 tons.

Our manufacturing plants use significant amounts of water which, after internal recycling and reuse, are eventually discharged to publicly owned treatment works (with the exception of our Blandon, Pennsylvania and Summerville, South Carolina facilities, which maintain a closed loop system). The discharge of process water is monitored by us, as well as by regulators. In addition, we are subject to regulations that govern the air quality and emissions from our plants. In the past, from time to time, we have received reports of discharges in excess of our water and air permit limits. In each case, we have addressed the concerns raised in those notices.

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Plants and Process

We manufacture fiber cement products in the United States, Australia, New Zealand and the Philippines. The location of each of our fiber cement plants and the annual design capacity for such plants are set forth below:

Location	Existing Annual Design Capacity(1)	Committed Additional Design Capacity(1)	Total Planned Design Capacity(1)
Fiber Cement Flat Sheet (in million square feet)			
United States			
Fontana, California	180	—	180
Plant City, Florida	300	—	300
Cleburne, Texas	500	—	500
Tacoma, Washington	200	—	200
Peru, Illinois	560	—	560
Waxahachie, Texas	360	—	360
Blandon, Pennsylvania	200	—	200
Summerville, South Carolina	190	—	190
Reno, Nevada	300	—	300
Pulaski, Virginia(2)	300	300	600
Total United States	3,090		3,390
Australia			
Sydney, New South Wales(3)	200	—	200
Brisbane, Queensland (Carole Park)(3)(4)	160	—	160
Total Australia	360		360
New Zealand			
Auckland(3)	75	—	75
The Philippines			
Manila	145	—	145
Total Fiber Cement Flat Sheet	3,670		3,970
Fiber Reinforced Concrete Pipes (in tons)(5)			
Plant City, Florida (pipes)	100,000	—	100,000
Brisbane, Queensland (Meeandah)(3)(4)	50,000	—	50,000
Total Fiber Reinforced Concrete Pipes	150,000		150,000

- (1) Annual design capacity is based on management's historical experience with our production process and is calculated assuming continuous operation, 24 hours per day, seven days per week, producing 5/16" thickness siding at a target operating speed. Plants outside the United States produce a range of thicker products, which negatively affect their outputs. Actual production is affected by factors such as product mix, batch size, plant availability and production speeds and is usually less than annual design capacity.
- (2) Our plant in Pulaski, Virginia will feature two manufacturing lines with a total annual design capacity of 600 million square feet (300 million per line). Currently only one line is complete.
- (3) Prior to March 2004, the land and buildings on which these facilities are located were leased on a long-term basis from Amaca Pty Limited. In March 2004, various subsidiaries of Multiplex Property Trust (which we collectively refer to as Multiplex) an unrelated third party, acquired the land and buildings related to these four fiber cement manufacturing facilities from Amaca. Prior to July 2005, the land and

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buildings on which these facilities are located was leased on a long-term basis from Multiplex. In July 2005, unrelated third parties, Penrose Land Trustee No. 1 Limited and Penrose Land Trustee No. 2 Limited (which we collectively refer to as the Penrose Land Trust) acquired from Multiplex the land and buildings related to our fiber cement manufacturing facilities in Auckland.

- (4) There are two manufacturing plants in Brisbane. Carole Park produces only flat sheets and Meeandah produces only pipes and columns.
- (5) Pipe and column capacity is measured in tons rather than million square feet.

While the same basic process is used to manufacture fiber cement products at each facility, plants are designed to produce the appropriate mix of products to meet each market's specific, projected needs. Many of our manufacturing facilities have been either newly constructed or substantially modernized and upgraded in the past five years. The facilities were constructed so production can be efficiently adjusted in response to increased consumer demand by increasing production capacity utilization, enhancing the economies of scale or adding additional lines to existing facilities, or making corresponding reductions in production capacity in response to weaker demand. Except for the Waxahachie, Texas plant, we own all of our fiber cement sites and plants located in the United States. The lease for the Waxahachie, Texas site and plant expires on March 31, 2020, at which time we have an option to purchase the plant. Pursuant to the lease, we make quarterly base rental payments of \$850,000. In 1998, we entered into lease agreements with a former subsidiary, now owned by the Foundation, for all of our fiber cement sites located in Australia. In March 2004, Multiplex acquired the land and buildings related to the four fiber cement manufacturing facilities from the Foundation. Prior to that acquisition, we renegotiated the four leases with Multiplex. Upon completion of the acquisition and subsequent transfer of title to Multiplex, Multiplex assumed the responsibility of landlord under each of the amended leases. In addition, in March 2004, we entered into a lease agreement with Multiplex for our fiber cement site located in New Zealand. In July 2005, the Penrose Land Trust acquired the land and buildings related to the fiber cement manufacturing facilities in New Zealand from Multiplex and we now make lease payments related to this site to the Penrose Land Trust, as landlord under the lease. We own our pipe plant in the United States. In addition, we own 40% of the land on which our Philippines fiber cement plant is located, and 100% of the Philippines plant itself.

For fiscal year 2006, average capacity utilization for our fiber cement plants by country was approximately as follows:

Country	Capacity Utilization(1)
United States	84%
Australia	56%
New Zealand	75%
Philippines	82%

- (1) Capacity utilization is based on design capacity. Design capacity is based on management's estimates, as described above. No accepted industry standard exists for the calculation of fiber cement manufacturing facility capacities.

The capital cost per unit of production for new plants has significantly declined since we opened our first U.S. plant in Fontana, California in 1989. This improvement is largely attributable to our utilization of proprietary technology. Management believes that our capital cost per unit of capacity is substantially lower than that of many of our competitors' plants. In addition, we can now build and commission new manufacturing plants significantly faster than when we built our first production line in the United States. Management believes that the speed and cost at which we can construct new plants relative to our competitors enable us to respond rapidly to emerging regional demand for fiber cement products and to gain the advantage accorded to the first local producer in a market.

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Mines

We own a quartz mine in Fontana, California and lease a quartz mine in Tacoma, Washington. Our five-year lease for the mine in Tacoma, Washington expired on February 28, 2006, at which time we exercised our option to renew the lease for an additional four years. We pay production royalties to the owner based on silica tonnage removed from the mine. Because other cost effective sources of sand are not available at these locations, we operate these quartz mines and process the rock to obtain silica for our fiber cement products.

Legal Proceedings

Our operations, like those of other companies engaged in similar businesses, are subject to a number of federal, state and local laws and regulations on air and water quality, waste handling and disposal. Our policy is to accrue for environmental costs when it is determined that it is probable that an obligation exists and the amount can be reasonably estimated. In the opinion of management, based on information presently known, except as set forth below, the ultimate liability for such matters should not have a material adverse effect on either the Company's consolidated financial position, results of operations or cash flows.

The Company is involved from time to time in various legal proceedings and administrative actions incidental or related to the normal conduct of business. Although it is impossible to predict the outcome of any pending legal proceeding, our management believes that such proceedings and actions should not, except as it relates to asbestos as described below, individually or in the aggregate, have a material adverse effect on either our consolidated financial position, results of operations or cash flows. See also Item 3, "Key Information — Risk Factors."

Commitment to Provide Funding on a Long-Term Basis in Respect of Asbestos-Related Liabilities of Former Subsidiaries

On December 1, 2005, the Company announced that it, the NSW Government and a wholly owned Australian subsidiary of the Company, James Hardie 117 Pty Ltd, which we refer to as the Performing Subsidiary, had entered into a conditional agreement, called the Final Funding Agreement, to provide long-term funding to a special purpose fund, or SPF, that will provide compensation for Australian asbestos-related personal injury claims against certain former James Hardie companies (being Amaca Pty Ltd (which we refer to as Amaca), Amaba Pty Ltd (which we refer to as Amaba), and ABN 60 000 009 263 Pty Ltd, (which we refer to as ABN 60), which we collectively refer to as the Former James Hardie Companies).

Key events occurring since 2001 that led to the signing of the Final Funding Agreement are summarized further below.

The Final Funding Agreement remains subject to a number of conditions precedent, including the receipt of an independent expert's report confirming that the funding proposal is in the best interests of the Company and its enterprise as a whole, approval of the Company's shareholders and lenders and confirmation satisfactory to the Company's Board of Directors, acting reasonably, that the contributions to be made by JHI NV and the Performing Subsidiary under the Final Funding Agreement will be tax deductible and the SPF will be exempt from Australian federal income tax on its income (or that alternative arrangements will exist which are satisfactory to the Company's Board of Directors).

In summary, the Final Funding Agreement provides for the following key steps to occur if the conditions precedent to that agreement are satisfied or waived in writing by the parties:

- the establishment of the SPF to provide compensation to Australian asbestos-related personal injury claimants with proven claims against the Former James Hardie Companies;
- initial funding of approximately A\$154 million provided by the Performing Subsidiary to the SPF, calculated on the basis of an actuarial report prepared by KPMG Actuaries Pty Ltd, or KPMG Actuaries, as of March 31, 2006. That report provided an estimate of the discounted net present value of all present and future Australian asbestos-related personal injury claims against the Former James

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Hardie Companies of A\$1.52 billion (\$1.14 billion).

- subject to the cap described below, an annual contribution in advance to top up the funds in the SPF to equal the actuarially calculated estimate of expected Australian asbestos-related personal injury claims against the Former James Hardie Companies for the following three years, to be revised annually (so as to create a rolling cash “buffer” in the SPF);
- a cap on the annual payments made by the Performing Subsidiary to the SPF, initially set at 35% of the Company’s free cash flow (defined as cash from operations in accordance with U.S. GAAP in force at the date of the Final Funding Agreement) for the immediately preceding financial year, with provisions for the percentage to decline over time depending upon the Company’s financial performance (and therefore the contributions already made to the SPF) and the claims outlook;
- an initial term of approximately 40 years, at the end of which time the parties may either agree upon a final payment to be made by the Company in satisfaction of any further funding obligations, or have the term automatically extended for further periods of 10 years until such agreement is reached or the relevant asbestos-related liabilities cease to arise;
- the entry by the parties and/or others into agreements ancillary to or connected with the Final Funding Agreement, which we collectively refer to as the Related Agreements;
- no cap on individual payments to asbestos claimants;
- the Performing Subsidiary’s payment obligations are guaranteed by JHI NV;
- the SPF’s claims to the funding payments required under the Final Funding Agreement will be subordinated to the claims of the Company’s lenders; and
- the compensation arrangements will extend to members of the Baryulgil community for asbestos-related claims arising from the activities of a former subsidiary of ABN 60, as described below.

The parties to the Final Funding Agreement are in discussions and negotiations as to how the remaining conditions precedent (and most notably, the condition precedent that the SPF must be tax exempt) may be satisfied, amended or otherwise dealt with in a manner satisfactory to those parties. As part of those discussions, it is likely that the agreed amount set out in the Final Funding Agreement as the initial funding payment will be recalculated, so as to take into account updated claims data and the effect of delays in implementing the Final Funding Agreement.

In addition to entering into the Final Funding Agreement, one or more of the Company, the Performing Subsidiary, the SPF and the NSW Government have entered into a number of agreements ancillary to or connected with the Final Funding Agreement, which we collectively refer to as the Related Agreements, including a trust deed (for a trust known as the Asbestos Injuries Compensation Fund), which we refer to as the Trust Deed, for the establishment of the SPF; a deed of guarantee under which JHI NV provides the guarantee described above; intercreditor deeds to achieve the subordination arrangements described above; and deeds of release in connection with the releases from civil liability described below.

The Company considers that the principal outstanding conditions to be fulfilled before the Final Funding Agreement becomes effective are those relating to the tax exempt status of the SPF and approval of the Final Funding Agreement by the Company’s shareholders.

In relation to the approval of the Final Funding Agreement by the Company’s shareholders, we have undertaken significant work towards preparing the necessary documentation to be sent to shareholders, but at present we are unable to specify a date for holding the relevant meeting. The Company considers that it can only properly put the proposal to shareholders once the tax issues described above have been resolved, since, as further described below, such issues materially affect the affordability of the proposal which shareholders will be asked to approve.

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The Company's ability to obtain a tax deduction has been confirmed by the ATO in a form binding on the Commissioner for the term of the Final Funding Agreement. The private ruling issued by the ATO provides deductibility over a five-year period from the date of contribution, whereas the condition precedent in the Final Funding Agreement provides for deductibility of contributions in the year incurred. The Company has indicated to the NSW Government that it is prepared to accept this basis of deductibility of the funding payments, if the tax condition relating to the tax exempt status of the SPF can be satisfactorily resolved. However, the ruling in relation to deductibility of contributions does not affect the status of the second tax condition applicable under the Final Funding Agreement (namely that the SPF is tax exempt), which remains unfulfilled. The ATO has in fact issued a notice to the SPF of refusal to endorse the SPF as being tax exempt on the basis that it is a charity. The SPF and the Company have received strong legal advice, including from some of Australia's leading counsel, that the SPF satisfies the requirements applicable under income tax legislation such that the ATO should endorse the SPF as a charity. At present the SPF and the Company are in further discussions with the ATO seeking to resolve the unsatisfied tax exemption condition precedent. The Company is also in discussions and negotiations with the NSW Government in relation to this condition and the means by which it could be fulfilled, amended or otherwise dealt with in a manner satisfactory to the parties to the Final Funding Agreement. The result of those discussions may be that the tax exemption condition is confirmed, or that it is amended in a manner which is agreed by the parties to the Final Funding Agreement to achieve the objectives set out in the Heads of Agreement described below.

The recording of the asbestos provision is in accordance with U.S. accounting standards because it is probable that we will make payments to fund asbestos-related claims on a long-term basis. The amount of the asbestos provision of \$742.8 million (A\$1.0 billion) at June 30, 2006 is our best estimate of the probable outcome. This estimate is based on the terms of the Final Funding Agreement, which includes an actuarial estimate prepared by KPMG Actuaries as of March 31, 2006 of the projected future cash outflows, undiscounted and uninflated.

If the conditions precedent to the Final Funding Agreement, such as the tax exempt status for the SPF, are not met, we may seek to enter into an alternative arrangement under which we would make payments for the benefit of asbestos claimants. Under alternative arrangements, the estimate may change.

Even if conditions to our funding obligations under the Final Funding Agreement, including the achievement of tax exempt status of the SPF, are not fulfilled, we have determined that it is nevertheless likely that we will make payments in respect of certain claimants who were injured by asbestos products manufactured by certain former Australian subsidiary companies. Our Joint Board has made it clear that, in a manner consistent with its obligations to shareholders and other stakeholders in the Company, it intends to proceed with fair and equitable actions to provide funding which can be applied towards compensating the injured parties. Any such alternative settlement may be subject to conditions precedent and would require lender and shareholder approval. However, if we proceed with an alternative settlement without the assurance of tax exempt status for the SPF, it is likely, as a function of economic reality, that we will have less funds to support payments in respect of asbestos claims. While we continue to hope that the conditions precedent to the Final Funding Agreement will be fulfilled, we have determined that our intention to continue to proceed responsibly in either event makes it appropriate for us to record the asbestos provision in the amounts set forth in the consolidated financial statements.

Key Events During and Since 2001 Leading to the Signing of the Final Funding Agreement

Separation of Amaca Pty Ltd, Amaba Pty Ltd and ABN 60

In February 2001, ABN 60, formerly known as James Hardie Industries Limited, or JHIL, established the Medical Research and Compensation Foundation, which we refer to as the Foundation, by gifting A\$3.0 million (\$1.7 million) in cash and transferring ownership of Amaca and Amaba to the Foundation. The Foundation is a special purpose charitable foundation established to fund medical and scientific research into asbestos-related diseases. Amaca and Amaba were Australian companies which had manufactured and marketed asbestos-related products up to 1987.

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The Foundation is managed by independent trustees and operates entirely independently of the Company and its current subsidiaries. The Company does not control (directly or indirectly) the activities of the Foundation in any way and, effective from February 16, 2001, has not owned or controlled (directly or indirectly) the activities of Amaca or Amaba. In particular, the trustees of the Foundation are responsible for the effective management of claims against Amaca and Amaba, and for the investment of Amaca's and Amaba's assets. Other than the offers to provide interim funding to the Foundation and the indemnity to the directors of ABN 60 as described below, the Company has no direct legally binding commitment to or interest in the Foundation, Amaca or Amaba, and it has no right to dividends or capital distributions made by the Foundation. None of the Foundation, Amaca, Amaba or ABN 60 are parties to the Final Funding Agreement described above, and none of those entities have obtained any directly enforceable rights under that agreement or the related agreements contemplated under that agreement.

On or about February 15, 2001, ABN 60, Amaca and Amaba entered into a Deed of Covenant and Indemnity which provided that, apart from ABN 60's limited financial obligations to Amaba and Amaca under the deed, ABN 60 had no further obligations to Amaca or Amaba in connection with their asbestos-related liabilities, and that ABN 60 was indemnified by those entities in the event that ABN 60 incurred or suffered any such liabilities. At all times, including at the time of the establishment of the ABN 60 Foundation, ABN 60 had assets available or was provided with funds to invest so as to be able to meet those obligations.

On March 31, 2003, the Company transferred control of ABN 60 to a newly established company named ABN 60 Foundation Pty Ltd, which we refer to as the ABN 60 Foundation. ABN 60 Foundation was established to be the sole shareholder of ABN 60. Following the establishment of the ABN 60 Foundation and transfer of shares in ABN 60 to the ABN 60 Foundation, the Company no longer owned any shares in ABN 60. ABN 60 Foundation is managed by independent directors and operates entirely independently of the Company. Since that date, the Company has not and currently does not control the activities of ABN 60 or ABN 60 Foundation in any way, it has no economic interest in ABN 60 or ABN 60 Foundation, and it has no right to dividends or capital distributions made by the ABN 60 Foundation.

Under the Final Funding Agreement and under legislation associated with that agreement described below, it is contemplated that following the establishment of the SPF and as part of the satisfaction of the conditions precedent to the Final Funding Agreement, the Company will, subject to limited exceptions, be entitled to appoint a majority of directors on the board of directors of the SPF, which will in turn be empowered under that legislation to issue certain specified directions to the boards of directors of the Former James Hardie Companies. That legislation also imposes statutory obligations upon the Former James Hardie Companies to comply with such directions, and the NSW Government may require the directors of the trustees of the Foundation and of the ABN 60 Foundation to resign pursuant to powers granted under the *James Hardie Former Subsidiaries (Special Provisions) Act 2005*.

Potential for Claims Against the Former James Hardie Companies to be Made Against the Company

Up to the date of the establishment of the Foundation, Amaca and Amaba incurred costs of asbestos-related litigation and settlements. From time to time, ABN 60 was joined as a party to asbestos suits which were primarily directed at Amaca and Amaba. Because Amaca, Amaba and ABN 60 were not or have not been a part of the Company since the time of establishment of the Foundation and the ABN 60 Foundation, no provision for asbestos-related claims was established in the Company's consolidated condensed financial statements prior to March 31, 2006.

The Final Funding Agreement does not confer upon the Former James Hardie Companies any directly enforceable rights against the Company in respect of the funding obligations. Similarly, the Final Funding Agreement does not create any directly enforceable rights in favor of any persons who may have personal injury claims against the Former James Hardie Companies and that agreement does not seek to make the Company or any current member of the James Hardie Group directly liable for damages for personal injury or death in connection with the former manufacture or sale of asbestos products by Amaca, Amaba or ABN 60.

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The funding obligations of the Performing Subsidiary and the Company to the SPF will be enforceable by the SPF and, in certain circumstances, directly by the NSW Government.

Apart from the funding obligations arising under the Final Funding Agreement, it is possible that the Company could become subject to suits for damages for personal injury or death in connection with the former manufacture or sale of asbestos products that have been or may be filed against Amaca, Amaba or ABN 60. However, as described further below, the ability of any claimants to initiate or pursue such suits is restricted by legislation enacted by the NSW Government pursuant to the Final Funding Agreement. Although it is difficult to predict the incidence or outcome of future litigation, and thus no assurances as to such incidence or outcome can be given, the Company believes that, in the absence of new legislation or a change in jurisprudence as adopted in prior case law before the NSW Supreme Court and Federal High Court, as more fully described below, the Company's liability with respect to such suits if such suits could be successfully asserted directly against the Company is not probable and estimable at this time. This belief is based on the following factors: following the transfers of Amaca and Amaba to the Foundation and of ABN 60 to the ABN 60 Foundation, none of those companies has been part of the Company and while those companies are proposed to become subsidiaries of the SPF as part of the steps to implement the Final Funding Agreement, neither the SPF nor the Company will thereby assume the liabilities of the Former James Hardie Companies under Australian law; the separateness of corporate entities under Australian law; the limited circumstances in which "piercing the corporate veil" might occur under Australian and Dutch law; the absence of an equivalent under Australian common law of the U.S. legal doctrine of "successor liability;" the effect of the *James Hardie (Civil Liability) Act 2005* and the *James Hardie (Civil Penalty Compensation Release) Act 2005* as described further below; and the belief that the principle applicable under Dutch law, to the effect that transferees of assets may be held liable for the transferor's liabilities when they acquire assets at a price that leaves the transferor with insufficient assets to meet claims, is not triggered by the transfers of Amaca, Amaba and ABN 60, the restructure of the Company in 2001, or previous group transactions. The courts in Australia have generally refused to hold parent entities responsible for the liabilities of their subsidiaries absent any finding of fraud, agency, direct operational responsibility or the like. However, if suits are made possible and/or successfully brought, they could have a material adverse effect on the Company's business, results of operations or financial condition.

In New Zealand, where RCI Holdings Pty Ltd owns a subsidiary that formerly manufactured asbestos-containing products, claims have been made against the statutory fund established under New Zealand's accident compensation regime (rather than against the subsidiary). The relevant legislation at present is the *Injury Prevention, Rehabilitation and Compensation Act 2001 (NZ)*. Where there is cover under this legislation, claims for compensatory damages are barred. Although claims not barred by the legislation could still be brought in some circumstances, any such claims are not currently estimable.

During the period ended March 31, 2006, the Company has not been a party to any material asbestos litigation and has not made any settlement payments in relation to any such litigation.

Under U.S. laws, the doctrine of "successor liability" provides that an acquirer of the assets of a business can, in certain jurisdictions and under certain circumstances, be held responsible for liabilities arising from the conduct of that business prior to the acquisition, notwithstanding the absence of a contractual arrangement between the acquirer and the seller pursuant to which the acquirer agreed to assume such liabilities.

The general principle under Australian law is that, in the absence of a contractual agreement to transfer specified liabilities of a business, and where there is no fraudulent conduct, the liabilities remain with the corporation that previously carried on the business and are not passed on to the acquirer of assets. Prior to March 2004, the Company leased manufacturing sites from Amaca, a former subsidiary that is now owned and controlled by the Foundation. In addition, the Company purchased certain plant and equipment and inventory from Amaca at fair value in connection with the first phase of the Company's restructuring. Each of these transactions involved only Australian companies and, accordingly, the Company believes the transactions are governed by Australian laws and not the laws of any other jurisdiction. The Company does not believe these transactions should give rise to the assumption by the Company of any asbestos-related liabilities.

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(tortious or otherwise) under Australian law that may have been incurred during the period prior to the transfer of the assets.

Under Dutch law, a Dutch transferee of assets may be held responsible for the liabilities of the transferor following a transfer of assets if the transfer results in the transferor having insufficient assets to meet the claims of its creditors or if the transfer otherwise jeopardizes the position of the creditors of the transferor. The Company believes the transfer by ABN 60 of all of the shares of James Hardie N.V., or JH NV, to JHI NV in the 2001 Restructuring will not result in the Company being held responsible as transferee under this rule because, upon the transfer and the implementation of the other aspects of the 2001 Restructuring, ABN 60 had the same financial resources to meet the claims of its creditors as it had prior to the transfer.

Special Commission of Inquiry

On October 29, 2003, the Foundation issued a press release stating that its “most recent actuarial analysis estimates that the compensation bill for the organization could reach one billion Australian dollars in addition to those funds already paid out to claimants since the Foundation was formed and that existing funding could be exhausted within five years.” In February 2004, the NSW Government established a Special Commission of Inquiry, or SCI, to investigate, among other matters described below, the circumstances in which the Foundation was established. The SCI was instructed to determine the current financial position of the Foundation and whether it would be likely to meet its future asbestos-related claims in the medium to long-term. It was also instructed to report on the circumstances in which the Foundation was separated from ABN 60 and whether this may have resulted in or contributed to a possible insufficiency of assets to meet future asbestos-related liabilities, and the circumstances in which any corporate restructure or asset transfers occurred within or in relation to the James Hardie Group prior to the funding of the Foundation to the extent that this may have affected the Foundation’s ability to meet its current and future liabilities. The SCI was also instructed to report on the adequacy of current arrangements available to the Foundation under the Corporations Act of Australia to assist the Foundation in managing its liabilities and whether reform was desirable in order to assist the Foundation in managing its obligations to current and future claimants.

On July 14, 2004, following the receipt of a new actuarial estimate of asbestos liabilities of the Foundation by KPMG Actuaries, the Company lodged a submission with the SCI stating that the Company would recommend to its shareholders that they approve the provision of an unspecified amount of additional funding to enable an effective statute-based scheme to compensate all future claimants for asbestos-related injuries for which Amaca and Amaba may become liable. The Company proposed that the statutory scheme include the following elements:

- speedy, fair and equitable compensation for all existing and future claimants, including objective criteria to reduce superimposed inflation. Superimposed inflation is inflation in claim awards above the underlying rate of inflation and is sometimes called judicial inflation;
- contributions to be made in a manner which provide certainty to claimants as to their entitlement, the scheme administrator as to the amount available for distribution, and the proposed contributors (including the Company) as to the ultimate amount of their contributions;
- significant reductions in legal costs through reduced and more abbreviated litigation; and
- limitation of legal avenues outside of the scheme.

The submission stated that the proposal was made without any admission of liability or prejudice to the Company’s rights or defenses.

The SCI issued its report on September 21, 2004. The following is a summary of the principal findings of the SCI relating to the Company based on the SCI’s report and other information available to the Company. This summary does not contain all of the findings contained or observations made in the SCI report. It should be noted that the SCI is not a court and, therefore, its findings have no legal force.

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Principal Findings in Favor of the Company

The principal findings in favor of the Company were that:

- the establishment of the Foundation was legally effective and causes of action which the Foundation, Amaba or Amaca might have against the James Hardie Group, its officers and advisers would be unlikely to result in any significant increase in the funds of Amaba, Amaca or the Foundation (putting this finding conversely, the Company is unlikely to face any significant liability to the Foundation, Amaba or Amaca as a result of the then current causes of action of such entities against the current members of the James Hardie Group);
- there was no finding that JHI NV had committed any material breach of any law as a result of the separation and reorganization transactions which took place in 2001;
- many of the allegations and causes of action put forward by lawyers for the Foundation, Amaba and Amaca were “speculative;” and
- the SCI rejected the suggestion that JHI NV had engaged in misleading or deceptive conduct or attempted to pervert the course of justice or obtained court orders by fraud in relation to the 2001 Reorganization due to the fact that neither the reorganization scheme documents prepared in 2001 nor the submissions or materials presented to the court for the 2001 Reorganization referred to the possibility of the partly-paid shares being cancelled (the shares were cancelled in 2003).

Other Principal Findings Relevant to the Company

The other principal findings relevant to the Company were that:

- as a practical (but not legal) matter, if the “right” amount (and not merely the minimum amount) of funding was not provided to the Foundation, the Company would face potential legislative, customer, union and public action to apply legislative and boycott measures and public pressure to ensure that the Company met any significant funding shortfall; and
- the directors of ABN 60 at the time of the cancellation of the partly-paid shares (Messrs. Morley and Salter) effectively followed the instructions of JHI NV in relation to the cancellation. As a result, it might be concluded that JHI NV was a shadow director of ABN 60 at that time. However, while expressing some reservations about what occurred, the SCI did not find that the ABN 60 directors (including JHI NV as a shadow director) breached their duties in undertaking the cancellation.

Principal Findings Against ABN 60 (formerly called JHIL)

A number of further findings (positive and adverse) were also made in relation to ABN 60, which is not a current member of the James Hardie Group. Such findings were not directed against the Company. For the reasons provided above in this section “Legal Proceedings,” the Company does not believe that it will have any liability under current Australian law if future liabilities of ABN 60 or ABN 60 Foundation exceed the funds available to those entities. This includes liabilities that may attach to ABN 60 or ABN 60 Foundation as a result of claims made, if successful, in connection with the transactions involved in the establishment of the ABN 60 Foundation and the separation of ABN 60 from the Company.

The SCI found that, given ABN 60’s limited financial resources, ABN 60 would need to be able to succeed in making a claim against JHI NV in respect of the cancellation of the partly-paid shares before claims by Amaba or Amaca against ABN 60 had any practical value. Although expressing reservations about what occurred, the SCI did not find that the directors of ABN 60 had breached their duty in canceling the partly-paid shares.

The SCI did not make any finding that any cause of action by ABN 60 with respect to the partly-paid shares was likely to succeed.

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Principal Findings Against Mr. Macdonald and Mr. Shafron

The principal (but non-determinative) findings against Messrs. Macdonald and Shafron pertained to their conduct while officers of ABN 60 in relation to:

- alleged false and misleading conduct associated with a February 16, 2001 press release, particularly regarding a statement that the Foundation was “fully funded” in contravention of New South Wales and Commonwealth legislation prohibiting false or misleading conduct;
- allegedly breaching their duties as officers of ABN 60 by encouraging the board of directors of ABN 60 to act on the Trowbridge report, dated February 13, 2001 (which we refer to as the Trowbridge Report), in forming a view that the Foundation would be “fully funded”; and
- criticisms, falling short of findings of contraventions of law, based on their respective roles in the separation and reorganization transactions. These included criticisms relating to their development, control over, reliance on and use of the Trowbridge Report, despite (in the SCI’s view) their knowledge of its limitations.

Other Relevant Findings

The Commissioner noted that he had not carried out an exhaustive investigation and concluded that it was a matter for Commonwealth authorities (notably the Australian Securities and Investments Commission, or ASIC) to determine whether any further action should be taken in relation to matters which the Commissioner considered, comprised or might be likely to have comprised, contraventions of Australian corporations law. The Commissioner acknowledged that in relation to various of his findings, there was an issue as to whether Amaba or Amaca suffered any loss or damage from the actions reviewed by him but in this regard he did not find it necessary to reach any definitive conclusion.

The SCI’s findings are not binding and if the same issues were presented to a court, the court might come to different conclusions on one or more of the issues.

Findings Relating to Funding Shortfall

In relation to the question of the funding of the Foundation, the SCI found that there was a significant funding shortfall. In part, this was based on actuarial work commissioned by the Company indicating that the discounted value of the central estimate of the asbestos liabilities of Amaca and Amaba was approximately A\$1.573 billion as of June 30, 2003. The central estimate was calculated in accordance with Australian Actuarial Standards, which differ from generally accepted accounting principles in the United States. As of June 30, 2003, the undiscounted value of the central estimate of the asbestos liabilities of Amaca and Amaba, as determined by KPMG Actuaries, was approximately A\$3.403 billion (\$2.272 billion). The SCI found that the net assets of the Foundation and the ABN 60 Foundation were not sufficient to meet these prospective liabilities and were likely to be exhausted in the first half of 2007.

In relation to the Company’s statutory scheme proposal, the SCI reported that there were several issues that needed to be refined quite significantly but that it would be an appropriate starting point for devising a compensation scheme.

Events Following the SCI Findings

The NSW Government stated that it would not consider assisting the implementation of any proposal advanced by the Company unless it was the result of an agreement reached with the unions acting through the Australian Council of Trade Unions (which we refer to as the ACTU), UnionsNSW (formerly known as the Labour Council of New South Wales), and a representative of the asbestos claimants, which we collectively refer to as the Representatives. The statutory scheme that the Company proposed on July 14, 2004 was not accepted by the Representatives.

The Company continues to believe that, apart from the obligations it voluntarily assumed under the Final Funding Agreement described herein and as discussed below under the subheading “Interim Funding and

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ABN 60 Indemnity,” under current Australian law, it is not legally liable for any shortfall in the assets of Amaca, Amaba, the Foundation, the ABN 60 Foundation or ABN 60.

Following the release of the SCI report, the Representatives and others indicated that they would encourage or continue to encourage consumers and union members in Australia and elsewhere to ban or boycott the Company’s products, to demonstrate or otherwise create negative publicity toward the Company in order to influence the Company’s approach to the discussions with the NSW Government or to encourage governmental action if the discussions were unsuccessful. The Company’s financial position, results of operations and cash flows were affected by such bans and boycotts, although the impact was not material. The Representatives and others also indicated that they might take actions in an effort to influence the Company’s shareholders, a significant number of which are located in Australia, to approve any proposed arrangement. Pursuant to the Final Funding Agreement, the Representatives agreed to use their best endeavors to achieve forthwith the lifting of all bans or boycotts on any products manufactured, produced or sold by the Company, and the Company and the Representatives signed a deed of release in December 2005 under which the Company agreed to release the Representatives and the members of the ACTU and UnionsNSW from civil liability arising in relation to bans or boycotts instituted as a result of the events described above. Such releases did not extend to any new bans or boycotts, if applicable, implemented after the date of signing of the Final Funding Agreement, or to any bans or boycotts which persisted beyond January 1, 2006. The Company is aware of a number of bans or boycotts having been lifted, and is monitoring the progress towards the lifting of a number of remaining bans or boycotts. However, if the conditions precedent to the Final Funding Agreement are not satisfied or if for any other reason that agreement is not implemented, it remains the case that fresh bans or boycotts could be implemented against the Company’s products. Any such measures, and the influences resulting from them, could have a material adverse impact on the Company’s financial position, results of operations and cash flows.

On October 28, 2004, the NSW Premier announced that the NSW Government would seek the agreement of the Ministerial Council, comprising Ministers of the Commonwealth and the Australian States and Territories, to allow the NSW Government to pass legislation which he announced would “wind back James Hardie’s corporate restructure and rescind the cancellation of A\$1.9 billion in partly-paid shares.” The announcement said that “the laws will effectively enforce the liability (for asbestos-related claims) against the Dutch parent company.”

On November 5, 2004, the Australian Attorney-General and the Parliamentary Secretary to the Treasurer (the two relevant ministers of the Australian Federal Government) issued a news release stating that the Ministerial Council for Corporations (the relevant body of Federal, State and Territory Ministers), or MINCO, had unanimously agreed “to support a negotiated settlement that will ensure that victims of asbestos-related diseases receive full and timely compensation from James Hardie” and if “the current negotiations between James Hardie, the ACTU and asbestos victims do not reach an acceptable conclusion, MINCO also agreed in principle to consider options for legislative reform.” The news release of November 5, 2004 indicated that treaties to enforce Australian judgments in Dutch and U.S. courts are not required, but that the Australian Government has been involved in communications with Dutch and U.S. authorities regarding arrangements to ensure that Australian judgments are able to be enforced where necessary. If the conditions precedent to the full implementation of the Final Funding Agreement are not satisfied or if the otherwise the Final Funding Agreement is terminated by James Hardie, the Company is aware that legislative intervention may ensue, but has no detailed information as to the content of any such legislation.

Heads of Agreement

On December 21, 2004, the Company announced that it had entered into a non-binding Heads of Agreement with the NSW Government and the Representatives which was expected to form the basis of a proposed binding agreement under which a subsidiary of the Company would agree to provide, and the Company would guarantee, funding payments to a special purpose fund established to provide funding on a long-term basis to be applied towards meeting proven asbestos-related personal injury and death claims arising from exposure to asbestos occurring in Australia and made in proceedings in an Australian court or tribunal,

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which we refer to as the Claims, against the Former James Hardie Companies. The Heads of Agreement set out the key principles in a more detailed legally binding agreement.

Negotiations between the NSW Government and the Company as to the terms of such legally binding agreement continued throughout 2005 and resulted in the execution of the Final Funding Agreement as described herein.

Extension of Heads of Agreement to Cover Baryulgil Claims

On April 15, 2005, the Company announced that it had extended the coverage of the funding arrangements agreed under the Heads of Agreement to enable the SPF to settle or meet proven Claims by members of the Baryulgil community in Australia against Asbestos Mines Pty Ltd, which we refer to as Asbestos Mines, which conducted asbestos-related mining activities in Baryulgil, NSW. Asbestos Mines began mining in Baryulgil in 1944 as a joint venture between Wunderlich Ltd (now Seltsam Ltd, an entity of CSR Ltd) and a former James Hardie subsidiary (now Amaca Pty Ltd). From 1954 until 1976, Asbestos Mines was a wholly owned subsidiary of James Hardie Industries Limited (now ABN 60). Asbestos Mines, which has subsequently been renamed Marlew Mining Pty Ltd, has not been part of the James Hardie Group since 1976, when it was sold to Woodsreef Mines Ltd (subsequently renamed Mineral Commodities Ltd). The Company has no current right to access any Claims information in relation to Claims against Asbestos Mines, and has no current involvement in the management or settlement of such Claims.

Interim Funding and ABN 60 Indemnity

The Company has previously announced a number of measures in relation to the funding position of the Foundation prior to the Company's entry into the Final Funding Agreement. On December 3, 2004, and in part as a result of initiatives undertaken by the Company, the Foundation received a payment of A\$88.5 million from ABN 60 for use in processing and meeting asbestos-related claims pursuant to the terms of a deed of covenant and indemnity which ABN 60, Amaca and Amaba had entered into in February 2001.

The Company facilitated the payment of such funds by granting an indemnity (under a separate deed of indemnity) to the directors of ABN 60, which it announced on November 16, 2004. Under the terms of that indemnity, the Company agreed to meet any liability incurred by the ABN 60 directors resulting from the release of the A\$88.5 million by ABN 60 to the Foundation. The Company believes that the release of funding by ABN 60 is in accordance with law and effective contracts and therefore the Company should not incur liability under this indemnity. The Company has neither received any claim nor made any payments in relation to this indemnity.

Additionally, on November 16, 2004, the Company offered to provide funding to the Foundation on an interim basis for a period of up to six months from that date. Such funding would only be provided once existing Foundation funds (in particular, funding available to Amaca and Amaba) had been exhausted. On the basis of updated information provided to KPMG Actuaries by representatives of the Foundation as to the incidence of claims and the current net assets of the Amaca and Amaba, and assuming such incidence of claims continues, the Company considers that it is unlikely that the Foundation funds will be exhausted before the commencement of calendar year 2007.

On March 31, 2005, the Company announced that it would extend the timing of its commitment to assist the Foundation to obtain interim funding, if necessary, prior to the Final Funding Agreement being finalized in accordance with the updated timetable announced on that date.

Under the Final Funding Agreement entered into on December 1, 2005, the Company and James Hardie 117 Pty Limited (a subsidiary of the Company) agreed to assist in ensuring that funding is available to Amaca, Amaba and ABN 60, for the purposes of meeting their liabilities in respect of Australian personal injury and death claims arising from exposure to asbestos in Australia. Such funding was agreed to be provided subject to the existing sources of funding of Amaca, Amaba and ABN 60 being exhausted (which, to the Company's knowledge, has not yet occurred).

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This interim funding commitment was provided for the period from the date of the agreement until the earlier of the date of full implementation of that agreement, or the “condition precedent date,” being June 30, 2006 or such later date as the parties may agree in writing. On several occasions, the Company and the NSW Government have agreed to extend the condition precedent date. Currently the condition precedent date has been set to September 30, 2006 and discussions are currently taking place between the Company and the NSW Government regarding a further extension. The extent and manner of assistance to be provided and the terms and conditions thereof remain to be agreed between the Company and those entities.

The Company has not recorded a provision for either the indemnity or the potential payments under the interim funding proposal. The Company has not been required to make any payments pursuant to this commitment.

With regard to the ABN 60 indemnity, there is no maximum value or limit on the amount of payments that may be required. As such, the Company is unable to disclose a maximum amount that could be required to be paid. The Company believes, however, that the expected value of any potential future payments resulting from the ABN 60 indemnity is zero and that the likelihood of any payment being required under this indemnity is remote.

Releases From Civil Liability

The Final Funding Agreement was supplemented by legislation passed by the NSW Government to provide releases to the James Hardie Group and to current and former directors, officers, employees, agents and advisers of James Hardie group members from all civil liabilities in connection with (among other matters) the establishment and funding (or underfunding) of the Foundation as described above, the corporate reorganizations of the James Hardie Group in 2001 and other matters examined by the SCI.

The full form of the statutory releases is set out in legislation passed by the NSW Parliament and contained in the *James Hardie (Civil Liability) Act 2005* and the *James Hardie (Civil Penalty Compensation Release) Act 2005*. The term “civil liabilities” is not defined in that legislation and therefore bears its ordinary meaning under Australian law. When introducing that legislation into the NSW Parliament, the Attorney General of New South Wales stated that the legislation was intended to extinguish liabilities for civil penalties for which a compensation order may be imposed under the *Corporations Act 2001*(Cth), but it was not intended to release the released persons from any other kind of civil penalty orders that may be imposed (including any liabilities for fines, orders banning individuals from being directors, or court declaration that a contravention of a civil penalty provision has occurred). Australian courts may have regard to those statements in determining the scope of civil liabilities released under this legislation, where they consider that the natural and ordinary meaning of “civil liabilities” is ambiguous or obscure.

That legislation also released certain persons in relation to the entry by JHI NV and the Performing Subsidiary into the Heads of Agreement, the Final Funding Agreement and the Related Agreements and their implementation by the James Hardie Group, and the circumstances giving rise to the same. However, such releases did not affect the obligations of JHI NV and the Performing Subsidiary of their obligation set out in the Final Funding Agreement or Related Agreements.

The NSW Government has also undertaken to refrain from taking any action inconsistent with such releases and extinguishments. The releases and extinguishments contained in the legislation described above are permanent in relation to all released persons who are natural persons. In relation to companies and other non-natural persons who were released under that legislation, the releases and extinguishments may be suspended by the NSW Government if the Performing Subsidiary is and remains in breach of any obligation to make a funding payment under the Final Funding Agreement or of its obligations not to undertake certain prejudicial specified dealings, and the Performing Subsidiary or the Company has not remedied the breach within three months of the Company having received a notice under the Final Funding Agreement.

Actuarial Study; Claims Estimate

The Company commissioned an updated actuarial study of potential asbestos-related liabilities as of March 31, 2006. Based on the results of these studies, it is estimated that the discounted value of the central

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estimate for claims against the Former James Hardie Companies was approximately A\$1.52 billion (\$1.14 billion). The undiscounted value of the central estimate of the asbestos-related liabilities of Amaca and Amaba as determined by KPMG Actuaries was approximately A\$3.08 billion (\$2.3 billion). Actual liabilities of those companies for such claims could vary, perhaps materially, from the central estimate described above. This central estimate is calculated in accordance with Australian Actuarial Standards, which differ from accounting principles generally accepted in the United States.

In estimating the potential financial exposure, KPMG Actuaries made assumptions related to the total number of claims which were reasonably estimated to be asserted through 2071, the typical cost of settlement (which is sensitive to, among other factors, the industry in which the plaintiff claims exposure, the alleged disease type and the jurisdiction in which the action is being brought), the legal costs incurred in the litigation of such claims, the rate of receipt of claims, the settlement strategy in dealing with outstanding claims and the timing of settlements.

Further, KPMG Actuaries have relied on the data and information provided by the Foundation and Amaca Claim Services, Amaca Pty Ltd (under NSW External Administration), which we refer to as ACS, and assumed that it is accurate and complete in all material respects. The actuaries have not verified the information independently nor established the accuracy or completeness of the data and information provided or used for the preparation of the report.

Due to inherent uncertainties in the legal and medical environment, the number and timing of future claim notifications and settlements, the recoverability of claims against insurance contracts, and estimates of future trends in average claim awards, as well as the extent to which the above-named entities will contribute to the overall settlements, the actual amount of liability could differ materially from that which is currently projected.

A sensitivity analysis has been performed to determine how the actuarial estimates would change if certain assumptions (i.e., the rate of inflation and superimposed inflation, the average costs of claims and legal fees, and the projected numbers of claims) were different from the assumptions used to determine the central estimates. This analysis shows that the discounted central estimates could be in a range of A\$1.0 billion (\$0.7 billion) to A\$2.5 billion (\$1.8 billion) (undiscounted estimates of A\$1.8 billion (\$1.4 billion) to A\$5.3 billion (\$3.9 billion) as of March 31, 2006). It should be noted that the actual cost of the liabilities could be outside of that range depending on the results of actual experience relative to the assumptions made.

The potential range of costs as estimated by KPMG Actuaries is affected by a number of variables such as nil settlement rates (where no settlement is payable by the Former James Hardie Companies because the claim settlement is borne by other asbestos defendants (other than the Former James Hardie subsidiaries) which are held liable), peak year of claims, past history of claims numbers, average settlement rates, past history of Australian asbestos-related medical injuries, current number of claims, average defense and plaintiff legal costs, base wage inflation and superimposed inflation. The potential range of losses disclosed includes both asserted and unasserted claims. While no assurances can be provided, if the Final Funding Agreement is approved by all of the necessary parties, including our Board of Directors, shareholders and lenders, the Company expects to be able to partially recover losses from various insurance carriers. As of March 31, 2006, KPMG Actuaries' undiscounted central estimate of asbestos-related liabilities was A\$3.1 billion (\$2.2 billion). This undiscounted central estimate is net of expected insurance recoveries of A\$504.8 million (\$379.9 million) after making a general credit risk allowance for bad debt insurance carriers and an allowance for A\$65.5 million (\$49.3 million) of "by claim" or subrogation recoveries from other third parties.

Currently, the timing of any potential payments is uncertain because the conditions precedent to the Final Funding Agreement have not been satisfied. In addition, the Company has not yet incurred any settlement costs pursuant to its offer to provide the Foundation with interim funding, which is described above under the subheading "Interim Funding and ABN 60 Indemnity" because the Foundation continues to meet all claims of Amaca and Amaba.

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Claims Data

The following table, provided by KPMG Actuaries, shows the number of claims pending as of March 31, 2006 and 2005.

	Years Ended March 31,	
	2006	2005
Australia	556	712
New Zealand	—	—
Unknown-Court Not Identified(1)	20	36
USA	1	1

- (1) The “Unknown — Court Not Identified” designation reflects that the information for such claims had not been, as of the date of publication, entered into the database which the Foundation maintains. Over time, as the details of “unknown” claims are provided to the Foundation, the Company believes the database is updated to reflect where such claims originate. Accordingly, the Company understands the number of unknown claims pending fluctuates due to the resolution of claims as well as the reclassification of such claims.

For the years ended March 31, 2006, 2005 and 2004, the following tables, provided by KPMG Actuaries, show the claims filed, the number of claims dismissed, settled or otherwise resolved for each period, and the average settlement amount per claim.

	Australia Years Ended March 31,		
	2006	2005	2004
Number of claims filed	346	489	379
Number of claims dismissed	97	62	119
Number of claims settled or otherwise resolved	405	402	316
Average settlement amount per claim	A\$ 151,883	A\$ 157,594	A\$ 167,450
Average settlement amount per claim	\$ 114,322	\$ 116,572	\$ 116,127

	Unknown — Court Not Identified Years Ended March 31,		
	2006	2005	2004
Number of claims filed	6	7	1
Number of claims dismissed	10	20	15
Number of claims settled or otherwise resolved	12	2	—
Average settlement amount per claim	A\$ 198,892	A\$ 47,000	A\$ —
Average settlement amount per claim	\$ 149,706	\$ 34,766	\$ —

	USA Years Ended March 31,		
	2006	2005	2004
Number of claims filed	—	—	—
Number of claims dismissed	—	3	1
Number of claims settled or otherwise resolved	—	1	—
Average settlement amount per claim	A\$ —	A \$228,293	A\$ —
Average settlement amount per claim	\$ —	\$168,868	\$ —

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The following table, provided by KPMG Actuaries, shows the activity related to the numbers of open claims, new claims, and closed claims during each of the past five years and the average settlement per settled claim and case closed.

	As of March 31,				
	2006	2005	2004	2003	2002
Number of open claims at beginning of year	749	743	814	671	569
Number of new claims	352	496	380	409	375
Number of closed claims	524	490	451	266	273
Number of open claims at year-end	577	749	743	814	671
Average settlement amount per settled claim	A \$153,236	A \$157,223	A \$167,450	A \$201,200	A \$197,941
Average settlement amount per settled claim	\$115,341	\$116,298	\$116,127	\$112,974	\$101,603
Average settlement amount per case closed	A \$121,945	A \$129,949	A \$117,327	A \$177,752	A \$125,435
Average settlement amount per case closed	\$ 91,788	\$ 96,123	\$ 81,366	\$ 99,808	\$ 64,386

The Company has not had any responsibility or involvement in the management of claims against ABN 60 since the time ABN 60 left the James Hardie Group in 2003. Since February 2001, when Amaca and Amaba were separated from the James Hardie Group, neither the Company nor any of its current subsidiaries has had any responsibility or involvement in the management of claims against those entities. Prior to that date, the principal entity potentially involved in relation to such claims was ABN 60, which has not been a member of the James Hardie Group since March 2003. However, the Final Funding Agreement and associated New South Wales legislation contemplates that the SPF will have both the responsibility for and arrangement of claims against the Former James Hardie Companies, and that the Company will have the right to appoint a majority of the directors of the SPF unless a special default or insolvency event arises, as explained further above.

On October 26, 2004, the Company, the Foundation and KPMG Actuaries entered into an agreement under which the Company would be entitled to obtain a copy of the actuarial report prepared by KPMG Actuaries in relation to the claims liabilities of the Foundation and Amaba and Amaca, and would be entitled to publicly release the final version of such reports. Under the terms of the Final Funding Agreement, but subject to it being implemented, the Company has obtained similar rights of access to actuarial information produced for the SPF by the actuary to be appointed by the SPF (which we refer to as the Approved Actuary). The Company's future disclosures with respect to claims statistics is subject to it obtaining such information from the Approved Actuary. The Company has had no general right (and has not obtained any right under the Final Funding Agreement) to audit or otherwise require independent verification of such information or the methodologies to be adopted by the Approved Actuary. As a result, the Company cannot make any representations or warranties as to the accuracy or completeness of the actuarial information disclosed herein or that may be disclosed in the future.

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SCI and Other Related Expenses

The Company has incurred substantial costs associated with the Special Commission of Inquiry, or SCI, and may incur material costs in the future related to the SCI or subsequent legal proceedings. The following are the components of SCI and other related expenses:

	Years Ended March 31,	
	2006	2005
	(In millions)	
SCI	\$ —	\$ 6.8
Internal investigation	—	4.9
ASIC investigation	0.8	1.2
Severance and consulting	0.1	6.0
Resolution advisory fees	9.8	6.4
Funding advice	2.9	0.6
Other	3.8	2.2
Total SCI and other related expenses	<u>\$ 17.4</u>	<u>\$ 28.1</u>

Internal investigation costs reflect costs incurred by the Company in connection with an internal investigation conducted by independent legal advisors to investigate allegations raised during the SCI and the preparation and filing of the Company's annual financial statements in the United States.

Australian Securities and Investments Commission Investigation

ASIC has announced that it is conducting an investigation into the events examined by the SCI, without limiting itself to the evidence compiled by the SCI. ASIC has served notices to produce relevant documents upon the Company and various directors and officers of the Company and upon certain of the Company's advisers and auditors at the time of the separation and restructure transactions described above. ASIC has also served notices requiring the Company and ABN 60 to produce certain computerized information and requiring certain current and former directors and officers of ABN 60 or the Company to present themselves for examination by ASIC delegates. So far as the Company is aware, individuals who have been required to attend such examinations have done so. To date, ASIC has announced that it is investigating various matters, but it has not specified the particulars of alleged contraventions under investigation, nor has it announced that it has reached any conclusion that any person or entity has contravened any relevant law.

To assist ASIC's investigation, the Australian Federal Government enacted legislation to abrogate the legal professional privilege which would otherwise have attached to certain documents relevant to matters under investigation or to any future civil proceedings to be taken. The legislation is set out in the *James Hardie (Investigations and Proceedings) Act 2004*.

The Company may incur liability to meet the costs of current or former directors, officers or employees of the James Hardie Group to the extent that those costs are covered by indemnity arrangements granted by the Company to those persons. To date, claims have been received from certain current or former officers in relation to the ASIC investigation, and in relation to the examination of these officers by ASIC delegates, the amount of which cannot be assessed at present. In relation to these claims and any others that may arise, the Company may be reimbursed in whole or in part under directors' and officers' insurance policies maintained by the Company.

Financial Position of the Foundation

On the basis of the current cash and financial position of the Foundation's subsidiaries (Amaca and Amaba) and following the Company's entry into the Heads of Agreement, the applications previously made to the Supreme Court of NSW by the Foundation for the appointment of a provisional liquidator to the

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Foundation's subsidiaries were dismissed with the Foundations consent. Such applications have now been rendered unnecessary by the passage of the civil liability release legislation described above.

The potential for Amaba, Amaca or ABN 60 to be placed into insolvency has been further reduced by legislation passed in NSW (the *James Hardie Former Subsidiaries (Winding Up and Administration) Act 2005*), parts of which came into force on December 2, 2005 and which will, when fully effective, replace the *James Hardie Former Subsidiaries (Special Provisions) Act 2005*. That legislation maintains the *status quo* of Amaca, Amaba and ABN 60, including by providing for a statutory form of administration for those entities so as to prevent them being placed into administration or liquidation under the provisions of the Australian Corporations Act which would usually apply to an insolvent Australian company. The legislation also sought to ensure that the directors of those entities would not seek to remove the assets or the register of shares in those entities outside New South Wales.

The Company believes it is possible that future costs related to the Company's implementation of the Final Funding Agreement may be material. The Company does not expect any material additional costs to be incurred in connection with the Special Commission of Inquiry.

Tax Contingencies

Due to our size and the nature of our business, we are subject to ongoing reviews by the Internal Revenue Service, or IRS, the ATO and other taxing jurisdictions on various tax matters, including challenges to various positions we assert on our income tax returns. We accrue for tax contingencies based upon our best estimate of the taxes ultimately expected to be paid, which we update over time as more information becomes available. Such amounts are included in taxes payable or other non-current liabilities, as appropriate. If we ultimately determine that payment of these amounts is unnecessary, we will reverse the liability and recognize a tax benefit during the period in which we determine that the liability is no longer necessary. We record an additional charge in the period in which we determine that the recorded tax liability is less than we expect the ultimate assessment to be.

In fiscal year 2006, we settled certain tax audits and paid all additional amounts due for the applicable fiscal years and recorded a \$20.7 million tax benefit to reduce amounts accrued in excess of all amounts paid.

In fiscal year 2005, we settled certain tax audits and filed amended income tax returns and paid additional tax for the applicable fiscal years. We recorded a \$2.5 million tax benefit to reduce amounts accrued in excess of all amounts paid.

Relevant tax authorities from various jurisdictions in which we operate are in the process of auditing our respective jurisdictional income tax returns for various ranges of years. Of the audits currently being conducted, none have progressed sufficiently to predict their ultimate outcome. We have accrued income tax liabilities for these audits based upon knowledge of all relevant facts and circumstances, taking into account existing tax laws, our experience with previous audits and settlements, the status of current tax examinations, and how the tax authorities view certain issues.

Australian Taxation Office Assessment

In March 2006, RCI Pty Ltd, a wholly owned subsidiary of ours, which we refer to as RCI, received an amended assessment from the ATO in respect of RCI's income tax return for the year ended March 31, 1999. The amended assessment relates to the amount of net capital gains arising as a result of an internal corporate restructure carried out in 1998 and has been issued pursuant to the discretion granted to the Commissioner of Taxation under Part IVA of the Income Tax Assessment Act 1936. The original amended assessment issued

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to RCI was for a total of A\$412.0 million. However, after a subsequent remission of general interest charges by the ATO, the total is now A\$378.0 million, and comprised the following at March 31, 2006:

	<u>\$</u>	<u>A\$</u>
	(In millions)	
Primary tax after allowable credits	\$ 129.5	A \$172.0
Penalties(1)	32.4	43.0
General interest charges	122.7	163.0
Total amended assessment	<u>\$ 284.6</u>	<u>A \$378.0</u>

(1) Represents 25% of primary tax.

In late 2005, the Tax Laws Amendment (Improvements to Self Assessment Act (No. 2)) 2005 of Australia, or the ROSA Act, went into effect. Prior to the ROSA Act becoming law, the ATO had the power to amend earlier tax assessments to give effect to a determination under the general anti-avoidance provisions of the tax legislation, Part IVA, within six years after the date on which tax became due and payable under the earlier assessment. The ROSA Act changed this period from six to four years. Unlike the other changes made by the ROSA Act to the ATO's powers to amend earlier assessments (which apply only to the 2005 and later tax years), the changes to Part IVA operated immediately from royal assent on December 15, 2005. The amended assessment was issued to RCI to give effect to a Part IVA determination after the ROSA Act became law, but was issued after the four year period had expired (although just before the old six year period had expired).

On June 23, 2006, following negotiation with the ATO regarding payment options for the amended assessment, we were advised by the ATO that, in accordance with the ATO Receivable Policy, the Company is able to make a payment of 50% of the A\$378.0 million (\$284.6 million), being A\$189.0 million (\$140.4 million — converted using the assets and liabilities rate at June 30, 2006), and provide a guarantee from James Hardie Industries N.V. in favor of the ATO for the remaining 50% unpaid pending outcome of an appeal against amended assessment. Following enactment of Tax Laws Amendment (2006 Measures No. 3) 2006 of Australia, which we refer to as TLA No. 3, payment of this 50% became due and was paid on July 5, 2006.

On June 30, 2006, TLA No. 3 was enacted. TLA No. 3 retrospectively ensures that the relevant Part IVA changes only take effect from the 2006 and later tax years. The consequence of TLA No. 3 is that the amended assessment is not invalid.

We believe RCI's view of its tax position will ultimately prevail in this matter. Accordingly, it is expected that any amount paid on July 5, 2006 (or any later date) would be recovered by RCI (with interest) at the time RCI is successful in its appeal against the amended assessment. It is our intention to treat this payment as a receivable.

RCI strongly disputes the amended assessment and is pursuing all avenues of objection and appeal to contest the ATO's position in this matter. The ATO has confirmed that RCI has a reasonably arguable position that the amount of net capital gains arising as a result of the corporate restructure carried out in 1998 has been reported correctly in the fiscal year 1999 tax return and that Part IVA does not apply. As a result, the ATO reduced the amount of penalty from an automatic 50% of primary tax that would otherwise apply in these circumstances, to 25% of primary tax. In Australia, a reasonably arguable position means that the tax position is about as likely to be correct as it is not correct. We and RCI received legal and tax advice at the time of the transaction, during the ATO inquiries and following receipt of the amended assessment. We believe that the tax position reported in RCI's tax return for the 1999 fiscal year will be upheld on appeal. Accordingly, at this time, we are unable to determine with any certainty whether any amount will ultimately become payable by RCI. Therefore, we believe that the probable requirements under SFAS No. 5, "Accounting for Contingencies," for recording a liability have not been met and therefore we have not recorded a liability as of June 30, 2006 for the remainder of the amended assessment.

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As a result of the amended assessment described above imposed on RCI, it is expected that the free cash flow of the Company and its subsidiaries for the year ended March 31, 2007 will be negative. As a result, no annual payment will be required under the Final Funding Agreement for the financial year ended March 31, 2007, even if the conditions to that agreement are satisfied in full or otherwise dealt with to the satisfaction of the parties thereto before that date. This result arises since each annual payment due under the Final Funding Agreement on July 1 each year is calculated by reference to the free cash flow of the previous full financial year, and is subject to there being positive free cash flow during that financial year and to the operation of a free cash flow cap. However, this cap does not affect the amount of the initial funding to be made under the Final Funding Agreement.

For further information on the amended ATO assessment, see Item 3, “Key Information — Risk Factors.”

Item 4A. *Unresolved Staff Comments*

None.

Item 5. *Operating and Financial Review and Prospects*

The following discussion of our financial condition and results of operations should be read in conjunction with the consolidated financial statements and the related notes thereto, included under Item 18.

Overview

We intend this discussion to provide information that will assist in understanding our March 31, 2006 consolidated financial statements, the changes in significant items in those consolidated financial statements from year to year, and the primary reasons for those changes. This discussion includes information about our critical accounting policies and how these policies affect our consolidated financial statements, and information about the consolidated financial results of each business segment to provide a better understanding of how each segment and its results affect our financial condition and results of operations as a whole.

Our results for fiscal year 2006 were substantially affected by a provision of \$715.6 million which we recorded, as of March 31, 2006, for estimated future asbestos-related compensation payments. We also incurred significant costs associated with the Special Commission of Inquiry, or SCI, and other related matters during fiscal years 2006 and 2005. Information regarding our asbestos-related matters and the SCI and other related matters can be found in this discussion, Item 3, “Key Information — Risk Factors,” Item 4, “Information on the Company — Legal Proceedings” and Notes 12 and 20 to our consolidated financial statements in Item 18.

As we disclosed in our results announcement for the quarter ended June 30, 2006, which we furnished to the SEC on a Form 6-K dated August 25, 2006, we had to increase our asbestos provision by \$27.2 million to \$742.8 million as of June 30, 2006 as a result of exchange rate movements between the Australian and the U.S. dollars, which significantly affected reported earnings due to the asbestos provision’s denomination in Australian dollars and the fact that our financial results are reported in U.S. dollars. See also, Item 3, “Key Information — Risk Factors.” Because the financial information in this Annual Report on Form 20-F is as of the year ended March 31, 2006, it does not reflect this subsequent event.

The Company and the Building Product Markets

Based on net sales, we believe we are the largest manufacturer of fiber cement products and systems for internal and external building construction applications in the United States, Australia, New Zealand and the Philippines. Our current primary geographic markets include the United States, Australia, New Zealand, the Philippines and Europe. Through significant research and development expenditure, we develop key product and production process technologies that we patent or hold as trade secrets. We believe that these technologies give us a competitive advantage.

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We manufacture numerous types of fiber cement products with a variety of patterned profiles and surface finishes for a range of applications including external siding and soffit lining, trim, fencing, internal linings, facades, floor and tile underlayments, drainage pipes and decorative columns. Our products are used in various market segments, including new residential construction, manufactured housing, repair and remodel and a variety of commercial and industrial construction applications. We believe that in certain construction applications, our fiber cement products and systems provide a combination of distinctive performance, design and cost advantages over competing building products and systems.

Our products are primarily sold in the residential housing markets. Residential construction levels fluctuate based on new home construction activity and the repair and renovation of existing homes. These levels of activity are affected by many factors, including home mortgage interest rates, inflation rates, unemployment levels, existing home sales, the average age and the size of housing inventory, consumer home repair and renovation spending, gross domestic product growth and consumer confidence levels. These factors were generally favorable during fiscal year 2006, resulting in healthy levels of residential construction and home repair and renovation activity.

Fiscal Year 2006 Key Results

As of March 31, 2006, we recorded a provision of \$715.6 million for estimated future asbestos-related compensation payments (asbestos provision).

Total net sales increased 23% to \$1,488.5 million in fiscal year 2006. However, the asbestos provision resulted in an operating loss of \$434.9 million compared to an operating profit of \$196.2 million in fiscal year 2005. We reported a loss from continuing operations of \$506.7 million because of the asbestos provision.

Our largest market is North America, where fiber cement is one of the fastest growing segments of the external siding market. During fiscal year 2006, USA Fiber Cement net sales contributed approximately 82% of total net sales, and its operating income was the primary contributor of total Company operating income (before the asbestos provision). Net sales increased due to increased sales volume and a higher average net sales price. Operating (loss) income increased from fiscal year 2005 primarily due to increased sales, which were partially offset by higher unit costs, freight costs and selling, general and administrative expense.

Asia Pacific net sales contributed approximately 16% of total net sales, and its operating income was the second largest contributor of total Company operating income (before the asbestos provision) in 2006. Net sales increased in fiscal year 2006 in our Australia and New Zealand business, but fell in our Philippines Fiber Cement business. The increase in net sales in our Australia and New Zealand businesses, which was due to favorable exchange rates and increased volume, was partially offset by a reduction in average net sales price. Sales in our Philippines business were adversely affected during fiscal year 2006 by weaker domestic demand and increased competition in export markets. Asia Pacific operating income decreased primarily due to increased costs in Australia.

Our emerging businesses of Europe Fiber Cement and USA Hardie Pipe continued to make good progress. Our USA Hardie Pipe business reduced its loss compared to last year even though sales volumes were lower. Our Europe Fiber Cement business increased its sales as demand increased. On April 18, 2006, we announced that we would close our Artisan[®] roofing business. Following a review of the carrying value of the assets related to this operation, an asset impairment charge of \$13.4 million was recorded in fiscal year 2006.

For further information regarding our business and operations, please see Item 4, "Information on the Company."

Critical Accounting Policies

The accounting policies affecting our financial condition and results of operations are more fully described in Note 2 to our consolidated financial statements included in Item 18. Certain of our accounting policies require the application of judgment by management in selecting appropriate assumptions for calculating financial estimates, which inherently contain some degree of uncertainty. Management bases its estimates on historical experience and other assumptions that are believed to be reasonable under the

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circumstances, the results of which form the basis for making judgments about the reported carrying value of assets and liabilities and the reported amounts of revenues and expenses that may not be readily apparent from other sources. Actual results may differ from these estimates under different assumptions and conditions. We consider the following policies to be the most critical in understanding the judgments that are involved in preparing our consolidated financial statements and the uncertainties that could impact our results of operations, financial condition and cash flows.

Accounting for Contingencies

We account for loss contingencies in accordance with SFAS No. 5, “Accounting for Contingencies,” under which we accrue amounts for losses arising from contingent obligations when the obligations are probable and the amounts are reasonably estimable. As facts concerning contingencies become known, we reassess our situation and make appropriate adjustments to the consolidated financial statements. For additional information regarding asbestos-related matters and the Australian Taxation Office, or ATO, assessment, see Item 3, “Key Information — Risk Factors,” Item 4, “Information on the Company — Legal Proceedings” and Notes 12 and 13 to our consolidated financial statements in Item 18.

Accounting for Asbestos-Related Payments

The amount of the asbestos provision is based on our best estimate of the probable outcome. This estimate, which reflects the terms of the Final Funding Agreement, has been calculated by reference to (but is not exclusively based upon) the most recent actuarial estimate of projected future cash flows prepared by KPMG Actuaries. The asbestos provision includes cash flows that are undiscounted and uninflated and also includes an allowance for the future operating costs of the special purpose fund, or SPF.

In estimating the potential financial exposure, KPMG Actuaries have made a number of assumptions. These include an estimate of the total number of claims by disease type which are reasonably estimated to be asserted through 2071, the typical average cost of a claim settlement (which is sensitive to, among other factors, the industry in which the plaintiff claims exposure, the alleged disease type and the jurisdiction in which the action is being brought), the legal costs incurred in the litigation of such claims, the proportion of claims for which liability is repudiated, the rate of receipt of claims, the settlement strategy in dealing with outstanding claims, the timing of settlements of future claims and the long-term rate of inflation of claim awards and legal costs.

Further, KPMG Actuaries have relied on the data and information provided by the Foundation and Amaca Claim Services, Amaca Pty Ltd (under NSW External Administration), which we refer to as ACS, and have assumed that it is accurate and complete in all material respects. The actuaries have neither verified the information independently nor established the accuracy or completeness of the data and information provided or used for the preparation of the report.

Due to inherent uncertainties in the legal and medical environment, the number and timing of future claim notifications and settlements, the recoverability of claims against insurance contracts, and estimates of future trends in average claim awards, as well as the extent to which the above-named entities will contribute to the overall settlements, the actual amount of liability could differ materially from that which is currently projected and could result in significant debits or credits to the consolidated balance sheet and statement of operations.

An updated actuarial assessment will be performed as of March 31st each year. Any changes in the estimate will be reflected as a charge or credit to our consolidated statement of operations at that date. Material adverse changes to the actuarial estimate would have an adverse effect on our business, results of operations and financial condition.

For additional information regarding our asbestos provision, see Item 3, “Key Information — Risk Factors,” Item 4, “Information on the Company — Legal Proceedings,” Item 5, “Operating Review and Prospect” and Notes 12 and 20 to our consolidated financial statements in Item 18.

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Sales

We record estimated reductions to sales for customer rebates and discounts including volume, promotional, cash and other rebates and discounts. Rebates and discounts are recorded based on management's best estimate when products are sold. The estimates are based on historical experience for similar programs and products. Management reviews these rebates and discounts on an ongoing basis and the related accruals are adjusted, if necessary, as additional information becomes available.

Accounts Receivable

We evaluate the collectibility of accounts receivable on an ongoing basis based on historical bad debts, customer credit-worthiness, current economic trends and changes in our customer payment activity. An allowance for doubtful accounts is provided for known and estimated bad debts. Although credit losses have historically been within our expectations, we cannot guarantee that we will continue to experience the same credit loss rates that we have in the past. Because our accounts receivable are concentrated in a relatively small number of customers, a significant change in the liquidity or financial position of any of these customers could impact their ability to make payments and result in the need for additional allowances which would decrease our net sales. For additional information regarding our customer concentration, see Item 3, "Key Information — Risk Factors."

Inventory

Inventories are recorded at the lower of cost or market. In order to determine market, management regularly reviews inventory quantities on hand and evaluates significant items to determine whether they are excess, slow-moving or obsolete. The estimated value of excess, slow-moving and obsolete inventory is recorded as a reduction to inventory and an expense in cost of sales in the period it is identified. This estimate requires management to make judgments about the future demand for inventory, and is therefore at risk to change from period to period. If our estimate for the future demand for inventory is greater than actual demand and we fail to reduce manufacturing output accordingly, we could be required to record additional inventory reserves, which would have a negative impact on our gross profit.

Accrued Warranty Reserve

We offer various warranties on our products, including a 50-year limited warranty on certain of our fiber cement siding products in the United States. Because our fiber cement products have only been used in North America since the early 1990s, there is a risk that these products will not perform in accordance with our expectations over an extended period of time. A typical warranty program requires that we replace defective products within a specified time period from the date of sale. We record an estimate for future warranty-related costs based on an analysis of actual historical warranty costs as they relate to sales. Based on this analysis and other factors, we adjust the amount of our warranty provisions as necessary. Although our warranty costs have historically been within calculated estimates, if our experience is significantly different from our estimates, it could result in the need for additional reserves. For additional information regarding warranties, see Item 3, "Key Information — Risk Factors."

Accounting for Income Tax

We account for income taxes according to SFAS No. 109, "Accounting for Income Taxes," under which we compute our deferred tax assets and liabilities, which arise from differences in the timing of recognition of revenue and expense for tax and financial statement purposes. We must assess whether, and to what extent, we can recover our deferred tax assets. If full or partial recovery is unlikely, we must increase our income tax expense by recording a valuation allowance against the portion of deferred tax assets that we cannot recover. We believe that we will recover all of the deferred tax assets recorded (net of valuation allowance) on our consolidated balance sheet at March 31, 2006. However, if facts later indicate that we will be unable to recover all or a portion of our net deferred tax assets, our income tax expense would increase in the period in which we determine that recovery is unlikely.

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Due to our size and the nature of our business, we are subject to ongoing reviews by taxing jurisdictions on various tax matters, including challenges to various positions we assert on our income tax returns. We accrue for tax contingencies based upon our best estimate of the taxes ultimately expected to be paid, which we update over time as more information becomes available and include knowledge of all relevant facts and circumstances, taking into account existing tax laws, our experience with previous audits and settlements, the status of current tax examinations and how the tax authorities view certain issues. Such amounts are included in taxes payable or other non-current liabilities, as appropriate. If we ultimately determine that payment of these amounts is unnecessary, we reverse the liability and recognize a tax benefit during the period in which we determine that the liability is no longer necessary. We record an additional charge in the period in which we determine that the recorded tax liability is less than we expect the ultimate assessment to be.

For additional information, see Item 3, “Key Information — Risk Factors,” Item 4, “Information on the Company — Recent Developments,” and Notes 13 and 20 to our consolidated financial statements in Item 18.

Results of Operations

In fiscal years 2004 through 2006, there was a significant increase in net sales generated from our USA Fiber Cement operations primarily as a result of demand for our fiber cement products. To meet the increased demand, we have spent \$355.5 million in capital investments during fiscal years 2004 to 2006 in this segment.

The following table shows our selected financial and operating data for continuing operations, expressed in millions of U.S. dollars and as a percentage of total net sales:

	Fiscal Years Ended March 31,					
	2006		2005		2004	
Net sales:						
USA Fiber Cement	\$1,218.4	81.9%	\$ 939.2	77.6%	\$ 738.6	75.2%
Asia Pacific Fiber Cement	241.8	16.2	236.1	19.5	219.8	22.4
Other(1)	28.3	1.9	35.1	2.9	23.5	2.4
Total net sales	1,488.5	100.0	1,210.4	100.0	981.9	100.0
Cost of goods sold	(937.7)	(63.0)	(784.0)	(64.8)	(623.0)	(63.4)
Gross profit	550.8	37.0	426.4	35.2	358.9	36.6
Selling, general and administrative expenses	(209.8)	(14.1)	(174.5)	(14.4)	(162.0)	(16.5)
Research and development expenses	(28.7)	(1.9)	(21.6)	(1.8)	(22.6)	(2.3)
SCI and other related expenses	(17.4)	(1.2)	(28.1)	(2.3)	—	—
Impairment of roofing plant	(13.4)	(0.9)	—	—	—	—
Asbestos provision	(715.6)	(48.1)	—	—	—	—
Other operating expense	(0.8)	—	(6.0)	(0.5)	(2.1)	(0.3)
Operating (loss) income	(434.9)	(29.2)	196.2	16.2	172.2	17.5
Interest expense	(7.2)	(0.5)	(7.3)	(0.6)	(11.2)	(1.1)
Interest income	7.0	0.5	2.2	0.2	1.2	0.1
Other (expense) income	—	—	(1.3)	(0.1)	3.5	0.4
(Loss) income from continuing operations before income taxes	(435.1)	(29.2)	189.8	15.7	165.7	16.9
Income tax expense	(71.6)	(4.8)	(61.9)	(5.1)	(40.4)	(4.1)
(Loss) income from continuing operations	<u>\$ (506.7)</u>	<u>(34.0)%</u>	<u>\$ 127.9</u>	<u>10.6%</u>	<u>\$ 125.3</u>	<u>12.8%</u>

(1) Includes sales of fiber cement in Chile (fiscal year 2004 through July 2005 only), fiber reinforced concrete pipes in the United States, a roofing pilot plant in the United States and fiber cement operations

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in Europe. Our Chilean business was sold in July 2005. Our roofing pilot plant ceased operations in April 2006. See Item 4, “Information on the Company — Capital Expenditures and Divestitures” and Note 14 to our consolidated financial statements in Item 18.

The following table provides a breakdown of our operating (loss) income:

	Fiscal Years Ended March 31,		
	2006	2005	2004
		(In millions)	
USA Fiber Cement	\$ 342.6	\$ 241.5	\$ 195.6
Asia Pacific Fiber Cement	41.7	46.8	37.6
Research and Development	(15.7)	(17.5)	(17.6)
Other(1)	(26.5)	(11.8)	(15.9)
Total segment operating income	342.1	259.0	199.7
General Corporate	(61.4)	(62.8)	(27.5)
Asbestos provision	(715.6)	—	—
Total operating (loss) income	<u>\$ (434.9)</u>	<u>\$ 196.2</u>	<u>\$ 172.2</u>

- (1) Includes impairment charge of \$13.4 million in fiscal year 2006 related to the closure of our roofing pilot plant. See Item 4, “Information on the Company — Recent Developments.”

Year Ended March 31, 2006 Compared to Year Ended March 31, 2005

Total Net Sales. Total net sales increased 23% from \$1,210.4 million in fiscal year 2005 to \$1,488.5 million in fiscal year 2006. Net sales from USA Fiber Cement increased 30% from \$939.2 million in fiscal year 2005 to \$1,218.4 million in fiscal year 2006 due to continued growth in sales volume and a higher average net sales price. Net sales from Asia Pacific Fiber Cement increased 2% from \$236.1 million in fiscal year 2005 to \$241.8 million in fiscal year 2006 primarily due to increased higher sales volume in Australia and New Zealand. Other net sales decreased by 19% from \$35.1 million in fiscal year 2005 to \$28.3 million in fiscal year 2006, with this decline primarily due to the sale of our Chilean flat sheet business in July 2005.

USA Fiber Cement Net Sales. Net sales increased 30% from \$939.2 million in fiscal year 2005 to \$1,218.4 million in fiscal year 2006 due to increased sales volume and a higher average net sales price. Sales volume increased 18% from 1,855.1 million square feet in fiscal year 2005 to 2,182.8 million square feet in fiscal year 2006, due mainly to growth in primary demand and a resilient housing market. The average net sales price increased 10% from \$506 per thousand square feet in fiscal year 2005 to \$558 per thousand square feet in fiscal year 2006 due to price increases for some products that were implemented during fiscal year 2006 and proportionally stronger growth of differentiated, higher-priced products. Despite further modest interest rate increases, we did not experience the expected ‘cooling’ of the new housing construction market during fiscal year 2006. New housing construction activity was very strong over the full year as it continued to be buoyed by relatively low interest rates and strong housing prices. Repair and remodeling activity also remained very strong during fiscal year 2006.

The strong growth in sales volume was across both our interior and exterior product categories and our emerging and established geographic markets, reflecting further market penetration and the healthy new housing and repair and remodeling activity.

Demand for exterior products continued to grow in all key regions across the United States, and further market share gains were achieved at the expense of alternative materials, mainly vinyl and wood-based siding. There was strong sales growth in differentiated, higher-priced products, as well as in our core products.

Implementation of our ColorPlus® product business model in the emerging markets continued during fiscal year 2006. The model is aimed at improving the positioning of the ColorPlus® product range of pre-painted products in markets dominated by vinyl siding and increasing revenue and contribution per unit. All

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phases of the implementation are underway and progressing well. Sales of the ColorPlus® product range as a percentage of exterior product sales in the business' emerging markets almost doubled over fiscal year 2005. We intend to introduce ColorPlus® products to selected regions of our established markets in fiscal year 2007.

In the interior products market, sales of both Hardibacker 500® half-inch backerboard and quarter-inch backerboard grew very strongly. We continued to take market share in this category, particularly in the half-inch segment.

In our established markets, we continued to focus on growth strategies including an increased focus on the repair and remodel segment. Sales in the established markets were slightly affected by the impact of the September 2005 hurricanes that caused considerable damage along the Gulf Coast, particularly in the states of Louisiana and Mississippi. Sales in these states account for less than 5% of total sales of the USA Fiber Cement business.

At the end of fiscal year 2006, we completed construction of one of the two planned production lines at our new plant in Pulaski, Virginia, and in April 2006, this line commenced commercial production. At the end of fiscal year 2006, we also completed construction of, and commenced production on, a new ColorPlus® product line at our Blandon, Pennsylvania plant.

During fiscal year 2006, we commenced the ramp-up of our new trim line at Peru, Illinois and continued the ramp-up of our new West Coast manufacturing plant at Reno, Nevada. We also began construction of other additional pre-finishing capacity at plants in our emerging markets.

Asia Pacific Fiber Cement Net Sales. Net sales increased 2% from \$236.1 million in fiscal year 2005 to \$241.8 million in fiscal year 2006. Net sales in Australian dollars increased 1% due to a 3% increase in the average net sales price, partly offset by a 2% decline in sales volume from 376.9 million square feet in fiscal year 2005 to 368.3 million square feet in fiscal year 2006.

In our Australia and New Zealand Fiber Cement business, net sales increased 4% from \$210.1 million in fiscal year 2005 to \$218.1 million in fiscal year 2006, primarily due to favorable currency exchange rates and a 3% increase in sales volume. In Australian dollars, net sales increased 2%. The average net sales price in Australian dollars decreased 1% compared to fiscal year 2005. In Australia, both the residential housing construction and the renovation markets softened, particularly in New South Wales. The increase in sales volume in fiscal year 2006 was due to initiatives designed to grow primary demand for fiber cement and generate further market share in our targeted markets. In the commercial construction sector, activity remained at buoyant levels and, following the execution of the Final Funding Agreement for asbestos-related compensation in December 2005, we began to regain momentum lost through product bans and boycotts imposed during the prior year and a half, particularly in Victoria. We achieved strong sales of our Linea® weatherboards, which were launched in Queensland during the first half of fiscal year 2006, and continued to roll-out our Business Builder Program in all states to help generate primary demand for our products. In addition we launched Aquatec™ Wet Area Flooring in Victoria during the third quarter of the fiscal year 2006. In New Zealand, housing construction activity also softened. The growth momentum of Linea® weatherboards continued throughout the year and helped to generate increased primary demand for our products in a weakened market. Linea® weatherboards remain our top selling product in New Zealand.

In the Philippines, net sales decreased 9% from \$26.0 million in fiscal year 2005 to \$23.7 million in fiscal year 2006. In local currency, net sales decreased 11% due to a 19% decrease in sales volume partly offset by a 10% increase in the average net sales price. Demand was adversely affected during fiscal year 2006 by weaker domestic construction activity resulting from uncertainty associated with increased domestic political and economic instability, and increased competition in the business' export markets.

Other Sales. Other sales include sales of our fiber cement products manufactured in Chile (through July 2005), sales of Hardie™ pipe in the United States, our roofing pilot plant in the United States which we closed in April 2006, and fiber cement operations in Europe.

In our pipes business, net sales fell short against fiscal year 2005. A decrease in sales volume was partly offset by a higher average sales price.

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In our Europe Fiber Cement business, net sales increased in fiscal year 2006 compared to fiscal year 2005 due to stronger demand resulting from increased awareness of the business' products among builders, distributors and contractors; expansion into new geographic markets; and higher average net sales price.

Our roofing pilot plant consisted of a small-scale roofing manufacturing plant in Fontana, California opened in 2003. Since then, we undertook production and market trials of a new roofing product in Southern California to quantify the market potential of the new product. On April 18, 2006, we ceased market development initiatives for our roofing product and announced the closure of our roofing plant. Following a review of the carrying value of the assets related to this operation, an asset impairment charge of \$13.4 million was recorded in fiscal year 2006. The decision not to proceed with our roofing product was made after we reviewed market testing results and concluded that greater shareholder value would be created by focusing on other market growth initiatives.

We sold our Chilean business in July 2005 due to its small scale and limited strategic fit.

Gross Profit. Gross profit increased 29% from \$426.4 million in fiscal year 2005 to \$550.8 million in fiscal year 2006 due mainly to a strong gross profit improvement in the USA Fiber Cement business. The gross profit margin increased 1.8 percentage points to 37.0% in fiscal year 2006.

USA Fiber Cement gross profit increased 37% compared to fiscal year 2005 as a result of increases in both sales volume and the average net sales price, partially offset by higher manufacturing costs and freight costs. The gross profit margin increased 2.1 percentage points in fiscal year 2006.

Asia Pacific Fiber Cement gross profit decreased 5% due to reduced profitability in the Asia Pacific businesses in Australia and the Philippines, which was partly offset by improvements in New Zealand and favorable currency movements. In Australian dollars, gross profit decreased 7% due primarily to increased costs in all the Asia Pacific businesses.

Selling, General and Administrative (SG&A) Expenses. SG&A expenses increased 20% from \$174.5 million in fiscal year 2005 to \$209.8 million in fiscal year 2006, mainly due to an increase in the accrual for employees' bonuses to reflect our improved profit performance (before the asbestos provision); increased spending on growth initiatives in the USA Fiber Cement business; and increased professional service fees. As a percentage of sales, SG&A expense decreased 0.3 of a percentage point to 14.1% in fiscal year 2006.

Research and Development Expenses. Research and development expenses include costs associated with "core" research projects that are designed to benefit all business units. These costs are recorded in the Research and Development segment rather than being attributed to individual business units. These costs were 3% higher at \$12.3 million in fiscal year 2006. Other research and development costs associated with commercialization projects in business units are included in the business unit segment results. In total, these costs increased 71% to \$16.4 million for fiscal year 2006.

SCI and Other Related Expenses. In February 2004, the Government of New South Wales in Australia established the SCI to investigate, among other matters, the circumstances in which the Medical Research and Compensation Foundation was established. Shortly after release of the SCI report on September 21, 2004, we commenced negotiations with the NSW Government, the Australian Council of Trade Unions, or ACTU, UnionsNSW and a representative of asbestos claimants in relation to our offer to the SCI on July 14, 2004 to provide funds voluntarily for proven Australia-based asbestos-related injury and death claims against certain former James Hardie Australian subsidiary companies. On December 21, 2004, we entered into a Heads of Agreement with the above parties to establish and fund an SPF to provide funding for these claims on a long-term basis. We subsequently entered negotiations with the NSW Government on a binding agreement that we intend to put to shareholders for approval. On December 1, 2005, the Company and the NSW Government signed the Final Funding Agreement, or FFA. The Final Funding Agreement is subject to certain conditions precedent, including the tax exempt status of the SPF and its approval by our lenders and shareholders.

Costs incurred associated with the SCI and other related expenses totaled \$17.4 million in fiscal year 2006 compared to \$28.1 million in fiscal year 2005.

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Further information on the SCI and other related matters can be found in Item 3, “Key Information — Risk Factors,” Item 4, “Information on the Company — Legal Proceedings” and Notes 12 and 20 to our consolidated financial statements in Item 18.

Asbestos Provision. The recording of the asbestos provision is in accordance with U.S. accounting standards because we have determined that it is probable that we will make payments to fund asbestos-related claims on a long-term basis. The amount of the asbestos provision of \$715.6 million (A\$1.0 billion) as of March 31, 2006 is our best estimate of the probable outcome as of that date. This estimate may change under alternative arrangements such as those discussed in the next paragraph. This estimate is based on the terms of the Final Funding Agreement, which includes an actuarial estimate prepared by KPMG Actuaries, at March 31, 2006 of the projected future cash outflows, undiscounted and uninflated.

Conditions Precedent Under Discussion with the ATO. On June 23, 2006, the ATO advised us that it has refused to endorse the SPF as a tax concession charity (which is required for it to be exempt from income tax and other federal taxes), arguing that, in its opinion, the scope of its activities under the Trust Deed and the Final Funding Agreement does not meet current legislative requirements for such an endorsement. The SPF and the Company have received strong legal advice, including from some of Australia’s leading counsel, that the SPF satisfies the requirements applicable under income tax legislation such that the ATO should endorse the SPF as a charity. At the time of filing this report, the Company is in further discussions with the ATO and is in discussions and negotiations with the NSW Government, seeking to resolve this unsatisfied condition precedent to the Final Funding Agreement and the means by which it could be fulfilled, amended or otherwise dealt with in a manner satisfactory to the parties to the Final Funding Agreement.

On June 29, 2006, the ATO issued a ruling to us to the effect that our contributions to the SPF would be tax deductible over the anticipated life of the arrangements in accordance with the recent “blackhole expenditure” Federal Legislation which was enacted in April 2006. The ruling issued by the ATO provides deductibility over a five-year period from the date of contribution, whereas the condition precedent in the Final Funding Agreement provides for deductibility of contributions in the year incurred. The Company has indicated to the NSW Government that it is prepared to accept this basis of deductibility of the funding payments, if the tax condition relating to the tax exempt status of the SPF can be satisfactorily resolved.

Intention to Make Payments to Asbestos Claimants. Even if conditions to our funding obligations under the Final Funding Agreement are not fulfilled, we have determined that it is nevertheless likely that we will make payments in respect of certain claimants who were injured by asbestos products manufactured by certain former Australian subsidiary companies. Our Joint Board has made it clear that, in a manner consistent with its obligations to shareholders and other stakeholders in the Company, it intends to proceed with fair and equitable actions to compensate the injured parties. Any such alternative settlement would require lender and shareholder approval. However, if we proceed with an alternative settlement without the current conditions precedent being met, it is likely, as a function of economic reality, that we will have less funds to support payments in respect of asbestos claims. While we continue to hope that the conditions precedent to the Final Funding Agreement will be fulfilled, we have determined that our intention to proceed responsibly in either event makes it appropriate for us to record the asbestos provision in the amounts set forth in the financial statements.

Further information on the asbestos provision, the SCI, and other related matters can be found in Item 3, “Key Information — Risk Factors,” Item 4, “Information on the Company — Legal Proceedings” and Notes 12 and 20 to our consolidated financial statements in Item 18.

Operating Income. Operating income decreased from \$196.2 million profit in fiscal year 2005 to a loss of \$434.9 million for fiscal year 2006. Operating income includes the asbestos provision of a \$715.6 million, SCI and other related expenses of \$17.4 million, and an asset impairment charge of \$13.4 million relating to the closure of our roofing pilot plant.

USA Fiber Cement operating income increased 42% from \$241.5 million in fiscal year 2005 to \$342.6 million in fiscal year 2006. The increase was due to increased sales volume and higher average net sales

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price, partially offset by higher unit costs, freight costs and SG&A expenses. The operating income margin was 2.4 percentage points higher at 28.1%.

Asia Pacific Fiber Cement operating income decreased 11% from \$46.8 million in fiscal year 2005 to \$41.7 million in fiscal year 2006 due to a reduced profit performance in both our Australia and New Zealand, and Philippines businesses. The operating income margin was 2.6 percentage points lower at 17.2%. Australia and New Zealand Fiber Cement operating income decreased 8% from \$42.4 million in fiscal year 2005 to \$38.9 million in fiscal year 2006. In Australian dollars, our Australia and New Zealand business operating income fell by 10% due to increased costs in Australia, which was partially offset by increased sales volume in Australia and New Zealand. The operating income margin was 2.4 percentage points lower at 17.8%. The Philippines Fiber Cement business recorded a decrease in operating income due to the impact of weaker domestic construction activity on demand for its products, as well as increased competitive activity in its export markets.

Our USA Hardie Pipe business reduced its operating loss in fiscal year 2006 compared to fiscal year 2005.

Our Europe Fiber Cement business incurred an operating loss in fiscal year 2006 as it continued to build net sales.

Following a review of the results of our roofing product trials in California, we announced on April 18, 2006 that the pilot plant was to close. Following a review of the carrying value of the assets related to this operation, an asset impairment charge of \$13.4 million was recorded.

The Chilean Fiber Cement business was sold in July 2005.

General corporate costs decreased by \$1.4 million from \$62.8 million in fiscal year 2005 to \$61.4 million in fiscal year 2006. There was a decrease of \$10.7 million in SCI and other related expenses, a \$0.7 million loss in fiscal year 2005 on the sale of land owned in Sacramento, which did not recur in fiscal year 2006, and a reduction of \$3.5 million in the cost of the Australian companies' defined benefit pension scheme. These decreases were partly offset by a \$8.6 million increase in employee bonus plan expense, a \$3.5 million increase in employee share-based compensation expense from stock options and from stock appreciation rights, primarily caused by an increase in the Company's share price, and an increase in other general costs of \$1.4 million.

Net Interest Expense. Net interest decreased by \$4.9 million to \$0.2 million in fiscal year 2006. The decrease in interest expense was primarily due to our being in a positive net cash position for the majority of fiscal year 2006.

Income Tax Expense. Income tax expense increased \$9.7 million from \$61.9 million in fiscal year 2005 to \$71.6 million in fiscal year 2006. The increase in expense was due to an increase in profits and the geographic mix of earnings. This was partially offset by a reduction in the income tax reserves in the U.S. arising as a result of the finalization of certain tax audits during fiscal year 2006.

Income from Continuing Operations. Income from continuing operations decreased from a profit of \$127.9 million in fiscal year 2005 to a loss of \$506.7 million in fiscal year 2006. Income from continuing operations in fiscal year 2006 includes \$715.6 million relating to the booking of the asbestos provision, an impairment charge of \$13.4 million (\$8.0 million, after tax) relating to the closure of our roofing pilot plant, SCI and other related expenses of \$17.4 million (\$16.5 million, after tax) and a write-back of tax provisions of \$20.7 million.

Year Ended March 31, 2005 Compared to Year Ended March 31, 2004

Total Net Sales. Total net sales increased 23% compared to fiscal year 2004, from \$981.9 million in fiscal year 2004 to \$1,210.4 million in fiscal year 2005. Net sales from USA Fiber Cement increased 27% from \$738.6 million in fiscal year 2004 to \$939.2 million in fiscal year 2005 due to continued strong growth in sales volumes and a higher average net sales price. Net sales from Asia Pacific Fiber Cement increased 7% from \$219.8 million in fiscal year 2004 to \$236.1 million in fiscal year 2005 due to increased sales volumes and

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favorable foreign currency movements. Net sales from other operations (see footnote 2 to the chart in Item 3, “Key Information — Selected Financial Data”) increased 49% from \$23.5 million in fiscal year 2004 to \$35.1 million in fiscal year 2005 as the Chilean flat sheet business, the USA Hardie Pipe business and Europe Fiber Cement business continued to grow.

USA Fiber Cement Net Sales. Net sales increased 27% from \$738.6 million in fiscal year 2004 to \$939.2 million in fiscal year 2005 due to increased sales volumes and a higher average net sales price. Sales volume increased 22% from 1,519.9 million square feet in fiscal year 2004 to 1,855.1 million square feet in fiscal year 2005, primarily due to continued strong growth in primary demand for fiber cement and a favorable housing construction market. New residential housing construction remained buoyant during the year due to strong consumer demand and low inventories of houses for sale, fueled by low interest rates, solid housing prices and a strengthening domestic economy.

We continued to grow sales in both our emerging and established geographic markets and in our exterior and interior product markets. Further market share was gained in our emerging geographic markets as our exterior products continued to penetrate against alternative materials, primarily wood-based and vinyl siding. There continued to be growth in sales of higher-priced, differentiated products such as vented soffits, Heritage® siding panels, the ColorPlus® collection of pre-painted siding and Harditrim® XLD® planks. There were further market share gains in the interior products market, with sales of Hardibacker 500® half-inch backerboard up strongly compared to fiscal year 2004.

The average net sales price increased 4% from \$486 per thousand square feet in fiscal year 2004 to \$506 per thousand square feet in fiscal year 2005. The increase was due to proportionally stronger growth of differentiated, higher priced products, including Harditrim® planks, vented soffit and the ColorPlus® collection of products, and price increases for some products that became effective on July 1, 2004 and January 1, 2005.

Our West Coast manufacturing capacity increased during fiscal year 2005 with the addition of our new fiber cement plant in Reno, Nevada. The plant began producing product in the fourth quarter of fiscal year 2005 and its ramp-up is progressing well. At fiscal year end 2005, we were in pre-production with our new 160 million square foot trim line in Peru, Illinois. Also, during fiscal year 2005, we added pre-finishing capacity in Peru, Illinois and we began construction of a plant in Pulaski, Virginia.

Asia Pacific Fiber Cement Net Sales. Net sales increased 7% from \$219.8 million in fiscal year 2004 to \$236.1 million in fiscal year 2005. Net sales increased 1% in Australian dollars. Sales volume increased 4% from 362.1 million square feet in fiscal year 2004 to 376.9 million square feet in fiscal year 2005.

In our Australia and New Zealand Fiber Cement business, net sales increased 8% from \$195.5 million in fiscal year 2004 to \$210.1 million in fiscal year 2005 due to a higher average net sales price and favorable foreign currency movements. In Australian dollars, net sales increased 1%. Sales volumes decreased from 284.2 million square feet in fiscal year 2004 to 283.3 million square feet in fiscal year 2005 primarily due to weaker market conditions in Australia and the impact of product bans and boycotts in Australia connected with the SCI and release of the SCI report. In Australia, new residential housing activity improved early in fiscal year 2005 led by buoyant activity in Queensland, and the renovation and commercial segments also remained strong early in fiscal year 2005. However, both new residential housing and renovations activity softened over fiscal year 2005. In New Zealand, new residential housing activity was robust in the first half of fiscal year 2005 but softened slightly during the second half of fiscal year 2005. Sales of our Linea® weatherboards continued to grow strongly. The average net sales price increased 1% in Australian dollars. During fiscal year 2005 we launched Eclipsa® eaves lining, a new pre-painted eave product, across Australia. Eclipsa® eaves lining offers cost benefits and construction advantages over non-painted eave products and we expect that it will be received favorably by builders.

In the Philippines, net sales increased 25% from \$20.8 million in fiscal year 2004 to \$26.0 million in fiscal year 2005. In local currency, net sales increased 27%. This increase was due to a 20% increase in sales volume and a 5% increase in the average net sales price. The increase in the average net sales price was due to a change in sales mix between domestic and export sales and higher domestic prices in the second half of fiscal

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year 2005. Increased market penetration and regional exports resulted in significantly stronger demand during fiscal year 2005.

Other Sales. Other sales include sales of our fiber cement products manufactured in Chile, sales of Hardie™ pipe in the United States, our roofing operations in the United States, and fiber cement operations in Europe.

Our Chilean business continued to increase its penetration of the domestic flat sheet market and increased sales of higher-priced, differentiated products, and increased regional exports. Net sales increased compared to fiscal year 2004, due to growth in sales volume and a higher average net sales price. In local currency, the average net sales price decreased primarily due to the impact of a weaker U.S. dollar on export prices, partly offset by higher domestic prices and a change in the sales mix. Construction activity in Chile continued to show signs of improvement during fiscal year 2005.

Our USA Hardie Pipe business continued to penetrate the Florida market of the United States and to improve its manufacturing efficiency. Net sales for fiscal year 2005 increased strongly due to increased sales volumes and higher prices despite severe weather in Florida that adversely affected sales in the first half of fiscal year 2005. The increase in sales volume was due to market share gains and buoyant construction activity in Florida. The average net sales price improved strongly during fiscal year 2005, reflecting favorable market conditions and improved customer focus by the business. The manufacturing performance of our plant also improved significantly during fiscal year 2005, but operating costs remain above our targets.

Our European business continued to grow demand during fiscal year 2005 by building awareness of our products among distributors, builders and contractors, and by adding further distribution outlets in both the U.K. and French markets. Sales have continued to build steadily since commencement of operations in the first quarter of fiscal year 2004. Progress on creating primary demand in Europe for fiber cement siding products and converting tile applications from drywall and wood to fiber cement products, remains in line with management expectations.

In June 2003, we completed construction and began production trials at our roofing pilot plant in Fontana, California. The pilot plant, which has a design capacity of 25 million square feet, was built to test our proprietary manufacturing technology and to provide product for market testing in Southern California. Our roofing business is continuing to prove its business model and remains focused on market testing, refining the manufacturing operation and improving productivity. Our Artisan® roofing product, made from a new lightweight concrete roofing technology, has now been launched in all our targeted markets in California.

Gross Profit. Gross profit increased 19% from \$358.9 million in fiscal year 2004 to \$426.4 million in fiscal year 2005 due to improvements in our major businesses. The gross profit margin decreased 1.4 percentage points to 35.2% in fiscal year 2005.

USA Fiber Cement gross profit increased 19% due to higher net sales, partly offset by an increase in unit cost of sales and increased freight costs. The higher unit cost of sales resulted primarily from increased sales of higher-priced, differentiated products, higher pulp and cement costs, maintenance expenses and a temporary reduction in manufacturing efficiency at some plants that occurred during the second quarter of fiscal year 2005. Higher freight costs were primarily related to an increase in length of haul of some products due to supply issues associated with a temporary reduction in plant manufacturing efficiency in the second quarter of fiscal year 2005, and higher fuel costs and general liability insurance. The gross profit margin decreased 2.6 percentage points.

Asia Pacific Fiber Cement gross profit increased 11% following improvements from Australia and New Zealand Fiber Cement and Philippines Fiber Cement, which increased 8% and 53%, respectively. The improved result was due to manufacturing efficiency gains in both Australia and New Zealand and increased net sales in New Zealand, partly offset by reduced net sales in Australia attributable to weaker market conditions and product bans and boycotts in Australia connected with the SCI and release of its report. In the Philippines, increased sales accounted for the stronger gross profit performance. The Asia Pacific Fiber Cement gross profit margin increased 1.2 percentage points.

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Selling, General and Administrative (SG&A) Expenses. SG&A expenses increased 8% compared to fiscal year 2004, from \$162.0 million to \$174.5 million. The increase in SG&A expenses was due mainly to increased sales and marketing, information technology and other expenses associated with growth initiatives in the United States. As a percentage of sales, SG&A expenses for the year were 2.1 percentage points lower at 14.4%.

Research and Development Expenses. Research and development expenses include costs associated with “core” research projects that are designed to benefit all fiber cement business units. These costs are recorded in the Research and Development segment rather than being attributed to individual business units. These costs decreased 15% for fiscal year 2005, to \$12.0 million. Other research and development costs associated with commercialization projects in business units are included in the business related unit segment results. In total, these costs increased 13% to \$9.6 million for fiscal year 2005.

SCI and Other Related Expenses. In February 2004, the NSW Government, Australia, established a SCI to investigate, among other matters, the circumstances in which the Foundation was established and the corporate reorganizations which led to and followed the establishment of the Foundation. Shortly after release of the SCI report on September 21, 2004, we commenced negotiations with the NSW Government, the ACTU, UnionsNSW and a representative of asbestos claimants in relation to our offer made to the SCI on July 14, 2004 to provide funds voluntarily for proven Australian-based asbestos-related injury and death claims against certain former James Hardie Group Australian subsidiaries. On December 21, 2004, we entered into a Heads of Agreement with the above parties to establish and fund a SPF to provide funding for these claims on a long-term basis. We have subsequently entered into negotiations with the NSW Government on an agreement that, when completed, we expect to be put to shareholders for approval.

Costs incurred during fiscal year 2005 associated with the SCI and other related matters totaled \$28.1 million and included: \$6.8 million related to the SCI; \$4.9 million related to the internal investigation conducted by independent legal advisers, consistent with U.S. securities regulations, of the impact on our financial statements of allegations of illegal conduct raised during the SCI and any potential impacts on the financial statements (the investigation found there was no adverse impact on our 2004 financial statements); \$1.2 million related to the Australian Securities and Investments Commission, or ASIC, investigation into the circumstances surrounding the creation of the Foundation; \$6.4 million for resolution advisory services; \$6.0 million in severance and consulting payments to former executives; and \$2.8 million for other matters.

Further information on the SCI and other related matters can be found in Item 3, “Key Information — Risk Factors” and Item 4, “Information on the Company — Legal Proceedings” And Note 13 to our consolidated financial statements in Item 18.

Other Operating Expenses. Other operating expenses of \$6.0 million in fiscal year 2005 relate to a settlement loss of \$5.3 million for an employee retirement plan and a loss on the sale of land in Sacramento, California. The retirement of a significant number of participants in the employee retirement plan resulted in a requirement under SFAS No. 88 to recognize and accelerate the amortizing of an actuarial loss for the plan. The other operating expense amount in fiscal year 2004 of \$2.1 million mainly reflects an increase in cost provisions for our Australia and New Zealand business.

Operating Income. Operating income increased 14% from \$172.2 million in fiscal year 2004 to \$196.2 million in fiscal year 2005. The operating income margin decreased 1.3 percentage points to 16.2% in fiscal year 2005. Operating income includes SCI and other related expenses of \$28.1 million.

USA Fiber Cement operating income increased 24% from \$195.6 million in fiscal year 2004 to \$241.5 million in fiscal year 2005. The increase was due to growth in net sales, partly offset by an increase in unit cost of sales, unit freight cost, general liability insurance and SG&A expenses. The increase in unit cost of sales was due to increased sales of higher cost differentiated products, higher pulp and cement costs, increased maintenance expenses and a temporary reduction in manufacturing efficiency at some plants that occurred during the second quarter of fiscal year 2005. Higher freight costs were primarily related to an increase in length of haul of some products due to supply issues associated with the temporary reduction in plant

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manufacturing efficiency and higher fuel costs. The operating income margin decreased 0.8 of a percentage point to 25.7%.

Asia Pacific Fiber Cement operating income increased 25% from \$37.6 million in fiscal year 2004 to \$46.8 million in fiscal year 2005. The operating income margin increased 2.7 percentage points to 19.8% in fiscal year 2005. Australia and New Zealand Fiber Cement operating income increased 20% from \$35.4 million in fiscal year 2004 to \$42.4 million in fiscal year 2005. In Australian dollars, Australia and New Zealand Fiber Cement operating income increased 12%. The increase in operating income in Australian dollars was mainly due to cost savings and the impact of a cost provision recorded in fiscal year 2004 that did not recur in fiscal year 2005. The operating income margin increased 2.1 percentage points to 20.2% in fiscal year 2005. Philippines Fiber Cement business more than doubled its positive operating income performance compared to fiscal year 2004 due to increased net sales.

The Chile Fiber Cement business recorded a small positive operating income in each quarter of fiscal year 2005.

Our USA Hardie Pipe business significantly reduced its operating loss compared to fiscal year 2004 due to increased sales volumes, higher selling prices and manufacturing cost savings.

Our Europe Fiber Cement business incurred an operating loss for fiscal year 2005 as expected.

General corporate costs increased \$35.3 million from \$27.5 million in fiscal year 2004 to \$62.8 million in fiscal year 2005. This increase was primarily due to \$28.1 million of SCI and other related expenses, a settlement loss of \$5.3 million related to an employee retirement plan, a \$0.7 million loss on sale of land owned in Sacramento, California and a net increase in other general corporate costs. Additionally, in the fiscal year 2004, we booked a reversal of an excess provision of \$1.6 million related to a vendor dispute that we settled favorably that did not recur in fiscal year 2005. These increases were partially offset by a \$2.5 million decrease in employee bonus plan expense and a \$3.0 million decrease in employee share-based compensation expense from stock appreciation rights primarily caused by a decrease in our share price.

Net Interest Expense. Net interest expense decreased by \$4.9 million from \$10.0 million in fiscal year 2004 to \$5.1 million in fiscal year 2005, primarily due to a higher amount of interest expense capitalized on construction projects in fiscal year 2005 compared to fiscal year 2004, higher interest income in fiscal year 2005 due to higher average cash balances and lower interest expense in fiscal year 2005 due to lower average debt balances.

Other (Expense) Income. During fiscal year 2005, other expense consisted primarily of a \$2.1 million impairment charge that we recorded on an investment in a company that filed a voluntary petition for reorganization under Chapter 11 of the U.S. bankruptcy code, partially offset by a \$0.8 million gain on a separate investment. In fiscal year 2004, we realized a gain before income tax of \$4.5 million on the sale of property formerly owned by one of our New Zealand subsidiaries. Additionally, a previously recorded liability related to potential contingent legal claims was reversed, resulting in income of \$4.3 million. We also realized \$0.1 million in net investment income. These income items were partially offset by an impairment charge of \$2.2 million that we recorded on an investment in a company that filed a voluntary petition for reorganization under Chapter 11 of the U.S. bankruptcy code. Additionally, we incurred an expense of \$3.2 million primarily due to a capital duty fee paid in conjunction with our Dutch legal structure. We incurred this to extend the scope of our international finance subsidiary to lend to global operations.

Income Tax Expense. Income tax expense increased by \$21.5 million from \$40.4 million in fiscal year 2004 to \$61.9 million in fiscal year 2005 due to the increase in profit, the geographic mix of earnings, estimated income tax contingencies recorded during fiscal year 2005 and non-deductible SCI and other related expenses.

Income from Continuing Operations. Income from continuing operations increased from \$125.3 million in fiscal year 2004 to \$127.9 million in fiscal year 2005. Income from continuing operations includes SCI and other related expenses of \$28.1 million and a related tax benefit of \$5.8 million.

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Discontinued Operations

In total, we recorded neither income nor a loss from discontinued operations in fiscal year 2006, a loss of \$1.0 million in fiscal year 2005 and income of \$4.3 million in fiscal year 2004. The amount in fiscal year 2005 relates primarily to additional costs associated with the sale of New Zealand land in March 2004 and the settlement of a dispute associated with a former business. The amount for fiscal year 2004 primarily includes a favorable outcome from matters related to our former Gypsum business and a gain on the sale of our New Zealand Building Systems business, net of other wind-up costs of Gypsum and other discontinued businesses. See Note 14 to our consolidated financial statements included in Item 18 for additional information about the results of our discontinued operations.

Building Systems

On May 30, 2003, we sold our New Zealand Building Systems business to a third party. We recorded a gain of \$1.9 million representing the excess of net proceeds from the sale of \$6.7 million over the net book value of assets sold of \$4.8 million. The proceeds from the sale comprised cash of \$5.0 million and a note receivable in the amount of \$1.7 million. As of March 31, 2005, the \$1.7 million note receivable had been collected in full.

ABN 60

Following the establishment of the ABN 60 Foundation and transfer of the shares in ABN 60 to the ABN 60 Foundation, we no longer own any shares of ABN 60. ABN 60 Foundation is managed by independent directors and operates entirely independently of us. Since that date, we have not and currently we do not control the activities of ABN 60 or ABN 60 Foundation in any way. Other than as described in Note 12 to our consolidated financial statements in Item 18, we have no economic interest in ABN 60 or ABN 60 Foundation and we have no right to dividends or capital distributions made by the ABN 60 Foundation. Apart from the express indemnity for non-asbestos matters provided to ABN 60 and a possible arrangement to fund some or all future claimants for asbestos-related injuries caused by former James Hardie Group subsidiary companies and to the potential liabilities more fully described in Notes 12 and 20 to our consolidated financial statements in Item 18, we do not believe we will have any liability under current Australian law should future liabilities of ABN 60 or ABN 60 Foundation exceed the funds available to those entities. As a result of the change in ownership of ABN 60 on March 31, 2003, we recorded a loss on disposal of \$0.4 million, representing the liabilities of ABN 60 (to the Foundation) of A\$94.6 million (\$57.2 million), the A\$94.5 million (\$57.1 million) in cash held on the balance sheet, and costs associated with the establishment and funding of the ABN 60 Foundation. Also see "Legal Proceedings" and Notes 12 and 14 to our consolidated financial statements included below in Item 18.

Under the terms of a Deed of Covenant, Indemnity and Access entered into by JHI NV and ABN 60 at or around this time, the ABN 60 Foundation was established, JHI NV agreed to indemnify ABN 60 Foundation for any non asbestos-related legal claims made on ABN 60 in relation to any acts or omissions of ABN 60 or its directors and officers, which occurred prior to the transfer of ABN 60 to the ABN 60 Foundation. The indemnity is uncapped and the term of the indemnity is in perpetuity. We believe that the likelihood of any material non asbestos-related claims occurring which would result in a call on this indemnity is remote. As such, we have not recorded a liability for the indemnity. We have not pledged any assets as collateral for such indemnity.

Also under the terms of that Deed of Covenant, Indemnity and Access, Amaca, Amaba and ABN 60 agreed to indemnify JHI NV and its related corporate entities for past and future asbestos-related liabilities incurred by them as a result of the acts or omissions of ABN 60 prior to establishing the ABN 60 Foundation. Amaca and Amaba provided similar indemnities under the Deed of Covenant and Indemnity entered into with ABN 60, which included indemnities in favor of JHI NV and its related entities. Amaca, Amaba and ABN 60's obligation to indemnify JHI NV and its related entities includes asbestos-related claims that may arise associated with the manufacturing activities of those companies.

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Our liability under or in connection with the indemnities described above may potentially be mitigated or otherwise affected by the releases from civil liability described under the heading “Releases from Civil Liability” in Item 4, “Information on the Company — Legal Proceedings.” However, we have taken the view to date that such legislation does not ameliorate our liability with respect to those indemnities.

Disposal of Chile Business

In June 2005, we approved a plan to dispose of our Chile Fiber Cement business to Compañía Industrial El Volcan S.A, which we refer to as Volcan. The sale closed on July 8, 2005. The Company received net proceeds of \$3.9 million and recorded a loss on disposal of \$0.8 million. This loss on disposal is included in other operating expense in our consolidated statements of operations.

As part of the terms of the sale of the Chile Fiber Cement business to Volcan, we entered into a two-year take or pay purchase contract for fiber cement product manufactured by Volcan. The first and second year of the contract amounts to a purchase commitment of approximately \$2.8 million and \$2.1 million, respectively. As this contract qualifies as continuing involvement per SFAS No. 144, “Accounting for the Impairment or Disposal of Long Lived Assets,” the results of operations and loss on disposal of the Chile Fiber Cement business are included in our income from continuing operations. See Note 14 to our consolidated financial statements included in Item 18 for additional information about the results of the disposal of our Chile Fiber Cement business.

Impact of Recent Accounting Pronouncements

Inventory Costs

In November 2004, the Financial Accounting Standards Board, or FASB, issued SFAS No. 151, “Inventory Costs — an amendment of Accounting Research Bulletin, or ARB, No. 43, Chapter 4.” SFAS No. 151 requires abnormal amounts of inventory costs related to idle facility, freight handling and wasted material expenses to be recognized as current period charges. Additionally, SFAS No. 151 requires that allocation of fixed production overheads to the costs of conversion be based on the normal capacity of the production facilities. SFAS No. 151 is effective for fiscal years beginning after June 15, 2005. The adoption of this standard did not have a material impact on our consolidated financial statements.

American Jobs Creation Act

In October 2004, the President of the United States signed into law the American Jobs Creation Act (which we refer to as the Act). The Act allows for a U.S. federal income tax deduction for a percentage of income earned from certain U.S. production activities. Based on the effective date of the Act, we were eligible for this deduction in the first quarter of fiscal year 2006. Additionally, in December 2004, the FASB issued FASB Staff Position, FSP, No. 109-1, “Application of FASB Statement No. 109, Accounting for Income Taxes (which we refer to as SFAS No. 109), to the Tax Deduction on Qualified Production Activities Provided by the American Jobs Creation Act of 2004.” FSP No. 109-1, which was effective upon issuance, states the deduction under this provision of the Act should be accounted for as a special deduction in accordance with SFAS No. 109. The adoption of this standard did not have a material impact on our consolidated financial statements.

The Act also allows for an 85% dividends received deduction on the repatriation of certain earnings of foreign subsidiaries. In December 2004, the FASB issued FSP No. 109-2, “Accounting and Disclosure Guidance for the Foreign Earnings Repatriation Provision within the American Jobs Creation Act of 2004.” FSP No. 109-2, which was effective upon issuance, allows companies time beyond the financial reporting period of enactment to evaluate the effect of the Act on its plan for reinvestment or repatriation of foreign earnings for purposes of applying SFAS No. 109. Additionally, FSP 109-2 provides guidance regarding the required disclosures surrounding a company’s reinvestment or repatriation of foreign earnings. The adoption of this standard did not have a material effect on our consolidated financial statements.

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Exchanges of Non-Monetary Assets

In December 2004, the FASB issued SFAS No. 153, “Exchange of Non-Monetary Assets — An Amendment of ARB Opinion No. 29,” which requires non-monetary asset exchanges to be accounted for at fair value. The Company is required to adopt the provisions of SFAS No. 153 for non-monetary exchanges occurring in fiscal periods beginning after June 15, 2005. The adoption of this standard did not have a material impact on our consolidated financial statements.

Share-Based Payment

In December 2004, the FASB issued SFAS No. 123 (revised 2004), “Share-Based Payment” (which we refer to as SFAS No. 123R). SFAS No. 123R replaces SFAS No. 123, “Accounting for Stock-Based Compensation,” and supersedes Accounting Principles Board, or APB, Opinion No. 25, “Accounting for Stock Issued to Employees.” Generally, SFAS No. 123R is similar in approach to SFAS No. 123 and requires that compensation cost relating to share-based payments be recognized in the financial statements based on the fair value of the equity or liability instruments issued. SFAS No. 123R is effective as of the beginning of the first interim or annual reporting period that begins after June 15, 2005. In April 2005, the U.S. Securities and Exchange Commission delayed the effective date of SFAS No. 123R until fiscal years beginning after June 15, 2005. We adopted SFAS No. 123 in fiscal year 2003 and do not expect the adoption of SFAS No. 123R, which will occur in the first quarter of fiscal year 2007, to have a material effect on our consolidated financial statements.

Conditional Asset Retirement Obligations

In March 2005, the FASB issued FASB Interpretation No. 47, or FIN 47, “Accounting for Conditional Asset Retirement Obligations.” FIN 47 clarifies the term “conditional asset retirement obligation” used in SFAS No. 143, “Accounting for Asset Retirement Obligations.” FIN 47 is effective no later than the end of the fiscal year ending after December 15, 2005. The adoption of this interpretation did not have a material impact on our consolidated financial statements.

Accounting Changes and Error Corrections

In May 2005, the FASB issued SFAS No. 154, “Accounting Changes and Error Corrections — a replacement of APB Opinion No. 20 and FASB Statement No. 3.” SFAS No. 154 requires retrospective application to prior periods’ financial statements of a voluntary change in accounting principle unless it is impracticable. APB Opinion No. 20, “Accounting Changes,” previously required that most voluntary changes in accounting principle be recognized by including in net income of the period of the change the cumulative effect of changing to the new accounting principle. This statement is effective for accounting changes and corrections of errors made in fiscal years beginning after December 15, 2005. The adoption of this standard is not expected to have a material impact on our consolidated financial statements.

Uncertain Tax Positions

In June 2006, the FASB issued Interpretation No. 48, or FIN 48, entitled “Accounting for Uncertainty in Income Taxes,” an interpretation of SFAS No. 109. FIN 48 clarifies the accounting for uncertainty in income taxes recognized in an enterprise’s financial statements in accordance with SFAS No. 109. Unlike SFAS No. 109, FIN 48 prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. Additionally, FIN 48 provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. We will adopt the provisions of FIN 48 effective April 1, 2007. We have not yet determined the effect of the adoption of FIN 48 on our financial position or results of operations.

Liquidity and Capital Resources

Our treasury policy regarding our liquidity management, foreign exchange risks management, interest rate risk management and cash management is administered by our treasury department and is centralized in

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The Netherlands. This policy is reviewed annually and is designed to ensure that we have sufficient liquidity to support our business activities and meet future business requirements in the countries in which we operate. Counterparty limits are managed by our treasury department and based upon the counterparty credit rating; total exposure to any one counterparty is limited to specified amounts and signed off annually by the CFO.

We have historically met our working capital needs and capital expenditure requirements through a combination of cash flow from operations, proceeds from the divestiture of businesses, credit facilities and other borrowings, proceeds from the sale of property, plant and equipment and proceeds from the redemption of investments. Seasonal fluctuations in working capital generally have not had a significant impact on our short-term or long-term liquidity. We believe that we can meet our present working capital requirements for at least the next 12 months based on our current capital resources. We expect that cash commitments arising from the Final Funding Agreement will be met either from cash generated by our operating activities or, should this prove insufficient, from borrowings under our existing credit facilities.

We had cash and cash equivalents of \$315.1 million as of March 31, 2006. At that date, we also had credit facilities totaling \$476.7 million, of which \$302.7 million was outstanding. The credit facilities are all non-collateralized and as of March 31, 2006 consisted of the following:

Description	Effective Interest Rate	At March 31, 2006	
		Total Facility (In millions)	Principal Outstanding
US\$ notes, fixed interest, repayable annually in varying tranches from November 2006 through November 2013	7.16%	\$ 121.7	\$ 121.7
US\$ 364-day facilities, can be drawn in US\$, variable interest rates based on LIBOR plus margin, can be repaid and redrawn until June 2007	5.41%	110.0	81.0
US\$ term facilities, can be drawn in US\$, variable interest rates based on LIBOR plus margin, can be repaid and redrawn until December 2006	5.27%	245.0	100.0
Total		<u>\$ 476.7</u>	<u>\$ 302.7</u>

As of March 31, 2006 we had net cash of \$12.4 million, compared with net debt of \$45.8 million as of March 31, 2005, an increase of \$58.2 million.

Our credit facilities currently consist of 364-day facilities in the amount of \$110.0 million, which mature in June 2007, and term facilities in the amount of \$245.0 million, which mature in December 2006. The maturity dates of the \$110.0 million 364-day facilities and \$245.0 million term facilities were extended from December 2006 and June 2006, respectively, in June 2006. For both facilities, interest is calculated at the commencement of each draw-down period based on the U.S.-dollar London Interbank Offered Rate, or LIBOR, plus the margins of individual lenders, and is payable at the end of each draw-down period. During fiscal year 2006, the Company paid \$0.7 million in commitment fees. As of March 31, 2006, \$181.0 million was drawn under the combined facilities and \$174.0 million was available.

In March 2006, our wholly owned subsidiary RCI received an amended assessment from the ATO of A\$412.0 million (\$310.0 million). The assessment was subsequently amended to A\$378.0 million (\$284.6 million).

RCI is appealing the amended assessment and may incur substantial legal and other expenses in pursuing this appeal. On July 5, 2006, pursuant to an agreement negotiated with the ATO and in accordance with the ATO Receivable Policy, the Company made a payment of A\$189.0 million (\$140.4 million — converted using the assets and liabilities rate at June 30, 2006) being 50% of the amended assessment, and guaranteed the remaining unpaid 50% of the amended assessment, pending the outcome of the appeal of the amended assessment. The Company also agreed to pay general interest charges accruing on the unpaid balance of the amended assessment in arrears on a quarterly basis. The first payment of accrued general interest charges will

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be due October 15, 2006 in respect of the quarter ending September 30, 2006. These payments will reduce our liquidity. We believe that RCI's view on its tax position will ultimately prevail in this matter. Accordingly, it is expected that any amounts paid would be recovered, with interest, by RCI at the time RCI is successful in its appeal against the amended assessment. However, if RCI is unsuccessful in its appeal, RCI will be required to pay the entire assessment. As of March 31, 2006, we had not recorded any liability for the amended assessment. For more information, see Note 13 to our consolidated financial statements in Item 18.

Additionally, if the conditions precedent to the full implementation of the Final Funding Agreement, including lender approval, are satisfied, the maturity date of the \$245.0 million facilities will be automatically extended until June 2010.

As a result of recording the asbestos provision at March 31, 2006, and the Supervisory Board's approval on May 12, 2006 of the recording of this provision, we would not have been in compliance with certain of the restrictive covenants in respect of the U.S.-dollar non-collateralized notes. However, under the terms of the non-collateralized notes agreement, prepayment of these notes was permitted, and on April 28, 2006 we issued a notice to all noteholders to prepay in full all outstanding notes on May 8, 2006. On that date, the U.S.-dollar non-collateralized notes were prepaid in full, including a make-whole payment of \$6.0 million. In the fourth quarter of fiscal year 2006, \$181.0 million was drawn down on the credit facilities in anticipation of the prepayment of the U.S.-dollar non-collateralized notes as described above.

The Company anticipates being able to meet its payment obligations from:

- existing cash and unutilized committed facilities;
- net operating cash flow during the current year;
- an extension of the term of existing credit facilities; and
- the addition of proposed new funding facilities.

However, if the conditions precedent to the full implementation of the Final Funding Agreement are not satisfied or dealt with in a manner acceptable to all parties to the Final Funding Agreement, we may not be able to renew our credit facilities on substantially similar terms, or at all; we may have to pay additional fees and expenses that we might not have to pay under normal circumstances; and we may have to agree to terms that could increase the cost of our debt structure. See Item 3, "Key Information — Risk Factors."

If we are unable to extend our credit facilities, or are unable to renew our credit facilities on terms that are substantially similar to the ones we presently have, we may experience liquidity issues and will have to reduce our levels of planned capital expenditures, reduce or eliminate dividend payments, or take other measures to conserve cash in order to meet our future cash flow requirements. Nevertheless, we believe we will have sufficient funds to meet our working capital and other cash requirements for at least the next 12 months based on our existing cash balances and anticipated operating cash flows arising during the year.

At March 31, 2006, our management believes that we were in compliance with all restrictive covenants contained in the non-collateralized notes and credit facility agreements. Under the most restrictive of these covenants, we are required to maintain certain ratios of debt to equity and net worth and levels of earnings before interest and taxes and are limited in how much we can spend on an annual basis in relation to asbestos payments to Amaca, Amaba or ABN 60.

Cash Flow — Year Ended March 31, 2006 compared to Year Ended March 31, 2005

Net operating cash inflows increased by 9% from \$219.8 million in fiscal year 2005 to \$240.6 million in fiscal year 2006 primarily due to the improved operating performance of the business, offset by increases in operating assets.

Net cash used in investing activities increased from \$149.8 million in fiscal year 2005 to \$154.0 million in fiscal year 2006 as we continued to invest in increasing our production capacity. The increase in capital expenditure was partially offset by \$8.0 million net proceeds from the sale of our Chilean flat sheet business in July 2005.

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Net cash provided by investing activities increased from a utilization of \$27.6 million in fiscal year 2005 to \$116.5 million in fiscal year 2006 due to the drawdown of \$181.0 million on our term facilities in preparation for the prepayment of the U.S.-dollar non-collateralized notes on May 8, 2006, and an increase in proceeds from issuance of shares of \$16.1 million. This increase was offset by an increase of \$32.2 million in dividend payments and a \$20.0 million increase in loan repayments.

Cash Flow — Year Ended March 31, 2005 compared to Year Ended March 31, 2004

Net operating cash inflows increased by \$57.2 million or 35% from \$162.6 million to \$219.8 million for the year ended March 31, 2005 compared to the year ended March 31, 2004, primarily due to changes in our operating assets and liabilities.

Net cash used in investing activities was \$149.2 million for the year ended March 31, 2005 compared to \$58.0 million in fiscal year 2004. The increase in the cash used was primarily due to additional capital expenditures of \$78.4 million for the year ended March 31, 2005, \$10.9 million cash received in fiscal year 2004 from the sale of land and buildings of our Australia and New Zealand business in March 2004, and \$5.0 million cash received in the fiscal year 2004 from the sale of our New Zealand Building Systems business in May 2003 that did not recur in fiscal year 2005, partly offset by proceeds of \$3.4 million from the sale of land in Sacramento, California in fiscal year 2005.

Net cash used in financing activities was \$28.2 million for the year ended March 31, 2005 compared to \$87.9 million for the fiscal year ended March 31, 2004. The decrease in cash used was primarily due to a \$68.7 million repayment of capital in fiscal year 2004 that did not recur in fiscal year 2005 and a \$9.2 million decrease in dividends paid, partly offset by a \$17.6 million scheduled debt repayment in fiscal year 2005.

Capital Requirements and Resources

Our capital requirements consist of expansion, renovation and maintenance of our production facilities and construction of new facilities. Our working capital requirements, consisting primarily of inventory and accounts receivable and payables, fluctuate seasonally during months of the year when overall construction and renovation activity volumes increase.

During each fiscal year in the three year period ended March 31, 2006, our continuing businesses generated cash in excess of our capital requirements. As we continue expanding our fiber cement businesses, we expect to use cash primarily generated from our operations to fund capital expenditures and working capital. During fiscal year 2007, we expect to spend a significant amount on capital expenditures that include facility upgrades, new facility construction, and implementation of new fiber cement technologies. We plan to fund any cash flow shortfalls that we may experience due to payments that may be made under the Final Funding Agreement and payments made to the ATO under the amended assessment, with future cash flow surpluses, cash on hand of \$315.1 million at March 31, 2006, and cash that we anticipate will be available to us under credit facilities.

On December 1, 2005, we announced that we, the NSW Government and James Hardie 117 Pty Ltd, which we refer to as the Performing Subsidiary, had entered into a Final Funding Agreement to provide long-term funding to a SPF that will provide compensation for Australian asbestos-related personal injury claims against the former James Hardie Australian subsidiaries arising from exposure to asbestos in Australia. The Final Funding Agreement is subject to a number of conditions precedent, including our being satisfied with the tax treatment of the proposed funding arrangements and receiving approval of our lenders and shareholders. As of March 31, 2006, we recorded a provision for estimated future asbestos-related compensation payments (asbestos provision) of \$715.6 million. The booking of this asbestos provision is based on the Company's assumption that the conditions precedent to the effectiveness of the Final Funding Agreement will be fulfilled, including the achievement of tax deductibility of payments to the SPF, and the SPF being exempt from tax. If these conditions are not fulfilled or otherwise dealt with in a manner acceptable to the parties to the Final Funding Agreement, we are likely to propose an alternative settlement, in which case the amount of the provision may be adjusted to reflect the funds available for contribution by us under such an alternative

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settlement. Any such alternative settlement may be subject to conditions precedent and would require lender and shareholder approval. See Item 4, “Information on the Company — Legal Proceedings.”

Currently, the timing of any potential payments is uncertain because the conditions precedent to the Final Funding Agreement have not been satisfied. If the conditions precedent to the Final Funding Agreement are satisfied, we expect to make an initial payment of approximately A\$154 million (equal to estimated asbestos claims to be paid over the next three years less existing cash of the Foundation), although given the delays in implementing the Final Funding Agreement this amount may be recalculated to take into account the latest available claims data. We believe that the cash and cash equivalents that we currently have on hand and funds from credit facilities that we anticipate will be available, will be sufficient to fund the initial payment. Additionally, we anticipate that the Final Funding Agreement will require us to make annual payments to fund asbestos claims.

On June 23, 2006, the ATO advised us that it has refused to endorse the SPF as a tax concession charity (which is required for the SPF to be exempt from tax), arguing that, in its opinion, the scope of its activities under the Trust Deed and the Final Funding Agreement does not meet current legislative requirements for such an endorsement. The SPF and the Company have received strong legal advice, including from some of Australia’s leading counsel, that the SPF satisfies the requirements applicable under income tax legislation such that the ATO should endorse the SPF as a charity. At the time of filing this report, the Company is in further discussions with the ATO and is in discussions and negotiations with the NSW Government, seeking to resolve this unsatisfied condition precedent to the Final Funding Agreement and the means by which it could be fulfilled, amended or otherwise dealt with in a manner satisfactory to the parties to the Final Funding Agreement.

On June 29, 2006, the ATO issued a ruling to us to the effect that our contributions to the SPF would be tax deductible over the anticipated life of the arrangements in accordance with the recent “blackhole expenditure” Federal Legislation which was enacted in April 2006. The ruling issued by the ATO provides deductibility over a five-year period from the date of contribution, whereas the condition precedent in the Final Funding Agreement provides for deductibility of contributions in the year incurred. The Company has indicated to the NSW Government that it is prepared to accept this basis of deductibility of the funding payments, if the tax condition relating to the tax exempt status of the SPF can be satisfactorily resolved.

Costs incurred in satisfying the conditions precedent related to Final Funding Agreement may be significant and will negatively impact our cash generated from operations over the short-term. We anticipate that our cash flows from operations, net of estimated payments that may be made under the Final Funding Agreement, will be sufficient to fund our planned capital expenditure and working capital requirements in the short-term. If we do not generate sufficient cash from operations to fund our planned capital expenditures and working capital requirements, we believe the cash and cash equivalents of \$315.1 million at March 31, 2006, and the cash that we anticipate will be available to us under credit facilities, will be sufficient to meet any cash shortfalls during at least the next 12 months.

We expect to rely primarily on increased market penetration of our products and increased profitability from a more favorable product mix to generate cash to fund our long-term growth. Historically, our products have been well-accepted by the market and our product mix has changed towards higher-priced, differentiated products that generate higher margins.

We have historically reinvested a portion of the cash generated from our operations to fund additional capital expenditures, including research and development activities, which we believe have facilitated greater market penetration and increased profitability. Our ability to meet our long-term liquidity needs, including our long-term growth plan, is dependent on the continuation of this trend and other factors discussed here.

We believe our business is affected by general economic conditions and interest rates in the United States and in other countries because these factors affect the number of new housing starts, the level of housing prices and household net worth. We believe that higher housing prices, which may affect available owner equity and household net worth, are contributors to the currently relatively strong renovation and remodel

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markets for our products. Over the past several years, favorable economic conditions and historically-reasonable mortgage interest rates in the United States helped sustain new housing starts and renovation and remodel expenditures in the United States. However, increases in interest rates during 2005 and 2006 may cause a levelling-off or decrease in new housing starts over at least the short-term. We expect that business derived from current U.S. forecasts of new housing starts and continued healthy renovation and remodel expenditures will result in our operations generating cash flow sufficient to fund the majority of our planned capital expenditures. It is possible that a decline in new housing starts in the United States or in other countries in which we manufacture and sell our products would negatively impact our growth and current levels of revenue and profitability and therefore decrease our liquidity and our ability to generate sufficient cash from operations to meet our capital requirements. During calendar years 2005 and 2006, U.S. home mortgage interest rates steadily increased and, along with continued housing price increases, the U.S. housing affordability index has decreased. We believe that these economic factors, along with others, will cause a slowdown in growth of U.S. new housing construction over the short-term, which may reduce demand for our products.

Pulp and cement are primary ingredients in our fiber cement formulation, which have been subject to price volatility, affecting our working capital requirements. See Item 3, “Key Information — Risk Factors.” Cement prices increased in fiscal year 2006. Pulp prices increased in fiscal year 2005 and the increase continued during fiscal year 2006. We expect that cement prices will remain high in the short-term. In addition, it is possible that pulp prices will also fluctuate. To minimize additional working capital requirements caused by rising pulp or cement prices, we may seek to enter into contracts with suppliers for the purchase of pulp or cement that could fix our pulp or cement prices over the longer-term. However, if pulp or cement prices do not continue to rise, cash generated from our operations may be negatively impacted if pulp or cement pricing is fixed over the longer-term.

Freight costs have increased primarily due to continued higher fuel prices. We expect fuel costs to remain higher, which will increase our working capital requirements as compared to fiscal year 2006.

The collective impact of the foregoing factors, and other factors, including those identified in Item 3, “Key Information — Risk Factors,” may affect our ability to generate sufficient cash flows from operations to meet our short and longer-term capital requirements. We believe that we will be able to fund any cash shortfalls for at least the next 12 months with cash that we anticipate will be available under our credit facilities and that we will be able to maintain sufficient cash available under those facilities. Additionally, we could determine it necessary to reduce or eliminate dividend payments, scale back or postpone our expansion plans and/or take other measures to conserve cash to maintain sufficient capital resources over the short and longer-term.

Capital Expenditures

Our total capital expenditures, including amounts accrued, for continuing operations for fiscal years 2006, 2005 and 2004 were \$162.8 million, \$153.0 million and \$74.1 million, respectively. The capital expenditures were primarily used to create additional low cost, high volume manufacturing capacity to meet increased demand for our fiber cement products and to create new manufacturing capacity for new fiber cement products.

Significant capital expenditures in fiscal year 2006 included (i) completion of the first line at our new Pulaski, Virginia plant and (ii) the continued implementation of our ColorPlus® product strategy. This strategy includes constructing additional ColorPlus® coating capacity inside our existing plants. In fiscal year 2006, we completed construction of, and commenced production on, a new ColorPlus® product line at our Blandon, Pennsylvania plant. In addition, we began construction on new ColorPlus® coating lines at our Reno, Nevada and Pulaski, Virginia plants. Significant capital expenditures in fiscal year 2005 included the completion of our new Reno, Nevada plant and the construction of a new trim line at our Peru, Illinois plant.

Significant capital expenditures in fiscal year 2004 included the completion of: (i) an upgrade to our Blandon, Pennsylvania plant; (ii) a panel production line at our Waxahachie, Texas plant; (iii) a new pre-finishing line at our Peru, Illinois plant; and (iv) a roofing pilot plant in Fontana, California. In addition, in

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fiscal year 2004 we began construction on a new green-field fiber cement plant in Reno, Nevada and on a new trim line at our Peru, Illinois plant. See Item 4, “Information on the Company — Capital Expenditures and Divestitures.”

Contractual Obligations

The following table summarizes our significant contractual obligations at March 31, 2006:

	Payments Due				
	Total	During Fiscal Year Ending March 31,			
		2007	2008 to 2009	2010 to 2011	Thereafter
			(In millions)		
Long-term Debt(1)	\$121.7	\$121.7	\$ —	\$ —	\$ —
Interest on Long-term Debt	10.4	10.4	—	—	—
Operating Leases	142.8	15.8	26.3	22.0	78.7
Purchase Obligations(2)	22.2	22.2	—	—	—
Total	<u>\$297.1</u>	<u>\$170.1</u>	<u>\$ 26.3</u>	<u>\$ 22.0</u>	<u>\$ 78.7</u>

- (1) Under the terms of the U.S.-dollar non-collateralized notes agreement (fixed-rate debt), prepayment was permitted and on April 28, 2006, we issued a notice to all noteholders to prepay in full all outstanding notes on May 8, 2006. On May 8, 2006, the U.S.-dollar non-collateralized notes were prepaid in full, including a make-whole payment of \$6.0 million.
- (2) Purchase Obligations are defined as agreements to purchase goods or services that are enforceable and legally-binding on us and that specify all significant terms, including: fixed or minimum quantities to be purchased; fixed, minimum or variable price provisions; and the approximate timing of the transactions. Purchase obligations listed above primarily represent commitments for capital expenditures, the majority of which relate to the construction of the plant we are building in Pulaski, Virginia.

The table above does not include amounts related to our future funding obligations for our Australian defined benefit plan. We estimate that our pension plan funding will be approximately \$1.4 million for fiscal year 2007. Projected payments beyond fiscal year 2007 are not currently determinable. See also Note 7 to our consolidated financial statements in Item 18.

The table above does not include any amounts related to funding obligations that might arise from asbestos-related matters discussed under Item 3, “Key Information — Risk Factors,” Item 4, “Information on the Company — Legal Proceedings” and Notes 12 and 20 to our consolidated financial statements in Item 18. Although we have recorded an asbestos provision at March 31, 2006 of \$715.6 million, conditions precedent to the Final Funding Agreement have not been met. If conditions precedent to the Final Funding Agreement are not met, we may seek to enter into an alternative arrangement under which we would make payments for the benefit of asbestos claimants. Under alternative arrangements, this estimate may change. Depending on future developments, the impact of future cash funding obligations is significant and our financial position, results of operations and cash flows would be materially adversely affected and our ability to pay dividends would be impaired. In addition, the table above does not include any amounts related to the amended Australian income tax assessment discussed under Note 13 to our consolidated financial statements in Item 18. We have not established a provision for the amended assessment because at this time such liabilities are not probable. RCI is appealing the amended assessment and may incur substantial legal and other expenses in pursuing this appeal. On July 5, 2006, pursuant to an agreement negotiated with the ATO and in accordance with the ATO Receivable Policy, the Company made a payment of A\$189.0 million (\$140.4 million — converted using the assets and liabilities rate at June 30, 2006) being 50% of the amended assessment, and guaranteed the remaining unpaid 50% of the amended assessment, pending the outcome of the appeal of the amended assessment. The Company also agreed to pay general interest charges accruing on the unpaid balance of the amended assessment in arrears on a quarterly basis. The first payment of accrued general interest charges will be due October 15, 2006 in respect of the quarter ending September 30, 2006. These payments will reduce our

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liquidity. In addition, if we are unsuccessful in our appeal, we would be required to pay the entire assessment, in which case, our financial position, liquidity and cash flow will be materially and adversely affected.

See Notes 9 and 12 to our consolidated financial statements in Item 18 for further information regarding long-term debt and operating leases, respectively.

Off-Balance Sheet Arrangements

As of March 31, 2006 and 2005, we did not have any material off-balance sheet arrangements.

Inflation

We do not believe that inflation has had a significant impact on our results of operations for the fiscal years ended March 31, 2006, 2005 or 2004.

Seasonality and Quarterly Variability

Our earnings are seasonal and typically follow activity levels in the building and construction industry. In the United States, the calendar quarters ending December and March reflect reduced levels of building activity depending on weather conditions. In Australia and New Zealand, the calendar quarter ending March is usually affected by a slowdown due to summer holidays. In the Philippines, construction activity diminishes during the wet season from June to September and during the last half of December due to the slowdown in business activity over the holiday period. Also, general industry patterns can be affected by weather, economic conditions, industrial disputes and other factors.

Research and Development

For fiscal years 2006, 2005 and 2004, our expenses for research and development were \$28.7 million, \$21.6 million and \$22.6 million, respectively.

We have invested heavily in research and development, with a focus primarily on fiber cement. We view research and development as key to sustaining our existing market leadership position and expect to continue to allocate significant funding to this endeavor. Through our investment in process technology, we aim to keep reducing our capital and operating costs, and find new ways to make existing and new products.

For more information on our research and development efforts, see Item 4, “Information on the Company — Research and Development.”

Outlook

New housing construction in North America is slowing. The National Association of Home Builders, or NAHB, currently predicts housing starts will continue to slow gradually with higher long-term rates through the end of calendar year 2006 to the middle of calendar year 2007.

In a June 14, 2006 report, Chief Economist David Seiders at the NAHB, noted: “The ‘moderate’ and ‘orderly’ housing slowdown appears to be on track, marked by systematic declines in mortgage applications, home sales and housing starts as well as by a slowdown in house price appreciation. The process should extend well into next year as long as our broad economic and financial market forecasts stay on track.”

Furthermore, the NAHB cautions that downside risk to its “soft landing” prediction remains substantial. Our U.S. business’ focus on growing primary demand for fiber cement, increasing market share in exterior and interior product segments and increasing revenue per unit, is expected to help the business to continue to perform better than the overall market. Repair and remodeling activity is expected to remain buoyant in the short term. This market accounts for approximately 30% of sales in our U.S. business.

Despite an expected moderate softening in new housing construction, we expect our business to continue growing sales through further penetration of our targeted markets and by increasing the proportion of higher-priced differentiated products in our sales mix.

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The upward pressure on raw materials and energy costs is expected to continue and the impact of high oil prices on freight costs shows no sign of abating.

The housing markets in Australia and New Zealand are also experiencing a downturn, but our initiatives to grow primary demand are expected to help dampen the impact.

Conditions in the Philippines are expected to remain difficult due to some continuing political and economic uncertainty, high levels of inflation, and our market share being aggressively pursued by competitors. In the Philippines, improvements in operational efficiency during the first quarter of fiscal year 2007 are expected to continue in spite of increased costs and sustained competitive market conditions.

We continue to incur costs associated with the Final Funding Agreement and other related matters, including costs related to: discussions with the Commonwealth Treasury and ATO on the tax exempt status of the SPF; cooperating with ASIC's ongoing investigation into the circumstances surrounding and leading up to the establishment of the Foundation, the corporate reorganizations in 2001 and 2003, and associated matters; providing an updated actuarial assessment of the total asbestos liabilities of the Former James Hardie Companies; and associated legal and advisory costs. These costs are likely to continue to be material over the short term.

In addition, the asbestos provision will be updated annually, based on the most recent actuarial determinations and claims experience, and quarterly to reflect changes in foreign exchange rates. Changes to the actuarial reports may have a material impact on our consolidated financial statements.

Item 6. *Directors, Senior Management and Employees*

Board Practices and Senior Management

Board Structure

We have a multi-tiered board structure, which is consistent with Dutch corporate law. This structure consists of a Managing Board, a Supervisory Board and a Joint Board.

In the Netherlands, a two-tier board structure with a Managing Board and a Supervisory Board is common. In Australia, the vast majority of companies listed on the ASX have a one-tier board comprising both executive directors and non-executive directors. Therefore, in addition to our Managing Board and Supervisory Board, our board structure includes a Joint Board, which we refer to as the Joint Board, or, the Board, comprising all non-executive directors and our CEO. The Joint Board is the equivalent of a full board of directors of a U.S. or an Australian company.

The responsibilities of each of our Managing Board, Supervisory Board and Joint Board are formalized in charters which are available from the Investor Relations area of our website, www.jameshardie.com.

Managing Board

Members

The Managing Board includes only executive directors and must have at least two members, or more as determined by the Supervisory Board. The members of the Managing Board are appointed by our shareholders at a General Meeting. The Supervisory Board and any of our shareholders have the right to make nominations for the Managing Board.

The Supervisory Board appoints one member of the Managing Board as its Chairman and one member as its Chief Executive Officer. The title of Chairman and Chief Executive Officer may be granted to the same person. The Managing Board is currently chaired by our Chief Executive Officer, Mr. Gries.

If one or more, or all, of the members of the Managing Board are prevented from acting, or are failing to act, the Supervisory Board is authorized to designate a person temporarily in charge of management.

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Members of the Managing Board may be suspended and dismissed by shareholders at the General Meeting. Furthermore, members of the Managing Board may be suspended at any time by the Supervisory Board.

No member of the Managing Board (other than our CEO) shall hold office for a continuous period of more than three years, or past the end of the third General Meeting following his or her appointment, whichever is longer, without submitting himself or herself for re-election.

Responsibilities

The Managing Board manages our Company and is responsible for:

- the general affairs, operations and finance of the Company; and
- ensuring the implementation of our goals, strategy and policies, to achieve results.

The Managing Board is also responsible for complying with all relevant legislation and regulations and for managing the risks associated with our activities.

It reports related developments to, and discusses the internal risk management and control systems with, the Supervisory Board and the Audit Committee. The Managing Board is accountable for the performance of its duties to the Supervisory Board and to shareholders.

The Managing Board provides the Supervisory Board, in a timely manner, with all the information it needs to discharge its duties. In discharging its duties, the Managing Board takes into account our interests, our enterprise (including the interests of our employees) shareholders, other stakeholders and all other parties involved in or with us.

Supervisory Board

Members

The Supervisory Board includes only non-executive directors and must have at least two members, or more as determined by the Supervisory Board. The members of the Supervisory Board are appointed by shareholders at the General Meeting. The Supervisory Board and any of our shareholders have the right to make nominations for the Supervisory Board.

If there is a vacancy on the Supervisory Board at any time after the end of an annual General Meeting and prior to the subsequent annual General Meeting, the Supervisory Board may appoint one or more members of the Supervisory Board to fill any vacancy, provided that:

- such member(s) retire no later than the end of the first General Meeting following their appointment; and
- the number of the members of the Supervisory Board appointed by the Supervisory Board at any given time does not exceed one-third of the aggregate number of members of the Supervisory Board as fixed by the Supervisory Board.

The Supervisory Board appoints one of its members as Chairman. The Supervisory Board is currently chaired by Ms. Meredith Hellicar.

No member of the Supervisory Board shall hold office for a continuous period of more than three years, or past the end of the third General Meeting of shareholders following his or her appointment, whichever is longer, without submitting himself or herself for re-election.

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Responsibilities

The Supervisory Board is responsible for:

- supervising the policy and actions pursued by the Managing Board;
- supervising the general course of our affairs and the business enterprise we operate; and
- advising the Managing Board.

In discharging its duties, the Supervisory Board takes into account our interests, our enterprise (including the interests of our employees), shareholders, other stakeholders and all other parties involved in or with us.

Members of the Supervisory Board may be suspended at any time by a majority vote of members of the Supervisory Board, and may be dismissed by the shareholders at the General Meeting.

Joint Board

Members

The Joint Board consists of between three and twelve members as determined by the Supervisory Board's Chairman or a greater number as determined by our shareholders at a General Meeting.

The Joint Board consists of all members of the Supervisory Board, the Chief Executive Officer and, if the Chairman of the Supervisory Board decides and designates, one or more other members of the Managing Board, provided that the number of members of the Managing Board on the Joint Board is never greater than the number of members of the Supervisory Board.

The Joint Board currently includes all of the members of the Supervisory Board as well as our Chief Executive Officer.

The Joint Board appoints one of its members as the Chairman. The Chairman must be an independent, non-executive director. The Joint Board is currently chaired by Ms. Hellicar, who also chairs the Supervisory Board.

Responsibilities

The Joint Board is responsible for supervising the general course of our affairs, approving the strategy set by the Managing Board, and monitoring our performance. To this end, we adopt a three-year business plan and a 12-month operating plan. Our financial results and performance are closely monitored against these plans.

Our Joint Board also seeks to ensure that we have in place effective external disclosure policies and procedures so that our shareholders and the financial markets are fully-informed on all material matters that might influence the share price.

The core responsibility of members of the Joint Board is to exercise their business judgment in the best interests of the Company and our shareholders. Members of the Joint Board must fulfill their fiduciary duties to shareholders by complying with all applicable laws and regulations. Directors also take into consideration the interests of other stakeholders in the Company, including employees, customers, creditors and others with a legitimate interest in the Company's affairs.

In discharging their duties, directors are provided with direct access to our senior executives and outside advisors and auditors. Joint Board Committees and individual directors may seek independent professional advice at the Company's expense for the proper performance of their duties.

Processes

The Joint Board generally holds at least five meetings per year and whenever the Chairman of the Joint Board or two or more of its members have requested a meeting. Joint Board meetings are generally held at the Company's offices in The Netherlands, but may in exceptional circumstances be held elsewhere. In addition,

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meetings may also be held by telephone or video-conference provided that all participants can hear each other simultaneously. The vast majority of the Joint Board meetings shall physically be held in The Netherlands.

Each physical Joint Board meeting includes an executive session without any members of our management present.

The Joint Board has an annual program of visiting our facilities and spending time with line management and customers to assist directors to better understand our businesses and the markets in which we operate.

Directors

Qualifications

Our directors have qualifications, experience and expertise which assist the Joint Board in fulfilling its responsibilities, and assist the Company to achieve future growth.

Directors are required to be able to devote a sufficient amount of time to prepare for, and effectively participate in, board and committee meetings. The responsibilities of directors and our expectations of them are set out in a letter at the time the director is appointed.

Independence

All directors are expected to bring their independent views and judgment to the Joint Board and must declare any potential or actual conflicts of interest.

The Joint Board considers all relevant facts and circumstances in determining the independence of directors in accordance with applicable listing standards, and whether a director has a material relationship with us or another party that might impair his or her independence.

The Joint Board may determine that a director is independent even if there is a material relationship. This may occur if that relationship is not considered by the Joint Board to influence, or be perceived to influence, the director's decisions in relation to us.

The Joint Board has not set materiality thresholds and considers all relationships on a case-by-case basis, considering the accounting standards approach to materiality.

The Joint Board has a policy that a majority of its members and the Chairman must be independent unless a greater number is required to be independent under the rules and regulations of ASX, the NYSE or any other applicable regulatory body. For the purposes of complying with the independence requirements for directors who serve on the Nominating and Governance Committee, the Remuneration Committee and the Audit Committee, a director's independence is determined by the Joint Board in accordance with the rules and regulations of the applicable exchange or regulatory body.

The office of Chairman of the Joint Board and Chief Executive Officer cannot be held by the same person simultaneously, other than in special circumstances and/or for a short period of time.

The Joint Board does not believe that arbitrary limits on the tenure of directors are appropriate or in the best interests of our Company and our shareholders. Limits on tenure may cause the loss of experience and expertise that are important contributors to our long-term growth and prosperity. Conversely, the Joint Board does not believe that directors should expect to be automatically nominated for re-election at the end of their three-year term. Instead, nomination for re-election should be based on directors' individual performance and our needs.

The Joint Board has considered the issue of the independence of our directors and determined that each member of the Joint Board is independent, other than Mr. Gries. Mr. Gries is our Chief Executive Officer and as such is not independent.

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Two ways in which our corporate governance practices significantly differ from those followed by U.S. domestic companies under NYSE listing standards should be noted:

First, in the United States, it is the audit committee of a board of directors that is required to be solely responsible for, among other matters, appointing a company's independent auditor. However, in accordance with Dutch law, our shareholders are required to appoint our independent auditor. In the event our shareholders do not appoint an independent auditor, our Supervisory Board is authorized to do so and, should the Supervisory Board fail to appoint an independent auditor, our Managing Board is authorized to do so.

Second, the NYSE rules require each issuer to have an audit committee, a compensation committee (the equivalent to a remuneration committee), and a nominating committee composed entirely of independent directors. Because we are a foreign private issuer, we do not have to comply with this requirement. In our case, the charters of the committees of our board of directors reflect Australian and Dutch practices and as such only require that we have a majority of independent directors on such committees, unless a higher number is mandatory. Notwithstanding this difference, all of the current members of our Audit Committee, Remuneration Committee, and Nominating and Governance Committee presently qualify as independent in accordance with the rules and regulations of the Securities and Exchange Commission and the NYSE.

Our directors' shareholdings, which are disclosed under "Share Ownership" below, are not considered to detract from their independence.

All of the independent directors have:

- undertaken to advise the Joint Board of any change in their circumstances that could affect their independence; and
- completed a comprehensive questionnaire that confirms their independence.

Director Orientation

We have an orientation procedure for new directors. Our Chief Executive Officer, Chief Financial Officer, General Counsel and Executive Vice Presidents are responsible for providing information for the orientation for new directors and for periodically providing materials or briefing papers to the Joint Board on matters as requested or appropriate for directors to fulfill their duties.

Typically, a new director will undergo an extensive orientation that includes:

- visits to our facilities, meetings with management and customers;
- reviews of financial position, strategy, operating performance and risk management;
- a review of his or her rights, duties and responsibilities; and
- a discussion of the role of Supervisory Board Committees.

We also have induction and orientation programs for executives and employees that are tailored according to seniority and position.

We encourage our directors to participate in continuing education programs to assist them in performing their responsibilities.

Remuneration

Under our Articles of Association, the salary, the bonus (if any) and the other terms and conditions of employment of the members of the Managing Board are determined by the Supervisory Board. Under an amendment to the Dutch Civil Code which came into force on October 1, 2004, the salary and bonus of members of the Managing Board must be determined within the scope and the limits of a Remuneration Policy.

A Remuneration Policy for the members of the Managing Board was developed by the Supervisory Board and approved by our shareholders for adoption at the August 2005 Annual General Meeting. Arrangements

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for the remuneration of the members of the Managing Board in the form of shares or CUFS, or rights to acquire shares or CUFS, in our share capital were approved as a transitional plan for one year by shareholders at the 2005 General Meeting. New arrangements will be subject to the approval of shareholders at the 2006 General Meeting.

Under our Articles of Association, the Supervisory Board determines the remuneration of its members, provided that the total amount does not exceed a maximum sum approved by shareholders at a General Meeting. The total remuneration of members of the Supervisory Board will always be determined by shareholders. The shareholders will be asked to approve an increase of the remuneration cap at the 2006 General Meeting.

Indemnification

Our Articles of Association generally provide that we will indemnify any person who is (or keep indemnified any person who was) a member of our Managing, Supervisory or Joint Boards or one of our employees, officers or agents, who suffers any loss as a result of any action in connection with their service to us, provided they acted in good faith in carrying out their duties and in a manner they reasonably believed to be in our interest. This indemnification will generally not be available if the person seeking indemnification acted with gross negligence or willful misconduct in performing their duties to us. A court in which an action is brought may, however, determine that indemnification is appropriate nonetheless.

Management Succession

The Supervisory Board, together with the Nominating and Governance Committee, has developed, and periodically revises, management succession plans, policies and procedures for our Chief Executive Officer and other senior officers, whether such succession occurs as a result of a promotion, termination, resignation, retirement or an emergency.

Board Committees

Our Supervisory Board has three committees: the Audit Committee, the Nominating and Governance Committee and the Remuneration Committee.

Audit Committee

The key aspects of our Audit Committee Charter, as of March 31, 2006, are set out below.

Members and Independence

The Audit Committee contains at least three members of the Supervisory Board, appointed by the Supervisory Board. The majority of the members of the Audit Committee must be independent. If the rules and regulations of the ASX, the NYSE or any other applicable regulatory body make it a mandatory requirement that more members of the Audit Committee be independent, then the number of members of the Audit Committee required by the rules to be independent must be independent. For purposes of complying with any applicable independence requirements, a director's independence is determined by the Supervisory Board in accordance with the rules and regulations of the applicable exchange or regulatory body.

Currently, the members of the Audit Committee are Mr. Michael Brown (Chairman), Mr. James Loudon, Mr. Michael Gillfillan, and Ms. Hellicar. Dr. Gregory Clark, who resigned from our Supervisory Board on May 9, 2006, was a member of our Audit Committee during fiscal year 2006. All current Audit Committee members are independent.

As determined by the Supervisory Board, all members of the Audit Committee must be financially literate and must have sufficient business, industry and financial expertise to act effectively as members of the Audit Committee. At least one member must have accounting or related financial management expertise. In addition, at least one member of the Audit Committee shall be an "audit committee financial expert" as

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determined by the Supervisory Board in accordance with U.S. Securities and Exchange Commission rules. These may be the same person.

The Supervisory Board appoints one member of the Audit Committee as its Chairman. The Chairman must be independent and is primarily responsible for the proper functioning of the Audit Committee. The Chairman acts as spokesman of the Audit Committee and is the main contact for the Supervisory Board. The Chairman of the Audit Committee must not be the current Chairman of the Supervisory Board or a former member of the Managing Board.

Under the NYSE listing standards applicable to U.S. companies, if a member of an audit committee simultaneously serves on the audit committees of more than three public companies, the listed company's board must determine that such simultaneous service would not impair the ability of such member to effectively serve on the listed company's audit committee. Mr. Brown serves on the audit committees of four public companies in addition to our Audit Committee. The Joint Board has determined that such simultaneous service does not impair his ability to effectively serve on our Audit Committee.

Purpose, Duties and Responsibilities

The Audit Committee provides advice and assistance to the Supervisory Board in fulfilling its responsibilities relating to: the integrity of the Company's financial statements; the Company's compliance with legal and regulatory requirements; the external auditor's qualifications and independence; the Company's internal controls; oversight of risk assessment and management; the performance of the Company's internal audit function and the external auditor; and such other matters as the Supervisory Board may request from time to time.

Standards and Quality: The Audit Committee oversees the adequacy and effectiveness of the Company's accounting and financial policies and controls, including periodic discussions with management, internal auditors and the external auditor, and seeks assurance of compliance with relevant regulatory and statutory requirements.

Financial Reports: The Audit Committee oversees the Company's financial reporting process and reports on the results of its activities to the Supervisory Board. Specifically, the Audit Committee reviews with management and the external auditor the Company's annual and quarterly financial statements and reports to shareholders, seeking assurance that the external auditor is satisfied with the disclosures and content of the financial statements, and recommends their adoption to the Supervisory Board. The Chairman of the Audit Committee may represent the entire Audit Committee for the purposes of quarterly reviews.

Risk Assessment and Management: The Audit Committee reviews, monitors and discusses the Company's policies and procedures with respect to:

- the identification of strategic, operational and financial risks;
- the establishment of effective systems to monitor, assess, prioritize, mitigate and manage risk; and
- reporting systems for monitoring compliance with risk policies.

External Audit: The Audit Committee has general oversight of the appointment and provision of all external audit services to the Company.

Internal Audit: The Audit Committee oversees the Company's internal audit function, and approves the appointment and termination of all providers of internal audit services, both internal and external. The Audit Committee approves, and can direct, the plan of action for internal audit services, takes note of internal audit findings and recommendations, supervises compliance with the plan and recommendations, and assesses the performance of the internal audit function.

Internal Controls: The Audit Committee reviews and discusses the adequacy and effectiveness of the Company's internal compliance and control systems as well as and the effectiveness of their implementation, including any significant deficiencies in internal controls and significant changes in such controls.

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Disclosure Controls and Procedures: The Audit Committee reviews and discusses the adequacy and effectiveness of the Company's disclosure controls and procedures and management reports thereon.

Complaints: The Audit Committee establishes procedures for the receipt, retention and treatment of complaints regarding accounting, internal accounting controls and auditing matters, including procedures for confidential, anonymous submission of concerns by employees regarding questionable accounting and auditing matters.

Meetings

The Audit Committee meets as often as it deems necessary or appropriate, either in person or by telephone, and at such times and places, and with such invitees, as the Audit Committee determines. A quorum for a meeting of the Audit Committee is a majority of its members. Resolutions of the Audit Committee are adopted by a majority of votes cast. The Audit Committee keeps minutes of meetings and records of resolutions passed, and these are included in the papers for the next Supervisory Board meeting after each meeting of the Audit Committee. The Audit Committee reports regularly to the Supervisory Board about its meetings and activities.

Communications

The Audit Committee maintains free and open communications with the external auditor, the internal auditors and management. The Audit Committee periodically meets with the external auditor without representatives of management to discuss the adequacy of the Company's disclosures and policies and to satisfy itself regarding the external auditor's independence from management and management's cooperation with the external auditor's requirements. The external auditor may communicate with the Audit Committee or its Chairman at any time.

Access and Advisors

In exercising its oversight role, the Audit Committee may investigate any matter it initiates or that is brought to its attention, and for this purpose has full access to the Company's records, personnel and any required external support. The Audit Committee has the authority to retain, at the Company's expense, the external auditor and such other outside counsel, accountants, experts and advisors as it determines appropriate to assist the Audit Committee in the performance of its functions. The Company will also provide funding for the payment of ordinary administrative expenses of the Audit Committee that are necessary or appropriate in carrying out its duties.

Standards

The Audit Committee reviews, and may take any necessary action to uphold, the overall quality of the Company's financial reporting and practices.

Charter

The Audit Committee reviews and assesses the adequacy of its charter at least annually, and recommends any changes it considers appropriate to the Supervisory Board.

Annual Review

The Audit Committee conducts an annual performance review of the Audit Committee and reports its findings to the Supervisory Board.

Conflicts of Interest

The Audit Committee oversees the Company's compliance programs with respect to legal and regulatory requirements and the Company's Code of Ethics policy, including reviewing related party transactions and other conflict of interest issues as they arise.

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Reporting

In addition to providing the Supervisory Board with a report and minutes of each of its meetings, the Audit Committee will inform the Supervisory Board of any general issues that arise with respect to the quality or integrity of the Company's financial statements, the Company's compliance with legal or regulatory requirements, the performance and independence of the external auditor, or the performance of the internal audit function.

Special Reviews

The Audit Committee may undertake other special duties as requested by the Supervisory Board.

Annual Information Meeting

Our External Auditor attends the Annual Information Meeting.

Certifying Financial Reports

Under SEC rules, our Chief Executive Officer and Chief Financial Officer certify that our financial statements contain a fair presentation of our financial condition and results in accordance with U.S. law. Similarly, our Chief Executive Officer and Chief Financial Officer provide a sign-off in accordance with U.S. requirements.

Also under SEC rules, our Chief Executive Officer and Chief Financial Officer are required to provide certain certifications in connection with our annual report on Form 20-F, including a certification that the financial statements and other financial information included in the Form 20-F fairly present in all material respects the financial condition, results of operations, and cash flows of the Company, as of, and for the period presented in, the report.

Audit Committee's Risk Management Subcommittee

In August 2005, the Audit Committee established a Risk Management Subcommittee. The Risk Management Subcommittee provides advice and assistance to the Audit Committee and assists the Audit Committee in fulfilling its responsibilities relating to the Company's risk management and assessment. The Subcommittee reports to the Audit Committee on the procedures in place for identifying, monitoring, managing and reporting on the principal strategic, operational and financial risks of the Company.

Currently, the members of the Subcommittee are Mr. Brown (Chairman), Mr. Gries, Mr. Chenu and senior employees of the Company. Dr. Clark, who resigned from our Supervisory Board on May 9, 2006, was Chairman of the Risk Management Subcommittee during fiscal year 2006.

Our complete Audit Committee Charter is available from the Investor Relations area of our website, www.jameshardie.com.

Nominating and Governance Committee

Our Nominating and Governance Committee was formed in 2002. The key aspects of our Nominating and Governance Committee Charter, as of March 31, 2006, are set out below.

Members and Independence

The Nominating and Governance Committee consists of at least three members of the Supervisory Board, and are appointed by the Supervisory Board.

The majority of the members of the committee must be independent unless a greater number is required to be independent under the rules and regulations of the ASX, the NYSE or any other applicable regulatory body. For the purposes of complying with any applicable independence requirements for directors who serve

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on the Nominating and Governance Committee, a director's independence is determined by the Supervisory Board in accordance with the rules and regulations of the applicable exchange or regulatory body.

The Supervisory Board appoints one member of the committee as its Chairman. The Chairman must be independent, is primarily responsible for the committee's proper functioning, acts as the committee's spokesman and is the main contact for the Supervisory Board.

Currently, the members of the Nominating and Governance Committee are Mr. McGauchie (Chairman), Mr. Gillfillan and Ms. Hellicar, all of whom are independent. Dr. Clark (who resigned from our Supervisory Board on May 9, 2006) and Mr. Peter Cameron (who resigned from our Supervisory Board on January 19, 2006) were both members of our Nominating and Governance Committee during fiscal year 2006.

Purpose, Duties and Responsibilities

The purpose of the committee is to identify individuals qualified to become members of the Managing Board or Supervisory Board; recommend to the Supervisory Board candidates for the Managing Board or Supervisory Board (to be appointed by shareholders); recommend to the Supervisory Board a set of corporate governance principles; and perform a leadership role in shaping the Company's corporate governance policies.

Outside Advisors

The committee has the authority to retain such outside counsel, experts, and other advisors as it determines appropriate to assist it in the full performance of its functions, including sole authority to retain and terminate any search firm used to identify director candidates, and to approve the search firm's fees and other retention terms.

Meetings

The committee meets as often as it deems necessary or appropriate, either in person by telephone, and at such times and places as the committee determines. A quorum for a meeting of the committee is a majority of its members. Resolutions of the committee are adopted by a majority of votes cast. The committee reports regularly to the Supervisory Board with respect to its meetings.

Report

The committee prepares a report of its deliberations and findings and provides the Supervisory Board with the report at the first meeting of the Supervisory Board directly following the meeting of the committee and in any event no less frequently than annually.

Our complete Nominating and Governance Committee Charter is available from the Investor Relations area of our website, www.jameshardie.com.

Remuneration Committee

The key aspects of our Remuneration Committee Charter are set out below.

Members and Independence

The Remuneration Committee consists of at least three members of the Supervisory Board who are appointed by the Supervisory Board.

The majority of the members of the Remuneration Committee must be independent unless a greater number is required to be independent under the rules and regulations of ASX, the NYSE or any other applicable regulatory body. For the purposes of complying with any applicable independence requirements for directors to serve on our Remuneration Committee, a director's independence shall be determined by the Supervisory Board in accordance with the rules and regulations of the applicable exchange or regulatory body.

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Additionally, members of the Remuneration Committee must qualify as “non-employee directors” for purposes of Rule 16b-3 under the Securities Exchange Act of 1934, as amended, and as “outside directors” for purposes of Section 162(m) of the Internal Revenue Code.

The Supervisory Board appoints one member of the Remuneration Committee as its Chairman. The Chairman must be independent, is primarily responsible for the committee’s proper functioning, acts as the committee’s spokesman and is the main contact for the Supervisory Board. The Chairperson of the Remuneration Committee may not be the current Chairperson of the Supervisory Board or a former member of the Managing Board.

Currently, the members of our Remuneration Committee are Mr. Barr (Chairman), Mr. Loudon and Ms. Hellicar, all of whom are independent.

Purpose, Duties, and Responsibilities

The purpose of the Remuneration Committee is to discharge the responsibilities of the Supervisory Board relating to remuneration of the Company’s senior executives and non-executive directors and to further advise the Supervisory Board on the Company’s remuneration policies and practices. The Remuneration Committee:

- administers and makes recommendations on the Company’s incentive compensation and equity-based remuneration plans;
- reviews the remuneration of Supervisory Board Directors for service on the Supervisory Board and Board committees;
- reviews the remuneration policy for members of the Managing Board; and
- makes recommendations to the Supervisory Board on the Company’s recruitment, retention and termination policies and procedures for senior management.

Subcommittees

The Remuneration Committee may delegate any of the foregoing duties and responsibilities to a subcommittee of the Remuneration Committee consisting of no fewer than two members of the committee.

Outside Advisors

The Remuneration Committee will have the sole authority to retain, at the expense of the Company, such outside counsel, experts, remuneration consultants and other advisors as it determines appropriate to assist it in the full performance of its functions.

Meetings

The Remuneration Committee will meet as often as it deems necessary or appropriate, either in person or by telephone, and at such times and places as the Remuneration Committee determines. A quorum for a meeting of the Remuneration Committee is a majority of its members. Resolutions of the Remuneration Committee are adopted by a majority of votes cast. The Remuneration Committee will report regularly to the Supervisory Board with respect to its meetings and activities.

Report

The Remuneration Committee prepares a report of its deliberations and findings and provides the Supervisory Board with the report at its first meeting directly following the meeting of the Remuneration Committee and, in any event, no less frequently than annually.

Our complete Remuneration Committee Charter is available from the Investor Relations area of our website, www.jameshardie.com.

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Policies and Programs

We have a number of policies and programs that address key aspects of our corporate governance. Our key policies and programs cover:

- Risk Management;
- Business Conduct and Ethics;
- Ethics Hotline (Whistleblower);
- Continuous Disclosure and Market Communication;
- Insider Trading; and
- Corporate Governance Principles.

Risk Management

The Joint Board, together with the Audit Committee, is responsible for satisfying itself that our risk management systems are effective and, in particular, for ensuring that:

- the principal strategic, operational and financial risks are identified;
- effective systems are in place to monitor and manage risks; and
- reporting systems, internal controls and arrangements for monitoring compliance with laws and regulations are adequate.

As noted above, our Audit Committee receives advice and assistance from a Risk Management Subcommittee formed in August 2005. In addition to maintaining appropriate insurance and other risk management measures, the Company has taken the following steps to address identified risks. It has:

- established policies and procedures in relation to treasury operations, including the use of financial derivatives;
- issued and revised standards and procedures in relation to environmental and health and safety matters;
- implemented and maintained training programs in relation to legal issues such as trade practices/antitrust, trade secrecy, and Intellectual Property protection; and
- issued procedures requiring that significant capital and recurring expenditure is approved at the appropriate levels.

The internal and external audit functions are involved in risk assessment and the management and measurement of the effectiveness of the Company's risk management systems. The internal and external audit functions are separate from and independent of each other.

The above risks are also addressed in our Code of Business Conduct and Ethics which applies to all employees and directors, and monitored through regular reports to the Joint Board. Where appropriate, members of the management team and independent advisers also make presentations to the Joint Board and to the Audit Committee during the year.

We regularly review the need for additional disclosure of our risk management systems including those related to our internal compliance and control system.

In accordance with Dutch law, our Managing Board has assessed our internal risk management and control systems. Based on its most recent assessment, the Managing Board believes that our internal risk management and control systems provide a reasonable level of assurance that they are adequate and that they have operated effectively in fiscal year 2006. Consequently, the Managing Board has concluded that we comply with the requirements of applicable Dutch law.

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Notwithstanding the foregoing, we do not expect that our internal risk management and control systems will prevent or detect all error and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control system's objectives will be met.

The design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Further, because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, within the Company have been detected.

These inherent limitations include the realities that judgments in decision-making can be faulty and that breakdowns can occur because of simple error or mistake. Controls can also be circumvented by the individual acts of some persons, by collusion of two or more people, or by management overriding the controls. The design of any system of controls is based in part on certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Projections of any evaluation of controls effectiveness to future periods are subject to risks. Over time, controls may become inadequate because of changes in conditions or deterioration in the degree of compliance with our policies or procedures.

Our analysis of our internal risk management and control systems for purposes of the Dutch law is different from the report that we will be required to prepare in the United States pursuant to Section 404 of the Sarbanes-Oxley Act of 2002. Section 404 requires, among other things, that companies include a management report on a company's internal control over financial reporting that is accompanied by a separate auditor's report on management's assessment.

For foreign private issuers such as our Company, the deadline for complying with the requirements of Section 404 has been extended to the first fiscal year ending on or after July 15, 2006 or, in our case, March 31, 2007. Accordingly, our Section 404 report will first appear in our annual report on Form 20-F for the fiscal year ending March 31, 2007.

Business Conduct and Ethics

See Item 16B, "Code of Business Conduct and Ethics."

Our Code of Business Conduct and Ethics, as amended, is available from the Investor Relations area of our website, www.jameshardie.com.

Ethics Hotline (Whistleblower)

See Item 16B, "Code of Business Conduct and Ethics."

Continuous Disclosure and Market Communication Policy

We have a Continuous Disclosure and Market Communication Policy which is designed to ensure that investors can easily understand our strategies and assess the quality of our management and examine our financial position and the strength of our growth prospects.

The policy is also designed to ensure that we satisfy our legal obligations on disclosure to the ASX and under the Australian Corporations Act (2001) as well as our obligations in the United States where we are traded on the NYSE, and in The Netherlands.

Communication

We are committed to communicating effectively with our investors. Our investor relations program includes:

- management briefings and presentations to accompany quarterly results, which are accessible on a live webcast and teleconference;

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- audio webcasts of other management briefings and view webcasts of the shareholder information meeting;
- a comprehensive Investor Relations website that displays all Company announcements and notices as soon as they have been cleared by the ASX, as well as all major management and road show presentations;
- United States and Australian site visits and briefings on strategy for investment analysts;
- an e-mail alert service to advise investors and other interested parties of announcements and other events; and
- equality of access for shareholders, investment analysts and the media to briefings, presentations and meetings.

Shareholders' Participation

We encourage our shareholders to exercise their rights at our General Meeting. While our General Meetings take place in The Netherlands, we conduct informational meetings, which we refer to as Information Meetings, in Australia to enable CUFS holders to attend a meeting together to review items of business and other matters that will be considered and voted on at the subsequent General Meeting in The Netherlands.

We distribute with the Notice of Meeting a question form which holders can use to submit questions in advance of the meeting. We implemented this process to make it easier for more holders to have questions answered, whether or not they can attend the Information Meeting. Holders can also ask questions relevant to the business of the meeting from the floor during the Information Meeting.

For the benefit of holders unable to attend, the Information Meeting is broadcast live over the internet at www.jameshardie.com (click on "Investor Relations", then "Annual Meetings"). This webcast then remains on our website so it can be replayed later.

Each shareholder, person entitled to vote, and CUFS holder (but not an ADR holder) has the right to attend the General Meeting either in person or by proxy; to address shareholder meetings; and, in the case of shareholders and other persons entitled to vote (for instance, certain pledge holders), to exercise voting rights, subject to the provisions of our Articles of Association. While ADR holders cannot vote directly, ADR holders can direct the voting of their underlying shares through the ADR depository. See Item 10, "Additional Information — Key Provisions of our Articles of Association of JHI NV — Shareholders Meetings and Voting Rights."

We set a registration date for the exercise of the voting rights at a General Meeting. Shareholders and CUFS holders registered at this date are entitled to attend the meeting and to exercise the other shareholder rights (in the meeting in question) notwithstanding subsequent sale of their shares. This date is published in advance of every General Meeting. Shareholders who are entitled to attend a General Meeting may be represented by proxies.

Unless otherwise required by our Articles of Association or Dutch law, resolutions of the General Meeting are validly adopted by an absolute majority of the votes cast at a meeting at which at least 5% of our issued share capital is present or represented.

Explanatory notes to the Notice of Meeting inform shareholders of all facts and circumstances relevant to the proposed resolutions. The explanatory notes and Notice of Meeting are sent to shareholders and are available from the Investor Relations area of our website, www.jameshardie.com.

Our Continuous Disclosure and Market Communication Policy is available from the Investor Relations area of our website, www.jameshardie.com.

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Insider Trading

Directors and senior executives are subject to our Insider Trading Policy and rules.

Directors and senior executives, among others, must notify the designated compliance officer, currently our General Counsel, before buying or selling our shares. Our shares may only be bought or sold by employees, including senior executives and directors, within four weeks beginning two days after the announcement of quarterly or full year results. Even during this trading “window,” all those covered by our Insider Trading Policy are prohibited from dealing in securities for “short swing profit” (i.e., where the profit is realized, or expected to be realized from any purchase and sale, or sale and purchase, of Company securities within any period of less than six months) or “hedging transactions,” (i.e., dealing in call or put options involving Company securities or any other derivative Company securities that limit the economic risk of Company securities).

The Managing Board recognizes that it is the individual responsibility of each of director and employee to ensure that he or she complies with the spirit and the letter of insider trading laws and that notification to our compliance officer in no way implies approval of any transaction.

Our Insider Trading Policy is available from the Investors Relations area of our website, www.jameshardie.com.

Corporate Governance Principles

Our Corporate Governance Principles are available from the Investor Relations area of our website (www.jameshardie.com) under the “Policies and Programs” link and available in print to any shareholder who requests a copy.

Updated Information

We have a dedicated section on corporate governance as part of the “Investor Relations” area of our website (www.jameshardie.com). Information in this section of the website is updated and expanded from time to time to ensure it presents the most up-to-date information on our corporate governance systems.

Current and Former Directors and Executive Officers

Recent Developments

On June 30, 2005, Mr. W. (Pim) Vlot’s employment agreement expired by its terms. Mr. Vlot was an interim member of our Managing Board and our Company Secretary.

On July 1, 2005, Mr. Benjamin Butterfield was appointed our Company Secretary and an interim member of the Managing Board, and on August 22, 2005 he was appointed to the Managing Board by our shareholders.

On August 22, 2005, Mr. Russell Chenu was appointed to the Managing Board by our shareholders.

On August 22, 2005, Mr. Louis Gries, an interim member of the Managing Board since October 22, 2004, was appointed to the Managing Board by our shareholders.

On September 1, 2005, Ms. Cathy Wallace joined the Company as Vice President, Human Resources.

On December 19, 2005, Mr. Donald Merkley resigned from his position as Executive Vice President Research & Development and from the Company. Mr. Mark Fisher replaced Mr. Merkley in the research & development role.

On January 19, 2006, Mr. Peter Cameron, a non-executive director, resigned from the Joint and Supervisory Boards and from the Nominating and Governance Committee for health reasons. Mr. Cameron died in February 2006.

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On April 10, 2006, Mr. Grant Gustafson joined the Company as Vice President, Interiors & Business Development.

On May 9, 2006, Dr. Gregory Clark, a non-executive director, resigned from his position on our Joint and Supervisory Boards and from our Audit Committee and Nominating and Governance Committee.

On September 1, 2006, Mr. David Merkley resigned from his position as our Executive Vice President, Engineering and Process Development.

On September 25, 2006, Ms. Hellicar, Mr. Gillfillan, and Mr. McGauchie were each re-elected to our Supervisory Board for a three-year term expiring in 2009.

The current members of our Supervisory Board, Managing Board, Joint Board and our Senior Leadership Team, along with former directors and a former Senior Leadership Team officer, are as follows:

<u>Name</u>	<u>Age</u>	<u>Position</u>	<u>Term Expires</u>
Supervisory Board			
Meredith Hellicar	52	Chairman of the Joint Board and Chairman of the Supervisory Board	2009
John Barr	59	Deputy Chairman of the Joint Board and Deputy Chairman of the Supervisory Board	2007
Michael Brown	60	Member of the Joint Board and the Supervisory Board	2008
Michael Gillfillan	58	Member of the Joint Board and the Supervisory Board	2009
James Loudon	63	Member of the Joint Board and the Supervisory Board	2008
Donald McGauchie	56	Member of the Joint Board and the Supervisory Board	2009
Managing Board			
Louis Gries	52	Chief Executive Officer, Member of the Joint Board and Chairman of the Managing Board	
Russell Chenu	57	Chief Financial Officer and Member of the Managing Board	
Benjamin Butterfield	46	General Counsel, Member of the Managing Board and Company Secretary	
Other Senior Leadership Team Officers			
Steve Ashe	46	Vice President — Investor Relations	
Peter Baker	55	Executive Vice President — Australia	
James Chilcoff	42	Vice President — International Business	
Mark Fisher	35	Vice President — Research and Development	
Grant Gustafson(1)	44	Vice President — Interiors and Business Development	
Nigel Rigby	39	Vice President — Emerging Markets	
Robert Russell	40	Vice President — Established Markets	
Cathy Wallace(2)	50	Vice President — Global Human Resources	

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Former Directors and Senior Leadership Team Officers

Peter Cameron(3)	54	Former Member of the Joint Board and Supervisory Board
Gregory Clark(4)	63	Former Member of the Joint Board and the Supervisory Board
W. (Pim) Vlot(5)	41	Former Interim Member of the Managing Board and Former Company Secretary
Donald Merkley(6)	43	Former Executive Vice President — Research and Development
David Merkley(7)	43	Former Executive Vice President — Engineering and Process Development

- (1) Mr. Gustafson joined us as a Vice President in April 2006.
- (2) Ms. Wallace joined us as a Vice President in September 2005.
- (3) On January 19, 2006, Mr. Cameron resigned from our Joint and Supervisory Boards and from the Nominating and Governance Committee for health reasons. Mr. Cameron died in February 2006.
- (4) On May 9, 2006, Dr. Clark resigned from our Joint Board, Supervisory Board, Audit Committee and Nominating and Governance Committee.
- (5) Mr. Vlot's temporary employment agreement, as amended, provided that unless an indefinite contract was negotiated, the contract would automatically terminate on June 30, 2005. The agreement expired by its terms on June 30, 2005.
- (6) On December 19, 2005, Mr. Donald Merkley resigned from his position as Executive Vice President — Research and Development and from the Company.
- (7) On September 1, 2006, Mr. David Merkley resigned from his position as Executive Vice President — Engineering and Process Development and from the Company.

Directors

Meredith Hellicar is the Chairman of our Joint Board and the Chairman of our Supervisory Board. From July 19, 2004 until its dissolution on March 31, 2005, Ms. Hellicar was also the Chairman of the Special Committee overseeing matters relating to the SCI. Ms. Hellicar is also a member of our Remuneration Committee, Nominating and Governance Committee and Audit Committee. Ms. Hellicar joined James Hardie Industries Limited (now named ABN 60) as an independent, non-executive director in May 1992. She resigned as director of JHIL in October 2001 and was appointed as a member of our Supervisory Board and Joint Board. She was last elected by our shareholders at our 2006 Annual General Meeting. Ms. Hellicar was appointed Chairman of our Joint and Supervisory Board after former Chairman Alan McGregor's resignation in August 2004. She is experienced as a company director and has held chief executive positions in resources, transport and logistics, law and financial services. She is a director of AMP Limited (since March 2003), Southern Cross Airports Group and Amalgamated Holdings Limited (since October 2003); and Chairman of The Sydney Institute and HLA Envirosiences Pty Limited. Ms. Hellicar is also a member of the Australian Takeovers Panel and the Garvan Institute Foundation. Her previous experience includes directorships with the NSW Environment Protection Authority from 1992 to 1996, AurionGold until December 2002, the NSW Treasury Corporation from 2003 to 2004 and HCS Limited from 2001 to 2005. Ms. Hellicar was Chief Executive Officer of the law firm Corrs Chambers Westgarth and Managing Director of TNT Logistics Asia Pte Ltd and InTech Pty Ltd. Ms. Hellicar was awarded a Centenary Medal for her contribution to society in business leadership. Ms. Hellicar received a Bachelor of Arts and Master of Laws, specializing in international business law, from University of Sydney.

John Barr joined James Hardie Industries N.V. as an independent, non-executive director as a member of our Joint Board and Supervisory Board in September 2003 and was appointed Deputy Chairman of the Joint and Supervisory Boards in October 2004. He was last elected by our shareholders at our 2004 Annual

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General Meeting. Mr. Barr is also Chairman of our Remuneration Committee. Mr. Barr has been a director of Performance Logistics Group, Inc., the second largest provider of new vehicle transportation services in North America since September 2005 and was its Chairman from March 2004 to September 2005. In April 2005, he assumed the role of Chief Executive Officer of Papa Murphy's International Inc., a take-and-bake pizza chain, following its June 2004 acquisition by a partnership consisting of himself, Charlesbank Capital Partners, LLC and company management. Mr. Barr also has served as Vice-Chairman of the Board of Directors of Papa Murphy's since June 2004. He has more than 30 years of management experience in the North American industrial sector, including 25 years at The Valvoline Company, a leading marketer, distributor and producer of quality branded automotive and industrial products and services; Mr. Barr also served as President and Chief Executive Officer of Automotive Performance Industries from 1999 to April 2004. Between 1995 and 1999, Mr. Barr served as President and Chief Operating Officer and a member of the board of directors of the Quaker State Corporation, a leading automotive aftermarket products and consumer car care company, now part of Royal Dutch Shell. Since December 2002, Mr. Barr has served as director of United Auto Group, the second largest publicly held automotive retailer in the United States, and, in August 2003, he was appointed to the board of directors of Clean Harbors Inc., the leading provider of hazardous waste and environmental management services throughout North America. In December 2003, he was appointed as director to UST Inc.

Michael Brown is a member of our Joint Board and Supervisory Board, Chairman of our Audit Committee, and Chairman of our Risk Management Subcommittee. Mr. Brown joined James Hardie Industries Limited as an independent, non-executive director in September 1992 and was appointed to our Supervisory Board and Joint Board in October 2001. He was last elected by our shareholders at our 2005 Annual General Meeting. Mr. Brown has broad executive experience in finance, accounting and general management in Australia, Asia and the United States. He is a director of Repco Corporation Ltd (since 2001), having served as its Chairman until March 2006, and is also a director of Energy Developments Ltd (director since 2001; Chairman since 2003). He is a non-executive director of Wattyl Ltd (since 2003) and Innamincka Petroleum Ltd (since 2003). He was Group Finance Director of Brambles Industries Limited from 1995 to 2000; prior to that, he was Finance Director of Goodman Fielder Ltd, Renison Goldfields Consolidated Ltd, and Esso Australia Ltd.

Michael Gillfillan is a member of our Joint Board and Supervisory Board, and a member of our Nominating and Governance Committee and our Audit Committee. In addition, Mr. Gillfillan was a member of the Special Committee overseeing matters relating to the SCI from July 19, 2004 until its dissolution on March 31, 2005. Mr. Gillfillan joined James Hardie Industries Limited as an independent, non-executive director in August 1999 and was appointed to our Supervisory Board and Joint Board in September 2001. He was last elected by our shareholders at our 2006 Annual General Meeting. He provides us with considerable knowledge of U.S. capital markets and a depth of experience in commercial and corporate banking. He has held a number of senior executive positions, including Vice Chairman of Wells Fargo Bank. He was elected as a director of UnionBanCal Corporation and its primary subsidiary, Union Bank of California, NA in January 2003 and is a partner at Meriturn Partners, LLC. Mr. Gillfillan received a B.A. in History from the University of California, Berkeley and an MBA from the University of California, Los Angeles.

James Loudon is a member of our Joint Board and Supervisory Board, Audit Committee and Remuneration Committee. Mr. Loudon was elected as an independent, non-executive director in July 2002 after joining James Hardie Industries N.V. as a consultant to the Board in March 2002. He was last elected by our shareholders at our 2005 Annual General Meeting. He has held management positions in finance and investment banking and senior roles in the transport and construction industries. He is currently Deputy Chairman of Caledonia Investments Plc and has been a director of this company since 1995. He is Governor of the University of Greenwich and of several charitable organizations. He was a non-executive director of Lafarge Malayan Cement Berhad from 1989 to 2004. In addition, he served as Group Finance Director of Blue Circle Industries Plc, one of the world's largest cement producers, from 1987 until 2001 and, prior to that, he was the first Vice-President of Finance for Blue Circle's companies in the United States. Mr. Loudon received a Bachelor of Arts from Cambridge University and an MBA from the Stanford Graduate School of Business.

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Donald McGauchie is a member of our Joint Board and Supervisory Board and the Chairman of our Nominating and Governance Committee. In addition, Mr. McGauchie was a member of the Special Committee overseeing matters relating to the SCI from July 19, 2004 until its dissolution on March 31, 2005. Mr. McGauchie joined James Hardie Industries N.V. as an independent, non-executive director in August 2003. Mr. McGauchie has wide commercial experience within the food processing, commodity trading, finance and telecommunication sectors. He also has extensive public policy experience, having previously held several high-level advisory positions to the Australian Government including the Prime Minister's Supermarket to Asia Council, the Foreign Affairs Council and the Trade Policy Advisory Council. Mr. McGauchie is Chairman of Telstra Corporation Limited (since 2004) and a director of The Reserve Bank of Australia and Nufarm Limited (since 2003). Mr. McGauchie was a director of National Foods Limited from 2000 to 2005, director of Graincorp Limited from 1999 to 2002, Chairman of Woolstock Australia Limited from 1999 to 2002, Deputy Chairman of Ridley Corporation Limited from 1998 to 2004, President of the National Farmers Federation from 1994 to 1998 and Chairman of Rural Finance Corporation from 2003 to 2004. In 2003, he was awarded the Centenary Medal for service to Australian society through agriculture and business.

Louis Gries is our Chief Executive Officer, a member of the Joint Board, Chairman of the Managing Board and a member of our Risk Management Subcommittee. Mr. Gries was elected to the Managing Board by our shareholders at our 2005 Annual General Meeting. Mr. Gries joined us as Manager of the Fontana fiber cement plant in California in February 1991 and was appointed President of James Hardie Building Products (USA) in December 1993 and Executive Vice President — Operations in January 2003. In October 2004, Mr. Gries was appointed interim CEO and in February 2005, he was appointed CEO. He previously held management positions with United States Gypsum Corporation, or USG. He has a Bachelor of Science in Mathematics from the University of Illinois and an MBA from California State University, Long Beach.

Russell Chenu is our Chief Financial Officer, a member of the Managing Board and member of our Risk Management Subcommittee. Mr. Chenu joined us in October 2004 as Interim Chief Financial Officer and Executive Vice President, Australia. In February 2005, he was appointed Chief Financial Officer. Mr. Chenu was elected to our Managing Board by our shareholders at the 2005 Annual General Meeting. From February 2001 to July 2004, Mr. Chenu served as Chief Financial Officer of Tab Limited, then a publicly traded entertainment and gambling company. Prior to that, from November 1999 to February 2001, he served as Chief Financial Officer of Delta Gold Limited, then a publicly traded gold mining company. Mr. Chenu previously worked for us for 13 years in a variety of capacities, ultimately as Group Banking Manager from 1982 to 1984. He has a Bachelor of Commerce from the University of Melbourne and an MBA from Macquarie Graduate School of Management in Australia.

Benjamin Butterfield is our General Counsel, Company Secretary, and a member of our Managing Board. Mr. Butterfield joined us in January 2005 as our General Counsel. On July 1, 2005, he was appointed as an interim member of the Managing Board and our Company Secretary. He was elected to the Managing Board by our shareholders at our 2005 Annual General Meeting. From 2003 to 2004, Mr. Butterfield served as General Counsel of Lennar Corporation. Prior to that, from 1996 to 2003 he served as General Counsel of Hughes Supply, Inc. Prior to this, he was a partner at Maguire, Voorhis & Wells, PA (now part of Holland & Knight LLP). Mr. Butterfield was Chairman of the Business Law Section of the Orange County (FL) Bar Association from 1994 to 1995. He has a Bachelor of Arts from Covenant College in Lookout Mountain, Tennessee and a Juris Doctor from Stetson University College of Law in St. Petersburg, Florida.

Senior Leadership Team Officers

Steve Ashe is our Vice President — Investor Relations. Mr. Ashe joined us in January 2000 as Vice President — Public Affairs and was appointed Vice President — Investor Relations in October 2001, responsible for managing the Company's relationships with the investment market. Before joining us, Mr. Ashe worked with PricewaterhouseCoopers (and the former Coopers & Lybrand) spending ten years specializing in accounting, taxation and business advice, and six years on regulation and government matters. He has a Bachelor of Business degree from the University of Technology Sydney and is a member of the Australian Institute of Chartered Accountants.

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Peter Baker is our Executive Vice President — Australia. Mr. Baker joined us in October 2004 as General Manager External Affairs and became Executive Vice President — Australia in September 2005. He has been involved in various aspects of the resolution of our asbestos compensation matters and his current role includes managing our corporate activities in Australia. Mr. Baker is an experienced corporate executive who has held a number of senior positions in Australian public and private companies, including the MIA Group, the Tenix Group and TNT Ltd. In a number of these senior roles he was responsible for formulating corporate strategy, new market expansions in Australia and overseas, and mergers and acquisitions. He has a Bachelor of Science with first class honors from the University of Leicester, UK; a Master of Science in Operational Research with distinction from the London School of Economics, UK; and an MBA from the University of Chicago.

James Chilcoff is our Vice President — International Business. Mr. Chilcoff joined us in 1997 as a Senior Product Manager for Siding. Other roles Mr. Chilcoff has held with us include: Siding Product Development Manager — Marketing from 1998 to 1999; Siding Product Manager from 1999 to 2000; Exterior Marketing Manager from 2000 to 2001; Southern Division Sales/ Marketing Manager from 2001 to 2002; Vice President Sales/ Marketing from 2002 to 2003; and General Manager of our Australia and New Zealand business from 2003 to 2004. In August 2004, Mr. Chilcoff became Vice President — International. In July 2005, Mr. Chilcoff's role was expanded to include overseeing our U.S. Marketing Group and the Repair & Remodel section of our Company. Before joining us, Mr. Chilcoff held various positions with CertainTeed Corporation, S. C. Johnson Wax, Formica Corporation and Armstrong World Industries. Mr. Chilcoff has a Bachelor of Business Administration from Eastern Michigan University and an MBA from Xavier University in Ohio.

Mark Fisher is our Vice President — Research and Development. Mr. Fisher joined us in 1993 as a Production Engineer. Other roles Mr. Fisher has held with us include: Finishing Manager, Production Manager and Product Manager at various locations from 1993 to 1999; Sales and Marketing Manager from 2000 to 2002; and General Manager of our Europe Fiber Cement business from 2002 to 2004. In November 2004, Mr. Fisher became Vice President — Specialty Products. In December 2005, he was appointed as Vice President — Research Development and is also responsible for Artisan[®] roofing and our USA Hardie Pipe business. Before joining us, Mr. Fisher worked in Engineering for Chevron Corporation. Mr. Fisher has a Bachelor of Science in Mechanical Engineering and an MBA from University of Southern California.

Grant Gustafson is our Vice President — Interiors and Business Development. Mr. Gustafson joined us in April 2006. Prior to joining us, Mr. Gustafson held various consulting and consulting management positions, including serving as Managing Director of Arthur D. Little (Southeast Asia and Greater China) from 2000 to 2004, and as a consultant with Bain & Company from 1986 to 1988. In addition, Mr. Gustafson has held senior management positions in the commercial building products sector, including serving as Vice President of Marketing for American Buildings Company from 2005 to 2006, and Director of Marketing with Varco-Pruden from 1988 to 1993. He was also Senior Vice President of the investment firm Markmore Sdn Bhd of Malaysia from 2004 to 2005. He has a Bachelor of Arts from the University of California Santa Barbara and an MBA from the University of Chicago.

Nigel Rigby is our Vice President — Emerging Markets. Mr. Rigby joined us in 1998 as a Planning Manager for our New Zealand business. Other roles Mr. Rigby held with us include: Sales and Marketing Manager and Product Development Manager for our New Zealand business from 1999 to 2002; Strategic Marketing Manager for our Australian business from 2002 to 2003; Business Development Manager for our U.S. business in 2003; and Vice President Exterior Sales — Emerging Markets from 2003 to 2004. In November 2004, Mr. Rigby became Vice President — Emerging Markets. Before joining us, Mr. Rigby held various management positions at Fletcher Challenge, a New Zealand based company involved in energy, pulp and paper, forestry and building materials.

Robert Russell is our Vice President — Established Markets. Mr. Russell joined us in 1996 as a Production Engineer. Other roles Mr. Russell held with us include: Production Manager from 1997 to 1998; Plant Manager from 1998 to 1999; Interior Products & Retail Sales Manager from 1999 to 2000; Vice President Marketing and Sales (James Hardie Gypsum) from 2000 to 2001; Business Development Manager

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from 2001 to 2002 and Vice President Exterior Sales and Marketing — Established Markets from 2002 to 2004. In November 2004, Mr. Russell became Vice President — Established Markets. Prior to joining us, Mr. Russell held various engineering positions with USG Corporation. Mr. Russell has a Bachelor of Science Degree in Industrial Engineering from the University of Arizona and his MBA at the University of California Los Angeles.

Cathy Wallace is our Vice President — Global Human Resources. Ms. Wallace joined us in September 2005. She has over 20 years of experience in the fields of human resources, organizational development, customer service and quality management and has provided strategic leadership for the planning, implementation and measurement of these functions in the service, distribution and manufacturing industries. Before joining us, Ms. Wallace held executive human resources positions in a variety of organizations including, most recently, The Home Depot Supply. Her other roles have included Vice President, Human Resources and member of the senior management team for the publicly-traded U.S. data storage company, ANACOMP, and Director, Human Resources and member of the international management team for Solar Turbines, a subsidiary of Caterpillar, Inc. Ms. Wallace has a Bachelor of Science in Psychology from Gordon College (Massachusetts) and has completed the coursework for a Master of Science in Industrial/ Organizational Psychology from San Diego State University in California.

None of the persons above has any familial relationship with each other. In addition, none of the individuals listed above is party to any arrangement or understanding with a major shareholder, customer, supplier or other entity, pursuant to which any of the above was selected as a director or member of senior management.

Former Directors and Senior Leadership Team Officers

Former Directors

Peter Cameron was a member of our Joint Board and Supervisory Board and our Nominating and Governance Committee. Mr. Cameron resigned on January 19, 2006 due to health reasons. He died in February 2006. Mr. Cameron joined James Hardie Industries N.V. as an independent, non-executive director as a member of our Joint Board and Supervisory Board in August 2003. He was last elected by our shareholders at our 2003 Annual General Meeting. Mr. Cameron had been involved in some of Australia's largest corporate takeovers, mergers and corporate reconstructions, and had a wealth of commercial and corporate advisory experience. He was Chairman of Investment Banking in Australia and Managing Director of Credit Suisse First Boston. In addition, he was a member of the Australian Takeovers Panel and Chairman of the Advisory Board of the University of Sydney Law School. Mr. Cameron was formerly a partner and Head of Mergers and Acquisitions with the Australian law firm, Allens Arthur Robinson. Mr. Cameron had a Bachelor of Arts and Bachelor of Laws from the University of Sydney.

Gregory Clark was a member of our Joint Board, Supervisory Board, Nominating and Governance Committee, Audit Committee, and a member of our Risk Management Subcommittee during fiscal year 2006. Dr. Clark resigned from these boards and committees on May 9, 2006. He was elected as an independent, non-executive director in July 2002. Dr. Clark first joined the Company as a consultant to the Board in December 2001. He was last elected by our shareholders at our 2005 Annual General Meeting. He has a distinguished background in science and business, specializing in the development and commercialization of new technology. He is the recipient of a number of international awards for science and technology, including the Australian Academy of Science Pawsey Medal as the most outstanding Australian scientist. Dr. Clark is currently Principal of Clark Capital Partners, a technology advisor to a number of financial institutions and a Director of Australia and New Zealand Banking Group Limited (since 2004). He served as President and Chief Operating Officer of U.S.-based Loral Space and Communications LLC from 1998 to 2000. Prior to that, he was President of News Corporation's News Technology Group and a member of News Corporation's Executive Committee. Dr. Clark received a Ph.D. in Physics from the Australian National University.

W. (Pim) Vlot was our Legal Counsel Europe & Global Intellectual Property Manager, Company Secretary and an interim member of our Managing Board. Mr. Vlot joined us in January 2004 as Legal

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Counsel Europe & Global Manager Intellectual Property. In February 2004, Mr. Vlot was also appointed Company Secretary and in October 2004, he was appointed as an interim member of the Managing Board. Before joining us, from January 2003 to December 2003, he worked at the Amsterdam office of the Amicorp Group, a privately owned international provider of multinational company management, trust and fiduciary and financial services. From October 2001 to December 2002, he worked at Ernst & Young in The Netherlands as Senior Manager, tax and legal. From 2000 to 2001, Mr. Vlot worked at EQT Scandinavia B.V., the Dutch branch of a Swedish Private Equity firm in Amsterdam, as its in-house counsel tax and legal. Mr. Vlot has been a part-time teacher in corporate tax law at the Inholland University for Economic and Legal studies in Rotterdam and has taught Dutch and international corporate tax law at the Dutch Federal Tax Consultants Association in Amsterdam. Mr. Vlot holds a masters degree in Dutch and International Tax Law from the University of Amsterdam.

Former Senior Leadership Team Officers

David Merkley was our Executive Vice President — Engineering and Process Development until his resignation on September 1, 2006. Mr. Merkley joined us in 1994 as Plant Manager of our Fontana fiber cement operation in California. Other roles Mr. Merkley held with us include: Manager, Research and Development from 1994 to 1996; Plant Manager, Plant City from 1996 to 1998; Process Development Manager from 1998 to 2000; and Operations Manager for James Hardie Building Products USA from 2000 to 2002. In 2002, Mr. Merkley was made Executive Vice President — Manufacturing and Engineering, with global responsibility. In August 2004, Mr. Merkley became Executive Vice President — Engineering and Process Development with responsibility for further development of new flat sheets, pipes and trim technologies, new product engineering and plant design and construction. Prior to joining us, Mr. Merkley held various engineering positions in the civil construction industry. Mr. Merkley has a Bachelor of Science in Construction from Arizona State University.

Donald Merkley was our Executive Vice President — Research and Development until his resignation on December 19, 2005. Mr. Merkley joined us in 1993 as Manager of our Plant City fiber cement plant in Florida and was appointed U.S. Product Development Manager in 1997. In 2002, he was made Executive Vice President — Research and Development and in January 2003, his role was expanded to give him responsibility for our emerging roofing business in the United States. Mr. Merkley is also involved in reviewing business development opportunities. Before joining us, Mr. Merkley held positions with USG Corporation in various engineering-related roles. He has a Bachelor of Science in Engineering from Arizona State University.

Employees

As of the end of each of the last three fiscal years, we employed the following number of people:

	Fiscal Years Ended March 31,		
	2006	2005	2004
Fiber Cement United States and Canada	2,150	1,820	1,722
Fiber Cement Australia	402	424	459
Fiber Cement New Zealand	170	147	161
Fiber Cement Philippines	202	211	225
Pipes (United States and Australia)	129	162	178
Fiber Cement Europe	58	31	37
Roofing (United States)	24	19	18
Fiber Cement Chile	—	139	122
Research & Development, including Technology	118	131	117
General Corporate	50	38	34
Total Employees	3,303	3,122	3,073

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We no longer have fiber cement employees in Chile because we sold our Chilean fiber cement business in July 2005. As of the end of March 31, 2006, of the 3,303 people employed, 286 were members of labor unions (200 in Australia and 86 in New Zealand). Our management believes that we have a satisfactory relationship with these unions and its members and there are currently no ongoing labor disputes. We currently have no employees who are members of a union in the United States or the Philippines.

Compensation

Remuneration

The aggregate amount of compensation that we paid to, or accrued with respect to, members of our Supervisory Board, Managing Board and our executive officers (21 persons in aggregate) for services in all their capacities to us during fiscal year 2006 was approximately \$13.8 million. This figure consists of base salaries, bonuses paid, accrued compensation relating to awards of shadow stock, superannuation and retirement benefits, stock options and severance.

At our Annual General Meeting on September 25, 2006, our shareholders voted to approve an increase in the aggregate amount of remuneration payable per annum to members of our Supervisory Board. For information on this increase, see Item 4, “Information on the Company — Recent Developments.”

As of March 31, 2006, the total amount accrued to provide pension, retirement or similar benefits was approximately \$0.6 million and was related to certain members of our Supervisory Board. See “Other Compensation” for a description of retirement benefits to which two of our directors may be entitled.

The tables below set forth the compensation for those non-executive and executive directors who served on the Board during the fiscal years ended March 31, 2006 and 2005; and for our five most highly compensated current executive officers and for our former executive officers during the fiscal years ended March 31, 2006 and 2005 (if the current and former non-executive directors and executive officers were in this group for that period):

Name	Primary	Equity	Post-employment	Total
	Directors’ Fees	JHI NV Stock(1)	Superannuation(2)	
	US\$	US\$	US\$	US\$
Non-Executive Directors				
M. Hellicar				
Fiscal year 2006	\$ 178,777	\$ 20,000	\$ 17,890	\$216,667
Fiscal year 2005	128,750	20,000	13,388	162,138
J. D. Barr				
Fiscal year 2006	51,100	10,000	—	61,100
Fiscal year 2005	60,000	10,000	—	70,000
M. R. Brown				
Fiscal year 2006	50,598	10,000	5,454	66,052
Fiscal year 2005	60,000	10,000	6,300	76,300
M. J. Gillfillan				
Fiscal year 2006	51,100	10,000	—	61,100
Fiscal year 2005	55,000	10,000	—	65,000
J. R. H. Loudon				
Fiscal year 2006	47,767	10,000	—	57,767
Fiscal year 2005	40,000	20,000	—	60,000
D. G. McGauchie				
Fiscal year 2006	50,598	10,000	5,454	66,052
Fiscal year 2005	55,000	10,000	5,850	70,850

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Name	Primary	Equity	Post-employment	Total
	Directors' Fees	JHI NV Stock(1)	Superannuation(2)	US\$
	US\$	US\$	US\$	US\$
Former Non-Executive Directors				
P. Cameron(3)				
Fiscal year 2006	30,000	25,000	4,950	59,950
Fiscal year 2005	40,000	20,000	5,400	65,400
G. J. Clark(4)				
Fiscal year 2006	51,100	10,000	—	61,100
Fiscal year 2005	50,000	10,000	—	60,000
Total Compensation for Non-Executive Directors				
Fiscal year 2006	\$ 511,040	\$105,000	\$ 33,748	\$649,788
Fiscal year 2005	\$ 488,750	\$110,000	\$ 30,938	\$629,688

Name	Primary			Post-employment	Equity	Other		Total
	Base Pay	Bonuses(5)	Noncash Benefits(6)	Super-annuation and 401(k) Benefits	Options(7)	Relocation and Expatriate Benefits	Severance	US\$
	US\$	US\$	US\$	US\$	US\$	US\$	US\$	US\$
Executive Directors								
L. Gries								
Fiscal year 2006	\$ 740,385	\$1,890,363	\$ 42,657	\$ 10,478	\$717,218	\$110,774	\$ —	\$3,511,875
Fiscal year 2005	576,654	1,160,452	136,012	13,000	233,155	—	—	2,119,273
R. Chenu								
Fiscal year 2006	564,546	159,832	18,558	50,809	62,736	70,454	—	926,935
Fiscal year 2005(8)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
B. Butterfield								
Fiscal year 2006	311,250	450,450	30,410	9,913	128,369	215,717	—	1,146,109
Fiscal year 2005(9)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Former Executive Director								
P. Vlot(10)								
Fiscal year 2006	17,250	—	—	—	—	—	60,880	78,130
Fiscal year 2005	136,436	—	—	3,619	—	—	—	140,055
Total Compensation for Executive Directors								
Fiscal year 2006	\$1,633,431	\$2,500,645	\$ 91,625	\$ 71,200	\$908,323	\$396,945	\$ 60,880	\$5,663,049
Fiscal year 2005	\$ 713,090	\$1,160,452	\$136,012	\$ 16,619	\$233,155	\$ —	\$ —	\$2,259,328

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Name	Primary			Post-employment	Equity	Other	Total
	Base Pay US\$	Bonuses(5) US\$	Noncash Benefits(6) US\$	401(k) Benefits US\$	Options(7) US\$	Relocation Allowances and Other Non- recurring(11) US\$	
Current Executive Officers							
J. Chilcoff							
Fiscal year 2006	\$ 290,385	\$ 418,231	\$ 13,899	\$ 13,269	\$ 157,409	\$ 113,038	\$1,006,231
Fiscal year 2005	234,231	259,688	31,956	12,000	27,172	104,971	670,018
M. T. Fisher							
Fiscal year 2006	260,962	376,467	30,039	14,242	191,791	—	873,501
Fiscal year 2005	215,770	262,062	50,301	12,946	107,084	17,438	665,601
N. Rigby							
Fiscal year 2006	260,962	356,419	32,919	—	159,020	1,257	810,577
Fiscal year 2005(12)	N/A	N/A	N/A	N/A	N/A	N/A	N/A
R. P. Russell							
Fiscal year 2006	260,962	374,403	35,100	14,338	195,253	10,192	890,248
Fiscal year 2005	233,751	234,542	32,366	12,833	111,733	—	625,225
Former Executive Officers							
David Merkley(13)							
Fiscal year 2006	\$ 323,826	\$ 761,679	\$ 24,315	\$ 14,372	\$ 258,299	\$ 7,306	\$1,389,797
Fiscal year 2005	303,769	475,573	87,978	13,000	192,269	—	1,072,589
Donald Merkley(14)							
Fiscal year 2006	254,800	16,515	15,222	8,540	708,790	75,829	1,079,696
Fiscal year 2005	334,000	521,656	65,245	13,000	195,177	—	1,129,078
Total Compensation for Executive Officers							
Fiscal year 2006	\$1,651,897	\$2,303,714	\$151,494	\$ 64,761	\$1,670,562	\$ 207,622	\$6,050,050
Fiscal year 2005	\$1,321,521	\$1,753,521	\$267,846	\$ 63,779	\$ 633,435	\$ 122,409	\$4,162,511

- (1) The annual allocation to non-executive directors of JHI NV stock to the value of \$10,000 was approved by shareholders at the Annual General Meeting held on July 19, 2002. The non-executive directors can elect to take additional stock in lieu of fees.
- (2) The superannuation benefits include Australian-mandated 9% superannuation guarantee contributions on the Australian directors' total fees.
- (3) On January 19, 2006, Mr. Cameron resigned from the Joint and Supervisory Boards and from the Nominating and Governance Committee for health reasons.
- (4) On May 9, 2006, Dr. Clark resigned from our Joint Board, Supervisory Board, Audit Committee, and Nominating and Governance Committee.
- (5) Includes all incentive amounts paid in the year indicated, including the portion of any incentive awarded for performance in the indicated year that was paid in that year, as well as, any performance incentive amounts realized as a result of prior years' performance and paid in the applicable year as a result of our achievement of predetermined financial targets pursuant to the terms of our Economic Profit Incentive Plan. See "Other Compensation: Economic Profit Incentive Plan" for a summary of the terms of our Economic Profit Incentive Plan.
- (6) Includes the aggregate amount of all noncash benefits received by the executive in the year indicated. Examples of noncash benefits that may be received by our executives include medical and life insurance benefits, car and airfare allowances, membership in executive wellness programs, long service leaves, and tax services.

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- (7) Options are valued using the Black-Scholes option-pricing model and the fair value of options granted are included in compensation during the period in which the options vest. The weighted average assumptions and weighted average fair value used for grants in fiscal year 2006 were as follows: 1.2% dividend yield; 27.4% expected volatility; 4.8% risk free interest rate; 3.3 years of expected life; and A\$1.35 weighted fair value at grant date. The Company's Shadow Stock Plan and non-US based Employee Stock Plan were terminated at the end of February 2005 and the value on that day of all the outstanding shares of these plans were paid to participants.
- (8) Mr. Chenu only became a member of the Managing Board during fiscal year 2006, following his election by shareholders at the annual meeting held on August 22, 2005.
- (9) Mr. Butterfield only became a member of the Managing Board during fiscal year 2006, following his election by shareholders at the annual meeting held on August 22, 2005.
- (10) On June 30, 2005, Mr. Vlot's temporary employment agreement expired by its terms.
- (11) Other non-recurring includes cash paid in lieu of vacation accrued, as permitted under our U.S. vacation policy and California law.
- (12) Mr. Rigby's fiscal year 2005 remuneration did not place him among the Company's most highly remunerated executives.
- (13) On September 1, 2006, Mr. David Merkley resigned from the Company.
- (14) On December 19, 2005, Mr. Donald Merkley resigned from the Company. Beginning in calendar 2006, he will receive as severance payment 18 monthly payments equal in total to his most recent annual salary and average bonus over the last three years. He will continue vesting in his stock options until the end of his post-employment consulting agreement with the Company. All of the expense associated with his stock options was recorded during fiscal year 2006. Mr. Merkley received cash of \$75,829 as payment for his accrued vacation time and this amount is recorded as Other Non-Recurring in this table.

On March 8, 2006, December 1, 2005, February 22, 2005 and December 14, 2004, we granted options to purchase 40,200 shares, 5,224,100 shares, 273,000 shares and 5,391,100 shares of our common stock, respectively, at fair market value to management and other employees under the 2001 Equity Incentive Plan. See the section below entitled "Option Ownership" and "Stock-Based Compensation" for further information about option awards and a description of our equity compensation plans. See also "Other Compensation" for a description of our non-equity based compensation plans.

Employment Contracts

Remuneration and other terms of employment for the Chief Executive Officer, Company Secretary and General Counsel, Chief Financial Officer and certain other senior executives are formalized in service agreements. The main elements of these agreements are set out below.

Chief Executive Officer

Details of the terms of our CEO's employment contract are as follows:

Components	Details
Length of contract	Three year term, commencing February 10, 2005. Term is automatically extended on 9th day of each February for an additional one year unless either party notifies the other, 90 days in advance of the automatic renew date, that it does not want the term to renew.
Base salary	\$750,000 per year. Salary will be reviewed annually by the JHI NV Board in April.

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Components	Details
Short-term incentive	Annual incentive target is 100% of annual base salary: — 80% of this incentive target is based on the Company meeting or exceeding aggressive performance objectives; and — 20% of this incentive target is based on the CEO meeting or exceeding personal performance objectives. The Remuneration Committee recommends the Company's and CEO's performance objectives, and the performance against these objectives, to the Supervisory Board for approval. If the Company's performance exceeds the annual objective, the CEO realizes an incentive greater than his target incentive, but only one-third of the excess incentive is paid to the participant at the end of the fiscal year. The remaining two-thirds is then deposited with a notional bank and is paid to the CEO over the following two years if the Company's objectives are met in these years, or is reduced if the Company's objectives are not met.
Long-term incentive	The banking mechanism of the annual incentive plan is considered a long-term incentive. Upon the approval of the shareholders, stock options with performance hurdles will be granted each year. The recommended number of options to be granted will be appropriate for this level of executive in the U.S.
Defined Contribution Plan	The CEO may participate in the 401(k) defined contribution plan up to the annual IRS limit. The Company will match his contributions into the plan up to the annual IRS limit.
Resignation	The CEO may cease his employment with the Company by providing written notice.
Termination by James Hardie	The Company may terminate the CEO's employment for cause or not for cause. If the Company terminates the employment, not for cause, or the CEO terminates his employment "for good reason" the Company will pay the following: a. amount equivalent to 1.5 times the annual base salary at the time of termination; or b. amount equivalent to 1.5 times the executive's Average Annual Incentive actually paid in up to the previous three fiscal years as CEO.
Post-termination Consulting	The Company will request the CEO, and the CEO will agree, to consult to the Company upon termination for a minimum of two years, as long as he maintains the Company's non-compete and confidentiality agreements, and he will receive his annual base salary and annual target and non-compete.

Chief Financial Officer

Details of our CFO's employment contract are as follows:

Components	Details
Length of contract	Fixed period of two and a half (2.5) years concluding October 5, 2007.
Base salary	A\$750,000 per year.
Short-term incentive	Annual incentive target is 33% of annual base salary based on the CFO meeting or exceeding personal performance objectives.

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Components	Details
Long-term incentive	Upon the approval of the shareholders, stock options with performance hurdles will be granted each year. The recommended number of options to be granted will equal one-third of the executive's base salary.
Superannuation	The Company will contribute 9% of gross salary to Superannuation in the executive's name.
Resignation or Termination	The Company or CFO may cease the CFO's employment with the Company by providing three months' notice in writing.
Redundancy or material change in role	If the position of CFO is determined to be redundant or subject to a material adverse change the Company or the CFO may terminate the CFO's employment. The Company will pay the CFO a severance payment equal to the greater of 12 months' pay or the remaining proportion of the term of the contract.

Company Secretary and General Counsel

Details of our Company Secretary and General Counsel's employment contract are as follows:

Components	Details
Length of contract	Indefinite.
Base salary	\$315,000 per year.
Short term incentive	Annual incentive target is 65% of annual base salary: <ul style="list-style-type: none"> — 80% of this incentive target is based on the Company meeting or exceeding aggressive performance objectives; and — 20% of this incentive target is based on the General Counsel and Company Secretary meeting or exceeding personal performance objectives. <p>The CEO recommends the General Counsel and Company Secretary's performance objectives and the performance against these objectives, to the Remuneration Committee and the Supervisory Board for approval. The Company's objectives are set by the Remuneration Committee's recommendation to the Supervisory Board. If the Company's performance exceeds the annual objective, the executive realizes a incentive greater than his target incentive, but only one-third of the excess incentive is paid to the participant at the end of the fiscal year. The remaining two-thirds is then deposited with a notional bank and is paid to the General Counsel and Company Secretary over the following two years if the Company's objectives are met in these years, or is reduced if the Company's objectives are not met.</p>
Long-term incentive	The banking mechanism of the annual incentive plan is considered a long-term incentive. Upon the approval of the shareholders, stock options with performance hurdles will be granted each year. The recommended number of options to be granted will be appropriate for this level of executive in the United States.
Defined Contribution Plan	Since the General Counsel and Company Secretary may not participate in the U.S. 401(k) defined contribution plan up to the annual IRS limit while he is on assignment to The Netherlands, the Company will provide a payment up to the annual IRS limit directly to the executive.
Resignation or Termination	The General Counsel and Company Secretary may cease his employment with the Company by providing written notice.

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Components	Details
Termination by James Hardie	The Company may terminate the General Counsel and Company Secretary's employment for cause or not for cause.
Post-termination Consulting	The Company will request the General Counsel and Company Secretary, and he will agree, to consult to the Company upon termination for a minimum of two years, as long as he maintains the Company's non-compete and confidentiality agreements, and he will receive his annual base salary in exchange for this consulting and non-compete.

Benefits Contained in Contracts for CEO, CFO and Company Secretary and General Counsel

Employment contracts for each of our CEO, CFO and General Counsel and Company Secretary also specify the following benefits:

Components	Details
International Assignment	The executives receive additional benefits due to international assignment: housing allowance, expatriate Goods and Services allowance, moving and storage.
Other	Tax Equalization: The Company covers the extra personal tax burden for Managing Board Directors based in The Netherlands. Tax Advice: The Company will pay the costs of filing the executives' income tax returns to the required countries. Health, Welfare and Vacation Benefits: The executives are eligible to receive all health, welfare and vacation benefits offered to all U.S. employees. They are also eligible to participate in the Company's Executive Health and Wellness program. Business Expenses: The executives are entitled to receive reimbursement for all reasonable and necessary travel and other business expenses they incur or pay for in connection with the performance of their services under this Agreement. Automobile: The Company will either purchase or lease an automobile for business and personal use by the executives, or, in the alternative, the executives will be entitled to an automobile lease allowance not to exceed \$750 per month. Unused allowance or part thereof will be paid to the executives.

Other Executive Officer Employment Contracts

Details of the employment contracts for our other current executive officers are as follows:

Components	Details
Length of contract	Indefinite.
Base salary	Base salary is subject to Remuneration Committee approval and reviewed annually in May for increase effective July 1.
Short-term incentive	An annual incentive target is set at a percentage of the executive's salary. Targets typically range from 55-90%; 80% of this incentive target is based on the Company meeting or exceeding aggressive performance objectives; 20% of this incentive target is based on the executive meeting or exceeding personal performance objectives.

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Components	Details
	The CEO recommends the executive's performance objectives and the performance against these objectives, to the Remuneration Committee and Supervisory Board for approval. The Company's objectives are set by the Remuneration Committee's recommendation to the Supervisory Board. If the Company's performance exceeds the annual objective, the executive realizes an incentive greater than his target incentive, but only one-third of the excess incentive is paid to the participant at the end of the fiscal year. The remaining two-thirds is then deposited with a notional bank and is paid to the executive over the following two years if the Company's objectives are met in these years, or is reduced if the Company's objectives are not met.
Long-term incentive	The banking mechanism of the annual incentive plan is considered a long term incentive. Upon the approval of our Supervisory Board, stock options have been granted each year under the JHI NV 2001 Equity Incentive Plan. It is anticipated that upon the approval of our Supervisory Board, equity will be granted under a new plan in the future.
Defined Contribution Plan	The executive may participate in the U.S. 401(k) defined contribution plan up to the annual IRS limit. The Company will match the executive's contributions into the plan up to the annual IRS limit.
Resignation	The executive may cease his employment with the Company by providing written notice.
Termination by James Hardie	The Company may terminate the executive's employment for cause or not for cause. In the case of one executive, if the Company terminates the employment, not for cause, or the executive terminates his employment "for good reason" then the Company may pay up to: a. an amount equivalent to 1.5 times the annual base salary at the time of termination; or b. amount equivalent to 1.5 times the executive's Average Annual Incentive actually paid in the previous three fiscal years.
Post-termination Consulting	Depending on the executive's individual contract, the Company may, or may be required to, request the executive, and the executive will agree, to consult to the Company for two years upon termination in exchange for the payment as designated in the individual's contract, as long as the executive maintains the Company's non-compete and confidentiality agreements. The payment amount ranges from the executive's annual base salary to the annual base salary plus annual target incentive as of the termination date.
Other	Health, Welfare and Vacation Benefits: The executive is eligible to receive all health, welfare and vacation benefits offered to all U.S. employees. The executive is also eligible to participate in the Company's Executive Health and Wellness program. Business Expenses: The executive is entitled to receive reimbursement for all reasonable and necessary travel and other business expenses he or she incurs or pays in connection with the performance of his or her services under this Agreement.

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Components	Details
International Assignment	<p>Automobile: The Company will either lease an automobile for business and personal use by the executive, or, in the alternative, the executive will be entitled to an automobile lease allowance not to exceed \$750 per month. Unused allowance or part of this will be paid to the executive.</p> <p>Executives who are on assignment in countries other than their own receive additional benefits which may include tax equalization payment and tax advice, a car in the country they are assigned to, and financial assistance with housing, moving and storage.</p>

Share Ownership

As of August 31, 2006, the number of shares of our common stock beneficially owned by each person listed in the table under the heading "Compensation — Remuneration," is set forth below.

Name	Number of Shares Beneficially Owned(1)	Percent of Class(2)
Current Directors and Executive Officers		
Meredith Hellicar	11,566	*
John Barr(3)	22,826	*
Michael Brown	14,727	*
Michael Gillfillan(4)	54,727	*
James Loudon	6,355	*
Donald McGauchie(5)	9,569	*
Louis Gries	1,154,719	*
Russell Chenu	38,250	*
Benjamin Butterfield	45,000	*
James Chilcoff	356,570	*
Mark Fisher	345,396	*
Nigel Rigby	108,503	*
Robert Russell	249,634	*
Former Directors and Executive Officers		
Peter Cameron(6)	15,613	*
Gregory Clark	14,116	*
David Merkley	325,000	*
Donald Merkley	739,588	*
Pim Vlot	—	*

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* Indicates that the individual beneficially owns less than 1% of our shares of common stock.

- (1) Since the Supervisory Board Share Plan, or SBSP, was approved at the 2002 Annual General Meeting, four general allotments have been made to non-executive directors. The number of beneficial shares includes the following SBSP allotments:

Name	Shares Allotted under SBSP			
	November 22, 2005(a)	December 3, 2004(b)	August 22, 2003(c)	August 27, 2002(d)
Meredith Hellicar	1,515	2,117	2,225	2,948
John Barr	758	1,068	—	—
Michael Brown	758	1,068	1,260	1,641
Michael Gillfillan	758	1,068	1,260	1,641
James Loudon	758	2,117	1,839	1,641
Donald McGauchie	758	1,068	1,743	—
Former Directors				
Peter Cameron	1,894	2,117	5,602	—
Gregory Clark	758	1,068	5,602	6,688
Alan McGregor	—	—	1,260	1,641

- (a) Each participant's November 22, 2005 mandatory participation of 758 shares is subject to a two-year escrow period ending November 22, 2007. In the case of Peter Cameron, the escrow was released after he died in February 2006.
- (b) Each participant's December 3, 2004 mandatory participation of 1,068 shares is subject to a two-year escrow period ending on December 4, 2006. In the case of Peter Cameron, the escrow was released after he died in February 2006.
- (c) Each participant's August 22, 2003 mandatory participation of 1,260 shares were subject to a two-year escrow period until they were released on August 22, 2005.
- (d) Each participant's August 27, 2002 mandatory participation of 1,641 shares were subject to a two-year escrow period until they were released on August 27, 2004.
- (2) Based on 463,326,011 shares of common stock outstanding at August 31, 2006 (all of which are subject to CUFS).
- (3) As of August 31, 2006, 21,000 shares were held in a trust, of which Mr. Barr and his wife are trustees.
- (4) As of August 31, 2006, 50,000 shares were held in a trust, of which Mr. Gillfillan and his wife are trustees.
- (5) As of August 31, 2006, 6,000 shares were held for the McGauchie Superannuation Fund for which Mr. McGauchie is a trustee.
- (6) As of August 31, 2006, 6,000 shares were held by Mr. Cameron's wife and 9,613 shares were held by Mr. Cameron's estate.

None of the shares held by any of the directors or executive officers has any special voting rights. Beneficial ownership of shares includes shares issuable upon exercise of options which are exercisable within 60 days of August 31, 2006.

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Option Ownership

The number of shares of our common stock that each person listed in the table under the heading “Compensation — Remuneration,” have an option to purchase as of August 31, 2006 was:

Name	Number of Shares Underlying Options Owned		Exercise Price	Expiration Date
Current Executive Officers				
Louis Gries	40,174(1,2)	A\$	3.1321/share(3,4,5)	November 2009
	175,023(1,6)	A\$	3.0921/share(3,4,5)	November 2010
	324,347(7)	A\$	5.0586/share(4,5)	December 2011
	325,000(8)	A\$	6.4490/share(5)	December 2012
	325,000(9)	A\$	7.05/share	December 2013
	1,000,000(10)	A\$	8.53/share	November 2015
Russell Chenu	93,000(11)	A\$	6.30/share	February 2015
	90,000(10)	A\$	8.53/share	November 2015
Benjamin Butterfield	180,000(11)	A\$	6.30/share	February 2015
	230,000(10)	A\$	8.53/share	November 2015
James Chilcoff	40,174(1,2)	A\$	3.1321/share(3,4,5)	November 2009
	92,113(1,6)	A\$	3.0921/share(3,4,5)	November 2010
	68,283(7)	A\$	5.0586/share(4,5)	December 2011
	111,000(8)	A\$	6.4490/share(5)	December 2012
	180,000(14)	A\$	5.99/share	December 2014
	190,000(13)	A\$	8.90/share	December 2015
Mark Fisher	92,113(1,6)	A\$	3.0921/share(3,4,5)	November 2010
	68,283(7)	A\$	5.0586/share(4,5)	December 2011
	74,000(8)	A\$	6.4490/share(5)	December 2012
	132,000(9)	A\$	7.05/share	December 2013
	180,000(14)	A\$	5.99/share	December 2014
	190,000(13)	A\$	8.90/share	December 2015
Nigel Rigby	20,003(7)	A\$	5.0586/share(4,5)	December 2011
	27,000(8)	A\$	6.4490/share(5)	December 2012
	33,000(9)	A\$	7.05/share	December 2013
	180,000(14)	A\$	5.99/share	December 2014
	190,000(13)	A\$	8.90/share	December 2015
Robert Russell	27,634(1,6)	A\$	3.0921/share(3,4,5)	November 2010
	111,000(8)	A\$	6.4490/share(5)	December 2012
	132,000(9)	A\$	7.05/share	December 2013
	180,000(14)	A\$	5.99/share	December 2014
	190,000(13)	A\$	8.90/share	December 2015
Former Executive Director and Officers				
David Merkley	200,000(8)	A\$	6.4490/share(5)	December 2012
	250,000(9)	A\$	7.05/share	December 2013
	172,500(12)	A\$	5.99/share	December 2014
	190,000(13)	A\$	8.90/share	December 2015
Donald Merkley	48,209(1,2)	A\$	3.1321/share(3,4,5)	November 2009
	138,170(1,6)	A\$	3.0921/share(3,4,5)	November 2010
	170,709(7)	A\$	5.0586/share(4,5)	December 2011
	200,000(8)	A\$	6.4490/share(5)	December 2012
	250,000(9)	A\$	7.05/share	December 2013
	230,000(14)	A\$	5.99/share	December 2014
	190,000(13)	A\$	8.90/share	December 2015
Pim Vlot	—			

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- (1) This nonqualified stock option to purchase shares of our common stock was granted on October 19, 2001 under our 2001 Equity Incentive Plan in exchange for the termination of an award of shadow stock covering an equal number of shares of JHIL common stock. See “Equity Plans — 2001 Equity Incentive Plan” under Item 6.
- (2) All options vested and became exercisable in November 2004.
- (3) The exercise price reflects an A\$0.0965 per share price reduction due to a capital return paid to shareholders in December 2001.
- (4) The exercise price reflects an A\$0.3804 per share price reduction due to a capital return paid to shareholders in November 2002.
- (5) The exercise price reflects an A\$0.2110 per share price reduction due to a capital return paid to shareholders in November 2003.
- (6) All options vested and became exercisable in November 2005.
- (7) Granted under the 2001 Equity Incentive Plan. All options vested and became exercisable in December 2004.
- (8) Granted under the 2001 Equity Incentive Plan. All options vested and became exercisable in December 2005.
- (9) Granted under the 2001 Equity Incentive Plan. Options vest and become exercisable in three installments: 25% on December 5, 2004; 25% on December 5, 2005; and 50% on December 5, 2006.
- (10) Granted under the Managing Board Transitional Stock Option Plan. Options vest and become exercisable on the first business day on or after November 22, 2008 if the following conditions are met: 50% vest if our total shareholder return, or TSR, is equal to or above the Median TSR and an additional 2% of the options shall vest for each 1% increment that the Company’s TSR is above the Median TSR. If any options remain unvested on the last business day of each six month period between November 22, 2008 and November 22, 2010, we will reapply the vesting criteria to those options on that business day.
- (11) Granted under the 2001 Equity Incentive Plan. Options vest and become exercisable in three installments: 25% on February 22, 2006; 25% on February 22, 2007; and 50% on February 22, 2008.
- (12) Granted under the 2001 Equity Incentive Plan. Options vest and become exercisable: 33% on December 14, 2006; and 67% on December 14, 2007.
- (13) Granted under the 2001 Equity Incentive Plan. Options vest and become exercisable in three installments: 25% on December 1, 2006; 25% on December 1, 2007; and 50% on December 1, 2008.
- (14) Granted under the 2001 Equity Incentive Plan. Options vest and become exercisable in three installments: 25% on December 14, 2005; 25% on December 14, 2006; and 50% on December 14, 2007.

Stock-Based Compensation

A modified SBSP, which replaces our SBSP described below, and a Long Term Incentive Plan and were approved at our Annual General Meeting on September 25, 2006. See Item 4, “Information on the Company — Recent Developments” for information on these new plans.

At March 31, 2006, the Company had the following stock-based compensation plans: the 2001 Equity Incentive Plan; the Stock Appreciation Rights Plan; the Supervisory Board Share Plan; and the Managing Board Transitional Stock Option Plan.

As of March 31, 2005, 1,200,000 options were outstanding and exercisable under the Peter Macdonald Share Option Plan and 1,950,000 options were outstanding under the 2002 Peter Macdonald Option Plan. Mr. Macdonald exercised all of the 1,200,000 options in April 2005, prior to its expiration date of April 20, 2005. The remaining 1,950,000 options were cancelled on October 31, 2005 because performance hurdles were not met.

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On December 5, 2003, 12,600 shadow stock shares were granted under the terms and conditions of the Key Management Shadow Stock Incentive Plan. All of these shares remained outstanding as of March 31, 2005 but were subsequently cancelled in April 2005.

2001 Equity Incentive Plan

Under our 2001 Equity Incentive Plan, our employees, including employees of our subsidiaries and officers who are employees, but not including any member of our Managing Board or Supervisory Board, are eligible to receive awards in the form of nonqualified stock options, performance awards, restricted stock grants, stock appreciation rights, dividend equivalent rights, phantom stock or other stock-based benefits. The 2001 Equity Incentive Plan is intended to promote our long-term financial interests by encouraging our management and other persons to acquire an ownership position in us, to align their interests with those of our shareholders and to encourage and reward their performance. The 2001 Equity Incentive Plan was approved by our shareholders and Joint Board subject to implementation of the consummation of our 2001 Reorganization.

An aggregate of 45,077,100 shares of common stock have been made available for issuance under the 2001 Equity Incentive Plan, provided that such number (and any awards granted) is subject to adjustment in the event of a stock split, stock dividend or other changes in our common stock or capital structure or our restructuring. Our ADSs evidenced by ADRs and our common stock in the form of CUFS will be equivalent to and interchangeable with our common stock for all purposes of the 2001 Equity Incentive Plan, provided that ADRs will be proportionately adjusted to account for the ratio of CUFS in relation to ADRs.

The following number of options to purchase shares of our common stock issued under this plan were as follows:

Share Grant Date	Number of Options Granted	Options Outstanding as of August 31, 2006
October 2001(1)	5,468,829	1,030,863
December 2001	4,248,417	1,270,724
December 2002	4,037,000	2,064,800
December 2003	6,179,583	3,857,720
December 2004	5,391,100	4,445,350
February 2005	273,000	273,000
December 2005	5,224,100	5,186,100
March 2006	40,200	40,200
Total outstanding		18,168,757

- (1) Awarded to our employees on October 19, 2001 in exchange for the cancellation of JHIL shadow stock awards under the JHIL Key Management Equity Incentive Plan.

Our Remuneration Committee administers the 2001 Equity Incentive Plan. Subject to the provisions of the 2001 Equity Incentive Plan, our Joint Board or Remuneration Committee is authorized to determine who may participate in the 2001 Equity Incentive Plan, the number and types of awards made to each participant and the terms, conditions and limitations applicable to each award. In addition, our Joint Board or Remuneration Committee will have the exclusive power to interpret the 2001 Equity Incentive Plan and to adopt such rules and regulations as it deems necessary or appropriate for purposes of administering the 2001 Equity Incentive Plan. Subject to certain limitations, our Joint Board or Remuneration Committee will be authorized to amend, modify or terminate the 2001 Equity Incentive Plan to meet any changes in legal requirements or for any other purpose permitted by law.

The purchase or exercise price of any award granted under the 2001 Equity Incentive Plan may be paid in cash or other consideration at the discretion of our Joint Board or Remuneration Committee. Our Joint Board

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or Remuneration Committee, in its discretion and as allowed by applicable laws, may allow cashless exercises of awards or may permit us to assist in the exercise of options.

Stock Options. Under the 2001 Equity Incentive Plan, our Joint Board or Remuneration Committee is authorized to award nonqualified options to purchase shares of common stock as additional employment compensation. The 2001 Equity Incentive Plan does not allow us to grant options qualified as “incentive stock options” under Section 422 of the U.S. Internal Revenue Code of 1986, as amended. Options are exercisable over such periods as may be determined by our Joint Board or Remuneration Committee, but no stock option may be exercised after 10 years from the date of grant. Options may be exercisable in installments and upon such other terms as determined by our Joint Board or Remuneration Committee. Options are evidenced by notices of option grants authorized by our Joint Board or Remuneration Committee. No option is transferable other than by will or by the laws of descent and distribution or pursuant to certain domestic relations orders.

Performance Awards. Our Joint Board or Remuneration Committee, in its discretion, may award performance awards to an eligible person contingent on the attainment of criteria specified by our Joint Board or Remuneration Committee. Performance awards are paid in the form of cash, shares of common stock or a combination of both. Our Joint Board or Remuneration Committee determines the total number of performance shares subject to an award, and the terms and the time at which the performance shares will be issued.

Restricted Stock Awards. Our Joint Board or Remuneration Committee may award restricted shares of common stock, which are subject to forfeiture under such conditions and for such periods of time as our Joint Board or Remuneration Committee may determine. Shares of restricted stock may not be sold, transferred, assigned, pledged or otherwise encumbered so long as such shares remain restricted. Our Joint Board or Remuneration Committee determines the conditions or restrictions of any restricted stock awards, which may include restrictions on requirements of continued employment, individual performance or our financial performance or other criteria.

Stock Appreciation Rights. Our Joint Board or Remuneration Committee also may award stock appreciation rights either in tandem with an option or alone. Stock appreciation rights granted in tandem with a stock option may be granted at the same time as the stock option or at a later time. A stock appreciation right entitles the participant to receive from us an amount payable in cash, in shares of common stock or in a combination of cash and common stock, equal to the positive difference between the fair market value of a share of common stock on the date of exercise and the grant price, or such lesser amount as our Joint Board or Remuneration Committee may determine.

Dividend Equivalent Rights. Dividend equivalent rights, defined as a right to receive payment with respect to all or some portion of the cash dividends that are or would be payable with respect to shares of common stock, may be awarded in tandem with stock options, stock appreciation rights or other awards under the 2001 Equity Incentive Plan. Our Joint Board or Remuneration Committee determines the terms and conditions of these rights. The rights may be paid in cash, shares of common stock or other awards.

Other Stock-Based Benefits. Our Joint Board or Remuneration Committee may award other benefits that, by their terms, might involve the issuance or sale of our common stock or other securities, or involve a benefit that is measured by the value, appreciation, dividend yield or other features attributable to a specified number of shares of our common stock or other securities, including but not limited to stock payments, stock bonuses and stock sales.

Effect of Change in Control. The 2001 Equity Incentive Plan provides for the automatic acceleration of certain benefits and the termination of the plan under certain circumstances in the event of a “change in control.” A change in control will be deemed to have occurred if either (1) any person or group acquires beneficial ownership equivalent to 30% of our voting securities, (2) individuals who are members of our Joint Board as of the effective date of the 2001 Equity Incentive Plan, or individuals who became members of our Joint Board after the effective date of the 2001 Equity Incentive Plan whose election or nomination for election was approved by a majority of such individuals (or, in the case of directors nominated by a person, entity or group with 20% of our voting securities, by two-thirds of such individuals) cease to constitute at least

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a majority of the members of our Joint Board, or (3) there occurs the consummation of certain mergers, the sale of substantially all of our assets or our complete liquidation or dissolution.

Stock Appreciation Rights Plans

On December 14, 2004, 527,000 stock appreciation rights were granted to Interim Managing Board members under the terms and conditions of the JHI NV Stock Appreciation Rights Incentive Plan. All of these stock appreciation rights were outstanding as of March 31, 2005. At June 30, 2005, 27,000 stock appreciation rights were cancelled. The remaining 500,000 stock appreciation rights were outstanding at March 31, 2006 and will vest 50% on December 14, 2006 and 50% on December 14, 2007, and will be settled in cash.

Supervisory Board Share Plan

At our 2002 Annual General Meeting, our shareholders approved a Supervisory Board Share Plan, or SBSP, effective for a three-year period. This plan was renewed at our 2005 Annual General Meeting. Under the SBSP, all non-executive directors on our Joint Board and Supervisory Board receive shares of our common stock as payment for a portion of their director fees. The SBSP requires that our directors to take at least \$10,000 of their fees in shares and allows directors to receive additional shares in lieu of fees in their discretion. Shares issued under the \$10,000 compulsory component of the SBSP are subject to a two-year escrow that requires members of the Supervisory Board to retain those shares for at least two years following issue. The issue price for the shares is the average market closing price at which CUFS were quoted on the ASX during the five business days preceding the day of issue. No loans will be entered into by us in relation to the grant of shares pursuant to the SBSP.

Managing Board Transitional Stock Option Plan

On November 22, 2005, we granted members of our Managing Board options to purchase 1,320,000 shares of our common stock at an exercise price per share equal to A\$8.53 under our Managing Board Transitional Stock Option Plan. Under the plan's rules, the exercise price and the number of shares available on exercise may be adjusted on the occurrence of certain events, including new issues, share splits, rights issues and capital reconstructions. 50% of these options become exercisable on the first business day on or after November 22, 2008, if our total shareholder return, or TSR (essentially the dividend yield and common stock performance), from November 22, 2005 to that date was at least equal to the median TSR for the companies comprising our peer group, as set out in the plan. In addition, for each 1% increment that our TSR is above the median TSR an additional 2% of the options become exercisable. If any options remain unvested on the last business day of each six month period between November 22, 2008 and November 22, 2010, we will reapply the vesting criteria to those options on that business day.

Other Compensation

Economic Profit Incentive Plan

We maintain an Economic Profit Incentive Plan which provides incentive compensation for certain of our executive directors, officers and key executives. This plan is a variable pay plan, which links our incentive payments to certain key individuals to the performance of the Company and the individual's performance. These designated executives are entitled to receive incentive payments upon the Company's achievement of certain predetermined financial targets and certain other mutually agreed upon personal objectives. A participant is eligible to receive an incentive payment based on his or her individual performance regardless of the Company's performance. The portion of the target incentive that is based on the Company's performance is an amount up to 80% of the target incentive and is paid to the participant at the end of the fiscal year if the Company's predetermined financial target is met. If the Company's predetermined financial target is exceeded, the participant is eligible to receive an incentive payment that is greater than the target incentive but only one-third of the portion of the incentive that is greater than the target incentive is actually paid to the participant at the end of the fiscal year. The remaining two-thirds is deposited with a notional bank and is paid

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to the executive over the following two years if the Company's predetermined financial targets are met in those years, or is reduced if the Company's predetermined financial targets are not met. The Company believes that this Plan distinguishes between sustained performance and one-time performance and encourages participants to maintain a long-term view.

401(k) Plan

We sponsor a U.S. defined contribution plan, the James Hardie Retirement and Profit Sharing Plan, for our employees in the United States and a defined benefit pension plan, the James Hardie Australia Superannuation Plan, for our employees in Australia. The U.S. defined contribution plan is a tax-qualified retirement and savings plan (which we refer to as the 401(k) Plan) covering all U.S. employees, subject to certain eligibility requirements. Participating employees may elect to reduce their current annual compensation by up to \$15,000 in calendar year 2006 and have the amount of such reduction contributed to the 401(k) Plan, with a maximum compensation limit of \$220,000. In addition, we match employee contributions dollar for dollar up to a maximum of the first 6% of an employee's base salary.

James Hardie Australia Superannuation Plan

The James Hardie Australia Superannuation Plan is funded based on statutory requirements in Australia and is based primarily on the contributions and income derived thereon held by the plan on behalf of the member, and to a lesser degree, on the participants' eligible compensation and years of credited service.

Director Retirement Benefits

In July 2002, we discontinued a retirement plan that entitled our Supervisory Board members to receive, upon their termination for any reason other than misconduct, an amount equal to a multiple of up to five times their average annual fees for the three year period prior to their retirement. The applicable multiple was based on the director's years of service on our Supervisory Board, including service on the JHIL Board. Two of our directors, Ms. Hellicar and Mr. Brown, retained some benefits that had accrued as of 2002 under the retirement plan, and they may therefore be entitled to benefits pursuant to this plan upon retirement from our Supervisory Board. In the event Ms. Hellicar retires from our Supervisory Board for any reason other than misconduct, she will be entitled to four times her average director's fees for the previous three years prior to her retirement. In the event Mr. Brown retires from our Supervisory Board for any reason other than misconduct, he will be entitled to four times his average director's fees for the previous three years prior to his retirement.

Item 7. *Major Shareholders and Related Party Transactions*

Major Shareholders

As of August 31, 2006, all issued and outstanding shares of our common stock were listed on the Australian Stock Exchange in the form of CHESS Units of Foreign Securities, or CUFS. CUFS represent beneficial ownership of our shares. CHESS Depository Nominees Pty Ltd is the registered owner of the shares represented by CUFS. Each of our CUFS represents one share of our common stock.

To our knowledge, based on shareholder notices filed with the Australian Stock Exchange (unless indicated otherwise below), as of August 31, 2006, the following table identifies those shareholders which

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beneficially owned 5% or more of our common stock and their holdings and percentage of shares outstanding as of the date of their last respective notices:

Shareholder	Shares Beneficially Owned	Percentage of Shares Outstanding
Commonwealth Bank of Australia (and subsidiaries)	54,916,592	11.90%
Lazard Asset Management Pacific Co.	46,309,135	9.99%
Schroder Investment Management Australia Limited	35,496,683	7.66%
The Capital Group Companies, Inc.	32,960,346	7.12%
National Australia Bank Limited Group	28,198,184	6.15%
Concord Capital Ltd.	23,646,400	5.10%

Commonwealth Bank merged with Colonial First State Investments in June 2000, and their combined holdings as of March 22, 2001 exceeded 5% of JHIL's outstanding stock. Commonwealth Bank increased its percentage ownership of JHIL to approximately 13% in May 2001. Through subsequent periodic purchases, Commonwealth Bank gradually increased its interest in JHI NV to 17.03% in July 2003, but based on information provided by Commonwealth Bank in its Form 13G filed with the U.S. Securities and Exchange Commission on August 14, 2006, it had reduced its interest in JHI NV to 11.90% as of August 8, 2006.

Lazard Asset Management Pacific Co became a substantial shareholder on April 1, 2004, with a 5.34% interest in our outstanding stock and increased its holding in JHI NV on July 28, 2006 to 9.99% in the last notice received.

Schroder Investment Management Australia Limited became a substantial shareholder on January 28, 2004, with a 5.55% interest in JHI NV's outstanding shares and, through subsequent purchases, increased its holding in JHI NV on April 6, 2004 to 8.69%. Schroder Investment Management Australia Limited reduced its holding in JHI NV to 7.66% on July 27, 2006 in the last notice received.

The Capital Group Companies, Inc. became a substantial shareholder on August 3, 2004, with a 5.09% interest in JHI NV outstanding shares and increased its holding in JHI NV on March 17, 2006 to 7.12% in the last notice received.

National Australia Bank Limited Group became a substantial shareholder on May 25, 2004, with 5.03% of our outstanding stock and increased its holding in JHI NV on June 16, 2004 to 6.15% in the last notice received.

Concord Capital Ltd became a substantial shareholder on June 18, 2004, with 5.34% of our outstanding stock. Their substantial holding status ceased on August 6, 2004 when their holding fell below 5%. On August 20, 2004 their holding increased to 5.19% of our outstanding stock, but their substantial holding status again ceased when their holding fell below 5% on April 8, 2005. On June 29, 2006 their holding increased to 5.10% of our outstanding stock.

Each of the above shareholders has the same voting rights as all other holders of our common stock. To our knowledge, except for the major shareholders described above, we are not directly or indirectly owned or controlled by another corporation, by a foreign government or by any other natural or legal persons severally or jointly.

Other Security Ownership Information

As of August 31, 2006, 0.48% of the outstanding shares of our common stock were held by 52 CUFs holders with registered addresses in the United States. In addition, as of August 31, 2006, 0.56% of our outstanding shares were represented by ADRs held by 11 holders, all of whom have registered addresses in the United States. A total of 1.04% of our outstanding capital stock was registered to 63 U.S. holders as of August 31, 2006.

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Related Party Transactions

In accordance with the New York Stock Exchange listing standards, our Audit Committee reviews and approves all related party transactions. In discharging the duties set forth in their charter, the Audit Committee reviews all conflicts and/or related party transactions at least every year in the fourth quarter. In addition, the Audit Committee reviews any proposed related party transaction from time to time as they arise. Furthermore, the Code of Business Conduct and Ethics adopted by the Company requires directors and employees to avoid conflicts of interest, which include related party transactions.

Existing Loans to our Directors and Directors of our Subsidiaries

As of August 31, 2006, loans receivable totaling \$30,092 were outstanding from certain executive directors or former directors of subsidiaries of JHI NV who were directors during fiscal year 2006 under the terms and conditions of the Executive Share Purchase Plan, which we refer to as the Plan. Loans under the Plan are interest-free and repayable from dividend income earned by, or capital returns from, securities acquired under the Plan. The loans are collateralized by CUFS under the Plan. No new loans to Directors or executive officers of JHI NV, under the plan or otherwise, and no modifications to existing loans have been made since December 1997.

During fiscal year 2006, repayments totaling \$1,892 were received in respect of the Plan from Messrs. Kneeshaw and Salter. In July 2006, repayments totalling \$800 were received in respect of the Plan from Messrs. Kneeshaw and Salter. No repayments were made between April and June and in August 2006.

Payments Made to Directors and Director-Related Entities of JHI NV

We have subsidiaries located in various countries, many of which require at least one director to be a local resident. All payments below arise because of these requirements.

Dr. Clark, who resigned from our Joint and Supervising Boards on May 9, 2006, is a non-executive director of ANZ Banking Group Limited with whom we transact banking business. Mr. McGauchie is also a non-executive director of Telstra Corporation Limited from which we purchase communications services. All transactions were in accordance with normal commercial terms and conditions. It is not considered that these directors had significant influence over these transactions.

In February 2004, one of our subsidiaries entered into a consulting agreement in usual commercial terms and conditions with The Gries Group in respect to professional services. The principal of The Gries Group, James P. Gries, is Mr. Louis Gries' brother. Under the agreement, approximately \$12,000 was paid each month to The Gries Group. The agreement expired in June 2005 and payments of \$50,876 were made for the year ended March 31, 2006. Mr. Louis Gries has no economic interest in The Gries Group.

Payments of \$8,829 for the year ended March 31, 2006 were made to Grech, Vella, Tortell & Hyzler Advocates. Dr. Vella was a director of a number of our subsidiaries during fiscal year 2006. The payments were made in respect of professional services and were negotiated in accordance with usual commercial terms and conditions.

Payments totaling \$78,496 for the year ended March 31, 2006 were made to M. Helyar, R. Le Tocq and N. Wild who are directors of one of our subsidiaries. The payments were made in respect of professional services and were negotiated in accordance with usual commercial terms and conditions.

Payments totaling \$4,984 for the year ended March 31, 2006 were made to Bernaldo, Mirador and Directo Law Offices. R. Bernaldo is a director of one of our subsidiaries. The payments were made in respect of professional services and were negotiated in accordance with usual commercial terms and conditions.

Item 8. Financial Information

See Item 4, "Information on the Company — Legal Proceedings," Item 18, "Financial Statements," and pages F-1 through F-58. There has been no significant change to the financial statements included in this annual report since the date of such financial statements.

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See Item 10, “Additional Information — Key Provisions of our Articles of Association of JHI NV — Dividends.”

Item 9. Listing Details

Price History

Prior to the restructuring that we completed in October 2001, there was no public market for shares of JHI NV common stock, nor was there a market for JHI NV ADRs. Shares in JHIL, which represented substantially the same operations, assets and liabilities as those of JHI NV prior to our 2001 Reorganization, were traded on the Australian Stock Exchange and over-the-counter as ADRs. One JHIL ADR represented two JHIL shares. After October 19, 2001, our shares were listed on the New York Stock Exchange and one JHI NV ADR represents five JHI NV shares.

JHIL shares were exchanged for JHI NV shares represented by CUFS shares on October 19, 2001. See Item 4, “Information on the Company — History and Development of the Company.”

The high and low trading prices of JHI NV CUFS on the Australian Stock Exchange are as follows:

Period	High		Low	
	(A\$)	(US\$)	(A\$)	(US\$)
Fiscal year ended:				
March 31, 2006	9.81	7.38	5.49	4.13
March 31, 2005	7.23	5.35	4.95	3.66
March 31, 2004	8.04	5.58	5.84	4.05
March 31, 2003	7.06	3.96	5.56	3.12
March 31, 2002	6.77	3.47	4.19	2.15
Fiscal quarter ended:				
June 30, 2006	9.95	7.43	7.12	5.32
March 31, 2006	9.81	7.25	8.11	6.00
December 31, 2005	9.03	6.72	7.65	5.69
September 30, 2005	9.44	7.17	7.40	5.62
June 30, 2005	7.75	5.96	5.49	4.22
March 31, 2005	7.23	5.63	5.79	4.49
December 31, 2004	6.77	5.09	5.50	4.13
September 30, 2004	6.30	4.52	4.95	3.55
June 30, 2004	6.88	4.92	5.22	3.73
Month ended:				
August 31, 2006	7.05	5.39	6.31	4.82
July 31, 2006	7.85	5.90	6.56	4.93
June 30, 2006	8.59	6.35	7.12	5.26
May 31, 2006	9.54	7.32	8.13	6.24
April 30, 2006	9.95	7.32	9.18	6.76
March 31, 2006	9.81	7.12	8.67	6.30

The U.S. dollar prices set forth above were calculated using the weighted average exchange rate for the relevant period.

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The high and low trading prices of JHI NV ADRs on the New York Stock Exchange are as follows:

<u>Period</u>	<u>High</u> <u>(US\$)</u>	<u>Low</u> <u>(US\$)</u>
Fiscal year ended:		
March 31, 2006	36.36	21.54
March 31, 2005	27.21	18.10
March 31, 2004	28.50	18.25
March 31, 2003	19.95	15.29
March 31, 2002	17.95	11.10
Fiscal quarter ended:		
June 30, 2006	36.80	25.90
March 31, 2006	35.59	30.51
December 31, 2005	34.80	29.60
September 30, 2005	36.36	27.70
June 30, 2005	30.00	21.54
March 31, 2005	27.21	22.60
December 31, 2004	26.52	20.50
September 30, 2004	22.26	18.10
June 30, 2004	25.05	18.82
Month ended:		
August 31, 2006	26.73	24.75
July 31, 2006	28.85	25.40
June 30, 2006	31.91	25.90
May 31, 2006	36.74	31.30
April 30, 2006	36.80	33.45
March 31, 2006	35.59	32.50

Trading Markets

Our securities are listed and quoted on the following stock exchanges:

Common Stock (in the form of CUFS)	Australian Stock Exchange
ADRs	New York Stock Exchange

We cannot predict the prices at which our shares and ADRs will trade or the volume of trading for such securities, nor can we assure you that these securities will continue to meet the applicable listing requirements of these exchanges.

Trading on the Australian Stock Exchange

The Australian Stock Exchange is headquartered in Sydney, Australia, with branches located in each Australian state capital. Our CUFS trade on the Australian Stock Exchange under the symbol "JHX." The Australian Stock Exchange is a publicly listed company with trading being undertaken by brokers licensed under the Australian Corporations Act 2001. Trading principally takes place between the hours of 10:00 a.m. and 4:00 p.m. on each weekday (excluding Australian public holidays). Settlement of trades in uncertificated securities listed on the Australian Stock Exchange is generally effected electronically on the third business day following the trade. This is undertaken through CHES (Clearing House Electronic Sub-register System), which is the clearing and settlement system operated by the Australian Stock Exchange.

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Trading on the New York Stock Exchange

In the United States, five JHI NV CUFS equal one JHI NV ADR. Our ADRs trade on the New York Stock Exchange under the symbol “JHX.” Trading principally takes place between the hours of 9:30 a.m. and 4:00 p.m. on each weekday (excluding U.S. public holidays). All inquiries and correspondence regarding ADRs should be directed to The Bank of New York, depository for our ADRs, at The Bank of New York, ADR Department, 101 Barclay Street #22W, New York, New York 10286 or at its website located at www.adrbny.com or contact: The Bank of New York, Investor Relations, P.O. Box 11258, Church Street Station, New York, NY 10286-1258, toll free telephone number for USA domestic callers: 1-888-BNY-ADRs, non-U.S. callers can call: 212-815-3700 or email: shareowners@bankofny.com.

Item 10. Additional Information

General

We were originally incorporated in 1998 as a private company with limited liability, or “*besloten vennootschap met beperkte aansprakelijkheid*” (a “B.V.”). By notarial deed dated July 24, 2001, we changed our name to James Hardie Industries N.V. and by the same deed we changed our legal form into that of a “*naamloze vennootschap*” (an “N.V.”), a public limited liability company under Dutch law. Our Articles of Association were most recently amended on September 1, 2005.

Our corporate seat is in Amsterdam, The Netherlands and we have offices at The Atrium, 8th floor, Strawinskylaan 3077, 1077 ZX Amsterdam, The Netherlands. We are registered at the trade register of the Chamber of Commerce and Industry for Amsterdam, The Netherlands under number 34106455.

Key Provisions of our Articles of Association of JHI NV

Purpose of the Company

Our purposes are:

- to participate in, to take an interest in any other way in and to conduct the management of business enterprises of whatever nature;
- to raise funds through the issuance of debt or equity or in any other way and to finance third parties;
- to provide guarantees, including guarantees for the debts of third parties; and
- to perform all activities which are incidental to or which may be conducive to, or connected with, any of the foregoing.

Provisions of our Articles of Association or Charter Related to Directors

Power to vote when director is materially interested. Pursuant to the Company’s Articles of Association, and subject to limited exceptions, a member of the Managing Board who has a material personal interest in a matter that relates to the affairs of the Company must give all other members of the Managing Board notice of his or her interest. Furthermore, subject to limited exceptions, a member of the Managing Board who has a material personal interest in a matter that is being considered at a meeting of the Managing Board may neither be present while the matter is being considered at such meeting nor vote on the matter.

Subject to limited exceptions, a member of the Supervisory Board who has a material personal interest in a matter that relates to the affairs of the Company must give all other members of the Supervisory Board notice of his or her interest. Furthermore, subject to limited exceptions, a member of the Supervisory Board who has a material personal interest in a matter that is being considered at a meeting of the Supervisory Board may neither be present while the matter is being considered at such meeting nor vote on the matter.

If a member of the Managing Board has a conflict of interest with the Company (whether acting in his personal capacity by entering into an agreement with the Company, conducting any litigation against the Company or acting in any other capacity), he or she, will still have the power to represent the Company

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towards third parties when entering into transactions, unless a person is designated at the General Meeting of Shareholders for that purpose or the law provides the designation in a different manner.

Power to vote compensation. The compensation of the members of the Supervisory Board is determined at the General Meeting of Shareholders.

The remuneration of the members of the Managing Board is determined by the Supervisory Board within the limits of the remuneration policy adopted at the General Meeting of Shareholders. The Supervisory Board will submit for approval by the General Meeting of Shareholders a proposal regarding the arrangements for the remuneration of the members of the Managing Board in the form of shares or rights to acquire shares. This proposal includes at least how many shares or rights to acquire shares may be awarded to the Managing Board and which criteria apply to an award or a modification. Our Articles of Association do not include any provisions regarding the power of the members of the Managing Board, in the absence of an independent quorum, to vote compensation to themselves or any other members of the Managing Board.

Borrowing Powers. Our Articles of Association do not include any provisions regarding the borrowing powers of members of the Managing Board or the Supervisory Board. However, the provisions regarding conflicts of interest generally govern this issue.

Age Limit Requirement for Retirement or Non-Retirement. Our Articles of Association do not include any provisions regarding the mandatory retirement age of a member of the Managing Board or the Supervisory Board.

Number of shares for director's qualification. Our Articles of Association do not impose any obligation on the members of the Managing Board or the Supervisory Board to hold shares in the Company.

Issuance of Shares; Preemptive Rights

Pursuant to Dutch law and our Articles of Association, the authority to issue shares and to grant rights to subscribe for shares, such as options, and to limit or exclude preemptive rights is vested in our shareholders as a group, unless our shareholders have delegated this authority to another corporate body. Such delegation is valid for a maximum period of five years, but may be renewed at any time prior to its expiration.

At our August 22, 2005 Annual General Meeting, our Supervisory Board has been delegated the authority to issue shares and to grant rights to subscribe for shares, such as options, and to limit or exclude preemptive rights until August 22, 2010. After August 22, 2010, shares and rights to subscribe for shares may be issued, and preemptive rights may be limited or excluded by our shareholders or by our Supervisory Board, provided it has again been delegated this authority by our shareholders (such delegation shall be for a maximum period of five years). We plan to ask our shareholders to delegate this authority to our Supervisory Board again prior to August 22, 2010. It is anticipated that our Supervisory Board will eliminate preemptive rights with respect to any and all issuances of shares of common stock during such period.

Shares of common stock must be issued for a subscription price at least equal to their nominal value and at least 25% of the nominal value must have been paid up at the time of issuance.

As a Dutch company that has listed securities in Australia and the United States, we are subject to applicable legislation regarding insider trading. Generally, Dutch law prohibits anyone, whether or not a director or employee of the issuer, from trading in or bringing about transactions in the securities of the issuer while in possession of inside, non-public information and from passing on inside information or recommending a transaction while in possession of inside information. Under Australian law, persons are prohibited from trading on the basis of information which is not generally available and which, if it were generally available, a reasonable person would expect to have a material effect on the price or value of securities. Similarly, in the United States, persons are prohibited from trading on the basis of material, non-public information. We have adopted an internal code on insider trading consistent with Dutch, Australian and U.S. laws and regulations.

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Repurchase of Shares

At the proposal of our Joint Board, we may acquire shares in our own capital, subject to certain provisions of Dutch law and of our Articles of Association, if and insofar as (1) shareholders' equity, less the amount to be paid for the shares acquired, is not less than the sum of the paid and called up part of our issued share capital, plus any reserves required to be maintained by Dutch law or our Articles of Association, (2) the aggregate par value of the shares of our capital which we or our subsidiaries acquire, already hold or on which we or they hold a right of pledge, amounts to no more than one-tenth of the aggregate par value of the issued share capital and (3) our shareholders, as a group, have authorized our Managing Board to acquire such shares, which authorization shall be valid for no more than eighteen months. Neither we nor any of our subsidiaries may vote shares that are held by them or us.

At our August 22, 2005 Annual General Meeting, our Managing Board was authorized to cause JHI NV to acquire shares in JHI NV's capital for a period expiring on February 22, 2007. After February 22, 2007, shares in JHI NV's capital may be acquired if our Managing Board has again been authorized to do so by our shareholders (such authorization may be for a maximum period of 18 months). We intend to ask our shareholders in our 2006 Annual General Meeting to renew the authorization of the Managing Board to cause JHI NV to acquire shares in JHI NV's capital, on terms substantially identical to the August 22, 2005 authorization.

Reduction of Share Capital

Upon the proposal of our Managing Board, our shareholders as a group have the power to effect a reduction of share capital by deciding to (i) cancel shares, or depositary receipts related to shares, acquired by us in our own share capital, or (ii) to reduce the nominal value of our shares, subject to applicable statutory provisions, with or without a partial repayment or release. The proposal of our Managing Board, as referred to in the preceding sentence, is subject to the approval of our Joint Board. In case of a partial repayment or release, these must be made *pro rata* to all shares. The *pro rata* requirements may be waived by agreement of all shareholders concerned.

Shareholders Meetings and Voting Rights

Each shareholder, person entitled to vote and CUFS holder (but not an ADR holder) has the right to attend general meetings of shareholders, either in person or by proxy, to address shareholder meetings and, in the case of shareholders and other persons entitled to vote (for instance, certain pledge holders), to exercise voting rights, subject to the provisions of our Articles of Association. As described in the paragraph below, although ADR holders cannot vote directly, they can direct the voting of their underlying shares through the ADR depository. Meetings of shareholders are held in The Netherlands at least annually, within six months after the close of each of our fiscal years. These meetings take place in either Amsterdam, The Hague, Rotterdam or Haarlemmermeer. Additional meetings of shareholders may be held as often as our Managing Board or our Supervisory Board deems necessary or if called by (1) holders of shares of common stock jointly representing at least 5% of our issued share capital, or (2) at least 100 holders of shares of common stock or one shareholder representing at least 100 CUFS holders or any relevant combination thereof so that the request of at least 100 persons is taken into account. Our Articles of Association also provide that an information meeting of shareholders must be held in Australia prior to each general meeting.

We give notice of each meeting of shareholders by mail and by way of an announcement in a nationally distributed newspaper in The Netherlands. Such notice is given no later than the 28th day prior to the day of the meeting and includes or is accompanied by an agenda identifying the business to be considered at the meeting. We currently are exempt from the proxy rules under the U.S. Securities Exchange Act of 1934 (which we refer to as the Exchange Act). Holders of shares of common stock represented by CUFS are provided notice of general meetings of shareholders and other communications with shareholders by us, and the ADR depository, The Bank of New York, provides our ADR holders with such notices and communications. CHES Depositary Nominees Pty Ltd, or CDN, or we on behalf of CDN, may deliver to CUFS holders instruction forms allowing the CUFS holders to instruct CDN how to vote at a meeting. Similarly, the ADR

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depository may deliver to ADR holders instruction forms allowing the ADR holders to direct the ADR depository on how to instruct CDN to vote at a meeting. In order for CUFS holders to attend general meetings of shareholders in person, such holders need not withdraw the shares of common stock represented by the CUFS, but must follow such rules and procedures as may be established by the CUFS Subregistrar and our share registry. CUFS holders may request CDN to appoint them as proxy for the purposes of voting the shares underlying their holding of CUFS on behalf of CDN. In order for ADR holders to attend general meetings of shareholders in person, such holders will have to convert their ADRs into CUFS and, in doing so, must follow the procedures set forth in the deposit agreement and such rules and procedures as may be established by the ADR depository.

Each share of common stock entitles the holder thereof to one vote on each matter to be voted upon by the shareholders. Holders of CUFS will be entitled to attend and to speak, but not vote, at our shareholders meetings. A CUFS holder may follow instructions set out in a relevant Notice of Meeting to have the registered shareholder, CDN, appoint the CUFS holder as a proxy of CDN to vote their CUFS holding at the relevant meeting of shareholders. Holders of ADRs are not entitled to attend or speak, nor vote, at our general meetings of shareholders, but, as described above, they can direct the voting of their underlying shares through the ADR depository.

Unless otherwise required by our Articles of Association or Dutch law, resolutions of the general meeting of shareholders will be validly adopted by an absolute majority of the votes cast at a meeting at which at least 5% of our issued share capital is present or represented. Except where expressly stated otherwise in this Form 20-F, all references here and elsewhere herein to actions by the shareholders, or shareholders as a group, are references to actions taken by way of such a resolution at a meeting of shareholders.

Dutch law and our Articles of Association currently do not impose any limitations on the rights of persons who are not resident of The Netherlands to hold or vote shares of common stock, solely as a result of such non-resident status.

Annual Report

Our fiscal year runs from April 1 through March 31. Dutch law requires that within five months after the end of our fiscal year, unless the general meeting of shareholders has extended this period for a maximum of six months, our Managing Board must make available to our shareholders a report with respect to that fiscal year. This report must include the financial statements and a report of an independent accountant. The annual report must be submitted to the shareholders for adoption. The annual report, including the management report, is prepared in English and, in the case of the consolidated accounts of JHI NV and its wholly owned subsidiaries, according to U.S. GAAP, and in the case of JHI NV's accounts, according to accounting principles generally accepted in The Netherlands (which we refer to as Dutch GAAP).

Indemnification

Our Articles of Association provide that we shall generally indemnify any person who is or was a member of our Managing, Supervisory or Joint Boards or one of our employees, officers or agents, and who suffers any loss as a result of any action in connection with their service to us, provided they acted in good faith in carrying out their duties and in a manner they reasonably believed to be in our interest. This indemnification generally will not be available if the person seeking indemnification acted with gross negligence or willful misconduct in the performance of such person's duties to us. A court in which an action is brought may, however, determine that indemnification is appropriate nonetheless.

Dividends

All calculations to determine the amounts available for dividends or other distributions are based on our statutory accounts, which are, as a holding company, different from our consolidated accounts and which are prepared in accordance with Dutch GAAP because we are a Dutch company. Because we are a holding company and have limited operations of our own, we are largely dependent on dividends or other distributions from our subsidiaries to fund any cash dividends.

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The profits of JHI NV in any financial year, if any, shall first be retained by way of a reserve in such amount as determined by our Supervisory Board. The remaining portion of the profits shall be at the disposal of our Managing Board for further allocation to our reserves or, if permitted by Dutch law and our Articles of Association, be made available for distribution as a dividend to the holders of shares of common stock, or a combination thereof. Our Managing Board, upon approval of our Joint Board, may also declare interim dividends as permitted by Dutch law and our Articles of Association.

We may not make any distribution, whether out of our profits as an interim dividend, out of our general share premium reserve or out of any other reserves that are available for shareholder distributions under Dutch law, if the distribution would reduce shareholders' equity to an amount less than the sum of the paid and called up part of our issued share capital, plus certain reserves that are required to be maintained by Dutch law and our Articles of Association. Distributions may, at the discretion of Managing Board, upon approval of our Joint Board, be made in cash or in shares or other securities, such as a stock dividend, provided that our shareholders as a group are authorized to make distributions in shares or other securities, if and so long as our Supervisory Board has not been delegated the authority to issue shares and rights to subscribe for shares. See "Issuance of Shares; Preemptive Rights."

Cash dividends and other distributions that have not been collected within five years and two days after the date on which they became due and payable will revert to us.

JHIL historically paid dividends to its shareholders. JHI NV's Managing Board, subject to the approval of the Joint Board, determines whether to declare a dividend and the amount of any such dividend. Our Managing Board also determines the record dates at which time registered holders of our shares, including the CHESSE Depository Nominee issuing CUFS to the ADR depository, will be entitled to dividends and sets the payment dates. Dividends are declared payable to our shareholders in U.S. dollars. The ADR Depository (Bank of New York) receives dividends in U.S. dollars directly from JHI NV on each CUFS dividend payment date and will distribute any dividend to holders of ADRs in U.S. dollars pursuant to the terms of the deposit agreement. Other CUFS holders registered at a dividend record date are paid their dividend on each CUFS dividend payment date in the equivalent amount of Australian dollars, as determined by the prevailing exchange rate shortly after the CUFS dividend record date.

Amendment of Articles of Association

Our Articles of Association may be amended by our shareholders by resolution approved by 75% of the votes cast at a general meeting of shareholders at which at least 5% of our issued share capital is present or represented.

Liquidation Rights

In the event of our dissolution and liquidation, and after we have paid all debts and liquidation expenses, all assets available for distribution shall be distributed to our holders of shares of common stock *pro rata* based on the nominal amount paid upon the shares of common stock held by such holders. As a holding company, our sole material assets are the capital stock of our subsidiaries. Therefore, in the event of a dissolution or liquidation, we will either distribute the capital stock of our subsidiaries or sell such stock and distribute the net proceeds thereof, or liquidate such subsidiaries and distribute the net proceeds thereof, after satisfying our liabilities.

Limitations on Right to Hold Common Stock

Subject to certain exceptions, our Articles of Association prohibit the holding of shares of our common stock if, because of an acquisition of a relevant interest (including in the form of shares of our common stock, CUFS or ADRs) in such shares: (1) the number of shares of our common stock in which any person, directly or indirectly, acquires or holds a relevant interest increases from 20% or below to over 20% or from a starting point that is above 20% and below 90% of the issued and outstanding share capital of JHI NV or (2) the voting rights which any person, directly or indirectly, is entitled to exercise at a general meeting of shareholders increase from 20% or below to over 20% or from a starting point that is above 20% and below 90%

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of the total number of such voting rights which may be exercised by any person at a general meeting of shareholders. The purpose of this prohibition is to ensure that the principles which underpin the Australian Corporations Act 2001 takeover regime are complied with in a change of control, namely that: (1) the acquisition of control over the Company takes place in an efficient, competitive and informed market; (2) the holders of the shares of our common stock or CUFS and our Managing Board, Joint Board and Supervisory Board know the identity of any person who proposes to acquire a substantial interest in the Company, have a reasonable time to consider the proposal, and are given enough information to enable them to assess the merits of the proposal and (3) as far as practicable, the holders of the shares of our common stock or CUFS, among others, all have a reasonable and equal opportunity to participate in any benefits accruing to the holders through any proposal under which a person would acquire a substantial interest in the Company. The exceptions to this prohibition set forth in our Articles of Association generally include:

- acquisitions that result from acceptances under a takeover bid, which complies with the Articles of Association, including the principles set forth above;
- acquisitions which result in a person's voting power increasing by not more than 3% in a six-month period;
- acquisitions which are consistent with the principles set forth above, conform to the other takeover principles set out in the Articles of Association (adjusting those principles as appropriate to meet the particular circumstances of the acquisitions) and have received the prior approval of the Supervisory Board; and
- acquisitions approved at a general meeting of shareholders, subject to certain requirements being satisfied in relation to voting and the provision of information.

The prohibition does not apply to holdings by the CUFS depository, CDN, of our shares as custodian for the CUFS holders but will apply to CDN where another person acquires or holds a relevant interest in breach of the provisions. If a person acquires or holds a relevant interest in breach of the prohibition, JHI NV has several powers available to it under our Articles of Association. These include powers to require the disposal of our common stock, disregard the exercise of votes and suspend dividend rights. These powers will only extend to that number of shares of common stock which are acquired or held in breach of the prohibition.

The Supervisory Board may cause JHI NV to exercise these powers if JHI NV has first obtained a judgment from a court of competent jurisdiction that a breach of the prohibition has occurred and is continuing. Alternatively, these powers may also be exercised without having recourse to the courts if certain procedures in relation to obtaining legal advice are followed. Our right to exercise these powers by complying with these procedures must be renewed by shareholder approval every five years or such powers will lapse. If renewed, confirmation of this renewal must be made by lodgment of a declaration by the Managing Board, on recommendation of the Joint Board, with the relevant authority in accordance with Dutch law.

Furthermore, if JHI NV becomes subject to the law of any jurisdiction, which applies so as to regulate the acquisition of control and the conduct of any takeover of the Company, JHI NV shall consult promptly with the ASX to determine whether, in the light of the application of such law:

- (i) ASX requires an amendment to the takeover provisions in our Articles of Association to comply with the ASX Listing Rules as then in force; or
- (ii) any waiver of the ASX Listing Rules permitting the inclusion of the takeovers provisions has ceased to have effect.

In either case, the Managing Board shall put to a general meeting of shareholders a proposal to amend our Articles of Association so as to make them, to the fullest extent permitted by law, consistent with the ASX Listing Rules.

Although these provisions of our Articles of Association may help to ensure that no person may acquire voting control of us without making an offer to all shareholders, these provisions may also have the effect of delaying or preventing a change in control of the Company.

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Disclosure of Holdings

Pursuant to our Articles of Association, shareholders are required to notify us of acquisitions of 5% or more of our outstanding securities and of any further change in their holdings of 1% or more of our outstanding securities. In addition, pursuant to our Articles of Association, we have the power to require our shareholders and CUFIs holders to provide to us information about the identity of persons who have relevant interests in our securities and the details of that interest. These provisions are intended to mirror the tracing of beneficial ownership provisions of the Australian Corporations Act 2001, which would not have applied statutorily to us as a Dutch company absent a specific provision in our Articles of Association.

Finally, shareholders are subject to beneficial ownership reporting disclosure requirements under U.S. securities laws, including the filing of beneficial ownership reports on Schedules 13D and 13G with the SEC. The SEC's rules require all persons who beneficially own more than 5% of a class of securities registered with the SEC to file either a Schedule 13D or 13G. This filing requirement applies to all holders of our shares of common stock, ADRs or CUFIs because our securities have been registered with the SEC. The number of shares of common stock underlying ADRs and CUFIs is used to determine whether a person beneficially owns more than 5% of the class of securities. This beneficial ownership-reporting requirement applies whether or not the holders are U.S. residents. The decision of whether to file a Schedule 13D or a Schedule 13G will depend primarily on the nature of the beneficial owner and the circumstances surrounding the person's beneficial ownership. A copy of the rules and regulations relating to the reporting of beneficial ownership with the SEC, as well as Schedules 13D and 13G, are available on the SEC's website at www.sec.gov.

Material Contracts

In addition to the other contracts that are described in this Annual Report on Form 20-F, including without limitation the Final Funding Agreement and certain other related agreements described in Item 4, "Information on the Company — Legal Proceedings," and any contracts that have been entered into in the ordinary course of business, the following are the contracts we consider to be material to us. All contracts described below have been filed as an exhibit to this Annual Report on Form 20-F and are hereby incorporated by reference and the summary below is qualified in its entirety by such reference.

Notes. In November 1998, James Hardie International Finance B.V issued, and JHI NV guaranteed, \$225.0 million of noncollateralized notes as part of a seven-tranche private placement facility. Principal repayments were due in seven installments on specified dates that commenced on November 5, 2004 and were to end on November 5, 2013. The tranches bore fixed interest rates of 6.86%, 6.92%, 6.99%, 7.05%, 7.12%, 7.24% and 7.42%, respectively. Interest was payable on May 5, and November 5, each year. On May 8, 2006, we prepaid the notes in full and as a result incurred a make-whole payment of \$6.0 million. Had we not prepaid the notes prior to our decision to record the asbestos provision, as permitted by the non-collateralized notes agreement, we would not have been in compliance with certain of the restrictive covenants contained therein. See Item 3, "Key Information — Risk Factors" and Note 9 to our consolidated financial statements included in Item 18.

U.S. Dollar Cash Advance Facilities. Our credit facilities currently consist of 364-day facilities in the amount of \$110.0 million, which mature in June 2007, and term facilities in the amount of \$245.0 million, which mature in December 2006. For both facilities, interest is calculated at the commencement of each draw-down period based on the U.S.-dollar London Interbank Offered Rate, or LIBOR, plus the margins of individual lenders, and is payable at the end of each draw-down period. During the year ended March 31, 2006, we paid \$0.7 million in commitment fees. As of March 31, 2006, there was \$181.0 million drawn under the combined facilities and \$174.0 million was available.

If the conditions precedent to the full implementation of the Final Funding Agreement, including lender approval, are satisfied, the maturity date of the \$245.0 million term facilities will be automatically extended until June 2010. In the fourth quarter, \$181.0 million was drawn down on the credit facilities in anticipation of the prepayment of the U.S.-dollar non-collateralized notes as described above.

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Gypsum Indemnity. We sold our Gypsum wallboard manufacturing facilities in April 2002. Under the terms of the sale agreement with the buyer, BPB U.S. Holdings, Inc., we agreed to customary indemnification obligations which generally have expired. However, pursuant to the sale agreement, we agreed to indemnify the buyer for any future liabilities arising from asbestos-related injuries to persons or property arising from our former Gypsum business. Although we are not aware of any asbestos-related claims arising from the Gypsum business nor circumstances that would give rise to such claims, our obligation under the sale agreement to indemnify the buyer for liabilities arising from asbestos-related injuries arises only if such claims exceed \$5 million in the aggregate, is limited to \$250 million in the aggregate and will continue for 30 years after the closing date of our Gypsum business.

Pursuant to the terms of our agreement to sell our Gypsum business, we also retained responsibility for any losses incurred by the buyer resulting from environmental conditions at the Duwamish River in the State of Washington so long as notice of a claim is given within 10 years of closing. Our indemnification obligations in this regard are subject to a \$34.5 million limitation. The Seattle gypsum facility had previously been included on the “Confirmed and Suspected Contaminate Sites Report” released in 1987 due to the presence of metals in the groundwater. Because we believe the metals found emanated from an offsite source, we do not believe we are liable for, and have not been requested to conduct, any investigation or remediation relating to the metals in the groundwater. See Item 3, “Key Information — Risk Factors.”

ABN 60 Indemnities. In connection with the separation of Amaca, Amaba and ABN 60 from the James Hardie Group, JHI NV agreed to indemnify ABN 60 Foundation for any non asbestos-related legal claims made against ABN 60. There is no maximum amount of the indemnity and the term of the indemnity is in perpetuity. We believe that the likelihood of any material non-asbestos-related claims occurring against ABN 60 is remote. As such, we have not recorded a liability for the indemnity. We have not pledged any assets as collateral for such indemnity. See “Legal Proceedings” in Item 4, and Note 12 to our consolidated financial statements included below in Item 18.

Exchange Controls

There are no legislative or other legal provisions currently in force in The Netherlands or arising under our Articles of Association restricting the import or export of capital, including the availability of cash and cash equivalents for use by JHI NV and its wholly owned subsidiaries, or remittances to our security holders not resident in The Netherlands. Cash dividends payable in U.S. dollars on our common stock may be officially transferred from The Netherlands and converted into any other convertible currency.

There are no limitations, either by Dutch law or in our Articles of Association, on the right of non-residents of The Netherlands to hold or vote our common stock.

Taxation

The following summarizes the material Dutch and U.S. tax consequences of an investment in shares of our common stock. This summary does not address every aspect of taxation relevant to a particular investor subject to special treatment under any applicable law and is not intended to apply in all respects to all categories of investors. In addition, except for the matters discussed under “Netherlands Taxation,” this summary does not consider the effect of other foreign tax laws or any state, local or other tax laws that may apply to an investment in shares of our common stock. This summary assumes that we will conduct our business in the manner described in this annual report. Changes in our organizational structure or the manner in which we conduct our business may invalidate all or parts of this summary. The laws on which this summary is based could change, perhaps with retroactive effect, and any law changes could invalidate all or parts of this summary. We will not update this summary for any law changes after the date of this annual report.

This discussion does not bind either the U.S. or Dutch tax authorities or the courts of those jurisdictions. We have not sought a ruling nor will we seek a ruling of the U.S. or Dutch tax agencies about matters in this summary (although, as noted in the risk factor in Item 3, “Key Information — Risk Factors” discussing the application of the U.S.- Netherlands income tax treaty, we have sought a ruling from the U.S. Internal

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Revenue Service on a matter of internal company taxation). We cannot assure you that such tax agencies will concur with the views in this summary concerning the tax consequences of the purchase, ownership or disposition of our common stock or that any reviewing judicial body in the United States or The Netherlands would likewise concur.

PROSPECTIVE INVESTORS SHOULD CONSULT THEIR TAX ADVISORS REGARDING THE PARTICULAR TAX CONSEQUENCES OF THEIR ACQUIRING, OWNING AND DISPOSING OF OUR COMMON SHARES, INCLUDING THE EFFECT OF ANY FOREIGN, STATE OR LOCAL TAXES.

United States Taxation

The following is a summary of the material U.S. federal income tax consequences generally applicable to “U.S. Shareholders” (as defined below) who invest in shares of our common stock and hold the shares as capital assets. For purposes of this summary, “U.S. Shareholders” means: (1) citizens or individual residents of the United States (as defined for U.S. federal income tax purposes); (2) corporations created or organized in or under the laws of the United States or any of its political subdivisions; (3) estates whose income is subject to U.S. federal income taxation regardless of its source and (4) trusts if (i) a court in the United States can exercise primary supervision over the administration of the trust, and one or more U.S. persons can control all of the substantial decisions of the trust, or (ii) the trust was in existence on August 20, 1996 and properly elected to continue to be treated as a United States person. If a partnership (including for this purpose any entity treated as a partnership for U.S. federal tax purposes) is a beneficial owner of shares of our common stock, the U.S. federal tax treatment of a partner in the partnership generally will depend on the status of the partner and the activities of the partnership. A holder of our common stock that is a partnership and partners in that partnership should consult their own tax advisors regarding the U.S. federal income tax consequences of holding and disposing of those shares.

This summary does not comprehensively describe all possible tax issues that could influence a current or prospective U.S. Shareholder’s decision to buy or sell shares of our common stock. In particular, this summary does not discuss: (1) the tax treatment of special classes of U.S. Shareholders, such as financial institutions, life insurance companies, tax exempt organizations, tax-qualified employer plans and other tax-qualified or qualified accounts, investors liable for the alternative minimum tax, dealers in securities, shareholders who hold shares of our common stock as part of a hedge, straddle or other risk reduction arrangement, or shareholders whose functional currency is not the U.S. dollar; (2) the tax treatment of U.S. Shareholders who own (directly or indirectly by attribution through certain related parties) 10% or more of our voting stock and (3) the application of other U.S. federal taxes, such as the U.S. federal estate tax. The summary is based on the Internal Revenue Code of 1986, as amended (which we refer to as the Code), applicable Treasury regulations, judicial decisions and administrative rulings and practice, all as of the date of this annual report.

Treatment of ADRs. For U.S. federal income tax purposes, a holder of an ADR is considered the owner of the shares of stock represented by the ADR. Accordingly, except as otherwise noted, references in this summary to ownership of shares of our common stock includes ownership of the shares of our common stock underlying the corresponding ADRs.

Taxation of Distributions. Subject to the passive foreign investment company rules discussed below, the tax treatment of a distribution on shares of our common stock held by a U.S. Shareholder depends on whether such distribution is from our current or accumulated earnings and profits (as determined under U.S. federal income tax principles). To the extent a distribution is from our current or accumulated earnings and profits, a U.S. Shareholder will include such amount in gross income as a dividend. To the extent a distribution exceeds our current and accumulated earnings and profits, a U.S. Shareholder will treat such amount first as a non-taxable return of capital to the extent of the U.S. Shareholder’s tax basis in such shares, and any excess amount will be treated and taxed as a capital gain. See the discussion of “Capital Gains Rates” below. Notwithstanding the foregoing described treatment, we do not intend to maintain calculations of our current and accumulated earnings and profits. Dividends received on shares of our common stock will not qualify for the inter-corporate dividends received deduction.

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Distributions to U.S. Shareholders that are treated as dividends may be subject to a reduced rate of tax under recently enacted U.S. tax laws. For tax years beginning after December 31, 2002 and before January 1, 2011, “qualified dividend income” is subject to a maximum tax rate of 15%. “Qualified dividend income” includes dividends received from a “qualified foreign corporation.” A “qualified foreign corporation” includes (1) a foreign corporation that is eligible for the benefits of a comprehensive income tax treaty with the U.S. that contains an exchange of information program and (2) a foreign corporation that pays dividends with respect to shares of its stock that are readily tradable on an established securities market in the U.S. We believe that we are, and will continue to be, a “qualified foreign corporation” and that dividends we pay with respect to our shares will qualify as “qualified dividend income.” To be eligible for the 15% tax rate, a U.S. Shareholder must hold our shares un-hedged for a minimum holding period (generally, 61 days during the 121-day period beginning on the date that is 60 days before the ex-dividend date of the distribution). Although we believe we presently are, and will continue to be, a “qualified foreign corporation,” we cannot guarantee that we will so qualify. For example, we will not constitute a “qualified foreign corporation” if we are classified as a “passive foreign investment company” (discussed below) in either the taxable year of the distribution or the preceding tax year.

Distributions to U.S. Shareholders that are treated as dividends are generally considered income from sources outside the United States and foreign source “passive” income or, in the case of certain holders, “financial services” income for purposes of the foreign tax credit limitation rules. For taxable years beginning after December 31, 2006, “passive” income generally will be treated as “passive category” income, and “financial services” income generally will be treated as “general category” income. However, if U.S. persons own, directly or indirectly, 50% or more of our shares of common stock, then a portion of the dividends (based on the portion of our earnings and profits that is from U.S. sources) may be treated as sourced within the U.S. This 50% ownership rule could potentially limit a U.S. shareholder’s ability to use foreign tax credits against the shareholder’s U.S. tax liability. In addition, special rules will apply to determine a U.S. Shareholder’s foreign tax credit limitation if a dividend distributed with respect to our shares constitutes “qualified dividend income” (as described above). See the discussion of “Credit of Foreign Taxes Withheld” below.

The amount of any distribution we make on shares of our common stock in foreign currency generally will equal the fair market value in U.S. dollars of such foreign currency on the date of receipt. A U.S. Shareholder will have a tax basis in the foreign currency equal to its U.S. dollar value on the date of receipt and will recognize gain or loss when it sells or exchanges the foreign currency. Such gain or loss is taxable as ordinary income or loss from U.S. sources. U.S. Shareholders who are individuals will not recognize gain upon selling or exchanging foreign currency if the gain does not exceed \$200 and the sale or exchange constitutes a “personal transaction” under the Internal Revenue Code. The amount of any distribution we make with respect to shares of our common stock in property other than money will equal the fair market value of that property on the date of distribution.

Credit of Foreign Taxes Withheld. Under certain conditions, including a requirement to hold shares of our common stock un-hedged for a certain period, and subject to limitation, a U.S. Shareholder may claim a credit against the U.S. shareholder’s federal income tax liability for the foreign tax owed and withheld or paid with respect to distributions on our shares. Alternatively, a U.S. Shareholder may deduct the amount of withheld foreign taxes, but only for a year for which the U.S. Shareholder elects to deduct all foreign income taxes. Complex rules determine how and when the foreign tax credit applies, and U.S. Shareholders should consult their tax advisors to determine whether and to what extent they may claim foreign tax credits.

Under certain conditions, we may retain a portion of Netherlands taxes we withhold from dividends paid to our shareholders, rather than pay that portion of the withheld taxes to The Netherlands Tax Administration. Uncertainty exists whether a U.S. Shareholder can properly claim as a foreign tax credit any Netherlands withholding taxes we retain. As a result, U.S. Shareholders should consult their tax advisors regarding their ability to do so. If unable to claim a foreign tax credit for those tax amounts, a U.S. shareholder still may deduct them for U.S. federal income tax purposes, but only for a year for which the U.S. Shareholder elects to deduct all foreign income taxes. The conditions under which we could retain Netherlands withholding taxes

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are unlikely to occur, but upon request, we will inform U.S. Shareholders whether we retained any Dutch tax withheld from distributions on shares of our common stock.

Sale or Other Disposition of Shares. Subject to the passive foreign investment company rules discussed below, a U.S. Shareholder will recognize capital gain or loss on the sale or other taxable disposition of shares of our common stock, equal to the difference between the U.S. Shareholder's adjusted tax basis in the shares sold or disposed of and the amount realized on the sale or disposition. Individual U.S. Shareholders may benefit from lower marginal tax rates on capital gains recognized on shares sold, depending on the U.S. Shareholder's holding period of the shares. See the discussion of "Capital Gains Rates" below. Capital losses not offset by capital gains are subject to limitations on deductibility. The gain or loss from the sale or other disposition of shares of our common stock generally will be treated as income from sources within the United States for foreign tax credit purposes, unless the U.S. Shareholder is a U.S. citizen residing outside the United States and certain other conditions are met.

Capital Gains Rates. For individual U.S. Shareholders, the tax rates applicable to capital gain and ordinary income may vary substantially. For calendar year 2005, the highest marginal income tax rate that could apply to the ordinary income of an individual U.S. Shareholder (disregarding the effect of limitations on deductions) is 35%. In contrast, a maximum rate of 15% applies to any net capital gain of an individual U.S. Shareholder if such gain is attributable to the sale or exchange of capital assets held more than one year. Gain attributable to the sale or exchange of capital assets held one year or less is short-term capital gain, taxable at the same rates as ordinary income. In addition, a maximum rate of 15% applies to "qualified dividend income" (as described above).

Controlled Foreign Corporation Status. If more than 50% of either the voting power of all classes of our voting stock or the total value of our stock is owned, directly or indirectly, by citizens or residents of the United States, United States domestic partnerships and corporations or estates or trusts other than foreign estates or trusts, each of which owns 10% or more of the total combined voting power of all classes of our stock entitled to vote, which we refer to as 10-Percent Shareholders, we could be treated as a "controlled foreign corporation," or CFC, under the Code. This classification would, among other consequences, require 10-Percent Shareholders to include in their gross income their pro rata shares of our "Subpart F income" (as specifically defined by the Code) and our earnings invested in U.S. property (as specifically defined by the Code).

In addition, gain from the sale or exchange of our common shares by a U.S. person who is or was a 10-Percent Shareholder at any time during the five-year period ending with the sale or exchange is treated as dividend income to the extent of earnings and profits of the company attributable to the stock sold or exchanged. Under certain circumstances, a corporate shareholder that directly owns 10% or more of our voting shares may be entitled to an indirect foreign tax credit for income taxes paid by us in connection with amounts so characterized as dividends under the Code.

If we were classified as both a passive foreign investment company, or PFIC, as described below, and a CFC, generally we would not be treated as a passive foreign investment company with respect to 10-Percent Shareholders. We believe that we are not and will not become a CFC.

Passive Foreign Investment Company Status. Special U.S. federal income tax rules apply to U.S. Shareholders owning capital stock of a PFIC. A foreign corporation will be a PFIC for any taxable year in which 75% or more of its gross income is passive income or in which 50% or more of the average value of its assets is "passive assets" (generally assets that generate passive income or assets held for the production of passive income). For these purposes, passive income excludes certain interest, dividends or royalties from related parties.

If we were a PFIC, each U.S. Shareholder would likely face increased tax liabilities, possibly including in amount, upon the sale or other disposition of shares of our common stock or upon receipt of "excess distributions," unless the U.S. Shareholder elects (1) to be taxed currently on its pro rata portion of our income, regardless of whether such income was distributed in the form of dividends or otherwise (provided we furnish certain information to our shareholders), or (2) to mark its shares to market by accounting for any

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difference between such shares' fair market value and adjusted basis at the end of the taxable year by either an inclusion in income or a deduction from income (provided our ADRs, CUFS or common shares satisfy a test for being regularly traded on a qualified exchange or other market). Because of the manner in which we operate our business, we are not, nor do we expect to become, a PFIC.

U.S. Federal Income Tax Provisions Applicable to Non-United States Holders. Holders of shares of our common stock who are not U.S. Shareholders, which we refer to as Non-U.S. Shareholders, generally will not be subject to U.S. federal income taxes, including U.S. withholding taxes, on any dividends paid on our shares or on any gain realized on a sale, exchange or other disposition of the shares unless the dividends or gain is effectively connected with the conduct by the Non-U.S. Shareholder of a trade or business in the United States (and is attributable to a permanent establishment or fixed base the Non-U.S. Shareholder maintains in the United States if an applicable income tax treaty so requires as a condition for the Non-U.S. Shareholder to be subject to U.S. taxation on a net income basis on income from the common stock). A corporate Non-U.S. Shareholder under certain circumstances may also be subject to an additional "branch profits tax," the rate of which may be reduced pursuant to an applicable income tax treaty. In addition, gain recognized on a sale, exchange or other disposition of our shares by a Non-U.S. Shareholder who is an individual generally will be subject to U.S. federal income taxes if the Non-U.S. Shareholder is present in the United States for 183 days or more in the taxable year in which the sale or other disposition occurs and certain other conditions are met.

U.S. Information Reporting and Backup Withholding. Dividend payments on shares of our common stock and proceeds from the sale, exchange, or redemption of shares of our common stock may be subject to information reporting to the Internal Revenue Service and possible U.S. backup withholding at a current rate of 28%. Backup withholding will not apply to a shareholder who furnishes a correct taxpayer identification number or certificate of foreign status and makes any other required certification or who is otherwise exempt from backup withholding. U.S. persons who are required to establish their exempt status generally must provide such certification on a properly completed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification). Non-U.S. shareholders generally will not be subject to U.S. information reporting or backup withholding. However, such shareholders may be required to provide certification of non-U.S. status in connection with payments received in the United States or through certain U.S.-related financial intermediaries.

Backup withholding is not an additional tax. Amounts withheld as backup withholding may be credited against a shareholder's U.S. federal income tax liability, and a shareholder may obtain a refund of any excess amounts withheld under the backup withholding rules by filing the appropriate claim for refund with the Internal Revenue Service and furnishing any required information.

Netherlands Taxation

The following is a summary of the material Dutch tax consequences generally applicable to an investment in shares of our common stock by a beneficial owner who is neither a citizen, resident nor deemed resident of The Netherlands. This summary does not comprehensively describe all possible tax issues that could influence a prospective shareholder's decision to acquire shares of our common stock. For example, this summary omits from discussion Netherlands' gift, estate and inheritance taxes. The summary is based on the Dutch tax legislation, published case law and other applicable regulations as at the date of this annual report, any of which may change possibly with retroactive effect.

Treatment of ADRs. In general, for Netherlands tax purposes, an owner of depositary receipts is considered the owner of the shares of stock represented by depositary receipts. Accordingly, except as otherwise noted, references in this section of the annual report to ownership of shares of our common stock includes ownership of the shares underlying the corresponding ADRs.

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Dutch Dividend Withholding Tax. The Netherlands imposes a 25% withholding tax on amounts we distribute as dividends. The term “dividends” for this purpose includes, but is not limited to:

- (1) direct or indirect distributions in cash or in kind, deemed or constructive distributions, and repayments of additional paid-in capital not recognized as such for Netherlands dividend withholding tax purposes;
- (2) liquidation proceeds, proceeds of redemption of shares of common stock or, generally, except if a certain specific exemption applies, consideration paid by us for the repurchase of shares of common stock in excess of the average paid-in capital recognized for Netherlands dividend withholding tax purposes;
- (3) the par value of shares of common stock issued to a holder of shares of common stock or an increase of the par value of shares of common stock, as the case may be, to the extent that no contribution to capital, recognized for Netherlands dividend withholding tax purposes, was made or will be made; and
- (4) the partial repayment of paid-in capital, recognized for Netherlands dividend withholding tax purposes, if and to the extent that there are net profits, or *zuivere winst*, for dividend withholding tax purposes, unless the general meeting of our shareholders has previously resolved to make such repayment and provided that the par value of the shares of common stock concerned has been reduced by a corresponding amount by changing our Articles of Association. As a result of contributions in kind (i.e., in shares) to our paid-in capital made prior to the listing of our common shares, a portion of such paid-in capital may not be recognized for Dutch dividend withholding tax purposes.

If a double taxation convention is in effect between The Netherlands and the country of residence of a non-resident shareholder and depending on the terms of that double taxation convention, such non-resident shareholder may be eligible for a full or partial exemption from, or refund of, Dutch dividend withholding tax.

Under the U.S.-NL Treaty, dividends that we pay to citizens and residents of the United States who are the beneficial owners of shares of our common stock (other than an exempt organization or exempt pension organization) are generally eligible for a reduction of the 25% Netherlands withholding tax to 15%, or in the case of certain U.S. corporate shareholders owning directly at least 10% of our voting power, 5%, unless the shares of common stock held by such residents form part of the business property of a business carried on through a permanent establishment in The Netherlands. The same exception applies if the beneficial owner of the shares, being a citizen or resident of the United States, performs independent personal services from a fixed base situated in The Netherlands and the holding of the shares of common stock in respect of which the dividends are paid pertains to such fixed base in The Netherlands. The U.S.-NL Treaty also exempts from tax dividends we pay to exempt pension organizations and exempt organizations, as defined under the treaty. A shareholder of our common stock, other than an individual, will be ineligible for the benefits of the U.S.-NL Treaty unless the shareholder satisfies certain tests under the limitation on benefits provisions of Article 26 of the U.S.-NL Treaty. To prevent so-called dividend stripping, Netherlands law generally denies the treaty benefit of a reduced dividend withholding tax rate for any dividend paid to a recipient who is not the “beneficial owner” of the dividend.

To claim the reduced withholding tax rate on portfolio dividends under the U.S.-NL Treaty, a shareholder of our common stock (other than an exempt organization or exempt pension organization) must give us in duplicate a signed Form IB 92 USA before payment of the dividend. The form has a qualifying banker’s affidavit, requiring a bank member of the New York Stock Exchange or the American Stock Exchange, or a member bank of the Federal Reserve System, to attest that the bank has custody of the shares of common stock, or that the bank has been shown that the common shares are property of the applicant. If the Form IB 92 USA is submitted before the dividend payment date and all relevant conditions are fulfilled, we will withhold tax from the dividend at the reduced treaty rate of 15%. If a shareholder of our common stock is unable to claim withholding tax relief in this manner, the shareholder can get a refund of excess tax withheld by filing a Form IB 92 USA, describing the circumstances that prevented the holder’s claiming withholding tax relief. The holder must file the form within three years after the end of calendar year in which the tax had been levied.

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A qualified exempt pension organization may obtain a full exemption from the dividend withholding tax if, before the payment of the dividend, the organization gives us in duplicate a signed Form IB 96 USA, along with the requisite banker's affidavit as described above, and includes IRS Form 6166 for the relevant year or a valid qualification certification issued by the competent Dutch tax office and complies with certain other requirements. Other qualifying exempt organizations are ineligible for relief from withholding at source but may claim a refund of the tax withheld by filing a Form IB 95 USA and complying with certain other formalities.

Holders of shares of our common stock through a depository will initially receive dividends subject to a withholding tax rate of 25%. Upon timely receipt of required documents concerning a holder's eligibility for the reduced rate under the U.S.-NL Treaty, dependent on the status of the holder, the dividend-disbursing agent (via any nominee) will pay an amount equal to 10% or 20% of the dividend to the holder.

Taxes on Income and Capital Gains. A shareholder of shares of our common stock will not be subject to any Netherlands taxes on income or capital gains in respect of dividends distributed by the Company or in respect of capital gains realized on the disposition of shares of our common stock (other than the dividend withholding tax described above), provided that:

(1) such shareholder is neither resident nor deemed to be resident in The Netherlands, nor has elected to be subject to the rules of the Dutch Income Tax Act 2001 that apply to residents of The Netherlands;

(2) such shareholder does not have a business or an interest in a business that is, in whole or in part, carried on through a permanent establishment or a permanent representative in The Netherlands and to which business or part of a business, as the case may be, the shares of common stock are attributable;

(3) such shareholder does not perform independent personal services in The Netherlands giving rise to a fixed base in The Netherlands to which the shares of common stock are attributable; and

(4) the shares of common stock owned by such shareholder do not form part of a substantial interest or a deemed substantial interest, as defined below, in the share capital of the Company or, if such shares of common stock do form part of such an interest, they form part of the assets of a business other than a Netherlands business.

Generally, a shareholder of our common stock will have a substantial interest in our shares only if the shareholder, the spouse of the shareholder, certain other relatives (including foster children), or certain persons in the household of the shareholder, alone or together, whether directly or indirectly, own or possess certain rights (e.g., the right of usufruct) in, shares of our stock representing 5% or more of the total issued and outstanding capital (or the issued and outstanding capital of any class of shares), or rights to acquire the shares, whether or not already issued, that represent at any time 5% or more of the total issued and outstanding capital (or the issued and outstanding capital of any class of shares) or the ownership of certain profit participating certificates that relate to 5% or more of the annual profit and/or to 5% or more of the liquidation proceeds. Shareholders of our common stock who do not hold a substantial interest themselves will also be subject to the "substantial interest" regime if their spouse and/or certain other relatives hold a substantial interest. A deemed substantial interest is present if a substantial interest or part of a substantial interest has been disposed of, or is deemed to have been disposed of, without recognition of a gain.

If a shareholder has a substantial interest in the shares of our common stock and is resident of a country with which The Netherlands has concluded a convention to avoid double taxation, such shareholder may, depending on the terms of such double taxation convention, be eligible for an exemption from Netherlands income tax on capital gains realized upon the disposition or deemed disposition of shares of our common stock, or to a full or partial exemption from Netherlands income tax on dividends we pay.

Under the U.S.-NL Treaty, capital gains realized by a shareholder that has a substantial interest in the shares of our common stock and is a resident of the United States (as defined in the U.S.-NL Treaty) upon the disposition of shares of our common stock, are, with certain exceptions, generally exempt from Netherlands tax.

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As indicated above, a shareholder of shares of our common stock, other than an individual, will be ineligible for the benefits of the U.S.-NL Treaty if such shareholder does not satisfy the limitation on benefits provisions under Article 26 of the U.S.-NL Treaty.

Other Taxes and Duties. No other Netherlands registration tax, transfer tax, stamp duty or any similar documentary tax or duty will be payable by our investors in respect of or in connection with the subscription, issue, placement, allotment or transfer of shares of our common stock.

Documents Available for Review

We are subject to the reporting requirements of the Exchange Act applicable to “foreign private issuers” and in accordance therewith file reports, including annual reports, and other information with the SEC. Such reports and other information have been filed electronically with the SEC beginning November 4, 2002. The SEC maintains a site on the Internet, at www.sec.gov, which contains reports and other information regarding issuers that file electronically with the SEC. In addition, such reports may be obtained, upon written request, from our Company Secretary at Atrium, 8th floor, Strawinskylaan 3077, 1077 ZX Amsterdam, The Netherlands or our Assistant Company Secretary Level 3, 22 Pitt Street, Sydney, NSW 2000. Such reports and other information filed with the SEC prior to November 2002 may be inspected and copied at prescribed rates at the public reference facilities maintained by the SEC at 100 F Street N.E., Washington, D.C. 20549, or obtained by written request to our Company Secretary. Although, as a foreign private issuer, we are exempt from the rules under the Exchange Act prescribing the furnishing and content of proxy statements and annual reports to shareholders and the quarterly reporting requirements of the Exchange Act, we:

- furnish our shareholders with annual reports containing consolidated financial statements examined by an independent registered public accounting firm; and
- furnish quarterly reports for the first three quarters of each fiscal year containing unaudited consolidated financial information in filings with the SEC under Form 6-K.

Item 11. *Quantitative and Qualitative Disclosures About Market Risk*

Cash and cash equivalents include amounts on deposit in banks and cash invested temporarily in various highly liquid financial instruments with original maturities of three month or less when acquired.

We have operations in foreign countries and, as a result, are exposed to foreign currency exchange rate risk inherent in purchases, sales, assets and liabilities denominated in currencies other than the U.S. dollar. We also are exposed to interest rate risk associated with our long-term debt and to changes in prices of commodities we use in production.

Periodically, interest rate swaps, commodity swaps and forward exchange contracts are used to manage market risks and reduce exposure resulting from fluctuations in interest rates, commodity prices and foreign currency exchange rates. Our policy is to enter into derivative instruments solely to mitigate risks in our business and not for trading or speculative purposes.

Foreign Currency Exchange Rate Risk

We have significant operations outside of the United States and, as a result, are exposed to changes in exchange rates which affect our financial position, results of operations and cash flow. In addition, if the conditions precedent to the Final Funding Agreement are met and we are required to start making payments to the SPF, those payments will be required to be made in Australian dollars which, because the majority of our revenues is produced in U.S. dollars, would expose us to risks associated with fluctuations in the U.S.-dollar/ Australian dollar exchange rate. See Item 3, “Key Information — Risk Factors.”

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For our fiscal year ended March 31, 2006, the following currencies comprised the following percentages of our net sales, cost of goods sold, expenses and liabilities:

	US\$	A\$	NZ\$	Other(1)
Net sales	82.9%	11.0%	3.6%	2.5%
Cost of goods sold	84.2%	10.7%	2.9%	2.2%
Expenses(2)	18.7%	79.4%	0.4%	1.5%
Liabilities (excluding borrowings)(2)	25.6%	72.4%	1.6%	0.4%

For our fiscal year ended March 31, 2005, the following currencies comprised the following percentages of our net sales, cost of goods sold, expenses and liabilities:

	US\$	A\$	NZ\$	Other(1)
Net sales	79.0%	13.3%	4.1%	3.6%
Cost of goods sold	81.5%	12.0%	3.1%	3.4%
Expenses	60.3%	31.5%	2.5%	5.7%
Liabilities (excluding borrowings)	73.9%	17.6%	5.1%	3.4%

(1) Comprises Philippine Pesos, Euros and Chilean Pesos.

(2) Includes A\$1.0 billion of asbestos provision recorded in the fourth quarter of fiscal year 2006, which is denominated in Australian dollars.

We purchase raw materials and fixed assets and sell some finished product for amounts denominated in currencies other than the functional currency of the business in which the related transaction is generated. In order to protect against foreign exchange rate movements, we may enter into forward exchange contracts timed to mature when settlement of the underlying transaction is due to occur. As of March 31, 2006, there were no such material contracts outstanding.

Interest Rate Risk

We have market risk from changes in interest rates, primarily related to our borrowings. As of March 31, 2006, 40% of our borrowings were fixed-rate and 60% were variable-rate, as compared to 93% of our borrowings at a fixed rate and 7% at a variable rate as of March 31, 2005. The percentage of fixed-rate debt reduces the earnings volatility that would result from changes in interest rates. From time to time, we may enter into interest rate swap contracts in an effort to mitigate interest rate risk. As of March 31, 2006, we had no interest rate swap contracts outstanding.

The table below presents our long-term borrowings at March 31, 2006, the expected maturity date of future principal repayments and related weighted average interest rates. The fair value of our outstanding debt is what we likely would have to pay over the term of the loan if we were to enter into debt on substantially the same terms today. As of March 31, 2006, all of our outstanding fixed-rate borrowings were denominated in U.S. dollars. As permitted by our U.S.-dollar non-collateralized notes agreement (fixed-rate debt), we prepaid in full our U.S.-dollar non-collateralized notes on May 8, 2006, and as a result incurred a make-whole payment of \$6.0 million.

Future Principal Repayments by Expected Maturity Date

	Year Ending March 31,		
	2007	Total	Fair Value
	(In millions of U.S. dollars, except percentages)		
Fixed-rate debt	\$ 121.7	\$ 121.7	\$ 133.8
Weighted-average interest rate	7.16%	7.16%	

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Commodity Price Risk

We are exposed to changes in prices of commodities used in our operations, primarily associated with energy, fuel and raw materials such as pulp and cement. Pulp has historically demonstrated more price sensitivity than other raw materials that we use in our manufacturing process. In addition energy, fuel and cement prices rose in fiscal year 2006. Pulp prices increased in fiscal year 2005 and the increase continued during fiscal year 2006. We expect that pulp, energy, fuel and cement prices will continue to fluctuate in the near future. To minimize the additional working capital requirements caused by rising prices related to these commodities, we may seek to enter into contracts with suppliers for the purchase of these commodities that could fix our prices over the longer-term. However, if such commodity prices do not continue to rise, our cost of sales may be negatively impacted due to fixed pricing over the longer-term. We have assessed the market risk for pulp and believe that, based on our most recent estimates, a \$56 per metric ton price movement in pulp prices, which represents approximately 10% of the average market pulp price in fiscal year 2006, would have had approximately a 1.2% change in cost of sales in fiscal year 2006.

We have also assessed the market risk for cement and believe that, based on our most recent estimates, an \$8 per metric ton price movement in cement prices, which represents approximately 10% of the average market cement price in fiscal year 2006, would have had approximately a 0.8% change in cost of sales in fiscal year 2006.

Item 12. *Description of Securities Other Than Equity Securities*

Not Required.

PART II

Item 13. *Defaults, Dividend Arrearages and Delinquencies*

None.

Item 14. *Material Modifications to the Rights of Security Holders and Use of Proceeds*

None.

Item 15. *Controls and Procedures*

We carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the U.S. Securities Exchange Act of 1934, as amended) as of the end of the period covered by this report. In designing and evaluating our disclosure controls and procedures, our management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives and are subject to certain limitations, including the exercise of judgment by individuals, the difficulty in identifying unlikely future events, and the difficulty in eliminating misconduct completely. Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that, our disclosure controls and procedures were effective to ensure the information required to be disclosed in the reports that we file or submit under the Exchange Act were recorded, processed, summarized and reported within the time periods specified in the rules and forms of the Securities and Exchange Commission and that such information was accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, to allow for timely decisions regarding required disclosures.

There have been no changes in our internal control over financial reporting during fiscal year 2006 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

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Item 16A. *Audit Committee Financial Expert*

Our Joint Board has determined that Michael Brown, Michael Gillfillan and James Loudon are “audit committee financial experts,” as such term is defined by applicable SEC rules, and qualify as independent under the rules of the New York Stock Exchange, or NYSE.

Under the NYSE listing standards applicable to U.S. companies, if a member of an audit committee simultaneously serves on the audit committees of more than three public companies, the listed company’s board must determine that such simultaneous service would not impair the ability of such member to effectively serve on the listed company’s audit committee. Mr. Brown serves on the audit committees of four public companies in addition to our Audit Committee. The Joint Board has determined that such simultaneous service does not impair his ability to effectively serve on our Audit Committee.

Item 16B. *Code of Business Conduct and Ethics*

We seek to maintain high standards of integrity and are committed to ensuring that we conduct our business in accordance with high standards of ethical behavior.

We require our employees to comply with the spirit and the letter of all laws and other statutory requirements governing the conduct of our activities in each country in which we operate. Our Code of Business Conduct and Ethics applies to all of our employees, including our senior executives and directors.

Our Code of Business Conduct and Ethics also covers many aspects of Company policy that govern compliance with legal and other responsibilities to stakeholders.

We have taken specific action, including training and education, to ensure that our employees understand and comply with their obligations in areas such as occupational health and safety, trade practices/antitrust, environmental protection, employment practices such as equal opportunity, sexual harassment and discrimination, continuous disclosure and insider trading, public and SEC disclosure, and corrupt practices.

In June 2005, we updated our Code of Business Conduct and Ethics to make it applicable to our directors, in addition to all of our employees, in compliance with the relevant rules and regulations of the New York Stock Exchange.

Our Code of Business Conduct and Ethics also provides employees with instructions about whom they should contact if they have information or questions regarding violations of the policies in the Code of Business Conduct and Ethics. We have created a telephone “Ethics Hotline” to allow employees in each jurisdiction in which we operate to report anonymously any concerns. This new hotline has been implemented in every country in which we operate.

We have not granted any waivers from the provisions of our Code of Business Conduct and Ethics during fiscal year 2006.

Our complete Code of Business Conduct and Ethics is publicly available and can be found by visiting our website, www.jameshardie.com, and clicking on “Investor Relations,” then “Corporate Governance,” and then “Policies and Programs.”

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Item 16C. Principal Accountant Fees and Services

Fees Paid to Our Independent Registered Public Accounting Firm

Fees paid to our independent registered public accounting firm for services provided for fiscal years 2006, 2005 and 2004 were as follows:

	Fiscal Years Ended March 31,		
	2006	2005	2004
	(In millions)		
Audit Fees(1)	\$ 1.6	\$ 3.1	\$ 1.2
Audit-Related Fees(2)	0.1	0.2	0.1
Tax Fees(3)	5.2	4.2	3.5

- (1) Audit Fees include the aggregate fees for professional services rendered by our independent registered public accounting firm. Professional services include the audit of our annual financial statements and services that are normally provided in connection with statutory and regulatory filings. During the fiscal year ended March 31, 2005, total audit fees also included internal investigation fees of \$1.9 million.
- (2) Audit-Related Fees include the aggregate fees billed for assurance and related services rendered by our independent registered public accounting firm. Our independent registered public accounting firm did not engage any temporary employees to conduct any portion of the audit of our financial statements for the fiscal year ended March 31, 2006.
- (3) Tax Fees include the aggregate fees billed for tax compliance, tax advice and tax planning services rendered by our independent registered public accounting firm.

Audit Committee Pre-Approval Policies and Procedures

In accordance with our Audit Committee's policy and the requirements of the law, all services provided by PricewaterhouseCoopers LLP are pre-approved annually by the Audit Committee. Pre-approval includes a list of specific audit and non-audit services in the following categories: audit services, audit-related services, tax services and other services. Any additional services that we may ask our independent registered public accounting firm to perform will be set forth in a separate document requesting Audit Committee approval in advance of the service being performed.

All of the services pre-approved by the Audit Committee are permissible under the SEC's auditor independence rules. To avoid potential conflicts of interest, the law prohibits a publicly traded company from obtaining certain non-audit services from its independent registered public accounting firm. We obtain these services from other service providers as needed.

Item 16D. Exemptions from Listing Standards for Audit Committees

Not Applicable.

Item 16E. Purchases of Equity Securities by the Issuer and Affiliated Purchasers

None.

Item 17. Financial Statements

Not applicable.

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PART III

Item 18. *Financial Statements*

See pages F-1 through F-58, which are incorporated into this annual report by reference.

Item 19. *Exhibits*

Documents filed as exhibits to this annual report:

<u>Exhibit Number</u>	<u>Description of Exhibits</u>
1.1	Articles of Association, as amended on September 1, 2005 of James Hardie Industries N.V. (English Translation)
2.1	Letter Agreement of September 6, 2001 by and between James Hardie Industries N.V. and CHESS Depository Nominees Pty Limited, as the depository for CHESS Units of Foreign Securities(3)
2.2	Deposit Agreement dated as of September 24, 2001 between The Bank of New York, as depository, and James Hardie Industries N.V.(3)
2.3	Note Purchase Agreement, dated as of November 5, 1998, among James Hardie Finance B.V., James Hardie N.V. and certain purchasers thereto re: \$225,000,000 Guaranteed Senior Notes(3)
2.4	Assignment and Assumption Agreement and First Amendment to Note Purchase Agreement, dated as of January 24, 2000, by and among James Hardie Finance B.V., James Hardie U.S. Funding, Inc., James Hardie N.V., James Hardie Aust Investco Pty Limited and certain noteholders thereto(3)
2.5	Second Amendment to the Note Purchase Agreement dated as of October 22, 2001, by and among, James Hardie U.S. Funding, Inc., James Hardie N.V., James Hardie Aust Investco Pty Limited, James Hardie Australia Finance Pty Limited, James Hardie International Finance B. V. and certain noteholders thereto(3)
2.6	Assignment and Assumption Agreement and Third Amendment to Note Purchase Agreement, dated as of November 18, 2002, among James Hardie U.S. Funding Inc, James Hardie International Finance B.V., James Hardie Industries N.V., James Hardie N.V. and certain noteholders thereto(1)
2.7	Common Terms Deed Poll dated June 15, 2005 between James Hardie International Finance B.V. and James Hardie Industries N.V.(3)
2.8	Form of Term Facility Agreement between James Hardie International Finance B.V. and Financier(3)
2.9	Form of Extension of Facilities and other matters for Term Facility Agreement between James Hardie International Finance B.V. and Financier
2.10	Form of 364-day Facility Agreement between James Hardie International Finance B.V. and Financier(3)
2.11	Form of Extension Request for 364-day Facility Agreement between James Hardie International Finance B.V. and Financier
2.12	Form of Guarantee Deed between James Hardie Industries N.V. and Financier(3)
4.1	James Hardie Industries N.V. 2001 Equity Incentive Plan(3)
4.2	Economic Profit and Individual Performance Incentive Plans(3)
4.3	JHI NV Stock Appreciation Rights Incentive Plan(3)
4.4	Supervisory Board Share Plan 2006
4.5	James Hardie Industries N.V. Long Term Incentive Plan 2006
4.6	2005 Managing Board Transitional Stock Option Plan
4.7	Form of Joint and Several Indemnity Agreement among James Hardie N.V., James Hardie (USA) Inc. and certain indemnitees thereto(3)
4.8	Form of Joint and Several Indemnity Agreement among James Hardie Industries N.V., James Hardie Inc. and certain indemnitees thereto(3)

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Exhibit Number	Description of Exhibits
4.9	Form of Deed of Access to Documents, Indemnity and Insurance among James Hardie Industries N.V. and certain indemnitees thereto(3)
4.10	Form of Joint and Several Indemnity Agreement among James Hardie Industries N.V., James Hardie Building Products Inc. and certain indemnities thereto(3)
4.11	Lease Amendment, dated March 23, 2004, among Amaca Pty Limited (f/k/a/ James Hardie & Coy Pty Limited), James Hardie Australia Pty Limited and James Hardie Industries N.V. re premises at the corner of Cobalt & Silica Street, Carole Park, Queensland, Australia(2)
4.12	Variation of Lease dated March 23, 2004, among Amaca Pty Limited (f/k/a/ James Hardie & Coy Pty Limited), James Hardie Australia Pty Limited and James Hardie Industries N.V. re premises at the corner of Colquhoun & Devon Streets, Rosehill, New South Wales, Australia(2)
4.13	Extension of Lease dated March 23, 2004, among Amaca Pty Limited (f/k/a/ James Hardie & Coy Pty Limited), James Hardie Australia Pty Limited and James Hardie Industries N.V. re premises at Rutland, Avenue, Welshpool, Western Australia, Australia(2)
4.14	Lease Amendment dated March 23, 2004, among Amaca Pty Limited (f/k/a/ James Hardie & Coy Pty Limited), James Hardie Australia Pty Limited and James Hardie Industries N.V. re premises at 46 Randle Road, Meeandah, Queensland, Australia(2)
4.15	Lease Agreement dated March 23, 2004 among Studorp Limited, James Hardie New Zealand Limited and James Hardie Industries N.V. re premises at the corner of O'Rorke and Station Roads, Penrose, Auckland, New Zealand (2)
4.16	Lease Agreement dated March 23, 2004 among Studorp Limited, James Hardie New Zealand Limited and James Hardie Industries N.V. re premises at 44-74 O'Rorke Road, Penrose, Auckland, New Zealand(2)
4.17	Ownership transfer related to corner of O'Rorke and Station Roads, Penrose, Auckland, New Zealand and 44-74 O'Rorke Road, Penrose, Auckland, New Zealand effective June 30, 2005
4.18	Industrial Building Lease Agreement, effective October 6, 2000, between James Hardie Building Products, Inc. and Fortra Fiber-Cement L.L.C., re premises at Waxahachie, Ellis County, Texas(3)
4.19	Asset Purchase Agreement by and between James Hardie Building Products, Inc. and Cemplank, Inc. dated as of December 12, 2001(3)
4.20	Amended and Restated Stock Purchase Agreement dated March 12, 2002, between BPB U.S. Holdings, Inc. and James Hardie Inc.(3)
4.21	Final Funding Agreement
4.22	Asbestos Injuries Compensation Fund Trust Deed by and between James Hardie Aust. Holdings Pty Limited and Asbestos Injuries Compensation Fund Limited
4.23	Deed of Release by and among James Hardie Industries N.V., Australian Council of Trade Unions, Unions New South Wales, and Bernard Douglas Banton
4.24	Parent Guarantee by and among Asbestos Injuries Compensation Fund Limited, The State of New South Wales, and James Hardie Industries N.V.
4.25	Deed of Release by and between James Hardie Industries N.V. and The State of New South Wales
4.26	Irrevocable Power of Attorney by and between Asbestos Injuries Compensation Fund Limited and The State of New South Wales
4.27	Deed of Accession by and among Asbestos Injuries Compensation Fund Limited, James Hardie Industries N.V., LGTDD Pty Limited, and The State of New South Wales
4.28	Letters Extending the Condition Precedent Date for the Final Funding Agreement
8.1	List of significant subsidiaries of James Hardie Industries N.V.
12.1	Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
12.2	Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
13.1	Certification of the Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

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Exhibit Number	Description of Exhibits
15.1	Consent of independent registered public accounting firm
15.2	Consent of KPMG Actuaries Pty Ltd
99.1	Excerpts of the ASX Settlement and Transfer Corporation Pty Ltd as of June 10, 2005
99.2	Excerpts of the Financial Services Reform Act 2001, as of March 11, 2002(3)
99.3	ASIC Class Order 02/311, dated November 3, 2002(3)
99.4	ASIC Modification, dated March 7, 2002(3)
99.5	ASIC Modification, dated February 26, 2004

- (1) Previously filed as an exhibit to our Annual Report on Form 20-F dated July 2, 2003 and incorporated herein by reference.
- (2) Previously filed as an exhibit to our Annual Report on Form 20-F dated November 22, 2004 and incorporated herein by reference.
- (3) Previously filed as an exhibit to our Annual Report on Form 20-F dated July 7, 2005 and incorporated herein by reference.

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SIGNATURES

The registrant hereby certifies that it meets all of the requirements for filing on Form 20-F and that it has duly caused and authorized the undersigned to sign this annual report on its behalf.

JAMES HARDIE INDUSTRIES N.V.

By:

/s/ Louis Gries

Louis Gries
Chief Executive Officer

Date: September 28, 2006

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JAMES HARDIE INDUSTRIES N.V.

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Report of Independent Registered Public Accounting Firm

To the Board of Directors and Shareholders of
James Hardie Industries N.V. and Subsidiaries

In our opinion, the accompanying consolidated balance sheets and the related consolidated statements of operations, cash flows and changes in shareholders' equity present fairly, in all material respects, the financial position of James Hardie Industries N.V. and Subsidiaries at March 31, 2006 and 2005, and the results of their operations and their cash flows for each of the three years in the period ended March 31, 2006 in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

As discussed in Notes 12 and 13 to the consolidated financial statements, the Company is subject to certain significant contingencies, including asbestos-related claims against former subsidiaries for which a provision in an amount representing the Company's best estimate of the probable outcome has been established; a Special Commission of Inquiry established by the government of New South Wales, Australia; a Final Funding Agreement; an investigation by the Australian Securities and Investments Commission; an offer of an indemnity to ABN 60 together with a related commitment to provide funding to the Medical Research and Compensation Foundation; and a significant amended tax assessment from the Australian Tax Office.

/s/ **PRICEWATERHOUSECOOPERS LLP**

PRICEWATERHOUSECOOPERS LLP
Los Angeles, California
May 12, 2006, except for Note 20,
as to which the dates are June 23, 2006,
June 29, 2006 and July 5, 2006

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James Hardie Industries N.V. and Subsidiaries
Consolidated Balance Sheets

	Notes	March 31	
		2006	2005
(Millions of US dollars)			
ASSETS			
Current assets:			
Cash and cash equivalents	3	\$ 315.1	\$ 113.5
Accounts and notes receivable, net of allowance for doubtful accounts of \$1.3 million and \$1.5 million as of March 31, 2006 and March 31, 2005, respectively	4	153.2	127.2
Inventories	5	124.0	99.9
Prepaid expenses and other current assets		33.8	12.0
Deferred income taxes	13	30.7	26.0
Total current assets		656.8	378.6
Property, plant and equipment, net	6	775.6	685.7
Deferred income taxes	13	4.8	12.3
Other assets		8.2	12.3
Total assets		\$ 1,445.4	\$ 1,088.9
LIABILITIES AND SHAREHOLDERS' EQUITY			
Current liabilities:			
Accounts payable and accrued liabilities	8	\$ 117.8	\$ 94.0
Current portion of long-term debt	9	121.7	25.7
Short-term debt	9	181.0	11.9
Accrued payroll and employee benefits		46.3	35.7
Accrued product warranties	11	11.4	8.0
Income taxes payable	13	24.5	21.4
Other liabilities		3.3	1.7
Total current liabilities		506.0	198.4
Long-term debt	9	—	121.7
Deferred income taxes	13	79.8	77.5
Accrued product warranties	11	4.1	4.9
Asbestos provision	12	715.6	—
Other liabilities	10	45.0	61.7
Total liabilities		1,350.5	464.2
Commitments and contingencies	12		
Shareholders' equity:			
Common stock, Euro 0.59 par value, 2.0 billion shares authorized; 463,306,511 shares issued and outstanding at March 31, 2006 and 459,373,176 shares issued and outstanding at March 31, 2005	15	253.2	245.8
Additional paid-in capital	15	158.8	139.4
Retained (deficit) earnings		(288.3)	264.3
Employee loans	15	(0.4)	(0.7)
Accumulated other comprehensive loss	18	(28.4)	(24.1)
Total shareholders' equity		94.9	624.7
Total liabilities and shareholders' equity		\$ 1,445.4	\$ 1,088.9

The accompanying notes are an integral part of these consolidated financial statements.

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James Hardie Industries N.V. and Subsidiaries
Consolidated Statements of Operations

	Notes	Years Ended March 31		
		2006	2005	2004
		(Millions of US dollars, except per share data)		
Net sales	17	\$ 1,488.5	\$ 1,210.4	\$ 981.9
Cost of goods sold		(937.7)	(784.0)	(623.0)
Gross profit		550.8	426.4	358.9
Selling, general and administrative expenses		(209.8)	(174.5)	(162.0)
Research and development expenses		(28.7)	(21.6)	(22.6)
SCI and other related expenses	12	(17.4)	(28.1)	—
Impairment of roofing plant	6	(13.4)	—	—
Asbestos provision	12	(715.6)	—	—
Other operating expense		(0.8)	(6.0)	(2.1)
Operating (loss) income		(434.9)	196.2	172.2
Interest expense		(7.2)	(7.3)	(11.2)
Interest income		7.0	2.2	1.2
Other (expense) income		—	(1.3)	3.5
(Loss) income from continuing operations before income taxes	17	(435.1)	189.8	165.7
Income tax expense	13	(71.6)	(61.9)	(40.4)
(Loss) income from continuing operations		(506.7)	127.9	125.3
Discontinued operations:				
(Loss) income from discontinued operations, net of income tax benefit (expense) of nil, \$0.2 million and (\$0.1) million for 2006, 2005 and 2004, respectively	14	—	(0.3)	0.2
(Loss) gain on disposal of discontinued operations, net of income tax benefit of nil, nil and \$4.8 million for 2006, 2005 and 2004, respectively	14	—	(0.7)	4.1
(Loss) income from discontinued operations		—	(1.0)	4.3
Net (loss) income		\$ (506.7)	\$ 126.9	\$ 129.6
(Loss) income per share — basic:				
(Loss) income from continuing operations		\$ (1.10)	\$ 0.28	\$ 0.27
Income from discontinued operations		—	—	0.01
Net (loss) income per share — basic		\$ (1.10)	\$ 0.28	\$ 0.28
(Loss) income per share — diluted:				
(Loss) income from continuing operations		\$ (1.10)	\$ 0.28	\$ 0.27
Income from discontinued operations		—	—	0.01
Net (loss) income per share — diluted		\$ (1.10)	\$ 0.28	\$ 0.28
Weighted average common shares outstanding (Millions):				
Basic	2	461.7	458.9	458.1
Diluted	2	461.7	461.0	461.4

The accompanying notes are an integral part of these consolidated financial statements.

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James Hardie Industries N.V. and Subsidiaries
Consolidated Statements of Cash Flows

	Years Ended March 31		
	2006	2005	2004
(Millions of US dollars)			
Cash Flows From Operating Activities			
Net (loss) income	\$ (506.7)	\$ 126.9	\$ 129.6
Adjustments to reconcile net (loss) income to net cash provided by operating activities:			
Loss (gain) on sale of land and buildings	—	0.7	(4.2)
Loss (gain) on disposal of subsidiaries and businesses	—	2.1	(1.9)
Depreciation and amortization	45.3	36.3	36.4
Deferred income taxes	4.3	11.1	14.6
Prepaid pension cost	2.9	7.6	1.8
Tax benefit from stock options exercised	2.2	0.4	0.4
Stock compensation	5.9	3.0	3.3
Asbestos provision	715.6	—	—
Impairment of roofing plant	13.4	—	—
Other	1.7	—	0.7
Changes in operating assets and liabilities:			
Accounts and notes receivable	(24.0)	(3.7)	(24.8)
Inventories	(26.6)	4.3	(24.9)
Prepaid expenses and other current assets	(24.8)	32.6	2.1
Accounts payable and accrued liabilities	24.4	15.0	1.3
Other accrued liabilities and other liabilities	7.0	(16.5)	28.2
Net cash provided by operating activities	240.6	219.8	162.6
Cash Flows From Investing Activities			
Purchases of property, plant and equipment	(162.0)	(153.2)	(74.8)
Proceeds from sale of property, plant and equipment	—	3.4	10.9
Proceeds from disposal of subsidiaries and businesses, net of cash divested	8.0	—	5.0
Net cash used in investing activities	(154.0)	(149.8)	(58.9)
Cash Flows From Financing Activities			
Net proceeds from line of credit	—	0.5	0.5
Proceeds from borrowings	181.0	—	—
Repayments of borrowings	(37.6)	(17.6)	—
Proceeds from issuance of shares	18.7	2.6	3.2
Repayments of capital	—	—	(68.7)
Dividends paid	(45.9)	(13.7)	(22.9)
Collections on loans receivable	0.3	0.6	0.9
Net cash provided by (used in) financing activities	116.5	(27.6)	(87.0)
Effects of exchange rate changes on cash	(1.5)	(1.2)	0.5
Net increase in cash and cash equivalents	201.6	41.2	17.2
Cash and cash equivalents at beginning of period	113.5	72.3	55.1
Cash and cash equivalents at end of period	\$ 315.1	\$ 113.5	\$ 72.3
Components of Cash and Cash Equivalents			
Cash at bank and on hand	\$ 24.9	\$ 28.6	\$ 24.6
Short-term deposits	290.2	84.9	47.7
Cash and cash equivalents at end of period	\$ 315.1	\$ 113.5	\$ 72.3
Supplemental Disclosure of Cash Flow Activities			
Cash paid during the period for interest, net of amounts capitalized	\$ 3.5	\$ 10.7	\$ 11.7
Cash paid (refunded) during the period for income taxes, net	\$ 93.4	\$ 15.7	\$ (6.5)

The accompanying notes are an integral part of these consolidated financial statements.

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James Hardie Industries N.V. and Subsidiaries
Consolidated Statements of Changes in Shareholders' Equity

	Common Stock	Additional Paid-In Capital	Retained Earnings (Accumulated Deficit)	Employee Loans	Accumulated Other Comprehensive Income (Loss)	Total
	(Millions of US dollars)					
Balances as of March 31, 2003	\$ 269.7	\$ 171.3	\$ 44.4	\$ (1.7)	\$ (49.0)	\$ 434.7
Comprehensive income:						
Net income	—	—	129.6	—	—	129.6
Other comprehensive income (loss):						
Amortization of unrealized transition loss on derivative instruments	—	—	—	—	1.1	1.1
Foreign currency translation gain	—	—	—	—	16.0	16.0
Unrealized loss on available-for-sale securities	—	—	—	—	(0.1)	(0.1)
Additional minimum pension liability adjustment	—	—	—	—	7.7	7.7
Other comprehensive income	—	—	—	—	24.7	24.7
Total comprehensive income						154.3
Dividends paid	—	—	(22.9)	—	—	(22.9)
Conversion of common stock from Euro 0.64 par value to Euro 0.73 par value	48.4	(48.4)	—	—	—	—
Conversion of common stock from Euro 0.73 par value to Euro 0.5995 par value and subsequent return of capital	(68.7)	—	—	—	—	(68.7)
Conversion of common stock from Euro 0.5995 par value to Euro 0.59 par value	(5.0)	5.0	—	—	—	—
Stock compensation	—	3.3	—	—	—	3.3
Tax benefit from stock options exercised	—	0.4	—	—	—	0.4
Employee loans repaid	—	—	—	0.4	—	0.4
Stock options exercised	0.8	2.4	—	—	—	3.2
Balances as of March 31, 2004	\$ 245.2	\$ 134.0	\$ 151.1	\$ (1.3)	\$ (24.3)	\$ 504.7
Comprehensive income:						
Net income	—	—	126.9	—	—	126.9
Other comprehensive income (loss):						
Amortization of unrealized transition loss on derivative instruments	—	—	—	—	1.1	1.1
Foreign currency translation loss	—	—	—	—	(0.9)	(0.9)
Other comprehensive income	—	—	—	—	0.2	0.2
Total comprehensive income						127.1
Dividends paid	—	—	(13.7)	—	—	(13.7)
Stock compensation	—	3.0	—	—	—	3.0
Tax benefit from stock options exercised	—	0.4	—	—	—	0.4
Employee loans repaid	—	—	—	0.6	—	0.6
Stock options exercised	0.6	2.0	—	—	—	2.6
Balances as of March 31, 2005	\$ 245.8	\$ 139.4	\$ 264.3	\$ (0.7)	\$ (24.1)	\$ 624.7
Comprehensive loss:						
Net loss	—	—	(506.7)	—	—	(506.7)
Other comprehensive income (loss):						
Amortization of unrealized transition loss on derivative instruments	—	—	—	—	0.5	0.5
Foreign currency translation loss	—	—	—	—	(4.8)	(4.8)
Other comprehensive loss	—	—	—	—	(4.3)	(4.3)
Total comprehensive loss						(511.0)
Dividends paid	—	—	(45.9)	—	—	(45.9)
Stock compensation	—	5.9	—	—	—	5.9
Tax benefit from stock options exercised	—	2.2	—	—	—	2.2
Employee loans repaid	—	—	—	0.3	—	0.3
Stock options exercised	7.4	11.3	—	—	—	18.7
Balances as of March 31, 2006	\$ 253.2	\$ 158.8	\$ (288.3)	\$ (0.4)	\$ (28.4)	\$ 94.9

The accompanying notes are an integral part of these consolidated financial statements.

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James Hardie Industries N.V. and Subsidiaries **Notes to Consolidated Financial Statements**

1. Background and Basis of Presentation

Nature of Operations

The Company manufactures and sells fiber cement building products for interior and exterior building construction applications primarily in the United States, Australia, New Zealand, Philippines and Europe.

Background

On July 2, 1998, ABN 60 000 009 263 Pty Ltd, formerly James Hardie Industries Limited (“JHIL”), then a public company organized under the laws of Australia and listed on the Australian Stock Exchange, announced a plan of reorganization and capital restructuring (the “1998 Reorganization”). James Hardie N.V. (“JHNV”) was incorporated in August 1998, as an intermediary holding company, with all of its common stock owned by indirect subsidiaries of JHIL. On October 16, 1998, JHIL’s shareholders approved the 1998 Reorganization. Effective as of November 1, 1998, JHIL contributed its fiber cement businesses, its US gypsum wallboard business, its Australian and New Zealand building systems businesses and its Australian windows business (collectively, the “Transferred Businesses”) to JHNV and its subsidiaries. In connection with the 1998 Reorganization, JHIL and its non-transferring subsidiaries retained certain unrelated assets and liabilities.

On July 24, 2001, JHIL announced a further plan of reorganization and capital restructuring (the “2001 Reorganization”). Completion of the 2001 Reorganization occurred on October 19, 2001. In connection with the 2001 Reorganization, James Hardie Industries N.V. (“JHI NV”), formerly RCI Netherlands Holdings B.V., issued common shares represented by CHESS Units of Foreign Securities (“CUFS”) on a one for one basis to existing JHIL shareholders in exchange for their shares in JHIL such that JHI NV became the new ultimate holding company for JHIL and JHNV.

Following the 2001 Reorganization, JHI NV controls the same assets and liabilities as JHIL controlled immediately prior to the 2001 Reorganization.

Basis of Presentation

The consolidated financial statements represent the financial position, results of operations and cash flows of JHI NV and its current wholly owned subsidiaries, collectively referred to as either the “Company” or “James Hardie” and JHI NV together with its subsidiaries as of the time relevant to the applicable reference, the “James Hardie Group,” unless the context indicates otherwise.

2. Summary of Significant Accounting Policies

Accounting Principles

The consolidated financial statements are prepared in accordance with accounting principles generally accepted in the United States of America (“US GAAP”). The US dollar is used as the reporting currency. All subsidiaries are consolidated and all significant intercompany transactions and balances are eliminated.

Use of Estimates

The preparation of financial statements in conformity with US GAAP requires management to make estimates and assumptions. These estimates and assumptions affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from these estimates.

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James Hardie Industries N.V. and Subsidiaries **Notes to Consolidated Financial Statements — (Continued)**

Reclassifications

Certain prior year balances have been reclassified to conform with the current year presentation.

Foreign Currency Translation

All assets and liabilities are translated into US dollars at current exchange rates while revenues and expenses are translated at average exchange rates in effect for the period. The effects of foreign currency translation adjustments are included directly in other comprehensive income in shareholders' equity. Gains and losses arising from foreign currency transactions are recognized in income currently.

Cash and Cash Equivalents

Cash and cash equivalents include amounts on deposit in banks and cash invested temporarily in various highly liquid financial instruments with original maturities of three months or less when acquired.

Inventories

Inventories are valued at the lower of cost or market. Cost is generally determined under the first-in, first-out method, except that the cost of raw materials and supplies is determined using actual or average costs. Cost includes the costs of materials, labor and applied factory overhead.

Property, Plant and Equipment

Property, plant and equipment are stated at cost. Property, plant and equipment of businesses acquired are recorded at their estimated cost based on fair value at the date of acquisition. Depreciation of property, plant and equipment is computed using the straight-line method over the following estimated useful lives:

	<u>Years</u>
Buildings	40
Building improvements	5 to 10
Manufacturing machinery	20
General equipment	5 to 10
Computer equipment	3 to 4
Office furniture and equipment	3 to 10

The costs of additions and improvements are capitalized, while maintenance and repair costs are expensed as incurred. Interest is capitalized in connection with the construction of major facilities. Capitalized interest is recorded as part of the asset to which it relates and is amortized over the asset's estimated useful life. Retirements, sales and disposals of assets are recorded by removing the cost and accumulated depreciation amounts with any resulting gain or loss reflected in the consolidated statements of operations.

Impairment of Long-Lived Assets

In accordance with Statement of Financial Accounting standards ("SFAS") No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets," long-lived assets, such as property, plant and equipment, and purchased intangibles subject to amortization, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of the asset exceeds its estimated future cash flows, an impairment charge is recognized by the amount by which the carrying amount of the asset exceeds the fair value of the assets.

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James Hardie Industries N.V. and Subsidiaries **Notes to Consolidated Financial Statements — (Continued)**

Environmental

Environmental remediation expenditures that relate to current operations are expensed or capitalized as appropriate. Expenditures that relate to an existing condition caused by past operations, and which do not contribute to current or future revenue generation, are expensed. Liabilities are recorded when environmental assessments and/or remedial efforts are probable and the costs can be reasonably estimated. Estimated liabilities are not discounted to present value. Generally, the timing of these accruals coincides with completion of a feasibility study or the Company's commitment to a formal plan of action.

Mineral Acquisition Costs

The Company records acquired proven and probable silica mineral ore reserves at their fair value at the date of acquisition. Depletion expense is recorded based on the estimated rate per ton multiplied by the number of tons extracted during the period. The rate per ton may be periodically revised by management based on changes in the estimated tons available to be extracted which, in turn, is based on third party studies of proven and probable reserves.

SFAS No. 143, "Accounting for Asset Retirement Obligations," requires the recording of a liability for an asset retirement obligation in the period in which the liability is incurred. The initial measurement is based upon the present value of estimated third party costs and a related long-lived asset retirement cost capitalized as part of the asset's carrying value and allocated to expense over the asset's useful life. Accordingly, the Company accrues for reclamation costs associated with mining activities, which are accrued during production and are included in determining the cost of production.

Revenue Recognition

The Company recognizes revenue when the risks and obligations of ownership have been transferred to the customer, which generally occurs at the time of delivery to the customer. The Company records estimated reductions to sales for customer rebates and discounts including volume, promotional, cash and other discounts. Rebates and discounts are recorded based on management's best estimate when products are sold. The estimates are based on historical experience for similar programs and products. Management reviews these rebates and discounts on an ongoing basis and the related accruals are adjusted, if necessary, as additional information becomes available.

Cost of Goods Sold

Cost of goods sold is primarily comprised of cost of materials, labor and manufacturing. Cost of goods sold also includes the cost of inbound freight charges, purchasing and receiving costs, inspection costs, warehousing costs, internal transfer costs and shipping and handling costs.

Shipping and Handling

Shipping and handling costs are charged to cost of goods sold as incurred. Recovery of these costs is incorporated in the Company's sales price per unit and is therefore classified as part of net sales.

Selling, General and Administrative

Selling, general and administrative expenses primarily include costs related to advertising, marketing, selling, information technology and other general corporate functions. Selling, general and administrative expenses also include certain transportation and logistics expenses associated with the Company's distribution network. Transportation and logistic costs were \$2.5 million, \$1.2 million and \$1.3 million for the years ended March 31, 2006, 2005 and 2004, respectively.

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James Hardie Industries N.V. and Subsidiaries
Notes to Consolidated Financial Statements — (Continued)

Advertising

The Company expenses the production costs of advertising the first time the advertising takes place. Advertising expense was \$19.1 million, \$15.7 million and \$15.2 million for the years ended March 31, 2006, 2005 and 2004, respectively.

Accrued Product Warranties

An accrual for estimated future warranty costs is recorded based on an analysis by the Company, including the historical relationship of warranty costs to sales.

Income Taxes

The Company accounts for income taxes under the asset and liability method. Under this method, deferred income taxes are recognized by applying enacted statutory rates applicable to future years to differences between the tax bases and financial reporting amounts of existing assets and liabilities. The effect on deferred taxes of a change in tax rates is recognized in income in the period that includes the enactment date. A valuation allowance is provided when it is more likely than not that all or some portion of deferred tax assets will not be realized.

Financial Instruments

To meet the reporting requirements of SFAS No. 107, "Disclosures About Fair Value of Financial Instruments," the Company calculates the fair value of financial instruments and includes this additional information in the notes to the consolidated financial statements when the fair value is different than the carrying value of those financial instruments. When the fair value reasonably approximates the carrying value, no additional disclosure is made. The estimated fair value amounts have been determined by the Company using available market information and appropriate valuation methodologies. However, considerable judgment is required in interpreting market data to develop the estimates of fair value. Accordingly, the estimates presented herein are not necessarily indicative of the amounts that the Company could realize in a current market exchange. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated fair value amounts.

Periodically, interest rate swaps, commodity swaps and forward exchange contracts are used to manage market risks and reduce exposure resulting from fluctuations in interest rates, commodity prices and foreign currency exchange rates. Where such contracts are designated as, and are effective as, a hedge, gains and losses arising on such contracts are accounted for in accordance with SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities," as amended. Specifically, changes in the fair value of derivative instruments designated as cash flow hedges are deferred and recorded in other comprehensive income. These deferred gains or losses are recognized in income when the transactions being hedged are completed. The ineffective portion of these hedges is recognized in income currently. Changes in the fair value of derivative instruments designated as fair value hedges are recognized in income, as are changes in the fair value of the hedged item. Changes in the fair value of derivative instruments that are not designated as hedges for accounting purposes are recognized in income. The Company does not use derivatives for trading purposes.

Stock-Based Compensation

The Company reflects stock-based compensation expense under a fair value based accounting method for all options granted, modified or settled according with SFAS No. 123, "Accounting for Stock based Compensation" and SFAS No. 148, "Accounting for Stock based Compensation — Transition and Disclosure."

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James Hardie Industries N.V. and Subsidiaries Notes to Consolidated Financial Statements — (Continued)

Employee Benefit Plans

The Company sponsors both defined benefit and defined contribution retirement plans for its employees. Employer contributions to the defined contribution plans are recognized as periodic pension expense in the period that the employees' salaries or wages are earned. The defined benefit plan covers all eligible employees and takes into consideration the following components to calculate net periodic pension expense: (a) service cost; (b) interest cost; (c) expected return on plan assets; (d) amortization of unrecognized prior service cost; (e) recognition of net actuarial gains or losses; and (f) amortization of any unrecognized net transition asset. If the amount of the Company's total contribution to its pension plan for the period is not equal to the amount of net periodic pension cost, the Company recognizes the difference either as a prepaid or accrued pension cost.

Dividends

Dividends are recorded as a liability on the date that the Supervisory Board of Directors formally declares the dividend.

Earnings Per Share

The Company is required to disclose basic and diluted earnings per share ("EPS"). Basic EPS is calculated using income divided by the weighted average number of common shares outstanding during the period. Diluted EPS is similar to basic EPS except that the weighted average number of common shares outstanding is increased to include the number of additional common shares calculated using the treasury method that would have been outstanding if the dilutive potential common shares, such as options, had been issued. Accordingly, basic and dilutive common shares outstanding used in determining net income per share are as follows:

	Years Ended March 31		
	2006	2005	2004
	(Millions of shares)		
Basic common shares outstanding	461.7	458.9	458.1
Dilutive effect of stock options	—	2.1	3.3
Diluted common shares outstanding	<u>461.7</u>	<u>461.0</u>	<u>461.4</u>
(Continuing operations — US dollar)	2006	2005	2004
Net (loss) income per share — basic	(\$ 1.10)	\$ 0.28	\$0.28
Net (loss) income per share — diluted	(\$ 1.10)	\$ 0.28	\$0.28

Potential common shares of 6.6 million, 8.2 million and 2.0 million for the years ended March 31, 2006, 2005 and 2004, respectively, have been excluded from the calculation of diluted common shares outstanding because the effect of their inclusion would be anti-dilutive. Due to the net loss for the year ended March 31, 2006, the assumed net exercise of stock options was excluded, as the effect would have been anti-dilutive.

Accumulated Other Comprehensive Income (Loss)

Accumulated other comprehensive income (loss) includes foreign currency translation and derivative instruments and is presented as a separate component of shareholders' equity.

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James Hardie Industries N.V. and Subsidiaries **Notes to Consolidated Financial Statements — (Continued)**

Recent Accounting Pronouncements

Inventory Costs

In November 2004, the Financial Accounting Standard Board (“FASB”) issued SFAS No. 151, “Inventory Costs — an amendment of Accounting Research Bulletin (“ARB”) No. 43, Chapter 4.” SFAS No. 151 requires abnormal amounts of inventory costs related to idle facility, freight handling and wasted material expenses to be recognized as current period charges. Additionally, SFAS No. 151 requires that allocation of fixed production overheads to the costs of conversion be based on the normal capacity of the production facilities. SFAS No. 151 is effective for fiscal years beginning after June 15, 2005. The adoption of this standard did not have a material impact on the Company’s consolidated financial statements.

American Jobs Creation Act

In October 2004, the President of the United States signed into law the American Jobs Creation Act (the “Act”). The Act allows for a US federal income tax deduction for a percentage of income earned from certain US production activities. Based on the effective date of the Act, the Company was eligible for this deduction in the first quarter of fiscal year 2006. Additionally, in December 2004, the FASB issued FASB Staff Position (“FSP”) 109-1, “Application of FASB Statement No. 109, Accounting for Income Taxes (“SFAS No. 109”), to the Tax Deduction on Qualified Production Activities Provided by the American Jobs Creation Act of 2004.” FSP 109-1, which was effective upon issuance, states the deduction under this provision of the Act should be accounted for as a special deduction in accordance with SFAS No. 109. The adoption of this standard did not have a material impact on the Company’s consolidated financial statements.

The Act also allows for an 85% dividends received deduction on the repatriation of certain earnings of foreign subsidiaries. In December 2004, the FASB issued FSP 109-2, “Accounting and Disclosure Guidance for the Foreign Earnings Repatriation Provision within the American Jobs Creation Act of 2004.” FSP 109-2, which was effective upon issuance, allows companies time beyond the financial reporting period of enactment to evaluate the effect of the Act on its plan for reinvestment or repatriation of foreign earnings for purposes of applying SFAS No. 109. Additionally, FSP 109-2 provides guidance regarding the required disclosures surrounding a company’s reinvestment or repatriation of foreign earnings. The adoption of this standard did not have a material effect on the Company’s consolidated financial statements.

Exchanges of Non-Monetary Assets

In December 2004, the FASB issued SFAS No. 153, “Exchange of Non-Monetary Assets — An Amendment of ARB Opinion No. 29,” which requires non-monetary asset exchanges to be accounted for at fair value. The Company is required to adopt the provisions of SFAS No. 153 for non-monetary exchanges occurring in fiscal periods beginning after June 15, 2005. The adoption of this standard did not have a material impact on the Company’s consolidated financial statements.

Share-Based Payment

In December 2004, the FASB issued SFAS No. 123 (revised 2004), “Share-Based Payment” (“SFAS No. 123R”). SFAS No. 123R replaces SFAS No. 123 and supersedes APB Opinion No. 25, “Accounting for Stock Issued to Employees.” Generally, SFAS No. 123R is similar in approach to SFAS No. 123 and requires that compensation cost relating to share-based payments be recognized in the financial statements based on the fair value of the equity or liability instruments issued. SFAS No. 123R is effective as of the beginning of the first interim or annual reporting period that begins after June 15, 2005. In April 2005, the United States Securities and Exchange Commission delayed the effective date of SFAS No. 123R until fiscal years beginning after June 15, 2005. The Company adopted SFAS No. 123 in

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James Hardie Industries N.V. and Subsidiaries **Notes to Consolidated Financial Statements — (Continued)**

fiscal year 2003 and does not expect the adoption of SFAS No. 123R, which will occur in the first quarter of fiscal year 2007 to have a material effect on the Company's consolidated financial statements.

Conditional Asset Retirement Obligations

In March 2005, the FASB issued FASB Interpretation No. 47 ("FIN 47"), "Accounting for Conditional Asset Retirement Obligations." FIN 47 clarifies the term "conditional asset retirement obligation" used in SFAS No. 143, "Accounting for Asset Retirement Obligations." FIN 47 is effective no later than the end of the fiscal year ending after December 15, 2005. The adoption of this standard did not have a material impact on the Company's consolidated financial statements.

Accounting Changes and Error Corrections

In May 2005, the FASB issued SFAS No. 154, "Accounting Changes and Error Corrections — a replacement of APB Opinion No. 20 and FASB Statement No. 3." SFAS No. 154 requires retrospective application to prior periods' financial statements of a voluntary change in accounting principle unless it is impracticable. APB Opinion No. 20, "Accounting Changes," previously required that most voluntary changes in accounting principle be recognized by including in net income of the period of the change the cumulative effect of changing to the new accounting principle. This statement is effective for accounting changes and corrections of errors made in fiscal years beginning after December 15, 2005. The adoption of this standard will not have a material impact on the Company's consolidated financial statements.

Uncertain Tax Positions

In July 2005, the FASB issued an exposure draft of a proposed interpretation "Accounting for Uncertain Tax Positions." The proposed interpretation clarifies the accounting for uncertain tax positions in accordance with SFAS No. 109. The proposed interpretation requires that a tax position meet a "probable recognition threshold" for the benefit of the uncertain tax position to be recognized in the financial statements. A tax position that fails to meet the probable recognition threshold will result in either reduction of current or deferred tax asset or receivable, or recording a current or deferred tax liability. The proposed interpretation also provides guidance on measurement, derecognition of tax benefits, classification, interim reporting disclosure and transition requirements in accounting for uncertain tax positions. The exposure draft has not yet been finalized. If and when finalized, the Company will determine the impact, if any, on its consolidated financial statements.

3. Cash and Cash Equivalents

Cash and cash equivalents include amounts on deposit in banks and cash invested temporarily in various highly liquid financial instruments with original maturities of three months or less.

Cash and cash equivalents consist of the following components:

	March 31	
	2006	2005
	(Millions of US dollars)	
Cash at bank and on hand	\$ 24.9	\$ 28.6
Short-term deposits	290.2	84.9
Total cash and cash equivalents	\$ 315.1	\$ 113.5

Short-term deposits are placed at floating interest rates varying between 4.60% to 4.85% and 2.70% to 2.76% as of March 31, 2006 and 2005, respectively. Included in Cash at bank and on hand at March 31, 2006 is \$5.0 million of restricted cash.

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James Hardie Industries N.V. and Subsidiaries
Notes to Consolidated Financial Statements — (Continued)

4. Accounts and Notes Receivable

Accounts and notes receivable consist of the following components:

	March 31	
	2006	2005
	(Millions of US dollars)	
Trade receivables	\$ 146.5	\$ 121.6
Other receivables and advances	8.0	7.1
Allowance for doubtful accounts	(1.3)	(1.5)
Total accounts and notes receivable	<u>\$ 153.2</u>	<u>\$ 127.2</u>

The collectibility of accounts receivable, consisting mainly of trade receivables, is reviewed on an ongoing basis and an allowance for doubtful accounts is provided for known and estimated bad debts. The following are changes in the allowance for doubtful accounts:

	Years Ended March 31	
	2006	2005
	(Millions of US dollars)	
Balance at April 1	\$ 1.5	\$ 1.2
Charged to expense	0.3	0.4
Costs and deductions	(0.5)	(0.1)
Balance at March 31	<u>\$ 1.3</u>	<u>\$ 1.5</u>

5. Inventories

Inventories consist of the following components:

	March 31	
	2006	2005
	(Millions of US dollars)	
Finished goods	\$ 84.1	\$ 71.1
Work-in-process	9.2	8.5
Raw materials and supplies	33.0	22.4
Provision for obsolete finished goods and raw materials	(2.3)	(2.1)
Total inventories	<u>\$ 124.0</u>	<u>\$ 99.9</u>

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James Hardie Industries N.V. and Subsidiaries
Notes to Consolidated Financial Statements — (Continued)

6. Property, Plant and Equipment

Property, plant and equipment consist of the following components:

	<u>Land</u>	<u>Buildings</u>	<u>Machinery and Equipment</u>	<u>Construction in Progress</u>	<u>Total</u>
	(Millions of US dollars)				
Balance at April 1, 2004:					
Cost	\$11.3	\$ 135.0	\$ 562.8	\$ 63.0	\$ 772.1
Accumulated depreciation	—	(21.0)	(184.0)	—	(205.0)
Net book value	11.3	114.0	378.8	63.0	567.1
Changes in net book value:					
Capital expenditures	0.2	3.2	32.5	117.1	153.0
Retirements and sales	—	—	—	(4.1)	(4.1)
Depreciation	—	(4.5)	(31.8)	—	(36.3)
Other movements	—	—	3.4	—	3.4
Foreign currency translation adjustments	—	—	2.6	—	2.6
Total changes	0.2	(1.3)	6.7	113.0	118.6
Balance at March 31, 2005:					
Cost	11.5	131.1	606.6	176.6	925.8
Accumulated depreciation	—	(24.4)	(215.7)	—	(240.1)
Net book value	<u>\$11.5</u>	<u>\$ 106.7</u>	<u>\$ 390.9</u>	<u>\$ 176.6</u>	<u>\$ 685.7</u>
	<u>Land</u>	<u>Buildings</u>	<u>Machinery and Equipment</u>	<u>Construction in Progress</u>	<u>Total</u>
Balance at April 1, 2005:					
Cost	\$11.5	\$ 131.1	\$ 606.6	\$ 176.6	\$ 925.8
Accumulated depreciation	—	(24.4)	(215.7)	—	(240.1)
Net book value	11.5	106.7	390.9	176.6	685.7
Changes in net book value:					
Capital expenditures	4.1	16.4	90.8	51.5	162.8
Retirements and sales	—	—	(8.9)	—	(8.9)
Depreciation	—	(7.3)	(38.0)	—	(45.3)
Impairment	—	—	(13.4)	—	(13.4)
Other movements	—	—	(0.9)	—	(0.9)
Foreign currency translation adjustments	—	—	(4.4)	—	(4.4)
Total changes	4.1	9.1	25.2	51.5	89.9
Balance at March 31, 2006:					
Cost	15.6	147.5	669.8	228.1	1,061.0
Accumulated depreciation	—	(31.7)	(253.7)	—	(285.4)
Net book value	<u>\$15.6</u>	<u>\$ 115.8</u>	<u>\$ 416.1</u>	<u>\$ 228.1</u>	<u>\$ 775.6</u>

Construction in progress consists of plant expansions and upgrades.

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James Hardie Industries N.V. and Subsidiaries **Notes to Consolidated Financial Statements — (Continued)**

Interest related to the construction of major facilities is capitalized and included in the cost of the asset to which it relates. Interest capitalized was \$5.7 million, \$5.9 million and \$1.6 million for the years ended March 31, 2006, 2005 and 2004, respectively. Depreciation expense for continuing operations was \$45.3 million, \$36.3 million and \$35.9 million for the years ended March 31, 2006, 2005 and 2004, respectively. The impairment charge for the pilot roofing plant was \$13.4 million for the year ended March 31, 2006.

7. Retirement Plans

The Company sponsors a US retirement plan, the James Hardie Retirement and Profit Sharing Plan, for its employees in the United States and a retirement plan, the James Hardie Australia Superannuation Plan, for its employees in Australia. The US retirement plan is a tax-qualified defined contribution retirement and savings plan covering all US employees subject to certain eligibility requirements and matches employee contributions (subject to limitations) dollar for dollar up to 6% of their salary or base compensation. The James Hardie Australia Superannuation Plan has two types of participants. Participants who joined the plan prior to July 1, 2003 have rights and benefits that are accounted for as a defined benefit plan in the Company's consolidated financial statements while participants who joined the plan subsequent to July 1, 2003 have rights and benefits that are accounted for as a defined contribution plan in the Company's consolidated financial statements. The James Hardie Australia Superannuation Plan is funded based on statutory requirements in Australia. The Company's expense for its defined contribution plans totaled \$2.6 million, \$5.2 million and \$3.8 million for the years ended March 31, 2006, 2005 and 2004, respectively. Details of the defined benefit component of the James Hardie Australia Superannuation Plan ("Defined Benefit Plan") are as follows.

The investment strategy/policy of the Defined Benefit Plan is set by the Trustee (Mercer) for each investment option. The strategy includes the selection of a long-term mix of investments (asset classes) that supports the option's aims.

The aims of the Mercer Growth option, in which the Defined Benefit Plan assets are invested, are:

- to achieve a rate of return (net of tax and investment expenses) that exceeds inflation (CPI) increases by at least 3% per annum over a moving five year period;
- to achieve a rate of return (net of tax and investment expenses) above the median result for the Mercer Pooled Fund Survey over a rolling three year period; and
- over shorter periods, outperform the notional return of the benchmark mix of investments.

The assets are invested by appointing professional investment managers and/or from time to time investing in a range of investment vehicles offered by professional investment managers.

Investment managers may utilize derivatives in managing investment portfolios for the Trustee. However, the Trustee does not undertake day-to-day management of derivative instruments. Derivatives may be used, among other things, to manage risk (e.g., for currency hedging). Losses from derivatives can occur (e.g., due to stock market movements). The Trustee seeks to manage risk by placing limits on the extent of derivative use in any relevant Investment Management Agreements between the Trustee and investment managers. The Trustee also considers the risks and the controls set out in the managers' Risk Management Statements. The targeted ranges of asset allocations are:

Equity securities	40- 75%
Debt securities	15- 60%
Real estate	0- 20%

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James Hardie Industries N.V. and Subsidiaries
Notes to Consolidated Financial Statements — (Continued)

The following are the actual asset allocations by asset category for the Defined Benefit Plan:

	March 31	
	2006	2005
Equity securities	48.8%	36.6%
Fixed interest	15.1	12.7
Real estate	5.7	4.7
Cash	30.4	46.0
Total	<u>100.0%</u>	<u>100.0%</u>

The following are the components of net periodic pension cost for the Defined Benefit Plan:

	Years Ended March 31		
	2006	2005	2004
	(Millions of US dollars)		
Service cost	\$ 1.9	\$ 2.5	\$ 2.9
Interest cost	2.3	2.5	2.9
Expected return on plan assets	(2.6)	(3.2)	(3.6)
Amortization of unrecognized transition asset	—	—	(0.9)
Amortization of prior service costs	—	0.1	0.1
Recognized net actuarial loss	0.4	0.4	0.4
Net periodic pension cost	<u>2.0</u>	<u>2.3</u>	<u>1.8</u>
Settlement loss	0.9	5.3	—
Net pension cost	<u>\$ 2.9</u>	<u>\$ 7.6</u>	<u>\$ 1.8</u>

The settlement losses in fiscal year 2006 and 2005 relate to lump sum payments made to terminated participants of the Defined Benefit Plan and are included in other operating expense in the consolidated statements of operations.

The following are the assumptions used in developing the net periodic cost and projected benefit obligation as of March 31 (of each year listed below) for the Defined Benefit Plan:

	March 31		
	2006	2005	2004
	%	%	%
Net Periodic Benefit Cost Assumptions:			
Discount rate	6.5	6.5	6.8
Rate of increase in compensation	4.0	4.0	3.5
Expected return on plan assets	6.5	6.5	6.8
Projected Benefit Obligation Assumptions:			
Discount rate	6.0	6.5	6.5
Rate of increase in compensation	4.0	4.0	4.0

The discount rate methodology is based on the yield on 10-year high quality investment securities in Australia adjusted to reflect the rates at which pension benefits could be effectively settled. The change in the discount rate used on the projected benefit obligation from 2005 to 2006 is a direct result of the change in yields of high quality investment securities over the same periods, adjusted to rates at which pension benefits could be effectively settled. The increase in the rate of increase in compensation under the projected benefit obligation assumption from 2004 to 2005 reflects an increase in the expected margin of compensation

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increases over price inflation. The decrease in the expected return on plan assets from 2004 to 2005 was a result of lower expected after-tax rates of return. The expected return on plan assets assumption is determined by weighting the expected long-term return for each asset class by the target/actual allocation of assets to each class. The returns used for each class are net of investment tax and investment fees. Net unrecognized gains and losses are amortized over the average remaining service period of active employees. A market related value of assets is used to determine pension costs with the difference between actual and expected investment return each year recognized over five years.

The following are the actuarial changes in the benefit obligation, changes in plan assets and the funded status of the Defined Benefit Plan:

	Years Ended March 31	
	2006	2005
(Millions of US dollars)		
Changes in benefit obligation:		
Benefit obligation at April 1	\$ 37.6	\$ 40.7
Service cost	1.9	2.5
Interest cost	2.3	2.5
Plan participants' contributions	0.6	0.9
Actuarial loss	2.7	2.0
Benefits paid	(6.7)	(11.4)
Foreign currency translation	(2.8)	0.4
Benefit obligation at March 31	<u>\$ 35.6</u>	<u>\$ 37.6</u>
Changes in plan assets:		
Fair value of plan assets at April 1	\$ 37.7	\$ 41.2
Actual return on plan assets	6.6	4.7
Employer contributions	1.2	1.8
Participant contributions	0.6	0.9
Benefits paid	(6.7)	(11.4)
Foreign currency translation	(2.9)	0.5
Fair value of plan assets at March 31	<u>\$ 36.5</u>	<u>\$ 37.7</u>
Funded status	\$ 0.9	\$ 0.1
Unrecognized actuarial loss	5.2	8.3
Other assets	<u>\$ 6.1</u>	<u>\$ 8.4</u>

The following table provides further details of the Defined Benefit Plan:

	Years Ended March 31	
	2006	2005
(Millions of US dollars)		
Projected benefit obligation	\$ 35.6	\$ 37.6
Accumulated benefit obligation	35.6	37.6
Fair market value of plan assets	36.5	37.7

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The Defined Benefit Plan measurement date is March 31, 2006. The Company expects to make contributions to the Defined Benefit Plan of approximately \$1.4 million during fiscal year 2007.

The following are the expected Defined Benefit Plan benefits to be paid in each of the following ten fiscal years:

	Years Ended March 31	
	(Millions of US dollars)	
2007	\$	3.2
2008		2.1
2009		2.2
2010		2.6
2011		2.6
2012-2016		13.0
Estimated future benefit payments	\$	<u>25.7</u>

8. Accounts Payable and Accrued Liabilities

Accounts payable and accrued liabilities consist of the following components:

	March 31	
	2006	2005
	(Millions of US dollars)	
Trade creditors	\$ 66.0	\$ 65.3
Other creditors and accruals	51.8	28.7
Total accounts payable and accrued liabilities	<u>\$ 117.8</u>	<u>\$ 94.0</u>

9. Short and Long-Term Debt

Long-term debt consists of the following components:

	March 31	
	2006	2005
	(Millions of US dollars)	
US\$ noncollateralized notes — current portion	\$ 121.7	\$ 25.7
US\$ noncollateralized notes — long-term portion	—	121.7
Total debt at 7.11% average rate	<u>\$ 121.7</u>	<u>\$ 147.4</u>

The US\$ non-collateralized notes form part of a seven tranche private placement facility which provides for maximum borrowings of \$165.0 million. Principal repayments are due in seven installments that commenced on November 5, 2004 and end on November 5, 2013. The tranches bear fixed interest rates of 6.86%, 6.92%, 6.99%, 7.05%, 7.12%, 7.24% and 7.42%. Interest is payable on May 5th and November 5th each year. The first tranche of \$17.6 million was repaid in November 2004.

As a result of the recording of the asbestos provision at March 31, 2006, and the Supervisory Board's approval of this on May 12, 2006, the Company would not have been in compliance with certain of the restrictive covenants in respect of the US\$ non-collateralized notes. However, under the terms of the non-collateralized notes agreement, prepayment of these notes is permitted and on April 28, 2006, the Company

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James Hardie Industries N.V. and Subsidiaries **Notes to Consolidated Financial Statements — (Continued)**

issued a notice to all note holders to prepay in full all outstanding notes on May 8, 2006. On that date the US\$ non-collateralized notes were prepaid in full, incurring a make-whole payment of \$6.0 million.

The Company's credit facilities currently consist of 364-day facilities in the amount of \$110.0 million, which mature in December 2006 and term facilities in the amount of \$245.0 million, which mature in June 2006. For both facilities, interest is calculated at the commencement of each draw-down period based on the US\$ London Interbank Offered Rate ("LIBOR") plus the margins of individual lenders, and is payable at the end of each draw-down period. During the year ended March 31, 2006, the Company paid \$0.7 million in commitment fees. At March 31, 2006, there was \$181.0 million drawn under the combined facilities and \$174.0 million was available.

The Company has requested that its lenders extend the maturity date of the 364-day facilities from December 2006 to June 2007 and the maturity date of the other term facilities to December 2006. Upon satisfaction of the conditions precedent to the full implementation of the Final Funding Agreement, including lender approval, the maturity date of the other term facilities will be automatically extended until June 2010. In the fourth quarter, \$181.0 million was drawn down on the credit facilities in anticipation of the prepayment of the US\$ non-collateralized notes described above.

The Company anticipates being able to meet its payment obligations from:

- existing cash and unutilized committed facilities;
- net operating cash flow during the current year;
- an extension of the term of existing credit facilities; and
- the addition of proposed new funding facilities.

However, if the conditions precedent to the full implementation of the Final Funding Agreement are not satisfied, the Company may not be able to renew its credit facilities on substantially similar terms, or at all; may have to pay additional fees and expenses that it might not have to pay under normal circumstances; and it may have to agree to terms that could increase the cost of its debt structure. Additionally, in order to appeal the amended Australian income tax assessment referred to above, pursuant to the ATO Receivables Policy, the Company is required to post a cash deposit in an amount which could be as large as the amount of the entire assessment. Even if the Company is ultimately successful in its appeal and the cash deposit is refunded, this procedural requirement to post a cash deposit could materially and adversely affect the Company's financial position and liquidity. If the Company is unable to extend its credit facilities, or is unable to renew its credit facilities on terms that are substantially similar to the ones it presently has, it may experience liquidity issues and will have to reduce its levels of planned capital expenditures and/or take other measures to conserve cash in order to meet its future cash flow requirements.

At March 31, 2006, our management believes that the Company was in compliance with all restrictive covenants contained in the non-collateralized notes and credit facility agreements. Under the most restrictive of these covenants, the Company is required to maintain certain ratios of debt to equity and net worth and levels of earnings before interest and taxes and has limits on how much it can spend on an annual basis in relation to asbestos payments to either Amaca Pty Ltd (formerly James Hardie & Coy Pty Ltd) ("Amaca"), Amaba Pty Ltd (formerly Jsekarb Pty Ltd) ("Amaba") or ABN 60 Pty Ltd ("ABN 60").

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10. Non-Current Other Liabilities

Non-current other liabilities consist of the following components:

	March 31	
	2006	2005
	(Millions of US dollars)	
Employee entitlements	\$ 17.0	\$ 5.3
Product liability	0.7	4.7
Other	27.3	51.7
Total non-current other liabilities	<u>\$ 45.0</u>	<u>\$ 61.7</u>

11. Product Warranties

The Company offers various warranties on its products, including a 50-year limited warranty on certain of its fiber cement siding products in the United States. A typical warranty program requires that the Company replace defective products within a specified time period from the date of sale. The Company records an estimate for future warranty related costs based on an analysis of actual historical warranty costs as they relate to sales. Based on this analysis and other factors, the adequacy of the Company's warranty provisions are adjusted as necessary. While the Company's warranty costs have historically been within its calculated estimates, it is possible that future warranty costs could exceed those estimates.

Additionally, the Company includes in its accrual for product warranties amounts for a Class Action Settlement Agreement (the "Settlement Agreement") related to its previous roofing product, which is no longer manufactured in the United States. On February 14, 2002, the Company signed the Settlement Agreement for all product, warranty and property related liability claims associated with its previously manufactured roofing products. These products were removed from the marketplace between 1995 and 1998 in areas where there had been any alleged problems. The total amount included in the product warranty provision relating to the Settlement Agreement is \$5.7 million and \$5.8 million as of March 31, 2006 and 2005, respectively.

The following are the changes in the product warranty provision:

	Years Ended March 31	
	2006	2005
	(Millions of US dollars)	
Balance at beginning of period	\$ 12.9	\$ 12.0
Accruals for product warranties	6.2	4.3
Settlements made in cash or in kind	(3.4)	(3.4)
Foreign currency translation adjustments	(0.2)	—
Balance at end of period	<u>\$ 15.5</u>	<u>\$ 12.9</u>

The "Accruals for product warranties" line item above includes an additional accrual of \$0.6 million for the year ended March 31, 2006 related to the Settlement Agreement. This increase reflects the results of the Company's most recent estimate of its total exposure. The "Settlements made in cash or in kind" line item above includes settlements related to the Settlement Agreement of \$0.7 million and \$0.9 million for the years ended March 31, 2006 and 2005, respectively.

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James Hardie Industries N.V. and Subsidiaries **Notes to Consolidated Financial Statements — (Continued)**

12. Commitments and Contingencies

Commitment to provide funding on a long-term basis in respect of asbestos-related liabilities of former subsidiaries

On December 1, 2005, the Company announced that it, the NSW Government and a wholly owned Australian subsidiary of the Company (LGTTD Pty Ltd, described below as the “Performing Subsidiary”) had entered into a conditional agreement (the “Final Funding Agreement”) to provide long-term funding to a special purpose fund (“SPF”) that will provide compensation for Australian asbestos-related personal injury claims against certain former James Hardie companies (being Amaca Pty Ltd (“Amaca”), Amaba Pty Ltd (“Amaba”) and ABN 60 Pty Ltd (“ABN 60”)) (the “Former James Hardie Companies”).

Key events occurring since 2001 that led to the signing of the Final Funding Agreement are summarized further below.

The Final Funding Agreement remains subject to a number of conditions precedent, including the receipt of an independent expert’s report confirming that the funding proposal is in the best interests of the Company and its enterprise as a whole, approval of the Company’s shareholders and lenders, and confirmation satisfactory to the Company’s Board of Directors, acting reasonably, that the contributions to be made by JHI NV and the Performing Subsidiary under the Final Funding Agreement will be tax deductible and the SPF will be exempt from Australian federal income tax on its income.

In summary, the Final Funding Agreement provides for the following key steps to occur if the conditions precedent to that agreement are satisfied or waived in writing by the parties:

- the establishment of the SPF to provide compensation to Australian asbestos-related personal injury claimants with proven claims against the Former James Hardie Companies;
- initial funding of approximately A\$154 million provided by the Performing Subsidiary to the SPF, calculated on the basis of an actuarial report prepared by KPMG Actuaries Pty Ltd (“KPMG Actuaries”) as of March 31, 2006. That report provided an estimate of the discounted net present value of all present and future Australian asbestos-related personal injury claims against the Former James Hardie Companies of A\$1.52 billion (\$1.14 billion).
- a two-year rolling cash buffer in the SPF and, subject to the cap described below, an annual contribution in advance to top up those funds to equal the actuarially calculated estimate of expected Australian asbestos-related personal injury claims against the Former James Hardie Companies for the following three years, to be revised annually;
- a cap on the annual payments made by the Performing Subsidiary to the SPF, initially set at 35% of the Company’s free cash flow (defined as cash from operations in accordance with US GAAP in force at the date of the Final Funding Agreement) for the immediately preceding financial year, with provisions for the percentage to decline over time depending upon the Company’s financial performance (and therefore the contributions already made to the SPF) and the claims outlook;
- an initial term of approximately 40 years, at which time the parties may either agree upon a final payment to be made by the Company in satisfaction of any further funding obligations, or have the term automatically extended for further periods of 10 years until such agreement is reached or the relevant asbestos-related liabilities cease to arise;
- the entry by the parties and/or others into agreements to or connected with the Final Funding Agreements (the “Related Agreements”);
- no cap on individual payments to asbestos claimants;

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James Hardie Industries N.V. and Subsidiaries **Notes to Consolidated Financial Statements — (Continued)**

- the Performing Subsidiary's payment obligations are guaranteed by the James Hardie Industries N.V.;
- the SPF's claims to the funding payments required under the Final Funding Agreement will be subordinated to the claims of the Company's lenders; and
- the compensation arrangements will extend to members of the Baryulgil community for asbestos-related claims arising from the activities of a former subsidiary of ABN 60 (as described below).

In addition to entering into the Final Funding Agreement, one or more of the Company, the Performing Subsidiary, the SPF and the NSW Government have entered into a number of agreements ancillary to or connected with the Final Funding Agreements (the "Related Agreements"), including a trust deed for the establishment of the SPF, a deed of guarantee under which James Hardie Industries N.V. provides the guarantee described above, intercreditor deeds to achieve the subordination arrangements described above and deeds of release in connection with the releases from civil liability described below.

The Company considers that the principal outstanding conditions to be fulfilled before the Final Funding Agreement becomes effective are those relating to the taxation treatment in Australia of payments made by the Performing Subsidiary to the SPF, the tax exempt status of the SPF, and approval of the Final Funding Agreement by the Company's shareholders. The Company is in discussions relating to the taxation issues described above with the Australian Federal Commissioner of Taxation and is seeking confirmation in a form binding on the Commissioner that those conditions have been satisfied including in relation to the impact of legislation which took effect on April 6, 2006 and which is described further below.

In relation to the approval of the Final Funding Agreement by the Company's shareholders, the Company has undertaken significant work towards preparing the necessary documentation to be sent to shareholders, but at present is unable to specify a date for holding the relevant meeting. The Company considers that it can only properly put the proposal to shareholders once the tax issues described above have been resolved, since as further described below, such issues materially affect the affordability of the proposal which shareholders will be asked to approve.

The recording of the asbestos provision is in accordance with US accounting standards because it is probable that the Company will make payments to fund asbestos-related claims on a long-term basis. The amount of the asbestos provision of \$715.6 million (A\$1.0 billion) at March 31, 2006 is the Company's best estimate of the probable outcome. This estimate is based on the terms of the Final Funding Agreement, which includes an actuarial estimate prepared by KPMG Actuaries as of March 31, 2006 of the projected future cash outflows, undiscounted and uninflated. The Company's ability to obtain a tax deduction under legislation remains the subject of an ongoing application to the Australian Tax Office ("ATO"). If the conditions precedent to the Final Funding Agreement, such as the tax deductibility of payments, are not met, the Company may seek to enter into an alternative arrangement under which it would make payments for the benefit of asbestos claimants. Under alternative arrangements, the estimate may change.

Even if conditions to the Company's funding obligations under the Final Funding Agreement, including the achievement of tax deductibility, are not fulfilled, the Company has determined that it is nevertheless likely that it will make payments in respect of certain claimants who were injured by asbestos products manufactured by certain former Australian subsidiary companies. The Board of James Hardie has made it clear that, in a manner consistent with its obligations to shareholders and other stakeholders in the Company, it intends to proceed with fair and equitable actions to compensate the injured parties. Any such alternative settlement may be subject to conditions precedent and would require lender and shareholder approval. However, if James Hardie proceeds with an alternative settlement without the assurance of tax deductibility, it is likely, as a function of economic reality, that the Company will have less funds to support payments in respect of asbestos claims. While the Company continues to hope that the conditions precedent to the Final Funding Agreement will be fulfilled, it has determined that its intention to continue to proceed responsibly in

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James Hardie Industries N.V. and Subsidiaries **Notes to Consolidated Financial Statements — (Continued)**

either event makes it appropriate for the Company to record the asbestos provision in the amounts set forth in the financial statements.

Key events since 2001 leading to the signing of the Final Funding Agreement

Separation of Amaca Pty Ltd and Amaba Pty Ltd and ABN 60

In February 2001, ABN 60, formerly known as James Hardie Industries Limited (“JHIL”), established the Medical Research and Compensation Foundation (the “Foundation”) by gifting A\$3.0 million (\$1.7 million) in cash and transferring ownership of Amaca and Amaba to the Foundation. The Foundation is a special purpose charitable foundation established to fund medical and scientific research into asbestos-related diseases. Amaca and Amaba were Australian companies which had manufactured and marketed asbestos-related products prior to 1987.

The Foundation is managed by independent trustees and operates entirely independently of the Company and its current subsidiaries. The Company does not control (directly or indirectly) the activities of the Foundation in any way and, effective from February 16, 2001, has not owned or controlled (directly or indirectly) the activities of Amaca or Amaba. In particular, the trustees of the Foundation are responsible for the effective management of claims against Amaca and Amaba, and for the investment of Amaca’s and Amaba’s assets. Other than the offers to provide interim funding to the Foundation and the indemnity to the directors of ABN 60 as described below, the Company has no direct legally binding commitment to or interest in the Foundation, Amaca or Amaba, and it has no right to dividends or capital distributions made by the Foundation. None of the Foundation, Amaca, Amaba or ABN 60 are parties to the Final Funding Agreement described above, and none of those entities has obtained any directly enforceable rights under that agreement or the related agreements contemplated under that agreement.

On March 31, 2003, the Company transferred control of ABN 60 to a newly established company named ABN 60 Foundation Pty Ltd (“ABN 60 Foundation”). ABN 60 Foundation was established to be the sole shareholder of ABN 60 and to ensure that ABN 60 met the payment obligations owed to the Foundation under the terms of a deed of covenant and indemnity described below. Following the establishment of the ABN 60 Foundation, the Company no longer owned any shares in ABN 60. ABN 60 Foundation is managed by independent directors and operates entirely independently of the Company. Since that date, the Company has not and currently does not control the activities of ABN 60 or ABN 60 Foundation in any way, it has no economic interest in ABN 60 or ABN 60 Foundation, and it has no right to dividends or capital distributions made by the ABN 60 Foundation.

Under the Final Funding Agreement and under legislation associated with that agreement described below, it is contemplated that following the establishment of the SPF and as part of the satisfaction of the conditions precedent to the Final Funding Agreement, the Company will, subject to limited exceptions, be entitled to appoint a majority of directors on the board of directors of the SPF, which will in turn be empowered under that legislation to issue certain specified directions to the boards of directors of the Former James Hardie Companies. That legislation also imposes statutory obligations upon the Former James Hardie Companies To comply with such directions, and the NSW Government may require the directors of the trustees of the Foundation and of the ABN 60 Foundation to resign pursuant to powers granted under the *James Hardie Former Subsidiaries (Special Provisions) Act 2005*.

Potential for claims against the Former James Hardie Companies to be made against the Company

Up to the date of the establishment of the Foundation, Amaca and Amaba incurred costs of asbestos-related litigation and settlements. From time to time, ABN 60 was joined as a party to asbestos suits which were primarily directed at Amaca and Amaba. Because Amaca, Amaba and ABN 60 were not or have not been a part of the Company since the time of establishment of the Foundation and the ABN 60 Foundation,

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no provision for asbestos-related claims was established in the Company's consolidated financial statements prior to March 31, 2006.

The Final Funding Agreement does not confer upon the Former James Hardie Companies any directly enforceable rights against the Company in respect of the funding obligations. Similarly, the Final Funding Agreement does not create any directly enforceable rights in favor of any persons who may have personal injury claims against the Former James Hardie Companies and that agreement does not seek to make the Company or any current member of the James Hardie Group directly liable for damages for personal injury or death in connection with the former manufacture or sale of asbestos products by Amaca, Amaba or ABN 60. The funding obligations of the Performing Subsidiary and the Company to the SPF will be enforceable by the SPF and, in certain circumstances, directly by the NSW Government.

Apart from the funding obligations arising under the Final Funding Agreement, it is possible that the Company could become subject to suits for damages for personal injury or death in connection with the former manufacture or sale of asbestos products that have been or may be filed against Amaca, Amaba or ABN 60. However, as described further below, the ability of any claimants to initiate or pursue such suits is restricted by legislation enacted by the NSW Government pursuant to the Final Funding Agreement. Although it is difficult to predict the incidence or outcome of future litigation, and thus no assurances as to such incidence or outcome can be given, the Company believes that, in the absence of new legislation or a change in jurisprudence as adopted in prior case law before the NSW Supreme Court and Federal High Court, as more fully described below, the Company's liability with respect to such suits if such suits could be successfully asserted directly against the Company is not probable and estimable at this time. This belief is based on the following factors: following the transfers of Amaca and Amaba to the Foundation and of ABN 60 to the ABN 60 Foundation, none of those companies has been part of the Company and while those companies are proposed to become subsidiaries of the SPF as part of the steps to implement the Final Funding Agreement, neither the SPF nor the Company will thereby assume the liabilities of the Former James Hardie Companies under Australian law; the separateness of corporate entities under Australian law; the limited circumstances in which "piercing the corporate veil" might occur under Australian and Dutch law; the absence of an equivalent under Australian common law of the US legal doctrine of "successor liability"; the effect of the *James Hardie (Civil Liability) Act 2005* and the *James Hardie (Civil Penalty Compensation Release) Act 2005* as described further below; and the belief that the principle applicable under Dutch law, to the effect that transferees of assets may be held liable for the transferor's liabilities when they acquire assets at a price that leaves the transferor with insufficient assets to meet claims, is not triggered by the transfers of Amaca, Amaba and ABN 60, the restructure of the Company in 2001, or previous group transactions. The courts in Australia have generally refused to hold parent entities responsible for the liabilities of their subsidiaries absent any finding of fraud, agency, direct operational responsibility or the like. However, if suits are made possible and/or successfully brought, they could have a material adverse effect on the Company's business, results of operations or financial condition.

In New Zealand, where RCI Holdings Pty Ltd owns a subsidiary that formerly manufactured asbestos-containing products, claims have been made against the statutory fund established under New Zealand's accident compensation regime (rather than against the subsidiary). The relevant legislation at present is the Injury Prevention, Rehabilitation and Compensation Act 2001 (NZ). Where there is cover under this legislation, claims for compensatory damages are barred. Although claims not barred by the legislation could still be brought in some circumstances, any such claims are not currently estimable.

During the period ended March 31, 2006, the Company has not been a party to any material asbestos litigation and has not made any settlement payments in relation to any such litigation.

Under US laws, the doctrine of "successor liability" provides that an acquirer of the assets of a business can, in certain jurisdictions and under certain circumstances, be held responsible for liabilities arising from the

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conduct of that business prior to the acquisition, notwithstanding the absence of a contractual arrangement between the acquirer and the seller pursuant to which the acquirer agreed to assume such liabilities.

The general principle under Australian law is that, in the absence of a contractual agreement to transfer specified liabilities of a business, and where there is no fraudulent conduct, the liabilities remain with the corporation that previously carried on the business and are not passed on to the acquirer of assets. Prior to March 2004, the Company leased manufacturing sites from Amaca, a former subsidiary that is now owned and controlled by the Foundation. In addition, the Company purchased certain plant and equipment and inventory from Amaca at fair value in connection with the first phase of the Company's restructuring. Each of these transactions involved only Australian companies and, accordingly, the Company believes the transactions are governed by Australian laws and not the laws of any other jurisdiction. The Company does not believe these transactions should give rise to the assumption by the Company of any asbestos-related liabilities (tortious or otherwise) under Australian law that may have been incurred during the period prior to the transfer of the assets.

Under Dutch law, a Dutch transferee of assets may be held responsible for the liabilities of the transferor following a transfer of assets if the transfer results in the transferor having insufficient assets to meet the claims of its creditors or if the transfer otherwise jeopardizes the position of the creditors of the transferor. The Company believes the transfer by ABN 60 of all of the shares of James Hardie N.V. ("JH NV") to JHI NV in the 2001 Reorganization will not result in the Company being held responsible as transferee under this rule because, upon the transfer and the implementation of the other aspects of the 2001 Reorganization, ABN 60 had the same financial resources to meet the claims of its creditors as it had prior to the transfer.

Special Commission of Inquiry

On October 29, 2003, the Foundation issued a press release stating that its "most recent actuarial analysis estimates that the compensation bill for the organization could reach one billion Australian dollars in addition to those funds already paid out to claimants since the Foundation was formed and that existing funding could be exhausted within five years." In February 2004, the NSW Government established a Special Commission of Inquiry ("SCI") to investigate, among other matters described below, the circumstances in which the Foundation was established. The SCI was instructed to determine the current financial position of the Foundation and whether it would be likely to meet its future asbestos-related claims in the medium to long-term. It was also instructed to report on the circumstances in which the Foundation was separated from ABN 60 and whether this may have resulted in or contributed to a possible insufficiency of assets to meet future asbestos-related liabilities, and the circumstances in which any corporate restructure or asset transfers occurred within or in relation to the James Hardie Group prior to the funding of the Foundation to the extent that this may have affected the Foundation's ability to meet its current and future liabilities. The SCI was also instructed to report on the adequacy of current arrangements available to the Foundation under the Corporations Act of Australia to assist the Foundation in managing its liabilities and whether reform was desirable in order to assist the Foundation in managing its obligations to current and future claimants.

On July 14, 2004, following the receipt of a new actuarial estimate of asbestos liabilities of the Foundation by KPMG Actuaries, the Company lodged a submission with the SCI stating that the Company would recommend to its shareholders that they approve the provision of an unspecified amount of additional funding to enable an effective statute-based scheme to compensate all future claimants for asbestos-related injuries for which Amaca and Amaba may become liable. The Company proposed that the statutory scheme include the following elements:

- speedy, fair and equitable compensation for all existing and future claimants, including objective criteria to reduce superimposed inflation. Superimposed inflation is inflation in claim awards above the underlying rate of inflation and is sometimes called judicial inflation;

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- contributions to be made in a manner which provide certainty to claimants as to their entitlement, the scheme administrator as to the amount available for distribution, and the proposed contributors (including the Company) as to the ultimate amount of their contributions;
- significant reductions in legal costs through reduced and more abbreviated litigation; and
- limitation of legal avenues outside of the scheme.

The submission stated that the proposal was made without any admission of liability or prejudice to the Company's rights or defenses.

The SCI issued its report on September 21, 2004. The following is a summary of the principal findings of the SCI relating to the Company based on the SCI's report and other information available to the Company.

This summary does not contain all of the findings contained or observations made in the SCI report. It should be noted that the SCI is not a court and, therefore, its findings have no legal force.

Principal findings in favor of the Company

The principal findings in favor of the Company were that:

- the establishment of the Foundation was legally effective and causes of action which the Foundation, Amaba or Amaca might have against the James Hardie Group, its officers and advisers would be unlikely to result in any significant increase in the funds of Amaba, Amaca or the Foundation (putting this finding conversely, the Company is unlikely to face any significant liability to the Foundation, Amaba or Amaba as a result of the then current causes of action of such entities against the current members of the James Hardie Group);
- there was no finding that JHI NV had committed any material breach of any law as a result of the separation and reorganization transactions which took place in 2001;
- many of the allegations and causes of action put forward by lawyers for the Foundation, Amaba and Amaca were "speculative"; and
- the SCI rejected the suggestion that JHI NV had breached any law or was part of a conspiracy in relation to the fact that the reorganization scheme documents prepared in 2001 did not refer to the possibility of the partly-paid shares being cancelled (the shares were cancelled in 2003).

Other principal findings relevant to the Company

The other principal findings relevant to the Company were that:

- as a practical (but not legal) matter, if the "right" amount (and not merely the minimum amount) of funding was not provided to the Foundation, the Company would face potential legislative, customer, union and public action to apply legislative and boycott measures and public pressure to ensure that the Company met any significant funding shortfall; and
- the directors of ABN 60 at the time of the cancellation of the partly-paid shares (Messrs Morley and Salter) effectively followed the instructions of JHI NV in relation to the cancellation. As a result, it might be concluded that JHI NV was a shadow director of ABN 60 at that time. However, while expressing some reservations about what occurred, the SCI did not find that the ABN 60 directors (including JHI NV as a shadow director) breached their duties in undertaking the cancellation.

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James Hardie Industries N.V. and Subsidiaries **Notes to Consolidated Financial Statements — (Continued)**

Principal findings against ABN 60 (formerly called JHIL)

A number of further findings (positive and adverse) were also made in relation to ABN 60, which is not a current member of the James Hardie Group. Such findings were not directed against the Company. For the reasons provided above, the Company does not believe that it will have any liability under current Australian law if future liabilities of ABN 60 or ABN 60 Foundation exceed the funds available to those entities. This includes liabilities that may attach to ABN 60 or ABN 60 Foundation as a result of claims made, if successful, in connection with the transactions involved in the establishment of the ABN 60 Foundation and the separation of ABN 60 from the Company.

The SCI found that, given ABN 60's limited financial resources, ABN 60 would need to be able to succeed in making a claim against JHI NV in respect of the cancellation of the partly-paid shares before claims by Amaba or Amaca against ABN 60 had any practical value. Although expressing reservations about what occurred, the SCI did not find that the directors of ABN 60 had breached their duty in canceling the partly-paid shares.

The SCI did not make any finding that any cause of action by ABN 60 with respect to the partly-paid shares was likely to succeed.

Principal findings against Mr. Macdonald and Mr. Shafron

The principal (but non-determinative) findings against Messrs Macdonald and Shafron pertained to their conduct while officers of ABN 60 in relation to:

- alleged false and misleading conduct associated with a February 16, 2001 press release, particularly regarding a statement that the Foundation was “fully funded” in contravention of New South Wales and Commonwealth legislation prohibiting false or misleading conduct;
- allegedly breaching their duties as officers of ABN 60 by encouraging the board of directors of ABN 60 to act on the Trowbridge report, dated February 13, 2001 (the “Trowbridge Report”), in forming a view that the Foundation would be “fully funded”; and
- criticisms, falling short of findings of contraventions of law, based on their respective roles in the separation and reorganization transactions. These included criticisms relating to their development, control over, reliance on and use of the Trowbridge Report, despite (in the SCI's view) their knowledge of its limitations.

The Commissioner noted that he had not carried out an exhaustive investigation and concluded that it was a matter for Commonwealth authorities (notably the Australian Securities and Investments Commission “ASIC”) to determine whether any further action should be taken in relation to matters which the Commissioner considered comprised, or might be likely to have comprised, contraventions of Australian corporations law. The Commissioner acknowledged that in relation to various of his findings, there was an issue as to whether Amaba or Amaca suffered any loss or damage from the actions reviewed by him but in this regard he did not find it necessary to reach any definitive conclusion.

In relation to the question of the funding of the Foundation, the SCI found that there was a significant funding shortfall. In part, this was based on actuarial work commissioned by the Company indicating that the discounted value of the central estimate of the asbestos liabilities of Amaca and Amaba was approximately A\$1.573 billion as of June 30, 2003. The central estimate was calculated in accordance with Australian Actuarial Standards, which differ from generally accepted accounting principles in the United States. As of June 30, 2003, the undiscounted value of the central estimate of the asbestos liabilities of Amaca and Amaba, as determined by KPMG Actuaries, was approximately A\$3.403 billion (\$2.272 billion). The SCI found that the net assets of the Foundation and the ABN 60 Foundation were not sufficient to meet these prospective liabilities and were likely to be exhausted in the first half of 2007.

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James Hardie Industries N.V. and Subsidiaries **Notes to Consolidated Financial Statements — (Continued)**

In relation to the Company's statutory scheme proposal, the SCI reported that there were several issues that needed to be refined quite significantly but that it would be an appropriate starting point for devising a compensation scheme.

The SCI's findings are not binding and if the same issues were presented to a court, the court might come to different conclusions on one or more of the issues.

Events Following the SCI Findings

The NSW Government stated that it would not consider assisting the implementation of any proposal advanced by the Company unless it was the result of an agreement reached with the unions acting through the Australian Council of Trade Unions ("ACTU"), UnionsNSW (formerly known as the Labor Council of New South Wales), and a representative of the asbestos claimants (together, the "Representatives"). The statutory scheme that the Company proposed on July 14, 2004 was not accepted by the Representatives.

The Company continues to believe that, apart from the obligations it voluntarily assumed under the Final Funding Agreement described herein and as discussed below under the subheading "Interim Funding and ABN 60 Indemnity," under current Australian law, it is not legally liable for any shortfall in the assets of Amaca, Amaba, the Foundation, the ABN 60 Foundation or ABN 60.

Following the release of the SCI report, the Representatives and others indicated that they would encourage or continue to encourage consumers and union members in Australia and elsewhere to ban or boycott the Company's products, to demonstrate or otherwise create negative publicity toward the Company in order to influence the Company's approach to the discussions with the NSW Government or to encourage governmental action if the discussions were unsuccessful. The Company's financial position, results of operations and cash flows were affected by such bans and boycotts, although the impact was not material. The Representatives and others also indicated that they might take actions in an effort to influence the Company's shareholders, a significant number of which are located in Australia, to approve any proposed arrangement. Pursuant to the Final Funding Agreement, the Representatives agreed to use their best endeavors to achieve forthwith the lifting of all bans or boycotts on any products manufactured, produced or sold by the Company, and the Company and the Representatives signed a deed of release in December 2005 under which the Company agreed to release the Representatives and the members of the ACTU and UnionsNSW from civil liability arising in relation to bans or boycotts instituted as a result of the events described above. Such releases did not extend to any new bans or boycotts, if applicable, implemented after the date of signing of the Final Funding Agreement, or to any bans or boycotts which persisted beyond January 1, 2006. The Company is aware of a number of bans or boycotts having been lifted, and is monitoring the progress towards the lifting of a number of remaining bans or boycotts. However, if the conditions precedent to the Final Funding Agreement are not satisfied or if for any other reason that agreement is not implemented, it remains the case that fresh bans or boycotts could be implemented against the Company's products. Any such measures, and the influences resulting from them, could have a material adverse impact on the Company's financial position, results of operations and cash flows.

On October 28, 2004, the NSW Premier announced that the NSW Government would seek the agreement of the Ministerial Council, comprising Ministers of the Commonwealth and the Australian States and Territories, to allow the NSW Government to pass legislation which he announced would "wind back James Hardie's corporate restructure and rescind the cancellation of A\$1.9 billion in partly-paid shares." The announcement said that "the laws will effectively enforce the liability (for asbestos-related claims) against the Dutch parent company."

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On November 5, 2004, the Australian Attorney-General and the Parliamentary Secretary to the Treasurer (the two relevant ministers of the Australian Federal Government) issued a news release stating that the Ministerial Council for Corporations (the relevant body of Federal, State and Territory Ministers) (“MINCO”) had unanimously agreed “to support a negotiated settlement that will ensure that victims of asbestos-related diseases receive full and timely compensation from James Hardie” and if “the current negotiations between James Hardie, the ACTU and asbestos victims do not reach an acceptable conclusion, MINCO also agreed in principle to consider options for legislative reform.” The news release of November 5, 2004 indicated that treaties to enforce Australian judgments in Dutch and US courts are not required, but that the Australian Government had been involved in communications with Dutch and US authorities regarding arrangements to ensure that Australian judgments are able to be enforced where necessary. If the conditions precedent to the full implementation of the Final Funding Agreement are not satisfied or if otherwise the Final Funding Agreement is terminated by James Hardie, the Company is aware that legislative intervention may ensue but has no detailed information as to the content of any such legislation.

Heads of Agreement

On December 21, 2004, the Company announced that it had entered into a non-binding Heads of Agreement with the NSW Government and the Representatives which was expected to form the basis of a proposed binding agreement under which a subsidiary of the Company would agree to provide, and the Company would guarantee, funding payments to a special purpose fund established to provide funding on a long-term basis to be applied towards meeting proven asbestos-related personal injury and death claims (“Claims”) against the Former James Hardie Companies. The Heads of Agreement set out the key principles to be reflected in a more detailed legally binding agreement.

Negotiations between the NSW Government and the Company as to the terms of such legally binding agreement continued throughout 2005 and resulted in the execution of the Final Funding Agreement as described herein.

Extension of Heads of Agreement to cover Baryulgil claims

On April 15, 2005, the Company announced that it had extended the coverage of the funding arrangements agreed under the Heads of Agreement to enable the SPF to settle or meet proven Claims by members of the Baryulgil community in Australia against Asbestos Mines Pty Ltd (“Asbestos Mines”), which conducted asbestos-related mining activities in Baryulgil, NSW. Asbestos Mines began mining at Baryulgil in 1944 as a joint venture between Wunderlich Ltd (now Seltsam Ltd, an entity of CSR Ltd) and a former James Hardie subsidiary (now Amaca Pty Ltd.) From 1954 until 1976, Asbestos Mines was a wholly owned subsidiary of James Hardie Industries Limited (now ABN 60). Asbestos Mines, which has subsequently been renamed Marlew Mining Pty Ltd, has not been part of the James Hardie Group since 1976, when it was sold to Woodsreef Mines Ltd (subsequently renamed Mineral Commodities Ltd). The Company has no current right to access any Claims information in relation to Claims against Asbestos Mines, and has no current involvement in the management or settlement of such Claims.

Interim Funding and ABN 60 Indemnity

The Company has previously announced a number of measures in relation to the funding position of the Foundation prior to the Company’s entry into the Final Funding Agreement. On December 3, 2004, and in part as a result of initiatives undertaken by the Company, the Foundation received a payment of A\$88.5 million from ABN 60 for use in processing and meeting asbestos-related claims pursuant to the terms of a deed of covenant and indemnity which ABN 60, Amaca and Amaba had entered into in February 2001.

The Company facilitated the payment of such funds by granting an indemnity (under a separate deed of indemnity) to the directors of ABN 60, which it announced on November 16, 2004. Under the terms of that

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James Hardie Industries N.V. and Subsidiaries **Notes to Consolidated Financial Statements — (Continued)**

indemnity, the Company agreed to meet any liability incurred by the ABN 60 directors resulting from the release of the A\$88.5 million by ABN 60 to the Foundation. The Company believes that the release of funding by ABN 60 is in accordance with law and effective contracts and therefore the Company should not incur liability under this indemnity. The Company has not received any claim nor made any payments in relation to this indemnity.

Additionally, on November 16, 2004, the Company offered to provide funding to the Foundation on an interim basis for a period of up to six months from that date. Such funding would only be provided once existing Foundation funds (in particular, funding available to Amaca and Amaba) had been exhausted. On the basis of updated information provided to KPMG Actuaries by representatives of the Foundation as to the incidence of claims and the current net assets of the Amaca and Amaba, and assuming such incidence of claims continues, the Company considers that it is unlikely that the Foundation funds will be exhausted before late calendar year 2006.

On March 31, 2005, the Company announced that it would extend the timing of its commitment to assist the Foundation to obtain interim funding, if necessary, prior to the Final Funding Agreement being finalized in accordance with the updated timetable announced on that date.

The Company has not recorded a provision for either the indemnity or the potential payments under the interim funding proposal. The Company has not been required to make any payments pursuant to this commitment.

With regard to the ABN 60 indemnity, there is no maximum value or limit on the amount of payments that may be required. As such, the Company is unable to disclose a maximum amount that could be required to be paid. The Company believes, however, that the expected value of any potential future payments resulting from the ABN 60 indemnity is zero and that the likelihood of any payment being required under this indemnity is remote.

Releases From Civil Liability

The Final Funding Agreement was supplemented by legislation passed by the NSW Government to provide releases to the James Hardie Group and to current and former directors, officers, employees, agents and advisers of James Hardie Group members from all civil liabilities in connection with, among other matters, the establishment and funding (or underfunding) of the Foundation as described above, the corporate reorganizations of the James Hardie Group in 2001 and other matters examined by the SCI.

The full form of the statutory releases is set out in legislation passed by the NSW Parliament and contained in the *James Hardie (Civil Liability) Act 2005* and the *James Hardie (Civil Penalty Compensation Release) Act 2005*. The term “civil liabilities” is not defined in that legislation and therefore bears its ordinary meaning under Australian law. When introducing that legislation into the NSW Parliament, the Attorney General of New South Wales stated that the legislation was intended to extinguish liabilities for civil penalties for which a compensation order may be imposed under the Corporations Act 2001 (Cth), but it was not intended to release the released persons from any other kind of civil penalty orders that may be imposed (including any liabilities for fines, orders banning individuals from being directors, or court declaration that a contravention of a civil penalty provision has occurred). Australian courts may have regard to those statements in determining the scope of civil liabilities released under this legislation, where they consider that the natural and ordinary meaning of “civil liabilities” is ambiguous or obscure.

That legislation also released certain persons in relation to the entry by JHI NV and the Performing Subsidiary into the Heads of Agreement, the Final Funding Agreement and the Related Agreements and their implementation by the James Hardie Group, and the circumstances giving rise to the same. However, such releases did not affect the obligations of JHI NV and the Performing Subsidiary set out in the Final Funding Agreement or Related Agreements.

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Notes to Consolidated Financial Statements — (Continued)

The NSW Government has also undertaken to refrain from taking any action inconsistent with such releases and extinguishments. The releases and extinguishments contained in the legislation described above are permanent in relation to all released persons who are natural persons. In relation to companies and other non-natural persons who were released under that legislation, the releases and extinguishments may be suspended by the NSW Government if the Performing Subsidiary is and remains in breach of any obligation to make a funding payment under the Final Funding Agreement or of its obligations not to undertake certain prejudicial specified dealings, and the Performing Subsidiary or the Company has not remedied the breach within three months of the Company having received a notice under the Final Funding Agreement.

Actuarial Study; Claims Estimate

The Company commissioned an updated actuarial study of potential asbestos-related liabilities as of March 31, 2006. Based on the results of these studies, it is estimated that the discounted value of the central estimate for claims against the Former James Hardie companies was approximately A\$1.52 billion (\$1.14 billion). The undiscounted value of the central estimate of the asbestos-related liabilities of Amaca and Amaba as determined by KPMG Actuaries was approximately A\$3.08 billion (\$2.3 billion). Actual liabilities of those companies for such claims could vary, perhaps materially, from the central estimate described above. This central estimate is calculated in accordance with Australian Actuarial Standards, which differ from accounting principles generally accepted in the United States.

In estimating the potential financial exposure, the actuaries made assumptions related to the total number of claims which were reasonably estimated to be asserted through 2071, the typical cost of settlement (which is sensitive to, among other factors, the industry in which the plaintiff claims exposure, the alleged disease type and the jurisdiction in which the action is being brought), the legal costs incurred in the litigation of such claims, the rate of receipt of claims, the settlement strategy in dealing with outstanding claims and the timing of settlements.

Further, the actuaries have relied on the data and information provided by the Foundation and Amaca Claim Services, Amaca Pty Ltd (Under NSW External Administration) (“ACS”) and assumed that it is accurate and complete in all material respects. The actuaries have not verified the information independently nor established the accuracy or completeness of the data and information provided or used for the preparation of the report.

Due to inherent uncertainties in the legal and medical environment, the number and timing of future claim notifications and settlements, the recoverability of claims against insurance contracts, and estimates of future trends in average claim awards, as well as the extent to which the above-named entities will contribute to the overall settlements, the actual amount of liability could differ materially from that which is currently projected.

A sensitivity analysis has been performed to determine how the actuarial estimates would change if certain assumptions (i.e., the rate of inflation and superimposed inflation, the average costs of claims and legal fees, and the projected numbers of claims) were different from the assumptions used to determine the central estimates. This analysis shows that the discounted central estimates could be in a range of A\$1.0 billion (\$0.7 billion) to A\$2.5 billion (\$1.8 billion) (undiscounted estimates of A\$1.8 billion (\$1.4 billion) to A\$5.3 billion (\$3.9 billion) as of March 31, 2006. It should be noted that the actual cost of the liabilities could be outside of that range depending on the results of actual experience relative to the assumptions made.

The potential range of costs as estimated by KPMG Actuaries is affected by a number of variables such as nil settlement rates (where no settlement is payable by the Former James Hardie Companies because the claim settlement is borne by other asbestos defendants (other than the Former James Hardie subsidiaries) which are held liable), peak year of claims, past history of claims numbers, average settlement rates, past history of Australian asbestos-related medical injuries, current number of claims, average defense and plaintiff

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legal costs, base wage inflation and superimposed inflation. The potential range of losses disclosed includes both asserted and unasserted claims. While no assurances can be provided, if the Final Funding Agreement is approved by all of the necessary parties, including the Company's Board of Directors, shareholders and lenders, the Company expects to be able to partially recover losses from various insurance carriers. As of March 31, 2006, KPMG Actuaries' undiscounted central estimate of asbestos-related liabilities was A\$3.1 billion (\$2.2 billion). This undiscounted central estimate is net of expected insurance recoveries of A\$504.8 million (\$379.9 million) after making a general credit risk allowance for bad debt insurance carriers and an allowance for A\$65.5 million (\$49.3 million) of "by claim" or subrogation recoveries from other third parties.

Currently, the timing of any potential payments is uncertain because the conditions precedent to the Final Funding Agreement have not been satisfied. In addition, the Company has not yet incurred any settlement costs pursuant to its offer to provide the Foundation with interim funding, which is described above under the heading "Interim Funding and ABN 60 Indemnity" because the Foundation continues to meet all claims of Amaca and Amaba.

Claims Data

The following table, provided by KPMG Actuaries, shows the number of claims pending as of March 31, 2006 and 2005:

	Years Ended March 31	
	2006	2005
Australia	556	712
New Zealand	—	—
Unknown — Court Not Identified(1)	20	36
USA	1	1

(1) The "Unknown — Court Not Identified" designation reflects that the information for such claims had not been, as of the date of publication, entered into the database which the Foundation maintains. Over time, as the details of "unknown" claims are provided to the Foundation, the Company believes the database is updated to reflect where such claims originate. Accordingly, the Company understands the number of unknown claims pending fluctuates due to the resolution of claims as well as the reclassification of such claims.

For the years ended March 31, 2006, 2005 and 2004 the following tables, provided by KPMG Actuaries, show the claims filed, the number of claims dismissed, settled or otherwise resolved for each period, and the average settlement amount per claim.

	Australia Years Ended March 31					
	2006		2005		2004	
Number of claims filed	346		489		379	
Number of claims dismissed	97		62		119	
Number of claims settled or otherwise resolved	405		402		316	
Average settlement amount per claim	A\$ 151,883		A\$ 157,594		A\$ 167,450	
Average settlement amount per claim	US\$ 114,322		US\$ 116,572		US\$ 116,127	

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James Hardie Industries N.V. and Subsidiaries
Notes to Consolidated Financial Statements — (Continued)

	Unknown — Court Not Identified Years Ended March 31					
	2006		2005		2004	
Number of claims filed	6		7		1	
Number of claims dismissed	10		20		15	
Number of claims settled or otherwise resolved	12		2		—	
Average settlement amount per claim	A\$	198,892	A\$	47,000	A\$	—
Average settlement amount per claim	US\$	149,706	US\$	34,766	US\$	—

	USA Years Ended March 31					
	2006		2005		2004	
Number of claims filed	—		—		—	
Number of claims dismissed	—		3		1	
Number of claims settled or otherwise resolved	—		1		—	
Average settlement amount per claim	A\$	—	A\$	228,293	A\$	—
Average settlement amount per claim	US\$	—	US\$	168,868	US\$	—

The following table, provided by KPMG Actuaries, shows the activity related to the numbers of open claims, new claims, and closed claims during each of the past five years and the average settlement per settled claim and case closed.

	Years Ended March 31				
	2006	2005	2004	2003	2002
Number of open claims at beginning of year	749	743	814	671	569
Number of new claims	352	496	380	409	375
Number of closed claims	524	490	451	266	273
Number of open claims at year-end	577	749	743	814	671
Average settlement amount per settled claim	A\$ 153,236	A\$ 157,223	A\$ 167,450	A\$ 201,200	A\$ 197,941
Average settlement amount per case closed	A\$ 121,945	A\$ 129,949	A\$ 117,327	A\$ 177,752	A\$ 125,435
Average settlement amount per settled claim	US\$ 115,341	US\$ 116,298	US\$ 116,127	US\$ 112,974	US\$ 101,603
Average settlement amount per case closed	US\$ 91,788	US\$ 96,123	US\$ 81,366	US\$ 99,808	US\$ 64,386

The Company has not had any responsibility or involvement in the management of claims against ABN 60 since the time ABN 60 left the James Hardie Group in 2003. Since February 2001, when Amaca and Amaba were separated from the James Hardie Group, neither the Company nor any current subsidiary of the Company has had any responsibility or involvement in the management of claims against those entities. Prior to that date, the principal entity potentially involved in relation to such claims was ABN 60, which has not been a member of the James Hardie Group since March 2003. However, the Final Funding Agreement and associated New South Wales legislation contemplates that the SPF will have both the responsibility for and arrangement of claims against the Former James Hardie Companies, and that the Company will have the right to appoint a majority of the directors of the SPF unless a special default or insolvency event arises, as explained further above.

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James Hardie Industries N.V. and Subsidiaries Notes to Consolidated Financial Statements — (Continued)

On October 26, 2004, the Company, the Foundation and KPMG Actuaries entered into an agreement under which the Company would be entitled to obtain a copy of the actuarial report prepared by KPMG Actuaries in relation to the claims liabilities of the Foundation and Amaba and Amaca, and would be entitled to publicly release the final version of such reports. Under the terms of the Final Funding Agreement, but subject to it being implemented, the Company has obtained similar rights of access to actuarial information produced for the SPF by the actuary to be appointed by the SPF (the “Approved Actuary”). The Company’s future disclosures with respect to claims statistics is subject to it obtaining such information from the Approved Actuary. The Company has had no general right (and has not obtained any right under the Final Funding Agreement) to audit or otherwise require independent verification of such information or the methodologies to be adopted by the Approved Actuary. As a result, the Company cannot make any representations or warranties as to the accuracy or completeness of the actuarial information disclosed herein or that may be disclosed in the future.

SCI and Other Related Expenses

The Company has incurred substantial costs associated with the SCI and may incur material costs in the future related to the SCI or subsequent legal proceedings. The following are the components of SCI and other related expenses:

	Years Ended March 31	
	2006	2005
	(Millions of US dollars)	
SCI	\$ —	\$ 6.8
Internal investigation	—	4.9
ASIC investigation	0.8	1.2
Severance and consulting	0.1	6.0
Resolution advisory fees	9.8	6.4
Funding advice	2.9	0.6
Other	3.8	2.2
Total SCI and other related expenses	\$ 17.4	\$ 28.1

Internal investigation costs reflect costs incurred by the Company in connection with an internal investigation conducted by independent legal advisors to investigate allegations raised during the SCI and the preparation and filing of the Company’s annual financial statements in the United States.

ASIC

ASIC has announced that it is conducting an investigation into the events examined by the SCI, without limiting itself to the evidence compiled by the SCI. ASIC has served notices to produce relevant documents upon the Company and various directors and officers of the Company and upon certain of the Company’s advisers and auditors at the time of the separation and restructure transactions described above. ASIC has also served notices requiring the Company and ABN 60 to produce certain computerized information and requiring certain current and former directors and officers of ABN 60 or the Company to present themselves for examination by ASIC delegates. So far as the Company is aware, the individuals who have been required to attend such examinations have done so. To date, ASIC has announced that it is investigating various matters, but it has not specified the particulars of alleged contraventions under investigation, nor has it announced that it has reached any conclusion that any person or entity has contravened any relevant law.

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To assist ASIC's investigation, the Australian Federal Government enacted legislation to abrogate the legal professional privilege which would otherwise have attached to certain documents relevant to matters under investigation or to any future civil proceedings to be taken. The legislation is set out in the *James Hardie (Investigations and Proceedings) Act 2004*.

The Company may incur liability to meet the costs of current or former directors, officers or employees of the James Hardie Group to the extent that those costs are covered by indemnity arrangements granted by the Company to those persons. To date, no claims have been received from any current or former officers in relation to the ASIC investigation, except in relation to the examination by a former director of ABN 60 by ASIC delegates, the amount of which cannot be assessed at present. In relation to this claim and any others that may arise, the Company may be reimbursed in whole or in part under directors' and officers' insurance policies maintained by the Company.

Financial Position of the Foundation

On the basis of the current cash and financial position of the Foundation's subsidiaries (Amaca and Amaba) and following the Company's entry into the Heads of Agreement, the applications previously made to the Supreme Court of NSW by the Foundation for the appointment of a provisional liquidator to the Foundation's subsidiaries were dismissed with the Foundations consent. Such applications have now been rendered unnecessary by the passage of the civil liability release legislation described above.

The potential for Amaba, Amaca or ABN 60 to be placed into insolvency has been further reduced by legislation passed in NSW (the *James Hardie Former Subsidiaries (Winding Up and Administration) Act 2005*), parts of which came into force on December 2, 2005 and which will, when fully effective, replace the *James Hardie Former Subsidiaries (Special Provisions) Act 2005*. That legislation maintains the *status quo* of Amaca, Amaba and ABN 60, including by providing for a statutory form of administration for those entities so as to prevent them being placed into administration or liquidation under the provisions of the Australian Corporations Act which would usually apply to an insolvent Australian company. The legislation also sought to ensure that the directors of those entities would not seek to remove the assets or the register of shares in those entities outside New South Wales.

The Company believes it is possible that future costs related to the Company's implementation of the Final Funding Agreement may be material. The Company does not expect any material additional costs to be incurred in connection with the SCI.

Environmental and Legal

The operations of the Company, like those of other companies engaged in similar businesses, are subject to a number of federal, state and local laws and regulations on air and water quality, waste handling and disposal. The Company's policy is to accrue for environmental costs when it is determined that it is probable that an obligation exists and the amount can be reasonably estimated. In the opinion of management, based on information presently known except as set forth above, the ultimate liability for such matters should not have a material adverse effect on either the Company's consolidated financial position, results of operations or cash flows.

The Company is involved from time to time in various legal proceedings and administrative actions incidental or related to the normal conduct of its business. Although it is impossible to predict the outcome of any pending legal proceeding, management believes that such proceedings and actions should not, except as it relates to asbestos as described above, individually or in the aggregate, have a material adverse effect on either its consolidated financial position, results of operations or cash flows.

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Operating Leases

As the lessee, the Company principally enters into property, building and equipment leases. The following are future minimum lease payments for non-cancelable operating leases having a remaining term in excess of one year at March 31, 2006:

Years Ending March 31:	(Millions of US dollars)	
2007	\$	15.8
2008		14.0
2009		12.3
2010		11.1
2011		10.9
Thereafter		78.7
Total	\$	142.8

Rental expense amounted to \$12.5 million, \$9.1 million and \$8.1 million for the years ended March 31, 2006, 2005 and 2004, respectively.

Capital Commitments

Commitments for the acquisition of plant and equipment and other purchase obligations, primarily in the United States, contracted for but not recognized as liabilities and generally payable within one year, were \$22.2 million at March 31, 2006.

13. Income Taxes

Income tax expense includes income taxes currently payable and those deferred because of temporary differences between the financial statement and tax bases of assets and liabilities. Income tax expense for continuing operations consists of the following components:

	Years Ended March 31		
	2006	2005	2004
	(Millions of US dollars)		
Income from continuing operations before income taxes:			
Domestic(1)	\$ 113.7	\$ 90.5	\$ 103.5
Foreign	(548.8)	99.3	62.2
(Loss) income from continuing operations before income taxes:	\$ (435.1)	\$ 189.8	\$ 165.7
Income tax expense:			
Current:			
Domestic(1)	\$ (9.0)	\$ (14.1)	\$ (6.7)
Foreign	(91.5)	(37.1)	(20.4)
Current income tax expense	(100.5)	(51.2)	(27.1)

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James Hardie Industries N.V. and Subsidiaries
Notes to Consolidated Financial Statements — (Continued)

	Years Ended March 31		
	2006	2005	2004
	(Millions of US dollars)		
Deferred:			
Domestic(1)	(0.3)	5.0	(3.9)
Foreign	29.2	(15.7)	(9.4)
Deferred income tax expense	28.9	(10.7)	(13.3)
Total income tax expense for continuing operations	<u>\$ (71.6)</u>	<u>\$ (61.9)</u>	<u>\$ (40.4)</u>

(1) Since JHI NV is the Dutch parent holding company, domestic represents The Netherlands.

Income tax expense computed at the statutory rates represents taxes on income applicable to all jurisdictions in which the Company conducts business, calculated as the statutory income tax rate in each jurisdiction multiplied by the pre-tax income attributable to that jurisdiction. Income tax expense from continuing operations is reconciled to the tax at the statutory rates as follows:

	Years Ended March 31		
	2006	2005	2004
	(Millions of US dollars)		
Income tax expense computed at statutory tax rates	\$ 121.0	\$ (65.3)	\$ (60.7)
US state income taxes, net of the federal benefit	(7.1)	(5.3)	(0.2)
Asbestos provision	(214.7)	—	—
Benefit from Dutch financial risk reserve regime	12.7	18.1	24.8
Expenses not deductible	(3.4)	(2.3)	(2.5)
Non-assessable items	1.4	—	1.3
Losses not available for carryforward	(2.6)	(2.4)	—
Change in reserves	20.7	(3.7)	(3.9)
Other items	0.4	(1.0)	0.8
Total income tax expense	<u>\$ (71.6)</u>	<u>\$ (61.9)</u>	<u>\$ (40.4)</u>
Effective tax rate	<u>16.5%</u>	<u>32.6%</u>	<u>24.4%</u>

Deferred tax balances consist of the following components:

	March 31	
	2006	2005
	(Millions of US dollars)	
Deferred tax assets:		
Provisions and accruals	\$ 33.2	\$ 29.0
Net operating loss carryforwards	8.9	12.8
Capital loss carryforwards	31.2	33.7
Taxes on intellectual property transfer	8.3	10.0
Total deferred tax assets	81.6	85.5
Valuation allowance	(35.2)	(38.1)
Total deferred tax assets net of valuation allowance	<u>46.4</u>	<u>47.4</u>

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James Hardie Industries N.V. and Subsidiaries
Notes to Consolidated Financial Statements — (Continued)

	<u>March 31</u>	
	<u>2006</u>	<u>2005</u>
	(Millions of US dollars)	
Deferred tax liabilities:		
Property, plant and equipment	(91.7)	(86.9)
Prepaid pension cost	(1.8)	(2.5)
Total deferred tax liabilities	(93.5)	(89.4)
Foreign currency movements	2.8	2.8
Net deferred tax liabilities	<u>\$ (44.3)</u>	<u>\$ (39.2)</u>

Under SFAS No. 109, "Accounting for Income Taxes," the Company establishes a valuation allowance against a deferred tax asset if it is more likely than not that some portion or all of the deferred tax asset will not be realized. The Company has established a valuation allowance pertaining to a portion of its Australian net operating loss carryforwards and all of its Australian capital loss carryforwards. The valuation allowance decreased by \$2.9 million during fiscal year 2006 primarily due to foreign currency movements.

As of March 31, 2006, the Company had Australian tax loss carryforwards of approximately \$23.7 million that will never expire. As of March 31, 2006, the Company had a \$13.8 million valuation allowance against the Australian tax loss carryforwards.

As of March 31, 2006, the Company had \$103.9 million in Australian capital loss carryforwards which will never expire. At March 31, 2006, the Company had a 100% valuation allowance against the Australian capital loss carryforwards.

As of March 31, 2006, the undistributed earnings of non-Dutch subsidiaries approximated \$475.6 million. The Company intends to indefinitely reinvest these earnings, and accordingly, has not provided for taxes that would be payable upon remittance of those earnings. The amount of the potential deferred tax liability related to undistributed earnings is impracticable to determine at this time.

Due to the size of the Company and the nature of its business, the Company is subject to ongoing reviews by taxing jurisdictions on various tax matters, including challenges to various positions the Company asserts on its income tax returns. The Company accrues for tax contingencies based upon its best estimate of the taxes ultimately expected to be paid, which it updates over time as more information becomes available. Such amounts are included in taxes payable or other non-current liabilities, as appropriate. If the Company ultimately determines that payment of these amounts is unnecessary, the Company reverses the liability and recognizes a tax benefit during the period in which the Company determines that the liability is no longer necessary. The Company records an additional charge in the period in which it determines that the recorded tax liability is less than it expects the ultimate assessment to be.

In fiscal year 2006, the Company finalized certain tax audits and paid all additional amounts due for the applicable fiscal years and recorded a \$20.7 million tax benefit to reduce amounts accrued in excess of all amounts paid.

In fiscal year 2005, the Company settled certain tax audits and filed amended income tax returns and paid additional tax for the applicable fiscal years. The Company recorded a \$2.5 million tax benefit to reduce amounts accrued in excess of all amounts paid.

Relevant tax authorities from various jurisdictions in which the Company operates are in the process of auditing the Company's respective jurisdictional income tax returns for various ranges of years. Of the audits currently being conducted none have progressed sufficiently to predict their ultimate outcome. The Company accrues income tax liabilities for these audits based upon knowledge of all relevant facts and circumstances,

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James Hardie Industries N.V. and Subsidiaries Notes to Consolidated Financial Statements — (Continued)

taking into account existing tax laws, its experience with previous audits and settlements, the status of current tax examination and how the tax authorities view certain issues.

The Company currently derives significant tax benefits under the US-Netherlands tax treaty. The treaty was amended during fiscal year 2005 and became effective for the Company on February 1, 2006. The amended treaty provides, among other things, new requirements that the Company must meet for the Company to continue to qualify for treaty benefits and its effective income tax rate. During fiscal year 2006, the Company made changes to its organizational and operational structure to satisfy the requirements of the amended treaty and believes that it is now in compliance and should continue qualifying for treaty benefits. However, if during a subsequent tax audit or related process the Internal Revenue Service (“IRS”) determines that these changes do not meet the new requirements, the Company may not qualify for treaty benefits; its effective income tax rate could significantly increase beginning in the fiscal year that such determination is made; and it could be liable for taxes owed from the effective date of the amended treaty provisions.

In March 2006, RCI Pty Ltd (RCI) a wholly owned subsidiary of the Company received an amended assessment from the Australian Taxation Office (“ATO”) in respect of RCI’s income tax return for the year ended March 31, 1999. The amended assessment relates to the amount of net capital gains arising as a result of an internal corporate restructure carried out in 1998 and has been issued pursuant to the discretion granted to the Commissioner of Taxation under Part IVA of the Income Tax Assessment Act 1936. The original amended assessment issued to RCI was for a total of A\$412.0 million. However, after a subsequent remission of general interest charges by the ATO, the total is now A\$378.0 million, comprised of the following:

	US\$	A\$
	(Millions of dollars)	
Primary tax after allowable credits	\$ 129.5	A\$ 172.0
Penalties(1)	32.4	43.0
General interest charges	122.7	163.0
Total amended assessment	<u>\$ 284.6</u>	<u>A\$ 378.0</u>

(1) Represents 25% of primary tax

In late 2005, the Tax Laws Amendment (Improvements to Self Assessment Act (No 2)) 2005 of Australia (the ROSA Act) came into effect. Prior to the ROSA Act becoming law, the ATO had the power to amend earlier tax assessments to give effect to a determination under the general anti avoidance provisions of the tax legislation, Part IVA, within six years after the date on which tax became due and payable under the earlier assessment. The ROSA Act changed this period from six to four years. Unlike the other changes made by the ROSA Act to the ATO’s powers to amend earlier assessments (which apply only to the 2005 and later tax years), the changes to Part IVA operated immediately from royal assent on December 15, 2005. The amended assessment was issued to RCI to give effect to a Part IVA determination after the ROSA Act became law, but was issued after the four year period had expired (although just before the old six year period had expired).

The ATO has acknowledged in writing to the Company that this was an issue and deferred the time for payment of tax to June 30, 2006 because of the uncertainty. The Government announced on May 9, 2006 that there had been a drafting error and that a law would be presented to Parliament to ensure retrospectively that the relevant Part IVA changes would only take effect from the 2005 and later tax years. The Company has not seen any draft law.

Even though the ATO did not appear to have the power to make and issue the amended assessment because it was out of time (subject to retrospective correcting legislation being passed), there remains an issue

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James Hardie Industries N.V. and Subsidiaries **Notes to Consolidated Financial Statements — (Continued)**

as to whether the amended assessment is valid until successfully challenged in Court, or whether it is invalid and a nullity.

However, if the validity of the amended assessment is confirmed, there is a range of possible payment outcomes in accordance with the ATO Receivable Policy. These will be subject to negotiation with the ATO and include RCI paying the entire assessment on June 30, 2006 or entering into an arrangement with the ATO to pay at least 50% of the primary tax on June 30, 2006.

The Company believes that RCI's tax position will ultimately prevail in this matter. Accordingly, it is expected that any amounts paid on June 30, 2006 (or any later time) would be recovered by RCI (with interest) at the time RCI is successful in its appeal against the amended assessment.

RCI strongly disputes the amended assessment and is pursuing all avenues of objection and appeal to contest the ATO's position in this matter. The ATO has confirmed that RCI has a reasonably arguable position that the amount of net capital gains arising as a result of the corporate restructure carried out in 1998 has been reported correctly in fiscal year 1999 tax return and that Part IVA does not apply. As a result, the ATO reduced the amount of penalty from an automatic 50% of primary tax that would otherwise apply in these circumstances, to 25% of primary tax. In Australia, a reasonably arguable position means that the tax position is about as likely to be correct as it is not correct. The Company and RCI received legal and tax advice at the time of the transaction, during the ATO enquiries and following receipt of the amended assessment. The Company believes that the tax position reported in RCI's tax return for the 1999 year will be upheld on appeal. Accordingly, at this time, the Company is unable to determine with any certainty whether any amount will ultimately become payable by RCI or, if any amount is ultimately payable, the amount of any such payment. Therefore, the Company believes that the probable and estimable requirements under SFAS No. 5, "Accounting for Contingencies," for recording a liability have not been met and therefore has not recorded any liability at March 31, 2006 for the amended assessment.

14. Discontinued Operations

Building Systems

On May 30, 2003, the Company sold its New Zealand Building Systems business to a third party. A gain of \$1.9 million represented the excess of net proceeds from the sale of \$6.7 million over the net book value of assets sold of \$4.8 million. The proceeds from the sale were comprised of cash of \$5.0 million and a note receivable in the amount of \$1.7 million. As of March 31, 2005, the \$1.7 million note receivable had been collected in full.

ABN 60

Following the establishment of the ABN 60 Foundation, the Company no longer owns any shares of ABN 60. ABN 60 Foundation is managed by independent directors and operates entirely independently of the Company. Since that date, the Company has not and currently does not control the activities of ABN 60 or ABN 60 Foundation in any way. The Company has no economic interest, other than described in Note 12, in ABN 60 or ABN 60 Foundation and has no right to dividends or capital distributions made by the ABN 60 Foundation. Apart from the express indemnity for non-asbestos matters provided to ABN 60 and a possible arrangement to fund some or all future claimants for asbestos-related injuries caused by former James Hardie subsidiary companies and to the potential liabilities more fully described in Note 12, the Company does not believe it will have any liability under current Australian law should future liabilities of ABN 60 or ABN 60 Foundation exceed the funds available to those entities. As a result of the change in ownership of ABN 60 on March 31, 2003, a loss on disposal of \$0.4 million was recorded by James Hardie at March 31, 2003, representing the liabilities of ABN 60 (to the Foundation) of A\$94.6 million (\$57.2 million), the

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James Hardie Industries N.V. and Subsidiaries **Notes to Consolidated Financial Statements — (Continued)**

A\$94.5 million (\$57.1 million) in cash held on the balance sheet, and costs associated with the establishment and funding of ABN 60 Foundation.

Under the terms on which the ABN 60 Foundation was established, JHI NV agreed to indemnify ABN 60 Foundation for any non asbestos-related legal claims made on ABN 60 in relation to any acts or omissions of ABN 60 or its directors and officers which occurred prior to the transfer of ABN 60 to the ABN 60 Foundation. The indemnity is uncapped and the term of the indemnity is in perpetuity. James Hardie believes that the likelihood of any material non asbestos-related claims occurring, which would result in a call on this indemnity, is remote. As such, the Company has not recorded a liability for the indemnity. The Company has not pledged any assets as collateral for such indemnity.

Also under those terms of establishing the ABN 60 Foundation, Amaca, Amaba and ABN 60 agreed to indemnify JHI NV and its related corporate entities for past and future asbestos-related liabilities incurred by them as a result of the acts or omissions of ABN 60 prior to establishing the ABN 60 Foundation. Amaca, Amaba and ABN 60's obligation to indemnify JHI NV and its related entities includes asbestos-related claims that may arise associated with the manufacturing activities of those companies.

Disposal of Chile Business

In June 2005, the Company approved a plan to dispose of its Chile Fiber Cement business to Compañía Industrial El Volcan S.A. (Volcan). The sale closed on July 8, 2005. The Company received net proceeds of \$3.9 million and recorded a loss on disposal of \$0.8 million. This loss on disposal is included in other operating expense in the Company's consolidated statements of operations.

As part of the terms of the sale of the Chile Fiber Cement business to Volcan, the Company entered into a two-year take or pay purchase contract for fiber cement product manufactured by Volcan. The first year of the contract amounts to a purchase commitment of approximately \$2.8 million and the second year amounts to a purchase commitment of approximately \$2.1 million. As this contract qualifies as continuing involvement per SFAS No. 144, "Accounting for the Impairment or Disposal of Long Lived Assets," the operating results and loss on disposal of the Chile Fiber Cement business are included in the Company's income from continuing operations and are comprised of the following components:

	Years Ended March 31	
	2006	2005
	(Millions of US dollars)	
Chile Fibre Cement		
Net sales	\$ 5.1	\$ 13.3
Cost of goods sold	(3.5)	(10.1)
Gross profit	1.6	3.2
Selling, general and administrative expenses	(1.2)	(2.0)
Loss on disposal of business	(0.8)	—
Operating (loss) income	(0.4)	1.2
Interest expense	(0.2)	(0.4)
Net (loss) income	<u>\$ (0.6)</u>	<u>\$ 0.8</u>

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James Hardie Industries N.V. and Subsidiaries
Notes to Consolidated Financial Statements — (Continued)

The following are the results of operations of discontinued businesses:

	Years Ended March 31		
	2006	2005	2004
	(Millions of US dollars)		
Building Systems			
Net sales	\$ —	\$ —	\$ 2.9
Income before income tax expense	—	—	0.3
Income tax expense	—	—	(0.1)
Net income	—	—	0.2
Building Services			
Net sales	—	—	—
Loss before income tax benefit	—	(0.5)	—
Income tax benefit	—	0.2	—
Net loss	—	(0.3)	—
Total			
Net sales	—	—	2.9
(Loss) income before income tax benefit (expense)	—	(0.5)	0.3
Income tax benefit (expense)	—	0.2	(0.1)
Net (loss) income	—	(0.3)	0.2
(Loss) gain on disposal, net of income taxes	—	(0.7)	4.1
(Loss) income from discontinued operations	\$ —	\$ (1.0)	\$ 4.3

15. Stock-Based Compensation

At March 31, 2006, the Company had the following stock-based compensation plans: the Executive Share Purchase Plan; the 2001 Equity Incentive Plan; one Stock Appreciation Rights Plan; the Supervisory Board Share Plan and the Managing Board Transitional Stock Option Plan. As of March 31, 2006, the Company has no units outstanding under the following stock based compensation plans: Peter Donald Macdonald Share Option Plan; Peter Donald Macdonald Share Option Plan 2001; Peter Donald Macdonald Share Option Plan 2002; and Key Management Shadow Stock Incentive Plan.

The Company accounts for stock options using the fair value provisions of SFAS No. 123, which requires the Company to value stock options issued based upon an option pricing model and recognize this value as compensation expense over the periods in which the options vest.

The Company estimates the fair value of each option grant on the date of grant using the Black-Scholes option-pricing model. In the table below are the weighted average assumptions and weighted average fair values used for grants in fiscal year 2006, 2005 and 2004:

	Years Ended March 31		
	2006	2005	2004
Dividend yield	1.2%	1.1%	1.0%
Expected volatility	27.4%	29.1%	26.0%
Risk free interest rate	4.8%	3.2%	2.7%
Expected life in years	3.3	3.3	3.3
Weighted average fair value at grant date	A\$ 1.35	A\$ 1.35	A\$ 1.42

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James Hardie Industries N.V. and Subsidiaries **Notes to Consolidated Financial Statements — (Continued)**

Compensation expense arising from stock option grants as determined using the Black-Scholes model was \$5.9 million, \$3.0 million and \$3.2 million for the fiscal years ended March 31, 2006, 2005 and 2004, respectively.

Executive Share Purchase Plan

Prior to July 1998, JHIL issued stock under an Executive Share Purchase Plan (the “Plan”). Under the terms of the Plan, eligible executives purchased JHIL shares at their market price when issued. Executives funded purchases of JHIL shares with non-recourse, interest-free loans provided by JHIL and collateralized by the shares. In such cases, the amount of indebtedness is reduced by any amounts payable by JHIL in respect of such shares, including dividends and capital returns. These loans are generally payable within two years after termination of an executive’s employment. As part of the 2001 Reorganization, the identical terms of the agreement have been carried over to JHI NV. Variable plan accounting under the provisions of Accounting Principles Board (“APB”) Opinion No. 25 has been applied to the Executive Share Purchase Plan shares granted prior to April 1, 1995 and fair value accounting, pursuant to the requirements of SFAS No. 123, has been applied to shares granted after March 31, 1995. Accordingly, the Company recorded variable compensation expense of nil, nil and \$0.1 million for the years ended March 31, 2006, 2005 and 2004, respectively. No shares were issued to executives during fiscal year 2006, 2005 and 2004.

Managing Board Transitional Stock Option Plan

The Managing Board Transitional Stock Option Plan provides an incentive to the members of the Managing Board. The maximum number of ordinary shares that may be issued and outstanding or subject to outstanding options under this plan shall not exceed 1,380,000 shares. At March 31, 2006, there were 1,320,000 options outstanding under this plan.

The Company granted options to purchase 1,320,000 shares of the Company’s common stock at an exercise price per share equal to A\$8.53 under the Managing Board Transitional Stock Option plan on November 22, 2005 to the Managing Directors. As set out in the plan rules, the exercise price and the number of shares available on exercise may be adjusted on the occurrence of certain events, including new issues, share splits, right issues and capital reconstructions. 50% of these options become exercisable on the first business day on or after November 22, 2008, if the total shareholder returns (“TSR”) (essentially its dividend yield and common stock performance) from November 22, 2005 to that date was at least equal to the median TSR for the companies comprising the Company’s peer group, as set out in the plan. In addition, for each 1% increment that the Company’s TSR is above the median TSR an additional 2% of the options become exercisable. If any options remain unvested on the last business day of each six month period following November 22, 2008 and November 22, 2010, the Company will reapply the vesting criteria to those options on that business day.

2001 Equity Incentive Plan

On October 19, 2001 (the grant date), JHI NV granted a total of 5,468,829 stock options under the JHI NV 2001 Equity Incentive Plan (the “2001 Equity Incentive Plan”) to key US executives in exchange for their previously granted Key Management Equity Incentive Plan (“KMEIP”) shadow shares that were originally granted in November 2000 and 1999 by JHIL. These options may be exercised in five equal tranches (20% each year) starting with the first anniversary of the original shadow share grant.

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Notes to Consolidated Financial Statements — (Continued)

<u>Original Shadow Share Grant Date</u>	<u>Original Exercise Price</u>	<u>October 2001 Number of Options Granted</u>	<u>Option Expiration Date</u>
November 1999	A\$ 3.82	1,968,544	November 2009
November 2000	A\$ 3.78	3,500,285	November 2010

As set out in the plan rules, the exercise prices and the number of shares available on exercise may be adjusted on the occurrence of certain events, including new issues, share splits, rights issues and capital reconstructions. Consequently, the exercise price was reduced by A\$0.21, A\$0.38 and A\$0.10 for the November 2003, November 2002 and December 2001 returns of capital, respectively.

Under the 2001 Equity Incentive Plan, additional grants have been made at fair market value to management and other employees of the Company as follows:

<u>Share Grant Date</u>	<u>Original Exercise Price</u>	<u>Number of Options Granted</u>	<u>Option Expiration Date</u>
December 2001	A\$ 5.65	4,248,417	December 2011
December 2002	A\$ 6.66	4,037,000	December 2012
December 2003	A\$ 7.05	6,179,583	December 2013
December 2004	A\$ 5.99	5,391,100	December 2014
February 2005	A\$ 6.30	273,000	February 2015
December 2005	A\$ 8.90	5,224,100	December 2015
March 2006	A\$ 9.50	40,200	March 2016

Each option confers the right to subscribe for one ordinary share in the capital of JHI NV. The options may be exercised as follows: 25% after the first year; 25% after the second year; and 50% after the third year. All unexercised options expire 10 years from the date of issue or 90 days after the employee ceases to be employed by the Company. Also, as set out in the plan rules, the exercise prices and the number of shares available on exercise may be adjusted on the occurrence of certain events, including new issues, share splits, rights issues and capital reconstructions.

Consequently, the exercise price on the December 2002 and December 2001 option grants were reduced by A\$0.21 for the November 2003 return of capital and the December 2001 option grant was reduced by A\$0.38 for the November 2002 return of capital.

The Company is authorized to issue 45,077,100 shares under the 2001 Equity Incentive Plan. The following table summarizes the shares available for grant under this plan:

<u>Shares Available for Grant</u>	<u>Years Ended March 31</u>		
	<u>2006</u>	<u>2005</u>	<u>2004</u>
Shares available at beginning of period	24,340,258	27,293,210	32,884,940
Awards granted	(5,264,300)	(5,664,100)	(6,179,583)
Options forfeited	700,275	2,711,148	587,853
Shares available at end of period	<u>19,776,233</u>	<u>24,340,258</u>	<u>27,293,210</u>

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Notes to Consolidated Financial Statements — (Continued)

The following table shows the movement in all of the Company's outstanding options:

	2006		2005		2004	
	Number of Shares	Weighted Average Exercise Price	Number of Shares	Weighted Average Exercise Price	Number of Shares	Weighted Average Exercise Price
	(In Australian dollars)					
Outstanding at beginning of period	20,128,610	A\$ 5.75	17,978,707	A\$ 5.72	13,410,024	A\$ 5.20
Granted	6,584,300	8.83	5,664,100	6.00	6,179,583	7.05
Exercised	(3,925,378)	4.79	(803,049)	4.13	(1,023,047)	4.38
Forfeited	(3,274,275)	5.68	(2,711,148)	6.56	(587,853)	5.79
Outstanding at end of period	<u>19,513,257</u>	<u>A\$ 6.99</u>	<u>20,128,610</u>	<u>A\$ 5.75</u>	<u>17,978,707</u>	<u>A\$ 5.72</u>
Options exercisable at March 31	<u>7,234,897</u>	<u>A\$ 5.82</u>	<u>7,155,625</u>	<u>A\$ 5.08</u>	<u>3,858,736</u>	<u>A\$ 4.54</u>

Range of Exercise Price	Options Outstanding			Options Exercisable	
	Number Outstanding at March 31, 2006	Weighted Average Remaining Contractual Life (in Years)	Weighted Average Exercise Price	Number Exercisable at March 31, 2006	Weighted Average Exercise Price
	(In Australian dollars)				
A\$3.09	773,750	4.6	A\$ 3.09	773,750	A\$ 3.09
3.13	257,113	3.6	3.13	257,113	3.13
5.06	1,270,724	5.7	5.06	1,270,724	5.06
5.99	4,464,850	8.7	5.99	967,900	5.99
6.30	273,000	8.9	6.30	68,250	6.30
6.45	2,064,800	6.7	6.45	2,064,800	6.45
7.05	3,857,720	7.7	7.05	1,832,360	7.05
8.53	1,320,000	9.7	8.53	—	—
8.90	5,191,100	9.7	8.90	—	—
9.50	40,200	9.9	9.50	—	—
A\$3.09 to A\$9.50	<u>19,513,257</u>	<u>8.2</u>	<u>A\$ 6.99</u>	<u>7,234,897</u>	<u>A\$ 5.82</u>

Supervisory Board Share Plan

At the 2002 Annual General Meeting, the shareholders approved a Supervisory Board Share Plan ("SBSP"), which requires that all non-executive directors on the Joint Board and Supervisory Board receive shares of the Company's common stock as payment for a portion of their director fees. The SBSP requires that the directors take at least \$10,000 of their fees in shares and allows directors to receive additional shares in lieu of fees in their discretion. Shares issued under the \$10,000 compulsory component of the SBSP are subject to a two-year escrow that requires members of the Supervisory Board to retain those shares for at least two years following issue. In exceptional circumstances, this may be varied at the discretion of the Managing Board. The issue price for the shares is the market value at the time of issue. No loans will be entered into by the Company relation to the grant of shares pursuant to the SBSP.

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Peter Donald Macdonald Share Option Plans

Peter Donald Macdonald Share Option Plan

As a replacement for options previously granted by JHIL on November 17, 1999, Mr. Macdonald was granted an option to purchase 1,200,000 shares of the Company's common stock at an exercise price of A\$3.87 per share under the JHI NV Peter Donald Macdonald Share Option Plan. As with the original JHIL option grant, this stock option became fully vested and exercisable on November 17, 2004. The options had an expiration date of April 20, 2005, six months after the date of Mr. Macdonald's resignation. The exercise price and the number of shares available on exercise could be adjusted on the occurrence of certain events, including new issues, share splits, rights issues and capital reconstructions, as set out in the plan rules. Consequently, the exercise price was reduced by A\$0.21, A\$0.38 and A\$0.10 for the November 2003, November 2002 and December 2001 returns of capital, respectively. Mr. Macdonald exercised all of these options in April 2005.

Peter Donald Macdonald Share Option Plan 2001

As a replacement for options previously granted by JHIL on July 12, 2001, Mr. Macdonald was granted an option to purchase 624,000 shares of the Company's common stock at an exercise price per share equal to A\$5.45 under the JHI NV Peter Donald Macdonald Share Option Plan 2001. The replacement options were to become exercisable for 468,000 shares on the first business day on or after July 12, 2004, if JHI NV's TSR (essentially its dividend yield and common stock performance) from July 12, 2001 to that date was at least equal to the median TSR for the companies comprising JHI NV's peer group, as set out in the plan. In addition, the replacement options were to become exercisable on that same day for an additional 6,240 shares for each one-percent improvement in JHI NV's TSR ranking above the median total shareholder returns for its peer group (up to a total of 156,000 additional shares). On the first business day of each month from November 2004 until the options expired on April 20, 2005, six months after the date of Mr. Macdonald's resignation, JHI NV's total shareholder returns were compared with that of its peer group to determine if any previously unvested options vest according to the applicable test described above. As set out in the plan rules, the exercise price and the number of shares available on exercise could be adjusted on the occurrence of certain events, including new issues, share splits, rights issues and capital reconstructions. Consequently, the exercise price was reduced by A\$0.21, A\$0.38 and A\$0.10 for the November 2003, November 2002 and December 2001 returns of capital, respectively. As the TSR requirement had not been met six months after Mr. Macdonald ceased to be employed by JHI NV, all of these options expired in April 2005.

Peter Donald Macdonald Share Option Plan 2002

On July 19, 2002, under the JHI NV Peter Donald Macdonald 2002 Share Option Plan, Mr. Macdonald was granted an option to purchase 1,950,000 shares of the Company's common stock at an exercise price of A\$6.30 per share. These options were to become exercisable for 1,462,500 shares of JHI NV's common stock on the first business day on or after July 19, 2005, if JHI NV's TSR from July 19, 2002 to that date was at least equal to the median TSR for the companies comprising its peer group, which comprises those companies included in the S&P/ ASX 200 index excluding the companies listed in the 200 Financials and 200 Property Trust indices. Additionally, for each one-percent improvement in JHI NV's TSR ranking above the median TSR for its peer group 19,500 shares were to become exercisable (up to a total of 487,500 additional shares). If any options remained unexercisable on that date because the applicable test for TSR was not satisfied, then on the first business day of each month occurring from that day until October 31, 2005, JHI NV's TSR would again be compared with that of its peer group to determine if any previously unvested options vested according to the applicable test described above. Any vested options would have remained exercisable until the tenth anniversary of the issue date, July 19, 2012. As set out in the plan rules, the exercise price and the number of shares available on exercise could be adjusted on the occurrence of certain events, including new issues, share

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James Hardie Industries N.V. and Subsidiaries **Notes to Consolidated Financial Statements — (Continued)**

splits, rights issues and capital reconstructions. Consequently, the exercise price was reduced by A\$0.21 and A\$0.38 for the November 2003 and November 2002 returns of capital, respectively. All 1,950,000 options expired on October 31, 2005.

Key Management Shadow Stock Incentive Plan

On December 5, 2003, 12,600 shadow stock shares were granted under the terms and conditions of the Key Management Shadow Stock Incentive Plan. At March 31, 2005, 12,600 shadow stock shares were outstanding. All of these shadow stock shares were cancelled in April 2005.

Stock Appreciation Rights Plan

On December 14, 2004, 527,000 stock appreciation rights were granted under the terms and conditions of the JHI NV Stock Appreciation Rights Incentive Plan. This plan provides similar incentives as the 2001 Equity Incentive Plan. 27,000 of these stock appreciation rights were cancelled in April 2005. The remaining 500,000 stock appreciation rights were outstanding at March 31, 2006 and will vest 50% December 2006 and 50% December 2007. These rights have been accounted for as stock appreciation rights under SFAS No. 123 and, accordingly, compensation expense of \$0.5 million, nil and \$2.6 million was recognized in fiscal year 2006, 2005 and 2004, respectively.

16. Financial Instruments

Foreign Currency

As a multinational corporation, the Company maintains significant operations in foreign countries. As a result of these activities, the Company is exposed to changes in exchange rates which affect its results of operations and cash flows. As of March 31, 2006 and 2005, the Company had not entered into any material contracts to hedge these exposures.

The Company purchases raw materials and fixed assets and sells some finished product for amounts denominated in currencies other than the functional currency of the business in which the related transaction is generated. In order to protect against foreign exchange rate movements, the Company may enter into forward exchange contracts timed to mature when settlement of the underlying transaction is due to occur. As of March 31, 2006 and 2005, there were no material contracts outstanding.

Credit Risk

Financial instruments which potentially subject the Company to credit risk consist primarily of cash and cash equivalents, investments and trade accounts receivable.

The Company maintains cash and cash equivalents, investments and certain other financial instruments with various major financial institutions. At times, these financial instruments may be in excess of federally insured limits. To minimize this risk, the Company performs periodic evaluations of the relative credit standing of these financial institutions and, where appropriate, places limits on the amount of credit exposure with any one institution.

For off-balance sheet financial instruments, including derivatives, credit risk also arises from the potential failure of counterparties to meet their obligations under the respective contracts at maturity. The Company controls risk through the use of credit ratings and reviews of appropriately assessed authority limits.

The Company is exposed to losses on forward exchange contracts in the event that counterparties fail to deliver the contracted amount. The credit exposure to the Company is calculated as the mark-to-market value of all contracts outstanding with that counterparty. As of March 31, 2006 and 2005, total credit exposure arising from forward exchange contracts was not material.

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James Hardie Industries N.V. and Subsidiaries
Notes to Consolidated Financial Statements — (Continued)

Credit risk with respect to trade accounts receivable is concentrated due to the concentration of the distribution channels for the Company's fiber cement products. Credit is extended based on an evaluation of each customer's financial condition and, generally, collateral is not required. The Company has historically not incurred significant credit losses.

Fair Values

The carrying values of cash and cash equivalents, marketable securities, accounts receivable, short-term borrowings and accounts payable and accrued liabilities are a reasonable estimate of their fair value due to the short-term nature of these instruments. The following table summarizes the estimated fair value of the Company's long-term debt (including current portion of long-term debt):

	March 31			
	2006		2005	
	Carrying Value	Fair Value	Carrying Value	Fair Value
(Millions of US dollars)				
Long-term debt:				
Floating	\$ —	\$ —	\$ —	\$ —
Fixed	121.7	133.8	147.4	173.6
Total	<u>\$ 121.7</u>	<u>\$ 133.8</u>	<u>\$ 147.4</u>	<u>\$ 173.6</u>

Fair values of long-term debt were determined by reference to the March 31, 2006 and March 31, 2005 market values for comparably rated debt instruments.

17. Operating Segment Information and Concentrations of Risk

The Company has reported its operating segment information in the format that the operating segment information is available to and evaluated by the Board of Directors. USA Fiber Cement manufactures and sells fiber cement interior linings, exterior siding and related accessories products in the United States. Asia Pacific Fiber Cement includes all fiber cement manufactured in Australia, New Zealand and the Philippines and sold in Australia, New Zealand and Asia. Research and Development represents the cost incurred by the research and development centers. Other includes the manufacture and sale of fiber cement products in Chile (fiscal years 2005 and 2004 only), the manufacture and sale of fiber cement reinforced pipes in the United States, fiber cement operations in Europe and roofing operations in the United States. The roofing plant was closed and the business ceased operations in April 2006. The Company's operating segments are strategic operating units that are managed separately due to their different products and/or geographical location.

Operating Segments

The following are the Company's operating segments and geographical information:

	Net Sales to Customers(1) Years Ended March 31		
	2006	2005	2004
(Millions of US dollars)			
USA Fiber Cement	\$ 1,218.4	\$ 939.2	\$ 738.6
Asia Pacific Fiber Cement	241.8	236.1	219.8
Other	28.3	35.1	23.5
Worldwide total from continuing operations	<u>\$ 1,488.5</u>	<u>\$ 1,210.4</u>	<u>\$ 981.9</u>

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James Hardie Industries N.V. and Subsidiaries
Notes to Consolidated Financial Statements — (Continued)

	(Loss) Income From Continuing Operations Before Income Taxes Years Ended March 31		
	2006	2005	2004
	(Millions of US dollars)		
USA Fiber Cement(2)	\$ 342.6	\$ 241.5	\$ 195.6
Asia Pacific Fiber Cement(2)	41.7	46.8	37.6
Research and Development(2)	(15.7)	(17.5)	(17.6)
Other	(26.5)	(11.8)	(15.9)
Segments total	342.1	259.0	199.7
General Corporate(3),(4)	(61.4)	(62.8)	(27.5)
Asbestos provision	(715.6)	—	—
Total operating (loss) income	(434.9)	196.2	172.2
Net interest expense(5)	(0.2)	(5.1)	(10.0)
Other income (expense), net	—	(1.3)	3.5
Worldwide total from continuing operations	<u>\$ (435.1)</u>	<u>\$ 189.8</u>	<u>\$ 165.7</u>

	Total Identifiable Assets March 31	
	2006	2005
	(Millions of US dollars)	
USA Fiber Cement	\$ 826.0	\$ 670.1
Asia Pacific Fiber Cement	170.4	181.4
Other	54.8	79.4
Segments total	1,051.2	930.9
General Corporate(6)	394.2	155.8
Worldwide total	<u>\$ 1,445.4</u>	<u>\$ 1,086.7</u>

	Additions to Property, Plant and Equipment(7) Years Ended March 31		
	2006	2005	2004
	(Millions of US dollars)		
USA Fiber Cement	\$ 154.5	\$ 144.8	\$ 56.2
Asia Pacific Fiber Cement	6.6	4.1	8.4
Other	1.7	4.1	9.5
Worldwide total	<u>\$ 162.8</u>	<u>\$ 153.0</u>	<u>\$ 74.1</u>

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James Hardie Industries N.V. and Subsidiaries
Notes to Consolidated Financial Statements — (Continued)

	Depreciation and Amortization		
	Years Ended March 31		
	2006	2005	2004
	(Millions of US dollars)		
USA Fiber Cement	\$ 32.4	\$ 23.1	\$ 25.1
Asia Pacific Fiber Cement	10.0	10.1	9.7
Other	2.9	3.1	1.5
Segments total	45.3	36.3	36.3
General Corporate	—	—	0.1
Worldwide total	<u>\$ 45.3</u>	<u>\$ 36.3</u>	<u>\$ 36.4</u>

Geographic Areas	Net Sales to Customers(1)		
	Years Ended March 31		
	2006	2005	2004
	(Millions of US dollars)		
USA	\$ 1,233.7	\$ 955.7	\$ 748.9
Australia	164.5	160.5	154.9
New Zealand	53.6	49.6	40.6
Other Countries	36.7	44.6	37.5
Worldwide total from continuing operations	<u>\$ 1,488.5</u>	<u>\$ 1,210.4</u>	<u>\$ 981.9</u>

	Total Identifiable Assets	
	March 31	
	2006	2005
	(Millions of US dollars)	
USA	\$ 870.3	\$ 729.2
Australia	108.5	118.8
New Zealand	18.7	21.4
Other Countries	53.7	61.5
Segments total	1,051.2	930.9
General Corporate(6)	394.2	155.8
Worldwide total	<u>\$ 1,445.4</u>	<u>\$ 1,086.7</u>

(1) Export sales and inter-segmental sales are not significant.

(2) Research and development costs of \$13.2 million, \$7.6 million and \$6.3 million in fiscal years 2006, 2005 and 2004, respectively, were expensed in the USA Fiber Cement operating segment. Research and development costs of \$2.3 million, \$1.9 million and \$2.2 million in fiscal years 2006, 2005 and 2004, respectively, were expensed in the Asia Pacific Fiber Cement segment. Research and development costs of \$12.3 million, \$12.0 million and \$14.1 million in fiscal years 2006, 2005 and 2004, respectively, were expensed in the Research and Development segment. Research and Development costs of \$0.9 million, \$0.1 million and nil in fiscal years 2006, 2005 and 2004, respectively, were expensed in Other segment. Research and Development costs also include selling, general and administrative expenses of \$3.4 million, \$5.5 million and \$3.5 million in fiscal years 2006, 2005 and 2004, respectively.

Research and development expenditures are expensed as incurred and in total amounted to \$28.7 million, \$21.6 million and \$22.6 million for the years ended March 31, 2006, 2005 and 2004, respectively.

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James Hardie Industries N.V. and Subsidiaries Notes to Consolidated Financial Statements — (Continued)

- (3) The principal components of General Corporate are officer and employee compensation and related benefits, professional and legal fees, administrative costs and rental expense, net of rental income, on the Company's corporate offices.
- Net periodic pension cost related to the Australian Defined Benefit Plan for the Asia Pacific Fiber Cement segment totaling \$2.0 million, \$2.3 million and \$1.8 million in fiscal years 2006, 2005 and 2004, respectively, has been included in the General Corporate segment. Also, a settlement loss of \$0.9 million and \$5.3 million on the Defined Benefit Plan in fiscal years 2006 and 2005, respectively, has been included in the General Corporate segment.
- (4) Includes costs of \$17.4 million and \$28.1 million for SCI and other related expenses in fiscal years 2006 and 2005, respectively. See Note 12.
- (5) The Company does not report net interest expense for each operating segment as operating segments are not held directly accountable for interest expense.
- (6) The Company does not report deferred tax assets and liabilities for each operating segment as operating segments are not held directly accountable for deferred taxes. All deferred taxes are included in General Corporate.
- (7) Additions to property, plant and equipment are calculated on an accrual basis, and therefore differ from property, plant and equipment in the consolidated statements of cash flows.

Concentrations of Risk

The distribution channels for the Company's fiber cement products are concentrated. If the Company were to lose one or more of its major customers, there can be no assurance that the Company will be able to find a replacement. Therefore, the loss of one or more customers could have a material adverse effect on the Company's consolidated financial position, results of operations and cash flows. The Company has three major customers that individually account for over 10% of the Company's net sales.

These three customers' accounts receivable represented 60% and 49% of the Company's trade accounts receivable at March 31, 2006 and 2005, respectively. The following are gross sales generated by these three customers, which are all from the USA Fiber Cement segment:

	Years Ended March 31		
	2006	2005	2004
	(Millions of US dollars)		
Customer A	\$ 168.5	\$ 131.8	\$ 111.3
Customer B	426.2	295.4	252.2
Customer C	156.6	131.7	112.9
Total	<u>\$ 751.3</u>	<u>\$ 558.9</u>	<u>\$ 476.4</u>

Approximately 17% of the Company's fiscal year 2006 net sales from continuing operations were derived from outside the United States. Consequently, changes in the value of foreign currencies could significantly affect the consolidated financial position, results of operations and cash flows of the Company's non-US operations on translation into US dollars.

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James Hardie Industries N.V. and Subsidiaries
Notes to Consolidated Financial Statements — (Continued)

18. Other Comprehensive Loss

The following are the components of total accumulated other comprehensive loss, which is displayed in the consolidated balance sheets:

	Years Ended March 31	
	2006	2005
	(Millions of US dollars)	
Unrealized transition loss on derivative instruments classified as cash flow hedges	\$ —	\$ (0.5)
Foreign currency translation adjustments	(28.4)	(23.6)
Total accumulated other comprehensive loss	<u>\$ (28.4)</u>	<u>\$ (24.1)</u>

In August 2000, the Company entered into a contract with a third party to hedge the price of 5,000 metric tons per month of pulp, a major commodity used in the manufacture of fiber cement products. The original contract term was effective from September 1, 2000 to August 31, 2005, with settlement payments due each month. On April 1, 2001, the Company adopted SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities," as amended. The cumulative effect on April 1, 2001 of adopting this statement was to reduce other comprehensive income, a component of shareholders' equity, by \$4.9 million. Subsequently, this amount has been amortized over the original term of the pulp contract to cost of goods sold.

19. Related Party Transactions

JHI NV Directors' Securities Transactions

The Company's Directors and their director-related entities held an aggregate of 271,561 ordinary shares and 266,217 ordinary shares at March 31, 2006 and 2005, respectively, and 2,782,544 options and 1,189,544 options at March 31, 2006 and 2005, respectively.

Supervisory Board members on November 22, 2005 participated in an allotment of 7,957 shares at A\$8.64 per share under the terms of the Supervisory Board Share Plan which was approved by JHI NV shareholders on August 22, 2005. Directors' allocations were as follows:

Director	Shares Allotted
M. Hellicar	1,515
J. Barr	758
M.R. Brown	758
P.S. Cameron	1,894
G.J. Clark	758
M.J. Gillfillan	758
J.R.H. Loudon	758
D.G. McGauchie	758
Total	<u>7,957</u>

The JHI NV dividend paid on July 1, 2004 and December 16, 2005 to Directors and their related entities was on the same terms and conditions that applied to other holders.

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James Hardie Industries N.V. and Subsidiaries **Notes to Consolidated Financial Statements — (Continued)**

Existing Loans to the Company's Directors and Directors of James Hardie Subsidiaries

At March 31, 2006 and March 31, 2005, loans totaling \$30,466 and \$33,204, respectively, were outstanding from certain executive directors or former directors of subsidiaries of JHI NV under the terms and conditions of the Executive Share Purchase Plan (the "Plan"). Loans under the Plan are interest free and repayable from dividend income earned by, or capital returns from, securities acquired under the Plan. The loans are collateralized by CUFS under the Plan. No new loans to Directors or executive officers of JHI NV, under the plan or otherwise, and no modifications to existing loans have been made since December 1997.

During fiscal years 2006 and 2005, repayments totaling \$1,892 and \$18,632, respectively, were received in respect of the Plan from AT Kneeshaw, PD Macdonald, PG Morley and DAJ Salter. During fiscal year 2005, an executive director of a subsidiary resigned with loans outstanding of \$117,688. Under the terms of the plan, this director has two years from due date of his resignation to repay such loan.

Payments made to Directors and Director Related Entities of JHI NV during the Year

In August 2004, Chairman Meredith Hellicar was appointed to a role as Chairman of a special committee of the Board of Directors. The special committee was established to oversee the Company's asbestos matters and was dissolved on March 31, 2005. In this role, she received a fee of \$33,777 and \$45,000 for the years ended March 31, 2006 and 2005, respectively.

Supervisory Board Director GJ Clark is a director of ANZ Banking Group Limited with whom the Company transacts banking business. Supervisory Board Director DG McGauchie is a director of Telstra Corporation Limited from whom the Company purchases communications services. All transactions were in accordance with normal commercial terms and conditions. It is not considered that these Directors had significant influence over these transactions.

In February 2004, a subsidiary of the Company entered into a consulting agreement in usual commercial terms and conditions with The Gries Group in respect to professional services. The principal of The Gries Group, James P. Gries, is Louis Gries' brother. Under the agreement, approximately \$12,000 was paid each month to The Gries Group. The agreement expired in June 2005 and payments of \$50,876 and \$157,080 were made for the years ended March 31, 2006 and 2005, respectively. Louis Gries has no economic interest in The Gries Group.

Payments made to Director and Director Related Entities of Subsidiaries of JHI NV

The Company has subsidiaries located in various countries, many of which require that at least one director be a local resident. All payments described below arise because of these requirements.

Payments of \$8,829 and \$6,817 for the years ended March 31, 2006 and 2005, respectively, were made to Grech, Vella, Tortell & Hyzler Advocates. Dr JJ Vella was a director of one of the Company's subsidiaries. The payments were in respect of professional services and were negotiated in accordance with usual commercial terms and conditions.

Payments of nil and \$86,822 for the years ended March 31, 2006 and 2005, respectively, were made to Pether and Associates Pty Ltd, technical contractors. The late JF Pether was a director of a subsidiary of the Company and was a director of Pether and Associates Pty Ltd. The payments were in respect of technical services and were negotiated in accordance with usual commercial terms and conditions.

Payments totaling nil and \$27,634 for the years ended March 31, 2006 and 2005, respectively, were made to R Christensen and T Norman who are directors of some of the Company's subsidiaries. The payments were in respect of professional services and were negotiated in accordance with usual commercial terms and conditions.

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James Hardie Industries N.V. and Subsidiaries **Notes to Consolidated Financial Statements — (Continued)**

Payments totaling \$78,496 and \$71,849 for the years ended March 31, 2006 and 2005, respectively, were made to M Helyar, R Le Tocq and N Wild who are directors of a subsidiary of the Company. The payments were in respect of professional services and were negotiated in accordance with usual commercial terms and conditions.

Payments totaling nil and \$15,488 for the years ended March 31, 2006 and 2005, respectively, were made to Marlee (UK) Ltd. Marlee (UK) Ltd is a director of a subsidiary of the Company. The payments were in respect of professional services and were negotiated in accordance with usual commercial terms and conditions.

Payments totaling \$4,984 and \$4,730 for the years ended March 31, 2006 and 2005, respectively, were made to Bernaldo, Mirador and Directo Law Offices. R Bernaldo is a director of a subsidiary of the Company. The payments were in respect of professional services and were negotiated in accordance with usual commercial terms and conditions.

20. Subsequent Events

Since the Company filed its consolidated financial statements with the ASX on May 15, 2006, there have been the following significant developments:

- On June 29, 2006, the ATO issued a ruling to the Company to the effect that James Hardie's contributions to the SPF would be tax deductible over the anticipated life of the arrangements in accordance with the recent "blackhole expenditure" Federal Legislation which was enacted in April 2006.
- On June 23, 2006, the ATO advised the Company that it has refused to endorse the SPF as a tax concession charity, arguing that, in its opinion, the scope of its activities under the Trust Deed and the Final Funding Agreement does not meet current legislative requirements for such an endorsement. The Company is reviewing the implications of this development. Having the SPF qualify for tax exempt status remains a condition precedent to the completion of the Final Funding Agreement.
- On June 23, 2006, following negotiation with the ATO regarding the payment options in relation to the amended assessment referred to in Note 13, the ATO advised the Company that it may make a partial payment of 50% of the A\$378 million amended assessment (A\$189 million) pending the outcome of an appeal. This amount was paid on July 5, 2006.
- In June 2006, the Company's lenders agreed to extend the maturity date of its 364-day facilities from December 2006 to June 2007 and to extend the maturity date of its term facilities from June 2006 to December 2006.

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James Hardie Industries N.V. and Subsidiaries
Remuneration Disclosures

(unaudited, not forming part of the consolidated financial statements)

Remuneration of Directors

Income paid or payable, or otherwise made available by the Company and related parties to directors of the Company in connection with the management of affairs of the Company totaled \$10.9 million and \$15.1 million for the years ended March 31, 2006 and 2005, respectively.

Remuneration for Supervisory Board Directors includes attendance at meetings of the Board and its Sub-committees. Remuneration for the Managing Board Directors is determined on the same basis as for other executives as described in below.

Director Retirement Benefits

In July 2002, the Company discontinued a retirement plan that entitled the Supervisory Board Directors to receive, upon their termination for any reason other than misconduct, an amount equal to a multiple of up to five times their average annual fees for the three year period prior to their retirement. The applicable multiple was based on the director's years of service on the Supervisory Board, including service on the JHIL Supervisory Board.

Two directors, Ms. Hellicar and Mr. Brown, retained some benefits that had accrued as of 2002 under the retirement plan and they may therefore be entitled to benefits pursuant to this plan upon retirement from the Supervisory Board. In the event Ms. Hellicar retires from the Supervisory Board for any reason other than misconduct, she will be entitled to four times her average director's fees for the previous three years prior to her retirement. In the event Mr. Brown retires from the Supervisory Board for any reason other than misconduct, he will be entitled to four times his average director's fees for the previous three years prior to his retirement.

Remuneration of Executives

Remuneration received or receivable from the Company by all executives (including Managing Board Directors) whose remuneration was at least \$0.1 million was \$13.7 million and \$18.5 million for the years ended March 31, 2006 and 2005, respectively. Remuneration for each executive includes salary, incentives, superannuation, stock options, retirement and termination payments, motor vehicles, fringe benefits, tax and other benefits.

An executive is defined as the CEO, members of the Senior Leadership Team, General Managers of Business Units and Company Secretaries of JHI NV.

Remuneration is determined on the basis of the cost of the remuneration to the Company, but excludes insurance premiums paid by the Company in respect of directors' and officers' liability insurance contracts.

Options and shares issued to executives under the Executive Share Purchase Plan are valued using the Black-Scholes model and the fair value of options granted is included in remuneration.

Remuneration of Independent Registered Public Accounting Firm

Remuneration to the Company's independent registered public accounting firm for services provided for fiscal years 2006, 2005 and 2004 were as follows:

Audit Fees

The aggregate fees for professional services rendered by its independent registered public accounting firm during the years ended March 31, 2006, 2005 and 2004 were \$1.6 million, \$3.1 million and \$1.2 million, respectively. Professional services include the audit of the Company's annual financial statements and services

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James Hardie Industries N.V. and Subsidiaries
Remuneration Disclosures
(unaudited, not forming part of the consolidated financial statements)

that are normally provided in connection with statutory and regulatory filings. The fees for the year ended March 31, 2005 included \$1.9 million of internal investigation fees.

Audit-Related Fees

The aggregate fees billed for assurance and related services rendered by the Company's independent registered public accounting firm during the years ended March 31, 2006, 2005 and 2004 were \$0.1 million, \$0.2 million and \$0.1 million, respectively.

Tax Fees

The aggregate fees billed for tax compliance, tax advice and tax planning services rendered by the Company's independent registered public accounting firm during the years ended March 31, 2006, 2005 and 2004 were \$5.2 million, \$4.2 million and \$3.5 million, respectively.

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James Hardie Industries N.V. and Subsidiaries
Selected Quarterly Financial Data

(unaudited, not forming part of the consolidated financial statements)

The information furnished in the selected quarterly financial data for the years ended March 31, 2006 and 2005 is unaudited but includes all adjustments which, in the opinion of management, are necessary for a fair statement of the financial results of the respective interim periods. Such adjustments are of a normal recurring nature. Interim financial statements are by necessity somewhat tentative; judgments are used to estimate interim amounts for items that are normally determinable only on an annual basis.

	Year Ended March 31, 2006				Year Ended March 31, 2005			
	By Quarter				By Quarter			
	First	Second	Third	Fourth	First	Second	Third	Fourth
	(Millions of US dollars)							
Net sales	\$ 359.4	\$ 376.6	\$ 362.7	\$ 389.8	\$ 306.1	\$ 300.9	\$ 287.0	\$ 316.4
Cost of goods sold	(214.1)	(239.3)	(234.0)	(250.3)	(194.8)	(203.8)	(190.3)	(195.1)
Gross profit	145.3	137.3	128.7	139.5	111.3	97.1	96.7	121.3
Operating income (loss)	86.9	76.4	64.4	(662.6)	58.3	40.0	33.3	64.6
Interest expense	(1.7)	(2.2)	(1.1)	(2.2)	(2.8)	(1.9)	(1.3)	(1.3)
Interest income	1.0	1.2	1.9	2.9	0.3	0.6	0.6	0.7
Other (expense) income, net	—	—	—	—	—	(1.9)	0.4	0.2
Income (loss) from continuing operations before income taxes	86.2	75.4	65.2	(661.9)	55.8	36.8	33.0	64.2
Income tax (expense) benefit	(30.3)	(27.8)	(24.5)	11.0	(18.7)	(12.1)	(13.2)	(17.9)
Income (loss) from continuing operations	55.9	47.6	40.7	(650.9)	37.1	24.7	19.8	46.3
Discontinued operations:								
Loss from discontinued operations net of income tax	—	—	—	—	—	—	(0.3)	—
(Loss) gain on disposal of discontinued operations net of income tax	—	—	—	—	(0.8)	0.1	—	—
(Loss) income from discontinued operations	—	—	—	—	(0.8)	0.1	(0.3)	—
Net income (loss)	<u>\$ 55.9</u>	<u>\$ 47.6</u>	<u>\$ 40.7</u>	<u>\$(650.9)</u>	<u>\$ 36.3</u>	<u>\$ 24.8</u>	<u>\$ 19.5</u>	<u>\$ 46.3</u>

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Exhibit Index

Exhibit Number	Description of Exhibits
1.1	Articles of Association, as amended on September 1, 2005 of James Hardie Industries N.V. (English Translation)
2.1	Letter Agreement of September 6, 2001 by and between James Hardie Industries N.V. and CHESSE Depository Nominees Pty Limited, as the depository for CHESSE Units of Foreign Securities(3)
2.2	Deposit Agreement dated as of September 24, 2001 between The Bank of New York, as depository, and James Hardie Industries N.V.(3)
2.3	Note Purchase Agreement, dated as of November 5, 1998, among James Hardie Finance B.V., James Hardie N.V. and certain purchasers thereto re: \$225,000,000 Guaranteed Senior Notes(3)
2.4	Assignment and Assumption Agreement and First Amendment to Note Purchase Agreement, dated as of January 24, 2000, by and among James Hardie Finance B.V., James Hardie U.S. Funding, Inc., James Hardie N.V., James Hardie Aust Investco Pty Limited and certain noteholders thereto(3)
2.5	Second Amendment to the Note Purchase Agreement dated as of October 22, 2001, by and among, James Hardie U.S. Funding, Inc., James Hardie N.V., James Hardie Aust Investco Pty Limited, James Hardie Australia Finance Pty Limited, James Hardie International Finance B. V. and certain noteholders thereto(3)
2.6	Assignment and Assumption Agreement and Third Amendment to Note Purchase Agreement, dated as of November 18, 2002, among James Hardie U.S. Funding Inc, James Hardie International Finance B.V., James Hardie Industries N.V., James Hardie N.V. and certain noteholders thereto(1)
2.7	Common Terms Deed Poll dated June 15, 2005 between James Hardie International Finance B.V. and James Hardie Industries N.V.(3)
2.8	Form of Term Facility Agreement between James Hardie International Finance B.V. and Financier(3)
2.9	Form of Extension of Facilities and other matters for Term Facility Agreement between James Hardie International Finance B.V. and Financier
2.10	Form of 364-day Facility Agreement between James Hardie International Finance B.V. and Financier(3)
2.11	Form of Extension Request for 364-day Facility Agreement between James Hardie International Finance B.V. and Financier
2.12	Form of Guarantee Deed between James Hardie Industries N.V. and Financier(3)
4.1	James Hardie Industries N.V. 2001 Equity Incentive Plan(3)
4.2	Economic Profit and Individual Performance Incentive Plans(3)
4.3	JHI NV Stock Appreciation Rights Incentive Plan(3)
4.4	Supervisory Board Share Plan 2006
4.5	James Hardie Industries N.V. Long Term Incentive Plan 2006
4.6	2005 Managing Board Transitional Stock Option Plan
4.7	Form of Joint and Several Indemnity Agreement among James Hardie N.V., James Hardie (USA) Inc. and certain indemnitees thereto(3)
4.8	Form of Joint and Several Indemnity Agreement among James Hardie Industries N.V., James Hardie Inc. and certain indemnitees thereto(3)
4.9	Form of Deed of Access to Documents, Indemnity and Insurance among James Hardie Industries N.V. and certain indemnitees thereto(3)
4.10	Form of Joint and Several Indemnity Agreement among James Hardie Industries N.V., James Hardie Building Products Inc. and certain indemnities thereto(3)
4.11	Lease Amendment, dated March 23, 2004, among Amaca Pty Limited (f/k/a/ James Hardie & Coy Pty Limited), James Hardie Australia Pty Limited and James Hardie Industries N.V. re premises at the corner of Cobalt & Silica Street, Carole Park, Queensland, Australia(2)
4.12	Variation of Lease dated March 23, 2004, among Amaca Pty Limited (f/k/a/ James Hardie & Coy Pty Limited), James Hardie Australia Pty Limited and James Hardie Industries N.V. re premises at the corner of Colquhoun & Devon Streets, Rosehill, New South Wales, Australia(2)
4.13	Extension of Lease dated March 23, 2004, among Amaca Pty Limited (f/k/a/ James Hardie & Coy Pty Limited), James Hardie Australia Pty Limited and James Hardie Industries N.V. re premises at Rutland, Avenue, Welshpool, Western Australia, Australia(2)

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Exhibit Number	Description of Exhibits
4.14	Lease Amendment dated March 23, 2004, among Amaca Pty Limited (f/k/a/ James Hardie & Coy Pty Limited), James Hardie Australia Pty Limited and James Hardie Industries N.V. re premises at 46 Randle Road, Meeandah, Queensland, Australia(2)
4.15	Lease Agreement dated March 23, 2004 among Studorp Limited, James Hardie New Zealand Limited and James Hardie Industries N.V. re premises at the corner of O'Rorke and Station Roads, Penrose, Auckland, New Zealand (2)
4.16	Lease Agreement dated March 23, 2004 among Studorp Limited, James Hardie New Zealand Limited and James Hardie Industries N.V. re premises at 44-74 O'Rorke Road, Penrose, Auckland, New Zealand(2)
4.17	Ownership transfer related to corner of O'Rorke and Station Roads, Penrose, Auckland, New Zealand and 44-74 O'Rorke Road, Penrose, Auckland, New Zealand effective June 30, 2005
4.18	Industrial Building Lease Agreement, effective October 6, 2000, between James Hardie Building Products, Inc. and Fortra Fiber-Cement L.L.C., re premises at Waxahachie, Ellis County, Texas(3)
4.19	Asset Purchase Agreement by and between James Hardie Building Products, Inc. and Cemplank, Inc. dated as of December 12, 2001(3)
4.20	Amended and Restated Stock Purchase Agreement dated March 12, 2002, between BPB U.S. Holdings, Inc. and James Hardie Inc.(3)
4.21	Final Funding Agreement
4.22	Asbestos Injuries Compensation Fund Trust Deed by and between James Hardie Aust. Holdings Pty Limited and Asbestos Injuries Compensation Fund Limited
4.23	Deed of Release by and among James Hardie Industries N.V., Australian Council of Trade Unions, Unions New South Wales, and Bernard Douglas Banton
4.24	Parent Guarantee by and among Asbestos Injuries Compensation Fund Limited, The State of New South Wales, and James Hardie Industries N.V.
4.25	Deed of Release by and between James Hardie Industries N.V. and The State of New South Wales
4.26	Irrevocable Power of Attorney by and between Asbestos Injuries Compensation Fund Limited and The State of New South Wales
4.27	Deed of Accession by and among Asbestos Injuries Compensation Fund Limited, James Hardie Industries N.V., LGTDD Pty Limited, and The State of New South Wales
4.28	Letters Extending the Condition Precedent Date for the Final Funding Agreement
8.1	List of significant subsidiaries of James Hardie Industries N.V.
12.1	Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
12.2	Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
13.1	Certification of the Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
15.1	Consent of independent registered public accounting firm
15.2	Consent of KPMG Actuaries Pty Ltd
99.1	Excerpts of the ASX Settlement and Transfer Corporation Pty Ltd as of June 10, 2005
99.2	Excerpts of the Financial Services Reform Act 2001, as of March 11, 2002(3)
99.3	ASIC Class Order 02/311, dated November 3, 2002(3)
99.4	ASIC Modification, dated March 7, 2002(3)
99.5	ASIC Modification, dated February 26, 2004

(1) Previously filed as an exhibit to our Annual Report on Form 20-F dated July 2, 2003 and incorporated herein by reference.

(2) Previously filed as an exhibit to our Annual Report on Form 20-F dated November 22, 2004 and incorporated herein by reference.

(3) Previously filed as an exhibit to our Annual Report on Form 20-F dated July 7, 2005 and incorporated herein by reference.

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UNOFFICIAL TRANSLATION
OF THE DEED OF AMENDMENT OF
THE ARTICLES OF ASSOCIATION
JAMES HARDIE INDUSTRIES N.V.
dated 1 September 2005

On the first day of September two thousand and five appears before me, Professor Martin van Olffen, notaris (civil-law notary) practising in Amsterdam:

Reinier Hans Kleipool, kandidaat-notaris (candidate civil-law notary), employed by De Brauw Blackstone Westbroek N.V., a limited liability company, with corporate seat in The Hague, with address at: 2596 AL The Hague, the Netherlands, Zuid-Hollandlaan 7, at the office in Amsterdam, born in Geldermalsen on the twenty-fourth day of September nineteen hundred and seventy-nine. The person appearing declares that on the twenty-second day of August two thousand and five the general meeting of shareholders of JAMES HARDIE INDUSTRIES N.V., a limited liability company, with corporate seat in Amsterdam and address at: 1077ZX Amsterdam, Strawinskylaan 3077a, resolved to amend the articles of association of this company and to authorise the person appearing to execute this deed.

Pursuant to those resolutions the person appearing declares that he amends the company's articles of association such that these shall read in full as follows

ARTICLES OF ASSOCIATION:

CHAPTER I

DEFINITIONS.

ARTICLE 1.

Capitalised terms used in these articles of association shall have the following meaning:

<TABLE>	
<S>	<C>
ARTICLES	these articles of association;
ASTC	the ASX Settlement and Transfer Corporation Pty Ltd, the holder of an Australian clearing and settlement facility licence granted under the Corporations Act;
ASTC OPERATING RULES	the Australian law governed operating rules of the ASTC, regulating the settlement, clearing and registration of, among other things, the CUFS, as amended, varied or waived (with respect to the Company or generally) from time to time;
ASX	The Australian Stock Exchange Limited;
BUSINESS DAY(S)	Monday to Friday inclusive, except New Year's Day, Good Friday, Easter Monday, Christmas Day, Boxing Day, and any other day that ASX or NYSE declares is not a business day;
CEO	the member of the Managing Board who has been appointed as chief executive officer pursuant to article 15.1 of these Articles;
CHESS	Clearing House Electronic Sub-Register System as such term is defined in the ASTC Operating Rules;
COMPANY	James Hardie Industries N.V.;
</TABLE>	

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<TABLE> <S> CORPORATIONS ACT	<C> Australian Corporations Act 2001 (Cth) and the rules and regulations issued pursuant thereto, as re-enacted, amended or modified from time to time;
CUFS(S)	any CHESS Unit(s) of Foreign Securities as defined in the ASTC Operating Rules and the Corporations Act and which are issued or made available in respect of Share(s);
CUFS HOLDER(S)	any record owner of CUFS(s) according to the terms and conditions of the ASTC Operating Rules and the Corporations Act;
GENERAL MEETING	as the context may require, the corporate body (orgaan) comprising Shareholders who are entitled to vote and others persons who are entitled to vote, or the meeting (bijeenkomst) of the Shareholders and other persons who are entitled to attend such meetings;
INFORMATION MEETING	the information meeting to be held in advance of each General Meeting pursuant to article 36 of these Articles;
JOINT BOARD	the board as composed or re-instituted in accordance with article 27 of these Articles;
JOINT BOARD RULES	the rules governing the internal organisation of the Joint Board (gecombineerde raad reglement) as may be adopted pursuant to article 27 of these Articles;
JOINT HOLDER(S)	in respect of an asset, any person who jointly together with one or more other participants (deelgenoten) holds legal title to such asset;
LAW	unless provided otherwise in these Articles, the law of the Netherlands;
LISTING RULES	the listing rules of the ASX and the NYSE as amended or modified from time to time;
MANAGEMENT RULES	the rules governing the internal organisation of the Managing Board (directiereglement) as may be adopted pursuant to article 15 of these Articles;
MANAGING BOARD	the managing board as appointed and composed in accordance with article 14 of these Articles;
NYSE	The New York Stock Exchange;
PRESCRIBED RATE	the base rate charged by the Company's principal banker to corporate customers from time to time in respect of overdraft loans in excess of one hundred thousand United States dollars (\$100,000) calculated on a daily basis and a year of three hundred and sixty-five (365) days;
SHARE(S)	any share(s) comprised in the authorised share capital of the Company pursuant to article 4.1. of these Articles;
SHAREHOLDER(S)	any person who by Law holds legal title (juridisch gerechtigde) to the Shares;
</TABLE>	

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<TABLE> <S> SHAREHOLDER'S RIGHTS	<C> the right to vote on Shares, the right to receive dividends and other distributions on Shares and the right to participate in any General Meeting;
SCH	the Securities Clearing House as defined in, and so designated pursuant to, section 779B of the Corporations Act;
SCH BUSINESS RULES	the Australian law governed business rules of SCH governing inter alia the CUFSS;
SUPERVISORY BOARD	the supervisory board as appointed and composed in accordance with article 22 of these Articles;
SUPERVISORY RULES	the rules governing the internal organisation of the Supervisory Board (commissarissen reglement) as may be adopted pursuant to article 23 of these Articles;
USUFRUCT	the right to use (gebruiken), and receive the proceeds of (de vruchten genieten van), another person's assets.

</TABLE>

CHAPTER II

NAME. SEAT.

ARTICLE 2.

The name of the Company is: James Hardie Industries N.V.

Its corporate seat is in Amsterdam.

OBJECTS.

ARTICLE 3.

The objects of the Company are:

- a. to participate in, to take an interest in any other way in and to conduct the management of business enterprises of whatever nature;
 - b. to raise funds by the issues of debt or equity or in any other way and to finance third parties;
 - c. to provide guarantees, including guarantees for debts of third parties,
- and to perform all activities which are incidental to or which may be conducive to, or connected with, any of the foregoing.

SHARE CAPITAL. ISSUANCE OF SHARES. PRE-EMPTIVE RIGHTS.

ARTICLE 4.

- 4.1. The authorised share capital of the Company amounts to one billion one hundred and eighty million euro (EUR 1,180,000,000). It is divided into two billion (2,000,000,000) shares of fifty-nine eurocents (EUR 0.59) each.
- 4.2. Subject to the approval of the Joint Board the Supervisory Board shall have the power to resolve upon the issue of Shares and to determine the price and further terms and conditions of such share issue, if and in so far as the Supervisory Board has been designated by the General Meeting as the authorised corporate body (orgaan) for this purpose. A designation as referred to above shall only be valid for a specific period of not more than five years and may from time to time be extended with a period of not more than five years.
- 4.3. If a designation as referred to in article 4.2 of these Articles is not in force, the General Meeting shall have power to resolve upon the issue of

Shares, but only upon the

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proposal of and for a price and on such further terms and conditions to be determined by the Supervisory Board, subject to the approval of the Joint Board.

- 4.4. In the event of an issue of Shares, the Shareholders shall have a pre-emptive right in proportion to the number of Shares held by them. Should a Shareholder not or not fully exercise his pre-emptive right, the remaining Shareholders shall be similarly entitled to pre-emptive rights in respect of the Shares that have not been claimed.

If the latter collectively do not or do not fully exercise their pre-emptive rights, the Supervisory Board, and if a designation as referred to in article 4.2 of these Articles is not in force, the General Meeting, shall be due to decide to whom the Shares which have not been claimed shall be issued and such issue may be made at a higher price. There shall be no pre-emptive right to Shares issued against a contribution other than in cash or issued to employees of the Company or of a group company. The Company shall notify all Shareholders of an issue of Shares in respect of which pre-emption rights exist and of the period of time within which such rights may be exercised with due observance of article 10.2 of these Articles.

The Supervisory Board shall have the power to limit or exclude any pre-emptive rights to which Shareholders shall be entitled, but only if and in so far as it has been granted such authority by the General Meeting, and provided further that the Supervisory Board can only exercise such authority if at that time it also has authority to resolve upon the issue of Shares. The provisions in the second sentence of article 4.2 of these Articles shall equally apply.

- 4.5. If a designation as referred to in article 4.2 of these Articles is not in force, the General Meeting shall have power to limit or exclude any pre-emptive rights to which Shareholders shall be entitled, but only upon the proposal of the Supervisory Board.
- 4.6. This article 4 shall equally apply to the granting of rights to subscribe for Shares (such as stock options), but shall not apply to the issue of Shares to a person who exercises a previously acquired right to subscribe for Shares, in which case no pre-emptive right exists (and no further action pursuant to articles 4.2 and 4.3 of these Articles shall be required).

ISSUANCE PRICE. PAYMENT ON SHARES. CALLS ON SHARES.

ARTICLE 5.

- 5.1. Without prejudice to what has been provided in section 2:80, subsection 2 Dutch Civil Code, Shares shall at no time be issued below par. Upon subscription of a Share, the amount to be paid thereon shall be equal to the nominal value of such Share and - if such Share is subscribed for a higher amount - the difference between such amounts. It may be stipulated that a part of the nominal value, not exceeding three-fourths (3/4) thereof, shall be due for payment after the Company has so called for it to be paid.
- 5.2. Calls on Shareholders in respect of any part of the nominal value unpaid on the Shares pursuant to article 5.1. shall be made with due observance of the following:
- a. the Managing Board may cause the Company to call at any time on Shareholders in respect of any part of the nominal value unpaid on the Shares which is not by the terms of issue of those Shares made payable at fixed times;

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- b. each Shareholder shall, on receiving at least fourteen (14) days' notice specifying the time and place of payment, pay to the Company at the time and place so specified the amount called on the Shareholder's Shares;
 - c. the Managing Board may revoke or postpone a call;
 - d. a call may be required to be paid by instalments;
 - e. a call is made at such time or times specified in the resolution of the Managing Board authorising the call.
- 5.3. If and so long as the Shares are quoted on the ASX, calls shall be made, and notice of those calls given, in accordance with the Listing Rules.
- 5.4. Joint Holders of a Share are jointly and severally liable to pay any call in respect of the Share.
- 5.5. If a sum called or otherwise payable to the Company in respect of a Share is not paid before or on the date fixed for payment, the Shareholder from whom such sum is due shall pay:
- a. interest on the sum from the day fixed for payment of the sum to the time of actual payment at a rate determined by the Managing Board but not exceeding the sum of the Prescribed Rate plus five per cent (5%); and
 - b. any costs and expenses incurred by the Company by reason of non-payment or late payment of the sum.
- 5.6. The Managing Board may waive payment of some or all of the interest or costs and expenses as referred to in article 5.5 under b, wholly or in part.
- 5.7. Any sum that, under the terms of issue of a Share, becomes payable at a fixed date shall, for the purposes of these Articles, be taken to be duly called and payable on the date on which under the terms of issue the sum becomes payable.
- 5.8. The Managing Board may accept from a Shareholder the whole or a part of the amount unpaid on a Share even if that amount has not been called. The Managing Board may authorise payment by the Company of interest on the whole or any part of an amount accepted under this article 5.8 until the amount becomes payable, at a rate, not exceeding the Prescribed Rate, which is agreed between the Managing Board and the Shareholder paying the sum. At the time the amount accepted under this article 5.8 becomes payable pursuant to a call by the Company, the Company shall treat and accept the amount so paid in advance by the Shareholder as a payment on Shares and shall off set (verrekenen) the amount payable by the Company to the Shareholder pursuant to the first sentence of this Article 5.8. against the amount payable by the Shareholder to the Company pursuant to the call. The Managing Board may at any time repay the whole or any part of any amount paid in advance on serving the Shareholder with one (1) month's notice of its intention to do so.
- 5.9. Payments on Shares must be made in cash to the extent that no other contribution has been agreed upon. If the Company so agrees, payment in cash can be made in a currency other than in Euro.
- 5.10. A Shareholder shall not be entitled to vote at a General Meeting unless all calls and other sums presently payable by the Shareholder in respect of any of his Shares have been paid.

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ACQUISITION BY THE COMPANY OF SHARES. CANCELLATION OF SHARES AND CAPITAL
REDUCTION.

ARTICLE 6.

6.1. The Company may acquire Shares for valuable consideration if and in so far as:

- a. its shareholders equity (eigen vermogen) less the purchase price to be paid by the Company for such Shares is not less than the aggregate amount of the paid up and called up share capital and the reserves which must be maintained by Law;
- b. the aggregate par value of the Shares which the Company acquires, already holds or on which it holds a right of pledge, or which are held by a subsidiary of the Company, amounts to no more than one-tenth of the aggregate par value of the issued share capital; and
- c. the General Meeting has authorised the Managing Board to acquire such shares, which authorisation shall be valid for no more than eighteen months on each occasion,

subject to any further applicable statutory provisions and the provisions of these Articles and the Listing Rules.

6.2. Shares thus acquired may again be disposed of by the Company. Notwithstanding what has been provided in article 6.1, the Managing Board shall not cause the Company to acquire Shares or dispose of such Shares other than subject to the approval of the Joint Board. If depositary receipts for Shares have been issued, such depositary receipts shall for the application of the provisions of articles 6.1 and 6.2 be treated as Shares. In addition, CUFSS shall for the application of the provisions of articles 6.1 and 6.2 be treated as Shares.

6.3. In the General Meeting no votes may be cast in respect of any Share held by the Company or by a subsidiary of the Company. No votes may be cast in respect of any Share if (i) the depositary receipt for such Share, or (ii) the CUFSS issued in respect thereof is held by the Company or by a subsidiary of the Company. However, the holders of a right of Usufruct and the holders of a right of pledge (pandrecht) on Shares held by the Company or by a subsidiary of the Company, are nonetheless not excluded from the right to vote such Shares, if the right of Usufruct or the right of pledge was granted prior to the time such Shares were acquired by the Company or by a subsidiary of the Company. Neither the Company nor a subsidiary of the Company may cast votes in respect of a Share on which it holds a right of Usufruct or a right of pledge. Shares in respect of which voting rights may not be exercised by Law or pursuant to these Articles shall not be considered outstanding or otherwise taken into account when determining to what extent the Shareholders have cast their votes, to what extent Shareholders are present or represented at the General Meeting or to what extent the share capital is provided or represented.

6.4. Upon the proposal of the Managing Board the General Meeting shall have power to decide to cancel Shares acquired by the Company or depositary receipts of which were acquired by the Company or to reduce the share capital in another manner, subject however to applicable statutory provisions. A proposal of the Managing Board, as referred to in the preceding sentence, is subject to the approval of the Joint Board.

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6.5. A partial repayment or release must be made pro rata to all Shares. The pro rata requirements may be waived by agreement of all Shareholders.

SHARES. SHARE CERTIFICATES.

ARTICLE 7.

7.1. Shares shall be issued in registered form only.

7.2. Shares shall be available in the form of an entry in the share register with or without the issue of a share certificate, which share certificate shall consist of a main part (mantel) only. Share certificates will, at the discretion of the Managing Board, be issued upon the request of a Shareholder.

7.3. Share certificates shall be available in such denominations as the Managing Board shall determine.

7.4. All share certificates shall be signed on behalf of the Company by one or more members of the Managing Board with due observance of article 18.1 of these Articles; the signature may be effected by printed facsimile. In addition, all share certificates may be signed on behalf of the Company by one or more persons designated by the Managing Board for that purpose.

7.5. All share certificates shall be identified by numbers and/or letters.

7.6. The Managing Board can determine that for the purpose to permit or facilitate trading of Shares at a foreign stock exchange, share certificates shall be issued in such form as the Managing Board may determine, in order to comply with the Listing Rules.

7.7. The expression "share certificate" as used in these Articles shall include a share certificate in respect of more than one share.

MISSING OR DAMAGED SHARE CERTIFICATES.

ARTICLE 8.

8.1. Upon written request by or on behalf of a Shareholder, and further subject to such conditions as the Managing Board may deem appropriate, missing or damaged share certificates may be replaced by new share certificates bearing the same numbers and/or letters, provided the Shareholder who has made such request, or the person making such request on his behalf, provides satisfactory evidence of his title and, in so far as applicable, the loss of the share certificates to the Managing Board.

8.2. If, as and when the Managing Board deems such appropriate, the replacement of missing share certificates may be made subject to the publication of the request also stating the numbers and/or letters of the missing share certificates, in at least three daily published newspapers to be designated by the Managing Board.

8.3. The issue of a new share certificate shall render the share certificates that it replaces invalid.

8.4. The issue of new certificates may in appropriate cases, at the discretion of the Managing Board, be published in newspapers to be indicated by the Managing Board.

SHARE REGISTER. OTHER REGISTERS.

ARTICLE 9.

9.1. With due observance of the applicable statutory provisions in respect of registered shares, a share register shall be kept by or on behalf of the Company, which register shall be regularly updated and, at the discretion of the Managing Board, may, in whole or in part, be kept in more than one copy and at more than one address.

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Part of the register may be kept abroad in order to comply with applicable foreign statutory provisions or the Listing Rules.

- 9.2. Each Shareholder's name, his address and such further information as required by Law and such further information as the Managing Board deems appropriate, whether at the request of a Shareholder or not, shall be recorded in the share register.
- 9.3. The form and the contents of the share register shall be determined by the Managing Board with due observance of the provisions of articles 9.1 and 9.2 of these Articles.
- 9.4. Upon his request a Shareholder shall be provided with written evidence of the contents of the share register with regard to the Shares registered in his name free of charge, and the statement so issued may be validly signed on behalf of the Company by a person to be designated for that purpose by the Managing Board.
- 9.5. The provisions of articles 9.2 through 9.4 inclusive of these Articles shall equally apply to persons who hold a right of Usufruct or a right of pledge on one or more shares.
- 9.6. The Managing Board shall have power and authority to permit inspection of the share register and to provide information recorded therein as well as any other information regarding the direct or indirect shareholding of a Shareholder of which the Company has been notified by that Shareholder to the authorities entrusted with the supervision and/or implementation of the trading of CUFSS on the ASX.
- 9.7. The Company shall establish and maintain any such registers as required to be established and maintained by it under the Corporations Act, the Listing Rules or the ASTC Operating Rules, including but not limited to a register of debenture holders and of option holders.
- 9.8. The Managing Board shall have power and authority to permit auditing of the Company's registers at such intervals, and by such persons in such manner, as required by the Listing Rules and the ASTC Operating Rules.

NOTICES.

ARTICLE 10.

- 10.1. Notices of meetings and notifications which by Law or pursuant to these Articles must be made to Shareholders shall be given by way of an announcement in a nationally distributed newspaper in the Netherlands and by at least one of the following means, determined at the discretion of the Managing Board:
 - a. serving it on the Shareholder personally; or
 - b. sending it by post to the Shareholder's address as shown in the share register or other registers as mentioned in article 9 of these Articles or the address supplied by the Shareholder to the Company for the giving of notices; or
 - c. transmitting it to the fax number supplied by the Shareholder to the Company for the giving of notices; or
 - d. transmitting it electronically to the electronic mail address given by the Shareholder to the Company for the giving of notices; or
 - e. serving it in any manner contemplated in this article 10.1 on a Shareholder's attorney as specified by the Shareholder in a notice given pursuant to article 10.4.

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- 10.2. Without prejudice to the provisions of article 10.1, the Company shall notify all Shareholders of an issue of Shares in respect of which pre-emption rights exist and of the period of time within which such rights may be exercised by way of an advertisement in the National Gazette (Staatscourant) and in a nationally distributed newspaper in the Netherlands, unless the notification to all Shareholders takes place in writing to the address as supplied by the Shareholder to the Company for the giving of notices as referred to in article 10.1. under b.
- 10.3. Any Shareholder who failed to leave his address or update the Company on any change of address is not entitled to receive any notice but the Company may elect to serve such notices to any fax number or an electronic mail address notified by the Shareholder to the Company.
- 10.4. A Shareholder may, by written notice to the Company left at or sent to the registered office, request that all notices to be given by the Company be served on the Shareholder's attorney at an address specified in the notice and the Company may do so in its discretion.
- 10.5. Notices to a Shareholder whose address for notices is outside the country from where the notice is sent, shall be sent by airmail, air courier, fax or electronic mail.
- 10.6. Where a notice is sent by post, airmail or air courier, service of the notice shall, to the fullest extent permitted by Law, be taken to be effected by properly addressing and posting or delivering to the air courier a letter containing the notice and to have been effected on the day after the date of its posting or delivery to the air courier.
- 10.7. In proving service of any notice it will be sufficient to prove that the letter containing the notice was properly addressed and put into the post office or other public postal receptacle or delivered to the air courier.
- 10.8. Where a notice is sent by fax or electronic transmission, service of the notice shall, to the fullest extent permitted by Law, be taken to be effected by properly addressing and sending or transmitting the notice and to have been effected on the day it is sent.
- 10.9. A notice may be given by the Company to a person entitled to a Share in consequence of the death or bankruptcy of a Shareholder:
 - a. by serving it on the person personally;
 - b. by sending it by post addressed to the person by name or by the title of representative of the deceased or assignee of the bankrupt or by any like description at the address (if any) supplied for the purpose by the person;
 - c. if such an address has not been supplied, at the address to which the notice might have been sent if the death or bankruptcy had not occurred;
 - d. by transmitting it to the fax number supplied by the person to the Company; or
 - e. if such a fax number has not been supplied, by transmitting it to the fax number to which the notice might have been sent if the death or bankruptcy had not occurred; or
 - f. by transmitting it to the electronic mail address supplied by the person to the Company.
- 10.10. Unless provided otherwise in these Articles where a period of notice is required to be given, the day on which the notice is deemed to be served will, but the day of doing the act or other thing will not be included in the number of days or other period.

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- 10.11. Notifications which by Law or under these Articles are to be addressed to the General Meeting may take place by including the same in the notice of the General Meeting or in a document which has been made available for inspection at the offices of the Company, provided this is mentioned in the notice of the meeting.
- 10.12. Notices of meetings and notifications which by Law or pursuant to these Articles must be made to Shareholders shall also be given to CUFS Holder(s) provided the Shares are quoted on the ASX, any other persons entitled by Law to attend a General Meeting and to any other person to whom the Company is required to give notice under the Listing Rules, and any reference to Shareholder(s) in this article 10 must be read as a reference to CUFS Holder(s), any such person(s) entitled by Law to attend a General Meeting and to any such other person to whom the Company is required to give notice under the Listing Rules, with such notices and notifications to be written in the English language and any other language determined by the Company.
- 10.13. Any notice as referred to in article 10.1 through article 10.12 inclusive, will be sent with due observance of the Listing Rules.
- 10.14. Notifications of Shareholders and other notifications to be addressed to the Managing Board, the Supervisory Board or the Joint Board shall be sent by letter to the office of the Company or to the addresses of all members of the Managing Board, the Joint Board or the Supervisory Board.

TRANSFER OF REGISTERED SHARES.

ARTICLE 11.

- 11.1. The transfer of title to the Shares or the transfer of title to or a termination of a right of Usufruct on Shares or the creation or release of a right of Usufruct or of a right of pledge on Shares shall be effected by way of a written instrument and in accordance with the (further) provisions set forth in section 2:86, or, as the case may be, section 2:86c Dutch Civil Code. In addition, upon the transfer of a Share in respect of which a share certificate has been issued, such share certificate must be delivered to the Company. The Company can acknowledge the transfer of a Share in respect of which a share certificate has been issued by endorsement on the share certificate or by issuance of a new share certificate to the transferee, at the discretion of the Managing Board.
- 11.2. If the transfer concerns Shares that have not been fully paid-up the acknowledgement by the Company can only be made if the written instrument bears a fixed date (authentieke of geregistreerde onderhandse akte). After the transfer or allocation (toedeling) of partially paid up Shares, each of the previous Shareholders shall remain jointly and severally liable vis-a-vis the Company for the amount to be paid on the Shares transferred or allocated. The Managing Board together with the Supervisory Board could discharge any previous Shareholder from further joint and several liability by means of the execution of an authentic or registered private deed bearing a fixed date (authentieke of geregistreerde onderhandse akte); in such case the joint and several liability of the previous Shareholder will remain to exist for payments called for within one year after the date on which said authentic or registered deed is executed.

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11.3. The provisions of article 11.1 shall equally apply to (i) the allotment of Shares in the event of a partition of any joint holding, (ii) the transfer of Shares as a consequence of foreclosure of a right of pledge and (iii) the creation or transfer of limited rights in rem on Shares.

11.4. Any requests made pursuant to and in accordance with articles 8, 9 and 11 may be sent to the Company at such address(es) as to be determined by the Managing Board, at all times including an address in the municipality or city where the ASX has its principal place of business.

FEES AND EXPENSES.

ARTICLE 12.

Without prejudice to article 9.4, the Company is authorised to charge such amounts as may be determined by the Managing Board provided they do not exceed cost price, to persons who have made a request pursuant to and in accordance with articles 8, 9 and 11.

JOINT HOLDING.

ARTICLE 13.

If Shares, CUFSS or depositary receipts for Shares issued with the co-operation of the Company are included in a joint holding, the Joint Holders may only be represented vis-a-vis the Company by a person who has been designated by them in writing for that purpose. The Joint Holders may also designate more than one person. If the joint holding comprises Shares, the Joint Holders may determine at the time of the designation of the representative or thereafter - but only unanimously - that, if a Joint Holder so wishes, a number of votes corresponding to his interest in the joint holding will be cast in accordance with his instructions.

MANAGING BOARD. NUMBER OF MEMBERS OF THE MANAGING BOARD.

APPOINTMENT.

ARTICLE 14.

14.1. The Company shall be managed by the Managing Board comprising of at least two (2) or more members under the guidance of the Supervisory Board. The number of members of the Managing Board shall be determined by the Supervisory Board.

14.2. Other than the CEO, no member of the Managing Board shall hold office for a continuous period in excess of three (3) years or past the end of the third annual General Meeting following such member's appointment, whichever is the longer, without submitting for re-election. If no members of the Managing Board would otherwise be required to submit for re-election but the Listing Rules require that a member of the Managing Board is appointed, the member to retire at the end of the annual General Meeting will be the member, other than the CEO, who has been longest in office since their last appointment, but, as between persons, other than the CEO, who became a member of the Managing Board on the same day, the one to retire shall (unless they otherwise agree among themselves) be determined by lot.

A member of the Managing Board, other than the CEO, retiring pursuant to this article 14.2 shall be eligible for re-election and shall hold office as a member of the Managing Board until the end of the General Meeting at which such member retires.

14.3. Members of the Managing Board shall be appointed by the General Meeting. If a member of the Managing Board is to be appointed, the Supervisory Board as well as any Shareholder shall have the right to make nominations.

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14.4. Nominations by Shareholders must be made no less than thirty-five (35) Business Days (or in the case the General Meeting is held at the request of one or more Shareholders thirty (30) Business Days) before the date of the General Meeting at which the appointment of members of the Managing Board is to be considered.

The nominations shall be included in the notice of the General Meeting at which the appointment shall be considered. If nominations have not been made or have not been made in due time, this shall be stated in the notice and the General Meeting may appoint a member of the Managing Board at its discretion.

14.5. Members of the Managing Board are not required to hold any Shares.

CHAIR OF THE MANAGING BOARD. CEO. ORGANISATION OF THE MANAGING BOARD. PREVENTED FROM ACTING.

ARTICLE 15.

15.1. The Supervisory Board shall appoint one of the members of the Managing Board as chair of the Managing Board.

The Supervisory Board shall appoint one of the members of the Managing Board to hold the most senior executive position in the Company and such person shall have the title and role of chief executive officer or such other title as the Supervisory Board determines, for the period and on the terms as the Supervisory Board thinks fit. Subject to the terms of any agreement entered into between the Company and the chief executive officer in a particular case, the Supervisory Board may at any time revoke such appointment.

15.2. The appointment as chair or chief executive officer automatically terminates if the chair or the chief executive officer, respectively, ceases for any reason to be a member of the Managing Board.

15.3. With due observance of these Articles, subject to the approval of the Supervisory Board, the Managing Board may adopt Management Rules and the Managing Board shall have authority, subject to the approval of the Supervisory Board, to amend the Management Rules from time to time. Also, subject to the approval of the Supervisory Board, the Managing Board may divide the duties among the members of the Managing Board, whether or not by way of a provision to that effect in the Management Rules. The Management Rules may include directions to the Managing Board concerning the general financial, economic, personnel and social policy of the Company, to be taken into consideration by the Managing Board in the performance of its duties.

15.4. In case one, more or all members of the Managing Board are prevented from acting or are absent, the Supervisory Board is authorised to designate one or more persons temporarily in charge of management (belet en ontstentenis persoon). In case one or more members of the Managing Board are prevented from acting or is absent, the remaining member(s) of the Managing Board may also be temporarily responsible for the entire management. In case all members of the Managing Board are prevented from acting or are absent and the Supervisory Board has not designated one or more persons temporarily in charge of the management, the Supervisory Board shall temporarily be in charge of the management. Failing one or more members of the Managing Board, the Supervisory Board shall take the necessary measures as soon as possible in order to have a definitive arrangement made.

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RESOLUTIONS OF THE MANAGING BOARD. CONFLICT OF INTEREST.

ARTICLE 16.

16.1. Resolutions of the Managing Board shall be validly adopted, if adopted by absolute majority of votes, in a meeting at which at least two (2) of the members of the Managing Board are present.

In case of absence, a member of the Managing Board may issue a proxy only to another member of the Managing Board, provided however that a member of Managing Board can only act as proxy for not more than one other member of the Managing Board.

Each member of the Managing Board has the right to cast one vote. In case of a tie vote, if more than two members of the Managing Board are present at the meeting, the chair of the Managing Board shall have a decisive vote. In case of a tie vote, if only two members of the Managing Board are present at the meeting, the proposal shall be rejected.

16.2. The Managing Board may adopt its resolutions in writing without holding a meeting, provided that the proposals for such resolutions have been communicated in writing to all members of the Managing Board and no member of the Managing Board has objected to this method of adoption of a resolution.

16.3. A certificate signed by a member of the Managing Board confirming that the Managing Board has adopted a particular resolution, shall constitute evidence of such resolution vis-a-vis third parties.

16.4. The Management Rules shall include provisions on the manner of convening board meetings and the internal procedure at such meetings. These meetings may be held by telephone conference communications, as well as by video communications, provided all participating members of the Managing Board can hear each other simultaneously.

16.5. Without prejudice to article 16.6, a member of the Managing Board who has a material personal interest in a matter that relates to the affairs of the Company must give all of the other members of the Managing Board notice of his or her interest.

16.6. A member of the Managing Board with a material personal interest in a matter that relates to the affairs of the Company is not required to give notice in the following circumstances:

a. if the interest:

(i) arises because the member of the Managing Board is a Shareholder of the Company and is held in common with the other Shareholders of the Company; or

(ii) arises in relation to the member's remuneration as a member of the Managing Board; or

(iii) relates to a contract the Company is proposing to enter into that is subject to approval by the General Meeting and will not impose any obligation on the Company if it is not approved by the General Meeting; or

(iv) arises merely because the member of the Managing Board is a guarantor or has given an indemnity or security for all or part of a loan (or proposed loan) to the Company; or

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- (v) arises merely because the member of the Managing Board has a right of subrogation in relation to a guarantee or indemnity referred to above; or
- (vi) relates to a contract that insures, or would insure, the member of the Managing Board against any liability such member incurs or would incur as an officer of the Company (but only if the contract does not make the Company or a related company the insurer); or
- (vii) relates to any payment by the Company or another company in respect of an officer or any contract relating to such an indemnity; or
- (viii) is in a contract, or proposed contract, with, or for the benefit of, or on behalf of, another company and arises merely because the member of the Managing Board is a director of the other company; or

b. if all of the following conditions are met:

- (i) the member of the Managing Board has already given notice of the nature and extent of the interest and its relation to the affairs of the Company;
- (ii) if a person who was not a member of the Managing Board at the time the notice above was given, is appointed as a managing director and the notice was given by that person; and
- (iii) the nature or extent of the interest has not materially changed or increased from that disclosed in the notice; or

c. if the member of the Managing Board has given a standing notice of the nature and extent of the interest in accordance with article 16.8 and that standing notice is still effective in relation to the interest.

16.7. Notices of material personal interest given by a member of the Managing Board must:

- a. give details of the nature and extent of the interest of the member of the Managing Board and the relation of the interest to the affairs of the Company;
- b. be given at a meeting of the Managing Board as soon as practicable after the member of the Managing Board becomes aware of his or her interest in the matter; and
- c. be recorded in the minutes of the meeting of the Managing Board at which the notice is given.

16.8. The standing notice referred to in article 16.6 under c:

- a. may be given at any time and whether or not the matter relates to the affairs of the Company at the time the notice is given;
- b. must give details of the nature and extent of the interest and be given:
 - (i) at a meeting of the Managing Board (either orally or in writing); or
 - (ii) to each of the other members of the Managing Board individually in writing.
- c. must be tabled at the next meeting of the Managing Board in the event that it is given to other members of the Managing Board individually in written form pursuant to article 16.7 under b.;
- d. recorded in the minutes of the meeting at which it is given or tabled.

16.9. A standing notice that is given under article 16.8 takes effect as soon as it is given and ceases to have effect in the following circumstances:

- a. if a person who was not a member of the Managing Board at the time

when the notice was given is appointed as a member of the Managing Board; and

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- b. if the nature or extent of the interest materially changed or increases from that that disclosed in the notice.

16.10. A member of the Managing Board who has a material personal interest in a matter that is being considered at a meeting of the Managing Board or Joint Board may neither be present while the matter is being considered at such meeting nor vote on the matter, except in the following circumstances:

- a. if the material personal interest is a matter that is not required to be disclosed under article 16.6;
- b. if the members of the Managing Board who do not have a material personal interest in the matter have passed a resolution that:
 - (i) identified the member of the Managing Board, the nature and the extent of the interest of the member of the Managing Board in the matter and in relation to the affairs of the Company; and
 - (ii) states that the other members of the Managing Board are satisfied that the interest should not disqualify the member of the Managing Board from voting or being present.

16.11. If, after application of article 16.10, no member of the Managing Board, other than the member(s) in respect of whom the conflict exists, would remain to be entitled to be present while the matter is being considered at the meeting of the Managing Board and to vote on the matter, the member(s) of the Managing Board in respect of whom the conflict exists may call a General Meeting and the General Meeting may pass a resolution to decide as to whether or not such member(s) are entitled to be present while the matter is being considered at such meeting and to vote on the matter.

16.12. Articles 16.6 up to and including 16.11 shall not derogate from article 18.4.

MANDATORY PRIOR APPROVAL FOR MANAGEMENT ACTION.

ARTICLE 17.

17.1. Without prejudice to any other applicable provisions of these Articles, the Managing Board shall require the prior approval of the Supervisory Board for any action specified from time to time by a resolution to that effect adopted by the Supervisory Board, of which the Managing Board has been informed in writing.

17.2. Without prejudice to any other applicable provisions of these Articles, the Managing Board shall require the prior approval of the General Meeting if required by Law and the provisions of these Articles, as well as for such resolutions as are clearly defined by a resolution to that effect adopted by the General Meeting, of which the Managing Board has been informed in writing.

17.3. Without prejudice to any other applicable provisions of these Articles, the Managing Board shall furthermore require the approval of the Supervisory Board, the Joint Board and the General Meeting for resolutions of the Managing Board regarding a significant change in the identity or nature of the Company or the enterprise, including in any event:

- a. the transfer of the enterprise or practically the entire enterprise to a third party;
- b. to conclude or cancel any long-lasting co-operation by the Company or a subsidiary ('dochtermaatschappij') with any other legal person or company or as a fully liable general partner of a limited partnership or a general partnership, provided that such co-operation or the cancellation thereof is of essential importance to the Company;

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- c. to acquire or dispose of a participating interest in the capital of a company with a value of at least one-third of the sum of the assets according to the consolidated balance sheet with explanatory notes thereto according to the last adopted annual accounts of the Company, by the Company or a subsidiary ('dochtermaatschappij').

17.4. A lack of the approval of the Supervisory Board, Joint Board or the General Meeting as mentioned in paragraphs 1 to 3 of this article may not be invoked by or against third parties.

17.5. If a serious private bid is made for a business unit or a participating interest and the value of the bid exceeds the threshold referred to in paragraph 3 under c., and such bid is made public, the Managing Board shall, at its earliest convenience, make public its position on the bid and the reasons for this position.

REPRESENTATION. CONFLICT OF INTEREST.

ARTICLE 18.

18.1. The entire Managing Board is authorised to represent the Company and bind it vis-a-vis third parties. The Company may also be represented by the CEO, acting individually, and may also be represented by two members of the Managing Board acting jointly.

18.2. The Managing Board may grant special and general powers of attorney to persons, whether or not such persons are employed by the Company, authorising them to represent the Company and bind it vis-a-vis third parties. The scope and limits of such powers of attorney shall be determined by the Managing Board. The Managing Board may in addition grant to such persons such titles as it deems appropriate.

18.3. The Managing Board shall have the power to enter into and perform agreements and all legal acts (rechtshandelingen) contemplated thereby as specified in section 2:94, subsections 1 and 2 Dutch Civil Code insofar as such power is not expressly excluded or limited by any provision of these Articles.

18.4. If a member of the Managing Board has a conflict of interest with the Company (whether acting in his personal capacity by entering into an agreement with the Company or conducting any litigation against the Company or whether acting in any other capacity), he as well as any other members of the Managing Board, shall have the power to represent the Company, with due observance of the provisions of the first paragraph, unless the General Meeting designates a person for that purpose or the law provides for the designation in a different manner. Such person may also be the member of the Managing Board in respect of whom such conflict of interest existed.

REMUNERATION OF THE MEMBERS OF THE MANAGING BOARD.

ARTICLE 19.

19.1. The General Meeting shall adopt on the proposal of the Supervisory Board the policy in the area of remuneration of the Managing Board. To the extent that the Company has established an employees' council pursuant to statutory provisions, the remuneration policy shall in written form and together with the submission to the General Meeting be submitted to the employees' council for examination.

19.2. The salary, the bonus, if any, and the other terms and conditions of employment (including pension benefits) of the members of the Managing Board will, with due observance of the policy as referred to in the preceding paragraph, be determined by the Supervisory Board. The Supervisory Board will submit for approval by the General Meeting

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a proposal regarding the arrangements for the remuneration in the form of Shares or CUFSS or rights to acquire Shares or CUFSS. This proposal includes at least how many Shares or CUFSS or rights to acquire Shares or CUFSS may be awarded to the Managing Board and which criteria apply to an award or a modification.

- 19.3. The members of the Managing Board shall be paid for their services as a member of the Managing Board by way of fee, wage, salary, bonus, commission or participation in profits, but not by a commission on, or percentage of, turnover.
- 19.4. The remuneration to which a member of the Managing Board is entitled may be provided to a member in cash or in such other form as is agreed between the Company and such member. A member of the Managing Board may elect to forgo some or all of the member's entitlement to cash remuneration in favour of another agreed form of remuneration and vice versa.
- 19.5. The members of the Managing Board shall also be entitled to be paid or reimbursed for all travelling and other expenses properly incurred by them in attending and returning from any Managing Board meeting, meeting of any committee of the members of the Managing Board, General Meeting or otherwise in connection with the business or affairs of the Company.
- 19.6. Subject to applicable Law and the Listing Rules, a member of the Managing Board may be engaged by the Company in any other capacity and may be appointed on such terms as to remuneration, tenure of office and otherwise as may be agreed with the Company.
- 19.7. In addition to any other amounts payable under these Articles, the Company may make any payment or give any benefit to any member of the Managing Board or a member of the managing board of a subsidiary of the Company or any other person in connection with the such member's retirement, resignation from or loss of office or death while in office, if it is made or given in accordance with the Law and the Listing Rules.
- 19.8. Subject to this article 19, the Company may:
 - a. make contracts or arrangements with a member of the Managing Board or a person about to become a member of the Managing Board or a member of the managing board of a subsidiary of the Company under which such member or any person nominated by such member is paid or provided with a lump sum payment, pension, retiring allowance or other benefit on or after such member or person about to become a member of the Managing Board or of the managing board of a subsidiary of the Company ceases to hold office for any reason;
 - b. make any payment under any contract or arrangement referred to in paragraph a. above; and
 - c. establish any fund or scheme to provide lump sum payments, pensions, retiring allowances or other benefits for:
 - (i) members of the Managing Board, on them ceasing to hold office; or
 - (ii) any person including a person nominated by the member of the Managing Board, in the event of such member's death while in office,
 - (iii) and from time to time pay to the fund or scheme any sum as the Company considers necessary to provide those benefits.

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19.9. The Company may impose any conditions and restrictions under any contract, arrangement, fund or scheme referred to in article 19.8 as it thinks proper.

19.10. The Company may authorise any subsidiary of the Company to make a similar contract or arrangement with the members of its Managing Board and make payments under it or establish and maintain any fund or scheme, whether or not all or any of the members of its managing board are also a member of the Managing Board.

SUSPENSION OR DISMISSAL OF MEMBERS OF THE MANAGING BOARD.

ARTICLE 20.

20.1. The General Meeting shall at any time be entitled to suspend or dismiss a member of the Managing Board.

20.2. The Supervisory Board shall also at any time be entitled to suspend (but not to dismiss) a member of the Managing Board. During his suspension, a member of the Managing Board will not receive any salary or other payments unless his employment agreement or the resolution regarding his suspension provides otherwise.

20.3. Within three months after a suspension of a member of the Managing Board has taken effect, a General Meeting shall be held, in which meeting a resolution must be adopted to either terminate or extend the suspension for a maximum period of another three months. If neither such resolution is adopted nor the General Meeting has resolved to dismiss the member of the Managing Board, the suspension shall terminate after the period of suspension has expired.

The member of the Managing Board shall be given the opportunity to account for his actions at that meeting.

20.4. Further to article 20.1, a member of the Managing Board shall cease to be a member of the Managing Board if he:

- a. becomes bankrupt, or obtains suspension of payments, or any event having analogous effect under applicable law, or proposes or makes any agreement for the deferral, rescheduling or other adjustment of all or part of his debts;
- b. loses his full legal capacity (handelingsbekwaamheid), or any event having analogous effect under applicable law;
- c. resigns by notice in writing to the Company;
- d. is absent without the consent of the other members from Managing Board meetings held during a continuous period of three (3) months;
- e. becomes prohibited from being a member of the Managing Board by reason of any provision of law; or
- f. dies.

SUPERVISORY BOARD.

ARTICLE 21.

21.1. The Supervisory Board shall be responsible for supervising the policy pursued by the Managing Board and the general course of affairs of the Company and the business enterprise which it operates. The Supervisory Board shall assist the Managing Board with advice relating to the general policy aspects connected with the activities of the Company. In fulfilling their duties the members of the Supervisory Board shall serve the interests of the Company and the business enterprise which it operates.

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21.2. The Managing Board shall provide the Supervisory Board and the Joint Board in good time with all relevant information as well as with all other information as the Supervisory Board and the Joint Board may request, in connection with the exercise of its duties. At least once per year, the Managing Board shall inform the Supervisory Board and the Joint Board in writing in respect of the principles of the strategic plan, the general and financial risks and the management and control systems of the Company. The Managing Board shall at that time ask the approval of the Supervisory Board and the Joint Board for:

- a. The operational and financial objectives of the Company;
- b. The strategy designed to achieve the objectives; and
- c. The parameters to be applied in relation to the strategy, for example in respect of the financial ratio's.

NUMBER OF MEMBERS OF THE SUPERVISORY BOARD. APPOINTMENT.

ARTICLE 22.

22.1. The Supervisory Board shall consist of at least two (2) members. The number of members of the Supervisory Board shall be determined by the Supervisory Board.

22.2. No member of the Supervisory Board shall hold office for a continuous period in excess of three (3) years or past the end of the third annual General Meeting following such member's appointment, whichever is the longer, without submitting for re-election. If no member of the Supervisory Board would otherwise be required to submit for re-election but the Listing Rules require that a member of the Supervisory Board is appointed, the member of the Supervisory Board to retire at the end of the annual General Meeting will be the member who has been longest in office since their last election, but, as between persons who became member of the Supervisory Board on the same day, the one to retire shall (unless they otherwise agree among themselves) be determined by lot. A retiring member of the Supervisory Board pursuant to this article 22.2 shall be eligible for re-election and shall hold office as a member of the Supervisory Board until the end of the General Meeting at which such member retires. The Supervisory Board shall draw up a retirement schedule for the members of the Supervisory Board.

22.3. Members of the Supervisory Board shall be appointed by the General Meeting, provided however, that in case of a vacancy in the Supervisory Board at any time after the end of an annual General Meeting and prior to the subsequent annual General Meeting, the Supervisory Board may appoint the member(s) of the Supervisory Board so as to fill any vacancy provided that:

- a. the member(s) of the Supervisory Board so appointed by the Supervisory Board retire(s) no later than at the end of the first annual General Meeting following his or their appointment; and
- b. the number of the members of the Supervisory Board appointed by the Supervisory Board at any given time shall not exceed one-third (1/3) of the aggregate number of members of the Supervisory Board as fixed by the Supervisory Board pursuant to article 22.1, such that if the resulting number is not a whole number, the number of members to be appointed by the Supervisory Board shall be rounded downwards to the nearest whole number.

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- 22.4. If a member of the Supervisory Board is to be appointed by the General Meeting, the Supervisory Board as well as any Shareholder shall have the right to make a nomination.
- 22.5. Nominations by Shareholders must be made no less than thirty-five (35) Business Days (or in the case the General Meeting is held at the request of the Shareholders thirty (30) Business Days) before the date of the General Meeting at which the appointment of members of the Supervisory Board is to be considered. The nominations shall be included in the notice of the General Meeting at which the appointment shall be considered. If nominations have not been made or have not been made in due time, this shall be stated in the notice and the General Meeting may appoint a member of the Supervisory Board at its discretion. Whenever a member of the Supervisory Board must be appointed the information referred to in section 2:142 subsection 3 Dutch Civil Code shall be made available to the Shareholders for their prior inspection. In case of a reappointment the manner in which the candidate has fulfilled his duties as a member of the Supervisory Board shall be taken into account.

22.6. Members of the Supervisory Board are not required to hold any Shares.

CHAIR OF THE SUPERVISORY BOARD. ORGANISATION OF THE SUPERVISORY BOARD. COMPANY SECRETARY.

ARTICLE 23.

- 23.1. The Supervisory Board shall appoint one of its members as its chair. The Supervisory Board shall be assisted by the Company Secretary, to be appointed and dismissed, as the case may be, by the Managing Board and the Supervisory Board jointly, subject to the approval of the Joint Board.
- 23.2. The Supervisory Board shall adopt a profile of its size and composition, taking account of the nature of the business, its activities and the desired expertise and background of the members of the Supervisory Board.
- 23.3. The Supervisory Board may appoint committees from among its members.
- 23.4. With due observance of these Articles, the Supervisory Board may adopt Supervisory Rules and the Supervisory Board shall have the authority to amend the Supervisory Board Rules from time to time. Furthermore, the Supervisory Board shall adopt rules for each of its committees and the Supervisory Board shall have the authority to amend these committee rules from time to time.
- 23.5. The Supervisory Board may decide that one or more of its members shall have access to all premises of the Company and that they shall be authorised to examine all books, correspondence and other records and to be fully informed of all actions which have taken place.
- 23.6. At the expense of the Company, the Supervisory Board may obtain such advice from experts as the Supervisory Board deems desirable for the proper fulfilment of its duties.
- 23.7. If there is only one member of the Supervisory Board in office, such member shall have all rights and obligations granted to and imposed on the Supervisory Board and the chair of the Supervisory Board by Law and by these Articles.

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RESOLUTIONS BY THE SUPERVISORY BOARD. CONFLICT OF INTEREST.

ARTICLE 24.

24.1. Resolutions of the Supervisory Board shall be validly adopted, if adopted by absolute majority of votes in a meeting at which at least two (2) of the members of the Supervisory Board are present.

In case of absence, a member of the Supervisory Board may issue a proxy only to another member of the Supervisory Board, provided however that a member of Supervisory Board can only act as proxy for not more than one other member of the Supervisory Board.

Each member of the Supervisory Board has the right to cast one vote. In case of a tie vote, if more than two members of the Supervisory Board are present at the meeting, the chair of the Supervisory Board shall have a decisive vote. In case of a tie vote, if only two members of the Supervisory Board are present at the meeting, the proposal shall be rejected.

24.2. The Supervisory Board may adopt its resolutions in writing without holding a meeting, provided that the proposals for such resolutions have been communicated in writing to all members of the Supervisory Board and no member has objected to this method of adoption of a resolution.

24.3. A certificate signed by a member of the Supervisory Board confirming that the Supervisory Board has adopted a particular resolution, shall constitute evidence of such resolution vis-a-vis third parties.

24.4. The members of the Managing Board shall attend meetings of the Supervisory Board at the latter's request.

24.5. Meetings of the Supervisory Board shall be convened by the chair of the Supervisory Board, either at the request of two or more members of the Supervisory Board or at the request of the Managing Board. If the chair fails to convene a meeting so that it can be held within four weeks of the receipt of the request, the members of the Supervisory Board making the request are entitled to convene the meeting.

24.6. The Supervisory Rules shall include provisions on the manner of convening supervisory board meetings and the internal procedure at such meetings. These meetings may be held by telephone conference communications, as well as by video communications, provided all participating members of the Supervisory Board can hear each other simultaneously.

24.7. Articles 16.5 through 16.11 inclusive of these Articles shall, to the fullest extent possible, equally apply to members of the Supervisory Board. Any references to member(s) of the Managing Board or the Managing Board in those articles must be read as a reference to member(s) of the Supervisory Board or the Supervisory Board, respectively.

REMUNERATION OF THE MEMBERS OF THE SUPERVISORY BOARD.

ARTICLE 25.

25.1. The General Meeting shall, on proposal of the Supervisory Board, determine the maximum aggregate amount of the remuneration of the members of the Supervisory Board, which may include an amount designated for members of the Supervisory Board to be appointed in the future.

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- 25.2. The remuneration as determined in accordance with article 25.1:
- a. shall be divided among the members of the Supervisory Board in the proportions as they may agree or, if they cannot agree, equally among them; and
 - b. may be exclusive of any benefits that the Company provides to members of the Supervisory Board in satisfaction of legislative schemes (including benefits provided under superannuation guarantee or similar schemes).
- 25.3. Remuneration payable to members of the Supervisory Board shall be by a fixed sum and not by a commission on or as a percentage of the operating revenue of the Company.
- 25.4. The members of the Supervisory Board shall also be entitled to be paid or reimbursed for all travelling and other expenses properly incurred by them in attending and returning from any meeting of the Supervisory Board, meeting of any committee of the Supervisory Board, General Meeting or otherwise in connection with the business or affairs of the Company.
- 25.5. Subject to applicable Law and the Listing Rules, a member of the Supervisory Board may be engaged by the Company in any other capacity and may be appointed on such terms as to remuneration, tenure of office and otherwise as may be agreed with the Company.
- 25.6. Articles 19.7 through 19.10 of these Articles shall, to the fullest extent possible, equally apply to members of the Supervisory Board. Any references to member(s) of the Managing Board in those articles must be read as a reference to member(s) of the Supervisory Board.

SUSPENSION OR DISMISSAL OF MEMBERS OF THE SUPERVISORY BOARD.

ARTICLE 26.

- 26.1. A member of the Supervisory Board may at any time be suspended or dismissed by the General Meeting with due observance of article 22 of these Articles.
- 26.2. Within three months after a suspension of a member of the Supervisory Board has taken effect, a General Meeting shall be held, in which meeting a resolution must be adopted to either terminate or extend the suspension for a maximum period of another three months. If neither such resolution is adopted nor the General Meeting has resolved to dismiss the member of the Supervisory Board, the suspension shall terminate after the period of suspension has expired. The member of the Supervisory Board shall be given the opportunity to account for his actions at that meeting.
- 26.3. Further to article 26.1, a member of the Supervisory Board shall cease to be a member of the Supervisory Board if he:
- a. becomes bankrupt, or obtains suspension of payments, or any other event having analogous effect under applicable law, or proposes or makes any agreement for the deferral, rescheduling or other adjustment of all or part of his debts;
 - b. loses its full legal capacity (handelingsbekwaamheid), or any other event having analogous effect under applicable law;
 - c. resigns by notice in writing to the Company;
 - d. is absent without the consent of the other members of the Supervisory Board from meeting of the Supervisory Board held during a continuous period of three (3) months;

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- e. becomes prohibited from being a member of the Supervisory Board by reason of any provision of Law; or
- f. dies.

JOINT BOARD.

ARTICLE 27.

27.1. The Company shall have a Joint Board comprising not less than three (3) and no more than twelve (12) members, or such greater number as determined by the General Meeting. Without prejudice to the preceding sentence, the number of members of the Joint Board shall be determined by the chair of the Supervisory Board.

The Joint Board will be responsible for overseeing the general course of affairs of the Company and has the other powers as described in these Articles.

The Joint Board shall consist of all members of the Supervisory Board, the CEO and, if the chair of the Supervisory Board decides thereto, one or more other members of the Managing Board, to be designated by the chair of the Supervisory Board, provided however that the number of members of the Managing Board being on the Joint Board can never be greater than the number of members of the Supervisory Board.

The chair of the Supervisory Board shall adopt a resolution to designate one or more members of the Managing Board as member(s) of the Joint Board in writing and shall communicate such resolution to all members of the Joint Board, including the designated members of the Managing Board.

27.2. The Joint Board may resolve by unanimous votes at a meeting at which all members of the Joint Board are present or represented to abolish the Joint Board. The Joint Board shall no longer be instituted from the date such resolution has been filed with the trade register of the competent Chamber of Commerce and Industry as referred to in section 2:77 Dutch Civil Code.

27.3. Following any resolution of the Joint Board as referred to in article 27, paragraph 2, the Supervisory Board may resolve to re-institute a Joint Board. Any such re-institution of the Joint Board shall be effective as from the date of filing of such resolution with the trade register of the competent Chamber of Commerce and Industry as referred to in section 2: 77 Dutch Civil Code. If and so long as a Joint Board has been instituted, the provisions of this article shall apply to the Joint Board and its members, without prejudice to what has otherwise been provided in these Articles concerning the Joint Board and its members.

27.4. If and so long as the Joint Board is not instituted, the powers and authorities of the Joint Board shall vest in the Supervisory Board, and the powers and authorities of the chair of the Joint Board shall vest in the chair of the Supervisory Board.

27.5. The members of the Joint Board shall resign or be suspended or dismissed from the Joint Board simultaneously with their resignation, suspension or dismissal as member of the Managing Board or Supervisory Board.

27.6. The Joint Board shall appoint one of its members as chair of the Joint Board. The Joint Board may adopt Joint Board Rules.

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- 27.7. Unless otherwise provided in these Articles, resolutions of the Joint Board shall be validly adopted by an absolute majority of votes in a meeting at which at least three (3) of the members of the Joint Board are present, provided however that, unless there are no members of the Supervisory Board in office, at least one member of the Supervisory Board must be present or represented at the meeting and the votes cast in favour of the resolution must include the vote of at least one member of the Supervisory Board. In case of absence, a member of the Joint Board may issue a proxy, however, only to another member of the Joint Board. Each member of the Joint Board has the right to cast one vote. In case of a tie vote, the chair of the Joint Board shall have a decisive vote.
- 27.8. The Joint Board may adopt its resolutions in writing without holding a meeting, provided that the proposals for such resolutions have been communicated to all members and no member has objected to this method of adoption of a resolution.
- 27.9. A certificate signed by a member of the Joint Board confirming that the Joint Board has adopted a particular resolution, shall constitute evidence of such resolution vis-a-vis third parties.
- 27.10. The Joint Board shall meet whenever the chairman of the Joint Board or two or more of its members so request. Meetings of the Joint Board shall be convened by the chair of the Joint Board. If the chair fails to convene a meeting so that it can be held within four weeks of the receipt of the request, the members of the Joint Board who have requested a meeting of the Joint Board to be held are entitled to convene such meeting.
- 27.11. The Joint Board Rules shall include provisions on the manner of convening board meetings and the internal procedure at such meetings. These meetings may be held by telephone conference communications, as well as by video communications, provided all participating members can hear each other simultaneously.

INDEMNIFICATION.

ARTICLE 28.

- 28.1. Unless otherwise provided for by Dutch Law, the Company shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative based on acts or failures to act in the exercise of his duties as a member of the Managing Board, Supervisory Board or Joint Board, officer, employee or agent of the Company, or in the exercise of his duties as a director, officer or agent of another company, a partnership, joint venture, trust or other enterprise at the Company's request, against all expenses (including attorneys' fees) judgements, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding.
- 28.2. A party involved is not entitled to reimbursement as referred to in paragraph 1 in case and to the extent that (i) a Dutch court has established in a final and non-appealable decision that the acts or omissions to act of the party involved may be characterized as being wilful misconduct (opzet), intentional recklessness (bewuste roekeloosheid) or seriously imputable (ernstig verwijtbaar) unless otherwise provided for by Dutch law or unless such in view of the circumstances of the case would be unacceptable according to standards of

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reasonableness and fairness or that (ii) the costs or the financial loss of the party involved are covered by an insurance and the insurer has reimbursed the costs or financial loss.

- 28.3. To the extent that a supervisory director, managing director, member of the Joint Board, officer, employee or agent of the Company has been successful on the merits or otherwise in defence of any action, suit or proceeding, referred to in paragraph 1, or in defence of any claim, issue or matter therein, he shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him in connection therewith.
- 28.4. Expenses incurred in defending a civil or criminal action, suit or proceeding will be paid by the Company in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the member of the Managing Board, Supervisory Board, Joint Board, officer, employee or agent to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Company as authorised in this article.
- 28.5. The indemnification provided for by this article shall not be deemed exclusive of any other right to which a person seeking indemnification may be entitled under any by-laws, agreement, resolution of the General Meeting or of the disinterested members of the Managing Board or otherwise, both as to actions in his official capacity and as to actions in another capacity while holding such position, and shall continue as to a person who has ceased to be a member of the Managing Board, Supervisory Board, Joint Board, officer, employee or agent and shall also inure to the benefit of the heirs, executors and administrators of such a person.
- 28.6. The Company shall have the power to purchase and maintain insurance on behalf of any person who is or was a member of the Managing Board, Supervisory Board, Joint Board, officer, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another company, a partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity or arising out of his capacity as such, whether or not the Company would have the power to indemnify him against such liability under the provisions of this article.
- 28.7. Whenever in this article reference is made to the Company, this shall include, in addition to the resulting or surviving company also any constituent company (including any constituent company of a constituent company) absorbed in a consolidation or merger which, if its separate existence had continued, would have had the power to indemnify its members of the Managing Board, Supervisory Board, Joint Board, officers, employees and agents, so that any person who is or was a member of the Managing Board, Supervisory Board, Joint Board, officer, employee or agent of such constituent company, or is or was serving at the request of such constituent company as a director, officer or agent of another company, a partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this article with respect to the resulting or surviving company as he would have with respect to such constituent company if its separate existence had continued.

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28.8. The Supervisory Board may further execute the foregoing with respect to members of the Managing Board. The Managing Board may further execute the foregoing with respect to members of the Supervisory Board, Joint Board, officers, employees and agents of the Company.

GENERAL MEETING. ANNUAL GENERAL MEETING.

ARTICLE 29.

29.1. The annual General Meeting shall be held within six months after the close of the financial year.

29.2. At this General Meeting the following subjects shall be considered:

- a. the written annual report prepared by the Managing Board on the course of business of the Company and the conduct of its affairs during the past financial year;
- b. the adoption of the annual accounts;
- c. the appointment of member(s) of the Managing Board, in accordance with the provisions of article 14;
- d. the appointment of member(s) of the Supervisory Board, in accordance with the provisions of article 22; and
- e. any other proposal placed on the agenda in accordance with the provisions of the Law or these Articles.

If the agenda shall include a proposal regarding discharge of liability (decharge) this will be separate for managing directors and supervisory directors.

29.3. The Managing Board and the Supervisory Board shall give the General Meeting the opportunity to ask questions and ask for information. All reasonable questions will be answered and all reasonable requests for information will be fulfilled subject to the decision of the chairman of the General Meeting.

EXTRAORDINARY GENERAL MEETINGS.

ARTICLE 30.

30.1. Without prejudice to articles 30.4 and 30.5, extraordinary General Meetings shall be called for and held as often as deemed necessary by the Managing Board and the Supervisory Board and shall be held on the request of:

- a. Shareholders, representing at least five percent (5%) of the issued share capital of the Company; or
- b. at least one hundred (100) Shareholders or one (1) Shareholder representing at least one hundred (100) CUFS Holders or any relevant combination so that the request of at least one hundred (100) persons are taken into account,

with the percentage of votes that the Shareholders represent to be determined as at midnight (Sydney time) before the date referred to in the last stanza of article 30.2. The Managing Board will only call a General Meeting, as referred to in the preceding sentence after having this proposed to and approved by the Joint Board.

30.2. The request referred to in article 30.1:

- a. must be in writing;
- b. must state any resolution, and the wording of any resolution, proposed to be put on the agenda for, and to be adopted at, the General Meeting;

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- c. may state any statement, and the wording of any statement, to be considered at the General Meeting as referred to in article 30.7;
- d. must be signed by the Shareholder(s) making the request;
- e. must be given to the Company; and
- f. may be given in one or more counterparts,

and if given in more than one counterpart will be taken to be received by the Company on the date that the last of such requests is received as is necessary to satisfy the representation requirement set out in article 30.1.

- 30.3. A General Meeting as requested pursuant to article 30.1 must be called within twenty-one (21) days after the request is given to the Company. The meeting is to be held not later than two (2) months after the request is given to the Company with the notice convening such General Meeting to be given in accordance with the other provisions of these Articles.

The Company must distribute to all of its Shareholders a copy of the proposed resolution and, if applicable, the statement as referred to in article 30.2 under c immediately following the receipt thereof, or as soon as practicable afterwards, and in the same way, as it is required to give notice to its Shareholders pursuant to article 10.1. under a. through e. inclusive. The Company shall meet the expenses incurred in making the request provided the copy of the said statement (if any) is received in time to send it out to the Shareholders together with the notice of the General Meeting. Unless the Managing Board agrees otherwise, the Shareholders requesting the General Meeting shall be jointly and individually liable for the expenses reasonably incurred by the Company in distributing a copy of the statement (if any) if the Company does not receive the same in time to send it out with the notice of the General Meeting.

- 30.4. If none of the Managing Board or Supervisory Board convene a General Meeting within the twenty one (21) day period referred to in article 30.3, Shareholders who represent fifty percent (50%) of the votes of all of the persons who made, or were so represented in respect of, the request under article 30.1, may call, and arrange to hold, a General Meeting, to be held within three (3) months of the request given under article 30.1, at the cost of the Company, including the reasonable expenses of the Shareholders. The notice convening such General Meeting must be given in accordance with the other provisions of these Articles.

- 30.5. In addition to article 30.1, shareholders representing at least five percent (5%) of the issued share capital of the Company may call, and arrange to hold, a General Meeting at the cost of such Shareholders. The notice convening such General Meeting must be given in accordance with the other provisions of these Articles. The percentage of votes that Shareholders represent is to be determined as at midnight (Sydney time) before the date on which the General Meeting is called.

- 30.6. Shareholders, who individually or together with other Shareholders may request an extraordinary General Meeting pursuant to article 30.1, may at all times give the Company notice of a resolution that they propose to put on the agenda for, and have adopted at, a General Meeting.

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Such notice:

- a. must be in writing;
- b. must state the proposed resolution, and the wording of the proposed resolution;
- c. must be signed by the Shareholder(s) making the request;
- d. must be given to the Company; and
- e. may be given in one or more counterparts, and if given in more than one counterpart will be taken to be received by the Company on the date that the last of such requests is received as is necessary to satisfy the representation requirement set out in article 30.1.

The Managing Board or Supervisory Board shall ensure that such resolution is considered at the next General Meeting that occurs more than two (2) months after such notice is given with such notice to be given in accordance with the other provisions of these Articles. The Company must give its Shareholders notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it is required to give notice to its Shareholders pursuant to article 10.1. under a. through e. inclusive. The Company shall meet the expenses incurred in giving the notice if it receives the notice in time to send it out to the Shareholders with the notice of the General Meeting. Unless the Managing Board agrees otherwise, the Shareholders requesting the General Meeting shall be jointly and individually liable for the expenses reasonably incurred by the Company in giving notice of the resolution if the Company does not receive the request in time to send it out with the notice of the General Meeting

To the fullest extent permitted by Law, the Company need not comply with the request if the notice of the proposed resolution is more than one thousand (1,000) words long or defamatory.

- 30.7. Shareholders, who individually or together with other Shareholders may request an extraordinary General Meeting pursuant to article 30.1, may at all times request the Company give to all its Shareholders a statement provided by the Shareholders making the request in connection with a resolution that is proposed to be adopted at a General Meeting or about any other matter that may properly be considered at a General Meeting.

Such request:

- a. must be in writing;
- b. must state the statement, and the wording of the statement;
- c. must be signed by the Shareholder(s) making the request;
- d. must be given to the Company; and
- e. may be given in one or more counterparts, and if given in more than one counterpart will be taken to be received by the Company on the date that the last of such requests is received as is necessary to satisfy the representation requirement set out in article 30.1.

The Company must distribute to all of its Shareholders a copy of the proposed resolution immediately following the receipt thereof, or as soon as practicable afterwards, and in the same way, as it is required to give notice to its Shareholders pursuant to article 10.1. under a. through e. inclusive.

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The Company shall meet the expenses incurred in distributing the statement, provided it receives the statement in time to send it out to the Shareholders together with the notice of the General Meeting. Unless the Managing Board agrees otherwise, the Shareholders making the request shall be jointly and individually liable for the expenses reasonably incurred by the Company in distributing the statement if the Company does not receive the request in time to send it out with the notice of the General Meeting. To the fullest extent permitted by Law, the Company need not comply with the request if the statement is more than one thousand (1,000) words long or defamatory.

PLACE AND NOTICE OF GENERAL MEETINGS.

ARTICLE 31.

- 31.1. General Meetings shall be held at Amsterdam, Haarlemmermeer (Schiphol Airport), Rotterdam, or The Hague and at the time and location stated in the notice convening such General Meeting, without prejudice to article 37.2 under b sub (i) or article 37.3.
- 31.2. The notice convening a General Meeting pursuant to articles 30.1. through 30.3 inclusive shall be given by either the Managing Board or the Supervisory Board. The notice convening a General Meeting pursuant to articles 30.4. and 30.5 shall be given by the Shareholders in accordance with the said articles.
- 31.3. Any notice of a General Meeting shall exclusively be given:
- a. with due observance of the provisions of articles 10 and 32 and shall state the location and time of, and in case the General Meeting may be attended and addressed by way of telephone or video conferencing pursuant to article 34.3, the details for such conferencing, and agenda (and possible other information) for, the General Meeting and the Information Meeting;
 - b. to every Shareholder and other persons entitled to receive notices of meetings and notifications pursuant to article 10.12; and
 - c. to the auditor to the Company.

NOTICE PERIOD. AGENDA.

ARTICLE 32.

- 32.1. The notice convening a General Meeting shall be sent no later than on the twenty-eighth day prior to the meeting. The notice shall always contain or be accompanied by the agenda for the meeting, the place and contact details for the purpose of receiving proxy appointments and such information as, at the discretion of the person(s) convening the General Meeting, is deemed necessary to enable Shareholders to make a well considered decision or refer where such information shall be publicly available.
- 32.2. The agenda shall contain such subjects to be considered at the meeting as the person(s) convening the meeting shall decide. No valid resolutions can be adopted at a General Meeting in respect of subjects that are not mentioned in the agenda.
- 32.3. Without prejudice of the provisions of article 30, one or more Shareholders representing solely or jointly at least one-hundredth part of the issued share capital or, as long as the shares of the Company are admitted to official quotation on a stock exchange as referred to in article 1, subsection e of the Securities Transactions Supervision Act 1995 (Wet toezicht effectenverkeer 1995), that is under the supervision of the government or of an authority or organization recognized by the government, representing a value of at least fifty million euro (EUR 50,000,000) according to the official price list of the stock exchange

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concerned, can request the Managing Board to place a matter on the agenda, provided that the Company has received such request at least sixty days prior to the date of the General Meeting concerned and provided that it is not detrimental to an overriding interest of the Company.

32.4. The Managing Board and the Supervisory Board shall, after consultation with the Joint Board, inform the General Meeting by means of explanatory notes to the agenda of all facts and circumstances relevant to the proposals on the agenda. These explanatory notes to the agenda shall be put on the company's website.

CHAIR OF GENERAL MEETINGS. MINUTES.

ARTICLE 33.

33.1. General Meetings shall be presided by the chair of the Supervisory Board. In case of absence of the chair of the Supervisory Board the meeting shall be presided by any other person nominated by the Supervisory Board. The chair of the General Meeting shall appoint the secretary of that meeting.

33.2. The secretary of the meeting shall keep the minutes of the business transacted at the General Meeting. Minutes shall be adopted and in evidence of such adoption be signed by the chair and the secretary of the General Meeting, or alternatively be adopted by a subsequent General Meeting; in the latter case the minutes shall be signed by the chair and the secretary of such subsequent General Meeting in evidence of their adoption, unless a notarial official record (notarieel proces-verbaal) will be drawn up by a civil law notary (notaris), in which case said official record need only be signed by the civil law notary and by the witnesses, if any.

The draft minutes of the General Meeting shall be made available, on request, to shareholders no later than three months after the end of the meeting, after which the shareholders shall have the opportunity to react to the draft minutes in the following three months. The minutes shall then be adopted in the manner as described in the second sentence of this paragraph.

If a notarial official record (notarieel proces-verbaal) has been drawn up, the notarial official record shall be made available, on request, no later than three months after the end of the general meeting.

33.3. A certificate signed by the chairman and the secretary of the meeting confirming that the General Meeting has adopted a particular resolution, shall constitute evidence of such resolution vis-a-vis third parties.

33.4. The chair of the General Meeting may request a civil law notary (notaris) to include the minutes of the meeting in a notarial official record (notarieel proces-verbaal).

ATTENDANCE OF GENERAL MEETINGS.

ARTICLE 34.

34.1. All Shareholders and other persons entitled to vote at General Meetings are entitled to attend the General Meetings, to address the General Meeting and to vote, provided that, and if so required as set out in the notice convening the meeting, such person has notified the Managing Board in writing of such person's intention to be present at the General Meeting or to be represented not later than the time specified in the notice convening the meeting.

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- 34.2. The provisions laid down in article 34.1 are mutatis mutandis applicable on Shares from which the holders of a right of Usufruct or pledge who have the voting right attached to those Shares derive their rights. In addition, the provisions laid down in article 34.1 shall equally apply to CUFS Holders, except that the CUFS Holders shall not have the right to vote.
- 34.3 If so determined by the Managing Board or the Supervisory Board, General Meetings may also be attended and addressed (but no voting may so be established) by means of telephone or video conference, provided each person entitled to attend and address the General Meeting pursuant to article 34.1 can hear and be heard at the same time.
- 34.4. The Managing Board may determine that the persons who are entitled to attend the General Meeting, as referred to in article 34.1 and article 34.2, are persons who (i) are a Shareholders or persons who are otherwise entitled to attend the General Meeting as at a certain date, determined by the Managing Board, such date hereinafter referred to as: the "record date", and (ii) who are as such registered in a register (or one or more parts thereof) designated thereto by the Managing Board, hereinafter referred to as: the "register", regardless of whether they are a Shareholder or person otherwise entitled to attend the General Meeting at the time of the General Meeting.
- 34.5. The record date referred to in article 34.4 cannot be earlier than at a certain time on the seventh day and not later than at a certain time on the third day, prior to the date of the General Meeting. The notice (oproeping) of the General Meeting will contain the procedure for registration, and lodgement of valid proxies.

PROXIES.

ARTICLE 35.

- 35.1. Shareholders and other persons entitled to attend a General Meeting may be represented by proxies duly authorised in writing, and provided notice and proxy appointments are given in the form approved by the Managing Board in writing to the Managing Board in accordance with article 34.1 and with due observance of article 35.2, such proxies shall be admitted to the General Meeting.
- 35.2 The instrument appointing the proxy given in accordance with article 35.1, and any power of attorney or other authority (if any) under which the instrument is signed, must be deposited not less than forty-eight hours before the start of the General Meeting or adjourned General Meeting (or such lesser time as set out in the notice convening the General Meeting), at the registered office of the Company or at such other place as is specified for that purpose in the notice convening the General Meeting.
- 35.3. All matters regarding the admittance to the General Meeting, the exercise of voting rights and the outcome of the votes, as well as any other matters regarding the proceedings at the General Meeting shall be decided upon by the chair of that meeting, with due observance of the provisions of section 2:13 Dutch Civil Code.

INFORMATION MEETING.

ARTICLE 36.

- 36.1. Information Meetings shall be held no more than seven (7) days prior to each General Meeting and shall be for the benefit of Shareholders and other persons entitled to attend a General Meeting who are unable to attend such General Meeting.

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- 36.2. Information Meetings shall be held in Australia. The notice convening an Information Meeting shall be included in the notice convening the General Meeting and shall be given with due observance of article 31.3.
- 36.3. No voting will occur at any Information Meeting.
- 36.4. Subject to articles 34.1 and 35.1 and without limiting any other lodgement with the Company as set out in the relevant notice of a General Meeting, the Managing Board shall ensure that Shareholders and other persons entitled to vote at General Meetings are able to lodge proxies at the Information Meeting for admission to the General Meeting.

ADOPTION OF RESOLUTIONS. QUORUM. ADJOURNMENTS.

ARTICLE 37.

- 37.1. Unless provided otherwise by Law or these Articles, resolutions shall be validly adopted if adopted by an absolute majority of votes cast at a General Meeting at which at least five (5) % of the issued and outstanding share capital is present or represented. Blank and invalid votes shall not be counted.
- 37.2. If a quorum is not present within thirty (30) minutes after the opening of the General Meeting:
 - a. where the meeting was convened upon the request of Shareholders, the General Meeting will be dissolved;
 - b. in any other case, provided the Shares are quoted on the ASX:
 - (i) the meeting stands adjourned to a time and place as the Managing Board decides provided however that such meeting shall be resumed as soon as practically possible but not later than twenty four hours after the time originally fixed for the General Meeting and that the place may only be altered into a place within the same municipality as originally fixed for the General Meeting; and
 - (ii) if at the adjourned meeting a quorum is not present within thirty (30) minutes after the time appointed for the meeting, the meeting will be dissolved.
- 37.3. Provided the Shares are quoted on the ASX, the chair may in order to procure the orderly conduct of proceedings at the General Meeting (for instance, to allow for a break, to gain information and advice, to give the opportunity to deliberate) adjourn the General Meeting from time to time and from place to place, provided however that such meeting shall be resumed as soon as practically possible but not later than twenty four hours after the time originally fixed for the General Meeting and that the place may only be altered in a place within the same municipality as originally fixed for the General Meeting. If the chair elects to adjourn the General Meeting pursuant to the preceding sentence, the chair may decide whether to seek the approval of the Shareholders present. No business shall be transacted at any adjourned General Meeting other than the business left unfinished at the General Meeting from which the adjournment took place.
- 37.4. Any resolution to be considered at a General Meeting shall be decided on written votes and in the manner and at the time the chair of the General Meeting directs.

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- 37.5. The chair shall determine any dispute as to the admission or rejection of a vote and such determination made in good faith shall be final and conclusive, subject to any judicial examination by any competent court. An objection to the qualification of a person to vote raised before or at the General Meeting or adjourned General Meeting shall be decided upon by the chair of the meeting, whose decision shall be final, subject to any judicial examination by any competent court.
- 37.6. If the voting concerns the appointment of a person and more than one person has been nominated for appointment, then votes shall be taken until one of the nominees has obtained an absolute majority of the votes cast. The further votes may, at the chair's discretion, be taken at a subsequent General Meeting.
- 37.7. In the case of an equality of votes cast at the General Meeting the chair has a casting vote.
- 37.8. Unless depositary receipts for Shares have been issued with the co-operation of the Company, the Shareholders may adopt a resolution that they can adopt at a meeting, without holding a meeting. Such a resolution shall only be valid if all Shareholders entitled to vote have cast their votes in writing in favour of the proposal concerned and all members of the Managing Board and the Supervisory Board were been offered the opportunity to advise on the resolution to be so adopted.

VOTING RIGHT PER SHARE.

ARTICLE 38.

At the General Meeting each Share shall confer the right to cast one vote, unless provided otherwise by Law or these Articles.

SPECIAL RESOLUTIONS. PROPOSALS TO AMEND THESE ARTICLES OR TO LIQUIDATE OR TO MERGE AND DEMERGE THE COMPANY.

ARTICLE 39.

- 39.1. Without prejudice to the quorum requirement as referred to in article 37.1., a resolution of the General Meeting to amend these Articles or to dissolve the Company shall only be valid if:
- a. adopted by at least a three-fourths (3/4) majority of the votes cast at such General Meeting; and
 - b. with respect to a proposed amendment of these Articles one complete copy of the proposal has been freely available for the Shareholders and the other persons entitled to attend the General Meeting at the office of the Company as from the day of notice convening such meeting until the close of that meeting.
- 39.2. A resolution by the General Meeting to merge or demerge the Company shall only be valid if adopted by at least a three-fourths (3/4) majority of the votes cast at such General Meeting.

ANNUAL ACCOUNTS. REPORT OF THE MANAGING BOARD AND DISTRIBUTIONS.

ARTICLE 40.

- 40.1. The financial year of the Company shall run from the first day of April up to and including the thirty-first day of March of the following year.

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- 40.2. Each year the Managing Board shall prepare the annual accounts, consisting of a balance sheet as at the thirty-first day of March and a profit and loss account in respect of the preceding financial year, together with the explanatory notes thereto. The Managing Board shall furthermore prepare a report on the course of business of the Company and the conduct of its affairs during the past financial year.
- 40.3. The Managing Board shall draw up the annual accounts in accordance with applicable generally accepted accounting principles and all other applicable provisions of the Law. The annual accounts shall be signed by all members of the Managing Board and the Supervisory Board; if the signature of one or more of them is lacking, this shall be disclosed, stating the reasons thereof.
- 40.4. The Managing Board shall explain, in a separate chapter of the annual report the principles of the corporate governance structure of the Company. This chapter shall reflect how the Company has applied the provisions of the code of conduct designated pursuant to the order in council (algemene maatregel van bestuur) as referred to in article 2:391, paragraph 4, Civil Code to the extent that these provisions are directed to the Managing Board or Supervisory Board. To the extent that the Company does not comply with the provisions referred to in the preceding sentence, the Managing Board shall reflect in the chapter referred to above why and to what extent the Company deviates from these provisions.
- 40.5. The Managing Board shall, on behalf of the Company, cause the annual accounts to be examined by one or more registered accountant(s) designated for the purposes by the General Meeting or other experts designated for that purpose in accordance with section 2:393 Dutch Civil Code. The auditor or the other expert designated shall report on his examination to the Supervisory Board and the Managing Board and shall issue a certificate containing the results thereof. The Managing Board shall ensure that the report on the annual accounts shall be available at the offices of the Company for the Shareholders.
- 40.6. Copies of the annual accounts, the annual report of the Managing Board and the information to be added to each of such documents pursuant to the Law shall be made freely available at the office of the Company for the Shareholders and the other persons entitled to attend General Meeting, as from the date of the notice convening the General Meeting at which meeting they shall be discussed, until the close thereof.
- 40.7. The registered accountant or the other expert designated for that purpose pursuant to article 2:393, Civil Code, may be questioned by the General Meeting in relation to its statement on the fairness of the annual account. The registered accountant or the other expert designated for that purpose pursuant to article 2:393, Civil Code shall therefore be invited to attend this meeting and be entitled to address this meeting.

ARTICLE 41.

[THIS ARTICLE HAS LAPSED.]

PROFIT AND LOSS. RESERVATION. DIVIDEND.

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ARTICLE 42.

- 42.1. Out of the profit made in any financial year shall first be retained by way of reserve, with due observance of applicable provisions of Law relating to statutory reserves (wettelijke reserves) such portion of the profit - the positive balance of the profit and loss account - as determined by the Supervisory Board. The Supervisory Board may determine how to attribute losses.
- 42.2. The portion of the profit remaining after application of article 42.1, shall be at the disposal of the Managing Board, or, if the Managing Board resolves so, the General Meeting.
- 42.3. Subject to the Law and these Articles, the Managing Board may, subject to the approval of the Joint Board, resolve to declare a dividend and fix the date and amount of payment and determine as to whether or not profits are distributed to Shareholders either in cash or in Shares or other securities issued by the Company or by other companies, or a combination thereof, provided however that a resolution to distribute Shares requires a resolution of the corporate body authorised to resolve upon the issue of Shares.
- 42.4. Subject to the provisions of section 2:105 subsection 4 Dutch Civil Code, and these Articles the Managing Board may, subject to the approval of the Joint Board, resolve to declare an interim dividend on Shares. Subject to the approval of the Joint Board, interim dividends may be distributed to the Shareholders, in proportion to the number of Shares held by each of them, either in cash or in Shares or other securities issued by the Company or by other companies, or a combination thereof, provided however that a resolution to distribute Shares requires a resolution of the corporate body authorised to resolve upon the issue of Shares.
- 42.5. Dividends shall be divisible among the Shareholders in proportion to the nominal amount paid (or credited as paid) (excluding the amounts unpaid on those Shares pursuant to article 5) on the Shares of each Shareholder without prejudice to the other provisions of this article 42. To the extent one or more payments on Shares are made during the period to which a dividend relates, the dividend on the amounts so paid on Shares shall be reduced pro rata to the date of these payments.
- 42.6. The Company can only declare dividends in so far as its shareholders equity (eigen vermogen) exceeds the amount of the paid up and called portion of the share capital, plus the statutory reserves (wettelijke reserves).

OTHER DISTRIBUTIONS.

ARTICLE 43.

- 43.1. Next to possible other reserves, the Company may maintain a share premium reserve for Shares.
- 43.2. The Managing Board may, subject to the approval of the Joint Board, declare distributions out of a share premium reserve or out of any other reserve shown in the annual accounts, not being a statutory reserve (wettelijke reserve).
- 43.3. Subject to the Law and these Articles and subject to the approval of the Joint Board, the Managing Board may resolve to declare a distribution as referred to in article 43.2. and fix the date and amount of payment and determine as to whether or not profits are distributed to Shareholders either in cash or in Shares or other securities issued by the

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Company or by other companies, or a combination thereof, provided however that a resolution to distribute Shares requires a resolution of the corporate body authorised to resolve upon the issue of Shares.

- 43.4. Distributions shall be divisible among the Shareholders in proportion to the nominal amount paid (or credited as paid) (excluding the amounts unpaid on those Shares pursuant to article 5) on the Shares of each Shareholder.
- 43.5. The Company can only declare distributions in so far as its shareholders equity (eigen vermogen) exceeds the amount of the paid up and called portion of the share capital, plus the statutory reserves (wettelijke reserves).

PAYMENT OF DIVIDEND AND OTHER DISTRIBUTIONS.

ARTICLE 44.

- 44.1. Distributions pursuant to article 42 or article 43 of these Articles shall be payable as of the date fixed for payment by the Managing Board, subject to the approval of the Joint Board. No dividend shall carry interest against the Company.
- 44.2. Distributions pursuant to article 42 or article 43 of these Articles shall be made payable at an address or addresses in the Netherlands, to be determined by the Managing Board, as well as at least one address in each other country or state where the Shares or CUFSS are traded on a stock exchange.
- 44.3. Cash distributions shall be declared in United States Dollars, unless the Managing Board determines otherwise and may be paid in such currency or currencies as the Managing Board determines using the rate of exchange prevailing on a date fixed by the Managing Board.
- 44.4. The person entitled to a distribution on Shares pursuant to article 42 or article 43 of these Articles shall be the person in whose name the Share is registered at a date fixed by the Managing Board.
- 44.5. Distributions on Shares in cash pursuant to article 42 or article 43 of these Articles that have not been collected within five years and two days after have become due and payable shall revert to the Company.
- 44.6. In the case of a distribution on Shares pursuant to articles 42.3, 43.3 or article 43.4, any Shares or other securities in the Company or another company not claimed within a period to be determined by the Managing Board shall be sold for the account of the persons entitled to the distribution who failed to claim such Shares or other securities. The net proceeds of such sale shall thereafter be held at the disposal of the above persons in proportion to their entitlement; the right to the proceeds shall lapse, however, if the proceeds are not claimed within five years and two days after the date fixed for payment of the distribution.
- 44.7. In the case of a distribution on Shares pursuant to articles 42.3, 43.3 or article 43.4, any Shares or other securities in the Company or another company that can not under applicable law be claimed or accepted by a Shareholder within a period to be determined by the Managing Board may at the request of the relevant Shareholder be sold for the account of the persons entitled to such distribution. The net proceeds of such sale shall thereafter be paid to, or held at the disposal of, the above person; the right to the proceeds shall lapse, however, if the proceeds are not claimed within five

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years and two days after the date the Company has notified such person of the sale and the proceeds arising therefrom.

44.8. The Managing Board may cause the Company to deduct from any dividend or other distribution payable to a Shareholder all sums of money due and payable by such Shareholder to the Company on account of calls or otherwise in relation to Shares.

DISSOLUTION. LIQUIDATION.

ARTICLE 45.

45.1. If the Company is dissolved, the liquidation shall be carried out by the person(s) designated for that purpose by the General Meeting, under the supervision of the Supervisory Board.

45.2. The General Meeting shall upon the proposal of the Supervisory Board determine the remuneration payable to the liquidators and to the person responsible for supervising the liquidation.

45.3. The liquidation shall take place with due observance of the provisions of the Law. During the liquidation period these Articles shall, to the extent possible, remain in full force and effect.

45.4. After settling the liquidation, the liquidators shall render account in accordance with the provisions of the Law.

45.5. After the Company has ceased to exist, the books and records of the Company shall remain in the custody of the person designated for that purpose by the liquidators during a seven (7) year period.

DISTRIBUTION TO SHAREHOLDERS UPON DISSOLUTION.

ARTICLE 46.

After all liabilities of the Company have been settled, including those incidental to the liquidation, the balance shall then be distributed among the Shareholders in proportion to the nominal amount paid (or credited as paid) (excluding the amounts unpaid on those Shares pursuant to article 5) on the Shares of each Shareholder.

EFFECT OF THESE ARTICLES.

ARTICLE 47.

These Articles are binding on the Company and each Shareholder and the Company, on the one hand, and each Shareholder severally, on the other hand, is to observe and perform these Articles so far as they apply to him/it.

HOLDING OF SHARES AND CUFS.

ARTICLE 48.

The Shareholder holds the Shares (and accordingly any holder of CUFS takes its interests in the Shares) subject to:

- a. the provisions of these Articles;
- b. any obligations or liabilities which the Shareholder may incur in respect of the Shares pursuant to these Articles; and
- c. any rights or interests of the Company or any third party in the Shares which may arise under or pursuant to the exercise of any power contained in these Articles.

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CHAPTER III

LIMITATIONS ON THE RIGHT TO HOLD SHARES.

ARTICLE 49.

Capitalised terms used and not defined in article 1 in this chapter III shall have the following meaning:

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AFFILIATED COMPANIES

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of a Person:

- (i) a Parent Company of the Person;
- (ii) a Subsidiary Company of the Person; and/or
- (iii) another company where the Person and that company are both Subsidiary Companies of the same Parent Company;

ASIC ASSOCIATE

Australian Securities and Investments Commission; of a Person:

- (i) an Affiliated Company of the Person; and/or
- (ii) another Person with whom such Person has entered into an agreement for the purpose of holding or acquiring a Relevant Interest;

AUSTRALIAN LAW AND POLICY

- (i) decisions of an Australian court;
 - (ii) published policy statements, practice notes and other guidelines and public releases issued by ASIC; and
 - (iii) published decisions, rules, policies and other guidelines and public releases issued by the Panel,
- each in relation to the provisions in the Corporations Act (including predecessors of that legislation) similar in nature to these Articles;

BID SECURITIES CONTROL

the CUFS or Shares being bid for under a Take-over Bid; over a Person,

- (i) the ability to exercise, directly or Indirectly:
 - (A) more than twenty (20%) of the voting rights in a general meeting of such Person; or (B) the right to dismiss or appoint more than fifty percent (50%) of the members of such Person's managing or supervisory board; or
- (ii) in respect of a Person that is not a legal entity: being liable (whether actually or contingently) -alone or together with one or more Affiliated Companies - for such Person's debts vis-a-vis third parties;

CORPORATIONS ACT BID

a bid for Shares or CUFS made in compliance, so far as possible, with Parts 6.4, 6.5, 6.6 and 6.8 of the Corporations Act in respect of off-market bids (as that term is defined in the Corporations Act) as if the Company were incorporated in Australia and were the "target" as defined in those Parts, subject to:

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- (i) any requirement under those provisions for a document to be lodged with ASIC being taken to be satisfied if the document is given to ASX instead; and
- (ii) any other modifications or exemptions agreed between the Person making the bid and the Supervisory Board in accordance with article 49.13;

INDIRECTLY

- by, through or in concert with:
- (i) one or more Affiliated Companies of such Person;
 - (ii) a nominee or trustee for the Person; or
 - (iii) another Person with whom such Person has entered into an agreement for the purpose of holding or acquiring a Relevant Interest;

ON MARKET TRANSACTION

- a transaction that is effected on ASX and is:
- (i) an on-market transaction as defined in the rules governing the operation of ASX; or
 - (ii) if those rules do not define on-market transactions - effected in the ordinary course of trading on ASX;

PANEL

the Corporations and Securities Panel established under the Australian Securities and Investments Commission Act (2001) or any successor or replacement entity;

PARENT COMPANIES

of a Person, one or more companies exercising Control over such Person;

PERSON

a natural person, a legal entity or any other legal form that under applicable law has the power to hold a Relevant Interest;

RELEVANT INTEREST

- any interest in Shares that causes or permits a Person to:
- (i) exercise or to influence (or restrain) the exercise of voting rights on Shares (whether through the giving of voting instructions or as a proxy or otherwise); or
 - (ii) dispose or to influence (or restrain) the disposal of Shares,
- including inter alia the legal ownership of a Share, a CUFs, a right of pledge (pandrecht) or right of Usufruct on a Share and an interest under an option agreement to acquire a Share or a CUFs;

SENIOR COUNSEL

an Australian legal practitioner practising in the New South Wales or Victorian bar who has been appointed by the Attorney General of New South Wales or Victoria (as the case may be) as a senior counsel or queen's counsel;

SUBSIDIARY COMPANIES

of a Person, one or more companies over which Control is exercised by such Person;

TAKE-OVER BID

a bid for Shares or CUFs that at all relevant times fulfils the purposes set out in article 49.1 and complies with the principles in article 49.13.

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49.1. The purposes of this chapter III is to ensure that:

- a. the acquisition of control over CUFS or Shares takes place in an efficient, competitive and informed market; and
- b. each Shareholder and CUFS Holder and as well as the Managing Board, Joint Board and Supervisory Board:
 - (i) know the identity of any Person who proposes to acquire a substantial interest in the Company; and
 - (ii) are given reasonable time to consider a proposal to acquire a substantial interest in the Company; and
 - (iii) are given enough information to assess the merits of a proposal to acquire a substantial interest in the Company; and
- c. as far as practicable, the Shareholders and CUFS Holders all have a reasonable and equal opportunity to participate in any benefits accruing through a proposal to acquire a substantial interest in the Company.

In the interpretation of a provision of article 49, a construction that would promote the purpose or object underlying these Articles is to be preferred to a construction that would not promote that purpose or object.

49.2. Without prejudice to the exceptions and exemptions as referred to in articles 49.5 and 49.6, no Person may hold a Share if, because of an acquisition of a Relevant Interest by any Person in that Share:

- a. the number of Shares in respect of which any Person (including, without limitation, the holder) directly or Indirectly acquires or holds a Relevant Interest increases:
 - (i) from twenty percent (20%) or below to more than twenty percent (20%); or
 - (ii) from a starting point that is above twenty (20%) and below ninety percent (90%),of the issued and outstanding share capital of the Company; or
- b. the voting rights which any Person (including, without limitation, the holder) directly or Indirectly, is entitled to exercise at a General Meeting on any matter increase:
 - (i) from twenty percent (20%) or below to more than twenty percent (20%); or
 - (ii) from a starting point that is above twenty percent (20%) and below ninety percent (90%),of the total number of such voting rights which may be exercised by any Person at a General Meeting.

For the purposes of this article 49 (including article 49.2), a Person holds a Share if the Person:

- (A) is the legal owner of the Share; or
- (B) holds a right of pledge (pandrecht) or right of Usufruct on Shares, provided the right to vote the Shares so pledged or subject to the right of Usufruct is included in such right.

Any holding of a Share or acquisition of a Relevant Interest in breach of this article 49.2 does not cause such acquisition or holding to be invalid.

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- 49.2A (a) A Shareholder must give the information referred to in article 49.2A(e) to the Company if:
 - (i) a Person begins to have, or ceases to have, a substantial holding in the Company; or
 - (ii) a Person has a substantial holding in the Company and there is a movement of at least one percent (1%) in their holding; or
 - (iii) a Person makes a Take-over Bid for securities of the Company.

The Shareholder must also give the information to the ASX. For the purposes of this article, a "Substantial Holder" means a Person referred to in paragraphs (i), (ii) or (iii) above.

- (b) The obligation of the Shareholder to provide this information referred to in article 49.2A(e) is taken to be satisfied if it is provided to the Company and ASX by the Substantial Holder.
- (c) For the purposes of this article, a Person has a substantial holding in the Company if the total votes attached to Shares in which the Person directly or Indirectly:
 - (A) has Relevant Interests; or
 - (B) would have a Relevant Interest but for the operation of article 49.5(g) or article 49.5(j),
 is five percent (5%) or more of the total number of votes attached to all Shares.

- (d) For the purposes of this article there is a movement of at least one percent (1%) in a Person's holding if the percentage worked out using the following formula increases or decreases by one (1) or more percentage points from the percentage they last disclosed under this article in relation to the Company:

Person's votes
 ----- x one hundred (100)
 Total votes in the Company

where:

"Person's votes" is the total number of votes attached to all the Shares (if any) in which the Person directly or Indirectly has a Relevant Interest.

"Total votes in the Company" is the total number of votes attached to all Shares.

- (e) The information to be given must include:
 - (i) the Substantial Holder's name and address;
 - (ii) details of their Relevant Interest in Shares and of the circumstances giving rise to that Relevant Interest;
 - (iii) the name of the Shareholders in relation to the Shares in which the Substantial Holder has a Relevant Interest;
 - (iv) details of any agreement through which the Substantial Holder would have a Relevant Interest in Shares in the Company;
 - (v) the name of each Associate who has a Relevant Interest in Shares in the Company, together with details of:
 - (A) the nature of their association with the Associate;
 - (B) the Relevant Interest of the Associate; and
 - (C) any agreement through which the Associate has the Relevant Interest; and

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- (vi) if the information is being given because of a movement in their holding - the size and date of that movement.
- (f) The information must be given in the form prescribed by the Company (if the Company has prescribed a form) and must be accompanied by:
 - (i) a copy of any document including any agreement that:
 - (A) contributed to the situation giving rise to the Shareholder needing to provide the information; and
 - (B) is in writing and readily available to the Substantial Holder or Shareholder; and
 - (ii) a statement by the Substantial Holder or Shareholder giving full and accurate details of any contract, scheme or arrangement that:
 - (A) contributed to the situation giving rise to the Shareholder needing to provide the information; and
 - (B) is not both in writing and readily available to the Substantial Holder or Shareholder.
- (g) The information does not need to be accompanied by the documents referred to in article 49.2A(f) if the transaction that gives rise to the Shareholder needing to provide the information takes place on the ASX.
- (h) The Shareholder must give the information:
 - (i) within two (2) Business Days after they become aware of the information as referred to in article 49.2(A) (e); or
 - (ii) by nine-thirty (9.30 am) on the next trading day of the ASX after they become aware of the information as referred to in article 49.2(A) (e) if a Take-over Bid is made.

49.3. For the purpose of article 49.2 or article 49.2A, a Person:

- a. holding or acquiring a Relevant Interest; or
- b. exercising the voting rights at a General Meeting,

shall together with his Affiliated Companies be considered as one Person in respect of such Relevant Interest or exercise of voting rights, and each of them, to the extent he holds one or more Shares shall be jointly and severally liable (hoofdelijk aansprakelijk) for each other's obligations under these Articles pursuant to article 49.7 under a., and article 50.3 under b. In addition, there may be imposed on each of them the other remedies referred to in articles 49.7 and 50.3.

49.4. For the purpose of article 49.2 or article 49.2A, if one or more Persons pursuant to an agreement or a nominee or trustee arrangement act together for the purpose of:

- a. holding or acquiring a Relevant Interest; or
- b. exercising the voting rights at a General Meeting; or
- c. circumventing the prohibition as referred to in article 49.2 or the obligation in article 49.2A,

all of them shall be considered as one Person in respect of such Relevant Interest, exercise of voting rights or circumvention of the prohibition or obligation. Each of them, to the extent he holds one or more Shares shall be jointly and severally liable (hoofdelijk aansprakelijk) for each other's obligations under these Articles pursuant to article 49.7

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under a. and article 50.3 under b. In addition, there may be imposed on each of them the other remedies referred to in articles 49.7 and 50.3.

49.5. A Person is not considered to hold or acquire a Relevant Interest for the purpose of article 49.2 or article 49.2A, if the Relevant Interest arises merely because:

- a. that Person acquires a Relevant Interest solely as a nominee or trustee for a Person who may direct the nominee or trustee as to the exercise of any power relating to the Relevant Interest;
- b. that Person holds Shares as a securities intermediary (effectenbemiddelaar) within the meaning of section 7 of the 1995 Act on the supervision of the securities trade (Wet toezicht effectenverkeer 1995), such as inter alia brokers and dealers, provided such Person acts on behalf of someone else (and not for his own account) in the ordinary course of such Person's business and provided such person is qualified to practise under applicable law;
- c. that Person holds Shares as a custodian (bewaarder) or depository in order to enable the Shares of the Company to be traded on a stock market of a securities exchange, provided such Person is qualified to practise under applicable law;
- d. that Person holds or acquires a Relevant Interest as a result of a share repurchase and cancellation of shares;
- e. of a charge or other security taken for the purpose of a transaction entered into by the Person if:
 - (i) the mortgage, charge or security is taken or acquired in the ordinary course of the Person's business of providing financial services and on ordinary commercial terms; and
 - (ii) the Person whose property is subject to the charge or security is not an Affiliated Company of the Person;
- f. the Person has been appointed to vote as a proxy or representative on Shares if:
 - (i) the appointment is for one General Meeting only; and
 - (ii) neither the Person nor any Affiliated Company gives valuable consideration for such appointment;
- g. of:
 - (i) an exchange traded option over the Shares; or
 - (ii) a right to acquire a Relevant Interest given by a (futures) agreement.

This paragraph g. stops applying to any Relevant Interest when the obligation to make or take delivery of the Shares arises;

- h. a company's articles of association or applicable law gives all shareholders pre-emptive rights on the transfer of shares if all shareholders of the relevant company have pre-emptive rights on the same terms;
- i. the Person is a (managing) director of a legal entity having a Relevant Interest; or
- j. of an agreement if the agreement is conditional on a resolution referred to in article 49.6 under e.

When a Person's Relevant Interest in a Share is disregarded pursuant to this article 49.5, the Person shall for the purposes of article 49.2 under b. or article 49.2A be taken not to be entitled to exercise, directly or Indirectly, the voting rights relating to that Share.

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- 49.6. The prohibition as referred to in article 49.2 or the obligation as referred to in article 49.2A shall not apply to the extent that:
- a. the holding or acquisition of a Relevant Interest results from the acceptance of offers under a Take-over Bid;
 - b. the holding or acquisition of a Relevant Interest is the result of an On-Market Transaction if:
 - (i) the acquisition is by or on behalf of the bidder under a Take-over Bid; and
 - (ii) the acquisition occurs during the bid period in respect of the Take-over Bid; and
 - (iii) the Take-over Bid is for all the Bid Securities; and
 - (iv) the Take-over Bid is unconditional;
 - c. the holding or acquisition of a Relevant Interest arises in the following circumstances:
 - (i) throughout the six (6) months before the acquisition a Person directly, or Indirectly, holds a Relevant Interest in the issued and outstanding share capital of the Company of at least nineteen percent (19%); and
 - (ii) as a result of the acquisition, directly, or Indirectly, the Person would have a Relevant Interest in the issued and outstanding share capital of the Company not more than three (3) percentage points higher than he had six (6) months before the acquisition;
 - d. the holding or acquisition of a Relevant Interest:
 - (i) is consistent with the purposes in article 49.1; and
 - (ii) conforms to the principles in article 49.13 as they apply to the acquisition or holding, adjusting those principles as appropriate to meet the particular circumstances of the acquisition or holding but without derogating from the purposes in article 49.1; and
 - (iii) has received the prior approval of the Supervisory Board;
 - e. the holding or acquisition of a Relevant Interest has been approved previously by a General Meeting if:
 - (i) no votes are cast in favour of the resolution by:
 - (A) the Person proposing to make the acquisition and its Associates; or
 - (B) the Person (if any) from whom the acquisition is to be made and its Associates; and
 - (ii) the Shareholders were given all information known to the Person proposing to make the acquisition or its Associates, or known to the Company, that was material to the decision on how to vote on the resolution, including:
 - (A) the identity of the Person proposing to make the acquisition and its Associates; and
 - (B) the maximum extent of the increase in that Person's Relevant Interest in the Company that would result from the acquisition; and
 - (C) the Relevant Interest that Person would have as a result of the acquisition; and

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- (D) the maximum extent of the increase in the Relevant Interest each of that Person's Associates that would result from the acquisition; and
 - (E) the Relevant Interest that each of that Person's Associates would have as a result of the acquisition;
- f. the holding or acquisition of a Relevant Interest results from an acquisition through operation of law including a merger by Law in accordance with the Dutch Civil Code;
 - g. the holding or acquisition of a Relevant Interest results from the acceptance of take-over offers made by the Company for the securities of another body corporate listed on the stock market of a securities exchange, which offers are made in accordance with applicable securities law regulating the conduct of take-overs of bodies corporate of that kind, where Shares or securities convertible into Shares are included in the consideration for the acquisition of securities under those offers;
 - h. the holding or acquisition of a Relevant Interest results from the exercise of rights of conversion attaching to securities convertible into Shares issued in accordance with paragraph g; or
 - i. the holding or acquisition of a Relevant Interest results from an issue by the Company under a prospectus to a Person as underwriter or sub-underwriter to the issue where the prospectus disclosed the effect or range of possible effects that the issue would have on the number of Shares in which that Person would have a Relevant Interest and on the voting rights of that Person.
- 49.7. Subject to articles 49.8 and 49.9, the Supervisory Board may cause the Company to exercise any one or more of the following remedies if a breach by a Person of the provisions of article 49.2 or article 49.2A has occurred or is continuing:
- a. require, by notice in writing, the Shareholder to dispose all or part of the Shares so held in breach of article 49.2 or article 49.2A within the time specified in the notice;
 - b. disregard the exercise by such Person of all or part of the voting rights arising from the Shares or the right of pledge (pandrecht) or the right of Usufruct on Shares, provided the right to vote the Shares so pledged or subject to the right of Usufruct is included in such right so held in breach of article 49.2 or article 49.2A; or
 - c. suspend such Person from the right to receive all or part of the dividends or other distributions arising from the Shares so held in breach of article 49.2 or article 49.2A.
- 49.8. The Company may exercise the remedies referred to in article 49.7 if it first obtains a judgement from the competent courts and acts in accordance with such judgement, that a breach of the prohibition of article 49.2 or the obligation in article 49.2A has occurred and is continuing.
- 49.9. In addition to exercising its rights under articles 49.8 and 49.10, the Company may exercise the remedies referred to in article 49.7 if it first obtains advice from, and acts in accordance with the advice of:

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- a. a Senior Counsel in the commercial field of at least five (5) years standing as a Senior Counsel; or
- b. a senior partner experienced in Australian mergers and acquisitions of a major Australian commercial law firm; and

in either case, being independent of (and not associated with) the Company or any other interested party and without a material personal interest in the matter. The advisor shall be appointed by the Company, but must be nominated by:

- (i) the president of the Panel; or
- (ii) if such Person is unwilling or unable to make the nomination, the director of the Panel; or
- (iii) if such Person is unwilling or unable to make the nomination, a mediator on the Supreme Court of New South Wales list of approved mediators nominated by the Company.

The advisor must inter alia be instructed to:

- (A) advise whether any breach of article 49.2, article 49.2A or article 50.2 has occurred;
- (B) have regard to the purposes under article 49.1 and to the extent applicable, the principles in article 49.13, Australian Law and Policy in interpreting these provisions and giving this advice;
- (C) in determining whether the exception under article 49.6 under a. applies to an acquisition or holding of a Relevant Interest pursuant to a Take-over Bid that is not a Corporations Act Bid, have regard to the manner in which a bid for CUFS or Shares would have been conducted under a Corporations Act Bid, including the information which would have provided to shareholders in connection with such bid;
- (D) give the Company and any Person that would be aggrieved by the exercise of the Company's powers under articles 49.7 or article 50.3 the opportunity, with their legal advisors, to make submissions to the advisor, prior to the advisor providing the advice;
- (E) have regard to issues under Dutch law to the extent relevant to providing his or her advice and for that purpose to retain, at the Company's cost, an appropriately qualified expert in Dutch law; and
- (F) provide his or her advice as soon as possible.

The Company shall:

- 1. provide any assistance or information it may possess, which is reasonably required by the advisor to give this advice;
- 2. be responsible for paying the advisors' fees and expenses;
- 3. include in the terms of the advisor's appointment an indemnity by the Company in favour of the advisor for any loss or liability he or she may incur in connection with providing this advice, except as a result if his or her negligence or wilful default; and
- 4. provide a copy of the advice to the Person who has breached or is alleged to have breached article 49.2, article 49.2A or article 50.2.

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The Company shall include any other terms and conditions in the appointment of the advisor which the Person nominating the advisor specifies.

49.10. Where the Company is seeking but has not received advice under article 49.9, the Company may also exercise any of the remedies described in article 49.7 (other than that as described under a.) by notice in writing to the Shareholder but so that they have effect for the period commencing on the date the notice is given and ending on the earlier of:

- a. twenty one (21) days after the notice has been given; and
- b. one (1) day after the advice under article 49.9 has been provided to the Company.

49.11. If there are reasonable grounds to believe that a breach of article 49.2 or article 49.2A has occurred, the Supervisory Board must consider whether to exercise the remedies under article 49.7 or article 50.3 and take advice as to whether it should exercise those remedies. For that purpose, the Supervisory Board must give proper consideration to (and include within any brief for advice) any submission that a breach has occurred from any Shareholders or any other interested Person or officer of the Company aggrieved by the alleged breach.

49.12. If the requirements of any notice pursuant to article 49.7 under a. are not complied with by the Person within the time specified in the notice, the Company may, as an irrevocable proxy of the Shareholder, without any further instrument, cause the Shares referred to in the notice to be sold on any relevant securities exchange on which they are quoted, or, if they are not so quoted, in accordance with section 2: 87b Dutch Civil Code.

The Company may:

- a. appoint a Person as transferor to effect a transfer in respect of any Shares sold in accordance with this article and to receive and give good discharge of the purchase money for them;
- b. acknowledge the transfer despite the fact that the share certificates (if any) may not have been delivered to the Company;
- c. issue a new share certificate (if required) in which event the previous certificate(s) (if any) are deemed to have been cancelled;
- d. if the Person delivers the relevant share certificates (if any) to the Company for cancellation, the purchase money less the expenses of any sale made in accordance with paragraph (b) above must be paid to the Person whose Shares were sold; and
- e. if the Person does not deliver the relevant share certificates (if any) to the Company, the Company may sue the Person in detinue for recovery of the share certificates (if any), and the Person is not entitled to deny or dispute the Company's ownership and right to possession of any share certificate in any legal action.

The Company may, by notice in writing, at any time require any Shareholder to provide the Company any information or evidence (on oath or otherwise verified if the Company reasonably requires) as the Company may consider likely to be of

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assistance in determining whether or not that Person is eligible to remain a Shareholder with respect to all his Shares.

Despite anything in this article 49.12, the Company has no liability, subject to article 49.18, arising from any Person holding Shares in circumstances which would result in or have the effect of causing an infringement or contravention of article 49.2 or article 49.2A.

The Company and the members of its Managing Board, Supervisory Board or Joint Board have no liability to any Person arising from any action taken by the Company under this article, provided that such action was taken in good faith.

49.13. In addition to fulfilling the purposes in article 49.1, a Take-over Bid must comply with the following principles.

- a. An offer for Bid Securities must be an offer to buy all the Bid Securities or a specified proportion of the Bid Securities. The proportion specified must be the same for all holders of the Bid Securities.
- b. A Person who holds one (1) or more parcels of those securities as trustee or nominee for, or otherwise on account of, another Person may accept the offer as if a separate offer had been made in relation to:
 - (i) each of those parcels; and
 - (ii) any parcel they hold in its own right;
- c. All the offers made must be the same. In applying this paragraph, the following shall be disregarded:
 - (i) any differences in the offers attributable to the fact that the number of Bid Securities that may be acquired under each offer is limited by the number of Bid Securities held by the holder;
 - (ii) any differences in the offers attributable to the fact that the offers relate to Bid Securities having different accrued dividend or distribution entitlements;
 - (iii) any differences in the offers attributable to the fact that the offers relate to Bid Securities on which different amounts are paid up or remain unpaid;
 - (iv) any differences in the offers attributable to the fact that the Person making the offer may issue or transfer only whole numbers of securities as consideration for the acquisition; and
 - (v) any additional cash amount offered to holders instead of the fraction of a security that would otherwise be offered.
- d. The consideration offered for Bid Securities must equal or exceed the maximum consideration that the Person making the offer directly or Indirectly provided, or agreed to provide, for Shares or CUFS under any purchase or agreement during the four (4) months before the first day of the period of the offer.
- e. A Person making an offer for Bid Securities must not directly or Indirectly, during the period of the offer, give, offer to give or agree to give a benefit to a Person if:
 - (i) the benefit is likely to induce the Person directly or Indirectly to:
 - (A) accept the offer; or
 - (B) dispose of Shares or CUFS; and
 - (ii) the benefit is not offered to all holders of Bid Securities.

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- f. The period of the offer must:
- (i) start on the date the first offer is made; and
 - (ii) last for at least one (1) month, and not more than twelve (12) months. If, within the last seven (7) days of the period of the offer:
 - (A) the offers are varied to improve the consideration offered (including by offering an alternative form of consideration); or
 - (B) the number of Shares in which the Person making the offer directly or Indirectly holds a Relevant Interest, or both, increases to more than fifty percent (50%) of the issued and outstanding share capital of the Company,
- the period of the offer is extended so that it ends fourteen (14) days after the event referred to in paragraph (A) or (B) above.
- g. Offers must not be subject to a maximum acceptance condition. A maximum acceptance condition is one that provides that the offers will terminate, or the maximum consideration offered will be reduced, if effectively one or more of the following occurs:
- (i) the number of Bid Securities for which the Person making the offer receives acceptances reaches or exceeds a particular number; or
 - (ii) the number of Shares in which the Person making the offer directly or Indirectly holds a Relevant Interest, or both, reaches or exceeds a particular percentage of the issued and outstanding share capital of the Company; or
 - (iii) the percentage of Bid Securities the Person making the offer has a Relevant Interest in reaches or exceeds a particular percentage of Bid Securities in that class.
- Offers must not be subject to a discriminatory condition. A discriminatory condition is a condition that allows the Person making the offer to acquire, or may result in that Person acquiring, Bid Securities from some but not all of the people who accept the offers.
- Offers must not be subject to a condition if the fulfilment of the condition depends on:
- (i) the opinion, belief or other state of mind of the Person making the offer or an Affiliated Company; or
 - (ii) the happening of an event that is within the sole control of, or is a direct result of action by, any of the following:
 - (A) the Person making the offer (acting alone or together with an Affiliated Company); or
 - (B) an Affiliated Company (acting alone or together with the Person making the offer or another Affiliated Company of that Person).
- h. The Person making the offer may only vary the offer made by:
- (i) improving the consideration offered (including by offering an additional form of consideration); or
 - (ii) extending the period of the offer.

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The terms of unaccepted offers must be varied in the same way. Any person who has already accepted an offer must be entitled to the improved consideration and, in the case of an addition of a new form of consideration, be entitled to make a fresh election.

- i. A Person making an offer that is unconditional may extend the period of the offer at any time before the end of the offer. A Person making an offer that is still subject to conditions may only extend the period of the offer at least seven (7) days before the end of the period of the offer unless during that seven (7) day period another Person announces a bid for Bid Securities or improves the consideration offered under another bid for Bid Securities.
- j. Each offer must be in writing and have the same date. This date is the day the first offer is made.
- k. The Person making the offer must, at the same time it gives its offer to holders of Bid Securities, also give a document to those holders setting out all information known to the Person that is material to the making of the decision by a holder of Bid Securities whether or not to accept the offer. This document must be given to the Company and ASX at least fourteen (14) days before it is given to these holders and must be dated. The date is the date on which the document is given to ASX. If the Person making the offer becomes aware of:
 - (i) a misleading or deceptive statement in the document; or
 - (ii) an omission from the document of information required by article 49.1 or this article 49.13; or
 - (iii) a new circumstance that:
 - (A) has arisen since the document was given to the Company; and
 - (B) would have been required by article 49.1 or this article 49.13 to be included in the document if it had arisen before the document was given to the Company,

that is material from the point of view of a holder of Bid Securities, the Person making the offer must prepare a supplementary document that remedies this defect. The Person making the offer must give the supplementary document to the Company and give a copy with ASX. The supplementary document must be dated. The date is the date on which the supplementary document is given to ASX.

49.14. A bid for Shares or CUFS is taken to comply with the principles in article 49.13 if it is a Corporations Act Bid at all relevant times. The Supervisory Board must act reasonably and in a timely manner in agreeing with a Person making a Corporations Act Bid to any modifications or exemptions to the application of Parts 6.4, 6.5, 6.6 and 6.8 of the Corporations Act to a Corporations Act Bid having regard to the purposes in article 49.1, the principles in article 49.13 and Australian Law and Policy.

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49.15. If a Take-over Bid is made, the Company must:

- a. give to all holders of Bid Securities, ASX and the Person making the Take-over Bid a document in a timely manner setting out all information that the holders and their professional advisers would reasonably require to make an informed assessment whether to accept an offer under the Take-over Bid. The document must contain this information:
 - (i) only to the extent to which it is reasonable for investors and their professional advisers to expect to see the information in the document; and
 - (ii) only if the information is known to any members of the Managing Board or Joint Board; and

The document must also contain a statement by each member of the Managing Board and Joint Board:

- (A) recommending that offers under the Take-over Bid be accepted or not accepted, and giving reasons for the recommendation; or
- (B) giving reasons why a recommendation is not made.

The document must be dated. The date is the date on which the document is given to ASX;

- b. if it becomes aware of:
 - (i) a misleading or deceptive statement in the document; or
 - (ii) an omission from the document of information required by paragraph a above; or
 - (iii) a new circumstance that:
 - (A) has arisen since the document was given to the Person making the offer; and
 - (B) would have been required by paragraph a. above to be included if it had arisen before the document was given to the Person making the offer,

that is material from the point of view of a holder of Bid Securities, prepare a supplementary document that remedies this defect and give it to the Person making the offer and ASX. The supplementary document must be dated. The date is the date on which the supplementary document is given to ASX; and

- c. if it has been given a document in accordance with article 49.13 under k. and the Person making the offer makes a request for information under this paragraph for the purposes of fulfilling the purposes under article 49.1 and complying with the principles under article 49.13, the Company must inform the Person of the name and address of each Person who held Bid Securities and that Person's holding, at the specified time by the Person making the Offer. The Company must give the information to the Person making the offer in a timely manner and:
 - (i) in the form that the Person requests; or
 - (ii) if the Company is unable to comply with the request - in writing.

If the Company must give the information to the Person in electronic form, the information must be readable but the information need not be formatted for the preferred operating system of the Person making the offer.

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- 49.16. The Company may, by giving notice in writing, require the holder of a Share or a CUFS to give to the Company, within two (2) Business Days after receiving the notice, a statement in writing setting out:
- a. full details of the holder's Relevant Interest and of the circumstances giving rise to that Relevant Interest; and
 - b. the name and address of each other Person who has a Relevant Interest together with full details of:
 - (i) the nature and extent of the Relevant Interest; and
 - (ii) the circumstances that give rise to the Person's Relevant Interest; and
 - c. the name and address of each Person who has given the holder of the Shares or the Person as referred to in paragraph b. above instructions about:
 - (i) the acquisition or disposal of a Relevant Interest; or
 - (ii) the exercise of any voting or other rights attached to a Relevant Interest;
 - (iii) any other matter relating to a Relevant Interest; together with full details of those instructions (including the date or dates on which those relevant instructions were given).

A matter referred to in paragraph b. or c. need only be disclosed to the extent to which it is known to the Person making the disclosure. Where a statement is delivered to the Company containing any details as referred to in paragraphs b. or c., the Company may, by giving notice in writing, require a holder of a Share or a CUFS to give to the Company or to use its best endeavours to procure that any other Persons as referred to in paragraphs b. or c. above to give to the Company, within two (2) days after receiving the notice, a statement in writing setting out the details as referred to in paragraphs a, b. and/or c. above.

- 49.17. So long as Shares are quoted on ASX, if the Company becomes subject to the law of any jurisdiction which applies so as to regulate the acquisition of control, and the conduct of any take-over, of the Company:
- a. the Company shall consult promptly with ASX to determine whether, in the light of the application of such law:
 - (i) ASX requires amendment to Chapter III of these articles in order for these Articles to comply with the Listing Rules as then in force; or
 - (ii) any waiver of the Listing Rules permitting the inclusion of all or part of Chapter III in these Articles has ceased to have effect; and
 - b. where:
 - (i) the Listing Rules require these Articles to contain a provision and it does not contain such a provision;
 - (ii) the Listing Rules require these Articles not to contain a provision and it contains such a provision; or
 - (iii) any provision of these Articles is or becomes inconsistent with the Listing Rules,
- the Managing Board shall put to the General Meeting a proposal to amend these Articles so as to make them, to the fullest extent permitted by Law, consistent with the Listing Rules.

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49.18. The Company shall indemnify a Person who:

- a. is or was a Shareholder for the purpose of making CUFS available; and
- b. was or is a party or is threatened to be made a party to any threatened, pending, current or completed action, suit, investigation or proceeding, whether civil, criminal, administrative or investigative brought by any other person in connection with any action taken or not taken by such person or the Company as contemplated under article 49.7, article 49.12 or article 50.3, against all expenses (including attorneys' fees) judgements, fines and amounts paid in settlement which are actually and reasonably incurred by the person in connection with such action, suit, investigation or proceeding unless such Shareholder acted in bad faith.

CUFS HOLDERS.

ARTICLE 50

- 50.1. This article 50 is applicable to CUFS Holders who are bound by these Articles under the Corporations Act (as modified) or any other applicable law.
- 50.2. A CUFS Holder shall not do anything which would result in a breach of these Articles whether on the part of that Person or another Person bound by these Articles.
- 50.3. Where a remedy is exercisable under article 49.7 in respect of Shares and CUFS are issued in respect of the Shares which are the subject of the remedy:
 - a. the Company must give a written notice setting out the name and holding of the CUFS Holder, whose CUFS relate to the Shares, and such other information as the Company considers necessary, to the Shareholder and the Shareholder shall be entitled to rely on the information contained in that notice for the purposes of these Articles. A copy of this notice, as well as any notice given to the Shareholder under article 49.7 or article 49.10, must also be given to that CUFS Holder;
 - b. the Supervisory Board may cause the Company to require, by notice in writing to the CUFS Holder, that the CUFS Holder dispose of such number of CUFS that relate to the Shares, and within such time, as is specified in the notice;
 - c. if the notice to the Shareholder under paragraph a. above states that the right to receive dividends or other distributions in respect of any of those Shares has been suspended, the Shareholder shall not, before receiving notice from the Company that the suspension has been lifted, distribute, nor direct the Company to distribute, to the CUFS Holder any dividend or distribution from the Company in respect of the CUFS which relate to those Shares;
 - d. if the notice to the Shareholder under paragraph a. above states that the Company has determined to disregard the exercise of voting rights attached to particular Shares, the Shareholder shall inform the Company, as required by the Company, of such directions as to voting which the Shareholder has received from the CUFS Holders, and the names of the CUFS Holders concerned, in respect of all Shares held by the Shareholder, in order to ensure that the exercise of voting rights attaching to those Shares which are the subject of the Company's determination, and not other Shares, are disregarded. The Company shall be entitled to rely upon the information provided by the Shareholder.

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50.4. If the requirements of a notice under article 50.3 under b. are not complied with by the Person within the time specified in the notice, the Company may, as an irrevocable proxy of the CUFH Holder, without any further instrument, cause the CUFH referred to in the notice to be sold to the extent permitted by and in accordance with the ASTC Operating Rules and must pay to the Person whose CUFH were sold the purchase money less the expenses of the sale.

The Company may, by notice in writing, at any time require any CUFH Holder to provide the Company any information or evidence (on oath or otherwise verified if the Company reasonably requires) as the Company may reasonably consider likely to be of assistance in determining whether or not a breach of these Articles has occurred or is continuing.

Despite anything in this article 50.4, the Company and the Shareholder have no liability arising from any Person holding CUFH in circumstances which would result in or have the effect of causing an infringement or contravention of article 49.2, article 49.2A or article 50.2.

50.5. A CUFH Holder shall not have any claim against the Company, the members of its Managing Board, Supervisory Board or Joint Board or the Shareholder for any action taken by any of them in accordance with article 49 or this article 50 or the ASTC Operating Rules, provided that such action was taken in good faith.

CHAPTER IV

RENEWAL PROVISION.

ARTICLE 51.

Articles 49.9 through 49.10 of these Articles shall lapse after a period of five (5) years from the later of the date referenced in the head of this deed and the date that the General Meeting last extended the applicability of articles 49.9 through 49.10, subject to the confirmation of such extension by way of a deposit by the Managing Board on recommendation of the Joint Board of a declaration with the trade register of the competent Chamber of Commerce and Industry as referred to in section 2: 77 Dutch Civil Code. If those articles lapse, the remedies in article 49.7 may thereafter be exercised only if the Company has obtained a judgement from the competent courts in accordance with article 49.8.

The required ministerial declaration of no-objection was granted on the thirtieth day of August two thousand and five, number N.V. 1.000.893.

The ministerial declaration of no-objection and a document in evidence of the resolutions, referred to in the head of this deed, are attached to this deed.

In witness whereof the original of this deed which will be retained by me, notaris, is executed in Amsterdam, on the date first mentioned in the head of this deed.

Having conveyed the substance of the deed and given an explanation thereto and following the statement of the person appearing that he has taken note of the contents of the deed and agrees with the partial reading thereof, this deed is signed, immediately after reading those parts of the deed which the law requires to be read, by the person appearing, who is known to me, notaris, and by myself, notaris.

(signed): R.H. Kleipool, M. van Olffen.

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James Hardie International Finance BV.
 Atrium, Unit 08
 Strawinskylaan 3077
 1077 ZX Amsterdam
 The Netherlands

Tel +31 20 3012980
 Fax +31 20 4042544

3 May 2006

("Financier") #1#

Strictly Private & Confidential

Dear Sirs

Extension of Facilities and other matters

We refer to the:

- "James Hardie — Common Terms Deed Poll" dated 15 June 2005 between the Financier, #1# ("**Borrower**") and James Hardie Industries N.V. ("**CTDP**"), as amended by the "CTDP Amendment Deed and New Borrower Deed Poll" executed by James Hardie Building Products, Inc. (US), the Borrower and James Hardie Industries N.V. ("**JHINV**") on 12 January 2006 ("**CTDP Amendment**");
- "James Hardie — Term Facility Agreement" ("**Term Facility Agreement**") and the "James Hardie — 364-day Facility Agreement" ("**364-day Facility Agreement**"), each dated #2# June 2005 between the Financier and the Borrower, as amended by the CTDP Amendment;
- our letters dated 16 June 2005 and 17 January 2006 in relation to the proposed utilisation of the Facilities to repay all or some of the US\$121,733,333 Guaranteed Senior Notes issued by the Borrower on 5 November 1998 ("**Notes**").

Capitalised terms used in this letter have the same meaning as in the Term Facility and the 364-day Facility Agreement, as the case may be.

1 Extension request — Term Facility Agreement

As the Maturity Date of the Facility made available under the Term Facility Agreement may not be extended automatically prior to the first anniversary of the date of the Term Facility Agreement, namely 16 June 2006, we request that the current definition of Maturity Date in the Details section of the Term Facility Agreement be deleted in its entirety and replaced with the following words:

"31 December 2006 with automatic extension to the fifth anniversary of the date of this agreement if the Extension Events occur on or before 31 December 2006."

2 Formal request for consent

As you know, there is a 30 day period during which you must respond to our formal request for your consent to the terms of the Final Funding Agreement and the Guarantee and Subordination Documents for the purposes of sub-paragraph (e) of the definition of "Extension Events" in the Term Facility Agreement. Our current intention is not to trigger this 30 day period until 15 May 2006 at the earliest.

3 Prepayment of Guaranteed Senior Notes

We wish to inform you that we have given notice to the holders of the Notes that we intend to prepay the Notes in full on 8 May 2006. We intend to use our available cash reserves to fund the prepayment and will not be drawing down on the Facilities for this purpose.

Could you please confirm your acceptance of the amendment to the Term Facility Agreement by signing and returning the enclosed copy of this letter to us.

In order to manage the upcoming maturities in the drawn debt, we would ask that you respond before 18 May 2006.

Yours faithfully

/s/ Russell Chenu

Russell Chenu being an
Authorised Officer of

James Hardie International Finance BV, as Obligors' Agent (with corporate seat in Amsterdam) and
James Hardie Building Products Inc (US)

Confirmed and accepted:

(Financier) #1

_____ being an Authorised Officer of the Financier
(Print Name)

/s/ Karen Hughes

Karen Hughes being an
Authorised Officer of

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James Hardie — Form of 364-day Facility Agreement

Schedule 3 — Extension Request (clause 5.2)

To: (Financier) #1#

Date: 1 May 2005

Extension Request — James Hardie — 364-day Facility Agreement dated #2# June 2005 between James Hardies International Finance BV (“Borrower” and “Obligors’ Agent) and #1# (“Financier”) (“Facility Agreement”)

In accordance with clause 5.2 (“Extension of Maturity Date”) of the Facility Agreement, the Obligors’ Agent requests as follows;

We request that the Maturity Date under the Facility Agreement in respect of US\$#3# be extended to a date 182 days after the current Maturity Date under the Facility Agreement.

The Maturity Date, if extended in accordance with this request, will be #4# June 2007.

If this extension request is accepted, the Facility Limit applicable from the current Maturity Date will be US\$#2#.

/s/ Nita Moritz-Jotwani

Nita Moritz-Jotwani being an
Authorised Officer of

/s/ Karen Hughes

Karen Hughes being an
Authorised Officer of

James Hardie International Finance BV
as Obligors’ Agent (with corporate seat in Amsterdam)

We agree to extend the maturity Dare for the requested Facility Limit in accordance with the above notice.

Signed for the Financier on _____ by:

_____ being an Authorised Officer of the Financier
(print name)

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MALLESONS STEPHEN JAQUES

James Hardie Industries NV
Supervisory Board Share Plan

Dated 14 August 2006

MALLESONS STEPHEN JAQUES
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Australia
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F +61 2 9296 3999
DX 113 Sydney
www.mallesons.com

1 INTRODUCTION

1.1 PURPOSE

The Plan provides Supervisory Board Members with an opportunity to acquire an ownership interest in the Company either directly, or indirectly through a Superannuation Plan nominated by them.

1.2 COMMENCEMENT

The Plan commences on the date that the Company determines.

1.3 RULES ARE BINDING

The Company and each Participant are bound by these rules.

2 INVITATION, APPLICATION AND ACCEPTANCE

2.1 ELIGIBILITY

The Managing Board, with the approval of the Joint Board, may determine the Supervisory Board Members who are eligible to participate in the Plan from time to time.

2.2 INVITATION MAY BE MADE

From time to time the Company may make, and a person who is eligible to participate in the Plan in accordance with rule 2.1 may receive, an Invitation to participate in the Plan.

2.3 CONTENT OF INVITATION

The Invitation must be in writing and include the following details:

- (a) the number of CUFS or the method of calculating the number of CUFS for which the Participant may apply;
- (b) any restrictions or other conditions relating to the CUFS as determined by the Managing Board; and
- (c) the method of acceptance of an Application.

2.4 APPLICATION FORM

The Invitation to a Participant must be accompanied by an Application Form.

2.5 APPLYING FOR CUFS

A Participant who receives an Invitation under rule 2.2 may apply for CUFS by completing and returning the Application form in accordance with the directions in the Invitation.

2.6 ELECTION AS TO METHOD OF SATISFYING APPLICATIONS

The Company may elect to satisfy an Application either by issuing new shares (to be held in the form of CUFS) or purchasing shares on market (as defined in section 9 of the Corporations Act) on behalf of the Participant.

2.7 PARTICIPANT AGREES TO BE BOUND

Each Participant is, by submitting an Application Form, deemed to have agreed to be bound by:

- (a) the terms of the Invitation and Application Form;
- (b) the Insider Trading Policy of the Company;
- (c) the provisions of these rules; and
- (d) the articles of association of the Company and the laws applicable to the Company.

2.8 ACCEPTANCE OF APPLICATION

The acceptance by the Company of an Application by a Participant is effective and occurs at the time of allotment or transfer of the CUFS to the Participant.

2.9 WHEN APPLICATIONS WILL NOT BE ACCEPTED

A Participant's Application will not be accepted if, at the date of the proposed allotment or transfer of CUFS, they are not a Supervisory Board Member (or a Superannuation Plan nominated by a person who is a Supervisory Board Member).

2.10 BOARD MAY DENY APPLICATION

The Managing Board, with the approval of the Joint Board, has the discretion to determine that an Application by a Participant who otherwise would be eligible to acquire CUFS under the Plan will not be accepted.

3 ACQUISITION PRICE

3.1 SHARES ISSUED TO PARTICIPANTS

Any shares issued to a Participant under the Plan are to be issued at a price equal to the average of the closing prices for CUFS on the ASX during the period of five business days immediately preceding the date of issue of the shares.

3.2 SHARES ACQUIRED ON MARKET

Any shares purchased on market under the Plan on behalf of a Participant are taken to be transferred under the Plan to the Participant at the price at which the relevant CUFS were acquired by the Company. Any brokerage, stamp duty or other costs are to be borne by the Company.

4 ALLOTMENT OF CUFS

4.1 NOTICE

The Company must advise a Participant that it has allotted or transferred CUFS to them under the Plan as soon as reasonably practicable after the allotment or transfer occurs.

4.2 OWNERSHIP OF CUFS

- (a) Subject to (b) and (c), each Supervisory Board Member has the legal and beneficial ownership of the CUFS allotted or transferred to them.
- (b) If CUFS have been allotted or transferred to a Superannuation Plan, the trustee or its equivalent in respect of the relevant Superannuation Plan will hold the legal interest in the CUFS allotted to the Superannuation Plan.
- (c) Any disposal of those CUFS referred to in (a) or (b) above by a Participant is restricted in accordance with any restrictions specified in the Invitation to the Participant to apply for the CUFS under rule 2.3(b).

4.3 QUOTATION OF CUFS

The Company must apply to ASX for official quotation of any new shares / CUFS allotted under the Plan.

5 ADMINISTRATION OF PLAN

5.1 MANAGING BOARD TO ADMINISTER PLAN

The Plan is to be administered by the Managing Board in accordance with these rules. The Managing Board, with the approval of the Joint Board, may make further provisions for the operation of the Plan which are consistent with these rules.

5.2 MANAGING BOARD POWERS AND DISCRETIONS

Any power or discretion which is conferred on the Managing Board by these rules must be exercised by the Managing Board in the interests or for the benefit of the Company, and the Managing Board is not, in exercising any power or discretion, under any fiduciary or other obligation to any other person.

5.3 DELEGATION OF MANAGING BOARD POWERS AND DISCRETIONS

Any power or discretion which is conferred on the Managing Board by these rules may be delegated by the Managing Board to a committee consisting of those directors (other than directors who are members of the Supervisory Board), other officers or employees of the Company as the Managing Board thinks fit.

5.4 MANAGING BOARD DECISION: FINAL AND CONCLUSIVE

The decision of the Managing Board as to the interpretation, effect or application of these rules is final and conclusive.

5.5 SUSPENSION OF PLAN

The Managing Board, with the approval of the Joint Board, may suspend the operation of the Plan and may cancel the Plan even if the suspension or cancellation of the Plan is prejudicial to the existing rights of a Participant under the Plan. Suspension or termination of the Plan does not give rise to any liability on the part of, or any right of action against, the Company.

6 OVERRIDING RESTRICTIONS ON THE PLAN

Despite any other provision of these rules, no CUFS may be acquired by a Participant or other person under the Plan if to do so would contravene the Corporations Act, the Dutch Civil Code, the U.S. Securities Act of 1933 or the Listing Rules.

7 AMENDMENT OF THE PLAN

7.1 MANAGING BOARD MAY AMEND

The Managing Board may, with the approval of the Joint Board, at any time by written instrument amend all or any of the provisions of these rules, including this rule 7, even if the amendment is prejudicial to the existing rights of a Participant under the Plan. Amendment of the Plan does not give rise to any liability on the part of, or any right of action against, the Company.

7.2 RETROSPECTIVE AMENDMENT POSSIBLE

Any amendment made under rule 6.1 may be given retrospective effect as specified in the written instrument by which the amendment is made.

8 MISCELLANEOUS PROVISIONS

8.1 INSTRUCTIONS BY MEMBERS

For the purposes of these rules, the Company is entitled to regard any notice, direction or other communication given or purported to be given by or on behalf of a Participant (or a legal personal representative of a Supervisory Board Member) as valid, whether given orally or in writing.

8.2 GOVERNING LAW

These rules are governed by the laws in force in The Netherlands and are construed and take effect in accordance with those laws.

8.3 ROUNDING

Unless expressly provided for in these rules, any calculation of a number of CUFS under the Plan is to be rounded down to the nearest whole number.

9 DEFINITIONS AND INTERPRETATION

9.1 DEFINITIONS

The following words and expressions have the following meanings unless the contrary intention appears:

APPLICATION means an application for CUFS made by a Participant under the terms of an Invitation.

APPLICATION FORM means an application form for CUFS attached to an Invitation.

ASTC means Australian Settlement and Transfer Corporation Pty Limited (ABN 49 008 532).

ASTC SETTLEMENT RULES means the settlement rules of ASTC.

ASX means Australian Stock Exchange Limited.

CUFS means a CHESS Unit of Foreign Securities, as defined in the ASTC Settlement Rules, in respect of a Share.

COMPANY means James Hardie Industries N.V (ARBN 097 829 895) (Incorporated in The Netherlands. The liability of members is limited).

CORPORATIONS ACT means the Corporations Act 2001 (Cwlth).

INVITATION means an invitation to apply for CUFS under the Plan made in accordance with clause 2.2.

JOINT BOARD means the joint board of the Company.

LISTING RULES means the Listing Rules of ASX, except to the extent of any express waiver by ASX.

MANAGING BOARD means all or some of the members of the managing board of the Company acting as such, and includes a committee of the Managing Board and a delegate of the Managing Board.

PARTICIPANT means any Supervisory Board Member eligible to acquire CUFS under this Plan in accordance with rule 2.1 and includes any Superannuation Plan nominated, with the prior written approval of the Managing Board, by a Supervisory Board Member to receive an Invitation for which the relevant Supervisory Board Member would otherwise be eligible.

PLAN means the Supervisory Board Share Plan, the rules of which are set out in this document.

SHARES means fully paid ordinary shares in the capital of the Company.

SUPERANNUATION PLAN means a personal superannuation or pension plan nominated by a Supervisory Board Member to participate in the Plan that meets such criteria as the Managing Board may, in its discretion, from time to time determine.

SUPERVISORY BOARD means the supervisory board of the Company.

SUPERVISORY BOARD MEMBER means a member of the Supervisory Board.

9.2 INTERPRETATION

In these rules, unless the contrary intention appears:

- (a) words importing the singular include the plural and vice versa;
- (b) references to these rules, or any particular clause of these rules, means these rules, or the relevant clause, as amended from time to time;
- (c) references to a document or any part of a document means the document or relevant part, as amended from time to time;
- (d) references to a statute or other law include regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (e) references to the exercise of a power or discretion include a decision not to exercise the power or discretion; and
- (f) "including" when introducing a list of items does not exclude a reference to other items whether of the same class or genus or not.

Headings are for convenience only and do not affect the interpretation of these rules.

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MALLESONS STEPHEN JAQUES

James Hardie Industries NV
Long Term Incentive Plan

Dated 1 August 2006

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LONG TERM INCENTIVE PLAN

GENERAL TERMS

1 INTRODUCTION

1.1 PURPOSE

The Plan provides eligible Executives with an opportunity to acquire an ownership interest or exposure to an ownership interest in the Company.

1.2 COMMENCEMENT

The Plan commences on the date that the Company determines.

1.3 RULES ARE BINDING

The Company, the Trustee, each Participating Company and each Participant are bound by these rules.

1.4 PLAN NOT TO LIMIT OTHER ARRANGEMENTS

This Plan is not the sole means by which the Group intends to provide incentives to Participants or other employees of the Group, and nothing in this Plan is intended to restrict the Group from remunerating or otherwise rewarding Participants or other employees outside the Plan.

2 INVITATION, APPLICATION AND ACCEPTANCE

2.1 ELIGIBILITY

The Board may determine the Executives who are eligible to participate in the Plan from time to time.

2.2 INVITATION MAY BE MADE

From time to time the Company may make an Invitation to participate in the Plan to an Executive who is eligible to participate in the Plan in accordance with rule 2.1.

2.3 FORM OF APPLICATION

The Invitation to an Executive must be accompanied by an Application Form.

2.4 PARTICIPANT AGREES TO BE BOUND

Each Participant is, by submitting a completed Application Form, deemed to have agreed to be bound by:

- (a) the terms of the Invitation and Application Form;

- (b) the provisions of these rules, as amended from time to time, except the provisions of the schedules apply in accordance with paragraph (d) below;
- (c) the Articles of Association, as amended from time to time; and
- (d) the provisions of:
 - (i) schedule 1, to the extent the Participant makes an Application for Options;
 - (ii) schedule 2, to the extent the Participant makes an Application for Performance Rights;
 - (iii) schedule 3, to the extent the Participant makes an Application for Performance Shares and the Participant is not a U.S. Executive at the time of the grant;
 - (iv) schedule 4, to the extent the Participant makes an Application for Awards; and
 - (v) schedule 5, to the extent that the Participant is a U.S. Executive at the time of grant;
- (e) for Performance Shares issued in accordance with schedule 3, the provisions of the Trust Deed.

2.4A TRUST TO BE CONSTITUTED

The Company must not make an Invitation to participate in the Plan for Performance Shares on the terms set out in schedule 3, unless a Trust has been constituted.

2.4B COMPANY MAY PROVIDE

The Company may provide:

- (i) Options on the terms set out in schedule 1;
- (ii) Performance Rights on the terms set out in schedule 2;
- (iii) Performance Shares to any Participant who is not a U.S. Executive at the time of the grant, on the terms set out in schedule 3 and subject to the terms of the Trust Deed;
- (iv) Awards on the terms set out in schedule 4;
- (v) Options, Performance Rights or Awards to a U.S. Executive on the terms set out in schedule 5 (including, to the extent that there is no inconsistency, any terms set out in schedules 1, 2 and 4 respectively which are incorporated into schedule 5); and
- (vi) Performance Shares to a U.S. Executive on the terms set out in schedule 5 (including, to the extent that there is no

inconsistency, any terms set out in schedule 3 which do not relate to the terms of the Trust and which are incorporated into schedule 5).

2.5 ACCEPTANCE OF APPLICATION

The Application must be in the form included with the Invitation, and may not be made on the basis that it is subject to any terms and conditions other than those specified in the Invitation. The method of acceptance of an Application must be set out in the Application Form, including:

- (a) the name or title of the person to whom the Application must be sent; and
- (b) the date and time by which the Application must be received by or on behalf of the Company.

2.6 WHEN COMPANY MUST RECEIVE THE APPLICATION

For an Application to be effective, it must be received by or on behalf of the Company by the time and date specified in the Invitation, unless otherwise determined by the Board.

2.7 WHO MAY APPLY

On receipt of an Invitation, the Executive may apply for the Options, Performance Rights, Performance Shares or Awards (as the case may be) described in that Invitation by sending to the person designated by the Company an Application duly completed and signed in accordance with rule 2.6.

2.8 WHEN APPLICATIONS WILL NOT BE ACCEPTED

An Application under rule 2.7 will not be accepted if, at the date the Application would otherwise be accepted:

- (a) he or she is not an Executive;
- (b) he or she has given their Employer notice of his or her resignation as an Executive; or
- (c) he or she has been given notice of termination of employment as an Executive or if, in the opinion of the Board, he or she has tendered his or her resignation to avoid such dismissal.

2.9 BOARD'S DISCRETION

The Board may determine that an Application under this rule 2 by an Executive who would otherwise be eligible to participate under these rules will not be accepted.

2.10 CESSATION OF MEMBERSHIP

A person ceases to be a Participant when all other property or moneys to which the Participant is entitled under the Plan have been transferred or paid in accordance with these rules.

3 ADMINISTRATION OF PLAN

3.1 TRUSTEE AND BOARD TO ADMINISTER PLAN

- (a) The Plan is to be administered by the Board and to the extent specified under schedule 3, the Trustee, in accordance with these rules. The Board may make further provisions for the operation of the Plan which are consistent with these rules.
- (b) Notwithstanding (a), the Remuneration Committee shall administer the Plan and any Invitations with respect to grants of Options, Performance Rights, Performance Shares and/or Awards made to Covered Employees. Furthermore, in respect of such grants of Options, Performance Rights, Performance Shares and/or Awards made to Covered Employees, any references in these rules (or in any Invitation issued under these rules) to the Board, except for those provided in rules 3.3 and 3.6, shall be replaced with Remuneration Committee in each such place that it occurs.

3.2 BOARD POWERS AND DISCRETIONS

Any power or discretion which is conferred on the Board by these rules must be exercised by the Board in the interests or for the benefit of the Company, and the Board is not, in exercising any power or discretion, under any fiduciary or other obligation to any other person.

3.3 DELEGATION OF BOARD POWERS AND DISCRETIONS

Any power or discretion which is conferred on the Board by these rules including the power to invite Executives to participate in the Plan and to determine the terms and conditions of a Participant's Option, Performance Right, Performance Share or Award may be delegated by the Board to:

- (a) a committee consisting of such directors, other officers or employees of the Company, or any combination of such persons as the Board thinks fit;
- (b) a related body corporate of the Company; or
- (c) a third party,

for such periods and on such conditions as the Board thinks fit.

3.4 DOCUMENTS

The Company may from time to time require a person invited to participate in the Plan or a Participant to complete and return such other documents as may be required by law to be completed by that person or Participant, or such

other documents which the Company considers should, for legal, taxation or administrative reasons, be completed by that person or Participant.

3.5 BOARD DECISION: FINAL AND CONCLUSIVE

The decision of the Board as to the interpretation, effect or application of these rules and all calculations and determination made by the Board under these rules are final, conclusive and binding in the absence of manifest error.

3.6 SUSPENSION OF PLAN

The Board may from time to time suspend the operation of the Plan and may at any time cancel the Plan. The suspension or cancellation of the Plan must not prejudice the existing rights (if any) of Participants.

3.7 MANNER OF EXERCISE OF REMUNERATION COMMITTEE AUTHORITY

- (a) The Remuneration Committee, and not the Board, shall exercise sole and exclusive discretion on any matter relating to a Participant then subject to Section 16 of the U.S. Exchange Act with respect to the Company to the extent necessary in order that transactions by that Participant shall be exempt under Rule 16b-3 under the U.S. Exchange Act.
- (b) Any action of the Remuneration Committee shall be final, conclusive and binding on all persons, including the Company, its Executives, their beneficiaries or other persons claiming rights from or through an Executive, and shareholders.
- (c) The express grant of any specific power to the Remuneration Committee, and the taking of any action by the Remuneration Committee, shall not be construed as limiting any power or authority of the Remuneration Committee.
- (d) The Remuneration Committee may delegate to officers or managers of the Company, or any committees thereof, the authority (subject to such terms as the Remuneration Committee shall determine), to perform such functions, including administrative functions, as the Remuneration Committee may determine, to the extent that such delegation will not:
 - (i) result in the loss of an exemption under Rule 16b-3(d)(1) for Options, Performance Rights, Performance Shares or Awards granted to Participants subject to Section 16 of the U.S. Exchange Act in respect of the Company; or
 - (ii) cause Options, Performance Rights, Performance Shares or Awards which are intended to qualify as "performance-based compensation" under U.S. Revenue Code Section 162(m) to fail to so qualify.

3.8 CONSULTANTS

If:

- (a) a Participant's employment agreement provides that the Participant will commence as a consultant to a Group Company on ceasing employment with the Company; and
 - (b) on ceasing employment with the Company, the Participant commences as a consultant to a Group Company in accordance with that agreement,
- then
- (c) the Participant is deemed to continue as an employee of the Company for the purposes of these rules; and
 - (d) the Participant will cease to be an employee for the purposes of these rules when the Participant ceases to be a consultant to that Group Company.

4 RESTRICTIONS ON THE PLAN

4.1 COMPLIANCE WITH APPLICABLE REGULATIONS

Despite any other provision of these rules or any term or condition of the participation of any Participant in the Plan, no Share may be acquired by the Trustee or transferred to a Participant or other person, no Performance Right or Option may be granted or exercised, no Award may be granted and no Payout may be made if to do so would contravene any Applicable Regulations.

4.2 RESTRICTION ON THE SIZE OF THE PLAN

The Board must not issue an Invitation to apply for Options, issue Shares on the exercise of Performance Rights, or cause the Trustee of the Performance Share Plan to subscribe for Shares, if the number of Shares the subject of the Invitation to apply for Options, the exercise of the Performance Rights or the subscription for shares by the Trustee of the Performance Share Plan, when added to:

- (a) the number of Shares which would be issued if all outstanding Options, and all Options which may be granted pursuant to the acceptance of any outstanding Invitation to apply for Options, were exercised; and
- (b) the number of Shares issued to the Trustee of the Performance Share Plan and which remain held in that Trust,

would exceed 5% of the total number of issued Shares at the relevant date.

4.3 INCENTIVE STOCK OPTION LIMITS

Notwithstanding anything in this rule 4 to the contrary, but subject to any adjustments provided for in Schedules 2 and 5 of these rules, the maximum aggregate number of Shares that may be issued under the Plan as a result of the exercise of Incentive Stock Options shall be 8 million Shares.

4.4 APPLICATION OF LIMITATION TO GRANTS OF AWARD

- (a) No Option, Performance Right, Performance Share or Award may be granted if:
 - (i) the number of Shares to be delivered in connection with such an Option, Performance Right, Performance Share or Award; or
 - (ii) in the case of an Option, Performance Right, Performance Share or Award relating to Shares but settled only in cash (such as cash-only Awards), the number of Shares to which such Option, Performance Right, Performance Share and/or Award relates, exceeds the number of Shares remaining available for delivery under the Plan, minus the number of Shares deliverable in settlement of or relating to then outstanding Options, Performance Rights, Performance Shares and/or Awards.
- (b) The Board may adopt reasonable counting procedures to ensure appropriate counting, avoid double counting (as, for example, in the case of tandem or substitute awards) and make adjustments if the number of Shares actually delivered differs from the number of Shares previously counted in connection with an Option, Performance Right, Performance Share and/or Award.

4.5 PER-PERSON AWARD LIMITATIONS

Subject to any adjustments provided for in Schedules 2 and 5 of these rules, in any financial year of the Company during any part of which the Plan is in effect, no Participant may be granted Options, Performance Rights, Performance Shares or Awards with respect to more than 2 million Shares. In addition, the maximum dollar value payable to any one Participant with respect to Awards (or with respect to any Performance Rights payable in cash) is US\$1 million.

5 AMENDMENT OF THE PLAN

5.1 BOARD MAY AMEND

Subject to rules 5.2, 5.3 and 5.4, the Board may at any time by written instrument, amend all or any of the provisions of these rules, including this rule 5.

5.2 NO REDUCTION OF EXISTING RIGHTS

Any amendment to the provisions of these rules must not materially reduce the rights of any Participant as they existed before the date of the amendment, unless the amendment is introduced primarily:

- (a) for the purpose of complying with or conforming to present or future law or regulation governing or regulating the maintenance or operation of the Plan or like plans;

- (b) to correct any manifest error or mistake;
- (c) to enable contributions or other amounts paid by a member of the Group to the Plan to qualify as income tax deductions for that member or another member of the Group;
- (d) to enable the Trustee or any Employer to reduce the amount of fringe benefits tax under the Fringe Benefits Tax Assessment Act 1986 (Cwlth), the amount of tax under the Tax Acts, or the amount of any other tax or impost that would otherwise be payable by the Trustee or the Employer in relation to the Plan;
- (e) for the purpose of enabling the Participants generally (but not necessarily each Participant) to receive a more favourable taxation treatment in respect of their participation in the Plan; or
- (f) to enable the Plan or any member of the Group to comply with Applicable Regulations.

5.3 RETROSPECTIVE AMENDMENT POSSIBLE

Subject to rules 5.2 and 5.4, any amendment made under rule 5.1 may be given retrospective effect as specified in the written instrument by which the amendment is made.

5.4 SHAREHOLDER APPROVAL OF CERTAIN AMENDMENTS

In the event that the Board amends:

- (a) the limits set forth in rules 4.3 and 4.5 hereof;
- (b) the rules set forth in Schedule 5 hereof;
- (c) any Options, Performance Rights, Performance Shares and/or Awards that are granted to a U.S. Executive; and/or
- (d) any other rules of this Plan, if so required by the U.S. Revenue Code, the U.S. Exchange Act, the New York Stock Exchange (or other automated quotation system on which the Shares may then be listed or quoted) and/or any other applicable U.S. laws or regulations,

such amendments shall be subject to the approval of the Company's shareholders not later than the next annual meeting following such Board action.

6 TERMINATION OF THE PLAN

The Plan terminates and is to be wound up (as provided below) on the earliest of:

- (a) if an order is made or an effective resolution is passed for the winding up of the Company other than for the purpose of amalgamation or reconstruction;

- (b) if the Board determines that the Plan is to be wound up; or
- (c) with respect only to Incentive Stock Options, whether vested or not, on the tenth anniversary of the Effective Date of the Plan.

7 MISCELLANEOUS PROVISIONS

7.1 RIGHTS OF PARTICIPANTS

Nothing in these rules:

- (a) confers on any person any expectation to become a Participant;
- (b) confers on any Executive the right to be invited to apply for, to be offered or to receive any Option, Performance Right, Performance Share or Award;
- (c) confers on any Participant the right to continue as an employee of any Employer;
- (d) affects any rights which any Employer may have to terminate the employment of any Executive; or
- (e) may be used to increase damages in any action brought against any Employer in respect of any termination of employment.

No person, whether a Participant or otherwise, has any claim, right or interest in respect of the Plan or any Performance Shares or other property of the Plan, whether against the Trustee, the Company or any other person, as a consequence of termination of the Executive's employment or appointment or otherwise, except under and in accordance with these rules.

7.2 INSTRUCTIONS BY PARTICIPANTS

For the purposes of these rules, the Trustee, the Board, the Company and any Employer is entitled to regard any notice, direction or other communication given or purported to be given by or on behalf of a Participant (or a legal personal representative of a Participant) as valid, whether given orally or in writing. Any notice, direction or other communication given or purported to be given by or on behalf of a Participant (or a legal personal representative of a Participant) or any other person under these rules to the Company, the Trustee or the Employer is duly given only if actually received by the Company, Trustee or Employer (as the case may be).

7.3 NOTICES

Any notice, certificate, consent, approval, waiver or other communications given by the Board, the Trustee, the Company or the Employer is deemed to have been duly given if:

- (a) sent by electronic mail or delivered by hand; or
- (b) sent by ordinary prepaid mail,

and is deemed to have been served:

- (c) if sent by electronic mail or delivered by hand, at the time of sending or delivery; or
- (d) if posted, three Business Days (or, if posted to a Participant's address outside The Netherlands, seven Business Days) after the date of posting.

Delivery, transmission and postage is to the address of any Participant as indicated on the Application Form, any other address as the Board, the Trustee or any Participant may notify to the other or in the case of a Participant who is an Executive, the address of the place of business at which the Participant performs the whole or substantially the whole of the duties of his or her office or employment.

7.4 GOVERNING LAW

These rules are governed by the laws in force in The Netherlands and are construed and take effect in accordance with those laws.

7.5 PAYMENTS NET OF TAX

If, when the Board or the Trustee makes or is deemed to make a payment to a Participant under these rules, the Board or the Trustee is obliged to deduct or withhold any amount of tax or other government levy or impost, the payment to the Participant is to be made net of the deduction or withholding.

7.6 TAXES ON TRANSFERS TO PARTICIPANTS

The Board or the Trustee may, when transferring Shares to a Participant under these rules, require the Participant to provide the Board or the Trustee with an amount of money which the Board or the Trustee estimates is necessary to meet the Participant's liability (if any) to pay stamp duty or other taxes in respect of the transfer. Where the Board or the Trustee is provided with funds for that purpose, the Board or the Trustee must apply the funds in payment of the stamp duty or other tax, arrange for registration of the transfer on the Participant's behalf and return any excess funds to the Participant.

7.7 ROUNDING

Unless expressly provided for in these rules, any calculation of a number of Shares under the Plan is to be rounded to the nearest whole number with 0.5 being rounded up.

7.8 PLAN EFFECTIVE DATE AND SHAREHOLDER APPROVAL

If approval of the Plan is mandatory under the requirements of:

- (a) U.S. Revenue Code Sections 162(m) (if applicable) and 422, and Rule 16b-3 under the U.S. Exchange Act
- (b) the rules of any stock exchange or automated quotation system on which the Shares may be listed or quoted; and

(c) other laws, regulations, and obligations of the Company applicable to the Plan,

then, to that extent, the Plan shall become effective on the Effective Date, subject to approval within 12 months of its adoption, by shareholders of the Company eligible to vote on the election of directors.

If approval of the Plan is required in relation to Options, Performance Rights, Performance Shares and/or Awards, then those Options, Performance Rights, Performance Shares and/or Awards may be granted subject to any shareholder approval so required, but may not be exercised or otherwise settled in the event the shareholder approval is not obtained.

8 DEFINITIONS AND INTERPRETATION

8.1 DEFINITIONS

The following words and expressions have the following meanings unless the contrary intention appears:

ACQUISITION DATE means, in relation to a Participant's Share, the date on which a Participant acquires the Participant's Share for the purposes of Division 13A of Part III of the Tax Act.

APPLICABLE REGULATIONS means the listing requirements imposed by any exchange or trading system on which the Company's securities trade and any law or regulation that applies to the operation of the Plan.

APPLICATION means an application for Options, Performance Rights, Performance Shares or an Award made by an Executive under the terms of an Invitation.

APPLICATION FORM means an application form attached to an Invitation.

ARTICLES OF ASSOCIATION means the articles of association of the Company.

ASTC SETTLEMENT RULES means the operating rules of ASX Settlement and Transfer Corporation Pty Limited.

ASX means Australian Stock Exchange Limited.

AWARD means an entitlement to a Payout.

BOARD means all or some of the directors of the Company acting as a board, and includes a committee of the Board and a delegate of the Board.

BUSINESS DAY means a day other than a Saturday, Sunday or public holiday in The Netherlands.

COMPANY means James Hardie Industries NV.

CORPORATIONS ACT means the Corporations Act 2001 (Cwlth).

COVERED EMPLOYEE means an Executive who is a "covered employee" within the meaning of Section 162(m)(3) of the U.S. Revenue Code, or any successor provision thereto.

CUFS means a CHES unit of Foreign Securities, as defined in the ASTC Settlement Rules, in respect of Shares.

DETERMINATION DATE means in respect of a Payout the date determined by the Board and set out in the Invitation to the relevant Participant to apply for the Payout.

DIVIDENDS means dividends declared or paid in respect of Shares held by the Trustee on behalf of a Participant and includes any amount distributed in respect of those Shares following a reduction of capital by the Company.

EFFECTIVE DATE means the date the Plan is approved by the Board, which shall be 1 August, 2006.

EMPLOYER means any Group Company, and in relation to any particular Participant means the company by which that Participant is for the time being employed.

EXECUTIVE means a person who is in the full time or part time employment of a Group Company.

EXERCISE CONDITION means, in relation to an Option or a Performance Right, a condition (other than a Vesting Condition) which must be satisfied or waived before that Option or Performance Right (as the case may be) may be exercised.

EXERCISE PERIOD means, in relation to an Option or a Performance Right, the latest period at the end of which that Option or Performance Right will lapse.

EXERCISE PRICE means:

- (a) in relation to a Performance Right, the amount payable on exercise of that Performance Right, as determined by the Board and specified in the Invitation and adjusted in accordance with paragraph 7 of schedule 2. If no determination is made, the applicable Exercise Price is nil; or
- (b) in relation to an Option, the amount payable on exercise of that Option, as specified in the Invitation and adjusted in accordance with paragraph 7 of schedule 1, but may not be less than twenty cents for each Share to be acquired on exercise of the Option.

FAIR MARKET VALUE means the fair market value of Shares, Awards or other property as determined by the Remuneration Committee, or under procedures established by the Remuneration Committee. Unless otherwise determined by the Remuneration Committee, the Fair Market Value of a Share as of any given date shall be the "Closing Price" (as defined below) of the Share on that reference date. For these purposes the "Closing Price" of a Share on any day shall be the closing sale price per Share reported on a consolidated basis for stock listed on the principal stock exchange or market on which Shares are traded on the date immediately preceding the date as of which such value is

being determined or, if there is no sale on that date, then on the last previous day on which a sale was reported.

GENERAL MEETING has the meaning given in the Articles of Association.

GRANT DATE means, in relation to an Option or a Performance Right, the date on which that Option or Performance Right is granted.

GROUP means the Company and each of its Subsidiaries.

GROUP COMPANY means the Company or any of its Subsidiaries.

INCENTIVE STOCK OPTION means any Option intended to be designated as an incentive stock option within the meaning of Section 422 of the U.S. Revenue Code or any successor provision thereto.

INDEPENDENT DIRECTORS, when referring to either the Board or members of the Remuneration Committee, shall have the same meaning as used in the rules of the New York Stock Exchange or any U.S national securities exchange on which any securities of the Company are listed for trading, and if not listed for trading on any such U.S exchange, by the rules of the New York Stock Market.

INVITATION means an invitation to apply for Options, Performance Rights, Performance Shares or an Award under the Plan made in accordance with rule 2.2.

LISTING RULES means the Listing Rules of ASX, except to the extent of any express waiver by ASX.

MARKET PARTICIPANT has the meaning given in the ASTC Settlement Rules.

MARKET VALUE means the market value of a Share determined under section 139FA of the Tax Act.

MINIMUM RESTRICTION CONDITION means in respect of a Performance Share, any condition (other than a Performance Condition) which the Board may impose that must be satisfied or waived before the Performance Share is vested in its holder.

NET INCOME means, in respect of a Year of Income of the Performance Share Plan, an amount which the Trustee determines to be the "net income" (as defined in section 95 of the Tax Act) of the Trust for that Year of Income.

NOTICE OF WITHDRAWAL OF SHARES means a duly completed and executed written request by a Participant to the Trustee (in a form approved by the Board) to:

- (a) transfer to, or on behalf of, the Participant some or all of the Participant's Shares; or
- (b) sell, on behalf of the Participant, some or all of the Participant's Shares.

OPTION means a right to acquire a Share granted under schedule 1.

PARTICIPANT means an Executive to whom an Option, a Performance Right, a Performance Share or an Award (as the case may be) has been granted and who has not ceased to be a Participant under rule 2.10 and includes a legal personal representative of the Participant.

PARTICIPANT SHARES means, in relation to a Participant, the Performance Shares held by the Trustee on behalf of the Participant which stand to the credit of the Share Account of that Participant, and PARTICIPANT'S SHARE(S) has a corresponding meaning.

PARTICIPATING COMPANY means each Group Company to which the Board resolves that the Plan extends.

PAYOUT means the amount calculated in accordance with the formula set out in the Invitation for an Award.

PAYOUT DATE means:

- (a) the date determined by the Board and set out in the Invitation to an Executive under paragraph 1 of schedule 4; or
- (b) where the Participant qualifies for a Payout under paragraph 3.3(b) of schedule 4, such other date specified by the Board in writing,

and must be within 60 days of the date on which the Participant qualifies for the Payout.

PAYOUT QUALIFICATION CONDITION means, in respect of a Payout, any condition (other than a Payout Vesting Condition) which the Board may impose that must be satisfied or waived for the Participant to have a right to receive that Payout, including satisfaction of a performance hurdle.

PAYOUT VESTING CONDITION means, in respect of a Payout, a condition which must be satisfied or waived before the right to receive that Payout becomes vested in its holder.

PERFORMANCE CONDITION means, in respect of a Performance Share, any condition which must be satisfied or waived before the Participant may withdraw Performance Shares from the Performance Share Plan.

PERFORMANCE PERIOD means that period established by the Remuneration Committee at the time any Option, Performance Right, Performance Share or Award is granted or at any time thereafter during which any performance goals specified by the Remuneration Committee with respect to such Option, Performance Right, Performance Share or Award are to be measured.

PERFORMANCE RIGHT means a right to acquire a Share (by transfer or issue at the election of the Company) granted under schedule 2.

PERFORMANCE SHARE PLAN means the plan the rules of which are set out in this document (excluding the rules of the schedules other than schedule 3).

PERFORMANCE SHARES means:

- (a) in relation to grants made in accordance with schedule 3, Shares and CUFS which are held by the Trustee in accordance with these rules for the purposes of the Performance Share Plan; or
- (b) in relation to grants made to U.S. Executives in accordance with schedule 5, performance shares which are paid to U.S. Executives in Shares or in a lump sum or in installments under paragraph 4 of schedule 5.

PLAN means the James Hardie Industries NV Long Term Incentive Plan, the rules of which are set out in this document.

PLAN EXPENSES means all expenses, outgoings, costs and charges incurred in the establishment and operation of the Performance Share Plan and includes any amounts of income or other tax payable by the Trustee in relation to the Performance Share Plan.

PRESCRIBED EXERCISE DATE means, in relation to an Option or a Performance Right, the first date on which that Option or Performance Right is exercisable, subject to the Terms and Conditions of Grant for that Option or Performance Right.

PRESCRIBED QUALIFICATION DATE means, in relation to a Payout, the date on which the Participant qualifies for the Payout subject to the Terms and Conditions of Award for the Payout.

PRESCRIBED WITHDRAWAL DATE means, in relation to a Performance Share, the first date on which the Participant may submit a Notice of Withdrawal of Shares in respect of that Performance Share subject to the Terms and Conditions for that Performance Share.

REDUNDANCY means termination of employment of a Participant by a Participating Company due to economic, technological, structural or other organisational change where through no act or default of the Participant:

- (a) the Participating Company no longer requires the duties and responsibilities carried out by the Participant to be carried out by anyone; or
- (b) the Participating Company no longer requires the position held by the Participant to be held by anyone.

REMUNERATION COMMITTEE means the Remuneration Committee of the Board, within the meaning of Section 162(m) of the U.S. Revenue Code.

REORGANISATION means any merger, consolidation, reconstruction or other reorganisation in respect of the Company, including any compromise or arrangement for the purposes of or in connection with a scheme for the reconstruction of the Company or its amalgamation with any other company.

RESERVE ACCOUNT means the account established by the Trustee under paragraph 16.3 of schedule 3.

RETIREMENT means termination of the employment of a Participant with a Participating Company because:

- (a) the Participant attains the age that the Board accepts as the retirement age for that individual;
- (b) the Participant is unable, in the opinion of the Board, to perform his or her duties because of illness or incapacity.

RIGHTS means any rights or options to acquire Shares or other securities issued or to be issued by the Company.

SECURITY INTEREST means a mortgage, charge, pledge, lien or other encumbrance of any nature.

SEPARATION means the termination of a Participant's employment with a Participating Company by the volition of the Participant and with the written consent of the Board expressly given for the purposes of the Plan.

SHARE ACCOUNT means, in relation to a Participant, the account maintained in respect of that Participant under paragraph 16.1 of schedule 3.

SHARES means fully paid ordinary shares in the capital of the Company.

SUBSIDIARY means an entity that is controlled by the Company.

SUPPLEMENTARY CONDITION means, in relation to an Option, a Performance Right, a Performance Share or an Award, any term or condition (other than the rules, the Exercise Conditions, the Vesting Conditions, the Minimum Restriction Conditions, the Performance Conditions, the Payout Vesting Conditions or the Payout Qualification Conditions) to which that Option, Performance Right, Performance Share or Award is subject, or to which any Shares acquired pursuant to the exercise of that Option or Performance Right will be subject.

TAX ACT means the Income Tax Assessment Act 1936 (Cwlth) and the Income Tax Assessment Act 1997 (Cwlth), as the context requires.

TERMS AND CONDITIONS means, in relation to a Performance Share, all of:

- (a) these rules (other than the schedules);
- (b) the rules of schedule 3;
- (c) any Minimum Restriction Condition;
- (d) any Performance Condition; and
- (e) any Supplementary Condition.

TERMS AND CONDITIONS OF AWARD means, in relation to an Award, all of:

- (a) these rules (other than the schedules);
- (b) the rules of schedule 4;
- (c) any Payout Vesting Condition;

- (d) any Payout Qualification Condition; and
- (e) any Supplementary Condition.

TERMS AND CONDITIONS OF GRANT means, in relation to an Option or a Performance Right, all of:

- (a) these rules (other than the schedules);
- (b) the rules of schedule 1 or 2 respectively;
- (c) any Vesting Condition;
- (d) any Exercise Condition; and
- (e) any Supplementary Condition.

TRANCHE means a number of Options or Performance Rights (as the case may be) which have the same Prescribed Exercise Date.

TRUST means the James Hardie Industries NV Long Term Incentive Plan Trust established in relation to Performance Shares issued in accordance with schedule 3, by the trust deed dated on or about the date of these rules between the Company and the Trustee.

TRUST DEED means the trust deed constituting the Trust on terms approved by the Board and dealing with the matters contained in schedule 3.

TRUSTEE means the trustee to be established by the Company prior to the first issue of Performance Shares under schedule 3.

U.S. EXCHANGE ACT means the Securities Exchange Act of 1934, as amended from time to time, including rules thereunder and successor provisions and rules thereto.

U.S. EXECUTIVE means an Executive of the Company who is subject to taxation in respect of Options, Performance Rights, Performance Shares or Awards in the United States.

U.S. REVENUE CODE means the U.S. Internal Revenue Code of 1986, as amended.

VESTING CONDITION means, in relation to an Option or a Performance Right, a condition which must be satisfied or waived before that Option or Performance Right becomes vested in its holder.

VESTED AWARDS means an Award in respect of which Payout Vesting Conditions have been satisfied.

VESTED OPTIONS means an Option in respect of which Vesting Conditions have been satisfied.

VESTED PERFORMANCE RIGHT means a Performance Right in respect of which Vesting Conditions have been satisfied.

YEAR OF INCOME means a period of 12 months ending on 30 June in any year and includes the period commencing on the date of these rules and terminating on the next 30 June and the period ending on the date of termination of the Plan and commencing on the preceding 1 July.

8.2 INTERPRETATION

In these rules, unless the contrary intention appears:

- (a) words importing the singular include the plural and vice versa;
- (b) subject to paragraphs (c), and (d), references to these rules, or any particular rule or paragraph of these rules, means these rules, or the relevant rule or paragraph, as amended from time to time;
- (c) in a schedule, references to "these rules" and any particular paragraph of these rules exclude the paragraphs of the schedules other than the paragraphs of that schedule;
- (d) in:
 - (i) schedules 1 and 2, references to the rules includes a reference to any Vesting Condition, any Exercise Condition and any Supplementary Condition;
 - (ii) schedule 3, references to the rules includes a reference to any Minimum Restriction Condition, any Performance Condition and any Supplementary Condition;
 - (iii) schedule 4, references to the rules includes a reference to any Payout Vesting Condition, any Payout Qualification Condition and any Supplementary Condition;
- (e) the references to Share in the definition of an Option and Performance Right in rule 8.1 include a reference to a Share resulting from an adjustment;
- (f) references to a statute or other law include regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (g) references to the exercise of a power or discretion include a decision not to exercise the power or discretion;
- (h) references to a "year" mean any period of 12 months;
- (i) the words "include", "including" or "such as" are not used as, nor are they to be interpreted as words of limitation, and when introducing a list of items does not exclude a reference to other items whether of the same class or genus or not;
- (j) "Australian dollars", "dollars", "A\$" or "\$" is a reference to the lawful currency of Australia;

- (k) law means common law, principles of equity, and laws made by parliament (and laws made by parliament include parliamentary laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (l) a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (m) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (n) if an act under this agreement to be done by a party on or by a given day is done after 5.30pm on that day, it is taken to be done on the next day.

8.3 HEADING

Headings are for convenience only and, except where they are inserted as a means of cross-reference, do not affect the interpretation of these rules.

LONG TERM INCENTIVE PLAN

Schedule 1 - Options

1 INVITATION TO APPLY FOR OPTIONS

An Invitation to an Executive to apply for Options may be on such terms and conditions as the Board decides from time to time, including as to:

- (a) the number of Options for which that Executive may apply;
- (b) the amount payable (if any) for the grant of an Option or how it is calculated;
- (c) the Exercise Price (if any) or how it is calculated;
- (d) the Prescribed Exercise Date or how it is calculated;
- (e) any Vesting Condition;
- (f) any Exercise Condition;
- (g) any Supplementary Condition; and
- (h) the Exercise Period or how it is calculated.

2 GRANT OF OPTIONS

2.1 COMPANY TO GRANT OPTIONS

On receipt of an application for Options, the Company at the discretion of the Board may grant Options to the Executive specified in the Invitation, subject to the Terms and Conditions of Grant.

2.2 CERTIFICATE OR STATEMENT

Following the grant of Options under paragraph 2.1, the Company will issue to the Participant a certificate and/or other document that states or together state with respect to that grant:

- (a) the number of Options granted;
- (b) the Exercise Price;
- (c) the Grant Date;
- (d) where the Options are comprised in two or more Tranches, the number of Options in each Tranche;
- (e) the Prescribed Exercise Date;

(f) the Exercise Period; and

(g) other terms and conditions (if any) as determined by the Board.

2.3 RESTRICTIONS ON DEALING WITH OPTIONS

A Participant may not sell, assign, transfer or otherwise deal with, or grant a Security Interest over, an Option granted to the Participant. The Option lapses immediately on purported sale, assignment, transfer, dealing or grant of Security Interest, unless the Board in its absolute discretion approves the dealing, or the transfer or transmission is effected by force of law on death or legal incapacity to the Participant's legal personal representative.

3 REGISTER OF OPTIONS

Unless the Board determines otherwise, Options granted under these rules (and Shares issued on their exercise) will be registered in the appropriate register of the Company.

4 EXERCISE OF OPTIONS

4.1 MANNER OF EXERCISE

Unless otherwise prohibited from doing so under this paragraph 4, or unless the Option has lapsed, a Participant may exercise a Participant's Option:

(a) in accordance with the Terms and Conditions of Grant; and

(b) by paying the Exercise Price to or as directed by the Company.

The total Exercise Price payable by a Participant on exercise of Options is the Exercise Price of an Option (expressed in cents to one decimal place) multiplied by the number of Options being exercised by that Participant, rounded up to the nearest cent.

4.2 VESTING CONDITIONS AND EXERCISE CONDITION

Subject to paragraph 6, if an Option is subject to a Vesting Condition and/or an Exercise Condition, it may not be exercised unless all Vesting Conditions and Exercise Conditions are satisfied (and in any situation referred to in paragraph 4.3(b)(i), is satisfied at the time of death or other cessation of employment), and then only to the extent permitted by the Exercise Condition.

4.3 EXERCISE DATE

A Participant may exercise an Option only on or after:

(a) the Prescribed Exercise Date for the Option; or

(b) any earlier date on which the Participant is entitled to exercise the Option:

- (i) under this paragraph 4 dealing with the Participant's death or otherwise ceasing to be employed by a Group Company, and with situations where the employer ceases to be a Group Company or the business in which the Participant is employed is transferred; or
- (ii) under paragraph 6 dealing with takeover bids, change of control, court orders, Reorganisation and winding up.

4.4 LIFE OF OPTION

Notwithstanding any other provision of these rules, the latest date on which an Option lapses is the date of expiry of the Exercise Period.

4.5 OPTION WILL LAPSE EARLIER ON DEATH OR CESSATION OF EMPLOYMENT

Unless the Exercise Period expires at an earlier date or the Terms of Issue provide otherwise, a Participant's Option lapses on the latest of:

- (a) the expiry of 24 months after the Participant's death, if death occurs before the Option lapses under paragraph (b), (c) or (d);
- (b) the expiry of 24 months after the Participant ceases to be employed by a Group Company by reason of Retirement or permanent disability;
- (c) the expiry of 3 months after the Participant ceases to be employed by a Group Company for any other reason; and
- (d) if the Board extends the time during which the Option may be exercised under paragraph 4.8, the expiry of that time,

provided that if the Board issues a notice under paragraph 4.6 or 4.7 advising the Participant that a Vested Option has lapsed, the Option is deemed to have lapsed on the date of death or cessation of employment (as the case may be) and the Company has no obligation to issue the Shares to which the Vested Option relates following any purported exercise of the Vested Option.

4.6 EXERCISE OF OPTIONS ON PARTICIPANT'S DEATH

If a Participant dies before exercising an Option, at a time when the individual:

- (a) is still an employee of a Group Company; or
- (b) having ceased to be employed by a Group Company, falls within the terms of paragraph 4.7,

then (subject to the other provisions of this paragraph 4), the Participant may:

- (c) exercise a Vested Option at any time from the date of death until it lapses pursuant to paragraph 4.4 or 4.5, except a Vested Option is deemed to have lapsed on the date of death where the Board reasonably determines and provides notice to the Participant in writing that the Vested Option has lapsed and the Company has no

obligation to issue the Shares to which the Vested Option relates following any purported exercise of the Vested Option; or

- (d) if permitted by the Board in writing, exercise an Option that is not a Vested Option at any time from the date of death until it lapses.

4.7 EXERCISE OF AN OPTION ON CEASING TO BE EMPLOYED BY A GROUP COMPANY

If, before exercising an Option, a Participant ceases to be employed by a Group Company (other than by reason of his or her death), then (subject to the other provisions of this paragraph 4):

- (a) if the employment ceases by reason of Retirement, Redundancy, Separation or otherwise for termination by the relevant Group Company other than in circumstances set out in paragraph 4.11 the Participant may:
 - (i) exercise a Vested Option at any time from the date of cessation of employment until it lapses pursuant to paragraph 4.4 or 4.5, except a Vested Option is deemed to have lapsed on the date of cessation of employment where the Board reasonably determines and provides notice to the Participant in writing that the Vested Option has lapsed and the Company has no obligation to issue the Shares to which the Vested Option relates following any purported exercise of the Vested Option; or
 - (ii) if permitted by the Board in writing, exercise an Option that is not a Vested Option from the date of cessation of employment until it lapses; or
- (b) if the employment ceases for a reason other than Retirement, Redundancy, Separation or otherwise for termination by the relevant Group Company other than in circumstances set out in paragraph 4.11 the Participant may exercise any unexercised Option at any time from the date of cessation until it lapses, only if permitted by the Board in writing.

4.7A Notwithstanding any other provisions of these rules, a Participant may not exercise an Option which has lapsed.

4.8 BOARD MAY EXTEND TIME FOR EXERCISE BY PARTICIPANT

The Board may, in writing, extend a period during which a Participant may exercise an Option under these rules, except the Exercise Period.

4.9 INDIVIDUAL NOT TREATED AS CEASING TO BE AN EMPLOYEE

For the purposes of this paragraph 4, a Participant:

- (a) is not treated as ceasing to be an employee of a Group Company unless and until the individual is no longer an employee of any Group Company, whether or not in the same capacity as at the time the Option was granted; and

- (b) subject to paragraph 4.10, is not treated as ceasing to be an employee of a Group Company if the individual is no longer an employee of any Group Company because:
 - (i) the individual's employer ceases to be a Group Company, whether or not, after the cessation, the individual remains an employee of that employer; or
 - (ii) the individual is an employee of a business that is transferred to a person that is not a Group Company.

4.10 OPTION LAPSES IF EMPLOYER CEASES TO BE A GROUP COMPANY OR ON CHANGE IN OWNERSHIP OF BUSINESS

If a Participant is no longer an employee of a Group Company because of circumstances set out in paragraph 4.9(b)(i) or (ii), then the Options lapse upon this occurring except where otherwise determined by the Board in writing, in which case the Participant's Options lapse on the latest of:

- (a) the expiration of 24 months after the date of the cessation or transfer (as the case may be);
- (b) if the Board extends the period during which the Option may be exercised under paragraph 4.8, the expiration of that time; and
- (c) if the Participant dies before the Option lapses under paragraph (a) or (b), the expiration of 24 months after the individual's death.

4.11 OPTION MAY LAPSE IN THE CASE OF FRAUD OR DISHONESTY

If, in the opinion of the Board, a Participant:

- (a) has committed (or it is evident the Participant intends to commit), any act (whether by omission or commission) which amounts or would amount to any of dishonesty, fraud, wilful misconduct, wilful breach of duty, serious and wilful negligence or incompetence in the performance of the Participant's duties; or
- (b) is convicted of a criminal offence (other than a minor motor traffic offence or other trivial offence which does not impact on the Participant's good fame and character or ability to perform his/her duties) or is guilty of any other wilful or recklessly indifferent conduct which, in the reasonable opinion of the Board, may injure or tend to injure the reputation and/or the business or operations of a Group Company,

the Board may declare that any unexercised Option has lapsed, and the Option lapses accordingly.

4.12 NO EXERCISE OF OPTION ON BANKRUPTCY

It is a condition precedent to the exercise of an Option that if the Participant is an individual, the Participant is not bankrupt and has not committed an act of bankruptcy or, if the Participant is deceased, the Participant's estate is not

bankrupt or if the Participant is not an individual, the Participant is not insolvent or subject to a resolution or order for winding up.

4.13 DISCRETION TO DETERMINE THAT OPTIONS WILL NOT LAPSE

Notwithstanding any other paragraph in this Schedule 1, if a Participant ceases employment with the Company for any reason, or gives notice of their intention to cease employment with the Company, the Board may in its absolute discretion (on any conditions which it thinks fit) decide that some or all of the unvested Options held by the participant do not lapse, but lapse at the time and subject to the conditions it may specify by notice to the Participant, which may include one or more of the following:

- (a) that the period to which any Vesting Condition and / or any Exercise Condition relates is reduced to a period shorter than that which would otherwise apply;
- (b) that the Vesting Criteria applicable to an Option be waived; and
- (c) that an Option which vests in accordance with the terms and conditions specified in the notice may be exercised within the period specified in paragraph 4.5 or any shorter period specified in the notice.

5 DELIVERY OF SHARES ON EXERCISE OF OPTIONS

5.1 ISSUE

Subject to paragraphs 5.4 and 5.5 within 15 Business Days after the exercise of a Participant's Options, the Company will issue to the Participant the number of Shares comprised in each Option (expressed to four decimal places) multiplied by the number of Options exercised by that Participant rounded down to the nearest whole number of Shares. Subject to the Listing Rules, if a Participant requests that they are allocated CUFSS in respect of the Shares issued, the Company will do everything practicable to promptly facilitate the issue of CUFSS to the Participant in respect of those Shares.

5.2 SHARES ISSUED BY THE COMPANY TO RANK PARI PASSU

All Shares issued on the exercise of a Participant's Options will rank pari passu in all respects with the Shares of the same class for the time being on issue except for any rights attaching to the Shares by reference to a record date prior to the date of their allotment.

5.3 SHARES TO BE QUOTED ON ASX

If Shares of the same class as those issued on the exercise of a Participant's Options are quoted on the ASX, the Company will apply to the ASX as required by the Listing Rules for those Shares to be quoted.

5.4 RESTRICTION AS TO DEALING

Where the Shares referred to in paragraph 5.1 are subject (pursuant to the Terms and Conditions of Grant) to any restriction as to disposal or other

dealing by the Participant for any period, the Board may implement any procedure it deems appropriate that complies with Applicable Regulations to ensure compliance by the Participant with this restriction.

5.5 PARTICIPANT'S AGREEMENT

By applying for and being granted Options under these rules, each Participant undertakes that while the Shares acquired by the Participant as a result of the exercise of Options are subject to any restriction procedure prescribed under paragraph 5.4, the Participant will not take any action or permit another person to take any action to remove the restriction procedure.

5.6 EXPIRY OF RESTRICTION

Upon the expiry of any restriction over a Share, the Company will take all actions necessary to ensure that the Participant can deal with the Share.

6 TAKEOVER, REORGANISATION AND WINDING-UP

6.1 OPTIONS MAY BE EXERCISED AT A TIME EARLIER THAN THE PRESCRIBED EXERCISE DATE

If, under any of the following provisions of this paragraph 6 (in connection with a takeover bid, change of control, proposed Reorganisation or winding up) the Board, in its absolute discretion, gives notice that a Participant may exercise any or all of the Participant's Options as determined by the Board within a particular time, then, subject to the applicable provisions of paragraph 4 (except paragraph 4.2) and to paragraph 6.7, the Participant may exercise those Options within that time in addition to any other period during which the Options may be exercised.

6.2 TAKEOVER BID

If a takeover bid is made to acquire any Shares, at any time any offers under a takeover bid remain open for acceptance, the Board may give written notice of the bid to each Participant, stating that any or all of the Participant's Options as determined by the Board may be exercised within 30 days from the date of the notice.

6.3 APPLICATION TO THE COURT

If the Board determines that an application is to be made to a court for a meeting to be held as described in paragraph 6.5, the Board may give written notice of the application to each Participant, stating that any or all of the Participant's Options as determined by the Board may be exercised up to five Business Days before the hearing of the application.

6.4 CHANGE OF CONTROL

If, pursuant to a takeover bid or otherwise, any person together with their associates acquire Shares, which when aggregated with Shares already acquired by such person and their associates, comprise more than 30% of the issued Shares of the Company, the Board may give written notice to each Participant permitting the Participant to exercise any or all the Participant's

Options as determined by the Board within 60 days or such reasonable longer period as approved by the Board from the last date when any of the Shares referred to were so acquired.

6.5 MEETING TO CONSIDER A REORGANISATION

If, pursuant to the Articles of Association, Applicable Regulations or otherwise, the Board determines to convene a General Meeting or other meeting of holders of the Company's securities or a meeting of the Company's creditors, or a court orders such a meeting, to be held in relation to a proposed Reorganisation, the Board may give written notice to each Participant permitting the Participant to exercise the Participant's Options before the time of the meeting.

6.6 COMPULSORY ACQUISITION, REORGANISATION OR WINDING UP

If:

- (a) a person becomes bound or entitled to compulsorily acquire Shares under the Articles of Association or Applicable Regulations;
- (b) a Reorganisation is sanctioned by one or more of the following under the Articles of Association, Applicable Regulations or otherwise:
 - (i) a court;
 - (ii) a General Meeting or other meeting of holders of the Company's securities; or
 - (iii) a meeting of the Company's creditors; or
- (c) the Company passes a resolution for voluntary winding up or an order is made for the compulsory winding up of the Company,

then the Board may give written notice to each Participant permitting the Participant to exercise the Participant's Options within a specified period of up to 30 days after the occurrence of the relevant event.

6.7 OPTIONS LAPSE COMPULSORY ACQUISITION, REORGANISATION OR WINDING UP

If a Participant becomes entitled to exercise the Participant's Options under paragraph 6.6 then, notwithstanding any other provision in these rules, all Options lapse on the expiration of the specified period allowed for exercise.

7 ADJUSTMENT OF OPTIONS

7.1 BONUS ISSUE

If the Company makes a bonus issue of Shares pro rata to shareholders (other than an issue in lieu or in satisfaction of dividends or by way of dividend reinvestment) and no Shares have been allotted in respect of an Option before the record date for determining entitlements to the bonus issue then number of Shares over which the Option is exercisable will be increased by the

number of Shares which the Participant would have received if the Option had been exercised before the record date for the bonus issue.

7.2 RIGHTS ISSUE

If:

- (a) Shares are offered pro rata for subscription by the Company's shareholders generally by way of a rights issue; and
- (b) the price at which each Share is so offered is less than the Market Value on the day of public announcement of the rights issue,

the Exercise Price of each Option is reduced according to the following formula unless the Exercise Price of the Option is nil:

$$O' = O - \frac{E[P-(S+D)]}{N + 1}$$

where:

O' = the new Exercise Price of the Option

O = the old Exercise Price of the Option

E = the number of Shares to which a Participant is entitled under one Option

P = the average market price per Share (weighted by reference to volume) sold in the ordinary course of trading on the ASX during the 5 trading days ending on the day before the ex rights date or ex entitlements date

S = the subscription price for a Share under the pro rata issue

D = the dividend due but not yet paid on the existing Shares (except those to be issued under the pro rata issue)

N = the number of Shares with rights or entitlements that must be held to receive a right to one new Share.

7.3 SUB-DIVISION, CONSOLIDATION, REDUCTION OR RETURN

If there is any reorganisation, including any subdivision, consolidation, reduction or return of the issued capital of the Company, the number of Options to which each Participant is entitled or the Exercise Price (if any), or both, will be adjusted in the way specified by the Listing Rules from time to time.

7.4 LIMITED RIGHT TO PARTICIPATE IN NEW ISSUES

Subject to the preceding paragraphs, during the currency of a Participant's Option and before its exercise, the Participant is not entitled to participate in any new issue of securities of the Company as a result of holding the Option.

7.5 CUMULATION OF ADJUSTMENTS

Full effect must be given to these paragraphs 7.1, 7.2 and 7.3 as and when occasions of their application arise and in such manner that the effects of the successive applications of them are cumulative, the intention being that the adjustments they progressively effect must be such as to reflect in relation to the Shares comprised in an Option the adjustments which on the occasions in question are progressively effective in relation to Shares already on issue. All adjustment calculations are to be to four decimal places and in the case of the Exercise Price (if any), to four decimal places expressed in cents.

Unless otherwise provided in these rules, a Participant has no right to:

- (a) change the Exercise Price of the Option; or
- (b) change the number of Shares over which the Option can be exercised.

LONG TERM INCENTIVE PLAN

Schedule 2 - Performance Rights

1 INVITATION TO APPLY FOR PERFORMANCE RIGHTS

An Invitation to an Executive to apply for Performance Rights may be made on such terms and conditions as the Board decides from time to time, including as to:

- (a) the number of Performance Rights for which that Executive may apply;
- (b) the amount payable (if any) for the grant of a Performance Right or how it is calculated;
- (c) the Exercise Price (if any) or how it is calculated;
- (d) the Prescribed Exercise Date or how it is calculated;
- (e) any Vesting Condition;
- (f) any Exercise Condition;
- (g) any Supplementary Condition; and
- (h) the Exercise Period or how it is calculated.

2 GRANT OF PERFORMANCE RIGHTS

2.1 COMPANY TO GRANT PERFORMANCE RIGHTS

On receipt of an application for Performance Rights, the Company at the discretion of the Board may grant Performance Rights to the Executive specified in the Invitation, subject to the Terms and Conditions of Grant.

2.2 CERTIFICATE OR STATEMENT

Following the grant of Performance Rights under paragraph 2.1, the Company will issue to the Participant a certificate and/or other document that states or together state with respect to that grant:

- (a) the number of Performance Rights granted;
- (b) the Exercise Price;
- (c) the Grant Date;
- (d) where the Performance Rights are comprised in two or more Tranches, the number of Performance Rights in each Tranche;

- (e) the Prescribed Exercise Date;
- (f) the Exercise Period; and
- (g) other terms and conditions (if any) as determined by the Board.

2.3 RESTRICTION ON DEALING

A Participant may not sell, assign, transfer or otherwise deal with, or grant a Security Interest over, a Performance Right granted to the Participant. The Performance Right lapses immediately on purported sale, assignment, transfer, dealing or grant of Security Interest, unless the Board in its absolute discretion approves the dealing or the transfer or transmission is effected by force of law on death or legal incapacity to the Participant's legal personal representative.

3 REGISTER OF PERFORMANCE RIGHTS

Unless the Board determines otherwise, Performance Rights granted under these rules (and Shares issued or transferred to the relevant Participant on their exercise) will be registered in the appropriate register of the Company.

4 EXERCISE OF PERFORMANCE RIGHTS

4.1 MANNER OF EXERCISE

Unless otherwise prohibited from doing so under this paragraph 4, or unless the Performance Right has lapsed, a Participant may exercise a Participant's Performance Right:

- (a) in accordance with the Terms and Conditions of Grant; and
- (b) by paying the Exercise Price (if any) to or as directed by the Company.

The total Exercise Price (if any) payable by a Participant on exercise of Performance Rights is the Exercise Price of a Performance Right (if any) (expressed in cents to one decimal place) multiplied by the number of Performance Rights being exercised by that Participant, rounded up to the nearest cent.

4.2 VESTING CONDITIONS AND EXERCISE CONDITION

Subject to paragraph 6, if a Performance Right is subject to a Vesting Condition and/or an Exercise Condition, it may not be exercised unless all Vesting Conditions and Exercise Conditions are satisfied (and in any situation referred to in paragraph 4.3(b)(i), is satisfied at the time of death or other cessation of employment), and then only to the extent permitted by the Exercise Condition.

4.3 EXERCISE DATE

A Participant may exercise a Performance Right only on or after:

- (a) the Prescribed Exercise Date for the Performance Right; or
- (b) any earlier date on which the Participant is entitled to exercise the Performance Right:
 - (i) under this paragraph 4 dealing with the Participant's death or otherwise ceasing to be employed by a Group Company, and with situations where the employer ceases to be a Group Company or the business in which the Participant is employed is transferred; or
 - (ii) under paragraph 6 dealing with takeover bids, change of control, Reorganisation and winding up.

4.4 LIFE OF PERFORMANCE RIGHT

Notwithstanding any other provision of these rules, the latest date on which a Performance Right lapses is the date of expiry of the Exercise Period.

4.5 PERFORMANCE RIGHT WILL LAPSE EARLIER ON DEATH OR CESSATION OF EMPLOYMENT

Unless the Exercise Period expires at an earlier date or the Terms of Issue provide otherwise, a Participant's Performance Right lapses on the latest of:

- (a) the expiry of 24 months after the Participant's death, if death occurs before the Performance Right lapses under paragraph (b), (c) or (d);
- (b) the expiry of 24 months after the Participant ceases to be employed by a Group Company by reason of Retirement or permanent disability;
- (c) the expiry of 3 months after the Participant ceases to be employed by a Group Company for any other reason; and
- (d) if the Board extends the time during which the Performance Right may be exercised under paragraph 4.8, the expiry of that time,

provided that if the Board issues a notice under paragraph 4.6 or 4.7 advising the Participant that a Vested Performance Right has lapsed, the Performance Right is deemed to have lapsed on the date of death or cessation of employment (as the case may be) and the Company has no obligation to issue or cause to be transferred the Shares to which the Vested Performance Right relates following any purported exercise of the Vested Performance Right.

4.6 EXERCISE OF PERFORMANCE RIGHTS ON PARTICIPANT'S DEATH

If a Participant dies before exercising a Performance Right, at a time when the individual:

- (a) is still an employee of a Group Company; or
- (b) having ceased to be employed by a Group Company, falls within the terms of paragraph 4.7,

then (subject to the other provisions of this paragraph 4), the Participant may:

- (c) exercise a Vested Performance Right at any time from the date of death until it lapses pursuant to paragraph 4.4 or 4.5, except a Vested Performance Right is deemed to have lapsed on the date of death where the Board reasonably determines and provides notice to the Participant in writing that the Vested Performance Right has lapsed and the Company has no obligation to issue or cause to be transferred the Shares to which the Vested Performance Right relates following any purported exercise of the Vested Performance Right; or
- (d) if permitted by the Board in writing, exercise a Performance Right that is not a Vested Performance Right at any time from the date of death until it lapses.

4.7 EXERCISE OF A PERFORMANCE RIGHT ON CEASING TO BE EMPLOYED BY A GROUP COMPANY

If, before exercising a Performance Right, a Participant ceases to be employed by a Group Company (other than by reason of his or her death), then (subject to the other provisions of this paragraph 4):

- (a) if the employment ceases by reason of Retirement, Redundancy, Separation or otherwise for termination by the relevant Group Company other than in circumstances set out in paragraph 4.11 the Participant may:
 - (i) exercise a Vested Performance Right at any time from the date of cessation of employment until it lapses pursuant to paragraph 4.4 or 4.5, except a Vested Performance Right is deemed to have lapsed on the date of cessation of employment where the Board reasonably determines and provides notice to the Participant in writing that the Vested Performance Right has lapsed and the Company has no obligation to issue or cause to be transferred the Shares to which the Vested Performance Right relates following any purported exercise of the Vested Performance Right; or
 - (ii) if permitted by the Board in writing, exercise a Performance Right that is not a Vested Performance Right from the date of cessation of employment until it lapses; or
- (b) if the employment ceases for a reason other than Retirement, Redundancy, Separation or otherwise for termination by the relevant Group Company other than in circumstances set out in paragraph 4.11 the Participant may exercise any unexercised Performance Right at any time from the date of cessation until it lapses, only if permitted by the Board in writing.

4.7A Notwithstanding any other provisions of these rules, a Participant may not exercise a Performance Right which has lapsed.

4.8 BOARD MAY EXTEND TIME FOR EXERCISE BY PARTICIPANT

The Board may, in writing, extend a period during which a Participant may exercise a Performance Right under these rules, except the Exercise Period.

4.9 INDIVIDUAL NOT TREATED AS CEASING TO BE AN EMPLOYEE

For the purposes of this paragraph 4, a Participant:

- (a) is not treated as ceasing to be an employee of a Group Company unless and until the individual is no longer an employee of any Group Company, whether or not in the same capacity as at the time the Performance Right was granted; and
- (b) subject to paragraph 4.10, is not treated as ceasing to be an employee of a Group Company if the individual is no longer an employee of any Group Company because:
 - (i) the individual's employer ceases to be a Group Company, whether or not, after the cessation, the individual remains an employee of that employer; or
 - (ii) the individual is an employee of a business that is transferred to a person that is not a Group Company.

4.10 PERFORMANCE RIGHT LAPSES IF EMPLOYER CEASES TO BE A GROUP COMPANY OR ON CHANGE IN OWNERSHIP OF BUSINESS

If a Participant is no longer an employee of a Group Company because of circumstances set out in paragraph 4.9(b)(i) or (ii), then the Performance Rights lapse upon this occurring except where otherwise determined by the Board in writing, in which case the Participant's Performance Rights lapse on the latest of:

- (a) the expiration of 24 months after the date of the cessation or transfer (as the case may be);
- (b) if the Board extends the period during which the Performance Right may be exercised under paragraph 4.8, the expiration of that time; and
- (c) if the Participant dies before the Performance Right lapses under paragraph (a) or (b), the expiration of 24 months after the individual's death.

4.11 PERFORMANCE RIGHT MAY LAPSE IN THE CASE OF FRAUD OR DISHONESTY

If, in the opinion of the Board, a Participant:

- (a) has committed (or it is evident the Participant intends to commit), any act (whether by omission or commission) which amounts or would amount to any of dishonesty, fraud, wilful misconduct, wilful breach of duty, serious and wilful negligence or incompetence in the performance of the Participant's duties; or
- (b) is convicted of a criminal offence (other than a minor motor traffic offence or other trivial offence which does not impact on the

Participant's good fame and character or ability to perform his/her duties) or is guilty of any other wilful or recklessly indifferent conduct which, in the reasonable opinion of the Board, may injure or tend to injure the reputation and/or the business or operations of a Group Company,

the Board may declare that any unexercised Performance Right has lapsed, and the Performance Right lapses accordingly.

4.12 NO EXERCISE OF PERFORMANCE RIGHT ON BANKRUPTCY

It is a condition precedent to the exercise of a Performance Right that if the Participant is an individual, the Participant is not bankrupt and has not committed an act of bankruptcy or, if the Participant is deceased, the Participant's estate is not bankrupt or if the Participant is not an individual, the Participant is not insolvent or subject to a resolution or order for winding up.

4.13 DISCRETION TO DETERMINE THAT PERFORMANCE RIGHTS WILL NOT LAPSE

Notwithstanding any other paragraph in this Schedule 2, if a Participant ceases employment with the Company for any reason, or gives notice of their intention to cease employment with the Company, the Board may in its absolute discretion (on any conditions which it thinks fit) decide that some or all of the unvested Performance Rights held by the participant do not lapse, but lapse at the time and subject to the conditions it may specify by notice to the Participant, which may include one or more of the following:

- (a) that the period to which any Vesting Condition and / or any Exercise Condition relates is reduced to a period shorter than that which would otherwise apply;
- (b) that the Vesting Criteria applicable to a Performance Right be waived; and
- (c) that a Performance Right which vests in accordance with the terms and conditions specified in the notice may be exercised within the period specified in paragraph 4.5 or any shorter period specified in the notice.

5 DELIVERY OF SHARES ON EXERCISE OF PERFORMANCE RIGHTS

5.1 ISSUE OR TRANSFER

Subject to paragraphs 5.4 and 5.5 within 15 Business Days after the exercise of a Participant's Performance Rights, the Company will issue or cause to be transferred to a Participant the number of Shares comprised in each Performance Right (expressed to four decimal places) multiplied by the number of Performance Rights exercised by that Participant rounded down to the nearest whole number of Shares. Subject to the Listing Rules, if a Participant requests that they are allocated CUFS in respect of the Shares issued, the Company will do everything practicable to promptly facilitate the issue of CUFS to the Participant in respect of those Shares.

5.2 SHARES TO RANK PARI PASSU

All Shares issued or transferred on the exercise of a Participant's Performance Rights will rank pari passu in all respects with the Shares of the same class for the time being on issue except for any rights attaching to the Shares by reference to a record date prior to the date of their allotment or transfer.

5.3 SHARES TO BE QUOTED ON ASX

If Shares of the same class as those issued on the exercise of a Participant's Performance Rights are quoted on the ASX, the Company will apply to the ASX as required by the Listing Rules for those Shares to be quoted.

5.4 RESTRICTION AS TO DEALING

Where the Shares referred to in paragraph 5.1 are subject (pursuant to the Terms and Conditions of Grant) to any restriction as to disposal or other dealing by the Participant for any period, the Board may implement any procedure it deems appropriate that complies with Applicable Regulations to ensure compliance by the Participant with this restriction.

5.5 PARTICIPANT'S AGREEMENT

By applying for and being granted Performance Rights under these rules, each Participant undertakes that while the Shares acquired by the Participant as a result of the exercise of Performance Rights are subject to any restriction procedure prescribed under paragraph 5.4, the Participant will not take any action or permit another person to take any action to remove the restriction procedure.

5.6 EXPIRY OF RESTRICTION

Upon the expiry of any restriction over a Share, the Company will take all actions necessary to ensure that the Participant can deal with the Share.

6 TAKEOVER, REORGANISATION AND WINDING-UP

6.1 PERFORMANCE RIGHTS MAY BE EXERCISED AT A TIME EARLIER THAN THE PRESCRIBED EXERCISE DATE

If, under any of the following provisions of this paragraph 6 (in connection with a takeover bid, change of control, proposed Reorganisation or winding up) the Board, in its absolute discretion, gives notice that a Participant may exercise any or all of the Participant's Performance Rights as determined by the Board within a particular time, then, subject to the applicable provisions of paragraph 4 (except paragraph 4.2) and to paragraph 6.7, the Participant may exercise those Performance Rights within that time in addition to any other period during which the Performance Rights may be exercised.

6.2 TAKEOVER BID

If a takeover bid is made to acquire any Shares, at any time any offers under a takeover bid remain open for acceptance, the Board may give written notice of the bid to each Participant, stating that any or all of the Participant's

Performance Rights as determined by the Board may be exercised within 30 days from the date of the notice.

6.3 APPLICATION TO THE COURT

If the Board determines that an application is to be made to a court for a meeting to be held as described in paragraph 6.5, the Board may give written notice of the application to each Participant, stating that any or all of the Participant's Performance Rights as determined by the Board may be exercised up to five Business Days before the hearing of the application.

6.4 CHANGE OF CONTROL

If, pursuant to a takeover bid or otherwise, any person together with their associates acquire Shares, which when aggregated with Shares already acquired by such person and their associates, comprise more than 30% of the issued Shares of the Company, the Board may give written notice to each Participant permitting the Participant to exercise any or all the Participant's Performance Rights as determined by the Board within 60 days or such reasonable longer period as approved by the Board from the last date when any of the Shares referred to were so acquired.

6.5 MEETING TO CONSIDER A REORGANISATION

If, pursuant to the Articles of Association, Applicable Regulations or otherwise, the Board determines to convene a General Meeting or other meeting of holders of the Company's securities or a meeting of the Company's creditors, or a court orders such a meeting, to be held in relation to a proposed Reorganisation, the Board may give written notice to each Participant permitting the Participant to exercise the Participant's Performance Rights before the time of the meeting.

6.6 COMPULSORY ACQUISITION, REORGANISATION OR WINDING UP

If:

- (a) a person becomes bound or entitled to compulsorily acquire Shares in the Company under the Articles of Association or Applicable Regulations;
- (b) a Reorganisation is sanctioned by one or more of the following under the Articles of Association, Applicable Regulations or otherwise:
 - (i) a court;
 - (ii) a General Meeting or other meeting of holders of the Company's securities; or
 - (iii) a meeting of the Company's creditors; or
- (c) the Company passes a resolution for voluntary winding up or an order is made for the compulsory winding up of the Company,

then the Board may give written notice to each Participant permitting the Participant to exercise the Participant's Performance Rights within a specified period of up to 30 days after the occurrence of the relevant event.

6.7 PERFORMANCE RIGHTS LAPSE ON COMPULSORY ACQUISITION, REORGANISATION OR WINDING UP

If a Participant becomes entitled to exercise the Participant's Performance Rights under paragraph 6.6 then, notwithstanding any other provision in these rules, all Performance Rights lapse on the expiration of the specified period allowed for exercise.

7 ADJUSTMENT OF PERFORMANCE RIGHTS

7.1 BONUS ISSUE

If the Company makes a bonus issue of Shares pro rata to shareholders (other than an issue in lieu or in satisfaction of dividends or by way of dividend reinvestment) and no Shares have been allotted in respect of a Performance Right before the record date for determining entitlements to the bonus issue then number of Shares over which the Performance Right is exercisable will be increased by the number of Shares which the Participant would have received if the Performance Right had been exercised before the record date for the bonus issue.

7.2 RIGHTS ISSUE

If:

- (a) Shares are offered pro rata for subscription by the Company's shareholders generally by way of a rights issue; and
- (b) the price at which each Share is so offered is less than the Market Value on the day of public announcement of the rights issue,

the Exercise Price of each Performance Right is reduced according to the following formula unless the Exercise Price of the Performance Right is nil:

$$O' = O - \frac{E[P-(S+D)]}{N + 1}$$

where:

- O' = the new Exercise Price of the Performance Right
- O = the old Exercise Price of the Performance Right
- E = the number of Shares to which a Participant is entitled under one Performance Right
- P = the average market price per Share (weighted by reference to volume) sold in the ordinary course of trading on the ASX during the 5 trading days ending on the day before the ex rights date or ex entitlements date

- S = the subscription price for a Share under the pro rata issue
- D = the dividend due but not yet paid on the existing Shares (except those to be issued under the pro rata issue)
- N = the number of Shares with rights or entitlements that must be held to receive a right to one new Share.

7.3 SUB-DIVISION, CONSOLIDATION, REDUCTION OR RETURN

If there is any reorganisation, including any subdivision, consolidation, reduction or return of the issued capital of the Company, the number of Performance Rights to which each Participant is entitled or the Exercise Price (if any), or both, will be adjusted in the way specified by the Listing Rules from time to time.

7.4 LIMITED RIGHT TO PARTICIPATE IN NEW ISSUES

Subject to the preceding paragraphs, during the currency of a Participant's Performance Right and before its exercise, the Participant is not entitled to participate in any new issue of securities of the Company as a result of holding the Performance Right.

7.5 CUMULATION OF ADJUSTMENTS

Full effect must be given to these paragraphs 7.1, 7.2 and 7.3 as and when occasions of their application arise and in such manner that the effects of the successive applications of them are cumulative, the intention being that the adjustments they progressively effect must be such as to reflect in relation to the Shares comprised in a Performance Right the adjustments which on the occasions in question are progressively effective in relation to Shares already on issue. All adjustment calculations are to be to four decimal places and in the case of the Exercise Price (if any), to four decimal places expressed in cents.

Unless otherwise provided in these rules, a Participant has no right to:

- (a) change the Exercise Price of the Performance Right; or
- (b) change the number of Shares over which the Performance Right can be exercised.

Schedule 3 - Performance Shares

1 INVITATION TO APPLY FOR PERFORMANCE SHARES

An Invitation to an Executive to apply for Performance Shares may be made on such terms and conditions as the Board decides from time to time, including as to:

- (a) the number of Performance Shares or the method of calculating the number of Performance Shares for which the Executive may apply;
- (b) whether the Performance Shares will CUFS or Shares;
- (c) the amount payable (if any) for the Performance Shares or how it is calculated;
- (d) the Prescribed Withdrawal Date or how it is calculated;
- (e) any Minimum Restriction Condition;
- (f) any Performance Condition; and
- (g) any Supplementary Condition.

2 ACQUISITION AND ALLOCATION OF SHARES BY TRUSTEE

2.1 CAPITAL CONTRIBUTIONS TO TRUST

On and from commencement of the Performance Share Plan, the Company or any Subsidiary may pay to the Trustee amounts determined by the Company from time to time to fund the Performance Share Plan, including acquisition of Shares and/or CUFS for the purposes of the Performance Share Plan or Plan Expenses.

2.2 APPLICATION OF CAPITAL CONTRIBUTION

The Trustee may use any amounts received under paragraph 2.1 to acquire Shares and/or CUFS for the benefit of Participants, as directed from time to time by the Company. The Trustee must not repay to any Group Company any amount received as contributions for the acquisition of Shares.

2.3 SHARES AND CUFS HELD FOR PARTICIPANTS

On receipt of an application for Performance Shares, the Company at the discretion of the Board may cause the Trustee to hold Participant Shares on behalf of a Participant subject to the Terms of Conditions.

2.4 SHARES AND CUFSS REGISTERED IN NAME OF TRUSTEE

Shares or CUFSS acquired for a Participant under the Performance Share Plan are to be registered in the name of the Trustee, or a nominee of the Trustee, as determined from time to time and must be allocated to the Share Account of that Participant. A Participant has no rights and obligations under the Performance Share Plan unless and until Shares or CUFSS which are registered in the name of the Trustee are allocated to that Participant's Share Account.

2.5 QUOTATION

The Company must apply to ASX for official quotation of any Shares issued to the Trustee.

2.6 NOTIFICATION TO PARTICIPANT

The Company must ensure that each Participant is notified in writing when Shares or CUFSS are acquired and registered in the name of the Trustee for the benefit of that Participant and allocated to that Participant's Share Account.

2.7 NO FRACTIONS

The Trustee must not hold fractions of Shares or CUFSS on behalf of a Participant. Any Shares remaining after the allocation of whole Shares to a Participant may be held in Reserve Account used by the Trustee to satisfy future applications made under the Performance Share Plan.

3 RESTRICTIONS ON DEALING WITH PARTICIPANT SHARES

3.1 RESTRICTION ON DEALING

Except as provided in these rules, a Participant may not dispose of, deal in, or grant a Security Interest over, any interest in their Participant Shares (whether or not the Shares are subject to Minimum Restriction Conditions or Performance Conditions).

3.2 ARRANGEMENTS TO ENFORCE RESTRICTION

The Trustee is entitled to make any arrangements it considers necessary to enforce the restriction in paragraph 3.1 and any Minimum Restriction Conditions or Performance Conditions, and Participants are bound by those arrangements and must take any steps reasonably required by the Trustee.

4 DEALING IN PARTICIPANT SHARES

4.1 WITHDRAWAL OF PARTICIPANT SHARES

- (a) Unless otherwise prohibited from doing so under this paragraph 4, or unless the Participant Share has been forfeited, a Participant may submit a Notice of Withdrawal of Shares in accordance with the Terms and Conditions.
- (b) The Trustee may in its absolute discretion reject a Notice of Withdrawal of Shares.

4.2 MINIMUM RESTRICTION CONDITIONS AND PERFORMANCE CONDITIONS

Subject to paragraph 9, if a Participant Share is subject to a Minimum Restriction Condition and/or a Performance Condition, a Participant may not submit a Notice of Withdrawal of Shares unless all Minimum Restriction Conditions and Performance Conditions are satisfied (and in any situation referred to in paragraph 4.3(b)(i), is satisfied at the time of death or other cessation of employment), and then only to the extent permitted by the Performance Condition.

4.3 WITHDRAWAL

A Participant may submit a Notice of Withdrawal of Shares only on or after:

- (a) the Prescribed Withdrawal Date for the Participant Share; or
- (b) any earlier date on which the Participant is entitled submit a Notice of Withdrawal of Shares:
 - (i) under this paragraph 4 dealing with the Participant's death or otherwise ceasing to be employed by a Group Company, and with situations where the employer ceases to be a Group Company or the business in which the Participant is employed is transferred; or
 - (ii) under paragraph 9 dealing with takeover bids, change of control, court orders, Reorganisations and winding up.

4.4 PARTICIPANT SHARE WILL BE FORFEITED EARLIER ON DEATH OR CESSATION OF EMPLOYMENT

A Participant's Participant Shares will be forfeited for \$1.00 in total unless the Terms of Issue provide otherwise on the latest of:

- (a) the expiry of 24 months after the Participant's death, if death occurs before the Participant Share is forfeited under paragraph (b), (c) or (d);
- (b) the expiry of 24 months after the Participant ceases to be employed by a Group Company by reason of Retirement or permanent disability;
- (c) the expiry of 3 months after the Participant ceases to be employed by a Group Company for any other reason; and
- (d) if the Board extends the time during which a Notice of Withdrawal of Shares may be submitted under paragraph 4.7, the expiry of that time,

provided that if the Board issues a notice under paragraph 4.5 or 4.6 advising the Participant that a Participant Share has been forfeited, the Participant Share is deemed to have been forfeited on the date of death or cessation of employment (as the case may be) and the Trustee and the Company has no obligation to comply with a Notice of Withdrawal of Shares purportedly submitted in respect of that Participant Share.

4.5 WITHDRAWAL ON PARTICIPANT'S DEATH

If a Participant dies before submitting a Notice of Withdrawal of Shares, at a time when the individual:

- (a) is still an employee of a Group Company; or
- (b) having ceased to be employed by a Group Company, falls within the terms of paragraph 4.6,

then (subject to the other provisions of this paragraph 4), the Participant may:

- (c) where the Minimum Restriction Conditions (if any) of a Participant Share have been satisfied, submit a Notice of Withdrawal of Shares in respect of that Participant Share at any time from the date of death until it is forfeited pursuant to paragraph 4.4, except a Participant Share is deemed to have been forfeited on the date of death where the Board reasonably determines and provides notice to the Participant in writing that the Participant Share has been forfeited the Trustee and the Company has no obligation to comply with a Notice of Withdrawal of Shares purportedly submitted in respect of that Participant Share; or
- (d) where the Minimum Restriction Conditions (if any) of a Participant Share have not been satisfied, if permitted by the Board in writing, submit a Notice of Withdrawal of Shares in respect of that Participant Share at any time from the date of death until it is forfeited.

4.6 WITHDRAWAL ON CEASING TO BE EMPLOYED BY A GROUP COMPANY

If, before submitting a Notice of Withdrawal of Shares, a Participant ceases to be employed by a Group Company (other than by reason of his or her death), then (subject to the other provisions of this paragraph 4):

- (a) if the employment ceases by reason of Retirement, Redundancy, Separation or otherwise for termination by the relevant Group Company other than in circumstances set out in paragraph 4.10 the Participant may:
 - (i) where the Minimum Restriction Conditions (if any) of a Participant Share have been satisfied, submit a Notice of Withdrawal of Shares in respect of that Participant Share at any time from the date of cessation of employment until it is forfeited pursuant to paragraph 4.4, except a Participant Share is deemed to have been forfeited on the date of cessation of employment where the Board reasonably determines and provides notice to the Participant in writing that the Participant Share has been forfeited and the Trustee and the Company has no obligation to comply with a Notice of Withdrawal of Shares purportedly submitted in respect of that Participant Share; or
 - (ii) where the Minimum Restriction Conditions (if any) of a Participant Share have not been satisfied, if permitted by the Board in writing, submit a Notice of Withdrawal of Shares in

respect of that Participant Share from the date of cessation of employment until it is forfeited; or

- (b) if the employment ceases for a reason other than Retirement, Redundancy, Separation or otherwise for termination by the relevant Group Company other than in circumstances set out in paragraph 4.10 the Participant may submit a Notice of Withdrawal of Shares at any time from the date of cessation until it is forfeited, only if permitted by the Board in writing.

4.7A Notwithstanding any other provisions of these rules, a Participant may not submit a Notice of Withdrawal of Shares in relation to a Participant Share under these rules if the Participant Share has been forfeited.

4.7 BOARD MAY EXTEND TIME FOR NOTICE OF WITHDRAWAL OF SHARES

Subject to paragraph 4.13, the Board may, in writing, extend a period during which a Participant may submit a Notice of Withdrawal of Shares under these rules.

4.8 INDIVIDUAL NOT TREATED AS CEASING TO BE AN EMPLOYEE

For the purposes of this paragraph 4, a Participant:

- (a) is not treated as ceasing to be an employee of a Group Company unless and until the individual is no longer an employee of any Group Company, whether or not in the same capacity as at the time the Participant Share was granted; and
- (b) subject to paragraph 4.9, is not treated as ceasing to be an employee of a Group Company if the individual is no longer an employee of any Group Company because:
 - (i) the individual's employer ceases to be a Group Company, whether or not, after the cessation, the individual remains an employee of that employer; or
 - (ii) the individual is an employee of a business that is transferred to a person that is not a Group Company.

4.9 PARTICIPANT SHARE WILL BE FORFEITED IF EMPLOYER CEASES TO BE A GROUP COMPANY OR ON CHANGE IN OWNERSHIP OF BUSINESS

If a Participant is no longer an employee of a Group Company because of circumstances set out in paragraph 4.8(b)(i) or (ii), then the Participant's Shares are forfeited for a total of \$1.00 upon this occurring except where otherwise determined by the Board in writing, in which case the Participant's Shares will be forfeited for a total of \$1.00 on the latest of:

- (a) the expiration of 24 months after the date of the cessation or transfer (as the case may be);
- (b) if the Board extends the period during which a Notice of Withdrawal of Shares may be submitted under paragraph 4.7, the expiration of that time; and

- (c) if the Participant dies before the Participant Share is forfeited under paragraph (a) or (b), the expiration of 24 months after the individual's death.

4.10 PARTICIPANT SHARE MAY BE FORFEITED IN THE CASE OF FRAUD OR DISHONESTY

If, in the opinion of the Board, a Participant:

- (a) has committed (or it is evident the Participant intends to commit), any act (whether by omission or commission) which amounts or would amount to any of dishonesty, fraud, wilful misconduct, wilful breach of duty, serious and wilful negligence or incompetence in the performance of the Participant's duties; or
- (b) is convicted of a criminal offence (other than a minor motor traffic offence or other trivial offence which does not impact on the Participant's good fame and character or ability to perform his/her duties) or is guilty of any other wilful or recklessly indifferent conduct which, in the reasonable opinion of the Board, may injure or tend to injure the reputation and/or the business or operations of a Group Company,

the Board may declare that any or all of the Participant's Participant Shares have been forfeited for a total of \$1.00, and the Participant Shares are forfeited accordingly.

4.10A DISCRETION TO DETERMINE THAT PERFORMANCE SHARES WILL NOT BE FORFEITED

Notwithstanding any other paragraph in this Schedule 3, if a Participant ceases employment with the Company for any reason, or gives notice of their intention to cease employment with the Company, the Board may in its absolute discretion (on any conditions which it thinks fit) decide that some or all of the Participant's unvested Performance Shares will not be forfeited at that time, but will be forfeited at the time and subject to the conditions it may specify by notice to the Participant, which may include one or more of the following:

- (c) that the period to which any Minimum Restriction Conditions and / or any Performance Condition relates is reduced to a period shorter than that which would otherwise apply;
- (d) that the Minimum Restriction Condition applicable to a Performance Share be waived; and
- (e) that a Performance Share which vests in accordance with the terms and conditions specified in the notice may be exercised within the period specified in paragraph 4.4 or any shorter period specified in the notice.

4.11 WITHDRAWAL NOT PERMITTED ON BANKRUPTCY

It is a condition precedent to submitting a Notice of Withdrawal of Shares that if the Participant is an individual, the Participant is not bankrupt and has not committed an act of bankruptcy or, if the Participant is deceased, the Participant's estate is not bankrupt or if the Participant is not an individual,

the Participant is not insolvent or subject to a resolution or order for winding up.

4.12 SHARES/CUFS HELD IN RESERVE ACCOUNT

Where Shares or CUFS are forfeited under this paragraph 4, the Trustee may either hold those Shares or CUFS (as applicable) in the Reserve Account or sell those Shares or CUFS and hold those proceeds to the Reserve Account.

4.13 RELEASE OF PARTICIPANT SHARES AFTER 10 YEARS

Subject to this paragraph 4, if a Participant has not submitted a Notice of Withdrawal of Shares to the Trustee within 30 days after the 10th anniversary of the Acquisition Date of the Participant's Shares, then the Board may, in its absolute discretion, direct the Trustee (which direction the Trustee must comply with) to either:

- (a) transfer to the Participant some or all of the Participant's Shares held by the Trustee on behalf of the Participant (and, in this case, the Participant irrevocably directs the Trustee to do all that is necessary on behalf of the Participant to effect and complete the transfer); or
- (b) sell, on behalf of the Participant, some or all of the Participant's Shares held by the Trustee on behalf of the Participant.

4.14 APPLICATION OF SALE PROCEEDS

If the Participant's Shares are sold by the Trustee on behalf of the Participant, the Trustee must apply the proceeds of sale:

- (a) first, in payment of any stamp duty, tax, brokerage or like costs and expenses of the sale incurred by the Trustee on behalf of the Participant; and
- (b) second, the balance (if any) in payment to the Participant.

4.15 SALE OF PARTICIPANT SHARES

Any direction by a Participant to the Trustee under this paragraph 4 to sell some or all of the Participant's Shares on the Participant's behalf is a direction to sell those Participant's Shares at any time within 60 days of the date of the direction by instructing a Market Participant to sell the Participant's Shares at the best price reasonably obtainable for that Participant's Shares in the market at the time of sale.

4.16 PROCEEDS OF SALE DEDUCTION

If the Trustee, in its discretion, considers that it will be required to deduct or remit any amount in respect of taxation because the Participant's Shares are to be transferred to the Participant or sold under this paragraph 4, then, despite anything else in these rules, the Trustee may retain and sell (on behalf of the Participant) a sufficient number of the Participant's Shares to obtain cash to meet that obligation.

4.17 TRUSTEE MAY ACCUMULATE TRANSFERS

Where the Trustee is required to sell or transfer the Participant's Shares under paragraph 4, the Trustee may accumulate the Participant Shares to be sold or transferred and deal with them all at or about the same time, provided that all outstanding sales and transfers are effected within 60 days after the date of the Participant's direction or the Trustee's decision to sell or transfer.

4.18 TRUSTEE MAY DEFER SALE OR TRANSFER

The Trustee may defer the sale or transfer of any Participant's Shares under paragraph 4 until the Board has determined to its satisfaction that the Participant's Shares have not been forfeited under this paragraph 4 in the particular circumstances of the Participant.

A Participant may agree with the Trustee to repay any debts owing or moneys payable to a Group Company on their behalf from the proceeds of sale of the Participant's Shares.

4.19 UNCLAIMED MONEYS

If the Trustee cannot, within 12 months from the date of sale of a Participant's Shares under this paragraph 4, locate the Participant (at their last residential address, as notified by the Participant) to pay any balance of the proceeds of sale of the Participant's Shares in accordance with this paragraph 4, then the Trustee must transfer the proceeds to the Reserve Account.

4.20 RECTIFICATION

If:

- (a) a Participant's Shares have been sold by the Trustee but it is subsequently proven to the satisfaction of the Trustee that those Participant's Shares were not required to be sold; or
- (b) a Court or other competent authority orders the reinstatement of a person as a Participant of the Performance Share Plan,

the Trustee may take the steps it considers necessary or desirable to put the affected Participant(s) or former Participant(s) in the same position (so far as is practicable) as they would have been had the Participant's Shares not been sold.

Without limiting the above, the Trustee may in those circumstances:

- (a) allocate Shares or CUFS forfeited by other Participants under this paragraph 4 to the affected Participant's or former Participant's Share Account;
- (b) apply cash from the Reserve Account to acquire Shares or CUFS for the affected Participant or former Participant; and/or
- (c) treat the Acquisition Date of the Shares or CUFS (as applicable) credited to the affected Participant or former Participant's Share Account as being a date other than the actual date of acquisition.

5 TRUSTEE MAY REJECT NOTICE OF WITHDRAWAL

If the Board determines that a Participant's employment may be terminated by their Employer (or that the Participant may terminate their employment with a Group Company) in circumstances which may involve an act of fraud, defalcation or gross misconduct in relation to the Group then, despite anything else in these rules, the Board may direct the Trustee to reject any Notice of Withdrawal of Shares in relation to the Participant's Shares (which direction the Trustee must comply with).

6 RESERVE ACCOUNT

6.1 CREDIT OF RESERVE ACCOUNT

Any amounts, Performance Shares or other property standing from time to time to the credit of the Reserve Account must be held by the Trustee for the general purposes of the Performance Share Plan until applied in accordance with paragraph 6.2 or 6.3.

6.2 APPLICATION OF RESERVE ACCOUNT AMOUNTS

The Trustee may apply any amount standing to the credit of the Reserve Account:

(a) in meeting Plan Expenses; or

(b) for any other purposes relevant to the Performance Share Plan,

however no amount may be paid to, or applied for the benefit of, the Company or any other member of the Group.

6.3 DISPOSAL OF PERFORMANCE SHARES HELD IN RESERVE ACCOUNT

Any Performance Shares standing to the credit of the Reserve Account, and any other property standing to the credit of the Reserve Account, may be sold or disposed of by the Trustee, in which case the sale proceeds are to be applied in accordance with paragraph 6.2.

7 DISTRIBUTION OF DIVIDENDS, RIGHTS ISSUES, BONUS SHARES AND INTEREST

7.1 DISTRIBUTIONS AND OTHER BENEFITS

A Participant is entitled to receive any dividend or other distribution or entitlement in respect of Performance Shares which, at the record date for determining entitlements to those dividends or other distribution or entitlement, stand to the credit of the Share Account of that Participant. This applies even if the Performance Shares remain subject to Minimum Restriction Condition or Performance Condition, but does not apply if the Shares are forfeited under paragraph 4. Except as expressly provided for in these rules, the Trustee may determine the most practical means for the dividend, distribution or entitlement to be realised.

7.2 RESERVE ACCOUNT SHARES

Any dividends received by the Trustee in respect of Performance Shares which, at the record date for determining entitlements to those dividends, stand to the credit of the Reserve Account are to be credited to the Reserve Account and applied in accordance with paragraph 6.

7.3 PARTICIPATION IN SCHEMES

- (a) A Participant is entitled to participate in any scheme for the reinvestment of dividends paid or payable from time to time by the Company, or any bonus election scheme which permits dividends paid or payable from time to time by the Company to be foregone and bonus shares to be issued in lieu, in respect of a Participant's Shares and:
- (b) may do so by giving written notice to the Trustee;
- (c) the Participant's participation must be in respect of all the Participant's Shares, and not some only;
- (d) a Participant's participation in a dividend reinvestment scheme or bonus share scheme under this paragraph continues until the Participant notifies the Trustee in writing that they no longer wish to participate in the scheme; and
- (e) where a Participant is participating in a dividend reinvestment scheme or a bonus share scheme under this paragraph, any Shares or CUFS which are received by the Trustee in respect of Performance Shares that, at the record date for determining entitlements to those shares stand to the credit of the Share Account of that Participant, must be credited to the Share Account of that Participant and must not be subject to any Minimum Restriction Condition or Performance Condition. Participants are not entitled to fractions of Shares, which are to be credited to the Reserve Account and applied in accordance with paragraph 6.

7.4 RIGHTS ISSUES

- (a) If the Company announces a Rights issue:
- (b) the Trustee must notify each Participant of the Rights issue, and offer each Participant an opportunity to require the Trustee to exercise those Rights in respect of Participant Shares;
- (c) if the Participant wants the Trustee to exercise the relevant Rights, they must give a written direction to the Trustee to this effect and pay the issue price to the Trustee by the time and in the manner specified in the notice referred to in paragraph 7.4(a);
- (d) any Shares or CUFS allotted to the Trustee as a result of the Trustee exercising Rights in accordance with this paragraph 7.4 must be credited to the Share Account of the relevant Participant and are not subject to any Minimum Restriction Condition or Performance Condition; and

- (e) if the Rights are renouncable and a Participant declines, or does not respond to, the offer made by the Trustee under paragraph 7.4(a), the Trustee must use its best endeavours to sell those Rights. The Participant is entitled to receive the net proceeds of that sale, and the Trustee must pay the net proceeds of that sale to the Participant.

7.5 BONUS SHARES

- (a) Any bonus shares which are received by the Trustee in respect of Performance Shares that, at the record date for determining entitlements to those bonus shares, stand to the credit of:
- (b) any Share Account of a Participant - are to be credited to that Share Account, and are deemed for the purposes of these rules to have been credited to that Share Account at the same time as the Performance Shares in respect of which the bonus shares are issued were credited to the Share Account. Bonus shares are to be subject to the same Minimum Restriction Conditions and Performance Conditions as the Shares or CUPS (as applicable) in respect of which they are issued. Participants are not entitled to fractions of bonus shares, which are to be credited to the Reserve Account and applied in accordance with paragraph 6; or
- (c) the Reserve Account - are to be credited to the Reserve Account and applied in accordance with paragraph 6.

7.6 INTEREST

Any interest or other earnings derived by the Trustee and not otherwise provided for under this paragraph 7, whether attributable to amounts standing to the credit of the Share Accounts of Participants or to amounts standing to the credit of the Reserve Account, are to be credited to the Reserve Account and applied in accordance with paragraph 6.

8 VOTING RIGHTS

8.1 NOTICES TO BE FORWARDED TO PARTICIPANT

A copy of all notices of General Meetings of members of the Company received by the Trustee must be forwarded to each Participant unless the Participant has notified the Trustee that they do not wish to receive the notices.

8.2 PARTICIPANT MAY DIRECT VOTING

Subject to the terms of issue of the relevant Performance Shares, a Participant may direct the exercise of any voting rights attaching to the Participant's Shares by directing the Trustee how the relevant voting rights are to be exercised at any meeting of members of the Company.

8.3 TRUSTEE TO FOLLOW DIRECTIONS

The Trustee must exercise the voting rights attached to Participant's Shares in accordance with the instructions of a Participant given under paragraph 8.2

and received by the Trustee not less than 72 hours before the relevant meeting.

8.4 NO VOTING IF NO DIRECTION

The Trustee must not exercise any voting rights attaching to any Participant Shares in respect of which it has not received instructions in accordance with this paragraph 8.

9 TAKEOVER OFFERS, REORGANISATIONS AND COMPULSORY ACQUISITION

9.1 TRUSTEE NOT TO ACCEPT

The Trustee must not accept any offer made for any Performance Shares, and any purported acceptance by a Participant in respect of their Participant Shares is of no force or effect, unless:

- (a) the Board makes a decision in accordance with paragraph 9.2 and a Participant issues a notice in accordance with paragraph 9.4; or
- (b) the Board gives a direction in accordance with paragraph 9.5.

9.2 TAKEOVERS AND REORGANISATION: BOARD DETERMINATION

If:

- (a) a takeover bid is made for all or part of the Shares, the Board may declare that a Participant is permitted, if they wish, to direct the Trustee to accept the offer on the Participant's behalf in respect of all or part of the Participant's Shares on the terms, and in the circumstances, determined by the Board in its absolute discretion;
- (b) a proposed Reorganisation is announced, the Board may:
 - (i) on the terms and in the circumstances determined by the Board in its absolute discretion, declare that a Participant is permitted, if they wish, to direct the Trustee to sell, on the Participant's behalf, the Participant's Shares by instructing a Market Participant; or
 - (ii) make any other determination in relation to Participant's participation in the proposed Reorganisation as it sees fit including, but not limited to, the matters referred to in paragraph 9.3.

9.3 EXAMPLES OF BOARD DETERMINATION

Without limiting the scope of the Board's determination under paragraph 9.2, the Board may determine:

- (a) the form of consideration to be received by the Trustee on behalf of the Participant for the Participant's Shares (for example, cash, shares, other securities or a combination of them);

- (b) the extent to which non-cash consideration received by the Trustee on behalf of the Participant for the Participant's Shares will be converted into cash in accordance with paragraphs 9.9 to 9.11;
- (c) that any shares or other securities received by the Trustee on behalf of the Participant for the Participant's Shares are not to be transferred to the Participant, but rather:
 - (i) be treated in accordance with these rules as if they were Participant Shares; and
 - (ii) be deemed, for the purposes of these rules, to have been credited to the Share Account of that Participant at date(s) as near as possible to the date(s) when the Participant's Shares, in respect of which the Participant directed the Trustee to accept the offer, were credited to that account.

9.4 PARTICIPANT'S DIRECTION IN WRITING

A Participant, who wishes to direct the Trustee to accept an offer in respect of all or part of the Participant's Shares in accordance with the Board determination (if any), must do so by giving notice in writing to the Trustee on or before the day specified in the Board determination.

9.5 RESERVE ACCOUNT SHARES

Where an offer is made for all or part of the Shares, the Board may direct the Trustee to accept that offer in respect of all or part of the Performance Shares standing to the credit of the Reserve Account, in which case the money or other consideration received by the Trustee for accepting the offer is to be credited to the Reserve Account and applied in accordance with paragraph 6.

9.6 COMPULSORY ACQUISITION: CONTINUED APPLICATION OF THESE RULES

The Board may determine that any shares or other securities received by the Trustee in consideration for the compulsory acquisition of any Participant's Shares are not to be transferred to the Participant, but rather are to be dealt with in accordance with the Board's determination. Without limiting the scope of the Board's determination, the Board may determine that those shares or other securities are to be:

- (a) treated in accordance with these rules as if they were Performance Shares; and
- (b) deemed, for the purposes of these rules, to have been credited to the Share Account of the Participant at date(s) as near as possible to the date(s) when the Performance Shares, which were compulsorily acquired in consideration for those shares or securities, were credited to that account.

9.7 COMPULSORY ACQUISITION: RESERVE ACCOUNT SHARES

If any Performance Shares standing to the credit of the Reserve Account are subject to compulsory acquisition under any law, the money or other consideration received by the Trustee in respect of that compulsory

acquisition is to be credited to the Reserve Account and applied in accordance with paragraph 6.

9.8 PROCEDURE TO CONVERT NON-CASH CONSIDERATION

If the Trustee is required, by a Board determination, to convert non-cash consideration received on the sale of Participant Shares to cash the Trustee must apply the cash received on conversion:

- (a) first, in payment of any stamp duty, tax (including brokerage or like costs and expenses) of the sale incurred by the Trustee on behalf of the Participant; and
- (b) second, the balance (if any) in payment to the Participant.

A Participant may agree with the Trustee to repay any debts owing or moneys payable to a Group Company, on their behalf from the proceeds of sale of the non-cash consideration.

9.9 CONVERSION OF NON-CASH CONSIDERATION: AUTHORISATION

Each Participant irrevocably authorises the Trustee to take any action reasonably necessary to convert non-cash consideration received by the Trustee on behalf of the Participant for the Participant's Shares, (other than non-cash consideration which is not to be transferred in accordance with paragraph 9.3 and paragraph 9.6) to pay the cash received in accordance with paragraph 9.8.

9.10 CONVERSION OF NON-CASH CONSIDERATION

Any direction to convert non-cash consideration to cash is a direction to sell that non-cash consideration at any time within 60 days of the date of the direction at the best price reasonably obtainable for that non-cash consideration in the market at the time of sale.

9.11 TRUSTEE MAY ACCUMULATE TRANSFERS

If the Trustee is required to sell non-cash consideration under paragraph 9.8, the Trustee may accumulate the non-cash consideration to be sold and deal with them all at or about the same time, provided that all outstanding sales and transfers are effected within 60 days of the direction.

9.12 UNCLAIMED MONEYS

If the Trustee cannot, within 12 months from the date of sale of non-cash consideration under this paragraph 9, locate the Participant (at their last residential address, as notified by the Participant) to pay any balance of the proceeds of sale of the Participant's non-cash consideration in accordance with this paragraph 9, then the Trustee must transfer the proceeds to the Reserve Account.

10 CHANGE OF TRUSTEE AND TRUSTEE POWERS

10.1 BOARD MAY APPOINT NEW TRUSTEE

The Board may by resolution appoint a new Trustee from time to time.

10.2 CEASING TO BE TRUSTEE

The Trustee ceases to be the Trustee:

- (a) when the Board serves notice in writing to that effect on the Trustee;
- (b) when the Trustee serves notice in writing to that effect on the Board;
or
- (c) when a provisional liquidator, receiver, administrator or receiver and manager of the Trustee is appointed to the Trustee or the Trustee goes into liquidation or an order or resolution is made for its winding up.

10.3 TRANSFER OF ASSETS

On a change of Trustee, the retiring Trustee must promptly and expeditiously execute all transfers, deeds or other documents necessary to transfer all money and property held under the terms of these rules into the name of the new Trustee.

10.4 POWERS OF TRUSTEE

Subject to rule 4.1 and without prejudice to the powers vested in the Trustee by these rules or otherwise, the Trustee has the following powers:

- (a) to enter into and execute all contracts, deeds and documents and do all acts, matters or things which it may deem expedient for the purpose of giving effect to and carrying out the trusts, authorities, powers and discretions conferred on the Trustee by these rules;
- (b) to subscribe for, purchase or otherwise acquire and to sell or otherwise dispose of property, rights or privileges which the Trustee is authorised by these rules to acquire or dispose of on terms and conditions it thinks fit;
- (c) to appoint and at its discretion remove or suspend custodian trustees, managers, agents and servants, determine the powers and duties to be delegated to them and pay such remuneration to them as it may think fit;
- (d) to institute, conduct, defend, compound, settle or abandon any legal proceedings concerning the affairs of the Performance Share Plan, and also to compound and allow time for payment or satisfaction of any debts due and any claim or demands by or against the Trustee concerning the Performance Share Plan;
- (e) to open bank accounts and to retain on current or deposit account at any bank, those moneys as it considers proper and to make

regulations for the operation of those bank accounts, including the signing and endorsing of cheques;

- (f) to subscribe for, purchase or otherwise acquire and hold Performance Shares and transfer them to persons in accordance with these rules;
- (g) to receive distributions paid on Performance Shares and to apply those amounts in accordance with these rules;
- (h) to sell Performance Shares and apply the proceeds of sale in accordance with these rules;
- (i) to sell or take up any Rights and apply the proceeds of sale or resulting Shares or other securities in accordance with these rules;
- (j) to take and act on the advice or opinion of any legal practitioner (whether in relation to the interpretation of these rules or any other document or statute or as to the administration of the Trust) or any other professional person, and whether obtained by the Trustee or not, without being liable in respect of any act done by it in accordance with that advice or opinion;
- (k) to make rules or to adopt procedures not inconsistent with the provisions of these rules in relation to the calculation and rounding off of contributions, dividends, interest or other amounts, the determination of periods of time, and any other matters as are appropriate for the convenient administration of the Performance Share Plan;
- (l) to pay from the funds of the Trust any Plan Expenses;
- (m) generally to do all acts and things as the Trustee may consider necessary or expedient for the administration, maintenance and preservation of the Performance Share Plan and in performance of its obligations under these rules.

10.5 TRUSTEE MAY APPOINT DELEGATE

The Trustee may from time to time delegate to any director of the Trustee, or other person appointed by the Trustee, the right and power on behalf of the Trustee to sign, draw, endorse, or otherwise execute, as the case may be, all or any:

- (a) cheques, drafts and other negotiable or transferable instruments;
- (b) receipts for money paid to the Trustee; and
- (c) other documents connected with the due administration of the Performance Share Plan or with these rules.

10.6 TRANSFERS AND PAYMENTS

No transfer, distribution or payment under these rules is to be made until the Trustee has ascertained that it may be made in accordance with the provisions of these rules.

10.7 GOOD FAITH

Any transfer, distribution or payment made in good faith to a person believed by the Trustee to be entitled to receive it is, for the purposes of these rules, deemed to be a transfer, distribution or payment (as the case may be) to the person entitled to receive it and is a valid discharge to the Trustee in respect of the transfer, distribution or payment.

10.8 TRUSTEE'S DISCRETIONS: GENERALLY

The Trustee, or any director or other officer of the Trustee, may exercise or concur in exercising all powers and discretions conferred on the Trustee, director or officer (as the case may be), by law even though it or they may have a direct or other personal interest in the mode or result of exercising that power or discretion. The director or officer may nevertheless abstain from acting, except as a formal party, in any matter in which they may be personally interested.

10.9 TRUSTEE'S DISCRETION WHERE PARTICIPANT IMPAIRED

If a Participant, or person who is entitled to any Performance Shares or other property or to payment of any amount under these rules, is under any legal, physical, mental or other disability of any kind and is, in the opinion of the Trustee, unable to properly and competently manage their financial affairs, the Trustee may transfer all or part of the relevant Performance Shares or other property, or make payment of all or part of the relevant amount (as the case may be), to any other person as the Trustee, in its sole discretion, sees fit, to be held for the benefit of the Participant or person otherwise entitled. The Trustee is not liable for or responsible for seeing to the subsequent application of the Performance Shares or other property transferred or amounts paid, and the receipt of the recipient, transferee or payee is a good discharge.

10.10 UNFETTERED POWERS AND DISCRETION

The Trustee in the exercise of the powers and discretions vested in it by these rules has an absolute and uncontrolled discretion and may exercise or enforce all or any of those powers and discretions at any time and from time to time or may refrain from exercising all or any of them from time to time or at all.

10.11 EXTENSION OF TIME

Without limiting paragraph 10.10, the Trustee has a discretion to extend the period within which a Participant must give a notice to the Trustee or exercise a right conferred on the Participant under these rules where, in all the circumstances, the Trustee considers that it would unfairly prejudice the Participant or their estate not to do so.

10.12 REMUNERATION OF TRUSTEE

The Trustee is not entitled to receive from the Performance Share Plan any commission or other remuneration in respect of its office, but the Company may if it thinks fit pay to the Trustee any remuneration it thinks fit from its own resources.

10.13 TRUSTEE NOT TO USE TRUST PROPERTY AS SECURITY

The Trustee must not use any Participant Shares as security.

11 TRUSTEE'S WARRANTIES

11.1 TRUSTEE AUTHORISED

If the Trustee is not a Group Company, the Trustee represents and warrants to the Company on the date of these rules and throughout the term of its appointment as trustee of the Trust that:

- (a) it is duly incorporated and validly exists under the law of its place of incorporation;
- (b) it has taken all necessary action to authorise the execution, delivery and performance of these rules in accordance with its terms;
- (c) it has full power to enter into and perform its obligations under these rules and can do so without the approval or consent of any other person; and
- (d) its obligations under these rules are valid and binding and are enforceable against it in accordance with its terms.

11.2 COMPLIANCE WITH LAW

If the Trustee is not a Group Company, the Trustee represents and warrants to the Company on the date of these rules and throughout the term of its appointment as trustee of the Trust that the execution, delivery and performance by it of its obligations under these rules and any other document to be executed by it pursuant to or in connection with these rules complies with:

- (a) each law, and each regulation, authorisation, ruling, judgment, order or decree of any government agency which is binding on it;
- (b) its constitution; and
- (c) any other document which is binding on it, and will not result in a breach of, or give any third party a right to terminate or modify, any agreement, licence or other instrument or result in a breach of any order, judgment or decree of any court, government agency or regulatory body to which it is a party or by which it is bound.

11.3 SOLVENCY OF TRUSTEE

If the Trustee is not a Group Company, the Trustee represents and warrants to the Company on the date of these rules and throughout the term of its appointment as trustee of the Trust that it is not insolvent, in liquidation or administration and no proceedings have been brought or threatened for the purpose of winding it up or placing it in administration. No petition or other process for winding-up has been presented or threatened against it and there are no circumstances justifying such a petition or other process. No writ of execution has issued against it and is outstanding. No receiver, receiver and

manager or other controller, administrator or similar official has been appointed over any part of its undertaking or assets and there are no circumstances (including execution of the trust deed constituting the Trust) justifying an appointment.

12 LICENCES OBTAINED

If the Trustee is not a Group Company, the Trustee represents and warrants to the Company on the date of these rules and throughout the term of its appointment as trustee of the Trust that:

- (a) it has all statutory licences, consents and authorisations required to execute, deliver and perform its obligations under these rules and any other documents to be executed by it pursuant to or in connection with these rules ("LICENCE");
- (b) all conditions which apply to any such Licence have been (or will be) complied with in all material respects;
- (c) no Licences have been breached by it or are likely to be suspended, cancelled, refused, materially altered, not renewed, or revoked; and
- (d) in particular, it warrants that it will comply with its obligations under Part 7 of the Corporations Act with respect to its role as trustee of the Trust and its obligations under these rules.

13 TRUST PROPERTY AND INVESTMENTS

13.1 TRUST PROPERTY

The Trust's property consists of:

- (a) the settlement sum referred to in Trust Deed constituting the Trust;
- (b) contributions made to the Trust under these rules;
- (c) Performance Shares; and
- (d) any other moneys or property received by the Trustee for the purposes of the Performance Share Plan, and the investments and property from time to time representing the above, together with all associated income, additions or accretions.

13.2 INVESTMENTS

Any moneys that may be held by the Trustee, but which are not currently required for the purposes of the Performance Share Plan, may in the absolute discretion of the Trustee be placed on deposit with any bank, company or financial institution or invested in any one or more of the modes of investment authorised by law for the investment of trust funds or in any manner in which the Trustee could invest, if it were personally entitled to those moneys.

13.3 CHARACTERISATION OF INCOME AND CAPITAL

Before the end of each Year of Income, the Trustee may decide whether:

- (a) any amount received or held by the Trustee under the Performance Share Plan is to be treated as being on income or capital account; and
- (b) any actual or deemed capital gain arising in that Year of Income under the Tax Act is to be included as income of the Trust estate constituted by the Trust Deed.

Unless the Trustee has made a decision under this paragraph 13.3, an item is taken into account in calculating the income of the Trust estate constituted by the Trust Deed if it would be taken into account in calculating the Net Income of the Trust.

Where the income of the Trust estate constituted by the Trust Deed determined under this paragraph 13 includes the amount of a deemed capital gain arising from the appointment or distribution of part of the income or property of the Trust during a Year of Income in favour of a Participant, or a fund, the Trustee may decide that such amount has been distributed to that Participant or fund by virtue of that appointment or distribution.

The Trustee may decide that any part of a payment or distribution made under the Performance Share Plan is to be from a particular class or source of income or property of the Performance Share Plan.

14 RECORDS AND ACCOUNTS

14.1 SEPARATE PARTICIPANT ACCOUNTS

The Trustee must cause a Share Account to be opened and maintained in respect of each Participant in which the following are to be recorded:

- (a) Performance Shares allocated to the Participant;
- (b) Performance Shares transferred from the Share Account to the Participant;
- (c) Performance Shares or amounts transferred from the Share Account to the Reserve Account; and
- (d) any other credit or debit made to the Share Account for the purposes of, or in accordance with, these rules.

14.2 NOTIFICATION TO PARTICIPANT

At least once each year, at a time the Trustee considers appropriate, the Trustee must notify each Participant of the number of their Participant Shares and any other information the Trustee considers appropriate.

14.3 RESERVE ACCOUNT TO BE OPENED AND MAINTAINED

The Trustee must cause a Reserve Account to be opened and maintained, in which the following are to be recorded:

- (a) Performance Shares or amounts transferred between any Share Account and the Reserve Account;
- (b) any dividends, Rights, bonus shares, interest or other earnings or other amounts credited to the Reserve Account under paragraph 6;
- (c) any application of any amount standing to the credit of the Reserve Account in accordance with these rules;
- (d) any sale or disposal of Performance Shares or other property standing to the credit of the Reserve Account in accordance with these rules; and
- (e) any other credit or debit made to the Reserve Account for the purposes of these rules.

14.4 OTHER ACCOUNTS

The Trustee must keep, or cause to be kept, any other accounts and records necessary for the operation of the Performance Share Plan and the Trust.

14.5 INSPECTION OF ACCOUNTS

The books of account of the Trust must be maintained at the registered office of the Company and be available for inspection by Participants during normal business hours in Australia, or other times agreed between the Trustee and relevant Participants, free of charge, on prior written request.

14.6 AUDIT OF ACCOUNTS

The Trustee must appoint an auditor of the Trust. The Trustee must cause the books of account to be audited annually by the Trust's auditor and must ensure that the auditor has access to all papers, accounts and documents concerned with or relating to the Trust.

15 OBLIGATIONS AND INDEMNITY OF THE TRUSTEE

15.1 TRUSTEE INDEMNITY

Without derogating from the right of indemnity given by law to trustees, the Company agrees to indemnify and continue to indemnify the Trustee:

- (a) in respect of all liabilities, costs and expenses incurred by the Trustee in the execution or purported execution of the Trust or any of the powers, authorities or discretions vested in the Trustee; and
- (b) from and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted to be done,
- (c) other than a liability or claim arising out of the Trustee's negligence, dishonesty, fraud or the Trustee wilfully or knowingly being a party to (if internal) a breach of trust.

15.2 NO TRUSTEE LIABILITY

The Trustee is not under any liability whatsoever to any Group Company except in the event of:

- (a) the Trustee's negligence, dishonesty, fraud or wilful breach of trust; or
- (b) the negligence, dishonesty, fraud or wilful breach of trust of any of the Trustee's employees or agents.

15.3 PARTICIPANT NOT LIABLE

Nothing in paragraph 15 enables the Trustee to recover any liabilities, costs and expenses from any Participant.

15.4 NO RIGHT AGAINST PARTICIPANT

Except as expressly provided in these rules, the Trustee has no right of indemnity against a Participant personally.

16 TERMINATION

16.1 TERMINATION OF THE TRUST

The Trust terminates and is to be wound up (as provided below) on the occurrence of any of the following events:

- (a) if the Plan is terminated under rule 6;
- (b) if the Board determines that the Trust is to be wound up; or
- (c) should the Trust be at any time subject to the rule of law against perpetuity, on the later of:
 - (i) the date on which the Trust becomes subject to the rule of law against perpetuity; and
 - (ii) the 80th anniversary of the date of these rules.

16.2 TERMINATION: SALE AND APPLICATION OF PROCEEDS

On the Plan and the Trust terminating in accordance with paragraph 16.1(a), the Trustee must either, in its absolute discretion, transfer the Participant Shares to the Participant of the Performance Share Plan or sell the Participant Shares. If the Participant Shares are sold, the Trust must apply the proceeds received in the manner set out in paragraph 4.14.

16.3 APPLICATION OF RESIDUAL AMOUNT

If, after selling Performance Shares and applying the proceeds in accordance with paragraph 16.2, any Performance Shares or other assets of the Performance Share Plan remain, they and the proceeds of their sale must be firstly applied in meeting any Plan Expenses and the costs and liabilities of

winding up the Performance Share Plan, and then be applied by the Trustee to or for the benefit of:

- (a) any other employee share plan or employee incentive plan or scheme for the benefit of employees of the Group; or
- (b) any superannuation or similar fund for the benefit of employees of the Group,

as the Trustee in its absolute discretion determines and, if applied to two or more plans or schemes, in the proportions as the Trustee in its absolute discretion determines.

16.4 COMPANY'S OBLIGATION FOR ANY SHORTFALL

To the extent that the Performance Shares or other assets or the proceeds of their sale are not sufficient to meet all Plan Expenses and the costs and liabilities of winding up the Performance Share Plan, they are to be met by the Company.

Schedule 4 - Award

1 INVITATION TO APPLY FOR AN AWARD

An Invitation to an Executive to apply for an Award may be made on such terms and conditions as the Board decides from time to time, including as to:

- (a) the Prescribed Qualification Date or how it is calculated;
- (b) the Determination Date;
- (c) the number of Shares or CUFS on which the Payout will be calculated;
- (d) any Payout Vesting Conditions;
- (e) any Payout Qualification Conditions;
- (f) any Supplementary Conditions; and
- (g) the Payout Date.

2 GRANT OF AWARDS

2.1 COMPANY TO GRANT AWARDS

On receipt of an application for Awards, the Company at the discretion of the Board may grant Awards to the Executive specified in the Invitation, subject to the Terms and Conditions of Award.

2.2 NOTIFICATION TO PARTICIPANT

Following the grant of an Award a Participant under paragraph 2.1, the Company will notify the Participant in writing:

- (a) the Prescribed Qualification Date or how it is calculated;
- (b) the Determination Date;
- (c) the number of Shares or CUFS on which the Payout will be calculated;
- (d) the Payout Date; and
- (e) other terms and conditions (if any) as determined by the Board.

2.3 RESTRICTIONS ON DEALING WITH AWARDS

A Participant may not sell, assign, transfer or otherwise deal with, or grant a Security Interest over, an Award granted to the Participant. The Award lapses immediately on purported sale, assignment, transfer, dealing or grant of Security Interest, unless the Board in its absolute discretion approves the dealing or the transfer or transmission is effected by force of law on death or legal incapacity to the Participant's legal personal representative.

3 PAYMENT OF PAYOUTS

3.1 PAYOUT VESTING CONDITIONS AND PAYOUT QUALIFICATION CONDITIONS

Subject to paragraph 4, if a Participant's Award is subject to Payout Vesting Conditions and/or Payout Qualification Conditions, the Participant will not qualify for payment of the Payout unless all Payout Vesting Conditions and Payout Qualification Conditions are satisfied (and in any situation referred to in paragraph 3.3(b)(i), is satisfied at the time of death or other cessation of employment), and then only to the extent permitted by the Payout Qualification Condition.

3.2 TIMING OF PAYMENT

The Company will pay the Payout to the Participant on or before the Payout Date.

3.3 QUALIFICATION DATE

A Participant will qualify for a Payout only on:

- (a) the Prescribed Qualification Date for the Payout; or
- (b) any earlier date on which the Participant qualifies for the Payout:
 - (i) under this paragraph 3 dealing with the Participant's death or otherwise ceasing to be employed by a Group Company, and with situations where the employer ceases to be a Group Company or the business in which the Participant is employed is transferred; or
 - (ii) under paragraph 4 dealing with takeover bids, change of control, court orders, Reorganisations and winding up.

3.4 AWARD WILL LAPSE EARLIER ON DEATH OR CESSATION OF EMPLOYMENT

A Participant's Award lapses on the latest of:

- (a) the expiry of 24 months after the Participant's death, if death occurs before the Award lapses under paragraph (b) or (c);
- (b) the expiry of 24 months after the Participant ceases to be employed by a Group Company by reason of Retirement or permanent disability; and

- (c) the expiry of 3 months after the Participant ceases to be employed by a Group Company for any other reason,

provided that if the Board issues a notice under paragraph 3.5 or 3.6 advising the Participant that a Vested Award has lapsed, the Award is deemed to have lapsed on the date of death or cessation of employment (as the case may be) and the Company has no obligation to make a Payout in respect of the Vested Award.

3.5 QUALIFICATION FOR A PAYOUT ON PARTICIPANT'S DEATH

If a Participant dies before qualifying for a Payout, at a time when the individual:

- (a) is still an employee of a Group Company; or
- (b) having ceased to be employed by a Group Company, falls within the terms of paragraph 3.6,

then (subject to the other provisions of this paragraph 3), the Participant will:

- (c) qualify to receive a Payout in respect of a Vested Award on the date of death except a Vested Award is deemed to have lapsed on the date of death where the Board reasonably determines and provides notice to the Participant in writing that the Vested Award has lapsed and the Company has no obligation to make a Payout in respect of the Vested Award; or
- (d) if permitted by the Board in writing, qualify to receive a Payout in respect of an Award that is not a Vested Award on the date of death.

3.6 QUALIFICATION FOR A PAYOUT ON CEASING TO BE EMPLOYED BY A GROUP COMPANY

If, before qualifying for a Payout, a Participant ceases to be employed by a Group Company (other than by reason of his or her death), then (subject to the other provisions of this paragraph 3):

- (a) if the employment ceases by reason of Retirement, Redundancy, Separation or otherwise for termination by the relevant Group Company other than in circumstances set out in paragraph 3.9 the Participant will:
 - (i) qualify to receive a Payout in respect of a Vested Award on the date of cessation of employment, except a Vested Award is deemed to have lapsed on the date of cessation of employment where the Board reasonably determines and provides notice to the Participant in writing that the Vested Award has lapsed and the Company has no obligation to make a Payout in respect of the Vested Award; or
 - (ii) if permitted by the Board in writing, qualify to receive a Payout in respect of an Award that is not a Vested Award on the date of cessation of employment; or

- (b) if the employment ceases for a reason other than Retirement, Redundancy, Separation or otherwise for termination by the relevant Group Company other than in circumstances set out in paragraph 3.9 the Participant is qualified to receive a Payout on the date of cessation, only if permitted by the Board in writing.

3.7 INDIVIDUAL NOT TREATED AS CEASING TO BE AN EMPLOYEE

For the purposes of this paragraph 3, a Participant:

- (a) is not treated as ceasing to be an employee of a Group Company unless and until the individual is no longer an employee of any Group Company, whether or not in the same capacity as at the time the Award was granted; and
- (b) subject to paragraph 3.8, is not treated as ceasing to be an employee of a Group Company if the individual is no longer an employee of any Group Company because:
 - (i) the individual's employer ceases to be a Group Company, whether or not, after the cessation, the individual remains an employee of that employer; or
 - (ii) the individual is an employee of a business that is transferred to a person that is not a Group Company.

3.8 AWARD LAPSES IF EMPLOYER CEASES TO BE A GROUP COMPANY OR ON CHANGE IN OWNERSHIP OF BUSINESS

If a Participant is no longer an employee of a Group Company because of circumstances set out in paragraph 3.7(b)(i) or (ii), then the Awards lapse upon this occurring except where otherwise determined by the Board in writing, in which case the Participant's Awards lapse on the latest of:

- (a) the expiration of 24 months after the date of the cessation or transfer (as the case may be); and
- (b) if the Participant dies before the Award lapses under paragraph (a), the expiration of 24 months after the individual's death.

3.9 AWARD MAY LAPSE IN THE CASE OF FRAUD OR DISHONESTY

If, in the opinion of the Board, a Participant:

- (a) has committed (or it is evident the Participant intends to commit), any act (whether by omission or commission) which amounts or would amount to any of dishonesty, fraud, wilful misconduct, wilful breach of duty, serious and wilful negligence or incompetence in the performance of the Participant's duties; or
- (b) is convicted of a criminal offence (other than a minor motor traffic offence or other trivial offence which does not impact on the Participant's good fame and character or ability to perform his/her duties) or is guilty of any other wilful or recklessly indifferent conduct which, in the reasonable opinion of the Board, may injure or

tend to injure the reputation and/or the business or operations of a Group Company,

the Board may declare that any Award has lapsed, and the Award lapses accordingly.

3.10 NOT QUALIFY FOR A PAYOUT ON BANKRUPTCY

It is a condition precedent to qualification for a Payout that if the Participant is an individual, the Participant is not bankrupt and has not committed an act of bankruptcy or, if the Participant is deceased, the Participant's estate is not bankrupt or if the Participant is not an individual, the Participant is not insolvent or subject to a resolution or order for winding up.

3.11 CEASING TO BE AN EXECUTIVE

Where a Participant qualifies for a Payout under this paragraph 3 (other than paragraph 3.3(a)) and paragraph 4, the Board may in its discretion adjust the amount of the Payout pro rata based on the proportion which the period from the date the Board accepts the Participant's application to participate in the Plan ("ACCEPTANCE DATE") to the date the Participant ceases to be an Executive bears to the period from the Acceptance Date to the Prescribed Qualification Date.

3.12 NOTICE

The Company will notify Participants of any adjustment that will be made to a Payout within a reasonable time of the event which gave rise to the adjustment under paragraph 3.11 occurring.

3.13 DISCRETION TO DETERMINE THAT AWARD WILL NOT LAPSE

Notwithstanding any other paragraph in this Schedule 4, if a Participant ceases employment with the Company for any reason, or gives notice of their intention to cease employment with the Company before the Payout of an Award, the Board may in its absolute discretion (on any conditions which it thinks fit) decide that some or all of the Award does not lapse, but lapses at the time and subject to the conditions it may specify by notice to the Participant, which may include one or more of the following:

- (a) that the period to which any Payout Vesting Condition and / or any Payout Qualification Condition relates is reduced to a period shorter than that which would otherwise apply;
- (b) that the Payout Vesting Criteria applicable to an Award be waived; and
- (c) that an Award which vests in accordance with the terms and conditions specified in the notice may be exercised within the period specified in paragraph 3.4 or any shorter period specified in the notice.

4 TAKEOVER, REORGANISATION AND WINDING-UP

4.1 TAKEOVER BID

If a takeover bid is made to acquire any Shares, at any time any offers under a takeover bid remain open for acceptance, the Board may give written notice of the bid to each Participant, stating that the Participant has qualified to receive a Payout on such date specified in the notice.

4.2 APPLICATION TO THE COURT

If the Board determines that an application is to be made to the court under for a meeting to be held as described in paragraph 4.4, the Board may give written notice of the application to each Participant, stating that the Participant has qualified to receive a Payout on such date specified in the notice.

4.3 CHANGE OF CONTROL

If, pursuant to a takeover bid or otherwise, any person together with their associates acquire Shares, which when aggregated with Shares already acquired by such person and their associates, comprise more than 30% of the issued Shares of the Company, the Board may give written notice to each Participant stating that the Participant has qualified to receive a Payout on such date specified in the notice.

4.4 MEETING TO CONSIDER A REORGANISATION

If, pursuant to the Articles of Association, Applicable Regulations or otherwise, the Board determines to convene a General Meeting or other meeting of holders of the Company's securities or a meeting of the Company's creditors, or a court orders a meeting, to be held in relation to a proposed Reorganisation, the Board may give written notice to each Participant stating that the Participant has qualified to receive a Payout on such date specified in the notice.

4.5 COMPULSORY ACQUISITION, REORGANISATION OR WINDING UP

If:

- (a) a person becomes bound or entitled to compulsorily acquire Shares in the Company under the Articles of Association or Applicable Regulations;
- (b) a Reorganisation is sanctioned by one or more of the following under the Articles of Association, Applicable Regulations or otherwise:
 - (i) a court;
 - (ii) a General Meeting or other meeting of holders of the Company's securities; or
- (c) a meeting of the Company's creditors; or

- (d) the Company passes a resolution for voluntary winding up or an order is made for the compulsory winding up of the Company,

then the Board may give written notice to each Participant stating that the Participant has qualified to receive a Payout on such date specified in the notice.

5 ADJUSTMENTS

The Company may, as reasonably determined by the Board, adjust the Payout if any of the following occurs which affects the number of Shares on issue:

- (a) a bonus issue of Shares (including an issue by way of a dividend); or
- (b) a capital reconstruction of the issued capital of the Company including by a consolidation or sub-division.

6 TAXES

Payouts shall be reduced by any taxes that are required to be withheld from such payments.

7 NO INTEREST IN UNITS OR SHARES

For the avoidance of doubt, nothing in this schedule confers or is intended to confer on a Participant any interest in a unit, share or other security in the Group or any right to acquire a share or other security in the Group or any other body corporate or entity or any right or benefit generally accorded to holders of Shares or CUFS.

Schedule 5 - Provisions applicable only to U.S. Executives

1 GENERAL

- (a) Notwithstanding any provision of the Plan (including any Schedules thereto) or any Invitation to the contrary, the terms and conditions specified in this Schedule 5 shall apply to all Invitations for Options, Performance Rights, Performance Shares and/or Awards granted to each Participant who is a U.S. Executive at the time of the grant.
- (b) The provisions of this Schedule 5 incorporate the provisions of Schedules 1, 2, 3 and 4 except that, in the event of any conflict between a term and/or condition of the Plan (or any Invitation) and this Schedule 5, the provisions of this Schedule 5 shall prevail to the extent of the conflict.

2 OPTIONS

2.1 ADDITIONAL TERMS AND CONDITIONS

The Board is authorized to grant Options to any U.S. Executive in accordance with Schedule 1 and including the following terms and conditions:

- (a) EXERCISE PRICE. The Exercise Price payable under an Option shall be determined by the Board, provided that such Exercise Price shall not be less than 100% of the Fair Market Value of a Share on the Grant Date of the Option. If the U.S. Executive owns or is deemed to own (by reason of the attribution rules applicable under Section 424(d) of the U.S. Revenue Code) more than 10% of the combined voting power of all classes of stock of the Company (or any parent corporation or subsidiary corporation of the Company, as those terms are defined in Sections 424(e) and (f) of the U.S. Revenue Code, respectively) and an Incentive Stock Option is granted to such U.S. Executive, the Exercise Price of such Incentive Stock Option (to the extent required by the U.S. Revenue Code at the time of grant) shall be no less than 110% of the Fair Market Value a Share on the Grant Date.
- (b) INCENTIVE STOCK OPTIONS. The terms of any Incentive Stock Option granted under the Plan shall comply in all respects with the provisions of Section 422 of the U.S. Revenue Code. Notwithstanding anything in the Plan to the contrary, no term of the Plan relating to Incentive Stock Options shall be interpreted, amended or altered, nor shall any discretion or authority granted under the Plan be exercised, so as to disqualify either the Plan or any Incentive Stock Option under Section 422 of the U.S. Revenue Code, unless the Executive has first requested, or consents to, the change that will result in such

disqualification. Thus, if and to the extent required to comply with Section 422 of the U.S. Revenue Code, Options granted as Incentive Stock Options shall be subject to the following special terms and conditions:

- (i) Incentive Stock Options shall only be granted to a U.S. Executive of the Company who, on the Grant Date, is an employee of a Group Company.
- (ii) The Invitation shall specify that no disposition of the Shares acquired upon exercise of the Incentive Stock Option by the U.S. Executive shall be allowed within one year from the Prescribed Exercise Date and two years from the Grant Date.
- (iii) The Incentive Stock Option shall not be granted within 10 years from the Effective Date of the Plan, or the date the Plan is approved by the shareholders, whichever is earlier.
- (iv) The Incentive Stock Option shall not be exercisable more than ten years after the date such Incentive Stock Option is granted; provided, however, that if an U.S. Executive owns or is deemed to own (by reason of the attribution rules of Section 424(d) of the U.S. Revenue Code) more than 10% of the combined voting power of all classes of stock of the Company (or any parent corporation or subsidiary corporation of the Company, as those terms are defined in Sections 424(e) and (f) of the U.S. Revenue Code, respectively) and the Incentive Stock Option is granted to such U.S. Executive, the term of the Incentive Stock Option shall be (to the extent required by the U.S. Revenue Code at the time of the grant) for no more than five years from the date of grant.
- (v) The aggregate Fair Market Value (determined as of the Grant Date of the Incentive Stock Option) of the Shares with respect to which Incentive Stock Options granted under the Plan and all other option plans of the Company (and any parent corporation or subsidiary corporation of the Company, as those terms are defined in Sections 424(e) and (f) of the U.S. Revenue Code, respectively) that become exercisable for the first time by the U.S. Executive during any calendar year shall not (to the extent required by the U.S. Revenue Code at the time of the grant) exceed US\$100,000.
- (vi) An Incentive Stock Option shall not be transferable by such U.S. Executive otherwise than by will or the laws of descent and distribution, and is exercisable, during the U.S. Executive's lifetime, only by such U.S. Executive.
- (vii) An Incentive Stock Option shall not be exercisable more than three months after the U.S. Executive ceases to be employed by a Group Company. However, if such cessation is on account of the U.S. Executive's disability (within the

meaning of Section 22 of the U.S. Revenue Code), the three months shall be extended to 12 months.

2.2 ADJUSTMENTS

Notwithstanding anything to the contrary, the Board shall not make any adjustments to Options under Section 7.2 of Schedule 2 that would cause any adverse tax treatment to any Participant under Section 409A of the U.S. Revenue Code or that would be in contravention of any U.S. securities laws or any rules and regulations under the New York Stock Exchange or any exchange on which the Shares of the Company are listed.

3 PERFORMANCE RIGHTS

3.1 ADDITIONAL TERMS AND CONDITIONS

The Board is authorized to grant Performance Rights to any U.S. Executive (which shall be treated as a grant of restricted stock to such U.S. Executive and governed by Section 83 of the U.S. Revenue Code) in accordance with Schedule 2 and including the following terms and conditions:

- (a) GRANT AND RESTRICTIONS. Performance Rights shall be subject to such restrictions on transferability, risk of forfeiture and other restrictions, if any, as the Board may impose, or as otherwise provided in this Plan, covering a period of time specified by the Board (the "Restriction Period"). The terms of any Invitation to apply for Performance Rights granted under the Plan shall contain provisions determined by the Board and not inconsistent with the Plan. The restrictions may lapse separately or in combination at such times, under such circumstances (including based on achievement of performance goals and/or future service requirements), in such installments or otherwise, as the Board may determine at the date of grant or thereafter. Except to the extent restricted under the terms of the Plan and any Invitation relating to Performance Rights, an U.S. Executive granted Performance Rights shall have all of the rights of a shareholder, including the right to vote the Shares underlying the Performance Rights and the right to receive dividends thereon (subject to any mandatory reinvestment or other requirement imposed by the Board). During the Restriction Period, the Performance Rights may not be sold, transferred, pledged, hypothecated, margined or otherwise encumbered by the U.S. Executive.
- (b) CERTIFICATES FOR STOCK. Performance Rights granted under the Plan may be evidenced in such manner as the Board shall determine. If certificates representing Performance Rights are registered in the name of the U.S. Executive, the Board may require that such certificates bear an appropriate legend referring to the terms, conditions and restrictions applicable to such Performance Rights, that the Company retain physical possession of the certificates, and that the U.S. Executive deliver a stock power to the Company, endorsed in blank, relating to the Performance Rights.

- (c) DIVIDENDS AND SPLITS. As a condition to the Invitation to apply for Performance Rights, the Board may require or permit an U.S. Executive to elect that any cash dividends paid on a Share underlying such Performance Rights be automatically reinvested in additional Performance Rights or applied to the purchase of additional Performance Rights under the Plan. Unless otherwise determined by the Board, Shares distributed in connection with a stock split or stock dividend, and other property distributed as a dividend, shall be subject to restrictions and a risk of forfeiture to the same extent as the Performance Rights with respect to which such Shares or other property have been distributed.

4 PERFORMANCE SHARES

4.1 TERMS AND CONDITIONS

The Board is authorized to grant Performance Shares to any U.S. Executive. Any Performance Shares granted to a U.S. Executive shall be governed by the following provisions and those terms and conditions in Schedule 3 shall not be applicable to such grant (and, for the avoidance of doubt, any Performance Shares granted under this Schedule 5 shall not be held by the Trustee under the Trust established in relation to the Performance Share Plan):

- (a) GRANTS AND RESTRICTIONS. The Board is authorized to grant Performance Shares to any U.S. Executive payable in cash, Shares, or other Performance Shares, on terms and conditions established by the Board, if and to the extent that the Board shall, in its sole discretion, determine that such Performance Shares shall be subject to those provisions. The performance criteria to be achieved during any Performance Period and the length of the Performance Period shall be determined by the Board upon the grant of each Performance Share. Except as may be provided in an Invitation for Performance Shares, Performance Shares will be distributed only after the end of the relevant Performance Period. The performance goals to be achieved for each Performance Period shall be conclusively determined by the Board and may be based upon the criteria set forth in paragraph 6.1(f) of this Schedule, or in the case of Performance Shares that the Board determines shall not be subject to paragraph 6.1(f) of this Schedule, any other criteria that the Board, in its sole discretion, shall determine should be used for that purpose. The number of Performance Shares to be distributed shall be conclusively determined by the Board. Performance Shares may be paid in Shares or in a lump sum or in installments following the close of the Performance Period or, in accordance with procedures established by the Board, on a deferred basis.
- (b) OTHER TERMS AND CONDITIONS. Unless otherwise determined by the Board on the Grant Date and in the Invitation, all other terms and conditions of Performance Shares granted to U.S. Executives shall be governed under Schedule 2, provided that "Performance Share" shall replace "Performance Right" in each such place that it appears in such Schedule 2.

5 AWARDS

5.1 ADDITIONAL TERMS AND CONDITIONS

The Board is authorized to grant Awards to any U.S. Executive in accordance with Schedule 4 and including the following terms and conditions:

- (a) COMPLIANCE WITH SECTION 409A. Grants of Awards under the Plan are intended to be exempt from the requirements of Section 409A by reason of the benefits hereunder constituting short-term deferrals within the meaning of applicable guidance issued under Section 409A, and to the extent administratively practicable, the Plan shall be construed in a manner consistent with the requirements for such exemption. If and to the extent that the grant of Awards under the Plan are not deemed to qualify for the short-term deferral exception, then the Plan and any Invitations for Awards granted pursuant to the Plan shall be construed in a manner consistent with the requirements of Section 409A, and the Committee may amend the Plan and/or any such Invitations to the extent necessary or appropriate to comply with those requirements, without obtaining shareholder or Participant approval.

6 CERTAIN PROVISIONS APPLICABLE TO OPTIONS, PERFORMANCE RIGHTS, PERFORMANCE SHARES AND AWARDS

Each Option, Performance Right, Performance Share and Award granted to a U.S. Executive shall be subject to the following additional provisions:

- (a) TERM. The term of each Option, Performance Right, Performance Share and Award shall be for such period as may be determined by the Board; provided that in no event shall the term exceed a period of ten years (or in the case of an Incentive Stock Option such shorter term as may be required under Section 422 of the U.S. Revenue Code).
- (b) TIME AND METHOD OF EXERCISE. The Board shall determine the time or times at which or the circumstances under which an Option, Performance Right, or Performance Shares may be withdrawn and/or Award may be exercised in whole or in part (including based on achievement of performance goals and/or future service requirements), the time or times at which such Option, Performance Right, Performance Share and/or Award shall cease to be or become exercisable or withdrawn (as the case may be) following a Participant ceasing to be employed by a Group Company or upon other conditions, the methods by which the exercise price may be paid or deemed to be paid (including in the discretion of the Board a cashless exercise procedure), the form of such payment, including, without limitation, cash, Shares (including without limitation the withholding of Shares otherwise deliverable pursuant to the Option, Performance Right, Performance Share and/or Award), other Options, Performance Rights, Performance Shares and/or Awards granted under other plans of the Company or a Group Company, or other property (including

notes or other contractual obligations of Participants to make payment on a deferred basis provided that such deferred payments are not in violation of the Sarbanes-Oxley Act of 2002, or any rule or regulation adopted thereunder or any other applicable law), and the methods by or forms in which Shares will be delivered or deemed to be delivered to Participants.

- (c) FORM AND TIMING OF PAYMENT. Subject to the terms of the Plan and any applicable Invitation, payments to be made by the Company upon the exercise or settlement of an Option, Performance Right, Performance Share and Award may be made in such forms as the Board shall determine, including, without limitation, cash, Shares, other Invitations or other property, and may be made in a single payment or transfer, in installments, or on a deferred basis. Any installment or deferral provided for in the preceding sentence shall, however, be subject to the Company's compliance with the provisions of the Sarbanes-Oxley Act of 2002, the rules and regulations adopted by the Securities and Exchange Commission thereunder, and all applicable rules of the New York Stock Exchange or any national securities exchange on which the Company's securities are listed for trading and, if not listed for trading on either the New York Stock Exchange or a national securities exchange, then the rules of the Nasdaq Stock Market. The settlement of any Option, Performance Right, Performance Share and Award may be accelerated, and cash paid in lieu of Shares in connection with such settlement, in the discretion of the Board or upon occurrence of one or more specified events (in addition to a Change in Control). Installment or deferred payments may be required by the Board or permitted at the election of the Executive on terms and conditions established by the Board. Payments may include, without limitation, provisions for the payment or crediting of a reasonable interest rate on installment or deferred payments or the grant or crediting of Dividend Equivalents or other amounts in respect of installment or deferred payments denominated in Shares.
- (d) EXEMPTIONS FROM SECTION 16(B) LIABILITY. It is the intent of the Company that the grant of any Options, Performance Rights, Performance Shares and Awards to (and/or any other transactions pursuant to the Plan with) an Executive who is subject to Section 16 of the U.S. Exchange Act, shall be exempt from Section 16 pursuant to an applicable exemption (except for transactions acknowledged in writing to be non-exempt by such Executive). Accordingly, if any provision of this Plan or any Invitation does not comply with the requirements of Rule 16b-3 then applicable to any such transaction, such provision shall be construed or deemed amended to the extent necessary to conform to the applicable requirements of Rule 16b-3 so that such Executive shall avoid liability under Section 16(b).
- (e) U.S. REVENUE CODE SECTION 409A. If and to the extent that the Board believes that the Plan and/or any Invitations for Options, Performance Rights, Performance Shares and Awards may constitute a "nonqualified deferred compensation plan" under Section 409A of the U.S. Revenue Code, the terms and conditions set forth in the Award Agreement for that Award shall be drafted in a manner that is

intended to comply with, and those provisions (and /or the provisions of the Plan applicable thereto) shall be interpreted in a manner consistent with, the applicable requirements of Section 409A of the U.S. Revenue Code, and the Board, in its sole discretion and without the consent of any U.S. Executive, may amend any Award Agreement (and the provisions of the Plan applicable thereto) if and to the extent that the Board determines necessary or appropriate to comply with the applicable requirements of Section 409A of the U.S. Revenue Code.

(f) U.S. REVENUE CODE SECTION 162(M) PROVISIONS.

- (i) Covered Employees. The Committee, in its discretion, may determine at the time an Option, Performance Right, Performance Share or Award is granted to an Executive who is, or is likely to be, as of the end of the tax year in which the Company would claim a tax deduction in connection with such Option, Performance Right, Performance Share or Award, a "Covered Employee," that the provisions of this Section 6.1(e) shall be applicable to such Option, Performance Right, Performance Share or Award.
- (ii) Performance Criteria. If an Option, Performance Right, Performance Share or Award is subject to this Section 6.1(e), then the lapsing of restrictions thereon and the distribution of cash, Shares or other property pursuant thereto, as applicable, shall be contingent upon achievement of one or more objective performance goals. Performance goals shall be objective and shall otherwise meet the requirements of Section 162(m) of the U.S. Revenue Code and regulations thereunder including the requirement that the level or levels of performance targeted by the Committee result in the achievement of performance goals being "substantially uncertain." One or more of the following business criteria for the Company, on a consolidated basis, or for business or geographical units of the Company (except with respect to the total shareholder return and earnings per share criteria), shall be used by the Committee in establishing performance goals for such Options, Performance Rights, Performance Shares and Awards: (1) earnings per share; (2) revenues or margins; (3) cash flow; (4) operating margin; (5) return on net assets, investment, capital, or equity; (6) economic value added; (7) direct contribution; (8) net income; pretax earnings; earnings before interest and taxes; earnings before interest, taxes, depreciation and amortization; earnings after interest expense and before extraordinary or special items; operating income; income before interest income or expense, unusual items and income taxes, local, state or federal and excluding budgeted and actual bonuses which might be paid under any ongoing bonus plans of the Company; (9) working capital; (10) management of fixed costs or variable costs; (11) identification or consummation of investment opportunities or completion of specified projects in accordance with corporate business plans, including strategic mergers, acquisitions or divestitures; (12) total shareholder

return; (13) debt reduction; (14) market share; (15) entry into new markets, either geographically or by business unit; (16) customer retention and satisfaction; (17) strategic plan development and implementation, including turnaround plans; (18) and/or the Fair Market Value of a Share. Any of the above goals may be determined on an absolute or relative basis or as compared to the performance of a published or special index deemed applicable by the Committee including, but not limited to, the Standard & Poor's 500 Stock Index or a group of companies that are comparable to the Company. The Committee shall exclude the impact of an event or occurrence which the Committee determines should appropriately be excluded, including without limitation (i) restructurings, discontinued operations, extraordinary items, and other unusual or non-recurring charges, (ii) an event either not directly related to the operations of the Company or not within the reasonable control of the Company's management, or (iii) a change in accounting standards required by generally accepted accounting principles.

- (iii) Performance Period; Timing For Establishing Performance Goals. Achievement of performance goals in respect of Performance Awards shall be measured over a Performance Period no shorter than 12 months and no longer than five years, as specified by the Committee. Performance goals shall be established not later than 90 days after the beginning of any Performance Period applicable to such Performance Awards, or at such other date as may be required or permitted for "performance-based compensation" under U.S. Revenue Code Section 162(m).
- (iv) Adjustments. The Committee may, in its discretion, reduce the amount of a settlement otherwise to be made in connection with Options, Performance Rights, Performance Shares or Awards subject to this Section 8, but may not exercise discretion to increase any such amount payable to a Covered Employee in respect of an Option, Performance Right, Performance Share or Award subject to this Section 6.1(e). The Committee shall specify the circumstances in which such Awards shall be paid or forfeited in the event of termination of the Executive's employment prior to the end of a Performance Period or exercise or settlement of Options, Performance Rights, Performance Shares or Awards.
- (v) Committee Certification. No Executive shall receive any payment under the Plan that is subject to this Section 6.1(e) unless the Committee has certified, by resolution or other appropriate action in writing, that the performance criteria and any other material terms previously established by the Committee or set forth in the Plan, have been satisfied to the extent necessary to qualify as "performance based compensation" under U.S. Revenue Code Section 162(m).

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JAMES HARDIE INDUSTRIES NV

ARBN 097 829 895

Incorporated in The Netherlands with corporate seat in Amsterdam. The liability of members is limited.

JAMES HARDIE INDUSTRIES N.V.

2005 MANAGING BOARD TRANSITIONAL STOCK OPTION PLAN

1. PURPOSE, DEFINITIONS AND INTERPRETATION

1.1 This Plan sets forth the rules agreed between the Company and the holders of Options regarding the Options issued pursuant to this Plan.

1.2 In this Plan, the following words and expressions have the meanings indicated unless the contrary intention appears:

APPLICABLE REGULATIONS means the listing requirements imposed by any exchange or trading system upon which the Company's securities trade and any law or regulation that applies to the operation of the Plan.

ARTICLES means the articles of association of the Company.

ASX means Australian Stock Exchange Limited or the stock market conducted by it, as the context requires.

ASTC SETTLEMENT RULES means the settlement rules of ASX Settlement and Transfer Corporation Pty Limited (ACN 008 504 532).

BOARD means the supervisory board of the Company.

BUSINESS DAY means a day which is a trading day on ASX.

CHANGE IN CONTROL means:

- (a) a person obtains Voting Power in the Company of at least 30% pursuant to a takeover bid for all or a proportion of all of the voting shares of the Company which is or becomes unconditional;
- (b) a scheme of arrangement or other merger proposal in relation to the Company becomes binding on the holders of all of the voting shares of the Company and by reason of such scheme or proposal a person obtains Voting Power in the Company of at least 30%; or
- (c) a person becomes beneficial owner of at least 30% of the voting shares of the Company on issue other than under (a) or (b).

COMPANY means James Hardie Industries N.V., with corporate seat at Amsterdam, The Netherlands.

CUF means a Chess Unit of Foreign Securities (which has the meaning given by the ASTC Settlement Rules) in respect of an Ordinary Share.

EXERCISE PRICE means the closing price of CUFS on ASX on the Issue Date, as adjusted in accordance with Section 5 in respect of Ordinary Shares.

FAMILY MEMBER means the spouse or a child of a Participant.

FIFTH ANNIVERSARY means the day falling five years from the Issue Date or, if that day is not a Business Day, the next succeeding Business Day.

GROUP means the Company and its subsidiaries as defined in the Corporations Act 2001.

ISSUE DATE means the date upon which an Option is issued to a Participant under the Plan.

JUST CAUSE DISMISSAL means a termination of a Participant's employment (including deemed employment under Section 4.11) for cause under the terms of the Participant's employment agreement, or for any of the following reasons:

- (a) the Participant violates any reasonable rule or regulation of the Company or the Participant's superiors, including the Board, and that violation:
 - (i) results in damage to the Company; or
 - (ii) has not ceased within such reasonable time as the Company may specify by written notice to the Participant;
- (b) any willful misconduct or gross negligence by the Participant in the responsibilities assigned to him or her;
- (c) any willful failure to perform his or her job;
- (d) any wrongful conduct of a Participant which has an adverse impact on the Company or which constitutes fraud, embezzlement or dishonesty;
- (e) the Participant's performing services for any other person or entity which competes with the Company while he or she is employed by the Company without the written approval of the Chief Executive Officer of the Company, or, in the case of the Chief Executive Officer, the Board; or
- (f) any other conduct that the Board determines constitutes Just Cause for Dismissal; provided, however, that if the term has been defined in an employment agreement between the Company and the Participant, then Just Cause Dismissal shall have the definition set forth in such employment agreement.

The foregoing definition shall not in any way preclude or restrict the right of the Company to discharge or dismiss any Participant or other person in the service of the Company for any other acts or omissions, but such other acts or omission shall not be deemed, for purposes of this Plan, to constitute grounds for Just Cause Dismissal.

LISTING RULES means the Listing Rules of ASX.

MEDIAN TSR means the middle value of the series comprising the TSR for each company comprising the Peer Group for the Performance Period.

NOMINEE means a Family Member or company nominated by a Participant for an issue or transfer of Ordinary Share under Section 3.1.

OPTION means an option granted under this Plan to subscribe for or purchase an Ordinary Share at the Exercise Price.

ORDINARY SHARES means ordinary shares in the capital of the Company.

PARTICIPANT means a member of the managing board of directors of the Company and a former member of the managing board of directors of the Company to whom Section 4.11 applies.

PEER GROUP means the companies in the Peer Group Index or, if any of the S&P/ASX 200 Index, the 200 Financials Index or the 200 Property Trust index is not published, such other comparable companies as the Board may determine in its sole discretion, but always excluding the Company.

PEER GROUP INDEX means the companies listed in the S&P/ASX 200 Index at the start of the Performance Period, excluding the companies listed in the 200 Financials and 200 Property Trust indices and companies which cease to be included in the S&P/ASX 200 Index during the Performance Period.

PERFORMANCE PERIOD means the period of time between the Issue Date and the date on which the Vesting Criteria are applied to determine if an Option has vested under Section 4.3 or 4.4.

PERMANENT DISABILITY means, in respect of a Participant:

- (a) the inability of the Participant to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of twelve months or more; or
- (b) if the words "Permanent Disability" are given a particular meaning in the Participant's employment agreement, the same as those words do in that that agreement.

PLAN means this 2005 Managing Board Transitional Stock Option Plan.

RECORD DATE has the meaning given under the Listing Rules.

TENTH ANNIVERSARY means the day falling ten years from the Issue Date or, if that day is not a Business Day, the next succeeding Business Day.

THIRD ANNIVERSARY means the day falling three years from the Issue Date or, if that day is not a Business Day, the next succeeding Business Day.

TSR means, in respect of a company, Total Shareholder Returns (including dividends and other distributions) of such company for the Performance Period, as calculated in accordance with the procedure set out in Schedule A to these Rules.

TSR RANKING means the percentile ranking of the Company amongst the Peer Group, where the Company and each company in the Peer Group are ranked in ascending order according to their TSR for the Performance Period so that company with the highest TSR for the Performance Period is at the 100th percentile (being the percentage of companies in the Peer Group above which the Company ranks on this basis).

VOTING POWER has the same meaning as is given to that term in the Corporations Act 2001.

- 1.3 Where any calculation or adjustment made under this Plan produces a fraction of a cent or a share, the fraction must be eliminated by rounding to the nearest whole number favourable to an Option holder or its designee.
- 1.4 Words denoting the singular number only shall include the plural number and vice versa.
- 1.5 Headings have been inserted for ease of reference only and shall not affect the interpretation of this Plan.
- 1.6 Subject to Section 5, the number of Ordinary Shares that may be issued and outstanding or subject to outstanding Options under this Plan shall not exceed 1,380,000.
- 2. GRANT OF OPTIONS
 - 2.1 Subject to the express provisions of this Plan, the Board may, from time to time in its discretion, grant each Participant Options. The number of Options granted to each Participant hereunder, if any, will be determined by the Board based upon, among other matters, a Participant's specific position and responsibilities, grants to other senior executives in the Group, and such other factors as the Board may deem appropriate. Each Option shall be subject to the terms and conditions of this Plan and such other terms and conditions established by the Board as are not inconsistent with the provisions of the Plan. Options may be granted from time to time by the Board, provided that all Option grants shall be made during one of the Company's four open trading windows each year when the Company does not have any material non-public information.
 - 2.2 Upon grant of an Option, the Company must deliver to the Option holder a certificate or other written statement evidencing the Option and setting out the terms of its issue and the rights of the Option holder under this Plan.
 - 2.3 Unless a Participant has agreed in writing to receive an Option before the Issue Date for the Option, the Participant may, within 10 days of the Issue Date of an Option, or such other period as may be specified in the certificate given to the Participant pursuant to Section 2.2, disclaim his or her rights and entitlements in respect of that Option by written notice to the Company. If a Participant gives the Company notice in respect of an Option under this

Section 2.3, the Option is deemed not to have been granted to the Participant. If the Participant does not give the Company notice in respect of an Option under this Section 2.3, the Participant is deemed to have accepted the grant of the Option with effect from the Issue Date.

3. ENTITLEMENT

- 3.1 Subject to Section 3.2, each Option entitles the holder, upon exercise, to be issued or, subject to any Applicable Regulations, transferred, one Ordinary Share (newly issued or existing), credited as fully paid, or, at the Option holder's request and subject to any Applicable Regulations, to have issued or transferred to a Nominee, one Ordinary Share (newly issued or existing), credited as fully paid.
- 3.2 The Option grant, the certificate provided to an Option holder under Section 2.2, or other written agreement with an Option holder in respect of an Option may provide that the Option entitles the holder upon exercise to be issued (but not transferred) one Ordinary Share credited as fully paid or, at the Option holder's request and subject to Applicable Regulations, to have one Ordinary Share issued (but not transferred) to a Nominee.
- 3.3 Ordinary Shares issued or transferred on the exercise of Options will rank pari passu with all existing Ordinary Shares from the date of issue or transfer.
- 3.4 The Company must, in the case of newly issued Ordinary Shares, promptly make application for official quotation by the ASX of all Ordinary Shares issued on the exercise of Options.

4. EXERCISE OF OPTIONS

- 4.1 An Option that has vested under Section 4.3 or 4.4 is exercisable by the holder delivering to the Company's Secretary, or assignee:
- (a) a notice in the form of the notice in Schedule B (or such other form as the Board may, in its discretion approve for the purpose of this Section 4.1(a)) addressed to the Company and signed by the Option holder stating the number of Options which are to be exercised;
 - (b) if required by Dutch law, a notification form for purposes of the insider trading notification to the Dutch Securities Board; and
 - (c) payment to the Company in cleared funds of the Exercise Price applicable to all of the Options specified to be exercised.
- 4.2 If the items listed in Section 4.1 are delivered in accordance with that Section, the Company must issue, or, as applicable, transfer, an Ordinary Share (newly issued or existing, as applicable) to the Option holder or, subject to Section 3.1, his or her Nominee, as soon as practicable after the date on which the Option is exercised. Subject to the Listing Rules, if an Option holder requests that he or she or (subject to any Applicable Regulations) his or her Nominee, is allocated a CUF in respect of the Ordinary Share issued, or, as applicable, transferred, to the Option holder or his or her Nominee on the exercise of an Option, the Company will do everything practicable to promptly facilitate the issue, or, as applicable, transfer, of a CUF to the Option holder or his or her Nominee, as applicable, in respect of that Ordinary Share.
- 4.3 On the Third Anniversary of the Issue Date, Options granted hereunder shall vest in accordance with the following criteria (the "VESTING CRITERIA"):
- (a) 50% of the Options shall vest if the Company's TSR Ranking is equal to or above the Median TSR; and
 - (b) an additional 2% of Options shall vest for each 1% increment that the Company's TSR Ranking is above the Median TSR (e.g., if the Company's TSR Ranking is 4%

above the Median TSR, then 58% of the Options shall vest; if the Company's TSR Ranking is 25% above the Median TSR, then 100% of the Options shall vest);

- 4.4 If any Options remain unvested on the last Business Day of each six month period following the Third Anniversary and before the Fifth Anniversary, the Company will reapply the Vesting Criteria to those Options on that Business Day, and those Options shall vest on that Business Day according to the Vesting Criteria as applied on that date. If the last Business Day of the fourth consecutive six month period following the Third Anniversary is after the Fifth Anniversary, the Company will reapply the Vesting Criteria on the last Business Day immediately preceding the Fifth Anniversary. The Vesting Criteria will be applied on the basis that the number of Options that vest is the number determined by applying the Vesting Criteria to the total number of vested and unvested Options in that tranche and then deducting the number of Options that have previously vested. For the avoidance of doubt, if an Option vests under Section 4.3 or this Section 4.4, the Option will not become unvested as a result of any subsequent application of the Vesting Criteria under this Section 4.4. Any Options that do not vest before the Fifth Anniversary, shall immediately expire and become unexercisable on the Fifth Anniversary. For the sake of clarity, by way of example, see Schedule C hereto.
- 4.5 Subject to Section 4.10, if a Participant's employment with the Company ceases for any reason, then all of such Participant's unvested Options granted hereunder shall immediately expire and become unexercisable as of the date of such cessation of service.
- 4.6 If a Participant's employment ceases for any reason, then all of such Participant's vested Options granted hereunder shall be treated in accordance with this Section 4.6:
- (a) Termination for Cause. Except as otherwise provided by the Board, in the event of a Just Cause Dismissal of a Participant, all of the outstanding vested Options granted to such Participant shall expire and become unexercisable as of the date of such Just Cause Dismissal.
 - (b) Termination Other Than For Cause. Subject to Section 4.6(a) above, and except as otherwise provided by the Board, in the event a Participant's cessation of service to the Company is due to:
 - (i) any reason other than Just Cause Dismissal, death, Permanent Disability or retirement, all of the outstanding vested Options granted to the Participant shall expire and become unexercisable as of the earlier of:
 - (A) the date such Options would expire in accordance with their terms if the Participant had remained employed by the Company; or
 - (B) 18 months after the Participant's employment by the Company is terminated.
 - (ii) Death or Permanent Disability. All of the outstanding vested Options granted to the Participant shall expire and become unexercisable as of the earlier of:
 - (A) the date such Options would expire in accordance with their terms if the Participant had remained in service; or
 - (B) 24 months after the date of death or termination.
 - (iii) Retirement. All of the outstanding, vested Options granted to the Participant shall expire and become unexercisable as of the earlier of:
 - (A) the date such Options expire in accordance with their terms; or
 - (B) 24 months after the date of retirement.
- 4.7 If a Participant dies after an Option has vested and before it has expired or become unexercisable, with the approval of Board, in its absolute discretion, the Option may (but only at a time permitted by the approval and in accordance with any conditions specified in the approval) be exercised by the legal personal representative of the Participant in accordance with Section 4.1, and to the extent necessary for this to occur, the Option may be transferred to the legal personal representative.

- 4.8 Unless the Board provides otherwise in the Option grant or in a written agreement, and subject to any Applicable Regulations, in the event of a Change in Control, the Board shall provide that all Options either:
- (a) vest in full upon the Change in Control and terminate at the end of the period determined by the Board for the purpose of this Section 4.8(a);
 - (b) are assumed or continued in effect in connection with the Change in Control transaction;
 - (c) are cashed out for an amount equal to the deal consideration per share less the Exercise Price; or
 - (d) are substituted for similar awards of the surviving corporation.

Subject to the Listing Rules, each Option that is assumed or otherwise continued in effect in connection with a Change in Control shall, if deemed necessary by the Board, be appropriately adjusted, immediately after such Change in Control, to apply to the number and class of securities which would have been issuable or transferable to an Option holder in consummation of such Change in Control had the Option been exercised immediately prior to such Change in Control. Appropriate adjustments to reflect such Change in Control shall, if deemed necessary by the Board, also be made to the Exercise Price for each outstanding Option, provided the aggregate of the Exercise Prices for all outstanding Options shall remain the same. To the extent the holders of Ordinary Shares receive cash consideration in whole or part for their Ordinary Shares in consummation of the Change in Control, the successor corporation may, in connection with the assumption of the outstanding Options, substitute one or more shares of its own common stock, or the equivalent thereof, with a fair market value equivalent to the cash consideration paid per share of Ordinary Share in such Change in Control transaction.

- 4.9 Subject to Sections 4.5 and 4.6, all Options shall expire on the earlier to occur of:
- (a) in the case of Options which do not vest by the Fifth Anniversary under Section 4.3, 4.4 or 4.8(a), on the Fifth Anniversary; and
 - (b) in the case of Options which vest by the Fifth Anniversary under Section 4.3, 4.4 or 4.8(a), on the Tenth Anniversary.
- 4.10 If a Participant ceases employment with the Company, or gives notice of their intention to cease employment with the Company, the Supervisory Board may in its absolute discretion (on any conditions which it thinks fit) decide that some or all of the unvested Options held by the Participant do not lapse under Section 4.5, but lapse at the time and subject to the conditions it may specify by notice to the Participant, which may include one or more of the following:
- (a) that the Performance Period of an Option is reduced to a period shorter than that specified in Section 4.3 or 4.4;
 - (b) that the Vesting Criteria applicable to an Option be waived; and
 - (c) that an Option which vests in accordance with the terms and conditions specified in the notice may be exercised within the period specified in Section 4.6 or any shorter period specified in the notice.

4.11 If:

- (a) a Participant's employment agreement provides that the Participant will commence as a consultant to a Group company on ceasing employment with the Company; and
- (b) on ceasing employment with the Company, the Participant commences as a consultant to a Group company in accordance with that agreement,

then:

- (c) the Participant is deemed to continue as an employee of the Company for the purpose of this Plan; and
- (d) the Participant will cease to be an employee for the purpose of this Plan when the Participant ceases to be a consultant to that Group company.

5. ANTI-DILUTION PROVISIONS

5.1 PARTICIPATION IN NEW ISSUES

An Option holder may, to the extent his or her Option has vested and can otherwise be exercised, participate in new issues of securities of the Company to holders of Ordinary Shares if the Option is exercised before the record date for determining entitlements to the issue. The Company must give 7 Business Days' notice of any new issue to the holder before the record date for determining entitlements to the issue in accordance with the Listing Rules, so as to permit the holder to exercise any Option which, on its terms, may be exercised before that record date. An Option holder has no right to participate in new issues of securities of the Company to holders of Ordinary Shares in respect of an Option which has not been exercised before the Record Date for determining entitlements to the issue.

5.2 BONUS ISSUES

If:

- (a) the Company makes a bonus issue of shares or other securities pro rata to holders of Ordinary Shares; and
- (b) an Option has not yet vested or can otherwise not be exercised before the Record Date for determining entitlements to the bonus issue,

then:

- (c) the number of securities over which that Option is exercisable is increased by the number of securities which the Option holder would have received if the Option had been exercised before the Record Date for the bonus issue.

5.3 RIGHTS ISSUES

If:

- (a) the Company makes pro rata issue to the holders of Ordinary Shares (other than a pro rata issue to the holders of Ordinary Shares for which no consideration is payable by them); and
- (b) an Option has not yet vested or can otherwise not be exercised before the Record Date for determining entitlements to the rights issue,

then:

- (c) the Exercise Price will be the greater of the Exercise Price applying before the pro rata issue and the amount calculated as:

$$O' = O - \frac{E[P - (S+D)]}{N + 1}$$

O' = the new exercise price of the option.

O = the old exercise price of the option.

E = the number of underlying securities into which one option is exercisable.

NOTE: E is one unless the number has changed because of a bonus issue.

P = the average market price (as defined in the Listing Rules) per security (weighted by reference to volume) of the underlying securities during the five (5) trading days ending on the day before the ex rights date or ex entitlements date.

S = the subscription price for a security under the pro rata issue.

D = the dividend due but not yet paid on the existing underlying securities (except those to be issued under the pro rata issue).

N = the number of securities with rights or entitlements that must be held to receive a right to one new security.

5.4 CONSOLIDATION OF CAPITAL

Where prior to the expiration of an Option the Company consolidates its Ordinary Shares, the number of Options is consolidated in the same ratio as the Ordinary Shares are consolidated, and the Exercise Price is amended in inverse proportion to the ratio in which the Ordinary Shares are consolidated.

5.5 SUBDIVISION OF CAPITAL

Where prior to the expiration of an Option the Company subdivides its Ordinary Shares, the number of Options is subdivided in the same ratio as the Ordinary Shares are subdivided, and the Exercise Price is amended in inverse proportion to the ratio in which the Ordinary Shares are subdivided.

5.6 RETURN OF CAPITAL

Where prior to the expiration of an Option the Company returns issued capital to holders of Ordinary Shares, the Exercise Price of each Option is reduced by the same amount as the amount returned in relation to each Ordinary Share.

5.7 REDUCTION OF CAPITAL BY CANCELLATION

Where prior to the expiration of an Option the Company reduces its issued capital by a cancellation of paid up capital that is lost or not represented by available assets and where no Ordinary Shares are cancelled, the number of Options and the Exercise Price of each Option remain unaltered.

5.8 PRO-RATA CANCELLATION OF CAPITAL

Where prior to the expiration of an Option the Company cancels Ordinary Shares on a pro-rata basis, the number of Options is reduced in the same ratio as the Ordinary Shares are cancelled, and the Exercise Price of each Option is amended in inverse proportion to the ratio in which the Ordinary Shares are cancelled.

5.9 OTHER REORGANISATIONS OF CAPITAL

Where prior to the expiration of an Option the Company reorganises its issued capital in a manner that is not referred to in Sections 5.4 to 5.8, the number of Options, or the Exercise Price of those Options, or both, must be reorganised so that the Option holder does not receive a benefit that holders of Ordinary Shares do not receive. This Section 5.9 does not prevent a rounding up of the number of Ordinary Shares the Holder may receive on exercise of an Option if the rounding up is approved at the meeting of Ordinary Share holders which approves the reorganisation.

5.10 LISTING RULES

If the Company is listed, each amendment contemplated by the provisions of this Section 5 is subject to its being consistent with the Listing Rules. The rights of a Participant will be changed to the extent necessary to comply with the Listing Rules applying to a reorganisation of capital at the time of the reorganisation.

6. MISCELLANEOUS

6.1 The Company must send to the holder of Options all reports and accounts required to be laid before a general meeting of the Company, and all notices of general meetings of shareholders, as if the Option holder was the holder of an Ordinary Share.

6.2 If Options are exercised simultaneously, then the holder may aggregate the number of Ordinary Shares or fractions of Ordinary Shares or other securities to which the holder is entitled to subscribe under those Options. Fractions in the aggregate number only will be disregarded in determining the total entitlement to subscribe.

- 6.4 In spite of anything else in this Plan, the exercise of Options, the issue, or, as applicable, transfer, of Ordinary Shares to and/or the acquisition of CUFS by an Option holder or his or her Nominee, and the disposal of the resulting Ordinary Shares and/or CUFS is subject to:
- (a) insider trading rules and securities offering rules imposed by law; and
 - (b) the securities transactions rules to which the Company and each Participant has agreed.
- 6.5 Subject to Section 4.7, Options are not transferable.
- 6.6 Any power or discretion which is conferred on the Board by the terms of the Plan or an Option may be delegated by the Board to a committee consisting of those Directors, other officers, employees of the Company (or any combination of people who hold any of these positions) as the Board thinks fit.
7. NOTICES
- 7.1 The Company must give notices to Option holders in the manner prescribed by the Articles for the giving of notices to holders of Ordinary Shares. For this purpose the provisions of the Articles prescribing the manner for giving notices to holders of Ordinary Shares apply, with all necessary modifications, to giving notices to Option holders.
- 7.2 Whenever adjustments are made to:
- (a) the Exercise Price for an Option;
 - (b) the number of Options held by an Option holder;
 - (c) the entitlement to Ordinary Shares on exercise of Options; or
 - (d) this Plan,
- then the Company must give notice of the adjustment to each Option holder.
8. SHAREHOLDER APPROVAL
- If any Applicable Regulations require the approval of holders of Ordinary Shares of the grant of Options to a Participant, no Options will be granted to the Participant before that approval is obtained in accordance with the Applicable Regulations.
9. AMENDMENTS; INTERPRETATION
- 9.1 This Plan is effective from its approval by the Company's shareholders to 31 December 2006, unless terminated by the Board prior to that date, whereupon the Plan will terminate automatically. The Board may, insofar as permitted by law, from time to time suspend or terminate the Plan. No Options may be granted during any suspension of this Plan or after its termination. Any Option outstanding after the termination of the Plan shall remain in effect until such Option has been exercised or expires in accordance with its terms and the terms of the Plan. The Board may, insofar as permitted by any Applicable Regulations, from time to time revise or amend the Plan in any respect except that, unless required to comply with any Applicable Regulations, no such amendment shall adversely affect any rights or obligations of an Option holder under any outstanding Option previously granted under the Plan without the consent of such Option holder. Amendments shall be subject to approval by a general meeting of the Company to the extent such approval is required to comply with any Applicable Regulations.
- 9.2 Subject to the express provisions of the Plan, the Board has the authority to interpret the Plan and any documents used to evidence Options, to determine the terms and conditions of Options and to make all other determinations necessary or advisable for the administration of

the Plan. All interpretations, determinations and actions by the Board shall be final, conclusive and binding upon all parties. The Board has authority to prescribe, amend and rescind rules and regulations relating to the Plan.

9.3 Subject to any Applicable Regulations, the Board may make any modifications to the terms and conditions of an outstanding Option provided that the resultant provisions are permissible under the Plan and the consent of the Option holder shall be obtained if the amendment will materially and adversely affect his or her rights under the Option.

9.4 The Plan shall be binding upon the successors and assigns of the Company.

SCHEDULE A

CALCULATION OF TSR

The TSR for each company in the Peer Group over the Performance Period shall be calculated in accordance with the following procedure:

<TABLE>

<CAPTION>

	Explanation -----	Example -----
<S>	<C>	<C>
Step 1	Calculate the average daily closing price of an ordinary share of a company over the 5 days immediately preceding the end of the Performance Period.	Suppose average closing price at end of Performance Period is \$9.00.
Step 2	Work out the average daily closing price of an ordinary share of a company over the 5 days immediately preceding the start of the Performance Period.	Suppose average closing price at start of Performance Period is \$6.00.
Step 3	Divide the result from Step 1 by the result from Step 2.	$9.00 / 6.00 = 1.50$

		YEAR	PRICE	DIVIDEND	DIVIDEND YIELD
		----	----	-----	-----
Step 4	Divide each dividend (including all cash payments for capital reductions, special dividends etc) paid on an ordinary share of the same company during the Performance Period by the price of an ordinary share of the same company on the date of payment of the respective dividend. Each of these amounts is the "dividend yield".	1	6.50	12.0 cents	1.8462%
		2	7.50	12.0 cents	1.6000%
		3	8.50	12.0 cents	1.4118%

	YEAR	RESULT
	----	-----
Step 5	1	1.018462
	2	1.016000
	3	1.014118

Step 6 Multiply each of the results in Step 5 together. $1.018462 \times 1.016000 \times 1.014118 = 1.049365$

Step 7 Multiply the result from Step 3 by the result from Step 6. $1.50 \times 1.049365 = 1.574048$

Step 8 Subtract 1.0 from the result from Step 7. $1.574048 - 1.00 = 0.574048$

Step 9 Multiply the result from Step 8 by 100. $0.574048 \times 100 = 57.4048\%$

</TABLE>

SCHEDULE B

NOTICE OF EXERCISE FOR NONQUALIFIED STOCK OPTION

Date: _____

To: James Hardie Stock Plan Administrator

James Hardie Industries N.V. (ACN 000 009 263)

26300 La Alameda, Suite 100 e-mail: stock.options@jameshardie.com

Mission Viejo, California 92691 USA FAX: 1-949-348-4579

Notice is hereby given that I elect to purchase _____ shares of common stock, represented by CHESS Units of Foreign Securities, or "CUFS" (the "Shares") pursuant to the stock option (option grant number _____) granted to me on _____ with an exercise price of A\$_____ per share (the "Option").

I understand that James Hardie Industries N.V. (the "Company") is not obligated to issue or transfer any Shares unless I have paid the total exercise price for the Shares and all tax withholding requirements as may be applicable with respect to the exercise of the Option and issuance of the Shares, which consists of:

COMPLETE ONE OR MORE AS APPLICABLE

<TABLE>
<CAPTION>

EXERCISE PRICE	WITHHOLDING TAX
[]	[]
[]	[]
[]	[]

<S>	<C>	<C>
[]	[]	A direct deposit in Australian dollars into the Company's bank account maintained at ANZ Bank, Pitt Street, Sydney, NSW, Australia; BSB 012 003; Account 8372 04785
[]	[]	A direct deposit in US dollars into the Company's bank account maintained at Wells Fargo Bank, Los Angeles, CA, USA; ABA 121000248; Account XXXXXXXX
[]	[]	If acceptable to Goldman Sachs JBWere Equity Finance Pty Ltd, I request it provide me with a recourse loan for the amount due in order to exercise my stock options. I authorize Goldman Sachs JBWere Equity Finance Pty Ltd to repay the loan from the proceeds of the immediate sale at market of the exercised shares less brokerage and interest fees. (This requires immediate sale of shares after exercise at market price. See the attached Form B for details required to sell these shares.)

</TABLE>

Please instruct the company register to issue the CUFS holding statement (in lieu of a share certificate) in my name as designated below. I hereby acknowledge that, to the extent I am an "affiliate" of the Company (as that term is defined in Rule 144 promulgated under the Securities Act of 1933, as amended) or to the extent that the Shares have not been registered under the Securities Act of 1933, as amended, or applicable state securities laws,

the Shares are subject to, and the certificates representing the Shares (or holding statements for the CUFS) may, in the Company's discretion, be legended to reflect, certain trading restrictions under applicable securities laws (including particularly the Securities and Exchange Commission's Rule 144), and I hereby agree to comply with all such restrictions and to execute such documents or take such other actions as the Company may require in connection with such restrictions.

I confirm that I do not possess any Insider Information as such term is defined in the Company's Insider Trading Policy.

I acknowledge that I understand that this Option is a Nonqualified Stock Option, meaning that it is not eligible for United States tax deferral, and accordingly that if I am subject to taxation in the United States, I will owe taxes on the difference between the Option exercise price and the Company's stock price on the date of exercise, and I must pay over to the Company an amount required to satisfy withholding tax obligations on the date of this Option exercise.

I agree to provide to the Company such additional documents or information as may be required pursuant to the Company's 2005 Managing Board Transitional Stock Option Plan.

EXECUTED this ____ day of _____, 200__

OPTIONEE:

----- Signature	----- Home Street Address
----- Print or Type Name	----- City/State/ZIP
----- Social Security or Other Identification Number	----- Country

FORM B

NOTICE OF IMMEDIATE SALE OF SHARES (CUFS) AFTER EXERCISE OF OPTIONS

To: Donna Gulbin - donna.gulbin@gsjbw.com
Cc: Corporate Secretary
Date: _____

From: Cathy McCutcheon as agent for James Hardie Industries NV 2005 Managing Board Transitional Stock Option Plan (Phone: 1-949-348-4408; fax 1-949-348-4579; e-mail: Cathy.Mccutcheon@jameshardie.com)

SUBJECT: Confirmation of James Hardie Industries NV CUFS sale order placed today.

<TABLE>
<S>

<C>
To be completed by employee selling Shares:

Full Name: _____

Home Address (in full):
Street _____
City/State/Zip code _____
Country _____

Security Holder Reference Number (SRN) - if available

Number of Shares being exercised (as a number and spelled out)

Exercise Price (AUD\$)

Date Options vested

Number of Shares being SOLD (as a number and spelled out)

ASX price limits in AUD (if any)

Note: you can only set AUD price limits if you already own the shares or are using a "cash" exercise.

(ITEMS 1 & 2 TO BE COMPLETED BY PLAN ADMINISTRATOR)

SETTLEMENT INSTRUCTIONS:

GOLDMAN SACHS JBWERE PTY LTD

1. Repayment of advance in AUD to be directly credited to:

- a. Advance provided by JH:
- b. Advance provided by Goldman Sachs JBWere Equity Finance Pty Ltd:

1. Sale proceeds to be directed as follows for repayment of advance:

- a. AUD \$_____ to Goldman Sachs JBWere Equity Finance Pty Ltd
- b. Interest on the above loan charged at the prevailing margin lending rate for the number of days debt is outstanding with a minimum of AUD\$200.

2. USD _____ credited to: JH BUILDING PRODUCTS CORPORATE account at Wells Fargo Bank, Los Angeles, CA USA.

2. Withholding taxes (USD) - if applicable, credited directly to:

3. Direct Credit of remainder, after fees, in local currency to:

3. Remainder to seller's account after, brokerage fees, loan repayment and applicable taxes (converted to sellers nominated currency):

Name of holder of bank account: _____
bank name: _____
address: _____
ABA (BSB) # _____
account # _____
currency: _____

OPTIONEE:

</TABLE>

SCHEDULE C

VESTING UPON RETESTING

For the sake of clarity, by way of example only:

If 100,000 options were granted to a Participant and 58% (58,000) vested because the Company's TSR Ranking on the Third Anniversary was 54%, then 42,000 Options would remain unvested. If, upon retesting the Company's TSR Ranking after the Third Anniversary in accordance with Section 4.4, it is determined that the Company's TSR Ranking is 60%, then an aggregate of 70,000 Options are entitled to be vested. Accordingly, because 58,000 were already vested, an additional 12,000 Options would become vested, for a total of 70,000 Options being vested as of the retest date.

Assume that, on the next retest date, it is determined that the Company's TSR Ranking is 55%, 5% less than it was the last time the Company's TSR Ranking was tested. In this event, such retest would have no effect on the Participant's vested or unvested Options: 70,000 would remain vested and 30,000 would remain unvested.

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MULTIPLEX

Multiplex Property Services Pty Ltd
ABN: 12 086 199 242

James Hardie NZ Industrial Portfolio
Level 1, 1 Kent Street
SYDNEY NSW 2000
Telephone: 02 9241 4455 Fax: 02 9241 5522

5 January 2006
Ref: 060105 James Hardie L.doc

Josie Hui
James Hardie Australia Pty Limited
Level 3, 22 Pitt Street
Sydney NSW 2000

Dear Josie

Multiplex and James Hardie New Zealand Limited ('James Hardie')
Premises: Cnr O'Rorke and Station Street, Penrose and 44 O'Rorke Street, Penrose, New Zealand

Following our recent discussion, we confirm that the ownership of above properties changed effective 30 June 2005.

The new ownership details are as follows:

Mark Weipers
Location Group Limited
Ph. 09 3009-9543
Fax. 09 309-7483
Email reception@location.co.nz

Yours sincerely

/s/ Tamara Doohan
Tamara Doohan
Property Manager
Multiplex Property Services Pty Ltd

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New South Wales Government

James Hardie Industries N.V.
LGTD Pty Limited
The State of New South Wales

FINAL FUNDING AGREEMENT
in respect of the provision of long term
funding for compensation arrangements
for certain victims of Asbestos-related diseases
in Australia

CONFORMED COPY

ATANASKOVIC HARTNELL
LAWYERS - CORPORATE, FINANCE & TAXATION



LAWYERS

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THIS DEED is made on 1 December 2005

PARTIES

1. **James Hardie Industries N.V.** ARBN 097 829 895, a limited liability company incorporated in the Netherlands and having its registered office at Atrium, 8th floor, Strawinskyiaan 3077, 1077ZX Amsterdam, The Netherlands, (with its Australian registered office at Level 3, 22 Pitt Street, Sydney in the State of New South Wales) (**JHINV**)
2. **LGTDD Pty Limited** ABN 116 110 948, of Level 3, 22 Pitt Street, Sydney in the State of New South Wales (**the Performing Subsidiary**)
3. **The State of New South Wales (NSW Government)**

RECITALS

- A.** This deed is entered into by the Parties described above in the following context (some of the expressions used in these recitals being defined in **clause 1** of this deed):
- (a) in February 2004, the NSW Government established the Jackson Inquiry;
 - (b) in September 2004, the Jackson Inquiry found that the MRCF was, and is, underfunded in the sense that Amaca and Amaba, being two former subsidiaries of JHIL which are now owned by MRCF, will not over time have sufficient funds and other assets to meet their anticipated future liabilities:
 - (i) to sufferers of Asbestos disease as a result of exposure to Asbestos dust and fibre in Australia whilst in their employ or from products manufactured by Amaca or Amaba or otherwise from their Asbestos activities; and
 - (ii) to the relatives or estates of such sufferers,and associated costs and expense;
 - (c) in July 2004, JHINV had proposed to the Jackson Inquiry that, on certain conditions, its directors would recommend that shareholders approve the provision of additional funding to provide for the present and future liabilities of Amaca and Amaba to such sufferers of Asbestos related disease;
 - (d) the ABN 60 Foundation is the holding company of ABN 60, the former parent company of the James Hardie group, which may be alleged to

have Asbestos-related personal injury liabilities arising from its own activities and from the activities of Amaca and Amaba, and has (or had) payment obligations to Amaca and Amaba under a deed of covenant and indemnity between them dated 16 February 2001;

(e) the Jackson Inquiry found, inter alia, that:

- (i) ABN 60 (then, as JHIL, the parent company of the James Hardie group) did not have a legal obligation to provide funds to Amaca and Amaba to add to the assets of those companies on or prior to implementing the arrangements which resulted in those former subsidiaries becoming owned by the MRCF;
- (ii) some of the suggested causes of action of Amaca, Amaba or the MRCF arising out of the conduct of members of the James Hardie Group, their officers, their actuaries and various firms of solicitors were “speculative”, and that other causes of action were “perhaps not [speculative]”, but that all such causes of action were “unlikely to result in any significant increase in the funds of Amaca, Amaba or the Foundation”;
- (iii) there was “no doubt management and the Board [of what was then JHIL] were entitled to seek to achieve, if they could, separation of [JHIL] from Amaca and Amaba and thus from the shadow thought to be cast from those companies’ emerging asbestos liabilities”;

(f) the Jackson Inquiry also found, however, that:

- (i) ABN 60 was “very aware that if it were perceived as not having made adequate provision for the future asbestos liabilities of Amaca and Amaba, there would be a wave of adverse public opinion which might well result in action being taken by the Australian or State governments to legislate to make other companies in the James Hardie group liable, in addition to Amaca or Amaba” for such future asbestos liabilities;
- (ii) ABN 60’s representations at the time of establishment of the MRCF that the MRCF was “fully-funded” were misleading;
- (iii) “it was not possible, in money terms, to say that separation of Amaca and Amaba from ABN 60 or other members of the James Hardie Group directly resulted in or contributed to a possible insufficiency of assets to meet the future asbestos related liabilities of Amaca and Amaba”, but that, in practical terms, the separation was “likely to have an effect of that kind”; and
- (iv) “proposals to remove Amaca and Amaba from the Group leaving them with nothing more than their net assets had no practical

prospect of success unless it was apparent that the funds left to Amaca and Amaba were sufficient to satisfy the asbestos liabilities”, and that while “JHIL was perfectly entitled to seek a means whereby it could pursue its aims without it being perceived, rightly or wrongly, as associated with ongoing asbestos liabilities”, “to do so as a practical matter required that it make provision for the separated Amaca and Amaba to have access to the funds necessary to meet the ongoing asbestos liabilities, ie to provide the right amount, not the legal minimum of such funding”.

- (g) the Parties have recorded the findings of the Jackson Inquiry Report described in recitals (e) and (f) above, without conceding that such findings are correct in fact or law, or would necessarily be upheld if the relevant underlying facts were the subject of a final binding judgement;
- (h) following the release of the Jackson Inquiry Report, the NSW Government requested the ACTU, Unions NSW and Banton to conduct negotiations with JHINV in order to resolve the underfunding of the MRCF, and subsequently the NSW Government also took part in those negotiations;
- (i) in those negotiations, the principal objective of the Initial Negotiating Parties, for different reasons, was to achieve a binding agreement intended to ensure that, after taking into account the existing assets of the Liable Entities, sufficient funding is made available by the JHINV Group to fully compensate, on an agreed basis, all proven current and future Australian Asbestos personal injury and death Claimants against the Liable Entities;
- (j) on 21 December 2004, the Initial Negotiating Parties entered into a non-binding Heads of Agreement which set out the agreed position of the Initial Negotiating Parties in relation to the principles on which the binding agreement would be based and the key standing considerations relevant to implementing those principles to be reflected in that binding agreement;
- (k) in the Heads of Agreement, the Initial Negotiating Parties acknowledged that the funding arrangement must be affordable and bankable for the JHINV Group; that it is in the mutual interests of the Parties and Claimants that the JHINV Group remains profitable and financially viable and is able to continue to grow its business in a competitive environment, retain the support of the equity and debt markets and is able to meet all of its current and future financial commitments; and that the JHINV Group’s capital structure is sufficiently robust to support growth and withstand a recessionary environment. In this regard, it was recognised by the Initial Negotiating Parties, and is recognised by the Parties, that the JHINV Group’s commercial viability and success will

provide the basis for the long term funding of the claims which are to be subject to those funding arrangements;

- (l) the JHINV Group has asserted that it has suffered damage to business operations and sales from boycotts and other actions in relation to the distribution and sale of its products in Australia and in other places throughout the world and is or was subject to a number of threats relating to future action (including those described in Recital (m)) and sought to establish that its business operations and sales would no longer be affected by those boycotts and other actions or the threat of them;
- (m) JHINV asserts that a principal purpose of the JHINV Group in entering into this deed is to avert threats from the NSW Government, the federal government and other state and territorial governments (and perhaps governments of other countries in which the JHINV Group is, or the ABN 60 group was, active), that it or they would act, or support the NSW Government acting, to legislatively impose liability upon one or more members of the JHINV Group in relation to Asbestos-related personal injury liabilities of the Liable Entities in excess of the available assets of the Liable Entities unless James Hardie reached a voluntary settlement in relation to such liabilities, which threats were evidenced *inter alia* by:
 - (i) the announcement on 28 October, 2004 by the then Premier of New South Wales, the Hon. Robert John Carr, that the NSW Government would seek the agreement of the Ministerial Council, comprised of Ministers of the Commonwealth and the Australian States and Territories, to allow the NSW Government to pass legislation to “*wind back James Hardie’s corporate restructure and rescind the cancellation of the A\$1.9 billion in partly paid shares*”, which partly paid shares JHINV had previously held in ABN 60;
 - (ii) the announcement on 5 November, 2004 by the Federal Attorney General and the Parliamentary Secretary to the Federal Treasurer that the Ministerial Council for Corporations (“MINCO”) had unanimously agreed to “*support a negotiated settlement that will ensure that victims of asbestos-related diseases receive full and timely compensation from James Hardie*” and that if “*the current negotiations between James Hardie, the ACTU and asbestos victims do not reach an acceptable conclusion, MINCO also agreed in principle to consider options for legislative reform*”; and
 - (iii) the announcement on 21 November 2005 by the Premier of New South Wales, the Hon. Morris Iemma, that the NSW Government would, in the week following the week of that announcement,

introduce legislation to the Parliament of New South Wales to “*secure compensation for the victims of James Hardie’s asbestos products*” if JHINV did not settle the terms of a binding funding agreement with the NSW Government forthwith, and JHINV understands that, while the precise terms, enforceability and full consequences of such proposed legislation if enacted have not been made public nor disclosed to JHINV or any other member of the JHINV Group, such legislation if enacted may be likely to have a material adverse effect on the profitability, financial position or reputation of JHINV and/or other members of the JHINV Group;

- (n) the JHINV Group seeks, on a continuing basis, meaningful cost savings in the legal and administrative arrangements existing throughout Australia for making, handling and finalising claims by Asbestos disease sufferers against Amaca and Amaba, including the processes associated with third party recovery and the apportionment of damages;
- (o) on 18 November 2004, the NSW Government established the Review of Legal and Administrative Costs in Dust Diseases Compensation Claims to consider the issue of improving the efficiency with which Dust Diseases Compensation Claims are resolved. The Costs Review Inquiry Report was released on 8 March 2005 and recommended a number of key steps in the reform of the compensation system applicable for asbestos compensation claims in New South Wales. Following the release of that Report, the Cost Review Inquiry Legislation commenced on 1 July 2005. The JHINV Group considers these steps to be a material advance in achieving for the State of New South Wales what the JHINV Group seeks to achieve as referred to in recital (n), although the legislation introduced to date does not constitute complete satisfaction of those objectives, either outside or on a continuing basis within New South Wales. The NSW Government also adopted the recommendation of the Costs Review Inquiry Report to undertake a review of the reforms after data in relation to the reforms’ first 12 months of operation are available. It is important to the JHINV Group that this form of review occur (and periodically reoccur) so as to ensure that meaningful cost savings as described in the previous recital continue to be derived with respect to the making, handling and finalising of claims by Claimants against Amaca and Amaba;
- (p) on 15 April 2005, JHINV announced that, subject to the qualifications and conditions set out in the relevant announcement, it would extend the coverage of the Fund to permit members of the Baryulgil community (former asbestos mine workers and residents) to receive compensation funding from the Fund for Proven Claims against the former ABN 60 subsidiary, Marlew Mining Pty Ltd (formerly Asbestos Mines Pty Ltd). JHINV has agreed to implement that announcement on and subject to the terms of this deed; and

(q) the Fund is to be established under the laws of New South Wales as required under **clause 4.1** of the Heads of Agreement and it is a Condition that the Trustee becomes a Party to this deed prior to the Commencement Date.

B. The Parties enter into this deed:

- (a) to reflect their formal and legally binding agreement to implement the principles set out in the Heads of Agreement and the Modified Objectives, and
- (b) in particular, to record the financial obligations of JHINV and the Performing Subsidiary set out in **clauses 6** and **9** below.

TERMS OF AGREEMENT

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions apply in this deed including its Recitals unless the context requires otherwise.

ABN 60 means ABN 60 Pty Limited (ABN 60 000 009 263).

ABN 60 Foundation means ABN 60 Foundation Pty Ltd (ACN 106 266 611).

Accepted Tax Condition means each condition accepted in accordance with **clause 2.2(b)** and thereafter including any additional condition imposed (and accepted by JHINV) in accordance with **clause 6.4(a)(ii)**.

Additional Payment has the meaning given to it in **clause 9.2(a)(v)**.

Amaba means Amaba Pty Limited (ABN 98 000 387 342).

Amaca means Amaca Pty Limited (ABN 49 000 035 512).

Annual Actuarial Report means a report prepared by the Approved Actuary pursuant to **clause 14**.

Annual Contribution Amount has the meaning given in **clause 9.4**.

Annual Payment means for each year, the payment to be made pursuant to **clause 9.3**.

Appointor means each person described in **clauses 5.1** to **5.3** inclusive and **clause 16.3** who is entitled to appoint one or more Directors.

Approved Actuary means an actuarial firm which:

- (a) has been appointed in accordance with **clause 5.15** and which nominates a principal who is an approved actuary under the *Insurance Act 1973* or who has qualifications under equivalent legislation of another relevant jurisdiction;
- (b) has relevant and substantive experience and expertise in Asbestos-related liability provisioning appropriate to undertake the determination referred to in **clause 14.4**;
- (c) has no interest or duty which conflicts or may conflict with its functions as contemplated under this deed as the Approved Actuary; and
- (d) is not affiliated with the accounting firm performing the role of Approved Auditor during the term of the Approved Actuary's appointment,

or, where the circumstances set out in **clause 5.15(f)** apply, an actuarial firm determined in accordance with that clause.

Approved Auditor means the auditor of the Trustee to be appointed by the Trustee under **clause 5.12**.

Asbestos means the fibrous form of those mineral silicates that belong to the serpentine or amphibole groups of rock-forming minerals, including actinolite, amosite (brown asbestos), anthophyllite, chrysotile (white asbestos), crocidolite (blue asbestos) and tremolite.

Asbestos Liabilities means any and all liabilities of the Liable Entities in connection with Asbestos, including without limitation Personal Asbestos Claims, Marlew Claims, Claims Legal Costs, and Excluded Claims and any Liability owed by the Liable Entities to the Trustee pursuant to any indemnity in favour of, or right of reimbursement of, the Trustee arising from the Trustee paying any liability of the Liable Entities, but for the avoidance of doubt, excluding Operating Expenses and Claims Legal Costs in each case incurred but unpaid by the Trustee or the Liable Entities.

Asbestos Mining Activities has the meaning given in the Marlew Legislation.

Asbestos Support Groups means each of The Asbestos Diseases Foundation of Australia, Asbestos Diseases Society of Australia Inc, The Asbestos Victims Association of South Australia, Queensland Asbestos Related Disease Support Society, Gippsland Asbestos Related Disease Support Inc, and Asbestos Diseases Society of Victoria.

ASIC means the Australian Securities and Investments Commission.

Audited Financial Statements means, in respect of a Person and a Financial Year the audited consolidated financial statements of that Person for that Financial Year

prepared in accordance with the following generally accepted accounting principles (**GAAP**), consistently applied throughout that Financial Year:

- (a) where that Person is Listed at the time the relevant audit report is signed, the generally accepted accounting principles used in that Person's published financial reports; or
- (b) where that Person is not Listed at that time and paragraph (c) does not apply, US GAAP or such other GAAP as is commonly applied by multinational companies at that time in respect of their financial statements; or
- (c) where that Person is not Listed at that time and it and its subsidiaries operate wholly or predominantly in one jurisdiction, the generally accepted accounting principles of that jurisdiction.

Australia has the meaning given in Section 17 of the *Acts Interpretation Act 1901* (Cth), as in force with the date of this deed.

Banton means Bernie Banton of 133-7 Parramatta Road Granville, in the State of New South Wales, as the designated representative of the Asbestos Support Groups.

Board Papers means:

- (a) in relation to a Director, all Documents circulated by the Trustee to him or her acting in that capacity.
- (b) all Documents tabled at a meeting of the Directors or otherwise made or physically available to Directors at such meetings, including, without limitation, periodic board papers, submissions, minutes, letters, board committee and sub-committee papers.

Business Day means a day (not being a Saturday or a Sunday) on which banks are open for general banking business in Sydney.

Change of Tax Law means a change to the Taxation law of Australia or of a state or territory and includes:

- (a) a withdrawal of or change to a ruling by an Australian Taxation authority, or the expiry of the operation of such ruling without renewal or satisfactory substitution, if such ruling constituted the basis on which the condition referred to in **clause 2.2(b)** was fulfilled; or
- (b) any announcement by a responsible Minister of the Commonwealth or of a state or territory, or the introduction of a bill into the parliament of the Commonwealth, to effect such a change of law.

CHESS Depository Interest has the meaning given to it in the operating rules of the settlement facility operated by ASX Settlement and Transfer Corporation Pty Ltd (ACN 008 504 532).

Claimant means an individual (or legal personal representative of an individual) who makes a Personal Asbestos Claim or a Marlew Claim.

Claims Legal Costs means all costs, charges, expenses and outgoings incurred or expected to be borne by the Trustee or the Liable Entities, in respect of legal advisors, other advisors, experts, Court proceedings and other dispute resolution methods in connection with Personal Asbestos Claims and Marlew Claims but in all cases excluding any costs included as a component of calculating a Proven Claim.

Commencement Date means the date described in **clause 2.7**.

Concurrent Wrongdoer in relation to a personal injury or death claim for damages under common law or other law (disregarding any law which comes into force in breach of **clause 13** and which breach has been Notified to the NSW Government under **clause 16.5**), means a Person whose acts or omissions, together with the acts or omissions of one or more Liable Entities or Marlew or any member of the JHINV Group (whether or not together with any other Persons) caused, independently of each other or jointly, the damage or loss to another Person that is the subject of that claim.

Condition means a condition precedent set out in **clause 2.1**.

Contribution Claim means a cross-claim or other claim under common law or other law (disregarding any law which comes into force in breach of **clause 13** and which breach has been Notified to the NSW Government under **clause 16.5**)

- (a) for contribution by a Concurrent Wrongdoer against a Liable Entity or a member of the JHINV Group in relation to facts or circumstances which give rise to a right of a Person to make a Personal Asbestos Claim or a Marlew Claim; or
- (b) by another Person who is entitled under common law (including by way of contract) to be subrogated to such a first mentioned cross-claim or other claim,

provided that any such claim of the kind described in **clause 13.7** shall be subject to the limits contained in that clause.

Controlled Entity means, in respect of a Person, another Person in respect of which the first-mentioned Person is required to consolidate in its Audited Financial Statements but, in the case of JHINV, does not include any Liable Entity or the Trustee. For the avoidance of doubt, JHINV is not a Controlled Entity of JHINV.

Corporations Act means the *Corporations Act 2001* (Cth).

Costs Review Inquiry means the Review of Legal and Administrative Costs in Dust Diseases Compensation Claims announced by the NSW Government on 18 November, 2004.

Costs Review Inquiry Legislation means the *Dust Diseases Tribunal Amendment (Claims Resolution) Act 2005*, which commenced on 1 July 2005.

Costs Review Inquiry Report means the report of the Review of Legal and Administrative Costs in Dust Diseases Compensation Claims, as released by The Hon. Robert John Carr, the then Premier of New South Wales on 8 March 2005.

Court means a court or tribunal in Australia having jurisdiction to hear and determine common law personal injury and death claims arising from exposure to Asbestos.

Cross Guarantee means any guarantee or indemnity (or other covenant to secure satisfaction of any payment or obligation) given by a Controlled Entity of JHINV to secure satisfaction of any payment or obligation of any Controlled Entity of JHINV to a Lender which is entitled or becomes entitled to the benefit of the Intercreditor Deeds in accordance with **clause 2.2** of that deed.

Deed of Accession means a deed of accession in the form set out in **Annexure 1**.

Deeds of Covenant and Indemnity means:

- (a) the deed of that name dated 16 February 2001 between JHIL, Amaba and Amaca and any amendments thereto (including without limitation pursuant to the amending deed dated 10 September 2001); and
- (b) the Deed of Covenant Indemnity and Access between JHINV and ABN 60 dated 31 March 2003 and any amendments thereto.

Director means a director of the Trustee appointed in accordance with **clause 5** or **16.3**.

Discounted Central Estimate means the central estimate of the present value (determined using the discount rate used within the relevant actuarial report) of the liabilities of the Liable Entities and Marlew in respect of expected Proven Claims and Claims Legal Costs, calculated in accordance with **clause 14.4**.

Document means:

- (a) anything on which there is writing;
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- (c) anything from which sounds, images or writing can be reproduced with or without the aid of anything else; and
- (d) a map, plan, drawing or photograph.

Dust Diseases Tribunal means the Dust Diseases Tribunal of New South Wales.

Duty means any stamp, transaction or registration duty or any similar charge imposed by a Government Authority and includes, but is not limited to, any interest, fine, penalty, charge or other amount imposed in respect of the above.

Equity Distribution has the meaning given in **clause 7.1**.

Equity Securityholder has the meaning given to it in **clause 7.1**.

Excluded Claims means the claims referred to in **clause 8.2(b)**.

Excluded Marlew Claim means a Marlew Claim:

- (a) covered by the indemnities granted by the Minister of Mineral Resources under the deed between the Minister, Fuller Earthmoving Pty Limited and James Hardie Industries Limited dated 11 March 1996; or
- (b) by a current or former employee of Marlew in relation to an exposure to Asbestos in the course of such employment to the extent:
 - (i) the loss is recoverable under a Worker's Compensation Scheme or Policy; or
 - (ii) the Claimant is not unable to recover damages from a Marlew Joint Tortfeasor in accordance with the Marlew Legislation;
- (c) by an individual who was or is an employee of a person other than Marlew arising from exposure to Asbestos in the course of such employment by that other person where such loss is recoverable from that person or under a Worker's Compensation Scheme or Policy; or
- (d) in which another defendant (or its insurer) is a Marlew Joint Tortfeasor from whom the plaintiff is entitled to recover compensation in proceedings in the Dust Diseases Tribunal, and the Claimant is not unable to recover damages from that Marlew Joint Tortfeasor in accordance with the Marlew Legislation.

Final Payment means the payment referred to in **clause 9.9**.

Financial Covenants means those covenants initialled for the purposes of identification by the Parties, as varied or replaced from time to time in accordance with **clause 15**.

Financial Year means a year ending on 31 March, or if there is any change from time to time to the Financial Year of the JHINV Group, the twelve-month period as ends on the new end date adopted by JHINV except that the first such Financial Year after that change shall be a period of not less than six months and not greater than 18 months ending on the new end date.

Financial Year End means, in respect of any Financial Year, the last date of that Financial Year.

First Release Bill means the *James Hardie (Civil Liability) Bill* 2005 (NSW) as initialled by the parties for the purposes of identification.

Free Cash Flow means, in respect of a Financial Year but subject to **clauses 9.5** and **9.14(c)**, the net cash provided by operating activities (as calculated in accordance with US GAAP as in force on 21 December 2004) of the JHINV Group for that Financial Year:

(a) for the avoidance of doubt, after deducting:

- (i) interest paid, increases in net operating assets and liabilities, and Taxes paid;
- (ii) any Asbestos-related payments paid by any member of the JHINV Group in that Financial Year, whether by way of any Funding Payments paid to the Trustee, or any other payments in connection with Asbestos paid by any member of the JHINV Group to any other Person in that Financial Year; and

(b) after deducting the income statement charge in relation to minority interests' share of profits,

(c) for the avoidance of doubt, after adding:

- (i) interest received, decreases in net operating assets and liabilities, and receipts of Taxes;
- (ii) any Asbestos-related payments received by any member of the JHINV Group in that Financial Year, whether by way of any Funding Payments refunded to the Performing Subsidiary by the Trustee, or any other amounts in connection with Asbestos received by any member of the JHINV Group from any other Person in that Financial Year; and

(d) after adding the income statement credit in relation to minority interests' share of losses,

as certified in accordance with **clause 5.16**.

Free Cash Flow Amount has the meaning given in **clause 9.5**.

Fund means the Asbestos Injury Compensation Fund to be established pursuant to the Trust Deed.

Fund Account means the bank account opened by the Trustee and into which an amount equal to the Initial Funding is to be paid by the Performing Subsidiary pursuant to **clause 9.2** of this deed.

Funding Obligation means each obligation of the Performing Subsidiary to make a Funding Payment.

Funding Payments mean:

- (a) the Initial Funding payable under **clause 9.2** (which, for the avoidance of doubt, includes the Additional Payment);
- (b) the Annual Payments payable under **clause 9.3**; and
- (c) any Final Payment payable under **clause 9.9**.

and **Funding Payment** means any of those payments.

Further Actuarial Report means a report prepared by the Approved Actuary under **clause 14.2(b)**.

Government Authority means any government or any governmental, semi-governmental or judicial entity, authority or agency and for the avoidance of doubt, includes without limitation, the Commonwealth of Australia or any state or territory of Australia and the Australian Taxation Office.

Heads of Agreement means the non-binding agreement entered into on 21 December 2004 between the Initial Negotiating Parties.

Independent Expert means a person who customarily performs the role of an independent expert appointed to provide the report referred to in **clause 2.1(b)**.

Indirect Tax means any goods and services tax, consumption tax, value added tax or any tax of a similar nature.

Initial Funding has the meaning given in **clause 9.2**.

Initial Lenders means the Lenders to the JHINV Group under facilities or notes notified by JHINV (by listing the facilities but removing lender identification details) as at the date of this deed but excluding any of those Persons who have ceased to be Lenders or have been replaced, and adding any new Lenders, as at the date of satisfaction of the Conditions (other than the Conditions set out in **clauses 2.1(d) and (m)**), as at that later date, in each case as initialled by the Parties for the purposes of identification.

Initial Negotiating Parties means each of JHINV, the NSW Government, the ACTU, Unions NSW and Banton.

Initial Report means the report of KPMG Actuaries dated 30 November 2005 in respect of liabilities of the Liable Entities as at 30 June 2005.

Insolvency Event means, in respect of a Person, the occurrence in respect of that Person of any one or more events referred to in paragraphs (a) to (h) of the definition of "Insolvent".

A Person is **Insolvent** if the Person:

-
- (a) admits in writing its inability to pay its debts generally as they become due (otherwise than as contemplated in **clause 16.6**);
- (b) was established under Dutch law and files a petition with any court in the Netherlands in relation to its bankruptcy (*faillissement*) or seeking an order for a suspension of payments (*surseance van betaling*);
- (c) files, or consents by answer or otherwise to the filing against it of, a petition for relief or insolvent reorganisation or insolvent arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, insolvent reorganisation, insolvent moratorium or other similar law of any jurisdiction (including, without limitation, a filing by the Person under Chapter 7 or Chapter 11 of the US Bankruptcy Code), provided that where the filing is a filing under Chapter 11 of that Code, the Person:
- (i) is at the time of filing unable to pay its debts generally as and when they become due; or
 - (ii) in the case of JHINV, after it makes such a filing, fails to pay a JHINV Contribution or other amount under the JHINV Guarantee when such payment would (but for the moratorium granted as a result of that filing) have been due for 30 days after that due date,
- and also provided that, in any such filing under Chapter 11 of that Code a Person is **Insolvent** no later than the earliest date as of which creditors may vote on any matter or accept or reject a plan of reorganisation;
- (d) makes an assignment for the benefit of its creditors generally;
- (e) consents to the appointment of a custodian (not being a nominee for the person), receiver, receiver and manager, trustee or other officer with similar powers with respect to it or with respect to a substantial part of its property;
- (f) consents to the appointment of an insolvency administrator or such an insolvency administrator is appointed and that appointment is not terminated within 28 days;
- (g) is adjudicated as insolvent or to be liquidated, in each case, by a court of competent jurisdiction; or
- (h) is subject to a Wind-Up Event.

and **Insolvency** has a corresponding meaning.

Insurance and Other Recoveries means any proceeds which may reasonably be expected to be recovered or recoverable for the account of a Liable Entity or to result in the satisfaction (in whole or part) of a liability of a Liable Entity (of any nature) to a third party, under any product liability insurance policy or public liability insurance policy or commutation of such policy or under any other contract, including any

contract of indemnity, but excluding any such amount recovered or recoverable under a Worker's Compensation Scheme or Policy.

Insurer includes any insurer as well the Insurer Guarantee Fund established under the *Workers Compensation Act 1987* or any similar fund or body (whether within or outside Australia) which assumes the liabilities of defaulting or insolvent insurers.

Intercreditor Deeds means the deeds substantially in the form set out in **Annexures 7A and 7B**, as may be amended with the agreement of JHINV and the NSW Government (in each case acting reasonably) as the result of review by, and negotiations with, JHINV's existing bank Lenders.

Interest Rate for a period means the following rate, as determined by the Approved Actuary and notified to the Parties:

- (a) the rate determined as the arithmetic mean (rounded up, if necessary, to the nearest 0.01%) of the bid rates displayed at or about 10.30am (Sydney time) on the first day of that period on the Reuters screen BBSW page for a term equivalent to the period after eliminating one of the highest and one of the lowest of those rates; or
- (b) if:
 - (i) for any reason there are no rates displayed for a term equivalent to that period; or
 - (ii) the basis on which those rates are displayed is changed,

then the Interest Rate will be the average of the buying rates quoted by the three largest Australian banks by market capitalisation at or about that time on that day. The buying rates must be for bills of exchange which are accepted by an Australian bank and which have a term equivalent to the period and the Interest Rate is to be expressed as a yield per cent per annum to maturity.

Irrevocable Power of Attorney means the deed in the form set out in **Annexure 9**.

Jackson Inquiry means the inquiry referred to in paragraph (a) of recital A.

JHIL means the company formerly known as James Hardie Industries Limited (now ABN 60).

JHINV Articles means the articles of association of JHINV.

JHINV Auditor means the external auditor of JHINV from time to time.

JHINV Boards means each of the Supervisory Board, the Managing Board and the Joint Board of JHINV.

JHINV Contributions means the payments to be made by JHINV or the Performing Subsidiary under **clause 9**.

JHINV Group means JHINV and its Controlled Entities from time to time, excluding the Trustee and any of the Liable Entities, if they are or become such Controlled Entities.

JHINV Group Taxpayer means the Performing Subsidiary or, if another member or members of the JHINV Group is or are liable to pay Australian federal income tax on the taxable income of a tax consolidated group which includes the Performing Subsidiary, that member or those members of the JHINV Group.

JHINV Guarantee means the deed in the form set out in **Annexure 5**.

Joint Board means the Joint Board of JHINV as established under Article 27 of the JHINV Articles.

KPMG Actuaries means KPMG Actuaries Pty Ltd (ABN 77 002 882 000).

Lenders means:

- (a) the Initial Lenders; and
- (b) all other Persons to whom liabilities are owed where such liabilities are or are required to be included in the JHINV Group's financial statements or notes thereto as debt or borrowings, but excluding any person who is an "Excluded Lender" defined in the Intercreditor Deeds.

Liable Entities means Amaca, Amaba and ABN 60.

Liquidation means, in respect of any Person, the liquidation of all or substantially all of its assets (other than, in the case of JHINV, where the acquirer of all or substantially all of such assets has by deed of accession become bound to observe all the obligations of JHINV under this deed and the JHINV Guarantee and the other Related Agreements to which JHINV is a party) with the intention of distributing the proceeds to creditors or security holders, or a final order directing or requiring such a liquidation is made or entered or deemed to have been made or entered by any court of competent jurisdiction.

Listed means listed on a stock market of a Stock Exchange.

Managing Board means the Managing Board of JHINV established under Article 14 of JHINV's Articles of Association.

Marlew means the company registered under the Corporations Act as Marlew Mining Pty Limited (ACN 000 049 650) that was formerly called Asbestos Mines Pty Limited and includes any successor to or continuation of that company.

Marlew Claim means, subject to **clause 13.7** a claim which satisfies one of the following paragraphs and which is not an Excluded Marlew Claim:

- (a) any present or future personal injury or death claim by an individual or the legal personal representative of an individual, for damages under common law or other law (disregarding any law which comes into force in breach of **clause 13** and which breach has been Notified to the NSW Government under **clause 16.5**) which:
 - (i) arose or arises from exposure to Asbestos in the Baryulgil region from Asbestos Mining Activities at Baryulgil conducted by Marlew, provided that:
 - (A) the individual's exposure to Asbestos occurred wholly within Australia; or
 - (B) where the individual has been exposed to Asbestos both within and outside Australia, the amount of damages included in the Marlew Claim shall be limited to the amount attributable to the proportion of the exposure which caused or contributed to the loss or damage giving rise to the Marlew Claim which occurred in Australia;
 - (ii) is commenced in New South Wales in the Dust Diseases Tribunal; and
 - (iii) is or could have been made against Marlew had Marlew not been in external administration or wound up, or could be made against Marlew on the assumption (other than as contemplated under the Marlew legislation) that Marlew will not be in the future in external administration;
- (b) any claim made under compensation to relatives legislation by a relative of a deceased individual (or personal representative of such a relative) or (where permitted by law) the legal personal representative of a deceased individual in each case where the individual, but for such individual's death, would have been entitled to bring a claim of the kind described in paragraph (a); or
- (c) a Contribution Claim relating to a claim described in paragraphs (a) or (b).

Marlew Joint Tortfeasor means any Person who is or would be jointly and severally liable with Marlew in respect of a Marlew Claim, had Marlew not been in external administration or wound up, or on the assumption (other than as contemplated under the Marlew legislation that Marlew will not in the future be in external administration or wound up).

Marlew legislation means the legislation set out in Part 4 of the First Release Bill.

Modified Objectives means the Objectives appropriately updated in respect of paragraphs 20 and 23 inclusive thereof to take due account of the establishment of the Costs Review Inquiry.

MRCF means the Medical Research & Compensation Foundation (ABN 21 095 924 137).

Notice has the meaning given to it in **clause 30(a)**.

NSW Government Auditor means an auditor engaged in accordance with and for the purposes described in **clause 5.13**.

NSW Government Deed of Release means the deed in the form set out in **Annexure 6**.

NSW Government Reviewing Actuary means an actuarial firm appointed in accordance with **clause 14.5** which:

- (a) nominates a principal who is an approved actuary under the *Insurance Act 1973* (Cth) or has equivalent qualifications under equivalent legislation of another relevant jurisdiction;
- (b) is not and has not for a period of at least five (5) years been a service provider to the Trustee or any member of the JHINV Group;
- (c) is not affiliated with the accounting firm performing the Approved Auditor role; and
- (d) is not affiliated with the firm performing the role of the Approved Actuary,

or, where the circumstances set out in **clause 14.5(b)** apply, an actuary determined in accordance with that **clause 14.5(b)**.

NYSE means the New York Stock Exchange Inc.

Objectives means the Statement of Objectives set out in Annexure 1 of the Heads of Agreement.

Operating Expenses means the reasonable operating costs, expenses and Taxes of the Trustee or Liable Entities of conducting the activities referred to in **clause 4.2** but excludes any Claims Legal Costs.

Other Governments means each of the Australian government and the governments of the states and territories of Australia other than the NSW Government.

P has the meaning given in **clause 7.2(m)**.

Payable Liability means:

- (a) any Proven Claim (whether arising before or after the date of this deed);

- (b) Operating Expenses;
- (c) Claims Legal Costs;
- (d) any liability of a Liable Entity to the Trustee, however arising, in respect of any amounts paid by the Trustee in respect of any liability or otherwise on behalf of the Liable Entity;
- (e) any pre-commencement claim (as defined in the Transaction Legislation) against a Liable Entity;
- (f) if regulations are made pursuant to section 30 of the Transaction Legislation and if and to the extent the Trustee and JHINV have Notified the NSW Government that any such liability is to be included in the scope of Payable Liability, any liability of a Liable Entity to pay amounts received by it from an insurer in respect of a liability to a third party incurred by it for which it is or was insured under a contract of insurance entered into before the date on which the Transaction Legislation receives the Royal Assent; and
- (g) Recoveries within the meaning and subject to the limits set out in **clause 13.7**,

but in the cases of paragraphs (a), (c) and (e) excludes any such liabilities or claims to the extent that they have been recovered or are recoverable under a Worker's Compensation Scheme or Policy.

Parties mean the parties to this deed, being JHINV, the Performing Subsidiary, the NSW Government and, subject to **clause 1.4**, the Trustee.

Payment Date means 1 July 2006 and each subsequent 1 July in each year of the Term, or in the event that the Financial Year End is not 31 March, the date falling 3 months and 1 day after that Financial Year End.

Performing Subsidiary means LGTDD Pty Limited or, if a subsidiary of JHINV other than that entity is nominated under **clause 6.2** to perform the obligations described in **clauses 6** and **9** and each of JHINV and that subsidiary has complied with **clause 6.2**, that subsidiary.

Period Actuarial Estimate means, in respect of a period, the central estimate of the present value (determined using the discount rate used in the relevant actuarial report) of the liabilities of the Liable Entities and Marlew in respect of expected Proven Claims and Claims Legal Costs (in each case which are reasonably expected to become payable in that period), before allowing for Insurance and Other Recoveries, calculated in accordance with **clause 9.2** or **14.4(b)(ii)** as the case may be.

Person includes any general partnership, limited partnership, corporation, limited liability company, joint venture, trust, business trust, governmental agency, co-operative, association, individual or other entity, and the heirs, executors,

administrators, legal representatives, successors and assigns of such a person as the context may require.

Personal Asbestos Claim means, subject to **clause 13.7**:

- (a) any present or future personal injury or death claim by an individual or the legal personal representative of an individual, for damages under common law or under other law (disregarding any law which comes into force in breach of **clause 13** and which breach has been Notified to the NSW Government under **clause 16.5**) which:
 - (i) arises from exposure to Asbestos occurring in Australia, provided that:
 - (A) the individual's exposure to Asbestos occurred wholly within Australia; or
 - (B) where the individual has been exposed to Asbestos both within and outside Australia, damages included in the Personal Asbestos Claim shall be limited to the amount attributable to the proportion of the exposure which caused or contributed to the loss or damage giving rise to the Personal Asbestos Claim which occurred in Australia;
 - (ii) is made in proceedings in an Australian court or tribunal; and
- (b) any claim made under compensation to relatives legislation by a relative of a deceased individual (or personal representative of such a relative) or (where permitted by law) the legal personal representative of a deceased individual in each case where the individual, but for such individual's death, would have been entitled to bring a claim of the kind described in paragraph (a); or
- (c) a Contribution Claim made in relation to a claim described in paragraph (a) or (b),

but in each case excludes any Marlew Claim and any other claim to the extent they have been recovered or are recoverable under a Worker's Compensation Scheme or Policy.

Proven Claim means any Personal Asbestos Claim or Marlew Claim in respect of which final judgment has been given against, or a binding settlement has been entered into by a Liable Entity or any member of the JHINV Group from time to time, and in each case, to the extent to which that entity incurs liability under that judgment or settlement (including any interest, costs or damages to be borne by a Liable Entity or the relevant member of the JHINV Group pursuant to such judgment or settlement).

Qualifying Capital Ratio has the meaning given to it in **clause 7.8**.

Quoted means, in relation to securities of a Listed entity, quoted for trading on a Stock Exchange.

Reconstruction Event means:

- (a) the summoning of a meeting of creditors or the obtaining of an order of a court to do so for the purpose of considering any scheme or plan of arrangement for reconstruction or compromise with creditors;
- (b) a voluntary case is commenced, or a final order for relief is entered, under Chapter 11 of the US Bankruptcy Code;
- (c) a filing by JHINV for a suspension of payments under Dutch law, provided that the Court grants the (provisional) suspension of payments to JHINV;
- (d) any comparable action under the laws of any other jurisdiction occurs having substantially the same effect as the orders described in paragraphs (b) and (c),

but in each case none of the aforementioned events will comprise a Reconstruction Event where the proceeding or other action is commenced or initiated by or on behalf of the Trustee or the NSW Government under this deed or the JHINV Guarantee, whether acting alone or together with others, and for this purpose an order will be deemed to be final when any timely-commenced proceeding for review of such an order has been concluded without such order being subsequently dismissed, withdrawn, struck out, vacated or reversed, and the time for commencing any further proceeding for review of such order has expired.

Related Agreements means documents ancillary to this deed listed in **Schedule 1**.

Release Bills mean the First Release Bill and the Second Release Bill.

Release Legislation has the meaning given in **clause 2.1(g)**.

Released Person has the meaning given in **clause 12.1(a)(i)**.

Releases means the releases and extinguishments of liability described in **clause 12** and set out in the Release Legislation or the NSW Government Deed of Release.

Relevant Matters means all matters relating to or arising out of any of the following or their facts, matters and circumstances:

- (a) the establishment and underfunding or funding of the MRCF, and the February 2001 ABN 60 group corporate reorganisation (including, without limitation, the transfer of the Liable Entities out of the JHIL Group, representations made to incoming directors of the Liable Entities and other third parties regarding the Liable Entities and their assets and liabilities, the media releases of ABN 60 of 16 February 2001 and of JHINV of 29 and 30 October 2003 and any statements made in relation to any of the foregoing matters);

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- (b) the Deeds of Covenant and Indemnity;
 - (c) the transfers of assets, and the dividends and management fees paid, by the Liable Entities, as described in the report of the Jackson Commission;
 - (d) the August to October 2001 ABN 60 group corporate reorganisation, including without limitation the scheme of arrangement in relation to ABN 60 of August to October 2001, the contemporaneous reduction of capital of (and cancellation of fully paid ordinary shares in) ABN 60 and subscription by JHINV for partly paid shares in ABN 60, the subsequent cancellation of those partly paid shares in ABN 60 in March 2003 and representations to third parties and the court and any statements made in relation to any of the foregoing matters; and
 - (e) the transfer of assets from ABN 60 to JHINV, the establishment of the ABN 60 Foundation Limited and ABN 60 Foundation Trust, and the allotment of fully paid shares in ABN 60 to ABN 60 Foundation Limited.

Resolution means the resolution to be voted on by Shareholders, as described in **clause 2.1(d)**.

Second Release Bill means the *James Hardie (Civil Penalty Compensation Release) Bill 2005 (NSW)*, as initialled by the parties for the purposes of identification.

Security Interest means a right, power or arrangement in relation to an asset which provides security for the payment or satisfaction of a debt, obligation or liability including without limitation under a bill of sale, mortgage, charge, lien, pledge, trust, power, deposit or hypothecation and includes an agreement to grant or create any of those things.

Shareholder means a holder of Shares.

Shareholder Documentation means the notice of meeting (including without limitation, the Resolution), explanatory memorandum and all accompanying documents to be sent to the Shareholders in relation to seeking the approval of entry into, and implementation of, this deed and the Related Agreements.

Shares means:

- (a) ordinary shares in JHINV; and
- (b) for so long as they are Quoted, the Quoted CHESS Depository Interests over the ordinary shares in JHINV, to the exclusion of the relevant underlying ordinary shares in JHINV.

Special Default has the meaning given in **clause 16.2**.

SPF Funded Liability means:

- (a) only those liabilities described in paragraphs (a), (b), (c), (e) and (g) of the definition of Payable Liability and excludes the liabilities described in paragraph (d) or (f) of the definition of “Payable Liability”; and
- (b) a claim or category of claim which JHINV and the NSW Government agree in writing is a “SPF Funded Liability” or a category of “SPF Funded Liability”.

Stock Exchange means ASX or any approved foreign exchange (as defined under the Corporations Act).

Supervisory Board means the Supervisory Board of JHINV established under Article 21 of JHINV’s Articles of Association.

Tax and **Taxation** mean all forms of taxation, duties, imposts, fees, levies, deductions or withholdings, whether of Australia, a state or territory or elsewhere, including without limitation income tax, fringe benefits tax, withholding tax, capital gains tax, pay-as-you-go tax, goods and services tax, customs and other import or export duties, excise duties, sales tax, stamp duty or other similar contributions and any interest or penalty, in respect of any of them.

Tax Requirements means the requirements set out in **clause 2.1(a)(i)** and **(ii)**.

Term means the period from the Commencement Date to 31 March 2045, which may be extended as referred to in **clause 9.9**.

Term Central Estimate means the central estimate of the present value (determined using the discount rate used in the relevant Annual Actuarial Report) of the liabilities of the Liable Entities and Marlew in respect of expected Proven Claims and Claims Legal Costs (in each case reasonably expected to become payable in the period specified in **clause 14.4(b)(iii)**) determined under **clause 14.4(b)(iii)**, after allowing for Insurance and Other Recoveries during that period, and otherwise calculated in accordance with **clause 14.4**.

Transaction Bill means the *James Hardie Former Subsidiaries (Winding up and Administration) Bill* 2005 (NSW), as initialled by the parties for the purposes of identification.

Transaction Documentation means this deed, the Related Agreements, the Transaction Legislation and the Release Legislation.

Transaction Legislation has the meaning given in **clause 2.1(f)**.

Trust Deed means the trust deed for the Fund to be entered into in the form, set out in **Annexure 3**.

Trustee means the trustee of the Fund from time to time, in its capacity as trustee, initially being Asbestos Injuries Compensation Fund Limited.

Trustee Board means the board of directors of the Trustee established in accordance with **clause 5.1**.

Trustee Constitution means the constitution of the initial Trustee in the form set out in **Schedule 10**.

Unions' Deed of Release means the deed in the form set out in **Annexure 4**.

Unions NSW means Unions New South Wales of 10th Floor, 377-383 Sussex Street, Sydney in the State of New South Wales.

US Bankruptcy Code means title 11 of the United States Code, the codification of United States bankruptcy law.

US GAAP means generally accepted accounting principles as in force in the United States of America and, unless expressly otherwise provided in this deed, means those principles as in force from time to time.

VA has the meaning given in **clause 7.2(m)**.

VL has the meaning given in **clause 7.2(m)**.

Valuation Ratio has the meaning given in **clause 7.2(m)**.

Wind-Up or Reconstruction Amount has the meaning given in **clause 10.4**.

Wind-Up Event means, in respect of a Person, the occurrence of any one or more of the following:

- (a) a final court order is entered that it be wound up or declared bankrupt;
- (b) a liquidator (excluding a provisional liquidator) is appointed to it and the appointment is not subsequently terminated;
- (c) a court declaration of bankruptcy is made in relation to it and is not subsequently withdrawn, struck out, dismissed, vacated or reversed;
- (d) the dissolution of such Person under Dutch law (*ontbinding*) or the law of any other jurisdiction;
- (e) the declaration of its bankruptcy under Dutch law (*faillissement*);
- (f) the Liquidation of that Person;
- (g) a final order for relief occurs or is deemed to occur in relation to it under Chapter 7 or Chapter 11 of the US Bankruptcy Code which, when implemented, will result in the Liquidation of that Person; and

(h) any comparable action occurs under the law of any competent jurisdiction which has a substantially the same effect to paragraphs (a) to (g) of this definition,

and an order shall be deemed to be final when any timely-commenced proceeding for review of such an order has been concluded without such order being subsequently dismissed, withdrawn, struck out, vacated or reversed, and the time for commencing any further proceeding for review of such order has expired.

Worker's Compensation Scheme or Policy means any of the following:

- (a) any worker's compensation scheme established by any law of the Commonwealth of Australia or of any State or Territory of Australia;
- (b) any fund established to cover liabilities under insurance policies upon the actual or prospective insolvency of the insurer (including without limitation the Insurer Guarantee Fund established under the *Worker's Compensation Act 1987 (NSW)*); and
- (c) any policy of insurance issued under or pursuant to such a scheme.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms if capitalised have a corresponding meaning.
- (d) A reference to a clause, Schedule or Annexure is a reference to a clause of, or schedule or annexure to, this deed.
- (e) A reference to an agreement or document (including a reference to this deed) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this deed or that other agreement or document, and includes the recitals and schedules and annexures to that agreement or document.
- (f) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
- (g) A reference to a party to this deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).

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- (h) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
 - (i) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
 - (j) A reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
 - (k) A reference to dollars and \$ is to Australian currency.
 - (l) A reference to a particular Government Authority or Stock Exchange includes a reference to any other Government Authority or Stock Exchange which succeeds the former or which performs substantially the same functions and duties as the former.
 - (m) A reference to a person's consent is to that person's consent given in writing.
 - (n) For the avoidance of doubt, **clause 6.1** does not and is not intended to give rise to any greater obligation on the part of the JHINV Group than is contemplated by **clause 9** or its implementation in this deed.
 - (o) A reference to the Trustee is a reference to the Trustee having the assets, benefits and liabilities under this deed, the Trust Deed, the other Related Agreements and any Cross Guarantee or other agreement or instrument binding upon it.

1.3 Agreement Legally Binding

- (a) This deed is and is intended to be legally binding on all Parties hereto and to be enforceable at law and equity.
- (b) This deed binds the Crown in right of New South Wales and to the maximum extent permitted by law the State Crown hereby waives all Crown immunity with respect to this deed and the Related Agreements.

1.4 Accession by the Trustee

- (a) On establishment of the Fund in accordance with **clause 3.1** and appointment of directors to the Trustee Board, the Parties must:
 - (i) use their respective best endeavours to procure the Trustee to agree to become a party to this deed; and

- (ii) promptly following the Trustee agreeing to do so, execute and deliver to the other Parties, and use their respective best endeavours to procure the Trustee to execute and deliver to the parties, a Deed of Accession.
- (b) Where the Trustee and the Parties deliver a Deed of Accession in accordance with **clause 1.4(a)** or a novation deed in accordance with **clause 1.4(c)**, the Trustee shall be, and shall be taken to be, a Party to this deed effective from the time of delivery of such deed and shall have the benefit of each right expressed to be that of the Trustee and be entitled to enforce each such right against the other Parties.
- (c) Upon the appointment of a new Trustee in accordance with the Trust Deed, the Parties shall execute a novation deed which has been executed by the new Trustee, under which, among other things, all liabilities incurred by or on behalf of the outgoing Trustee under this deed are assumed by the new Trustee.

1.5 Business Days

If the day on or by which a person must do something under this deed is not a Business Day, it must be done on or by the next Business Day.

2 CONDITIONS PRECEDENT

2.1 Conditions precedent

The provisions of and obligations of the Parties under this deed (excluding this **clause 2** and **clauses 1, 3, 17, 21 to 27, 29 to 34** inclusive) are subject to, and do not commence until each of the following Conditions has been satisfied or waived in writing by the Parties:

- (a) the JHINV Boards and the board of directors of the Performing Subsidiary are satisfied, acting reasonably that with effect on or before payment of the Initial Funding (and by force of retrospective legislation where necessary), that:
 - (i) payment of the JHINV Contributions (including, for the avoidance of doubt, the Initial Funding) will be fully deductible expenses of the JHINV Group Taxpayer in the years in which they are incurred for the purpose of determining the taxable income of the JHINV Group Taxpayer for the purposes of the Tax laws of Australia; and
 - (ii) the Trustee will be exempt from Tax in respect of its income (including without limitation its receipts of JHINV Contributions);
- (b) the JHINV Boards and the board of directors of the Performing Subsidiary receive an independent expert's report from the Independent Expert that subject to satisfaction of the Conditions under **clause 2.1(a)** if those Conditions have not been satisfied by the date of finalisation of the report, the implementation of this deed and the JHINV Guarantee by JHINV and the

Performing Subsidiary is in the best interests of JHINV and its enterprise as a whole;

- (c) the JHINV Boards resolve, being satisfied in their discretion they should do so having regard to their duties as directors, to recommend that the Shareholders vote in favour of approval of this deed and its implementation by the JHINV Group (which resolution may, at JHINV's discretion, be sought so as to be conditional upon satisfaction of the Conditions under **clause 2.1(a)** if those Conditions have not been satisfied by the date of such resolution, such resolution not to be otherwise conditional upon anything not required to be done under this deed on or before the Commencement Date);
- (d) the Shareholders in a general meeting duly convened under the JHINV Articles approve this deed and the JHINV Guarantee and their implementation by the JHINV Group (which approval may, at the discretion of JHINV, be sought so as to be conditional upon satisfaction of the Conditions under **clause 2.1(a)** if those Conditions have not been satisfied by the date at which the Shareholders vote on that resolution, such resolution not to be otherwise conditional upon anything not required to be done under this deed on or before the Commencement Date);
- (e) the Initial Lenders approve the JHINV Group implementing this deed on terms acceptable to JHINV acting reasonably (such approvals to be evidenced in the usual form of such approvals provided by such Initial Lenders);
- (f) the Transaction Bill is enacted by the NSW Parliament and comes into force:
 - (i) in the form initialled by authorised representatives of JHINV and the NSW Government on or prior to the date of this deed for the purposes of identification; or
 - (ii) otherwise on terms stated in writing by JHINV to be acceptable to it,
(such legislation, the "**Transaction Legislation**");
- (g) the Release Bills are enacted by the NSW Parliament and come into force:
 - (i) in the form initialled by authorised representatives of JHINV and the NSW Government on or prior to the date of this deed for the purpose of identification; or
 - (ii) otherwise on terms stated in writing by JHINV to be acceptable to it,
(such legislation, the "**Release Legislation**");
- (h) execution of each of the Related Agreements by each of the parties thereto;

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- (i) the following are satisfied (or waived by agreement in writing by the Parties) on the date at which all Conditions set out in this **clause 2.1** (other than this **clause 2.1(i)** and **clause 2.1(m)**) have been satisfied:
- (A) JHINV confirms in writing to the NSW Government (without qualification) that the terms of **clause 7** of this deed would not have been breached; and
- (B) the NSW Government confirms in writing to JHINV (without qualification) that no adverse or discriminatory legislative action within the meaning of **clause 13.2 or 13.3** has been taken nor has **clause 13.4** had any application;
- in each case, had those provisions been binding upon the Parties for the period between the date of signing this deed and the date at which all other Conditions set out in this **clause 2.1** (other than **clause 2.1(m)**) have been satisfied or waived by the Parties; and
- (C) to the extent shares in the Liable Entities have not been transferred to the Trustee on or prior to the Commencement Date, the Minister empowered to do so under section 16(1) of the Transaction Legislation (when in force) serves an order under that section upon each of the shareholders of each of the Liable Entities and the directors of each of the Liable Entities to transfer all of the shares held by such shareholders in the Liable Entities to the SPF Trustee, on a day on or prior to the Commencement Date, and such transfers occur so as to vest legal and beneficial title in the Liable Entities in the SPF Trustee; and
- (D) the NSW Government has not breached **clauses 2.3(b)** and **(c)** between the date of signing this deed and the date at which all other Conditions set out in this **clause 2.1** (other than **clause 2.1(m)**) have been satisfied or waived by the Parties;
- (j) the receipt by JHINV and the NSW Government of each of the opinions required under **clause 22**;
- (k) the Trustee appoints the Approved Actuary on terms consistent with this deed and JHINV irrevocably waives in writing (in the form of Annexure 8), any right to object to KPMG Actuaries being appointed as and performing the role of the initial Approved Actuary of the Trustee, notwithstanding that KPMG Actuaries has provided or may provide before the Commencement Date any services to any member of the JHINV Group;
- (l) the execution and delivery of the Deed of Accession by the Parties thereto, including the Trustee; and
- (m) the Performing Subsidiary deposits the Initial Funding into the Fund Account,

provided that upon satisfaction or waiver of such conditions, **clauses 7 and 13.2, 13.3 and 13.4** shall be taken for all purposes of this Deed to have been binding and effective from the date of this deed.

2.2 Satisfaction of Conditions Precedent

- (a) (i) The Conditions (other than the Conditions under **clauses 2.1(d), (e), (i), (j) and (m)**) must be satisfied by 30 June 2006 or such later date as JHINV and the NSW Government may agree in writing.
- (ii) The Conditions described in **clauses 2.1(d), (e), (i) and (j) and (m)** must be satisfied within 12 weeks of the satisfaction of the other Conditions (save that the Condition described in **clause 2.1(m)** must only be satisfied once the other Conditions have been satisfied).
- (b) JHINV acknowledges that the Conditions set out in **clauses 2.1(a)(i) and (ii)** will be satisfied if the JHINV Boards are reasonably satisfied that in relation to each Condition listed in those paragraphs, one or more of the following is satisfied:
- (i) binding legislation is in force having the consequences set out in the paragraphs;
- (ii) JHINV receives a binding private ruling, applying for a period acceptable to JHINV, confirming the matters set out in those paragraphs; or
- (iii) the Treasurer announces that the Federal Government will introduce legislation, to take effect (retrospectively if necessary) on or before payment of the Initial Funding, having the consequences described in those paragraphs, and if the legislation, ruling or announcement as the case may be imposes any conditions or qualifications to those consequences arising, those conditions are acceptable to JHINV acting reasonably.
- (c) If the Performing Subsidiary pays the Initial Funding on the basis of an announcement as contemplated under **clause 2.2(b)(iii)**, any further obligations of JHINV or the Performing Subsidiary to make any payments whatsoever under this deed or any Related Agreement or to perform any obligation under the JHINV Guarantee shall be conditional upon binding legislation coming into force or a binding private ruling having been issued and being in force and meeting the requirements described in **clauses 2.1(a)(i) and (ii)** respectively and such obligations thereafter shall be subject to **clause 6.4**.
- (d) If **clause 2.2(c)** has any operation and subsequently legislation or a binding private ruling meeting the requirements described in **clause 2.2(b)**:
- (i) comes into force within 12 months of the date on which the Initial Funding is paid or such later date agreed by JHINV and the NSW

Government in writing, then the Performing Subsidiary shall, within 10 Business Days of this **clause 2.2(d)** applying:

- (A) pay to the Trustee each JHINV Contribution which would, in the absence of **clause 2.2(c)**, have been due and payable by the Performing Subsidiary under **clause 9**; and
 - (B) pay Interest to the Trustee on each payment due under paragraph (A), at the Interest Rate from the date each such payment would have been due if **clause 2.2(c)** had not applied until the date such payment is made;
- (ii) does not come into force by the end of the period referred to in **clause 2.2(d)(i)**, **clause 2.6(b)** shall apply on the basis that:
- (A) the Conditions were not satisfied or waived on or by the last day of that period; and
 - (B) this deed shall terminate and **clause 2.6(b)** shall apply, unless JHINV and the NSW Government agree otherwise in writing.

2.3 Best Endeavours to Satisfy Conditions

- (a) Each Party shall use its best endeavours promptly to satisfy each Condition for which it is responsible including, without limitation, taking the steps set out in the timetable initialled for identification by the Parties for which they are responsible, to the extent possible, by the relevant date set out in that timetable. Each Party must give the Party responsible for the satisfaction of a Condition any reasonable assistance that such responsible party may request to satisfy that Condition. Each Party must promptly give a Notice to the other Parties that a Condition for which it is responsible has been satisfied upon becoming aware of that satisfaction.
- (b) Prior to the Commencement Date, without prejudice to any right or remedy of the NSW Government, the releases and extinguishments of liabilities set out in the Release Legislation in respect of Persons who are not natural persons may only be suspended by the NSW Government if:
 - (i) JHINV or the Performing Subsidiary is and remains in breach of its obligations under **clauses 2.3(a) or 2.4**; or
 - (ii) this deed is terminated under **clause 2.6**, on or after the conclusion of the negotiations (if any) under **clause 2.6(d)**, provided that any suspension of such releases shall not take effect less than 14 days after JHINV has been Notified of any proposed suspension. This **clause 2.3(b)** shall have no operation after the Commencement Date.

- (c) The NSW Government must revoke the suspension of any release of liability suspended as a result of a breach of a kind described in **clause 2.3(b)** immediately upon JHINV remedying that breach and Notifying the NSW Government demonstrating that such a breach has been remedied.

2.4 Specific actions to be taken by each party

The following table sets out the Conditions for which each party is responsible and, without limiting **clause 2.3**, specific actions it must take to satisfy those Conditions:

<u>In relation to this Condition...</u>	<u>this party is responsible...</u>	<u>...and must take this action:</u>
Clause 2.1(a)	JHINV	Seek relevant taxation opinions or rulings (where applicable).
	JHINV and the Trustee	Participate in discussions with Federal Government regarding income tax exemption of the Trustee and tax deductibility of payments to the Trustee.
Clause 2.1(b)	JHINV	Retain and instruct Independent Expert.
Clause 2.1(c)	JHINV	Request JHINV Boards to consider this resolution. Provide JHINV Boards with the material information relevant to their decision whether to pass this resolution.
Clause 2.1(d)	JHINV	Comply with clause 2.5 .
Clause 2.1(e)	JHINV	Provide the Initial Lenders with the material information relevant to their decision whether to give their approval. Seek the approval of the Initial Lenders for the entry into and implementation of this deed.
Clause 2.1(f)	NSW Government	On a timely basis, introduce the Transaction Bill into Parliament, cause it to be debated and considered by Parliament and, if passed, seek royal assent in relation thereto and the timely commencement of the operation of such legislation.

<u>In relation to this Condition...</u>	<u>this party is responsible...</u>	<u>...and must take this action:</u>
Clause 2.1(g)	NSW Government	On a timely basis, introduce the Release Bills into Parliament, cause them to be debated and considered by Parliament and, if passed, seek royal assent.
Clause 2.1(h)	Each Party	Execute those Related Agreements to which it is a party.
Clause 2.1(i)	JHINV	Provide the confirmation set out in clause 2.1(i)(i) .
	NSW Government	Provide the confirmation set out in clause 2.1(i)(ii) . If the shares described therein are not transferred within the date described therein, issue the order described in clause 2.1(i)(B) .
Clause 2.1(j)	JHINV	Procure the delivery of the legal opinions referred to in that clause.
Clause 2.1(k)	Trustee	Retain and instruct the Approved Actuary.
	JHINV	Provide waiver of conflict letter.
Clause 2.1(l)	All Parties	Execute Deed of Accession.
Clause 2.1(m)	Performing Subsidiary	Once all other Conditions have been satisfied in full or waived by agreement in writing by the Parties, deposit the Initial Funding into the Fund Account

2.5 Shareholder Documentation

Without in any way limiting the generality of **clause 2.3**, JHINV must use its best endeavours to take each of the following steps:

- (a) provide permitted recipients under the terms of a confidentiality deed duly executed by inter alia the NSW Government and JHINV on or by the date of this deed with access (and subject at all times to the NSW Government and the other permitted recipients adhering to the confidentiality requirements set out in that deed) to enable them to review (but not take a copy of) a verification draft of the Shareholder Documentation at least 10 days before the proposed date of despatch to the Shareholders;

- (b) consider in good faith any comments of the NSW Government on the draft Shareholder Documentation;
- (c) ensure that the Shareholder Documentation complies in all material respects with all disclosure requirements under applicable Dutch laws and regulations and, to the extent applicable, under the Australian and US laws, regulations and ASX Listing Rules and equivalent US requirements;
- (d) promptly convene a meeting of Shareholders and despatch the Shareholder Documentation following the date on which such actions are resolved to be taken by the JHINV Boards; and
- (e) ensure that if it or any other member of the JHINV Group becomes aware that **clause 2.5(c)** has not been complied with, it makes timely and adequate disclosure of such further matters required to be disclosed under the relevant law, regulation or listing rule, in each case, using best endeavours to achieve those steps.

2.6 Failure to satisfy Conditions

If all of the Conditions are not satisfied or waived by written agreement between the Parties under **clause 2.1**, on or by the date referred to in **clause 2.2(a)** or any later date as may be agreed in writing by the Parties (or if **clause 2.2(d)(ii)** or **clause 6.4(i)** applies):

- (a) any Party may, by Notice to the others, terminate this deed and each of the Related Agreements;
- (b) where that termination occurs:
 - (i) each Party is relieved of any further obligation under this deed other than under this **clause 2.6**, **clauses 23, 25 to 27** and **29 to 34** inclusive, which will survive termination;
 - (ii) any amount received by the Trustee from JHINV or the Performing Subsidiary pursuant to this deed or a Related Agreement before that time must be refunded in full to JHINV, excluding:
 - (A) any monies paid under **clause 17.1** on terms that such funding is not required to be repaid (either generally or in specified circumstances, where those circumstances have arisen); and
 - (B) any amounts which, as at the date of termination, the Trustee or Liable Entities:
 - I. have paid out in settlement of SPF Funded Liabilities;
 - II. have incurred a liability to pay SPF Funded Liabilities; or

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- III. reasonably expect will be required to be paid to meet Proven Claims arising from Personal Asbestos Claims and Marlew Claims which were notified by Claimants to the Trustee or the Liable Entities prior to the date of termination; and
- (iii) each of the Parties undertakes that it will not take any steps to prevent or impede the repayment of any monies required to be repaid to the Performing Subsidiary or JHINV in accordance with this clause; and
 - (iv) such monies shall only be taken to be repaid for the purposes of this **clause 2.6** when received by JHINV in cleared funds in an account nominated by JHINV (and for this purpose the Performing Subsidiary authorises and directs that any amounts due to be refunded to it pursuant to this **clause 2.6** must be paid directly to JHINV);
- (c) the termination does not affect accrued rights arising from any breach of this deed occurring before such termination; and
- (d) following termination, where practicable the Parties must negotiate in good faith for a period of up to one month, to seek, on a bona fide basis, to agree to alternative arrangements in relation to any Condition or Conditions which have not been satisfied as will enable such Condition(s) to be:
- (i) satisfied in an alternative manner; or
 - (ii) where agreed in writing between the Parties, disregarded or no longer required.

2.7 Commencement Date

The Commencement Date shall fall 5 Business Days after the date on which all Conditions (excluding the Condition in **clause 2.1 (m)**) have been satisfied or waived by agreement in writing by the Parties. The Parties may by agreement in writing vary the Commencement Date.

2.8 Representations and Warranties

- (a) JHINV represents and warrants that the statements set out in **Part 1 of Schedule 2** are true and accurate as at the date of this deed.
- (b) On the date of this deed, JHINV has provided to the NSW Government, and the NSW Government acknowledges receipt, of an officer's certificate signed by the chief financial officer of JHINV in the form set out in **Part 2 of Schedule 2**.

3 STRUCTURE

3.1 Agreed Structure

The Parties agree to the structure set out in the Transaction Bill and the Trust Deed for establishing the Fund for the purpose of funding the payment of liabilities to Claimants in respect of Proven Claims, and for meeting reasonable Operating Expenses and Claims Legal Costs, and other Payable Liabilities, and for dealing with such Liable Entities.

3.2 Selection of Agreed Structure

The Parties acknowledge and agree that in determining the method of restructuring of the Liable Entities and the Trustee, the matters referred to in **clause 5.4** of the Heads of Agreement were taken into account.

3.3 No recourse

- (a) The Parties agree that, without prejudice to the NSW Government's ability to undertake adverse legislative or regulatory action against the JHINV Group in the manner permitted under **clause 13** during any period where the circumstances set out in **clauses 13.2(d)** or **13.3(d)** apply, neither JHINV nor any other member of the JHINV Group shall have any obligations, and there shall be no (and the Parties shall not seek) recourse to any of them, with respect to any liabilities of the Liable Entities, other than and then only to the extent set out in:
- (i) this deed and the Related Agreements; and
 - (ii) the Transaction Legislation and the Release Legislation, each as in force in the form accepted by JHINV as satisfying the Conditions set out in **clauses 2.1(f)** and **(g)** respectively, or as may be amended by NSW Government (in relation to amendments which would not adversely affect JHINV, the Performing Subsidiary or the Fund) or following agreement in writing with JHINV (in relation to any amendments which would adversely affect any of those parties).
- (b) The Parties agree that Claimants have no rights arising under this deed or any Related Agreement against any of the Parties to this deed or any Related Agreement.

4 THE FUND

4.1 Governing law and principal place of business of the Trustee

The Trustee must ensure that the Fund:

- (a) remains governed by the laws of New South Wales; and
- (b) maintains its principal place of business in New South Wales.

4.2 Role of the Trustee

The Trustee's role is to do the following (and in respect of **clauses 4.2(c), (d), (h)(ii), (i) and (k)** in relation to a Liable Entity, the Trustee shall only be obliged to take such steps to the extent that the Liable Entity is under the control or direction of the Trustee):

- (a) hold the benefit of the Funding Obligations and the obligation of the Performing Subsidiary (if applicable) to pay the Wind-Up or Reconstruction Amount in accordance with **clause 10**, the JHINV Guarantee and of JHINV's covenants and obligations under this deed and the Related Agreements to ensure the payment by the JHINV Group of the JHINV Contributions under this deed and any Cross Guarantee given pursuant to **clause 15.7**, and enforce the same as may be required from time to time;
- (b) be the creditor of the Performing Subsidiary and JHINV for payments (whether actually or contingently) due and payable to the Trustee under this deed and receive and give a proper receipt for such amounts;
- (c) manage itself or through one or more of the Liable Entities or otherwise cause to be managed, the response to all Payable Liabilities for itself or for or on behalf of the Liable Entities (and in respect of Payable Liabilities which are not SPF Funded Liabilities, on the basis that the Liable Entities must bear the full cost and all liabilities associated with such claims);
- (d) subject to it having the necessary funds to do so and **clause 9.15**, pay in accordance with and subject to **clause 4.7** and the provisions of the Transaction Legislation, SPF Funded Liabilities itself or through one or more of the Liable Entities, and in each case for itself or for or on behalf of the Liable Entities as the Trustee may in its discretion determine;
- (e) use its best endeavours to achieve all available legal and administrative cost savings in relation to:
 - (i) the process for handling the response to Personal Asbestos Claims and Marlew Claims;
 - (ii) court proceedings dealing with apportionment of damages in relation to Personal Asbestos Claims and Marlew Claims; and
 - (iii) exercising rights of recovery;
- (f) review and implement legal and administrative cost savings in the claims management process on a continuing basis both in relation to the process for settling Personal Asbestos Claims and Marlew Claims and the process generally applicable in relation to Personal Asbestos Claims and Marlew Claims, including reducing Claims Legal Costs;
- (g) invest the assets contributed to or received by the Trustee;

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- (h) use its best endeavours to:
- (i) recover;
 - (ii) procure that each Liable Entity recover; and
 - (iii) exercise or procure the exercise of rights subrogated from any Claimant to recover,
- amounts paid or liabilities incurred with respect to any Personal Asbestos Claims, Marlew Claims or any other Payable Liabilities from insurers, reinsurers and other parties who may have contributed to the loss relating to such claims;
- (i) generally do all things necessary and convenient for the purposes of handling and finalising Payable Liabilities for itself or for and on behalf of the Liable Entities (provided that nothing in this deed shall require the Trustee to incur any liability or pay any amount with respect to a liability which is not a SPF Funded Liability);
 - (j) as provided by the Transaction Legislation or to the extent otherwise entitled to do so, be subrogated to the rights of the Claimants against the Liable Entities and Marlew or any other persons in relation to any Payable Liability settled or met by the Trustee; and
 - (k) be authorised and permitted to negotiate with Claimants and at its discretion procure that the relevant Liable Entity enter into binding settlements in relation to (including without limitation compromises of Payable Liabilities).

4.3 Association of the Trustee with JHINV

- (a) If at any time the Trustee is proposed to become part of, or an associate of, the JHINV Group other than as contemplated under **clauses 4 or 5** (excluding this **clause 4.3**), the Trustee and JHINV must give the NSW Government at least 90 days' prior Notice with such Notice containing all relevant details of the proposal (**Relevant Proposal**). Such association may only occur if the NSW Government gives Notice that it is satisfied, acting reasonably and diligently:
 - (i) with the adequacy of the protections afforded with respect to the Trustee;
 - (ii) that any Insolvency within the JHINV Group will not result in the Trustee also becoming insolvent, save to the extent that the group Insolvency may impact on the payment of the JHINV Contributions; and
 - (iii) that creditors of the JHINV Group will not have access to any funds or assets of the Trustee or the Liable Entities for payment of liabilities owing to them in their capacity as creditors of the JHINV Group.

- (b) The NSW Government shall be taken to be satisfied with a Relevant Proposal and to have given Notice to that effect if, by the end of the 90 day Notice period or such longer period as extended under **clause 4.3(c)**, it has not given any Notice to JHINV of its decision in relation to such Relevant Proposal.
- (c) Before the end of the 90 day Notice period, the NSW Government may extend by Notice the period within which it must make a decision on the Relevant Proposal by an additional 60 days commencing immediately after the last day of the first 90 day period.
- (d) If the NSW Government is not satisfied as to the matters in **clause 4.3(a)**, it must give Notice of its decision (including reasons) within the 90 day Notice period or such longer period as extended under **clause 4.3(c)**.
- (e) Without limiting any other rights or remedies available to JHINV or the Trustee, either or both of those Parties may seek a declaratory relief from a Court in relation to an adverse decision of the NSW Government under **clause 4.3(d)**, but JHINV and the Trustee agree not to implement any step of the proposal unless and until such declaration of the Court has been made.
- (f) Where a Relevant Proposal will or may reasonably be expected to result in **clause 6.4(a)** having any operation, the NSW Government shall be entitled to reject that Relevant Proposal.
- (g) Nothing in this **clause 4.3** derogates from, or reduces or increases the rights or obligations of JHINV and the Performing Subsidiary under any other provision of this deed.

4.4 Trustee Covenants

- (a) The Trustee covenants in favour of each other Party to fully comply with the terms of the Trust Deed and with its obligations under this deed.
- (b) Subject to **clause 9.15**, the Trustee covenants that it will ensure that each Liable Entity will continue to trade notwithstanding the occurrence of an Insolvency Event of that Liable Entity so long as the Transaction Legislation permits the Liable Entity to do so and no other law prohibits the Liable Entity from doing so.
- (c) The Trustee covenants in favour of the other Parties that it will comply with all conditions attaching to any exemption given, from time to time, under federal law which has been accepted by JHINV under **clause 2.2(b)** or **clause 6.4** of this deed in respect of Taxation of the Trustee in relation to the Fund (including the Taxation of the income of the Fund).

4.5 Inconsistency

In the event, and to the extent, of any inconsistency between the provisions of this deed and the terms of the instrument establishing or governing the Trustee

or any Related Agreement, this deed shall prevail except in the event that the relevant instrument is the Transaction Legislation or the Release Legislation.

4.6 Alternative payment mechanism if Trustee insolvent etc .

- (a) In the event that the Trustee is unable by operation of law or incapacity to carry out its functions under **clause 4.2(a)** and **(c)**, for whatever reason including Insolvency, each Party agrees to use all reasonable endeavours to overcome that difficulty, including by replacing the Trustee where the new Trustee, while governed in the same way as the outgoing Trustee, would not suffer the same inability.
- (b) If after 6 months the Trustee or any replacement Trustee remains unable to carry out its functions for the reasons set out in **clause 4.6(a)**, then unless that inability has arisen by reason of any breach of this deed by the NSW Government (whether by an act or an omission by the NSW Government) or an act of the NSW Government, the NSW Government may, subject to the remainder of this **clause 4.6**, establish an alternative payment mechanism by giving Notice to JHINV of the Person to whom the Funding Payments (and, to the extent payable, any Wind-Up or Reconstruction Amount) shall be made for the benefit of Claimants having Proven Claims (the "**New Person**") and the Performing Subsidiary shall thereafter make such payments to the New Person in substitution for the Trustee.
- (c) Nothing in this **clause 4.6** will, and no alternative funding arrangements established under this clause may:
 - (i) negate or reduce or increase the continuing obligations of JHINV or the Performing Subsidiary under this deed; or
 - (ii) entitle the NSW Government or any Government Authority (whether directly or indirectly) to the benefit of any amounts paid or which are or may become payable to the Trustee by JHINV or the Performing Subsidiary under this deed or any Related Agreement.
- (d) Any nomination by the NSW Government of a Person as the New Person shall not be effective unless and until that Person irrevocably agrees in favour of the Parties to perform the obligations of the Trustee under this deed and the Related Agreements to which the Trustee is a party, and the Parties agree promptly to comply with **clause 1.4(c)** by executing a novation deed.
- (e) The NSW Government must ensure that the New Person nominated by it pursuant to **clause 4.6(b)** is reasonably capable of properly and diligently performing and discharging the obligations described in **clause 4.6(d)**.
- (f) The NSW Government must not nominate a New Person to be appointed under this **clause 4.6** which is not incorporated in Australia without the prior written consent of JHINV.

4.7 Indemnity by Liable Entities

The Parties acknowledge and agree that where the Trustee has made a payment in respect of which it is entitled to be indemnified by one or more Liable Entities under section 36(2) of the Transaction Legislation, the Trustee shall be entitled to charge the relevant Liable Entity or Liable Entities (as the case may be) interest on that amount for the period between the date on which the Trustee makes the relevant payment until the date the Liable Entity or Liable Entities (as the case may be) discharges its or their indemnity obligations in relation to that payment. That interest shall be calculated at the Interest Rate or such other rate as agreed in writing by the Parties.

5 GOVERNANCE AND AUDIT OF THE FUND

5.1 The Trustee Board

- (a) The management of the Fund shall vest in the Trustee.
- (b) The Trustee Board shall consist of a minimum of three Directors and a maximum of five Directors as determined by the Directors.
- (c) Initially there shall be five Directors. JHINV must appoint three of those initial Directors and the NSW Government must appoint two of those initial Directors.

5.2 Power to appoint directors

- (a) Subject to **clause 16.3(b)**:
 - (i) JHINV shall be entitled to appoint a majority of the Directors from time to time to the Trustee Board and to designate one of those Directors to be Chairman;
 - (ii) JHINV may, by Notice to the other Parties, nominate a subsidiary for so long as it remains a subsidiary of JHINV, to exercise its rights under this **clause 5.2(a)**; and
 - (iii) JHINV shall, or shall procure that the nominated subsidiary shall, promptly give Notice to the Trustee and the NSW Government of any appointment made pursuant to this **clause 5.2(a)**.
- (b) The NSW Government shall be entitled to appoint the remaining Directors.
- (c) If the NSW Government appoints officers of the NSW Government as Directors, the Trustee shall and JHINV shall procure that the Directors nominated by it vote in favour of any resolutions of the Trustee Board necessary to ensure that to the extent permitted by applicable law the Trustee waives any potential conflicts of interest arising because the officer is both a Director and has duties to the NSW Government as a public servant.

- (d) A Party shall promptly remove a Director appointed by that Party from office if that Director has committed, or is suspected on reasonable grounds by one or more Parties, of having committed a material breach or successive breaches of confidentiality in relation to the affairs of the Trustee or any of the Parties in connection with this deed or who otherwise engages in conduct which renders him or her unsuitable to be a Director.

5.3 Power to remove and replace Directors

Each Appointor may, by Notice in writing to the Trustee, remove and replace, from time to time, the persons appointed by it as a Director or Chairman. Except in cases of emergency, at least 5 Business Days' Notice shall be given to the other Parties of any proposed appointment of a Director.

5.4 Quorum

The quorum for a Trustee Board meeting is, if JHINV has appointed at least one Director, one Director appointed by JHINV and, if the NSW Government has appointed at least one Director, one Director appointed by the NSW Government, provided that:

- (a) subject to **clause 5.4(b)**, if a quorum is not present at a meeting, the meeting shall be reconvened by Notice to a date no less than 24 hours after the date of the original meeting (or such time as is reasonable in cases of emergency) and the quorum for such a reconvened meeting of which all Directors have been given notice in writing shall be at least two Directors; and
- (b) if **clause 16.3(b)** applies, the quorum shall be determined in accordance with **clause 16.3(b)(i)**.

5.5 Voting at Trustee Board meetings

- (a) Except as otherwise specified in this deed, at any meeting of the Directors, each Director has one vote.
- (b) If a Director representative of a Party and his or her alternate Director is absent, the remaining Director representatives of that Party shall be entitled to jointly exercise the absent Director's vote.

5.6 Chairman and Chairman's vote

The Chairman will have a casting vote in addition to a deliberative vote.

5.7 Interests of Appointor

- (a) Subject always to a Director's obligations under the Trust Deed, the Trustee Constitution, statute or otherwise at law, a Director may take into account the views of that Director's Appointor and may act on the wishes of that Appointor in performing any of his or her duties or exercising any power, right or discretion as a Director in relation to the Trustee.

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- (b) A Director may provide that Director's Appointor with copies of all documents, Board Papers and other material which come into the possession of the Director in that capacity and may disclose to and discuss with the Appointor all information to which the Director becomes privy in that capacity.

5.8 Adjournment

If a quorum is not present within 1 hour after the time appointed for a meeting, the meeting will stand adjourned to:

- (a) if **clause 5.4(a)** applies, the time specified in that clause; and
- (b) in any other case the same time and place seven days after the meeting or to another day, time and place determined by those Directors present.

5.9 Alternate Directors

Each Director may appoint, by Notice in writing to the Trustee, an alternate to act in his or her place. Except in cases of emergency, at least 5 Business Days' Notice must be given of any proposed appointment of an alternate Director pursuant to this **clause 5.9**.

5.10 Chief Executive Officer

The Trustee will be responsible for the selection, appointment and termination of the chief executive officer of the Fund and the terms on which he or she is engaged from time to time.

5.11 Insurance and Indemnities

The Trustee must use best endeavours to take out and maintain Directors and Officers liability insurance with a reputable insurer in respect of each Director and must execute a deed of access and indemnity in favour of each Director.

5.12 Approved Auditor

- (a) The Trustee shall, with the consent of each of the NSW Government and JHINV, appoint and continue to retain an Approved Auditor to be the auditor of the Trustee.
- (b) The Trustee shall, before purporting to appoint an Approved Auditor, give Notice to the NSW Government and JHINV setting out:
- (i) the name and address of the proposed appointee;
 - (ii) the qualifications and experience of the proposed appointee; and
 - (iii) all information that it has concerning the independence (or potential conflicts of duty affecting or that may affect) the proposed appointee (including any information concerning the matters set out in **clause 5.12(d)(iii)**).

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- (c) The consent of each of the NSW Government and of JHINV to the appointment of any Approved Auditor shall not be unreasonably withheld. If the Trustee gives Notice in accordance with **clause 5.12(b)** and the NSW Government or JHINV (as the case may be) either gives consent or does not give Notice to the Trustee Board refusing consent (with reasons) within one month of the Trustee Board's Notice to it, the Trustee Board may appoint the Person specified in its Notice.
- (d) The Approved Auditor must at all times:
- (i) be a registered company auditor;
 - (ii) have appropriate qualifications and experience to be able to perform the audit expected to be performed as at the time of the appointment; and
 - (iii) not be associated with the current Approved Actuary of the Trustee or the NSW Government Reviewing Actuary and not associated with any firm who has held either of those roles within the last 5 years.
- (e) If after having made reasonable enquiries and assessment the Trustee has not been able to identify an auditor who meets all of the requirements set out in **clause 5.12(d)** above, or the NSW Government or JHINV has given Notice refusing consent in accordance with **clause 5.12(c)**, the Trustee shall notify the other Parties of that fact and, failing agreement between the Parties within 21 days as to an auditor acceptable to all of the Parties, the Trustee shall promptly refer the matter and relevant correspondence between the Parties (including reasons for refusal to a particular auditor being appointed) to the President of the Institute of Chartered Accountants of Australia, who shall have the sole power to determine an available auditor who best meets those requirements. Upon being given Notice of such auditor, the Trustee must promptly offer to engage the selected auditor to audit the Trustee on usual commercial terms. Any refusal by JHINV or NSW Government to consent to the appointment of a Person as an Approved Auditor does not prevent the said President from appointing that Person as the Approved Auditor.
- (f) The reports of the Approved Auditor to the Trustee shall be provided to the Trustee with copies to JHINV and the NSW Government.
- (g) The Trustee must:
- (i) prepare a set of consolidated financial statements for the Trustee and the Liable Entities in respect of each Financial Year during the Term, in accordance with requirements applicable under the *Corporations Act* and in accordance with Australian generally accepted accounting principles (or on such other basis as may be agreed between the Parties); and

- (ii) engage the Approved Auditor to audit those financial statements on a timely basis in respect of each Financial Year and to provide a copy of the relevant audit reports to the other Parties to this deed.

5.13 Government Review

- (a) The NSW Government may by Notice to the Trustee and JHINV, at its own cost, appoint an auditor (**NSW Government Auditor**) to conduct a general or more limited audit of the activities, affairs and financial position of the Trustee. The NSW Government Auditor must also satisfy the requirements described in **clause 5.12(d)**.
- (b) The Notice appointing a NSW Government Auditor must specify the scope of the proposed audit.
- (c) The NSW Government Auditor may not commence the proposed audit until 10 Business Days after the Notice under **clause 5.13(a)** has been received by the Trustee and JHINV.
- (d) The Trustee must give the NSW Government Auditor:
 - (i) full and free access to the books and records of the Trustee at its premises;
 - (ii) all reasonable assistance and explanations of information that the NSW Government Auditor may request; and
 - (iii) to the extent the Trustee is entitled to do so without being in breach of any confidentiality obligation to which it is subject, access to the working papers of all Approved Auditors.
- (e) The NSW Government Auditor must give its report (which must include all of its material findings and recommendations) to the NSW Government with copies to the Trustee and JHINV. Otherwise it must keep its report and all the information made available to it during its audit by the Trustee confidential.

5.14 Reporting

The Trustee shall establish an annual budget for the operations of the Fund and shall within 3 months after each Financial Year End report to JHINV and the NSW Government, as to the performance of the Trustee by reference to its budget, financial objectives, and the role of the Trustee.

5.15 Approved Actuary

- (a) The Trustee must ensure that at all times during the Term an Approved Actuary is retained by the Trustee on terms consistent with the terms of this deed.
- (b) The Trustee shall appoint KPMG Actuaries as the initial Approved Actuary and may:

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- (i) terminate the appointment of any Approved Actuary; and
 - (ii) appoint another person as the Approved Actuary with the prior consent of the NSW Government and JHINV, and in engaging any Approved Actuary, the Trustee shall require the Approved Actuary to undertake that the nominated principal of the Approved Actuary from time to time must:
 - (A) meet the requirements set out in paragraph (a) of the definition of “Approved Actuary” and that if that principal changes the Approved Actuary must notify the Parties to this deed of the new principal’s qualifications and experience details; and
 - (B) ensure that at all times such a principal is so nominated.
 - (c) The Trustee shall, before purporting to appoint an Approved Actuary other than KPMG Actuaries Pty Limited (which is to be appointed as the initial Approved Actuary in accordance with **clause 5.15(b)**), give Notice to the NSW Government and JHINV setting out:
 - (i) the name and address of the proposed appointee;
 - (ii) all information that it has concerning the proposed appointee relating to their satisfying the definition of “Approved Actuary” in **clause 1.1**.
 - (d) Where the NSW Government’s or JHINV’s consent to the appointment of any Approved Actuary is required, such consent shall not be unreasonably withheld and shall be taken to be given if the NSW Government or JHINV (as the case may be) does not give Notice to the Trustee and to the other of them refusing consent (with reasons) to that Person being appointed within 1 month of the Trustee’s Notice to it.
 - (e) In the event that the Approved Actuary ceases at any time to satisfy the requirements set out in the definition of “Approved Actuary”, or to continue to have the qualifications and attributes which resulted in the engagement of that Person as the Approved Actuary, then the Trustee shall appoint another Person, with the consent of the NSW Government and JHINV, to be sought in accordance with **clause 5.15(c)** and given in accordance with **clause 5.15(d)** or, if such consent is refused, under **clause 5.15(f)**.
 - (f) If after having made reasonable enquiries and assessment the Trustee has not been able to identify an actuary who meets all of the requirements set out in the definition of “Approved Actuary” in **clause 1.1**, or the NSW Government or JHINV has given Notice in accordance with **clause 5.15(d)** refusing consent, the Trustee shall notify the other Parties of that fact and, failing agreement between the Parties within 21 days as to an actuary acceptable to all of the Parties, the Trustee shall promptly refer the matter (including relevant correspondence between the Parties (including reasons for refusing that a

particular actuary be appointed)) to the President of the Institute of Actuaries of Australia, who shall have the sole power to determine an available actuary who best meets those requirements. Upon being given Notice of such actuary, the Trustee must promptly offer to engage the selected actuary as Approved Actuary on usual commercial terms. Neither the NSW Government's nor JHINV's refusal to consent to the appointment of a Person as an Approved Actuary shall prevent the said President from appointing that Person as an Approved Actuary.

- (g) If a replacement Approved Actuary is to be appointed, the Trustee must use its reasonable endeavours to procure that until such appointment, the current Approved Actuary continues in its role as such, and the Approved Actuary shall be permitted to do so despite any event described in **clause 5.15(a)** while a replacement is found.

5.16 Free Cash Flow Certification

JHINV agrees that, within 30 days after receipt of a signed audit opinion with respect to its Audited Financial Statements in respect of a Financial Year, JHINV will use its best endeavours to procure that the Free Cash Flow of JHINV for that Financial Year is verified by the end of that 30 day period:

- (a) by using its best endeavours to procure that the JHINV Auditor confirms the calculation of the amount of that Free Cash Flow in a certificate signed by it addressed to JHINV, the NSW Government and the Trustee;
- (b) if the JHINV Auditor is unavailable or unwilling to provide such a certificate, by disclosing to the other Parties the reasons known to JHINV for such unavailability or unwillingness and by using its best endeavours to procure that another suitably qualified auditor of similar standard and reputation provides such a certificate; and
- (c) by providing that certificate to each of the Trustee and the NSW Government.

6 FUNDING OBLIGATIONS OF JHINV AND THE PERFORMING SUBSIDIARY

6.1 Primary Funding Obligation

JHINV hereby nominates the Performing Subsidiary as the entity which is primarily liable, and the Performing Subsidiary agrees to be primarily liable, to pay the JHINV Contributions to the Trustee in accordance with the terms of this deed and in particular **clause 9** of this deed.

6.2 Substitution of Performing Subsidiary

- (a) JHINV:
- (i) may, subject to there being no Funding Obligations or other amounts due and payable by the Performing Subsidiary under this deed which

remain outstanding, by Notice to the Trustee (with a copy to the NSW Government) from time to time;

- (ii) must, on request from the NSW Government to do so after the occurrence of an Insolvency Event in respect of the Performing Subsidiary which has not been cured before the earlier of the next date on which the Performing Subsidiary is due to make a payment to the Trustee under this deed and the date falling 3 months after that Insolvency Event; and
 - (iii) must, if required under **clause 6.3**, in accordance with **clause 6.2(b)**, replace the Performing Subsidiary with another subsidiary of JHINV as the person primarily liable for the payment to the Trustee of the JHINV Contributions and the performance of all other obligations and liabilities of the Performing Subsidiary under this deed and the Related Agreements.
- (b) A substitution under **clause 6.2(a)** will not occur unless and until:
- (i) the incoming party is not subject to an Insolvency Event;
 - (ii) the incoming party duly executes and delivers a novation deed to and in favour of the Parties in the form set out in **Schedule 9** under which, among other things, all obligations of the outgoing Performing Subsidiary under this deed are assumed by the incoming party;
 - (iii) where the incoming party is not a wholly owned subsidiary of JHINV, or if the NSW Government so requests, JHINV duly executes and delivers to the Trustee and the NSW Government a guarantee in respect of the obligations of the incoming party which is *mutatis mutandis* on the same terms as the current JHINV Guarantee; and
 - (iv) if the incoming party is not incorporated in or within Australia, JHINV procures the delivery of an opinion of generally recognised independent legal counsel qualified to practice in the relevant jurisdiction to the effect that all deeds of accession or novation, agreements or other instruments effecting such assumption are valid, binding and enforceable in accordance with their terms and comply with the requirements set out in this deed and the Related Agreements in relation to such deeds or instruments (assuming, for the purposes of such opinion, the validity of all terms of this deed and all Related Agreements); and
 - (v) where the outgoing Performing Subsidiary has been subject to an Insolvency Event, JHINV executes and delivers to the Trustee and the NSW Government a deed poll in favour of them acknowledging that despite any compromise or extinguishment of the Funding Obligations under that Insolvency Event, the nature and the value of obligations of the incoming Performing Subsidiary and JHINV under this deed and the

JHINV Guarantee (including in relation to the Funding Obligations and (where payable) the Wind-Up or Reconstruction Amount) have not been reduced or compromised by that compromise or extinguishment and procures that the incoming party provides a corresponding acknowledgement in respect of its obligations under the Principal Deed and the Related Agreements save that this **clause 6.2(b)(v)** does not apply where at the time of substitution under **clause 6.2(a)**, both the Insolvency Event has been discharged or cured, and such discharge or cure did not involve any such compromise or extinguishment of the above mentioned rights which would affect the obligations of the incoming Performing Subsidiary.

- (c) If JHINV nominates a new Performing Subsidiary pursuant to this **clause 6.2** which is not an Australian Tax resident for the purposes of the *Income Tax Assessment Act 1997* (Cth) or which is a resident of a country other than Australia for taxation purposes, then:
- (i) the new Performing Subsidiary shall be liable to make the Funding Payments free and clear of any Tax due or payable in any country other than Australia;
 - (ii) if that Performing Subsidiary is or becomes subject to a law of any jurisdiction outside Australia which requires deductions or withholdings of amounts from the Funding Payments, then that Performing Subsidiary shall make such deduction or withholding but shall pay an additional amount in respect of each affected Funding Payment as shall be required so that such aggregate amount in respect of the Funding Payment as is received by the Trustee will not be less than the amount of such Funding Payment assuming no deduction or withholding was required; and
 - (iii) **clause 6.4(a)** shall have no operation in respect of that new Performing Subsidiary.

6.3 Cessation of Subsidiary Status

If the Performing Subsidiary ceases for any reason to be a subsidiary of JHINV, JHINV shall promptly Notify the Trustee and the NSW Government and, unless otherwise agreed in writing within 25 Business Days of such Notice by the Trustee and the NSW Government, JHINV shall Notify such Parties of a new subsidiary in accordance with **clause 6.2(a)** to act as the Performing Subsidiary and promptly cause that nominated subsidiary to comply with **clause 6.2(b)(ii)**.

6.4 Continuity of satisfaction of Tax Requirements

- (a) Subject to the remainder of this **clause 6.4**, any obligations of JHINV or the Performing Subsidiary to make payments under this deed or any Related Agreement other than the Initial Funding shall be conditional upon, and neither

JHINV nor the Performing Subsidiary shall have any obligation to make such payments unless:

- (i) binding legislation or a binding private ruling which satisfies the Tax Requirements has come into full force; and
 - (ii) if the applicable legislation or ruling (as the case may be) to give effect to an announcement by the Treasurer under **clause 2.2(b)(iii)**, when enacted or made, imposes any additional conditions or qualifications to the Tax Requirements being or remaining satisfied, those conditions are acceptable to JHINV acting reasonably; and
 - (iii) there is no Change in Tax Law which results in, or which will if implemented result in, one or more of the Tax Requirements ceasing to be satisfied.
- (b) If payment of the JHINV Contributions to the Trustee is a deductible expense of a JHINV Group Taxpayer for the purpose of determining the taxable income of that JHINV Group Taxpayer for the purposes of the Tax laws of Australia, but the JHINV Group Taxpayer:
- (i) is entitled to a partial (but not a full) deduction for Tax purposes in respect of the aggregate JHINV Contributions incurred in the relevant year of Taxation and the loss of deductibility affects not more than a *de minimus* amount of the aggregate JHINV Contributions in that year; or
 - (ii) is entitled to a deduction on a deferred basis or in respect of a year of Taxation other than the year in which the JHINV Contribution is paid or incurred and JHINV has elected by Notice to the NSW Government that this **clause 6.4(b)(ii)** shall apply.
- then **clause 6.4(a)** shall have no operation in relation to such *de minimus* loss of deductibility or such matter in respect of which JHINV has given a Notice under **clause 6.4(b)(ii)** respectively.
- (c) Any imposition of Taxes on the Trustee's income (including without limitation the receipt by the Trustee of JHINV Contributions) shall not trigger the operation of this **clause 6.4** where such Taxes are not more than a *de minimus* amount of such income.
- (d) **Clause 6.4(a)** shall have no operation:
- (i) in relation to a year or years of Taxation, where JHINV makes an irrevocable election by Notice in writing to the other parties to this deed that **clause 6.4(a)** shall not operate in relation to that year or years of Taxation or in relation to particular forms or levels of Taxation;
 - (ii) where any of the Tax Requirements ceases to be satisfied by reason of any Accepted Tax Condition ceasing to be satisfied by reason of any

deliberate or reckless act or omission of any member of the JHINV Group; or

(iii) where any of the Tax Requirements ceases to be satisfied by reason of any Accepted Tax Condition ceasing to be satisfied by reason of any inadvertent or negligent act or omission of any member of the JHINV Group, unless:

(A) JHINV has:

- I. given Notice to the Trustee and the NSW Government of the relevant circumstances; and
- II. paid or agreed to pay any applicable penalty or interest reasonably imposed by assessment of the Australian Taxation Office and has taken such other reasonable steps as necessary to remedy the non-compliance with the Accepted Tax Condition; and

(B) either:

- I. the Australian Taxation Office has then revoked or withdrawn the deductibility of the JHINV Contributions or has not otherwise confirmed to JHINV within 12 months of the date of Notice under paragraph (A) that the Tax Requirements will thereafter be satisfied; or
- II. where the Tax Requirements were satisfied under the legislation in force, that legislation is amended or repealed so as to result in the Tax Requirements ceasing to be satisfied and alternate legislation resulting in the Tax Requirements being again satisfied does not come into force within 12 months of the date of amendment or repeal of the earlier legislation.

(e) If the Performing Subsidiary is replaced with another JHINV subsidiary that is an Australian tax resident for the purposes of the *Income Tax Assessment Act 1997* (Cth), **clause 6.4(a)** shall not be triggered where any of the Tax Requirements ceases to be satisfied by reason of that replacement resulting (whether immediately or subsequently) in any Accepted Tax Condition not being satisfied, including as a result of a Change of Tax Law which, at the time of replacing the Performing Subsidiary, was in force or which could not, on reasonable grounds have been anticipated at that time to come into force and which would not have applied to the initial Performing Subsidiary as a Change of Tax resulting in a Tax Requirement ceasing to be satisfied.

(f) **Clause 6.4(a)** shall have no operation in respect of an obligation to pay the Wind-Up or Reconstruction Amount where a Tax Requirement ceases to apply

solely by reason of the Wind-Up Event or Reconstruction Event to which the Wind-Up or Reconstruction Amount relates.

- (g) For the avoidance of doubt, this **clause 6.4** may operate as a result of the Tax Requirements ceasing to be satisfied as a result of or following the substitution of the Trustee (after appropriate consultation) with an alternative payee pursuant to **clause 4.6**.
- (h) If **clause 6.4(a)** has any operation and subsequently legislation or a binding private ruling resulting in the Tax Requirements being satisfied comes into force within 12 months of the start of that operation of **clause 6.4(a)**, then:
- (i) the Performing Subsidiary must, within 20 Business Days, pay any JHINV Contributions or other payments which have not been paid but would have been due and payable under this deed or any Related Agreement but which were not due and payable by reason of the operation of this **clause 6.4**, together with Interest on each such payment at the Interest Rate for the period from the date that payment would have been due and payable but for **clause 6.4** until the date the payment was made; and
 - (ii) JHINV's obligations under this deed and the JHINV Guarantee with respect to the payment of the JHINV Contributions described in **clause 6.4(h)(i)** shall apply from the date of coming into force of such legislation or ruling, as the case may be.
- (i) If **clause 6.4(a)** has any operation and legislation or a binding private ruling satisfying the Tax Requirements does not come into force within 12 months of the start of that operation of **clause 6.4(a)** or such later date as the Parties may agree in writing, **clause 2.6** shall apply as if JHINV had validly served a Notice of termination pursuant to **clause 6.4(a)** on the last day of that period or such later specified date, as the case may be.
- (j) If JHINV considers that a Change in Tax Law results or is likely to result in the operation of **clause 6.4(a)** it shall give a Notice to the NSW Government containing material particulars of that Change in Tax Law.

7 RESTRICTIONS ON SPECIFIED DEALINGS

7.1 Clause 7 Definitions

- (a) Unless otherwise indicated elsewhere in this deed by an express capitalised reference to a defined term herein, the following definitions apply in and solely for the purposes of this **clause 7**:

Capital Management Transaction means any capital reduction, return of capital, share buyback, dividend characterised by JHINV as a special dividend or other capital management transaction having a similar effect in relation to Equity Securities of JHINV, but excludes any Distribution.

Close Group means, at any time, JHINV and each member of the JHINV Group that is a wholly owned subsidiary (whether directly or indirectly through one or more interposed wholly owned entities) of JHINV.

Distribution means any distribution to the Equity Securityholders in JHINV or a class of such Equity Securityholders (other than a dividend characterised by JHINV as a special dividend), in their capacity as such, whether by JHINV or any member of the JHINV Group, including without limitation, any dividend or distribution in cash or in specie to, those Equity Securityholders.

Equity Distribution means:

- (a) any Distribution; and
- (b) any amount of money paid (or agreed or declared to be paid) and/or valuable consideration provided (or agreed or declared to be provided) to Equity Securityholders in respect of any Capital Management Transaction.

Equity Security means, in respect of a Person:

- (a) a security in that Person which permits or entitles a holder of that security to participate in:
 - (i) the profits available for distribution to holders of equity of that Person; or
 - (ii) the surplus available for distribution to holders of equity on a Wind Up Event of that Person, ignoring any securities in respect of which such rights are contingent on the exercise of conversion or exchange rights, unless or until such rights are exercised; or
- (b) a CHES Depository Interest, American Depository Receipt or other Stock Exchange traded interest (created by or at the instance of that Person) in a security which is within paragraph (a) of this definition, other than a Hybrid.

Equity Securityholder means at any time a Person (excluding any member of the Close Group) who holds Equity Securities.

Excluded Related Entity means any Person which becomes:

- (a) a Parent Entity of JHINV pursuant to a transaction or related transactions where the following requirements are satisfied:

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- (i) the value of Equity Securities in the Parent Entity issued or transferred (or to be issued or transferred) to the JHINV Equity Securityholders in their capacity as such in connection with the transaction or transactions by which the Person becomes a Parent Entity of JHINV is less than 80% of the aggregate value of all Equity Securities of the Parent Entity which will be on issue immediately after fully implementing such transaction(s); and
 - (ii) the proportion of voting shares in the Parent Entity issued or transferred or to be issued or transferred to JHINV Equity Securityholders in their capacity as such, as a result of the transaction or transactions by which the Person becomes a Parent Entity of JHINV, is less than 80% of all voting shares in the Parent Entity which will be on issue immediately after fully implementing such transaction(s); and
 - (iii) the transaction or transactions by which the Person becomes the Parent Entity of JHINV are not wholly or predominantly financed (directly or indirectly) by or on the credit of any member of the JHINV Group; or
- (b) a Sibling Entity of JHINV pursuant to a transaction or related transactions where the following requirements are satisfied:
- (i) the aggregate value of Equity Securities in the Sibling Entity held (or to be held) by members of the JHINV Group or issued or transferred (or to be issued or transferred) to the JHINV Equity Securityholders in their capacity as such in connection with the transaction or transactions by which the Person becomes a Sibling Entity of JHINV is less than 80% of the aggregate value of all Equity Securities of the Sibling Entity which will be on issue immediately after fully implementing such transaction(s);
 - (ii) the proportion of the aggregate voting shares in the Sibling Entity held (or to be held) by members of the JHINV Group or issued or transferred or to be issued or transferred to JHINV Equity Securityholders in their capacity as such, as a result of the transaction or transactions by which the Sibling Entity becomes a Sibling Entity of JHINV, is less than 80% of all voting shares in the Sibling Entity which will be on issue immediately after fully implementing such transaction(s); and
 - (iii) the transaction or transactions by which the Person becomes the Sibling Entity of JHINV are not wholly or predominantly financed (directly or indirectly) by or on the credit of any member of the JHINV Group,

where for this purpose, if a Person becomes a Parent Entity or a Sibling Entity by means of one or more related transactions, the effect of all such transactions shall be taken into account in applying the tests in paragraphs (a) or (b) above (as applicable).

Hybrid means a security (other than an Equity Security) issued by any member of the JHINV Group the terms of which entitle its holder or the issuer, either generally or in specific circumstances, to convert that security into, or exchange that security for:

- (a) one or more securities in a member of the JHINV Group that fall within paragraph (a) or (b) of the definition of Equity Securities;
- (b) if the JHINV Group issuer is not a body with share capital, other ownership interests conferring voting power at a general meeting of members of the JHINV Group issuer; or
- (c) a multiple or a fraction of any of the foregoing securities.

Independent Valuation Expert means a Person who is appointed by JHINV in accordance with **clause 7.1(b)**.

Liable Group means the following persons, taken as a whole:

- (a) JHINV, unless or until JHINV no longer has obligations under this deed or under the JHINV Guarantee;
- (b) if any Person becomes and remains liable (whether in addition to or in substitution for JHINV) to perform JHINV's obligations under this deed or the JHINV Guarantee, that Person; and
- (c) the Performing Subsidiary from time to time.

Market Capitalisation means, in relation to any Person on any date, the sum of:

- (a) the amount calculated in accordance with the following formula for each class of Equity Securities in that Person which is Quoted:

$$V = N \times P$$

where:

V is the value of that class of Equity Securities in that Person;

N is the number of Equity Securities in that Person on issue in that class on that date; and

P is the VWAP of those securities during:

- (i) in the circumstances set out in **clause 7.2(g)**, the 12 months immediately preceding that date; and
 - (ii) otherwise, the 5 trading days immediately preceding that date;
- (b) in respect of each class of Equity Securities in that Person which is not Quoted, the market value of those securities as at that date, as determined by:
- (i) JHINV acting reasonably; or
 - (ii) if required by JHINV, the Independent Valuation Expert; or
 - (iii) the Independent Valuation Expert, if a Party, by Notice in writing to the other Parties, requires such a determination to be made; and
- (c) in respect of each class of Hybrids of that Person, the total value attributable to the equity component of all Hybrids, as determined on the same basis as the determination described in paragraph (b) above,

provided in each case that:

- (d) where a security is a Quoted depository interest in respect of another security of that Person which is not Quoted, only the Quoted depository interest will be counted in assessing the Market Capitalisation;
- (e) where a security is a Quoted depository interest in respect of another Quoted security, depository interest or Hybrid of that Person, only the second-mentioned Quoted security, depository interest or Hybrid will be counted in assessing the Market Capitalisation;
- (f) where a security is Quoted on more than one Stock Exchange, only the price of those securities as Quoted on the primary Stock Exchange will be counted in assessing the Market Capitalisation; and

and for the avoidance of doubt, while the classes of Equity Securities of JHINV remain those on issue as at the date of this deed, the Market Capitalisation of JHINV shall be calculated by reference to the market value of the CHESSE Depository Interests over the ordinary shares of JHINV.

Net Income means, in respect of a Financial Year, the consolidated net income for the JHINV Group for that Financial Year as set out in JHINV's Audited Financial Statements for that Financial Year, adjusted (if necessary) to:

- (a) for the avoidance of doubt, deduct any Tax expense incurred or add any Tax credit arising in that Financial Year;

- (b) deduct any increase or add back any reduction in non-cash provisions (including Asbestos provisions) required under the GAAP in respect of which the Audited Financial Statements are prepared with respect to the Funding Payments; and
- (c) after deducting the income statement charge in relation to minority interests' share of profits or adding the income statement credit in relation to minority interests' share of losses.

Non-Arm's-Length Dealing means, in relation to a member of the JHINV Group, any transaction or dealing:

- (a) between that member of the JHINV Group and any Person which is not part of the Close Group; and
- (b) which is not on arm's-length terms; and
- (c) where that member of the JHINV Group incurs or will incur a detriment (other than a *de minimus* detriment) because the terms are not arm's-length terms.

Parent Entity means any Person of which JHINV is a Controlled Entity or where there are two or more such Persons, only the ultimate holding company of JHINV shall be a Parent Entity.

Relevant Obligations means the obligations of the Performing Subsidiary to the Fund under **clauses 6 and 9**, and the obligations of JHINV under the JHINV Guarantee.

Reorganisation means:

- (a) any:
 - (i) increase or decrease in;
 - (ii) variation of any rights attaching to all or any part of; or
 - (iii) reorganisation or scheme of arrangement with respect to,
the share capital of any Controlled Entity of JHINV, howsoever effected that has the effect or consequence of creating rights in respect of such share capital in favour of any Person outside the Close Group or transferring such rights from a member of the JHINV Group to a Person outside the Close Group;
- (b) any:
 - (i) decrease in;
 - (ii) variation of any rights attaching to all or any part of; or

(iii) reorganisation or scheme of arrangement with respect to,

the share capital of JHINV, howsoever effected that has the effect or consequence of adversely affecting the rights of the Trustee relative to JHINV Equity Securityholders;

- (c) any Capital Management Transaction in relation to Equity Securities of JHINV, excluding any Capital Management Transaction (or the part thereof) the only counterparties to which are members of the Close Group;
- (d) any transfer by JHINV or any other member of the JHINV Group of any Equity Securities (or if the member is not a body with a share capital, other ownership interests conferring voting power at a general meeting of members) in any Controlled Entity of JHINV to one or more Persons outside the Close Group;
- (e) any issue of Equity Securities (or if the member is not a body with a share capital, other ownership interests conferring voting power at a general meeting of members) in any Controlled Entity of JHINV to one or more Persons outside the Close Group;
- (f) any issue, or transfer by JHINV or any other member of the JHINV Group, of Hybrids in any member of the JHINV Group to one or more Persons outside the Close Group; or
- (g) any Person becoming a Parent Entity or a Sibling Entity, other than an Excluded Related Entity.

Sibling Entity means any Person (including without limitation any Person which is and then ceases to be a member of the JHINV Group) in respect of which shares or other securities in that Person are offered (whether by way of issue or transfer), issued or transferred to all or substantially all of the Equity Securityholders or a class of Equity Securityholders in their capacity as such (disregarding any Equity Securityholders to whom it is illegal in their jurisdiction of residence to be offered, issued or transferred the same), where a member of the JHINV Group causes, procures or otherwise materially facilitates the transaction under which such securities are offered, issued or transferred and:

- (a) the relevant Equity Securityholders continue to hold Equity Securities in JHINV (whether or not a lesser or greater number than they held before such issue or transfer); or
- (b) the relevant Equity Securityholders cease to hold Equity Securities in JHINV and that Person does not immediately become a Parent Entity.

Specified Dealing means a Distribution, a Reorganisation or a Non-Arm's-Length Dealing.

Valuation Ratio means the amount determined under **clause 7.2(m)**.

VWAP means the volume weighted average price for the specified securities over the specified period as determined in accordance with the rules of the primary Stock Exchange on which those securities are Listed.

- (b) If an Independent Valuation Expert is required to determine a matter under this **clause 7**, JHINV shall use its best endeavours to procure that:
- (i) the Person appointed:
 - A. is a reputable independent valuer of shares or businesses who has the requisite financial expertise having regard to the nature of the transaction or asset being considered;
 - B. has declared it has no interest or duty which conflicts with its functions as an Independent Valuation Expert under this deed;
 - C. is not an associate (as defined in the Corporations Act) of any member of the JHINV Group; and
 - D. has not provided any material services to any member of the JHINV Group within the previous 12 months other than as an Independent Valuation Expert; and
 - (ii) it appoints that Person on usual commercial terms, including that:
 - A. the terms state the purpose of appointing that Person;
 - B. the Independent Valuation Expert must:
 - I. prepare a written report setting out the terms of reference and its assessment with a statement of its detailed reasoning for its assessment;
 - II. address that report to JHINV, the Trustee and the NSW Government such that each of those persons is severally entitled to rely on such report; and
 - III. contemporaneously provide a copy of that report to JHINV, the Trustee and the NSW Government, provided that no such obligation will apply to a Person unless such Person has agreed to keep such information confidential on the same basis as that applying under **clause 23**;
 - C. subject to **clause 7.1(g)**, JHINV is responsible for the payment of the Independent Valuation Expert's costs and fees;

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- D. the Independent Valuation Expert acts as an expert and not an arbitrator;
 - E. JHINV must allow the Independent Valuation Expert full and free access to the relevant financial and other relevant information of the JHINV Group and give the Independent Valuation Expert any assistance that the Independent Valuation Expert may reasonably request; and
 - F. any limitations on the liability of the Independent Valuation Expert with respect to the engagement are consistent with usual practice for independent valuation experts.
- (c) JHINV must by Notice inform the NSW Government and the Trustee of any appointment of the Independent Valuation Expert at the same time such appointment is publicly announced.
 - (d) A written report of an Independent Valuation Expert prepared and provided pursuant to **clause 7.1(b)** shall, in the absence of manifest error, be binding on the Parties.
 - (e) Where a Distribution or Capital Management Transaction includes a distribution in specie or other non-cash distribution, then for the purposes of this **clause 7** the amount of that part of the distribution shall equal the market value of such property less any consideration payable by the Equity Securityholder to the relevant member of the JHINV Group in respect of that distribution. If there is any dispute concerning the valuation of any such distribution for the purposes of this **clause 7**, a Party may require that JHINV refer the matter to an Independent Valuation Expert or, if the Independent Valuation Expert does not so determine within 3 months of the distribution being made, or if no Independent Valuation Expert accepts such an appointment within that 3 month period shall be determined by an Independent Valuation Expert appointed by the NSW Government on the same basis that JHINV is required to appoint such an expert under **clauses 7.1(b), (c) and (d)** and provided that the NSW Government shall notify JHINV immediately of any appointment by it of an Independent Valuation Expert pursuant to this clause.
 - (f) In this **clause 7**, in the case of an offer of securities for issue or transfer (and performance of any contract arising from that offer), in determining whether the terms of that transaction are on arm's-length terms, but without limiting the circumstances in which terms may be regarded as being on an arm's-length basis:
 - (i) in relation to pricing terms, any normal market discount associated with a transaction of that kind (taking account of the nature and the terms of the securities offered, the terms of the offer and the size of the offer) shall be disregarded;

(ii) in relation to pricing terms, if the pricing of the securities offered, the amount of any discount or both results from an open market bookbuild or auction conducted in relation to the offer by reputable investment bankers, stockbrokers or other relevant market intermediaries:

A. the pricing of the securities offered shall be taken to be arm's-length pricing terms; and

B. the amount of any discount shall be taken to be a normal market discount.

(iii) regard shall be had to all other relevant circumstances.

(g) Where a Party exercises a right under this deed to require that a determination or estimation is referred to an Independent Valuation Expert and the matter to be determined or estimated is reasonably capable of being determined or reasonably estimated without such a referral, and JHINV has made that determination or estimation and provided reasons with supporting information in relation to that determination or estimation to the referring Party, then JHINV shall bear the reasonable costs and expenses of the Independent Valuation Expert's review of that determination or estimation, unless the Independent Valuation Expert finds that JHINV's determination or estimation was substantively correct, in which case such costs will be borne by the referring Party.

7.2 Exempt Transactions

Unless otherwise expressly specified in this **clause 7.2**, the provisions of **clauses 7.3 to 7.6** inclusive do not and are not intended to apply in relation to a transaction which satisfies one or more of the following paragraphs:

(a) any transaction or dealing (including, without limitation, any purchase or sale of a business or assets, or any sale, purchase or issue of shares or securities, or a transaction or dealing under which a liability is assumed or a Security Interest is granted) by a JHINV Group member on arm's-length terms;

(b) any transaction (excluding any transaction with JHINV Equity Securityholders acting in their capacity as such) of a revenue or capital nature entered into in the ordinary course of the business of the JHINV Group taken as a whole, to be assessed having regard to the JHINV Group's historical operations and activities over the period of 3 years prior to the relevant transaction;

(c) any transaction or dealing the only parties to which (other than parties whose consent is required in order to effect such transaction or dealing and whose involvement is on arm's length terms) are Close Group members before and after the transaction or dealing, and where no value or consideration is provided or made available to any Person outside the Close Group other than (i) with respect to Taxes or other amounts payable to any Government Authorities in connection with the transaction or dealing; (ii) to advisers in

respect of their fees and disbursements, and (iii) to other Persons whose consent is required in order to effect such transaction or dealing or who are otherwise involved in implementing the transaction or dealing, again provided their involvement is on arm's-length terms;

- (d) a member of the JHINV Group making a takeover bid for shares, or other securities in, or all or substantially all of the assets of a company or enterprise to the extent that the consideration offered and given for the takeover bid is:
 - (i) Equity Securities in JHINV; or
 - (ii) on arm's-length terms (regardless of the nature and source of funding or consideration for the takeover bid);
- (e) JHINV becoming a Controlled Entity of an Excluded Related Entity;
- (f) payments by JHINV of ordinary dividends or provisions in relation thereto, provided that the total dividends paid or provided for by JHINV in any period of two consecutive Financial Years (the "**Dividend Period**") (and ignoring payments to the extent previously provided for) is not more than 75% of the aggregate Net Income in respect of the two Financial Years ending at the end of the first Financial Year of the Dividend Period (and after deducting from the dividends included in that calculation any dividends to the extent such dividends are reinvested in any member of the JHINV Group or are replaced pursuant to an underwritten dividend reinvestment plan or equivalent program);
- (g) if, at the time of implementation of the transaction Shares are Listed, any Capital Management Transaction in relation to Equity Securities in JHINV where the sum of money paid and valuable consideration provided by members of the JHINV Group to Equity Securityholders in JHINV in respect of the Capital Management Transaction and all other transactions falling within this **clause 7.2(g)** which occurred or were announced within the period of 36 months prior to the date on which the transaction is first announced does not exceed 15% of the Market Capitalisation of JHINV determined as at the date such transaction is first announced (and where a Capital Management Transaction (such as a buyback scheme) is announced but is not fully given effect to at the time a further Capital Management Transaction is announced, only the Capital Management Transactions implemented under that scheme to that date shall be taken into account, but any further utilisation of that scheme shall be treated as a new Capital Management Transaction which will be deemed to be announced on the date of its implementation);
- (h) any issue of Equity Securities in JHINV (whether to JHINV Equity Securityholders or to other persons);
- (i) any issue of bonds, notes or other unsecured debentures, excluding Hybrids, made by any member of the JHINV Group on arm's-length terms;

- (j) while Shares are Quoted, any issue by a JHINV Group member of Hybrids on arm's-length terms;
- (k) any Capital Management Transaction (which, for the avoidance of any doubt, does not include any ordinary dividend) in relation to Equity Securities in JHINV to the extent the sum of money to be paid and the value of other consideration to be provided to Equity Securityholders as part of that Capital Management Transaction and other previous transactions under this **clause 7.2(k)** does not exceed the amount of capital raised as a result of issuing Equity Securities in JHINV after the date of this deed to Persons outside the JHINV Group (excluding any capital raised in respect of which JHINV has given a Notice of Capital Election under **clause 7.8(b)** or which has been included in "SRC" or has been deducted from "ED" for the purposes of determining "QCR" under **clause 7.8(f)**);
- (l) a transaction (or, if relevant, that part of a transaction) that consists of:
- (i) a Person becoming a Parent Entity or a Sibling Entity where the Person is an Excluded Related Entity or where each of JHINV and the Parent Entity or the Sibling Entity, as the case may be, have complied with **clause 7.7** but nothing in this **clause 7.2(l)(i)** exempts any Distribution or Capital Management Transaction which would not otherwise be exempt under another provision of **clause 7.2**; or
 - (ii) a transaction or dealing between JHINV and any Sibling Entity (or their respective wholly-owned subsidiaries), where each of JHINV and the Sibling Entity have complied with **clause 7.7** and the Sibling Entity has acceded to this deed and the relevant Related Agreements;
- (m) any transaction or dealing where the number determined by the following formula (the "**Valuation Ratio**") is equal to or greater than 2.75, on:
- (i) where the transaction or dealing is publicly announced, the trading day prior to the date it is first publicly announced; or
 - (ii) otherwise, the trading day prior to the day on which JHINV approves the entry into a legally binding commitment to undertake the transaction:

$$VR = \frac{(MC \times QCR) + TCE - (VA - VL + P)}{TCE - (VA - VL + P)}$$

where:

VR is the Valuation Ratio;

MC is the Market Capitalisation of JHINV (assessed by reference to the relevant trading day described above) less:

- A. in the case of a cash Equity Distribution, the amount declared or payable;
- B. in the case of a non-cash Equity Distribution, the market value of the Equity Distribution effected or to be effected under the transaction or dealing, less any consideration payable to the JHINV Group in return for the Equity Distribution; and
- C. in all other cases, the consideration payable by the JHINV Group with respect to the transaction less the consideration receivable by the JHINV Group with respect to the transaction,

and in each case, if there is any dispute as to the calculation of any amount or formula under this **clause 7.2**, a Party may require that the matter be referred to an Independent Valuation Expert in accordance with **clause 7.1(b)**;

QCR is the Qualifying Capital Ratio applicable on that date; and

TCE equals the Term Central Estimate set out in the most recent Annual Actuarial Report;

VA equals the value of the assets of the Trustee and the Liable Entities reported in the Audited Financial Statements of those entities as at the date to which the Annual Actuarial Report referred to in "TCE" was prepared, but does not include any assets included in that calculation of "TCE";

VL equals the value of the liabilities of the Trustee and the Liable Entities as reported in the Audited Financial Statements referred to in the definition of "**VA**", but does not include any Asbestos Liabilities, whether included in "TCE" or otherwise;

P equals the sum of all payments (other than payments by way of loan) received by Trustee from the Performing Subsidiary or any other member of the JHINV Group since the date to which the Annual Actuarial Report referred to in "TCE" was prepared.

- (n) any transaction which occurs pursuant to a composition or compromise plan which has been duly approved by creditors of JHINV in accordance with applicable law in connection with a Reconstruction Event to which **clause 10** applies and any transaction following a Wind-Up Event which transaction has been duly approved by the liquidator of JHINV; or
- (o) the making of a Capital Election or the related Capital Raising.

None of the paragraphs in this **clause 7.2** is limited by any of the others. The inclusion of a transaction or dealing in this **clause 7.2** does not and should not be

taken to imply that, but for that inclusion, it would be a Specified Dealing to which **clause 7.3** would, or is intended to, apply. Where a Specified Dealing is of a kind described in an exemption listed in this **clause 7.2** but that Specified Dealing exceeds (or would result in JHINV exceeding) a quantum limitation set out in that exemption, the exemption shall be available for that part of the Specified Dealing which does not exceed (or which would not result in JHINV exceeding) that limitation.

7.3 Covenant not to undertake prejudicial Specified Dealings

Subject to **clauses 7.2** and **7.6**, JHINV must not, without the prior written consent of the NSW Government, undertake, make, permit or cause to occur any Specified Dealing which would:

- (a) materially adversely affect the priority (whether under statute, security or otherwise) as between the Trustee and Equity Securityholders to a surplus of the Liable Group after payments to the Lenders and other creditors having a right of priority of payment over the Trustee (whether under statute, security or otherwise) as if such surplus were to be notionally allocated between those entitled thereto but without assuming that a Wind-Up or Reconstruction Amount is then payable; or
- (b) materially impair the legal or financial capacity of the Liable Group (assessed by reference to the whole Liable Group and not merely one or some Liable Group members),

in each case such that the Liable Group would, by reason of the Specified Dealing, cease to be likely, assessed on a reasonable basis (and having regard to all relevant circumstances), to be able to satisfy the Relevant Obligations that would have arisen had the Specified Dealing not occurred.

7.4 Application of clause 7.3

- (a) Specified Dealings to which **clause 7.5** applies are to be aggregated in accordance with **clause 7.5** before applying **clause 7.3** in respect of the most recent Specified Dealing (and without affecting the application of this **clause 7** in relation to any earlier Specified Dealing).
- (b) Where a Specified Dealing:
 - (i) is not exempt under **clause 7.2** from the operation of **clause 7.3**; and
 - (ii) impairs the legal or financial capacity of the Liable Group to perform the Relevant Obligations but that impairment is not itself material,

then in applying **clause 7.3** to that Specified Dealing, regard shall be had to the cumulative effect of all other Specified Dealings which attracted the operation of this **clause 7.4(b)** within the period of 24 months prior to the date on which that Specified Dealing was publicly announced or (if earlier) on which it was first implemented, and where part of a Specified Dealing would be

exempt under **clause 7.2** from the operation of **clause 7.3**, that part of the Specified Dealing is to be ignored in applying this **clause 7.4**.

- (c) Where an assessment under **clause 7.3** requires consideration of the likely level of Annual Contribution Amounts or likely future Free Cash Flow after the relevant Specified Dealing takes effect, that assessment is to be made by reference to:
- (i) the Annual Actuarial Report most recently received prior to the date of the assessment, and not to further actuarial assessments of the liabilities of the Liable Entities; and
 - (ii) the likely effect of the Specified Dealing on the likely future Free Cash Flow of JHINV, comparing the position that would be or is expected to arise if the Specified Dealing had, or had not, occurred, and to the extent that assumptions are required to be made in assessing that likely effect, having regard only to assumptions that are reasonable.

7.5 Aggregation of Certain Specified Dealings

Two or more Specified Dealings agreed (including by way of conditional agreement or option), or completed in any 12 month period, will be deemed to comprise a single Specified Dealing for the purposes of **clause 7.4(a)** if and only if they:

- (a) are entered into by any one or more members of the JHINV Group with the same party or with parties associated with or acting in concert with one another; or
- (b) together lead to one or more material parts of the JHINV Group's activities or business (taken as a whole) ceasing to be owned or controlled by a member of the JHINV Group; or
- (c) are proposed to the JHINV Equity Securityholders as related Specified Dealings or for consideration at one or more general meetings to be held within a period of 90 days.

If aggregation under this **clause 7.5** results in a requirement for NSW Government consent under **clause 7.3**, then that consent is required only for the latest transaction and each transaction which is conditional on the latest transaction and which has otherwise not yet been implemented.

7.6 Excluded transactions

- (a) A Specified Dealing will not be regarded as being undertaken, made, permitted or caused to occur contrary to **clause 7.3** if:
 - (i) prior to it occurring, JHINV gives a Notice to the NSW Government setting out that JHINV is seeking to apply this **clause 7.6** and containing:

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- A. reasonable details of the relevant Specified Dealing in writing together with a written report of an Independent Valuation Expert stating that in the opinion of that expert **clause 7.3** would not be contravened by that Specified Dealing occurring and setting out a reasoned statement by the expert as to why the expert holds that opinion; and
- B. the information, calculations and documents, which were provided by or on behalf of members of the JHINV Group to the Independent Valuation Expert; and
- C. a statement that the JHINV Boards consider that the Specified Dealing will not contravene **clause 7.3**; and (ii) the NSW Government does not within the period of 30 days after JHINV has complied with **clause 7.6(b)** (or if **clause 7.6(d)** applies, the further period described in that clause) (the “**Review Period**”), give Notice to JHINV stating that in its opinion it is satisfied that **clause 7.3** would be contravened by the Specified Dealing occurring and giving its reasons for holding that opinion.
- (b) From the time a Notice of the kind described in **clause 7.6(a)(i)** is given by JHINV, JHINV shall make available to the NSW Government and its advisers the Independent Valuation Expert on reasonable notice during normal working hours to answer questions regarding the opinion and underlying reasons of the Independent Valuation Expert. The NSW Government shall undertake, and shall procure that any advisers appointed by it for the purposes of this **clause 7.6** undertake, to keep all of such information confidential on the basis that **clause 23** of this deed applies in respect of such information.
- (c) Where the NSW Government acting with reasonable diligence identifies that the information provided to it under **clause 7.6(b)** does not provide a sufficient basis for an informed opinion as to whether a Specified Dealing breaches **clause 7.3**, the NSW Government may, by Notice to JHINV, request such further information from JHINV or the Independent Valuation Expert as is reasonably necessary to form such an opinion and the Review Period will automatically be extended by a reasonable period (not exceeding 30 days) after receipt by the NSW Government of such information.
- (d) Where the NSW Government acting reasonably determines that the Review Period is insufficient to review the information provided to it under **clause 7.6(b)** or **7.6(c)** in order to form an opinion as to whether a Specified Dealing breaches **clause 7.3**, the NSW Government may, by Notice to JHINV, extend the Review Period by such further period as is reasonably required to review such information (but in any event such further period shall not exceed a period of 60 days). Without limiting the foregoing, it shall be reasonable for the Review Period to be extended under this **clause 7.6(d)** if the Review Period is insufficient for the NSW Government to engage as expeditiously as possible (but having regard to required due process) any external advisers from which it

considers it necessary or appropriate to obtain advice with respect to its opinion and the proposed Specified Dealing.

- (e) Any opinion given by the NSW Government under this **clause 7.6** shall not result in **clause 7.3** being rendered inapplicable to a Specified Dealing if the information provided or made available to the Independent Valuation Expert or the NSW Government under this **clause 7.6**, contained any material misstatement of fact or any material omission.
- (f) Without prejudice to JHINV's obligations under **clause 7.6(b)**, JHINV must pay the reasonable costs of the NSW Government (including the reasonable cost of advisers) of any review by the NSW Government of a proposed Specified Dealing under this **clause 7.6**.

7.7 Mandatory accession

- (a) The remaining provisions of this **clause 7.7** have no application in relation to:
 - (i) an Excluded Related Entity;
 - (ii) a Person becoming a Sibling Entity where:
 - A. **clause 7.3** is not breached by its creation;
 - B. both the Sibling Entity and JHINV are Listed following its creation; and
 - C. none of the securities of the Sibling Entity are stapled to any securities of JHINV at or around the time the Person becomes a Sibling Entity; or
 - (iii) a Person becoming a Sibling Entity where the Valuation Ratio (as applied to JHINV but excluding the Sibling Entity) immediately after that Person becoming a Sibling Entity is not less than 2.75.

Further, nothing in this **clause 7.7** requires JHINV or its directors to do anything the authorising of which would require or entail the JHINV Boards taking or refraining from taking or authorising JHINV taking or refraining to take any action which is contrary to law.

- (b) JHINV agrees that to the extent within its power or control, it will procure that each Person who becomes or who will upon implementation of a transaction become a Parent Entity promptly enters into a deed of accession under which it becomes bound to observe all of the obligations of JHINV under this deed and the JHINV Guarantee (in each case as if all references to "JHINV" were a reference to the Parent Entity). Subject to **clause 7.7(f)** and **7.7(g)** JHINV shall remain bound by its obligations under this deed and the JHINV Guarantee.

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- (c) JHINV agrees that to the extent within its power or control, it will procure that a Person who becomes or who will upon implementation of a transaction become a Sibling Entity enters into a deed on terms equivalent (other than differences of the kind contemplated in and agreed between JHINV and the NSW Government pursuant to **clause 7.7(d)**), to those in this deed under which it agrees to be bound by obligations equivalent to those of JHINV under this deed, the JHINV Guarantee and each other Related Agreement to which JHINV is a party, but applied on the basis that a reference to “JHINV” is a reference to that Person and on the basis that a reference to the Performing Subsidiary is to a subsidiary of that Person which also enters into that deed and agrees to the same obligations as apply to the Performing Subsidiary under this deed and JHINV shall remain bound by its obligations under this deed and the Related Agreements.
- (d) Where a Person is to become a Sibling Entity and **clause 7.7(c)** applies, JHINV and the NSW Government shall negotiate in good faith such changes to this deed and the Related Agreements as are necessary to reflect the division of obligations under this deed between two separate and distinct groups and such that the Trustee is not worse off (other than de minimis detriments) as a consequence of that Person becoming a Sibling Entity.
- (e) Where a Person described in **clauses 7.7(b)** or **(c)** executes an accession deed or other deed under those clauses, JHINV must procure the delivery of an opinion of a recognised expert independent legal counsel practising in the place of incorporation of the Parent Entity or the Sibling Entity, or other independent legal counsel reasonably satisfactory to the NSW Government, to the effect that all deeds of accession (or if applicable any other agreements or other instruments effecting such accession) are enforceable in accordance with their terms to no material extent less than this deed would have been enforceable against JHINV.
- (f) If an accession deed has been delivered by the Parent Entity referred to in **clause 7.7(b)** and the financial position of the Liable Group after substituting the Parent Entity for JHINV would be substantially the same or better than the position of the Liable Group prior to that substitution and all material consents and conditions referred to in the legal opinion given under **clause 7.7(e)** have been given or satisfied, then the Parties must, on request by Notice from JHINV, execute a deed of release in favour of JHINV releasing it from all obligations under this deed and the Related Agreements to which it is a party, within 15 Business Days of receipt of such Notice from JHINV.
- (g) If the Parent Entity executes a deed of accession referred to in **clause 7.7(b)**, then:
- (i) this deed shall apply as if references to JHINV were to the Parent Entity;

- (ii) if the Parent Entity is not the immediate holding company of JHINV, it shall procure the immediate holding company to enter into a deed of guarantee on terms equivalent to the JHINV Guarantee;
- (iii) subject to **clause 7.7(f)**, JHINV shall be jointly and severally liable with the Parent Entity to perform the obligations of the Parent Entity under this Deed;
- (iv) for the purposes of **clause 7.8**, the Parent Entity shall be deemed to have completed a Capital Raising at the time of the Parent Entity's accession to this deed and may make a Capital Election in relation to that Capital Raising. In such a case the definitions in **clause 7.8** shall be applied as follows:

QCR means the Qualifying Capital Ratio to apply to the Parent Entity.

MV means the Market Capitalisation of JHINV immediately prior to the announcement of the transaction by which the Parent Entity is to become the Parent Entity.

ED means the amount of ED which would have applied in a calculation of QCR for JHINV after taking into account the sum of all Equity Distributions paid or payable to the Equity Securityholders of JHINV in connection with the transaction or transactions under which the relevant Person becomes a Parent Entity (other than such Equity Distributions which occurred prior to the announcement of the transaction by which the Parent Entity is to become the Parent Entity).

SRC means the sum of the Market Capitalisation of the Parent Entity immediately prior to the announcement of the transaction by which the Parent Entity is to become the Parent Entity (less the sum of the amount (if any) which is double counted in the Market Capitalisation of the Parent Entity and MV and the amount of all Equity Distributions made or declared by the Parent Entity between the time of the announcement of the transaction by which the Parent Entity is to become the Parent Entity and the time of accession) and any new capital raised in connection with the transactions under which the Person becomes the Parent Entity (other than such capital which was raised prior to the announcement of the transaction by which the Parent Entity is to become the Parent Entity).

PQCR means the QCR which applied to JHINV immediately prior to the announcement of the transaction by which the Parent Entity is to become the Parent Entity.

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- (v) any discharge of any obligation (whether under this deed or under a guarantee or other Related Agreement) by any of the Parent Entity, the immediate holding company of JHINV or JHINV shall comprise full performance and discharge by the other persons just described of that (or their equivalent) obligation); and
 - (vi) for so long as JHINV remains a wholly owned subsidiary of the Parent Entity, the Close Group of JHINV shall include members of the Close Group of the Parent Entity.
 - (h) Without prejudice to the obligations of JHINV under clause 7.7(b) if a Person becomes a Parent Entity which is the ultimate holding company of JHINV and clause 7.7(b) applies in respect of that Parent Entity but it does not enter into an accession deed under that clause, on and from the time at which that Person becomes a Parent Entity:
 - (i) the definition of JHINV's Free Cash Flow shall be the Free Cash Flow of the Parent Entity; and
 - (ii) for the purposes of clause 7.8, JHINV shall be deemed to have completed a Capital Raising at the time that the Parent Entity became the Parent Entity and may make a Capital Election in relation to that Capital Raising. In such a case the definitions in clause 7.8 shall be applied as follows:

QCR means the Qualifying Capital Ratio to apply to JHINV.

MV means the Market Capitalisation of JHINV immediately prior to the announcement of transaction by which the Parent Entity is to become the Parent Entity.

ED means the amount of ED which would have applied in a calculation of QCR for JHINV after taking into account the sum of all Equity Distributions paid or payable to the Equity Securityholders of JHINV in connection with the transaction or transactions under which the relevant Person becomes a Parent Entity (other than such Equity Distributions which occurred prior to the announcement of the transaction by which the Parent Entity is to become the Parent Entity).

SRC means the sum of the Market Capitalisation of the Parent Entity immediately prior to the announcement of the transaction by which the Parent Entity is to become the Parent Entity (less the sum of the amount (if any) which is double counted in the Market Capitalisation of the Parent Entity and MV and the amount of all Equity Distributions made or declared by the Parent Entity between the time of the announcement of the transaction by which the Parent Entity is to become the Parent Entity and the time at which the Parent Entity becomes the Parent Entity) and any new capital raised in connection with the transactions

under which the Person becomes the Parent Entity (other than such capital which was raised prior to the announcement of the transaction by which the Parent Entity is to become the Parent Entity).

PQCR means the QCR which applied to JHINV immediately prior to the announcement of the transaction by which the Parent Entity is to become the Parent Entity.

- (i) Without prejudice to the obligations of JHINV under **clause 7.7(c)**, if a Person becomes a Sibling Entity and **clause 7.7(c)** applies in respect of that Sibling Entity but it does not enter into an accession deed under that clause, on and from the time at which that Person becomes a Sibling Entity:
- (i) the definition of JHINV's Free Cash Flow shall comprise the sum of (A) the Free Cash Flow of JHINV (excluding any Free Cash Flow arising from JHINV's ownership of the Sibling Entity) and (B) the Free Cash Flow of the Sibling Entity multiplied by the proportion of the higher of the Equity Securities and voting shares in the Sibling Entity held in aggregate by JHINV Equity Securityholders and members of the JHINV Group as at the time at which that Person became a Sibling Entity; and
- (ii) for the purposes of **clause 7.8**, JHINV shall be deemed to have completed a Capital Raising at the time the Sibling Entity became a Sibling Entity and may make a Capital Election in relation to that Capital Raising. In such a case the definitions in **clause 7.8** shall be applied as follows:

QCR means the Qualifying Capital Ratio to apply to JHINV.

MV means the Market Capitalisation of JHINV immediately prior to the announcement of the transaction by which the Sibling Entity is to become a Sibling Entity.

ED means the amount of ED which would have applied in a calculation of QCR for JHINV after taking into account the sum of all Equity Distributions paid or payable to the Equity Securityholders of JHINV in connection with the transaction or transactions under which the Sibling Entity becomes a Sibling Entity (other than Equity Distributions that occurred prior to the announcement of the transaction by which the Sibling Entity is to become a Sibling Entity).

SRC means the sum of (A) the sum of the Market Capitalisation of the Sibling Entity (less the sum of the amount (if any) which is double counted in the Market Capitalisation of the Sibling Entity and MV and the amount of all Equity Distributions made or declared by the Sibling Entity between the time of the announcement of the transaction by which the Sibling Entity is to become a Sibling Entity and the time at which the Sibling Entity becomes a Sibling Entity) and new capital raised by the Sibling Entity in connection with the transactions under

which the Person becomes a Sibling Entity (other than such capital which was raised prior to the announcement of the transaction by which the Sibling Entity is to become a Sibling Entity), such sum multiplied by the proportion of the higher of the Equity Securities and voting shares in the Sibling Entity held in aggregate by JHINV Equity Securityholders and members of the JHINV Group as at the time at which that Person becomes a Sibling Entity and (B) new capital raised by JHINV (other than such capital which was raised prior to the announcement of the transaction by which the Sibling Entity is to become a Sibling Entity).

PQCR means the QCR which applied to JHINV immediately prior to the announcement of the transaction under which the Sibling Entity is to become a Sibling Entity.

7.8 Capital Election

- (a) The following definitions apply in and solely for the purposes of this **clause 7.8** and **clauses 7.2(k), (m) and (o)**, and for the purpose of defining the Qualifying Capital Ratio (as referred to in **clause 9.3**):

Capital Election has the meaning given to it in **clause 7.8(b)**.

Capital Raising means the issue of Equity Securities in JHINV:

- (i) in a single transaction (whether underwritten or not) where the payment of subscription moneys for those Equity Securities is made within 12 months of the commencement of the transaction (and if such payment occurs after a period of 12 months, the capital raised after that time shall be deemed for the purposes of this **clause 7.8** to comprise a separate Capital Raising commencing on the first day after that 12-month period); or
- (ii) as all or part of the consideration for an acquisition by a member of the JHINV Group of an asset, business or entity or a merger of JHINV with a Person other than a member of the JHINV Group.

Capital Raising Announcement means, in respect of a Capital Raising, the first public announcement of that Capital Raising (whether prospectively or otherwise) on the principal Stock Exchange on which Shares are Listed.

Capital Raising Completion Date means, in respect of a Capital Raising:

- (i) under paragraph (i) of the definition of Capital Raising, the earlier of the date on which the Capital Raising is completed and 12 months after the Capital Raising Announcement; and
- (ii) under paragraph (ii) of the definition of Capital Raising, the last date on which the relevant JHINV Group member may issue Equity Securities as consideration for the relevant acquisition or merger.

Capital Ratio Period means, subject to **clause 7.8(g)**, in respect of a Capital Raising for which a Capital Election has been made, the period:

- (i) commencing on the first day of the first Financial Year commencing after the Capital Raising Completion Date of that Capital Raising (“**First Year**”); and
- (ii) ending on the last day of the Financial Year in which the Capital Raising Completion Date for the next Capital Raising for which a Capital Election has been made occurs.

Qualifying Capital Ratio means the ratio determined in accordance with **clause 7.8(e), (f), (g), (h) and (i)**.

- (b) If, while the Shares are Quoted, JHINV proposes to raise capital under a Capital Raising of an amount greater than 5% of the Market Capitalisation of JHINV as at the trading day immediately prior to the Capital Raising Announcement, JHINV may elect to apply the provisions of this **clause 7.8** in respect of all but not some of that capital by giving a Notice in accordance with **clause 7.8(c)** (“**Capital Election**”).
- (c) A Notice by JHINV of a Capital Election:
 - (i) must be given to the Trustee and the NSW Government within 15 Business Days after the Capital Raising Announcement;
 - (ii) applies in relation to all and not some of the capital to be raised under the Capital Raising;
 - (iii) shall annex a copy of the Capital Raising Announcement and specify the material terms of the proposed Capital Raising, including the amount to be raised and where applicable, the minimum and/or maximum amounts to be raised (provided that any failure to satisfy this subparagraph (iii) shall not invalidate the Capital Election); and
 - (iv) may not be withdrawn or revoked once given unless the Capital Raising is not completed, in which case the Capital Election shall be automatically deemed for all purposes not to have been made.
- (d) If JHINV has given a Notice under **clause 7.8(c)** in respect of a Capital Election and the relevant Capital Raising has been completed, JHINV must give a Notice to the Trustee and the NSW Government within 15 Business Days after the Capital Raising Completion Date to which that Capital Election relates, specifying the total amount of capital raised under that Capital Raising.
- (e) If no Capital Raising has ever occurred for which a Capital Election has been made, the Qualifying Capital Ratio shall be 1.

- (f) Subject to **clauses 7.8(e), (g), (h) and (i)**, the Qualifying Capital Ratio to apply during a Capital Ratio Period will be calculated in accordance with the formula:

$$\text{QCR} = \frac{(\text{MV} + \text{ED})}{(\text{MV} + \text{SRC})} \times \text{PQCR}$$

where:

QCR means the Qualifying Capital Ratio;

MV means the Market Capitalisation of JHINV as at the trading day immediately prior to the Capital Raising Announcement;

ED equals:

- (a) **nil**, where the Valuation Ratio (assessed by reference to the trading day described in “MV”) as adjusted by **clause 9.14(c)** is equal to or greater than 2.75; or
- (b) in any other case, the greater of zero and the sum of the following Distributions and Capital Management Transactions, provided each occurred while the Valuation Ratio was below 2.75:
 - (i) that part of each Distribution made during the Previous Period which when made exceeded the limit described in **clause 7.2(f)** and which did not fall within **clause 7.2(k)**; and
 - (ii) that part of each Capital Management Transaction during the Previous Period which did not fall within **clause 7.2(k)**, less the sum of all other Capital Raisings completed during the Previous Period in respect of which an election under **clause 7.8(i)** was not made;

SRC means the sum of:

- (a) the capital raised under the Capital Raising for which the Capital Election was made; and
- (b) the total amount of capital raised under Capital Raisings since the first day of the Previous Period for which Capital Elections were not made (where JHINV elects by Notice under **clause 7.8(i)** that such amounts should be included in the calculation of “SRC”) less capital which has been returned or cancelled since the first day of the Previous Period;

PQCR is the Qualifying Capital Ratio which applied in respect of the Previous Period (and, for the first Capital Raising for which a Capital Election has been made, equals 1);

Previous Period means, in respect of:

- (a) the first Capital Raising occurring after the date of this deed for which a Capital Election has been made, the period commencing on 1 April 2005 and ending on the last day of the Financial Year in which the Capital Raising Completion Date in respect of that Capital Raising falls; and
- (b) for each subsequent Capital Raising for which a Capital Election has been made, the period:
 - (i) commencing immediately after the last applicable Previous Period; and
 - (ii) ending on the last day of the Financial Year in which the Capital Raising Completion Date in respect of that Capital Raising falls;
- (g) If there is more than one Capital Raising which is subject to a Capital Election and is completed in any Financial Year (“**Relevant FY**”), there will be only one Capital Ratio Period for all of those Capital Raisings and the Qualifying Capital Ratio for that Capital Ratio Period will be as calculated in respect of the last such Capital Raising Completion Date on the basis of the following amended definitions for **clause 7.8(f)**:
 - (i) **MV** means the Market Capitalisation of JHINV as at the trading day immediately prior to the first Capital Raising Announcement in the Relevant FY; and
 - (ii) **SRC** means the sum of the total amount of capital raised in respect of each Capital Raising for which a Capital Election has been made completed in the Relevant FY and the total amount of capital raised since the first day of the Previous Period in respect of which a Capital Election has not been made but excluding all such capital which has been returned or cancelled.
- (h) Notwithstanding **clause 7.8(f)**, the Qualifying Capital Ratio to be applied to the Free Cash Flow Amount for the purposes of determining the Annual Payment pursuant to **clause 9.3** cannot increase as a result of the making of a Capital Election in respect of a Capital Raising. If such a result would otherwise arise from the making of a Capital Election under **clause 7.8(b)**, the Qualifying Capital Ratio shall remain unchanged for all purposes and the Capital Election shall be automatically deemed for all purposes not to have been made.
- (i) In calculating ED and SRC under **clause 7.8(f)** where paragraph (a) of the definition of ED does not apply, all Capital Raisings completed during the Previous Period will be deducted from the amount of ED under paragraph (b) of the definition of ED unless and to the extent that JHINV has irrevocably elected by Notice to the NSW Government that some or all of such capital is to be included in the definition of SRC.

7.9 Notice of certain Specified Dealings

If JHINV undertakes a Specified Dealing other than a Specified Dealing falling within **clause 7.2**, it shall give a Notice of such Specified Dealing and material particulars to the NSW Government within 14 days of the earlier of announcing and undertaking that Specified Dealing.

8 SCOPE OF OBLIGATIONS

8.1 Application of funds

The Parties acknowledge that it is the intent of this deed and the Transaction Legislation and the Trust Deed to ensure that:

- (a) the monies and other assets provided to the Trustee (including the JHINV Contributions) may only be applied in the payment of SPF Funded Liabilities; and
- (b) such monies and other assets are not to be applied to satisfy any other creditors of the Trustee or of the Liable Entities or of the JHINV Group.

8.2 Excluded Claims

Each of the Parties agree and acknowledge that:

- (a) this deed and the Transaction Legislation seek to address, within the limits set out in this deed (including but without limitation the limits set out in **clause 9**) the funding for payment of SPF Funded Liabilities and the handling of Payable Liabilities; and
- (b) nothing in this deed requires or shall require JHINV, the Performing Subsidiary or any other member of the JHINV Group to provide any funding for payment of any of the following liabilities of the Liable Entities (together, the **Excluded Claims**):
 - (i) personal injury or death claims arising from exposure to Asbestos outside Australia;
 - (ii) personal injury or death claims arising from exposure to Asbestos made outside Australia;
 - (iii) claims for economic loss (other than any economic loss forming part of the calculation of an award of damages for personal injury or death) or loss of property, including those relating to land remediation and/or Asbestos or Asbestos products removal, arising out of or in connection with Asbestos or Asbestos products manufactured, sold, distributed or used by or on behalf of the Liable Entities;
 - (iv) any Excluded Marlew Claim;

- (v) any liabilities of the Liable Entities other than SPF Funded Liabilities.

9 FUNDING ARRANGEMENTS

9.1 Funding Agreement

The Performing Subsidiary agrees in favour of the Trustee that it will make the Funding Payments to the Trustee at the times those payments are required to be made under this deed and shall be liable to make such payments when due and payable to the Trustee by way of a specialty debt owing to the Trustee, as evidenced and constituted by this deed.

9.2 Initial funding (including Additional Payment)

The Performing Subsidiary shall, on the date specified in **clause 2.7**, pay into the Fund Account an amount equal to the following **(Initial Funding)**, calculated using the same methodologies and assumptions used in determining the Discounted Central Estimate, and to be set out in the Initial Report, being \$153.9 million, which is comprised of:

- (a) \$248.1 million, being the sum of the following amounts:
- (i) the Period Actuarial Estimate for the nine months ending 31 March 2006, being \$54.0 million;
 - (ii) plus the Period Actuarial Estimate for the Financial Year ending 31 March 2007, being \$81.3 million;
 - (iii) plus the Period Actuarial Estimate for the Financial Year ending 31 March 2008, being \$83.5 million;
 - (iv) plus an amount equal to the estimated reasonable Operating Expenses of the Trustee and the Liable Entities for the nine months to 31 March 2006, being \$6.9 million;
 - (v) plus a prepayment (the "**Additional Payment**") equal to \$22.4 million; and
- (b) minus the value of the net assets of the Liable Entities as at 30 June 2005 determined in accordance with **clause 9.10** and by any amounts (other than by way of loan) received by the Trustee or a Liable Entity from any member of the JHINV Group between 1 July 2005 and the Commencement Date (whether under **clause 17** or otherwise).

9.3 Annual payment

- (a) Subject to **clause 9.3(b)** and **clauses 9.7** and **9.11**, on each Payment Date, the Performing Subsidiary must pay to the Trustee an amount equal to the lesser of:

- (i) the Annual Contribution Amount for that Payment Date plus, for the first Payment Date after the Commencement Date, \$7.7 million; and
- (ii) whichever is the greater of:
 - (A) the amount equal to the Free Cash Flow Amount for that Payment Date multiplied by the Qualifying Capital Ratio applicable at that time; and
 - (B) zero,less, in respect of the Payment Date falling on 1 July 2006, \$14.7 million and in respect of the Payment Date falling on 1 July 2007, \$7.7 million.
- (b) If the amount calculated under **clause 9.3(a)** in respect of a Payment Date (as adjusted by **clause 9.14(b)**) is a negative amount and JHINV Notifies the Trustee that this **clause 9.3(b)** should apply, on that Payment Date the Trustee must pay the absolute value of that negative amount to the Performing Subsidiary or to such other entity nominated by the Performing Subsidiary.

9.4 Annual Contribution Amount and adjustments thereto

- (a) The Annual Contribution Amount in respect of a Payment Date shall be the amount equal to:
 - (i) the Period Actuarial Estimate, as set out in the Annual Actuarial Report for the period commencing immediately after the end of the Financial Year preceding the Payment Date (the "**Prior Financial Year**") (that is, while each Financial Year ends on 31 March, this period will commence on the 1st of April preceding the relevant Payment Date) and ending at the end of the third Financial Year following the Prior Financial Year (or, if the end of the Term has been determined not to be extended under **clause 9.9(b)** and the remainder of the Term is less than 3 years, to the end of the Term);
 - (ii) plus an amount equal to the estimated reasonable Operating Expenses of the Trustee and the Liable Entities for the first year of that period as reasonably determined by the Trustee; and
 - (iii) minus the value of the net assets held by the Trustee and the Liable Entities at the end of the Prior Financial Year as determined by the Approved Auditor, in accordance with **clause 9.10** but subject to **clauses 9.14(a) and 13.4**.
- (b) If, for any reason, the Annual Contribution Amount, or the Free Cash Flow Amount required to be calculated under **clause 9.5** or certified under **clause 5.16** in respect of any Payment Date cannot be determined at least 5 Business Days before the Payment Date then:

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- (i) if the Annual Contribution Amount is unknown, the Trustee must use its best endeavours to procure the Approved Actuary to determine, prior to the Payment Date, a reasonable estimate of the Annual Contribution Amount with respect to that Payment Date (failing which, such estimate shall be calculated by reference to the previously published Actuarial Report and the most recently published financial statements of JHINV or the Liable Entities or Trustee as applicable);
 - (ii) if the Free Cash Flow Amount is unknown, JHINV must use its best endeavours to procure the JHINV Auditor to determine, prior to the Payment Date, a reasonable estimate of the Free Cash Flow Amount with respect to that Payment Date, having regard to the most recent Audited Financial Statements;
 - (iii) the estimate of the relevant Annual Payment payable under **clause 9.3** shall be determined having regard to the estimate or estimates, as the case may be, referred to in **clauses 9.4(b)(i)** and **(ii)**, and shall be paid by the Performing Subsidiary on the relevant Payment Date;
 - (iv) if the amount determined under **clause 9.4(b)(iii)** is a negative amount, the Trustee must pay an amount equal to the absolute value of that amount (that is, disregarding the fact that it is a negative amount) to the Performing Subsidiary or to such other entity nominated by the Performing Subsidiary on the relevant Payment Date;
 - (v) the Trustee shall (if applicable) as soon as reasonably possible, use best endeavours to procure that the Annual Actuarial Report is finalised and that JHINV and the NSW Government are provided with a copy of the relevant Annual Actuarial Report and are notified of the Annual Contribution Amount within 30 days after the relevant Payment Date;
 - (vi) JHINV shall (if applicable) as soon as reasonably possible, use best endeavours to procure that the certification of the Free Cash Flow Amount in accordance with **clause 5.16** is finalised and that the Trustee and the NSW Government are provided with a certificate within 30 days after the relevant Payment Date;
 - (vii) if applicable, but subject to **clauses 9.5 and 9.6**, the Performing Subsidiary or the Trustee (as the case requires) shall make a payment or an adjusting payment (as the case requires) so as to ensure that the Trustee has obtained (and has obtained no more or less than) the full amount due under **clause 9.3**. Any payment or adjusting payment made under this **clause 9.4(b)(vii)** shall be paid together with interest from the Payment Date until the date the payment or the adjusting payment is made, at the Interest Rate, such payment or adjusting payment to be made in any event within 10 Business Days of the finalised Annual Actuarial Report, the Annual Contribution Amount and the Free Cash Flow Amount being Notified to the Trustee and JHINV; and

- (viii) if the JHINV Auditor or Approved Actuary (as the case may be) is unable or unwilling to provide the estimate referred to in paragraphs (i) or (ii), JHINV or the Trustee (as applicable) shall fully disclose to the other Parties the reasons known to them for such inability or unwillingness and **clause 5.16** shall apply in relation to any failure to obtain an audit certificate.

9.5 Free Cash Flow Amount

- (a) Subject to **clauses 9.5(b), (c) and (d)**, the Free Cash Flow Amount in respect of any Payment Date shall be an amount equal to the percentage (determined in accordance with **clause 9.6**) of the Free Cash Flow in the immediately preceding Financial Year as certified by the JHINV Auditor. JHINV shall use its best endeavours to provide a copy of that certificate to the Trustee and the NSW Government by no later than 5 Business Days prior to the Payment Date.
- (b) In calculating the Free Cash Flow Amount in respect of the Payment Date falling on 1 July 2006, the Free Cash Flow for the Financial Year ending on 31 March 2006 shall be an amount equal to the Free Cash Flow for that Financial Year plus each of the amounts referred to in **clauses 9.2(a)(i), (a)(ii) and (a)(v)** and less the amount set out in **clause 9.2(b)**.
- (c) In calculating the Free Cash Flow Amount in respect of the Payment Date falling on 1 July 2007, the Free Cash Flow for the Financial Year ending on 31 March 2007 shall be an amount equal to the Free Cash Flow for that Financial Year less \$14.7 million.
- (d) In calculating the Free Cash Flow Amount in respect of the Payment Date falling on 1 July 2008, the Free Cash Flow for the Financial Year ending on 31 March 2008 shall be an amount equal to the Free Cash Flow for that Financial Year less \$7.7 million.
- (e) The Free Cash Flow Amount shall be converted to Australian dollars by reference to:
- (i) where that amount is reported in US dollars, it shall be translated at the spot Australian dollar / US dollar exchange rate (for purchasing AUD) shown on the Bloomberg AUD/USD currency Bid-Quote page as at 10am (Sydney time) on the date falling 5 Business Days prior to the relevant Payment Date;
 - (ii) where that amount is reported in another currency other than US dollars, it shall be translated at the spot Australian dollar/relevant foreign currency exchange rate (for purchasing AUD) shown on the equivalent Bloomberg AUD/foreign currency Bid-Quote page at the same time and date as described in paragraph (i) above; and
 - (iii) if Bloomberg does not quote such exchange rates, by reference to the rate described above shown on an online bid quotation system

equivalent to Bloomberg at the time and the day described in paragraph (i) above.

9.6 Percentage of Free Cash Flow

The percentage of Free Cash Flow for any Financial Year of the Term available for payments shall be the percentage as determined in accordance with **Schedule 3**.

9.7 Payment Options

- (a) Where the Performing Subsidiary gives Notice to the Trustee (with a copy to the NSW Government) not less than 10 Business Days before a Payment Date that it wishes to do so, it may:
- (i) make Annual Payments in relation to one or more specified Financial Years of (or for) the remainder of the Term by equal instalments at intervals of either 3 or 6 months (as specified in that Notice) commencing on that Payment Date, provided that all instalments in respect of a Financial Year must, however, become payable by the last Business Day of that Financial Year; and
 - (ii) prepay an amount at any time, whether or not a Funding Payment amount has at that time been calculated. Where a prepayment is made pursuant to this **clause 9.7**, **clause 9.14** shall apply.

For the avoidance of doubt, the prepayment under **clause 9.2(a)(v)** does not constitute a prepayment under this **clause 9.7**.

- (b) If the Performing Subsidiary gives Notice under **clause 9.7(a)(i)**, it must compensate the Trustee for the interest forgone by the Trustee arising from the later receipt of such Annual Payment by instalments, at the Interest Rate for the period during which a payment is deferred as a result of the operation of **clause 9.7(a)**. Such interest shall accrue from day to day and shall be paid together with the payment of the relevant instalment.
- (c) The Performing Subsidiary may by Notice to the Trustee (with a copy to the NSW Government) given not less than 10 Business Days before the commencement of a Financial Year, revoke or vary a Notice given under **clause 9.7(a)** but that Notice may only affect payments in Financial Years commencing after the date that the Notice is given.
- (d) For the avoidance of doubt, the Initial Funding may not be paid in instalments.

9.8 Notification of payments

The Performing Subsidiary must give Notice to the NSW Government (with a copy to the Trustee) at least 5 Business Days prior to each Payment Date specifying or providing in respect of the payment due on that date:

- (a) the amount of the payment;
- (b) details of calculations of the amount;
- (c) the provision of this deed under which it is to be made;
- (d) the date on which it is to be made; and
- (e) provided it is available, a copy of the certificate of the JHINV Auditor procured under **clause 9.5**.

9.9 End of Term

- (a) JHINV may (but is not obliged) by Notice to the remaining Parties at least 18 months prior to the end of the Term, elect to procure that a Final Payment calculation is made as follows:
 - (i) the Approved Actuary must provide an actuarial report (the “**End of Term Actuarial Report**”) setting out its estimate of the final payment which would be required to be made by the Performing Subsidiary having regard to the principles set out in this **clause 9.9** (the “**Final Payment**”);
 - (ii) the Final Payment will be determined having regard inter alia to the following factors:
 - (A) that it represents a final payment to be made by the Performing Subsidiary with respect to SPF Funded Liabilities;
 - (B) that it is a lump sum payment;
 - (C) that the value of the assets of the Trustee and the Liable Entities (including Insurance and Other Recoveries and any other amounts expected to be recoverable after the Final Payment) must reduce the amount of the Final Payment; and
 - (D) to the extent applicable, the method of calculating the Discounted Central Estimate is in accordance with **clause 14.4**; and
 - (iii) the Approved Actuary will employ the generally accepted best practice methodologies and assumptions relevant at that time to the determination of that valuation and having regard to the purpose of calculating a Final Payment to be made to the Trustee; and
- (b) If the Parties (in their absolute discretion) by the end of the Term have not agreed on the Final Payment and the terms on which a Final Payment would be made at the end of the Term or if JHINV has not given Notice under **clause 9.9(a)**, then the Term will be automatically extended by a period of 10 years.

This **clause 9.9** shall have further applications at the end of the Term as extended pursuant to any prior application of this **clause 9.9**.

9.10 Assets and Liabilities of Liable Entities

For the purpose of determining the amounts to be deducted under **clause 9.2(b)** and **9.4(a)(iii)**, the net assets of the Liable Entities shall comprise:

- (a) for the purposes of **clause 9.2(b)**, an amount equal to the sum of:
 - (i) \$94.2 million; and
 - (ii) any amounts (other than by way of loan) received by the Trustee or a Liable Entity from any member of the JHINV Group between 1 July 2005 and the Commencement Date (whether under **clause 17** or otherwise).
- (b) for the purposes of **clause 9.4(a)(iii)** for each Financial Year:
 - (i) the total assets of the Trustee and the Liable Entities as at the end of that Financial Year (including, for the avoidance of doubt, any amounts by way of Insurance and Other Recoveries determined in accordance with **clause 9.13(a)** and properly recognised in the accounts as assets in accordance with relevant accounting standards); less
 - (ii) the liabilities of the Trustee and the Liable Entities as at the end of that Financial Year,

in each case after excluding all Asbestos Liabilities (other than current Proven Claims) and the calculation of the net assets pursuant to **clause 9.10(b)** shall be confirmed by the Approved Auditor.

9.11 Commutation

If required by JHINV, JHINV and the NSW Government shall negotiate in good faith in relation to agreeing upon the basis upon which JHINV and the Performing Subsidiary could commute their respective obligations under this deed and the Related Agreements, and each member of the JHINV Group would be released from its obligations under this deed and the Related Agreements, on and from the time that:

- (a) another Person undertakes or Persons enter into a deed undertaking those obligations or other obligations satisfactory to the NSW Government in its absolute discretion; or
- (b) the Performing Subsidiary or other member of the JHINV Group makes or procures the making of a lump sum payment or payments to the Trustee, subject to the Parties (in their absolute discretion) reaching agreement on satisfactory arrangements designed to provide a reasonably high degree of

assurance that Personal Asbestos Claims and Marlew Claims would continue to be dealt with and Proven Claims would continue to be paid.

The NSW Government may withhold its agreement to any such commutation in its absolute discretion.

9.12 Preparation of Audited Financial Statements

JHINV agrees to prepare Audited Financial Statements in respect of JHINV for each Financial Year throughout the Term, unless the other Parties agree in writing that such a report is no longer required. For the avoidance of doubt, nothing in this **clause 9.12** shall affect the basis on which the Free Cash Flow is determined.

9.13 Calculation of Insurance and Other Recoveries

- (a) Subject to **clause 9.13(b)**, for the purposes of calculation of the Initial Funding and each Annual Contribution Amount under this deed, the amount calculated as "Insurance and Other Recoveries" shall include only such recoveries as the Approved Auditor considers on reasonable grounds are, according to law, payable to the Liable Entities during the period of 12 months following the end of the Prior Financial Year (as defined in **clause 9.4(a)(i)** in relation to that Annual Contribution Amount) or, in the case of the Initial Funding, during the 9 month period ending on 31 March 2006. For the avoidance of doubt, this restriction shall not affect the calculation of Insurance and Other Recoveries when calculating the Term Central Estimate or the Discounted Central Estimate (as applicable) which shall be calculated by reference to the period to which the relevant definition relates.
- (b) For the purposes of this deed, where the Approved Actuary considers on reasonable grounds that an amount calculated as "Insurance and Other Recoveries" under this deed would otherwise be overstated due to a present or expected liability of a Liable Entity to make all or part of that amount available to non-Australian claimants or claimants for contribution against the Liable Entity, and such amounts would be recoverable by those claimants, the Approved Actuary shall be required to adjust the relevant Insurance and Other Recoveries calculation so as to take into account the likely effect of such liabilities.

9.14 Prepayments

If there has been one or more prepayments under **clause 9.7(a)(ii)** then:

- (a) the amount of the prepayment shall be excluded from the net assets of the Trustee for the purposes of calculating an Annual Contribution Amount, unless the Valuation Ratio as at the last day of the Financial Year preceding the relevant Payment Date exceeded 2.75;
- (b) amounts prepaid are not refundable and cannot cause the amount calculated under **clause 9.3(a)** to be negative;

- (c) for all purposes (including Schedule 3) the Free Cash Flow in the year of prepayment and in each subsequent year shall be deemed to be the Free Cash Flow that would have applied if the prepayment or prepayments had not been made and payments were made when due in the absence of any prepayment or prepayments;
- (d) for the purposes of Schedule 3, each Annual Contribution Amount for the year of prepayment and in each subsequent year shall be deemed to be the Annual Contribution Amount that would have applied if the prepayment or prepayments had not been made and payments were made when due in the absence of any prepayment or prepayments; and
- (e) in calculating the Valuation Ratio referred to in paragraph (a) of the definition of ED in **clause 7.8(f)**, no prepayment or prepayments can render ED equal to nil.

9.15 Rationing arrangements

The Parties acknowledge and agree that:

- (a) the available assets of the Trustee, including as a result of payments made under this deed and earnings on Fund assets from time to time, may or may not be sufficient to meet in full all Operating Expenses, Proven Claims, Claims Legal Costs and other SPF Funded Liabilities as and when they fall due for payment;
- (b) if the Trustee considers that it is reasonably likely that it does not or will not have sufficient funds to pay the amounts described in **clause 9.15(a)** as and when they fall due for payment, it may become necessary, in accordance with Division 5 of Part 4 of the Transaction Legislation, for the Trustee to ration the timing or amount of payments made with respect to Proven Claims or Payable Liabilities in order to achieve the foregoing;
- (c) if it is reasonably foreseeable that the available assets of the Trustee and the Liable Entities from time to time (including without limitation the JHINV Contributions and earnings of the Fund from time to time) are likely to be insufficient to fund the payment of all reasonably foreseeable SPF Funded Liabilities:
 - (i) the Trustee may Notify the NSW Government and JHINV that the circumstances described in this **clause 9.15(c)** are reasonably foreseeable and provide reasonable details of such circumstances and the prospective shortfall, and following the giving of such a Notice, the Parties agree that for so long as the Trustee:
 - (A) is seeking and thereafter engaging in or is ready, willing and able to enter into and pursue bona fide discussions with the NSW Government and JHINV in relation to a proposed scheme under

section 35 of the Transaction Legislation ("**Rationing Scheme**"); or

(B) is proceeding with reasonable expedition to design, prepare, seek approval of the Minister for an application to the Court, approval of the Court of and implement the Rationing Scheme,

from the time such a Notice is given until such time as the Supreme Court of New South Wales has made final orders in respect of the Rationing Scheme, the Trustee may defer payment of Proven Claims in whole or in part if and to the extent the Trustee has determined this to be reasonably immediately necessary (and prior to the Rationing Scheme being approved by the Court) to avoid Persons with earlier Proven Claims receiving greater proportionate payments than Persons with expected later Proven Claims, provided that any such deferral shall accord with principles set out in section 35(4) of the Transaction Legislation and provided further that the rights of such Persons to payment of their Proven Claims shall not be prejudiced except to the extent of such deferral and by the Rationing Scheme following approval by the Court; and

(ii) no member of the JHINV Group has or shall have any liability for such a shortfall other than as expressly provided in this deed and none of the Parties shall impose any liability on any member of the JHINV Group in respect of that shortfall but nothing in this **clause 9.15(c)(ii)** shall relieve JHINV or the Performing Subsidiary from any of their obligations under the Transaction Documentation.

10 JHINV GUARANTEE AND WIND UP AND RECONSTRUCTION EVENTS

10.1 JHINV Guarantee

JHINV must immediately following the time of execution by the Trustee of the deed and accession referred to in **clause 1.4**, execute and deliver to the Trustee and the NSW Government the JHINV Guarantee.

10.2 Calling of and payments under guarantee

Without limiting the JHINV Guarantee and **clause 16**, the JHINV Guarantee may be enforced against JHINV without the need to first initiate any proceedings or to seek to enforce the Funding Obligations or any other payment obligations against the Performing Subsidiary.

10.3 JHINV Wind Up Event or Reconstruction Event

(a) If a Wind-Up Event of JHINV occurs, each of the Funding Obligations of the Performing Subsidiary and the obligations of JHINV under the JHINV Guarantee will automatically accelerate and crystallise on the following basis:

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- (i) the Funding Obligations will become immediately due and payable by the Performing Subsidiary and shall, to the extent permitted by law, be an amount equal to the Wind Up or Reconstruction Amount determined in accordance with **clause 10.4(a)**, and comprise a specialty debt due immediately prior to the filing of the order that resulted in the Wind-Up Event, occurring;
 - (ii) the Guaranteed Obligations under the JHINV Guarantee will become immediately due and payable in accordance with the terms of the JHINV Guarantee;
- (b) The Wind-Up or Reconstruction Amount may be proved in any proceedings following or in connection with any Wind-Up Event in relation to JHINV and voted in relation to such proceedings.
- (c) By Notice to JHINV, the NSW Government may at any time:
- (i) cause the Wind-Up or Reconstruction Amount to cease to be payable, and the Funding Obligations and the Guaranteed Obligations to cease to be subject to an acceleration and crystallisation under **clause 10.3(a)** in respect of one or more Wind-Up Events; or
 - (ii) direct that the acceleration and crystallisation provided for in **clause 10.3(a)** to be deemed not to have occurred in respect of one or more Wind-Up Events.
- (d) The Wind-Up or Reconstruction Amount will cease to be payable, and the Funding Obligations and the Guaranteed Obligations will cease to be subject to an acceleration and crystallisation under this **clause 10** in respect of the relevant Wind Up Event if an order of the kind described in the definition of “Wind Up Event” is made and is subsequently struck out, dismissed, reversed or withdrawn and the time period for commencing any proceedings to review such an order has expired (or any timely commenced proceedings for review of such an order, have been concluded).
- (e) If a Reconstruction Event of JHINV occurs, each of the Funding Obligations of the Performing Subsidiary and the obligations of JHINV under the JHINV Guarantee will automatically accelerate and crystallise on the following basis, but subject to **clauses 10.3(g) and (i)**:
- (i) the Funding Obligations will become immediately due and payable by the Performing Subsidiary and shall be an amount equal to the Wind-Up or Reconstruction Amount determined in accordance with **clause 10.4(b)**, and comprise a specialty debt due immediately prior to the Reconstruction Event;
 - (ii) the Guaranteed Obligations under the JHINV Guarantee will become immediately due and payable in accordance with the terms of the JHINV Guarantee.

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- (f) The Wind Up or Reconstruction Amount may be voted and proved for the purposes of (or at) any meeting or vote of creditors or similar proceedings relating to creditors following and in relation to any Reconstruction Event in relation to JHINV, subject to **clause 10.5**.
- (g) The Wind-Up or Reconstruction Amount will immediately cease to be payable, and the Funding Obligations and the Guaranteed Obligations will immediately cease to be subject to an acceleration and crystallisation, and may no longer be voted or proved under this **clause 10** in respect of the relevant Reconstruction Event if:
- (i) the order constituting the “Reconstruction Event” is entered or made (or deemed to have been entered or made) and is subsequently struck out, dismissed, reversed, withdrawn or otherwise comes to an end, provided that, if the Reconstruction Event is an event as described in paragraph (c) of the definition of Reconstruction Event and the order was entered under Dutch law, JHINV emerges from the Reconstruction Event without a Plan (as defined under clause 10.5) having been accepted by the creditors and approved by the court and without being declared bankrupt;
 - (ii) the meeting of creditors of the kind described in paragraph (a) or (d) that constitutes the “Reconstruction Event” is convened and the meeting is held or is cancelled or is otherwise vacated; or
 - (iii) any vote of creditors due to occur following that Reconstruction Event (other than a Reconstruction Event as described in paragraph (c) of the definition of Reconstruction Event and the order was entered under Dutch law or occurring as a result of a voluntary case being commenced, or a final order for relief being entered, under Chapter 11 of the US Bankruptcy Code) to determine any compromise, plan or distribution occurs, is cancelled or is otherwise permanently vacated or rendered invalid.
- (h) By Notice to JHINV, the NSW Government may at any time:
- (i) cause the Funding Obligations and the Guaranteed Obligations to cease to be subject to an acceleration and crystallisation under **clause 10.3(a)** in respect of one or more Reconstruction Events; or
 - (ii) direct that the acceleration and crystallisation provided for in **clause 10.3(a)** to be deemed not to have occurred in respect of one or more Reconstruction Events.
- (i) Each of the Trustee and the NSW Government:
- (i) subject to **clause 10.3(j)**, covenant in favour of JHINV and the Performing Subsidiary in respect of a Reconstruction Event that except for the purposes of asserting a claim against JHINV or the Performing Subsidiary in a bankruptcy proceeding or an insolvency proceeding relating to such Reconstruction Event, neither the Trustee nor or the NSW Government shall commence, institute or continue proceedings in any jurisdiction seeking the enforcement or recovery from JHINV or the Performing Subsidiary of the Wind Up or Reconstruction Amount (whether under this deed or any Related Agreement) relating to such

Reconstruction Event or any part thereof, but nothing in this **clause 10.3(i)(i)** shall prejudice the operation of any provision of this Deed which is enlivened by the occurrence of a Wind Up Event; and

- (ii) acknowledge that JHINV has agreed to the terms of this **clause 10** in reliance on the covenants described in this **clause 10.3(i)** and that compliance by both the Trustee and the NSW Government is a fundamental condition to it having any rights under this **clause 10** in respect of a Reconstruction Event.
- (j) Nothing in **clause 10.3(i)** shall restrict the Trustee or the NSW Government from:
- (i) voting or proving the Wind Up or Reconstruction Amount in accordance with and subject to **clause 10.3(f)**; or
 - (ii) commencing or instituting proceedings in any jurisdiction in relation only to the existence or amount of any Wind Up or Reconstruction Amount or any voting rights attaching thereto, or any matters incidental to determining such amount or voting rights.

10.4 Calculation of Wind Up or Reconstruction Amount

- (a) Upon a Wind-Up Event or Reconstruction Event occurring in relation to JHINV, the Wind Up Amount or Reconstruction Amount will be determined on the following basis:

$$\text{Wind Up Amount or Reconstruction Amount} = \text{TCE} - \text{C} - (\text{VA} - \text{VL} + \text{P})$$

where:

TCE has the meaning given in **clause 7.2(m)** as set out in the most recent Annual Actuarial Report published prior to the Wind Up Event or Reconstruction Event;

VA has the meaning given in **clause 7.2(m)**;

VL has the meaning given in **clause 7.2(m)**;

P has the meaning given in **clause 7.2(m)**.

C equals the amount determined in accordance with the following provisions:

- (i) notwithstanding anything herein to the contrary, C shall equal zero:
 - (A) upon and following a Wind-Up Event; or
 - (B) if:

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- I. JHINV commences a bankruptcy proceeding made under the US Bankruptcy Code which results in the occurrence of a "Reconstruction Event"; and
 - II. the determination of the amount of the Trustee's claim is required in order for the Trustee to prove or vote that claim to permit the Trustee to participate in a vote of creditors; and
 - III. JHINV fails to provide the information required under clause 10.4(d) in time to permit such a determination to be made;
- (ii) in any other circumstance for the purposes of determining a Wind-Up or Reconstruction Amount, "C" shall equal the amount by which TCE exceeds the present value of all the Annual Payments that are then due or would become due pursuant to this Principal Deed taking into account the operation of the Free Cash Flow cap under **clause 9.3**, having regard to the following:
- (A) C shall be calculated on the basis of the projected Free Cash Flow of JHINV taking into account any projected changes in Free Cash Flow as a result of implementing a proposed Plan (as defined in **clause 10.5**) arising other than from debt to equity conversions by creditors of JHINV or new capital raised by JHINV or any Reorganised Debtor (as defined in **clause 10.5**), and the Qualifying Capital Ratio, in each case, immediately prior to the Reconstruction Event discounted at a discount rate equal to the sum of:
 - (i) the discount rate used in the calculation of the "TCE" as published in the most recent Annual Actuarial Report, and
 - (ii) 5 percentage points (500 basis points); and
 - (B) C shall be calculated recognizing that the Term is automatically extended (unless the Parties in their absolute discretion agree otherwise) under **clause 9.9**.
- (b) In determining the value of "VA" and "VL" the Trustee shall procure that the Approved Auditor seeks appropriate expert advice from the Approved Actuary or otherwise as it considers necessary, and the value of each of "VA" and "VL" shall be certified by the Approved Auditor;
- (c) The certification of the value of "VA" and "VL" by the Approved Auditor shall, if the NSW Government so requires, be subject to review by the NSW Government Auditor in the manner set out in **clause 5.13**;

- (d) If a Reconstruction Event occurs, JHINV must provide a Notice to the Approved Auditor (copied to the NSW Government and the Trustee) setting out its projections of its Free Cash Flow and its estimate of C and the basis on which such estimate has been calculated (but without accepting liability for any errors or omissions in relation to the same) during the period for which it is necessary to project the Free Cash Flow in determining the amount of C. The Trustee or the NSW Government may, by election, require that an Independent Valuation Expert determines the amount of "C" on the terms set out in **clause 7.1(b)**, and in such event, such terms shall apply in relation to the determination of such Independent Valuation Expert despite the fact that such determination is not a determination under **clause 7** and in such a case C shall be equal to the amount determined by the Independent Valuation Expert or if no such Independent Valuation Expert is appointed within 10 Business Days of receipt of JHINV's Notice under this **clause 10.4(d)**, the estimate of C in that Notice.

10.5 Voting

Each of the Trustee and NSW Government acknowledge and agree that, without prejudice to their obligations under the Intercreditor Deed and to the extent permitted by law, all voting rights conferred upon the Trustee and the NSW Government arising out of this Deed or the JHINV Guarantee will be exercised in respect of any proposed meeting or composition with creditors, plan of arrangement, plan of reorganization, or other restructuring for JHINV in connection with any Reconstruction Event ("**Plan**") so as to vote in favour of the Plan where, if the Plan were to come into force:

- (a) JHINV or any entity (the "**Reorganised Debtor**") which, pursuant to and upon the effective date of a restructuring transaction (including a plan of reorganization confirmed under Chapter 11 of the U.S. Bankruptcy Code, but not a transaction approved by the court pursuant to Section 363 of the U.S. Bankruptcy Code) occurring in connection with a Reconstruction Event (i) acquires or undertakes the whole or a substantial part of the business or assets of JHINV or the JHINV Group, or (ii) consolidates, merges, or engages in another similar transaction with JHINV or the JHINV Group as a part of the restructuring transaction occurring in connection with a Reconstruction Event, would not be Insolvent;
- (b) the implementation of the Plan would not result in a Liquidation of JHINV or the Reorganised Debtor;
- (c) the Principal Deed, the JHINV Guarantee and each other Related Agreement would continue to bind all Parties to them (or in the case of a Reorganised Debtor of JHINV, that Reorganised Debtor), save that any termination of the Intercreditor Deed shall not result in this requirement failing to be satisfied; and
- (d) ignoring any effect of the Intercreditor Deed, the Plan would not operate so as to discriminate between the claims of the Trustee and the claims of the Lenders adversely to the claims of the Trustee.

10.6 Consequence of a Plan

If a Plan (as defined in **clause 10.5**) comes into and continues in effect in relation to a Reconstruction Event, then unless such a Plan is cancelled or abandoned prior to being implemented:

- (a) the obligations of JHINV and the Performing Subsidiary and the claims of the Trustee and the NSW Government arising under this Deed and the Related Agreements (including without limitation in respect of the Wind-Up or Reconstruction Amount) shall be dealt with in accordance with the Plan; and
- (b) the Wind-Up or Reconstruction Amount will immediately cease to be payable, and the Funding Obligations and the Guaranteed Obligations will immediately cease to be subject to an acceleration and crystallisation, and may no longer be voted or proved under this **clause 10** in respect of that Reconstruction Event.

11 EFFICIENCIES

11.1 Costs Review Inquiry

- (a) The Parties acknowledge that the Costs Review Inquiry Legislation commenced on 1 July 2005 and that the conditions precedent contemplated by **clauses 3.2(a), 3.3(d)** and (in respect of the Costs Review Inquiry) **3.3(e)** of the Heads of Agreement have been satisfied.
- (b) The NSW Government agrees to:
 - (i) share the results of the Costs Review Inquiry with the Other Governments; and
 - (ii) encourage the timely adoption by each Other Government of the results of the Costs Review Inquiry to the extent appropriate in the case of the Courts and tribunals of any Other Government which handles Claims; and
 - (iii) undertake the review of the Costs Review Inquiry Legislation anticipated in the Costs Review Inquiry Report within the time contemplated in that report.
- (c) While the NSW Government is not obliged to perform any of its obligations under **clause 11.1(b)** until on or after the Commencement Date, it may in its absolute discretion choose to perform some or all of those obligations before the Commencement Date and such performance will, on the occurrence of the Commencement Date, be taken to satisfy the relevant obligations under **clause 11.1(b)**.

11.2 Acknowledgements

All Parties acknowledge that:

- (a) all Parties desire that the process for the management of Personal Asbestos Claims, Marlew Claims and Claims Legal Costs is as efficient as possible, consistent with preserving Claimants' rights to compensation, and that they are committed to seeking to maintain an efficient claims management process over time; and
- (b) an efficient process for the management of Personal Asbestos Claims, Marlew Claims and Claims Legal Costs is important to the funding arrangements covered by this deed.

11.3 Procedural Improvements Submissions

- (a) Either or both JHINV and the Trustee may from time to time make submissions to the NSW Government regarding further changes which might be made to the processes of making, processing and settling Personal Asbestos Claims, Marlew Claims and Claims Legal Costs including the apportionment of damages and recovery of contributions and payment of damages from third parties to make the same more economically and otherwise efficient.
- (b) The NSW Government agrees and undertakes:
 - (i) to give timely and bona fide consideration to:
 - A. submissions made under **clause 11.3(a)**; and
 - B. the adoption of the proposals set out in those submissions; and
 - (ii) that in the event the NSW Government adopts any proposals the subject of a submission under **clause 11.3(a)**, the NSW Government shall share its information on those proposals which are so adopted with the Other Governments, and use its reasonable endeavours to encourage their timely adoption by each Other Government to the extent appropriate in the case of the Courts and tribunals of that Other Government which handle Claims.

12 RELEASES

12.1 Releases of the JHINV Group, Liable Entities and other Persons

- (a) The Parties acknowledge that upon the commencement of the Release Legislation, the NSW Government will have used its best endeavours, subject to any limits on the legislative powers of the State of New South Wales, to bring into force legislation effective under New South Wales law to extinguish any civil liability of:

- (i) each member of the JHINV Group, each Liable Entity and each of their respective present and past directors, officers, employees, advisors and agents (collectively, the “**Released Persons**”) in respect of the Relevant Matters;
- (ii) Released Persons in respect of the entry by JHINV and the Performing Subsidiary into this deed and the Related Agreements and their implementation by the JHINV Group, and the circumstances giving rise to the same, but without prejudice to the obligations of members of the JHINV Group to the parties to this deed or the Related Agreements under, or in connection with negotiations leading to the entry by the parties into, this deed or any Related Agreement; and
- (iii) any member of the JHINV Group or any Liable Entity for claims for economic loss (not forming part of a personal injury claim or otherwise resulting from personal injury) or loss of or damage to property, including those relating to land remediation or Asbestos or Asbestos products removal, arising out of Asbestos or Asbestos products manufactured, sold, distributed or used by or on behalf of the Liable Entities,

and the NSW Government agrees, subject to the remainder of this **clause 12**, that it will not introduce legislation (whether or not expressed to amend the Release Legislation or the Transaction Legislation) which denies the JHINV Group the benefit of, or derogates from, the releases and extinguishments set out in the Release Legislation.

- (b) For the purposes of this **clause 12**, “**civil liability**” has its natural and ordinary meaning.
- (c) In addition to any rights arising in favour of the Released Persons under the Release Legislation, the NSW Government must execute the NSW Government Deed of Release on or before the Commencement Date.
- (d) JHINV agrees promptly to provide to any Released Person who so requested in writing, a photocopy of a counterpart of the NSW Government Deed of Release duly executed by the NSW Government.
- (e) Without prejudice to any right or remedy of the NSW Government, the Releases in respect of Persons who are not natural persons may be suspended by the NSW Government whenever:
 - (i) the Performing Subsidiary shall be and remains in breach of any obligation to make a Funding Payment under this deed and such breach shall have remained unremedied for not less than 3 months and remains unremedied; or;

- (ii) JHINV is in breach of clause 7 and that breach has not been rectified within a reasonable period (of not less than 3 months) of JHINV having received a Notice under **clause 12.1(f)**; or
 - (iii) JHINV is and remains in breach of **clause 7** and JHINV has not given a Notice to the NSW Government under **clause 7.9** in respect of that breach, and the NSW Government has given JHINV at least 30 days' Notice that the suspension applies.
- (f) The NSW Government may give to JHINV Notice of any matter which JHINV has given it Notice under **clause 7.9** which the NSW Government considers, acting reasonably, to constitute a breach by JHINV of **clause 7**. For the avoidance of doubt, any Notice given by the NSW Government is not proof that JHINV is in breach of **clause 7** and if the NSW Government having given notice, purports to suspend then that suspension will not take effect. If a Notice is given in circumstances where JHINV is in breach of **clause 7** and the relevant period referred to in **clause 12.1(e)** has not expired, those Releases will not be suspended until the expiry of that period.
- (g) The NSW Government must revoke the suspension of any release of liability suspended as a result of any breach of a kind described in **clause 12.1** immediately upon JHINV remedying that breach and Notifying the NSW Government demonstrating that such a breach has been remedied.

12.2 No Admission

Nothing in this deed or any Related Agreement can nor shall be taken as an admission by JHINV, the Performing Subsidiary or any of their controlled entities, directors, officers, employees, advisers or agents (past and present) that it or he or she has had any role in organising or procuring any unlawful action or is or has been in breach of any law.

12.3 Releases of ACTU, Unions NSW and Banton

JHINV agrees, and the Trustee shall procure the Liable Entities, unconditionally and irrevocably to release each of the following Persons and (if applicable) their past and present directors, officers, advisers and agents:

- (a) the ACTU (and those unions affiliated to the ACTU);
- (b) Unions NSW (and those unions affiliated to Unions NSW);
- (c) the officers, members and employees of the ACTU (and its affiliated Unions) and Unions NSW (and its affiliated unions); and
- (d) Banton,

from civil liability which they may have to JHINV, the Liable Entities or arising from or relating to:

- (e) the underfunding of the MRCF;
- (f) the Jackson Inquiry;
- (g) all Relevant Matters,

on and subject to the terms set out in the Unions' Deed of Release.

13 NO ADVERSE OR DISCRIMINATORY LEGISLATIVE OR REGULATORY ACTION AND DISCUSSIONS WITH OTHER GOVERNMENTS

13.1 Legislative or regulatory action

- (a) For the purposes of **clause 13, legislative action** means the enactment, amendment or repeal of any legislation, including without limitation the making, amendment or repeal of any instrument, as defined in section 3(1) of the Interpretation Act 1987, which includes a statutory rule, as defined in section 21 of the *Interpretation Act 1987* (NSW).
- (b) For the purposes of **clause 13, regulatory action** means:
 - (i) the exercise of statutory functions (being functions, powers, authorities and duties conferred or imposed on any person or body by legislation); and
 - (ii) the exercise by the NSW Government of the powers and functions described in section 7 of the Australia Act 1986 (Cth) itself or by advising the Governor of New South Wales to exercise such powers and functions,
but excludes any action taken under and in accordance with the Transaction Legislation or the Release Legislation.

13.2 No Adverse Legislative Action

- (a) Subject to the remaining provisions of this **clause 13**, the NSW Government undertakes to and agrees with JHINV and the Performing Subsidiary that it will not undertake any adverse legislative action directed at any member of the JHINV Group, the Trustee or any of the Liable Entities in relation to any of the Relevant Matters or in relation to Asbestos Liabilities (except that, for these purposes, "Excluded Claims" within the definition of "Asbestos Liabilities" are limited to Excluded Claims relating to Asbestos).
- (b) Without limitation, legislative action shall be taken to be adverse if:
 - (i) it denies to or in relation to any of the Trustee, any member of the JHINV Group or any of the Liable Entities benefits or advantages which are provided or available to others in similar circumstances; or

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- (ii) it operates by reference to any of the Trustee, any member of the JHINV Group or any of the Liable Entities, this Deed or any of the Related Agreements or an attribute which only one or more of them possesses;
 - (iii) it amends or repeals all or part of the Transaction Legislation or Release Legislation in a manner which would adversely affect any member of the JHINV Group, the Trustee or the Liable Entities, unless such amendment or repeal has been agreed in advance in writing by JHINV acting reasonably;
 - (iv) notwithstanding the fact that the legislative action may not on its face contravene the provisions of this **clause 13** (for example because it applies generally), having regard to the nature or circumstances of the legislative action, it would be concluded that the purpose of the legislative action was or a material purpose of the legislative action included having the effect of increasing any of the amounts that but for such action would have been payable under this Deed or in respect of payments of the liabilities to be funded hereunder and the legislative action has or will have the result or effect of increasing any of such amounts.
- (c) Subject to **clause 13.2(b)(iii)** and also, in the case of clauses **13.2(c)(ii)** and **(iii)**, subject to **clause 13.2(b)(iv)**, legislative action:
- (i) in respect of the claims handling and determination process, including through the Dust Diseases Tribunal;
 - (ii) in respect of the handling, removal or disposal of Asbestos; or
 - (iii) considered necessary to deal with the consequences of the manufacture and sale of asbestos products,
- shall not be considered adverse to any member of the JHINV Group, the Trustee or the Liable Entities under **clauses 13.2(a)** and **(b)** if it applies to former Asbestos manufacturers or Asbestos defendants generally, irrespective of the fact that it might by reason of circumstances have a greater impact on JHINV, the Trustee or the Liable Entities than on other manufacturers or defendants, provided that, if clause **13.2(b)(iv)** applies in relation to actions referred to in **clause 13.2(c)(i)**, the JHINV Group, the Trustee and the Liable Entities do not suffer any material increase in Operating Expenses or Claims Legal Costs to be borne by them as a result of such actions under **clause 13.2(c)(i)** (or any equivalent actions under **clause 13.3(c)(i)**).
- (d) The obligations and undertakings of the NSW Government set out in **clause 13.2(a)** shall be suspended whenever:
- (i) the Performing Subsidiary shall be and remains in breach of any obligation to make a Funding Payment under this deed, and such

breach shall have remained for not less than 3 months and remains unremedied; or

- (ii) JHINV is in breach of **clause 7** and that breach has not been remedied within a reasonable period (of not less than 3 months) of JHINV having received a Notice under **clause 13.2(e)** and such breach remains unremedied; or
 - (iii) JHINV shall be and remains in breach of **clause 7** and JHINV has not given a Notice to the NSW Government under **clause 7.9** in respect of that breach and the NSW Government has given JHINV at least 30 days' Notice that the suspension applies.
- (e) The NSW Government may notify JHINV of any matter of which JHINV has given it Notice under **clause 7.9** which the NSW Government considers, acting reasonably, to constitute a breach by JHINV of **clause 7**. For the avoidance of doubt, any notice given by the NSW Government is not proof that JHINV is in breach of **clause 7**. If the NSW Government, having given Notice under this **clause 13.2(e)**, undertakes adverse legislative action in circumstances where JHINV is not in breach of **clause 7**, then without limiting JHINV's other rights at common law or under this Deed, that adverse legislative action will be in breach of **clause 13.2**.
- (f) Immediately upon any breach described in **clause 13.2(d)** being rectified and the NSW Government having received Notice of such breach being rectified, the NSW Government shall not take, and shall cease to take, any further adverse legislative action, provided that nothing in this **clause 13.2(f)** requires the NSW Government to:
- (i) seek the repeal of legislation in force at the time such breach is rectified (other than any legislation which was, when introduced, in breach of the provisions of this deed); or
 - (ii) take any executive or other action in breach of generally applicable protocols of the NSW Government associated with bringing legislation into force.
- (g) The NSW Government acknowledges and agrees that:
- (i) damages for dust diseases compensation are determined by common law in New South Wales;
 - (ii) the NSW Government will not change the common law basis of assessment of damages for dust diseases compensation; and
 - (iii) accordingly, the NSW Government will not legislate to reduce or increase damages for dust diseases.

- (h) The Parties acknowledge that this **clause 13.2** does not prevent the proper exercise by the NSW Parliament of its legislative power, but that this **clause 13.2(h)** is without prejudice to the right of any other Party or Parties to claim damages from the NSW Government in respect of any breach by the NSW Government of its obligations under this **clause 13**.
- (i) The Parties acknowledge that this **clause 13.2** operates and is intended to operate independently of **clause 13.3**.

13.3 No Adverse Regulatory Action

- (a) Subject to the remaining provisions of this **clause 13**, the NSW Government undertakes to and agrees with JHINV and the Performing Subsidiary that it will not undertake any adverse regulatory action directed at any member of the JHINV Group, the Trustee or any of the Liable Entities in relation to any of the Relevant Matters or in relation to Asbestos Liabilities (except that, for these purposes, "Excluded Claims" within the definition of "Asbestos Liabilities" are limited to Excluded Claims relating to Asbestos).
- (b) Without limitation, regulatory action shall be taken to be adverse if:
 - (i) it denies to or in relation to any of the Trustee, any member of the JHINV Group or any of the Liable Entities benefits or advantages which are provided or available to others in similar circumstances;
 - (ii) it operates by reference to any of the Trustee, any member of the JHINV Group or any of the Liable Entities, this Deed or any of the Related Agreements or an attribute which only they possess; or
 - (iii) notwithstanding the fact that the regulatory action may not on its face contravene the provisions of this **clause 13** (for example because it applies generally), having regard to the nature or circumstances of the regulatory action, it would be concluded that the purpose of the regulatory action was or a material purpose of the regulatory action included having the effect of increasing any of the amounts that but for such action would have been payable under this deed or in respect of payments of the liabilities to be funded hereunder and the regulatory action has or will have the result or effect of increasing any such amounts.
- (c) Subject, in the case of **clauses 13.3(c)(ii)** and **(iii)**, to **clause 13.3(b)(iii)**, regulatory action:
 - (i) in respect of the claims handling and determination process, including through the Dust Diseases Tribunal;
 - (ii) in respect of the handling, removal or disposal of Asbestos; or

- (iii) considered necessary to deal with the consequences of the manufacture and sale of asbestos products, shall not be considered adverse to any member of the JHINV Group, the Trustee or the Liable Entities under **clauses 13.3(a)** and **(b)** if it applies to former Asbestos manufacturers or Asbestos defendants generally, irrespective of the fact that it might by reason of circumstances have a greater impact on JHINV, the Trustee or the Liable Entities than on other manufacturers or defendants, provided that, if **clause 13.3(b)(iii)** applies in relation to a matter referred to in **clause 13.3(c)(i)**, the JHINV Group, the Trustee and the Liable Entities do not suffer any material increase in Operating Expenses or Claims Legal Costs to be borne by them as a result of such actions under **clause 13.3(c)(i)** (or any equivalent actions under **clause 13.2(c)(i)**).
- (d) The obligations and undertakings of the NSW Government set out in **clause 13.3(a)** shall be suspended whilever:
- (i) the Performing Subsidiary shall be and remains in breach of any obligation to make a Funding Payment under this deed, and such breach shall have remained for not less than 3 months and remains unremedied; or
 - (ii) JHINV is in breach of **clause 7** and that breach has not been remedied within a reasonable period (not less than 3 months) of JHINV having received a Notice under **clause 13.3(e)** and such breach remains unremedied; or
 - (iii) JHINV shall be and remains in breach of clause 7 and JHINV has not given a Notice to the NSW Government under clause 7.9 in respect of that breach and the NSW Government has given JHINV at least 30 days' Notice that the suspension applies.
- (e) The NSW Government may notify JHINV of any matter of which JHINV has given it Notice under **clause 7.9** which the NSW Government considers, acting reasonably, to constitute a breach by JHINV of **clause 7**. For the avoidance of doubt, any notice given by the NSW Government is not proof that JHINV is in breach of **clause 7**. If the NSW Government having given Notice under this **clause 13.3(e)**, undertakes adverse regulatory action in circumstances where JHINV is not in breach of **clause 7**, then without limiting JHINV's other rights at common law or under this Deed, that adverse regulatory action will be in breach of **clause 13.3**.
- (f) Immediately upon any breach described in **clause 13.3(d)** being rectified and the NSW Government having received Notice of such breach being rectified, the NSW Government shall not take, and shall cease to take, any further adverse regulatory action, provided that nothing in this **clause 13.3(f)** requires the NSW Government to:

- (i) seek the repeal of legislation or any instrument in force at the time such breach is rectified (other than any legislation or instrument which was, when introduced, in breach of the provisions of this deed); or
 - (ii) take any executive or other action in breach of generally applicable protocols of the NSW Government associated with bringing legislation or instruments into force.
- (g) The Parties acknowledge that this **clause 13.3** operates and is intended to operate independently of **clause 13.2**.

13.4 Other Governments

(a) Subject to **clause 13.7**, this **clause 13.4** applies if:

- (i) an Other Government introduces a scheme (the “**Scheme**”) providing for payment of compensation, or which provides benefits for which the common law would provide compensation, to some or all Claimants (the “**Relevant Claimants**”) for what would, if brought against a Liable Entity or a member of the JHINV Group, constitute Personal Asbestos Claims (the “**Relevant Claims**”); and
 - (ii) JHINV, another member of the JHINV Group, the Trustee or any Liable Entity is required by law to make payments under the Scheme to the Relevant Claimants or to contribute to a Person designated under the Scheme to receive payments on account of liabilities imposed under the Scheme for the purpose of compensating the Relevant Claimants for Relevant Claims (the “**Relevant Liabilities**”).
- (b) Subject to **clause 13.7**, **clause 13.4(c)(i)** shall also apply if an Other Government takes any legislative or regulatory action which, had it been taken by the NSW Government, would have resulted in the NSW Government breaching **clause 13.2** or **13.3** and in such a case, then unless **clause 13.4(a)** applies in respect of such action, such action shall be deemed to be a Scheme to which **clause 13.4(c)(i)** applies and the Relevant Liabilities shall be the additional liabilities incurred by members of the JHINV Group, the Trustee or the Liable Entities as a result of such action, provided that such application of **clause 13.4(c)(i)** shall occur only from the later of 6 months after the date JHINV shall have Notified the NSW Government of such legislative or regulatory action by such other Government or the possibility or proposal that such action (or some generally similar action) might or would be taken by such other Government and the date and the time such application would have occurred but for this proviso.
- (c) If this **clause 13.4** applies:
- (i) the payment obligations of the Performing Subsidiary and JHINV under this deed and the Related Agreements shall be adjusted so as to ensure

that the JHINV Group's present and future liabilities with respect to Personal Asbestos Claims are not increased as a result of the Scheme as follows:

- (A) all payments of Relevant Liabilities made by a member of the JHINV Group under the Scheme shall be treated as though they had been received by the Trustee and had increased the net assets of the Trustee by that amount (and earned income for each Financial Year at the discount rate published by the Approved Actuary in the Annual Actuarial Report in relation to that Financial Year); and
- (B) any Relevant Liabilities incurred but unpaid by the Liable Entities or the Trustee under the Scheme shall be ignored in determining the net assets of the Liable Entities and the Trustee and any payments of Relevant Liabilities shall be added back to the net assets of the relevant Liable Entity or the Trustee (as applicable) (as though the net assets were never reduced by the amount of such payments).

provided that, in the case of a Scheme described in **clause 13.4(a) and (b)**, such adjustments shall cease to be made when the arrangements contemplated in **clause 13.4(c)(ii)** are implemented (including that any amending legislation necessary to give effect to that clause comes into full force); and

- (ii) the Parties agree to negotiate in good faith to make such modifications to the terms of this deed and the Related Agreements (and the NSW Government agrees to use its best endeavours to amend the Transaction Legislation and the Release Legislation) as are reasonably necessary to ensure that the liability of the JHINV Group, the Trustee and the Liable Entities in connection with Personal Asbestos Claims (having regard to liabilities arising under the Transaction Documents and the Relevant Liabilities under the Scheme) is not increased as a result of the implementation and operation of the Scheme.
- (d) Without limiting **clause 13.4(c)**, the Parties agree that:
- (i) the necessary modification to the Funding Obligations may be reflected in a narrowing of the definition of "Claimants" under this deed or a deferral of payment of Relevant Claims under the Transaction Legislation, which will cause an adjustment to the Period Actuarial Estimate, the Term Central Estimate and the Discounted Central Estimate; and
 - (ii) a Relevant Claimant should not, by reason of the Scheme, recover or obtain full compensation more than once for a Relevant Claim.

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- (e) If JHINV, another member of the JHINV Group, the Trustee or any Liable Entity is not required by law to make payments under the Scheme, but JHINV wishes to elect to make payments to the Scheme either itself or through another member of the JHINV Group, the Trustee or any Liable Entity, then:
- (i) the Parties agree to negotiate in good faith to determine what modifications (if any) should be made to the terms of this deed, the Related Agreements, the Transaction Legislation and the Release Legislation in respect of the funding arrangements and the management of Personal Asbestos Claims to give appropriate recognition to the Scheme of the Other Government and to reflect the fact that Relevant Claimants will be compensated for Relevant Claims under the Scheme instead of under the funding arrangements under this deed; and
 - (ii) unless the Parties reach agreement on the modifications (if any) and those modifications (including to the Transaction Legislation and the Release Legislation) (if any) are made, no adjustment shall be made to the obligations of JHINV or the Performing Subsidiary under this deed or any Related Agreement even if JHINV elects to make payments under the Scheme.

13.5 Participation in discussions with Other Governments and regulators

The NSW Government must, if requested by JHINV by Notice to the NSW Government:

- (a) participate with JHINV in discussions with either or both:
 - (i) Other Governments; and
 - (ii) the Australian Competition and Consumer Commission, the ASIC and other regulatory bodies, in relation to matters arising out of the Jackson Inquiry; and
- (b) advocate action by the Other Governments or the regulatory bodies described in **clause 13.5(a)**, consistent with the provisions of the Transaction Documentation.

13.6 Referral of powers

If the NSW Government refers legislative power to the Commonwealth in a manner permitted under section 51(xxxvii) of the Commonwealth Constitution for any matter in relation to Asbestos Liabilities or their management, the NSW Government must:

- (a) ensure that the referral does not affect the Transaction Documentation;
- (b) ensure that the referral does not permit the Commonwealth to legislate in a manner inconsistent with the Transaction Documentation; or

- (c) obtain JHINV's prior written agreement to the referral to the extent that it would not conform to the requirements of **clauses 13.6(a) or 13.6(b)**.

13.7 Limitations on Recoveries

- (a) For the purposes of this clause 13.7, "**Recoveries**" means any statutory entitlement of the NSW Government or any Other Government or any governmental agency or authority of any such government ("**Relevant Body**") to impose liability on or to recover an amount or amounts from any person in respect of any payments made or to be made or benefits provided by a Relevant Body in respect of Personal Asbestos Claims or Marlew Claims (other than as a defendant or in settlement of any claim, including a cross-claim or claim for contribution).
- (b) In consideration of JHINV's and the Performing Subsidiary's agreement to include the liabilities described in this paragraph (b) within the scope of the funding arrangements set out in this deed (but only to the limited extent provided for in this **clause 13.7**), the NSW Government agrees to use its best endeavours to ensure, through the Transaction Legislation, that the Liable Entities (or the Trustee on their behalf) cannot be compelled to pay (whether paid directly to Relevant Bodies or as a component of amounts payable or liabilities incurred in respect of Personal Asbestos Claims or Marlew Claims or to Concurrent Wrongdoers) Recoveries which in aggregate exceed in any Financial Year the lesser of:
- (i) the amount equal to the liabilities of the Liable Entities to pay Recoveries as calculated under the relevant statute(s) from time to time;
 - (ii) for the first Financial Year of operation of the Fund, an amount equal to \$750,000 (**Annual Limit**) and in respect of each subsequent Financial Year, an amount equal to the prior Financial Year's Annual Limit, indexed for inflation or deflation by reference to the All Groups Consumer Price Index as published by the Australian Bureau of Statistics (or, if such statistic ceases to be published, the nearest equivalent generally published figure);

and further the aggregate of Recoveries paid by the Liable Entities (or the Trustee on their behalf) over the Term of this deed (including any extension of the Term under **clause 9.9** of this deed) shall not exceed \$30 million.

- (c) Without limiting JHINV's or the Performing Subsidiary's rights under any other provision of this deed, if any Liable Entity (or the Trustee on its own behalf or on behalf of a Liable Entity) or any member of the JHINV Group is required to pay any amount in respect of Recoveries which exceeds the amounts described in **clause 13.7(b)**, the payment obligations of the Performing Subsidiary and JHINV under this deed and the Related Agreements shall be adjusted by the amount of the excess as though the excess were a payment of a Relevant Liability under a Scheme to which **clause 13.4** applies.

14 ACTUARIAL ISSUES

14.1 Initial Report

The Parties acknowledge that:

- (a) JHINV engaged KPMG Actuaries to provide in the Initial Report, a calculation of the Discounted Central Estimate of the liabilities of the Liable Entities to Claimants as at 30 June 2005;
- (b) a copy of that Initial Report has been made available to the Parties;
- (c) the Initial Report clearly delineates the methodology and assumptions made for the purposes of that calculation.
- (d) if the Commencement Date has not occurred by 30 April 2006, any Party may by Notice before the Commencement Date, request that KPMG Actuaries consider a matter specified in the Notice (being a matter listed in **clause 14.2(b)**) to consider whether in light of the specified matter KPMG Actuaries wishes to amend the Initial Report under **clause 14.2**.

14.2 Initial Payment

- (a) The Parties acknowledge that the calculation of the Initial Funding amount set out in this deed has been based upon the facts, assumptions and results set out in the Initial Report.
- (b) JHINV acknowledges that the terms on which it has engaged KPMG Actuaries have included terms that if the Commencement Date has not commenced by 31 March 2006, KPMG Actuaries may, by further report ("**Further Actuarial Report**") amend the Initial Report at any time before the Commencement Date by reason of the bona fide consideration by KPMG Actuaries of any of the following:
 - (i) new or additional information which has been provided to KPMG Actuaries and which would cause KPMG Actuaries to update or amend the Initial Report; and
 - (ii) actual experience.
- (c) Where KPMG Actuaries amends the Initial Report under **clause 14.2(b)**, whichever of JHINV or the Trustee has then engaged KPMG Actuaries must use its best endeavours to procure that KPMG Actuaries promptly gives the Further Actuarial Report to the Parties.
- (d) Subject to **clause 14.2(e)**, if the Parties are given a Further Actuarial Report in accordance with **clause 14.2(c)**, they must:

- (i) meet to consider whether the Further Actuarial Report indicates that the Initial Funding or the Additional Payment remain an appropriate basis for the establishment of the Fund; and
 - (ii) negotiate in good faith to agree, if they agree that those payments and matters are no longer appropriate, amendments to **clause 9.2** (and, to the extent those amendments affect the amount of the Additional Payment, the amounts to be deducted under **clause 9.2**) so that the Initial Funding will be appropriate on the basis of the facts, assumptions and results set out in the Further Actuarial Report.
- (e) If a Further Actuarial report is prepared and the Commencement Date occurs before any agreement is reached under **clause 14.2(d)**, the Parties agree that the Initial Funding shall be calculated by reference to the Initial Report and not the Further Actuarial Report and the parties will negotiate in good faith to determine whether an adjustment payment in respect of the Initial Funding should be made by the Performing Subsidiary or the Trustee and if so the amount of such payment.

14.3 Liable Entities to assist

The Trustee must procure (to the extent the Liable Entities are subject to its control or direction) that the Liable Entities:

- (a) provide to the Approved Actuary data and other assistance requested by the Approved Actuary to enable the Approved Actuary to prepare the Annual Actuarial Report for the period ending as at the Financial Year End of each Financial Year within 20 days of the Financial Year End of that year;
- (b) provide, if requested to do so, ongoing regular information to, amongst others, the Approved Actuary in relation to the notification, payment and settlement of Claims and Claims Legal Costs, and the assets available to meet Proven Claims, Claims Legal Costs and Operating Expenses and other Payable Liabilities; and
- (c) provide access for the Approved Actuary to Persons relevant to the operations of the Trustee and to Persons relevant to the operations of the Liable Entities, including, but not restricted to, employees, executives, claims managers and advisers of the Trustee and the Liable Entities.

14.4 Ongoing actuarial assessments

- (a) The Trustee will use its best endeavours to procure that the Approved Actuary prepares and provides to the NSW Government an Annual Actuarial Report by the date which is 20 days prior to each Payment Date. If the Approved Actuary is unavailable or unwilling to provide that report, the Trustee must immediately disclose to the other Parties the reasons known to the Trustee for such unavailability or unwillingness and must use its best endeavours to procure that the report is delivered as soon as possible after that due date (and **clause**

9.4(b) shall apply where the report has not been finalised at least 5 Business Days before the Payment Date).

(b) Each Annual Actuarial Report must set out:

- (i) the Discounted Central Estimate as at the end of the Financial Year ending prior to the Payment Date;
- (ii) the Period Actuarial Estimate for the period commencing immediately after the end of the Financial Year preceding the Payment Date (the “**Prior Financial Year**”) and ending at the end of the third Financial Year following the Prior Financial Year (or, if the end of the Term has been determined not to be extended under **clause 9.9(b)**, and the remainder of the Term is less than 3 years, to the end of the Term); and

(iii) the Term Central Estimate for the period:

- (A) from and including the day following the end of the Financial Year preceding that Payment Date;
- (B) up to and including the last day of the Term (excluding any automatic or potential extension of the Term pursuant to **clause 9.9**, unless or until the Term has been extended in accordance with that clause).

(c) The Trustee must engage the Approved Actuary on terms that (and use its best endeavours to procure that):

- (i) the Approved Actuary must undertake the calculations set out in **clause 14.4(b)** and include these calculations in its Annual Actuarial Report;
- (ii) the Annual Actuarial Reports are prepared adopting methodologies and assumptions which are consistent from year to year, subject to the need and duty to update or vary such methodologies and assumptions where required to reflect generally accepted best practice methodologies and assumptions appropriate at the relevant time, to be clearly delineated consistent with determining a Discounted Central Estimate; and

(iii) the Annual Actuarial Report complies with PS300 or subsequent applicable Australian actuarial standards.

14.5 Review by NSW Government Reviewing Actuary

(a) The NSW Government may from time to time appoint a NSW Government Reviewing Actuary to conduct a peer review of the Initial Report or any one or more Annual Actuarial Reports or Further Actuarial Report (not being a report given before the Initial Report and not more than 5 years before the date of appointment of the NSW Government Reviewing Actuary).

- (b) If after having made reasonable enquiries and assessment the NSW Government has not been able to identify an actuary who meets all of the requirements set out in the definition of “NSW Government Reviewing Actuary” in **clause 1.1**, the NSW Government shall notify the other Parties of that fact and failing agreement between the Parties within 21 days as to an actuary acceptable to all the Parties, the NSW Government shall promptly refer the matter to the President of the Institute of Actuaries of Australia, who shall have the sole power to select an available actuary who best meets those requirements to be the NSW Government Reviewing Actuary. The NSW Government may appoint the actuary so selected or may elect not to appoint a NSW Government Reviewing Actuary at that time.
- (c) Where the NSW Government proposes to make an appointment of a NSW Government Reviewing Actuary under this **clause 14.5**, it must promptly give Notice to JHINV, the Trustee and the Approved Actuary specifying:
- (i) the name and address of the proposed appointee;
 - (ii) the basis on which the proposed appointee fulfils the requirements for such an appointment as set out in the definition of “NSW Government Reviewing Actuary” in **clause 1.1**.
 - (iii) the Initial Report, the Further Actuarial Report or the Annual Actuarial Reports to be reviewed by the proposed appointee; and
 - (iv) an outline of the scope and purpose of the independent review.

14.6 Access by NSW Government Reviewing Actuary

If requested by the NSW Government Reviewing Actuary by Notice, the Trustee, must (and must use its best endeavours to procure the Liable Entities and the Approved Actuary to) provide:

- (a) data;
- (b) results of modelling; and
- (c) all other assistance and information (including providing reasonable access to the working papers of the Approved Actuary), reasonably required by the NSW Government Reviewing Actuary, so as to enable the NSW Government Reviewing Actuary to conduct any peer review under **clause 14.5**. Those persons are only required to do so if the NSW Government Reviewing Actuary has executed a confidentiality deed (on terms reasonably acceptable to those persons and to the NSW Government) to keep confidential any information and data so provided and to recognise and protect the intellectual capital and property of the Approved Actuary’s work and models to the extent they are disclosed, provided it shall not be required to incur any material expenditure in complying with this requirement, but it may be liable to pay damages for any breach of this **clause 14.6**.

The confidentiality deed will permit the NSW Government Reviewing Actuary to make any disclosure to the NSW Government, the Trustee, the Liable Entities, JHINV or the officers and employees or any of them, subject to the recipients being under a legally binding obligation of confidentiality in respect of such information, subject to limited exceptions to permit disclosures required by law.

14.7 NSW Government Reviewing Actuary Input

If the NSW Government Reviewing Actuary:

- (a) has reasonable grounds to disagree with, and in fact does not agree with, the information, calculations, methodology or assumptions in any Annual Actuarial Report or the Further Actuarial Report; and
- (b) considers that the disagreement is material,

the NSW Government may, at its discretion, give Notice to the Approved Actuary (with copies to the Trustee, JHINV and the Performing Subsidiary) setting out in detail those assumptions or those elements of the methodology of the Annual Actuarial Report or the Further Actuarial Report with which the NSW Government Reviewing Actuary disagrees, and providing detailed reasons for its disagreement and for its view that the disagreement is material.

14.8 Consideration of NSW Government Reviewing Actuary's Notice

If the Trustee receives a copy of a Notice from the NSW Government to the Approved Actuary under **clause 14.7**, the Trustee must instruct the Approved Actuary:

- (a) to give the matters set out by the NSW Government *bona fide* consideration and provide a detailed response by Notice to the NSW Government (with copies to the Trustee, JHINV and the Performing Subsidiary); and
- (b) where the Approved Actuary considers it is necessary or appropriate to do so, to revise and reissue the most recent report on which the NSW Government Reviewing Actuary conducted its review or recalculate the Discounted Central Estimate, Term Central Estimate or Period Actuarial Estimate (as the case may be) as at the relevant Financial Year End upon the revised assumptions and methodologies.

14.9 Revised Report by Approved Actuary

- (a) If the Trustee gives an instruction under **clause 14.8** and the Approved Actuary issues a revised report, that report shall be in substitution for the relevant report under **clause 14.4**, and shall form the basis for calculating relevant amounts for the purposes of **clauses 9 and 10** for the relevant Financial Year.
- (b) Where an error or recalculation disclosed in the revised report of the Approved Actuary has resulted in the Performing Subsidiary making an overpayment or

underpayment to the Trustee, the Performing Subsidiary shall promptly pay any amounts underpaid by it to the Trustee, or the Trustee shall promptly reimburse the Performing Subsidiary for any amount overpaid to it (as the case may be). Where the error resulted in no payment having occurred, the Performing Subsidiary shall promptly make the correct payment.

14.10 Actuarial Acknowledgments of Uncertainty

Each of the Parties acknowledges, without derogating from the remaining provisions of this deed, that:

- (a) there is inherent uncertainty involved in the actuarial assessment of long tail liabilities arising from exposure to Asbestos; and
- (b) the primary purpose in obtaining the Annual Actuarial Reports is:
 - (i) to ascertain the Discounted Central Estimate, the Term Discounted Central Estimate and Period Actuarial Estimates as at the end of the relevant Financial Year; and
 - (ii) not to determine the current amount that would need to be set aside in a closed fund established at the end of the relevant Financial Year in order to ensure that all Proven Claims would be paid in full without any further financial support to that fund.

14.11 Review of Draft Annual Actuarial Reports

- (a) The Trustee shall procure that the Approved Actuary provides to each of JHINV and the NSW Government an advanced draft of each Annual Actuarial Report at least 10 Business Days prior to that report being required to be finalised under this deed.
- (b) No later than 5 Business Days after receipt of a draft report under **clause 14.11(a)**, JHINV or the NSW Government may give Notice to the Trustee and the Approved Actuary with copies to the other Parties, requesting that the Approved Actuary consider specified questions of fact regarding the contents of the draft report.
- (c) The Trustee shall procure that the Approved Actuary considers in good faith any questions of fact notified under **clause 14.11(b)** by JHINV or the NSW Government with respect to the draft report.

15 FINANCIAL COVENANTS

15.1 Terms of Financial Covenants

JHINV covenants to the Trustee in terms of the Financial Covenants and warrants that these are equivalent to those given by it as at the date of this deed to its Initial Lenders.

15.2 Changes to Financial Covenants

If the Financial Covenants given by JHINV to the Lenders change or new Financial Covenants are given by JHINV to its Lenders from time to time during the Term in lieu of or in addition to any previously applicable Financial Covenant, JHINV automatically covenants to the Trustee in terms of those new or amended Financial Covenants. JHINV must notify the Trustee and the NSW Government of details of the new or amended Financial Covenants as soon as reasonably practicable and, until such Notice is given, the Financial Covenants in favour of the Trustee as last notified to the Trustee shall continue to apply in favour of the Trustee in addition to any new or amended Financial Covenants automatically given in favour of the Trustee.

15.3 Information undertakings

In the event that JHINV is obliged to notify a Lender of a breach of any of the Financial Covenants, JHINV agrees and undertakes to notify the Trustee and the NSW Government at the same time the Notice is given to the relevant Lender and keep the Trustee and the NSW Government informed, on a timely basis, of the outcome of discussions with the relevant Lender in respect of such a breach. Each recipient of such a Notice agrees to keep the contents and the fact of such Notices having been given confidential, other than to the extent reasonably necessary for the recipients to exercise their rights under this deed and any Related Agreements to which they are a party.

15.4 Auditor's Certificate

JHINV shall procure that, not later than 60 Business Days after the end of each Financial Year of JHINV, the JHINV Auditor gives the Trustee and the NSW Government a certificate in respect of that Financial Year specifying whether or not:

- (a) the financial statements for that year indicate that JHINV was on the last day of that Financial Year in breach of any of the Financial Covenants; or
- (b) in the course of its audit of the accounts of JHINV for that Financial Year, it became aware of any information that showed that JHINV was, on the last day of that Financial Year, in breach of any of the Financial Covenants and if it is aware of any such information, the JHINV Auditor must specify the nature and period of the existence of any breach.

15.5 Consents under the equivalent Financial Covenants

Where a Financial Covenant is given to the Trustee and conduct may not be engaged in or allowed without the consent of the Trustee under that Financial Covenant, then any consent or a waiver granted by the Lender under the equivalent Financial Covenant given by that Lender shall be taken to be consent or waiver (as the case may be) by the Trustee, but shall be subject to qualifications equivalent to those set out in the Lender's consent or waiver. JHINV must promptly deliver to the Trustee a certified copy of the consent or waiver granted by that Lender.

15.6 Warranty on Absence of Cross Guarantees

JHINV warrants to the Trustee and the NSW Government that at the date of this deed the Controlled Entities within the JHINV Group have not given Cross Guarantees of liabilities of JHINV to third parties, except as required:

- (a) to obtain relief under ASIC Class Order 98/1418 for wholly owned subsidiaries from preparing audited financial statements (or any class order amending, replacing or superseding such order); and
- (b) Australian Tax Office tax consolidation requirements imposed by virtue of Part 3-90 of the *Income Tax Assessment Act 1997* (Cth).

15.7 Future Cross Guarantees

If on or after 21 December 2004 any Controlled Entity of JHINV has entered or enters into any Cross Guarantee in favour of any Lender, JHINV must procure that:

- (a) the relevant Controlled Entity gives in favour of the Trustee a cross guarantee subordinated to the Cross Guarantee given to the Lender (but otherwise on equivalent terms); and
- (b) that such cross guarantee remains in force for as long as the Lender's Cross Guarantee remains in force.

15.8 Warranty and Covenant in relation to JHINV liabilities

JHINV warrants to the Trustee and the NSW Government that, at the date of this deed, JHINV has no material liabilities other than:

- (a) creditors, provisions and indemnities incidental to its activities as a holding company without a material operating business, and
- (b) guarantees or indemnities given to Lenders;
- (c) liabilities in relation to Taxation;
- (d) liabilities to Shareholders in their capacity as such not prohibited under this deed;
- (e) those liabilities arising by virtue of the cross guarantees described in **clause 15.6**; and
- (f) liabilities arising under this deed and the Related Agreements to which it is a party,

and covenants that, for the term of this deed, it will have no material liabilities other than those of the kind described in **clauses 15.8(a) to (f)** inclusive.

15.9 Reporting under Intercreditor Deeds

JHINV agrees to provide to the NSW Government and the Trustee, on a quarterly basis, summary information in relation to the quantum and type of Finance Money Debt (as defined in the Intercreditor Deeds) of the JHINV Group (but JHINV shall not be required to disclose details of Lenders as part of such reporting).

16 DEFAULT

16.1 Notifications of Default

- (a) JHINV, the Performing Subsidiary and, to the extent it becomes aware of the following, upon becoming so aware, the Trustee must immediately give Notice complying with **clause 16.1(b)** to the Trustee and the NSW Government where there is:
- (i) a failure by the Performing Subsidiary to make any Funding Payment at the time required;
 - (ii) a failure by JHINV to make any payment required by the JHINV Guarantee at the time required; or
 - (iii) any other failure, breach or default by JHINV or the Performing Subsidiary under this deed or any Related Agreement of which they become aware.
- (b) A Notice under **clause 16.1(a)** must specify:
- (i) the failure, breach or other default of which Notice is given; and
 - (ii) material particulars of that failure, breach or other default.

16.2 Special Default of JHINV or Performing Subsidiary

A Special Default occurs if and only if:

- (a) the Performing Subsidiary fails to make a payment when due under **clause 9** and such payment is not made within three months of a Notice of default being given to JHINV by the NSW Government or by the Trustee; or
 - (b) JHINV breaches its obligations under **clause 7** of this deed and JHINV does not remedy the breach within three months and Notice of the default has been given to JHINV by the NSW Government or the Trustee,
- and immediately ceases to exist where that payment is made or that breach has been remedied, as the case may be.

16.3 Consequences of Special Default of JHINV or Performing Subsidiary

- (a) Without prejudice to **clause 10**, if a Special Default occurs, there is no acceleration of the obligations of any member of the JHINV Group to the Trustee, but, without limiting any other remedy that may be available to the Trustee or the NSW Government during the currency of a Special Default, no member of the JHINV Group shall be entitled to declare or pay any Equity Distributions to Equity Securityholders of JHINV.
- (b) If a Special Default occurs, or an Insolvency Event in relation to JHINV occurs, and so long as that Special Default or Insolvency Event remains in existence, and the NSW Government gives to JHINV a Notice that this **clause 16.3(b)** is to apply:
 - (i) the quorum for a Trustee Board meeting will be two Directors appointed by the NSW Government;
 - (ii) the total number of votes that may be cast at any Trustee Board meeting by the Directors (including the Chairman) appointed by JHINV or one of its subsidiaries present at the meeting shall be one less than the number of votes that may be cast by the number of Directors appointed by the NSW Government present at that meeting; and
 - (iii) the Trustee Board shall be constituted so that the majority of Directors shall have been appointed by the NSW Government, and:
 - (A) the NSW Government may appoint further Directors so that the foregoing is achieved, and the Chairman (and remove any such appointees); and
 - (B) JHINV shall procure the resignation of the requisite number of Directors appointed by JHINV so that the foregoing is achieved.

16.4 Remedy of Special Default of JHINV or Performing Subsidiary

If following the exercise by the NSW Government of its rights under **clause 16.3(b)** any Directors have been appointed or removed pursuant to **clause 16.3(b)(iii)** and the relevant Special Default is remedied or the Insolvency Event ceases to exist (as the case may be):

- (a) the NSW Government must immediately give Notice to the Trustee under **clause 5.3** removing, and procure the resignation of, the Directors that it appointed as a result of that Special Default or Insolvency Event; and
- (b) JHINV may appoint replacement directors under **clause 5.2** such that the majority of Directors are then appointed by JHINV.

16.5 Other breaches, including by the NSW Government or the Trustee

- (a) If any Party to this deed becomes aware that it has breached any of the terms of this deed (other than breaches which comprise Special Defaults), then that party must immediately give each other Party to this deed a Notice setting out full details of the breach and its expected impact on its future compliance with its obligations arising under this deed.
- (b) If a Party to this deed becomes aware that any other Party has breached any of the terms of this deed (other than breaches which comprise Special Defaults), it may give that other Party Notice of the breach.
- (c) The Party in breach which gives or receives a Notice under **clause 16.5(a) or (b)** shall have a reasonable period after the first such Notice to rectify the breach, except where the breach is incapable of remedy and the other Parties shall not take action in relation to such breach until such period has expired.
- (d) For the avoidance of doubt, this **clause 16.5** does not require the giving of Notice or any other act before **clause 10** applies in accordance with its terms.
- (e) The absence of express termination rights in this deed shall not derogate from or qualify the common law termination rights of each Party (if any), which are expressly (and are intended to be) preserved in full, save that:
 - (i) JHINV cannot terminate this Deed or any Related Agreement for any default or breach committed by the Trustee whenever directors appointed by JHINV to the Trustee Board are entitled to exercise a majority of the votes of that Board;
 - (ii) the NSW Government cannot terminate this Deed or any Related Agreement for any default or breach committed by the Trustee whenever the quorum and voting arrangements described in **clause 16.3(b)** apply; and
 - (iii) termination by the NSW Government in respect of a default by JHINV (and vice versa) shall operate to terminate this deed as between all of the Parties to it; and
 - (iv) the Trustee can only terminate this Deed where permitted to do so under the terms of the Trust Deed.

16.6 NSW Government's right and power to enforce

- (a) Subject to **clause 16.6(c)**, the NSW Government shall be entitled directly to enforce all promises made by JHINV and the Performing Subsidiary to the Trustee under **clauses 6, 9, 10, 15.1** and **15.7** of this deed, under each Related Agreement to which the Trustee is a party and each Cross-Guarantee given in favour of the Trustee by any Controlled Entity of JHINV, in each case, to the full extent permitted by law provided that:

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- (i) in relation to **clause 9** and without prejudice to the operation of **clause 10**, neither the Trustee nor the NSW Government may exercise any such enforcement right (other than urgent interlocutory relief as described in and subject to the provisions of **clause 16.6(c)(iv)(B)** below) in respect of a default by the Performing Subsidiary in paying the Annual Payment (or any instalment thereof) under **clause 9** for a period of 40 days from the date when such Annual Payment (or any instalment thereof) was due if:
- A. the Performing Subsidiary or JHINV has immediately provided to the NSW Government reasons for the default and such reasons are reasonable in the circumstances;
 - B. JHINV has promptly after that due date entered into and continued to pursue or been ready, willing and able to enter into and pursue discussions with the NSW Government and (if available) the Trustee to remedy that default and provides to the NSW Government and the Trustee material particulars of the default and the proposed remedy or remedies;
 - C. JHINV is not and does not become Insolvent at any time during that period; and
 - D. subject to **clause 10**, a Reconstruction Event does not occur at any time during that period.
- provided that such period shall automatically expire upon any of the requirements in sub-paragraphs (A) to (D) inclusive ("**Moratorium Requirements**") ceasing to be satisfied; and
- (ii) if all of the Moratorium Requirements remain satisfied at the expiry of the above 40 day period and, in the opinion of the NSW Government (acting reasonably), there is a reasonable prospect of JHINV or the Performing Subsidiary paying the outstanding amount within a further period of 50 days, the initial 40 day period shall be extended by a further 50 days, save that such period shall automatically expire upon any of the Moratorium Requirements ceasing to be satisfied.
- (b) Subject to **clause 16.6(c)**, the NSW Government shall have the power directly to enforce as an attorney of the Trustee under the Irrevocable Power of Attorney and on behalf of the Trustee all promises made by JHINV and the Performing Subsidiary to the Trustee under **clauses 6, 9, 10, 15.1** and **15.7** of this Deed, under each Related Agreement to which the Trustee is a party and each Cross-Guarantee given in favour of the Trustee by any Controlled Entity of JHINV, provided that such power may only be exercised or enforced subject to the same requirements applicable to the NSW Government's direct enforcement entitlements contained in **clauses 16.6(a)(i)** and **(ii)**. The NSW Government and the Trustee covenant that they will not amend or replace the

Irrevocable Power of Attorney without the prior written consent of JHINV, not to be unreasonably withheld.

- (c) Prior to taking any action to exercise any of the foregoing powers of enforcement (“**Action**”):
- (i) the NSW Government shall Notify the Trustee of the Action the NSW Government would propose to take and the reasons why such Action is required or appropriate;
 - (ii) the Trustee may by Notice to the NSW Government within 3 Business Days of receipt by the Trustee of the Notice described in **clause 16.6(c)(i)** indicate its views on the NSW Government’s proposed Action, including whether the Trustee has any objection to such proposed Action, and shall provide its reasons for such views and any objection by the Trustee to such proposed Action (including without limitation any course of action the Trustee might propose to take in response to the NSW Government’s proposal);
 - (iii) the NSW Government must give proper and *bona fide* consideration to the views and any objection by the Trustee set out in the Trustee’s Notice described in **clause 16.6(c)(ii)**, and subject to the Trustee Board being promptly available for such a meeting, meet with the Trustee Board if requested so to do by that Board and if after so doing the NSW Government nevertheless proposes to take such Action, unless such Notice is waived by the Trustee, the NSW Government shall give at least 2 Business Days’ Notice to the Trustee of its intention so to do; and
 - (iv) the NSW Government shall be entitled only to take:
 - (A) the Action so Notified, such other alternative action as may reasonably be considered to be within the general scope of the Action so Notified, or as otherwise agreed by the Trustee, and any of the foregoing actions as shall be reasonably incidental to either the Action so Notified or such alternative or agreed Action; and
 - (B) urgent Action in the nature of seeking urgent interlocutory Court relief of which it was not practicable for the procedure in this **clause 16.6(c)** to be carried out, provided that the NSW Government gives such notice of such urgent action to the Trustee in relation thereto as shall be reasonably practicable in the circumstances.
- (d) Subject to the foregoing and **clause 10.3(i)**, the NSW Government shall be entitled to claim and recover as damages (in addition to all other amounts which the NSW Government may be entitled to claim and recover on the NSW Government’s own behalf) an amount equal to the damages which the Trustee

itself would have suffered as a result of the breach to which the power of enforcement relates, together with any interest to the extent not included in the damages, provided that in relation to any such claims or any exercise by the NSW Government of its enforcement entitlements or its exercise of powers as attorney:

- (i) the NSW Government may not recover any such amount to the extent that the same amount has previously been recovered by the Trustee;
 - (ii) the Trustee may not recover any such amount to the extent that the same amount has previously been recovered by the NSW Government;
 - (iii) any amount recovered by the NSW Government pursuant to its rights under this **clause 16.6** (excluding any amounts required to be disgorged by operation of law and legal and other recovery costs to the extent recovered in relation to the NSW Government in its own capacity and not on behalf of the Trustee) shall reduce any liability or obligation of JHINV and/or the Performing Subsidiary to the Trustee under this deed or a Related Agreement by a corresponding amount;
 - (iv) unless **clause 4.6** applies, any amounts received by the NSW Government pursuant to its rights under this **clause 16.6** or which is due and payable to it (excluding any amounts required to be disgorged by operation of law (disregarding any law which comes into force in breach of **clause 13** and which breach has been Notified to the NSW Government) its legal and other recovery costs), must be paid (or, where not yet received, directed by it to be paid) immediately to the Trustee and such amounts shall be held on trust for the Trustee;
 - (v) if **clause 4.6** applies, any such amount received by or under the direction of the NSW Government (excluding legal and other recovery costs to the extent recovered in relation to the NSW Government in its own capacity and not on behalf of the Trustee) shall be paid in accordance with that clause;
 - (vi) if the NSW Government takes any action in exercise of any such enforcement entitlements, it shall be liable to the Trustee for such damage as the Trustee may suffer from any negligence in relation to the timing or manner of such action, unless at the time such action is taken a majority of directors of the Trustee Board were appointed by JHINV and control a majority of the voting rights of that Board and the Trustee has been given reasonable prior Notice of such action by the NSW Government and not objected to such action.
- (e) If the NSW Government takes any enforcement action under this **clause 16.6**, it may, by Notice to the Trustee but subject to **clause 16.6(d)(iv)**, require that the Trustee refrain from taking any action which, if taken, would be inconsistent

with the Action of the NSW Government under this **clause 16.6** or, subject to law, rescind or revoke prior actions undertaken by the Trustee.

- (f) The Trustee must not, without the prior written consent of the NSW Government, waive or compromise all or any part of any payment (actually or contingently) due from JHINV or the Performing Subsidiary under this deed or any Related Agreement, and the Parties acknowledge that any such purported waiver or compromise that is not accompanied by such written consent from the NSW Government is invalid, has no effect on the obligations of JHINV or the Performing Subsidiary and cannot be relied upon or pleaded by way of estoppel or otherwise.
- (g) The NSW Government's power of enforcement referred to in this **clause 16.6** is without prejudice to any of the rights and powers conferred on the NSW Government (whether alone or jointly with others) under, or consequent upon a breach by a Party of its obligations under, this deed or any Related Agreement.
- (h) Subject to the foregoing provisions of this **clause 16.6**, the power of the NSW Government to enforce under this **clause 16.6** on behalf of the Trustee shall be without prejudice to and shall not derogate or detract from the rights and powers of the Trustee to enforce the provisions of this deed (and any Related Agreement to which it is a party) given in favour of the Trustee.

16.7 Interest on defaults

Except as otherwise provided for in **clause 9.4(b)(vii)** or **9.7**, if the Performing Subsidiary or JHINV fail to pay a JHINV Contribution when due and payable under this deed, then the Trustee shall be entitled to charge interest on that amount for the period it remains unpaid at an interest rate per annum equal to the Interest Rate plus 100 basis points.

17 INTERIM FUNDING

17.1 Interim Funding to Liable Entities

Pending the provision of funding under this deed, and prior to the earlier of the Commencement Date and the date referred to in **clause 2.2(a)**, and subject to the other existing sources of funding of the Liable Entities being exhausted, and subject to agreement as to the extent and terms thereof, JHINV and the Performing Subsidiary shall assist in ensuring that funding is available to the Liable Entities for the purposes of meeting liabilities to Claimants up to the earlier of the Commencement Date and the date referred to in **clause 2.2(a)**.

17.2 Conditions to interim funding

JHINV's obligations under this **clause 17** are conditional upon each of the Parties to this deed other than JHINV and the Performing Subsidiary performing their respective obligations under this deed.

17.3 Type of assistance

The extent and manner of assistance to be provided (for example, by way of loan or advance) and the terms and conditions thereof are to be agreed by JHINV and the Liable Entities.

18 BORROWING BY THE TRUSTEE

18.1 Power to Borrow

Subject to the terms of the Trust Deed, the Trustee may borrow funds in the event that there is a shortfall or prospective shortfall of funds being available to it by way of Funding Payments.

18.2 No Credit Support by NSW Government or the JHINV Group

The Trustee shall not be entitled to credit or other borrowing support from the NSW Government or the JHINV Group.

19 EDUCATION PROGRAMME

19.1 Education campaign

JHINV agrees that it will contribute an amount of \$75,000 per annum for a period of 10 years (starting on the Commencement Date and payable on or by each anniversary thereof) towards an education campaign for the benefit of the Australian public on the dangers of Asbestos on the following basis:

- (a) the Parties are to seek, on an ongoing basis, the active co-operation and funding support of the Other Governments, insurers and other companies with Asbestos liabilities relevant to the focus of the education campaign described in **clause 19.1(f)** for the education campaign;
- (b) funding shall be administered by a Committee comprised of representatives of the NSW Government, JHINV, the ACTU and any Persons who have committed a minimum of \$50,000 per annum to the education campaign (if they so wish);
- (c) amounts contributed by JHINV and not spent within a certain year shall be carried over to the next year and amounts left over at the end of the 10 year period shall be allocated at the Committee's sole discretion to:
 - (i) education programs determined by the Committee; or
 - (ii) a medical research funding institution of good repute which conducts medical research into Asbestos, as selected by the Committee following consultation with JHINV;

- (d) the Committee will consider the style and content of the education campaign and will not endorse that content or style without the approval of a majority of the representatives on the Committee;
- (e) the Parties acknowledge the importance of an endorsement by a government of education material and the Committee will use reasonable endeavours to obtain such an endorsement of its education material and the NSW Government agrees to consider in good faith such requests for endorsement;
- (f) the education campaign will focus on “home renovators” by:
 - (i) alerting those people to the dangers of Asbestos;
 - (ii) alerting those people as to what products may contain Asbestos and where those products may be found in existing household or other environments; and
 - (iii) advising those people as to the steps that ought be taken by people planning home renovations or who otherwise identify Asbestos products in their home or other environment; and
- (g) the education campaign will use such methods as are determined by the Committee in its discretion.

19.2 “In kind” assistance

In addition to its obligation to contribute money under **clause 19.1**, JHINV and the NSW Government each agree to provide a reasonable level of “in kind” assistance to assist in the delivery of the education campaign by the methods determined by the Committee. By way of example only, such “in kind” assistance might involve the use of the JHINV Group’s distribution network within Australia to distribute educational material designed to be made available to home renovators at point of sale of hardware products.

20 MEDICAL RESEARCH

20.1 Medical research

The Parties agree that:

- (a) JHINV will contribute an amount of \$500,000 per annum for a period of 10 years (starting on the Commencement Date and payable on or by each anniversary thereof) for the purposes of conducting or funding the conduct of medical research into the diagnosis and treatment of Asbestos diseases on the basis that:
 - (i) JHINV administers its own medical research grants scheme with the assistance of relevant experts to review and make recommendations concerning the expressions of interest and research proposals; and

- (ii) any Funds not used in any particular year can be carried over and added to the next year's funding amount;
- (b) JHINV will, within 6 months of the Commencement Date, establish a trust for the purposes of conducting or funding the conduct of medical research into the diagnosis and treatment of Asbestos diseases and ensure that all funds paid to that trust are maintained in one or more bank accounts to be used only for the purposes of the trust;
- (c) the trustee of the medical research trust will at all times be a member of the JHINV Group determined by JHINV in its discretion;
- (d) the awarding of medical research grants from the proceeds of the trust shall be a matter for the trustee to determine in accordance with the purposes of the trust; and
- (e) on and from the time the final payment required under this **clause 20.1** is made, or if for any reason the trust determines earlier than on the tenth anniversary of the Commencement Date, JHINV may at its election, by Notice to the NSW Government determine the medical research trust and in any such case any resulting surplus funds and any amounts not then due and payable under **clause 20.1(a)** shall be paid to one or more medical research institutions selected by agreement between JHINV and the NSW Government which are of good repute and which conduct medical research into the diagnosis and treatment of Asbestos diseases (and on such terms as JHINV may consider reasonable to ensure that such funds are only expended on such medical research into Asbestos diseases).

20.2 Reporting obligations

- (a) Within 20 Business Days after establishing the trust referred to in **clause 20.1(b)**, JHINV shall give Notice to the NSW Government confirming that the trust has been established and attaching a copy of the instrument by which the trust was established.
- (b) JHINV agrees to promptly provide to the NSW Government copies of the annual reports, financial statements and such other periodic reports as may be produced by the medical research trust from time to time in relation to the granting of medical research grants.
- (c) JHINV agrees to procure that the trust deed pursuant to which the trust is established shall oblige the trustee to include within its periodical reporting:
 - (i) the amount of each contribution by JHINV under **clause 20.1(a)** and the current balance of the trust funds; and
 - (ii) in respect of each medical research grant from proceeds of the trust, the name and address of the recipient of such grant, the amount of such

grant and details of the medical research project to which such grant is to be applied.

21 BANS AND BOYCOTTS

If requested by JHINV, the NSW Government will write to persons persisting in bans or boycotts in New South Wales with respect to JHINV's products requesting that such bans and boycotts be lifted.

22 OPINIONS

22.1 Acknowledgement of receipt of opinions effective at the date of this deed

Each Party acknowledges that JHINV has obtained (effective as of the date of this deed), for the benefit of all Parties to this deed, the following opinions relating to the validity, binding nature and enforceability of this deed, the insolvency law in relevant jurisdictions including Australia, and such other matters set out in those opinions:

- (a) an opinion from Atanaskovic Hartnell as to the validity, binding nature and enforceability of this deed under Australian law, in the form set out in **Schedule 4**; and
- (b) an opinion from De Brauw Blackstone Westbroek in relation to Dutch law in the form set out in **Schedule 5**.

22.2 Opinions to be received following execution of this deed

JHINV agrees to obtain the following opinions in respect of compliance with relevant laws and applicable Stock Exchange requirements relating to JHINV seeking Shareholder approval as described in **clause 2.1(d)** and the form and content of the Shareholders Documentation, for the benefit of all Parties to this deed:

- (a) an opinion from Atanaskovic Hartnell in the form set out in **Schedule 6**;
- (b) an opinion from De Brauw Blackstone Westbroek in relation to Dutch law in the form set out in **Schedule 7**;
- (c) a corresponding opinion from Gibson, Dunn and Crutcher LLP in relation to applicable U.S. Federal and Californian law and the rules and regulations of the New York Stock Exchange in the form set out in **Schedule 8**,

or such other law firms qualified to provide such opinions which are acceptable to the Parties acting reasonably (as the case requires).

23 CONFIDENTIALITY

23.1 Confidentiality

Subject to **clause 23.2**, each Party shall, and shall procure that its employees, officers, agents and advisers (each a "**Representative**") keep strictly confidential:

- (a) the terms of this deed and the Related Agreements until the Shareholder Documentation has been sent to Shareholders; and
- (b) all information provided to that Party or its Representatives in relation to, or in connection with this deed or any Related Agreement; and
- (c) all matters relating to the Transaction Legislation and the Release Legislation, including without limitation, drafts of the Transaction Bill and the Release Bills.

and each Party shall be responsible for all acts and omissions of its Representatives in relation to such information.

23.2 Exceptions

A Party (and its Representatives) may disclose information under or obtained in connection with this deed, the Fund, the Related Agreements and the initialled drafts of the Transaction Legislation and the Release Legislation as may be necessary to:

- (a) the Party's related bodies corporate, professional advisors, bankers, financial advisors and financiers, if those persons undertake to keep the information disclosed confidential;
- (b) any Person being considered by a Party to be nominated as a Director, provided that such candidate agrees to keep such information confidential pending his or her appointment (after which the Director shall be subject to the same confidentiality requirements applicable to other Directors) and failing such appointment being made the candidate must immediately return all such information in written or recorded form and delete all electronic records of such information in its possession or under its control;
- (c) comply with any applicable law or requirement of any regulatory body (including any relevant Stock Exchange) and any corporate governance guidelines adopted by such bodies which are adopted by JHINV;
- (d) any of its employees to whom it is necessary to disclose the information, if that employee undertakes to keep the information confidential;
- (e) gain necessary approvals for the purpose of entering into or implementing this deed (including by satisfying the Conditions) provided (except in the case of the Condition in **clause 2.1(d)**) that, except in relation to any disclosures made pursuant to **clause 2.5**, the recipient is provided with a copy of this **clause 23** and agrees to keep such information confidential;

- (f) any Person as permitted by the written agreement of all Parties; or
- (g) any Person if the content of the Disclosure is or has become generally available to the public otherwise than by breach of this deed or by breach of any confidentiality deed entered into on or before the date of this deed and to which the NSW Government and JHINV (among others) were party in relation to the Transaction Bill and the Release Bills (and for the avoidance of doubt, once a version of the Transaction Legislation or the Release Legislation is introduced in the NSW Parliament, only so much of any other version of the Transaction Legislation, the Release Legislation, the Transaction Bill or the Release Bills as is reflected in the terms in which it is introduced is then in the public domain).

23.3 Disclosure to the parties to the Heads of Agreement

A Party may disclose the terms of this deed to a party to the Heads of Agreement and their professional advisors provided the following terms and conditions are satisfied:

- (a) those persons must have previously agreed to keep such information strictly confidential until such time as the Shareholder Documentation is sent to Shareholders;
- (b) access by such persons to the terms of this deed shall be supervised by the disclosing Party; and
- (c) such persons shall not be permitted to photocopy or retain a copy of this deed or any of the Related Agreements to which they are not party, until the Shareholder Documentation has been sent to Shareholders.

24 AGREED SUMMARY

The Parties have agreed upon a summary of this deed and the Related Agreements which is set out in **Annexure 2**. This deed (other than the summary) and the Related Agreements prevail over the summary, and for the avoidance of doubt the summary does not form part of this deed. The summary is not subject to **clause 23.1**.

25 COSTS AND STAMP DUTY

25.1 Costs

Subject to **clause 25.2**, unless and to the extent otherwise agreed in writing between any of the Parties, each Party must bear its own costs arising out of the negotiation, preparation and execution of this deed and the Related Agreements

25.2 Stamp duty

Subject to **clause 25.3**, all Duty payable on or in connection with this deed and any Related Agreement and any instrument executed under or any transaction evidenced by such documents must be borne by JHINV.

25.3 Waiver of NSW stamp duty

The NSW Government agrees to waive any Duty payable to it on or in connection with this deed or any Related Agreement in accordance with **clause 63** of the Transaction Bill.

26 GOVERNING LAW AND JURISDICTION

26.1 Governing law

This deed is governed by the laws of New South Wales.

26.2 Submission to jurisdiction

Each Party submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales, and waives any right to claim that those Courts are an inconvenient forum.

26.3 Service

- (a) A document may be served on a Party by delivering it to that Party at its address in **clause 30**.
- (b) This **clause 26.3** does not prevent another mode of service.
- (c) JHINV irrevocably appoints James Hardie Australia Pty Limited (ACN 084 635 558 as its agent to receive service of process in any legal action or proceeding related to this deed or any Related Agreement in the Courts of New South Wales, and must appoint a substitute agent reasonably acceptable to the NSW Government if the then current agent is unable to receive service of process.

27 COUNTERPARTS

This deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

28 ACCESS TO INFORMATION

- (a) If at any time there is no Director in office who has been appointed by the NSW Government or if the NSW Government has requested the Trustee in writing to do so, the Trustee must do the following, provided that the NSW Government shall not be entitled to exercise these rights in such a way as to interfere with or impose a material compliance or administrative burden on the Trustee:
 - (i) upon being requested to do so on a Financial Year by Financial Year basis, provide to an officer of the NSW Government notified by the NSW Government to the Trustee and JHINV from time to time as being designated for this purpose ("**Designated Officer**") copies of all notices of meeting of the Trustee Board, all agendas and copies of minutes of

Trustee Board meetings held during that Financial Year as if the Designated Officer were a Director;

- (ii) promptly, upon being requested to do so in relation to a particular meeting, provide the Designated Officer with a copy of the Board Papers of the Trustee Board as if the Designated Officer were a Director;
 - (iii) upon being given reasonable notice, permit the NSW Government to inspect the property of the Trustee during office hours;
 - (iv) upon being given reasonable notice, permit the NSW Government to inspect and take copies of the Trustee's business records, including its accounts; and
 - (v) respond to reasonable enquiries relating to the business affairs and finances of the Trustee and permit the Designated Officer and such other senior officers ("**Senior Officers**") of the NSW Government as may be reasonably necessary with reasonable access to the officers, employees, and Approved Auditor of the Trustee to enable such matters to be discussed.
- (b) The NSW Government agrees and undertakes to procure that all information obtained by it or the Designated Officer or any Senior Officer in relation to the Trustee under this **clause 28** shall be kept confidential and shall be used only for the purpose of assessing the compliance of JHINV, the Performing Subsidiary and the Trustee with their respective obligations under this deed and the Related Agreements.
- (c) JHINV, the Performing Subsidiary and the Trustee acknowledge that the confidentiality obligations of the NSW Government under **clause 28(b)** are without prejudice to any overriding obligations of any NSW Government Minister to perform his or her Ministerial duties to the NSW Parliament, nor do such obligations fetter the exercise by any such Minister of his or her proper Ministerial functions or powers.
- (d) In the event that the NSW Government has requested the Trustee to provide any document described in **clause 28(a)** and the Trustee has after a reasonable time been unable to locate such document, the Designated Officer may request JHINV and JHINV shall use reasonable endeavours to provide a copy of the named and identified document to the Designated Officer, and JHINV shall provide a copy of any such document within the possession or under the control of JHINV or the Performing Subsidiary.

29 AMENDMENT OF THIS DEED

The Parties can only vary a term of this deed if the variation is in writing and all Parties execute an amending agreement hereto.

30 NOTICES

(a) A notice, approval, consent, nomination or other communication ("**Notice**") to a person relating to this deed:

- (i) must state that it is a notice relating to this deed;
- (ii) shall state the relevant clause in this deed to which the notice relates;
- (iii) must be in legible writing; and
- (iv) must be in English.

(b) If the Notice is to either or both of JHINV and/or the Performing Subsidiary then it must be addressed as follows:

Name: James Hardie Industries NV/ Performing Subsidiary
Attention: The Chairman and the Chief Financial Officer
Addresses: Atrium, 8th floor, Strawinskylaan 3077, 1077ZX Amsterdam, The Netherlands
Level 3, 20 Pitt Street, Sydney NSW 2000
Facsimile: + 61 2 8274 5218

(c) If the Notice is to the NSW Government then it must be addressed as follows:

Name: The State of New South Wales, c/- The Cabinet Office
Attention: Deputy Director-General (Legal)
Address: Level 39, Governor Macquarie Tower, Farrer Place, Sydney, NSW 2000
Facsimile: + 61 2 9228 3062

with copies, if the NSW Government has appointed a Director or any Directors, to each such Director as notified to the Trustee from time to time by such Director; and

(d) If the Notice is to the Trustee then it must be addressed as follows:

Name: Asbestos Injuries Compensation Fund Limited
Attention: The Chairman
Address: To be advised

Facsimile: To be advised

- (e) If the Notice is from a corporation then an officer of that corporation must sign the Notice.
- (f) Notice is sent by the sender and received by the receiver:
 - (i) if the Notice is hand delivered, upon delivery to the receiving Party;
 - (ii) if the Notice is sent by facsimile, upon the successful completion of the relevant transmission;
 - (iii) if the Notice is sent by registered mail within Australia, 2 Business Days after the registration of the notice of posting; and
 - (iv) if the Notice is sent by ordinary mail within Australia, 3 Business Days from and including the date of postage.
- (g) For the avoidance of doubt, Notice shall not be sent by electronic email.
- (h) In **clause 30(f)**, a reference to a Party receiving a Notice includes a reference to the receiver's officers, agents or employees.
- (i) A Party may vary any of the details relating to it contained in **clause 30(b)** or **30(c)** at any time by Notice to the other Parties.
- (j) Where a Notice to a Party must be copied to another Person, each such Notice must be despatched at the same time and using the same method and upon failure to do so, each such Notice will be deemed to be given at the time and by the method of despatch of the last such Notice.

31 GENERAL

31.1 Severability

- (a) If a provision of this deed is invalid, illegal or unenforceable, then that provision to the extent of the invalidity, illegality or unenforceability must be ignored in the interpretation of this deed.
- (b) All the other provisions of this deed remain in full force and effect.

31.2 No waiver

- (a) A Party's agreement to waive a right or entitlement under this deed is only effective if that Party gives written Notice of that waiver to the Party seeking the benefit of the waiver.
- (b) Waiver by a Party of anything required to be done under this deed is not a waiver of any other thing required to be done under this deed.

- (c) **Clause 31.2(b)** applies even if the act or thing is of a different nature.
- (d) A failure or delay in exercising a right arising from a breach of this deed is not a waiver of that right.

31.3 Further assurances

Each Party must do everything necessary to give full effect to this deed.

31.4 Entire agreement

- (a) This deed and the Related Agreements embody the entire agreement between the Parties.
- (b) This deed supersedes all previous agreements.
- (c) The Heads of Agreement is superseded by this deed.

32 CUMULATIVE RIGHTS

A right, power, discretion and remedy arising out of this deed in favour of a Party:

- (a) is cumulative; and
- (b) does not diminish any other right, power, discretion and remedy of any Party.

33 ATTORNEYS

An attorney executing this deed states that the attorney has no notice of the revocation, termination or suspension of the power of attorney appointing that attorney.

34 ASSIGNMENT, NOVATION AND OTHER DEALINGS

A Party must not assign or novate this deed, or declare a trust over, or otherwise deal with (or enter into any subcontract in relation to) all or any part of the benefit of it or a right or obligation under it, or purport to do so, without the prior written consent of the other Parties.

Schedule 1 — Related Agreements

Title	Parties	Purpose
Trust Deed of the Fund (Annexure 8)	Settlor Trustee	Establish the Fund and set out its purposes powers and governance
JHINV Guarantee	JHINV, the Trustee and NSW Government	Guarantee by JHINV
Intercreditor Deeds (Annexures 7A and 7B)	The Trustee JHINV/Performing Subsidiary NSW Government Guarantee Trustee	Sets out intercreditor arrangements as between the Trustee and the NSW Government, and the Lenders
Unions' Deed of Release (Annexure 3)	JHINV, ACTU, Unions NSW, Banton	Release from liability and lifting of boycotts upon signing Principal Deed
NSW Government Deed of Release (Annexure 6)	JHINV, NSW Government	Release from liability upon the Commencement Date
Irrevocable Power of Attorney (Annexure 9)	Trustee NSW Government	To appoint the NSW Government as the attorney of the Trustee

Schedule 2 — Representations and Warranties

Part 1 – Representations and warranties by JHINV

JHINV represents and warrants to the NSW Government as follows:

(a) **incorporation:**

- (i) JHINV is a company duly incorporated and validly existing under the laws of the Netherlands;
- (ii) the Performing Subsidiary is a company duly incorporated and validly existing under the laws of Australia;

(b) **corporate power:** each of:

- (i) subject to satisfaction of the conditions set forth in **clauses 2.1(c) and 2.1(d)**, JHINV; and
- (ii) the Performing Subsidiary,

has the corporate power to enter into and perform its obligations under this deed, the JHINV Guarantee and the other Related Agreements to which it is a party and to carry out the transactions contemplated by those documents;

(c) **enforceability:** subject to the terms of the opinions set out in Schedules 3, 4 and 5, this deed and each Related Agreement to which JHINV or the Performing Subsidiary is a party are valid, binding and enforceable against those parties in accordance with their terms in competent courts exercising jurisdiction in New South Wales or, in the case of the JHINV Guarantee, in the Netherlands;

(d) **no contravention by JHINV:** so far as JHINV is aware, the execution by JHINV of this deed, the JHINV Guarantee and the other Related Agreements to which it is a party will not violate in any material respect any provision of:

- (i) the constituent documents of JHINV;
- (ii) any material agreement or judgment binding upon JHINV or the assets of JHINV; or
- (iii) any law or regulation of any Government Authority or Stock Exchange;

(e) **no contravention by the Performing Subsidiary:** so far as JHINV is aware, the execution by the Performing Subsidiary of this deed and the Related Agreements to which it is a party will not violate in any material respect any provision of:

- (i) constituent documents of the Performing Subsidiary;

- (ii) any material agreement or judgment binding upon the Performing Subsidiary or the assets of the Performing Subsidiary; or
- (iii) any law or regulation of any Government Authority or Stock Exchange;
- (f) **Solvency:** JHINV is, immediately after entering into this deed, the JHINV Guarantee and the other Related Agreements, able to pay its debts as and when they fall due; and
- (g) **Authorisations:** All authorisations, consents, approvals, registrations, notices, exemptions and licenses with or from any Governmental Authority or Stock Exchange necessary for the due and valid execution by JHINV and the Performing Subsidiary of, this deed and each of the Related Agreements to which JHINV or the Performing Subsidiary is a party, or which would, if not obtained by JHINV or the Performing Subsidiary, prevent the exercise by the Trustee of its remedies under this deed and each of the Related Agreements to which JHINV or the Performing Subsidiary is a party (assuming such rights were exercised immediately upon execution of this deed), have been effected or obtained and are in full force and effect.

2. Awareness

A reference in **clause 1** of this **Schedule 2** to JHINV's awareness shall be taken to be a reference solely to the awareness of the officer of JHINV who provides a certificate pursuant to **clause 2.8(b)**, after having made reasonable enquiries.

3. Acknowledgement of Reliance

JHINV acknowledges that the NSW Government has relied upon the representations and warranties made by JHINV in this deed and in the certificate delivered pursuant to **clause 2.8(b)** in connection with those representations and warranties. All such representations and warranties shall survive the execution and delivery of this deed and the Related Agreements.

Schedule 2 — Representations and Warranties (continued)**Part 2 – Form of Officer’s certificate**

To: The State of New South Wales

I, [*insert name*], am the Chief Financial Officer of James Hardie Industries N.V (“**JHINV**”).

I refer to the deed having the name “a deed in respect of a Final Funding Agreement” dated to be entered into on the date of this certificate between James Hardie Industries N.V., The State of New South Wales and LGTDD Pty Limited in relation to the provision of long term funding for compensation arrangements for certain victims of Asbestos-related diseases in Australia (“**Principal Deed**”).

This certificate is referred to in clause 2.8(b) of the Principal Deed.

I certify that I have been duly authorised by JHINV to give this certificate and that to the best of my knowledge and belief having made reasonable enquiries, each of the representations and warranties set out in Part 1 of Schedule 2 of the Principal Deed are true and accurate as at the date of this certificate.

I am aware that JHINV will acknowledge in the Principal Deed that The State of New South Wales will rely upon the representations and warranties made by JHINV in the Principal Deed and in this certificate.

Signed: _____

Date: _____

Schedule 3 – Percentage of Free Cash Flow

Rules for Determination of Percentage of Free Cash Flow for Payments of JHINV Contributions

1. Initial Free Cash Flow position and general rule

The percentage of Free Cash Flow available for payments under **clause 9** for each Financial Year of the Term shall be:

- a. for each Financial Year before the Financial Year ending on 31 March 2012, 35%; and
- b. for each Financial Year ending on or after 31 March 2012, subject to paragraphs 2, 3, and 4, the same percentage as for the previous Financial Year.

2. Step Down

Subject to **clauses 9.14(c)** and **9.14(d)**, in relation to each Financial Year (**Relevant Financial Year**) to which paragraph 1(b) applies, if:

- a. there has been no previous reduction in the percentage of Free Cash Flow under this paragraph 2 or the last reduction in the percentage of Free Cash Flow under this paragraph 2 (ie not being a reduction under paragraph 5) occurred no later than the Financial Year commencing four years before the start date of the Relevant Financial Year;
- b. the percentage of Free Cash Flow applying to payments under **clause 9** for the previous Financial Year was 10% or more; and
- c. the formula $AFCF \times (PP - 5 \text{ percentage points}) > ACA$ is satisfied

where:

AFCF = the arithmetic mean of the amounts of the Free Cash Flow for the previous four Financial Years

PP = the percentage of Free Cash Flow applying to payments under **clause 9** for the previous Financial Year

ACA = the arithmetic mean of the Annual Contribution Amounts for the previous four Financial Years,

the percentage of Free Cash Flow available for payments under **clause 9** for that Financial Year shall be the percentage which applied in the previous Financial Year less 5 percentage points.

Example in relation to paragraph 2

If the Relevant Financial Year was the year ending on 31 March 2015 and in the previous Financial Year PP was 35% then the percentage of Free Cash Flow for the Relevant Financial Year would become 30% if the tests in sub-paragraph (a) and sub-paragraph (c) were satisfied.

3. Step Up

3.1 Subject to paragraph 3.2 and to **clauses 9.14(c)** and **9.14(d)**, in relation to any Financial Year commencing with or which comes after the Financial Year ending 31 March 2013, if:

- a. there has been a reduction in the percentage of Free Cash Flow under paragraph 2; and
- b. the Annual Contribution Amount for that Financial Year would be greater than that which would be otherwise required by **clause 9** for that Financial Year,

then the percentage of Free Cash Flow available for payments under **clause 9** for that Financial Year shall be the percentage which applied in the previous year plus 5 percentage points.

3.2 If there has been an increase in the percentage of Free Cash Flow under paragraph 3.1, the percentage cannot be stepped up again from that level in any subsequent Financial Year.

Example in relation to paragraph 3:

If the percentage of Free Cash Flow in the Financial Year ending 31 March 2016 would have been 25% and then paragraph 3.1 applies to that Financial Year, the new percentage of Free Cash Flow for that Financial Year would be 30% but paragraph 3.2 prevents the Free Cash Flow percentage ever being increased at any stage in the future to above 30%.

4. No Immediate Reduction if Step Up in 2013 Financial Year

Where paragraph 3 has been applied to the Financial Year ending 31 March 2013 to increase the percentage of Free Cash Flow available for payments in that Financial Year back up to 35%, paragraph 2 cannot be applied to the Financial Year ending on 31 March 2014 to reduce the percentage of Free Cash Flow in that Financial Year back down to 30%.

Example in relation to paragraph 4

If the percentage of Free Cash Flow for the year ending 31 March 2012 was reduced under paragraph 2 to 30% and then was increased for the Financial Year ending 31 March 2013 under paragraph 3 to 35%, the earliest that it

could be reduced again under paragraph 2 to 30% would be the year ending 31 March 2015 (because paragraph 2 could not be reapplied until after 31 March 2014). The earliest that it could then be further reduced under paragraph 2 to 25% would be the year ending 31 March 2019 (because paragraph 2(a) requires a four year gap between the start dates for each step down other than step downs to reverse a step up under paragraph 5).

5. Step-down After Previous Step-up

Subject to paragraph 4, where paragraph 3 has been applied to increase the percentage of Free Cash Flow available for payments in a Financial Year, the application of the test in paragraph 2(a) to determine whether to reduce the percentage of Free Cash Flow, should be ignored when assessing whether JHINV can move down to the next 5 percentage point level.

Example in relation to paragraph 5

If the percentage was reduced under paragraph 2 from 35% to 30% for the year ending 31 March 2015 and then had to be increased under paragraph 3 to 35% for the year ending 31 March 2016, the percentage could return to 30% for the year ending 31 March 2017 (if the test in paragraph 2(c) is satisfied). The earliest that paragraph 2 will allow a reduction to 25% would then be the year ending 31 March 2019 i.e. 4 years after the last reduction under paragraph 2.

Schedule 4 – Opinion — Atanaskovic Hartnell

Opinion from Atanaskovic Hartnell to be given on execution of this deed

Schedule 5 – Opinion – De Brauw Blackstone Westbroek

Opinion from De Brauw Blackstone Westbroek to be given on execution of this deed

Schedule 6 – Opinion – Atanaskovic Hartnell

Negative assurance opinion from Atanaskovic Hartnell to be given immediately following Shareholder approval

Schedule 7 – Opinion – De Brauw Blackstone Westbroek

Opinion from De Brauw Blackstone Westbroek to be given regarding shareholder approval

Schedule 8 – Opinion – Gibson Dunn and Crutcher LLP

Opinion from Gibson Dunn and Crutcher LLP to be given regarding Shareholder approval

Schedule 9 — Deed of Novation**DEED OF NOVATION****DATE****PARTIES**

1. **[PERFORMING SUBSIDIARY] (Retiring Party)**

2. **[INSERT] (Substitute Party)**

AND

3. **JAMES HARDIE INDUSTRIES N.V. ARBN 097 892 895** incorporated in the Netherlands and having its registered office at Atrium, 8th Floor, Strawinskylaan 3077, 1077ZX Amsterdam, Netherlands (with its principal office in Australia at Level 3, 22 Pitt Street, Sydney, New South Wales, 2000) (**JHINV**)

4. **THE STATE OF NEW SOUTH WALES (NSW Government)**

5. **LGTTDD PTY LIMITED** ABN [], of Level 3, 22 Pitt Street, Sydney in the State of New South Wales (the **Performing Subsidiary**)

6. **[AICF] LIMITED**, trustee of the Fund from time to time, in its capacity as trustee (the **Trustee**)

(each of JHINV, NSW Government, the Performing Subsidiary and the Trustee[*and insert other parties*] are a **Continuing Party**)

THE PARTIES AGREE

DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

In this deed capitalised terms have the meaning given to them in the Principal Deed except as set out below or the context requires otherwise.

Effective Date means the date of this deed.

Principal Deed means the deed having the name “a deed for a Final Funding Agreement” dated [*insert date*] between James Hardie Industries N.V., The State of New South Wales, the Performing Subsidiary and the Trustee in relation to the provision by the Performing Subsidiary of funding to the Trustee by way of long-term contributions towards Asbestos-related liabilities for Claims against the Liable Entities.

1.2 Interpretation

The rules of interpretation in clause 1.2 of the Principal Deed apply unless the context requires otherwise.

2. NOVATION

2.1 Novation

On and from the Effective Date, the parties novate the Principal Deed so that:

- (a) the Substitute Party replaces the Retiring Party under the Principal Deed as if it was an original party to the Principal Deed; and
- (b) a reference in the Principal Deed to the Retiring Party must be read as a reference to the Substitute Party.

2.2 Assumptions of rights and obligations

On and from the Effective Date, the Substitute Party:

- (a) must comply with the Principal Deed; and
- (b) obtains the rights and assumes the obligations and liabilities of the Retiring Party under the Principal Deed whether arising before or after the Effective Date; and
- (c) each Continuing Party must comply with the Principal Deed on the basis that the Substitute Party has replaced the Retiring Party under it in accordance with this deed.

2.3 Release by Continuing Party

Each Continuing Party, on and from the Effective Date, releases the Retiring Party from:

- (a) any of the Retiring Party's obligations or liabilities which arose under the Principal Deed; and
- (b) any action, claim and demand it has, or but for this **clause 2.3** would have had, against the Retiring Party under the Principal Deed.

2.4 Release by Retiring Party

The Retiring Party, on and from the Effective Date, releases each Continuing Party from:

- (a) any obligation and liability under the Principal Deed; and
- (b) any action, claim and demand it has, or but for this clause 2.4 would have had, against the Continuing Party under the Principal Deed.

2.5 Indemnity and Liability

- (a) The Substitute Party indemnifies the Retiring Party on demand against any claim, action, damage, loss, liability, cost, expense or payment which the Retiring Party pays, suffers, incurs or is liable for in respect of any act of or omission by the Substitute Party in respect of the Principal Deed, which occurs after the Effective Date.
- (b) The Substitute Party is liable to each Continuing Party in respect of any claim, action, damage, loss, liability, cost, expense or payment which the Continuing Party pays, suffers, incurs or is liable for in respect of the Principal Deed, which occurred, or which arises out of or is caused by any act or omission which occurred on, before or after the Effective Date.
- (c) Without limiting the generality of their respective terms, each indemnity in this clause 2.5 in favour of a party extends to all legal costs and expenses incurred by the party on the higher of a solicitor and own client basis and a full indemnity basis.

3. REPRESENTATIONS AND WARRANTIES

3.1 Substitute Party Warranties

- (a) The Substitute Party represents and warrants to each Continuing Party that the statements with respect to the Performing Subsidiary set out in **Part 1** of **Schedule 2** of the Principal Deed are true and accurate as at the date of this

deed, as amended by replacing references to “the Performing Subsidiary” with “the Substitute Party”.

- (b) On the date of this deed, the Substitute Party has provided to the NSW Government, and the NSW Government acknowledges receipt, of an officer’s certificate signed by the chief financial officer of the Substitute Party in the form set out in **Part 2 of Schedule 2** (but only in respect of statements made with respect to the Performing Subsidiary, as described in clause 3.1(b) of this deed).

4. MISCELLANEOUS

4.1 General

Clauses 25.1, 25.2, 26.1, 26.2, 26.3(a) and (b), 27, 29, 30, 31.1, 31.2, 31.3, 32, 33 and 34 of the Principal Deed shall apply to this deed except that under clause 30 references to JHINV/Performing Subsidiary and their address shall be replaced by a reference to the Retiring Party and the Retiring Party’s relevant address and references to NSW Government and its address for notices shall be replaced by a reference to the Substituting Party and its relevant address.

SIGNED as a deed.

[EXECUTION CLAUSES]

Schedule 10 - Trustee Constitution

CORPORATIONS ACT
A Company Limited by Guarantee
ASBESTOS INJURIES COMPENSATION FUND LIMITED
ABN XX XXX XXX XXX
CONSTITUTION
[insert date] 2005

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ASBESTOS INJURIES COMPENSATION FUND LIMITED
CONSTITUTION

1. Objects of the Company

1.1 Definitions and Interpretation

Schedule 1 applies and forms part of this Constitution.

1.2 Nature of the Company

- (a) The Company is a public company limited by guarantee.
- (b) The initial Member will be the Person who is listed as the initial member in the registration statement. Thereafter, the Member will be the Chairperson of the Board from time to time.
- (c) The Member undertakes to contribute an amount not exceeding \$10 to the property of the Company if the Company is wound up:
 - (i) at a time when the Person is a Member; or
 - (ii) within one year after the time the Person ceased to be a Member,for:
 - (iii) payment of the debts and liabilities of the Company contracted before the Person ceases to be a Member; and
 - (iv) payment of the costs, charges and expenses of winding up the Company.

1.3 Replaceable rules

The replaceable rules in the *Corporations Act* do not apply to the Company.

1.4 Objects

The objects of the Company are:

- (a) the principal purpose of receiving and providing funding for the payment and paying of Payable Liabilities and providing services with respect to the management and resolution of Payable Liabilities; and
- (b) the following additional purposes, which are for the Company to :
 - (i) hold the benefit of the Funding Obligations and the obligation of the Performing Subsidiary (if applicable) to pay the Wind-Up or Reconstruction Amount in accordance with clause 10 of the Final Funding Agreement, the JHINV Guarantee, and the covenants and obligations of JHINV under the Final Funding Agreement and the Related Agreements to ensure the payment by the JHINV Group of the JHINV Contributions under the Final Funding Agreement and any Cross Guarantee given pursuant to clause 15.7 of the Final Funding Agreement, and enforce the same as may be required from time to time ;

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- (ii) be the creditor of the Performing Subsidiary and JHINV for payments (whether actually or contingently) due and payable to the Company under the Final Funding Agreement and receive and give a proper receipt for such amounts;
 - (iii) manage itself or through one or more of the Liable Entities or otherwise cause to be managed, the response to all Payable Liabilities for itself or for or on behalf of the Liable Entities including by entry into Claims Management Agreements with the Liable Entities (and in respect of Payable Liabilities which are not SPF Funded Liabilities, on the basis that the Liable Entities must bear the full cost and all liabilities associated with such claims);
 - (iv) provide management services to a Liable Entity in connection with the winding up of the Liable Entity including exercising all powers conferred on it by the Transaction Legislation;
 - (v) subject to it having the necessary funds to do so and clause 9.15 of the Final Funding Agreement, pay in accordance with and subject to clause 4.7 of the Final Funding Agreement and the provisions of the Transaction Legislation, the SPF Funded Liabilities itself or through one or more of the Liable Entities, and in each case for itself or for or on behalf of the Liable Entities as the Company may in its discretion determine;
 - (vi) use its best endeavours to achieve all available legal and administrative cost savings in relation to:
 - A. the process for handling the response to Personal Asbestos Claims and Marlew Claims;
 - B. Court proceedings dealing with apportionment of damages in relation to Personal Asbestos Claims and Marlew Claims; and
 - C. exercising rights of recovery.
 - (vii) review and implement legal and administrative cost savings in the claims management process on a continuing basis both in relation to the process for settling Personal Asbestos Claims and Marlew Claims and the process generally applicable in relation to Personal Asbestos Claims and Marlew Claims, including reducing Claims Legal Costs;
 - (viii) invest the assets contributed to or received by the Company;
 - (ix) use its best endeavours to:
 - A. recover;
 - B. procure that each Liable Entity recover; and
 - C. exercise or procure the exercise of rights subrogated from any Claimant to recover, amounts paid or liabilities incurred with respect to any Personal Asbestos Claims, Marlew Claims or any other Payable Liabilities from insurers, reinsurers and other parties who may have contributed to the loss relating to such claims;
 - (x) generally do all things necessary and convenient for the purposes of

handling and finalising Payable Liabilities for itself or for and on behalf of the Liable Entities (provided that nothing in the Final Funding Agreement shall require the Company to incur any liability or pay any amount with respect to a liability which is not a SPF Funded Liability);

- (xi) as provided by the Transaction Legislation or to the extent otherwise entitled to do so, be subrogated to the rights of the Claimants against the Liable Entities and Marlew or any other Persons in relation to any Payable Liability settled or met by the Company;
- (xii) be authorised and permitted to negotiate with Claimants and at its discretion procure that the relevant Liable Entity enter into binding settlements in relation to (including without limitation compromises of Payable Liabilities); and
- (xiii) accept appointment and act as a Single Claims Manager.

1.5 Obligations of the Company

In the achievement of its objects under Rule 1.4, the Company is to comply with the obligations applicable to the Company as set out in the Final Funding Agreement, the Transaction Legislation and the Related Agreements.

1.6 No distribution to Members

- (a) The income and property of the Company shall be used and applied solely in promotion of its objects and no portion shall be distributed, paid or transferred directly or indirectly by way of dividend, bonus or by way of profit to the Members.
- (b) Rule 1.5(a) does not prevent the payment in good faith by the Company to a Member of:
 - (i) payment for services rendered or goods supplied by the Member in the ordinary course of business;
 - (ii) interest at a reasonable rate on money borrowed by the Company from a Member;
 - (iii) reasonable rent for premises demised or let to the Company by the Member; or
 - (iv) any other reasonable amount of a similar character to those described in this Rule 1.5(b).

1.7 Membership

- (a) The initial Member is the Person who became a member of the Company upon registration, and that Person shall be the Chairperson of the Board appointed in accordance with the Final Funding Agreement.
- (b) Subject to paragraphs (c) and (d), the Board may admit and remove Members.
- (c) For so long as the Company retains the office of trustee of the Fund:
 - (i) the Company shall only have one Member;
 - (ii) a Person will only be eligible to become a Member if that Person holds the office of Chairperson; and

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- (iii) the Board will not admit a Person as a Member unless:
 - A. upon that admission, there will only be one Member; and
 - B. that Person has first covenanted in favour of the Company and the Appointors that it will not seek to exercise its power to amend this Constitution without the prior written consent of the Appointors, or otherwise cause or procure the Company to act in a manner which is inconsistent with its obligations as trustee.
 - (d) If the Member ceases to be the Chairperson of the Board of Directors, the Member must immediately resign their Membership by notice in writing.
 - (e) A resignation or removal pursuant to paragraph (d) will only become effective:
 - (i) once another Person who is appointed to the office of Chairperson; and
 - (ii) that Person has become a Member.

2. Proceedings of Members

2.1 Written resolutions of Members

While the Company has only one Member, the Company may pass a resolution by that Member signing a record in writing of that resolution.

2.2 Annual General Meeting

- (a) The Company must hold an AGM if required by, and in accordance with, the *Corporations Act*.
- (b) The business of an AGM may include any of the following, even if not referred to in the notice of the meeting:
 - (i) the consideration of the annual financial report, Directors report and auditors report for the Company;
 - (ii) the appointment of Directors;
 - (iii) the appointment of the auditor of the Company; and
 - (iv) the fixing of the remuneration of the auditor of the Company.

2.3 How to call meetings of Members

- (a) The Company must give not less than Prescribed Notice of a meeting of Members.
- (b) Notice of a meeting of Members must be given to each Member, each Director, and any auditor of the Company.
- (c) A notice of a meeting of Members must:
 - (i) set out the place, date and time for the meeting (and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
 - (ii) state the general nature of the business of the meeting; and
 - (iii) set out or include any other information or documents specified by the

Corporations Act.

(d) A Person may waive notice of any meeting of Members by notice in writing to the Company to that effect.

2.4 Right to attend meetings

- (a) Each Member and any auditor of the Company is entitled to attend any meetings of Members.
- (b) Subject to this Constitution, each Director is entitled to attend and speak at all meetings of Members.

2.5 Meeting at more than one place

- (a) A meeting of Members may be held in 2 or more places linked together by any technology that:
 - (i) gives the Members as a whole in those places a reasonable opportunity to participate in proceedings;
 - (ii) enables the Chairperson to be aware of proceedings in each place; and
 - (iii) enables the Members in each place to vote on a show of hands and on a poll.
- (b) If a meeting of Members is held in 2 or more places:
 - (i) a Member present at one of the places is taken to be present at the meeting; and
 - (ii) the Chairperson of that meeting may determine at which place the meeting is taken to have been held.

2.6 Chairperson

- (a) The Chairperson must (if present within 15 minutes after the time appointed for the holding of the meeting and willing to act) chair each meeting of Members.
- (b) If at a meeting of Members:
 - (i) there is no Chairperson;
 - (ii) the Chairperson is not present within 15 minutes after the time appointed for the holding of a meeting of Members; or
 - (iii) the Chairperson is present within that time but is not willing to chair all or part of that meeting,the Directors present may, by majority vote, elect a Person present to chair all or part of the meeting of Members.

2.7 General conduct of meetings

- (a) Subject to the *Corporations Act*, the Chairperson is responsible for the general conduct of that meeting and for the procedures to be adopted at that meeting.
- (b) The Chairperson may delegate any power conferred by this Rule to any Person.
- (c) The powers conferred on the Chairperson under this Rule 2.7 do not limit the

powers conferred by law.

2.8 Resolutions of Members

- (a) Each Member will have one vote.
- (b) A corporate Member may nominate any individual as its representative to exercise any votes it is entitled to at any general meeting of the Company, regardless of the position held by that individual within the corporate Member.

3. Directors

3.1 Number and Appointment of Directors

- (a) The Company must have at least 3 Directors and a maximum of 5 Directors as determined by the Directors.
- (b) Subject to Rule 3.1(c) and 3.1(d):
 - (i) JHINV shall be entitled to appoint a majority of the Directors from time to time and to designate one of those Directors to be Chairperson.
 - (ii) JHINV may by notice in writing to the Company and the NSW Government, nominate a subsidiary of JHINV for so long as it remains a subsidiary of JHINV to exercise its rights under Rule 3.1(b)(i); and
 - (iii) JHINV shall, or shall procure that the nominated subsidiary shall, promptly give written notice to the Company and the NSW Government of any appointment made pursuant to this Rule 3.1(b).
- (c) The NSW Government shall be entitled to appoint the remaining Directors.
- (d) If a Special Default occurs or an Insolvency Event in relation to JHINV occurs, and so long as that Special Default or Insolvency Event remains in existence and the NSW Government gives to JHINV a Notice under the Principal Deed that clause 16.3(b) of the Final Funding Agreement is to apply, the following Rules apply:
 - (i) the Board must be constituted so that a majority of the Directors shall have been appointed by the NSW Government;
 - (ii) the NSW Government may appoint further Directors so that the foregoing is achieved, and the Chairperson (and remove any such appointees); and
 - (iii) JHINV must procure the resignation of the requisite number of Directors appointed by JHINV (so that the foregoing is achieved),
and the Company will give effect to all actions taken by the NSW Government and JHINV in accordance with this paragraph.
- (e) A Director need not be a Member to qualify for appointment.

3.2 Vacation of office

- (a) A Director may resign from office by giving the Company notice in writing.
- (b) Each Appointor may, by notice in writing to the Company, remove and replace from time to time the Persons appointed by it under Rule 3.1. Except in cases of emergency, an Appointor must give at least 5 Business Days' notice to the other

Appointor of any proposed appointment of a Director.

- (c) In addition to the circumstances prescribed by the Corporations Act, or by the terms of the Director's appointment, the office of a Director becomes vacant if the Director:
- (i) becomes of unsound mind or a Person whose estate is liable to be dealt with under a law relating to mental health;
 - (ii) is absent without the consent of the Directors from all meetings of the Directors held during a period of 6 months and the other Directors resolve that his or her office be vacated;
 - (iii) resigns by notice in writing to the Company; or
 - (iv) the Director becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors generally.

3.3 Remuneration of Directors

- (a) Subject to Rule 3.3(b), a Director is not entitled to be paid any fee or remuneration for holding office as a Director but is entitled to be paid or reimbursed by the Company for:
- (i) out of pocket expenses incurred by the Director in the performance of any duty as a director of the Company subject to the amount payable not exceeding any amount previously approved by the Board;
 - (ii) any service rendered to the Company by the director in a professional or technical capacity (and not in his or her capacity as a Director) where the provision of the service has been previously approved by the Board and the remuneration for the service does not exceed an amount which is proper remuneration for the service;
 - (iii) any salary or wage due to the director as an employee of the Company where the terms of employment have been previously approved by the Board and the salary or wage does not exceed an amount which is proper remuneration;
 - (iv) an insurance premium in respect of a contract insuring an officer to which section 212 of the *Corporations Act* refers or the provision of a financial benefit (by way of indemnity) to a Director to which section 212 of the *Corporations Act* refers.
- (b) In addition to the payments to the Directors permitted under Rule 3.3, the Company may pay such amount as Director's fees as it considers appropriate to any Director not being an employee of the NSW Government or an employee of any member of the JHINV Group.

3.4 Interests and duties of Directors

- (a) A Director may not hold an office or place of profit (except as auditor) in the Company;
- (b) A Director is not precluded from voting or otherwise acting in his or her capacity as a Director as a result of any conflict of interest arising from the fact that the Director is an employee, consultant or officer of an Appointor, or in the case of a Director appointed by the NSW Government, a public servant.
- (c) A Director may hold an office or otherwise be interested in any related body

corporate of the Company or other body corporate in which the Company is interested or act, or the Director's firm may act, in any professional capacity for the Company (except as auditor) or any related body corporate of the Company or other body corporate in which the Company is interested and retain the benefits of doing so, if the Director discloses in accordance with the *Corporations Act* the interest giving rise to those benefits.

- (d) If a Director discloses the interest of the Director in accordance with the *Corporations Act*:
- (i) the Director may contract or make an arrangement with the Company, or a related body corporate of the Company or a body corporate in which the Company is interested, in any matter in any capacity;
 - (ii) the Director may, subject to the *Corporations Act*, be counted in a quorum for a meeting of Directors considering that contract or arrangement;
 - (iii) the Director may, subject to the *Corporations Act*, vote on whether the Company enters into the contract or arrangement, and on any matter that relates to the contract, arrangement or interest;
 - (iv) the Director may sign on behalf of the Company, or witness the affixing of the common seal of the Company to, any document in respect of the contract or arrangement;
 - (v) the Director may retain the benefits under the contract or arrangement; and
 - (vi) the Company cannot avoid the contract or arrangement merely because of the existence of the Director's interest.
- (e) Whilst the Company holds office as the trustee of the Fund, a Director who causes the Company to comply with its obligations as such will be deemed to be acting in the best interests of the Company.

4. Officers

4.1 Secretary

- (a) The first Secretary is the Person specified in the application for registration of the Company as Company secretary.
- (b) The Directors may appoint one or more Secretaries, for any period and on any terms (including as to remuneration) the Directors resolve.
- (c) Subject to any agreement between the Company and a Secretary, the Directors may remove or dismiss a Secretary at any time, with or without cause.
- (d) The Directors may revoke or vary the appointment of a Secretary.

4.2 Indemnity and insurance

- (a) To the extent permitted by law, the Company must indemnify each Relevant Officer against:
 - (i) a liability of that Person; and
 - (ii) legal costs of that Person.

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- (b) To the extent permitted by law, the Company may make a payment (whether by way of advance, loan or otherwise) to a Relevant Officer in respect of Legal Costs of that Person.
 - (c) To the extent permitted by law, the Company must pay, or agree to pay, a premium for a contract insuring a Relevant Officer against:
 - (i) a liability of that Person; and
 - (ii) legal costs of that Person.
 - (d) To the extent permitted by law, the Company must enter into an agreement or deed with:
 - (i) a Relevant Officer; or
 - (ii) a Person who is, or has been an officer of the Company or a subsidiary of the Company, under which the Company will do the following:
 - (iii) keep books of the Company and allow either or both that Person and that Person's advisers access to those books on the terms agreed;
 - (iv) indemnify that Person against any liability of that Person;
 - (v) make a payment (whether by way of advance, loan or otherwise) to that Person in respect of legal costs of that Person; and
 - (vi) keep that Person insured in respect of any act or omission by that Person while a Relevant Officer or an officer of the Company or a subsidiary of the Company, on the terms agreed (including as to payment of all or part of the premium for the contract of insurance).

5. Powers of the Company and Directors

5.1 General powers

- (a) The management of the Fund shall vest in the Company.
- (b) Without limiting Rule 5.1(a), the Company may exercise in any manner permitted by the *Corporations Act* any power which a public company limited by guarantee may exercise under the *Corporations Act*.
- (c) The business of the Company is managed by or under the direction of the Directors.
- (d) The Directors may exercise all the powers of the Company except any powers that the *Corporations Act* or this Constitution requires the Company to exercise in general meeting.

5.2 Execution of documents

- (a) If the Company has a common seal, the Company may execute a document if that seal is fixed to the document and the fixing of that seal is witnessed by:
 - (i) two Directors;
 - (ii) a Director and a Secretary; and

-
- (iii) a Director and another Person appointed by the Directors for that purpose.
 - (b) The Company may execute a document without a common seal if the document is signed by:
 - (i) two Directors;
 - (ii) a Director and a Secretary;
 - (iii) a Director and another Person appointed by the Directors for that purpose.
 - (c) The Directors may resolve, generally or in a particular case, that any signature on certificates for Membership may be affixed by mechanical or other means.
 - (d) Negotiable instruments may be signed, drawn, accepted, endorsed or otherwise executed by or on behalf of the Company in the manner and by the Persons as the Directors resolve.

5.3 Committees and delegates

- (a) The Directors may delegate any of their powers (including this power to delegate) to a committee of Directors, a Director, an employee of the Company or any other Person.
- (b) The Directors may revoke or vary any power delegated under Rule 5.3(a).
- (c) A committee or delegate must exercise the powers delegated in accordance with any directions of the Directors.
- (d) The exercise of a power by the committee or delegate is as effective as if the Directors exercised the power.
- (e) Rule 6 applies with the necessary changes to meetings of a committee of Directors.

6. Proceedings of Directors

6.1 Written resolutions of Directors

- (a) The Directors may pass a resolution without a meeting of the Directors being held if all the Directors entitled to vote on the resolution assent to a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of the documents referred to in Rule 6.1(a) may be used for assenting to by the Directors if the wording of the resolution and the statement is identical in each copy.
- (c) A Director may signify assent to a document under this Rule 6.1 by signing the document or by notifying the Company of the assent of the Director:
 - (i) in a manner permitted by Rule 5.3; or
 - (ii) by any technology including telephone.
- (d) Where a Director signifies assent to a document under Rule 6.1(c) other than by signing the document, the Director must by way of confirmation sign the document before or at the next meeting of Directors attended by that Director.

(e) The resolution the subject of a document under Rule 6.1(b) is not invalid if a Director does not comply with Rule 6.1(d).

6.2 Meetings of Directors

- (a) The Directors may meet, adjourn and otherwise regulate their meetings as they think fit.
- (b) A meeting of Directors may be held using any technology consented to by a majority of the Directors.
- (c) The consent of a Director under Rule 6.2(b):
 - (i) may be for all meetings of Directors or for any number of meetings; and
 - (ii) may only be withdrawn by that Director within a reasonable period before a meeting of Directors.
- (d) If a meeting of Directors is held in two or more places linked together by any technology:
 - (i) a Director present at one of the places is taken to be present at the meeting unless and until the Director states to the Chairperson of the meeting that the Director is discontinuing her or her participation in the meeting; and
 - (ii) the Chairperson of that meeting may determine at which place the meeting will be taken to have been held.

6.3 Who can call meetings of Directors

- (a) A Director may call a meeting of Directors at any time.
- (b) On request of any Director, a Secretary of the Company must call a meeting of the Directors.

6.4 How to call meetings of Directors

- (a) Subject to this Constitution, a notice of a meeting of Directors must be given to each Director, or an alternate Director appointed under Rule 6.7.
- (b) A notice of meeting of Directors:
 - (i) must set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
 - (ii) must state the general nature of the business of the meeting; and
 - (iii) may be given in Person, by post or subject to the Corporations Act, by a form of technology.
- (c) The Company must give not less than 48 hours notice of a meeting of Directors, unless all Directors agree otherwise.
- (d) A Director may waive notice of a meeting of Directors by notice in writing to the Company to that effect.

6.5 Quorum

The quorum for a Board meeting is, if JHINV has appointed at least one Director, one Director appointed by JHINV and, if the NSW Government has appointed at least one Director, one Director appointed by the NSW Government provided that:

- (a) subject to Rule 6.5(b), if a quorum is not present at a meeting, the meeting shall be reconvened by notice to a date no less than 24 hours after the date of the original meeting (or such time as is reasonable in cases of emergency) and the quorum for such a reconvened meeting of which all Directors have been given notice in writing shall be at least two Directors; and
- (b) if a Special Default occurs or an Insolvency Event occurs in relation to JHINV occurs, so long as and so long as that Special Default or Insolvency Event remains in existence, and the NSW Government gives to JHINV a notice under the Final Funding Agreement that clause 16.3(b) of the Final Funding Agreement is to apply, the quorum will be two Directors appointed by the NSW Government.

6.6 Adjournment

Subject always to Rule 6.5, if a quorum is not present within 1 hour after the time appointed for a meeting, the meeting will stand adjourned to:

- (a) if Rule 6.5(a) applies, the time specified in that Rule; or
- (b) in any other case the same time and place seven days after the meeting or to another day, time and place determined by those Directors present.

6.7 Alternate Directors

Each Director may appoint, by Notice in writing to the Company, an alternate to act in his or her place. Except in cases of emergency, at least 5 Business Days' notice must be given of any proposed appointment of an alternate Director pursuant to this Rule 6.7.

6.8 Chief Executive Officer

The Board will be responsible for the selection, appointment and termination of the Chief Executive Officer of the Company and the terms on which he or she is engaged from time to time.

6.9 Chairperson

- (a) The Chairperson must (if present within 15 minutes after the time appointed for the holding of the meeting and will to act) chair each meeting of Directors.
- (b) If:
 - (i) there is no Chairperson; or
 - (ii) the Chairperson is not present within 15 minutes after the time appointed for the holding of a meeting of Directors; or
 - (iii) the Chairperson is present within that time but is not willing to chair all or part of that meeting, the Directors present must elect one of themselves to chair all or part of the meeting of Directors.
- (c) A Person does not cease to be a Chairperson of Directors if that Person retires as a

Director at a meeting of Members and is re-elected as a Director at that meeting.

6.10 Resolutions of Directors

- (a) A resolution of Directors is passed if more votes are cast in favour of the resolution than against it.
- (b) Subject to Rules 6.10(c) and 6.10(e) and except as otherwise specified in the Final Funding Agreement, each Director has one vote at any meeting of the Directors.
- (c) If a Director representative of an Appointor and his or her alternate Director is absent, the remaining Director representatives of that Appointor shall be entitled to jointly exercise the absent Director's vote.
- (d) Subject to Rule 6.10(e), in case of an equality of votes on a resolution at a meeting of Directors, the Chairperson of that meeting has a casting vote on that resolution in addition to any vote the Chairperson has in his or her capacity as a Director in respect of that resolution.
- (e) If a Special Default occurs within the meaning of clause 16.2 of the Final Funding Agreement, then the total number of votes that may be cast at any Board meeting by the Directors (including the Chairperson) appointed by JHINV or one of its subsidiaries present at the meeting shall be one less than the number of votes that may be cast by the number of votes that may be cast by the number of Directors appointed by the NSW Government present at that meeting.

6.11 Interests of Appointor

- (a) Subject always to a Director's obligations under the Trust Deed, the Constitution, statute or otherwise at law, a Director may take into account the views of that Director's Appointor and may act on the wishes of that Appointor in performing any of his or her duties or exercising any power, right or discretion as a Director in relation to the Company.
- (b) A Director may provide that Director's Appointor with copies of all documents, Board Papers and other material which come into the possession of the Director in that capacity and may disclose to and discuss with the Appointor all information to which the Director becomes privy in that capacity.

7. Notices

7.1 Notice to Members

The Company may give notice to a Member:

- (i) in Person;
- (ii) by sending it by post to the address of the Member in the Register or the alternative address (if any) nominated by that Member; or
- (iii) by sending it to the fax number or electronic address (if any) nominated by that Member.

7.2 Notice to Directors

The Company may give notice to a Director:

- (a) in Person;
- (b) by sending it by post to the usual residential address of that Person or the alternative

address (if any) nominated by that Person;

- (c) by sending it to the fax number or electronic address (if any) nominated by that Person; or
- (d) by any other means agreed between the Company and that Person.

7.3 Notice to the Company

A Person may give notice to the Company:

- (a) by leaving it at the registered office of the Company;
- (b) by sending it by post to the registered office of the Company;
- (c) by sending it to the fax number at the registered office of the Company; or
- (d) by any other means permitted by the *Corporations Act*.

7.4 Time of service

Notice is sent by the sender and received by the receiver;

- (i) if the notice is hand delivered, upon delivery to the receiving party;
- (ii) if the notice is sent by facsimile, upon the successful completion of the relevant transmission;
- (iii) if the notice is sent by registered mail within Australia, 2 Business Days after the registration of the notice of posting;
- (iv) if the notice is sent by ordinary mail within Australia, 3 Business Days from and including the date of postage.

7.5 Signatures

The Directors may decide, generally or in a particular case, that a notice given by the Company be signed by mechanical or other means.

8. Distributions from the Company

If, upon a winding up of the Company, there remains any property whatsoever after all debts and liabilities of the Company have been satisfied, the liquidator must give or transfer such surplus property equally to another incorporated entity whose constitution contains similar objectives and a similar restriction to this Rule.

9. Inconsistency

- (a) In the event, and to the extent, of any inconsistency between the provisions of the Final Funding Agreement and the terms of this Constitution, the Final Funding Agreement shall prevail.
- (b) In the event, and to the extent, of any inconsistency between the provisions of the Trust Deed and the terms of this Constitution, the Trust Deed shall prevail.

Schedule 1 — Definitions and Interpretations

1. Definitions

In this Constitution:

“**Appointor**” means each Person described in clauses 5.1 to 5.3, and clause 16.3 of the Final Funding Agreement who is entitled to appoint one or more Directors.

“**Asbestos**” means the fibrous form of those mineral silicates that belong to the serpentine or amphibole groups of rock forming minerals, including actinolite, amosite (brown asbestos), anthophyllite, chrysotile (white asbestos), crocidolite (blue asbestos) and tremolite.

“**Board**” means the board of Directors.

“**Board Papers**” means

- (a) in relation to a Director, all Documents circulated by the Company to him or her acting in that capacity.
- (b) all Documents tabled at a meeting of the Directors or otherwise made or physically available to Directors at such meetings, including, without limitation, periodic board papers, submissions, minutes, letters, board committee and sub-committee papers.

“**Business Day**” means a day (not being a Saturday or a Sunday) on which banks are open for general banking business in Sydney.

“**Chairperson**” means the chairperson of the Board from time to time.

“**Claimant**” means an individual (or legal Personal representative of an individual) who makes a Personal Asbestos Claim or a Marlew Claim.

“**Claims Legal Costs**” has the meaning given to it under the Final Funding Agreement.

“**Claims Management Agreement**” has the meaning given to it in the Trust Deed.

“**Controlled Entities**” has the meaning given to it under the Final Funding Agreement.

“**Corporations Act**” means the *Corporations Act 2001*.

“**Company**” means Asbestos Injuries Compensation Fund Limited.

“**Directors**” means the Directors of the Company for the time being, and if the Company has only one Director, that Director.

“**Document**” means:

- (a) anything on which there is writing;
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for Persons qualified to interpret them;
- (c) anything from which sounds, images or writing can be reproduced with or without the aid of anything else; and
- (d) a map, plan, drawing or photograph.

“**Final Funding Agreement**” means the Final Funding Agreement in relation to the provision of long term funding for compensation arrangements for certain victims of Asbestos related

disease is Australia between James Hardie Industries NV, the Performing Subsidiary and the State of New South Wales.

“Fund” means the trust known as the Asbestos Injury Compensation Fund to be established pursuant to the Trust Deed.

“Funding Obligation” means each obligation of the Performing Subsidiary to make a Funding Payment.

“Funding Payments” mean:

(a) the Initial Funding payable under clause 9.2 of the Final Funding Agreement (which, for the avoidance of doubt, includes the Additional Payment as defined therein);

(b) the Annual Payments payable under clause 9.3 of the Final Funding Agreement; and

(c) any Final Payment payable under clause 9.9 of the Final Funding Agreement,

and Funding Payment means any of those payments.

“Insolvency Event” has the meaning given to it in the Final Funding Agreement.

“JHINV” means James Hardie Industries NV, ARBN 097 829 895, a limited liability company incorporated in the Netherlands and having its registered office at Atrium, Unit 04-07 Strawinskylaan 3077, 1077ZX Amsterdam, The Netherlands (with its Australian registered office at Level 3, 22 Pitt Street, Sydney in the State of New South Wales).

“JHINV Contributions” means the payments to be made by JHINV or the Performing Subsidiary under clause 9 of the Final Funding Agreement.

“JHINV Group” has the meaning given to it in the Final Funding Agreement.

“JHINV Guarantee” means the deed of guarantee by JHINV in the form set out in Annexure 5 of the Final Funding Agreement.

“Liable Entities” means Amaca Pty Ltd, Amaba Pty Ltd and ABN 60 Pty Ltd.

“Marlew Claim” has the meaning given to it in the Final Funding Agreement.

“Member” means a Person whose name is entered in the Register as a Member of the Company.

“NSW Government” means the State of New South Wales.

“Payable Liability” has the meaning given to it in the Final Funding Agreement.

“Performing Subsidiary” means LGTDD Pty Ltd or if a subsidiary of JHINV other than that entity is nominated under clause 6.2 of the Final Funding Agreement to perform the obligations described in clauses 6 and 9 of the Final Funding Agreement, and each of JHINV and that subsidiary has complied with clause 6.2 of the Final Funding Agreement, that subsidiary.

“Person” includes any general partnership, limited partnership, corporation, limited liability company, joint venture, trust, business trust, governmental agency, co-operative, association, individual or other entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such a person as the context may require.

“**Personal Asbestos Claim**” has the meaning given to it in the Final Funding Agreement.

“**Prescribed Notice**” means 21 days or any shorter period of notice for a meeting allowed under the *Corporations Act*.

“**Register**” means the register of Members kept under the *Corporations Act* and, where appropriate, includes any branch register.

“**Registered Office**” means the Company’s registered office from time to time as disclosed in the records of the Company with the Australian Securities & Investments Commission.

“**Related Agreements**” means documents ancillary to the Final Funding Agreement listed in Schedule 1 to the Final Funding Agreement.

“**Relevant Officer**” means a Person who is, or has been, a Director or Secretary.

“**Rules**” means these rules as may be amended from time to time.

“**Secretary**” means a secretary of the Company for the time being.

“**Special Default**” means a breach or default of a kind described in clause 16.2 of the Final Funding Agreement.

“**SPF Funded Liability**” has the meaning given to it in the Final Funding Agreement.

“**Transaction Legislation**” has the meaning given to it in the Principal Deed.

“**Trust Deed**” means the trust deed for the Fund to be entered into in the form set out in the Final Funding Agreement.

2. Interpretation

(d) In this Constitution:

- (i) a Member is taken to be present at a meeting of Members if the Member is present in Person or by proxy, attorney or representative; and
- (ii) a reference to a notice or document in writing includes a notice or document given by fax or another form of written communication.

(e) In this Constitution, headings are for convenience only and do not affect interpretation, and unless the context indicates a contrary intention:

- (i) words importing the singular include the plural (and vice versa);
- (ii) words indicating a gender include every other gender;
- (iii) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
- (iv) the word “includes” in any form is not a word of limitation.

(f) Unless the context indicates a contrary intention, in this Constitution:

- (i) a reference to a Rule or a Schedule is to a rule or a schedule of this Constitution;
- (ii) a reference in a Schedule to a paragraph is to a paragraph of that Schedule;

-
- (iii) a Schedule is part of this Constitution; and
 - (iv) a reference to this Constitution is to this Constitution (and where applicable any of its provisions) as modified or repealed from time to time.
 - (g) Unless the context indicates a contrary intention, in this Constitution, a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it.
 - (h) Unless the context indicates a contrary intention, in this Constitution:
 - (i) an expression in an Rule that deals with a matter dealt with by a provision of the *Corporations Act* has the same meaning as in that provision; and
 - (ii) an expression in an Rule that is defined in section 9 of the *Corporations Act* has the same meaning as in that provision.

3. Exercise of powers

Where this Constitution confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty must be performed from time to time as the occasion requires.

4. Severing invalid provisions

If at any time any provision of this Constitution is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that does not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Constitution; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Constitution.

Date: 2005

Signed for and on behalf of [Member]

Authorised signatory

Authorised signatory

Signing Page

Signed by The Honourable Morris Iemma MP,
Premier of New South Wales,
for The State of New South Wales

/s/ Morris Iemma

Signed by Meredith Hellicar and Russell Chenu
for James Hardie Industries N.V.

/s/ Meredith Hellicar

Meredith Hellicar
Chairman

/s/ Russell Chenu

Russell Chenu
Authorised Officer

Signed for and on behalf of

LGTDD Pty Limited by its

duly authorised attorney

/s/ Russell Chenu

Russell Chenu

Annexure 1 — Deed of Accession**DEED OF ACCESSION**

DEED dated _____ by _____

1. **ASBESTOS INJURIES COMPENSATION FUND** of [ADDRESS] (*Acceding Party*)
2. **James Hardie Industries N.V.** ARBN 097 829 895 incorporated in the Netherlands and having its registered office at Atrium, 8th Floor, Strawinskylaan 3077, 1077ZX Amsterdam, The Netherlands, Amsterdam in the Netherlands (with its Australian principal office at Level 3, 22 Pitt Street, Sydney in the State of New South Wales) (*JHINV*)
3. [_____] (*Performing Subsidiary*)
4. **The State of New South Wales** (*NSW Government*)
5. [*Any other parties subsequently joined as a party to the deed by execution of a Deed of Accession.*]

(each of JHINV, the Performing Subsidiary and NSW Government [*add to this, if applicable*], *the Existing Parties*)

RECITAL

This deed is supplemental to a Principal Deed between the Existing Parties dated [_____] in relation to the provision of long term funding for compensation arrangements for certain victims of Asbestos-related diseases (*Principal Deed*).

OPERATIVE PART**1. Acceding Party to be bound**

The Acceding Party confirms to the Existing Parties that it has been supplied with a copy of the Principal Deed, JHINV Guarantee and Intercreditor Deed and covenants with all Existing Parties to observe, perform and be bound by all the terms of the Principal Deed, the JHINV Guarantee and the Intercreditor Deeds so that the

Acceding Party is deemed, from the date of this deed to be a party to the Principal Deed, the JHINV Guarantee and Intercreditor Deeds.

2. Existing Parties

The Existing Parties severally covenant with the Acceding Party to observe, perform and be bound by all of the terms of the Principal Deed, the JHINV Guarantee and Intercreditor Deed.

3 Representations and warranties

The Acceding Party represents and warrants to each Continuing Party that each of the following statements are true and accurate as at the date of this deed:

- (a) the statements with respect to the Performing Subsidiary set out in **Part 1 of Schedule 2** of the Principal Deed, as amended by replacing reference to “the Performing Subsidiary” with “the Continuing Parties”;
- (b) the trust to which it is a trustee it has been validly created and is validly existing;
- (c) it is the sole trustee of the trust on behalf of which it has entered into this deed;
- (d) there has been no resolution or direction to terminate the trust on behalf of which it has entered into this deed, nor to remove it as trustee of that trust; and
- (e) it has the power to enter into this deed as trustee of the trust on behalf of which it has entered into this deed.
- (f) On the date of this deed, the Acceding Party has provided to the NSW Government, and the NSW Government acknowledges receipt, of an officer’s certificate signed by the chief financial officer of the Substitute Party in the form set out in **Part 2 of Schedule 2**).

4. Address for Notices

The address and Notice details of the Acceding Party for the purposes of **clause 29** of the Principal Deed is:

[]

5. Governing law

This deed is governed by the laws applicable in New South Wales.

6. Interpretation

Words and expressions defined in the Principal Deed have the same meaning where used in this deed.

EXECUTED as a deed.

[EXECUTION CLAUSES]

Annexure 2 – Summary of Final Funding Agreement and Related Agreements

Annexure 3 — Trust Deed

[] (Settlor)

Asbestos Injuries Compensation Fund Limited (Trustee)

Asbestos Injuries

Compensation Fund

Trust Deed

[Name to be confirmed]

ATANASKOVIC HARTNELL
LAWYERS - CORPORATE, FINANCE & TAXATION

Level 10

Atanaskovic Hartnell House

75-85 Elizabeth Street

Sydney NSW

Australia 2000

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Asbestos Injuries (JH) Compensation Fund Trust Deed

Date 2005

- Parties**
1. [] (ACN) of [*] (the **Settlor**) [JHINV to confirm]
 2. **[AICF] Limited** (ABN[*]) a company limited by guarantee of [*] (the **Trustee**)

- Recitals**
- A. JHINV, the NSW Government and the Performing Subsidiary have entered into a long term funding agreement (**Final Funding Agreement**) intended to ensure that funding is made available by JHINV and/or its subsidiaries to compensate, on the basis set out in the Final Funding Agreement, proven current and future Australian Claimants against the Liable Entities.
 - B. In accordance with the Final Funding Agreement, the Settlor wishes to establish a trust fund which will constitute the Fund.
 - C. The Settlor has paid the Settled Sum to the Trustee before the date of this Deed, and the Trustee has agreed to be the trustee of the Fund and to hold the Settled Sum and the other Fund Property on trust for the Fund Purpose in accordance with this Deed.
 - D. Upon the establishment of the Fund, it is contemplated that the parties to the Final Funding Agreement will procure that the Trustee, by executing a Deed of Accession, will become a party to the Final Funding Agreement to give effect to the intention and agreement of the relevant parties referred to in the preceding paragraphs.
 - E. It is the intention of the parties to the Final Funding Agreement that all of the issued shares in the Liable Entities will be transferred to the Trustee to hold on trust for the Fund Purpose and that the Trustee manage itself or through one or more of the Liable Entities, or otherwise cause to be managed, the response to all Payable Liabilities for itself or for or on behalf of the Liable Entities.
 - F. The NSW Government is to pass the Transaction Legislation, inter alia, to validate the existence of the Fund, and to confer certain powers and responsibilities on the Trustee.

IT IS AGREED as follows.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed (including the Recitals) unless the context requires otherwise, terms defined in the Final Funding Agreement or in the Transaction Legislation bear their corresponding meaning, and:

ABN 60 means ABN 60 Pty Limited (ABN 60 000 009 263).

Amaba means Amaba Pty Limited (ABN 98 000 387 342).

Amaca means Amaca Pty Limited (ABN 49 000 035 512).

Annual Contribution Amount means the amount specified in clause 9.4 of the Final Funding Agreement.

Annual Payment means for each year, the payment to be made pursuant to clause 9.3 of the Final Funding Agreement.

Appointee means any executive, director or employee of the Trustee appointed to the board of directors or any other governing body of an Investee.

Appointor means each Person entitled to appoint one or more Directors.

Approved Actuary means an actuarial firm which:

- (a) has been appointed in accordance with clause 5.15 of the Final Funding Agreement and which nominates a principal who is an approved actuary under the Insurance Act 1973 or who has qualifications under equivalent legislation of another relevant jurisdiction;
- (b) has relevant and substantive experience and expertise in Asbestos-related liability provisioning appropriate to undertake the determination referred to in clause 14.4 of the Final Funding Agreement;
- (c) has no interest or duty which conflicts or may conflict with his functions as contemplated under this deed as the Approved Actuary; and
- (d) is not affiliated with the accounting firm, performing the role of Approved Auditor during the term of the Approved Actuary's appointment,

or, where the circumstances set out in clause 5.15(f) of the Final Funding Agreement apply, an actuarial firm determined in accordance with that clause.

Approved Auditor means the auditor of the Trustee to be appointed by the Trustee in accordance with clause 5.12 of the Final Funding Agreement.

Asbestos means the fibrous form of those mineral silicates that belong to the serpentine or amphibole groups of rock-forming minerals, including actinolite, amosite (brown asbestos), anthophyllite, chrysotile (white asbestos), crocidolite (blue asbestos) and tremolite.

Asbestos Mining Activities has the meaning given in the Marlew Legislation.

Audited Financial Statements means, in respect of a Person and a Financial Year the audited consolidated financial statements of that Person for that Financial Year prepared in accordance with the following generally accepted accounting principles (GAAP), consistently applied throughout that Financial Year:

- (a) where that Person is Listed at the time the relevant audit report is signed, the generally accepted accounting principles used in that Person's published financial reports; or
- (b) where that Person is not Listed at that time and paragraph (c) does not apply, US GAAP or such other GAAP as is commonly applied by multinational companies at that time in respect of their financial statements; or
- (c) where that Person is not Listed at that time and it and its subsidiaries operates wholly or predominantly in one jurisdiction, the generally accepted accounting principles of that jurisdiction.

Australia has the meaning given in Section 17 of the *Acts Interpretation Act 1901* (Cth), as in force at the date of this deed.

Claimant means an individual (or legal personal representative of an individual) who makes a Personal Asbestos Claim or a Marlew Claim.

Claims Legal Costs means all costs, charges, expenses and outgoings incurred or expected to be borne by the Trustee or the Liable Entities in respect of legal advisors, other advisors, experts, Court proceedings and other dispute resolution methods in connection with Personal Asbestos Claims and Marlew Claims but in all cases excluding any costs included as a component of calculating a Proven Claim.

Claims Management Agreement means an agreement between the Trustee and a Liable Entity whereby the Liable Entity agrees that the Trustee or a Person designated by the Trustee will manage all claims against the Liable Entity in accordance with the provisions of this Deed, the Final Funding Agreement and the Transaction Legislation.

Commencement Date has the meaning given to that term in clause 1 of the Principal Deed.

Commonwealth means the Commonwealth of Australia.

Concurrent Wrongdoer in relation to a personal injury or death claim for damages under common law or other law (disregarding any law which comes into force in breach of clause 13 of the Final Funding Agreement and which breach has been notified to the NSW Government under clause 16.5 of the Final Funding Agreement), means a Person whose acts or omissions, together with the acts or omissions of one or more Liable Entities or Marlew or any member of the JHINV Group (whether or not together with any other Persons) caused, independently of each other or jointly, the damage or loss to another Person that is the subject of that claim.

Constitution means the constitution of the Trustee.

Constitutional Provisions means the clauses required to be included in the Constitution, as set out in the Schedule to this Deed.

Contribution Claim means a cross-claim or other claim under common law or other law (disregarding any law which comes into force in breach of clause 13 of the Final Funding Agreement and which breach has been notified to the NSW Government under clause 16.5 of the Final Funding Agreement):

- (a) for contribution by a Concurrent Wrongdoer against a Liable Entity or a member of the JHINV Group in relation to facts or circumstances which give rise to a right of a Person to make a Personal Asbestos Claim or a Marlew Claim; or
- (b) by another Person who is entitled under common law (including by way of contract) to be subrogated to such a first mentioned cross-claim or other claim,

provided that any such claim of the kind described in clause 13.7 of the Final Funding Agreement shall be subject to the limits contained in that clause.

Controlled Entity means, in respect of a Person, another Person in respect of which the first-mentioned Person is required to consolidate in its Audited Financial Statements but, in the case of JHINV, does not include any Liable Entity or the Trustee. For the avoidance of doubt, JHINV is not a Controlled Entity of JHINV.

Corporations Act means the *Corporations Act 2001* (Cth).

Court means a court or tribunal in Australia having jurisdiction to hear and determine common law personal injury and death claims arising from exposure to Asbestos.

Cross Guarantee means any guarantee or indemnity (or other covenant to secure satisfaction of any payment or obligation) given by a Controlled Entity of JHINV to secure satisfaction of any payment or obligation of any Controlled Entity of JHINV to a Lender which is entitled or becomes entitled to the benefit of the Intercreditor Deeds in accordance with **clause 2.2** of that deed.

Deed of Accession means a deed of accession in the form set out in Annexure 1 to the Final Funding Agreement.

Director means a director of the Trustee appointed in accordance with clause 5 or clause 16.3 of the Final Funding Agreement.

Excluded Marlew Claim means a Marlew Claim:

- (a) covered by the indemnities granted by the Minister of Mineral Resources under the deed between the Minister, Fuller Earthmoving Pty Limited and James Hardie Industries Limited dated 11 March 1996; or
- (b) by a current or former employee of Marlew in relation to an exposure to Asbestos in the course of such employment to the extent:
 - (i) the loss is recoverable under a Worker's Compensation Scheme or Policy; or

- (ii) the Claimant is not unable to recover damages from a Marlew Joint Tortfeasor in accordance with the Marlew Legislation;
- (c) by an individual who was or is an employee of a person other than Marlew arising from exposure to Asbestos in the course of such employment by that other person where such loss is recoverable from that person or under a Worker's Compensation Scheme or Policy; or
- (d) in which another defendant (or its insurer) is a Marlew Joint Tortfeasor from whom the plaintiff is entitled to recover compensation in proceedings in the Dust Diseases Tribunal, and the Claimant is not unable to recover damages from that Marlew Joint Tortfeasor in accordance with the Marlew Legislation.

Final Payment means the payment referred to in clause 9.9 of the Final Funding Agreement.

Final Funding Agreement means the deed of that name dated 1 December 2005 between the initial parties JHINV, the Performing Subsidiary and the NSW Government.

Financial Year means a year ending on 31 March, or if there is any change from time to time to the Financial Year of the JHINV Group, the twelve-month period as ends on the new end date adopted by JHINV except that the first such Financial Year after that change shall be a period of not less than six months and not greater than 18 months ending on the new end date.

First Release Bill means the *James Hardie (Civil Liability) Bill 2005(NSW)* as initialled by the parties to the Final Funding Agreement for the purposes of identification.

Fund means the trust constituted by this Deed (referred to as the "Fund" in the Final Funding Agreement).

Fund Account means a bank account within New South Wales to be designated the "Asbestos Injuries Compensation Fund Account" (referred to as the "Fund Account" in the Final Funding Agreement).

Fund Property means the assets referred to in clause 2.3.

Fund Purpose means the purpose set out in clause 3.

Funding Obligations means each obligation of the Performing Subsidiary to make a Funding Payment.

Funding Payments mean:

- (a) the Initial Funding payable under clause 9.2 of the Final Funding Agreement (which, for the avoidance of doubt, includes the Additional Payment as defined therein);
- (b) the Annual Payments payable under clause 9.3 of the Final Funding Agreement; and

(c) any Final Payment payable under clause 9.9 of the Final Funding Agreement, and *Funding Payment* means any of those payments.

Initial Funding has the meaning given to that term in clause 1 of the Final Funding Agreement.

Insolvency Event means in respect of a Person, the occurrence in respect of that Person of any one or more events referred to in paragraphs (a) to (b) of the definition of "Insolvent".

A Person is *Insolvent* if the Person:

- (a) admits in writing its inability to pay its debts as they become due (otherwise than as contemplated in clause 16.6 of the Final Funding Agreement);
- (b) was established under Dutch law and files a petition with any court in the Netherlands in relation to its bankruptcy (faillissement) or seeking an order for a suspension of payments (surseance van betaling);
- (c) files, or consents by answer or otherwise to the filing against it of, a petition for relief or insolvent reorganisation or insolvent arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, insolvent reorganisation, insolvent moratorium or other similar law of any jurisdiction (including, without limitation, a filing by the Person under Chapter 7 or Chapter 11 of the US Bankruptcy Code, provided that where the filing is a filing under Chapter 11 of that Code, the Person:
 - (i) is at the time of filing unable to pay its debts generally as and when they become due; or
 - (ii) in the case of JHINV, after it makes such a filing, fails to pay a JHINV Contribution or other amount under the JHINV Guarantee when such payment would (but for the moratorium granted as a result of that filing) have been due for 30 days after that due date and also provided that in any such filing under Chapter 11 of that Code a Person is Insolvent no later than the earliest date as of which creditors may vote on any matter or accept or reject a plan of reorganisation;
- (d) makes an assignment for the benefit of its creditors generally;
- (e) consents to the appointment of a custodian (not being a nominee for the person), receiver, receiver and manager, trustee or other officer with similar powers with respect to it or with respect to a substantial part of its property;
- (f) consents to the appointment of an insolvency administrator or such an insolvency administrator is appointed and that appointment is not terminated within 28 days;
- (g) is adjudicated as insolvent or to be liquidated, in each case, by a court of competent jurisdiction; or
- (h) is subject to a Wind-Up Event;

and *Insolvency* has a corresponding meaning

Intercreditor Deeds means the deeds substantially in the form set out in Annexures 7A and 7B to the Final Funding Agreement, as may be amended with the agreement of JHINV and the NSW Government (in each case acting reasonably) as the result of the review by, and negotiations with JHINV's existing bank Lenders.

Investee means any entity in which the Fund has made or wishes to make an Investment.

Investment means an investment by the Trustee.

Irrevocable Power of Attorney means the deed in the form set out at Annexure 9 of the Final Funding Agreement.

JHINV means James Hardie Industries NV (ARBN 097 829 895) incorporated in the Netherlands and having its registered office at Atrium, Unit 04-07, Strawinskylaan 3077, 1077ZX Amsterdam, The Netherlands (with its Australian principal office at Level 3, 22 Pitt Street, Sydney in the State of New South Wales).

JHINV Contributions means the payments to be made by JHINV or the Performing Subsidiary under clause 9 of the Final Funding Agreement.

JHINV Group means JHINV and its Controlled Entities from time to time, excluding the Trustee and any of the Liable Entities, if they are or become such Controlled Entities.

JHINV Guarantee means the deed set out in the form of Annexure 5 of the Final Funding Agreement.

Liable Entities means Amaca, Amaba and ABN 60.

Marlew means the company registered under the *Corporations Act* as Marlew Mining Pty Limited (ACN 000 049 650) that was formerly called Asbestos Mines Pty Limited and includes any successor to or continuation of that company.

Marlew Claim means, subject to clause 13.7 of the Final Funding Agreement, a claim which satisfies one of the following paragraphs and which is not an Excluded Marlew Claim:

- (a) any present or future personal injury or death claim by an individual or the legal personal representative of an individual for damages under common law or other law (disregarding any law which comes into force in breach of clause 13 of the Final Funding Agreement and which breach has been notified to the NSW Government under clause 16.5 of the Final Funding Agreement) which:
 - (i) arose or arises from exposure to Asbestos in the Baryulgil region from Asbestos Mining Activities at Baryulgil conducted by Marlew, provided that:
 - (A) the individual's exposure to Asbestos occurred wholly within Australia; or

- (B) where the individual has been exposed to Asbestos both within and outside Australia, the amount of damages included in the Marlew Claim shall be limited to the amount attributable to the proportion of the exposure which caused or contributed to the loss or damage giving rise to the Marlew Claim which occurred in Australia;
- (ii) is commenced in New South Wales in the Dust Diseases Tribunal; and
- (ii) is or could have been made against Marlew had Marlew not been in external administration or wound up, or could be made against Marlew on the assumption (other than as contemplated under the Marlew legislation) that Marlew will not be in the future in external administration;
- (b) any claim made under compensation to relatives legislation by a relative of a deceased individual (or personal representative of such a relative) or (where permitted by law) the legal personal representative of a deceased individual in each case where the individual, but for such individual's death, would have been entitled to bring a claim of the kind described in paragraph (a); or
- (c) a Contribution Claim relating to a claim described in paragraphs (a) or (b).

Marlew Joint Tortfeasor means any Person who is or would be jointly and severally liable with Marlew in respect of a Marlew Claim, had Marlew not been in external administration or wound up, or on the assumption other than as contemplated in the Marlew legislation that Marlew will not in the future, be in external administration or wound up.

Marlew legislation means the legislation set out in Part 4 of the First Release Bill.

NSW Government Auditor means an auditor engaged in accordance with and for the purposes set out in clause 5.13 of the Final Funding Agreement.

Operating Expenses means the reasonable operating costs, expenses and Taxes of the Trustee or Liable Entities of conducting the activities referred to in clause 4.2 of the Final Funding Agreement but excludes any Claims Legal Costs.

Payable Liability means:

- (a) any Proven Claim (whether arising before or after the date of this deed);
- (b) Operating Expenses;
- (c) Claims Legal Costs;
- (d) any liability of a Liable Entity to the Trustee, however arising, in respect of any amounts paid by the Trustee in respect of any liability or otherwise on behalf of the Liable Entity;
- (e) any pre-commencement claim (as defined in the Transaction Legislation) against a Liable Entity;

- (f) if regulations are made pursuant to section 30 of the Transaction Legislation and if and to the extent the Trustee and JHINV notify the NSW Government that any such liability is to be included in the scope of Payable Liability, any liability of a Liable Entity to pay amounts received by it from an insurer in respect of a liability to a third party incurred by it for which it is or was insured under a contract of insurance entered into before the date on which the Transaction Legislation receives the Royal Assent; and
- (g) Recoveries within the meaning and subject to the limits set out in clause 13.7 of the Final Funding Agreement, but in the cases of paragraphs (a), (c) and (e) excludes any such liabilities or claims to the extent that they have been recovered or are recoverable under a Worker's Compensation Scheme or Policy.

Performing Subsidiary means LGTDD Pty Limited or, if a subsidiary of JHINV other than that entity is nominated under clause 6.2 of the Final Funding Agreement to perform the obligations described in clauses 6 and 9 of the Final Funding Agreement and each of JHINV and that subsidiary has complied with clause 6.2 of the Final Funding Agreement, that subsidiary.

Person includes any general partnership, limited partnership, corporation, limited liability company, joint venture, trust, business trust, governmental agency, co-operative, association, individual or other entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such a person as the context may require.

Personal Asbestos Claim means subject to clause 13.7 of the Final Funding Agreement:

- (a) any present or future personal injury or death claim by an individual or the legal personal representative of an individual, for damages under common law or under other law (disregarding any law which comes into force in breach of clause 13 of the Final Funding Agreement and which breach has been notified to the NSW Government under clause 16.5 of the Final Funding Agreement) which:
- (i) arises from exposure to Asbestos occurring in Australia, provided that:
 - (A) the individual's exposure to Asbestos occurred wholly within Australia; or
 - (B) where the individual has been exposed to Asbestos both within and outside Australia, damages included in the Personal Asbestos Claim shall be limited to the amount attributable to the proportion of the exposure which caused or contributed to the loss or damage giving rise to the Personal Asbestos Claim which occurred in Australia;
 - (ii) is made in proceedings in an Australian court or tribunal; and
- is made against all or any of the Liable Entities or any member of the JHINV Group from time to time;

(b) any claim made under compensation to relatives legislation by a relative of a deceased individual (or personal representative of such a relative) or (where permitted by law) the legal personal representative of a deceased individual in each case where the individual, but for such individual's death, would have been entitled to bring a claim of the kind described in paragraph (a); or

(c) a Contribution Claim made in relation to a claim described in paragraph (a) or (b),

but in each case excludes any Marlew Claim and any other claim to the extent they have been recovered or are recoverable under a Worker's Compensation Scheme or Policy.

Power means a power, right, authority, discretion or remedy which is conferred on the Trustee:

(a) by this Deed;

(b) by the Final Funding Agreement;

(c) by the Constitution; or

(d) by the Transaction Legislation or any other law of the State of New South Wales as amended from time to time.

Proven Claim means any Personal Asbestos Claim or Marlew Claim in respect of which final judgment has been given against, or a binding settlement has been entered into by a Liable Entity or any member of the JHINV Group from time to time, and in each case, to the extent to which that entity incurs liability under that judgment or settlement (including any interest, costs or damages to be borne by a Liable Entity or the relevant member of the JHINV Group pursuant to such judgment or settlement).

Related Agreements means documents ancillary to the Final Funding Agreement which are listed in Schedule 1 to the Final Funding Agreement.

Release Legislation has the meaning given to that term in clause 1 of the Final Funding Agreement.

Securities has the meaning set out in the *Corporations Act*.

Settled Sum means ten dollars (\$10).

Single Claims Manager means in respect of any legal proceedings which involve a Personal Asbestos Claim and one or more Concurrent Claims, the party responsible for managing and resolving the Personal Asbestos Claim and the claims against at least one other party, including a single claims manager within the meaning of the *Dust Diseases Tribunal Amendment (Claims Resolution) Act 2005*.

Special Default means a breach or default of a kind described in clause 16.2 of the Final Funding Agreement.

SPF Funded Liability means:

- (a) only those liabilities described in paragraphs (a), (b), (c), (e) and (g) of the definition of “Payable Liability” and excludes the liabilities described in paragraph (d) or (f) of the definition of “Payable Liability”; and
- (b) a claim or category of claim which JHINV and the NSW Government agree in writing is a “SPF Funded Liability” or a category of “SPF Funded Liability”.

Tax Act means the *Income Tax Assessment Act 1997* (Cth).

Trusts Act means the *Charitable Trusts Act 1993*.

Trustee Board means the board of Directors.

Transaction Legislation has the meaning given to it in the Final Funding Agreement.

Trustee Act means the *Trustee Act 1925* (NSW).

Wind-Up or Reconstruction Amount has the meaning given to it in the Final Funding Agreement.

Worker’s Compensation Scheme or Policy means any of the following:

- (a) any worker’s compensation scheme established by any law of the Commonwealth or of any State or Territory of Australia;
- (b) any fund established to cover liabilities under insurance policies upon the actual or prospective insolvency of the insurer (including without limitation the Insurer Guarantee Fund established under the *Worker’s Compensation Act 1987* (NSW)); and
- (c) any policy of insurance issued under or pursuant to such a scheme.

1.2 General Interpretation

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise.

- (a) The singular includes the plural and the converse.
- (b) A gender includes all genders.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a clause, annexure, schedule or exhibit is a reference to a clause of, or annexure, schedule or exhibit to, this Deed.
- (f) A reference to a party to this Deed or another agreement or document includes the party’s successors and permitted substitutes or assigns.

- (g) A reference to an agreement includes any amendment, variation or substitution of that agreement from time to time.
- (h) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to writing includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
- (j) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (k) Mentioning anything after include, includes or including does not limit what else might be included.
- (l) A reference in this Deed to a Power is to be construed without limitation to any other Power also mentioned in this Deed.
- (m) A reference to an asset includes any real or personal, present or future, tangible or intangible property or asset and any right, interest, revenue or benefit in, under or derived from the property or asset.
- (n) Any term not otherwise defined in this Deed, the Final Funding Agreement or the Transaction Legislation has the meaning given in the *Corporations Act*.

2. APPOINTMENT AND DECLARATION OF TRUST

2.1 Acknowledgement

The Trustee acknowledges receipt of the Settled Sum from the Settlor prior to the execution of this Deed.

2.2 Establishment of Fund and Appointment

- (a) The Fund is established by and upon the execution of this Deed.
- (b) The Settlor appoints the Trustee, and the Trustee accepts the appointment, as trustee of the Fund to hold the Fund Property for the Fund Purpose on the terms and conditions of this Deed.

2.3 Acceptance and Declaration

The Trustee declares that it holds and will hold on trust for the Fund Purpose:

- (a) the Settled Sum;
- (b) the benefit of the Funding Obligations and the obligation of the Performing Subsidiary (if applicable) to pay the Wind-Up or Reconstruction Amount in accordance with clause 10 of the Final Funding Agreement, the JHINV Guarantee and each of JHINV's covenants and obligations under the Final Funding Agreement and the Related Agreements to ensure the payment by the JHINV Group of the JHINV Contributions under the Final Funding Agreement and any

Cross Guarantee given pursuant to clause 15.7 of the Final Funding Agreement, and enforce the same as may be required from time to time;

- (c) the Fund Account and all money, Investments or other assets which the Trustee acquires as Trustee of the Fund;
- (d) all proceeds of the above (whether capital or income) and any Investments;
- (e) all permitted accumulations of income and all accretions and additions to the before-mentioned money, Investments and assets;
- (f) the shares in the Liable Entities; and
- (g) any asset or property of a Liable Entity which is transferred to the Trustee pursuant to the Transaction Legislation, (all of which are referred to jointly and severally as **Fund Property**).

2.4 Name and Location of Fund

- (a) The Fund is to be known as the *Asbestos Injuries Compensation Fund*.
- (b) If any property is transferred or any interest is given to the Trustee to hold as Fund Property, that property or interest may be transferred or given by referring to the Fund by its name or to the Trustee by its name.
- (c) The Fund must at all times maintain its principal place of business in New South Wales.

3. PURPOSE

The Fund shall exist and be maintained by the Trustee, and the Fund Property must be maintained and applied by the Trustee, for:

- 3.1 the principal purpose of receiving and providing funding for the payment and paying of Payable Liabilities and providing services with respect to the management and resolution of Payable Liabilities; and
- 3.2 the following additional purposes which are for the Trustee to:
 - (a) hold the benefit of the Funding Obligations and the obligation of the Performing Subsidiary (if applicable) to pay the Wind-Up or Reconstruction Amount in accordance with clause 10 of the Final Funding Agreement, the JHINV Guarantee, and the covenants and obligations of JHINV under the Final Funding Agreement and the Related Agreements to ensure the payment by the JHINV Group of the JHINV Contributions under the Final Funding Agreement and any Cross Guarantee given pursuant to clause 15.7 of the Final Funding Agreement, and enforce the same as may be required from time to time;
 - (b) be the creditor of the Performing Subsidiary and JHINV for payments (whether actually or contingently) due and payable to the Trustee under the Final Funding Agreement and receive and give a proper receipt for such amounts;

- (c) manage itself or through one or more of the Liable Entities or otherwise cause to be managed, the response to all Payable Liabilities for itself or for or on behalf of the Liable Entities including by entry into Claims Management Agreement with the Liable Entities (and in respect of Payable Liabilities which are not SPF Funded Liabilities, on the basis that the Liable Entities must bear the full cost and all liabilities associated with such claims);
- (d) to provide management services to Liable Entity in connection with the winding up of the Liable Entity including exercising all powers conferred on it by the Transaction Legislation;
- (e) subject to it having the necessary funds to do so and clause 9.15 of the Final Funding Agreement, pay in accordance with and subject to clause 4.7 of the Final Funding Agreement and the provisions of the Transaction Legislation, the SPF Funded Liabilities itself or through one or more of the Liable Entities, and in each case for itself or for or on behalf of the Liable Entities as the Trustee may in its discretion determine;
- (f) use its best endeavours to achieve all available legal and administrative cost savings in relation to:
 - (i) the process for handling the response to Personal Asbestos Claims and Marlew Claims;
 - (ii) Court proceedings dealing with apportionment of damages in relation to Personal Asbestos Claims and Marlew Claims; and
 - (iii) exercising rights of recovery.
- (g) review and implement legal and administrative cost savings in the claims management process on a continuing basis both in relation to the process for settling Personal Asbestos Claims and Marlew Claims and the process generally applicable in relation to Personal Asbestos Claims and Marlew Claims, including reducing Claims Legal Costs;
- (h) invest the assets contributed to or received by the Trustee;
- (i) use its best endeavours to:
 - (i) recover;
 - (ii) procure that each Liable Entity recover; and
 - (iii) exercise or procure the exercise of rights subrogated from any Claimant to recover,amounts paid or liabilities incurred with respect to any Personal Asbestos Claims, Marlew Claims or any other Payable Liabilities from insurers, reinsurers and other parties who may have contributed to the loss relating to such claims;

- (j) generally do all things necessary and convenient for the purposes of handling and finalising Payable Liabilities for itself or for and on behalf of the Liable Entities (provided that nothing in the Final Funding Agreement shall require the Trustee to incur any liability or pay any amount with respect to a liability which is not a SPF Funded Liability);
- (k) as provided by the Transaction Legislation or to the extent otherwise entitled to do so, be subrogated to the rights of the Claimants against the Liable Entities and Marlew or any other persons in relation to any Payable Liability settled or met by the Trustee;
- (l) be authorised and permitted to negotiate with Claimants and at its discretion procure that the relevant Liable Entity enter into binding settlements in relation to (including without limitation compromises of Payable Liabilities).

4. TRUSTEE

4.1 The Trustee

The Trustee must at all times ensure that it:

- (a) is a company registered under the *Corporations Act* that is taken under section 119A of that Act to be registered in New South Wales;
- (b) is a resident of New South Wales;
- (c) includes within its Constitution the Constitutional Provisions; and
- (d) does not accept appointment, or act, as a trustee of any fund or trust other than the Fund, or carry on any business, except to the extent necessary for the Trustee to perform its functions under this Deed and under the Transaction Legislation.

4.2 General powers of the Trustee

Subject to this Deed, the Trustee has all the powers, privileges and other incidents of ownership or possession over and in respect of the Fund Property that it is possible under the law to confer on a trustee and as though it were the absolute owner of the Fund Property and acting in its personal capacity.

4.3 General Administration of Fund Property

The Fund Property must be held and administered by the Trustee in the following manner:

- (a) The Trustee must open or arrange the opening of the Fund Account.
- (b) The Fund Account is to be in addition to any other bank account maintained by the Trustee.
- (c) The Trustee must pay or credit to the Fund Account all of the following moneys promptly upon receipt by the Trustee:

- (i) all monetary gifts and donations received by the Trustee (including the Settled Sum);
 - (ii) the Funding Payments;
 - (iii) all interest earned on the monies in the Fund Account; and
 - (iv) all monies derived from property given or transferred to or acquired by the Fund.
- (d) No other monies will be paid or credited to the Fund Account.
- (e) The Fund Account will be managed by the Trustee Board.
- (f) The Fund Property must at all times be clearly identifiable as property of the Trustee and must be held separately from the assets of the Trustee.
- (g) The Fund Property may only be dealt with and applied by the Trustee in connection with or in furtherance of the Fund Purpose, in the manner required or permitted by this Deed, the Final Funding Agreement, the Transaction Legislation and the general law.

4.4 Control of Liable Entities

The Trustee is not required to carry out the functions referred to in clauses 3.2(c), (e), (i) (ii), (j) and (l) in relation to a Liable Entity unless that Liable Entity is under the control or direction of the Trustee.

4.5 Contracting and Investing powers

To the extent permitted by law, the Trustee in its capacity as Trustee of the Fund has power to do or to cause the Liable Entities to do any of the following:

- (a) subject to clause 4.2, invest in shares, stock, bonds, cash deposits, notes, debentures, units, rights to profit or any other security (including, but without limitation, whether convertible, redeemable, preferred, deferred or partly paid, with or without any right, title or interest in or to such security including an option or a right to subscribe) including making contributions in respect thereof;
- (b) realise, vary or exchange any Investment and add any Investment to the Fund Property;
- (c) subject to clause 6.2, exercise any voting rights attaching to Investments forming part of the Fund Property in such manner as the Trustee thinks fit;
- (d) appoint any of its executives, directors or employees (each an **Appointee**) to the board of directors or other governing body of an Investee, provided that fees earned by any Appointee shall be income of the Trustee and form part of the Fund Property;
- (e) possess, sell, exchange, transfer, mortgage, pledge or otherwise dispose of, encumber or deal in the assets of the Fund for cash, shares, stock, Securities or other property of any nature (whether real or personal) or any

combination of them on such terms and conditions as may be determined by the Trustee (for the avoidance of doubt, the Trustee has the power to provide warranties in relation to the sale of any Investment);

- (f) borrow money or Securities either bearing or free of interest, with or without security, and by way of loan, debenture, bill of exchange or otherwise on such terms and conditions as the Trustee, in its absolute discretion thinks fit, or guarantee loans or other extensions of credit;
- (g) make loans or provide other financial accommodation to Investees, or give guarantees for the benefit of Investees or other Persons as a necessary or integral part of an Investment;
- (h) institute, prosecute and compromise legal proceedings to secure compliance with this Deed or any other right which the Trustee has as Trustee of the Fund and enforce any debt or liability owed to the Trustee as Trustee of the Fund (or to which the Trustee is subrogated) including by issuing any statutory or other demand, instituting, prosecuting and compromising any legal proceedings, and lodging a proof of debt or claim in relation to, or as a consequence of, the Insolvency of any Person;
- (i) pursue and compromise any claim held by the Trustee or to which the Trustee is subrogated to any insurer or reinsurer;
- (j) pay all outgoing and expenses connected with the Fund or this Deed (including all fees payable to Agents and/or attorneys appointed under clause 4.5) and, subject to clause 4.3, conduct such bank account or accounts of the Fund as the Trustee thinks fit;
- (k) give receipts and discharges in the name of the Fund for any moneys received on behalf of the Trustee;
- (l) either alone or jointly with any other Person, guarantee, give any indemnity in respect of or become liable for or (whether or not any such guarantee has been given) mortgage or charge the Fund Property or any part of it as security for the payment of money, with or without interest (including money payable or to become payable under a fluctuating overdraft) or for the performance of any obligations by any Person and without limitation, for the purpose of securing the payment of any moneys or the performance of any obligations for which the Trustee has become or may become liable under or by virtue of any guarantee, indemnity, option or other contract entered into by the Trustee;
- (m) draw, endorse, discount, sell, purchase and otherwise deal with bills of exchange, commercial bills, promissory notes, other negotiable instruments or certificates of deposit, debentures, notes or any other financial instruments either alone or jointly but so that the total of the moneys for the time being the subject of liability on the part of the Trustee whether as drawer, acceptor or endorser of any and all such instruments and whether alone or jointly or severally with other persons are deemed to be liabilities of the Fund for all purposes, and any reference in this clause to the "Trustee" shall include a reference to each Liable Entity;
- (n) maintain and repair the Fund Property;

- (o) develop, improve or vary the Fund Property in any way;
- (p) insure the Fund Property for any amount against any risk;
- (q) pay expenses and outgoings (including taxes) incurred on the Fund Property out of capital or income;
- (r) lease Fund Property at any rent and on any terms;
- (s) add to the Fund Property any part of the income arising from its application for the Fund Purpose;
- (t) solicit and receive as additions to the Fund Property gifts and benefactions of any kind whether inter vivos or testamentary; and
- (u) take any action it thinks fit for the adequate protection of the Fund Property and do all things incidental to the exercise of any powers conferred on the Trustee by this Deed;
- (v) enter into Claims Management Agreements with the Liable Entities (and in respect Payable Liabilities which are not SPF Funded Liabilities), on the basis that the Liable Entities must bear the full cost and all liabilities associated with such claims; and
- (w) accept appointment and act as a Single Claims Manager.

4.6 Powers of Delegation and Appointment

The Trustee may:

- (a) authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to provide advice, hold title to any Fund Property, perform any act or exercise any discretion within the Trustee's power, including without limitation the power to appoint in turn its own agent or delegate and in particular the power to enter into the Irrevocable Power of Attorney;
- (b) include in the authorisation provisions to protect and assist those dealing with the agent or delegate as the Trustee thinks fit;
- (c) appoint, remove or vary the appointment of the Approved Actuary, the Approved Auditor and any accountants, solicitors, barristers, investment bankers, technical or other experts and qualified advisers to:
 - (i) provide advice;
 - (ii) do anything required or permissible by this Deed, including the receipt and payment of money and the execution of any document by the Trustee; and
 - (iii) transact any business,

in connection with the Fund, the Fund Purpose or the Fund Property, subject always to the obligations of the Trustee under the Final Funding Agreement;

- (d) appoint an attorney to execute any document on any terms the Trustee thinks fit;
- (e) employ any person in connection with anything required to be done under this Deed and to decide the remuneration (including expenses and superannuation) to be paid to that person provided that, subject to clause 4.7(f), no payment is made to any director of the Trustee other than the payment of:
 - (i) out of pocket expenses incurred by the director in the performance of any duty as a director of the Trustee subject to the amount payable not exceeding any amount previously approved by the board of directors of the Trustee;
 - (ii) any service rendered to the Trustee by the director in a professional or technical capacity (and not in his or her capacity as a director) where the provision of the service has been previously approved by the board of directors of the Trustee and the remuneration for the service does not exceed an amount which is proper remuneration for the service;
 - (iii) any salary or wage due to the director as an employee of the Trustee where the terms of employment have been previously approved by the board of directors of the Trustee and the salary or wage does not exceed an amount which is proper remuneration;
 - (iv) an insurance premium in respect of a contract insuring an officer to which section 212 of the *Corporations Act* refers or the provision of a financial benefit (by way of indemnity) to a director to which section 212 of the *Corporations Act* refers;
- (f) in addition to the payments to directors of the Trustee permitted under clause 4.7(e), pay such amount as director's fees as it considers appropriate to any director of the Trustee not being an employee of the NSW Government or an employee of any member of the JHINV Group; and
- (g) direct any director or officer of a Liable Entity to act in any manner or do any act as described in this Deed.

4.7 Compliance with Transaction Legislation

In addition to any Powers conferred on the Trustee under this Deed and at law, the Trustee may exercise each and any power conferred on it by the Transaction Legislation or by any other Act or Regulation made under any Act of the State of New South Wales.

4.8 Limitations on Powers of the Trustee

- (a) Notwithstanding any other provision of this Deed, the Trustee has no power to and must not pay or discharge or purport to pay or discharge any liability of a Liable Entity which a Liable Entity is not authorised to pay or discharge by the Final Funding Agreement, a Related Agreement or the Transaction Legislation.

- (b) Notwithstanding any other provision of this Deed, prior to the Commencement Date the Trustee may not exercise any of its powers under this Deed or at law except to the extent that such exercise is necessary or reasonably incidental to:
- (i) establish the Fund Account;
 - (ii) manage any application to the Australian Taxation Office concerning the status of the Fund for income tax purposes;
or
 - (iii) other matters or tasks which are purely administrative in nature and preparatory to the discharge by the Trustee of its substantive rights, powers and responsibilities under this Deed, the Final Funding Agreement and the Transaction Legislation.

4.9 Exercise of Discretion

The Trustee may in its absolute discretion decide how and when to exercise its Powers.

4.10 Compliance with the Final Funding Agreement

- (a) The Trustee must at all times comply fully with the obligations imposed on the Trustee by the Final Funding Agreement.
- (b) In the event of any inconsistency between the Final Funding Agreement and this Deed, the terms of the Final Funding Agreement prevail to the extent of the inconsistency but otherwise this Deed shall have effect.

4.11 Trustee's standard of duty

The Trustee must exercise the same degree of care, skill and diligence as a reasonable and prudent person would exercise if it was the Trustee of the Fund.

4.12 Reliance on Advice

The Trustee may take and may act upon:

- (a) the advice of the Approved Actuary;
- (b) the opinion or advice of counsel or solicitors, whether or not instructed by the Trustee, in relation to the interpretation of this Deed or any other document (whether statutory or otherwise) or generally in connection with the Fund;
- (c) advice, opinions, statements or information from any bankers, accountants, auditors, valuers and other persons consulted by the Trustee who are in each case believed by the Trustee in good faith to be expert in relation to the matters upon which they are consulted; and
- (d) any other document provided to the Trustee in connection with the Fund upon which it is reasonable for the Trustee to rely,

and the Trustee will not be liable for anything done, suffered or omitted by it in good faith in reasonable reliance upon such opinion, advice, statement, information or document, unless otherwise known to be false or incomplete.

4.13 Remuneration

- (a) Subject to paragraph (b), no remuneration or other benefit in money or money's worth will be paid or transferred, directly or indirectly, to the Trustee or to any member or officer of the Trustee in respect of his or her duties or conduct as such.
- (b) The Trustee may pay out of the Fund Property:
 - (i) reasonable remuneration to any member, officer, employee or agent of the Trustee for services actually rendered to the Trustee acting in accordance with this Deed;
 - (ii) payment or reimbursement for out of pocket expenses reasonably incurred by any member, officer, employee or agent of the Trustee in carrying out the Trustee's functions under this Deed; and
 - (iii) fees and disbursements to any solicitor, accountant or other advisor or the Trustee.

5. LIABILITY

The Trustee shall not be liable for:

- (a) a loss to the Fund Property;
 - (b) any action taken or omitted to be taken by it under this Deed,
- except in the case of wilful default, fraud or negligence of the Trustee.

6. INDEMNITY AND INSURANCE

6.1 Indemnity

The Trustee and the officers, employees, agents and attorneys of the Trustee (each an **Indemnified Person**) shall be indemnified out of the Fund Property for:

- (a) all costs, charges, liabilities and expenses (including legal costs and expenses) incurred in the performance or exercise or attempted performance or exercise of any duty or Power; and
- (b) any action brought against any of them concerning this Deed, the Fund Property or the neglect or default of any solicitor, banker, accountant or other agent employed in good faith by the Trustee,

except to the extent any of the above arise or are incurred as a result of the wilful default, fraud or negligence of the Indemnified Party.

6.2 Indemnity for Exercise of Voting Rights

Except as otherwise provided by law:

- (a) the Trustee or its Appointee is not liable or responsible to any Person for the management of any company or body or for any vote or action taken or consent given by the Trustee or its Appointee in person or by proxy or power of attorney.
- (b) neither the Trustee nor the holder of any proxy or power of attorney:
 - (i) incurs any liability or responsibility by reason of any error of law or mistake of fact or any matter or thing done or omitted or approval voted or given or withheld by the Trustee or its Appointee or by the holder of a proxy or power of attorney under this Deed; and
 - (ii) is under any obligation to anyone with respect to any action taken or caused to be taken or omitted by the Trustee or its Appointee or by any holder of a proxy or power of attorney.

6.3 Maintain Insurance

- (a) The Trustee must use its best endeavours to effect and maintain a contract of insurance with an established and reputable insurer, which insures the Trustee and the officers and employees of the Trustee (each an **Insured Person**) against all liabilities incurred by them whilst acting in that capacity, provided that the liability does not arise out of conduct involving a wilful breach of duty to the Trustee. The Trustee shall be entitled to pay for the premium on such contracts out of Fund Property.
- (b) Unless the Trustee agrees otherwise, the contract of insurance referred to in clause 6.3(a) must contain a provision waiving all rights of subrogation or action against each Insured Person.
- (c) The exercise of the Trustee's discretion under clause 6.3(b) only arises if the Trustee receives a written request (either as a standing request or from time to time) from an Insured Person and if and to the extent that the Insured Person does not otherwise have the benefit of a contract of insurance on the same terms as set out in that clause.
- (d) The Trustee may satisfy its obligations under clause 6.3(a) by paying the premium attributed to the Insured Persons by a broker under a global contract of insurance that includes coverage for the Insured Persons and the officers of companies in the JHINV Group.

6.4 Not render void

The Trustee must use its best endeavours to ensure that it does not do anything which will render void any contract of insurance effected under clause 6.3.

7. APPOINTMENT OF NEW TRUSTEE

7.1 Condition Precedent to Appointment

No appointment or purported appointment of a new Trustee of the Fund will take effect unless and until the new trustee to be appointed has been approved in writing by the NSW Government (acting reasonably) and a Deed of Accession has been duly executed by the proposed new Trustee and each other party thereto and delivered to JHINV and the NSW Government.

7.2 Trustee Act, reliance and notices

- (a) Subject to the following paragraphs, the provisions of Part 2 Division 2.1 of the Trustee Act apply:
 - (i) if for the purposes of section 6(4)(b) of the Trustee Act, the last surviving or continuing Trustee is a corporation in liquidation then any relevant appointment may be made by the liquidator of that corporation; and
 - (ii) notwithstanding section 8(1) of the Trustee Act, a sole Trustee may only retire if at least one new Trustee is appointed in place of that sole Trustee.
- (b) Upon the retirement, removal or appointment of the Trustee, the new Trustee must endorse a note on this Deed recording the retirement, removal or appointment and any Person acting on this Deed or with notice of its terms shall be entitled to rely on its terms (as amended) as evidence of the identity of the Trustee or the Trustees at that time.

7.3 Acceptance of Accounts and Discharge

- (a) Any new Trustee may accept the accounts given and the property delivered to it by a continuing or ceasing Trustee without having to enquire as to the assets of the Fund.
- (b) Subject to clause (d), any ceasing Trustee may be given a full discharge by the new Trustee and the discharge will release the ceasing Trustee from all obligations in relation to all or any part of the Fund Property.
- (c) Any discharge given under clause (b) will bind all persons who:
 - (i) have or might take any interest in all or any part of the Fund Property; or
 - (ii) who have or might have a right to have the Fund Property properly administered in accordance under this Deed.
- (d) Despite anything in clause (b), a ceasing Trustee shall not be released by any discharge given under clause (b) if:
 - (a) that discharge arises from any acts or omissions of the ceasing Trustee having been concealed by the Trustee fraudulently, dishonestly or in bad faith; or

- (b) the discharge relates to any loss to the Fund, for which the Fund has not been properly compensated, which arose as a consequence of the wilful default, fraud or negligence of the ceasing Trustee.

8. THIRD PARTIES

No person (including the Registrar General or any other government agency) dealing in good faith with the Trustee (including as vendor, purchaser or mortgagor) is bound to enquire:

- (a) as to the authority or purpose of the Trustee;
- (b) as to the application of money received by the Trustee;
- (c) whether the dealing is necessary or proper; or
- (d) in any other way as to the proprietary or regularity of the dealing.

9. FAILURE OF THE TRUSTEE AND TERMINATION OF THE FUND

- (a) The Trustee may only terminate the Fund with the prior written consent of the NSW Government.
- (b) If the Fund is terminated, set aside or fails for any reason, or if the Trustee becomes unable (for any reason including as a consequence of an Insolvency Event) to carry out its functions and comply with its obligations under this Deed, the Final Funding Agreement and the Transaction Legislation, then the Fund Property must be applied as follows:
 - (i) first, in payment of any amounts payable to any creditor of the Trustee; and
 - (ii) secondly, the balance must be dealt with and applied in accordance with clause 4.6 of the Final Funding Agreement.

10. AMENDMENTS

- (a) Subject to this clause, this Deed may from time to time be amended by a deed poll executed by the Trustee.
- (b) No amendment of this Deed shall be made if as a result:
 - (i) the Fund Purpose would be altered in any way;
 - (ii) any of clauses 1.1, 2.4(c), 3, 4, 5, 7.1, 8, 9 or 10 would be amended, repealed or otherwise made redundant or ineffective.

11. FINANCES OF THE FUND

11.1 Accounts and Approved Auditor

- (a) The Trustee must ensure that proper books of account and all other proper books and records are kept for the Fund and for each of the Liable Entities.

- (b) The Trustee must comply with clause 5.12 of the Final Funding Agreement including by appointing an Approved Auditor to be the auditor of the Fund and ensuring that the financial affairs of the Fund and each of the Liable Entities are audited by the Approved Auditor at least once in each calendar year.
- (c) The Trustee must provide the NSW Government and JHINV with each report of the Approved Auditor.

11.2 Approved Actuary

The Trustee must appoint and at all times retain an Approved Actuary of the Fund in accordance with clause 5.15 of the Final Funding Agreement.

11.3 Access to Books and Records

The Trustee must give the NSW Government Auditor full and free access to the books and records of the Fund in accordance with clause 5.13 of the Final Funding Agreement.

11.4 General Reporting Obligations

- (a) Within three months of the end of each Financial Year, the Trustee will prepare and issue to JHINV and the NSW Government a report of the affairs and activities of the Fund for the reporting period by reference to the budget of the Fund for the reporting period and its financial and other objectives for that period;
- (b) The Trustee must:
 - (i) prepare a set of consolidated financial statements for the Trustee and the Liable Entities in respect of each Financial Year during the Term, in accordance with requirements applicable under the *Corporations Act* and in accordance with Australian generally accepted accounting principles (or on such other basis as may be agreed between the parties to the Final Funding Agreement); and
 - (ii) engage the Approved Auditor to audit those financial statements on a timely basis in respect of each Financial Year and to provide a copy of the relevant audit reports to the other Parties to this Deed.

12. ACTION BY THE TRUSTEE

12.1 Actions through Board of Directors

The Trustee will act through its board of directors in accordance with this Deed, the Final Funding Agreement, its Constitution, the Transaction Legislation and the *Corporations Act*.

12.2 Compliance with Tax Exemption

The Trustee will comply with any condition to any exemption from Taxation given from time to time in respect of the Fund or its income, and shall do all things reasonably necessary to maintain and comply with that exemption, provided that

nothing in this clause shall permit or authorise the Trustee to fail to act in accordance with the Fund Purpose, the Final Funding Agreement or the Transaction Legislation.

13 CERTIFICATES

A certificate signed by the secretary of the Trustee that a resolution has been passed by the Trustee, is conclusive, evidence as against any person dealing with any of those bodies that the resolution has been duly passed at a properly convened meeting of the relevant body.

14. GOVERNING LAW

This Deed is governed by the laws of New South Wales.

15. NO ENFORCEMENT BY THIRD PARTIES

For the avoidance of doubt, no other Person may seek to enforce this Deed or the Fund constituted by this Deed, except as provided in the Transaction Legislation or clause 4.4(a) of the Final Funding Agreement.

EXECUTED and delivered as a Deed in New South Wales.

Each Attorney executing this Deed states that he or she has no notice of revocation or suspension of his power of attorney.

SIGNED SEALED and DELIVERED)
on behalf of **[SETTLOR]**)
in the presence of:)

_____ Signature

Witness Print Name

Print name

SIGNED SEALED and DELIVERED
on behalf of **ASBESTOS INJURIES**
COMPENSATION FUND LIMITED
in the presence of:

)
)
)
)

Signature

Witness

Print Name

Print name

SCHEDULE 1

Constitutional Provisions

1. The Trustee Board

- 1.1 The management of the Fund shall vest in the Trustee.
- 1.2 The Trustee Board shall consist of a minimum of 3 Directors and a maximum of 5 Directors as determined by the Directors.
- 1.3 Initially there shall be five Directors. JHINV must appoint three of those Directors and the NSW Government must appoint two of those initial Directors.

2. Power to appoint directors

- 2.1 Unless paragraph 2.3 applies:
 - (a) JHINV shall be entitled to appoint a majority of the Directors from time to time to the Trustee Board and to designate one of those Directors to be Chairman;
 - (b) JHINV may, by Notice to the other Parties, nominate a subsidiary for so long as it remains a subsidiary of JHINV, to exercise its rights under this clause 2.1; and
 - (c) JHINV shall, or shall procure that the nominated subsidiary shall, promptly give Notice to the Trustee and the NSW Government of any appointment made pursuant to this clause 2.1.
- 2.2 The NSW Government shall be entitled to appoint the remaining Directors.
- 2.3 If a Special Default occurs or an Insolvency Event in relation to JHINV occurs and so long as that Special Default or Insolvency Event remains in existence and the NSW Government gives to JHINV a notice that clause 16.3(b) of the Final Funding Agreement is to apply:
 - (a) the Trustee Board must be constituted so that a majority of the Directors shall have been appointed by the NSW Government,
 - (b) the NSW Government may appoint further Directors so that the foregoing is achieved, and the Chairman (and remove any such appointees); and
 - (c) JHINV must procure the resignation of the requisite number of Directors appointed by JHINV (so that the foregoing is achieved).

3. Power to remove and replace Directors

Each Appointor may, by Notice in writing to the Trustee, remove and replace, from time to time, the persons appointed by it as a Director or Chairman. Except in cases of emergency, at least 5 Business Days' Notice shall be given to the other parties of any proposed appointment of a Director

4. Quorum

The quorum for a Trustee Board meeting is, if JHINV has appointed at least one Director, one Director appointed by JHINV and, if the NSW Government has appointed at least one Director, one Director appointed by the NSW Government provided that:

- (a) subject to paragraph (b), if a quorum is not present at a meeting, the meeting shall be reconvened by Notice to a date no less than 24 hours after the date of the original meeting (or such time as is reasonable in cases of emergency) and the quorum for such a reconvened meeting of which all Directors have been given notice in writing shall be at least two Directors; and
- (b) if a Special Default occurs or an Insolvency Event in relation to JHINV occurs and so long as the Special Default or Insolvency Event remains in existence, and the NSW Government gives to JHINV a Notice that clause 16.3(b) of the Final Funding Agreement is to apply, the quorum for a meeting of the Board of the Fund will be two Directors appointed by the NSW Government.

5. Voting at Trustee Board meetings

- (a) Subject to paragraph (c) and except as otherwise specified in this Constitution, at any meeting of the Directors, each Director has one vote.
- (b) Subject to paragraph (c), if a Director representative of a party and his or her alternate Director is absent, the remaining Director representatives of that party shall be entitled to jointly exercise the absent Director's vote.
- (c) If a Special Default occurs or an Insolvency Event occurs in relation to JHINV occurs, and so long as that Special Default or Insolvency Event remains in existence and the NSW Government gives to JHINV a Notice that clause 16.3(b) of the Final Funding Agreement is to apply, the total number of votes that may be cast at any meeting of the Board of the Trustee by the Directors (including the Chairman) appointed by JHINV or one of its subsidiaries present at the meeting shall be one less than the number of votes that may be cast by the Directors appointed by the NSW Government present at that meeting.

6. Chairman and Chairman's vote

The Chairman will have a casting vote in addition to a deliberative vote.

7. Interests of Appointor

- 7.1 Subject always to a Director's obligations under the Trust Deed, this Constitution, statute or otherwise at law, a Director may take into account the views of that Director's Appointor and may act on the wishes of that Appointor in performing any of his or her duties or exercising any power, right or discretion as a Director in relation to the Trustee.
- 7.2 A Director may provide that Director's Appointor with copies of all documents, Board Papers and other material which come into the possession of the Director in that capacity and may disclose to and discuss with the Appointor all information to which the Director becomes privy in that capacity.

7.3 A Director is not precluded from voting or otherwise acting in his or her capacity as a Director as a result of any conflict of interest arising from the fact that the Director is an employee, consultant or officer of an Appointor, or in the case of a Director appointed by the NSW Government, a public servant.

8. Adjournment

Subject always to clause 4, if a quorum is not present within 1 hour after the time appointed for a meeting, the meeting will stand adjourned as follows:

- (a) if paragraph 4(a) applies, the meeting shall be adjourned to the time specified in paragraph 4(a);
- (b) in any other case the same time and place seven days after the meeting or to another day, time and place determined by those Directors present.

9. Alternate Directors

Each Director may appoint, by Notice in writing to the Trustee, an alternate to act in his or her place. Except in cases of emergency, at least 5 Business Days' Notice must be given of any proposed appointment of an alternate director pursuant to this clause 9.

10. Insurance and Indemnities

The Trustee must use best endeavours to take out and maintain Directors and Officers liability insurance with a reputable insurer in respect of each Director and must execute a deed of access and indemnity in favour of each Director.

Annexure 4 — Form of Unions' Deed of Release

**James Hardie Industries N.V.
Australian Council of Trade Unions
Unions New South Wales
Bernard Douglas Banton**

**DEED OF RELEASE -
UNIONS AND BANTON**

THIS DEED is made on 2005 between:

1. **James Hardie Industries N.V.** ARBN 097 829 895 incorporated in the Netherlands and with its Australian registered office at Level 3, 22 Pitt Street, Sydney (**JHINV**)
2. **Australian Council of Trade Unions** of Level 2, 393 Swanston Street, Melbourne in the State of Victoria (**ACTU**)
3. **Unions New South Wales**, of 10th Floor, 377-383 Sussex Street, Sydney in the State of New South Wales (**Unions NSW**)
4. **Bernard Douglas Banton** of 133-7 Parramatta Road Granville, NSW, as the authorised representative of the Asbestos Victims Groups named in Schedule 1 to this Deed

RECITALS

- A. This deed is entered into by the Parties described above in the following context (some of the expressions used in these recitals being defined in **clause 1** of this deed):
- (a) in February 2004, the NSW Government established the Jackson Inquiry;
 - (b) in September 2004, the Jackson Inquiry found that the MRCF was, and is, underfunded in the sense that Amaca and Amaba, being two former subsidiaries of JHIL which are now owned by MRCF, will not over time have sufficient funds and other assets to meet their anticipated future liabilities:
 - to sufferers of Asbestos disease as a result of exposure to Asbestos dust and fibre in Australia whilst in their employ or from products manufactured by Amaca or Amaba or otherwise from their Asbestos activities; and
 - to the relatives or estates of such sufferers,and associated costs and expense;
 - (c) in July 2004, JHINV had proposed to the Jackson Inquiry that, on certain conditions, its directors would recommend that shareholders approve the provision of additional funding to provide for the present and future liabilities of Amaca and Amaba to such sufferers of Asbestos related disease;
 - (d) the ABN 60 Foundation is the holding company of ABN 60, the former parent company of the James Hardie group, which may be alleged to have Asbestos- related personal injury liabilities arising from its own activities and from the

activities of Amaca and Amaba, and has (or had) payment obligations to Amaca and Amaba under a deed of covenant and indemnity between them dated 16 February 2001;

- (f) the NSW Government requested the ACTU, Unions NSW and Banton to conduct negotiations with JHINV in order to resolve the underfunding of the MRCF, and subsequently the NSW Government also took part in those negotiations;
- (g) in those negotiations, the principal objective of the Initial Negotiating Parties, for different reasons, was to achieve a binding agreement intended to ensure that sufficient funding is made available by the JHINV Group to fully compensate, after taking into account the existing assets of the Liable Entities, on an agreed basis, all proven current and future Australian Asbestos personal injury and death Claimants against the Liable Entities;
- (h) on 21 December 2004, the Initial Negotiating Parties entered into a non-binding Heads of Agreement which set out the agreed position of the Initial Negotiating Parties in relation to the principles on which the binding agreement would be based and the key standing considerations relevant to implementing those principles to be reflected in that binding agreement;
- (i) on or about the date of this deed, the NSW Government, JHINV and the Performing Subsidiary entered into a deed (the "**Final Funding Agreement**") which set out the agreed position of those persons in relation to the basis on which, subject to the satisfaction or waiver of the conditions set out in the Final Funding Agreement, JHINV and/or the Performing Subsidiary will provide funding on a long-term basis to the Fund;
- (j) the JHINV Group has asserted that it has suffered damage to business operations and sales from boycotts and other actions in relation to the distribution and sale of its products in Australia and in other places throughout the world and is or was subject to a number of threats relating to future action, and the JHINV Group has sought to establish that its business operations and sales would no longer be affected by those boycotts and other actions or the threat of them; and
- (k) the Fund is to be established under the laws of New South Wales as required under **clause 4.1** of the Heads of Agreement and it is a condition of the Final Funding Agreement that the Trustee becomes a party to the Final Funding Agreement prior to the Commencement Date.

B. The Parties enter into this deed to reflect:

- (a) their formal and legally binding agreement in relation to the releases described in **clause 9.2** of the Heads of Agreement,
- (b) the agreed basis of further actions by the Parties in relation to the lifting of boycotts, as anticipated in **clause 16** of the Heads of Agreement; and
- (c) the agreed basis on which public statements may be made in relation to the circumstances leading up to the signing of this Deed by the Parties and the Final Funding Agreement by the parties thereto, consistent with the arrangements applicable under **clauses 16.1** and **19** of the Heads of Agreement.

THIS DEED WITNESSES that the parties agree to the following:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed and unless the context requires otherwise, terms defined in the Principal Agreement bear their corresponding meaning and:

ABN 60 means ABN 60 Pty Limited (ABN 60 000 009 263).

ABN 60 Foundation means ABN 60 Foundation Pty Ltd (ACN 106 266 611).

Amaba means Amaba Pty Limited (ABN 98 000 387 342).

Amaca means Amaca Pty Limited (ABN 49 000 035 512).

Asbestos means the fibrous form of those mineral silicates that belong to the serpentine or amphibole groups of rock-forming minerals, including actinolite, amosite (brown asbestos), anthophyllite, chrysotile (white asbestos), crocidolite (blue asbestos) and tremolite.

Asbestos Support Groups means each of The Asbestos Diseases Foundation of Australia, Asbestos Diseases Society of Australia Inc, The Asbestos Victims Association of South Australia, Queensland Asbestos Related Disease Support Society, Gippsland Asbestos Related Disease Support Inc, and Asbestos Diseases Society of Victoria.

“Associated Person” means:

- (a) in relation to the ACTU, each union affiliated to the ACTU and each of its and their officers, members and employees;
- (b) in relation to Unions NSW, each union affiliated to Unions NSW and each of it and their officers, members and employees;
- (c) in relation to Banton, each of the Asbestos Support Groups; and
- (d) in relation to JHINV or a Liable Entity, means each of its past and present directors, officers, employees, agents or advisers.

Banton means Bernard Douglas Banton of 133-7 Parramatta Road Granville, in the State of New South Wales, as the designated representative of the Asbestos Support Groups.

Business Day means a day (not being a Saturday or a Sunday) on which banks are open for general banking business in Sydney.

Civil Liability means any and all civil liability.

Commencement Date has the meaning given in the Final Funding Agreement.

Controlled Entity has the meaning given in the Final Funding Agreement.

Corporations Act means the *Corporations Act 2001* (Cth).

Court means a court or tribunal in Australia having jurisdiction to hear and determine common law personal injury and death claims arising from exposure to Asbestos.

Deeds of Covenant and Indemnity means:

- (a) the deed of that name dated 16 February 2001 and entered into between JHIL, Amaba and Amaca and any amendments thereto (including without limitation pursuant to the amending deed dated 10 September 2001); and
- (b) the Deed of Covenant Indemnity and Access between JHINV and ABN 60 dated 31 March 2003 and any amendments thereto.

Final Funding Agreement has the meaning given in Recital A(i).

Final Funding Agreement Date means the date on which the Final Funding Agreement is executed by JHINV and the NSW Government.

Fund means the Trustee in its capacity as trustee of the Asbestos Injury Compensation Foundation to be established pursuant to the Trust Deed.

Heads of Agreement means the non-binding agreement entered into on 21 December 2004 between the Initial Negotiating Parties.

Initial Negotiating Parties means each of JHINV, the NSW Government, the ACTU, Unions NSW and Banton.

Jackson Inquiry means the inquiry referred to in paragraph (a) of recital A.

JHIL means the company formerly known as James Hardie Industries Limited (now ABN 60).

JHINV Group means JHINV and its Controlled Entities, excluding the Fund and any of the Liable Entities, if they become such Controlled Entities.

“Jackson Inquiry” means the Special Commission of Inquiry into the Medical Research and Compensation Foundation established by the NSW Government in February 2004.

Liable Entities means Amaca, Amaba and ABN 60.

“MRCF” means the Medical Research & Compensation Foundation (ABN 21 095 924 137).

Notice has the meaning given to it in **clause 11**.

Other Governments means each of the Australian government and the governments of the states and territories of Australia other than the NSW Government.

Parties means the parties to this Deed.

Performing Subsidiary means LGTDD Pty Limited or any other subsidiary of JHINV validly nominated under **clause 6.2** of the Final Funding Agreement to perform the obligations of the Performing Subsidiary under that deed.

Person includes any general partnership, limited partnership, corporation, limited liability company, joint venture, trust, business trust, governmental agency, co-operative, association, individual or other entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such a person as the context may require.

“Final Funding Agreement” means the deed of that name dated on or about the date of this Deed, the initial parties to which are JHINV, the Performing Subsidiary and the NSW Government.

“Released Claims” of a Person means any Civil Liability the Person has or may have arising from or relating to:

- (i) the underfunding of the MRCF; or
- (ii) the Jackson Inquiry; or
- (iii) all Relevant Matters; or
- (iv) any bans, boycotts or other action in place as a result of the Relevant Matters on any products manufactured, distributed or sold by any member of the JHINV Group, save that no ban, boycott or any other action shall comprise a Released Claim to the extent it:
 - (A) is new or is put into place after the Final Funding Agreement Date; or
 - (B) persists or continues in place on or after 1 January 2006.

“Released Party” means the ACTU, Unions NSW and Banton.

“Relevant Matters” means all matters in connection with:

- (a) the establishment and any underfunding or funding of the MRCF and the February 2001 ABN 60 group corporate reorganisation (including, without limitation, the transfer of the Liable Entities out of the group, representations made to incoming directors of the Liable Entities and other third parties regarding the Liable Entities and their assets and liabilities, the media releases of ABN 60 of 16 February 2001 and of JHINV of 29 and 30 October 2003 and any statements made in relation to any of the foregoing matters);
- (b) the Deeds of Covenant and Indemnity;
- (c) the transfers of assets, and the dividends and management fees paid, by the Liable Entities as described in the report of the Jackson Commission;
- (d) the August to October 2001 ABN 60 group corporate reorganisation (including without limitation the scheme of arrangement in relation to ABN 60 of August to October 2001, the contemporaneous reduction of capital of (and cancellation of fully paid ordinary shares in) ABN 60 and subscription by JHINV for partly paid shares in ABN 60, the subsequent cancellation of those partly paid shares in ABN 60 in March and April 2003 and representations to third parties and the court) any statements made by any person in relation to any of the foregoing matters;

- (e) the transfer of assets from ABN 60 to JHINV, the establishment of the ABN 60 Foundation Limited and ABN 60 Foundation Trust, and the allotment of fully paid shares in ABN 60 to ABN 60 Foundation Limited. (f).

Trust Deed means the trust deed for the Fund.

1.2 **Trustee** means the trustee of the Fund from time to time, initially being Asbestos Injuries Compensation Fund Limited.

1.3 Interpretation

In this Deed, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this agreement;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning;
- (e) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and vice versa;
- (f) a reference to any thing (including, but not limited to, any right) includes a part of that thing;
- (g) a reference to a party to a document includes that party's successors and permitted assigns;
- (h) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute; and
- (i) a reference to a document or agreement includes all amendments or supplements to, or replacements or novations of, that document or agreement.

2 RELEASE BY JHINV AND THE LIABLE ENTITIES

- 2.1 With effect from the Final Funding Agreement Date, JHINV hereby frees, releases and discharges each Released Party and each Associated Person of each Released Party from all Released Claims and shall procure to the extent it is able to that each of its Associated Persons release each of the Released Parties and each Associated Person from all Released Claims.
- 2.2 The parties acknowledge that the Released Parties hold the benefit of the releases in favour of each Associated Person of each Released Party set out in **clause 2.1** on trust for that Associated Person.

- 2.3 Nothing in this Deed can be taken as an admission by any of the Released Parties that it or he has had any role in organising or procuring any unlawful action.
- 2.4 The Parties agree that the Liable Entities may, by executing a deed of accession, agree to provide releases in favour of the Released Persons having the same scope as those given by JHINV under this deed.
- 2.5 In consideration for the releases described in clause 2.1:
- (a) the ACTU agrees, if requested by JHINV, that it will:
 - (i) write to persons persisting in bans or boycotts with respect to JHINV's products requesting that such bans or boycotts be lifted;
 - (ii) participate in discussions with JHINV and such persons to seek the lifting of such bans or boycotts;
 - (b) Unions NSW agrees, if requested by JHINV, that it will:
 - (i) write to persons persisting in bans or boycotts in New South Wales with respect to JHINV's products requesting that such bans or boycotts be lifted;
 - (ii) participate in discussions with JHINV and such persons to seek the lifting of such bans or boycotts
- 2.6 The obligations in clause 2.5 will not apply while the release from civil liability applicable to JHINV and certain related persons of JHINV (as contemplated in the Final Funding Agreement) have been validly suspended.

3 BOYCOTTS

- 3.1 From the Final Funding Agreement Date, each of the ACTU, Unions NSW and Banton agrees to use its or his best endeavours to achieve forthwith the lifting of all bans or boycotts on any products manufactured, produced or sold by any member of the JHINV Group.
- 3.2 Subject to **clause 3.4**, the obligation of each of the ACTU, Unions NSW and Banton shall be a continuing obligation whenever any bans or boycotts remain in place.
- 3.3 It is agreed that the endeavours required of the ACTU, Unions NSW and Banton under this **clause 3** will be limited by the extent to which individuals and organisations which may have imposed those bans or boycotts can be influenced by ACTU, Unions NSW or Banton using their best endeavours to achieve the lifting of such bans or boycotts.
- 3.4 The obligations of the ACTU, Unions NSW and Banton under this **clause 3** shall be suspended during any period in which JHINV is in breach of its obligations under the Final Funding Agreement and that breach has not been remedied.
- 3.5 Nothing in this Deed is intended to or does constrain the rights of the ACTU and Unions NSW or any of their Associated Persons to act in a way which is otherwise lawful.

4 CONFIDENTIALITY

4.1 Subject to **clause 4.2**, each party shall keep the terms of this Deed confidential.

4.2 A party may make any disclosures in relation to this Deed as set out in the Annexure or as necessary to:

- (a) its related bodies corporate, professional advisors, bankers, financial advisors and financiers, if those persons undertake to keep the information disclosed confidential;
- (b) comply with any applicable law or requirement of any regulatory body (including any relevant stock exchange) or to comply with the terms of the Final Funding Agreement;
- (c) any of its employees to whom it is necessary to disclose the information, on receipt of an undertaking from that employee to keep the information confidential; or
- (d) to gain necessary approvals for the purpose of entering into this deed provided that for any disclosure other than those described in paragraphs (a) to (c) above, the recipient is informed at the time of such disclosure that confidentiality restraints apply in relation to the information disclosed; or
- (e) on and from the time James Hardie has publicly released an explanatory memorandum in relation to the proposal set out in the Final Funding Agreement, to any of its Associated Persons to whom it is necessary to disclose the information, on receipt of an undertaking from that Associated Person to keep the information confidential.

5 DEED MAY BE USED IN COURT

Except in relation to a breach of this Deed and the continuing obligations of the parties pursuant to this Deed, this Deed may be pleaded as a full and complete defence by any party to any actions, suits, or proceedings commenced, continued or taken by another party or on its behalf in connection with any of the matters referred to this Deed.

6 GOVERNING LAW

This Deed shall be construed in accordance with and be governed by the laws of the State of New South Wales and the parties agree that the court system of that State will be forum of choice in relation to this Deed.

7 ENTRY INTO DEED

The parties acknowledge that this Deed is voluntarily entered into and that each party has obtained their own legal advice concerning its terms.

8 SEVERANCE

If any provision of this Deed is held to be invalid or unenforceable for any reason, it will, to the extent that it is invalid or unenforceable, be treated as severed from this Deed and will not affect the remaining provisions of this Deed.

9 VARIATION OF DEED

This Deed may only be varied or replaced by a deed duly executed by each of the parties.

10 COUNTERPARTS

This Deed may be executed in any number of counterparts and all counterparts, taken together, constitute one instrument. A party may execute this Deed by executing any counterpart.

11 NOTICES

11.1 A notice, approval, consent, nomination or other communication (Notice) to a person relating to this deed:

- (i) must state that it is a notice relating to this deed;
- (ii) shall state the relevant clause in this deed to which the notice relates, provided that any such failure to comply with this requirement shall not affect the validity of any such notice;
- (iii) must be in legible writing; and
- (iv) must be in English.

11.2 If the Notice is to either or both of JHINV and/or the Performing Subsidiary then it must be addressed as follows:

Name: James Hardie Industries NV
Attention: The Chairman and The Chief Financial Officer
Address: Level 3, 20 Pitt Street, Sydney NSW 2000
Facsimile: + 61 2 8274 5218

11.3 If the Notice is to the NSW Government then it must be addressed as follows:

Name: The State of New South Wales, c/- The Cabinet Office
Attention: Deputy Director-General (Legal)
Address: Level 39, Governor Macquarie Tower, Farrer Place, Sydney, NSW 2000
Facsimile: +61 2 9228 3062

with copies to, if the NSW Government has appointed a Director or any Directors, to each such Director as notified to the Trustee from time to time by such Director.

11.4 If the Notice is to the ACTU then it must be addressed as follows:

Name: Australian Council of Trade Unions
Attention: The Secretary

Address: Level 2, 393 Swanston St, Melbourne, Victoria 3000

Facsimile: 03 9663 8220

11.5 If the Notice is to Unions NSW then it must be addressed as follows:

Name: Unions NSW

Attention: The Secretary

Address: 10th Floor, 377 – 388 Sussex St, Sydney, 2000

Facsimile: 02 9261 305

11.6 If the Notice is from a corporation then an officer of that corporation must sign the Notice.

11.7 Notice is sent by the sender and received by the receiver:

- (i) if the Notice is hand delivered, upon delivery to the receiving Party;
- (ii) if the Notice is sent by facsimile, upon the successful completion of the relevant transmission;
- (iii) if the Notice is sent by registered mail within Australia, 2 Business Days after the registration of the notice of posting;
and
- (iv) if the Notice is sent by ordinary mail within Australia, 3 Business Days from and including the date of postage.

11.8 For the avoidance of doubt, Notice shall not be sent by electronic email.

11.9 In this **clause 11**, a reference to a Party receiving a Notice includes a reference to the receiver's officers, agents or employees.

11.10 A Party may vary any of the details relating to it contained in this **clause 11** at any time by Notice to the other Parties.

11.11 Where a Notice to a Party must be copied to another Person, each such Notice must be despatched on the same day (but any failure to comply with this **clause 11.11** shall not affect the validity of any such Notices).

11.12 Court action shall not be commenced by any party to the Deed with respect to any alleged breach of this Deed until 10 Business Days have elapsed after the giving of Notice to each of the ACTU and Unions NSW containing particulars of the alleged breach and an invitation to rectify the breach.

EXECUTED by the parties as a Deed:

EXECUTED by
JAMES HARDIE INDUSTRIES NV

_____))
Signature of Director

_____))
Name of Director

EXECUTED on behalf of
THE AUSTRALIAN COUNCIL OF TRADE UNIONS by:
(ACN 008 394 509):

_____))
Signature of witness

_____))
Name of witness

EXECUTED on behalf of
UNIONS NEW SOUTH WALES by:
(ACN 008 394 509):

_____))
Signature of witness

_____))
Name of witness

Signed by
BERNARD DOUGLAS BANTON
in the presence of:

_____))
Witness

_____))
Name

_____))
Signature of Director/Secretary

_____))
Name of Director/Secretary

_____))
Signature of Secretary

_____))
Name of Secretary

_____))
Signature of *Assistant* Secretary

_____))
Name of *Assistant* Secretary

Annexure 5 – JHINV Guarantee

DATED [_____]

**AICF Limited in its capacity as trustee for
the
Asbestos Injuries Compensation Foundation
as the Beneficiary
The State of New South Wales Government
and
James Hardie Industries N.V.
as the Guarantor**

PARENT GUARANTEE

THIS PARENT GUARANTEE is made on [] @ []

BETWEEN:

(1) **AICF Limited** [], a company limited by guarantee incorporated under the laws of the State of New South Wales, Australia, having its registered office at [], in its capacity as trustee for the **Asbestos Injuries Compensation Foundation, [address, registration, etc.]** (the “**Fund Trustee**”), duly represented by:

and

(2) The **State of New South Wales**, [address etc.], Australia (the “**NSW Government**”), duly represented by:

and

(3) **James Hardie Industries N.V.**, a company incorporated under the laws of the Netherlands, with its corporate seat in Amsterdam, the Netherlands, registered with the trade register of the Chamber of Commerce with number 34106455 (the “**Guarantor**”), duly represented by:

The aforementioned parties also collectively referred to as the “**Parties**” or individually as the “**Party**”.

RECITALS:

- (1) The NSW Government, LGTDD Pty Ltd and the Guarantor are parties to a Final Funding Agreement dated 1 December 2005 (the “**Final Funding Agreement**”).
- (2) The Fund Trustee has become a party to the Final Funding Agreement by executing a Deed of Accession on [date].
- (3) Pursuant to **Clause 10** of the Final Funding Agreement, the Guarantor has agreed to deliver this Guarantee to the Fund Trustee and the NSW Government.
- (4) The NSW Government is not a creditor of the Guarantor in relation to the payment of the Guaranteed Obligations.

IT IS AGREED AS FOLLOWS:

1. INTERPRETATION

Capitalised terms shall be used herein as such terms are defined in the Final Funding Agreement (and such terms will be interpreted in accordance with the

laws of New South Wales, Australia, being the governing law of the Final Funding Agreement), unless defined otherwise in this Guarantee; and

“**Guarantee**” means this guarantee; and

“**Guaranteed Obligations**” means any of the payment obligations of the Performing Subsidiary to the Fund Trustee under the Final Funding Agreement, including the obligation to pay the Wind-Up or Reconstruction Amount, and “Guaranteed Obligation” means any one such payment obligation. Where the Performing Subsidiary would have been liable to make a payment under the Final Funding Agreement but for the Liquidation or Insolvency of the Performing Subsidiary or the occurrence of a Wind-up Event or Reconstruction Event in respect of the Performing Subsidiary, it will be taken still to be liable for the purposes of this Guarantee.

2. GUARANTEE

2.1 The Guarantor hereby irrevocably and unconditionally:

- (a) guarantees to the Fund Trustee the due and punctual performance by the Performing Subsidiary of the Guaranteed Obligations;
- (b) guarantees to the Fund Trustee that, whenever the Performing Subsidiary does not pay any amount due under any of its Guaranteed Obligations, the Guarantor shall immediately on first written demand by the Fund Trustee pay that amount to the Fund Trustee, as if it were the principal obligor thereof; and
- (c) guarantees to the Fund Trustee that it shall immediately on first written demand by or on behalf of the Fund Trustee pay to the Fund Trustee, all costs and expenses incurred by the Fund Trustee in relation to the protection or enforcement of its rights under this Guarantee and all costs and damages incurred by the Fund Trustee as a result of the Performing Subsidiary not fulfilling one or more of the Guaranteed Obligations when due.

2.2 The obligations of the Guarantor pursuant to **Clause 2.1** shall be continuing obligations and extend to all sums payable by the Performing Subsidiary under the Guaranteed Obligations. The obligations of the Guarantor pursuant to **Clause 2.1** shall remain in full force and effect until all the Guaranteed Obligations shall have been paid, satisfied or discharged in full. Termination of this Guarantee is only allowed if and when the Final Funding Agreement is terminated (otherwise than due to breach or default by the Guarantor or the Performing Subsidiary) and the Performing Subsidiary has fully discharged all of the Guaranteed Obligations. The obligations of the Guarantor shall remain in full force in the event that the Performing Subsidiary is replaced by another subsidiary of the Guarantor in accordance with clause 6.2 of the Final Funding Agreement or in the events described in **Clause 2.1(d)**.

-
- 2.3** This Guarantee is a guarantee of performance of the Guaranteed Obligations by payment of all amounts that are the subject of the Guaranteed Obligations when due and payable.
- 2.4** This Guarantee is not a contract of surety (*borgtocht*). The obligations of the Guarantor hereunder are independent of the obligations of the Performing Subsidiary and the obligations of any other guarantor of the obligations of the Performing Subsidiary under the Final Funding Agreement.
- 2.5** Payment by the Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify, abridge or extinguish the Guarantor's liability for any portion of the Guaranteed Obligations which has not been paid. Without limiting the generality of the foregoing, if the Fund Trustee is awarded a judgment in any proceedings brought to enforce the Guarantor's obligations to pay a portion of the Guaranteed Obligations, such judgment shall not be deemed to release the Guarantor from its obligation to pay the portion of the Guaranteed Obligations that is not the subject of such proceedings, and such judgment shall not, except to the extent satisfied by the Guarantor, limit, affect, modify, abridge or extinguish any part of the Guarantor's liability in respect of the Guaranteed Obligations.
- 2.6** This Guarantee is independent of, in addition to and shall not prejudice or affect or be prejudiced or be affected by any other right, remedy, guarantee, indemnity or security and may be enforced without first having recourse to the same or any other mortgage, charge, pledge or lien now or hereafter held by or available to the Fund Trustee and/or the NSW Government.
- 2.7** If any discharge (whether in respect of the Guaranteed Obligations or any security for those obligations or otherwise) or arrangement is made in whole or in part on the faith of any payment, security or other disposition by the Performing Subsidiary or the Guarantor which is subsequently avoided or which must be restored (without limitation) on bankruptcy, liquidation, moratorium of payment or otherwise, the liability of the Guarantor will continue or be reinstated as if the discharge or arrangement had not occurred. This clause 2.7 survives the discharge of this Deed.
- 2.8** Unless and until all the Guaranteed Obligations have been satisfied or discharged in full, the Guarantor shall not, after a claim has been made or by virtue of any payment or performance under this Guarantee, in respect of any payment made to the Fund Trustee and/or the NSW Government:
- (a) exercise any right of subrogation in respect of or claim to be subrogated to any rights, security or moneys held, received or receivable by the Fund Trustee;
 - (b) exercise against or claim from the Performing Subsidiary any right of contribution or recourse;
 - (c) claim as a creditor of the Performing Subsidiary in competition with the Fund Trustee; or

(d) have the benefit of or take any action to receive or claim any payment, distribution or security in respect of the Guaranteed Obligations or amounts payable under this Guarantee from or on account of the Performing Subsidiary, or exercise any right of set-off as against the Performing Subsidiary (and the Guarantor waives any right it would otherwise have to have the benefit of or receive or claim any such payment, distribution or security or to exercise any such right of set-off).

2.9 This Guarantee will not be discharged or otherwise affected as security for the Guaranteed Obligations as a result of any of the following:

- (a) bankruptcy, moratorium of payment, winding-up, reconstruction, liquidation or similar proceedings relative to the Performing Subsidiary;
- (b) any change in the status, function, control or ownership of the Performing Subsidiary;
- (c) any extension of time or other forbearance being granted or agreed to be granted to the Performing Subsidiary in respect of its Guaranteed Obligations;
- (d) any amendment to, or any increase, variation, waiver or release of, any of the Guaranteed Obligations or any termination, amendment or variation of the Final Funding Agreement (and any reference herein to the Final Funding Agreement shall be taken as referring to the Final Funding Agreement as amended or varied from time to time);
- (e) the taking, variation, compromise, exchange, substitution, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights or remedies against, or security over assets of the Performing Subsidiary or any other person, or any non-presentment or non-observance of any formality or other requirement in respect of any instruments or any failure to realise the full value of any security;
- (f) any present or future guarantee, indemnity, mortgage, charge, pledge, lien or other security or right or remedy held by or available to the Fund Trustee being or becoming wholly or in part void, voidable or unenforceable on any ground whatsoever; or
- (g) any other act, event or omission (other than performance by the Guarantor of this Guarantee) which, but for this clause might operate to discharge, extinguish, impair or otherwise affect any of the obligations of the Guarantor contained herein or any of the rights, powers or remedies conferred in respect of the Guarantor upon the Fund Trustee and/or the NSW Government by this Guarantee or by law.

3. ENFORCEMENT

3.1 The Fund Trustee may enforce this Guarantee only upon the occurrence of (i) a breach of any Guaranteed Obligation by the Performing Subsidiary; (ii) a

Wind-Up Event; or (iii) a Reconstruction Event, in accordance with and subject to clause 10 of the Final Funding Agreement.

3.2 A claim under this Guarantee in respect of the obligation of the Performing Subsidiary to make Annual Payments (and/or instalments thereof) under clause 9 of the Final Funding Agreement, can only be made if the Performing Subsidiary has been in default (*verzuim*) for a period of 40 days from the date when such Annual Payment (or any instalment thereof) was due, provided that:

- (a) the Performing Subsidiary or the Guarantor has immediately provided to the NSW Government reasons for the default and such reasons are reasonable in the circumstances; and
- (b) the Guarantor has promptly after that due date entered into and continued to pursue or been ready, willing and able to enter into and pursue discussions with the NSW Government and (if available) the Fund Trustee to remedy the breach and provides to the Fund Trustee and NSW Government material particulars of the breach and the proposed remedy or remedies;
- (c) the Guarantor is not and does not become Insolvent at any time during that period; and
- (d) subject to clause 10 of the Final Funding Agreement, a Reconstruction Event does not occur at any time during that period,

provided that such period shall automatically expire upon any of the requirements in paragraphs (a) to (d) inclusive ("**Moratorium Requirements**") ceasing to be satisfied.

If the Moratorium Requirements remain satisfied at the expiry of the above 40 day period and if in the opinion of the Fund Trustee and the NSW Government (acting reasonably) there is a reasonable prospect of the Guarantor or the Performing Subsidiary paying the outstanding amount within a further period of 50 days, the initial 40 day period shall be extended once by a further 50 days, save that such period shall automatically expire upon any of the Moratorium Requirements ceasing to be satisfied.

3.3 Without prejudice to clause 3.2 above, the Fund Trustee shall not be obliged before bringing a claim under this Guarantee:

- (a) to take any action against the Performing Subsidiary or to obtain judgment in any court against the Performing Subsidiary or any other person;
- (b) to file any claim in a bankruptcy, moratorium of payment, winding-up, liquidation or similar proceedings relative to the Performing Subsidiary or any other person; or

(c) to make, enforce or seek to enforce any claim against the Performing Subsidiary or any other person under any agreement or arrangement.

3.4 The restrictions to the enforcement of the Guarantee as set out in clause 3.2 of this Guarantee do not apply in respect of claims under or in relation to the Guarantee brought by the Fund Trustee in summary proceedings (*kort geding*) or other proceedings to obtain urgent interlocutory Court relief.

3.5 The Guarantor waives any and all rights of set off (*verrekening*), counterclaim or suspension (*opschorting*) it may have at any time with respect to amounts payable hereunder against amounts owed to it by the Fund Trustee.

3.6 The Guarantor waives to the fullest extent allowed by the laws of the Netherlands all rights, privileges, defences and exceptions pursuant to the Articles 6:139, 7:852, 853, 854, 855 and 856 of the Dutch Civil Code.

3.7 To the extent permitted by law the Guarantor hereby waives, for the benefit of the Fund Trustee and the NSW Government:

(a) any right to require the Fund Trustee and/or the NSW Government, as a condition of payment or performance by the Guarantor, to:

(i) proceed against or exhaust any security held from the Performing Subsidiary, any other guarantor or any other Person,

(ii) proceed against or have resort to any balance of any credit on the books of the Fund Trustee and/or the NSW Government in favour of the Performing Subsidiary or any other Person, or

(iii) pursue any other remedy in the power of the Guarantee Trustee and/or the NSW Government whatsoever;

(b) any defence arising by reason of the incapacity, lack of authority or any disability or other defence of the Performing Subsidiary or any other guarantor, including any defence based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of the Performing Subsidiary or any other guarantor from any cause other than payment in full of the Guaranteed Obligations;

(c) any defence based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal;

(d)

(i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any discharge of the Guarantor's obligations hereunder;

- (ii) the benefit of any statute of limitations affecting the Guarantor's liability hereunder or the enforcement hereof, and
- (iii) promptness, diligence and any requirement that the Fund Trustee and/or the NSW Government protect, secure, perfect or insure any security interest or lien or any property subject thereto;
- (e) notices, demands, presentments, protests, notices of protest, notices of dishonour and notices of any action or inaction, including acceptance hereof, notices of default hereunder, the Final Funding Agreement, any other Related Agreement or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit to the Performing Subsidiary and any right to consent to any thereof; and
- (f) any defences or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof.

4. REPRESENTATIONS AND WARRANTIES

4.1 The Guarantor warrants that the following is true, accurate and not misleading as of the date of this Guarantee and will at all times after the date of this Guarantee up to and including the Commencement Date be true, accurate and not misleading:

- (a) The Guarantor has been duly incorporated and is validly existing under the laws of its jurisdiction and has the necessary corporate capacity and power to enter into the Guarantee and to perform its obligations under the Guarantee.
- (b) All corporate and other action required to be taken by the Guarantor to authorise the execution of the Guarantee and the performance of its obligations under the Guarantee has been duly taken.
- (c) The Guarantee has been duly executed on behalf of the Guarantor and constitutes legal, valid and binding obligations of the Guarantor, enforceable in accordance with their terms subject to the terms of the opinion from De Brauw Blackstone Westbroek referred to in schedule 5 of the Final Funding Agreement.
- (d) The execution and performance of the Guarantee do not conflict with or result in a breach of any provision of the articles of association of the Guarantor, including but not limited to its corporate purpose, or any provision of any applicable law in force on the date of this Guarantee or any agreement to which the Guarantor is a party.
- (e) No approval, consent, license or notice to any regulatory or governmental body (other than such approvals, consents, licenses or

notices as have been obtained or given) is necessary to ensure the validity, enforceability or performance of the obligations of the Guarantor under the Guarantee.

5. NOTICES

5.1 All notices, consents, waivers and other communications under this Guarantee must be in writing in English and delivered by hand or sent by regular mail, registered mail, express courier, facsimile or e-mail to the appropriate addresses and facsimile numbers set out below or to such address and facsimile number as a Party may notify to the other Party from time to time. A notice shall be effective upon receipt and shall be deemed to have been received at the time of delivery (if delivered by hand, registered mail or express courier) or at the time of successful transmission (if delivered by fax or e-mail).

To the Fund Trustee:

Name: _____
Address: _____
Fax number: _____
Attention: _____

To the NSW Government:

Name: _____
Address: _____
Fax number: _____
Attention: _____

To the Guarantor:

Name: _____
Address: _____
Fax number: _____
Attention: _____

6. NSW GOVERNMENT'S RIGHT TO ENFORCE

- 6.1** The parties agree and acknowledge that clause 16.6 of the Final Funding Agreement provides that the NSW Government shall be entitled directly to enforce all promises made by the Guarantor to the Fund Trustee under this Guarantee to the full extent permitted by law on and subject to the terms of clause 16.6 of the Final Funding Agreement.
- 6.2** Any person (including, but not limited to, a firm, body corporate, unincorporated association, court or authority) who deals with the NSW Government in good faith in relation to this Guarantee may, without enquiry, assume that the NSW Government has complied with clause 16.6 of the Final Funding Agreement unless the contrary is proved.
- 6.3** The parties agree and acknowledge that:
- (a) the Guarantee is a Related Agreement under the Final Funding Agreement;
 - (b) under an Irrevocable Power of Attorney, a copy of which is attached as Annexure A to this Guarantee, and in addition to its rights under clause 6.1 of this Guarantee, the NSW Government shall have the power directly to enforce as an attorney of the Fund Trustee under the Irrevocable Power of Attorney and on behalf of the Fund Trustee all promises made by the Guarantor to the Fund Trustee under this Guarantee, subject to the terms of clause 16.6 of the Final Funding Agreement;
 - (c) under the Final Funding Agreement, the NSW Government and the Fund Trustee covenanted that they will not amend or replace that Irrevocable Power of Attorney without the prior written consent of the Guarantor, not to be unreasonably withheld; and
 - (d) any actions taken by the NSW Government under that Irrevocable Power of Attorney in respect of this Guarantee are valid and binding to the extent such actions are made in accordance with that Irrevocable Power of Attorney.
- 6.4** On the legal relationship of the Beneficiary and the NSW Government vis-à-vis the Guarantor, article 6:16 of the Dutch Civil Code does not apply.

7. CHOICE OF LAW AND JURISDICTION

This Guarantee is governed by the laws of the Netherlands, with the exception of the Netherlands private international law. Any dispute arising out of or in connection with this Guarantee shall be exclusively decided by the competent court in Amsterdam.

8. COUNTERPARTS

This Guarantee may be executed in any number of counterparts. All counterparts together will be taken to be one instrument.

Thus agreed and signed in [] on [], etc.

[Irrevocable Power of Attorney as Annexure A]

Annexure 6 — NSW Government Deed of Release

JAMES HARDIE INDUSTRIES N.V.

THE STATE OF NEW SOUTH WALES

DEED OF RELEASE

ATANASKOVIC HARTNELL
LAWYERS - CORPORATE, FINANCE & TAXATION

Level 10
Atanaskovic Hartnell House
75-85 Elizabeth Street
Sydney NSW
Australia 2000

THIS DEED is made on 2005 between:

1. **James Hardie Industries N.V.** ARBN 097 829 895 incorporated in the Netherlands and having its registered office at Atrium, Unit 04-07, Strawinskyalaan 3077, 1077ZX Amsterdam, The Netherlands, and with its Australian registered office at Level 3, 22 Pitt Street, Sydney, New South Wales (**JHINV**)
2. **The State of New South Wales (NSW Government)**

RECITALS

- A. This deed is entered into by the Parties described above in the following context (some of the expressions used in these recitals being defined in **clause 1** of this deed):
 - (a) on 21 December 2004, the Initial Negotiating Parties entered into a non-binding Heads of Agreement which set out the agreed position of the Initial Negotiating Parties in relation to the principles on which the binding agreement referred to in Recital (b) would be based and the key standing considerations relevant to implementing those principles to be reflected in the binding agreement; and
 - (b) on or about the date of this deed, the NSW Government, JHINV and the Performing Subsidiary entered into a deed (the "**Principal Deed**") which set out the agreed position of those persons in relation to the basis on which, subject to the satisfaction or waiver of the conditions set out in the Principal Deed, JHINV and/or the Performing Subsidiary will provide funding on a long-term basis to the Trustee.
- B. The Parties enter into this deed to give effect to the releases contemplated in **clause 12.1(c)** of the Heads of Agreement.

THIS DEED WITNESSES that the Parties agree to the following:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed:

ABN 60 means ABN 60 Pty Limited (ABN 60 000 009 263).

ABN 60 Foundation means ABN 60 Foundation Pty Ltd (ACN 106 266 611).

ACTU means Australian Council of Trade Unions of Level 2, 393 Swanston Street, Melbourne in the State of Victoria.

Amaba means Amaba Pty Limited (ABN 98 000 387 342).

Amaca means Amaca Pty Limited (ABN 49 000 035 512).

Asbestos Support Groups means each of The Asbestos Diseases Foundation of Australia, Asbestos Diseases Society of Australia Inc, The Asbestos Victims

Association of South Australia, Queensland Asbestos Related Disease Support Society, Gippsland Asbestos Related Disease Support Inc, and Asbestos Diseases Society of Victoria.

Associated Person means:

- (a) each member of the JHINV Group;
- (b) each Liable Entity; and
- (c) each past and present director, officer, employee, adviser or agent of any person described in paragraphs (a) or (b) of this definition.

Banton means Bernie Banton of 133-7 Parramatta Road Granville, in the State of New South Wales, as the designated representative of the Asbestos Support Groups.

Business Day means a day (not being a Saturday or a Sunday) on which banks are open for general banking business in Sydney.

Commencement Date means the date on which the Release Legislation commences.

Controlled Entities has the same meaning as in the Principal Deed.

Deeds of Covenant and Indemnity means:

- (a) the deed of that name dated 16 February 2001 and entered into between JHIL, Amaba and Amaca and any amendments thereto (including without limitation pursuant to the amending deed dated 10 September 2001); and
- (b) the Deed of Covenant Indemnity and Access between JHINV and ABN 60 dated 31 March 2003 and any amendments thereto.

Fund means the Asbestos Injury (JH) Compensation Foundation to be established pursuant to a trust deed in the form initialled by the Parties for the purposes of identification.

Heads of Agreement means the non-binding agreement entered into on 21 December 2004 between the Initial Negotiating Parties.

Initial Negotiating Parties means each of JHINV, the NSW Government, the ACTU, Unions NSW and Banton.

Jackson Inquiry means the Special Commission of Inquiry that was commissioned, by Letters Patent dated 27 February 2004 and 30 June 2004, to inquire into and report on certain matters relating to the establishment of MRCF.

JHIL means the company formerly known as James Hardie Industries Limited (now ABN 60).

JHIL Group means JHIL and its Controlled Entities from time to time.

JHINV Group means JHINV and its Controlled Entities.

Liable Entities means Amaca, Amaba and ABN 60.

MRCF means the Medical Research & Compensation Foundation (ABN 21 095 924 137).

Notice has the meaning given to it in **clause 11**.

Parties means the parties to this deed.

Performing Subsidiary means LGTDD Pty Limited or, if a subsidiary of JHINV other than that entity is nominated under **clause 6.2** of the Principal Deed, that subsidiary.

Person includes any general partnership, limited partnership, corporation, limited liability company, joint venture, trust, business trust, governmental agency, co-operative, association, individual or other entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such a person as the context may require.

Principal Deed means the deed of that name dated on or before the date of this deed initially between JHINV, the Performing Subsidiary and the NSW Government.

Release Legislation has the same meaning as in clause 1 of the Principal Deed.

Relevant Matters means all matters relating to or arising out of any of the following or their facts, matters and circumstances:

- (a) the establishment and underfunding or funding of the MRCF, and the February 2001 ABN 60 group corporate reorganisation (including, without limitation, the transfer of the Liable Entities out of the JHIL Group, representations made to incoming directors of the Liable Entities and other third parties regarding the Liable Entities and their assets and liabilities, the media releases of ABN 60 of 16 February 2001 and of JHINV of 29 and 30 October 2003 and any statements made in relation to any of the foregoing matters);
- (b) the Deeds of Covenant and Indemnity;
- (c) the transfers of assets, and the dividends and management fees paid, by the Liable Entities, as described in the report of the Jackson Inquiry;
- (d) the August to October 2001 ABN 60 group corporate reorganisation (including without limitation the scheme of arrangement in relation to ABN 60 of August to October 2001, the contemporaneous reduction of capital of (and cancellation of fully paid ordinary shares in) ABN 60 and subscription by JHINV for partly paid shares in ABN 60, the subsequent cancellation of those partly paid shares in ABN 60 in March 2003 and representations to third parties and the court and any statements made in relation to any of the foregoing matters); and
- (e) the transfer of assets from ABN 60 to JHINV, the establishment of the ABN 60 Foundation Limited and ABN 60 Foundation Trust, and the allotment of fully paid shares in ABN 60 to ABN 60 Foundation.

Trustee means the trustee of the Fund from time to time, in its capacity as trustee, initially being Asbestos Injuries Compensation Fund Trustee Limited.

Unions NSW means Unions New South Wales of 10th Floor, 377-383 Sussex Street, Sydney in the State of New South Wales.

1.2 Interpretation

In this deed, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this agreement;
- (b) any reference to civil liability has its natural and ordinary meaning;
- (c) words importing the singular include the plural and vice versa;
- (d) words importing a gender include any gender;
- (e) other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning;
- (f) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and vice versa;
- (g) a reference to any thing (including, but not limited to, any right) includes a part of that thing;
- (h) a reference to a Party to a document includes that Party's successors and permitted assigns;
- (i) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute; and
- (j) a reference to a document or agreement includes all amendments or supplements to, or replacements or novations of, that document or agreement.

2 DEED BINDS THE CROWN

This deed binds the Crown in right of New South Wales.

3 RELEASES BY NSW GOVERNMENT

- 3.1 With effect on and from the Commencement Date, and to the maximum extent permitted by law pursuant to this deed (but without requiring any further act by the NSW Government), the NSW Government releases each of JHINV and each Associated Person from any civil liability relating to or arising out of any of the Relevant Matters.
- 3.2 The Parties acknowledge that JHINV holds the benefit of the release set out in **clause 3.1** in favour of an Associated Person on trust for that Associated Person.
- 3.3 Nothing in this deed can nor shall be taken as an admission by JHINV, the Performing Subsidiary or any of their Controlled Entities, directors, officers, employees, advisers or agents (past and present) that it or he or she has had any role in organising or procuring any unlawful action or is or has been in breach of any law.

- 3.4 Each release given under this deed in favour of any Associated Person who is a natural person is absolute, unconditional and irrevocable.
- 3.5 Each release given under this deed in favour of JHINV or any Associated Person which is not a natural person shall be suspended whilessoever:
- (i) the Performing Subsidiary shall be and remains in breach of any obligation to make a Funding Payment under the Principal Deed and such breach shall have remained unremedied for not less than 3 months and remains unremedied;
 - (ii) JHINV is in breach of **clause 7** of the Principal Deed and that breach has not been rectified within a reasonable period (of not less than 3 months) of JHINV having received a Notice under **clause 12.1(f)** of the Principal Deed; or
 - (ii) JHINV is and remains in breach of **clause 7** of the Principal Deed and JHINV has not given a Notice to the NSW Government under **clause 7.9** of the Principal Deed in respect of that breach, and the NSW Government has given JHINV at least 30 days' Notice that the suspension applies.

4 CONFIDENTIALITY

- 4.1 Subject to **clause 4.2**, each Party shall keep the terms of this deed strictly confidential.
- 4.2 A Party may make any disclosures in relation to this deed in the manner and to the extent permitted under the Principal Deed.

5 DEED MAY BE USED IN COURT

- (a) Subject to **clause 5(b)**, except in relation to a breach of this deed, or whilessoever any release given pursuant to this deed has been suspended in accordance with **clause 3.5**, and without affecting the continuing obligations of the Parties pursuant to this deed, this deed may be pleaded as a full and complete defence by JHINV or any Associated Person to any civil liability actions, suits, or proceedings commenced, continued or taken by the NSW Government in relation to any of the Relevant Matters.
- (b) None of JHINV nor any Associated Person which is not a natural person may plead the releases in favour of that person given under **clause 3.1** in defence to any claim against that person by the NSW Government while that release has been suspended under **clause 3.5**.

6 GOVERNING LAW

This Deed shall be construed in accordance with and be governed by the laws of the State of New South Wales and the Parties agree that the courts of that State will be forum of choice in relation to this deed.

7 ENTRY INTO DEED

The Parties acknowledge that this deed is voluntarily entered into and that each Party has obtained their own legal advice concerning its terms.

8 SEVERANCE

If any provision of this deed is held to be invalid or unenforceable for any reason, it will, to the extent that it is invalid or unenforceable, be treated as severed from this deed and will not affect the remaining provisions of this deed.

9 VARIATION OF DEED

This Deed may only be varied or replaced by a deed duly executed by each of the Parties.

10 COUNTERPARTS

This Deed may be executed in any number of counterparts and all counterparts, taken together, constitute one instrument. A Party may execute this deed by executing any counterpart.

11 NOTICES

11.1 A notice, approval, consent, nomination or other communication ("**Notice**") to a person relating to this deed:

- (i) must state that it is a notice relating to this deed;
- (ii) shall state the relevant clause in this deed to which the notice relates;
- (iii) must be in legible writing; and
- (iv) must be in English.

11.2 If the Notice is to JHINV then it must be addressed as follows:

Name: James Hardie Industries NV

Attention: The Chairman

Address: Level 3, 20 Pitt Street, Sydney NSW 2000

Facsimile: (02) 8274 5217

With a copy to:

Attention: The Chief Legal Counsel

Address: Atrium, Unit 04-07, Strawinskylaan 3077, 1077ZX Amsterdam, The Netherlands

Facsimile: 31 (0) 20 404 2544

11.3 If the Notice is to the NSW Government then it must be addressed as follows:

Name: The State of New South Wales, c/- The Cabinet Office

Attention: Deputy Director-General (Legal)

Address: Level 39, Governor Macquarie Tower, Farrer Place, Sydney, NSW 2000

Facsimile: 02 9228 3062

- 11.4 If the Notice is from a corporation then an officer of that corporation must sign the Notice.
- 11.5 Notice is sent by the sender and received by the receiver:
- (i) if the Notice is hand delivered, upon delivery to the receiving Party;
 - (ii) if the Notice is sent by facsimile, upon the successful completion of the relevant transmission;
 - (iii) if the Notice is sent by registered mail within Australia, 2 Business Days after the registration of the notice of posting; and
- 11.6 If the Notice is sent by ordinary mail within Australia, 3 Business Days from and including the date of postage
- 11.7 For the avoidance of doubt, Notice shall not be sent by electronic email.
- 11.8 In **clause 11.5**, a reference to a Party receiving a Notice includes a reference to the receiver's officers, agents or employees.
- 11.9 A Party may vary any of the details relating to it or its officers contained in this **clause 11.2** at any time by Notice to the other Parties.
- 11.10 Where a Notice to a Party must be copied to another Person, each such Notice must be despatched at the same time and using the same method and upon failure to do so, each such Notice will be deemed to be given at the time and by the method of despatch of the last such Notice.

EXECUTED by the Parties as a Deed:

EXECUTED by
JAMES HARDIE INDUSTRIES NV

Signature of Director

Name of Director

EXECUTED by
THE HONOURABLE MORRIS IEMMA MP,
PREMIER OF NEW SOUTH WALES
FOR THE STATE OF NEW SOUTH
WALES

Signature of witness

Name of witness

)
)

Signature of Director/Secretary

Name of Director/Secretary

)
)

Signature

Name

Annexure 7A — Intercreditor Deed (JHINV)

Final draft 10

Annexure 7A to the Final Funding Agreement

DATE: 01.12.2005



LAWYERS

INTERCREDITOR DEED
THE STATE OF NEW SOUTH WALES
ASBESTOS INJURIES
COMPENSATION FUND TRUSTEE
LIMITED (ABN [INSERT])
JAMES HARDIE INDUSTRIES N.V.
(ARBN 097 829 895)
[GUARANTEE TRUSTEE] (ABN
[INSERT])

2 Park Street Sydney NSW 2000 Australia

email@gtlaw.com.au www.gtlaw.com.au Telephone + 61 2 9263 4000 Facsimile + 61 2 9263 4111

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DATED

PARTIES

1. **THE STATE OF NEW SOUTH WALES** of Level 39, Governor Macquarie Tower, Farrer Place, Sydney, NSW 2000 (**NSW Government**)
2. **ASBESTOS INJURIES COMPENSATION FUND TRUSTEE LIMITED (ABN [insert])** of [*insert address*] in its capacity as trustee for the Asbestos Injuries (JH) Compensation Foundation (**Fund Trustee**)
3. **JAMES HARDIE INDUSTRIES N.V.** (ARBN 097 829 895) a limited liability company incorporated in The Netherlands, with its corporate seat in Amsterdam, and having its registered office at Atrium, Unit 04-07, Strawinskyiaan 3077, 1077 ZX Amsterdam, The Netherlands (with its Australian registered office at Level 3, 22 Pitt Street, Sydney in the State of New South Wales) (**JHINV**)
4. **[GUARANTEE TRUSTEE] (ABN [insert])** of [*insert address*] in its capacity as trustee for the Financiers (**Guarantee Trustee**)

The defined terms in the above list of parties are given expanded meanings in the Dictionary in Part 1 of Attachment A to this deed.

BACKGROUND

This deed is entered into in the following context (where capitalised terms are defined in clause 1):

- A. James Hardie Industries Limited (**JHIL**), a company organised under the laws of Australia, was listed on the Australian Stock Exchange in 1951. The business then carried on by JHIL and its subsidiaries had by that time been carried on in Australia, in one form or another and under the “James Hardie” name, for at least 60 years.
- B. Under plans of reorganisation and capital restructuring executed between 1998 and 2001, JHIL sold on arm’s length terms substantially all of its business, operations and undertaking to members of the JHINV Group with the result that JHINV became the ultimate holding company of the businesses formerly carried on or controlled by JHIL.

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- C.** JHINV is a company organised under the laws of The Netherlands and is listed on both the Australian Stock Exchange and the New York Stock Exchange (with the listing on the latter exchange via American Depositary Receipts). At the date of this deed, the JHINV Group carries on the business of manufacturing building products in the United States of America, Australia, New Zealand and the Philippines.
- D.** On 21 December 2004, JHINV and others entered into a non-binding Heads of Agreement containing, among other things, a set of agreed principles on which the Performing Subsidiary will provide, and JHINV will guarantee the payment of, funding to the Fund on a long term basis of compensation for personal injury and death claims made in Australia against JHIL or certain former subsidiaries of JHIL arising from exposure to asbestos in Australia.
- E.** The principles contained in the Heads of Agreement have been developed and are set out in the Final Funding Agreement which is and is intended to be legally binding on all parties to it and to be enforceable at law and equity.
- F.** JHINV has guaranteed the obligations of the Performing Subsidiary under the Final Funding Agreement on and subject to the terms of the Guarantee.
- G.** The creditor of JHINV under the Guarantee is the Fund Trustee.
- H.** The claim of the Fund Trustee against JHINV under the Guarantee is an ordinary unsecured claim (*concurrente vordering*).
- I.** The NSW Government is not a creditor of JHINV in relation to the payment of the Compensation Debt.
- J.** However, the NSW Government shall be entitled to directly enforce all promises made by JHINV to the Fund Trustee under the Guarantee subject to, and in accordance with, the provisions of the Guarantee.
- K.** The purpose of this deed is to set out the agreement between (1) the Fund Trustee and the NSW Government, and (2) the Guarantee Trustee and the Financiers, as to the manner in which certain rights in respect of the Compensation Debt and the Finance Money Debt respectively are to be exercised in an Insolvency of JHINV.

-
- L.** JHINV is a party to this deed for the sole purpose of nominating Persons as Financiers, assuming certain obligations and being entitled to directly enforce the promises made under clauses 2.2 and 8 of this deed (and, if required for such enforcement, clauses 1, 2.1, 2.3 and 10 to 14 inclusive).
- M.** This deed is not intended, and shall not be taken, to (1) affect the status or ranking of the Compensation Debt as an ordinary unsecured claim (*concurrente vordering*) against JHINV, (2) affect the status or ranking of the Compensation Debt as against the other debts (including the Finance Debt Money) or the other creditors of JHINV (including the Financiers) in an Insolvency of JHINV, or (3) constitute a subordination agreement within the meaning of section 3:277 (2) Dutch Civil Code.

THE PARTIES AGREE

1. PRELIMINARY

1.1 Defined Terms and Interpretation

- (a) A term or expression starting with a capital letter which is defined in the Dictionary in Part 1 of Attachment A (**Dictionary**), has the meaning given to it in the Dictionary.
- (b) The Interpretation clauses in Parts 2 and 3 of Attachment A (**Interpretation** and **Trust Convention**) set out rules of interpretation for this deed.

1.2 Consideration

Each party acknowledges entering into this deed and incurring obligations and giving rights under this deed for valuable consideration received from the other parties to this deed (including, in the case of the Fund Trustee, the NSW Government and JHINV, the execution of the Final Funding Agreement and the Guarantee).

Each Replacement Trustee or New Guarantee Trustee who accedes to this deed in accordance with clause 4.6 or 7.6 will be taken to acknowledge becoming a party to this deed and incurring obligations and giving rights under this deed for valuable consideration received from the other parties to this deed.

1.3 Crown immunity

This deed binds the Crown in right of New South Wales and to the maximum extent permitted by law the NSW Government hereby waives all Crown immunity with respect to this deed.

2. DEED

2.1 Effect

Subject to clauses 2.3, 4.6 and 7.6, this deed takes effect as both:

- (a) a deed between the NSW Government, the Fund Trustee, JHINV and the Guarantee Trustee; and
- (b) a deed poll by the NSW Government and the Fund Trustee in favour of each Financier from time to time in respect of any Finance Money Debt raised or incurred by JHINV from time to time during the term of the Final Funding Agreement.

For the avoidance of doubt:

- (i) this deed continues for the term of the Final Funding Agreement even though there may be no Finance Money Debt outstanding at any particular point in time;
- (ii) undertakings expressed to be in favour of some of the parties to this deed (excluding JHINV) are not given in favour of JHINV, although JHINV is entitled to directly enforce the promises made under clauses 2.2 and 8 of this deed (and, if required for such enforcement, clauses 1, 2.1, 2.3 and 10 to 14 inclusive).

2.2 Benefit

- (a) Each Financier has the benefit of, is bound by and is entitled to enforce this deed even though it is not a party to, or is not in existence at the date of execution and delivery of this deed.
- (b) Subject to clause 2.2(f), the benefit and obligations of this deed may be extended to any Person (and such Person shall become a Financier) in relation to any document (and such document shall become a Finance Document) under which

liabilities are owed to such Person where such liabilities are, or are required to be, included in the JHINV Group's financial statements or notes thereto as debt or borrowings (including bank loans, letter of credit facilities, derivatives and debt capital markets issues which are, or are required to be, so included or noted) of JHINV (or another member of the JHINV Group the performance of whose obligations has been guaranteed by JHINV) by JHINV signing and delivering to that Person (or an agent or trustee acting on behalf of that Person) and the Guarantee Trustee, a Financier Nomination Letter and the Person countersigning such Financier Nomination Letter and delivering the countersigned Financier Nomination Letter to the Guarantee Trustee.

- (c) Without limiting clause 2.2(b), the benefits and obligations of this deed do not extend to a Person:
 - (i) by reason of any conduct or representation made by JHINV to that Person; and
 - (ii) unless and until the Guarantee Trustee has received a duly countersigned Financier Nomination Letter from that Person.
- (d) The Guarantee Trustee must:
 - (i) promptly send a copy of each countersigned Financier Nomination Letter to the NSW Government and the Fund Trustee (other than a Financier Nomination Letter in respect of a Financier where this deed has ceased to apply to that Financier in accordance with clause 2.2(g)) upon an officer of the Guarantee Trustee responsible for the day to day administration of this deed becoming aware of the occurrence of an Insolvency of JHINV; and
 - (ii) following the occurrence of an Insolvency of JHINV, on request provide to the NSW Government and the Fund Trustee written confirmation of the nature and quantum of the Finance Money Debt as at the date such information is provided.
- (e) The Fund Trustee and the NSW Government confirm that, subject to clause 2.2(f), each of them has irrevocably and for valuable consideration authorised JHINV to sign and deliver any Financier Nomination Letter, nominating a Person as a Financier and a document as a Finance Document, and acknowledge and

confirm that the provisions of this deed which are for the benefit of the Financiers, will extend to that Financier and the Finance Document so nominated.

- (f) The benefit and obligations of this deed in relation to Financiers may not be extended to any Person who is an Excluded Lender and any such nomination shall be of no force or effect for the purposes of this deed.
- (g) This deed shall cease to apply to a Financier once:
 - (i) there is no Finance Money Debt in respect of that Financier;
 - (ii) JHINV has no outstanding obligations to the Financier in relation to any Finance Money Debt; and
 - (iii) that Financier has no further obligation to provide financial accommodation to JHINV (or another member of the JHINV Group the performance of whose obligations has been guaranteed by JHINV) under the relevant Finance Documents, or that Financier otherwise consents in writing to such cessation.
- (h) If this deed ceases to apply to a Financier in accordance with clause 2.2(g), JHINV and that Financier must promptly notify the Guarantee Trustee.

2.3 Inconsistency

If any provision of the Final Funding Agreement, any Related Agreement (as defined in the Final Funding Agreement, but excluding this deed), the Guarantee, the Finance Guarantee or any Finance Document is inconsistent with this deed, this deed prevails to the extent of the inconsistency unless a contrary intention is expressed in this deed.

3. INTERCREDITOR ARRANGEMENTS

3.1 Purpose of this deed

The purpose of this deed is to set out the agreement between:

- (a) the Fund Trustee and the NSW Government; and

(b) the Guarantee Trustee and the Financiers,

as to the manner in which certain rights in respect of the Compensation Debt and the Finance Money Debt respectively are to be exercised in an Insolvency of JHINV.

3.2 NSW Government not a creditor of JHINV

Notwithstanding the wording of any other provision of the Final Funding Agreement, the Guarantee, any other Related Agreement or this deed, the NSW Government acknowledges that it is not a creditor of JHINV in relation to the payment of the Compensation Debt.

3.3 Turnover

Each Compensation Party agrees for the benefit of the Guarantee Trustee and the Financiers that if JHINV becomes Insolvent, any amount (in the form of money or other property) paid to it by or for the account of, or recovered by it from or for the account of, JHINV in respect of the Compensation Debt, after the occurrence of the relevant Insolvency Event, will be paid to, or otherwise accounted for, to the Guarantee Trustee or the relevant Financiers in accordance with this deed, until the Finance Money Debt has been paid and satisfied in full.

3.4 Status and ranking of the Compensation Debt

The parties to this deed acknowledge and agree that this deed does not:

- (a) affect the status or ranking of the Compensation Debt as an ordinary unsecured claim (*concurrente vordering*) against JHINV;
- (b) affect the status or ranking of the Compensation Debt as against the other debts (including the Finance Money Debt) or the other creditors of JHINV (including the Financiers) in an Insolvency of JHINV; nor
- (c) constitute a subordination agreement within the meaning of section 3:277 (2) Dutch Civil Code.

4. PROCEDURE ON INSOLVENCY

4.1 Proceeds held on trust

Subject to this deed, while JHINV is Insolvent and for so long as any Finance Money Debt remains outstanding, each Compensation Party agrees for the benefit of the Guarantee Trustee and the Financiers to hold all Proceeds received by it from or on account of JHINV (or such proportion of the Proceeds sufficient to discharge and satisfy the Finance Money Debt in full) on trust for the relevant Financiers.

For so long as any Finance Money Debt remains outstanding, then promptly after receipt by it of any Proceeds from or on account of JHINV, each Compensation Party agrees for the benefit of the Guarantee Trustee and the Financiers to notify the Guarantee Trustee and deposit the Proceeds (or such proportion of the Proceeds sufficient to discharge and satisfy the Finance Money Debt in full) into one or more accounts specifically designated by the Guarantee Trustee for that purpose (or, in the case of any Proceeds which consist of property other than money, transfer such property to the Guarantee Trustee).

This clause establishes a trust over the Proceeds. It does not create a charge or other security interest over the Proceeds.

4.2 Distribution of Proceeds

Each Compensation Party agrees for the benefit of the Guarantee Trustee and the Financiers that all Proceeds received by it from or on account of JHINV are to be held and distributed:

- (a) first, to the Guarantee Trustee on account of the Finance Money Debt which remains owing by JHINV to the Financiers, after all payments received from, or due and payable under the Insolvency by, the Insolvency Official and all prior payments under this clause 4.2(a), if any, have been taken into account (“**Net Finance Money Debt**”);
- (b) secondly, to the extent of any balance after repayment of the Net Finance Money Debt owed by JHINV to the Financiers in full, to the Fund Trustee to satisfy the Compensation Debt; and
- (c) thirdly, to the extent of any balance after repayment of the Compensation Debt in full, to JHINV (for its own account).

4.3 Payment of amounts recovered

Subject to the provisions of this clause 4.3, each Compensation Party agrees for the benefit of the Guarantee Trustee and the Financiers that, if at any time while JHINV is Insolvent, an amount (in the form of money or any other property):

- (a) is received or recovered by a Compensation Party on account of the Compensation Debt (which is not subject to the trust in clause 4.1); or
- (b) is paid to any Person other than a Compensation Party in connection with the Compensation Debt with the consent or at the request of a Compensation Party or for the benefit of a Compensation Party; or
- (c) is set off by a Compensation Party against the Compensation Debt (whether by operation of law or otherwise),

the Compensation Party agrees for the benefit of the Guarantee Trustee and the Financiers to promptly notify the Guarantee Trustee and pay into one or more accounts specifically designated by the Guarantee Trustee for that purpose the amount (or, in the case of any Proceeds which consists of property other than money, transfer such property to the Guarantee Trustee) received, recovered, paid or set off (or such proportion of the amount or other property sufficient to discharge and satisfy the Finance Money Debt in full).

If in an Insolvency of JHINV, a Compensation Party is required to refund, repay or otherwise disgorge to, or in favour of, JHINV all or any part of an Annual Payment received prior to the occurrence of the relevant Insolvency Event (otherwise than pursuant to clause 14.9(b) of the Final Funding Agreement as the result of any overpayment of that Annual Payment), this clause 4.3 does not apply if that amount is set off against another amount owed by JHINV to that Compensation Party and no payment is required by that Compensation Party pursuant to this clause 4.3 in respect of the amount set off.

4.4 Residual Rights

If at any time subsequent to the occurrence of an Insolvency Event in respect of JHINV, the Financiers have received, whether by way of distribution by the Insolvency Official in the Insolvency, as payments to the Guarantee Trustee under clause 4 or otherwise, an amount at least equal to the amount (in the form of money or any other property) of the

Finance Money Debt, the Financiers agree for the benefit of the Fund Trustee and the NSW Government that the Financiers must:

- (a) not withdraw, waive, release, compromise or deal in any way with their remaining rights in the Insolvency in relation to the Finance Money Debt (**Residual Rights**);
- (b) until the Compensation Debt has been discharged and satisfied in full, do anything reasonably required by the NSW Government (at the cost of the NSW Government) to assign or otherwise transfer their Residual Rights to the Fund Trustee or to enable the Fund Trustee to be subrogated to, or otherwise enjoy the benefit of, the Residual Rights; and
- (c) pay any money and/or any other property received pursuant to the Residual Rights to the Fund Trustee.

4.5 No exercise of Financiers' rights

As long as any of the Finance Money Debt remains outstanding, each Compensation Party and the NSW Government agree for the benefit of the Guarantee Trustee and the Financiers that such party may not, without the prior written consent of the Guarantee Trustee, exercise any right to claim to be entitled to the benefit of any of the rights of some or all of the Financiers (including the benefit of any Residual Rights or any Security Interest or guarantee, indemnity or assurance against financial loss in respect of any Finance Money Debt).

In addition, if a Replacement Trustee has been appointed or nominated, but not yet executed and delivered an Accession Deed (and a power of attorney as required by clause 8.1(b)) in accordance with clause 4.6, the NSW Government agrees for the benefit of the Guarantee Trustee and the Financiers to ensure that, as long as any of the Finance Money Debt remains outstanding, the Replacement Trustee does not exercise or seek to exercise any right to claim to be entitled to the benefit of any of the rights of some or all of the Financiers (including the benefit of any Residual Rights or any Security Interest or guarantee, indemnity or assurance against financial loss in respect of any Finance Money Debt).

4.6 Substitution of the Fund Trustee

If a Replacement Trustee is appointed in accordance with the Final Funding Agreement then the NSW Government must:

- (a) promptly notify the Guarantee Trustee of the appointment and the identity and contact details of the Replacement Trustee; and
- (b) procure, at its own expense, that the Replacement Trustee duly executes and delivers an Accession Deed (and a power of attorney as required by clause 8.1(b)) to each party to this deed.

A Replacement Trustee acquires no rights or benefits under this deed (either in its capacity as such or as successor to the Fund Trustee) until such time as an Accession Deed (and a power of attorney as required by clause 8.1(b)) has been duly executed by the Replacement Trustee and delivered to each party to this deed. This clause does not require such documents to be delivered to a Financier.

The NSW Government shall ensure that the Replacement Trustee is incorporated in the State of New South Wales.

4.7 Additional Rights

- (a) If in connection with an Insolvency of JHINV a Compensation Party is required to disgorge or unwind all or part of the recovery of receipt of Proceeds or any other amounts (in the form of money or other property) received by it from, or on account of, JHINV and which have been paid to the Guarantee Trustee or a Financier in accordance with this clause 4, the Guarantee Trustee or the relevant Financier (as the case may be), must promptly, following a request from the relevant Compensation Party, repay to the relevant Compensation Party the amounts (or other property) so received by it from that Compensation Party.
- (b) If in connection with an Insolvency of JHINV the Guarantee Trustee or a Financier is required to disgorge or unwind all or part of the recovery of any money and/or any other property received pursuant to the Residual Rights and which have been paid to the Fund Trustee in accordance with clause 4.4(c), the Fund Trustee, must promptly, following a request from the Guarantee Trustee or the relevant Financier (as the case may be), repay to the Guarantee Trustee or the

relevant Financier (as the case may be), the amounts (or other property) so received by it in accordance with clause 4.4(c).

5. RIGHTS IN RELATION TO THE COMPENSATION DEBT

5.1 No prohibition

Subject to the provisions of clauses 3.3, 4.1, 4.2, 4.5, 6 and 8 of this deed, no Compensation Party nor the NSW Government is prohibited by this deed from, or restricted in exercising all or any of its rights under the Final Funding Agreement or the Guarantee in relation to the obligations and liabilities of JHINV, whether before or after the occurrence of an Insolvency Event in respect of JHINV.

Without limiting the generality of the foregoing, but subject to the provisions of clauses 3.3, 4.1, 4.2, 4.5, 6 and 8 of this deed, a Compensation Party and the NSW Government (but only to the extent it is entitled to do so acting in accordance with the Final Funding Agreement and applicable law) may:

- (a) make demand for, commence proceedings in relation to, enforce any judgment in relation to and compromise or settle any claim in relation to all such obligations and liabilities;
- (b) seek or obtain from any court of competent jurisdiction at any time an order directing JHINV to make any payment under or to specifically perform its obligations under the Final Funding Agreement or the Guarantee, or similar equitable relief;
- (c) make application to any court of competent jurisdiction for the winding up of, or in relation to the Insolvency, of JHINV;
- (d) be present and vote at any meeting of creditors or other meeting which it is entitled to attend concerning any proposal relating to JHINV or at any meeting relating to the Insolvency of JHINV;
- (e) individually make submissions to an Insolvency Official in connection with any Insolvency of JHINV;
- (f) prove the Compensation Debt in any Insolvency of JHINV; and

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- (g) participate in any proceedings relating to its right to vote and prove or otherwise participate in any meeting, proceeding or distribution concerning the Insolvency of JHINV.

5.2 NSW Government Enforcement Rights

- (a) Any action or the enforcement of any rights of a Compensation Party under this deed in the event of an Insolvency of JHINV may only be taken by the NSW Government, unless the NSW Government otherwise consents in writing to the Fund Trustee taking such action or enforcing those rights.

For the avoidance of doubt, this clause does not preclude an Attorney exercising any rights under a power of attorney granted pursuant to, and in accordance with, clause 8.

- (b) Any action taken by the NSW Government under this deed:
- (i) shall oblige the Fund Trustee to cause any similar or inconsistent action to be revoked, rescinded or discontinued, provided that the Fund Trustee may resume or initiate any such action if and to the extent that the corresponding action taken by the NSW Government is revoked or abandoned by notice in writing by the NSW Government; and
 - (ii) shall oblige the NSW Government to hold on trust for the Fund Trustee any amounts (in the form of money or other property) received or recovered under, or in respect of, the action taken.
- (c) Where this deed requires or contemplates the consent of, or a nomination or determination by the Fund Trustee, such consent, nomination or determination shall only be effective if consented to by the NSW Government, and the Guarantee Trustee must not accept or act on a notice of consent, nomination or determination, or any other direction, by the Fund Trustee, unless such notice is accompanied by consent from the NSW Government.
- (d) Without limiting clauses 5.2(a) or (c), the parties acknowledge that:
- (i) under clause 16.6(f) of the Final Funding Agreement the Fund Trustee has agreed not to, without the prior written consent of the NSW Government, waive or compromise all or any part of any payment

(actually or contingently) due from JHINV or the Performing Subsidiary under the Final Funding Agreement or any Related Agreement (including this deed); and

- (ii) any such waiver or compromise by the Fund Trustee that is not accompanied by such written consent from the NSW Government shall be invalid and has no effect on the obligations of the parties under this deed and cannot be relied upon by the parties or pleaded by way of estoppel or otherwise in any action or proceeding for the enforcement of the Final Funding Agreement or any Related Agreement (including this deed).
- (e) The NSW Government acknowledges that its right to enforce this deed is subject to the clause 16.6 of the Final Funding Agreement (but, in an Insolvency of JHINV, only to the extent the provisions of that clause apply in an Insolvency of JHINV).
- (f) Without limiting clauses 5.2(a) or (c), the parties acknowledge that the NSW Government may commence or institute proceedings in any jurisdiction in relation to the existence or amount of the Compensation Debt (but, in the case of any Wind Up or Reconstruction Amount (as defined in the Final Funding Agreement), subject to clause 10 of the Final Funding Agreement) or any voting rights attaching thereto, or any matters incidental to determining such amount or voting rights.

6. COVENANTS

6.1 Restriction on dealings

The Fund Trustee and the NSW Government agree for the benefit of the Guarantee Trustee and the Financiers that such party may not assign, transfer, create a Security Interest in respect of or otherwise create rights in respect of or deal with any of its rights under the Final Funding Agreement, the Guarantee or this deed which affect the nature, timing or quantum of the amount actually or contingently payable to a Compensation Party under the Final Funding Agreement, the Guarantee or another Related Agreement, or allow any interest in any such right to be varied, or consent or agree to any of those things, without:

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- (a) the prior written consent of the Guarantee Trustee acting on instructions from all or a specified majority of the Financiers as referred to in clause 7.3; or
 - (b) in the case of the creation of a Security Interest, the holders of that Security Interest and all other persons having an interest in that Security Interest (if any), having agreed to be bound by the corresponding obligations of the relevant Compensation Party or the NSW Government under the Final Funding Agreement, the Guarantee or this deed (as the case may be).

6.2 No security

Each of the Fund Trustee and the NSW Government agree for the benefit of the Guarantee Trustee and the Financiers that it may not do, or agree to do, any of the following:

- (a) (**set off**) during the Insolvency of JHINV, exercise any right of set off in respect of the Compensation Debt;
- (b) (**Security Interest or guarantee**) except for the Guarantee and a Cross Guarantee (Fund Guaranteed Money), accept from JHINV or another member of the JHINV Group the benefit of any Security Interest or guarantee, indemnity or assurance against financial loss in respect of the Compensation Debt; or
- (c) (**arrangements**) enter into any arrangement, take any action or fail to do any thing, which results in any Proceeds received by it from or on account of JHINV (or such proportion of the Proceeds sufficient to discharge and satisfy the Finance Money Debt in full) not being held on trust for the relevant Financiers in accordance with the terms of this deed,

without the prior written consent of the Guarantee Trustee acting on instructions from all or a specified majority of the Financiers as referred to in clause 7.3.

If in an Insolvency of JHINV, a Compensation Party is required to refund, repay or otherwise disgorge to, or in favour of, JHINV all or any part of an Annual Payment received prior to the occurrence of the relevant Insolvency Event (otherwise than pursuant to clause 14.9(b) of the Final Funding Agreement as the result of any overpayment of that Annual Payment), clause 6.2(a) does not prohibit that amount being set off by that Compensation Party against another amount owed by JHINV to that Compensation Party.

7. GUARANTEE TRUSTEE

7.1 Appointment and removal

Subject to clause 7.6, the Fund Trustee and the NSW Government:

- (a) acknowledge that JHINV or the Financiers may appoint, remove and replace the Guarantee Trustee as trustee under the Finance Guarantee (such newly appointed or replacement trustee, a **New Guarantee Trustee**); and
- (b) agree to do anything reasonably required by JHINV, the Financiers, the outgoing Guarantee Trustee or the New Guarantee Trustee to enable the New Guarantee Trustee to become a party to this deed in substitution for the outgoing Guarantee Trustee.

7.2 Sole Representative

- (a) So long as a Person is acting as trustee under the Finance Guarantee, the Fund Trustee and the NSW Government may deal exclusively with that Person in respect of all matters concerning this deed.
- (b) The Financiers acknowledge and confirm that the Person acting as trustee under the Finance Guarantee is empowered to exercise all of their rights and powers under this deed and agree not to take any action or proceedings to set aside any act, notice or omission of the Guarantee Trustee undertaken in accordance with this deed.

7.3 Acknowledgement by Fund Trustee and the NSW Government

The Fund Trustee and the NSW Government acknowledge that in exercising some or all of the rights and powers of the Financiers under this deed (including voting on any matter in any meeting, proceeding or distribution concerning the Insolvency of JHINV), the Guarantee Trustee may be required to obtain instructions and/or consent from all or a specified majority of the Financiers.

If the Guarantee Trustee is so required to obtain instructions and/or consent from all or a specified majority of the Financiers, the Guarantee Trustee must promptly request such instructions and/or consent.

The Fund Trustee and the NSW Government are entitled to rely on any representation by the Guarantee Trustee in relation to its instructions.

7.4 No Guarantee Trustee

Subject to clause 8.10, if no Person is acting as trustee under the Finance Guarantee, then unless a contrary intention is apparent from this deed, all references to the Guarantee Trustee in this deed shall be taken to be references to each Financier to which this deed applies from time to time acting severally such that each Financier may severally exercise the rights of the Guarantee Trustee.

If the Guarantee Trustee is to cease to be trustee under the Finance Guarantee and a New Guarantee Trustee is not being appointed in accordance with clause 7.6, the outgoing Guarantee Trustee must send promptly a copy of each countersigned Financier Nomination Letter to the Fund Trustee and the NSW Government (other than a Financier Nomination Letter in respect of a Financier where this deed has ceased to apply to that Financier in accordance with clause 2.2(g)).

7.5 Acknowledgement by Guarantee Trustee

The Guarantee Trustee acknowledges and undertakes (and each New Guarantee Trustee at the date of becoming a party to this deed will be deemed to acknowledge and undertake) that it:

- (a) is a recognised trustee company under the laws of the place in which its Specified Office is located;
- (b) has relevant and substantive experience and expertise in custody of financial obligations and in Insolvency proceedings generally;
- (c) except to the extent it is entitled to be paid fees or reimbursed or indemnified for costs and expenses by JHINV, has no interest or duty which to its knowledge conflicts or may conflict with its functions under this deed; and
- (d) is not a member of a firm, or a director or employee of a firm or a body owned by a firm, performing any role as advisor, banker, custodian or trustee to JHINV, another member of the JHINV Group or (except for roles undertaken in the ordinary course of business for state owned business enterprises) the NSW

Government during a period of 3 years prior to the date of this deed or becoming a party to this deed, as the case may be.

7.6 Substitution of Guarantee Trustee

- (a) JHINV or the Financiers can only replace the Guarantee Trustee with any Person who at the date of becoming a New Guarantee Trustee:
- (i) is a recognised trustee company under the laws of the place in which its Specified Office is located;
 - (ii) has relevant and substantive experience and expertise in custody of financial obligations and in Insolvency proceedings generally;
 - (iii) except to the extent it is entitled to be paid fees or reimbursed or indemnified for costs and expenses by JHINV, has no interest or duty which to its knowledge conflicts or may conflict with its functions as contemplated under this deed; and
 - (iv) is not a member of a firm, or a director or employee of a firm or a body owned by a firm, performing any role as advisor, banker, custodian or trustee to JHINV, another member of the JHINV Group or (except for roles undertaken in the ordinary course of business for state owned business enterprises) the NSW Government during a period of 3 years prior to becoming a party to this deed.
- (b) A substitution under clause 7.6(a) will not occur and a New Guarantee Trustee acquires no rights or benefits under this deed unless and until the New Guarantee Trustee duly executes and delivers an Accession Deed to each party to this deed. This clause does not require an Accession Deed to be delivered to a Financier.
- (c) If the New Guarantee Trustee is not incorporated in Australia, the Financiers must procure, at no expense to the Fund Trustee or the NSW Government, the delivery to the Fund Trustee and the NSW Government of an opinion of generally recognised independent legal counsel qualified to practise in the relevant jurisdiction to the effect that the Accession Deed and this deed are valid, binding and enforceable obligations of the New Guarantee Trustee (subject to laws and defences generally affecting the enforcement of contracts and the discretionary nature of equitable remedies).

7.7 Standard of Duty

The Guarantee Trustee must exercise, and must procure that each Authorised Officer of the Guarantee Trustee exercises, good faith and the same degree of care, skill and diligence as a reasonable and prudent Person would exercise in carrying out its functions, duties and obligations under this deed.

7.8 Functions, duties and obligations of the Guarantee Trustee

7.8.1 Role of the Guarantee Trustee

Subject to the other provisions of this deed, the Guarantee Trustee must:

- (a) upon an officer of the Guarantee Trustee responsible for the day to day administration of this deed becoming aware of any Insolvency of JHINV, promptly send to each Compensation Party a notice which requests them to advise in writing the amount of the Compensation Debt or, alternatively, the basis on which the Compensation Debt is to be calculated and, in the event of a conflict in the amount of the Compensation Debt advised by the Fund Trustee and the NSW Government, then (in the absence of manifest error) the amount advised by the NSW Government prevails;
- (b) not do anything to prevent or interfere with a Compensation Party proving the Compensation Debt in an Insolvency (to the extent that the Compensation Party is acting in accordance with the Final Funding Agreement and applicable law);
- (c) not make any representation or submission to an Insolvency Official in relation to the valuation of the claims of the Compensation Parties in respect of the Compensation Debt unless reasonably requested by the NSW Government;
- (d) where the Guarantee Trustee is entitled to exercise any vote pursuant to clause 8, take all necessary and reasonable steps permitted by applicable law to exercise that vote for the value of the Compensation Debt for the purposes of the Insolvency of JHINV (including the presentation of all evidence and submissions to any Insolvency Official as reasonably requested by the NSW Government);
- (e) promptly advise each Compensation Party of any dispute between:
 - (i) the Guarantee Trustee; and

(ii) an Insolvency Official, JHINV and/or one or more creditors of JHINV,

in relation to the Compensation Debt or this deed and which may come before a court of competent jurisdiction, and take all reasonable steps permitted by applicable law to delay the determination of the dispute for such period of time (as is reasonable having regard to the procedural laws governing the conduct of the dispute before the relevant court of competent jurisdiction) so as to give the Compensation Parties a reasonable opportunity to present evidence and submissions to the relevant court of competent jurisdiction if it so wishes;

(f) if JHINV is Insolvent, take all reasonable action permitted by applicable law to ensure that:

(i) all moneys recoverable in respect of the Finance Money Debt are duly and promptly recovered from the relevant Insolvency Official; and

(ii) any amount payable or repayable to a Compensation Party by a Financier under this deed, by reason of that Financier receiving whether by way of distribution by the Insolvency Official in the Insolvency, as payments by a Compensation Party under this deed or otherwise, an amount in excess of the Finance Money Debt owed to that Financier, are paid or repaid by that Financier to that Compensation Party;

(g) not do anything to prevent or interfere with a Compensation Party promptly recovering from the relevant Insolvency Official all moneys which are recoverable in respect of the Compensation Debt;

(h) take all reasonable steps permitted by applicable law and requested by the NSW Government to assist the Compensation Parties with the determination of any dispute between:

(i) a Compensation Party; and

(ii) an Insolvency Official, JHINV and/or one or more creditors of JHINV.

in relation to the Compensation Debt or this deed;

(i) to the extent permitted by applicable law, apply for and use reasonable endeavours to obtain any stay, extension of time or other order in relation to the

Insolvency of JHINV which the Guarantee Trustee reasonably considers is necessary in order to enable any Independent Expert to discharge its responsibilities under and in accordance with clause 8 or which the NSW Government reasonably requests for such purpose;

- (j) upon an officer of the Guarantee Trustee responsible for the day to day administration of this deed becoming aware of any breach of this deed by any party, promptly notify JHINV, the Financiers and the Compensation Parties of that breach including details of that breach; and
- (k) promptly notify JHINV, the Financiers and the Compensation Parties if for any reason it is unable to perform its obligations under this deed.

7.8.2 Provision of information

Without limiting the provisions of clause 8 in relation to Notice of Voting in Insolvency, the Guarantee Trustee and each Compensation Party agree to give notice to the Compensation Parties or the Guarantee Trustee, as the case may be, of any request received from an Insolvency Official in an Insolvency of JHINV which seeks instructions and/or consent from one or more creditors of JHINV (including, for the avoidance of doubt, a Financier, the Guarantee Trustee or a Compensation Party) or otherwise requests action to be taken by one or more creditors of JHINV in exercise of their respective rights as creditors of JHINV.

7.8.3 Limitations on the obligations of the Guarantee Trustee

Notwithstanding clause 7.8.1, the Guarantee Trustee is not required to do any act, matter or thing requested by the NSW Government (including make any representation or submission, or present any evidence, to an Insolvency Official or provide any assistance with the determination of any dispute between a Compensation Party and an Insolvency Official before a court of competent jurisdiction) which in the opinion of the Guarantee Trustee (after having received advice from legal counsel appointed by it and acting reasonably) will constitute a breach by the Guarantee Trustee of its fiduciary duties owed to the Financiers in respect of the Finance Money Debt (including, for the avoidance of doubt, any duty not to act in manner which conflicts with a direction of all or a specified majority of the Financiers).

If any such act, matter or thing will constitute such a breach, the Guarantee Trustee must promptly notify the NSW Government and take all reasonable steps subsequently

requested by the NSW Government and permitted under applicable law to ensure that the objective of the original act, matter or thing requested by the NSW Government is able to be otherwise achieved:

- (a) in a manner which does not constitute a breach by the Guarantee Trustee of its fiduciary duties owed to the Financiers in respect of the Finance Money Debt; or
- (b) by the NSW Government doing the relevant act, matter or thing in a manner which, if the relevant act, matter or thing had been done by the Guarantee Trustee, would be in accordance with this deed.

7.8.4 Duties of Guarantee Trustee

The Guarantee Trustee has no duties to the Compensation Parties or the NSW Government except as expressly provided for in this deed.

7.8.5 Limitation on Liability

To the extent permitted by law, nothing in this clause 7.8 imposes liability on the Guarantee Trustee for:

- (a) special, indirect, incidental, consequential or punitive damages; or
- (b) economic loss, loss of profits, loss of revenue, or loss of goodwill,

arising out of any action undertaken by it in accordance with clause 7.8.1, except to the extent resulting from the fraud, negligence or wilful misconduct of the Guarantee Trustee.

7.8.6 Indemnity

To the extent permitted by law, the NSW Government indemnifies and keeps indemnified the Guarantee Trustee against any claims, cost or liability which may be imposed and which arises out of any action properly undertaken by it in accordance with 7.8.1(c) or undertaken by the Guarantee Trustee in accordance with a request of the NSW Government under clause 7.8.1, except to the extent caused by the fraud, negligence or wilful misconduct of the Guarantee Trustee or the failure of the Guarantee Trustee to take action at the request of the NSW Government.

8. VOTING IN INSOLVENCY PROCEEDINGS

8.1 Irrevocable Appointment of Attorney

- (a) Subject to this clause 8, Asbestos Injuries Compensation Fund Trustee Limited in its capacity as trustee for the Asbestos Injuries (JH) Compensation Foundation irrevocably and for valuable consideration agrees to appoint the Guarantee Trustee and each Authorised Officer of the Guarantee Trustee individually as the attorney of Asbestos Injuries Compensation Fund Trustee Limited in its capacity as trustee for the Asbestos Injuries (JH) Compensation Foundation (together with any person appointed as an attorney in accordance with clauses 8.1(b) and (c), an **Attorney**) to vote the Compensation Debt during the Insolvency of JHINV or at any meeting, proceeding or distribution concerning the Insolvency of JHINV for so long as any Finance Money Debt remains outstanding, by executing a power of attorney substantially in the form of Schedule 3 to this deed, provided that any vote must be exercised in accordance with this clause 8 and Asbestos Injuries Compensation Fund Trustee Limited in that capacity further irrevocably and for valuable consideration agrees, if required for further assurance, to execute a proxy or authority in a form ordinarily required under the applicable law governing the relevant proceeding.
- (b) Subject to this clause 8 and simultaneously with executing and delivering an Accession Deed in accordance with clause 4.6, each Replacement Trustee must irrevocably and for valuable consideration appoint the Guarantee Trustee and each Authorised Officer of the Guarantee Trustee individually as the attorney of the Replacement Trustee to vote the Compensation Debt during the Insolvency of JHINV or at any meeting, proceeding or distribution concerning the Insolvency of JHINV for so long as any Finance Money Debt remains outstanding, by executing a power of attorney substantially in the form of Schedule 3 to this deed provided that any vote must be exercised in accordance with this clause 8 and the Replacement Trustee further irrevocably and for valuable consideration agrees, if required for further assurance, to execute a proxy or authority in a form ordinarily required under the applicable law governing the relevant proceeding.
- (c) Subject to this clause 8, the Fund Trustee and the NSW Government agree not to vote or attempt to vote the Compensation Debt during the Insolvency of JHINV or at any meeting, proceeding or distribution concerning the Insolvency of JHINV for so long as any Finance Money Debt remains outstanding.

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- (d) The Fund Trustee irrevocably and for valuable consideration authorises the Guarantee Trustee to provide an original or copy of any power of attorney executed in accordance with clause 8.1(a) or (b) to an Insolvency Official for the purpose of establishing the right and entitlement of each Attorney during the Insolvency of JHINV to exercise the appointor's right to vote the Compensation Debt at any meeting, proceeding or distribution concerning the Insolvency of JHINV.
- (e) The Guarantee Trustee must ensure that an Attorney only exercises, and in circumstances where the Guarantee Trustee is itself appointed an Attorney, the Guarantee Trustee must only exercise, its rights under a power of attorney granted in accordance with this clause 8 in accordance with, and subject to, the provisions of this deed.
- (f) To the extent required under applicable law, the Fund Trustee agrees to ratify:
- (i) anything the Guarantee Trustee does in accordance with this clause 8, and such ratification is without prejudice to its rights in respect of any breach of this deed by the Guarantee Trustee; and
 - (ii) whatever an Attorney does in exercising powers under a power of attorney granted in accordance with this clause 8, provided that there is no obligation to ratify or confirm any act or matter in breach of this deed or any applicable law.
- (g) Subject to the provisions of this deed, each Compensation Party and the NSW Government must not do anything to prevent or interfere with the exercise by:
- (i) the Guarantee Trustee of its rights and powers, or the performance of its obligations, under this clause 8; or
 - (ii) an Attorney of its rights and powers, or the performance of its obligations, under the relevant power of attorney.
- (h) Subject to the terms and conditions of this deed and subject to compliance with its provisions, an Attorney may exercise the right to vote in the appointor's name or, if necessary or desirable under the applicable law governing the relevant proceeding, the Attorney's name, and may do anything necessary or incidental to such exercise including signing and delivering documents.

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- (i) If for any reason whatsoever an Attorney is not entitled by operation of law to exercise its rights under the relevant power of attorney, the appointor shall exercise those rights as directed by the Guarantee Trustee, provided such directions are in accordance with this clause 8.
 - (j) The Guarantee Trustee must promptly provide the NSW Government with reasonable details of any action taken by the Guarantee Trustee or an Attorney in respect of the exercise of its powers under a power of attorney granted in accordance with this clause 8.
 - (k) The Guarantee Trustee must promptly provide full details of any action taken or any votes cast by the Guarantee Trustee or an Attorney in respect of the Compensation Debt.

8.2 Voting

- (a) The Compensation Parties are responsible for proving the Compensation Debt in any Insolvency of JHINV and providing such information as to the value of the Compensation Debt as is required by the relevant Insolvency Official for the purposes of ascribing a value to the Compensation Debt for the purposes of an Insolvency of JHINV. In proving the Compensation Debt, the Compensation Parties must:
 - (i) use reasonable endeavours to ensure that the relevant Insolvency Official sends all Notices of Voting in Insolvency in an Insolvency of JHINV (or a copy of all such notices) to the Guarantee Trustee; and
 - (ii) to the extent such notices are received by the Compensation Parties, provide a copy to the Guarantee Trustee.

Notwithstanding any other provision of this deed other than, and subject to, clauses 7.8.1(b) and (c), the Guarantee Trustee is not responsible for proving the Compensation Debt in any Insolvency of JHINV.

The Compensation Parties agree to provide the Guarantee Trustee with copies of all documents submitted to the relevant Insolvency Official for the purposes of ascribing a value to the Compensation Debt for the purposes of an Insolvency of JHINV or ensuring that the relevant Insolvency Official sends all Notices of

Voting in Insolvency in an Insolvency of JHINV (or a copy of all such notices) to the Guarantee Trustee.

- (b) Subject to clauses 8.8 and 8.9, during the Insolvency of JHINV the Guarantee Trustee must ensure that an Attorney only votes on any matter in any meeting, proceeding or distribution concerning the Insolvency of JHINV in respect of the Compensation Debt in accordance with the instructions of the Financiers given in accordance with the Finance Guarantee, provided that:
- (i) the Guarantee Trustee must ensure that an Attorney does not vote unless the Guarantee Trustee has provided the NSW Government with 10 Business Days notice (or, subject to clause 7.8.1(i), such shorter notice as the Guarantee Trustee determines is reasonable having regard to the terms of the Notice of Voting in Insolvency) of the Attorney's intention to vote and the Attorney votes in accordance with the intention as notified; and
 - (ii) if an Independent Expert has been appointed under clause 8.3, and the Independent Expert has determined that, in its opinion, the criteria set out in:
 - A. clauses 8.4(a), (b), (c) and, if applicable, (d); or
 - B. clause 8.4(e),are satisfied in relation to the Preferred Option or a particular choice as described in clause 8.3(a)(ii)(B) or (C), as the case may be, then the Guarantee Trustee must ensure that an Attorney votes in favour of the Preferred Option or that particular choice.
- For the avoidance of doubt, the Guarantee Trustee must ensure that an Attorney votes in accordance with the proviso to this clause 8.2(b) irrespective of any instructions of the Financiers to the contrary given in accordance with the Finance Guarantee.
- (c) Each of the Fund Trustee and NSW Government acknowledge that in clause 10.5 of the Final Funding Agreement they agreed that, without prejudice to their obligations under or the operation of this deed and to the extent permitted by law, all voting rights arising out of the Guarantee will be exercised in respect of any

proposed composition with creditors, plan of arrangement, plan of reorganization, or other restructuring for JHINV in connection with any Reconstruction Event (“**Plan**”) so as to vote in favour of the Plan where, if the Plan were to come into force the conditions specified in clause 10.5 of the Final Funding Agreement would be satisfied.

Accordingly, if the circumstances in clause 10.5 of the Final Funding Agreement apply, the Fund Trustee and NSW Government agree that the Plan is the Preferred Option.

- (d) If following the occurrence of a Wind-Up Event in respect of JHINV, the value of the assets of JHINV available for distribution to pay the claims of ordinary unsecured creditors (or realisation to allow such payment), as determined or estimated (in the absence of manifest error) by the relevant Insolvency Official (or otherwise determined or estimated for the purposes of the relevant Insolvency proceeding in accordance with applicable law) is equal to or less than the amount required to enable discharge and satisfaction of the Finance Money Debt in full, then, subject to clauses 8.8 to 8.10 inclusive, during the Wind-Up Event an Attorney may vote on any matter in any meeting, proceeding or distribution concerning the Wind-Up Event in respect of the Compensation Debt in accordance with the instructions of the Financiers given in accordance with the Finance Guarantee and clauses 8.2(b) and (c), 8.3 to 8.7 inclusive and 8.11 do not apply.

8.3 Appointment of an Independent Expert

- (a) If during the Insolvency of JHINV:

(i) the Guarantee Trustee or an Attorney receives a Notice of Voting in Insolvency (or a copy of a Notice of Voting in Insolvency); and

(ii) a vote on any matter in any meeting, proceeding or distribution concerning the Insolvency of JHINV requires a choice between:

- A. two or more options, proposals, courses of action or other alternatives (howsoever described) (**Options**) for the partial or full winding up, restructure or reconstruction of JHINV or the realisation of some or all of JHINV’s assets in connection with its Insolvency;

B. deferring or not deferring any action; or

C. extending or not extending the Insolvency proceeding,

then the Guarantee Trustee must promptly provide the NSW Government with a copy of the Notice of Voting in Insolvency and procure the appointment of an Independent Expert in accordance with this clause 8.3, such appointment to be made within 10 Business Days of receipt by the Guarantee Trustee of the Notice of Voting in Insolvency (unless the NSW Government gives notice that it does not so require).

- (b) The Guarantee Trustee must, prior to any appointment of an Independent Expert under this deed, provide the NSW Government with 5 Business Days notice (or, subject to clause 7.8.1(i), such shorter notice as the Guarantee Trustee determines is reasonable having regard to the terms of the Notice of Voting in Insolvency) of the Person nominated by the Guarantee Trustee to act as Independent Expert, together with evidence demonstrating such nominee's compliance with the criteria and qualifications required of an Independent Expert under this deed.
- (c) If an Independent Expert is appointed under this clause 8.3, the costs of the Independent Expert shall be borne by the NSW Government.
- (d) Subject to clause 8.3(e), upon receipt of a Notice of Voting in Insolvency and at any time prior to 2 Business Days before the latest date on which the Independent Expert must make a determination in accordance with clauses 8.4 and 8.5 (or, subject to clause 7.8.1(i), such earlier time as the Guarantee Trustee determines is reasonable having regard to the terms of the Notice of Voting in Insolvency and advises the Fund Trustee and the NSW Government), the NSW Government may nominate:
 - (i) an Option which it would like an Attorney to vote for in respect of the Compensation Debt; or
 - (ii) if the vote relates to deferring or not deferring any action or extending or not extending the Insolvency proceeding, which alternative it would like the Attorney to vote for in respect of the Compensation Debt.

(e) If an Independent Expert appointed under this clause 8 determines that an Option, other than the Option nominated by the NSW Government under clause 8.3(d)(i), satisfies the criteria set out in:

- (i) clauses 8.4(a), (b), (c) and if applicable, (d); or
- (ii) clause 8.4(e),

then the NSW Government may immediately, with notice in writing to the Guarantee Trustee, nominate the Option so determined by the Independent Expert as the Option that it would like an Attorney to vote for in respect of the Compensation Debt.

(f) For the purposes of this clause 8 and subject to clause 8.2(c), **Preferred Option** means:

- (i) subject to clause 8.3(f)(ii), the Option nominated by the NSW Government under clause 8.3(d)(i); or
- (ii) if the circumstances in clause 8.3(e) apply, the Option nominated by the NSW Government under clause 8.3(e); or
- (iii) if the circumstances in clause 8.3(g) apply, the Option nominated by the NSW Government under clause 8.3(g); or
- (iv) if the NSW Government has not nominated an Option in accordance with clause 8.3(d)(i) or 8.3(e), the Preferred Option is deemed to be the Option which the Independent Expert determines satisfies the criteria set out in:
 - A. clauses 8.4(a), (b), (c) and, if applicable, (d); or
 - B. clause 8.4(e),

and in respect of which the amounts anticipated to be received by, or on behalf of the Fund, have a higher net present value than any other Option having regard (among any other factors) to any potential future payment by JHINV or a James Hardie Successor (under an agreement similar in its effect to the Final Funding Agreement) in respect of part or all amounts

payable under the guarantee of payment of the Fund Guaranteed Money in accordance with the Guarantee.

- (g) If the Independent Expert determines that there are two or more Options which satisfy the criteria set out in clause 8.2(b)(ii), the NSW Government may notify the Guarantee Trustee in writing which Option it wishes to nominate as the Preferred Option.

8.4 Role of the Independent Expert

If an Independent Expert is appointed under this clause 8, the Independent Expert shall determine (and shall be instructed by the Guarantee Trustee only to determine), in its opinion:

- (a) whether, one or more Options (if approved and implemented in the manner described in the Notice of Voting in Insolvency) are likely to result in the recovery by the Guarantee Trustee of an amount in respect of the Finance Money Debt which would be sufficient (taking into account prior ranking claims, the likely or anticipated distribution to Financiers by the Insolvency Official and any likely payment to the Guarantee Trustee under clause 4) to discharge and satisfy the Finance Money Debt in full;
- (b) whether one or more of the Options which satisfy the requirements of paragraph (a) (if approved and implemented in the manner described in the Notice of Voting in Insolvency) are likely to result in the recovery by the Guarantee Trustee in respect of the Finance Money Debt of an amount:
- (i) which would be at least 5% greater than the amount which the Guarantee Trustee would be likely to recover in respect of the Finance Money Debt under any other Option, after allowing for the time value of money; and
 - (ii) which would discharge and satisfy the Finance Money Debt in full by a date no later than 12 months after the earliest date by which any of the other Options would achieve full discharge and satisfaction of the Finance Money Debt; and
- (c) whether the conditions (if any) attached to one or more of the Options which satisfy the requirements of paragraph (a) (as described in the Notice of Voting in Insolvency) do not involve a materially greater risk of non-recovery, or delay in

recovery of more than 12 months, by the Guarantee Trustee of an amount which would be sufficient (taking into account prior ranking claims, the likely or anticipated distribution to the Financiers by the Insolvency Official and any likely payment to the Guarantee Trust under clause 4) to discharge and satisfy the Finance Money Debt in full, compared to the risks of non-recovery, or delay in recovery of more than 12 months, associated with the other Options (taking into account the conditions (if any) attached to those other Options (as described in the Notice of Voting in Insolvency)); and

- (d) if one of more of the Options which satisfy the requirements of paragraph (a) (if approved and implemented in the manner described in the Notice of Voting in Insolvency) are each likely to result in the recovery by the Guarantee Trustee of an amount sufficient to discharge and satisfy the Finance Money Debt in full within substantially the same period of time (taking into account prior ranking claims, the likely or anticipated distribution to the Financiers by the Insolvency Official and any likely payment to the Guarantee Trust under clause 4), which Option would result in the amounts anticipated to be received by, or on behalf of, the Fund in respect of the Compensation Debt having a higher net present value than the other Options having regard (among any other relevant factors) to any potential future payment by JHINV or a James Hardie Successor (under an agreement similar in its effect to the Final Funding Agreement) in respect of part or all amounts payable under the guarantee of payment of the Fund Guaranteed Money in accordance with the Guarantee; and
- (e) if the vote relates to deferring or not deferring any action or extending or not extending the Insolvency proceeding, which choice is likely to result in:
 - (i) a greater net recovery in respect of the Finance Money Debt (taking into account prior ranking claims, the likely or anticipated distribution to the Financiers by the Insolvency Official and any likely payment to the Guarantee Trust under clause 4); or
 - (ii) if either choice would result in the recovery by the Guarantee Trustee of an amount sufficient to discharge and satisfy the Finance Money Debt in full (taking into account prior ranking claims, the likely or anticipated distribution to the Financiers by the Insolvency Official and any likely payment to the Guarantee Trust under clause 4), a greater net recovery in respect of the Compensation Debt (taking into account prior ranking claims, the likely or anticipated distribution to the Financiers by the

Insolvency Official and any likely payment to the Guarantee Trust under clause 4) within the next 12 months.

8.5 Notice of determination by the Independent Expert

The Independent Expert shall send its determination, together with reasons and supporting material, in writing to the Guarantee Trustee and the NSW Government within 10 Business Days of its appointment (or such shorter period as the Guarantee Trustee may specify at the time of appointment of the Independent Expert having regard to the terms of the Notice of Voting in Insolvency).

8.6 Assistance to the Independent Expert

Subject to any duty of confidentiality or applicable law, the Guarantee Trustee, the Financiers, JHINV, the Fund Trustee and the NSW Government must promptly provide the Independent Expert with any information or assistance it reasonably requests for the purpose of making its determination under clause 8.4.

8.7 Determination by the Independent Expert final

The determination of the Independent Expert shall (in the absence of manifest error) be final and binding on the Guarantee Trustee, each Financier, JHINV, the Fund Trustee and the NSW Government.

8.8 Consent of NSW Government required in certain circumstances

- (a) Subject to clauses 8.9 to 8.11 inclusive, but otherwise notwithstanding any other provision of clauses 8.2 to 8.7 inclusive, the Guarantee Trustee must ensure that an Attorney does not, without the prior written consent of the NSW Government, vote in respect of the Specified Proportion of the Compensation Debt in favour of any arrangement, assignment, reconstruction, composition, option, proposal or other course of action proposed in connection with JHINV's Insolvency which, if approved and implemented, would result in the extinguishment of any part of the Compensation Debt (other than by payment in full or upon the final dissolution or winding up of JHINV in circumstances where there will be an insufficiency of assets to enable payment of any part of the Compensation Debt taking into account prior ranking claims, the distribution to the Financiers by the Insolvency Official and payments to the Guarantee Trust under clause 4). An Attorney may vote the balance of the Compensation Debt in accordance with the instructions of

the Financiers given in accordance with the Finance Guarantee (or, in the absence of such instructions, as the Guarantee Trustee directs).

- (b) Where there are two or more Options, the Guarantee Trustee must appoint and obtain advice from an Independent Expert in accordance with clauses 8.3 and 8.4 and, provided that the Independent Expert has had due regard to the matters specified in clause 8.4, the Guarantee Trustee must, subject to clauses 8.2(d) and 8.9 to 8.11 inclusive, ensure that an Attorney votes the Specified Proportion of the Compensation Debt in favour of the Preferred Option. An Attorney may vote the balance of the Compensation Debt in accordance with the instructions of the Financiers given in accordance with the Finance Guarantee.

8.9 Options providing for a return to shareholders of JHINV

Notwithstanding any other provision of this clause 8, where any arrangement, assignment, reconstruction, composition, option, proposal or other course of action is proposed in connection with JHINV's Insolvency which, if approved and implemented, would result in:

- (a) a return to the shareholders of JHINV without:
- (i) payment of the Compensation Debt in full; or
 - (ii) the entry into an arrangement approved by the NSW Government by a James Hardie Successor which is materially similar in nature and value to the arrangements under the Final Funding Agreement; or
- (b) a maintenance or continuing standing of JHINV or the creation or promotion of any James Hardie Successor, under which shareholders of JHINV have or might have any continuing value or interest attaching to their shares in JHINV,

the Guarantee Trustee must appoint and obtain advice from an Independent Expert.

Where the Independent Expert determines that if the arrangement, assignment, reconstruction, composition, option, proposal or other course of action was implemented, the return to, or interests of, the shareholders of JHINV in JHINV or a James Hardie Successor, would exceed US\$10 million in aggregate value (**Shareholder Option**), the Guarantee Trustee must, subject to clause 8.10, ensure that an Attorney votes against the Shareholder Option, in respect of 100 per cent (100%) of the Compensation Debt, unless:

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- (i) the NSW Government has otherwise consented; or
 - (ii) the Independent Expert has determined that the implementation of the arrangement, assignment, reconstruction, composition, option, proposal or other course of action would be likely to result in a greater return in respect of the Compensation Debt than any other option which is likely to be available (including a Wind-Up Event in respect of JHINV), having regard (among any other relevant factors) to any potential future payment by JHINV or a James Hardie Successor (under an agreement similar in its effect to the Final Funding Agreement) in respect of part or all amounts payable under the guarantee of payment of the Fund Guaranteed Money in accordance with the Guarantee.

Where the return to, or interests of the shareholders of JHINV in JHINV or a James Hardie Successor is less than or equal to US\$10 million in aggregate value the Guarantee Trustee must ensure that an Attorney votes in accordance with this clause 8 and otherwise with the instructions of the Financiers given in accordance with the Finance Guarantee.

If an Independent Expert is appointed under this clause 8.9, the costs of the Independent Expert shall be borne by the NSW Government.

8.10 Defaulting or absent Guarantee Trustee

If:

- (a) a court of competent jurisdiction has determined that the Guarantee Trustee is in breach of, or default under, this deed; or
- (b) there is no Person acting as trustee under the Finance Guarantee,

then for so long as such breach or default continues and remains unremedied, or until a Person is appointed as a New Guarantee Trustee in accordance with clause 7.6, as the case may be, the Compensation Parties may exercise any vote in any Insolvency proceeding in respect of the Compensation Debt which would otherwise be exercised by an Attorney.

8.11 Residual Power

If the Guarantee Trustee is obliged by reason of this clause 8 to ensure that an Attorney votes in a manner recommended by the Independent Expert, the Guarantee Trustee may cause the Attorney to vote in another manner approved by the NSW Government.

9. CHANGES TO RIGHTS

9.1 Rights of the Financiers are protected

- (a) Rights given to or for the benefit of the Financiers under this deed, and the obligations of each Compensation Party and the NSW Government under it, are not affected by any act or omission by a Compensation Party, the NSW Government, the Guarantee Trustee, any Financier or any other Person or by any other act, other matter or thing whatsoever, whether negligent or not, except as agreed to in writing by the Guarantee Trustee. For example, those rights and liabilities are not affected by:
- (i) any act or omission:
 - A. varying or replacing any arrangement under which any Finance Money Debt or Compensation Debt is expressed to be owing, such as by increasing a facility limit or extending the term;
 - B. releasing or discharging JHINV or any Security Provider (including discharge by operation of law) or giving them a concession (such as more time to pay);
 - C. releasing any Person who gives a guarantee or indemnity in connection with any of JHINV's obligations;
 - D. releasing, losing the benefit of, or not obtaining any Security Interest or negotiable instrument;
 - E. by which the obligations of a Compensation Party, the NSW Government, JHINV or any Security Provider may not be enforceable;
 - F. by which any Person who was intended to guarantee or provide a Security Interest securing all or part of the Finance Money Debt does not do so, or does not do so effectively;

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- G. by which a Compensation Party or the NSW Government is discharged from its obligations to the Financiers by operation of law;
 - H. by which any Security Interest which could be registered is not registered; or
 - I. any other thing causing any prejudice (including material prejudice);
- (ii) a Person dealing in any way with a Security Interest, guarantee, indemnity, judgment or negotiable instrument;
 - (iii) the death, mental or physical disability, incapacity, Insolvency or any legal limitation of any Person including JHINV, a Compensation Party or the NSW Government;
 - (iv) changes in the membership, name or business of any Person;
 - (v) JHINV opening an account with any Financier;
 - (vi) acquiescence or delay by any Financier or any other Person;
 - (vii) an assignment of rights or a novation in connection with all or part of the Finance Money Debt or the Compensation Debt;
 - (viii) the acceptance of the repudiation of, or termination of, any Finance Document or any other document or agreement; or
 - (ix) any payment to a Financier, including any payment which at the payment date or at any time after the payment date is, in whole or part, illegal, void, voidable, avoided or unenforceable.

This clause applies regardless of whether JHINV, a Compensation Party or the NSW Government is aware of, has consented to or is given notice of any act, omission, matter or thing referred to in this clause. This clause does not limit the obligations of a Compensation Party or the NSW Government under this deed.

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- (b) Subject to this deed, the Financiers may act freely in their interests in relation to any matter concerning the Finance Money Debt without regard to the interests of a Compensation Party or the NSW Government or the terms of the Compensation Debt and without incurring any liability to a Compensation Party or the NSW Government.

9.2 Payments

The Fund Trustee and the NSW Government agree to make any payments required under this deed:

- (a) to, or as directed by, the Guarantee Trustee;
- (b) in full without set off or counterclaim, and without any deduction in respect of Taxes unless prohibited by law; and
- (c) in the currency in which it receives or recovers payment in respect of the Compensation Debt.

9.3 Reinstatement of rights

Under any law relating to Insolvency, a Person may claim that a transaction (including a payment) in connection with this deed or the Finance Money Debt is void or voidable. If such a claim is made and upheld, conceded or compromised, then the Financiers are immediately entitled as against each Compensation Party and the NSW Government to the rights under this deed in respect of the Finance Money Debt to which they were entitled immediately before the transaction. On request from the Financiers, each Compensation Party and the NSW Government agrees to do anything reasonably required and at the cost of the Financiers (including signing any document) to restore to the Financiers any right the Financiers held under this deed immediately before the transaction.

This clause 9.3 applies whether or not the Guarantee Trustee or a Financier, knew, or ought to have known, that the transaction would or may be void or voidable.

9.4 Set-off

A Financier may set off any amount due for payment by the Financier to a Compensation Party against any amount due for payment by that Compensation Party to the Financier. This does not restrict any right of set-off which may arise at law.

9.5 Discretion in exercising rights

A Financier may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this deed expressly states otherwise.

9.6 Partial exercising of rights

If any party or a Financier does not exercise a right or remedy fully or at a given time, that party or the Financier (as the case may be) may still exercise it later.

9.7 Remedies cumulative

The rights and remedies of each party and the Financiers under this deed are in addition to other rights and remedies given by law independently of this deed.

9.8 Variation and waiver

Unless this deed expressly states otherwise, a provision of this deed, or right created under it, may not be waived or varied except in writing signed by the party or parties to be bound and with the prior written consent of the other parties.

For the avoidance of doubt, but subject to any requirement for the Guarantee Trustee to obtain instructions and/or consent from all or a specified majority of the Financiers as referred to in clause 7.3, this clause 9.8 does not require a Financier to sign any such waiver or variation.

10. INCONSISTENT LAW

10.1 Inconsistent law

To the extent permitted by law, this deed prevails to the extent it is inconsistent with any law.

10.2 Supervening legislation

Any present or future legislation which operates to vary the obligations of a Compensation Party or the NSW Government in connection with this deed with the result that the Financiers' rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

11. NOTICES

(a) A notice, approval, consent, nomination or other communication (including a Financier Nomination Letter) (**Communication**) to a Person relating to this deed:

- (i) must state that it relates to this deed and state the relevant clause in this deed;
- (ii) must be signed by an Authorised Officer;
- (iii) must be in legible writing; and
- (iv) must be in English.

(b) Communications must be addressed as follows:

If the Communication is to NSW Government then it must be addressed as follows:

Name:

Attention:

Address:

Facsimile:

unless the NSW Government has notified the other parties of new contact details, in which case the Communication must be addressed in the manner last notified by the NSW Government.

If the Communication is to the Fund Trustee then it must be addressed as follows:

Name:

Attention:

Address:

Facsimile:

unless the Fund Trustee has notified the other parties of new contact details, in which case the Communication must be addressed in the manner last notified by the Fund Trustee.

A copy of any such Communication to the Fund Trustee must promptly be sent to the NSW Government in accordance with this clause 11.

If the Communication is to the Guarantee Trustee then it must be addressed as follows:

Name:

Attention:

Address:

Facsimile:

unless the Guarantee Trustee has notified the other parties of new contact details, in which case the Communication must be addressed in the manner last notified by the Guarantee Trustee.

If the Communication is to a Financier then it must be addressed as specified in the relevant Financier Nomination Letter, unless the Financier has subsequently notified the other parties of new contact details, in which case the Communication must be addressed in the manner last notified by the Financier.

If the Communication is to a Replacement Trustee or a New Guarantee Trustee then it must be addressed as specified in the relevant Accession Deed, unless the Replacement Trustee or New Guarantee Trustee has subsequently notified the other parties of new contact details, in which case the Communication must be addressed in the manner last notified by the Replacement Trustee or New Guarantee Trustee.

- (c) If the Communication is sent by the sender it shall be deemed to be received by the receiver:
- (i) if the Communication is hand delivered, upon delivery to the receiving party;
 - (ii) if the Communication is sent by facsimile, upon the successful completion of the relevant transmission;
 - (iii) if the Communication is sent by registered mail within Australia, 2 business days after the registration of the notice of posting; and
 - (iv) if the Communication is sent by ordinary mail within Australia, 3 business days from then including the date of postage, provided that where a notice to a party must be copied to another Person, each such notice will only be given at the time the last notice is received.
- (d) For the avoidance of doubt, a Communication shall not be sent by electronic email.

12. GOVERNING LAW AND JURISDICTION

12.1 Governing law

This deed is governed by the laws of New South Wales.

12.2 Submission to jurisdiction

Each party and Financier submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales, and waives any right to claim that those courts are an inconvenient forum.

12.3 Service

- (a) A document may be served on a party or a Financier by delivering it to that party at its address in clause 11.
- (b) This clause 12.3 does not prevent another mode of service.

13. COUNTERPARTS

This deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

14. GENERAL

14.1 Severability

- (a) If a provision of this deed is invalid, illegal or unenforceable, then that provision to the extent of the invalidity, illegality or unenforceability must be ignored in the interpretation of this deed.
- (b) All the other provisions of this deed remain in full force and effect.

14.2 No waiver

- (a) A party's agreement to waive a right or entitlement under this deed is only effective if that party gives written notice of that waiver to the party seeking the benefit of the waiver.
- (b) Waiver by a party of anything required to be done under this deed is not a waiver of any other thing required to be done under this deed.
- (c) Paragraph (b) applies whether the other act or thing required to be done under this deed is of the same or a different nature as the act or thing waived.
- (d) A failure or delay in exercising a right arising from a breach of this deed is not a waiver of that right.
- (e) The parties must not waive this clause 14.

14.3 Further assurances

Each party and Financier must do everything necessary to give full effect to this deed.

14.4 Entire agreement

- (a) This deed embodies the entire agreement between the Fund Trustee and the NSW Government on the one part, and the Guarantee Trustee and the Financiers on the other part.
- (b) This deed supersedes all previous agreements.

14.5 Cumulative rights

A right, power, discretion and remedy arising out of this deed in favour of a party or a Financier:

- (a) is cumulative; and
- (b) does not diminish any other right, power, discretion and remedy of any party or a Financier.

14.6 Certificates

A Financier or the Guarantee Trustee may give a Compensation Party or the NSW Government a certificate about an amount payable or other matter in connection with this deed, the Finance Guarantee or a Finance Document. The certificate is sufficient evidence of the amount or matter, unless it is proved to be incorrect.

14.7 Amendment of this deed

The parties can only vary a term of this deed if the variation is in writing and all parties execute an amending deed.

14.8 Confidentiality

Subject to the exceptions set out below, each party shall, and shall procure that its employees, officers, agents and advisers (each a “**Representative**”) keep strictly confidential all information provided to that party or its Representatives in relation to, or

in connection with the Final Funding Agreement, this deed and the other Related Agreements and each party shall be responsible for all acts and omissions of its Representatives in relation to such information.

A party (and its Representatives) may disclose information under or obtained in connection with the Final Funding Agreement, this deed and the other Related Agreements as may be necessary to:

- (a) the party's related bodies corporate, professional advisors, bankers, financial advisors and financiers, if those persons undertake to keep the information disclosed confidential;
- (b) comply with any applicable law or requirement of any regulatory body (including any relevant stock exchange) and any corporate governance guidelines adopted by such bodies which are adopted by such party;
- (c) any of its employees to whom it is necessary to disclose the information, if that employee undertakes to keep the information confidential;
- (d) any Person as permitted by the written agreement of all parties; or
- (e) any Person if the content of the disclosure is or has become generally available to the public otherwise than by breach of this deed.

15. GUARANTEE TRUSTEE LIMITATION OF LIABILITY

[To be provided by the Guarantee Trustee]

Executed as a deed

Each person executing this deed states that the person has no notice of the revocation, termination or suspension of the authority pursuant to which the person executes this deed.

Signed, sealed and delivered by **The Honourable Morris Iemma MP,**
Premier of New South Wales,
for The State of New South Wales

Signed, sealed and delivered by **Asbestos Injuries Compensation Fund Trustee Limited** in its capacity as trustee for the **Asbestos Injuries (JH) Compensation Foundation**

[Insert name]

[Insert name]

[Insert Capacity]

[Insert Capacity]

Signed, sealed and delivered by James Hardie Industries N.V.

[Insert name]

[Insert name]

[Insert Capacity]

[Insert Capacity]

Signed, sealed and delivered by [*Guarantee Trustee*]

[Insert name]

[Insert Capacity]

[Insert name]

[Insert Capacity]

SCHEDULE 1
FINANCIER NOMINATION LETTER

[Date]

To: [Financier]

Intercreditor Deed — Financier Nomination Letter

We refer to the Intercreditor Deed between the State of New South Wales, Asbestos Injuries Compensation Fund Trustee Limited, ourselves and [insert name] (**Guarantee Trustee**) dated [insert date] (**Intercreditor Deed**).

For the purposes of the Intercreditor Deed, on and from the date of this letter:

We nominate the following document as a finance document:

Name: [insert details]
Date: [insert details]
Parties: [insert details]

The agreement described above, and each document named or referred to as a [“Finance Document”] in that agreement, is a Finance Document for the purposes of the Intercreditor Deed; and

We nominate you as a “Financier” in relation to each Finance Document referred to above.

Please confirm your acceptance of the above nomination, and the benefit and obligations of the Intercreditor Deed, by signing and returning the attached copy of this letter to the Guarantee Trustee.

Clauses 1 (**Interpretation**) and 12 (**Governing law and Jurisdiction**) of the Intercreditor Deed apply to this letter as they were fully set out in this letter.

Executed as deed poll for and on behalf of

JAMES HARDIE INDUSTRIES N.V.

with its corporate seat in Amsterdam

by its Authorised Officer:

Name:

Title:

Endorsement by the Guarantee Trustee:

We undertake that, if required by clause 2.2(b) of the Intercreditor Deed, we will send a copy of the signed Financier Nomination Letter to the State of New South Wales and the Fund Trustee (each as defined in the Intercreditor Deed).

Executed as a deed poll for and on behalf of

[INSERT NAME OF GUARANTEE TRUSTEE]

by its Authorised Officer:

Name:

Title:

Acceptance by the nominated Financier

We accept and agree to the above nomination.

We acknowledge becoming entitled to the benefit of the Intercreditor Deed and incurring obligations and giving rights under the Intercreditor Deed for valuable consideration received from the parties to the Intercreditor Deed.

We further acknowledge that the Intercreditor Deed does not:

- (a) affect the status or ranking of the Compensation Debt as an ordinary unsecured claim (*concurrente vordering*) against JHINV;
- (b) affect the status or ranking of the Compensation Debt as against the other debts (including the Finance Money Debt) or the other creditors of JHINV (including the Financiers) in an Insolvency of JHINV; nor

(c) constitute a subordination agreement within the meaning of section 3:277 (2) Dutch Civil Code.

We accept the benefit and obligations of the Intercreditor Deed, and agree to:

- (i) be bound by the terms of that deed;
- (ii) promptly respond to any requests from the Guarantee Trustee for (A) instructions as to the manner in which the Guarantee Trustee should exercise any of its rights or benefits under the Intercreditor Deed, or (B) any consent required from the Financiers (and agree not to unreasonably withhold or delay such consent); and
- (iii) agree that if we fail to promptly so respond, the Guarantee Trustee may exercise such rights or benefits in accordance with the instructions of the requisite majority of the Financiers who do so respond in accordance with the Finance Guarantee.

Executed as a deed poll for and on behalf of

[Insert name of Financier]

by its Authorised Officer:

Name:

Title:

SCHEDULE 2
ACCESSION DEED

[Date]

To: [Existing parties to the Intercreditor Deed]

Intercreditor Deed — Accession as [Replacement Trustee / New Guarantee Trustee]

We refer to the Intercreditor Deed between the State of New South Wales, Asbestos Injuries Compensation Fund Trustee Limited, James Hardie Industries N.V. and [*insert name*] (**Guarantee Trustee**) dated [*insert date*] (**Intercreditor Deed**).

We acknowledge becoming a party to the Intercreditor Deed and incurring obligations and giving rights under the Intercreditor Deed for valuable consideration received from the other parties to the Intercreditor Deed.

We hereby undertake, for the benefit of existing parties to the Intercreditor Deed, that on and from the date of this letter, we will perform and comply with all the duties and obligations [of a Replacement Trustee and the Fund Trustee] [expressed to be assumed by [a Replacement Trustee / New Guarantee Trustee]] under the Intercreditor Deed.

Clauses 1 (**Interpretation**) and 12 (**Governing law and Jurisdiction**) of the Intercreditor Deed apply to this letter as they were fully set out in this letter.

Executed as a deed poll for and on behalf of

[NAME OF REPLACEMENT TRUSTEE / NEW GUARANTEE TRUSTEE]

by its Authorised Officer:

Name:

Title:

SCHEDULE 3
FORM OF POWER OF ATTORNEY

Appointer: [Asbestos Injuries Compensation Fund Trustee Limited in its capacity as trustee for the Asbestos Injuries (JH) Compensation Foundation] / [[*name of replacement trustee*] as replacement trustee of the Asbestos Injuries (JH) Compensation Foundation] / [*name of New Person*] as [successor] to [Asbestos Injuries Compensation Fund Trustee Limited] / [*name of replacement trustee*] in its capacity as trustee for the Asbestos Injuries (JH) Compensation Foundation] ([*ABN*]) of [*address of Appointer*]

Attorney: [*name of Guarantee Trustee*] ([*ABN*]) (**Guarantee Trustee**) of [*address of Guarantee Trustee*] and each Authorised Officer of the Guarantee Trustee from time to time individually

Date: [*date of power of attorney*]

1. APPOINTMENT

Subject to clause 4, the Appointer irrevocably and for valuable consideration appoints the Attorney to be the Appointer's attorney. This appointment is of each Attorney individually and any two or more of them jointly.

2. WHAT THE APPOINTER MAY DO

The Attorney may:

- (a) exercise the right to cast all and any votes attaching to, or to be cast in respect of, the Compensation Debt during the Insolvency of JHINV at, or in connection with, any meeting, proceeding or distribution concerning the Insolvency of JHINV for so long as any Finance Money Debt remains outstanding and to the exclusion of the right of the Appointor to exercise all of any such votes for so long as any Finance Money Debt remains outstanding;
- (b) do anything necessary or incidental to such exercise including, without limitation, signing and delivering documents;

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- (c) provide an original or copy of this power of attorney to an Insolvency Official for the purpose of establishing the right and entitlement of the Attorney during the Insolvency of JHINV to exercise the right to cast all and any votes attaching to, or to be cast in respect of, the Compensation Debt during the Insolvency of JHINV at, or in connection with, any meeting, proceeding or distribution concerning the Insolvency of JHINV; and
 - (d) do anything which in the Attorney's opinion is necessary or desirable to ensure the validity and enforceability of this power of attorney under any applicable law (including, without limitation, stamping or registering this power of attorney or filing this power of attorney with any government authority).

Subject to the terms and conditions set out in the Intercreditor Deed, the Attorney may do these things in the name and on behalf of the Appointer or, if necessary or desirable under any applicable law in the Attorney's opinion, the Attorney's name.

3. GENERAL

3.1 Attorney's acts valid

Subject to the terms and conditions set out in the Intercreditor Deed, the Appointer declares that all acts, matters and things done by the Attorney in exercising powers under this power of attorney and which are in accordance with the terms and conditions set out in the Intercreditor Deed, will be as valid and effective as if they had been done by the Appointer.

3.2 Benefit to the Attorney

The Attorney may exercise a power under this power of attorney even if:

- (a) it involves a conflict of duty; or
- (b) the Attorney has a personal interest in the doing of that act.

3.3 Governing law

This deed is governed by the law in force in New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of that place.

4. COMPLIANCE WITH INTERCREDITOR DEED

Notwithstanding any other provision of this Power of Attorney, the Attorney must exercise the rights granted to it under this Power of Attorney in accordance with, and subject to, the terms and conditions set out in the Intercreditor Deed.

5. INTERPRETATION

In this power of attorney:

Authorised Officer has the same meaning as in the Intercreditor Deed.

Compensation Debt has the same meaning as in the Intercreditor Deed.

Finance Money Debt has the same meaning as in the Intercreditor Deed.

Insolvency has the same meaning as in the Intercreditor Deed.

Insolvency Official has the same meaning as in the Intercreditor Deed.

Intercreditor Deed means the Intercreditor Deed between the State of New South Wales, Asbestos Injuries Compensation Fund Trustee Limited, James Hardie Industries N.V and [*insert name of Guarantee Trustee*] dated [*insert date*].

JHINV has the same meaning as in the Intercreditor Deed.

EXECUTED as a deed poll

Signed, sealed and delivered by [*name of Appointer*]

[*name of signatory*]

[*capacity of signatory*]

[*name of signatory*]

[*capacity of signatory*]

ATTACHMENT A
DICTIONARY AND INTERPRETATION
(CLAUSE 1)

1. DICTIONARY

In this deed:

Accession Deed means a letter (executed as a deed poll) in the form of Schedule 2 to this deed.

Annual Payment has the meaning given to that term in the Final Funding Agreement.

Attorney has the meaning given to it in clause 8.1(a).

Audited Financial Statements means, in respect of a Person and a Financial Year, the audited consolidated financial statements of that Person for that Financial Year prepared in accordance with the following generally accepted accounting principles (**GAAP**), consistently applied throughout that Financial Year:

- (a) where that Person is Listed at the time the relevant audit report is signed, the generally accepted accounting principles used in that Person's published financial reports; or
- (b) where that Person is not Listed at that time and paragraph (c) does not apply, US GAAP or such other GAAP as is commonly applied by multinational companies at that time in respect of their financial statements; or
- (c) where that Person is not Listed at that time and it and its subsidiaries operate wholly or predominantly in one jurisdiction, the generally accepted accounting principles of that jurisdiction.

Authorised Officer means:

- (a) in the case of the Guarantee Trustee or a Financier, a director or secretary, or an officer whose title contains the word "director", "chief", "head", "president", "vice-president", "executive" or "manager" or a Person performing the functions

of any of them, or any other Person nominated by the Guarantee Trustee or the Financier, as the case may be, as an Authorised Officer for the purposes of this deed;

- (b) in the case of the Fund Trustee, a Person appointed by the Fund Trustee and notified to the Guarantee Trustee and the Financiers as an Authorised Officer for the purposes of this deed, and whose specimen signature is provided with such notification;
- (c) in the case of JHINV, a managing director of JHINV or a person appointed by JHINV and notified to the Fund Trustee, the NSW Government, the Guarantee Trustee and the Financiers as an Authorised Officer for the purposes of this deed, and whose specimen signature is provided with such notification; and
- (d) in the case of the NSW Government, any person who is a member of the Chief Executive Service or the Senior Executive Service of the New South Wales Public Service at the time the relevant act pursuant to this deed is to be undertaken. The Guarantee Trustee may rely on a statement from any person it reasonably believes is a member of the Chief Executive Service or the Senior Executive Service of the New South Wales Public Service that such person is in fact a member of the Chief Executive Service or the Senior Executive Service of the New South Wales Public Service.

Business Day means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in Sydney, Australia and Amsterdam, The Netherlands.

Communication has the meaning given to it in clause 11(a).

Compensation Debt means at any time all amounts then due for payment or which will or may become due for payment or that remain unpaid by JHINV in connection with the Guarantee (including all amounts payable under the guarantee of payment of the Fund Guaranteed Money in accordance with the Guarantee), provided that once such amounts have been ascribed a value by an Insolvency Official for the purposes of an Insolvency of JHINV (including acceptance of a proof of debt for such amounts or a lesser amount by an Insolvency Official), a reference to the Compensation Debt is a reference to amounts having that value, provided that if interest is payable on such amount under applicable law, the Compensation Debt also includes such interest as is payable under applicable law (including all interest accruing on or subsequent to the filing of a petition initiating

any proceeding in bankruptcy or insolvency or any like proceeding whether or not such interest is an allowed claim in such proceeding).

For the avoidance of doubt, the Compensation Debt is only payable once to the Fund Trustee or the NSW Government for the sole benefit of the Fund Trustee in accordance with the terms of the Guarantee, the Final Funding Agreement and the other Related Agreements and nothing in this deed obliges JHINV to pay the same amount to more than one Person.

Compensation Parties means, subject to clause 5.2, the Fund Trustee and the NSW Government.

Controlled Entity means in respect of a Person, another Person in respect of which the first-mentioned Person is required to consolidate in its Audited Financial Statements but, in the case of JHINV, does not include any Liabile Entity (as defined in the Final Funding Agreement) or the Fund Trustee. For the avoidance of doubt, JHINV is not a Controlled Entity of the JHINV Group.

Cross Guarantee (Fund Guaranteed Money) means a guarantee or indemnity (or other covenant to secure the satisfaction of any payment or obligation) given by a member of the JHINV Group (other than JHINV) (**Subsidiary Guarantor**):

- (a) in favour of the Fund Trustee in respect of the Fund Guaranteed Money;
- (b) on substantially the same terms as a guarantee or indemnity (or other covenant to secure the satisfaction of any payment or obligation) given by the Subsidiary Guarantor in respect of financial accommodation provided by a Person to another member of the JHINV Group;
- (c) which terminates when the guarantee, indemnity or other covenant referred to in paragraph (b) terminates whether by express provision or by operation of law,

provided that the Fund Trustee and the NSW Government have entered into a deed on substantially the same terms as this deed in relation to the benefit of any such guarantee or indemnity (or other covenant to secure the satisfaction of any payment or obligation).

Excluded Lender means any Person to the extent that such Person:

- (a) is a trade creditor;

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- (b) has provided any debt on terms that it is to be subordinated to the Compensation Debt;
 - (c) has provided any debt or other borrowing which arises pursuant to a derivative:
 - (i) relating to equity interests in a member of the JHINV Group; or
 - (ii) which is recognised as equity under applicable accounting standards;
 - (d) is a member of the JHINV Group;
 - (e) is or becomes a creditor in respect of an amount owing to such Person in its capacity as a shareholder of JHINV or another member of the JHINV Group otherwise than on arm's length terms;
 - (f) provides financial accommodation to a Controlled Entity of the JHINV Group and receives the benefit of a guarantee or indemnity (or other covenant to secure the satisfaction of any payment or obligation) given by a JHINV Group member (other than JHINV), where there is no Cross Guarantee (Fund Guaranteed Money) provided to the Fund Trustee on substantially the same terms as the Guarantee; or
 - (g) acquires the rights, as a creditor, of any such Person referred to in any of paragraphs (a) to (f) inclusive or their assignees.

Final Funding Agreement means the legally binding agreement so entitled dated 1 December 2005 between JHINV, the Performing Subsidiary and the NSW Government to which the Fund Trustee became a party on [].

Finance Document in relation to a Financier means each agreement to which the Financier (whether or not together with any other Person) is a party under which liabilities are owed by JHINV (or another member of the JHINV Group the performance of whose obligations has been guaranteed by JHINV) where such liabilities are, or are required to be, included in the JHINV Group's financial statements or notes thereto as debt or borrowings (including bank loans, letter of credit facilities, derivatives and debt capital markets issues which are, or are required to be, so included or noted) and which is nominated as a "Finance Document" in a Financier Nomination Letter. For the avoidance of doubt, the Finance Guarantee is not a Finance Document.

Finance Guarantee means the deed dated [*insert date*] given by JHINV, among other things, guaranteeing the obligations of other members of the JHINV Group in favour of the Guarantee Trustee and the Financiers.

Finance Money Debt means at any time, the total of all amounts then due for payment or which will or may become due for payment or that remain unpaid by JHINV (or another member of the JHINV Group where payment of such amounts have been guaranteed by JHINV under the Finance Guarantee) to any Financier (for its own account or for the account of another Person) pursuant to any Finance Document or to the Guarantee Trustee (for the account of a Financier) under the Finance Guarantee, provided that once such amounts have been ascribed a value by an Insolvency Official for the purposes of an Insolvency of JHINV (including acceptance of a proof of debt for such amounts or a lesser amount by an Insolvency Official), a reference to the Finance Money Debt is a reference to amounts having that value, as ascribed from time to time, provided that in determining such value for the purposes of an Insolvency of JHINV:

- (a) if any Financier (for its own account or for the account of another Person) or the Guarantee Trustee (for the account of a Financier):
 - (i) fails to lodge a proof of debt (or similar claim) in an Insolvency of JHINV within the time provided for under applicable law (as such time may be extended by a relevant Insolvency Official); or
 - (ii) lodges a proof of debt (or similar claim) in an Insolvency of JHINV and such proof of debt has not been accepted in whole or part by the relevant Insolvency Official (and such decision is not subject to appeal to, or review by, that Insolvency Official or another relevant Insolvency Official and the time for commencing any such appeal, or requesting any such review, has passed),

such amount shall be deemed to be zero or, in the case of subparagraph (ii), such amount shall be deemed to be reduced to the extent that it is not accepted by the relevant Insolvency Official;

- (b) if interest is payable on such amount under applicable law, the Finance Money Debt also includes such interest as is payable under applicable law (including all interest accruing on or subsequent to the filing of a petition initiating any proceeding in bankruptcy or insolvency or any like proceeding whether or not such interest is an allowed claim in such proceeding);

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- (c) if a Financier enters into, or is otherwise bound by, any conversion of debt to equity (which is not also a distribution subject to paragraph (d) below), then Finance Money Debt shall be deemed to be reduced by the full amount of the face value of the debt (and any applicable interest) so converted; or
- (d) if a Financier receives any money or other property or any other right pursuant to a Reconstruction Event, then Finance Money Debt (and any applicable interest) shall be deemed to be reduced by the full amount of the fair market value of the money, property or right acquired as at the date of receipt.

This definition applies:

- (i) irrespective of the capacity in which JHINV, the other member of the JHINV Group or the Financier became entitled to the amount concerned;
- (ii) irrespective of the capacity in which JHINV, the other member of the JHINV Group or the Financier became liable in respect of the amount concerned;
- (iii) whether JHINV, the other member of the JHINV Group or the Financier is liable as principal debtor, as surety or otherwise;
- (iv) whether JHINV or other member of the JHINV Group is liable alone, or together with another Person;
- (v) even if JHINV or another member of the JHINV Group owes an amount or obligation to the Financier because it was assigned to the Financier, whether or not:
 - A. the assignment was before, at the same time as, or after the date of this deed; or
 - B. JHINV or another member of the JHINV Group consented to or was aware of the assignment; or
 - C. the assigned obligation was secured;
- (vi) even if this deed was assigned to the Financier, whether or not:

A. JHINV or another member of the JHINV Group consented to or was aware of the assignment; or

B. any of the Finance Money Debt was previously unsecured; or

(vii) if JHINV or another member of the JHINV Group is a trustee, whether or not it has a right of indemnity from the trust fund.

Financial Year means a year ending on 31 March, or if there is any change from time to time to the Financial Year of the JHINV Group, the twelve-month period that ends on the new end date adopted by JHINV except that the first such Financial Year after that change shall be a period of not less than six months and not greater than 18 months ending on the new end date.

Financier means each Person nominated as a “Financier” in a Financier Nomination Letter in accordance with clause 2.2(b) of this deed. A reference to a “Financier” includes the Guarantee Trustee or another agent or trustee acting on behalf of the Financier, but excludes an Excluded Lender.

Financier Nomination Letter means a letter (executed as a deed poll by each party to it) in the form set out in Schedule 1 to this deed and, for the avoidance of doubt, includes, without limitation, such a letter provided to any successor or permitted assign of a Financier.

Fund Trustee includes any Replacement Trustee.

Fund Guaranteed Money means, subject to the Performing Subsidiary Intercreditor Deed, all amounts that:

(a) at any time;

(b) for any reason or any circumstance in connection with any agreement, transaction, instrument (whether negotiable or non-negotiable), document, event, act, omission, matter or thing whatsoever;

(c) whether at law or otherwise; and

(d) whether or not of a type but in the contemplation of the parties of the date of this deed,

are payable, are owing but not currently payable, are contingently owing, or remain unpaid by the Performing Subsidiary to the Fund Trustee under the Final Funding Agreement.

Guarantee means the guarantee dated [*insert date*] 2005 given by JHINV, among other things, guaranteeing the obligations of the Performing Subsidiary under the Final Funding Agreement or, subject to compliance with clause 6.1, a guarantee provided in replacement of or in substitution for, or in addition to, that guarantee in accordance with the Final Funding Agreement.

Guarantee Trustee means [*insert name*] or such other Person acting as trustee under the Finance Guarantee (including any New Guarantee Trustee).

Heads of Agreement means the non-binding agreement entered into on 21 December 2004 between JHINV, the NSW Government, the Australian Council of Trade Unions, Unions New South Wales and a representative of certain asbestos victims groups.

Independent Expert means any Person who:

- (a) has relevant and substantive experience and expertise in Insolvency and, if applicable, financial restructuring appropriate to undertake the determination referred to in clause 8;
- (b) except to the extent he or she is entitled to be paid fees or reimbursed or indemnified for costs and expenses by the NSW Government in accordance with this deed, has no interest or duty which to his or her knowledge conflicts or may conflict with his or her functions as contemplated under this deed; and
- (c) is not a member of a firm, or a director or employee of a firm or a body owned by the firm, performing any role as advisor, banker, custodian or trustee to the JHINV Group or (except for roles undertaken in the ordinary course of business for state owned business enterprises) the NSW Government during a period of 3 years prior to the date of appointment under clause 8.

Insolvency Event means, in respect of a Person, the occurrence in respect of that Person of any one or more of the events referred to in paragraphs (a) to (h) of the definition of "Insolvent" .

Insolvency Official means a custodian, receiver, receiver and manager, trustee, liquidator, provisional liquidator, administrator or any other officer appointed in connection with the Insolvency of JHINV and includes, without limitation:

- (a) a receiver in bankruptcy (*curator*), an administrator (*bewindvoerder*) and a liquidator (*vereffenaar*) appointed under Dutch law or a trustee or debtor in possession in any proceedings under Chapter 7 or Chapter 11 of the US Bankruptcy Code in relation to JHINV (or another member of the JHINV Group in circumstances where the US bankruptcy court has jurisdiction to make an order affecting the nature, timing, quantum or ranking of creditors' claims against JHINV); and
- (b) where the context so requires, a supervisory judge or a court of competent jurisdiction exercising jurisdiction in respect of the Insolvency of JHINV.

A Person is **Insolvent** if the Person:

- (a) admits in writing its inability to pay its debts generally as they become due (otherwise than as contemplated in clause 16.6 of the Final Funding Agreement);
- (b) was established under Dutch law and files a petition with any court in the Netherlands in relation to its bankruptcy (*faillissement*) or seeking an order for a suspension of payments (*surseance van betaling*);
- (c) files, or consents by answer or otherwise to the filing against it of, a petition for relief or insolvent reorganisation or insolvent arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, insolvent reorganisation, insolvent moratorium or other similar law of any jurisdiction (including, without limitation, a filing by the Person under Chapter 7 or Chapter 11 of the US Bankruptcy Code), provided that where the filing is a filing under Chapter 11 of that Code, the Person:
 - (i) is at the time of filing unable to pay its debts generally as and when they become due; or
 - (ii) in the case of JHINV, after it makes such a filing, fails to pay a JHINV Contribution or other amount under the JHINV Guarantee when such payment would (but for the moratorium granted as a result of that filing) have been due for 30 days after that due date,

and also provided that, in any such filing under Chapter 11 of that Code a Person is Insolvent no later than the earliest date as of which creditors may vote on any matter or accept or reject a plan of reorganisation;

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- (d) makes an assignment for the benefit of its creditors generally;
 - (e) consents to the appointment of a custodian (not being a nominee for the person), receiver, receiver and manager, trustee or other officer with similar powers with respect to it or with respect to a substantial part of its property;
 - (f) consents to the appointment of an insolvency administrator or such an insolvency administrator is appointed and that appointment is not terminated within 28 days;
 - (g) is adjudicated as insolvent or to be liquidated, in each case, by a court of competent jurisdiction; or
 - (h) is subject to a Wind-Up Event,

and **Insolvency** has a corresponding meaning.

James Hardie Successor means any entity which will or might pursuant to a restructuring or by any other transaction proposed under, or in connection with, the Insolvency of JHINV acquire the whole or a substantial part of the business or assets of a member of the JHINV Group and which offers or acknowledges an entitlement of the shareholders of JHINV to become shareholders of that entity (disregarding any shareholders to whom it is illegal in their jurisdiction of residence to become such shareholders).

JHIL has the meaning specified in Recital A.

JHINV includes any Parent Entity which has acceded to the Final Funding Agreement in accordance with that document.

JHINV Group means JHINV and its Controlled Entities.

Liquidation means, in respect of any Person, the liquidation of all or substantially all of its assets (other than, in the case of JHINV, where the acquirer of all or substantially all of such assets has by deed of accession become bound to observe all the obligations of JHINV under this deed and the JHINV Guarantee and the other Related Agreements to which JHINV is a party) with the intention of distributing the proceeds to creditors or security holders, or a final order directing or requiring such a liquidation is made or entered or deemed to have been made or entered by any court of competent jurisdiction.

Listed means listed on a stock market of Australian Stock Exchange Limited or any approved foreign exchange (as defined under the Corporations Act 2001 of Australia).

Net Finance Money Debt has the meaning given to it in clause 4.2(a).

New Guarantee Trustee has the meaning given to it in clause 7.1(a).

New Person has the meaning given to it in clause 4.6 of the Final Funding Agreement.

Notice of Voting in Insolvency means a written notice from an Insolvency Official of any matter or matters in connection with the Insolvency of JHINV (or another member of the JHINV Group where the Insolvency of such member is being administered on a combined or consolidated basis with an Insolvency of JHINV including any proceedings or reconstruction pursuant to, or any orders under, Chapter 7 or Chapter 11 of the US Bankruptcy Code which involve both JHINV and such member) and requiring or inviting the casting of votes by creditors of JHINV (or creditors of the companies whose Insolvencies are being administered on a combined or consolidated basis) in relation to such matter or matters.

Option has the meaning given to it in clause 8.3.

Parent Entity means any Person which becomes the ultimate holding company of JHINV.

Performing Subsidiary means LGTDD Pty Limited (ACN 116 110 948) of Level 3, 22 Pitt Street, Sydney NSW 2000 or any other subsidiary of JHINV substituted for that Person in accordance with the terms of the Final Funding Agreement.

Performing Subsidiary Intercreditor Deed means the deed dated on or about the date of this deed between the NSW Government, the Fund Trustee, the Performing Subsidiary, JHINV and the Guarantee Trustee in its separate capacity as trustee for certain lenders to the Performing Subsidiary (as more fully described in that deed).

Person includes any general partnership, limited partnership, corporation, limited liability company, joint venture, trust, business trust, governmental agency, co-operative, association, individual or other entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such a Person as the context may require.

Preferred Option has the meaning given to it in clause 8.3(f).

Proceeds means:

- (a) any amount (in the form of money or any other property) received or recovered by a Compensation Party in respect of the Compensation Debt during an Insolvency of JHINV;
- (b) any amount (in the form of money or any other property) received or recovered by a Compensation Party in connection with the failure by any of them or JHINV to comply with their respective obligations under this deed.

Reconstruction Event means:

- (a) the summoning of a meeting of creditors or the obtaining of an order of a court to do so for the purpose of considering any scheme or plan of arrangement for reconstruction or compromise with creditors;
- (b) a final order for relief under Chapter 11 of the US Bankruptcy Code is entered by a US court;
- (c) a filing by JHINV for a suspension of payments under Dutch law, provided that the Court grants the (provisional) suspension of payments to JHINV;
- (d) any comparable action under the laws of any other jurisdiction occurs having substantially the same effect as the orders described in paragraphs (b) and (c),

but in each case none of the aforementioned events will comprise a Reconstruction Event where the proceeding or other action is commenced or initiated by or on behalf of the Trustee or the NSW Government under this deed or the JHINV Guarantee, whether acting alone or together with others, and for this purpose an order will be deemed to be final when any timely-commenced proceeding for review of such an order has been concluded without such order being subsequently dismissed, withdrawn, struck out, vacated or reversed, and the time for commencing any further proceeding for review of such order has expired.

Related Agreement means documents ancillary to the Final Funding Agreement listed in Schedule 1 to the Final Funding Agreement.

Replacement Trustee means any replacement trustee of the Asbestos Injuries (JH) Compensation Foundation and any New Person, in either case appointed in accordance with the Final Funding Agreement, as a substitute for Asbestos Injuries Compensation Fund Trustee Limited in its capacity as trustee for the Asbestos Injuries (JH)

Compensation Foundation (or a previously appointed replacement trustee or New Person) as the creditor of:

- (a) the Performing Subsidiary in respect of the Fund Guaranteed Money and the Final Funding Agreement; and
- (b) JHINV in respect of the Guarantee (including all amounts payable under the guarantee of payment of the Fund Guaranteed Money).

Residual Rights has the meaning given in clause 4.4.

Security Interest means any mortgage, pledge, lien or charge or any security or preferential interest or arrangement of any kind or any other right of, or arrangement with, any creditor to have its claims satisfied in priority to other creditors with, or from the proceeds of, any asset. This definition:

- (a) includes any retention of title agreements arising other than in the ordinary course of business; and
- (b) excludes any right of set-off, right to combine accounts, or other similar right or arrangement arising in the ordinary course of business or by operation of law.

Security Provider means a Person (other than JHINV) who at any time is liable by guarantee, indemnity or otherwise alone or jointly, or jointly and individually, to pay or indemnify against non-payment of the Finance Money Debt or the Compensation Debt (as the context requires).

Specified Office means the office or branch through which the Guarantee Trustee (or any New Guarantee Trustee) enters into this deed.

Specified Proportion means:

- (a) if in the Insolvency of JHINV, the votes relating to the Compensation Debt can be proportionately cast in favour of different courses of action:
 - A. 100 per cent of the amount of the Compensation Debt,
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B. such percentage of the Compensation Debt, which when added to all Finance Money Debt owed by JHINV, represents the amount reasonably expected at that time (having regard to the value of the assets of JHINV available for distribution to pay the claims of ordinary unsecured creditors as estimated by the Insolvency Official (or otherwise determined or estimated for the purposes of the relevant Insolvency proceeding in accordance with applicable law) and taking into account prior ranking claims, the likely or anticipated distribution to the Financiers by the Insolvency Official and any likely payment to the Guarantee Trust under clause 4) would be required to enable discharge and satisfaction of the Finance Money Debt in full; or

(b) if in the Insolvency of JHINV, the votes relating to the Compensation Debt cannot be proportionately cast in favour of different courses of action, 100 per cent of the amount of the Compensation Debt.

Trust Convention means the Convention on the Law applicable to Trusts and on their Recognition 1985.

US GAAP means generally accepted accounting principles as in force in the United States of America and, unless expressly otherwise provided in this deed, means those principles as in force from time to time.

Wind-Up Event means, in respect of a Person, the occurrence of any one or more of the following:

- (a) a final court order is entered that it be wound up or declared bankrupt;
- (b) a liquidator (excluding a provisional liquidator) is appointed to it and the appointment is not subsequently terminated;
- (c) a court declaration of bankruptcy is made in relation to it and is not subsequently withdrawn, struck out, dismissed, vacated or reversed;
- (d) the dissolution of such Person under Dutch law (*ontbinding*) or the law of any other jurisdiction;
- (e) the declaration of its bankruptcy under Dutch law (*faillissement*);
- (f) the Liquidation of that Person;

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- (g) a final order for relief occurs or is deemed to occur in relation to it under Chapter 7 or Chapter 11 of the US Bankruptcy Code which, when implemented, will result in the Liquidation of that Person; and
 - (h) any comparable action occurs under the law of any competent jurisdiction which has a substantially the same effect to paragraphs (a) to (g) of this definition,

and an order shall be deemed to be final when any timely-commenced proceeding for review of such an order has been concluded without such order being subsequently dismissed, withdrawn, struck out, vacated or reversed, and the time for commencing any further proceeding for review of such order has expired.

2. INTERPRETATION

In this deed the following rules of interpretation apply unless the contrary intention appears.

- (a) Headings are for convenience only and do not affect the interpretation of this deed.
- (b) The singular includes the plural and vice versa.
- (c) Words that are gender neutral or gender specific include each gender.
- (d) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (e) The words 'such as', 'including', 'particularly' and similar expressions are not used as nor are intended to be interpreted as words of limitation.
- (f) A reference to:
 - (i) a thing (including but not limited to a chose in action or other right) includes a part of that thing;
 - (ii) a party or a Financier includes its successors and permitted assigns;
 - (iii) a document includes all amendments or supplements to that document;

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- (iv) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this deed;
 - (v) this deed includes all schedules and attachments to it;
 - (vi) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity or a rule of an applicable Financial Market and is a reference to that law as amended, consolidated or replaced;
 - (vii) an agreement other than this deed includes an undertaking, or legally enforceable arrangement or understanding whether or not in writing;
 - (viii) a monetary amount is in Australian dollars; and
 - (ix) the words “to prove for”, “prove” and “right of proof”, when used in connection with a Insolvency proceeding under Dutch law include, without limitation, “filing”, “filing for verification purposes” and “verification procedure”, as the context may require.
- (g) An agreement on the part of two or more persons binds them severally.
- (h) When the day on which something must be done is not a Business Day, that thing must be done on the following Business Day.
- (i) In determining the time of day where relevant to this deed, the relevant time of day is:
- (i) for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or
 - (ii) for any other purpose under this deed, the time of day in the place where the party required to perform an obligation is located.
- (j) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this deed or any part of it.

3. TRUST CONVENTION

It is the express intention of the parties to this deed that each trust constituted by this deed:

- (a) be recognised as a trust in accordance with the terms of this deed in any relevant jurisdiction;
- (b) qualify as a “trust” for the purpose of the Trust Convention; and
- (c) be recognised as a trust in accordance with the Trust Convention in any jurisdiction where the Trust Convention applies.

Annexure 7B — Intercreditor Deed (Performing Subsidiary)

Final draft 3

Annexure 7B to the Final Funding Agreement

DATE: 01.12.2005



L A W Y E R S

**PERFORMING SUBSIDIARY
INTERCREDITOR DEED**

**THE STATE OF NEW SOUTH WALES
ASBESTOS INJURIES
COMPENSATION FUND TRUSTEE
LIMITED (ABN [INSERT])
LGTDD PTY LIMITED (ACN 116 110 948)
[GUARANTEE TRUSTEE] (ABN [INSERT])**

2 Park Street Sydney NSW 2000 Australia

email@gtlaw.au www.gtlaw.com.au Telephone + 61 2 9263 4000 Facsimile + 61 2 9263 4111

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DATED

PARTIES

1. **THE STATE OF NEW SOUTH WALES** of Level 39, Governor Macquarie Tower, Farrer Place, Sydney, NSW 2000 (**NSW Government**)
2. **ASBESTOS INJURIES COMPENSATION FUND TRUSTEE LIMITED (ABN [insert])** of **[insert address]** in its capacity as trustee for the Asbestos Injuries (JH) Compensation Foundation (**Fund Trustee**)
3. **LGTDD PTY LIMITED** (ACN 116 110 948) of Level 3, 22 Pitt Street, Sydney in the State of New South Wales) (**LGTDD**)
4. **[GUARANTEE TRUSTEE] (ABN [insert])** of **[insert address]** in its capacity as trustee for the Financiers (**Guarantee Trustee**)

The defined terms in the above list of parties are given expanded meanings in the Dictionary in Part 1 of Attachment A to this deed.

BACKGROUND

This deed is entered into in the following context (where capitalised terms are defined in clause 1):

- A. James Hardie Industries Limited (**JHIL**), a company organised under the laws of Australia, was listed on the Australian Stock Exchange in 1951. The business then carried on by JHIL and its subsidiaries had by that time been carried on in Australia, in one form or another and under the “James Hardie” name, for at least 60 years.
- B. Under plans of reorganisation and capital restructuring executed between 1998 and 2001, JHIL sold on arm’s length terms substantially all of its business, operations and undertaking to members of the JHINV Group with the result that JHINV became the ultimate holding company of the businesses formerly carried on or controlled by JHIL.
- C. JHINV is a company organised under the laws of The Netherlands and is listed on both the Australian Stock Exchange and the New York Stock Exchange (with

the listing on the latter exchange via American Depository Receipts). At the date of this deed, the JHINV Group carries on the business of manufacturing building products in the United States of America, Australia, New Zealand and the Philippines.

- D.** LGTDD is a wholly owned subsidiary of JHINV.
- E.** On 21 December 2004, JHINV and others entered into a non-binding Heads of Agreement containing, among other things, a set of agreed principles on which LGTDD will provide, and JHINV will guarantee the payment of, funding to the Fund on a long term basis of compensation for personal injury and death claims made in Australia against JHIL or certain former subsidiaries of JHIL arising from exposure to asbestos in Australia.
- F.** The principles contained in the Heads of Agreement have been developed and are set out in the Final Funding Agreement which is and is intended to be legally binding on all parties to it and to be enforceable at law and equity.
- G.** The creditor of LGTDD under the Final Funding Agreement is the Fund Trustee.
- H.** The NSW Government is not a creditor of LGTDD in relation to the payment of the Compensation Debt (Performing Subsidiary).
- I.** However, the NSW Government shall be entitled to directly enforce all promises made by LGTDD to the Fund Trustee under the Final Funding Agreement subject to, and in accordance with, the provisions of the Final Funding Agreement.
- J.** The purpose of this deed is to set out the agreement between (1) the Fund Trustee and the NSW Government, and (2) the Guarantee Trustee and the Financiers, as to the manner in which certain rights in respect of the Compensation Debt (Performing Subsidiary) and the Finance Money Debt (Performing Subsidiary) respectively are to be exercised in an Insolvency of LGTDD.
- K.** LGTDD is a party to this deed for the sole purpose of nominating Persons as Financiers, assuming certain obligations and being entitled to directly enforce the promises made under clauses 2.2 and 8 of this deed (and, if required for such enforcement, clauses 1, 2.1, 2.3 and 10 to 14 inclusive).

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- L. This deed is not intended, and shall not be taken, to (1) affect the status or ranking of the Compensation Debt (Performing Subsidiary) as an ordinary unsecured claim against LGTDD, or (2) affect the status or ranking of the Compensation Debt (Performing Subsidiary) as against the other debts (including the Finance Money (Performing Subsidiary)) or the other creditors of LGTDD (including the Financiers).

THE PARTIES AGREE

1. PRELIMINARY

1.1 Defined Terms and Interpretation

- (a) A term or expression starting with a capital letter which is defined in the Dictionary in Part 1 of Attachment A (**Dictionary**), has the meaning given to it in the Dictionary.
- (b) The Interpretation clauses in Part 2 of Attachment A (**Interpretation**) set out rules of interpretation for this deed.

1.2 Consideration

Each party acknowledges entering into this deed and incurring obligations and giving rights under this deed for valuable consideration received from the other parties to this deed (including in the case of the Fund Trustee, the NSW Government and LGTDD, the execution of the Final Funding Agreement).

Each Replacement Trustee or New Guarantee Trustee who accedes to this deed in accordance with clause 4.6 or 7.6 will be taken to acknowledge becoming a party to this deed and incurring obligations and giving rights under this deed for valuable consideration received from the other parties to this deed.

1.3 Crown immunity

This deed binds the Crown in right of New South Wales and to the maximum extent permitted by law the NSW Government hereby waives all Crown immunity with respect to this deed.

2. DEED

2.1 Effect

Subject to clauses 2.3, 4.6 and 7.6, this deed takes effect as both:

- (a) a deed between the NSW Government, the Fund Trustee, LGTDD and the Guarantee Trustee; and
- (b) a deed poll by the NSW Government and the Fund Trustee in favour of each Financier from time to time in respect of any Finance Money Debt (Performing Subsidiary) raised or incurred by LGTDD from time to time during the term of the Final Funding Agreement.

For the avoidance of doubt:

- (i) this deed continues for the term of the Final Funding Agreement even though there may be no Finance Money Debt (Performing Subsidiary) outstanding at any particular point in time;
- (ii) undertakings expressed to be in favour of some of the parties to this deed (excluding LGTDD) are not given in favour of LGTDD, although LGTDD is entitled to directly enforce the promises made under clauses 2.2 and 8 of this deed (and, if required for such enforcement, clauses 1, 2.1, 2.3 and 10 to 14 inclusive).

2.2 Benefit

- (a) Each Financier has the benefit of, is bound by and is entitled to enforce this deed even though it is not a party to, or is not in existence at the date of execution and delivery of this deed.
- (b) Subject to clause 2.2(f), the benefit and obligations of this deed may be extended to any Person (and such Person shall become a Financier) in relation to any document (and such document shall become a Finance Document) under which liabilities are owed to such Person where such liabilities are, or are required to be, included in the LGTDD Group's financial statements or notes thereto as debt or borrowings (including bank loans, letter of credit facilities, derivatives and debt capital markets issues which are, or are required to be, so included or noted)

of LGTDD (or another member of the LGTDD Group the performance of whose obligations has been guaranteed by LGTDD) by LGTDD signing and delivering to that Person (or an agent or trustee acting on behalf of that Person) and the Guarantee Trustee, a Financier Nomination Letter and the Person countersigning such Financier Nomination Letter and delivering the countersigned Financier Nomination Letter to the Guarantee Trustee.

- (c) Without limiting clause 2.2(b), the benefits and obligations of this deed do not extend to a Person:
 - (i) by reason of any conduct or representation made by LGTDD or JHINV to that Person; and
 - (ii) unless and until the Guarantee Trustee has received a duly countersigned Financier Nomination Letter from that Person.
- (d) The Guarantee Trustee must:
 - (i) promptly send a copy of each countersigned Financier Nomination Letter to the NSW Government and the Fund Trustee (other than a Financier Nomination Letter in respect of a Financier where this deed has ceased to apply to that Financier in accordance with clause 2.2(g)) upon an officer of the Guarantee Trustee responsible for the day to day administration of this deed becoming aware of the occurrence of an Insolvency of LGTDD; and
 - (ii) following the occurrence of an Insolvency of LGTDD, on request provide to the NSW Government and the Fund Trustee written confirmation of the nature and quantum of the Finance Money Debt (Performing Subsidiary) as at the date such information is provided.
- (e) The Fund Trustee and the NSW Government confirm that, subject to clause 2.2(f), each of them has irrevocably and for valuable consideration authorised LGTDD to sign and deliver any Financier Nomination Letter, nominating a Person as a Financier and a document as a Finance Document, and acknowledge and confirm that the provisions of this deed which are for the benefit of the Financiers, will extend to that Financier and the Finance Document so nominated.

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- (f) The benefit and obligations of this deed in relation to Financiers may not be extended to any Person who is an Excluded Lender and any such nomination shall be of no force or effect for the purposes of this deed.
- (g) This deed shall cease to apply to a Financier once:
- (i) there is no Finance Money Debt (Performing Subsidiary) in respect of that Financier;
 - (ii) LGTDD has no outstanding obligations to the Financier in relation to any Finance Money Debt (Performing Subsidiary); and
 - (iii) that Financier has no further obligation to provide financial accommodation to LGTDD (or another member of the LGTDD Group the performance of whose obligations has been guaranteed by LGTDD) under the relevant Finance Documents, or that Financier otherwise consents in writing to such cessation.
- (h) If this deed ceases to apply to a Financier in accordance with clause 2.2(g), LGTDD and that Financier must promptly notify the Guarantee Trustee.

2.3 Inconsistency

If any provision of the Final Funding Agreement, any Related Agreement (as defined in the Final Funding Agreement, but excluding this deed and the JHINV Intercreditor Deed), the Finance Guarantee (LGTDD) or any Finance Document is inconsistent with this deed, this deed prevails to the extent of the inconsistency unless a contrary intention is expressed in this deed.

3. INTERCREDITOR ARRANGEMENTS

3.1 Purpose of this deed

The purpose of this deed is to set out the agreement between:

- (a) the Fund Trustee and the NSW Government; and
- (b) the Guarantee Trustee and the Financiers,

as to the manner in which certain rights in respect of the Compensation Debt (Performing Subsidiary) and the Finance Money Debt (Performing Subsidiary) respectively are to be exercised in an Insolvency of LGTDD.

3.2 NSW Government not a creditor of LGTDD

Notwithstanding the wording of any other provision of the Final Funding Agreement, any Related Agreement or this deed, the NSW Government acknowledges that it is not a creditor of LGTDD in relation to the payment of the Compensation Debt (Performing Subsidiary).

3.3 Turnover

Each Compensation Party agrees for the benefit of the Guarantee Trustee and the Financiers that if LGTDD becomes Insolvent, any amount (in the form of money or other property) paid to it by or for the account of, or recovered by it from or for the account of, LGTDD in respect of the Compensation Debt (Performing Subsidiary), after the occurrence of the relevant Insolvency Event, will be paid to, or otherwise accounted for, to the Guarantee Trustee or the relevant Financiers in accordance with this deed, until the Finance Money Debt (Performing Subsidiary) has been paid and satisfied in full.

3.4 Status and ranking of the Compensation Debt (Performing Subsidiary)

The parties to this deed acknowledge and agree that this deed does not:

- (a) affect the status or ranking of the Compensation Debt (Performing Subsidiary) as an ordinary unsecured claim against LGTDD; or
- (b) affect the status or ranking of the Compensation Debt (Performing Subsidiary) as against the other debts (including the Finance Money (Performing Subsidiary)) or the other creditors of LGTDD (including the Financiers).

4. PROCEDURE ON INSOLVENCY

4.1 Proceeds held on trust

Subject to this deed, while LGTDD is Insolvent and for so long as any Finance Money Debt (Performing Subsidiary) remains outstanding, each Compensation Party agrees for the benefit of the Guarantee Trustee and the Financiers to hold all Proceeds received by it

from or on account of LGTDD (or such proportion of the Proceeds sufficient to discharge and satisfy the Finance Money Debt (Performing Subsidiary) in full) on trust for the relevant Financiers.

For so long as any Finance Money Debt (Performing Subsidiary) remains outstanding, then promptly after receipt by it of any Proceeds from or on account of LGTDD, each Compensation Party agrees for the benefit of the Guarantee Trustee and the Financiers to notify the Guarantee Trustee and deposit the Proceeds (or such proportion of the Proceeds sufficient to discharge and satisfy the Finance Money Debt (Performing Subsidiary) in full) into one or more accounts specifically designated by the Guarantee Trustee for that purpose (or, in the case of any Proceeds which consist of property other than money, transfer such property to the Guarantee Trustee).

This clause establishes a trust over the Proceeds. It does not create a charge or other security interest over the Proceeds.

4.2 Distribution of Proceeds

Each Compensation Party agrees for the benefit of the Guarantee Trustee and the Financiers that all Proceeds received by it from or on account of LGTDD are to be held and distributed:

- (a) first, to the Guarantee Trustee on account of the Finance Money Debt (Performing Subsidiary) which remains owing by LGTDD to the Financiers, after all payments received from, or due and payable under the Insolvency by, the Insolvency Official and all prior payments under this clause 4.2(a), if any, have been taken into account (“ **Net Finance Money Debt (Performing Subsidiary)** ”);
- (b) secondly, to the extent of any balance after repayment of the Net Finance Money Debt (Performing Subsidiary) owed by LGTDD to the Financiers in full, to the Fund Trustee to satisfy the Compensation Debt (Performing Subsidiary); and
- (c) thirdly, to the extent of any balance after repayment of the Compensation Debt (Performing Subsidiary) in full, to LGTDD (for its own account).

4.3 Payment of amounts recovered

Subject to the provisions of this clause 4.3, each Compensation Party agrees for the benefit of the Guarantee Trustee and the Financiers that, if at any time while LGTDD is Insolvent, an amount (in the form of money or any other property):

- (a) is received or recovered by a Compensation Party on account of the Compensation Debt (Performing Subsidiary) (which is not subject to the trust in clause 4.1); or
- (b) is paid to any Person other than a Compensation Party in connection with the Compensation Debt (Performing Subsidiary) with the consent or at the request of a Compensation Party or for the benefit of a Compensation Party; or
- (c) is set off by a Compensation Party against the Compensation Debt (Performing Subsidiary) (whether by operation of law or otherwise),

the Compensation Party agrees for the benefit of the Guarantee Trustee and the Financiers to promptly notify the Guarantee Trustee and pay into one or more accounts specifically designated by the Guarantee Trustee for that purpose the amount (or, in the case of any Proceeds which consists of property other than money, transfer such property to the Guarantee Trustee) received, recovered, paid or set off (or such proportion of the amount or other property sufficient to discharge and satisfy the Finance Money Debt (Performing Subsidiary) in full).

If in an Insolvency of LGTDD, a Compensation Party is required to refund, repay or otherwise disgorge to, or in favour of, LGTDD all or any part of an Annual Payment received prior to the occurrence of the relevant Insolvency Event (otherwise than pursuant to clause 14.9(b) of the Final Funding Agreement as the result of any overpayment of that Annual Payment), this clause 4.3 does not apply if that amount is set off against another amount owed by LGTDD to that Compensation Party and no payment is required by that Compensation Party pursuant to this clause 4.3 in respect of the amount set off.

4.4 Residual Rights

If at any time subsequent to the occurrence of an Insolvency Event in respect of LGTDD, the Financiers have received, whether by way of distribution by the Insolvency Official in the Insolvency, as payments to the Guarantee Trustee under clause 4 or otherwise, an

amount at least equal to the amount (in the form of money or any other property) of the Finance Money Debt (Performing Subsidiary), the Financiers agree for the benefit of the Fund Trustee and the NSW Government that the Financiers must:

- (a) not withdraw, waive, release, compromise or deal in any way with their remaining rights in the Insolvency in relation to the Finance Money Debt (Performing Subsidiary) (**Residual Rights**);
- (b) until the Compensation Debt (Performing Subsidiary) has been discharged and satisfied in full, do anything reasonably required by the NSW Government (at the cost of the NSW Government) to assign or otherwise transfer their Residual Rights to the Fund Trustee or to enable the Fund Trustee to be subrogated to, or otherwise enjoy the benefit of, the Residual Rights; and
- (c) pay any money and/or any other property received pursuant to the Residual Rights to the Fund Trustee.

4.5 No exercise of Financiers' rights

As long as any of the Finance Money Debt (Performing Subsidiary) remains outstanding, each Compensation Party and the NSW Government agree for the benefit of the Guarantee Trustee and the Financiers that such party may not, without the prior written consent of the Guarantee Trustee, exercise any right to claim to be entitled to the benefit of any of the rights of some or all of the Financiers (including the benefit of any Residual Rights or any Security Interest or guarantee, indemnity or assurance against financial loss in respect of any Finance Money Debt (Performing Subsidiary)).

In addition, if a Replacement Trustee has been appointed or nominated, but not yet executed and delivered an Accession Deed (and a power of attorney as required by clause 8.1(b)) in accordance with clause 4.6, the NSW Government agrees for the benefit of the Guarantee Trustee and the Financiers to ensure that, as long as any of the Finance Money Debt (Performing Subsidiary) remains outstanding, the Replacement Trustee does not exercise or seek to exercise any right to claim to be entitled to the benefit of any of the rights of some or all of the Financiers (including the benefit of any Residual Rights or any Security Interest or guarantee, indemnity or assurance against financial loss in respect of any Finance Money Debt (Performing Subsidiary)).

4.6 Substitution of the Fund Trustee

If a Replacement Trustee is appointed in accordance with the Final Funding Agreement then the NSW Government must:

- (a) promptly notify the Guarantee Trustee of the appointment and the identity and contact details of the Replacement Trustee; and
- (b) procure, at its own expense, that the Replacement Trustee duly executes and delivers an Accession Deed (and a power of attorney as required by clause 8.1(b)) to each party to this deed.

A Replacement Trustee acquires no rights or benefits under this deed (either in its capacity as such or as successor to the Fund Trustee) until such time as an Accession Deed (and a power of attorney as required by clause 8.1(b)) has been duly executed by the Replacement Trustee and delivered to each party to this deed. This clause does not require such documents to be delivered to a Financier.

The NSW Government shall ensure that the Replacement Trustee is incorporated in the State of New South Wales.

4.7 Additional Rights

- (a) If in connection with an Insolvency of LGTDD a Compensation Party is required to disgorge or unwind all or part of the recovery of receipt of Proceeds or any other amounts (in the form of money or other property) received by it from, or on account of, LGTDD and which have been paid to the Guarantee Trustee or a Financier in accordance with this clause 4, the Guarantee Trustee or the relevant Financier (as the case may be), must promptly, following a request from the relevant Compensation Party, repay to the relevant Compensation Party the amounts (or other property) so received by it from that Compensation Party.
- (b) If in connection with an Insolvency of LGTDD the Guarantee Trustee or a Financier is required to disgorge or unwind all or part of the recovery of any money and/or any other property received pursuant to the Residual Rights and which have been paid to the Fund Trustee in accordance with clause 4.4(c), the Fund Trustee, must promptly, following a request from the Guarantee Trustee or the relevant Financier (as the case may be), repay to the Guarantee Trustee or the

relevant Financier (as the case may be), the amounts (or other property) so received by it in accordance with clause 4.4(c).

4.8 Replacement or substitution of LGTDD

If LGTDD is replaced or substituted as Performing Subsidiary (as that term is defined in the Final Funding Agreement) by another Person (“**Replacement Subsidiary**”) in accordance with clause 6.2 of the Final Funding Agreement, this deed shall automatically terminate (and no party shall have any rights or owe any obligations under this deed) upon the Compensation Parties, the Guarantee Trustee and the Replacement Subsidiary (each acting reasonably) having entered into a replacement deed on substantially the same terms as this deed.

If the Replacement Subsidiary assumes any obligations in respect of a Financier, that Person may become a Financier under that replacement deed.

5. RIGHTS IN RELATION TO THE COMPENSATION DEBT (PERFORMING SUBSIDIARY)

5.1 No prohibition

Subject to the provisions of clauses 3.3, 4.1, 4.2, 4.5, 6 and 8 of this deed, no Compensation Party nor the NSW Government is prohibited by this deed from, or restricted in exercising all or any of its rights under the Final Funding Agreement in relation to the obligations and liabilities of LGTDD, whether before or after the occurrence of an Insolvency Event in respect of LGTDD.

Without limiting the generality of the foregoing, but subject to the provisions of clauses 3.3, 4.1, 4.2, 4.5, 6 and 8 of this deed, a Compensation Party and the NSW Government (but only to the extent it is entitled to do so acting in accordance with the Final Funding Agreement and applicable law) may:

- (a) make demand for, commence proceedings in relation to, enforce any judgment in relation to and compromise or settle any claim in relation to all such obligations and liabilities;
- (b) seek or obtain from any court of competent jurisdiction at any time an order directing LGTDD to make any payment under or to specifically perform its obligations under the Final Funding Agreement, or similar equitable relief;

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- (c) make application to any court of competent jurisdiction for the winding up of, or in relation to the Insolvency, of LGTDD;
 - (d) be present and vote at any meeting of creditors or other meeting which it is entitled to attend concerning any proposal relating to LGTDD or at any meeting relating to the Insolvency of LGTDD;
 - (e) individually make submissions to an Insolvency Official in connection with any Insolvency of LGTDD;
 - (f) prove the Compensation Debt (Performing Subsidiary) in any Insolvency of LGTDD; and
 - (g) participate in any proceedings relating to its right to vote and prove or otherwise participate in any meeting, proceeding or distribution concerning the Insolvency of LGTDD.

5.2 NSW Government Enforcement Rights

- (a) Any action or the enforcement of any rights of a Compensation Party under this deed in the event of an Insolvency of LGTDD may only be taken by the NSW Government, unless the NSW Government otherwise consents in writing to the Fund Trustee taking such action or enforcing those rights.

For the avoidance of doubt, this clause does not preclude an Attorney exercising any rights under a power of attorney granted pursuant to, and in accordance with, clause 8.

- (b) Any action taken by the NSW Government under this deed:
 - (i) shall oblige the Fund Trustee to cause any similar or inconsistent action to be revoked, rescinded or discontinued, provided that the Fund Trustee may resume or initiate any such action if and to the extent that the corresponding action taken by the NSW Government is revoked or abandoned by notice in writing by the NSW Government; and
 - (ii) shall oblige the NSW Government to hold on trust for the Fund Trustee any amounts (in the form of money or other property) received or recovered under, or in respect of, the action taken.

-
- (c) Where this deed requires or contemplates the consent of, or a nomination or determination by the Fund Trustee, such consent, nomination or determination shall only be effective if consented to by the NSW Government, and the Guarantee Trustee must not accept or act on a notice of consent, nomination or determination, or any other direction, by the Fund Trustee, unless such notice is accompanied by consent from the NSW Government.
- (d) Without limiting clauses 5.2(a) or (c), the parties acknowledge that:
- (i) under clause 16.6(f) of the Final Funding Agreement the Fund Trustee has agreed not to, without the prior written consent of the NSW Government, waive or compromise all or any part of any payment (actually or contingently) due from LGTDD under the Final Funding Agreement or any Related Agreement (including this deed); and
 - (ii) any such waiver or compromise by the Fund Trustee that is not accompanied by such written consent from the NSW Government shall be invalid and has no effect on the obligations of the parties under this deed and cannot be relied upon by the parties or pleaded by way of estoppel or otherwise in any action or proceeding for the enforcement of the Final Funding Agreement or any Related Agreement (including this deed).
- (e) The NSW Government acknowledges that its right to enforce this deed is subject to the clause 16.6 of the Final Funding Agreement (but, in an Insolvency of JHINV, only to the extent the provisions of that clause apply in an Insolvency of JHINV).
- (f) Without limiting clauses 5.2(a) or (c), the parties acknowledge that the NSW Government may commence or institute proceedings in any jurisdiction in relation to the existence or amount of the Compensation Debt (but, in the case of any Wind Up or Reconstruction Amount (as defined in the Final Funding Agreement), subject to clause 10 of the Final Funding Agreement) or any voting rights attaching thereto, or any matters incidental to determining such amount or voting rights.

6. COVENANTS

6.1 Restriction on dealings

The Fund Trustee and the NSW Government agree for the benefit of the Guarantee Trustee and the Financiers that such party may not assign, transfer, create a Security Interest in respect of or otherwise create rights in respect of or deal with any of its rights under the Final Funding Agreement or this deed which affect the nature, timing or quantum of the amount actually or contingently payable to a Compensation Party under the Final Funding Agreement or any Related Agreement, or allow any interest in any such right to be varied, or consent or agree to any of those things, without:

- (a) the prior written consent of the Guarantee Trustee acting on instructions from all or a specified majority of the Financiers as referred to in clause 7.3; or
- (b) in the case of the creation of a Security Interest, the holders of that Security Interest and all other persons having an interest in that Security Interest (if any), having agreed to be bound by the corresponding obligations of the relevant Compensation Party or the NSW Government under the Final Funding Agreement or this deed (as the case may be).

6.2 No security

Each of the Fund Trustee and the NSW Government agree for the benefit of the Guarantee Trustee and the Financiers that it may not do, or agree to do, any of the following:

- (a) **(set off)** during the Insolvency of LGTDD, exercise any right of set off in respect of the Compensation Debt (Performing Subsidiary);
- (b) **(Security Interest or guarantee)** except for the JHINV Guarantee (as defined in the Final Funding Agreement) and a Cross Guarantee (Fund Guaranteed Money), accept from LGTDD or another member of the LGTDD Group the benefit of any Security Interest or guarantee, indemnity or assurance against financial loss in respect of the Compensation Debt (Performing Subsidiary); or
- (c) **(arrangements)** enter into any arrangement, take any action or fail to do any thing, which results in any Proceeds received by it from or on account of LGTDD (or such proportion of the Proceeds sufficient to discharge and satisfy the Finance

Money Debt (Performing Subsidiary) in full) not being held on trust for the relevant Financiers in accordance with the terms of this deed,

without the prior written consent of the Guarantee Trustee acting on instructions from all or a specified majority of the Financiers as referred to in clause 7.3.

If in an Insolvency of LGTDD, a Compensation Party is required to refund, repay or otherwise disgorge to, or in favour of, LGTDD all or any part of an Annual Payment received prior to the occurrence of the relevant Insolvency Event (otherwise than pursuant to clause 14.9(b) of the Final Funding Agreement as the result of any overpayment of that Annual Payment), clause 6.2(a) does not prohibit that amount being set off by that Compensation Party against another amount owed by LGTDD to that Compensation Party.

7. GUARANTEE TRUSTEE

7.1 Appointment and removal

Subject to clause 7.6, the Fund Trustee and the NSW Government:

- (a) acknowledge that LGTDD or the Financiers may appoint, remove and replace the Guarantee Trustee as trustee under the Finance Guarantee (LGTDD) (such newly appointed or replacement trustee, a **New Guarantee Trustee**); and
- (b) agree to do anything reasonably required by LGTDD, the Financiers, the outgoing Guarantee Trustee or the New Guarantee Trustee to enable the New Guarantee Trustee to become a party to this deed in substitution for the outgoing Guarantee Trustee.

7.2 Sole Representative

- (a) So long as a Person is acting as trustee under the Finance Guarantee (LGTDD), the Fund Trustee and the NSW Government may deal exclusively with that Person in respect of all matters concerning this deed.
- (b) The Financiers acknowledge and confirm that the Person acting as trustee under the Finance Guarantee (LGTDD) is empowered to exercise all of their rights and powers under this deed and agree not to take any action or proceedings to set

aside any act, notice or omission of the Guarantee Trustee undertaken in accordance with this deed.

7.3 Acknowledgement by Fund Trustee and the NSW Government

The Fund Trustee and the NSW Government acknowledge that in exercising some or all of the rights and powers of the Financiers under this deed (including voting on any matter in any meeting, proceeding or distribution concerning the Insolvency of LGTDD), the Guarantee Trustee may be required to obtain instructions and/or consent from all or a specified majority of the Financiers.

If the Guarantee Trustee is so required to obtain instructions and/or consent from all or a specified majority of the Financiers, the Guarantee Trustee must promptly request such instructions and/or consent.

The Fund Trustee and the NSW Government are entitled to rely on any representation by the Guarantee Trustee in relation to its instructions.

7.4 No Guarantee Trustee

Subject to clause 8.10, if no Person is acting as trustee under the Finance Guarantee (LGTDD), then unless a contrary intention is apparent from this deed, all references to the Guarantee Trustee in this deed shall be taken to be references to each Financier to which this deed applies from time to time acting severally such that each Financier may severally exercise the rights of the Guarantee Trustee.

If the Guarantee Trustee is to cease to be trustee under the Finance Guarantee (LGTDD) and a New Guarantee Trustee is not being appointed in accordance with clause 7.6, the outgoing Guarantee Trustee must send promptly a copy of each countersigned Financier Nomination Letter to the Fund Trustee and the NSW Government (other than a Financier Nomination Letter in respect of a Financier where this deed has ceased to apply to that Financier in accordance with clause 2.2(g)).

7.5 Acknowledgement by Guarantee Trustee

The Guarantee Trustee acknowledges and undertakes (and each New Guarantee Trustee at the date of becoming a party to this deed will be deemed to acknowledge and undertake) that it:

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- (a) is a recognised trustee company under the laws of the place in which its Specified Office is located;
 - (b) has relevant and substantive experience and expertise in custody of financial obligations and in Insolvency proceedings generally;
 - (c) except to the extent it is entitled to be paid fees or reimbursed or indemnified for costs and expenses by LGTDD or JHINV, has no interest or duty which to its knowledge conflicts or may conflict with its functions under this deed; and
 - (d) is not a member of a firm, or a director or employee of a firm or a body owned by a firm, performing any role as advisor, banker, custodian or trustee to LGTDD, JHINV, another member of the JHINV Group or (except for roles undertaken in the ordinary course of business for state owned business enterprises) the NSW Government during a period of 3 years prior to the date of this deed or becoming a party to this deed, as the case may be.

7.6 Substitution of Guarantee Trustee

- (a) LGTDD or the Financiers can only replace the Guarantee Trustee with any Person who at the date of becoming a New Guarantee Trustee:
 - (i) is a recognised trustee company under the laws of the place in which its Specified Office is located;
 - (ii) has relevant and substantive experience and expertise in custody of financial obligations and in Insolvency proceedings generally;
 - (iii) except to the extent it is entitled to be paid fees or reimbursed or indemnified for costs and expenses by LGTDD or JHINV, has no interest or duty which to its knowledge conflicts or may conflict with its functions as contemplated under this deed; and
 - (iv) is not a member of a firm, or a director or employee of a firm or a body owned by a firm, performing any role as advisor, banker, custodian or trustee to LGTDD, JHINV, another member of the JHINV Group or (except for roles undertaken in the ordinary course of business for state owned business enterprises) the NSW Government during a period of 3 years prior to becoming a party to this deed.

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- (b) A substitution under clause 7.6(a) will not occur and a New Guarantee Trustee acquires no rights or benefits under this deed unless and until the New Guarantee Trustee duly executes and delivers an Accession Deed to each party to this deed. This clause does not require an Accession Deed to be delivered to a Financier.
 - (c) If the New Guarantee Trustee is not incorporated in Australia, the Financiers must procure, at no expense to the Fund Trustee or the NSW Government, the delivery to the Fund Trustee and the NSW Government of an opinion of generally recognised independent legal counsel qualified to practise in the relevant jurisdiction to the effect that the Accession Deed and this deed are valid, binding and enforceable obligations of the New Guarantee Trustee (subject to laws and defences generally affecting the enforcement of contracts and the discretionary nature of equitable remedies).

7.7 Standard of Duty

The Guarantee Trustee must exercise, and must procure that each Authorised Officer of the Guarantee Trustee exercises, good faith and the same degree of care, skill and diligence as a reasonable and prudent Person would exercise in carrying out its functions, duties and obligations under this deed.

7.8 Functions, duties and obligations of the Guarantee Trustee

7.8.1 Role of the Guarantee Trustee

Subject to the other provisions of this deed, the Guarantee Trustee must:

- (a) upon an officer of the Guarantee Trustee responsible for the day to day administration of this deed becoming aware of any Insolvency of LGTDD, promptly send to each Compensation Party a notice which requests them to advise in writing the amount of the Compensation Debt (Performing Subsidiary) or, alternatively, the basis on which the Compensation Debt (Performing Subsidiary) is to be calculated and, in the event of a conflict in the amount of the Compensation Debt (Performing Subsidiary) advised by the Fund Trustee and the NSW Government, then (in the absence of manifest error) the amount advised by the NSW Government prevails;
- (b) not do anything to prevent or interfere with a Compensation Party proving the Compensation Debt (Performing Subsidiary) in an Insolvency (to the extent that

the Compensation Party is acting in accordance with the Final Funding Agreement and applicable law);

- (c) not make any representation or submission to an Insolvency Official in relation to the valuation of the claims of the Compensation Parties in respect of the Compensation Debt (Performing Subsidiary) unless reasonably requested by the NSW Government;
- (d) where the Guarantee Trustee is entitled to exercise any vote pursuant to clause 8, take all necessary and reasonable steps permitted by applicable law to exercise that vote for the value of the Compensation Debt (Performing Subsidiary) for the purposes of the Insolvency of LGTDD (including the presentation of all evidence and submissions to any Insolvency Official as reasonably requested by the NSW Government);
- (e) promptly advise each Compensation Party of any dispute between:
 - (i) the Guarantee Trustee; and
 - (ii) an Insolvency Official, LGTDD, JHINV and/or one or more creditors of LGTDD,in relation to the Compensation Debt (Performing Subsidiary) or this deed and which may come before a court of competent jurisdiction, and take all reasonable steps permitted by applicable law to delay the determination of the dispute for such period of time (as is reasonable having regard to the procedural laws governing the conduct of the dispute before the relevant court of competent jurisdiction) so as to give the Compensation Parties a reasonable opportunity to present evidence and submissions to the relevant court of competent jurisdiction if it so wishes;
- (f) if LGTDD is Insolvent, take all reasonable action permitted by applicable law to ensure that:
 - (i) all moneys recoverable in respect of the Finance Money Debt (Performing Subsidiary) are duly and promptly recovered from the relevant Insolvency Official; and

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- (ii) any amount payable or repayable to a Compensation Party by a Financier under this deed, by reason of that Financier receiving whether by way of distribution by the Insolvency Official in the Insolvency, as payments by a Compensation Party under this deed or otherwise, an amount in excess of the Finance Money Debt (Performing Subsidiary) owed to that Financier, are paid or repaid by that Financier to that Compensation Party;
 - (g) not do anything to prevent or interfere with a Compensation Party promptly recovering from the relevant Insolvency Official all moneys which are recoverable in respect of the Compensation Debt (Performing Subsidiary);
 - (h) take all reasonable steps permitted by applicable law and requested by the NSW Government to assist the Compensation Parties with the determination of any dispute between:
 - (i) a Compensation Party; and
 - (ii) an Insolvency Official, LGTDD, JHINV and/or one or more creditors of LGTDD.in relation to the Compensation Debt (Performing Subsidiary) or this deed;
 - (i) to the extent permitted by applicable law, apply for and use reasonable endeavours to obtain any stay, extension of time or other order in relation to the Insolvency of LGTDD which the Guarantee Trustee reasonably considers is necessary in order to enable any Independent Expert to discharge its responsibilities under and in accordance with clause 8 or which the NSW Government reasonably requests for such purpose;
 - (j) upon an officer of the Guarantee Trustee responsible for the day to day administration of this deed becoming aware of any breach of this deed by any party, promptly notify LGTDD, the Financiers and the Compensation Parties of that breach including details of that breach; and
 - (k) promptly notify LGTDD, the Financiers and the Compensation Parties if for any reason it is unable to perform its obligations under this deed.

7.8.2 Provision of information

Without limiting the provisions of clause 8 in relation to Notice of Voting in Insolvency, the Guarantee Trustee and each Compensation Party agree to give notice to the Compensation Parties or the Guarantee Trustee, as the case may be, of any request received from an Insolvency Official in an Insolvency of LGTDD which seeks instructions and/or consent from one or more creditors of LGTDD (including, for the avoidance of doubt, a Financier, the Guarantee Trustee or a Compensation Party) or otherwise requests action to be taken by one or more creditors of LGTDD in exercise of their respective rights as creditors of LGTDD.

7.8.3 Limitations on the obligations of the Guarantee Trustee

Notwithstanding clause 7.8.1, the Guarantee Trustee is not required to do any act, matter or thing requested by the NSW Government (including make any representation or submission, or present any evidence, to an Insolvency Official or provide any assistance with the determination of any dispute between a Compensation Party and an Insolvency Official before a court of competent jurisdiction) which in the opinion of the Guarantee Trustee (after having received advice from legal counsel appointed by it and acting reasonably) will constitute a breach by the Guarantee Trustee of its fiduciary duties owed to the Financiers in respect of the Finance Money Debt (Performing Subsidiary) (including, for the avoidance of doubt, any duty not to act in manner which conflicts with a direction of all or a specified majority of the Financiers).

If any such act, matter or thing will constitute such a breach, the Guarantee Trustee must promptly notify the NSW Government and take all reasonable steps subsequently requested by the NSW Government and permitted under applicable law to ensure that the objective of the original act, matter or thing requested by the NSW Government is able to be otherwise achieved:

- (a) in a manner which does not constitute a breach by the Guarantee Trustee of its fiduciary duties owed to the Financiers in respect of the Finance Money Debt (Performing Subsidiary); or
- (b) by the NSW Government doing the relevant act, matter or thing in a manner which, if the relevant act, matter or thing had been done by the Guarantee Trustee, would be in accordance with this deed.

7.8.4 Duties of Guarantee Trustee

The Guarantee Trustee has no duties to the Compensation Parties or the NSW Government except as expressly provided for in this deed.

7.8.5 Limitation on Liability

To the extent permitted by law, nothing in this clause 7.8 imposes liability on the Guarantee Trustee for:

- (a) special, indirect, incidental, consequential or punitive damages; or
- (b) economic loss, loss of profits, loss of revenue, or loss of goodwill,

arising out of any action undertaken by it in accordance with clause 7.8.1, except to the extent resulting from the fraud, negligence or wilful misconduct of the Guarantee Trustee.

7.8.6 Indemnity

To the extent permitted by law, the NSW Government indemnifies and keeps indemnified the Guarantee Trustee against any claims, cost or liability which may be imposed and which arises out of any action properly undertaken by it in accordance with 7.8.1(c) or undertaken by the Guarantee Trustee in accordance with a request of the NSW Government under clause 7.8.1, except to the extent caused by the fraud, negligence or wilful misconduct of the Guarantee Trustee or the failure of the Guarantee Trustee to take action at the request of the NSW Government.

8. VOTING IN INSOLVENCY PROCEEDINGS

8.1 Irrevocable Appointment of Attorney

- (a) Subject to this clause 8, Asbestos Injuries Compensation Fund Trustee Limited in its capacity as trustee for the Asbestos Injuries (JH) Compensation Foundation irrevocably and for valuable consideration agrees to appoint the Guarantee Trustee and each Authorised Officer of the Guarantee Trustee individually as the attorney of Asbestos Injuries Compensation Fund Trustee Limited in its capacity as trustee for the Asbestos Injuries (JH) Compensation Foundation (together with any person appointed as an attorney in accordance with clause 8.1(b), an **Attorney**) to vote the Compensation Debt (Performing Subsidiary) during the Insolvency of LGTDD or at any meeting, proceeding or distribution concerning

the Insolvency of LGTDD for so long as any Finance Money Debt (Performing Subsidiary) remains outstanding, by executing a power of attorney substantially in the form of Schedule 3 to this deed, provided that any vote must be exercised in accordance with this clause 8 and Asbestos Injuries Compensation Fund Trustee Limited in that capacity further irrevocably and for valuable consideration agrees, if required for further assurance, to execute a proxy or authority in a form ordinarily required under the applicable law governing the relevant proceeding.

- (b) Subject to this clause 8 and simultaneously with executing and delivering an Accession Deed in accordance with clause 4.6, each Replacement Trustee must irrevocably and for valuable consideration appoint the Guarantee Trustee and each Authorised Officer of the Guarantee Trustee individually as the attorney of the Replacement Trustee to vote the Compensation Debt (Performing Subsidiary) during the Insolvency of LGTDD or at any meeting, proceeding or distribution concerning the Insolvency of LGTDD for so long as any Finance Money Debt (Performing Subsidiary) remains outstanding, by executing a power of attorney substantially in the form of Schedule 3 to this deed provided that any vote must be exercised in accordance with this clause 8 and the Replacement Trustee further irrevocably and for valuable consideration agrees, if required for further assurance, to execute a proxy or authority in a form ordinarily required under the applicable law governing the relevant proceeding.
- (c) Subject to this clause 8, the Fund Trustee and the NSW Government agree not to vote or attempt to vote the Compensation Debt (Performing Subsidiary) during the Insolvency of LGTDD or at any meeting, proceeding or distribution concerning the Insolvency of LGTDD for so long as any Finance Money Debt (Performing Subsidiary) remains outstanding.
- (d) The Fund Trustee irrevocably and for valuable consideration authorises the Guarantee Trustee to provide an original or copy of any power of attorney executed in accordance with clause 8.1(a) or (b) to an Insolvency Official for the purpose of establishing the right and entitlement of each Attorney during the Insolvency of LGTDD to exercise the appointor's right to vote the Compensation Debt (Performing Subsidiary) at any meeting, proceeding or distribution concerning the Insolvency of LGTDD.
- (e) The Guarantee Trustee must ensure that an Attorney only exercises, and in circumstances where the Guarantee Trustee is itself appointed an Attorney, the

Guarantee Trustee must only exercise, its rights under a power of attorney granted in accordance with this clause 8 in accordance with, and subject to, the provisions of this deed.

- (f) To the extent required under applicable law, the Fund Trustee agrees to ratify:
 - (i) anything the Guarantee Trustee does in accordance with this clause 8, and such ratification is without prejudice to its rights in respect of any breach of this deed by the Guarantee Trustee; and
 - (ii) whatever an Attorney does in exercising powers under a power of attorney granted in accordance with this clause 8, provided that there is no obligation to ratify or confirm any act or matter in breach of this deed or any applicable law.
- (g) Subject to the provisions of this deed, each Compensation Party and the NSW Government must not do anything to prevent or interfere with the exercise by:
 - (i) the Guarantee Trustee of its rights and powers, or the performance of its obligations, under this clause 8; or
 - (ii) an Attorney of its rights and powers, or the performance of its obligations, under the relevant power of attorney.
- (h) Subject to the terms and conditions of this deed and subject to compliance with its provisions, an Attorney may exercise the right to vote in the appointor's name or, if necessary or desirable under the applicable law governing the relevant proceeding, the Attorney's name, and may do anything necessary or incidental to such exercise including signing and delivering documents.
- (i) If for any reason whatsoever an Attorney is not entitled by operation of law to exercise its rights under the relevant power of attorney, the appointor shall exercise those rights as directed by the Guarantee Trustee, provided such directions are in accordance with this clause 8.
- (j) The Guarantee Trustee must promptly provide the NSW Government with reasonable details of any action taken by the Guarantee Trustee or an Attorney in respect of the exercise of its powers under a power of attorney granted in accordance with this clause 8.

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- (k) The Guarantee Trustee must promptly provide full details of any action taken or any votes cast by the Guarantee Trustee or an Attorney in respect of the Compensation Debt (Performing Subsidiary).

8.2 Voting

- (a) The Compensation Parties are responsible for proving the Compensation Debt (Performing Subsidiary) in any Insolvency of LGTDD and providing such information as to the value of the Compensation Debt (Performing Subsidiary) as is required by the relevant Insolvency Official for the purposes of ascribing a value to the Compensation Debt (Performing Subsidiary) for the purposes of an Insolvency of LGTDD. In proving the Compensation Debt (Performing Subsidiary) , the Compensation Parties must:

- (i) use reasonable endeavours to ensure that the relevant Insolvency Official sends all Notices of Voting in Insolvency in an Insolvency of LGTDD (or a copy of all such notices) to the Guarantee Trustee; and
- (ii) to the extent such notices are received by the Compensation Parties, provide a copy to the Guarantee Trustee.

Notwithstanding any other provision of this deed other than, and subject to, clauses 7.8.1(b) and (c), the Guarantee Trustee is not responsible for proving the Compensation Debt (Performing Subsidiary) in any Insolvency of LGTDD.

The Compensation Parties agree to provide the Guarantee Trustee with copies of all documents submitted to the relevant Insolvency Official for the purposes of ascribing a value to the Compensation Debt (Performing Subsidiary) for the purposes of an Insolvency of LGTDD or ensuring that the relevant Insolvency Official sends all Notices of Voting in Insolvency in an Insolvency of LGTDD (or a copy of all such notices) to the Guarantee Trustee.

- (b) Subject to clause 8.8, during the Insolvency of LGTDD the Guarantee Trustee must ensure that an Attorney only votes on any matter in any meeting, proceeding or distribution concerning the Insolvency of LGTDD in respect of the Compensation Debt (Performing Subsidiary) in accordance with the instructions of the Financiers given in accordance with the Finance Guarantee (LGTDD), provided that:

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- (i) the Guarantee Trustee must ensure that an Attorney does not vote unless the Guarantee Trustee has provided the NSW Government with 10 Business Days notice (or, subject to clause 7.8.1(i), such shorter notice as the Guarantee Trustee determines is reasonable having regard to the terms of the Notice of Voting in Insolvency) of the Attorney's intention to vote and the Attorney votes in accordance with the intention as notified; and
 - (ii) if an Independent Expert has been appointed under clause 8.3, and the Independent Expert has determined that, in its opinion, the criteria set out in:
 - A. clauses 8.4(a), (b), (c) and, if applicable, (d); or
 - B. clause 8.4(e),

are satisfied in relation to the Preferred Option or a particular choice as described in clause 8.3(a)(ii)(B) or (C), as the case may be, then the Guarantee Trustee must ensure that an Attorney votes in favour of the Preferred Option or that particular choice.

For the avoidance of doubt, the Guarantee Trustee must ensure that an Attorney votes in accordance with the proviso to this clause 8.2(b) irrespective of any instructions of the Financiers to the contrary given in accordance with the Finance Guarantee (LGTDD).

- (c) If following the occurrence of a Wind-Up Event in respect of LGTDD, the value of the assets of LGTDD available for distribution to pay the claims of ordinary unsecured creditors (or realisation to allow such payment), as determined or estimated (in the absence of manifest error) by the relevant Insolvency Official (or otherwise determined or estimated for the purposes of the relevant Insolvency proceeding in accordance with applicable law) is equal to or less than the amount required to enable discharge and satisfaction of the Finance Money Debt (Performing Subsidiary) in full, then, subject to clauses 8.8 and 8.9, during the Wind-Up Event an Attorney may vote on any matter in any meeting, proceeding or distribution concerning the Wind-Up Event in respect of the Compensation Debt (Performing Subsidiary) in accordance with the instructions of the Financiers given in accordance with the Finance Guarantee (LGTDD) and clauses 8.2(b), 8.3 to 8.7 inclusive and 8.10 do not apply.

8.3 Appointment of an Independent Expert

(a) If during the Insolvency of LGTDD:

- (i) the Guarantee Trustee or an Attorney receives a Notice of Voting in Insolvency (or a copy of a Notice of Voting in Insolvency); and
- (ii) a vote on any matter in any meeting, proceeding or distribution concerning the Insolvency of LGTDD requires a choice between:
 - A. two or more options, proposals, courses of action or other alternatives (howsoever described) (**Options**) for the partial or full winding up, restructure or reconstruction of LGTDD or the realisation of some or all of LGTDD's assets in connection with its Insolvency;
 - B. deferring or not deferring any action; or
 - C. extending or not extending the Insolvency proceeding,

then the Guarantee Trustee must promptly provide the NSW Government with a copy of the Notice of Voting in Insolvency and procure the appointment of an Independent Expert in accordance with this clause 8.3, such appointment to be made within 10 Business Days of receipt by the Guarantee Trustee of the Notice of Voting in Insolvency (unless the NSW Government gives notice that it does not so require).

- (b) The Guarantee Trustee must, prior to any appointment of an Independent Expert under this deed, provide the NSW Government with 5 Business Days notice (or, subject to clause 7.8.1(i), such shorter notice as the Guarantee Trustee determines is reasonable having regard to the terms of the Notice of Voting in Insolvency) of the Person nominated by the Guarantee Trustee to act as Independent Expert, together with evidence demonstrating such nominee's compliance with the criteria and qualifications required of an Independent Expert under this deed.
- (c) If an Independent Expert is appointed under this clause 8.3, the costs of the Independent Expert shall be borne by the NSW Government.

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- (d) Subject to clause 8.3(e), upon receipt of a Notice of Voting in Insolvency and at any time prior to 2 Business Days before the latest date on which the Independent Expert must make a determination in accordance with clauses 8.4 and 8.5 (or, subject to clause 7.8.1(i), such earlier time as the Guarantee Trustee determines is reasonable having regard to the terms of the Notice of Voting in Insolvency and advises the Fund Trustee and the NSW Government), the NSW Government may nominate:
- (i) an Option which it would like an Attorney to vote for in respect of the Compensation Debt (Performing Subsidiary); or
 - (ii) if the vote relates to deferring or not deferring any action or extending or not extending the Insolvency proceeding, which alternative it would like the Attorney to vote for in respect of the Compensation Debt (Performing Subsidiary).
- (e) If an Independent Expert appointed under this clause 8 determines that an Option, other than the Option nominated by the NSW Government under clause 8.3(d)(i), satisfies the criteria set out in:
- (i) clauses 8.4(a), (b), (c) and if applicable, (d); or
 - (ii) clause 8.4(e),
- then the NSW Government may immediately, with notice in writing to the Guarantee Trustee, nominate the Option so determined by the Independent Expert as the Option that it would like an Attorney to vote for in respect of the Compensation Debt (Performing Subsidiary).
- (f) For the purposes of this clause 8, **Preferred Option** means:
- (i) subject to clause 8.3(f)(ii), the Option nominated by the NSW Government under clause 8.3(d)(i); or
 - (ii) if the circumstances in clause 8.3(e) apply, the Option nominated by the NSW Government under clause 8.3(e); or
 - (iii) if the circumstances in clause 8.3(g) apply, the Option nominated by the NSW Government under clause 8.3(g); or

(iv) if the NSW Government has not nominated an Option in accordance with clause 8.3(d)(i) or 8.3(e), the Preferred Option is deemed to be the Option which the Independent Expert determines satisfies the criteria set out in:

- A. clauses 8.4(a), (b), (c) and, if applicable, (d); or
- B. clause 8.4(e),

and in respect of which the amounts anticipated to be received by, or on behalf of the Fund, have a higher net present value than any other Option having regard (among any other factors) to any potential future payment by LGTDD, JHINV or a James Hardie Successor (under an agreement similar in its effect to the Final Funding Agreement) in respect of part or all of the Compensation Debt (Performing Subsidiary).

(g) If the Independent Expert determines that there are two or more Options which satisfy the criteria set out in clause 8.2(b)(ii), the NSW Government may notify the Guarantee Trustee in writing which Option it wishes to nominate as the Preferred Option.

8.4 Role of the Independent Expert

If an Independent Expert is appointed under this clause 8, the Independent Expert shall determine (and shall be instructed by the Guarantee Trustee only to determine), in its opinion:

- (a) whether, one or more Options (if approved and implemented in the manner described in the Notice of Voting in Insolvency) are likely to result in the recovery by the Guarantee Trustee of an amount in respect of the Finance Money Debt (Performing Subsidiary) which would be sufficient (taking into account prior ranking claims, the likely or anticipated distribution to Financiers by the Insolvency Official and any likely payment to the Guarantee Trustee under clause 4) to discharge and satisfy the Finance Money Debt (Performing Subsidiary) in full;
- (b) whether one or more of the Options which satisfy the requirements of paragraph (a) (if approved and implemented in the manner described in the Notice of Voting in Insolvency) are likely to result in the recovery by the Guarantee

Trustee in respect of the Finance Money Debt (Performing Subsidiary) of an amount:

- (i) which would be at least 5% greater than the amount which the Guarantee Trustee would be likely to recover in respect of the Finance Money Debt (Performing Subsidiary) under any other Option, after allowing for the time value of money; and
 - (ii) which would discharge and satisfy the Finance Money Debt (Performing Subsidiary) in full by a date no later than 12 months after the earliest date by which any of the other Options would achieve full discharge and satisfaction of the Finance Money Debt (Performing Subsidiary); and
- (c) whether the conditions (if any) attached to one or more of the Options which satisfy the requirements of paragraph (a) (as described in the Notice of Voting in Insolvency) do not involve a materially greater risk of non-recovery, or delay in recovery of more than 12 months, by the Guarantee Trustee of an amount which would be sufficient (taking into account prior ranking claims, the likely or anticipated distribution to the Financiers by the Insolvency Official and any likely payment to the Guarantee Trust under clause 4) to discharge and satisfy the Finance Money Debt (Performing Subsidiary) in full, compared to the risks of non-recovery, or delay in recovery of more than 12 months, associated with the other Options (taking into account the conditions (if any) attached to those other Options (as described in the Notice of Voting in Insolvency)); and
- (d) if one of more of the Options which satisfy the requirements of paragraph (a) (if approved and implemented in the manner described in the Notice of Voting in Insolvency) are each likely to result in the recovery by the Guarantee Trustee of an amount sufficient to discharge and satisfy the Finance Money Debt (Performing Subsidiary) in full within substantially the same period of time (taking into account prior ranking claims, the likely or anticipated distribution to the Financiers by the Insolvency Official and any likely payment to the Guarantee Trust under clause 4), which Option would result in the amounts anticipated to be received by, or on behalf of, the Fund in respect of the Compensation Debt (Performing Subsidiary) having a higher net present value than the other Options having regard (among any other relevant factors) to any potential future payment by LGTDD, JHINV or a James Hardie Successor (under an agreement similar in its effect to the Final Funding Agreement) in respect of part or all of the Compensation Debt (Performing Subsidiary); and

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- (e) if the vote relates to deferring or not deferring any action or extending or not extending the Insolvency proceeding, which choice is likely to result in:
- (i) a greater net recovery in respect of the Finance Money Debt (Performing Subsidiary) (taking into account prior ranking claims, the likely or anticipated distribution to the Financiers by the Insolvency Official and any likely payment to the Guarantee Trust under clause 4); or
 - (ii) if either choice would result in the recovery by the Guarantee Trustee of an amount sufficient to discharge and satisfy the Finance Money Debt (Performing Subsidiary) in full (taking into account prior ranking claims, the likely or anticipated distribution to the Financiers by the Insolvency Official and any likely payment to the Guarantee Trust under clause 4), a greater net recovery in respect of the Compensation Debt (Performing Subsidiary) (taking into account prior ranking claims, the likely or anticipated distribution to the Financiers by the Insolvency Official and any likely payment to the Guarantee Trust under clause 4) within the next 12 months.

8.5 Notice of determination by the Independent Expert

The Independent Expert shall send its determination, together with reasons and supporting material, in writing to the Guarantee Trustee and the NSW Government within 10 Business Days of its appointment (or such shorter period as the Guarantee Trustee may specify at the time of appointment of the Independent Expert having regard to the terms of the Notice of Voting in Insolvency).

8.6 Assistance to the Independent Expert

Subject to any duty of confidentiality or applicable law, the Guarantee Trustee, the Financiers, LGTDD, the Fund Trustee and the NSW Government must promptly provide the Independent Expert with any information or assistance it reasonably requests for the purpose of making its determination under clause 8.4.

8.7 Determination by the Independent Expert final

The determination of the Independent Expert shall (in the absence of manifest error) be final and binding on the Guarantee Trustee, each Financier, LGTDD, the Fund Trustee and the NSW Government.

8.8 Consent of NSW Government required in certain circumstances

- (a) Subject to clauses 8.9 and 8.10, but otherwise notwithstanding any other provision of clauses 8.2 to 8.7 inclusive, the Guarantee Trustee must ensure that an Attorney does not, without the prior written consent of the NSW Government, vote in respect of the Specified Proportion of the Compensation Debt (Performing Subsidiary) in favour of any arrangement, assignment, reconstruction, composition, option, proposal or other course of action proposed in connection with LGTDD's Insolvency which, if approved and implemented, would result in the extinguishment of any part of the Compensation Debt (Performing Subsidiary) (other than by payment in full or upon the final dissolution or winding up of JHINV in circumstances where there will be an insufficiency of assets to enable payment of any part of the Compensation Debt (Performing Subsidiary) taking into account prior ranking claims, the distribution to the Financiers by the Insolvency Official and payments to the Guarantee Trust under clause 4). An Attorney may vote the balance of the Compensation Debt (Performing Subsidiary) in accordance with the instructions of the Financiers given in accordance with the Finance Guarantee (LGTDD) (or, in the absence of such instructions, as the Guarantee Trustee directs).
- (b) Where there are two or more Options, the Guarantee Trustee must appoint and obtain advice from an Independent Expert in accordance with clauses 8.3 and 8.4 and, provided that the Independent Expert has had due regard to the matters specified in clause 8.4, the Guarantee Trustee must, subject to clauses 8.2(c), 8.9 and 8.10, ensure that an Attorney votes the Specified Proportion of the Compensation Debt (Performing Subsidiary) in favour of the Preferred Option. An Attorney may vote the balance of the Compensation Debt (Performing Subsidiary) in accordance with the instructions of the Financiers given in accordance with the Finance Guarantee (LGTDD).

8.9 Defaulting or absent Guarantee Trustee

If:

- (a) a court of competent jurisdiction has determined that the Guarantee Trustee is in breach of, or default under, this deed; or
- (b) there is no Person acting as trustee under the Finance Guarantee (LGTDD),

then for so long as such breach or default continues and remains unremedied, or until a Person is appointed as a New Guarantee Trustee in accordance with clause 7.6, as the case may be, the Compensation Parties may exercise any vote in any Insolvency proceeding in respect of the Compensation Debt (Performing Subsidiary) which would otherwise be exercised by an Attorney.

8.10 Residual Power

If the Guarantee Trustee is obliged by reason of this clause 8 to ensure that an Attorney votes in a manner recommended by the Independent Expert, the Guarantee Trustee may cause the Attorney to vote in another manner approved by the NSW Government.

9. CHANGES TO RIGHTS

9.1 Rights of the Financiers are protected

- (a) Rights given to or for the benefit of the Financiers under this deed, and the obligations of each Compensation Party and the NSW Government under it, are not affected by any act or omission by a Compensation Party, the NSW Government, the Guarantee Trustee, any Financier or any other Person or by any other act, other matter or thing whatsoever, whether negligent or not, except as agreed to in writing by the Guarantee Trustee. For example, those rights and liabilities are not affected by:
- (i) any act or omission:
- A. varying or replacing any arrangement under which any Finance Money Debt (Performing Subsidiary) or Compensation Debt (Performing Subsidiary) is expressed to be owing, such as by increasing a facility limit or extending the term;
 - B. releasing or discharging LGTDD or any Security Provider (including discharge by operation of law) or giving them a concession (such as more time to pay);
 - C. releasing any Person who gives a guarantee or indemnity in connection with any of LGTDD's obligations;

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- D. releasing, losing the benefit of, or not obtaining any Security Interest or negotiable instrument;
 - E. by which the obligations of a Compensation Party, the NSW Government, LGTDD or any Security Provider may not be enforceable;
 - F. by which any Person who was intended to guarantee or provide a Security Interest securing all or part of the Finance Money Debt (Performing Subsidiary) does not do so, or does not do so effectively;
 - G. by which a Compensation Party or the NSW Government is discharged from its obligations to the Financiers by operation of law;
 - H. by which any Security Interest which could be registered is not registered; or
 - I. any other thing causing any prejudice (including material prejudice);
- (ii) a Person dealing in any way with a Security Interest, guarantee, indemnity, judgment or negotiable instrument;
 - (iii) the death, mental or physical disability, incapacity, Insolvency or any legal limitation of any Person including LGTDD, a Compensation Party or the NSW Government;
 - (iv) changes in the membership, name or business of any Person;
 - (v) LGTDD opening an account with any Financier;
 - (vi) acquiescence or delay by any Financier or any other Person;
 - (vii) an assignment of rights or a novation in connection with all or part of the Finance Money Debt (Performing Subsidiary) or the Compensation Debt (Performing Subsidiary);

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- (viii) the acceptance of the repudiation of, or termination of, any Finance Document or any other document or agreement; or
 - (ix) any payment to a Financier, including any payment which at the payment date or at any time after the payment date is, in whole or part, illegal, void, voidable, avoided or unenforceable.

This clause applies regardless of whether LGTDD, a Compensation Party or the NSW Government is aware of, has consented to or is given notice of any act, omission, matter or thing referred to in this clause. This clause does not limit the obligations of a Compensation Party or the NSW Government under this deed.

- (b) Subject to this deed, the Financiers may act freely in their interests in relation to any matter concerning the Finance Money Debt (Performing Subsidiary) without regard to the interests of a Compensation Party or the NSW Government or the terms of the Compensation Debt (Performing Subsidiary) and without incurring any liability to a Compensation Party or the NSW Government.

9.2 Payments

The Fund Trustee and the NSW Government agree to make any payments required under this deed:

- (a) to, or as directed by, the Guarantee Trustee;
- (b) in full without set off or counterclaim, and without any deduction in respect of Taxes unless prohibited by law; and
- (c) in the currency in which it receives or recovers payment in respect of the Compensation Debt (Performing Subsidiary).

9.3 Reinstatement of rights

Under any law relating to Insolvency, a Person may claim that a transaction (including a payment) in connection with this deed or the Finance Money Debt (Performing Subsidiary) is void or voidable. If such a claim is made and upheld, conceded or compromised, then the Financiers are immediately entitled as against each Compensation Party and the NSW Government to the rights under this deed in respect of the Finance Money Debt (Performing Subsidiary) to which they were entitled immediately before the

transaction. On request from the Financiers, each Compensation Party and the NSW Government agrees to do anything reasonably required and at the cost of the Financiers (including signing any document) to restore to the Financiers any right the Financiers held under this deed immediately before the transaction.

This clause 9.3 applies whether or not the Guarantee Trustee or a Financier, knew, or ought to have known, that the transaction would or may be void or voidable.

9.4 Set-off

A Financier may set off any amount due for payment by the Financier to a Compensation Party against any amount due for payment by that Compensation Party to the Financier. This does not restrict any right of set-off which may arise at law.

9.5 Discretion in exercising rights

A Financier may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this deed expressly states otherwise.

9.6 Partial exercising of rights

If any party or a Financier does not exercise a right or remedy fully or at a given time, that party or the Financier (as the case may be) may still exercise it later.

9.7 Remedies cumulative

The rights and remedies of each party and the Financiers under this deed are in addition to other rights and remedies given by law independently of this deed.

9.8 Variation and waiver

Unless this deed expressly states otherwise, a provision of this deed, or right created under it, may not be waived or varied except in writing signed by the party or parties to be bound and with the prior written consent of the other parties.

For the avoidance of doubt, but subject to any requirement for the Guarantee Trustee to obtain instructions and/or consent from all or a specified majority of the Financiers as

referred to in clause 7.3, this clause 9.8 does not require a Financier to sign any such waiver or variation.

10. INCONSISTENT LAW

10.1 Inconsistent law

To the extent permitted by law, this deed prevails to the extent it is inconsistent with any law.

10.2 Supervening legislation

Any present or future legislation which operates to vary the obligations of a Compensation Party or the NSW Government in connection with this deed with the result that the Financiers' rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

11. NOTICES

- (a) A notice, approval, consent, nomination or other communication (including a Financier Nomination Letter) (**Communication**) to a Person relating to this deed:
- (i) must state that it relates to this deed and state the relevant clause in this deed;
 - (ii) must be signed by an Authorised Officer;
 - (iii) must be in legible writing; and
 - (iv) must be in English.
- (b) Communications must be addressed as follows:

If the Communication is to NSW Government then it must be addressed as follows:

Name:

Attention:

Address:

Facsimile:

unless the NSW Government has notified the other parties of new contact details, in which case the Communication must be addressed in the manner last notified by the NSW Government.

If the Communication is to the Fund Trustee then it must be addressed as follows:

Name:

Attention:

Address:

Facsimile:

unless the Fund Trustee has notified the other parties of new contact details, in which case the Communication must be addressed in the manner last notified by the Fund Trustee.

A copy of any such Communication to the Fund Trustee must promptly be sent to the NSW Government in accordance with this clause 11.

If the Communication is to the Guarantee Trustee then it must be addressed as follows:

Name:

Attention:

Address:

Facsimile:

unless the Guarantee Trustee has notified the other parties of new contact details, in which case the Communication must be addressed in the manner last notified by the Guarantee Trustee.

If the Communication is to a Financier then it must be addressed as specified in the relevant Financier Nomination Letter, unless the Financier has subsequently notified the other parties of new contact details, in which case the Communication must be addressed in the manner last notified by the Financier.

If the Communication is to a Replacement Trustee or a New Guarantee Trustee then it must be addressed as specified in the relevant Accession Deed, unless the Replacement Trustee or New Guarantee Trustee has subsequently notified the other parties of new contact details, in which case the Communication must be addressed in the manner last notified by the Replacement Trustee or New Guarantee Trustee.

- (c) If the Communication is sent by the sender it shall be deemed to be received by the receiver:
- (i) if the Communication is hand delivered, upon delivery to the receiving party;
 - (ii) if the Communication is sent by facsimile, upon the successful completion of the relevant transmission;
 - (iii) if the Communication is sent by registered mail within Australia, 2 business days after the registration of the notice of posting; and
 - (iv) if the Communication is sent by ordinary mail within Australia, 3 business days from then including the date of postage, provided that where a notice to a party must be copied to another Person, each such notice will only be given at the time the last notice is received.
- (d) For the avoidance of doubt, a Communication shall not be sent by electronic email.

12. GOVERNING LAW AND JURISDICTION

12.1 Governing law

This deed is governed by the laws of New South Wales.

12.2 Submission to jurisdiction

Each party and Financier submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales, and waives any right to claim that those courts are an inconvenient forum.

12.3 Service

- (a) A document may be served on a party or a Financier by delivering it to that party at its address in clause 11.
- (b) This clause 12.3 does not prevent another mode of service.

13. COUNTERPARTS

This deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

14. GENERAL

14.1 Severability

- (a) If a provision of this deed is invalid, illegal or unenforceable, then that provision to the extent of the invalidity, illegality or unenforceability must be ignored in the interpretation of this deed.
- (b) All the other provisions of this deed remain in full force and effect.

14.2 No waiver

- (a) A party's agreement to waive a right or entitlement under this deed is only effective if that party gives written notice of that waiver to the party seeking the benefit of the waiver.

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- (b) Waiver by a party of anything required to be done under this deed is not a waiver of any other thing required to be done under this deed.
 - (c) Paragraph (b) applies whether the other act or thing required to be done under this deed is of the same or a different nature as the act or thing waived.
 - (d) A failure or delay in exercising a right arising from a breach of this deed is not a waiver of that right.
 - (e) The parties must not waive this clause 14.

14.3 Further assurances

Each party and Financier must do everything necessary to give full effect to this deed.

14.4 Entire agreement

- (a) This deed embodies the entire agreement between the Fund Trustee and the NSW Government on the one part, and the Guarantee Trustee and the Financiers on the other part.
- (b) This deed supersedes all previous agreements.

14.5 Cumulative rights

A right, power, discretion and remedy arising out of this deed in favour of a party or a Financier:

- (a) is cumulative; and
- (b) does not diminish any other right, power, discretion and remedy of any party or a Financier.

14.6 Certificates

A Financier or the Guarantee Trustee may give a Compensation Party or the NSW Government a certificate about an amount payable or other matter in connection with this deed, the Finance Guarantee (LGTDD) or a Finance Document. The certificate is sufficient evidence of the amount or matter, unless it is proved to be incorrect.

14.7 Amendment of this deed

The parties can only vary a term of this deed if the variation is in writing and all parties execute an amending deed.

14.8 Confidentiality

Subject to the exceptions set out below, each party shall, and shall procure that its employees, officers, agents and advisers (each a “ **Representative** ”) keep strictly confidential all information provided to that party or its Representatives in relation to, or in connection with the Final Funding Agreement, this deed and the other Related Agreements and each party shall be responsible for all acts and omissions of its Representatives in relation to such information.

A party (and its Representatives) may disclose information under or obtained in connection with the Final Funding Agreement, this deed and the other Related Agreements as may be necessary to:

- (a) the party’s related bodies corporate, professional advisors, bankers, financial advisors and financiers, if those persons undertake to keep the information disclosed confidential;
- (b) comply with any applicable law or requirement of any regulatory body (including any relevant stock exchange) and any corporate governance guidelines adopted by such bodies which are adopted by such party;
- (c) any of its employees to whom it is necessary to disclose the information, if that employee undertakes to keep the information confidential;
- (d) any Person as permitted by the written agreement of all parties; or
- (e) any Person if the content of the disclosure is or has become generally available to the public otherwise than by breach of this deed.

15. GUARANTEE TRUSTEE LIMITATION OF LIABILITY

[To be provided by the Guarantee Trustee]

Executed as a deed

Each person executing this deed states that the person has no notice of the revocation, termination or suspension of the authority pursuant to which the person executes this deed.

Signed, sealed and delivered by **The Honourable Morris Iemma MP** ,
Premier of New South Wales ,
for The State of New South Wales

Signed, sealed and delivered by **Asbestos Injuries Compensation Fund Trustee Limited** in its capacity as trustee for the **Asbestos Injuries (JH) Compensation Foundation**

[Insert name]

[Insert Capacity]

Signed, sealed and delivered by LGTDD Pty Limited

[Insert name]

[Insert Capacity]

[Insert name]

[Insert Capacity]

[Insert name]

[Insert Capacity]

Signed, sealed and delivered by [*Guarantee Trustee*]

[Insert name]

[Insert Capacity]

[Insert name]

[Insert Capacity]

SCHEDULE 1
FINANCIER NOMINATION LETTER

[Date]

To: [Financier]

Performing Subsidiary Intercreditor Deed — Financier Nomination Letter

We refer to the Performing Subsidiary Intercreditor Deed between the State of New South Wales, Asbestos Injuries Compensation Fund Trustee Limited, ourselves and [insert name] (**Guarantee Trustee**) dated [insert date] (**Performing Subsidiary Intercreditor Deed**).

For the purposes of the Performing Subsidiary Intercreditor Deed, on and from the date of this letter:

We nominate the following document as a finance document:

Name: [insert details]

Date: [insert details]

Parties: [insert details]

The agreement described above, and each document named or referred to as a ["Finance Document"] in that agreement, is a Finance Document for the purposes of the Performing Subsidiary Intercreditor Deed; and

We nominate you as a "Financier" in relation to each Finance Document referred to above.

Please confirm your acceptance of the above nomination, and the benefit and obligations of the Performing Subsidiary Intercreditor Deed, by signing and returning the attached copy of this letter to the Guarantee Trustee.

Clauses 1 (**Interpretation**) and 12 (**Governing law and Jurisdiction**) of the Performing Subsidiary Intercreditor Deed apply to this letter as they were fully set out in this letter.

Executed as deed poll for and on behalf of
LGTDD PTY LIMITED

by its Authorised Officer:

Name:

Title:

Endorsement by the Guarantee Trustee:

We undertake that, if required by clause 2.2(b) of the Performing Subsidiary Intercreditor Deed, we will send a copy of the signed Financier Nomination Letter to the State of New South Wales and the Fund Trustee (each as defined in the Performing Subsidiary Intercreditor Deed).

Executed as a deed poll for and on behalf of

[INSERT NAME OF GUARANTEE TRUSTEE]

by its Authorised Officer:

Name:

Title:

Acceptance by the nominated Financier

We accept and agree to the above nomination.

We acknowledge becoming entitled to the benefit of the Performing Subsidiary Intercreditor Deed and incurring obligations and giving rights under the Performing Subsidiary Intercreditor Deed for valuable consideration received from the parties to the Performing Subsidiary Intercreditor Deed.

We further acknowledge that the Performing Subsidiary Intercreditor Deed does not:

(a) affect the status or ranking of the Compensation Debt (Performing Subsidiary) as an ordinary unsecured claim against LGTDD;

(b) affect the status or ranking of the Compensation Debt (Performing Subsidiary) as against the other debts (including the Finance Money (Performing Subsidiary)) or the other creditors of LGTDD (including the Financiers).

We accept the benefit and obligations of the Performing Subsidiary Intercreditor Deed, and agree to:

- (i) be bound by the terms of that deed;
- (ii) promptly respond to any requests from the Guarantee Trustee for (A) instructions as to the manner in which the Guarantee Trustee should exercise any of its rights or benefits under the Performing Subsidiary Intercreditor Deed, or (B) any consent required from the Financiers (and agree not to unreasonably withhold or delay such consent); and
- (iii) agree that if we fail to promptly so respond, the Guarantee Trustee may exercise such rights or benefits in accordance with the instructions of the requisite majority of the Financiers who do so respond in accordance with the Finance Guarantee (LGTDD).

Executed as a deed poll for and on behalf of

[Insert name of Financier]

by its Authorised Officer:

Name:

Title:

SCHEDULE 2
ACCESSION DEED

[Date]

To: [Existing parties to the Performing Subsidiary Intercreditor Deed]

Performing Subsidiary Intercreditor Deed — Accession as [Replacement Trustee / New Guarantee Trustee]

We refer to the Performing Subsidiary Intercreditor Deed between the State of New South Wales, Asbestos Injuries Compensation Fund Trustee Limited, LGTDD Pty Limited and [*insert name*] (**Guarantee Trustee**) dated [*insert date*] (**Performing Subsidiary Intercreditor Deed**).

We acknowledge becoming a party to the Performing Subsidiary Intercreditor Deed and incurring obligations and giving rights under the Performing Subsidiary Intercreditor Deed for valuable consideration received from the other parties to the Performing Subsidiary Intercreditor Deed.

We hereby undertake, for the benefit of existing parties to the Performing Subsidiary Intercreditor Deed, that on and from the date of this letter, we will perform and comply with all the duties and obligations [of a Replacement Trustee and the Fund Trustee] [expressed to be assumed by [a Replacement Trustee / New Guarantee Trustee]] under the Performing Subsidiary Intercreditor Deed.

Clauses 1 (**Interpretation**) and 12 (**Governing law and Jurisdiction**) of the Performing Subsidiary Intercreditor Deed apply to this letter as they were fully set out in this letter.

Executed as a deed poll for and on behalf of

[NAME OF REPLACEMENT TRUSTEE / NEW GUARANTEE TRUSTEE]

by its Authorised Officer:

Name:

Title:

SCHEDULE 3
FORM OF POWER OF ATTORNEY

Appointer: [Asbestos Injuries Compensation Fund Trustee Limited in its capacity as trustee for the Asbestos Injuries (JH) Compensation Foundation] / *[[name of replacement trustee]* as replacement trustee of the Asbestos Injuries (JH) Compensation Foundation] / *[name of New Person]* as [successor] to [Asbestos Injuries Compensation Fund Trustee Limited] / *[name of replacement trustee]* in its capacity as trustee for the Asbestos Injuries (JH) Compensation Foundation] (*[ABN]*) of *[address of Appointer]*

Attorney: *[name of Guarantee Trustee]* (*[ABN]*) (**Guarantee Trustee**) of *[address of Guarantee Trustee]* and each Authorised Officer of the Guarantee Trustee from time to time individually

Date: *[date of power of attorney]*

1. APPOINTMENT

Subject to clause 4, the Appointer irrevocably and for valuable consideration appoints the Attorney to be the Appointer's attorney. This appointment is of each Attorney individually and any two or more of them jointly.

2. WHAT THE APPOINTER MAY DO

The Attorney may:

- (a) exercise the right to cast all and any votes attaching to, or to be cast in respect of, the Compensation Debt (Performing Subsidiary) during the Insolvency of LGTDD at, or in connection with, any meeting, proceeding or distribution concerning the Insolvency of LGTDD for so long as any Finance Money Debt (Performing Subsidiary) remains outstanding and to the exclusion of the right of the Appointer to exercise all of any such votes for so long as any Finance Money Debt (Performing Subsidiary) remains outstanding;
- (b) do anything necessary or incidental to such exercise including, without limitation, signing and delivering documents;

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- (c) provide an original or copy of this power of attorney to an Insolvency Official for the purpose of establishing the right and entitlement of the Attorney during the Insolvency of LGTDD to exercise the right to cast all and any votes attaching to, or to be cast in respect of, the Compensation Debt (Performing Subsidiary) during the Insolvency of LGTDD at, or in connection with, any meeting, proceeding or distribution concerning the Insolvency of LGTDD; and
 - (d) do anything which in the Attorney's opinion is necessary or desirable to ensure the validity and enforceability of this power of attorney under any applicable law (including, without limitation, stamping or registering this power of attorney or filing this power of attorney with any government authority).

Subject to the terms and conditions set out in the Performing Subsidiary Intercreditor Deed, the Attorney may do these things in the name and on behalf of the Appointer or, if necessary or desirable under any applicable law in the Attorney's opinion, the Attorney's name.

3. GENERAL

3.1 Attorney's acts valid

Subject to the terms and conditions set out in the Performing Subsidiary Intercreditor Deed, the Appointer declares that all acts, matters and things done by the Attorney in exercising powers under this power of attorney and which are in accordance with the terms and conditions set out in the Performing Subsidiary Intercreditor Deed, will be as valid and effective as if they had been done by the Appointer.

3.2 Benefit to the Attorney

The Attorney may exercise a power under this power of attorney even if:

- (a) it involves a conflict of duty; or
- (b) the Attorney has a personal interest in the doing of that act.

3.3 Governing law

This deed is governed by the law in force in New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of that place.

4. COMPLIANCE WITH PERFORMING SUBSIDIARY INTERCREDITOR DEED

Notwithstanding any other provision of this Power of Attorney, the Attorney must exercise the rights granted to it under this Power of Attorney in accordance with, and subject to, the terms and conditions set out in the Performing Subsidiary Intercreditor Deed.

5. INTERPRETATION

In this power of attorney:

Authorised Officer has the same meaning as in the Performing Subsidiary Intercreditor Deed.

Compensation Debt (Performing Subsidiary) has the same meaning as in the Performing Subsidiary Intercreditor Deed.

Finance Money Debt (Performing Subsidiary) has the same meaning as in the Performing Subsidiary Intercreditor Deed.

Insolvency has the same meaning as in the Performing Subsidiary Intercreditor Deed.

Insolvency Official has the same meaning as in the Performing Subsidiary Intercreditor Deed.

Performing Subsidiary Intercreditor Deed means the Intercreditor Deed between the State of New South Wales, Asbestos Injuries Compensation Fund Trustee Limited, LGTDD Pty Limited and [*insert name of Guarantee Trustee*] dated [*insert date*].

LGTDD has the same meaning as in the Performing Subsidiary Intercreditor Deed.

EXECUTED as a deed poll

Signed, sealed and delivered by [*name of Appointer*]

[*name of signatory*]

[*name of signatory*]

[capacity of signatory]

[capacity of signatory]

ATTACHMENT A
DICTIONARY AND INTERPRETATION
(CLAUSE 1)

1. DICTIONARY

In this deed:

Accession Deed means a letter (executed as a deed poll) in the form of Schedule 2 to this deed.

Annual Payment has the meaning given to that term in the Final Funding Agreement.

Attorney has the meaning given to it in clause 8.1(a).

Audited Financial Statements means, in respect of a Financial Year, the audited consolidated financial statements of LGTDD for that Financial Year prepared in accordance with the generally accepted accounting principles with respect to which LGTDD prepares its published financial reports, in each case consistently applied throughout that Financial Year.

Authorised Officer means:

- (a) in the case of the Guarantee Trustee or a Financier, a director or secretary, or an officer whose title contains the word “director”, “chief”, “head”, “president”, “vice-president”, “executive” or “manager” or a Person performing the functions of any of them, or any other Person nominated by the Guarantee Trustee or the Financier, as the case may be, as an Authorised Officer for the purposes of this deed;
- (b) in the case of the Fund Trustee, a Person appointed by the Fund Trustee and notified to the Guarantee Trustee and the Financiers as an Authorised Officer for the purposes of this deed, and whose specimen signature is provided with such notification;
- (c) in the case of LGTDD, a director of LGTDD or a person appointed by LGTDD and notified to the Fund Trustee, the NSW Government, the Guarantee Trustee

and the Financiers as an Authorised Officer for the purposes of this deed, and whose specimen signature is provided with such notification; and

- (d) in the case of the NSW Government, any person who is a member of the Chief Executive Service or the Senior Executive Service of the New South Wales Public Service at the time the relevant act pursuant to this deed is to be undertaken. The Guarantee Trustee may rely on a statement from any person it reasonably believes is a member of the Chief Executive Service or the Senior Executive Service of the New South Wales Public Service that such person is in fact a member of the Chief Executive Service or the Senior Executive Service of the New South Wales Public Service.

Business Day means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in Sydney, Australia.

Communication has the meaning given to it in clause 11(a).

Compensation Debt (Performing Subsidiary) means at any time all amounts then due for payment or which will or may become due for payment or that remain unpaid by LGTDD in connection with the Final Funding Agreement, provided that once such amounts have been ascribed a value by an Insolvency Official for the purposes of an Insolvency of LGTDD (including acceptance of a proof of debt for such amounts or a lesser amount by an Insolvency Official), a reference to the Compensation Debt (Performing Subsidiary) is a reference to amounts having that value, provided that if interest is payable on such amount under applicable law, the Compensation Debt (Performing Subsidiary) also includes such interest as is payable under applicable law (including all interest accruing on or subsequent to the filing of a petition initiating any proceeding in bankruptcy or insolvency or any like proceeding whether or not such interest is an allowed claim in such proceeding).

For the avoidance of doubt, the Compensation Debt (Performing Subsidiary) is only payable once to the Fund Trustee or the NSW Government for the sole benefit of the Fund Trustee in accordance with the terms of the Final Funding Agreement and the Related Agreements and nothing in this deed obliges LGTDD to pay the same amount to more than one Person.

Compensation Parties means subject to clause 5.2, the Fund Trustee and, the NSW Government.

Controlled Entity means in respect of a Person, another Person in respect of which the first-mentioned Person is required to consolidate in its Audited Financial Statements but, in the case of LGTDD, does not include any Liable Entity (as defined in the Final Funding Agreement) or the Fund Trustee. For the avoidance of doubt, LGTDD is not a Controlled Entity of the LGTDD Group.

Cross Guarantee (Fund Guaranteed Money) means a guarantee or indemnity (or other covenant to secure the satisfaction of any payment or obligation) given by a member of the LGTDD Group (other than LGTDD) (**Subsidiary Guarantor**):

- (a) in favour of the Fund Trustee in respect of the Compensation Debt (Performing Subsidiary);
- (b) on substantially the same terms as a guarantee or indemnity (or other covenant to secure the satisfaction of any payment or obligation) given by the Subsidiary Guarantor in respect of financial accommodation provided by a Person to another member of the LGTDD Group;
- (c) which terminates when the guarantee, indemnity or other covenant referred to in paragraph (b) terminates whether by express provision or by operation of law,

provided that the Fund Trustee and the NSW Government have entered into a deed on substantially the same terms as this deed in relation to the benefit of any such guarantee or indemnity (or other covenant to secure the satisfaction of any payment or obligation).

Excluded Lender means any Person to the extent that such Person:

- (a) is a trade creditor;
- (b) has provided any debt on terms that it is to be subordinated to the Compensation Debt (Performing Subsidiary);
- (c) has provided any debt or other borrowing which arises pursuant to a derivative:
 - (i) relating to equity interests in a member of the LGTDD Group; or
 - (ii) which is recognised as equity under applicable accounting standards;
- (d) is a member of the LGTDD Group;

-
- (e) is or becomes a creditor in respect of an amount owing to such Person in its capacity as a shareholder of LGTDD or another member of the LGTDD Group otherwise than on arm's length terms;
- (f) provides financial accommodation to a Controlled Entity of the LGTDD Group and receives the benefit of a guarantee or indemnity (or other covenant to secure the satisfaction of any payment or obligation) given by a LGTDD Group member (other than LGTDD), where there is no Cross Guarantee (Fund Guaranteed Money) provided to the Fund Trustee on substantially the same terms as the Guarantee; or
- (g) acquires the rights, as a creditor, of any such Person referred to in any of paragraphs (a) to (f) inclusive or their assignees.

Final Funding Agreement means the legally binding agreement so entitled dated 1 December 2005 between JHINV, LGTDD and the NSW Government to which the Fund Trustee became a party on [].

Finance Document in relation to a Financier means each agreement to which the Financier (whether or not together with any other Person) is a party under which liabilities are owed by LGTDD (or another member of the LGTDD Group the performance of whose obligations has been guaranteed by LGTDD) where such liabilities are, or are required to be, included in the LGTDD Group's financial statements or notes thereto as debt or borrowings (including bank loans, letter of credit facilities, derivatives and debt capital markets issues which are, or are required to be, so included or noted) and which is nominated as a "Finance Document" in a Financier Nomination Letter. For the avoidance of doubt, the Finance Guarantee (LGTDD) is not a Finance Document.

Finance Guarantee (LGTDD) means the deed dated [*insert date*] given by LGTDD, among other things, guaranteeing the obligations of other members of the LGTDD Group in favour of the Guarantee Trustee and the Financiers.

Finance Money Debt (Performing Subsidiary) means at any time, the total of all amounts then due for payment or which will or may become due for payment or that remain unpaid by LGTDD (or another member of the LGTDD Group where payment of such amounts have been guaranteed by LGTDD under the Finance Guarantee (LGTDD)) to any Financier (for its own account or for the account of another Person) pursuant to any Finance Document or to the Guarantee Trustee (for the account of a Financier) under the

Finance Guarantee (LGTDD), provided that once such amounts have been ascribed a value by an Insolvency Official for the purposes of an Insolvency of LGTDD (including acceptance of a proof of debt for such amounts or a lesser amount by an Insolvency Official), a reference to the Finance Money Debt (Performing Subsidiary) is a reference to amounts having that value, as ascribed from time to time, provided that in determining such value for the purposes of an Insolvency of LGTDD:

- (a) if any Financier (for its own account or for the account of another Person) or the Guarantee Trustee (for the account of a Financier):
 - (i) fails to lodge a proof of debt (or similar claim) in an Insolvency of LGTDD within the time provided for under applicable law (as such time may be extended by a relevant Insolvency Official); or
 - (ii) lodges a proof of debt (or similar claim) in an Insolvency of LGTDD and such proof of debt has not been accepted in whole or part by the relevant Insolvency Official (and such decision is not subject to appeal to, or review by, that Insolvency Official or another relevant Insolvency Official and the time for commencing any such appeal, or requesting any such review, has passed),

such amount shall be deemed to be zero or, in the case of subparagraph (ii), such amount shall be deemed to be reduced to the extent that it is not accepted by the relevant Insolvency Official;

- (b) if interest is payable on such amount under applicable law, the Finance Money Debt (Performing Subsidiary) also includes such interest as is payable under applicable law (including all interest accruing on or subsequent to the filing of a petition initiating any proceeding in bankruptcy or insolvency or any like proceeding whether or not such interest is an allowed claim in such proceeding);
- (c) if a Financier enters into, or is otherwise bound by, any conversion of debt to equity (which is not also a distribution subject to paragraph (d) below), then Finance Money Debt (Performing Subsidiary) shall be deemed to be reduced by the full amount of the face value of the debt (and any applicable interest) so converted;
- (d) if a Financier receives any money or other property or any other right pursuant to a Reconstruction Event, then Finance Money Debt (Performing Subsidiary) (and

any applicable interest) shall be deemed to be reduced by the full amount of the fair market value of the money, property or right acquired as at the date of receipt; or

- (e) if any amount is received or due from a Person in respect of the Insolvency of JHINV or by operation of the JHINV Intercreditor Deed and the amount so received or due is in whole or part "Finance Money Debt" (as that term is defined in the JHINV Intercreditor Deed), then the Finance Money Debt (Performing Subsidiary) shall be deemed to be reduced by that amount.

This definition applies:

- (i) irrespective of the capacity in which LGTDD, the other member of the LGTDD Group or the Financier became entitled to the amount concerned;
- (ii) irrespective of the capacity in which LGTDD, the other member of the LGTDD Group or the Financier became liable in respect of the amount concerned;
- (iii) whether LGTDD, the other member of the LGTDD Group or the Financier is liable as principal debtor, as surety or otherwise;
- (iv) whether LGTDD or other member of the LGTDD Group is liable alone, or together with another Person;
- (v) even if LGTDD or another member of the LGTDD Group owes an amount or obligation to the Financier because it was assigned to the Financier, whether or not:
 - A. the assignment was before, at the same time as, or after the date of this deed; or
 - B. LGTDD or another member of the LGTDD Group consented to or was aware of the assignment; or
 - C. the assigned obligation was secured;
- (vi) even if this deed was assigned to the Financier, whether or not:

-
- A. LGTDD or another member of the LGTDD Group consented to or was aware of the assignment; or
- B. any of the Finance Money Debt (Performing Subsidiary) was previously unsecured; or
- (vii) if LGTDD or another member of the LGTDD Group is a trustee, whether or not it has a right of indemnity from the trust fund.

Financial Year means a year ending on 31 March, or if there is any change from time to time to the Financial Year of the LGTDD Group, the twelve-month period that ends on the new end date adopted by LGTDD except that the first such Financial Year after that change shall be a period of not less than six months and not greater than 18 months ending on the new end date.

Financier means each Person nominated as a “Financier” in a Financier Nomination Letter in accordance with clause 2.2(b) of this deed. A reference to a “Financier” includes the Guarantee Trustee or another agent or trustee acting on behalf of the Financier, but excludes an Excluded Lender.

Financier Nomination Letter means a letter (executed as a deed poll by each party to it) in the form set out in Schedule 1 to this deed and, for the avoidance of doubt, includes, without limitation, such a letter provided to any successor or permitted assign of a Financier.

Fund Trustee includes any Replacement Trustee.

Guarantee Trustee means [*insert name*] or such other Person acting as trustee under the Finance Guarantee (LGTDD) (including any New Guarantee Trustee). For the avoidance of doubt the Guarantee Trustee enters into this deed in a separate and different capacity from the capacity in which it enters into the Intercreditor Deed between the State of New South Wales, Asbestos Injuries Compensation Fund Trustee Limited, JHINV and the Guarantee Trustee dated on or about the date of this deed.

Heads of Agreement means the non-binding agreement entered into on 21 December 2004 between JHINV, the NSW Government, the Australian Council of Trade Unions, Unions New South Wales and a representative of certain asbestos victims groups.

Independent Expert means any Person who:

-
- (a) has relevant and substantive experience and expertise in Insolvency and, if applicable, financial restructuring appropriate to undertake the determination referred to in clause 8;
 - (b) except to the extent he or she is entitled to be paid fees or reimbursed or indemnified for costs and expenses by the NSW Government in accordance with this deed, has no interest or duty which to his or her knowledge conflicts or may conflict with his or her functions as contemplated under this deed; and
 - (c) is not a member of a firm, or a director or employee of a firm or a body owned by the firm, performing any role as advisor, banker, custodian or trustee to the JHINV Group or (except for roles undertaken in the ordinary course of business for state owned business enterprises) the NSW Government during a period of 3 years prior to the date of appointment under clause 8.

Insolvency Event means, in respect of a Person, the occurrence in respect of that Person of any one or more of the events referred to in paragraphs (a) to (h) of the definition of “Insolvent” .

Insolvency Official means a custodian, receiver, receiver and manager, trustee, liquidator, provisional liquidator, administrator or any other officer appointed in connection with the Insolvency of LGTDD.

A Person is **Insolvent** if the Person:

- (d) admits in writing its inability to pay its debts generally as they become due (otherwise than as contemplated in clause 16.6 of the Final Funding Agreement);
- (e) was established under Dutch law and files a petition with any court in the Netherlands in relation to its bankruptcy (*faillissement*) or seeking an order for a suspension of payments (*surseance van betaling*);
- (f) files, or consents by answer or otherwise to the filing against it of, a petition for relief or insolvent reorganisation or insolvent arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, insolvent reorganisation, insolvent moratorium or other similar law of any jurisdiction (including, without limitation, a filing by the Person under Chapter 7 or Chapter 11 of the US Bankruptcy Code), provided that where the filing is a filing under Chapter 11 of that Code, the Person:
 - (i) is at the time of filing unable to pay its debts generally as and when they become due; or

(ii) in the case of JHINV, after it makes such a filing, fails to pay a JHINV Contribution or other amount under the JHINV Guarantee when such payment would (but for the moratorium granted as a result of that filing) have been due for 30 days after that due date,

and also provided that, in any such filing under Chapter 11 of that Code a Person is Insolvent no later than the earliest date as of which creditors may vote on any matter or accept or reject a plan of reorganisation;

- (g) makes an assignment for the benefit of its creditors generally;
- (h) consents to the appointment of a custodian (not being a nominee for the person), receiver, receiver and manager, trustee or other officer with similar powers with respect to it or with respect to a substantial part of its property;
- (i) consents to the appointment of an insolvency administrator or such an insolvency administrator is appointed and that appointment is not terminated within 28 days;
- (j) is adjudicated as insolvent or to be liquidated, in each case, by a court of competent jurisdiction; or
- (k) is subject to a Wind-Up Event,

and **Insolvency** has a corresponding meaning.

James Hardie Successor means any entity which will or might pursuant to a restructuring or by any other transaction proposed under, or in connection with, the Insolvency of JHINV acquire the whole or a substantial part of the business or assets of a member of the JHINV Group and which offers or acknowledges an entitlement of the shareholders of JHINV to become shareholders of that entity (disregarding any shareholders to whom it is illegal in their jurisdiction of residence to become such shareholders).

JHIL has the meaning specified in Recital A.

JHINV means James Hardie Industries N.V. (ARBN 097 829 895) a limited liability company incorporated in The Netherlands, with its corporate seat in Amsterdam, and having its registered office at Atrium, Unit 04-07, Strawinskylaan 3077, 1077 ZX Amsterdam, The Netherlands (with its Australian registered office at of Level 3, 22 Pitt Street, Sydney in the State of New South Wales) and includes any Parent Entity which has acceded to the Final Funding Agreement in accordance with that document.

JHINV Group means JHINV and its Controlled Entities.

JHINV Intercreditor Deed means the Intercreditor Deed between the State of New South Wales, Asbestos Injuries Compensation Fund Trustee Limited, James Hardie Industries N.V. and [*insert name of Guarantee Trustee*] dated [*insert date*].

LGTDD includes any other subsidiary of JHINV substituted for LGTDD in accordance with the terms of the Final Funding Agreement until a replacement for this deed is entered into in accordance with clause 4.8.

LGTDD Group means LGTDD and its Controlled Entities.

Liquidation means, in respect of any Person, the liquidation of all or substantially all of its assets (other than, in the case of JHINV, where the acquirer of all or substantially all of such assets has by deed of accession become bound to observe all the obligations of JHINV under this deed and the JHINV Guarantee and the other Related Agreements to which JHINV is a party) with the intention of distributing the proceeds to creditors or security holders, or a final order directing or requiring such a liquidation is made or entered or deemed to have been made or entered by any court of competent jurisdiction. **Net Finance Money Debt (Performing Subsidiary)** has the meaning given to it in clause 4.2(a).

New Guarantee Trustee has the meaning given to it in clause 7.1(a).

New Person has the meaning given to it in clause 4.6 of the Final Funding Agreement.

Notice of Voting in Insolvency means a written notice from an Insolvency Official of any matter or matters in connection with the Insolvency of LGTDD (or another member of the LGTDD Group where the Insolvency of such member is being administered on a combined or consolidated basis with an Insolvency of LGTDD).

Option has the meaning given to it in clause 8.3.

Parent Entity means any Person which becomes the ultimate holding company of JHINV.

Person includes any general partnership, limited partnership, corporation, limited liability company, joint venture, trust, business trust, governmental agency, co-operative, association, individual or other entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such a Person as the context may require.

Preferred Option has the meaning given to it in clause 8.3(f).

Proceeds means:

- (a) any amount (in the form of money or any other property) received or recovered by a Compensation Party in respect of the Compensation Debt (Performing Subsidiary) during an Insolvency of LGTDD;
- (b) any amount (in the form of money or any other property) received or recovered by a Compensation Party in connection with the failure by any of them or LGTDD to comply with their respective obligations under this deed.

Reconstruction Event means:

- (a) the summoning of a meeting of creditors or the obtaining of an order of a court to do so for the purpose of considering any scheme or plan of arrangement for reconstruction or compromise with creditors;
- (b) a final order for relief under Chapter 11 of the US Bankruptcy Code is entered by a US court;
- (c) a filing by JHINV for a suspension of payments under Dutch law, provided that the Court grants the (provisional) suspension of payments to JHINV;
- (d) any comparable action under the laws of any other jurisdiction occurs having substantially the same effect as the orders described in paragraphs (b) and (c),

but in each case none of the aforementioned events will comprise a Reconstruction Event where the proceeding or other action is commenced or initiated by or on behalf of the Trustee or the NSW Government under this deed or the JHINV Guarantee, whether acting alone or together with others, and for this purpose an order will be deemed to be final when any timely-commenced proceeding for review of such an order has been concluded without such order being subsequently dismissed, withdrawn, struck out, vacated or reversed, and the time for commencing any further proceeding for review of such order has expired.

Related Agreement means documents ancillary to the Final Funding Agreement listed in Schedule 1 to the Final Funding Agreement.

Replacement Trustee means any replacement trustee of the Asbestos Injuries (JH) Compensation Foundation and any New Person, in either case appointed in accordance with the Final Funding Agreement, as a substitute for Asbestos Injuries Compensation Fund Trustee Limited in its capacity as trustee for the Asbestos Injuries (JH)

Compensation Foundation (or a previously appointed replacement trustee or New Person) as the creditor of LGTDD in respect of the Compensation Debt (Performing Subsidiary) and the Final Funding Agreement.

Residual Rights has the meaning given in clause 4.4.

Security Interest means any mortgage, pledge, lien or charge or any security or preferential interest or arrangement of any kind or any other right of, or arrangement with, any creditor to have its claims satisfied in priority to other creditors with, or from the proceeds of, any asset. This definition:

- (a) includes any retention of title agreements arising other than in the ordinary course of business; and
- (b) excludes any right of set-off, right to combine accounts, or other similar right or arrangement arising in the ordinary course of business or by operation of law.

Security Provider means a Person (other than LGTDD) who at any time is liable by guarantee, indemnity or otherwise alone or jointly, or jointly and individually, to pay or indemnify against non-payment of the Finance Money Debt (Performing Subsidiary) or the Compensation Debt (Performing Subsidiary) (as the context requires).

Specified Office means the office or branch through which the Guarantee Trustee (or any New Guarantee Trustee) enters into this deed.

Specified Proportion means:

- (a) if in the Insolvency of LGTDD, the votes relating to the Compensation Debt (Performing Subsidiary) can be proportionately cast in favour of different courses of action:
 - A. 100 per cent of the amount of the Compensation Debt (Performing Subsidiary),
less
 - B. such percentage of the Compensation Debt (Performing Subsidiary), which when added to all Finance Money Debt (Performing Subsidiary) owed by LGTDD, represents the amount reasonably expected at that time

(having regard to the value of the assets of LGTDD available for distribution to pay the claims of ordinary unsecured creditors as estimated by the Insolvency Official (or otherwise determined or estimated for the purposes of the relevant Insolvency proceeding in accordance with applicable law) and taking into account prior ranking claims, the likely or anticipated distribution to the Financiers by the Insolvency Official and any likely payment to the Guarantee Trust under clause 4) would be required to enable discharge and satisfaction of the Finance Money Debt (Performing Subsidiary) in full; or

- (b) if in the Insolvency of LGTDD, the votes relating to the Compensation Debt (Performing Subsidiary) cannot be proportionately cast in favour of different courses of action, 100 per cent of the amount of the Compensation Debt (Performing Subsidiary).

Wind-Up Event means, in respect of a Person, the occurrence of any one or more of the following:

- (a) a final court order is entered that it be wound up or declared bankrupt;
- (b) a liquidator (excluding a provisional liquidator) is appointed to it and the appointment is not subsequently terminated;
- (c) a court declaration of bankruptcy is made in relation to it and is not subsequently withdrawn, struck out, dismissed, vacated or reversed;
- (d) the dissolution of such Person under Dutch law (*ontbinding*) or the law of any other jurisdiction;
- (e) the declaration of its bankruptcy under Dutch law (*faillissement*);
- (f) the Liquidation of that Person;
- (g) a final order for relief occurs or is deemed to occur in relation to it under Chapter 7 or Chapter 11 of the US Bankruptcy Code which, when implemented, will result in the Liquidation of that Person; and
- (h) any comparable action occurs under the law of any competent jurisdiction which has a substantially the same effect to paragraphs (a) to (g) of this definition,

and an order shall be deemed to be final when any timely-commenced proceeding for review of such an order has been concluded without such order being subsequently

dismissed, withdrawn, struck out, vacated or reversed, and the time for commencing any further proceeding for review of such order has expired.

2. INTERPRETATION

In this deed the following rules of interpretation apply unless the contrary intention appears.

- (a) Headings are for convenience only and do not affect the interpretation of this deed.
- (b) The singular includes the plural and vice versa.
- (c) Words that are gender neutral or gender specific include each gender.
- (d) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (e) The words 'such as', 'including', 'particularly' and similar expressions are not used as nor are intended to be interpreted as words of limitation.
- (f) A reference to:
 - (i) a thing (including but not limited to a chose in action or other right) includes a part of that thing;
 - (ii) a party or a Financier includes its successors and permitted assigns;
 - (iii) a document includes all amendments or supplements to that document;
 - (iv) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this deed;
 - (v) this deed includes all schedules and attachments to it;
 - (vi) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity or a rule of an applicable Financial Market and is a reference to that law as amended, consolidated or replaced;

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- (vii) an agreement other than this deed includes an undertaking, or legally enforceable arrangement or understanding whether or not in writing; and
 - (viii) a monetary amount is in Australian dollars.
 - (g) An agreement on the part of two or more persons binds them severally.
 - (h) When the day on which something must be done is not a Business Day, that thing must be done on the following Business Day.
 - (i) In determining the time of day where relevant to this deed, the relevant time of day is:
 - (i) for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or
 - (ii) for any other purpose under this deed, the time of day in the place where the party required to perform an obligation is located.
 - (j) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this deed or any part of it.

Annexure 8 – KPMG Waiver of Conflict Letter

[On JHINV's letterhead]

[KPMG Actuaries]

[AICF] Limited

cc NSWG

Date []

Dear []

Appointment of KPMG as Approved Actuaries to the Fund

KPMG Actuaries Pty Ltd (**KPMG Actuaries**) has, prior to the date of this letter, been retained by James Hardie Industries (**JHINV**) and Allens Arthur Robinson to undertake the reviews and to provide the reports set out in the schedule attached to this letter.

In particular:

- (a) KPMG Actuaries was retained to provide a central estimate of the Australian asbestos-related personal injury and death liabilities of the subsidiaries of the Medical Research and Compensation Foundation (**MRCF**) as at 30 June 2003; and
- (b) KPMG Actuaries was retained during the negotiations of the non-binding heads of agreement entered into on 21 December 2004 between JHINV, the New South Wales Government (**NSWG**), the ACTU, Unions NSW and Bernie Banton (**Heads of Agreement**) to provide an updated central estimate of those liabilities as at 30 June 2004, and to provide a further updated central estimate of liabilities as at 30 June 2005 (**Initial Report**), as part of the agreed actuarial procedures set out in a Deed entitled "A deed for a Final Funding Agreement" between, initially the NSWG, JHINV, and the Performing Subsidiary dated on or about the date of this letter (**Principal Deed**).

Under the Principal Deed, the parties thereto agreed that [AICF] Limited should become a party to that deed by way of a deed of accession, and that it will become the trustee of a special purpose fund (**Fund**) to be established in accordance with and for the purposes set out in the Principal Deed and the trust deed described therein in relation to the Fund.

KPMG Actuaries has confirmed, by way of a letter dated on or about the date of this letter, its willingness to be appointed as the initial "Approved Actuary" of the Fund (the **Approved Actuary**).

By this letter, JHINV on behalf of itself and the members of the JHINV Group (as defined in the Principal Deed):

- (a) irrevocably waives and releases KPMG Actuaries from any actual or potential conflict of interest which might otherwise have prevented KPMG Actuaries from being engaged as or performing the role of Approved Actuary;
- (b) shall not raise any objection to KPMG Actuaries acting as the Approved Actuary in accordance with the terms of the Principal Deed;
- (c) confirms that whenever KPMG Actuaries is the Approved Actuary, JHINV irrevocably consents to KPMG Actuaries disclosing to the Fund all written advice relating to any matter in connection with the Fund provided or to be provided by KPMG Actuaries to it prior to the appointment KPMG Actuaries as the Approved Actuary to the Fund.

Signed by

(on behalf of the JHINV Group)

Annexure 9 – Irrevocable Power of Attorney



LAWYERS

**IRREVOCABLE POWER OF
ATTORNEY**

**ASBESTOS INJURIES
COMPENSATION FUND LIMITED**

THE STATE OF NEW SOUTH WALES

2 Park Street Sydney NSW 2000 Australia
email@gtlaw.com.au <http://www.gtlaw.com.au> Facsimile + 61 2 9263 4111 Telephone + 61 2 9263 4000

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4. POWERS

4.1 Scope

Subject to clause 4.2, the Appointor hereby irrevocably grants the Attorney the powers to do in the name of the Appointor and on its behalf everything that the Attorney considers

necessary or expedient to enforce on behalf of the Appointor all promises made by JHINV and the Performing Subsidiary to the Appointor under clauses 6, 9, 10, 15.1 and 15.7 of the Final Funding Agreement and under each Relevant Agreement, including without limitation the powers to:

- (a) subject to clause 10 of the Final Funding Agreement, vote and prove, on behalf of the Appointor, the Wind-Up or Reconstruction Amount or any debt owing to the Appointor under clause 6, 9, 10, 15.1 and 15.7 of the Final Funding Agreement and any Related Agreement and make application to any court of competent jurisdiction in relation to any Reconstruction Event or Insolvency Event of JHINV;
- (b) subject to clause 10 of the Final Funding Agreement be present and vote at any meeting relating to any Reconstruction Event or, subject to the Intercreditor Deed, any Insolvency Event of JHINV, or any other meeting of creditors of JHINV where the obligation owed to the Appointor arises under clause 6, 9, 10, 15.1 or 15.7 of the Final Funding Agreement or any Related Agreement;
- (c) individually make submissions to an Insolvency Official or any court having jurisdiction in connection with any Reconstruction Event or an Insolvency Event of JHINV; and
- (d) do anything which in the Attorney's opinion is necessary or desirable to ensure the validity and enforceability of this power of attorney under any applicable law (including without limitation, stamping or registering this power of attorney or filing this power of attorney with any government authority).

Without limiting the foregoing but subject to clause 4.2, in respect of an obligation owed to the Appointor arises under clause 6, 9, 10, 15.1 or 15.7 of the Final Funding Agreement or the Related Agreements, the Appointor hereby authorizes the Attorney, as attorney in fact for the Appointor and with full power of substitution to attend the meeting of creditors of JHINV or any adjournment thereof, and, subject to the Intercreditor Deed, to vote in the Appointor's behalf on any question that may be

lawfully submitted to creditors at such meeting or adjourned meeting, and for a trustee or trustees of the estate of JHINV and to accept or reject any plan of reorganisation of JHINV.

4.2 Exercise

- (a) The foregoing powers of enforcement are subject to clause 16.6 of the Final Funding Agreement.
- (b) This power of attorney automatically terminates in the event of the termination of the Final Funding Agreement.

5. VALIDITY OF ACTS AND RATIFICATION

The Appointor:

- (a) declares that everything done by the Attorney in exercising powers under this power of attorney is as valid as if it had been done by the Appointor; and
- (b) agrees to ratify, confirm and be bound by whatever the Attorney does in exercising powers under this power of attorney.

6. DECLARATION

The Appointor declares that a Person who deals with the Attorney in good faith may accept a written statement signed by the Attorney to the effect that this power of attorney has not been revoked as conclusive evidence of that fact.

7. USE OF NAME

The Attorney may exercise powers under this power of attorney in the name of the Appointor or in the name of the Attorney including the conduct of any court proceedings.

8. AUTHORITY TO BENEFIT THIRD PARTIES

The Appointor expressly authorises the Appointor to do anything which may result in a benefit to a third party.

9. APPOINTMENT IRREVOCABLE

The Appointor declares that this power of attorney is given for valuable consideration and is irrevocable from the date of this deed for the duration of the Final Funding Agreement.

10. US ACKNOWLEDGMENT

The Appointer must, on request by the Attorney, use all reasonable endeavours to ensure that the execution of this deed is acknowledged before one of the officers enumerated in *28 U.S.C* *§ 459, § 953, Rule 9012*, or a person authorised to administer oaths under the laws of the state where the oath is administered.

11. GOVERNING LAW

This deed is governed by the laws applicable in New South Wales.

12. NOTICES

Clause 30 of the Final Funding Agreement shall apply to this deed.

13. COUNTERPARTS

This deed may be executed in any number of counterparts, each of which when executed, is an original. These counterparts together make one instrument.

EXECUTED as a deed.

**THE COMMON SEAL of ASBESTOS INJURIES
COMPENSATION FUND LIMITED** is fixed in the
presence of:

Signature of Director

Name of Director (print)

Acknowledged before me on _____, [Date], by

[Name], who says that he or she is a Director of
the corporation named above and is authorised to execute
this power of attorney in its behalf.

Signature of Director/Secretary

Name of Director/Secretary (print)

Acknowledged before me on _____, [Date], by

[Name], who says that he or she is
[Title] of the corporation named above and is authorised to
execute this power of attorney in its behalf.

SIGNED by **THE HONOURABLE MORRIS IEMMA MP**,
Premier of New South Wales for the State of New South
Wales:

Signature of The Honourable Morris Iemma, MP

Signature of Witness

Name of Witness (print)

Signing page 2

ATTACHMENT A — DICTIONARY AND INTERPRETATION

DICTIONARY AND INTERPRETATION

(Clause 1.1)

1. DICTIONARY

In this deed:

Claimants has the meaning given to it in the Final Funding Agreement.

Compensation Parties has the meaning given to it in the Final Funding Agreement.

Controlled Entity has the meaning given to it in the Final Funding Agreement.

Cross Guarantee has the meaning given to it in the Final Funding Agreement.

Initial Funding has the meaning given in the Final Funding Agreement.

Insolvency Event has the meaning given to it in the Final Funding Agreement.

Insolvency Official has the meaning given to it in the Intercreditor Deed.

Intercreditor Deed means the deed so entitled dated [] 2005 between JHINV, the NSW Government, the Appointor and the [Guarantee Trustee].

JHINV means James Hardie Industries N.V. and any Parent Entity.

JHINV Guarantee has the meaning given to it in the Final Funding Agreement.

Notice has the meaning given to it in the Final Funding Agreement.

Parent Entity means any Person and all such Persons of which JHINV is a Controlled Entity and where there are two or more such Persons, only the immediate holding company and the ultimate holding company of JHINV.

Performing Subsidiary means LGTDD Pty Limited or, if a subsidiary of JHINV other than that entity is nominated under clause 6.2 of the Final Funding Agreement to perform the obligations described in clauses 6 and 9 of the Final Funding Agreement and each of JHINV and that subsidiary has complied with clause 6.2 of the Final Funding Agreement, that subsidiary.

Person includes any general partnership, limited partnership, corporation, limited liability company, joint venture, trust, business trust, governmental agency, co-operative, association, individual or other entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such a person as the context may require.

Final Funding Agreement means the legally binding agreement so entitled dated [] 2005 between JHINV, the Performing Subsidiary and the Attorney to which the Appointor became a party on [] 2005.

Reconstruction Event has the meaning given to it in the Final Funding Agreement.

Relevant Agreements means each of those documents listed in Schedule 1 to the Final Funding Agreement to which the Appointor is a party and each Cross-Guarantee given in favour of the Appointor by any Controlled Entity of JHINV.

Wind-Up or Reconstruction Amount has the meaning given to it in the Final Funding Agreement.

2. INTERPRETATION

In this deed the following rules of interpretation apply unless the contrary intention appears.

- (a) Headings are for convenience only and do not affect the interpretation of this deed.
- (b) The singular includes the plural and vice versa.
- (c) Words that are gender neutral or gender specific include each gender.
- (d) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (e) The words 'such as', 'including', 'particularly' and similar expressions are not used as nor are intended to be interpreted as words of limitation.
- (f) A reference to:
 - (i) a thing (including but not limited to a chose in action or other right) includes a part of that thing;
 - (ii) a document includes all amendments or supplements to that document;

-
- (iii) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this deed;
 - (iv) this deed includes all schedules and attachments to it;
 - (v) an agreement other than this deed includes an undertaking, or legally enforceable arrangement or understanding whether or not in writing; and
 - (vi) a monetary amount is in Australian dollars.

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**James Hardie Industries N.V.
Asbestos Injuries Compensation Fund Limited (Trustee)**

**Asbestos Injuries
Compensation Fund
Trust Deed**

CONFORMED COPY

ATANASKOVIC HARTNELL
LAWYERS - CORPORATE, FINANCE & TAXATION

Level 10
Atanaskovic Hartnell House
75-85 Elizabeth Street
Sydney NSW
Australia 2000

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Asbestos Injuries (JH) Compensation Fund Trust Deed

Date 7 April 2006

1. **James Hardie Industries N.V.** ARBN 097829895, a limited liability company incorporated in the Netherlands and having its registered office at Atrium, 8th floor, Strawinskylaan 3077, 1077ZX Amsterdam The Netherlands, (with its Australian registered office at Level 3, 22 Pitt Street, Sydney, in the State of New South Wales) (the **Settlor**)

Parties 2. **Asbestos Injuries Compensation Fund Limited** (ACN 117 363 461) a company limited by guarantee having its registered address at Level 3, 18-22 Pitt Street, Sydney, New South Wales (the **Trustee**)

Recitals

A. JHINV, the NSW Government and the Performing Subsidiary have entered into a long term funding agreement (**Final Funding Agreement**) intended to ensure that funding is made available by JHINV and/or its subsidiaries to compensate, on the basis set out in the Final Funding Agreement, proven current and future Australian Claimants against the Liable Entities.

B. In accordance with the Final Funding Agreement, the Settlor wishes to establish a trust fund which will constitute the Fund.

C. The Settlor has paid the Settled Sum to the Trustee before the date of this Deed, and the Trustee has agreed to be the trustee of the Fund and to hold the Settled Sum and the other Fund Property on trust for the Fund Purpose in accordance with this Deed.

D. Upon the establishment of the Fund, it is contemplated that the parties to the Final Funding Agreement will procure that the Trustee, by executing a Deed of Accession, will become a party to the Final Funding Agreement to give effect to the intention and agreement of the relevant parties referred to in the preceding paragraphs.

E. It is the intention of the parties to the Final Funding Agreement that all of the issued shares in the Liable Entities will be transferred to the Trustee to hold on trust for the Fund Purpose and that the Trustee manage itself or through one or more of the Liable Entities, or otherwise cause to be managed, the response to all Payable Liabilities for itself or for or on behalf of the Liable Entities.

F. The NSW Government is to pass the Transaction Legislation, inter alia, to validate the existence of the Fund, and to confer certain powers and responsibilities on the Trustee.

IT IS AGREED as follows.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed (including the Recitals) unless the context requires otherwise, terms defined in the Final Funding Agreement or in the Transaction Legislation bear their corresponding meaning, and:

ABN 60 means ABN 60 Pty Limited (ABN 60 000 009 263).

Amaba means Amaba Pty Limited (ABN 98 000 387 342).

Amaca means Amaca Pty Limited (ABN 49 000 035 512).

Annual Contribution Amount means the amount specified in clause 9.4 of the Final Funding Agreement.

Annual Payment means for each year, the payment to be made pursuant to clause 9.3 of the Final Funding Agreement.

Appointee means any executive, director or employee of the Trustee appointed to the board of directors or any other governing body of an Investee.

Appointor means each Person entitled to appoint one or more Directors.

Approved Actuary means an actuarial firm which:

- (a) has been appointed in accordance with clause 5.15 of the Final Funding Agreement and which nominates a principal who is an approved actuary under the Insurance Act 1973 or who has qualifications under equivalent legislation of another relevant jurisdiction;
- (b) has relevant and substantive experience and expertise in Asbestos-related liability provisioning appropriate to undertake the determination referred to in clause 14.4 of the Final Funding Agreement;
- (c) has no interest or duty which conflicts or may conflict with his functions as contemplated under this deed as the Approved Actuary; and
- (d) is not affiliated with the accounting firm, performing the role of Approved Auditor during the term of the Approved Actuary's appointment,

or, where the circumstances set out in clause 5.15(f) of the Final Funding Agreement apply, an actuarial firm determined in accordance with that clause.

Approved Auditor means the auditor of the Trustee to be appointed by the Trustee in accordance with clause 5.12 of the Final Funding Agreement.

Asbestos means the fibrous form of those mineral silicates that belong to the serpentine or amphibole groups of rock-forming minerals, including actinolite, amosite (brown asbestos), anthophyllite, chrysotile (white asbestos), crocidolite (blue asbestos) and tremolite.

Asbestos Mining Activities has the meaning given in the Marlew Legislation.

Audited Financial Statements means, in respect of a Person and a Financial Year the audited consolidated financial statements of that Person for that Financial Year prepared in accordance with the following generally accepted accounting principles (GAAP), consistently applied throughout that Financial Year:

- (a) where that Person is Listed at the time the relevant audit report is signed, the generally accepted accounting principles used in that Person's published financial reports; or
- (b) where that Person is not Listed at that time and paragraph (c) does not apply, US GAAP or such other GAAP as is commonly applied by multinational companies at that time in respect of their financial statements; or
- (c) where that Person is not Listed at that time and it and its subsidiaries operates wholly or predominantly in one jurisdiction, the generally accepted accounting principles of that jurisdiction.

Australia has the meaning given in Section 17 of the *Acts Interpretation Act 1901* (Cth), as in force at the date of this deed.

Claimant means an individual (or legal personal representative of an individual) who makes a Personal Asbestos Claim or a Marlew Claim.

Claims Legal Costs means all costs, charges, expenses and outgoings incurred or expected to be borne by the Trustee or the Liable Entities in respect of legal advisors, other advisors, experts, Court proceedings and other dispute resolution methods in connection with Personal Asbestos Claims and Marlew Claims but in all cases excluding any costs included as a component of calculating a Proven Claim.

Claims Management Agreement means an agreement between the Trustee and a Liable Entity whereby the Liable Entity agrees that the Trustee or a Person designated by the Trustee will manage all claims against the Liable Entity in accordance with the provisions of this Deed, the Final Funding Agreement and the Transaction Legislation.

Commencement Date has the meaning given to that term in clause 1 of the Principal Deed.

Commonwealth means the Commonwealth of Australia.

Concurrent Wrongdoer in relation to a personal injury or death claim for damages under common law or other law (disregarding any law which comes into force in breach of clause 13 of the Final Funding Agreement and which breach has been notified to the NSW Government under clause 16.5 of the Final Funding Agreement), means a Person whose acts or omissions, together with the acts or omissions of one or more Liable Entities or Marlew or any member of the JHINV Group (whether or not together with any other Persons) caused, independently of each other or jointly, the damage or loss to another Person that is the subject of that claim.

Constitution means the constitution of the Trustee.

Constitutional Provisions means the clauses required to be included in the Constitution, as set out in the Schedule to this Deed.

Contribution Claim means a cross-claim or other claim under common law or other law (disregarding any law which comes into force in breach of clause 13 of the Final Funding Agreement and which breach has been notified to the NSW Government under clause 16.5 of the Final Funding Agreement):

- (a) for contribution by a Concurrent Wrongdoer against a Liable Entity or a member of the JHINV Group in relation to facts or circumstances which give rise to a right of a Person to make a Personal Asbestos Claim or a Marlew Claim; or
- (b) by another Person who is entitled under common law (including by way of contract) to be subrogated to such a first mentioned cross-claim or other claim,

provided that any such claim of the kind described in clause 13.7 of the Final Funding Agreement shall be subject to the limits contained in that clause.

Controlled Entity means, in respect of a Person, another Person in respect of which the first-mentioned Person is required to consolidate in its Audited Financial Statements but, in the case of JHINV, does not include any Liable Entity or the Trustee. For the avoidance of doubt, JHINV is not a Controlled Entity of JHINV.

Corporations Act means the *Corporations Act 2001* (Cth).

Court means a court or tribunal in Australia having jurisdiction to hear and determine common law personal injury and death claims arising from exposure to Asbestos.

Cross Guarantee means any guarantee or indemnity (or other covenant to secure satisfaction of any payment or obligation) given by a Controlled Entity of JHINV to secure satisfaction of any payment or obligation of any Controlled Entity of JHINV to a Lender which is entitled or becomes entitled to the benefit of the Intercreditor Deeds in accordance with **clause 2.2** of that deed.

Deed of Accession means a deed of accession in the form set out in Annexure 1 to the Final Funding Agreement.

Director means a director of the Trustee appointed in accordance with clause 5 or clause 16.3 of the Final Funding Agreement.

Excluded Marlew Claim means a Marlew Claim:

- (a) covered by the indemnities granted by the Minister of Mineral Resources under the deed between the Minister, Fuller Earthmoving Pty Limited and James Hardie Industries Limited dated 11 March 1996; or
- (b) by a current or former employee of Marlew in relation to an exposure to Asbestos in the course of such employment to the extent:
 - (i) the loss is recoverable under a Worker's Compensation Scheme or Policy; or

- (ii) the Claimant is not unable to recover damages from a Marlew Joint Tortfeasor in accordance with the Marlew Legislation;
- (c) by an individual who was or is an employee of a person other than Marlew arising from exposure to Asbestos in the course of such employment by that other person where such loss is recoverable from that person or under a Worker's Compensation Scheme or Policy; or
- (d) in which another defendant (or its insurer) is a Marlew Joint Tortfeasor from whom the plaintiff is entitled to recover compensation in proceedings in the Dust Diseases Tribunal, and the Claimant is not unable to recover damages from that Marlew Joint Tortfeasor in accordance with the Marlew Legislation.

Final Payment means the payment referred to in clause 9.9 of the Final Funding Agreement.

Final Funding Agreement means the deed of that name dated 1 December 2005 between the initial parties JHINV, the Performing Subsidiary and the NSW Government.

Financial Year means a year ending on 31 March, or if there is any change from time to time to the Financial Year of the JHINV Group, the twelve-month period as ends on the new end date adopted by JHINV except that the first such Financial Year after that change shall be a period of not less than six months and not greater than 18 months ending on the new end date.

First Release Bill means the *James Hardie (Civil Liability) Bill 2005(NSW)* as initialled by the parties to the Final Funding Agreement for the purposes of identification.

Fund means the trust constituted by this Deed (referred to as the "Fund" in the Final Funding Agreement).

Fund Account means a bank account within New South Wales to be designated the "Asbestos Injuries Compensation Fund Account" (referred to as the "Fund Account" in the Final Funding Agreement).

Fund Property means the assets referred to in clause 2.3.

Fund Purpose means the purpose set out in clause 3.

Funding Obligations means each obligation of the Performing Subsidiary to make a Funding Payment.

Funding Payments mean:

- (a) the Initial Funding payable under clause 9.2 of the Final Funding Agreement (which, for the avoidance of doubt, includes the Additional Payment as defined therein);
- (b) the Annual Payments payable under clause 9.3 of the Final Funding Agreement; and

(c) any Final Payment payable under clause 9.9 of the Final Funding Agreement, and *Funding Payment* means any of those payments.

Initial Funding has the meaning given to that term in clause 1 of the Final Funding Agreement.

Insolvency Event means in respect of a Person, the occurrence in respect of that Person of any one or more events referred to in paragraphs (a) to (b) of the definition of "Insolvent".

A Person is *Insolvent* if the Person:

- (a) admits in writing its inability to pay its debts as they become due (otherwise than as contemplated in clause 16.6 of the Final Funding Agreement);
- (b) was established under Dutch law and files a petition with any court in the Netherlands in relation to its bankruptcy (faillissement) or seeking an order for a suspension of payments (surseance van betaling);
- (c) files, or consents by answer or otherwise to the filing against it of, a petition for relief or insolvent reorganisation or insolvent arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, insolvent reorganisation, insolvent moratorium or other similar law of any jurisdiction (including, without limitation, a filing by the Person under Chapter 7 or Chapter 11 of the US Bankruptcy Code, provided that where the filing is a filing under Chapter 11 of that Code, the Person:
 - (i) is at the time of filing unable to pay its debts generally as and when they become due; or
 - (ii) in the case of JHINV, after it makes such a filing, fails to pay a JHINV Contribution or other amount under the JHINV Guarantee when such payment would (but for the moratorium granted as a result of that filing) have been due for 30 days after that due date and also provided that in any such filing under Chapter 11 of that Code a Person is Insolvent no later than the earliest date as of which creditors may vote on any matter or accept or reject a plan of reorganisation;
- (d) makes an assignment for the benefit of its creditors generally;
- (e) consents to the appointment of a custodian (not being a nominee for the person), receiver, receiver and manager, trustee or other officer with similar powers with respect to it or with respect to a substantial part of its property;
- (f) consents to the appointment of an insolvency administrator or such an insolvency administrator is appointed and that appointment is not terminated within 28 days;
- (g) is adjudicated as insolvent or to be liquidated, in each case, by a court of competent jurisdiction; or
- (h) is subject to a Wind-Up Event;

and *Insolvency* has a corresponding meaning

Intercreditor Deeds means the deeds substantially in the form set out in Annexures 7A and 7B to the Final Funding Agreement, as may be amended with the agreement of JHINV and the NSW Government (in each case acting reasonably) as the result of the review by, and negotiations with JHINV's existing bank Lenders.

Investee means any entity in which the Fund has made or wishes to make an Investment.

Investment means an investment by the Trustee.

Irrevocable Power of Attorney means the deed in the form set out at Annexure 9 of the Final Funding Agreement.

JHINV means James Hardie Industries NV (ARBN 097 829 895) incorporated in the Netherlands and having its registered office at Atrium, Unit 04-07, Strawinskylaan 3077, 1077ZX Amsterdam, The Netherlands (with its Australian principal office at Level 3, 22 Pitt Street, Sydney in the State of New South Wales).

JHINV Contributions means the payments to be made by JHINV or the Performing Subsidiary under clause 9 of the Final Funding Agreement.

JHINV Group means JHINV and its Controlled Entities from time to time, excluding the Trustee and any of the Liable Entities, if they are or become such Controlled Entities.

JHINV Guarantee means the deed set out in the form of Annexure 5 of the Final Funding Agreement.

Liable Entities means Amaca, Amaba and ABN 60.

Marlew means the company registered under the *Corporations Act* as Marlew Mining Pty Limited (ACN 000 049 650) that was formerly called Asbestos Mines Pty Limited and includes any successor to or continuation of that company.

Marlew Claim means, subject to clause 13.7 of the Final Funding Agreement, a claim which satisfies one of the following paragraphs and which is not an Excluded Marlew Claim:

- (a) any present or future personal injury or death claim by an individual or the legal personal representative of an individual for damages under common law or other law (disregarding any law which comes into force in breach of clause 13 of the Final Funding Agreement and which breach has been notified to the NSW Government under clause 16.5 of the Final Funding Agreement) which:
 - (i) arose or arises from exposure to Asbestos in the Baryulgil region from Asbestos Mining Activities at Baryulgil conducted by Marlew, provided that:
 - (A) the individual's exposure to Asbestos occurred wholly within Australia; or

- (B) where the individual has been exposed to Asbestos both within and outside Australia, the amount of damages included in the Marlew Claim shall be limited to the amount attributable to the proportion of the exposure which caused or contributed to the loss or damage giving rise to the Marlew Claim which occurred in Australia;
- (ii) is commenced in New South Wales in the Dust Diseases Tribunal; and
- (ii) is or could have been made against Marlew had Marlew not been in external administration or wound up, or could be made against Marlew on the assumption (other than as contemplated under the Marlew legislation) that Marlew will not be in the future in external administration;
- (b) any claim made under compensation to relatives legislation by a relative of a deceased individual (or personal representative of such a relative) or (where permitted by law) the legal personal representative of a deceased individual in each case where the individual, but for such individual's death, would have been entitled to bring a claim of the kind described in paragraph (a); or
- (c) a Contribution Claim relating to a claim described in paragraphs (a) or (b).

Marlew Joint Tortfeasor means any Person who is or would be jointly and severally liable with Marlew in respect of a Marlew Claim, had Marlew not been in external administration or wound up, or on the assumption other than as contemplated in the Marlew legislation that Marlew will not in the future, be in external administration or wound up.

Marlew legislation means the legislation set out in Part 4 of the First Release Bill.

NSW Government Auditor means an auditor engaged in accordance with and for the purposes set out in clause 5.13 of the Final Funding Agreement.

Operating Expenses means the reasonable operating costs, expenses and Taxes of the Trustee or Liable Entities of conducting the activities referred to in clause 4.2 of the Final Funding Agreement but excludes any Claims Legal Costs.

Payable Liability means:

- (a) any Proven Claim (whether arising before or after the date of this deed);
- (b) Operating Expenses;
- (c) Claims Legal Costs;
- (d) any liability of a Liable Entity to the Trustee, however arising, in respect of any amounts paid by the Trustee in respect of any liability or otherwise on behalf of the Liable Entity;
- (e) any pre-commencement claim (as defined in the Transaction Legislation) against a Liable Entity;

(f) if regulations are made pursuant to section 30 of the Transaction Legislation and if and to the extent the Trustee and JHINV notify the NSW Government that any such liability is to be included in the scope of Payable Liability, any liability of a Liable Entity to pay amounts received by it from an insurer in respect of a liability to a third party incurred by it for which it is or was insured under a contract of insurance entered into before the date on which the Transaction Legislation receives the Royal Assent; and

(g) Recoveries within the meaning and subject to the limits set out in clause 13.7 of the Final Funding Agreement, but in the cases of paragraphs (a), (c) and (e) excludes any such liabilities or claims to the extent that they have been recovered or are recoverable under a Worker's Compensation Scheme or Policy.

Performing Subsidiary means LGTDD Pty Limited or, if a subsidiary of JHINV other than that entity is nominated under clause 6.2 of the Final Funding Agreement to perform the obligations described in clauses 6 and 9 of the Final Funding Agreement and each of JHINV and that subsidiary has complied with clause 6.2 of the Final Funding Agreement, that subsidiary.

Person includes any general partnership, limited partnership, corporation, limited liability company, joint venture, trust, business trust, governmental agency, co-operative, association, individual or other entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such a person as the context may require.

Personal Asbestos Claim means subject to clause 13.7 of the Final Funding Agreement:

(a) any present or future personal injury or death claim by an individual or the legal personal representative of an individual, for damages under common law or under other law (disregarding any law which comes into force in breach of clause 13 of the Final Funding Agreement and which breach has been notified to the NSW Government under clause 16.5 of the Final Funding Agreement) which:

(i) arises from exposure to Asbestos occurring in Australia, provided that:

(A) the individual's exposure to Asbestos occurred wholly within Australia; or

(B) where the individual has been exposed to Asbestos both within and outside Australia, damages included in the Personal Asbestos Claim shall be limited to the amount attributable to the proportion of the exposure which caused or contributed to the loss or damage giving rise to the Personal Asbestos Claim which occurred in Australia;

(ii) is made in proceedings in an Australian court or tribunal; and

is made against all or any of the Liable Entities or any member of the JHINV Group from time to time;

(b) any claim made under compensation to relatives legislation by a relative of a deceased individual (or personal representative of such a relative) or (where permitted by law) the legal personal representative of a deceased individual in each case where the individual, but for such individual's death, would have been entitled to bring a claim of the kind described in paragraph (a); or

(c) a Contribution Claim made in relation to a claim described in paragraph (a) or (b),

but in each case excludes any Marlew Claim and any other claim to the extent they have been recovered or are recoverable under a Worker's Compensation Scheme or Policy.

Power means a power, right, authority, discretion or remedy which is conferred on the Trustee:

(a) by this Deed;

(b) by the Final Funding Agreement;

(c) by the Constitution; or

(d) by the Transaction Legislation or any other law of the State of New South Wales as amended from time to time.

Proven Claim means any Personal Asbestos Claim or Marlew Claim in respect of which final judgment has been given against, or a binding settlement has been entered into by a Liable Entity or any member of the JHINV Group from time to time, and in each case, to the extent to which that entity incurs liability under that judgment or settlement (including any interest, costs or damages to be borne by a Liable Entity or the relevant member of the JHINV Group pursuant to such judgment or settlement).

Related Agreements means documents ancillary to the Final Funding Agreement which are listed in Schedule 1 to the Final Funding Agreement.

Release Legislation has the meaning given to that term in clause 1 of the Final Funding Agreement.

Securities has the meaning set out in the *Corporations Act*.

Settled Sum means ten dollars (\$10).

Single Claims Manager means in respect of any legal proceedings which involve a Personal Asbestos Claim and one or more Concurrent Claims, the party responsible for managing and resolving the Personal Asbestos Claim and the claims against at least one other party, including a single claims manager within the meaning of the *Dust Diseases Tribunal Amendment (Claims Resolution) Act 2005*.

Special Default means a breach or default of a kind described in clause 16.2 of the Final Funding Agreement.

SPF Funded Liability means:

- (a) only those liabilities described in paragraphs (a), (b), (c), (e) and (g) of the definition of “Payable Liability” and excludes the liabilities described in paragraph (d) or (f) of the definition of “Payable Liability”; and
- (b) a claim or category of claim which JHINV and the NSW Government agree in writing is a “SPF Funded Liability” or a category of “SPF Funded Liability”.

Tax Act means the *Income Tax Assessment Act 1997* (Cth).

Trusts Act means the *Charitable Trusts Act 1993*.

Trustee Board means the board of Directors.

Transaction Legislation has the meaning given to it in the Final Funding Agreement.

Trustee Act means the *Trustee Act 1925* (NSW).

Wind-Up or Reconstruction Amount has the meaning given to it in the Final Funding Agreement.

Worker’s Compensation Scheme or Policy means any of the following:

- (a) any worker’s compensation scheme established by any law of the Commonwealth or of any State or Territory of Australia;
- (b) any fund established to cover liabilities under insurance policies upon the actual or prospective insolvency of the insurer (including without limitation the Insurer Guarantee Fund established under the *Worker’s Compensation Act 1987* (NSW)); and
- (c) any policy of insurance issued under or pursuant to such a scheme.

1.2 General Interpretation

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise.

- (a) The singular includes the plural and the converse.
- (b) A gender includes all genders.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a clause, annexure, schedule or exhibit is a reference to a clause of, or annexure, schedule or exhibit to, this Deed.
- (f) A reference to a party to this Deed or another agreement or document includes the party’s successors and permitted substitutes or assigns.

- (g) A reference to an agreement includes any amendment, variation or substitution of that agreement from time to time.
- (h) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to writing includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
- (j) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (k) Mentioning anything after include, includes or including does not limit what else might be included.
- (l) A reference in this Deed to a Power is to be construed without limitation to any other Power also mentioned in this Deed.
- (m) A reference to an asset includes any real or personal, present or future, tangible or intangible property or asset and any right, interest, revenue or benefit in, under or derived from the property or asset.
- (n) Any term not otherwise defined in this Deed, the Final Funding Agreement or the Transaction Legislation has the meaning given in the *Corporations Act*.

2. APPOINTMENT AND DECLARATION OF TRUST

2.1 Acknowledgement

The Trustee acknowledges receipt of the Settled Sum from the Settlor prior to the execution of this Deed.

2.2 Establishment of Fund and Appointment

- (a) The Fund is established by and upon the execution of this Deed.
- (b) The Settlor appoints the Trustee, and the Trustee accepts the appointment, as trustee of the Fund to hold the Fund Property for the Fund Purpose on the terms and conditions of this Deed.

2.3 Acceptance and Declaration

The Trustee declares that it holds and will hold on trust for the Fund Purpose:

- (a) the Settled Sum;
- (b) the benefit of the Funding Obligations and the obligation of the Performing Subsidiary (if applicable) to pay the Wind-Up or Reconstruction Amount in accordance with clause 10 of the Final Funding Agreement, the JHINV Guarantee and each of JHINV's covenants and obligations under the Final Funding Agreement and the Related Agreements to ensure the payment by the JHINV Group of the JHINV Contributions under the Final Funding Agreement and any

Cross Guarantee given pursuant to clause 15.7 of the Final Funding Agreement, and enforce the same as may be required from time to time;

- (c) the Fund Account and all money, Investments or other assets which the Trustee acquires as Trustee of the Fund;
- (d) all proceeds of the above (whether capital or income) and any Investments;
- (e) all permitted accumulations of income and all accretions and additions to the before-mentioned money, Investments and assets;
- (f) the shares in the Liable Entities; and
- (g) any asset or property of a Liable Entity which is transferred to the Trustee pursuant to the Transaction Legislation, (all of which are referred to jointly and severally as **Fund Property**).

2.4 Name and Location of Fund

- (a) The Fund is to be known as the *Asbestos Injuries Compensation Fund*.
- (b) If any property is transferred or any interest is given to the Trustee to hold as Fund Property, that property or interest may be transferred or given by referring to the Fund by its name or to the Trustee by its name.
- (c) The Fund must at all times maintain its principal place of business in New South Wales.

3. PURPOSE

The Fund shall exist and be maintained by the Trustee, and the Fund Property must be maintained and applied by the Trustee, for:

- 3.1 the principal purpose of receiving and providing funding for the payment and paying of Payable Liabilities and providing services with respect to the management and resolution of Payable Liabilities; and
- 3.2 the following additional purposes which are for the Trustee to:
 - (a) hold the benefit of the Funding Obligations and the obligation of the Performing Subsidiary (if applicable) to pay the Wind-Up or Reconstruction Amount in accordance with clause 10 of the Final Funding Agreement, the JHINV Guarantee, and the covenants and obligations of JHINV under the Final Funding Agreement and the Related Agreements to ensure the payment by the JHINV Group of the JHINV Contributions under the Final Funding Agreement and any Cross Guarantee given pursuant to clause 15.7 of the Final Funding Agreement, and enforce the same as may be required from time to time;
 - (b) be the creditor of the Performing Subsidiary and JHINV for payments (whether actually or contingently) due and payable to the Trustee under the Final Funding Agreement and receive and give a proper receipt for such amounts;

- (c) manage itself or through one or more of the Liable Entities or otherwise cause to be managed, the response to all Payable Liabilities for itself or for or on behalf of the Liable Entities including by entry into Claims Management Agreement with the Liable Entities (and in respect of Payable Liabilities which are not SPF Funded Liabilities, on the basis that the Liable Entities must bear the full cost and all liabilities associated with such claims);
- (d) to provide management services to Liable Entity in connection with the winding up of the Liable Entity including exercising all powers conferred on it by the Transaction Legislation;
- (e) subject to it having the necessary funds to do so and clause 9.15 of the Final Funding Agreement, pay in accordance with and subject to clause 4.7 of the Final Funding Agreement and the provisions of the Transaction Legislation, the SPF Funded Liabilities itself or through one or more of the Liable Entities, and in each case for itself or for or on behalf of the Liable Entities as the Trustee may in its discretion determine;
- (f) use its best endeavours to achieve all available legal and administrative cost savings in relation to:
 - (i) the process for handling the response to Personal Asbestos Claims and Marlew Claims;
 - (ii) Court proceedings dealing with apportionment of damages in relation to Personal Asbestos Claims and Marlew Claims; and
 - (iii) exercising rights of recovery.
- (g) review and implement legal and administrative cost savings in the claims management process on a continuing basis both in relation to the process for settling Personal Asbestos Claims and Marlew Claims and the process generally applicable in relation to Personal Asbestos Claims and Marlew Claims, including reducing Claims Legal Costs;
- (h) invest the assets contributed to or received by the Trustee;
- (i) use its best endeavours to:
 - (i) recover;
 - (ii) procure that each Liable Entity recover; and
 - (iii) exercise or procure the exercise of rights subrogated from any Claimant to recover,amounts paid or liabilities incurred with respect to any Personal Asbestos Claims, Marlew Claims or any other Payable Liabilities from insurers, reinsurers and other parties who may have contributed to the loss relating to such claims;

- (j) generally do all things necessary and convenient for the purposes of handling and finalising Payable Liabilities for itself or for and on behalf of the Liable Entities (provided that nothing in the Final Funding Agreement shall require the Trustee to incur any liability or pay any amount with respect to a liability which is not a SPF Funded Liability);
- (k) as provided by the Transaction Legislation or to the extent otherwise entitled to do so, be subrogated to the rights of the Claimants against the Liable Entities and Marlew or any other persons in relation to any Payable Liability settled or met by the Trustee;
- (l) be authorised and permitted to negotiate with Claimants and at its discretion procure that the relevant Liable Entity enter into binding settlements in relation to (including without limitation compromises of Payable Liabilities).

4. TRUSTEE

4.1 The Trustee

The Trustee must at all times ensure that it:

- (a) is a company registered under the *Corporations Act* that is taken under section 119A of that Act to be registered in New South Wales;
- (b) is a resident of New South Wales;
- (c) includes within its Constitution the Constitutional Provisions; and
- (d) does not accept appointment, or act, as a trustee of any fund or trust other than the Fund, or carry on any business, except to the extent necessary for the Trustee to perform its functions under this Deed and under the Transaction Legislation.

4.2 General powers of the Trustee

Subject to this Deed, the Trustee has all the powers, privileges and other incidents of ownership or possession over and in respect of the Fund Property that it is possible under the law to confer on a trustee and as though it were the absolute owner of the Fund Property and acting in its personal capacity.

4.3 General Administration of Fund Property

The Fund Property must be held and administered by the Trustee in the following manner:

- (a) The Trustee must open or arrange the opening of the Fund Account.
- (b) The Fund Account is to be in addition to any other bank account maintained by the Trustee.
- (c) The Trustee must pay or credit to the Fund Account all of the following moneys promptly upon receipt by the Trustee:

- (i) all monetary gifts and donations received by the Trustee (including the Settled Sum);
 - (ii) the Funding Payments;
 - (iii) all interest earned on the monies in the Fund Account; and
 - (iv) all monies derived from property given or transferred to or acquired by the Fund.
- (d) No other monies will be paid or credited to the Fund Account.
- (e) The Fund Account will be managed by the Trustee Board.
- (f) The Fund Property must at all times be clearly identifiable as property of the Trustee and must be held separately from the assets of the Trustee.
- (g) The Fund Property may only be dealt with and applied by the Trustee in connection with or in furtherance of the Fund Purpose, in the manner required or permitted by this Deed, the Final Funding Agreement, the Transaction Legislation and the general law.

4.4 Control of Liable Entities

The Trustee is not required to carry out the functions referred to in clauses 3.2(c), (e), (i) (ii), (j) and (l) in relation to a Liable Entity unless that Liable Entity is under the control or direction of the Trustee.

4.5 Contracting and Investing powers

To the extent permitted by law, the Trustee in its capacity as Trustee of the Fund has power to do or to cause the Liable Entities to do any of the following:

- (a) subject to clause 4.2, invest in shares, stock, bonds, cash deposits, notes, debentures, units, rights to profit or any other security (including, but without limitation, whether convertible, redeemable, preferred, deferred or partly paid, with or without any right, title or interest in or to such security including an option or a right to subscribe) including making contributions in respect thereof;
- (b) realise, vary or exchange any Investment and add any Investment to the Fund Property;
- (c) subject to clause 6.2, exercise any voting rights attaching to Investments forming part of the Fund Property in such manner as the Trustee thinks fit;
- (d) appoint any of its executives, directors or employees (each an **Appointee**) to the board of directors or other governing body of an Investee, provided that fees earned by any Appointee shall be income of the Trustee and form part of the Fund Property;
- (e) possess, sell, exchange, transfer, mortgage, pledge or otherwise dispose of, encumber or deal in the assets of the Fund for cash, shares, stock, Securities or other property of any nature (whether real or personal) or any

combination of them on such terms and conditions as may be determined by the Trustee (for the avoidance of doubt, the Trustee has the power to provide warranties in relation to the sale of any Investment);

- (f) borrow money or Securities either bearing or free of interest, with or without security, and by way of loan, debenture, bill of exchange or otherwise on such terms and conditions as the Trustee, in its absolute discretion thinks fit, or guarantee loans or other extensions of credit;
- (g) make loans or provide other financial accommodation to Investees, or give guarantees for the benefit of Investees or other Persons as a necessary or integral part of an Investment;
- (h) institute, prosecute and compromise legal proceedings to secure compliance with this Deed or any other right which the Trustee has as Trustee of the Fund and enforce any debt or liability owed to the Trustee as Trustee of the Fund (or to which the Trustee is subrogated) including by issuing any statutory or other demand, instituting, prosecuting and compromising any legal proceedings, and lodging a proof of debt or claim in relation to, or as a consequence of, the Insolvency of any Person;
- (i) pursue and compromise any claim held by the Trustee or to which the Trustee is subrogated to any insurer or reinsurer;
- (j) pay all outgoings and expenses connected with the Fund or this Deed (including all fees payable to Agents and/or attorneys appointed under clause 4.5) and, subject to clause 4.3, conduct such bank account or accounts of the Fund as the Trustee thinks fit;
- (k) give receipts and discharges in the name of the Fund for any moneys received on behalf of the Trustee;
- (l) either alone or jointly with any other Person, guarantee, give any indemnity in respect of or become liable for or (whether or not any such guarantee has been given) mortgage or charge the Fund Property or any part of it as security for the payment of money, with or without interest (including money payable or to become payable under a fluctuating overdraft) or for the performance of any obligations by any Person and without limitation, for the purpose of securing the payment of any moneys or the performance of any obligations for which the Trustee has become or may become liable under or by virtue of any guarantee, indemnity, option or other contract entered into by the Trustee;
- (m) draw, endorse, discount, sell, purchase and otherwise deal with bills of exchange, commercial bills, promissory notes, other negotiable instruments or certificates of deposit, debentures, notes or any other financial instruments either alone or jointly but so that the total of the moneys for the time being the subject of liability on the part of the Trustee whether as drawer, acceptor or endorser of any and all such instruments and whether alone or jointly or severally with other persons are deemed to be liabilities of the Fund for all purposes, and any reference in this clause to the "Trustee" shall include a reference to each Liable Entity;
- (n) maintain and repair the Fund Property;

- (o) develop, improve or vary the Fund Property in any way;
- (p) insure the Fund Property for any amount against any risk;
- (q) pay expenses and outgoings (including taxes) incurred on the Fund Property out of capital or income;
- (r) lease Fund Property at any rent and on any terms;
- (s) add to the Fund Property any part of the income arising from its application for the Fund Purpose;
- (t) solicit and receive as additions to the Fund Property gifts and benefactions of any kind whether inter vivos or testamentary; and
- (u) take any action it thinks fit for the adequate protection of the Fund Property and do all things incidental to the exercise of any powers conferred on the Trustee by this Deed;
- (v) enter into Claims Management Agreements with the Liable Entities (and in respect Payable Liabilities which are not SPF Funded Liabilities), on the basis that the Liable Entities must bear the full cost and all liabilities associated with such claims; and
- (w) accept appointment and act as a Single Claims Manager.

4.6 Powers of Delegation and Appointment

The Trustee may:

- (a) authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to provide advice, hold title to any Fund Property, perform any act or exercise any discretion within the Trustee's power, including without limitation the power to appoint in turn its own agent or delegate and in particular the power to enter into the Irrevocable Power of Attorney;
- (b) include in the authorisation provisions to protect and assist those dealing with the agent or delegate as the Trustee thinks fit;
- (c) appoint, remove or vary the appointment of the Approved Actuary, the Approved Auditor and any accountants, solicitors, barristers, investment bankers, technical or other experts and qualified advisers to:
 - (i) provide advice;
 - (ii) do anything required or permissible by this Deed, including the receipt and payment of money and the execution of any document by the Trustee; and
 - (iii) transact any business,in connection with the Fund, the Fund Purpose or the Fund Property, subject always to the obligations of the Trustee under the Final Funding Agreement;

- (d) appoint an attorney to execute any document on any terms the Trustee thinks fit;
- (e) employ any person in connection with anything required to be done under this Deed and to decide the remuneration (including expenses and superannuation) to be paid to that person provided that, subject to clause 4.6(f), no payment is made to any director of the Trustee other than the payment of:
 - (i) out of pocket expenses incurred by the director in the performance of any duty as a director of the Trustee subject to the amount payable not exceeding any amount previously approved by the board of directors of the Trustee;
 - (ii) any service rendered to the Trustee by the director in a professional or technical capacity (and not in his or her capacity as a director) where the provision of the service has been previously approved by the board of directors of the Trustee and the remuneration for the service does not exceed an amount which is proper remuneration for the service;
 - (iii) any salary or wage due to the director as an employee of the Trustee where the terms of employment have been previously approved by the board of directors of the Trustee and the salary or wage does not exceed an amount which is proper remuneration;
 - (iv) an insurance premium in respect of a contract insuring an officer to which section 212 of the *Corporations Act* refers or the provision of a financial benefit (by way of indemnity) to a director to which section 212 of the *Corporations Act* refers;
- (f) in addition to the payments to directors of the Trustee permitted under clause 4.6(e), pay such amount as director's fees as it considers appropriate to any director of the Trustee not being an employee of the NSW Government or an employee of any member of the JHINV Group; and
- (g) direct any director or officer of a Liable Entity to act in any manner or do any act as described in this Deed.

4.7 Compliance with Transaction Legislation

In addition to any Powers conferred on the Trustee under this Deed and at law, the Trustee may exercise each and any power conferred on it by the Transaction Legislation or by any other Act or Regulation made under any Act of the State of New South Wales.

4.8 Limitations on Powers of the Trustee

- (a) Notwithstanding any other provision of this Deed, the Trustee has no power to and must not pay or discharge or purport to pay or discharge any liability of a Liable Entity which a Liable Entity is not authorised to pay or discharge by the Final Funding Agreement, a Related Agreement or the Transaction Legislation.

- (b) Notwithstanding any other provision of this Deed, prior to the Commencement Date the Trustee may not exercise any of its powers under this Deed or at law except to the extent that such exercise is necessary or reasonably incidental to:
- (i) establish the Fund Account;
 - (ii) manage any application to the Australian Taxation Office concerning the status of the Fund for income tax purposes; or
 - (iii) other matters or tasks which are purely administrative in nature and preparatory to the discharge by the Trustee of its substantive rights, powers and responsibilities under this Deed, the Final Funding Agreement and the Transaction Legislation.

4.9 Exercise of Discretion

The Trustee may in its absolute discretion decide how and when to exercise its Powers.

4.10 Compliance with the Final Funding Agreement

- (a) The Trustee must at all times comply fully with the obligations imposed on the Trustee by the Final Funding Agreement.
- (b) In the event of any inconsistency between the Final Funding Agreement and this Deed, the terms of the Final Funding Agreement prevail to the extent of the inconsistency but otherwise this Deed shall have effect.

4.11 Trustee's standard of duty

The Trustee must exercise the same degree of care, skill and diligence as a reasonable and prudent person would exercise if it was the Trustee of the Fund.

4.12 Reliance on Advice

The Trustee may take and may act upon:

- (a) the advice of the Approved Actuary;
- (b) the opinion or advice of counsel or solicitors, whether or not instructed by the Trustee, in relation to the interpretation of this Deed or any other document (whether statutory or otherwise) or generally in connection with the Fund;
- (c) advice, opinions, statements or information from any bankers, accountants, auditors, valuers and other persons consulted by the Trustee who are in each case believed by the Trustee in good faith to be expert in relation to the matters upon which they are consulted; and
- (d) any other document provided to the Trustee in connection with the Fund upon which it is reasonable for the Trustee to rely,

and the Trustee will not be liable for anything done, suffered or omitted by it in good faith in reasonable reliance upon such opinion, advice, statement, information or document, unless otherwise known to be false or incomplete.

4.13 Remuneration

- (a) Subject to paragraph (b), no remuneration or other benefit in money or money's worth will be paid or transferred, directly or indirectly, to the Trustee or to any member or officer of the Trustee in respect of his or her duties or conduct as such.
- (b) The Trustee may pay out of the Fund Property:
 - (i) reasonable remuneration to any member, officer, employee or agent of the Trustee for services actually rendered to the Trustee acting in accordance with this Deed;
 - (ii) payment or reimbursement for out of pocket expenses reasonably incurred by any member, officer, employee or agent of the Trustee in carrying out the Trustee's functions under this Deed; and
 - (iii) fees and disbursements to any solicitor, accountant or other advisor or the Trustee.

5. LIABILITY

The Trustee shall not be liable for:

- (a) a loss to the Fund Property;
- (b) any action taken or omitted to be taken by it under this Deed,
except in the case of wilful default, fraud or negligence of the Trustee.

6. INDEMNITY AND INSURANCE

6.1 Indemnity

The Trustee and the officers, employees, agents and attorneys of the Trustee (each an **Indemnified Person**) shall be indemnified out of the Fund Property for:

- (a) all costs, charges, liabilities and expenses (including legal costs and expenses) incurred in the performance or exercise or attempted performance or exercise of any duty or Power; and
- (b) any action brought against any of them concerning this Deed, the Fund Property or the neglect or default of any solicitor, banker, accountant or other agent employed in good faith by the Trustee,

except to the extent any of the above arise or are incurred as a result of the wilful default, fraud or negligence of the Indemnified Party.

6.2 Indemnity for Exercise of Voting Rights

Except as otherwise provided by law:

- (a) the Trustee or its Appointee is not liable or responsible to any Person for the management of any company or body or for any vote or action taken or consent given by the Trustee or its Appointee in person or by proxy or power of attorney.
- (b) neither the Trustee nor the holder of any proxy or power of attorney:
 - (i) incurs any liability or responsibility by reason of any error of law or mistake of fact or any matter or thing done or omitted or approval voted or given or withheld by the Trustee or its Appointee or by the holder of a proxy or power of attorney under this Deed; and
 - (ii) is under any obligation to anyone with respect to any action taken or caused to be taken or omitted by the Trustee or its Appointee or by any holder of a proxy or power of attorney.

6.3 Maintain Insurance

- (a) The Trustee must use its best endeavours to effect and maintain a contract of insurance with an established and reputable insurer, which insures the Trustee and the officers and employees of the Trustee (each an **Insured Person**) against all liabilities incurred by them whilst acting in that capacity, provided that the liability does not arise out of conduct involving a wilful breach of duty to the Trustee. The Trustee shall be entitled to pay for the premium on such contracts out of Fund Property.
- (b) Unless the Trustee agrees otherwise, the contract of insurance referred to in clause 6.3(a) must contain a provision waiving all rights of subrogation or action against each Insured Person.
- (c) The exercise of the Trustee's discretion under clause 6.3(b) only arises if the Trustee receives a written request (either as a standing request or from time to time) from an Insured Person and if and to the extent that the Insured Person does not otherwise have the benefit of a contract of insurance on the same terms as set out in that clause.
- (d) The Trustee may satisfy its obligations under clause 6.3(a) by paying the premium attributed to the Insured Persons by a broker under a global contract of insurance that includes coverage for the Insured Persons and the officers of companies in the JHINV Group.

6.4 Not render void

The Trustee must use its best endeavours to ensure that it does not do anything which will render void any contract of insurance effected under clause 6.3.

7. APPOINTMENT OF NEW TRUSTEE

7.1 Condition Precedent to Appointment

No appointment or purported appointment of a new Trustee of the Fund will take effect unless and until the new trustee to be appointed has been approved in writing by the NSW Government (acting reasonably) and a Deed of Accession has been duly executed by the proposed new Trustee and each other party thereto and delivered to JHINV and the NSW Government.

7.2 Trustee Act, reliance and notices

- (a) Subject to the following paragraphs, the provisions of Part 2 Division 2.1 of the Trustee Act apply:
 - (i) if for the purposes of section 6(4)(b) of the Trustee Act, the last surviving or continuing Trustee is a corporation in liquidation then any relevant appointment may be made by the liquidator of that corporation; and
 - (ii) notwithstanding section 8(1) of the Trustee Act, a sole Trustee may only retire if at least one new Trustee is appointed in place of that sole Trustee.
- (b) Upon the retirement, removal or appointment of the Trustee, the new Trustee must endorse a note on this Deed recording the retirement, removal or appointment and any Person acting on this Deed or with notice of its terms shall be entitled to rely on its terms (as amended) as evidence of the identity of the Trustee or the Trustees at that time.

7.3 Acceptance of Accounts and Discharge

- (a) Any new Trustee may accept the accounts given and the property delivered to it by a continuing or ceasing Trustee without having to enquire as to the assets of the Fund.
- (b) Subject to clause (d), any ceasing Trustee may be given a full discharge by the new Trustee and the discharge will release the ceasing Trustee from all obligations in relation to all or any part of the Fund Property.
- (c) Any discharge given under clause (b) will bind all persons who:
 - (i) have or might take any interest in all or any part of the Fund Property; or
 - (ii) who have or might have a right to have the Fund Property properly administered in accordance under this Deed.
- (d) Despite anything in clause (b), a ceasing Trustee shall not be released by any discharge given under clause (b) if:
 - (a) that discharge arises from any acts or omissions of the ceasing Trustee having been concealed by the Trustee fraudulently, dishonestly or in bad faith; or

- (b) the discharge relates to any loss to the Fund, for which the Fund has not been properly compensated, which arose as a consequence of the wilful default, fraud or negligence of the ceasing Trustee.

8. THIRD PARTIES

No person (including the Registrar General or any other government agency) dealing in good faith with the Trustee (including as vendor, purchaser or mortgagor) is bound to enquire:

- (a) as to the authority or purpose of the Trustee;
- (b) as to the application of money received by the Trustee;
- (c) whether the dealing is necessary or proper; or
- (d) in any other way as to the proprietary or regularity of the dealing.

9. FAILURE OF THE TRUSTEE AND TERMINATION OF THE FUND

- (a) The Trustee may only terminate the Fund with the prior written consent of the NSW Government.
- (b) If the Fund is terminated, set aside or fails for any reason, or if the Trustee becomes unable (for any reason including as a consequence of an Insolvency Event) to carry out its functions and comply with its obligations under this Deed, the Final Funding Agreement and the Transaction Legislation, then the Fund Property must be applied as follows:
 - (i) first, in payment of any amounts payable to any creditor of the Trustee; and
 - (ii) secondly, the balance must be dealt with and applied in accordance with clause 4.6 of the Final Funding Agreement.

10. AMENDMENTS

- (a) Subject to this clause, this Deed may from time to time be amended by a deed poll executed by the Trustee.
- (b) Prior to the Commencement Date, any provision of this Deed whatsoever may be amended with the prior written consent of the parties to the Final Funding Agreement.
- (c) Subject to clause 10(b), no amendment of this Deed shall be made if as a result:
 - (i) the Fund Purpose would be altered in any way;
 - (ii) any of clauses 1.1, 2.4(c), 3, 4, 5, 7.1, 8, 9 or 10 would be amended, repealed or otherwise made redundant or ineffective.

11. FINANCES OF THE FUND

11.1 Accounts and Approved Auditor

- (a) The Trustee must ensure that proper books of account and all other proper books and records are kept for the Fund and for each of the Liable Entities.

- (b) The Trustee must comply with clause 5.12 of the Final Funding Agreement including by appointing an Approved Auditor to be the auditor of the Fund and ensuring that the financial affairs of the Fund and each of the Liable Entities are audited by the Approved Auditor at least once in each calendar year.
- (c) The Trustee must provide the NSW Government and JHINV with each report of the Approved Auditor.

11.2 Approved Actuary

The Trustee must appoint and at all times retain an Approved Actuary of the Fund in accordance with clause 5.15 of the Final Funding Agreement.

11.3 Access to Books and Records

The Trustee must give the NSW Government Auditor full and free access to the books and records of the Fund in accordance with clause 5.13 of the Final Funding Agreement.

11.4 General Reporting Obligations

- (a) Within three months of the end of each Financial Year, the Trustee will prepare and issue to JHINV and the NSW Government a report of the affairs and activities of the Fund for the reporting period by reference to the budget of the Fund for the reporting period and its financial and other objectives for that period;
- (b) The Trustee must:
 - (i) prepare a set of consolidated financial statements for the Trustee and the Liable Entities in respect of each Financial Year during the Term, in accordance with requirements applicable under the *Corporations Act* and in accordance with Australian generally accepted accounting principles (or on such other basis as may be agreed between the parties to the Final Funding Agreement); and
 - (ii) engage the Approved Auditor to audit those financial statements on a timely basis in respect of each Financial Year and to provide a copy of the relevant audit reports to the other Parties to this Deed.

12. ACTION BY THE TRUSTEE

12.1 Actions through Board of Directors

The Trustee will act through its board of directors in accordance with this Deed, the Final Funding Agreement, its Constitution, the Transaction Legislation and the *Corporations Act*.

12.2 Compliance with Tax Exemption

The Trustee will comply with any condition to any exemption from Taxation given from time to time in respect of the Fund or its income, and shall do all things reasonably necessary to maintain and comply with that exemption, provided that

nothing in this clause shall permit or authorise the Trustee to fail to act in accordance with the Fund Purpose, the Final Funding Agreement or the Transaction Legislation.

13. CERTIFICATES

A certificate signed by the secretary of the Trustee that a resolution has been passed by the Trustee, is conclusive, evidence as against any person dealing with any of those bodies that the resolution has been duly passed at a properly convened meeting of the relevant body.

14. GOVERNING LAW

This Deed is governed by the laws of New South Wales.

15. NO ENFORCEMENT BY THIRD PARTIES

For the avoidance of doubt, no other Person may seek to enforce this Deed or the Fund constituted by this Deed, except as provided in the Transaction Legislation or clause 4.4(a) of the Final Funding Agreement.

EXECUTED and delivered as a Deed in New South Wales.

Each Attorney executing this Deed states that he or she has no notice of revocation or suspension of his power of attorney.

SIGNED SEALED and DELIVERED)
by **JAMES HARDIE INDUSTRIES N.V.**)
AUST. HOLDINGS PTY LIMITED)

/s/ Meredith Hellicar
Signature of director

/s/ Russell L. Chenu
Signature of director

MEREDITH HELLICAR
Print Name

RUSSELL L CHENU
Print name

SIGNED SEALED and DELIVERED)
By **ASBESTOS INJURIES**)
COMPENSATION FUND LIMITED)
)

/s/ Peter W. Baker
Signature of director

/s/ Joanne Marchione
Signature of director

PETER W BAKER
Print Name

Joanne Marchione

Print name

SCHEDULE 1

Constitutional Provisions

1. The Trustee Board

- 1.1 The management of the Fund shall vest in the Trustee.
- 1.2 The Trustee Board shall consist of a minimum of 3 Directors and a maximum of 5 Directors as determined by the Directors.
- 1.3 Initially there shall be five Directors. JHINV must appoint three of those Directors and the NSW Government must appoint two of those initial Directors.

2. Power to appoint directors

- 2.1 Unless paragraph 2.3 applies:
 - (a) JHINV shall be entitled to appoint a majority of the Directors from time to time to the Trustee Board and to designate one of those Directors to be Chairman;
 - (b) JHINV may, by Notice to the other Parties, nominate a subsidiary for so long as it remains a subsidiary of JHINV, to exercise its rights under this clause 2.1; and
 - (c) JHINV shall, or shall procure that the nominated subsidiary shall, promptly give Notice to the Trustee and the NSW Government of any appointment made pursuant to this clause 2.1.
- 2.2 The NSW Government shall be entitled to appoint the remaining Directors.
- 2.3 If a Special Default occurs or an Insolvency Event in relation to JHINV occurs and so long as that Special Default or Insolvency Event remains in existence and the NSW Government gives to JHINV a notice that clause 16.3(b) of the Final Funding Agreement is to apply:
 - (a) the Trustee Board must be constituted so that a majority of the Directors shall have been appointed by the NSW Government,
 - (b) the NSW Government may appoint further Directors so that the foregoing is achieved, and the Chairman (and remove any such appointees); and
 - (c) JHINV must procure the resignation of the requisite number of Directors appointed by JHINV (so that the foregoing is achieved).

3. Power to remove and replace Directors

Each Appointor may, by Notice in writing to the Trustee, remove and replace, from time to time, the persons appointed by it as a Director or Chairman. Except in cases of emergency, at least 5 Business Days' Notice shall be given to the other parties of any proposed appointment of a Director

4. Quorum

The quorum for a Trustee Board meeting is, if JHINV has appointed at least one Director, one Director appointed by JHINV and, if the NSW Government has appointed at least one Director, one Director appointed by the NSW Government provided that:

- (a) subject to paragraph (b), if a quorum is not present at a meeting, the meeting shall be reconvened by Notice to a date no less than 24 hours after the date of the original meeting (or such time as is reasonable in cases of emergency) and the quorum for such a reconvened meeting of which all Directors have been given notice in writing shall be at least two Directors; and
- (b) if a Special Default occurs or an Insolvency Event in relation to JHINV occurs and so long as the Special Default or Insolvency Event remains in existence, and the NSW Government gives to JHINV a Notice that clause 16.3(b) of the Final Funding Agreement is to apply, the quorum for a meeting of the Board of the Fund will be two Directors appointed by the NSW Government.

5. Voting at Trustee Board meetings

- (a) Subject to paragraph (c) and except as otherwise specified in this Constitution, at any meeting of the Directors, each Director has one vote.
- (b) Subject to paragraph (c), if a Director representative of a party and his or her alternate Director is absent, the remaining Director representatives of that party shall be entitled to jointly exercise the absent Director's vote.
- (c) If a Special Default occurs or an Insolvency Event occurs in relation to JHINV occurs, and so long as that Special Default or Insolvency Event remains in existence and the NSW Government gives to JHINV a Notice that clause 16.3(b) of the Final Funding Agreement is to apply, the total number of votes that may be cast at any meeting of the Board of the Trustee by the Directors (including the Chairman) appointed by JHINV or one of its subsidiaries present at the meeting shall be one less than the number of votes that may be cast by the Directors appointed by the NSW Government present at that meeting.

6. Chairman and Chairman's vote

The Chairman will have a casting vote in addition to a deliberative vote.

7. Interests of Appointor

- 7.1 Subject always to a Director's obligations under the Trust Deed, this Constitution, statute or otherwise at law, a Director may take into account the views of that Director's Appointor and may act on the wishes of that Appointor in performing any of his or her duties or exercising any power, right or discretion as a Director in relation to the Trustee.
- 7.2 A Director may provide that Director's Appointor with copies of all documents, Board Papers and other material which come into the possession of the Director in that capacity and may disclose to and discuss with the Appointor all information to which the Director becomes privy in that capacity.

7.3 A Director is not precluded from voting or otherwise acting in his or her capacity as a Director as a result of any conflict of interest arising from the fact that the Director is an employee, consultant or officer of an Appointor, or in the case of a Director appointed by the NSW Government, a public servant.

8. Adjournment

Subject always to paragraph 4, if a quorum is not present within 1 hour after the time appointed for a meeting, the meeting will stand adjourned as follows:

- (a) if paragraph 4(a) applies, the meeting shall be adjourned to the time specified in paragraph 4(a);
- (b) in any other case the same time and place seven days after the meeting or to another day, time and place determined by those Directors present.

9. Alternate Directors

Each Director may appoint, by Notice in writing to the Trustee, an alternate to act in his or her place. Except in cases of emergency, at least 5 Business Days' Notice must be given of any proposed appointment of an alternate director pursuant to this clause 9.

10. Insurance and Indemnities

The Trustee must use best endeavours to take out and maintain Directors and Officers liability insurance with a reputable insurer in respect of each Director and must execute a deed of access and indemnity in favour of each Director.

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James Hardie Industries N.V.
Australian Council of Trade Unions
Unions New South Wales
Bernard Douglas Banton

**DEED OF RELEASE -
UNIONS AND BANTON**

CONFORMED COPY

THIS DEED is made on 21 December 2005 between:

1. **James Hardie Industries N.V.** ARBN 097 829 895 incorporated in the Netherlands and with its Australian registered office at Level 3, 22 Pitt Street, Sydney (**JHINV**)
2. **Australian Council of Trade Unions** of Level 2, 393 Swanston Street, Melbourne in the State of Victoria (**ACTU**)
3. **Unions New South Wales**, of 10th Floor, 377-383 Sussex Street, Sydney in the State of New South Wales (**Unions NSW**)
4. **Bernard Douglas Banton** of 133-7 Parramatta Road Granville, NSW, as the authorised representative of the Asbestos Victims Groups named in Schedule 1 to this Deed

RECITALS

- A. This deed is entered into by the Parties described above in the following context (some of the expressions used in these recitals being defined in **clause 1** of this deed):
 - (a) in February 2004, the NSW Government established the Jackson Inquiry;
 - (b) in September 2004, the Jackson Inquiry found that the MRCF was, and is, underfunded in the sense that Amaca and Amaba, being two former subsidiaries of JHIL which are now owned by MRCF, will not over time have sufficient funds and other assets to meet their anticipated future liabilities:
 - to sufferers of Asbestos disease as a result of exposure to Asbestos dust and fibre in Australia whilst in their employ or from products manufactured by Amaca or Amaba or otherwise from their Asbestos activities; and
 - to the relatives or estates of such sufferers,and associated costs and expense;
 - (c) in July 2004, JHINV had proposed to the Jackson Inquiry that, on certain conditions, its directors would recommend that shareholders approve the provision of additional funding to provide for the present and future liabilities of Amaca and Amaba to such sufferers of Asbestos related disease;
 - (d) the ABN 60 Foundation is the holding company of ABN 60, the former parent company of the James Hardie group, which may be alleged to have Asbestos- related personal injury liabilities arising from its own activities and from the

activities of Amaca and Amaba, and has (or had) payment obligations to Amaca and Amaba under a deed of covenant and indemnity between them dated 16 February 2001;

- (f) the NSW Government requested the ACTU, Unions NSW and Banton to conduct negotiations with JHINV in order to resolve the underfunding of the MRCF, and subsequently the NSW Government also took part in those negotiations;
- (g) in those negotiations, the principal objective of the Initial Negotiating Parties, for different reasons, was to achieve a binding agreement intended to ensure that sufficient funding is made available by the JHINV Group to fully compensate, after taking into account the existing assets of the Liable Entities, on an agreed basis, all proven current and future Australian Asbestos personal injury and death Claimants against the Liable Entities;
- (h) on 21 December 2004, the Initial Negotiating Parties entered into a non-binding Heads of Agreement which set out the agreed position of the Initial Negotiating Parties in relation to the principles on which the binding agreement would be based and the key standing considerations relevant to implementing those principles to be reflected in that binding agreement;
- (i) on or about the date of this deed, the NSW Government, JHINV and the Performing Subsidiary entered into a deed (the “**Final Funding Agreement**”) which set out the agreed position of those persons in relation to the basis on which, subject to the satisfaction or waiver of the conditions set out in the Final Funding Agreement, JHINV and/or the Performing Subsidiary will provide funding on a long-term basis to the Fund;
- (j) the JHINV Group has asserted that it has suffered damage to business operations and sales from boycotts and other actions in relation to the distribution and sale of its products in Australia and in other places throughout the world and is or was subject to a number of threats relating to future action, and the JHINV Group has sought to establish that its business operations and sales would no longer be affected by those boycotts and other actions or the threat of them; and
- (k) the Fund is to be established under the laws of New South Wales as required under **clause 4.1** of the Heads of Agreement and it is a condition of the Final Funding Agreement that the Trustee becomes a party to the Final Funding Agreement prior to the Commencement Date.

B. The Parties enter into this deed to reflect:

- (a) their formal and legally binding agreement in relation to the releases described in **clause 9.2** of the Heads of Agreement,
- (b) the agreed basis of further actions by the Parties in relation to the lifting of boycotts, as anticipated in **clause 16** of the Heads of Agreement; and
- (c) the agreed basis on which public statements may be made in relation to the circumstances leading up to the signing of this Deed by the Parties and the Final Funding Agreement by the parties thereto, consistent with the

arrangements applicable under **clauses 16.1** and **19** of the Heads of Agreement.

THIS DEED WITNESSES that the parties agree to the following:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed and unless the context requires otherwise, terms defined in the Principal Agreement bear their corresponding meaning and:

ABN 60 means ABN 60 Pty Limited (ABN 60 000 009 263).

ABN 60 Foundation means ABN 60 Foundation Pty Ltd (ACN 106 266 611).

Amaba means Amaba Pty Limited (ABN 98 000 387 342).

Amaca means Amaca Pty Limited (ABN 49 000 035 512).

Asbestos means the fibrous form of those mineral silicates that belong to the serpentine or amphibole groups of rock-forming minerals, including actinolite, amosite (brown asbestos), anthophyllite, chrysotile (white asbestos), crocidolite (blue asbestos) and tremolite.

Asbestos Support Groups means each of The Asbestos Diseases Foundation of Australia, Asbestos Diseases Society of Australia Inc, The Asbestos Victims Association of South Australia, Queensland Asbestos Related Disease Support Society, Gippsland Asbestos Related Disease Support Inc, and Asbestos Diseases Society of Victoria.

“Associated Person” means:

- (a) in relation to the ACTU, each union affiliated to the ACTU and each of its and their officers, members and employees;
- (b) in relation to Unions NSW, each union affiliated to Unions NSW and each of it and their officers, members and employees;
- (c) in relation to Banton, each of the Asbestos Support Groups; and
- (d) in relation to JHINV or a Liable Entity, means each of its past and present directors, officers, employees, agents or advisers.

Banton means Bernard Douglas Banton of 133-7 Parramatta Road Granville, in the State of New South Wales, as the designated representative of the Asbestos Support Groups.

Business Day means a day (not being a Saturday or a Sunday) on which banks are open for general banking business in Sydney.

Civil Liability means any and all civil liability.

Commencement Date has the meaning given in the Final Funding Agreement.

Controlled Entity has the meaning given in the Final Funding Agreement.

Corporations Act means the *Corporations Act 2001* (Cth).

Court means a court or tribunal in Australia having jurisdiction to hear and determine common law personal injury and death claims arising from exposure to Asbestos.

Deeds of Covenant and Indemnity means:

- (a) the deed of that name dated 16 February 2001 and entered into between JHIL, Amaba and Amaca and any amendments thereto (including without limitation pursuant to the amending deed dated 10 September 2001); and
- (b) the Deed of Covenant Indemnity and Access between JHINV and ABN 60 dated 31 March 2003 and any amendments thereto.

Final Funding Agreement has the meaning given in Recital A(i).

Final Funding Agreement Date means the date on which the Final Funding Agreement is executed by JHINV and the NSW Government.

Fund means the Trustee in its capacity as trustee of the Asbestos Injury Compensation Foundation to be established pursuant to the Trust Deed.

Heads of Agreement means the non-binding agreement entered into on 21 December 2004 between the Initial Negotiating Parties.

Initial Negotiating Parties means each of JHINV, the NSW Government, the ACTU, Unions NSW and Banton.

Jackson Inquiry means the inquiry referred to in paragraph (a) of recital A.

JHIL means the company formerly known as James Hardie Industries Limited (now ABN 60).

JHINV Group means JHINV and its Controlled Entities, excluding the Fund and any of the Liable Entities, if they become such Controlled Entities.

“Jackson Inquiry” means the Special Commission of Inquiry into the Medical Research and Compensation Foundation established by the NSW Government in February 2004.

Liable Entities means Amaca, Amaba and ABN 60.

“MRCF” means the Medical Research & Compensation Foundation (ABN 21 095 924 137).

Notice has the meaning given to it in **clause 11**.

Other Governments means each of the Australian government and the governments of the states and territories of Australia other than the NSW Government.

Parties means the parties to this Deed.

Performing Subsidiary means LGTDD Pty Limited or any other subsidiary of JHINV validly nominated under **clause 6.2** of the Final Funding Agreement to perform the obligations of the Performing Subsidiary under that deed.

Person includes any general partnership, limited partnership, corporation, limited liability company, joint venture, trust, business trust, governmental agency, co-operative, association, individual or other entity, and the heirs, executors,

administrators, legal representatives, successors and assigns of such a person as the context may require.

“Final Funding Agreement” means the deed of that name dated on or about the date of this Deed, the initial parties to which are JHINV, the Performing Subsidiary and the NSW Government.

“Released Claims” of a Person means any Civil Liability the Person has or may have arising from or relating to:

- (i) the underfunding of the MRCF; or
- (ii) the Jackson Inquiry; or
- (iii) all Relevant Matters; or
- (iv) any bans, boycotts or other action in place as a result of the Relevant Matters on any products manufactured, distributed or sold by any member of the JHINV Group, save that no ban, boycott or any other action shall comprise a Released Claim to the extent it:
 - (A) is new or is put into place after the Final Funding Agreement Date; or
 - (B) persists or continues in place on or after 1 January 2006.

“Released Party” means the ACTU, Unions NSW and Banton.

“Relevant Matters” means all matters in connection with:

- (a) the establishment and any underfunding or funding of the MRCF and the February 2001 ABN 60 group corporate reorganisation (including, without limitation, the transfer of the Liable Entities out of the group, representations made to incoming directors of the Liable Entities and other third parties regarding the Liable Entities and their assets and liabilities, the media releases of ABN 60 of 16 February 2001 and of JHINV of 29 and 30 October 2003 and any statements made in relation to any of the foregoing matters);
- (b) the Deeds of Covenant and Indemnity;
- (c) the transfers of assets, and the dividends and management fees paid, by the Liable Entities as described in the report of the Jackson Commission;
- (d) the August to October 2001 ABN 60 group corporate reorganisation (including without limitation the scheme of arrangement in relation to ABN 60 of August to October 2001, the contemporaneous reduction of capital of (and cancellation of fully paid ordinary shares in) ABN 60 and subscription by JHINV for partly paid shares in ABN 60, the subsequent cancellation of those partly paid shares in ABN 60 in March and April 2003 and representations to third parties and the court) any statements made by any person in relation to any of the foregoing matters;

- (e) the transfer of assets from ABN 60 to JHINV, the establishment of the ABN 60 Foundation Limited and ABN 60 Foundation Trust, and the allotment of fully paid shares in ABN 60 to ABN 60 Foundation Limited. (f).

Trust Deed means the trust deed for the Fund.

1.2 **Trustee** means the trustee of the Fund from time to time, initially being Asbestos Injuries Compensation Fund Limited.

1.3 Interpretation

In this Deed, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this agreement;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning;
- (e) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and vice versa;
- (f) a reference to any thing (including, but not limited to, any right) includes a part of that thing;
- (g) a reference to a party to a document includes that party's successors and permitted assigns;
- (h) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute; and
- (i) a reference to a document or agreement includes all amendments or supplements to, or replacements or novations of, that document or agreement.

2 RELEASE BY JHINV AND THE LIABLE ENTITIES

- 2.1 With effect from the Final Funding Agreement Date, JHINV hereby frees, releases and discharges each Released Party and each Associated Person of each Released Party from all Released Claims and shall procure to the extent it is able to that each of its Associated Persons release each of the Released Parties and each Associated Person from all Released Claims.
- 2.2 The parties acknowledge that the Released Parties hold the benefit of the releases in favour of each Associated Person of each Released Party set out in **clause 2.1** on trust for that Associated Person.

- 2.3 Nothing in this Deed can be taken as an admission by any of the Released Parties that it or he has had any role in organising or procuring any unlawful action.
- 2.4 The Parties agree that the Liable Entities may, by executing a deed of accession, agree to provide releases in favour of the Released Persons having the same scope as those given by JHINV under this deed.
- 2.5 In consideration for the releases described in clause 2.1:
- (a) the ACTU agrees, if requested by JHINV, that it will:
 - (i) write to persons persisting in bans or boycotts with respect to JHINV's products requesting that such bans or boycotts be lifted;
 - (ii) participate in discussions with JHINV and such persons to seek the lifting of such bans or boycotts;
 - (b) Unions NSW agrees, if requested by JHINV, that it will:
 - (i) write to persons persisting in bans or boycotts in New South Wales with respect to JHINV's products requesting that such bans or boycotts be lifted;
 - (ii) participate in discussions with JHINV and such persons to seek the lifting of such bans or boycotts
- 2.6 The obligations in clause 2.5 will not apply while the release from civil liability applicable to JHINV and certain related persons of JHINV (as contemplated in the Final Funding Agreement) have been validly suspended.

3 BOYCOTTS

- 3.1 From the Final Funding Agreement Date, each of the ACTU, Unions NSW and Banton agrees to use its or his best endeavours to achieve forthwith the lifting of all bans or boycotts on any products manufactured, produced or sold by any member of the JHINV Group.
- 3.2 Subject to **clause 3.4**, the obligation of each of the ACTU, Unions NSW and Banton shall be a continuing obligation whenever any bans or boycotts remain in place.
- 3.3 It is agreed that the endeavours required of the ACTU, Unions NSW and Banton under this **clause 3** will be limited by the extent to which individuals and organisations which may have imposed those bans or boycotts can be influenced by ACTU, Unions NSW or Banton using their best endeavours to achieve the lifting of such bans or boycotts.
- 3.4 The obligations of the ACTU, Unions NSW and Banton under this **clause 3** shall be suspended during any period in which JHINV is in breach of its obligations under the Final Funding Agreement and that breach has not been remedied.
- 3.5 Nothing in this Deed is intended to or does constrain the rights of the ACTU and Unions NSW or any of their Associated Persons to act in a way which is otherwise lawful.

4 CONFIDENTIALITY

4.1 Subject to **clause 4.2**, each party shall keep the terms of this Deed confidential.

4.2 A party may make any disclosures in relation to this Deed as set out in the Annexure or as necessary to:

- (a) its related bodies corporate, professional advisors, bankers, financial advisors and financiers, if those persons undertake to keep the information disclosed confidential;
- (b) comply with any applicable law or requirement of any regulatory body (including any relevant stock exchange) or to comply with the terms of the Final Funding Agreement;
- (c) any of its employees to whom it is necessary to disclose the information, on receipt of an undertaking from that employee to keep the information confidential; or
- (d) to gain necessary approvals for the purpose of entering into this deed provided that for any disclosure other than those described in paragraphs (a) to (c) above, the recipient is informed at the time of such disclosure that confidentiality restraints apply in relation to the information disclosed; or
- (e) on and from the time James Hardie has publicly released an explanatory memorandum in relation to the proposal set out in the Final Funding Agreement, to any of its Associated Persons to whom it is necessary to disclose the information, on receipt of an undertaking from that Associated Person to keep the information confidential.

5 DEED MAY BE USED IN COURT

Except in relation to a breach of this Deed and the continuing obligations of the parties pursuant to this Deed, this Deed may be pleaded as a full and complete defence by any party to any actions, suits, or proceedings commenced, continued or taken by another party or on its behalf in connection with any of the matters referred to this Deed.

6 GOVERNING LAW

This Deed shall be construed in accordance with and be governed by the laws of the State of New South Wales and the parties agree that the court system of that State will be forum of choice in relation to this Deed.

7 ENTRY INTO DEED

The parties acknowledge that this Deed is voluntarily entered into and that each party has obtained their own legal advice concerning its terms.

8 SEVERANCE

If any provision of this Deed is held to be invalid or unenforceable for any reason, it will, to the extent that it is invalid or unenforceable, be treated as severed from this Deed and will not affect the remaining provisions of this Deed.

9 VARIATION OF DEED

This Deed may only be varied or replaced by a deed duly executed by each of the parties.

10 COUNTERPARTS

This Deed may be executed in any number of counterparts and all counterparts, taken together, constitute one instrument. A party may execute this Deed by executing any counterpart.

11 NOTICES

11.1 A notice, approval, consent, nomination or other communication (Notice) to a person relating to this deed:

- (i) must state that it is a notice relating to this deed;
- (ii) shall state the relevant clause in this deed to which the notice relates, provided that any such failure to comply with this requirement shall not affect the validity of any such notice;
- (iii) must be in legible writing; and
- (iv) must be in English.

11.2 If the Notice is to either or both of JHINV and/or the Performing Subsidiary then it must be addressed as follows:

Name: James Hardie Industries NV

Attention: The Chairman and The Chief Financial Officer

Address: Level 3, 20 Pitt Street, Sydney NSW 2000

Facsimile: + 61 2 8274 5218

11.3 If the Notice is to the NSW Government then it must be addressed as follows:

Name: The State of New South Wales, c/- The Cabinet Office

Attention: Deputy Director-General (Legal)

Address: Level 39, Governor Macquarie Tower, Farrer Place, Sydney, NSW 2000

Facsimile: +61 2 9228 3062

with copies to, if the NSW Government has appointed a Director or any Directors, to each such Director as notified to the Trustee from time to time by such Director.

11.4 If the Notice is to the ACTU then it must be addressed as follows:

Name: Australian Council of Trade Unions

Attention: The Secretary

Address: Level 2, 393 Swanston St, Melbourne, Victoria 3000

Facsimile: 03 9663 8220

11.5 If the Notice is to Unions NSW then it must be addressed as follows:

Name: Unions NSW

Attention: The Secretary

Address: 10th Floor, 377 – 388 Sussex St, Sydney, 2000

Facsimile: 02 9261 305

11.6 If the Notice is from a corporation then an officer of that corporation must sign the Notice.

11.7 Notice is sent by the sender and received by the receiver:

- (i) if the Notice is hand delivered, upon delivery to the receiving Party;
- (ii) if the Notice is sent by facsimile, upon the successful completion of the relevant transmission;
- (iii) if the Notice is sent by registered mail within Australia, 2 Business Days after the registration of the notice of posting; and
- (iv) if the Notice is sent by ordinary mail within Australia, 3 Business Days from and including the date of postage.

11.8 For the avoidance of doubt, Notice shall not be sent by electronic email.

11.9 In this **clause 11**, a reference to a Party receiving a Notice includes a reference to the receiver's officers, agents or employees.

11.10 A Party may vary any of the details relating to it contained in this **clause 11** at any time by Notice to the other Parties.

11.11 Where a Notice to a Party must be copied to another Person, each such Notice must be despatched on the same day (but any failure to comply with this **clause 11.11** shall not affect the validity of any such Notices).

11.12 Court action shall not be commenced by any party to the Deed with respect to any alleged breach of this Deed until 10 Business Days have elapsed after the giving of Notice to each of the ACTU and Unions NSW containing particulars of the alleged breach and an invitation to rectify the breach.

EXECUTED by the parties as a Deed:

EXECUTED by
JAMES HARDIE INDUSTRIES NV

/s/ Russell Chenu

Signature of Director

Russell Chenu

Name of Director

EXECUTED on behalf of
THE AUSTRALIAN COUNCIL OF TRADE UNIONS by:
(ACN 008 394 509):

/s/ K J Fowlie

Signature of witness

K J FOWLIE

Name of witness

EXECUTED on behalf of
UNIONS NEW SOUTH WALES by:
(ACN 008 394 509):

/s/ K J Fowlie

Signature of witness

K J FOWLIE

Name of witness

Signed by
BERNARD DOUGLAS BANTON

in the presence of:

/s/ Kwan Cui

Witness

KWAN CUI

Name

) */s/ Benjamin Butterfield*
) _____

Signature of Director/Secretary

Benjamin Butterfield

Name of Director/Secretary

) */s/ Gregory Combet*
) _____

Signature of Secretary

GREGORY COMBET

Name of Secretary

) */s/ Mark Lennon*
) _____

Signature of Assistant Secretary

MARK LENNON

Name of Assistant Secretary

) */s/ Bernie Banton*
) _____

Bernie Banton

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DATED 8 JUNE 2006

Asbestos Injuries Compensation Fund Limited in its capacity as trustee for the

Asbestos Injuries Compensation Fund

as the Beneficiary

and

The State of New South Wales Government

and

James Hardie Industries N.V.

as the Guarantor

PARENT GUARANTEE

CONFORMED COPY

THIS PARENT GUARANTEE is made on *8 June 2006* in Sydney, New South Wales

BETWEEN:

(1) **Asbestos Injuries Compensation Fund Limited (ACN 117 363 461)**, a company limited by guarantee incorporated under the laws of the State of New South Wales, Australia, having its registered office at Level 3, 22 Pitt Street Sydney New South Wales, in its capacity as trustee for the **Asbestos Injuries Compensation Fund**, a trust established by way of trust deed dated 7 April 2006 (the "**Fund Trustee**"), duly represented by Peter Baker and Joanne Marchione;

and

(2) The **State of New South Wales**, Level 39, Governor Macquarie Tower, Farrer Place, Sydney NSW 2000, Australia (the "**NSW Government**"), duly represented by;

and

(3) **James Hardie Industries N.V.**, a company incorporated under the laws of the Netherlands, with its corporate seat in Amsterdam, the Netherlands, registered with the trade register of the Chamber of Commerce with number 34106455 (the "**Guarantor**"), duly represented by Meredith Hellicar and Russell Chenu.

The aforementioned parties also collectively referred to as the "**Parties**" or individually as the "**Party**".

RECITALS:

(1) The NSW Government, LGTDD Pty Ltd and the Guarantor are parties to a Final Funding Agreement dated 1 December 2005 (the "**Final Funding Agreement**").

(2) The Fund Trustee has become a party to the Final Funding Agreement by executing a Deed of Accession on or about the date of this deed.

(3) Pursuant to **Clause 10** of the Final Funding Agreement, the Guarantor has agreed to deliver this Guarantee to the Fund Trustee and the NSW Government.

(4) The NSW Government is not a creditor of the Guarantor in relation to the payment of the Guaranteed Obligations.

IT IS AGREED AS FOLLOWS:

1. INTERPRETATION

Capitalised terms shall be used herein as such terms are defined in the Final Funding Agreement (and such terms will be interpreted in accordance with the

laws of New South Wales, Australia, being the governing law of the Final Funding Agreement), unless defined otherwise in this Guarantee; and

"**Guarantee**" means this guarantee; and

"**Guaranteed Obligations**" means any of the payment obligations of the Performing Subsidiary to the Fund Trustee under the Final Funding Agreement, including the obligation to pay the Wind-Up or Reconstruction Amount, and "Guaranteed Obligation" means any one such payment obligation. Where the Performing Subsidiary would have been liable to make a payment under the Final Funding Agreement but for the Liquidation or Insolvency of the Performing Subsidiary or the occurrence of a Wind-up Event or Reconstruction Event in respect of the Performing Subsidiary, it will be taken still to be liable for the purposes of this Guarantee.

2. **GUARANTEE**

2.1 The Guarantor hereby irrevocably and unconditionally:

- (a) guarantees to the Fund Trustee the due and punctual performance by the Performing Subsidiary of the Guaranteed Obligations;
- (b) guarantees to the Fund Trustee that, whenever the Performing Subsidiary does not pay any amount due under any of its Guaranteed Obligations, the Guarantor shall immediately on first written demand by the Fund Trustee pay that amount to the Fund Trustee, as if it were the principal obligor thereof; and
- (c) guarantees to the Fund Trustee that it shall immediately on first written demand by or on behalf of the Fund Trustee pay to the Fund Trustee, all costs and expenses incurred by the Fund Trustee in relation to the protection or enforcement of its rights under this Guarantee and all costs and damages incurred by the Fund Trustee as a result of the Performing Subsidiary not fulfilling one or more of the Guaranteed Obligations when due.

2.2 The obligations of the Guarantor pursuant to **Clause 2.1** shall be continuing obligations and extend to all sums payable by the Performing Subsidiary under the Guaranteed Obligations. The obligations of the Guarantor pursuant to **Clause 2.1** shall remain in full force and effect until all the Guaranteed Obligations shall have been paid, satisfied or discharged in full. Termination of this Guarantee is only allowed if and when the Final Funding Agreement is terminated (otherwise than due to breach or default by the Guarantor or the Performing Subsidiary) and the Performing Subsidiary has fully discharged all of the Guaranteed Obligations. The obligations of the Guarantor shall remain in full force in the event that the Performing Subsidiary is replaced by another subsidiary of the Guarantor in accordance with clause 6.2 of the Final Funding Agreement or in the events described in **Clause 2.1(d)**.

-
- 2.3** This Guarantee is a guarantee of performance of the Guaranteed Obligations by payment of all amounts that are the subject of the Guaranteed Obligations when due and payable.
- 2.4** This Guarantee is not a contract of surety (*borgtocht*). The obligations of the Guarantor hereunder are independent of the obligations of the Performing Subsidiary and the obligations of any other guarantor of the obligations of the Performing Subsidiary under the Final Funding Agreement.
- 2.5** Payment by the Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify, abridge or extinguish the Guarantor's liability for any portion of the Guaranteed Obligations which has not been paid. Without limiting the generality of the foregoing, if the Fund Trustee is awarded a judgment in any proceedings brought to enforce the Guarantor's obligations to pay a portion of the Guaranteed Obligations, such judgment shall not be deemed to release the Guarantor from its obligation to pay the portion of the Guaranteed Obligations that is not the subject of such proceedings, and such judgment shall not, except to the extent satisfied by the Guarantor, limit, affect, modify, abridge or extinguish any part of the Guarantor's liability in respect of the Guaranteed Obligations.
- 2.6** This Guarantee is independent of, in addition to and shall not prejudice or affect or be prejudiced or be affected by any other right, remedy, guarantee, indemnity or security and may be enforced without first having recourse to the same or any other mortgage, charge, pledge or lien now or hereafter held by or available to the Fund Trustee and/or the NSW Government.
- 2.7** If any discharge (whether in respect of the Guaranteed Obligations or any security for those obligations or otherwise) or arrangement is made in whole or in part on the faith of any payment, security or other disposition by the Performing Subsidiary or the Guarantor which is subsequently avoided or which must be restored (without limitation) on bankruptcy, liquidation, moratorium of payment or otherwise, the liability of the Guarantor will continue or be reinstated as if the discharge or arrangement had not occurred. This clause 2.7 survives the discharge of this Deed.
- 2.8** Unless and until all the Guaranteed Obligations have been satisfied or discharged in full, the Guarantor shall not, after a claim has been made or by virtue of any payment or performance under this Guarantee, in respect of any payment made to the Fund Trustee and/or the NSW Government:
- (a) exercise any right of subrogation in respect of or claim to be subrogated to any rights, security or moneys held, received or receivable by the Fund Trustee;
 - (b) exercise against or claim from the Performing Subsidiary any right of contribution or recourse;
 - (c) claim as a creditor of the Performing Subsidiary in competition with the Fund Trustee; or

- (d) have the benefit of or take any action to receive or claim any payment, distribution or security in respect of the Guaranteed Obligations or amounts payable under this Guarantee from or on account of the Performing Subsidiary, or exercise any right of set-off as against the Performing Subsidiary (and the Guarantor waives any right it would otherwise have to have the benefit of or receive or claim any such payment, distribution or security or to exercise any such right of set-off).

2.9 This Guarantee will not be discharged or otherwise affected as security for the Guaranteed Obligations as a result of any of the following:

- (a) bankruptcy, moratorium of payment, winding-up, reconstruction, liquidation or similar proceedings relative to the Performing Subsidiary;
- (b) any change in the status, function, control or ownership of the Performing Subsidiary;
- (c) any extension of time or other forbearance being granted or agreed to be granted to the Performing Subsidiary in respect of its Guaranteed Obligations;
- (d) any amendment to, or any increase, variation, waiver or release of, any of the Guaranteed Obligations or any termination, amendment or variation of the Final Funding Agreement (and any reference herein to the Final Funding Agreement shall be taken as referring to the Final Funding Agreement as amended or varied from time to time);
- (e) the taking, variation, compromise, exchange, substitution, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights or remedies against, or security over assets of the Performing Subsidiary or any other person, or any non-presentment or non-observance of any formality or other requirement in respect of any instruments or any failure to realise the full value of any security;
- (f) any present or future guarantee, indemnity, mortgage, charge, pledge, lien or other security or right or remedy held by or available to the Fund Trustee being or becoming wholly or in part void, voidable or unenforceable on any ground whatsoever; or
- (g) any other act, event or omission (other than performance by the Guarantor of this Guarantee) which, but for this clause might operate to discharge, extinguish, impair or otherwise affect any of the obligations of the Guarantor contained herein or any of the rights, powers or remedies conferred in respect of the Guarantor upon the Fund Trustee and/or the NSW Government by this Guarantee or by law.

3. ENFORCEMENT

3.1 The Fund Trustee may enforce this Guarantee only upon the occurrence of (i) a breach of any Guaranteed Obligation by the Performing Subsidiary; (ii) a

Wind-Up Event; or (iii) a Reconstruction Event, in accordance with and subject to clause 10 of the Final Funding Agreement.

3.2 A claim under this Guarantee in respect of the obligation of the Performing Subsidiary to make Annual Payments (and/or instalments thereof) under clause 9 of the Final Funding Agreement, can only be made if the Performing Subsidiary has been in default (*verzuim*) for a period of 40 days from the date when such Annual Payment (or any instalment thereof) was due, provided that:

- (a) the Performing Subsidiary or the Guarantor has immediately provided to the NSW Government reasons for the default and such reasons are reasonable in the circumstances (for example and without limitation, that the Guarantor is experiencing temporary cash flow difficulties and is seeking to rectify that difficulty); and
- (b) the Guarantor has promptly after that due date entered into and continued to pursue or been ready, willing and able to enter into and pursue discussions with the NSW Government and (if available) the Fund Trustee to remedy the breach and provides to the Fund Trustee and NSW Government material particulars of the breach and the proposed remedy or remedies;
- (c) the Guarantor is not and does not become Insolvent at any time during that period; and
- (d) subject to clause 10 of the Final Funding Agreement, a Reconstruction Event does not occur at any time during that period,

provided that such period shall automatically expire upon any of the requirements in paragraphs (a) to (d) inclusive ("**Moratorium Requirements**") ceasing to be satisfied.

If the Moratorium Requirements remain satisfied at the expiry of the above 40 day period and if in the opinion of the NSW Government (acting reasonably) there is a reasonable prospect of the Guarantor or the Performing Subsidiary paying the outstanding amount within a further period of 50 days, the initial 40 day period shall be extended once by a further 50 days, save that such period shall automatically expire upon any of the Moratorium Requirements ceasing to be satisfied.

3.3 Without prejudice to clause 3.2 above, the Fund Trustee shall not be obliged before bringing a claim under this Guarantee:

- (a) to take any action against the Performing Subsidiary or to obtain judgment in any court against the Performing Subsidiary or any other person;
- (b) to file any claim in a bankruptcy, moratorium of payment, winding-up, liquidation or similar proceedings relative to the Performing Subsidiary or any other person; or

(c) to make, enforce or seek to enforce any claim against the Performing Subsidiary or any other person under any agreement or arrangement.

- 3.4** The restrictions to the enforcement of the Guarantee as set out in clause 3.2 of this Guarantee do not apply in respect of claims under or in relation to the Guarantee brought by the Fund Trustee in summary proceedings (*kort geding*) or other proceedings to obtain urgent interlocutory Court relief.
- 3.5** The Guarantor waives any and all rights of set off (*verrekening*), counterclaim or suspension (*opschorting*) it may have at any time with respect to amounts payable hereunder against amounts owed to it by the Fund Trustee.
- 3.6** The Guarantor waives to the fullest extent allowed by the laws of the Netherlands all rights, privileges, defences and exceptions pursuant to the Articles 6:139, 7:852, 853, 854, 855 and 856 of the Dutch Civil Code.
- 3.7** To the extent permitted by law the Guarantor hereby waives, for the benefit of the Fund Trustee and the NSW Government:
- (a) any right to require the Fund Trustee and/or the NSW Government, as a condition of payment or performance by the Guarantor, to:
- (i) proceed against or exhaust any security held from the Performing Subsidiary, any other guarantor or any other Person,
 - (ii) proceed against or have resort to any balance of any credit on the books of the Fund Trustee and/or the NSW Government in favour of the Performing Subsidiary or any other Person, or
 - (iii) pursue any other remedy in the power of the Guarantee Trustee and/or the NSW Government whatsoever;
- (b) any defence arising by reason of the incapacity, lack of authority or any disability or other defence of the Performing Subsidiary or any other guarantor, including any defence based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of the Performing Subsidiary or any other guarantor from any cause other than payment in full of the Guaranteed Obligations;
- (c) any defence based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal;
- (d)
- (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any discharge of the Guarantor's obligations hereunder;

- (ii) the benefit of any statute of limitations affecting the Guarantor's liability hereunder or the enforcement hereof, and
- (iii) promptness, diligence and any requirement that the Fund Trustee and/or the NSW Government protect, secure, perfect or insure any security interest or lien or any property subject thereto;
- (e) notices, demands, presentments, protests, notices of protest, notices of dishonour and notices of any action or inaction, including acceptance hereof, notices of default hereunder, the Final Funding Agreement, any other Related Agreement or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit to the Performing Subsidiary and any right to consent to any thereof; and
- (f) any defences or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof.

4. REPRESENTATIONS AND WARRANTIES

4.1 The Guarantor warrants that the following is true, accurate and not misleading as of the date of this Guarantee and will at all times after the date of this Guarantee up to and including the Commencement Date be true, accurate and not misleading:

- (a) The Guarantor has been duly incorporated and is validly existing under the laws of its jurisdiction and has the necessary corporate capacity and power to enter into the Guarantee and to perform its obligations under the Guarantee.
- (b) All corporate and other action required to be taken by the Guarantor to authorise the execution of the Guarantee and the performance of its obligations under the Guarantee has been duly taken.
- (c) The Guarantee has been duly executed on behalf of the Guarantor and constitutes legal, valid and binding obligations of the Guarantor, enforceable in accordance with their terms subject to the terms of the opinion from De Brauw Blackstone Westbroek referred to in schedule 5 of the Final Funding Agreement.
- (d) The execution and performance of the Guarantee do not conflict with or result in a breach of any provision of the articles of association of the Guarantor, including but not limited to its corporate purpose, or any provision of any applicable law in force on the date of this Guarantee or any agreement to which the Guarantor is a party.
- (e) No approval, consent, license or notice to any regulatory or governmental body (other than such approvals, consents, licenses or

notices as have been obtained or given) is necessary to ensure the validity, enforceability or performance of the obligations of the Guarantor under the Guarantee.

5. NOTICES

5.1 All notices, consents, waivers and other communications under this Guarantee must be in writing in English and delivered by hand or sent by regular mail, registered mail, express courier, facsimile or e-mail to the appropriate addresses and facsimile numbers set out below or to such address and facsimile number as a Party may notify to the other Party from time to time. A notice shall be effective upon receipt and shall be deemed to have been received at the time of delivery (if delivered by hand, registered mail or express courier) or at the time of successful transmission (if delivered by fax or e-mail).

To the Fund Trustee:

Name: Asbestos Injuries Compensation Fund Limited
Address: Level 3, 18-22 Pitt Street Sydney New South Wales
Fax number: +612 8274 5217
Attention: The Chairman

To the NSW Government:

Name: The State of New South Wales, c/- The Cabinet Office
Address: Level 39, Governor Macquarie Tower, Farrer Place, Sydney, NSW 2000
Fax number: + 61 2 9228 3062
Attention: Deputy Director-General (Legal)

To the Guarantor:

Name: James Hardie Industries NV
Addresses: Atrium, 8th floor, Strawinskylaan 3077, 1077ZX Amsterdam, The Netherlands
Level 3, 20 Pitt Street, Sydney NSW 2000
Fax number: + 61 2 8274 5218
Attention: The Chairman and the Chief Financial Officer

6. NSW GOVERNMENT'S RIGHT TO ENFORCE

- 6.1** The parties agree and acknowledge that clause 16.6 of the Final Funding Agreement provides that the NSW Government shall be entitled directly to enforce all promises made by the Guarantor to the Fund Trustee under this Guarantee to the full extent permitted by law on and subject to the terms of clause 16.6 of the Final Funding Agreement.
- 6.2** Any person (including, but not limited to, a firm, body corporate, unincorporated association, court or authority) who deals with the NSW Government in good faith in relation to this Guarantee may, without enquiry, assume that the NSW Government has complied with clause 16.6 of the Final Funding Agreement unless the contrary is proved.
- 6.3** The parties agree and acknowledge that:
- (a) the Guarantee is a Related Agreement under the Final Funding Agreement;
 - (b) under an Irrevocable Power of Attorney, a copy of which is attached as Annexure A to this Guarantee, and in addition to its rights under clause 6.1 of this Guarantee, the NSW Government shall have the power directly to enforce as an attorney of the Fund Trustee under the Irrevocable Power of Attorney and on behalf of the Fund Trustee all promises made by the Guarantor to the Fund Trustee under this Guarantee, subject to the terms of clause 16.6 of the Final Funding Agreement;
 - (c) under the Final Funding Agreement, the NSW Government and the Fund Trustee covenanted that they will not amend or replace that Irrevocable Power of Attorney without the prior written consent of the Guarantor, not to be unreasonably withheld; and
 - (d) any actions taken by the NSW Government under that Irrevocable Power of Attorney in respect of this Guarantee are valid and binding to the extent such actions are made in accordance with that Irrevocable Power of Attorney.
- 6.4** On the legal relationship of the Beneficiary and the NSW Government vis-à-vis the Guarantor, article 6:16 of the Dutch Civil Code does not apply.

7. CHOICE OF LAW AND JURISDICTION

This Guarantee is governed by the laws of the Netherlands, with the exception of the Netherlands private international law. Any dispute arising out of or in connection with this Guarantee shall be exclusively decided by the competent court in Amsterdam.

8. COUNTERPARTS

This Guarantee may be executed in any number of counterparts. All counterparts together will be taken to be one instrument.

Thus agreed and signed in Sydney on 8 June 2006.

Signed for Asbestos Injuries)
Compensation Fund Limited by)

/s/ Peter Baker
Name: Peter Baker
Director / Secretary

/s/ Joanne Marchione
Name: Joanne Marchione
Director

Signed by Meredith Hellicar)
and Russell Chenu for James)
Hardie Industries N.V.)

/s/ Meredith Hellicar
Meredith Hellicar
Chairman

/s/ Russell Chenu
Name: Russell Chenu
Director

Signed by Robert John Debus MP)
for the State of New South Wales)
in the presence of)

/s/ Leigh Rae Sanderson
Signature of Witness

/s/ Robert John Debus
Name:

Leigh Rae Sanderson
Name of Witness

Annexure A
Irrevocable Power of Attorney
(attached)

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**JAMES HARDIE INDUSTRIES N.V.
THE STATE OF NEW SOUTH WALES**

DEED OF RELEASE

CONFORMED COPY

ATANASKOVIC HARTNELL
LAWYERS - CORPORATE, FINANCE & TAXATION

Level 10
Atanaskovic Hartnell House
75-85 Elizabeth Street
Sydney NSW
Australia 2000

THIS DEED is made on *22 June* 2006 between:

1. **James Hardie Industries N.V.** ARBN 097 829 895 incorporated in the Netherlands and having its registered office at Atrium, Unit 04-07, Strawinskyiaan 3077, 1077ZX Amsterdam, The Netherlands, and with its Australian registered office at Level 3, 22 Pitt Street, Sydney, New South Wales (**JHINV**)
2. **The State of New South Wales (NSW Government)**

RECITALS

- A. This deed is entered into by the Parties described above in the following context (some of the expressions used in these recitals being defined in **clause 1** of this deed):
 - (a) on 21 December 2004, the Initial Negotiating Parties entered into a non-binding Heads of Agreement which set out the agreed position of the Initial Negotiating Parties in relation to the principles on which the binding agreement referred to in Recital (b) would be based and the key standing considerations relevant to implementing those principles to be reflected in the binding agreement; and
 - (b) on 1 December 2005, the NSW Government, JHINV and the Performing Subsidiary entered into an agreement (the "**Final Funding Agreement**") which set out the agreed position of those persons in relation to the basis on which, subject to the satisfaction or waiver of the conditions set out in the Final Funding Agreement, JHINV and/or the Performing Subsidiary will provide funding on a long-term basis to the Trustee.
- B. The Parties enter into this deed to give effect to the releases contemplated in **clause 12.1(c)** of the Heads of Agreement.

THIS DEED WITNESSES that the Parties agree to the following:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed:

ABN 60 means ABN 60 Pty Limited (ABN 60 000 009 263).

ABN 60 Foundation means ABN 60 Foundation Pty Ltd (ACN 106 266 611).

ACTU means Australian Council of Trade Unions of Level 2, 393 Swanston Street, Melbourne in the State of Victoria.

Amaba means Amaba Pty Limited (ABN 98 000 387 342).

Amaca means Amaca Pty Limited (ABN 49 000 035 512).

Asbestos Support Groups means each of The Asbestos Diseases Foundation of Australia, Asbestos Diseases Society of Australia Inc, The Asbestos Victims Association of South Australia, Queensland Asbestos Related Disease Support Society, Gippsland Asbestos Related Disease Support Inc, and Asbestos Diseases Society of Victoria.

Associated Person means:

- (a) each member of the JHINV Group;
- (b) each Liable Entity; and
- (c) each past and present director, officer, employee, adviser or agent of any person described in paragraphs (a) or (b) of this definition.

Banton means Bernie Banton of 133-7 Parramatta Road Granville, in the State of New South Wales, as the designated representative of the Asbestos Support Groups.

Business Day means a day (not being a Saturday or a Sunday) on which banks are open for general banking business in Sydney.

Commencement Date means the date on which the Release Legislation commences.

Controlled Entities has the same meaning as in the Final Funding Agreement.

Deed of Accession means the deed of that name dated 8 June 2006 between the Trustee, JHINV, the Performing Subsidiary and the NSW Government.

Deeds of Covenant and Indemnity means:

- (a) the deed of that name dated 16 February 2001 and entered into between JHIL, Amaba and Amaca and any amendments thereto (including without limitation pursuant to the amending deed dated 10 September 2001); and
- (b) the Deed of Covenant Indemnity and Access between JHINV and ABN 60 dated 31 March 2003 and any amendments thereto.

Final Funding Agreement means the deed of that name dated 1 December 2005 between JHINV, the Performing Subsidiary, the NSW Government and, pursuant to the Deed of Accession, the Trustee.

Fund means the Asbestos Injuries Compensation Fund established pursuant to a trust deed dated 7 April 2006 between JHINV and the Trustee..

Heads of Agreement means the non-binding agreement entered into on 21 December 2004 between the Initial Negotiating Parties.

Initial Negotiating Parties means each of JHINV, the NSW Government, the ACTU, Unions NSW and Banton.

Jackson Inquiry means the Special Commission of Inquiry that was commissioned, by Letters Patent dated 27 February 2004 and 30 June 2004, to inquire into and report on certain matters relating to the establishment of MRCF.

JHIL means the company formerly known as James Hardie Industries Limited (now ABN 60).

JHIL Group means JHIL and its Controlled Entities from time to time.

JHINV Group means JHINV and its Controlled Entities.

Liabe Entities means Amaca, Amaba and ABN 60.

MRCF means the Medical Research & Compensation Foundation (ABN 21 095 924 137).

Notice has the meaning given to it in **clause 11**.

Parties means the parties to this deed.

Performing Subsidiary means LGTDD Pty Limited or, if a subsidiary of JHINV other than that entity is nominated under **clause 6.2** of the Final Funding Agreement, that subsidiary.

Person includes any general partnership, limited partnership, corporation, limited liability company, joint venture, trust, business trust, governmental agency, co-operative, association, individual or other entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such a person as the context may require.

Release Legislation has the same meaning as in clause 1 of the Final Funding Agreement.

Relevant Matters means all matters relating to or arising out of any of the following or their facts, matters and circumstances:

- (a) the establishment and underfunding or funding of the MRCF, and the February 2001 ABN 60 group corporate reorganisation (including, without limitation, the transfer of the Liabe Entities out of the JHIL Group, representations made to incoming directors of the Liabe Entities and other third parties regarding the Liabe Entities and their assets and liabilities, the media releases of ABN 60 of 16 February 2001 and of JHINV of 29 and 30 October 2003 and any statements made in relation to any of the foregoing matters);
- (b) the Deeds of Covenant and Indemnity;
- (c) the transfers of assets, and the dividends and management fees paid, by the Liabe Entities, as described in the report of the Jackson Inquiry;
- (d) the August to October 2001 ABN 60 group corporate reorganisation (including without limitation the scheme of arrangement in relation to ABN 60 of August to October 2001, the contemporaneous reduction of capital of (and cancellation of fully paid ordinary shares in) ABN 60 and subscription by JHINV for partly paid shares in ABN 60, the subsequent cancellation of those partly paid shares in ABN 60 in March 2003 and representations to third parties and the court and any statements made in relation to any of the foregoing matters); and
- (e) the transfer of assets from ABN 60 to JHINV, the establishment of the ABN 60 Foundation Limited and ABN 60 Foundation Trust, and the allotment of fully paid shares in ABN 60 to ABN 60 Foundation.

Trustee means the trustee of the Fund from time to time, in its capacity as trustee, initially being Asbestos Injuries Compensation Fund Limited.

Unions NSW means Unions New South Wales of 10th Floor, 377-383 Sussex Street, Sydney in the State of New South Wales.

1.2 Interpretation

In this deed, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this agreement;
- (b) any reference to civil liability has its natural and ordinary meaning;
- (c) words importing the singular include the plural and vice versa;
- (d) words importing a gender include any gender;
- (e) other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning;
- (f) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and vice versa;
- (g) a reference to any thing (including, but not limited to, any right) includes a part of that thing;
- (h) a reference to a Party to a document includes that Party's successors and permitted assigns;
- (i) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute; and
- (j) a reference to a document or agreement includes all amendments or supplements to, or replacements or novations of, that document or agreement.

2 DEED BINDS THE CROWN

This deed binds the Crown in right of New South Wales.

3 RELEASES BY NSW GOVERNMENT

- 3.1 With effect on and from the Commencement Date, and to the maximum extent permitted by law pursuant to this deed (but without requiring any further act by the NSW Government), the NSW Government releases each of JHINV and each Associated Person from any civil liability relating to or arising out of any of the Relevant Matters.
- 3.2 The Parties acknowledge that JHINV holds the benefit of the release set out in **clause 3.1** in favour of an Associated Person on trust for that Associated Person.

- 3.3 Nothing in this deed can nor shall be taken as an admission by JHINV, the Performing Subsidiary or any of their Controlled Entities, directors, officers, employees, advisers or agents (past and present) that it or he or she has had any role in organising or procuring any unlawful action or is or has been in breach of any law.
- 3.4 Each release given under this deed in favour of any Associated Person who is a natural person is absolute, unconditional and irrevocable.
- 3.5 Each release given under this deed in favour of JHINV or any Associated Person which is not a natural person shall be suspended whilessoever:
- (i) the Performing Subsidiary shall be and remains in breach of any obligation to make a Funding Payment under the Final Funding Agreement and such breach shall have remained unremedied for not less than 3 months and remains unremedied;
 - (ii) JHINV is in breach of **clause 7** of the Final Funding Agreement and that breach has not been rectified within a reasonable period (of not less than 3 months) of JHINV having received a Notice under **clause 12.1(f)** of the Final Funding Agreement; or
 - (ii) JHINV is and remains in breach of **clause 7** of the Final Funding Agreement and JHINV has not given a Notice to the NSW Government under **clause 7.9** of the Final Funding Agreement in respect of that breach, and the NSW Government has given JHINV at least 30 days' Notice that the suspension applies.

4 CONFIDENTIALITY

- 4.1 Subject to **clause 4.2**, each Party shall keep the terms of this deed strictly confidential.
- 4.2 A Party may make any disclosures in relation to this deed in the manner and to the extent permitted under the Final Funding Agreement.

5 DEED MAY BE USED IN COURT

- (a) Subject to **clause 5(b)**, except in relation to a breach of this deed, or whilessoever any release given pursuant to this deed has been suspended in accordance with **clause 3.5**, and without affecting the continuing obligations of the Parties pursuant to this deed, this deed may be pleaded as a full and complete defence by JHINV or any Associated Person to any civil liability actions, suits, or proceedings commenced, continued or taken by the NSW Government in relation to any of the Relevant Matters.
- (b) None of JHINV nor any Associated Person which is not a natural person may plead the releases in favour of that person given under **clause 3.1** in defence to any claim against that person by the NSW Government while that release has been suspended under **clause 3.5**.

6 GOVERNING LAW

This Deed shall be construed in accordance with and be governed by the laws of the State of New South Wales and the Parties agree that the courts of that State will be forum of choice in relation to this deed.

7 ENTRY INTO DEED

The Parties acknowledge that this deed is voluntarily entered into and that each Party has obtained their own legal advice concerning its terms.

8 SEVERANCE

If any provision of this deed is held to be invalid or unenforceable for any reason, it will, to the extent that it is invalid or unenforceable, be treated as severed from this deed and will not affect the remaining provisions of this deed.

9 VARIATION OF DEED

This Deed may only be varied or replaced by a deed duly executed by each of the Parties.

10 COUNTERPARTS

This Deed may be executed in any number of counterparts and all counterparts, taken together, constitute one instrument. A Party may execute this deed by executing any counterpart.

11 NOTICES

11.1 A notice, approval, consent, nomination or other communication ("**Notice**") to a person relating to this deed:

- (i) must state that it is a notice relating to this deed;
- (ii) shall state the relevant clause in this deed to which the notice relates;
- (iii) must be in legible writing; and
- (iv) must be in English.

11.2 If the Notice is to JHINV then it must be addressed as follows:

Name: James Hardie Industries NV

Attention: The Chairman

Address: Level 3, 20 Pitt Street, Sydney NSW 2000

Facsimile: (02) 8274 5217

With a copy to:

Attention: The Chief Legal Counsel

Address: Atrium, Unit 04-07, Strawinskylaan 3077, 1077ZX Amsterdam, The Netherlands

Facsimile: 31 (0) 20 404 2544

11.3 If the Notice is to the NSW Government then it must be addressed as follows:

Name: The State of New South Wales, c/- The Cabinet Office

Attention: Deputy Director-General (Legal)

Address: Level 39, Governor Macquarie Tower, Farrer Place, Sydney, NSW 2000

Facsimile: 02 9228 3062

11.4 If the Notice is from a corporation then an officer of that corporation must sign the Notice.

11.5 Notice is sent by the sender and received by the receiver:

- (i) if the Notice is hand delivered, upon delivery to the receiving Party;
- (ii) if the Notice is sent by facsimile, upon the successful completion of the relevant transmission;
- (iii) if the Notice is sent by registered mail within Australia, 2 Business Days after the registration of the notice of posting; and

11.6 If the Notice is sent by ordinary mail within Australia, 3 Business Days from and including the date of postage

11.7 For the avoidance of doubt, Notice shall not be sent by electronic email.

11.8 In **clause 11.5**, a reference to a Party receiving a Notice includes a reference to the receiver's officers, agents or employees.

11.9 A Party may vary any of the details relating to it or its officers contained in this **clause 11.2** at any time by Notice to the other Parties.

11.10 Where a Notice to a Party must be copied to another Person, each such Notice must be despatched at the same time and using the same method and upon failure to do so, each such Notice will be deemed to be given at the time and by the method of despatch of the last such Notice.

EXECUTED by the Parties as a Deed:

EXECUTED by
JAMES HARDIE INDUSTRIES NV

/s/ Louis Gries

Signature of Director
LOUIS GRIES

Name of Director

)
)

/s/ Russell Chenu

Signature of Director/Secretary
RUSSELL CHENU

Name of Director/Secretary

EXECUTED by
**THE HONOURABLE ROBERT JOHN DEBUS MP,
ATTORNEY GENERAL OF NEW SOUTH WALES
FOR THE STATE OF NEW SOUTH
WALES**

/s/ Leigh Rae Sanderson

Signature of witness
LEIGH RAE SANDERSON

Name of witness

)
)

/s/ The Hon Robert John Debus

Signature

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LAWYERS

**IRREVOCABLE POWER OF
ATTORNEY**

**ASBESTOS INJURIES
COMPENSATION FUND LIMITED**

**THE STATE OF NEW SOUTH
WALES**

CONFORMED COPY

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THIS IRREVOCABLE POWER OF ATTORNEY is made on *8 June 2006*

BETWEEN

1. **ASBESTOS INJURIES COMPENSATION FUND LIMITED ACN 117 363 461**, a company limited by guarantee incorporated under the laws of the State of New South Wales, Australia, having its registered office at Level 3, 22 Pitt Street, Sydney, New South Wales, in its capacity as trustee for the **Asbestos Injuries Compensation Fund**, a trust established by way of a trust deed dated 7 April 2006 (**Appointor**)
2. **THE STATE OF NEW SOUTH WALES (Attorney)**

THE PARTIES AGREE

1. PRELIMINARY

Defined Terms and Interpretation

- 1.1 A term or expression starting with a capital letter which is defined in the Dictionary in Part 1 of Attachment A (**Dictionary**), has the meaning given to it in the Dictionary.
- 1.2 The Interpretation clauses in Part 2 of Attachment A (**Interpretation**) set out rules of interpretation for this deed.

2. APPOINTMENT

The Appointor appoints the Attorney to be its attorney from the date of this deed for the duration of the Final Funding Agreement.

3. CONSIDERATION

Each party acknowledges entering into this deed and incurring obligations and giving rights under this deed for valuable consideration received from the other party to this deed.

4. POWERS

4.1 Scope

Subject to clause 4.2, the Appointor hereby irrevocably grants the Attorney the powers to do in the name of the Appointor and on its behalf everything that the Attorney considers necessary or expedient to enforce on behalf of the Appointor all promises made by JHINV and the Performing Subsidiary to the Appointor under clauses 6, 9, 10, 15.1 and 15.7 of the Final Funding Agreement and under each Relevant Agreement, including without limitation the powers to:

- (a) subject to clause 10 of the Final Funding Agreement, vote and prove, on behalf of the Appointor, the Wind-Up or Reconstruction Amount or any debt owing to the Appointor under clause 6, 9, 10, 15.1 and 15.7 of the Final Funding Agreement and any Related Agreement and make application to any court of competent jurisdiction in relation to any Reconstruction Event or Insolvency Event of JHINV;
- (b) subject to clause 10 of the Final Funding Agreement be present and vote at any meeting relating to any Reconstruction Event or, subject to the Intercreditor Deed, any Insolvency Event of JHINV, or any other meeting of creditors of JHINV where the obligation owed to the Appointor arises under clause 6, 9, 10, 15.1 or 15.7 of the Final Funding Agreement or any Related Agreement;
- (c) individually make submissions to an Insolvency Official or any court having jurisdiction in connection with any Reconstruction Event or an Insolvency Event of JHINV; and
- (d) do anything which in the Attorney's opinion is necessary or desirable to ensure the validity and enforceability of this power of attorney under any applicable law (including without limitation, stamping or registering this power of attorney or filing this power of attorney with any government authority).

Without limiting the foregoing but subject to clause 4.2, in respect of an obligation owed to the Appointor arises under clause 6, 9, 10, 15.1 or 15.7 of the Final Funding Agreement or the Related Agreements, the Appointor hereby authorizes the Attorney, as attorney in fact for the Appointor and with full power of substitution to attend the meeting of creditors of JHINV or any adjournment thereof, and, subject to the Intercreditor Deed, to vote in the Appointor's behalf on any question that may be

lawfully submitted to creditors at such meeting or adjourned meeting, and for a trustee or trustees of the estate of JHINV and to accept or reject any plan of reorganisation of JHINV.

4.2 Exercise

- (a) The foregoing powers of enforcement are subject to clause 16.6 of the Final Funding Agreement.
- (b) This power of attorney automatically terminates in the event of the termination of the Final Funding Agreement.

5. VALIDITY OF ACTS AND RATIFICATION

The Appointor:

- (a) declares that everything done by the Attorney in exercising powers under this power of attorney is as valid as if it had been done by the Appointor; and
- (b) agrees to ratify, confirm and be bound by whatever the Attorney does in exercising powers under this power of attorney.

6. DECLARATION

The Appointor declares that a Person who deals with the Attorney in good faith may accept a written statement signed by the Attorney to the effect that this power of attorney has not been revoked as conclusive evidence of that fact.

7. USE OF NAME

The Attorney may exercise powers under this power of attorney in the name of the Appointor or in the name of the Attorney including the conduct of any court proceedings.

8. AUTHORITY TO BENEFIT THIRD PARTIES

The Appointor expressly authorises the Appointor to do anything which may result in a benefit to a third party.

9. APPOINTMENT IRREVOCABLE

The Appointor declares that this power of attorney is given for valuable consideration and is irrevocable from the date of this deed for the duration of the Final Funding Agreement.

10. US ACKNOWLEDGMENT

The Appointer must, on request by the Attorney, use all reasonable endeavours to ensure that the execution of this deed is acknowledged before one of the officers enumerated in *28 U.S.C* ϵ 459, ϵ 953, *Rule 9012*, or a person authorised to administer oaths under the laws of the state where the oath is administered.

11. GOVERNING LAW

This deed is governed by the laws applicable in New South Wales.

12. NOTICES

Clause 30 of the Final Funding Agreement shall apply to notices given under this deed.

13. COUNTERPARTS

This deed may be executed in any number of counterparts, each of which when executed, is an original. These counterparts together make one instrument.

EXECUTED as a deed.

EXECUTED by **ASBESTOS INJURIES COMPENSATION FUND LIMITED** in its capacity as trustee of the Asbestos Injuries Compensation Fund:

/s/ P W Baker

Signature of Director*

PETER W. BAKER

Name of Director (print)

/s/ Alan T Kneeshaw

Signature of witness

ALAN T. KNEESHAW

Name of witness (print)

/s/ Joanne Marchione

Signature of Director/*

JOANNE MARCHIONE

Name of Director/Secretary (print)

/s/ Alan T Kneeshaw

Signature of witness

ALAN T. KNEESHAW

Name of witness(print)

* Each individual signing the deed acknowledges that he or she is a director or secretary of the corporation named above and is authorised to execute this power of attorney on its behalf.

SIGNED by _____ for the State of New South Wales in the presence of:

/s/ Leigh Rae Sanderson

Signature of Witness

LEIGH RAE SANDERSON

Name of Witness (print)

/s/ The Hon. Robert John Debus MP

Name of signatory

ATTORNEY GENERAL

Office of signatory

ATTACHMENT A — DICTIONARY AND INTERPRETATION
DICTIONARY AND INTERPRETATION
(Clause 1.1)

1. DICTIONARY

In this deed:

Claimants has the meaning given to it in the Final Funding Agreement.

Compensation Parties has the meaning given to it in the Final Funding Agreement.

Controlled Entity has the meaning given to it in the Final Funding Agreement.

Cross Guarantee has the meaning given to it in the Final Funding Agreement.

Final Funding Agreement means the legally binding agreement so entitled dated 1 December 2005 between JHINV, the Performing Subsidiary and the Attorney to which the Appointor became a party on or about the date of this deed.

Initial Funding has the meaning given in the Final Funding Agreement.

Insolvency Event has the meaning given to it in the Final Funding Agreement.

Insolvency Official has the meaning given to it in the Intercreditor Deed.

Intercreditor Deed means each deed so entitled to be entered into between JHINV or the Performing Subsidiary (as the case may be), the NSW Government, the Appointor and the Guarantee Trustee (as defined in that deed), in or substantially, in the form annexed as Annexure 7A or 7B respectively, of the Final Funding Agreement.

JHINV means James Hardie Industries N.V. and any Parent Entity.

JHINV Guarantee has the meaning given to it in the Final Funding Agreement.

Notice has the meaning given to it in the Final Funding Agreement.

Parent Entity means any Person and all such Persons of which JHINV is a Controlled Entity and where there are two or more such Persons, only the immediate holding company and the ultimate holding company of JHINV.

Performing Subsidiary means LGTDD Pty Limited or, if a subsidiary of JHINV other than that entity is nominated under clause 6.2 of the Final Funding Agreement to perform the obligations described in clauses 6 and 9 of the Final Funding Agreement and each of JHINV and that subsidiary has complied with clause 6.2 of the Final Funding Agreement, that subsidiary.

Person includes any general partnership, limited partnership, corporation, limited liability company, joint venture, trust, business trust, governmental agency, co-operative, association, individual or other entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such a person as the context may require.

Reconstruction Event has the meaning given to it in the Final Funding Agreement.

Relevant Agreements means each of those documents listed in Schedule 1 to the Final Funding Agreement to which the Appointor is a party and each Cross-Guarantee given in favour of the Appointer by any Controlled Entity of JHINV.

Wind-Up or Reconstruction Amount has the meaning given to it in the Final Funding Agreement.

2. INTERPRETATION

In this deed the following rules of interpretation apply unless the contrary intention appears.

- (a) Headings are for convenience only and do not affect the interpretation of this deed.
- (b) The singular includes the plural and vice versa.
- (c) Words that are gender neutral or gender specific include each gender.
- (d) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (e) The words 'such as', 'including', 'particularly' and similar expressions are not used as nor are intended to be interpreted as words of limitation.
- (f) A reference to:

-
- (i) a thing (including but not limited to a chose in action or other right) includes a part of that thing;
 - (ii) a document includes all amendments or supplements to that document;
 - (iii) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this deed;
 - (iv) this deed includes all schedules and attachments to it;
 - (v) an agreement other than this deed includes an undertaking, or legally enforceable arrangement or understanding whether or not in writing; and
 - (vi) a monetary amount is in Australian dollars.

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CONFORMED COPY**DEED OF ACCESSION**

DEED dated 8 June 2006 by

1. **ASBESTOS INJURIES COMPENSATION FUND LIMITED** ACN 117 363 461, of Level 3, 18-22 Pitt Street, Sydney in the State of New South Wales, in its capacity as trustee of the Asbestos Injuries Compensation Fund Trust (*Acceding Party*)
2. **James Hardie Industries N.V.** ARBN 097 829 895 incorporated in the Netherlands and having its registered office at Atrium, 8th Floor, Strawinskylaan 3077, 1077ZX Amsterdam, The Netherlands, (with its Australian principal office at Level 3, 22 Pitt Street, Sydney in the State of New South Wales) (*JHINV*)
3. **LGTDD Pty Limited** ABN 116 110 948, of Level 3, 18-22 Pitt Street, Sydney in the State of New South Wales (*Performing Subsidiary*)
4. **The State of New South Wales** (*NSW Government*)

(each of JHINV, the Performing Subsidiary and NSW Government, the *Existing Parties*)

RECITALS

- A. This deed is supplemental to the Final Funding Agreement between the Existing Parties dated 1 December 2005 in respect of the provision of long term funding for compensation arrangements for certain victims of Asbestos-related diseases in Australia (*Final Funding Agreement*).
- B. On 7 April 2006, the Acceding Party became the trustee of the Asbestos Injuries Compensation Fund Trust by executing a deed of trust with James Hardie Industries NV as settlor (the "Asbestos Injuries Compensation Fund Trust").

OPERATIVE PART**1. Acceding Party to be bound**

The Acceding Party confirms to the Existing Parties that it has been supplied with a copy of the Final Funding Agreement, JHINV Guarantee and Intercreditor Deeds and covenants with all Existing Parties to observe, perform and be bound by all the terms of the Final Funding Agreement, the JHINV Guarantee and the Intercreditor Deeds so that the Acceding Party is deemed, from the date of this deed to be a party to the Final Funding Agreement, the JHINV Guarantee and Intercreditor Deeds.

2. Existing Parties

The Existing Parties severally covenant with the Acceding Party to observe, perform and be bound by all of the terms of the Final Funding Agreement, the JHINV Guarantee and Intercreditor Deed.

3 Representations and warranties

The Acceding Party represents and warrants to each of the Existing Parties that each of the following statements is true and accurate as at the date of this deed:

- (a) the statements with respect to the Performing Subsidiary set out in **Part 1 of Schedule 2** of the Final Funding Agreement, as amended by replacing each reference to the Performing Subsidiary with a reference to the Acceding Party;
- (b) the trust to which it is a trustee it has been validly created and is validly existing;
- (c) it is the sole trustee of the trust on behalf of which it has entered into this deed;
- (d) there has been no resolution or direction to terminate the trust on behalf of which it has entered into this deed, nor to remove it as trustee of that trust;
- (e) it has the power to enter into this deed as trustee of the trust on behalf of which it has entered into this deed; and
- (f) On the date of this deed, the Acceding Party has provided to the NSW Government, and the NSW Government acknowledges receipt, of an officer's certificate signed by the chairman of directors (or, if appointed, the chief executive officer) of the Acceding Party in the form set out in the **Schedule** to this deed.

4. Address for Notices

The address and Notice details of the Acceding Party for the purposes of **clause 30** of the Final Funding Agreement is:

Level 3, 18-22 Pitt Street, Sydney in the State of New South Wales

Attention: The Chairman

Fax number: +61 (0)2 8274 5218

5. Governing law

This deed is governed by the laws applicable in New South Wales.

6. Interpretation

Words and expressions defined in the Final Funding Agreement have the same meaning where used in this deed.

Schedule

Form of Officer's certificate

To: The State of New South Wales

I, Peter W Baker, am the Chairman of Directors of Asbestos Injuries Compensation Fund Limited ("**AICF**").

I refer to the deed having the name "Final Funding Agreement" entered into on 1 December 2005 between James Hardie Industries N.V., The State of New South Wales and LGTDD Pty Limited in respect of the provision of long term funding for compensation arrangements for certain victims of Asbestos-related diseases in Australia ("**Final Funding Agreement**").

I also refer to a deed of accession dated on or about the date of this certificate between the AICF and the parties to the Final Funding Agreement ("**Deed of Accession**"), under which AICF accedes to the terms of the Final Funding Agreement.

I certify that I have been duly authorised by AICF to give this certificate and that to the best of my knowledge and belief having made reasonable enquiries, each of the representations and warranties given by AICF set out in clause 3 of the Deed of Accession are true and accurate as at the date of this certificate.

I am aware that The State of New South Wales will rely upon the representations and warranties made by AICF in the Deed of Accession and by me in this certificate.

Signed: */s/ Russell Chenu*

Date: *1 December 2005*

EXECUTED as a deed.

Signed for Asbestos Injuries Compensation
Fund Limited by

/s/ P W Baker

Name: *PETER W BAKER*
Director / Secretary

/s/ Joanne Marchione

Name: *JOANNE MARCHIONE*
Director

Signed by Meredith Hellicar and Russell Chenu
for James Hardie Industries N.V.

/s/ Meredith Hellicar

Meredith Hellicar
Chairman

/s/ Russell Chenu

Russell Chenu
Authorised Officer

Signed for LGTDD Pty Limited
By

/s/ D A J Salter

DAJ Salter
Director / Secretary

/s/ Bruce Potts

Bruce Potts
Director

Signed by *The Hon Robert John Debus MP*
Attorney General
For the State of New South Wales

/s/ The Hon Robert John Debus

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[LETTERHEAD OF NEW SOUTH WALES — CABINET OFFICE]

31 August 2006

Mr Russell Chenu
Chief Financial Officer
James Hardie Industries NV
Level 3
20 Pitt Street
SYDNEY NSW 2000

By facsimile: 8274 5218

Dear Mr Chenu

I refer to your letter of 30 August 2006.

On behalf of the NSW Government, for the purposes of clause 2.2(a)(i) of the Final Funding Agreement, I agree to the further extension of the deadline in that clause from 31 August 2006 to 30 September 2006.

As I noted on the last occasion that we agreed to an extension of time, a one-month extension may not allow sufficient time to resolve the issue of the taxation status of the Fund.

If, as seems likely, a further extension of time is required, the NSW Government would prefer to extend the time based on a reasonable timeframe for resolving the taxation issue. I trust that such an approach will be possible by the time we may next need to consider an extension of time.

In your letter, you refer to JHINV progressing matters with the Australian Taxation Office, and exploring options with the NSW and Commonwealth Governments. As I have stated previously, the NSW Government considers that JHINV must first consult and agree with the NSW Government any option to resolve the tax status of the Fund, bearing in mind that any change to the current arrangements will entail amendments to NSW legislation, the Final Funding Agreement and at least some of the related documentation.

Yours sincerely

/s/ Leigh Sanderson

Leigh Sanderson
Deputy Director-General

[JAMES HARDIE INDUSTRIES N.V. LETTERHEAD]

Ms Leigh Sanderson
Deputy Director-General
The Cabinet Office
Level 39, Governor Macquarie Tower
1 Farrar Place
SYDNEY NSW 2000

30 August 2006

By facsimile: 9228 3062

Dear Ms Sanderson

FINAL FUNDING AGREEMENT

We refer to the requirement contained in clause 2.2(a)(i) of the Final Funding Agreement that certain conditions precedent described in clause 2.1 of that agreement must be satisfied by 30 June 2006, and to our prior exchange of letters agreeing to extend this deadline until 31 July 2006, and then 31 August 2006.

In the light of our discussions since our prior correspondence in relation to the tax exemption condition set out in the Final Funding Agreement, we hereby request the NSW Government's agreement that for the purposes of clause 2.2(a)(i) of the Final Funding Agreement, the deadline referred to in that clause is extended to 30 September 2006. This extended time will provide an opportunity for us to further progress matters with the Australian Taxation Office and explore with the New South Wales and Commonwealth Governments other options for achieving the intentions of the Final Funding Agreement.

As previously noted, nothing in this extension will affect the obligations of any of the New South Wales Government, James Hardie Industries NV, the Performing Subsidiary or the Fund to use their best endeavours to seek to promptly satisfy the conditions precedent to the Final Funding Agreement, pursuant to clause 2.3 of the agreement.

Yours sincerely,

/s/ Russell Chenu

Russell Chenu
Chief Financial Officer

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LIST OF SIGNIFICANT SUBSIDIARIES

The table below sets forth our significant subsidiaries, all of which are 100% owned by James Hardie Industries N.V., either directly or indirectly.

<u>Name of Company</u>	<u>Jurisdiction of Establishment</u>
James Hardie Aust Holdings Pty Ltd.	Australia
James Hardie Austgroup Pty Ltd.	Australia
James Hardie Australia Management Pty Ltd.	Australia
James Hardie Australia Pty Ltd.	Australia
James Hardie Building Products Inc.	United States
James Hardie Europe B.V.	Netherlands
James Hardie Fibre Cement Pty Ltd.	Australia
James Hardie International Finance B.V.	Netherlands
James Hardie International Finance Holdings Sub I B.V	Netherlands
James Hardie International Finance Holdings Sub II B.V	Netherlands
James Hardie International Holdings B.V.	Netherlands
James Hardie N.V.	Netherlands
James Hardie New Zealand Limited	New Zealand
James Hardie Philippines Inc.	Philippines
James Hardie Research (Holdings) Pty Ltd.	Australia
James Hardie U.S. Investments Sierra Inc.	United States
N.V. Technology Holdings A Limited Partnership	Australia
RCI Pty Ltd.	Australia

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**CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Russell Chenu, certify that:

1. I have reviewed this annual report on Form 20-F of James Hardie Industries N.V.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the company as of, and for, the periods presented in this report;
4. The company's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the company and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Evaluated the effectiveness of the company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - c) Disclosed in this report any change in the company's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting; and
5. The company's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of the company's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the company's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal control over financial reporting.

/s/ Russell Chenu

Russell Chenu
Chief Financial Officer

Date: September 28, 2006

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**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

Each of the undersigned hereby certifies, in his capacity as an officer of James Hardie Industries N.V. (the "Company"), for purposes of 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of his knowledge:

- the Annual Report of the Company on Form 20-F for the fiscal year ended March 31, 2006 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- the information contained in such report fairly presents, in all material respects, the financial condition and results of operation of the Company.

Dated: September 28, 2006

/s/ Louis Gries

Louis Gries
Chief Executive Officer

/s/ Russell Chenu

Russell Chenu
Chief Financial Officer

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CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statement on Form S-8 (No. 333-14036) of James Hardie Industries N.V. and Subsidiaries of our report dated May 12, 2006, except for Note 20, as to which the dates are June 23, 2006, June 29, 2006 and July 5, 2006 relating to the financial statements, which appears in this Form 20-F.

/s/ PRICEWATERHOUSECOOPERS LLP
PRICEWATERHOUSECOOPERS LLP

Los Angeles, California
September 27, 2006

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Consent of KPMG Actuaries Pty Ltd (“KPMG Actuaries”) in relation to Form 20-F filing

We hereby consent to your references to KPMG Actuaries Pty Ltd (“KPMG Actuaries”) and to our actuarial valuation report effective as of March 31, 2006, dated May 15, 2006 (the “Report”), and to make use of, or quote, information and analyses contained within that Report for the purpose of James Hardie Industries N.V.’s (“JHI NV”) Annual Report on Form 20-F for fiscal year ended March 31, 2006.

In addition, we hereby consent to your references to past actuarial valuations performed by KPMG Actuaries for the purpose of JHI NV’s Annual Report on Form 20-F for fiscal year ended March 31, 2006.

Your attention is drawn to the Important Note at the beginning of the Executive Summary and Section 1 of the Report.

/s/ Richard Wilkinson

Richard Wilkinson BSc FIA FIAA

Director

KPMG Actuaries Pty Ltd

Fellow of the Institute of Actuaries (London)

Fellow of the Institute of Actuaries of Australia

Sydney, Australia

September 27, 2006

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Excerpts of the ASX Settlement and Transfer Corporation
Pty Ltd as of June 10, 2005

See www.asx.com.au/supervision/rules_guidance/astc_rules.htm for up-to-date rules

1.2 APPLICATION AND EFFECT OF THESE RULES

1.2.1 OPERATING RULES OF ASTC

These Rules are the operating rules of the Settlement Facility for the purposes of the Corporations Act. These Rules should be read in conjunction with:

- (a) the Procedures; and
- (b) the Corporations Act.

To the extent of any inconsistency between these Rules and the Procedures, these Rules will prevail.

Introduced 11/03/04

1.2.2 BINDING EFFECT OF RULES

These Rules are binding on Issuers, Participants and ASTC in the manner set out in:

- (a) section 822B of the Corporations Act; and
- (b) Rules 1.2.3 and 1.2.4.

Introduced 11/03/04 Origin SCH 1.5.1

1.2.3 COVENANTS TO OBSERVE RULES

These Rules (other than a Warranty and Indemnity Provision) have the effect of a contract under seal between ASTC and all Facility Users under which:

- (a) each Facility User covenants with ASTC and each other Facility User to observe the Rules and to perform the obligations which the Rules purport to impose on the Facility User, in the manner provided by the Rules; and
- (b) subject to Rules 3.6.11 to 3.6.18 inclusive, ASTC covenants with each Facility User to observe the Rules and to perform the obligations which the Rules purport to impose on ASTC, in the manner provided by the Rules.

These Rules have the effect of a contract under seal between all RTGS Payments Providers for the time being admitted to participate in that capacity, ASTC and all Facility Users.

Introduced 11/03/04 Origin SCH 1.5.2, 1.5.7

1.2.4 EFFECT OF WARRANTY AND INDEMNITY PROVISIONS

The Issuer Warranties and Indemnities have the effect of a contract under seal between the Issuer, ASTC and every Participant.

The Participant Warranties and Indemnities have the effect of a contract under seal between the Participant, ASTC, every Issuer and every other Participant.

The ASTC Indemnity has the effect of a contract under seal between ASTC and each Issuer.

Introduced 11/03/04 Origin SCH 1.5.4, 1.5.5, 1.5.6

1.3 STATE OF EMERGENCY RULES

1.3.1 ACTION IF A STATE OF EMERGENCY EXISTS

If ASTC determines that a State of Emergency exists ASTC may take or authorise any action it considers necessary for the purpose of dealing with the State of Emergency, including:

(a) making State of Emergency Rules (that may be inconsistent with these Rules) for the protection of the interests of ASTC and Facility Users;

(b) suspending provision of any ASTC facilities and services to one or more persons;

(c) taking, or refraining from taking, or directing a Participant to take or refrain from taking, any action which ASTC considers is appropriate;

(d) taking any action in the name of and at the expense of a Participant;

or

(e) other action that is inconsistent with these Rules (other than Rule 1.3).

In the event of conflict between the State of Emergency Rules and these Rules, the State of Emergency Rules will prevail.

Introduced 11/03/04 Origin SCH 1.6.1, 1.6.3

1.3.2 EFFECT OF A STATE OF EMERGENCY

No person bound by the Rules is liable for failure to comply with a Rule (other than a Warranty an Indemnity Provision or a State of Emergency Rule) if, and to the extent to which, compliance has been delayed, interfered with, curtailed or prevented by a State of Emergency.

Introduced 11/03/04 Origin SCH 1.5.3

1.3.3 PERIOD FOR STATE OF EMERGENCY RULES

ASTC may specify the period during which any State of Emergency Rules remain in force, but the period must not exceed 30 Business Days. If ASTC does not specify a period during which any State of Emergency Rules remain in force, the State of Emergency Rules remain in force for 30 Business Days.

Introduced 11/03/04 Origin SCH 1.6.2

1.3.4 NOTICE TO ISSUERS AND PARTICIPANTS

ASTC must promptly notify Issuers and Participants of the making of any State of Emergency Rules.

Introduced 11/03/04 Origin SCH 1.6.4

1.3.5 FACILITY USER MUST INFORM ASTC OF POTENTIAL STATE OF EMERGENCY

A Facility User that becomes aware of any event or condition that may lead to a State of Emergency must immediately inform ASTC.

Introduced 11/03/04 Origin SCH 1.6.5

1.3.6 NO LIABILITY OF ASTC

Without limiting any other liability provisions in these Rules none of ASTC, its officers, employees, agents or contractors are liable to a Facility User or any other person for:

(a) any failure or delay in performance in whole or in part of the obligations of ASTC under the Rules or any contract, if that failure or delay is caused directly or indirectly by a State of Emergency which entitles ASTC to act under this Rule 1.3; or

(b) any loss, liability, damage, cost or expense arising in any way (including, without limitation, by negligence) from the bona fide exercise of any power, right or discretion conferred upon ASTC by this Rule 1.3.

Introduced 11/03/04

1.4 SETTLEMENT PROCEDURES

1.4.1 ASTC MAY APPROVE PROCEDURES

ASTC may from time to time approve written Procedures relating to the operations of ASTC and the Settlement Facility, the conduct of Facility Users and the structure and operation of electronic communications between ASTC and Facility Users.

Introduced 11/03/04 Origin SCH 1.8.1

1.4.2 PROCEDURES ARE NOT PART OF THE RULES

The Procedures do not form part of these Rules. However, if a Rule requires a person to comply with any part of the Procedures, failure by the person to comply with that part of the Procedures is a contravention of the Rule.

Introduced 11/03/04 Origin SCH 1.8.2, 1.8.3

1.4.3 CHANGES TO PROCEDURES

ASTC may approve changes to the Procedures from time to time and must give such notice as is reasonable in the circumstances to Facility Users of any changes to the Procedures before those changes take effect.

Introduced 11/03/04 Origin SCH 1.8.7, 1.8.4

13.1 APPLICATION OF CDI RULES

13.1.1 EFFECT OF RULES 13.1 TO 13.13

Rules 13.1 to 13.13 only apply to, and have effect in relation to, CDIs issued in respect of a class of Principal Financial Products.

The Rules, to the extent that they are not inconsistent with Rules 13.1 to 13.13, have full force and effect in relation to CDIs other than as specifically modified by the provisions of these Rules 13.1 to 13.13.

Introduced 11/03/04 Origin SCH 3A.1.1, 3A.1.2 Amended 06/06/05

13.2 PREREQUISITES FOR SETTLEMENT OF INSTRUCTIONS IN PRINCIPAL FINANCIAL PRODUCTS

13.2.1 APPROVAL OF PERSON AS PRINCIPAL ISSUER

A person who has applied for:

(a) a class of Principal Financial Products; or

(b) CDIs issued over a class of Principal Financial Products, to be quoted on the market of an Approved Market Operator may apply to ASTC in the form prescribed in the Procedures to:

(c) act as Principal Issuer in relation to CDIs issued or to be issued in respect of those Principal Financial Products; and

(d) to have those CDIs approved.

Introduced 11/03/04 Origin SCH 3A.2.1 Amended 10/06/04 06/06/05

13.2.2 APPOINTMENT OF DEPOSITORY NOMINEE AND ISSUE OF CDIS

If ASTC determines to accept an application under rule 13.2.1, the Principal Issuer must:

(a) appoint a Depository Nominee for the purpose of complying with these Rules;

(b) give Notice to ASTC of:

(i) the identity of the Depository Nominee appointed by the Principal Issuer; and

(ii) the Transmutation Ratio for the Principal Financial Products;

(c) make arrangements satisfactory to ASTC to enable the Principal Issuer to comply with the requirements of Rules 13.4.3 and 13.5; and

(d) make arrangements satisfactory to ASTC to issue CDIs or make them available in respect of that class of Principal Financial Products to each person who has:

(i) an entitlement to those CDIs or Principal Financial Products; and

(ii) where applicable, not elected to take a document of Title to those Principal Financial Products.

Introduced 11/03/04 Origin SCH 3A.2.2 Amended 06/06/05

13.2.3 VESTING ARRANGEMENTS FOR PRINCIPAL FINANCIAL PRODUCTS

If Rule 13.2.2 applies, the Principal Issuer must, either not later than End of Day on the Despatch Date for the new Principal Financial Products, or such other time as ASTC requires:

(a) cause the Title to any Principal Financial Products that are to be held in the form of CDIs to be vested in the Depository Nominee nominated by the Principal Issuer under Rule 13.2.2, in a manner recognised by Australian law and all applicable foreign laws;

(b) immediately give Notice to ASTC that Title to the Principal Financial Products has vested in the Depository Nominee; and

(c) record:

(i) the CDIs corresponding to the Principal Financial Products on the CHES Subregister or the Issuer Sponsored Subregister, as the case requires; and

(ii) the information required to be recorded under these Rules in such manner as to identify each Holder of the CDIs, whether on the CHES Subregister or the Issuer Sponsored Subregister.

Introduced 11/03/04 Origin SCH 3A.2.3 Amended 06/06/05

13.2.4 EFFECTIVE DATE OF APPROVAL - CDIS AS APPROVED FINANCIAL PRODUCTS

Where ASTC determines to accept an application made under Rule 13.2.1, the Commencement Date for CDIs issued in respect of the class of Principal Financial Products will be the date that ASTC notifies the Principal Issuer that those CDIs are Approved Financial Products, or such other date determined by ASTC.

Introduced 06/06/05

13.2.5 CDIS AS APPROVED FINANCIAL PRODUCTS - TRANSITIONAL PROVISION

From the date on which this rule 13.2.5 comes into effect, all CDIs issued by a Principal Issuer over a class of previously approved Principal Financial Products will be taken to be Approved Financial Products.

Introduced 06/06/05

13.3 TRANSMUTATION AND ALTERATIONS OF PRINCIPAL FINANCIAL PRODUCTS

13.3.1 TRANSMUTATION OF PRINCIPAL FINANCIAL PRODUCTS TO CDIS AT ELECTION OF HOLDER

If a Holder of Financial Products that forms part of a class of Principal Financial Products in respect of which CDIs have been approved gives Notice to the Principal Issuer, at any time after the date of quotation of the Principal Financial Products, requesting the Transmutation of a quantity of those Principal Financial Products to CDIs, the Principal Issuer must, provided the Notice is accompanied by any corresponding documents of Title:

(a) as soon as possible, cause Title to the quantity of Principal Financial Products specified in the Notice to be vested in the Depository Nominee for those Principal Financial Products;

(b) record:

(i) the CDIs corresponding to the Principal Financial Products on the CDI Register; and

(ii) the information required to be recorded under these Rules in such manner as to identify each Holder of the CDIs, on the CDI Register; and

(c) give Notice to the Holder that the Transmutation has been effected.

Introduced 11/03/04 Origin SCH 3A.3.1 Amended 06/06/05

13.3.2 TRANSMUTATION OF PRINCIPAL FINANCIAL PRODUCTS TO CDIS FOR SETTLEMENT PURPOSES

Each Participant that is obliged to deliver a quantity of Principal Financial Products to another Participant must, unless otherwise agreed with that Participant, do so by initiating a Message to Transfer the corresponding quantity of CDIs in respect of those Principal Financial Products.

A Participant must not deliver a paper-based transfer of Principal Financial Products to another Participant unless otherwise agreed with that other Participant.

Introduced 11/03/04 Origin SCH 3A.3.2, 3A.3.3

13.3.3 PARTICIPANT MAY INITIATE A TRANSMUTATION ON BEHALF OF A PERSON

A Participant that is authorised by a person to do so, may Transmute Principal Financial Products to CDIs or CDIs to Principal Financial Products on behalf of the person in any circumstance where Transmutation by that person is permitted under these Rules.

Introduced 11/03/04 Origin SCH 3A.3.4

13.4 CONSEQUENCES OF VESTING TITLE IN DEPOSITARY NOMINEE

13.4.1 ECONOMIC BENEFITS AND ENTITLEMENTS IN RELATION TO PRINCIPAL FINANCIAL PRODUCTS

If Title to Principal Financial Products is vested in a Depositary Nominee under these Rules, all right, title and interest in those Principal Financial Products is held by the Depositary Nominee subject to the right of any person identified, in accordance with these Rules, as a Holder of CDIs in respect of those Principal Financial Products to receive all direct economic benefits and any other entitlements in relation to those Principal Financial Products.

Introduced 11/03/04 Origin SCH 3A.4.1

13.4.2 IDENTIFICATION OF CDI HOLDERS

For the purposes of Rule 13.4.1, a person is (subject to any subsequent disposition) entitled to all direct economic benefits and any other entitlements in relation to Principal Financial Products vested in a Depositary Nominee under these Rules if:

(a) in accordance with Rule 13.2.3, the Principal Issuer has recorded the person in the CDI Register as the holder of CDIs for those Principal Financial Products; or

(b) under Rule 13.3.1, the person is the former Holder of the Principal Financial Products to which the CDIs relate, or that person's nominee.

Introduced 11/03/04 Origin SCH 3A.4.2

13.4.3 IMMOBILISATION OF PRINCIPAL FINANCIAL PRODUCTS

A Depositary Nominee that holds Principal Financial Products under these Rules must:

(a)

(i) where a Certificate is issued as evidence of Title to those Financial Products, make arrangements satisfactory to ASTC for any Certificate representing its holding of Principal Financial Products to be held by the Principal Issuer for safekeeping; or

(ii) where the Financial Products are held on account in an Approved Clearing House, ensure that a Segregated Account is maintained in respect of those Financial Products, which must constitute the Principal Register for the purposes of these Rules;

(b) not dispose of any of those Principal Financial Products unless authorised by these Rules; and

(c) not create any interest (including a security interest) which is inconsistent with the Title of the Depositary Nominee to the Principal Financial Products and the interests of the Holders of CDIs in respect of the Principal Financial Products unless authorised by these Rules.

Introduced 11/03/04 Origin SCH 3A.4.3

13.5 REGISTERS AND PROCESSING OF TRANSFERS AND TRANSMUTATIONS

13.5.1 ISSUER TO ESTABLISH AND MAINTAIN PRINCIPAL REGISTER AND CDI REGISTER

If CDIs in respect of a class of Principal Financial Products are approved, the Principal Issuer must establish and maintain:

(a) a Principal Register in Australia which contains all of the information that would otherwise be required to be kept by the Principal Issuer if it maintained an Australian branch register for those Financial Products; and

(b) a CDI Register in Australia that contains all of the information that would otherwise be required to be kept under the Corporations Act as if the Principal Issuer were an Australian listed public company and the CDIs were Financial Products of that company.

Introduced 11/03/04 Origin SCH 3A.5.1, 3A.5.2 Amended 06/06/05

13.5.2 RECONCILIATION OF REGISTERS

The Principal Issuer must ensure, at all times that:

(a) the total number of CDIs on the CDI Register reconciles to the total number of Principal Financial Products registered in the name of the Depository Nominee on the Principal Register; and

(b) where applicable, it has one or more Certificates registered in the name of the Depository Nominee in its possession which represent the same number of Principal Financial Products as are registered in the name of the Depository Nominee on the Principal Register.

Introduced 11/03/04 Origin SCH 3A.5.3 Amended 06/06/05

13.5.3 RIGHT OF INSPECTION OF PRINCIPAL REGISTER AND CDI REGISTER

If:

(a) a Principal Register; or

(b) a CDI Register,

is required to be established and maintained by a Principal Issuer under Rule 13.5.1, the Principal Issuer must make that Principal Register or that CDI Register, as the case requires, available for inspection to the same extent and in the same manner as if that register were a register of Financial Products of an Australian listed public company.

This Rule 13.5.3 does not apply in respect of a class of Principal Financial Products issued by a DI Issuer to the extent that the Principal Register need not be available for inspection where that Principal Register is located in a foreign jurisdiction.

Introduced 11/03/04 Origin SCH 3A.5.4A

13.5.4 ISSUER SPONSORED SUBREGISTERS AND CHESSE SUBREGISTERS FOR CDIS

If CDIs in respect of a class of Principal Financial Products are approved, the Principal Issuer must establish and maintain:

- (a) an Issuer Sponsored Subregister; and
- (b) a CHESSE Subregister,

of CDIs in respect of the Principal Financial Products as if the CDIs were Financial Products of an Australian Issuer, issued wholly in uncertificated form.

Introduced 11/03/04 Origin SCH 3A.5.5 Amended 06/06/05

13.5.5 THIRD PARTY PROVIDER AS AGENT (DELETED)

Introduced 11/03/04 Origin SCH 3A.5.6 Deleted 06/06/05

13.5.6 AGENTS OF PRINCIPAL ISSUER

If a Principal Issuer employs or retains a Third Party Provider to establish and maintain a Principal Register or a CDI Register in respect of a class of its Principal Financial Products, then for the purposes of these Rules, the Third Party Provider is taken to perform those services as the agent of the Principal Issuer.

Introduced 11/03/04 Origin SCH 3A.5.7 Amended 06/06/05

13.5.7 DEPOSITARY NOMINEE OBLIGED TO ENSURE INFORMATION IS PROVIDED TO PRINCIPAL ISSUER

Notwithstanding Rule 13.5.2, if a Depositary Nominee employs or retains a Third Party Provider to administer the Principal Register, which is not the same Third Party Provider as that retained by the Principal Issuer to establish and maintain a CDI Register under Rule 13.5.6, then the Depositary Nominee must ensure that its Third Party Provider provides such information to the Principal Issuer at such times as the Principal Issuer requires for performance of its obligations under Rules 13.1 to 13.13.

Introduced 11/03/04 Origin SCH 3A.5.8

13.5.8 POWER OF ATTORNEY

The Depositary Nominee appoints the Principal Issuer to be the Depositary Nominee's attorney and in the name of the Depositary Nominee (or in the name of the Principal Issuer or its delegate) and on the Depositary Nominee's behalf:

- (a) to execute any transfer for the purposes of Rule 13.3; and
- (b) to do all things necessary or desirable to give full effect to the rights and obligations of the Depositary Nominee in Rules 13.1 to 13.13;

and the Depositary Nominee undertakes to ratify and confirm anything done under this power of attorney by the Principal Issuer.

Introduced 11/03/04 Origin SCH 3A.5.9

13.5.9 DELEGATION BY PRINCIPAL ISSUER UNDER POWER OF ATTORNEY

The Principal Issuer may in writing:

- (a) delegate its powers to any person for any period;
- (b) at its discretion, revoke any such delegation; and
- (c) exercise or concur in exercising any power despite the Principal Issuer or a delegate of the Principal Issuer having a direct or personal interest in the mode or result of the exercise of that power.

Introduced 11/03/04 Origin SCH 3A.5.9A

13.5.10 INDEMNITY

If a Principal Issuer or its Third Party Provider executes a transfer of Principal Financial Products on behalf of a Depositary Nominee as transferor or transferee, other than a Transfer which is supported by a Message initiated by a Participant under these Rules, the Principal Issuer warrants to ASTC that it indemnifies:

- (a) the Depositary Nominee;
- (b) ASTC;
- (c) the transferor or the beneficial owner of the Principal Financial Products, as the case requires; and
- (d) each Participant,

against all losses, damages, costs and expenses that they or any of them may suffer or incur as a result of the transfer not being authorised by the transferor or by the beneficial owner of the Principal Financial Products.

Introduced 11/03/04 Origin SCH 3A.5.10

13.5.11 ASTC HOLDS BENEFIT OF WARRANTIES FOR DEPOSITARY NOMINEE

ASTC holds the benefit of any warranties and indemnities given to it by the Principal Issuer under Rules 13.1 to 13.13 in trust for the benefit of the Depositary Nominee.

Introduced 11/03/04 Origin SCH 3A.5.10A

13.5.12 PRINCIPAL ISSUER AND DEPOSITARY NOMINEE NOT TO INTERFERE IN TRANSFER AND TRANSMUTATION

Unless otherwise permitted under these Rules or the Listing Rules, a Principal Issuer or a Depositary Nominee must not refuse or fail to register, or give effect to, or otherwise interfere with the processing and registration of:

- (a) a paper-based transfer of Principal Financial Products;
- (b) a Transfer of CDIs;
- (c) a Transmutation of Principal Financial Products to CDIs;
- (d) a Transmutation of CDIs to Principal Financial Products;
- (e) a shunt from a DI Register to a Principal Register; or
- (f) a shunt from a Principal Register to a DI Register.

Introduced 11/03/04 Origin SCH 3A.5.11, 3A.5.12 Amended 06/06/05

13.5.13 NO NOTICE OF UNREGISTERED INTERESTS

For the purposes of all relevant Australian and foreign laws, neither ASTC nor any Depositary Nominee is affected by actual, implied or constructive notice of any interest in CDIs other than the Holdings on the CDI Register.

A Depositary Nominee may deal with the registered Holder of CDIs as if, for all purposes, the Holder of CDIs is the absolute beneficial owner of the Principal Financial Products to which the CDIs relate, without any liability whatsoever to any other person who asserts an interest in the CDIs or in the Principal Financial Products to which the CDIs relate.

Introduced 11/03/04 Origin SCH 3A.5.13, 3A.5.14

13.6 CORPORATE ACTIONS

13.6.1 APPLICATION OF RULES

The purpose of the following Rules is to ensure that the benefit of all Corporate Actions of a Principal Issuer will enure to the benefit of the relevant Holders of CDIs as if they were Holders of the corresponding Principal Financial Products, where Principal Financial Products are held by a Depositary Nominee under these Rules.

Introduced 11/03/04 Origin SCH 3A.6.1 Amended 06/06/05

13.6.2 DISTRIBUTION OF DIVIDENDS TO HOLDERS OF CDIS

If CDIs in respect of a class of Principal Financial Products are approved under Rule 13.2, the Principal Issuer must distribute any dividend declared in respect of the corresponding Principal

Financial Products to Holders of CDIs based on relevant Cum Entitlement Balances as at End of Day on the Record Date for the dividend in proportions as determined by the Transmutation Ratio.

Introduced 11/03/04 Origin SCH 3A.6.2 Amended 06/06/05

13.6.3 DIRECTION AND ACKNOWLEDGMENT BY DEPOSITARY NOMINEE

For the purposes of:

(a) the Principal Issuer's constitution; and

(b) all laws governing the entitlement to dividends of a Depositary Nominee of the Principal Issuer,

the Depositary Nominee is taken to have directed the Principal Issuer to distribute any dividend, that would otherwise be payable to it under the Principal Issuer's constitution, in accordance with these Rules.

Introduced 11/03/04 Origin SCH 3A.6.3

13.6.4 DISCHARGE OF PRINCIPAL ISSUER'S OBLIGATION TO PAY DIVIDEND TO DEPOSITARY NOMINEE

A Depositary Nominee for a Principal Issuer acknowledges that distribution of a dividend in accordance with these Rules discharges the Principal Issuer's obligation to pay the dividend to the Depositary Nominee.

Introduced 11/03/04 Origin SCH 3A.6.4

13.6.5 PAYMENT BY DEPOSITARY INTEREST ISSUER

Rules 13.6.2, 13.6.3 and 13.6.4 apply in respect of a DI as if a reference to "dividend" is a reference to any distribution or payment, whether principal, premium or interest, as defined in the offering memorandum in respect of the Principal Financial Products.

Introduced 11/03/04 Origin SCH 3A.6.4A

13.6.6 PAYMENT OBLIGATIONS

Where a DI Issuer makes a payment pursuant to Rule 13.6.2, that payment must be made to all Holders of DIs as soon as reasonably practicable.

Introduced 11/03/04, Amended 04/04/05 Origin SCH 3A.6.4B

13.6.7 BONUS ISSUES, RIGHTS ISSUES AND RECONSTRUCTIONS

If CDIs in respect of a class of Principal Financial Products are approved under Rule 13.2, the Principal Issuer must administer all Corporate Actions (including bonus issues, rights issues,

mergers and reconstructions) that result in the issue of additional or replacement Financial Products in respect of the Principal Financial Products so that:

(a) if the benefits conferred in a Corporate Action are additional or replacement Principal Financial Products, those Principal Financial Products are vested in the Depository Nominee as Holder of the Principal Financial Products and the benefits are distributed to Holders of CDIs in the form of CDIs corresponding to those Principal Financial Products;

(b) additional or replacement CDIs are issued to Holders of CDIs based on relevant Cum Entitlement Balances as at End of Day on the Record Date for the Corporate Action on the same terms as would otherwise have applied if the Holders of CDIs were Holders of the Principal Financial Products; and

(c) the benefit of Corporate Actions is conferred on Holders of CDIs in proportions determined by the Transmutation Ratio.

Introduced 11/03/04 Origin SCH 3A.6.5 Amended 06/06/05

13.6.8 DIVIDEND REINVESTMENT AND BONUS SHARE PLANS

If CDIs in respect of a class of Principal Financial Products are approved under Rule 13.2, the Principal Issuer must, in relation to any dividend investment scheme or bonus share plan in respect of those Principal Financial Products:

(a) make available to Holders of CDIs, based on relevant Cum Entitlement Balances as at End of Day on the Record Date for determining entitlements, all benefits and entitlements arising under the dividend reinvestment scheme or bonus share plan, as the case requires;

(b) distribute all benefits and entitlements arising under the dividend reinvestment scheme or bonus share plan, as the case requires, to Holders of CDIs in proportions determined by the Transmutation Ratio;

(c) ensure that any right under such a plan to elect to receive financial products rather than cash is exercised by Holders of CDIs rather than the Depository Nominee; and

(d) if a Holder of CDIs elects to receive financial products, issue Principal Financial Products to the Depository Nominee and distribute corresponding CDIs to the Holder of CDIs.

Introduced 11/03/04 Origin SCH 3A.6.6 Amended 06/06/05

13.6.9 EXERCISE OF HOLDER RIGHTS

If CDIs in respect of a class of Principal Financial Products are approved under Rule 13.2, the Depository Nominee must exercise any rights vested in it as the Holder of the Principal Financial Products under any law (including any right to institute legal proceedings as a holder of Financial Products), in accordance with:

(a) any direction given by a Holder of CDIs; or

(b) any direction of Holders of CDIs given by ordinary resolution at a meeting of Holders of CDIs.

Introduced 11/03/04 Origin SCH 3A.6.7 Amended 06/06/05

13.6.10 FRACTIONAL ENTITLEMENTS

If a Corporate Action gives Holders of Principal Financial Products a fractional entitlement to additional or replacement financial products, the Principal Issuer must ensure that:

(a) the number of additional or replacement financial products issued to the Depository Nominee is calculated as if each Holder of CDIs with respect to the Depository Nominee's Holdings is a Holder of a corresponding number of Principal Financial Products; and

(b) Holders of CDIs receive additional or replacement CDIs reflecting the entitlements so calculated.

Introduced 11/03/04 Origin SCH 3A.6.8 Amended 06/06/05

13.6.11 GENERAL DIRECTION AND ACKNOWLEDGMENT BY DEPOSITARY NOMINEE

A Depository Nominee for a Principal Issuer:

(a) is taken to have directed the Principal Issuer to administer all Corporate Actions of the Principal Issuer in the manner provided in these Rules; and

(b) acknowledges that compliance with these Rules discharges the Principal Issuer's obligation to make the benefit of a Corporate Action available to the Depository Nominee.

Introduced 11/03/04 Origin SCH 3A.6.9, 3A.6.10

13.6.12 TRANSMUTATIONS OF FINANCIAL PRODUCTS AND ASSOCIATED ENTITLEMENTS

Where, during an ex-period for a Corporate Action, Principal Financial Products under Rules 13.1 to 13.13 are Transmuted in order to give effect to a transfer of those Principal Financial Products, the transmutation of those Principal Financial Products must be effected together with any associated Entitlement.

Introduced 11/03/04 Origin SCH 3A.6.11 Amended 06/06/05

13.7 TAKEOVERS

13.7.1 DEPOSITARY NOMINEE TO ACCEPT ONLY IF AUTHORISED BY HOLDERS OF CDIS

If a takeover offer in respect of Principal Financial Products is received by a Depository Nominee, the Depository Nominee must not accept the offer except to the extent that acceptance is authorised by Holders of CDIs with respect to the Principal Financial Products under these Rules.

Introduced 11/03/04 Origin SCH 3A.7.1 Amended 06/06/05

13.7.2 ACCEPTANCE WITH RESPECT TO HOLDERS OF CDIS ON CHESS SUBREGISTER

If:

- (a) Principal Financial Products are held by a Depository Nominee; and
- (b) the corresponding CDIs are held on a CHESS Subregister,

then the provisions of the Rules governing the processing of takeover acceptances of Financial Products held on a CHESS Subregister apply as if the CDIs were Financial Products of a listed public company and the Depository Nominee must accept a takeover offer with respect to Principal Financial Products which it holds if and to the extent to which acceptances are received and processed pursuant to the Rules.

Introduced 11/03/04 Origin SCH 3A.7.2 Amended 06/06/05

13.7.3 ACCEPTANCE WITH RESPECT TO HOLDERS OF CDIS ON ISSUER-SPONSORED SUBREGISTER

If:

- (a) Principal Financial Products are held by a Depository Nominee; and
- (b) corresponding CDIs are held on the Issuer Sponsored Subregister,

then the Depository Nominee must:

(c) as soon as possible after the date of receipt of the takeover offer from the offeror, despatch to each Holder of CDIs registered on the CDI Register at the date of the offer, copies of the offer documentation, together with any other documents despatched to target holders of the Principal Financial Products; and

(d) ensure that the offer documentation despatched to Holders of CDIs includes a Notice in a form acceptable to ASTC in accordance with the Procedures.

Introduced 11/03/04 Origin SCH 3A.7.3 Amended 06/06/05

13.7.4 PROCESSING OF ACCEPTANCES FROM HOLDERS OF CDIS

Where the provisions of Rule 13.7.3 apply, the Depository Nominee must ensure that:

(a) the offeror receives and processes acceptances from Holders of CDIs or appoints a receiving agent in Australia to receive and process acceptances with respect to Holders of CDIs on the Issuer Sponsored Subregister; and

(b) either the offeror or the offeror's receiving agent provides the Depository Nominee with a clear statement of the number of Principal Financial Products held by the Depository Nominee with respect to which acceptances of Holders of CDIs have been received,

in sufficient time to enable the Depositary Nominee to lodge a valid acceptance of the offer with the offeror as holder of the Principal Financial Products.

Introduced 11/03/04 Origin SCH 3A.7.4

13.7.5 LIABILITY OF DEPOSITARY NOMINEE

The Depositary Nominee has no liability to:

- (a) the Principal Issuer;
- (b) Holders of Principal Financial Products;
- (c) Holders of CDIs;
- (d) any person claiming an interest in Principal Financial Products or CDIs; or
- (e) the takeover offeror,

with respect to lodging or not lodging takeover acceptances for the whole or any part of its Holding of Principal Financial Products unless it:

- (f) acts contrary to a statement of a receiving agent given under Rule 13.7.4(b) or contrary to the information supplied to it by ASTC regarding takeover acceptances with respect to Holdings on the CHESSE Subregister for the CDIs;
- (g) acts negligently or in breach of these Rules; or
- (h) negligently fails to lodge the acceptance or acceptances before the close of the offer period.

Introduced 11/03/04 Origin SCH 3A.7.5 Amended 06/06/05

13.8 VOTING ARRANGEMENTS

13.8.1 INTERPRETATION

For the purposes of Rule 13.8, "constitution of a Principal Issuer" means:

- (a) in respect of a share, constitution as defined in the Corporations Act; or
- (b) in respect of a Financial Product other than a share, the document which creates the right for a holder of Financial Products to attend and vote at meetings of holders of Financial Products of that class and to appoint proxies in respect of that voting.

Introduced 11/03/04 Origin SCH 3A.1.3

13.8.2 PRINCIPAL ISSUER TO NOTIFY HOLDERS OF CDIS

If a meeting is convened of Holders of a class of Principal Financial Products vested in a Depositary Nominee for a Principal Issuer, the Principal Issuer must send a Notice of the meeting to each Holder of CDIs at the address recorded in the CDI Register at the same time as Notice of the meeting is sent to Holders of the Principal Financial Products.

Introduced 11/03/04 Origin SCH 3A.8.1

13.8.3 HOLDERS OF CDIS MAY GIVE DIRECTIONS TO DEPOSITARY NOMINEE

Subject to Rule 13.8.8, the Depositary Nominee must appoint two proxies even if under the constitution of the Principal Issuer, a Depositary Nominee has a right to:

(a) appoint more than one proxy for the purpose of voting at a meeting of the Principal Issuer; and

(b) cast different proxy votes for different parts of the Holding.

Introduced 11/03/04 Origin SCH 3A.8.2

13.8.4 PROXIES TO INDICATE RESULTS OF RESOLUTION

One of the two proxies so appointed in accordance with Rule 13.8.3 must indicate the number of Principal Financial Products in favour of the resolution described in the proxy, and the second proxy must indicate the number of Principal Financial Products against the resolution described in the proxy.

Introduced 11/03/04 Origin SCH 3A.8.3 Amended 06/06/05

13.8.5 DETERMINING THE NUMBER OF FINANCIAL PRODUCTS FOR EACH PROXY

The manner in which the number of Principal Financial Products is determined for each proxy is by:

(a) taking the number of CDIs in favour of the resolution;

(b) taking the number of CDIs against the resolution;

(c) applying the transmutation ratio to those CDIs; and

(d) entering the resultant number of Principal Financial Products on the appropriate proxy.

Introduced 11/03/04 Origin SCH 3A.8.4 Amended 06/06/05

13.8.6 DEPOSITARY NOMINEE APPOINTING A SINGLE PROXY

If under the constitution of the Principal Issuer, a Depositary Nominee can only appoint a single proxy, the Depositary Nominee must:

- (a) take the number of CDIs in favour of the resolution;
- (b) take the number of CDIs against the resolution;
- (c) determine the net voting position either in favour of or against the resolution;
- (d) apply the transmutation ratio to those CDIs; and
- (e) accordingly enter the resultant number of Principal Financial Products on the proxy.

Introduced 11/03/04 Origin SCH 3A.8.5 Amended 06/060/05

13.8.7 VOTING INSTRUCTIONS BY DEPOSITARY NOMINEE

Where the appointed proxy or proxies are required to vote on multiple resolutions, the Depositary Nominee must instruct the proxy or proxies to vote in such manner as will in the reasonable opinion of the Depositary Nominee best represent the wishes of the majority of Holders of CDIs.

Introduced 11/03/04 Origin SCH 3A.8.5A

13.8.8 DEPOSITARY NOMINEE TO APPOINT HOLDERS OF CDIS AS PROXY

The Depositary Nominee must appoint a Holder of CDIs or a person nominated by a Holder of CDIs as its proxy for the purpose of attending and voting at a meeting of the Principal Issuer where:

(a) the constitution of the Principal Issuer allows the Depositary Nominee to appoint Holders of CDIs or a person nominated by a Holder of CDIs as its proxy; and

(b) the Holder of CDIs has informed the Principal Issuer that the Holder wishes to nominate another person to be appointed as the Depositary Nominee's proxy.

Introduced 11/03/04 Origin SCH 3A.8.1

13.8.9 PRINCIPAL ISSUER MUST NOTIFY HOLDERS OF CDIS OF THEIR RIGHTS

The Principal Issuer must:

(a) include with the Notice of meeting distributed under Rule 13.8.2 a Notice in a form acceptable to ASTC in accordance with the Procedures; and

(b) make appropriate arrangements to:

(i) collect and process any directions by Holders of CDIs;

(ii) provide the Depositary Nominee with a report in writing that clearly shows how the Depositary Nominee must exercise its right to vote by proxy at the meeting, in sufficient time to enable the Depositary Nominee to lodge a proxy for the meeting; and

(iii) where a Holder of CDIs, or a person nominated by a Holder of CDIs, is to be appointed the Depositary Nominee's proxy in accordance with Rule 13.8.8, collect and process all relevant proxy forms in sufficient time to enable the Depositary Nominee to lodge a proxy or proxies for the meeting.

Introduced 11/03/04 Origin SCH 3A.8.6

13.8.10 DEPOSITARY NOMINEE TO CALL FOR A POLL

To the extent that it is able to do so, the Depositary Nominee must make or join in any demand for a poll in respect of any matter at a meeting of the Principal Issuer in accordance with any report in writing supplied by the Principal Issuer under Rule 13.8.9(b) (ii).

Introduced 11/03/04 Origin SCH 3A.8.7

13.8.11 MEETINGS OF HOLDERS OF CDIS

If it is necessary or appropriate for a meeting of Holders of CDIs to be convened for any purpose, including a purpose specified in these Rules:

(a) the meeting may be convened by the directors of the Principal Issuer to which the CDIs relate, or in any other manner in which a meeting of holders of Financial Products of the Principal Issuer may be convened under the law of the place of formation of the Principal Issuer;

(b) the rights of Holders of CDIs to appoint a proxy, to vote on a show of hands, to call for a poll and vote on a poll must be determined as if the meeting were a meeting of holders of Financial Products of the Principal Issuer;

(c) the requirements for Notice of the meeting and the rules and procedures for a meeting of Holders of CDIs must be the requirements, rules and procedures that would apply to a meeting of holders of Financial Products of the Principal Issuer.

Introduced 11/03/04 Origin SCH 3A.8.8

13.8.12 LIABILITY OF DEPOSITARY NOMINEES

The Depositary Nominee has no liability to:

(a) the Principal Issuer;

(b) Holders of Principal Financial Products;

(c) Holders of CDIs; or

(d) any person claiming an interest in Principal Financial Products or CDIs,

with respect to any conduct or omission of the Depositary Nominee at or connected with a meeting of Holders of Financial Products of a Principal Issuer, unless the Depositary Nominee:

(e) acts contrary to a report of the Principal Issuer given under Rule 13.8.9(b)(ii);

(f) acts negligently or in breach of these Rules; or

(g) negligently fails to vote or lodge forms of proxy before the close of the period within which proxies for the meeting may be lodged.

Introduced 11/03/04 Origin SCH 3A.8.9

13.9 SPECIFIC MODIFICATIONS TO RULES

13.9.1 MODIFICATIONS

The following modifications are made to the Rules in respect of the operation of Section 13:

(a) Rule 8.1 does not apply.

(b) Rule 8.2.1(a) is varied by the insertion of the words "or CDIs that are to be approved under Rules 13.1 to 13.13;" after Rule " 8.1".

(c) Rules 8.6.4 and 8.6.5 should be read as if references to the "Commission" were references to "ASTC" and references to the "Corporations Act" were references to "these Rules".

(d) The provisions of Rule 8.12 are modified by the provisions of Rules 13.9.2 to 13.9.6 below.

(e) Rule 5.2.1 is amended by insertion of the words "or CDIs that are to be approved under Rules 13.1 to 13.13" after "8.1" in Rule 5.2.1.

(f) Rules 5.2.2 and 5.4.1 do not apply to a class of CDIs that is Approved under Rules 13.1 to 13.13.

(g) Rule 5.4.2 is to be read as if the following provision is added to the end of Rule 5.4.2, "A Principal Issuer may not cease to operate its Issuer Sponsored Subregister unless ASTC agrees in writing."

(h) Rule 5.9 only applies where a Transfer is initiated by a Participant which has the effect of a Conversion.

(i) Rules 5.13.1 and 5.13.3 are modified so that the references to "total issued capital" must be read as references to "total number of CDIs".

(j) The provisions of Section 14 are taken to apply to CDIs as if the CDIs were Financial Products in an Australian listed public company and the takeover bid with respect to the Principal Financial Products was a takeover under the Corporations Act.

Introduced 11/03/04 Origin SCH 3A.9.1 to 3A.9.5, 3A.9.8 to 3A.9.12, 3A.9.12A to 3A.9.19

Amended 04/04/05 06/06/05

13.9.2 CDI TO PRINCIPAL FINANCIAL PRODUCT TRANSMUTATION

A CDI to Principal Financial Product Transmutation may be initiated by a Participant that Transmits a Valid Originating Message to ASTC in accordance with the Procedures.

Introduced 11/03/04 Origin SCH 3A.9.6.1 Amended 06/06/05

13.9.3 ACTIONS OF ASTC

If an Originating Message Transmitted to ASTC complies with Rule 13.9.2 and there are sufficient available CDIs in the Source Holding, ASTC must:

(a) deduct the number of CDIs specified in the Originating Message from the Source Holding; and

(b) Transmit a Message to the Principal Issuer to transfer Principal Financial Products in accordance with the Originating Message.

Introduced 11/03/04 Origin SCH 3A.9.6.2 Amended 04/04/05 06/06/05

13.9.4 PRINCIPAL ISSUER TO GENERATE TRUSTEE TRANSFER FORMS

If a Principal Issuer receives a Valid Message under Rule 13.9.3(b), the Principal Issuer must, within the Scheduled Time:

(a) generate a Trustee Transfer Form in accordance with the Procedures; and

(b) register that Transfer in the Principal Register.

Introduced 11/03/04 Origin SCH 3A.9.6.3 Amended 04/04/05 06/06/05

13.9.5 TIME AT WHICH TRANSFER TAKES EFFECT

A Transfer initiated under Rule 13.9.4(a) is deemed to take effect at the time ASTC deducts the number of CDIs specified in the Originating Message from the Source Holding.

Introduced 11/03/04 Origin SCH 3A.9.6.4 Amended 06/06/05

13.9.6 AUTHORITY OF HOLDER OF CDI REQUIRED

A Participant must not transmit a Valid Originating Message which has the effect of Transmuting CDIs to Principal Financial Products without the prior authority of the Holder of CDIs.

Introduced 11/03/04 Origin SCH 3A.9.6.5

13.9.7 PRINCIPAL FINANCIAL PRODUCT TO CDI TRANSMUTATION

A Principal Financial Product to CDI Transmutation may be initiated by a Participant that:

(a) lodges a properly completed document of Transfer and Certificate or Marked Transfer with the Principal Issuer within the Scheduled Time; and

(b) Transmits a Valid Originating Message to ASTC in accordance with the Procedures.

Introduced 11/03/04 Origin SCH 3A.9.7.1 Amended 06/06/05

13.9.8 ASTC TO REQUEST PRINCIPAL ISSUER TO AUTHORISE THE TRANSMUTATION

If an Originating Message Transmitted to ASTC complies with Rule 13.9.7(b), ASTC will:

(a) Transmit to the Principal Issuer a Message requesting the Principal Issuer to authorise the Transmutation of Principal Financial Products to CDIs in accordance with that Originating Message; and

(b) specify the Registration Details in the Message to the Issuer to enable the Issuer to validate the Registration Details, where applicable.

Introduced 11/03/04 Origin SCH 3A.9.7.2 Amended 04/04/05 06/06/05

13.9.9 PRINCIPAL ISSUER TO PROCESS THE TRANSFER

If a Principal Issuer receives:

(a) a properly completed document of Transfer and Certificate or Marked Transfer; and

(b) a Valid Message under Rule 13.9.8 from ASTC pursuant to an Originating Message,

the Principal Issuer must, within the Scheduled Time:

(c) enter the Transfer in the Principal Register;

(d) Transmit a Message to ASTC to Transfer the Financial Products in accordance with the Originating Message; and

(e) in the case of a Message requesting the Principal Issuer to authorise a Transfer where the Transfer has the effect of a Conversion, ensure the Registration Details specified in the Message for the Target Holding match the Registration Details maintained by the Principal Issuer for the Source Holding.

Introduced 11/03/04 Origin SCH 3A.9.7.3 Amended 04/04/05

13.9.10 ASTC TO ENTER FINANCIAL PRODUCTS INTO TARGET HOLDING

If ASTC receives a Valid Message under Rule 13.9.9(d), ASTC must enter Financial Products into the Target Holding in accordance with the Originating Message.

Introduced 11/03/04 Origin SCH 3A.9.7.4

13.9.11 CONDITIONS FOR ISSUER'S AUTHORISATION OF A TRANSFER NOT MET

If the conditions for authorisation by the Issuer of a Transfer as stipulated in Rule 13.9.9 are not met, the Issuer must, within the Scheduled Time:

(a) reject the Message; and/or

(b) return the properly completed document of Transfer and Certificate or Marked Transfer to the Participant that lodged it without entering the Transfer in the Principal Register,

whichever is relevant.

Introduced 11/03/04 Origin SCH 3A.9.7.5 Amended 09/05/05

13.9.12 TIME AT WHICH TRANSFER TAKES EFFECT

A Transfer initiated under Rule 13.9.7 takes effect when both the actions described in Rule 13.9.9(c) and (d) are completed.

Introduced 11/03/04 Origin SCH 3A.9.7.6

13.9.13 ASTC MAY PURGE UNACTIONED MESSAGES

If a Principal Issuer receives a Message from ASTC under Rule 13.9.8 and does not respond to ASTC under either Rule 13.9.9 or Rule 13.9.11 within the relevant Scheduled Time for response, ASTC may purge the unactioned Message from the Settlement Facility.

Introduced 09/05/05

13.10 SHUNTING BETWEEN REGISTERS

13.10.1 SHUNT FROM DI REGISTER TO PRINCIPAL REGISTER

Where a Holder gives Notice requesting that the Principal Issuer shunt all or part of a Holding of DIs into Principal Financial Products, the Principal Issuer must reduce that Holding by the

number specified in the Notice and take such steps as are necessary to shunt the same number of Principal Financial Products from the relevant Segregated Account to the Approved Clearing House account nominated in the Notice, within 3 Business Days of receipt of that Notice.

Introduced 11/03/04 Origin SCH 3A.10.1

13.10.2 SHUNT FROM PRINCIPAL REGISTER TO DI REGISTER

Where a Holder gives Notice requesting that the Principal Issuer shunt all or part of a Holding of Principal Financial Products into DIs, the Principal Issuer must take all necessary steps to shunt those Principal Financial Products to the Segregated Account and enter the same number of DIs into a Holding in accordance with the instructions given in the Notice, within 3 Business Days of receipt of that Notice.

Introduced 11/03/04 Origin SCH 3A.10.2

13.11 TAX LAWS

13.11.1 PRINCIPAL ISSUER TO COMPANY WITH TAX LAWS

The Principal Issuer will use its best endeavours to:

(a) comply with all applicable Tax laws as agent and attorney of the Depository Nominee;

(b) ensure that the Depository Nominee complies with all applicable Tax laws; and

(c) not do any act or thing which creates a Tax liability, or not omit to do any act or thing, the omission of which creates a Tax liability, which must be discharged by the Depository Nominee, unless provision has been made for the discharge of the liability by some person other than the Depository Nominee.

The obligations of the Principal Issuer and the Depository Nominee are subject to all relevant Tax laws.

Introduced 11/03/04 Origin SCH 3A.11.1, 3A.11.2

13.12 NOTICE

13.12.1 NOTICE TO HOLDERS OF CDIS

Any obligation to give notice to Holders of CDIs under Rules 13.1 to 13.13 must be discharged upon the Depository Nominee giving notice to the Holder of CDIs at the address of the Holder of CDIs noted on the CDI Register.

Introduced 11/03/04 Origin SCH 3A.12.1

13.13 GENERAL INDEMNITY

13.13.1 PRINCIPAL ISSUER TO INDEMNIFY THE DEPOSITARY NOMINEE

The Principal Issuer indemnifies the Depositary Nominee against all expenses, losses, damages and costs that the Depositary Nominee may sustain or incur in connection with:

(a) CDIs;

(b) its capacity as holder of Principal Financial Products;

(c) any act done, or required to be done, by the Principal Issuer (whether or not on behalf of the Depositary Nominee) under Rules 13.1 to 13.13 of the Rules; and

(d) any act otherwise done or required to be done by the Depositary Nominee under Rules 13.1 to 13.13 of the Rules.

Introduced 11/03/04 Origin SCH 3A.13.1

8.6 CHESS SUBREGISTERS

8.6.1 STATUS OF CHESS SUBREGISTER

ASTC must administer, as agent of an Issuer in accordance with these Rules, a CHESS Subregister for each class of the Issuer's Approved Financial Products to which the following provisions apply:

(a) subject to paragraph (b), the CHESS Subregister for a class of an Issuer's Approved Financial Products forms part of the Issuer's principal register for that class of Financial Products; and

(b) if an Issuer's principal register for a class of Approved Financial Products is located outside Australia, the CHESS Subregister forms part of the Issuer's principal Australian register, notwithstanding the fact that the Australian register is a branch register and forms a part of the Issuer's principal register outside Australia.

Introduced 11/03/04 Origin SCH 5.1

8.6.2 INFORMATION RECORDED AND MAINTAINED ON A CHESS SUBREGISTER

ASTC must record and maintain on a CHESS Subregister for a class of Approved Financial Products:

(a) the Registration Details and HIN of each person with a CHESS Holding of Financial Products in that class; and

(b) in relation to each such person, the number of Financial Products held.

Introduced 11/03/04 Origin SCH 5.2.1

8.6.3 HIN NOT TO BE TAKEN TO BE INCLUDED IN A REGISTER

Except to the extent required by these Rules or the law, an Issuer must not include a HIN in a register for the purpose of:

(a) the register being open for inspection; or

(b) furnishing a copy of the register or any part of the register.

Introduced 11/03/04 Origin SCH 5.2.2

8.6.4 NOTICE OF LOCATION OF STORED INFORMATION

As soon as a class of an Issuer's Financial Products are Approved, the Issuer must:

(a) give notice to the Commission in accordance with Section 1301(1) of the Corporations Act specifying (subject to Rule 8.6.5) the registered office of ASTC as the situation of the place of storage of the information maintained by ASTC on a CHESS Sub register;

(b) give a copy of that notice to ASTC; and

(c) give a copy of that notice to the exempt or special stock market or exempt financial market where the Issuer's Financial Products are quoted.

Introduced 11/03/04 Origin SCH 5.2.3, 5.2.4

8.6.5 CHANGE OF LOCATION OF STORED INFORMATION

If the situation of the place of storage in relation to information maintained by ASTC on a CHESSE Subregister changes:

(a) ASTC must promptly give Notice to the Issuer of the new place of storage; and

(b) the Issuer must give notice to the Commission of the new place of storage in accordance with Section 1301(4) of the Corporations Act.

Introduced 11/03/04 Origin SCH 5.2.5

8.6.6 CLASSES OF HOLDINGS ON A CHESSE SUBREGISTER

Holdings that may be maintained on a CHESSE Subregister are:

(a) Holdings that are controlled by a Participant; or

(b) such other Holdings as are determined by ASTC, from time to time.

Introduced 11/03/04 Origin SCH 5.3.1

8.7 ESTABLISHING A HOLDER RECORD

8.7.1 RESTRICTIONS ON ESTABLISHING A HOLDER RECORD

A Participant must not Transmit a Message to establish a Holder Record in relation to a person under Rule 8.7.2 unless:

(a) the person is a Related Body Corporate of the Participant; or

(b) the Participant holds a current Sponsorship Agreement executed by the Participant and the person.

Introduced 11/03/04 Origin SCH 5.4.1A

8.7.2 ESTABLISHING A HOLDER RECORD

If a Participant Transmits a Valid Message to ASTC requesting ASTC to establish a Holder Record that includes the matters specified in the Procedures, ASTC must:

(a) establish a Holder Record on CHESSE for that person;

(b) allocate a HIN to that Holder; and

(c) if the Holder Record has been established for a Participant Sponsored Holder, promptly send a Notice in relation to that Holder Record to that Participant Sponsored Holder.

If the Holder Record is in relation to a person that is a Participant Sponsored Holder, the Participant must, in the absence of any specific alternative written authority from that other person specify as the current Registration Details in the Message, the name and address details for the person as recorded in the Sponsorship Agreement.

Introduced 11/03/04 Origin SCH 5.4.1, 5.4.1B

8.7.3 HOLDER RECORD FOR HOLDING OF FOR FINANCIAL PRODUCTS

A Participant must determine whether the Residency Indicator of a Holder Record is applicable to any new Holding of FOR Financial Products, and if it is not applicable to the new Holding of FOR Financial Products and there is no existing Holder Record with the appropriate Residency Indicator, the Participant must:

(a) establish a separate Holder Record for that new Holding with the appropriate Residency Indicator; and

(b) transfer that Holding to that Holder Record.

Note: Because of differing definitions of "Foreign Person" under the governing legislation or constitution of different Issuers with aggregate foreign ownership restrictions, a Holder's status (for the purposes of settling transactions in FOR Financial Products) may differ between Issuers.

Where these circumstances apply, Holders must have two distinct Holder Records in CHES; one with a Residency Indicator of "F" and another with a Residency Indicator of "D". Holdings of particular Financial Products must then be linked to the appropriate Holder Record.

Introduced 11/03/04 Origin SCH 5.4.3

8.7.4 INDEMNITY BY PARTICIPANT WHERE HOLDER RECORD ESTABLISHED INCORRECTLY

If, under Rule 8.7.2, a Participant has Transmitted a Valid Message requesting ASTC to establish a Holder Record and that Message specifies the Holder Type as Participant Sponsored Holder or specifies a Residency Indicator and any of the following apply:

(a) the Participant is not authorised to establish the Holder Record;

(b) the Participant has provided incorrect details in the Message; or

(c) the Participant has provided an incorrect Residency Indicator in the Message,

subject to Rule 8.7.5 the Participant indemnifies:

(d) ASTC from and against all losses, damages, costs and expenses which ASTC may suffer or incur by reason of that unauthorised request or that Transmission of incorrect Holder Record details or an incorrect Residency Indicator; and

(e) if a Holding is established using incorrect Holder Record details or an incorrect Residency Indicator, the Issuer from and against all losses, damages, costs and expenses which the Issuer may suffer or incur by reason of that Holding being established.

Introduced 11/03/04 Origin SCH 5.4.4, 5.4.5

8.7.5 LIMITATION ON PARTICIPANT INDEMNITY

A Participant is not liable to indemnify ASTC or an Issuer under Rule 8.7.4 if the Participant has provided details which are consistent with the directions of the relevant Holder for the purposes of holding FOR Financial Products and the Participant had no reason to believe that those directions were incorrect.

Introduced 11/03/04 Origin SCH 5.4.6

8.8 ESTABLISHING A CHESS HOLDING

8.8.1 A CHESS HOLDING MAY BE ESTABLISHED

If a Holder Record for a person has been established and a HIN allocated and a Message specifying that HIN to identify the Target Holding is Transmitted in any of the following circumstances:

(a) a Participant Transmits a Valid Originating Message that initiates a Demand Transfer or Conversion;

(b) ASTC Transmits a Valid Originating Message that initiates a Settlement Transfer; or

(c) an Issuer Transmits a Valid Message to initiate a Holding Adjustment or a Financial Products Transformation,

a CHESS Holding may be established by entering the Financial Products specified in the Message into the Target Holding and, if a new CHESS Holding is established ASTC must notify the Issuer:

(d) that a new Holding has been established; and

(e) of the Holder Record details.

Introduced 11/03/04 Origin SCH 5.5

8.9 REPORTING TO PARTICIPANT SPONSORED HOLDERS IN RESPECT OF DESPATCHED FINANCIAL PRODUCTS

8.9.1 ISSUER TO SEND HOLDER A NOTICE

If:

(a) an Issuer makes available forms of application for an Offer of Approved Financial Products; and

(b) an Approved Market Operator gives that Issuer approval for quotation of those Financial Products,

the Issuer must, within 5 Business Days of receiving notification from ASTC that a new CHES Holding has been established under Rule 5.3.2, and provided the Registration Details specified in the notification from ASTC match the Registration Details specified in the application for the person to whom the Financial Products have been allocated, send to the Holder of that Holding a Notice that sets out:

(c) the HIN;

(d) the Registration Details; and

(e) the Holding Balance,

for the CHES Holding as specified in the notification from ASTC.

Introduced 11/03/04 Origin SCH 5.4B

8.10 RESTRICTION ON CHES HOLDINGS

8.10.1 RESTRICTIONS ON NUMBER OF JOINT HOLDERS

Unless permitted under an Issuer's constitution, a Participant must not establish a CHES Holding that would be held jointly by more than 3 persons.

Introduced 11/03/04 Origin SCH 5.6.1

8.10.2 PROHIBITION ON HOLDINGS OF LESS THAN A MARKETABLE PARCEL

A Participant must not initiate a Transfer of Financial Products if, by giving effect to that Transfer, a new CHES or Issuer Sponsored Holding of less than a marketable parcel will be established unless:

(a) the Holding of less than a marketable parcel is expressly permitted under an Issuer's constitution; or

(b) the Transfer establishes a new Settlement Holding or Accumulation Holding.

Introduced 11/03/04 Origin SCH 5.7

8.10.3 EQUITABLE INTERESTS

Unless required by these Rules or the law, ASTC need not record on the CHES Subregister, and is not required to recognise:

(a) any equitable, contingent, future or partial interest in any Financial Product; or

(b) any other right in respect of a Financial Product,

except an absolute right of legal ownership in the registered Holder.

Introduced 11/03/04 Origin SCH 5.8

8.11 CONFIDENTIALITY

8.11.1 NO DISCLOSURE EXCEPT IN CERTAIN CIRCUMSTANCES

Unless required by these Rules or the law, or with the express consent of the Holder, or of the duly appointed attorney, agent or legal personal representative of that Holder, neither an Issuer nor a Participant may disclose:

(a) the HIN of a CHES Holding;

(b) the PID of the Controlling Participant of a CHES Holding; or

(c) the SRN for the Holder of an Issuer Sponsored Holding,

other than to:

(d) the Holder of that Holding;

(e) the Holder's duly appointed attorney, agent or legal personal representative;

(f) if the Holding is a CHES Holding, the Controlling Participant for that Holding; or

(g) ASTC.

Introduced 11/03/04 Origin SCH 5.9.1

8.11.2 REQUEST FOR INFORMATION BY A PARTICIPANT

For the purpose of Rule 8.11.1(e), if a Participant provides a request to an Issuer in acceptable form or a written request to another Participant for:

(a) details of the SRN of a Holding on the Issuer Sponsored Subregister;

(b) the Holding Balance of a Holding on the Issuer Sponsored Subregister;

(c) the HIN of a CHESSE Holder; or

(d) the PID of the Controlling Participant of the CHESSE Holding,

the requesting Participant:

(e) is taken to have warranted to the Issuer or the other Participant that it is the duly appointed agent of the Holder for the purposes of obtaining the details requested;

(f) indemnifies the Issuer or the other Participant in respect of any loss which the Issuer or the other Participant may suffer as a result of the requesting Participant not being authorised to request the information provided; and

(g) is, in the case of a request to the Issuer, taken to have acknowledged that:

(i) the details provided by the Issuer represent information currently available to the Issuer at the time of response and excludes unregistered transactions; and

(ii) the Issuer will not be liable for any loss incurred by the Holder or the Participant as a result of reliance on the details provided, in the absence of information not available to the Issuer at the time of providing those details.

Note: A Participant may request SRN and Issuer Sponsored Holding Balance details from an Issuer via CHESSE message where the Participant is permitted to establish and maintain Sponsored Holdings under Rule 6.3 and has provided ASTC with a Sponsorship Bond of \$500,000, refer Rule 6.7.

Introduced 11/03/04 Origin SCH 5.9.2, 5.9.3 Amended 04/04/05

8.11.3 DISCLOSURE OF INFORMATION REGARDING FINANCIAL PRODUCTS

Subject to Rule 8.11.4, or unless otherwise required by these Rules or the law, ASTC must not disclose any information regarding Financial Products in a CHESSE Holding other than to:

(a) the Holder of that Holding;

(b) the Controlling Participant for that Holding;

(c) the Issuer of the Financial Products; or

(d) if Rule 14.13 applies in relation to a takeover bid any of the following:

(i) the bidder;

(ii) the CHESSE Bidder; or

(iii) any agent that the bidder or the CHES Bidder engages to prepare and distribute offer documentation or process takeover acceptances.

Introduced 11/03/04 Origin SCH 5.9.4

8.11.4 CIRCUMSTANCES WHERE ASTC MAY DISCLOSE INFORMATION

ASTC may disclose information regarding Financial Products in a CHES Holding, including information in relation to deductions from or transfers to a CHES Holding, any relevant Source or Target Holdings and Holder Record details, to:

- (a) the Commission;
- (b) the Reserve Bank of Australia;
- (c) an Approved Market Operator;
- (d) an Approved Clearing Facility;
- (e) the home regulator of a Foreign Clearing House; or
- (f) SEGC

where that body, in the proper exercise of its powers and in order to assist it in the performance of its regulatory functions (or in the case of SEGC, its regulatory or other functions), requests that ASTC provide the information to it.

Without limiting the above, ASTC may disclose to the Reserve Bank of Australia any confidential information of a Facility User that is supplied to ASTC in connection with the Real Time Gross Settlement of a transaction and that is required, in accordance with interface specifications, to be included by ASTC in any message sent to the Reserve Bank of Australia across the Feeder System interface with RITS/RTGS.

Introduced 11/03/04 Origin SCH 5.9.6

8.11.5 COPYRIGHT INFORMATION SUPPLIED TO ASTC

To the extent that a Participant or an Issuer has copyright in the information supplied to ASTC under these Rules, then, subject to Rule 8.11.1 or 8.11.2, the Participant or the Issuer, as the case requires, grants ASTC a licence to reproduce that information to the extent deemed necessary by ASTC.

Introduced 11/03/04 Origin SCH 5.9.5

8.11.6 REQUEST BY PARTICIPANT FOR PID

If a Participant provides a request to ASTC for the PID of the Controlling Participant in relation to a particular HIN ASTC may disclose:

- (a) the PID of the Controlling Participant;
- (b) the status of the Controlling Participant; and
- (c) the status of the HIN.

The requesting Participant:

(d) is taken to have warranted to ASTC and the Controlling Participant that it is the duly appointed agent of the Holder for the purposes of obtaining the details requested; and

(e) indemnifies ASTC or any other Participant in respect of any loss which ASTC or the other Participant may suffer as a result of the requesting Participant not being authorised to request the information provided.

Introduced 09/05/05

8.12 REGISTRATION DATE

8.12.1 THE DATE TO BE RECORDED FOR REGISTRATION PURPOSES

If a Transfer is not a CHES to CHES Transfer, the date to be recorded as the date Financial Products are entered into a Target Holding for registration purposes is:

(a) if the Source Holding is a CHES Holding, the date, as evidenced by the CHES processing timestamp, that ASTC Transmits to the Issuer the Message to Transfer the Financial Products; or

(b) if the Source Holding is an Issuer Sponsored Holding, the date the Issuer Transmits to ASTC the Message authorising the Transfer of the Financial Products.

Introduced 11/03/04 Origin SCH 5.10

8.13 CHES SUBREGISTER TO REMAIN OPEN ON EACH BUSINESS DAY

8.13.1 ASTC TO KEEP CHES SUBREGISTER OPEN AND MUST PROCESS MESSAGES

On any Business Day, ASTC:

(a) unless otherwise provided in these Rules, must not close a CHES Subregister; and

(b) must process Messages in accordance with these Rules.

Introduced 11/03/04 Origin SCH 5.11

8.14 CLOSURE OF A CHESS SUBREGISTER

8.14.1 CLOSURE OF A CHESS SUBREGISTER - OTHER THAN WHERE FINANCIAL PRODUCTS LAPSE, EXPIRE, MATURE ETC.

Unless Rule 8.14.2 applies, if:

(a) ASTC revokes Approval of a class of an Issuer's Financial Products under Rule 8.4.1(e) or 8.5.4; or

(b) Approval of a class of an Issuer's Financial Products ceases under Rule 8.4.8,

ASTC and the Issuer must take such steps as may be necessary to effect the orderly closure of any affected CHESS Subregister, including without limitation:

(c) ASTC giving such Notice as is reasonably practicable to the Issuer and each Participant of:

(i) the date of closure of the CHESS Subregister; and

(ii) the last day on which ASTC will process Messages or classes of Messages Transmitted by the Issuer or Participants;

(d) the Issuer using its best endeavours to ensure that all outstanding processing that affects CHESS Holdings in that class is completed prior to the date of closure of the CHESS Subregister;

(e) ASTC, on the date of closure of the CHESS Subregister:

(i) removing all Holdings on that Subregister to an Issuer Sponsored Subregister; and

(ii) giving Notice to the Issuer that the CHESS Subregister has been closed;

(f) ASTC sending a Holding statement in accordance with Rule 8.18.6 to each Participant Sponsored Holder of Financial Products on the CHESS Subregister advising that the Holding has been Converted to an Issuer Operated Subregister; and

(g) on the day of such closure or on any subsequent Business Day ASTC may archive that CHESS Subregister provided that on the archiving day it must notify the Issuer and Participants confirming the archival of that Subregister.

Introduced 11/03/04 Origin SCH 5.12.1, 5.12.2

8.14.2 CLOSURE OF A CHESS SUBREGISTER - WHERE FINANCIAL PRODUCTS LAPSE, EXPIRE, MATURE ETC.

If a class of Approved Financial Products ceases to be quoted because the Financial Products have lapsed, expired, matured or have been redeemed, paid up or Reconstructed, subject to Rules

8.14.3 and 14.21.4, ASTC may archive the CHESSE Subregister for that class of Financial Products:

(a) in the case of the class of Approved Financial Products being warrants eligible to be traded under the operating rules of an Approved Market Operator not less than 10 Business Days after the date on which the cessation occurred;

(b) in the case of any other class of Approved Financial Products not less than 20 Business Days after the date on which the cessation occurred; and

if ASTC archives a CHESSE Subregister under this Rule 8.14.2, ASTC must:

(c) subject to Rule 8.14.3, reject all Messages Transmitted by the Issuer or Participants that affect a CHESSE Holding on that Subregister; and

(d) notify the Issuer, and each Participant confirming the archival of that Subregister.

Introduced 11/03/04 Origin SCH 5.13.1, 5.13.2 Amended 10/06/04

8.14.3 REPORT FACILITIES TO BE PROVIDED BY ASTC

ASTC must provide Report facilities to the Issuer and Participants for a period of not less than 10 Business Days for warrants eligible to be traded under the operating rules of an Approved Market Operator and not less than 20 Business Days in the case of any other class of Approved Financial Products following the cessation of a CHESSE Subregister under Rule 8.14.2.

Introduced 11/03/04 Origin SCH 5.13.3 Amended 10/06/04

2.1 GENERAL PRINCIPLES OF INTERPRETATION

In these Rules, unless the context otherwise requires:

(a) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any regulation or statutory instrument issued under, that legislation or legislative provision;

(b) a reference to the operating rules of an Approved Clearing Facility, the operating rules of an Approved Market Operator, the Listing Rules, these Rules, the Procedures or the Fees and Charges Schedule is a reference to the operating rules, the Procedures or the Schedule as modified or amended from time to time;

(c) the singular includes the plural and vice-versa;

(d) a reference to person, body, corporation, trust, partnership, unincorporated body, firm, association, authority or government includes any of them;

(e) a word denoting any gender includes all genders;

(f) if a word or expression is given a particular meaning, another part of speech or grammatical form of that word or expression has a corresponding meaning;

(g) a reference to power includes a reference to authority and discretion;

(h) a reference to a Rule (eg Rule 2.4) includes a reference to all sub-Rules included under that Rule (eg Rule 2.5.4);

(i) a reference to a Section (eg Section 2) includes a reference to all Rules and sub-Rules within that Section;

(j) a reference to any Rule or Procedure is a reference to that Rule or Procedure as amended from time to time;

(k) a reference to time is to the time in Sydney, Australia;

(l) a reference to currency is a reference to Australian currency;

(m) a reference to writing includes typing, printing, lithography, photography, telex, facsimile or any other mode of representing or reproducing words in a visible form;

(n) where there is a reference to the power of ASTC to make, demand or impose a requirement there is a corresponding obligation of the relevant Participant to comply with that demand or requirement in all respects; and

(o) a reference to ASTC notifying or giving notice to a Participant or vice-versa is a reference to notifying or giving notice in accordance with Rule 1.10.

Introduced 11/03/04 Origin SCH 21.1

2.2 WORDS AND EXPRESSIONS DEFINED IN THE CORPORATIONS ACT

2.2.1 WORDS AND EXPRESSIONS DEFINED HAVE THE SAME MEANING IN THESE RULES

Words and expressions defined in the Constitutions or the Corporations Act will unless otherwise defined or specified in these Rules, or the contrary intention appears, have the same meaning in these Rules.

Introduced 11/03/04 Origin SCH 21.1.2 Amended 04/04/05

2.3 HEADINGS AND INTRODUCTORY OVERVIEW

2.3.1 HEADINGS AND INTRODUCTORY OVERVIEW FOR CONVENIENCE OF REFERENCE ONLY

In these Rules, headings and the introductory overview at the beginning of each Section are for convenience of reference only and do not affect interpretation of the Rules or the Procedures.

Introduced 11/03/04 Origin SCH 21.2.1

2.4 CONDUCT, ACTS AND OMISSIONS

2.4.1 REFERENCES TO CONDUCT OR DOING ANY ACT OR THING

In these Rules:

(a) a reference to conduct or engaging in conduct includes a reference to doing, refusing to do or omitting to do, any act, including the making of, or the giving effect to a provision of, an agreement; and

(b) unless the contrary intention appears, a reference to doing, refusing or omitting to do any act or thing includes a reference to causing, permitting or authorising:

(i) the act or thing to be done; or

(ii) the refusal or omission to occur.

Introduced 11/03/04 Origin SCH 21.3.1, 21.3.5

2.4.2 CONDUCT BY OFFICERS, EMPLOYEES, AGENTS AND THIRD PARTY PROVIDERS

In these Rules, conduct engaged in on behalf of a person:

(a) by an officer, employee, Third Party Provider or other agent of the person within the scope of the actual or apparent authority of the officer, employee, Third Party Provider or other agent; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of an officer, employee, Third Party Provider or other agent of the person, where the

giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the officer, employee, Third Party Provider or other agent,

is taken to have been engaged in also by the person.

Introduced 11/03/04 Origin SCH 21.3.2

2.4.3 STATE OF MIND OF A PERSON

If for the purposes of these Rules in respect of conduct engaged in by a person, it is necessary to establish the state of mind of the person, it is sufficient to show that an officer, employee, Third Party Provider or other agent of the person, being an officer, employee, Third Party Provider or other agent by whom the conduct was engaged in within the scope of the actual or apparent authority of that officer, employee, Third Party Provider or other agent, had that state of mind.

In this Rule 2.4.3, a reference to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the person's intention, opinion, belief or purpose.

Introduced 11/03/04 Origin SCH 21.3.3, 21.3.4

2.5 REGARD TO BE HAD TO PURPOSE OR OBJECT OF RULES

2.5.1 CONSTRUCTION TO PROMOTE PURPOSE OF RULES

In the interpretation of a Rule, a construction that would promote the purpose or object underlying the Rules (whether that purpose or object is expressly stated in the Rules or not) is to be preferred to a construction that would not promote that purpose or object.

Introduced 11/03/04 Origin SCH 21.4.1

2.6 EXAMPLES AND NOTES

2.6.1 USE OF EXAMPLES AND NOTES

If these Rules include an example of, or a note about, the operation of a Rule:

- (a) the example or note is not to be taken to be exhaustive; and
- (b) if the example or note is inconsistent with the Rule, the Rule prevails.

Introduced 11/03/04 Origin SCH 21.5.1

2.7 CHANGE OF NAME

2.7.1 REFERENCE TO A BODY OR OFFICE UNDER A FORMER NAME

If:

(a) the name of a body is changed in accordance with the law (whether or not the body is incorporated); or

(b) the name of an office is changed by law,

then a reference in these Rules to the body or office under any former name, except in relation to matters that occurred before the change took effect, is taken as a reference to the body or office under the new name.

Introduced 11/03/04 Origin SCH 21.6

2.8 EFFECT OF AMENDMENT TO RULES AND PROCEDURES

2.8.1 WHERE AMENDMENTS TO RULES AND PROCEDURES ARE MADE

Unless expressly stated otherwise, where a Rule or Procedure is:

(a) amended;

(b) deleted; or

(c) lapses or otherwise ceases to have effect,

that circumstance does not:

(d) revive anything not in force or existing at the time at which that circumstance takes effect;

(e) affect the previous operations of that Rule or Procedure or anything done under that Rule or Procedure;

(f) affect any right, privilege, obligation or liability acquired, accrued or incurred under that Rule or Procedure;

(g) affect any penalty, forfeiture, suspension, expulsion or disciplinary action taken or incurred in respect of any contravention of that Rule or Procedure; or

(h) affect any investigation, disciplinary proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, suspension, expulsion or disciplinary action, and any such investigation, disciplinary proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture, suspension, expulsion or disciplinary action may be imposed as if the circumstance had not taken effect.

Introduced 11/03/04 Origin OCH 19.2.5

2.9 RULES IN FORCE AT TIME OF CONTRAVENTION

2.9.1 DETERMINING A CONTRAVENTION OF THE RULES

Unless expressly stated otherwise, in determining whether the act or omission of a party constitutes a contravention of the Rules, the matter will be determined with regard to the Rules in force at the time of the relevant act or omission.

Introduced 11/03/04 Origin OCH 19.2.6 Amended 10/06/04

2.10 SPECIFIC DEFINITIONS FOR THE PURPOSE OF THE CORPORATIONS ACT AND OTHER LEGISLATION

2.10.1 ASTC REGULATED TRANSFERS

For the purposes of the definition of "ASTC-regulated transfer" in Regulation 1.0.02 of the Corporations Regulations, any Transfer or purported Transfer of Approved Financial Products, whether or not effected in accordance with the Rules, is an ASTC-regulated transfer. A reference to an 'SCH regulated transfer' in any legislation or regulation means an ASTC-regulated transfer. Any ASTC-regulated transfer is, for the purposes of the Corporations Regulations, to be taken, and always to have been, a proper ASTC transfer.

Introduced 11/03/04 Origin SCH 21.9.1

2.10.2 CHESS SUBREGISTER

For the purposes of the definition of "ASTC subregister" in Regulation 7.11.01 of the Corporations Regulations, a CHES Subregister is an ASTC subregister.

Introduced 11/03/04

2.10.3 REFERENCES TO SCH

Where legislation refers to "SCH" or "Securities Clearing House", references in these Rules to ASTC are taken to be references to "SCH" or "Securities Clearing House" for the purposes only of that legislation.

Introduced 11/03/04

2.11 ENTERING AND DEDUCTING FINANCIAL PRODUCTS FROM HOLDINGS

2.11.1 REFERENCES TO ENTERING OR DEDUCTING FINANCIAL PRODUCTS

In these Rules, a reference to entering a number of Financial Products into a Holding is a reference to:

(a) if the Holding does not exist at the time of the entry, establishing the Holding with a Holding Balance equal to that number of Financial Products; or

(b) if the Holding already exists at the time of the entry, adding that number of Financial Products to the Holding Balance of the Holding.

In these Rules, a reference to deducting a number of Financial Products from a Holding is a reference to:

(c) if the Holding Balance of the Holding is equal to that number, removing the Holding from the register; and

(d) if the Holding Balance of the Holding is greater than that number, subtracting that number of Financial Products from the Holding Balance.

Introduced 11/03/04 Origin SCH 21.11

2.12 MEANING OF RESERVATION AND RELEASE OF FINANCIAL PRODUCTS FOR SUBPOSITION PURPOSES

2.12.1 RESERVATION IN A SUBPOSITION

For the purposes of these Rules, a number of Financial Products in a CHES Holding are reserved in a Subposition if:

(a) the Subposition is created over that number of Financial Products; or

(b) an existing reservation in a Subposition of Financial Products in that Holding is increased by that number of Financial Products.

Introduced 11/03/04 Origin SCH 21.12.1

2.12.2 RELEASE FROM A SUBPOSITION

For the purposes of these Rules, a number of Financial Products in a CHES Holding are released from a Subposition if:

(a) the Subposition over that number of Financial Products is removed; or

(b) where the total number of Financial Products in the Holding that are reserved in the Subposition exceeds the number of Financial Products specified to be released, the Subposition reservation is reduced by that specified number of Financial Products.

Introduced 11/03/04 Origin SCH 21.12.2

2.13 DEFINITIONS

2.13.1 DEFINITIONS USED IN THE RULES

In these Rules, unless the context otherwise requires:

"ABN" stands for Australian Business Number and means a person's number as shown in the Australian Business Register.

"ACCEPTANCE FORM" means a document that enables a person to communicate to an Issuer an election in relation to a Corporate Action, including (without limitation):

- (a) an entitlement & acceptance form;
- (b) a provisional letter of allotment; and
- (c) an application form (whether or not attached to a prospectus).

"ACCOUNT PARTICIPANT" means a Participant admitted to participate in the Settlement Facility under Rule 4.5.

"ACCOUNTANT" means a member of the Australian Society of Certified Practising Accountants, the Institute of Chartered Accountants in Australia or other body approved by ASTC.

"ACCRUED BATCH INSTRUCTION" means a Batch Instruction generated by ASTC to effect a distribution of Financial Products arising from a Corporate Action.

"ACCRUED DVP BATCH INSTRUCTION" means an Accrued Batch Instruction with a Settlement Amount that is scheduled to settle in DvP Batch Settlement.

"ACCRUED RTGS INSTRUCTION" mean an RTGS Instruction generated by ASTC to effect a distribution of Financial Products arising from a Corporate Action.

"ACCUMULATION ACCOUNT" means a Holder Record maintained by a Settlement Participant for the purpose of facilitating settlement of transactions in Approved Financial Products with non-Participant clients.

"ACCUMULATION HOLDING" means a Holding of Financial Products for which the Holder Record is an Accumulation Account.

"ACH" means Australian Clearing House Pty. Limited (ABN 48 001 314 503).

"ADMISSION FORM" means an admission form, as specified by ASTC from time to time, for use by a Participant seeking to become a Participant in the Settlement Facility.

"AIC" stands for Access Identification Code and means a unique code allocated by ASTC under Rule 16.14.

"AIF" stands for Automated Information Facility and means the service so designated that is offered by the Reserve Bank of Australia in connection with RITS/RTGS.

"AIS" means ASX International Services Pty Limited (ABN 62 089 068 913).

"ALLOCATION COMPONENT" means, without limitation, in respect of an Offer:

- (a) a Firm Allocation Component;
- (b) a book-build; or
- (c) a placement.

"ALLOCATION INTEREST" means a journal entry on a CHES or Issuer operated record:

(a) representing an Approved Financial Product applied for, or to be applied for, under an Offer; and

(b) by which the Issuer calculates the number of Approved Financial Products to be issued or disposed under Rule 15.27.

"APPEAL" means an appeal to the Appeal Tribunal against:

- (a) a determination of the Disciplinary Tribunal under Section 12;
- (b) rejection of an application for Participation under Section 4;
- (c) action taken against a Participant under Section 12; or

(d) revocation or impending revocation of ASTC Approval of a class of an Issuer's Financial Products under Section 8 or Section 12.

"APPEAL NOTICE" means a Notice given to appeal decisions made under the Rules.

"APPEAL TRIBUNAL" means the tribunal established under Section 8 or Section 12 for the purpose of hearing Appeals.

"APPLICATIONS CLOSE DATE" means the date by which a person must submit an Acceptance Form to an Issuer if the person wishes to subscribe for new or additional Financial Products.

"APPROVED AGENT" means a person who has such qualifications for the purposes of Section 12 as ASTC or ASTC determines and who is appointed by the Managing Director of ASTC.

"APPROVED CLEARING FACILITY" means a CS Facility approved by ASTC as an Approved Clearing Facility and specified in the Procedures.

"APPROVED CLEARING HOUSE" means a settlement and deposit system for the safe custody, delivery and payment of Principal Financial Products or Participating International Financial Products, approved by ASTC for the purposes of establishing a Segregated Account.

"APPROVED FINANCIAL PRODUCTS" means a Financial Product approved by ASTC in accordance with Section 8 or Section 13.

"APPROVED MARKET OPERATOR" means a Market Operator approved by ASTC as an Approved Market Operator and specified in the Procedures.

"ASTC" means ASX Settlement and Transfer Corporation Pty Ltd (ABN 49 008 504 532).

"ASTC INDEMNITY" means the indemnity in Rule 3.6.7.

"ASTC REGULATED TRANSFER" means any Transfer or purported Transfer of Approved Financial Products.

"ASX" means Australian Stock Exchange Limited (ABN 98 008 624 691).

"ASX GROUP" means ASX and its subsidiaries and controlled entities.

"ASX BUSINESS RULES" means the operating rules (excluding the Listing Rules) of ASX.

"ASX WORLD LINK AGREEMENT" means the agreement between AIS and a Settlement Participant which is a Market Participant for participation in the ASX World Link Service as displayed on the ASX World Link Website from time to time.

"ASX WORLD LINK SERVICE" has the same definition as that set out in the ASX World Link Agreement.

"ASX WORLD LINK WEBSITE" means in relation to the ASX World Link Service the information (whether data, text, images, speech or otherwise) concerning the ASX World Link Service displayed from time to time by AIS or a Related Body Corporate of ASX on the internet at the URL: <https://www.asxonline.com>, or at any other additional or replacement URL notified by AIS to Participants from time to time, as that information is varied from time to time.

"AUSTRALIAN ADI" has the meaning it has in the Corporations Act.

"AUSTRALIAN ADI ACCOUNT" means an account held with an Australian ADI.

"AUTHORISED COPY" in relation to documents specified under Section 6 of these Rules, means a true and complete copy of the document in a form authorised by ASTC.

"AUTHORISED PERSON" means any person who has actual authority of the Facility User to cause Messages to be Transmitted by that Facility User.

"AVAILABLE CREDIT" in Section 11, has the meaning given in Rule 11.20.3.

"AVAILABLE FINANCIAL PRODUCTS" means Financial Products that are:

(a) not in a Locked Holding;

(b) in the case of Financial Products in an Issuer Sponsored Holding, not reserved under the Listing Rules for the benefit of an Offeror in relation to a takeover scheme;

(c) in the case of Financial Products in a CHES Holding, not reserved in a Subposition.

"BANK" means the person that operates the clearing facility for inter-bank payments on behalf of ASTC and may, where permitted by the Reserve Bank of Australia, include ASTC and for the purposes of the Standard Payments Provider Deed is known as the CHES Bank.

"BANKRUPTCY" means:

(a) in the case of a body corporate, where:

(i) an administrator of the body corporate is appointed under section 436A, 436B or 436C of the Corporations Act;

(ii) the body corporate commences to be wound up or ceases to carry on a business;

(iii) a receiver, or a receiver and manager, of property of the body corporate is appointed, whether by a court or otherwise; or

(iv) the body corporate enters into a compromise or arrangement with its creditors or a class of them; or

(b) in the case of a natural person, where:

(i) a creditor's petition or a debtor's petition is presented under Division 2 or 3, as the case may be, of Part IV of the Bankruptcy Act 1966 against the person, the partnership in which the person is a partner, or two or more joint debtors who include the person;

(ii) the person's property becomes subject to control under Division 2 of Part X of the Bankruptcy Act 1966;

(iii) the person executes a deed of assignment or deed of arrangement under Part X of the Bankruptcy Act 1966;

(iv) the person's creditors accept a composition under Part X of the Bankruptcy Act 1966; or

(v) the person's creditors accept a debt agreement proposal under Part IX of the Bankruptcy Act 1966,

and, where a reference is made to a Division or Part of the Bankruptcy Act 1966, that reference includes a reference to the provisions of a law of an external territory, or a country other than Australia or an external territory, that correspond to that Division or Part.

"BATCH INSTRUCTION" means an instruction to ASTC to effect:

(a) a Settlement Transfer in Batch Settlement and, if the instruction is for value, payment in DvP Batch Settlement; or

(b) in respect of a Payment Batch Instruction, payment in Batch Settlement, and includes:

- (a) a CCP Net Batch Instruction;
- (b) a CCP Gross Batch Instruction;
- (c) a CCP Derivatives Payment Batch Instruction;
- (d) a Dual Entry Batch Instruction;
- (e) a Dual Entry Payment Batch Instruction;
- (f) a Single Entry Batch Instruction; and
- (g) a Direct Batch Instruction.

"BATCH SETTLEMENT" means the process by which transactions are settled in the Settlement Facility in accordance with Section 10 whether or not in DvP Batch Settlement.

"BUSINESS DAY" means a day other than:

- (a) a Saturday, Sunday, New Year's Day, Good Friday, Easter Monday, Christmas Day, Boxing Day; and
- (b) any other day which ASTC notifies Facility Users is not a Business Day.

"BUSINESS HOURS" means the hours between Start of Day and End of Day.

"CASH SUB-RECORD" means a CHES record:

- (a) ancillary to a Participant's Net Position Record; and
- (b) tagged with an RTGS Account Identifier,

that tracks amounts to be debited or credited, on settlement of an RTGS Instruction, to the account of the Participant linked to that RTGS Account Identifier.

"CCP" means ACH and any other person nominated by ASTC and approved by the Commission when operating as a central counterparty to a transaction novated in accordance with the operating rules of an Approved Clearing Facility.

"CCP BATCH INSTRUCTION" means either a CCP Gross Batch Instruction or a CCP Net Batch Instruction.

"CCP DERIVATIVES PAYMENT BATCH INSTRUCTION" means an Instruction notified by CCP to ASTC for settlement in relation to a derivatives payment in Batch Settlement on each Business Day;

"CCP GROSS BATCH INSTRUCTION" means a Batch Instruction (excluding a Dual Entry Payment Batch Instruction) to give effect to a transaction that has been novated to CCP but that has not been netted in accordance with the operating rules of the Approved Clearing Facility.

"CCP GROSS RTGS INSTRUCTION" means an RTGS Instruction to give effect to a transaction that has been novated to CCP but that has not been netted in accordance with the operating rules of the Approved Clearing Facility.

"CCP NET BATCH INSTRUCTION" means a Batch Instruction (excluding a Dual Entry Payment Batch Instruction) to give effect to a transaction that has been novated to CCP and netted in accordance with the operating rules of the Approved Clearing Facility.

"CDI" stands for CHES Depositary Interest and means a unit of beneficial ownership in a Principal Financial Product, registered in the name of the Depositary Nominee, and includes:

- (a) CUFS; and
- (b) DIs.

"CDI REGISTER" means a register of CDI Holdings maintained by a Principal Issuer under the Rules, consisting of:

- (a) an Issuer-Sponsored Subregister of Holders of CDIs and a CHES Subregister of Holders of CDIs; or
- (b) with the consent of ASTC, a CHES Subregister of Holders of CDI.

Note: ASTC may consent to a CDI Register consisting of a CHES Subregister only, where the relevant offer is limited to institutional Holders.

"CERTIFICATE" means any document issued to a Holder of Principal Financial Products or Participating International Financial Products as evidence of that Holder's title to those Principal Financial Products or Participating International Financial Products, for example, a share certificate, an option certificate, debenture or warrant.

"CERTIFICATE NUMBER" means a reference number allocated by an Issuer in respect of, and printed on, a Certificate.

"CERTIFICATED HOLDING" means a Holding of Principal Financial Products on the Principal Register.

"CHANGE OF REGISTRATION DETAILS" means information altering Registration Details in the electronic records of ASTC.

"CHES" stands for the Clearing House Electronic Subregister System operated by:

- (a) ACH for the purpose of clearing Cash Market Transactions and Cash CCP Transactions; and

(b) ASTC for the purpose of settling transactions in Approved Financial Products, Transferring Financial Products and registering Transfers.

"CHESS HOLDING" means a Holding of Financial Products on the CHESS Subregister.

"CHESS PROVISION" means:

(a) a provision of these Rules; or

(b) a provision of Chapter 7 of the Corporations Act which is material to the operation of CHESS.

"CHESS RENOUNCEABLE RIGHTS SUBREGISTER" means the Subregister administered by ASTC that records Holdings of rights.

"CHESS SOFTWARE" means all systems and applications programs relevant to the operation of CHESS including (without limitation) all of the computer software maintained and used by ASTC for the purposes of CHESS (other than software used by a Facility User to communicate with CHESS).

"CHESS SUBREGISTER" means:

(a) that part of an Issuer's register;

(b) that part of a Foreign Issuer's CDI Register, for a class of the Issuer's Approved Financial Products; or

(c) the FDI Register for a class of Participating International Financial Products,

that is administered by ASTC.

"CHESS TO CERTIFICATED" means a Transfer or Conversion of Principal Financial Products from a CHESS Holding to a certificated register administered by the Principal Issuer.

"CHESS TO CHESS" means a Transfer of Financial Products from one CHESS Holding to another CHESS Holding.

"CHESS TO ISSUER SPONSORED" means a Transfer or Conversion of Financial Products from a CHESS Holding to an Issuer Sponsored Holding.

"CLEARING ACCOUNT" means a Settlement Account or an Accumulation Account.

"CLEARING HOLDING" means a Settlement Holding or an Accumulation Holding.

"CLEARING PARTICIPANT" means a person admitted as a participant in an Approved Clearing Facility under the operating rules of that facility.

"COMMENCEMENT DATE" in relation to a class of an Issuer's Financial Products, means the date on which Financial Products in that class become Approved Financial Products.

"COMMISSION" means the Australian Securities and Investments Commission.

"COMMUNICATION" means an electronic communication within CHES which may affect the balance of a CHES Holding.

"COMPLETE CORPORATE ACTION RECORD" means a record of information relating to a Corporate Action that includes all relevant dates.

"CONFIRMED FOR INDICATOR" means, when specified in a Message transmitted by a Participant, that the Participant is seeking to effect a Transfer or Conversion as a Foreign to Foreign Allocation.

Note: the indicator to be set in such instances is "OR"

"CONFIRMED FOR FINANCIAL PRODUCTS" means the lesser of either:

(a) the number of FOR Financial Products in a Holding whose Residency Indicator is recorded by ASTC as "F", calculated as the current Holding Balance of FOR Financial Products; or

(b) the number of FOR Financial Products in a Holding whose Residency Indicator is recorded as "F", at Start of Day, adjusted by:

(i) those Financial Products transferred into the Holding pursuant to a Foreign to Foreign Allocation during that Business Day; and

(ii) any Conversions of those Financial Products into or out of the Holding; and

(iii) those Holding Adjustments initiated by an Issuer pursuant to Rule 5.12.4; less

(iv) that number of Financial Products transferred out of the Holding pursuant to a Foreign to Foreign Allocation during that Business Day.

"CONTRAVENTION NOTICE" means a Notice given by ASTC to a Facility User under Section 12.

"CONTROLLING PARTICIPANT" in relation to a CHES Holding, means the Participant that has the capacity in CHES to either:

(a) Transfer or Convert Financial Products from the Holding; or

(b) transfer in terms of Rule 13.19.2; or

(c) Transmute FDIs from the Holding.

"CONVERSION" means a movement of Financial Products from a Holding on one Subregister to a Holding on another Subregister without any change in legal ownership.

"CONVERTIBLE FORM" means when the Participant has received all the necessary documentation such that:

(a) the registry is satisfied that the Registration Details for the Certificates, SRN or other form of Source Holding match the Registration Details for the Target Holding; and

(b) the Participant is able to initiate the Conversion message.

"CORPORATE ACTION" means:

(a) action taken by an Issuer of Financial Products for the purpose of giving an Entitlement to Holders of a class of the Issuer's Financial Products;

(b) action taken by a Principal Issuer for the purpose of giving an Entitlement in respect of Principal Financial Products held by a Depository Nominee to Holders of CDIs; and

(c) in relation to Section 13 action taken by an issuer of Participating International Financial Products for the purposes of giving an Entitlement in respect to Participating International Financial Products, held by a Depository Nominee.

"CS FACILITY" means a CS facility licensed as such under the Corporations Act or a Foreign Clearing House.

"CUFS" stands for CHES Units of Foreign Securities and means a unit of beneficial ownership in a Financial Product of a Foreign Issuer, registered in the name of the Depository Nominee.

"CUM ENTITLEMENT" in relation to a Transfer or a Conversion, means a Transfer or Conversion of Parent Financial Products together with the Entitlement to a Corporate Action.

"CUM ENTITLEMENT BALANCE" means, in respect of a Corporate Action, the number of Parent Financial Products to be used by the Issuer to calculate the Entitlement of a Holder or a former Holder of Parent Financial Products.

"CUM PROCESSING" means processing of Cum Entitlement Transfers and Conversions by deducting Financial Products from or entering Financial Products into the Cum Entitlement Balance for a Holding.

"CURRENT VALUATION" means the current market valuation of Financial Products, being the last sale price for the Financial Products at the close of business on the previous Business Day, or if a higher offer price or lower bid price exists at that time, that price.

"CUSTODIAL PURPOSES" for the purposes of Rule 6.3.4 means in relation to Financial Products in a Clearing Holding, any purpose other than the purpose of facilitating:

(a) the execution of outstanding orders; or

(b) the clearing and settlement of outstanding transactions.

"DEBIT CAP" in relation to a Net Position Record for an RTGS Participant, means a facility within the Feeder System that, if activated, enables the Participant's Net Position Record to go into debit up to the Debit Limit, at any time when the relevant RTGS Payments Provider is deemed to have made the election set out in Rule 11.9.2.

"DEBIT CAP COMPLIANT" in Section 11, has the meaning given in Rule 11.20.2.

"DEBIT CAP STATUS" means at any time the status of a Debit Cap as authorised at that time by the RTGS Payments Provider for the relevant RTGS Participant, being either:

- (a) active; or
- (b) null (inactive).

"DEBIT LIMIT" in relation to a Debit Cap at any time, means the dollar amount:

- (a) most recently notified in accordance with Rules 11.9.1(c) and 11.9.3(c); and
- (b) recorded by ASTC against the Net Position Record to which that Debit Cap applies.

"DELIVERY OBLIGATION" in relation to an RTGS Instruction, means an obligation on the part of one party to deliver certain Financial Products to the other on settlement.

"DEMAND REPORT" means a Message Transmitted by ASTC to a Facility User to provide information about CHES Holdings or CHES Subregister movements in accordance with parameters specified by the Facility User.

"DEMAND TRANSFER" means a Transfer other than a Settlement Transfer.

"DEMAND TRANSFER SETTLEMENT" means settlement of a Batch Instruction is effected by the counterparties by Demand Transfer

"DEPOSITARY NOMINEE" means the person appointed under these Rules, being either:

- (a) CHES Depositary Nominees Pty Ltd (as long as it remains admitted to participate in CHES under Rule 4.3.1); or
- (b) a person admitted as a General Settlement Participant under Rule 4.3.1, whose function is to hold Title or Other Interest to Principal Financial Products or Participating International Financial Products.

"DERIVATIVES" means derivatives entered into on a market in a derivatives instrument that is operated by an Approved Market Operator.

"DERIVATIVES COVER" means Financial Products lodged with, or otherwise made available to, an Approved Clearing Facility as security for deposits or margins payable in relation to Derivatives transactions.

"DESPATCH" in relation to Financial Products to be entered into a CHES Holding pursuant to a Corporate Action, means Transmit a Message to enter the Financial Products into the Holding.

"DESPATCH DATE" means the date by which an Issuer is required to have despatched Certificates (or in the case of rights, entitlement and acceptance forms in relation to those rights) or to have entered Financial Products (including rights) into Holders' uncertificated Holdings in accordance with Listing Rules or otherwise as determined by the relevant Approved Market Operator and notified from time to time.

"DI" stands for Depositary Interest and means a unit of beneficial ownership in a Financial Product which is not a Financial Product of a Foreign Issuer, registered in the name of the Depositary Nominee.

"DI ISSUER" means an Issuer of Financial Products quoted on ASX, a condition of the issue being that the Financial Products are held by investors in Australia in the form of DIs.

"DIRECT BATCH INSTRUCTION" means a Batch Instruction under which the obligations are effected by the counterparties directly.

"DIRECT HOLDING" means a CHES Holding where the Holder is:

(a) the Controlling Participant; or

(b) if the Controlling Participant is an incorporated entity, a Related Body Corporate of that Participant; or

(c) if the Controlling Participant is a partnership, a nominee company provided all of its issued capital is owned by the partners.

"DISCIPLINARY REGISTER" means the register maintained by ASTC under Rule 12.6.1.

"DISCIPLINARY TRIBUNAL" means the tribunal established under Rule 12.4.

"DIVESTMENT" means action taken by an Issuer to require or effect the disposal of Financial Products.

"DUAL ENTRY BATCH INSTRUCTION" means a Batch Instruction that results from Matched Dual Entry Settlement Messages.

"DUAL ENTRY BATCH MESSAGE" means a Message that complies with Rule 10.9.2.

"DUAL ENTRY DEMAND MESSAGE" means a Message that complies with Rule 9.5.1.

"DUAL ENTRY DEMAND TRANSFER" means a Demand Transfer of Financial Products that gives effect to a Dual Entry Demand Message.

"DUAL ENTRY PAYMENT BATCH INSTRUCTION" means a Batch Instruction that results from Matched Dual Entry Payment Batch Messages.

"DUAL ENTRY PAYMENT BATCH MESSAGE" means a Message that complies with Rule 10.9.2.

"DUAL ENTRY RTGS INSTRUCTION" means an RTGS Instruction that results from Matched Dual Entry RTGS Messages.

"DUAL ENTRY RTGS MESSAGE" means an RTGS Message that relates to a DvP RTGS Transaction.

"DUAL ENTRY SWITCH TO BATCH SETTLEMENT MESSAGE" in relation to a Dual Entry RTGS Instruction, means a Message that, in accordance with the requirements of the EIS, requests that an RTGS Instruction be removed from Real Time Gross Settlement and included in Batch Settlement under Section 10.

"DUAL ENTRY SWITCH TO RTGS MESSAGE" means a Message that, in accordance with the requirements of the EIS, requests that an Batch Instruction be removed from DvP Batch Settlement and included in Real Time Gross Settlement under Section 11.

"DVP BATCH INSTRUCTION" means a Batch Instruction to be settled in DvP Batch Settlement.

"DVP BATCH SETTLEMENT" means a component of Batch Settlement in which irrevocable payment is made through the funds transfer procedures or alternative payment arrangements specified in Rule 10.7.1 or 10.7.2 in exchange for the irrevocable Transfer of Financial Products.

"DVP DECLARATION" means the time when all the registered payment instructions in the CHES Payments Provider User Group are simultaneously effected for the purposes of Batch Settlement.

"DVP INSTRUCTION" means:

- (a) a DvP Batch Instruction; or
- (b) a DvP RTGS Instruction.

"DVP NOTIFICATION" means the notification of DvP Declaration to be given by ASTC to a Payments Provider under the Standard Client Bank Deed.

"DVP REAL TIME GROSS SETTLEMENT" means a component of Real Time Gross Settlement in CHES in which the Payment Obligation and the Delivery Obligation identified in a DvP RTGS Instruction are irrevocably and simultaneously settled in accordance with Rule 11.25.

"DVP RTGS" stands for DvP Real Time Gross Settlement.

"DVP RTGS INSTRUCTION" means an RTGS Instruction that identifies a Payment Obligation and a Delivery Obligation.

"DVP SETTLEMENT" means:

- (a) DvP Batch Settlement; or
- (b) DvP Real Time Gross Settlement.

"EFFECTIVE DATE" means the date referred to in a Participant Change Notice on which the novation of a Client Agreement is deemed to have occurred.

"EIS" stands for External Interface Specification, and means a document, made by ASTC, that provides detailed information about protocols, message formats and security features for communications between Facility Users and ASTC.

"ELECTION DATE" means the date by which a person must instruct an Issuer if the person wishes to convert or exercise Financial Products in accordance with the terms of a Corporate Action.

"EMPLOYEE" includes a director, partner, employee, officer, consultant, agent, representative, advisor or an independent contractor who acts for or by arrangement with a Participant or Issuer in the conduct of its business.

"END OF DAY" means on any Trading Day, 7:00pm Sydney time or such other time as ASTC may from time to time determine.

"END OF DAY PROCESSING PHASE" means on any Trading Day, the time period after End of Day during which various scheduled processing and system administration tasks are completed (for example, financial products maintenance, corporate action processing, archiving and system backup).

"ENTITLEMENT" means a security benefit as defined in Regulation 7.5.01 of the Corporations Regulations and includes (without limitation):

- (a) rights;
- (b) bonus issues;
- (c) dividend, interest and trust distribution payments;
- (d) priority issues;
- (e) offers under an equal access scheme; and

(f) in relation to Participating International Financial Products means any equivalent or similar benefit (however described) provided or offered by the issuer of the Participating International Financial Products.

"ENTITLEMENT DATE" in relation to Section 13 means, a date specified by the Depository Nominee as the date by reference to which the Depository Nominee will identify the persons entitled to the benefit of a Corporate Action.

"ETF APPLICATION" means the application required by an Issuer to enable new ETF Financial Products to be created and despatched to a subscriber.

"ETF FINANCIAL PRODUCTS" means Financial Products of a registered managed investment scheme:

(a) listed on an Approved Market Operator;

(b) with power and approval to continually issue and have quoted on an Approved Market Operator, Financial Products in the scheme; and

(c) which provides for the issue of new Financial Products in return for the subscriber transferring to the scheme a portfolio of Financial Products.

"EVENT OF NON-COMPLIANCE" means an event for which Notice must be given under Rule 12.18.

"EX DATE" means the date on which the relevant Approved Market Operator changes the basis of quotation for a class of Parent Financial Products to signify that trading in that class no longer carries the entitlement.

"EX ENTITLEMENT" in relation to a Transfer or a Conversion, means a Transfer or Conversion of Parent Financial Products without the Entitlement to a Corporate Action.

"EX PERIOD" means the Period from Start of Day on the Ex Date to End of Day on the Record Date in respect of a Corporate Action.

"EXCESS FINANCIAL PRODUCTS" means:

(a) those FOR Financial Products determined by an Issuer that cause the Foreign Ownership Percentage Level to be exceeded; or

(b) with the exception of a Foreign to Foreign Allocation, those FOR Financial Products determined by an Issuer, where the Issuer is authorised to do so under its constitution or governing legislation, to have been transferred into a Holding with a Residency Indicator of "F", on the day when the Foreign Ownership Percentage Level Foreign Holder Percentage Level is exceeded.

"EXCLUDED CLASS OF FINANCIAL PRODUCTS" means a class of Financial Products declared by ASTC from time to time as a class of Financial Products that is not eligible for processing in CHES.

"EXCLUDED CASH SUB-RECORD" means a Cash Sub-record so designated by an RTGS Participant for the purposes of Rule 11.20.

"EXEMPTION CODE" means a numeric code in the form approved by the Australian Taxation Office for the purpose of TFN exemption reporting.

"FACILITY USER" means:

- (a) a Participant; or
- (b) an Issuer of Approved Financial Products.

"FAIL" means the removal under the Rules of the whole or part of an Instruction from Batch Settlement or Real Time Gross Settlement, on a Business Day.

"FDI" stands for Foreign Depository Interest and which comprises a beneficial interest or Other Interest in a Participating International Financial Product held by a Depository Nominee.

"FDI REGISTER" means the record of Holders of FDIs containing the information required by Rule 13.19.4.

"FDI TRANSACTION" means a transaction where on transfer of clear funds the Depository Nominee records or removes FDIs in the FDI Register, as the case requires.

"FEEDER SYSTEM" in relation to CHES, means collectively the systems and procedures to effect Real Time Gross Settlement utilising an electronic interface to RITS/RTGS and, when appropriate, the AIF.

"FEEDER SYSTEM QUEUE" means the facility within the Feeder System to:

(a) test RTGS Instructions within CHES in the manner contemplated by Rules 11.18, 11.19 and 11.20; and

(b) hold and allow ASTC to monitor unsettled RTGS Instructions during the RTGS Settling Phase.

"FEES AND CHARGES SCHEDULE" means the Fees and Charges Schedule made by ASTC under Rule 1.6.

"FINANCIAL PRODUCTS" means:

(a) Division 4 financial products as defined in Regulation 7.11.03 of the Corporations Regulations; or

(b) For the purposes of Rule 8.3.2, financial products issued under an employee incentive scheme and company issued options.

"FINANCIAL PRODUCTS CODE" means the code that is assigned to a class of Approved Financial Products by an Approved Market Operator.

"FINANCIAL PRODUCTS SHORTFALL" means (the number that is greater than zero, where the number is calculated by the total number of Financial Products of a class projected to be delivered from a Holding in Scheduled Settlement on a Business Day) less the sum of the number of Financial Products of that class in that Holding at Settlement Cut-Off on that Business

Day and of the total number of Financial Products of that class projected to be received into that Holding in Scheduled Settlement on that Business Day where:

SS=D-(H+R) and:

SS is the Financial Products Shortfall

D is the total number of Financial Products of a class projected to be delivered from the Holding

H is the number of Financial Products of a class in the Holding

R is the total number of Financial Products of a class projected to be received into the Holding.

"FINANCIAL PRODUCTS TRANSFORMATION" means either:

(a) an adjustment to the Holding Balance of a CHESS Holding initiated by the Issuer because Financial Products in the Holding have:

(i) been absorbed into an existing class of Financial Products (for example, Financial Products that do not rank for a Dividend to Financial Products that do); or

(ii) been assigned a new Financial Product Code (for example, because of a Reconstruction); or

(b) in respect of Allocation Interests, an adjustment to a Holding of Allocation Interests initiated by the Issuer in order to despatch Approved Financial Products under Rule 15.27.

"FIRM ALLOCATION COMPONENT" means that part of an Offer which is reserved for clients of a Participant under an agreement between the Issuer and a Participant.

"FOR FINANCIAL PRODUCTS" means a class of Approved Financial Products included in Schedule 1, pursuant to Rule 5.18.2.

"FOREIGN CLEARING HOUSE" means a person which:

(a) has its principal place of business in a country other than Australia;

(b) is authorised to provide clearing and settlement services in the country in which it has its principal place of business; and

(c) is subject to prudential and/or other regulatory supervision in the country in which it has its principal place of business by a regulatory authority that has entered into an information sharing arrangement dealing with market matters with the Commission.

"FOREIGN CONFIRMED HOLDING NET MOVEMENT REPORT" means a report that:

- (a) for the specified period; and
- (b) in respect of each CHESS Holding containing Confirmed FOR Financial Products in the specified sets out a summary on a daily basis of:
 - (c) total units added to the Holding pursuant to Foreign to Foreign Allocations;
 - (d) total units deducted from the Holding pursuant to Foreign to Foreign Allocations;
 - (e) total units added to the Holding of Confirmed FOR Financial Products as a result of registry authorised transactions;
 - (f) total units deducted from the Holding of Confirmed FOR Financial Products as a result of registry authorised transactions; and
 - (g) the end of day closing balance for the Holding.

"FOREIGN ISSUER" means an Issuer whose place of incorporation does not recognise CHESS as a system that can transfer and register legal Title to Financial Products.

"FOREIGN OWNERSHIP PERCENTAGE LEVEL" means the aggregate limit of foreign ownership, pursuant to the constitution or governing legislation of an Issuer whose Financial Products are included in Schedule 1.

"FOREIGN PERSON" means, where specified pursuant to Rule 8.7.2, that the Holder has notified the Controlling Participant that the beneficial owner of the Financial Products in the Holding, for the purposes of legislation or under the constitution of an Issuer whose Financial Products are included in Schedule 1:

- (a) is a foreign person;
- (b) is an associate of a foreign person; or
- (c) has a beneficial interest in the Financial Products, part of that beneficial interest vesting in a Foreign Person, other than persons, associates or interests which the legislation or constitution ignores or excludes for the purposes of aggregate foreign ownership restrictions.

Note: a Residency Indicator of "F" denotes a Foreign Person

"FOREIGN REGISTER" means a register of an Issuer that is located outside Australia.

"FOREIGN FINANCIAL PRODUCTS" means financial products issued or made available by a Foreign Issuer.

"FOREIGN TO FOREIGN ALLOCATION" means a Transfer or Conversion of Confirmed FOR Financial Products, including a Transfer pursuant to a transaction effected in accordance with the ASX Business Rules, where the Residency Indicator of both the Source and Target Holdings is "F", thus resulting in a Holding of Confirmed FOR Financial Products.

"FULL DOWNLOAD" in relation to the CHESSE Subregister for a class of an Issuer's Financial Products, means a Demand Report Transmitted to the Issuer of:

- (a) the HINs of all Holders on the Subregister; and
- (b) the Holding Balances of all Holdings; and/or
- (c) the Cum Entitlement Balances for all Holdings or former Holdings.

"GENERAL SETTLEMENT PARTICIPANT" means a Participant admitted to participate in the Settlement Facility under Rule 4.3 but does not include a Recognised Market Operator under Rule 4.3.13.

"HELD BALANCE" means the number of Financial Products that remain in a Certificated Holding after a Transfer by a Participant of only some of the Financial Products represented by a Certificate or Marked Transfer.

"HELD BALANCE REFERENCE NUMBER" means the number allocated by an Issuer to identify a Held Balance.

"HIN" stands for Holder Identification Number and means a number used to:

- (a) identify a Holder of Financial Products on the CHESSE Subregister; and
- (b) link the Holding details maintained on the CHESSE Subregister with the Holder's Registration Details.

"HOLDER" means:

- (a) a person registered as the legal owner of Financial Products in a Holding;
- (b) a person who is recorded as holding CDIs on the CDI Register;
- (c) a person who is recorded on a record of Allocation Interests; or
- (d) a person who is recorded as holding FDIs on the FDI Register.

"HOLDER RECORD" means the Registration Details, the HIN and the Holder Type as recorded by ASTC in CHESSE for the purpose of operating one or more CHESSE Holdings.

"HOLDER RECORD LOCK" means a facility that prevents Financial Products from being deducted from any current Holding to which the relevant Holder Record applies, pursuant to a Transfer or Conversion.

"HOLDER TYPE" means a code used to indicate the capacity in which a Participant:

(a) establishes a Holder Record;

(b) controls a CHES Holding, (for example, Direct, Participant Sponsored or Clearing Account).

"HOLDING" means:

(a) a number of Financial Products of an Issuer held by a Holder on the Issuer's register;

(b) a number of CDIs held by a Holder on the CDI Register;

(c) a number of Allocation Interests recorded in respect of a Holder; or

(d) a number of FDIs recorded as held by a Holder on an FDI Register.

"HOLDING ADJUSTMENT" means a movement of Financial Products to or from a CHES Holding that is initiated by an Issuer Transmitting a Message to ASTC to:

(a) give effect to a Corporate Action or Reconstruction in relation to a class of the Issuer's Financial Products;

(b) establish a CHES Holding pursuant to a new issue of Approved Financial Products;

(c) move Financial Products from a CHES Holding for the purpose of Divestment or forfeiture; or

(d) move Financial Products to or from a CHES Holding in such other circumstances as:

(i) are permitted by these Rules; or

(ii) may be agreed between ASTC and the Issuer.

"HOLDING BALANCE" means the number of Financial Products in a Holding.

"HOLDING LOCK" means, in relation to a Holding on either the CHES Subregister or an Issuer Operated Subregister, a facility that prevents Financial Products from being deducted from, or entered into, a Holding pursuant to a Transfer or Conversion.

"HOLDING NET MOVEMENT REPORT" means a report that:

(a) for the specified period; and

(b) in respect of each CHES Holding of Financial Products in the specified class that has undergone a Holding Balance change during the specified period,

(c) sets out, a summary on a daily basis of:

- (i) total units added to the Holding;
- (ii) total units deducted from the Holding;
- (iii) total units added to the Holding as a result of registry authorised transactions;
- (iv) total units deducted from the Holding as a result of registry authorised transactions; and
- (v) the End of Day closing balance for the Holding.

"INCAPACITY LAW" means a law relating to the administration of the estates of persons who, through mental or physical incapacity, are incapable of managing their affairs.

"INDUSTRY GROUP" means one of the following groups:

- (a) Participants or senior officers of Participants; or
- (b) senior officers of Issuers or of Issuers' Third Party Providers.

"INSTRUCTION" means a Batch Instruction or an RTGS Instruction.

"ISSUER" means a person who issues or makes available or proposes to issue or make available, Approved Financial Products and includes (without limitation):

(a) a listed company or company whose Financial Products are quoted by a market licensee or by a financial market or type of financial market exempted under section 791C of the Corporations Act;

- (b) a warrant issuer;
- (c) the responsible entity of a managed investment scheme;
- (d) a Foreign Issuer.

"ISSUER OPERATED SUBREGISTER" means an Issuer Sponsored Subregister.

"ISSUER SPONSORED HOLDING" means a Holding of Financial Products on the Issuer Sponsored Subregister.

"ISSUER SPONSORED SUBREGISTER" means:

(a) that part of an Issuer's register that records uncertificated Holdings of Financial Products in accordance with Listing Rule 8.2; or

(b) that part of a CDI Register, that is administered by the Issuer (and not ASTC).

"ISSUER SPONSORED TO CHESS" means a Transfer or Conversion of Financial Products from an Issuer Sponsored Holding to a CHESS Holding.

"ISSUER WARRANTIES AND INDEMNITIES" means warranties and indemnities given by an Issuer under these Rules.

"LAST CORPORATE ACTION EVENT DATE" means in the case of an Entitlement under a Corporate Action that involves:

(a) the issue of Financial Products only, the Despatch Date;

(b) the payment of money only, the due date of payment; or

(c) a combination of the issue of Financial Products and the payment of money, the later of the Despatch Date and the due date of payment,

where, before the date when the Issuer must have completed its obligation to pay money or issue Financial Products is unknown or unclear the Last Corporate Action Event Date will be a date ASTC reasonably determines is appropriate in the circumstances and notifies the Issuer and each Participant.

"LISTING RULES" means the Listing Rules of an Approved Market Operator.

"LOCKED" in relation to a Holding, means subject to a Holding Lock or a Holder Record Lock.

"MAC" stands for Message Authentication Code, and means a code appended to a Message by ASTC or a Facility User for the purpose of enabling the recipient of the Message to confirm the identity of the Facility User Transmitting the Message.

"MARKED TRANSFER" means a Registrable Transfer Document that has been marked by the Issuer or a marking body.

"MARKET OPERATOR" means:

(a) ASX; or

(b) in the Rules made from time to time pursuant to arrangements entered into under section 798C of the Corporations Act, in relation to quoted financial products issued by ASX, "the Commission"; or

(c) in relation to:

(i) a class of financial products quoted, or to be quoted by; or

(ii) a participant of a market licensee under the Corporations Act other than ASX,

that market licensee; or

(d) the operator of a financial market or type of financial market exempted under section 791C of the Corporations Act.

"MARKET PARTICIPANT" means a participant of an Approved Market Operator.

"MARKING NUMBER" means the unique reference number allocated to a Marked Transfer by the Issuer or a marking body.

"MATCH AND MATCHED" in relation to Messages Transmitted to ASTC by a Participant, means that the Message contains, or under the Rules may be taken to contain, the same details for message fields that require mandatory matching.

"MATCHED MESSAGES" means:

(a) in relation to Dual Entry RTGS Messages, Messages that are Matched under Rule 11.13.3;

(b) in relation to Dual Entry Batch Messages, Messages that are Matched under Rule 9.5.2 or 10.9.3;

(c) in relation to Dual Entry Switch to Batch Settlement Messages, Messages that are Matched under Rule 11.12.3;

(d) in relation to Dual Entry Switch to RTGS Messages, Messages that are Matched under Rule 10.6.1 or 10.11.8; and

(e) in relation to Dual Entry Payment Batch Messages, Messages that are Matched under Rule 10.8.3,

and in any other case means Valid Messages that are Matched.

"MAXIMUM PERCENTAGE" means 10% or such other percentage prescribed by ASTC.

"MAXIMUM VALUE" means \$350,000 or such other amount prescribed by ASTC.

"MESSAGE" means an electronic message of a kind specified in the EIS for use in CHES.

"NET POSITION RECORD" in relation to an RTGS Participant, means a facility established within CHES through which ASTC tracks and records the outcome of RTGS Instructions due for settlement on any RTGS Business Day, that relate to a particular Payment Facility of that Participant.

"NET POSITION RECORD STATUS" means at any time the status of a Net Position Record as authorised at that time by the RTGS Payments Provider that maintains the Payment Facility to which that Net Position Record is linked, being either:

(a) active; or

(b) inactive.

"NOMINEE COMPANY" means a body corporate controlled and operated by a Participant admitted under Rule 4.3.1 that carries on the business of holding Financial Products as a trustee or nominee.

"NOTICE" has a meaning given by Rule 1.10.

"NOTICE OF DEATH" means a death certificate or any other formal document that is acceptable by ASTC as evidence of a Holder's death.

"OFF MARKET TRANSACTION" means a transaction in Approved Financial Products that is not an On Market Transaction.

"OFFER" means:

(a) an offer for subscription or an invitation to subscribe for Financial Products, under which an Issuer must issue; or

(b) an offer under which an Issuer must dispose of,

Approved Financial Products to successful applicants.

"OFFER ACCEPTED SUBPOSITION" means a Subposition for the reservation of Financial Products in a CHES Holding which are the subject of an acceptance under a takeover bid.

"OLD CORPORATIONS ACT" means the Corporations Act as in force immediately before 11 March 2002.

"ON MARKET TRANSACTION" means a transaction in Approved Financial Products in relation to which one of the following conditions is satisfied:

(a) the transaction was entered into in the ordinary course of trading on an Approved Market Operator's market; or

(b) the transaction is, under the operating rules of an Approved Market Operator, described, or to be described, as 'special' when it is reported to the Approved Market Operator; or

(c) in relation to a transaction between a Participant and a Participant who is not a Market Participant, a confirmation is issued in relation to a transaction under paragraph (a) or (b); or

(d) in relation to a transaction between two Participants that are not Market Participants, the transaction is entered into solely for the purpose of facilitating settlement of a transaction of a kind referred to in paragraph (a) or (b).

"ORIGINATING MESSAGE" means a Message Transmitted to ASTC by the Controlling Participant for a CHES Holding which (as a consequence of that Message being processed) results in ASTC or a Facility User Transmitting another Message (whether or not that consequential Message also results from the processing of any intervening Message).

"OTHER INTEREST" means any right or interest whether legal or equitable in the Participating International Financial Product and includes an option to acquire a right or interest in the Participating International Financial Product.

"PARENT BATCH INSTRUCTION" means a Batch Instruction that gives rise to an Accrued Batch Instruction as a result of a Corporate Action.

"PARENT DVP BATCH INSTRUCTION" means a Parent Batch Instruction with a Settlement Amount scheduled to settle in DvP Batch Settlement.

"PARENT DVP RTGS INSTRUCTION" means a Parent RTGS Instruction with a Settlement Amount scheduled to settle in DvP Real Time Gross Settlement.

"PARENT FINANCIAL PRODUCTS" means a class of Approved Financial Products to which an Entitlement to cash or Financial Products attaches that, during an Ex Period, may be Transferred with or without the Entitlement.

"PARENT RTGS INSTRUCTION" means an RTGS Instruction that gives rise to an Accrued RTGS Instruction as a result of a Corporate Action.

"PARTICIPANT" means an Account Participant, a Specialist Settlement Participant, or a General Settlement Participant.

"PARTICIPANT BIDDER" means a Participant entitled or authorised (whether as the bidder or on behalf of the bidder) to receive acceptances of bids made under a takeover bid in accordance with these Rules.

"PARTICIPANT CHANGE NOTICE" means the Notice sent to a Participant Sponsored Holder which complies with the requirements of Rule 7.1.10(a)

"PARTICIPANT MANAGED" in relation to the attributes of a Net Position Record, means any of the matters set out in Rule 11.9.11.

"PARTICIPANT SPONSORED HOLDER" means a person that has a current Sponsorship Agreement with a Participant as required or permitted under these Rules.

"PARTICIPANT SPONSORED HOLDING" means a CHES Holding of a Participant Sponsored Holder.

"PARTICIPANT WARRANTIES AND INDEMNITIES" means warranties and indemnities given by a Participant under these Rules.

"PARTICIPATION REQUIREMENTS" means matters set out in Section 4 in relation to which ASTC must be satisfied in order for a person to be admitted to participate in CHES in any capacity.

"PARTICIPATING INTERNATIONAL FINANCIAL PRODUCTS" mean financial products:

(a) traded on a market other than in Australia; and

(b) declared by ASTC under Rule 13.15 from time to time to be available for settlement by means of FDIs.

Note: financial products in this definition are not restricted by jurisdictional limits in the Corporations Act.

"PARTY" in relation to a Proceeding or Appeal, means:

(a) the Facility User to whom a Contravention Notice was given in the Proceeding; or,

(b) ASTC or the Facility User to or by whom an Appeal Notice was given in the Appeal,

as the case requires.

"PAYMENT BATCH INSTRUCTION" means:

(a) a CCP Derivatives Payment Batch Instruction; or

(b) a Dual Entry Payment Batch Instruction.

"PAYMENT FACILITY" means a Facility operated for a Participant at a Payments Provider for the purposes of paying and receiving payments in Batch Settlement.

"PAYMENT OBLIGATION" in relation to an RTGS Instruction means an obligation on the part of one party to pay a cash amount to the other on settlement.

"PAYMENT SHORTFALL" for a Payment Facility, means:

(a) if the Participant's net obligation to make payment is not authorised, the amount of the net obligation for which authorisation is sought; or

(b) if the Participant's net obligation to make payment is not authorised, the difference between the amount of the net obligation to make the payment that has already been authorised by the Payments Provider and the amount of the net obligation to make a payment for which further authorisation is sought from the Payments Provider.

"PAYMENT SYSTEMS AND NETTING ACT" means the Payment Systems and Netting Act 1998 (Cth).

"PAYMENTS PROVIDER" means a person that:

(a) operates an exchange settlement account with the Reserve Bank of Australia in its own name;

(b) has the operational capacity to:

(i) authorise and make payments on behalf of Participants;

(ii) make payments to Participants; and

(iii) register entries in the Payments Provider User Group for the purpose of discharging its net obligation to make payment to the Bank or its net entitlement to receive payment from the Bank in accordance with the Standard Payments Provider Deed;

(c) meets the technical and performance requirements prescribed by ASTC to ensure that the person does not affect the integrity or orderly operation of CHES; and

(d) is a person who facilitates Batch Settlement by approving or making payments in accordance with the terms and conditions of the relevant Standard Payment Providers Deed.

"PAYMENTS PROVIDER MANAGED" in relation to the attributes of a Net Position Record, means any of the matters set out in Rule 11.9.3(a) to (f).

"PAYMENTS PROVIDER USER GROUP" means the subsystem within the interbank payments system, operated by the Reserve Bank of Australia, established to enable financial institutions to satisfy payment obligations of CHES Participants on behalf of CHES Participants.

"PID" stands for participant identifier and means a UIC allocated by ASTC to a Participant that is:

(a) used as the identification code of the Participant that controls a Holding on the CHES Subregister; and

(b) included in a Message header to identify the source and/or destination of CHES Data Messages.

"PRE-CASH SETTLEMENT PERIOD" means, for the purposes of Regulation 7.5.44 of the Corporations Regulations 15 Business Days.

"PRE-COMMENCEMENT TESTING" means testing at the direction of ASTC to establish whether a Facility User meets the Technical and Performance Requirements.

"PRESCRIBED PERCENTAGE" means 50% or such other percentage determined by ASTC.

"PRESCRIBED PERSON" means the person from time to time notified as such by ASTC to Participants and RTGS Payments Providers.

"PRINCIPAL" in relation to a body, means each of:

(a) any parent body of the body;

(b) each Director or person in the position of a Director;

(c) where the body consists of two or more partners or trustees, each principal (within the meaning of paragraphs (a) and (b)) of each of those partners or trustees.

"PRINCIPAL FINANCIAL PRODUCTS" means Financial Products issued or made available by a Principal Issuer.

"PRINCIPAL ISSUER" means:

- (a) a Foreign Issuer; or
- (b) a DI Issuer.

"PRINCIPAL REGISTER" means the register of those Holdings of Principal Financial Products maintained by a Principal Issuer in Australia under these Rules.

"PROCEDURES" means any document, electronic file or other information (recorded by any mode of representing words or reproducing words) approved by ASTC and circulated where applicable to Participants, Issuers, third party service providers and employees in accordance with Rule 1.4 and, without limitation, includes any EIS and any guidance note, practice note, Explanatory Memoranda or other information issued by ASTC to Facility Users from time to time.

"PROCEEDING" means proceedings taken under Section 12 by ASTC against a Facility User and commenced by a Contravention Notice.

"PUBLISH A NOTICE" means to publish a Notice in at least one national newspaper and at least one state or territory based newspaper in each state and territory.

"REAL TIME GROSS SETTLEMENT" means the processing and settling of payment and delivery obligations in real time and on a gross, not net, basis, the fundamental characteristic of which is that the payment and delivery components of a transaction become irrevocable at the time of settlement and, in relation to CHES, is effected in accordance with systems and procedures contained in Section 11.

"RECIPROCAL ARRANGEMENT" means any agreement or arrangement between ASTC and any governmental agency or regulatory authority (including, without limitation, a market, clearing house or clearing and settlement facility), in Australia or elsewhere, whose functions include the regulation of trading in, or clearing and settlement of, financial products (in Australia or elsewhere) which provides for the disclosure of information between ASTC and the other party in relation to dealings in, or clearing and settlement of, financial products (in Australia or elsewhere).

"RECOGNISED MARKET OPERATOR" means a Market Operator admitted as a Participant under Rule 4.3.1 and which is recognised under Rule 4.3.13.

"RECOGNISED PHYSICAL ACCESS POINT" means:

- (a) in the case of a Facility User, the physical location of an application system that the Facility User employs to operate an interface with CHES; or

(b) in the case of ASTC, the physical location of the application system that operates CHESS.

"RECONSTRUCTION" means an alteration to the issued capital of an Issuer, which affects the number, or nature, of Financial Products held by a Holder and includes (without limitation) a reorganisation or a merger.

"RECORD DATE" means 5:00pm (or, in the case of a ASTC-Regulated Transfer, a later time permitted by the Rules) on the date specified by an Issuer as the date by reference to which the Issuer will establish Cum Entitlement Balances for the purpose of identifying the persons entitled to the benefit of a Corporate Action.

"RECORDED" in relation to an RTGS Instruction, means that its details have been stored in CHESS in accordance with Rule 11.15.

"RECORDS" means books, computer software, information processing equipment and any other item on which information is stored or recorded in any manner.

"REGISTRABLE TRANSFER DOCUMENT" means any document that an Issuer is entitled to accept as a valid instrument of transfer or a Transfer Request Document.

"REGISTRATION DETAILS" means the name, address and Residency Indicator of a Holder.

"RELATED BODY CORPORATE" has the meaning set out in Section 50 of the Corporations Act.

"RELATED PARTY" means each entity in the ASX Group.

"REMOVE" means to move a Holding between a Principal Register and a CHESS or an Issuer Operated Subregister without a change of legal ownership.

"RENOUNCEABLE RIGHTS RECORD" means the record maintained by an Issuer of Holders of renounceable rights not held on the CHESS Rights Subregister.

"REPORT" means a Standing Report or a Demand Report.

"REPORTING POINT" means a particular point during a Business Day when information is stored by CHESS for the purposes of reporting data to Facility Users; Acceptable values comprise:

- (a) end of Settlement Processing Phase;
- (b) Trade Instruction Cut-Off;
- (c) End of Day.

"RESERVE" in Section 11 in relation to Financial Products, has the meaning given in Rule 11.19.1(d).

"RESERVED PROCESSING PERIOD" means the End of Day Processing Phase.

"RESIDENCY INDICATOR" means a code used to indicate the status of the ultimate beneficial owner or owners of FOR Financial Products in a Holding on the CHES Subregister or an Issuer Operated Subregister, for the purposes of settling transactions in FOR Financial Products. (i.e. "D" for Domestic, "F" for Foreign Person, and in the case of Holdings of Financial Products where beneficial ownership is both domestic and foreign, "M" for Mixed).

"RESTRICTED FINANCIAL PRODUCTS" means Financial Products that are subject to a restriction agreement under Listing Rule 9.1.

"RESTRICTION" in relation to the participation of a Participant, means any limitation on the entitlement of the Participant to send a Message or a class of Messages to ASTC.

"RIGHTS PERIOD" means the period from Start of Day on the date that rights trading begins on an Approved Market Operator to End of Day on the date that application money to take up those rights must be paid to the Issuer.

"RITS" means the Reserve Bank Information and Transfer System.

"RITS POSTSETTLEMENT ADVICE" means a settlement confirmation, elected to be received by an RTGS Payments Provider, that is generated by RITS/RTGS and sent through the AIF to that RTGS Payments Provider.

"RITS PRESETTLEMENT ADVICE" means an advice, elected to be received by an RTGS Payments Provider to enable it to make a credit decision in connection with the performance of a Payment Obligation, that is generated by RITS/RTGS and sent through the AIF to that RTGS Payments Provider.

"RITS/RTGS" means RITS, as operated by the Reserve Bank of Australia for Real Time Gross Settlement.

"RITS REGULATIONS" means the regulations and conditions of operation that govern RITS as published from time to time by the Reserve Bank of Australia.

"ROUTINE REPORTING" means electronic reporting that is generated automatically by CHES as transactions are processed.

"RTGS" stands for Real Time Gross Settlement.

"RTGS ACCOUNT IDENTIFIER" means a numeric identifier (that may, but need not, be an account number) agreed between an RTGS Participant and an RTGS Payments Provider to uniquely identify the Participant's account that is to be debited, or credited, with the amount of any Payment Obligation, on settlement of an RTGS Instruction in accordance with Rule 11.25.

"RTGS ACCREDITED" in relation to a Participant, has the meaning set out in Rule 11.5.2.

"RTGS BUSINESS DAY" means a Settlement Day within the meaning of the RITS Regulations, or any other day declared by the Reserve Bank as a day on which RITS/RTGS will operate that is notified by ASTC to Participants.

"RTGS CONTINGENCY REPORT" means a report of the settlement status of CHESS-related funds transfer requests sent to RITS/RTGS that is provided to ASTC by the Reserve Bank of Australia in manner and form as agreed between them.

"RTGS CUT-OFF" means on any RTGS Business Day, 4.30pm Sydney time or such other time as ASTC may from time to time determine.

"RTGS DELIVERY SHORTFALL" in relation to Financial Products of a particular class in a Holding at any time on the RTGS Settlement Date for a particular RTGS Instruction, means that the sum of:

(a) the number of Financial Products of that class required to be delivered from that Holding in Real Time Gross Settlement under that RTGS Instruction on that day;

(b) the number of Financial Products of that class Reserved against that Holding in relation to RTGS Instructions at that time in the RTGS Settling Phase, and

(c) prior to ASTC recording under Rule 10.12.1(f)(ii) a movement of Financial Products of that class against that Holding to effect DvP Net Settlement on that day, the number of Financial Products of that class that ASTC has determined at Settlement Cut-off will be so recorded as a movement against that holding at DvP Notification on that day,

is greater than:

(d) the total number of Available Financial Products at that time in the Holding.

"RTGS ELIGIBLE" in relation to Financial Products, has the meaning set out in Rule 11.1.1.

"RTGS END OF DAY" means on any RTGS Business Day, 5.00pm Sydney time or such other time as ASTC may from time to time determine.

"RTGS INSTRUCTION" means an instruction to ASTC to settle an RTGS Transaction in Real Time Gross Settlement through the CHESS Feeder System, and includes a DvP RTGS Instruction, a CCP Gross RTGS Instruction and a Dual Entry RTGS Instruction.

"RTGS INSTRUCTION CUT-OFF" on any RTGS Business Day means 4.25pm Sydney time or such other time as ASTC may from time to time determine.

"RTGS MANDATORY" in relation to an RTGS Transaction, has the meaning set out in Rule 11.3.1.

"RTGS MESSAGE" means a Message that, in accordance with the requirements of the EIS, instructs ASTC to settle an RTGS Transaction in Real Time Gross Settlement.

"RTGS PARTICIPANT" means a Participant:

(a) that satisfies the criteria for participation in Real Time Gross Settlement set out in Rule 11.5; and

(b) for which a Net Position Record has been established under the Rules that records the Net Position Record Status as active.

"RTGS PARTICIPATION REQUIREMENTS" in relation to a Participant, means any technical and performance requirements notified by ASTC to the Participant to ensure that it is capable of operating in Real Time Gross Settlement.

"RTGS PAYMENTS PROVIDER" means a Payments Provider that:

(a) satisfies the criteria for participation in Real Time Gross Settlement in CHES set out in Rule 11.6.1; and

(b) has been admitted to participate in Real Time Gross Settlement in CHES in that capacity.

"RTGS PRE-COMMENCEMENT TESTING" means testing at the direction of ASTC to establish whether a prospective RTGS Participant meets the RTGS Participation Requirements.

"RTGS SETTLEMENT DATE" means the RTGS Business Day specified, or taken to be specified, in an "RTGS Instruction as the date on which the counterparties intend that RTGS Instruction to settle in Real Time Gross Settlement.

"RTGS SETTLEMENT REPORT" means a report required to be made available by ASTC to an RTGS Payments Provider in accordance with Rule 11.30.

"RTGS SETTLING PHASE" in relation to an RTGS Instruction, means the time period that commences in accordance with Rule 11.22.1 and ends when all components of that RTGS Instruction have been settled in CHES in accordance with Rule 11.25.

"RULES" means the operating rules of the Settlement Facility in accordance with Rule 1.2 including the appendices, schedules and any State of Emergency Rules.

"SCHEDULED TIME" means the time within or by which a requirement under these Rules must be complied with as specified in Appendix 1 to these Rules.

"SECTION" means a section of these Rules.

"SECURITY KEY" means an electronic code that is:

(a) generated by ASTC; and

(b) used to ensure secure communications between ASTC and Facility Users.

"SEGC" means Securities Exchanges Guarantee Corporation Ltd (ABN 19 008 626 793).

"SEGREGATED ACCOUNT" means an account maintained in accordance with these Rules with an Approved Clearing House which contains Principal Financial Products or Participating International Financial Products held solely on behalf of the Depository Nominee.

"SETTLEMENT ACCOUNT" means a Holder Record maintained in CHES by a Participant for the purpose of facilitating settlement of transactions in Approved Financial Products with other Participants.

"SETTLEMENT ADJUSTMENT" means an adjustment to the Settlement Amount of a DvP Batch Instruction or a DvP RTGS Instruction.

"SETTLEMENT AGENT" means a General Settlement Participant that is has a Settlement Agreement with a Clearing Participant.

"SETTLEMENT AGREEMENT" means an agreement between a General Settlement Participant and a Clearing Participant under which the General Settlement Participant agrees to act as Settlement Agent for the Clearing Participant.

"SETTLEMENT AMOUNT" means the consideration for an Instruction.

"SETTLEMENT AMOUNT TOLERANCE" means \$1.00 or such other amount that ASTC prescribes.

"SETTLEMENT BOND" means a bond issued to ASTC at the request of a Participant in accordance with Rule 4.9.1.

"SETTLEMENT CUT-OFF" means, on any Business Day, 10.30 am Sydney time or such other time as ASTC may from time to time determine.

"SETTLEMENT DATE" means the Business Day on which an Instruction is scheduled to settle.

"SETTLEMENT FACILITY" means the facility provided by ASTC as described in Rules 1.1.1 and 1.1.2.

"SETTLEMENT HOLDING" means a Holding of Financial Products for which the Holder Record is a Settlement Account.

"SETTLEMENT PARTICIPANT" means:

(a) a Participant that has been admitted to participate in the Settlement Facility as a General Settlement Participant; or

(b) a person that has been admitted to participate in the Settlement Facility as a Specialist Settlement Participant.

"SETTLEMENT PROCESSING PHASE" in relation to DvP Net Settlement, means, on any Business Day, the time period commencing after Settlement Cut-off during which Settlement Transfers are processed by ASTC against CHES Holdings.

"SETTLEMENT TRANSFER" means a Transfer of Financial Products that gives effect to an Instruction.

"SINGLE ENTRY BATCH MESSAGE" means a Message that complies with Rule 10.9.11.

"SINGLE ENTRY BATCH INSTRUCTION" means a Batch Instruction that gives effect to a Single Entry Batch Message.

"SINGLE ENTRY DEMAND MESSAGE" means a Message that complies with Rule 9.4.1 or Rule 9.13.1.

"SINGLE ENTRY TRANSFER REQUEST" means a Demand Transfer of Financial Products that gives effect to a Single Entry Demand Message.

"SOURCE HOLDING" means the Holding from which Financial Products will be deducted in giving effect to a Transfer, Conversion, Corporate Action or other transaction.

"SPECIALIST SETTLEMENT PARTICIPANT" means a Participant admitted under Rule 4.4.

"SPONSORING PARTICIPANT" means a Participant that establishes and maintains a Participant Sponsored Holding.

"SPONSORSHIP AGREEMENT" means a written agreement between the Sponsoring Participant and another person, signed by both parties, as required under Section 7 of these Rules.

"SPONSORSHIP BOND" means a bond issued to ASTC at the request of a Participant in accordance with Rule 4.9.3.

"SRN" stands for Security holder Reference Number and means a number allocated by an Issuer to identify a Holder on an Issuer Operated Subregister.

"STANDARD ACCEPTANCE FORM" means a standard entitlement and acceptance form in respect of renounceable rights as specified by ASTC from time to time.

"STANDARD CLIENT BANK DEED" means a standard deed executed by ASTC and a bank.

"STANDARD CONVERSION FORM" means a standard form, as specified by ASTC from time to time, for the conversion of convertible Financial Products.

"STANDARD EXERCISE FORM" means a standard form of notice of exercise, as specified by ASTC from time to time, for options and other Financial Products that carry exercisable rights.

"STANDARD PAYMENTS PROVIDER DEED" means a standard deed executed by ASTC and a Payments Provider and includes a Standard Client Bank Deed.

"STANDING BUY ACCOUNT IDENTIFIER" means an RTGS Account Identifier that is notified to ASTC under Rule 11.9.11 or Rule 11.9.15 for the purposes of an RTGS Instruction where the Participant will, on settlement, be the payer of the Payment Obligation identified in that RTGS Instruction.

"STANDING HIN" means a HIN that is notified to ASTC under Rule 6.4.2.

"STANDING INSTRUCTIONS" means a Holder's instructions to an Issuer in relation to matters relevant to Holdings, including (without limitation) TFN notification, Residency Indicator, direct credit of dividends or interest payments, annual report elections and elections in respect of shareholders' dividend plans.

"STANDING REPORT" means one of a series of Messages periodically Transmitted by ASTC to a Facility User, each of which provides information about CHES Holdings or CHES Subregister movements in accordance with parameters specified by the Facility User.

"STANDING SELL ACCOUNT IDENTIFIER" means an RTGS Sell Account Identifier that is notified to ASTC under Rule 11.9.11 or Rule 11.9.15 for the purposes of an RTGS Instruction where the Participant will, on settlement, be the payee of the Payment Obligation identified in that RTGS Instruction.

"STANDING SETTLEMENT HIN" means a HIN notified to ASTC under Rule 6.4.2.

"START OF DAY" means, on any Trading Day, 8.00 am Sydney time or such other time as ASTC may from time to time determine.

"STATE OF EMERGENCY" means any of the following:

(a) fire, power failure or restriction, communication breakdown, accident, flood, embargo, boycott, labour dispute, unavailability of data processing or any other computer system or facility, act of God; or

(b) act of war (whether declared or undeclared) or an outbreak or escalation of hostilities in any region of the world which in the opinion of ASTC prevents or significantly hinders the operation of the Settlement Facility; or

(c) an act of terrorism; or

(d) other event which, in the opinion of ASTC, prevents or significantly hinders the operations of the Settlement Facility.

"STATE OF EMERGENCY RULES" means any Rules made by ASTC under Rule 1.3.

"SUBPOSITION" means a facility in CHES by which in accordance with Rule 14.1.3:

(a) activity in relation to Financial Products held in a CHES Holding may be restricted; and

(b) access to those Financial Products for limited purposes may be given to a Participant other than the Controlling Participant.

"SUBREGISTER" means:

(a) in the case of Financial Products other than CDIs, a CHES Subregister or an Issuer Operated Subregister; or

(b) in the case of CDIs, a CDI Register.

"SUPER PARTICIPANT" means:

(a) in relation to a group of Participants within paragraph (a) of the definition of Super Participant Group, any Participant within that group that is notified to ASTC by all the Participants within that group; or

(b) in relation to a group of Participants within paragraph (b) of the definition of Super Participant Group, the Settlement Participant.

"SUPER PARTICIPANT GROUP" means:

(a) a group of Participants that are related bodies corporate within the meaning of section 50 of the Corporations Act; or

(b) a Settlement Participant which has a Clearing Agreement with one or more Account Participant and each of those Account Participants with whom it has a Clearing Agreement.

"SURVEILLANCE REPORT" means a report generated by CHES that identifies changes to:

(a) Batch Instructions notified to ASTC by an Approved Market Operator under Rule 10.9.1; and

(b) Batch Instructions that result from Matched Dual Entry Batch Messages,

(c) to assist ASTC in monitoring compliance with these Rules.

"SWITCH TO BATCH SETTLEMENT MESSAGE" means a Message that, in accordance with the requirements of the EIS, requests that an RTGS Instruction be removed from Real Time Gross Settlement in CHES and settled in Batch Settlement.

"TAKEOVER CONSIDERATION CODE" means a unique code allocated by an Approved Market Operator in respect of each alternate form of consideration offered under a takeover.

"TAKEOVER TRANSFER" means a Transfer of Financial Products from a CHES Holding pursuant to acceptance of an offer for the Financial Products made under a takeover scheme.

"TAKEOVER TRANSFEREE HOLDING" means a CHES Holding to which Financial Products are to be Transferred pursuant to acceptances of offers made under a takeover bid.

"TARGET HOLDING" means the Holding into which Financial Products will be entered in giving effect to a Transfer, Conversion, Corporate Action or other transaction.

"TARGET TRANSACTION IDENTIFIER" means a reference number identifying a transaction which is the target of another transaction.

"TAX" means any present or future tax, levy, impost, duty, charge, fee, deduction, or withholding of whatever nature, levied, collected, assessed or imposed by any government or semi-government authority and any amount imposed in respect of any of the above.

"TECHNICAL AND PERFORMANCE REQUIREMENTS" means the requirements on Facility Users set out in Section 16.

"TERMS AND CONDITIONS FOR FDI CONTROLLING PARTICIPANTS" means those terms and conditions between AIS, CDN and the Controlling Participant of FDIs from time to time displayed on the ASX World Link Website.

"TFN" stands for Tax File Number and means a numeric code allocated by the Australian Taxation Office for taxation purposes.

"THIRD PARTY PROVIDER" means a person that:

- (a) operates an interface with CHES;
 - (b) performs any obligations of a Facility User under these Rules; or
 - (c) uses facilities provided by ASTC,
- on behalf of a Facility User.

"TITLE" in relation to Financial Products, means:

- (a) legal title where the Financial Products can be owned at law, and
- (b) equitable or beneficial title where the Financial Products can be owned only in equity.

"TOTAL SECURITY BALANCE REPORT" means a report that sets out the aggregate of all Holding Balances held on the CHES Subregister for a class of Financial Products as at a specified point in time.

"TRADE DATE" means the date on which an agreement or arrangement for the purchase or sale of Financial Products was executed.

"TRADE INSTRUCTION CUT-OFF" means, on any Business Day, 10.30am Sydney Time or such other time as ASTC may from time to time determine.

"TRADING DAY" means a day other than:

(a) a Saturday, Sunday, New Year's Day, Good Friday, Easter Monday, Christmas Day, Boxing Day; and

(b) any other day that ASTC may declare and publish is not a trading day.

"TRANSACTION IDENTIFIER" means a reference number identifying a Message Transmitted through CHESSE.

"TRANSACTION STATEMENT" means a transaction statement for an Issuer Sponsored Holding as referred to in Listing Rules 8.5, 8.6 and 8.7.

"TRANSFER" means a transfer of Financial Products, or for the purposes of Section 15, a transfer of Allocation Interests:

(a) from a CHESSE Holding to any other Holding; or

(b) from any Holding to a CHESSE Holding.

"TRANSFER REQUEST DOCUMENT" means a document supplied by a Settlement Participant which is not a Market Participant to an Issuer that entitles the Issuer to authorise a Transfer of Financial Products from an Issuer Sponsored Holding to a CHESSE Holding.

"TRANSITION PERIOD" means the period from 11 March 2002 to 10 March 2004 or such later date as determined by the Commission.

"TRANSMIT" means cause a Message to be made available for collection in the Message collection facility provided in CHESSE for Messages passing between ASTC and Facility Users.

Note: Rule 16.17 specifies when a Facility User or ASTC is taken to have Transmitted a Message.

"TRANSMUTE" means to cause:

(a) Principal Financial Products to be converted into CDIs, or CDIs to be converted into Principal Financial Products; or

(b) Participating International Financial Products to be converted into FDI's, or FDI's to be converted into Participating International Financial Products;

under these Rules, without any change in beneficial ownership.

"TRANSMUTATION RATIO" means the ratio which identifies the number or fraction of CDIs into which a Principal Financial Product may be converted, and the number or fraction of Principal Financial Products into which a CDI may be converted.

"TRIBUNAL" means the Disciplinary Tribunal or the Appeal Tribunal, as applicable.

"TRIBUNAL PANEL" means the panel established under Rule 12.10.1.

"TRUSTEE COMPANY" means a trustee company within the meaning of State or Territory Trustee Companies legislation or a Public Trustee of a State or Territory.

"UIC" stands for User Identification Code and means a unique numeric code allocated by ASTC to ASTC and each Facility User for the purpose of identifying the source and destination of Messages and which may be:

- (a) the UIC of an Issuer;
- (b) a PID; or
- (c) such other numeric code allocated by ASTC.

"VALID" in relation to a Message, means a Message that:

- (a) identifies the source of the Message in the Message header by specifying a current source UIC that is compatible with the specified AIC;
- (b) correctly identifies the destination of the Message in the Message header by specifying the current UIC for the targeted Message recipient;
- (c) is formatted in accordance with and contains all the mandatory data requirements specified in the EIS;
- (d) has been properly authenticated, (determined by reference to the MAC); and
- (e) meets CHES encryption requirements specified in the EIS.

"WARRANTY AND INDEMNITY PROVISION" means a provision of:

- (a) the Participant Warranties and Indemnities;
- (b) the Issuer Warranties and Indemnities; or
- (c) the ASTC Indemnity.

"WITHDRAWAL INSTRUCTIONS" means written or oral instructions from a Participant Sponsored Holder to the Controlling Participant for the withdrawal of Financial Products from a Participant Sponsored Holding and includes instructions:

- (a) for the Conversion of Financial Products in a Participant Sponsored Holding to any other mode of Holding;
- (b) to initiate a change of sponsorship for the Financial Products;
- (c) to endorse or initiate an off market transfer of Financial Products; or
- (d) to accept a takeover offer for the Financial Products on behalf of the Participant Sponsored Holder;

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(e) to accept a takeover offer for the Securities on behalf of the Participant Sponsored Holder.

Introduced 11/03/04 Origin SCH 21.13 Amended 09/05/05 06/06/05

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[CO 04/166]
CHESS-APPROVED FOREIGN SECURITIES -- AMENDMENT

Issued 26/2/2002

Class Order [CO 04/166] amends [CO 02/284] by replacing in the Schedule the term 'SCH business rules' with the term 'ASTC operating rules'.

Australian Securities and Investments Commission
Corporations Act 2001 -- Subsection 1075A(1) -- Variation

Under subsection 1075A(1) of the Corporations Act 2001 the Australian Securities and Investments Commission varies Class Order [CO 02/284] by, in the Schedule, omitting "SCH business rules" and substituting "ASTC operating rules".

Dated this 26th day of February 2004

Signed by Brendan Byrne
as a delegate of the Australian Securities and Investments

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