

# Corporate Governance Principles

This section of our report describes the main elements of our corporate governance structure. James Hardie also has a Corporate Governance section in the Investor Relations area of its website ([www.jameshardie.com](http://www.jameshardie.com)) to provide more detailed information on our governance arrangements, charters and policies. Information on this section of the website is progressively updated and expanded to ensure it presents the most up-to-date information on our corporate governance arrangements.

## Corporate Governance at James Hardie

James Hardie is a public limited liability company (*naamloze vennootschap*) incorporated under Dutch law.

As a multi-national organisation, James Hardie operates under the regulatory requirements of numerous jurisdictions and organisations, including the Dutch Authority Financial Markets (AFM), the Australian Stock Exchange (ASX), the Australian Securities and Investment Commission (ASIC), the New York Stock Exchange (NYSE), the US Securities and Exchange Commission (SEC) and various other rule-making bodies. We believe it is important that our behaviour reflects the spirit, as well as the letter, of the law and we aim to govern the Company in a way that meets or exceeds appropriate community expectations.

James Hardie's corporate governance framework is reviewed regularly and upgraded or changed as appropriate to reflect our and our stakeholders' interests, changes in law and current best practices. We have, for example, recently undertaken a corporate governance review in each of the jurisdictions in which we operate and the results of this review are reflected in this report.

Our corporate governance standards apply to all of our subsidiaries.

## Dutch Corporate Governance Code

On 9 December 2003, a new Dutch Code (the Code) on Corporate Governance was published by the Dutch Corporate Governance Committee (the Tabaksblat Committee). The Code includes a set of principles and best practice provisions, thereby creating a set of standards that govern the conduct of members of the Managing Board, the Supervisory Board and shareholders.

From the annual report for the financial year started on or after 1 January 2004 onwards, listed Dutch companies are obliged to explain their corporate governance structure in a separate section of their annual report. In this section, listed Dutch companies must indicate expressly to what extent they apply the best practice provisions of the Code and, if they do not, why and to what extent they do not apply them.

The Code applies to James Hardie because it is a Dutch listed public limited liability company. We are required to report on the best practice provisions in the Code for this fiscal year.

## ASX Principles and Recommendations

In March 2003, the ASX Corporate Governance Council released a publication titled *Principles of Good Corporate Governance and Best Practice Recommendations*, setting out ten core principles and 28 best practice recommendations which the ASX Corporate Governance Council believes underlie effective corporate governance.

Our compliance with the ASX Corporate Governance Council's Best Practice Recommendations (ASX Corporate Governance Council Recommendations) is noted throughout this report.

## NYSE Corporate Governance Rules

In accordance with the corporate governance standards adopted by the New York Stock Exchange (NYSE) on 3 November 2004, listed companies that are foreign private issuers (which includes James Hardie) are permitted to follow home country practice in lieu of the provisions of the corporate governance rules contained in Section 303A of the Listed Company Manual, except that foreign private issuers are required to comply with Section 303A.06, Section 303A.11 and Section 303A.12(b) and (c), each of which are discussed below.

Section 303A.06 requires that all listed companies have an Audit Committee that satisfies the requirements of Rule 10A-3 under the Securities Exchange Act of 1934, as amended.

Section 303A.11 provides that listed foreign private issuers must disclose any significant ways in which their corporate governance practices differ from those followed by US companies under the NYSE listing standards.

Section 303A.12(b) provides that each listed company CEO must promptly notify the NYSE in writing after any executive officer of the listed company becomes aware of any material non-compliance with any applicable provisions of this Section 303A.

Section 303A.12(c) provides that each listed company must submit a written affirmation annually to the NYSE about its compliance with the NYSE's corporate governance listing standards and a written interim affirmation each time a change occurs to the Board or any of the committees subject to Section 303A.

James Hardie complies with the mandatory NYSE listing standards and many of the non compulsory standards. In accordance with Section 303A.11, we disclose in this report, and in our Annual Report on Form 20-F that is filed with the SEC, any significant ways in which our corporate governance practices differ from those followed by US companies under the NYSE listing standards. Our Annual Report on Form 20-F is available from the Investor Relations area of our website at [www.jameshardie.com](http://www.jameshardie.com) or from our corporate offices, the addresses of which are shown on page 141, or from the SEC's website, [www.sec.gov](http://www.sec.gov).

## Further Improvement of Our Corporate Governance Structure

In connection with the implementation of the Dutch Corporate Governance Code and the amendment to the Dutch Civil Code, a proposal will be put to our 2005 Annual General Meeting of shareholders to amend our current Articles of Association. The proposal contains an enhancement of the independent character of the Supervisory Board as well as a partial re-allocation of the powers of each of the Managing Board, Supervisory Board and Joint Board (created by the Company to match the one-tier board comprising both executive directors and non-executive directors that is familiar to Australian and US investors).

The combined powers of the Joint Board and the Supervisory Board will be brought in line generally with the powers usually available to the "outside directors" of traditional Dutch multinational companies, through their membership of the Supervisory Board.

The following pages contain an overview of our corporate governance framework.

## Board Structure

James Hardie has 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 (the "Board") comprising all non-executive directors and our CEO.

Although the responsibilities of each of our boards are not currently formalised in charters, we have developed charters of the Managing Board, Supervisory Board and Joint Board. These new charters will become effective on the date of amendment of our Articles of Association and will be put on the Investor Relations area of our website at [www.jameshardie.com](http://www.jameshardie.com).

The table on page 60 of this annual report summarise the composition of our boards and board committees and each board member's attendance at meetings during the year.

## Managing Board

### Members

The Managing Board includes only executive directors. It consists of 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 Joint 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 Chairman and one member as the 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, more or all members of the Managing Board are prevented from acting, or are failing to act, the Joint Board is authorised to designate a person temporarily in charge of management.

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 by the Supervisory Board.

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

### Responsibilities

The Managing Board manages James Hardie. It is responsible for:

- the general affairs, operations and finance; and
- achieving James Hardie's goals, strategy and policies, and 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 exercise the duties of the Supervisory Board. In discharging its duties, the Managing Board takes into account the interests of James Hardie, its enterprise (including the interests of its employees) shareholders, other stakeholders and all parties involved in or with James Hardie.

## Supervisory Board

### Members

The Supervisory Board includes only non-executive directors.

It consists of at least two members, or more as determined by the Joint Board. The members of the Supervisory Board are appointed by shareholders at the General Meeting. The Joint Board and any of James Hardie's 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 Joint Board may appoint member(s) of the Supervisory Board to fill any vacancy, provided:

- that these member(s) retire(s) no later than at the end of the first Annual General Meeting following their appointment; and,

- the number of the members of the Supervisory Board appointed by the Joint Board at any given time does not exceed one-third of the aggregate number of members of the Supervisory Board as fixed by the Joint Board.

The Supervisory Board appoints one of its members as Chairman. In our case, this person also chairs the Joint Board. The Supervisory Board is currently chaired by Ms Hellicar.

No member of the Supervisory Board shall hold office for a continuous period in excess of three years or past the end of the third General Meeting of Shareholders following such member's appointment, whichever is the longer, without submitting for re-election.

#### *Responsibilities*

The Supervisory Board is responsible for:

- supervising the policy and actions pursued by the Managing Board; and
- the general course of affairs of James Hardie and the business enterprise it operates.

The Supervisory Board assists the Managing Board with advice relating to the general policy aspects connected with its activities. In discharging its duties, the Supervisory Board takes into account the interests of James Hardie, its enterprise (including the interests of its employees), shareholders, other stakeholders and all parties involved in or with James Hardie.

Members of the Supervisory Board may be suspended and dismissed by the shareholders.

### **Joint Board**

#### *Members*

The Joint Board consists of between three and twelve members as determined by the 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, one or more other members of the Managing Board, to be designated by the Chairman of the Supervisory 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 the Chairman of the Managing Board, ie the CEO.

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

*Our Joint Board structure and composition is consistent with ASX Corporate Governance Council Recommendations 1.1, 2.1, 2.2 and 2.3.*

#### *Responsibilities*

The Joint Board is responsible for overseeing the general course of affairs of James Hardie, approving the strategy set by the Managing Board, and monitoring Company 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 its shareholders. Members of the Joint Board must fulfil their fiduciary duties to shareholders in compliance 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 purposes of the proper performance of their duties.

*The responsibilities of the Joint Board are consistent with ASX Corporate Governance Council Recommendation 1.1.*

#### *Processes*

The Joint Board generally holds at least four 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, 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 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, customers and suppliers to assist directors to better understand our businesses and the markets in which we operate.

### **Directors**

#### **Qualifications**

Our directors possess qualifications, experience and expertise which will assist the board in fulfilling its responsibilities, and assist the Company to achieve future growth. The skills, experience and relevant expertise of each director, and his or her term of appointment, is summarised on pages 36 – 37 of this annual report and also appears on the Investor Relations area of our website ([www.jameshardie.com](http://www.jameshardie.com))

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, and are consistent with ASX Corporate Governance Council Recommendation 1.1.*

## **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.

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

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 the company.

The Joint Board has not set materiality thresholds and considers all relationships on a case-by-case basis, having regard to 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 are 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 who serve on the Nominating and Corporate Governance Committee, the Remuneration Committee and the Audit Committee, a director's independence is determined by the board in accordance with the rules and regulations of the applicable exchange or regulatory body.

In addition, 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.

*This is consistent with ASX Corporate Governance Council Recommendation 2.3, the CEO and Chairman shall not be the same person.*

The Joint Board does not believe that arbitrary limits on the tenure of directors are appropriate or in the best interests of the Company or its 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 Board does not believe that directors should expect to be automatically nominated for re-election at the end of their three-year term, but that their nomination for re-election should be based on their individual performance and our needs.

*Our criteria for determining the independence of directors is consistent with the definition of "independence" set out in ASX Corporate Governance Council Recommendation 2.1. Our Chairman is independent – ASX Corporate Governance Council Recommendation 2.2.*

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

Under the NYSE listing standards applicable to US companies, Mr Loudon would not be considered to be independent because his son is an employee of our independent registered public accounting firm. However, his son does not work, and has never worked, on our audit or otherwise performed services for us. Accordingly, despite the fact that Mr Loudon is not independent under the NYSE rules, the board of directors has resolved to have him continue to serve on the Audit Committee and the Remuneration Committee.

Two additional ways in which our corporate governance practices significantly differ from those followed by US domestic companies under NYSE listing standards should be noted. First, in the US, 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 addition, 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. In our case, the charters of the committees of our board of directors only require that we have a majority of independent directors on such committees, unless a higher number is mandatory.

Directors' shareholdings are disclosed elsewhere in this report and 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.

*The details provided above, and elsewhere in this report, are consistent with ASX Corporate Governance Council Recommendation 2.5.*

## **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 the fulfilment of the directors' duties.

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

- visits to our facilities, meetings with management and customers; and
- 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 Joint 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 Joint Board. Under an amendment to the Dutch Civil Code which came into force on 1 October 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 has been developed by the Supervisory and Joint Boards and will be submitted to our shareholders for adoption at the next General Meeting. Furthermore, arrangements 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 James Hardie's share capital will be subject to the approval of shareholders at the 2005 General Meeting.

Under our Articles of Association, the Joint Board determines the remuneration of the members of the Supervisory Board, provided that the total amount does not exceed a maximum sum approved by shareholders at the General Meeting. Under the amendment to the Dutch Civil Code, the total remuneration of the members of the Supervisory Board will always be determined by shareholders.

### **Indemnification**

Our Articles of Association generally provide that we will indemnify any person who is or 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 generally will not be available if the person seeking indemnification acted with gross negligence or wilful 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.

### **Management Succession**

The Joint 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 Joint Board has three committees: the Audit Committee; the Nominating and Governance Committee; and the Remuneration Committee. In addition, a fourth committee, known as the Special Committee, operated between 19 July 2004 and 31 March 2005.

Following the Corporate Governance review and changes proposed to the Articles of Association, the board committee structure is being revised and it is anticipated that the Supervisory Board instead of the Joint Board will have three committees: the Audit Committee, the Nominating and Governance Committee and the Remuneration Committee.

### **Audit Committee**

Following our recent corporate governance review, changes were made to update and expand our Audit Committee Charter. The key aspects of the charter, as amended, at the date of this annual report are set out below.

#### *Members and Independence*

The Audit Committee contains at least three members of the Board, appointed by the 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 mandatorily require more members of the Audit Committee to 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 Board in accordance with the rules and regulations of the applicable exchange or regulatory body.

All members must be financially literate and must have sufficient business, industry and financial expertise to act effectively as members of the Audit Committee, as determined by the Board. At least one member must have accounting or related financial management expertise, as determined by the Board. In addition, at least one member of the Audit Committee shall be an "audit committee financial expert" as determined by the Board in accordance with US Securities and Exchange Commission rules.

The 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 Board. The Chairman of the Audit Committee must not be the current Chairman of the Board or a former member of the

Managing Board.

At the date of this annual report, the members of the Audit Committee are Mr Brown (Chairman), Mr Loudon, Mr Clark and Ms Hellicar.

Under the NYSE listing standards applicable to US companies, Mr Loudon would not be considered to be independent because his son is an employee of our independent registered public accounting firm. However, his son does not work, and has never worked, on our audit or otherwise performed services for us. Accordingly, despite the fact that Mr Loudon is not independent under the NYSE rules, the Board has resolved to have him continue to serve on the Audit Committee.

#### *Purpose, Duties and Responsibilities*

The Audit Committee provides advice and assistance to the Supervisory Board in fulfilling the Board's 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 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 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 Board. The Chairman of the Audit Committee may represent the entire Audit Committee for the purposes of quarterly reviews. In overseeing the financial reporting process, the Audit Committee:

- Oversees the submission of financial information by the Company (including information relating to the Company's choice of accounting policies, the application and assessment of the effects of new relevant legislation, and information on the treatment of estimated entries in the annual accounts).
- Meets to review and discuss with management and the External Auditor the annual audited and quarterly financial statements of the Company, including: (i) an analysis of the External Auditor's judgment as to the quality of the Company's accounting principles, including significant financial reporting issues and judgments made in connection with the preparation of the financial statements; (ii) the Company's specific disclosures

under "Management's Discussion and Analysis of Financial Condition and Results of Operations," including accounting policies that may be regarded as critical; and (iii) major issues regarding the Company's accounting principles and financial statement presentations, including any significant changes in the Company's selection or application of accounting principles and financial statement presentations.

- Assesses whether the external reporting is consistent with the members of the Audit Committee's information and knowledge and is adequate for shareholder needs.
- Reviews and discusses corporate policies with respect to earnings press releases, as well as financial information and earnings guidance, if any, provided to analysts and ratings agencies.

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

- a. the identification of strategic, operational and financial risks;
- b. the establishment of effective systems to monitor, assess, prioritise, mitigate and manage risk; and
- c. 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. Specifically, the Audit Committee:

- Is responsible, in its capacity as a committee of the Board, for the selection, retention, compensation, and general oversight of the work of the External Auditor. Accordingly, it recommends the appointment and, as appropriate, the termination of the External Auditor to the General Meeting of shareholders. The External Auditor reports directly to the Audit Committee. At least every four years, the Audit Committee shall, together with the Managing Board, thoroughly assess the functioning of the External Auditor in the various entities and capacities in which the External Auditor operates. The main conclusions of the assessment are notified to the General Meeting, accompanied by, if appropriate, a proposal for the replacement of the External Auditor and appointment of a new External Auditor.
- Reviews all audit reports provided to the Company by the External Auditor.
- Obtains and reviews, at least annually, a report by the External Auditor describing: (i) the External Auditor's internal quality-control procedures; (ii) any material issues raised by the most recent internal quality-control review, peer review, or by any inquiry or investigation by governmental or professional authorities, within the preceding five years relating to one or more independent audits carried out by the External Auditors, as well as any steps taken by the External Auditor to deal with any such issues; and (iii) all relationships between the External Auditor and the Company.

- Approves in advance all audit services to be provided by the External Auditor.
- Establishes policies and procedures for the engagement of the External Auditor to provide permissible non-audit services, which shall include pre-approval of all permissible non-audit services to be provided by the External Auditor, and determines the involvement of the External Auditor in respect of the contents and publication of financial reporting by the Company other than the annual accounts.
- Considers, at least annually, the independence of the External Auditor, including whether the External Auditor's performance of permissible non-audit services is compatible with the auditor's independence, and obtains and reviews a report by the External Auditor describing any relationships between the External Auditor and the Company or any other relationships that may adversely affect the independence of the External Auditor. At least once a year, the Audit Committee shall, together with the Managing Board, report to the Board on the developments concerning the relationship with the External Auditor, in particular its independence. The report shall address issues including the adequacy of the rotation of the partners within the External Auditor firm, and the appropriateness of any non-audit services provided by the External Auditor. Ongoing retention of the External Auditor will take into account the outcome of this report.
- Oversees the compliance with recommendations and observations of the External Auditor.
- Reviews and discusses with the External Auditor: (i) the scope of the audit, the results of the audit, any irregularities in respect of the content of the financial reporting, and any difficulties the External Auditor encountered in the course of its audit work, including management's response, any restrictions on the scope of the External Auditor's activities or on access to requested information, and any significant disagreements with management; and (ii) any reports of the External Auditor with respect to interim periods.
- Establishes policies for the hiring of employees and former employees of the External Auditor.

**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 (including the Company's internal audit director from time to time). 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. Specifically, the Audit Committee:

- Discusses with the internal auditors the overall scope and plans for its audit activities.
- Reviews and approves the annual internal audit plan and the related budget and work program.

- Reviews all internal audit reports.
- Oversees the implementation of corrective actions by management personnel.

In addition, the Audit Committee meets separately and periodically with all providers of internal audit services, at either the committee's or the internal auditor's request, and reviews and discusses the scope and results of the internal audit program. At least annually, the Audit Committee assesses the performance and objectivity of the internal audit function, including review of the internal audit program and co-ordination between internal and external auditors, and the need for any changes.

**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.

**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 telephonically, 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 Board meeting after each meeting of the Audit Committee. The Audit Committee reports regularly to the 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 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. 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 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 Board.

#### *Annual Review*

The Audit Committee conducts an annual performance review of the Audit Committee and reports its findings to the 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 policies, including reviewing related party transactions and other conflict of interest issues as they arise.

#### *Reporting*

In addition to providing the Board with a report and minutes of each of its meetings, the Audit Committee will inform the 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 Board.

*We have an Audit Committee (ASX Corporate Governance Council Recommendation 4.2); its structure is consistent with ASX Corporate Governance Council Recommendation 4.3; it has a charter (ASX Corporate Governance Council Recommendation 4.4) and we have provided the information indicated in the Guide to Reporting (ASX Corporate Governance Council Recommendation 4.5).*

Our Audit Committee Charter, as amended, is available on our Investor Relations website at [www.jameshardie.com](http://www.jameshardie.com)

#### **The Auditor Attends the Annual Information Meeting**

*Our auditor attends the Annual Information Meeting, consistent with ASX Corporate Governance Council Recommendation 6.2.*

#### **Certifying Financial Reports**

Under United States law, the Chief Executive Officer and Chief Financial Officer certify that our accounts are a fair presentation of our financial condition and results in accordance with US law. Similarly, the CEO and CFO provide a sign-off in accordance with US requirements.

*This is an appropriate certification and sign-off with regard to the laws governing the accounts of the Company and is also an appropriate certification and sign-off in relation to our accounts for the purposes of ASX Corporate Governance Council Recommendations 4.1 and 7.2.*

#### **Nominating and Governance Committee**

Our Nominating and Governance Committee was formed in 2002 and operates in accordance with ASX Corporate Governance Council Recommendation 2.4. Following our recent corporate governance review, changes were made to update and expand our Nominating and Governance Committee Charter. The key aspects of the charter, as amended, at the date of this annual report are set out below.

#### *Members and Independence*

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

The majority of the members of the committee must be independent unless a greater number are 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 who serve on the Nominating and Governance Committee, a director's independence is determined by the Board in accordance with the rules and regulations of the applicable exchange or regulatory body.

The Joint 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 Board.

At the date of this annual report, the members of the Nominating and Governance Committee are Mr McGauchie (Chairman), Mr Cameron, Mr Clark and Ms Hellicar.

#### *Purpose, Duties and Responsibilities*

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

- Develop criteria for identifying and evaluating candidates for the Managing Board and the Board. These criteria include a candidate's business experience and skills, independence, judgment, integrity, ability to commit sufficient time and attention to the activities of the Managing Board and Board, as well as the absence of any potential conflicts with the Company's interests. In applying these criteria, the committee considers the needs of the Managing Board and the Board as a whole and seeks to achieve a diversity of occupational and personal backgrounds on the Board.

- Identify and review the qualifications of, and recruit candidates for, the Managing Board and the Board.
- Assess the contributions and independence of incumbent directors in determining whether to recommend them for re-election to the Board.
- Establish a procedure for the consideration of candidates for the Managing Board and the Board recommended by the Company's stockholders.
- Recommend to the Board candidates for election or re-election to the Managing Board and the Board, all to be elected by shareholders at a General Meeting.
- Recommend to the Board candidates to be appointed by the Board as necessary to fill vacancies and newly created directorships and make recommendations for the removal of directors.
- Develop and recommend to the Board a set of corporate governance principles and review and recommend changes to these principles, as necessary.
- Make recommendations to the Board concerning the structure, composition and functioning of the Board and its committees.
- Recommend to the Board candidates for appointment to board committees and consider periodically rotating directors among the committees.
- Review and recommend to the Board retirement and other tenure policies for directors.
- Review directorships in other public companies held by or offered to directors and senior officers of the Company.
- Review and assess the channels through which the Board receives information, and the quality and timeliness of information received.
- Review the Company's succession plans relating to the CEO and other senior officers.
- Periodically evaluate the functioning of the individual members of the Managing Board and the Board and report the results of the evaluation to the Board.
- Periodically evaluate the scope and composition of the Managing Board and the Board, and propose the profile of the Board.
- Supervise the policy of the Managing Board in relation to the selection and appointment criteria for senior management.
- Annually evaluate the performance of the committee and the adequacy of the committee's charter.
- Perform such other duties and responsibilities as are consistent with the purpose of the committee and as the Board or the committee deems appropriate.

#### *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 or telephonically, 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 full Board with respect to its meetings.

#### *Report*

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

Our Nominating and Governance Committee Charter, as amended, is available from the Investor Relations area of our website at [www.jameshardie.com](http://www.jameshardie.com)

*The structure and responsibilities of the Nominating and Governance Committee are consistent with ASX Corporate Governance Council Recommendation 2.4; it provides the information indicated, consistent with ASX Corporate Governance Council Recommendation 2.5.*

#### **Remuneration Committee**

Following our recent corporate governance review, changes were made to update and expand our Remuneration Committee Charter. The key aspects of the charter, as amended, at the date of this annual report 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 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 the Remuneration Committee, a director's independence shall be determined by the Board in accordance with the rules and regulations of the applicable exchange or regulatory body.

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 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 Board. The Chair of the Remuneration committee may not be the current Chairman of the Board or a former member of the Managing Board.

At the date of this report, the members of the Remuneration Committee are Mr Barr (Chairman), Mr Loudon and Ms Hellicar.

Under the NYSE listing standards applicable to US companies, Mr Loudon would not be considered to be independent because his son is an employee of our independent registered public accounting firm. However, his son does not work, and has never worked, on our audit or otherwise performed services for us. Accordingly, despite the fact that Mr Loudon is not independent under the NYSE rules, the board of directors has resolved to have him continue to serve on the Remuneration Committee.

### *Purpose, Duties, and Responsibilities*

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

- Oversee the Company's overall remuneration structure, policies and programs, assess whether the Company's remuneration structure establishes appropriate incentives for management and employees, and approve any significant changes in the Company's remuneration structure, policies and programs.
- Administer and make recommendations to the Board with respect to the Company's incentive-compensation and equity-based remuneration plans, including the Company's 2001 Equity Incentive Plan.
- Review the remuneration of directors, for service on the Board and the Board committees and recommend changes in remuneration to the Board.
- Prepare a proposal for the Board concerning the remuneration policy for the members of the Managing Board to be put to a General Meeting.
- Review and make recommendations to the Board on the Company's recruitment, retention and termination policies and procedures for senior management.
- Prepare a proposal concerning the individual remuneration of the members of the Managing Board to be put to the Board, including: (i) the remuneration structure; and (ii) the amount of fixed remuneration, shares and/or options and/or other variable remuneration components, pension rights, severance pay and other forms of remuneration to be awarded, as well as the related performance criteria.
- Review and approve corporate goals and objectives relevant to the remuneration of the members of the Managing Board, evaluate the performance of the members of the Managing Board in light of those goals and objectives, and recommend to the Board the remuneration of the members of the Managing Board.

- Prepare the remuneration report on the remuneration policies for the Managing Board to be put to the Board for adoption. The remuneration report comprises a report on the way in which the remuneration policy was implemented in the most recent financial year as well as an outline of the remuneration policy that will be implemented in the following years. At a minimum, the outline must contain the information as referred to in best practice provision II.2.10 of the Dutch Corporate Governance Code. The remuneration report shall be posted on the Company's website.
- Make recommendations regarding the remuneration of the Company's other senior executives.
- Approve stock option and other stock incentive awards for senior executives.
- Review and approve the design of incentive schemes and other benefit plans pertaining to senior executives.
- Review and recommend employment agreements and severance arrangements for senior executives, including change-in-control provisions, plans or agreements.
- Approve, amend or modify the terms of any remuneration or benefit plan that does not require shareholder approval.
- Annually evaluate the performance of the Remuneration Committee and the adequacy of this charter.
- Perform such other duties and responsibilities as are consistent with the purpose of the Remuneration Committee and as the Board or the Remuneration Committee deems appropriate.

### *Sub-committees*

The Remuneration Committee may delegate any of the foregoing duties and responsibilities to a sub-committee of the Remuneration Committee consisting of not less 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 telephonically, 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 full Board with respect to its meetings and activities.

### *Report*

The Remuneration Committee prepares a report of its deliberations and findings and provides the 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.

Further information on remuneration matters is also set out in the Directors' Report on pages 63 – 78.

Our Remuneration Committee Charter, as amended, is available from the Investor Relations area of our website at [www.jameshardie.com](http://www.jameshardie.com)

As part of the Directors' Report we have also included a Remuneration Report which provides disclosure about the Company's Remuneration policies.

*The establishment of a Remuneration Committee is consistent with ASX Corporate Governance Council Recommendation 9.2. The structure and disclosure of our remuneration arrangements is consistent with ASX Corporate Governance Council Recommendations 9.1, 9.3, 9.4 and 9.5.*

### Special Committee

In July 2004, the Board established a committee of the Board to oversee our participation in the SCI's investigation into the Foundation. The Special Committee was wound-up on 31 March 2005.

Ms Hellicar (Chairman), Mr McGauchie and Mr Gillfillan served on the Special Committee. Its responsibilities included:

- Reviewing the SCI's report, which was delivered to the NSW Government on 21 September 2004, and recommending to the Joint Board appropriate actions in response to its findings; and
- Overseeing any developments with respect to or discussion of arrangements as to the SCI's findings and taking any recommendations to the Joint Board and, ultimately, to our shareholders for approval.

### 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.

### 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.

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 an appropriate level of management or by the Joint Board.

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 Best Practice Provision II.1.4 of the Dutch Corporate Governance Code, our Managing Board has assessed our internal risk management and control systems. Based on the Managing Board's 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 2005. Consequently, the Managing Board has concluded that we are in compliance with the requirements of Best Practice Provision II:1.4 of the Dutch Corporate Governance Code.

Notwithstanding the foregoing, our management does 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 override of 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 policies or procedures.

Our analysis of our internal risk management and control systems for purposes of the Dutch Corporate Governance Code 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, including James Hardie, the deadline for complying with the requirements of Section 404 has been extended to the first fiscal year ending on or after 15 July 2006 or, in James Hardie's case, 31 March 2007. Accordingly, our Section 404 report will appear in our Annual Report on Form 20-F for the fiscal year ending 31 March 2007.

*Our risk management procedures are consistent with ASX Corporate Governance Council Recommendations 7.1, 7.2 and 7.3.*

## **Business Conduct and Ethics**

We seek to maintain high standards of integrity and we are committed to ensuring that James Hardie conducts its business in accordance with high standards of ethical behaviour.

We require our employees to comply with the spirit and the letter of all laws and other statutory requirements governing the conduct of James Hardie's 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.

Specific action, including training and education, has been taken to ensure that 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.

## **Ethics Hotline (Whistleblower)**

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 policy. James Hardie has developed and is progressively implementing telephone Ethics Hotlines to allow employees in each jurisdiction in which we operate to anonymously report any concerns.

The Ethics Hotline will be introduced progressively in James Hardie's operations in the Netherlands, the United States and Australia before 31 July 2005. The policy has been customised to take into account the CLERP 9 requirements to protect the privacy of individuals who use the service, in line with Australian standards.

Our Code of Business Conduct and Ethics also covers many aspects of Company policy that govern compliance with legal and other responsibilities to stakeholders.

Our Code of Business Conduct and Ethics, as amended, is available from the Corporate Governance area of our Investor Relations website at [www.jameshardie.com](http://www.jameshardie.com)

*Our actions, outlined above, to promote ethical and responsible decision-making are consistent with ASX Corporate Governance Council Recommendations 3.1, 3.2, 3.3 and 10.1.*

*Our Code of Business Conduct and Ethics is consistent with ASX Corporate Governance Council Recommendation 10.1.*

## **Continuous Disclosure and Market Communication**

We comply with all relevant disclosure laws and listing rules in Australia (ASX and ASIC), the United States (SEC and NYSE) and the Netherlands (AFM).

### **Disclosure**

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

The policy is also designed to ensure that James Hardie satisfies its legal obligations on disclosure to the ASX and under the Australian Corporations Act (2001) as well as its obligations in the United States where the Company is 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;
- 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 roadshow presentations;
- Australian and United States site visits and briefings on strategy for investment analysts;
- a quarterly newsletter available to shareholders and other

interested parties;

- 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 the Company's General Meetings take place in the Netherlands, we conduct 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 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](http://www.jameshardie.com) (select Investor Relations, then Annual Meetings). The webcast then remains on the Company's website so it can be replayed later if required.

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.

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 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.

Explanatory notes to the Notice of Meeting inform shareholders of all facts and circumstances relevant to the proposed resolutions. The explanatory notes are sent to shareholders and made available on our Investor Relations website at [www.jameshardie.com](http://www.jameshardie.com)

*Our Continuous Disclosure and Market Communication Policy is consistent with ASX Corporate Governance Council Recommendation 5.1.*

*Our communication strategies are consistent with ASX Corporate Governance Council Recommendation 6.1.*

Our Continuous Disclosure and Market Communication Policy is available in the Investor Relations area of our website at [www.jameshardie.com](http://www.jameshardie.com)

### **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. James Hardie 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.

The Joint Board recognises that it is the individual responsibility of each director and employee of James Hardie to ensure he or she complies with the spirit and the letter of insider trading laws and that notification to the Joint Board in no way implies Joint Board approval of any transaction. Our Insider Trading Policy is available in the Investor Relations area of our website at [www.jameshardie.com](http://www.jameshardie.com)

*Our Insider Trading Policy and rules are consistent with ASX Corporate Governance Council Recommendation 3.2.*

### **Discussion of Dutch Corporate Governance Codes and Requirements**

#### **Compliance with the Dutch Corporate Governance Code**

James Hardie's corporate governance structure and compliance with the Code is the joint responsibility of the Managing Board and the Supervisory Board and they are accountable for this to shareholders at the General Meeting.

Not applying a specific best practice provision is not in itself considered objectionable by the Code, and may well be justified because of particular circumstances relevant to James Hardie. In accordance with the requirements of Dutch law, we describe below instances where James Hardie does not (yet) fully comply with the letter of a principle or best practice provision in the Code applying to the Managing Board or the Supervisory Board. To the extent we do not apply such principles and best practice provisions, or do not intend to apply these in the current or the subsequent financial year, we state the reasons.

#### *Managing Board*

On the basis of article 14.2 of James Hardie's Articles of Association, a member of the Managing Board will be appointed for a maximum term of three years, except for the Chief Executive Officer. Pursuant to Best Practice Provision II.1.1 of the Code, a member of the Managing Board shall be appointed for a maximum term of four years. On 22 October 2004, Mr Gries was appointed by the Joint Board as interim member of the Managing Board with the title Chief Executive Officer. Mr Gries will be nominated for appointment as Member of the Managing Board at the next Annual General Meeting for a term to coincide with his tenure as CEO. We believe that not setting a limitation for

the appointment of our Chief Executive Officer is conducive to the continuity of our management.

With regard to the Best Practice provisions of the Code dealing with the Managing Board's remuneration:

1. The Principle preceding Best Practice Provision II.2.9 provides that the remuneration of members of the Managing Board shall be resolved within the scope of the Remuneration Policy adopted by the General Meeting. Our remuneration policies and practices are well documented in the Directors' Report on pages 63 – 78 and our Supervisory Board has recently adopted a Remuneration Policy for members of the Managing Board. This policy will be presented to shareholders for adoption at the 2005 General Meeting.
2. The Principle preceding Best Practice Provision II.2.9 also provides that schemes whereby members of the Managing Board are remunerated in the form of shares or rights to acquire shares shall be submitted to the General Meeting for approval. A 2005 Managing Director Transitional Stock Option Plan will be presented at the 2005 General Meeting of Shareholders for approval.
3. Best Practice Provision II.2.6 provides that neither the exercise price nor the other conditions regarding options granted to members of the Managing Board be modified during the term of the options, except as prompted by structural changes relating to shares or the Company in accordance with established market practice. James Hardie may modify the term of the options as specified in the 2005 Managing Director Transitional Stock Option Plan or employment agreement with a member of the Managing Board upon the departure of the employee.

Best Practice Provision II.2.7. provides that a severance payment to a member of the Managing Board shall not exceed one time the amount of the fixed salary. At the time of the resignation of Mr Macdonald as Chief Executive Officer and member of the Managing Board, we agreed to pay him a higher amount, based on his employment contract (entered into before the new Dutch Code came into effect). In contracts with members of the Managing Board, the severance payments are agreed upon on an individual basis, taking into account home country practice and the member of the Managing Board's specific situation, provided that a severance payment can not exceed the limits set out in the Corporations Act (2001) unless approved by shareholders at a General Meeting.

Best Practice Provision II.2.8. provides that a company shall not grant loans to members of the Managing Board. We had granted a loan to Mr Macdonald which was settled at the time of his resignation.

#### *Supervisory Board*

Best Practice Provision III.1.1 provides that the Supervisory Board adopts a Supervisory Board Charter. Subsequent

to the end of fiscal year 2005, the Supervisory Board adopted a Supervisory Board Charter which will become effective once amendments to the Articles of Association are approved at the 2005 General Meeting. The Supervisory Board Charter will then be put on the Investor Relations area of our website at [www.jameshardie.com](http://www.jameshardie.com).

Best Practice Provision III.3.1 provides that the Supervisory Board adopts a profile of its size and composition. Subsequent to the end of fiscal year 2005, the Supervisory Board has prepared a Supervisory Board profile that satisfies the recommendations of the Code. The profile is available on the Investor Relations area of our website at [www.jameshardie.com](http://www.jameshardie.com).

Best Practice Provision III.3.6 provides that the Supervisory Board draws up a retirement schedule. The dates of re-election of the members of the Supervisory Board are available in the Investor Relations area of our website and, subsequent to the end of fiscal year 2005, the Supervisory Board has prepared a Supervisory Board retirement schedule that satisfies the recommendations of the Code. The schedule is available on the Investor Relations area of our website [www.jameshardie.com](http://www.jameshardie.com).

Principle III.5 provides that if the Supervisory Board comprises more than four members, it shall appoint from among its members an audit committee, a remuneration committee and a selection and appointment committee. James Hardie has established an Audit Committee, Nominating and Governance Committee and Remuneration Committee which currently all operate as committees of the Joint Board instead of the Supervisory Board, although all committee members are only Supervisory Board members. Following approval by shareholders of amendments to our Articles of Association, these committees will become committees of the Supervisory Board.

Best Practice Provision III.5.1 provides that charters for each of the committees of the Supervisory Board shall be adopted by the Supervisory Board. While James Hardie had charters for each of the Audit Committee, Nominating and Governance Committee and the Remuneration Committee throughout fiscal year 2005, these charters were subsequently updated to reflect the Code's requirements with regards to the responsibilities of each of the committees. The revised charters are available on the Investor Relations area of our website [www.jameshardie.com](http://www.jameshardie.com).

Best Practice Provision III.6.5 provides that the Supervisory Board Charter should include provisions on dealing with conflicts of interests between James Hardie and the members of the Managing Board or Supervisory Board. Articles 16 and 24 of James Hardie's Articles of Association deal with potential conflicts of interest between members of the Managing and Supervisory Board. Subsequent to the end of fiscal year 2005, the Supervisory Board finalised a Supervisory Board Charter which includes the requirements

relating to conflicts of interest as recommended by the Code.

Best Practice Provision III.7.1 provides that members of the Supervisory Board shall not be granted shares by way of remuneration. Currently, on the basis of James Hardie's Supervisory Board Share Plan, members of the Supervisory Board are obliged to receive a minimum of US\$10,000 of their annual remuneration in the form of shares with the option to use a larger part of their annual remuneration to buy shares. It is intended to continue, and indeed enhance, this practice, which assists in aligning directors' interests with those of shareholders.

#### **Limitations on Right to Hold Our Shares**

Subject to certain exceptions, our Articles of Association prohibit the holding of shares 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:

- the number of shares 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 our issued and outstanding share capital; or
- the voting rights which any person, directly or indirectly, is entitled to exercise at a General Meeting increase from 20% or below to over 20% or from a starting point that is above 20% and below 90% of the total number of such voting rights which may be exercised by any person at a General Meeting. 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:
  - the acquisition of control over James Hardie takes place in an efficient, competitive and informed market;
  - the holders of the shares 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 James Hardie, have a reasonable time to consider the proposal, and are given enough information to enable them to assess the merits of the proposal; and
  - as far as practicable, the holders of shares or CUFS *inter alia* 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 James Hardie. The Articles of Association include certain exceptions to this prohibition.

The Supervisory Board may cause James Hardie to exercise these powers if James Hardie 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 lodgement of a declaration by the Joint Board with the relevant authority in accordance with Dutch law.

Although these provisions may help to ensure that no person may acquire voting control of James Hardie without making an offer to all shareholders, these provisions may also have the effect of delaying or preventing a change in control of James Hardie.

#### **Updated Information**

We have a dedicated section on corporate governance as part of our Investor Relations area of our website at [www.jameshardie.com](http://www.jameshardie.com)

Information on this section of the website is progressively updated and expanded to ensure it presents the most up-to-date information on our corporate governance systems.