As filed with the Securities and Exchange Commission on June 23, 2009

Registration No. 333-

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

Form F-4

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

JAMES HARDIE INDUSTRIES N.V.

(Exact name of registrant as specified in its charter)

The Netherlands	3272	Not Applicable
(State or other jurisdiction of incorporation or organization)	*(Primary Standard Industrial Classification Code Number)*	*(I.R.S. Employer Identification No.)*

Atrium, 8th floor
Strawinskylaan 3077
1077 ZX Amsterdam, The Netherlands
+31 20 301 2980 (Telephone) +31 20 404 2544 (Facsimile)
(Address, including zip code and telephone number, including area code of registrant's principal executive offices)

CT Corporation System
111 Eighth Avenue
New York, New York 10011
(212) 894-8940
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:
Michael E. Gizang
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 10036-6522
(212) 735-3000

Approximate date of commencement of proposed sale to the public: As soon as practicable after this registration statement becomes effective and all other conditions to the consummation of the transactions described in this prospectus have been satisfied or waived.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act of 1933, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: ☐

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered(1)	Amount to be Registered	Proposed Maximum Offering Price per Unit	Proposed Maximum Aggregate Offering Price(3)	Amount of Registration Fee(4)
James Hardie Industries SE Ordinary Shares	102,000,000(2)	$3.21	$327,205,851	$18,258

(1) American depositary shares issuable on deposit of securities representing James Hardie Industries SE ordinary shares registered hereby have been registered pursuant to a separate Registration Statement on Form F-6.

(2) Based on (i) the estimated number of James Hardie Industries N.V. ordinary shares beneficially held by seurityholders resident in the United States of America, and (ii) the one-to-one basis on which each James Hardie Industries N.V. ordinary share will be transformed into a James Hardie Industries SE ordinary share.

(3) The proposed maximum aggregate offering price of all of the James Hardie Industries SE shares registered in connection with the Proposal is $327,205,851. Pursuant to Rules 457(f)(1) and 457(c) under the Securities Act and solely for the purpose of calculating the registration fee, the proposed maximum aggregate offering price is equal to the aggregate market value of the approximate number of James Hardie Industries N.V. ordinary shares to be transformed in the Proposal (calculated as set forth in note (2) above) based upon a market value of $3.21 per James Hardie Industries N.V. ordinary share, the average of the high and low sale prices per James Hardie Industries N.V. CUFS on the ASX Limited on June 19, 2009 and converted to United States dollars based on the Federal Reserve Bank of New York foreign exchange rate for Australian dollars on June 19, 2009.

(4) Calculated by multiplying 0.00005580 by the proposed maximum aggregate offering price.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment that specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

The information contained in this preliminary prospectus may change. The registrant may not complete the transaction and issue these securities until the registration statement filed with the US Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state or jurisdiction where the offer is not permitted.

PRELIMINARY COPY — SUBJECT TO COMPLETION, JUNE 23, 2009

EXPLANATORY MEMORANDUM

James Hardie Industries N.V.
ARBN 097 829 895

Transformation of James Hardie Industries N.V. from a Dutch "NV" company to a Dutch "SE" company and the subsequent transfer of the corporate domicile of the Dutch "SE" company from The Netherlands to Ireland to become an Irish "SE" company (the "Proposal")

Registering 102,000,000 Ordinary Shares of James Hardie Industries SE in the US

Your Directors unanimously recommend that you vote in favour of the Proposal.

This Explanatory Memorandum and the Notice of Meetings included herein are important and require your immediate attention. They should be read in their entirety. If you are in doubt as to what you should do, you should consult your investment adviser or other professional adviser. If you have recently sold all of your James Hardie Industries N.V. securities, please ignore this Explanatory Memorandum and the Notice of Meetings. If you have any queries about this Explanatory Memorandum, the Notice of Meetings, the Proposal or how to vote, or if you need an additional copy of this Explanatory Memorandum, you should call the Information Helpline in Australia at 1800 675 021 (between 8:00 a.m. and 5:00 p.m. (AEST)) or elsewhere in the world at +1-949-367-4900 (between 8:00 a.m.and 5:00 p.m. (Central Time)).

The principal market on which James Hardie Industries N.V. securities trade is the Australian Securities Exchange where they trade in the form of CHESS Units of Foreign Securities, or CUFS, under the symbol "JHX" (International Securities Identification Number AU000000JHX1). American Depository Shares, each representing five units of CUFS, also are quoted on the New York Stock Exchange under the symbol "JHX."

Given the existing geographic spread of beneficial share ownership of James Hardie Industries N.V., this document is subject to disclosure and regulatory requirements in the United States and as such, the form and style of this document have been prepared in accordance with applicable US Securities and Exchange Commission requirements relating to registration statements. This Explanatory Memorandum also constitutes a prospectus under US federal securities laws.

None of the US Securities and Exchange Commission, any US state securities commission, the Australian Securities & Investments Commission or any other regulatory authority has approved or disapproved of these securities or passed upon the adequacy or accuracy of this Explanatory Memorandum. Any representation to the contrary is a criminal offence.

The Proposal involves certain risks. For a discussion of risk factors you should consider in evaluating the Proposal, see "Risk Factors" beginning on page 17.

The date of this Prospectus (herein referred to as the Explanatory Memorandum) is , 2009.

IMPORTANT NOTICES

Terminology

In this Explanatory Memorandum, references to:

- "we," "us," "our," the "company," "Dutch NV," and "JHI NV" refer to James Hardie Industries N.V. We refer to James Hardie Industries SE when domiciled in The Netherlands as "Dutch SE" and James Hardie Industries SE when domiciled in Ireland as "Irish SE."
- "James Hardie" refers collectively to James Hardie Industries N.V. and its controlled subsidiaries.
- "CUFS" refers to CHESS Units of Foreign Securities, each of which represents a beneficial ownership interest in an underlying ordinary share (which we refer to as shares).
- "ADRs" refers to American Depositary Receipts, which are the receipts or certificates that evidence ownership of American Depositary Shares (which we refer to as ADSs), each of which represents a beneficial ownership interest in five CUFS.
- "shareholders" refers to holders of CUFS, ADSs or CUFS converted to shares.
- "A$" refers to Australian dollars and "US$" refers to US dollars.

Certain other capitalised terms used in this Explanatory Memorandum have the meanings ascribed to them in the Glossary in Section 19.

This Explanatory Memorandum, which constitutes a prospectus under US federal securities laws, has been prepared in connection with the registration of 102,000,000 shares of Dutch SE, with the number of shares being registered based on (i) the estimated number of JHI NV shares beneficially held by securityholders resident in the US, and (ii) the one-to-one basis on which each JHI NV share will be transformed into a Dutch SE share.

This Explanatory Memorandum and the Notice of Meetings included herein have been prepared to assist shareholders in deciding how to vote on Stage 1 of the Proposal. You should read this Explanatory Memorandum and the Notice of Meetings in their entirety before making a decision about how to vote on the resolution to be considered at the extraordinary general meeting.

This Explanatory Memorandum contains important information relating to the Proposal. The Notice of Meetings contains important information relating to voting at the extraordinary general meeting, including the record date, the quorum and vote required for approval and how to vote your CUFS, ADSs and CUFS you have converted to shares and the resolution that shareholders are being asked to approve with respect to Stage 1 of the Proposal. A separate notice of meetings regarding the matters to be considered at our annual general meeting, which will be held immediately following the extraordinary general meeting, will be sent to you under separate cover. The notice of meetings for our annual general meeting sets forth, among other things, a description of the matters that will be considered at the annual general meeting and the resolutions that shareholders will be asked to approve at that meeting. If for any reason you do not receive the notice of meetings for the annual general meeting, you should contact us at the address, telephone numbers or e-mail address identified below.

Information Incorporated by Reference

This Explanatory Memorandum incorporates important business and financial information about us by reference and, as a result, this information is not included in or delivered with this Explanatory Memorandum. For a list of those documents that are incorporated by reference into this Explanatory Memorandum, see "Incorporation of Certain Documents by Reference" in Section 14.

Documents incorporated by reference are available from us upon oral or written request without charge. As we file annual reports and furnish other information to the US Securities and Exchange Commission, you also may obtain documents incorporated by reference into this Explanatory Memorandum from the website of the US Securities and Exchange Commission at the URL (or uniform resource locator) http://www.sec.gov or by requesting

them from us by calling the Information Helpline in Australia at 1800 675 021 (between 8:00 a.m. and 5:00 p.m. (AEST)) or elsewhere in the world at +1-949-367-4900 (between 8:00 a.m. and 5:00 p.m. (Central Time)) or in writing by regular and electronic mail at the following address:

James Hardie Industries N.V.
Atrium, 8th floor
Strawinskylaan 3077
1077 ZX Amsterdam, The Netherlands
Attention: Company Secretary
E-Mail: infoline@jameshardie.com

In order to receive timely delivery of the documents in advance of the extraordinary general meeting for Stage 1 of the Proposal, you should make your request no later than August 14, 2009.

A number of documents related to the Proposal also may be found at the Investor Relations area of our website (www.jameshardie.com, select "James Hardie Investor Relations").

Forward-looking Statements

This Explanatory Memorandum, Notice of Meetings and the documents incorporated herein by reference contain forward-looking statements. We may from time to time make forward-looking statements in our periodic reports filed with or furnished to the US Securities and Exchange Commission on Forms 20-F and 6-K, in our annual reports to shareholders, in offering circulars, invitation memoranda and prospectuses, in media releases and other written materials and in oral statements made by our officers, directors or employees to analysts, institutional investors, existing and potential lenders, representatives of the media and others. Statements that are not historical facts are forward-looking statements and for US purposes such forward-looking statements are statements made pursuant to the Safe Harbor Provisions of the Private Securities Litigation Reform Act of 1995. Examples of forward-looking statements include:

- statements about our future performance;
- projections of our results of operations or financial condition;
- statements regarding our plans, objectives or goals, including those relating to our strategies, initiatives, competition, acquisitions, dispositions and/or our products;
- expectations concerning the costs associated with the suspension or closure of operations at any of our plants and future plans with respect to any such plants;
- expectations that our credit facilities will be extended or renewed;
- expectations concerning dividend payments;
- statements concerning our corporate and tax domiciles and potential changes to them;
- statements regarding tax liabilities and related audits and proceedings;
- statements as to the possible consequences of proceedings brought against us and certain of our former directors and officers by the Australian Securities & Investments Commission;
- expectations about the timing and amount of contributions to the Asbestos Injuries Compensation Fund, a special purpose fund for the compensation of proven Australian asbestos-related personal injury and death claims;
- expectations concerning indemnification obligations; and
- statements about product or environmental liabilities.

Words such as "believe," "anticipate," "plan," "expect," "intend," "target," "estimate," "project," "predict," "forecast," "guideline," "aim," "will," "should," "continue" and similar expressions are intended to identify

forward-looking statements but are not the exclusive means of identifying such statements. Readers are cautioned not to place undue reliance on these forward-looking statements and all such forward-looking statements are qualified in their entirety by reference to the following cautionary statements.

Forward-looking statements are based on our estimates and assumptions and because forward-looking statements address future results, events and conditions, they, by their very nature, involve inherent risks and uncertainties. Such known and unknown risks, uncertainties and other factors may cause our actual results, performance or other achievements to differ materially from the anticipated results, performance or achievements expressed, projected or implied by these forward-looking statements. These factors, some of which are discussed under "Risk Factors" beginning on page 17, including those incorporated by reference from our Annual Report on Form 20-F filed with the US Securities and Exchange Commission, include but are not limited to: all matters relating to or arising out of the prior manufacture of products that contained asbestos by our current and former subsidiaries; required contributions to the Asbestos Injuries Compensation Fund and the effect of currency exchange rate movements on the amount recorded in our financial statements as an asbestos liability; 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 customers; a customer's inability to pay; compliance with and changes in environmental and health and safety laws; risks of conducting business internationally; compliance with and changes in laws and regulations; currency exchange risks; the concentration of our customer base on large format retail customers, distributors and dealers; the effect of natural disasters; changes in our key management personnel; inherent limitations on internal controls; use of accounting estimates; and all other risks identified in our reports filed with Australian, Dutch and US securities agencies and exchanges (as appropriate). We caution that the foregoing list of factors is not exhaustive 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 and are statements of our current expectations concerning future results, events and conditions.

You should carefully review all of the information included in this Explanatory Memorandum and the Notice of Meetings, before making a decision on how to vote on Stage 1 of the Proposal to be considered at the extraordinary general meeting.

Intellectual Property

"James Hardie" and any logos are trademarks of James Hardie International Finance B.V., which may be registered in certain jurisdictions. Names of other companies and any other trademarks are owned by their respective owners.

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LETTER FROM THE CHAIRMEN

Dear shareholder: , 2009

For some time, your directors have indicated that James Hardie has been considering the complex issue of the domicile of James Hardie Industries N.V. In our 2008 Annual Report, we indicated that resolving this issue was a very important priority for your directors. Three primary factors have been driving this:

- We believe it is critically important that our key senior managers with global responsibilities are able to spend more time with James Hardie's operations and in its markets. Qualifying for benefits under the tax treaty between the US and The Netherlands (which we refer to as the US/Netherlands Treaty) has become increasingly costly for James Hardie since revisions to the treaty became effective in early 2006, because the revised tax treaty requires these key senior managers to spend a major portion of their time in The Netherlands.
- In June 2008, the US Internal Revenue Service (which we refer to as the US IRS) asserted that James Hardie did not qualify for benefits under the US/Netherlands Treaty for 2006 and 2007. While we ultimately prevailed in that dispute, the US IRS could reassert its position in respect of subsequent time periods and, accordingly, we consider it prudent to mitigate the risk of further disputes with the US IRS.
- Because your directors are proposing to change the company's domicile, we believe it also is efficient to transfer our intellectual property and treasury and finance operations from The Netherlands before the expiry of the favourable tax concessions the company currently enjoys in The Netherlands under the Financial Risk Reserve regime on December 31, 2010.

With these factors in mind, your directors, together with key senior managers and professional advisers, have explored a range of alternatives, including remaining in The Netherlands or moving to the US, Australia or elsewhere in Europe. Your directors determined not to pursue a move to the US or Australia due to, among other reasons, potential tax consequences, additional complexity to James Hardie's corporate structure and practical considerations due to the very high shareholder approval requirements, which are explained in greater detail in this Explanatory Memorandum. After considering potential options, your directors have concluded, for reasons explained in this Explanatory Memorandum, that it is in the best interests of James Hardie and its shareholders for James Hardie to implement a two-stage plan (which we refer to as the Proposal) to:

Stage 1: transform James Hardie to a European Company, which is a public limited company known as a *Societas Europaea* or SE; and

Stage 2: move the corporate domicile of James Hardie from The Netherlands to Ireland.

Importantly, the Proposal will not change the overall commitment of James Hardie to make contributions to the Asbestos Injuries Compensation Fund under the Amended and Restated Final Funding Agreement. However, if a contribution is due to the Asbestos Injuries Compensation Fund in the company's 2011 financial year, which is not yet known, the costs associated with the Proposal will most likely reduce the amount of the company's contribution in that year. The capacity of the Asbestos Injuries Compensation Fund to satisfy claims is linked to the long-term financial success of James Hardie, especially the company's ability to generate net operating cash flow. Implementation of the Proposal is expected to have medium and long-term benefits for the Asbestos Injuries Compensation Fund, as the company's Irish domicile is anticipated to result in reduced tax payments relative to taxes that would be payable if the company remained domiciled in The Netherlands and the intellectual property and treasury and finance operations remained in The Netherlands after December 31, 2010 following the expiry of the Financial Risk Reserve regime.

Each stage of the Proposal has to be undertaken separately and requires a separate shareholder vote. If shareholders approve Stage 1 and it is implemented, a Stage 2 explanatory memorandum seeking approval for Stage 2 will be distributed in late 2009. If shareholders approve both stages, your directors anticipate that

implementation of the Proposal will be completed in early 2010. It is important to implement the Proposal as soon as practicable, as there are risks and costs associated with delay.

In connection with the issue of James Hardie's domicile and in light of the expiry of the Financial Risk Reserve regime in The Netherlands on December 31, 2010, your directors also have considered the location of the company's intellectual property and treasury and finance operations. After review, your directors do not believe James Hardie will receive the full benefits of the Proposal if its intellectual property and treasury and finance operations remain in The Netherlands after the move to Ireland and, on that basis, have determined to transfer these operations to Ireland in connection with the implementation of Stage 1 of the Proposal. The transfer of the company's intellectual property in connection with the Proposal will result in tax in The Netherlands that would not be incurred if the intellectual property remained in The Netherlands. However, we believe that a transfer of the intellectual property following the expiry of the Financial Risk Reserve regime would result in greater tax in The Netherlands.

This Explanatory Memorandum sets out material information relevant to the Proposal. As there are certain risks and disadvantages involved in connection with the implementation of the Proposal, we urge all shareholders to read this document in full and consider both the benefits of the Proposal as well as the risks and disadvantages involved. For example, transaction and implementation costs of the Proposal, including taxes associated with the transfer of the company's intellectual property, are estimated as of the date of this Explanatory Memorandum to range from approximately US$51-71 million. This amount includes approximately US$30-50 million of taxes due in The Netherlands as a result of the transfer of the intellectual property in connection with Stage 1 of the Proposal. The amount of taxes actually due at the time of the transfer of the intellectual property and the company's exit from the Financial Risk Reserve regime in The Netherlands will depend on a number of factors, including the fair market value of the intellectual property at the time of its transfer and our tax bases in the intellectual property, income earned in the company's Financial Risk Reserve account, changes in currency exchange rates and the availability of offsets to the amounts in this account to finance capital and other qualifying expenditures.

KEY BENEFITS

Following a multi-year review of various alternatives, your directors have concluded that the transformation to a European Company and the move to Ireland and a transfer of our intellectual property and treasury and finance operations in connection with the transformation to a European Company is the best course of action at this time and is in the best interests of James Hardie and its shareholders because it:

- allows key senior managers with global responsibilities to spend more time with James Hardie's operations and in its markets because the US/Ireland Treaty does not contain a substantial presence test that requires these managers to spend significant time in Ireland;
- provides greater certainty for James Hardie to obtain benefits under the tax treaty between the US and Ireland than is the case under the US/Netherlands Treaty;
- increases our flexibility to undertake certain transactions under Irish company law, which your directors believe expands the company's future strategic options;
- simplifies the company's governance structure to a single board of directors;
- makes the company's intellectual property and treasury and finance operations eligible for a statutory tax rate that is currently lower than would be the case if these operations remained in The Netherlands after the expiry of the Financial Risk Reserve regime; and
- permits most shareholders to be eligible to receive dividends not subject to withholding tax.

SUMMARY

While the costs associated with implementation of the Proposal and the related transfer of the company's intellectual property and treasury and finance operations are not insignificant, your directors are of the view that the Proposal is the best course of action at this time for James Hardie and its shareholders and, accordingly, unanimously recommend that shareholders vote in favour of the Proposal.

This Explanatory Memorandum includes a Notice of Meetings for Stage 1 of the Proposal. Each director intends to vote his or her shareholding in James Hardie in favour of Stage 1.

If Stage 1 is approved and implemented, we will write to you again with the formal proposal to proceed with Stage 2. Each stage needs to be approved by shareholders if the expected benefits of the Proposal are to be realised.

Sincerely,

Michael Hammes
Chairman
Supervisory and Joint Boards

Louis Gries
Chief Executive Officer and
Chairman Managing Board

INDICATIVE TIMETABLE

The key dates for consideration and implementation of the Proposal are shown below. All times referred to are Australian Eastern Standard Time (which we refer to as AEST) unless otherwise stated.

EVENT	DATE
STAGE 1 OF THE PROPOSAL	
ADR record date for voting at the extraordinary general meeting	Thursday on July 9, 2009 at 5:00 p.m. EDT
CUFS record date for voting at the extraordinary general meeting	Monday on August 17, 2009 at 5:00 p.m.
Extraordinary information meeting of JHI NV — in Australia	Tuesday on August 18, 2009 at 11:30 a.m.
Deadline for submission of Direction Forms for extraordinary general meeting	No later than 4:00 p.m. on August 18, 2009
Deadline for submission of Proxy Forms for extraordinary general meeting	No later than 5:00 p.m. on August 18, 2009
Extraordinary general meeting of JHI NV — in The Netherlands	Friday on August 21, 2009 at 11:00 a.m.
Expected effective date of Stage 1 (if Stage 1 of the Proposal is approved by shareholders and all other conditions are met)	September 30, 2009

If Stage 1 of the Proposal is implemented we expect to seek approval of Stage 2. A further explanatory memorandum will be issued in relation to Stage 2 of the Proposal.

EVENT	DATE
STAGE 2 OF THE PROPOSAL	
ADR record date for voting at the extraordinary general meeting	Friday on November 27, 2009 at 5:00 p.m. EDT
CUFS record date for voting at the extraordinary general meeting	Friday on January 8, 2010 at 5:00 p.m.
Extraordinary information meeting of Dutch SE — in Australia	Monday on January 11, 2010 at 11:00 a.m.
Deadline for submission of Direction Forms for extraordinary general meeting	No later than 4:00 p.m. on January 11, 2010
Deadline for submission of Proxy Forms for extraordinary general meeting	No later than 5:00 p.m. on January 11, 2010
Extraordinary general meeting of Dutch SE — in The Netherlands	Wednesday on January 13, 2010 at 11:00 a.m.
Expected effective date of Stage 2 (if Stage 2 of the Proposal is approved by shareholders and all other conditions are met)	January 29, 2010

The final timetable will depend on a number of factors, some of which will be outside of our control, including various regulatory filings and approvals, as well as the completion of an employee consultation process with respect to each stage of the Proposal and other corporate restructuring steps (see "Key Steps in Connection with the Proposal" in Section 1.2).

Any material changes to the above timetable will be announced to the Australian Securities Exchange (which we refer to as the ASX), furnished to the US Securities and Exchange Commission on a Form 6-K and made available on the James Hardie Investor Relations website (www.jameshardie.com, select "James Hardie Investor Relations").

QUESTIONS AND ANSWERS ABOUT THE PROPOSAL

The following are some of the questions that you, as a shareholder, may have regarding the Proposal and answers to those questions. This section highlights selected information from this Explanatory Memorandum and the Notice of Meetings, but does not contain all of the information that may be important to you. Section numbers in parentheses following certain of the questions in this part refer to some of the other places in this Explanatory Memorandum or the Notice of Meetings that contain more detailed information regarding the subject matter discussed.

Q1: What is the Proposal? (Section 1)

A: The Proposal is to transform the company from a public limited liability corporation registered in The Netherlands (*Naamloze Vennootschap* (NV)) to a European Company (*Societas Europaea* (SE)) in a two-stage transaction, which ultimately will result in the relocation of our corporate domicile from The Netherlands to Ireland.

Q2: When and where is the shareholders' meeting? (Section 20)

A: The extraordinary general meeting to consider Stage 1 of the Proposal will be held at the company's offices Atrium , 8th floor, Stawinskylaan 3077, 1077 ZX Amsterdam, The Netherlands at 11:00 a.m. Central Europe Time on August 21, 2009.

An extraordinary information meeting also will be held to enable CUFS holders to attend a meeting in Australia to review Stage 1 of the Proposal and the resolution that is to be considered and voted on at the extraordinary general meeting in The Netherlands. The extraordinary information meeting will be held prior to the extraordinary general meeting at The Auditorium, the Mint, 10 Macquarie Street, Sydney, NSW, Australia at 11:30 a.m. (AEST) on August 18, 2009. A live webcast of the extraordinary information meeting will be available on our website.

Please refer to the Notice of Meetings included in this Explanatory Memorandum for details.

Q3: Who can vote at the shareholders' meeting? (Section 21)

A: In order to be eligible to vote on Stage 1, you must be the registered owner or holder (as applicable) of: CUFS at 5:00 p.m. (AEST) on August 17, 2009; ADRs at 5:00 p.m. (US Eastern Daylight Saving Time) on July 9, 2009; or shares at 5:00 p.m. (AEST) on August 17, 2009.

Q4: What is the proposal that shareholders will be asked to consider and vote on at the extraordinary general meeting in connection with Stage 1 of the Proposal? (Section 20)

A The shareholders will be asked to consider and vote on the transformation of the company from a Dutch NV company to a Dutch SE company, including the following specific approvals:

- JHI NV implement Stage 1, as a result of which JHI NV will adopt the form of a Societas Europaea, governed by Dutch law;
- JHI NV's articles of association be amended as described in the Explanatory Memorandum, including changing the name of JHI NV from James Hardie Industries N.V. to James Hardie Industries SE;
- any member of the Managing Board or any partner of our Dutch legal advisor, Loyens & Loeff NV, be authorised to apply for the required ministerial declaration of no-objection of the Dutch Ministry of Justice in connection with the amendments to the articles of association and to execute the notarial deed of amendments to the articles of association;
- the execution of any deed, agreement or other document contemplated by Stage 1 as described in the Explanatory Memorandum, or which is necessary or desirable to give effect to Stage 1;
- any member of the Managing Board be appointed to represent JHI NV in accordance with the articles of association in all matters concerning Stage 1; and
- that the actions of one or more members of the Joint or Managing Boards relating to Stage 1 up to the date of the extraordinary general meeting be ratified and approved.

Q5: What do I need to do now? (Section 21)

A: After carefully reading and considering the information contained in this Explanatory Memorandum, please follow the instructions for voting the CUFS, ADSs or CUFS converted to shares that you hold, which are described in the Notice of Meetings included herein under "Information on Voting" in Section 21. The manner by which you vote is determined by whether you hold CUFS, ADSs or CUFS you have converted to shares. Although voting is not compulsory, your vote is important and your directors encourage you to vote on the Proposal.

Q6: What is an SE? (Section 4.2)

A: An SE is a legal form of a public limited company recognised in the European Union (which we refer to as the EU) member states, which can be registered in any of those member states. The corporate domicile of an SE can be transferred after shareholder approval to any other EU member state that has implemented the Council Regulation (EC) No 2157/2001 on the Statute for a European Company (which we refer to as the SE Regulation).

Under the SE Regulation, our transformation to an SE will not affect our continuity as a legal person; we continue with the same assets, liabilities, rights and obligations both before and after our transformation to an SE and following the transfer of our corporate domicile to Ireland.

A number of enterprises have become SEs in recent years, including Porsche, Allianz, BASF and Swiss RE International.

Q7: Why is James Hardie undertaking the Proposal now? (Section 3.1)

A: Your directors consider this to be an appropriate time for James Hardie and its shareholders to implement the Proposal notwithstanding the current market environment for James Hardie and the global financial and liquidity crisis, as implementation of the Proposal will enable us to:

- provide key senior management with global responsibilities more opportunities to work directly with our local operations and in our markets. Our business in the US has been adversely affected by the decline in the US housing market and the turmoil within financial and mortgage lending institutions. These challenges make it even more costly to maintain substantial management presence in The Netherlands, away from our major operations and markets;
- provide more certainty regarding our ability to obtain benefits under the tax treaty between the US and Ireland (which we refer to as the US/Ireland Treaty) than is the case under the US/Netherlands Treaty; and
- put in place alternative arrangements in light of the pending expiry of the Financial Risk Reserve regime in The Netherlands on December 31, 2010.

Q8: Why is James Hardie not moving the parent company to the US? (Section 3.5)

A: We considered a range of options for moving the parent company to the US, including: (1) having a new US parent company acquire all of our shares from shareholders in exchange for shares issued by the new US parent company and (2) by way of a dual incorporation structure under Delaware corporate law and Dutch company law.

Having a new US parent company acquire all of our shares would result in the new US parent company becoming our holding company. This option was considered impractical because unless the new US parent company was able to acquire at least 95% of all of our issued share capital, the transaction could result in two James Hardie entities being publicly listed: a US parent company and a Dutch parent company. This is due to the requirement under Dutch law that 95% of all of our issued share capital needs to be acquired in order to effect a compulsory acquisition of the remaining shares.

We also considered a move of the parent company to the US by way of a dual incorporation structure under Delaware corporate law and Dutch company law, which would require the approval of 75% of shareholder votes cast at a properly held meeting at which at least 5% of our issued share capital is present or represented. However, the structure resulting from this dual incorporation was determined to be too

complex, and it is unclear whether this structure would be fully recognised under Dutch law. In addition, without a ruling from the Australian Taxation Office, it was uncertain whether this transaction would have resulted in an income tax liability for some Australian tax resident shareholders.

Q9: Why is James Hardie not moving the parent company to Australia? (Section 3.5)

A: We considered moving the parent company to Australia by having a new Australian parent company acquire all of our shares from shareholders in exchange for shares issued by the new Australian parent company. Such a transaction would result in the new Australian parent company becoming our holding company.

This option was considered to be not as attractive as the Proposal because:

- as would be the case with a proposed move of the parent company to the US, unless the new Australian parent company was able to acquire at least 95% of all of our issued share capital, the transaction could result in two James Hardie entities being publicly listed: an Australian parent company and a Dutch parent company. This is due to the requirement under Dutch law that 95% of all of our issued share capital needs to be acquired in order to effect a compulsory acquisition of the remaining shares;
- moving our corporate domicile to Australia by other means was not considered possible under Dutch company law without a potential tax cost to some shareholders; and
- if our tax residence was moved to Australia (and not our corporate domicile), dividends paid to shareholders would continue to be subject to a 15% Dutch dividend withholding tax (with the potential for such tax to be offset by our shareholders).

Q10: What is the impact of the Proposal on our asbestos funding arrangements with Asbestos Injuries Compensation Fund? (Section 3.2)

A: The Proposal will not change the overall commitment of James Hardie to make contributions to the Asbestos Injuries Compensation Fund (which we refer to as the AICF) under the Amended and Restated Final Funding Agreement (which we refer to as the AFFA). However, if a contribution is due to the AICF in our 2011 financial year, which is not yet known, the costs associated with the Proposal will most likely reduce the amount of the company's contribution. The capacity of the AICF to satisfy claims is linked to the long-term financial success of James Hardie, especially the company's ability to generate net operating cash flow. Implementation of the Proposal is expected to have medium and long-term benefits for the AICF, as James Hardie's Irish domicile is anticipated to result in reduced tax payments relative to taxes that would be payable if we remained domiciled in The Netherlands and the intellectual property and treasury and finance operations remained in The Netherlands after December 31, 2010 following the expiry of the Financial Risk Reserve regime.

Q11: Why have the directors not made a recommendation in respect of Stage 2 at this time?

A: Your directors are not able to make a recommendation in respect of Stage 2 at this time because the SE Regulation requires that the approval of the proposed relocation of the corporate domicile of Dutch SE be approved by the directors and shareholders of Dutch SE. Because we will not become Dutch SE until Stage 1 has been implemented, your directors, in their capacity as directors of Dutch NV, cannot recommend, and Dutch SE cannot approve, Stage 2 of the Proposal at this time.

If Stage 1 is approved and implemented and we transform to Dutch SE, your directors will write to you again with the formal proposal to proceed with Stage 2.

Q12: What will happen if I abstain from voting? (Section 21)

A: Any CUFS, ADSs and CUFS you have converted to shares for which no votes are cast effectively will be treated as null votes and will not count toward the voting outcome.

Q13: When do you expect the Proposal to be completed?

A: If shareholders approve both stages, your directors anticipate that the Proposal will be implemented in early 2010.

Q14: What happens to James Hardie if Stage 1 of the Proposal is approved but Stage 2 of the Proposal does not proceed? (Section 3.4)

A: If Stage 1 of the Proposal is approved, but Stage 2 of the Proposal does not proceed, Dutch SE will continue as a European Company with its corporate domicile remaining in The Netherlands. In that circumstance, while remaining a Dutch incorporated company, Dutch SE will be able to move its corporate domicile to Ireland (or any other EU member state that has implemented the SE Regulation) at a later date if shareholders approve such a move in the future.

If Stage 2 is not implemented, none of the other favourable aspects of the Proposal will be obtained and the risks and disadvantages of staying in The Netherlands described in this Explanatory Memorandum will continue to apply. In the event we have transferred our intellectual property and our treasury and finance operations from The Netherlands in connection with the implementation of Stage 1 of the Proposal, based on current estimates and subject to the limitations of this estimate described elsewhere in this Explanatory Memorandum, we will have incurred US$30-50 million of Dutch tax as a result of a capital gain on the transfer of our intellectual property from The Netherlands. However, we believe leaving the intellectual property in The Netherlands until the implementation of Stage 2 of the Proposal will result in additional Dutch Tax, as will a future transfer of our intellectual property after the expiry on December 31, 2010 of the Financial Risk Reserve regime. See "Financial and Accounting Impact" in Section 1.3.

We may determine, subject to any required consents from our lenders, to transfer our intellectual property and treasury and finance operations from The Netherlands independent of either stage being approved by shareholders and implemented. These transfers do not require shareholder approval. The transfer of our treasury and finance operations from The Netherlands would result in the early termination of our participation in the Financial Risk Reserve regime in The Netherlands and would require the payment of all Dutch tax due on the balance remaining in our Financial Risk Reserve account at that time, including any tax due from the transfer of our intellectual property from The Netherlands.

Q15: What matters will be considered at the annual general meeting immediately following the extraordinary general meeting?

A: At the annual general meeting, shareholders will be asked to consider, among other things, resolutions relating to our annual accounts for our 2009 financial year, our remuneration report for our 2009 financial year, re-election of five directors offering themselves for re-election, amendments to the James Hardie Industries N.V. Long Term Incentive Plan 2006 (which we refer to as our Long Term Incentive Plan), grants of equity securities to our Managing Board directors and other procedural matters.

Please refer to the separate notice of meetings for the annual general meeting and annual information meeting delivered to you under separate cover for details and the full text of the resolutions to be considered at the annual general meeting. If you have not received a copy of the notice of meetings for the annual general meeting, please see "Where You Can Find Additional Information" in Section 13 to request a copy.

Q16: Who can answer questions I might have about the Proposal? (Section 13)

A: If you have additional questions about this Explanatory Memorandum, the Notice of Meetings, the meetings or the Proposal, you may submit these in advance of the extraordinary information meeting and the extraordinary general meeting. You also may ask questions relating to the Proposal at these meetings, without submitting those questions in advance. You also may contact us at:

James Hardie Industries N.V.
Atrium, 8th floor
Strawinskylaan 3077
1077 ZX Amsterdam, The Netherlands
Attention: Company Secretary
E-mail: infoline@jameshardie.com

or by calling the Information Helpline in Australia at 1800 675 021 (between 8:00 a.m. and 5:00 p.m. (AEST)) or elsewhere in the world at +1-949-367-4900 (between 8:00 a.m. and 5:00 p.m. (Central Time)). You also may obtain additional information about us from documents filed or furnished with the Australian Securities Exchange and the US Securities and Exchange Commission by following instructions in the section entitled “Where You Can Find Additional Information” in Section 13.

SUMMARY

This summary highlights selected information from this Explanatory Memorandum and the Notice of Meetings and does not contain all of the information that may be important to you. You should read carefully the entire Explanatory Memorandum and Notice of Meetings and the additional documents referred to in this Explanatory Memorandum and the Notice of Meetings to fully understand the Proposal and resolution that shareholders will be asked to consider at the extraordinary general meeting. You also should read the notice of meetings for the annual general meeting that will be held immediately following the extraordinary general meeting. We have included references to other parts of this Explanatory Memorandum to direct you to a more complete description of the topics presented in this summary.

James Hardie (see Section 2.5.1)

Through our network of subsidiaries, we manufacture building materials in the US, Australia, New Zealand and the Philippines. In financial year 2008, we generated net sales in excess of US$1.4 billion. The majority of our building materials manufacturing capacity (86%) was located in the US and the US market also accounted for almost 80% of net sales to customers. As of May 31, 2009, we employed 2,349 people worldwide, the majority of whom (1,455) were located in the US.

In connection with the Proposal, we have formed JHCBM plc (which we refer to as Irish plc Subsidiary) as a subsidiary incorporated in Ireland with registered number 471542. Irish plc Subsidiary has no significant assets, has the minimum statutory capitalisation of €40,000 and has not engaged in any business or other activities other than in connection with its formation and the Proposal. As part of Stage 1, Irish plc Subsidiary will merge with and into us to form Dutch SE, after which Irish plc Subsidiary will cease to exist.

Our principal executive offices and telephone number are: Atrium, 8th floor, Strawinskylaan 3077, 1077 ZX Amsterdam, The Netherlands, Telephone: +31 20 301 2980. The principal executive offices and telephone number of Irish plc Subsidiary are: Arthur Cox Building, Earlsfort Terrace, Dublin 2, Ireland, Telephone: +35 31 618 0000.

Recent Developments (see page 24)

On May 21, 2009, we publicly announced our financial results for the fourth quarter and full year ended March 31, 2009. We also announced that after a further review of our dividend policy, the Board had decided to omit the year-end dividend to preserve capital. See “Recent Developments” on page 24.

The Proposal (see Section 1)

The Proposal is to effect our transformation from a public limited liability corporation registered in The Netherlands (*Naamloze Vennootschap* (NV)) to a European Company (*Societas Europaea* (SE)) and ultimately the relocation of our corporate domicile from The Netherlands to Ireland.

The Proposal is to be undertaken in two stages, as follows:

- **Stage 1:** We will transform to a European Company (*Societas Europaea* (SE)) by merging with a newly-formed subsidiary. We will become Dutch SE, with our corporate domicile remaining in The Netherlands.

In connection with the implementation of Stage 1 of the Proposal, we currently intend to transfer our intellectual property to a newly-formed subsidiary with its tax residence in Ireland and to transfer our treasury and finance operations to a newly-formed Irish subsidiary. We believe leaving the intellectual property in The Netherlands until the implementation of Stage 2 of the Proposal would result in the incurrence of additional Dutch tax in the event of a future transfer of our intellectual property. However, as the transfer of our intellectual property and our treasury and finance operations from The Netherlands does not require shareholder approval, we may determine, subject to any required consents from our lenders, to transfer our intellectual property and our treasury and finance operations from The Netherlands independent of either stage being approved by shareholders and implemented. The transfer of our treasury and finance operations from The Netherlands would result in the early termination of our participation in the Financial Risk Reserve regime in The Netherlands and would require

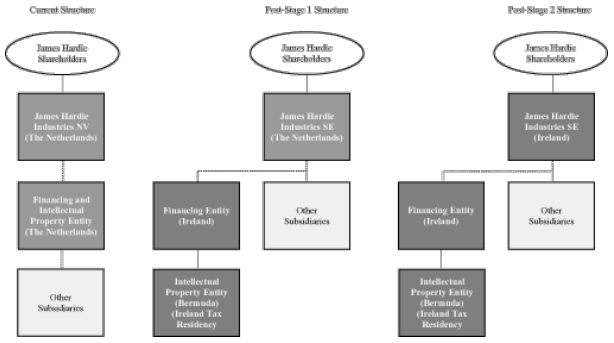
the payment of all Dutch tax due on the balance remaining in our Financial Risk Reserve account at that time, including tax due from the transfer of our intellectual property from The Netherlands.

- **Stage 2:** Following implementation of Stage 1, Dutch SE will move its corporate domicile to Ireland to become Irish SE.

In connection with Stage 2, the registered office and head office of Dutch SE will move from The Netherlands to Ireland.

See "Financial and Accounting Impact" in Section 1.3 for further information regarding Dutch tax costs in connection with the transfer of our intellectual property and our exit from the Financial Risk Reserve regime.

The Proposal is shown in the following simplified diagrams:



Reasons for the Proposal and Related Matters (see Section 3.1)

Following a multi-year review of various alternatives, your directors have concluded that the Proposal is the best course of action at this time and is in the best interests of James Hardie and its shareholders because it:

- allows key senior managers with global responsibilities to spend more time with James Hardie's operations and in its markets because the US/Ireland Treaty does not contain a substantial presence test that requires these managers to spend significant time in Ireland;
- provides greater certainty for James Hardie to obtain benefits under the US/Ireland Treaty than is the case under the US/Netherlands Treaty;
- increases our flexibility to undertake certain transactions under Irish company law, which your directors believe expands our future strategic options;
- simplifies our governance structure to a single board of directors;
- makes our intellectual property and treasury and finance operations eligible for a statutory tax rate that is currently lower than would be the case if these operations remained in The Netherlands after the expiry of the Financial Risk Reserve regime; and
- permits most shareholders to be eligible to receive dividends not subject to withholding tax.

Required Shareholder Approvals (see Section 1.8)

At the extraordinary general meeting on August 21, 2009, you will be asked to approve Stage 1 of the Proposal, which is our transformation to a European Company domiciled in The Netherlands through a merger with our newly-formed Irish subsidiary, Irish plc Subsidiary.

Stage 1 of the Proposal will require the approval of 75% of shareholder votes cast at a properly held meeting at which at least 5% of our issued share capital is present or represented.

If Stage 1 of the Proposal is approved and implemented, shareholders of Dutch SE will be asked at a subsequent general meeting to approve Stage 2 of the Proposal, which is the transformation of Dutch SE to Irish SE through the relocation of the corporate domicile of Dutch SE from The Netherlands to Ireland. Stage 2 of the Proposal will require the approval of $66^{2}/_{3}$% of shareholder votes cast at a properly held meeting at which at least 5% of Dutch SE's issued share capital is present or represented.

Recommendation of Your Directors (see Section 21)

Your directors believe that the Proposal is the best course of action at this time and is in the best interests of James Hardie and its shareholders. Your directors unanimously recommend that you vote in favour of Stage 1 of the Proposal. Each director intends to vote his or her own shareholding in favour of Stage 1.

Holdings by our Directors and Officers of Shares, CUFS and ADSs (see Section 10.1.2)

As of May 31, 2009, your directors and executive officers and their affiliates held 202,990 (or less than 0.05%) of our then outstanding CUFS and 3,800 of our then outstanding ADSs (or less than 0.93%). As of May 31, 2009, all directors, executive officers and their affiliates as a group, held an aggregate of 0.051% of the outstanding shares entitled to vote at the extraordinary general meeting.

Rights of Shareholders (see Sections 4.2, 5.4 and 5.6)

From a shareholder perspective, little will change in practical terms following implementation of Stage 1, except that our three-tiered board will change to a two-tiered board, the required shareholder approval threshold for Stage 2 of the Proposal will be reduced from 75% to $66^{2}/_{3}$% and the chief executive officer will not be entitled to hold office as a director for a continuous period in excess of six years without standing for re-election. Other minor changes will result from Dutch SE being subject to the SE Regulation, in addition to Dutch company law.

As part of implementation of Stage 2, Irish SE will adopt a form of memorandum and articles of association consistent with Irish company law and the SE Regulation and the rights of shareholders will undergo more substantial changes than in Stage 1. In addition, the Irish takeover regime will apply to Irish SE. The most significant of the changes in Stage 2 include:

- a change from a two-tiered board to a single-tiered board;
- holders of 5% of Irish SE's issued share capital, as compared to 1% of Dutch SE's issued share capital or holders of Dutch SE shares representing at least EUR 50 million in value, having the right, subject to complying with specified time periods and providing specified information, to request that the board place a matter on the agenda of an annual general meeting;
- holders of 10% of Irish SE's issued share capital, as compared to any shareholder of Dutch SE, having the right, subject to complying with specified time periods and providing specified information, to nominate candidates for election as directors at an extraordinary general meeting;
- holders of 5% of Irish SE's issued share capital, as compared to either 5% of Dutch SE's issued share capital or at least 100 shareholders of Dutch SE, having the right, subject to complying with specified time periods and providing specified information, to request the board to call an extraordinary general meeting and place items (other than the nomination of directors) on the agenda for such meeting;
- a takeover offer will, in general, be required of a person who acquires 30% or more of the voting rights of Irish SE, as compared to 20% of the voting rights of Dutch SE; and
- a person who acquires 80% or more of Irish SE's issued share capital, as compared to 95% of Dutch SE's issued share capital, can compel the acquisition of the remaining outstanding issued share capital.

We encourage you to read "Summary of Key Differences Between Dutch NV and Dutch SE" in Section 4.2, "Summary of Key Corporate Law Differences Between Dutch SE and Irish SE" in Section 5.4 and "Principal Differences Between the Takeover Regime under the Articles of Association of Dutch NV and Dutch SE and the Irish Takeover Rules" in Section 5.6 for a more detailed discussion of these differences.

You will continue to hold the same number of CUFS, ADSs or CUFS you have converted to shares in Dutch SE (if Stage 1 of the Proposal is approved and implemented) and in Irish SE (if Stage 2 of the Proposal is approved and implemented) as you held beforehand. The current certificates and holding statements evidencing your CUFS, ADSs or CUFS converted to shares will continue to evidence the same number and kind of securities following implementation of each stage of the Proposal.

Impact on Asbestos Funding Arrangements with AICF (see Section 3.2)

The Proposal will not change the overall commitment of James Hardie to make contributions to the AICF under the AFFA. However, if a contribution is due to the AICF in our 2011 financial year, which is not yet known, the costs associated with the Proposal will most likely reduce the amount of the company's contribution by an amount up to 35% of the costs associated with the Proposal.

Whether, and to what extent, the costs associated with the Proposal actually reduce any contribution due to the AICF in our 2011 financial year will ultimately depend on the amount of the contribution otherwise required to be made under the AFFA and the company's net cash provided by operating activities for financial year 2010 before taking account of these costs.

The capacity of the AICF to satisfy claims is linked to the long-term financial success of James Hardie, especially the company's ability to generate net operating cash flow. Implementation of the Proposal is expected to have medium and long-term benefits for the AICF, as James Hardie's Irish domicile is anticipated to result in reduced tax payments relative to taxes that would be payable if we remained domiciled in The Netherlands and the intellectual property and treasury and finance operations remained in The Netherlands after December 31, 2010 following the expiry of the Financial Risk Reserve regime.

Financial and Accounting Impact (see Section 1.3)

The Proposal and the transfer of our intellectual property and treasury and finance operations in connection with the Proposal will have the following significant financial and accounting impacts:

- Transaction and implementation costs in connection with the Proposal, including the transfer of our intellectual property and treasury and finance operations, assuming our intellectual property was transferred as of September 30, 2009 (the currently estimated date for implementation of Stage 1 of the Proposal), are estimated to range from approximately US$51-71 million, US$14 million of which already has been incurred. The costs expected to be incurred in connection with Stage 1 of the Proposal include approximately US$30-50 million in Dutch tax as a result of a capital gain on the transfer of our intellectual property from The Netherlands. The starting point of this range was estimated using the fair market value of our intellectual property as of June 1, 2009 and our income forecasts for our Financial Risk Reserve account through September 30, 2009, but did not take into account any gains or losses as a result of changes in currency exchange rates. Due to the factors described below that affect the amount of Dutch tax actually due as a result of the transfer of our intellectual property, as well as the actual time of such transfer and our exit from the Financial Risk Reserve regime, the tax due could vary from our estimate and the amount of such variance could be material.

  Under the Financial Risk Reserve regime rulings relating to our intellectual property, 28% of the gain from the transfer of our intellectual property would be subject to the statutory rate of Dutch corporate tax (currently 25.5%), which, based on the framework described in the preceding paragraph, is estimated to result in Dutch tax of US$20-24 million. The remaining 72% of the gain from the transfer of our intellectual property will be included in our Financial Risk Reserve account. The Financial Risk Reserve account may be released tax-free if and to the extent James Hardie makes qualifying capital contributions to group

companies that use the cash received to finance capital and other qualifying expenditures ("exempt releases").

Any balance remaining in our Financial Risk Reserve account at the time of the regime's expiry or our earlier exit is subject to tax at the statutory rate of Dutch corporate tax. The transfer of our treasury and finance operations from The Netherlands would result in the early termination of our Financial Risk Reserve regime ruling. Based on an estimated ending balance in our Financial Risk Reserve account on September 30, 2009, the amount of exempt releases (which permit amounts in the Financial Risk Reserve account to be released without further tax) expected to be available immediately prior to our exit from the regime and the statutory rate of Dutch corporate tax (currently 25.5%), we estimate that approximately US$10-26 million in additional Dutch tax will be due on the transfer of these operations.

The amount of Dutch tax actually due at the time of the transfer of our intellectual property and our subsequent exit from the Financial Risk Reserve regime will depend on a number of factors at that time, such as the fair market value of our intellectual property and our tax bases in the intellectual property, the income earned in and exempt releases from, our Financial Risk Reserve account, changes in currency exchange rates and the amount of exempt releases available. The amount of tax due at the time of our exit from the Financial Risk Reserve regime would increase as a result of weakening in the value of the Australian and New Zealand currencies as compared to the US dollar. The determination of the fair market value of our intellectual property is affected by, among other things, our results of operations and the state of the markets in which we sell our products. An improvement in our results of operations or an increase in the number of housing starts in the markets in which we sell our products could result in an increase in the fair market value of our intellectual property. The value of our intellectual property has fluctuated in the past and in the future may vary materially from the value we used to estimate the starting point of the range of the amount of taxes due on the transfer of our intellectual property. Additionally, the fair market value of our intellectual property could increase as a result of a strengthening in the value of the Australian and New Zealand currencies as compared to the US dollar. For example, assuming the other factors that affect the amount of Dutch tax due on the transfer of our intellectual property remained unchanged, a 10% increase in the fair market value of our intellectual property as of the date of its transfer would result in approximately US$14 million in additional Dutch tax.

The Dutch tax would not be incurred if our intellectual property remains in The Netherlands after the move of Dutch SE's domicile to Ireland. While the one-time payments relating to the transfer of our intellectual property are not insignificant, we believe leaving the intellectual property in The Netherlands would result in additional Dutch tax in the event of a future transfer of this property from The Netherlands. In addition, leaving our intellectual property in The Netherlands would not permit us to obtain all of the expected benefits of the Proposal and the connected transactions. For example, leaving the intellectual property in The Netherlands after the expiration of the Financial Risk Reserve regime, would result in a higher statutory rate of tax on royalty payments in respect of our intellectual property than would be the case in Ireland (assuming an equivalent replacement regime is not adopted in The Netherlands) and would not allow us to be eligible for a 0% withholding tax rate on royalty payments made from our subsidiaries in the US to our Dutch subsidiary which holds our intellectual property.

The transfer of our intellectual property and our finance and treasury operations do not require shareholder approval and we may determine, subject to any required consents from our lenders, to transfer our intellectual property and our finance and treasury operations from The Netherlands independent of either stage being approved by shareholders and implemented.

The remaining approximately US$21 million of costs, US$14 million of which already has been incurred, relate primarily to expenses associated with the Proposal, advisory fees and costs related to our establishment of a new head office in Ireland.

- Our annual accounts will continue to be prepared under Generally Accepted Accounting Principles applicable in the US (which we refer to as US GAAP). Commencing with the first financial year end after the Proposal (including Stage 2) is completed (i.e., year ended March 31, 2010 if, as anticipated, Stage 2 is implemented prior to April 1, 2010), the annual accounts of Irish SE also will be prepared under Generally Accepted Accounting Principles applicable in Ireland (which we refer to as Irish GAAP).
- In connection with the approval of Stage 2, we intend that Dutch SE will request shareholders to approve the reclassification of a merger revaluation reserve established in connection with our 2001 reorganisation to maintain the historical cost bases of our consolidated net assets from directly before the 2001 reorganisation. As a result of this reclassification, the amounts available to Irish SE for distribution as dividends and to repurchase shares will be substantially the same as for Dutch SE.
- After implementation of Stage 2, Irish SE's ability to pay dividends and repurchase shares will be subject to Irish company law and will be determined based on profits calculated under Irish GAAP. However, as a result of this reclassification, we do not believe these changes will have a material impact on Irish SE's ability to pay dividends or repurchase shares.

A more detailed explanation of the accounting and financial impact of implementing the Proposal is described under the heading "Financial and Accounting Impact" in Section 1.3.

Accounting Treatment of the Proposal (see Section 7)

Under US GAAP, we will account for our merger with Irish plc Subsidiary in Stage 1 of the Proposal under US GAAP accounting rules governing transactions between entities under common control, which will not have an impact on our consolidated financial statements. We will account for certain income tax payments associated with leaving The Netherlands and transferring intellectual property to Ireland in accordance with the Statement of Financial Accounting Standards No. 109, "Accounting for Income Taxes" and Accounting Research Bulletin No. 51, "Consolidated Financial Statements."

Under US GAAP, Stage 2 of the Proposal will have no impact on our consolidated financial statements.

Regulatory Requirements (see Section 1.2)

If shareholders approve Stage 1 of the Proposal, we must apply for and receive a "statement of no objection" from the Dutch Ministry of Justice and confirmation of the High Court of Ireland that all legal requirements for Stage 1 of the Proposal have been fulfilled before our transformation to Dutch SE may be implemented.

We expect to obtain both of these approvals within approximately four to five weeks following shareholder approval.

Stock Exchange Listings (see Section 3.6)

After our transformation to Dutch SE, Dutch SE's securities will continue to be quoted on the ASX in the form of CUFS (with CHESS Depositary Nominees Pty Ltd. being the registered holder of the underlying shares and each CUFS representing one underlying share) and the NYSE in the form of ADSs (with The Bank of New York Mellon as the registered owner of CUFS and each ADS representing 5 CUFS/underlying shares). We intend to continue to maintain listings under the symbol "JHX" on both the ASX and the NYSE.

Dissenters' Rights (see Section 21)

Under Dutch company law, shareholders do not have dissenters' or appraisal rights in connection with the Proposal.

Material Tax Consequences for Shareholders (see Section 9)

For a detailed discussion of the material Australian, US federal, Dutch, Irish and UK tax consequences of the Proposal for our shareholders, see "Material Tax Considerations of the Proposal" in Section 9.

The tax consequences of the Proposal for you will depend upon the facts of your situation. You should consult your own tax advisors for a full understanding of the tax consequences of the Proposal for you.

Notice for CUFS holders entitled to an exemption

Please note that following implementation of Stage 2 of the Proposal, shareholders who reside in an EU member country other than Ireland or in a country with which Ireland has a double tax treaty and who do not reside in Ireland must complete and send to Irish SE a non-resident declaration form in order to avoid Irish dividend withholding tax (See "Irish Income Tax Consequences of the Proposal — Irish SE Shareholders Taxation" in Section 9.4.3). If the appropriate declaration is not made, such shareholders will suffer Irish dividend withholding tax of 20% on dividends paid by Irish SE and may not be entitled to offset such tax. In this case, it would be necessary for such shareholders to apply for a refund of the withholding tax suffered directly from the Irish Revenue.

Australian resident shareholders who have not made the appropriate declaration will not be entitled to an offset for the Irish dividend withholding tax against their Australian income tax liability (See "Australian Income Tax Consequences of the Proposal — Dividends and Distributions from us after our transformation to Irish SE" in Section 9.1.3.2) and will need to apply for a refund of the withholding tax suffered directly from the Irish Revenue.

We therefore strongly recommend that the appropriate declaration is made by all shareholders who do not reside in Ireland.

Notice for ADS holders with a registered address in the U.S.

Following implementation of Stage 2 of the Proposal, ADS holders with a registered address in the US will be entitled to an automatic exemption from Irish dividend withholding tax. This means that they will not be required to complete a non-resident declaration form in order to avoid Irish dividend withholding tax (See "Irish Income Tax Consequences of the Proposal — Irish SE Shareholders Taxation" in Section 9.4.3).

SUMMARY SELECTED HISTORICAL CONSOLIDATED FINANCIAL INFORMATION

The following is our summary selected consolidated financial information for each of the years in the five-year period ended March 31, 2008 and the nine-month periods ended December 31, 2008 and December 31, 2007. The data is derived from, and should be read together with, our Annual Report on Form 20-F for the year ended March 31, 2008 and our report on Form 6-K furnished on February 17, 2009, which are incorporated by reference into this Explanatory Memorandum. See "Where You Can Find Additional Information" in Section 13.

Historical results are not indicative of expected future performance.

We prepare our financial statements in accordance with US GAAP as outlined in note 2 to our audited consolidated financial statements included in our Annual Report on Form 20-F for the year ended March 31, 2008.

The information below refers to EBITDA of James Hardie. EBITDA is not a measure of financial performance under US GAAP and should not be considered an alternative to, or more meaningful than, income from operations, net income or cash flows as defined by US GAAP or as a measure of profitability or liquidity. Please see the reconciliation of EBITDA to Cash flows provided by operating activities, which is the most directly comparable US GAAP financial measure for each of the periods presented, below.

We have not included financial information for Irish plc Subsidiary as it is a newly-formed entity and has not conducted business during any of the periods illustrated below.

JAMES HARDIE GROUP

	Nine Months Ended December 31		Year Ended March 31				
	2008	2007	2008	2007	2006	2005	2004
	(Unaudited)		US$m (unless otherwise stated)				
Consolidated Statements of Operations Data							
Net Sales							
USA and Europe Fibre Cement	740.6	931.1	1,170.5	1,291.2	1,246.7	974.3	762.1
Asia Pacific Fibre Cement	220.7	224.8	298.3	251.7	241.8	236.1	219.8
Total net sales	961.3	1,155.9	1,468.8	1,542.9	1,488.5	1,210.4	981.9
Operating (loss) income	334.0	144.9	(36.6)	(86.6)	(434.9)	196.2	172.2
Interest expense	(7.4)	(6.7)	(11.1)	(12.0)	(7.2)	(7.3)	(11.2)
Interest income	5.5	10.0	12.2	5.5	7.0	2.2	1.2
Other (expense) income	—	—	—	—	—	(1.3)	3.5
(Loss) income from continuing operations before income taxes	332.1	148.2	(35.5)	(93.1)	(435.1)	189.8	165.7
Income tax (expense) benefit	(66.2)	(72.9)	(36.1)	243.9	(71.6)	(61.9)	(40.4)
(Loss) income from continuing operations	265.9	75.3	(71.6)	150.8	(506.7)	127.9	125.3
Net (loss) income	265.9	75.3	(71.6)	151.7	(506.7)	126.9	129.6
(Loss) Income from continuing operations per common share — basic	0.62	0.16	(0.16)	0.32	(1.10)	0.28	0.27
Net (Loss) income per common share — basic	0.62	0.16	(0.16)	0.33	(1.10)	0.28	0.28
(Loss) Income from continuing operations per common share — diluted	0.61	0.16	(0.16)	0.32	(1.10)	0.28	0.27
Net (Loss) income per common share — diluted	0.61	0.16	(0.16)	0.33	(1.10)	0.28	0.28
Dividends paid per share	0.08	0.27	0.27	0.09	0.10	0.03	0.05
Book value per share	(0.09)	(0.12)	(0.47)	0.55	0.20	1.36	1.10
Return of capital per share	—	—	—	—	—	—	0.15
Weighted average number of common shares outstanding							
Basic	432.2	461.9	455.0	464.6	461.7	458.9	458.1
Diluted	433.5	462.8	455.0	466.4	461.7	461.0	461.4

	Nine Months Ended December 31		Year Ended March 31				
	2008	2007	2008	2007	2006	2005	2004
	(Unaudited)		US$m (unless otherwise stated)				
Consolidated Cash Flow Information							
Cash flows provided by (used in) operating activities	25.3	279.4	319.3	(67.1)	238.4	219.4	162.2
Cash flows used in investing activities	(16.8)	(28.7)	(38.5)	(92.6)	(154.0)	(149.8)	(58.9)
Cash flows (used in) provided by financing activities	(0.8)	(201.7)	(254.4)	(136.4)	118.7	(27.2)	(86.6)
Other Data							
Depreciation and amortisation	41.6	42.1	56.5	50.7	45.3	36.3	36.4
EBITDA	375.6	187.0	19.9	(35.9)	(389.6)	232.5	208.6
Capital expenditures	16.8	28.7	38.5	92.1	162.8	153.0	74.1
Volume (million square feet)							
USA and Europe Fibre Cement	1,218.3	1,550.0	1,916.6	2,216.2	2,244.4	1,952.4	1,594.3
Asia Pacific Fibre Cement	301.4	302.9	398.2	390.8	368.3	376.9	362.1
Average sales price per unit (per thousand square feet)							
USA and Europe Fibre Cement	608	601	600	583	555	499	478
Asia Pacific Fibre Cement (A$)	877	866	862	842	872	847	875
Consolidated Balance Sheet Data							
Net current assets	60.2	201.4	183.7	259.0	150.8	180.2	195.9
Total assets	1,827.0	2,155.9	2,179.9	2,128.1	1,445.4	1,088.9	971.2
Total debt	298.2	302.5	264.5	188.0	302.7	159.3	175.8
Common stock	219.7	252.3	219.7	251.8	253.2	245.8	245.2
Shareholders' (deficit) equity	(37.5)	(52.6)	(202.6)	258.7	94.9	624.7	504.7

EBITDA represents income from continuing operations before interest income, interest expense, income taxes, other non-operating expenses, other expense (income), cumulative effect of change in accounting principle, depreciation and amortization charges. The following table presents a reconciliation of EBITDA to Cash flows provided by operating activities, as this is the most directly comparable GAAP financial measure to EBITDA for each of the periods indicated:

	Nine Months Ended December 31		Year Ended March 31				
	2008	2007	2008	2007	2006	2005	2004
	(Unaudited)		US$m (unless otherwise stated)				
Net cash provided by (used in) operating activities	25.3	279.4	319.3	(67.1)	238.4	219.4	162.2
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities	172.8	(148.0)	(318.9)	4.5	(789.1)	(60.8)	(50.7)
Change in operating assets and liabilities, net	67.8	(56.1)	(72.0)	214.3	44.0	(31.7)	18.1
Net income (loss)	265.9	75.3	(71.6)	151.7	(506.7)	126.9	129.6
Loss (income) from discontinued operations	—	—	—	—	—	1.0	(4.3)
Cumulative effect of change in accounting principle	—	—	—	(0.9)	—	—	—
Income tax expense (benefit)	66.2	72.9	36.1	(243.9)	71.6	61.9	40.4
Interest expense	7.4	6.7	11.1	12.0	7.2	7.3	11.2
Interest income	(5.5)	(10.0)	(12.2)	(5.5)	(7.0)	(2.2)	(1.2)
Other expense (income)	—	—	—	—	—	1.3	(3.5)
Depreciation and amortisation	41.6	42.1	56.5	50.7	45.3	36.3	36.4
EBITDA	375.6	187.0	19.9	(35.9)	(389.6)	232.5	208.6

MARKET PRICE INFORMATION

Our securities, in the form of:

- CUFS trade on the ASX; and
- ADSs trade on the NYSE,

each under the symbol "JHX."

Irish plc Subsidiary's shares are not publicly traded.

The following table presents the closing market prices per security for our publicly traded securities, being CUFS and ADSs in Australian dollars and US dollars, respectively:

- as reported on ASX for CUFS; and
- as reported on the NYSE for ADSs.

In each case, the prices quoted are given as of June 22, 2009, which was:

- the last full trading day on ASX and the NYSE prior to the public announcement of the Proposal; and
- the most recent practicable trading date prior to the date of this Explanatory Memorandum.

	James Hardie	
	CUFS (A$)	ADSs (US$)
June 22, 2009	$ 4.20	$ 16.18
June 22, 2009	$ 4.20	$ 16.18

You are urged to obtain current market prices quoted for our CUFS and ADSs before making a decision with respect to the Proposal.

RISK FACTORS

Our most recent Annual Report on Form 20-F, which is incorporated by reference into this Explanatory Memorandum, describes a variety of risks relevant to our business and financial condition, which you are urged to read in full. The following discussion concerns key risk factors relating specifically to the Proposal.

Irish SE will be exposed to the risk of future adverse changes in Irish and US law, as well as changes in tax rates, which could materially adversely affect us, including by reducing or eliminating the anticipated benefits of the Proposal.

Upon implementation of Stage 2 of the Proposal, Irish SE will be subject to Irish law. As a result, Irish SE would be subject to the risk of future adverse changes in Irish law (including Irish company and tax law). In addition, the tax rates for which we expect Irish SE and its subsidiaries to be eligible on our transformation may be increased in the future.

Irish SE also will be subject to the risk of future adverse changes to US law, as well as changes of law in other countries in which Irish SE or its subsidiaries operate.

For example, the US Congress may take legislative action that could override tax treaties upon which we rely or could subject Irish SE or Dutch SE to US tax. A number of legislative proposals in recent years have sought to deny benefits or impose penalties on companies domiciled outside of the US that conduct substantial business in the US or whose executives with decision-making responsibility are located primarily in the US. We cannot predict the outcome of any specific legislative proposal.

Our effective tax rate may be higher in future years whether or not we implement the Proposal.

James Hardie's effective tax rate for the year ended March 31, 2009 was the result of tax expense incurred in a number of jurisdictions, principally the US, Australia, New Zealand, the Philippines and The Netherlands. The primary drivers of James Hardie's effective tax rate are the tax rates of the jurisdictions in which we operate, the level and geographic mix of pre-tax earnings, intra-group royalties, interest rates and the level of debt which give rise to interest expense on external debt and intra-group debt, the benefits derived from the Financial Risk Reserve regime in The Netherlands, extraordinary and non-core items, and the value of adjustments for timing differences and permanent differences, including the non-deductibility of certain expenses, all of which are subject to change and which could result in a material increase in our effective tax rate.

Other than the Financial Risk Reserve regime, which expires on December 31, 2010, these factors will continue to drive James Hardie's effective tax rate. Whether James Hardie implements the Proposal or remains in The Netherlands, we cannot provide any assurance as to what our effective tax rate will be in the future.

Revenue rulings received from Irish and Dutch Revenue authorities are based upon facts that may not be met in the future, in which case there is a risk that the conclusions reached in the rulings will not be applicable to us, including that Irish SE will not be treated as an Irish tax resident for purposes of the US/Ireland Treaty.

In connection with the Proposal, we requested and received certain revenue rulings from Irish and Dutch Revenue authorities, which are described in further detail in this Explanatory Memorandum (see "Revenue Rulings" in Section 6). Revenue rulings represent advice received from taxing authorities as to the tax consequences of particular circumstances or a transaction and are based upon the specific facts presented to the taxing authority in the ruling request. In the case of the Irish Revenue authorities' ruling, the Irish Revenue authorities have the ability to review their advice when a transaction is complete and all the facts are known.

One of the rulings received from the Irish Revenue authorities confirms, among other things, that so long as Irish SE is centrally managed and controlled in Ireland, it will be a tax resident of Ireland once Stage 2 of the Proposal has been approved and implemented. The ruling received from the Dutch Revenue authorities confirms, among other things, that if the Proposal is implemented, Irish SE will be no longer subject to Dutch tax as a resident in The Netherlands (except on Dutch source income) as long as Irish SE remains an Irish tax resident. Two of the other Irish Revenue authorities' rulings relate to the tax status in Ireland of two of our newly-formed subsidiaries to

which our intellectual property and our treasury and finance operations will be transferred in connection with the Proposal.

The issue as to whether a company is centrally managed and controlled in Ireland is a question of fact directed at the highest level of control of a company's business, as distinct from day-to-day control to carry out normal business operations. Irish SE intends to establish that it is centrally managed and controlled in Ireland by, among other things, holding a majority of its board meetings in any one year in Ireland with participation of a majority of its directors in Ireland, the board deciding on corporate strategy, such as decisions relating to significant transactions and investments, capital expenditures, equity and debt raising and dividend payments in Ireland, and maintaining its head office function in Ireland. One of the rulings from the Irish Revenue authorities confirms that if Irish SE operates in this manner, Irish SE will be deemed a tax resident of Ireland.

If Irish SE fails to satisfy the requirement that it be centrally managed and controlled in Ireland because it fails to operate in the manner set out in the ruling from the Irish Revenue authorities or otherwise, it may not qualify as an Irish tax resident for the purposes of the US/Ireland Treaty. If this occurred, Irish SE would not receive some or all of the anticipated benefits under the Proposal. In such circumstances, Irish SE also could be subject to tax in another jurisdiction, including The Netherlands. Irish SE or its subsidiaries may also in the future fail to operate in a manner consistent with other facts upon which our rulings are based. In such event, the conclusions reached in the revenue rulings would no longer be applicable and we may not receive some or all of the anticipated benefits of the Proposal. See "Revenue Rulings" in Section 6.

The US/Ireland Treaty may be amended in the future and there is a risk that Irish SE would be unable or unwilling to make changes required to qualify for treaty benefits.

While the US/Ireland Treaty contains an article regarding limitations on benefits (which requires the relevant person claiming relief to be an Irish resident who meets one or more requirements set out in the treaty), the limitations of benefits article in the US/Ireland Treaty does not presently contain an equivalent to the substantial presence requirement included in the US/Netherlands Treaty. See "The US/Netherlands Treaty" and "The US IRS 30-Day Letter" in Sections 2.3 and 2.4, respectively, for a further description of "substantial presence".

However, the US/Ireland Treaty may be amended in the future in a manner that would adversely affect Irish SE or its ability to qualify for benefits under the US/Ireland Treaty, including in a manner that would result in Irish SE and its subsidiaries not receiving some or all of the anticipated benefits of the Proposal. A risk of such an amendment to the US/Ireland Treaty arises from, among other things, the fact that the US Model Income Tax Convention of November 15, 2006, which generally serves as a basis for US tax treaty negotiations, contains an equivalent to the substantial presence requirement included in the US/Netherlands treaty.

In the event the US/Ireland Treaty were amended in a manner that would adversely affect Irish SE or its ability to qualify for benefits under the US/Ireland Treaty, including in a manner that would result in Irish SE and its subsidiaries not receiving some or all of the anticipated benefits of the Proposal, Irish SE would need to consider its available alternatives at that time.

There is a risk that the US IRS will react adversely as a result of our decision to pursue the Proposal.

Although we do not believe our decision to pursue the Proposal should increase the likelihood that the US IRS will seek to examine any tax years or portions thereof not examined prior to the move to Ireland, we cannot predict how the US IRS will react to our decision to pursue the Proposal. There can be no assurance that, as a result of the Proposal, the US IRS will not seek to examine other tax years or portions thereof. In addition, the US IRS could seek to challenge our move to Ireland and our ability to receive benefits under the US/Ireland Treaty. However, because we expect Irish SE will be able to satisfy the requirements of the US/Ireland Treaty, we believe Irish SE will be eligible to receive the benefits under the US/Ireland Treaty.

A final class ruling from the Australian Taxation Office seeking confirmation that no capital gain or capital loss will arise under the Australian capital gains tax provisions for Australian tax resident shareholders may not be received or a final ruling received from the Australian Taxation Office may reach a different conclusion from the draft ruling, which could result in Australian tax resident shareholders realising a capital gain or a capital loss under the Australian capital gains tax provisions as a result of the Proposal.

In connection with the Proposal, we have received advice that no capital gain or capital loss should arise under the Australian capital gains tax provisions from the Proposal for Australian tax resident shareholders that hold their shares or CUFS on capital account. However, this advice is not binding on the Australian Taxation Office, which may reach a different conclusion. In order to provide more certainty to such Australian tax resident shareholders, we have applied to the Australian Taxation Office for a class ruling confirming that no capital gain or capital loss will arise under the Australian capital gains tax provisions for these shareholders as a result of the Proposal.

A class ruling is a form of public ruling provided by the Australian Taxation Office. A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities (e.g., our shareholders) in relation to a particular scheme or a class of schemes. If our Australian shareholders rely on a class ruling, the Commissioner must apply the law as set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages the shareholder, in which case the law may be applied to shareholders in a way that is more favourable to the shareholder, provided the Commissioner is not prevented from doing so by a time limit imposed by the law). We have received a draft ruling from the Australian Taxation Office that no capital gain or capital loss will arise under the Australian capital gains tax provisions from the Proposal for Australian tax resident shareholders that hold their shares or CUFS on capital account. We expect the Australian Taxation Office to issue a final ruling prior to implementation of Stage 1 of the Proposal. However, the draft ruling we have received is not legally binding on the Australian Taxation Office and the final ruling we receive from the Australian Taxation Office could be different, which could result in Australian tax resident shareholders realising a capital gain or capital loss under the Australian capital gains tax provisions as a result of the Proposal.

The rights of shareholders after our transformation to Irish SE will not be the same as at present.

We are a company subject to Dutch statutory rules on public limited companies. Following our transformation to Dutch SE, Dutch SE will continue to be subject to Dutch statutory rules with only minor changes to the rights of shareholders, except that our three-tiered board will change to a two-tiered board, the required shareholder approval threshold for Stage 2 of the Proposal will be reduced from 75% to 66$^{2}/_{3}$% and the chief executive officer will not be entitled to hold office as a director for a continuous period in excess of six years without standing for re-election.

More significant changes to the rights of shareholders will occur upon implementation of Stage 2 of the Proposal. Irish SE will be a company registered under the laws of Ireland and the rights of holders of Irish SE securities will be governed by Irish company law and the memorandum and articles of association of Irish SE. Due to the differences between Dutch and Irish laws and the differences between our constituent documents both before and after implementing Stage 2 of the Proposal, your rights as a shareholder will change.

By way of example, as a result of the Proposal, the present takeover regime under our articles of association will no longer apply and Irish SE instead will be subject to the Irish takeover rules and the regulation of the Irish Takeover Panel.

For more information regarding these differences and the changes in the rights for shareholders see "Summary of Key Differences between Dutch NV and Dutch SE" in Section 4.2 and "Summary of Key Corporate Law Differences Between Dutch SE and Irish SE" in Section 5.4.

In connection with the Proposal, we are required to negotiate the terms of future employee involvement in Dutch SE with a special negotiating body comprised of employees from EU member states in which James Hardie operates. These negotiations are expected to lead to the creation of an employee representative body that will have certain information and consultation rights in relation to future decisions of the boards of Dutch SE and Irish SE.

Under the SE Regulation and other relevant legislation, formation of an SE through merger requires the companies involved in the merger to enter into negotiations with a special negotiating body (which we refer to as the SNB), made up of a number of employee representatives in EU member states to come to an arrangement on future employee involvement in the SE. We commenced this process shortly before mailing this Explanatory Memorandum.

We cannot implement Stage 1 of the Proposal without coming to an arrangement on employee involvement. As a result, we may not be able to implement Stage 1 of the Proposal until approximately seven months from the date of this Explanatory Memorandum (or longer if we would agree with the SNB to extend this period), which will delay the implementation of Stage 2 of the Proposal. We expect that any such delay will result in increased costs.

Under the SE Regulation and other relevant legislation, in the event we and the SNB are unable to come to an arrangement regarding employee involvement within six months following the formation of the SNB, we and the SNB can agree to extend this period or we may accept the standard rules. In general, the standard rules require our Managing Board to inform and consult with an employee representative body (which we refer to as an ERB) on major issues affecting employees. At this time, we cannot determine the outcome of the SNB process.

In the event that the standard rules apply, Dutch SE would have to provide information to and consult with the employee representative body in connection with future decisions regarding major issues affecting employees, including the decision by the boards of Dutch SE to approve Stage 2 of the Proposal. However, the employee representative body would not have the power to block or prevent any Managing or Supervisory Board decisions or actions, including the decision to implement Stage 2 of the Proposal. While we do not anticipate any specific governance issues as a result of employee involvement in future board decisions, we have not previously been subject to these requirements and cannot determine how or whether employee involvement will affect our future governance or operations.

Changes in our board structure and the composition of our board of directors may lead to a loss of continuity of directors and adversely affect our decision-making and governance.

In connection with the implementation of Stage 2 of the Proposal, the Supervisory and Managing Boards of Dutch SE will be replaced with a single board, which we expect will consist of eight non-executive directors and one executive director of Irish SE. We expect that the majority of your directors currently serving on the Supervisory Board will continue as non-executive directors of Irish SE, with two new directors also being added to the board.

Only one of the existing six directors on our Supervisory Board whom we expect to continue as a director of Irish SE has served more than three years. The balance of the Irish SE board, other than our CEO, will be made up of directors with less than three years experience with James Hardie. We intend that any new directors nominated will have appropriate experience in business, corporate governance and the types of issues confronting James Hardie. However, the changes to our board structure and composition as a result of the implementation of the Proposal may result for a period of time in a reduction in the effectiveness of your directors and of board-level decision-making at Irish SE.

For more information about our board structure and the composition of our boards, see “Corporate Governance” in Section 5.3.

The actual benefits that we realise from the Proposal could be materially different from our current expectations.

The Proposal is designed to enable us to reorganise James Hardie in a manner that would, among other things, allow key senior managers with global responsibilities to be free to spend more time with management at our local operations and in our markets and provide more certainty to James Hardie regarding its future tax obligations. In

addition, the Proposal is partly driven by the desire to increase our future flexibility by becoming subject to Irish company law. However, there can be no assurance that the ability of our key senior managers with global responsibilities to spend more time with local operations and in our markets will result in an improvement to our results of operations, that the tax laws expected to apply to Irish SE's operations will not adversely change in the future, that Irish company law will not become more restrictive or otherwise disadvantageous or that changes to our governance structure and board composition will not adversely affect us. A variety of other factors that are partially or entirely beyond our control could cause the actual benefits that we realise from the Proposal to be materially different from what we currently expect.

Our business may be adversely affected as a result of adverse action against us and negative publicity resulting from our announcement and implementation of the Proposal, including the reduction of amounts available for contributions under the AFFA resulting from the costs associated with the Proposal and the possibility of the AICF later not having sufficient funding to meet future obligations.

There is a possibility that, despite certain covenants agreed to by the New South Wales Government in the AFFA, adverse action could be directed against us by one or more of the New South Wales Government, the Government of the Commonwealth of Australia (which we refer to as the Australian Commonwealth Government), governments of the other states or territories of Australia or any other governments, unions or union representative groups, or asbestos disease groups in relation to the asbestos liabilities in respect of which the AICF has been established. Such action might arise as a result of the costs of the Proposal reducing the amounts available for contribution under the AFFA in the financial year following implementation of the Proposal, particularly if the AICF does not have sufficient funding in future years to meet obligations to claimants. This risk is compounded by other factors adversely affecting our net operating cash flow, such as the difficult trading conditions we currently face in our key markets and the payments we have made, and may make in the future, to taxation authorities in respect of prior taxation years.

The Proposal also could result in increased negative publicity related to James Hardie. There continues to be negative publicity regarding, and criticism of, companies that conduct substantial business in the US but are domiciled in countries like Bermuda. We cannot assure you that we will not be subject to similar criticism based on the Proposal. We previously have been the subject of significant negative publicity in connection with the events that were considered by the Special Commission of Inquiry and the Australian Securities & Investments Commission proceedings in Australia.

We believe that any such adverse action or negative publicity could materially adversely affect our financial position, liquidity, results of operations and cash flows, employee morale and the market prices of our publicly traded securities.

We may be unable to obtain the regulatory and other approvals required to implement the Proposal or the Proposal may be challenged by governmental entities or third parties.

Implementing Stage 1 of the Proposal requires a statement of no objection from the Dutch Ministry of Justice and confirmation from the High Court of Ireland that all legal requirements for Stage 1 of the Proposal have been satisfied. We expect we will be able to obtain both of these.

In addition, as of the date of this Explanatory Memorandum we have applied for a statement of no objection from the Treasurer of Australia under Australia's Foreign Acquisitions and Takeovers Act of 1975 in respect of the transfer of our intellectual property from The Netherlands to Ireland and the indirect transfer of our Australian subsidiaries resulting from the internal reorganisation that we are undertaking in connection with the Proposal. We expect to receive the statement of no objection by the time shareholders are asked to consider and approve Stage 1 of the Proposal.

While the Proposal does not require any notice, consent or approval under the terms of the AFFA, we have, as a matter of courtesy, advised the New South Wales Government and Asbestos Injuries Compensation Fund Limited (in its capacity as trustee of the AICF). We and our subsidiary, James Hardie 117 Pty Limited, also have entered into a deed of confirmation with the New South Wales Government and Asbestos Injuries Compensation Fund Limited (the "AFFA Deed of Confirmation"). Among other things, we have agreed in the AFFA Deed of Confirmation that

relevant James Hardie companies and the AICF will apply to the Australian Taxation Office for rulings to replace the tax rulings previously issued by the Australian Taxation Office in connection with the AFFA and for confirmation that the Accepted Tax Conditions (as defined in the AFFA) will remain unchanged in all material respects after implementation of the Proposal (the "ATO Rulings"). We have undertaken in the AFFA Deed of Confirmation that we will not complete the merger with Irish plc Subsidiary necessary to facilitate our transformation to Dutch SE before the Australian Taxation Office has determined these applications. We are released from this undertaking on the first to occur of the Australian Taxation Office determining the applications and 31 December 2009. If the ATO Rulings are unable to be obtained, while we would be released from our undertaking under the AFFA Deed of Confirmation we would need to reassess our ability to proceed to implement the Proposal having regard to the Australian Taxation Office's position, our rights and obligations under the AFFA and the circumstances existing at the time. However we reserve our right to proceed in those circumstances if we determine to do so.

In addition, a relevant state or foreign governmental authority could revoke, fail to provide or challenge or seek to block the Proposal, as such authority deems necessary or desirable in the public interest. Moreover, in some jurisdictions, a third party could initiate a private action challenging or seeking to enjoin the Proposal, before or after it is implemented. We cannot be sure that a challenge to the Proposal will not be made or that, if a challenge is made, our position will prevail. For a full description of the regulatory approvals required for the Proposal, see "Key Steps in Connection with the Proposal" in Section 1.2

Any delay in the implementation of the Proposal may significantly reduce the benefits expected to be obtained from the Proposal.

In addition to the required regulatory and other approvals, the Proposal is subject to a number of other conditions, some of which may prevent, delay or otherwise materially adversely affect its implementation. Although we expect that these conditions will be satisfied in a timely fashion, we cannot predict whether and when these other conditions will be satisfied. Any delay in implementing the Proposal may significantly reduce some or all of the expected benefits from the Proposal and/or result in material increases to the estimated transaction and implementation costs.

Stage 1 of the Proposal may be approved and implemented but Stage 2 of the Proposal may not proceed, in which event Dutch SE will not receive the anticipated benefits from the Proposal.

If Stage 1 of the Proposal is approved and implemented, but Stage 2 of the Proposal does not proceed, Dutch SE will continue as a European Company with its corporate domicile in The Netherlands, with capacity to move its corporate domicile in the future to any other EU member state (that has implemented the SE Regulation) if shareholders approve such a move.

If Stage 2 is not implemented, none of the other favourable aspects of the Proposal will be obtained and the risks and adverse consequences for Dutch SE of staying in The Netherlands will continue to apply, including the requirement for our key senior managers with global responsibilities to spend a significant amount of their time in The Netherlands and the uncertainty regarding our tax obligations as a result of the US IRS interpretation of the application of the US/Netherlands Treaty to James Hardie. In the event Stage 1 is approved and implemented and Stage 2 of the Proposal does not proceed, we will be a Dutch SE and remain exposed to the risk of future adverse changes in Dutch law and Dutch SE will have incurred significant transaction and implementation costs, as well as the diversion of management resources. In the event we have transferred our intellectual property and our treasury and finance operations from The Netherlands in connection with the implementation of Stage 1, based on estimates as of the date of this Explanatory Memorandum, we will have incurred US$30-50 million of Dutch tax as a result of a capital gain on the transfer of our intellectual property from The Netherlands.

More information regarding the costs associated with the Proposal and the costs associated with the transfer of our intellectual property and treasury and finance operations is described under the heading "Financial and Accounting Impact" in Section 1.3.

Implementation of the Proposal and relocation of Dutch SE's corporate headquarters from The Netherlands to Ireland might be disruptive.

Implementing the Proposal could divert our management resources from other transactions or activities that we may otherwise desire to undertake. Diversion of management attention from such activities could adversely affect our ongoing operations and business relationships. These diversions may prevent us from pursuing attractive business opportunities that may arise prior to implementing the Proposal.

In addition, relocating Dutch SE's head office from The Netherlands to Ireland upon implementation of Stage 2 of the Proposal could result in the loss of personnel. Terminating or replacing such personnel could be costly and have a negative impact on the continuity and progress of our business, including our operating results.

We will be exposed to future regulatory risks relating to changes affecting European Companies.

We will be subject to regulatory initiatives of the EU regarding European Companies and the SE Regulation. Changes in the EU, the SE Regulation or the EU directives affecting SEs may affect the overall benefits anticipated as a result of implementing the Proposal. Any of these changes could have a material adverse effect on our business, including our results of operations.

RECENT DEVELOPMENTS

Recent Financial Results

On May 21, 2009, we publicly announced our financial results for the fourth quarter and full year ended March 31, 2009. We announced a US$7.2 million net operating profit, excluding asbestos, ASIC expenses, asset impairments and tax adjustments, for the quarter ended March 31, 2009, a decrease of 57% compared to the same period last year. For the quarter, net operating loss including asbestos, ASIC expenses, asset impairments and tax adjustments was US$129.6 million (mainly due to the change in the actuarial estimate of the company's asbestos liability), compared to US$146.9 million for the same quarter last year. Full year net operating profit excluding asbestos, ASIC expenses, asset impairments and tax adjustments, decreased 44% to US$96.9 million from US$173.8 million. Including asbestos, ASIC expenses, asset impairments and tax adjustments, net operating profit for the full year increased from a loss of US$71.6 million to a profit of US$136.3 million.

We also announced that the diluted loss per share for the quarter decreased from US33.8 cents per share to US30.0 cents per share. For the full year, diluted earnings per share improved from a loss of US15.7 cents per share to earnings of US31.4 cents per share. Diluted earnings per share excluding asbestos, ASIC expenses, asset impairments and tax adjustments decreased from US3.8 cents to US1.7 cents for the quarter and decreased by 42% from US38.1 cents to US22.3 cents for the full year.

We announced net operating cash flow for the full year ended March 31, 2009 moved from cash provided of US$319.3 million in the prior year to cash used of US$45.2 million. The decrease was driven primarily by the reduced contribution from the USA and Europe Fibre Cement business, quarterly installment payments to the AICF totaling US$110.0 million and ATO settlement payment of US$101.6 million.

We also announced that after a further review of our dividend policy, the Board had decided to omit the year-end dividend to preserve capital.

Definitions

Financial Measures — US GAAP equivalents

Net operating profit — is equivalent to the US GAAP measure of net income.

Non-US GAAP Financial Measures

Net operating profit excluding asbestos, ASIC expenses, asset impairments and tax adjustments — Net operating profit excluding asbestos, ASIC expenses, asset impairments and tax adjustments is not a measure of financial performance under US GAAP and should not be considered to be more meaningful than net income. The company has included this financial measure to provide investors with an alternative method for assessing its operating results in a manner that is focussed on the performance of its ongoing operations. The company uses this non-US GAAP measure for the same purposes.

	Q4 FY 2009	Q4 FY 2008	FY 2009	FY 2008
	US$ Millions			
Net operating (loss) profit	$ (129.6)	$ (146.9)	$ 136.3	$ (71.6)
Asbestos:				
Asbestos adjustments	176.5	182.3	(17.4)	240.1
AICF SG&A expenses	(0.7)	1.3	0.7	4.0
AICF interest income	(1.6)	(2.4)	(6.4)	(9.4)
Impairment of AICF investments	14.8	—	14.8	—
Tax benefit related to asbestos adjustments	(48.7)	(46.2)	(48.7)	(45.8)
ASIC expenses (net of tax)	1.2	0.7	10.4	4.1
Asset impairments:				
Impairment charges (net of tax)	—	24.6	—	44.6
Impairment related costs (net of tax)	—	1.6	—	2.0
Tax adjustments	(4.7)	1.6	7.2	5.8
Net operating profit excluding asbestos, ASIC expenses, asset impairments and tax adjustments	$ 7.2	$ 16.6	$ 96.9	$ 173.8

Diluted earnings per share excluding asbestos, ASIC expenses, asset impairments and tax adjustments — Diluted earnings per share excluding asbestos, ASIC expenses, asset impairments and tax adjustments is not a measure of financial performance under US GAAP and should not be considered to be more meaningful than diluted earnings per share. The company has included this financial measure to provide investors with an alternative method for assessing its operating results in a manner that is focussed on the performance of its ongoing operations. The company's management uses this non-US GAAP measure for the same purposes.

	Q4 FY 2009	Q4 FY 2008	FY 2009	FY 2008
	US$ Millions			
Net operating profit excluding asbestos, ASIC expenses, asset impairments and tax adjustments	$ 7.2	$ 16.6	$ 96.9	$ 173.8
Weighted average common shares outstanding — Diluted (millions)	435.6	434.6	434.5	456.1
Diluted earnings per share excluding asbestos, ASIC expenses, asset impairments and tax adjustments (US cents)	1.7	3.8	22.3	38.1

Remuneration of Managing Board and Senior Executives

On June 22, 2009 the Supervisory Board approved a number of changes to remuneration arrangements for the Managing Board and senior executives for fiscal year 2010. JHI NV will seek shareholder approval for the changes at the 2009 annual general meeting on August 21, 2009, which will be held immediately following the Extraordinary General Meeting.

The key adjustments to the remuneration framework in fiscal year 2010 are:

- For long-term incentive grants under the JHINV Long Term Incentive Plan 2006 (which we refer to as the LTIP), having 70% of the LTI Target quantum vesting subject to negative discretion based on a number of quantitative performance criteria which will be approved by shareholders (which we refer to as the Scorecard). The remaining 30% of LTI Target quantum will continue to be granted under the LTIP based on relative total shareholder return with no negative discretion applicable.

- Re-allocating 40% of LTI Target quantum temporarily to the STI Target quantum under the Executive Incentive Program and the LTIP, to be granted as restricted stock and vesting subject to performance against the Scorecard.
- Paying the remaining 30% of LTI Target in cash under the LTIP based on changes in the value of the company's stock and vesting subject to performance against the Scorecard.
- Indexing the EBIT goal under the Executive Incentive Program for changes to housing starts in Asia Pacific as well as the current indexing for the US business.
- Paying all STI Target payments under the LTIP in a mixture of shares and restricted stock rather than cash.

1. THE PROPOSAL

1.1. Summary of Terms of the Proposal

The Proposal is to effect our transformation from a public limited liability corporation registered in The Netherlands (*Naamloze Vennootschap* (NV)) to a European Company (*Societas Europaea* (SE)), and ultimately the relocation of our corporate domicile from The Netherlands to Ireland.

The Proposal is to be undertaken in two stages, as follows:

- **Stage 1:** We will transform to a European Company (*Societas Europaea* (SE)) by merging with a newly-formed subsidiary. We will become Dutch SE, with our corporate domicile remaining in The Netherlands.

In connection with the implementation of Stage 1 of the Proposal, we currently intend to transfer our intellectual property to a newly-formed subsidiary tax resident in Ireland and to transfer our treasury and finance operations to a newly-formed Irish subsidiary. We believe leaving the intellectual property in The Netherlands until the implementation of Stage 2 of the Proposal would result in the incurrence of additional Dutch tax on a future transfer of the intellectual property from The Netherlands. However, as the transfer of our intellectual property and our treasury and finance operations from The Netherlands does not require shareholder approval, we may determine, subject to any required consents from our lenders, to transfer our intellectual property and our treasury and finance operations from The Netherlands independent of either stage being approved by shareholders and implemented. The transfer of our treasury and finance operations from The Netherlands would result in the early termination of our participation in the Financial Risk Reserve regime in The Netherlands and would require the payment of all Dutch tax due on the balance remaining in our Financial Risk Reserve account at that time, including tax due from the transfer of our intellectual property from The Netherlands.

- **Stage 2:** Following implementation of Stage 1, Dutch SE will move its corporate domicile to Ireland to become Irish SE.

In connection with Stage 2, the registered office and head office of Dutch SE will move from The Netherlands to Ireland.

See "Financial and Accounting Impact" in Section 1.3 for further information regarding costs associated with the Proposal and the costs associated with the transfer of our intellectual property and our treasury and finance operations.

1.2. Key Steps in Connection with the Proposal

1.2.1. Stage 1

The following key steps already have been undertaken with respect to the Proposal:

- approval by your directors of Stage 1;
- execution of the terms of merger and the filing thereof with the Dutch Trade Register;
- initiation of the SNB process;
- receipt of rulings from the Irish and Dutch Revenue authorities confirming certain Irish and Dutch tax matters relating to the Proposal;
- application for a statement of no objection from the Treasurer of Australia in relation to the transfer of our intellectual property and the indirect transfer of our Australian subsidiaries under an Irish holding company structure;
- receipt of a draft ruling from the Australian Taxation Office that no capital gain or capital loss will arise for Australian tax resident shareholders that hold their shares or CUFS on capital account;

- confirmation from the ASX that it does not object to the terms of the proposed constituent documents for Dutch SE and Irish SE;
- confirmation by the New South Wales Government and Asbestos Injuries Compensation Fund Limited (as trustee of the AICF) pursuant to the AFFA Deed of Confirmation that the Proposal does not constitute an "Insolvency Event," "Wind-Up Event" or "Reconstruction Event" under the AFFA or under the replacement parent guarantee, a default under the AFFA or a breach of the AFFA or any of the Related Agreements (as defined in the AFFA) by us or any other of our subsidiaries which is a party to those agreements; and
- confirmation from our current lending banks that the Proposal does not require any consent or approval, or result in any rights of termination, under our existing external finance facilities and agreement with our current lending banks for the rearrangement of those facilities to enable James Hardie International Finance Limited (which we refer to as JHIF Limited), a newly-formed finance subsidiary that will operate our treasury and finance functions, to become a borrower and assume the obligations of James Hardie International Finance B.V. (which we refer to as JHIF BV) under the external finance facilities at the same time the financing and treasury operations are transferred to it.

The key remaining steps that must be satisfied to implement Stage 1 of the Proposal are:

- shareholder approval for Stage 1;
- completion of the SNB process;
- receipt of a statement of no objection from the Dutch Ministry of Justice;
- receipt of a statement of no objection from the Treasurer of Australia;
- expiry of the one-month period for creditor opposition that commenced the day after publication of the terms of merger and during which period the Dutch Ministry of Justice has the authority to file objections on grounds of public order, provided that such period may restart the day after publication of any amendments to the terms of merger;
- confirmation by the High Court of Ireland that all legal requirements for Stage 1 of the Proposal have been satisfied; and
- the Australian Taxation Office determining the applications for rulings to replace those previously issued in connection with the AFFA and for confirmation that the Accepted Tax Conditions (as defined in the AFFA) will remain unchanged in all material respects after implementation of the Proposal.

Dutch law requires the Managing Board to inform our shareholders prior to or at the extraordinary general meeting of any important changes in the circumstances that have had an impact on the terms of merger (including the explanatory notes). Once the steps above have been satisfied, Stage 1 will be effected upon execution of a deed of merger and the filing of such deed with the Dutch Trade Register, resulting in our transformation to Dutch SE with our corporate domicile continuing in The Netherlands.

The Dutch Civil Code also requires that the deed of merger be executed within six months after the announcement that the terms of merger have been filed with the Dutch Trade Register. We intend that the SNB process will be completed within that period (see "Employee Representative Body" in Section 4.4). If the SNB process is not completed within this six-month period, we may seek to agree on an extension of the period of negotiations with the SNB. Such agreed extension will trigger an extension of the six-month period within which the deed of merger must be executed. In the event of such an extension, the deed of merger must then be executed within three months from the end of the extended period as agreed with the SNB.

1.2.2. Stage 2

The following steps must be satisfied before Stage 2 of the Proposal can be implemented:

- approval by the directors of Dutch SE for Stage 2, which we expect will involve the provision of information to and consultation with the employee representative body that is formed in connection with Stage 1;

- expiry of a two-month period after publication of the transfer proposal relating to Stage 2 for creditor opposition to the change in corporate domicile to Ireland and satisfactory resolution of any creditor objections;
- expiry of a two-month period after publication of the transfer proposal relating to Stage 2 without opposition from the Dutch Ministry of Justice based on grounds of public interest;
- shareholder approval for Stage 2, including the reclassification of Dutch SE's merger revaluation reserve (see "Financial and Accounting Impact" in Section 1.3); and
- a Dutch civil law notary issuing a certificate attesting to the completion of the acts and formalities to be accomplished before the move to Ireland and the submission of the certificate to the Companies Registration Office of Ireland, together with appropriate filing documentation.

Although we do not believe there are any regulatory approvals required to complete Stage 2 of the Proposal, Dutch law is unclear as to whether a statement of no objection of the Dutch Ministry of Justice is required. As a result, we also intend to seek a statement of no objection from the Dutch Ministry of Justice in connection with the implementation of Stage 2.

1.3. Financial and Accounting Impact

The significant financial and accounting impacts from the implementation of the Proposal and the transfer of our intellectual property and treasury and finance operations in connection with the Proposal are described below.

Transaction and implementation costs in connection with the Proposal and related transactions, consisting of the transfer of our intellectual property and treasury and finance operations, assuming our intellectual property was transferred as of September 30, 2009 (the currently estimated date for implementation of Stage 1 of the Proposal), are estimated to range from approximately US$51-71 million, US$14 million of which already has been incurred. The costs expected to be incurred in connection with Stage 1 of the Proposal include a one-time approximately US$30-50 million tax in The Netherlands as a result of a capital gain on the transfer of our intellectual property from The Netherlands. The starting point of this range was estimated using the fair market value of our intellectual property as of June 1, 2009 and our income forecasts for our Financial Risk Reserve account through September 30, 2009, but did not take into account any gains or losses as a result of changes in currency exchange rates. Due to the factors described below that affect the amount of Dutch tax actually due as a result of the transfer of our intellectual property, as well as the actual time of such transfer and our exit from the Financial Risk Reserve regime, the tax due could vary from our estimate and the amount of such variance could be material.

This estimated one-time Dutch tax cost of US$30-50 million arises from a capital gain on the transfer of our intellectual property out of The Netherlands to a newly-formed Bermuda company tax resident in Ireland in connection with Stage 1 of the Proposal. Under the Financial Risk Reserve regime rulings relating to our intellectual property, 28% of this gain would be subject to the statutory rate of Dutch corporate tax (currently 25.5%), which is estimated to result in Dutch tax of US$20-24 million. The remaining 72% of the gain will be included in our Financial Risk Reserve account. The Financial Risk Reserve account may be released tax-free if and to the extent that James Hardie makes qualifying capital contributions to group companies that use the cash received to finance capital and other qualifying expenditures ("exempt releases").

Any balance remaining in our Financial Risk Reserve account at the time of the regime's expiry or our earlier exit is subject to tax at the statutory rate of Dutch corporate tax. The transfer of our treasury and finance operations from The Netherlands would result in the early termination of our Financial Risk Reserve regime ruling. Based on an estimated ending balance in our Financial Risk Reserve account on September 30, 2009, the amount of exempt releases expected to be available immediately prior to our exit from the regime and the statutory rate of Dutch corporate tax (currently 25.5%), we estimate that approximately US$10-26 million in additional Dutch tax will be due on the transfer of these operations. However, the starting point of this range may be as low as zero if we prevail

on certain Dutch tax positions we have taken or plan to take in our Dutch tax returns for which we have not recorded a tax benefit in our consolidated financial statements.

The amount of Dutch tax actually due at the time of the transfer of our intellectual property and our subsequent exit from the Financial Risk Reserve regime will depend on a number of factors at that time, such as fair market value of our intellectual property and our tax bases in the intellectual property, other income earned and exempt releases up to that date in our Financial Risk Reserve account, changes in currency exchange rates and the amount of exempt releases available. The amount of tax due at the time of our exit from the Financial Risk Reserve regime would increase as a result of a weakening in the value of the Australian and New Zealand currencies as compared to the US dollar. The determination of the fair market value of our intellectual property is affected by, among other things, our results of operations and the state of the markets in which we sell our products. An improvement in our results of operations or an increase in the number of housing starts in the markets in which we sell our products could result in an increase in the fair market value of our intellectual property. The value of our intellectual property has fluctuated in the past and in the future may vary materially from the value we used to estimate the starting point of the range of the amount of taxes due on the transfer of our intellectual property. Additionally, the fair market value of our intellectual property could increase as a result of any strengthening in the value of the Australian and New Zealand currencies as compared to the US dollar. For example, assuming the other factors that affect the amount of Dutch tax due on the transfer of our intellectual property remained unchanged, a 10% increase in the fair market value of our intellectual property as of the date of its transfer would result in approximately US$14 million in additional Dutch tax.

This Dutch tax would not be incurred if our intellectual property remained in The Netherlands after the move of Dutch SE's domicile to Ireland. While the one-time payments relating to the transfer of our intellectual property are not insignificant, we believe leaving the intellectual property in The Netherlands would result in the incurrence of additional Dutch tax in the event of a future transfer of this property from The Netherlands. In addition, leaving our intellectual property in The Netherlands would not permit us to obtain all of the expected benefits of the Proposal. The transfer of our treasury and finance operations will permit interest income from our finance operations to be eligible for a lower statutory rate of tax in Ireland than would be applicable in The Netherlands following expiry of the Financial Risk Reserve regime on December 31, 2010. For example, leaving the intellectual property in The Netherlands after the expiration of the Financial Risk Reserve regime, would result in a higher statutory rate of tax on royalty payments in respect of our intellectual property than would be the case in Ireland (assuming an equivalent replacement regime is not adopted in The Netherlands) and would not allow us to be eligible for a 0% withholding tax rate on royalty payments made from our subsidiaries in the US to our Dutch subsidiary which holds our intellectual property.

As previously described, the transfer of our intellectual property and treasury and finance operations does not require shareholder approval and we may determine, subject to any required consents from our lenders, to complete these transfers independent of either stage being approved by shareholders and implemented.

The remaining approximately US$21 million of costs, US$14 million of which already has been incurred, relate primarily to expenses associated with the Proposal, advisory fees and costs related to our establishment of a new head office in Ireland.

Our annual accounts will continue to be prepared under US GAAP. Commencing with the first financial year end after the Proposal (including Stage 2) is completed (i.e., year ended March 31, 2010 if Stage 2 is implemented prior to April 1, 2010), the annual accounts of Irish SE also will be prepared under Irish GAAP.

In connection with our 2001 reorganisation (See "The 2001 and 2003 Reorganisations" in Section 2.1), a negative merger revaluation reserve was recorded in the company's financial statements in order to maintain the historical cost bases of our consolidated net assets from directly before the 2001 reorganisation. Under Dutch and Irish company law, the merger revaluation reserve is included in the calculation of amounts available for distribution to shareholders. In The Netherlands, the share premium reserve also is included in such calculation. In Ireland, share premium reserve is not included in such calculation, which would result in a material reduction in the amount available for distribution to shareholders following Dutch SE's transformation to Irish SE in Stage 2.

As part of shareholder approval for Stage 2, shareholders of Dutch SE will be asked to approve the reclassification of the merger revaluation reserve to share premium reserve and retained earnings, which will eliminate this merger revaluation reserve. After implementation of Stage 2, our ability to pay dividends and repurchase shares will be subject to Irish company law and will be determined based on our profits calculated under Irish GAAP. However, as a result of this reclassification, we do not believe these changes will have a material impact on our ability to pay dividends or repurchase shares.

1.4. Our Transformation to Dutch SE (Stage 1)

To effect our transformation to Dutch SE, we have entered into the terms of merger with our newly-formed subsidiary, Irish plc Subsidiary. Under the SE Regulation, effecting a merger with a company in another EU member state is the only currently available option to the company to achieve the proposed transformation to Dutch SE. Other options available under the SE Regulation, such as a direct conversion of the company into Dutch SE or the formation of a new holding company, require that the company has had a subsidiary governed by the legislation of another EU member state for at least two years prior to the implementation of Stage 1 of the Proposal, which will not be the case for the company at the time of the anticipated implementation of Stage 1 of the Proposal.

As a result of the merger, we will continue as the surviving entity, assuming all of the assets and liabilities of Irish plc Subsidiary by operation of law. Upon completion of the merger, our articles of association will be amended to comply with the SE Regulation and we will become Dutch SE.

Our transformation to Dutch SE following the merger will involve a change of corporate form only, with Dutch SE having the same assets and liabilities both before and after the transformation. We will need to change details of our registration in The Netherlands to reflect our change of corporate form to Dutch SE.

1.5. Summary of Terms of Merger

On June 23, 2009, we and Irish plc Subsidiary entered into the terms of merger pursuant to which Irish plc Subsidiary will merge with and into us and we will become Dutch SE. We recommend that you read carefully the terms of merger including the explanatory notes for the complete terms of the merger and other important information. The terms of merger, including the explanatory notes (but without annexes), are attached to this Explanatory Memorandum as Annex A and are incorporated by reference.

The material provisions of the terms of merger are as follows:

- we will, by operation of law, acquire the nominal assets and liabilities of Irish plc Subsidiary under a universal title of succession;
- Irish plc Subsidiary's six nominee shareholders, who collectively hold six shares in Irish plc Subsidiary (which represents all of the outstanding issued share capital of Irish plc Subsidiary not held by us), will each receive one share in Dutch SE in exchange for the one share each of them holds in Irish plc Subsidiary;
- the articles of association of Dutch SE will be amended; and
- our existing Managing and Supervisory Boards will continue as the Managing and Supervisory Boards of Dutch SE but our Joint Board will be eliminated.

There are no contractual conditions precedent to the merger. However, the merger will only become effective upon the execution of the deed of merger and the filing of such deed with the Dutch Trade Register following (a) the receipt by the parties of a statement of no objection from the Dutch Ministry of Justice, (b) a certificate of compliance from the High Court of Ireland and (c) the registration of the merger in the Dutch Trade Register, which is subject to the presentation of an arrangement on employee involvement. (See "Employee Representative Body" in Section 4.4.)

1.6. Corporate Domicile of Dutch SE to Ireland (Stage 2)

After Stage 1 is implemented, Dutch SE intends to seek shareholder approval for Stage 2, which provides for the corporate domicile of Dutch SE to change from The Netherlands to Ireland.

1.7. Holdings of CUFS, ADSs and Shares through the Proposal

Shareholders will continue to hold the same number of CUFS, ADSs or CUFS they have converted to shares in Dutch SE (if Stage 1 is approved and implemented) and in Irish SE (if Stage 2 is approved and implemented) as they held beforehand. No action is required of shareholders in respect of their certificates or holding statements in connection with the Proposal. If the Proposal is approved and implemented, shareholders' current certificates or holding statements for our securities will remain effective and continue to represent their holdings in Dutch SE and Irish SE (as applicable) until new holding statements are issued in the ordinary course as a result of future changes in security holdings.

1.8. Required Votes for the Proposal

Stage 1 of the Proposal will require the approval of 75% of shareholder votes cast at a properly held meeting at which at least 5% of our issued share capital is present or represented. Stage 2 of the Proposal will require the approval of $66^{2}/_{3}$% of shareholder votes cast at a properly held meeting at which at least 5% of Dutch SE's issued share capital is present or represented.

2. BACKGROUND OF THE PROPOSAL AND RELATED MATTERS

This section summarises the key background events leading to your directors' recommendation of the Proposal.

2.1. The 2001 and 2003 Reorganisations

In July 2001, we announced plans to establish a new corporate structure designed to place us and our shareholders in a position to maximise value from our existing operations and continuing international growth. The restructure resulted in the incorporation of our parent company in The Netherlands with a primary listing on the ASX in the form of CUFS and the listing of ADSs on the NYSE.

In 2003, we transferred ownership of certain intellectual property assets to The Netherlands to better manage our intellectual property assets by centralising the investment, holding and use of the intellectual property.

2.2. The Netherlands Financial Risk Reserve Regime

We currently have our finance and treasury activities centralised in a subsidiary located in The Netherlands. This subsidiary also owns, manages and develops the intellectual property that we license to our operating subsidiaries and third parties. Under Dutch law, we derive commercial and tax benefits from the group finance operations of our Netherlands based finance subsidiary. This subsidiary received a ruling from Dutch Revenue authorities that allows it to set aside 80% of the qualifying financing income received from these activities in a Financial Risk Reserve account subject to the Financial Risk Reserve regime. A similar ruling was also received that allows 72% of the gain from the disposal of intellectual property, to be included in the Financial Risk Reserve account. The other 20% of the income received from qualifying financing activities and the other 28% of the gain arising from the disposal of our intellectual property, are subject to the statutory rate of Dutch corporate tax (currently 25.5%). The Financial Risk Reserve regime also allows that 50% or 100% of qualifying equity contributions used to finance capital and certain other expenditures may be released from the Financial Risk Reserve account without being subject to any further Dutch tax. Amounts not released from the Financial Risk Reserve account prior to the expiry or early termination of the Financial Risk Reserve regime will be subject to the statutory rate of Dutch corporate tax (currently 25.5%).

The favourable tax benefits provided under the Financial Risk Reserve regime are due to expire on December 31, 2010. However, the transfer of our treasury and finance operations from The Netherlands would result in the early termination of our participation in this regime.

Recently, the Dutch Ministry of Finance published several proposals for comment, including a compulsory group interest box regime. It is uncertain at this time whether this proposed regime will be adopted, whether the European Commission will approve this compulsory interest box regime or the timing thereof. While there are a number of strategies that in principle could be used to reduce the impact of the statutory rate that would be in effect in The Netherlands upon the expiry of the Financial Risk Reserve regime, in case the proposed regime is not put into effect, after review, given our current circumstances, we do not believe that any of the strategies we considered will satisfy our needs. For example, we considered remaining domiciled in The Netherlands and moving our intellectual property to another jurisdiction in the EU. While this strategy could have addressed the issue of the expiration of the Financial Risk Reserve regime in 2010, it would not have addressed other issues, including allowing key senior managers with global responsibility to spend more time with James Hardie's operations and in its markets, providing greater certainty for us to obtain benefits under the US/Netherlands Treaty and increasing James Hardie's flexibility in the future to undertake certain transactions which directors believe expands our strategic options.

2.3. The US/Netherlands Treaty

As a tax resident of The Netherlands, we have received and we believe are entitled to receive substantial tax benefits under the US/Netherlands Treaty, which we believe provides for no US withholding tax on dividends, interest and royalties paid by our US subsidiaries to us or our subsidiaries, subject to certain conditions being met, in The Netherlands.

These benefits were available to us under the terms of the US/Netherlands Treaty that existed when we moved our domicile to The Netherlands in 2002. In 2004, the US/Netherlands Treaty was amended to include an additional requirement commonly known as the "substantial presence" test, which requires us to demonstrate that the primary place of management and control of the company is in The Netherlands. Because the requirements regarding primary place of management and control are set forth in the US/Netherlands Treaty and are not specifically defined, these requirements are subject to interpretation by the US IRS. In the US/Ireland Treaty, the eligibility requirements are more objective and do not require the same level of interpretation as the US/Netherlands Treaty.

The amended US/Netherlands Treaty applied to us from February 1, 2006 onward. In response to these amendments, we increased the presence of our key senior executives and added additional corporate functions and other employees in The Netherlands. We believe that as a result of our response to the 2004 amendments we have had and continue to have a substantial presence in The Netherlands and that we and our Dutch subsidiaries qualify for benefits under the amended US/Netherlands Treaty.

2.4. The US IRS 30-Day Letter

In July 2008, the US IRS concluded an audit to determine whether we satisfy the requirements under the amended US/Netherlands Treaty. As part of this audit process, the US IRS issued a 30-Day Letter in which it asserted that we and our subsidiaries in The Netherlands did not qualify for benefits under the amended US/Netherlands Treaty during 2006 and 2007.

We strongly disagreed with the assertions made by the US IRS, and contested the US IRS's findings by filing a formal protest to the 30-Day Letter through the administrative appeals process. Following a conference with the Appeals Division of the US IRS and further discussions, we announced on April 15, 2009 that the US IRS has signed a settlement agreement with the company's subsidiaries in which the US IRS conceded the US government's position in full. As a result, the US IRS has now concluded that we and our subsidiaries did qualify for prior benefits under the amended US/Netherlands Treaty during 2006 and 2007.

We believe that we and our Dutch subsidiaries have qualified and continue to qualify for treaty benefits under the amended US/Netherlands Treaty. While we ultimately prevailed in the dispute with the US IRS for the years 2006 and 2007, the US IRS could reassert its position in respect of subsequent tax periods and, accordingly, your directors consider it prudent to mitigate the risk of further disputes with the US IRS. If the US IRS were to reassert its position in respect of subsequent tax periods and the Proposal is not implemented, we may be unable to receive tax benefits under the US/Netherlands Treaty, in which case we could be liable for 30% withholding tax on dividend, interest and royalty payments in periods ending after 2007 and, again, interest charges and penalties could apply. While the Proposal will not impact the risk of withholding taxes being imposed on payments made to us or our subsidiaries in The Netherlands during 2008 and 2009, if we remain domiciled in The Netherlands, the amount of withholding tax that could be in dispute with the US IRS is estimated to be approximately US$30 million for 2010 and is expected to increase thereafter.

2.5. Our Business and Residency Requirements

2.5.1. Our Business

Through our network of subsidiaries, we manufacture building materials in the US, Australia, New Zealand and the Philippines. In financial year 2008, we generated net sales in excess of US$1.4 billion. The majority of our building materials manufacturing capacity (86%) was located in the US and the US market also accounted for almost 80% of net sales to customers. As of March 16, 2009, we employed 2,329 people worldwide, the majority of whom (1,410) were located in the US.

Our business in the US has been adversely affected by the decline in the US housing market and the turmoil within financial and mortgage lending institutions. These challenges make it even more difficult to maintain significant management presence in The Netherlands, away from our major operations, while continuing to comply with the "substantial presence" test under the amended US/Netherlands Treaty.

2.5.2. Our Residency Requirements

To satisfy the requirements of the amended US/Netherlands Treaty as discussed under "The US/Netherlands Treaty" in Section 2.3, we moved our Chief Executive Officer, Chief Financial Officer and General Counsel to The Netherlands prior to February 1, 2006 and established our head office there. In addition:

- strategic decisions regarding our business have been and continue to be made in The Netherlands, and our US and Asia Pacific leadership teams travel to The Netherlands for regular meetings with the Managing Board; and
- the majority of Supervisory Board meetings have been and continue to be held in The Netherlands.

Even if increasing our management presence in The Netherlands were a viable practical and commercial option, the continued uncertainty surrounding the annual application of the amended US/Netherlands Treaty presents an unacceptable risk for us as the US IRS could, notwithstanding its concession that we and our subsidiaries qualified for benefits during 2006 and 2007, take the position at any time that the primary place of management and control requirements under the "substantial presence" test are not met in subsequent tax years. Failure to meet the requirements in the amended US/Netherlands Treaty would have serious ramifications for our shareholders given the large amounts of withholding tax, plus interest and penalties, in respect of future payments of interest, royalties and dividends out of the US that would be incurred.

Resolution of any disputes through litigation could take several years, would involve distraction of our management and may not be resolved in our favour. Your directors consider that the on-going US IRS risk outweighs the potential risks and disadvantages associated with the Proposal.

In any event, given the current economic environment, your directors do not believe that continuing to base key senior management with global responsibilities in The Netherlands, away from most of our operations and markets, is in the best interests of James Hardie and its shareholders.

2.6. Features of Dutch Company Law

At present Dutch company law offers limited flexibility and requires a higher threshold for shareholder acceptance in order to complete a number of transactions that would require a lower threshold for shareholder acceptance in other jurisdictions. This makes reorganising James Hardie, and undertaking transactions that your directors might consider in the future, difficult to implement.

By way of example, Dutch company law:

- does not provide for schemes of arrangement (which is a court sanctioned process that allows shareholders to approve the reorganisation of a company at a court convened meeting of members) as it exists under Australian and Irish law;
- requires acceptance by holders of 95% of all of our issued share capital to establish a non-Dutch company as the holding company for James Hardie so that the transaction would not result in two separately listed companies;
- requires 95% of all of our issued share capital to be acquired to effect a compulsory acquisition under a takeover; and
- permits a single board structure in which we could allocate executive duties to our existing Managing Board members and supervisory duties to our existing Supervisory Board members, but all members of the single board would in principle be subject to collective liability for the acts or omissions of any member. A proposal has been submitted to parliament for a single board structure in The Netherlands that would mitigate this collective liability. However, there can be no assurance that a single board structure without collective liability will be adopted in The Netherlands or its timing or specific terms.

The two stage implementation of the Proposal by which we are transformed to Dutch SE and then Irish SE is a way to achieve this reorganisation within the limits of Dutch company law. At the conclusion of Stage 2, we (as Dutch SE) will cease to be subject to Dutch company law and instead (as Irish SE) will become subject to Irish law

in addition to the SE Regulation. A summary of the key differences between Dutch and Irish law is described under the heading "Summary of Key Corporate Law Differences Between Dutch SE and Irish SE" in Section 5.4.

2.7. Features of Irish Company Law

By way of contrast, Irish company law offers greater flexibility and provides for more achievable shareholder acceptance thresholds for certain key types of transactions. As a result, future reorganisations of Irish SE and other types of transactions that the Irish SE board may wish to undertake would be greatly simplified.

By way of example, Irish company law:

- provides for schemes of arrangement (which require approval by a majority of members in number representing not less than 75% in value of the members present and voting either in person or by proxy at a court-convened meeting of members), which could be used to, among other things, complete a reorganisation that under current Irish law would enable a new parent company domiciled in a jurisdiction outside of the EU to be established in a manner that could result in Australian capital gains tax relief being available for most shareholders that would otherwise realise a capital gain under the Australian capital gains tax provisions, or to complete other transactions that the board of Irish SE may wish to consider undertaking in the future;
- in the context of an offer for the entire issued share capital of Irish SE, requires 80% (instead of 95%) of the issued share capital of Irish SE to be acquired to effect a compulsory acquisition; and
- provides for a statutory takeover regime, which may be beneficial to Irish SE and its shareholders.

3. IMPORTANT CONSIDERATIONS FOR SHAREHOLDERS

3.1. Key Benefits

The Proposal and the contemplated transfer of our intellectual property and treasury and finance operations provide the following key benefits:

- allow key senior managers with global responsibilities to spend more time with James Hardie's operations and in its markets because the US/Ireland Treaty does not contain a substantial presence test that requires these managers to spend significant time in Ireland;
- provide greater certainty for James Hardie to obtain benefits under the US/Ireland Treaty than is the case under the US/Netherlands Treaty. In addition, Irish SE would be eligible for a 0% withholding tax rate on royalty and interest payments made from its subsidiaries in the US to Irish SE and its subsidiaries in Ireland;
- increase our flexibility to undertake certain transactions under Irish company law, which your directors believe expands our future strategic options;
- simplify our governance structure to a single board of directors;
- make us eligible for a lower statutory tax rate for our intellectual property and treasury and finance operations than would be the case if these operations remained in The Netherlands after the expiry of the Financial Risk Reserve regime; and
- permit most shareholders to be eligible to receive dividends not subject to withholding tax.

Firstly, the amended US/Netherlands Treaty currently requires the "substantial presence" test to be satisfied in The Netherlands. This test requires key senior management with global responsibilities to spend considerable time in The Netherlands beyond a level required to effectively manage James Hardie's global operations as described under the heading "Our Business and Residency Requirements" in Section 2.5. The Proposal to move our corporate domicile to Ireland would permit our key senior management with global responsibilities to be free to spend more time with our operations and in our markets as we would no longer be restricted by the requirements of the "substantial presence" test.

Secondly, the Proposal addresses the concerns previously raised by the US IRS as to whether we qualify for treaty benefits under the amended US/Netherlands Treaty. The US/Ireland Treaty does not contain a "substantial presence" test, so the requirements for treaty benefits under the US/Ireland Treaty are clearer and more settled. Those requirements include that Irish SE be a tax resident of Ireland and that the principal class of its shares satisfies certain minimum trading requirements on one or more recognised stock exchanges (which include both the ASX and the NYSE). In light of the ruling we received from the Irish Revenue authorities relating to Irish SE qualifying as a tax resident of Ireland (see "Irish Ruling Requests" in Section 6.2) and our assessment that we believe we will be able to operate in the manner set out in the rulings to qualify as an Irish tax resident and that Irish SE securities will continue to be quoted for trading, and, we expect, will continue to meet the trading requirements on both the ASX and the NYSE, we believe that Irish SE will satisfy such requirements. We also believe that the objective nature of such requirements, as compared to the "substantial presence" test under the US/Netherlands Treaty, reduces the likelihood of successful challenge to Irish SE's qualifications under the current US/Ireland Treaty.

Thirdly, Irish company law will permit Irish SE to pursue a range of possible future strategic options not available under existing Dutch company law. Among other things, Irish law requires the acquisition of 80% of the issued share capital of Irish SE in order to effect a compulsory acquisition where an offer has been made to acquire the entire issued share capital of Irish SE and provides for the concept of a court-approved scheme of arrangement. The ability under Irish law to effect a compulsory acquisition (at a lower threshold) and implement a court-approved scheme of arrangement could be used to complete a reorganisation or other transaction that the board of Irish SE may wish to consider in the future. Dutch law requires the acquisition of 95% of all of our issued share capital to effect a compulsory acquisition and does not provide for schemes of arrangement. The range of possible future strategic options available as an Irish SE, as compared to those existing under Dutch company law, should allow James Hardie increased flexibility, even in the event the US/Ireland Treaty were to be changed in the future.

Fourthly, the Proposal will allow us to simplify our existing governance structure by permitting Irish SE to adopt a single board.

Fifthly, we believe that our intellectual property and treasury and finance operations will be eligible for a statutory rate of tax that currently is lower than would be the case if these operations remained in The Netherlands after the expiry of the Financial Risk Reserve regime on December 31, 2010. See "Taxation Impact on Irish SE" in Section 5.2.4. We have received rulings from the Irish Revenue authorities relating to the tax status in Ireland of two of our newly-formed subsidiaries, which will hold our intellectual property and treasury and finance operations. Based on these rulings and our assessment that these operations will satisfy the facts set forth in our ruling requests, we believe the subsidiaries which will conduct our intellectual property and treasury and finance operations in Ireland will qualify as "trading companies" and will be eligible for a corporation tax rate for "trading companies" (currently 12.5%) which is lower than the rate that currently would be applicable in The Netherlands to these operations following the expiry of the Financial Risk Reserve regime on December 31, 2010.

Recently, the Dutch Ministry of Finance published several proposals for comment, including a compulsory group interest box regime. It is uncertain at this time whether this proposed regime will be adopted, whether the European Commission will approve this compulsory interest box regime or the timing there of. In addition, the Proposal allows Irish SE to be eligible for a 0% withholding tax rate on royalty and interest payments made from its subsidiaries in the US to Irish SE and its subsidiaries in Ireland.

Finally, dividends paid by Irish SE to most shareholders (who are resident in Australia or the US) will be eligible to be free from dividend withholding tax if certain exemptions apply and the shareholder has provided the necessary documentation. (See "Irish Shareholders Taxation" in Section 9.4.3.) This compares favourably to the current situation under Dutch law where dividends paid to:

- Australian resident shareholders are subject to a 15% Dutch dividend withholding tax (with the potential for such tax to be offset by shareholders); and
- US resident shareholders (with less than a 10% shareholding in us) are subject to a 15% Dutch dividend withholding tax (with the potential for such tax to be creditable by shareholders).

However, other shareholders who are not residents of a country that has concluded a tax treaty with Ireland or who are not corporate shareholders that meet certain ownership conditions will be subject to Irish dividend withholding tax at a rate of 20%. Depending on the laws of their place of residence, such shareholders might be able to obtain a tax credit for that tax.

With these key benefits in mind and the continued uncertainty regarding the application of the US/Netherlands Treaty, your directors have explored a range of alternative options (described under the heading "Other Options Considered by Your Directors" in Section 3.5), and have concluded that the best course of action at this time for James Hardie and its shareholders is to effect our transformation to a European Company and move our corporate domicile from The Netherlands to Ireland and, in connection with the Proposal, transfer our intellectual property and treasury and finance operations to Ireland.

3.2. Impact on Asbestos Funding Arrangements with AICF

3.2.1. AFFA

The AFFA was entered into by us, the Asbestos Injuries Compensation Fund Limited (as trustee for the AICF), the New South Wales Government and James Hardie 117 Pty Limited on November 21, 2006 to provide long-term funding to the AICF. This is a special purpose fund established to provide compensation for Australian asbestos- related personal injury and death claims for which certain of our former companies, including Amaca Pty Ltd and Amaba Pty Ltd, are found liable. A copy of the AFFA is available on our website at www.jameshardie.com.

3.2.2. AFFA Deed of Confirmation

While we do not consider that notice, consent or approval of the Proposal is required under the AFFA, we have advised the New South Wales Government and Asbestos Injuries Compensation Fund Limited on a courtesy basis of the details of the Proposal. We and James Hardie 117 Pty Limited have also entered into the AFFA Deed of

Confirmation confirming that the AFFA and the Related Agreements (as defined in the AFFA) to which we are a party continue in effect once we are an SE with certain agreed changes to those agreements to reflect the fact that, upon implementation of Stage 2, we will become subject to Irish law.

We have agreed in the AFFA Deed of Confirmation that relevant James Hardie companies and the AICF will apply to the Australian Taxation Office for rulings to replace the tax rulings previously issued by the Australian Taxation Office in connection with the AFFA and for confirmation that the Accepted Tax Conditions (as defined in the AFFA) will remain unchanged in all material respects, and we have undertaken in the AFFA Deed of Confirmation that we will not complete the merger with Irish plc Subsidiary necessary to facilitate our transformation to Dutch SE before the Australian Taxation Office has determined these applications. We are released from this undertaking on the first to occur of the Australian Taxation Office determining the applications and 31 December 2009. If the ATO Rulings are unable to be obtained, while we would be released from our undertaking under the AFFA Deed of Confirmation we would need to reassess our ability to proceed to implement the Proposal having regard to the Australian Taxation Office's position, our rights and obligations under the AFFA and the circumstances existing at the time. However we reserve our right to proceed in those circumstances if we determine to do so.

3.2.3. Funding Obligations

Implementation of the Proposal will not change the overall commitment of James Hardie to make contributions to the AICF under the AFFA.

Under the terms of the AFFA, James Hardie 117 Pty Limited has the primary obligation to make the funding contributions to Asbestos Injuries Compensation Fund Limited (as trustee for the AICF) and we have provided the New South Wales Government and Asbestos Injuries Compensation Fund Limited with an unconditional and irrevocable guarantee that the funding contributions will be made in accordance with the terms of the AFFA.

Under the AFFA, the AICF is required to be funded on an annual or quarterly basis subject to the application of various provisions under the AFFA, including a cap on annual contributions to 35% of our free cash flow in the financial year immediately preceding the payment (which we refer to as the annual free cash flow cap). Free cash flow is defined for this purpose as net cash provided by operating activities calculated in accordance with US GAAP as in force on December 21, 2004. The amount of the contribution required is dependent upon several factors, including actuarial estimations, actual claims paid by and operating expenses of the AICF, and the application of the annual free cash flow cap.

The initial funding contribution of A$184.3 million was made to the AICF in February 2007. No contribution was required to be made under the AFFA in financial year 2008. Further contributions were made on a quarterly basis in July and October 2008 and in January and March 2009, totaling A$118.0 million (inclusive of interest).

If a contribution is due to the AICF in our 2011 financial year, which is not yet known, the costs associated with the Proposal will most likely reduce the amount of the company's contribution by an amount up to 35% of such costs associated with the Proposal. Whether, and to what extent, the costs actually reduce the payment due to the AICF in our 2011 financial year ultimately will depend on the amount of the payment otherwise required to be made under the AFFA and the company's free cash flow for financial year 2010 before taking account of the costs associated with the Proposal.

3.2.4. Restrictions on Specified Dealing

The AFFA provides that we will refrain from undertaking certain transactions (known as Specified Dealings as defined in the AFFA) without obtaining the prior consent of the New South Wales Government. However, a broad range of transactions are exempt from this restriction. Capitalised terms used in this Section 3.2.4 and "Other Matters" in Section 3.2.4 have the same meaning given to them in the AFFA unless defined otherwise in this Explanatory Memorandum. A copy of the AFFA has been filed with the US Securities and Exchange Commission as an exhibit to the registration statement of which this Explanatory Memorandum forms a part. A copy of the AFFA is also available under the Investor Relations area of our website (www.jameshardie.com, select "James Hardie

Investor Relations") and copies may be obtained on request. See "Where You Can Find Additional Information" in Section 13.

The restriction on Specified Dealings has been designed to prevent transactions that would result in us or James Hardie 117 Pty Limited ceasing to be likely to satisfy the funding obligations which would have arisen under the AFFA had the Specified Dealing not occurred.

In order for the restriction to apply, the Specified Dealing must:

- materially adversely affect the priority as between the AICF and our shareholders to a surplus from a notional winding up of ourselves and James Hardie 117 Pty Limited; or
- materially impair the legal or financial capacity of ourselves and James Hardie 117 Pty Limited as a whole,

such that, in each case, we and James Hardie 117 Pty Limited would, by reason of the relevant Specified Dealing, cease to be likely (assessed on a reasonable basis and having regard to all relevant circumstances) to be able to satisfy the funding and guarantee obligations which would have arisen under the AFFA had the Specified Dealing not occurred.

Those restrictions apply to certain dividends and other distributions, reorganisations of, or dealings in, share capital which create or vest rights in such capital in third parties, or non-arm's length transactions. The AFFA contains certain exemptions from such restrictions and also requires that if we undertake a Specified Dealing that is not exempt, we must provide notice of that dealing to the New South Wales Government within 14 days of the earlier of announcing and undertaking the transaction.

We do not consider that the Proposal will constitute a Specified Dealing that is restricted by the AFFA and accordingly the AFFA does not have any impact on the company implementing the Proposal.

3.2.5. Other Matters

Under the terms of the AFFA, the funding obligations of James Hardie 117 Pty Limited and our guarantee of James Hardie 117 Pty Limited's obligations under that agreement are owed only to Asbestos Injuries Compensation Fund Limited as trustee for the AICF, with the New South Wales Government having certain direct enforcement rights.

Provided that James Hardie 117 Pty Limited meets its payment obligations under the AFFA and there is no Insolvency Event, Wind-Up Event or Reconstruction Event, neither we nor our subsidiaries will have any additional liability under the AFFA to contribute funding. We have satisfied ourselves that nothing in the Proposal involves the occurrence of an Insolvency Event, Wind-Up Event or Reconstruction Event. The New South Wales Government and the Asbestos Injuries Compensation Fund Limited also have confirmed this in the AFFA Deed of Confirmation.

3.2.6. Australian Taxation Office Rulings on Contributions under the AFFA

A number of rulings relating to the Australian tax treatment of contributions under the AFFA and other related matters previously were obtained from the Australian Taxation Office (the "Rulings"). While we do not anticipate that the Proposal will have any impact on the operation and effect of the Rulings, we have agreed with the New South Wales Government and the AICF in the AFFA Deed of Confirmation that relevant James Hardie companies and the AICF will apply to the Australian Taxation Office for rulings to replace the Rulings and for confirmation that the Accepted Tax Conditions (as defined in the AFFA) will remain unchanged in all material respects after the Proposal is implemented.

We have undertaken in the AFFA Deed of Confirmation that we will not complete the merger with Irish plc Subsidiary necessary to facilitate our transformation to Dutch SE before the Australian Taxation Office has determined these applications. We are released from this undertaking on the first to occur of the Australian Taxation Office determining the applications and 31 December 2009. If the ATO Rulings are unable to be obtained, while we would be released from our undertaking under the AFFA Deed of Confirmation we would need to reassess our ability to proceed to implement the Proposal having regard to the Australian Taxation Office's position, our rights

and obligations under the AFFA and the circumstances existing at the time. However we reserve our right to proceed in those circumstances if we determine to do so.

3.3. Matters Not Affected by the Proposal

The Proposal will not affect the on-going dispute with the Australian Taxation Office in respect of RCI Pty Ltd.

As announced on March 22, 2006, RCI Pty Ltd, one of our wholly-owned subsidiaries, received an amended assessment from the Australian Taxation Office in respect of RCI Pty Ltd's income tax return for the year ended March 31, 1999. The amended assessment relates to the amount of net capital gains arising from an internal corporate restructure carried out in 1998 and has been issued pursuant to the discretion granted to the Commissioner of Taxation under Australia's general anti-avoidance laws (Part IVA of the Income Tax Assessment Act 1936). The original amended assessment issued to RCI Pty Ltd was for a total of A$412.0 million. However, after subsequent remissions of general interest charges by the Australian Taxation Office, the total was changed to A$368.0 million, comprising A$172.0 million of primary tax after allowable credits, A$43.0 million of penalties (representing 25% of primary tax) and A$153.0 million of general interest charges.

RCI Pty Ltd is appealing the amended assessment. On July 5, 2006, pursuant to an agreement negotiated with the Australian Taxation Office, we made a payment of A$189.0 million. We also agreed to guarantee the payment of the remaining 50% of the amended assessment should this appeal not be successful and to pay general interest charges accruing on the unpaid balance of the amended assessment in arrears on a quarterly basis. We believe RCI Pty Ltd's view of its tax position will be upheld on appeal, and as such no reserve or provision has been established in respect of this claim.

At the end of May 2007, the Australian Taxation Office disallowed our objection to RCI Pty Ltd's notice of amended assessment for RCI Pty Ltd for the year ended March 31, 1999. We continue to pursue all avenues of appeal to contest the Australian Taxation Office's position in this matter. The matter is expected to go before the Federal Court of Australia no later than September 2009.

3.4. Consequences if the Proposal Does Not Proceed

If the Proposal does not proceed, or if Stage 1 is approved and implemented but Stage 2 does not proceed, we will remain registered and a tax resident in The Netherlands. In that event, we will have incurred the one time tax costs estimated to range from US$30-50 million and approximately US$20 million in advisory fees and expenses and other transaction costs without the expected benefits from the Proposal. However, the costs associated with the move of our head office functions would not be incurred and we would not have to pay to maintain an office in Ireland.

In addition, when the favourable tax treatment under the Financial Risk Reserve regime ends on December 31, 2010, assuming that a new tax regime is not put into effect, interest and royalty income derived in The Netherlands will be subject to taxation at the statutory corporate tax rate (currently 25.5%). While there are a number of strategies that in principle could be used to reduce the impact of the statutory rate applicable to James Hardie to a lower effective tax rate, after review, given our current circumstances, we do not believe that any of the strategies we considered will satisfy our needs. For example, we considered remaining domiciled in The Netherlands and moving our intellectual property to another jurisdiction in the EU. While this strategy could have addressed the issue of the expiration of the Financial Risk Reserve regime in 2010, it would not have addressed other issues, including allowing key senior managers with global responsibility to spend more time with James Hardie's operations and in its markets, providing greater certainty for us to obtain benefits under the US/Netherlands Treaty and increasing James Hardie's flexibility in the future to undertake certain transactions which directors believe expands our strategic options. Similarly, the rate of tax on the gain from any transfer of the intellectual property after December 31, 2010 will be at that statutory rate.

Generally, interest, royalty and future dividend payments from our subsidiaries in the US to us and our subsidiaries in The Netherlands will only qualify for no withholding tax if we meet the requirements of the amended US/Netherlands Treaty. To meet these requirements, our key senior managers with global responsibilities would have to continue to spend a significant amount of time in The Netherlands away from our markets and operations.

Further, notwithstanding the concession by the US IRS that we and our subsidiaries qualified for benefits during 2006 and 2007, the year-by-year assessment by the US IRS to determine whether the requirements for benefits under the amended US/Netherlands Treaty are satisfied exposes us to the continued risk that the US IRS determines we do not qualify for treaty benefits in subsequent years. This means that interest, royalty and dividend payments from our subsidiaries in the US to us and our subsidiaries in The Netherlands could be subject to 30% US withholding tax. In the event the Proposal does not proceed, we might consider other actions to mitigate this risk.

In addition, if we remain in The Netherlands, we will continue to be subject to Dutch company law and a less flexible legal regime. This could affect our ability to complete future transactions that we may wish to pursue for the benefit of James Hardie and its shareholders.

We may determine, subject to any required consents from our lenders, to transfer our intellectual property and treasury and finance operations from The Netherlands independent of either stage being approved by shareholders and implemented. These transfers do not require shareholder approval.

3.5. Other Options Considered by Your Directors

In recommending the Proposal, your directors considered a range of alternative options before concluding that the Proposal is the best course of action at this time and is in the best interests of James Hardie and its shareholders. Some of these options are not able to be undertaken because of the proposed location of key senior management with global responsibilities, legal, tax, accounting and other obstacles. The other options principally considered by your directors include:

- Moving to Australia

  We considered moving the parent company to Australia by having a new Australian parent company acquire all of our shares from shareholders in exchange for the shares issued by the new Australian parent company. Such a transaction would result in the new Australian parent company becoming our holding company. However, unless the new Australian parent company was able to acquire at least 95% of all of our issued share capital, the transaction could result in two James Hardie entities being publicly held and listed: an Australian parent company and a Dutch parent company. This is due to the requirement under Dutch law for 95% of all of our issued share capital to be acquired in order to effect a compulsory acquisition of the remaining shares. In addition, moving our corporate domicile to Australia by other means was not considered possible under Dutch company law without a potential tax cost to some Australian tax resident shareholders.

  If only our tax residence was moved to Australia, dividends paid to shareholders would continue to be subject to a 15% Dutch dividend withholding tax with the potential for such tax to be offset by shareholders. The tax treaty between Australia and The Netherlands is currently being renegotiated. We are unaware whether the renegotiation will result in any changes to the rates of dividend withholding tax.

- Moving to the US

  We considered moving the parent company to the US by having a new US parent company acquire all of our shares from shareholders in exchange for shares issued by the new US parent company. Such a transaction would result in the new US parent company becoming our holding company. However, unless the new US parent company was able to acquire at least 95% of all of our issued share capital, the transaction could result in two James Hardie entities being publicly held and listed: a US parent company and a Dutch parent company. This is due to the requirement under Dutch law that 95% of all of our issued share capital be acquired in order to effect a compulsory acquisition of the remaining shares.

  In light of the 95% shareholder acceptance requirement to implement this structure, we also considered a move of the parent company to the US by way of a dual incorporation structure under Delaware corporate law and Dutch company law that would only require a 75% shareholder vote. However, the structure resulting from the dual incorporation was determined to be too complex and it is unclear whether this structure would be fully recognised under Dutch law. In addition, without a ruling from the Australian

Taxation Office, it was uncertain whether this transaction would have resulted in income tax liability for some Australian tax resident shareholders.

- Remaining resident in The Netherlands

  If we were to remain resident in The Netherlands, key senior managers with global responsibilities would be required to continue to spend a large portion of their time in The Netherlands rather than being free to spend additional time with James Hardie's operations and in its markets. Moreover, after the Financial Risk Reserve regime expires on December 31, 2010, assuming that a new tax regime is not put into effect, interest and net royalty income derived in The Netherlands will be subject to taxation at the statutory corporate tax rate (currently 25.5%). While there are a number of strategies that may possibly be used to reduce the impact of the statutory rate applicable to James Hardie to a lower effective tax rate, after review, given our current circumstances, we do not believe that any of the strategies we considered would satisfy our needs. Furthermore, we would be subject to the risk of the US IRS continuing to take the view that we fail to qualify for benefits under the US/Netherlands Treaty for tax years subsequent to the 2006 and 2007 calendar years.

- Transferring ownership of our intellectual property to the US and maintaining our tax residence in The Netherlands

  Transferring ownership of our intellectual property assets to the US would result in an estimated US$20-24 million Dutch tax cost as of the date of this Explanatory Memorandum. This cost could be mitigated to some extent by the amortisation of the value of the intellectual property (on a straight line basis) over 15 years for US tax purposes. However, assuming our treasury and financing operations remained in The Netherlands, after the Financial Risk Reserve regime expires on December 31, 2010 and assuming that a new tax regime is not put into effect, we would become subject to the current statutory tax rate of 25.5% on the interest income received from our subsidiaries in the US to us and our subsidiaries in The Netherlands.

  Recently, the Dutch Ministry of Finance published several proposals for comment, including a compulsory group interest box regime. It is uncertain at this time whether this proposed regime will be adopted, whether the European Commission will approve this compulsory interest box regime or the timing there of. While there are a number of strategies that may possibly be used to reduce the impact of the statutory rate that would be in effect upon the expiry of the Financial Risk Reserve regime, in the case the proposed regime is not put into effect after review, given our current circumstances, we do not believe that any of the strategies we considered will satisfy our needs.

  In addition, this option did not address the need to have key senior managers with global responsibilities free to spend more time with James Hardie's operations and in its markets, or the risk of the US IRS determining that we fail to qualify for benefits under the US/Netherlands Treaty for tax years subsequent to the 2006 and 2007 calendar years.

- Moving our tax residence to Ireland

  If we ceased holding board meetings in The Netherlands and conducted the majority of future board meetings in Ireland and otherwise satisfied the requirement that we are centrally managed and controlled in Ireland, we could become tax resident in Ireland. However, this would result in James Hardie becoming subject to Irish tax law while at the same time remaining subject to Dutch company law.

  Under this alternative, we would be exposed to future adverse changes in Irish tax law and Dutch company law. Such a strategy would not enable us to benefit from the more flexible features of Irish company law, including schemes of arrangement and a single board.

- Other

  We also considered moving our domicile to Ireland without using the SE form. However, we could not merge a Dutch N.V. into an Irish company in a transaction in which the Irish company would survive without a potential income tax liability arising for some of our Australian shareholders. We also considered moving our domicile to Ireland using an exchange offer. However, that transaction would require acceptance by the

holders of at least 95% of the shares in order to be able to compel the acquisition of 100% of the outstanding shares so that the transaction would not result in two James Hardie entities being publicly held and listed.

3.6. Continuation of ASX and NYSE Listings

Following the transformation of Dutch SE to Irish SE, James Hardie's securities will continue to be quoted on the ASX in the form of CUFS (with CHESS Depositary Nominees Pty Ltd. being the registered holder of the underlying shares and each CUFS representing one underlying share) and the NYSE in the form of ADSs (with The Bank of New York Mellon as the registered owner of CUFS and each ADS representing 5 CUFS/underlying shares). We intend to continue to maintain listings under the symbol "JHX" on both stock exchanges.

Shareholders will continue to hold the same number of CUFS, ADSs or CUFS converted to shares in Dutch SE (if Stage 1 of the Proposal is approved and implemented) and in Irish SE (if Stage 2 of the Proposal is approved and implemented) as they held beforehand. The current certificates and holding statements evidencing CUFS, ADSs or CUFS converted to shares will continue to evidence the same number and kind of securities following implementation of each stage of the Proposal.

3.7. No Irish Stamp Duty on Share Market Transactions

A ruling has been obtained from the Irish Revenue authorities confirming that on-market transactions in CUFS and ADSs through the CHESS and the NYSE trading systems, respectively, will be treated as exempt from stamp duty in Ireland. However, off-market transactions in CUFS or underlying shares, as well as conversions into and out of CUFS or ADSs may be subject to Irish stamp duty at a rate of 1% of market value or consideration paid (whichever is greater). Please refer to "Irish Income Tax Consequences of the Proposal — Irish Stamp Duty on Future Transfers of Irish SE Shares" in Section 9.4.3.5 for further details.

3.8. Impact on External Borrowings

We have obtained confirmation from our current lending banks that the Proposal does not require any consent or approval, or result in any rights of termination, under our existing external finance facilities, and have reached agreement with our current lending banks for the rearrangement of those facilities to enable JHIF Limited to become a borrower and assume the obligations of JHIF BV under the external finance facilities at the time our financing and treasury operations are transferred from JHIF BV to JHIF Limited. This is recorded in deeds of confirmation entered into with individual lenders. Please refer to "Lender Deeds of Confirmation" in Section 5.2.3 for further details.

3.9. Foreign Investment Review Board Approvals

Under the Australian Government's foreign investment policy and in accordance with the requirements of the Foreign Acquisitions and Takeovers Act 1975, we have voluntarily notified the Foreign Investment Review Board of the Proposal and the proposed transfer of intellectual property from JHIF BV (a Dutch incorporated and domiciled company) to James Hardie Technology Limited (a Bermudan incorporated and Irish tax resident company) and the indirect transfer of James Hardie's Australian subsidiaries which will occur as a result of our internal reorganisation of our existing group structure in connection with the Proposal.

While there is no compulsory notification required, as the Federal Treasurer of Australia is empowered to block proposals or unwind transactions that are deemed to be contrary to Australia's national interests, we considered it to be in the best interests of James Hardie and its shareholders to voluntarily notify the Foreign Investment Review Board of the Proposal and obtain certainty that this power would not be exercised in the future.

4. OUR TRANSFORMATION TO DUTCH SE (STAGE 1)

4.1. Introduction

This section provides further details about our transformation to Dutch SE, including a summary of the key legal differences that arise upon our transformation and additional information on the effect upon rights of shareholders.

Shareholders also should consider the other sections of this Explanatory Memorandum when deciding whether to approve the Proposal, including "Corporate Domicile of Dutch SE to Ireland (Stage 2)" in Section 5, which addresses the principal consequences of the subsequent change in corporate domicile to Ireland.

4.2. Summary of Key Differences between Dutch NV and Dutch SE

The *Societas Europaea* or SE is a legal form of a public limited company introduced in the EU member states by the SE Regulation. One of the benefits of the SE Regulation is that it facilitates cross border mergers and cross border transfers of registered offices of SEs within the EU, subject to a vote of shareholders, whereas greater limitations typically apply to similar cross border transactions for other legal entities.

Only a few details on the corporate structure of the SE are set forth in the SE Regulation itself. These details are as follows:

- minimum issued share capital of €120,000;
- the head office and registered office of the SE must be in the same EU member state;
- the abbreviation "SE" must form part of the company's name;
- the company must either have a one tier board (one board with both executives and non-executives) or a two tier board (management board and supervisory board). Our current Managing and Supervisory Boards will continue during our existence as Dutch SE, but our Joint Board will cease to exist upon implementation of Stage 1 of the Proposal; and
- the SE is a specific form of a public limited company subject to the local laws in the EU member state where it has its head office and registered seat (i.e., corporate domicile).

The more detailed rules affecting the corporate structure of an SE are the rules that apply to public limited companies in the jurisdiction of the SE's corporate domicile. Upon our transformation to Dutch SE with our registered office remaining in The Netherlands, our constituent documents will be amended as described in Section 4.5. We are currently a Dutch public limited company and therefore Dutch statutory rules on public limited companies already apply. Any other changes will be mainly technical amendments to comply with the SE Regulation and Dutch statutory law.

4.3. Head Office, Corporate Office, Intellectual Property and Treasury and Finance Operations

We do not anticipate that there will be any changes to our head office and corporate office in connection with Stage 1.

4.3.1. Intellectual Property Operations

We currently manage our intellectual property portfolio in The Netherlands through our subsidiary, JHIF BV. In connection with Stage 1 of the Proposal, we currently intend to transfer our intellectual property to James Hardie Technology Limited (which we refer to as JHT), a Bermudan incorporated company that will be resident in Ireland for tax purposes. As previously described, the transfer of our intellectual property from The Netherlands does not require shareholder approval and, subject to any required consents from our lenders, we may determine to transfer our intellectual property from The Netherlands independent of either stage being approved by shareholders and implemented. The Lender Deeds of Confirmation described in Section 5.2.3 require that the transfer of our treasury and finance operations contemplated in connection with the completion of Stage 1 and the assumption of the obligations under our external finance facilities by JHIF Limited occurs within thirty days of the date of the transfer

of our intellectual property or such other date as may be agreed. After completion of this transfer, JHIF BV would no longer have any responsibility for managing our intellectual property portfolio and would cease to exist as a result of our internal reorganisation in connection with the Proposal.

4.3.2. Treasury and Finance Operations

We currently operate a central financing and treasury function in The Netherlands through our subsidiary, JHIF BV, which is supported by accountants and cash managers in our main operating subsidiaries. In connection with Stage 1 of the Proposal, we currently intend to transfer our treasury and finance operations to JHIF Limited. As previously described, the transfer of our treasury and finance operations from The Netherlands results in the termination of our participation in the Financial Risk Reserve regime and the payment of all Dutch tax due in respect of amounts in our Financial Risk Reserve account at the time of such transfer.

As a result of such transfer, JHIF Limited would acquire the entire internal and external loan portfolio from JHIF BV and would become the centralised finance and treasury holding company to implement and manage James Hardie's treasury policy for liquidity management, currency risk, interest rate risk, other financial risks and cash management functions. The transfer of these operations does not require shareholder approval and, subject to any required consents from our lenders, we may determine to transfer our treasury and finance operations from The Netherlands independent of either stage being approved by shareholders and implemented. The Lender Deeds of Confirmation described in Section 5.2.3 require that the transfer of our treasury and finance operations contemplated in connection with the completion of Stage 1 and the assumption of the obligations under our external finance facilities by JHIF Limited occurs within thirty days of the date of the transfer of our intellectual property or such other date as may be agreed.

4.4. Employee Representative Body

The SE Regulation specifies that employee involvement in an SE shall be governed by the provisions of Council Directive 2001/86/EC of October 8, 2001 (which we refer to as the SE Employee Directive), which is then implemented through legislation in each of the EU member states. Pursuant to the SE Regulation and the SE Employee Directive, Dutch SE can only be registered after negotiations with employees of JHI NV and its subsidiaries located in EU member states regarding the employees' future involvement in Dutch SE. These negotiations are conducted on behalf of the employees through the SNB.

The SNB must reflect a proportional representation of all employees of the relevant companies in the EU member states. As of May 31, 2009, we had 58 employees in 4 EU member states. The size and representation from the various EU member states where we or our subsidiaries have employees are determined by reference to the number of employees employed in each EU member state. The laws of each EU member state where we have or our subsidiaries have employees provide how employees from that EU member state are appointed to the SNB.

After publishing the terms of merger, we began the process of establishing the SNB by providing the required information to all employees located in the relevant EU member states, including an overview of (1) us, our subsidiaries and our establishments located in EU member states, (2) the persons employed by us and by these subsidiaries and establishments, and (3) the distribution of our employees among the EU member states.

Once the SNB is established, we will seek to negotiate a written agreement with the SNB in order to provide for the future involvement in Dutch SE of our employees located in EU member states. Negotiations may continue for a period of up to six months from the establishment of the SNB, provided that we may agree with the SNB to extend such period for up to one year in total. We will bear the costs of the SNB during this process, including the costs of experts consulted by the SNB (if necessary) to the extent we have been informed of such costs beforehand.

The SNB has the power to either (1) approve a negotiated agreement with us, (2) refuse to enter into negotiations with us, or (3) break-off negotiations entirely. A negotiated agreement could involve the establishment

of an ERB. Under the SE Employee Directive, a negotiated agreement will need to cover at least the following issues in relation to our transformation to Dutch SE:

- the scope of the agreement;
- the creation of an ERB to engage in discussions with Dutch SE in the context of information and consultation of employees of Dutch SE, its subsidiaries and its establishments;
- the number of members, composition and allocation of seats in the ERB and the members' period of appointment;
- the field of activity and the powers of the ERB;
- the procedure for information and consultation of the ERB;
- the frequency and location of meetings of the ERB;
- the financial and material resources available to the ERB;
- the date of entry into force of the agreement and its duration;
- the instances in which the agreement must be renegotiated;
- the procedure for negotiating a new agreement, the adaptation of the agreement to changes in the structure and size of Dutch SE, and in the number of persons employed in the EU member states; and
- the implications of not concluding a new agreement.

In the event the SNB refuses to enter into negotiations or breaks off negotiations, we will use a set of default rules, commonly known as the standard rules (as annexed to the SE Employee Directive). Similarly, if we and the SNB fail to reach a negotiated agreement prior to the end of a six-month negotiating period, or such extended period as we and the SNB may agree upon, these standard rules will apply. The standard rules require, among other things, the setting up of an ERB, which consists of employees located in EU member states. Such ERB will have information and consultation rights, including the right to meet with the Managing Board of Dutch SE at least once per year to discuss issues of concern to the employees. Additionally, Dutch SE would have to provide information to and consult with the ERB in connection with future decisions regarding major issues affecting employees, including the decision by Dutch SE to approve Stage 2 of the Proposal. However, the ERB will not have the power to block or prevent any Supervisory or Managing Board decisions or actions, including the decision to implement Stage 2 of the Proposal.

As neither we nor Irish plc Subsidiary currently is governed by employee participation rules (which, for the purposes of the SE Employee Directive, means employee election or nomination rights for the Managing and Supervisory Boards), Dutch SE will not be required to establish provisions for employee participation.

We cannot implement our transformation into Dutch SE until we come to an arrangement regarding employee involvement through negotiations or determine that the standard rules apply. As a result of the six month initial negotiation period under the SE Regulation and other relevant legislation, we may not be able to implement Stage 1 of the Proposal until approximately seven months from the date of this Explanatory Memorandum (or longer if we agree with the SNB to extend this period), which would delay the implementation of Stage 2 of the Proposal.

4.5. Summary of Articles of Association of Dutch SE

The principal changes to our constituent documents will result in the elimination of the Joint Board and the establishment of a two-tiered board structure, the reduction of the shareholder approval requirements for Stage 2 to 66²/₃% from 75% and that the chief executive officer's appointment as a director may be for up to six years prior to standing for re-election. Other minor changes will result from Dutch SE being subject to the SE Regulation, in addition to Dutch company law.

Following is a summary highlighting selected information from the articles of association of Dutch SE and does not contain all of the information that may be important to you. We recommend that you read carefully the articles of association of Dutch SE for the complete description of your rights as a shareholder under the articles of

association of Dutch SE and other important information. The articles of association of Dutch SE have been filed with the US Securities and Exchange Commission as an exhibit to our registration statement of which this Explanatory Memorandum forms a part and is incorporated herein by reference. These articles of association are also available under the Investor Relations area of our website (www.jameshardie.com, select "James Hardie Investor Relations") and copies may be obtained on request. See "Where You Can Find Additional Information" in Section 13.

4.5.1. Purpose of the Company

Dutch SE's 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 that are incidental to or that may be conducive to, or connected with, any of the foregoing.

4.5.2. Provisions of Dutch SE's Articles of Association or Charters related to Directors

4.5.2.1. Power to vote when a director is materially interested

Pursuant to Dutch SE's articles of association, and subject to limited exceptions, a member of the Managing or Supervisory Board who has a material personal interest in a matter that relates to the affairs of Dutch SE must give all other members of the Managing or Supervisory Boards, as applicable, notice of his or her interest. Furthermore, subject to limited exceptions, a member of the Managing or Supervisory Boards who has a material personal interest in a matter that is being considered at a meeting of the Managing or Supervisory Boards, as applicable, may neither be present while the matter is being considered at such meeting nor vote on the matter.

If a member of the Managing or Supervisory Board has a conflict of interest with Dutch SE (whether acting in his or her personal capacity by entering into an agreement with Dutch SE, conducting any litigation against Dutch SE or acting in any other capacity), he or she will still have the power to represent Dutch SE 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.

Dutch SE's 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.

4.5.2.2. Power to vote compensation

The company's approach to approval of changes to the remuneration policy of the company from time to time with respect to members of the Managing and Supervisory Boards is described under the heading "Summary of Key Corporate Law Differences Between Dutch SE and Irish SE" in Section 5.4 under the subheading "Remuneration of Directors."

4.5.2.3. Age limit requirement for retirement or non-retirement

Dutch SE's articles of association do not include any provisions regarding the mandatory retirement age of a member of the Managing Board or the Supervisory Board.

4.5.2.4. Number of shares for director's qualification

Dutch SE's articles of association do not impose any obligation on the members of the Managing or Supervisory Boards to hold shares in Dutch SE.

4.5.3. Annual Report

Dutch SE's financial year runs from April 1 through March 31. Dutch law requires that within five months after the end of Dutch SE's financial year, unless the general meeting of shareholders has extended this period for a maximum of six months, Dutch SE's Managing Board must make available to Dutch SE's shareholders a report with respect to that financial 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 Dutch SE and its wholly owned subsidiaries, according to US GAAP, and in the case of Dutch SE's accounts, according to Dutch GAAP.

4.5.4. Amendment of Articles of Association, Dissolution, Merger and Demerger

Dutch SE's shareholders can amend Dutch SE's articles of association, dissolve Dutch SE or merge or demerge Dutch SE, by a resolution approved by 75% of the votes cast at a general meeting of shareholders at which at least 5% of Dutch SE's issued share capital is present or represented. Dutch SE's articles of association also will provide that Stage 2 of the Proposal requires the approval of 66²/₃% of shareholder votes cast at a properly held meeting at which at least 5% of Dutch SE's issued share capital is present or represented.

4.5.5. Limitations on Right to Hold Shares

Limitations on the right to hold Dutch SE's shares are described under the heading "Principal Differences Between the Takeover Regime under the Articles of Association of Dutch NV and Dutch SE and the Irish Takeover Rules — Key Differences between Article 49 and the Irish Takeover Rules" under the subheading "Relevant Thresholds for Triggering a Mandatory Takeover Offer" in Section 5.6.3.

The exceptions to these limitations provided for in Dutch SE's articles of association generally include:

- acquisitions that result from acceptances under a takeover bid which complies with the articles of association;
- acquisitions that result in a person's voting power increasing by not more than 3% in a six-month period;
- acquisitions that 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.

These limitations will not apply to holdings by the CUFS depositary, CHESS Depositary Nominees Pty Ltd., of Dutch SE's shares as custodian for the CUFS holders, but will apply to CHESS Depositary Nominees Pty Ltd. where another person acquires or holds a relevant interest in breach of those provisions.

Although these provisions of Dutch SE's articles of association may help to ensure that no person may acquire voting control of Dutch SE without making an offer to all shareholders, such provisions also may have the effect of delaying or preventing a change in control of Dutch SE.

4.5.6. Disclosure of Holdings

Disclosure thresholds applicable to the acquisition of shares of Dutch SE are described under the heading "Principal Differences Between the Takeover Regime under the Articles of Association of Dutch NV and Dutch SE and the Irish Takeover Rules — Key Differences between Article 49 and the Irish Takeover Rules" under the subheading "Disclosure of Substantial Holdings" in Section 5.6.3.

In addition, shareholders are subject to beneficial ownership reporting disclosure requirements under US securities laws. The US Securities and Exchange Commission's rules require all persons who beneficially own more

than 5% of a class of securities registered with the US Securities and Exchange Commission to file either a Schedule 13D or 13G. A copy of the rules and regulations relating to the reporting of beneficial ownership with the US Securities and Exchange Commission, as well as Schedules 13D and 13G, are available on the US Securities and Exchange Commission's website at www.sec.gov.

4.6. Board Composition and Structure; Board Committees

All of the current members of our Managing and Supervisory Boards will continue as members of the Managing and Supervisory Boards of Dutch SE. Michael N. Hammes will continue as Chairman of the Supervisory Board and Donald McGauchie will continue as Deputy Chairman. Brian Anderson, David Harrison and Donald McGauchie will continue as chairmen of the audit, remuneration, and nominating and governance committees, respectively. The Joint Board will be eliminated following the merger with Irish plc Subsidiary and thereafter all of the powers and duties currently carried out by the Joint Board will be carried out by the Supervisory Board.

The current audit, remuneration, and nominating and governance committees of the Supervisory Board will remain in place. After we become Dutch SE, there will be some minor changes to the charters of the committees to take into account our transformation to Dutch SE. If Stage 1 is implemented, copies of the charters of the committees of Dutch SE's Supervisory Board will be available in the Investor Relations area of our website (www.jameshardie.com, select "James Hardie Investor Relations").

The terms of the current members of our Managing and Supervisory Boards will remain the same except that the chief executive officer shall not be entitled to hold office as a director for a continuous period in excess of six years without standing for re-election at the annual general meeting of shareholders.

4.7. Board and Shareholder Meetings

A majority of Dutch SE's Supervisory Board meetings will continue to be held in The Netherlands. The annual general meetings and extraordinary general meetings will continue to be held in The Netherlands and the annual information meeting and extraordinary information meetings will continue to be held in Australia.

4.8. Indemnification

Our articles of association provide that we will generally indemnify any person who is or was a director or one of our employees, officers or agents, or who at our request has become a director, officer or attorney of another entity or a trust, and suffers any loss as a result of any action in connection with their service to us, provided he or she acted in good faith in carrying out his or her duties and in a manner he or she reasonably believed to be in our interest. This indemnification generally will not be available if the person seeking indemnification acted with willful misconduct, intentional recklessness, was seriously imputable or did not act in good faith in the performance of such person's duties to us. Please refer to our articles of association for further information, which are filed as an exhibit to the registration statement of which this Explanatory Memorandum forms a part and are incorporated by reference herein.

In addition, we have provided Deeds of Access, Insurance and Indemnity (which we refer to as an Indemnity Deed) governed by Dutch law to our directors and senior employees and our subsidiary, James Hardie Building Products Inc., has provided Indemnity Agreements governed by Nevada law (which we refer to as an Indemnity Agreement) to the company's and James Hardie Building Products Inc.'s directors, officers and certain employees.

The Indemnity Deeds will require Dutch SE, to the maximum extent permitted by Dutch law, to unconditionally and irrevocably indemnify a director in relation to the director serving or having served as a director of Dutch SE or one of its subsidiaries or another entity at Dutch SE's request, or the request of one of Dutch SE's subsidiaries. In addition, the Indemnity Deeds provide for advances to allow indemnitees to fund their defense costs. However, the indemnitee will be required to repay the amounts advanced to them if it is ultimately determined that he or she is not entitled to indemnification for such amounts, if any such amounts exceed what is permitted to be paid under the Indemnity Deeds or Indemnity Agreements or if he or she receives payment under an insurance contract in respect of those liabilities. To the extent than an indemnitee also receives payments under an indemnity

from one of our subsidiaries, such indemnitee is not entitled to claim under the Indemnity Deeds or Indemnity Agreements.

The Indemnity Agreements provide that James Hardie Building Products Inc. shall hold harmless and indemnify a director, officer or employee of the company, James Hardie Building Products Inc., or their affiliates to the maximum extent permitted by Nevada law. In addition, the Indemnity Agreements require James Hardie Building Products Inc., upon request by the director, officer or employee, to make payment of amounts payable under the Indemnity Agreements as expended or incurred in advance of final determination of a proceeding, provided, however, that the director, officer or employee undertakes to repay the amounts if it is ultimately determined that he or she is not entitled to be indemnified for such amounts.

Following Stage 1, Dutch SE will retain the same indemnity provisions in its articles of association, however these will not apply to the Joint Board, which will be eliminated after completion of Stage 1 of the Proposal, and the Indemnity Deeds and Indemnity Agreements will continue to be in effect. Dutch SE also intends to maintain directors' and officers' liability insurance.

5. CORPORATE DOMICILE OF DUTCH SE TO IRELAND (STAGE 2)

5.1. Introduction

After our transformation to Dutch SE as described in "Our Transformation to Dutch SE (Stage 1)" in Section 4, we intend for Dutch SE to seek shareholder approval for Stage 2 and begin the process of relocating its corporate domicile to Ireland, thereby becoming Irish SE. In order to seek shareholder approval for Stage 2 of the Proposal, a Stage 2 explanatory memorandum will be distributed to shareholders following approval and implementation of Stage 1 and after Stage 2 is approved by the Dutch SE boards.

This section sets out the following:

- details of the change in corporate domicile to Ireland as part of the Stage 2 transformation process;
- a summary of the key differences as a result of moving to Ireland and becoming Irish SE (including corporate governance arrangements and applicable company law and takeover rules); and
- other relevant factors for consideration by shareholders as described further below.

5.2. Implications of Moving to Ireland

5.2.1. Tax Residence in Ireland

Irish SE will need to be tax resident in Ireland in order to qualify for benefits under the US/Ireland Treaty. We have, in connection with the Proposal, requested and received revenue rulings from Irish and Dutch Revenue authorities. The rulings confirm that so long as Irish SE is centrally managed and controlled in Ireland, Irish SE will not be a tax resident of The Netherlands and will be a tax resident of Ireland once Stage 2 of the Proposal is implemented.

The issue as to whether a company is centrally managed and controlled in Ireland is a question of fact and this concept is directed at the highest level of control of a company's business, as distinct from day-to-day control, to carry out normal business operations. It is intended that Irish SE will satisfy the requirement to be centrally managed and controlled in Ireland by, among other things, holding a majority of its board meetings in any one year in Ireland at which a majority of the directors would be physically present in Ireland with the board making major strategic business decisions relating to James Hardie as a whole, such as decisions relating to significant investments, capital expenditures, equity and debt raising and dividend payments in Ireland, and having a head office function located in Ireland, and most business decisions relating to Irish SE as a distinct entity.

5.2.2. Head Office

Dutch SE's head office will move to Ireland if Stage 2 of the Proposal is approved and implemented. The head office will employ the requisite personnel to run Irish SE's head office and corporate office.

5.2.3. Lender Deeds of Confirmation

We have entered into a deed of confirmation with each of our current lending banks confirming that implementation of the Proposal does not require any consent or approval, or result in any rights of termination, under our existing external finance facilities. Amongst other matters, these deeds of confirmation also provide for JHIF Limited, our newly-formed finance subsidiary, to become a borrower and assume the obligations of JHIF BV under these facilities at the time our financing and treasury operations are transferred from JHIF BV to JHIF Limited. Our existing lenders also have confirmed that they do not object to the contemplated changes to the AFFA and related documents.

5.2.4. Taxation Impact on Irish SE

As Irish SE's head office, corporate office and treasury, finance and intellectual property functions will be located in Ireland, the income from those activities will be subject to tax in Ireland. The current company tax rate for trading companies, such as JHT and JHIF Limited, is 12.5%. We obtained rulings from the Irish Revenue authorities

confirming that JHT and JHIF Limited will be eligible for the corporation tax rate for trading companies for the treasury, finance and intellectual property functions carried out in Ireland.

We also obtained a ruling confirming that, assuming Irish SE is centrally managed and controlled in Ireland, Irish SE will become Irish tax resident after the implementation of Stage 2. As a result, so long as Irish SE is listed on one or more recognised stock exchanges (which include both the ASX and the NYSE) and continues to meet the trading tests under the US/Ireland Treaty, Irish SE will qualify for treaty benefits under the US/Ireland Treaty after Stage 2 is implemented. Under current law, interest and royalties paid from Irish SE's subsidiaries in the US to Irish SE or its subsidiaries that are tax resident in Ireland are free of US withholding tax and dividends paid from those US subsidiaries to James Hardie entities in Ireland are subject to 5% US dividend withholding tax, which will be creditable in Ireland.

In addition, the Dutch Revenue authorities have confirmed that no Dutch corporate income tax will be imposed (except on Dutch-source income) as long as Irish SE continues to be tax resident in Ireland under the tax treaty between The Netherlands and Ireland.

5.3. Corporate Governance

Our corporate governance framework will change if Stage 2 of the Proposal is approved and implemented to reflect the change in our corporate domicile from The Netherlands to Ireland. This is discussed in more detail below.

5.3.1. Corporate Governance Framework Following Transformation to Irish SE

We currently operate under the regulatory requirements on corporate governance of numerous jurisdictions and organisations, including the ASX, Australian Securities & Investments Commission, NYSE, the US Securities and Exchange Commission and various other rule-making bodies. The Investor Relations area of our website (www.jameshardie.com, select "James Hardie Investor Relations") contains information about the ways in which we currently comply with the ASX Corporate Governance Council Principles and Recommendations, NYSE corporate governance standards for listed companies that are foreign private issuers and the Dutch Corporate Governance Code.

Upon transformation to Irish SE, the Dutch Corporate Governance Code will no longer apply. We will become subject to the regulatory requirements of the Irish Takeover Panel, which will generally only be relevant where a third party has made a takeover offer for Irish SE or an approach which may lead to a takeover offer. The Combined Code on Corporate Governance as published by the Financial Reporting Council in the UK will not apply to Irish SE unless its shares become quoted on the Irish Stock Exchange or the London Stock Exchange.

Irish SE will continue to comply with the ASX Corporate Governance Council Principles and Recommendations as its general policy and continue to explain any departures from those Principles and Recommendations in its annual report. Irish SE also will continue to follow the NYSE corporate governance standards for listed companies that are foreign private issuers (which will include Irish SE).

5.3.2. Board Structure

If Stage 2 of the Proposal is approved by shareholders and implemented, the Supervisory and Managing Boards of Dutch SE will be replaced by a single unitary board of non-executive and executive directors, the composition of which we expect will be eight non-executive directors and one executive director. All the powers of the Managing Board and Supervisory Board of Dutch SE will be exercised by the single board of directors of Irish SE.

5.3.3. Board and Shareholder Meetings

Irish SE's board is expected to make most of the key strategic decisions at meetings convened in Ireland. There may be occasions where board meetings would be held outside Ireland or by telephone, but the majority of meetings in any one year are expected to be held in Ireland.

The annual general meeting of shareholders of Irish SE will no longer be held in The Netherlands. It is expected that Australian and US resident shareholders will be able to participate in the annual general meeting and ask questions through a webcast of proceedings on Irish SE's website and at a location in Australia after Stage 2 of the Proposal is undertaken. While Irish SE will no longer hold annual information meetings, Irish SE may conduct shareholder briefings in Australia. No decision has been made at this time with respect to these meetings and there will not be any requirement in the articles of association of Irish SE to conduct these shareholder briefings.

5.3.4. Board Composition and Structure; Board Committees

Michael N. Hammes, Brian Anderson, Donald McGauchie, David Harrison, James Osborne and Rudy van der Meer are expected to be directors of Irish SE on implementation of Stage 2 of the Proposal. Michael N. Hammes will continue as Chairman, Donald McGauchie will continue as Deputy Chairman and Brian Anderson, David Harrison and Donald McGauchie will continue as chairmen of the audit, remuneration, and nominating and governance committees, respectively.

We anticipate that two additional directors, one or more of whom are Irish residents, will be proposed for election as directors of Irish SE at the extraordinary general meeting to approve Stage 2. Brief biographical details of any new directors will be set out in the notice of meetings accompanying the Stage 2 explanatory memorandum.

The articles of association of Irish SE provide flexibility in relation to the 2010, 2011 and 2012 annual general meetings for the directors to determine among themselves who will retire or stand for re-election, or where the directors fail to make such determination, for the Chairman to so determine at each of such meetings. The directors have not yet made a determination of which directors will stand for re-election at each of these annual meetings. From the 2013 annual general meeting and thereafter, the identity of the directors to retire and offer themselves for re-election at each annual general meeting will be those directors, except for a director who holds the office of chief executive officer, who have been longest in office since their last appointment. A director who is the chief executive officer of Irish SE shall only have to retire and (if he or she so chooses) present himself or herself for re-election as a director once every six years following their initial appointment. See "Summary of Key Corporate Law Differences Between Dutch SE and Irish SE" in Section 5.4 under the subheading "Term of Directors' Appointment."

The audit, remuneration and nominating and governance committees of Dutch SE will become committees of Irish SE's single tier board if Stage 2 of the Proposal is approved and implemented.

It is not envisaged that there will be any material changes to the board charters or method of operations of those committees except that any directors elected to the board of Irish SE at the extraordinary general meeting to approve Stage 2 are expected to be elected to the various board committees and we will disclose these changes in the ordinary course.

5.3.5. Independence of Chairman and Non-Executive Directors

The chairman of the board and of each of the committees as well as a majority of directors of Irish SE and its board committees will be independent unless a greater number is required to be independent under the ASX Corporate Governance Council Principles and Recommendations, the rules and regulations of the ASX, the NYSE or any other regulatory body.

5.3.6. Delegation of Powers

Irish SE's board will be responsible for the management and operation of Irish SE, and will have the power to delegate any of their powers to the chief executive officer, any other person holding any other executive office or to any committee established by the board. The board will be free to exercise all of the powers of Irish SE in furtherance of Irish SE's objects, except for any powers which are expressly reserved for shareholders by the constituent documents or Irish company law.

Irish SE's board will also have the power to execute powers of attorney in order to appoint attorneys to act on Irish SE's behalf from time to time.

In addition, Irish SE's board may also establish (and appoint members to) any committees, local boards or agencies for managing any of the affairs of Irish SE, either in Ireland or elsewhere.

5.3.7. Indemnification

Irish SE's articles of association will provide for indemnification of any person who is or was a director, company secretary, employee or such other person who may be deemed by Irish SE's board to be an agent of Irish SE, who suffers any cost, loss, or expense as a result of any action in connection with the entry into any contract or discharge of their duties to Irish SE, provided he or she acted in good faith in carrying out their duties and in a manner they reasonably believed to be in Irish SE's interest. This indemnification will generally not be available if the person seeking indemnification acted in a manner that could be characterised as negligent, default, breach of duty or breach of trust in performing such person's duties to Irish SE. In addition, under Irish company law, this indemnity only binds Irish SE to indemnify a current or former director or company secretary where judgment is given in any civil or criminal action in favour of such director or company secretary, or where a court grants relief because the director or company secretary acted honestly and reasonably and ought fairly to be excused. The articles of association of Irish SE apply the same limitations to other indemnitees referred to above who are not current or former directors or the company secretary of Irish SE.

In addition, we currently provide Indemnity Deeds governed by Dutch law to our directors and senior employees and James Hardie Building Products Inc. has provided Indemnity Agreements to the company's and James Hardie Building Products Inc.'s directors, officers and employees, each of which will continue in effect following implementation of Stage 2 with the terms described in "Indemnification" in Section 4.8. In addition to these existing indemnities, upon implementation of Stage 2, Irish SE will provide an indemnity generally consistent with the existing Indemnity Deeds, but which will be governed by Irish law, to its directors and the company secretary and to certain senior employees. These Irish law-governed Indemnity Deeds will require Irish SE, to the maximum extent permitted by Irish law, to unconditionally and irrevocably indemnify a person in relation to the person serving or having so served as a director, company secretary or senior employee of Irish SE or one of its subsidiaries or another entity at Irish SE's request, or the request of one of Irish SE's subsidiaries. In addition, the Irish law-governed Indemnity Deeds will provide for advances to allow indemnitees to fund their defense costs. However, the indemnified party will be required to repay the amounts paid to them if it is ultimately determined that he or she is not entitled to indemnification for such amounts, if any such amounts exceed what Irish SE is permitted to pay under the Irish law-governed Indemnity Deeds or if he or she receives payment under an insurance contract in respect of those liabilities. To the extent that an indemnitee also receives payment under an indemnity from one of our subsidiaries, such indemnitee is not entitled to claim under the Irish law-governed Indemnity Deeds.

Irish law renders void any provision in an Irish company's articles of association or other contract that would exempt from liability or provide any director or the company secretary with an indemnity for negligence, default, breach of duty or breach of trust. This limitation is broader than is currently permitted under our Indemnity Deeds.

Irish SE also intends to maintain directors' and officers' liability insurance.

5.3.8. Share Plans

Following implementation of Stage 2, our 2001 Equity Incentive Plan, 2005 Managing Board Transitional Stock Option Plan, Long Term Incentive Plan 2006, and Supervisory Board Plan will cease to be governed by Dutch law and become governed by Irish law. The plans also will be amended to reflect the fact that Irish SE will have a single board of directors. Changes to the Long Term Incentive Plan will be voted on at our next annual general meeting, which also will be held immediately following the extraordinary general meeting at which shareholders will be asked to consider Stage 1 of the Proposal.

5.4. Summary of Key Corporate Law Differences Between Dutch SE and Irish SE

As part of the implementation of Stage 2 and the change of corporate domicile to Ireland, the constituent documents of Dutch SE will no longer apply and will instead be replaced with a memorandum and articles of association consistent with the company law regime applicable in Ireland as supplemented by the provisions of the SE Regulation.

The key differences between Dutch SE and Irish SE arise as a result of the fact that Dutch SE is subject to Dutch law while Irish SE is subject to Irish law.

The table below, together with Section 5.6, summarises the material differences between Dutch SE and Irish SE and the rights of shareholders in the event the Proposal is approved and implemented. The summary is not an exhaustive list of all the differences or a complete description of the differences described and reference is made to the articles of association of Dutch SE and Irish SE which are filed as exhibits with the US Securities and Exchange Commission to our registration statement of which this Explanatory Memorandum forms a part and are incorporated by reference. The articles of association are also available under the Investor Relations area of our website (www.jameshardie.com, select "James Hardie Investor Relations") and copies may be obtained on request. See "Where You Can Find Additional Information" in Section 13.

Where existing authorisations exist under our articles of association, Dutch SE's articles of association will provide for the continuation of such authorisations with the same expiry date as is currently the case.

It should be noted that the authorised share capital of Irish SE will be identical to that of Dutch SE (€1,180,000,000 divided into 2,000,000,000 shares of €0.59 each).

Issue	Dutch SE/Dutch Law	Irish SE/Irish Law
Rights Attaching to Shares		
Issue of Additional Shares and Pre-emptive Rights	The Supervisory Board has the power (a) to issue shares and (b) to limit or exclude pre-emptive rights in respect of such issue for a period of up to five years, subject to renewal, if it has been granted such power by an ordinary resolution of shareholders (which requires the approval of a majority of a quorum of shareholders). The shareholders of Dutch NV have provided these authorisations, which will expire on August 18, 2010. If the Supervisory Board has not been designated as the authorised body for share issues and limitations of pre-emptive rights, the shareholders have the power to take such actions, but only upon the proposal of the Supervisory Board. In the absence of any action by shareholders or the Supervisory Board, share issues are subject to pre-emptive rights in favour of the then current shareholders, except for shares issued (a) for consideration other than for cash or (b) to employees of James Hardie.	The board has the power (a) to issue shares up to a maximum of Irish SE's authorised share capital and (b) to limit or exclude statutory pre-emptive rights in respect of such issue for cash consideration, for a period of up to five years in each case, subject to renewal, by a special resolution of shareholders (which requires the approval of holders of 75% of shares present in person or by proxy and voting at the relevant general meeting) in the case of disapplication of statutory pre-emptive rights, and an ordinary resolution (which requires the approval of holders of a majority of shares present in person or by proxy and voting at the relevant general meeting) in the case of authorising the board to issue shares. Irish SE's articles of association, which shareholders will be asked to approve at the extraordinary general meeting held to consider and take action on Stage 2, will grant these authorisations to the board, which will expire (unless renewed) on the fifth anniversary of the extraordinary general meeting to consider and take action on Stage 2. If the board is at any time not designated as the authorised body for such powers, the shareholders acting by ordinary resolution have the power to issue shares, but only upon the proposal of the board.

Issue	Dutch SE/Dutch Law	Irish SE/Irish Law
Buy-Back of Shares and Share Redemptions	The Managing Board, subject to the approval of the Supervisory Board, has the power to buy-back Dutch SE's shares for a period of up to 18 months, subject to renewal, if it has been granted such power by an ordinary resolution of shareholders. The resolution must specify the number of shares (up to 10% under the articles of association of the aggregate par value of the issued share capital) that may be acquired, the manner in which they may be acquired and the range of prices that may be paid by Dutch SE. The shareholders of Dutch NV have provided such authorisation, which will expire on February 21, 2010 and a further renewal of this authority to February 17, 2011 will be sought at the 2009 annual general meeting. Any shares to be bought back must be fully paid and a buy-back of shares may only be funded out of freely distributable profits or out of the proceeds of a fresh issue of shares for that purpose. Dutch company law does not recognise redeemable shares. Under Dutch company law, shares that have been bought back by Dutch SE are not automatically cancelled and must be held in treasury unless cancellation of such shares is approved by an ordinary resolution of the shareholders and a creditor process is followed.	The board has the power to buy-back Irish SE's shares through market repurchases if granted a general authority to do so by an ordinary resolution of shareholders. A designation of such general authority can be valid for a period of no more than 18 months, subject to renewal, and must specify the number of shares that may be acquired and a price range or formula to calculate the acceptable range of prices that may be paid by Irish SE. Irish SE's articles of association, which shareholders will be asked to approve at the extraordinary general meeting held to consider and take action on Stage 2, will grant these authorisations to the board, which will expire (unless renewed) on the 18 month anniversary of such extraordinary general meeting. In the case of off-market repurchases, the proposed repurchase contract must be authorised by a special resolution. A redemption or repurchase of shares may only be funded out of freely distributable reserves or out of the proceeds of a fresh issue of shares for that purpose. Shareholder approval is not required for the redemption of redeemable shares. Under Irish company law, the board may determine whether shares that have been repurchased or redeemed by Irish SE will either be held in treasury or cancelled. However, under Irish company law, the nominal value of treasury shares held by Irish SE may not, at any one time, exceed 10% of the nominal value of the issued share capital of Irish SE.

Issue	Dutch SE/Dutch Law	Irish SE/Irish Law
Dividends and Distributions	Subject to the approval of the Supervisory Board, the Managing Board, or the shareholders if so designated by the Managing Board, has the power to declare dividends and other distributions, including distributions out of a share premium reserve or out of any other reserve shown in the annual accounts as not being a statutory reserve. Notwithstanding the foregoing, (a) dividends may only be declared in so far as Dutch SE's shareholders equity exceeds the amount of the paid up and called portion of the share capital, plus the statutory reserves and (b) provided distributions made in shares requires a resolution to that effect of the corporate body authorised to decide on the issue of additional shares.	Dividends and distributions of assets to shareholders may be declared (a) in the case of dividends, by the board or (b) upon the recommendation of the board, by an ordinary resolution of shareholders, provided that with respect to dividends or distributions declared pursuant to subsection (b) above, the dividends or distributions may not exceed the amount recommended by the board. Dividends and distributions may only be made in so far as (a) Irish SE has sufficient freely distributable reserves and (b) Irish SE's net assets are in excess of the aggregate of called up share capital plus undistributable reserves and the distribution does not reduce its net assets below such aggregate.
Directors **Board Structure**	Dutch SE will have a two-tiered board structure, consisting of a Managing Board and a Supervisory Board. On approval of Stage 1, the Joint Board will cease to exist.	Irish SE will have a single-tier board.

Issue	Dutch SE/Dutch Law	Irish SE/Irish Law
Powers of Board	Where a matter is not specifically reserved for the Managing Board or the Supervisory Board, such matter falls within the remit of the shareholders. All such matters require an ordinary resolution of shareholders except for the following, which require a special resolution of the shareholders: • amending the articles of association; • mergers; and • demergers. The Managing Board requires approval of each of the Supervisory Board and the shareholders for resolutions regarding a significant change in the identity or nature of Dutch SE, including: • the transfer of the enterprise or practically the entire enterprise to a third party; • to conclude or cancel a long-lasting co-operation with any other person 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 Dutch SE; and • to acquire or dispose of a participating interest in the capital of a company with a value of a least one-third of the sum of the assets according to the consolidated balance sheet. The shareholders and the Supervisory Board each may subject Managing Board decisions to their approval by means of a resolution to that effect.	Under Irish company law and the articles of association, certain matters are reserved for shareholder determination pursuant to a special resolution. Such matters include: • reduction of share capital; • approval of a change of name; • deciding to vary class rights attaching to shares; • amending the memorandum or articles of association; • disapplication of statutory pre-emptive rights; and • approval of schemes of arrangements. Under Irish company law and the articles of association, certain matters are reserved for shareholder determination pursuant to an ordinary resolution. Such matters include: • increasing the authorised share capital; and • renewing board authority to allot shares. Where a matter is not specifically reserved for shareholder determination, such matter falls within the remit of the board.

Issue	Dutch SE/Dutch Law	Irish SE/Irish Law
Duties of Directors	The Managing Board and Supervisory Board are under a duty to act in the best interests of Dutch SE, which involves taking into account the interests of its shareholders, Dutch SE and its business and all persons involved in the organisation of Dutch SE (including, in particular, creditors and employees of Dutch SE and its subsidiaries). In addition to the statutory and fiduciary duties of directors, the Managing Board is entrusted with the management of Dutch SE and the Supervisory Board is entrusted with the supervision thereof and has the duty to assist the Managing Board by rendering advice. The Supervisory Board is also responsible for overseeing the general course of affairs of Dutch SE and has such other powers as set forth in the articles of association, including approving: • a declaration of dividends; • any share buy-back programs; and • new share issuances.	The board is under a common law fiduciary duty to act in the best interests of Irish SE. In the case of insolvency, the directors would also be required to take into account the interests of Irish SE's creditors. All directors will have equal and overall responsibility for the management of Irish SE (although executive directors will have additional responsibilities and duties arising under their service contracts and will be expected to exercise a degree of skill and diligence commensurate with their specific executive positions).
Remuneration of Directors	The policy for the remuneration of the Managing Board is determined by an ordinary resolution of shareholders based upon the proposal of the Supervisory Board from time to time. The salary, bonus and other terms and conditions of employment (including pension benefits) of the Managing Board will be determined by the Supervisory Board in accordance with the policy adopted by shareholders. Arrangements for remuneration in the form of shares or CUFS for the Managing Board require shareholders approval pursuant to an ordinary resolution.	The maximum aggregate remuneration of the non-executive directors is determined by the articles of association and can be raised from time to time by an ordinary resolution. Executive directors may be paid such extra remuneration by way of salary, commission or otherwise as the board may from time to time determine. These provisions are subject to the relevant listing rules of the ASX regarding director remuneration.

Issue	Dutch SE/Dutch Law	Irish SE/Irish Law
	The maximum aggregate remuneration of the Supervisory Board is determined by the shareholders from time to time pursuant to an ordinary resolution on the recommendation of the Supervisory Board. These provisions are subject to the relevant listing rules of the ASX regarding director remuneration.	
Number and Nomination of Directors	The number of Managing Board members shall be at least two and is determined by the Supervisory Board. There are currently three members of the Managing Board of Dutch NV. Members of the Managing Board are appointed by an ordinary resolution at a general meeting. The number of Supervisory Board members shall be at least two and determined by the Supervisory Board. There are currently six members of the Supervisory Board. Members of the Supervisory Board are appointed at the annual general meeting (unless a vacancy arises) by an ordinary resolution.	Pursuant to the articles of association, the number of directors shall be determined by the directors from time to time and shall be at least three and no more than twelve. Initially, we expect the board will be comprised of eight non-executive directors and one executive director, who will be the chief executive officer. The board may delegate such powers as they see fit to the chief executive officer, however the board as a whole will be responsible for the strategic direction of Irish SE and for ensuring that it complies with all applicable corporate governance standards and requirements.

Issue	Dutch SE/Dutch Law	Irish SE/Irish Law
	The Supervisory Board and shareholders have the right to make nominations of members of the Managing Board and the Supervisory Board. Nominations by shareholders must be made no less than 35 business days (or 30 business days if the meeting is being called by shareholders) before the date of the general meeting at which the appointment of members of the Managing Board and the Supervisory Board are to be considered. If nominations have not been made or are not made in due time, the shareholders may appoint a member of the Managing Board or the Supervisory Board at their discretion. A person appointed to the board to fill a vacancy or as a result of an increase of the size of the board must retire or stand for re-election at the next annual general meeting.	The board and the shareholders have the right to nominate persons as directors. Shareholders may nominate candidates for election as directors at any annual general meeting by delivering notice of such intention to Irish SE's registered office not less than 30 business days nor more than the earlier of (a) 60 business days' prior to the anniversary date of the previous year's annual general meeting and (b) 40 business days prior to the date on which the annual general meeting is due to be held. Holders of at least 10% of the issued share capital of Irish SE may nominate candidates for election as directors at any extraordinary general meeting by delivering notice of such intention to Irish SE's registered office not less than 30 business days prior to the date on which the extraordinary general meeting is due to be held. Notice of nominations by shareholders must contain certain information identified in the articles of association, including: the name and registered address of the beneficial holder who requested (excluding any custodian or other nominee) the shareholder to propose a person for nomination; certain information regarding such beneficial holder's shareholdings (including derivatives and similar securities) in Irish SE; and a description of all agreements between such beneficial holder and any other person in connection with such nominations and any material interest of such beneficial holder or other person in such nominations. The notice also must contain information regarding each proposed nominee, such nominee's shareholdings in Irish SE and consent of such nominee to being named as a nominee and to serve as director if elected.

Issue	Dutch SE/Dutch Law	Irish SE/Irish Law
		Our boards currently have a nominating committee and we expect that Irish SE will have a similar committee. Directors may appoint additional directors up to the maximum number of directors permitted under the articles of association. Directors appointed in such a manner are subject to re-election at the next annual general meeting. Directors may fill casual vacancies provided that any director appointed by the board will be subject to re-election by shareholders at the next annual general meeting.
Term of Directors' Appointment	Members of the Managing Board or the Supervisory Board (other than the chief executive officer who shall be entitled to hold office for a continuous period of six years, subject to renewal) shall be entitled to hold office for a continuous period of three years, or past the end of the third annual general meeting following his or her appointment, whichever is longer, without retiring or standing for re-election.	Under the articles of association, one third of directors (excluding the chief executive officer) shall elect to retire or stand for re-election at each of the first three annual general meetings following Irish SE's registration in Ireland, provided that where the number of such directors is less than one-third, the chairman shall nominate the directors who are to retire or stand for re-election. At the fourth and at each subsequent annual general meeting following Irish SE's registration in Ireland the directors (excluding the chief executive officer) that are to retire by rotation shall be those who have been longest in office since their last appointment or re-appointment; provided that where the number of such directors is more than one-third, the directors that will constitute the one-third to retire or stand for re-election shall be determined (unless otherwise agreed) by lot. The chief executive officer is required to stand for re-election as a director every six years following their appointment as a director.

Issue	Dutch SE/Dutch Law	Irish SE/Irish Law
Removal of Directors	Shareholders may remove or suspend Supervisory and Managing Board members, with or without cause, by an ordinary resolution of the shareholders. Managing Board members can also be suspended (but not dismissed) by the Supervisory Board with or without cause.	Shareholders who, alone or together, hold 5% or more of Irish SE's issued share capital may convene an extraordinary general meeting and propose resolutions for consideration at such an extraordinary general meeting, upon 28 days' notice to the director, to remove any director, with or without cause, by an ordinary resolution. The shareholders may also, by ordinary resolution, appoint another director to fill the vacancy caused by the removal. Under the articles of association, a director can also be removed, with or without cause, if all of the other directors in writing require his or her resignation.
Vacancies	A vacancy in the Managing Board shall be filled by an ordinary resolution of the shareholders. A vacancy in the Supervisory Board between annual general meetings may be filled by the remaining members of the Supervisory Board provided that the term of such director will end at the next annual general meeting and the number of members appointed shall not exceed one-third the number of members of the Supervisory Board prior to the moment a vacancy occurs.	Under Irish SE's articles of association, shareholders may appoint directors, either to fill a vacancy or as an additional director, by an ordinary resolution. Under the articles of association vacancies can also be filled by the board. Any director appointed by the board will be subject to re-election by shareholders at the next annual general meeting.

Issue	Dutch SE/Dutch Law	Irish SE/Irish Law
Directors' Indemnity	Under the articles of association, the directors, officers and employees are indemnified by Dutch SE for losses arising out of such persons exercise of their duties to Dutch SE. This indemnity does not apply where a Dutch court establishes that the acts or omissions of directors and officers constitute willful misconduct, intentional recklessness or are seriously imputable, unless this would be unacceptable according to standards of reasonableness and fairness.	Under the articles of association, the current and former directors, company secretary, employees and persons who may be deemed by the board of Irish SE to be an agent of Irish SE are indemnified by Irish SE for costs, losses and expenses arising out of such person's exercise of their duties to Irish SE. However, under Irish company law, this indemnity only binds Irish SE to indemnify a current or former director or company secretary where judgment is given in any civil or criminal action in favour of such director or company secretary, or where a court grants relief because the director or company secretary acted honestly and reasonably and ought fairly to be excused. The articles of association apply the same restrictions to employees and persons deemed by the board of Irish SE to be an agent of Irish SE who are not current or former directors or company secretary. Irish SE will also enter into deeds of access, insurance and indemnity with its directors and company secretary and certain senior employees.
Shareholders' Meetings **Annual General Meetings**	Annual general meetings are to be held within six months from the end of the financial year. Such meetings will be held in The Netherlands. Holders of at least 1% of the issued share capital or shares representing at least EUR 50 million in value can request the Managing Board to place a matter on the agenda for an annual general meeting so long as such request is made 60 days prior to the annual general meeting and provided that the matter is not detrimental to an overriding interest of Dutch SE.	Annual general meetings must be held at least once in each calendar year (at no more than 15-month intervals) and within six months after the financial year-end. Irish SE will announce the date of an annual general meeting no less than 40 business days before such meeting is due to be held. Annual general meetings of Irish SE generally will be held in Ireland unless shareholder approval, pursuant to an ordinary resolution, is granted at the preceding annual general meeting to hold the following general meeting outside of Ireland.

Issue	Dutch SE/Dutch Law	Irish SE/Irish Law
	Holders of CUFS and ADSs will not appear on Dutch SE's share registry as legal holders of shares. Accordingly, the ability to call an extraordinary general meeting only may be exercised, in the case of holders of CUFS, by providing instructions to the CUFS depositary or by converting their CUFS to shares, and, in the case of holders of ADSs, by converting their ADSs to CUFS and thereafter providing instructions to the CUFS depositary or converting their CUFS to shares.	Under the articles of association, holders of at least 5% of the issued share capital can request that the board place a matter on the agenda of an annual general meeting so long as notice of such proposal is provided to Irish SE by such shareholders not less than 30 nor more than the earlier of (a) 60 business days prior to the anniversary date of the previous year's annual general meeting and (b) 40 business days prior to the date on which the annual general meeting is due to be held. Any such advance notice shall be delivered to Irish SE's registered office and must contain certain information identified in the articles of association, including: the name and registered address of the beneficial holder (excluding any custodian or other nominee) who requested the shareholder to provide Irish SE with notice of the intention to raise business at the meeting; a description of the item of business, the proposed resolution and reasons for requesting such business; a description of all agreements between such beneficial holder and any other person in connection with such proposal and any material interests of such beneficial holder or other person in such proposed business; and certain information regarding such beneficial holder's shareholdings (including derivatives and similar securities) in Irish SE. In addition, where the matter relates to director nominations, the details required under "Number and Nominations of Directors" will also apply.

Issue	Dutch SE/Dutch Law	Irish SE/Irish Law
		Holders of CUFS and ADSs will not appear on Irish SE's share register as legal holders of shares. Accordingly, the ability to call an extraordinary general meeting only may be exercised, in the case of holders of CUFS, by providing instructions to the CUFS depositary or by converting their CUFS to shares, and, in the case of holders of ADSs, by converting their ADSs to CUFS and thereafter providing instructions to the CUFS depositary or converting their CUFS to shares.
Information Meetings	Under the articles of association, an annual information meeting (or extraordinary information meeting for extraordinary general meetings) must be held within seven days prior to an annual general meeting (or extraordinary general meeting) as appropriate.	There will be no requirement for Irish SE to hold information meetings.

Issue	Dutch SE/Dutch Law	Irish SE/Irish Law
Extraordinary General Meetings	Extraordinary general meetings may be convened as often as deemed necessary by the Managing Board and the Supervisory Board and shall be held at the request of: • shareholders, representing at least 5% of the issued share capital; or • at least 100 shareholders, or one shareholder representing at least 100 holders of CUFS, or any combination of the foregoing. An extraordinary general meeting must be called within 21 days after a shareholder request has been given to Dutch SE and held no later than two months after such shareholder request. If the meeting is not called within 21 days after receiving such shareholder request, the shareholders who represent at least 50% of the votes of all of the persons who requested the extraordinary general meeting may call and hold an extraordinary general meeting within three months after such shareholders request, at Dutch SE's cost. In addition, shareholders representing at least 5% of the issued share capital may call and arrange to hold an extraordinary general meeting, at their own cost.	Extraordinary general meetings may be convened as often as deemed necessary by the board and shall be held at the request of shareholders holding not less than 5% of issued share capital among them provided that such shareholders provide advanced notice, delivered to Irish SE's registered office, containing certain information identified in the articles of association, including: the name and registered address of the beneficial holder (excluding any custodian or other nominee) who requested the shareholder to provide Irish SE with notice of the intention to raise business at the meeting; a description of the item of business, the proposed resolution and reasons for requesting such business except that only shareholders holding 10% or more of issued share capital among them are permitted to provide notice with respect to the election of directors; a description of all agreements between such beneficial holder and any other person in connection with such proposal and any material interests of such beneficial holder or other person in such proposed business; and certain information regarding such beneficial holder's shareholdings (including derivatives and similar securities) in Irish SE.

Issue	Dutch SE/Dutch Law	Irish SE/Irish Law
	Shareholders (individually or with other shareholders who have requested an extraordinary general meeting) may provide Dutch SE with a notice of a resolution that the shareholder proposes to include on the agenda of the extraordinary general meeting. Holders of CUFS and ADSs will not appear on Dutch SE's share registry as legal holders of shares. Accordingly, the ability to call an extraordinary general meeting only may be exercised, in the case of holders of CUFS, by providing instructions to the CUFS depositary or by converting their CUFS to shares, and, in the case of holders of ADSs, by converting their ADSs to CUFS and thereafter providing instructions to the CUFS depositary or converting their CUFS to shares.	In addition, if at any time there are not sufficient directors capable of acting to form a quorum, the Chairman or any three directors or any one or more shareholders holding not less than 5% of issued share capital between them, may convene an extraordinary general meeting. An extraordinary general meeting must be called within 21 clear days (meaning 21 days excluding the day notice is given and the day of the meeting) after a shareholder request has been given to Irish SE, and held no later than two months after such shareholder request. One or more persons who alone or together hold at least 10% of the issued share capital of Irish SE can request that the board call an extraordinary general meeting. In addition, such holders can also request that the board place a matter on the agenda of any extraordinary general meeting so long as written notice complying with the requirements in relation to notice of resolutions in (a) Irish SE's articles of association, including, but not limited to, providing the information required to be in a notice convening an extraordinary general meeting by shareholders holding at least 5% of the issued share capital of Irish SE, and (b) the Irish Companies Acts is received by Irish SE within five business days of the day Irish SE announces to the ASX its intention to convene such extraordinary general meeting. Irish SE's directors may make recommendations in relation to any additional items added to the agenda.

Issue	Dutch SE/Dutch Law	Irish SE/Irish Law
		Holders of CUFS and ADSs will not appear on Irish SE's share register as legal holders of shares. Accordingly, the ability to call an extraordinary general meeting only may be exercised, in the case of holders of CUFS, by providing instructions to the CUFS depositary or by converting their CUFS to shares, and, in the case of holders of ADSs, by converting their ADSs to CUFS and thereafter providing instructions to the CUFS depositary or converting their CUFS to shares.
Notice of Meetings	Under the articles of association, at least 28 days' notice for all meetings is required.	Under the articles of association, at least 21 clear days' notice (meaning 21 days excluding the day notice was given and the day of the meeting) for annual general meetings and at least 14 clear days' notice for extraordinary general meetings is required unless a special resolution is proposed at an extraordinary general meeting, in which case at least 21 clear days notice is required.
Rights of Shareholders Derivative Actions	There is no right under Dutch law for shareholders to bring a derivative action.	Under Irish company law, a shareholder may be entitled to bring a derivative action on behalf of Irish SE in circumstances where the court determines that the merits of the case require such action to be permitted.

Issue	Dutch SE/Dutch Law	Irish SE/Irish Law
Inspection of Books and Records	Under Dutch company law, shareholders are entitled to inspect the minute books relating to shareholder meetings and the share register of Dutch SE. Under the articles of association, the shareholders may, at the annual general meeting, request information and such reasonable requests for information shall be fulfilled (subject to the decision of the chairman at the general meeting). Holders of CUFS and ADSs will not appear on Dutch SE's share registry as legal holders of shares. Accordingly, the ability to request information only may be exercised, in the case of holders of CUFS, by providing instructions to the CUFS depositary or by converting their CUFS to shares, and, in the case of holders of ADSs, by converting their ADSs to CUFS and thereafter providing instructions to the CUFS depositary or converting their CUFS to shares.	Under Irish company law, shareholders are entitled to inspect Irish SE's statutory books (share register and minute books of Irish SE relating to shareholder meetings). Holders of CUFS and ADSs will not appear on Irish SE's share register as legal holders of shares. Accordingly, the ability to inspect statutory books only may be exercised, in the case of holders of CUFS, by providing instructions to the CUFS depositary or by converting their CUFS to shares, and, in the case of holders of ADSs, by converting their ADSs to CUFS and thereafter providing instructions to the CUFS depositary or converting their CUFS to shares.
Takeovers **Applicable Takeover Rules**	The takeover regime of The Netherlands does not apply. However, the articles of association prescribe a takeover regime which incorporates certain principles of the Australian takeover regime. For further information, please refer to "Principal Differences between the Takeover Regime Under the Articles of Association of Dutch NV and Dutch SE and the Irish Takeover Rules" in Section 5.6.	The Irish takeover regime will apply. For further information, please refer to "Principal Differences between the Takeover Regime Under the Articles of Association of Dutch NV and Dutch SE and the Irish Takeover Rules" in Section 5.6.

5.5. Summary of Irish SE Articles of Association

Following is a summary highlighting selected information from the articles of association of Irish SE and does not contain all of the information that may be important to you. We recommend that you read carefully the articles of association of Irish SE for the complete description of your rights as a shareholder and other important information. The articles of association of Irish SE are filed as an exhibit to our registration statement with the US Securities and Exchange Commission and are incorporated by reference. These articles of association are also available under the Investor Relations area of our website (www.jameshardie.com, select "James Hardie Investor Relations") and copies may be obtained on request. See "Where You Can Find Additional Information" in Section 13.

5.5.1. Register and Entry Number / SE's Objects and Purposes

Irish SE will be registered with the Companies Registration Office in Ireland. It will be assigned a registered number once it has filed the required documents at the conclusion of Stage 2.

Irish SE's main object will be to:

"carry on the businesses of manufacturer, distributor, wholesaler, retailer, service provider, investor, designer, trader and any other business (except the issuing of policies of insurance) which may seem to the SE's board of directors capable of being conveniently carried on in connection with these objects or calculated directly or indirectly to enhance the value of or render more profitable any of the SE's property."

Irish SE also will have the power to carry on the business of a holding company and co-ordinate the administration, finances and activities of any subsidiary companies or associated companies.

The usual powers of an Irish public limited company also will be granted to Irish SE. These include the power to borrow, to charge Irish SE's assets, to grant guarantees and indemnities, to incorporate new companies and to acquire existing companies.

5.5.2. Powers and Requirements of Directors

The directors will be granted the general power to manage Irish SE by its articles of association. The directors will have the power to exercise all of the powers of Irish SE that have not been otherwise expressly reserved to the shareholders of Irish SE by Irish company law or Irish SE's articles of association. In addition, the directors also will be granted certain specific powers by Irish SE's articles of association, including:

- the power to delegate their powers to the chief executive officer, any executive director or to a committee of the board;
- the power to appoint attorneys to act on behalf of Irish SE;
- the power to borrow money on behalf of Irish SE and to mortgage or charge Irish SE's undertaking, property, assets, and uncalled capital as security for such borrowings; and
- the power to do anything that is necessary or desirable for Irish SE to participate in any computerised, electronic or other system for the facilitation of the transfer of CUFS or the operation of Irish SE's registers that may be owned, operated or sponsored by the ASX.

Irish SE's articles of association will expressly list some, but not all, of the duties of directors.

With respect to remuneration of directors, further information is set out under the heading "Summary of Key Corporate Law Differences between Dutch SE and Irish SE" in Section 5.4 under the subheading "Remuneration of Directors."

Irish SE's articles of association do not include any provisions regarding the mandatory retirement age of a director.

Under Irish law, directors have a common law fiduciary duty to act in the best interest of Irish SE and to exercise good faith and due care and skill. Directors also have statutory duties that mainly relate to administrative obligations. Further information is included under the heading "Key Corporate Law Differences Between Dutch SE and Irish SE" in Section 5.4 under the subheading "Duties of Directors".

No director will require a share qualification in order to act as a director.

5.5.3. Rights, Preferences and Restrictions Attaching to Shares

Irish SE initially will be registered with one class of shares, however the articles of association will allow for any share to be issued with such rights or restrictions as the shareholders of Irish SE may by ordinary resolution determine.

Shareholders may authorise Irish SE (acting through its directors) by special resolution to issue shares in whatever manner on the basis that they can be subsequently redeemed. Once issued, Irish SE may cancel redeemed shares or alternatively hold them as treasury shares (which subsequently can be reissued or cancelled).

5.5.3.1. Dividend rights

A description of Irish SE's director's power to declare dividends and distributions is set out under the heading "Summary of Key Corporate Law Differences Between Dutch SE and Irish SE" in Section 5.4. under the subheading "Dividends and Distributions."

If directors so resolve, any dividend that has remained unclaimed for twelve years from the date of its declaration shall be forfeited and cease to remain owing by Irish SE. The payment by directors of any unclaimed dividend or other moneys payable in respect of a share into a separate account shall not constitute Irish SE a trustee in respect thereof.

5.5.3.2. Voting rights

All shares issued will have the right to one vote for each share held on every matter submitted to a vote of the shareholders. CUFS holders will be entitled to attend and to speak, but not vote, at Irish SE's shareholder meetings. ADR holders will neither be entitled to attend and to speak, nor be entitled to vote, at Irish SE's general meetings of shareholders.

A description of Irish SE's shareholder's rights with respect to voting on directors and the terms of directors' appointment is set out under the heading "Summary of Key Corporate Law Differences Between Dutch SE and Irish SE" in Section 5.4 under the subheadings "Number and Nomination of Directors" and "Term of Director's Appointment."

Irish law and Irish SE's articles of association currently do not impose any limitations on the rights of persons who are not residents of Ireland to hold or vote shares, solely as a result of such non-resident status.

Unless otherwise required by Irish SE's articles of association or Irish law, no business other than the appointment of a chairman may be transacted unless at least 5% of Irish SE's issued share capital is present or represented.

5.5.3.3. Rights upon liquidation

In the event of Irish SE liquidation, and after Irish SE has paid all debts and liquidation expenses, the excess of any assets shall be distributed among Irish SE shareholders in proportion to the capital at the commencement of the winding up paid up or credited as paid up on such shares held by Irish SE shareholders. As a holding company, Irish SE's sole material assets will be the capital stock of its subsidiaries.

5.5.3.4. Acquisition of own shares

A description of Irish SE's power to repurchase or redeem shares of Irish SE is set out under the heading "Summary of Key Corporate Law Differences Between Dutch SE and Irish SE" in Section 5.4. under the subheading "Buy-Back of Shares and Share Redemptions."

5.5.4. Necessary Action to Change the Rights of Holders of the Shares

Irish SE's share capital may be divided into different classes of shares and the rights attached to any class may be varied with the consent in writing of 75% in nominal value of the issued shares of that class or with the consent of 75% of that share class by value of those voting at a separate general meeting of the shareholders of such class.

5.5.5. Meetings' Conditions and Procedures

5.5.5.1. Directors' meetings

The directors shall meet at least once every three months to discuss the progress and foreseeable development of Irish SE's business. A meeting of the directors may be called by the chairman of the board or any three directors. Notice must be given to each director personally, orally or in writing. Unless the directors arrange otherwise, the quorum for the conduct of business at a directors meeting will be three directors. Each director shall have one vote, and in addition to his or her own vote, shall be entitled to one vote in respect of each other director not present at the meeting who shall have authorised him or her in respect of such meeting to vote for such other director in his or her absence. Decisions at meetings of the directors will be decided by a majority of votes. Where there is equality of votes, the chairman of the board will have the deciding vote. Irish SE's articles of association provide for directors to participate in meetings of the board or committees of the board telephonically.

Subject to the provisions of Irish company law, provided that a director discloses the nature and extent of a material interest, such director may, subject to a number of stated exceptions, be party to an arrangement or transaction with Irish SE or its subsidiaries, but may not vote on a resolution concerning a matter in which such director has, directly or indirectly, an interest which is material or a duty which conflicts or may conflict with the interests of Irish SE. Such director shall not be counted in the quorum present at a meeting in relation to any such resolution on which the director is not entitled to vote.

5.5.5.2. General meetings

The first annual general meeting of Irish SE following its registration in Ireland does not need to be held in Ireland but must be held within 18 months of its registration. Subsequent annual general meetings of Irish SE are also not required to be held in Ireland so long as there is an ordinary resolution of shareholders providing that it be held elsewhere. There is no requirement that extraordinary general meetings be held in Ireland. Following the first annual general meeting, Irish SE must hold an annual general meeting in each calendar year and within six months after the financial year end and shall announce the date such annual general meetings no less than 40 business days before such meeting is due to be held. All business that is transacted at an annual general meeting shall be deemed to be special business, except: (1) the declaration of a dividend; (2) the consideration of the accounts, balance sheets and reports of the directors and auditors; (3) the election of directors in the place of those retiring (whether by rotation or otherwise); (4) the fixing of the remuneration of the directors; (5) the re-appointment of the retiring auditors; and (6) the fixing of the remuneration of the auditors.

An extraordinary general meeting can be convened by (1) the directors (or if there is an insufficient number of directors to form a quorum, by the chairman of the board or any three directors) or (2) by one or more persons who alone or together hold 5% of Irish SE's issued share capital provided that such shareholders provide advance notice, delivered to Irish SE's registered office, containing certain information identified in the articles of association, including: the name and registered address of the beneficial holder (excluding any custodian or other nominee) who requested the shareholder to provide Irish SE with notice of the intention to raise business at the meeting; a description of the item of business, the proposed resolution and reasons for requesting such business except that only shareholders holding 10% or more of issued share capital among them are permitted to provide notice with respect to the election of directors; a description of all agreements between such beneficial holder and any other person in connection with such proposal and any material interests of such beneficial holder or other person in such proposed business; and certain information regarding such beneficial holder's shareholdings (including derivatives and similar securities) in Irish SE.

One or more persons who alone or together hold at least 10% of the issued share capital of Irish SE can request that the board call an extraordinary general meeting. In addition, such holders can also request that the board place a matter on the agenda of any extraordinary general meeting so long as written notice complying with the requirements in relation to notice of resolutions in (a) Irish SE's articles of association, including, but not limited to, providing the information required to be in a notice convening an extraordinary general meeting by shareholders holding at least 5% of the issued share capital of Irish SE, and (b) the Irish Companies Acts is received by Irish SE within five business days of the day Irish SE announces to the ASX its intention to convene such extraordinary general meeting. Such holders may nominate candidates for election as directors at any extraordinary general

meeting by delivering notice of such intention to Irish SE's registered office not less than 30 business days prior to the date on which the extraordinary general meeting is due to be held. Irish SE's directors may make recommendations in relation to any additional items added to the agenda.

The quorum for general meetings and for meetings of a separate class of shareholders in Irish SE will be one or more persons who alone or jointly hold at least 5% of Irish SE's issued share capital or, in the case of a separate class meeting, 5% of the issued share capital of that class. These same quorum requirements also will apply to all adjourned meetings.

A description of Irish SE's notice requirements and rights conferred on Irish SE's shareholders is set forth under the heading "Summary of Key Corporate Law Differences Between Dutch SE and Irish SE" in Section 5.4 under the subheadings "Notice of Meetings," "Annual General Meetings" and "Extraordinary General Meetings."

All voting at general meetings will be decided by a poll, votes may be given in person, by proxy or by a duly authorised representative, in each case in the manner prescribed by Irish SE's articles of association. Where there is an equality of votes the chairman of the meeting will have a second, or casting, vote.

5.5.6. Right to Own Shares

Irish SE's memorandum of association will provide it with the power to own shares in its subsidiaries or any non-group companies for that matter.

Irish SE's articles of association provide that Irish SE may not purchase and own its own shares unless such purchase has been approved by a special resolution of Irish SE in the case of an "off market purchase" or a general authority has been granted to Irish SE by an ordinary resolution in the case of a "market purchase." Once such shares have been purchased, they may be cancelled or held as treasury shares, however, under Irish company law, the nominal value of treasury shares held by Irish SE may not, at any one time, exceed 10% of the nominal value of the issued share capital of Irish SE. If the shares are held as treasury shares, Irish SE is not allowed to exercise the votes, if any, attaching to those shares. A more detailed description is set out under the heading "Summary of Key Corporate Law Differences Between Dutch SE and Irish SE" in Section 5.4 under the subheading "Buy-back of Shares and Share Redemptions".

5.5.7. Thresholds for Which Shareholder Ownership Must be Disclosed

Under Irish law, a person must notify Irish SE in writing within five business days of an acquisition or disposition of shares in Irish SE where:

- such person's interest was below 5% of Irish SE's issued share capital prior to such acquisition and equals or exceeds 5% after such acquisition;
- such person's interest was equal to or above 5% of Irish SE's issued share capital before an acquisition or disposition and increases or decreases through an integer of a percentage as a result of such acquisition or disposition (e.g., from 5.8% to 6.3% or from 8.2% to 7.9%); and
- where such person's interest was equal to or above 5% of Irish SE's issued share capital before a disposition and falls below 5% as a result of such disposition.

In addition, under Irish law, Irish SE can, if it has reasonable cause to believe that a person or company has an interest in Irish SE's shares, require such person or company to confirm that belief (or as the case may be) to indicate whether or not it is the case and to provide certain information in relation to such holdings, including details of his or her interest in any shares in the SE and the interests (if any) of all persons having a beneficial interest in the shares. Such disclosed information does not need to be made publicly accessible.

5.5.8. Consequences of Non-Disclosure of Shareholder Ownership

Failure of a shareholder to disclose its interests in Irish SE's shares as described above in "Thresholds for which Shareholder Ownership Must be Disclosed" in Section 5.5.7 will result in no right or interest of any kind in respect of that person's shares being enforceable, whether directly or indirectly by action or legal proceeding. If a

person fails to respond to Irish SE when it makes a request for information in the manner described above, Irish SE may apply to the High Court of Ireland for an order stating that: (a) any transfer of such shares will be void; (b) such shares will have no voting rights; (c) no further shares will be issued in right of those shares or pursuant to any offer made to the holder thereof; and (d) such shares will not be entitled to any payment from Irish SE. Such restrictions, whether imposed for a failure to disclose a notifiable interest or for a failure to respond to a request for information, may only be lifted by an order of the High Court of Ireland.

Irish SE also will be subject to the Irish Takeover Rules and the rules governing substantial acquisition of shares. A more detailed description is set out in "Principal Differences Between the Takeover Regime under the Articles of Association of Dutch NV and Dutch SE and the Irish Takeover Rules" in Section 5.6.

Where shares have not been fully paid up, Irish SE's directors may exercise Irish SE's first and paramount lien on such shares, meaning they can either sell or transfer them.

5.5.9. Conditions Imposed by Irish SE's Articles of Association Governing Changes to Irish SE's Capital

The articles of association of Irish SE, which shareholders will be asked to approve in connection with Stage 2, will provide that, for five years from the date of the adoption of Irish SE's articles of association, directors will have the right to allot shares without further action on the part of shareholders up to the maximum authorised share capital of Irish SE. Five years is the maximum period allowed by Irish law before such authorisation has to be renewed by an ordinary resolution of the shareholders. This right is subject to the listing rules of the ASX and NYSE in relation to the issue of new equity securities, which require:

- in the case of the ASX, shareholder approval for the issue of equity securities which exceed 15% of the number of equity securities on issue (as determined in accordance with the ASX listing rules and subject to the various exemptions set out therein); and
- in the case of the NYSE, shareholder approval for the issuance of shares that have or will have upon issuance voting power equal to or in excess of 20% of the voting power outstanding before the issuance of such shares (subject to certain exceptions).

The articles of association also will provide that directors have the right to issue authorised share capital without regard to the statutory pre-emptive rights granted to shareholders in relation to issues of shares for cash under Irish company law. The right to issue shares for cash without regard to statutory pre-emptive rights is subject to the same five-year limit as the directors' authority to issue shares, subject to renewal by a special resolution of shareholders.

5.6. Principal Differences Between the Takeover Regime under the Articles of Association of Dutch NV and Dutch SE and the Irish Takeover Rules

5.6.1. Overview

As a result of our transformation in Stage 2 of the Proposal to Irish SE, the present takeover regime under article 49 of our articles of association and Dutch SE's articles of association will no longer apply. Article 49 is modelled on the takeover regime that applies in Australia and was introduced in 2001 because there are no takeover rules applicable to us under Dutch law. As Irish SE will have a listing of equity securities on the NYSE, it will be subject to the Irish Takeover Panel Act 1997 (as amended) and the Irish Takeover Panel Act 1997 Takeover Panel Rules and Substantial Acquisition Rules 2007 (as amended) as applied to non-Directive Relevant Companies (we refer to these laws as the Irish Takeover Rules).

The Irish Takeover Rules regulate takeover and merger transactions, however effected, by which control of a target incorporated in Ireland (and having a listing of equity securities on an EU regulated stock exchange or on the NYSE or NASDAQ) may be obtained or consolidated. Control means a holding or aggregate holding of shares carrying 30% or more of the voting rights of a company, irrespective of whether the holding or holdings give de facto control.

The Irish Takeover Rules are statute based. The Irish Takeover Panel is the body that regulates all transactions subject to the Irish Takeover Rules.

The Irish Takeover Rules are built on the following general principles that apply to any transaction regulated by these rules:

- all holders of the securities of an offeree of the same class must be afforded equivalent treatment; moreover, if a person acquires control of a company, the other holders of securities must be protected;
- the holders of the securities of an offeree must have sufficient time and information to enable them to reach a properly informed decision on the offer; where it advises the holders of securities, the board of the offeree must give its views on the effects of implementation of the offer on employment, conditions of employment and the locations of the offeree's places of business;
- the board of an offeree must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the offer;
- false markets must not be created in the securities of the offeree, of the offeror or of any other company concerned by the offer in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted;
- an offeror must announce an offer only after ensuring that he or she can fulfill in full any cash consideration, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration;
- an offeree must not be hindered in the conduct of its affairs for longer than is reasonable by an offer for its securities; and
- a substantial acquisition of securities (whether such acquisition is to be effected by one transaction or a series of transactions) shall take place only at an acceptable speed and shall be subject to adequate and timely disclosure.

5.6.2. Takeover Thresholds

Rule 9 of the Irish Takeover Rules states that, except with the consent of the Irish Takeover Panel, when:

- any person acquires, whether by a series of transactions over a period of time or not, shares or other securities which (taken together with shares or other securities held or acquired by persons acting in concert) carry 30% or more of the voting rights of a company; or
- any person, who together with persons acting in concert, holds not less than 30% of the voting rights and such person or any person acting in concert with them acquires, in any period of twelve months, additional shares or other securities of more than 0.05% of the total voting rights of the company,

such person must extend offers to the holders of any class of equity securities (whether voting or non-voting) and to holders of any class of transferable voting capital in respect of all such equity securities and transferable voting capital.

A single holder (that is, a holder excluding any parties acting in concert with the holder) holding more than 50% of the voting rights of a company is not subject to Rule 9.

The Irish Takeover Rules also contain rules called "Substantial Acquisition Rules" which restrict the speed with which a person may increase their holding of shares and rights over shares to an aggregate of between 15% and 30% of the voting rights of a company. These rules also require accelerated disclosure of acquisitions of shares or rights over shares relating to such holdings.

5.6.3. Key Differences Between Article 49 and the Irish Takeover Rules

The key differences between the Irish Takeover Rules (taken together with provisions of Irish company law relating to disclosure of interests in shares) and the current takeover regime as applicable to us under Article 49 of

our articles of association and which will also form part of Dutch SE's articles of association are described in the following table:

Key Differences	Article 49 of Dutch NV/Dutch SE articles of association	Irish Takeover Rules/ Irish Company Law
Relevant Thresholds for Triggering a Mandatory Takeover Offer	Pursuant to the articles of association, a takeover offer is required if either (a) the number of shares in respect of which any person (or persons acting in concert) directly or indirectly acquires or holds a relevant interest or (b) the voting rights which a person (or persons acting in concert) is entitled to exercise at a general meeting, in each case, increases: (i) from 20% or below to more than 20%; or (ii) from a starting point that is above 20% and below 90%. A "relevant interest' means any interest in shares that causes or permits a person to (1) exercise or influence the exercise of voting rights on shares; or (2) dispose or influence the disposal of shares, including inter alia the legal ownership of shares, CUFS and an interest under an option agreement to acquire a share or a CUFS.	Pursuant to the Irish Takeover Rules, a takeover offer is required if either (a) any person (or persons acting in concert) acquires 30% or more of the voting rights of Irish SE, whether in one transaction or a series of transactions or (b) during any 12-month period, any person (or persons acting in concert) who holds not less than 30% and not more than 50% of the voting rights of Irish SE acquires additional securities representing more than 0.05% of the voting rights of Irish SE.
Disclosure of Substantial Holdings	Pursuant to the articles of association, where any person (or persons acting in concert): (a) acquires, or ceases to have, a substantial holding in shares (being a relevant interest in 5% or more of the total number of votes attached to all shares); (b) has a substantial holding and there is a movement of at least 1% in their holding; or (c) makes a takeover bid for shares or CUFS; such person or persons must provide to Dutch NV or Dutch SE (as applicable) and the ASX information with respect to their identity and such holdings within 2 business days after they become aware of the information or by 9:30 a.m. AEST on the next trading day of the ASX after they become aware of the information if a takeover bid has been made.	As described under the heading "Summary of Irish SE Articles of Association — Thresholds for Which Shareholder Ownership Must be Disclosed" in Section 5.5.7, shareholders are required to notify Irish SE of interests of 5% or more and thereafter any acquisitions or dispositions of shares which brings such person's interest through an integer of a percentage point. Under the Irish Takeover Rules, whenever James Hardie is in an "offer period" (which, broadly, means being subject to a takeover bid or having announced it has received an approach which may lead to a takeover bid) all dealings by the bidder, persons acting in concert with the bidder and holders of more than 1% of Irish SE's voting capital must be publicly disclosed by 12 noon on the next business day.

Key Differences	Article 49 of Dutch NV/Dutch SE articles of association	Irish Takeover Rules/ Irish Company Law
Consequence of Exceeding Thresholds or Failing to Make Required Disclosures	The Supervisory Board may, subject to certain conditions, cause Dutch NV or Dutch SE (as applicable) to take the following actions with respect to the shares held by a shareholder that exceed the thresholds described above under "Disclosure of Substantial Holdings" for triggering mandatory takeover offers or in the event the shareholder fails to provide the information required in respect of substantial holdings: (a) require the shareholder to dispose of all or part of such shares; (b) disregard the exercise by such person of all or part of the voting rights arising from such shares; or (c) suspend such person from the right to receive all or part of the dividends or other distributions arising from such shares.	As described under the heading "Summary of Irish SE Articles of Association--Thresholds for Which Shareholder Ownership Must be Disclosed" in Section 5.5.7, where a shareholder fails to make the required disclosure in relation to the 5% shareholding threshold or acquisition or disposition of Irish SE's issued share capital thereafter that takes such person's interest in Irish SE's issued share capital through an integer of a percentage point, all rights associated with such shareholder's shareholding become unenforceable and can only be reinstated by an order of the High Court of Ireland. Any failure to comply with disclosure obligations in the Irish Takeover Rules will constitute a breach of the Irish Takeover Rules and may result in public censure by the Irish Takeover Panel.
Compulsory Acquisition of Shares Following a Takeover Bid	Under Dutch company law, in the event any person (or persons acting in concert) acquires 95% or more of Dutch SE's issued share capital in a takeover bid, such person or group may compel the acquisition of the remaining 5% of Dutch SE's shares.	Under Irish company law, in the event any person acquires 80% or more of Irish SE's issued share capital in the context of a takeover bid, such person or persons may compel the acquisition of the remaining outstanding issued share capital which were not acquired during the period of the takeover bid. In the event that the person who has acquired 80% of Irish SE's issued share capital does not proceed with the compulsory acquisition of the remaining issued share capital, the holders of the remaining issued share capital have the right to compel such person to acquire their shareholdings on the same terms as the takeover bid.

6. REVENUE RULINGS

Based on requests for rulings submitted by us, the Dutch and Irish Revenue authorities have confirmed certain tax aspects of the Proposal and related matters. The rulings issued in response to our requests are based on specific circumstances applicable to us that we expect will exist in the future, including the manner in which Irish SE and certain of its subsidiaries will operate. Below is a summary of our ruling requests and the rulings issued in response.

6.1. Dutch Ruling Request

A ruling request was submitted to the Dutch Revenue authorities to confirm, among other things, that, if the Proposal is implemented, JHI NV will no longer be subject to Dutch tax as a resident (except on Dutch source income that The Netherlands is permitted to tax under the tax treaty between Ireland and The Netherlands), and that dividends paid by Irish SE will not be subject to Dutch withholding tax.

The ruling request explained that JHI NV plans to transfer the management and control of its business from The Netherlands to Ireland and detailed those activities proposed to be undertaken to effect that transfer.

The request indicated that JHI NV will cease to perform activities in The Netherlands and it will undertake the activities of a holding company managed and controlled by the board of directors of Irish SE. The request stated that the board would hold meetings at least every three months, the majority of which in any one year would be held in Ireland, and at which a majority of the directors would be physically present in Ireland. No board meetings will be held in The Netherlands and no executive director of the Irish SE board will reside in The Netherlands. The request also stated that major strategic business decisions relating to James Hardie, as a whole, and most business decisions that relate to Irish SE, as a distinct entity, would be reserved for its board.

Based on these facts, the ruling request sought confirmation from the Dutch Revenue authorities that because Irish SE would be centrally managed and controlled in Ireland, it would not be a tax resident of The Netherlands for purposes of the tax treaty between The Netherlands and Ireland. Therefore, Irish SE would not be liable for income tax in The Netherlands except to the extent either company earns Dutch source income that The Netherlands is permitted to tax under the tax treaty between Ireland and The Netherlands. Further, dividends paid by Irish SE would not be subject to Dutch withholding tax.

Based on the facts set forth in the ruling request, the Dutch authorities have confirmed their view that, after the Proposal is implemented, among other things, Irish SE will not be considered a tax resident of The Netherlands for purposes of the tax treaty between The Netherlands and Ireland from the date the Irish Revenue authorities treat Irish SE as an Irish tax resident under the treaty and for so long as the Irish Revenue authorities maintain that view. The ruling confirmed that after the Proposal is implemented, Irish SE will not be subject to corporate income tax in The Netherlands, except to the extent that it earns Dutch source income that The Netherlands is permitted to tax under the tax treaty between The Netherlands and Ireland. The ruling also confirmed that dividends paid by Irish SE will not be subject to Dutch withholding tax during this same period.

6.2. Irish Ruling Requests

6.2.1. Irish SE is a tax resident of Ireland and an Investment Company

A ruling request was submitted to the Irish Revenue authorities seeking confirmation, among other things, that if the Proposal is implemented and Irish SE operates in the manner set forth in the ruling, Irish SE would be an Irish tax resident and an investment company for Irish tax law purposes.

Although Irish SE will have its registered office in Ireland, it will be considered a tax resident in Ireland only if it is centrally managed and controlled in Ireland. Under Irish tax law, it is generally understood that a company will be centrally managed and controlled where its board of directors makes the key strategic decisions of the company in Ireland. A company is considered an investment company under Irish law if its business consists wholly or mainly of the making of investments and the principal part of the company's income is derived from the making of investments.

The ruling request submitted to the Irish authorities described the manner in which Irish SE would operate in order to be regarded as centrally managed and controlled in Ireland. The request stated that the board would hold

meetings at least every three months, the majority of which in any one year would be held in Ireland, and at which a majority of the directors would be physically present in Ireland. The request also stated that major strategic business decisions relating to James Hardie, as a whole, and most business decisions that relate to Irish SE, as a distinct entity, would be reserved for the board. Based on these facts, the ruling request sought confirmation from the Irish authorities that Irish SE would be centrally managed and controlled in Ireland and, therefore, an Irish tax resident.

The ruling request also provided support for treating Irish SE as an investment company under Irish tax law. The request stated that Irish SE will act as the holding company for James Hardie, as a whole, and the board of directors of Irish SE will be involved in reviewing and making key investment decisions, including decisions relating to future acquisitions and dispositions of subsidiaries, dividend policy, and financing arrangements. The ruling request also stated that all of the income earned by Irish SE would be in the form of dividends or interest. Based on these points, the ruling request sought confirmation from the Irish authorities that because Irish SE's business would consist wholly or mainly of the making of investments, and the company's income would be principally derived from the making of investments, Irish SE would be regarded as an investment company under Irish tax law.

Based on the facts set forth in the ruling request, the Irish Revenue authorities have confirmed that Irish SE will be a tax resident in Ireland on the basis that it will be centrally managed and controlled in Ireland. The ruling also confirms that, based on the facts provided in the ruling request, Irish SE will be treated as an investment company under Irish tax law, which would enable Irish SE to deduct for Irish corporation tax purposes certain expenses related to, among other things, remuneration of directors and certain administrative expenses.

6.2.1.1. JHIF Limited is an Irish tax resident and a trading company for Irish tax purposes

A ruling request was submitted to the Irish Revenue authorities seeking confirmation that if the transfer of the treasury and finance operation are implemented, JHIF Limited would be regarded as carrying on a trade of treasury operations in Ireland by reason of its intra-group financing and treasury activities in Ireland and would be considered a tax resident in Ireland because it will be centrally managed and controlled there.

A company that is considered to carry on a trade in Ireland is subject to tax in Ireland at the trading rate (currently 12.5%). The determination of whether a company is involved in a "trade" in Ireland is a fact specific inquiry that generally looks to whether the company's activities are of the same kind and carried on in the same way as those ordinarily carried out in the line of business. Several factors may be considered in this analysis, including whether the activities are carried on with a view to making a profit, the frequency of such transactions, whether the company is actively managed and strategic decisions are made in Ireland, and whether the persons carrying on the activities have the requisite skill to carry out the activities. The determination of where a company is centrally managed and controlled is generally based on where the board of directors makes the key strategic decisions of the company.

The ruling request submitted to the Irish Revenue authorities explained that JHIF Limited would be formed as a new limited liability company under Irish law for the purpose of carrying out James Hardie's finance and treasury operations and would acquire the entire loan portfolio of the Dutch subsidiary (i.e., JHIF BV) currently carrying on such functions. The ruling stated that JHIF Limited's board of directors would exercise central management and control over the company and would hold the majority of its meetings in Ireland at which policy decisions affecting the company would be made. The ruling request also provided that the day-to-day activities of JHIF Limited would be conducted in Ireland by an Irish resident treasury manager and up to eight other experienced persons. The request stated that JHIF Limited would enter into a substantial number of transactions to manage the treasury function for James Hardie, including borrowing from third parties and lending to group companies as necessary to fund capital expenditures, managing James Hardie's foreign exchange exposure, maximising rates of return on excess cash deposits, operating a cash pooling arrangement to enable surplus funds to be pooled at JHIF Limited, negotiating new debt facilities and inter-company loan agreements, and providing back-office services to other entities in James Hardie.

The ruling request sought confirmation that JHIF Limited will carry on a "trade" in Ireland based on the fact that JHIF Limited would (i) engage in a significant number of financing, treasury and back office services, (ii) negotiate and enter into new transactions, (iii) enter into all treasury transactions with group companies on an arm's length basis, (iv) assume all risks and rewards in relation to its financing activities, (v) be managed and controlled by its board of directors and the majority of its meetings would be held in Ireland, and (vi) the board of directors would have the relevant expertise and related skills to manage and operate an intra-group financing and treasury business.

Based on the facts set forth in the ruling request, the Irish Revenue authorities have confirmed that the company "would be regarded as carrying on a trade of a treasury operations" in Ireland, so that the profits arising thereon will be subject to tax in Ireland at the trading rate (currently 12.5%). The ruling also confirmed that JHIF Limited will be regarded as tax resident in Ireland because it will be centrally managed and controlled in Ireland.

6.2.1.2. JHT is an Irish tax resident and a trading company for Irish tax purposes

A ruling request was submitted to the Irish Revenue authorities requesting confirmation that if the intellectual property is transferred, JHT would be regarded as carrying on a trade of brand management operations (through its management of our intellectual property operations) in Ireland, and that the company would be a tax resident in Ireland because the company will be centrally managed and controlled in Ireland.

The determination of whether JHT will carry on a "trade" in Ireland is generally based on the nature and frequency of the specific activities carried on by the company. Similarly, the determination of where JHT is centrally managed and controlled is generally based on where the board of directors of JHT will make the key strategic decisions of the company.

The ruling request explained that JHT would be formed as a new Bermuda-incorporated company for the purpose of managing all of James Hardie's intellectual property, a function that currently is carried on by JHIF BV. The request explained that JHT would directly and indirectly acquire legal title to all of James Hardie's intellectual property, and would conduct all of the management functions with respect to James Hardie's intellectual property. Further, the request stated that the day-to-day activities of JHT will be conducted by a new global intellectual property manager for James Hardie, who will be resident in Ireland, an employee of JHT, and will possess the requisite skills to manage James Hardie's intellectual property and who will be supported by an appropriate number of employees with appropriate skills. The global intellectual property manager would be actively involved in negotiating renewed and new license agreements, monitoring that licensees are not in breach of license agreements, providing direction on all intellectual property filings worldwide, and providing oversight to the future intellectual property strategy of James Hardie. Based on these facts, the ruling request sought confirmation from the Irish authorities that JHT would be engaged in a "trade" in Ireland.

The ruling request stated that JHT's board would exercise the central management and control of the company from Ireland. The board will have at least one Irish resident director, but all directors will have expertise regarding intellectual property. Board meetings would be held at least every three months, the majority of the meetings will be held in Ireland, and the board will make key strategic decisions affecting JHT at those meetings. Based on these facts, the ruling request sought confirmation from the Irish Revenue authorities that because it is centrally managed and controlled in Ireland, JHT is a tax resident of Ireland.

Based on the facts described in the ruling request, the Irish Revenue authorities have confirmed that JHT would be regarded as carrying on a trade of intellectual property management in Ireland and, as a result, the profits arising thereon will be subject to tax in Ireland at the trading rate (currently 12.5%). The ruling also confirmed that JHT will be regarded as a tax resident in Ireland because it will be centrally managed and controlled in Ireland.

6.2.1.3. Irish stamp duty will not be due by reason of implementing the Proposal or on subsequent transfers of Irish SE securities on the ASX or NYSE

A ruling request was submitted to the Irish Revenue authorities requesting confirmation that if the Proposal is implemented, electronic transfers of Irish SE shares through the CHESS system (i.e., transfers of CUFS) and the ADR system would not be subject to Irish stamp duty. The ruling request explained that prior to implementation of the Proposal, shares of JHI NV are traded electronically in Australia through the CHESS system and in the US through the ADR system, and that the Proposal would replicate this share structure in Irish SE. Therefore, after the Proposal is implemented, Irish SE shares would continue to be electronically transferred through the CHESS system and the ADR system.

The ruling request specifically sought confirmation from the Irish authorities that transfers of Irish SE shares through the ADR system would come within a specific exemption from stamp duty on transfers of ADSs contained in Ireland's stamp duty legislation. The ruling request also reasons that Irish stamp duty is only imposed on the

electronic transfer of securities if the electronic transfer takes place within a "relevant system." The ruling request reasoned that, based on the wording of the stamp duty legislation and the relevant Irish company legislation, the only system that currently can be regarded as a "relevant system" is the CREST clearing system and electronic transfers through other clearing systems would not be within the charge to Irish stamp duty. As a result, the ruling request sought confirmation that electronic transfers of Irish SE shares through the CHESS system and the ADR system would not be subject to Irish stamp duty.

Although the Irish Revenue authorities did agree that the specific exemption for transfers of ADSs will apply they did not agree that CREST is the only system that can be regarded as a "relevant system."

Nevertheless, in response to the ruling request, the Irish Revenue authorities have confirmed that electronic transfers of shares of Irish SE through the CHESS and ADR systems will be treated as exempt from stamp duty in Ireland.

7. ACCOUNTING TREATMENT OF THE PROPOSAL

Under US GAAP, we will account for our merger with Irish plc Subsidiary in Stage 1 of the Proposal under US GAAP accounting rules governing transactions between entities under common control, which will not have an impact on our consolidated financial statements. We will account for certain income tax payments associated with leaving The Netherlands and transferring our intellectual property to Ireland in accordance with the Statement of Financial Accounting Standards No. 109, "Accounting for Income Taxes" and Accounting Research Bulletin No. 51, "Consolidated Financial Statements."

Under US GAAP, Stage 2 of the Proposal will have no impact on our consolidated financial statements.

8. MARKET PRICE AND DIVIDEND INFORMATION

The following table sets forth, for each of the periods indicated, the high and low trading prices of (i) our CUFS as reported by ASX and (ii) our ADSs as reported by the NYSE. Our financial year ends on March 31.

	JHI NV			
	CUFS (ASX) A$		ADSs (NYSE) US$	
	High	Low	High	Low
Year Ended March 31, 2004	8.04	5.84	28.50	18.25
Year Ended March 31, 2005	7.23	4.95	27.21	18.10
Year Ended March 31, 2006	9.81	5.49	36.36	21.54
Year Ended March 31, 2007	10.24	6.31	41.70	24.20
Year Ended March 31, 2008	9.65	5.34	40.50	23.00
First Quarter, 2008	9.65	8.13	40.50	33.30
Second Quarter, 2008	9.17	7.00	39.60	27.80
Third Quarter, 2008	7.57	6.02	34.34	25.18
Fourth Quarter, 2008	7.07	5.34	30.57	23.00
Year Ended March 31, 2009	7.04	2.89	31.55	9.38
First Quarter, 2009	7.04	4.13	31.55	20.15
Second Quarter, 2009	5.79	3.82	24.25	18.10
Third Quarter, 2009	5.49	3.20	22.53	10.65
Fourth Quarter, 2009	4.79	2.89	16.60	9.38
Month End				
December, 2008	4.78	3.38	16.50	11.29
January, 2009	4.79	3.63	16.60	12.43
February, 2009	4.05	3.01	12.27	9.41
March, 2009	4.38	2.89	14.65	9.38
April, 2009	4.99	4.05	18.50	14.95
May, 2009	5.15	4.10	18.99	16.07

At June 22, 2009, the latest practicable date prior to the date of this Explanatory Memorandum, the reported closing market price of the securities was as follows:

- Our CUFS on the ASX: A$4.20.
- Our ADSs on the NYSE: US$16.18.

The following table sets forth, for each of the financial years indicated, the dividends paid on each of our CUFS and ADSs.

	(US$ per CUFS)	James Hardie (US$ per ADS)	(AU$ per CUFS)
2004	$ 0.05	$ 0.25	$ 0.0721
2005	$ 0.03	$ 0.15	$ 0.0434
2006	$ 0.10	$ 0.50	$ 0.1324
2007	$ 0.09	$ 0.45	$ 0.1181
2008	$ 0.27	$ 1.35	$ 0.3160
2009 (through May 31, 2009)	$ 0.08	$ 0.40	$ 0.0836

9. MATERIAL TAX CONSIDERATIONS OF THE PROPOSAL

The purpose of this section is to describe the material Australian, US federal, Dutch, Irish and UK tax considerations for shareholders with general information in relation to taxation considerations arising from the Proposal. The information set out in this section is for general information purposes only and is not intended to constitute a complete description of all tax consequences relating to the Proposal.

This section expresses general conclusions and is based on advice we received in respect of Australian, US federal, Dutch, Irish and UK income and corporation tax laws at the date of this Explanatory Memorandum. This section does not address all specific considerations under the tax laws of Australia, the US, The Netherlands, Ireland and the UK which may apply to certain taxpayers, including share traders, non-domiciles, entities or people holding our CUFS, ADSs or CUFS converted to shares on revenue account, persons who have (or are deemed to have) acquired our CUFS, ADSs or CUFS converted to shares in connection with an office or employment, banks, insurance companies, collective investment schemes and superannuation funds. This section does not address any taxation considerations arising under the laws of any jurisdiction other than Australia, the US federal, The Netherlands, Ireland and the UK. Any tax rates described in this section are subject to change.

9.1. Australian Income Tax Consequences of the Proposal

For the purposes of this section, an "Australian Shareholder" is an individual or corporate Australian tax resident holder of CUFS or shares in JHI NV that holds their CUFS or shares on capital account. References in this section to shares should also be read as a reference to CUFS in respect of such shares, unless otherwise stated.

The following section describes the material Australian income tax considerations of the Proposal for JHI NV and Australian Shareholders. The comments are based on the law and understanding of the practice of the tax authorities in Australia as at the date of this Explanatory Memorandum. These are subject to change periodically as is their interpretation by the courts. No assurance can be given that the Australian Taxation Office would not assert, or that a court would not sustain, a position contrary to any of the tax aspects described below. This summary regarding the Australian income tax considerations does not purport to be a complete analysis of the potential tax consequences of the Proposal for Australian Shareholders, and is intended as a general guide to the Australian income tax implications only. It should not be a substitute for advice from an appropriate professional adviser and all Australian Shareholders are strongly advised to obtain their own professional advice on the tax implications of the Proposal based on their own specific circumstances. This summary only covers the Australian income tax consequences for Australian Shareholders that hold their shares on capital account. It does not address Australian Shareholders that hold their shares as trading stock or revenue assets.

9.1.1. JHI NV Taxation on Stage 1 and Stage 2

JHI NV, both prior to and following its transformation to Dutch SE (in Stage 1) and Irish SE (in Stage 2) should not be subject to Australian income tax on its profits provided that it is not tax resident in Australia (e.g., it is not, prior to or following its transformation to Dutch SE and Irish SE, carrying on business in Australia).

9.1.2. Australian Shareholder Taxation on Stage 1

9.1.2.1. Class ruling from the Australian Taxation Office

We have applied for a class ruling from the Australian Taxation Office in relation to the impact of the Proposal under the Australian capital gains tax provisions (which we refer to as the Ruling), and have received a draft class ruling (which we refer to as the Draft Ruling). This section accords with the Draft Ruling and our expectation is that the Ruling will be obtained that will confirm the Australian income tax consequences of the Proposal under the Australian capital gains tax provisions for Australian Shareholders.

Once the final Ruling is released, a link to the Ruling will be posted on the James Hardie website (www.jameshardie.com, select "James Hardie Investor Relations").

9.1.2.2. Capital gains tax consequences for Australian Shareholders of our transformation to Dutch SE

The Draft Ruling states that our transformation to Dutch SE should not give rise to a capital gain or a capital loss for Australian Shareholders under the Australian capital gains tax (which we refer to as the CGT) provisions, as:

- we are the same legal entity as Dutch SE and Australian Shareholders will hold the same shares before and after the transformation; therefore, there is no disposal of our shares by Australian Shareholders;
- there is no actual or deemed cancellation or redemption of our shares; and
- Australian Shareholders will not receive any new shares in Dutch SE or any other type of consideration as a result of our transformation to Dutch SE.

9.1.2.3. Dividends and Distributions from us after our transformation to Dutch SE

The Australian income tax treatment of dividends and distributions received by Australian Shareholders from Dutch SE after Stage 1 of the Proposal is implemented should be the same as dividends and distributions received by such Australian Shareholders from us prior to the implementation of Stage 1 of the Proposal.

9.1.2.4. An Australian Shareholder's disposition of shares in Dutch SE

The Australian income tax implications associated with any capital gain or loss that Australian Shareholders make upon the disposal of their holding of shares in Dutch SE after Stage 1 of the Proposal is implemented should be the same as if Australian Shareholders disposed of their holding of shares in us disregarding our transformation to Dutch SE.

9.1.2.5. Controlled foreign company and foreign investment fund regimes

There are two Australian income tax regimes which can include undistributed profits of Dutch SE and its foreign subsidiaries in the assessable income of Australian Shareholders. These regimes are the controlled foreign company (which we refer to as the CFC) and the foreign investment fund (which we refer to as the FIF) regimes.

The impact of these regimes should not change following Stage 1 of the Proposal being approved and implemented. Accordingly, if an Australian Shareholder, together with its associates, holds 10% or more of the shares in Dutch SE, the application of the CFC regime to this holding should not change.

Similarly, each of the shares in Dutch SE should continue to represent an interest in a foreign company such that Dutch SE will be a FIF for Australian income tax purposes. The FIF rules are complex and will need to be considered by each Australian Shareholder in light of their particular circumstances. However, we note that the classification of Dutch SE on the ASX will be the same as our existing ASX classification (i.e., "Materials" according to the General Industry Classification Standard (which we refer to as the GICS)) prior to the approval and implementation of Stage 1 of the Proposal. Whilst Dutch SE remains listed on the ASX (or another approved stock exchange, e.g., NYSE), and the relevant stock exchange designates Dutch SE to be engaging in eligible activities (e.g., in the sector of "Materials" according to GICS) an exemption should apply to ensure that Australian Shareholders should not be required to include attributed FIF income in their Australian assessable income.

9.1.3. Australian Shareholder Taxation on Stage 2

9.1.3.1. Capital gains tax consequences for Australian Shareholders of our transformation from Dutch SE to Irish SE

The Draft Ruling from the Australian Taxation Office states that the transformation of Dutch SE to Irish SE should not result in a capital gain or a capital loss for Australian Shareholders under the Australian CGT provisions, as:

- Dutch SE is the same legal entity both before and after its transformation from Dutch SE to Irish SE and Australian Shareholders will hold the same shares before and after the transformation; therefore, there is no disposal by Australian Shareholders of their shares in Dutch SE;

- the adoption of new constituent documents for Irish SE at the point of registration of Irish SE does not constitute a disposal or part disposal of the shares in Dutch SE;
- there is no actual or deemed cancellation or redemption of the shares held by Australian Shareholders in Dutch SE as a result of the transformation to Irish SE or the adoption of new constituent documents for Irish SE; and
- Australian Shareholders will not receive any new shares in Irish SE or any other type of consideration as a result of the transformation of Dutch SE to Irish SE, including as a result of the change in rights of the Australian Shareholders following the adoption of new constituent documents for Irish SE.

9.1.3.2. Dividends and Distributions from us after our transformation to Irish SE

The Australian income tax treatment of dividends and distributions received by Australian Shareholders from Irish SE after Stage 2 of the Proposal is implemented should be the same as dividends and distributions received by such Australian Shareholders from us prior to the implementation of Stage 2 of the Proposal.

However, the amount of tax that Irish SE may be required to withhold from the dividends and distributions paid to Australian Shareholders and remit to the Irish Revenue authorities may differ from the amount of tax that Dutch SE was required to withhold and remit to the Dutch Revenue authorities (please refer to "Irish Income Tax Consequences of the Proposal" and "Dutch Tax Consequences of the Proposal" set out in Sections 9.4 and 9.3, respectively).

No Irish withholding tax will be imposed on dividends if the Australian Shareholder receiving the dividends has completed and filed the non-resident declaration form. Where Australian Shareholders fail to file the non-resident declaration form, Irish withholding tax on dividends or distributions will be suffered (refer to section 9.4.3.1). As the Australian Shareholder will have an entitlement to a refund of the Irish withholding tax if appropriate forms are filed with the Irish tax authorities, Australian Shareholders will not be able to reduce the Australian income tax payable on the dividends or distributions by the amount of the withholding tax deducted and remitted to the Irish Revenue authorities. We therefore strongly recommend that the appropriate non-resident declaration form is completed by all Australian Shareholders and sent to Irish SE.

9.1.3.3. An Australian Shareholder's disposition of shares in Irish SE

The Australian income tax implications associated with any capital gain or loss that Australian Shareholders make upon the disposal of their holding of shares in Irish SE after Stage 2 of the Proposal is implemented, should be the same as if Australian Shareholders disposed of their holding of shares in us disregarding our transformation.

9.1.3.4. CFC and FIF regimes

The impact of the CFC and FIF regimes should not alter following the transformation of Dutch SE to Irish SE upon implementation of Stage 2. Accordingly, the implications of the CFC and FIF regimes for Australian Shareholders should be the same as those described above in relation to our transformation to Dutch SE.

9.2. US Federal Income Tax Consequences of the Proposal

The following discussion describes the material US federal income tax considerations of the Proposal. The US federal income tax consequences to the company and its US Holders (defined below) on the specific issues discussed in Sections 9.2.1 and 9.2.2 below are based upon an opinion received by the company as of the date of this Explanatory Memorandum from Skadden, Arps, Slate, Meagher & Flom LLP, our US tax counsel in connection with the Proposal. The opinion, which is attached as an exhibit to the registration statement of which this Explanatory Memorandum forms a part, is incorporated herein by this reference, and is subject to reconfirmation at the implementation of each stage of the Proposal. The remainder of the following discussion (Sections 9.2.3-9.2.9) sets forth additional tax considerations in connection with the proposal. However, the actual tax consequences to any particular US Holder in respect of these matters will depend on such US Holder's particular situation, and on the

specific facts and circumstances applicable to such US Holder. Accordingly, our US tax counsel cannot provide opinions as to the actual tax consequences to any US Holder with respect to the tax matters discussed in these remaining sections. Our US tax counsel has provided an opinion to the company as of the date of this Explanatory Memorandum that these sections fairly summarize the general tax considerations, and this opinion is also attached as an exhibit to the registration statement. The following discussion is based on current provisions of the Internal Revenue Code of 1986, as amended (which we refer to as the Code), current and proposed US Treasury regulations promulgated thereunder, judicial decisions and published positions of the US and other applicable authorities, including the US/Netherlands Treaty and US/Ireland Treaty, all as in effect as of the date of this Explanatory Memorandum, and each of which is subject to change or to differing interpretations (possibly with retroactive effect). No rulings have been or will be sought from the US IRS regarding any matter described in this Explanatory Memorandum. No assurance can be given that the US IRS would not assert, or that a court would not sustain, a position contrary to any of the tax aspects described below. This discussion does not contain a detailed description of all the US federal income tax consequences to a US Holder which depends on a US Holder's particular circumstances and does not address the effects of state, local or non-US tax laws or any US federal tax laws other than US federal income tax laws. Further, this discussion considers only US Holders that will own our CUFS, ADSs or CUFS converted to shares as "capital assets" within the meaning of section 1221 of the Code (generally, assets held for investment purposes), and does not address the potential application of the alternative minimum tax or the US federal income tax consequences to US Holders that are subject to special treatment, including US Holders that:

- are broker-dealers or insurance companies;
- have elected mark-to-market accounting;
- are tax-exempt organisations;
- are banks, financial institutions or "financial services entities";
- hold our CUFS, ADSs or CUFS converted to shares as part of a straddle, "hedge" or "conversion transaction" with other investments;
- own at any time directly, indirectly or by attribution our CUFS, ADSs or CUFS converted to shares having at least 10% of the voting power of our issued share capital;
- are deemed to sell our CUFS, ADSs or CUFS converted to shares under the constructive sale provisions of the Code;
- are subject to the alternative minimum tax;
- hold our CUFS, ADSs or CUFS converted to shares in a tax-deferred account;
- have a functional currency that is not the US dollar; or
- are regulated investment companies or real estate investment trusts.

For purposes of this discussion, a "US Holder" for US federal income tax purposes is any beneficial owner of our CUFS, ADSs or CUFS converted to shares that is (i) a citizen or individual resident of the US, (ii) a corporation, or entity classified as a corporation for US federal income tax purposes, which is created or organised under the laws of the US or any political subdivision thereof, (iii) an estate the income of which is subject to regular US federal income taxation regardless of its source, or (iv) a trust if (A) a court within the US is able to exercise primary supervision over the administration of the trust and one or more US persons, as defined in Section 7701(a)(30) of the Code, have authority to control all substantial decisions of the trust, or (B) the trust has properly elected under applicable US Treasury regulations to be treated as a US person.

This discussion does not consider the tax treatment of persons who hold our CUFS, ADSs or CUFS converted to shares through a partnership. If a partnership, including for this purpose any entity classified as a partnership for US federal income tax purposes, is a holder of our CUFS, ADSs or CUFS converted to shares, the US federal income tax treatment of a partner in such partnership will generally depend upon the status of such partner and the

activities of the partnership. **US Holders that are partnerships and partners in such partnerships should consult their tax advisors to determine the US federal income tax consequences of acquiring, holding and disposing of our CUFS, ADSs or CUFS converted to shares.**

US HOLDERS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS TO DETERMINE THE US FEDERAL, STATE, LOCAL AND NON-US INCOME AND OTHER TAX CONSEQUENCES THAT ARE GENERALLY APPLICABLE TO THE PROPOSAL, AS WELL AS THE CONSEQUENCES OF THE TAX LAWS OF THE JURISDICTIONS OF WHICH THEY ARE CITIZENS, RESIDENTS OR DOMICILIARIES OR IN WHICH THEY CONDUCT BUSINESS.

9.2.1. Taxation on Stage 1 of the Proposal to JHI NV and to US Holders of JHI NV

The transformation of the Company in Stage 1 of the Proposal to Dutch SE will be treated for US federal income tax purposes as a "reorganization" under section 368(a)(1)(F) of the Code as the transformation involves the mere change of the Company's form or place of organisation. Consequently, neither the Company nor any US Holder will recognise gain or loss for US federal income tax purposes as a result of the transformation and implementation of Stage 1 of the Proposal.

9.2.2. Taxation on Stage 2 of the Proposal to Dutch SE and to US Holders of Dutch SE

Dutch SE after Stage 1 will move its corporate domicile to, and become a tax resident of, Ireland, and Dutch SE will become Irish SE. Both before and after the transformation, Dutch SE will continue to have the same assets and liabilities, rights and obligations. After Stage 2 of the Proposal, the holders of our CUFS, ADSs or CUFS converted to shares will continue to hold the same number of CUFS, ADSs or CUFS converted to shares in Irish SE as they held in Dutch SE.

The transformation of Dutch SE in Stage 2 of the Proposal to Irish SE will be treated for US federal income tax purposes as a "reorganisation" under section 368(a)(1)(F) of the Code as the transformation involves the mere change of Dutch SE's form or place of organisation. Consequently, neither the Company nor any US Holder will recognise gain or loss for US federal income tax purposes as a result of the transformation and implementation of Stage 2 of the Proposal.

9.2.3. Distributions from us after our Transformation to Dutch SE in Stage 1

Subject to the discussion below with respect to passive foreign investment companies, a US Holder will be required to include in gross income as ordinary income an amount equal to the US dollar value of any distributions paid on our CUFS, ADSs or CUFS converted to shares on the date the distribution is received (based on the exchange rate on that date) to the extent the distribution is paid out of our current and/or accumulated earnings and profits as determined for US federal income tax purposes. A US Holder may be subject to US income tax on such dividend income at a rate lower than the general tax rate applicable to ordinary income. A distribution in excess of earnings and profits will be treated first as a nontaxable return of capital, reducing the US Holder's basis in the CUFS, ADSs or CUFS converted to shares and, to the extent in excess of basis, will be treated as gain from the sale or exchange of the US Holder's CUFS, ADSs or CUFS converted to shares.

9.2.4. Dividend, Interest, or Royalty Payments made by our Subsidiaries in the US to Dutch SE after Stage 1

In general, the US will impose a 30% withholding tax on a dividend, interest, or royalty payment made by our US subsidiaries to us or our subsidiaries that are tax residents in The Netherlands. The 30% US withholding tax rate may be reduced under the US/Netherlands Treaty if the Dutch entity receiving the dividend, interest, or royalty payment is a tax resident of The Netherlands under the US/Netherlands Treaty and meets certain other requirements set forth in the US/Netherlands Treaty. While the company believes that it and such subsidiaries are and will continue to be tax residents of The Netherlands following the implementation of Stage 1, the US IRS previously has asserted that the company and such subsidiaries did not qualify for benefits under the US/Netherlands Treaty and

may make the same assertion in the future (See "Background of the Proposal and Related Matters — The US IRS 30-Day Letter" in Section 2.4).

Under the US/Netherlands Treaty, a dividend paid by our subsidiaries in the US to us or our subsidiaries that are tax residents in The Netherlands should be exempt from US withholding tax, provided the Dutch tax resident entity receiving the dividend holds at least 80% of the stock of the US corporation paying the dividend. If the 80% ownership threshold is not met, the dividend should be subject to a 5% US withholding tax, provided the Dutch tax resident entity receiving the dividend holds at least 10% of the stock of the US corporation paying the dividend. If the 10% ownership threshold is not met, the dividend will be subject to a 15% US withholding tax. In addition, any interest or royalty payment made by our subsidiaries in the US to us or our subsidiaries that are Dutch tax residents should be exempt from US withholding tax pursuant to the US/Netherlands Treaty.

9.2.5. Distributions from us after our Transformation to Irish SE in Stage 2

Subject to the discussion below with respect to passive foreign investment companies, a US Holder will be required to include in gross income as ordinary income an amount equal to the US dollar value of any distributions paid on our CUFS, ADSs or CUFS converted to shares on the date the distribution is received (based on the exchange rate on that date) to the extent the distribution is paid out of our current and/or accumulated earnings and profits as determined for US federal income tax purposes. A US Holder may be subject to US income tax on such dividend income at a rate lower than the general tax rate applicable to ordinary income. A distribution in excess of earnings and profits will be treated first as a nontaxable return of capital, reducing the US Holder's basis in the CUFS, ADSs or CUFS converted to shares and, to the extent in excess of basis, will be treated as gain from the sale or exchange of the US Holder's CUFS, ADSs or CUFS converted to shares.

No Irish withholding tax will be imposed on dividends if the US Holder receiving the dividends has completed and filed the non-resident declaration form. ADS holders may not be required to submit the non-resident declaration in order to receive dividends without deduction of Irish dividend withholding tax provided their registered address is in the US.

9.2.6. Dividend, Interest, or Royalty Payments made by our Subsidiaries in the US to us or our Subsidiaries that are Irish Tax Residents after Stage 2

In general, the US will impose a 30% withholding tax on a dividend, interest, or royalty payment made by our US subsidiaries to us or our subsidiaries that are tax residents in Ireland. The 30% US withholding tax rate may be reduced under the US/Ireland Treaty if the Irish entity receiving the dividend, interest, or royalty payment is a tax resident of Ireland under the US/Ireland Treaty and meets certain other requirements set forth in the US/Ireland Treaty.

As discussed below in "Irish Income Tax Consequences of the Proposal" in Section 9.4, as a result of the Proposal and the transfer of intellectual property and finance and treasury, Irish SE and the newly formed intellectual property and financing subsidiaries will be subject to tax in Ireland and therefore should be considered Irish tax residents under the US/Ireland Treaty.

After Stage 2 of the Proposal is implemented, assuming our CUFS and ADSs continue to be quoted and publicly traded on the ASX and the NYSE, respectively, and assuming that we meet any necessary trading and the other requirements of the US/Ireland Treaty, Irish SE and each of the newly-formed subsidiaries referred to above should each be entitled to benefits under the US/Ireland Treaty, including reduced withholding tax on the receipt of a dividend, interest or royalty payment made by our subsidiaries in the US.

Assuming we meet the trading and other requirements under the US/Ireland Treaty: a dividend paid by our subsidiaries in the US to us or our subsidiaries that are tax residents in Ireland should be subject to a 5% US withholding tax, provided the Irish tax resident entity receiving the dividend holds at least 10% of the stock of the US corporation paying the dividend, provided that the 10% ownership threshold is not met, the dividend will be subject to a 15% US withholding tax; and any interest or royalty payment made by our subsidiaries in the US to us or

our subsidiaries that are Irish tax residents should be exempt from US withholding tax pursuant to the US/Ireland Treaty.

The US/Ireland Treaty is subject to change at any time through a renegotiation of its provisions, which may affect the US withholding rates and tax consequences of dividend, interest, or royalty payment made by our subsidiaries in the US.

9.2.7. A US Holder's disposition of CUFS, ADSs or Shares

Subject to the discussion below with respect to passive foreign investment companies, upon the sale, exchange or other disposition of our CUFS, ADSs or CUFS converted to shares, a US Holder will recognise capital gain or loss in an amount equal to the difference, if any, between the US Holder's basis in the CUFS, ADSs or CUFS converted to shares, which usually is the US Holder's cost of the security, and the amount realised on the disposition. Capital gains from the sale, exchange or other disposition of the CUFS, ADSs or CUFS converted to shares held more than one year is long-term capital gain, and, in the case of a US Holder that is not a corporation, is eligible for a maximum 15% rate of taxation. Gain or loss recognised by a US Holder on a sale, exchange or other disposition of the CUFS, ADSs or CUFS converted to shares generally will be treated as US source income or loss for purposes of the US foreign tax credit limitations. The deductibility of a capital loss recognised on the sale, exchange or other disposition of an ordinary share is subject to limitations.

9.2.8. Passive Foreign Investment Companies

If you are a US person who holds shares in a passive foreign investment company (which we refer to as a PFIC), certain, generally adverse, US federal income tax rules will apply to you. A foreign corporation will be considered a PFIC for any taxable year in which (i) 75% or more of its gross income is passive income, or (ii) 50% or more of the average value of its assets are considered "passive assets" (generally, assets that generate passive income). The determination of PFIC status is fundamentally factual in nature, depends on the application of complex U.S. federal income tax rules that are subject to differing interpretations, and generally cannot be determined until the close of the taxable year in question.

If a US person holds CUFS, ADSs or CUFS converted to shares in a PFIC, the US Holder could be subject to the additional US federal income taxes on gain recognised with respect to the disposition of the CUFS, ADSs or CUFS converted to shares, and on certain distributions treated as "excess distributions" as defined in Section 1291 of the Code (unless such US person elects to be taxed currently pursuant to a "mark-to-market" or "qualified electing fund" election). Generally, an excess distribution would occur in a taxable year when a US person receives a distribution from the PFIC that is greater than 125% of the average annual distributions received by such US Holder during the three preceding taxable years or, if shorter, during such US Holder 's holding period in the CUFs, ADSs, or CUFS converted to shares of the PFIC. Generally, a US Holder would be required to allocate any excess distribution or gain from the sale or other disposition of its CUFS, ADSs, or CUFS converted to shares ratably over the US Holder's holding period. Such amounts would be taxed at the highest applicable rate of tax on ordinary income and amounts allocated to prior taxable years would be subject to an interest charge at a rate applicable to underpayments of tax. Moreover, non-corporate US persons will not generally be eligible for reduced rates of taxation on any dividends from a PFIC in the taxable year in which such dividends are paid or in the prior tax year.

We believe that neither we nor our subsidiaries should be, for US federal income tax purposes, a PFIC, and we expect to operate in such a manner that neither we nor our subsidiaries at any point during or after implementation of the Proposal will become a PFIC. US Holders of our CUFS, ADSs or CUFS converted to shares should consult their own tax advisors regarding the effect of the PFIC rules to such holder, and the availability and effect of any election that may be available under the PFIC rules.

9.2.9. Information Reporting and Backup Withholding

Payments of distributions on our CUFS, ADSs or CUFS converted to shares, or proceeds arising from the sale or other disposition of our CUFS, ADSs or CUFS converted to shares, to a US Holder (other than an exempt

recipient, such as a corporation) made within the US or by a "US payor" or "US middleman" (as those terms are defined in applicable US Treasury regulations) generally will be subject to information reporting. Such payments generally will also be subject to backup withholding tax (currently imposed at a rate of 28%) if such US Holder fails to timely furnish a correct taxpayer identification number on US IRS Form W-9 or otherwise fails to comply with, or establish an exemption from, such backup withholding tax requirements. In addition to being subject to backup withholding tax, if a US Holder does not provide us (or our transfer agent) with the holder's correct taxpayer identification number or other required information, the holder may be subject to penalties imposed by the US IRS. A US Holder may be allowed a refund or a credit equal to any amounts withheld under the US backup withholding tax rules against such US Holder's US federal income tax liability, provided the US Holder timely furnishes the required information to the US IRS.

Non-U.S. Holders of our CUFs, ADSs, or CUFs converted to shares may, in certain circumstances, be subject to information reporting and backup withholding on payments of distributions on, or proceeds arising from the sale or other disposition of, our CUFs, ADSs, or CUFs converted to shares. Non-U.S. holders should consult their own tax advisors regarding the application of such provisions, the availability of exemptions, and the procedure for obtaining an exemption, if available, as applicable to their particular situations.

9.3. Dutch Tax Consequences of the Proposal

For the purposes of this section, a "Dutch tax resident shareholder" is an individual or corporate Dutch tax resident holder of CUFS, ADSs or shares that holds such shares or CUFS on capital account. References in this section to shares should also be read as a reference to CUFS or ADSs in respect of such shares, unless otherwise stated.

The following discussion describes the material Dutch income tax considerations of the Proposal, and is based on the law and understanding of the practice of the tax authorities in The Netherlands as of the date of this Explanatory Memorandum. These are subject to change periodically as is their interpretation by the courts. No assurance can be given that the Dutch Revenue authorities would not assert, or that a court would not sustain a position contrary to any of the tax aspects described below. This discussion does not purport to be a complete analysis of the potential tax consequences of the Proposal for Dutch tax resident shareholders and non-Dutch resident shareholders and, except as noted below, is intended as a general guide to the Dutch income tax implications only. It should not be a substitute for advice from an appropriate professional adviser and all Dutch tax resident shareholders and non-Dutch resident shareholders are strongly advised to obtain their own professional advice on the Dutch tax consequences of the Proposal based on their own specific circumstances.

The Dutch tax consequences for JHI NV and for its non-Dutch tax resident shareholders on the specific issues discussed in Sections 9.3.1 through — 9.3.2.4 below are based upon an opinion received by JHI NV as of the date of this Explanatory Memorandum from PricewaterhouseCoopers Belastingadviseurs NV, our Dutch tax counsel in connection with the Proposal. The opinion, which is attached as an exhibit to the registration statement of which this Explanatory Memorandum forms a part, is incorporated herein by this reference and is subject to reconfirmation at the implementation of each stage of the Proposal.

The remainder of the following discussion, Sections 9.3.2.5, 9.3.3, and 9.3.4 set forth additional tax considerations applicable to the Proposal. However, the actual Dutch tax consequences discussed in these sections will depend on the specific facts and circumstances applicable to the Dutch tax resident holders or the Company. Accordingly, our Dutch tax counsel cannot provide opinions as to the actual tax consequences on the tax matters discussed in these sections. Our Dutch tax counsel has provided an opinion that these sections fairly summarize the relevant Dutch tax law.

The main components of the Proposal are:

- our transformation into Dutch SE; and
- our transfer of the corporate domicile of Dutch SE from The Netherlands to Ireland.

9.3.1. JHI NV Taxation

Our transformation from an NV into Dutch SE does not constitute a taxable event for Dutch dividend withholding tax purposes. The transfer of the corporate domicile of Dutch SE from The Netherlands to Ireland is also not a taxable event for Dutch dividend withholding tax purposes. The Dutch Revenue authorities have confirmed these two statements in a private letter ruling.

After the Proposal is implemented, among other things, Irish SE will no longer be considered tax resident of The Netherlands for purposes of the tax treaty between The Netherlands and Ireland from the date the Irish Revenue authorities treat the company as Irish tax resident under the treaty, and for so long as the Irish Revenue authorities maintain that view.

We will incur an exit charge on leaving The Netherlands and be taxed on the excess of the market value of our assets over their tax book value except where investments in direct subsidiaries qualify for the participation exemption.

After the Proposal is implemented, dividends paid by Irish SE will not be subject to Dutch withholding tax. Also, after the Proposal is implemented, Irish SE will not be subject to corporate income tax in The Netherlands, except to the extent that the company earns Dutch source income that The Netherlands is permitted to tax under the tax treaty between The Netherlands and Ireland.

9.3.2. Dutch Shareholder Taxation

9.3.2.1. Dutch tax on future distributions: non-Dutch resident shareholders

Our Dutch dividend withholding tax position with respect to dividends distributed after our transformation into Dutch SE and prior to our transformation into Irish SE will not change, i.e., Dutch dividend withholding tax will still have to be withheld from dividends to shareholders. However, following our transformation into Irish SE, Dutch dividend withholding tax will no longer have to be withheld from our dividend distributions from the date the Irish Revenue authorities treat us as a tax resident of Ireland and for so long as we are and remain tax resident in Ireland.

9.3.2.2. Dutch tax on future distributions: Dutch resident shareholders

Our Dutch dividend withholding tax position with respect to dividends distributed after our transformation into Dutch SE and prior to our transformation into Irish SE will not change and withholding tax will continue to be withheld from dividends paid.

After we transform from Dutch SE into Irish SE, we will be tax resident in Ireland under The Netherlands/Ireland tax treaty and Dutch dividend withholding tax will no longer have to be withheld from dividend distributions made after the Proposal is implemented and from the date the Irish Revenue authorities treat us as a tax resident of Ireland and for so long as we are and remain tax resident in Ireland. The Dutch Revenue authorities have confirmed this in a private letter ruling.

9.3.2.3. Our transformation into Dutch SE and the subsequent transfer of Dutch SE to Ireland: non-Dutch resident individual and corporate shareholders

There will be no direct Dutch tax consequences for non-Dutch resident shareholders from our transformation from Dutch NV to Dutch SE.

The transfer of tax residence of Dutch SE from The Netherlands to Ireland is a taxable event for non-corporate shareholders who have both (a) a substantial shareholding and (b) who are resident of countries other than The Netherlands. For all other non-corporate shareholders and for all corporate shareholders the transfer of the tax residence of Dutch SE from The Netherlands to Ireland is not a taxable event for Dutch tax purposes. Someone has a substantial shareholding if he or she, together with his or her partner or close relative, directly or indirectly:

- owns 5% or more of the issued capital of a company;

- has rights to acquire directly or indirectly 5% or more of the issued capital of a company;
- has profit shares that confer the right to receive 5% or more of the annual profits of a company or has rights to receive 5% or more of the liquidation distribution in the event of the liquidation of a company; or
- is entitled to cast 5% or more of the votes in the general meeting of shareholders.

A substantial shareholder will be subject to tax only if his or her interest does not form part of the business assets of his or her business. Substantial shareholders who are residents of countries with which The Netherlands has concluded a double tax treaty, will not be subject to substantial interest tax, provided that the tax treaty allocates the right to tax capital gains arising from shares to the country of which they are a resident. For shareholders who are residents of the US, that condition is met, i.e., they will not be subject to this tax, unless they are US resident individuals who were tax resident in The Netherlands at any time in the previous five years and who, at the time of our (the company's) transfer of residence, alone or together with related individuals, own a 25% or greater interest in us. For shareholders who are residents of Australia, however, that condition is not met, i.e., Australian resident non-corporate shareholders with a substantial shareholding will therefore in principle be subject to Dutch substantial interest tax. For shareholders who are residents of the UK, The Netherlands/UK tax treaty currently in force allocates the exclusive taxing right of capital gains arising on the disposal of shares to the country in which the shareholder resides, which means that UK resident non-corporate shareholders with a substantial shareholding should in principle not be subject to Dutch substantial interest tax. However, the treaty provides an exception to this where the person was resident in The Netherlands at any time during the five years immediately preceding the disposal.

A new tax treaty has been signed between the UK and The Netherlands which is not yet in force. Under the new treaty, non-corporate substantial shareholders resident in the UK may be subject to Dutch substantial interest tax if they were residents of The Netherlands at any time in the previous six tax years. This time window is extended to ten years with respect to shareholders with a 20% or greater interest.

It should be noted that non-corporate substantial shareholders are already subject to this substantial interest tax in the event of a disposal of their interest if they are not resident in a country where they are protected by a tax treaty. The tax is triggered when the substantial interest is disposed of and is levied at a flat rate of 25% on the difference between the aggregate purchase price and the consideration received.

As set out above, the transfer of our tax residence from The Netherlands to Ireland when we transform from Dutch SE into Irish SE triggers this substantial interest tax if the relevant conditions of Dutch domestic tax law are met and the relevant shareholders are not protected by a tax treaty that allocates the right to tax capital gains arising from shares to the country of which they are a resident. The tax is levied in the form of a provisional assessment amounting to 25% on the difference between the market value of the shares at the time of migration from The Netherlands and their aggregate purchase price. Upon written request this assessment is deferred for 10 years. If the shareholder is an EU resident the deferral is automatic. Generally, the tax becomes payable — without interest — only if the shares are actually disposed of within these 10 years.

9.3.2.4. Distributions and capital gains after our transfer to Ireland: non-Dutch resident individual and corporate shareholders

Distributions after our transformation into Irish SE are exempt from Dutch tax unless:

(i) such distribution is attributable to a business or part thereof which is carried on through a permanent establishment or a permanent representative in The Netherlands; or

(ii) the distribution is made to an individual and qualifies as income from miscellaneous activities (*belastbaar resultaat uit overage werkzaamheden*) in The Netherlands as defined in the Dutch Income Tax Act 2001.

In cases where such a tax liability arises, individual shareholders shall be subject to Dutch income tax at progressive rates up to 52%; corporate shareholders shall be subject to corporate income tax at a maximum rate of

25.5%. In case such corporate shareholder owns 5% or more of our paid-up capital then such distribution may be exempt under the Dutch participation regime.

Capital gains arising from the transfer of shares in us after our transformation into Irish SE are exempt from Dutch tax unless:

(i) the capital gain is attributable to a business or part thereof which is carried on through a permanent establishment or a permanent representative in The Netherlands;

(ii) the capital gain is made by an individual and qualifies as income from miscellaneous activities (*belastbaar resultaat uit overage werkzaamheden*) in The Netherlands as defined in the Dutch Income Tax Act of 2001; or

(iii) the shareholder is an individual who has a substantial shareholding in Irish SE at any time in the 10 years following our transfer to Ireland and if that shareholder is not protected by a tax treaty that allocates the right to tax the capital gain to the country of which that shareholder is a resident.

In cases where such tax liability under (i) and (ii) above arises, individual shareholders shall be subject to Dutch income tax at progressive rates up to 52%; corporate shareholders shall be subject to corporate income tax at a maximum rate of 25.5%. In case such corporate shareholder owns 5% or more of our paid-up capital then such capital gain may be exempt under the Dutch participation regime. In cases where a tax liability under (iii) arises, the substantial shareholder shall be subject to Dutch income tax at a rate of 25%.

The substantial interest rules are complex and substantial shareholders are strongly advised to consult their own tax counsel.

9.3.2.5. Our transformation into Dutch SE and the subsequent transfer of Dutch SE to Ireland: Dutch resident individual and corporate shareholders

There will be no direct Dutch tax consequences for Dutch resident shareholders from our transformation from an NV into Dutch SE.

When Dutch SE transforms into Irish SE and our tax residence moves from The Netherlands to Ireland, the tax consequences for Dutch resident shareholders are as follows:

- Individual shareholders with an interest of less than 5% are taxed on their shares as Box 3 income in their income tax return. Such assets are deemed to produce an annual yield of 4% which is taxable at a flat rate of 30%. Our transformation into Irish SE should not have any tax consequences on those shareholders and their Box 3 income is calculated and reported as normal in their income tax returns.
- Individual shareholders with an interest of 5% or more are considered “substantial shareholders”; they are taxable at 25% on dividends and capital gains arising from their substantial interest. Our transformation from Dutch SE into Irish SE should not be deemed a disposal and therefore should not trigger the substantial interest tax so long as the individual shareholder with a substantial shareholding remains a resident of The Netherlands and does not dispose of his or her interest. If an individual shareholder with a substantial shareholding migrates from The Netherlands, then the Dutch Revenue authorities may provisionally assess the deemed capital gain arising on the individual’s substantial shareholding. The provisional assessment is calculated as being 25% of the difference between the market value at the time of migration from The Netherlands and their aggregate purchase price of the shares. Upon written request by the shareholders, this assessment is deferred for 10 years. If the shareholder is migrating to another EU country the deferral is automatic. Generally, the tax becomes payable only if the shares are actually disposed of within these 10 years. The Netherlands’ right to tax may be limited by double tax treaties entered into between The Netherlands and the country to which the substantial shareholder migrates.
- Corporate shareholders that are resident in The Netherlands are subject to tax on dividends, gains and any other income arising from their shareholding. If they have a substantial interest (being 5% or more of our

nominal paid-up shares), then dividends and gains arising on a disposal of our shares may be exempt under the Dutch participation exemption regime. The transformation of Dutch SE into Irish SE should in principle not result in tax consequences for corporate shareholders, unless the corporate shareholders dispose of their shares at the same time and their gains are not exempt under the participation exemption.

Where Dutch resident shareholders migrate from The Netherlands this may have tax consequences which may be mitigated by relevant double tax treaties.

This is a complex area and Dutch resident shareholders are strongly advised to consult their own tax counsel.

9.3.3. Participation exemption

The exit charge on leaving the Netherlands (refer 9.3.1 above) does not apply if and to the extent the investments in our direct subsidiaries qualify for the participation exemption. We believe that our investments in our direct subsidiaries should qualify for the participation exemption. This conclusion can be based on two separate lines of reasoning that each lead to the same conclusion. The first line of reasoning is based on the understanding that the investments in subsidiary companies held by JHI NV represent the operating companies of the group and that their aggregate assets consist of more than 50% of qualifying assets (i.e., non-passive assets) such as machinery and equipment, inventory, trade receivables and unrecorded goodwill. Based on that understanding the participation exemption applies to the transaction. The second line of reasoning is that the US, Australian and New Zealand profits are subject to tax at a rate far in excess of 10%. Based on that understanding the participation exemption equally applies.

9.3.4. Dutch Tax Consequences of the Associated Transaction/Transfer of Intellectual Property Assets and Treasury Function

See "Financial and Accounting Impact" in Section 1.3 for a discussion of the tax consequences to us as a result of the transfer of our intellectual property and treasury and finance operations.

9.4. Irish Tax Consequences of the Proposal

For purposes of this section an "Irish tax resident shareholder" is an individual or corporate Irish tax resident holder of CUFS, ADSs or shares that holds such shares or CUFS on capital account. References in this section to shares should also be read as a reference to CUFS or ADSs in respect of such shares, unless otherwise stated.

The following section describes the material Irish tax considerations of the Proposal for JHI NV, Irish tax resident shareholders, and non-Irish resident shareholders at the date of this Explanatory Memorandum. These are subject to change periodically as is their interpretation by the courts. No assurance can be given that the Irish Revenue authorities would not assert, or that a court would not sustain a position contrary to any of the tax aspects described below. This summary regarding the Irish tax considerations does not purport to be a complete analysis of the potential tax consequences of the Proposal for Irish tax resident shareholders, and is intended as a general guide to the Irish tax implications only. It should not be a substitute for advice from an appropriate professional adviser and all Irish tax resident shareholders are strongly advised to obtain their own professional advice on the tax implications of the Proposal based on their own specific circumstances.

9.4.1. JHI NV Taxation on Stage 1

There will be no Irish tax consequence upon implementation of Stage 1 of the Proposal, whereby we will transform to a European Company with our corporate domicile in The Netherlands.

9.4.2. Irish SE Taxation on Stage 2

Stage 2 of the Proposal involves Dutch SE moving its corporate domicile to, and becoming tax resident of, Ireland. We have received a ruling from the Irish Revenue authorities with respect to certain tax aspects of the Proposal. See "Irish Ruling Requests" in Section 6.2.

9.4.3. Irish SE Shareholders Taxation

9.4.3.1. Tax on future dividends from Irish SE: non-Irish resident shareholders

Distributions made by Irish SE to non-Irish resident shareholders will generally be subject to Irish dividend withholding tax at the standard rate of income tax (currently 20%) unless you are a shareholder who falls within one of the categories of exempt shareholders referred to below. No dividend withholding tax will apply where the non-Irish resident shareholder files the non-resident declaration form and qualifies for an exemption, as set forth below. Where dividend withholding tax applies, Irish SE will be responsible for withholding the dividend withholding tax at source. For dividend withholding tax purposes, a dividend includes any distribution made by Irish SE to its shareholders, including cash dividends, non-cash dividends and additional shares taken in lieu of a cash dividend.

Dividend withholding tax is not payable where an exemption applies provided that we have received all necessary documentation required by the relevant legislation from our shareholder prior to payment of the dividend.

Certain of our non-Irish tax resident shareholders (both individual and corporate) are also entitled to an exemption from dividend withholding tax. In particular, a non-Irish tax resident shareholder is not subject to dividend withholding tax on dividends received from Irish SE if you are:

- an individual shareholder resident for tax purposes in either a member state of the EU (apart from Ireland) or in a country with which Ireland has a double tax treaty, and the individual is neither resident nor ordinarily resident in Ireland;
- a corporate shareholder not resident for tax purposes in Ireland nor ultimately controlled, directly or indirectly, by persons so resident and which is resident for tax purposes in either a member state of the EU (apart from Ireland) or a country with which Ireland has a double tax treaty;
- a corporate shareholder that is not resident for tax purposes in Ireland and which is ultimately controlled, directly or indirectly, by persons resident in either a member state of the EU (apart from Ireland) or in a country with which Ireland has a double tax treaty;
- a corporate shareholder that is not resident for tax purposes in Ireland and whose principal class of shares (or those of its 75% parent) is substantially and regularly traded on a recognised stock exchange in either a member state of the EU (including Ireland where the company trades only on the Irish stock exchange) or in a country with which Ireland has a double tax treaty or on an exchange approved by the Irish Minister for Finance; or
- a corporate shareholder that is not resident for tax purposes in Ireland and is wholly-owned, directly or indirectly, by two or more companies the principal class of shares of each of which is substantially and regularly traded on a recognised stock exchange in either a member state of the EU (including Ireland where the company trades only on the Irish stock exchange) or in a country with which Ireland has a double tax treaty or on an exchange approved by the Irish Minister for Finance,

and provided that, in all cases noted above, you have made the appropriate non-resident declaration to Irish SE prior to payment of the dividend. Those of you who currently hold ADSs may not be required to submit an appropriate declaration in order to receive dividends without deduction of Irish dividend withholding tax provided your registered address is in the US.

9.4.3.2. Tax on future dividends from Irish SE: Irish resident shareholders

Certain categories of Irish tax resident shareholders are entitled to an exemption from dividend withholding tax, including Irish tax resident companies.

9.4.3.3. Tax on future disposal of Irish SE Shares: Non-Irish resident shareholders

Shareholders who are not Irish tax resident, or in the case of individuals, are not tax resident and not ordinarily resident for tax purposes in Ireland will not be liable for Irish tax on chargeable gains realised on a subsequent disposal of Irish SE's shares unless such shares are used, held or acquired for the purposes of a trade, profession or vocation carried on in Ireland through a branch or an agency. Such shareholders may be subject to foreign taxation on any gain under local law of the jurisdiction of their residence. An individual who is temporarily a non-resident of Ireland at the time of the disposal may, under anti-avoidance legislation, still be liable to Irish taxation on any chargeable gains realised (subject to the availability of exemptions or reliefs).

9.4.3.4. Tax on future disposal of Irish SE Shares: Irish resident shareholders

A disposal of Irish SE's shares by shareholders who are resident or ordinarily resident in Ireland may, subject to availability of exemptions and reliefs, give rise to a chargeable gain or allowable loss for the purpose of Irish capital gains tax.

9.4.3.5. Irish stamp duty on future transfers of Irish SE shares

We have obtained a ruling from the Irish Revenue authorities confirming that any electronic transfers of shares by you through the CHESS or the ADR system will be treated as exempt from stamp duty in Ireland. If you undertake an off-market transaction involving a transfer of the underlying shares, this will be subject to Irish stamp duty at a rate of 1% of market value or consideration paid, whichever is greater and will not be able to be registered until duly stamped. An off-market transfer of CUFS will also, where evidenced in writing, be subject to the 1% Irish stamp duty. In addition a conversion of shares into CUFS or ADSs or a conversion of CUFS or ADSs into underlying shares will be liable to 1% Irish stamp duty where the conversion is on a sale or in contemplation of a sale. In each case, payment of this stamp duty will be the responsibility of the person receiving the transfer.

9.5. UK Tax Consequences of the Proposal

For the purposes of this section, a "UK tax resident shareholder" in JHI NV is an individual or corporate UK tax resident holder of CUFS, ADSs or shares (who holds their CUFS, ADSs or shares on capital account). References in this section to shares should also be read as a reference to CUFS or ADSs in respect of such shares, unless otherwise stated.

The following section sets forth the material UK income tax considerations of the Proposal for JHI NV and UK tax resident shareholders. The comments are based on the law and understanding of the practice of the tax authorities in the UK as at the date of this Explanatory Memorandum. These are subject to change periodically as is their interpretation by the courts. No assurance can be given that Her Majesty's Revenue & Customs (which we refer to as the HMRC) would not assert, or that a court would not sustain a position contrary to any of the tax aspects set forth below. This summary regarding the UK income tax considerations does not purport to be a complete analysis of the potential tax consequences of the Proposal for UK tax resident shareholders and is intended as a general guide to the UK income tax implications only. It should not be a substitute for advice from an appropriate professional adviser and all UK tax resident shareholders are strongly advised to obtain their own professional advice on the tax implications of the Proposal based on their own specific circumstances. It is based on current UK legislation and an understanding of current HMRC published practice as at the date of this Explanatory Memorandum.

This summary is intended as a general guide and, except where express reference is made to the position of non-UK residents, apply only to JHI NV shareholders who are resident and, if individuals, ordinarily resident and domiciled in the UK for tax purposes. They relate only to such JHI NV shareholders who hold their JHI NV shares

directly as an investment (other than under an individual savings account) and who are absolute beneficial owners of those JHI NV shares. These paragraphs do not deal with certain types of shareholders, such as persons holding or acquiring JHI NV shares in the course of trade or by reason of their, or another's, employment, collective investment schemes and insurance companies.

No rulings have been or will be sought from HMRC regarding any matter described in this Explanatory Memorandum.

9.5.1. JHI NV Taxation

JHI NV, both prior to and following its transformation to Dutch SE (in Stage 1) and Irish SE (in Stage 2) should not be subject to UK corporation tax on its profits provided that it is not tax resident in the UK and it is not, prior to or following its transformation to Dutch SE and Irish SE, carrying on a business in the UK through a permanent establishment.

9.5.2. UK Shareholder Taxation

9.5.2.1. Capital gains consequences for UK tax resident shareholders of the transformation to Dutch SE

Our transformation to Dutch SE in Stage 1 will involve a change of corporate form only, without any change in legal entity. Stage 1 of the Proposal will not involve any actual or deemed redemption or cancellation of our shares or the issue of any new shares or securities to the UK tax resident shareholders, nor will any UK tax resident shareholders receive any consideration in respect of the transformation.

The transformation to Dutch SE should not therefore give rise to a capital gain or capital loss for UK tax resident shareholders under the UK capital gains legislation, since there should be no disposal of shares for the following reasons:

- we are the same legal entity as Dutch SE and UK tax resident shareholders will hold the same number and kind of shares with the same rights both before and after the transformation. Therefore, there is no disposal by UK tax resident shareholders of their shares in us;
- there is no actual or deemed cancellation or redemption of the shares held by the UK tax resident shareholders in us; and
- UK tax resident shareholders will not receive any new shares in Dutch SE or any other type of consideration as a result of our transformation to Dutch SE.

9.5.2.2. Capital gains consequences for UK tax resident shareholders of the transformation of Dutch SE to Irish SE

Upon implementation of Stage 2 of the Proposal, Dutch SE will move its registered office from The Netherlands to Ireland and will transform to Irish SE. The transformation to Irish SE does not affect the company's identity or continuity as a legal person, and it remains with the same assets and liabilities, rights and obligations following the transfer of its corporate domicile to Ireland. Furthermore, the transformation of Dutch SE to Irish SE does not involve a change in legal personality of the entity and this stage will not involve any actual or deemed redemption or cancellation of Dutch SE shares or the issue of any new shares or securities to the UK tax resident shareholders, nor will UK tax resident shareholders receive any consideration in respect of this transformation.

As described in "Summary of Key Corporate Law Differences Between Dutch SE and Irish SE" in Section 5.4, to allow the transformation of Dutch SE to Irish SE, Irish SE will adopt a form of memorandum and articles of association that comply with Irish company law and the SE Regulation and this adoption will impact the rights of the UK tax resident shareholders.

The transformation of Dutch SE to Irish SE should not result in a capital gain or capital loss for UK tax resident shareholders under the UK capital gains legislation, as there should be no disposal of shares for the following reasons:

- Dutch SE is the same legal entity both before and after its transformation from Dutch SE to Irish SE and UK tax resident shareholders will hold the same shares before and after the transformation;
- the adoption of new constituent documents for Irish SE at the point of registration of Irish SE does not constitute a disposal or part disposal of the shares in Dutch SE;
- there is no actual or deemed cancellation or redemption of the shares held by UK tax resident shareholders in Dutch SE as a result of the transformation to Irish SE or the adoption of new constituent documents for Irish SE; and
- UK tax resident shareholders will not receive any new shares in Irish SE or any other type of consideration as a result of the transformation of Dutch SE to Irish SE, including as a result of the change in rights of the UK tax resident shareholders following adoption of new constituent documents for Irish SE.

9.5.3. Tax on Future Dividends and Distributions From Irish SE

9.5.3.1. Individuals

An Irish SE shareholder who is resident and ordinarily resident in the UK for tax purposes and UK domiciled will generally be subject to UK income tax at the rate of 10% in the case of basic rate tax payers and 32.5% in the case of higher rate tax payers. This assumes that the remittance basis of taxation is not claimed and is based on the gross amount of any dividends paid by Irish SE before deduction of Irish tax withheld (if any). UK resident, ordinarily resident and domiciled Irish SE shareholders may be able to apply for an exemption from withholding taxes under Irish domestic law or the UK-Ireland double tax treaty and Irish SE shareholders are referred generally to "Irish Income Tax consequences of the Proposal" in Section 9.4 for a description of the Irish consequences of the payment of dividends by Irish SE. No Irish withholding tax will be imposed on dividends if the UK tax resident shareholder receiving the dividends has completed and filed the non-resident declaration form.

HMRC will generally give credit for Irish dividend withholding tax withheld from the payment of a dividend (if any) and not recoverable from the Irish tax authorities against the income tax payable by the relevant Irish SE shareholder in respect of the dividend.

An individual shareholder of Irish SE who is resident and ordinarily resident in the UK for tax purposes and UK domiciled and who owns a shareholding of less than 10% in Irish SE should, for dividends received from Irish SE, be entitled to a non-repayable tax credit. It is proposed that, in respect of individuals who own a shareholding of 10% or more, such individuals will also be entitled to a non-repayable tax credit with effect from April 6, 2009. The value of the tax credit will be one-ninth of the amount of the dividend paid by Irish SE and the tax credit is added to the amount paid to compute the gross amount of the dividend paid by Irish SE. The gross amount of the dividend will be regarded as the top slice of the Irish SE shareholder's income and will be subject to UK income tax as set out above. The tax credit will be available to set against such shareholder's liability (if any) to tax on the gross amount of the dividend.

9.5.3.2. Pension funds

A shareholder of Irish SE who is a UK pension fund should be exempt from tax on dividends received from Irish SE. There is no mechanism to recover any withholding tax deducted overseas.

9.5.3.3. UK company holding less than 10% of the issued share capital of Irish SE

A shareholder of Irish SE who is a UK company holding less than 10% of the issued share capital of Irish SE should be subject to UK corporation tax at 28%. Any dividends paid by Irish SE to UK tax resident shareholders

should be payable without deduction of Irish dividend withholding tax provided UK tax resident shareholder has completed a requisite non-resident declaration form and returned to Irish SE prior to payment of any dividend. UK tax resident shareholders may not be required to complete a requisite declaration form in order to receive dividends without deduction of Irish dividend withholding tax provided the conditions of Directive 90/435/EEC (July 23, 1990), as amended by Directive 2003/123/EC (February 2, 2004), concerning distributions of profits to parent companies (which we refer to as the EU Parent Subsidiary Directive) are met. However, if a UK tax resident shareholder does not meet the conditions of the EU Parent Subsidiary Directive and has not completed a requisite non-resident declaration form, Irish SE will be required to remit 20% of the gross dividend to the tax authorities in Ireland as dividend withholding tax.

The assessable income of a UK tax resident shareholder will need to include the gross amount of the dividend from Irish SE (i.e., the dividend before withholding tax has been deducted). The dividend income will be subject to UK corporation tax at 28%. However, it may be possible to reduce the UK corporation tax payable on the dividend by the amount of withholding tax. This is called double tax relief.

In its recent decision in the Franked Investment Income Group Litigation Order case (C-446/04) (which we refer to as the FII GLO), the European Court of Justice held that the current UK system for taxation of dividends paid by companies in other EU member states to UK corporation tax payers holding less than 10% of the voting power of the company (also known as "portfolio dividends") was contrary to EU law. The UK government has not yet issued any statement as to how it intends to react to this judgment in relation to portfolio dividends as the FII GLO is still before the UK courts. UK corporation tax payers receiving portfolio dividends from Irish SE should consult an appropriate professional adviser as to the implications of the FII GLO.

HMRC are in the middle of a consultation process which is expected to change how the UK taxes UK companies' foreign profits including foreign dividends. Draft legislation has been released but may still be subject to change before enactment. A new dividend exemption is proposed to be effective from July 1, 2009. This may therefore impact significantly on the comments above. UK corporation tax payers receiving dividends from Irish SE should consult an appropriate professional adviser as to the implications of the changes to the taxation of foreign profits.

9.5.3.4. UK company holding more than 10% of the issued share capital of Irish SE

A shareholder of Irish SE who is a UK company holding more than 10% of the issued share capital of Irish SE should be subject to UK corporation tax at 28%. Any dividends paid by Irish SE to UK tax resident shareholders should be payable without deduction of Irish dividend withholding tax provided UK tax resident shareholders have completed a requisite non-resident declaration form and returned to Irish SE prior to payment of any dividend. UK tax resident shareholders may not be required to complete a requisite declaration form in order to receive dividends without deduction of Irish dividend withholding tax provided the conditions of the EU Parent Subsidiary Directive are met. However, if a UK tax resident shareholder does not meet the conditions of the EU Parent Subsidiary Directive and has not completed a requisite non-resident declaration form, Irish SE will be required to remit 20% of the gross dividend to the tax authorities in Ireland as dividend withholding tax.

The assessable income of a UK tax resident shareholder will need to include the gross amount of any dividend from Irish SE (i.e., before any dividend withholding tax has been deducted) further grossed up for underlying tax suffered on the profits from which the dividend was paid. The dividend income will be subject to UK corporation tax at 28%.

However, it may be possible to reduce the UK corporation tax payable on the dividend by the amount of withholding tax and underlying tax. This is called double tax relief. The availability of double tax relief will depend on the individual circumstances of a UK tax resident shareholder. Therefore, UK tax resident shareholders should consult an appropriate professional adviser.

In its recent decision in the FII GLO, the European Court of Justice held that the current UK system for taxation of dividends paid by companies in other EU member states to UK corporation tax payers holding more than 10% of the voting power of the company was contrary to EU law. The UK government has not yet issued any statement as to

how it intends to react to this judgment as the FII GLO is still before the UK courts. UK corporation tax payers receiving dividends from Irish SE should consult an appropriate professional adviser as to the implications of the FII GLO.

HMRC are in the middle of a consultation process which is expected to change how the UK taxes UK companies' foreign profits, including foreign dividends. Draft legislation has been released but may still be subject to change before enactment. The introduction of a dividend exemption will be effective from July 1, 2009. This may therefore impact significantly on the comments above. UK corporation tax payers receiving dividends from Irish SE should consult an appropriate professional adviser as to the implications of the changes to the taxation of foreign profits.

9.5.4. Tax on Capital Gains

An individual's liability for UK tax on chargeable gains will depend on the individual circumstances of Dutch SE and Irish SE shareholders.

9.5.4.1. Disposal of Irish SE shares by UK resident and ordinarily resident Irish SE shareholders

A disposal of Irish SE shares by a shareholder of Irish SE who is resident and ordinarily resident in the UK for tax purposes and domiciled in the UK may, depending on individual circumstances (including the availability of exemptions and reliefs), gives rise to a chargeable gain or allowable loss for the purposes of the UK taxation of chargeable gains.

Capital gains tax is currently charged at a rate of 18%. Factors which are likely to determine the extent to which a capital gain arising from the disposal of Irish SE shares will be subject to capital gains tax include the level of the annual exemption of tax-free capital gains in the tax year in which the disposal takes place, the extent to which the Irish SE shareholder realises any other capital gains in that year and the extent to which the Irish SE shareholder has incurred capital losses in that or any earlier tax year. However, the extent to which a capital gain arising from the disposal of Irish SE shares will be subject to capital gains tax depend on individual circumstances.

9.5.4.2. Disposal of Irish SE shares by non-UK tax resident Irish SE shareholders

A shareholder of Irish SE who is not resident and, in the case of an individual, not ordinarily resident or domiciled for tax purposes in the UK will not generally be liable for UK tax on capital gains realised on a subsequent disposal of their Irish SE shares unless such Irish SE shares are acquired for use by or for the purposes of a branch or agency through which such person is carrying on a trade, profession or vocation in the UK. Such Irish SE shareholders may be subject to foreign taxation on any gain under local law of their county of residence.

A shareholder of Irish SE who is an individual and who is temporarily a non-resident of the UK at the time of the disposal may, under anti-avoidance legislation, still be liable to UK taxation on any chargeable gain realised (subject to the availability of exemptions or reliefs).

9.5.4.3. Pension funds

A shareholder of Irish SE who is a UK pension fund should be exempt from tax on disposals of shares in Irish SE.

9.5.4.4. UK company holding less than 10% of the issued share capital of Irish SE

An Irish SE shareholder who is a UK company holding less than 10% of the issued share capital of Irish SE should be subject to UK corporation tax generally at 28% on capital gains arising on the disposal of shares. A deduction should be available for the costs of acquisition of the shares that are being disposed, adjusted for inflation.

9.5.4.5. UK company holding more than 10% of the issued share capital of Irish SE

A shareholder of Irish SE who is a UK company holding more than 10% of the issued share capital of Irish SE may be eligible for substantial shareholdings relief upon disposal of shares in Irish SE. There are a number of criteria to be satisfied and eligibility will depend on individual facts and circumstances. Therefore, each UK tax resident shareholder should consult an appropriate professional adviser. If substantial shareholdings exemption is not available, any capital gain on the disposal of shares in Irish SE will be subject to UK corporation tax generally at 28%. In computing any gain, a deduction should be available for the costs of acquisition of the shares being disposed of, adjusted for inflation.

9.5.4.6. UK Stamp duty and stamp duty reserve tax

The transformation of Dutch NV to Dutch SE will involve no change of the underlying legal entity, merely a change in the status of that entity from an NV to an SE and the transformation will not involve any actual or deemed redemption or cancellation of shares in Dutch NV nor the issue of any new shares in Dutch SE. Consequently, no UK stamp duty or stamp duty reserve tax (which we refer to as SDRT) would arise on that transformation.

Furthermore, the transformation of Dutch SE to Irish SE will involve no change of the underlying legal entity. Consequently, no UK stamp duty or SDRT would arise on that movement of domicile.

No UK stamp duty would arise on the future transfer of Irish SE shares provided the relevant transfer documentation is signed and retained outside the UK. Further, no SDRT would arise in respect of any agreement to transfer Irish SE shares provided these shares are issued outside the UK and, if in registered form, are registered on a register kept outside the UK.

10. CERTAIN INFORMATION CONCERNING US AND IRISH PLC SUBSIDIARY

10.1. JHI NV

10.1.1. Dissenters' Rights of Appraisal

Under Dutch company law, you do not have dissenters' or appraisal rights in connection with the Proposal.

10.1.2. Interest of Certain Persons in Matters to be Acted Upon

As of May 31, 2009, your directors and executive officers and their affiliates held 202,990 (or less than 0.05%) of our then outstanding CUFS and 3,800 of our then outstanding ADSs (or less than 0.93%). As of May 31, 2009 all directors, executive officers and their affiliates as a group, held an aggregate of 0.051% of the outstanding shares entitled to vote at the extraordinary general meeting.

10.1.3. Voting Securities and Principal Holders Thereof

432,263,720 of our shares were outstanding as of May 31, 2009. Each share outstanding is entitled to one vote.

10.1.4. Major Shareholders

To our knowledge, based on shareholder notices filed with the ASX (unless indicated otherwise below), as of May 31, 2009, the following table identifies the shareholders who beneficially owned 5% or more of our shares 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
Lazard Asset Management Pacific Co.(1)	40,889,912	9.46%
Schroder Investment Management Australia Limited(2)	31,024,755	7.18%
Baillie Gifford & Co. and its affiliated companies(3)	30,577,580	7.07%
The Capital Group Companies, Inc.(4)	30,217,658	6.99%
National Australia Bank Limited Group(5)	28,198,184	6.52%
Concord Capital(6)	26,178,231	6.06%
Vanguard Investments Australia Ltd.(7)	22,097,739	5.11%

(1) Lazard Asset Management Pacific Co. became a major shareholder on April 1, 2004, with a holding of 24,505,916 shares of our issued share capital and, through subsequent purchases, increased its holding of our issued share capital on April 24, 2008 to 65,424,399 shares. Through subsequent sales, Lazard reduced its holding to 40,889,912 shares of our issued share capital in the last notice received.

(2) Schroder Investment Management Australia Limited became a major shareholder on January 28, 2004, with a holding of 25,485,997 shares of our issued share capital and, through subsequent purchases, increased its holdings of our issued share capital on April 6, 2004 to 39,835,741 shares. Schroder Investment Management Australia Limited reduced its holdings to 31,024,755 shares of our issued share capital on January 8, 2007 in the last notice received.

(3) Baillie Gifford & Co. and its affiliated companies became a major shareholder on December 24, 2007, with a holding of 24,577,253 shares of our issued share capital and, through subsequent purchases, increased its holdings of our issued share capital to 30,577,580 shares on September 30, 2008 in the last notice received.

(4) The Capital Group Companies, Inc. became a major shareholder on August 3, 2004, with a holding of 23,331,660 shares of our issued share capital and, through subsequent purchases, increased its holdings of our issued share capital to 30,217,658 shares on May 29, 2009 in the last notice received.

(5) National Australia Bank Limited Group became a major shareholder on May 25, 2004, with 23,060,940 shares of our issued share capital and, through subsequent purchases, increased its holdings of our issued share capital to 28,198,184 shares on June 16, 2004 in the last notice received.

(6) Concord Capital became a major shareholder on June 18, 2004, with 24,499,832 shares of our issued share capital. Their substantial holding status ceased on August 6, 2004 when their holdings in our issued share capital fell below 5%. On August 20, 2004, their holdings increased to over 5% of our issued share capital but their substantial holding status again ceased when their holdings of our issued share capital fell below 5% on April 8, 2005. On October 26, 2007, Concord Capital became a substantial shareholder again with a holding of 23,723,697 shares of our issued share capital and, through subsequent purchases, increased its holding of our issued share capital to 26,178,231 shares on May 5, 2009 in the last notice received.

(7) Vanguard Investments Australia Ltd became a major shareholder on April 3, 2008, with a holding of 22,097,739 shares of our issued share capital.

Orion Asset Management Limited became a major shareholder on May 16, 2008, with a holding of 22,659,318 shares of our issued share capital and ceased to be a major shareholder on August 12, 2008.

Suncorp Metway Limited and its subsidiaries became a major shareholder on June 29, 2007, with a holding of 23,520,538 shares of our issued share capital and ceased to be a major shareholder on March 19, 2009.

Each of the above shareholders has the same voting rights as all other holders of our shares. 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.

10.1.5. Other Security Ownership Information

As of May 31, 2009, 0.44% of our outstanding shares were held by 63 CUFS holders who have registered addresses in the US. In addition, as of May 31, 2009, 0.52% of our outstanding shares were represented by ADSs held by 9 holders, all of whom have registered addresses in the US. A total of 0.96% of our outstanding shares were registered to 72 US holders as of May 31, 2009. We estimate that as of May 31, 2009, approximately 16% of our outstanding shares were held by beneficial holders who were located in the US.

10.1.6. Directors and Officers

10.1.6.1. Directors and senior management

The information set forth under the heading "Item 6. Directors, Senior Management and Employees — Directors and Senior Management" in our Annual Report on Form 20-F, as well as in our reports on Form 6-K that are incorporated by reference into this Explanatory Memorandum, is incorporated by reference in this paragraph.

In addition:

- Donald DeFosset retired as a member of the Joint and Supervisory Boards with effect from August 31, 2008.
- James Loudon retired as a member of the Joint and Supervisory Boards with effect from August 22, 2008.
- David Andrews resigned as a member of the Joint and Supervisory Boards with effect from February 9, 2009.
- Catherine Walter AM resigned as a member of the Joint and Supervisory Boards with effect from March 12, 2009.
- James Osborne was appointed as a member of the Joint and Supervisory Boards with effect from March 12, 2009.
- Joel Rood separated from us on November 3, 2008. Nigel Rigby became Vice President of our newly formed Eastern Division, which incorporates his former Northern Division onto the old Southern Division market and plants.
- Peter Baker separated from us on March 31, 2009. Grant Gustafson assumed responsibility for the balance of our non-US businesses.

10.1.6.2. Compensation

The information set forth under the heading "Item 6. Directors, Senior Management and Employees — Compensation," in our Annual Report on Form 20-F, as well as in our reports on Form 6-K that are incorporated by reference into this Explanatory Memorandum, is incorporated by reference in this paragraph.

10.1.6.3. Share ownership

The information set forth under the heading "Item 6. Directors, Senior Management and Employees — Share Ownership," in our Annual Report on Form 20-F, as well as in our reports on Form 6-K that are incorporated by reference into this Explanatory Memorandum, is incorporated by reference in this paragraph.

In addition:

- David Harrison acquired 1,000 ADRs on December 17, 2008.
- Russell Chenu acquired 5,000 CUFS on February 19, 2009.
- Michael Hammes acquired 5,605 CUFS pursuant to the Supervisory Board Share Plan on March 13, 2009.
- Rudy van der Meer acquired 11,945 CUFS pursuant to the Supervisory Board Share Plan on March 13, 2009.
- Nigel Rigby was granted 36,066 Deferred Bonus RSUs on June 17, 2008, 116,948 Relative TSR RSUs on December 17, 2008 and 77,548 RSUs on May 29, 2009.
- Louis Gries was granted 558,708 Relative TSR RSUs and 201,324 Deferred Bonus RSUs on September 15, 2008 and 487,446 RSUs on May 29, 2009.
- Russell Chenu was granted 108,637 Relative TSR RSUs on September 15, 2008 and 94,781 RSUs on May 29, 2009.
- Robert E. Cox was granted 155,196 Relative TSR RSUs on September 15, 2008 and 133,402 RSUs on May 29, 2009.
- Brian Holte was granted 7,455 Deferred Bonus RSUs on June 17, 2008, 116,948 Relative TSR RSUs on December 17, 2008 and 77,548 RSUs on May 29, 2009.
- Grant Gustafson was granted 16,459 Deferred Bonus RSUs on June 17, 2008, 116,948 Relative TSR RSUs on December 17, 2008 and 77,548 RSUs on May 29, 2009.
- Mark Fisher was granted 36,066 Deferred Bonus RSUs on June 17, 2008, 116, 948 Relative TSR RSUs on December 17, 2008 and 77,548 RSUs on May 29, 2009.
- Peter Baker was granted 15,103 Deferred Bonus RSUs on June 17, 2008 and 19,491 Relative TSR RSUs on December 17, 2008. The Deferred Bonus RSUs and Relative TSR RSUs were terminated on March 31, 2009 upon his separation from the company.
- Joel Rood was granted 14,910 Deferred Bonus RSUs on June 17, 2008. The Deferred Bonus RSUs were terminated on November 3, 2008 upon his separation from the company.

10.1.6.4. Interest of management in certain transactions

The information set forth under the heading "Item 7. Major shareholders and Related Party Transactions — Related Party Transactions," in our Annual Report on Form 20-F, as well as in our reports on Form 6-K that are incorporated by reference into this Explanatory Memorandum, is incorporated by reference in this paragraph.

In addition, since April 1, 2008, repayments totaling US$1,369 were received in respect of the Executive Share Purchase Plan. In addition, one former executive director of a subsidiary repaid his loan in full on August 28, 2008, leaving only one former executive director as a participant in the Plan.

As a matter of law, all employment and services agreements concluded by us will automatically pass to Dutch SE upon legal effectiveness of Stage 1 of the Proposal and to Irish SE on legal effectiveness of Stage 2 of the Proposal, unless otherwise provided for in the respective agreement.

10.2. Irish plc Subsidiary

In connection with the Proposal, we have formed JHCBM plc (Irish plc Subsidiary) as a subsidiary under the laws of Ireland. Irish plc Subsidiary has no significant assets or liabilities and has not engaged in any business or other activities other than in connection with its formation and the Proposal. Irish plc Subsidiary will cease to exist after implementation of Stage 1 of the Proposal.

11. DESCRIPTION OF DUTCH SE ORDINARY SHARES

Below is a description of Dutch SE's shares. In addition to the information described below, refer to "Summary of Key Corporate Law Differences Between Dutch SE and Irish SE" in Section 5.4 for additional information relating to issuances of additional shares, pre-emptive rights, share repurchases, dividends and distributions, and shareholder meetings.

11.1. Share Capital

11.1.1. General

Authorised share capital will amount to €1.8 billion, consisting of 2 billion shares, with a nominal value of €0.59 each, of which 432,214,668 were issued and outstanding as of the date of our most recent balance sheet included in our financial statements as of March 31, 2008 and approximately 432,263,720 are expected to be issued and outstanding upon implementation of Stage 1 based on our number of shares outstanding at May 31, 2009.

As of the date of our most recent balance sheet included in our financial statements as of March 31, 2008 none of our outstanding shares were restricted shares issued to employees; there were no restricted stock units issued to employees conferring a right to currently unissued shares; none of our outstanding shares were held by subsidiaries; none of our outstanding shares were held as treasury shares; 20,135,086 of our unissued shares were outstanding to employees, of which 8,736,099 had vested and were capable of being exercised; and 1,210,735 of our unissued shares were subject to options held by our former employees and were vested and capable of being exercised.

As of May 31, 2009: none of our outstanding shares were restricted shares held by employees; there were 4,054,285 restricted stock units issued to employees conferring a right to currently unissued shares; none of our outstanding shares were held by our subsidiaries; none of our outstanding shares were held as treasury shares; 16,573,517 of our unissued shares were outstanding to employees, of which 11,063,109 had vested and were capable of being exercised; and 852,519 of our unissued shares were subject to options held by our former employees and were vested and capable of being exercised. As of January 1, 2008 we had 467,863,821 shares issued and outstanding and as of December 31, 2008 we had 432,948,363 shares issued and outstanding. There are no resolutions, authorisations or approvals by which shares have been or will be created or issued, other than approvals to issue shares on exercise of vested share options or restricted stock units.

Upon proposal by Dutch SE's Managing Board and subject to Dutch law, Dutch SE's shareholders may reduce Dutch SE's issued share capital by cancellation of shares where Dutch SE has acquired such shares or by reducing the par value of shares. A partial repayment or release must be made pro rata to all shares concerned. The pro rata requirements may be waived by agreement of all shareholders concerned. At the 2008 annual general meeting on August 22, 2008, our shareholders approved a grant of power to the Managing Board to reduce our share capital by up to 10% and we will be seeking a renewal of that authority at the 2009 annual general meeting. Dutch SE's articles of association will provide for the continuation of this authorisation with the same expiry date applicable to our Managing Board's authority as set out in the table below.

11.1.2. Changes in our Issued and Outstanding Share Capital in the Last Three Years

Within the last three years, we have issued or reduced our share capital as follows:

Date of Issuance/Reduction	Number/Type of Shares (Par Value €0.59)
Year ended March 31, 2007	issued 3,988,880 shares on exercise of options
Year ended March 31, 2008	issued 606,079 shares on exercise of options
March 31, 2008	cancelled 34,978,107 shares held in treasury
Year ended March 31, 2009	issued 49,052 shares on exercise of options
March 31, 2009	cancelled 708,695 shares held in treasury

11.2. Description of CUFS

11.2.1. Overview

CUFS are CHESS units of foreign securities representing beneficial ownership of shares, legal title to which is held by an Australian depository entity, being CHESS Depository Nominees Pty Ltd. Each of Dutch SE's CUFS will represent beneficial ownership of one of Dutch SE's shares.

The key practical difference between CUFS and shares is that CUFS holders will not be able to vote CUFS directly at general meetings of shareholders. A CUFS holder, however, may vote at Dutch SE's general meetings in any of the following ways:

- by instructing CHESS Depository Nominees Pty Ltd., as legal owner of the shares of Dutch SE represented by the CUFS, how to vote the shares of Dutch SE represented by the holder's CUFS; or
- by converting the holder's CUFS into shares of Dutch SE represented thereby and voting the shares at the meeting, which must be undertaken prior to the meeting. However, in order to sell their shares on the ASX thereafter, it will be first necessary to convert them back to CUFS.

Dutch SE will distribute, or cause to be distributed, more detailed instructions and the appropriate proxy or other forms to CUFS holders, including The Bank of New York Mellon, prior to any general meetings. In any case, Dutch SE cannot guarantee that the instructions, proxies and forms will be received by CUFS holders in time for such CUFS holder to take the necessary actions to vote as described above. Dutch SE cannot assure you that The Bank of New York Mellon, as a holder of CUFS underlying ADRs, will receive proxies or forms in time to enable it to distribute them to ADR holders with sufficient time for ADR holders to take the necessary actions to enable The Bank of New York Mellon to vote as instructed.

CUFS holders will receive holding statements in lieu of certificates for their CUFS. The holding statement sets out the number of Dutch SE CUFS held by each holder and the reference number of that holding. The current holding statements evidencing CUFS will not be reissued and will continue to evidence the same number and kind of securities following implementation of Stage 1 of the Proposal. An updated holding statement will only be provided to CUFS holders if there is a change in their holding of Dutch SE CUFS.

A summary of the rights and entitlements of holders of Dutch SE's CUFS is set out below. Further information about CUFS is available from Dutch SE's share registry, ASX, or most Australian stockbrokers.

11.2.2. Converting from a CUFS Holding to a Certified Holding of Shares

Dutch SE's CUFS holders will be able to convert their CUFS holding to a holding of shares of Dutch SE by:

- in the case of issuer sponsored CUFS, notifying Dutch SE's share registry; or
- in the case of CUFS sponsored on the CHESS subregister, notifying their sponsoring broker.

In either case, once Dutch SE's share registry has been notified, it will provide the holder with the necessary transfer forms.

Shareholders who hold shares of Dutch SE directly will not be able to sell their shares on the ASX. The transfer of Dutch SE's shares (as opposed to Dutch SE's CUFS) requires the execution of a deed by both the transferor and transferee. The transfer will have effect when Dutch SE is a party to the deed, when the deed of transfer is served upon Dutch SE or when the transaction is acknowledged by Dutch SE. If a certificate has been issued for a share, such certificate must be delivered to Dutch SE before a transfer can be effected and Dutch SE must endorse such transfer on the share certificate or issue a new certificate.

11.2.3. Dividends and Other Shareholder Entitlements

ASX Settlement and Transfer Corporation Pty Limited is the settlement processing facility for ASX's market and provides settlement and asset registration services. ASX Settlement and Transfer Corporation Pty Limited's operating rules are known as the ASTC Settlement Rules. These rules require Dutch SE to treat CUFS holders as if they were the holders of the underlying shares for purposes of dividends and other entitlements.

The ASTC Settlement Rules ensure that CUFS holders have all economic benefits of legal ownership. If a cash dividend or any other cash distribution is made in a currency other than Australian dollars, Dutch SE's share registry (acting as CHESS Depository Nominees Pty Ltd.'s agent) will convert the dividend or other cash distributions into Australian dollars. These will then be distributed to Dutch SE's CUFS holders in Australian dollars in accordance with each CUFS holder's entitlement. In respect of dividends to ADR holders, we expect that Dutch SE will pay dividends in US dollars directly to The Bank of New York Mellon, who will then distribute the dividends pursuant to the Deposit Agreement referred to in Section 12.1.

11.2.4. Takeovers

If a takeover offer is received by CHESS Depository Nominees Pty Ltd. in respect of any of the shares of Dutch SE of which CHESS Depository Nominees Pty Ltd. is the registered holder, CHESS Depository Nominees Pty Ltd. must not accept the offer except to the extent that acceptance is authorised by Dutch SE's CUFS holders with respect to the shares underlying their CUFS, in accordance with the ASTC Settlement Rules.

11.2.5. Other Rights

As CUFS holders will not appear on Dutch SE's share registry as legal holders of shares of Dutch SE, any other right conferred on Dutch SE's shareholders may be exercised by Dutch SE's CUFS holders only by instructing CHESS Depository Nominees Pty Ltd. CUFS holders (but not ADR holders) are provided with the right under Dutch SE's articles of association to attend and speak at all of Dutch SE's information and general meetings.

11.2.6. Fees

A CUFS holder will not incur any additional fees or charges solely as a result of being a CUFS holder.

11.2.7. Trading in CUFS

CUFS holders who wish to trade in Dutch SE's shares will be transferring beneficial title rather than legal title. The transfer will be settled electronically by delivery of the relevant CUFS holding through CHESS, thereby avoiding the need to effect settlement by the physical delivery of certificates.

Trading in CUFS holdings is no different to trading in other CHESS approved securities. More information on trading CUFS electronically on the ASX is available from that exchange and from most Australian stockbrokers.

11.3. Issuance of Shares; Insider Trading

Shares of Dutch SE will be issued in registered form only. Shares must be issued for a subscription price equal to their nominal value, which must be fully paid unless otherwise agreed, of which at least 25% must be paid up at the time of issuance.

As a Dutch company that has quoted securities in Australia and the US, Dutch SE will be 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 whilst in possession of inside information. Under Australian law, persons are prohibited from trading on the basis of undisclosed, price-sensitive information regarding a company's securities. In the US, persons are prohibited from trading on the basis of material, non-public information. Dutch SE will continue to apply our current Insider Trading Policy consistent with Dutch, Australian and US laws and regulations on insider trading and will make this policy available to its directors and employees to whom these laws and regulations may apply. The insider trading rules of The Netherlands, Australia and the US will generally be applicable to Dutch SE's directors and employees and those who obtain and unlawfully use non-public information.

11.4. Dividend Rights

All calculations to determine the amounts available for dividends or other distributions will be based on Dutch SE's statutory accounts which will, as a holding company, be different from Dutch SE's consolidated accounts and

which will be prepared in accordance with Dutch GAAP because Dutch SE is a Dutch company. Because Dutch SE is a holding company and will have no operations of its own, it will be dependent on dividends or other distributions received from its subsidiaries, including debt service payments, to fund any cash dividends.

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 Dutch SE.

We have historically paid dividends to our shareholders. Whether a dividend is declared and the amount of any such dividend is determined by your directors. Dutch SE's Managing Board (subject to the approval of Dutch SE's Supervisory Board) will likewise determine whether to declare a dividend and the amount of any such dividend. The Managing Board will also determine the record date on which record holders of Dutch SE's shares, including CHESS Depositary Nominees Pty Ltd. issuing CUFS to The Bank of New York Mellon, will be entitled to such a dividend. We expect Dutch SE to declare any dividend in US dollars and The Bank of New York Mellon, as a CUFS holder, will receive dividends directly from Dutch SE shortly after the record date for the dividend and, as depositary for the ADSs, will distribute any dividend to holders of ADRs in US dollars pursuant to the terms of the Deposit Agreement referred to in Section 12.1. All non-ADR holders owning interests in Dutch SE's shares are expected to be paid their dividend in the equivalent amount of Australian dollars, as determined by the prevailing exchange rate announced by Dutch SE shortly after the record date for the dividend. As of the date of this Explanatory Memorandum, we have not yet appointed any financial institution to act as paying agent for the payment of Dutch SE's dividends.

11.5. Rights upon Liquidation

In the event of Dutch SE's dissolution and liquidation, and after Dutch SE has paid all debts and liquidation expenses, all assets available for distribution shall be distributed to Dutch SE's holders of shares pro rata based on the amount paid upon the shares held by such holders. As a holding company, Dutch SE's material assets will be share capital and debt investments of its subsidiaries.

11.6. Voting Rights

All shares issued will have the right to one vote for each share held on every matter submitted to a vote of the shareholders. CUFS holders will be entitled to attend and to speak, but not vote, at Dutch SE's shareholder meetings. ADR holders will neither be entitled to attend, speak nor vote, at Dutch SE's general meetings.

Dutch law and Dutch SE's articles of association currently do not impose any limitations on the rights of persons who are not residents of The Netherlands to hold or vote shares solely as a result of such non-resident status.

Unless otherwise required by Dutch SE's 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 Dutch SE's issued share capital is present or represented.

11.7. Shareholders' Meetings

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 general 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 Dutch SE's articles of association.

Dutch SE will 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 will be given no later than the 28th day prior to the day of the meeting and will include or be accompanied by an agenda identifying the business to be considered at the meeting. So long as Dutch SE remains a foreign private issuer under the US securities law, Dutch SE will be exempt from the proxy rules under the US Securities Exchange Act of 1934. Holders of shares represented by CUFS will be provided notice of general meetings of shareholders and other communications with shareholders by Dutch SE. CHESS Depository Nominees Pty Ltd., or Dutch SE on behalf of CHESS Depository Nominees Pty Ltd., may deliver to CUFS holders instruction forms allowing the CUFS holders to instruct CHESS Depository Nominees Pty Ltd. how to vote at a meeting. Pursuant to the Deposit Agreement referred to in Section 12.1, upon the request of

Dutch SE, the Bank of New York Mellon has agreed to mail to ADR holders instruction forms allowing ADR holders to direct The Bank of New York Mellon on how to instruct CHESS Depository Nominees Pty Ltd. to vote at a meeting. CUFS holders may attend general meetings of shareholders in person, without the need to withdraw the shares represented by the CUFS, and must follow such rules and procedures as may be established by the CUFS subregistrar and Dutch SE's share registry. In order for ADR holders to attend general meetings of shareholders in person, such holders will have to convert their ADSs into CUFS and, in doing so, must follow the procedures set forth in the Deposit Agreement referred to in Section 12.1 and such rules and procedures as may be established by The Bank of New York Mellon.

11.8. Share-Based Compensation

As of the date of this Explanatory Memorandum, we have the following share-based compensation plans for our employees that will remain in effect after our transformation to Dutch SE:

11.8.1. Executive Share Purchase Plan

Prior to July 1998, James Hardie Industries Limited issued stock under the Executive Share Purchase Plan. Under the terms of the Executive Share Purchase Plan, eligible executives purchased James Hardie Industries Limited shares at their market price when issued. Executives funded purchases of James Hardie Industries Limited shares with non-recourse, interest-free loans provided by James Hardie Industries Limited and collateralised by the shares. In such cases, the amount of indebtedness is reduced by any amounts payable by James Hardie Industries Limited in respect of such shares, including dividends and capital returns. These loans are generally repayable within two years after termination of an executive's employment. Variable plan accounting under the provisions of Accounting Principles Board (which we refer to as APB) Opinion No. 25, "Accounting for Stock Issued to Employees," has been applied to Executive Share Purchase Plan shares granted prior to April 1, 1995 and fair value accounting, pursuant to the requirements of SFAS No. 123R, "Accounting for Stock-Based Compensation," has been applied to shares granted after March 31, 1995. We have recorded no compensation expense during the years ended March 31, 2008, 2007 and 2006. No shares were issued under this plan during financial years ended March 31, 2008, 2007 and 2006.

11.8.2. 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 the 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 such as restricted stock units. 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 the Joint Board subject to implementation of the consummation of the 2001 Reorganisation.

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 its restructuring. Our ADSs evidenced by ADRs and our shares in the form of CUFS will be equivalent to and interchangeable with our shares for all purposes of the 2001 Equity Incentive Plan, provided that ADSs will be proportionately adjusted to account for the ratio of CUFS in relation to ADSs.

The following number of options to purchase shares issued under this plan was as follows:

Share Grant Date	Number of Options Granted	Options Outstanding as of May 31, 2009
October 2001(1)	5,468,829	510,342
December 2001	4,248,417	617,592
December 2002	4,037,000	838,000
December 2003	6,179,583	1,951,250
December 2004	5,391,100	2,093,625
February 2005	273,000	93,000
December 2005	5,224,100	2,550,000
March 2006	40,200	40,200
November 2006	3,499,490	1,856,885
March 2007	330,900	168,500
December 2007	5,031,310	3,238,642
Total	**39,723,929**	**13,958,036**

(1) Awarded to our employees on October 19, 2001 in exchange for the cancellation of James Hardie Industries Limited shadow stock awards under the James Hardie Industries Limited Key Management Equity Incentive Plan.

The following number of restricted stock units issued under this plan were as follows

Share Grant Date	Number of Restricted Stock Units Granted	Restricted Stock Units Vested as of May 31, 2009
June 2008	698,440	—
December 2008	992,271	24,052
Total	**1,690,711**	**24,052**

Our Remuneration Committee administers the 2001 Equity Incentive Plan. Subject to the provisions of the 2001 Equity Incentive Plan, the Remuneration Committee is authorised 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, the Remuneration Committee will have the exclusive power to interpret the 2001 Equity Incentive Plan and to adopt such rules and regulations as they deem necessary or appropriate for purposes of administering the 2001 Equity Incentive Plan. Subject to certain limitations, the Remuneration Committee will be authorised 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 the Remuneration Committee. The Remuneration Committee, in its discretion and as allowed by applicable laws, may allow cashless exercises of awards or may permit the company to assist in the exercise of options.

11.8.2.1. Stock options

Under the 2001 Equity Incentive Plan, the Remuneration Committee is authorised to award nonqualified options to purchase shares 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 Code. Options are exercisable over such periods as may be determined by the 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 the Remuneration Committee. Options are evidenced by notices of option grants authorised by the 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.

11.8.2.2. Performance awards

The Remuneration Committee, in its discretion, may award performance awards to an eligible person contingent on the attainment of criteria specified by the Remuneration Committee. Performance awards are paid in the form of cash, shares or a combination of both. The 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.

11.8.2.3. Restricted stock awards

The Remuneration Committee may award restricted shares of common stock, which are subject to forfeiture under such conditions and for such periods of time as the Remuneration Committee may determine. Restricted shares may not be sold, transferred, assigned, pledged or otherwise encumbered so long as such shares remain restricted. The 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.

11.8.2.4. Stock appreciation rights

The 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 an amount payable in cash, in shares or in a combination of cash and shares, equal to the positive difference between the fair market value of a share on the date of exercise and the grant price, or such lesser amount as the Remuneration Committee may determine.

11.8.2.5. 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, may be awarded in tandem with stock options, stock appreciation rights or other awards under the 2001 Equity Incentive Plan. The Remuneration Committee determines the terms and conditions of these rights. The rights may be paid in cash, shares or other awards.

11.8.2.6. Restricted stock units

In financial year 2009, the Joint Board and Remuneration Committee approved the issue of restricted stock units. Restricted stock units are unfunded and unsecured contractual entitlements for shares to be issued in the future and may be subject to time vesting or performance hurdles prior to vesting. On vesting, restricted stock units convert into shares. As of May 29, 2009 there were 1,437,559 restricted stock units outstanding under this plan.

11.8.2.7. Other stock-based benefits

The Remuneration Committee may award other benefits that, by their terms, might involve the issuance or sale of our shares 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 or other securities, including but not limited to payments, share bonuses and share sales.

11.8.2.8. 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 Supervisory Board as of the effective date of the 2001 Equity Incentive Plan, or individuals who became members of our Supervisory Board after the effective date of the 2001 Equity Incentive Plan whose election or nomination for election was approved by at least 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 being at least a majority of the members of our Supervisory

Board, or (3) there occurs the consummation of certain mergers (other than a merger that results in existing voting securities continuing to represent more than 5% of the voting power of the merged entity or a recapitalisation or reincorporation that does not result in a material change in the beneficial ownership of the voting securities of the company), the sale of substantially all of our assets or our complete liquidation or dissolution. The Board has taken action so that the completion of the Proposal will not result in any adjustments to the number, kind or price of shares granted under the 2001 Equity Incentive Plan. In addition, references included in the 2001 Equity Plan to members of our Supervisory Board, will be amended by the Remuneration Committee to refer to members of the single board of Irish SE in connection with implementation of Stage 2.

11.8.3. Supervisory Board Share Plan 2006

At the 2006 annual general meeting, our shareholders approved the replacement of our previous Supervisory Board Share Plan with a new plan also called the Supervisory Board Share Plan, and the participation of the Supervisory Board directors under the Supervisory Board Share Plan for a three-year period. The Supervisory Board Share Plan was last approved at the 2007 annual general meeting for a period of three years.

Participation by members of the Supervisory Board in the Supervisory Board Share Plan is not mandatory. Under the Supervisory Board Share Plan, the Supervisory Board members can elect to receive some of their annual fees in the form of shares/CUFS. This is different from the Supervisory Board Share Plan under which Supervisory Board members were required to contribute a portion of their annual fees in shares/CUFS. As of May 31, 2009, 79,342 shares had been acquired under this plan.

Shares/CUFS received under the Supervisory Board Share Plan can be either issued or acquired on market. Where shares/CUFS are issued, the price is the average of the market closing prices at which CUFS were quoted to the ASX during the five business days preceding the day of issue. Where shares/CUFS are acquired on market, the price is the purchase price.

The Supervisory Board Share Plan does not include a performance condition because the amounts applied to acquire shares/CUFS under the Supervisory Board Share Plan are from the annual fees earned by the Supervisory Board directors.

11.8.4. Managing Board Transitional Stock Option Plan

11.8.4.1. Overview

The Managing Board Transitional Stock Option Plan provides an incentive to the members of the Managing Board. The maximum number of shares that may be issued and outstanding or subject to outstanding options under this plan without further shareholder approval is 1,320,000 shares. At March 31, 2008 and 2007, there were 1,320,000 options outstanding under this plan.

On November 22, 2005, we granted options to purchase 1,320,000 shares at an exercise price per share equal to A$8.53 to the Managing Board directors under the Managing Board Transitional Stock Option Plan. 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, rights issues and capital reconstructions. Fifty-percent of these options become exercisable on the first business day on or after November 22, 2008 if the total shareholder returns (essentially its dividend yield and common stock performance) from November 22, 2005 to that date were at least equal to the median total shareholder returns for the companies comprising our peer group, as set out in the plan. In addition, for each 1% increment that our total shareholder returns is above the median total shareholder returns, 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 before November 22, 2010, we will reapply the vesting criteria to those options on that business day.

11.8.4.2. Effect of change in control

The 2005 Managing Board Transitional Stock Option Plan provides for the automatic vesting of certain benefits under 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) a person obtains at least 30% of our voting shares pursuant to a takeover bid

for all or a proportion of all of our voting shares which is or becomes unconditional, (2) a scheme of arrangement or other merger proposal becomes binding on the holders of all of our voting shares and by reason of such scheme or proposal a person obtains at least 30% of our voting shares, or (3) a person becomes the beneficial owner of at least 30% of our voting shares for any other reason.

11.8.5. Long-Term Incentive Plan

11.8.5.1. Overview

At our 2006 annual general meeting, our shareholders approved the establishment of the Long-Term Incentive Plan to provide incentives to members of the Managing Board and to certain members of its management or executives. The shareholders also approved, in accordance with certain Long-Term Incentive Plan rules, the issue of certain options or other rights over, or interest in, shares, the issue and/or transfer of shares under them, and the grant of cash awards to members of our Managing Board and executives. At our 2008 annual general meeting, our shareholders amended the Long-Term Incentive Plan to also allow restricted stock units to be granted under the Long-Term Incentive Plan. In August 2007 and November 2006, 1,016,000 options and 1,132,000 options, and in September 2008, December 2008 and May 2009, 1,023,865, 545,757 and 1,066,595 restricted stock units, respectively, were granted under the Long-Term Incentive Plan to our Managing Board and to certain members of our management, respectively. The vesting of these options are subject to "performance hurdles" as outlined in the Long-Term Incentive Plan rules. Unexercised options expire 10 years from the date of issue and restricted stock units expire on exercise, vesting or as set out in the Long-Term Incentive Plan rules. As of May 29, 2009, there were 2,148,000 options and 2,616,726 restricted stock units outstanding under this plan. As previously set forth, shareholders will be asked at the 2009 annual general meeting on August 21, 2009, which will be held immediately following the Extraordinary General Meeting, to approved changes to this plan previously approved by the Supervisory Board.

11.8.5.2. Effect of change in control, takeover by certain organisations or liquidation

The Long-Term Incentive Plan provides for plan participants' early exercise of certain benefits or early payout under the plan in the event of a "change in control," takeover by certain organisations or liquidation. For options, a "change in control" is deemed to have occurred 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 our issued shares. For restricted stock units, a "change of control" is deemed to occur if (1) a takeover bid is made to acquire all of the shares of the company and it is recommended by the Supervisory Board or becomes unconditional, (2) a transaction is announced which would result in one person owning all the issued shares in the company, (3) a person owns or controls sufficient shares to enable them to influence the composition of the Supervisory Board, or (4) a similar transaction occurs which the Supervisory Board determines to be a control event. On a change of control, the Supervisory Board can determine that all or some restricted stock units have vested on any conditions it determines. Any remaining restricted stock units lapse. The Board has taken action so that the completion of the Proposal will not be interpreted as a "Reorganisation" under the Long-Term Incentive Plan. In addition, references included in the Long Term Incentive Plan to members of our Supervisory Board, will be amended by the Remuneration Committee to refer to members of the single board of Irish SE in connection with implementation of Stage 2.

11.8.6. Deferred Bonus Program

The Supervisory Board implemented a one-off Deferred Bonus Program in June 2008. Payments under this plan comprised of a cash payment equal to one third of the total value (short-term incentive) and a grant of two year vesting restricted stock units equal to two thirds of the value (long-term incentive) in June 2008. The total value of cash and restricted stock units under the Deferred Bonus Program was 75% of the short-term incentive target in fiscal year 2008, which therefore included 75% of the bonus bank the senior executive had accumulated for our good performance in fiscal years 2006 and 2007.

Restricted stock units are unfunded and unsecured contractual entitlements for shares to be issued in the future. The restricted stock units granted in respect of the Deferred Bonus Program vest and convert into shares on a one-

for-one basis in two years if the senior executive has maintained a satisfactory level of performance during this period, subject to exceptions based on the reasons for the recipient's departure and other specified corporate events.

The chief executive officer was also a participant in this program and received a grant of restricted stock units in September 2008.

As of May 31, 2009, there were 562,161 restricted stock units outstanding under 2001 Equity Incentive Plan pursuant to this program and 201,324 restricted stock units outstanding under the Long-Term Incentive Plan issued to the chief executive officer.

11.8.7. Executive Incentive Plan

The Executive Incentive Plan rewards eligible exempt executives and employees of James Hardie based on performance against predetermined Earnings Before Interest and Taxes (which we refer to as "EBIT") goals for James Hardie which are adopted at the start of each fiscal year. Participating employees will have different EBIT goals, depending on their function and location. The Remuneration Committee and the Chief Executive Officer have the joint authority and discretion to make payments due under this plan in a form of equity for any given fiscal year.

12. DESCRIPTION OF DUTCH SE ADS

The following is a summary of the material terms of the amended and restated deposit agreement to be entered into between The Bank of New York Mellon, as depositary, and Dutch SE (which we refer to as the Deposit Agreement). For more complete information, you should read the form of Deposit Agreement and the form of ADR attached thereto as exhibit A, which together will contain the terms of your ADSs and ADRs, which are included as exhibits to the registration statement on Form F-6 we have filed in connection with Stage 1 of the Proposal. See "Where You Can Find Additional Information" in Section 13. Following implementation of Stage 1 of the Proposal, copies of the executed Deposit Agreement will be on file with The Bank of New York Mellon at its corporate trust office and the custodian and will be available for inspection by ADR holders during regular business hours.

12.1. American Depositary Shares

Each ADS issued by The Bank of New York Mellon represents five shares in the form of CUFS and is quoted on the NYSE under the code "JHX."

The Bank of New York Mellon, as depositary, will issue the ADSs, which will be evidenced by ADRs. CUFS may be deposited with Australia and New Zealand Banking Group Ltd, Melbourne, as custodian, pursuant to the Deposit Agreement that Dutch SE intends to enter with The Bank of New York Mellon and you as an ADR holder. Each ADR will also represent any securities, cash or other property deposited with The Bank of New York Mellon but not distributed by it to you.

The Bank of New York Mellon's corporate trust office is located at 101 Barclay Street, New York, New York 10286. Its principal executive office is located at One Wall Street, New York, New York 10286.

The Australia and New Zealand Banking Group Ltd's office is located at 530 Collins Street, Level 16, Melbourne Victoria 3000, Australia.

12.2. Holding of Dutch SE ADSs

You may hold ADSs either directly or indirectly through your broker or other financial institution. If you hold ADSs directly, by having an ADS registered in your name on the books of The Bank of New York Mellon, you are an ADR holder. This description assumes you hold your ADSs directly. If you hold the ADSs through your broker or financial institution nominee, you must rely on the procedures of such broker or financial institution to assert the rights of an ADR holder described in this section. You should consult with your broker or financial institution to find out what those procedures are.

Because The Bank of New York Mellon will actually hold the CUFS underlying your ADSs, you will not appear on Dutch SE's registry as a legal holder of shares of Dutch SE and therefore you must rely on The Bank of New York Mellon to exercise the rights of a CUFS holder on your behalf. As a CUFS holder, The Bank of New York Mellon will not appear on Dutch SE's registry as a legal holder of shares of Dutch SE and therefore any rights conferred on Dutch SE's shareholders may be exercised by The Bank of New York Mellon as a CUFS holder only by instructing CHESS Depository Nominees Pty Ltd. The obligations of The Bank of New York Mellon and its agents are set out in the Deposit Agreement. See "Description of CUFS" in Section 11.2 for more information concerning CUFS.

The Deposit Agreement will be and the ADSs are governed by New York law.

12.3. Dividends and Distributions

The Bank of New York Mellon has agreed to pay to you the cash dividends or other distributions it or the custodian receives with respect to CUFS or other deposited securities after deducting its fees and expenses. You will receive these distributions in proportion to the number of shares represented by CUFS that your ADSs represent. The custodian will hold all deposited securities for the account of The Bank of New York Mellon. Dutch SE's CUFS, deposited securities, including any additional securities, property and cash received on or in substitution for any CUFS deposited with the custodian are referred to as "deposited securities."

12.3.1. Cash

The Bank of New York Mellon or the custodian, as the case may be, distributes all dividends and distributions in respect of Dutch SE's deposited securities deposited under the Deposit Agreement. The Bank of New York Mellon will convert any cash dividend or other cash distribution Dutch SE pays on its deposited securities into US dollars, if such amounts are delivered to it in a foreign currency and if it can do so on a reasonable basis and can transfer the US dollars to the US. If that is not possible, or if any approval from any government is needed and cannot be obtained, the agreement allows The Bank of New York Mellon to distribute the foreign currency only to those ADR holders to whom it is possible to do so. The Bank of New York Mellon will hold the foreign currency it cannot convert for the account of the ADR holders who have not been paid. It will not invest the foreign currency and it will not be liable for the interest.

Before making a distribution, any fees payable to The Bank of New York Mellon under the Deposit Agreement and any withholding taxes that must be paid under applicable law will be deducted. The Bank of New York Mellon will distribute only whole US dollars and cents and will round fractional cents to the nearest whole cent. If the exchange rates fluctuate during a time when The Bank of New York Mellon cannot convert the foreign currency, you may lose some or all of the value of the distribution.

12.3.2. CUFS

The Bank of New York Mellon may distribute additional ADRs for ADSs representing any CUFS which are issued as a result of a distribution of shares as a dividend. The Bank of New York Mellon will only distribute ADRs representing whole ADSs. It will sell shares that would require it to deliver ADRs for fractional ADSs and distribute the net proceeds in the same way it does with cash. If The Bank of New York Mellon does not distribute additional ADRs, each ADR will also represent the new deposited securities or any of Dutch SE's securities represented by any deposited securities.

12.3.3. Rights to Receive Additional Deposited Securities or Any of Dutch SE's Securities Represented by Any of Dutch SE's Deposited Securities

If Dutch SE offers holders of its deposited securities, or any of its securities represented by any of its deposited securities, any rights to subscribe for additional shares or any other rights, The Bank of New York Mellon may make these rights available to you. Such distribution may be made to all owners of ADSs or to certain owners of ADS, but not to others, to whom The Bank of New York Mellon determines the distribution to be lawful and feasible. In lieu of such distribution, The Bank of New York Mellon may sell the rights and distribute the proceeds in the same way it does with cash. The Bank of New York Mellon may also allow rights that are not distributed or sold to lapse. If so, you will receive no value for them.

If The Bank of New York Mellon makes rights available to you, upon instruction from you, it will exercise the rights and purchase the additional securities on your behalf. The Bank of New York Mellon will then deposit the additional securities and deliver to you ADRs for these shares. It will exercise rights only if you pay it the exercise price and any other charges the rights require you to pay.

The Bank of New York Mellon will not offer rights to owners of ADSs unless either the rights and the securities to which such rights relate are registered, or exempt from registration, under the US Securities Act of 1933. The Bank of New York Mellon will not distribute any warrants or instruments representing rights unless Dutch SE provides The Bank of New York Mellon with a legal opinion that the distribution of such instruments is exempt from such registration and The Bank of New York Mellon may rely on such opinion.

US securities laws may restrict the sale, deposit, cancellation and transfer of the ADSs issued after exercise of rights. For example, you may not be able to trade the ADSs freely in the US. In this case, The Bank of New York Mellon may issue the ADSs under a separate restricted Deposit Agreement that will contain the same provisions as the agreement, except for the changes necessary to put the restrictions in place.

12.3.4. Other Distributions

The Bank of New York Mellon will send to you all other distributions on deposited securities or any of Dutch SE's securities represented by any deposited securities, after deduction or upon payment of any fees and expenses of The Bank of New York Mellon or any taxes or other governmental charges, by any means it believes is legal, fair and practical. If it cannot make the distribution in that way, The Bank of New York Mellon may decide to sell what Dutch SE distributed and distribute the net proceeds in the same way it does with cash or it may decide to hold what Dutch SE distributed, in which case the ADRs will also represent the newly distributed property.

Dutch SE is under no obligation to register ADSs, CUFS, rights or other securities under the US Securities Act of 1933. Dutch SE also has no obligation to take any other action to permit the distribution of ADSs, shares, CUFS, rights or anything else to ADR holders. This means that you may not receive distributions Dutch SE makes on its shares or any value for them if it is illegal or impractical for Dutch SE to make them available to you.

The Bank of New York Mellon may choose any practical method of distribution for any specific ADR holder, including the distribution of foreign currency, securities or property, or it may retain such items, without paying interest on or investing them, on behalf of the ADR holder as deposited securities.

The Bank of New York Mellon is not responsible if it decides that it is unlawful or impractical to make a distribution available to any ADR holders.

There can be no assurance that The Bank of New York Mellon will be able to convert any currency at a specified exchange rate or sell any property, rights, shares, CUFS or other securities at a specified price, or that any of such transactions can be completed within a specified time period.

12.4. Reclassifications, Recapitalisations and Mergers

If Dutch SE does any of the following:

- change the nominal or par value of its deposited securities or securities represented by any of its deposited securities;
- reclassify, split up or consolidate any deposited securities, or securities represented by any of its deposited securities; or
- recapitalise, reorganise, merge, consolidate, sell all or substantially all of its assets, or take any similar action,

then, the shares, CUFS or other securities received by The Bank of New York Mellon will become deposited securities. Each ADR will automatically represent its proportional share of the new deposited securities. The Bank of New York Mellon may, and will at Dutch SE's request, issue new ADRs evidencing these deposited securities or ask you to surrender your outstanding ADRs in exchange for new ADRs that specifically describe the new deposited securities.

12.5. Deposit, Cancellation and Withdrawal

12.5.1. Deposit

The Bank of New York Mellon will issue ADRs if you or your broker deposit CUFS or other evidence of rights to receive shares with the custodian. Upon each deposit of CUFS, receipt of related delivery documentation and compliance with the other provisions of the Deposit Agreement, including the payment of the fees and expenses and any charges of The Bank of New York Mellon and any taxes such as stamp taxes or stock transfer taxes or other fees or charges owing, The Bank of New York Mellon will issue an ADR or ADRs in the name of the person entitled thereto evidencing the number of ADSs to which such person is entitled. Certificated ADRs will be delivered at The Bank of New York Mellon's corporate trust office to the persons you direct.

12.5.2. Cancellation and Withdrawal

You may turn in your ADRs at The Bank of New York Mellon's corporate trust office. Upon payment of certain applicable fees and expenses, charges and taxes, and upon receipt of proper instructions, The Bank of New York Mellon will deliver deposited securities to you, or the person designated by you, at the office of the custodian. At your risk, expense and request, The Bank of New York Mellon shall direct the custodian to deliver deposited securities at The Bank of New York Mellon's corporate trust office.

The Bank of New York Mellon may close its transfer books or Dutch SE may close its transfer books at any time or from time to time. This may cause temporary delays in your ability to receive ADRs against deposits of CUFS, cancel ADRs and obtain deposited securities, or transfer ADRs. However, even in the situation described in the previous paragraph, you have the right to cancel your ADRs and withdraw the underlying CUFS at any time subject only to:

- temporary delays caused by closing of The Bank of New York Mellon's transfer books or Dutch SE's transfer books or the deposit of CUFS in connection with voting at a general meeting, or the payment of dividends;
- the payment of fees, taxes and similar charges; and
- compliance with any laws or governmental regulations relating to ADRs or to the withdrawal of underlying CUFS.

All ADRs surrendered to The Bank of New York Mellon will be cancelled by The Bank of New York Mellon and The Bank of New York Mellon is authorised to destroy such cancelled ADRs.

12.6. Uncertificated ADRs; The Depositary Trust Company Direct Registration System

ADSs may be certificated securities evidenced by ADRs or uncertificated securities. The form of ADR is annexed as Exhibit A to the Deposit Agreement and summarises the terms and conditions of, and will be the prospectus required under the Securities Act of 1933 for, both certificated and uncertificated ADSs. Except for those provisions of the Deposit Agreement that by their nature do not apply to uncertificated ADSs, all the provisions of the Deposit Agreement apply, with the necessary changes having been made, to both certificated and uncertificated ADSs. ADSs not evidenced by ADRs will be transferable as uncertificated registered securities under New York law.

The Direct Registration System and Profile Modification System will apply to uncertificated ADSs upon acceptance thereof to the Direct Registration System by The Depositary Trust Company. The Direct Registration System is the system administered by The Depositary Trust Company pursuant to which The Bank of New York Mellon may register the ownership of uncertificated ADSs, which ownership shall be evidenced by periodic statements sent by the depositary to the registered holders of uncertificated ADSs. The Profile Modification System is a required feature of the Direct Registration System which allows a Depositary Trust Company participant to direct The Bank of New York Mellon to register a transfer of those ADSs to The Depositary Trust Company or its nominee and to deliver those ADSs to The Depositary Trust Company account of that participant without receipt by The Bank of New York Mellon of prior authorisation from the holder to register such transfer. In connection with and in accordance with the arrangements and procedures relating to the Direct Registration System/Profile Modification System, The Bank of New York Mellon will not verify, determine or otherwise ascertain that the Depository Trust Company participant that is claiming to be acting on behalf of an ADS holder in requesting registration of transfer and delivery has the actual authority to act on behalf of the ADS holder (notwithstanding any requirements under the Uniform Commercial Code). The Bank of New York Mellon's reliance on and compliance with instructions received through the Direct Registration System/Profile Modification System shall not constitute negligence or bad faith on the part of The Bank of New York Mellon.

12.7. Voting Rights; Other Rights of ADR Holders

If you are an ADR holder and The Bank of New York Mellon asks you to provide it with voting instructions, you may instruct The Bank of New York Mellon how to direct, or cause the custodian to direct, CHESS Depository Nominees Pty Ltd. to exercise the voting rights for the shares held by CHESS Depository Nominees Pty Ltd. and

represented by the CUFS which underlie your ADSs. Upon receipt of notice of any meeting of holders of shares or deposited securities sent by Dutch SE, The Bank of New York Mellon has agreed, upon Dutch SE's request, to mail the notice to the ADR holders as soon as practicable. The notice will contain an English version of the notice received from Dutch SE and will describe how you, by a certain date, may instruct The Bank of New York Mellon to direct, or cause the custodian to direct, CHESS Depository Nominees Pty Ltd. to exercise the voting rights for the shares held by CHESS Depository Nominees Pty Ltd. and represented by the CUFS underlying your ADSs.

For instructions to be valid, The Bank of New York Mellon must receive them on or before the date specified. The Bank of New York Mellon will attempt, as far as is practical and subject to the provisions governing the underlying shares, CUFS or other deposited securities, to vote, or to have CHESS Depository Nominees Pty Ltd. vote, in accordance with your instructions. The Bank of New York Mellon will vote or attempt to vote only as you instruct. The Bank of New York Mellon will not itself exercise any voting discretion.

Neither The Bank of New York Mellon nor its agents are responsible for any failure to carry out any voting instructions, for the manner in which any vote is cast or for the effect of any vote.

Dutch SE cannot guarantee that you will receive voting materials in time to instruct The Bank of New York Mellon to vote and it is possible that you, or persons who hold their ADRs through brokers, dealers or other third parties, will not have the opportunity to vote. The Bank of New York Mellon will not charge ADR holders for taking any action in connection with general meetings. You may also withdraw your underlying CUFS and then instruct CHESS Depository Nominees Pty Ltd., as holder of the shares represented by the CUFS, how to vote those shares. For instructions concerning how to withdraw your CUFS from The Bank of New York Mellon so that you may instruct CHESS Depository Nominees Pty Ltd. how to vote them directly, see "Description of CUFS" in Sections 11.2 and "Description of CUFS — Converting from a CUFS Holding to a Certified Holding of Shares" in Section 11.2.2.

Under the Deposit Agreement, The Bank of New York Mellon has not agreed to perform any other act on behalf of ADR holders. Accordingly, any right conferred on our shareholders, such as the ability to call an extraordinary general meeting, only may be exercised by holders of ADRs by converting their ADSs to CUFS and thereafter providing instructions to the CUFS depositary, or by converting their CUFS to shares. In order for ADR holders to attend general meetings of shareholders in person, such holders will have to convert their ADSs 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 Bank of New York Mellon.

12.7.1. Record Dates

The Bank of New York Mellon will fix the record dates for determining the ADR holders who will be entitled:

• to receive a dividend distribution or rights; or

- to give instructions for the exercise of voting rights at a general meeting, all subject to the provisions of the Deposit Agreement.

12.7.2. Reports and Other Communications

The Bank of New York Mellon will make available for inspection by ADR holders at its corporate trust office any communications or reports, including any proxy soliciting materials, from Dutch SE or CHESS Depository Nominees Pty Ltd., as the CUFS depositary, that are both received by The Bank of New York Mellon or the custodian or its nominee as a holder of deposited securities and made generally available to the holders of deposited securities. The Bank of New York Mellon will also arrange for the mailing, at Dutch SE's request and at Dutch SE's expense, of copies of the notices, reports and communications, including any proxy soliciting materials, to all ADR holders. These communications will be furnished by Dutch SE in English.

12.8. Fees and Charges

ADR holders or persons depositing CUFS will be charged for the following expenses:

ADR Holders Must Pay:	For:
US$5.00 (or less) per 100 ADSs	Each issuance of an ADS, including as a result of a distribution of CUFS or rights or other property Each cancellation of an ADS, including if the Deposit Agreement terminates
US$0.02 (or less) per ADS	Any cash payment
Clearing and Settlement Fees	Clearing and settlement fees of CUFS on the register of the foreign registrar from your name to the name of The Bank of New York Mellon or its agent when you deposit, or similar fees resulting from your withdrawal of, CUFS
US$0.02 (or less) per ADS per calendar year	Depositary services; provided that this fee will not be charged if a fee of US$0.02 was charged in the same calendar year for a cash distribution
Expenses of The Bank of New York Mellon	Conversion of foreign currencies to US dollars. Cable, telex and facsimile transmission expenses
Taxes and other governmental charges The Bank of New York Mellon or the custodian has to pay on any ADS or deposited securities underlying an ADS (e.g., stock transfer taxes, stamp duty or withholding taxes)	As necessary
Distribution fees	Distributions of or relating to deposited securities

The fees described above may be amended from time to time. CHESS may charge CHESS participants customary fees for utilising the CHESS. The fees for CUFS are the same as fees charged with respect to shares. The Bank of New York Mellon may pass along any fees incurred in the clearance and settlement of CUFS.

12.9. Amendments and Termination

12.9.1. Amendment

Dutch SE may agree with The Bank of New York Mellon to amend the Deposit Agreement and the form of ADRs without your consent for any reason. ADR holders must be given at least 30 days' notice of any amendment that imposes or increases any fees or charges (except for taxes and other governmental charges or registration fees, cable, telex or facsimile transmission costs, delivery costs or other such expenses), or prejudices any substantial existing right of ADR holders. If an ADR holder continues to hold ADSs after being so notified, such ADR holder will be deemed, at the time an amendment becomes effective, to have consented and agreed to such amendment. Notwithstanding the foregoing, no amendment shall impair a holder's right to surrender its ADRs and receive deposited securities represented thereby, except as necessary to ensure compliance with mandatory provisions of applicable law.

12.9.2. Termination

The Bank of New York Mellon will terminate the Deposit Agreement if Dutch SE asks it to do so. The Bank of New York Mellon may also terminate the agreement if it has advised Dutch SE that it wants to resign and Dutch SE has not appointed a new depositary bank within 90 days. In both cases, The Bank of New York Mellon is required to notify you at least 90 days before termination.

After termination, The Bank of New York Mellon and its agents will be required only to collect dividends, sell rights and other distributions on the deposited securities and deliver CUFS and other deposited securities upon cancellation of ADRs. After one year from the date of termination, The Bank of New York Mellon may sell any remaining deposited securities by public or private sale. After that, The Bank of New York Mellon will hold the proceeds of the sale, as well as any other cash it is holding under the Deposit Agreement, for the pro rata benefit of the ADR holders who have not surrendered their ADRs. It will not invest the money and will have no liability for

interest. The Bank of New York Mellon's only obligations will be to account for the proceeds of the sale and other cash. After termination of the Deposit Agreement, Dutch SE's only obligations will be with respect to indemnification and to pay certain amounts due to The Bank of New York Mellon.

12.10. Books of Depositary

The Bank of New York Mellon shall keep books for the registration of ADRs and transfers of ADRs which at all reasonable times shall be open for inspection by ADR holders, provided that such inspection shall not be for the purpose of communicating with ADR holders in the interest of a business or object other than the business of Dutch SE or a matter related to the Deposit Agreement or the ADSs.

12.11. Limitations on Obligations and Liabilities

The Deposit Agreement expressly limits Dutch SE's and The Bank of New York Mellon's obligations and liability. Neither Dutch SE nor The Bank of New York Mellon will be liable if either:

- performs its obligations specifically set forth in the Deposit Agreement without negligence or bad faith; or
- takes any action or omits to take any action based on advice or information provided by legal counsel, accountants, any person presenting shares for deposit, any holder or any other qualified person.

In the Deposit Agreement, Dutch SE and The Bank of New York Mellon agree to indemnify each other under certain circumstances. Neither Dutch SE nor The Bank of New York Mellon is under any obligation to appear in, prosecute or defend any action, suit or other proceeding in respect of any deposited securities or ADRs which such party believes may involve its expense or liability unless satisfactory indemnity is furnished.

The Bank of New York Mellon will not be responsible for failing to carry out instructions to vote the ADSs, the manner in which the ADSs are voted or the effect of the vote. The Bank of New York Mellon may own and deal in any class of securities of Dutch SE.

12.12. Requirements for Depositary Actions

Before The Bank of New York Mellon will issue or register the transfer of an ADR, make a distribution on an ADR, or make a withdrawal of deposited securities, The Bank of New York Mellon may require:

- payment of stock transfer or other taxes or governmental charges and transfer or registration fees charged by third parties for the transfer of an CUFS or other deposited securities;
- production of satisfactory proof of the identity and genuineness of any signature or other information it deems necessary; and
- compliance with regulations it may establish from time to time consistent with the deposit agreement, including presentation of transfer documents.

The Bank of New York Mellon may refuse to deliver, transfer or register transfers of ADRs generally when the books of The Bank of New York Mellon, the CHESS subregister or Dutch SE are closed, or at any time if The Bank of New York Mellon or Dutch SE deems it advisable to do so.

You will have the right to surrender your ADRs, cancel your ADSs and withdraw the underlying deposited securities at any time except in circumstances in which The Bank of New York Mellon may restrict the withdrawal of deposited securities. See "Deposit, Cancellation and Withdrawal" in Section 12.5.

12.13. Pre-Release Transactions

In certain circumstances, subject to the provisions of the Deposit Agreement, The Bank of New York Mellon may issue ADRs evidencing ADSs before deposit of the underlying CUFS. This is called a pre-release of the ADRs. The Bank of New York Mellon may also deliver CUFS upon cancellation of pre-released ADRs (even if the ADRs are cancelled before the pre-release transaction has been closed out). A pre-release is closed out as soon as the underlying CUFS are delivered to The Bank of New York Mellon. The Bank of New York Mellon may receive

ADRs instead of shares to close out a pre-release. The Bank of New York Mellon may pre-release ADRs only under the following conditions:

- before or at the time of the pre-release, the party to whom the pre-release is being made must represent to The Bank of New York Mellon in writing that it or its customer owns the CUFS or ADRs to be deposited;
- the pre-release must be fully collateralised with cash or other collateral that The Bank of New York Mellon considers appropriate;
- The Bank of New York Mellon must be able to close out the pre-release on not more than five business days' notice; and
- the pre-release shall be subject to such further indemnities and credit regulations as The Bank of New York Mellon deems appropriate.

In addition, The Bank of New York Mellon will limit the number of ADSs that may be outstanding at any time as a result of pre-release to 30% of the CUFS deposited under the Deposit Agreement, although The Bank of New York Mellon may disregard the limit from time to time if it deems it appropriate to do so.

12.14. Taxes

ADR holders will be required to pay any tax or other governmental charge on any ADS or ADR, deposited security or distribution. If an ADR holder owes any tax or other governmental charge, The Bank of New York Mellon may deduct the amount thereof from any cash distribution or sell deposited securities and deduct the amount owing from the net proceeds of such sale. In either case, the ADR holder will remain liable for any shortfall.

Additionally, if any tax or governmental charge is unpaid, The Bank of New York Mellon may refuse to effect any transfer of an ADR or withdrawal of deposited securities until such payment is made. If The Bank of New York Mellon sells the deposited securities, it will, if appropriate, reduce the number of ADRs to reflect the sale and pay to you any proceeds, or send to you any property, remaining after it has paid the taxes.

13. WHERE YOU CAN FIND ADDITIONAL INFORMATION

We file annual, quarterly and current reports and other information with the US Securities and Exchange Commission. Shareholders may read and copy this information at the US Securities and Exchange Commission's public reference room located at 100 F Street, N.E., Washington, D.C. 20549. Shareholders may obtain information on the operation of the Public Reference Rooms by calling the US Securities and Exchange Commission at 1-800-SEC-0330. The US Securities and Exchange Commission also maintains a website, www.sec.gov, from which any electronic filings made by us may be obtained without charge.

In addition, documents incorporated by reference are available from us upon oral or written request without charge. You may obtain such documents by requesting them from us by calling the Information Helpline in Australia at 1800 675 021 (between 8:00 a.m. and 5:00 p.m. (AEST)) or elsewhere in the world at +1-949-367-4900 (between 8:00 a.m. and 5:00 p.m. (Central Time)) or in writing by regular and electronic mail at the following address:

James Hardie Industries N.V.
Atrium, 8th floor
Strawinskylaan 3077
1077 ZX Amsterdam, The Netherlands
Attention: Company Secretary
E-Mail: infoline@jameshardie.com

In order to receive timely delivery of the documents in advance of the extraordinary general meeting, you should make your request no later than August 14, 2009.

We have in relation to the Proposal filed a registration statement on Form F-4 with the US Securities and Exchange Commission. This Explanatory Memorandum, including the Notice of Meetings, is part of that registration statement on Form F-4. This Explanatory Memorandum does not contain all of the information you can find in the registration statement or the exhibits to the registration statement.

14. INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The US Securities and Exchange Commission allows information to be "incorporated by reference" into this Explanatory Memorandum. This means that we can disclose information about our financial condition to you by referring you to another document filed or furnished separately with the US Securities and Exchange Commission. The information incorporated by reference is considered to be part of this Explanatory Memorandum, except for any information that is superseded by information that is included directly in this Explanatory Memorandum. The following documents filed with the US Securities and Exchange Commission contain important business and financial information about James Hardie and are incorporated by reference in this Explanatory Memorandum:

- our Annual Report on Form 20-F for the financial year ended March 31, 2008, filed with the US Securities and Exchange Commission on July 8, 2008; and
- our reports on Form 6-K furnished to the US Securities and Exchange Commission on August 13, 2008, September 8, 2008, December 12, 2008, February 17, 2009 and April 15, 2009.

This Explanatory Memorandum also incorporates by reference each of the following documents that we will file with or furnish to the US Securities and Exchange Commission after the date of this Explanatory Memorandum until the date of the extraordinary general meeting to approve Stage 1 of the Proposal:

- any annual reports filed under Section 13(a), 13(c) or 15(d) of the Securities Exchange Act of 1934; and
- any current reports furnished on Form 6-K that indicate that they are incorporated by reference into this Explanatory Memorandum.

Any information contained in such subsequently filed or furnished reports that updates, modifies, supplements or replaces information contained in this Explanatory Memorandum automatically shall supersede and replace such

information. Any information that is modified or superseded by a subsequently filed or furnished report or document shall not be deemed, except as so modified or superseded, to constitute a part of this Explanatory Memorandum.

You may request a copy of these filings incorporated herein by reference, including exhibits to such documents that are specifically incorporated by reference. See "Where You Can Find Additional Information" in Section 13.

15. LEGAL MATTERS

The legality of the Dutch SE shares (including those represented by CUFS and ADRs) will be passed upon by Loyens & Loeff.

Certain US federal income tax consequences of the Proposal will be passed upon by Skadden, Arps, Slate, Meagher & Flom LLP.

Certain Australian and UK tax consequences of the Proposal will be passed upon by PricewaterhouseCoopers LLP.

Certain Dutch tax consequences of the Proposal will be passed upon by PricewaterhouseCoopers Belastingadviseurs N.V.

Certain Irish tax consequences of the Proposal will be passed upon by PricewaterhouseCoopers.

16. EXPERTS

The consolidated financial statements and management's assessment of the effectiveness of internal control over financial reporting (which is included in Management's Report on Internal Control over Financial Reporting) incorporated in this Explanatory Memorandum by reference to the Annual Report on Form 20-F for the year ended March 31, 2008 have been so incorporated in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

17. SERVICE OF PROCESS AND ENFORCEABILITY OF CIVIL LIABILITIES UNDER US SECURITIES LAWS

We are registered under the laws of The Netherlands. As at the date of this Explanatory Memorandum, most of your directors and executive officers, and certain experts named in this Explanatory Memorandum, reside outside of the US. As a result, it may not be possible for investors to effect service of process within the US upon us or those persons or to enforce against us or them, either inside or outside the US, judgments obtained in US courts, or to enforce in US courts, judgments obtained against them in courts in jurisdictions outside the US, in any action predicated upon civil liability provisions of the federal securities laws of the US. In addition, both in original actions and in actions for the enforcement of judgments of US courts, there is doubt whether civil liabilities predicated solely upon the US federal securities laws are enforceable in The Netherlands, Ireland and Australia.

18. INDEMNIFICATION

Insofar as indemnification for liabilities arising under the US Securities Act of 1933 may be permitted to directors, officers or persons controlling us pursuant to the foregoing provisions, we have been informed that in the opinion of the US Securities and Exchange Commission such indemnification is against public policy as expressed in the US Securities Act of 1933 and is therefore unenforceable.

19. GLOSSARY

A$	means Australian dollars.
ADRs	means American Depositary Receipts, which are the receipts or certificates that evidence ownership of American Depositary Shares.
ADSs	means American Depositary Shares, each of which represents a beneficial ownership interest in five CUFS.
AEST	means Australian Eastern Standard Time.
AFFA	means the Amended and Restated Final Funding Agreement.
AFFA Deed of Confirmation	means the Deed of Confirmation, dated June 23, 2009 between JHI NV, James Hardie 117 Pty Limited, the State of New South Wales and Asbestos Injuries Compensation Fund Limited in its capacity as trustee of the Asbestos Injuries Compensation Fund.
AICF	means the Asbestos Injuries Compensation Fund.
ASTC Settlement Rules	means the ASX Settlement and Transfer Corporation Pty Limited Settlement Rules.
ASX	means the Australian Securities Exchange.
ATO Rulings	means the Australian Taxation Office rulings to replace the tax rulings previously issued by the Australian Taxation Office in connection with the AFFA and for confirmation that the Accepted Tax Conditions (as defined in the AFFA) will remain unchanged in all material respects after implementation of the Proposal.
CHESS	means Clearing House Electronic Subregister System.
CUFS	means CHESS Units of Foreign Securities, each of which represent a beneficial ownership in an underlying ordinary share.
Dutch GAAP	means Generally Accepted Accounting Principles applicable in The Netherlands.
Dutch NV	means JHI NV.
Dutch SE	means James Hardie Industries SE when domiciled in The Netherlands.
Dutch Trade Register	means the trade register of the Chamber of Commerce in The Netherlands.
EU	means the European Union.
Explanatory Memorandum	means this document which, for the purposes of US federal securities laws, is a prospectus.
Indemnity Agreements	means Indemnity Agreements by and between James Hardie Building Products, Inc. and certain employees, and which are governed by Nevada law.
Indemnity Deed	means Deeds of Access, Insurance and Indemnity by and between JHI NV and certain employees, and which are governed by Dutch law.
Ireland	means the Republic of Ireland.
Irish GAAP	means Generally Accepted Accounting Principles applicable in Ireland.

Irish plc Subsidiary	means JHCBM plc.
Irish SE	means James Hardie Industries SE when domiciled in Ireland.
Irish Takeover Rules	means the Irish Takeover Panel Act 1997 (as amended) and the Irish Takeover Panel Act 1997 Takeover Panel Rules and Substantial Acquisition Rules 2007 (as amended) as applied to non-Directive Relevant Companies.
James Hardie	means collectively JHI NV and its controlled subsidiaries.
JHIF BV	means James Hardie International Finance B.V.
JHIF Limited	means James Hardie International Finance Limited.
JHI NV	means James Hardie Industries N.V.
JHT	means James Hardie Technology Limited.
Joint Board	means the Joint Board of JHI NV, which consists of all directors of the Supervisory Board and one director of the Managing Board.
Managing Board	means the Managing Board of JHI NV, which consists of executive officers, and is responsible for managing James Hardie (including overseeing James Hardie's general affairs, operations, and finance) under the supervision of the Supervisory Board.
Notice of Meetings	means the notice of extraordinary general meeting and extraordinary information meeting of James Hardie dated June 23, 2009.
NYSE	means the New York Stock Exchange.
our	means JHI NV.
SE Employee Directive	means Directive 2001/86/EC.
SE Regulation	means the Council Regulation (EC) No 2157/2001 on the Statute for a European Company.
shareholder	means holders of CUFS, ADSs or CUFS converted to shares.
shares	means ordinary shares of JHI NV.
SNB	means a special negotiating body as referred to in the SE Employee Directive and the Dutch implementation act in relation thereto.
Supervisory Board	means the Supervisory Board of JHI NV, which consists of only non-executive Directors, and is responsible for advising on and supervising the policy pursued by the Managing Board and the general course of affairs of JHI NV and the business enterprise which it operates.
Terms of Merger	means the draft terms of merger, including the explanatory notes.
UK	means the United Kingdom.
United States or US	means the United States of America.
us	means JHI NV.
US GAAP	means Generally Accepted Accounting Principles applying in the US.
US IRS	means US Internal Revenue Service.
US/Ireland Treaty	means the Convention between the US and the Government of Ireland for the Avoidance of Double Taxation and Fiscal Evasion with

	Regards to Taxes on Income and Capital Gains and the Protocols signed on July 28, 1997.
US/Netherlands Treaty	means the amended Convention between the US and The Kingdom of The Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed in Washington, on December 8, 1992 as amended by the Protocols signed at Washington, on October 13, 1993 and March 8, 2004.
US$	means United States dollars.
we	means JHI NV.

20. NOTICE OF MEETINGS

Our extraordinary information meeting has been called to enable CUFS holders to attend a meeting in Australia to review items of business and other matters that will be considered and voted on at the subsequent extraordinary general meeting in The Netherlands.

Appointing Someone to Attend the Extraordinary Information Meeting

If you are unable to attend the extraordinary information meeting, you may appoint someone else to attend and ask questions on your behalf. Please complete the relevant section of the Direction Form enclosed with this Notice of Meetings. Further details are described under the heading "Information on Voting — Attendance at the Extraordinary Information Meeting" in Section 21.

Questions

At the extraordinary information meeting, CUFS holders will be able to ask questions as they would at an extraordinary general meeting. To make it easier for more CUFS holders to have questions answered, whether or not they can attend the extraordinary information meeting, we invite them to use the accompanying form to submit questions in advance of the extraordinary information meeting. CUFS holders will also be able to ask questions relating to the business of the meeting from the floor during the extraordinary information meeting. If you are unable to attend the extraordinary information meeting, you may appoint someone else to attend and ask questions on your behalf. Please complete the relevant section of the enclosed Direction Form.

Webcast

The extraordinary information meeting will be broadcast live over the internet at www.jameshardie.com (select "James Hardie Investor Relations," then "Annual Meetings"). The webcast will remain on our website so that it can be replayed later if required.

Although no voting will take place at the extraordinary information meeting, CUFS holders will be able to lodge Direction Forms there, specifying how their vote is to be recorded at the extraordinary general meeting.

Meeting Details

The extraordinary information meeting will be held at:

The Auditorium, the Mint
10 Macquarie Street
Sydney, NSW
Australia

at 11:30 a.m. (AEST) on August 18, 2009.

The extraordinary general meeting will be held at:

Atrium, 8th floor
Strawinskylaan 3077
1077 ZX Amsterdam
The Netherlands

at 11:00 a.m. Central Europe Time (CET) on August 21, 2009.

Business of the Extraordinary General Meeting

Resolution OUR TRANSFORMATION FROM A DUTCH "NV" COMPANY TO A DUTCH "SE" COMPANY

To consider and, if thought fit, pass the following resolution as a special resolution to be adopted with a majority of at least 75% of the votes cast:

That:

In relation to Stage 1 of the Proposal:

(a) the company implement Stage 1 of the Proposal described in the Explanatory Memorandum, as a result of which the company will adopt the form of a Societas Europaea, governed by Dutch law;

(b) the company's articles of association be amended as referred to in the Explanatory Memorandum by making the changes shown in the copy of the amended articles of association tabled at this meeting and initialled by the Chairman for the purposes of identification including changing the name of the company from James Hardie Industries N.V. to James Hardie Industries SE;

(c) any member of the Managing Board of the company or any partner of the company's Dutch legal advisor, Loyens & Loeff NV, be authorised to apply for the required ministerial declaration of no-objection of the Dutch Ministry of Justice in connection with the amendments made to the articles of association, and to execute the notarial deed of amendments to the articles of association as required under Dutch law;

(d) the execution of any deed, agreement or other document contemplated by Stage 1 of the Proposal as described in the Explanatory Memorandum, or which is necessary or desirable to give effect to Stage 1 of the Proposal (which we refer to as the Stage 1 Proposal Documents), on behalf of the company or any relevant group company is hereby ratified and approved;

(e) any member of the Managing Board be appointed to represent the company in accordance with the company's articles of association in all matters concerning Stage 1 of the Proposal and the Stage 1 Proposal Documents, including where such matters concern the company or another group company, and notwithstanding that the Managing Board member may at the same time also be a director of any other group company; and

(f) that the actions of one or more members of the Joint or Managing Boards relating to Stage 1 of the Proposal up to the date of this meeting are hereby ratified and approved.

An explanation of the Proposal, including the background, risk factors, and questions and answers, including the proposed changes to the articles of association and the reasons for your directors' recommendation of the Proposal and the proposed resolution are set out in the Explanatory Memorandum of which this Notice of Meeting forms a part. A copy of the proposed amended articles of association referred to in paragraph (b) of the above resolution is available at the Investor Relations Area of our website (www.jameshardie.com, select "James Hardie Investor Relations").

Explanatory Notes and information on voting at the extraordinary general meeting are attached and a Direction Form is enclosed.

To ensure that your securities are represented at the extraordinary general meeting, you should vote by completing, signing and dating the enclosed Direction Form or a proxy card and returning it as set out in the attached information on voting, whether or not you expect to attend the extraordinary information meeting or extraordinary general meeting.

By order of the Managing Board and Supervisory Board,

Robert E. Cox
Company Secretary

, 2009

21. INFORMATION ON VOTING

Attendance at the Extraordinary Information Meeting

If you are a CUFS holder registered at 5:00 p.m. (AEST) on August 17, 2009, you may attend the extraordinary information meeting.

If you are not able to attend the extraordinary information meeting in person, or if you are a corporate entity, you may appoint another person to attend the extraordinary information meeting and ask questions on your behalf.

To allow the person you have appointed to attend the extraordinary information meeting, please complete the relevant section of the Direction Form, and lodge it no later than 5:00 p.m. (AEST) on August 17, 2009 using one of the methods set out under "Information on Voting — Lodgement Instructions" in this Section 21.

Computershare will keep a register of people appointed to attend the extraordinary information meeting on behalf of other CUFS holders, and these people will be required to provide appropriate identification to receive an entry card to enable them to speak and ask questions at the extraordinary information meeting.

If you lodge the Direction Form appointing your representative prior to the extraordinary information meeting, and complete your voting directions on that form, your voting directions may only be changed if you submit a further Direction Form within the time specified. Your representative cannot submit a revised Direction Form on your behalf at the extraordinary information meeting unless he or she is properly authorised to do so.

Vote Solicitation

We will bear all expenses in conjunction with the solicitation of the enclosed Direction Form, including the charges of brokerage houses and other custodians, nominees or fiduciaries for forwarding documents to security owners. In addition, your vote may be solicited by mail, in person, or by telephone or fax by certain of our officers, directors and employees.

Dissenters' Rights of Appraisal

Under Dutch company law, you do not have dissenters' or appraisal rights in connection with the Proposal.

Record Date

To be entitled to vote, our records must show you as being:

- for CUFS holders or persons who have converted their CUFS into shares, registered as a CUFS holder or holder of shares at 5:00 p.m. (AEST) on August 17, 2009 (which we refer to as the Record Date); and
- for ADR holders, the registered owner as at 5:00 p.m. (EDT) on July 9, 2009 (which we refer to as the ADR Record Date).

Quorum and Required Shareholder Approval

Stage 1 will require the approval of 75% of shareholder votes cast at a properly held meeting at which at least 5% of our issued share capital outstanding on the Record Date is represented in person or by proxy at the extraordinary general meeting. Each ordinary share is entitled to one vote.

Abstentions and Broker Non-Votes

Any CUFS, ADSs and CUFS you have converted to shares for which no votes are cast will be treated as null votes and will not count toward the voting outcome.

If you broker holds your shares in its name and you do not give the broker voting instructions, your broker may not vote your shares. If you do not give your broker voting instructions and the broker does not vote your shares, this is referred to as a "broker non-vote" which effectively will be treated as a null vote and will not count toward the voting outcome.

Voting on the Resolution

How you can vote will depend on whether you are:

- a holder of CUFS, which are quoted on the ASX;
- a holder of ADSs, which are quoted on the NYSE; or
- a holder of shares, which are not quoted on the ASX.

Voting if you are a CUFS Holder

CUFS holders who want to vote on the resolution to be considered at the extraordinary general meeting have the following three options available to them:

Option A

If you are not able to attend the extraordinary general meeting, but will attend the extraordinary information meeting, you may lodge a Direction Form before, at or following the conclusion of the extraordinary information meeting, directing CHESS Depository Nominees Pty Ltd. (the legal holder of the shares in the company for the purposes of the ASX Settlement and Transfer Corporation Pty Limited Settlement Rules) to vote the shares in the company held by it on your behalf.

To be eligible to vote in this manner, you must be registered as a CUFS holder on the Record Date.

CUFS holders who select Option A should follow either (1) or (2) below:

(1) Complete the Direction Form accompanying this Notice of Meetings and lodge it:

(a) in person at the extraordinary information meeting; or

(b) with Computershare using one of the methods set out under “Information on Voting — Lodgement Instructions” in this Section 21.

(2) Complete a Direction Form using the internet: Go to www.investorvote.com.au

To complete the Direction Form using the internet, you will need:

• Control number (located on your direction form)

• your Security Holder Reference Number;

• the Holder Identification Number from your current Holding Statement; or

• your postcode as recorded in the company’s register.

If you lodge the Direction Form using the internet in accordance with these instructions, you will be taken to have signed it.

Completed Direction Forms must be received by Computershare no later than 4:00 p.m. (AEST) on August 18, 2009.

Option B

If you would like to attend the extraordinary general meeting and vote in person you may ask CHESS Depository Nominees Pty Ltd. to appoint you or another person as proxy to vote the shares underlying your holding of CUFS on behalf of CHESS Depository Nominees Pty Ltd. by using a Proxy Request Form. For details on how to do this and how to receive a Proxy Request Form, please refer to the Annual Meetings page of the Investor Relations website (www.jameshardie.com, select “James Hardie Investor Relations,” then “Annual Meetings”).

To attend and vote at the extraordinary general meeting in The Netherlands, your completed Proxy Request Form must be received by Computershare no later than 5:00 p.m. (AEST) on August 11, 2009.

Option C	If you would like to attend and vote at the extraordinary general meeting, you may also do so by converting your CUFS to ordinary shares. For details on how to do this, please refer to the Annual Meetings page of the Investor Relations website (www.jameshardie.com, select "James Hardie Investor Relations," then "Annual Meetings"). CUFS must be converted into shares before 5:00 p.m. (AEST) on August 11, 2009. We will not acknowledge any requests to transfer shares received between 5:00 p.m. (AEST) on August 11, 2009 and the close of the extraordinary general meeting. To obtain a free copy of CHESS Depository Nominees Pty Ltd.'s Financial Services Guide, or any Supplementary Financial Services Guide, go to www.asx.com.au/cdis, or phone 1 300 300 279 from within Australia or +61 1 300 300 279 from outside Australia and ask to have one sent to you.

Voting if you are an ADR Holder

The ADR depositary for ADRs held in our ADR program is The Bank of New York Mellon. The Bank of New York Mellon will send this Notice of Meetings to ADR holders on or about July 16, 2009 and advise ADR holders how to give, change or revoke their voting instructions.

To be eligible to vote, you must be registered as an ADR holder as of the ADR Record Date.

The Bank of New York Mellon must receive any voting instructions, in the form required by The Bank of New York Mellon's voting instructions, no later than 5:00 p.m. (EDT) on August 10, 2009. The Bank of New York Mellon will endeavour, as far as is practicable, to instruct that the shares ultimately underlying the ADRs are voted in accordance with the instructions received by The Bank of New York Mellon from ADR holders. If an ADR holder does not submit any voting instructions, the shares ultimately underlying the ADRs held by such holder will not be voted.

Voting if you have Converted your CUFS to Shares

People holding shares who are registered as of the Record Date are eligible to attend and vote at the extraordinary general meeting.

Our shares are not able to be traded on the ASX or the NYSE. People holding shares are entitled to attend and vote at the extraordinary general meeting or, if they are unable to attend the meeting, are entitled to appoint one or more proxies. Where more than one proxy is appointed, the person must specify on separate forms the proportion or number of votes each proxy may exercise. Proxies do not need to be holders of shares.

To appoint a proxy, complete the Proxy Form and return it to Computershare by post, delivery to their offices or by fax using the details noted below under Lodgement Instructions. For details on how to receive a Proxy Form, please refer to the Annual Meetings page of the Investor Relations website (www.jameshardie.com, select "James Hardie Investor Relations," then "Annual Meetings").

Proxy Forms must be received no later than 5:00 p.m. (AEST) on August 13, 2009.

Lodgement Instructions

Completed Direction Forms, Proxy Request Forms and Proxy Forms may be lodged with Computershare using one of the following methods:

- by post to GPO Box 242, Melbourne, Victoria 8060, Australia;
- by delivery to Computershare at Level 3, 60 Carrington Street, Sydney NSW, Australia;
- by email to Alex.Goud@computershare.com.au; or
- by facsimile to 18 0078 3477 from inside Australia or +61 3 9473 2555 from outside Australia.

How Can I Change or Revoke my Vote?

CUFS Holder

You can change your vote by:

- completing and submitting a revised Direction Form by no later than 4:00 p.m. (AEST) on August 18, 2009, which if it is dated later than the previous direction form, will override your previous Direction Form; or
- attending the extraordinary general meeting and voting in person. Please refer to "Information on Voting — Voting if you are a CUFs holder" and "Information on Voting — Voting if you have converted your CUFs into Shares" (as applicable) in this Section 21 for further information on how to do this.

If you are a CUFS holder and wish to revoke rather than change your vote, you must send a written signed revocation to Computershare by no later than 4:00 p.m. (AEST) on August 18, 2009.

Similarly, if you have appointed a proxy, you can revoke your nomination at any time prior to the extraordinary general meeting. Furthermore, if you decide to attend and vote at the extraordinary general meeting in person and you have converted your CUFS into Shares, your proxy will not be entitled to speak or vote.

ADR Holder

If you are an ADR Holder and wish to change or revoke your vote, please refer to "Information on Voting — Voting if you are an ADR Holder."

Explanatory Notes

Resolution — Our Transformation from a Dutch "NV" company to a Dutch "SE" company

An explanation of the Proposal, including the background, risk factors, and questions and answers, including the proposed changes to the articles of association and the reasons of your directors' recommendation of the Proposal and the proposed resolution is set out in the Explanatory Memorandum. A copy of the proposed amended articles of association is available at the Investor Relations Area of our website (www.jameshardie.com, select "James Hardie Investor Relations").

Recommendation

The Supervisory and Managing Boards believe it is in the interests of James Hardie and its shareholders that Stage 1 of the Proposal be approved and directors unanimously recommend that you vote in favour of the resolution. Each Director intends to vote his or her own shareholding in us in favour of Stage 1 of the Proposal.

Notice Availability

Additional copies of this notice can be downloaded from the Investor Relations section of our website (www.jameshardie.com, select "James Hardie Investor Relations") or they can be obtained by contacting the company's registrar Computershare using one of the methods set out under "Information on Voting — Lodgement Instructions" in Section 21.

ANNEX A
DRAFT TERMS OF MERGER

DRAFT TERMS OF MERGER
REGARDING THE FORMATION OF SE THROUGH MERGER BY ACQUISITION
BY
JAMES HARDIE INDUSTRIES N.V.
(ACQUIRING COMPANY)
AND
JHCBM plc
(COMPANY CEASING TO EXIST)

Date: 22 June 2009
Execution copy

Loyens & Loeff N.V.
Weena 690
3012 CN Rotterdam
Ref: HJP/IG

DRAFT TERMS OF MERGER

(Formation of European company (Societas Europaea) through merger by acquisition pursuant to Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE))

DATE: 22 June 2009

THE MANAGEMENT BOARDS OF:

1. **James Hardie Industries N.V.**, a public company under Dutch law (*naamloze vennootschap*), having its official seat in Amsterdam, the Netherlands, office address at (1077 ZX) Amsterdam, the Netherlands, Strawinskylaan 3077, registered with the Trade Register in Amsterdam, the Netherlands under number 34106455,

- hereinafter: the "Acquiring Company";

2. **JHCBM plc**, a public limited company incorporated under the laws of Ireland, having its registered office at Arthur Cox Building, Earlsfort Terrace, Dublin 2, Ireland, and having registered no. 471542,

hereinafter: the "Company Ceasing to Exist";

the Acquiring Company and the Company Ceasing to Exist are jointly referred to as the "Merging Companies".

WHEREAS:

(i) the Acquiring Company is the holder of 39,994 shares in the capital of the Company Ceasing to Exist, each share having a nominal value of EUR 1;

(ii) Six (6) shares in the capital of the Company Ceasing to Exist are held by 6 nominee shareholders (hereinafter jointly: the "Nominee Shareholders");

(iii) the Merging Companies have not been dissolved or declared bankrupt, nor has a suspension of payment been declared with respect to the Merging Companies;

(iv) the Acquiring Company and its subsidiaries in the EU have employees in the following EU jurisdictions:

a. the Netherlands

b. United Kingdom

c. France

d. Denmark.

(v) the Company Ceasing to Exist does not have any subsidiaries in any of the EU member states and has no employees;

(vi) these draft terms of merger also incorporate the report/explanatory notes (*toelichting op het voorstel*) required pursuant to Section 2:313 paragraph 1 Dutch Civil Code ("DCC");

PROPOSE THE FORMATION OF AN SE THROUGH MERGER BY ACQUISITION as referred to in Article 17 par. 2 sub a. of the EU Council Regulation 2157/2001/EC of 8 October 2001 on the Statute for a European company (the "SE Regulation") as a result of which merger:

- the Acquiring Company will acquire the assets and liabilities of the Company Ceasing to Exist under a universal title of succession;
- the Nominee Shareholders will be granted shares in the Acquiring Company;
- the Acquiring Company shall take the form of a European public limited liability company (*Societas Europaea*) (an "SE");
- the Company Ceasing to Exist will cease to exist.

THE DATA TO BE MENTIONED PURSUANT TO ARTICLE 20 SE REGULATION, 2:312 PARAGRAPH 2, 2:326 AND 2:333D DDC AND OF REGULATION 6 OF THE EUROPEAN COMMUNITIES (MERGERS AND DIVISIONS OF COMPANIES) REGULATIONS 1987 ARE AS FOLLOWS:

A. Type of legal entity, name and official seat of the Merging Companies.

(i) The public company James Hardie Industries N.V., having its official seat at Amsterdam and having its registered office at (1077 ZX) Amsterdam, the Netherlands, Strawinskylaan 3077, the Netherlands, as per the effectuation of the merger the Acquiring Company shall be transformed into an European public company and its name shall be changed into: James Hardie Industries SE. James Hardie Industries SE shall have its official seat at Amsterdam, The Netherlands and its registered office at (1077 ZX) Amsterdam, the Netherlands, Strawinskylaan 3077.

(ii) The Irish public limited company, JHCBM plc, having its registered office at Arthur Cox Building, Earlsfort Terrace, Dublin 2, Ireland.

B. The exchange ratio of the shares.

For each share in the capital of the Company Ceasing to Exist held by a Nominee Shareholder, the applicable Nominee Shareholder will acquire 1 share in the capital of the Acquiring Company with a nominal value of EUR 0.59 and no additional financial payment shall be made. The Nominee Shareholder waives its rights pursuant to its shareholding in both the Acquiring Company and the Company Ceasing to Exist with regard to all economic rights attached to the shareholding as a consequence of which the economic value of the shareholding by the Nominee Shareholder in both the Acquiring Company and the Company Ceasing to Exist is nil.

C. Allotment of shares.

The granting of registered shares in the Acquiring Company to the Nominee Shareholders will be reflected in the deed of merger and registered in the shareholder's register of the Acquiring Company. The Nominee Shareholders do not need to be a party to the deed of merger. No share certificates shall be issued. The shares to be granted shall not be listed.

D. Date per which the Nominee Shareholders will share in the profits of the Acquiring Company.

On the basis that the beneficial ownership of the shares held by the Nominee Shareholders is in the hands of the Acquiring Company and this will equally apply once the merger is complete, the Nominee Shareholders will not have an opportunity of sharing in the profits of the Acquiring Company.

E. Date from which the transactions of the Merging Companies will be treated for accounting purposes as being those of the SE.

The transactions of the Merging Companies will be treated for accounting purposes as being those of the SE from the date that the merger by acquisition is complete.

F. Date per which the financial data of the Company Ceasing to Exist will be accounted for in the annual accounts of the Acquiring Company.

The financial data of the Company Ceasing to Exist will be accounted for in the annual accounts of the Acquiring Company for the financial year ending 31 March 2010. The last financial period of the Company Ceasing to Exist, which started at its incorporation, will end on the date that the merger by acquisition is complete.

G. Rights, compensations or other measures conferred by the SE on holders of shares to which special rights are attached and /or on holders of securities other than shares, pursuant to applicable local laws.

On its formation, the SE will not have issued any shares with special rights as meant in Article 20 par. 2 sub (f) SE Regulation. Therefore, no special rights and no compensation will be granted at the expense of the SE to anyone.

H. Benefits or special advantages to be granted to a member of the management board or of the supervisory board of the Merging Companies or to another party involved with the merger (including experts who examine the draft terms of merger), in connection with the merger.

None.

I. Articles of association of the Acquiring Company and the SE.

The articles of association of the Acquiring Company were most recently amended by deed executed on 20 August 2007 before a candidate civil-law notary substituting for Prof. Mr. M. van Olffen, civil law notary in Amsterdam. The articles of association will be amended at the merger. The consecutive wording of the current articles of association of the Acquiring Company and the articles of association as they will read after the amendment thereof in connection with the merger (i.e. the proposed articles of association of the SE) are attached as ***Annex A*** and ***Annex B*** to this draft terms of merger, respectively.

J. Procedures for employee participation.

As soon as practically possible after publishing these draft terms of merger the management boards of the Merging Companies shall take the necessary steps to start negotiations with the representatives of the employees of the Merging Companies on arrangements for the involvement of employees in Jamies Hardie Industries SE, including, but not limited to the creation of a special negotiating body, in accordance with the provisions of the Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees (the "Employee Directive"). The Company Ceasing to Exist has no employees.

Negotiations shall commence as soon as the special negotiating body is established. The Acquiring Company reserves the right to accept the applicable standard rules (as referred to in Article 7 Employee Directive) if no arrangement is concluded within the time prescribed by the Employee Directive.

K. Intentions with regard to the composition of the management board or of the supervisory board of the Acquiring Company after the merger.

There is no intention to change the composition of the management board after the merger.

The present composition is as follows:

Management board:

- L. Gries
- R.L. Chenu
- R.E. Cox

Supervisory board:

- D.G. McGauchie
- B.P. Anderson
- R.M.J. van der Meer
- M.N. Hammes

- D.D. Harrison
- J. Osborne

L. Contemplated continuation or termination of activities.

The activities of the Company Ceasing to Exist will be continued by the Acquiring Company.

M. Corporate approvals of the draft terms of merger.

The resolution to approve the draft terms of merger and to effect the merger in conformity with the common draft terms of merger is neither subject to the approval of a company body (*orgaan*) of the Merging Companies nor of any other third party.

N. Likely effects on employment.

The merger and the transformation of the Acquiring Company into an SE is not expected to have any material effect on employment because the Company Ceasing to Exist does not have any employees, nor does it trade.

O. Effects of the merger on the goodwill and the distributable reserves of the Acquiring Company.

The merger has no material effect on the goodwill and the distributable reserves of the Acquiring Company. The Company Ceasing to Exist has no material assets and no liabilities.

P. Information on the valuation of assets and liabilities of the Company Ceasing to Exist to be acquired by the Acquiring Company.

The Company Ceasing to Exist has no assets or liabilities apart from share capital of EUR 40,000 and cash/receivables of EUR 40,000. Therefore no valuations are necessary.

Q. Dates of the Merging Companies' accounts.

The dates of the most recently adopted annual accounts / interim financial statements and any other accounts of the Merging Companies' accounts used to establish the conditions of the merger are:

Acquiring Company:

31 March 2009 (draft annual accounts)

Company Ceasing to Exist:

2 June 2009 (interim statement as at the date of incorporation)

R. Proposal for the level of compensation of shareholders that vote against the draft terms of merger.

Any shareholder in the Company Ceasing to Exist who votes against the draft terms of merger shall be entitled to have their shares bought from them by the Acquiring Company at a price of EUR 1.00 per share.

S. Shares to be cancelled pursuant to Section 2:325 paragraph 3 DCC.

Not applicable.

THE DATA TO BE MENTIONED PURSUANT TO SECTION 2:313 PARAGRAPH 1 DCC AND SECTION 2:327 DDC ARE AS FOLLOWS:

1. Reasons for the merger.

The reason for the merger is to allow the Acquiring Company to adopt the form of a European Public Company (SE).

2. Expected consequences for the activities.

None. To the extent that the Company Ceasing to Exist has any activities, these activities will be continued in the same way by the Acquiring Company.

3. Explanation from a legal, economic and social point of view.

Legal

The Company Ceasing to Exist ceases to exist and its assets and liabilities transfer to the Acquiring Company under a universal title of succession. The Acquiring Company is transformed into a European public company (SE), governed by the laws of the Netherlands.

Economic

From an economic point of view the merger has no consequences.

Social

The merger has no consequence for the employment and the employment conditions except as per the outcome of the process for employee participation as referred to in paragraph N above.

4. Method(s) for determination of exchange rate.

Preliminary remarks:

It is considered that the laws applicable to the merger dictate that shares are allocated to shareholders of the Company Ceasing to Exist, which is considered to include all holders of legal title to shares in the Company Ceasing to Exist, so including the Nominee Shareholders.

The number of shares allocable to the Nominee Shareholders is kept to a bare minimum in view of the fact they only hold legal title, while beneficial ownership is in the hands of the Acquiring Company.

In this respect, it is also noted that the shares in the Acquiring Company acquired by the Nominee Shareholders may be transferred (for nil consideration) to the Acquiring Company after the effectuation of subject merger.

Method for determination of exchange ratio

The method pursuant to which the exchange ratio has been determined does not have a specific name as such. The exchange ratio is kept as simple as possible (one share in the Acquiring Company in exchange for one share in the Company Ceasing to Exist) in view of the preliminary remarks above.

Appropriateness of method used

The method is appropriate in this particular instance as it achieves a result that is, within the parameters of the merger requirements, the most appropriate manner to achieve that the value of the interest held by the Nominee Shareholders prior to the merger is equal to that of their interest held after the merger.

Valuation result

The method used does not lead to a specific valuation.

There have been no particular difficulties at the valuation and the determination of the exchange rate.

AUDITOR STATEMENTS AND REPORT.

KPMG and Deloitte issued the following documents

a. A report on the exchange ratio as referred to in Section 2:328 paragraph 1 DCC. This report is attached to the draft terms of merger as ***Annex C*** (KPMG) ***Annex D*** (Deloitte).

b. A report on the equity of the Merging Companies as referred to in Section 2:328 paragraph 1 DCC. This report is part of ***Annex C*** (KPMG) ***Annex D*** (Deloitte).

c. The auditors' statements referred to in Section 2:328 paragraph 2 DCC have been attached to these explanatory notes as ***Annex E*** (KPMG) and ***Annex F*** (Deloitte).

ANNEXES.

Annexes to these draft terms form an integrated part of this proposal.

List of Annexes:

Annex A: current articles of association James Hardie Industries N.V. (Acquiring Company)

Annex B: articles of association James Hardie Industries SE (Acquiring Company) after amendment

Annex C: auditors' report of KPMG referred to in Section 2:328 paragraph 1 DCC

Annex D: auditors' report of Deloitte referred to in Section 2:328 paragraph 1 DCC

Annex E: auditors' statement of KPMG referred to in Section 2:328 paragraph 2 DCC

Annex F: auditors' statement of Deloitte referred to in Section 2:328 paragraph 2 DCC

[signature page to follow]

SIGNATURE PAGE OF DRAFT TERMS OF MERGER

Signed as of the date first written above.

Management Board James Hardie Industries N.V.:

L. Gries

R.L. Chenu

R.E. Cox

Supervisory Board James Hardie Industries N.V.:

D.G. McGauchie

R.M.J. van der Meer

B.P. Anderson

M.N. Hammes

D.D. Harrison

J. Osborne

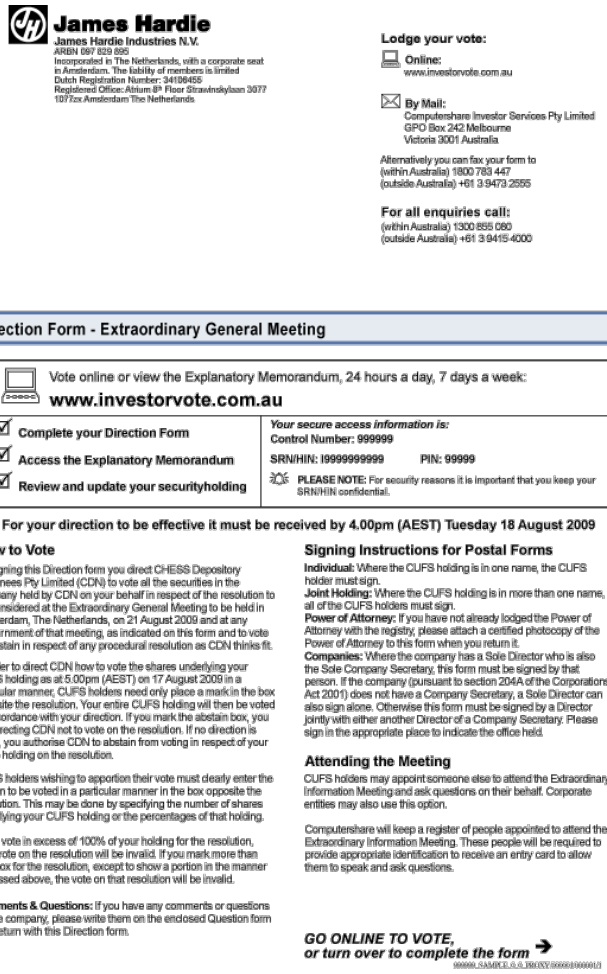
Board JHCBM plc

S. Barnett

D.J. Ex

ANNEX B

DIRECTION FORM



James Hardie

James Hardie Industries N.V.
ARBN 097 829 895
Incorporated in The Netherlands, with a corporate seat in Amsterdam. The liability of members is limited
Dutch Registration Number: 34198455
Registered Office: Atrium 8th Floor Strawinskylaan 3077
1077zx Amsterdam The Netherlands

Lodge your vote:

Online:
www.investorvote.com.au

By Mail:
Computershare Investor Services Pty Limited
GPO Box 242 Melbourne
Victoria 3001 Australia

Alternatively you can fax your form to
(within Australia) 1800 783 447
(outside Australia) +61 3 9473 2555

For all enquiries call:
(within Australia) 1300 855 080
(outside Australia) +61 3 9415 4000

Direction Form - Extraordinary General Meeting

Vote online or view the Explanatory Memorandum, 24 hours a day, 7 days a week:
www.investorvote.com.au

- ☑ **Complete your Direction Form**
- ☑ **Access the Explanatory Memorandum**
- ☑ **Review and update your securityholding**

Your secure access information is:
Control Number: 999999
SRN/HIN: I9999999999 **PIN: 99999**
PLEASE NOTE: For security reasons it is important that you keep your SRN/HIN confidential.

For your direction to be effective it must be received by 4.00pm (AEST) Tuesday 18 August 2009

How to Vote

By signing this Direction form you direct CHESS Depository Nominees Pty Limited (CDN) to vote all the securities in the company held by CDN on your behalf in respect of the resolution to be considered at the Extraordinary General Meeting to be held in Amsterdam, The Netherlands, on 21 August 2009 and at any adjournment of that meeting, as indicated on this form and to vote or abstain in respect of any procedural resolution as CDN thinks fit.

In order to direct CDN how to vote the shares underlying your CUFS holding as at 5.00pm (AEST) on 17 August 2009 in a particular manner, CUFS holders need only place a mark in the box opposite the resolution. Your entire CUFS holding will then be voted in accordance with your direction. If you mark the abstain box, you are directing CDN not to vote on the resolution. If no direction is given, you authorise CDN to abstain from voting in respect of your entire holding on the resolution.

CUFS holders wishing to apportion their vote must clearly enter the portion to be voted in a particular manner in the box opposite the resolution. This may be done by specifying the number of shares underlying your CUFS holding or the percentages of that holding.

If you vote in excess of 100% of your holding for the resolution, your vote on the resolution will be invalid. If you mark more than one box for the resolution, except to show a portion in the manner discussed above, the vote on that resolution will be invalid.

Comments & Questions: If you have any comments or questions for the company, please write them on the enclosed Question form and return with this Direction form.

Signing Instructions for Postal Forms

Individual: Where the CUFS holding is in one name, the CUFS holder must sign.
Joint Holding: Where the CUFS holding is in more than one name, all of the CUFS holders must sign.
Power of Attorney: If you have not already lodged the Power of Attorney with the registry, please attach a certified photocopy of the Power of Attorney to this form when you return it.
Companies: Where the company has a Sole Director who is also the Sole Company Secretary, this form must be signed by that person. If the company (pursuant to section 204A of the Corporations Act 2001) does not have a Company Secretary, a Sole Director can also sign alone. Otherwise this form must be signed by a Director jointly with either another Director of a Company Secretary. Please sign in the appropriate place to indicate the office held.

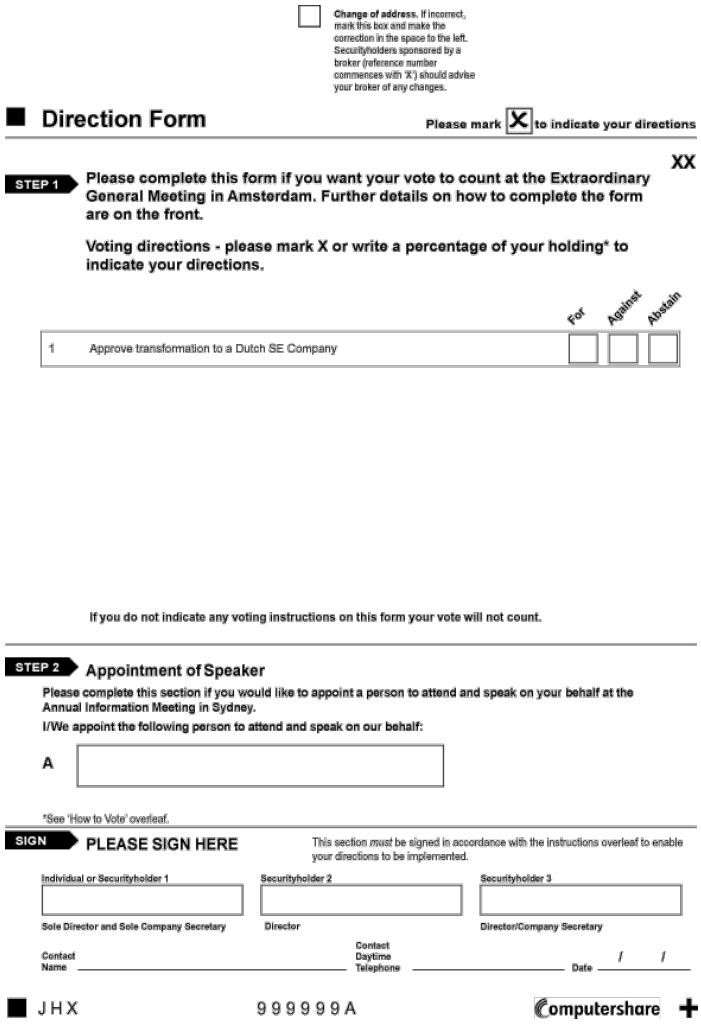
Attending the Meeting

CUFS holders may appoint someone else to attend the Extraordinary Information Meeting and ask questions on their behalf. Corporate entities may also use this option.

Computershare will keep a register of people appointed to attend the Extraordinary Information Meeting. These people will be required to provide appropriate identification to receive an entry card to allow them to speak and ask questions.

GO ONLINE TO VOTE,
or turn over to complete the form ➔

This Document is printed on **Greenhouse Friendly™** ENVI Laser Carbon Neutral Paper



☐ Change of address. If incorrect, mark this box and make the correction in the space to the left. Securityholders sponsored by a broker (reference number commences with 'X') should advise your broker of any changes.

Direction Form

Please mark X to indicate your directions

XX

STEP 1 Please complete this form if you want your vote to count at the Extraordinary General Meeting in Amsterdam. Further details on how to complete the form are on the front.

Voting directions - please mark X or write a percentage of your holding* to indicate your directions.

		For	Against	Abstain
1	Approve transformation to a Dutch SE Company	☐	☐	☐

If you do not indicate any voting instructions on this form your vote will not count.

STEP 2 Appointment of Speaker

Please complete this section if you would like to appoint a person to attend and speak on your behalf at the Annual Information Meeting in Sydney.

I/We appoint the following person to attend and speak on our behalf:

A ☐

*See 'How to Vote' overleaf.

SIGN PLEASE SIGN HERE

This section *must* be signed in accordance with the instructions overleaf to enable your directions to be implemented.

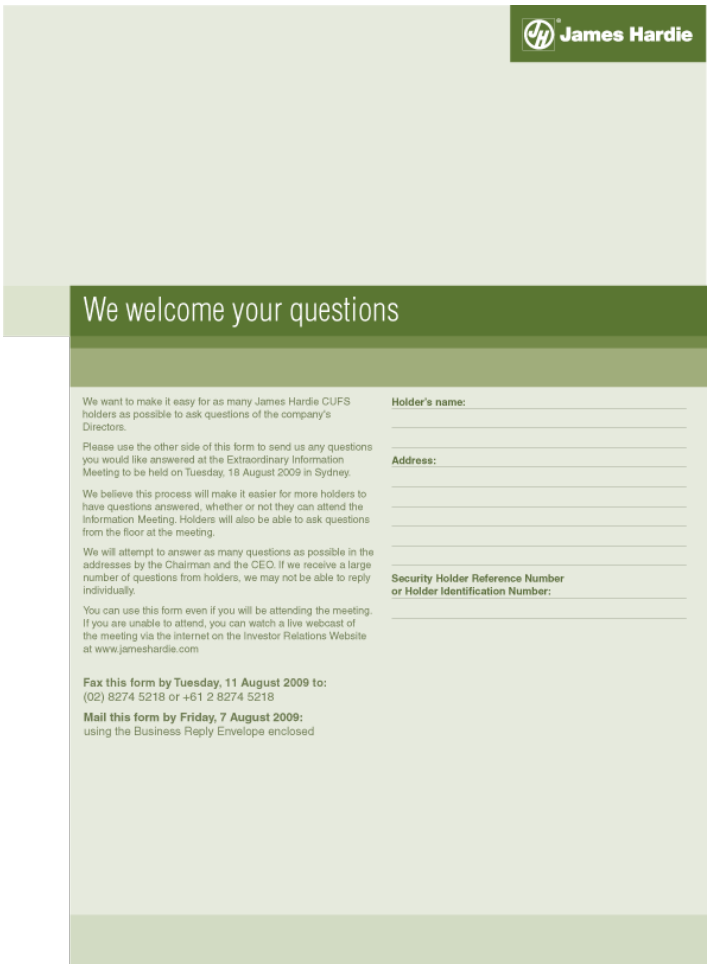
Individual or Securityholder 1	Securityholder 2	Securityholder 3
Sole Director and Sole Company Secretary	Director	Director/Company Secretary

Contact Name _____ Contact Daytime Telephone _____ Date / /

JHX 999999A Computershare +

ANNEX C

QUESTION FORM



James Hardie

We welcome your questions

We want to make it easy for as many James Hardie CUFS holders as possible to ask questions of the company's Directors.

Please use the other side of this form to send us any questions you would like answered at the Extraordinary Information Meeting to be held on Tuesday, 18 August 2009 in Sydney.

We believe this process will make it easier for more holders to have questions answered, whether or not they can attend the Information Meeting. Holders will also be able to ask questions from the floor at the meeting.

We will attempt to answer as many questions as possible in the addresses by the Chairman and the CEO. If we receive a large number of questions from holders, we may not be able to reply individually.

You can use this form even if you will be attending the meeting. If you are unable to attend, you can watch a live webcast of the meeting via the internet on the Investor Relations Website at www.jameshardie.com

Fax this form by Tuesday, 11 August 2009 to:
(02) 8274 5218 or +61 2 8274 5218

Mail this form by Friday, 7 August 2009:
using the Business Reply Envelope enclosed

Holder's name:

Address:

Security Holder Reference Number or Holder Identification Number:

Fax this form by Tuesday, 11 August 2009 to:
(02)8274 5218 or+61 2 8274 5218

Mail this form Friday, 7 August 2009:
using the Business Reply Envelope enclosed

Security Holder Reference Number or Holder Identification Number:

Question(s):

PART II

INFORMATION NOT REQUIRED IN THE PROSPECTUS

Indemnification of Directors and Officers

Our articles of association provide in article 28 that we shall generally indemnify any person who is or was a director or one of our employees, officers or agents, or who at our request has become a director, officer or agent of another entity or a trust, and 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 nevertheless.

In addition, our articles of association provide that shareholders may approve a resolution at a general meeting of shareholders to fully discharge the members of our Managing Board, Supervisory Board and Joint Board from liability towards us in respect of the exercise of their duties during the financial year covered by the annual accounts subject to certain exceptions under Dutch law, including exceptions relating to the liability of members of our Managing Board, Supervisory Board and Joint Board upon bankruptcy or insolvency of a company. Under Dutch law, this discharge is not absolute and would not be effective as to any matters not disclosed in or apparent from our annual accounts or not otherwise disclosed to our shareholders, and is subject to general reasonableness and fairness. Our shareholders have not approved such a resolution at this time.

Following Stage 1, Dutch SE will retain the same indemnity provisions in its articles of association, however these will not apply to the Joint Board, which will be eliminated after completion of Stage 1 of the Proposal.

Following Stage 2, Irish SE's articles of association will provide for indemnification of any person who is or was a director, company secretary, employee or person deemed by Irish SE's board to be an agent of Irish SE, who suffers any cost, loss or expense as a result of any action in connection with the discharge of their duties to Irish SE, provided they acted in good faith in carrying out their duties and in a manner they reasonably believed to be in Irish SE's interest. This indemnification will generally not be available if the person seeking indemnification acted in a manner that could be characterised as negligent, default, breach of duty or breach of trust in performing their duties. However, under Irish company law, this indemnity only binds Irish SE to indemnify a current or former director or company secretary where judgment is given in any civil or criminal action in favour of such director or company secretary, or where a court grants relief because the director or company secretary acted honestly and reasonably and ought fairly to be excused. The articles of association of Irish SE apply the same limitations to other indemnitees who are not current or former directors or the company secretary of Irish SE.

Indemnity Agreements

We have provided Deeds of Access, Insurance and Indemnity (which we refer to as an Indemnity Deed) governed by Dutch law to our directors and senior employees and our subsidiary, James Hardie Building Products Inc., has provided Indemnity Agreements governed by Nevada law (which we refer to as an Indemnity Agreement) to directors, officers and certain employees of us, James Hardie Building Products Inc. or their affiliates. These Indemnity Deeds and Indemnity Agreements are consistent with our articles of association and relevant laws.

The terms of the Indemnity Deeds require us, to the maximum extent permitted by law, to unconditionally and irrevocably indemnify a director in relation to the director serving or having served as a director of us or one of our subsidiaries or another entity at our request or the request of one of our subsidiaries to the extent permitted by Dutch law from and against all claims, liabilities (including liability for negligence), civil penalties being pecuniary penalties imposed by legislation, legal costs actually and reasonably incurred (not limited to taxed costs), net wage or withholding taxes, social security premiums or other Dutch or foreign taxes as a result of indemnification, as well as reasonable legal costs actually incurred in good faith by the director in obtaining legal advice regarding issues arising from an Indemnity Deed or making a claim or in relation to being a witness to any type of proceedings, mediation or other form of dispute resolution. This indemnity is limited to the extent that it is not available to a director where a Dutch court has established in a final, non-appealable decision that the director (1) acted with willful misconduct, (2) acted with intentional recklessness, (3) was seriously imputable or (4) did not act in good

faith, unless otherwise provided for by Dutch law or the boards provide otherwise based on standards of reasonableness and fairness.

The Indemnity Deeds require us, upon a request by a director, to make payment of amounts payable within 30 days of the incurrence of the liability or the date the amount is due and payable, whichever is shorter, and the director undertakes to repay the amounts paid to them if it is ultimately determined that he or she is not entitled to indemnification for such amounts or if such amounts exceed what we are permitted to pay under the Indemnity Deed or if he or she receives payment under an insurance contract in respect of those liabilities. To the extent that a director also receives payment under an indemnity from one of our subsidiaries, the director is not entitled to claim under the Dutch law Indemnity Deed.

Under the Indemnity Deeds a director has the right to access our company books and those of our subsidiaries in relation to any act or omission in relation to the director acting in that capacity for us, our subsidiaries or another entity at our request or at the request of our subsidiaries.

Following Stage 1, the Dutch law-governed Indemnity Deeds will continue to be in effect.

The Indemnity Agreements provide that James Hardie Building Products Inc. shall hold harmless and indemnify a director, officer or employee of us, James Hardie Building Products Inc., or their affiliates to the maximum extent allowed by Nevada law against any expenses, liabilities and losses (including, without limitation, investigation expenses, expert witnesses' and attorneys' fees and expenses, judgments, penalties, fines, amounts paid or to be paid in settlement, any interest, assessments, or other charges imposed thereon and any federal, state, local or foreign taxes imposed as a result of actual or deemed receipt of any payment) actually and reasonably incurred by the director, officer or employee (net of any insurance proceeds or other amounts received by the indemnitee as compensation for such expenses, liabilities or losses) in connection with any actual or threatened action, suit or proceeding, whether civil, criminal, administrative or investigative or in arbitration, to which the director, officer or employee is a party or participant or is threatened to be made a party or participant (a) based upon, arising from, relating to or by reason of the fact that the director, officer or employee was or is a director, officer or employee of us or of James Hardie Building Products Inc., or is or was serving at our request or the request of James Hardie Building Products Inc., as a director, officer, partner, member, manager, trustee, fiduciary, employee or agent of another corporation or entity, or (b) arising from or relating to any action or omission to act taken by the director, officer or employee in any of the capacities described above. However, the director, officer or employee will only be indemnified in connection with a proceeding initiated by him or her (other than a proceeding to enforce his or her rights under the indemnity agreement) if the proceeding was authorised by a two-thirds vote of the board of directors of James Hardie Building Products Inc.

By the terms of the Indemnity Agreements, its benefits are not available if there is a judgment or other final adjudication, after all appeals and all time for appeals has expired, which is adverse to the director, officer or employee and which establishes (a) his or her acts were committed in bad faith, or were the result of active and deliberate dishonesty or willful fraud or illegality, and were material to the cause of action so adjudicated; (b) that he or she in fact personally gained a financial profit or other advantage to which he or she was not legally entitled, (c) that indemnification of the director, officer or employee is prohibited by applicable law, (d) in respect of any remuneration paid to the director, officer or employee if such remuneration was in violation of law or (e) that such indemnification is not lawful and James Hardie Building Products Inc. and the director, officer or employee have been advised that the US Securities and Exchange Commission believes that the indemnification for liabilities arising under the US federal securities laws is against public policy and is, therefore, unenforceable and claims for indemnification should be submitted to the appropriate court for adjudication. In addition, the benefits are not available for any claim made against the director, officer or employee for an accounting of profits made from the purchase or sale by the director, officer or employee of our securities within the meaning of Section 16(b) of the US Securities Exchange Act of 1934 or analogous provisions of any applicable law.

The Indemnity Agreements require James Hardie Building Products Inc., upon request by the director, officer or employee, to make payment within 30 days of amounts payable under the Indemnity Agreements as expended or incurred in advance of indemnification, provided, however, that the director, officer or employee undertakes to repay the amounts if it is ultimately determined that he or she is not entitled to indemnification for such amounts.

The Indemnity Agreements will continue in effect following implementation of Stage 1 and Stage 2.

Following Stage 2, Irish SE will provide Indemnity Deeds to Irish SE directors, the company secretary and certain senior employees generally consistent with the existing Dutch law-governed Indemnity Deeds, but which will be subject to Irish law. The current Dutch law-governed Indemnity Deeds extend protection to directors beyond that permitted for Irish companies under Irish company law. Irish law contains a restriction on the indemnity that an Irish public company, and therefore an Irish SE, can give its current and former directors and company secretary. Irish law renders void any provision in an Irish company's articles of association or other contract that would exempt from liability or provide any current or former director or company secretary with an indemnity for negligence, default, breach of duty or breach of trust. In addition, under Irish company law, this indemnity only binds Irish SE to indemnify a current or former director or company secretary where judgment is given in any civil or criminal action in favour of such director or company secretary, or where a court grants relief because the director or company secretary acted honestly and reasonably and ought fairly to be excused. The articles of association of Irish SE apply the same limitations to other indemnitees who are not current or former directors or the company secretary of Irish SE. This limitation on the matters for which director may be indemnified is broader than is currently permitted under the Dutch law-governed Indemnity Deeds.

The directors will still be allowed to claim advances for costs as permitted under the Irish law-governed Indemnity Deeds. However, in the event a final determination is made against a current or former director or company secretary or, if no determination is made at all, an Irish Court would interpret the scope of the indemnity contained in the Indemnity Deed such that Irish SE could require the current or former director or company secretary to repay an advance in the circumstances required under Irish law outlined above.

As required by the terms of the Indemnity Deeds and the Indemnity Agreements, we and James Hardie Building Products Inc. maintain director and officers insurance policies under which such persons would be insured against liabilities resulting from their service to us.

Exhibits and Financial Statement Schedules

See Exhibit Index attached hereto and incorporated herein by reference.

Undertakings

(a) In accordance with Item 512 of Regulation S-K, the undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) (§ 230.424(b) of this chapter) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) To file a post-effective amendment to the registration statement to include any financial statements required by "Item 8.A. of Form 20-F (17 CFR § 249.220f)" at the start of any delayed offering or throughout a continuous offering.

(5) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424 (17 CFR § 230.424);

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(6) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(7) That prior to any public reoffering of the securities registered hereunder through use of a prospectus which is a part of this registration statement, by any person or party who is deemed to be an underwriter within the meaning of Rule 145(c), the issuer undertakes that such reoffering prospectus will contain the information called for by the applicable registration form with respect to reofferings by persons who may be deemed underwriters, in addition to the information called for by the other Items of the applicable form.

(8) That every prospectus (i) that is filed pursuant to paragraph (a)(7) immediately preceding, or (ii) that purports to meet the requirements of section 10(a)(3) of the Securities Act of 1933 and is used in connection with an offering of securities subject to Rule 415, will be filed as a part of an amendment to the registration statement and will not be used until such amendment is effective, and that, for purposes of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(b) The undersigned registrant hereby undertakes: (i) to respond to requests for information that is incorporated by reference into the prospectus pursuant to Items 4, 10(b), 11, or 13 of this Form, within one business day of receipt of such request, and to send the incorporated documents by first class mail or other equally prompt means; and (ii) to arrange or provide for a facility in the US to respond to such requests. The undertaking in sub-paragraph (i) above includes information contained in documents filed after the effective date of the registration statement through the date of responding to the request.

(c) The undersigned registrant hereby undertakes to supply by means of a post-effective amendment all information concerning a transaction and the company being acquired involved therein, that was not the subject of and included in the registration statement when it became effective.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the below registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorised, in Sydney, Australia on this 23rd day of June 2009.

JAMES HARDIE INDUSTRIES N.V.

By: /s/ Russell Chenu
Russell Chenu
Managing Board Director
and Chief Financial Officer

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed below by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Louis Gries Louis Gries	Chief Executive Officer and Managing Board Director	June 23, 2009
/s/ Russell Chenu Russell Chenu	Chief Financial Officer, Principal Accounting Officer/Controller and Managing Board Director	June 23, 2009
* Michael N. Hammes	Chairman and Joint and Supervisory Board Director	June 23, 2009
* Donald McGauchie AO	Deputy Chairman and Joint and Supervisory Board Director	June 23, 2009
* Brian Anderson	Joint and Supervisory Board Director	June 23, 2009
* David Harrison	Joint and Supervisory Board Director	June 23, 2009
* Rudy van der Meer	Joint and Supervisory Board Director	June 23, 2009
* James Osborne	Joint and Supervisory Board Director	June 23, 2009
/s/ Robert E. Cox Robert E. Cox	Managing Board Director	June 23, 2009

*By: /s/ Russell Chenu
Russell Chenu
Attorney-in-fact
Authorised Representative in the United States

/s/ Paul Bokota
Paul Bokota
Deputy General Counsel
James Hardie Building Products Inc.

EXHIBIT INDEX

Exhibit Number	Description
2.1	Draft Terms of Merger and Explanatory Notes and Annexes
3.1	Form of Articles of Association of James Hardie Industries SE, a European Company registered in The Netherlands (which form Annex B to the Terms of Merger)
3.2	Form of Memorandum and Articles of Association of James Hardie Industries SE, A European Company registered in Ireland
4.1	Form of Deposit Agreement to be entered into between James Hardie Industries SE and The Bank of New York Mellon, as depositary
4.2	Common Terms Deed Poll as amended and restated on February 20, 2008 among James Hardie International Finance B.V., James Hardie Building Products, Inc. and James Hardie Industries N.V. (incorporated herein by reference to Exhibit 2.3 to James Hardie's Form 20-F for the year ended March 31, 2008, filed on July 8, 2008)
4.3	Form of Amended and Restated Common Terms Deed Poll among James Hardie International Finance B.V., James Hardie Building Products, Inc., James Hardie International Finance Limited and James Hardie Industries SE
4.4	Form of Term Facility Agreement between James Hardie International Finance B.V. and Financier (incorporated herein by reference to Exhibit 2.23 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2005, filed on July 7, 2005)
4.5	Form of Term Facility Agreement — Occurrence of Extension Event among James Hardie International Finance B.V., James Hardie Building Products, Inc. and Financier (incorporated herein by reference to Exhibit 2.9 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2007, filed on July 6, 2007)
4.6	Form of 3 Year Term (Bullet) Facility Agreement dated February 21, 2008 among James Hardie International Finance B.V., James Hardie Building Products, Inc. and Financier (incorporated herein by reference to Exhibit 2.6 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2008, filed on July 8, 2008)
4.7	Form of 5 Year Term (Bullet) Facility Agreement dated February 21, 2008 among James Hardie International Finance B.V., James Hardie Building Products, Inc. and Financier (incorporated herein by reference to Exhibit 2.7 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2008, filed on July 8, 2008)
4.8	Form of Rolling 364-day Facility Agreement between James Hardie International Finance B.V. and Financier (including Form of Extension Request) (incorporated herein by reference to Exhibit 2.24 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2005, filed on July 7, 2005)
4.9	Form of 364-day Facility Agreement between James Hardie International Finance B.V. and Financier
4.10	Form of Guarantee Deed between James Hardie Industries N.V. and Financier (incorporated herein by reference to Exhibit 2.25 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2005, filed on July 7, 2005)
4.11	Form of Lender Deeds of Confirmation between James Hardie International Finance B.V., James Hardie Building Products, Inc., James Hardie Industries N.V. and Financier
4.12	Form of Amending Deed AET Guarantee Trust Deed between James Hardie Industries N.V. and AET Structured Finance Services Pty Limited
4.13	Form of Amending Deed to the Performing Subsidiary Undertaking and Guarantee Trust Deed between James Hardie 117 Pty Limited and AET Structured Finance Services Pty Limited
5.1*	Opinion of Loyens & Loeff regarding validity of the James Hardie securities being registered
8.1*	Opinion of PricewaterhouseCoopers LLP regarding certain Australian tax matters
8.2*	Opinion of Skadden, Arps, Slate, Meagher & Flom LLP regarding certain US federal income tax matters
8.3*	Opinion of PricewaterhouseCoopers Belastingadviseurs N.V. regarding certain Dutch tax matters
8.4*	Opinion of PricewaterhouseCoopers regarding certain Irish tax matters
8.5*	Opinion of PricewaterhouseCoopers LLP regarding certain UK tax matters

Exhibit Number	Description
10.1	Amended and Restated James Hardie Industries N.V. 2001 Equity Incentive Plan (incorporated herein by reference to Exhibit 4.1 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2005, filed on July 7, 2005)
10.2	Executive Incentive Plan 2009
10.3	Supervisory Board Share Plan 2006 (incorporated herein by reference to Exhibit 4.4 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2006, filed on September 29, 2006)
10.4	James Hardie Industries N.V. Long Term Incentive Plan 2006 dated August 1, 2006 and amended on August 22, 2008 (incorporated herein by reference to Exhibit 4.4 to James Hardie's registration statement on Form S-8, filed on September 11, 2008)
10.5	2005 Managing Board Transitional Stock Option Plan (incorporated herein by reference to Exhibit 4.6 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2006, filed on September 29, 2006)
10.6	Form of Joint and Several Indemnity Agreement among James Hardie N.V., James Hardie (USA) Inc. and certain former executive officers and Managing Board directors thereto (incorporated herein by reference to Exhibit 4.15 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2005, filed on July 7, 2005)
10.7	Form of Joint and Several Indemnity Agreement among James Hardie Industries N.V., James Hardie Inc. and certain former Supervisory Board and Managing Board directors thereto (incorporated herein by reference to Exhibit 4.16 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2005, filed on July 7, 2005)
10.8	Form of Deed of Access, Insurance and Indemnity between James Hardie Industries N.V. and Supervisory Board directors and Managing Board directors (incorporated herein by reference to Exhibit 4.9 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2008, filed on July 8, 2008)
10.9	Form of Indemnity Agreement between James Hardie Building Products, Inc. and Supervisory Board directors, Managing Board directors and certain executive officers (incorporated herein by reference to Exhibit 4.10 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2008, filed on July 8, 2008)
10.10	Form of Irish law-governed Deed of Access, Insurance and Indemnity between James Hardie Industries SE, a European Company registered in Ireland, and its directors, company secretary and certain senior employees
10.11	Surrender of Freehold Lease among Brookfield Multiplex Carole Park Landowner Pty Limited (f/k/a Multiplex Carole Park Landowner Pty Limited); James Hardie Australia Pty Limited and James Hardie Industries N.V. dated October 18, 2007 re Cobalt & Silica Street, Carole Park, Queensland, Australia
10.12	Lease between Brookfield Multiplex Carole Park Landowner Pty Limited (f/k/a Multiplex Carole Park Landowner Pty Limited) and James Hardie Australia Pty Limited dated October 18, 2007 re Cobalt & Silica Street, Carole Park, Queensland, Australia
10.13	Variation of Lease dated March 23, 2004, among Brookfield Multiplex Carole Park Landowner Pty Limited (f/k/a Multiplex Carole Park Landowner Pty Limited) as successor in interest to 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 (incorporated herein by reference to Exhibit 4.21 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2004, filed on November 22, 2004)
10.14	Lease dated April 3, 2009, between Welshpool Landowner Pty and James Hardie Australia Pty Limited re premises at Rutland Avenue, Welshpool, Western Australia, Australia
10.15	Lease Amendment dated March 23, 2004, among Brookfield Multiplex Carole Park Landowner Pty Limited (f/k/a Multiplex Carole Park Landowner Pty Limited) as successor in interest to 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 (incorporated herein by reference to Exhibit 4.23 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2004, filed on November 22, 2004)

Exhibit Number	Description
10.16	Lease Agreement dated March 23, 2004 among Location Group Limited as successor in interest to 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 (incorporated herein by reference to Exhibit 4.24 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2004, filed on November 22, 2004)
10.17	Lease Agreement dated March 23, 2004 among Location Group Limited as successor in interest to 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 (incorporated herein by reference to Exhibit 4.25 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2004, filed on November 22, 2004)
10.18	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 (incorporated herein by reference to Exhibit 4.17 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2006, filed on September 29, 2006)
10.19	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 (incorporated herein by reference to Exhibit 4.25 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2005, filed on July 7, 2005)
10.20	Asset Purchase Agreement by and between James Hardie Building Products, Inc. and Cemplank, Inc., dated as of December 12, 2001 (incorporated herein by reference to Exhibit 4.26 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2005, filed on July 7, 2005)
10.21	Amended and Restated Stock Purchase Agreement dated March 12, 2002, between BPB U.S. Holdings, Inc. and James Hardie Inc. (incorporated herein by reference to Exhibit 4.27 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2005, filed on July 7, 2005)
10.22	Amended and Restated Final Funding Agreement dated November 21, 2006 (incorporated herein by reference to Exhibit 99.4 to James Hardie's report on Form 6-K, filed on January 5, 2007)
10.23	Amended FFA Amendment dated August 6, 2007 (incorporated herein by reference to Exhibit 4.22 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2008, filed on July 8, 2008)
10.24	Amended FFA Amendment dated November 8, 2007 (incorporated herein by reference to Exhibit 4.23 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2008, filed on July 8, 2008)
10.25	Amended FFA Amendment dated June 11, 2008 (incorporated herein by reference to Exhibit 4.24 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2008, filed on July 8, 2008)
10.26	Address for Service of Notice on Trustee dated June 13, 2008 (incorporated herein by reference to Exhibit 4.25 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2008, filed on July 8, 2008)
10.27	Amended FFA Amendment dated July 17, 2008
10.28	Asbestos Injuries Compensation Fund Amended and Restated Trust Deed by and between James Hardie Industries N.V. and Asbestos Injuries Compensation Fund Limited dated December 14, 2006 (incorporated herein by reference to Exhibit 4.22 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2007, filed on July 6, 2007)
10.29	Deed Poll dated June 11, 2008 — amendment of the Asbestos Injuries Compensation Fund Amended and Restated Trust Deed (incorporated herein by reference to Exhibit 4.27 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2008, filed on July 8, 2008)
10.30	Deed of Release by and among James Hardie Industries N.V., Australian Council of Trade Unions, Unions New South Wales, and Bernard Douglas Banton dated December 21, 2005 (incorporated herein by reference to Exhibit 4.23 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2006, filed on September 29, 2006)
10.31	Form of Amending Agreement (Parent Guarantee) by and among Asbestos Injuries Compensation Fund Limited, The State of New South Wales, and James Hardie Industries N.V.

Exhibit Number	Description
10.32	Deed of Release by and between James Hardie Industries N.V. and The State of New South Wales dated June 22, 2006 (incorporated herein by reference to Exhibit 4.25 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2006, filed on September 29, 2006)
10.33	Second Irrevocable Power of Attorney by and between Asbestos Injuries Compensation Fund Limited and The State of New South Wales dated December 14, 2006 (incorporated herein by reference to Exhibit 4.26 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2007, filed on July 6, 2007)
10.34	Deed of Accession by and among Asbestos Injuries Compensation Fund Limited, James Hardie Industries N.V., James Hardie 117 Pty Limited, and The State of New South Wales dated December 14, 2006 (incorporated herein by reference to Exhibit 4.27 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2007, filed on July 6, 2007)
10.35	Form of Amending Deed (Intercreditor Deed) between The State of New South Wales, James Hardie Industries N.V., Asbestos Injuries Compensation Fund Limited and AET Structured Finance Services Pty Limited
10.36	Form of Amending Deed (Performing Subsidiary Intercreditor Deed) between The State of New South Wales, James Hardie 117 Pty Limited, Asbestos Injuries Compensation Fund Limited and AET Structured Finance Services Pty Limited
10.37	Deed of Confirmation dated June 23 2009 between James Hardie Industries N.V, James Hardie 117 Pty Limited, the State of New South Wales and Asbestos Injuries Compensation Fund Limited in its capacity as trustee of the Asbestos Injuries Compensation Fund
21	List of significant subsidiaries of James Hardie Industries N.V.
23.1	Consent of PricewaterhouseCoopers LLP, independent registered public accounting firms
23.2*	Consent of Loyens & Loeff (included in the opinion filed as Exhibit 5.1 to this Registration Statement)
23.3*	Consent of PricewaterhouseCoopers LLP (included in the opinion filed as Exhibit 8.1 to this Registration Statement)
23.4*	Consent of Skadden, Arps, Slate, Meagher & Flom LLP (included in the opinion filed as Exhibit 8.2 to this Registration Statement)
23.5*	Consent of PricewaterhouseCoopers Belastingadviseurs N.V. (included in the opinion filed as Exhibit 8.3 to this Registration Statement)
23.6*	Consent of PricewaterhouseCoopers (included in the opinion filed as Exhibit 8.4 to this Registration Statement)
23.7*	Consent of PricewaterhouseCoopers LLP (included in the opinion filed as Exhibit 8.5 to this Registration Statement)
24.1	Power of Attorney of Directors of James Hardie
99.1	Direction Form (included as Annex B to the Explanatory Memorandum)
99.2	Question Form (included as Annex C to the Explanatory Memorandum)
99.3	Excerpts of the ASTC Settlement Rules as of March 31, 2009
99.4	Subdivision B, Division 3 of Part 7.2 of the Corporations Act 2001 as of January 1, 2009
99.5	ASIC Class Order 02/311, dated November 3, 2002 (incorporated herein by reference to Exhibit 99.2 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2005, filed on July 7, 2005)
99.6	ASIC Modification, dated March 7, 2002 (incorporated herein by reference to Exhibit 99.3 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2005, filed on July 7, 2005)
99.7	ASIC Class Order 04/166, dated February 26, 2004 (incorporated herein by reference to Exhibit 99.5 to James Hardie's Annual Report on Form 20-F for the year ended March 31, 2006, filed on September 29, 2006)

* To be filed by amendment.

DRAFT TERMS OF MERGER

REGARDING THE FORMATION OF SE THROUGH MERGER BY ACQUISITION

BY

JAMES HARDIE INDUSTRIES N.V.
(ACQUIRING COMPANY)

AND

JHCBM plc
(COMPANY CEASING TO EXIST)

Date: 22 June 2009

Execution copy

Loyens & Loeff N.V.
Weena 690
3012 CN Rotterdam

Ref: HJP/IG

DRAFT TERMS OF MERGER

(Formation of European company (Societas Europaea) through merger by acquisition pursuant to Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE))

DATE: 22 June 2009

THE MANAGEMENT BOARDS OF:

1. **James Hardie Industries N.V.**, a public company under Dutch law (*naamloze vennootschap*), having its official seat in Amsterdam, the Netherlands, office address at (1077 ZX) Amsterdam, the Netherlands, Strawinskylaan 3077, registered with the Trade Register in Amsterdam, the Netherlands under number 34106455, — hereinafter: the "Acquiring Company";

2. **JHCBM plc**, a public limited company incorporated under the laws of Ireland, having its registered office at Arthur Cox Building, Earlsfort Terrace, Dublin 2, Ireland, and having registered no. 471542, hereinafter: the "Company Ceasing to Exist";
the Acquiring Company and the Company Ceasing to Exist are jointly referred to as the "Merging Companies".

WHEREAS:

(i) the Acquiring Company is the holder of 39,994 shares in the capital of the Company Ceasing to Exist, each share having a nominal value of EUR 1;

(ii) Six (6) shares in the capital of the Company Ceasing to Exist are held by 6 nominee shareholders (hereinafter jointly: the "Nominee Shareholders");

(iii) the Merging Companies have not been dissolved or declared bankrupt, nor has a suspension of payment been declared with respect to the Merging Companies;

(iv) the Acquiring Company and its subsidiaries in the EU have employees in the following EU jurisdictions:

a. the Netherlands

b. United Kingdom

c. France

d. Denmark.

(v) the Company Ceasing to Exist does not have any subsidiaries in any of the EU member states and has no employees;

(vi) these draft terms of merger also incorporate the report/explanatory notes (*toelichting op het voorstel*) required pursuant to Section 2:313 paragraph 1 Dutch Civil Code ("DCC");

PROPOSE THE FORMATION OF AN SE THROUGH MERGER BY ACQUISITION as referred to in Article 17 par. 2 sub a. of the EU Council Regulation 2157/2001/EC of 8 October 2001 on the Statute for a European company (the "SE Regulation") as a result of which merger:

- the Acquiring Company will acquire the assets and liabilities of the Company Ceasing to Exist under a universal title of succession;
- the Nominee Shareholders will be granted shares in the Acquiring Company;
- the Acquiring Company shall take the form of a European public limited liability company (*Societas Europaea*) (an "SE");
- the Company Ceasing to Exist will cease to exist.

THE DATA TO BE MENTIONED PURSUANT TO ARTICLE 20 SE REGULATION, 2:312 PARAGRAPH 2, 2:326 AND 2:333D DDC AND OF REGULATION 6 OF THE EUROPEAN COMMUNITIES (MERGERS AND DIVISIONS OF COMPANIES) REGULATIONS 1987 ARE AS FOLLOWS:

A. Type of legal entity, name and official seat of the Merging Companies.

(i) The public company James Hardie Industries N.V., having its official seat at Amsterdam and having its registered office at (1077 ZX) Amsterdam, the Netherlands, Strawinskylaan 3077, the Netherlands, as per the effectuation of the merger the Acquiring Company shall be transformed into an European public company and its name shall be changed into: James Hardie Industries SE. James Hardie Industries SE shall have its official seat at Amsterdam, The Netherlands and its registered office at (1077 ZX) Amsterdam, the Netherlands, Strawinskylaan 3077.

(ii) The Irish public limited company, JHCBM plc, having its registered office at Arthur Cox Building, Earlsfort Terrace, Dublin 2, Ireland.

B. The exchange ratio of the shares.

For each share in the capital of the Company Ceasing to Exist held by a Nominee Shareholder, the applicable Nominee Shareholder will acquire 1 share in the capital of the Acquiring Company with a nominal value of EUR 0.59 and no additional financial payment shall be made. The Nominee Shareholder waives its rights pursuant to its shareholding in both the Acquiring Company and the Company Ceasing to Exist with regard to all economic rights attached to the shareholding as a consequence of which the economic value of the shareholding by the Nominee Shareholder in both the Acquiring Company and the Company Ceasing to Exist is nil.

C. Allotment of shares.

The granting of registered shares in the Acquiring Company to the Nominee Shareholders will be reflected in the deed of merger and registered in the shareholder's register of the Acquiring Company. The Nominee Shareholders do not need to be a party to the deed of merger. No share certificates shall be issued. The shares to be granted shall not be listed.

D. Date per which the Nominee Shareholders will share in the profits of the Acquiring Company.

On the basis that the beneficial ownership of the shares held by the Nominee Shareholders is in the hands of the Acquiring Company and this will equally apply once the merger is complete, the Nominee Shareholders will not have an opportunity of sharing in the profits of the Acquiring Company.

E. Date from which the transactions of the Merging Companies will be treated for accounting purposes as being those of the SE.

The transactions of the Merging Companies will be treated for accounting purposes as being those of the SE from the date that the merger by acquisition is complete.

F. Date per which the financial data of the Company Ceasing to Exist will be accounted for in the annual accounts of the Acquiring Company.

The financial data of the Company Ceasing to Exist will be accounted for in the annual accounts of the Acquiring Company for the financial year ending 31 March 2010. The last financial period of the Company Ceasing to Exist, which started at its incorporation, will end on the date that the merger by acquisition is complete.

G. Rights, compensations or other measures conferred by the SE on holders of shares to which special rights are attached and /or on holders of securities other than shares, pursuant to applicable local laws.

On its formation, the SE will not have issued any shares with special rights as meant in Article 20 par. 2 sub (f) SE Regulation. Therefore, no special rights and no compensation will be granted at the expense of the SE to anyone.

H. Benefits or special advantages to be granted to a member of the management board or of the supervisory board of the Merging Companies or to another party involved with the merger (including experts who examine the draft terms of merger), in connection with the merger.

None.

I. Articles of association of the Acquiring Company and the SE.

The articles of association of the Acquiring Company were most recently amended by deed executed on 20 August 2007 before a candidate civil-law notary substituting for Prof. Mr. M. van Olffen, civil law notary in Amsterdam. The articles of association will be amended at the merger. The consecutive wording of the current articles of association of the Acquiring Company and the articles of association as they will read after the amendment thereof in connection with the merger (i.e. the proposed articles of association of the SE) are attached as ***Annex A*** and ***Annex B*** to this draft terms of merger, respectively.

J. Procedures for employee participation.

As soon as practically possible after publishing these draft terms of merger the management boards of the Merging Companies shall take the necessary steps to start negotiations with the representatives of the employees of the Merging Companies on arrangements for the involvement of employees in Jamies Hardie Industries SE, including, but not limited to the creation of a special negotiating body, in accordance with the provisions of the Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees (the "Employee Directive"). The Company

Ceasing to Exist has no employees.

Negotiations shall commence as soon as the special negotiating body is established. The Acquiring Company reserves the right to accept the applicable standard rules (as referred to in Article 7 Employee Directive) if no arrangement is concluded within the time prescribed by the Employee Directive.

K. Intentions with regard to the composition of the management board or of the supervisory board of the Acquiring Company after the merger.

There is no intention to change the composition of the management board after the merger.

The present composition is as follows:

Management board:

- L. Gries
- R.L. Chenu
- R.E. Cox

Supervisory board:

- D.G. McGauchie
- B.P. Anderson
- R.M.J. van der Meer
- M.N. Hammes
- D.D. Harrison
- J. Osborne

L. Contemplated continuation or termination of activities.

The activities of the Company Ceasing to Exist will be continued by the Acquiring Company.

M. Corporate approvals of the draft terms of merger.

The resolution to approve the draft terms of merger and to effect the merger in conformity with the common draft terms of merger is neither subject to the approval of a company body (*orgaan*) of the Merging Companies nor of any other third party.

N. Likely effects on employment.

The merger and the transformation of the Acquiring Company into an SE is not expected to have any material effect on employment because the Company Ceasing to Exist does not have any employees, nor does it trade.

O. Effects of the merger on the goodwill and the distributable reserves of the Acquiring Company.

The merger has no material effect on the goodwill and the distributable reserves of the Acquiring Company. The Company Ceasing to Exist has no material assets and no liabilities.

P. Information on the valuation of assets and liabilities of the Company Ceasing to Exist to be acquired by the Acquiring Company.

The Company Ceasing to Exist has no assets or liabilities apart from share capital of EUR 40,000 and cash/receivables of EUR 40,000. Therefore no valuations are necessary.

Q. Dates of the Merging Companies' accounts.

The dates of the most recently adopted annual accounts / interim financial statements and any other accounts of the Merging Companies' accounts used to establish the conditions of the merger are:

Acquiring Company:
31 March 2009 (draft annual accounts)

Company Ceasing to Exist:
2 June 2009 (interim statement as at the date of incorporation)

R. Proposal for the level of compensation of shareholders that vote against the draft terms of merger.

Any shareholder in the Company Ceasing to Exist who votes against the draft terms of merger shall be entitled to have their shares bought from them by the Acquiring Company at a price of EUR 1.00 per share.

S. Shares to be cancelled pursuant to Section 2:325 paragraph 3 DCC.

Not applicable.

THE DATA TO BE MENTIONED PURSUANT TO SECTION 2:313 PARAGRAPH 1 DCC AND SECTION 2:327 DDC ARE AS FOLLOWS:

1. Reasons for the merger.

The reason for the merger is to allow the Acquiring Company to adopt the form of a European Public Company (SE).

2. Expected consequences for the activities.

None. To the extent that the Company Ceasing to Exist has any activities, these activities will be continued in the same way by the Acquiring Company.

3. Explanation from a legal, economic and social point of view.

Legal

The Company Ceasing to Exist ceases to exist and its assets and liabilities transfer to the Acquiring Company under a universal title of succession. The Acquiring Company is transformed into a European public company (SE), governed by the laws of the Netherlands.

Economic

From an economic point of view the merger has no consequences.

Social

The merger has no consequence for the employment and the employment conditions except as per the outcome of the process for employee participation as referred to in paragraph N above.

4. Method(s) for determination of exchange rate.

Preliminary remarks:

It is considered that the laws applicable to the merger dictate that shares are allocated to shareholders of the Company Ceasing to Exist, which is considered to include all holders of legal title to shares in the Company Ceasing to Exist, so including the Nominee Shareholders.

The number of shares allocable to the Nominee Shareholders is kept to a bare minimum in view of the fact they only hold legal title, while beneficial ownership is in the hands of the Acquiring Company.

In this respect, it is also noted that the shares in the Acquiring Company acquired by the Nominee Shareholders may be transferred (for nil consideration) to the Acquiring Company after the effectuation of subject merger.

Method for determination of exchange ratio

The method pursuant to which the exchange ratio has been determined does not have a specific name as such. The exchange ratio is kept as simple as possible (one share in the Acquiring Company in exchange for one share in the Company Ceasing to Exist) in view of the preliminary remarks above.

Appropriateness of method used

The method is appropriate in this particular instance as it achieves a result that is, within the parameters of the merger requirements, the most appropriate manner to achieve that the value of the interest held by the Nominee Shareholders prior to the merger is equal to that of their interest held after the merger.

Valuation result

The method used does not lead to a specific valuation.

There have been no particular difficulties at the valuation and the determination of the exchange rate.

AUDITOR STATEMENTS AND REPORT.

KPMG and Deloitte issued the following documents

a. A report on the exchange ratio as referred to in Section 2:328 paragraph 1 DCC. This report is attached to the draft terms of merger as ***Annex C*** (KPMG) ***Annex D*** (Deloitte).

b. A report on the equity of the Merging Companies as referred to in Section 2:328 paragraph 1 DCC. This report is part of ***Annex C*** (KPMG) ***Annex D*** (Deloitte).

c. The auditors' statements referred to in Section 2:328 paragraph 2 DCC have been attached to these explanatory notes as ***Annex E*** (KPMG) and ***Annex F*** (Deloitte).

ANNEXES.

Annexes to these draft terms form an integrated part of this proposal.

List of Annexes:

Annex A: current articles of association James Hardie Industries N.V. (Acquiring Company)

Annex B: articles of association James Hardie Industries SE (Acquiring Company) after amendment

Annex C: auditors' report of KPMG referred to in Section 2:328 paragraph 1 DCC

Annex D: auditors' report of Deloitte referred to in Section 2:328 paragraph 1 DCC

Annex E: auditors' statement of KPMG referred to in Section 2:328 paragraph 2 DCC

Annex F: auditors' statement of Deloitte referred to in Section 2:328 paragraph 2 DCC

[*signature page to follow*]

SIGNATURE PAGE OF DRAFT TERMS OF MERGER

Signed as of the date first written above.

Management Board James Hardie Industries N.V.:

/s/ L. Gries
L. Gries

/s/ R.L. Chenu
R.L. Chenu

/s/ R.E. Cox
R.E. Cox

Supervisory Board James Hardie Industries N.V.:

/s/ D.G. McGauchie
D.G. McGauchie

/s/ R.M.J. van der Meer
R.M.J. van der Meer

/s/ B.P. Anderson
B.P. Anderson

/s/ M.N. Hammes
M.N. Hammes

/s/ D.D. Harrison
D.D. Harrison

/s/ J. Osborne
J. Osborne

Board JHCBM plc

/s/ S. Barnett
S. Barnett

/s/ D.J. Ex
D.J. Ex

ANNEX A

The undersigned:

Martijn Rouwenhorst, kandidaat-notaris (candidate civil-law notary), acting for Professor Martin van Olffen, notaris (civil-law notary) practising in Amsterdam, who is absent with leave, declares with respect to the articles of association (the "**Articles of Association**") of the limited liability company: **James Hardie Industries N.V.**, with its corporate seat in Amsterdam, the Netherlands (the " **Company**") as follows:

(i) the Articles of Association correspond with the document in the Dutch language which is attached to this declaration;

(ii) the document in the English language attached to this declaration is an unofficial translation of the Articles of Association; if differences occur in the translation, the Dutch text will govern by law; and

(iii) the Articles of Association were most recently amended by deed (the '**Deed**") executed on 20 August 2007 before a substitute of Professor M. van Olffen, notaris (civil-law notary) in Amsterdam; according to the Deed the ministerial declaration of no-objection was granted on 16 August 2007 under number N.V. 1.000.893.

When issuing the statements included above under (i) and (iii) I, M. Rouwenhorst, substitute, based any observations entirely on the information stated in the extract from the trade register of the registration of the Company and on an official copy of the Deed.

Signed in Amsterdam on 22 August 2007.

DE BRAUW
BLACKSTONE
WESTBROEK

ARTICLES OF ASSOCIATION

of:

James Hardie Industries N.V.
with corporate seat in Amsterdam
dated 20 August 2007

CHAPTER I

Definitions.

Article 1.

Capitalised terms used in these articles of association shall have the following meaning:

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.;
Corporations Act	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;
Shareholder's Rights	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.

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 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;

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.

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 CUFS 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.

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.

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 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.

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.

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-à-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.

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-à-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 annual 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.

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.

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-à-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

(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

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;

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-à-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-à-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 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.

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.

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 annual 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 prior to the moment a vacancy occurs, 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.

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.

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-à-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.

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;

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.

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-à-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 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 of 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.

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 (*décharge*) 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;

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 twentyone (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 it's 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.

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.

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.

31.4. Written requests as referred to in article 30 paragraph 1 and article 32 paragraph 3, may be submitted electronically. Written requests as referred to in article 30 paragraph

1 and article 32 paragraph 3 shall comply with conditions stipulated by the Managing Board, which conditions shall be posted on the company's website.

Notice period. Agenda.

Article 32.

32.1. The notice convening a General Meeting shall be sent no later than on the twentyeighth 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 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-à-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.

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 the date permitted by the Law and the Listing Rules. The notice (*proeping*) of the General Meeting shall contain the record date, the procedure for registration, and the procedure for registration lodgement of valid proxies.

34.6. To the extent that the Managing Board makes use of its right as referred to in article 34.5, the Managing Board may decide that persons entitled to attend General Meetings and vote thereat may, within a period prior to the General Meeting to be set by the Managing Board, which period cannot begin prior to the record date as meant in article

34.5, cast their votes electronically in a manner to be decided by the Managing Board. Votes cast in accordance with the previous sentence are equal to votes cast at the meeting.

34.7. The Managing Board may decide that each person entitled to attend General Meetings and vote thereat may, either in person or by written proxy, vote at that meeting by electronic means of communication, provided that such person can be identified via the electronic means of communication and furthermore provided that such person can directly take note of the business transacted at the General Meeting concerned. The Managing Board may attach conditions to the use of the electronic means of communication, which conditions shall be announced at the convocation of the General Meeting and shall be posted on the company's website.

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.

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 percent (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.

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. Without prejudice to the quorum requirement as referred to in article 37.1., 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.

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.

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, Iinterim 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 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 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.

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:

Affiliated Companies	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	Australian Securities and Investments Commission;
Associate	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 the CUFS or Shares being bid for under a Take-over Bid; over a Person,

Control

(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-à-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:

(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.

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.

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:

$$\frac{\text{Person's votes}}{\text{Total votes in the Company}} \times \text{one hundred (100)}$$

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

(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 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.

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

(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:

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.

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 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.

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.

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.

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.

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.

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.

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 CUFS Holder, without any further instrument, cause the CUFS 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 CUFS were sold the purchase money less the expenses of the sale.

The Company may, by notice in writing, at any time require any CUFS 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 CUFS 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 CUFS 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 and 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 (the twentieth day of August two thousand and

seven) and the date that the General Meeting last extended the applicability of articles 49.9 and 49.10, subject to the confirmation of such extension by way of the 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 judgment from the competent court(s) in accordance with article 49.8.

ARTICLES OF ASSOCIATION

OF

JAMES HARDIE INDUSTRIES SE
(AFTER STAGE 1 AMENDMENTS)

DRAFT 8 (20 MARCH 2009)

Loyens & Loeff
Weena 690
3012 CN Rotterdam

ref: HJP/IG
#4136830-v12

CHAPTER I
Definitions.
Article 1.

Capitalised terms used in these articles of association shall have the following meaning:

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 Settlement 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 Securities Exchange;
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 Settlement Rules;
Company	James Hardie Industries SE;
Corporations Act	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 Settlement 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 Settlement Rules and the Corporations Act;
Employee	Dutch Implementation law on Council Directive
Implementation Law	2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees (*Wet rol werknemers Europese rechtspersonen)*;
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 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 laws applicable in the Netherlands, including the SE Regulation and the Employee Implementation Law;
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;
SE Implementation Law	Dutch Implementation law on SE regulation (*Uitvoeringswet verordening Europese vennootschap*);
SE Regulation	Council Regulation (EC) Number 2157/2001 of eight October two thousand and one on the Statute for a European company (SE)**;**
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;
Shareholder's Rights	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.

CHAPTER II
Name. Seat.
Article 2.

The name of the Company is: James Hardie Industries SE.

Its corporate seat and registered office is in Amsterdam, The Netherlands.

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. 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 proposal of and for a price and on such further terms and conditions to be determined by the Supervisory 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;

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.

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 ten per cent. (10%) 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 Supervisory 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 CUFS 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 Supervisory Board.

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.

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 Settlement 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 Settlement 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 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.

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.

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 or the Supervisory Board shall be sent by letter to the office of the Company or to the addresses of all members of the Managing 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-à-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.

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-à-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. Subject to Article 20, members of the Managing Board shall be appointed and be entitled to hold office as a member of the Managing Board for a continuous period 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, provided however that the CEO shall be appointed and be entitled to hold office as a member of the Managing Board for a continuous period of six years 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 annual 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.

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. 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. The Supervisory Board may decide that the person to be designated is one of its members. Such member will in that case and for the period of time of his designation not be allowed to perform acts as Supervisory Board member.

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-à-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

(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

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 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 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;

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 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 article 17.3 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-à-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-à-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 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.

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.

21.2. The Managing Board shall provide the Supervisory Board in good time with all relevant information as well as with all other information as the Supervisory Board may request, in connection with the exercise of its duties. At least once per year, the Managing Board shall inform the Supervisory 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 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. Subject to Article 26, members of the Supervisory Board shall be appointed and be entitled to hold office as a member of the Supervisory Board for a continuous period 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 annual 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 prior to the moment a vacancy occurs, 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.

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.

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.

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-à-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.

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;

e. becomes prohibited from being a member of the Supervisory Board by reason of any provision of Law; or

f. dies.

Joint meetings of the Supervisory Board and the Managing Board.
Article 27.

27.1. The Supervisory Board shall meet together with the Managing Board whenever the chairman of the Supervisory Board or two or more of its members so request. Joint meetings of the Supervisory Board and the Managing Board shall be convened by the chair of the Supervisory 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 who have requested a meeting of the Supervisory Board to be held are entitled to convene such meeting.

27.11. The Supervisory Board and the Managing Board may adopt rules on the manner of convening joint meetings of the Supervisory Board and the Managing Board 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. Non-disclosure.
Article 28.

28.1. Unless otherwise provided for by 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 or Supervisory 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 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, officer, employee or agent of the Company has been successful on the merits or otherwise in defence of any action, suit of 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, 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, 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, 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, officers, employees and agents, so that any person who is or was a member of the Managing Board, Supervisory 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.

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, 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 (*décharge*) 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 Supervisory 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;

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 it's 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.

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.

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.

31.4. Written requests as referred to in article 30 paragraph 1 and article 32 paragraph 3, may be submitted electronically. Written requests as referred to in article 30 paragraph 1 and article 32 paragraph 3 shall comply with conditions stipulated by the Managing Board, which conditions shall be posted on the company's website.

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 1.1 of the Act on Financial Supervision (*Wet op het financieel toezicht*), 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 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 each other, 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-à-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.

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 the date permitted by the Law and the Listing Rules. The notice (*oproeping*) of the General Meeting shall contain the record date, the procedure for registration, and the procedure for registration lodgement of valid proxies.

34.6. To the extent that the Managing Board makes use of its right as referred to in article 34.5, the Managing Board may decide that persons entitled to attend General Meetings and vote thereat may, within a period prior to the General Meeting to be set by the Managing Board, which period cannot begin prior to the record date as meant in article 34.5, cast their votes electronically in a manner to be decided by the Managing Board. Votes cast in accordance with the previous sentence are equal to votes cast at the meeting.

34.7. The Managing Board may decide that each person entitled to attend General Meetings and vote thereat may, either in person or by written proxy, vote at that meeting by electronic means of communication, provided that such person can be identified via the electronic means of communication and furthermore provided that such person can directly take note of the business transacted at the General Meeting concerned. The Managing Board may attach conditions to the use of the electronic means of communication, which conditions shall be announced at the convocation of the General Meeting and shall be posted on the company's website.

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.

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 percent (5%) of the issued and outstanding share capital is present or represented. Votes that attach to Shares in respect of which the Shareholder has not taken part in the vote or has abstained or has returned a blank or spoilt ballot paper 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.

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, and subject to Article 39.3, 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. Without prejudice to the quorum requirement as referred to in article 37.1, 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.

39.3. A resolution of the General Meeting to amend these Articles in connection with a transfer of the seat and head office of the Company to Ireland in accordance with the SE Regulation shall be valid if adopted by at least a two/thirds (2/3) majority of the votes cast at such General Meeting, without prejudice to the quorum requirement as referred to in Article 37.1.

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.

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 been intentionally omitted.]
Profit and Loss. Reservation. Dividend.
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 Supervisory 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 Supervisory Board, resolve to declare an interim dividend on Shares. Subject to the approval of the Supervisory 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 Supervisory 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 Supervisory 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 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 Supervisory 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 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.

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:

Affiliated Companies 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-à-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:

(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.

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 and the 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.

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:

$$\frac{\text{Person's votes}}{\text{Total votes in the Company}} \times \text{one hundred (100)}$$

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

(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 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.

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

(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:

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.

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 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 or Supervisory 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.

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.

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.

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 Supervisory Board; and

The document must also contain a statement by each member of the Managing Board and Supervisory 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.

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.

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.

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 CUFS Holder, without any further instrument, cause the CUFS referred to in the notice to be sold to the extent permitted by and in accordance with the ASTC Settlement Rules and must pay to the Person whose CUFS were sold the purchase money less the expenses of the sale.

The Company may, by notice in writing, at any time require any CUFS 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 CUFS 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 CUFS Holder shall not have any claim against the Company, the members of its Managing Board or Supervisory Board or the Shareholder for any action taken by any of them in accordance with article 49 or this article 50 or the ASTC Settlement Rules, provided that such action was taken in good faith.

CHAPTER IV
Renewal provision.
Article 51.

Articles 49.9 and 49.10 of these Articles shall lapse after a period of five (5) years from the twentieth day of August two thousand and seven and the date that the General Meeting last extended the applicability of articles 49.9 and 49.10, subject to the confirmation of such extension by way of the deposit by the Managing Board on recommendation of the Supervisory 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 judgment from the competent court(s) in accordance with article 49.8.

TRANSITORY PROVISIONS

The subject conversion and amendment of these Articles shall not affect the authorities in place for the Company as at the date hereof, which are hereby ratified and confirmed:

1. 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 and to grant rights to subscribe for Shares, which power shall end on the eighteenth day of August two thousand and ten (subject to renewal in accordance

with article 4). The authorization concerns all non-issued Shares of the authorized share capital as it reads now or shall read at some point in time. The same applies to the authorization of the Supervisory Board to limit or exclude the right of pre-emption, as provided for in article 4.4.

2. The authorisation of the Managing Board as referred to in article 6.1.c to cause the Company to acquire, subject to approval of the Supervisory Board, Shares for valuable consideration for up to the maximum permitted by Dutch law, for a consideration per Share of not less than one eurocent (EUR 0.01) and for not more than one hundred and five per cent (105%) of the average closing price of a Share in the company as quoted on the ASX in the five business days preceding the acquisition, shall end after the lapse of eighteen months after [● *two thousand and nine*[1]] (subject to renewal in accordance with article 6).

Furthermore, for the avoidance of doubt, it is noted that the subject conversion and amendment of these Articles shall not affect approvals and policies in place for the Company as at the date hereof, which are hereby ratified and confirmed (and each of those thus continues to apply unaffected until the date it would have expired if the subject conversion and amendment of these Articles had not occurred), including but not limited to:

a. The approval to reduce the issued share capital of the Company by cancelling all Shares repurchased or to be repurchased by the Company under its share repurchase program as in force on [● *two thousand and nine*[2]], the exact number of which to be determined by the Managing Board up to a maximum of ten percent of the issued share capital of the Company as at [● *two thousand and nine*[3]].

b. The policy for Managing Board remuneration as adopted by the General Meeting on the seventeenth day of August two thousand and seven.

c. The maximum aggregate amount of remuneration for members of the Supervisory Board as adopted by the General Meeting on the nineteenth day of September two thousand and six.

d. The Supervisory Board Share Plan 2006 as adopted on the seventeenth day of August two thousand and seven.

e. The James Hardie Industries NV Long Term Incentive Plan 2006 as amended by the General Meeting on the twenty-second day of August two thousand and eight.

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1 If authorization is renewed in 2009 AGM, insert date of AGM. If authorization is not renewed during 2009 AGM, insert date of latest authorization ("the twenty-second day of August two thousand and eight").

2 See footnote 1.

3 See footnote 1.

Annex C

KPMG

To: the Board of Directors of James Hardie Industries N.V., Amsterdam

Auditors' report pursuant to section 2:328, subsection 1 of the Netherlands civil code

Introduction

We have examined the accompanying proposal, dated 22 June 2009 for the merger between James Hardie Industries N.V., Amsterdam, and JHCBM plc, Dublin. Management of both companies is responsible for this proposal, which is initialled by us for identification purposes. Our responsibility is to express an opinion on the reasonableness of the ratio for exchanging shares as included in the merger proposal and on the shareholders' equity of the company ceasing to exist as referred to in Section 2:328, subsection 1 of the Netherlands Civil Code.

Scope

We conducted our audit in accordance with Dutch law. This law requires that we plan and perform the audit to obtain reasonable assurance whether;

1 the ratio for exchanging shares, as included in the merger proposal, is reasonable, as referred to in Section 2:326 of the Netherlands Civil Code;

2 the shareholders' equity of JHCBM plc, as at 22 June 2009, on the basis of valuation methods generally accepted in the Netherlands, at least corresponds to the nominal paid-up amount on the aggregate number of shares to be acquired by its shareholders under the merger.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion:

1 the ratio for exchanging shares, as included in the merger proposal, is reasonable as referred to in Section 2:326 of the Netherlands Civil Code;

2 the shareholders' equity of JHCBM plc, as at 22 June 2009, on the basis of valuation methods generally accepted in the Netherlands, at least corresponds to the nominal paid-up amount of € 3,54 on the aggregate number of shares to be acquired by its shareholders under the merger.

Restriction of use and distribution

This report is restricted to James Hardie Industries N.V. for the specific use in relation to the legal merger and is not suitable for any other purpose.

Amstelveen, 22 June 2009

KPMG ACCOUNTANTS N.V.

R.W.G. van Teeffelen RA

Initials for identification purposes

DRAFT TERMS OF MERGER

REGARDING THE FORMATION OF SE THROUGH MERGER BY ACQUISITION

BY

JAMES HARDIE INDUSTRIES N.V.
(ACQUIRING COMPANY)

AND

JHCBM plc
(COMPANY CEASING TO EXIST)

Date: 22 June 2009

Execution copy

Loyens & Loeff N.V.
Weena 690
3012 CN Rotterdam

Ref: HJP/IG

DRAFT TERMS OF MERGER

(Formation of European company (Societas Europaea) through merger by acquisition pursuant to Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE))

DATE: 22 June 2009

THE MANAGEMENT BOARDS OF:

1. **James Hardie Industries N.V.**, a public company under Dutch law (*naamloze vennootschap*), having its official seat in Amsterdam, the Netherlands, office address at (1077 ZX) Amsterdam, the Netherlands, Strawinskylaan 3077, registered with the Trade Register in Amsterdam, the Netherlands under number 34106455,
   - hereinafter: the "Acquiring Company";
2. **JHCBM plc**, a public limited company incorporated under the laws of Ireland, having its registered office at Arthur Cox Building, Earlsfort Terrace, Dublin 2, Ireland, and having registered no. 471542,
   - hereinafter: the "Company Ceasing to Exist";

   the Acquiring Company and the Company Ceasing to Exist are jointly referred to as the "Merging Companies".

WHEREAS:

(i) the Acquiring Company is the holder of 39,994 shares in the capital of the Company Ceasing to Exist, each share having a nominal value of EUR 1;

(ii) Six (6) shares in the capital of the Company Ceasing to Exist are held by 6 nominee shareholders (hereinafter jointly: the "Nominee Shareholders");

(iii) the Merging Companies have not been dissolved or declared bankrupt, nor has a suspension of payment been declared with respect to the Merging Companies;

(iv) the Acquiring Company and its subsidiaries in the EU have employees in the following EU jurisdictions:
   a. the Netherlands
   b. United Kingdom
   c. France
   d. Denmark.

(v) the Company Ceasing to Exist does not have any subsidiaries in any of the EU member states and has no employees;

(vi) these draft terms of merger also incorporate the report/explanatory notes (*toelichting op het voorstel*) required pursuant to Section 2:313 paragraph 1 Dutch Civil Code ("DCC");

KPMG

KPMG Audit
Document to which our report dated
22 JUN 2009
also refers.
Initials for identification purposes
KPMG Accountants N.V.

PROPOSE THE FORMATION OF AN SE THROUGH MERGER BY ACQUISITION as referred to in Article 17 par. 2 sub a. of the EU Council Regulation 2157/2001/EC of 8 October 2001 on the Statute for a European company (the "SE Regulation") as a result of which merger:

- the Acquiring Company will acquire the assets and liabilities of the Company Ceasing to Exist under a universal title of succession;
- the Nominee Shareholders will be granted shares in the Acquiring Company;
- the Acquiring Company shall take the form of a European public limited liability company (*Societas Europaea*) (an "SE");
- the Company Ceasing to Exist will cease to exist.

THE DATA TO BE MENTIONED PURSUANT TO ARTICLE 20 SE REGULATION, 2:312 PARAGRAPH 2, 2:326 AND 2:333D DDC AND OF REGULATION 6 OF THE EUROPEAN COMMUNITIES (MERGERS AND DIVISIONS OF COMPANIES) REGULATIONS 1987 ARE AS FOLLOWS:

A. Type of legal entity, name and official seat of the Merging Companies.

(i) The public company James Hardie Industries N.V., having its official seat at Amsterdam and having its registered office at (1077 ZX) Amsterdam, the Netherlands, Strawinskylaan 3077, the Netherlands, as per the effectuation of the merger the Acquiring Company shall be transformed into an European public company and its name shall be changed into: James Hardie Industries SE. James Hardie Industries SE shall have its official seat at Amsterdam, The Netherlands and its registered office at (1077 ZX) Amsterdam, the Netherlands, Strawinskylaan 3077.

(ii) The Irish public limited company, JHCBM plc, having its registered office at Arthur Cox Building, Earlsfort Terrace, Dublin 2, Ireland.

B. The exchange ratio of the shares.

For each share in the capital of the Company Ceasing to Exist held by a Nominee Shareholder, the applicable Nominee Shareholder will acquire 1 share in the capital of the Acquiring Company with a nominal value of EUR 0.59 and no additional financial payment shall be made. The Nominee Shareholder waives its rights pursuant to its shareholding in both the Acquiring Company and the Company Ceasing to Exist with regard to all economic rights attached to the shareholding as a consequence of which the economic value of the shareholding by the Nominee Shareholder in both the Acquiring Company and the Company Ceasing to Exist is nil.

C. Allotment of shares.

The granting of registered shares in the Acquiring Company to the Nominee Shareholders will be reflected in the deed of merger and registered in the shareholder's register of the Acquiring Company. The Nominee Shareholders do not need to be a party to the deed of merger. No share certificates shall be issued. The shares to be granted shall not be listed.

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KPMG Audit
Document to which our report dated

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D. Date per which the Nominee Shareholders will share in the profits of the Acquiring Company.

On the basis that the beneficial ownership of the shares held by the Nominee Shareholders is in the hands of the Acquiring Company and this will equally apply once the merger is complete, the Nominee Shareholders will not have an opportunity of sharing in the profits of the Acquiring Company.

E. Date from which the transactions of the Merging Companies will be treated for accounting purposes as being those of the SE.

The transactions of the Merging Companies will be treated for accounting purposes as being those of the SE from the date that the merger by acquisition is complete.

F. Date per which the financial data of the Company Ceasing to Exist will be accounted for in the annual accounts of the Acquiring Company.

The financial data of the Company Ceasing to Exist will be accounted for in the annual accounts of the Acquiring Company for the financial year ending 31 March 2010. The last financial period of the Company Ceasing to Exist, which started at its incorporation, will end on the date that the merger by acquisition is complete.

G. Rights, compensations or other measures conferred by the SE on holders of shares to which special rights are attached and /or on holders of securities other than shares, pursuant to applicable local laws.

On its formation, the SE will not have issued any shares with special rights as meant in Article 20 par. 2 sub (f) SE Regulation. Therefore, no special rights and no compensation will be granted at the expense of the SE to anyone.

H. Benefits or special advantages to be granted to a member of the management board or of the supervisory board of the Merging Companies or to another party involved with the merger (including experts who examine the draft terms of merger), in connection with the merger.

None.

I. Articles of association of the Acquiring Company and the SE.

The articles of association of the Acquiring Company were most recently amended by deed executed on 20 August 2007 before a candidate civil-law notary substituting for Prof. Mr. M. van Olffen, civil law notary in Amsterdam. The articles of association will be amended at the merger. The consecutive wording of the current articles of association of the Acquiring Company and the articles of association as they will read after the amendment thereof in connection with the merger (i.e. the proposed articles of association of the SE) are attached as ***Annex A*** and ***Annex B*** to this draft terms of merger, respectively.

J. Procedures for employee participation.

As soon as practically possible after publishing these draft terms of merger the management boards of the Merging Companies shall take the necessary steps to start negotiations with the representatives of the employees of the Merging Companies on arrangements for the involvement of employees in Jamies Hardie Industries SE, including, but not limited to the creation of a special negotiating body, in accordance with the provisions of the Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees (the "Employee Directive"). The Company Ceasing to Exist has no employees.

Negotiations shall commence as soon as the special negotiating body is established. The Acquiring Company reserves the right to accept the applicable standard rules (as referred to in Article 7 Employee Directive) if no arrangement is concluded within the time prescribed by the Employee Directive.

K. Intentions with regard to the composition of the management board or of the supervisory board of the Acquiring Company after the merger.

There is no intention to change the composition of the management board after the merger.

The present composition is as follows:
Management board:
- L. Gries
- R.L. Chenu
- R.E. Cox

Supervisory board:
- D.G. McGauchie
- B.P. Anderson
- R.M.J. van der Meer
- M.N. Hammes
- D.D. Harrison
- J. Osborne

L. Contemplated continuation or termination of activities.

The activities of the Company Ceasing to Exist will be continued by the Acquiring Company.

M. Corporate approvals of the draft terms of merger.

The resolution to approve the draft terms of merger and to effect the merger in conformity with the common draft terms of merger is neither subject to the approval of any body (*orgaan*) of the Merging Companies nor of any other third party.

N. Likely effects on employment.

The merger and the transformation of the Acquiring Company into an SE is not expected to have any material effect on employment because the Company Ceasing to Exist does not have any employees, nor does it trade.

O. Effects of the merger on the goodwill and the distributable reserves of the Acquiring Company.

The merger has no material effect on the goodwill and the distributable reserves of the Acquiring Company. The Company Ceasing to Exist has no material assets and no liabilities.

P. Information on the valuation of assets and liabilities of the Company Ceasing to Exist to be acquired by the Acquiring Company.

The Company Ceasing to Exist has no assets or liabilities apart from share capital of EUR 40,000 and cash/receivables of EUR 40,000. Therefore no valuations are necessary.

Q. Dates of the Merging Companies' accounts.

The dates of the most recently adopted annual accounts / interim financial statements and any other accounts of the Merging Companies' accounts used to establish the conditions of the merger are:

Acquiring Company:
31 March 2009 (draft annual accounts)

Company Ceasing to Exist:
2 June 2009 (interim statement as at the date of incorporation)

R. Proposal for the level of compensation of shareholders that vote against the draft terms of merger.

Any shareholder in the Company Ceasing to Exist who votes against the draft terms of merger shall be entitled to have their shares bought from them by the Acquiring Company at a price of EUR 1.00 per share.

S. Shares to be cancelled pursuant to Section 2:325 paragraph 3 DCC.

Not applicable.

KPMG

KPMG Audit
Document to which our report dated

22 JUN 2009

also refers.
Initials for identification purposes
KPMG Accountants N.V.

THE DATA TO BE MENTIONED PURSUANT TO SECTION 2:313 PARAGRAPH 1 DCC AND SECTION 2:327 DDC ARE AS FOLLOWS:

1. **Reasons for the merger.**

   The reason for the merger is to allow the Acquiring Company to adopt the form of a European Public Company (SE).

2. **Expected consequences for the activities.**

   None. To the extent that the Company Ceasing to Exist has any activities, these activities will be continued in the same way by the Acquiring Company.

3. **Explanation from a legal, economic and social point of view.**

   Legal
   The Company Ceasing to Exist ceases to exist and its assets and liabilities transfer to the Acquiring Company under a universal title of succession. The Acquiring Company is transformed into a European public company (SE), governed by the laws of the Netherlands.

   Economic
   From an economic point of view the merger has no consequences.

   Social
   The merger has no consequence for the employment and the employment conditions except as per the outcome of the process for employee participation as referred to in paragraph N above.

4. **Method(s) for determination of exchange rate.**

   Preliminary remarks:
   It is considered that the laws applicable to the merger dictate that shares are allocated to shareholders of the Company Ceasing to Exist, which is considered to include all holders of legal title to shares in the Company Ceasing to Exist, so including the Nominee Shareholders.
   The number of shares allocable to the Nominee Shareholders is kept to a bare minimum in view of the fact they only hold legal title, while beneficial ownership is in the hands of the Acquiring Company.
   In this respect, it is also noted that the shares in the Acquiring Company acquired by the Nominee Shareholders may be transferred (for nil consideration) to the Acquiring Company after the effectuation of subject merger.

   Method for determination of exchange ratio
   The method pursuant to which the exchange ratio has been determined does not have a specific name as such. The exchange ratio is kept as simple as possible (one share in the Acquiring Company in exchange for one share in the Company Ceasing to Exist) in view of the preliminary remarks above.

Appropriateness of method used
The method is appropriate in this particular instance as it achieves a result that is, within the parameters of the merger requirements, the most appropriate manner to achieve that the value of the interest held by the Nominee Shareholders prior to the merger is equal to that of their interest held after the merger.

Valuation result
The method used does not lead to a specific valuation.

There have been no particular difficulties at the valuation and the determination of the exchange rate.

AUDITOR STATEMENTS AND REPORT.

KPMG and Deloitte issued the following documents

a. A report on the exchange ratio as referred to in Section 2:328 paragraph 1 DCC. This report is attached to the draft terms of merger as ***Annex C*** (KPMG) ***Annex D*** (Deloitte).
b. A report on the equity of the Merging Companies as referred to in Section 2:328 paragraph 1 DCC. This report is part of ***Annex C*** (KPMG) ***Annex D*** (Deloitte).
c. The auditors' statements referred to in Section 2:328 paragraph 2 DCC[1] have been attached to these explanatory notes as ***Annex E*** (KPMG) and ***Annex F*** (Deloitte).

ANNEXES.

Annexes to these draft terms form an integrated part of this proposal.

List of Annexes:

Annex A: current articles of association James Hardie Industries N.V. (Acquiring Company)
Annex B: articles of association James Hardie Industries SE (Acquiring Company) after amendment
Annex C: auditors' report of KPMG referred to in Section 2:328 paragraph 1 DCC
Annex D: auditors' report of Deloitte referred to in Section 2:328 paragraph 1 DCC
Annex E: auditors' statement of KPMG referred to in Section 2:328 paragraph 2 DCC
Annex F: auditors' statement of Deloitte referred to in Section 2:328 paragraph 2 DCC

[*signature page to follow*]

KPMG

KPMG Audit
Document to which our report dated
22 JUN 2009
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[1] Statement to present views of the auditor on elements set out under 4 on the exchange ratio and related elements.

SIGNATURE PAGE OF DRAFT TERMS OF MERGER

Signed as of the date first written above.

Management Board James Hardie Industries N.V.:

L. Gries

R.L. Chenu

R.E. Cox

Supervisory Board James Hardie Industries N.V.:

D.G. McGauchie

R.M.J. van der Meer

B.P. Anderson

M.N. Hammes

D.D. Harrison

J. Osborne

Board JHCBM plc

S. Barnett

D.J. Ey

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KPMG Accountants N.V.

Annex D

Deloitte.

Deloitte Accountants B.V.
Orlyplein 10
1043 DP Amsterdam
P.O.Box 58110
1040 HC Amsterdam
Netherlands

Tel: +31 (20) 582 5000
Fax: +31 (20) 582 4055
www.deloitte.nl

To the Management Board and
Supervisory Board of
James Hardie Industries N.V.
Strawinskylaan 3077
1077 ZX Amsterdam
The Netherlands

To the Board of
JHCBM plc
Arthur Cox Building
Earlsfort Terrace
Dublin 2
Ireland

Date	From	Reference
June 22, 2009	K.L. van Dorp	K-2009-447

Auditor's report pursuant to section 2:328, subsection 1 of the Netherlands Civil Code

Introduction

We have examined the accompanying proposal, dated June 22, 2009 for the merger between James Hardie Industries N.V. (acquiring company), a public company under Dutch law, having its official seat in Amsterdam, the Netherlands, and JHCBM plc (company ceasing to exist), a public limited company incorporated under the laws of Ireland, having its registered office at Arthur Cox Building, Earlsfort Terrace, Dublin 2, Ireland. Management of both companies is responsible for this proposal, which is initialled by us for identification purposes. Our responsibility is to express an opinion on the reasonableness of the ratio for exchanging shares as included in the merger proposal and on the shareholders' equity of the company ceasing to exist as referred to in Section 2:328, subsection 1 of the Netherlands Civil Code.

Scope

We conducted our audit in accordance with Dutch law. This law requires that we plan and perform the audit to obtain reasonable assurance whether;

1. the ratio for exchanging shares, as included in the merger proposal, is reasonable, as referred to in Section 2:326 of the Netherlands Civil Code;

2. the shareholders' equity of JHCBM plc held by the nominee shareholders, as at June 22, 2009, on the basis of valuation methods generally accepted in the Netherlands, at least corresponds to the nominal paid-up amount on the aggregate number of shares to be acquired by the nominee shareholders under the merger.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion:

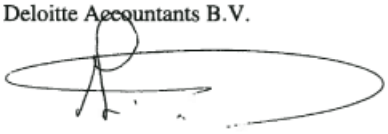
1. the ratio for exchanging shares, as included in the merger proposal, is reasonable considering the documents attached to the merger proposal;

2. the shareholders' equity of JHCBM plc held by the nominee shareholders, as at June 22, 2009, on the basis of valuation methods generally accepted in the Netherlands, at least corresponds to the nominal paid-up amount of € 3.54 on the aggregate number of shares to be acquired by the nominee shareholders under the merger.

Other matters - restriction of use (and distribution)

The merger proposal of James Hardie Industries N.V. and JHCBM plc and our auditor's report thereon are intended solely for the merger between James Hardie Industries N.V. and JHCBM plc and are not suitable for other purposes.

Deloitte Accountants B.V.



K.L. van Dorp

DRAFT TERMS OF MERGER

REGARDING THE FORMATION OF SE THROUGH MERGER BY ACQUISITION

BY

JAMES HARDIE INDUSTRIES N.V.
(ACQUIRING COMPANY)

AND

JHCBM plc
(COMPANY CEASING TO EXIST)

Date: 22 June 2009

Execution copy

Loyens & Loeff N.V.
Weena 690
3012 CN Rotterdam

Ref: HJP/IG

Signed for identification purposes only
22 June 2009

DRAFT TERMS OF MERGER

(Formation of European company (Societas Europaea) through merger by acquisition pursuant to Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE))

DATE: 22 June 2009

THE MANAGEMENT BOARDS OF:

1. **James Hardie Industries N.V.**, a public company under Dutch law (*naamloze vennootschap*), having its official seat in Amsterdam, the Netherlands, office address at (1077 ZX) Amsterdam, the Netherlands, Strawinskylaan 3077, registered with the Trade Register in Amsterdam, the Netherlands under number 34106455,
   - hereinafter: the "Acquiring Company";
2. **JHCBM plc**, a public limited company incorporated under the laws of Ireland, having its registered office at Arthur Cox Building, Earlsfort Terrace, Dublin 2, Ireland, and having registered no. 471542,
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the Acquiring Company and the Company Ceasing to Exist are jointly referred to as the "Merging Companies".

WHEREAS:

(i) the Acquiring Company is the holder of 39,994 shares in the capital of the Company Ceasing to Exist, each share having a nominal value of EUR 1;

(ii) Six (6) shares in the capital of the Company Ceasing to Exist are held by 6 nominee shareholders (hereinafter jointly: the "Nominee Shareholders");

(iii) the Merging Companies have not been dissolved or declared bankrupt, nor has a suspension of payment been declared with respect to the Merging Companies;

(iv) the Acquiring Company and its subsidiaries in the EU have employees in the following EU jurisdictions:
   a. the Netherlands
   b. United Kingdom
   c. France
   d. Denmark.

(v) the Company Ceasing to Exist does not have any subsidiaries in any of the EU member states and has no employees;

(vi) these draft terms of merger also incorporate the report/explanatory notes (*toelichting op het voorstel*) required pursuant to Section 2:313 paragraph 1 Dutch Civil Code ("DCC");

Signed for identification purposes only
22 June 2009

PROPOSE THE FORMATION OF AN SE THROUGH MERGER BY ACQUISITION as referred to in Article 17 par. 2 sub a. of the EU Council Regulation 2157/2001/EC of 8 October 2001 on the Statute for a European company (the "SE Regulation") as a result of which merger:

- the Acquiring Company will acquire the assets and liabilities of the Company Ceasing to Exist under a universal title of succession;
- the Nominee Shareholders will be granted shares in the Acquiring Company;
- the Acquiring Company shall take the form of a European public limited liability company (*Societas Europaea*) (an "SE");
- the Company Ceasing to Exist will cease to exist.

THE DATA TO BE MENTIONED PURSUANT TO ARTICLE 20 SE REGULATION, 2:312 PARAGRAPH 2, 2:326 AND 2:333D DDC AND OF REGULATION 6 OF THE EUROPEAN COMMUNITIES (MERGERS AND DIVISIONS OF COMPANIES) REGULATIONS 1987 ARE AS FOLLOWS:

A. Type of legal entity, name and official seat of the Merging Companies.

(i) The public company James Hardie Industries N.V., having its official seat at Amsterdam and having its registered office at (1077 ZX) Amsterdam, the Netherlands, Strawinskylaan 3077, the Netherlands, as per the effectuation of the merger the Acquiring Company shall be transformed into an European public company and its name shall be changed into: James Hardie Industries SE. James Hardie Industries SE shall have its official seat at Amsterdam, The Netherlands and its registered office at (1077 ZX) Amsterdam, the Netherlands, Strawinskylaan 3077.

(ii) The Irish public limited company, JHCBM plc, having its registered office at Arthur Cox Building, Earlsfort Terrace, Dublin 2, Ireland.

B. The exchange ratio of the shares.

For each share in the capital of the Company Ceasing to Exist held by a Nominee Shareholder, the applicable Nominee Shareholder will acquire 1 share in the capital of the Acquiring Company with a nominal value of EUR 0.59 and no additional financial payment shall be made. The Nominee Shareholder waives its rights pursuant to its shareholding in both the Acquiring Company and the Company Ceasing to Exist with regard to all economic rights attached to the shareholding as a consequence of which the economic value of the shareholding by the Nominee Shareholder in both the Acquiring Company and the Company Ceasing to Exist is nil.

C. Allotment of shares.

The granting of registered shares in the Acquiring Company to the Nominee Shareholders will be reflected in the deed of merger and registered in the shareholder's register of the Acquiring Company. The Nominee Shareholders do not need to be a party to the deed of merger. No share certificates shall be issued. The shares to be granted shall not be listed.

Signed for identification purposes only
22 JUNE 2009

D. Date per which the Nominee Shareholders will share in the profits of the Acquiring Company.

On the basis that the beneficial ownership of the shares held by the Nominee Shareholders is in the hands of the Acquiring Company and this will equally apply once the merger is complete, the Nominee Shareholders will not have an opportunity of sharing in the profits of the Acquiring Company.

E. Date from which the transactions of the Merging Companies will be treated for accounting purposes as being those of the SE.

The transactions of the Merging Companies will be treated for accounting purposes as being those of the SE from the date that the merger by acquisition is complete.

F. Date per which the financial data of the Company Ceasing to Exist will be accounted for in the annual accounts of the Acquiring Company.

The financial data of the Company Ceasing to Exist will be accounted for in the annual accounts of the Acquiring Company for the financial year ending 31 March 2010. The last financial period of the Company Ceasing to Exist, which started at its incorporation, will end on the date that the merger by acquisition is complete.

G. Rights, compensations or other measures conferred by the SE on holders of shares to which special rights are attached and /or on holders of securities other than shares, pursuant to applicable local laws.

On its formation, the SE will not have issued any shares with special rights as meant in Article 20 par. 2 sub (f) SE Regulation. Therefore, no special rights and no compensation will be granted at the expense of the SE to anyone.

H. Benefits or special advantages to be granted to a member of the management board or of the supervisory board of the Merging Companies or to another party involved with the merger (including experts who examine the draft terms of merger), in connection with the merger.

None.

I. Articles of association of the Acquiring Company and the SE.

The articles of association of the Acquiring Company were most recently amended by deed executed on 20 August 2007 before a candidate civil-law notary substituting for Prof. Mr. M. van Olffen, civil law notary in Amsterdam. The articles of association will be amended at the merger. The consecutive wording of the current articles of association of the Acquiring Company and the articles of association as they will read after the amendment thereof in connection with the merger (i.e. the proposed articles of association of the SE) are attached as ***Annex A*** and ***Annex B*** to this draft terms of merger, respectively.

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J. Procedures for employee participation.

As soon as practically possible after publishing these draft terms of merger the management boards of the Merging Companies shall take the necessary steps to start negotiations with the representatives of the employees of the Merging Companies on arrangements for the involvement of employees in Jamies Hardie Industries SE, including, but not limited to the creation of a special negotiating body, in accordance with the provisions of the Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees (the "Employee Directive"). The Company Ceasing to Exist has no employees.

Negotiations shall commence as soon as the special negotiating body is established. The Acquiring Company reserves the right to accept the applicable standard rules (as referred to in Article 7 Employee Directive) if no arrangement is concluded within the time prescribed by the Employee Directive.

K. Intentions with regard to the composition of the management board or of the supervisory board of the Acquiring Company after the merger.

There is no intention to change the composition of the management board after the merger.

The present composition is as follows:
Management board:
- L. Gries
- R.L. Chenu
- R.E. Cox

Supervisory board:
- D.G. McGauchie
- B.P. Anderson
- R.M.J. van der Meer
- M.N. Hammes
- D.D. Harrison
- J. Osborne

L. Contemplated continuation or termination of activities.

The activities of the Company Ceasing to Exist will be continued by the Acquiring Company.

M. Corporate approvals of the draft terms of merger.

The resolution to approve the draft terms of merger and to effect the merger in conformity with the common draft terms of merger is neither subject to the approval of a company body (*orgaan*) of the Merging Companies nor of any other third party.

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22 JUNE 2009

N. Likely effects on employment.

The merger and the transformation of the Acquiring Company into an SE is not expected to have any material effect on employment because the Company Ceasing to Exist does not have any employees, nor does it trade.

O. Effects of the merger on the goodwill and the distributable reserves of the Acquiring Company.

The merger has no material effect on the goodwill and the distributable reserves of the Acquiring Company. The Company Ceasing to Exist has no material assets and no liabilities.

P. Information on the valuation of assets and liabilities of the Company Ceasing to Exist to be acquired by the Acquiring Company.

The Company Ceasing to Exist has no assets or liabilities apart from share capital of EUR 40,000 and cash/receivables of EUR 40,000. Therefore no valuations are necessary.

Q. Dates of the Merging Companies' accounts.

The dates of the most recently adopted annual accounts / interim financial statements and any other accounts of the Merging Companies' accounts used to establish the conditions of the merger are:

Acquiring Company:
31 March 2009 (draft annual accounts)

Company Ceasing to Exist:
2 June 2009 (interim statement as at the date of incorporation)

R. Proposal for the level of compensation of shareholders that vote against the draft terms of merger.

Any shareholder in the Company Ceasing to Exist who votes against the draft terms of merger shall be entitled to have their shares bought from them by the Acquiring Company at a price of EUR 1.00 per share.

S. Shares to be cancelled pursuant to Section 2:325 paragraph 3 DCC.

Not applicable.

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22 JUNE 2009

THE DATA TO BE MENTIONED PURSUANT TO SECTION 2:313 PARAGRAPH 1 DCC AND SECTION 2:327 DDC ARE AS FOLLOWS:

1. **Reasons for the merger.**

   The reason for the merger is to allow the Acquiring Company to adopt the form of a European Public Company (SE).

2. **Expected consequences for the activities.**

   None. To the extent that the Company Ceasing to Exist has any activities, these activities will be continued in the same way by the Acquiring Company.

3. **Explanation from a legal, economic and social point of view.**

   Legal
   The Company Ceasing to Exist ceases to exist and its assets and liabilities transfer to the Acquiring Company under a universal title of succession. The Acquiring Company is transformed into a European public company (SE), governed by the laws of the Netherlands.

   Economic
   From an economic point of view the merger has no consequences.

   Social
   The merger has no consequence for the employment and the employment conditions except as per the outcome of the process for employee participation as referred to in paragraph N above.

4. **Method(s) for determination of exchange rate.**

   Preliminary remarks:
   It is considered that the laws applicable to the merger dictate that shares are allocated to shareholders of the Company Ceasing to Exist, which is considered to include all holders of legal title to shares in the Company Ceasing to Exist, so including the Nominee Shareholders.
   The number of shares allocable to the Nominee Shareholders is kept to a bare minimum in view of the fact they only hold legal title, while beneficial ownership is in the hands of the Acquiring Company.
   In this respect, it is also noted that the shares in the Acquiring Company acquired by the Nominee Shareholders may be transferred (for nil consideration) to the Acquiring Company after the effectuation of subject merger.

   Method for determination of exchange ratio
   The method pursuant to which the exchange ratio has been determined does not have a specific name as such. The exchange ratio is kept as simple as possible (one share in the Acquiring Company in exchange for one share in the Company Ceasing to Exist) in view of the preliminary remarks above.

Signed for identification purposes only
22 JUNE 2009

Appropriateness of method used
The method is appropriate in this particular instance as it achieves a result that is, within the parameters of the merger requirements, the most appropriate manner to achieve that the value of the interest held by the Nominee Shareholders prior to the merger is equal to that of their interest held after the merger.

Valuation result
The method used does not lead to a specific valuation.

There have been no particular difficulties at the valuation and the determination of the exchange rate.

AUDITOR STATEMENTS AND REPORT.

KPMG and Deloitte issued the following documents

a. A report on the exchange ratio as referred to in Section 2:328 paragraph 1 DCC. This report is attached to the draft terms of merger as ***Annex C*** (KPMG) ***Annex D*** (Deloitte).
b. A report on the equity of the Merging Companies as referred to in Section 2:328 paragraph 1 DCC. This report is part of ***Annex C*** (KPMG) ***Annex D*** (Deloitte).
c. The auditors' statements referred to in Section 2:328 paragraph 2 DCC[1] have been attached to these explanatory notes as ***Annex E*** (KPMG) and ***Annex F*** (Deloitte).

ANNEXES.

Annexes to these draft terms form an integrated part of this proposal.

List of Annexes:

Annex A:	current articles of association James Hardie Industries N.V. (Acquiring Company)
Annex B:	articles of association James Hardie Industries SE (Acquiring Company) after amendment
Annex C:	auditors' report of KPMG referred to in Section 2:328 paragraph 1 DCC
Annex D:	auditors' report of Deloitte referred to in Section 2:328 paragraph 1 DCC
Annex E:	auditors' statement of KPMG referred to in Section 2:328 paragraph 2 DCC
Annex F:	auditors' statement of Deloitte referred to in Section 2:328 paragraph 2 DCC

[*signature page to follow*]

1 Statement to present views of the auditor on elements set out under 4 on the exchange ratio and related elements.

Signed for identification purposes only
22 June 2019

SIGNATURE PAGE OF DRAFT TERMS OF MERGER

Signed as of the date first written above.

Management Board James Hardie Industries N.V.:

L. Gries

R.L. Chenu

R.E. Cox

Supervisory Board James Hardie Industries N.V.:

D.G. McGauchie

R.M.J. van der Meer

B.P. Anderson

M.N. Hammes

D.D. Harrison

J. Osborne

Board JHCBM plc

S. Barnett

D.J. Ey

Signed for identification purposes only
22 June 2021

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D.D. Harrison

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Board JHCBM plc

S. Barnett

D.J. Ex

Execution copy
#4139255-v14

Signed for identification purposes only
22 June 2009

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L. Gries	R.L. Chenu
R.E. Cox	

Supervisory Board James Hardie Industries N.V.:

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22/JUNE/2009

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Board JHCBM plc

S. Barnett

D.J. Ex

Execution copy
#4139255-v14

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22 JUNE 2009

Annex E

KPMG

To: the Board of Directors of James Hardie Industries N.V., Amsterdam

Auditor's statement pursuant to section 2:328, subsection 2 of the Netherlands civil code

Introduction

We have examined the accompanying information provided by management, in accordance with Section 2:327 of the Netherlands Civil Code, as included in the notes to the proposal for the merger dated 22 June 2009 between James Hardie Industries N.V., Amsterdam, and JHCBM plc, Dublin. Management of both companies is responsible for this information, which is initialled by us for identification purposes. Our responsibility is to issue an auditor's statement as referred to in section 2:328, subsection 2 of the Netherlands Civil Code.

Scope

We conducted our examination in accordance with Dutch law. This law requires that we plan and perform the examination to obtain reasonable assurance whether the information provided by management meets the requirements of Section 2:327 of the Netherlands Civil Code.

We believe that the evidence we have obtained is sufficient and appropriate to provide a basis for our conclusion.

Conclusion

We conclude that the information included in the notes to the merger proposal meets the requirements of Section 2:327 of the Netherlands Civil Code.

Restriction of use and distribution

This statement is restricted to James Hardie Industries N.V. for the use of the legal merger and is not suitable for any other purpose.

Amstelveen, 22 June 2009

KPMG ACCOUNTANTS N.V.

R.W.G. van Teeffelen RA

Initials for identification purposes

DRAFT TERMS OF MERGER

REGARDING THE FORMATION OF SE THROUGH MERGER BY ACQUISITION

BY

JAMES HARDIE INDUSTRIES N.V.
(ACQUIRING COMPANY)

AND

JHCBM plc
(COMPANY CEASING TO EXIST)

Date: 22 June 2009

Execution copy

Loyens & Loeff N.V.
Weena 690
3012 CN Rotterdam

Ref: HJP/IG

DRAFT TERMS OF MERGER

(Formation of European company (Societas Europaea) through merger by acquisition pursuant to Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE))

DATE: 22 June 2009

THE MANAGEMENT BOARDS OF:

1. **James Hardie Industries N.V.**, a public company under Dutch law (*naamloze vennootschap*), having its official seat in Amsterdam, the Netherlands, office address at (1077 ZX) Amsterdam, the Netherlands, Strawinskylaan 3077, registered with the Trade Register in Amsterdam, the Netherlands under number 34106455,
   - hereinafter: the "Acquiring Company";
2. **JHCBM plc**, a public limited company incorporated under the laws of Ireland, having its registered office at Arthur Cox Building, Earlsfort Terrace, Dublin 2, Ireland, and having registered no. 471542,
   - hereinafter: the "Company Ceasing to Exist";

   the Acquiring Company and the Company Ceasing to Exist are jointly referred to as the "Merging Companies".

WHEREAS:

(i) the Acquiring Company is the holder of 39,994 shares in the capital of the Company Ceasing to Exist, each share having a nominal value of EUR 1;

(ii) Six (6) shares in the capital of the Company Ceasing to Exist are held by 6 nominee shareholders (hereinafter jointly: the "Nominee Shareholders");

(iii) the Merging Companies have not been dissolved or declared bankrupt, nor has a suspension of payment been declared with respect to the Merging Companies;

(iv) the Acquiring Company and its subsidiaries in the EU have employees in the following EU jurisdictions:
   a. the Netherlands
   b. United Kingdom
   c. France
   d. Denmark.

(v) the Company Ceasing to Exist does not have any subsidiaries in any of the EU member states and has no employees;

(vi) these draft terms of merger also incorporate the report/explanatory notes (*toelichting op het voorstel*) required pursuant to Section 2:313 paragraph 1 Dutch Civil Code ("DCC");

KPMG
KPMG Audit
Document to which our report dated
22 JUN 2009
also refers.
Initials for identification purposes
KPMG Accountants N.V.

PROPOSE THE FORMATION OF AN SE THROUGH MERGER BY ACQUISITION as referred to in Article 17 par. 2 sub a. of the EU Council Regulation 2157/2001/EC of 8 October 2001 on the Statute for a European company (the "SE Regulation") as a result of which merger:

- the Acquiring Company will acquire the assets and liabilities of the Company Ceasing to Exist under a universal title of succession;
- the Nominee Shareholders will be granted shares in the Acquiring Company;
- the Acquiring Company shall take the form of a European public limited liability company (*Societas Europaea*) (an "SE");
- the Company Ceasing to Exist will cease to exist.

THE DATA TO BE MENTIONED PURSUANT TO ARTICLE 20 SE REGULATION, 2:312 PARAGRAPH 2, 2:326 AND 2:333D DDC AND OF REGULATION 6 OF THE EUROPEAN COMMUNITIES (MERGERS AND DIVISIONS OF COMPANIES) REGULATIONS 1987 ARE AS FOLLOWS:

A. Type of legal entity, name and official seat of the Merging Companies.

(i) The public company James Hardie Industries N.V., having its official seat at Amsterdam and having its registered office at (1077 ZX) Amsterdam, the Netherlands, Strawinskylaan 3077, the Netherlands, as per the effectuation of the merger the Acquiring Company shall be transformed into an European public company and its name shall be changed into: James Hardie Industries SE. James Hardie Industries SE shall have its official seat at Amsterdam, The Netherlands and its registered office at (1077 ZX) Amsterdam, the Netherlands, Strawinskylaan 3077.

(ii) The Irish public limited company, JHCBM plc, having its registered office at Arthur Cox Building, Earlsfort Terrace, Dublin 2, Ireland.

B. The exchange ratio of the shares.

For each share in the capital of the Company Ceasing to Exist held by a Nominee Shareholder, the applicable Nominee Shareholder will acquire 1 share in the capital of the Acquiring Company with a nominal value of EUR 0.59 and no additional financial payment shall be made. The Nominee Shareholder waives its rights pursuant to its shareholding in both the Acquiring Company and the Company Ceasing to Exist with regard to all economic rights attached to the shareholding as a consequence of which the economic value of the shareholding by the Nominee Shareholder in both the Acquiring Company and the Company Ceasing to Exist is nil.

C. Allotment of shares.

The granting of registered shares in the Acquiring Company to the Nominee Shareholders will be reflected in the deed of merger and registered in the shareholder's register of the Acquiring Company. The Nominee Shareholders do not need to be a party to the deed of merger. No share certificates shall be issued. The shares to be granted shall not be listed.

D. Date per which the Nominee Shareholders will share in the profits of the Acquiring Company.

On the basis that the beneficial ownership of the shares held by the Nominee Shareholders is in the hands of the Acquiring Company and this will equally apply once the merger is complete, the Nominee Shareholders will not have an opportunity of sharing in the profits of the Acquiring Company.

E. Date from which the transactions of the Merging Companies will be treated for accounting purposes as being those of the SE.

The transactions of the Merging Companies will be treated for accounting purposes as being those of the SE from the date that the merger by acquisition is complete.

F. Date per which the financial data of the Company Ceasing to Exist will be accounted for in the annual accounts of the Acquiring Company.

The financial data of the Company Ceasing to Exist will be accounted for in the annual accounts of the Acquiring Company for the financial year ending 31 March 2010. The last financial period of the Company Ceasing to Exist, which started at its incorporation, will end on the date that the merger by acquisition is complete.

G. Rights, compensations or other measures conferred by the SE on holders of shares to which special rights are attached and /or on holders of securities other than shares, pursuant to applicable local laws.

On its formation, the SE will not have issued any shares with special rights as meant in Article 20 par. 2 sub (f) SE Regulation. Therefore, no special rights and no compensation will be granted at the expense of the SE to anyone.

H. Benefits or special advantages to be granted to a member of the management board or of the supervisory board of the Merging Companies or to another party involved with the merger (including experts who examine the draft terms of merger), in connection with the merger.

None.

I. Articles of association of the Acquiring Company and the SE.

The articles of association of the Acquiring Company were most recently amended by deed executed on 20 August 2007 before a candidate civil-law notary substituting for Prof. Mr. M. van Olffen, civil law notary in Amsterdam. The articles of association will be amended at the merger. The consecutive wording of the current articles of association of the Acquiring Company and the articles of association as they will read after the amendment thereof in connection with the merger (i.e. the proposed articles of association of the SE) are attached as ***Annex A*** and ***Annex B*** to this draft terms of merger, respectively.

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As soon as practically possible after publishing these draft terms of merger the management boards of the Merging Companies shall take the necessary steps to start negotiations with the representatives of the employees of the Merging Companies on arrangements for the involvement of employees in Jamies Hardie Industries SE, including, but not limited to the creation of a special negotiating body, in accordance with the provisions of the Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees (the "Employee Directive"). The Company Ceasing to Exist has no employees.

Negotiations shall commence as soon as the special negotiating body is established. The Acquiring Company reserves the right to accept the applicable standard rules (as referred to in Article 7 Employee Directive) if no arrangement is concluded within the time prescribed by the Employee Directive.

K. Intentions with regard to the composition of the management board or of the supervisory board of the Acquiring Company after the merger.

There is no intention to change the composition of the management board after the merger.

The present composition is as follows:
Management board:
- L. Gries
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Supervisory board:
- D.G. McGauchie
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L. Contemplated continuation or termination of activities.

The activities of the Company Ceasing to Exist will be continued by the Acquiring Company.

M. Corporate approvals of the draft terms of merger.

The resolution to approve the draft terms of merger and to effect the merger in conformity with the common draft terms of merger is neither subject to the approval of any company body (*orgaan*) of the Merging Companies nor of any other third party.

N. Likely effects on employment.

The merger and the transformation of the Acquiring Company into an SE is not expected to have any material effect on employment because the Company Ceasing to Exist does not have any employees, nor does it trade.

O. Effects of the merger on the goodwill and the distributable reserves of the Acquiring Company.

The merger has no material effect on the goodwill and the distributable reserves of the Acquiring Company. The Company Ceasing to Exist has no material assets and no liabilities.

P. Information on the valuation of assets and liabilities of the Company Ceasing to Exist to be acquired by the Acquiring Company.

The Company Ceasing to Exist has no assets or liabilities apart from share capital of EUR 40,000 and cash/receivables of EUR 40,000. Therefore no valuations are necessary.

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The dates of the most recently adopted annual accounts / interim financial statements and any other accounts of the Merging Companies' accounts used to establish the conditions of the merger are:

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31 March 2009 (draft annual accounts)

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S. Shares to be cancelled pursuant to Section 2:325 paragraph 3 DCC.

Not applicable.

THE DATA TO BE MENTIONED PURSUANT TO SECTION 2:313 PARAGRAPH 1 DCC AND SECTION 2:327 DDC ARE AS FOLLOWS:

1. **Reasons for the merger.**

   The reason for the merger is to allow the Acquiring Company to adopt the form of a European Public Company (SE).

2. **Expected consequences for the activities.**

   None. To the extent that the Company Ceasing to Exist has any activities, these activities will be continued in the same way by the Acquiring Company.

3. **Explanation from a legal, economic and social point of view.**

   Legal
   The Company Ceasing to Exist ceases to exist and its assets and liabilities transfer to the Acquiring Company under a universal title of succession. The Acquiring Company is transformed into a European public company (SE), governed by the laws of the Netherlands.

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   From an economic point of view the merger has no consequences.

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   The merger has no consequence for the employment and the employment conditions except as per the outcome of the process for employee participation as referred to in paragraph N above.

4. **Method(s) for determination of exchange rate.**

   Preliminary remarks:
   It is considered that the laws applicable to the merger dictate that shares are allocated to shareholders of the Company Ceasing to Exist, which is considered to include all holders of legal title to shares in the Company Ceasing to Exist, so including the Nominee Shareholders.
   The number of shares allocable to the Nominee Shareholders is kept to a bare minimum in view of the fact they only hold legal title, while beneficial ownership is in the hands of the Acquiring Company.
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   The method pursuant to which the exchange ratio has been determined does not have a specific name as such. The exchange ratio is kept as simple as possible (one share in the Acquiring Company in exchange for one share in the Company Ceasing to Exist) in view of the preliminary remarks above.

Appropriateness of method used
The method is appropriate in this particular instance as it achieves a result that is, within the parameters of the merger requirements, the most appropriate manner to achieve that the value of the interest held by the Nominee Shareholders prior to the merger is equal to that of their interest held after the merger.

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The method used does not lead to a specific valuation.

There have been no particular difficulties at the valuation and the determination of the exchange rate.

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KPMG and Deloitte issued the following documents

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Annex D: auditors' report of Deloitte referred to in Section 2:328 paragraph 1 DCC
Annex E: auditors' statement of KPMG referred to in Section 2:328 paragraph 2 DCC
Annex F: auditors' statement of Deloitte referred to in Section 2:328 paragraph 2 DCC

[*signature page to follow*]

KPMG

KPMG Audit
Document to which our report dated
22 JUN 2009
also refers.
Initials for identification purposes
KPMG Accountants N.V.

[1] Statement to present views of the auditor on elements set out under 4 on the exchange ratio and related elements.

SIGNATURE PAGE OF DRAFT TERMS OF MERGER

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Management Board James Hardie Industries N.V.:

L. Gries

R.L. Chenu

R.E. Cox

Supervisory Board James Hardie Industries N.V.:

D.G. McGauchie

R.M.J. van der Meer

B.P. Anderson

M.N. Hammes

D.D. Harrison

J. Osborne

Board JHCBM plc

S. Barnett

D.J. Ey

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Annex F

Deloitte.

Deloitte Accountants B.V.
Orlyplein 10
1043 DP Amsterdam
P.O.Box 58110
1040 HC Amsterdam
Netherlands

Tel: +31 (20) 582 5000
Fax: +31 (20) 582 4055
www.deloitte.nl

To the Management Board and
Supervisory Board of
James Hardie Industries N.V.
Strawinskylaan 3077
1077 ZX Amsterdam
The Netherlands

To the Board of
JHCBM plc
Arthur Cox Building
Earlsfort Terrace
Dublin 2
Ireland

Date	From	Reference
June 22, 2009	K.L. van Dorp	K-2009-448

Auditor's statement pursuant to section 2:328, subsection 2 of the Netherlands Civil Code

Introduction

We have examined the accompanying information provided by management, in accordance with Section 2:327 of the Netherlands Civil Code, as included in the notes to the proposal for a merger dated June 22, 2009 between James Hardie Industries N.V. (acquiring company), a public company under Dutch law, having its official seat in Amsterdam, the Netherlands, and JHCBM plc (company ceasing to exist), a public limited company incorporated under the laws of Ireland, having its registered office at Arthur Cox Building, Earlsfort Terrace, Dublin 2, Ireland. Management of both companies is responsible for this information, which is initialled by us for identification purposes. Our responsibility is to issue an auditor's statement as referred to in section 2:328, subsection 2 of the Netherlands Civil Code.

Scope

We conducted our examination in accordance with Dutch law. This law requires that we plan and perform the examination to obtain reasonable assurance whether the information provided by management meets the requirements of Section 2:327 of the Netherlands Civil Code.

We believe that the evidence we have obtained is sufficient and appropriate to provide a basis for our conclusion.

Conclusion

We conclude that the information included in the notes to the merger proposal meets the requirements of Section 2:327 of the Netherlands Civil Code:

Deloitte.

Other matter – restriction of use (and distribution)

The information in the notes to the merger proposal of James Hardie Industries N.V. and JHCBM plc and our auditor's statement thereon are intended solely for the merger between James Hardie Industries N.V. and JHCBM plc and are not suitable for other purposes.

Deloitte Accountants B.V.

K.L. van Dorp

DRAFT TERMS OF MERGER

REGARDING THE FORMATION OF SE THROUGH MERGER BY ACQUISITION

BY

JAMES HARDIE INDUSTRIES N.V.
(ACQUIRING COMPANY)

AND

JHCBM plc
(COMPANY CEASING TO EXIST)

Date: 22 June 2009

Execution copy

Loyens & Loeff N.V.
Weena 690
3012 CN Rotterdam

Ref: HJP/IG

Signed for identification purposes only
22 June 2009

DRAFT TERMS OF MERGER

(Formation of European company (Societas Europaea) through merger by acquisition pursuant to Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE))

DATE: 22 June 2009

THE MANAGEMENT BOARDS OF:

1. **James Hardie Industries N.V.**, a public company under Dutch law (*naamloze vennootschap*), having its official seat in Amsterdam, the Netherlands, office address at (1077 ZX) Amsterdam, the Netherlands, Strawinskylaan 3077, registered with the Trade Register in Amsterdam, the Netherlands under number 34106455,
   - hereinafter: the "Acquiring Company";
2. **JHCBM plc**, a public limited company incorporated under the laws of Ireland, having its registered office at Arthur Cox Building, Earlsfort Terrace, Dublin 2, Ireland, and having registered no. 471542,
   - hereinafter: the "Company Ceasing to Exist";

the Acquiring Company and the Company Ceasing to Exist are jointly referred to as the "Merging Companies".

WHEREAS:

(i) the Acquiring Company is the holder of 39,994 shares in the capital of the Company Ceasing to Exist, each share having a nominal value of EUR 1;

(ii) Six (6) shares in the capital of the Company Ceasing to Exist are held by 6 nominee shareholders (hereinafter jointly: the "Nominee Shareholders");

(iii) the Merging Companies have not been dissolved or declared bankrupt, nor has a suspension of payment been declared with respect to the Merging Companies;

(iv) the Acquiring Company and its subsidiaries in the EU have employees in the following EU jurisdictions:
   a. the Netherlands
   b. United Kingdom
   c. France
   d. Denmark.

(v) the Company Ceasing to Exist does not have any subsidiaries in any of the EU member states and has no employees;

(vi) these draft terms of merger also incorporate the report/explanatory notes (*toelichting op het voorstel*) required pursuant to Section 2:313 paragraph 1 Dutch Civil Code ("DCC");

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22 June 2009

PROPOSE THE FORMATION OF AN SE THROUGH MERGER BY ACQUISITION as referred to in Article 17 par. 2 sub a. of the EU Council Regulation 2157/2001/EC of 8 October 2001 on the Statute for a European company (the "SE Regulation") as a result of which merger:

- the Acquiring Company will acquire the assets and liabilities of the Company Ceasing to Exist under a universal title of succession;
- the Nominee Shareholders will be granted shares in the Acquiring Company;
- the Acquiring Company shall take the form of a European public limited liability company (*Societas Europaea*) (an "SE");
- the Company Ceasing to Exist will cease to exist.

THE DATA TO BE MENTIONED PURSUANT TO ARTICLE 20 SE REGULATION, 2:312 PARAGRAPH 2, 2:326 AND 2:333D DDC AND OF REGULATION 6 OF THE EUROPEAN COMMUNITIES (MERGERS AND DIVISIONS OF COMPANIES) REGULATIONS 1987 ARE AS FOLLOWS:

A. Type of legal entity, name and official seat of the Merging Companies.

(i) The public company James Hardie Industries N.V., having its official seat at Amsterdam and having its registered office at (1077 ZX) Amsterdam, the Netherlands, Strawinskylaan 3077, the Netherlands, as per the effectuation of the merger the Acquiring Company shall be transformed into an European public company and its name shall be changed into: James Hardie Industries SE. James Hardie Industries SE shall have its official seat at Amsterdam, The Netherlands and its registered office at (1077 ZX) Amsterdam, the Netherlands, Strawinskylaan 3077.

(ii) The Irish public limited company, JHCBM plc, having its registered office at Arthur Cox Building, Earlsfort Terrace, Dublin 2, Ireland.

B. The exchange ratio of the shares.

For each share in the capital of the Company Ceasing to Exist held by a Nominee Shareholder, the applicable Nominee Shareholder will acquire 1 share in the capital of the Acquiring Company with a nominal value of EUR 0.59 and no additional financial payment shall be made. The Nominee Shareholder waives its rights pursuant to its shareholding in both the Acquiring Company and the Company Ceasing to Exist with regard to all economic rights attached to the shareholding as a consequence of which the economic value of the shareholding by the Nominee Shareholder in both the Acquiring Company and the Company Ceasing to Exist is nil.

C. Allotment of shares.

The granting of registered shares in the Acquiring Company to the Nominee Shareholders will be reflected in the deed of merger and registered in the shareholder's register of the Acquiring Company. The Nominee Shareholders do not need to be a party to the deed of merger. No share certificates shall be issued. The shares to be granted shall not be listed.

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22 JUNE 2009

D. Date per which the Nominee Shareholders will share in the profits of the Acquiring Company.

On the basis that the beneficial ownership of the shares held by the Nominee Shareholders is in the hands of the Acquiring Company and this will equally apply once the merger is complete, the Nominee Shareholders will not have an opportunity of sharing in the profits of the Acquiring Company.

E. Date from which the transactions of the Merging Companies will be treated for accounting purposes as being those of the SE.

The transactions of the Merging Companies will be treated for accounting purposes as being those of the SE from the date that the merger by acquisition is complete.

F. Date per which the financial data of the Company Ceasing to Exist will be accounted for in the annual accounts of the Acquiring Company.

The financial data of the Company Ceasing to Exist will be accounted for in the annual accounts of the Acquiring Company for the financial year ending 31 March 2010. The last financial period of the Company Ceasing to Exist, which started at its incorporation, will end on the date that the merger by acquisition is complete.

G. Rights, compensations or other measures conferred by the SE on holders of shares to which special rights are attached and /or on holders of securities other than shares, pursuant to applicable local laws.

On its formation, the SE will not have issued any shares with special rights as meant in Article 20 par. 2 sub (f) SE Regulation. Therefore, no special rights and no compensation will be granted at the expense of the SE to anyone.

H. Benefits or special advantages to be granted to a member of the management board or of the supervisory board of the Merging Companies or to another party involved with the merger (including experts who examine the draft terms of merger), in connection with the merger.

None.

I. Articles of association of the Acquiring Company and the SE.

The articles of association of the Acquiring Company were most recently amended by deed executed on 20 August 2007 before a candidate civil-law notary substituting for Prof. Mr. M. van Olffen, civil law notary in Amsterdam. The articles of association will be amended at the merger. The consecutive wording of the current articles of association of the Acquiring Company and the articles of association as they will read after the amendment thereof in connection with the merger (i.e. the proposed articles of association of the SE) are attached as ***Annex A*** and ***Annex B*** to this draft terms of merger, respectively.

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J. Procedures for employee participation.

As soon as practically possible after publishing these draft terms of merger the management boards of the Merging Companies shall take the necessary steps to start negotiations with the representatives of the employees of the Merging Companies on arrangements for the involvement of employees in Jamies Hardie Industries SE, including, but not limited to the creation of a special negotiating body, in accordance with the provisions of the Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees (the "Employee Directive"). The Company Ceasing to Exist has no employees.

Negotiations shall commence as soon as the special negotiating body is established. The Acquiring Company reserves the right to accept the applicable standard rules (as referred to in Article 7 Employee Directive) if no arrangement is concluded within the time prescribed by the Employee Directive.

K. Intentions with regard to the composition of the management board or of the supervisory board of the Acquiring Company after the merger.

There is no intention to change the composition of the management board after the merger.

The present composition is as follows:
Management board:
- L. Gries
- R.L. Chenu
- R.E. Cox

Supervisory board:
- D.G. McGauchie
- B.P. Anderson
- R.M.J. van der Meer
- M.N. Hammes
- D.D. Harrison
- J. Osborne

L. Contemplated continuation or termination of activities.

The activities of the Company Ceasing to Exist will be continued by the Acquiring Company.

M. Corporate approvals of the draft terms of merger.

The resolution to approve the draft terms of merger and to effect the merger in conformity with the common draft terms of merger is neither subject to the approval of a company body (*orgaan*) of the Merging Companies nor of any other third party.

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22 JUNE 2009

N. Likely effects on employment.

The merger and the transformation of the Acquiring Company into an SE is not expected to have any material effect on employment because the Company Ceasing to Exist does not have any employees, nor does it trade.

O. Effects of the merger on the goodwill and the distributable reserves of the Acquiring Company.

The merger has no material effect on the goodwill and the distributable reserves of the Acquiring Company. The Company Ceasing to Exist has no material assets and no liabilities.

P. Information on the valuation of assets and liabilities of the Company Ceasing to Exist to be acquired by the Acquiring Company.

The Company Ceasing to Exist has no assets or liabilities apart from share capital of EUR 40,000 and cash/receivables of EUR 40,000. Therefore no valuations are necessary.

Q. Dates of the Merging Companies' accounts.

The dates of the most recently adopted annual accounts / interim financial statements and any other accounts of the Merging Companies' accounts used to establish the conditions of the merger are:

Acquiring Company:
31 March 2009 (draft annual accounts)

Company Ceasing to Exist:
2 June 2009 (interim statement as at the date of incorporation)

R. Proposal for the level of compensation of shareholders that vote against the draft terms of merger.

Any shareholder in the Company Ceasing to Exist who votes against the draft terms of merger shall be entitled to have their shares bought from them by the Acquiring Company at a price of EUR 1.00 per share.

S. Shares to be cancelled pursuant to Section 2:325 paragraph 3 DCC.

Not applicable.

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THE DATA TO BE MENTIONED PURSUANT TO SECTION 2:313 PARAGRAPH 1 DCC AND SECTION 2:327 DDC ARE AS FOLLOWS:

1. **Reasons for the merger.**

   The reason for the merger is to allow the Acquiring Company to adopt the form of a European Public Company (SE).

2. **Expected consequences for the activities.**

   None. To the extent that the Company Ceasing to Exist has any activities, these activities will be continued in the same way by the Acquiring Company.

3. **Explanation from a legal, economic and social point of view.**

   Legal
   The Company Ceasing to Exist ceases to exist and its assets and liabilities transfer to the Acquiring Company under a universal title of succession. The Acquiring Company is transformed into a European public company (SE), governed by the laws of the Netherlands.

   Economic
   From an economic point of view the merger has no consequences.

   Social
   The merger has no consequence for the employment and the employment conditions except as per the outcome of the process for employee participation as referred to in paragraph N above.

4. **Method(s) for determination of exchange rate.**

   Preliminary remarks:
   It is considered that the laws applicable to the merger dictate that shares are allocated to shareholders of the Company Ceasing to Exist, which is considered to include all holders of legal title to shares in the Company Ceasing to Exist, so including the Nominee Shareholders.
   The number of shares allocable to the Nominee Shareholders is kept to a bare minimum in view of the fact they only hold legal title, while beneficial ownership is in the hands of the Acquiring Company.
   In this respect, it is also noted that the shares in the Acquiring Company acquired by the Nominee Shareholders may be transferred (for nil consideration) to the Acquiring Company after the effectuation of subject merger.

   Method for determination of exchange ratio
   The method pursuant to which the exchange ratio has been determined does not have a specific name as such. The exchange ratio is kept as simple as possible (one share in the Acquiring Company in exchange for one share in the Company Ceasing to Exist) in view of the preliminary remarks above.

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Appropriateness of method used
The method is appropriate in this particular instance as it achieves a result that is, within the parameters of the merger requirements, the most appropriate manner to achieve that the value of the interest held by the Nominee Shareholders prior to the merger is equal to that of their interest held after the merger.

Valuation result
The method used does not lead to a specific valuation.

There have been no particular difficulties at the valuation and the determination of the exchange rate.

AUDITOR STATEMENTS AND REPORT.

KPMG and Deloitte issued the following documents

a. A report on the exchange ratio as referred to in Section 2:328 paragraph 1 DCC. This report is attached to the draft terms of merger as ***Annex C*** (KPMG) ***Annex D*** (Deloitte).
b. A report on the equity of the Merging Companies as referred to in Section 2:328 paragraph 1 DCC. This report is part of ***Annex C*** (KPMG) ***Annex D*** (Deloitte).
c. The auditors' statements referred to in Section 2:328 paragraph 2 DCC[1] have been attached to these explanatory notes as ***Annex E*** (KPMG) and ***Annex F*** (Deloitte).

ANNEXES.

Annexes to these draft terms form an integrated part of this proposal.

List of Annexes:

Annex A: current articles of association James Hardie Industries N.V. (Acquiring Company)
Annex B: articles of association James Hardie Industries SE (Acquiring Company) after amendment
Annex C: auditors' report of KPMG referred to in Section 2:328 paragraph 1 DCC
Annex D: auditors' report of Deloitte referred to in Section 2:328 paragraph 1 DCC
Annex E: auditors' statement of KPMG referred to in Section 2:328 paragraph 2 DCC
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22 JUNE 2009

LOYENS & LOEFF

ARTICLES OF ASSOCIATION

OF

JAMES HARDIE INDUSTRIES SE
(AFTER STAGE 1 AMENDMENTS)

DRAFT 8 (20 MARCH 2009)

Loyens & Loeff
Weena 690
3012 CN Rotterdam

ref: HJP/IG
#4136830-v12

CHAPTER I
Definitions.
Article 1.

Capitalised terms used in these articles of association shall have the following meaning:

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 Settlement 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 Securities Exchange;
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 Settlement Rules;
Company	James Hardie Industries SE;
Corporations Act	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 Settlement 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 Settlement Rules and the Corporations Act;
Employee	Dutch Implementation law on Council Directive
Implementation Law	2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees (*Wet rol werknemers Europese rechtspersonen)*;
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 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 laws applicable in the Netherlands, including the SE Regulation and the Employee Implementation Law;
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;
SE Implementation Law	Dutch Implementation law on SE regulation (*Uitvoeringswet verordening Europese vennootschap*);
SE Regulation	Council Regulation (EC) Number 2157/2001 of eight October two thousand and one on the Statute for a European company (SE)**;**
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;
Shareholder's Rights	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.

CHAPTER II
Name. Seat.
Article 2.

The name of the Company is: James Hardie Industries SE.

Its corporate seat and registered office is in Amsterdam, The Netherlands.

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. 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 proposal of and for a price and on such further terms and conditions to be determined by the Supervisory 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;

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.

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 ten per cent. (10%) 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 Supervisory 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 CUFS 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 Supervisory Board.

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.

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 Settlement 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 Settlement 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 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.

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.

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 or the Supervisory Board shall be sent by letter to the office of the Company or to the addresses of all members of the Managing 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-à-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.

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-à-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. Subject to Article 20, members of the Managing Board shall be appointed and be entitled to hold office as a member of the Managing Board for a continuous period 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, provided however that the CEO shall be appointed and be entitled to hold office as a member of the Managing Board for a continuous period of six years 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 annual 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.

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. 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. The Supervisory Board may decide that the person to be designated is one of its members. Such member will in that case and for the period of time of his designation not be allowed to perform acts as Supervisory Board member.

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-à-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

(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

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 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 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;

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 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 article 17.3 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-à-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-à-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 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.

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.

21.2. The Managing Board shall provide the Supervisory Board in good time with all relevant information as well as with all other information as the Supervisory Board may request, in connection with the exercise of its duties. At least once per year, the Managing Board shall inform the Supervisory 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 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. Subject to Article 26, members of the Supervisory Board shall be appointed and be entitled to hold office as a member of the Supervisory Board for a continuous period 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 annual 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 prior to the moment a vacancy occurs, 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.

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.

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.

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-à-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.

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;

e. becomes prohibited from being a member of the Supervisory Board by reason of any provision of Law; or

f. dies.

Joint meetings of the Supervisory Board and the Managing Board.
Article 27.

27.1. The Supervisory Board shall meet together with the Managing Board whenever the chairman of the Supervisory Board or two or more of its members so request. Joint meetings of the Supervisory Board and the Managing Board shall be convened by the chair of the Supervisory 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 who have requested a meeting of the Supervisory Board to be held are entitled to convene such meeting.

27.11. The Supervisory Board and the Managing Board may adopt rules on the manner of convening joint meetings of the Supervisory Board and the Managing Board 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. Non-disclosure.
Article 28.

28.1. Unless otherwise provided for by 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 or Supervisory 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 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, officer, employee or agent of the Company has been successful on the merits or otherwise in defence of any action, suit of 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, 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, 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, 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, officers, employees and agents, so that any person who is or was a member of the Managing Board, Supervisory 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.

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, 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 (*décharge*) 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 Supervisory 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;

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 it's 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.

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.

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.

31.4. Written requests as referred to in article 30 paragraph 1 and article 32 paragraph 3, may be submitted electronically. Written requests as referred to in article 30 paragraph 1 and article 32 paragraph 3 shall comply with conditions stipulated by the Managing Board, which conditions shall be posted on the company's website.

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 1.1 of the Act on Financial Supervision (*Wet op het financieel toezicht*), 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 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 each other, 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-à-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.

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 the date permitted by the Law and the Listing Rules. The notice (*oproeping*) of the General Meeting shall contain the record date, the procedure for registration, and the procedure for registration lodgement of valid proxies.

34.6. To the extent that the Managing Board makes use of its right as referred to in article 34.5, the Managing Board may decide that persons entitled to attend General Meetings and vote thereat may, within a period prior to the General Meeting to be set by the Managing Board, which period cannot begin prior to the record date as meant in article 34.5, cast their votes electronically in a manner to be decided by the Managing Board. Votes cast in accordance with the previous sentence are equal to votes cast at the meeting.

34.7. The Managing Board may decide that each person entitled to attend General Meetings and vote thereat may, either in person or by written proxy, vote at that meeting by electronic means of communication, provided that such person can be identified via the electronic means of communication and furthermore provided that such person can directly take note of the business transacted at the General Meeting concerned. The Managing Board may attach conditions to the use of the electronic means of communication, which conditions shall be announced at the convocation of the General Meeting and shall be posted on the company's website.

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.

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 percent (5%) of the issued and outstanding share capital is present or represented. Votes that attach to Shares in respect of which the Shareholder has not taken part in the vote or has abstained or has returned a blank or spoilt ballot paper 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.

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, and subject to Article 39.3, 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. Without prejudice to the quorum requirement as referred to in article 37.1, 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.

39.3. A resolution of the General Meeting to amend these Articles in connection with a transfer of the seat and head office of the Company to Ireland in accordance with the SE Regulation shall be valid if adopted by at least a two/thirds (2/3) majority of the votes cast at such General Meeting, without prejudice to the quorum requirement as referred to in Article 37.1.

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.

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 been intentionally omitted.]
Profit and Loss. Reservation. Dividend.
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 Supervisory 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 Supervisory Board, resolve to declare an interim dividend on Shares. Subject to the approval of the Supervisory 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 Supervisory 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 Supervisory 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 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 Supervisory 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 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.

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:

Affiliated Companies 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-à-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:

(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.

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 and the 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.

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:

$$\frac{\text{Person's votes}}{\text{Total votes in the Company}} \times \text{one hundred (100)}$$

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

(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 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.

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

(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:

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.

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 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 or Supervisory 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.

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.

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.

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 Supervisory Board; and

The document must also contain a statement by each member of the Managing Board and Supervisory 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.

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.

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.

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 CUFS Holder, without any further instrument, cause the CUFS referred to in the notice to be sold to the extent permitted by and in accordance with the ASTC Settlement Rules and must pay to the Person whose CUFS were sold the purchase money less the expenses of the sale.

The Company may, by notice in writing, at any time require any CUFS 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 CUFS 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 CUFS Holder shall not have any claim against the Company, the members of its Managing Board or Supervisory Board or the Shareholder for any action taken by any of them in accordance with article 49 or this article 50 or the ASTC Settlement Rules, provided that such action was taken in good faith.

CHAPTER IV
Renewal provision.
Article 51.

Articles 49.9 and 49.10 of these Articles shall lapse after a period of five (5) years from the twentieth day of August two thousand and seven and the date that the General Meeting last extended the applicability of articles 49.9 and 49.10, subject to the confirmation of such extension by way of the deposit by the Managing Board on recommendation of the Supervisory 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 judgment from the competent court(s) in accordance with article 49.8.

TRANSITORY PROVISIONS

The subject conversion and amendment of these Articles shall not affect the authorities in place for the Company as at the date hereof, which are hereby ratified and confirmed:

1. 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 and to grant rights to subscribe for Shares, which power shall end on the eighteenth day of August two thousand and ten (subject to renewal in accordance

with article 4). The authorization concerns all non-issued Shares of the authorized share capital as it reads now or shall read at some point in time. The same applies to the authorization of the Supervisory Board to limit or exclude the right of pre-emption, as provided for in article 4.4.

2. The authorisation of the Managing Board as referred to in article 6.1.c to cause the Company to acquire, subject to approval of the Supervisory Board, Shares for valuable consideration for up to the maximum permitted by Dutch law, for a consideration per Share of not less than one eurocent (EUR 0.01) and for not more than one hundred and five per cent (105%) of the average closing price of a Share in the company as quoted on the ASX in the five business days preceding the acquisition, shall end after the lapse of eighteen months after [● *two thousand and nine*[1]] (subject to renewal in accordance with article 6).

Furthermore, for the avoidance of doubt, it is noted that the subject conversion and amendment of these Articles shall not affect approvals and policies in place for the Company as at the date hereof, which are hereby ratified and confirmed (and each of those thus continues to apply unaffected until the date it would have expired if the subject conversion and amendment of these Articles had not occurred), including but not limited to:

a. The approval to reduce the issued share capital of the Company by cancelling all Shares repurchased or to be repurchased by the Company under its share repurchase program as in force on [● *two thousand and nine*[2]], the exact number of which to be determined by the Managing Board up to a maximum of ten percent of the issued share capital of the Company as at [● *two thousand and nine*[3]].

b. The policy for Managing Board remuneration as adopted by the General Meeting on the seventeenth day of August two thousand and seven.

c. The maximum aggregate amount of remuneration for members of the Supervisory Board as adopted by the General Meeting on the nineteenth day of September two thousand and six.

d. The Supervisory Board Share Plan 2006 as adopted on the seventeenth day of August two thousand and seven.

e. The James Hardie Industries NV Long Term Incentive Plan 2006 as amended by the General Meeting on the twenty-second day of August two thousand and eight.

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1 If authorization is renewed in 2009 AGM, insert date of AGM. If authorization is not renewed during 2009 AGM, insert date of latest authorization ("the twenty-second day of August two thousand and eight").

2 See footnote 1.

3 See footnote 1.

Exhibit 3.2

Companies Acts 1963 to 2006

A SOCIETAS EUROPAEA

MEMORANDUM and ARTICLES OF ASSOCIATION

of

JAMES HARDIE INDUSTRIES SE

Registered as an Irish SE on ● day of ● 2009

Arthur Cox
Arthur Cox Building
Earlsfort Terrace
Dublin 2

Cert. No. ●

Companies Acts 1963 to 2006

A SOCIETAS EUROPAEA

MEMORANDUM OF ASSOCIATION

-of-

JAMES HARDIE INDUSTRIES SE

(As adopted upon its registration in Ireland following the transfer of its registered office from The Netherlands to Ireland under Article 8 of Council Regulation (EC) No 2157/2001 of 8 October 2001)

1. The name of the Societas Europaea is James Hardie Industries SE.

2. The SE is to be a Societas Europaea ("SE") within the meaning of EU Council Regulation (EC) No 2157/2001 of October 2001.

3. The objects for which the SE is established are:

(i) (a) to carry on the businesses of manufacturer, distributor, wholesaler, retailer, service provider, investor, designer, trader and any other business (except the issuing of policies of insurance) which may seem to the SE's board of directors capable of being conveniently carried on in connection with these objects or calculated directly or indirectly to enhance the value of or render more profitable any of the SE's property;

(b) to carry on the business of a holding company and to co-ordinate the administration, finances and activities of any subsidiary companies or associated companies, to do all lawful acts and things whatever that are necessary or convenient in carrying on the business of such a holding company and in particular to carry on in all its branches the business of a management services company, to act as managers and to direct or coordinate the management of other companies or of the business, property and estates of any company or person and to undertake and carry out all such services in connection therewith as may be deemed expedient by the SE's board of directors and to exercise its powers as a shareholder of other companies;

(c) to borrow or raise or secure the payment of money (including money in a currency other than the currency of the State) in such manner as the SE shall think fit and in particular by the issue of shares, debentures, debenture stock, perpetual or otherwise, charged upon all or any of the SE's property, both present and future, including its uncalled capital and to purchase, redeem or pay off any such securities;

(d) to guarantee, indemnify, grant indemnities in respect of, enter into any suretyship or joint obligation, or otherwise support or secure, whether by personal covenant, indemnity or undertaking or by mortgaging, charging, pledging or granting a lien or other security over all or any part of the SE's property (both present and future) or by any one or more of such methods or any other method and whether in support of such guarantee or indemnity or suretyship or joint obligation or otherwise, on such terms and conditions as the SE's board of directors shall think fit, the payment of any debts or the performance or discharge of any contract, obligation or liability of any person or company (including, without prejudice to the generality of the foregoing, the payment of any capital, principal, dividends or interest on any stocks, shares, debentures, debenture stock, notes, bonds or other securities of any person, authority or company) including, without prejudice to the generality of the foregoing, any body corporate which is the SE's subsidiary as defined in section 155 of the Companies Act 1963 and in any statutory modification or re-enactment thereof, or any other body corporate howsoever associated with the SE, in each case notwithstanding the fact that the SE may not receive any consideration, advantage or benefit, direct or indirect, from entering into any such guarantee or indemnity or suretyship or joint obligation or other arrangement or transaction contemplated herein.

(ii) To purchase, acquire, develop, re-claim, improve, cultivate and work lands and hereditaments of any estate or interest whatsoever, and any rights, privileges or easements over or in respect thereof and erect and build thereon factories, houses, offices and other buildings and to hold, occupy, lease, mortgage, sell or otherwise deal with the same.

(iii) To lay out land for building purposes, and to build on, improve, let on building leases, advance money to persons building on and otherwise develop the same.

(iv) To acquire, improve, manage, work, develop, exercise all rights in respect of, lease, mortgage, sell, dispose of, turn to account and otherwise deal with property of all kinds, and in particular lands, buildings, concessions and patents.

(v) To purchase, take on lease, or otherwise acquire, any mines, mining rights, and metalliferous land in Ireland or elsewhere, and any interest therein and to explore, work, exercise, develop and turn to account the same.

(vi) To carry on the businesses of a holding, investment, estate and trust company and to raise money on such terms and conditions as may be thought desirable, and invest the amount thereof in or upon or otherwise acquire and hold shares, stocks, debentures, debenture stocks, bonds mortgages, obligations and securities of any kind issued or guaranteed by any public or private company, corporation or undertaking of whatever nature wherever situated or carrying on business, and shares, stocks, debentures, debenture stocks, bonds, obligations and other securities of Ireland or any other government or authority supreme, municipal, local or otherwise in any part of the world.

(vii) To perform any duty or duties imposed on the SE by or under any enactment and, to exercise any power conferred on the SE by or under any enactment.

(viii) To carry on all or any of the businesses aforesaid either as a separate business or as the principal business of the SE, and to carry on any other business (whether manufacturing or otherwise) which may seem to the SE capable of being conveniently carried on in connection with the above objects or calculated directly or indirectly to enhance the value of or render more profitable any of the company's property.

(ix) To incorporate or cause to be incorporated any one or more subsidiaries of the SE (within the meaning of section 155 of the Companies Act, 1963) for the purpose of carrying on any business.

(x) To acquire and undertake the whole or any part of the business, property and liabilities of any person or company carrying on any business which the SE is authorised to carry on.

(xi) To apply for, purchase or otherwise acquire any patents, trade marks, brevets d'invention, licences, concessions and the like conferring any rights of any sort to use or any secret or other information as to any invention which may seem capable of being used for any of the purposes of the SE or the acquisition of which may seem calculated directly or indirectly to benefit the SE, and to use, exercise, develop or grant licences in respect of or otherwise turn to account the property rights or information so acquired.

(xii) To enter into partnership or into any arrangement for sharing profits, union of interests, co-operation, joint venture, reciprocal concession or otherwise with any person or company carrying on or engaged in or about to carry on or engage in any business or transaction which the SE is authorised to carry on or engage in or any business or transaction capable of being conducted so as directly or indirectly to benefit the SE.

(xiii) To purchase or otherwise acquire shares and securities of the SE or any company and to sell, hold, re-issue or otherwise deal with the same.

(xiv) To enter into any arrangements with any Governments or authorities, supreme, municipal, local or otherwise, that may seem conducive to the SE's objects or any of them and to obtain from any such Government or authority any rights, privileges and concessions which the SE may think it desirable to obtain and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions.

(xv) To establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit directors and ex-directors, employees or ex-employees of the SE or the dependents or connections of such persons and (without prejudice to the generality of the foregoing) to grant gratuities, pensions or allowances on

retirement or death to or in respect of any such persons and including the establishment of director and employee equity schemes and share option schemes, enabling directors and employees of the SE or other persons aforesaid to become shareholders in the SE, or otherwise to participate in the profits of the SE upon such terms and in such manner as the SE thinks fit, and to make payments towards insurance and to subscribe or guarantee money for charitable or benevolent objects or for any exhibition or for any public, general or useful object, or any other object whatsoever which the SE may think advisable.

(xvi) To establish and contribute to any scheme for the acquisition of shares in the SE for the benefit of the SE's employees and to lend or otherwise provide money for such schemes or the SE's employees or the employees of any of its subsidiary or associated bodies corporate to enable them to purchase shares or interests in shares of the SE.

(xvii) To establish any scheme or otherwise to provide for the purchase by or on behalf of customers of the SE of shares in the SE.

(xviii) To promote any company or companies for the purpose of acquiring all or any of the assets and liabilities of the SE or for any other purpose which may seem directly or indirectly calculated to benefit the SE.

(xix) Generally to purchase, take on lease or in exchange, hire or otherwise acquire any real and personal property and any rights or privileges which the SE may think necessary or convenient for the purposes of its business.

(xx) To develop and turn to account any land acquired by the SE or in which it is interested and in particular by laying out and preparing the same for building purposes, constructing, altering, pulling down, decorating, maintaining, fitting up and improving buildings and conveniences, letting on building leases or building agreement and by advancing money to and entering into contracts and arrangements of all kinds with builders, tenants and others.

(xxi) To construct, maintain and alter any building or works necessary or convenient for any of the purposes of the SE.

(xxii) To invest and deal with the monies of the SE not immediately required in such manner as may from time to time be determined.

(xxiii) To lend and advance money or give credit to such persons or companies whether with or without security and on such terms as may seem expedient, and in particular to customers and others having dealings with the SE; and to give guarantees or become security for any liabilities or obligations (present or future) of any persons or companies and generally to give any guarantees, indemnities and security on such terms and conditions as the SE may think fit.

(xxiv) To engage in currency exchange, interest rate and/or commodity or index linked transactions (whether in connection with or incidental to any other

contract, undertaking or business entered into or carried on by the SE or whether as an independent object or activity) including, but not limited to, dealings in foreign currency, spot and forward rate exchange contracts, futures, options, forward rate agreements, swaps, caps, floors, collars, commodity or index linked swaps and any other foreign exchange, interest rate or commodity or index linked arrangements and such other instruments as are similar to or derive from any of the foregoing whether for the purpose of making a profit or avoiding a loss or managing a currency or interest rate exposure or any other purpose and to enter into any contract for and to exercise and enforce all rights and powers conferred by or incidental, directly or indirectly, to such transactions or termination of any such transactions.

(xxv) To remunerate any person or company for services rendered or to be rendered in placing or assisting to place or guaranteeing the placing of any of the shares of the SE's capital or any debentures, debenture stock or other securities of the SE or in or about the formation or promotion of the SE or the conduct of its business.

(xxvi) To draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading, warrants, debentures and other negotiable or transferable instruments.

(xxvii) To undertake and execute any trusts of all and every nature (and without prejudice to the generality of the foregoing, whether commercial, charitable, political or social) the undertaking whereof may seem desirable and either gratuitously or otherwise.

(xxviii) To sell or dispose of the undertaking of the SE or any part thereof for such consideration as the SE may think fit, and including for shares, debentures or securities of any other company having objects altogether or in part similar to those of the SE.

(xxix) To adopt such means of making known the products and services of the SE as may seem expedient.

(xxx) To obtain any enactment for enabling the SE to carry any of its objects into effect or for effecting any modification of the SE's constitution or for any other purpose which may seem expedient and to oppose any proceedings or applications which may seem calculated directly or indirectly to prejudice the SE's interests.

(xxxi) To procure the SE to be listed, registered or recognised in any country or place.

(xxxii) To sell, improve, manage, develop, exchange, lease, mortgage, enfranchise, dispose of, turn to account or otherwise deal with all or any of the property and rights of the SE.

(xxxiii) To promote freedom of contract, and to resist, insure against, counteract and discourage interference therewith, to join any lawful federation, union or

association or do any other lawful act or thing with a view to preventing or resisting directly or indirectly any interruption of or interference with the SE's or any other trade or business or providing or safeguarding against the same, or resisting or opposing any strike, movement or organisation, which may be thought detrimental to the interests of the SE or its employees and to subscribe to any association or fund for any such purposes.

(xxxiv) To grant bonuses to any person or persons who are or have been in the employment of the SE.

(xxxv) To grant, convey, transfer or otherwise dispose of any property or asset of the SE of whatever nature or tenure for such price, consideration, sum or other return whether equal to or less than the market value thereof and whether by way of gift or otherwise as the Directors shall deem fit and to grant any fee farm grant or lease or to enter into any agreement for letting or hire of any such property or assets for a rent or return equal to or less than the market or rack rent therefor or at no rent and subject to or free from covenants and restrictions as the Directors shall deem appropriate.

(xxxvi) To do all or any of the above things in any part of the world and as principals, agents, contractors, trustees or otherwise and by or through trustees, agents or otherwise and either alone or in conjunction with others.

(xxxvii) To distribute any of the property of the SE in specie among the members.

(xxxviii) To do anything which appears to the SE to be requisite, advantageous or incidental to, or which appears to the SE to facilitate, either directly or indirectly, the attainment of the above objects or any of them.

NOTE: It is hereby declared that the word "company" in this clause shall be deemed to include any partnership or other body of persons whether incorporated or not incorporated and whether domiciled in Ireland or elsewhere.

4. The liability of the members is limited.

5. The share capital of the SE is €1,180,000,000 divided into 2,000,000,000 shares of €0.59 each.

6. The shares forming the capital, increased or reduced, may be increased or reduced and be divided into such classes and issued with any special rights, privileges and conditions or with such qualifications as regards preference, dividend, capital, voting or other special incidents, and be held upon such terms as may be attached to such shares or as may from time to time be provided by the original or any substituted or amended articles of association of the SE for the time being, but so that where shares are issued with any preferential or special rights, such rights shall not be alterable otherwise than pursuant to the provisions of the SE's articles of association for the time being.

I, the person whose name, address and description are subscribed, wish to be formed into a company in pursuance of this memorandum of association (as amended), and I agree to take the number of shares in the capital of the company set opposite my name.

Names, addresses and descriptions of subscribers	Number of shares taken by each subscriber
RCI Malta Investments Limited	50,000,000 shares of NLG 0.02 each

Dated the 26 day of October 1998

Witness to the above signatures:

Mr. Martin van Olffen
Deputy Civil Law Notary,
Amsterdam.
The Netherlands

Cert. No.

Companies Acts 1963 to 2006

A SOCIETAS EUROPAEA

ARTICLES OF ASSOCIATION

of

JAMES HARDIE INDUSTRIES SE

PART I — PRELIMINARY

1. **Interpretation**

(a) The regulations contained in Table A in the first schedule to the Companies Act, 1963 shall not apply to the SE.

(b) In these Articles the following expressions shall have the following meanings:

"the Acts"	means the Companies Acts, 1963 to 2005 and Parts 2 and 3 of the Investment Funds, Companies and Miscellaneous Provisions Act 2006, all statutory instruments which are to be read as one with, or construed or read together as one with, the Companies Acts and every statutory modification and re-enactment thereof for the time being in force;
"**address**"	includes any number or address used for the purposes of communication by way of electronic mail or other electronic communication;
"**advanced electronic signature**"	the meaning given to that expression in the Electronic Commerce Act, 2000;
"ASX"	ASX Limited or Australian Securities Exchange as appropriate;
"**Business Day"**	has the meaning given in the Listing Rules;
"**the 1963 Act**"	the Companies Act, 1963;
"**the 1983 Act**"	the Companies (Amendment) Act, 1983;
"**the 1990 Act**"	the Companies Act, 1990;

"**these Articles**"	these articles of association as from time to time and for the time being in force;
"**ASTC Settlement Rules**"	the operating rules of the settlement facility provided by ASX Settlement and Transfer Corporation Pty Ltd (ABN 49 008 504 532);
"**the Auditors**"	the independent external auditors for the time being of the SE;
"**Chairman**"	means the person holding the office of Chairman of the board of Directors for the time being;
"**CHESS"**	means the Clearing House Electronic Sub-Register System and has the meaning given to CHESS in the ASTC Settlement Rules;
"**Clear Days**"	in relation to the period of a notice, that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect;
"the Council Regulation"	means Council Regulation (EC) No. 2157/ 2001 of 8 October 2001;
"CUFS"	stands for CHESS Units of Foreign Securities and has the meaning given to CUFS in the ASTC Settlement Rules;
"**CUFS Holder**"	a record owner of CUFS according to the terms and conditions of the ASTC Settlement Rules;
"**the Directors**"	the Directors for the time being of the SE or any of them acting as the board of Directors of the SE;
"**Dispose**"	has the meaning given in the Listing Rules;
"**electronic communication**"	the meaning given to that word in the Electronic Commerce Act, 2000;
"**electronic signature**"	the meaning given to that word in the Electronic Commerce Act, 2000;
"**the Group**"	the SE and its subsidiaries from time to time and for the time being;
"**the Holder**"	in relation to any share, the member whose

	name is entered in the Register as the holder of the share or, where the context permits, the members whose names are entered in the Register as the joint holders of shares;
"**Holding Lock**"	has the meaning given in the Listing Rules;
"**Issuer Sponsored Sub-register**"	has the meaning given in the Listing Rules;
"**the Listing Rules**"	means the listing rules of ASX and any other rules of ASX which are applicable to the SE while the SE is Officially Listed, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX;
"**Marketable Parcel**"	has the meaning given in the Listing Rules;
"**Non-marketable Parcel**"	has the meaning given in the Listing Rules;
"the NYSE"	the New York Stock Exchange;
"Officially Listed"	means admitted to the official list of ASX;
"**Proper ASTC Transfer"**	has the meaning given in the *Australian Corporations Regulations 2001*;
"**qualified certificate**"	the meaning given to that word in the Electronic Commerce Act, 2000;
"**Record Date"**	has the meaning given in the Listing Rules;
"**the Register**"	the register of members to be kept as required by the Acts;
"**Restricted Securities**"	has the meaning given in the Listing Rules;
"**the SE**"	James Hardie Industries SE;
"**the Seal**"	the common seal of the SE or (where relevant) the official securities seal kept by the SE pursuant to the Acts;
"the SE Regulations"	means the European Communities (European Public Limited Liability Company) Regulations 2007;
"**Securities**"	has the meaning given in the Listing Rules;

"**Security Holder**"	has the meaning given in the Listing Rules;
"**the Secretary**"	the Secretary of the SE and any person appointed to perform the duties of the Secretary of the SE;
"**the State**"	Ireland exclusive of Northern Ireland;
"**treasury shares**"	shares in the SE which have been redeemed or purchased by the SE, as are being held by the SE, as treasury shares in accordance with Part XI of the 1990 Act;
"**Voting Exclusion Statement"**	has the meaning given in the Listing Rules;
"**warrants to subscribe**"	a warrant or certificate or similar document indicating the right of the registered holder thereof (other than under a Director and employee equity or share option scheme for employees) to subscribe for shares in the SE.

(c) Expressions in these Articles referring to writing shall be construed, unless the contrary intention appears, as including references to printing, lithography, photography and any other modes or representing or reproducing words in a visible form except as provided in these Articles and/or where it constitutes writing in electronic form sent to the SE, the SE has agreed to its receipt in such form. Expressions in these Articles referring to execution of any document shall include any mode of execution whether under seal or under hand or any mode of electronic signature as shall be approved by the Directors. Expressions in these Articles referring to receipt of any electronic communications shall, unless the contrary intention appears, be limited to receipt in such manner as the SE has approved.

(d) Unless the contrary intention appears, the use of the word "**address**" in these Articles in relation to electronic communications includes any number or address used for the purpose of such communications.

(e) Unless specifically defined herein or the context otherwise requires, words or expressions contained in these Articles shall bear the same meaning as in the Acts but excluding any statutory modification thereof not in force when these Articles become binding on the SE.

(f) The headings and captions included in these Articles are inserted for convenience of reference only and shall not be considered a part of or affect the construction or interpretation of these Articles.

(g) References in these Articles to any enactment or any section or any regulation or provision thereof shall mean such enactment, section or provision as the same may be amended and may be from time to time and for the time being in force.

(h) In these Articles the masculine gender shall include the feminine and neuter, and vice versa, and the singular number shall include the plural, and vice versa, and words importing persons shall include firms or companies.

(i) References in these Articles to Euro or cent or € or c shall mean the currency for the time being of the State.

(j) Reference herein to a share (or to a holding of shares) being in uncertificated form are references to that share being an uncertificated unit of a security.

2. **Consistency with Listing Rules**

(a) Subject only to the Acts and applicable law:

(i) despite anything contained in these Articles, if the Listing Rules prohibit an act being done, the act must not be done;

(ii) nothing contained in these Articles prevents an act being done that the Listing Rules require to be done; and

(iii) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done as the case may be.

(b) Upon the Directors becoming aware that the Listing Rules:

(i) require these Articles to contain a provision which they do not contain; or

(ii) require these Articles not to contain a provision which they contain,

and being satisfied that any such requirement is permissible under the Acts and law, the Directors shall give notice at the next annual general meeting of a special resolution to alter these Articles so that the Articles will conform with the requirements of the Listing Rules.

(c) Upon the Directors becoming aware that any provision of these Articles is or will become inconsistent with the Listing Rules, the Directors shall give notice at the next annual general meeting of a special resolution to amend the relevant provision of these Articles to overcome the inconsistency (to the extent that the Directors are satisfied that any such amendment is permissible under the Acts
and law).

(d) If there is a conflict between the Articles, the Listing Rules or the ASTC Settlement Rules and the Acts and law, the Acts and law will prevail.

(e) Unless a contrary intention appears, an expression in these Articles which is defined by any provision of the Listing Rules or the ASTC Settlement Rules has the same meaning as in that provision.

(f) If the SE has its Securities approved under the ASTC Settlement Rules or operates an Issuer Sponsored Sub-register, it must comply with the Listing Rules and the ASTC Settlement Rules including any requirements of an applicable sub-register system.

3. **Registered Office and Head Office**

The registered office of the SE shall be located in Dublin, Ireland as shall the SE's head office, being the place where the SE shall be managed and controlled.

PART II — SHARE CAPITAL AND RIGHTS

4. **Share capital**

The share capital of the SE is €1,180,000,000 divided into 2,000,000,000 shares of €0.59 each.

5. **Rights of shares on issue**

Without prejudice to any special rights conferred on the Holders of any existing shares or class of shares and subject to the provisions of the Acts, any share may be issued with such rights or restrictions as the SE may by ordinary resolution determine.

6. **Redeemable shares, Preference Shares and Preference Securities**

(a) Subject to the provisions of the Acts, any shares may be issued on the terms that they are, or at the option of the SE are, liable to be redeemed on such terms and in such manner as the SE may by special resolution determine. In addition and subject as aforesaid, the SE is hereby authorised to redeem (on such terms as may be contained in, or be determined pursuant to the provisions of, these Articles or a special resolution of the SE) any of its shares which have been converted into redeemable shares. Subject as aforesaid, the SE may cancel any shares so redeemed or may hold them as treasury shares and re-issue such treasury shares as shares of any class or classes or cancel them.

(b) If any of the Securities of the SE are preference shares or preference securities, the SE must comply with Listing Rules 6.3 to 6.7.

7. **Variation of rights**

(a) Whenever the share capital is divided into different classes of shares, the rights attached to any class may be varied or abrogated with the consent in writing of the Holders of three-fourths in nominal value of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the Holders of the shares of the class, and may be so varied or abrogated either whilst the SE is a going concern or during or in contemplation of a winding-up. The quorum at any such separate general meeting or at an adjourned meeting, shall be 5% of the issued share capital of the class in question.

(b) The rights conferred upon the Holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by these Articles or the terms of the issue of the shares of that class, be deemed to be varied by a purchase or redemption by the SE of its own shares or by the creation or issue of further shares ranking pari passu therewith or subordinate thereto.

8. **Trusts not recognised**

Except as required by law, no person shall be recognised by the SE as holding any share upon any trust, and the SE shall not be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any share or any interest in any fractional part of a share or (except only as by these Articles or by law otherwise provide) any other rights in respect of any share except an absolute right to the entirety thereof in the Holder; this shall not preclude the SE from requiring the members or a transferee of shares to furnish the SE with information as to the beneficial ownership of any share when such information is reasonably required by the SE. In addition, unless required to do so by the ASTC Settlement Rules or applicable law, the SE need not record on any register and is not required to recognise any equitable, contingent, future or partial interest in any of its CUFS or any other right in respect of any of its CUFS except an absolute right of legal ownership in the registered holder.

9. **Allotment of shares**

(a) Subject to the provisions of the Acts relating to authority, pre-emption or otherwise in regard to the allotment, issue of, or the grant of options over, or other rights to subscribe for, new shares and of any resolution of the SE in general meeting passed pursuant thereto, all unissued shares (including treasury shares) for the time being in the capital of the SE shall be at the disposal of the Directors and (subject to the provisions of the Acts) they may allot, offer, grant options over or otherwise dispose of them to such persons (including any Director) on such terms and conditions and at such times as they may consider to be in the best interests of the SE, but so that no share shall be issued at a discount to their par value and so that, in the case of shares offered to the public for subscription, the amount payable on application on each share shall not be less than one-quarter of the nominal amount of the share and the whole of any premium thereon.

(b) Without prejudice to the generality of the powers conferred on the Directors by the other paragraphs of this Article, the Directors may grant from time to time options (or any other interest in the capital of the SE) to subscribe for the unallotted shares in the capital of the SE to persons providing services to, or in the service or employment of, the SE or any subsidiary or associated company of the SE (including Directors holding executive offices) on such terms and subject to such conditions as may be approved from time to time by the Directors or by any committee thereof appointed by the Directors for the purpose of such approval.

(c) The Directors are, for the purposes of Section 20 of the 1983 Act generally and unconditionally authorised to exercise all powers of the SE to allot and issue relevant securities (as defined by the said Section 20) up to the amount of SE's authorised share capital and to allot and issue any shares purchased by the SE pursuant to the provisions of Part XI of the 1990 Act and held as treasury shares and this authority shall expire five years from the date of adoption of these articles of association.

(d) Where the Directors are authorised to allot relevant securities in accordance with Section 20 of the 1983 Act, the SE may at any time and from time to time by resolution of the Directors resolve to allot equity securities (as defined by Section 23 of that Act) for cash pursuant to their authority to allot relevant securities as if sub-section (1) of the said Section 23 did not apply to any such allotment provided that this power shall be limited to:-

(i) the allotment of equity securities in connection with any rights issue in favour of ordinary shareholders (other than those holders with registered addresses outside Australia or the United States of America to whom an offer would, in the opinion of the Directors, be impractical or unlawful in any jurisdiction) and/or any persons having a right to subscribe for or convert securities into ordinary shares in the capital of the SE (including without limitation any holders of options under any of the SE's director and employee equity or share option schemes for the time being) where the equity securities respectively attributable to the interests of such ordinary shareholders or such persons are proportionate (as nearly as may be) to the respective number of ordinary shares held by them or for which they are entitled to subscribe or convert into subject to such exclusions or other arrangements as the Directors may deem necessary or expedient to deal with any regulatory requirements, legal or practical problems in respect of overseas shareholders, fractional entitlements or otherwise;

(ii) the allotment of equity securities (other than pursuant to any such issue as referred to in paragraph (i) above) up to a maximum aggregate number which is equal to the amount of SE's authorised share capital; and

(iii) such power (unless otherwise in the resolution of the Directors) shall continue for as long as the Directors are authorised to allot relevant securities in accordance with Section 20 of the 1983 Act.

(e) The Directors shall, in allotting equity securities (as defined by the Listing Rules), comply with the provisions of the Listing Rules.

10. **Payment of commission**

The SE may exercise the powers of paying commissions conferred by the Acts. Subject to the provisions of the Listing Rules and the Acts, any such commission may be satisfied by the payment of cash or by the allotment of fully or partly paid shares or partly in one way and partly in the other. On any issue of shares the SE may also pay such brokerage as may be lawful.

11. **Payment by instalments**

If by the conditions of allotment of any share the whole or part of the amount or issue price thereof shall be payable by instalments, every such instalment when due shall be paid to the SE by the person who for the time being is the Holder of the share.

12. **Restricted Securities**

If any Securities of the SE are classified as Restricted Securities under the Listing Rules:

(a) during the escrow period set by the restriction agreement required by ASX in relation to those Securities:

(i) the Security Holder who holds the Restricted Securities may not Dispose of them; and

(ii) the SE must not register a transfer of the Restricted Securities or otherwise acknowledge a disposal of them,

except as permitted by the Listing Rules or ASX; and

(b) if there is a breach of the Listing Rules or of the relevant restriction agreement in relation to a Restricted Security, then while the breach continues, the holding of that security does not entitle a Security Holder:

(i) to be present, speak or vote at, or be counted in the quorum for, a meeting of Security Holders; or

(ii) to receive any dividend or other distribution.

PART III — SHARE CERTIFICATES

13. **Issue of certificates**

Except where the terms of issue provide otherwise, every member shall be entitled without payment to receive within two months after allotment or lodgement of a transfer to him of the shares in respect of which he is so registered (or within such other period as the conditions of issue shall provide) one certificate for all the shares of each class held by him or several certificates each for one or more of his shares upon payment for every certificate after the first of such reasonable sum as the Directors may determine provided that the SE shall not be bound to issue more than one certificate for shares held jointly by several persons and delivery of a certificate to one joint Holder shall be a sufficient delivery to all of them. The SE shall not be bound to register more than four persons as joint Holders of any share (except in the case of executors or trustees of a deceased member). Every certificate shall be sealed with the Seal and shall specify the number, class and distinguishing numbers (if any) of the shares to which it relates and the amount or respective amounts paid up thereon.

14. **Balance and exchange certificates**

(a) Where some only of the shares comprised in a share certificate are transferred

the old certificate shall be cancelled and the new certificate for the balance of such shares shall be issued in lieu without charge.

(b) Any two or more certificates representing shares of any one class held by any member at his request may be cancelled and a single new certificate for such shares issued in lieu, without charge unless the Directors otherwise determine. If any member shall surrender for cancellation a share certificate representing shares held by him and request the SE to issue in lieu two or more share certificates representing such shares in such proportions as he may specify, the Directors may comply, if they think fit, with such request.

15. **Replacement of certificates**

If a share certificate is defaced, worn out, lost, stolen or destroyed, it may be replaced on such terms (if any) as to evidence and indemnity and payment of any exceptional expenses incurred by the SE in investigating evidence or in relation to any indemnity as the Directors may determine, but otherwise free of charge, and (in the case of defacement or wearing out) on delivery up of the old certificate.

PART IV — LIEN ON SHARES

16. **Extent of lien**

The SE shall have a first and paramount lien on every share (not being a fully paid share) for:

(a) all due and unpaid calls and instalments in respect of that share; and

(b) all money which the SE is required by law to pay, and has paid, in respect of that share.

In each case, the lien extends to reasonable interest and expenses incurred because the amount is not paid.

The Directors, at any time, may declare any share to be wholly or in part exempt from the provisions of this Article. The SE's lien on a share shall extend to all distributions in respect of that share, including dividends.

17. **Power of sale**

The SE may sell in such manner as the Directors determine any share on which the SE has a lien if a sum in respect of which the lien exists is presently payable and is not paid within fourteen Clear Days after notice demanding payment, and stating that if the notice is not complied with the share may be sold, has been given to the Holder of the share or to the person entitled to it by reason of the death or bankruptcy of the Holder.

18. **Power to effect transfer**

To give effect to a sale, the Directors may authorise some person to execute an instrument of transfer of the share sold to, or in accordance with the directions of, the

purchaser. The transferee shall be entered in the Register as the Holder of the share comprised in any such transfer and he shall not be bound to see to the application of the purchase moneys nor shall his title to the share be affected by any irregularity in or invalidity of the proceedings in reference to the sale, and after the name of the transferee has been entered in the Register, the remedy of any person aggrieved by the sale shall be in damages only and against the SE exclusively.

19. **Proceeds of sale**

The net proceeds of the sale, after payment of the costs, shall be applied in payment of so much of the sum for which the lien exists as is presently payable and any residue (upon surrender to the SE for cancellation of the certificate for the shares sold and subject to a like lien for any moneys not presently payable as existed upon the shares before the sale) shall be paid to the person entitled to the shares at the date of the sale.

PART V — CALLS ON SHARES AND FORFEITURE

20. **Making of calls**

(a) Subject to the terms of allotment, the Directors may make calls upon the members in respect of any moneys unpaid on their shares and each member (subject to receiving at least fourteen Clear Days' notice (or any longer period required by the Listing Rules) specifying when and where payment is to be made) shall pay to the SE as required by the notice the amount called on his shares. A call may be required to be paid by instalments. A call may be revoked before receipt by the SE of a sum due thereunder, in whole or in part and payment of a call may be postponed in whole or in part. A person upon whom a call is made shall remain liable for calls made upon him notwithstanding the subsequent transfer of the shares in respect of which the call was made.

(b) While the SE is Officially Listed, it must comply with the requirements of the Listing Rules and the ASTC Settlement Rules in respect of the making of calls and notice given in relation to those calls.

21. **Time of call**

A call shall be deemed to have been made at the time when the resolution of the Directors authorising the call was passed.

22. **Liability of joint Holders**

The joint Holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

23. **Interest on calls**

If a call remains unpaid after it has become due and payable, the person from whom it is due and payable shall pay interest on the amount unpaid from the day it became due until it is paid at the rate fixed by the terms of allotment of the share or in the notice of the call or, if no rate is fixed, at the appropriate rate (as defined by the Acts) but the Directors may waive payment of the interest wholly or in part.

24. **Instalments treated as calls**

An amount payable in respect of a share on allotment or at any fixed date, whether in respect of nominal value or as an instalment of a call, shall be deemed to be a call and if it is not paid the provisions of these Articles shall apply as if that amount had become due and payable by virtue of a call.

25. **Power to differentiate**

Subject to the terms of allotment, the Directors may make arrangements on the issue of shares for a difference between the Holders in the amounts and times of payment of calls on their shares.

26. **Interest on moneys advanced**

The Directors, if they think fit, may receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him, and upon all or any of the moneys so advanced may pay (until the same would, but for such advance, become payable) interest at such rate, not exceeding (unless the SE in general meeting otherwise directs) fifteen per cent. per annum, as may be agreed upon between the Directors and the member paying such sum in advance.

27. **Notice requiring payment**

(a) If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the Directors, at any time thereafter during such times as any part of the call or instalment remains unpaid, may serve a notice on him requiring payment of so much of the call or instalment as is unpaid together with any interest which may have accrued.

(b) The notice shall name a further day (not earlier than the expiration of fourteen Clear Days (or any earlier or longer period required by the Listing Rules) from the date of service of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

(c) If the requirements of any such notice as aforesaid are not complied with then, at any time thereafter before the payment required by the notice has been made, any shares in respect of which the notice has been given may be forfeited by a resolution of the Directors to that effect. The forfeiture shall include all dividends or other moneys payable in respect of the forfeited shares and not paid before forfeiture. The Directors may accept a surrender of any share liable to be forfeited hereunder.

(d) On the trial or hearing of any action for the recovery of any money due for any call it shall be sufficient to prove that the name of the member sued is entered in the Register as the Holder, or one of the Holders, of the shares in respect of which such debt accrued, that the resolution making the call is duly recorded in the minute book and that notice of such call was duly given to the member sued, in pursuance of these Articles, and it shall not be necessary to prove the

appointment of the Directors who made such call nor any other matters whatsoever, but the proof of the matters aforesaid shall be conclusive evidence of the debt.

28. **Power of disposal**

Subject to the requirements of the Listing Rules and ASTC Settlement Rules in respect of forfeited shares, a forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Directors think fit and at any time before a sale or disposition the forfeiture may be cancelled, on such terms as the Directors think fit. Where for the purposes of its disposal such a share is to be transferred to any person, the Directors may authorise some person to execute an instrument of transfer of the share to that person. The SE may receive the consideration, if any, given for the share on any sale or disposition thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of and thereupon he shall be registered as the Holder of the share and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

29. **Effect of forfeiture**

A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but nevertheless shall remain liable to pay to the SE all moneys which, at the date of forfeiture, were payable by him to the SE in respect of the shares, without any deduction or allowance for the value of the shares at the time of forfeiture but his liability shall cease if and when the SE shall have received payment in full of all such moneys in respect of the shares.

30. **Statutory declaration**

A statutory declaration that the declarant is a Director or the Secretary of the SE, and that a share in the SE has been duly forfeited on the date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share.

31. **Payment of sums due on share issues**

The provisions of these Articles as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

32. **Surrender of shares**

The Directors may accept the surrender of any share which the Directors have resolved to have been forfeited upon such terms and conditions as may be agreed and, subject to any such terms and conditions, a surrendered share shall be treated as if it has been forfeited.

PART VI — TRANSFER OF SHARES

33. **Form of instrument of transfer**

Subject to such of the restrictions of these Articles and to such of the conditions of issue as may be applicable, the shares of any member may be transferred by instrument in writing in any usual or common form or any other form which the Directors may approve.

34. **Execution of instrument of transfer**

(a) The instrument of transfer of any share shall be executed by or on behalf of the transferor and, in cases where the share is not fully paid, by or on behalf of the transferee. The transferor shall be deemed to remain the Holder of the share until the name of the transferee is entered in the Register in respect thereof.

(b) Notwithstanding the provisions of these Articles and subject to any regulations made under Section 239 of the 1990 Act, title to any shares in the SE may also be evidenced and transferred without a written instrument in accordance with Section 239 of the 1990 Act or any regulations made thereunder. The Directors shall have power to permit any class of shares to be held in uncertificated form and to implement any arrangements they think fit for such evidencing and transfer which accord with such regulations and in particular shall, where appropriate, be entitled to disapply or modify all or part of the provisions in these Articles with respect to the requirement for written instruments of transfer and share certificates, in order to give effect to such regulations.

35. **Refusal to register transfers**

(a) The Directors in their absolute discretion and without assigning any reason therefor may decline to register:

(i) any transfer of a share which is not fully paid; or

(ii) any transfer of a share to or by a minor or person of unsound mind,

but this shall not apply to a transfer of such a share resulting from a sale of the share through a stock exchange on which the share is quoted unless Article 41 applies.

(b) The Directors may decline to recognise any instrument of transfer unless:

(i) the instrument of transfer is accompanied by the certificate of the shares to which it relates and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer;

(ii) the instrument of transfer is in respect of one class of share only;

(iii) the instrument of transfer is in favour of not more than four transferees; and

(iv) it is lodged at the registered office or at such other place as the Directors may appoint.

36. **Procedure on refusal**

If the Directors refuse to register a transfer then, within two months after the date on which the transfer was lodged with the SE, they shall send to the transferee notice of the refusal.

37. **Closing of transfer books**

The registration of transfers of shares or of transfers of any class of shares may be suspended at such times and for such periods (not exceeding thirty days in each year) as the Directors may determine.

38. **Absence of registration fees**

No fee shall be charged for the registration of any instrument of transfer or other document relating to or affecting the title to any share.

39. **Retention of transfer instruments**

The SE shall be entitled to retain any instrument of transfer which is registered, but any instrument of transfer which the Directors refuse to register shall be returned to the person lodging it when notice of the refusal is given.

40. **Renunciation of allotment**

Nothing in these Articles shall preclude the Directors from recognising a renunciation of the allotment of any shares by the allottee in favour of some other person.

41. **Restrictions on Transfer**

The SE may apply or ask CHESS to apply, a Holding Lock to prevent a transfer, or refuse to register a paper-based transfer document in the circumstances listed in Listing Rule 8.10.1.

PART VII — TRANSMISSION OF SHARES

42. **Death of a member**

If a member dies the survivor or survivors where he was a joint Holder, and his personal representatives where he was a sole Holder or the only survivor of joint Holders, shall be the only persons recognised by the SE as having any title to his interest in the shares; but nothing herein contained shall release the estate of a deceased member from any liability in respect of any share which had been jointly held
by him.

43. **Transmission on death or bankruptcy**

A person becoming entitled to a share in consequence of the death or bankruptcy of a

member may elect, upon such evidence being produced as the Directors may properly require, either to become the Holder of the share or to have some person nominated by him registered as the transferee. If he elects to become the Holder he shall give notice to the SE to that effect. If he elects to have another person registered he shall execute an instrument of transfer of the share to that person. All of these Articles relating to the transfer of shares shall apply to the notice or instrument of transfer as if it were an instrument of transfer executed by the member and the death or bankruptcy of the member had not occurred.

44. **Rights before registration**

A person becoming entitled to a share by reason of the death or bankruptcy of a member (upon supplying to the SE such evidence as the Directors may reasonably require to show his title to the share) shall have the rights to which he would be entitled if he were the Holder of the share, except that, before being registered as the Holder of the share, he shall not be entitled in respect of it to attend or vote at any meeting of the SE or at any separate meeting of the Holders of any class of shares in the SE, so, however, that the Directors, at any time, may give notice requiring any such person to elect either to be registered himself or to transfer the share and, if the notice is not complied with within ninety days, the Directors thereupon may withhold payment of all dividends, bonuses or other moneys payable in respect of the share until the requirements of the notice have been complied with.

PART VIII — ALTERATION OF SHARE CAPITAL

45. **Increase of capital**

(a) Subject to the Listing Rules, the SE from time to time by ordinary resolution may increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

(b) Subject to the provisions of the Acts and the Listing Rules, the new shares shall be issued to such persons, upon such terms and conditions and with such rights and privileges annexed thereto as the general meeting resolving upon the creation thereof shall direct and, if no direction be given, as the Directors shall determine and in particular such shares may be issued with a preferential or qualified right to dividends and in the distribution of the assets of the SE and with a special, or without any, right of voting.

(c) Except so far as otherwise provided by the conditions of issue or by these Articles, any capital raised by the creation of new shares shall be considered part of the pre-existing ordinary capital and shall be subject to the provisions herein contained with reference to calls and instalments, transfer and transmission, forfeiture, lien and otherwise.

46. **Consolidation, sub-division and cancellation of capital**

The SE, by ordinary resolution, may:

(a) consolidate and divide all or any of its share capital into shares of larger amount;

(b) subject to the Acts, subdivide its shares, or any of them, into shares of smaller amount, so however that in the sub-division the proportion between the amount paid and the amount, if any , unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived (and so that the resolution whereby any share is sub-divided may determine that, as between the Holders of the shares resulting from such sub-division, one or more of the shares may have, as compared with the others, any such preferred, deferred or other rights or be subject to any such restrictions as the SE has power to attach to unissued or new shares); or

(c) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person and reduce the amount of its authorised share capital by the amount of the shares so cancelled.

47. **Fractions on consolidation**

Subject to the provisions of these Articles, whenever as a result of a consolidation of shares any members would become entitled to fractions of a share, the Directors may sell, on behalf of those members, the shares representing the fractions for the best price reasonably obtainable to any person and distribute the proceeds of sale in due proportion among those members, and the Directors may authorise some person to execute an instrument of transfer of the shares to, or in accordance with the directions of, the purchaser. The transferee shall not be bound to see to the application of the purchase money nor shall his title to the shares be affected by any irregularity in or invalidity of the proceedings in reference to the sale.

48. **Purchase of own shares**

Subject to and in accordance with the provisions of the Acts and the Listing Rules and without prejudice to any relevant special rights attached to any class of shares, the SE may purchase any of its own shares of any class (including redeemable shares) at any price (whether at par or above or below par), and so that any shares to be so purchased may be selected in any manner whatsoever and cancelled or held by the SE as treasury shares:

(a) In accordance with section 213 of the 1990 Act the SE shall not make an off-market purchase of shares in the SE unless the purchase has first been authorised by a special resolution of the SE pre-approving a specific contract to purchase the shares; and

(b) In accordance with section 215 of the 1990 Act the SE shall not make a market purchase of shares in the SE unless the purchase has first been authorised by an ordinary resolution of the SE giving general authority for the purchase of said shares and such authority should specify the maximum number of shares authorised to be acquired and determine both the maximum and minimum prices which may be paid for those shares.

49. **Reduction of capital**

The SE, by special resolution, may reduce its share capital, any capital redemption reserve fund or any share premium account in any manner and with, and subject to, any incident authorised, and consent required, by law.

PART IX — GENERAL MEETINGS

50. **The Location of Annual and other General Meetings**

(a) The first annual general meeting of the SE following its registration in Ireland pursuant to Article 8 of the Council Regulation may be held outside of the State.

(b) Subsequent annual general meetings of the SE are not required to be held within the State where a resolution providing that it be held elsewhere has been passed at the preceding annual general meeting.

(c) Extraordinary general meetings are not required to be held within the State.

51. **Annual general meetings**

(a) The SE shall hold in each calendar year (within six months of the end of the SE's financial year end) a general meeting as its annual general meeting in addition to any other meeting in that year and shall specify the meeting as such in the notices calling it. Not more than fifteen months shall elapse between the date of one annual general meeting and that of the next. The SE will announce the date of the annual general meeting no less than forty (40) Business Days before such annual general meeting is due to be held.

(b) Only such business may be transacted at an annual general meeting of the SE as is either:

(i) specified in the notice of the meeting given by or at the direction of the SE's board of Directors (or any duly authorised committee thereof);

(ii) otherwise properly brought before the annual general meeting by or at the direction of the SE's board of Directors (or any duly authorised committee thereof); or

(iii) otherwise properly brought before the annual general meeting by one or more members of the SE who alone or together hold 5% or more of the SE's issued share capital:

(A) who is, or are, entitled to receive notice of the meeting, and to attend, speak and vote at such annual general meeting; and

(B) who comply with Articles 51(c) and (d),

provided that an item of business in relation to election of Directors must also comply with the provisions of Article 111.

(c) In order to bring business before an annual general meeting, pursuant to Article 51(b)(iii), notice of the intention to raise that business must be

addressed to the SE's board of Directors and delivered to the SE's registered office not less than thirty (30) Business Days before the date of the annual general meeting nor more than the earlier of:

(i) sixty (60) Business Days prior to the anniversary date of the immediately preceding annual general meeting of the SE; and

(ii) forty (40) Business Days prior to the date on which the annual general meeting is due to be held.

(d) A notice given pursuant to Article 51(c) must:

(i) specify as to each item of business to be put on the agenda before the annual general meeting:

(A) in not more than 1000 words, a description of the item of business, including the proposed resolution and the reasons for requesting such business; and

(B) a description of all agreements, arrangements, or understandings between such member (including the persons referred to in Article 51(d)(ii)) and any other person or persons (including their names) in connection with the proposal of such item of business by such member and any material interest of such member and any such other person or persons in such business, including any anticipated benefit to the member and any such other person or persons; and

(ii) the name and registered address of the beneficial holder(s) (excluding any custodian or other nominee) who requested (whether directly or through a custodian or other nominee) the member or members provide the SE with notice of the intention to raise business under Article 51(c); and

(iii) as to the member or members giving notice:

(A) the number, class and distinguishing numbers (if any) of all shares of the SE which are represented by the ownership interest referred to in Article 51(b)(iii); and

(B) full details of the beneficial interest in the shares of the SE held by the holder(s) referred to in Article 51(d)(ii) including the nature and extent of that interest (but excluding any custodian or other nominee) and the circumstances giving rise to the beneficial holder's interest in those shares (including, without limitation, whether and the extent to which any derivative instrument, swap, option, warrant, short interest, hedge or other transaction has been entered into by or on behalf of such member with respect to shares of the SE) and whether any other agreement, arrangement or understanding has been or is

proposed to be entered into by the holder of such interest with respect to shares in the SE.

(e) No business shall be conducted at an annual general meeting except business brought before the annual general meeting in accordance with the procedures described in this Article 51; provided, however, that, once business has been properly brought before the annual general meeting in accordance with such procedures, nothing in this Article 51 shall be deemed to preclude discussion by any member of any such business. The chairman of the annual general meeting shall determine whether such business was properly brought before the annual general meeting in accordance with the foregoing procedures and the chairman's decision in this regard shall be final. The chairman may, notwithstanding the fact that such business was not properly brought before the annual general meeting in accordance with the foregoing procedures, determine that such business is to be transacted at the annual general meeting.

52. **Extraordinary general meetings**

All general meetings other than annual general meetings shall be called extraordinary general meetings.

53. **Convening general meetings and putting items on the agenda**

(a) The Directors may convene general meetings. Extraordinary general meetings may also be convened on such requisition, or in default may be convened by such requisitionists, and in such manner as may be provided by the Acts and or the Council Regulation. If at any time there are not sufficient Directors capable of acting to form a quorum, then:

(i) the Chairman; or

(ii) any three Directors; or

(iii) any one or more members who alone or together hold at least 5% of the SE's issued share capital,

may convene an extraordinary general meeting in the same manner as nearly as possible as that in which general meetings may be convened by the Directors.

(b) One or more members who alone or together hold at least 5% of the SE's issued share capital may request the SE to convene an extraordinary general meeting and draw up the agenda therefore provided that:

(i) a notice is addressed to the SE's board of Directors and delivered to the SE's registered office;

(ii) such notice complies mutatis mutandis with Article 51(d) as if (A) the reference therein to Article 51(c) were a reference to Article 53(b)(i); and (B) the reference in Article 51(d)(ii) to a beneficial holder requesting the member to provide notice of the intention to raise the

business was a reference to a beneficial holder requesting the member to requisition an extraordinary general meeting under Article 53; and

(iii) where such notice relates to the election of Directors, such notice also complies with the provisions of Article 111.

Nothing shall preclude the Directors of the SE from adding items of business to the agenda or including recommendations in relation to any item contained in the agenda of an extraordinary general meeting convened in the manner set out in this Article 53(b).

(c) One or more members who alone or together hold at least 10% of the SE's issued share capital may request that one or more additional items be put on the agenda of an extraordinary general meeting. This right is subject to:

(i) written notice of the item being received, in accordance with Article 53(b), by the SE within 5 Business Days of the day the SE announces to the ASX its intention to convene the extraordinary general meeting at which the member wishes to put the additional item or items on the agenda;

(ii) the right of the Directors to make recommendations in relation to any additional item so added to the agenda of that extraordinary general meeting; and

(iii) the provisions of the Acts and the SE's memorandum of association and these Articles and, without prejudice to the generality of the foregoing, the requirements in Articles 55 and 114 (as applicable) in relation to the giving of notice of resolutions.

54. **Class meetings**

(a) At any time when the SE has two or more classes of shares, every decision by the general meeting shall be subject to a separate vote (to be taken by a poll) by each class of shareholders whose class rights are affected thereby.

(b) All provisions of these Articles relating to general meetings of the SE shall, mutatis mutandis, apply to every separate general meeting of the holders of any class of shares in the capital of the SE, except that:

(i) the necessary quorum shall be one or more persons holding or representing by proxy at least 5% in nominal value of the issued shares of the class or, at any adjourned meeting of such class, at least 5% in nominal value of the issued shares of the class present in person or by proxy, shall be deemed to constitute a meeting; and

(ii) any Holder of shares of the class present in person or by proxy may demand a poll; and

(iii) on a poll, each Holder of shares of the class shall have one vote in respect of every share of the class held by him.

55. **Notice of general meetings**

(a) Subject to the provisions of the Acts allowing a general meeting to be called by shorter notice, an annual general meeting and an extraordinary general meeting called for the passing of a special resolution shall be called by at least twenty-one Clear Days' notice and all other extraordinary general meetings shall be called by at least fourteen Clear Days' notice.

(b) Any notice convening a general meeting shall specify the time and place of the meeting and, in the case of special business, the general nature of that business and, in reasonable prominence, that a member entitled to attend and vote is entitled to appoint a proxy to attend, speak and vote in his place and that a proxy need not be a member of the SE. It shall also give particulars of any Directors who are to retire by rotation or otherwise at the meeting and of any persons who are recommended by the Directors for appointment or
re-appointment as Directors at the meeting or in respect of whom notice has been duly given to the SE of the intention to propose them for appointment or re-appointment as Directors at the meeting. Subject to any restrictions imposed on any shares, the notice shall be given to all the members and to the Directors, the Auditors and to any other person to whom the SE is required to give notice under the Listing Rules.

(c) The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at the meeting.

(d) Where, by any provision contained in the Acts, extended notice is required of a resolution, the resolution shall not be effective (except where the Directors of the SE have resolved to submit it) unless notice of the intention to move it has been given to the SE not less than twenty-eight days (or such shorter period as the Acts permit) before the meeting at which it is moved, and the SE shall give to the members notice of any such resolution as required by and in accordance with the provisions of the Acts and the Listing Rules.

56. **Means of Holding of General Meetings**

Subject to section 140 of the 1963 Act concerning annual general meetings, all general meetings (including annual, extraordinary and class meetings of the members of the SE) may be conducted by the use of a webcast, conference telephone or similar facility provided that the members (whether present in person, by proxy or by authorised representative), other persons entitled to attend such meetings and the auditors have been notified of the convening of the meeting and the availability of the webcast, conference telephone or similar facility for the meeting and, if present at the meeting as hereinafter provided, can hear and contribute to the meeting. Such participation in a meeting shall constitute presence and attendance in person at the meeting and the persons in attendance may be situated in any part of the world for any such meeting.

57. **Record Date**

Subject to any waiver that may be granted by the ASX, the SE must comply with the Listing Rules and the ASTC Settlement Rules in settling any Record Date.

PART X — PROCEEDINGS AT GENERAL MEETINGS

58. **Quorum for general meetings**

(a) No business other than the appointment of a chairman shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. Two persons who alone or together hold at least 5% of the issued share capital and who are entitled to vote upon the business to be transacted, each being a member or a proxy for a member or a duly authorised representative of a corporate member, shall be a quorum.

(b) If such a quorum is not present within half an hour from the time appointed for the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such time and place as the Directors may determine. If at the adjourned meeting such a quorum is not present within half an hour from the time appointed for the meeting, the meeting shall be dissolved.

59. **Special business**

All business shall be deemed special that is transacted at an extraordinary general meeting. All business that is transacted at an annual general meeting shall also be deemed special, with the exception of declaring a dividend, the consideration of the accounts, balance sheets and reports of the Directors and Auditors, the election of Directors in the place of those retiring (whether by rotation or otherwise), the fixing of the remuneration of the Directors, the re-appointment of the retiring Auditors and the fixing of the remuneration of the Auditors.

60. **Chairman of general meetings**

The Chairman of the board of Directors or, in his absence, the Deputy Chairman (if any) or, in his absence, some other Director nominated by the Directors, shall preside as chairman at every general meeting of the SE. If at any general meeting none of such persons shall be present within fifteen minutes after the time appointed for the holding of the meeting and willing to act, the Directors present shall elect one of their number to be chairman of the meeting and, if there is only one Director present and willing to act, he or she shall be chairman.

61. **Directors' and Auditors' right to attend general meetings**

A Director shall be entitled, notwithstanding that he is not a member, to attend and speak at any general meeting and at any separate meeting of the Holders of any class of shares in the SE. The Auditors shall be entitled to attend any general meeting and to be heard on any part of the business of the meeting which concerns them as the Auditors.

62. **Adjournment of general meetings**

The chairman, with the consent of a meeting at which a quorum is present, may (and if so directed by the meeting, shall) adjourn the meeting from time to time (or

indefinitely) and from place to place, but no business shall be transacted at any adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place. Where a meeting is adjourned indefinitely, the time and place for the adjourned meeting shall be fixed by the Directors. When a meeting is adjourned for fourteen days or more or indefinitely, at least seven Clear Days' notice shall be given specifying the time and meeting and the general nature of the business to be transacted. Save as aforesaid it shall not be necessary to give any notice of an adjourned meeting.

63. **Determination of resolutions**

At any general meeting a resolution put to the vote of the meeting shall be decided on a poll.

64. **Taking of a poll**

A poll shall be taken in such manner as the chairman directs and he may appoint scrutineers (who need not be members) and fix a time and place for declaring the result of the poll. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was held.

65. **Votes of members**

Votes may be given either personally or by proxy or a duly authorised representative of a corporate member. Subject to any rights or restrictions for the time being attached to any class or classes of shares every member present in person or by proxy or a duly authorised representative of a corporate member shall have one vote for every share carrying voting rights of which he is the Holder. On a poll a member entitled to more than one vote need not use all his votes or cast all the votes he or his proxy or proxies uses in the same way.

66. **Chairman's casting vote**

Where there is an equality of votes on a poll, the chairman of the meeting at which poll is held shall be entitled to a casting vote in addition to any other vote he may have.

67. **Voting by joint Holders**

Where there are joint Holders of a share, the vote of the senior who tenders a vote, whether in person or by proxy, in respect of such share shall be accepted to the exclusion of the votes of the other joint Holders; and for this purpose seniority shall be determined by the order in which the names of the Holders stand in the Register in respect of the share.

68. **Voting by incapacitated Holders**

A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction (whether in the State or elsewhere) in matters concerning mental disorder, may vote, on a poll, by his committee, receiver, guardian or other person appointed by that court and any such committee, receiver, guardian or other person may vote by proxy on a poll. Evidence to the satisfaction of the Directors of

the authority of the person claiming to exercise the right to vote shall be received at the Registered Office or at such other address as is specified in accordance with these Articles for the receipt of appointments of proxy, not less than forty-eight hours before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised and in default the right to vote shall not be exercisable.

69. **Default in payment of calls**

Unless the Directors otherwise determine, no member shall be entitled to vote at any general meeting or any separate meeting of the Holders of any class of shares in the SE, either in person or by proxy, or to exercise any privilege as a member in respect of any share held by him unless all moneys then payable by him in respect of that share have been paid.

70. **Restriction on voting by SE and its subsidiaries**

No votes may be cast in the general meeting in respect of any share if:

(a) the depositary receipt for such share; or

(b) the CUFS issued in respect of such share,

is held by the SE or by a subsidiary of the SE.

71. **Restriction of voting rights by Holders**

(a) If at any time the Directors shall determine that a Specified Event (as defined in paragraph (f) shall have occurred in relation to any share or shares the Directors may serve a notice to such effect on the Holder or Holders thereof. Upon the service of any such notice (in these Articles referred to as a "**Restriction Notice**") no Holder or Holders of the share or shares specified in such Restriction Notice shall be entitled, for so long as such Restriction Notice shall remain in force, to attend or vote at any general meeting or either personally or by proxy.

(b) A Restriction Notice shall be cancelled by the Directors as soon as reasonably practicable, but in any event not later than forty-eight hours, after the Holder or Holders concerned shall have remedied the default by virtue of which the Specified Event shall have occurred. A Restriction Notice shall automatically cease to have effect in respect of any share transferred upon registration of the relevant transfer provided that a Restriction Notice shall not cease to have effect in respect of any transfer where no change in the beneficial ownership of the share shall occur and for this purpose it shall be assumed that no such change has occurred where a transfer form in respect of the share is presented for registration having been stamped at a reduced rate of stamp duty by virtue of the transferor or transferee claiming to be entitled to such reduced rate as a result of the transfer being one where no beneficial interest passes.

(c) The Directors shall cause a notation to be made in the Register against the name of any Holder or Holders in respect of whom a Restriction Notice shall have been served indicating the number of shares specified in such Restriction Notice and shall cause such notation to be deleted upon cancellation or cesser of such Restriction Notice.

(d) Any determination of the Directors and any notice served by them pursuant to the provisions of this Article shall be conclusive as against the Holder or Holders of any share and the validity of any notice served by the Directors in pursuance of this Article shall not be questioned by any person.

(e) If, while any Restriction Notice shall remain in force in respect of any Holder or Holders of any shares, such Holder or Holders shall be issued with any further shares as a result of such Holder or Holders not renouncing any allotment of shares made to him or them pursuant to a capitalisation issue under Part XXII of these Articles, the Restriction Notice shall be deemed also to apply to such Holder or Holders in respect of such further shares on the same terms and conditions as were applicable to the said Holder or Holders immediately prior to such issue of further shares.

(f) For the purpose of these Articles the expression "**Specified Event**" in relation to any share shall mean the failure by the Holder or Holders thereof to pay any call or instalment of a call when such a call is due and payable.

72. **Voting Exclusion Statements**

If, under the Listing Rules, a notice of meeting contains a Voting Exclusion Statement, any votes cast on the resolution by the named person (or class of person) excluded from voting or an associate of that person or those persons must be disregarded.

73. **Time for objection to voting**

No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is tendered and every vote not disallowed at such meeting shall be valid. Any such objection made in due time shall be referred to the chairman of the meeting whose decision shall be final and conclusive.

74. **Appointment of proxy**

(a) Every member entitled to attend and vote at a general meeting may appoint a proxy to attend, speak and vote on his behalf and where a member holds more than one share carrying voting rights the member may appoint more than one proxy to attend, speak and vote at the same meeting the shares in respect of which the proxy has been so appointed. The appointment of a proxy shall be in writing in any usual form or in any other form which the Directors may approve and shall be signed by or on behalf of the appointor, provided that such form as required by the Listing Rules is used. The signature on such appointment need not be witnessed. A body corporate may sign a form of proxy under its common seal or under the hand of a duly authorised officer thereof or in such other manner as the Directors may approve. A proxy need not be a member of the SE. The appointment of a proxy in electronic form shall only be effective in such manner as the Directors may approve.

(b) Without limiting paragraph (a), the Directors may from time to time permit appointments of a proxy to be made by means of an electronic or internet communication or facility and may in a similar manner permit supplements to, or amendments or revocations of, any such electronic or internet communication or facility to be made. The Directors may in addition prescribe the method of determining the time at which any such electronic or internet communication or facility is to be treated as received by the SE. The Directors may treat any such electronic or internet communication or facility which purports to be or is expressed to be sent on behalf of a member as sufficient evidence of the authority of the person sending that instruction to send it on behalf of that member.

75. **Bodies corporate acting by representatives at meetings**

Any body corporate which is a member of the SE may by resolution of its directors or other governing body authorise such person or persons as it thinks fit to act as its representative or representatives at any meeting of the SE or of any class of members of the SE and any person so authorised shall be entitled to exercise the same powers on behalf of the body corporate which he represents as that body corporate could exercise if it were an individual member of the SE. Where a member appoints more than one representative in relation to a general meeting each representative must be appointed to exercise the rights attaching to a different share or shares held by the member.

76. **Receipt of proxy appointment**

Where the appointment of a proxy and any authority under which it is signed or a copy, certified notarially or in some other way approved by the Directors is to be received by the SE:

(a) in physical form it shall be deposited at the registered office or (at the option of the member) at such other place or places (if any) as may be specified for that purpose in or by way of note to the notice convening the meeting; or

(b) in electronic form, it may be so received where an address has been specified by the SE for the purpose of receiving electronic communications:

(i) in the notice convening the meeting; or

(ii) in any appointment of proxy sent out by the SE in relation to the meeting; or

(iii) in any invitation contained in an electronic communication to appoint a proxy issued by the SE in relation to the meeting,

provided that it is so received by the SE not less than forty-eight hours (or such lesser time as the Directors specify) before the time appointed for the holding of the meeting or adjourned meeting or (in the case of a poll taken otherwise than at or on the same day as the meeting or adjourned meeting) for the taking of the poll at which it is to be used, and in default shall not be treated as valid or, in the case of a meeting which is adjourned to, or a poll which is to be taken on, a date which is less than seven days

after the date of the meeting which was adjourned or at which the poll was declared, it shall be sufficient if the appointment of proxy and any such authority and certification thereof as aforesaid is so received by the SE at the commencement of the adjourned meeting or the taking of the poll. An appointment of proxy relating to more than one meeting (including any adjournment thereof) having once been so received for the purposes of any meeting shall not require to be delivered, deposited or received again for the purposes of any subsequent meeting to which it relates.

77. **Effect of proxy appointments**

Receipt by the SE of an appointment of proxy in respect of a meeting shall not preclude a member from attending and voting at the meeting or at any adjournment thereof. An appointment proxy shall be valid, unless the contrary is stated therein, for any adjournment of the meeting as for the meeting to which it relates.

78. **Effect of revocation of proxy or of authorisation**

(a) A vote given in accordance with the terms of an appointment of proxy or a resolution authorising a representative to act on behalf of a body corporate shall be valid notwithstanding the death or insanity of the principal, or the revocation of the appointment of proxy or of the authority under which the proxy was appointed or of the resolution authorising the representative to act or transfer of the share in respect of which the proxy was appointed or the authorisation of the representative to act was given, provided that no intimation in writing (whether in electronic form or otherwise) of such death, insanity, revocation or transfer shall have been received by the SE at the Office, at least 48 hours (or such lesser time as the Directors specify) before the commencement of the meeting or adjourned meeting at which the appointment of proxy is used or at which the representative acts PROVIDED HOWEVER, that where such intimation is given in electronic form it shall have been received by the SE at least 48 hours (or such lesser time as the Directors may specify) before the commencement of the meeting.

(b) The Directors may send, at the expense of the SE, by post, electronic mail or otherwise, to the members forms for the appointment of a proxy (with or without stamped envelopes for their return) for use at any general meeting or at any class meeting, either in blank or nominating any one or more of the Directors or any other persons in the alternative. If for the purpose of any meeting invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the expense of the SE, such invitations shall be issued to all (and not to some only) of the members entitled to be sent a notice of the meeting and to vote thereat by proxy, but the accidental omission to issue such invitations to, or the non-receipt of such invitations by, any member shall not invalidate the proceedings at any such meeting.

PART XI — COVENANTS WITH MEMBERS WHERE CUFS ARE IN ISSUE

Articles 79 to 95 shall only apply where CUFS are quoted on ASX and are intended to be for the benefit of the holder of CUFS but, without prejudice to any other contractual rights of the CUFS holders, these Articles shall be enforceable under these Articles only as against the SE by the registered member of the shares in respect of which CUFS have been issued.

79. **Non-Statutory Registers**

The SE shall establish and maintain any such registers as required to be established and maintained by it under the Listing Rules or the ASTC Settlement Rules (the "**Non-Statutory Registers**") and:

(a) The board of Directors shall have the power and authority to permit auditing of the Non-Statutory Registers at such intervals, and by such persons and in such manner, as required by the Listing Rules and the ASTC Settlement Rules.

(b) The board of Directors shall have power and authority to permit inspection of the Non-Statutory Registers and to provide information recorded therein as well as any other information regarding the direct or indirect shareholding of a shareholder of which the SE has been notified by that shareholder to the authorities entrusted with the supervision and/or implementation of the trading of CUFS on the ASX.

(c) Part of the Non-Statutory Registers may be kept abroad, in addition to in the State, in order to comply with the Listing Rules.

80. **Notice of General Meetings**

CUFS holders shall be entitled to receive notice of and to attend general meetings of the SE in the same manner as set out in Article 55 but shall not be entitled to vote.

81. **Registration of Transfers of CUFS**

The Directors must refuse to register or authorise any transfer of CUFS:

(a) not permitted under the Listing Rules or the ASTC Settlement Rules; or

(b) if permitted only on conditions contained in the Listing Rules or the ASTC Settlement Rules, then upon satisfaction of those conditions.

82. **Other Provisions on the Registration of Transfers of CUFS**

The following shall apply:

(a) The transfer of any CUFS in respect of shares in the SE may be effected by a Proper ASTC Transfer.

(b) Upon receipt of a Proper ASTC Transfer and subject to the Listing Rules and the ASTC Settlement Rules, the Directors must approve registration of a transferee named in the transfer as a CUFS Holder.

(c) The transferor will be deemed to remain the holder of the CUFS until a Proper ASTC Transfer has been effected or the name of the transferee is entered in the relevant register as the holder of the CUFS.

(d) The SE must not require a statutory declaration or other document in

connection with ownership restrictions of its CUFS before it will register a transfer document.

(e) The Directors may decline to register or may prevent registration of a transfer of CUFS or may apply a Holding Lock to prevent a transfer in accordance with the Listing Rules if: (i) the transfer is not in a registrable form; or (ii) registration of the transfer may breach a law of Australia.

(f) The Directors must cause notice of any action under Article 82(e) to be given as required by the Listing Rules. Failure to do so will not invalidate the action.

(g) The Directors may suspend the registration of transfers at the times and for the periods they determine, but only as permitted by the ASTC Settlement Rules.

(h) The Directors must ensure that the SE does not charge a fee for registering, issuing, handling or otherwise dealing with CUFS transfers and holding statements and other documents evidencing transactions or information with respect to its CUFS, as required by, or unless allowed by, Listing Rule 8.14.

(i) The Directors may decline to register or may prevent registration of a transfer of CUFS or may apply a Holding Lock to prevent a transfer in accordance with the Listing Rules if the transfer is paper-based and registration of the transfer will create a new holding that will be a Non-marketable Parcel.

(j) The SE may elect to, but is not required to, register more than 3 persons as joint holders of CUFS, unless the joint holders become entitled due to transmission upon the death of a CUFS Holder or unless required to so under the Listing Rules or the ASTC Settlement Rules.

Divestment of Non-marketable Parcel of CUFS

83. A divestment under Article 85 is subject to and must occur in accordance with the Listing Rules and the ASTC Settlement Rules, including ASTC Settlement Rule 5.12, which shall prevail in the event of any inconsistency with any of the provisions of Article 85 to Article 95.

84. The provisions of Article 85 to Article 95 only apply to Securities in a new holding created by the transfer of a parcel of Securities that was less than a Marketable Parcel at the time the transfer document was initiated or, in the case of a paper based transfer document, was lodged with the SE.

85. The board of Directors may cause the SE to sell a CUFS Holder's CUFS if the CUFS Holder holds less than a Non-marketable Parcel and the procedures in Articles 86 to 95 are observed.

Notice of Proposed Sale of CUFS

86. Once in any 12 month period, the SE may give written notice to a CUFS Holder who holds a Non-marketable Parcel or, if held by joint CUFS Holders, to all of the joint CUFS Holders:

    (a) explaining the effect of this Article 86;

    (b) stating that it intends to sell the Non-marketable Parcel; and

    (c) specifying a date at least 35 Business Days after the notice is given by which the CUFS Holder may give the SE written notice that the CUFS Holder wishes to retain the holding.

No sale where CUFS holder gives notice

87. The SE must not sell a Non-marketable Parcel if the SE receives a written notice that the CUFS Holder wants to retain it.

Terms of Sale

88. The SE may sell the Securities which make up the Non-marketable Parcel as soon as practicable at a price which the Directors consider to be the best price reasonably obtainable for the Securities at the time they are sold. A sale of Securities under this Article includes all dividends payable on and other rights attaching to them. The SE must pay the costs of the sale if not prohibited from doing so by the Acts or law, or must cause the purchaser to do so. Otherwise, the Directors may decide the manner, time and terms of sale.

89. For the purpose of giving effect to Article 88 the Directors may authorise a person, without further leave or consent from a relevant member, to execute a transfer as agent for the relevant member on behalf of the CUFS Holder who holds a Non-marketable Parcel.

Change in circumstance

90. If a CUFS Holder's holding becomes a Marketable Parcel after notice is given but before the Securities are sold, the Directors may decide that Articles 83 to 95 no longer applies to that holding. Before a sale is effected under Articles 85 to 95, the Directors may suspend or terminate the operation of this Article either generally or in the case of a specific CUFS Holder.

Application of proceeds

91. The SE must:

    (a) give written notice to the former CUFS Holder stating:

(i) what the amount of the sale proceeds is; and

(ii) that it is holding the balance for the former CUFS Holder while awaiting the former CUFS Holder's return of the certificate (if any) for the Securities sold or evidence of its loss or destruction;

(b) if the Securities were certificated, not pay the amount until it has received the certificate for them or evidence satisfactory to the SE of the loss or destruction of the certificate; and

(c) subject to Article 91(b), send the amount of the sale proceeds to the former holder after the sale.

92. **Protection for transferee**

The title of the new holder of CUFS sold under this Part XI is not affected by any irregularity in the sale. The sole remedy of any person previously interested in CUFS is damages which may be recovered only from the SE.

93. **No sale where takeover bid announced**

The power to sell under this Part XI lapses following the announcement of a takeover bid for the SE. The procedure may be started again after the close of the offers made under the takeover bid.

94. **Voting Rights and Dividend Rights**

The SE may remove or change the voting right or the right to receive dividends for any CUFS in a Non-marketable Parcel. If it has done so and proceeds with the sale of the Non-marketable Parcel, it must send any dividends that have been withheld to the former holder after the sale of the Non-marketable Parcel.

95. **No Express Permission for Holding of Non-marketable Parcel**

These Articles do not contain an express permission for a CUFS Holder to have a holding of a Non-marketable Parcel for the purposes of ASTC Settlement Rule 8.10.2.

PART XII — DIRECTORS

96. **Number of Directors**

Unless otherwise determined by the SE in general meeting, the number of Directors will be the number determined by the Directors from time to time and shall not be more than twelve nor less than three. The continuing Directors may act notwithstanding any vacancy in their body, provided that if the number of the Directors is reduced below the prescribed minimum the remaining Director or Directors shall appoint an additional Director or additional Directors to make up such minimum or shall convene a general meeting of the SE for the purpose of making such appointment. If there be no Director or Directors able or willing to act then any member or members representing 5% of the SE's issued share capital, may summon a general meeting for the purpose of appointing Directors. Any additional Director so

appointed shall hold office (subject to the provisions of the Acts and these Articles) only until the conclusion of the annual general meeting of the SE next following such appointment unless he is re-elected during such meeting and he shall not retire by rotation at such meeting or be taken into account in determining the Directors who are to retire by rotation at such meeting.

97. **Share qualification**

A Director shall not require a share qualification.

98. **Ordinary remuneration of Directors**

(a) Each Director shall be paid a fee for the services (which shall be deemed to accrue from day to day) at such rate as may from time to time be determined by the board of Directors.

(b) Without prejudice to any amounts payable under any other provision of these Articles (but at all times subject to the requirements of the Listing Rules), the ordinary remuneration of Directors who do not hold executive office shall not exceed in aggregate $US1,500,000 per annum or such higher amount as the SE may from time to time by ordinary resolution determine and shall be divisible (unless such resolution shall provide otherwise) among the Directors as they may agree, or, failing agreement, equally, except that any such Director who shall hold office for part only of the period in respect of which such remuneration is payable shall be entitled only to rank in such division for a proportion of the remuneration related to the period during which he has held office. In this Article "ordinary remuneration" shall not include such sums as are paid or reimbursed in accordance with board policy regarding travelling, accommodation and other expenses that are incurred by them in connection with their attendance at meetings of Directors or committees of Directors or general meetings or separate meetings of the Holders of any class of shares or of debentures of the SE or otherwise in connection with the discharge of their duties when engaged on the business of the SE.

99. **Special remuneration of Directors**

Any Director who holds any executive office (including for this purpose the office of Chairman or Deputy Chairman or the Chief Executive Officer) may be paid such extra remuneration by way of salary, commission or otherwise as the Directors may determine provided that such Director's salary or fee must not include a commission on, or percentage of, operating revenue.

100. **Expenses of Directors**

The Directors may be paid or reimbursed for all travelling, accommodation and other expenses reasonably incurred by them in accordance with Board policy regarding meetings of Directors or committees of Directors or general meetings or separate meetings of the Holders of any class of shares or of debentures of the SE or otherwise in connection with the discharge of their duties when engaged on the business of the SE.

101. **Alternate Directors**

(a) Any Director may appoint by writing (whether in electronic form or otherwise) under his hand any person (including another Director) to be his alternate provided always that no such appointment of a person other than a Director as an alternate shall be operative unless and until such appointment shall have been approved by resolution of the Directors. Any such authority may be sent by delivery, post, cable, telegram, telex, telefax, electronic mail or any other means of communication approved by the Directors and may bear a printed, facsimile, electronic or advanced electronic signature of the Director giving such authority.

(b) An alternate Director shall be entitled, subject to his giving to the SE an address (whether within or outside of the State), to receive notices of all meetings of the Directors and of all meetings of committees of Directors of which his appointor is a member, to attend and vote at any such meeting at which the Director appointing him is not personally present and in the absence of his appointor to exercise all the powers, rights, duties and authorities of his appointor as a Director (other than the right to appoint an alternate hereunder).

(c) Save as otherwise provided in these Articles, an alternate Director shall be deemed for all purposes to be a Director and shall alone be responsible for his own acts and defaults and he shall not be deemed to be the agent of the Director appointing him. The remuneration of any such alternate Director shall be payable out of the remuneration paid to the Director appointing him and shall consist of such portion of the last mentioned remuneration as shall be agreed between the alternate and the Director appointing him.

(d) A Director may revoke at any time the appointment of any alternate appointment by him. If a Director shall die or cease to hold the office of Director the appointment of his alternate shall thereupon cease and determine.

(e) If a Director retires by rotation or otherwise but is re-appointed or deemed to have been reappointed at the meeting at which he retires, any appointment of an alternate Director made by him which was in force immediately prior to his retirement shall continue after his re-appointment or deemed re-appointment.

(f) Any appointment or revocation by a Director under this Article shall be effected by notice in writing (whether in electronic form or otherwise) given under his hand to the Secretary or deposited or received at the registered office or in any other manner approved by the Directors.

PART XIII — POWERS OF DIRECTORS

102. **Directors' powers**

(a) Subject to the provisions of the Acts, the Memorandum of Association of the SE and these Articles and to any directions by the members given by special resolution, not being inconsistent with these Articles or with the Acts, the business of the SE shall be managed by the Directors who may do all such acts and things and exercise all the powers of the SE as are not by the Acts or

by these Articles required to be done or exercised by the SE in general meeting. No alteration of the Memorandum of Association of the SE or of these Articles and no such direction shall invalidate any prior act of the Directors which would have been valid if that alteration had not been made or that direction had not been given. The powers given by this Article shall not be limited by any special power given to the Directors by these Articles and a meeting of Directors at which a quorum is present may exercise all powers exercisable by the Directors.

(b) The only categories of transaction which require an express decision by the board of Directors are those which are reserved to the board of Directors under these Articles or the Acts.

103. **Power to delegate**

Without prejudice to the generality of Article 102(a) but subject to Article 102(b), the Directors may delegate any of their powers to the Chief Executive Officer or any person holding any other executive office or to any committee consisting of one or more Directors together with such other persons (if any) as may be appointed to such committee by the Directors provided that a majority of the members of each committee appointed by the Directors shall at all times consist of Directors and that no resolution of any such committee shall be effective unless a majority of the members of the committee present at the meeting at which it was passed are Directors. Any such delegation may be made subject to any conditions the Directors may impose, and either collaterally with or to the exclusion of their own powers and may be revoked. Subject to any such conditions, the proceedings of a committee with two or more members shall be governed by the provisions of these Articles regulating the proceedings of Directors so far as they are capable of applying.

104. **Appointment of attorneys**

The Directors, from time to time and at any time by power of attorney under seal, may appoint any company, firm or person or fluctuating body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys of the SE for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under these Articles) and for such period and subject to such conditions as they may think fit. Any such power of attorney may contain such provisions for the protection of persons dealing with any such attorney as the Directors may think fit and may authorise any such attorney to sub-delegate all or any of the powers, authorities and discretions vested in him.

105. **Local management**

Without prejudice to the generality of Article 103 but strictly subject to Article 3, the Directors may establish any committees, local boards or agencies for managing any of the affairs of the SE, either in the State or elsewhere, and may appoint any persons to be members of such committees, local boards or agencies and may fix their remuneration and may delegate to any committee, local board or agent any of the powers, authorities and discretions vested in the Directors with power to sub-delegate and any such appointment or delegation may be made upon such terms and subject to such conditions as the Directors may think fit, and the Directors may remove any

person so appointed, and may annul or vary any such delegation, but no person dealing in good faith with any such committee, local board or agency, without notice of any such removal, annulment or variation shall be affected thereby.

106. **Borrowing powers**

The Directors may exercise all the powers of the SE to borrow or raise money and to mortgage or charge its undertaking, property, assets, and uncalled capital or any part thereof and subject to Part III of the 1983 Act to issue debentures, debenture stock and other securities whether outright or as collateral security for any debt, liability or obligation of the SE or of any third party, without any limitation as to amount.

107. **Execution of negotiable instruments**

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for moneys paid to the SE shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by such person or persons and in such manner as the Directors shall determine from time to time by resolution.

108. **Participation in CHESS**

(a) The Directors may resolve to do anything that is necessary or desirable for the SE to participate in any computerised, electronic or other system for the facilitation of the transfer of CUFS or the operation of the SE's registers that may be owned, operated or sponsored by ASX or a related body corporate of ASX.

(b) While the SE remains a participant in any such system:

(i) it must comply with the Listing Rules and the ASTC Settlement Rules relating to transfers, divestment of holdings, holding statements for new holdings and changed holdings and replacement certificates;

(ii) it need not do anything that, as a participant, it is relieved of doing by the Acts or law or would otherwise be required to do by these Articles; and

(iii) it must comply with ASTC Settlement Rule 5.21 with respect to any rights issue.

PART XIV — APPOINTMENT AND RETIREMENT OF DIRECTORS

109. **Retirement**

(a) At each annual general meeting of the SE one-third of the Directors who are subject to retirement by rotation, or if their number is not three or a multiple of three then the number nearest to one-third, shall retire from office, but if there is only one Director who is subject to retirement by rotation then he shall retire provided that each Director (other than the Chief Executive Officer) shall present himself for re-election at least once every three years.

(b) At each of the first three annual general meetings following the SE's registration in Ireland, the Directors (including any Directors holding executive office pursuant to these Articles but excluding the Chief Executive Officer) to retire by rotation shall be those who have agreed to put themselves forward for retirement provided that where the number of such Directors is less than one-third, the Chairman shall nominate the Directors who are to retire.

(c) At the fourth and at each subsequent annual general meeting following the SE's registration in Ireland the Directors (including any Directors holding executive office pursuant to these Articles but excluding the Chief Executive Officer) to retire by rotation shall be those who have been longest in office since their last appointment or reappointment but as between persons who became or were last reappointed Directors on the same day those to retire shall be determined (unless they otherwise agree among themselves) by lot.

(d) At the sixth annual general meeting following the appointment or reappointment of the Chief Executive Officer as a Director, he shall retire and present himself for reelection as a Director at least once every six years.

(e) Subject to Article 110, a Director who retires at an annual general meeting may be reappointed, if willing to act. If he is not reappointed (or deemed to be reappointed pursuant to these Articles) he shall retain office until the meeting appoints someone in his place or, if it does not do so, until the end of the meeting.

110. **Deemed reappointment**

If the SE, at the meeting at which a Director retires by rotation, does not fill the vacancy then, subject to Article 111 the retiring Director, if willing to act, shall be deemed to have been re-appointed, unless at the meeting it is resolved not to fill the vacancy or a resolution for the reappointment of the Director is put to the meeting and lost.

111. **Eligibility for appointment as a Director**

(a) Except for:

(i) a Director who is eligible for election or re-election under Articles 109, 110 or 112(b) (as applicable); or

(ii) a person who is recommended for election by the board of Directors at any general meeting of the SE and provided that the Directors deliver to the registered office of the SE a notice which complies with paragraph (b)(i) of this Article as if reference therein to "member" was a reference to "the board of Directors",

a person is not eligible for election as a Director at a general meeting of the SE unless a consent to nomination signed by the person has been lodged at the registered office of the SE accompanied by a notice which:

(iii) in the case of annual general meetings, is delivered by a member of the SE not less than thirty (30) Business Days before the date of the annual general meeting and nor more than the earlier of (A) sixty (60) Business Days prior to the anniversary date of the immediately preceding annual general meeting of the SE; and (B) thirty (30) Business Days prior to the date on which the annual general meeting is due to be held; and

(iv) in the case of all general meetings other than annual general meetings, is delivered by one or members of the SE who alone or together hold at least 10% of the SE's issued share capital not less than thirty (30) Business Days before the date of the extraordinary general meeting which is convened in accordance with Article 53.

(b) Where Article 111(a)(iii) or Article 111(a)(iv) applies, nominations by a member or members of persons for election as Directors must include the following information:

(i) as to each person whom a member proposes to nominate for election as a Director:

(A) the name, date of birth and residential address of such person;

(B) the principal occupation or employment of such person;

(C) the number, class and distinguishing number (if any) of all shares of the SE which are held by that person (if any);

(D) where another person (other than the person nominated for election) holds an interest in the same shares held by such person, full details of that interest in the shares of the SE including the nature and extent of that interest (but excluding any custodian or other nominee) and the circumstances giving rise to the beneficial holder's interest in those shares (including, without limitation, whether and the extent to which any derivative instrument, swap, option, warrant, short interest, hedge or other transaction has been entered into by or on behalf of such person with respect to shares of the SE) and whether any other agreement, arrangement or understanding has been or is proposed to be entered into by the holder of such interest with respect to shares in the SE; and

(E) any other information relating to the person that would be required, if such person were so appointed, to be included in the SE's register of Directors; and

(ii) as to the member giving notice:

(A) if not the beneficial holder, the name and registered address of the beneficial holder(s) (excluding any custodian or other nominee) who requested (whether directly or through a

custodian or other nominee) the member or members to propose a person for nomination under Article 111(a)(iii) or Article 111(a)(iv) (as applicable),

(B) the number, class and distinguishing number (if any) of all shares of the SE which are represented by the ownership interest of the person referred to in Article 111(b)(ii)(A);

(C) full details of the beneficial interest in the shares of the SE held by the holder(s) referred in Article 111(b)(ii)(A) including the nature and extent of that interest (but excluding any custodian or other nominee) and the circumstances giving rise to the beneficial holder's interest in those shares (including, without limitation, whether and the extent to which any derivative instrument, swap, option, warrant, short interest, hedge or other transaction has been entered into by or on behalf of such member with respect to shares of the SE) and whether any other agreement, arrangement or understanding has been or is proposed to be entered into by the holder of such interest with respect to shares in the SE; and

(D) a description of all agreements, arrangements, or understandings between such member (including the person referred to in Article 111(b)(ii)(A)) and each proposed nominee and any other person or persons (including their names) pursuant to which the nomination(s) are to be made by such member, and any material interest of such member and any such other person or persons in such nomination, including any anticipated benefit to the member and any such other person or persons therefrom.

(c) No person shall be eligible for election as a Director of the SE unless nominated in accordance with the foregoing procedures. If the chairman of the general meeting determines that a nomination was not made in accordance with the foregoing procedures, the chairman may, in his discretion, declare to the general meeting that the nomination was defective and such defective nomination shall, if so declared, be disregarded.

(d) The chairman may, notwithstanding the fact that such notice of nomination was not properly brought in accordance with the foregoing procedures, permit such person to be eligible for nomination as a Director at the general meeting at which persons may be elected as Directors.

112. **Appointment of additional Directors**

(a) Subject to Article 111, the SE by ordinary resolution may appoint a person to be a Director either to fill a vacancy or as an additional Director and any Director so appointed shall be subject to retire by rotation in accordance with Article 109(a).

(b) The Directors may appoint a person who is willing to act to be a Director,

either to fill a vacancy or as an additional Director, provided that the appointment does not cause the number of Directors to exceed any number determined by the Directors or fixed by or in accordance with these Articles as the maximum number of Directors. A Director so appointed shall hold office only until the next following annual general meeting and shall not be taken into account in determining the Directors who are to retire by rotation at the meeting. If not re-appointed at such annual general meeting, such Director shall vacate office at the conclusion thereof.

PART XV — DISQUALIFICATION AND REMOVAL OF DIRECTORS

113. **Disqualification of Directors**

The office of a Director shall be vacated ipso facto if:

(a) he is restricted or disqualified from acting as a director of any company under the provisions of Part VII of the 1990 Act;

(b) he becomes bankrupt or makes any arrangement or composition with his creditors generally;

(c) in the opinion of a majority of his co-Directors, he becomes incapable by reason of mental disorder of discharging his duties as a Director;

(d) (not being a Director holding for a fixed term an executive office in his capacity as a Director) he resigns his office by notice to the SE;

(e) he is convicted of an indictable offence, unless the Directors otherwise determine;

(f) he shall have been absent for more than six consecutive months without permission of the Directors from meetings of the Directors held during that period and his alternate Director (if any) shall not have attended any such meeting in his place during such period, and the Directors pass a resolution that by reason of such absence he has vacated office; or

(g) he is required in writing (whether in electronic form or otherwise) by all his co-Directors to resign.

114. **Removal of Directors**

The SE, by ordinary resolution of which extended notice has been given in accordance with the provisions of the Acts, may remove any Director before the expiry of his period of office notwithstanding anything in these Articles or in any agreement between the SE and such Director and may, if thought fit, by ordinary resolution appoint another Director in his stead. The person appointed shall be subject to retirement at the same time as if he had become a Director on the date on which the Director in whose place he is appointed was last appointed a Director. Nothing in this Article shall be taken as depriving a person removed hereunder of compensation or damages payable to him in respect of the termination of his appointment as Director or of any appointment terminating with that Director.

PART XVI — DIRECTORS' OFFICES AND INTERESTS

115. **Executive offices**

(a) The Directors may appoint one of their body to the office of Chief Executive Officer and one or more of their body to any other executive office under the SE (including, where considered appropriate, the office of Chairman or Deputy Chairman) on such terms and for such period as they may determine and, without prejudice to the terms of any contract entered into in any particular case, may revoke any such appointment at any time.

(b) At all times subject to Article 99, a Director holding any such executive office shall receive such remuneration, whether in addition to or in substitution for his ordinary remuneration as a Director and whether by way of salary, commission, participation in profits or otherwise or partly in one way and partly in another, as the Directors may determine.

(c) The appointment of any Director to the office of Chairman or Chief Executive Officer shall terminate automatically if he ceases to be a Director but without prejudice to any claim for damages for breach of any contract of service between him and the SE.

(d) The appointment of any Director to any other executive office shall not terminate automatically if he ceases to be a Director unless the contract or resolution under which he holds executive office shall expressly state otherwise, in which event such termination shall be without prejudice to any claim for damages for breach of any contract of service between him and the SE.

(e) A Director may hold any other office or place of profit under the SE (except that of Auditor) in conjunction with his office of Director, and may act in a professional capacity to the SE, on such terms as to remuneration and otherwise as the Directors shall arrange.

116. **Directors' interests**

(a) Subject to the provisions of the Acts and the Listing Rules, and provided that he has disclosed to the Directors the nature and extent of any material interest of his, a Director notwithstanding his office:

(i) may be a party to, or otherwise interested in, any transaction or arrangement with the SE or any subsidiary or associated company thereof or in which the SE or any subsidiary or associated company thereof is otherwise interested;

(ii) may be a director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate promoted by the SE or in which the SE or any subsidiary or associated company thereof is otherwise interested; and

(iii) shall not be accountable, by reason of his office, to the SE for any benefit which he derives from any such office or employment or from

any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit.

(b) No Director or intending Director shall be disqualified by his office from contracting with the SE either as vendor, purchaser or otherwise, nor shall any such contract or any contract or arrangement entered into by or on behalf of the other SE in which any Director shall be in any way interested be avoided nor shall any Director so contracting or being so interested be liable to account to the SE for any profit realised by any such contract or arrangement by reason of such Director holding that office or of the fiduciary relationship thereby established. The nature of a Director's interest must be declared by him at the meeting of the Directors at which the question of entering into the contract or arrangement is first taken into consideration, or if the Director was not at the date of that meeting interested in the proposed contract or arrangement at the next meeting of the Directors held after he became so interested, and in a case where the Director becomes interested in a contract or arrangement after it is made at the first meeting of the Directors held after he becomes so interested.

(c) A copy of every declaration made and notice given under this Article shall be entered within three days after the making or giving thereof in a book kept for this purpose. Such book shall be open for inspection without charge by any Director, Secretary, Auditor or member of the SE at the Registered Office and shall be produced at every general meeting of the SE and at any meeting of the Directors if any Director so requests in sufficient time to enable the book to be available at the meeting.

(d) For the purposes of this Article:

(i) a general notice given to the Directors that a Director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the Director has an interest in any such transaction of the nature and extent so specified; and

(ii) an interest of which a Director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his.

(e) Directors shall be under a duty, even after they have ceased to hold office, not to divulge any information which that have concerning the SE, the disclosure of which might be prejudicial to the SE's interests, except where such disclosure is required or permitted under the national law provisions applicable to public limited liability companies or is in the public interest.

117. **Restriction on Directors' voting**

(a) Save as otherwise provided by these Articles, a Director shall not vote at a meeting of the Directors or a committee of Directors on any resolution concerning a matter in which he has, directly or indirectly, an interest which is

material or a duty which conflicts or may conflict with the interests of the SE. A Director shall not be counted in the quorum present at a meeting in relation to any such resolution on which he is not entitled to vote.

(b) A Director shall be entitled (in the absence of some other material interest than is indicated below) to vote (and be counted in the quorum) in respect of any resolutions concerning any of the following matters, namely:

(i) the giving of any security, guarantee or indemnity to him in respect of money lent by him to the SE or any of its subsidiary or associated companies or obligations incurred by him or by any other person at the request of or for the benefit of the SE or any of its subsidiary or associated companies;

(ii) the giving of any security, guarantee or indemnity to a third party in respect of a debt or obligation of the SE or any of its subsidiary or associated companies for which he himself has assumed responsibility in whole or in part and whether alone or jointly with others under a guarantee or indemnity or by the giving of security;

(iii) any proposal concerning any offer of shares or debentures or other securities of or by the SE or any of its subsidiary or associated companies for subscription, purchase or exchange in which offer he is or is to be interested as a participant in the underwriting or sub-underwriting thereof;

(iv) any proposal concerning any other company in which he is interested, directly or indirectly and whether as an officer or shareholder or otherwise howsoever, provided that he is not the Holder of or beneficially interested in 1% or more of the issued shares of any class of such company or of the voting rights available to members of such company (or of a third company through which his interest is derived) (any such interest being deemed for the purposes of this Article to be a material interest in all circumstances);

(v) any proposal concerning the adoption, modification or operation of a superannuation fund or retirement benefits scheme under which he may benefit and which has been approved by or is subject to and conditional upon approval for taxation purposes by the appropriate Revenue authorities;

(vi) any proposal concerning the adoption, modification or operation of any scheme for enabling employees (including full time executive Directors) of the SE and/or any subsidiary thereof to acquire shares in the SE or any arrangement for the benefit of employees of the SE or any of its subsidiaries under which the Director benefits or may benefit; or

(vii) any proposal concerning the giving of any indemnity pursuant to Article 157(a) or the discharge of the cost of any insurance cover purchased or maintained pursuant to Article 157(b).

(c) Where proposals are under consideration concerning the appointment (including fixing or varying the terms of appointment) of two or more Directors to offices or employments with the SE or any company in which the SE is interested, such proposals may be divided and considered in relation to each Director separately and in such case each of the Directors concerned (if not debarred from voting under sub-paragraph (b) (iv) of this Article) shall be entitled to vote (and be counted in the quorum) in respect of each resolution except that concerning his own appointment.

(d) If a question arises at a meeting of Directors or of a committee of Directors as to the materiality of a Director's interest or as to the right of any Director to vote and such question is not resolved by his voluntarily agreeing to abstain from voting, such question may be referred, before the conclusion of the meeting, to the chairman of the meeting and his ruling in relation to any Director other than himself shall be final and conclusive. In relation to the Chairman, such question may be resolved by a resolution of a majority of the Directors (other than the Chairman) present at the meeting at which the question first arises.

(e) For the purposes of this Article, an interest of a person who is the spouse or a minor child of a Director shall be treated as an interest of the Director and, in relation to an alternate Director, an interest of his appointor shall be treated as an interest of the alternate Director.

(f) The SE by ordinary resolution may suspend or relax the provisions of this Article to any extent or ratify any transaction not duly authorised by reason of a contravention of this Article, provided this is not inconsistent with the Listing Rules.

118. **Entitlement to grant pensions**

(a) The Directors may provide benefits, whether by way of pensions, gratuities or otherwise, for any Director, former Director or other officer or former officer of the SE or to any person who holds or has held any employment with the SE or with any body corporate which is or has been a subsidiary or associated company of the SE or a predecessor in business of the SE or of any such subsidiary or associated company and to any member of his family or any person who is or was dependent on him and may set up, establish, support, alter, maintain and continue any scheme for providing all or any such benefits and for such purposes any Director accordingly may be, become or remain a member of, or rejoin, any scheme and receive or retain for his own benefit all benefits to which he may be or become entitled thereunder. The Directors may pay out of the funds of the SE any premiums, contributions or sums payable by the SE under the provisions of any such scheme in respect of any of the persons or class of persons above referred to who are or may be or become members thereof.

(b) Subject to the provisions of Article 157(b), the Directors shall have the power to purchase and maintain insurance for or for the benefit of any persons who are or were at any time, directors, officers, or employees of the SE, or of any other company which is its holding company or in which the SE or such

holding company has any interest whether direct or indirect or which is in any way allied to or associated with the SE, or of any subsidiary undertaking of the SE or any such other company, or who are or were at any time trustees of any pension fund in which employees of the SE, or any other company or such subsidiary undertaking are interested, including (without prejudice to the generality of the foregoing) insurance against any liability incurred by such persons in respect of any act or omission when in the actual or purported execution or discharge of their duties or in the exercise or purported exercise of their powers or otherwise in relation to their duties, powers or offices in relation to the SE or any such other company, subsidiary undertaking or pension fund.

PART XVII — PROCEEDINGS OF DIRECTORS

119. **Convening and regulation of Directors' meetings**

(a) The Directors shall meet at least once every three month period to discuss the progress and foreseeable development of the SE's business and to the requirements of these Articles.

(b) Subject to Article 119(a), the Directors may regulate their proceedings as they think fit. The Chairman or any three Directors may call a meeting of the Directors. Any Director may waive notice of any meeting and any such waiver may be retrospective.

(c) Notice of a meeting of the Directors or any other notice required to be given to, or by, a Director shall be deemed to be duly given to a Director if it is given to him personally or by word of mouth or sent in writing by delivery, post, cable, telegram, telex, telefax, electronic mail or any other means of communication approved by the Directors to him at his last known address or any other address given by him to the SE for this purpose.

120. **Quorum for Directors' meetings**

(a) The quorum for the transaction of the business of the Directors may be fixed by the Directors and unless so fixed at any other number shall be three Directors.

(b) A person who holds office only as an alternate Director shall, if his appointor is not present, be counted in the quorum but notwithstanding that such person may act as alternate Director for more than one Director he shall not count as more than one for the purposes of determining whether a quorum is present.

(c) The continuing Directors or a sole Director may act notwithstanding any vacancies in their number but if the number of Directors is less than the number fixed as the quorum, they may act only for the purpose of filling vacancies or of calling a general meeting.

121. **Voting at Directors' meetings**

(a) Questions arising at any meeting of Directors shall be decided by a majority of

votes. Where there is an equality of votes, the chairman of the meeting shall have a second or casting vote.

(b) Subject as hereinafter provided, each Director present and voting shall have one vote and in addition to his own vote shall be entitled to one vote in respect of each other Director not present at the meeting who shall have authorised him in respect of such meeting to vote for such other Director in his absence. Any such authority may relate generally to all meetings of the Directors or to any specified meeting or meetings and must be in writing and may be sent by delivery, post, cable, telegram, telex, telefax, electronic mail or any other means of communication approved by the Directors and may bear a printed, facsimile, electronic signature or advanced electronic signature of the Director giving such authority. The authority must be delivered to the Secretary for filing prior to or must be produced at the first meeting at which a vote is to be cast pursuant thereto provided that no Director shall be entitled to any vote at a meeting on behalf of another Director pursuant to this paragraph if the other Director shall have appointed an alternate Director and that alternate Director is present at the meeting at which the Director proposes to vote pursuant to this paragraph.

122. **Telecommunication meetings**

Any Director or alternate Director may participate in a meeting of the Directors or any committee of the Directors by means of conference telephone or other telecommunications equipment by means of which all persons participating in the meeting can hear each other speak and such participation in a meeting shall constitute presence in person at the meeting.

123. **Chairman and Deputy Chairman of the board of Directors**

Subject to any appointment to the office of Chairman made pursuant to these Articles, the Directors shall elect a Chairman and a Deputy Chairman from amongst their number and determine the period for which he is to hold office, but if at any meeting the Chairman is unwilling to act or is not present within fifteen minutes after the time appointed for holding such meeting and the Deputy Chairman is unwilling to act or is not present within that time, the Directors present may choose one of their number to be chairman of such meeting.

124. **Validity of acts of Directors**

All acts done by any meeting of the Directors or of a committee of Directors or by any person acting as a Director, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Director or person acting as aforesaid, or that they or any of them were disqualified from holding office or had vacated office, shall be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director and had been entitled to vote.

125. **Directors' resolutions or other documents in writing**

A resolution or other document in writing (in electronic form or otherwise) signed (whether by electronic signature, advanced electronic signature or otherwise as

approved by the Directors) by all the Directors entitled to vote on the resolution shall be as valid as if it had been passed at a meeting of Directors or (as the case may be) a committee of Directors duly convened and held and may consist of several documents in the like form each signed by one or more Directors, and such resolution or other document or documents when duly signed may be delivered or transmitted (unless the Directors shall otherwise determine either generally or in any specific case) by facsimile transmission, electronic mail or some other similar means of transmitting the contents of documents. A resolution or other documents signed (whether by electronic signature, advanced electronic signature or otherwise as approved by the Directors) by an alternate Director need not also be signed by his appointor and, if it is signed by a Director who has appointed an alternate Director, it need not be signed by the alternate Director in that capacity.

PART XVIII — THE SECRETARY

126. **Appointment of secretary**

The Secretary shall be appointed by the Directors for such term, at such remuneration and upon such conditions as they may think fit and any Secretary so appointed may be removed by them. Anything required or authorised by the Acts or these Articles to be done by the Secretary may be done, if the office is vacant or there is for any other reason no Secretary readily available and capable of acting, by or to any assistant or acting secretary readily available and capable of acting, by or to any officer of the SE authorised generally or specially in that behalf by the Directors: Provided that any provision of the Acts or these Articles requiring or authorising a thing to be done by or to a Director and the Secretary shall not be satisfied by its being done by or to the same person acting both as a Director and as, or in the place of, the Secretary.

PART XIX — THE SEAL

127. **Use of Seal**

The Directors shall ensure that the Seal (including any official securities seal kept pursuant to the Acts) shall be used only by the authority of the Directors or of a committee authorised by the Directors or of such other person or persons as are authorised by the board of directors or a committee of the board of directors.

128. **Seal for use abroad**

The SE may exercise the powers conferred by the Acts with regard to having an official seal for use abroad and such powers shall be vested in the Directors.

129. **Signature of sealed instruments**

(a) Every instrument to which the Seal shall be affixed shall be signed by a Director or some person authorised by the SE for that purpose and shall also be signed by the Secretary or by a second Director or by some other person authorised by the SE for that purpose save that as regards any certificates for shares or debentures or other securities of the SE the Directors may determine by resolution that such signatures or either of them shall be dispensed with, or be printed thereon or affixed thereto by some method or system of mechanical

signature provided that in any such case the certificate to be sealed shall have been approved for sealing by the Secretary or by the registrar of the SE or by the Auditors or by some other person appointed by the Directors for this purpose in writing (and, for the avoidance of doubt, it shall be sufficient for approval to be given and/or evidenced either in such manner (if any) as may be approved by or on behalf of the Directors or by having certificates initialled before sealing or by having certificates presented for sealing accompanied by a list thereof which has been initialled).

(b) For the purposes of this Article 129, any instrument in electronic form to which the seal is required to be affixed, shall be sealed by means of an advanced electronic signature based on a qualified certificate of a Director and the Secretary or of a second Director or by some other person appointed by the Directors for the purpose.

PART XX — DIVIDENDS AND RESERVES

130. **Declaration of dividends**

Subject to the provisions of the Acts, the SE by ordinary resolution may declare dividends in accordance with the respective rights of the members, but no dividend shall exceed the amount recommended by the Directors.

131. **Interim and fixed dividends**

Subject to the provisions of the Acts, the Directors may declare and pay interim dividends if it appears to them that they are justified by the profits of the SE available for distribution. If the share capital is divided into different classes, the Directors may declare and pay interim dividends on shares which confer deferred or non-preferred rights with regard to dividend as well as on shares which confer preferential rights with regard to dividend, but subject always to any restrictions for the time being in force (whether under these Articles, under the terms of issue of any shares or under any agreement to which the SE is a party, or otherwise) relating to the application, or the priority of application, of the SE's profits available for distribution or to the declaration or as the case may be the payment of dividends by the SE. Subject as aforesaid, the Directors may also pay at intervals settled by them any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment. Provided the Directors act in good faith they shall not incur any liability to the Holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on any shares having deferred or non-preferred rights.

132. **Payment of dividends**

(a) Except as otherwise provided by the rights attached to shares, all dividends shall be declared and paid according to the amounts paid up on the shares on which the dividend is paid. All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it shall rank for dividend as from a particular date, such share shall rank for dividend accordingly. For the

purposes of this Article, no amount paid on a share in advance of calls shall be treated as paid on a share.

(b) If several persons are registered as joint Holders of any share, any one of them may give effectual receipts for any dividend or other moneys payable on or in respect of the share.

(c) Cash distributions shall be declared in United States dollars, unless the board of Directors determines otherwise and may be paid in such currency or currencies as the board of Directors determines using the rate of exchange prevailing on a date fixed by the board of Directors. The Directors may determine that dividends be paid in more than one currency, depending on the residency of the Holders.

133. **Deductions from dividends**

The Directors may deduct from any dividend or other moneys payable to any member in respect of a share any moneys presently payable by him to the SE in respect of that share.

134. **Dividends in specie**

A general meeting declaring a dividend may direct, upon the recommendation of the Directors, that it shall be satisfied wholly or partly by the distribution of assets (and, in particular, of paid up shares, debentures or debenture stock of any other company or in any one or more of such ways) and the Directors shall give effect to such resolution. Where any difficulty arises in regard to the distribution, the Directors may settle the same as they think expedient and in particular may issue fractional certificates and fix the value for distribution of such specific assets or any part thereof in order to adjust the rights of all the parties and may determine that cash payments shall be made to any members upon the footing of the value so fixed.

135. **Dividend payment mechanism**

(a) Any dividend or other moneys payable in respect of any share may be paid by cheque or warrant sent by post, at the risk of the person or persons entitled thereto, to the registered address of the Holder or, where there are joint Holders, to the registered address of the joint Holder whose name stands first in the Register in respect of the share or to such person and to such address as the Holder or joint Holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent and payment of the cheque or warrant shall be a good discharge to the SE. Any joint Holder or other person jointly entitled to a share may give receipts for any dividend or other moneys payable in respect of the share. Any such dividend or other distribution may also be paid by any other method (including payment in a currency other than United States dollars, electronic funds transfer, direct debit, bank transfer or by means of a relevant system) which the Directors consider appropriate and any member who elects for such method of payment shall be deemed to have accepted all of the risks inherent therein. The debiting of the SE's account in respect of the relevant amount shall be evidence of good discharge of the SE's obligations in respect of any payment made by any such methods.

(b) In respect of shares in uncertificated form, where the SE is authorized to do so by or on behalf of the holder or joint holders in such manner as the SE shall from time to time consider sufficient, the SE may also pay any such dividend, interest or other moneys by means of the relevant system concerned (subject always to the facilities and requirements of that relevant system). Every such payment made by means of the relevant system shall be made in such manner as may be consistent with the facilities and requirements of the relevant system concerned. Without prejudice to the generality of the foregoing, in respect of shares in uncertificated form, such payment may include the sending by the SE or by any person on its behalf of an instruction to the Operator of the relevant system to credit the cash memorandum account of the holder or joint holders**.**

136. **Dividends not to bear interest**

No dividend or other moneys payable in respect of a share shall bear interest against the SE unless otherwise provided by the rights attached to the share.

137. **Payment to Holders on a particular date**

Any resolution declaring a dividend on shares of any class, whether a resolution of the SE in general meeting or a resolution of the Directors, may specify that the same may be payable to the persons registered as the Holders of such shares at the close of business on a particular date, notwithstanding that it may be a date prior to that on which the resolution is passed, and thereupon the dividend shall be payable to them in accordance with their respective holdings so registered, but without prejudice to the rights inter se of transferors and transferees of any such shares in respect of such dividend. The provisions of this Article shall apply, mutatis mutandis, to capitalisations to be effected in pursuance of these Articles. Any dividend, interest or other sum payable which remains unclaimed for one year after having been declared may be invested or otherwise made use of by the Directors for the benefit of the SE until claimed.

138. **Unclaimed dividends**

If the Directors so resolve, any dividend which has remained unclaimed for twelve years from the date of its declaration shall be forfeited and cease to remain owing by the SE. The payment by the Directors of any unclaimed dividend or other moneys payable in respect of a share into a separate account shall not constitute the SE a trustee in respect thereof.

139. **Reserves**

Before recommending any dividend, whether preferential or otherwise, the Directors may carry to reserve out of the profits of the SE such sums as they think proper. All sums standing to reserve may be applied from time to time in the discretion of the Directors for any purpose to which the profits of the SE may be properly applied and at the like discretion may be either employed in the business of the SE or invested in such investments as the Directors may lawfully determine. The Directors may divide

the reserve into such special funds as they think fit and may consolidate into one fund any special funds or any parts of any special funds into which the reserve may have been divided as they may lawfully determine. Any sum which the Directors may carry to reserve out of the unrealised profits of the SE shall not be mixed with any reserve to which profits available for distribution have been carried. The Directors may also carry forward, without placing the same to reserve, any profits which they may think it prudent not to divide.

PART XXI — ACCOUNTS

140. **Accounts**

(a) The Directors shall cause to be kept proper books of account, whether in the form of documents, electronic form or otherwise, that:

(i) correctly record and explain the transactions of the SE;

(ii) will at any time enable the financial position of the SE to be determined with reasonable accuracy;

(iii) will enable the Directors to ensure that any balance sheet, profit and loss account or income and expenditure account of the SE complies with the requirements of the Acts; and

(iv) will enable the accounts of the SE to be readily and properly audited.

Books of account shall be kept on a continuous and consistent basis and entries therein shall be made in a timely manner and be consistent from year to year. Proper books of account shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the SE's affairs and to explain its transactions.

The SE may send by post, electronic mail or any other means of electronic communication a summary financial statement to its shareholders or persons nominated by any member. The SE may meet, but shall be under no obligation to meet, any request from any of its members to be sent additional copies of its full report and accounts or summary financial statement or other communications with its members.

(b) The books of account shall be kept at the registered office or, subject to the provisions of the Acts, at such other place as the Directors think fit and shall be open at all reasonable times to the inspection of the Directors.

(c) The Directors shall determine from time to time whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the SE or any of them shall be open to the inspection of members, not being Directors. No member (not being a Director) shall have any right of inspecting any account or book or document of the SE except as conferred by the Acts or authorised by the Directors or by the SE in general meeting.

(d) In accordance with the provisions of the Acts, the Directors shall cause to be

prepared and to be laid before the annual general meeting of the SE from time to time such profit and loss accounts, balance sheets, Group accounts and reports as are required by the Acts to be prepared and laid before such meeting.

(e) A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the annual general meeting of the SE together with a copy of the Directors' report and Auditors' report shall be sent by post, electronic mail or any other means of electronic communication, not less than twenty-one Clear Days before the date of the annual general meeting, to every person entitled under the provisions of the Acts to receive them; provided that in the case of those documents sent by electronic mail or any other means of electronic communication, such documents shall be sent with the consent of the recipient, to the address of the recipient notified to the SE by the recipient for such purposes and the required number of copies of these documents shall be forwarded at the same time to the appropriate section of the ASX.

(f) Auditors shall be appointed and their duties regulated in accordance with the Acts.

PART XXII — CAPITALISATION OF PROFITS OR RESERVES

141. **Capitalisation of distributable profits and reserves**

(a) Without prejudice to any powers conferred on the Directors by these Articles, the SE in general meeting may resolve, upon the recommendation of the Directors, that any sum for the time being standing to the credit of any of the SE's reserves (including any capital redemption reserve fund or share premium account) or to the credit of the profit and loss account be capitalised and applied on behalf of the members who would have been entitled to receive that sum if it had been distributed by way of dividend and in the same proportions either in or towards paying up amounts for the time being unpaid on any shares held by them respectively, or in paying up in full unissued shares or debentures of the SE of a nominal amount equal to the sum capitalised (such shares or debentures to be allotted and distributed credited as fully paid up to and amongst such Holders in the proportions aforesaid) or partly in one way and partly in another, so, however, that the only purposes for which sums standing to the credit of the capital redemption reserve fund or the share premium account shall be applied shall be those permitted by the Acts.

(b) The Directors may from time to time at their discretion, subject to the provisions of the Acts and, in particular, to their being duly authorised pursuant to Section 20 of the 1983 Act, to allot the relevant shares, to offer to the Holders of shares the right to elect to receive in lieu of any dividend or proposed dividend or part thereof an allotment of additional shares credited as fully paid. In any such case the following provisions shall apply:

(i) The basis of allotment shall be determined by the Directors in their absolute discretion.

(ii) The Directors shall give notice in writing (whether in electronic form or otherwise) to the Holders of shares of the right of election offered to them and shall send with or following such notice forms of election and specify the procedure to be followed and the place at which, and the latest date and time by which, duly completed forms of election must be lodged in order to be effective. The Directors may also issue forms under which Holders may elect in advance to receive new shares instead of dividends in respect of future dividends not yet declared (and, therefore, in respect of which the basis of allotment shall not yet have been determined).

(iii) The dividend (or that part of the dividend in respect of which a right of election has been offered) shall not be payable on shares in respect of which the right of election as aforesaid has been duly exercised (the "**Subject Ordinary Shares**") and in lieu thereof additional shares (but not any fraction of a share) shall be allotted to the Holders of the Subject Ordinary Shares on the basis of allotment determined aforesaid and for such purpose the Directors shall capitalise, out of such of the sums standing to the credit of any of the SE's reserves (including any capital redemption reserve fund or share premium account) or to the credit of the profit and loss account as the Directors may determine, a sum equal to the aggregate nominal amount of additional shares to be allotted on such basis and apply the same in paying up in full the appropriate number of unissued shares for allotment and distribution to and amongst the holders of the Subject Ordinary Shares on such basis.

(c) The additional shares so allotted shall rank pari passu in all respects with the fully paid shares then in issue save only as regards participation in the relevant dividend or share election in lieu.

(d) The Directors may do all acts and things considered necessary or expedient to give effect to any such capitalisation with full power to the Directors to make such provisions as they think fit where shares would otherwise have been distributable in fractions (including provisions whereby, in whole or in part, fractional entitlements are disregarded and the benefit of fractional entitlements accrues to the SE rather than to the holders concerned). The Directors may authorise any person to enter on behalf of all the Holders interested into an agreement with the SE providing for such capitalisation and matters incidental thereto and any agreement made under such authority shall be effective and binding on all concerned.

(e) The Directors may on any occasion determine that rights of election shall not be offered to any Holders of shares who are citizens or residents of any state or territory where the making or publication of an offer of rights of election or any exercise of rights of election or any purported acceptance of the same would or might be unlawful, and in such event the provisions aforesaid shall be read and construed subject to such determination.

142. **Capitalisation of non-distributable profits and reserves**

Without prejudice to any powers conferred on the Directors, the SE in general meeting may resolve, on the recommendation of the Directors, that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the SE's reserve accounts or to the credit of the profit and loss account which is not available for distribution by applying such sum in paying up in full unissued shares to be allotted as fully paid bonus shares to those members of the SE who would have been entitled to that sum if it were distributable and had been distributed by way of dividend (and in the same proportions) and the Directors shall give effect to such resolution.

143. **Implementation of capitalisation issues**

Whenever such a resolution is passed in pursuant to Articles 141 or 142, the Directors shall make all appropriations and applications of the undivided profits resolved to be capitalised thereby and all allotments and issues of fully paid shares or debentures, if any, and generally shall do all acts and things required to give effect thereto with full power to the Directors to make such provisions as they shall think fit in the case of shares or debentures becoming distributable in fractions (and, in particular, without prejudice to the generality of the foregoing, either to disregard such fractions or to sell the shares or debentures represented by such fractions and distribute the net proceeds of such sale to and for the benefit of the SE or to and for the benefit of the members otherwise entitled to such fractions in due proportions) and to authorise any person to enter on behalf of all the members concerned into an agreement with the SE providing for the allotment to them respectively, credited as fully paid up, of any further shares or debentures to which they may become entitled on such capitalisation or, as the case may require, for the payment up by the application thereto of their respective proportions of the profits resolved to be capitalised of the amounts remaining unpaid on their existing shares and any agreement made under such authority shall be binding on all such members.

PART XXIII — NOTICES

144. **Notices in writing**

Any notice to be given, served or delivered pursuant to these Articles shall be in writing (whether in electronic form or otherwise) and the SE must comply with ASX Listing Rule 15.10, which requires that any document to be sent to an overseas Security Holder is sent by air or by fax, or in another way that ensures that it will be received quickly.

145. **Service of notices**

(a) A notice or document (including a share certificate) to be given, served or delivered in pursuance of these Articles may be given to, served on or delivered to any member by the SE:

(i) by handing same to him or his authorised agent;

(ii) by leaving the same at his registered address;

(iii) by sending the same by the post in a pre-paid cover addressed to him at his registered address; or

(iv) by sending, with the consent of the member, the same by means of electronic mail or other means of electronic communication approved by the Directors, with the consent of the member, to the address of the member notified to the SE by the member for such purpose (or if not so notified, then to the address of the member last known to the SE).

(b) Where a notice or document is given, served or delivered pursuant to sub- paragraph (a) (i) or (ii) of this Article, the giving, service or delivery thereof shall be deemed to have been effected at the time the same was handed to the member or his authorised agent, or left at his registered address (as the case may be).

(c) Where a notice or document is given, served or delivered pursuant to sub-paragraph (a) (iii) of this Article, the giving, service or delivery thereof shall be deemed to have been effected at the expiration of twenty-four hours after the cover containing it was posted. In proving service or delivery it shall be sufficient to prove that such cover was properly addressed, stamped and posted.

(d) Where a notice or document is given, served or delivered pursuant to sub-paragraph (a)(iv) of this Article, the giving, service or delivery thereof shall be deemed to have been effected at the expiration of 48 hours after despatch.

(e) Every legal personal representative, committee, receiver, curator bonis or other legal curator, assignee in bankruptcy, examiner or liquidator of a member shall be bound by a notice given as aforesaid if sent to the last registered address of such member, or, in the event of notice given or delivered pursuant to sub-paragraph (a)(iv), if sent to the address notified by the SE by the member for such purpose notwithstanding that the SE may have notice of the death, lunacy, bankruptcy, liquidation or disability of such member.

(f) Notwithstanding anything contained in this Article the SE shall not be obliged to take account of or make any investigations as to the existence of any suspension or curtailment of postal services within or in relation to all or any part of any jurisdiction or other area other than the State.

(h) Any requirement in these Articles for the consent of a member in regard to the receipt by such member of electronic mail or other means of electronic communications approved by the Directors, including the receipt of the SE's audited accounts and the directors' and auditor's reports thereon, shall be deemed to have been satisfied where the SE has written to the member informing him/her of its intention to use electronic communications for such purposes and the member has not, within four weeks of the issue of such notice, served an objection in writing on the SE to such proposal. Where a member has given, or is deemed to have given, his/her consent to the receipt by such member of electronic mail or other means of electronic communications approved by the Directors, he/she may revoke such consent at any time by requesting the SE to communicate with him/her in documented

form PROVIDED HOWEVER that such revocation shall not take effect until five days after written notice of the revocation is received by the SE.

146. **Service on joint Holders**

A notice may be given by the SE to the joint Holders of a share by giving the notice to the joint Holder whose name stands first in the Register in respect of the share and notice so given shall be sufficient notice to all the joint Holders.

147. **Service on transfer or transmission of shares**

(a) Every person who becomes entitled to a share shall before his name is entered in the Register in respect of the share, be bound by any notice in respect of that share which has been duly given to a person from whom he derives his title provided that the provisions of this paragraph shall not apply to any notice served under Article 71 unless, under the provisions of Article 71(b), it is a notice which continues to have effect notwithstanding the registration of a transfer of the shares to which it relates.

(b) Without prejudice to the provisions of these Articles allowing a meeting to be convened by a notice issued, a notice may be given by the SE to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending or delivering it, in any manner authorised by these Articles for the giving of notice to a member, addressed to them at the address, if any, supplied by them for that purpose. Until such an address has been supplied, a notice may be given in any manner in which it might have been given if the death or bankruptcy had not occurred.

148. **Signature to notices**

The signature (whether electronic signature, an advanced electronic signature or otherwise) to any notice to be given by the SE may be written (in electronic form or otherwise) or printed.

149. **Deemed receipt of notices**

A member present, either in person or by proxy, at any meeting of the SE or the Holders of any class of shares in the SE shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.

PART XXIV — WINDING UP

150. **Distribution on winding up**

If the SE shall be wound up and the assets available for distribution among the members as such shall be insufficient to repay the whole of the paid up or credited as paid up share capital, such assets shall be distributed so that, as nearly as may be, the losses shall be borne by the members in proportion to the capital paid up or credited as paid up at the commencement of the winding up on the shares held by them respectively. And if in a winding up the assets available for distribution among the members shall be more than sufficient to repay the whole of the share capital paid up

or credited as paid up at the commencement of the winding up, the excess shall be distributed among the members in proportion to the capital at the commencement of the winding up paid up or credited as paid up on the said shares held by them respectively. Provided that this Article shall not affect the rights of the Holders of shares issued upon special terms and conditions.

151. **Sale by a liquidator**

(a) In case of a sale by the liquidator under Section 260 of the Companies Act, 1963, the liquidator may by the contract of sale agree so as to bind all the members for the allotment to the members direct of the proceeds of sale in proportion to their respective interests in the SE and may further by the contract limit a time at the expiration of which obligations or shares not accepted or required to be sold shall be deemed to have been irrevocably refused and be at the disposal of the SE, but so that nothing herein contained shall be taken to diminish, prejudice or affect the rights of dissenting members conferred by the said Section.

(b) The power of sale of the liquidator shall include a power to sell wholly or partially for debentures, debenture stock, or other obligations of another company, either then already constituted or about to be constituted for the purpose of carrying out the sale.

152. **Distribution in specie**

If the SE is wound up, the liquidator, with the sanction of a special resolution of the SE and any other sanction required by the Acts, may divide among the members in specie or kind the whole or any part of the assets of the SE (whether they shall consist of property of the same kind or not), and, for such purpose, may value any assets and determine how the division shall be carried out as between the members or different classes of members. The liquidator, with the like sanction, may vest the whole or any part of such assets in trustees upon such trusts for the benefit of the contributories as, with the like sanction, he determines, but so that no member shall be compelled to accept any assets upon which there is a liability.

PART XXV — MISCELLANEOUS

153. **Minutes of meetings**

The Directors shall cause minutes to be made of the following matters, namely:

(a) of all appointments of officers and committees made by the Directors and of their salary or remuneration;

(b) of the names of Directors present at every meeting of the Directors and of the names of any Directors and of all other members thereof present at every meeting of any committee appointed by the Directors; and

(c) of all resolutions and proceedings of all meetings of the SE and of the Holders of any class of shares in the SE and of the Directors and of committees appointed by the Directors.

Any such minute as aforesaid, if purporting to be signed by the chairman or deputy chairman (if any) of the meeting at which the proceedings were had, or by the chairman or deputy chairman (if any) of the next succeeding meeting, shall be prima facie evidence of the matter stated in such minute without any further proof.

154. **Inspection and secrecy**

The Directors shall determine from time to time whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the SE or any of them shall be open to the inspection of members, not being Directors, and no member (not being a Director) shall have any right of inspecting any account or book or document of the SE except as conferred by the Acts and the Listing Rules or authorised by the Directors or by the SE in general meeting. No member shall be entitled to require discovery of or any information respecting any detail of the SE's trading, or any matter which is or may be in the nature of a trade secret, mystery of trade, or secret process which may relate to the conduct of the business of the SE and which in the opinion of the Directors it would be inexpedient in the interests of the members of the SE to communicate to the public.

155. **Destruction of records**

The SE shall be entitled to destroy all instruments of transfer which have been registered at any time after the expiration of six years from the date of registration thereof, all notifications of change of address howsoever received at any time after the expiration of two years from the date of recording thereof and all share certificates and dividend mandates which have been cancelled or ceased to have effect at any time after the expiration of one year from the date of such cancellation or cessation. It shall be presumed conclusively in favour of the SE that every entry in the Register purporting to have been made on the basis of an instrument of transfer or other document so destroyed was duly and properly made and every instrument duly and properly registered and every share certificate so destroyed was a valid and effective document duly and properly cancelled and every other document hereinbefore mentioned so destroyed was a valid and effective document in accordance with the recorded particulars thereof in the books or records of the SE. Provided always that:

(a) the provision aforesaid shall apply only to the destruction of a document in good faith and without notice of any claim (regardless of the parties thereto) to which the document might be relevant;

(b) nothing herein contained shall be construed as imposing upon the SE any liability in respect of the destruction of any document earlier than as aforesaid or in any other circumstances which would not attach to the SE in the absence of this Article; and

(c) references herein to the destruction of any document include references to the disposal thereof in any manner.

156. **Untraced shareholders**

(a) The SE shall be entitled to sell at the best price reasonably obtainable any share of a Holder or any share to which a person is entitled by transmission if and provided that:

(i) for a period of twelve years no cheque or warrant sent by the SE through the post in a pre-paid letter addressed to the Holder or to the person entitled by transmission to the share at his address on the Register or the other last known address given by the Holder or the person entitled by transmission to which cheques and warrants are to be sent has been cashed and no communication has been received by the SE from the Holder or the person entitled by transmission (provided that during such twelve year period at least three dividends shall have become payable in respect of such share);

(ii) at the expiration of the said period of twelve years by advertisement in a national daily newspaper published in the State (and a national daily newspaper published in the United States of America and Australia and in a newspaper circulating in the area in which the address referred to in sub-paragraph (a)(i) of this Article is located) the SE has given notice of its intention to sell such share;

(iii) during the further period of three months after the date of the advertisement and prior to the exercise of the power of sale the SE has not received any communication from the Holder or person entitled by transmission; and

(iv) the SE has first given notice in writing to the NYSE and ASX, respectively of its intention to sell such shares.

(b) To give effect to any such sale the SE may appoint any person to execute as transferor an instrument of transfer of such share and such instrument of transfer shall be as effective as if it had been executed by the Holder or the person entitled by the transmission to such share. The transferee shall be entered in the Register as the Holder of the shares comprised in any such transfer and he shall not be bound to see to the application of the purchase moneys nor shall his title to the shares be affected by any irregularity in or invalidity of the proceedings in reference to the sale.

(c) The SE shall account to the Holder or other person entitled to such share for the net proceeds of such sale by carrying all moneys in respect thereof to a separate account which shall be a permanent debt of the SE and the SE shall be deemed to be a debtor and not a trustee in respect thereof for such Holder or other person. Moneys carried to such separate account may be either employed in the business of the SE or invested in such investments as the Directors may think fit, from time to time.

157. **Indemnity and Insurance**

(a) Subject to section 200 of the 1963 Act every director and secretary (whether past or present) of the SE shall be indemnified by the SE against, and it shall be the duty of the directors out of the funds of the SE to pay, all costs, losses and expenses which any such director or secretary may incur or become liable to by reason of any contract entered into or any act or thing done by him as

such director or secretary or in any way in the discharge of his duties. And no director or secretary shall be liable for the acts, receipts, neglects or defaults of any other director or officer, or for joining in any receipt or other act for conformity, or for any loss or expense happening to the SE through the insufficiency or deficiency of title to any property acquired by order of the directors for or on behalf of the SE, or for the insufficiency or deficiency of any security in or upon which any of the moneys of the SE shall be vested, or for any loss or damage arising from the bankruptcy, insolvency or tortious act by any person with whom any moneys securities or effects shall be deposited, or for any other loss, damage or misfortune whatever which shall happen in the execution of the duties of his office or in relation thereto unless the same happen through his own wilful act or default.

(b) The Directors shall have power to purchase and maintain for or for the benefit of any persons (including themselves) who are or were at any time directors, or other officers of the SE, insurance against any liability incurred by such persons in respect of any act or omission when in the actual or purported execution or discharge of their duties or in the exercise or purported exercise of their powers or otherwise in relation to their duties, powers or offices in relation to the SE and the Directors shall be entitled to vote (and be counted in the quorum) in respect of any resolution concerning the purchase of such insurance.

(c) Article 157(a) is without prejudice to any agreements entered into by the SE prior to its registration as an Irish SE which were lawful and permitted by the laws of the Member State where it was registered at the time of entering into such agreements.

(d) Every employee and such other person as may be deemed by the Directors of the SE to be an agent of the SE shall be indemnified by the SE as if such person was a director of the SE and therefore subject to the limitations of section 200 of the 1963 Act.

Companies Acts 1963 to 2006

A SOCIETAS EUROPAEA

MEMORANDUM and ARTICLES OF ASSOCIATION

of

JAMES HARDIE INDUSTRIES SE

Registered as an Irish SE on ● day of ● 2009

Arthur Cox
Arthur Cox Building
Earlsfort Terrace
Dublin 2

JAMES HARDIE INDUSTRIES SE
(formerly known as JAMES HARDIE INDUSTRIES N.V.)

AND

THE BANK OF NEW YORK MELLON

As Depositary

AND

OWNERS AND HOLDERS OF AMERICAN DEPOSITARY SHARES

Deposit Agreement

Dated as of September 24, 2001

Amended and Restated as of _____, 2009

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DEPOSIT AGREEMENT

DEPOSIT AGREEMENT dated as of September 24, 2001, as amended and restated as of _____, 2009, and effective as of the Effective Date (as hereinafter defined), among JAMES HARDIE INDUSTRIES SE (formerly known as JAMES HARDIE INDUSTRIES N.V.), incorporated under the laws of The Netherlands and with its corporate seat in Amsterdam, The Netherlands (herein called the Issuer), THE BANK OF NEW YORK MELLON, a New York banking corporation (herein called the Depositary), and all Owners and holders from time to time of American Depositary Shares issued hereunder.

W I T N E S S E T H :

WHEREAS, James Hardie Industries N.V., The Bank of New York Mellon, as depositary, and all Owners and holders from time to time of American Depositary Receipts issued thereunder entered into a deposit agreement dated as of September 24, 2001 (the "James Hardie Industries N.V. Deposit Agreement"):

WHEREAS, the Issuer and the Depositary now wish to amend and restate the James Hardie Industries N.V. Deposit Agreement to, among other things, (i) replace James Hardie Industries N.V. with James Hardie Industries SE as the issuer, and (ii) provide for the creation of uncertificated American Depositary Shares:

WHEREAS, the Issuer desires to provide, as hereinafter set forth in this Deposit Agreement, for the deposit of CUFS (as hereinafter defined), each representing a beneficial interest in one Share (as hereinafter defined) of the Issuer from time to time with the Depositary or with the Custodian (as hereinafter defined) as agent of the Depositary for the purposes set forth in this Deposit Agreement, for the creation of American Depositary Shares representing the CUFS (subject to the terms and conditions

of this Deposit Agreement) so deposited, in specified circumstances, and for the execution and delivery of American Depositary Receipts evidencing the American Depositary Shares; and

WHEREAS, the American Depositary Receipts are to be substantially in the form of Exhibit A annexed hereto, with appropriate insertions, modifications and omissions, as hereinafter provided in this Deposit Agreement;

NOW, THEREFORE, in consideration of the premises, it is agreed by and between the parties hereto as follows:

ARTICLE 1. DEFINITIONS.

The following definitions shall for all purposes, unless otherwise clearly indicated, apply to the respective terms used in this Deposit Agreement:

SECTION 1.01 American Depositary Shares.

The term "American Depositary Shares" shall mean the securities representing the interests in the Deposited Securities and evidenced by the Receipts issued hereunder. Each American Depositary Share shall represent the number of CUFS specified in Exhibit A annexed hereto, until there shall occur a distribution upon Deposited Securities covered by Section 4.03 or a change in Deposited Securities covered by Section 4.08 with respect to which additional Receipts are not executed and delivered, and thereafter American Depositary Shares shall evidence the amount of CUFS or Deposited Securities specified in such Sections.

SECTION 1.02 Article; Section.

Wherever references are made in this Deposit Agreement to an "Article" or "Articles" or to a "Section" or "Sections", such references shall mean an article or

articles or a section or sections of this Deposit Agreement, unless otherwise required by the context.

SECTION 1.03 CHESS.

The term "CHESS" shall mean Clearing House Electronic Subregister System, being the automated clearing and settlement process for transactions executed on the Australian Stock Exchange.

SECTION 1.04 CHESS Subregister.

The term "CHESS Subregister" shall mean that part of the Issuer's CUFS register that is administered by the SCH.

SECTION 1.05 Commission.

The term "Commission" shall mean the Securities and Exchange Commission of the United States or any successor governmental agency in the United States.

SECTION 1.06 CUFS Depositary.

The term "CUFS Depositary" shall mean the CUFS depositary nominee, CHESS Depositary Nominees Pty Limited, and its successors or any other entity appointed by the Issuer which performs substantially identical functions in Australia.

SECTION 1.07 CUFS.

The term "CUFS" shall mean CHESS Units of Foreign Securities, issued by the CUFS Depositary, representing beneficial ownership in Shares of the Issuer.

SECTION 1.08 Custodian.

The term "Custodian" shall mean the Australian office of Australia and New Zealand Banking Group Limited, as agent of the Depositary for the purposes of this Deposit Agreement, and any other firm or corporation which may hereafter be appointed by the Depositary pursuant to the terms of Section 5.05, as substitute or additional

custodian or custodians hereunder, as the context shall require and shall also mean all of them collectively.

SECTION 1.09 Delivery; Deposit; Surrender; Transfer; Withdraw.

The term "deliver", "deposit", surrender", "transfer" or "withdraw", when (i) with respect to CUFS or other Deposited Securities: (a) in the case of book-entry CUFS or other Deposited Securities, shall refer to an entry or entries in an account or accounts maintained by institutions authorized under applicable law to effect transfers of the CUFS or such other Deposited Securities, or (b) in the case of certificated Deposited Securities, to the physical delivery, deposit, withdrawal or transfer of certificates representing such Deposited Securities and (ii) with respect to American Depositary Shares evidenced by Receipts, (a) in the case of American Depositary Shares available in book-entry form, shall refer to appropriate adjustments in the records maintained by (1) the Depositary, (2) the Depository Trust Company ("DTC") or its nominee, or (3) institutions that have accounts with DTC, as applicable, or (b) otherwise, shall refer to the physical delivery, deposit, surrender, transfer or withdrawal of such American Depositary Shares evidenced by Receipts.

SECTION 1.10 Deposit Agreement.

The term "Deposit Agreement" shall mean this amended and restated Deposit Agreement, as the same may be amended from time to time in accordance with the provisions hereof.

SECTION 1.11 Depositary; Corporate Trust Office.

The term "Depositary" shall mean The Bank of New York Mellon, a New York banking corporation and any successor as depositary hereunder. The term "Corporate Trust Office", when used with respect to the Depositary, shall mean the office of the Depositary which at the date of this Agreement is 101 Barclay Street, New York, New York, 10286.

SECTION 1.12 Deposited Securities.

The term "Deposited Securities" as of any time shall mean CUFS at such time deposited or deemed to be deposited under this Deposit Agreement and any and all other securities, property and cash received by the Depositary or the Custodian in respect thereof and at such time held hereunder, subject as to cash to the provisions of Section 4.5.

SECTION 1.13 Dollars; Euro.

The term "Dollars" shall mean United States dollars. The term "Euro" shall mean the common currency of the participating member countries in the European Monetary Union.

SECTION 1.14 Holding Statement.

The term "Holding Statement" shall mean the statement which sets forth the number of CUFS held by a particular holder of CUFS.

SECTION 1.15 Issuer.

The term "Issuer" shall mean James Hardie Industries SE, incorporated under the laws of The Netherlands and with its corporate seat in Amsterdam, The Netherlands and its successors.

SECTION 1.16 Owner.

The term "Owner" shall mean the person in whose name a Receipt is registered on the books of the Depositary maintained for such purpose.

SECTION 1.17 Receipts.

The term "Receipts" shall mean the American Depositary Receipts issued hereunder evidencing American Depositary Shares.

SECTION 1.18 Registrar.

The term "Registrar" shall mean any bank or trust company having an office in the Borough of Manhattan, The City of New York, which shall be appointed to register Receipts and transfers of Receipts as herein provided.

SECTION 1.19 Restricted Securities.

The term "Restricted Securities" shall mean Shares, CUFS representing Shares, or American Depositary Shares representing such CUFS, which are acquired directly or indirectly from the Issuer or its affiliates (as defined in Rule 144 under the Securities Act of 1933) in a transaction or chain of transactions not involving any public offering or which are subject to resale limitations under Regulation D under that Act or both, or which are held by an officer, director (or persons performing similar functions) or other affiliate of the Issuer, or which are subject to other restrictions on sale or deposit under the laws of the United States or The Netherlands, or under a shareholder agreement or the Articles of Association of the Issuer.

SECTION 1.20 SCH.

The term "SCH" shall mean ASX Settlement and Transfer Corporation Pty Limited (ABN 49008 504 532), as approved as the securities clearing house and the entity administering CHESS.

SECTION 1.21 SCH Business Rules.

The term "SCH Business Rules" shall mean the Business Rules regulating the functions and operations of SCH.

SECTION 1.22 Securities Act of 1933.

The term "Securities Act of 1933" shall mean the United States Securities Act of 1933, as from time to time amended.

SECTION 1.23 Shares.

The term "Shares" shall mean ordinary shares in registered form of the Issuer, heretofore validly issued and outstanding and fully paid, nonassessable and free of any pre-emptive rights of the holders of outstanding Shares or hereafter validly issued and outstanding and fully paid, nonassessable and free of any pre-emptive rights of the holders of outstanding Shares or interim certificates representing such Shares.

ARTICLE 2. FORM OF RECEIPTS, DEPOSIT OF SHARES, EXECUTION AND DELIVERY, TRANSFER AND SURRENDER OF RECEIPTS.

SECTION 2.01 Form and Transferability of Receipts.

Definitive Receipts shall be substantially in the form set forth in Exhibit A annexed to this Deposit Agreement, with appropriate insertions, modifications and omissions, as hereinafter provided. No Receipt shall be entitled to any benefits under this Deposit Agreement or be valid or obligatory for any purpose, unless such Receipt shall have been executed by the Depositary by the manual or facsimile signature of a duly authorized signatory of the Depositary and, if a Registrar for the Receipts shall have been appointed, countersigned by the manual or facsimile signature of a duly authorized officer of the Registrar. The Depositary shall maintain books on which each Receipt so executed and delivered as hereinafter provided and the transfer of each such Receipt shall be registered. Receipts bearing the manual or facsimile signature of a duly authorized signatory of the Depositary who was at any time a proper signatory of the Depositary shall bind the Depositary, notwithstanding that such signatory has ceased to hold such office prior to the execution and delivery of such Receipts by the Registrar or did not hold such office on the date of issuance of such Receipts.

The Receipts may be endorsed with or have incorporated in the text thereof such legends or recitals or modifications not inconsistent with the provisions of this Deposit Agreement as may be required by the Depositary or required to comply with any applicable law or regulations thereunder or with the rules and regulations of any

securities exchange upon which American Depositary Shares may be listed or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Receipts are subject by reason of the date of issuance of the underlying Deposited Securities or otherwise.

Title to a Receipt (and to the American Depositary Shares evidenced thereby), when properly endorsed or accompanied by proper instruments of transfer, shall be transferable by delivery with the same effect as in the case of a negotiable instrument; provided, however, that the Depositary, notwithstanding any notice to the contrary, may treat the Owner thereof as the absolute owner thereof for the purpose of determining the person entitled to distribution of dividends or other distributions or to any notice provided for in this Deposit Agreement and for all other purposes.

SECTION 2.02 Deposit of CUFS.

Subject to the terms and conditions of this Deposit Agreement, and the SCH Business Rules, CUFS or evidence of rights to receive CUFS may be deposited by delivery thereof (which may include delivery by electronic transfer through the facilities of CHESS or otherwise) to any Custodian hereunder, accompanied by any appropriate instrument or instruments of transfer, or endorsement, in form satisfactory to the Custodian, together with all such certifications as may be required by the Depositary or the Custodian in accordance with the provisions of this Deposit Agreement, and, if the Depositary requires, together with a written order directing the Depositary to execute and deliver to, or upon the written order of, the person or persons stated in such order, a Receipt or Receipts for the number of American Depositary Shares representing such deposited CUFS. No CUFS shall be accepted for deposit unless accompanied by evidence satisfactory to the Depositary that any necessary approval has been granted by any applicable governmental body which is then performing the function of the regulation of currency exchange. If required by the Depositary, CUFS presented for deposit at any time, whether or not the transfer books of the Issuer or the CUFS

Depositary (or the appointed agent of the CUFS Depositary for transfer and registration of the CUFS), if applicable, are closed, shall also be accompanied by an agreement or assignment, or other instrument satisfactory to the Depositary, which will provide for the prompt transfer to the Custodian of any dividend, or right to subscribe for additional Shares or CUFS or to receive other property which any person in whose name the CUFS are or have been recorded may thereafter receive upon or in respect of such deposited CUFS, or in lieu thereof, such agreement of indemnity or other agreement as shall be satisfactory to the Depositary.

Upon delivery to a Custodian of CUFS to be deposited hereunder, or delivery to the Custodian of irrevocable instructions therefor, together in either case with the other documents above specified, such Custodian shall obtain confirmation of registration of, or registration of transfer of, the CUFS being deposited in the name of the Depositary or its nominee or such Custodian or its nominee.

Deposited Securities (other than CUFS) shall be held by the Depositary or by a Custodian for the account and to the order of the Depositary or at such other place or places as the Depositary shall determine.

SECTION 2.03 Execution and Delivery of Receipts.

Upon receipt by any Custodian of any deposit pursuant to Section 2.02 hereunder (and in addition, if the CHESS Subregister of the CUFS Depositary (or the appointed agent or agents of the CUFS Depositary for transfer and registration of the CUFS) are open, or if the Depositary so requires, a proper acknowledgment or other evidence from the CUFS Depositary (or appointed agent or agents of the CUFS Depositary for transfer and registration of the CUFS) satisfactory to the Depositary that any deposited CUFS have been recorded upon the CHESS Subregister of the CUFS Depositary (or by the appointed agent of the CUFS Depositary for transfer and registration of CUFS), if applicable, in the name of the Depositary or its nominee or such Custodian or its nominee), together with the other documents required as above specified,

such Custodian shall notify the Depositary of such deposit and the person or persons to whom or upon whose written order a Receipt or Receipts are deliverable in respect thereof and the number of American Depositary Shares to be evidenced thereby. Such notification shall be made by letter or, at the request, risk and expense of the person making the deposit, by cable, telex or facsimile transmission. Upon receiving such notice from such Custodian, the Depositary, subject to the terms and conditions of this Deposit Agreement, shall execute and deliver at its Corporate Trust Office, to or upon the order of the person or persons entitled thereto, a Receipt or Receipts, registered in the name or names and evidencing any authorized number of American Depositary Shares requested by such person or persons, but only upon payment to the Depositary of the fees of the Depositary for the execution and delivery of such Receipt or Receipts as provided in Section 5.09, and of all taxes and governmental charges and fees payable in connection with such deposit and the transfer of the deposited CUFS and the issuance of such Receipt or Receipts.

SECTION 2.04 Transfer of Receipts; Combination and Split-up of Receipts.

The Depositary, subject to the terms and conditions of this Deposit Agreement, shall register transfers of Receipts on its transfer books from time to time, upon any surrender of a Receipt, by the Owner in person or by a duly authorized attorney, properly endorsed or accompanied by proper instruments of transfer, and duly stamped as may be required by the laws of the State of New York and of the United States of America. Thereupon the Depositary shall execute a new Receipt or Receipts and deliver the same to or upon the order of the person entitled thereto.

The Depositary, subject to the terms and conditions of this Deposit Agreement, shall upon surrender of a Receipt or Receipts for the purpose of effecting a split-up or combination of such Receipt or Receipts, execute and deliver a new Receipt or Receipts for any authorized number of American Depositary Shares requested,

evidencing the same aggregate number of American Depositary Shares as the Receipt or Receipts surrendered.

The Depositary may appoint one or more co-transfer agents for the purpose of effecting transfers, combinations and split-ups of Receipts at designated transfer offices on behalf of the Depositary. In carrying out its functions, a co-transfer agent may require evidence of authority and compliance with applicable laws and other requirements by Owners or persons entitled to Receipts and will be entitled to protection and indemnity to the same extent as the Depositary.

SECTION 2.05 Surrender of Receipts and Withdrawal of CUFS.

Upon surrender at the Corporate Trust Office of the Depositary of a Receipt for the purpose of withdrawal of the Deposited Securities represented by the American Depositary Shares evidenced by such Receipt, and upon payment of the fee of the Depositary for the surrender of Receipts as provided in Section 5.09 and payment of all taxes and governmental charges payable in connection with such surrender and withdrawal of the Deposited Securities, and subject to the terms and conditions of this Deposit Agreement, the Owner of such Receipt shall be entitled to (i) with respect to the CUFS or other uncertificated Deposited Securities held through CHESS evidenced by such Receipt, instruct the Depositary to procure the electronic transfer through CHESS of such CUFS or such other uncertificated Deposited Securities to an account in the name of the Owner or such other name as the Owner may direct and (ii) physical delivery, to or upon the order of such Owner, of any other Deposited Securities at the time represented by the American Depositary Shares evidenced by such Receipt. Delivery of such other Deposited Securities, if applicable, may be made by the delivery of (a) certificates in the name of such Owner or as ordered by him or by certificates properly endorsed or accompanied by proper instruments of transfer to such Owner or as ordered by him and (b) any other securities, property and cash to which such Owner is then entitled in respect

of such Receipts to such Owner or as ordered by him. Such delivery shall be made, as hereinafter provided, without unreasonable delay.

A Receipt surrendered for such purposes may be required by the Depositary to be properly endorsed in blank or accompanied by proper instruments of transfer in blank, and if the Depositary so requires, the Owner thereof shall execute and deliver to the Depositary a written order directing the Depositary to (i) cause the electronic transfer of the CUFS represented by such Receipt to be recorded in an account in the name of the Owner or such other name as the Owner may direct and (ii) cause any other Deposited Securities being withdrawn to be delivered to or upon the written order of a person or persons designated in such order. Thereupon the Depositary shall direct the Custodian to deliver at the Australian office or account, as applicable, of such Custodian, subject to Sections 2.06, 3.01 and 3.02 and to the other terms and conditions of this Deposit Agreement, to or upon the written order of the person or persons designated in the order delivered to the Depositary as above provided, the amount of Deposited Securities represented by the American Depositary Shares evidenced by such Receipt, except that the Depositary may make delivery to such person or persons at the Corporate Trust Office of the Depositary of any dividends or distributions with respect to the Deposited Securities represented by the American Depositary Shares evidenced by such Receipt, or of any proceeds of sale of any dividends, distributions or rights, which may at the time be held by the Depositary.

At the request, risk and expense of any Owner so surrendering a Receipt, and for the account of such Owner, the Depositary shall direct the Custodian to forward any cash or other property (other than rights) comprising, and forward a certificate or certificates, if applicable, and other proper documents of title for, the Deposited Securities represented by the American Depositary Shares evidenced by such Receipt to the Depositary for delivery at the Corporate Trust Office of the Depositary. Such

direction shall be given by letter or, at the request, risk and expense of such Owner, by cable, telex or facsimile transmission.

SECTION 2.06 Limitations on Execution and Delivery, Transfer and Surrender of Receipts.

As a condition precedent to the execution and delivery, registration of transfer, split-up, combination or surrender of any Receipt or withdrawal of any Deposited Securities, the Depositary, the Issuer, the CUFS Depositary, Custodian or Registrar may require payment from the depositor of CUFS or the presentor of the Receipt of a sum sufficient to reimburse it for any tax or other governmental charge and any stock transfer or registration fee with respect thereto (including any such tax or charge and fee with respect to CUFS being deposited or withdrawn) and payment of any applicable fees as herein provided, may require the production of proof satisfactory to it as to the identity and genuineness of any signature and may also require compliance with any regulations the Depositary may establish consistent with the provisions of this Deposit Agreement, including, without limitation, this Section 2.06.

The delivery of Receipts against deposits of CUFS generally or against deposits of particular CUFS may be suspended, or the transfer of Receipts in particular instances may be refused, or the registration of transfer of outstanding Receipts generally may be suspended, during any period when the transfer books of the Depositary are closed, or if any such action is deemed necessary or advisable by the Depositary, the Issuer, or the CUFS Depositary at any time or from time to time because of any requirement of law or of any government or governmental body or commission, or under any provision of this Deposit Agreement, or for any other reason, subject to the provisions of Section 7.07 hereof. Notwithstanding any other provision of this Deposit Agreement or the Receipts, the surrender of outstanding Receipts and withdrawal of Deposited Securities may not be suspended subject only to (i) temporary delays caused by closing the transfer books of the Depositary or the Issuer or the deposit of Shares in

connection with voting at a shareholders' meeting, or the payment of dividends, (ii) the payment of fees, taxes and similar charges, and (iii) compliance with any U.S. or foreign laws or governmental regulations relating to the Receipts or to the withdrawal of the Deposited Securities. Without limitation of the foregoing, the Depositary shall not knowingly accept for deposit under this Deposit Agreement any CUFS if such CUFS, or the Shares underlying such CUFS, would be required to be registered under the provisions of the Securities Act of 1933, unless a registration statement is in effect as to such CUFS or Shares as applicable.

SECTION 2.07 Lost Receipts, etc.

In case any Receipt shall be mutilated, destroyed, lost or stolen, the Depositary shall execute and deliver a new Receipt of like tenor in exchange and substitution for such mutilated Receipt upon cancellation thereof, or in lieu of and in substitution for such destroyed, lost or stolen Receipt. Before the Depositary shall execute and deliver a new Receipt in substitution for a destroyed, lost or stolen Receipt, the Owner thereof shall have (a) filed with the Depositary (i) a request for such execution and delivery before the Depositary has notice that the Receipt has been acquired by a bona fide purchaser and (ii) a sufficient indemnity bond and (b) satisfied any other reasonable requirements imposed by the Depositary.

SECTION 2.08 Cancellation and Destruction of Surrendered Receipts.

All Receipts surrendered to the Depositary shall be cancelled by the Depositary. The Depositary is authorized to destroy Receipts so cancelled.

SECTION 2.09 Pre-Release of Receipts.

Notwithstanding Section 2.03 hereof, the Depositary may execute and deliver Receipts prior to the receipt of CUFS pursuant to Section 2.02 ("Pre-Release"). The Depositary may, pursuant to Section 2.05, deliver CUFS upon the receipt and cancellation of Receipts which have been Pre-Released, whether or not such cancellation is prior to the termination of such Pre-Release or the Depositary knows that such Receipt

has been Pre-Released. The Depositary may receive Receipts in lieu of CUFS in satisfaction of a Pre-Release. Each Pre-Release will be (a) preceded or accompanied by a written representation from the person to whom Receipts are to be delivered that such person, or its customer, owns the CUFS or Receipts to be remitted, as the case may be, (b) at all times fully collateralized with cash or such other collateral as the Depositary deems appropriate, (c) terminable by the Depositary on not more than five (5) business days notice, and (d) subject to such further indemnities and credit regulations as the Depositary deems appropriate. The number of American Depositary Shares which are outstanding at any time as a result of Pre-Releases will not normally exceed thirty percent (30%) of the CUFS deposited hereunder; provided, however, that the Depositary reserves the right to change or disregard such limit from time to time as it deems appropriate.

The Depositary may retain for its own account any compensation received by it in connection with the foregoing.

SECTION 2.10 Uncertificated American Depositary Shares; DTC Direct Registration System.

Notwithstanding anything to the contrary in this Deposit Agreement:

(a) American Depositary Shares may be certificated securities evidenced by Receipts or uncertificated securities. The form of Receipt annexed as Exhibit A to this Deposit Agreement summarizes the terms and conditions of, and will be the prospectus required under the Securities Act of 1933 for, both certificated and uncertificated American Depositary Shares. Except for those provisions of this Deposit Agreement that by their nature do not apply to uncertificated American Depositary Shares, all the provisions of this Deposit Agreement shall apply, mutatis mutandis, to both certificated and uncertificated American Depositary Shares.

(b) (i) The term “deliver”, or its noun form, when used with respect to Receipts, shall mean (A) book-entry transfer of American Depositary Shares to

an account at The Depository Trust Company, or its successor ("DTC"), designated by the person entitled to such delivery, evidencing American Depositary Shares registered in the name requested by that person, (B) registration of American Depositary Shares not evidenced by a Receipt on the books of the Depositary in the name requested by the person entitled to such delivery and mailing to that person of a statement confirming that registration or (C) if requested by the person entitled to such delivery, delivery at the Corporate Trust Office of the Depositary to the person entitled to such delivery of one or more Receipts.

(ii) The term "surrender", when used with respect to Receipts, shall mean (A) one or more book-entry transfers of American Depositary Shares to the DTC account of the Depositary, (B) delivery to the Depositary at its Corporate Trust Office of an instruction to surrender American Depositary Shares not evidenced by a Receipt or (C) surrender to the Depositary at its Corporate Trust Office of one or more Receipts evidencing American Depositary Shares.

(c) American Depositary Shares not evidenced by Receipts shall be transferable as uncertificated registered securities under the laws of New York.

(d) The Depositary shall have a duty to register a transfer, in the case of uncertificated American Depositary Shares, upon receipt from the Owner of a proper instruction (including, for the avoidance of doubt, instructions through DRS and Profile as provided in subsection (f) below). The Depositary, upon surrender of a Receipt for the purpose of exchanging it for uncertificated American Depositary Shares, shall cancel that Receipt and send the Owner a statement confirming that the Owner is the owner of the same number of uncertificated American Depositary Shares that the surrendered Receipt evidenced. The Depositary, upon receipt of a proper instruction (including, for the avoidance of doubt, instructions through DRS and Profile as provided in subsection (f) below) from the Owner of uncertificated American Depositary Shares for the purpose of exchanging them for certificated American Depositary Shares, shall execute and deliver

to the Owner a Receipt evidencing the same number of certificated American Depositary Shares.

(e) Upon satisfaction of the conditions for replacement of a Receipt that is mutilated, lost, destroyed or stolen, the Depositary shall deliver to the Owner the American Depositary Shares evidenced by that Receipt in uncertificated form unless otherwise requested by the Owner.

(f) (i) The parties acknowledge that the Direct Registration System ("DRS") and Profile Modification System ("Profile") shall apply to uncertificated American Depositary Shares upon acceptance thereof to DRS by DTC. DRS is the system administered by DTC pursuant to which the Depositary may register the ownership of uncertificated American Depositary Shares, which ownership shall be evidenced by periodic statements issued by the Depositary to the Owners entitled thereto. Profile is a required feature of DRS which allows a DTC participant, claiming to act on behalf of an Owner of American Depositary Shares, to direct the Depositary to register a transfer of those American Depositary Shares to DTC or its nominee and to deliver those American Depositary Shares to the DTC account of that DTC participant without receipt by the Depositary of prior authorization from the Owner to register such transfer.

(ii) In connection with and in accordance with the arrangements and procedures relating to DRS/Profile, the parties understand that the Depositary will not verify, determine or otherwise ascertain that the DTC participant which is claiming to be acting on behalf of an Owner in requesting a registration of transfer and delivery as described in subsection (i) has the actual authority to act on behalf of the Owner (notwithstanding any requirements under the Uniform Commercial Code). For the avoidance of doubt, the provisions of Sections 5.03 and 5.08 shall apply to the matters arising from the use of the DRS. The parties agree that the Depositary's reliance on and compliance with instructions received by the Depositary through the DRS/Profile System

and in accordance with this Deposit Agreement shall not constitute negligence or bad faith on the part of the Depositary.

ARTICLE 3. CERTAIN OBLIGATIONS OF OWNERS OF RECEIPTS.

SECTION 3.01 Filing Proofs, Certificates and Other Information.

Any person presenting CUFS for deposit or any Owner of a Receipt may be required from time to time to file with the Depositary or the Custodian such proof of citizenship or residence, exchange control approval, or such information relating to the registration on the CHESS Subregister if applicable, to execute such certificates and to make such representations and warranties, as the Depositary may deem necessary or proper. The Depositary may withhold the delivery or registration of transfer of any Receipt or the distribution of any dividend or sale or distribution of rights or of the proceeds thereof or the delivery of any Deposited Securities until such proof or other information is filed or such certificates are executed or such representations and warranties made.

SECTION 3.02 Liability of Owner for Taxes.

If any tax or other governmental charge shall become payable with respect to any Receipt or any Deposited Securities represented by any Receipt, such tax or other governmental charge shall be payable by the Owner of such Receipt to the Depositary. The Depositary may refuse to effect any transfer of such Receipt or any withdrawal of Deposited Securities represented by American Depositary Shares evidenced by such Receipt until such payment is made, and may withhold any dividends or other distributions, or may sell for the account of the Owner thereof any part or all of the Deposited Securities represented by the American Depositary Shares evidenced by such Receipt, and may apply such dividends or other distributions or the proceeds of any such sale in payment of such tax or other governmental charge and the Owner of such Receipt shall remain liable for any deficiency.

SECTION 3.03 Warranties on Deposit of Shares.

Every person depositing CUFS under this Deposit Agreement shall be deemed thereby to represent and warrant that such CUFS are validly issued, fully paid, nonassessable and free of any pre-emptive rights of the holders of outstanding Shares and that the person making such deposit is duly authorized so to do. Every such person shall also be deemed to represent that the deposit of such CUFS and the sale of Receipts evidencing American Depositary Shares representing such CUFS by that person are not restricted under the Securities Act of 1933. Such representations and warranties shall survive the deposit of CUFS and issuance of Receipts.

ARTICLE 4. THE DEPOSITED SECURITIES.

SECTION 4.01 Cash Distributions.

Whenever the Depositary shall receive any cash dividend or other cash distribution on any Deposited Securities, the Depositary shall, subject to the provisions of Section 4.05, convert such dividend or distribution into Dollars if such cash dividend or other cash distribution is not received in Dollars and shall distribute the amount thus received (net of the fees of the Depositary as provided in Section 5.09 hereof, if applicable) to the Owners entitled thereto, in proportion to the number of American Depositary Shares representing such Deposited Securities held by them respectively; provided, however, that in the event that the Issuer, the CUFS Depositary, the Custodian, or the Depositary shall be required to withhold and does withhold from such cash dividend or such other cash distribution an amount on account of taxes, the amount distributed to the Owner of the Receipts evidencing American Depositary Shares representing such Deposited Securities shall be reduced accordingly. The Depositary shall distribute only such amount, however, as can be distributed without attributing to any Owner a fraction of one cent. Any such fractional amounts shall be rounded to the nearest whole cent and so distributed to Owners entitled thereto. The Issuer or its agent will remit to the appropriate governmental agency in The Netherlands all amounts

withheld and owing to such agency. The Depositary will forward to the Issuer or the CUFS Depositary such information from its records as the Issuer or the CUFS Depositary may reasonably request to enable the Issuer or the CUFS Depositary to file necessary reports with governmental agencies, and the Depositary or the Issuer or the CUFS Depositary may file any such reports necessary to obtain benefits under the applicable tax treaties for the Owners of Receipts.

SECTION 4.02 Distributions Other Than Cash, CUFS or Rights.

Subject to the provisions of Section 4.11 and Section 5.09, whenever the Depositary shall receive any distribution other than a distribution described in Sections 4.01, 4.03 or 4.04, the Depositary shall cause the securities or property received by it to be distributed to the Owners entitled thereto, in proportion to the number of American Depositary Shares representing such Deposited Securities held by them respectively, in any manner that the Depositary may deem equitable and practicable for accomplishing such distribution; provided, however, that if in the opinion of the Depositary such distribution cannot be made proportionately among the Owners entitled thereto, or if for any other reason (including, but not limited to, any requirement that the Issuer, the CUFS Depositary or the Depositary withhold an amount on account of taxes or other governmental charges or that such securities must be registered under the Securities Act of 1933 in order to be distributed to Owners or holders) the Depositary deems such distribution not to be feasible, the Depositary may adopt such method as it may deem equitable and practicable for the purpose of effecting such distribution, including, but not limited to, the public or private sale of the securities or property thus received, or any part thereof, and the net proceeds of any such sale (net of the fees of the Depositary as provided in Section 5.09) shall be distributed by the Depositary to the Owners entitled thereto as in the case of a distribution received in cash. Any distributions received by the Depositary and not distributed to the Owners entitled thereto or sold as provided in this Section 4.02 shall be deemed to be Deposited Securities and shall be represented by such Owner’s Receipts.

SECTION 4.03 Distributions in CUFS.

If any distribution upon any Deposited Securities or any securities of the Issuer represented by any Deposited Securities results in a dividend in, or free distribution of, CUFS, the Depositary may distribute to the Owners of outstanding Receipts entitled thereto, in proportion to the number of American Depositary Shares representing such Deposited Securities held by them respectively, additional Receipts evidencing an aggregate number of American Depositary Shares representing the amount of CUFS received as such dividend or free distribution, subject to the terms and conditions of the Deposit Agreement with respect to the deposit of CUFS and the issuance of American Depositary Shares evidenced by Receipts, including the withholding of any tax or other governmental charge as provided in Section 4.11 and the payment of fees of the Depositary as provided in Section 5.09. In lieu of delivering Receipts for fractional American Depositary Shares in any such case, the Depositary shall sell the amount of CUFS represented by the aggregate of such fractions and distribute the net proceeds, all in the manner and subject to the conditions described in Section 4.01. If additional Receipts are not so distributed, each American Depositary Share shall thenceforth also represent the additional CUFS distributed upon the Deposited Securities represented thereby.

SECTION 4.04 Rights.

In the event that the Issuer shall offer or cause to be offered to the holders of any Deposited Securities, or any securities of the Issuer represented by any Deposited Securities, any rights to subscribe for additional Shares or any rights of any other nature, the Depositary shall have discretion as to the procedure to be followed in making such rights available to any Owners or in disposing of such rights on behalf of any Owners and making the net proceeds available to such Owners or, if by the terms of such rights offering or for any other reason, the Depositary may not either make such rights available to any Owners or dispose of such rights and make the net proceeds available to such Owners, then the Depositary shall allow the rights to lapse. If at the time of the offering

of any rights the Depositary determines in its discretion that it is lawful and feasible to make such rights available to all Owners or to certain Owners but not to other Owners, the Depositary may distribute to any Owner to whom it determines the distribution to be lawful and feasible, in proportion to the number of American Depositary Shares held by such Owner, warrants or other instruments therefor in such form as it deems appropriate.

In circumstances in which rights would otherwise not be distributed, if an Owner of Receipts requests the distribution of warrants or other instruments in order to exercise the rights allocable to the American Depositary Shares of such Owner hereunder, the Depositary will make such rights available to such Owner upon written notice from the Issuer to the Depositary that (a) the Issuer has elected in its sole discretion to permit such rights to be exercised and (b) such Owner has executed such documents as the Issuer has determined in its sole discretion are reasonably required under applicable law.

If the Depositary has distributed warrants or other instruments for rights to all or certain Owners, then upon instruction from such an Owner pursuant to such warrants or other instruments to the Depositary from such Owner to exercise such rights, upon payment by such Owner to the Depositary for the account of such Owner of an amount equal to the purchase price of the relevant security to be received upon the exercise of the rights, and upon payment of the fees of the Depositary and any other charges as set forth in such warrants or other instruments, the Depositary shall, on behalf of such Owner, exercise the rights and purchase the relevant security, and the Issuer shall cause the relevant security, if Shares, to be delivered to the CUFS Depositary on behalf of such Owner with instructions to issue CUFS representing such Shares and deliver them to the Custodian. As agent for such Owner, the Depositary will cause such CUFS to be deposited pursuant to Section 2.02 of this Deposit Agreement, and shall, pursuant to Section 2.03 of this Deposit Agreement, execute and deliver Receipts to such Owner. In the case of a distribution pursuant to the second paragraph of this section, such Receipts

shall be legended in accordance with applicable U.S. laws, and shall be subject to the appropriate restrictions on sale, deposit, cancellation, and transfer under such laws.

If the Depositary determines in its discretion that it is not lawful and feasible to make such rights available to all or certain Owners, it may sell the rights, warrants or other instruments in proportion to the number of American Depositary Shares held by the Owners to whom it has determined it may not lawfully or feasibly make such rights available, and allocate the net proceeds of such sales (net of the fees of the Depositary as provided in Section 5.09 and all taxes and governmental charges payable in connection with such rights and subject to the terms and conditions of this Deposit Agreement) for the account of such Owners otherwise entitled to such rights, warrants or other instruments, upon an averaged or other practical basis without regard to any distinctions among such Owners because of exchange restrictions or the date of delivery of any Receipt or otherwise.

The Depositary will not offer rights to Owners unless both the rights and the securities to which such rights relate are either exempt from registration under the Securities Act of 1933 with respect to a distribution to Owners or are registered under the provisions of such Act. If an Owner of Receipts requests distribution of warrants or other instruments, notwithstanding that there has been no such registration under such Act, the Depositary shall not effect such distribution unless it has received an opinion from recognized counsel in the United States for the Issuer upon which the Depositary may rely that such distribution to such Owner is exempt from such registration.

The Depositary shall not be responsible for any failure to determine that it may be lawful or feasible to make such rights available to Owners in general or any Owner in particular.

SECTION 4.05 Conversion of Foreign Currency.

Whenever the Depositary shall receive foreign currency, by way of dividends or other distributions or the net proceeds from the sale of securities, property or rights, and if at the time of the receipt thereof the foreign currency so received can in the judgment of the Depositary be converted on a reasonable basis into Dollars and the resulting Dollars transferred to the United States, the Depositary shall convert or cause to be converted, by sale or in any other manner that it may determine, such foreign currency into Dollars, and such Dollars shall be distributed to the Owners entitled thereto or, if the Depositary shall have distributed any warrants or other instruments which entitle the holders thereof to such Dollars, then to the holders of such warrants and/or instruments upon surrender thereof for cancellation. Such distribution may be made upon an averaged or other practicable basis without regard to any distinctions among Owners on account of exchange restrictions, the date of delivery of any Receipt or otherwise and shall be net of any expenses of conversion into Dollars incurred by the Depositary as provided in Section 5.09.

If such conversion or distribution can be effected only with the approval or license of any government or agency thereof, the Depositary shall file such application for approval or license, if any, as it may deem desirable.

If at any time the Depositary shall determine that in its judgment any foreign currency received by the Depositary is not convertible on a reasonable basis into Dollars transferable to the United States, or if any approval or license of any government or agency thereof which is required for such conversion is denied or in the opinion of the Depositary is not obtainable, or if any such approval or license is not obtained within a reasonable period as determined by the Depositary, the Depositary may distribute the foreign currency (or an appropriate document evidencing the right to receive such foreign currency) received by the Depositary to, or in its discretion may hold such foreign

currency uninvested and without liability for interest thereon for the respective accounts of, the Owners entitled to receive the same.

If any such conversion of foreign currency, in whole or in part, cannot be effected for distribution to some of the Owners entitled thereto, the Depositary may in its discretion make such conversion and distribution in Dollars to the extent permissible to the Owners entitled thereto and may distribute the balance of the foreign currency received by the Depositary to, or hold such balance uninvested and without liability for interest thereon for the respective accounts of, the Owners entitled thereto.

SECTION 4.06 Fixing of Record Date.

Whenever any cash dividend or other cash distribution shall become payable or any distribution other than cash shall be made, or whenever rights shall be issued with respect to the Deposited Securities or any securities of the Issuer represented by any Deposited Securities, or whenever for any reason the Depositary causes a change in the number of CUFS that are represented by each American Depositary Share, or whenever the Depositary shall receive notice of any meeting of holders of CUFS or the Shares underlying the CUFS or other Deposited Securities, the Depositary shall fix a record date which date shall, to the extent practicable, be the same date as the record date set with respect to the Shares, if any, (a) for the determination of the Owners who shall be (i) entitled to receive such dividend, distribution or rights or the net proceeds of the sale thereof or (ii) entitled to give instructions for the exercise of voting rights at any such meeting, or (b) on or after which each American Depositary Share will represent the changed number of Shares. Subject to the provisions of Sections 4.01 through 4.05 and to the other terms and conditions of this Deposit Agreement, the Owners on such record date shall be entitled, as the case may be, to receive the amount distributable by the Depositary with respect to such dividend or other distribution or such rights or the net proceeds of sale thereof in proportion to the number of American Depositary Shares held

by them respectively and to give voting instructions and to act in respect of any other such matter.

SECTION 4.07 Voting of Deposited Securities.

Upon receipt of notice of any meeting of holders of Shares or Deposited Securities, if requested in writing by the Issuer, the Depositary shall, as soon as practicable thereafter, mail to the Owners a notice, the form of which notice shall be in the sole discretion of the Depositary, which shall contain (a) such information as is contained in such notice of meeting received from the CUFS Depositary or the Issuer, and (b) a statement that the Owners as of the close of business on a specified record date will be entitled, subject to any applicable provision of Netherlands law and of the Articles of Association of the Issuer, to instruct the Depositary as to the exercise of the voting rights, if any, pertaining to the number of Shares represented by CUFS or other Deposited Securities represented by their respective American Depositary Shares and (c) a statement as to the manner in which such instructions may be given. Upon the written request of an Owner on such record date, received on or before the date established by the Depositary for such purpose, (the "Instruction Date") the Depositary shall endeavor, in so far as practicable, to instruct, or cause the Custodian to instruct, the CUFS Depositary to vote or cause to be voted, the Shares underlying the CUFS in accordance with the instructions received by the Depositary from Owners. The Depositary shall not instruct, or cause the Custodian to instruct, the CUFS Depositary to vote the Shares other than in accordance with such Owner's instructions.

There can be no assurance that Owners generally or any Owner in particular will receive the notice described in the preceding paragraph sufficiently prior to the Instruction Date to ensure that the Depositary will have enough time to instruct the CUFS Depositary to vote or that the CUFS Depositary will vote the Shares in accordance with the provisions set forth in the preceding paragraph.

SECTION 4.08 Changes Affecting Deposited Securities.

In circumstances where the provisions of Section 4.03 do not apply, upon any change in nominal value, change in par value, split-up, consolidation or any other reclassification of Deposited Securities or Shares represented by Deposited Securities, or upon any recapitalization, reorganization, merger or consolidation or sale of assets affecting the Issuer or to which it is a party, any securities which shall be received by the Depositary or a Custodian in exchange for or in conversion of or in respect of Deposited Securities, shall be treated as new Deposited Securities under this Deposit Agreement, and American Depositary Shares shall thenceforth represent the new Deposited Securities so received in exchange or conversion, unless additional Receipts are delivered pursuant to the following sentence. In any such case the Depositary may, and shall if the Issuer shall so request, execute and deliver additional Receipts as in the case of a distribution of Shares which results in the issuance of CUFS, or call for the surrender of outstanding Receipts to be exchanged for new Receipts specifically describing such new Deposited Securities.

SECTION 4.09 Reports.

The Depositary shall make available for inspection by Owners at its Corporate Trust Office any reports and communications, including any proxy soliciting material, received from the Issuer or the CUFS Depositary which are both (a) received by the Depositary and the Custodian as the holder of the Deposited Securities or by the CUFS Depositary as the holder of Shares underlying the CUFS and (b) made generally available to the holders of such Deposited Securities or of the Shares underlying the CUFS by the Issuer or the CUFS Depositary. The Depositary shall also, upon written request, send to the Owners copies of such reports furnished by the Issuer pursuant to Section 5.06. Any such reports and communications, including any such proxy soliciting material, furnished to the Depositary by the Issuer shall be furnished in English.

SECTION 4.10 Lists of Owners.

Promptly upon request by the Issuer or the CUFS Depositary, the Depositary shall, at the expense of the Issuer, furnish to it a list, as of a recent date, of the names, addresses and holdings of American Depositary Shares by all persons in whose names Receipts are registered on the books of the Depositary.

SECTION 4.11 Withholding.

In the event that the Depositary determines that any distribution in property (including CUFS and rights to subscribe therefor) is subject to any tax or other governmental charge which the Depositary is obligated to withhold, the Depositary may by public or private sale dispose of all or a portion of such property (including CUFS and rights to subscribe therefor) in such amounts and in such manner as the Depositary deems necessary and practicable to pay any such taxes or charges and the Depositary shall distribute the net proceeds of any such sale after deduction of such taxes or charges to the Owners entitled thereto in proportion to the number of American Depositary Shares held by them respectively.

ARTICLE 5. THE DEPOSITARY, THE CUSTODIANS AND THE ISSUER.

SECTION 5.01 Maintenance of Office and Transfer Books by the Depositary.

Until termination of this Deposit Agreement in accordance with its terms, the Depositary shall maintain in the Borough of Manhattan, The City of New York, facilities for the execution and delivery, registration, registration of transfers and surrender of Receipts in accordance with the provisions of this Deposit Agreement.

The Depositary shall keep books for the registration of Receipts and transfers of Receipts which at all reasonable times shall be open for inspection by the Owners, provided that such inspection shall not be for the purpose of communicating with Owners in the interest of a business or object other than the business of the Issuer or a matter related to this Deposit Agreement or the Receipts.

The Depositary may close the transfer books, at any time or from time to time, when deemed expedient by it in connection with the performance of its duties hereunder.

If any Receipts or the American Depositary Shares evidenced thereby are listed on one or more stock exchanges in the United States, the Depositary shall act as Registrar or appoint a Registrar or one or more co-registrars for registry of such Receipts in accordance with any requirements of such exchange or exchanges.

SECTION 5.02 Prevention or Delay in Performance by the Depositary or the Issuer.

Neither the Depositary nor the Issuer nor any of their directors, employees, agents or affiliates shall incur any liability to any Owner or holder of any Receipt, if by reason of any provision of any present or future law or regulation of the United States or any other country, or of any governmental or regulatory authority or stock exchange, or by reason of any provision, present or future, of the Articles of Association of the Issuer, or by reason of any act of God or war or other circumstances beyond its control, the Depositary or the Issuer or any of their directors, employees, agents or affiliates shall be prevented or forbidden from, or be subject to any civil or criminal penalty on account of, doing or performing any act or thing which by the terms of this Deposit Agreement it is provided shall be done or performed; nor shall the Depositary or the Issuer incur any liability to any Owner or holder of any Receipt by reason of any non-performance or delay, caused as aforesaid, in the performance of any act or thing which by the terms of this Deposit Agreement it is provided shall or may be done or performed, or by reason of any exercise of, or failure to exercise, any discretion provided for in this Deposit Agreement. Where, by the terms of a distribution pursuant to Sections 4.01, 4.02, or 4.03 of the Deposit Agreement, or an offering or distribution pursuant to Section 4.04 of the Deposit Agreement, or for any other reason, such distribution or offering may not be made available to Owners, and the Depositary may

not dispose of such distribution or offering on behalf of such Owners and make the net proceeds available to such Owners, then the Depositary shall not make such distribution or offering, and shall allow any rights, if applicable, to lapse.

SECTION 5.03 Obligations of the Depositary, the Custodian and the Issuer.

The Issuer assumes no obligation nor shall it be subject to any liability under this Deposit Agreement to Owners or holders of Receipts, except that it agrees to perform its obligations specifically set forth in this Deposit Agreement without negligence or bad faith.

The Depositary assumes no obligation nor shall it be subject to any liability under this Deposit Agreement to any Owner or holder of any Receipt (including, without limitation, liability with respect to the validity or worth of the Deposited Securities), except that it agrees to perform its obligations specifically set forth in this Deposit Agreement without negligence or bad faith.

Neither the Depositary nor the Issuer shall be under any obligation to appear in, prosecute or defend any action, suit or other proceeding in respect of any Deposited Securities or in respect of the Receipts, which in its opinion may involve it in expense or liability, unless indemnity satisfactory to it against all expense and liability shall be furnished as often as may be required, and the Custodian shall not be under any obligation whatsoever with respect to such proceedings, the responsibility of the Custodian being solely to the Depositary.

Neither the Depositary nor the Issuer shall be liable for any action or nonaction by it in reliance upon the advice of or information from legal counsel, accountants, any person presenting CUFS for deposit, any Owner or any other person believed by it in good faith to be competent to give such advice or information.

The Depositary shall not be liable for any acts or omissions made by a successor depositary whether in connection with a previous act or omission of the Depositary or in connection with any matter arising wholly after the removal or resignation of the Depositary, provided that in connection with the issue out of which such potential liability arises the Depositary performed its obligations without negligence or bad faith while it acted as Depositary.

The Depositary shall not be responsible for any failure to carry out any instructions to vote any of the Deposited Securities, or for the manner in which any such vote is cast or the effect of any such vote, provided that any such action or nonaction is in good faith.

No disclaimer of liability under the Securities Act of 1933 is intended by any provision of this Deposit Agreement.

SECTION 5.04 Resignation and Removal of the Depositary.

The Depositary may at any time resign as Depositary hereunder by written notice of its election so to do delivered to the Issuer, such resignation to take effect upon the appointment of a successor depositary and its acceptance of such appointment as hereinafter provided.

The Depositary may at any time be removed by the Issuer by 120 days prior written notice of such removal effective upon the later of (i) the 120th day after delivery of the notice to the Depositary or (ii) the appointment of a successor depositary and its acceptance of such appointment as hereinafter provided.

In case at any time the Depositary acting hereunder shall resign or be removed, the Issuer shall use its best efforts to appoint a successor depositary, which shall be a bank or trust company having an office in the Borough of Manhattan, The City of New York. Every successor depositary shall execute and deliver to its predecessor

and to the Issuer an instrument in writing accepting its appointment hereunder, and thereupon such successor depositary, without any further act or deed, shall become fully vested with all the rights, powers, duties and obligations of its predecessor; but such predecessor, nevertheless, upon payment of all sums due it and on the written request of the Issuer shall execute and deliver an instrument transferring to such successor all rights and powers of such predecessor hereunder, shall duly assign, transfer and deliver all right, title and interest in the Deposited Securities to such successor, and shall deliver to such successor a list of the Owners of all outstanding Receipts. Any such successor depositary shall promptly mail notice of its appointment to the Owners.

Any corporation into or with which the Depositary may be merged or consolidated shall be the successor of the Depositary without the execution or filing of any document or any further act.

SECTION 5.05 The Custodians.

The Custodian shall be subject at all times and in all respects to the directions of the Depositary and shall be responsible solely to it. Any Custodian may resign and be discharged from its duties hereunder by notice of such resignation delivered to the Depositary at least 30 days prior to the date on which such resignation is to become effective. If upon such resignation there shall be no Custodian acting hereunder, the Depositary shall, promptly after receiving such notice, appoint a substitute custodian or custodians, each of which shall thereafter be a Custodian hereunder. Whenever the Depositary in its discretion determines that it is in the best interest of the Owners to do so, it may appoint substitute or additional custodian or custodians, which shall thereafter be one of the Custodians hereunder. Upon demand of the Depositary any Custodian shall deliver such of the Deposited Securities held by it as are requested of it to any other Custodian or such substitute or additional custodian or custodians. Each such substitute or additional custodian shall deliver to the Depositary, forthwith upon its

appointment, an acceptance of such appointment satisfactory in form and substance to the Depositary.

Upon the appointment of any successor depositary hereunder, each Custodian then acting hereunder shall forthwith become, without any further act or writing, the agent hereunder of such successor depositary and the appointment of such successor depositary shall in no way impair the authority of each Custodian hereunder; but the successor depositary so appointed shall, nevertheless, on the written request of any Custodian, execute and deliver to such Custodian all such instruments as may be proper to give to such Custodian full and complete power and authority as agent hereunder of such successor depositary.

SECTION 5.06 Notices and Reports.

On or before the first date on which the Issuer gives notice, by publication or otherwise, of any meeting of holders of Shares or Deposited Securities, or of any adjourned meeting of such holders, or of the taking of any action in respect of any cash or other distributions or the offering of any rights, the Issuer agrees to transmit to the Depositary and the Custodian a copy of the notice thereof in the form given or to be given to holders of Shares or Deposited Securities.

The Issuer will arrange for the translation into English and the prompt transmittal by the Issuer to the Depositary and the Custodian of such notices and any other reports and communications which are made generally available by the Issuer to holders of its Shares. If requested in writing by the Issuer, the Depositary will arrange for the mailing, at the Issuer's expense, of copies of such notices, reports and communications to all Owners. The Issuer will timely provide the Depositary with the quantity of such notices, reports, and communications, as requested by the Depositary from time to time, in order for the Depositary to effect such mailings.

The Issuer shall deliver to the Depositary and the Custodian a copy (in English or with an English translation) of all provisions of or governing the CUFS. Promptly upon any change in those provisions, the Issuer shall deliver to the Depositary and the Custodian a copy (in English or with an English translation) of those provisions as changed. The Depositary and its agents may rely on the copy of those provisions for all purposes of this Deposit Agreement.

SECTION 5.07 Distribution of Additional Shares, Rights, etc.

The Issuer agrees that in the event of any issuance or distribution of (1) additional CUFS or Shares underlying the CUFS, (2) rights to subscribe for CUFS or Shares underlying the CUFS, (3) securities convertible into or exchangeable for CUFS or Shares underlying the CUFS, or (4) rights to subscribe for such securities, (each a "Distribution") the Issuer will promptly furnish to the Depositary and the CUFS Depositary a written opinion from U.S. counsel for the Issuer, which counsel shall be satisfactory to the Depositary and the CUFS Depositary, stating whether or not the Distribution requires a registration statement under the Securities Act of 1933 to be in effect prior to making such Distribution available to Owners entitled thereto. If in the opinion of such counsel a registration statement is required, such counsel shall furnish to the Depositary a written opinion as to whether or not there is a registration statement in effect which will cover such Distribution.

The Issuer agrees with the Depositary that neither the Issuer nor any company controlled by, controlling or under common control with the Issuer will at any time deposit any Shares with the CUFS Depositary or cause the deposit of CUFS hereunder, either originally issued or previously issued and reacquired by the Issuer or any such affiliate, unless a Registration Statement is in effect as to such Shares or CUFS, as applicable, under the Securities Act of 1933.

SECTION 5.08 Indemnification.

The Issuer agrees to indemnify the Depositary, its directors, employees, agents and affiliates and any Custodian against, and hold each of them harmless from, any liability or expense (including, but not limited to, the fees and expenses of counsel) which may arise out of acts performed or omitted, in accordance with the provisions of this Deposit Agreement and of the Receipts, as the same may be amended, modified or supplemented from time to time, (i) by either the Depositary or a Custodian or their respective directors, employees, agents and affiliates, except for any liability or expense arising out of the negligence or bad faith of either of them, or (ii) by the Issuer or any of its directors, employees, agents and affiliates.

The Depositary agrees to indemnify the Issuer, its directors, employees, agents and affiliates and hold them harmless from any liability or expense which may arise out of acts performed or omitted by the Depositary or its Custodian or their respective directors, employees, agents and affiliates due to their negligence or bad faith.

SECTION 5.09 Charges of Depositary.

The Issuer agrees to pay the fees, reasonable expenses and out-of-pocket charges of the Depositary and those of any Registrar only in accordance with agreements in writing entered into between the Depositary and the Issuer from time to time. The Depositary shall present its statement for such charges and expenses to the Issuer once every three months. The charges and expenses of the Custodian are for the sole account of the Depositary.

The following charges shall be incurred by any party depositing or withdrawing CUFS or by any party surrendering Receipts or to whom Receipts are issued (including, without limitation, issuance pursuant to a stock dividend or stock split declared by the Issuer or an exchange of stock regarding the Receipts or Deposited Securities or a distribution of Receipts pursuant to Section 4.03), or by Owners, as applicable: (1) taxes and other governmental charges, (2) such registration fees as may

from time to time be in effect for the registration of transfers of CUFS generally on the CHESS Subregister and applicable to transfers of CUFS to or from the name of the Depositary or its nominee or the Custodian or its nominee on the making of deposits or withdrawals hereunder, (3) such cable, telex and facsimile transmission expenses as are expressly provided in this Deposit Agreement, (4) such expenses as are incurred by the Depositary in the conversion of foreign currency pursuant to Section 4.05, (5) a fee of $5.00 or less per 100 American Depositary Shares (or portion thereof) for the execution and delivery of Receipts pursuant to Section 2.03, 4.03 or 4.04 and the surrender of Receipts pursuant to Section 2.05 or 6.02, (6) a fee of $.02 or less per American Depositary Share (or portion thereof) for any cash distribution made pursuant to the Deposit Agreement, including, but not limited to Sections 4.01 through 4.04 hereof, (7) a fee for the distribution of securities pursuant to Section 4.02, such fee being in an amount equal to the fee for the execution and delivery of American Depositary Shares referred to above which would have been charged as a result of the deposit of such securities (for purposes of this clause 7 treating all such securities as if they were Shares) but which securities are instead distributed by the Depositary to Owners, (8) a fee of $.02 or less per American Depositary Share (or portion thereof) for depositary services, which will accrue on the last day of each calendar year and which will be payable as provided in clause (9) below; provided, however, that no fee will be assessed under this clause (8) if a fee was charged pursuant to clause (6) above during that calendar year and (9) any other charge payable by the Depositary, any of the Depositary's agents, including the Custodian, or the agents of the Depositary's agents in connection with the servicing of CUFS or other Deposited Securities (which charge shall be assessed against Owners as of the date or dates set by the Depositary in accordance with Section 4.06 and shall be payable at the sole discretion of the Depositary by billing such Owners for such charge or by deducting such charge from one or more cash dividends or other cash distributions).

The Depositary, subject to Section 2.09 hereof, may own and deal in any class of securities of the Issuer and its affiliates and in Receipts.

SECTION 5.10 Retention of Depositary Documents.

The Depositary is authorized to destroy those documents, records, bills and other data compiled during the term of this Deposit Agreement at the times permitted by the laws or regulations governing the Depositary unless the Issuer requests that such papers be retained for a longer period or turned over to the Issuer or to a successor depositary.

SECTION 5.11 Exclusivity.

The Issuer agrees not to appoint any other depositary for issuance of American Depositary Receipts so long as The Bank of New York Mellon is acting as Depositary hereunder.

SECTION 5.12 List of Restricted Securities Owners.

From time to time, the Issuer shall provide to the Depositary a list setting forth, to the actual knowledge of the Issuer, those persons or entities who beneficially own Restricted Securities and the Issuer shall update that list on a regular basis. The Issuer agrees to advise in writing each of the persons or entities so listed that such Restricted Securities are ineligible for deposit hereunder. The Depositary may rely on such a list or update but shall not be liable for any action or omission made in reliance thereon.

ARTICLE 6. AMENDMENT AND TERMINATION.

SECTION 6.01 Amendment.

The form of the Receipts and any provisions of this Deposit Agreement may at any time and from time to time be amended by agreement between the Issuer and the Depositary in any respect which they may deem necessary or desirable. Any amendment which shall impose or increase any fees or charges (other than taxes and other governmental charges, registration fees, cable, telex or facsimile transmission costs, delivery costs or other such expenses), or which shall otherwise prejudice any substantial

existing right of Owners, shall, however, not become effective as to outstanding Receipts until the expiration of thirty days after notice of such amendment shall have been given to the Owners of outstanding Receipts. Every Owner at the time any amendment so becomes effective shall be deemed, by continuing to hold such Receipt, to consent and agree to such amendment and to be bound by the Deposit Agreement as amended thereby. In no event shall any amendment impair the right of the Owner of any Receipt to surrender such Receipt and receive therefor the Deposited Securities represented thereby, except in order to comply with mandatory provisions of applicable law.

SECTION 6.02 Termination.

The Depositary shall at any time at the direction of the Issuer terminate this Deposit Agreement by mailing notice of such termination to the Owners of all Receipts then outstanding at least 90 days prior to the date fixed in such notice for such termination. The Depositary may likewise terminate this Deposit Agreement by mailing notice of such termination to the Issuer and the Owners of all Receipts then outstanding if at any time 90 days shall have expired after the Depositary shall have delivered to the Issuer a written notice of its election to resign and a successor depositary shall not have been appointed and accepted its appointment as provided in Section 5.04. On and after the date of termination, the Owner of a Receipt will, upon (a) surrender of such Receipt at the Corporate Trust Office of the Depositary, (b) payment of the fee of the Depositary for the surrender of Receipts referred to in Section 2.05, and (c) payment of any applicable taxes or governmental charges, be entitled to delivery, to him or upon his order, of the amount of Deposited Securities represented by the American Depositary Shares evidenced by such Receipt. If any Receipts shall remain outstanding after the date of termination, the Depositary thereafter shall discontinue the registration of transfers of Receipts, shall suspend the distribution of dividends to the Owners thereof, and shall not give any further notices or perform any further acts under this Deposit Agreement, except that the Depositary shall continue to collect dividends and other distributions pertaining to Deposited Securities, shall sell rights as provided in this

Deposit Agreement, and shall continue to deliver Deposited Securities, together with any dividends or other distributions received with respect thereto and the net proceeds of the sale of any rights or other property, in exchange for Receipts surrendered to the Depositary (after deducting, in each case, the fee of the Depositary for the surrender of a Receipt, any expenses for the account of the Owner of such Receipt in accordance with the terms and conditions of this Deposit Agreement, and any applicable taxes or governmental charges). At any time after the expiration of one year from the date of termination, the Depositary may sell the Deposited Securities then held hereunder and may thereafter hold uninvested the net proceeds of any such sale, together with any other cash then held by it hereunder, unsegregated and without liability for interest, for the pro rata benefit of the Owners of Receipts which have not theretofore been surrendered, such Owners thereupon becoming general creditors of the Depositary with respect to such net proceeds. After making such sale, the Depositary shall be discharged from all obligations under this Deposit Agreement, except to account for such net proceeds and other cash (after deducting, in each case, the fee of the Depositary for the surrender of a Receipt, any expenses for the account of the Owner of such Receipt in accordance with the terms and conditions of this Deposit Agreement, and any applicable taxes or governmental charges). Upon the termination of this Deposit Agreement, the Issuer shall be discharged from all obligations under this Deposit Agreement except for its obligations to the Depositary under Sections 5.08 and 5.09 hereof.

ARTICLE 7. MISCELLANEOUS.

SECTION 7.01 Counterparts.

This Deposit Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of such counterparts shall constitute one and the same instrument. Copies of this Deposit Agreement shall be filed with the Depositary and the Custodians and shall be open to inspection by any holder or Owner of a Receipt during business hours.

SECTION 7.02 No Third Party Beneficiaries.

Notwithstanding any terms to the contrary hereof, this Deposit Agreement is for the exclusive benefit of the parties hereto and shall not be deemed to give any legal or equitable right, remedy or claim whatsoever to any other person.

SECTION 7.03 Severability.

In case any one or more of the provisions contained in this Deposit Agreement or in the Receipts should be or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein or therein shall in no way be affected, prejudiced or disturbed thereby.

SECTION 7.04 Holders and Owners as Parties; Binding Effect.

The holders and Owners of Receipts from time to time shall be parties to this Deposit Agreement and shall be bound by all of the terms and conditions hereof and of the Receipts by acceptance thereof.

SECTION 7.05 Notices.

Any and all notices to be given to the Issuer shall be deemed to have been duly given if in English and personally delivered or sent by mail or cable, telex or facsimile transmission confirmed by letter, addressed to James Hardie Industries SE, World Trade Center, Strawinskylaan 1725, 1077 JE Amsterdam, The Netherlands, Attention: Company Secretary or any other place to which the Issuer may have transferred its principal office.

Any and all notices to be given to the Depositary shall be deemed to have been duly given if in English and personally delivered or sent by mail or cable, telex or facsimile transmission confirmed by letter, addressed to The Bank of New York Mellon, 101 Barclay Street, New York, New York 10286, Attention: American Depositary Receipt Administration, or any other place to which the Depositary may have transferred its Corporate Trust Office.

Any and all notices to be given to any Owner shall be deemed to have been duly given if personally delivered or sent by mail or cable, telex or facsimile transmission confirmed by letter, addressed to such Owner at the address of such Owner as it appears on the transfer books for Receipts of the Depositary, or, if such Owner shall have filed with the Depositary a written request that notices intended for such Owner be mailed to some other address, at the address designated in such request.

Delivery of a notice sent by mail or cable, telex or facsimile transmission shall be deemed to be effected at the time when a duly addressed letter containing the same (or a confirmation thereof in the case of a cable, telex or facsimile transmission) is deposited, postage prepaid, in a post-office letter box. The Depositary or the Issuer may, however, act upon any cable, telex or facsimile transmission received by it, notwithstanding that such cable, telex or facsimile transmission shall not subsequently be confirmed by letter as aforesaid.

SECTION 7.06 Governing Law.

This Deposit Agreement and the Receipts shall be interpreted and all rights hereunder and thereunder and provisions hereof and thereof shall be governed by the laws of the State of New York.

SECTION 7.07 Compliance with U.S. Securities Laws.

Notwithstanding any terms of this Deposit Agreement to the contrary, the Issuer and the Depositary each agrees that it will not exercise any rights it has under the Deposit Agreement to prevent the withdrawal or delivery of Deposited Securities in a manner which would violate the United States securities laws, including, but not limited to, Section I.A.(1) of the General Instructions to the Form F-6 Registration Statement, as amended from time to time, under the Securities Act of 1933.

SECTION 7.08 Submission to Jurisdiction; Appointment of Agent for Service of Process.

The Issuer hereby (i) irrevocably designates and appoints National Registered Agents, Inc., 440 9th Avenue, 5th Floor, New York, New York 10001, as the Issuer's authorized agent upon which process may be served in any suit or proceeding arising out of or relating to the Shares or Deposited Securities, the American Depositary Shares, the Receipts or this Agreement, (ii) consents and submits to the jurisdiction of any state or federal court in the State of New York in which any such suit or proceeding may be instituted, and (iii) agrees that service of process upon said authorized agent shall be deemed in every respect effective service of process upon the Issuer in any such suit or proceeding. The Issuer agrees to deliver, upon the execution and delivery of this Deposit Agreement, a written acceptance by such agent of its appointment as such agent. The Issuer further agrees to take any and all action, including the filing of any and all such documents and instruments, as may be necessary to continue such designation and appointment in full force and effect for so long as any American Depositary Shares or Receipts remain outstanding or this Agreement remains in force. In the event the Issuer fails to continue such designation and appointment in full force and effect, the Issuer hereby waives personal service of process upon it and consents that any such service of process may be made by certified or registered mail, return receipt requested, directed to the Issuer at its address last specified for notices hereunder, and service so made shall be deemed completed five (5) days after the same shall have been so mailed.

SECTION 7.09 Effective Date.

The Issuer and the Depositary hereby agree that the effective date (the "Effective Date") of the Deposit Agreement shall be the date on which the Commission declares effective the Post-Effective Amendment No. 1 to the Form F-6 Registration Statement to which this Deposit Agreement is attached as Exhibit A(1).

SECTION 7.10 Summary in Respect of CHESS and CUFS.

The American Depositary Shares represent deposited CUFS. The Receipt shall contain the following description of CHESS and CUFS:

CHESS

CHESS facilitates the transfer of legal title and settlement of market transactions in Australia with an electronic subregister system. CHESS, which is operated by ASX Settlement and Transfer Corporation Pty Limited (herein called ASTC), is the approved securities clearing house (SCH) under s779B of the Australian Corporations Act 2001 (the "Australian Corporations Act"). This allows legal title to equities to be validly transferred electronically by virtue of provisions in the Australian Corporations Act and the SCH Business Rules.

Shares of the Issuer may be transferred and held indirectly in CHESS through the issue of CUFS.

CUFS

CUFS are a unit of beneficial ownership in a security of a foreign issuer, registered in the name of the depositary nominee. The depositary nominee for the Issuer is CHESS Depositary Nominees Pty Limited (herein called the CUFS Depositary). The CUFS Depositary is a subsidiary of Australian Stock Exchange Limited (herein called the ASX). The principal executive office of the CUFS Depositary is located as of the date of the Deposit Agreement at Level 8, 20 Bridge Street, Sydney NSW 2000, Australia.

The Articles of Association of the Issuer contain certain provisions that are relevant to CUFS holders, including, without limitation, any provisions therein relating to substantial shareholdings and any provisions therein relating to a change in control of the Issuer. In addition, the terms and conditions relating to CUFS are determined in accordance with the Australian Corporations Act and the SCH Business Rules. Those principal terms and conditions are briefly described as follows:

(i) Title to CUFS

Each CUFS represents a unit of beneficial ownership in one Share. Legal title to the underlying Shares will be held by the CUFS Depositary on behalf and for the benefit of CUFS holders.

(ii) Voting

CUFS holders are entitled to direct the CUFS Depositary as to how to exercise the voting rights with respect to the underlying Shares represented by the CUFS.

(iii) Economic Entitlements

CUFS holders are entitled to receive from the Issuer directly all dividends, bonus issues, rights issues and any other economic entitlements in respect of the underlying Shares represented by the CUFS as if they were the legal owners of the Shares.

(iv) Fees

The CUFS Depositary shall charge no fees or expenses to the CUFS holder for its services. In the event fees or expenses are accrued in connection with the services provided by the CUFS Depositary, such fees and expenses shall be paid by the Issuer to the CUFS Depositary.

(v) Immobilization of Shares

The certificate issued to the CUFS Depositary as evidence of its legal title to Shares is held by the Issuer for safekeeping. The CUFS Depositary may not create any interest (including a security interest) which is inconsistent with its title to the Shares and the interests of the holders of CUFS in respect of Shares unless authorized by the SCH Business Rules.

(vi) Evidence of Ownership

The holders of CUFS will not receive physical certificates. The Issuer will register the Shares in the name of the CUFS Depositary and the CUFS Depositary will create uncertificated CUFS holdings in the names of the holders. Statements of beneficial ownership will be issued to all CUFS holders, including to the Custodian on behalf of holders of Receipts.

CUFS holders who are sponsored by brokers or non-brokers that participate in CHESS will receive periodic Holding Statements. The Custodian, as a sponsored CUFS holder, shall receive periodic Holding Statements. SCH will issue the Holding Statements on behalf of the CUFS Depositary. CUFS holders who are sponsored by the Issuer will receive uncertificated holding statements from the Issuer's Australian registry on behalf of the CUFS Depositary.

(vii) Converting CUFS to Shares

A holder of CUFS in CHESS who wishes to convert CUFS to Shares of the Issuer can do so by instructing its sponsoring CHESS participant (ie, broker or non-broker participant). The participant transmits a CHESS message to the Issuer's registry instructing the registry to transfer the Shares from the CUFS Depositary into the name of the holder. The transfer is effected by a written instrument signed by the CUFS Depositary, as transferor, and the CUFS holder, as transferee, to which instrument the Issuer is a signatory or which instrument is served upon, or acknowledged by, the Issuer. The Issuer will then record the holder as registered owner of the Shares on the shareholder register and will, if required, issue a certificate to the holder.

Holders of Shares who wish to convert Shares back to CUFS in CHESS, can do so by lodging the Share certificate, if applicable, with their sponsoring CHESS participant and signing the seller side of an Australian standard transfer form. The participant lodges the Share certificate and transfer form with the Issuer's registry and transmits a CHESS message to the Issuer's registry instructing the registry to establish a

CHESS holding. The registry then transfers the securities from the holder's name into the name of the CUFS Depositary and establishes a CUFS holding in the name of the holder. CHESS, on behalf of the CUFS Depositary, issues a Holding Statement to the CUFS holders.

IN WITNESS WHEREOF, JAMES HARDIE INDUSTRIES SE and THE BANK OF NEW YORK MELLON have duly executed this agreement as of the day and year first set forth above and all Owners shall become parties hereto upon acceptance by them of Receipts issued in accordance with the terms hereof.

JAMES HARDIE INDUSTRIES SE

By: _____

THE BANK OF NEW YORK MELLON,
as Depositary

By: _____

Exhibit A to Deposit Agreement

No.

AMERICAN DEPOSITARY SHARES
(Each American Depositary Share represents five (5) deposited CUFS)

THE BANK OF NEW YORK MELLON
AMERICAN DEPOSITARY RECEIPT
FOR CHESS UNITS OF FOREIGN SECURITIES
REPRESENTING ORDINARY SHARES OF THE
PAR VALUE OF 0.59 EURO EACH OF
JAMES HARDIE INDUSTRIES SE
(INCORPORATED UNDER THE LAWS OF THE NETHERLANDS)

The Bank of New York Mellon as depositary (hereinafter called the "Depositary"), hereby certifies that_____, or registered assigns IS THE OWNER OF

AMERICAN DEPOSITARY SHARES

representing deposited CHESS Units of Foreign Securities (herein called "CUFS") of James Hardie Industries SE, incorporated under the laws of The Netherlands (herein called the "Company"). At the date hereof, each American Depositary Share represents five (5) CUFS which are either deposited or subject to deposit under the deposit agreement at the Australian office of Australia and New Zealand Banking Group Limited (herein called the "Custodian"). The Depositary's Corporate Trust Office is located at a different address than its principal executive office. Its Corporate Trust Office is located at 101 Barclay Street, New York, N.Y. 10286, and its principal executive office is located at One Wall Street, New York, N.Y. 10286.

THE DEPOSITARY'S CORPORATE TRUST OFFICE ADDRESS IS
101 BARCLAY STREET, NEW YORK, N.Y. 10286

1. **THE DEPOSIT AGREEMENT**.

This American Depositary Receipt is one of an issue (herein called "Receipts"), all issued and to be issued upon the terms and conditions set forth in the deposit agreement, dated as of September 24, 2001, as amended and restated as of _____, 2009 (herein called the "Deposit Agreement"), by and among the Company, the Depositary, and all Owners and holders from time to time of American Depositary Shares issued thereunder, each of whom by accepting a Receipt agrees to become a party thereto and become bound by all the terms and conditions thereof. The Deposit Agreement sets forth the rights of Owners and holders of the Receipts and the rights and duties of the Depositary in respect of the CUFS deposited thereunder and any and all other securities, property and cash from time to time received in respect of such CUFS and held thereunder (such CUFS, securities, property, and cash are herein called "Deposited Securities"). Copies of the Deposit Agreement are on file at the Depositary's Corporate Trust Office in New York City and at the office of the Custodian.

The statements made on the face and reverse of this Receipt are summaries of certain provisions of the Deposit Agreement and are qualified by and subject to the detailed provisions of the Deposit Agreement, to which reference is hereby made. Capitalized terms not defined herein shall have the meanings set forth in the Deposit Agreement.

2. **SURRENDER OF RECEIPTS AND WITHDRAWAL OF CUFS.**

Upon surrender at the Corporate Trust Office of the Depositary of this Receipt, and upon payment of the fee of the Depositary provided in this Receipt, and subject to the terms and conditions of the Deposit Agreement, the Owner hereof is entitled to (i) with respect to the CUFS or other uncertificated Deposited Securities held through CHESS evidenced by such Receipt, instruct the Depositary to procure the electronic transfer through CHESS of such CUFS or such other uncertificated Deposited Securities to an account in the name of the Owner or such other name as the Owner may direct and (ii) physical delivery, to or upon the order of such Owner, of any other Deposited Securities at the time represented by the American Depositary Shares for which this Receipt is issued. Delivery of such other Deposited Securities, if applicable, may be made by the delivery of (a) certificates in the name of the Owner hereof or as ordered by him or by certificates properly endorsed or accompanied by proper instruments of transfer to such Owner or as ordered by him and (b) any other securities, property and cash to which such Owner is then entitled in respect of this Receipt to such Owner or as ordered by him. Such delivery will be made at the option of the Owner hereof, either at the office of the Custodian or at the Corporate Trust Office of the Depositary, provided that the forwarding of certificates for Shares or other Deposited Securities for such delivery at the Corporate Trust Office of the Depositary shall be at the risk and expense of the Owner hereof. Notwithstanding any other provision of the Deposit Agreement or this Receipt, the surrender of outstanding Receipts and withdrawal of Deposited Securities may be suspended only for (i) temporary delays caused by closing the transfer books of the Depositary or the Company or the deposit of Shares in connection with voting at a

shareholders' meeting, or the payment of dividends, (ii) the payment of fees, taxes and similar charges, and (iii) compliance with any U.S. or foreign laws or governmental regulations relating to the Receipts or to the withdrawal of the Deposited Securities.

3. **TRANSFERS, SPLIT-UPS, AND COMBINATIONS OF RECEIPTS.**

The transfer of this Receipt is registrable on the books of the Depositary at its Corporate Trust Office by the Owner hereof in person or by a duly authorized attorney, upon surrender of this Receipt properly endorsed for transfer or accompanied by proper instruments of transfer and funds sufficient to pay any applicable transfer taxes and the expenses of the Depositary and upon compliance with such regulations, if any, as the Depositary may establish for such purpose. This Receipt may be split into other such Receipts, or may be combined with other such Receipts into one Receipt, evidencing the same aggregate number of American Depositary Shares as the Receipt or Receipts surrendered. As a condition precedent to the execution and delivery, registration of transfer, split-up, combination, or surrender of any Receipt or withdrawal of any Deposited Securities, the Depositary, the Company, the CUFS Depositary, the Custodian, or Registrar may require payment from the depositor of CUFS or the presentor of the Receipt of a sum sufficient to reimburse it for any tax or other governmental charge and any stock transfer or registration fee with respect thereto (including any such tax or charge and fee with respect to CUFS being deposited or withdrawn) and payment of any applicable fees as provided in this Receipt, may require the production of proof satisfactory to it as to the identity and genuineness of any signature and may also require compliance with any regulations the Depositary may establish consistent with the provisions of the Deposit Agreement or this Receipt.

The delivery of Receipts against deposits of CUFS generally or against deposits of particular CUFS may be suspended, or the transfer of Receipts in particular instances may be refused, or the registration of transfer of outstanding Receipts generally may be suspended, during any period when the transfer books of the Depositary are closed, or if any such action is deemed necessary or advisable by the Depositary, the Company, or the CUFS Depositary at any time or from time to time because of any requirement of law or of any government or governmental body or commission, or under any provision of the Deposit Agreement or this Receipt, or for any other reason, subject to Article (22) hereof. Without limitation of the foregoing, the Depositary shall not knowingly accept for deposit under the Deposit Agreement any CUFS if such CUFS, or the Shares underlying such CUFS, would be required to be registered under the provisions of the Securities Act of 1933, unless a registration statement is in effect as to such CUFS or Shares as applicable.

4. **LIABILITY OF OWNER FOR TAXES.**

If any tax or other governmental charge shall become payable with respect to any Receipt or any Deposited Securities represented hereby, such tax or other governmental charge shall be payable by the Owner hereof to the Depositary. The Depositary may refuse to effect any transfer of this Receipt or any withdrawal of Deposited Securities

represented by American Depositary Shares evidenced by such Receipt until such payment is made, and may withhold any dividends or other distributions, or may sell for the account of the Owner hereof any part or all of the Deposited Securities represented by the American Depositary Shares evidenced by this Receipt, and may apply such dividends or other distributions or the proceeds of any such sale in payment of such tax or other governmental charge and the Owner hereof shall remain liable for any deficiency.

5. **WARRANTIES OF DEPOSITORS.**

Every person depositing CUFS under the Deposit Agreement shall be deemed thereby to represent and warrant that such CUFS are validly issued, fully paid, nonassessable and free of any pre-emptive rights of the holders of outstanding Shares and that the person making such deposit is duly authorized so to do. Every such person shall also be deemed to represent that the deposit of such CUFS and the sale of Receipts evidencing American Depositary Shares representing such CUFS by that person are not restricted under the Securities Act of 1933. Such representations and warranties shall survive the deposit of CUFS and issuance of Receipts.

6. **FILING PROOFS, CERTIFICATES, AND OTHER INFORMATION.**

Any person presenting CUFS for deposit or any Owner of a Receipt may be required from time to time to file with the Depositary or the Custodian such proof of citizenship or residence, exchange control approval, or such information relating to the registration on the CHESS Subregister, if applicable, to execute such certificates and to make such representations and warranties, as the Depositary may deem necessary or proper. The Depositary may withhold the delivery or registration of transfer of any Receipt or the distribution of any dividend or sale or distribution of rights or of the proceeds thereof or the delivery of any Deposited Securities until such proof or other information is filed or such certificates are executed or such representations and warranties made. No CUFS shall be accepted for deposit unless accompanied by evidence satisfactory to the Depositary that any necessary approval has been granted by any applicable governmental body which is then performing the function of the regulation of currency exchange.

7. **CHARGES OF DEPOSITARY.**

The Company agrees to pay the fees, reasonable expenses and out-of-pocket charges of the Depositary and those of any Registrar only in accordance with agreements in writing entered into between the Depositary and the Company from time to time. The Depositary shall present its statement for such charges and expenses to the Company once every three months. The charges and expenses of the Custodian are for the sole account of the Depositary.

The following charges shall be incurred by any party depositing or withdrawing CUFS or by any party surrendering Receipts or to whom Receipts are issued (including, without limitation, issuance pursuant to a stock dividend or stock split declared by the

Company or an exchange regarding the Receipts or Deposited Securities or a distribution of Receipts pursuant to Section 4.03 of the Deposit Agreement), whichever applicable: (1) taxes and other governmental charges, (2) such registration fees as may from time to time be in effect for the registration of transfers of CUFS generally on the CHESS Subregister and applicable to transfers of CUFS to or from the name of the Depositary or its nominee or the Custodian or its nominee on the making of deposits or withdrawals under the Deposit Agreement, (3) such cable, telex and facsimile transmission expenses as are expressly provided in the Deposit Agreement, (4) such expenses as are incurred by the Depositary in the conversion of foreign currency pursuant to Section 4.05 of the Deposit Agreement, (5) a fee of $5.00 or less per 100 American Depositary Shares (or portion thereof) for the execution and delivery of Receipts pursuant to Sections 2.03, 4.03 or 4.04, and the surrender of Receipts pursuant to Sections 2.05 or 6.02 of the Deposit Agreement, (6) a fee of $.02 or less per American Depositary Share (or portion thereof) for any cash distribution made pursuant to the Deposit Agreement including, but not limited to Sections 4.01 through 4.04 thereof, (7) a fee for the distribution of securities pursuant to Section 4.02 of the Deposit Agreement, such fee being in an amount equal to the fee for the execution and delivery of American Depositary Shares referred to above which would have been charged as a result of the deposit of such securities (for purposes of this clause 7 treating all such securities as if they were Shares) but which securities are instead distributed by the Depositary to Owners, (8) a fee of $.02 or less per American Depositary Share (or portion thereof) for depositary services, which will accrue on the last day of each calendar year and which will be payable as provided in clause (9) below; provided, however, that no fee will be assessed under this clause (8) if a fee was charged pursuant to clause (6) above during that calendar year and (9) any other charge payable by the Depositary, any of the Depositary's agents, including the Custodian, or the agents of the Depositary's agents in connection with the servicing of CUFS or other Deposited Securities (which charge shall be assessed against Owners as of the date or dates set by the Depositary in accordance with Section 4.06 of the Deposit Agreement and shall be payable at the sole discretion of the Depositary by billing such Owners for such charge or by deducting such charge from one or more cash dividends or other cash distributions).

The Depositary, subject to Article (8) hereof, may own and deal in any class of securities of the Company and its affiliates and in Receipts.

8. **PRE-RELEASE OF RECEIPTS.**

Notwithstanding Section 2.03 of the Deposit Agreement, the Depositary may execute and deliver Receipts prior to the receipt of CUFS pursuant to Section 2.02 of the Deposit Agreement ("Pre-Release"). The Depositary may, pursuant to Section 2.05 of the Deposit Agreement, deliver CUFS upon the receipt and cancellation of Receipts which have been Pre-Released, whether or not such cancellation is prior to the termination of such Pre-Release or the Depositary knows that such Receipt has been Pre-Released. The Depositary may receive Receipts in lieu of CUFS in satisfactory of a Pre-Release. Each Pre-Release will be (a) preceded or accompanied by a written representation from the person to whom Receipts are to be delivered that such person, or

its customer, owns the CUFS or Receipts to be remitted, as the case may be, (b) at all times fully collateralized with cash or such other collateral as the Depositary deems appropriate, (c) terminable by the Depositary on not more than five (5) business days notice, and (d) subject to such further indemnities and credit regulations as the Depositary deems appropriate. The number of American Depositary Shares which are outstanding at any time as a result of Pre-Releases will not normally exceed thirty percent (30%) of the CUFS deposited under the Deposit Agreement; provided, however, that the Depositary reserves the right to change or disregard such limit from time to time as it deems appropriate.

The Depositary may retain for its own account any compensation received by it in connection with the foregoing.

9. **TITLE TO RECEIPTS.**

It is a condition of this Receipt and every successive holder and Owner of this Receipt by accepting or holding the same consents and agrees, that title to this Receipt when properly endorsed or accompanied by proper instruments of transfer, is transferable by delivery with the same effect as in the case of a negotiable instrument; provided, however, that the Depositary, notwithstanding any notice to the contrary, may treat the person in whose name this Receipt is registered on the books of the Depositary as the absolute owner hereof for the purpose of determining the person entitled to distribution of dividends or other distributions or to any notice provided for in the Deposit Agreement and for all other purposes.

10. **VALIDITY OF RECEIPT.**

This Receipt shall not be entitled to any benefits under the Deposit Agreement or be valid or obligatory for any purpose, unless this Receipt shall have been executed by the Depositary by the manual or facsimile signature of a duly authorized signatory of the Depositary and, if a Registrar for the Receipts shall have been appointed, countersigned by the manual or facsimile signature of a duly authorized officer of the Registrar.

11. **REPORTS; INSPECTION OF TRANSFER BOOKS.**

The Company is subject to the periodic reporting requirements of the Securities Exchange Act of 1934 and, accordingly, files certain reports with the Securities and Exchange Commission (hereinafter called the “Commission”).

Such reports and communications will be available for inspection and copying at the public reference facilities maintained by the Commission located at 100 F Street, N.E., Washington, D.C. 20549.

The Depositary will make available for inspection by Owners of Receipts at its Corporate Trust Office any reports and communications, including any proxy soliciting material, received from the Company or the CUFS Depositary which are both (a) received by the Depositary and the Custodian as the holder of the Deposited Securities or

by the CUFS Depositary as the holder of Shares underlying the CUFS and (b) made generally available to the holders of such Deposited Securities or of the Shares underlying the CUFS by the Company or the CUFS Depositary. The Depositary shall also, upon written request, send to the Owners of Receipts copies of such reports furnished by the Company pursuant to the Deposit Agreement. Any such reports and communications, including any such proxy soliciting material, furnished to the Depositary by the Company shall be furnished in English.

The Depositary shall keep books for the registration of Receipts and transfers of Receipts which at all reasonable times shall be open for inspection by the Owners of Receipts, provided that such inspection shall not be for the purpose of communicating with Owners of Receipts in the interest of a business or object other than the business of the Company or a matter related to the Deposit Agreement or the Receipts.

12. **DIVIDENDS AND DISTRIBUTIONS.**

Whenever the Depositary shall receive any cash dividend or other cash distribution on any Deposited Securities, the Depositary shall, if at the time of receipt thereof any amounts received in a foreign currency can in the judgment of the Depositary be converted on a reasonable basis into United States dollars transferable to the United States, and subject to the Deposit Agreement, convert such dividend or distribution into Dollars if such cash dividend or other cash distribution is not received in Dollars and shall distribute the amount thus received (net of the fees of the Depositary as provided in the Deposit Agreement, if applicable) to the Owners of Receipts entitled thereto, provided, however, that in the event that the Company, the CUFS Depositary, the Custodian, or the Depositary shall be required to withhold and does withhold from such cash dividend or such other cash distribution in respect of any Deposited Securities an amount on account of taxes, the amount distributed to the Owners of the Receipts evidencing American Depositary Shares representing such Deposited Securities shall be reduced accordingly.

Subject to the provisions of Sections 4.11 and 5.09 of the Deposit Agreement, whenever the Depositary shall receive any distribution other than a distribution described in Sections 4.01, 4.03 or 4.04 of the Deposit Agreement, the Depositary shall cause the securities or property received by it to be distributed to the Owners of Receipts entitled thereto, in any manner that the Depositary may deem equitable and practicable for accomplishing such distribution; provided, however, that if in the opinion of the Depositary such distribution cannot be made proportionately among the Owners of Receipts entitled thereto, or if for any other reason the Depositary deems such distribution not to be feasible, the Depositary may adopt such method as it may deem equitable and practicable for the purpose of effecting such distribution, including, but not limited to, the public or private sale of the securities or property thus received, or any part thereof, and the net proceeds of any such sale (net of the fees of the Depositary as provided in Section 5.09 of the Deposit Agreement) shall be distributed by the Depositary to the Owners of Receipts entitled thereto as in the case of a distribution

received in cash. Any distributions received by the Depositary and not distributed to the Owner entitled thereto or sold as provided in Section 4.02 of the Deposit Agreement shall be deemed to Deposited Securities and shall be represented by such Owner's Receipts.

If any distribution upon any Deposited Securities or any securities of the Company represented by any Deposited Securities results in a dividend in, or free distribution of, CUFS, the Depositary may distribute to the Owners of outstanding Receipts entitled thereto, additional Receipts evidencing an aggregate number of American Depositary Shares representing the amount of CUFS received as such dividend or free distribution, subject to the terms and conditions of the Deposit Agreement with respect to the deposit of CUFS and the issuance of American Depositary Shares evidenced by Receipts, including the withholding of any tax or other governmental charge as provided in Section 4.11 of the Deposit Agreement and the payment of the fees of the Depositary as provided in Section 5.09 of the Deposit Agreement. In lieu of delivering Receipts for fractional American Depositary Shares in any such case, the Depositary shall sell the amount of CUFS represented by the aggregate of such fractions and distribute the net proceeds, all in the manner and subject to the conditions set forth in the Deposit Agreement. If additional Receipts are not so distributed, each American Depositary Share shall thenceforth also represent the additional CUFS distributed upon the Deposited Securities represented thereby.

In the event that the Depositary determines that any distribution in property (including CUFS and rights to subscribe therefor) is subject to any tax or other governmental charge which the Depositary is obligated to withhold, the Depositary may by public or private sale dispose of all or a portion of such property (including CUFS and rights to subscribe therefor) in such amounts and in such manner as the Depositary deems necessary and practicable to pay any such taxes or charges and the Depositary shall distribute the net proceeds of any such sale after deduction of such taxes or charges to the Owners of Receipts entitled thereto.

13. **CONVERSION OF FOREIGN CURRENCY**.

Whenever the Depositary shall receive foreign currency, by way of dividends or other distributions or the net proceeds from the sale of securities, property or rights, and if at the time of the receipt thereof the foreign currency so received can in the judgment of the Depositary be converted on a reasonable basis into Dollars and the resulting Dollars transferred to the United States, the Depositary shall convert or cause to be converted, by sale or in any other manner that it may determine, such foreign currency into Dollars, and such Dollars shall be distributed to the Owners entitled thereto or, if the Depositary shall have distributed any warrants or other instruments which entitle the holders thereof to such Dollars, then to the holders of such warrants and/or instruments upon surrender thereof for cancellation. Such distribution may be made upon an averaged or other practicable basis without regard to any distinctions among Owners on account of exchange restrictions, the date of delivery of any Receipt or otherwise and

shall be net of any expenses of conversion into Dollars incurred by the Depositary as provided in Section 5.09 of the Deposit Agreement.

If such conversion or distribution can be effected only with the approval or license of any government or agency thereof, the Depositary shall file such application for approval or license, if any, as it may deem desirable.

If at any time the Depositary shall determine that in its judgment any foreign currency received by the Depositary is not convertible on a reasonable basis into Dollars transferable to the United States, or if any approval or license of any government or agency thereof which is required for such conversion is denied or in the opinion of the Depositary is not obtainable, or if any such approval or license is not obtained within a reasonable period as determined by the Depositary, the Depositary may distribute the foreign currency (or an appropriate document evidencing the right to receive such foreign currency) received by the Depositary to, or in its discretion may hold such foreign currency uninvested and without liability for interest thereon for the respective accounts of, the Owners entitled to receive the same.

If any such conversion of foreign currency, in whole or in part, cannot be effected for distribution to some of the Owners entitled thereto, the Depositary may in its discretion make such conversion and distribution in Dollars to the extent permissible to the Owners entitled thereto and may distribute the balance of the foreign currency received by the Depositary to, or hold such balance uninvested and without liability for interest thereon for the respective accounts of, the Owners entitled thereto.

14. **RIGHTS.**

In the event that the Company shall offer or cause to be offered to the holders of any Deposited Securities, or any securities of the Company represented by any Deposited Securities, any rights to subscribe for additional Shares or any rights of any other nature, the Depositary shall have discretion as to the procedure to be followed in making such rights available to any Owners or in disposing of such rights on behalf of any Owners and making the net proceeds available to such Owners or, if by the terms of such rights offering or for any other reason, the Depositary may not either make such rights available to any Owners or dispose of such rights and make the net proceeds available to such Owners, then the Depositary shall allow the rights to lapse. If at the time of the offering of any rights the Depositary determines in its discretion that it is lawful and feasible to make such rights available to all Owners or to certain Owners but not to other Owners, the Depositary may distribute, to any Owner to whom it determines the distribution to be lawful and feasible, in proportion to the number of American Depositary Shares held by such Owner, warrants or other instruments therefor in such form as it deems appropriate.

In circumstances in which rights would otherwise not be distributed, if an Owner of Receipts requests the distribution of warrants or other instruments in order to exercise the rights allocable to the American Depositary Shares of such Owner under the Deposit

Agreement, the Depositary will make such rights available to such Owner upon written notice from the Company to the Depositary that (a) the Company has elected in its sole discretion to permit such rights to be exercised and (b) such Owner has executed such documents as the Company has determined in its sole discretion are reasonably required under applicable law.

If the Depositary has distributed warrants or other instruments for rights to all or certain Owners, then upon instruction from such an Owner pursuant to such warrants or other instruments to the Depositary from such Owner to exercise such rights, upon payment by such Owner to the Depositary for the account of such Owner of an amount equal to the purchase price of the relevant security to be received upon the exercise of the rights, and upon payment of the fees of the Depositary and any other charges as set forth in such warrants or other instruments, the Depositary shall, on behalf of such Owner, exercise the rights and purchase the relevant security, and the Company shall cause the relevant security, if Shares, to be delivered to the CUFS Depositary on behalf of such Owner with instructions to issue CUFS representing such Shares and deliver them to the Custodian. As agent for such Owner, the Depositary will cause the Shares so purchased to be deposited pursuant to Section 2.02 of the Deposit Agreement, and shall, pursuant to Section 2.03 of the Deposit Agreement, execute and deliver Receipts to such Owner. In the case of a distribution pursuant to the second paragraph of this Article, such Receipts shall be legended in accordance with applicable U.S. laws, and shall be subject to the appropriate restrictions on sale, deposit, cancellation and transfer under such laws.

If the Depositary determines in its discretion that it is not lawful and feasible to make such rights available to all or certain Owners, it may sell the rights, warrants or other instruments in proportion to the number of American Depositary Shares held by the Owners to whom it has determined it may not lawfully or feasibly make such rights available, and allocate the net proceeds of such sales (net of the fees of the Depositary as provided in Section 5.09 of the Deposit Agreement and all taxes and governmental charges payable in connection with such rights and subject to the terms and conditions of the Deposit Agreement) for the account of such Owners otherwise entitled to such rights, warrants or other instruments, upon an averaged or other practical basis without regard to any distinctions among such Owners because of exchange restrictions or the date of delivery of any Receipt or otherwise.

The Depositary will not offer rights to Owners unless both the rights and the securities to which such rights relate are either exempt from registration under the Securities Act of 1933 with respect to a distribution to Owners or are registered under the provisions of such Act. If an Owner of Receipts requests distribution of warrants or other instruments, notwithstanding that there has been no such registration under such Act, the Depositary shall not effect such distribution unless it has received an opinion from recognized counsel in the United States for the Company upon which the Depositary may rely that such distribution to such Owner is exempt from such registration.

The Depositary shall not be responsible for any failure to determine that it may be lawful or feasible to make such rights available to Owners in general or any Owner in particular.

15. **RECORD DATES.**

Whenever any cash dividend or other cash distribution shall become payable or any distribution other than cash shall be made, or whenever rights shall be issued with respect to the Deposited Securities or any securities of the Company represented by any Deposited Securities, or whenever for any reason the Depositary causes a change in the number of CUFS that are represented by each American Depositary Share, or whenever the Depositary shall receive notice of any meeting of holders of CUFS or the Shares underlying the CUFS or other Deposited Securities, the Depositary shall fix a record date which date shall, to the extent practicable, be the same date as the record date set with respect to the Shares, if any, (a) for the determination of the Owners of Receipts who shall be (i) entitled to receive such dividend, distribution or rights or the net proceeds of the sale thereof or (ii) entitled to give instructions for the exercise of voting rights at any such meeting, or (b) on or after which each American Depositary Share will represent the changed number of Shares, subject to the provisions of the Deposit Agreement.

16. **VOTING OF DEPOSITED SECURITIES.**

Upon receipt of notice of any meeting of holders of Shares or other Deposited Securities, if requested in writing by the Company, the Depositary shall, as soon as practicable thereafter, mail to the Owners of Receipts a notice, the form of which notice shall be in the sole discretion of the Depositary, which shall contain (a) such information as is contained in such notice of meeting received from the CUFS Depositary or the Company, (b) a statement that the Owners of Receipts as of the close of business on a specified record date will be entitled, subject to any applicable provision of Netherlands law and of the Articles of Association of the Company, to instruct the Depositary as to the exercise of the voting rights, if any, pertaining to the number of Shares represented by CUFS or other Deposited Securities represented by their respective American Depositary Shares and (c) a statement as to the manner in which such instructions may be given. Upon the written request of an Owner of a Receipt on such record date, received on or before the date established by the Depositary for such purpose (the "Instruction Date"), the Depositary shall endeavor, in so far as practicable, to instruct, or cause the Custodian to instruct, the CUFS Depositary to vote or cause to be voted, the Shares underlying the CUFS in accordance with the instructions received by the Depositary from Owners. The Depositary shall not instruct, or cause the Custodian to instruct, the CUFS Depositary to vote the Shares other than in accordance with such Owner's instructions.

There can be no assurance that Owners generally or any Owner in particular will receive the notice described in the preceding paragraph sufficiently prior to the Instruction Date to ensure that the Depositary will have enough time to instruct the CUFS Depositary to vote or that the CUFS Depositary will vote the Shares in accordance with the provisions set forth in the preceding paragraph.

17. **CHANGES AFFECTING DEPOSITED SECURITIES.**

In circumstances where the provisions of Section 4.03 of the Deposit Agreement do not apply, upon any change in nominal value, change in par value, split-up, consolidation or any other reclassification of Deposited Securities or Shares represented by Deposited Securities, or upon any recapitalization, reorganization, merger or consolidation, or sale of assets affecting the Company or to which it is a party, any securities which shall be received by the Depositary or a Custodian in exchange for or in conversion of or in respect of Deposited Securities shall be treated as new Deposited Securities under the Deposit Agreement, and American Depositary Shares shall thenceforth represent the new Deposited Securities so received in exchange or conversion, unless additional Receipts are delivered pursuant to the following sentence. In any such case the Depositary may, and shall if the Company shall so request, execute and deliver additional Receipts as in the case of a distribution of Shares which results in the issuance of CUFS, or call for the surrender of outstanding Receipts to be exchanged for new Receipts specifically describing such new Deposited Securities.

18. **LIABILITY OF THE COMPANY AND DEPOSITARY.**

Neither the Depositary nor the Company nor any of their respective directors, employees, agents or affiliates shall incur any liability to any Owner or holder of any Receipt, if by reason of any provision of any present or future law or regulation of the United States or any other country, or of any governmental or regulatory authority or stock exchange, or by reason of any provision, present or future, of the Articles of Association of the Company, or by reason of any act of God or war or other circumstances beyond its control, the Depositary or the Company or any of their respective directors, employees, agents or affiliates shall be prevented or forbidden from, or be subject to any civil or criminal penalty on account of, doing or performing any act or thing which by the terms of the Deposit Agreement it is provided shall be done or performed; nor shall the Depositary or the Company incur any liability to any Owner or holder of a Receipt by reason of any non-performance or delay, caused as aforesaid, in the performance of any act or thing which by the terms of the Deposit Agreement it is provided shall or may be done or performed, or by reason of any exercise of, or failure to exercise, any discretion provided for in the Deposit Agreement. Where, by the terms of a distribution pursuant to Sections 4.01, 4.02 or 4.03 of the Deposit Agreement, or an offering or distribution pursuant to Section 4.04 of the Deposit Agreement, or for any other reason, such distribution or offering may not be made available to Owners of Receipts, and the Depositary may not dispose of such distribution or offering on behalf of such Owners and make the net proceeds available to such Owners, then the Depositary shall not make such distribution or offering, and shall allow any rights, if applicable, to lapse. Neither the Company nor the Depositary assumes any obligation or shall be subject to any liability under the Deposit Agreement to Owners or holders of Receipts, except that they agree to perform their obligations specifically set forth in the Deposit Agreement without negligence or bad faith. The Depositary shall not be subject to any liability with respect to the validity or worth of the Deposited Securities. Neither the

Depositary nor the Company shall be under any obligation to appear in, prosecute or defend any action, suit or other proceeding in respect of any Deposited Securities or in respect of the Receipts, which in its opinion may involve it in expense or liability, unless indemnity satisfactory to it against all expense and liability shall be furnished as often as may be required, and the Custodian shall not be under any obligation whatsoever with respect to such proceedings, the responsibility of the Custodian being solely to the Depositary. Neither the Depositary nor the Company shall be liable for any action or nonaction by it in reliance upon the advice of or information from legal counsel, accountants, any person presenting CUFS for deposit, any Owner or holder of a Receipt, or any other person believed by it in good faith to be competent to give such advice or information. The Depositary shall not be liable for any acts or omissions made by a successor depositary whether in connection with a previous act or omission of the Depositary or in connection with any matter arising wholly after the removal or resignation of the Depositary, provided that in connection with the issue out of which such potential liability arises the Depositary performed its obligations without negligence or bad faith while it acted as Depositary. The Depositary shall not be responsible for any failure to carry out any instructions to vote any of the Deposited Securities, or for the manner in which any such vote is cast or the effect of any such vote, provided that any such action or nonaction is in good faith. The Company agrees to indemnify the Depositary, its directors, employees, agents and affiliates and any Custodian against, and hold each of them harmless from, any liability or expense (including, but not limited to, the fees and expenses of counsel) which may arise out of acts performed or omitted, in accordance with the provisions of the Deposit Agreement and of the Receipts, as the same may be amended, modified or supplemented from time to time, (i) by either the Depositary or a Custodian or their respective directors, employees, agents and affiliates, except for any liability or expense arising out of the negligence or bad faith of either of them, or (ii) by the Company or any of its directors, employees, agents and affiliates. No disclaimer of liability under the Securities Act of 1933 is intended by any provision of the Deposit Agreement.

19. **RESIGNATION AND REMOVAL OF THE DEPOSITARY**.

The Depositary may at any time resign as Depositary under the Deposit Agreement by written notice of its election so to do delivered to the Company, such resignation to take effect upon the appointment of a successor depositary and its acceptance of such appointment as provided in the Deposit Agreement. The Depositary may at any time be removed by the Company by written notice of such removal, effective upon the later of (i) the 120th day after delivery of the notice to the Depositary or (ii) the appointment of a successor depositary and its acceptance of such appointment as provided in the Deposit Agreement. Whenever the Depositary in its discretion determines that it is in the best interest of the Owners of Receipts to do so, it may appoint substitute or additional custodian or custodians.

20. **AMENDMENT.**

The form of the Receipts and any provisions of the Deposit Agreement may at any time and from time to time be amended by agreement between the Company and the Depositary in any respect which they may deem necessary or desirable. Any amendment which shall impose or increase any fees or charges (other than taxes and other governmental charges, registration fees, cable, telex or facsimile transmission costs, delivery costs or other such expenses), or which shall otherwise prejudice any substantial existing right of Owners of Receipts, shall, however, not become effective as to outstanding Receipts until the expiration of thirty days after notice of such amendment shall have been given to the Owners of outstanding Receipts. Every Owner of a Receipt at the time any amendment so becomes effective shall be deemed, by continuing to hold such Receipt, to consent and agree to such amendment and to be bound by the Deposit Agreement as amended thereby. In no event shall any amendment impair the right of the Owner of any Receipt to surrender such Receipt and receive therefor the Deposited Securities represented thereby, except in order to comply with mandatory provisions of applicable law.

21. **TERMINATION OF DEPOSIT AGREEMENT.**

The Depositary shall at any time at the direction of the Company terminate the Deposit Agreement by mailing notice of such termination to the Owners of all Receipts then outstanding at least 90 days prior to the date fixed in such notice for such termination. The Depositary may likewise terminate the Deposit Agreement by mailing notice of such termination to the Company and the Owners of all Receipts then outstanding if at any time 90 days shall have expired after the Depositary shall have delivered to the Company a written notice of its election to resign and a successor depositary shall not have been appointed and accepted its appointment as provided in the Deposit Agreement. On and after the date of termination, the Owner of a Receipt will, upon (a) surrender of such Receipt at the Corporate Trust Office of the Depositary, (b) payment of the fee of the Depositary for the surrender of Receipts referred to in Section 2.05 of the Deposit Agreement and (c) payment of any applicable taxes or governmental charges, be entitled to delivery, to him or upon his order, of the amount of Deposited Securities represented by the American Depositary Shares evidenced by such Receipt. If any Receipts shall remain outstanding after the date of termination, the Depositary thereafter shall discontinue the registration of transfers of Receipts, shall suspend the distribution of dividends to the Owners thereof, and shall not give any further notices or perform any further acts under the Deposit Agreement, except that the Depositary shall continue to collect dividends and other distributions pertaining to Deposited Securities, shall sell rights as provided in the Deposit Agreement, and shall continue to deliver Deposited Securities, together with any dividends or other distributions received with respect thereto and the net proceeds of the sale of any rights or other property, in exchange for Receipts surrendered to the Depositary (after deducting, in each case, the fee of the Depositary for the surrender of a Receipt, any expenses for the account of the Owner of such Receipt in accordance with the terms and conditions of the Deposit

Agreement and any applicable taxes or governmental charges). At any time after the expiration of one year from the date of termination, the Depositary may sell the Deposited Securities then held under the Deposit Agreement and may thereafter hold uninvested the net proceeds of any such sale, together with any other cash then held by it thereunder, unsegregated and without liability for interest, for the pro rata benefit of the Owners of Receipts which have not theretofore been surrendered, such Owners thereupon becoming general creditors of the Depositary with respect to such net proceeds. After making such sale, the Depositary shall be discharged from all obligations under the Deposit Agreement, except to account for such net proceeds and other cash (after deducting, in each case, the fee of the Depositary for the surrender of a Receipt, any expenses for the account of the Owner of such Receipt in accordance with the terms and conditions of the Deposit Agreement, and any applicable taxes or governmental charges). Upon the termination of the Deposit Agreement, the Company shall be discharged from all obligations under the Deposit Agreement except for its obligations to the Depositary under Sections 5.08 and 5.09 of the Deposit Agreement.

22. **COMPLIANCE WITH U.S. SECURITIES LAWS.**

Notwithstanding any terms of the Deposit Agreement or this Receipt to the contrary, the Company and the Depositary each agrees that it will not exercise any rights it has under the Deposit Agreement to prevent the withdrawal or delivery of Deposited Securities in a manner which would violate the United States securities laws, including, but not limited to, Section I.A.(1) of the General Instructions to the Form F-6 Registration Statement, as amended from time to time, under the Securities Act of 1933.

23. **SUBMISSION TO JURISDICTION; APPOINTMENT OF AGENT FOR SERVICE OF PROCESS.**

The Company hereby (i) irrevocably designates and appoints National Registered Agents, Inc., 440 9th Avenue, 5th Floor, New York, New York 10001, as the Company's authorized agent upon which process may be served in any suit or proceeding arising out of or relating to the Shares or Deposited Securities, the American Depositary Shares, the Receipts or this Agreement, (ii) consents and submits to the jurisdiction of any state or federal court in the State of New York in which any such suit or proceeding may be instituted, and (iii) agrees that service of process upon said authorized agent shall be deemed in every respect effective service of process upon the Company in any such suit or proceeding. The Company agrees to deliver, upon the execution and delivery of this Deposit Agreement, a written acceptance by such agent of its appointment as such agent. The Company further agrees to take any and all action, including the filing of any and all such documents and instruments, as may be necessary to continue such designation and appointment in full force and effect for so long as any American Depositary Shares or Receipts remain outstanding or this Agreement remains in force. In the event the Company fails to continue such designation and appointment in full force and effect, the Company hereby waives personal service of process upon it and consents that any such service of process may be made by certified or registered mail, return receipt requested,

directed to the Company at its address last specified for notices hereunder, and service so made shall be deemed completed five (5) days after the same shall have been so mailed.

24. **EFFECTIVE DATE**.

The Company and the Depositary agree that the effective date (the "Effective Date") of the Deposit Agreement shall be the date on which the Commission declares effective the Post-Effective No. 1 to the Form F-6 Registration Statement to which the Deposit Agreement is attached as Exhibit A(1).

25. **SUMMARY IN RESPECT OF CHESS AND CUFS**.

The American Depositary Shares represent deposited CUFS. The following is a summary description of CHESS and CUFS:

CHESS

CHESS facilitates the transfer of legal title and settlement of market transactions in Australia with an electronic subregister system. CHESS, which is operated by ASX Settlement and Transfer Corporation Pty Limited (herein called ASTC), is the approved securities clearing house (SCH) under s779B of the Australian Corporations Act 2001 (the "Australian Corporations Act") This allows legal title to equities to be validly transferred electronically by virtue of provisions in the Australians Corporation Law and the SCH Business Rules.

Shares of the Company may be transferred and held indirectly in CHESS through the issue of CUFS.

CUFS

CUFS are a unit of beneficial ownership in a security of a foreign issuer, registered in the name of the depositary nominee. The depositary nominee for the Company is CHESS Depositary Nominee Pty Limited (herein called the CUFS Depositary). The CUFS Depositary is a subsidiary of Australian Stock Exchange Limited (herein called the ASX). The principal executive office of the CUFS Depositary is located as of the date of the Deposit Agreement at Level 8, 20 Bridge Street, Sydney NSW 2000, Australia.

The Articles of Association of the Company contain certain provisions that are relevant to CUFS holders, including, without limitation, any provisions therein relating to substantial shareholdings and any provisions therein relating to a change in control of the Company. In addition, the terms and conditions relating to CUFS are determined in accordance with the Australian Corporations Act and the SCH Business Rules. Those principal terms and conditions are briefly described as follows:

(i) Title to CUFS

Each CUFS represents a unit of beneficial ownership in one Share. Legal title to the underlying Shares will be held by the CUFS Depositary on behalf and for the benefit of CUFS holders.

(ii) Voting

CUFS holders are entitled to direct the CUFS Depositary as to how to exercise the voting rights with respect to the underlying Shares represented by the CUFS.

(iii) Economic Entitlements

CUFS holders are entitled to receive from the Company directly all dividends, bonus issues, rights issues and any other economic entitlements in respect of the underlying Shares represented by the CUFS as if they were the legal owners of the underlying Shares.

(iv) Fees

The CUFS Depositary shall charge no fees or expenses to the CUFS holder for its services. In the event fees or expenses are accrued in connection with the services provided by the CUFS Depositary, such fees and expenses shall be paid by the Company to the CUFS Depositary.

(v) Immobilization of Shares

The certificate issued to the CUFS Depositary as evidence of its legal title to Shares is held by the Company for safekeeping. The CUFS Depositary may not create any interest (including a security interest) which is inconsistent with its title to the Shares and the interests of the holders of CUFS in respect of Shares unless authorized by the SCH Business Rules.

(vi) Evidence of Ownership

The holders of CUFS will not receive physical certificates. The Company will register the Shares in the name of the CUFS Depositary and the CUFS Depositary will create uncertificated CUFS holdings in the names of the investors. Statements of beneficial ownership will be issued to all CUFS holders, including to the Custodian on behalf of holders of Receipts.

CUFS holders who are sponsored by brokers or non-brokers that participate in CHESS will receive periodic Holding Statements. The Custodian, as a sponsored CUFS holder, shall receive periodic Holding Statements. SCH will issue the Holding Statements on behalf of the CUFS Depositary. CUFS holders who are sponsored by the Company will receive uncertificated holding statements from the Company's Australian registry on behalf of the CUFS Depositary.

(vii) Converting CUFS to Shares

A holder of CUFS in CHESS who wishes to convert their CUFS to Shares of the Company can do so by instructing its sponsoring CHESS participant (ie, broker or non-broker participant). The participant transmits a CHESS message to the Company's registry instructing the registry to transfer the Shares from the CUFS Depositary into the name of the holder. The transfer is effected by a written instrument signed by the CUFS Depositary, as transferor, and the CUFS holder, as transferee, to which instrument the Company is a signatory or which instrument is served upon, or acknowledged by, the Company. The Company will then record the holder as registered owner of the Shares on the shareholder register and will, if required, issue a certificate to the holder.

Holders of Shares who wish to convert Shares back to CUFS in CHESS, can do so by lodging the Share certificate, if applicable, with their sponsoring CHESS participant and signing the seller side of an Australian standard transfer form. The participant lodges the Share certificate and transfer form with the Company's registry and transmits a CHESS message to Company's registry instructing the registry to establish a CHESS holding. The registry then transfers the securities from the holder's name into the name of the CUFS Depositary and establishes a CUFS holding in the name of the holder. CHESS, on behalf of the CUFS Depositary, issues a Holding Statement to the CUFS holders.

26. **UNCERTIFICATED AMERICAN DEPOSITARY SHARES; DTC DIRECT REGISTRATION SYSTEM.**

Notwithstanding anything to the contrary in the Deposit Agreement:

(a) American Depositary Shares may be certificated securities evidenced by Receipts or uncertificated securities. This Receipt summarizes the terms and conditions of, and is the prospectus required under the Securities Act of 1933 for, both certificated and uncertificated American Depositary Shares. Except for those provisions of the Deposit Agreement that by their nature do not apply to uncertificated American Depositary Shares, all the provisions of the Deposit Agreement shall apply, mutatis mutandis, to both certificated and uncertificated American Depositary Shares.

(b) (i) The term "deliver", or its noun form, when used with respect to Receipts, shall mean (A) book-entry transfer of American Depositary Shares to an account at The Depository Trust Company, or its successor ("DTC"), designated by the person entitled to such delivery, evidencing American Depositary Shares registered in the name requested by that person, (B) registration of American Depositary Shares not evidenced by a Receipt on the books of the Depositary in the name requested by the person entitled to such delivery and mailing to that person of a statement confirming that registration or (C) if requested by the person entitled to such delivery, delivery at the

Corporate Trust Office of the Depositary to the person entitled to such delivery of one or more Receipts.

(ii) The term "surrender", when used with respect to Receipts, shall mean (A) one or more book-entry transfers of American Depositary Shares to the DTC account of the Depositary, (B) delivery to the Depositary at its Corporate Trust Office of an instruction to surrender American Depositary Shares not evidenced by a Receipt or (C) surrender to the Depositary at its Corporate Trust Office of one or more Receipts evidencing American Depositary Shares.

(c) American Depositary Shares not evidenced by Receipts shall be transferable as uncertificated registered securities under the laws of New York.

(d) The Depositary shall have a duty to register a transfer, in the case of uncertificated American Depositary Shares, upon receipt from the Owner of a proper instruction (including, for the avoidance of doubt, instructions through DRS and Profile as provided in subsection (f) below). The Depositary, upon surrender of a Receipt for the purpose of exchanging it for uncertificated American Depositary Shares, shall cancel that Receipt and send the Owner a statement confirming that the Owner is the owner of the same number of uncertificated American Depositary Shares that the surrendered Receipt evidenced. The Depositary, upon receipt of a proper instruction (including, for the avoidance of doubt, instructions through DRS and Profile as provided in subsection (f) below) from the Owner of uncertificated American Depositary Shares for the purpose of exchanging them for certificated American Depositary Shares, shall execute and deliver to the Owner a Receipt evidencing the same number of certificated American Depositary Shares.

(e) Upon satisfaction of the conditions for replacement of a Receipt that is mutilated, lost, destroyed or stolen, the Depositary shall deliver to the Owner the American Depositary Shares evidenced by that Receipt in uncertificated form unless otherwise requested by the Owner.

(f) (i) The parties acknowledge that the Direct Registration System ("DRS") and Profile Modification System ("Profile") shall apply to uncertificated American Depositary Shares upon acceptance thereof to DRS by DTC. DRS is the system administered by DTC pursuant to which the Depositary may register the ownership of uncertificated American Depositary Shares, which ownership shall be evidenced by periodic statements issued by the Depositary to the Owners entitled thereto. Profile is a required feature of DRS which allows a DTC participant, claiming to act on behalf of an Owner of American Depositary Shares, to direct the Depositary to register a transfer of those American Depositary Shares to DTC or its nominee and to deliver those American Depositary Shares to the DTC account of that DTC participant without receipt by the Depositary of prior authorization from the Owner to register such transfer.

(ii) In connection with and in accordance with the arrangements and procedures relating to DRS/Profile, the parties understand that the Depositary will not verify, determine or otherwise ascertain that the DTC participant which is claiming to be acting on behalf of an Owner in requesting a registration of transfer and delivery as described in subsection (i) above has the actual authority to act on behalf of the Owner (notwithstanding any requirements under the Uniform Commercial Code). For the avoidance of doubt, the provisions of Sections 5.3 and 5.8 of the Deposit Agreement shall apply to the matters arising from the use of the DRS. The parties agree that the Depositary's reliance on and compliance with instructions received by the Depositary through the DRS/Profile System and in accordance with the Deposit Agreement shall not constitute negligence or bad faith on the part of the Depositary.

MALLESONS STEPHEN JAQUES

Draft

James Hardie — Common Terms Deed Poll

Amended and restated on 2009

James Hardie International Finance B.V. ("**JHIF**")
[James Hardie International Finance Limited] ("**JHIFL**")]
James Hardie Building Products, Inc. ("**JHBP**")
James Hardie Industries S.E. ("**Guarantor**")

Mallesons Stephen Jaques
Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney
www.mallesons.com
Ref: GNH:MJC / 02-5120-3708

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James Hardie — Common Terms Deed Poll

Details

Interpretation — Definitions are in clause 1.

Parties	**JHIF, JHIFL**, **JHBP** and the **Guarantor,** each as described below.	
JHIF	Name	James Hardie International Finance B.V.
	Corporate seat	Amsterdam
	Registered Number	34108775
	Address	8th Floor, Atrium, Unit 08 Strawinskylaan 3077 1077 ZX Amsterdam The Netherlands
	Fax	+ 31 20 404 2544
	Attention	Treasurer
JHIFL	Name	James Hardie International Finance Limited
	Corporate seat	Dublin
	Registration Number	[#]
	Address	[#]
	Fax	+ [#]
	Attention	[Treasurer]
JHBP	Name	James Hardie Building Products, Inc.
	Incorporated in	Nevada
	Address	Suite 100 26300 La Alameda Mission Viejo CA 92691 United States of America
	Fax	+ 1 949 348 4534
	Attention	Company Secretary
Guarantor	Name	James Hardie Industries S.E.

	Corporate seat	Amsterdam
	Registered Number	34106455
	ABN	49 097 829 895
	Address	8th Floor, Atrium, Unit 08 Strawinskylaan 3077 1077 ZX Amsterdam The Netherlands
	Fax	+ 31 20 404 2544
	Attention	Managing Director and Company Secretary

In favour of: Each Creditor as defined in this amended and restated deed.

Date of deed See Signing page

Recitals

A This amended and restated deed amends and restates the "James Hardie - Common Terms Deed Poll" dated 15 June 2005 as amended by the "CTDP Amendment Deed and New Borrower Deed Poll" dated 12 January 2006 and as further amended and restated on 20 February 2008 (together, the "**Previous Deeds**").

B The amendment and restatement of the Previous Deeds does not affect the nomination of any Person as a Creditor nor the nomination of any document as a Facility Agreement or Transaction Document prior to the execution of this amended and restated deed.

General terms

1 Interpretation

1.1 Definitions

These meanings apply unless the contrary intention appears:

A$, AUD or **Australian Dollars** means the lawful currency of Australia.

AFFA means the document entitled "Amended & Restated Final Funding Agreement in respect of the provision of long term funding for compensation arrangements for certain victims of Asbestos-related diseases in Australia" dated 21 November 2006 between the Guarantor, James Hardie 117 Pty Limited (formerly known as LGTDD Pty Limited), the State of New South Wales and the Asbestos Injuries Compensation Fund Limited in its capacity as trustee of the Asbestos Injuries Compensation Fund.

Amended and Restated Trust Deed means the Asbestos Injuries Compensation Fund Amended and Restated Trust Deed dated 14 December 2006 between the Guarantor and Asbestos Injuries Compensation Fund Limited.

Asbestos Injuries Compensation Fund has the meaning given to it in the Amended and Restated Trust Deed.

ASX means the stock exchange operated by ASX Limited.

ASX CNW Announcement means any release of information by the Guarantor through the ASX concerning any event or circumstance affecting the financial position of the Group in a manner which would affect the calculation of Consolidated Net Worth and which sets out specific details of the balance sheet impact of such event or circumstance.

ASX CNW Announcement Date means the date on which an ASX CNW Announcement is made.

Authorisation means:

(a) any consent, registration, filing, agreement, notarisation, certificate, licence, approval, permit, authority or exemption from, by or with a Government Agency; and

(b) any consent or authorisation regarded as given by a Government Agency due to the expiration of the period specified by a statute within which the Government Agency should have acted if it wished to proscribe or limit anything already lodged, registered or notified under that statute.

Authorised Officer means:

(a) in the case of a Creditor, a director or secretary of the Creditor, or an officer of that party 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 appointed by the Creditor as an Authorised Officer for the purposes of a Transaction Document; and

(b) in the case of an Obligor, a person appointed by the Obligor and notified to the Creditor as an Authorised Officer for the purposes of a Transaction Document, and whose specimen signature is provided with such notification to the Creditor.

Beneficiary Nomination Letter means, in relation to a Creditor, the "Beneficiary Nomination Letter" (as that term is defined in the Guarantee Trust Deed) for that Creditor and one or more Facility Agreements for that Creditor.

Borrower means each of JHIF, JHIFL, JHBP and any new borrower under clause 14.1 ("New Borrowers") individually but not jointly. It excludes any person released pursuant to clause 14.2 ("Release of Borrowers").

Break Costs means the actual costs and losses which a Creditor certifies (with reasonable details) that it has suffered or incurred by reason of:

(a) the liquidation or re-employment of deposits or other funds acquired or contracted for by the Creditor to fund or maintain financial accommodation under a Facility; or

(b) the termination or reversing of any agreement or arrangement entered into by the Creditor to hedge, fix or limit its effective cost of funding in relation to a Facility,

but excluding any loss of margin.

Business Day means a weekday (not being a public holiday) on which:

(a) in respect of a day on which the interest rate under a Facility Agreement is required to be determined and for the purposes of giving drawdown notices and selection notices under a Facility Agreement, banks are open for general banking business in London;

(b) for the purposes of making or receiving any payments in US Dollars, banks are open for general banking business in London, New York and Sydney;

(c) for the purpose of making or receiving any payments in another currency, banks are open for general banking business in such place or places specified in a relevant Facility Agreement; and

(d) for all other purposes, banks are open for general banking business in Sydney, Dublin and (until the Irish Registration Date) Amsterdam and any other place specified in a relevant Facility Agreement.

Capital Lease means, at any time, a lease with respect to which the lessee is required concurrently to recognise the acquisition of an asset and the incurrence of a liability in accordance with GAAP.

Capital Lease Obligation means, with respect to any Group Member (other than an Excluded Entity) and a Capital Lease, the amount of the obligation of such Group Member as the lessee under such Capital Lease which would, in accordance with GAAP, appear as a liability on a balance sheet of such Group Member.

Change of Control means the Guarantor becoming a Subsidiary (as defined in the Corporations Act) of another person.

Charitable Fund has the meaning given to it in the AFFA.

Compensation Provision means, at any time, the aggregate amount (without double counting) of provisions made by the Group at that time in accordance with GAAP for asbestos related liabilities (including, without limitation, obligations to fund or pay compensation pursuant to the AFFA).

Consolidated Funded Capitalisation means, at any time, the sum of Consolidated Net Worth and Consolidated Funded Debt at that time.

Consolidated Funded Debt means, as of any date of determination, the total of all Funded Debt of the Group outstanding on that date, after eliminating:

(a) all Funded Debt (if any) of the Excluded Entities; and

(b) all offsetting debits and credits between any Group Members (excluding the Excluded Entities) and all other items required to be eliminated in the course of the preparation of consolidated financial statements of the Group in accordance with GAAP.

Consolidated Net Worth means, at any date of determination, the sum of:

(a) the par value (or value stated in the books of the Group) of the capital stock (but excluding treasury stock and capital stock subscribed and unissued) of the Group; and

(b) the amount of the paid-in capital and retained earnings of the Group,

plus the Compensation Provision on that date (and eliminating all other consequential balance sheet impacts relating to the Compensation Provision), in each case as such amounts would be shown on the consolidated balance sheet of the Group prepared:

(c) as if the Excluded Entities were not Subsidiaries of the Guarantor (to the intent that the assets, liabilities and other balance sheet items of all Excluded Entities shall be excluded in calculating Consolidated Net Worth); and

(d) in accordance with GAAP,

on the most recent Reporting Date or, where applicable, on the most recent ASX CNW Announcement Date, to the extent such amounts have been adjusted to reflect the content of any ASX CNW Announcement which post-dates such balance sheet.

Consolidated Permitted External Financial Indebtedness means, as of any date of determination, the total of all Permitted External Financial Indebtedness of the Group outstanding on that date, after eliminating all offsetting debits and credits between any Group Members (excluding the Excluded Entities) and all other items required to be eliminated in the course of the preparation of consolidated financial statements of the Group in accordance with GAAP.

Controller has the meaning it has in the Corporations Act.

Corporations Act means the *Corporation Act* 2001 of Australia.

Costs means costs, fees, disbursements, charges and expenses, including, without limitation where an Obligor is liable to pay or reimburse the Costs, those incurred in connection with advisers and, unless an Event of Default is subsisting, only for an amount and on a basis previously agreed to in writing by the Obligor.

Creditor means each party nominated as a "Creditor" under a Facility Nomination Letter (and includes in the case of any syndicated facility, the facility agent) and, if there are more than one, means each of them individually but not jointly. It does not include any Group Member.

Deed of Release means a deed poll in the form of schedule 5 ("Form of Deed of Release").

Default Rate means, in respect of a Transaction Document, the rate of interest specified in that document as payable on any amount not paid under the document on the due date for payment.

Details means the section of this amended and restated deed headed "Details".

Directive means:

(a) a law; or

(b) a treaty, official directive, regulation, request, guideline or policy (whether or not having the force of law) with which responsible financiers generally comply in carrying on their business.

Due Currency means, in respect of any payment to be made under a Transaction Document, the currency in which that payment is due.

EBIT means the operating profit of the Group, on a consolidated basis, before adjustments for:

(a) significant, extraordinary, abnormal or exceptional items;

(b) items recognised in connection with the Special Commission of Inquiry into Medical Research and Compensation Foundation and other related expenses; and

(c) income tax,

but after:

(d) adding back Net Interest Charges and all items referred to in paragraphs (a) to (e) of the definition of "Net Interest Charges" that were deducted in deriving the operating profit figure of the Group; and

(e) eliminating all income, expense and other profit and loss statement impact of the Excluded Entities,

determined in each case by reference to the latest audited consolidated financial statements of the Group delivered under clause 9.6(b). It excludes any earnings from any Project Activities if these are derived from Project Vehicles or Project Property over which there exist Security Interests (unless such earnings have actually been received in cash by an Obligor).

Environmental Laws means any and all applicable statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licences, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

Event of Default means an Event of Default set out in clause 10.1 ("Events of Default").

Exchange Act means the Securities Exchange Act 1934 of the United States of America.

Excluded Entity means the Fund and each of the following entities:

(a) Amaba Pty Limited (ACN 000 387 342);

(b) Amaca Pty Limited (ACN 000 035 512);

(c) ABN 60 Pty Limited (ACN 000 009 263); and

(d) Marlew Mining Pty Limited (formerly known as Asbestos Mines Pty Limited) (ACN 000 049 650),

and any other entity agreed in writing by the Guarantor and each Creditor (or, in the case of a syndicated facility, the facility agent).

Excluded Tax means:

(a) a Tax imposed by any jurisdiction on or assessed against a Creditor as a consequence of the Creditor being a resident of or organised in or doing business in that jurisdiction, but not any Tax:

(i) that is calculated on or by reference to the gross amount of a payment derived under a Transaction Document or another document referred to in a Transaction Document (without the allowance of a deduction);

(ii) that is imposed as a result of the Creditor being considered a resident or organised or doing business in that jurisdiction solely as a result of it being a party to a Transaction Document or a transaction contemplated by a Transaction Document; or

(b) in relation to any payment by an Obligor resident or incorporated in the United States of America ("**US Obligor**"), any Tax payable by reason of the Creditor not being in receipt of such payment through, or such payment not being attributable to, a branch or lending office in the United States of America or by reason of the payment not being considered effectively connected income of a trade or business conducted within the United States of America by such branch or lending office (including, without limitation, any withholding tax payable under the laws of the United States of America in respect of interest due from a US Obligor under a Facility Agreement);

(c) a Tax which would not be required to be deducted by an Obligor if, before the Obligor makes a relevant payment, the relevant Creditor provided the Obligor with written confirmation as to any of its name, address, registration number, country of residence for tax purposes (including whether the relevant Creditor carries on a trade or business in the Obligor's country of residence and/or incorporation through a branch or agency in connection with which the relevant Creditor receives the relevant payment) or similar details or any relevant tax exemption or similar details; or

(d) in relation to any payment by an Irish Obligor, any Tax imposed by Ireland by reason of the Creditor to which the payment is made not being an Irish Qualifying Creditor.

Facility means any facility under a Facility Agreement.

Facility Agreement means each agreement to which a Creditor (together with any other persons) and a Borrower are party, which is nominated as a "Facility Agreement" in a Facility Nomination Letter.

Facility Nomination Letter means a letter substantially in the form set out in schedule 2 ("Facility Nomination Letter") to this deed prior to amendment and restatement or in the form set out in schedule 2 ("Facility Nomination Letter") to this amended and restated deed, in either case in favour of a person (not being a Group Member) providing financial accommodation to a Borrower (or any agent or trustee on that person's behalf).

Financial Indebtedness means, with respect to any Group Member, without double counting:

(a) its liabilities for borrowed money (including all liabilities in respect of letters of credit (excluding letters of credit and performance guarantees posted in respect of payment of accounts payable arising in the ordinary course of business) or instruments serving a similar function issued or accepted for its account by banks and other financial institutions);

(b) its liabilities for the deferred purchase price (for more than 90 days) of property acquired by such Group Member (excluding accounts payable arising in the ordinary course of business);

(c) its Capital Lease Obligations;

(d) all Preferred Stock of Subsidiaries (excluding the Excluded Entities) of such Group Member which is not owned by such Group Member or a Wholly Owned Subsidiary of such Group Member; and

(e) any Guarantee of such Group Member with respect to liabilities of a type described in any of paragraphs (a) to (d) of this definition.

Financial Year means each year ending on 31 March.

Financier Nomination Letter means, in relation to a Creditor, the "Financier Nomination Letter" (as that term is defined in the Intercreditor Deed) for that Creditor and one or more Facility Agreements for that Creditor.

Free Cash Flow has the meaning given to that term in the AFFA.

Fund means Asbestos Injuries Compensation Fund Limited as trustee for the Asbestos Injuries Compensation Fund .

Fund Guarantee has the meaning given to it in the Guarantee Trust Deed.

Funded Debt means, at any time, with respect to any Group Member (other than an Excluded Entity), all drawn and outstanding Financial Indebtedness (other than Non-Recourse Debt) of such Group Member owing to any person outside the Group (other than an Excluded Entity) at that time.

GAAP means generally accepted accounting principles as in effect from time to time in the United States of America.

Government Agency means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity having jurisdiction over, or in relation to the affairs of, a Group Member and, for the avoidance of doubt, includes, without limitation, the Australian Taxation Office, the US Internal Revenue Service, the Dutch tax authorities and the Irish Revenue Commissioners, in each case to the extent applicable.

Group means the Guarantor and its Subsidiaries and **Group Member** means any one of them.

Guarantee means any guarantee, suretyship, letter of credit, or any other obligation (whatever called and of whatever nature):

(a) to provide funds (whether by the advance or payment of money, the purchase of or subscription for shares or other securities, the purchase of assets or services, or otherwise) for the payment or discharge of;

(b) to indemnify any person against the consequences of default in the payment of; or

(c) to be responsible for,

any debt or monetary liability of another person or the assumption of any responsibility or obligation in respect of the insolvency or the financial condition of any other person.

Guarantee and Subordination Documents means:

(a) the Guarantee Trust Deed;

(b) the Intercreditor Deed;

(c) each Beneficiary Nomination Letter; and

(d) each Financier Nomination Letter.

Guarantee Trust Deed means the deed entitled "Guarantee Trust Deed" dated 19 December 2006 between the Guarantor and AET Structured Finance Services Pty Limited.

Guarantor means the person so described in the Details.

Indirect Tax means any goods and services tax, consumption tax, value added tax or any tax of a similar nature.

Intercreditor Deed means the deed so entitled dated 19 December 2006 between the State of New South Wales, the Guarantor, Asbestos Injuries Compensation Fund Limited in its capacity as trustee for the Charitable Fund and AET Structured Finance Services Pty Limited as amended by the letter dated 19 December 2006 between the same parties.

Irish Registration Date means the date on which the Guarantor is registered by the Registrar of Companies of Ireland as having its registered office in Ireland.

Irish Obligor means an Obligor resident or incorporated in Ireland.

Irish Qualifying Creditor means in respect of an Irish Obligor, a Creditor which at the time the payment is made, is beneficially entitled to the interest payable to that Creditor in respect of an advance under a Facility and is:

(a) an entity which is, pursuant to Section 9 of the Central Bank Act, 1971 of Ireland, licensed to carry on banking business in Ireland and whose Facility office is located in Ireland and which is recognised by

the Revenue Commissioners of Ireland as carrying on a bona fide banking business in Ireland for the purposes of Section 246(3)(a) of the Taxes Consolidation Act 1997 of Ireland ("**TCA**") in circumstances where the payments are made from Ireland and which is regarded by the Revenue Commissioners of Ireland as having made the advance for the purposes of Section 246(3)(a) TCA;

(b) an authorised credit institution under the terms of the European Union Consolidation Directive (Directive 2000/12/EC) that has duly established a branch in Ireland or has made all necessary notifications to its home state competent authorities required thereunder in relation to its intention to carry on banking business in Ireland and which is recognised by the Revenue Commissioners of Ireland as carrying on a bona fide banking business in Ireland for the purposes of Section 246(3)(a) TCA and has its Facility office located in Ireland in circumstances where the payments are made from Ireland and which is regarded by the Revenue Commissioners of Ireland as having made the advance for the purposes of Section 246(3)(a) TCA;

(c) a company (within the meaning of Section 246(1) TCA) which is resident in a country with which Ireland has a double taxation treaty or resident in a member state of the European Communities (other than Ireland) where residence is determined under the tax laws of the relevant country or Member State (together a "Relevant Territory"), provided that such company does not provide its commitment through or in connection with a branch or agency in Ireland, and where the company has provided written confirmation of the foregoing to the Irish Obligor before the Irish Obligor makes a relevant payment;

(d) a US company, where such company has provided written confirmation to the Irish Obligor that it is incorporated in the US and subject to tax in the US on its worldwide income provided that such company does not provide its commitment through or in connection with a branch or agency in Ireland; or

(e) a Creditor which is entitled under a double taxation agreement between the jurisdiction in which such Creditor is resident for Tax purposes and Ireland, subject to the completion of any necessary procedural formalities, to receive all payments from the Irish Obligor without a tax deduction, where such Creditor has applied for and the relevant Irish Obligor has obtained authorisation from the Revenue Commissioners of Ireland to make payments without deduction of Irish tax, and where such authorisation remains in force and effect.

JHBP Financial Reports means the non-public financial or equivalent reports prepared in respect of JHBP (or separate reports prepared for each division of JHBP) for the purpose of preparing consolidated financial statements of the Group, the form and content of which is at the discretion of the Obligors.

JHIF Financial Report means the non-public financial or equivalent reports prepared in respect of JHIF (or separate reports prepared for each division of

JHIF) for the purpose of preparing consolidated financial statements of the Group, the form and content of which is at the discretion of the Obligors.

JHIFL Financial Report means the non-public financial or equivalent reports prepared in respect of JHIFL [(or separate reports prepared for each division of JHIFL)] for the purpose of preparing consolidated financial statements of the Group, the form and content of which is at the discretion of the Obligors.

JHT Undertaking means the deed poll dated [#] 2009 given by James Hardie Technology Limited in favour of the Creditors.

Majority Creditor means:

(a) in relation to a syndicated or capital markets facility, the Creditors who form a "majority" (howsoever described) as defined under that Facility or all such Creditors, to the extent so required under that facility; and

(b) in relation to a bilateral facility, the Creditor under that facility.

Material Adverse Effect means a material adverse effect on:

(a) the ability of each Borrower to perform its obligations to pay Outstanding Moneys when the same are due or within any applicable grace period;

(b) the ability of the Guarantor to perform its obligations under the Guarantee Trust Deed in favour of the Creditor when the same are due or within any applicable grace period; or

(c) the validity or enforceability of the Transaction Documents.

Material Subsidiary means any Subsidiary of the Guarantor (other than an Excluded Entity) whose total assets at the time of determination (consolidated in the case of a Subsidiary which itself has one or more Subsidiaries) represent not less than 15% of Consolidated Net Worth at that time.

Net Interest Charges for a period means all interest and amounts in the nature of interest or of similar effect to interest, paid or payable by the Group (excluding the Excluded Entities), on a consolidated basis, less interest income received by or arising to the Group (excluding the Excluded Entities), on a consolidated basis, in the same period for which such Net Interest Charges are being determined, in each case by reference to the financial statements referred to in clause 9.6. It excludes:

(a) any swap break or reset costs incurred and paid as part of any termination of any hedging or facility;

(b) any break costs, early redemption premium, make-whole payments, liquidated damages or other penalties (howsoever described) incurred and paid in connection with the prepayment of any facility;

(c) capitalising interest under any agreement for the provision of Financial Indebtedness to a Group Member which is in the nature of:

(i) a construction facility to fund capital expenditure to be undertaken by a Group Member (but only while that capitalising interest is not payable under the terms of that agreement); or

(ii) a capital-indexed or zero coupon debt instrument which contractually allows the capitalisation of interest;

(d) establishment, arrangement, underwriting and other fees payable once only on the initial provision of financial accommodation; and

(e) all interest and amounts in the nature of interest, and any other amounts of the kind referred to in paragraphs (a) to (d) above, relating to:

(i) Subordinated Debt;

(ii) hybrid capital;

(iii) Non-Recourse Debt; or

(iv) a loan under which financial accommodation is provided from one Group Member (not being an Excluded Entity) to another Group Member (not being an Excluded Entity).

New Borrower means a person who executes a New Borrower Deed Poll in accordance with clause 14.1 ("New Borrowers").

New Borrower Deed Poll means each deed poll entered into by a New Borrower substantially in the form set out in schedule 3 ("Form of New Borrower Deed Poll").

Non-Australian Obligor means an Obligor which is not resident or incorporated in Australia.

Non-Recourse Debt means any Project Debt if, and for so long as:

(a) the person to whom the Project Debt is owed does not have recourse (whether by way of execution, set-off or otherwise) to a Group Member or its assets for the payment or repayment of the Project Debt other than to assets which the Security Interest ("**Project Securities**") securing that Project Debt are permitted to extend to under paragraph (h) of the definition of Permitted Security Interest (that person, and any agent or trustee on that person's behalf, being a "**Non-Recourse Financier**");

(b) the Non-Recourse Financier may not seek to wind up or place into administration, or pursue or make a claim in the winding up or administration of, any other Group Member to recover or to be repaid that Project Debt;

(c) the Non-Recourse Financier cannot obtain specific performance or a similar remedy with respect to any obligation of another Group Member to pay or repay that Project Debt; and

(d) the Non-Recourse Financier and any receiver, receiver and manager, agent or attorney appointed under the Project Securities, may not incur a liability on behalf of, or for the account of, a Group Member which liability itself is not subject to the above paragraphs as if references to Project Debt in those paragraphs included that liability.

For the avoidance of doubt, if Project Debt is incurred or owed by a Group Member which is not a Project Vehicle, then the tests in paragraphs (b) and (c) above must also be satisfied in respect of that Group Member in order for the Project Debt to qualify as Non-Recourse Debt.

Obligor means:

(a) a Borrower; or

(b) the Guarantor.

Obligors' Agent means JHIF or another Borrower:

(a) appointed by all the Borrowers and the Guarantor as Obligors' Agent;

(b) which has accepted such appointment; and

(c) whose appointment has been notified to all Creditors.

Outstanding Moneys means all debts and monetary liabilities of each Obligor to a Creditor under or in relation to any Transaction Document and in any capacity, irrespective of whether the debts or liabilities:

(a) are present or future;

(b) are actual, prospective, contingent or otherwise;

(c) are at any time ascertained or unascertained;

(d) are owed or incurred by, or on account of, that Obligor alone or severally or jointly with any other person;

(e) are owed to or incurred for the account of that Creditor alone or severally or jointly with any other person;

(f) are owed or incurred as principal, interest, fees, charges, taxes, duties or other imposts, damages (whether for breach of contract or tort or incurred on any other ground), losses, costs or expenses, or on any other account; or

(g) comprise any combination of the above.

Permitted External Financial Indebtedness means Financial Indebtedness of a Group Member (other than an Obligor or an Excluded Entity) owing to any person outside the Group under or in connection with:

(a) a working capital facility;

(b) a transactional banking facility;

(c) a Capital Lease;

(d) Non-Recourse Debt;

(e) a "soft loan" or other form of financial accommodation given to a Group Member by a Government Agency in connection with capital works or expansion plans undertaken by that Group Member or any other Group Member; or

(f) any financial accommodation which, in the opinion of the Guarantor, it is preferable for the relevant Group Member to raise from external sources (rather than by an intra-Group borrowing) for reasons based on economic advantage, administrative convenience and/or legal, structural, political and/or tax considerations.

Permitted Security Interest means:

(a) a Security Interest created by operation of law or otherwise to secure taxes, assessments or other governmental charges which are not more than 90 days overdue or are being contested in good faith;

(b) a Security Interest which a Group Member is required to create by any applicable law or is required or considers it necessary or expedient to create in order to obtain, maintain or renew any Authorisation;

(c) a Security Interest created by operation of law or otherwise in favour of a landlord, carrier, warehouseman, mechanic, materialman or other supplier (including rights by way of reservation or retention of title to property) or other similar Security Interest, in each case, incurred in the ordinary course of business for sums which are not more than 90 days overdue or are being contested in good faith;

(d) a Security Interest incurred, or deposits made, in the ordinary course of business:

(i) in connection with workers' compensation, unemployment insurance and other types of social security, employment or retirement benefits; or

(ii) to secure (or to obtain letters of credit that secure) the performance of tenders, statutory obligations, surety bonds, appeal bonds, bids, leases (other than Capital Leases), performance bonds, purchase, construction or sales contracts and other similar obligations,

in each case not incurred or made:

(A) in connection with the borrowing of money, the obtaining of advances or credit or payment of the deferred purchase price of property; nor

(B) to secure obligations due under the AFFA or any Related Agreement (as defined in the AFFA);

(e) a Security Interest in respect of a judgment debt of a Group Member, provided that the judgment is discharged or execution of it is stayed (permanently or pending appeal) within 90 days of entry thereof or adequate reserves have been provided for it;

(f) leases or subleases granted to others, easements, rights-of-way, restrictions and other similar charges or encumbrances, in each case incidental to, and not interfering with, the ordinary conduct of the business of the Group;

(g) a Security Interest on property or assets of a Group Member (not being an Excluded Entity) securing Financial Indebtedness owing to another Group Member (not being an Excluded Entity);

(h) a Security Interest existing or created under or in respect of Non-Recourse Debt facilities where the party holding any such Security Interest has security over Project Property or Project Vehicles only but no right of recourse to an Obligor or any Obligor's other assets;

(i) a Security Interest created on any asset or group of associated assets acquired by a Group Member or developed by a Group Member after 15 June 2005:

(i) for the sole purpose of financing or refinancing that acquisition or development; and

(ii) securing principal moneys not exceeding one hundred per cent (100%) of the cost of that acquisition or development;

(j) a Security Interest existing at the time of acquisition on any asset acquired by a Group Member after 15 June 2005 and not created in contemplation of the acquisition, provided that there is no increase in the amount of the principal moneys secured by that Security Interest;

(k) a Security Interest existing on property of a person immediately prior to its being consolidated with or merged into a Group Member or its becoming a Group Member (by becoming a Subsidiary of the Guarantor), provided that the Security Interest was not created in contemplation of the consolidation, merger or acquisition and there is no increase in the amount of the principal moneys secured by that Security Interest;

(l) any Security Interest existing at 15 June 2005 provided there is no increase in the amount of the principal moneys secured by that Security Interest;

(m) a Security Interest replacing, renewing, extending or refunding any Security Interest permitted by paragraph (i), (j), (k), (l) or (m), provided that:

(i) the principal moneys secured by such Security Interest immediately prior to such replacement, renewal, extension or refunding is not increased or the maturity thereof reduced; and

(ii) the Security Interest is not extended to any other property;

(n) a Security Interest created with the prior written consent of each Majority Creditor (or in the case of a syndicated facility, an agent or trustee acting on the instructions of the relevant Majority Creditor);

(o) a Security Interest created by a Group Member over its interest in a joint venture to secure:

(i) its obligations under the joint venture to any other party to the joint venture; or

(ii) its obligations, or the obligations of the joint venture, or the obligations of any entity formed for the purpose of the joint venture, under any agreement (including an agreement relating to financial accommodation) entered into for the purposes of the joint venture; or

(p) any Security Interest created pursuant to the general conditions of a bank operating in the Netherlands based on the general conditions drawn up by the Netherlands Bankers' Association (Nederlandse Vereniging van Banken) and the Consumers Union (Consumentenbond),

provided the aggregate amount of Financial Indebtedness of the Group (excluding intra-Group transactions and Financial Indebtedness of the Excluded Entities) secured by all such Permitted Security Interests granted in favour of persons outside the Group may not exceed 10% of the total assets of the Group (excluding the Excluded Entities) at any time.

PMP means a professional market party as defined in the Act on the Financial Supervision (Wet op het financieel toezicht) which includes (among others):

(a) legal entities which are authorised or regulated to operate in the financial markets, including: credit institutions, investment firms, other authorised or regulated financial institutions, insurance companies, collective investment schemes and their management companies, pension funds and their management companies, commodity dealers, as well as entities not so authorised or regulated whose corporate purpose is solely to invest in securities;

(b) national or regional public bodies, central banks, international or supranational financial organizations;

(c) enterprises:

(i) having a net shareholders' equity totalling€10,000,000 or more preceding the making available of the repayable funds; and

(ii) which have been active on the financial markets at least twice a month, on average, during two consecutive years preceding the making available of the repayable funds; and

(d) a person or company from which redeemable funds will be obtained through a debt instrument or a private contract, if the nominal value of the debt instrument or the claim under the private contract is at least €50,000 (or the equivalent in another currency), or the debt instrument or the claim under the private contract is acquired for a total consideration of at least €50,000 (or the equivalent in another currency).

This definition of "PMP" will only apply for so long as JHIF is an Obligor.

Potential Event of Default means an event or condition the occurrence or existence of which would, with the lapse of time or the giving of notice or both, become an Event of Default.

Preferred Stock means any class of capital stock of a corporation that is preferred over any other class of capital stock of such corporation as to payment of dividends or the payment of any amount upon liquidation or dissolution of the corporation.

Previous Deeds has the meaning given to it in the Recitals to this amended and restated deed.

Project Activity means the acquisition, development, construction, extension, expansion or improvement of any asset.

Project Debt means with respect to a project or development:

(a) Financial Indebtedness in relation to the acquisition and/or cost of Project Activities;

(b) Financial Indebtedness incurred before or at the time of carrying out Project Activities solely for the purpose of financing or refinancing the acquisition and/or cost of the Project Activities;

(c) any Financial Indebtedness incurred solely to refinance any Financial Indebtedness referred to above or incurred under any successive refinancing;

(d) any liabilities under hedging transactions entered into in connection with any Financial Indebtedness referred to above or any Project Activity;

(e) interest or amounts in the nature of interest, charges, fees, costs of any nature (including break costs or costs arising from changes in law), duties, expenses, currency indemnities, withholding taxes, indirect taxes and other similar indebtedness (however described) which, in

any case, is or are incurred or payable in connection with any of the above; or

(f) any guarantee or indemnity securing payment or repayment of any of the above amounts (but not any other Financial Indebtedness),

but does not include any Financial Indebtedness which is used to refinance any assets owned by an Obligor as at 15 June 2005.

Project Property means a Group Member's assets used or predominantly used in, or generated by, any Project Activities for a project or development including:

(a) assets forming part of or connected with or derived from that project or development; and

(b) proceeds derived from other Project Property relating to that project or development.

Project Vehicle means an entity, which is established for the purposes of, and confines its business operations solely to, owning or producing Project Property, carrying out Project Activities and incurring Project Debt.

Related Entity has the meaning given in the Corporations Act.

Release Request means a letter in the form of schedule 4 ("Form of Release Request").

Relevant Entity means an Obligor or a Material Subsidiary.

Reporting Date means each 31 March, 30 June, 30 September and 31 December in any year.

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.

Subordinated Debt means any Financial Indebtedness of any Group Member (other than an Excluded Entity) which is subordinated to the Facilities on terms which each Creditor (or under a syndicated facility, an agent or trustee acting on the instructions of the Majority Creditor) has confirmed are acceptable to it (such confirmation not to be unreasonably withheld or delayed).

Subsidiary in relation to a corporation means a subsidiary of the corporation for the purposes of the Corporations Act.

Tax means any present or future tax (including Indirect Taxes), levy, impost, duty, charge, fee, deduction, compulsory loan or withholding or any income, stamp or transaction duty, tax or charge, in the nature of tax whatsoever called (except if imposed on, or calculated having regard to, the net income of a Creditor) and whether imposed, levied, collected, withheld or assessed by any Government Agency and includes, but is not limited to, any penalty, fine, charge, fee, interest or other amount payable in connection with failure to pay or delay in paying the same.

Termination Date in respect to a Facility Agreement, means the termination date, maturity date, final repayment date, final redemption date or other final payment date (howsoever described) of a Facility as defined in the relevant Facility Agreement.

Transaction Document means each of:

(a) this amended and restated deed;

(b) each Facility Agreement;

(c) each Facility Nomination Letter;

(d) each New Borrower Deed Poll;

(e) each Deed of Release;

(f) the Guarantee and Subordination Documents;

(g) the JHT Undertaking;

(h) any other document agreed to be a Transaction Document by the Guarantor and a Creditor; and

(i) any document entered into for the purpose of amending or novating any of the above.

US$, USD or **US Dollars** means the lawful currency of the United States of America.

Wholly Owned Subsidiary has the meaning given in section 9 of the Corporations Act.

1.2 References to certain general terms

Unless the contrary intention appears, a reference in a Transaction Document to:

(a) a group of persons is a reference to any two or more of them jointly and to each of them individually;

(b) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;

(c) an agreement, representation or warranty by two or more persons binds them individually only;

(d) anything (including an amount) is a reference to the whole and each part of it (but nothing in this clause 1.2(d) implies that performance of part of an obligation constitutes performance of the obligation);

(e) a document (including this amended and restated deed) includes any variation, supplement to, novation or replacement of it;

(f) law includes (without limitation) common law, principles of equity, and laws made by any legislative body of any jurisdiction (and references to any statute, regulation or by-law include any modification or re-enactment of or any provision substituted for, and all statutory and subordinate instruments issued under such statute, regulation or by-law or such provision);

(g) an accounting term is a reference to that term as it is used in GAAP;

(h) the word "person" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated association and any Government Agency;

(i) a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;

(j) the words "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;

(k) other parts of speech and grammatical forms of a word or phrase defined in this amended and restated deed have a corresponding meaning;

(l) an agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;

(m) a reference to a document includes any agreement in writing, or any certificate, notice, instrument or other document of any kind;

(n) a reference to a body, other than a party to, or a beneficiary of, a Transaction Document (including an institute, association or authority) whether statutory or not:

(i) that ceases to exist; or

(ii) whose powers or functions are transferred to another body,

is a reference to the body that replaces it or any body that substantially succeeds to its powers or functions;

(o) "continuing" or "subsisting", in relation to an Event of Default or Potential Event of Default, means an Event of Default or Potential

Event of Default (as the case may be) that has not been waived in writing or remedied.

1.3 Numbers

In a Transaction Document, the singular includes the plural and vice versa.

1.4 Headings

In a Transaction Document, headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of the Transaction Document.

1.5 Conflict

(a) Subject to paragraph (b), even if any other Transaction Document is not expressly made subject to this amended and restated deed and despite the time and date of its execution, where a conflict arises between the provisions of this amended and restated deed and any other Transaction Document, the provisions of this amended and restated deed shall prevail unless the relevant provision in the other Transaction Document includes words substantially to the effect of "Despite the terms of the Common Terms Deed Poll".

(b) Where a conflict arises between the provisions of this amended and restated deed on the one hand and the Guarantee and Subordination Documents on the other hand, the provisions of the Guarantee and Subordination Documents shall prevail to the extent of the inconsistency.

1.6 Shareholder ratification

Each Obligor which is a shareholder of another company (a "**Relevant Company**") which is, or is to become, an Obligor, ratifies and approves in its capacity as a shareholder of that Relevant Company, the execution and performance by each such Relevant Company of each Transaction Document to which it is a party.

1.7 Borrowers severally liable only

Notwithstanding any other provision of this or any other Transaction Document, no Borrower is liable under the Transaction Documents for any obligation of another Borrower (including, without limitation, any obligation to indemnify a Creditor).

2 Creditors and Facilities

2.1 Creditors and Facilities

This amended and restated deed is for the benefit of, and is enforceable by, each Creditor from time to time even though it is not a party to, or is not in existence at the time of execution and delivery of this amended and restated deed, in relation to the Facility under which that Creditor is entitled and each Transaction Document under which that Creditor has benefits or obligations.

The benefit and obligations of this amended and restated deed may be extended to any other person (and such person shall become a Creditor) in relation to any other document (and such document shall become a Facility Agreement), by the Obligors' Agent signing and delivering to that Creditor (or, in the case of a syndicated facility, the facility agent) a Facility Nomination Letter and the Creditor countersigning such Facility Nomination Letter.

Each Obligor irrevocably authorises the Obligors' Agent to sign and deliver any Facility Nomination Letter and acknowledges and confirms that the provisions of this amended and restated deed which are for the benefit of the Creditors will extend to the Facility Agreement so nominated in that Facility Nomination Letter.

2.2 Removal of benefit for particular Creditor

This amended and restated deed ceases to be for the benefit of, and enforceable by, a Creditor if at any time:

(a) all Outstanding Moneys owing to that Creditor have been fully and finally paid;

(b) that Creditor is not committed to providing further financial accommodation to a Borrower pursuant to any Facility; and

(c) this is confirmed in writing by the Creditor. If requested by an Obligor, a Creditor will promptly confirm in writing that this amended and restated deed has ceased to be for the benefit of, and enforceable by, that Creditor.

3 Conditions precedent

3.1 Conditions to first drawdown

A Creditor's obligation to make available the first drawdown under a Facility Agreement entered into on the same date as, or after, the amendment and restatement of this amended and restated deed is subject to the following conditions precedent:

(a) the Creditor (or, in the case of a syndicated facility, the facility agent) has received each of the following items in form and substance satisfactory to the Creditor or the facility agent (as the case may be):

(i) (**verification certificate**) a certificate in relation to each Obligor given by a director of the relevant Obligor substantially in the form of schedule 1 ("Verification Certificate") with the attachments referred to therein;

(ii) (**legal opinions**) closing legal opinions in respect of this amended and restated deed, the Facility Agreement and the Guarantee and Subordination Documents from:

(A) for so long as JHIF is an Obligor, Loyens & Loeff N.V., Netherlands legal advisers to JHIF;

(B) prior to the Irish Registration Date, Loyens & Loeff N.V., Netherlands legal advisers to the Guarantor;

(C) after the Irish Registration Date, Arthur Cox, Irish legal advisers to the Guarantor;

(D) Arthur Cox, Irish legal advisers to JHIFL;

(E) McDonald Carano & Wilson, United States of America legal advisers to JHBP;

(F) Mallesons Stephen Jaques, Australian legal advisers to the Obligors; and

(G) if a new Borrower is party to a Facility Agreement, legal advisers to the new Borrower of recognised standing and acceptable to the Creditor;

(iii) (**executed documents**) to the extent not previously provided to the Creditor under this amended and restated deed:

(A) an original counterpart or certified copy of this amended and restated deed;

(B) original counterparts of the Facility Agreement; and

(C) a Facility Nomination Letter, if required by the Facility Agreement;

(D) certified copy of the Guarantee Trust Deed;

(E) a Beneficiary Nomination Letter, if required by the Facility Agreement;

(F) a certified copy of the Intercreditor Deed; and

(G) a Financier Nomination Letter, if required by the Facility Agreement,

executed by all relevant Obligors; and

(iv) (**fees**) evidence of instructions issued by the Obligors' Agent to pay all fees and expenses which are due under the Facility Agreement on or before the first drawdown; and

(b) (**know your customer**) if, in relation to the relevant Facility, a Creditor is required to comply with any know your customer checks and the information necessary is not already available to it and to the extent not previously provided to the Creditor under this amended and restated deed or under any other agreement, such documentation and other evidence as is reasonably requested to enable the Creditor to so comply, each in form and substance satisfactory to the Creditor (acting reasonably);

(c) (**representations true**) the representations and warranties by each Obligor in clause 8.1 of this amended and restated deed are true as at the date of the first drawdown notice and on the date of the first drawdown; and

(d) (**no default**) no Event of Default or Potential Event of Default subsists at the date of the first drawdown notice or on the date of the first drawdown or will result from the provision of the requested financial accommodation.

3.2 Conditions to subsequent drawdowns

The Creditor need not provide any financial accommodation subsequent to the first drawdown under a Facility Agreement unless:

(a) (**representations true**) the representations and warranties by each Obligor in clause 8.1 of this amended and restated deed (other than clause 8.1(d)(ii)) are true as at the date of the drawdown notice and on the drawdown date, as though they had been made at that date in respect of the facts and circumstances then subsisting; and

(b) (**no default**) no Event of Default or Potential Event of Default subsists at the date of the drawdown notice or on the drawdown date or will result from the provision of the requested financial accommodation.

4 Payments

4.1 Manner of payment

Each Obligor agrees to make payments (including by way of reimbursement) under each Transaction Document:

(a) on the due date (or, if that is not a Business Day, on the next Business Day unless that day falls in the following month or after the Termination Date for the relevant Facility, in which case, on the previous Business Day);

(b) at the time which is customary at the time for settlement of transactions in the relevant currency in the place for payment (if any) specified in the relevant Facility Agreement;

(c) in the Due Currency in immediately available funds;

(d) in full without set-off or counterclaim, and without any deduction in respect of Taxes unless prohibited by law; and

(e) to the applicable Creditor (or, in the case of a Creditor under a syndicated facility, the facility agent on its behalf) by making payment to the account nominated by the Creditor or by payment as the Creditor otherwise directs.

If a Creditor directs an Obligor to pay a particular party or in a particular manner, the Obligor is taken to have satisfied its obligation to the Creditor by paying in accordance with the direction.

An Obligor satisfies a payment obligation only when the Creditor (or, in the case of a Creditor under a syndicated facility, the facility agent on its behalf) or the person to whom it has directed payment actually receives the amount.

4.2 Currency of payment

Each Obligor waives any right it has in any jurisdiction to pay an amount other than in Due Currency. However, if a Creditor receives an amount in a currency other than the Due Currency:

(a) it may convert the amount received into the Due Currency (even though it may be necessary to convert through a third currency to do so) on the day and at such rates (including spot rate, same day value rate or value tomorrow rate) as it reasonably considers appropriate. It may deduct its usual Costs in connection with the conversion; and

(b) the Obligor satisfies its obligation to pay in the Due Currency only to the extent of the amount of the Due Currency obtained from the conversion after deducting the Costs of the conversion. Any surplus amount will be paid promptly by that Creditor to the relevant Obligor.

5 Withholding tax

5.1 Payments by Obligor

If a law requires an Obligor to deduct or withhold an amount in respect of Taxes (other than Indirect Taxes) in respect of a payment under any Transaction Document such that a Creditor ("**Indemnified Party**") would not actually receive on the due date the full amount provided for under the Transaction Document, then:

(a) the Obligor agrees to deduct the amount for such Taxes and any further deduction applicable to any further payment due under paragraph (c) below;

(b) the Obligor agrees to pay an amount equal to the amount deducted or withheld to the relevant authority in accordance with applicable law; and

(c) unless the Tax is an Excluded Tax, the amount payable is increased so that, after making the deduction or withholding and further deductions or withholdings applicable to additional amounts payable under this clause 5.1(c), the Indemnified Party is entitled to receive (at the time the payment is due) the amount it would have received if no deductions or withholdings had been required.

5.2 Payments by a facility agent to Creditors

If a law requires a facility agent under a syndicated facility to deduct or withhold an amount in respect of Taxes (other than Indirect Taxes) in respect of a payment by the facility agent to a Creditor under a syndicated facility such that the Creditor would not actually receive on the due date the full amount provided for under the syndicated facility, then:

(a) the facility agent must deduct or withhold the amount for such Taxes and any further deduction or withholding applicable to any further payment due under paragraph (c) below;

(b) the facility agent must pay an amount equal to the amount deducted or withheld to the relevant authority in accordance with applicable law and promptly give the original receipts to the relevant Borrower;

(c) unless the Tax is an Excluded Tax, the amount payable is increased so that, after making the deduction or withholding and further deductions or withholdings applicable to additional amounts payable under this clause 5.2(c), the Creditor is entitled to receive (at the time the payment is due) the amount it would have received if no deductions or withholdings had been required; and

(d) unless the Tax is an Excluded Tax, the relevant Borrower must pay to the facility agent an amount equal to any deduction or withholding which the facility agent is required to make under this clause 5.2.

5.3 Tax credit

If and to the extent that any Creditor is able in its opinion to apply for or otherwise take advantage of any offsetting tax credit, tax rebate or other similar tax benefit out of or in conjunction with any deduction or withholding which gives rise to an obligation on any Obligor to pay any additional amount pursuant to clause 5.1 or 5.2(d), that Creditor shall:

(a) give notice thereof to the Obligors' Agent and take steps to obtain that credit, rebate or benefit; and

(b) to the extent that in its opinion it can do so without prejudice to the retention of the credit, rebate or benefit, and upon receipt thereof, reimburse to the Obligor such amount of the credit, rebate or benefit as that Creditor shall, in its opinion (acting reasonably), have determined to be attributable to the deduction or withholding. In complying with this clause, no Creditor need disclose to any Obligor information about their tax affairs or order them in a particular way.

5.4 Early repayment or redemption

Without limiting the other provisions of this clause 5, if a Borrower is required to pay any amount to a Creditor or facility agent under a syndicated facility under this clause 5, that Borrower may elect to repay or redeem early all of that Creditor's outstandings under the applicable Facility which is affected by the event or events referred to in clause 5.1 or 5.2.

6 Increased costs

6.1 Compensation

The relevant Borrower agrees to compensate a Creditor on 30 days written notice if the Creditor determines that:

(a) a Directive, or change in Directive, in either case applying for the first time after the date of the relevant Facility Agreement;

(b) a change in a Directive's interpretation or administration by an authority after the date of the relevant Facility Agreement; or

(c) compliance by the Creditor or any of its Related Entities with any such Directive, changed Directive or changed interpretation or administration,

directly or indirectly:

(i) increases the effective cost to that Creditor of making, funding or maintaining the relevant Facility or its proportion of the Facility; or

(ii) reduces any amount paid or payable to, or received or receivable by, that Creditor or the effective return to that Creditor in connection with the relevant Facility.

In this clause 6.1, a reference to a Directive does not include a Directive imposing or changing the basis of a Tax on the overall net income of the Creditor.

Compensation need not be in the form of a lump sum and may be demanded as a series of payments.

A notice under this clause may not claim compensation for an increase or reduction suffered more than 180 days before the date of the notice, except to the extent that the event or circumstance giving rise to the increased cost or reduction is that a Directive is applied retrospectively and the notice was given by the Creditor no later than 120 days after it became aware of that event or circumstance and was able to quantify the amount for which it is entitled to be compensated under this clause 6.1.

Any demand under this clause 6.1 is to be made to the Obligors' Agent by the Creditor (except in the case of a Creditor under a syndicated facility, in which case demand must be made by the facility agent).

6.2 Substantiating costs

If a Creditor (or a facility agent on its behalf) makes a demand under clause 6.1 ("Compensation"), it must provide the relevant Borrower with reasonably detailed calculations showing how the amount demanded has been ascertained. However, nothing in this clause 6.2 obliges the Creditor to provide details of its business or tax affairs which it considers in good faith to be confidential.

6.3 Procedure for claim

(a) In the absence of manifest error, and subject to clause 6.2 ("Substantiating costs"), a certificate by a Creditor is sufficient evidence of the amount of the compensation payable by the relevant Borrower to the Creditor under clause 6.1 ("Compensation").

(b) In determining the amount of the compensation payable under clause 6.1 ("Compensation"), the Creditor may use averaging and attribution methods commonly used by the Creditor or any other method it reasonably considers appropriate to determine the amount.

6.4 Possible minimisation

(a) The Creditor agrees:

(i) to use reasonable endeavours to mitigate the effects of those events or circumstances giving rise to the increased cost or reduction in any payment or return for which the Creditor (or a facility agent on its behalf) claims compensation under clause 6.1 ("Compensation"); and

(ii) at the request of the Obligors' Agent, to consider the transfer or assignment of its rights and obligations under this amended and restated deed and the other relevant Transaction

Documents to which it is a party to another bank or financial institution at par.

(b) Subject to clause 6.4(a)(i), the relevant Borrower agrees to compensate the Creditor whether or not the increase or the reduction could have been avoided.

7 Illegality

7.1 Creditor's right to suspend or cancel

This clause 7 applies if a Creditor determines in good faith that:

(a) a change in a Directive;

(b) a change in the interpretation or administration of a Directive by an authority; or

(c) a Directive,

makes it (or will make it) illegal in practice for the Creditor to fund, provide, or continue to fund or provide, financial accommodation under any Transaction Document. In these circumstances, the Creditor by giving a notice to the Obligors' Agent, may suspend or cancel some or all of the Creditor's obligations under the relevant Transaction Document as indicated in the notice.

7.2 Extent and duration

The suspension or cancellation:

(a) must apply only to the extent necessary to avoid the illegality; and

(b) in the case of suspension, may continue only for so long as the illegality continues.

7.3 Notice requiring early repayment or redemption

If the illegality relates to an amount outstanding to a Creditor, the Creditor (or, in the case of a syndicated facility, the facility agent), by giving a notice to the Obligors' Agent, may require early repayment or redemption of all or part of the affected outstandings and interest accrued on that part. The relevant Borrower in respect of which the Creditor has made a determination under clause 7.1 agrees to repay or redeem the amount specified no later than the date the illegality arises.

7.4 Creditor to seek alternative funding method

The affected Creditor (at no cost to an Obligor) during the period of 90 days after the notice pursuant to clause 7.1 agrees to use reasonable endeavours to make that part of the facility affected by the illegality available by alternative means (including changing its lending office to another then existing lending office or making the financial accommodation available through a Related Entity of the Creditor).

8 Representations and warranties

8.1 Representations and warranties

Each Obligor (but in the case of a Borrower only from the date that it becomes a Borrower) represents and warrants (except in relation to matters disclosed to the Creditors and accepted in writing by the Creditors) that:

(a) (**status**) it is a corporation duly incorporated and validly existing under the laws of its place of incorporation;

(b) (**corporate authorisation, documents binding**) each Transaction Document to which it is a party has been duly authorized by all necessary corporate action on the part of the Obligor and constitutes a legal, valid and binding obligation of the Obligor enforceable against the Obligor in accordance with its terms, except as such enforceability may be limited by:

(i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally; and

(ii) general principles of law (regardless of whether such enforceability is considered in a proceeding in equity or at law);

(c) (**compliance with laws**) the execution, delivery and performance of the Transaction Documents to which it is a party will not:

(i) contravene its constitution;

(ii) result in the creation of any Security Interest (other than any Permitted Security Interest) in respect of any property of the Obligor or any of its Subsidiaries (excluding the Excluded Entities);

(iii) contravene in any material respect any law to which the Obligor or any of its Subsidiaries (excluding the Excluded Entities) is subject or by which the Obligor or any of its Subsidiaries (excluding the Excluded Entities) or any of their respective properties may be bound;

(iv) conflict with or result in a breach in any material respect of any of the terms, conditions or provisions of any order, judgment, decree, or ruling of any court, arbitrator or Government Agency applicable to the Obligor or any of its Subsidiaries (excluding the Excluded Entities); and

(v) result in the acceleration or cancellation of any agreement or obligation in respect of Financial Indebtedness of any Group Member (excluding the Excluded Entities);

(d) (**disclosure**)

(i) all information given to the Creditors by it or with its authority was, when given, true and correct in all material respects; and

(ii) the most recent Form 20-F filed by the Guarantor with the United States Securities and Exchange Commission was prepared and filed in accordance with the applicable requirements of US securities laws;

(e) (**Group financial statements**)

(i) the most recent financial statements of the Group (including in each case the related schedules and notes) fairly present in all material respects the consolidated financial position of the Group as at the end of the financial period to which they relate and have been prepared in accordance with GAAP consistently applied throughout the periods involved, except as set forth in the notes thereto (subject, in the case of an interim financial statements, to normal year-end adjustments); and

(ii) since the date of delivery of those statements, there has been no change in the financial condition, operations, business or prospects of the Group (excluding the Excluded Entities), except changes that individually or in the aggregate do not or are not likely to have a Material Adverse Effect;

(f) (**Borrower financial statements**)

(i) for so long as JHIF is an Obligor:

(A) the most recent financial statements of JHIF provided in accordance with clause 9.6(c)(i)(C) (including in each case the related schedules and notes) fairly present in all material respects the consolidated financial position of JHIF as at the end of the financial period to which they relate and have been prepared in accordance with generally accepted accounting principles as in effect from time to time in the Netherlands consistently applied throughout the periods involved, except as set forth in the notes thereto (subject, in the case of an interim financial statements, to normal year-end adjustments); and

(B) since the date of delivery of those statements, there has been no change in the financial condition, operations, business or prospects of JHIF, except changes that individually or in the aggregate do not or are not likely to have a Material Adverse Effect;

(ii) for so long as JHIFL is an Obligor:

(A) the most recent financial statements of JHIFL provided in accordance with clause 9.6(c)(ii)(C) (including in

each case the related schedules and notes) fairly present in all material respects the consolidated financial position of JHIFL as at the end of the financial period to which they relate and have been prepared in accordance with generally accepted accounting principles as in effect from time to time in the Republic of Ireland consistently applied throughout the periods involved, except as set forth in the notes thereto (subject, in the case of an interim financial statements, to normal year-end adjustments); and

(B) since the date of delivery of those statements, there has been no change in the financial condition, operations, business or prospects of JHIFL, except changes that individually or in the aggregate do not or are not likely to have a Material Adverse Effect;

(g) (**Authorisations**) all Authorisations necessary in connection with the execution, delivery or performance by the Obligor of the Transaction Documents to which it is a party have been obtained and are in full force and effect;

(h) (**litigation**) except as disclosed in the most recent financial statements of the Group, in an announcement by the Guarantor through the ASX or under clause 9.6(f) of this amended and restated deed, no litigation, arbitration, administrative proceeding or other procedure for the resolution of disputes is currently taking place or pending against any Group Member (excluding the Excluded Entities) or any Group Member's assets (excluding the Excluded Entities' assets) which has or is likely to have a Material Adverse Effect;

(i) (**Security Interests**) no Security Interest exists over any Group Member's assets (excluding the Excluded Entities' assets) which is not permitted by clause 9.3;

(j) (**environmental matters**) each Group Member (excluding the Excluded Entities) has complied with all applicable Environmental Laws and the terms and conditions of any Authorisation issued pursuant to an Environmental Law, except where a failure to comply does not or is not likely to have a Material Adverse Effect;

(k) (**no immunity**) neither it nor any of its assets has any immunity from jurisdiction, suit, execution, attachment or other legal process in any jurisdiction in which its assets are located or it carries on business;

(l) (**not a trustee**) it does not enter into any Transaction Document as trustee;

(m) (**ranking**) its obligations under the Transaction Documents rank at least pari passu with all of its other unsecured and unsubordinated obligations, other than those mandatorily preferred by law;

(n) (**default under law**) no member of the Group (excluding the Excluded Entities) is in breach of any law, Authorisation, agreement

or obligation binding upon it or its assets which has or is likely to have a Material Adverse Effect; and

(o) (**holding company**) in the case of the Guarantor only, at the date of this amended and restated deed, the Guarantor has no material liabilities other than:

(i) creditors, provisions and indemnities incidental to its activities as a holding company without a material operating business,

(ii) liabilities under this amended and restated deed and the Guarantee and Subordination Documents;

(iii) liabilities to the Fund, the Charitable Fund and the State of New South Wales under the AFFA (and Related Agreements, as defined in the AFFA), including the Fund Guarantee;

(iv) liabilities in relation to taxation; and

(v) liabilities to shareholders in their capacity as such not prohibited under the AFFA.

8.2 When representations and warranties made

Each representation and warranty is made in favour of a Creditor on the date of execution of its Facility Agreement and is not repeated unless specified in that Facility Agreement or in clause 3.2(a).

8.3 Reliance on representations and warranties

Each Obligor acknowledges that the Creditors have entered into the Transaction Documents in reliance on the representations and warranties in this clause.

9 Undertakings

9.1 Application

All undertakings set out in this clause 9 apply to a Facility Agreement unless the Majority Creditor (or under a syndicated facility, an agent or trustee acting on the instructions of the Majority Creditor) under that Facility Agreement consents in writing.

9.2 General undertakings

Each Obligor undertakes to each Creditor as follows:

(a) (**nature of business**) it will not (and will not permit any of its Subsidiaries (excluding the Excluded Entities) to) engage in any business if, as a result, the general nature of the business, taken on a consolidated basis, which would then be engaged in by the Group would be substantially changed from the general nature of the

business engaged in by the Group on the date of the relevant Facility Agreement;

(b) (**compliance with laws**) it will comply (and will procure that its Subsidiaries (excluding the Excluded Entities) comply) with all applicable laws (including, without limitation, all Environmental Laws and the terms and conditions of any Authorisation required under an Environmental Law) in all material respects where non-compliance has or is likely to have a Material Adverse Effect;

(c) (**ranking**) it will ensure that its obligations to the Creditor under the Transaction Documents rank and will continue to rank at least pari passu with all of its other unsecured and unsubordinated obligations, other than those mandatorily preferred by law;

(d) (**Financial Indebtedness of Group Members**) in the case of the Guarantor only, and without limiting clauses 9.4(d) or 9.4(e), it will ensure that each Group Member (excluding the Excluded Entities) that is not an Obligor does not incur any Financial Indebtedness owing to any person outside the Group that is not Permitted External Financial Indebtedness;

(e) (**holding company status**) in the case of the Guarantor only, it will have no material liabilities other than those described in clause 8.1(o);

(f) (**AFFA**) in the case of the Guarantor only, it will not (without the prior written consent of each relevant Creditor (or under a syndicated facility, an agent or trustee acting on the instructions of the Majority Creditor), such consent not to be unreasonably withheld or delayed) vary, or agree to vary, in any material adverse respect the AFFA and

(g) (**JHT ownership**) in the case of JHIFL only, it will not (without the prior written consent of each relevant Creditor (or under a syndicated facility, an agent or trustee acting on the instructions of the Majority Creditor), such consent not to be unreasonably withheld or delayed) cease to own 100% of the issued capital of James Hardie Technology Limited.

9.3 Negative Pledge

Each Obligor undertakes to each Creditor that it will not, and will not permit any of its Subsidiaries (excluding the Excluded Entities) to, create or allow to exist a Security Interest over any of its assets, other than a Permitted Security Interest.

9.4 Financial undertakings

(a) (**Consolidated Net Worth**) The Guarantor must ensure that Consolidated Net Worth is not less than US$320 million on each Reporting Date and, where applicable, on each ASX CNW Announcement Date.

(b) (**EBIT**) The Guarantor will ensure that EBIT will not be less than 2.5 times Net Interest Charges for the 12 month period ending on each Reporting Date.

(c) (**compensation funding**) The Guarantor will ensure that no more than 35% of its Free Cash Flow in any given Financial Year is contributed to the Fund on the payment dates under the AFFA in the next following Financial Year.

(d) (**Funded Debt**) The Guarantor will ensure that the ratio of Consolidated Funded Debt to Consolidated Funded Capitalisation does not exceed 65% at any time.

(e) (**Permitted External Financial Indebtedness**) The Guarantor will ensure that the ratio of Consolidated Permitted External Financial Indebtedness to Consolidated Funded Capitalisation does not exceed 15% at any time.

9.5 GAAP

The financial undertakings in clause 9.4 have been drafted such that compliance with them is based on GAAP. If:

(a) a Borrower's or Guarantor's accountants or auditors advise at any time that any change to GAAP occurring after 15 June 2005 materially and adversely alters the effect of any such provision (or any related definition) and the Obligors' Agent so notifies the Creditor; or

(b) the Creditor gives written notice to the Obligors' Agent referring specifically to this clause 9.5 and giving details of a change to GAAP occurring after 15 June 2005 which in the Creditor's opinion (acting reasonably) materially and adversely alters the effect of any such provision (or any related definition),

then:

(c) the Creditor and the Guarantor must negotiate in good faith to amend such provision so that they have an effect comparable to that at the date of this amended and restated deed; and

(d) until such time as the amendments referred to in clause 9.5(c) are agreed, compliance with the relevant provision (and related definitions) will be determined by reference to GAAP.

9.6 Reporting undertakings

The Guarantor shall deliver to each Creditor (or, in the case of a syndicated facility, the facility agent) the following:

(a) (**quarterly Group statements**) within 60 days after the end of each quarterly fiscal period in each fiscal year of the Guarantor (other than the last quarterly fiscal period of each such fiscal year) a copy of:

(i) a consolidated balance sheet of the Group as at the end of such quarter; and

(ii) consolidated statements of income, changes in shareholders' equity and cash flows of the Group, for such quarter and (in the case of the second and third quarters) for the portion of the fiscal year ending with such quarter,

setting forth in each case in comparative form the figures for the corresponding periods in the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP applicable to quarterly financial statements generally, and certified by the chief financial officer, treasurer or principal accounting officer of the Group as fairly presenting, in all material respects, the financial position of the companies being reported on and their results of operations and cash flows, subject to changes resulting from year-end adjustments, provided that delivery within the time period specified above of copies of the Guarantor's Quarterly Report on Form 10-Q prepared in compliance with the requirements applicable thereto and filed with the United States Securities and Exchange Commission shall be deemed to satisfy the requirements of this clause 9.6(a);

(b) (**annual Group statements**) within 105 days after the end of the fiscal year of the Guarantor a copy of:

(i) a consolidated balance sheet of the Group, as at the end of such year; and

(ii) consolidated statements of income, changes in shareholders' equity and cash flows of the Group, for such year,

setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP, and accompanied by an opinion thereon of independent certified public accountants of recognised national standing, which opinion shall state that such financial statements present fairly, in all material respects, the financial position of the companies being reported upon and their results of operations and cash flows and have been prepared in conformity with GAAP, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and that such audit provides a reasonable basis for such opinion in the circumstances, provided that the delivery within the time period specified above of the Guarantor's Annual Report on Form 10-K for such fiscal year (together with the Guarantor's annual report to shareholders, if any, prepared pursuant to Rule 14a-3 under the Exchange Act) prepared in accordance with the requirements applicable thereto and filed with the United States Securities and Exchange Commission shall be deemed to satisfy the requirements of this clause 9.6(b);

(c) (**Borrower statements and reports**)

(i) for so long as JHIF is an Obligor:

(A) at the same time at which each financial statement or report is delivered pursuant to clause 9.6(a) ("**Consolidated Quarterly Statement**") and for as long as the JHIF Financial Reports are prepared as a matter of general internal accounting practice of the Obligors, a copy of the JHIF Financial Reports for the year to date as at the end of the quarterly fiscal period to which the Consolidated Quarterly Statement relates;

(B) at the same time at which each financial statement or report is delivered pursuant to clause 9.6(b) ("**Consolidated Annual Statement**") and for as long as the JHIF Financial Reports are prepared as a matter of general internal accounting practice of the Obligors, a copy of the JHIF Financial Reports for the fiscal year to which the Consolidated Annual Statement relates;

(C) within 180 days after the end of the fiscal year of JHIF a copy of:

(1) the balance sheet of JHIF, as at the end of such year; and

(2) a statement of income, changes in shareholders' equity and cash flows of JHIF, for such year,

setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, prepared in accordance with generally accepted accounting principles as in effect from time to time in the Netherlands, and accompanied by an opinion thereon of independent certified public accountants of recognised national standing in the Netherlands, which opinion shall state that such financial statements present fairly, in all material respects, the financial position of JHIF and its results of operations and cash flows and have been prepared in conformity with generally accepted accounting principles as in effect from time to time in the Netherlands, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards in the Netherlands, and that such audit provides a reasonable basis for such opinion in the circumstances;

(ii) for so long as JHIFL is an Obligor:

(A) at the same time at which each financial statement or report is delivered pursuant to clause 9.6(a) ("**Consolidated Quarterly Statement**") and for as long as the JHIFL Financial Reports are prepared as a matter of general internal accounting practice of the Obligors, a copy of the JHIFL Financial Reports for the

year to date as at the end of the quarterly fiscal period to which the Consolidated Quarterly Statement relates;

(B) at the same time at which each financial statement or report is delivered pursuant to clause 9.6(b) (**"Consolidated Annual Statement**") and for as long as the JHIFL Financial Reports are prepared as a matter of general internal accounting practice of the Obligors, a copy of the JHIFL Financial Reports for the fiscal year to which the Consolidated Annual Statement relates;

(C) within 180 days after the end of the fiscal year of JHIFL a copy of:

(1) the balance sheet of JHIFL, as at the end of such year; and

(2) a statement of income, changes in shareholders' equity and cash flows of JHIFL, for such year,

setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, prepared in accordance with generally accepted accounting principles as in effect from time to time in the Republic of Ireland, and accompanied by an opinion thereon of independent certified public accountants of recognised national standing in the Republic of Ireland, which opinion shall state that such financial statements present fairly, in all material respects, the financial position of JHIFL and its results of operations and cash flows and have been prepared in conformity with generally accepted accounting principles as in effect from time to time in the Republic of Ireland, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards in the Republic of Ireland, and that such audit provides a reasonable basis for such opinion in the circumstances;

(iii) for so long as JHBP is an Obligor:

(A) at the same time at which each Consolidated Quarterly Statement is delivered pursuant to clause 9.6(a) and for as long as the JHBP Financial Reports are prepared as a matter of general internal accounting practice of the Obligors, a copy of the JHBP Financial Reports for the year to date as at the end of the quarterly fiscal period to which the Consolidated Quarterly Statement relates; and

(B) at the same time at which each Consolidated Annual Statement is delivered pursuant to clause 9.6(b) and for

as long as the JHBP Financial Reports are prepared as a matter of general internal accounting practice of the Obligors, a copy of the JHBP Financial Reports for the fiscal year to which the Consolidated Annual Statement relates;

(d) (**SEC and other reports**) promptly upon their becoming available, one copy of:

(i) to the extent not already provided under clauses 9.6(a), 9.6(b) or 9.6(c), each financial statement, report, notice or proxy statement sent by a Group Member (other than an Excluded Entity) to public securities holders generally; and

(ii) each regular or periodic report, each registration statement (without exhibits, except as expressly requested by the Creditor or facility agent as the case may be), and each prospectus and all amendments thereto filed by a Group Member (other than an Excluded Entity) with the United States Securities and Exchange Commission and all announcements made by the Guarantor through ASX and press releases and other statements made available generally by any Group Member (other than an Excluded Entity) to the public concerning developments that are material;

(e) (**Notice of Event of Default or Potential Event of Default**) promptly upon becoming aware of it, written notice to each Creditor (or, in the case of a syndicated facility, the facility agent) of:

(i) the existence of any Event of Default or Potential Event of Default; and

(ii) the occurrence of any event which has or is likely to have a Material Adverse Effect;

(f) (**litigation**) to the extent not disclosed in a document provided under clauses 9.6(a), 9.6(b), 9.6(c), 9.6(d) or 9.6(e), notice in writing and in reasonable detail of any litigation, arbitration, administrative proceeding or other procedure for the resolution of disputes commenced, taking place, pending or to its knowledge, threatened against any Group Member (other than an Excluded Entity) or any Group Member's assets (other than an Excluded Entity's assets) which has or is likely to have a Material Adverse Effect; and

(g) (**requested information**) such other information relating to the business, operations and condition (financial or otherwise) of the Group (excluding the Excluded Entities) as from time to time may be reasonably requested by a Creditor (but excluding any information which the Guarantor is bound by an obligation of confidentiality not to disclose).

9.7 Officer's certificate

Each set of consolidated financial statements delivered pursuant to clause 9.6(a) or 9.6(b) shall be accompanied by:

(a) a supplementary set of financial statements for the Group (excluding the Excluded Entities), showing adjustments made to the consolidated financial statements to eliminate the impact of the Excluded Entities; and

(b) a certificate of the chief financial officer, treasurer or principal accounting officer of the Group setting forth the information (including reasonably detailed calculations) required in order to establish whether the Guarantor was in compliance with the relevant requirements of clause 9.4 and the amount of after-tax income of James Hardie Technology Limited that is required to be distributed pursuant to the JHT Undertaking.

10 Events of default

10.1 Events of Default

Each of the following is an Event of Default:

(a) (**non-payment of principal**) a Borrower fails to pay an amount of principal payable by it under a Facility Agreement when due and does not remedy that failure within 2 Business Days after that amount becomes due and payable;

(b) (**non-payment of other amounts**) a Borrower fails to pay any amount, other than an amount described in paragraph (a), payable by it under a Facility Agreement and does not remedy that failure within 3 Business Days after that amount becomes due and payable;

(c) (**financial undertakings**)

(i) there is at any time a breach of any financial undertaking in clause 9.4 and, in the case of a breach of clause 9.4(d) or 9.4(e), the breach is not cured within 10 Business Days of the Guarantor receiving written notice from a Creditor (or, in the case of a syndicated facility, the facility agent) requiring such remedy; or

(ii) the Guarantor fails to deliver a certificate as required by clause 9.7(b) within 7 days of receipt of written notice from a Creditor of failure to provide such certificate;

(d) (**other default**)

(i) any Obligor defaults in the performance of or compliance with any material obligation contained in a Transaction Document (other than those referred to in clause 10.1(a), 10.1(b) or 10.1(c)); and

(ii) the default is not waived or, if capable of remedy, the default is not remedied within 21 days of the Obligor receiving written notice from a Creditor (or, in the case of a syndicated facility, the facility agent) referring specifically to this clause 10.1(d) and requiring such remedy;

(e) (**AFFA**) the Group Member primarily liable to make funding payments to the Fund under the AFFA defaults in the performance of, or compliance with, its obligation to make any such payment when due or within any applicable grace period and such default is not cured by that Group Member or the Guarantor within 3 Business Days;

(f) (**misrepresentation**)

(i) any representation or warranty made or deemed to be made by an Obligor in a Transaction Document proves to have been inaccurate in any material respect when made or deemed to be repeated; and

(ii) the misrepresentation or breach of warranty is not waived or, if capable of remedy, the matter giving rise to the misrepresentation or breach of warranty is not remedied within 21 days of the Obligor becoming aware that the representation or warranty was inaccurate when made or deemed to have been repeated;

(g) (**cross-default**)

(i) an Obligor is in default in the payment of any Financial Indebtedness that is outstanding in an aggregate principal amount of at least US$20,000,000 (or its equivalent in another currency) beyond any period of grace provided with respect thereto and such Financial Indebtedness is not paid within 3 Business Days; or

(ii) any Financial Indebtedness of an Obligor exceeding US$20,000,000 (or its equivalent in another currency) has become, or has been declared, due and payable before its stated maturity and such Financial Indebtedness is not paid within 3 Business Days.

(h) (**insolvency**) a Relevant Entity:

(i) is generally not paying, or admits in writing its inability to pay, its debts as they become due;

(ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganisation or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, reorganization, moratorium or other similar law of any jurisdiction (for the avoidance of doubt, this includes, in respect of a person established under Dutch law, a filing of a petition by it with

any court in the Netherlands in relation to its bankruptcy (*faillissement*) or suspension of payments (*surseance van betaling*) and, in respect of a person established under Irish law, a filing of a petition with any court in the Republic of Ireland in relation to its liquidation, the bringing forward of a scheme of arrangement or the appointment of an examiner);

(iii) makes an assignment for the benefit of its creditors;

(iv) consents to the appointment of a custodian, receiver, receiver and manager, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property;

(v) consents to the appointment of an administrator;

(vi) is adjudicated as insolvent or to be liquidated; or

(vii) takes corporate action for the purpose of any of the foregoing.

(i) (**receiver**)

(i) A court or Government Agency of competent jurisdiction enters an order appointing, without consent by a Relevant Entity, a custodian, receiver, receiver and manager, trustee or other officer with similar powers with respect to the Relevant Entity or with respect to any substantial part of its property, or constituting an order for relief or approving a petition for relief or reorganisation or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of the Relevant Entity, or any such petition shall be filed against the Relevant Entity (other than a frivolous or vexatious petition) and such petition is not dismissed or cancelled within 30 days (and for the avoidance of doubt, this includes, in respect of a person established under Dutch law, appointment by a court of a trustee (*curator*) in relation to its bankruptcy or appointment by a court of a receiver (*bewindvoerder*) in relation to its provisional suspension of payments and, in respect of a person established under Irish law, appointment by a court of an examiner); or

(ii) an administrator of the Relevant Entity is appointed; or

(iii) a receiver, receiver and manager, administrative receiver or similar officer is appointed to all or any substantial part of the assets of a Relevant Entity in respect of Financial Indebtedness that has been due and payable for at least 5 Business Days in an aggregate principal amount of at least US$20,000,000 (or its equivalent in another currency) and that officer is not removed within 7 days of his appointment;

(j) (**judgment**) a final judgment or judgments for the payment of money aggregating in excess of US$20,000,000 (or its equivalent in another currency) are rendered against a Relevant Entity and such judgments are not, within 45 days after entry thereof, bonded, discharged or stayed pending appeal, or are not discharged within 45 days after the expiration of such stay;

(k) (**vitiation of documents**)

(i) any material provision of a Transaction Document ceases for any reason to be in full force and effect or becomes void, voidable or unenforceable;

(ii) any law suspends, varies, terminates or excuses performance by an Obligor of any of its material obligations under a Transaction Document or purports to do any of the same;

(iii) it becomes impossible or unlawful for an Obligor to perform any of its material obligations under a Transaction Document or for the Creditors to exercise all or any of their rights, powers and remedies under a Transaction Document; or

(iv) an Obligor alleges that a Transaction Document has been affected as described in this paragraph;

(l) (**ownership of Borrower**) any Borrower ceases to be directly or indirectly fully owned and controlled by the Guarantor;

(m) (**Authorisation**) any Authorisation necessary in connection with the execution, delivery or performance by an Obligor of the Transaction Documents, or the validity or enforceability of the Transaction Documents, is not granted or ceases to be in full force and effect for any reason or is modified or amended in a manner which, in the reasonable opinion of all Creditors, would have a Material Adverse Effect; or

(n) (**material change**) a change occurs in the financial condition of the Group (as a whole, but excluding the Excluded Entities) which has a Material Adverse Effect.

10.2 Consequences of default

If an Event of Default is continuing, a Creditor (or, in the case of a syndicated facility, an agent or trustee acting on the instructions of the Majority Creditor) may declare at any time by notice to the Obligors' Agent that:

(a) an amount equal to all or any part of the Outstanding Moneys payable to the Creditor (or, in the case of a syndicated facility, the facility agent) is:

(i) payable on demand; or

(ii) immediately due for payment;

(b) the obligations of the Creditor specified in the notice are terminated and cancelled.

A Creditor (or, in the case of a syndicated facility, the facility agent) may make either or both of these declarations. The making of either of them gives immediate effect to its provisions.

11 Review events

If, at any time after the date of a Facility Agreement and for any reason, whether or not within the control of the Obligors:

(a) a Change of Control occurs;

(b) the securities of the Guarantor are suspended from quotation by ASX for more than 10 Business Days or the Guarantor is removed from the Official List of ASX; or

(c) provisions made by the Group in accordance with GAAP for asbestos related liabilities (if any) not arising in connection with the AFFA exceed 15% of Consolidated Net Worth at that time (with Consolidated Net Worth for this purpose calculated by adding back all such asbestos related liabilities under this paragraph (c), ignoring the 15% cap),

then the Guarantor must notify each Creditor (or, in the case of a syndicated facility, the facility agent) in writing of the occurrence of the event as soon as reasonably practicable. A Creditor may, by notice to any Borrower (with a reasonably detailed explanation of the reasons for its election to discontinue funding that Borrower) within 60 days of the date of receipt of notice from the Guarantor:

(d) cancel its commitment to provide financial accommodation under the relevant Facility Agreement with immediate effect; and/or

(e) declare the moneys borrowed under the relevant Facility Agreement to be, and the borrowed moneys will be, due and payable on a date no earlier than 90 days from the date of the Creditor's notice.

12 Costs and indemnities

12.1 What the Borrower agrees to pay

Each relevant Borrower agrees to pay a Creditor promptly on demand to the Obligors' Agent from that Creditor (except in the case of a Creditor under a syndicated facility, in which case demand must be made by the facility agent):

(a) the reasonable Costs of each Creditor in connection with:

(i) the registration of any Transaction Document; and

(ii) giving and considering consents, waivers, variations, discharges and releases requested by the relevant Borrower, the Guarantor or the Obligors' Agent;

(b) the Costs of each Creditor in exercising, enforcing or preserving rights in connection with a Transaction Document; and

(c) Taxes and fees (including registration fees) (other than Excluded Taxes) and fines and penalties in respect of fees paid in connection with any Transaction Document or a payment or receipt or any other transaction contemplated by any Transaction Document. However, the relevant Borrower need not pay a fine or penalty in connection with Taxes or fees to the extent that it has lodged with the relevant Creditor sufficient cleared funds for the relevant Creditor to be able to pay the Taxes or fees by the due date.

This clause 12.1 shall not apply to any amounts, which have otherwise been paid or compensated for under a Transaction Document.

12.2 Indemnity

Each relevant Borrower indemnifies each Creditor against any claim, action, damage, loss, liability, cost, charge, expense, outgoing and payment of Break Costs which that Creditor pays, suffers, incurs or is liable for in connection with:

(a) any failure by the relevant Borrower to draw down financial accommodation requested by it under a Transaction Document for any reason except default of a Creditor;

(b) financial accommodation under a Transaction Document being repaid, discharged or made payable other than at its maturity, an interest payment date or other due date applicable to it;

(c) any failure to prepay any part of the amount outstanding to a Creditor in accordance with a prepayment notice given under a Facility;

(d) a Creditor acting in connection with a Transaction Document in good faith on fax or telephone instructions which have no apparent irregularity on their face, purport to originate from the offices of an Obligor or to be given by an Authorised Officer of an Obligor which, in the case of fax instructions, are signed and such signature accords with a current specimen signature of an Authorised Officer in the possession of the Creditor;

(e) an Event of Default or Potential Event of Default;

(f) a Creditor exercising or attempting to exercise a right or remedy in connection with a Transaction Document after an Event of Default; or

(g) any indemnity a Creditor gives a Controller or administrator of the Obligor.

Each Borrower agrees to pay amounts due under this indemnity on demand to the Obligors' Agent from the applicable Creditor (except in the case of a Creditor under a syndicated facility, in which case demand must be made by, and payment must be made to the facility agent).

12.3 Currency conversion on judgment debt

If a judgment, order or proof of debt for an amount in connection with a Transaction Document is expressed in a currency other than that in which the amount is due under the Transaction Document, then the relevant Borrower indemnifies each Creditor against:

(a) any difference arising from converting the other currency if the rate of exchange used by the Creditor under clause 4.2 ("Currency of payment") for converting currency when it receives a payment in the other currency is less favourable to the Creditor than the rate of exchange used for the purpose of the judgment, order or acceptance of proof of debt; and

(b) the Costs of conversion.

Each Borrower agrees to pay amounts due under this indemnity to a Creditor on demand from that Creditor (except in the case of a Creditor under the syndicated facility, in which case demand must be made by the facility agent).

12.4 Indirect Taxes

(a) All payments to be made by an Obligor under or in connection with any Transaction Document have been calculated without regard to Indirect Tax. If all or part of any such payment is the consideration for a taxable supply or chargeable with Indirect Tax then, when the Obligor makes the payment:

(i) it must pay to the Creditor an additional amount equal to that payment (or part) multiplied by the appropriate rate of Indirect Tax; and

(ii) the Creditor will promptly provide to the Obligor a tax invoice complying with the relevant law relating to that Indirect Tax.

(b) Where a Transaction Document requires an Obligor to reimburse a Creditor for any costs or expenses, that Obligor shall also at the same time pay and indemnify that Creditor against all Indirect Tax incurred by that Creditor in respect of the costs or expenses save to the extent that that Creditor is entitled to repayment or credit in respect of the Indirect Tax. The Creditor will promptly provide to the Obligor a tax invoice complying with the relevant law relating to that Indirect Tax.

13 Interest on overdue amounts

13.1 Obligation to pay

If an Obligor does not pay any amount under any Transaction Document (including an amount of interest payable under this clause 13.1 on the due date for payment, that Obligor must pay interest on that amount at the Default Rate. The interest accrues daily from (and including) the due date to (but excluding) the date of actual payment and is calculated on actual days elapsed and either a 360 or 365 day year, whichever is the length of time customarily adopted for such calculations for the currency in which the relevant amount is denominated.

The relevant Obligor must pay interest under this clause to the relevant Creditor.

13.2 Compounding

Interest payable under clause 13.1 ("Obligation to pay"), which is not paid when due for payment, may be added to the overdue amounts by the relevant Creditor on the last Business Day of each calendar month. Interest is payable on the increased overdue amount at the Default Rate in the manner set out in clause 13.1 ("Obligation to pay").

13.3 Interest following judgment

If a liability becomes merged in a judgment, the relevant Obligor must pay interest on the amount of that liability as an independent obligation. This interest:

(a) accrues daily from (and including) the date the liability becomes due for payment both before and after the judgment up to (but excluding) the date the liability is paid; and

(b) is calculated at the judgment rate or the Default Rate (whichever is higher).

The relevant Obligor must pay interest under this clause 13 to the relevant Creditor on demand from the relevant Creditor.

14 Change of Borrowers

14.1 New Borrowers

A Wholly Owned Subsidiary of the Guarantor may, with the consent of each relevant Creditor, become a party to this amended and restated deed as a Borrower (after the date of this amended and restated deed) by:

(a) signing and delivering to each relevant Creditor (or, in the case of a syndicated facility, the facility agent) a deed poll substantially in the form of schedule 3 ("Form of New Borrower Deed Poll"); and

(b) doing any other thing the relevant Creditors reasonably request to ensure the enforceability of that company's obligations as a Borrower and, if requested, agrees to provide an opinion in form and substance satisfactory to the relevant Creditors from legal advisers of recognised standing acceptable to the relevant Creditors in that company's place of incorporation confirming such enforceability.

The Guarantor will confirm in writing to each relevant Creditor that the Guarantee Trust Deed applies to the borrowings of the new Borrower under the relevant Facility Agreements.

14.2 Release of Borrowers

(a) The Guarantor may request that a Borrower cease to be a Borrower by giving to each relevant Creditor (or, in the case of a syndicated facility, the facility agent) a duly completed Release Request executed by an Authorised Officer of the Guarantor and the Borrower that is, subject to the remaining provisions of this clause, to cease being a Borrower.

(b) On giving a Release Request to the Creditor (or, in the case of a syndicated facility, the facility agent) pursuant to clause 14.2(a), the Guarantor and the Borrower identified in that Release Request represent and warrant to the Creditor that no Event of Default or Potential Event of Default is outstanding or would result from the release of that Borrower from its obligations under this amended and restated deed.

(c) The Creditor (or, in the case of a syndicated facility, the facility agent) must, as soon as reasonably practicable after receiving a Release Request, execute a Deed of Release releasing the Borrower identified in the Release Request from its obligations under this amended and restated deed if, and only if:

(i) no amount due and payable to that Creditor by that Borrower under this amended and restated deed remains outstanding and unpaid; and

(ii) that Creditor is not committed to providing further financial accommodation to that Borrower pursuant to any Facility.

(d) The Borrower identified in the Release Request will cease to be a Borrower when the Creditor (or, in the case of a syndicated facility, the facility agent) executes a Deed of Release in respect of that Borrower.

15 Dealing with interests

15.1 Dealings by Obligors

An Obligor may only assign or otherwise deal with its rights or obligations under any Transaction Document with the consent of each Creditor.

15.2 Dealings by Creditors

A Creditor may assign, transfer, sub-participate or otherwise deal with all or any of its rights or obligations under a Transaction Document at any time if:

(a) the Obligors' Agent has given its prior consent, which consent shall not be unreasonably withheld;

(b) in respect of any Dutch Borrower, the assignment, transfer, sub-participation or other dealing is to or with a PMP; and

(c) in the case of a transfer of obligations, the transfer is effected by a novation in form and substance reasonably satisfactory to the relevant Borrower.

15.3 Change in lending office

A Creditor may change its lending office if it first notifies and consults with the Obligors' Agent. If this occurs, clause 15.5 will apply.

15.4 Securitisation permitted

(a) Subject to clause 15.4(b), a Creditor may, without having to obtain the consent of or notify any Obligor, assign, transfer, sub-participate or otherwise deal with all or any part of its rights and benefits under any Transaction Document to a trustee of a trust, company or other entity which in each case is established for the purposes of securitisation and, to the extent required for the Dutch Borrower to comply with the Banking Act on the Financial Supervision is a PMP.

(b) Notwithstanding any assignment, transfer, sub-participation or other dealing by that Creditor under clause 15.4(a):

(i) that Creditor remains bound by, and must continue to perform all its obligations under the Transaction Documents;

(ii) that Creditor is the only person entitled to exercise any power, and no assignee, transferee, sub-participant or other person who obtains an interest in any of the rights or benefits of that

Creditor under the Transaction Documents pursuant to clause 15.4(a) may do so; and

(iii) any amount payable by the Obligors to that Creditor under any Transaction Document will, if paid by an Obligor to that Creditor, operate as an effective discharge of the Obligor's obligation to make that payment.

(c) Nothing done by a Creditor under this clause 15.4 will affect any Obligor's rights under any Transaction Documents.

15.5 No increased costs

Despite anything to the contrary in this amended and restated deed or the Transaction Documents, if a Creditor changes its lending office or transfers, assigns, novates or otherwise deals with its rights or obligations under the Transaction Documents, then no Obligor will be required to pay:

(a) any net increase in the total amount of fees, Taxes, costs, expenses or charges which arises as a consequence of the change in lending office, transfer, assignment, novation or other dealing; or

(b) any fees, Taxes, costs, expenses or charges in respect of the change in lending office, transfer, assignment, novation or other dealing.

A substitution will be regarded as a transfer for the purposes of this clause 15.5.

15.6 Professional Market Party (PMP)

For so long as JHIF is an Obligor, the Obligors acknowledge that unless the Creditors are notified in writing by the Obligors' Agent of a change in the meaning of "PMP" as defined in the Act on the Financial Supervision, the Creditors will rely on, and will not independently investigate, the definition of PMP set out in this amended and restated deed for the purpose of complying with the requirements of clause 15.2(b) and 15.4(a).

16 Obligors' Agent

16.1 Obligors' Agent as agent of the Obligors

Each Obligor (other than the Obligors' Agent):

(a) irrevocably authorises the Obligors' Agent to act on its behalf as its agent in relation to the Transaction Documents, including:

(i) to give and receive as agent on its behalf all notices and instructions (including drawdown notices);

(ii) to sign on its behalf all documents in connection with the Transaction Documents (including amendments and variations of any Transaction Documents, and to execute any new Transaction Documents); and

(iii) to take such other action as may be necessary or desirable under or in connection with the Transaction Documents; and

(b) confirms that it will be bound by any action taken by the Obligors' Agent under or in connection with the Transaction Documents.

16.2 Acts of Obligors' Agent

(a) The respective liabilities of each of the Obligors under the Transaction Documents shall not be in any way affected by:

(i) any actual or purported irregularity in any act done or failure to act by the Obligors' Agent;

(ii) the Obligors' Agent acting (or purporting to act) in any respect outside any authority conferred upon it by any Obligor; or

(iii) any actual or purported failure by or inability of the Obligors' Agent to inform any Obligor of receipt by it of any notification under the Transaction Documents.

(b) In the event of any conflict between any notices or other communications of the Obligors' Agent and any other Obligor, those of the Obligors' Agent shall prevail.

17 Notices

17.1 Form

Unless expressly stated otherwise in a Transaction Document, all notices, certificates, consents, approvals, waivers and other communications in connection with that Transaction Document ("**Notices**") must be in writing, signed by an Authorised Officer of the sender and marked for attention as set out or referred to in the Details of this amended and restated deed or another Transaction Document or, if the recipient has notified otherwise, marked for attention in the way last notified.

17.2 Delivery

Notices must be:

(a) delivered to the address set out or referred to in this amended and restated deed or as set out as the recipient's relevant address in another Transaction Document; or

(b) sent by prepaid post (airmail, if appropriate) to the address set out or referred to in the Details or as set out as the recipient's address in another Transaction Document; or

(c) sent by fax to the fax number set out or referred to in the Details or as set out as the recipient's relevant fax number in another Transaction Document.

However, if the intended recipient has notified a changed postal address or changed fax number, then the communication must be to that address or number.

17.3 When effective

Notices take effect from the time they are received unless a later time is specified in them.

17.4 Receipt — postal

If sent by post, Notices are taken to be received three Business Days after posting (or five Business Days after posting if sent across national boundaries).

17.5 Receipt — fax

If sent by fax, Notices are taken to be received at the time shown in the transmission report as the time that the whole fax was sent.

17.6 Receipt — general

Despite clauses 17.4 ("Receipt — postal") and 17.5 ("Receipt — fax"), if Notices are received after 5:00pm in the place of receipt or on a non-Business Day, they are taken to be received at 9:00am on the next Business Day.

17.7 Notices to or from facility agent

A Notice to or from a facility agent appointed under a syndicated facility constitutes sufficient notice to or from the Creditors under that Facility Agreement for the purposes of this amended and restated deed.

17.8 Waiver of notice period

The Majority Creditor may waive a period of notice required to be given by an Obligor under any Transaction Document.

18 General

18.1 Consents

Each Obligor agrees to comply with all conditions in any consent a Creditor gives in connection with a Transaction Document if the Obligor relies on that consent in performing its obligations under the Transaction Documents.

18.2 Certificates

A Creditor may give an Obligor a certificate about an amount payable or other matter in connection with a Transaction Document. Subject to any applicable provision of the Transaction Documents specifying the form or content of the certificate (including clause 6.2 of this amended and restated deed), the certificate is sufficient evidence of the amount or matter, unless it is proved to be incorrect.

18.3 Set-off

At any time after a declaration is made under clause 10.2 of this amended and restated deed, the Creditor making the declaration (or on whose behalf a declaration was made by a facility agent for a syndicate of financiers) may set off any amount due for payment by the Creditor to an Obligor against any amount due for payment by the Obligor to the Creditor under the Transaction Document.

18.4 Discretion in exercising rights

A Creditor may exercise a right or remedy or give or refuse its consent under a Transaction Document in any way it considers appropriate (including by imposing conditions).

18.5 Partial exercising of rights

If a Creditor does not exercise a right or remedy under a Transaction Document fully or at a given time, the Creditor may still exercise it later.

18.6 No liability for loss

No Creditor is liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy under a Transaction Document.

18.7 Conflict of interest

A Creditor's rights and remedies under any Transaction Document may be exercised even if this involves a conflict of duty or the Creditor has a personal interest in their exercise.

18.8 Remedies cumulative

The rights and remedies of a Creditor under any Transaction Document are in addition to other rights and remedies given by law independently of the Transaction Document.

18.9 Indemnities

Any indemnity in a Transaction Document is a continuing obligation, independent of each Obligor's other obligations under that Transaction Document and continues after the Transaction Document ends. It is not necessary for a Creditor to incur expense or make payment before enforcing a right of indemnity under a Transaction Document.

18.10 Rights and obligations are unaffected

Rights given to a Creditor under a Transaction Document and each Obligor's liabilities under it are not affected by anything which might otherwise affect them at law.

18.11 Inconsistent law

To the extent permitted by law, each Transaction Document prevails to the extent it is inconsistent with any law.

18.12 Supervening legislation

Any present or future legislation which operates to vary the obligations of any Obligor in connection with a Transaction Document with the result that a Creditor's 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.

18.13 Variation

A provision of a Transaction Document, or right created under it, may not be varied except in writing signed by the party or parties to be bound (whether directly or through a properly authorised agent or attorney). A provision of this amended and restated deed may only be amended by agreement between the Obligors and each relevant Creditor.

18.14 Waiver

A provision of this amended and restated deed or right created under it may not be waived except in writing by the party granting the waiver.

18.15 Confidentiality

No Obligor or Creditor may disclose information provided by any party to a Transaction Document that is not publicly available (including the existence of or contents of any Transaction Document) except:

(a) to any person in connection with an exercise of rights or (subject to compliance with clause 15 a dealing with rights or obligations under a Transaction Document (including when a Creditor consults other Creditors after an Event of Default or in connection with preparatory steps such as negotiating with any potential assignee or potential sub-participant or other person who is considering contracting with the Creditor in connection with a Transaction Document);

(b) on a confidential basis, to officers, employees, legal and other advisers and auditors of any Obligor or Creditor;

(c) on a confidential basis, to any party to a Transaction Document or any Related Entity of any party to a Transaction Document;

(d) with the consent of the party who provided the information (such consent not to be unreasonably withheld); or

(e) as required by any law or stock exchange or any Governmental Agency (including for Australian, US, Irish and Dutch tax authorities, in each case to the extent applicable).

Each Obligor and Creditor is taken to consent to disclosures made in accordance with this clause 18.15.

18.15A Creditor's compliance with law

Each Obligor consents to a Creditor obtaining, verifying, recording and/or disclosing to any Government Agency all information concerning that Obligor, the Transaction Documents and the transactions contemplated thereunder which the Creditor is required by the law of any country (including, without limitation, laws relating to money laundering and/or the financing of terrorism) to obtain, verify, record and/or disclose. The Obligors agree to provide all information to the Creditor that the Creditor reasonably requires to comply with any such law.

18.16 No responsibility for other's obligations

If a Creditor does not comply with its obligations under a Transaction Document, this does not relieve any other Creditor or an Obligor of any of their respective obligations. No party is responsible for the obligations of another party.

18.17 Further steps

Each Obligor agrees to do anything a Creditor reasonably asks (such as obtaining consents, signing and producing documents and getting documents completed and signed):

(a) to bind the Obligor and any other person intended to be bound under a Transaction Document;

(b) to enable a Creditor to register any power of attorney or any Transaction Document; or

(c) to show whether the Obligor is complying with this amended and restated deed.

18.18 Counterparts

A Transaction Document may consist of a number of copies, each signed by one or more parties to the document. If so, the signed copies are treated as making up the one document.

18.19 Governing law

Each Transaction Document is governed by the law in force in New South Wales. Each Obligor submits to the non-exclusive jurisdiction of the courts of that place.

18.20 Serving documents

Subject to clause 18.21 ("Process Agent") and without preventing any other method of service, any document in a court action may be served on a party by being delivered to or left at that party's address for service of notices under clause 17 ("Notices").

18.21 Process Agent

Each Non-Australian Obligor appoints James Hardie Australia Pty Limited (ABN 12 084 635 558) of Level 3, 22 Pitt Street, Sydney NSW 2000 (Attention: The Company Secretary) as its agent for service of process to receive any document in connection with the Transaction Documents. If for any reason James Hardie Australia Pty Limited (ABN 12 084 635 558) ceases to be able to act as process agent for the Non-Australian Obligor, the Non-Australian Obligor must promptly appoint another person in New South Wales to act as its process agent and must promptly notify each Creditor (or, in the case of a syndicated facility, the facility agent) of that appointment.

18.22 Each Creditor's consent to this amended and restated deed

The terms of this amended and restated deed will take effect (and prevail over the terms of the Previous Deeds) as between the Obligors and a Creditor only after that Creditor has provided its written consent to the Obligors in respect of this amended and restated deed and until that time the Previous Deeds will apply as between the Obligors and that Creditor.

Subject to the above paragraph, the Previous Deeds remain in full force and effect.

EXECUTED as a deed poll

Schedule 1 — Verification Certificate (clause 3.1

[name]
[address]

Tel [insert]
Fax [insert]

To: [*Name of financier*]

US$[●] Facility Agreement dated [●] 20## between [*Name of Borrower*] and [*Name of financier*] ("Facility Agreement")

I [*name*] am a director of [James Hardie International Finance B.V. (with corporate seat in Amsterdam) / James Hardie International Finance Limited (with a registered office in Dublin) / James Hardie Industries S.E. (with corporate seat in Amsterdam) / James Hardie Building Products, Inc. (incorporated in Delaware)] ("**Company**"). I refer to the Facility Agreement. Definitions in the Facility Agreement apply in this Certificate.

I CERTIFY as follows:

1 Attached to this Certificate is a complete and up to date copy of:

(a) the constituent documents of the Company; and

(b) a written resolution of the board of directors of the Company and power of attorney in the name of the Company, evidencing resolutions of the board of directors of the Company approving execution of those of the following documents to which the Company is expressed to be a party, appointing attorneys for that purpose and appointing Authorised Officers of the Company for the purposes of those documents:

(i) the Facility Agreement;

(ii) the Common Terms Deed Poll; and

(iii) any Beneficiary Nomination Letter, Facility Nomination Letter or Financier Nomination Letter in relation to the Facility Agreement.

Those resolutions and that power of attorney have not been amended, modified or revoked and are in full force and effect.

2 Set out below are specimen signatures of the Authorised Officers of the Company.

Authorised Officers#

Name	Position	Signature
*	*	
*	*	
*	*	

One of the Authorised Officers must be the chief financial officer, treasurer or principal accounting officer of the Group (see clause 9.7 of the Common Terms Deed Poll).

DATED 2008

Name:

Schedule 2 — Facility Nomination Letter (clause 2.1

James Hardie International Finance B.V.
Atrium, Unit 08
Strawinskylaan 3077
1077 ZX Amsterdam
The Netherlands

Tel +31 20 3012980
Fax +31 20 4042544

To: [*Creditor*] [*Date*]

James Hardie — Common Terms Deed Poll — Facility Nomination Letter

We refer to the James Hardie — Common Terms Deed Poll as amended and restated on [●] 2009 ("**CTDP**").

For the purposes of the CTDP, on and from the date of this letter:

1. we nominate [each of] the following agreement[s] as a Facility Agreement:

   Name: [●]

   Date: [●]

   Parties: [●]

   [*repeat as necessary*]

2. the agreement, and each document named or referred to as a ["Financing Document"] in such agreement, is a Transaction Document for the purposes of the CTDP; and

3. we nominate you as a "Creditor" pursuant to that Facility Agreement.

Please confirm your acceptance of the above nomination, and the benefit and obligations of the CTDP, by signing and returning the attached copy of this letter.

Clauses 1 ("Interpretation") and 18.19 ("Governing law") of the CTDP described above apply to this letter as they were fully set out in this letter.

For and on behalf of
James Hardie International Finance B.V. as Obligors' Agent
(with corporate seat in Amsterdam)

Authorised Officer: [*Name*]

We accept and agree to the above nomination. We accept the benefit and obligations of the CTDP, and we agree to be bound by the terms of that deed.

*If JHIF is an Obligor, add the following sentence: We confirm that we are [*insert relevant category of PMP, eg, a company from which redeemable funds will be obtained in an amount of at least EUR 50,000 (or the equivalent in another currency)*] and accordingly we are a PMP within the meaning of the CTDP. In making this representation, we rely on, and have not independently investigated, the definition of PMP set out in the CTDP.

For and on behalf of ***[Insert name of Creditor]***

by its Authorised Officer
Name:
Title:

Schedule 3 — Form of New Borrower Deed Poll (clause 14.1

Deed Poll

New Borrower	***[Insert name and ABN/ACN or other registration number]***
	of: ***[Insert address]***
	Fax no:
	Attention:
CTDP	James Hardie — Common Terms Deed Poll as amended and restated on [●] 2009

BY THIS DEED POLL the New Borrower described above, for the benefit of each Creditor under the CTDP described above:

(a) irrevocably agrees that from the date of this deed poll it is a Borrower under the CTDP;

(b) irrevocably agrees to comply with and be bound by all current and future obligations of a Borrower or an Obligor under the CTDP or any other Transaction Document to which it is a party;

(c) acknowledges having read a copy of the CTDP before signing this deed poll;

(d) gives, as at the date of this deed poll, all representations and warranties on the part of a Borrower or an Obligor contained in the CTDP; and

(e) acknowledges receiving valuable consideration for this deed poll.

Clauses 1 ("Interpretation") and 18.19 ("Governing law") of the CTDP described above apply to this deed poll as if they were fully set out in this deed poll.

DATED [*Insert Date*]

EXECUTED as a deed poll

[*Insert execution clause for New Borrower and, if it is a Dutch company, its corporate seal*]

James Hardie — Common Terms Deed Poll

Schedule 4 — Form of Release Request (clause 14.2)

[*Date*]

To: [*Each relevant Creditor*]

James Hardie — Common Terms Deed Poll — Release Request

We refer to the deed entitled James Hardie — Common Terms Deed Poll as amended and restated on [•] 2009 ("**CTDP**").

(a) **Release request**

We request each of you release [*Insert name of retiring Borrower*] ("Retiring Borrower") from all liability under the CTDP pursuant to the attached Deed of Release.

(b) **Representation and warranty**

We represent and warrant that no Event of Default or Potential Event of Default is continuing or will result from the release of the Retiring Borrower.

Clause 1 of the CTDP applies to this Release Request as if it was fully set out in this Release Request.

For and on behalf of **James Hardie Industries S.E.** (with corporate seat in Amsterdam)	For and on behalf of [*Insert the **name of the retiring Borrower** and, if it is a Dutch company, its corporate seat*]
Authorised Officer: [Name]	Authorised Officer: [Name]

Schedule 5 — Form of Deed of Release (clause 14.2)

Deed of Release

Parties	**The Creditor**, the **Retiring Borrower** and the **Obligors' Agent**, as described below.
Creditor	[*Insert **name** and ABN/ACN or other registration number of a relevant Creditor*]
Retiring Borrower	[*Insert **name** and ABN/ACN or other registration number*]
Obligors' Agent	[ ] on behalf of each Obligor other than the Retiring Borrower.
CTDP	James Hardie — Common Terms Deed Poll as amended and restated on [●] 2009.

The Creditor releases the Retiring Borrower described above from all liability under the CTDP described above, with effect from **[***insert date or "the date of this deed"***]**.

Nothing in this deed affects the obligations of the Retiring Borrower described above other than under the CTDP.

Each Obligor (other than the Retiring Borrower) consents to this release and agrees that nothing in this deed affects its obligations to the Creditor or the Creditor's rights in respect of the Obligors (other than the Retiring Borrower) under a Transaction Document.

Clauses 1 ("Interpretation") and 18.19 ("Governing law") of the CTDP described above apply to this deed as if they were fully set out in this deed.

DATED [*Insert date*]

EXECUTED as a deed

[*Insert execution clauses for (1) each Creditor, (2) the Obligors' Agent (and its corporate seat) on behalf of each Obligor other than the Retiring Borrower, and (3) the Retiring Borrower and, if it is a Dutch company, its corporate seat*]

James Hardie — Common Terms Deed Poll

Signing page

DATED: 2009

SIGNED, SEALED AND DELIVERED by

and

as attorneys for **JAMES HARDIE INTERNATIONAL FINANCE B.V.** under power of attorney dated

in the presence of:

Signature of witness

Name of witness (block letters)

By executing this amended and restated deed each attorney states that the attorney has received no notice of revocation of the power of attorney

SIGNED, SEALED AND DELIVERED by

and

as attorneys for **JAMES HARDIE INTERNATIONAL FINANCE LIMITED** under power of attorney dated

in the presence of:

Signature of witness

Name of witness (block letters)

By executing this amended and restated deed each attorney states that the attorney has received no notice of revocation of the power of attorney

SIGNED, SEALED AND DELIVERED by

and

as Authorised Representatives of **JAMES HARDIE BUILDING PRODUCTS,INC.** in the presence of:

Signature of witness

Name of witness (block letters)

By executing this agreement each Authorised Representative states that the Authorised Representative has received no notice of revocation of his or her authority to execute this deed

SIGNED, SEALED AND DELIVERED by

and

as attorneys for **JAMES HARDIE INDUSTRIES S.E.** under power of attorney dated

in the presence of:

Signature of witness

Name of witness (block letters)

By executing this amended and restated deed each attorney states that the attorney has received no notice of revocation of the power of attorney

MALLESONS STEPHEN JAQUES

364-day Facility Agreement

Note: This is a template document setting out a majority of the terms of the 364-day Facility Agreement signed by James Hardie International Finance B.V. in November 2008. The actual signed 364-day Facility Agreement differs from previous 364-day facilities entered into with other lenders. [•] indicates text has been deleted in this template document to reflect those differences.

James Hardie — 364-day Facility Agreement

Dated [•] 2008

James Hardie International Finance B.V. ("**Borrower**" and "**Obligors' Agent**")
[•]("**Financier**")

Mallesons Stephen Jaques
Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney
www.mallesons.com

James Hardie — 364-day Facility Agreement
Contents

James Hardie — 364-day Facility Agreement

Details

Interpretation — Definitions are in clause 1.

Parties	**Borrower, Obligors' Agent** and **Financier,** each as described below.	
Borrower and **Obligors' Agent**	Name	**James Hardie International Finance B.V.**
	Corporate seat	Amsterdam
	Registered Number	34108775
	Address	8th Floor, Atrium, Unit 08 Strawinskylaan 3077 1077 ZX Amsterdam The Netherlands
	Fax	+ 31 20 404 2544
	Attention	Treasurer
Financier	Name	[•]
	ABN	[•]
	Address	[•]
	Fax	[•]
	Attention	[•]
Facility	Description	Revolving US$ cash advance facility.
	Facility Limit	US$[•]
	Maturity Date	The day 364 days after the date of this agreement.
	Currency	US$
	Interest Rate	For an Interest Period, means LIBOR plus the Margin.
	Margin	[•]
	Interest Periods	Subject to clause 4.2 ("Selection of Interest Period"), 1, 2, 3 or 6 months, or such other period as agreed between the Borrower and

		Financier.
	Purpose	For the payment of taxation.
Fees (also see clause 8)		[•]
		[•]
Date of agreement	See Signing page.	

James Hardie — 364-day Facility Agreement

General terms

1 Definitions

1.1 Definitions

Amount Owing means the total of all amounts which are then due for payment, or which will or may become due for payment, in connection with any Financing Document (including transactions in connection with them) to the Financier.

Availability Period means the period commencing on the date of this agreement and ending on the Maturity Date or, if earlier, the date on which the Facility Limit is cancelled in full.

Borrower means the person so described in the Details.

Common Terms Deed Poll means the amended and restated deed poll entitled "James Hardie - Common Terms Deed Poll" entered into by the Borrower, James Hardie Building Products, Inc. and the Guarantor on 20 February 2008.

Default Rate means the applicable Interest Rate at the time plus 2% per annum. For the purpose of this definition, the Interest accrues daily from (and including) the due date to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 360 days as if the overdue amount is a cash advance with Interest Periods of 30 days (or another period chosen from time to time by the Financier) with the first Interest Period starting on and including the due date.

Details means the section of this agreement headed "Details".

Drawdown Date means the Business Day on which a drawdown of the Facility is or is to be made but does not include a rollover of a Drawing on the last day of an Interest Period.

Drawdown Notice means a completed notice in writing, substantially in the form of, and containing the information and representations and warranties set out in, schedule 1 ("Drawdown Notice") and signed by an Authorised Officer of the Obligors' Agent.

Drawing means the outstanding principal amount of a drawdown made under the Facility.

Facility means the facility made available under this agreement.

Facility Limit means the amount set out as such in the Details as reduced by the total of all cancellations under this agreement.

Fee Payment Date means each 31 March, 30 June, 30 September and 31 December after the date of this agreement.

Financier means the person so described in the Details.

Financing Document means each of:

(a) this agreement;

(b) the Common Terms Deed Poll;

(c) the Guarantee and Subordination Documents;

(d) each Drawdown Notice;

(e) each Selection Notice;

(f) [•];

(g) [•];

(h) [•];

(i) any other document which the Obligors' Agent and the Financier agree to be a Financing Document; and

(j) any document entered into for the purpose of amending or novating any of the above.

Free Cash Flow has the same meaning as set out in the Common Terms Deed Poll.

Interest Payment Date means, in respect of an Interest Period, the last day of that Interest Period.

Interest Period means each period selected in accordance with clause 4.2 ("Selection of Interest Period").

Interest Rate means, subject to clause 4.6 ("Market disruption"), the interest rate set out in the Details.

LIBOR means, in relation to any Drawing:

(a) the applicable British Bankers' Association Interest Settlement Rate for US$ and the relevant period displayed on the appropriate page of the Reuters screen (but if the agreed page is replaced or service ceases to be available, the Financier may specify another page or service displaying the appropriate rate after consultation with the Obligors' Agent) ("**Screen Rate**"); or

(b) (if no Screen Rate is available for US$ and the Interest Period of that Drawing) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Financier at its request quoted by the principal London offices of at least three leading international banks chosen by the Financier in consultation with the Obligors' Agent to other leading banks in the London interbank market,

as of 11:00am (London time) on the day two Business Days before the first day of an Interest Period for which the interest rate is to be determined for the offering of

deposits in US$ and for a period comparable to the Interest Period for that Drawing.

Margin means on any day, the margin set out in the Details.

Market Disruption Event means:

(a) at or about noon on the day two Business Days before the first day of an Interest Period for which the interest rate is to be determined, by reason of circumstances affecting the London interbank market for US$, the "LIBOR" component of the Interest Rate cannot be determined; or

(b) before close of business in London on the day two Business Days before the first day of an Interest Period for which the interest rate is to be determined, the Financier determines that the cost to it of obtaining matching deposits in the London interbank market would be in excess of LIBOR.

Maturity Date means the maturity date for the Facility as set out in the Details, but if that is not a Business Day, then the preceding Business Day.

Prepayment Notice means a completed notice in writing, substantially in the form of, and containing the information set out in, schedule 4 ("Prepayment Notice") and signed by an Authorised Officer of the Obligors' Agent.

Repayment Notice means a completed notice in writing, substantially in the form of, and containing the information set out in, schedule 3 ("Repayment Notice") and signed by an Authorised Officer of the Obligors' Agent.

Review Date means:

(a) the date 6 months from the date of this agreement; and

(b) thereafter, each date 6 months before the then Maturity Date.

Selection Notice means a notice under clause 4.2(b) ("Selection of Interest Period"), to be substantially in the form of schedule 2 ("Selection Notice").

Undrawn Facility Limit means the Facility Limit less the aggregate of all Drawings outstanding.

1.2 Interaction with the Common Terms Deed Poll

(a) The Borrower acknowledges that:

(i) the Financier is a Creditor; and

(ii) this agreement is a Facility Agreement,

for the purposes of the Common Terms Deed Poll.

(b) On execution of this agreement, the provisions of the Common Terms Deed Poll (subject to paragraph (d) below) are incorporated into this agreement to the intent and effect that any such provision for the benefit of a Creditor or the Borrower (as defined in the Common Terms Deed Poll)

may be enforced by the Financier or the Borrower to the same extent as if the Financier was a party to the Common Terms Deed Poll.

(c) A term which has a defined meaning (including by reference to another document) in the Common Terms Deed Poll has the same meaning when used in this agreement unless it is expressly defined in this agreement, in which case the meaning in this agreement prevails.

(d) Where a conflict arises between a provision of the Common Terms Deed Poll and this agreement, the Common Terms Deed Poll will prevail unless the provision in this agreement includes words substantially to the effect of "Despite the terms of the Common Terms Deed Poll", in which case the relevant provision of this agreement prevails.

2 The Facility and Facility Limit

2.1 Financier to fund

The Financier agrees to provide to the Borrower the financial accommodation requested by the Obligors' Agent under this agreement.

2.2 Maximum accommodation

The financial accommodation to be provided under this agreement must not exceed the Facility Limit.

3 Using the Facility

3.1 Drawing down

The Borrower need not use the Facility. However, if the Borrower wants to use the Facility, it may do so by one or more drawdowns.

3.2 Requesting a drawdown

(a) If the Borrower wants a drawdown, the Obligors' Agent must provide a written Drawdown Notice to the Financier by 11:00am (London time) at least 2 Business Days prior to the requested Drawdown Date (or such later time as the Financier may agree).

(b) The minimum amount of a Drawing is the lesser of:

(i) US$1,000,000; and

(ii) the Undrawn Facility Limit.

(c) Unless the Drawing is for the Undrawn Facility Limit, the Drawing must be in integral multiples of US$[ ]

3.3 Effect of a Drawdown Notice

A Drawdown Notice is effective when the Financier actually receives it in legible form. An effective Drawdown Notice is irrevocable.

3.4 Conditions to first drawdown

The Borrower agrees not to request the first drawdown, and a Financier is not obliged to provide the first drawdown, unless:

(a) all the conditions precedent listed in clause 3 ("Conditions precedent") of the Common Terms Deed Poll have been either satisfied or waived in accordance with that agreement; and

(b) a completed Facility Nomination Letter nominating this agreement as a Facility Agreement has been received by the Financier.

3.5 Conditions to all drawdowns

In addition to the conditions precedent in clause 3 ("Conditions precedent") of the Common Terms Deed Poll, the Financier need not provide any financial accommodation on a Drawdown Date unless it is satisfied that:

(a) the Drawdown Date is a Business Day during the Availability Period for the Facility;

(b) the amount of the Drawing equals or exceeds the minimum drawdown amount set out in clause 3.2(b) ("Requesting a drawdown");

(c) after the Drawing has been made, the sum of all outstanding Drawings will not exceed the Facility Limit;

(d) the Financier has received a Drawdown Notice in respect of the requested drawdown in accordance with clause 3.2 ("Requesting a drawdown"); and

(e) the proposed Drawing is for the purpose set out in the Details.

3.6 Benefit of conditions

Each condition to a drawdown is for the sole benefit of the Financier and may only be waived by the Financier.

3.7 Currency and timing of drawdowns

The Financier agrees to make each drawdown available to the account specified in the relevant Drawdown Notice in immediately available US$ funds by 2:00pm (local time in Amsterdam) on the relevant Drawdown Date.

4 Interest

4.1 Interest charges

The Borrower must pay interest on each Drawing for each of its Interest Periods at the applicable Interest Rate. Interest:

(a) accrues daily from and including the first day of an Interest Period to but excluding the last day of the Interest Period; and

(b) is payable in arrears on each relevant Interest Payment Date; and

(c) is calculated on actual days elapsed and a year of 360 days.

4.2 Selection of Interest Period

An Interest Period for a Drawing is:

(a) for the first Interest Period, the period specified in the Drawdown Notice for that Drawing; and

(b) for each subsequent Interest Period, a period notified in a Selection Notice given by the Obligors' Agent to the Financier on the Business Day before the last day of the current Interest Period. However, in each case, the specified period must be one that is set out in the Details. If the Obligors' Agent does not give correct notice, the subsequent Interest Period is the same length as the Interest Period which immediately precedes it (or it is the period until the Maturity Date, if that is shorter than the preceding Interest Period).

4.3 When Interest Periods begin and end

(a) An Interest Period for a Drawing begins:

(i) for the first Interest Period, on its Drawdown Date; and

(ii) for each subsequent Interest Period, on the day when the preceding Interest Period for the Drawing ends.

(b) An Interest Period which would otherwise end on a day which is not a Business Day ends on the next Business Day (unless that day falls in the following month, in which case the Interest Period ends on the previous Business Day). However, an Interest Period which would otherwise end after the Maturity Date ends on the Maturity Date.

(c) If an Interest Period of one or a number of months commences on a date in a month for which there is no corresponding date in the month in which the Interest Period is to end, it will end on the last Business Day of the latter month.

4.4 Limit on Interest Periods

In selecting Interest Periods under clause 4.2 ("Selection of Interest Period"), the Obligors' Agent must ensure that there are no more than 5 different Interest Periods at any one time.

4.5 Notification of interest

Interest on a Drawing is payable in immediately available funds.

The Financier will notify the Obligors' Agent of the interest rates determined under this agreement as soon as they are ascertained. Failure to do so will not affect the obligations of the Borrower in any way.

4.6 Market disruption

If a Market Disruption Event occurs in relation to a Drawing for any Interest Period, then the Interest Rate on that Drawing for the Interest Period shall be the rate per annum which is the sum of:

(a) the Margin; and

(b) the rate notified by the Financier as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to the Financier of funding its participation in that Drawing from whatever source it may reasonably select.

4.7 Alternative basis of interest or funding

(a) If a Market Disruption Event occurs and the Financier or the Borrower so requires, the Financier and the Obligors' Agent shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.

(b) Any alternative basis agreed pursuant to paragraph (a) above shall, with the prior consent of the Financier and the Obligors' Agent, be binding on each of them and the Borrower.

(c) For the avoidance of doubt, in the event that no substitute basis is agreed at the end of the thirty day period, the rate of interest shall continue to be determined in accordance with the terms of this agreement.

5 Repaying and prepaying

5.1 Repayment

(a) The Borrower agrees to repay the total of the Drawings and all interest and other amounts (including default interest) which have accrued or which are otherwise payable (but unpaid) in respect of this agreement on the Maturity Date.

(b) The Obligors' Agent must provide a written Repayment Notice to the Financier by 11:00am (Sydney time) at least 2 Business Days prior to the Maturity Date (or such later time as the Financier may agree), but failure to do so is without prejudice to the obligations of the Borrower under clause 5.1(a) above.

5.2 Prepayment

The Borrower may prepay all or part of a Drawing as follows:

(a) if only part of a Drawing is prepaid, it must be at least US$1,000,000 and a whole multiple of US$500,000, or such lesser amount as may be agreed by the Financier (at its discretion) from time to time; and

(b) the Borrower must also pay all accrued (but unpaid) interest on that Drawing; and

(c) the Obligors' Agent must provide a written Prepayment Notice to the Financier at least 10 Business Days prior to the date of the requested prepayment (as at close of business Sydney time) (once given, a notice of prepayment is irrevocable and the Borrower is obliged to prepay in accordance with the notice).

If the prepayment is made on an Interest Payment Date for the Drawing to be prepaid, no Break Costs are payable. However, if the Borrower prepays on a day other than the Interest Payment Date for the Drawing to be prepaid and the Financier incurs any Break Costs as a result of such prepayment, then the Borrower will be liable for Break Costs (if any) under clause 12 ("Costs and indemnities") of the Common Terms Deed Poll.

5.3 Prepayment and the Facility Limit

The Facility Limit is not reduced by amounts prepaid under clause 5.2 ("Prepayment").

6 Payments

6.1 Payment by direction

If the Financier directs the Borrower to pay a particular party or in a particular manner, the Borrower is taken to have satisfied its obligation to the Financier by paying in accordance with the direction.

6.2 Amount Owing

Subject to the provisions of any Financing Document, the Borrower agrees to repay the Amount Owing on the Maturity Date under this agreement.

6.3 Application of payments — pre-default

Prior to an Event of Default, the Financier will apply amounts paid by the Borrower in accordance with the terms of the Financing Documents.

6.4 Application of payments — post-default

If an Event of Default subsists, the Financier may apply amounts paid by the Borrower towards satisfaction of the Borrower's obligations under the Financing Documents in the manner it sees fit, unless the Financing Documents expressly provide otherwise. This appropriation overrides any purported appropriation by the Borrower or any other person.

7 Cancellation

The Obligors' Agent may cancel the Undrawn Facility Limit in whole or in part at any time during the Availability Period by notifying the Financier in writing at least 2 Business Days prior to the date the cancellation is to take effect. A partial cancellation must be at least US$1,000,000, unless the Financier agrees otherwise. Once given, the notice is irrevocable. The Facility Limit is reduced by the amount of any cancellation.

The Facility Limit is automatically cancelled at 5:30pm (Sydney time) on the last day of the Availability Period.

8 Fees

9 [•]Financier representation

The Financier represents that it is [company from which redeemable funds will be obtained in an amount of at least EUR 50,000 (or the equivalent in another currency) and accordingly it is] a PMP within the meaning of this agreement as at the date of execution of this agreement.

The Borrower acknowledges that in making this representation the Financier relies on, and has not independently investigated, the definition of PMP set out in the Common Terms Deed Poll.

10 Interest on overdue amounts

This clause applies despite the provisions of the Common Terms Deed Poll.

10.1 Obligation to pay

If the Borrower does not pay any amount under or in respect of this agreement (including an amount of interest payable under this clause 10.1) on the due date for payment, the Borrower must pay interest on that amount at the Default Rate. The interest accrues daily from (and including) the due date to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 360 days.

The Borrower must pay interest under this clause to the Financier on demand from the Financier on the last Business Day of each calendar month.

10.2 Compounding

Interest payable under clause 10.1 (“Obligation to pay”) which is not paid when due for payment may be added to the overdue amount by the Financier on the last Business Day of each calendar month. Interest is payable on the increased overdue amount at the Default Rate in the manner set out in clause 10.1 (“Obligation to pay”).

10.3 Interest following judgment

If a liability becomes merged in a judgment, the Borrower must pay interest on the amount of that liability as an independent obligation. This interest:

(a) accrues daily from (and including) the date the liability becomes due for payment both before and after the judgment up to (but excluding) the date the liability is paid; and

(b) is calculated at the judgment rate or the Default Rate (whichever is higher).

11 Money Laundering

The Borrower agrees that the Financier may delay, block, or refuse to make any payment if the Financier believes on reasonable grounds that making that payment will breach any law in Australia or any other country where such payment is to be made, and the Financier will incur no liability to the Borrower if it does so.

The Borrower agrees to provide all information to the Financier that the Financier reasonably requires to comply with any law in Australia or any other country. The Borrower agrees the Financier may disclose information which it provides to the Financier where required by any law in Australia or any other country.

Unless the Borrower has disclosed that it is acting in a trustee capacity or on behalf of another party, the Borrower warrants that it is acting on its own behalf in applying for and using any of the Financier's products or services.

The Borrower declares and undertakes to the Financier that the payment of monies by the Financier in accordance with any written instructions given by the Borrower will not breach any law in Australia or any other country where such money is to be paid.

EXECUTED as an agreement.

James Hardie — 364-day Facility Agreement

Schedule 1 — Drawdown Notice (clause 3)

To: [ ]

Attention: [ ]

Fax: [ ]

[**Date**]

Drawdown Notice — James Hardie — 364-day Facility Agreement dated [ ] November 2008 between James Hardie International Finance B.V. ("Borrower" and "Obligors' Agent") and [•] ("Financier") ("Facility Agreement")

Under clause 3.2 ("Requesting a drawdown") of the Facility Agreement, the Obligors' Agent gives notice as follows.[1]

The Borrower wants to borrow under the Facility.

- The requested Drawdown Date is [•].[2]
- The amount of the proposed drawdown is US$[•].
- The requested first Interest Period is [•].
- The proposed drawdown is to be paid to:

Account number:	[•]		
Account name:	[•] Bank:	[•] Branch:	[•] Branch identifying number (Fedwire, BSB, etc): [•]

Representations and Warranties

The Borrower represents and warrants that:

[for the first Drawdown only]: the representations and warranties in clause 8 ("Representations and warranties") of the Common Terms Deed Poll are correct and not misleading on the date of this notice and that each will be correct and not misleading on the Drawdown Date.

[for any subsequent Drawdown]: those representations and warranties listed in clause 3.2(a) ("Conditions to subsequent drawdowns") of the Common Terms Deed Poll as required to be true on the date of each drawdown notice, are correct and not misleading on the date of this notice and that each will be correct and not misleading on the Drawdown Date.

No Event of Default or Potential Event of Default subsists at the date of this notice or will result from the provision of the requested utilisation.

Clause 1 (“Definitions”) of the Facility Agreement applies to this notice as if it was fully set out in this notice.

Yours faithfully

_____

[Name of person] being
an Authorised Officer of
James Hardie International Finance B.V.
as Obligors’ Agent (with corporate seat in Amsterdam)

Instructions for completion

1 All items must be completed.

2 Must be a Business Day within the Availability Period.

Schedule 2 — Selection Notice (clause 4.2)

To: [•]

Attention: [•]

Fax: [•]]

[**Date**]

Selection Notice — James Hardie — 364-day Facility Agreement dated [ ] November 2008 between James Hardie International Finance B.V. ("Borrower" and "Obligors' Agent") and [•] ("Financier") ("Facility Agreement")

Terms defined in the Facility Agreement have the same meaning when used in this notice.

This is an irrevocable notice under clause 4.2 ("Selection of Interest Period") of the Facility Agreement.

Under clause 4.2 ("Selection of Interest Period") of the Facility Agreement, the Obligors' Agent gives notice as follows:

The current Interest Period is due to end on [ ].

The Interest Period following the current Interest Period is to be a period of [•] [1].

Yours faithfully,

_____

[Name of person] being
an Authorised Officer of
James Hardie International Finance B.V.
as Obligors' Agent (with corporate seat in Amsterdam)

Instructions for completion

1 To be an Interest Period set out in the Details

Schedule 3 — Repayment Notice (clause 5.1)

[name]
[address]

Tel [insert]
Fax [insert]

To: [•]

Attention: [•]

Fax: [•]

[***Insert date***]

Repayment Notice — James Hardie — 364-day Facility Agreement dated [•] 2008 between James Hardie International Finance B.V. ("Borrower" and "Obligors' Agent") and [•] ("Financier") ("Facility Agreement")

Terms defined in the Facility Agreement have the same meaning when used in this notice and where not otherwise defined in this notice.

Under clause 5.1 ("Repayment") of the Facility Agreement, the Obligors' Agent gives notice as follows:

The Borrower wants to repay under the Facility Agreement in accordance with clause 5.1 ("Repayment") of the Facility Agreement.

- Repayment date: [•]
- The amount of the repayment: US$[•]
- Principal maturing: US$[•]
- This repayment [will/will not] trigger any Break Costs under clause 5.2 ("Prepayment") of the Facility Agreement.

Yours faithfully

[Name of person] being
an Authorised Officer of
James Hardie International Finance B.V.
as Obligors' Agent (with corporate seat in Amsterdam)

Schedule 4 — Prepayment Notice (clause 5.2)

[name]
[address]

Tel [insert]
Fax [insert]

To: [•]

Attention: [•]

Fax: [•]

[***Insert date***]

Prepayment Notice — James Hardie — 364-day Facility Agreement dated [•] 2008 between James Hardie International Finance B.V. ("Borrower" and "Obligors' Agent") and [•] ("Financier") ("Facility Agreement")

Terms defined in the Facility Agreement have the same meaning when used in this notice and where not otherwise defined in this notice.

Under clause 5.2 ("Prepayment") of the Facility Agreement, the Obligors' Agent gives notice as follows:

The Borrower wants to prepay under the Facility Agreement in accordance with clause 5.2 ("Prepayment") of the Facility Agreement.

- Prepayment date: [•]
- The amount of the prepayment (including any accrued but unpaid interest): US$[•]
- This repayment [will/will not] not trigger any Break Costs under clause 5.2 ("Prepayment") of the Facility Agreement.

Yours faithfully

[Name of person] being
an Authorised Officer of
James Hardie International Finance B.V.
as Obligors' Agent (with corporate seat in Amsterdam)

DATED: [•] 2008

Borrower and Obligors' Agent

SIGNED by)
)
and)
)
as attorneys for **JAMES HARDIE INTERNATIONAL FINANCE B.V.** under power of attorney dated)
)
in the presence of:)
)
)
)
)
)
)
)
)

_____

Signature of witness

_____

Name of witness (block letters)

_____

By executing this agreement each attorney states that the attorney has received no notice of revocation of the power of attorney

Financier

SIGNED by)
)
as attorney for [•]under power of attorney dated)
)
in the presence of:)
)
)
)
)
)
)
)
)
)

_____

Signature of witness

_____

Name of witness (block letters)

_____

By executing this agreement the attorney states that the attorney has received no notice of revocation of the power of attorney

MALLESONS STEPHEN JAQUES

Deed of Confirmation

Dated June 2009

James Hardie International Finance B.V. ("**Borrower**" and "**Obligors' Agent**")
James Hardie Building Products, Inc. ("**JHBP**")
James Hardie Industries N.V. ("**Guarantor**")
[•] ("**Financier**")

Mallesons Stephen Jaques
Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney
www.mallesons.com
Ref: 02-5501-6101

Deed of Confirmation
Contents

Deed of Confirmation

Details

Parties	**JHIF**, **JHBP, Guarantor** and **Financier** each as described below	
JHIF	Name	**James Hardie International Finance B.V.**
	Corporate seat	Amsterdam
	Registered Number	34108775
	Address	8th Floor, Atrium, Unit 08 Strawinskylaan 3077 1077 ZX Amsterdam The Netherlands
	Fax	+ 31 20 404 2544
	Attention	Treasurer
JHBP	Name	**James Hardie Building Products, Inc.**
	Incorporated in	Nevada
	Address	Suite 100 26300 La Alameda Mission Viejo CA 92691 United States of America
	Fax	+ 1 949 348 4534
	Attention	Company Secretary
Guarantor	Name	**James Hardie Industries N.V.**
	Corporate seat	Amsterdam
	Registered Number	34106455
	ABN	49 097 829 895
	Address	8th Floor, Atrium, Unit 08 Strawinskylaan 3077 1077 ZX Amsterdam The Netherlands

	Fax	+ 31 20 404 2544
	Attention	Managing Director and Company Secretary
Financier	Name	**[•]**
	Incorporated in	[•]
	Address	[•]
	Fax	[•]
	Attention	[•]

Recitals

A JHIF, JHBP, the Guarantor and the Financier are parties to one or more Transaction Documents.

B The Guarantor intends to transform its status to a "*Societas Europaea*" and subsequently to transfer its corporate domicile from The Netherlands to the Republic of Ireland (together, the "**Redomicile Transaction**").

C Pursuant to European Union Council Regulation No 2157/2001 ('**SE Regulation**"), the Third Council Directive (78/855/EEC) on mergers of public limited liability companies and relevant provisions of the Dutch Civil Code and Irish statute, the Guarantor will remain the same legal entity throughout and following the Redomicile Transaction.

Upon the transfer of the Guarantor's corporate domicile to the Republic of Ireland (then having the form of a*Societas Europaea* and known as JHISE), it will be treated as if it were an Irish public limited liability company governed by Irish law (as supplemented by the provisions of the SE Regulation).

D It is the intention of JHIF, JHBP and the Guarantor that the Transaction Documents continue in full force and effect during and after the Redomicile Transaction and that the legal rights and obligations of JHIF, JHBP, the Guarantor, the Financier and the other parties to the Transaction Documents are not prejudiced by the Redomicile Transaction.

E In connection with the Redomicile Transaction JHIF intends to:

(i) transfer all its intellectual property assets to James Hardie Technology Limited ('**JHT**"), a Bermudan incorporated wholly owned subsidiary of JHIFL that would be resident in the Republic of Ireland for tax purposes ("**IP Transfer**"); and

(ii) transfer its entire internal and external loan portfolio and other assets to James Hardie International Finance Limited ("**JHIFL**"), an Irish incorporated wholly owned subsidiary of the Guarantor; and

(iii) novate to JHIFL all its rights and obligations to the Financier under the Transaction Documents,

(together, the "**Treasury / IP Transfer**").

Upon completion of the Treasury / IP Transfer, JHIF will no longer have any finance and treasury responsibilities for the Group and JHIFL will thereafter undertake all the finance and treasury functions currently performed by JHIF.

F. Each party enters into this deed:

(i) to confirm, other than contemplated by this deed, that it continues to be bound by the Transaction Documents to which it is party during the course of the Redomicile Transaction, after completion of each part of the Redomicile Transaction (even if subsequent parts are not completed) and after full implementation of, the Redomicile Transaction; and

(ii) to amend some of the Transaction Documents to reflect certain aspects of the Guarantor's status after full implementation of the Redomicile Transaction; and

(iii) to agree the form of amendments proposed to be made to some of the other Transaction Documents; and

(iv) to agree the form of the negative pledge to be given by JHT which will take effect upon implementation of the IP Transfer; and

(v) to agree to JHIFL becoming a Borrower; and

(vi) to agree the form of a novation agreement in respect of certain Transaction Documents, which will take effect upon implementation of the Treasury / IP Transfer; and

(vii) to agree to JHIF ceasing to be a Borrower upon implementation of both the Treasury / IP Transfer.

Date of Deed of Confirmation See Signing page

Deed of Confirmation

General terms

1 Interpretation

1.1 CTDP

Clause 1 ("Interpretation") of the James Hardie — Common Terms Deed Poll as amended and restated on 20 February 2008 (**CTDP**") applies to this deed as was fully set out in this deed.

1.2 Additional definitions

These meanings apply unless the contrary intention appears:

Briefing Paper means the document entitled "James Hardie: Final Briefing Paper for Financiers and Guarantee Trustee regarding domicile proposal" dated on or about 16 June 2009 prepared by the Guarantor and its advisers and separately provided to the Financier and the Guarantee Trustee.

IP Transfer Date means the date specified by JHIF as the Obligors' Agent, by a notice given to the other parties in the manner specified in clause 17 ("Notices") of the CTDP, as the date on which the transfers of JHIF's beneficial interest in all intellectual property assets to JHT have been completed.

Irish Registration Date means the date on which JHISE is registered by the Registrar of Companies of Ireland as having its registered office in Ireland.

JHISE means the Guarantor once it has transformed from its present corporate form as a Dutch NV (*Naamloze Vernootschap*) into an SE (*Societas Europaea*).

JHT Undertaking means the document substantially in the form of Annexure A to this deed.

Novation Date means the date on which the Effective Date (as defined in the Novation Deed) occurs.

Novation Deed means the document substantially in the form of Annexure B to this deed.

Performing Subsidiary Intercreditor Deed means the document entitled "Performing Subsidiary Intercreditor Deed" dated 19 December 2006 between the NSW Government, the Trustee, James Hardie 117 Pty Limited and AET Structured Finance Services Pty Limited.

Performing Subsidiary Undertaking and Guarantee Trust Deed means the document entitled "James Hardie — Performing Subsidiary Undertaking and Guarantee Trust Deed" dated 19 December 2006 between James Hardie 117 Pty Limited (formerly known as LGTDD Pty Limited) and AET Structured Finance Services Pty Limited.

1.3 Transaction Document

The parties acknowledge that this deed is a Transaction Document.

2 Confirmations and acknowledgements for the Redomicile Transaction

2.1 Confirmation

Each of JHIF, JHBP and the Guarantor confirms for the benefit of each other party that, other than contemplated by this deed:

(a) it will continue to be bound by the Transaction Documents to which it is a party (including, without limitation, the CTDP, the Guarantee Trust Deed and the Intercreditor Deed) during the course of the Redomicile Transaction, after completion of each part of the Redomicile Transaction (even if subsequent parts are not completed) and after full implementation of the Redomicile Transaction; and

(b) other than as provided for in clause 3 ("Amendments"), the Transaction Documents (including, without limitation, the CTDP, the Guarantee Trust Deed and the Intercreditor Deed) remain in full force and effect, notwithstanding the implementation of all or part of the Redomicile Transaction.

2.2 Acknowledgment by the Financier

The Financier acknowledges and agrees that:

(a) the Redomicile Transaction (including each action outlined in the Briefing Paper) does not:

(i) involve an "Event of Default" or "Potential Event of Default";

(ii) constitute any other form of default under the Transaction Documents; or

(iii) constitute any breach of the Transaction Documents by JHIF, JHBP, the Guarantor or any other party to them;

(b) it will continue to be bound by the Transaction Documents to which it is a party during the course of the Redomicile Transaction, after completion of each part of the Redomicile Transaction (even if subsequent parts are not completed) and after full implementation of the Redomicile Transaction; and

(c) other than as provided for in clause 3 ("Amendments"), the Transaction Documents remain in full force and effect, notwithstanding the implementation of all or part of the Redomicile Transaction.

3 Amendments for the Redomicile Transaction

3.1 Common Terms Deed Poll

The parties:

(a) consent to the amendment of the CTDP as set out in Schedule 1, with effect from the date on which JHIFL becomes an additional Borrower under the CTDP by executing the amended and restated CTDP which effects the amendments described in this clause; and

(b) confirm that references to any Transaction Document (including, without limitation, the AFFA, the Final Funding Agreement, the Fund Guarantee, the Guarantee Trust Deed and the Intercreditor Deed) in clause 1.1 ("Definitions") of the CTDP after that Transaction Document has been amended in accordance with this deed is a reference to that Transaction Document as so amended.

3.2 Guarantee Trust Deed

The parties consent to the Guarantor joining with AET Structured Finance Services Pty Limited to amend the Guarantee Trust Deed as set out in Schedule 2, with effect from Novation Date.

3.3 Performing Subsidiary Undertaking and Guarantee Trust Deed

The parties consent to James Hardie 117 Pty Limited joining with AET Structured Finance Services Pty Limited to amend the Performing Subsidiary Undertaking and Guarantee Trust Deed as set out in Schedule 3, with effect from the Novation Date.

3.4 Intercreditor Deed

The parties consent to the Guarantor joining with The State of New South Wales, Asbestos Injuries Compensation Fund Limited in its capacity as trustee of the Asbestos Injuries Compensation Fund and AET Structured Finance Services Pty Limited to amend the Intercreditor Deed as set out in Schedule 4, with effect from the Irish Registration Date.

3.5 Performing Subsidiary Intercreditor Deed

The parties consent to James Hardie 117 Pty Limited joining with AET Structured Finance Services Pty Limited to amend the Performing Subsidiary Intercreditor Deed as set out in Schedule 5, with effect from the Irish Registration Date.

3.6 Final Funding Agreement

The parties consent to the Guarantor joining with The State of New South Wales, Asbestos Injuries Compensation Fund Limited in its capacity as trustee of the Asbestos Injuries Compensation Fund and James Hardie 117 Pty Limited to amend the Final Funding Agreement as set out in Schedule 6, with effect from the Irish Registration Date.

3.7 Fund Guarantee

The parties consent to the Guarantor executing an Amending Agreement to the Fund Guarantee in the form of Annexure C to this deed, with effect from the Irish Registration Date.

4 Treasury / IP Transfer

4.1 Consent

Subject to the conditions set out in clauses 4.3 ("Conditions precedent — IP Transfer Date") and 4.4 ("Conditions precedent — Novation Date"), the Financier consents to:

(a) JHIFL becoming a Borrower for the purposes of the CTDP by executing the amended and restated CTDP which effects the amendments described in clause 3.1;

(b) the Treasury / IP Transfer;

(c) all rights and obligations of JHIF under the Transaction Documents being novated to JHIFL pursuant to the Novation Deed; and

(d) JHIF ceasing to be a Borrower in accordance with clause 14.2 ("Release of Borrowers") of the CTDP with effect from the Novation Date on the basis that:

(i) this deed constitutes the relevant Release Request;

(ii) the Guarantor and JHIF are deemed to represent and warrant to the Financier as at the Novation Date that no Event of Default or Potential Event of Default is outstanding or would result from the release of JHIF from its obligations under the CTDP; and

(iii) this deed constitutes the Deed of Release releasing JHIF from its obligations under the CTDP with effect from the Novation Date.

4.2 Facility Nomination Letter

The parties agree that, upon satisfaction of the conditions set out in clause 4.3 ("Conditions precedent — IP Transfer Date") and 4.4 ("Conditions precedent — Novation Date"), the Novation Deed constitutes:

(a) confirmation that JHIF no longer has any rights or obligations to the Financier under each Transaction Document under which the rights and obligations of JHIF are novated to JHIFL; and

(b) a Facility Nomination Letter nominating:

(i) each Transaction Document under which the rights and obligations of JHIF are novated to JHIFL as a "Facility Agreement" for the purposes of the CTDP;

(ii) each document named or referred to as a "Financing Document" in such a Facility Agreement as a "Transaction Document" for the purposes of the CTDP; and

(iii) the Financier as a "Creditor" pursuant to each such Facility Agreement,

in the same terms as the existing Facility Nomination Letters in respect of each Transaction Document under which the rights and obligations of JHIF are novated to JHIFL (except that references to JHIF are to be read and construed as references to JHIFL).

4.3 Conditions precedent — IP Transfer Date

On or prior to the IP Transfer Date, the following must have occurred:

(a) the JHT Undertaking has been executed and a certified copy of it delivered to the Financier;

(b) an opinion from Conyers, Dill and Pearman (or another appropriately qualified and experienced Bermudan legal adviser acceptable to the Financier, acting reasonably) addressed to the Financier in respect of JHT's obligations under the JHT Undertaking being delivered to the Financier;

(c) an opinion from Mallesons Stephen Jaques addressed to the Financier in respect of the enforceability of JHT's obligations under the JHT Undertaking being delivered to the Financier; and

(d) approval has been obtained from the shareholders of JHINV to Stage 1 of the Proposal (each as defined in the Briefing Paper).

4.4 Conditions precedent — Novation Date

On or prior to the Novation Date, the following must be delivered to the Financier:

(a) (**verification certificate**) a certificate in relation to each Obligor given by a director of the relevant Obligor substantially in the form of schedule 1 ("Verification Certificate") of the CTDP with the attachments referred to therein;

(b) (**executed documents**):

(i) duly executed counterpart of the Novation Deed;

(ii) a certified copy of the executed amending deeds for the amendment of the CTDP, Guarantee Trust Deed, the Performing Subsidiary Undertaking and Guarantee Trust Deed, the Intercreditor Deed and the Performing Subsidiary Intercreditor Deed in accordance with this deed,

(iii) a certified copy of a Financier Cessation Letter and a Financier Nomination Letter under the Intercreditor Deed,

executed by all relevant Obligors;

(c) (**legal opinions**) legal opinions in respect of the relevant Obligors obligations under the documents listed in paragraph (b) from (as applicable):

(i) Loyens & Loeff N.V., Netherlands legal advisers to JHIF and the Guarantor;

(ii) Arthur Cox, Irish legal advisers to JHIFL and the Guarantor;

(iii) McDonald Carano & Wilson, United States of America legal advisers to JHBP;

(iv) Mallesons Stephen Jaques, Australian legal advisers to the Obligors; and

(d) (**know your customer**) if the Financier is required to comply with any know your customer checks and the information necessary is not already available to it and to the extent not previously provided to the Financier, such documentation and other evidence as is reasonably requested to enable the Financier to so comply.

4.5 Timing of debt novation / IP Transfer

The Guarantor will procure that the Novation Date will occur no later than the date which is 30 days after the IP Transfer Date or such later date agreed between the Guarantor and the Financier. Failure to comply with this clause will constitute an Event of Default under the Transaction Documents.

4.6 Guarantee Trust Deed

The Guarantor confirms that:

(a) it will continue to be bound by the Guarantee Trust Deed after completion of each part of the Treasury / IP Transfer (even if subsequent parts are not completed) and notwithstanding full implementation of the Treasury / IP Transfer; and

(b) the Guarantee Trust Deed will apply to the borrowings of JHIFL under the relevant Facility Agreements.

4.7 Transaction Documents

As from the Novation Date, various Transaction Documents are amended as set out in Schedule 8.

4.8 Form of opinions

The form of the opinions referred to in clauses 4.3(b) and 4.4(c) have been agreed by the parties and initialled by Mallesons Stephen Jaques and Freehills for the purposes of identification on the date of this deed.

4.9 Form of Transaction Documents

Once the Irish Registration Date has occurred, the Guarantor must provide the Financier with electronic conformed copies of the following Transaction Documents:

(a) CTDP;

(b) the Guarantee Trust Deed;

(c) the Performing Subsidiary Undertaking and Guarantee Trust Deed;

(d) the Intercreditor Deed;

(e) the Performing Subsidiary Intercreditor Deed;

(f) each Facility Agreement to which the Financier is a party; and

(g) each ISDA Master Agreement to which the Financier is a party,

and electronic conformed copies of the Final Funding Agreement and the Replacement Fund Guarantee, in each case showing all amendments made up to, and including the Irish Registration Date.

5 Costs

Clause 12 ("Costs and indemnities") of the CTDP applies to this deed as if fully set out in this deed.

6 Counterparts

This deed may consist of a number of copies each signed by one or more parties to the deed. If so, the signed copies are treated as making up the one document.

7 Governing law

Clause 18.19 ("Governing law") of the CTDP applies to this deed as if fully set out in this deed poll

EXECUTED as a deed.

Schedule 1 — Amendments to CTDP

The CTDP is amended by adding JHIFL as a party in accordance with clause 4.1(a) and as follows:

1 The definition of "Borrower" in clauses 1.1 ("Definitions") is amended by inserting the words ", JHIFL" after the word "JHIF" in the first line.

2 The definition of "Business Day" in clause 1.1 ("Definitions") is amended by deleting paragraph (d) and replacing it with the following paragraph:

"(d) for all other purposes, banks are open for general banking business in Sydney, Dublin and (until the Irish Registration Date), Amsterdam and any other place specified in a relevant Facility Agreement.".

3 The definition of "Excluded Tax" in clause 1.1 ("Definitions") is amended by:

– deleting paragraph (c) and replacing it with the following paragraph:

"(c) a Tax which would not be required to be deducted by an Obligor if, before the Obligor makes a relevant payment, the relevant Creditor provided the Obligor with written confirmation as to any of its name, address, registration number, country of residence for tax purposes (including whether the relevant Creditor carries on a trade or business in the Obligor's country of residence and/or incorporation through a branch or agency in connection with which the relevant Creditor receives the relevant payment) or similar details or any relevant tax exemption or similar details;"

– inserting a new paragraph (d) and re-numbering the subsequent paragraphs accordingly:

"(d) in relation to any payment by an Irish Obligor, any Tax imposed by Ireland by reason of the Creditor to which the payment is made not being an Irish Qualifying Creditor;"

4 The definition of "Final Funding Agreement" in clause 1.1 ("Definitions") is deleted and replaced with the following definition of "AFFA" (in alphabetical order):

"**AFFA** means the document entitled "Amended & Restated Final Funding Agreement in respect of the provision of long term funding for compensation arrangements for certain victims of Asbestos-related diseases in Australia" dated 21 November 2006 between the Guarantor, James Hardie 117 Pty Limited (formerly known as LGTDD Pty Limited), the State of New South Wales and the Asbestos Injuries Compensation Fund Limited in its capacity as trustee of the Asbestos Injuries Compensation Fund.".

5 All references to "Final Funding Agreement" in the CTDP are replaced with "AFFA".

6 The definition of "Government Agency" in clause 1.1 ("Definitions") is deleted and replaced with the following:

"**Government Agency** means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity having jurisdiction over, or in relation to the affairs of, a Group Member and, for the avoidance of doubt, includes, without limitation, the Australian Taxation Office, the US Internal Revenue Service, the Dutch tax authorities and the Irish Revenue Commissioners, in each case to the extent applicable.".

7 Inserting the following definitions of "Irish Obligor" and "Irish Qualifying Creditor" (in alphabetical order) in clause 1.1 ("Definitions"):

"**Irish Obligor**" means an Obligor resident or incorporated in Ireland."

"**Irish Qualifying Creditor** means in respect of an Irish Obligor, a Creditor which at the time the payment is made, is beneficially entitled to the interest payable to that Creditor in respect of an advance under a Facility and is:

(a) an entity which is, pursuant to Section 9 of the Central Bank Act, 1971 of Ireland, licensed to carry on banking business in Ireland and whose Facility office is located in Ireland and which is recognised by the Revenue Commissioners of Ireland as carrying on a bona fide banking business in Ireland for the purposes of Section 246(3)(a) of the Taxes Consolidation Act 1997 of Ireland ("**TCA**") in circumstances where the payments are made from Ireland and which is regarded by the Revenue Commissioners of Ireland as having made the advance for the purposes of Section 246(3)(a) TCA;

(b) an authorised credit institution under the terms of the European Union Consolidation Directive (Directive 2000/12/EC) that has duly established a branch in Ireland or has made all necessary notifications to its home state competent authorities required thereunder in relation to its intention to carry on banking business in Ireland and which is recognised by the Revenue Commissioners of Ireland as carrying on a bona fide banking business in Ireland for the purposes of Section 246(3)(a) TCA and has its Facility office located in Ireland in circumstances where the payments are made from Ireland and which is regarded by the Revenue Commissioners of Ireland as having made the advance for the purposes of Section 246(3)(a) TCA;

(c) a company (within the meaning of Section 246(1) TCA) which is resident in a country with which Ireland has a double taxation treaty or resident in a member state of the European Communities (other than Ireland) where residence is determined under the tax laws of the relevant country or Member State (together a "Relevant Territory"), provided that such company does not provide its commitment through or in connection with a branch or agency in Ireland, and where the company has

provided written confirmation of the foregoing to the Irish Obligor before the Irish Obligor makes a relevant payment;

(d) a US company, where such company has provided written confirmation to the Irish Obligor that it is incorporated in the US and subject to tax in the US on its worldwide income provided that such company does not provide its commitment through or in connection with a branch or agency in Ireland; or

(e) a Creditor which is entitled under a double taxation agreement between the jurisdiction in which such Creditor is resident for Tax purposes and Ireland, subject to the completion of any necessary procedural formalities, to receive all payments from the Irish Obligor without a tax deduction, where such Creditor has applied for and the relevant Irish Obligor has obtained authorisation from the Revenue Commissioners of Ireland to make payments without deduction of Irish tax, and where such authorisation remains in force and effect."

8 Inserting the following definition of "Irish Registration Date" (in alphabetical order) in clause 1.1 ("Definitions"):

"**Irish Registration Date** means the date on which the Guarantor is registered by the Registrar of Companies of Ireland as having its registered office in Ireland.".

9 Inserting the following definition of "JHIFL Financial Report" (in alphabetical order) in clause 1.1 ("Definitions"):

"**JHIFL Financial Report** means the non-public financial or equivalent reports prepared in respect of JHIFL for the purpose of preparing consolidated financial statements of the Group, the form and content of which is at the discretion of the Obligors.".

10 Inserting the definition of "JHT Undertaking" (in alphabetical order) in clause 1.1 ("Definitions"):

"**JHT Undertaking** means the deed poll dated [#] 2009 given by James Hardie Technology Limited in favour of the Creditors.".

11 The definition of "PMP" in clause 1.1 ("Definitions") is amended by inserting the following paragraph at the end of the definition:

"This definition of "PMP" will only apply for so long as JHIF is an Obligor.".

12 The definition of "Transaction Document" in clause 1.1 ("Definitions") is amended by inserting a new paragraph (g) and re-numbering the subsequent paragraphs accordingly:

"(g) the JHT Undertaking;".

13 Clause 3.1(a) ("Conditions to first drawdown") is amended by replacing sub-paragraph (ii) with the following:

"(ii) (**legal opinion**) closing legal opinions in respect of this amended and restated deed, the Facility Agreement and the Guarantee and Subordination Documents from:

(A) for so long as JHIF is an Obligor, Loyens & Loeff N.V., Netherlands legal advisers to JHIF;

(B) prior to the Irish Registration Date, Loyens & Loeff N.V., Netherlands legal advisers to the Guarantor;

(C) after the Irish Registration Date, Arthur Cox, Irish legal advisers to the Guarantor;

(D) Arthur Cox, Irish legal advisers to JHIFL;

(E) McDonald Carano & Wilson, United States of America legal advisers to JHBP;

(F) Mallesons Stephen Jaques, Australian legal advisers to the Obligors; and

(G) if a new Borrower is party to the Facility Agreement, legal advisers to the new Borrower of recognised standing and acceptable to the Creditor;".

14 Clause 8.1(f) ("JHIF financial statements") is deleted and replaced with the following:

"(f) (**Borrower financial statements**)

(i) for so long as JHIF is an Obligor:

(A) the most recent financial statements of JHIF provided in accordance with clause 9.6(c)(i)(C) (including in each case the related schedules and notes) fairly present in all material respects the consolidated financial position of JHIF as at the end of the financial period to which they relate and have been prepared in accordance with generally accepted accounting principles as in effect from time to time in the Netherlands consistently applied throughout the periods involved, except as set forth in the notes thereto (subject, in the case of an interim financial statements, to normal year-end adjustments); and

(B) since the date of delivery of those statements, there has been no change in the financial condition, operations, business or prospects of JHIF, except changes that individually or in the aggregate do not or are not likely to have a Material Adverse Effect;

(ii) for so long as JHIFL is an Obligor:

(A) the most recent financial statements of JHIFL provided in accordance with clause 9.6(c)(ii)(C) (including in each case the related schedules and notes) fairly present in all material respects the consolidated financial position of JHIFL as at the end of the financial period to which they relate and have been prepared in accordance with generally accepted accounting principles as in effect from time to time in the Republic of Ireland consistently applied throughout the periods involved, except as set forth in the notes thereto (subject, in the case of an interim financial statements, to normal year-end adjustments); and

(B) since the date of delivery of those statements, there has been no change in the financial condition, operations, business or prospects of JHIFL, except changes that individually or in the aggregate do not or are not likely to have a Material Adverse Effect;".

15 Clause 9.2 ("General undertakings") is amended by inserting a new paragraph (g) as follows:

"(g) (**JHT ownership**) in the case of JHIFL only, it will not (without the prior written consent of each relevant Creditor (or under a syndicated facility, an agent or trustee acting on the instructions of the Majority Creditor), such consent not to be unreasonably withheld or delayed) cease to own 100% of the issued capital of James Hardie Technology Limited.

16 Clause 9.6(c) ("JHIF and JHBP statements and reports") is deleted and replaced with the following:

"(c) (**Borrower statements and reports**)

(i) for so long as JHIF is an Obligor:

(A) at the same time at which each financial statement or report is delivered pursuant to clause 9.6(a) ("Consolidated Quarterly Statement") and for as long as the JHIF Financial Reports are prepared as a matter of general internal accounting practice of the Obligors, a copy of the JHIF Financial Reports for the year to date as at the end of the quarterly fiscal period to which the Consolidated Quarterly Statement relates;

(B) at the same time at which each financial statement or report is delivered pursuant to clause 9.6(b) ("Consolidated Annual Statement") and for as long as the JHIF

Financial Reports are prepared as a matter of general internal accounting practice of the Obligors, a copy of the JHIF Financial Reports for the fiscal year to which the Consolidated Annual Statement relates;

(C) within 180 days after the end of the fiscal year of JHIF a copy of:

(1) the balance sheet of JHIF, as at the end of such year; and

(2) a statement of income, changes in shareholders' equity and cash flows of JHIF, for such year,

setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, prepared in accordance with generally accepted accounting principles as in effect from time to time in the Netherlands, and accompanied by an opinion thereon of independent certified public accountants of recognised national standing in the Netherlands, which opinion shall state that such financial statements present fairly, in all material respects, the financial position of JHIF and its results of operations and cash flows and have been prepared in conformity with generally accepted accounting principles as in effect from time to time in the Netherlands, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards in the Netherlands, and that such audit provides a reasonable basis for such opinion in the circumstances;

(ii) for so long as JHIFL is an Obligor:

(A) at the same time at which each financial statement or report is delivered pursuant to clause 9.6(a) ("Consolidated Quarterly Statement") and for as long as the JHIFL Financial Reports are prepared as a matter of general internal accounting practice of the Obligors, a copy of the JHIFL Financial Reports for the year to date as at the end of the quarterly fiscal period to which the Consolidated Quarterly Statement relates;

(B) at the same time at which each financial statement or report is delivered pursuant to clause 9.6(b) ("Consolidated Annual Statement") and for as long as the JHIFL Financial Reports are prepared as a matter of

general internal accounting practice of the Obligors, a copy of the JHIFL Financial Reports for the fiscal year to which the Consolidated Annual Statement relates;

(C) within 180 days after the end of the fiscal year of JHIFL a copy of:

(1) the balance sheet of JHIFL, as at the end of such year; and

(2) a statement of income, changes in shareholders' equity and cash flows of JHIFL, for such year,

setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, prepared in accordance with generally accepted accounting principles as in effect from time to time in the Republic of Ireland, and accompanied by an opinion thereon of independent certified public accountants of recognised national standing in the Republic of Ireland, which opinion shall state that such financial statements present fairly, in all material respects, the financial position of JHIFL and its results of operations and cash flows and have been prepared in conformity with generally accepted accounting principles as in effect from time to time in the Republic of Ireland, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards in the Republic of Ireland, and that such audit provides a reasonable basis for such opinion in the circumstances;

(iii) for so long as JHBP is an Obligor:

(A) at the same time at which each Consolidated Quarterly Statement is delivered pursuant to clause 9.6(a) and for as long as the JHBP Financial Reports are prepared as a matter of general internal accounting practice of the Obligors, a copy of the JHBP Financial Reports for the year to date as at the end of the quarterly fiscal period to which the Consolidated Quarterly Statement relates; and

(B) at the same time at which each Consolidated Annual Statement is delivered pursuant to clause 9.6(b) and for as long as the JHBP Financial Reports are prepared as a matter of general internal accounting practice of the Obligors, a copy of the JHBP Financial Reports

for the fiscal year to which the Consolidated Annual Statement relates;

17 Clause 9.7(b) ("Officer's Certificate") is amended by inserting the words:

"and the amount of after-tax income of James Hardie Technology Limited that is required to be distributed pursuant to the JHT Undertaking"

after the words "clause 9.4" in the last line of clause 9.7(b).

18 Clause 10.1(h)(ii) ("Insolvency") is amended by inserting the words "and, in respect of a person established under Irish law, a filing of a petition with any court in the Republic of Ireland in relation to its liquidation, the bringing forward of a scheme of arrangement or the appointment of an examiner" in the final line after the word "*betaling)*".

19 Clause 10.1(h)(i)(i) ("receiver") is amended by inserting the words "and, in respect of a person established under Irish law, appointment by a court of an examiner" in the final line after the word "payments".

20 Clause 15.6 ("Professional Market Party (PMP))" is amended by inserting the words "For so long as JHIF is an Obligor," at the beginning of the clause.

21 Clause 18.15 ("Confidentiality") is amended by deleting paragraph (e) and replacing it with the following:

"(e) as required by any law or stock exchange or any Governmental Agency (including for Australian, US, Irish and Dutch tax authorities, in each case to the extent applicable)."

22 Schedule 1 ("Verification Certificate") is amended by:

– deleting the subject line and replacing it with the following subject line:

"**US$[•] Facility Agreement dated [•] 20## between [Name of Borrower] and [Name of financier] ("Facility Agreement")**"

– inserting the words "James Hardie International Finance Limited (with a registered office in Dublin)" in the second line after the words "Amsterdam) /"

– deleting the words "Managing Board" in the first line and second line of paragraph 1(b) and replacing them with "the board of directors of the Company"

23 Schedule 2 ("Facility Nomination Letter") is amended by inserting the words "*If JHIF is an Obligor, add the following sentence:" before the words "We confirm" in the final paragraph.

Deed of Confirmation

Schedule 2 — Amendments to Guarantee Trust Deed

The Guarantee Trust Deed is amended as follows:

1 The definition of "Business Day" in clause 1.1 ("Definitions') is amended by deleting paragraph (c) and replacing it with the following paragraph:

> "(c) for all other purposes, banks are open for general banking business in Sydney, Amsterdam (up to the Irish Registration Date) and Dublin (as from the Irish Registration Date) and any other place or places specified in the relevant Finance Document.".

2 The definition of "Excluded Tax" in clause 1.1 ("Definitions") is amended by deleting paragraph (b) and replacing it with the following paragraph:

> "(b) a Tax which would not be required to be deducted by the Guarantor if, before the Guarantor makes a relevant payment, the relevant Beneficiary provided the Guarantor with written confirmation as to any of its name, address, registration number, (in the case of a Beneficiary that is a company) country of residence for tax purposes or similar details or any relevant tax exemption or similar details."

3 The definition of "Final Funding Agreement" in clause 1.1 ("Definitions") is deleted and replaced with the following definition of "AFFA" (in alphabetical order):

> "**AFFA** means the document entitled "Amended & Restated Final Funding Agreement in respect of the provision of long term funding for compensation arrangements for certain victims of Asbestos-related diseases in Australia" dated 21 November 2006 between the Guarantor, James Hardie 117 Pty Limited (formerly known as LGTDD Pty Limited), the State of New South Wales and the Asbestos Injuries Compensation Fund Limited in its capacity as trustee of the Asbestos Injuries Compensation Fund (as amended from time to time).".

4 All references to "Final Funding Agreement" in the Guarantee Trust Deed are deleted and replaced with "AFFA".

5 The definition of "Fund Guarantee" is deleted and replaced with the following:

> "**Fund Guarantee** means the instrument entitled "Parent Guarantee" dated 21 November 2006 between the Fund Trustee, the NSW Government and the Guarantor as amended by an amending deed executed by the Guarantor on [#] 2009.".

6 The definition of "Government Agency" in clause 1.1 ("Definitions") is deleted and replaced with the following:

"**Government Agency** means any government or any governmental, semi governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity having jurisdiction over, or in relation to the affairs of, a James Hardie Group Member and, for the avoidance of doubt, includes, without limitation, the Australian Taxation Office, the US Internal Revenue Service, the Dutch tax authorities and the Irish Revenue Commissioners, in each case to the extent applicable.".

7 The definition of "Insolvency Official" in clause 1.1 ("Definitions") is deleted and replaced with the following:

"**Insolvency Official** means a custodian, receiver, receiver and manager, trustee, liquidator, provisional liquidator, administrator, examiner or any other officer appointed in connection with the Insolvency of the Guarantor and includes, without limitation:

(a) if the Guarantor is established in the Netherlands:

(i) a receiver in bankruptcy (*curator*), an administrator (*bewindvoerder*);

(ii) a liquidator (*vereffenaar*) appointed in connection with a Winding Up under Dutch law; and

(iii) where the context so requires, a supervisory judge or a court of competent jurisdiction in respect of the Insolvency of the Guarantor; and

(b) if the Guarantor is established in the Republic of Ireland:

(i) a receiver or an examiner;

(ii) a liquidator appointed in connection with a Winding Up under Irish law; and

(iii) where the context so requires, a supervisory judge or a court of competent jurisdiction in respect of the Insolvency of the Guarantor.".

8 The definition of "Insolvent" in clause 1.1 ("Definitions") is amended by inserting a new paragraph (c) and re-numbering the subsequent paragraphs accordingly:

"(c) was established under Irish law and files a petition with any court in Ireland in relation to its liquidation, the bringing forward of a scheme of arrangement or the appointment of an examiner;"

9 Inserting the following definition of "Irish Registration Date" (in alphabetical order) in clause 1.1 ("Definitions"):

> "**Irish Registration Date** means the date on which the Guarantor is registered by the Registrar of Companies of Ireland as having its registered office in Ireland.".

10 The definition of "Intercreditor Deed" in clause 1.1 ("Definitions") is amended by inserting the words "(as amended from time to time)" after the word "deed" in the third line.

11 The definition of "Winding Up" in clause 1.1 ("Definitions") is amended by inserting the words ", Irish law" after the words "Dutch law (*ontbinding*)" in the paragraph (d).

12 Clause 4(b)(ii) ("Termination") is amended by inserting the words "(if the Guarantor is established in the Netherlands) or the Republic of Ireland (if the Guarantor is established in the Republic of Ireland)" after the word "Netherlands" in the second line.

13 Clause 27.4 ("Set-off") is amended by inserting the words "(if the Guarantor is established in the Netherlands) or Irish law (if the Guarantor is established in the Republic of Ireland)" after the words "Dutch law" in the final line.

14 Schedule 2 ("Form of Replacement Guarantee") is amended by:

– deleting the details of the Guarantor and replacing them with the following:

Guarantor	Name	**James Hardie Industries S.E.**
	[Corporate seat]	[Amsterdam / Dublin]
	Registered Number	[34106455 / [#]]
	ABN	49 097 829 895
	Address	[#]
	Fax	[#]
	Attention	Managing Director and Company Secretary

– the definition of "Excluded Tax" in clause 1.1 ("Definitions") is amended by deleting paragraph (b) and replacing it with the following paragraph:

> "(b) a Tax which would not be required to be deducted by the Guarantor if, before the Guarantor makes a relevant payment, the relevant Beneficiary provided the Guarantor with written confirmation as to any of its name, address, registration number, (in the case of a Beneficiary that is a company) country of residence for tax purposes or similar details or any relevant tax exemption or similar details."

– the definition of "Government Agency" in clause 1.1 ("Definitions") is deleted and replaced with the following:

> "**Government Agency** means any government or any governmental, semi governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity having jurisdiction over, or in relation to the affairs of, a James Hardie Group Member and, for the avoidance of doubt, includes, without limitation, the Australian Taxation Office, the US Internal Revenue Service, and the Dutch tax authorities and the Irish tax authorities, in each case to the extent applicable.";

– the definition of "Insolvent" in clause 1.1 ("Definitions") is amended by inserting the words "and in respect of a person established under Irish law, a filing of a petition by it with any court in Ireland in relation to its liquidation, the bringing forward of a scheme of arrangement or the appointment of an examiner" at the end of paragraph (b);

– the definition of "Winding Up" in clause 1.1 ("Definitions") is amended by inserting the following paragraph at the end of the definition:

> "In respect of a person that is established under Irish law, **Winding Up** includes, without limitation, its dissolution or the granting of an order bringing forward of a scheme of arrangement.";

– clause 18.4 ("Set-off) is amended by inserting the words "(if the Guarantor is established in the Netherlands) or Irish law (if the Guarantor is established in the Republic of Ireland)" after the words "Dutch law" in the final line.

Deed of Confirmation

Schedule 3 — Amendments to Performing Subsidiary Undertaking and Guarantee Trust Deed

The Performing Subsidiary Undertaking and Guarantee Trust Deed is amended as follows:

1 The definition of "Business Day" in clause 1.1 ("Definitions") is amended by deleting paragraph (c) and replacing it with the following paragraph:

"(c) for all other purposes, banks are open for general banking business in Sydney and any other place or places specified in the relevant Finance Document.".

2 Clause 28.4 ("Set-off") is amended by deleting the words "Dutch law" in the fourth line and replacing it with "the laws of New South Wales, Australia".

Schedule 4 — Amendments to Intercreditor Deed

The Intercreditor Deed is amended as follows:

1 Clause 3.4 ("Status and ranking of the Compensation Debt") is amended by:

- deleting the words "(*concurrente vordering*)" in paragraph (a); and
- deleting paragraph (c) and replacing it with "[intentionally blank]".

2 Schedule 1 ("Financier Nomination Letter") is amended by:

- deleting the words "(*concurrente vordering*)" in paragraph (a); and
- deleting paragraph (c) and replacing it with "[intentionally blank]".

3 The definition of "Business Day' in clause 1 of Attachment A is amended by deleting the words "Amsterdam, The Netherlands" and replacing them with "Dublin, the Republic of Ireland".

4 Deleting the definition of "Insolvency Official" in clause 1 of attachment A and replacing it with the following:

"**Insolvency Official** means a custodian, receiver and manager, trustee, liquidator, provisional liquidator, administrator, examiner or any other officer appointed in connection with the Insolvency of JHINV and includes, without limitation:

(a) a receiver, an examiner and a liquidator appointed under Irish 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 in respect of the Insolvency of JHINV."

5 The definition of "Insolvent" in clause 1 of Attachment A is amended by deleting paragraph (b) and replacing it with the following paragraph:

"(b) was established under Irish law and files a petition with any court in the Republic of Ireland in relation to its liquidation, the bringing forward of a scheme of arrangement or the appointment of an examiner;".

6 The definition of "Reconstruction Event" in clause 1 of Attachment A is amended by deleting paragraph (c) and replacing it with the following paragraph:

"(c) a filing of a petition for the appointment of an examiner or the bringing forward of a scheme of arrangement under Irish law;".

7 Deleting the definition of "Trust Convention" in clause 1 of Attachment A.

8 The definition of "Wind-Up Event" in clause 1 of Attachment A is amended by deleting paragraphs (d) and (e) and replacing them with the following paragraphs:

"(d) the dissolution of such Person under Irish law or the law of any other jurisdiction;

(e) [intentionally blank];".

9 Clause 2(f)(ix) ("Interpretation") of Attachment A is amended by deleting the words "Dutch law" on the second line and replacing them with "Irish law".

10 Deleting clause 3 ("Trust Convention") of Attachment A.

Deed of Confirmation

Schedule 5 — Amendments to Performing Subsidiary Intercreditor Deed

The Performing Subsidiary Intercreditor Deed is amended as follows:

1 Clause 1 of Attachment A is amended by deleting the definition of "Insolvency Official" and replacing it with the following:

> "**Insolvency Official** means a custodian, receiver, receiver and manager, trustee, liquidator, provisional liquidator, administrator, examiner or any other officer appointed in connection with the Insolvency of the Performing Subsidiary".

2 The definition of "Insolvent" in clause 1 of Attachment A is amended by deleting paragraph (b) and replacing it with the following paragraph:

> "(b) was established under Irish law and files a petition with any court in the Republic of Ireland in relation to its liquidation, the bringing forward of a scheme of arrangement or the appointment of an examiner;".

3 The definition of "Reconstruction Event" in clause 1 of Attachment A is amended by deleting paragraph (c) and replacing it with the following paragraph:

> "(c) a filing of a petition for the appointment of an examiner or the bringing forward of a scheme of arrangement under Irish law;".

4 The definition of "Wind-Up Event" in clause 1 of Attachment A is amended by deleting paragraphs (d) and (e) and replacing them with the following paragraphs:

> "(d) the dissolution of such Person under Irish law or the law of any other jurisdiction;
>
> (e) [intentionally blank];".

Deed of Confirmation

Schedule 6 — Amendments to Final Funding Agreement

The Final Funding Agreement is amended as follows:

1 The definition of "Insolvent" in clause 1.1 ("Definitions") is amended by deleting paragraph (b) and replacing it with the following paragraph:

> "(b) was established under Irish law and files a petition with any court in the Republic of Ireland in relation to its liquidation, the bringing forward of a scheme of arrangement or the appointment of an examiner;".

2 The definition of "Joint Board" in clause 1.1 ("Definitions") is deleted.

3 The definition of "Reconstruction Event" in clause 1.1 ("Definitions") is amended by deleting paragraph (c) and replacing it with the following paragraph:

> "(c) a filing of a petition for the appointment of an examiner or the bringing forward of a scheme of arrangement under Irish law;".

4 The definition of "Wind-Up Event" in clause 1.1 ("Definitions") is amended by deleting paragraphs (d) and (e) and replacing them with the following paragraphs:

> "(d) the dissolution of such Person under Irish law or the law of any other jurisdiction;
>
> (e) [intentionally blank];".

5 Clause 10.3(g)(i) ("JHINV Wind Up Event or Reconstruction Event") is amended by deleting the words "Dutch law" on the sixth line and replacing them with "Irish law".

Facility Agreements

Each Facility Agreement is amended as follows:

1 Clause 3.7 (“Currency and timing of drawdowns”) is amended by deleting the word “Amsterdam” in the third line and replacing it with “Dublin”.

2 Deleting clause 9(b) (“Financier representation”) and replacing it with “[intentionally blank]”.

ISDA Master Agreements

The Schedule to each 2002 ISDA Master Agreement. is amended by replacing the words “the Netherlands” in the definitions of “Specified Treaty” and “Specified Jurisdiction” and replacing them with “the Republic of Ireland” in:

1 paragraph (a) of section (b) (“Payee Representations”) in the part entitled “Part 2: Tax Representations”; and

2 paragraph (b) of section (b) (“Payee Representations”) in the part entitled “Part 2: Tax Representations”.

Deed of Confirmation

Signing page

DATED: June 2009

SIGNED, SEALED AND DELIVERED by)
)
and)
)
as attorneys for **JAMES HARDIE INTERNATIONAL FINANCE B.V.** under power of attorney dated)
)
in the presence of:)

_____ _____

Signature of witness By executing this deed each attorney states that the attorney has received no notice of revocation of the power of attorney

_____

Name of witness (block letters)

SIGNED, SEALED AND DELIVERED by)
)
and)
)
as Authorised Representatives of **JAMES HARDIE BUILDING PRODUCTS, INC.** in the presence of:)

_____ _____

Signature of witness By executing this deed each Authorised Representative states that the Authorised Representative has received no notice of revocation of his or her authority to execute this deed

_____

Name of witness (block letters)

SIGNED, SEALED AND DELIVERED by)
)
and)
)
as attorneys for **JAMES HARDIE INDUSTRIES N.V.** under))
power of attorney dated)
)
in the presence of:))
))
))
))
_____))
Signature of witness) By executing this deed each attorney states that the attorney has received no notice of revocation of the power of attorney
))
_____))
Name of witness (block letters)))
))
)

SIGNED, SEALED AND DELIVERED by)
)
and)
)
as attorneys for **[•]** under power of attorney dated) _____
)
in the presence of:))
))
))
))
_____))
Signature of witness))
))
_____) _____
Name of witness (block letters)) By executing this deed each attorney states that the attorney has received no notice of revocation of the power of attorney
))
)

Deed of Confirmation

Annexure A — JHT Undertaking

Deed Poll

JHT	Name	[•]
	Incorporated in	Bermuda
	[Registered Number]	[•]
	Address	[•]
	Fax	[•]
	Attention	[•]
	Name	[•]

CTDP James Hardie — Common Terms Deed Poll as amended and restated on 20 February 2008 [as / to be] further amended and restated in accordance with each Deed of Confirmation dated [•] June 2009

BY THIS DEED POLL JHT described above, for the benefit of each Creditor under the CTDP described above:

(a) irrevocably undertakes from the date of this deed poll to each Creditor that:

(i) it will not create or allow to exist a Security Interest over any of its assets, other than a Permitted Security Interest;

(ii) it will not to incur any Financial Indebtedness other than Financial Indebtedness owed to another Group member;

(iii) it will distribute not less frequently than once per year, at least 95% of its annual after-tax income to JHIFL by way of dividends, subordinated loans or any other available means; and

(iv) it will not dispose of 10% or more of its assets or an interest in them or agree or attempt to do so except;

(A) where the disposals are in the ordinary course of day to day trading; or

(B) where the disposals are of obsolete assets no longer required for its business; or

(C) where the disposal occurs with the prior consent of the Creditor (or under syndicated facility, the consent of an agent or trustee acting on the instructions of the Majority Creditor).

(b) acknowledges having read a copy of the CTDP before signing this deed poll;

(c) gives, as at the date of this deed poll, all representations and warranties on the part of an Obligor contained in the CTDP;

(d) consents to the amendments to the Transaction Documents set out in each Deed of Confirmation dated [•] June 2009; and

(e) acknowledges receiving valuable consideration for this deed poll.

Clauses 1 ("Interpretation") and 18.19 ("Governing law") of the CTDP described above apply to this deed poll as if they were fully set out in this deed poll.

DATED [•] 2009

EXECUTED as a deed poll

SIGNED, SEALED AND DELIVERED by)
)
and)
)
as attorneys for **JAMES HARDIE TECHNOLOGY LIMITED**)
under power of attorney dated)
)
in the presence of:)
)
)
)
_____)
Signature of witness)
)
_____)
Name of witness (block letters))
)
)

_____

By executing this deed each attorney states that the attorney has received no notice of revocation of the power of attorney

Details

Interpretation — definitions are in clause 1.

Parties	**Outgoing Borrower, Incoming Borrower, JHBP, Financier and Guarantor**	
Outgoing Borrower	Name	**James Hardie International Finance B.V.**
	Corporate seat	Amsterdam
	Registered Number	34108775
	Address	8th Floor, Atrium, Unit 08 Strawinskylaan 3077 1077 ZX Amsterdam The Netherlands
	Fax	+ 31 20 404 2544
	Attention	Treasurer
Incoming Borrower	Name	[**James Hardie International Finance Limited**]
	[Company number]	[*insert Irish company number when FinCo incorporated*]
	Address	[•]
	Fax	[•]
	Attention	[•]
JHBP	Name	**James Hardie Building Products, Inc.**
	Incorporated in	Nevada
	Address	Suite 100 26300 La Alameda Mission Viejo CA 92691 United States of America
	Fax	+ 1 949 348 4534

	Attention	Company Secretary
Financier	Name	[•]
	ABN / Company No. (if applicable)	[•]
	Address	[•]
	Fax	[•]
	Attention	[•]
Guarantor	Name	James Hardie Industries N.V.
	Corporate seat	Amsterdam
	Registered Number	34106455
	ABN	49 097 829 895
	Address	8th Floor, Atrium, Unit 08 Strawinskylaan 3077 1077 ZX Amsterdam The Netherlands
	Fax	+ 31 20 404 2544
	Attention	Managing Director and Company Secretary

Recitals

A The Outgoing Borrower, JHBP and the Financier are parties to the Transaction Documents.

B The Outgoing Borrower, the Incoming Borrower, JHBP and the Guarantor are parties to the Common Terms Deed Poll which is made for the benefit of, and enforceable by, each Creditor (as defined in the Common Terms Deed Poll).

C Pursuant to various Facility Nomination Letters, for the purposes of the Common Terms Deed Poll:

(a) the Financier has been nominated as a "Creditor" in relation to each of the Transaction Documents; and

(b) each Facility Agreement has been nominated as a "Facility Agreement".

D The Guarantor intends to transform its status to a *Societas Europaea* and subsequently to transfer its registered office and corporate domicile from The Netherlands to the Republic of Ireland (together, the "**Redomicile Transaction**").

E As part of the Redomicile Transaction, the Outgoing Borrower intends to transfer all of rights and obligations under the Transaction Documents to the Incoming Borrower pursuant to this deed.

Date of the deed See Signing Page

Deed of Confirmation

General Terms

1 Interpretation

1.1 Definitions

The following meanings apply unless the contrary intention appears:

Common Terms Deed Poll means the deed poll named "James Hardie — Common Terms Deed Poll" as amended and restated on or about the date of this deed given by the Outgoing Borrower, the Incoming Borrower, JHBP and the Guarantor.

Details means the section of this deed headed "Details".

Deed of Confirmation means the Deed of Confirmation dated [•] 2009 between the Outgoing Borrower, JHBP, the Guarantor and the Financier.

Effective Date means [•] 2009 provided the Financier has confirmed receipt of the items described in clause 4.4 of the Deed of Confirmation.

Facility Nomination Letter means each "James Hardie — Common Terms Deed Poll — Facility Nomination Letter" between the Outgoing Borrower (as Obligors' Agent) and the Financier.

Financier means the person so described in the Details.

JHISE means JHINV once it has transformed from its present corporate form as a Dutch NV (*Naamloze Vernootschap*) into an SE (*Societas Europaea*).

Transaction Documents means each document set out in Schedule 1 ("Transaction Documents")

1.2 Definitions in Common Terms Deed Poll

A term which has a defined meaning (including by reference to another document) in the Common Terms Deed Poll has the same meaning when used in this deed unless it is expressly defined in this deed, in which case the meaning in this deed prevails.

1.3 Consideration

Each party to this deed acknowledges incurring obligations and giving rights under this deed for valuable consideration received from each other party.

1.4 Further assurances

Each party shall take all steps, execute all documents and do everything reasonably required by each other party to give effect to any of the transactions contemplated by this deed.

2 Novation

2.1 Novation

With effect on and from the Effective Date:

(a) the Outgoing Borrower and the Financier have no further rights against each other or obligations to each other in connection with the Transaction Documents, and release each other from all claims, demands, costs and expenses arising in connection with the Transaction Documents;

(b) the Incoming Borrower has the same rights against, and owes the same obligations to, the Financier in connection with the Transaction Documents and the Financier has the same rights against, and owes the same obligations to the Incoming Borrower in connection with the Transaction Documents, as if the Incoming Borrower had been named as a party to the Transaction Documents instead of the Outgoing Borrower from and including the date of each Transaction Document to which the Outgoing Borrower is a party.

(In this paragraph (b) a reference to the "same" rights or obligations is a reference to rights or obligations which are the same in nature and character as those rights or obligations rather than the same as to the person entitled to them or obliged to perform them);

(c) each reference in the Transaction Documents to the Outgoing Borrower with a corporate seat in Amsterdam, The Netherlands will be read as a reference to the Incoming Borrower with a registered office in Dublin, the Republic of Ireland; and

(d) each reference to the account details of the Outgoing Borrower is a reference to the account details for the Incoming Borrower, as notified by the Incoming Borrower to the Financier promptly following the Effective Date and otherwise from time to time; and

(e) the address for service of notice of the Incoming Borrower for the purposes of the Transaction Documents is as specified in the Details.

2.2 JHBP rights and obligations unaffected

Notwithstanding anything in this deed, the rights and obligations as between JHBP and the Financier under the Transaction Documents remain unaffected by the release and assumption in clause 2.2.

2.3 Obligors' Agent

Subject to clause 2.5 ("Conditions Precedent to Novation"), with effect on and from the Effective Date, for the purposes of the Common Terms Deed Poll:

(a) the Outgoing Borrower ceases to be the "Obligors' Agent";

(b) the New Borrower is appointed as "Obligors' Agent" by JHBP and the Guarantor and the New Borrower accepts that appointment; and

(c) this deed serves as notification of the appointment to the Financier (as a Creditor under the Common Terms Deed Poll).

2.4 Consent and acknowledgement

Each party:

(a) consents to the novation effected by this deed; and

(b) acknowledges that nothing in this deed or any of the transactions contemplated by this deed constitutes:

(i) a breach of any term of the Transaction Documents;

(ii) an Event of Default under the Common Terms Deed Poll; or

(iii) any other event or circumstance which, with the giving of notice, lapse of time, or fulfilment of any condition, would cause the acceleration of any payment to be made under, or the termination or enforcement of any of the Facility Agreements**.**

3 Representations and Warranties

3.1 General representations and warranties

Each party represents and warrants to each other party that:

(a) (**incorporation**) it is validly incorporated and has the power to carry on its business as it is now being conducted;

(b) (**power**) it has the power to enter into and perform its obligations under this deed;

(c) (**authority**) it has taken all action which is necessary to authorise the entry into and performance of its obligations under this deed; and

(d) (**binding obligations**) this deed constitutes legal, valid and binding obligations, enforceable in accordance with their terms.

3.2 Representations and warranties from each Obligor

Each Obligor makes the representations and warranties contained in clause 8.1 (“Representations and warranties”) of the Common Terms Deed Poll on the Effective Date.

4 Governing Law

Clause 18.19 (“Governing law”) of the Common Terms Deed Poll applies to this deed as if fully set out in this deed poll

5 General

5.1 Costs

The parties agree to pay their own legal and other costs and expenses in connection with the negotiation, preparation, execution and completion of this deed and of other related documentation, except stamp duty.

5.2 Stamp duty

The Incoming Borrower agrees to pay all stamp duty (including fines and penalties) chargeable, payable or assessed in relation to this deed and any transaction contemplated by it.

5.3 Counterparts

This deed may be executed in counterparts. All counterparts when taken together constitute one document and the date on which the last counterpart is executed will be the date of the deed.

5.4 No merger

The representations, warranties and indemnities in this deed do not merge on the Effective Date.

5.5 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on this agreement or any part of it.

5.6 Entire agreement

This deed constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject.

5.7 Confidentiality

Clause 18.15 (“Confidentiality”) of the Common Terms Deed Poll applies to this deed as if it were fully set out in this deed and as if the New Borrower is a “Obligor” for the purposes of that clause.

5.8 Transaction Document

The parties agree that this deed is a Transaction Document for the purposes of the Common Terms Deed Poll.

EXECUTED as deed.

Schedule 1 — Transaction Documents

Each of the following agreements are "Facility Agreements":

(a) the agreement entitled [#] dated [insert date] between the Outgoing Borrower, JHBP and the Financier.***[complete details as appropriate for each Financier, including ISDA Master Agreements and ISDA Schedule,]***

and together with the following:

(b) the Common Terms Deed Poll; and

(c) each Confirmation evidencing a Transaction (each term as defined in the ISDA Master Agreement noted above);

are the "Transaction Documents".

Deed of Confirmation

Signing page for Annexure B

DATED: 2009

Outgoing Borrower

SIGNED, SEALED AND DELIVERED by)
)
)
and)
)
as attorneys for **JAMES HARDIE INTERNATIONAL FINANCE B.V.** under power of attorney dated)
)
in the presence of:)
)
)

_____)
Signature of witness)
)
)
)

_____)
Name of witness (block letters))

_____
By executing this deed each attorney states that the attorney has received no notice of revocation of the power of attorney

Incoming Borrower

SIGNED, SEALED AND DELIVERED by)
)
)
and)
)
as attorneys for **JAMES HARDIE INTERNATIONAL FINANCE LIMITED** under power of attorney dated)
)
in the presence of:)
)
)

_____)
Signature of witness)
)
)
)

_____)
Name of witness (block letters))

_____
By executing this deed each attorney states that the attorney has received no notice of revocation of the power of attorney

JHBP

SIGNED, SEALED AND DELIVERED by

and

as Authorised Representatives of **JAMES HARDIE BUILDING PRODUCTS, INC.** in the presence of:

Signature of witness

Name of witness (block letters)

By executing this deed each Authorised Representative states that the Authorised Representative has received no notice of revocation of his or her authority to execute this deed

Guarantor

SIGNED, SEALED AND DELIVERED by

and

as attorneys for **JAMES HARDIE INDUSTRIES N.V.** under power of attorney dated

in the presence of:

Signature of witness

Name of witness (block letters)

By executing this deed each attorney states that the attorney has received no notice of revocation of the power of attorney

[***Note: Insert appropriate Financier execution block as required***]

Deed of Confirmation

Annexure C — Amending Agreement to Fund Guarantee

Details

Parties	**AICF, NSW Government** and **JHINV**	
AICF	Name	**Asbestos Injuries Compensation Fund Limited** a company limited by guarantee incorporated under the laws of the State of New South Wales, Australia, in its capacity as trustee for the Charitable Fund established under the Amended and Restated Trust Deed dated 14 December 2006 between it as trustee and JHINV
	ACN	117 363 461
	Address	Level 7, 233 Castlereagh Street Sydney New South Wales,
NSW Government	Name	**The State of New South Wales**
	Address	c/- Department of Premier and Cabinet, Level 39, Governor Macquarie Tower, 1 Farrer Place, Sydney, NSW, 2000
JHINV	Name	**James Hardie Industries N.V.** a limited liability company incorporated in The Netherlands
	ARBN	097 829 895
	Address	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)
Recitals	AICF, NSW Government and JHINV are parties to the Parent Guarantee and wish to amend the Parent Guarantee on the terms set out in this agreement.	
Date of Amending Deed	[•] June 2009	

Deed of Confirmation

General terms

1 Interpretation

These meanings apply unless the contrary intention appears:

Irish Registration Date means the date on which JHISE is registered by the Registrar of Companies of Ireland as having its registered office in Ireland.

JHI means:

(a) prior to the SE Transformation Date, JHINV;

(b) with effect on and from the SE Transformation Date up to the Irish Registration Date, JHISE with its corporate seat in the Netherlands; and

(c) with effect on and from the Irish Registration Date, JHISE with its corporate seat in the Republic of Ireland.

JHISE means JHINV once it has converted from its present corporate form as a Dutch NV (*Naamloze Vernootschap*) into an SE (*Societas Europaea*).

Parent Guarantee means the Guarantee dated 14 December 2006 between AICF, the NSW Government and JHINV.

SE Transformation Date means the date on which JHINV is registered as a "*Societas Europaea*" on the Dutch Trade Register pursuant to European Union Council Regulation 2157/2001.

2 Confirmations and acknowledgement

2.1 Confirmation in relation to definition of "Guarantor"

Each party confirms that the definition of "Guarantor" for the purposes of the Parent Guarantee is a reference to:

(a) with effect on and from the SE Transformation Date up to the Irish Registration Date, JHISE with its corporate seat in the Netherlands; and

(b) with effect on and from the Irish Registration Date, JHISE with its corporate seat in the Republic of Ireland.

2.2 JHI Confirmation

JHI confirms that, other than as provided for in clause 3 ("Amendments"), the Parent Guarantee remains in full force and effect and enforceable against it up to, including and after each of the SE Transformation Date and the Irish Registration Date.

2.3 Conflict

If there is a conflict between the Parent Guarantee and this agreement, the terms of this agreement prevail.

2.4 Consideration

This agreement is entered into in consideration of the parties' exchange of promises under this agreement and the receipt of valuable consideration which is hereby acknowledged.

3 Amendments

3.1 Parent Guarantee

As from the Irish Registration Date, the Parent Guarantee is amended as set out in schedule 1. The parties acknowledge that the amendments to the Parent Guarantee effected by this clause 3.1 are accurately reflected in the conformed copy of the Parent Guarantee attached at schedule 2.

3.2 Irrevocable Power of Attorney

The parties acknowledge that the Second Irrevocable Power of Attorney dated December 2006 between AICF and NSW Government will be replaced by a Third Irrevocable Power of Attorney between those parties in the form attached at schedule 3 from the date of execution of that Third Irrevocable Power of Attorney. To avoid doubt, JHI's execution of this agreement constitutes its prior written consent to the replacement effected by this clause 3.2 for the purposes of clause 6.3(c) of the Parent Guarantee.

4 Representations and warranties by JHI

JHI warrants as at the date of this agreement and repeats such warranty as at the SE Transformation Date and as at the Irish Registration Date that the following is true, accurate and not misleading:

(a) it has been duly incorporated and is validly existing under the laws of the jurisdiction of its incorporation and has the necessary corporate capacity and power to enter into this agreement and to perform its obligations under this agreement;

(b) all corporate and other action required to be taken by JHI to authorise the execution of this agreement and the performance of its obligations under this agreement has been duly taken;

(c) this agreement has been duly executed on behalf of JHI and constitutes legal, valid and binding obligations of JHI, enforceable in accordance with their terms subject to the terms of the opinion from Loyens Loeff delivered to the NSW Government and the Fund Trustee on or about the date of this agreement;

(d) the execution and performance of this agreement do not conflict with or result in a breach of any provision of the memorandum or articles of association of JHI or any provision of any applicable law in force on the date of this agreement or any deed to which JHI is a party, or on the SE Transformation Date or the Irish Registration Date;

(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 JHI under this agreement;

(f) the Parent Guarantee as amended by this agreement constitutes legal, valid and binding obligations of JHI, enforceable in accordance with their terms subject to the terms of the opinion from Arthur Cox delivered to the NSW Government and the Fund Trustee on or about the date of this agreement;

(g) the performance of the Parent Guarantee as amended by this agreement does not conflict with or result in a breach of any provision of the memorandum or articles of association of JHI or any provision of any applicable law in force on the date of this agreement;

(h) 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 JHI under the Parent Guarantee as amended by this agreement; and

(i) without limiting paragraphs (e) and (g) above, Dutch law does not preclude or otherwise prejudice the agreement of JHI as a Dutch company to the Irish Registration Date amendments set out in Schedule 1, which will only take effect on the Irish Registration Date.

JHI warrants as at the Irish Registration Date, the performance of the Parent Guarantee as amended by this agreement does not conflict with or result in a breach of any provision of the memorandum or articles of association of JHI or any provision of any applicable law in force on the Irish Registration Date.

5 Costs

Each party shall be responsible for its own costs, charges and expenses in connection with the preparation, negotiation and execution of this agreement.

6 General

Clause 5 (“Notices”) of the Parent Guarantee applies to this agreement as if it was fully set out in this agreement.

7 Counterparts

This agreement may consist of a number of copies each signed by one or more parties to the deed. If so, the signed copies are treated as making up the one document.

8 Governing law

This agreement is governed by the law in force in the Netherlands, with the exception of the Netherlands private international law. Any dispute arising out

of or in connection with this agreement shall be exclusively decided by the competent court in Amsterdam.

EXECUTED as an agreement.

Deed of Confirmation

Schedule 1 — Irish Registration Date Amendments

The Parent Guarantee is amended as follows:

1 The definition of "Final Funding Agreement" in clause 1 ("Interpretation") is amended by inserting the words ", as amended from time to time" after the word Agreement in the third line.

2 Clause 2.4 ("Guarantee") is amended by deleting the sentence "This Guarantee is not a contract of surety (*borgtocht*)." and replacing it with the following sentence:

> "The liability of the Guarantor under this Guarantee shall be as sole and primary obligor and not merely as surety and the Guarantor hereby waives all and any of its rights as surety which may at any time be inconsistent with any of the provisions of this Guarantee.".

3 Clause 2.7 ("Guarantee") is amended by inserting the words ", insolvency, winding-up, dissolution, examinership, the granting of court protection, administration, composition or arrangement" after the words "moratorium of payment" in the fifth line.

4 Clause 2.9(a) ("Guarantee") is amended by inserting the words "insolvency, dissolution, examinership, the granting of court protection, administration, composition or arrangement," after the words "winding-up" in the first line.

5 Clause 3.2 ("Enforcement") is amended by deleting the word "(*verzuim*)" in the fourth line and replacing it with "in respect of the making of such Annual Payment".

6 Clause 3.3(b) ("Enforcement") is amended by:

- deleting the word "a" in the first line and replacing it with "any insolvency,"; and
- inserting the words "examinership, the granting of court protection, administration, composition or arrangement," after the words "winding-up" in the second line.

7 Clause 3.4 ("Enforcement") is amended by deleting the words "(*kort geding*)" in the third line.

8 Clause 3.5 ("Enforcement") is amended by:

- deleting the word "*(verrekening),*" in the first line and replacing it with "or"; and
- deleting the words "or suspension (*opschorting*)".

9 Clause 3.6 is deleted and replaced with "[intentionally blank]".

10 Clause 3.7(a)(i) ("Enforcement") is deleted and replaced with the following:

> "(i) proceed against or exhaust or enforce any security held from the Performing Subsidiary, any other guarantor or any other Person

or make or file any proof of claim in any insolvency proceedings relative to the Performing Subsidiary, any other guarantor or any other person,".

11 Clause 3.7(a)(iii) ("Enforcement") is amended by deleting the word "Guarantee" in the first line and replacing it with the word "Fund".

12 Clause 3.7(d) ("Enforcement") is amended by inserting a new sub-paragraph (iii) as follows (and re-numbering sub-paragraph (iii) as sub-paragraph (iv) accordingly):

"(ii) the right to interpose any defence based upon any claim of laches or set-off or counterclaim of any nature or description;".

13 Insert a new clause 3.8 as follows:

"3.8 The Guarantor confirms to the Fund Trustee and the NSW Government that neither the Fund Trustee nor the NSW Government need advise the Guarantor of any default by the Performing Subsidiary in respect of the Guaranteed Obligations."

14 Clause 5.1 is amended by replacing the existing address details for the NSW Government and the Guarantor with the following:

"**To the NSW Government:**

Name:	The State of New South Wales, c/- Department of Premier and Cabinet
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 S.E.
Address:	c/- Arthur Cox, Earlsfort Centre, Earlsfort Terrace, Dublin 2, Ireland
Fax number:	+35 3 618 0618
and	
	Level 3, 22 Pitt Street, Sydney, NSW 2000
Fax number:	+61 2 8274 5218
Attention:	General Counsel"

15 Clause 6.4 ("NSW Government's right to enforce") is deleted.

16 Clause 7 ("Choice of law and jurisdiction") is deleted and replaced with the following:

"7. **CHOICE OF LAW AND JURISDICTION**

7.1 This Guarantee shall be governed by and construed in accordance with the laws of Ireland.

7.2 The courts of Ireland have exclusive jurisdiction to settle any dispute arising out of or in connection with this Guarantee (including a dispute regarding the existence, validity or termination of this Guarantee) (a "**Dispute**").

7.3 The parties hereto agree that the courts of Ireland are the most appropriate and convenient courts to settle Disputes and accordingly no party hereto will argue to the contrary.

7.4 This clause 7 is for the benefit of each of the Fund Trustee and the NSW Government. As a result, each of the Fund Trustee and the NSW Government shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, each of the Fund Trustee and the NSW Government may take concurrent proceedings in any number of jurisdictions."

17 Insert a new clause 9 as follows:

"9. **RULE AGAINST PERPETUITIES**

Nothing in this Guarantee shall authorise or permit the postponement of any estate or interest arising under the trusts created in this Guarantee from vesting outside the perpetuity period. In this context "perpetuity period" means the period commencing on the date of this Guarantee and ending on the expiration of 21 years from the date of the death of the last survivor of the descendants now living of the President of Ireland, Mary McAleese."

MALLESONS STEPHEN JAQUES

Draft

Amending Deed — Guarantee Trust Deed

Dated [•] 2009

James Hardie Industries N.V. ("**JHINV**")
AET Structured Finance Services Pty Limited ("**Guarantee Trustee**")

Mallesons Stephen Jaques
Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney
www.mallesons.com
Ref: 02-5501-6101

Amending Deed — Guarantee Trust Deed
Contents

Amending Deed — Guarantee Trust Deed

Details

Parties	**JHINV** and the **Guarantee Trustee**	
JHINV	Name	**James Hardie Industries N.V.** a limited liability company incorporated in The Netherlands
	ARBN	097 829 895
	Address	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)
Guarantee Trustee	Name	**AET Structured Finance Services Pty Ltd** in its capacity as trustee for the Financiers under the Guarantee Trust
	ABN	12 106 424 088
	Address	Level 22, 207 Kent Street Sydney, NSW, 2000

Recitals

A JHINV and the Guarantee Trustee are parties to one or more Transaction Documents.

B JHINV intends to transform its status to a "*Societas Europaea*" and subsequently to transfer its corporate domicile from The Netherlands to the Republic of Ireland (together, the "**Redomicile Transaction**").

C Pursuant to European Union Council Regulation No 2157/2001 ('**SE Regulation**"), the Third Council Directive (78/855/EEC) on mergers of public limited liability companies and relevant provisions of the Dutch Civil Code and Irish statute, JHINV will remain the same legal entity throughout and following the Redomicile Transaction. Upon the transfer of JHINV's corporate domicile to the Republic of Ireland (then having the form of a *Societas Europaea* and known as JHISE), it will be treated as if it were an Irish public limited liability company governed by Irish law (as supplemented by the provisions of the SE Regulation).

D It is the intention of JHINV that the Transaction Documents continue in full force and effect during and after the Redomicile Transaction and that the legal rights and obligations JHINV and the other parties to the Transaction Documents are not prejudiced by the Redomicile Transaction.

Parties	**JHINV**and the **Guarantee Trustee**

E In connection with the Redomicile Transaction James Hardie International Finance B.V. ("**JHIF**") intends to:

(i) transfer all its intellectual property assets to James Hardie Technology Limited ("**JHT**"), a Bermudan incorporated wholly owned subsidiary of JHIFL that would be resident in the Republic of Ireland for tax purposes ("**IP Transfer**"); and

(ii) transfer its entire internal and external loan portfolio and other assets to James Hardie International Finance Limited (**JHIFL**"), an Irish incorporated wholly owned subsidiary of JHINV; and

(iii) novate to JHIFL all its rights and obligations to the Financier under the Transaction Documents,

(together, the "**Treasury / IP Transfer**").

Upon completion of the Treasury / IP Transfer, JHIF will no longer have any finance and treasury responsibilities for the Group and JHIFL will thereafter undertake all the finance and treasury functions currently performed by JHIF.

F. Each party enters into this deed:

(i) to confirm that it continues to be bound by the Transaction Documents to which it is party during the course of the Redomicile Transaction, after completion of each part of the Redomicile Transaction (even if subsequent parts are not completed) and after full implementation of the Redomicile Transaction; and

(ii) to amend some of the Transaction Documents to reflect certain aspects of the JHINV's status after full implementation of the Redomicile Transaction; and

(iii) to agree the form of amendments proposed to be made to some of the other Transaction Documents.

Date of Amending Deed	[•] 2009

Amending Deed — Guarantee Trust Deed

General terms

1 Interpretation

Clause 1 ("Interpretation") of the James Hardie — Guarantee Trust Deed dated 19 December 2006 applies to this deed as if it was fully set out in this deed.

These meanings apply unless the contrary intention appears:

Amending Agreement (Parent Guarantee) means the document entitled "Amending Agreement (Parent Guarantee)" dated 18 June 2009 prepared by the Guarantor and its advisers and provided to the Guarantee Trustee.[1]

[**Beneficiary Direction** means a written direction (including email) from a Beneficiary to the Guarantee Trustee instructing the Guarantee Trustee to execute a document.]

CTDP means the document entitled "James Hardie — Common Terms Deed Poll" dated 20 February 2008 between JHIF, James Hardie Building Products, Inc. and JHINV.

Facility Agreements has the meaning given to that term in the CTDP.

Guarantee Trust Deed means the document entitled "James Hardie — Guarantee Trust Deed" dated 19 December 2006 between JHINV and the Guarantee Trustee.

Irish Registration Date means the date on which JHISE is registered by the Registrar of Companies of Ireland as having its registered office in Ireland.

JHISE means JHINV once it has converted from its present corporate form as a Dutch NV (*Naamloze Vernootschap*) into an SE (*Societas Europaea*).

Novation Date means the Effective Date as defined in the Novation Deed.

Novation Deed means a deed substantially in the form set out in Annexure B of the Deeds of Confirmation dated [23] June 2009 between James Hardie Industries N.V., James Hardie International Finance B.V., James Hardie Building Products, Inc. and financiers to James Hardie Group.

Replacement Parent Guarantee means the document entitled "Parent Guarantee" dated 14 December 2006 between JHINV, the State of New South Wales and Asbestos Injuries Compensation Fund Limited in its capacity as trustee of the Asbestos Injuries Compensation Fund.

SE Transformation Date means the date on which JHINV is registered as a "*Societas Europaea*" on the Dutch Trade Register pursuant to European Union Council Regulation 2157/2001.

Transaction Document has the meaning given to that term in the CTDP.

2 Confirmations and acknowledgement

2.1 Confirmation in relation to definition of "JHINV"

Each party confirms that the definition of "JHINV" for the purposes of the Guarantee Trust Deed is a reference to:

(a) with effect on and from the SE Transformation Date up to the Irish Registration Date, JHISE with its corporate seat in the Netherlands; and

(b) with effect on and from the Irish Registration Date, JHISE with its corporate seat in the Republic of Ireland.

2.2 Confirmation in relation to definition of "JHINV Guarantee"

Each party confirms that the definition of "JHINV Guarantee" for the purposes of the Intercreditor Deed and the Performing Subsidiary Intercreditor Deed is, with effect from the Irish Registration Date, a reference to the to the Replacement Parent Guarantee as amended by the Amending Agreement (Parent Guarantee).

2.3 Confirmation

JHINV confirms for the benefit of Guarantee Trustee that:

(a) it will continue to be bound by the Transaction Documents to which it is a party (including, without limitation, the CTDP, the Guarantee Trust Deed and the Intercreditor Deed) during the course of the Redomicile Transaction, after completion of each part of the Redomicile Transaction (even if subsequent parts are not completed) and after full implementation of the Redomicile Transaction;

(b) other than as provided for in clause 3 ("Amendments"), the Transaction Documents (including, without limitation, the CTDP, the Guarantee Trust Deed and the Intercreditor Deed) remain in full force and effect, notwithstanding the implementation of all or part of the Redomicile Transaction or the Treasury / IP Transfer;

(c) it will continue to be bound by the Guarantee Trust Deed after completion of each part of the Treasury / IP Transfer (even if subsequent parts are not completed) and notwithstanding full implementation of the Treasury / IP Transfer; and

(d) the Guarantee Trust Deed will apply to the borrowings of JHIFL under the relevant Facility Agreements.

2.4 Acknowledgement from Guarantee Trustee

The Guarantee Trustee acknowledges and agrees that:

(a) the Redomicile Transaction (including each action outlined in the Briefing Paper) does not:

(i) constitute an "Insolvency Event", "Insolvency" or "Winding Up" for the purposes of the Guarantee Trust Deed;

(ii) constitute any other form of default under the Transaction Documents to which the Guarantee Trustee is a party; or

(iii) constitute any breach of the Transaction Documents by JHINV, JHIF or any other party to them;

(b) it will continue to be bound by the Transaction Documents to which it is a party during the course of the Redomicile Transaction, after completion of each part of the Redomicile Transaction (even if subsequent parts are not completed) and after full implementation of the Redomicile Transaction; and

(c) other than as provided for in clause 3 ("Amendments"), the Transaction Documents remain in full force and effect, notwithstanding the implementation of all or part of the Redomicile Transaction.

2.5 Beneficiary Nomination Letter

Each party confirms that, on the Novation Date, the novation of all rights and obligations of JHIF under the Transaction Documents to JHIFL pursuant to the Novation Deed constitutes:

(a) confirmation that JHIF no longer has any rights or obligations to the Financier under each Transaction Document under which rights and obligations of JHIF are novated to JHIFL; and

(b) a Beneficiary Nomination Letter nominating:

(i) each Transaction Document under which rights and obligations of JHIF are novated to JHIFL as a "Finance Document" for the purposes of the Guarantee Trust Deed;

(ii) each document described in clause 2.5(b)(i) above, and each document named or referred to as a "Transaction Document" for the purposes of the CTDP as a "Finance Document" for the purpose of the Guarantee Trust Deed; and

(iii) the Financier as a "Beneficiary" pursuant to each such Finance Document,

in the same terms as the existing Beneficiary Nomination Letters in respect of each Transaction Document under which rights and obligations of JHIF are novated to JHIFL (except that references to JHIF are to be read and construed as references to JHIFL).

2.6 Conflict

If there is a conflict between the Guarantee Trust Deed and this deed, the terms of this deed prevail.

2.7 Consideration

This deed is entered into in consideration of the parties' exchange of promises under this deed and the receipt of valuable consideration which is hereby acknowledged.

3 Amendments

3.1 Guarantee Trust Deed

As from the Novation Date, the Guarantee Trust Deed is amended as set out in schedule 1.

3.2 Amending Deed — Intercreditor Deed

The Guarantee Trustee agrees to execute the deed of amendment to the Intercreditor Deed in the form set out in Annexure A ("Amending Deed to Intercreditor Deed") on execution of this deed [and receipt by it of a Beneficiary Direction from each Beneficiary in respect of the Amending Deed - Intercreditor Deed.].

3.3 Amending Deed — Performing Subsidiary Intercreditor Deed

The Guarantee Trustee agrees to execute the deed of amendment to the Performing Subsidiary Intercreditor Deed in the form set out in Annexure B ("Amending Deed to Performing Subsidiary Intercreditor Deed") on execution of this deed [and receipt by it of a Beneficiary Direction from each Beneficiary in respect of the Amending Deed - Performing Subsidiary Intercreditor Deed.].

3.4 Amending Deed — Performing Subsidiary Undertaking and Guarantee Trust Deed

The Guarantee Trustee agrees to execute the deed of amendment to the Performing Subsidiary Undertaking and Guarantee Trust Deed in the form set out in Annexure C ("Amending Deed to Performing Subsidiary Undertaking and Guarantee Trust Deed") on execution of this deed [and receipt by it of a Beneficiary Direction from each Beneficiary in respect of the Amending Deed - Performing Subsidiary Undertaking and Guarantee Trust Deed.].

4 Costs

Each party shall be responsible for its own costs, charges and expenses in connection with the preparation, negotiation and execution of this deed.

5 General

Clause 26 ("Notices") of the Guarantee Trust Deed applies to this deed as if it was fully set out in this deed.

6 Counterparts

This deed may consist of a number of copies each signed by one or more parties to the deed. If so, the signed copies are treated as making up the one document.

7 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 and waives any right to claim that those courts are an inconvenient forum.

EXECUTED as a deed.

Amending Deed — Guarantee Trust Deed

Schedule 1 — Irish Registration Date Amendments

The Guarantee Trust Deed is amended as follows:

1 The definition of "Business Day" in clause 1.1 ("Definitions') is amended by deleting paragraph (c) and replacing it with the following paragraph:

> "(c) for all other purposes, banks are open for general banking business in Sydney, Amsterdam (up to the Irish Registration Date) and Dublin (as from the Irish Registration Date) and any other place or places specified in the relevant Finance Document.".

2 The definition of "Excluded Tax" in clause 1.1 ("Definitions") is amended by deleting paragraph (b) and replacing it with the following paragraph:

> "(b) a Tax which would not be required to be deducted by the Guarantor if, before the Guarantor makes a relevant payment, the relevant Beneficiary provided the Guarantor with written confirmation as to any of its name, address, registration number, (in the case of a Beneficiary that is a company) country of residence for tax purposes or similar details or any relevant tax exemption or similar details."

3 The definition of "Final Funding Agreement" in clause 1.1 ("Definitions") is deleted and replaced with the following definition of "AFFA" (in alphabetical order):

> "**AFFA** means the document entitled "Amended & Restated Final Funding Agreement in respect of the provision of long term funding for compensation arrangements for certain victims of Asbestos-related diseases in Australia" dated 21 November 2006 between the Guarantor, James Hardie 117 Pty Limited (formerly known as LGTDD Pty Limited), the State of New South Wales and the Asbestos Injuries Compensation Fund Limited in its capacity as trustee of the Asbestos Injuries Compensation Fund (as amended from time to time).".

4 All references to "Final Funding Agreement" in the Guarantee Trust Deed are deleted and replaced with "AFFA".

5 The definition of "Fund Guarantee" is deleted and replaced with the following:

> "**Fund Guarantee** means the instrument entitled "Parent Guarantee" dated 21 November 2006 between the Fund Trustee, the NSW Government and the Guarantor as amended by an amending deed executed by the Guarantor on [#] 2009.".

6 The definition of "Government Agency" in clause 1.1 ("Definitions") is deleted and replaced with the following:

> "**Government Agency** means any government or any governmental, semi governmental, administrative, fiscal or judicial body, department,

commission, authority, tribunal, agency or entity having jurisdiction over, or in relation to the affairs of, a James Hardie Group Member and, for the avoidance of doubt, includes, without limitation, the Australian Taxation Office, the US Internal Revenue Service, the Dutch tax authorities and the Irish Revenue Commissioners, in each case to the extent applicable.".

7 The definition of "Insolvency Official" in clause 1.1 ("Definitions") is deleted and replaced with the following:

"**Insolvency Official** means a custodian, receiver, receiver and manager, trustee, liquidator, provisional liquidator, administrator, examiner or any other officer appointed in connection with the Insolvency of the Guarantor and includes, without limitation:

(a) if the Guarantor is established in the Netherlands:

(i) a receiver in bankruptcy (*curator*), an administrator (*bewindvoerder*);

(ii) a liquidator (*vereffenaar*) appointed in connection with a Winding Up under Dutch law; and

(iii) where the context so requires, a supervisory judge or a court of competent jurisdiction in respect of the Insolvency of the Guarantor; and

(b) if the Guarantor is established in the Republic of Ireland:

(i) a receiver or an examiner;

(ii) a liquidator appointed in connection with a Winding Up under Irish law; and

(iii) where the context so requires, a supervisory judge or a court of competent jurisdiction in respect of the Insolvency of the Guarantor.".

8 The definition of "Insolvent" in clause 1.1 ("Definitions") is amended by inserting a new paragraph (c) and re-numbering the subsequent paragraphs accordingly:

"(c) was established under Irish law and files a petition with any court in Ireland in relation to its liquidation, the bringing forward of a scheme of arrangement or the appointment of an examiner;"

9 Inserting the following definition of "Irish Registration Date" (in alphabetical order) in clause 1.1 ("Definitions"):

"**Irish Registration Date** means the date on which the Guarantor is registered by the Registrar of Companies of Ireland as having its registered office in Ireland.".

10 The definition of "Intercreditor Deed" in clause 1.1 ("Definitions") is amended by inserting the words "(as amended from time to time)" after the word "deed" in the third line.

11 The definition of "Winding Up" in clause 1.1 ("Definitions") is amended by inserting the words ", Irish law" after the words "Dutch law (*ontbinding*)" in the paragraph (d).

12 Clause 4(b)(ii) ("Termination") is amended by inserting the words "(if the Guarantor is established in the Netherlands) or the Republic of Ireland (if the Guarantor is established in the Republic of Ireland)" after the word "Netherlands" in the second line.

13 Clause 27.4 ("Set-off") is amended by inserting the words "(if the Guarantor is established in the Netherlands) or Irish law (if the Guarantor is established in the Republic of Ireland)" after the words "Dutch law" in the final line.

14 Schedule 2 ("Form of Replacement Guarantee") is amended by:

- deleting the details of the Guarantor and replacing them with the following:

Guarantor	Name	**James Hardie Industries S.E.**
	[Corporate seat]	[Amsterdam / Dublin]
	Registered Number	[34106455 / [#]]
	ABN	49 097 829 895
	Address	[#]
	Fax	[#]
	Attention	Managing Director and Company Secretary

– the definition of "Excluded Tax" in clause 1.1 ("Definitions") is amended by deleting paragraph (b) and replacing it with the following paragraph:

"(b) a Tax which would not be required to be deducted by the Guarantor if, before the Guarantor makes a relevant payment, the relevant Beneficiary provided the Guarantor with written confirmation as to any of its name, address, registration number, (in the case of a Beneficiary that is a company) country of residence for tax purposes or similar details or any relevant tax exemption or similar details."

– the definition of "Government Agency" in clause 1.1 ("Definitions") is deleted and replaced with the following:

"**Government Agency** means any government or any governmental, semi governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity having jurisdiction over, or in relation to the affairs of, a James Hardie Group

Member and, for the avoidance of doubt, includes, without limitation, the Australian Taxation Office, the US Internal Revenue Service, and the Dutch tax authorities and the Irish tax authorities, in each case to the extent applicable.";

- the definition of "Insolvent" in clause 1.1 ("Definitions") is amended by inserting the words "and in respect of a person established under Irish law, a filing of a petition by it with any court in Ireland in relation to its liquidation, the bringing forward of a scheme of arrangement or the appointment of an examiner" at the end of paragraph (b);
- the definition of "Winding Up" in clause 1.1 ("Definitions") is amended by inserting the following paragraph at the end of the definition:

  "In respect of a person that is established under Irish law, **Winding Up** includes, without limitation, its dissolution [or the granting of an order bringing forward of a scheme of arrangement].";
- clause 18.4 ("Set-off") is amended by inserting the words "(if the Guarantor is established in the Netherlands) or Irish law (if the Guarantor is established in the Republic of Ireland)" after the words "Dutch law" in the final line.

Signing page

DATED: _____

EXECUTED by)
)
)
as an authorised signatory for, and **SEALED AND DELIVERED** as a deed by, **JAMES HARDIE INDUSTRIES N.V.** in the presence of:)
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_____
By executing this deed the signatory states that the signatory has received no notice of revocation of the authority under which the signatory signs this deed

_____
Signature of witness

_____
Position

_____
Name of witness (block letters)

_____
By executing this deed the signatory states that the signatory has received no notice of revocation of the authority under which the signatory signs this deed

_____
Position

The Common Seal of AET Structured Finance Services Pty Limited
ABN 12 106 424 088 was affixed with the authority of:

(signed)

(print name)

Authorised Officer

(signed)

(print name)

Authorised Officer

Amending Deed — Guarantee Trust Deed

Annexure A: Amending Deed — Intercreditor Deed

[Copy of final version of Amending Deed — Intercreditor Deed (as annexed to NSWG DoC) to be annexed]

Annexure B: Amending Deed — Performing Subsidiary Intercreditor Deed

[Copy of final version of Amending Deed — Performing Subsidiary Intercreditor Deed (as annexed to NSWG DoC) to be annexed]

Annexure C: Amending Deed — Performing Subsidiary Undertaking and Guarantee Trust Deed

[Copy of final version of Amending Deed — Performing Subsidiary Undertaking and Guarantee Trust Deed to be annexed]

MALLESONS STEPHEN JAQUES

Draft

Amending Deed — Performing Subsidiary Undertaking and Guarantee Trust Deed

Dated [•] 2009

James Hardie 117 Pty Limited (formerly known as LGTDD Pty Limited) ("**Performing Subsidiary**")
AET Structured Finance Services Pty Limited ("**Undertaking and Guarantee Trustee**")

Mallesons Stephen Jaques
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Sydney NSW 2000
Australia
T +61 2 9296 2000
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DX 113 Sydney
www.mallesons.com
Ref: 02-5501-6101

Amending Deed — Performing Subsidiary Undertaking and Guarantee Trust Deed
Contents

Amending Deed — Performing Subsidiary Undertaking and Guarantee Trust Deed
Details

Parties	**Performing Subsidiary** and the **Undertaking and Guarantee Trustee**	
Performing Subsidiary	Name	James Hardie 117 Pty Limited (formerly known as LGTDD Pty Limited)
	ABN	30 116 110 948
	Address	Level 3, 32 Pitt Street, Sydney, NSW, 2000
Undertaking and Guarantee Trustee	Name	**AET Structured Finance Services Pty Ltd** in its capacity as trustee for the Financiers under the Guarantee Trust
	ABN	12 106 424 088
	Address	Level 22, 207 Kent Street Sydney, NSW, 2000
Recitals	The Performing Subsidiary and the Undertaking and Guarantee Trustee are parties to the Performing Subsidiary Undertaking and Guarantee Trust Deed and wish to amend the Performing Subsidiary Undertaking and Guarantee Trust Deed on the terms set out in this deed.	
Date of Amending Deed	[•] 2009	

Amending Deed — Performing Subsidiary Undertaking and Guarantee Trust Deed
General terms

1 Interpretation

Clause 1 ("Interpretation") of the James Hardie - Performing Subsidiary Undertaking and Guarantee Trust Deed applies to this deed as if it was fully set out in this deed.

These meanings apply unless the contrary intention appears:

Performing Subsidiary Undertaking and Guarantee Trust Deed means the document entitled " Performing Subsidiary Undertaking and Guarantee Trust Deed" dated 19 December 2006 between the Performing Subsidiary and the Undertaking and Guarantee Trustee.

Irish Registration Date means the date on which JHISE is registered by the Registrar of Companies of Ireland as having its registered office in Ireland.

JHISE means JHINV once it has converted from its present corporate form as a Dutch NV (*Naamloze Vernootschap*) into an SE (*Societas Europaea*).

Novation Date means the Effective Date as defined in the Novation Deed dated [] 2009.

Novation Deed means a deed substantially in the form set out in Annexure B of the Deeds of Confirmation dated [23] June 2009 between James Hardie Industries N.V., James Hardie International Finance B.V., James Hardie Building Products, Inc. and financiers to James Hardie Group.

SE Transformation Date means the date on which JHINV is registered as a "*Societas Europaea*" on the Dutch Trade Register pursuant to European Union Council Regulation 2157/2001.

2 Confirmations and acknowledgement

2.1 Confirmation in relation to definition of "JHINV"

Each party confirms that the definition of "JHINV" for the purposes of the Performing Subsidiary Undertaking and Guarantee Trust Deed is a reference to:

(a) with effect on and from the SE Transformation Date up to the Irish Registration Date, JHISE with its corporate seat in The Netherlands; and

(b) with effect on and from the Irish Registration Date, JHISE with its corporate seat in the Republic of Ireland.

2.2 Confirmation

Each party confirms that, other than as provided for in clause 3 ("Amendments"), the Performing Subsidiary Undertaking and Guarantee Trust Deed remains in full force and effect and enforceable against it up to, including and after each of the SE Transformation Date and the Irish Registration Date.

2.3 Conflict

If there is a conflict between the Performing Subsidiary Undertaking and Guarantee Trust Deed and this deed, the terms of this deed prevail.

2.4 Consideration

This deed is entered into in consideration of the parties' exchange of promises under this deed and the receipt of valuable consideration which is hereby acknowledged.

3 Amendments

As from the Novation Date, the Performing Subsidiary Undertaking and Guarantee Trust Deed is amended as set out in schedule 1.

4 Costs

Each party shall be responsible for its own costs, charges and expenses in connection with the preparation, negotiation and execution of this deed.

5 General

Clause 27 ("Notices") of the Performing Subsidiary Undertaking and Guarantee Trust Deed applies to this deed as if it was fully set out in this deed.

6 Counterparts

This deed may consist of a number of copies each signed by one or more parties to the deed. If so, the signed copies are treated as making up the one document.

7 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 and waives any right to claim that those courts are an inconvenient forum.

EXECUTED as a deed.

Amending Deed — Performing Subsidiary Undertaking and Guarantee Trust Deed
Schedule 1 — Irish Registration Date Amendments

The Performing Subsidiary Undertaking and Guarantee Trust Deed is amended as follows:

1 The definition of "Business Day" in clause 1.1 ("Definitions") is amended by deleting paragraph (c) and replacing it with the following paragraph:

"(c) for all other purposes, banks are open for general banking business in Sydney and any other place or places specified in the relevant Finance Document.".

2 Clause 28.4 ("Set-off") is amended by deleting the words "Dutch law" in the fourth line and replacing it with "the laws of New South Wales, Australia".

DATED: **2009**

EXECUTED by **JAMES HARDIE 117 PTY LIMITED** in accordance with section 127(1) of the Corporations Act 2001 (Cwlth) by authority of its directors:

Signature of director

Name of director (block letters)

Signature of director/company secretary*
*delete whichever is not applicable

Name of director/company secretary*
(block letters)
*delete whichever is not applicable

The Common Seal of AET Structured Finance Services Pty Limited ABN 12 106 424 088 was affixed with the authority of:

(signed)

(print name)

Authorised Officer

(signed)

(print name)

Authorised Officer

JAMES HARDIE

EXECUTIVE INCENTIVE PLAN

The following document sets out the terms of the James Hardie Executive Incentive Plan (the "Plan"). This document only applies to those persons who are eligible to receive an EBIT Bonus as defined below. Employees who are not eligible to receive an EBIT Bonus but who are eligible to receive a bonus based on individual performance are governed by the terms and conditions of the Company's separate Individual Performance Incentive Plan.

A. INCENTIVE PLAN

1. Purpose of the Incentive Plan

The purpose of the ***Executive Incentive Plan*** is to provide incentive compensation for eligible "exempt" *executives and employees* of James Hardie Industries N.V. (JHINV) and its subsidiary companies, including but not limited to James Hardie Building Products (collectively referred to as the "Company"), which directly relates their financial reward (annual bonus) to the Company's achievement of certain financial objectives as well as their individual achievement of specific personal objectives.

2. Definitions

- ***Board of Directors, Board*** — JHINV's Supervisory Board of Directors or its delegate, the Remuneration Committee.
- ***Bonus, bonus*** — The cash compensation the Company may provide to an employee in addition to the agreed base salary. It includes both the Company financial component (EBIT Bonus) and the individual performance component (IP Bonus). "Bonus" and "Incentive" are used interchangeably throughout this document.
- ***Base Salary*** — Participant's annual base salary as of the last day of the Plan Year.
- ***Change in Control*** — See attachment 1
- ***EBIT —*** Earnings Before Interest and Taxes (excluding non operating items such as asbestos adjustments and other related costs) as calculated under prevailing accounting rules and standards applicable to the Company.
- ***EBIT Bonus*** — The bonus that is based on the Company's (or participant's respective business group's) EBIT achievement for the Plan Year.
- ***EBIT/IP % Split*** — The percentage of the participant's Target Bonus that is based on the Company's EBIT achievement (the EBIT portion) versus the percentage that is based on individual performance achievement (the IP portion). These percentages vary based on the participant's position with the Company. These two percentages must total 100%.
- ***EBIT Target Bonus*** — The EBIT Bonus portion of the participant's Target Bonus upon applying the EBIT/IP Split
- ***IP Bonus —*** The bonus that is based on the participant's performance of individual performance objectives for the Plan Year.

- ***JH, The Company*** — James Hardie Industries N.V. and its subsidiaries
- ***Payout %*** —The percentage of the participant's EBIT Target Bonus that will be paid for that Plan Year's performance.
- ***Plan, bonus plan*** — the Executive Incentive Plan
- ***SLT*** — Senior Leadership Team comprised of the Company's CEO and direct reports
- ***Performance Rating*** — The individual rating that each employee receives based on their annual performance review.
- ***Plan Year*** — April 1st to March 31st, the Company's financial year.
- ***Target Bonus*** — The percentage of the participant's Base Salary that is available for Bonus. This is set annually for each participant.

3. Eligibility

Eligibility for a bonus plan is limited to nominated executives and key employees within the Company. In general, participation in a bonus plan is restricted to those employees in salaried exempt positions in grades 16 and above in the US; and in similar positions in other countries where we do business. Note, however, that not all exempt positions are on a bonus plan. Selection of employees for participation in a bonus plan in any Plan Year will be subject to approval of the CEO on the recommendation by the relevant Senior Leadership Team (SLT) member and the highest-ranking Human Resources executive.

Sales Management may have a portion of their total bonus target tied to all or part of this Plan as well as variable pay tied to a sales bonus or commission plan. For example, in the US, sales management's variable pay can be 50% tied to the US EBIT results and 50% tied to their regions' sales bonus plan. Their individual performance rating (IP) will not be tied to their variable pay.

Eligibility of executives and key employees for inclusion in a Plan does not guarantee their participation in any future year. Participation of any division/business unit in the Plan will be at the discretion of the Chief Executive Officer.

4. Bonus Calculation

The Bonus Calculation is based on two (2) components:

(a) IP Bonus

The IP Bonus is **solely** based on the individual's Performance Rating at the end of the Plan Year and/or when the individual changes roles during the year. The Performance Rating is determined by management's review of the individual's job performance.

The Performance Rating must be approved by the two levels of management above the participant prior to the IP Bonus being calculated, except in cases where there is no second level. At the start of each Plan Year, the Board approves the percentage of Target Bonus that each Performance Rating pays.

If the Company does not meet its EBIT Target, the participant still has the ability to earn all of his/her IP Bonus. The total IP Bonus payment to be paid for a Plan Year is calculated as follows:

IP Bonus	=	Base Salary	x	Target Bonus %	X	IP % Split	x	Performance rating %	X	% of yr in plan

(b) EBIT Bonus

The EBIT Bonus is based **entirely** on the achievement of set EBIT Targets for the participant's area of the business. These areas are defined in FY09 as US (for US and European executives); Asia Pacific; Managing Directors/Corporate.

Each Plan Year, the Remuneration Committee and the Board of Directors approve the "**EBIT Targets**" for each area of the business. The Board also approves the "**Payment Schedule**" for achievement of each level of EBIT. The Board has approved the following linear sliding schedule using the achievement levels listed below for FY09:

Company Performance as a % of EBIT Target	Payout as a % of EBIT Target Bonus
70%	0%
80%	33%
90%	67%
100%	100%
110%	150%
120%	200%

The most a participant can receive for their EBIT Bonus component is 200% of their EBIT Target Bonus. At the end of the Plan Year the "**Payout %**" is calculated utilizing the Payment Schedule above and is then used to calculate the participant's EBIT Bonus for that Plan Year:

EBIT Bonus Paid	=	Base Salary	x	Target Bonus %	X	EBIT % Split	x	Payout %	X	% of yr in plan

5. Bonus Payment

All bonus payments, less applicable withholdings, will be made within two and a half months following the end of the relevant Plan Year**Participants must be employed at the end of the Plan Year in order to receive any bonus**, unless one of the exceptions described in Section B(6), B(7), B(11) or B(12) applies.

The Remuneration Committee and the CEO have the joint authority and discretion to make payments due under this Plan in a form of equity for any given fiscal year. In

addition, if payouts are made in a form of equity, the Remuneration Committee and the CEO have the joint authority and discretion to revise the terms and conditions of the Plan as necessary to effectuate such a payout including, but not limited to, the date a participant needs to be employed in order to receive a payout under the Plan, and whether a cash payment can be made in lieu of equity under circumstances requiring a prorated payout.

B. ADMINISTRATION OF THE PLAN

1. Determination of Individual Bonus

(a) Each Plan Year the CEO, under the recommendation of the highest ranking local Human Resources executive and the SLT, will approve the Target Bonus levels and EBIT/IP splits for participants in the eligible salary grades in the Plan.

(b) Individual Target Bonuses shall be calculated based on the Base Salary for the participant at the end of the Plan Year, unless otherwise discussed below.

2. Determination of Objectives

(a) **Target EBIT:** Target EBIT for each area of the business will be determined by the Board of Directors or its delegate.

(b) **IP Objectives:** IP objectives for newly hired, transferred or promoted participants shall be set and approved by management (within 30 days of entering a job). Otherwise, IP objectives for participants shall be set by management as part of the Company's bi-annual performance cycle. Individual objectives for SLT members will be approved by the Board of Directors.

3. Participant Matters

The Board of Directors (or designee) shall, in its sole discretion and on behalf of the Company, determine all Plan matters with respect to all participants, with the exception of those matters within the authority of the CEO or the SLT as conferred by this document.

4. New Employees and Promotions into the Plan

New employees or employees promoted during a Plan Year may be offered participation in the Plan. Their eligibility for bonuses will be calculated on a pro rated basis in the year of entry, and must be approved by the relevant SLT member and the highest-ranking Human Resources executive.

In order to be eligible for a bonus, participants must be employed for a minimum qualifying period of 3 months with at least one month of participation in the Plan during a Plan Year unless waived by the Board of Directors (or designee). The 3 month qualifying period shall be included for purposes of bonus calculation.

5. Transfers and Promotions

The bonus for a participant who is transferred or promoted and remains in the Plan will be calculated in multiple parts. The bonus for each position will be calculated using the Target Bonus and Performance Rating for the part of the year the participant was in each position, unless designated otherwise in a contemporaneous written transfer agreement executed or approved by the employee's relevant SLT member and the highest-ranking Human Resources executive. The participant's final base salary at year end will be used for all calculations under this paragraph.

6. Retirement, Disability or Death

If during a Plan Year a participant retires[1], becomes totally and permanently incapacitated[2] or dies, such participant or their family or designee or estate shall receive the prorated bonus for the year in which the participant retires, becomes totally and permanently incapacitated, or dies utilizing, for the IP Bonus, the most recent performance rating and, for the EBIT Bonus, the "Payout %" as calculated at the end of the Plan Year for the appropriate area of the business.

Payment for participants will be made by the end of the third month following the relevant Plan Year.

In the event of a **short-term disability or leave of absence** (paid or unpaid), a participant may be eligible for a full or pro-rated bonus. The first three months of any leave of absence will be treated as time worked for the purpose of calculating a participant's eligible base salary. For example, if a participant is on approved leave for 2 months of the Plan Year, his/her bonus will be calculated using the participant's full year's Base Salary. If a participant is on approved leave for 4 months of the Plan Year, the first three months will be treated as time worked and the last month shall not, such that a prorated salary of 11 months will be used for purposes of calculating the bonus. If a year-end performance rating is not available (due to the leave), the Company will utilize the participant's most recent Performance Rating.

7. Job Eliminations

A participant whose employment is terminated as a result of the elimination of the participant's position may receive a prorated bonus. In order to receive a prorated bonus, a participant must have participated in the Plan for at least 1 month during the Plan Year and been employed by the Company for at least three months. The prorated bonus will be based on the time worked during the Plan Year, utilizing, for the EBIT Bonus, the "Payout %" as calculated at the end of the Plan Year and for the IP Bonus the participant's most recent Performance Rating.

A prorated payment for any Bonus in the year in which the job elimination occurs shall be made at the time when Bonus payments normally are made, unless otherwise determined by the relevant SLT member and the highest-ranking Human Resources executive.

8. Discontinued Participation in Plan

Where an employee has participated in the Plan in previous years, but in the current Plan Year their participation is discontinued, then they shall be paid a prorated Bonus for the period of participation in the Plan during the Plan Year, utilizing, for the EBIT Bonus, the Payout % as calculated at the end of the Plan Year, and, for the IP Bonus, the participant's most recent Performance Rating received while on the Plan. The end of year salary will be utilized unless otherwise specified in contemporaneous transfer documents executed or approved by the relevant SLT member and their top Human Resources professional.

A prorated payment for any bonus in the year in which the discontinuation of plan participation occurs shall be made at the regular time when bonus payments are made for that Plan Year.

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1 At age 65 or such other date as the Board of Directors (or designee) approves in particular circumstances.

2 Suffers from a mental or physical condition which is expected to last at least 12 months or result in death, and which, in the opinion of a licensed physician, will prevent the employee from engaging in any substantial or gainful employment.

9. Termination At the Initiative of the Company (excluding Job Eliminations)

Participants shall not be entitled to any bonus (including a pro-rated bonus) if they are terminated by the Company prior to the end of the Plan Year (March 31) for reasons other than job elimination or divestment (see section 11 below).

10. Resignation

If a participant resigns prior to the end of the Plan Year (March 31), the participant shall not be entitled to any bonus (including a pro-rated bonus) for the Plan Year in which the resignation occurs. If a participant resigns after the end of the Plan Year but before the bonus is paid, the participant is eligible to receive his/her bonus only for the Plan Year that just ended.

11. Divestments

If a participant's employment is terminated as a result of the sale of a business unit, entity, or subsidiary of JHINV during the Plan Year, participants will receive a prorated bonus utilizing the participant's base salary at the time of divestment, the participant's most recent Performance Rating and the year to date EBIT performance calculated as of the most recently completed quarter. The EBIT performance target will be adjusted for the number of complete quarters in plan prior to divestment. The resulting bonus will be paid at termination.

12. Change in Control

If during a Plan Year there is a change in control (see Attachment 1) of James Hardie Industries N.V., and the Plan is thereafter discontinued, participants will receive a prorated bonus for the Plan Year, utilizing the participant's base salary at the time of Change in Control, the participant's most recent Performance Rating and the year to date EBIT performance calculated as of the most recently completed quarter. The EBIT performance target will be adjusted for the number of complete quarters in plan prior to the Change in Control. The resulting bonus will be paid within 90 days following the Change in Control.

13. Post-Employment Misconduct

Notwithstanding any other provision of the Plan or any other agreement, in the event that a Participant's post-employment conduct breaches any agreement (including, but not limited to, confidentiality and/or non-competition agreements), he or she shall not be entitled to any bonus for which he or she otherwise would be eligible under this Plan.

14. No Guarantee

Nothing in this Plan is intended to alter the at-will status of the Company's employees. Participation in the Plan is no guarantee that a bonus under the Plan will be paid. The success of the Company, its business units and individual employees, as measured by the achievement of EBIT Targets and Individual Performance targets, shall determine the extent to which participants shall be entitled to receive bonuses.

Nothing in the terms and conditions of the Plan shall prevent the Company from canceling or amending the Plan at any time.

In the event the Company decides to cancel the Plan, participants will receive a pro-

rated bonus for the Plan Year. This payment will be made within 90 days of the Plan's cancellation utilizing the participant's base salary at the time of cancellation, the participant's most recent Performance Rating and the year to date EBIT performance calculated as of the most recently completed quarter. The EBIT performance target will be adjusted for the number of complete quarters in plan prior to cancellation. The resulting bonus will be paid within 90 days following the cancellation.

15. General Provisions

(a) Withholding of Taxes

The Company shall have the right to withhold taxes and other amounts, which, in the opinion of the Company, are required to be withheld by law with respect to any amount due or paid to participants under the Plan.

(b) Expenses

All expenses and costs in connection with the adoption and administration of the Plan shall be borne by the Company.

(c) Limitation on Rights

Except as expressly granted pursuant to the Plan, nothing in the Plan shall be deemed to give any employee any contractual or other right to participate in the benefits of the Plan. No award to any such participant in any Plan Year shall be deemed to create a right to receive any award or to participate in the benefits of the Plan in any subsequent Plan Year.

16. Limitations

(a) No Right to Continued Employment

Neither the establishment of the Plan nor the payment of a bonus under it shall be deemed to constitute an express or implied contract of employment for any participant for any period of time or in any way abridge the rights of the Company to determine the terms and conditions of employment or to terminate the employment of any employee in accordance with law.

(b) No Vested Rights

Except as expressly provided herein, no employee or other person shall have any claim of right (legal, equitable, or otherwise) to any bonus payment. No officer or employee of the Company or any other person shall have any authority to make representations or agreements to the contrary. No interest conferred herein to a participant shall be assignable.

(c) Not Part of Other Benefits

The benefits provided in this Plan shall not be deemed a part of any other benefit provided by the Company to its employees.

(d) Other Plans

Nothing contained in the Plan shall limit the Company's power to grant non-Plan bonuses to employees of Company, whether or not they are participants in this Plan.

(e) No Interest

Under no circumstances will interest accrue on any part of the bonus or other amounts potentially payable to any participant.

17. Exclusion of Bonuses From Benefit Calculations

Bonuses paid under this plan shall be excluded from an employee's compensation for the purpose of calculating other aspects of the employee's personal benefit and compensation packages, such as, for example, superannuation, contribution levels to 401k, leave entitlements and vehicle entitlements (unless otherwise required by law).

Bonuses shall also be excluded from an employee's compensation for the purpose of calculating any form of severance or separation due to the employee under applicable law, policy or contract.

18. Unfunded Plan

This Plan is unfunded. Nothing in the Plan shall create or be deemed to create a trust or separate fund of any kind, or a fiduciary relationship between the Company (or any of its subsidiaries) and any participant.

19. Authority of the Board of Directors

Full power and authority to interpret and administer this Plan shall be vested in the Board of Directors, which shall have the sole authority to create or alter terms for the Plan except as explicitly stated herein. The Board of Directors may from time to time make such decisions and adopt such terms for implementing the Plan as it deems appropriate for the Plan or any participant under the Plan. Any decision made by the Board of Directors arising out of or in connection with the construction, administration, interpretation and effect of the Plan shall be final, conclusive and binding upon all participants and any person claiming under or through them. The Board of Directors may delegate its power with respect to the Plan from time to time as it so determines.

20. Alterations to Plan

The Board of Directors may at any time by resolution revoke, add to or vary any of the provisions of the Plan or all or any of the rights or obligations of the Participants in connection with the plan.

21. Plan Terms

In all cases the terms as set forth in the Plan document shall take precedence over any other document issued in connection with the Plan.

22. Arbitration

All claims, disputes, questions, or controversies arising out of or relating to this Plan, will be resolved exclusively in final and binding arbitration in accordance with the

Arbitration Rules and Procedures, or successor rules then in effect, of Judicial Arbitration & Mediation Services, Inc. ("JAMS"). The arbitration will be conducted and administered in Orange County, California by JAMS or, in the event JAMS is not available or does not then conduct arbitration proceedings, a similarly reputable arbitration administrator. The employee and the Company will select a mutually acceptable, neutral arbitrator from among the JAMS panel of arbitrators. Except as provided by this Agreement, the Federal Arbitration Act will govern the administration of the arbitration proceedings. The arbitrator will apply the substantive law (and the law of remedies, if applicable) of the State of California, or federal law, as applicable, and the arbitrator is without jurisdiction to apply any different substantive law. The employee and the Company will each be allowed to engage in adequate discovery, the scope of which will be determined by the arbitrator consistent with the nature of the claim[s] in dispute. The arbitrator will have the authority to entertain a motion to dismiss and/or a motion for summary judgment by any party and will apply the standards governing such motions under the Federal Rules of Civil Procedure. The arbitrator will render a written award and supporting opinion that will set forth the arbitrator's findings of fact and conclusions of law. Judgment upon the award may be entered in any court of competent jurisdiction. The Company will pay the arbitrator's fees, as well as all administrative fees, associated with the arbitration. Each party will be responsible for paying its own attorneys' fees and costs (including expert witness fees and costs, if any).

ATTACHMENT 1
EXECUTIVE INCENTIVE PLANS

"Change in Control" means the following and shall be deemed to occur if the Board of Directors determines that any of the following events occurs:

- A takeover bid is made to acquire the whole of the issued ordinary share capital of the Company and the takeover bid is recommended by the Board of Directors or becomes unconditional;
- A transaction is announced by the Company which, if implemented, would result in a person owning all the issued shares in the Company;
- A person owns or controls sufficient shares to enable them to influence the composition of the Board of Directors; or
- Any other similar event has occurred or is likely to occur (including, but not limited to, a merger of the Company with another company), which the Board of Directors determines, in its absolute discretion, to be a Change in Control.

Exhibit 10.10

Deed of access, insurance and indemnity

Dated **2009**

James Hardie Industries SE ("Indemnitor")
[Name of Director] ("Director")

Deed of access, insurance and indemnity
Contents

Deed of access, insurance and indemnity

Details

Parties	**Indemnitor** and **Director**	
Indemnitor	Name	**James Hardie Industries SE**
	Place of registration	Ireland
	Registered number	
	Address	
	Telephone	
	Fax	
	Attention	General Counsel and Company Secretary
	Email	
Director	Name	
	Address	
	Telephone	
	Fax	
	Email	

Recitals	**A**	The Director has been a director of James Hardie Industries N.V. and has the benefit of an indemnity from James Hardie Industries N.V.
	B	James Hardie Industries N.V. became James Hardie Industries SE (Societas Europaea) in accordance with Regulation 2(1) of Council Regulation (EC) No. 2157/2001 on the ● day of ● 2009.
	C	James Hardie Industries SE intends to transfer its registered office to Ireland, whereupon it will become an Irish registered Societas Europaea ("**SE**") subject to the Irish Companies Acts.
	D	The indemnity set out in this deed is in addition and without prejudice to the existing deed of indemnity entered into by the Indemnitor in favour of the Director, while it was a Dutch N.V. and which remained in force as the Indemnitor became re-registered as a Dutch SE as set out in Recital B above.

E The indemnity set out in this deed shall take effect on the Date of Issue as defined in Clause 1.1 and apply to cover actions of the Director from the date of their appointment as a director of the Indemnitor, as well as during any period prior to the Date of Issue during which such director served as a director of James Hardie Industries N.V. and/or James Hardie Industries SE (a European Company registered in The Netherlands).

F The existing indemnity shall remain in force after the Date of Issue.

G As a condition of the Director agreeing to act (either at the date of this deed or any time after the date of this deed) or continuing to act as:

a) a director of the Indemnitor;

b) a director of any Subsidiary of the Indemnitor in respect of which the Director also acts as a director; or

c) a director of an Outside Entity where the appointment or service as director is made or done at the request of the Indemnitor,

the Director has requested that the Indemnitor enters into this deed.

H The Indemnitor has agreed to provide the covenants and indemnities provided for under this deed and acknowledges having received valuable consideration for doing so.

I This deed is not intended to replace or diminish any Third Party's obligations to the Director, including any insurer's obligation to indemnify the Director against any liability and any other indemnity granted by any Subsidiary of the Indemnitor except to the extent stated in this deed.

Date of deed See Signing page

Deed of access, insurance and indemnity

General terms

1 Interpretation

1.1 Definitions

These meanings apply unless the contrary intention appears:

Access Rights means the rights referred to and contained in clause 4.1 to access and take copies of the Company Books.

ASIC means Australian Securities and Investments Commission.

Authority means:

(a) a Royal Commission, Board of Inquiry, Parliamentary Committee or similar body;

(b) ASIC, Australian Prudential Regulation Authority, Australian Competition and Consumer Commission, Australian Stock Exchange and any other regulatory authority;

(c) a department of any Australian government or government of any other jurisdiction;

(d) SEC (the U.S. Securities and Exchange Commission);

(e) NYSE (New York Stock Exchange);

(f) a prosecutor, state attorney or attorney general, law enforcement agency or other public authority;

(g) an instrumentality, agent or appointee of the Crown in right of the Commonwealth, in right of a State or in right of a Territory or the equivalent of any of them in any other jurisdiction; and

(h) any other body exercising statutory or prerogative power under any applicable law.

Board means the Indemnitor's board of directors as well as the Managing, Supervisory and/or Joint Boards of James Hardie Industries N.V. and/or James Hardie Industries SE (a European Company registered in The Netherlands), as applicable.

Board Papers means:

(a) all existing and future Documents given or made available to the Board or any member thereof in the capacity of director or tabled at meetings of the Board or any committee of the Board (including

periodic Board papers, submissions, minutes, letters, Board committee and sub-committee papers); and

(b) any other Documents in the possession or control of the Indemnitor or a Subsidiary which are referred to in any of those Documents,

whether or not legal professional privilege applies to the Documents.

Claim means:

(a) any Proceedings, including any formal written claim, cause of action, action, demand or suit (including by way of contribution or indemnity and including actions by or in the right of the Indemnitor or a Subsidiary) at law or in equity (whether for damages or for declaratory, injunctive or other relief) however commenced;

(b) any investigation or inquiry by or initiated by any Authority or External Administrator in any way connected with any Director's Act;

(c) any formal investigation or inquiry:

(i) conducted by or initiated by the Indemnitor or a Subsidiary concerning the Director's Act; or

(ii) to which it is reasonable in the circumstances for the Director to respond, where the investigation or inquiry is concerning the Director's Act;

(d) any formal written claim, claim, cause of action, action, demand or suit originated by a Director, but only where the Director has first obtained Board approval by at least a 2/3 vote; or

(e) any written or oral threat, complaint or demand that might reasonably result in the Director believing that any action referred to in paragraphs (a) or (b) or (c) might be initiated.

Company Books includes:

(a) a register;

(b) any other record of information;

(c) financial reports or financial records, however compiled, recorded or stored;

(d) a Document; and

(e) the Board Papers,

of the Indemnitor or a relevant Subsidiary.

Corporations Act means the Australian *Corporations Act* 2001 (Cwlth).

Date of Issue means the date that the Companies Registration Office of Ireland issues the certificate confirming the transfer of the SE's registered office to Ireland.

Details means the section of this deed headed "Details".

Director's Act means any actual or alleged act, error, statement, misstatement, misleading statement, omission, neglect, conduct or breach of duty made, committed, omitted or attempted by the Director (either alone or jointly with one or more other persons) in any way connected with the Director being a director of the Indemnitor, any Subsidiary or Outside Entity (whether before or after the Effective Date and including as a director of James Hardie Industries N.V. and/or James Hardie Industries SE (a European Company registered in The Netherlands).

Document includes:

(a) any paper or other material on which there is writing or printing or on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;

(b) a disc, tape, hard drive or other article from which sounds, images, writings or messages are capable of being reproduced; and

(c) a disc, tape, hard drive or other article, or any material, from which sounds, images, writings or messages are capable of being reproduced with or without the aid of any other article or device,

including any notice, order, writ, summons and other legal process document.

Effective Date means the Date of Issue.

Excluded Liability means a liability for which the Indemnitor is not allowed to grant an indemnity against under applicable law or under its articles of association or constitution in force on the date of this deed.

External Administrator means a liquidator, provisional liquidator, controller (which has the same meaning as in the Corporations Act) or an administrator, receiver, trustee, debtor in possession, official committee, examiner, or other person or entity with the power to act on behalf of the Indemnitor or a Subsidiary during bankruptcy or an insolvency, or equivalent officer appointed under or recognised by the law of any jurisdiction of incorporation of the Indemnitor or a Subsidiary.

GST has the same meaning as in the GST Law.

GST Law means the A New Tax System (Goods and Services Tax) Act 1999 (Cwlth) and any legislation or regulation which imposes, levies, implements or varies a GST.

Insurance Policy means an insurance policy against liabilities incurred as a director of the Indemnitor or a Subsidiary or an Outside Entity taken out in accordance with and subject to clause 7.

Insurer means any reputable and financially sound insurer whose business includes the provision of the insurance contemplated in clause 7.

Legal Costs means legal costs, fees, charges or expenses.

Liability includes any liability, judgment, fines, costs, amounts paid in settlement, loss, expense, damages, monetary obligation or charge (whether actual, contingent or prospective), and includes Legal Costs, other than an Excluded Liability.

Outside Entity has the meaning ascribed to it in clause 5.8 ("Outside Entities") and for the avoidance of doubt includes any corporation that was an Outside Entity when the Director's Act for which indemnity is sought under this deed occurred, even though it has ceased to be an Outside Entity at the time the Claim is made.

Proceedings means any civil, criminal, administrative, investigative or arbitral proceedings, mediation or other form of alternative dispute resolution (whether or not held in conjunction with any civil, criminal, administrative or arbitral proceedings), in which it is alleged that a Director's Act has occurred.

Retirement Date means the last date on which the Director ceases to hold any office as a director of the Indemnitor or a Subsidiary or an Outside Entity except that for the purposes of this definition, the Director has not ceased to hold office as a director if the Director retires at a general meeting of the relevant entity in accordance with its constitution or the listing rules of the relevant exchange, offers himself for re-election at that meeting and is re-elected at that meeting (or any adjournment of that meeting).

Subsidiary means a subsidiary of the Indemnitor within the meaning of Section 155 of the Irish Companies Act 1963, and for the avoidance of doubt includes any corporation that was a Subsidiary of the Indemnitor when the Director's Act for which indemnity is sought under this deed occurred, even though it has ceased to be a Subsidiary at the time the Claim is made.

Supply has the same meaning as in the VATA or GST Law (as applicable).

Third Party means a person other than the Indemnitor or a Subsidiary and includes an insurer.

VATA means the Value Added Tax Act, 1972 of Ireland (as amended).

VAT means value added tax charged pursuant to or in conformity with Council Directive 2006/112/EC of 28 November 2006 or any similar levy or tax, including but not limited to GST.

1.2 General interpretation

In this deed unless the contrary intention appears:

(a) **(executors and administrators)** a reference to the Director includes a reference to the Director's personal representatives, executors and administrators;

(b) **(variations or replacement)** a reference to this deed includes any variation or replacement of it;

(c) **(singular includes plural)** the singular includes the plural and vice versa;

(d) **(person)** the word "person" includes an individual and a body corporate;

(e) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

(f) **(as a director)** a reference to a Liability incurred "as a director of the Indemnitor, a Subsidiary or Outside Entity" includes a reference to a Liability incurred by the Director after the Retirement Date to the extent the Liability relates to a Director's Act occurring while the Director was a director of the Indemnitor, Subsidiary or Outside Entity;

(g) **(director)** a reference to a director of a body corporate includes a reference to the members of the management board, supervisory board, joint board, board of directors and any equivalent corporate body (under applicable law) of such body corporate;

(h) **(references to the "Indemnitor")** where the Director acted as a director of the Indemnitor prior to the Effective Date a reference to "Indemnitor" includes a reference to James Hardie Industries N.V. and/or James Hardie Industries SE (a European Company registered in The Netherlands) (as applicable); and

(i) (**determinations**) where this deed refers to a final determination being made with respect to a right to indemnification this shall be read as a reference to a final decision of a court of final instance and competent jurisdiction which is not appealed with the period for an appeal.

1.3 Headings

Headings are for convenience only and do not affect the interpretation of this deed.

1.4 Footnotes

The footnotes to this deed are for information only and do not form part of this deed.

1.5 Counterparts

This deed may be executed in counterparts and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart. All counterparts shall constitute an original of this deed and when taken together are to be taken to constitute one instrument.

2 Effective Date

This deed shall have no force or effect at law or in equity until the Date of Issue.

3 Consideration

The Indemnitor enters into this deed for valuable consideration from the Director and receipt of that consideration is acknowledged.

4 Access to documents

4.1 Access Rights

It is acknowledged and accepted that the Director shall have, to the fullest extent permitted by applicable law, the right to access and take copies of the Company Books.

Without limiting the generality of the foregoing, the Director may have access to and take copies of the Company Books in connection with:

(a) any investigation or inquiry by an Authority or External Administrator:

(i) into the affairs of the Indemnitor or a Subsidiary during the Director's time as a director of the relevant entity; or

(ii) into any Director's Act; and

(b) any other purpose, if and to the extent approved by the Board or its delegate.

The Access Rights in clauses (a) and (b) above continue so long as the Director shall continue to serve as a director of the Indemnitor or a Subsidiary and, following his Retirement Date, so long as the Director shall be subject to any possible Proceedings (such period, the "Access Period").

4.2 Request for Access Rights

To exercise Access Rights, the Director must notify the Indemnitor specifying:

(a) the reason the Director wants Access Rights; and

(b) to which Company Books the Director wants Access Rights.

4.3 Indemnitor's obligations regarding access

If the request is one for which approval for access is required under clause 4.1 (b), the Indemnitor agrees to promptly consider the request and notify the Director of its decision (the consent of the Indemnitor not to be unreasonably withheld or delayed).

If access is permitted under this deed, the Indemnitor agrees to, or, where relevant, procure that the relevant Subsidiary:

(a) allow the Director access to the Company Books during normal business hours at the principal office of the relevant entity or another place or time agreed between the relevant entity and the Director; and

(b) if required by the Director, provide free of charge to the Director a copy of any of the Company Books requested.

4.4 Indemnitor's obligation to maintain documents

The Indemnitor agrees to use reasonable endeavours throughout the Access Period to maintain:

(a) a complete set of Board Papers in an orderly fashion at a secure place; and

(b) procure that each Subsidiary uses its reasonable endeavours to maintain the Company Books in accordance with its usual practices and policies.

In this clause, a complete set of Board Papers means those documents formally prepared and circulated as a Board pack of documents to all members of the Board or to all members of any relevant committee of the Board (including documents formally distributed at a Board meeting).

4.5 Notification of privileged documents

The Indemnitor agrees to notify or, as applicable, to procure that the relevant Subsidiary notifies the Director:

(a) if any Company Books to which the Director is to be given or has been given Access Rights are the subject of legal professional privilege in favour of the Indemnitor or a Subsidiary; and

(b) of the general nature of acts, omissions or conduct that could cause the privilege to be waived, extinguished or lost.

4.6 Director's obligations

The Director agrees:

(a) to use Company Books to which Access Rights have been given only for the permitted purpose;

(b) to keep Company Books confidential except that, subject to paragraph (c), the Director may disclose them:

(i) to the Director's lawyers and expert advisors retained by the Director or those lawyers but only for the purpose for which access is given to the Director; and

(ii) to the other parties to Proceedings in which the Director is a party if this is necessary for the purposes of those

Proceedings (but only those parts relevant to the Proceedings may be disclosed),

provided the recipient has agreed to maintain confidentiality; and

(c) if the Director has been advised that privilege exists, not to waive that privilege or do any act or omit to do any act which would cause that privilege to be waived or extinguished without the consent of the Indemnitor or the relevant Subsidiary (which must not be unreasonably withheld).

4.7 Return of documents

On request from the Indemnitor, the Director agrees to return to the Indemnitor or relevant Subsidiary, as applicable, all copies of Company Books for which Access Rights were granted when the permitted purpose has finished. This applies even after the Access Period has ended.

4.8 Other rights of access preserved

Nothing in this deed limits or restricts any other right of access to the Company Books the Director has under any applicable law.

5 Indemnities

5.1 Indemnities

To the maximum extent permitted by section 200 of the Irish Companies Act 1963 and subject to this deed, the Indemnitor unconditionally and irrevocably indemnifies the Director against any and all:

(a) Claims or in respect of any Liabilities (including without limitation a liability for negligence) arising from or in connection with a Director's Act (other than Legal Costs or civil penalties which are indemnified under paragraphs (b) and (c));

(b) civil penalties being pecuniary penalties imposed under legislation;

(c) Legal Costs, not limited to taxed costs (i.e. costs reviewed and approved by a court), actually and reasonably incurred by the Director in defending, or otherwise being represented in connection with a Claim or in respect of any Liability;

(d) reasonable Legal Costs actually incurred by the Director in good faith in obtaining legal advice for the purposes of making a claim for indemnification or seeking legal advice in relation to any issues that may arise under this deed in connection with making a claim for indemnification under this deed or any insurance policy procured by the Indemnitor under clause 6;

(e) reasonable Legal Costs actually incurred by the Director in good faith in connection with any civil, criminal, administrative, investigative or arbitral proceedings, mediation or other form of alternative dispute resolution (whether or not held in conjunction with any civil,

criminal, administrative or arbitral proceedings) in which the Director is made a witness by reason of the fact of his service as a director of the Indemnitor, a Subsidiary or Outside Entity;

(f) reasonable Legal Costs actually incurred by the Director in good faith in obtaining legal advice on issues relevant to their performance of their functions and the discharge of their duties as a director of the Indemnitor, a Subsidiary or Outside Entity (other than Legal Costs (i) incurred in connection with a Claim or in respect of any Liability which are indemnified on the basis specified in paragraph (c), (ii) indemnified on the basis specified in paragraph (d), or (iii) indemnified on the basis specified in paragraph (e)) if that expenditure has been approved by the Indemnitor in accordance with the Indemnitor's articles of association;

(g) any withholding taxes, social security premiums or other Irish or foreign taxes which are payable by or on account of the Director as a result of the event or circumstances indemnified against and the Director's actual or deemed receipt of any payment hereunder; and

(h) any other reasonable costs and expenses actually incurred by the Director in defending, or otherwise in connection with a Claim or in respect of any Liability.

5.2 Nature of indemnities

(a) The indemnities in this deed:

(i) are continuing obligations, independent of the Indemnitor's other obligations under this deed and survive the termination of this deed; and

(ii) extend to Liabilities arising out of Claims made after the Director has ceased being a director of the Indemnitor or a Subsidiary or Outside Entity.

(b) It is not necessary for the Director to incur expense or make payment before enforcing a right of indemnity under this deed.

(c) The Indemnitor's obligations under this deed are a primary obligation and the Director is not obliged to proceed against or enforce any other right against any person or property or demand payment from any other person before making a demand for payment by the Indemnitor under this deed.

(d) The Indemnitor's obligations under this deed are absolute and unconditional. They are not subject to any set-off, counterclaims or conditions. In particular, the Indemnitor's obligations will not be affected by anything which might abrogate, prejudice or limit them or the effectiveness of this deed.

(e) The Indemnitor waives in favour of the Director all rights at law or otherwise against any person or property so far as necessary to give effect to this deed.

(f) Where the law so requires, pending a final determination in respect of a right of a Director to be indemnified pursuant to this deed any amount paid pursuant to clauses 5.1, 5.3 or 5.5 shall be treated as an advance and shall be liable to be repaid in the circumstances set out in clause 5.7.

5.3 Payment of indemnified amounts

If the Director is entitled to be indemnified under this deed for a Liability which is due and payable, the Indemnitor agrees to pay that amount at the direction of the Director to discharge the Liability. Payment is to be made within 30 days of the date on which the Director provides evidence reasonably satisfactory to the Indemnitor that the:

(a) Director has incurred the Liability; and

(b) amount is due and payable,

or within such shorter time provided that the Director can demonstrate that such a Liability is payable within a shorter time.

5.4 Currency

(a) Currency of payment

(i) The Indemnitor must pay all money payable by it under this deed in the currency reasonably required by the Director.

(ii) If the Director accepts a payment under this deed in a currency other than that in which payment is required by clause 5.4(a)(i), that payment will not satisfy the amount due for payment except to the extent that the Director could buy (either directly or through a currency other than that in which the payment is due) with the payment received the required currency within a reasonable time of receipt after the deduction of all costs relating to the purchase.

(b) Currency deficiency

If there is any deficiency between:

(i) an amount payable by the Indemnitor under this deed which is received by the Director in a currency other than the currency payable under this deed because of a judgment, order or otherwise; and

(ii) the amount produced by converting the payment received from the currency in which it was paid into the currency in which it was agreed to be paid either directly or through a currency other than that in which it was agreed to be paid,

the Indemnitor must pay to the Director the deficiency and any loss, costs or expenses resulting from it.

(c) Exchange rate

Subject to any express provision to the contrary, if for the purposes of this deed it is necessary to convert one currency into another currency the conversion must be effected using an exchange rate selected by the Director reflecting market conditions (including transaction costs) at the time of conversion.

5.5 Payment of Legal Costs

Without limiting clauses 5.1 and 5.3, to the maximum extent permitted by law, Legal Costs and other Liabilities incurred by a Director which may be indemnified under clause 5.1 will be paid by the Indemnitor promptly as required in clause 5.3 and, where a Claim is involved, in advance of the final determination of such Claim, provided that amounts payable under this clause must be repaid if and to the extent required under clause 5.7.

5.6 Other insurance policies and indemnities

The Director is not obliged to claim under any indemnity or insurance policy before claiming under this deed.

5.7 Repayment by Director

To the extent to which the law requires a payment made by the Indemnitor under this clause 5 to be treated as an advance pending a final determination as referred to in clause 5.2(f), the Director agrees to repay those amounts (including but not limited to any amounts paid pursuant to clause 5.5), within 30 days after receiving a written request from the Indemnitor specifying the amount to be repaid, to the extent that:

(a) a court of final instance and of competent jurisdiction makes a final determination that the Director is not entitled to be indemnified by the Indemnitor for the Liability; or

(b) the Director is reimbursed by a Third Party for the Liability, or a Third Party satisfies the Liability directly.

If the law requires earlier repayment then the amount advanced must be repaid when the law so requires.

For the purpose of this clause, the Director is only required to repay amounts solely and directly attributable to the defence of the Director (to the exclusion of any other party to any Proceedings) in relation to a Claim or Liability.

5.8 Outside Entities

In this clause, "Outside Entity" means a body corporate which is not the Indemnitor or a Subsidiary (and for this purpose includes another company, a partnership, joint venture, trust or other enterprise where the Director has been appointed a director of an Outside Entity at the request of the Indemnitor or a Subsidiary of the Indemnitor or is serving, or continuing to serve, as a director at the request of the Indemnitor or a Subsidiary of the Indemnitor. In that event the Director is indemnified by the Indemnitor in accordance with this deed against any Claim and in respect of any Liability incurred in the capacity as a director of the Outside Entity as if that Liability had been

incurred in the capacity as a director of the Indemnitor in accordance with clause 4.1).

5.9 Multiple indemnities

The Indemnitor is not obliged to make payments to the extent that the Director has already received payment from any Subsidiary of the Indemnitor and the Director acknowledges he cannot claim payment from the Indemnitor to the extent he recovers payment from a Subsidiary of the Indemnitor.

5.10 Reasonable Costs

If the parties do not reach agreement as to whether Legal Costs under clauses 5.1 or 5.5 are reasonable within 30 days of the claim being made then either party may refer the dispute to an expert on legal costs in the place where the dispute arises for determination. The expert is to be the person nominated by the President of the Law Society of Ireland for the time being or a designee of such person who has regard to the place where the dispute arises, unless the parties agree to another person before the President nominates the expert.

Where an expert has been nominated under this clause to determine a dispute:

(a) the expert will determine the procedures for determination of the dispute and the allocation of costs and expenses in connection with the referral; and

(b) the decision of the expert will be conclusive and binding on the parties in the absence of manifest error.

6 Conduct of Claim

6.1 Director's undertakings

The Director agrees:

(a) to promptly notify the Indemnitor after the Director becomes aware of any circumstances which could reasonably be expected to give rise to a request by the Director for indemnity under this deed, provided that the failure to so notify Indemnitor will not relieve Indemnitor from any liability which it may have to the Director (except to the extent that the Indemnitor is prejudiced by such failure);

(b) to take any action and provide any information the Indemnitor reasonably requires to avoid, dispute, defend or appeal any Claim which could reasonably be expected to give rise to a request by the Director for indemnity under this deed;

(c) to assist the Indemnitor to the best of the Director's abilities in any action the Indemnitor takes to avoid, dispute, defend or appeal any Claim which may give rise to a request by the Director for indemnity under this deed;

(d) not to admit liability for or settle any Claim which may give rise to a request by the Director for indemnity under this deed without the Indemnitor's consent (which must not be unreasonably withheld);

(e) to promptly notify the Indemnitor of any offer of settlement or compromise received from a person making a Claim; and

(f) if the Indemnitor is entitled to act under clause 6.2, to do everything the Indemnitor reasonably requests, to enable the Indemnitor to enforce its rights under that clause or clause 6.3.

6.2 Conduct of Claim

With respect to any Claim:

(a) the Indemnitor shall be entitled to participate therein at its own expense;

(b) except with prior written consent of the Director, the Indemnitor shall not be entitled to assume the defence of any Claim;

(c) the Indemnitor shall not settle any Claim in any manner which would impose any penalty or limitation on the Director without the Director's prior written consent (not to be unreasonably withheld or delayed);

(d) the Director shall not settle any Claim without the Indemnitor's prior written consent (not to be unreasonably withheld or delayed); and

(e) as far as legally possible, Indemnitor may elect to be subrogated to the rights of the Director against a Third Party in connection with the Claim and any Liability arising in connection with the Claim, unless an insurer is entitled to be subrogated to those rights.

6.3 Control of Claim

If the Indemnitor is entitled to act under clause 6.2, the Indemnitor may manage and control the conduct of the Claim but must do so at the cost of the Indemnitor or its insurers. In those circumstances, the Indemnitor agrees to instruct its lawyers on behalf of both the Indemnitor and the Director and indemnify the Director against any costs awarded against the Director in any Claim brought by the Indemnitor in the exercise of its rights under this clause 6.

6.4 Legal advisers appointed by the Director

Where Indemnitor has not assumed control of the conduct of a Claim under clause 6.3, the Director may appoint legal or other advisers to assist the Director in connection with the Claim not being the advisers assisting the Indemnitor in connection with the Claim. Subject to the terms of this deed and to the Indemnitor approving the identity of the advisers to be appointed (such approval not to be unreasonably withheld or delayed), the Indemnitor agrees to pay all reasonable Legal Costs and other reasonable costs and expenses incurred by the Director in those circumstances.

Nothing in this clause 6.4 derogates from clauses 5.1(c), 5.1(d), 5.1(e), 5.1(f), 5.1(h) and 5.7.

6.5 Interpretation

Each cause of action, demand or suit comprised in any Claim shall be treated as a separate and distinct Claim, with the result that clauses 6.2 and 6.4 may each apply to different aspects of what might otherwise be regarded as the same Claim or Proceeding.

7 Insurance

7.1 Indemnitor to maintain insurance

To the extent permitted by law, the Indemnitor must, so long as the Director shall continue to serve as a director of the Indemnitor or a Subsidiary or Outside Entity and, following his Retirement Date, so long as the Director shall be subject to any possible Proceedings, maintain or procure that the relevant Subsidiary maintains an adequate Insurance Policy with an Insurer so far as is reasonably available at a reasonable cost. The Insurance Policy may contain generally accepted exclusions and conditions.

The Indemnitor agrees to and agrees to procure that any Subsidiary agrees to:

(a) use reasonable endeavours not to do or permit to be done anything which prejudices, and promptly rectify anything which might prejudice, cover under the Insurance Policy;

(b) upon receipt of a request in writing from the Director, provide the Director with a copy of the Insurance Policy and any certificates of insurance connected with it;

(c) notify the Director promptly if, for any reason, the Insurance Policy is cancelled or is not renewed or is likely to be cancelled or not renewed; and

(d) use reasonable endeavours to ensure that cover under the Insurance Policy following the Retirement Date is not materially less favourable to the Director than to the directors of the Indemnitor in office at that time.

7.2 Director's undertaking in connection with insurance

The Director agrees:

(a) to do anything the Indemnitor reasonably requires to enable the Indemnitor to take out and maintain the Insurance Policy at the Indemnitor's expense; and

(b) to comply at all times with all his obligations under the Insurance Policy, including reporting claims in writing as soon as practicable, and reporting circumstances which could give rise to a claim.

7.3 Director's acknowledgment in connection with insurance

The Director acknowledges that the negotiation of the terms of the Insurance Policy may:

(a) involve the Insurer varying the terms of the insurance policy offered which, if accepted by the Indemnitor, may provide less coverage or less favourable coverage for the Director;

(b) involve a decision by the Indemnitor, acting reasonably, to balance the proposed level of premiums against the terms offered; or

(c) result in a decision by the Indemnitor to accept varied terms or to change Insurers.

8 Subrogation

(a) In the event of the Indemnitor meeting its obligations under this deed, any rights which the Director has or might have against any other party in respect of any matter which has been the subject of indemnity will be subject to a right of subrogation by the Indemnitor.

(b) If the Indemnitor acts under this clause 8, the Director agrees to any claim or proceedings being brought by the Indemnitor in the Director's name and agrees to provide the Indemnitor with all reasonable assistance and co-operation including the execution of any necessary documents and papers.

(c) If the Director recovers any amount from a Third Party in respect of any matter giving rise to a claim under this indemnity, the Liability of the Indemnitor will be reduced by the amount so recovered. Should the Indemnitor recover an amount in excess of the total payment made, then the excess of that payment shall be restored to the Director less the cost to the Indemnitor of such recovery.

(d) The Director and Indemnitor shall do nothing to prejudice these rights.

9 Notices

9.1 Requirements for notices

All notices, consents, approvals, waivers and other communications in connection with this deed must be in writing, signed by the sender (if the Director) or an authorised representative of the sender (if the Indemnitor), and sent to the address or facsimile number, and marked for attention of the person identified in the Details or, if the recipient has notified otherwise, then marked for attention in the way last notified.

9.2 When effective

Communications take effect from the time they are received or taken to be received. Communications are taken to be received:

(a) if sent by post, on the day after the date of posting; or

(b) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent; or

(c) if sent by email, on the earlier of receipt by the sender of an automated message confirming delivery or on the day after the email is sent, unless the sender receives an automated message that the email has not been delivered.

10 General

10.1 Exercise of rights

A right in favour of the Director under this deed or a breach of an obligation of the Indemnitor under this deed can only be waived by an instrument duly executed by the Director. No other act, omission or delay of the Director will constitute a waiver binding against, or estoppel against, the Director.

10.2 Discretion in exercising rights

The Indemnitor 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. However, the Indemnitor acknowledges that in exercising any discretion it will in the ordinary course seek to provide the maximum protection to the Director that is consistent with the terms of this deed and applicable law.

10.3 Successors: Binding Agreement

This deed shall be binding on, and shall inure to the benefit of and be enforceable by, the Indemnitor's successors and assigns and by the Director's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, and legatees. Indemnitor shall require any successor or assignee (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Indemnitor expressly to assume and agree in writing to perform this Agreement in the same manner and to the same extent that such Indemnitor would be required to perform if no such succession or assignment had taken place.

10.4 Reinstatement of rights

If a transaction (including a payment) in connection with this deed is determined or conceded or compromised to be void or voidable then:

(a) the Director is immediately entitled as against the Indemnitor to all the rights under this deed to which the Director was entitled immediately before the transaction; and

(b) on request from the Director, the Indemnitor must do all things necessary (including signing any document) to restore all those rights to the Director.

10.5 VAT

Unless otherwise specifically stated, amounts payable under this deed are on a VAT exclusive basis. If any Supply made by one party ("**supplier**") in connection with this deed becomes subject to VAT, then the party receiving the Supply or other transaction being subject to VAT ("**recipient**") agrees to pay an additional amount to the supplier equal to the amount of VAT payable by the supplier to the applicable tax authority in respect of the Supply or other transaction being subject to VAT. If the amount of VAT recovered by the supplier from the recipient under this clause differs from the amount of VAT payable under applicable law by the supplier, the amount payable by the recipient to the supplier is to be adjusted accordingly.

Where one party ("**payer**") is liable to reimburse another party ("**payee**") for any expenditure incurred by the payee ("**Expenditure**"), the amount reimbursed by the payer shall be the VAT exclusive Expenditure plus an amount in respect of irrecoverable VAT (if any) of the payee in respect of such Expenditure, and an amount in respect of VAT (if any) payable to the payee by the payer under this clause.

10.6 Variation and waiver

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. A purported variation has no effect if it infringes applicable law.

10.7 Severability

If the whole or any part of a provision of this deed is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this deed.

10.8 Corporate Power and Capacity

The Indemnitor warrants by its execution hereof that it has the corporate power and capacity to enter into and has duly authorised the execution and delivery of this deed.

10.9 Governing law and jurisdiction

(a) This indemnity shall be governed by and construed in accordance with the laws of Ireland.

(b) Each of the parties to this deed irrevocably agrees that the courts of Ireland are to have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this deed and, for such purposes, irrevocably submits to the non-exclusive jurisdiction of such courts. Any proceeding, suit or action arising out of or in connection with this indemnity ("**Litigation**") may therefore be brought in the courts of Ireland.

(c) The Indemnitor irrevocably waives any objection to Litigation in the courts referred to in clause 10.9(b) on the grounds of venue or on the grounds of forum non conveniens.

(d) The submission to the non-exclusive jurisdiction of the courts referred to in clause 10.9(b) shall not (and shall not be construed so as to) limit the right of the parties to this deed to commence Litigation against any of the parties to this deed, in any other court of competent jurisdiction, nor shall the commencing of Litigation in any one or more jurisdictions preclude the commencing of Litigation in any other jurisdiction (whether concurrently or not) if and to the extent permitted by applicable law.

IN WITNESS of which this document has been executed and delivered as a deed on the date which first appears above.

Deed of access, insurance and indemnity

Signing page

Present when the Common Seal

of **JAMES HARDIE INDUSTRIES SE**
was affixed hereto

Director

Director/Secretary

SIGNED SEALED AND DELIVERED
by **[Name of Director]**
in the presence of:

Signature of witness:
Name:
Address:

Occupation:

Exhibit 10.11

QUEENSLAND LAND REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

SURRENDER OF FREEHOLD LEASE OR SUBLEASE

Form 8 Version 4

Dealing Number

Duty Imprint

OFFICE USE ONLY

Privacy Statement
Collection of this information is authorised by the Land Title Act 1994 the Land Act 1994 and the Water Act 2000 and is used to maintain the publicly searchable registers in the land registry and the water register. For more information about privacy in NR&W see the department's website.

1. Dealing number of instrument being surrendered
Lease 706009811

Lodger (Name, address & phone number)
Deacons
Level 17, 175 Eagle Street
Brisbane QLD 4000
3309 0888

Lodger Code

2. Lot on Plan Description	**County**	**Parish**	**Title Reference**
Lot 108 on CP SL 7249	Stanley	Woogaroo	15798160

3. Lessor

Mulitplex Carole Park Landowner Pty Limited ABN 15 784 033 895

4. Lessee

James Hardie Australia Pty Limited ACN 084 635 558

5. Surrender/Execution

a) Surrender of Freehold Lease/Sublease

***Full Surrender** The lease/sublease in item 1 is surrendered from 19 November 2007
***~~Partial Surrender~~** ~~The lease/sublease in item 1 is surrendered from / / .~~
~~*so far as relates to the land in item 2.~~
~~*so far as relates to part of the leased area.~~

OR

b) Surrender of Land Act Sublease
~~*I surrender all my right title and interest in the sublease in item 1 as from / / .~~

* delete if not applicable

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

/s/ Bruce J.W. Potts	signature		Executed for and on behalf of James Hardie Australia Pty Limited by its attorney, Joanne Marchione, under power of attorney registered number 707564405 dated 12 March 2004
Bruce J. W. Potts	full name		
Solicitor NSW	qualification	18/10/2007	/s/ Joanne Marchione

Witnessing Officer
(Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

Execution Date **Lessee's Signature**
~~Mulitplex Carole Park Landowner Pty Limited ABN 15 784 033 895 by its attorney under power of attorney~~ James Hardie Australia Pty Limited ABN 084 635 558

6. Acceptance

The lessor accepts this surrender.

/s/ Ian Robert O'Toole

Director
/s/ Alex Carrodus
Secretary

18/10/2007
Execution Date

Lessor's Signature
~~James Hardie Australia Pty Limited ACN 084 635 558~~
Multiplex Carole Park Landowner Pty Limited
ABN 15 784 033895

Deacons

Dated 19 October 2007

Deed of Surrender of Lease

Parties

Multiplex Carole Park Landowner Pty Limited
ABN 15 784 033 895
(**Landlord**)

James Hardie Australia Pty Limited
ACN 084 635 558
(**Tenant**)

James Hardie Industries N.V.
ARBN 097 829 895
(**Guarantor**)

Contact

Julian
Olley
Partner
1 Alfred Street, Circular Quay, Sydney NSW 2000
Telephone: +61 (0)2 9330 8184
Email: julian.olley@deacons.com.au
Website: www.deacons.com.au

Contents

Deed dated 19 October 2007

Parties **Multiplex Carole Park Landowner Pty Limited** ABN 15 784 033 895 as trustee for the Multiplex Carole Park Landowning Trust
of 1 Kent Street, Sydney NSW 2000
(**Landlord**)

James Hardie Australia Pty Limited ACN 084 635 558
of Level 3, 22 Pitt Street Sydney NSW 2000
(**Tenant**)

James Hardie Industries N.V. ARBN 097 829 895
c/- Level 3, 22 Pitt Street Sydney NSW 2000
(**Guarantor**)

Introduction

A. The Landlord is the registered proprietor of the Property.

B. The Landlord leases to the Tenant the Premises pursuant to the Lease.

C. The Tenant has agreed to surrender the Lease and the Premises on the Surrender Date and the Landlord has agreed to accept the surrender.

D. On the Surrender Date, the Lease will be surrendered by operation of Law.

E. There is no contract of sale between the Landlord and the Tenant and no premium or other consideration was paid in respect of the surrender of the Lease.

It is agreed

1. Definitions and interpretation

1.1 Definitions

In this Deed:

(1) **Deed** means this document, including any schedule or annexure to it;

(2) **Property** means the land described in certificate of title reference 15798160 known as Cnr Cobalt and Silica Streets, Carole Park Queensland;

(3) **Lease** means lease dealing no. 706009811 (as varied);

(4) **New Lease** means the proposed lease and licence of the New Premises to the Tenant, on terms of the lease annexed to this Deed as Annexure A;

(5) **New Premises** means the premises and the licensed areas as defined in the New Lease;

(6) **Premises** means the premises demised under the Lease;

(7) **Surrender Date** means 19 November 2007 ;

(8) **Surrender of Lease** means the surrender of lease form attached as Annexure B to this Deed; and

(9) **Trust** means the Multiplex Carole Park Landowning Trust.

1.2 **Interpretation**

In this Deed:

(1) reference to a person includes any other entity recognised by law and vice versa;

(2) words importing the singular number include the plural number and vice versa;

(3) words importing one gender include every gender;

(4) reference to any party to this Deed includes that party's executors, administrators or permitted assigns, or being a company, its successors or permitted assigns;

(5) an agreement, representation, or warranty by two or more persons binds them jointly and severally;

(6) an agreement, representation, or warranty in favour of two or more persons is for the benefit of them jointly and severally;

(7) reference to a statute, ordinance, code, or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments, or replacements of it;

(8) reference to an item is reference to the corresponding item in the Schedule;

(9) reference to the Schedule or an Annexure means the Schedule and Annexures attached to and forming part of this Deed;

(10) reference to a thing includes the whole and each part;

(11) reference to any body (including an institute, association or authority) which ceases to exist; or whose powers or functions are transferred refers to the body that replaces it or substantially succeeds to its powers or functions;

(12) each example is descriptive only and not exhaustive;

(13) clause headings are for reference purposes only.

1.3 **Words used in Lease**

Capitalised words used in this Deed but not defined have the same meaning as in the Lease.

2. Surrender

2.1 **Surrender**

Subject to **clause 3** of this Deed, the Landlord and Tenant acknowledge that:

(1) as at the Surrender Date the Tenant surrenders all of its interest in the Lease and the Premises and the Landlord accepts that surrender; and

(2) up to the Surrender Date, the Tenant must comply with and perform all the agreements and obligations of the Tenant under the Lease; and

(3) up to the Surrender Date, the Landlord must comply with and perform all agreements and obligations of the Landlord under the Lease.

2.2 **Vacating**

Despite **clause 2.1(2)**, the Landlord and Tenant both acknowledge that, as the New Lease deals with the leasing and licensing of the New Premises, which includes parts of the Premises, the Tenant is not required to yield up or make good that part of the Premises which forms part of the New Premises, in accordance with the provisions of the Lease but may remain in occupation immediately after the Surrender Date under the terms and conditions of the New Lease.

2.3 **Tenant's Property**

Despite the surrender of the Lease referred to in Clause 2.1 and any other provisions of this Deed, the Landlord and Tenant agree that the Tenant retains title to all of the "Lessee's Fitout and Fittings" (as defined in the Lease) which is the property of the Tenant, immediately before the Surrender Date, and otherwise subject to the terms of the New Lease.

2.4 **Yielding up**

If the Tenant gives notice to any sublessee of that part of the Premises which is not included as part of the New Premises (**Non-leased Area**) requiring the sublessee to vacate and yield up the Non-leased Area, the Landlord may not make any Claim against the Tenant for failing to yield up the Non-leased Area on the Surrender Date if a sublessee is still in occupation of the Non-leased Area.

3. Surrender Conditional

3.1 **Conditions**

This Deed (**clause 3.2** excepted) is conditional on the Landlord receiving all of the following:

(1) this Deed (in duplicate) properly executed by the Tenant and the Guarantor;

(2) payment of any arrears payable by the Tenant in respect of the period up to and including the Surrender Date;

(3) the New Lease (in duplicate) properly executed by the Tenant and the Guarantor together with evidence that the Tenant has effected the insurances required under the New Lease; and

(4) the Surrender of the Lease in registrable form (other than the payment of any stamp duty)

3.2 **Tenant to provide documents**

The Tenant must:

(1) provide to the Landlord:

(a) the documents referred to in **clause 3.1(1)** on the date of this Deed; and

(b) the payment referred to in **clause 3.1(2)** as soon as possible and, in any event, on or before the Surrender Date;

(2) procure that the documents referred to in **clauses 3.1(3)** and **(4)** are provided to the Landlord on the date of this Deed.

3.3 **Landlord to stamp and register documents**

The Landlord will, at its own cost, use its best endeavours to:

(1) execute the Surrender of Lease and the New Lease; and

(2) lodge the Surrender of Lease and the New Lease for stamping (if required) and registration,

within 30 days after this Deed has been entered into by the parties.

3.4 **Landlord's waiver**

The Landlord may, by notice in writing to the Tenant, waive (in whole or in part) the conditions referred to in **clause 3.1**.

4. Releases

4.1 **Release of Landlord**

With effect from the Surrender Date, the Landlord is released from and against all Claims whatever which the Tenant and/or the Guarantor may have had or might then or after the Surrender Date have maintained against the Landlord in respect of or in any way arising from the Lease after the Surrender Date.

4.2 **Release of Tenant and Guarantor**

With effect from the Surrender Date, the Tenant and the Guarantor are both released from and against all Claims whatever which the Landlord may have had or might then or after the Surrender Date have maintained against the Tenant and/or the Guarantor in respect of or in any way arising from the Lease after the Surrender Date.

5. Limitation of liability

5.1 **Capacity**

The Lessor enters into this Deed only in its capacity as trustee of the Trust (**Trustee**).

5.2 **Limitation**

Subject to clause 5.4:

(1) a liability arising under or in connection with this Deed (or the transactions contemplated by it) is limited and can be enforced against the Trustee only to the extent to which it can be satisfied out of property of the Trust out of which the Trustee is actually indemnified for the liability; and

(2) the limitation in clause 5.2(1) applies despite any other provisions of this Deed.

5.3 **No action**

Subject to clause 5.4 no party shall:

(1) sue the Trustee in any capacity other than as Trustee of the Trust;

(2) seek to appoint or take any steps to procure or support the appointment of a receiver, a receiver and manager, a liquidator, a provisional liquidator, an administrator or similar person to the Trustee or prove in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to the property of the Trust);

(3) enforce or seek to enforce any judgment in respect of any liability arising under or in connection with this Deed (or the transactions contemplated by it) against any property of the Trustee other than property held by the Trustee as responsible entity of the Trust.

5.4 **Extent of limitation**

The limitations in clauses 5.1, 5.2 and 5.3 do not apply to any liability of the Trustee to the extent that the liability is not satisfied because, under the constitution of the Trust or by operation of law there is a reduction in the extent of the Trustee's indemnification out of the assets of the Trust, as a result of the Trustee's fraud, negligence or breach of trust

6. Administrative provisions

6.1 **Notices**

(1) Any notice, approval, request, demand or other communication (**notice**) to be given for the purposes of this Deed must be in writing and must be:

(a) served personally; or

(b) sent by ordinary or registered post — person to person mail (airmail if overseas) to the address of the party specified in this Deed (or such other address as that party notifies in writing); or

(c) sent by facsimile transmission to the facsimile number of that party specified in this Deed, (or such other facsimile number as that party notifies in writing).

(2) A notice given:

(a) personally will be served on delivery;

(b) by post will be served seven days after posting;

(c) by facsimile transmission will be served on receipt of a transmission report by the machine from which the facsimile was sent indicating that the facsimile had been sent in its entirety to the facsimile number specified in this Deed or such other number as may have been notified by the receiving party. If the facsimile has not been completely transmitted by 5:00 pm (determined by reference to the time of day at the recipient's address) it will be deemed to have been served on the next day.

6.2 **Governing Law**

This Deed will be governed by the laws of Queensland. The parties submit to the non-exclusive jurisdiction of the courts of that state.

6.3 **Waiver**

The failure or omission of the Landlord at any time to:

(1) enforce or require the strict observance of or compliance with any provision of this Deed; or

(2) exercise any election or discretion under this Deed,

will not operate as a waiver of them or the rights of the Landlord, whether express or implied, arising under this Deed.

6.4 **Further Assurance**

Each party must sign, execute and complete all additional documents which may be necessary to effect, perfect, or complete the provisions of this Deed and the transactions to which it relates.

6.5 **Severability**

If any part of this Deed is or becomes illegal, invalid or unenforceable in any relevant jurisdiction, the legality, validity or enforceability of the remainder of the Deed will not be affected and this Deed will be read as if the part had been deleted in that jurisdiction only.

6.6 **No Representations**

No oral explanation or information provided by any party to another will affect the meaning or interpretation of this Deed or constitute any collateral agreement, warranty or understanding between any of the parties.

6.7 **Merger**

The obligations contained in this Deed will continue until satisfied in full.

6.8 **Execution by Counterparts**

This Deed may consist of one or more counterpart copies and all counterparts will, when taken together, constitute the one document.

6.9 **Stamp Duty and Costs**

(1) The Landlord shall pay the Tenant's reasonable legal costs arising out of the preparation, negotiation and execution of this Deed, the Surrender of Lease and the New Lease.

(2) The Landlord shall pay any registration fees chargeable on the registration of the Surrender of Lease and the New Lease.

(3) The Landlord shall pay any survey fees payable with respect to any plans necessary to enable the registration of the Surrender of Lease and the New Lease.

(4) The Landlord shall pay any stamp duty on this Deed and the Surrender of Lease.

7. GST

7.1 **GST exclusive value**

Except where the relevant supply is not a taxable supply or express provision is made to the contrary, and subject to this **clause 7**, the consideration for the supply payable by any party under this Deed excludes GST.

7.2 **Ability to pass on GST**

If a party makes a taxable supply in connection with this Deed for a consideration which excludes GST the party liable to pay for the taxable supply must also pay, within 14 days of receipt of a tax invoice under **clause 7.4** or at the same time as the GST exclusive value is otherwise payable (whichever is later) and in the same manner as the consideration, an amount equal to the GST payable in respect of the taxable supply.

7.3 **Reimbursements**

If this Deed requires a party ("**First Party**") to pay, reimburse or contribute to an amount paid or payable by another party ("**Second Party**") in respect of an acquisition from a third party for which the Second Party is entitled to claim an input tax credit, the amount required to be paid, reimbursed or contributed by the First Party will be the GST exclusive value of the acquisition by the Second Party. However, nothing in this **clause 7.3** shall limit the operation of **clause 7.2**.

7.4 **Tax Invoice**

A party's right to payment under **clause 7.2** is subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply.

8. Testing and Remediation Works

8.1 As and from the date of this Deed, the Tenant consents to the Landlord and persons authorised by the Landlord entering on that part of the Premises which is not included as part of the New Premises for the purposes of carrying out testing and remediation works (**Landlord's Works**).

8.2 The Landlord will carry out the Landlord's Works at its sole risk and cost.

8.3 Subject to clause 8.4, the Landlord indemnifies and will keep indemnified the Tenant against all Claims which may arise in relation to any loss or damage suffered by the Tenant in connection with the Landlord carrying out the Landlord's Works.

8.4 The indemnity provided in clause 8.3 applies only in respect of and is limited to Claims arising at any time but with respect to activities carried on by the Landlord on that part of the Premises which is not included as part of the New Premises up to and including the Surrender Date.

Executed as a deed and delivered on the date shown on the first page.

Executed by **Multiplex Carole Park Landowner Pty Limited** in accordance with section 127 of the *Corporations Act 2001:*

/s/ Alex Carrodus

~~Director~~/Company Secretary

Alex Carrodus

Name of ~~Director~~/Company Secretary
(BLOCK LETTERS)

/s/ Ian Robert O'Toole

Director

Ian Robert O'Toole

Name of Director
(BLOCK LETTERS)

Signed for and on behalf of **James Hardie Australia Pty Limited** by its attorney **Joanne Marchione** under power of attorney registered number 707564405 dated 12 March 2004 in the presence of:

James Hardie Australia Pty Limited by its attorney

/s/ Joanne Marchione

/s/ Bruce J. W. Potts

Signature of witness

Bruce J. W. Potts

Name of witness (BLOCK LETTERS)

Level 3, 22 Pitt Street, Sydney 2000

Address of witness

Signed for and on behalf of **James Hardie Industries N.V.** by its attorney **Joanne Marchione** under power of attorney registered number 707564412 dated 12 March 2004 in the presence of:

James Hardie Industries N.V. by its attorney

/s/ Joanne Marchione

/s/ Bruce J. W. Potts

Signature of witness

Bruce J. W. Potts

Name of witness (BLOCK LETTERS)

Level 3, 22 Pitt Street, Sydney 2000

Address of witness

Dealing Number *Duty Imprint*

OFFICE USE ONLY

Privacy Statement
Collection of this information is authorised by the Land Title Act 1994 the Land Act 1994 and the Water Act 2000 and is used to maintain the publicly searchable registers in the land registry and the water register. For more information about privacy in NR&W see the department's website.

1. Lessor
MULTIPLEX CAROLE PARK LANDOWNER PTY LIMITED
ABN 15 784 933 895

Lodger (Name, address & phone number) **Lodger Code**
Deacons
Level 17, 175 Eagle Street
Brisbane QLD 4000
3309 0888 2576695

2. Lot on Plan Description	**County**	**Parish**	**Title Reference**
LOT 108 ON CPSL 7249	STANLEY	WOOGAROO	15798160

3. Lessee Given names Surname/Company name and number (include tenancy if more than one)

JAMES HARDIE AUSTRALIA PTY LIMITED ACN 084 635 558

4. Interest being leased
FEE SIMPLE

5. Description of premises being leased
PART OF THE LAND BEING ALL OF THE BUILDINGS LOCATED ON THE LAND

6. Term of lease
Commencement date/event: 20 November 2007
Expiry date: 23/03/2019 and/or Event:
#Options: 2 X 10 YEARS

7. Rental/Consideration
See attached schedule

Insert *nil* if no option or insert option period (eg 3 years or 2 x 3 years)

8. Grant/Execution
The Lessor leases the premises described in item 5 to the Lessee for the term stated in item 6 subject to the covenants and conditions contained in the attached schedule.

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

/s/ Philippa Cass signature

Philippa Cass full name

Solicitor qualification

18/10/2007

/s/ Ian Robert O'Toole
Director

/s/ Alex Carrodus
Secretary

Witnessing Officer
(Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

Execution Date

Lessor's Signature
MULTIPLEX CAROLE PARK LANDOWNER PTY LIMITED
ABN 15 784 033 895

9. Acceptance

The lessee accepts the lease and acknowledges the amount payable or other considerations for the lease.

/s/ Bruce J.W. Potts	signature
Bruce J. W. Potts	full name
Legal Practitioner	qualification

	/s/ Joanne Marchione
	~~Director~~ James Hardie Australia Pty Limited Attorney by its attorney,
18/10/2007	Secretary Joanne Marchione, under power of attorney registered number 70756440 dated 12 March 2004

Witnessing Officer
(Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

Execution Date

Lessee's Signature
JAMES HARDIE AUSTRALIA PTY LIMITED ACN 084 635 558

Title Reference 15798160

Schedule of Terms

Operative Provisions

Item	Term	Definition
1.	Lessor	Multiplex Carole Park Landowner Pty Limited (ABN 15 784 033 895) of 1 Kent Street, Sydney, NSW
2.	Lessee	James Hardie Australia Pty Limited (ACN 084 635 558) of Level 3, 22 Pitt Street, Sydney, NSW
3.	Land	Certificate of Title 15798160
4.	Premises	All of the Buildings situated at the Corner of Cobalt and Silica Streets, Carole Park, QLD as hatched on the Plan in Annexure D in the condition in which they exist as at the Effective Date and includes the Lessor's Fixtures
5.	Term	11 Years 4 months 4 days
6.	Commencing Date	20 November 2007
7.	Terminating Date	23 March 2019
8.	Further Term	2 further terms each of 10 years, the last expiring on 23 March 2039.
9.	Rent	$1,092,726.96 per annum, (excluding GST) payable as prescribed in clauses 4.1 and 4.2, and subject to review as specified in clauses 4.4, 4.5, 4.6 and 4.7
10.	Review Dates	The Review Dates for review of the Rent are as follows: (a) Fixed Review Dates shall be each anniversary of the Effective Date during the Term other than the Commencing Date of a Further Term; and (b) Market Review Dates shall be the seventh anniversary of the Effective Date.
11.	Permitted Use	Manufacture, warehousing, distribution and sales of fibre cement products and systems and all associated activities (including offices) and any other use for which the Lessee may lawfully use the Premises.
12.	Public Risk Insurance	$50,000,000
13.	Review Dates for the Further term	The Review Dates for the review of the Rent in each Further Term and the method of review shall be as follows: (a) Fixed Review Dates shall be on each anniversary of the Commencing Date of that Further Term other than the Commencing Date of a Further Term; and (b) Market Reviews Dates shall be the Commencing Date of that Further Term and the fifth anniversary of the Commencing Date of that Further Term.
14.	Lessee's Proportion	79.20%

Title Reference 15798160

1. Interpretation

1.1 Definitions

The following definitions together with those in the Schedule apply unless the context requires otherwise.

Appurtenance includes any drain, basin, sink, toilet or urinal.

Australian Institute means the Australian Property Institute Inc. (Queensland Division).

Authorisation includes any authorisation, approval, consent, licence, permit, franchise, permission, filing, registration, resolution, direction, declaration or exemption.

Authorised Officer means any director or secretary, or any person from time to time nominated as an Authorised Officer by a party by a notice to the other party accompanied by specimen signatures of all new persons so appointed.

Authority includes:

(a) (**government**) any government in any jurisdiction, whether federal, state, territorial or local;

(b) (**public utility**) any provider of public utility services, whether statutory or not; and

(c) (**other body**) any other person, authority, instrumentality or body having jurisdiction, rights, powers, duties or responsibilities over the Premises or any part of them or anything in relation to them (including the Insurance Council of Australia Limited).

Building means those improvements (if any) described or referred to in Item 4.

Business Day means any day except Saturday or Sunday or a day that is a public holiday throughout Queensland.

Claim includes any claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding, right of action, claim for compensation and claim for abatement of rent obligation.

Competitor means any person engaged in the manufacture, distribution or sale of fibre cement products and underground drainage pipes made of concrete or fibre cement and:

(a) includes persons engaged in the businesses known as or trading under names which include the words “Lafarge”, “CSR” and “BGC”; but

(b) excludes any third party logistics operator.

Consent means prior written consent.

Council means lpswich City Council.

Cost includes any reasonable cost, charge, expense, outgoing, payment or other expenditure of any nature (whether direct, indirect or consequential and whether accrued or paid) including where appropriate all rates and all reasonable legal fees.

Title Reference 15798160

Effective Date means 24 March 2004.

Employees means employees, agents, invitees and contractors.

Environment means components of the earth, including

(a) land, air and water;

(b) any layer of the atmosphere;

(c) any organic or inorganic matter and any living organism; and

(d) human-made or modified structures and areas, and includes interacting natural ecosystems that include components referred to in paragraphs (a) to (c).

Environmental Law means a provision of Law, or a Law, which provision or Law relates to any aspect of the Environment, safety, health or the use of Substances or activities which may harm the Environment or be hazardous or otherwise harmful to health.

Event of Default means any event referred to in clause 12.1.

Fixed Review means a review of the Rent in accordance with clause 4.7.

Fixed Review Dates means a date on which a Fixed Review is to occur as set out in Item 10.

Further Term means the further term or terms (as the case may be), specified in Item 8.

GST means the goods and services tax as imposed by the GST Law including, where relevant, any related interest, penalties, fines or other charge to the extent caused by any default or delay by the Lessee.

GST Amount means, in relation to a Payment, an amount arrived at by multiplying the Payment (or the relevant part of a Payment if only part of a Payment is the consideration for a Taxable Supply) by the appropriate rate of GST (being 10% when the GST Law commenced).

GST Law has the meaning given to that term in*A New Tax System (Goods and Services Tax) Act*1999, or, if that Act is not valid or does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

Guarantor means James Hardie Industries N.V.

Initial Term means 11 years, 3 months and 23 days

Interest Rate means the minimum rate of interest charged by the Commonwealth Bank of Australia, on an overdraft of $100,000 plus 2%.

Land means the land described in Item 3.

Land Tax means land taxes or taxes in the nature of a tax on land.

Title Reference 15798160

Law includes any requirement of any statute, rule, regulation, proclamation, ordinance or by-law, present or future, and whether state, federal or otherwise.

Lease means this lease between the Lessor and the Lessee.

Lease Year means every 12 month period commencing on and from the Commencing Date.

Lessee means the party specified in Item 2, its successors and assigns.

Lessee's Business means the business carried on or entitled to be carried on in the Premises in compliance with the Permitted Use of the Premises.

Lessee's Fitout and Fittings means all fixtures, fittings, plant, equipment, partitions or other articles and chattels of all kinds (other than stock-in-trade) which satisfy all of the following:

(a) they are owned by or leased by third parties to the Lessee; and

(b) they are, at any time, in or attached to the Premises or the Licensed Area.

Lessee's Proportion means that proportion which the Lettable Area of the Premises and the Licensed Areas bears to the area of the Land determined in accordance with the Method of Measurement from time to time and which at the Commencing Date of the lease for the Initial Term is that proportion set out in Item 14.

Lessor means the party specified in Item 1 or the party for the time being entitled to the reversion expectant upon expiration or prior determination of the Lease.

Lessor's Asset Register means the list of items in the Premises or the Licensed Area contained in Annexure A.

Lessor's Fixtures means all fixtures in the Premises owned by the Lessor including the items listed in the Lessor's Asset Register and:

(a) (**general**) all plant and equipment, mechanical or otherwise which forms part of the base Building, fittings, fixtures, furniture, furnishings of any kind, including window coverings, blinds and light fittings; and

(b) (**fire fighting**) all stop cocks, fire hoses, hydrants, other fire prevention aids and all fire fighting systems from time to time located in the Premises or which may service the Premises and be on the Land.

Lettable Area means the gross lettable area determined in accordance with the Method of Measurement.

Licensed Area means the area the subject of the licence granted under clause 22 being that part of the Land and the improvements hatched on the plan in Annexure C.

Liquidation includes liquidation, official management, receivership, compromise, arrangement, amalgamation, administration, reconstruction, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise with creditors, bankruptcy or death.

Title Reference 15798160

Make Good Buildings means the buildings and other improvements hatched on the plan in Annexure B.

Market Rent means the Rent which could be obtained with respect to the Premises as at a particular Market Review Date in an open market by a willing but not anxious Lessor assessed using the criteria in clause 4.5(g).

Market Review means a review of the Rent in accordance with clause 4.4 and (if applicable) clauses 4.5 and 4.6.

Market Review Date means a date on which a Market Review is to occur as set out in Item 10.

Method of Measurement means the Method of Measurement of Buildings (1997 Revision) adopted by the Property Council of Australia Limited (formerly the Building Owners and Managers Association of Australia Limited). The Method of Measurement shall remain fixed for the term of this Lease and any Further Term despite any subsequent editions or variations which may be issued.

Non-Make Good Buildings means the buildings and other improvements crosshatched on the plan in Annexure B.

Outgoings means:

(a) (**council rates**) all charges payable to the Council:

(i) levied or charged with respect to the Land or the Premises or their use or occupation;

(ii) for any services to the Land or the Premises of the type from time to time provided by the Council; and/or

(iii) for waste and general garbage removal from the Land or the Premises (including any excess);

(b) (**water rates**) all charges payable to an Authority:

(i) levied or charged with respect to the Land or the Premises or their use or occupation; and

(ii) for the provision, reticulation or discharge of water and/or sewerage and/or drainage (including meter rents) to the Land or the Premises;

(c) (**management fees**) reasonable fees for management of the Premises, capped at 1% of the Rent and Outgoings from time to time; and

(d) (**insurances**) where the Lessor has effected the policy, all insurance premiums payable in respect of insurances for the Premises for its full insurable or replacement value to cover damage by fire, storm, tempest, impact and other usually insured risks of that nature, including loss of rent insurance (capped at 18 months cover),

but excluding from this Paragraph any amount which is:

(i) (**already included**) already included by virtue of another Paragraph of this definition;

Title Reference 15798160

(ii) (**otherwise payable**) otherwise payable by the Lessee pursuant to the provisions of this Lease;

(iii) (**tax**) Land Tax, income tax and capital gains tax of any nature; or

(iv) (**payable by the Lessor**) otherwise payable by the Lessor with respect to its obligations under this Lease.

Payment means:

(a) the amount of any monetary consideration (other than a GST Amount payable under this clause); and

(b) the GST Exclusive Market Value of any non-monetary consideration,

paid or provided by the Lessee for this Lease or by the Lessor or the Lessee for any other Supply made under or in connection with this Lease and includes:

(c) any Rent or contribution to Outgoings; and

(d) any amount payable by way of indemnity, reimbursement, compensation or damages.

Permitted Use means the use of the Premises specified in Item 11.

Premises means part of the Land being the buildings and other improvements specified in Item 4, and includes any of the Lessor's Fixtures from time to time in or on them.

Proposed Work includes any proposed sign, work, alteration, addition or installation in or to the Premises, the Lessor's Fixtures and/or to the existing Lessee's Fitout and Fittings by the Lessee and/or by the Lessee's Employees.

Related Body Corporate has the same meaning as given to that term in the *Corporations Act 2001*.

Rent means the rent specified in Item 9 as varied from time to time in accordance with this Lease.

Requirement includes any notice, order, direction, stipulation or similar notification received from or given by any Authority pursuant to and enforceable under any Law (including Environmental Law), whether in writing or otherwise, and regardless of to whom it is addressed or directed.

Review Date means a date on which either a CPI Review or a Market Review is to occur as set out in Item 10.

Services means electricity, gas, sewerage, water and telephone services.

Substance includes:

(a) any form of organic or chemical matter whether solid, liquid or gas; and

(b) radiation, radioactivity and magnetic activity.

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Tax Act means the Income Tax Assessment Act 1936 (Cth) and/or the Income Tax Assessment Act 1997 (Cth) (as the case may require).

Terminating Date means:

(a) the date specified in Item 7;

(b) any earlier date on which this Lease is determined;

(c) the date of expiration or earlier termination of the Further Term or, if more than one, the last Further Term; or

(d) the end of any period of holding over under clause 3.3,

as appropriate.

Termination Payment means:

(a) in respect of clause 7.1(e)(i)(A), the net present value of the aggregate of:

(i) the Rent and the Lessee's Proportion of Outgoings payable for the balance of the Term calculated from the date of termination; and

(ii) the cost of compliance with the Lessee's obligations in clause 13,

using the 10 year Commonwealth of Australia Government bond interest rate plus 115 basis points; and

(b) in respect of clauses 7.1(e)(i)(B)and 7.1(e)(ii), the net present value of the aggregate of:

(i) the Rent and the Lessee's Proportion of Outgoings payable for the balance of the Term with respect to the proportionate area of the Premises surrendered calculated from the date of the surrender; and

(ii) the cost of compliance with the Lessee's obligations in clause 13,

using the 10 year Commonwealth of Australia Government bond interest rate plus 115 basis points.

Trust means the Multiplex Carole Park Landowning Trust.

Umpire means a person who:

(a) is at the relevant time a Valuer;

(b) is appointed under clause 4.5;

(c) accepts his appointment in writing; and

(d) undertakes to hand down his determination of the Rent within 20 Business Days after being instructed to proceed.

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Valuer means a person who:

(a) is a full member of the Australian Institute and has been for the last 5 years;

(b) holds a licence to practise as a valuer of premises of the kind leased by this Lease;

(c) is active in the relevant market at the time of his appointment;

(d) has at least 3 years experience in valuing premises of the kind leased by this Lease; and

(e) undertakes to act promptly in accordance with the requirements of this Lease.

1.2 **General**

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise.

(a) (**Plurals**) The singular includes the plural and conversely.

(b) (**Gender**) A gender includes all genders.

(c) (**Other grammatical forms**) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.

(d) (**Person**) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.

(e) (**clause**) "clause", "Paragraph", "Schedule" or "Annexure" refers to this Lease and "Item" refers to the Schedule of Terms forming part of this Lease.

(f) (**Successors and assigns**) A reference to any party to this Lease or any other agreement or document includes the party's successors and substitutes or assigns.

(g) (**Joint and several obligations**) A reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally.

(h) (**Extrinsic terms**) Subject to the provisions of any written material to which the Lessor and the Lessee are parties, the Lessor and the Lessee agree that:

(i) (**whole agreement**) the terms contained in this Lease cover and comprise the whole of the agreement in respect of the Premises between the Lessor and the Lessee; and

(ii) (**no collateral agreement**) no further terms, whether in respect of the Premises or otherwise, shall be implied or arise between the Lessor and the Lessee by way of collateral or other agreement made by or on behalf of the Lessor or by or on behalf of the Lessee on or before or after the execution of this Lease, and any implication or collateral or other agreement is excluded and negatived.

(i) (**Amendments and variations**) A reference to an agreement or document (including this Lease) is to the agreement or document as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this Lease.

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(j) (**Legislation**) A reference to legislation or to a provision of legislation includes a modification, re-enactment of or substitution for it and a regulation or statutory instrument issued under it.

(k) (**Australian currency**) A reference to "dollars" or "$" is to Australian currency.

(l) (**Schedules and annexures**) Each schedule of/or annexure to this Lease forms part of it.

(m) (**Conduct**) A reference to conduct includes any omission, statement or undertaking, whether or not in writing.

(n) (**Writing**) A reference to "writing" includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.

(o) (**Event of Default**) An Event of Default "subsists" until it has been waived by or remedied to the reasonable satisfaction of the Lessor.

(p) (**Includes**) A reference to "includes" or "including" means "includes, without limitation" or "including, without limitation," respectively.

(q) (**Whole**) Reference to the whole includes part.

(r) (**Due and punctual**) All obligations are taken to be required to be performed duly and punctually.

(s) (**Permit or omit**) Words importing "do" include do, permit or omit, or cause to be done or omitted.

(t) (**Bodies and Authorities**)

(i) (**Successors**) Where a reference is made to any person, body or Authority that reference, if the person, body or Authority has ceased to exist, will be to the person, body or Authority as then serves substantially the same objects as that person, body or Authority.

(ii) (**President**) Any reference to the President of that person, body or Authority, in the absence of a President, will be read as a reference to the senior officer for the time being of the person, body or Authority or any other person fulfilling the duties of President.

(u) (**Consent of Lessor**) Unless stated otherwise in this Lease, where the Lessor has a discretion or its consent or approval is required for anything the Lessor:

(i) shall not unreasonably withhold, delay or condition its decision, consent or approval; and

(ii) must exercise its discretion acting reasonably.

(v) (**Relevant date**) Where the day or last day for doing anything or on which an entitlement is due to arise is not a Business Day that day or last day will be the immediately following Business Day.

(w) (**Month**) Month means calendar month.

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(x) (**Areas**) Unless otherwise stated in this Lease or the context otherwise requires, where the area whether gross or net and whether the whole or part of the Land is to be calculated or measured for the purposes of this Lease, those calculations and measurements shall be in accordance with the Method of Measurement.

(y) (**Third parties**) Any clause which requires that a third party act or refrain from acting will be read (where the context permits) that the party to this Lease appointing or otherwise having control of that third party shall cause or procure that third party to act or refrain from acting.

2. Exclusion of Statutory Provisions

2.1 **Relevant Acts**

To the extent permitted by Law or as may be contradicted by this Lease, the covenants, powers and provisions (if any) implied in leases by virtue of any Law are expressly negatived.

3. Term

3.1 **Term of Lease**

Subject to this Lease the Lessor leases to the Lessee and the Lessee takes a lease of the Premises for the Term.

3.2 **Option of renewal**

(a) (**Grant of further lease**) If:

(i) (**Further Term**) a Further Term is specified in Item 8;

(ii) (**Lessee gives notice**) the Lessee notifies the Lessor not more than 12 months nor less than 9 months before the Terminating Date that it requires a further lease for the Further Term; and

(iii) (**no default**) at the date of that notice and at the Terminating Date there is no subsisting Event of Default by the Lessee of which the Lessee has been notified by the Lessor and:

(A) (**if capable of remedy**) which has not been remedied to the reasonable satisfaction of the Lessor within the time specified in a notice given under clause 12.1 or waived in writing by the Lessor; or

(B) (**if not capable of remedy**) if not capable of remedy, for which the Lessee has not paid the Lessor reasonable compensation,

the Lessor shall grant to the Lessee a lease of the Premises for the Further Term commencing on the day after the Terminating Date.

(b) (**Conditions of further lease**) That lease for a Further Term will be on the same conditions as this Lease except that:

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(i) (**term**) the term to be specified in Item 5 of the lease for the Further Term will be the relevant period specified in Item 8;

(ii) (**commencing date**) the date to be specified in Item 6 of the lease for the Further Term will be the day after the Terminating Date of the immediately preceding Term;

(iii) (**terminating date**) the date to be specified in Item 7 of the lease for each Further Term will be the last day of the term specified in Item 8 calculated from the commencing date of the lease for that Further Term determined under Paragraph (ii);

(iv) (**Rent**) the amount of Rent to be specified in Item 9 of the lease for the Further Term will be as agreed under clause 3.2(c) or if no agreement is reached under that clause as determined under clauses 4.4, 4.5 and 4.6 as if the commencing date of the lease for the Further Term was a Market Review Date;

(v) (**Review Dates**) the Review Dates specified in Item 10 shall be omitted and replaced with the Review Dates specified in Item 13;

(vi) (**further options**) the number of Further Terms specified in Item 8 shall be reduced by one from the number specified in Item 8 of this Lease; and

(vii) (**last further lease**) if in any lease for the Further Term the number of Further Terms specified in Item 8 would by the operation of Paragraph (vi) be zero, then Item 13 and this clause 3.2 will not be included in that further lease so that the last further lease will end on the last day of the last occurring Further Term specified in Item 8 of this Lease.

(c) (**Early determination of Market Rent**)

(i) If the Lessee wishes to know the Rent for the first year of the Further Term prior to exercising its option for a Further Term, the Lessee may give notice to the Lessor seeking a determination of the Market Rent for the Further Term (such notice being given no earlier than 15 months and no later than 12 months prior to the Terminating Date of the Lease).

(ii) The Lessor must give the Lessee a notice with the Lessor's assessment of the Market Rent to apply in the first year of the Further Term within 10 Business Days after the Lessee gives a notice under clause 3.2(c)(i).

(iii) Upon receipt of the Lessor's assessment of Market Rent under clause 3.2(c)(ii), the parties agree to negotiate in good faith to agree upon the Market Rent to apply in the first year of the Further Term for a period of up to 3 months after the Lessor's notice of assessment of Market Rent is received by the Lessee.

(iv) If the parties fail to reach agreement under clause 3.2(c)(iii), clause 3.2(b) (iv) continues to apply.

3.3 **Holding over**

If the Lessor does not indicate refusal to the Lessee continuing to occupy the Premises beyond the Terminating Date (otherwise than under a lease for a Further Term) then:

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(a) (**monthly tenancy**) the Lessee does so as a monthly tenant and shall pay Rent and Outgoings:

(i) monthly in advance, the first payment to be made on the day following the Terminating Date; and

(ii) equal to one-twelfth of the annual rate of Rent and Outgoings payable immediately prior to the Terminating Date;

(b) (**determination**) the monthly tenancy is determinable at any time by either the Lessor or the Lessee by one month's notice given to the other, to end on any date, but otherwise the tenancy will continue on the conditions of this Lease as far as they may apply to a monthly tenancy.

4. Rent

4.1 **Payment of Rent**

(a) (**Rent**) The Lessee shall pay Rent to the Lessor at the relevant rate from time to time:

(i) (**no demand**) without demand;

(ii) (**no deduction**) without any deduction, abatement, counterclaim or right of set-off except to the extent that it is expressly provided for in this Lease; and

(iii) (**instalments**) by equal monthly instalments (and proportionately for any part of a month) in advance on the first Business Day of each month.

(b) (**As directed by Lessor**) All instalments of Rent shall be paid to the place and in the manner directed by the Lessor from time to time provided at least 10 Business Days notice of any change in the place or manner of payment is given.

4.2 **Rent Commencement**

The first instalment of Rent shall be paid on the Commencing Date.

4.3 **Deleted**

4.4 **Market review of Rent**

Should the Lessor wish to review the Rent as at a Market Review Date, then not earlier than 3 months before and not later than 3 months after the Market Review Date (time being of the essence) the Lessor may notify the Lessee of the Lessor's assessment of the Market Rent for the Premises at the particular Market Review Date. This assessment shall take into account the criteria contained in clause 4.5(g) which apply at that particular Market Review Date and, if applicable, clause 4.6.

4.5 **Lessee's dispute of Rent**

If the Lessee disagrees with the Lessor's assessment of the Market Rent and the Lessor and the Lessee are unable to agree on the Market Rent to apply from a particular Market Review Date then the following procedure applies.

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(a) (**Lessee to give notice**) The Lessee shall within 30 Business Days of being notified of the Lessor's assessment of the Market Rent (time being of the essence) notify the Lessor that the Lessee requires the Market Rent to be determined in accordance with this clause 4.5.

(b) (i) (**Nomination of Valuers**) Each of the Lessee and the Lessor shall, within 10 Business Days of service of the Lessee's notice under clause 4.5(a), by notice nominate a Valuer to the other and shall formally appoint that Valuer.

(ii) (**Nomination of Umpire**) Where two Valuers have been nominated they shall, within 5 Business Days of the date of the later nomination and prior to making their determination as to the Market Rent for the Premises, agree upon and nominate an Umpire to determine any disagreement which may arise between them.

(iii) (**Failure to agree**) If the Valuers cannot agree on or fail to nominate an Umpire within 5 Business Days of the date of the later nomination then either Valuer, the Lessor or the Lessee may request the President of the Australian Institute to nominate the Umpire.

(c) (**Valuer's determination**) Subject to clauses 4.5(d), (e) and (f), the nominated Valuers shall within 20 Business Days of the later nomination jointly determine the Market Rent of the Premises having regard to clause 4.5(g) as at that particular Market Review Date.

(d) (**Consequences of Lessee's failure**) If the Lessee fails to nominate a Valuer in accordance with clause 4.5(b) within the time required:

(i) (**determination by Lessor's Valuer**) the determination of the Market Rent shall be made by the Lessor's Valuer within 20 Business Days after being nominated, and his determination will be final and binding on the parties as if he had been appointed by Consent; and

(ii) (**Costs**) the Costs of the Lessor's Valuer's determination shall be apportioned equally between the Lessor and Lessee.

(e) (**Consequences of Lessor's failure to nominate Valuer**) If the Lessee nominates a Valuer under clause 4.5(b) within the time required, but the Lessor fails to do so:

(i) (**determination by Lessee's Valuer**) the determination of the Market Rent shall be made by the Lessee's Valuer within 20 Business Days after being nominated, and his determination will be final and binding on the parties as if he had been appointed by Consent; and

(ii) (**Costs**) the Costs of the Lessee's Valuer's determination shall be apportioned equally between the Lessor and Lessee.

(f) (i) (**Procedure in event of disagreement between Valuers**) Should the Valuers be unable to agree on the Market Rent for the Premises within the time required then the Market Rent shall be determined by the Umpire under clause 4.5(f)(iii).

(ii) (**Procedure where Valuer fails to assess**) If either or both of the Valuers for any reason fail to assess the Market Rent within the time required for them to make a determination, then either Valuer, the Lessor or the Lessee may request the Umpire to determine the Market Rent.

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(iii) (**Umpire's determination**) If it becomes necessary for the Umpire to determine the Market Rent, his determination will be final and binding on the parties and:

(A) (**evidence of Valuers**) in making his or her determination the Umpire shall have regard to any evidence submitted by the Valuers as to their assessments of the Market Rent;

(B) (**written determination**) the Umpire shall give his determination and the reason for it in writing to the Lessor and the Lessee within 20 Business Days of request for it in accordance with this Lease by the Lessor, the Lessee or the Valuers (or any of them); and

(C) (**Umpire's maximum**) the Umpire's determination shall not be more than the highest Market Rent as assessed by either Valuer under this clause 4.5.

(g) (**Market Rent criteria**) In determining the Market Rent each Valuer (including the Umpire) shall be taken to be acting as an expert and not as an arbitrator, and shall determine the Market Rent for the Premises as at the particular Market Review Date having regard to the terms of this Lease and shall:

(i) (**exclusions**) disregard:

(A) (**goodwill**) the value of any goodwill of the Lessee's Business, the Lessee's Fitout and Fittings and any other interest in the Premises created by this Lease; and

(B) (**money from occupational arrangement**) any sublease or other sub-tenancy agreement or occupational arrangement in respect of any part of the Land and any rental, fees or money payable under any of them; and

(ii) (**considerations**) have regard to:

(A) (**length of term**) the length of the whole of the Term, disregarding the fact that part of the Term will have elapsed at the Market Review Date, and have regard to the provisions of any options for a Further Term;

(B) (**comparable premises and locations**) the rates of rent payable for comparable premises in comparable locations;

(C) (**all covenants observed**) all covenants on the part of the Lessee and the Lessor in this Lease and assume that all covenants on the part of the Lessee have been fully performed and observed on time; and

(D) (**Outgoings**) the Lessee's obligation to pay the Lessee's Proportion of Outgoings; and

(E) (**Rent Review**) the frequency of market and other Rent reviews; and

(iii) (**assumptions**) assume that:

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(A) the Premises are available for use for the primary purpose for which the Premises may be used in accordance with this Lease;

(B) there has been no fair wear and tear of the Premises since the Effective Date; and

(C) any buildings which have been removed pursuant to clause 7.11(d) have not been removed.

(h) (**Costs of Valuers**) The Costs incurred in the determination of the Market Rent under this clause 4.5 shall be borne by the Lessor and by the Lessee in the following manner:

(i) (**Valuer**) subject to clauses 4.5(d)(ii) and 4.5(e)(ii), for the Costs of each Valuer appointed by a party, by the party who appoints that Valuer; and

(ii) (**Umpire**) for the Costs of the Umpire, by the parties equally.

(i) (**Date of effect of determination of Market Rent**) Subject to clauses 4.5(j) and 4.6, any variation in the Rent resulting from a determination of the Market Rent under clause 4.4 and/or 4.5 (as appropriate) will be effective on and from that particular Market Review Date.

(j) (**Payment of Rent pending review**) Where there is a dispute as to the Market Rent under clause 4.4 after the relevant Market Review Date or the revised Rent is not known at a Market Review Date then the amount of Rent payable by the Lessee from the Market Review Date pending the resolution of that dispute or the determination of the Market Rent shall be the Rent payable immediately before the relevant Market Review Date.

(k) (**Adjustment**) On resolution of the dispute or the Market Rent being determined, if the Rent payable for the period commencing on the Market Review Date is determined to be greater than that paid by the Lessee since the Market Review Date, then the Lessee shall pay the deficiency to the Lessor within 10 Business Days of the date of determination of the Market Rent under clause 4.4 or the determination of the Market Rent by the Valuers or by the Umpire under this clause 4.5 (as the case may be).

4.6 **Maximum increase on review**

Despite any other provision of this Lease the annual Rent payable from any Review Date following a review of the Rent under clause 4.4 (and, if applicable, clause 4.5) shall in no circumstances be:

(a) less than the annual Rent payable in the Lease Year immediately prior to that Review Date; or

(b) in the case of a Market Review (other than at the Commencing Date of a Further Term):

(i) greater than the Rent payable in the Lease Year immediately prior to the Market Review Date plus 10%; or

(ii) less than the annual Rent determined under clause 4.7.

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4.7 **Fixed Review**

On each Fixed Review Date, the Rent shall increase to 103% of the Rent payable immediately prior to that Fixed Review Date.

5. Outgoings

5.1 **Services**

(a) (**Meters**) The Lessor shall ensure that all Services supplied to the Premises are separately metered.

(b) (**Costs**) The Lessee shall pay all Costs for all Services supplied to the Premises (but with respect to water, the obligation under this clause 5.1(b) is limited to water usage and consumption charges).

5.2 **Cleaning**

The Lessee shall at its own Cost ensure that the Premises are kept clean.

5.3 **Outgoings**

The Lessee shall pay to the Lessor for each Lease Year an amount equal to the Lessee's Proportion of the Outgoings in accordance with this clause 5. This obligation shall not extend to any fines, penalties or interest on the Outgoings which arise because of the Lessor's delay in payment or the Lessor's delay in providing relevant invoices and accounts to the Lessee for payment.

5.4 **Lessor's estimate**

The Lessor may:

(a) (**notification of estimate**) before or during each Lease Year notify the Lessee of the Lessor's reasonable estimate of the Lessee's Proportion of Outgoings for that Lease Year; and

(b) (**adjustment of estimate**) from time to time during that Lease Year by notice to the Lessee adjust the reasonable estimate of the Lessee's Proportion of Outgoings as may be appropriate to take account of changes in any of the Outgoings.

5.5 **Payments on account**

The Lessee shall pay on account the amount of the estimates of the Lessee's Proportion of Outgoings provided for in clause 5.4 by equal monthly instalments in advance on the same days and in the same manner as the Lessee is required to pay Rent.

5.6 **Yearly adjustment**

(a) (**Lessor's notice**) As soon as practicable after the end of each Lease Year the Lessor shall give to the Lessee a notice with reasonable details and reasonable evidence of the Outgoings for that Lease Year.

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(b) (**Adjustment of payments on account**) The Lessee shall within 10 Business Days after the date of the notice referred to in clause 5.6(a) pay to the Lessor or the Lessor shall pay to the Lessee (as appropriate) the difference between the amount paid on account of the Lessee's Proportion of Outgoings during that Lease Year and the amount actually payable in respect of it by the Lessee, so that the Lessee shall have paid the correct amount of the Lessee's Proportion of Outgoings for that Lease Year.

(c) (**Audited statement**) If the Lessee disagrees with the details, amounts or calculations contained in the notice referred to in clause 5.6(a), the Lessee may require the Lessor to give the Lessee an audited statement of the Outgoings for that Lease Year prepared by a chartered accountant reasonably approved by the Lessee (or failing approval within 5 Business Days of the request for the statement, selected by the President of the Institute of Chartered Accountants at the request of either the Lessor or the Lessee). The Lessor shall have 20 Business Days after a request from the Lessee within which to provide the statement.

(d) (**Readjustment**) If the amounts shown in the audited statement are different from the amounts shown in the Lessor's notice given under clause 5.6(b), the amount of Outgoings shall be readjusted so that the Lessee shall have paid the correct amount of the Lessee's Proportion of Outgoings for that Lease Year.

5.7 **GST**

(a) (**General**) Capitalised expressions which are not defined in this clause but which have a defined meaning in the GST Law have the same meaning in this clause.

(b) (**Payment of GST**) The parties agree that:

(i) all Payments have been set or determined without regard to the impact of GST;

(ii) if the whole or any part of a Payment is the consideration for a Taxable Supply for which the payee is liable for GST, the GST Amount in respect of the Payment must be paid to the payee as an additional amount, either concurrently with the Payment or as otherwise agreed in writing; and

(iii) the payee will provide to the payer a Tax Invoice.

(c) (**Net of credits**) Despite any other provision of this lease, if a Payment due under this lease (including any contribution to Outgoings) is a reimbursement or indemnification by one party of an expense, loss or liability incurred or to be incurred by the other party, the Payment shall exclude any part of the amount to be reimbursed or indemnified for which the other party can claim an Input Tax Credit.

(d) (**TPA**) Each party will comply with its obligations under the Trade Practices Act 1974 in respect of any Payment to which it is entitled under this lease.

6. Use of Premises

6.1 **Permitted use**

The Lessee shall:

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(a) (**Lessee's Business**) not without the Lessor's Consent use the Premises for any purpose other than those specified in Item 11;

(b) (**non residence**) not use the Premises as a residence;

(c) (**no animals or birds**) not keep any animals or birds in the Premises; and

(d) (**pests and vermin**) at its own Cost keep the Premises free and clear of pests, insects and vermin.

6.2 **Overloading**

The Lessee shall not during the Term place or store any heavy articles or materials on any of the floors of, the Premises or the Building in a manner significantly differently from that at the Effective Date, without the Lessor's consent.

6.3 **Other activities by Lessee**

The Lessee shall:

(a) (**Appurtenances**) not use the Appurtenances in the Premises for any purpose other than those for which they were designed, and shall not place in the Appurtenances any substance which they were not designed to receive;

(b) (**air-conditioning and fire alarm equipment**) where any air conditioning or fire alarm system of the Lessor is installed in the Premises, not interfere (other than in accordance with clause 7.1) with that system nor obstruct or hinder access to it;

(c) (**not accumulate rubbish**) keep the Premises reasonably clean;

(d) (**not throw items from windows**) not throw anything out of the windows or doors of the Building or down the lift shafts, passages or skylights or into the light areas of the Building (if they exist), or deposit waste paper or rubbish anywhere except in proper receptacles, or place anything on any sill, ledge or other similar part of the exterior of the Building; and

(e) (**infectious diseases**) if any infectious illness occurs in the Premises:

(i) (**notify Lessor**) immediately notify the Lessor and all the proper Authorities; and

(ii) (**fumigate**) where that illness is confined to the Premises, at its Cost thoroughly fumigate and disinfect the Premises to the satisfaction of the Lessor and all relevant Authorities.

6.4 **For sale/to let**

The Lessor is entitled:

(a) (**advertising for lease**) where the Lessee has not given notice under clause 3.2(a)(ii), but only during the last three months of the Term, to place advertisements and signs on the part(s) of the Premises as are reasonably appropriate to indicate that the Premises are available for lease;

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(b) (**inspection by prospective tenants**) subject to the same limitations as in Paragraph (a), at all reasonable times and on reasonable notice (but where possible outside the usual trading hours of the Lessee) to show prospective tenants through the Premises;

(c) (**advertising for sale**) to place advertisements and signs on the part(s) of the Premises as it reasonably considers appropriate to indicate that the Premises are for sale; and

(d) (**inspection by prospective purchasers**) at all reasonable times and on reasonable notice (but where possible outside the usual trading hours of the Lessee), to show prospective purchasers through the Premises.

The Lessor may only exercise its rights under this clause 6.4 in the presence of a representative of the Lessee after signing and/or procuring signing by the Lessor's invitees of such confidentiality agreements as the Lessee may reasonable require. In exercise of those rights the Lessor must minimise any inconvenience or disruption to the Lessee or the Lessee's Business.

7. Maintenance, Repairs, Alterations and Additions

7.1 **Repairing obligations**

(a) (**General**) The Lessee:

(i) Must, during the Term and any extension or Further Term or any holding over, keep the Premises in good repair and condition including any structural or capital maintenance, replacement or repair having regard to their state of repair and condition at the Effective Date; and

(ii) acknowledges and agrees that subject to clauses 5.4, 5.6, 9.2, 11, 12.4, 15.2 and 15.5(b) and (c) the Lessor is not responsible for any costs and expenses in relation to the Premises during the Term and any extension or Further Term or any holding over.

(b) (**Exclusions**) Despite clause 7.1, the Lessee has no obligation to carry out any works which relate to:

(i) (**fair wear and tear**) fair wear and tear;

(ii) (**insurance**) damage to the Premises caused by fire, storm or tempest or any other risk covered by any insurance taken out by the Lessor in respect of the Premises (other than where any insurance money is irrecoverable through the act, omission, neglect, default or misconduct of the Lessee or the Lessee's Employees);

(iii) (**Lessor's act or omission**) patent or latent damage to the Premises caused or contributed to by any wilful or negligent act or omission of the Lessor or its Employees;

(iv) (**Non-Make Good Building**) any works to the Non Make Good Buildings, except to the extent required by clause 7.1(d) and clause 13.

(c) (**Structural repair**) Subject to clauses 15.2 and 15.5(c), nothing in this Lease requires the Lessor to carry out any structural or capital maintenance, replacement or repair except where rendered necessary by any wilful or negligent act or omission of the Lessor or the Lessor's

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Employees, which maintenance, replacement or repair the Lessor must attend to promptly after notice from the Lessee.

(d) (**Compliance with Laws and Requirements**) The Lessee shall, during the Term, subject to clauses 7.1(b)(i), (ii) and (iii), 7.1(e), 7.11, 15.2 and 15.5(c), comply with any Law or Requirement affecting the Premises (including any underground storage tanks and any Environmental contamination associated with them), the Lessee's use of the Premises and the Lessee's Fitout and Fittings, except that the Lessor must, at its Cost, promptly comply with these Laws or Requirements if:

(i) the Lessor or the Lessor's Employees have taken action or refrained from taking action that directly or indirectly has a material effect in causing the Law or Requirement to apply, be issued or enforced;

(ii) the Lessor or the Lessor's Employees have taken action or refrained from taking action that directly or indirectly has a material effect in causing the Law or Requirement to apply, be issued or enforced by doing works on the Land or any adjoining land; or

(iii) the Lessor or the Lessor's Employees have taken action or refrained from taking action that directly or indirectly has a material effect in causing the Law or Requirement to apply, be issued or enforced because of any subdivision, re-configuration of other dealing with the Land.

However, the Lessor is not obliged to comply with the Law or Requirement where the Law or Requirement applies, is issued or enforced solely as a result of the Lessor or the Lessor's Employees making any applications to Authorities with respect to redevelopment of that part of the Land which is not or will no longer be included in the Premises as anticipated by the terms of this Lease or because of the terms of any consents, approvals or permits granted by those Authorities in response to those applications.

(e) (**Options to terminate or surrender**)

(i) If there is a change in Law or a Requirement requiring the demolition or substantial upgrade of Buildings on the Premises, then the Lessee may at its option:

(A) terminate this Lease by giving notice to the Lessor together with the Termination Payment; or

(B) partially surrender this Lease by giving to the Lessor a surrender of lease in registrable form with respect to the relevant part of the Premises (and any ancillary areas) affected by the change in Law or Requirement together with the Termination Payment. Unless access can be provided to the surrendered area in accordance with clause 7.1(e)(iv)(B), in determining the area to be partially surrendered the Lessee must ensure that the surrendered area is not landlocked.

(ii) At any time during the Term the Lessee may at its option and at its Cost:

(A) partially surrender this Lease by giving to the Lessor a surrender of lease in registrable form with respect to any Non-Make Good Buildings together with the Termination Payment; and

(B) in determining the area to be partially surrendered the Lessee must:

(1) ensure that there is 6 metres clearance from the perimeter of the surrendered area to the nearest building; and

(2) unless access can be provided to the surrendered area in accordance with clause 7.1(e)(iv)(B) ensure that the surrendered area is not landlocked.

(iii) Neither party will have any further obligation to the other under this Lease following the date of service on the Lessor of the termination notice or partial surrender of lease and the relevant Termination Payment under clause 7.1(e)(i) or 7.1(e)(ii) (but limited with respect to the area of the Premises surrendered in the case of clauses 7.1(e)(i)(B) and 7.1(e)(ii)), except for any pre-existing breach.

(iv) If clauses 7.1(e)(i)(B) or 7.1(e)(ii) applies:

(A) the Rent and Outgoings under this Lease shall reduce proportionately by reference to the area of the Premises surrendered (with any dispute to be determined under clause 14) with effect from the date of service on the Lessor of the notice of termination or partial surrender of lease and the relevant Termination Payment (as the case may be);

(B) the Lessee must permit the Lessor and persons authorised by it to have a reasonable means of access through the Premises to the surrendered area, so long as that means of access and the use of it do not have a material adverse impact on the Lessee's use or operation of the Premises; and

(C) the definition of Outgoings will be amended to include reasonable security costs actually incurred by the Lessor arising from multiple occupancies of the Land.

7.2 **Lessor's right of inspection**

The Lessor may in the presence of a responsible officer of the Lessee at all reasonable times on giving to the Lessee reasonable notice enter the Premises and view the state of repair and condition.

7.3 **Enforcement of repairing obligations**

The Lessor may:

(a) **(serve notice)** notify the Lessee of any failure by the Lessee to carry out within the time allowed by this Lease any repair, replacement or cleaning of the Premises which the Lessee is obliged to do under this Lease; and/or

(b) (**carry out repair**) require the Lessee to carry out that repair, replacement or cleaning within a reasonable time. If the Lessee fails to do so within a reasonable time having regard to the nature of the defect complained of and the length of time reasonably required to remedy that defect, the Lessor may elect to carry out that repair, replacement or cleaning at the Lessee's Cost (but wherever possible outside the usual operating hours of the Lessee). The Lessee shall on demand reimburse the Lessor for those Costs. The Lessor in exercise of its rights under this clause 7.3(b) shall:

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(i) sign and/or procure signing by the Lessor's invitees of such confidentiality agreements as the Lessee may reasonably require;

(ii) endeavour not to cause any undue inconvenience to the Lessee and the conduct of the Lessee's Business; and

(iii) make good any damage caused to the Premises without delay.

7.4 **Lessor may enter to repair, decontaminate**

If:

(a) (**Lessor wishes to repair**) the Lessor wishes to carry out any repairs to the Premises considered necessary or desirable by the Lessor or in relation to anything which the Lessor is obliged to do under this Lease; or

(b) (**Requirements of Authority**) any Authority requires any repair or work to be undertaken on the Premises (including any decontamination, remediation or other cleanup) which the Lessor must or in its absolute discretion elects to do and for which the Lessee is not liable under this Lease,

then the Lessor, its architects, workmen and others authorised by the Lessor may at all reasonable times on giving to the Lessee reasonable notice enter and carry out any of those works and repairs. In so doing the Lessor shall:

(c) sign and/or procure signing by the Lessor's Employees of such confidentiality agreements as the Lessee may reasonably require;

(d) endeavour not to cause undue inconvenience to the Lessee and the conduct of the Lessee's Business, and

(e) make good any damage caused to the Premises without delay.

The Lessor shall indemnify the Lessee on demand in respect of all Claims incurred or suffered by the Lessee as a consequence of the carrying out of works under this clause 7.4.

7.5 **Deleted**

7.6 **Alterations to Premises**

(a) (**No Consent required**) The Lessee is entitled to carry out any Proposed Work on or to the Premises without the need to seek or obtain Lessor's Consent except that the Lessee must obtain the Lessor's Consent prior to carrying out any structural Proposed Works:

(i) on or to any Make Good Buildings; or

(ii) which materially increase the footprint of the Non-Make Good Buildings,

such Consent not to be unreasonably withheld or delayed.

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(b) (**Deemed Consent**) If the Lessor does not respond conclusively to a request for Consent within 20 Business Days of the written request being served on it, the Lessor is deemed to have Consented to the relevant request.

(c) (**Approvals**) The Lessee shall obtain all necessary approvals or permits before carrying out the Proposed Work.

(d) (**Lessor to assist**) The Lessor shall at the Lessee's Cost without delay do all acts and sign all documents to enable the Lessee to obtain the approvals and permits referred to in clause 7.6(c) and otherwise to enable the Lessee to carry out any Proposed Work in accordance with this Lease.

(e) (**Specific Proposed Works**) Despite clause 7.6(a), the Lessor gives its consent to Proposed Work which relates to installation and removal of the Lessee's plant and equipment, including bolting or affixing to the floors of the Premises, subject to clauses 6.2 and 13.

(f) (**Condition**) The Lessor, acting reasonably, may require the Lessee to carry out remediation works as a condition of the Lessor's Consent to Proposed Work where Consent is required under clause 7.6(a) if the Proposed Works will, if implemented:

(i) trigger a Requirement to carry out those remediation works; or

(ii) render the Premises unsuitable for the Permitted Use unless the remediation works are carried out with the Proposed Work.

7.7 **Notice to Lessor of damage, accident etc.**

The Lessee shall notify the Lessor of any:

(a) (**accident**) accident to or in the Premises; and/or

(b) (**notice**) circumstances reasonably likely to cause any damage or injury to occur within the Premises,

of which the Lessee has actual notice.

7.8 **Maintenance contracts**

The Lessee shall at its own Cost enter into maintenance contracts for the fire fighting services and equipment servicing the Premises with contractors approved by the Lessee and in a form and on terms (whether as to cost, standard of service or otherwise) reasonably acceptable to the Lessee.

7.9 **Deleted**

7.10 **Lessee's Fitout and Fittings**

The Lessee's Fitout and Fittings shall at all times be and remain the property of the Lessee (or the lessor of the Lessee's Fitout and Fittings, if applicable) despite any particular method of annexation to the Premises.

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7.11 **Timing for works and compliance with Requirements**

Despite any other provision of this Lease:

(a) the Lessee may carry out any maintenance, repair or replacement or other works or comply with any Law or Requirement which it is required under this Lease to do or comply with at such time as the Lessee (acting reasonably) determines except that the Lessee must still comply with:

(i) the timetable set out in the relevant Requirement to which any works relate; and

(ii) clause 13; and

(b) subject to clause 7.11(a)(i), the Lessor agrees that the mere issue of a Requirement or the existence of a non-compliance with Law does not of itself:

(i) trigger the Lessee's obligation to comply with it; or

(ii) constitute a timetable to do any works; or

(iii) constitute a breach of this Lease by the Lessee;

(c) the Lessor cannot (and shall not) take any steps or exercise any rights under this Lease or otherwise to cause the Lessee to remedy the non-compliance with Law or comply with the Requirement (or do so itself under clause 7.3 or otherwise), unless:

(i) clauses 7.11(a)(i) or (ii) apply; or

(ii) the relevant Authority is taking active steps to require the Lessor to remedy the non-compliance or comply with the Requirement and the Lessor will be exposed to liability or Cost if it does not do so; and

(d) the Lessee may, in its absolute discretion, elect to demolish any asbestos clad or roofed Buildings rather than comply with the relevant Law or Requirement but the Rent will not be reduced if the Lessee does so.

7.12 **Set off procedure**

(a) (**Notice**) If the Lessee wishes to set off any amount against the Rent, the Outgoings or any other amounts under this Lease in exercise of its rights under this Lease to do so, then the Lessee must give notice to the Lessor of the amount involved, reasonable detail of what the set off relates to and the provision of this Lease with respect to which the right is proposed to be exercised.

(b) (**No response**) If the Lessor does not respond to this notice within 20 Business Days of service of it (time being of the essence), the Lessee is entitled to exercise the set off rights referred to in the notice in accordance with this Lease.

(c) (**Dispute**) If the Lessor by notice to the Lessee disputes the Lessee's notice given under clause 7.12(a) within 20 Business Days of service of it (time being of the essence) and that dispute is not resolved within 5 Business Days of service of the Lessor's notice, either party may refer the matter to an appropriate independent person for determination under clause 14. The

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Lessee may not exercise any set off rights until any dispute under this clause has been determined or resolved.

8. Assignment And Sub-Letting

8.1 **No disposal of Lessee's interest without Consent**

(a) The Lessee may assign, transfer, sublet, licence or otherwise deal with or part with possession of the Premises or this Lease or any part of or any interest in them with the Consent of the Lessor which shall not be unreasonably withheld.

(b) The Lessor Consents to all sub-leases, sub-licences or other sub-rights to occupy the Premises which are in existence as at the Effective Date, whether or not those arrangements have been documented or disclosed.

8.2 **Lessor's obligation to Consent**

The Lessor must give the Consent referred to in clauses 8.1 and 8.5 if the Lessee proves to the reasonable satisfaction of the Lessor that the incoming tenant is a respectable, responsible and solvent Person and, in the case of an assignment or transfer, who is reasonably capable of performing the Lessee's obligations under this Lease.

8.3 **James Hardie Industries N.V. Provisions**

Despite clause 8.1, whilst the Lessee is James Hardie Australia Pty Limited or James Hardie Industries N.V. or a Related Body Corporate of either of those companies:

(a) (**subletting**) the Lessee may sublet, licence or otherwise part with possession of the Premises without obtaining the Lessor's Consent if the proposed sublessee or licensee is James Hardie Australia Pty Limited or James Hardie Industries N.V. or a Related Body Corporate of either of those companies. The Lessee shall notify the Lessor upon granting a sublease or licence of this nature;

(b) (**assignment**) the Lessee may assign this Lease to a Related Body Corporate of James Hardie Australia Pty Limited or James Hardie Industries N.V. or to either of those companies without obtaining the Lessor's Consent but notice of the assignment must be given to the Lessor;

(c) (**sale of business**) if there is a sale to a purchaser of the business carried on by James Hardie Australia Pty Limited or James Hardie Industries N.V. (as the case may be) then the Lessor gives its consent to an assignment of this Lease to the purchaser;

(d) (**short term sublease or licence**) the Lessee may sublet or licence up to 1,000m² of the Premises without the Lessor's Consent where the term of that sublease or licence (excluding any renewal or holding over period) does not exceed 12 months; and

(e) (**novation**) the Lessee may novate this Lease to a Related Body Corporate of James Hardie Australia Pty Limited or James Hardies Industries N.V. as long as at the same time the novation occurs the Lessee procures that a guarantee of the obligations of the new tenant under this Lease is given by James Hardie Industries N.V. in a form satisfactory to the Lessor (acting reasonably).

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8.4 **Deed**

If the Lessor requests it, the Lessee shall procure that any assignee or transferee of this Lease executes a direct covenant with the Lessor to observe the terms of this Lease in such forms as the Lessor may reasonably require including payment of reasonable legal costs.

8.5 **Change in Control**

(a) If:

(i) the Lessee is a company which is neither listed nor directly or indirectly wholly-owned by a company which is listed on any recognised Stock Exchange; and

(ii) there is a proposed change in the shareholding of the Lessee or its holding company so that a different person or group of people will control the composition of the board of directors or more than 50% of the shares giving a right to vote at general meetings of the Lessee,

then that proposed change in control is treated as a proposed assignment of this Lease and the Lessors Consent must be obtained prior to the change in control taking effect.

(b) The Lessor agrees that clause 8.5(a)will not apply to a change in shareholding or control where James Hardie Australia Pty Limited or a Related Body Corporate of James Hardie Australia Pty Ltd or James Hardie Industries N.V. remains or becomes:

(i) the owner or ultimate holding company of the Lessee; or

(ii) in control of the composition of the board of directors of the Lessee; or

(iii) in control of more than 50% of the shares giving a right to vote at general meetings of the Lessee.

9. Insurance and Indemnities

9.1 **Insurances to be taken out by Lessee**

The Lessee shall:

(a) (**public risk**) keep current during the Term (including any extension or Further Term or holding over) a public risk insurance policy with respect to the Premises, such policy to be for an amount of not less than the amount specified in Item 12;

(b) (**approved insurers**) ensure that all insurance policies maintained for the purposes of clause 9.1(a):

(i) (**insurance company**) are taken out with an independent and reputable insurer; and

(ii) (**amount**) are for amounts and contain conditions reasonably acceptable to or reasonably required by the Lessor and/or the Lessor's insurer(s); and

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(c) (**evidence of insurance**) in respect of any policy of insurance to be effected by the Lessee under this clause 9.1, whenever reasonably required by the Lessor (but not more than once annually), give to the Lessor a copy of the certificate of currency; and

(d) (**interest of Lessor**) in respect of the policy of insurance to be effected by the Lessee under clause 9.1(a), ensure that the interest of the Lessor is noted,

except that the Lessee will be deemed to have complied with clauses 9.1(a) to (d) if James Hardie Australia Pty Limited or James Hardie Industries N.V. or a Related Body Corporate of either of those companies is the Lessee and that Lessee is insured under the global insurance arrangements of either of those companies.

9.2 **Insurances to be taken out by Lessor**

The Lessor shall:

(a) (**property insurance**) keep current during the Term including any extension or Further Term or holding over the property insurance for the Premises including loss of rent cover (capped at 18 months) referred to in paragraph (e) of the definition of Outgoings;

(b) (**approved insurers**) ensure that all insurance policies maintained for the purposes of clause 9.2(a):

(i) (**insurance company**) are taken out with an independent and reputable insurer; and

(ii) (**amount**) are for amounts and contain conditions reasonably acceptable to or reasonably required by the Lessee and/or the Lessee's insurer(s); and

(c) (**evidence of insurance**) in respect of any policy of insurance to be effected by the Lessor under this clause 9.2, whenever reasonably required by the Lessee (but not more than once annually), give to the Lessee a copy of the certificate of currency and reasonable details of the policy coverage; and

(d) (**interest of Lessee**) in respect of the policy of insurance to be effected by the Lessor under clause 9.2(a), ensure that any interest of the Lessee is noted.

9.3 **Deductibles**

The Lessor will not object to any reasonable deductibles contained in any insurances effected or required to be effected by the Lessee pursuant to clause 9.1 provided that the Lessee will indemnify the Lessor to the extent of the deductible applicable under a Claim to which those insurances apply.

9.4 **Inflammable substances**

The Lessee shall not:

(a) (**reasonable quantities**) other than as is necessary for the Lessee's Business, store chemicals, inflammable liquids, acetylene gas or alcohol, volatile or explosive oils, compounds or substances on or in the Premises; or

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(b) (**use**) use any of those substances or fluids in the Premises for any purpose other than the Lessee's Business.

This clause 9.4 does not apply to anything in underground storage tanks on the Premises which exist at the Effective Date.

9.5 **Effect on Lessor's insurances**

The Lessee shall not without the Lessor's Consent, do anything to or on the Premises which will or may:

(a) (**increase the rate of insurance**) increase the rate of any insurance on the Premises or on any property in them, of which the Lessee has been notified by the Lessor, without paying to the Lessor an amount equal to the amount of that increase; or

(b) (**avoid insurance**) vitiate or render void or voidable any insurance, of which the Lessee has been notified by the Lessor, in respect of the Premises or any property in them.

9.6 **Insurance Proposal by the Lessee**

(a) If the Lessee is of the opinion that the Lessee will be able to procure the same insurance required to be obtained by the Lessor under clause 9.2(a) at a more competitive premium or on better terms, the Lessee may by notice in writing to the Lessor propose that it take out a policy for the insurance referred to in clause 9.2(a), noting the Lessor's interests as landlord (**Insurance Proposal**). The Lessee can only submit an Insurance Proposal once per year.

(b) The insurer proposed must be either rated A or higher by S&P or Moodys or a global insurer with respect only to the industrial special risks component of the Insurance Proposal.

(c) The Lessor must not unreasonably withhold, condition or delay its approval of an Insurance Proposal.

(d) If the Lessor approves the Insurance Proposal, the Lessee must promptly take out the insurance policy proposed under the Insurance Proposal (or, if the Lessor has failed to effect insurance under clause 9.2(a), the Lessee may take out the insurance policy anticipated by that clause) noting the Lessor's interests as landlord and, if required by the Lessor in writing, must note the interest of any financier to the Lessor and any mortgagee of the Land.

(e) If the Lessee effects insurance under clause 9.6(d) and the Lessor is not named as an insured party, the Lessee shall reimburse the Lessor for any premiums for "difference in cover" insurance the Lessor is required to effect as a result of the requirements of its financiers, capped at 3% of the premiums payable by the Lessee under its Insurance Proposal.

9.7 **Indemnities**

Even if:

(a) (**authorisation**) a Claim results from something the Lessee may be authorised or obliged to do under this Lease; and/or

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(b) (**waiver**) a waiver or other indulgence has been given to the Lessee in respect of an obligation of the Lessee under this clause 9.7,

the Lessee, except to the extent caused or contributed to by the Lessor or its Employees but only to the extent caused or contributed to by the Lessee or its Employees, shall indemnify the Lessor in respect of all Claims for which the Lessor will or may be or become liable, whether during or after the Term, in respect of or arising directly or indirectly from:

(c) (**injury to property or person**) any loss, damage or injury to property or person, in on or near the Premises caused or contributed to by:

(i) (**negligence**) any wilful or negligent act or omission;

(ii) (**default**) any default under this Lease; and/or

(iii) (**use**) the use of the Premises,

by or on the part of the Lessee or the Lessee's Employees;

(d) (**abuse of services**) the negligent or careless use or neglect of the Services and facilities of the Premises or the Appurtenances by the Lessee or the Lessee's Employees or any other person claiming through or under the Lessee;

(e) (**water leakage**) any overflow or leakage (including rain water or from any Service, Appurtenance or the Lessor's Fixtures) whether originating inside or outside the Premises; and

(f) (**plate glass**) any loss, damage or injury relating to plate and other glass caused or contributed to by any act or omission on the part of the Lessee or the Lessee's Employees,

but excluding any consequential loss.

10. Damage, Destruction and Resumption

10.1 **Damage to or destruction of Premises**

If at any time the Premises or any part of them are damaged or destroyed so that the Premises or any part of them are wholly or substantially unfit for the occupation and use of the Lessee or (having regard to the nature and location of the Premises and the normal means of access) are wholly or substantially inaccessible then, save where such damage or destruction arises out of the wilful or negligent act or omission of the Lessee or its Employees:

(a) (i) (**Rent and Outgoings abatement**) the Rent, the Outgoings and any other money payable periodically under this Lease, or a proportionate part of that Rent, the Lessee's Proportion of Outgoings or other moneys according to the nature and extent of the damage or destruction sustained, will abate; and

(ii) (**remedies suspended**) all remedies for recovery of Rent, the Lessee's Proportion of Outgoings and other moneys (or that proportionate part of them, as the case may be) falling due after that damage or destruction will be suspended,

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until the Premises have been restored or made fit for the occupation and use or made accessible to a standard equivalent to that at the Effective Date and all Services, air conditioning and air ventilation systems and fire fighting services and equipment for the Premises have been repaired so that they operate at a standard not less than as at the Effective Date;

(b) (**termination by Lessee**) if the Premises are substantially destroyed, damaged or rendered inaccessible due to the wilful or negligent act or omission of the Lessor or by default by the Lessor under the Lease, the Lessee shall have the right to terminate the Lease by notice to the Lessor and to claim damages;

(c) (**reinstatement by Lessor**) unless:

(i) (**no insurance moneys**) the Lessor's insurance policies have been invalidated or payment of insurance moneys under the policies refused because of some wilful act or omission of the Lessee or the Lessee's Employees;

(ii) (**Lessee insures**) if clause 9.6(d) applies, the Lessee does not make the proceeds of the insurance referred to in clause 9.2(a) available to the Lessor for reinstatement of the Premises; or

(iii) (**agreement**) the parties agree otherwise,

the Lessor shall proceed with all reasonable expedition and diligence to reinstate the Premises and/or make the Premises fit for the occupation and use of and/or accessible to the Lessee to the standard required by clause 10.1(a);

(d) (**determination by Lessee**) where it is required under clause 10.1(c), unless the Lessor obtains all necessary development consents to authorise the necessary works to be done and provides reasonable written evidence of that to the Lessee within 6 months of the destruction or damage first occurring, then the Lessee may terminate this Lease by giving not less than one month's notice to the Lessor. At the end of that notice period this Lease will be at an end;

(e) (i) (**delay in repair**) if the Lessor is obliged under clause 10.1(c) to do so, but does not:

(A) substantially commence the necessary works to make good the destruction or damage within 8 weeks, subject to any reasonable extension necessary to obtain approvals from any relevant Authority; and/or

(B) complete the necessary works to make good the destruction or damage within 9 months, subject to any reasonable extension necessary to obtain approvals from any relevant Authority,

of it first occurring, then the Lessee may (by notice to the Lessor) proceed to cause the necessary works to be carried out and the Lessor shall allow the Lessee, its Employees, contractors and workmen access to the Land for that purpose; and

(ii) (**Costs**) all Costs of any kind incurred by the Lessee under clause 10.1(e)(i) shall at the Lessee's option (but subject to clause 7.12):

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(A) (**demand**) be payable by the Lessor to the Lessee on demand on a full indemnity basis;

(B) (**proceeds**) be paid from available proceeds of the insurance effected under clause 9.2(a), which the Lessor must promptly make available to the Lessee; or

(C) (**combination**) be accounted for by a combination of the above in the Lessee's discretion,

until all Costs incurred by the Lessee have been recovered; and

(f) (**no obligation to re-instate**) if the circumstances in clauses 10.1(c)(i) or (ii) exist, then the Lessor shall be under no obligation to reinstate the Premises or the means of access to them. In that case, either party may terminate this Lease by giving not less than one month's notice to the other.

10.2 **Resumption of Premises**

If at any time the whole or any part of the Premises is resumed so that the residue of them is wholly or partially unfit for the occupation and use of the Lessee or (having regard to the nature and location of the Premises and the normal means of access) is wholly or partially inaccessible, then:

(a) (**Rent abatement**) a proportionate part of the Rent, the Lessee's Proportion of Outgoings, and any other moneys payable periodically under this Lease, according to the nature and extent of the resumption and having regard to the resultant impact on the Lessee's trade and takings, will abate; and

(b) (**remedies suspended**) all remedies for recovery of that proportionate, part of the Rent, the Lessee's Proportion of Outgoings, and other moneys falling due after that resumption will be suspended.

10.3 **Liability**

Except under clause 10.1(b) neither the Lessor or the Lessee is liable because of the determination of this Lease under this clause 10. That determination will be without prejudice to the rights of either party in respect of any preceding breach or non-observance of this Lease.

10.4 **Dispute**

Any dispute-arising under clauses 10.1 or 10.2 shall be determined by an appropriate independent person under clause 14.

11. Lessor's Covenants and Warranties

11.1 **Quiet enjoyment**

If the Lessee pays the Rent and other money payable under this Lease and observes and performs its obligations under this Lease, the Lessee may occupy and enjoy the Premises during the Term and any extension or Further Term or holding over without any interruption by the Lessor or by any person rightfully claiming through, under or in trust for the Lessor, or the Lessor's Employees.

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11.2 **Outgoings**

Without limiting the Lessor's rights of recovery under this Lease, and except where directly payable by the Lessee under this Lease, the Lessor shall pay all Outgoings promptly and, where applicable, by any due date for payment.

11.3 **Consent of Mortgagee**

The Lessor warrants that it has obtained all Consents (including Consents from any mortgagee of the Land) necessary for it to enter into this Lease.

11.4 **Deleted**

11.5 **Access**

The Lessor must provide the Lessee with access to the Premises 24 hours a day, 7 days a week.

11.6 **Management of Land**

The Lessor covenants with the Lessee that it will not subdivide or reconfigure the Land or create any easement, covenant or other right unless it obtains the Consent of the Lessee (which Consent shall not be unreasonably withheld). The Lessee may only withhold its Consent under this clause 11.6 if the actions proposed by the Lessor will have a material adverse impact on the Lessee's rights under this Lease or the Lessee's Business or the Lessee's use of the Premises or the Land. Any dispute under this Clause 11.6 may be referred by either party for determination under Clause 14.

11.7 **Construction**

The Lessee acknowledges that during the Term the Lessor may (if clause 18.2(a) applies) redevelop parts of the Land which are no longer included in this Lease and that it may be disturbed by resulting construction dust and noise. However, during any construction or redevelopment on the Land, the Lessor must:

(a) (**access**) do all things necessary to minimise disturbance to the Lessee in its access to, use and occupation of the Premises except that the Lessor may interrupt Services for a maximum period of 24 hours during non-shift time after consultation with and prior agreement of the Lessee or at other times as the Lessee may agree:

(b) (**Business**) do all things necessary to minimise disruption to the Lessee's Business conducted in the Premises.

11.8 **Competitors**

The Lessor covenants with the Lessee that it will not grant any lease or right of occupancy of or right to erect, install, affix, paint or otherwise display signage or advertising on any part of the Land or sell the Land or any part of it to any Competitor without the Consent of the Lessee.

11.9 **Breach of warranty or covenant**

If the Lessor breaches clauses 11.5, 11.6, 11.7 or 11.8 then, without prejudice to any other rights or remedies the Lessee may have, the Lessee at any time and in its absolute discretion shall be entitled to

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give the Lessor notice of an intention to terminate this Lease unless the Lessor satisfies the conditions contained in the notice within 20 Business Days or such longer period as may be reasonably required having regard to the nature of the breach and the time reasonably required to remedy the breach (the **Remedy Period**). If the conditions are not satisfied within the Remedy Period, the Lessee may in its absolute discretion terminate this Lease at any time after that.

12. Default and Determination

12.1 **Default**

Each of the following is an Event of Default (whether or not it is in the control of the Lessee):

(a) (**Rent in arrears**) the Rent or any part of it or any other money is in arrears and unpaid for 15 Business Days after it is due and has been demanded:

(b) (**failure to perform other covenants**) subject to clause 7.11, the Lessee fails to perform or observe any of its other obligations under this Lease within 15 Business Days or such longer period that may be reasonable in the circumstances after service of a notice requiring performance of the covenants: and

(c) (**Liquidation**) the Liquidation of the Lessee.

12.2 **Forfeiture of Lease**

If an Event of Default occurs the Lessor may, without prejudice to any other Claim which the Lessor has or may have or could otherwise have against the Lessee or any other person in respect of that default, at any time:

(a) (**determination by re-entry**) subject to any prior demand or notice as is required by Law and wherever possible, outside the normal trading hours of the Lessee, re-enter into and take possession of the Premises or any part of them (by force if necessary) and eject the Lessee and all other persons from them, in which event this Lease will be at an end; and/or

(b) (**determination by notice**) by notice to the Lessee determine this Lease, and from the date of giving that notice this Lease will be at an end.

12.3 **Waiver**

(a) (**Waiver by Lessor**) No consent or waiver express or implied by the Lessor to or of any breach of any covenant, condition, or duty of the Lessee shall be construed as a consent or waiver to or of any breach of the same or any other covenant, condition or duty.

(b) (**Waiver by Lessee**) No consent or waiver express or implied by the Lessee to or of any breach of any covenant, condition, or duty of the Lessor shall be construed as a consent or waiver to or of any breach of the same or any other covenant, condition or duty.

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12.4 **Lessor to mitigate damages**

If the Lessee vacates the Premises, whether with or without the Lessor's Consent, or the Lessor terminates or forfeits this Lease, the Lessor shall take all reasonable steps to mitigate its loss and shall as soon as possible endeavour to re-let the Premises at a reasonable rent and on reasonable terms.

12.5 **Recovery of damages**

(a) (**Fundamental terms**) The obligations contained in clauses 4.1, 4.2, 4.3, 4.4, 4.5, 5.3, 5.5, 6.1(a), 7.1(a) and (d), 7.6(a), 8.1, 9.1, 10.1 and 10.3 are agreed by the Lessor and the Lessee to be fundamental to this Lease.

(b) (**Damages**) If the Lessor determines this Lease pursuant to this clause 12 as a consequence of or in reliance upon a breach by the Lessee of one or more of the obligations contained in the provisions of this Lease referred to in clause 12.5(a) (whether alone or together with other obligations contained in this Lease) the Lessor shall, subject to clause 12.4, be entitled to damages for loss of the benefits which performance of all of the obligations and provisions of this Lease would, but for the determination, have conferred upon the Lessor, subject to the Lessor's duty to mitigate its loss.

12.6 **Interest on overdue money**

(a) (**Interest**) The Lessee shall pay to the Lessor interest at the Interest Rate on any Rent or other money due under this Lease (including money or Costs which are expressed to be payable or reimbursable to the Lessor on demand) but unpaid for 5 Business Days.

(b) (**Conditions**) That interest shall:

(i) (**accrual**) accrue on a daily basis and be calculated on daily rests;

(ii) (**payment**) be payable on demand or, if no earlier demand is made, on the first Business Day of each month where an amount arose in the preceding month or months;

(iii) (**calculation**) be calculated from the due date for payment of the Rent or other money (as appropriate) or, in the case of an amount payable by way of reimbursement or indemnity, the date of outlay or loss, if earlier, until the date of actual payment; and

(iv) (**recovery**) be recoverable in the same manner as Rent in arrears.

13. Termination

13.1 **Yield up**

In relation to the Premises (other than the Non Make Good Buildings), the Lessee shall at the Terminating Date:

(a) (**yield up**) yield them up in the state of repair and condition described in and on the terms set out in clause 7.1 except that the Lessee is not obliged to remove any Proposed Work it has done during the Term nor to reinstate the Premises to their former condition unless that was a condition of the Lessor's Consent to that Proposed Work being carried out by the Lessee; and

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(b) (**remove Lessee's Fitout and Fittings**) if the Lessor so requests or if the Lessee wishes to, remove from the Premises (other than the Non-Make Good Buildings) all the Lessee's Fitout and Fittings and any other property of the Lessee and repaint those parts of the Premises (other than the Non-Make Good Buildings) which were previously painted and recarpet those parts of the Premises (other than the Non-Make Good Buildings) which were carpeted at the Effective Date with carpet of such quality as was installed at the Effective Date.

13.2 **Non Make Good Buildings**

In relation to the Non Make Good Buildings:

(a) (**remove Lessee's Fitout and Fittings**) if the Lessor so requests the Lessee shall or if the Lessee wishes to the Lessee may, remove from the Premises all the Lessee's Fitout and Fittings and any other property of the Lessee; and

(b) (**any condition**) the Lessee can deliver them up to the Lessor in any condition, subject to performance of the Lessee's obligations in clause 7.1(d) which are due to be performed prior to the Terminating Date and under clause 13.2(a).

13.3 **Lessee not to cause damage**

The Lessee shall:

(a) (**not cause damage**) not cause or contribute to any damage to the Premises (other than the Non Make Good Buildings) in the removal of the Lessee's Fitout and Fittings and other property of the Lessee. If it does, however, it shall make good that damage; and

(b) (**leave Premises in good state**) leave the Premises in a clean state and Condition.

If the Lessee fails to comply with clauses 13.1, 13.2 and 13.3(a) and (b) within a reasonable time of the Terminating Date, the Lessor may make good and/or clean the Premises to the extent the Lessee was obliged to do so at the Cost of and as agent for the Lessee and recover from the Lessee the Cost to the Lessor of doing so as a liquidated debt payable on demand. The Lessee must also pay Rent and the Lessee's Proportion of Outgoings for any reasonable period in which the Lessor undertakes the Lessee's obligations under this clause 13.3.

13.4 **Failure by Lessee to remove Lessee's Fitout and Fittings**

If the Lessee fails to remove the Lessee's Fitout and Fittings and other property of the Lessee when required to do so under clauses 13.1 or 13.2 or following determination under clause 12.2, within 30 Business Days of notice to do so, the Lessor may cause the Lessee's Fitout and Fittings and other property of the Lessee to be removed and stored in such manner as the Lessor in its discretion thinks fit at the risk and Cost of the Lessee. The Lessee must also pay Rent and the Lessee's Proportion of Outgoings for any reasonable period in which the Lessor undertakes the Lessee's obligations under this clause 13.4.

13.5 **Failure to remove**

If the Lessee fails to remove the Lessee's Fitout and Fittings and other property of the Lessee by the Terminating Date under clauses 13.1 and 13.2 where the Lessor has not requested in writing that it do so, it shall then become the property of the Lessor.

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14. Disputes

14.1 **Appointment of expert**

Any dispute arising under this Lease may at the request of either party be referred for determination by an appropriate independent person who is:

(a) (**agreed by parties**) agreed between the Lessor and the Lessee; or

(b) (**failing agreement**) if they cannot agree, a member of a professional body nominated at the request of either the Lessor or the Lessee by the President of the Property Council of Australia Limited.

14.2 **Qualifications of expert**

The appointed person:

(a) (**experience**) must have substantial experience in relation to disputes in the nature of the matter in dispute and where appropriate, in relation to premises of a similar type within the area in which the Premises are located or other comparable areas; and

(b) (**expert**) in making his determination shall act as an expert and not as an arbitrator.

His determination will be final and binding on the parties.

14.3 **Cost of determination**

The Cost of the appointed person's determination shall be borne by either or both of the parties (as determined by the appointed person) and if by both of the parties in the proportion between them as the person making the determination decides.

15. Environmental Contamination

15.1 **Lessee's responsibility**

Despite any other provision of this Lease except clauses 15.4 and 15.5(b) and 15.5(c) and the Lessee's obligations with respect to underground storage tanks and any Environmental contamination associated with them under clause 7.1(d), the Lessee is not responsible for:

(a) in ground Environmental contamination of the Land or migrating onto or from the Land which exists at the Effective Date; or

(b) for any Environmental contamination in, on, under' or migrating onto or from the Land which occurs on and after the Effective Date which is not caused by the Lessee or its Employees.

15.2 **Lessor's obligations and indemnity**

The Lessor shall:

(a) (**comply**) without delay, but subject to clauses 15.4 and 15.5(b) and (c):

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(i) remediate any Environmental contamination referred to in clause 15.1 and which:

(A) any Authority requires remediated; or

(B) the parties agree or the expert under clause 14 determines is required pursuant to clause 15.2(c); and

(ii) comply with the Requirements of any Authority and the Law with respect to the Environmental contamination referred to in clause 15.1; and

(b) (**indemnify**) indemnify the Lessee against all Claims arising from the matters set out in clause 15.2(a) including any Costs arising from any agreement negotiated by or with the consent of the Lessor acting reasonably with any Authority relating to the matters referred to in clause 15.2(a) except to the extent that:

(i) other than with respect to Environmental contamination which constitutes a health and safety risk which the Lessee is required to notify to an Authority by Law, the Lessee or the Lessee's Employees have taken action with the intention of causing a Claim to be made or a notice or other Requirement issued and that action directly or indirectly has a material effect in causing the Claim to be made or the notice or other Requirement to be issued;

(ii) the Claim relates to Remediation to a standard higher than that required for industrial use (which the parties agree is the standard appropriate for the Permitted Use) whether arising from a rezoning of the Premises or otherwise; and/or

(iii) any disposition by the Lessee of a legal or equitable interest which the Lessee has in the Premises is made on terms which include an indemnity in respect of the Environment which is materially more advantageous to the person receiving that interest from the Lessee than the indemnity included in this clause 15.2, including in respect of the qualifications applicable to the indemnity contained in this clause 15.2(b).

(c) (i) If there is any Environmental contamination referred to in clause 15.1 which:

(A) prevents the Lessee operating from the Premises in the manner used at the Effective Date; or

(B) otherwise constitutes a health and safety risk, then the Lessee may give notice to the Lessor with reasonable details of the Environmental contamination and requesting that the Lessor remediate that contamination.

(ii) If the Lessor disputes whether the remediation requested by the Lessee is reasonably necessary, it must give notice to the Lessee within 20 Business Days of the date of service of the Lessee's notice under paragraph (i).

(iii) If the Lessor and the Lessee cannot agree on whether the remediation requested by the Lessee is reasonably necessary within 25 Business Days of the date of service of the Lessee's notice under paragraph (i) above, then either party may refer the matter for dispute resolution under clause 14.

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15.3 **Remediation by the Lessee if Lessor defaults**

If:

(a) (**Lessor's failure**) the Lessor fails to comply with clause 15.2(a) in accordance with the Requirements of any Authority and the Law (or, if no time is specified, within a reasonable time of notice from the Lessee, having regard to the nature of the remediation or the Law or Requirement and the period of time reasonably required to carry out the remediation or comply with the Law or Requirement); or

(b) (**emergency**) any emergency arises which requires the immediate or urgent remediation of Environmental contamination or compliance with a Requirement or the Law which the Lessor is required to remediate or comply with under this Lease,

then the Lessee may remediate the Environmental contamination or comply with the Law or the Requirement and the Cost of so doing and of all Claims incurred by the Lessee in properly complying with that Law or Requirement or arising from the Lessor's failure to do so and any reasonable Costs arising from temporary relocation of all or part of the Lessee's Business shall, at the Lessee's option be (but subject to clause 7.12):

(c) (**on demand**) payable by the Lessor to the Lessee on demand on a full indemnity basis;

(d) (**set off**) be set off against the Rent, the Lessee's Proportion of Outgoings and any other moneys payable by the Lessee under this Lease; or

(e) (**combination**) accounted for by a combination of the above in the Lessee's discretion,

until all Costs incurred by the Lessee have been recovered.

15.4 **Pre-existing UST's**

The Lessee must by the Terminating Date remove any underground storage tanks existing on the Land at the Effective Date or installed by the Lessee during the Term and remediate or otherwise deal with any Environmental contamination associated with them to the extent required to enable the Land to continue to be used for industrial purposes following the Terminating Date.

15.5 **Specific obligations**

(a) Subject to clause 7.11, the Lessee must effect and maintain all Environmental management plans relating to the Environmental condition of the Buildings on the Premises which are Required by Law or any Authority during the Term.

(b) Subject to clauses 7.11 and 15.5(c), the Lessee shall contribute up to a maximum of $40,000 per annum (increased by 3% per annum on each anniversary of the Effective Date) towards the Costs of:

(i) day to day repair and maintenance of the pumping out equipment (but not capital or structural Costs); and

(ii) any pumping out of mobile contaminants (including petroleum hydrocarbons) identified in the groundwater of that part of the Land included in the Premises,

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which is Required by Law or any Authority during the Term or any balance in excess of this amount per annum shall be payable by the Lessor within 5 Business Days of receipt of a tax invoice and reasonable details of the amount claimed.

(c) The Lessor must pay all capital Costs associated with the purchase, commissioning and, subject to the Lessee performing the repair and maintenance obligation referred to in clause 15.5(b), replacement of the remediation equipment required for the purposes of pumping out from the Premises and which i is Required by Law or any Authority during the Term, within 5 Business Days of receipt of a tax invoice and reasonable details of the amounts claimed.

15.6 **Recovery from polluter**

The Lessor must:

(a) include any pumping out Costs paid by the Lessee under clause 15.5(b) in any Claim against the polluter; and

(b) reimburse to the Lessee any of those Costs recovered from the polluter within 5 Business Days of receipt (capped at the amounts actually incurred by the Lessee).

15.7 **Acknowledgement**

Without limiting any other provision of this clause 15, the Lessee acknowledges that the Premises are at the Effective Date subject to Environmental contamination and accepts the Premises in that state.

16. Miscellaneous

16.1 **Notices**

All notices, requests, demands, consents, approvals, agreements or other communications to or by a party to this Lease:

(a) (**writing**) must be in writing;

(b) (**signed**) must be signed by the sender, or if a company, by its Authorised Officer; and

(c) (**served**) will be taken to have been served:

(i) (**personal**) in the case of delivery in person, when delivered to or left at the address of the recipient shown in this Lease (as the case may be) or at any other address which the recipient may have notified to the sender;

(ii) (**fax**) in the case of facsimile transmission, when recorded on the transmission result report unless:

(A) within 24 hours of that time the recipient informs the sender that the transmission was received in an incomplete or garbled form; or

(B) the transmission result report indicates a faulty or incomplete transmission; and

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(d) (**mail**) in the case of mail, on the third Business Day after the date on which the notice is accepted for posting by the relevant postal authority,

but if service is on a day which is not a Business Day in the place to which the communication is sent or is later than 4.00pm (local time) on a Business Day, the notice will be taken to have been served on the next Business Day in that place.

16.2 **Stamp Duty, Costs and Registration**

(a) (**Stamp Duty and registration fees**) The Lessee shall pay to the Lessor on demand all stamp duty (including penalties and fines other than those incurred due to the fault of the Lessor) and all registration fees (if applicable) with respect to this Lease.

(b) (**Legal costs**) Each party shall pay their own legal Costs with respect to this Lease.

(c) (**Lessor to stamp and register**) The Lessor shall (subject to receipt of necessary funds from the Lessee) attend to payment of stamp duty on and registration of this Lease at the Department of Natural Resources and Mines, Brisbane as soon as possible after the Effective Date.

16.3 **Severance**

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this Lease nor affect the validity or enforceability of that provision in any other jurisdiction.

16.4 **Entire agreement**

This Lease contains all the contractual arrangements of the parties with respect to the transaction to which it relates. No representations or warranties made by either party with respect to the transaction to which this Lease relates shall be actionable or enforceable except to the extent that they are contained in this Lease.

16.5 **Governing law**

This Lease is governed by the laws of Queensland. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

17. Confidentiality

(a) (**Duty**) Unless the parties otherwise agree in any particular instance, the provisions of this Lease and all information disclosed to or obtained by the parties in relation to each other and this Lease and which is not in public knowledge (or which is in public knowledge only as a consequence of a breach of this clause) must be kept confidential to the parties and may not be disclosed (unless otherwise required by Law) except to any bona fide consultants retained by a party in relation to this Lease, or to bona fide purchasers, financiers, assignees or sub occupants (as the case may be) and any such consultant or other person must be provided only with that information which he needs to know for the purposes of reviewing this Lease and he must undertake in writing to maintain the confidentiality of that information.

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(b) (**Indemnity**) The parties shall indemnify each other and must keep each other indemnified against all Claims suffered or incurred as a consequence of any breach of clause 17(a) by the Lessor or the Lessee or their respective Employees, consultants or other reasons for whom they are responsible.

18. Surrender of Lease

18.1 **Definitions**

Ausco Sublease means the sublease between the Lessee and Ausco Pty Limited which commenced on 1 March 2004, including the further term under the put and call option contained in that sublease.

Ausco Sublease Expiry Date means 30 March 2010.

Ausco Sublease Premises means the premises subleased to Ausco Pty Limited pursuant to the Ausco Sublease.

18.2 **Partial surrender**

(a) At any time after the Ausco Sublease Expiry Date, the Lessee may surrender its interest in this Lease with respect to the Ausco Sublease Premises by notice to the Lessor. The Lessee is released from all obligations with respect to the Ausco Sublease Premises which arise after the date of service of that notice, subject to clause 18.2(b) and (c).

(b) Despite any other provision of this Lease, on the date of service of the notice referred to in clause 18.2(a), the Lessee's Proportion of Outgoings payable under this Lease shall be reduced by an amount equal to the outgoings payable under the Ausco Sublease but the Rent will not reduce.

(c) If the Lessee has exercised its right under clause 18.2(a), the Rent shall reduce by the amount which is 50% of the per annum rent payable in the last year of the Ausco Sublease on the date of practical completion of a new building on all or any part of the Ausco Sublease Premises. The Lessor must promptly give notice to the Lessee when the new lease commences.

(d) The parties shall promptly do all things necessary to prepare, execute and register any documentation relevant to the surrender referred to in clause 18.2(a) and the variations to the Lease arising under clause 18.2(b) and 18.2(c).

(e) The parties agree that despite any other provision of this Lease, the Lessor's Consent to any holding over, renewal, extension or new lease to Ausco of all or any part of the Ausco Sublease Premises is not required.

18.3 **Deleted**

19. Limitation of liability

19.1 The Lessor enters into this Lease only in its capacity as trustee of the Trust (**Trustee**).

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19.2 Subject to clause 19.4:

(a) a liability arising under or in connection with this Lease (or the transactions contemplated by it) is limited and can be enforced against the Trustee only to the extent to which it can be satisfied out of property of the Trust out of which the Trustee is actually indemnified for the liability; and

(b) the limitation in clause 19.2(a) applies despite any other provisions of this Lease.

19.3 Subject to clause 19.4 no party shall:

(a) sue the Trustee in any capacity other than as Trustee of the Trust;

(b) seek to appoint or take any steps to procure or support the appointment of a receiver, a receiver and manager, a liquidator, a provisional liquidator, an administrator or similar person to the Trustee or prove in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to the property of the Trust);

(c) enforce or seek to enforce any judgment in respect of any liability arising under or in connection with this Lease (or the transactions contemplated by it) against any property of the Trustee other than property held by the Trustee as responsible entity of the Trust.

19.4 The limitations in clauses 19.1, 19.2 and 19.3 do not apply to any liability of the Trustee to the extent that the liability is not satisfied because, under the constitution of the Trust or by operation of law there is a reduction in the extent of the Trustee's indemnification out of the assets of the Trust, as a result of the Trustee's fraud, negligence or breach of trust .

20. Trust warranties

Where the Lessor is a trustee and/or responsible entity of a Trust, the Lessor warrants in its personal capacity that:

(a) (**trustee**) it is the sole trustee of the Trust;

(b) (**power**) it, in its capacity as trustee of the Trust, is entitled and competent and has absolute and complete authority, power and capacity to enter into and perform its obligations under this Lease and is not in breach of any Law or court order relating to its acting as trustee of the Trust;

(c) (**indemnity**) its right of indemnity out of; and lien over, the assets of the Trust has not been limited in any way and that right has priority over the right of the beneficiaries to the Trust assets;

(d) (**enforceable**) the deed establishing the Trust (**Trust Deed**) is enforceable in accordance with the Law applicable to it;

(e) (**consent**) the consent of each of the beneficiaries, unitholders or other persons whose consent is required under the Trust Deed has been obtained;

(f) (**no breach**) the entry into this Lease by the Lessor does not conflict with or result in a breach of, or default under, any provision of the Trust Deed or any other agreement to which the Lessor is a party (whether in its capacity as trustee of the Trust or its personal capacity);

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(g) (**Trust extant**) the Trust has not at the Effective Date been terminated nor has the date or any event for the vesting of the assets subject to the Trust occurred.

21. Guarantee and Indemnity

21.1 **Consideration**

The Guarantor gives this guarantee and indemnity in consideration of the Lessor agreeing to enter into this Lease at the request of the Guarantor. The Guarantor acknowledges the receipt of valuable consideration from the Lessor for the Guarantor incurring obligations and giving rights under this guarantee and indemnity.

21.2 **Guarantee**

The Guarantor unconditionally and irrevocably guarantees to the Lessor the due and punctual performance and observance by the Lessee of its obligations:

(a) under this Lease, even if this Lease is not registered or is found not to be a lease or is found to be a lease for a term less than the Term; and

(b) in connection with its occupation of the Premises,

including the obligations to pay money.

21.3 **Indemnity**

As a separate undertaking, the Guarantor unconditionally and irrevocably indemnifies the Lessor against all liability or loss arising from, and any costs, charges or expenses incurred in connection with:

(a) the Lessee's breach of this Lease; or

(b) the Lessee's occupation of the Premises,

including a breach of the obligations to pay money; or

(c) a representation or warranty by the Lessee in this Lease being incorrect or misleading when made or taken to be made; or

(d) a liquidator disclaiming this Lease.

It is not necessary for the Lessor to incur expense or make payment before enforcing that right of indemnity.

21.4 **Interest**

The Guarantor agrees to pay interest on any amount payable under this guarantee and indemnity from when the amount becomes due for payment until it is paid in full. The Guarantor must pay accumulated interest at the end of each month without demand. lnterest is payable as set out in clause 12.6.

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21.5 **Enforcement of rights**

The Guarantor waives any right it has of first requiring the Lessor to commence proceedings or enforce any other right against the Lessee or any other person before claiming under this guarantee and indemnity.

21.6 **Continuing security**

This guarantee and indemnity is a continuing security and is not discharged by any one payment.

21.7 **Guarantee not affected**

The liabilities of the Guarantor under this guarantee and indemnity as a guarantor, indemnifier or principal debtor and the rights of the Lessor under this guarantee and indemnity are not affected by anything which might otherwise affect them at law or in equity including, but not limited to, one or more of the following:

(a) the Lessor granting time or other indulgence to, compounding or compromising with or releasing the Lessee or any other Guarantor;

(b) acquiescence, delay, acts, omissions or mistakes on the part of the Lessor;

(c) any transfer of a right of the Lessor;

(d) the termination, surrender or expiry of, or any variation, assignment, subletting, licensing, extension or renewal of or any reduction or conversion of the Term of this Lease;

(e) the invalidity or unenforceability of an obligation or liability of a person other than the Guarantor;

(f) any change in the Lessee's occupation of the Premises;

(g) this Lease not being registered;

(h) this Lease not being effective as a lease;

(i) this Lease not being effective as a lease for the Term;

(j) any person named as Guarantor not executing or not executing effectively this guarantee and indemnity;

(k) a liquidator disclaiming this Lease.

21.8 **Suspension of Guarantor's rights**

The Guarantor may not:

(a) raise a set-off or counterclaim available to it or the Lessee against the Lessor in reduction of its liability under this guarantee and indemnity; or

(b) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any security or guarantee held by the Lessor in connection with this Lease; or

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(c) make a claim or enforce a right against the Lessee or its property; or

(d) prove in competition with the Lessor if a liquidator, provisional liquidator, receiver, administrator or trustee in bankruptcy is appointed in respect of the Lessee or the Lessee is otherwise unable to pay its debts when they fall due,

until all money payable to the Lessor in connection with the lease or the Lessee's occupation of the Premises is paid.

21.9 **Reinstatement of guarantee**

If a claim that a payment to the Lessor in connection with this Lease or this guarantee and indemnity is void or voidable (including, but not limited to, a claim under laws relating to liquidation, administration, insolvency or protection of creditors) is upheld, conceded or compromised then the Lessor is entitled immediately as against the Guarantor to the rights to which it would have been entitled under this guarantee and indemnity if the payment had not occurred.

21.10 **Costs**

The Guarantor agrees to pay or reimburse the Lessor on demand for:

(a) the Lessor's costs, charges and expenses in making, enforcing and doing anything in connection with this guarantee and indemnity including, but not limited to, legal costs and expenses on a full indemnity basis; and

(b) all stamp duties, fees, taxes and charges which are payable in connection with this guarantee and indemnity or a payment, receipt or other transaction contemplated by it.

Money paid to the Lessor by the Guarantor must be applied first against payment of costs, charges and expenses under this clause 21.10 then against other obligations under this guarantee and indemnity.

21.11 **Lessor may assign**

The Lessor may assign its rights under this guarantee and indemnity to a purchaser or transferee of the Land.

22. Licence of Licensed Area

22.1 **Grant of Licence**

The Lessor grants to the Lessee a non-exclusive licence to use the Licensed Area for purposes associated with the Permitted Use.

22.2 **Lessor to retain legal possession**

This clause 22 does not give the Lessee any interest in the Licensed Area or any part of it and the legal possession and control of it is at all times is vested in the registered proprietor for the time being of the Licensed Area.

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22.3 **Term**

The term of the licence is from the Commencing Date to the Terminating Date.

22.4 **Other conditions**

(a) The lessee shall not be required to pay any licence fee with respect to the Licensed Area in addition to the Rent.

(b) The Lessee shall indemnify the Lessor on demand against all Claims which the Lessor may sustain or incur in relation to:

(i) the Lessee's use of the Licensed Area; and

(ii) any breach of this clause 22 by the Lessee,

except to the extent that any such Claim is caused or contributed to by any act or omission on the part of the Lessor or its Employees.

(c) The terms of this Lease (other than clauses 4 and 5.3 to 5.6) apply to the licence of the Licensed Area granted under this clause 22.

22.5 **On sale**

If the Lessor sells the Land, it shall procure from the purchaser prior to completion of the sale deed in favour of the Lessee to observe and perform the provisions of this clause 22. This clause will only apply to the extent that the Lessee has or will have an interest in the Licensed Area at the date of completion of the sale.

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Executed as a deed and delivered on the date shown on the first page.

Executed by **Multiplex Carole Park Landowner Pty Limited** in accordance with section 127 of the Corporations Act 2001:

/s/ Alex Carrodus
~~Director/~~Company Secretary

Alex Carrodus
Name of ~~Director~~/Company Secretary
(BLOCK LETTERS)

/s/ Ian Robert O'Toole
Director

Ian Robert O'Toole
Name of Director
(BLOCK LETTERS)

Signed for and on behalf of **James Hardie Australia Pty Limited** by its attorney **Joanne Marchione** under power of attorney registered number 707564405 dated 12 March 2004 in the presence of:

/s/ Bruce J.W. Potts
Signature of witness

Bruce J. W. Potts
Name of witness (BLOCK LETTERS)

Level 3, 22 Pitt Street, Sydney 2000
Address of witness

James Hardie Australia Pty Limited
by its attorney

/s/ Joanne Marchione

Title Reference 15798160

Signed for and on behalf of **James Hardie Industries N.V.** by its attorney **Joanne Marchione** under power of attorney registered number 707564412 dated 12 March 2004 in the presence of:

/s/ Bruce J.W. Potts
Signature of witness

Bruce J.W. Potts
Name of witness (BLOCK LETTERS)

Level 3, 22 Pitt Street, Sydney 2000
Address of witness

James Hardie Industries N.V. by its attorney

/s/ Joanne Marchione

Exhibit 10.14

Lease

Welshpool Landowner Pty Ltd
("Lessor")

and

James Hardie Australia Pty Limited
("Lessee")

Clause | Page

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This lease

is made on 3 April 2009 between the following parties:

Welshpool Landowner Pty Ltd
ACN 108 198 778
of Suite 1, 567 Hay Street Daglish, Western Australia 6008
(**Lessor**)

2. James Hardie Australia Pty Limited
ACN 084 635 558
of 10 Colquhoun Street Rosehill, New South Wales 2142
(**Lessee**)

The parties agree

1 Definitions

Unless otherwise required by the context or subject matter:

Address means the address specified in Item 8 of the Schedule or any other address which the Lessor by notice to the Lessee nominates;

Building means the building situated at the corner of Briggs Street and Rutland Avenue, Welshpool, WA and all associated improvements;

Business Day means a day other than a Saturday, Sunday or public holiday in Western Australia;

Common Areas means the parts of the Land and the Building from time to time set aside by the Lessor:

(a) as areas open to the public;

(b) for common use by the Occupiers; or

(c) for common amenity or convenience;

Costs and Expenses means the costs and expenses mentioned in clause 11;

Date of Commencement means the date specified in Item 4 of the Schedule;

Document means this deed as supplemented, amended or varied from time to time;

Encumbrance means a mortgage, charge, bill of sale, lien, pledge, easement, restrictive covenant, writ, warrant or caveat and the claim stated in that caveat affecting the Land or the Building;

Event of Default means an event specified in clause 37.1;

Facility means a lavatory, sink, drain or other sewerage or plumbing facility, and a gas or electrical fitting or appliance in or on the Land or the Building;

Final Period means the period from the first day of the final Lease Year to the date of Termination;

Further Term means each further term specified in Item 5 of the Schedule;

Holding Over means holding over by the Lessee under clause 40;

Insured Risk means an event against which property owners customarily insure including, but not limited to, fire, explosion, earthquake, aircraft, riot, civil commotion, lightning, storm, tempest, act of God, fusion, smoke, rainwater, water leakage, impact by vehicles, machinery breakdown and malicious acts or omissions;

Interest means interest at the rate specified in Item 10 of the Schedule;

Land means the land described in Item 2 of the Schedule;

Lease Year means a period of TWELVE (12) months commencing on July 1 in any year of the Term or any other period of TWELVE (12) months specified by the Lessor, and includes where appropriate the Preliminary Period and the Final Period;

Lessee's Covenants means the covenants, agreements and obligations contained or implied in this Document or imposed by law to be observed and performed by the Lessee;

Lessee's Fixture means each fixture installed in or on the Premises by the Lessee or a previous occupier of the Premises or any part of the Premises;

Lessee's Proportion means:

(a) in respect of land tax and metropolitan region improvement tax;

  (1) if land tax and metropolitan region improvement tax are separately charged or assessed in respect of the Premises, the amount levied, assessed or charged in respect of the Premises; or

  (2) if land tax and metropolitan region improvement tax are not separately charged or assessed in respect of the Premises, an amount which bears the same ratio to the land tax and metropolitan region improvement tax as the land area of the Premises bears to the total land area of the Land; and

(b) in respect of local authority and water authority charges;

  (1) if local authority and water authority charges are separately charged or assessed in respect of the Premises, the amount levied, assessed or charged in respect of the Premises; or

  (2) if local authority and water authority charges are not separately charged or assessed in respect of the Premises, an amount which bears the same ratio to the local authority and water authority charges as the Building area of the Premises bears to the total Building area of the Land; and

(c) in respect of Variable Outgoings, an amount which bears the same ratio to the Variable Outgoings as the Building area of the Premises bears to the total Building area of the Land**;**

Lessee's Rights means the right to use:

(a) the Lessor's Fixtures from time to time in the Premises;

(b) the Facilities in the Premises; and

(c) the Services supplied to the Premises;

exclusively; and:

(d) the Common Areas;

(e) the Facilities in the Common Areas; and

(f) the Services supplied to:

(1) the Common Areas; and

(2) the Facilities in the Common Areas;

in common with other persons having a similar right; and:

(g) all rights in favour of the Lessee contained or implied in this Document; and

(h) the right to install cables in the Building subject to the approval of the Lessor;

Lessor's Covenants means the covenants, agreements and obligations contained or implied in this Document or imposed by law to be observed and performed by the Lessor;

Lessor's Fixtures includes:

(a) floor or window coverings;

(b) partitioning;

(c) light fittings; and

(d) any other fixture or fitting;

installed by the Lessor in the Premises and any replacement of any item mentioned in this definition;

Lessor's Rights means:

(a) the right to install in the Premises cables, pipes and wires for the supply of a Service, Facility, telephone or electronic communication for the Building, the Land or any Occupier; and

(b) all rights in favour of the Lessor contained or implied in this Document or granted by law;

Lettable Parts means those parts of the Building or the Land designated by the Lessor from time to time as being intended for letting;

Losses includes claims, demands, losses, damages, Costs and Expenses;

Managing Agent means the person specified in Item 9 of the Schedule or any person, firm or corporation as the Lessor by notice to the Lessee nominates;

Money Payable means the Rent and any other money payable by the Lessee under this Document;

Occupier means a lessee, licensee or other person having the right to occupy any part of the Building;

Painting and Decorating Intervals means the intervals specified in Item 11 of the Schedule;

Party means the Lessor or the Lessee according to the context;

Permitted Person means:

(a) an agent, employee, licensee, or invitee of the Lessee; and

(b) any person visiting the Building with the express or implied consent of any person mentioned in paragraph (a);

Permitted Use means the use specified in Item 13 of the Schedule;

Plant and Equipment means plant and equipment for or in connection with any:

(a) Service; or

(b) heating, cooling, lighting, power or plumbing;

serving the Land or the Building;

Preliminary Period means the period from midnight on the day before the Date of Commencement until midnight on the last day of the first Lease Year;

Premises means the Lettable Parts as shown on the plan annexed to this Document including:

(a) the internal finished surface of the permanent walls;

(b) where exterior windows are double glazed, the interior glazing and the area between the interior and exterior glazing;

(c) the internal finished surface of interior walls or partitions except in the case of inter-tenancy walls or partitions where the facing part of those walls to the centre line is included;

(d) the surface of the floor slabs, whether or not there is a raised floor; and

(e) if there is a suspended ceiling, the upper surface of the suspended ceiling, or if there is no suspended ceiling, the lower surface of the ceiling slab or roof;

but excluding:

(f) if the exterior windows are double glazed, the exterior glazing; and

(g) if the exterior windows are not double glazed, the exterior windows;

Public Liability Insurance Amount means the amount specified in Item 12 of the Schedule;

Rates and Taxes means:

(a) council rates and charges including, but not limited to, rubbish removal rates and charges;

(b) land tax and metropolitan region improvement tax on a single holding basis;

(c) water, drainage and sewerage rates including, but not limited to, meter rents, charges for the disposal of stormwater, and excess water charges; and

(d) all other similar rates, taxes, charges, assessments and impositions; levied, charged, assessed or imposed in respect of any part of the Land or the Building or the ownership or occupation of any part of the Land or the Building but excluding any tax imposed by the Income Tax Act 1936 and any other

statute from time to time in force imposing a tax on income or capital increase;

Rent means the rent specified in Item 6 of the Schedule as varied from time to time under this Document;

Schedule means the schedule to this Document;

Service means electricity, gas, oil, fuel, water or other like service;

Term means the term specified in Item 3 of the Schedule and any Further Term;

Termination means the expiry or earlier determination of the Term or any period of Holding Over;

Unfit for Occupation means that the Premises or the Building, or any part of the Premises or the Building are so destroyed or damaged as to:

(a) render the Premises substantially unfit for occupation and use; or

(b) interfere substantially with the Lessee's Rights; and

Variable Outgoings means all outgoings, costs and expenses of the Lessor assessed, charged, payable or incurred in respect of the Land or the Building or in the maintenance, repair, renovation, replacement, decoration, refurbishment, management, administration, control, supervision and security of the Land or the Building including, but not limited to, the cost of:

(a) insuring the Building or any part of the Building and any equipment or appliance in or on the Land or the Building against:

(1) fire, explosion, earthquake, aircraft, riot, civil commotion, flood, lightning, storm, tempest, act of God, fusion, smoke, rainwater, water leakage, impact by vehicles, machinery breakdown and malicious acts or omissions;

(2) loss of rent for a period of TWELVE (12) months;

(3) demolition and removal of debris;

(4) architects' and other consultants' fees;

(5) claims under workers' compensation legislation and statutory liability by employees of the Lessor working in or about the Building; and

(6) owner's third party liability; and

(7) all other risks which the Lessor insures against;

(b) maintaining, repairing, renovating, replacing, decorating and refurbishing the Building and the Land but excluding:

(1) work of a structural or capital nature; or

(2) work which is or would be the responsibility of any Occupier under the terms of this Document;

(c) providing, operating, maintaining, repairing, renovating, replacing, decorating, refurbishing, managing, administering, controlling, supervising and securing:

(1) Services to the Common Areas and to the Facilities within the Common Areas;

(2) any consumable item or service provided by the Lessor to or for the Common Areas or for the benefit of the Occupiers and not separately charged to any Occupier;

(3) services to the Building including, but not limited to, lighting, fire fighting and prevention systems, music and public address systems and emergency generators; and

(4) security systems for the Land or the Building;

(d) cleaning the Common Areas other than the Lettable Areas;

(e) compacting, storing and removing rubbish;

(f) landscaping and maintaining any part of the Land and the Building;

(g) providing, maintaining, repairing, renovating, replacing, decorating, refurbishing, managing, administer, controlling, supervising and securing any service or thing which the Lessor considers necessary or expedient or an improvement to the amenities of the Building or the Land; but excluding:

(1) work of a structural or capital nature; or

(2) work which is or would be the responsibility of any Occupier under the terms of this Document;

(h) employing the Managing Agent and employing and providing facilities for staff for the matters mentioned in this definition;

(j) legal fees and disbursements in relation to the matters mentioned in this definition;

(j) providing motor vehicles, plant, equipment, tools and materials for the matters mentioned in this definition; and

(k) taxes and statutory charges associated with the matters mentioned in this definition including, but not limited to, payroll tax, financial institutions duty, bank debits tax, tax on goods or services and taxes of a type not charged at the Date of Commencement.

(l) Rates and Taxes.

2 Grant of Lease

The Lessor:

(a) LEASES the Premises; and

(b) GRANTS the Lessee's Rights;

to the Lessee subject to all Encumbrances for the term specified in Item 3 of the Schedule and subject to:

(c) the payment of the Money Payable; and

(d) the observance and performance of the Lessee's Covenants;

but RESERVING to the Lessor the Lessor's Rights.

3 Quiet enjoyment

Except as provided in this Lease and subject to the observance and performance of the Lessee's Covenants, the Lessee may quietly hold the Premises and enjoy the Lessee's Rights during the Term without any interruption or disturbance from the Lessor or any person lawfully claiming through or under the Lessor.

4 Easements

4.1 Purposes for which Lessor may act

The Lessor may for the purpose of providing:

(a) a public or private entrance to or exit from;

(b) a support for a structure erected on;

(c) the supply of a Service, a Facility, or telephone or electronic communication to; or

(d) any other right, privilege or facility for;

the Building, the Land or any other land, do any of the things specified in clause 4.2.

4.2 Rights of Lessor in respect of easements

The Lessor may for the purposes detailed in clause 4.1 and subject to clause 4.3;

(a) grant rights of support to or enter into any arrangement or agreement with:

(1) any owner, lessee, tenant, occupier, or other person, interested in land adjacent to or near to the Building; or

(2) any public authority;

(b) dedicate or transfer any part of the Land; or

(c) grant or create any easement or privilege in favour of any person or public authority over or affecting the Premises, the Land or the Building.

4.3 Easements may not substantially derogate from Lessee's Rights

The Lessor may not without the Lessee's consent, which consent may not be unreasonably withheld, dedicate, transfer, grant or create any easement, right or privilege which substantially and permanently derogates from the Lessee's Rights.

5 Rent

The Lessee must pay to the Lessor the Rent without deduction or set off including but not limited to equitable setoff at the times and in the manner specified in Item 6 of the

Schedule during the Term except that the first and last payments will be apportioned on a daily basis if they are in respect of periods of less than a month.

6 Rent review

6.1 Definitions

In this clause:

Consumer Price Index means the index published by the Australian Bureau of Statistics as the Consumer Price Index for Perth for all groups or if that index is suspended or discontinued, the index substituted for it by the Australian Statistician;

Current Market Rental Value means the best current open market annual rental value that can be reasonable obtained for the Premises:-

(a) on the basis that the Premises are available for leasing between a willing lessor and a willing lessee;

(b) on the terms and conditions contained in this Lease (except as to rental payable);

(c) on the basis that the Lessee's Lease covenants and obligations have been fully performed at the Rent Review Date (herein defined);

(d) without taking into account the Lessee's trade fixtures and fittings any improvements fixtures and fittings erected or installed at the Lessee's expense;

(e) having regard to the current market rental for the average of three comparable premises in the area in which the Premises are located; and

(f) disregarding the value of any incentive offered to the Lessee to enter into this Lease.

Rent Notice means a notice given by the Lessor to the Lessee under clause 6.2(d)(1).

Rent Review Dates means the dates specified in Item 7 of the Schedule.

President means the President or the person acting or deputising for the President for the time being of the Australian Property Institute (Inc) (Western Australian Division); and

Valuer means a valuer who:

(a) is licensed and being a member of the Australian Institute for Valuer and Land Administrators;

(b) is a fellow or associate of the Australian Property Institute (Inc) (WA Division) of not less than FIVE (5) years standing; and

(c) has had not less than FIVE (5) years practical experience in Western Australia in the valuation of properties of the same general classification as the Premises.

6.2 Method of review the rent

(a) On the dates specified in Item 7(a) of the Schedule the Rent shall be reviewed to Consumer Price Index (CPI) Perth or THREE PERCENT (3%) whichever is greater.

(b) On the dates specified in Item 7(b) of the Schedule the Rent shall be reviewed to the Current Market Rental Value of the Premises.

(c) In no event shall the Current Market Rental Value be less than a CPI review or THREE PERCENT (3%) whichever is greater of the Rent payable immediately prior to the Rent Review Date.

(d) In reviewing the rent to the Current Market Rental Value the following shall apply:

(1) Not less than SIX (6) months prior to the Rent Review Date the Lessor shall give to the Lessee notice (**Rent Notice**) in writing of the annual Rent proposed by the Lessor to become payable from the Rent Review Date (**Lessor's Proposed Rent**).

(2) Within TWENTY ONE (21) days of service of that notice on the Lessee if the Lessee is not agreeable, the Lessee shall be entitled to give to the Lessor notice in writing disputing the amount of the Lessor's Proposed Rent and stating the amount which the Lessee considers to be the Rent that should be payable from the Rent Review Date (**Lessee's Proposed Rent**).

(3) If the Lessee does not give the notice referred to in paragraph (2) above within the time therein specified the Lessee shall be deemed to have accepted that the Lessor's Proposed Rent shall be the Rent payable by the Lessee to the Lessor on and from the Rent Review Date.

(4) If the Lessee gives notice referred to in paragraph (2) above within the time therein specified the Lessor may accept the Lessee's Proposed Rent as the rent payable by the Lessee to the Lessor on and from the Rent Review Date but if not so accepted or otherwise agreed prior to the Rent Review Date then the annual Rent payable from the Rent Review Date shall be determined by a Valuer appointed by the President for the time being of the Australian Property Institute (Inc) Western Australian Division and the Valuer shall be deemed to be acting as an expert whose decision shall be final and binding on both the Lessor and the Lessee. The cost of the Valuer's determination shall be borne equally by the Lessee and the Lessor.

(5) Until the annual Rent from the Rent Review Date is agreed or determined the Lessee shall pay to the Lessor a rental equivalent to the Rent immediately prior to the Rent Review Date. Any further sum which shall be payable by the Lessee from the Rent Review Date as a result of an agreement or determination as the case may be shall be paid in full to the Lessor immediately such sum is known.

7 Not to cause rent reduction

The Lessee must not by any act or omission:

(a) cause, directly or indirectly the Rent to be reduced; or

(b) impose on the Lessor any liability of the Lessee under this Document except:

(1) if obliged to do so by any statute from time to time in force; or

(2) with the consent of the Lessor.

8 Goods and services tax

8.1 Definitions

Unless the contrary intention appears, in this clause:

GST means a tax levied on the value of a good or service or property supplied, including but not limited to the value represented by the Rent and the amount of Variable Outgoings, Rates & Taxes or other Money Payable to the Lessor for goods or services or property.

Supply means a good or service or property supplied under this Document, including but not limited to the Premises, Utilities and other goods or services or property the cost of which comprises part of the Variable Outgoings or Rates and Taxes.

8.2 Lessee must pay GST

The Lessee must pay to the Lessor the amount of any GST the Lessor pays or is liable to pay on a Supply.

8.3 Lessee must pay GST at same time

Subject to receipt of a tax invoice, the Lessee must pay to the Lessor the amount of the GST that the Lessee is liable to pay:

(a) at the same time; and

(b) in the same manner

as the Lessee is obliged to pay for that Supply, including in relation to Rent, Variable Outgoings and Rates and Taxes, at the time the Lessee is obliged to pay those amounts.

8.4 Prices do not include GST

The price for each Supply, including Rent, fixed or determined under this Document does not include GST on that Supply and the Lessee must pay the amount of GST in addition to the price for that Supply fixed or determined under this Document.

8.5 Apportionment of GST

Where a Supply is not separately supplied to the Lessee, the liability of the Lessee for any amount for GST in relation to that Supply is determined on the same basis as the Lessee's Proportion of Variable Outgoings is determined.

8.6 Statement of GST paid is conclusive

A written statement given to the Lessee by the Lessor of the amount of GST that the Lessor pays or is liable to pay is conclusive as between the Parties except in the case of an obvious error.

9 Variable Outgoings

9.1 Estimate of Lessee's Proportion of Variable Outgoings

In respect of each Lease Year, the Lessor may estimate the Variable Outgoings and advise the Lessee of the amount estimated. In respect of the first Lease Year the Lessor's estimate is $74,400 (the "**Base Amount**").

9.2 Issue of statement of Variable Outgoings

After the expiry of each Lease Year the Lessor must issue to the Lessee a statement giving reasonable details of the Variable Outgoings and the calculation of the Lessee's Proportion of Variable Outgoings.

9.3 Issue of statement of Rates and Taxes

If the Premises are not separately assessed in respect of Rates and Taxes, the Lessor must issue to the Lessee a statement giving reasonable details of the Rates and Taxes and the calculation of the Lessee's Proportion of Rates and Taxes.

9.4 Apportionment for periods less than TWELVE (12) months

The Lessee's Proportion of Rates and Taxes and the Lessee's Proportion of Variable Outgoings for the Preliminary Period and the Final Period will be apportioned on a daily basis in respect of periods of less than TWELVE (12) months.

9.5 Changes to Variable Outgoings

Notwithstanding any other term of this agreement, the Lessor shall not, in the second and subsequent years of this Lease increase the Variable Outgoings above the Base Amount (i.e. the original $74,400) unless the Lessor has experienced an increase in any of the cost inputs that comprised the Base Amount and then any such increase shall be limited to the amount by which that individual cost increased.

9.6 Payment by Lessee

The Lessee must pay to the Lessor:

(a) the Lessee's Proportion of Variable Outgoings within TWENTY (20) business days of service by the Lessor on the Lessee of each statement of Variable Outgoings;

(b) on account of the Lessee's Proportion of Variable Outgoings, the amount estimated by the Lessor in respect of each Lease Year, by equal monthly payments on the first day of each month;

(c) on demand, the Lessee's Proportion of Rates and Taxes; and

(d) on demand, the Lessee's Proportion of Rates and Taxes estimated for the Final Period.

9.7 Lessor to pay Rates and Taxes

The Lessor must pay all Rates and Taxes promptly.

9.8 Lessor to refund overpayment

If in any Lease Year the amount paid by the Lessee under clause 9.6 above exceeds the Lessee's Proportion of Variable Outgoings, the Lessor must credit to the Lessee the overpayment except at the end of the Final Period when the Lessor must pay the overpayment to the Lessee within TEN (10) Business Days of service by the Lessor on the Lessee of the statement of Variable Outgoings disclosing the overpayment.

9.9 Lessor may recover taxes

If the Lessee's Proportion of Variable Outgoings includes any tax on goods or services, the Lessee must pay that tax.

10 Outgoings separately assessed

The Lessee must pay:

(a) to the Lessor; or

(b) if the demand is made to the Lessee by any statutory authority, then to that authority;

on demand all outgoings separately assessed or charged in respect of the Premises including, but not limited to:

(c) electricity, gas and other power and light charges and expenses including, but not limited to:

(1) charges and assessments for use under assessments or meter readings;

(2) meter rents;

(3) the cost of installation of any meter, wiring or other apparatus necessitated by the use of electricity, gas and other power, and

(4) the cost of cleaning the Premises; and

(d) the operation, maintenance and repair of fire sprinklers, monitoring and protection, air-conditioning, heating, cooling, ventilation plant, and roller doors servicing the Building.

11 Costs and expenses

11.1 Definition

In this clause:

Legal Fees means reasonable amounts which are payable or have been paid by the Lessor to the Lessor's solicitor.

11.2 Payment of costs

(a) The Lessee must pay to the Lessor all the costs, outgoings, fees, Legal Fees and disbursements, and payments, which the Lessor pays or is liable to pay in connection with or incidental to:

(1) the stamping, and any necessary registration, of this Document;

(2) the Money Payable;

(3) any breach of the Lessee's Covenants;

(4) the exercise or purported or attempted exercise of the Lessor's Rights;

(5) any work done at the request of the Lessee; and

(6) obtaining or attempting to obtain payment of the Money payable;

(7) any action, suit or proceeding arising out of, concerned with, or incidental to:

(A) any of the matters referred to in subparagraphs (1) to (6); or

(B) any other matter connected with, incidental to or arising out of this Document;

unless costs are awarded to the Lessee against the Lessor in that action, suit or proceeding;

if they are of a reasonable amount and have been reasonably incurred;

(b) the Lessee must pay, or if demand is made by the Lessor, must pay to the Lessor:

(1) all filing and registration fees in connection with this Document; and

(2) all duty, fines and penalties payable under the Stamp Act 1921, if not caused by any act or omission of the Lessor, financial institutions duty, debits tax, and other statutory duties or taxes on or in respect of:

(A) this Document;

12 Interest on overdue money

Without affecting the rights, powers and remedies of the Lessor under this Document, the Lessee must pay to the Lessor on demand Interest on any Money Payable which is unpaid for SEVEN (7) days computed from the due date for payment until payment.

13 Lessor to maintain building

Subject to the Lessee performing and observing the Lessee's Covenants, the Lessor must maintain:

(a) the structure of the Building; and

(b) the Common Areas

(1) to a standard reasonably commensurate with the standard of the Building as at the commencement of this lease (fair wear and tear excepted);

(2) to a standard reasonably commensurate with equivalent buildings (being buildings that would be relevant for the purposes of determining the Current Market Rent pursuant to clause 6.2); and

(3) in a safe condition.

14 Lessee to maintain premises

14.1 General

(a) The Lessee must maintain the Premises in good condition except in respect of:

(1) fair wear and tear;

(2) structural damage not caused by an act or omission of the Lessee or a Permitted Person; and

(3) damage caused by an event which is the subject of an Insured Risk, but if payment of the insurance money under the Lessor's insurance policy in respect of that damage is refused or reduced by reason of an act or default of the Lessee, the Lessee must in respect of that damage maintain the Premises in good condition to the extent that the insurance money is refused or reduced; but

(b) the Lessee's obligation under this clause is diminished to the extent that payment of insurance money under the Lessor's insurance policy in respect of that obligation is:

(1) received by the Lessor; or

(2) refused or reduced by reason of an act or default of the Lessor; and

(c) the Lessee must replace all broken or damaged glass in the doors, walls or windows of or to the Premises irrespective of the cause of breakage or damage.

14.2 Floor covering

The Lessee must:

(a) maintain the floor covering in the Premises in good and clean condition;

(b) make good all damage to the floor covering, fair wear and tear excepted;

(c) replace any area of floor covering in the Premises which is unduly worn having regard to the rest of the floor covering in the Premises;

(d) protect the floor covering from excessive wear by the use of protective devices approved by the Lessor from time to time; and

(e) on Termination, have the floor covering in the Premises professionally steam or dry cleaned.

14.3 Repair promptly

The Lessee must promptly:

(a) repair to the satisfaction of the Lessor any damage to the Premises for which the Lessee is liable; and

(b) replace all electric globes and fluorescent tubes in the Premises, which fail for any reason.

14.4 Paint and decorate

At the Painting and Decorating Intervals the Lessee must paint with TWO (2) coats at least those parts of the Premises usually painted (i.e. office internal and external walls and external dado panels) in a proper manner, using suitable, good quality materials of a colour and quality first approved by the Lessor in writing.

14.5 Clean and free from rubbish

The Lessee must keep the Premises clean and free from rubbish.

14.6 Pest control

The Lessee must take reasonable precautions to keep the Premises free of animals, birds and insects, and if required by the Lessor, at the cost of the Lessee employ from time to time pest exterminators approved by the Lessor.

15 Lessor's fixtures and the facilities in the premises

15.1 Maintain

(a) The Lessee must maintain the Lessor's Fixtures and the Facilities in the Premises in good condition and must replace any damaged items except in respect of:

(1) fair wear and tear; and

(2) damage caused by an event which is the subject of an Insured Risk, but if payment of the insurance money under the Lessor's insurance policy in respect of that damage is refused or reduced by reason of an act or default of the Lessee, the Lessee must in respect of that damage maintain the Premises in good condition to the extent that the insurance money is refused or reduced; but

(b) the Lessee's obligation under this clause is diminished to the extent that payment of insurance money under the Lessor's insurance policy in respect of the obligation is:

(1) received by the Lessor; or

(2) refused or reduced by reason of an act or default of the Lessor.

15.2 Replacements

If the Lessee is liable to replace any of the Lessor's Fixtures or the Facilities in the Premises, the Lessee must:

(a) replace that Lessor's Fixture or Facility with an item of similar quality, colour, and design; and

(b) carry out the replacement to the reasonable satisfaction of the Lessor.

15.3 Facilities

The Lessee must keep the Facilities within the Premises unobstructed.

16 Alterations

16.1 Restriction on alterations

The Lessee must not:

(a) make any alteration or addition to or demolish any part of the Premises;

(b) remove, alter or add to any of the Lessor's Fixtures, the Plant and Equipment or any Facility in the Premises;

(c) install any fixture or partitioning in the Premises;

(d) make any hole in the walls of the Premises;

(e) drive nails or other objects into the walls or other parts of the Building;

(f) cut, alter, remove or replace any carpet in the Premises; or

(g) install any curtain, blind or other window treatment in or outside the Premises;

without the prior consent of the Lessor and subject to:

(h) the requirements of any statute in force from time to time, the insurer of any of the Insured Risks and the Insurance Council of Australia; and

(i) any condition imposed by the Lessor.

16.2 Consent to alterations

In giving consent to any alteration, the Lessor may impose any condition, including, but not limited to, a condition that:

(a) the work be carried out:

(1) in accordance with drawings or specifications approved by the Lessor; or

(2) under the supervision of the Lessor's architect or other consultant;

(b) the Lessee pays the costs and fees of the Lessor in supervising or inspecting the work; and

(c) the Lessor requires the Lessee to carry out other work to or in the Building as a consequence of the alteration, addition, demolition or installation requested by the Lessee;

but in regard to the installation, alteration or addition of partitioning within the Premises, the consent of the Lessor may not be unreasonably withheld.

16.3 Other work necessitated by alteration

If any other work is:

(a) required by the Lessor as a condition of giving consent as mentioned in clause 16.1; or

(b) necessary to comply with a statute for the time being in force or the requirement of an insurer of the Insured Risks or the Insurance Council of Australia;

the Lessee must at the option of the Lessor either:

(c) carry out that other work; or

(d) permit the Lessor to carry out that other work;

at the cost of the Lessee in accordance with any requirement imposed by the Lessor in respect of that other work.

16.4 Asbestos and other harmful substances

The Lessee must:

(a) not install in the Premises:

(1) asbestos; or

(2) any other material having the potential to harm the health or safety of persons in the Building; and

(b) at the Lessee's cost remove from the Premises and make good any damage caused by the removal of:

(1) any asbestos brought onto the Land by the Lessee; or

(2) any other material having the potential to harm the health or safety of persons in the Building brought onto the Land by the Lessee.

17 Use of the premises

17.1 Purpose

The Lessee must not use any part of the Premises for any purpose other than the Permitted Use.

17.2 No warranty as to use

The Lessor gives no warranty as to the use to which the Premises may be put.

17.3 Premises subject to restrictions

The Lessee accepts the Premises for the Term with full knowledge of and subject to any existing prohibition or restriction on the use of the Premises.

17.4 Consent of authority needed

If the business carried on by the Lessee at the Premises is permissible only with consent, license or authority under any statute, the Lessee must obtain that consent, license or authority and comply with that statute.

18 Floor overloading

The Lessee will not bring onto the Premises any heavy machinery or other plant or equipment not necessary or proper for the Lessee's use of or its conduct of the business conducted from the Premises and in no event will any machinery, plant or equipment be of a nature or size that will cause or be likely to cause any structural damage to any part of the Premises.

19 Chemicals and inflammable substances

The Lessee must not, except for reasonable quantities for normal applications in connection with the cleaning of the Premises or any equipment in the Premises, or the operation of forklifts, use or store any chemical or inflammable substance within the Building.

20 Environmental covenant

20.1 Definition

In this clause:

Authorisation includes:

(a) a consent, authorisation, registration, agreement, certificate, permission, licence, approval, authority or exemption from, by or with a Government Agency; or

(b) in relation to anything which will be prohibited or restricted in whole or part by law if a Government Agency intervenes or acts in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without that intervention or action;

under an Environmental Law;

Contaminant means a noxious or hazardous substance which, having regard to the quantity and location of the substance and other substances in conjunction with which it is stored or used, is capable of causing material harm to the environment;

Environmental Law means a law relating to any aspect of the environment or health; and

Government Agency means a government or governmental, semi-governmental, or judicial entity or authority.

20.2 Environment

The Lessee must:

(a) use the Premises in a manner, which complies with each Environmental Law and each Authorisation;

(b) ensure that each Authorisation, of any conduct or activity in relation to the Premises is obtained before that conduct or activity and kept in full force and effect;

(c) not do or omit to do any act which might directly or indirectly result in the revocation, suspension or modification of an Authorisation in relation to the Premises or any conduct or activity in relation to the Premises;

(d) give to the Lessor notice immediately on becoming aware of:

(1) the existence of a Contaminant affecting the Premises; or

(2) the filing of a complaint or the commencement of proceedings against the Lessee in relation to an alleged failure to observe or perform obligations under an Environmental Law or Authorisation;

(e) provide to the Lessor on demand:

(1) a report on the effect of any Environmental Law or Authorisation applicable to the Premises or any conduct or activity on the Premises prepared by an expert nominated by the Lessor at the expense of the Lessee; and

(2) copies of all Authorisations relating to the Premises;

within a reasonable time after receipt by the Lessee of that request.

21 Use of other parts of the Building

21.1 Restrictions on use

The Lessee must not enter on or use the roof of the Building or any other part of the Building outside the Premises except the Common Areas.

21.2 Common Areas

The Lessee must not do or omit any act or thing, which might cause or allow the Common Areas:

(a) to deteriorate or become impaired except for fair wear and tear;

(b) to be in a condition other than a good and sanitary condition; or

(c) to be obstructed.

22 Use and enjoyment affecting occupiers

22.1 Offensive activities

The Lessee must not do or carry on in the Premises:

(a) any harmful, offensive or illegal act, matter or thing; or

(b) any act or thing which causes nuisance, damage, or disturbance to the Lessor or any Occupier.

22.2 Aerials and amplified noise

(a) The Lessee must not:

(1) construct or place outside the Premises any radio or television aerial or antenna (other than any telecommunications equipment which might reasonably be required by the Lessee in order to receive wireless telecommunications services from a telecommunications provider); or

(2) use any sound producing equipment so as to be audible from outside the Premises;

without the prior consent of the Lessor or after that consent is withdrawn.

(b) The Lessor may at any time withdraw a consent given under this subclause if the Lessor reasonably so determines, having regard to the rights or interests of the Lessor, the Occupiers and the owners or occupiers of nearby properties in which case the Lessee must remove the equipment (other than any telecommunications equipment which might reasonably be required by the Lessee in order to receive wireless telecommunications services from a telecommunications provider).

22.3 Infectious diseases

If any notifiable infectious disease occurs in the Premises, the Lessee must:

(a) notify each proper public authority; and

(b) comply with each requirement of each proper public authority.

22.4 No smoking

The Lessee must not smoke tobacco or any other substance in any part of the Building.

22.5 Not to cause obstruction

The Lessee must not do anything, which may cause an obstruction in the Facilities in any part of the Building.

23 Miscellaneous restrictions on use

23.1 Advertisements or notices

The Lessee must not display from or affix to the Premises or any other part of the Building any advertisement or notice visible from outside the Premises without the prior consent of the Lessor which the Lessor may not unreasonably withhold in the case of a notice:

(a) stating the name and business of the Lessee;

(b) affixed in a place immediately adjacent to the Premises.

23.2 Rubbish

The Lessee must not:

(a) place any rubbish in any part of the Building or the Land except in a place and receptacle designated by the Lessor for disposal of that type of rubbish;

(b) burn any rubbish in the Building or on the Land; or

(c) fail to remove on a regular basis any rubbish of a kind not removed by the local authority.

24 Security of the building and the Premises

24.1 Lock Premises

The Lessee must not leave the Premises unattended unless every door of the Premises giving access to a Common Area or an adjoining part of the Building is securely fastened and locked.

24.2 Outside doors of Building

The Lessee must not possess any key to any lock or security access device to an outside door of the Building except as provided by the Lessor.

25 Entry by Lessor

The Lessee must permit entry to the Premises by the Lessor:

25.1 General

(a) at all reasonable times on the Lessor giving to the Lessee reasonable notice; or

(b) on demand in the case of emergency; with or without:

(c) workmen and others; and

(d) plant, equipment and materials:

for the purposes mentioned in this clause;

25.2 Inspect state of repair

To inspect the state of repair of the Premises and to ensure compliance with the Lessee's Covenants;

25.3 Comply with authorities

To comply with any requirement, notification or order of an authority having jurisdiction or authority over or in respect of the Premises for which the Lessor is liable under this Document;

25.4 Maintenance, modifications or extensions

To carry out maintenance, repair, renovation, replacement, modifications, installations or extensions to the Building, the Plant and Equipment, or any other equipment, cables, pipes or wires within the Premises or the Building, on condition that the Lessor uses its reasonable endeavours not to cause any undue inconvenience to the Lessee;

25.5 Plant and Equipment

To maintain, service, install or remove any Plant and Equipment provided that the

Lessor uses its reasonable endeavours not to cause any undue inconvenience or disruption to the Lessee;

25.6 Interested persons

To view the Premises with:

(a) persons having or seeking an interest in the Building or any part of the Building;

(b) financiers;

(c) insurers; and

other similarly interested persons; or

25.7 Affix notices

To affix re-letting notices to the Premises during the last SIX (6) months of the Term.

26 Unauthorised purpose

The Lessee must not use the Facility, item of Plant and Equipment or Lessor's Fixture for a purpose other than for which it was designed or for which it is designated by the Lessor.

27 Plant and equipment

The Lessee must:

(a) comply with and observe the reasonable requirements of the Lessor relating to the Plant and Equipment;

(b) not do anything which might interfere with or impair the efficient operation of the Plant and Equipment; and

(c) when conditioned air is available, not obstruct that airflow through the ducting of the Premises; nor use any other method of air-conditioning, heating or cooling without the prior consent in writing of the Lessor.

28 Electrical circuits

28.1 Not overload

The Lessee must not install any electrical equipment on the Premises, which might overload the cables, switchboards, or sub-boards, through which electricity is connected to the Premises without the prior consent of the Lessor and under any condition imposed by the Lessor.

28.2 Consent to install equipment

If the Lessee wishes to install any electrical equipment on the Premises which might overload the cables, switchboards or sub-boards through which electricity is connected to the Premises and:

(a) the Lessor grants its consent; and

(b) the Lessor considers that any alteration is necessary to comply with the requirements of the Lessor's insurance underwriters or with any statute in force from time to time;

then:

(c) that alteration will be effected by the Lessor at the expense of the Lessee;

(d) the Lessee must pay the entire cost of the alteration to the Lessor on demand by the Lessor; and

(e) if required by the Lessor the Lessee must deposit with the Lessor the estimated cost of the alteration before commencement of any work.

29 Insurance

29.1 Public liability insurance

The Lessee effect and maintain with an insurance company in respect of the Premises adequate public liability insurance in an amount not less than the Public Liability Insurance Amount in respect of any one claim.

29.2 Insurance of Lessee's Fixtures

The Lessee must insure and keep insured to the full insurable value on a replacement or reinstatement basis the Lessee's Fixtures.

29.3 Workers' compensation insurance

The Lessee must effect and maintain workers' compensation insurance in respect of all employees of the Lessee employed in, about or from the Premises.

29.4 Glass

The Lessee must effect and maintain with an insurance company a policy of insurance against all risks in respect of the glass in the doors, walls or windows of or to the Premises.

29.5 Supply details etc.

The Lessee must in respect of the insurance mentioned in this clause:

(a) supply to the Lessor details;

(b) produce annually each certificates of currency issued by an Insurance Company;

(c) deliver promptly to the Lessor particulars of any alteration of the terms and conditions of each policy.

29.6 Not to invalidate insurance

The Lessee must:

(a) not do or omit to do any act or thing or bring or keep anything in the Building:

(1) which might render the insurance on the Building void or voidable; or

(2) which might cause the rate of premium to be increased; and

(b) if the Lessor approves in writing any proposal of the Lessee to add to or increase any risk, which is covered by insurance, pay all additional premiums resulting from the additional or increased risk.

30 Lessee's indemnities

30.1 Indemnities paramount

The obligation of the Lessee to indemnify the Lessor:

(a) under this Document; or

(b) by law;

is unaffected by the obligation of the Lessee to effect insurance and the obligation of the Lessee to indemnify is paramount.

30.2 Indemnity in respect of Lessor's expenses

To the extent permitted by law, the Lessee must on demand pay to the Lessor an amount equal to all money paid by the Lessor in respect of any liability of the Lessee under this Document.

30.3 General indemnity

The Lessee INDEMNIFIES the Lessor against all Losses for which the Lessor becomes liable in respect of loss or damage to property or death or injury of any nature or kind and however or wherever sustained:

(a) caused or contributed to by the use or occupancy of the Premises except to the extent caused or contributed to by the act or omission of the Lessor;

(b) resulting from an act or omission of the Lessee or the Lessee's Permitted Person; or

(c) resulting from a notice, claim or demand to pay, do or perform any act or thing to be paid, done or performed by the Lessee under this Document except to the extent that the Lessor is obliged under the provisions of this Document to pay for or contribute to that cost.

31 Lessee's obligations at risk and expense of Lessee

Unless this Document otherwise provides, whenever the Lessee is obliged or required by this Document to do or omit to do any act or thing, the doing or the omission of that act or thing will be at the sole risk and expense of the Lessee.

32 Limit of Lessor's liability

Each Lessor is only liable for breaches of the Lessor's Covenants occurring while that person is the registered proprietor of the Land.

33 Report to Lessor

The Lessee must report promptly to the Lessor or the Managing Agent in writing and in the case of emergency, verbally:

33.1 Damage to or defect in Premises

Any damage to or defect in the Premises, the Lessor's Fixtures, the Plant and Equipment or the Facilities in the Premises of which the Lessee is or ought to be aware;

33.2 Broken glass

Any breakage of glass in an exterior or inter-tenancy window or door in the Building;

33.3 Malfunction of Plant and Equipment or Facility

Any malfunction of any Plant and Equipment or Facility either within the Premises or used by the Lessee; and

33.4 Circumstance likely to cause damage or danger

Any circumstance likely to:

(a) be a danger; or

(b) cause any damage or danger;

to the Premises, the Building, or any person on or in the Premises, the Building or the Land of which the Lessee is aware.

34 Caveats

34.1 Not lodge absolute caveat

The Lessee must not lodge an absolute caveat over the Land to protect the interest of the Lessee under this Document.

34.2 Withdraw caveat on Termination

The Lessee must withdraw any caveat lodged by or on behalf of the Lessee over the Land on or before Termination.

35 Not impede exercise of Lessor's rights

The Lessee must not impede the exercise of the Lessor's Rights.

36 Compliance with statutes

Notwithstanding anything to the contrary contained or implied in this Document, the Lessee must comply promptly with all statutes from time to time in force relating to the Premises or the use of the Premises except for any imposing an obligation to carry out structural work which the Lessee is not required to carry out under this Document.

37 Default by Lessee

37.1 Events of default

An Event of Default occurs if:

(a) any Rent or Variable Outgoings is unpaid for SEVEN (7) days after becoming due whether or not demand for payment is made;

(b) the Lessee is in breach of any of the Lessee's Covenants other than covenants to pay Rent or Variable Outgoings for FOURTEEN (14) days after notice has been given to the Lessee;

(c) the Lessee is a body corporate and:

(1) an application is made, a resolution is passed, or a meeting is convened for the purpose of considering a resolution, for the Lessee to be wound up unless the winding up is for the purpose of reconstruction or amalgamation; or

(2) a resolution is passed, or a meeting is convened for the purpose of considering a resolution, for the appointment of an administrator of the affairs of the Lessee;

(d) the Lessee admits in writing its inability to pay its debts;

(e)

(1) a compromise or arrangement is made between the Lessee and its creditors; or

(2) an application is made to a Court for an order summoning a meeting of any class of creditors of the Lessee;

(f) a controller, as defined by the Corporations Law, is appointed in respect of any property of the Lessee;

(g) a mortgagee takes possession of any property of the Lessee;

(h) any execution or similar process is made against the Premises or the property of the Lessee;

(i) an application is made or notice given or other procedure commenced for the dissolution or cancellation of the registration of the Lessee under the Corporations Law or any analogous process;

(j) the Lessee, being a natural person, commits an act of bankruptcy; or

(k) the Lessee is in breach of a provision of an instrument other than this Document giving the Lessee a right to occupy any part of the Land or the Building.

37.2 Lessor may retake possession

After an Event of Default has occurred and without any notice or demand, the Lessor may at any time enter the Premises, and on re-entry the Term will immediately determine but without affecting any of the Lessor's Rights.

37.3 Acceptance of Money Payable not to prejudice Lessor's Rights

Demand by the Lessor for, or acceptance of, Money Payable after an Event of Default has occurred will not:

(a) affect the exercise by the Lessor of the Lessor's Rights; or

(b) operate as an election by the Lessor either to exercise or not to exercise the Lessor's Rights.

37.4 Lessor may remedy Lessee's default

If the Lessee:

(a) omits or neglects to pay any Money Payable; or

(b) does or fails to do anything which constitutes a breach of the Lessee's Covenants;

the Lessor may on each occasion without affecting any right, remedy or power arising from that default:

(c)

(1) pay that Money Payable;

(2) do or cease the doing of that thing; or

(3) both; as if it were the Lessee; and

(d) enter and remain on the Premises for that purpose;

and the Lessee must pay to the Lessor on demand the Lessor's cost of remedying each breach or default.

37.5 Exercise of Lessor's Rights

The Lessor may exercise the Lessor's Rights:

(1) without notice being required other than as provided in this Document; and

(2) notwithstanding laches, neglect or previous waiver by the Lessor in respect of any breach of the Lessee's Covenants or the exercise of the Lessor's Rights.

37.6 Essential terms

Each of the Lessee's Covenants which are specified in:

(a) clauses 5 ('RENT'), 8 ('GST') and 9.6 ('VARIABLE OUTGOINGS');

(b) clauses 14.1 and 14.3 ('LESSEE TO MAINTAIN PREMISES' 'General' and 'Repair promptly');

(c) clause 16 (‘ALTERATIONS’);

(d) clause 17.1 (‘USE OF PREMISES’ ‘Purpose’);

(e) clause 22.1 (‘USE AND ENJOYMENT AFFECTING OCCUPIERS’ ‘Offensive Activities’);

(f) clause 29 (‘INSURANCE’); and

(g) clause 44 (‘ASSIGNING AND CHARGING’);

are essential terms of this Document but this subclause does not mean or imply that there are no other essential terms in this Document.

37.7 Damages for breach of essential terms

In addition to any other remedy or entitlement of the Lessor including the right to terminate the estate granted by this Document:

(a) the Lessee must compensate the Lessor in respect of any breach of an essential term;

(b) the Lessor is entitled to recover damages from the Lessee in respect of such breaches; and

(c) the Lessee COVENANTS with the Lessor, which covenant will survive the Termination or any deemed surrender at law of the estate granted by this Document, that if the Term is determined:

(1) for breach of an essential term by the acceptance by the Lessor of a repudiation of this Document by the Lessee; or

(2) following the failure by the Lessee to comply with a notice given to the Lessee to remedy any default;

the Lessee must pay to the Lessor on demand the total of:

(3)

(A) the Rent then payable under this Document; and

(B) the Lessor’s reasonable estimate of the Variable Outgoings and Rates and Taxes which would have been payable by the Lessee;

for the unexpired balance of the Term if the Term had expired by effluxion of time; and

(4) Losses incurred by the Lessor as a result of that early determination including, but not limited to, all costs of reletting or attempting to relet the Premises;

less the rent and other money which the Lessor reasonably expects to obtain by reletting the Premises between the date of Termination and the date on which the Term would have expired by effluxion of time; but the Lessor:

(5) must take reasonable steps to mitigate its Losses and endeavour to relet the Premises at a reasonable rent and on reasonable terms; and

(6) is not required to offer or accept rent or terms which are the same or

similar to the rent or terms contained or implied in this Document.

37.8 Certificate to be conclusive

A certificate given to the Lessee by the Lessor of the amount of the Rent, Variable Outgoings and Rates and Taxes under 37.7(c) will be conclusive as between the Parties except in the case of manifest error.

37.9 Separate suits

The Lessor may without prejudice to any other remedy, sue the Lessee for any Money Payable which may from time to time become due and owing by the Lessee to the Lessor and in particular, the Lessor may:

(a) sue for any instalments of Rent, Variable Outgoings or Rates and Taxes as and when those instalments become due; and

(b) by a separate suit or suits sue for any further sum or sums which may be found to be due or owing by the Lessee to the Lessor on the completion of the calculations made at the end of each Lease Year; and

neither the institution of any suit nor the entering of judgment in any suit will bar the Lessor from bringing a separate or subsequent suit or suits for the balance of any Money Payable.

38 Destruction or damage to building or premises

38.1 Major Rebuilding Required

If the Building or any part of the Building is so destroyed or damaged:

(a) as to require major rebuilding of the Building;

(b) that the Premises are Unfit for Occupation;

(c) as to inhibit access to the Premises by the Lessee or the customers of the Lessee's business in any substantial manner; or

(d) as to cause significant disruption to the Lessee's business;

the Lessor:

(e) may within THREE (3) months of the destruction or damage terminate the Term with immediate effect by notice to the Lessee;

(f) will not be obliged to rebuild the Building or that part damaged; and

(g) unless the Lessor has Terminated the Term, must within THREE (3) months of the destruction or damage, give notice to the Lessee advising the Lessee:

(1) whether or not the Lessor intends to rebuild; and

(2) if the Lessor intends to rebuild, how long that rebuilding is estimated to take.

38.2 Abatement of Rent

If:

(a) the Premises are Unfit for Occupation; and

(b) payment of insurance money in respect of the damage or destruction causing the Premises to be Unfit for Occupation is not at any time refused or withheld in whole or in part as a result of any act or omission of the Lessee;

the Rent or a fair and just proportion according to the nature and extent of the damage sustained will from the date of damage or destruction until the Premises are reinstated and are no longer Unfit for Occupation abate and cease to be payable.

38.3 Lessee may Terminate

If the Premises are Unfit for Occupation and:

(a) the Lessor has given the Lessee notice under clause 38.1 that it does not intend to rebuild; or

(b) the Premises remain Unfit for Occupation for a period of at least THREE (3) months;

the Lessee may give the Lessor notice to terminate the Term with immediate effect but without affecting the rights of the Lessor in respect of any unpaid Money Payable or any antecedent breach by the Lessee of any of the Lessee's Covenants.

39 Option to renew

If:

(a) the Lessee at least NINE (9) months prior to the date for commencement of a Further Term gives the Lessor notice to grant the Further Term; and

(b) there is no subsisting default by the Lessee at the date of service of the notice and at the date for commencement of that Further Term in:

(1) the payment of the Money Payable; or

(2) the performance or observance of the Lessee's Covenants;

the Lessor must grant to the Lessee that Further Term at the Rent and on the terms and conditions of this Document.

40 Holding over

If the Lessee remains in possession of the Premises after expiry of the Term with the consent of the Lessor, the Lessee will be a monthly tenant of the Lessor at a rent equivalent to:

(a) the Rent for the period immediately preceding expiry of the Term increased by CPI or 3%, whichever is the greater; and

(b)

(1) the Lessee's Proportion of the Rates and Taxes; and

(2) the Lessee's Proportion of the Variable Outgoings which would have been payable by the Lessee if a Further Term had been granted at expiry of the Term;

and otherwise on the same terms and conditions as this Document.

41 Termination

41.1 Restoration of the Premises on Termination

Prior to Termination, the Lessee at the Lessee's cost must restore

(a) the Premises; and

(b)

(1) the Facilities

(2) the Building; and

(3) those parts of the Plant and Equipment;

affected by anything done by the Lessee,

to its original state having regard to the age of the Premises and the Lessee's Covenants.

41.2 Yield up and surrender keys

On Termination the Lessee must:

(a) peaceably surrender and yield up to the Lessor the Premises in a condition consistent with observance and performance of the Lessee's Covenants;

(b) surrender to the Lessor all keys and security access devices providing access to or within the Building held by the Lessee whether or not provided by the Lessor.

41.3 Removal of Lessee's Fixtures

Prior to Termination, the Lessee must remove from the Premises and the Building all the Lessee's Fixtures and property of the Lessee and promptly make good to the reasonable satisfaction of the Lessor any damage caused by that removal.

42 Lessee's goods left in common areas

After termination the Lessor may remove at the Lessee's expense and risk any goods or furniture of the Lessee left in the Common Areas and may sell them and use the money from the sale to offset any unpaid Money Payable

43 Lessee's fixtures not removed at termination

43.1 Lessor may remove

On re-entry the Lessor will have the right to remove any property of the Lessee left in or about the Premises.

43.2 Lessee to indemnify

The Lessee INDEMNIFIES the Lessor against all damage caused by the removal of and the cost of storing that property.

43.3 Property may be sold

All Lessee's Fixtures and property belonging to the Lessee not removed at Termination will, at the Lessor's option become the absolute property of the Lessor and may be disposed of by the Lessor as the Lessor thinks fit.

44 Assigning and charging

44.1 No assignment without consent

The Lessee must not assign, mortgage or charge the leasehold estate in the Premises nor sublet, part with possession, or dispose, of the Premises or any part of the Premises without the consent of the Lessor and except under this clause.

44.2 Exclusion of the Property Law Act

Sections 80 and 82 of the Property Law Act 1969 are excluded.

44.3 Changes in beneficial ownership of shares

If the Lessee is a corporation the shares in which are not quoted on any stock exchange in Australia, any change in the beneficial ownership, issue or cancellation of shares in that corporation or any holding company of that corporation within the meaning of the Corporations Law will be deemed to be an assignment of the leasehold estate created by this Document.

44.4 Consent to assignment

The Lessor may not unreasonably withhold its consent to an assignment of the leasehold estate created by this Document if:

(a) the proposed assignee is a respectable and responsible person of good financial standing, the onus of satisfying the Lessor in respect of those criteria being on the Lessee;

(b) all Money Payable then due or payable has been paid and there is no existing unremedied breach of the Lessee's Covenants;

(c) the Lessee procures the execution by the proposed assignee of a deed of assignment to which the Lessor is a party prepared and completed by the Lessor's solicitors at the cost of the Lessee in all respects;

(d) the assignment contains a covenant by the assignee with the Lessor to pay all Money Payable and to perform and observe all the Lessee's Covenants; and

(e) the Lessee pays to the Lessor the amounts specified in clause 44.8.

44.5 Directors or shareholders must guarantee

If the assignee is a corporation the shares in which are not quoted on any stock exchange in Australia, it will be a term of the Lessor's consent to the deed of assignment that the directors or the substantial shareholders at the option of the Lessor of that corporation guarantee to the Lessor the observance and performance by the assignee of the Lessee's Covenants including payment of all Money Payable.

44.6 Assignee substitutes for assignor

Subject to the proposed assignee being of similar financial standing as the assignor Lessee, upon the completion of any assignment of this Lease to an assignee all obligations of the assignor Lessee under this Lease shall cease.

44.7 Consent to charge

If the Lessor consents to a charge, that consent will be in a form approved by the Lessor.

44.8 Costs in respect of assigning

If the Lessee wishes to assign the leasehold estate created by this Document the Lessee must pay to the Lessor:

(a) all professional and other costs, charges and expenses on a full indemnity basis incurred by the Lessor of and incidental to:

(1) the enquiries made by or on behalf of the Lessor as to the respectability, responsibility and financial standing of each proposed assignee; and

(2) all other matters relating to the proposed assignment;

whether or not the assignment proceeds; and

(b) if required by the Lessor, a sum nominated by the Lessor on account of the amounts mentioned in paragraph (a).

44.9 Consent to sublet

The Lessor may not unreasonably withhold its consent to the subletting of the Premises or any part of the Premises.

45 Consents

Unless this Document otherwise expressly provides, the Lessor may withhold consent to any matter requiring consent without specifying any reason.

46 Act by agents

All acts and things which the Lessor is required or empowered to do under this Document may be done by the Lessor or the solicitor, agent, contractor or employee of the Lessor.

47 Lessee liable for permitted persons

The Lessee is liable for the acts or omissions of Permitted Persons arising out of and in connection with the rights and obligations created by this Document.

48 Notice

48.1 Definition

In this clause **Notice** includes each notice, demand, consent or authority given or made to any person under this Document.

48.2 Form and Service

A Notice to a person:

(a) must be in writing;

(b) may be given or made by:

(1) delivering it to that person personally;

(2) addressing it to that person and leaving it at or posting it to:

(A) the address of that person appearing in this Document;

(B) that person's usual or last known place of residence;

(C) if that person is in business as a principal, that person's usual or last known place of business;

(D) if that person is a corporation, its registered office or principal place of business; or

(E) any other address nominated by that person by notice to the person giving the Notice; or

(3) sending a facsimile copy of the Notice to the facsimile copier number specified in Item 14 of the Schedule or any other number nominated by that person by notice to the person giving the Notice;

(c) will be deemed to be given or made:

(1) if by personal delivery, when delivered;

(2) if by leaving the Notice at an address specified in paragraph (b), when left at that address unless the time of leaving the Notice is:

(A) not on a Business Day; or

(B) after FIVE (5) o'clock in the afternoon on a Business Day;

when it will be deemed to be given or made on the next following Business Day;

(3) if by post, on the second Business Day following the date of posting of the Notice to an address specified in paragraph (b); and

(4) if by facsimile, when despatched by facsimile to a number specified in paragraph (b)(3), unless the time of dispatch is:

(A) not on a Business Day; or

(B) after FIVE (5) o'clock in the afternoon on a Business Day;

when it will be deemed to be given or made on the next following Business Day; and

(d) may be signed:

(1) if given by an individual, by the person giving the Notice;

(2) if given by a corporation, by a director, secretary or manager of that corporation; or

(3) by a solicitor or other agent of the person giving the Notice.

49 Proper law

This Document is governed by, and to be interpreted in accordance with, the laws of Western Australia and where applicable the laws of the Commonwealth of Australia.

50 Arbitration

50.1 Dispute referred to single arbitrator

Except as otherwise provided, any dispute arising out of this Document is to be determined by a single arbitrator under the provisions of the Commercial Arbitration Act 1985 and the Lessor and Lessee may each be represented by a legal practitioner of their choice.

50.2 No abatement

The Lessee must pay the Money Payable without abatement or deduction until whichever is the earlier of:

(a) the date of the award of the arbitrator; or

(b) agreement between the parties;

(c) when the Lessor will refund to the Lessee any money paid by the Lessee not required to be paid within the terms of the award of the arbitrator or the agreement between the Lessor and Lessee.

51 Accrual on daily basis

Money Payable accrues on a daily basis.

52 Statutory powers

The powers conferred on the Lessor by or under any statute for the time being in force are, except to the extent inconsistent with the terms and provisions expressed in this Document, in augmentation of the powers conferred on the Lessor by this Document.

53 Moratorium not to apply

To the fullest extent permitted by law, the provisions of a statute which would, but for this clause:

(a) extend or postpone the date of payment of money

(b) reduce the rate of Interest; or

(c) abrogate, nullify, postpone or otherwise affect any condition

under this Document do not apply to limit or affect the terms of this Document.

54 Severance

If any part of this Document is, or becomes, void or unenforceable that part is or will be, severed from this Document to the intent that all parts that are not, or do not become, void or unenforceable remain in full force and effect and are unaffected by that severance.

55 Waivers

55.1 Failure or delay is not waiver

Failure to exercise or delay in exercising any right, power or privilege in this Document by the Lessor does not operate as a waiver of that right, power or privilege.

55.2 Partial exercise does not preclude further exercise

A single or partial exercise of any right, power or privilege does not preclude:

(a) any other or further exercise of that right, power or privilege; or

(b) the exercise of any other right, power or privilege.

56 Variation

This Document may be varied only by deed executed by the Parties.

57 Further assurances

Each Party must execute and do all acts and things necessary or desirable to implement and give full effect to the provisions and purpose of this Document.

58 Counterparts

This Document may be executed in any number of counterparts each of which is an

original and all of which constitute one and the same instrument.

59 Payment of money

Any sum of money to be paid to the Lessor must be paid to the Lessor at the Address or as otherwise directed by the Lessor by notice from time to time.

Schedule

1 Premises

The premises situated on the Land comprising of:

- Office / amenities 200 m^2 approximately
- Training room / amenities 200 m^2 approximately
- Warehouse 6,112 m^2 approximately
- Canopy 576 m^2 approximately

as shown on the attached plan.

2 Land

Lot 53 on Plan 12387, being the whole of the land comprised in Certificate of Title Volume 1770 Folio 067.

3 Term

A Term of Ten (10) years commencing on the Date of Commencement and expiring on 28 February 2019

4 Date of Commencement

1 March 2009

5 Further Term

(a) A Further Term of Five (5) years commencing on 1 March 2019 and expiring on 28 February 2024

(b) A Further Term of Five (5) years commencing on 1 March 2024 and expiring on 28 February 2029

6 Rent

From the Date of Commencement the Rent is $585,400.00 per annum, payable by instalments of $48,783.33 per month in advance on the first day of each month.

7 Rent Review Dates

(a) CPI review dates:

Every TWELVE (12) months from the Date of Commencement (other than the dates on which a market review is conducted).

(b) Market review dates:

Every FIVE (5) years from the Date of Commencement.

8 Address

Suite 1, 567 Hay Street Daglish, Western Australia

9 Managing Agent

As notified by the Lessor to the Lessee from time to time.

10 Rate Of Interest

FOUR PERCENT (4%) above the Westpac Indicator Lending Rate published by Westpac from time to time.

11 Painting and Decorating Intervals

THREE (3) months prior to the expiry of the Term

12 Public Liability Insurance Amount:

TWENTY MILLION DOLLARS ($20,000,000)

13 Permitted Use

Administration, warehousing, distribution, sales and manufacturing of fibre cement products and systems and all associated activities

14 Facsimile Number

Lessor: (08) 9388 0577

Lessee: (02) 9638 9299

Executed as a deed:

Executed by **Welshpool Landowner Pty Ltd**
ACN 108 198 778 in accordance with section 127(1)
of the Corporations Act 2001 by authority of its Directors:

/s/ Ian Beacham	/s/ Michael W Hodgson
Secretary/Director	Director
Ian Beacham	/s/ Michael W Hodgson
Name (please print)	Name (please print)

Executed by **James Hardie Australia Pty Limited**
ACN 084 635 558 in accordance with its constitution:

/s/ Marcin Firek	/s/ Shane Dias
Secretary/~~Director~~	Director
Marcin Firek	Shane Dias
Name (please print)	Name (please print)

Exhibit 10.27

13 May 2008

James Hardie Industries NV
Atrium, 8th Floor
Strawinskylaan 3077
1077ZX Amsterdam
The Netherlands

Attention: Russell Chenu

James Hardie 117 Pty Limited
Level 3, 22 Pitt Street
Sydney NSW 2000

Attention: Bruce Potts

The State of New South Wales
C/- Department of Premier and Cabinet
Level 39, Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Attention: Leigh Sanderson

Asbestos Injuries Compensation Fund Limited
ACN 117 363 461

Suite 1, Level 7
233 Castlereagh Street
Sydney NSW 2000

PO Box A962
Sydney South NSW 1235

DX 11548, Sydney Downtown

Telephone: (02) 9277 6600
Facsimile: (02) 9277 6699

Dear Sirs/Madam,

Interest Rate — Amended and Restated Final Funding Agreement Clause 4.7

Section 36(2) of the *James Hardie Former Subsidiaries (Winding up and Administration) Act 2005* provides that where the trustee makes a payment of compensation on behalf of a liable entity, the liable entity must indemnify the trustee for the amount of the payment, including any relevant interest.

Under clause 4.7 of the Amended and Restated Final Funding Agreement, the interest shall be calculated at the Interest Rate defined in the Amended and Restated Final Funding Agreement or such other rate as is agreed in writing by the Parties to the Amended and Restated Final Funding Agreement.

AICFL is concerned that any interest charged on the amount indemnified under section 36 may be regarded as derived for income tax purposes, and that in order to remove this risk it is desirable to reduce the rate of interest to 0%.

The Parties agree that the interest rate payable in each financial year under section 36(2) of the *James Hardie Former Subsidiaries (Winding up and Administration) Act 2005* and clause 4.7 of the Amended and Restated Final Funding Agreement shall be the 0%.

The Parties also agree that this rate of interest shall take effect from 1 July 2008.

Yours faithfully,

/s/ Peter W. Baker
Director

Duly authorised for and on behalf of Asbestos Injuries Compensation Fund Limited in its capacity as Trustee of the Compensation Funds

/s/Leigh Sanderson 17/7/08

Duly authorised for and on behalf of the New South Wales Government

/s/ Robert Cox
Director/Secretary
Duly authorised on behalf of James Hardie Industries N.V.

/s/ Bruce Potts
Director/~~Secretary~~
Duly authorised for and on behalf of James Hardie 117 Pty Limited

MALLESONS STEPHEN JAQUES

Amending Agreement — Parent Guarantee

Dated [•] June 2009

Asbestos Injuries Compensation Fund Limited in its capacity as trustee for the Charitable Fund ("**AICF**")
The State of New South Wales ("**NSW Government**")
James Hardie Industries N.V. ("**JHINV**")

Mallesons Stephen Jaques
Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney
www.mallesons.com
Ref: 02-5501-6101

Amending Agreement — Parent Guarantee
Contents

Amending Agreement — Parent Guarantee

Details

Parties	**AICF, NSW Government** and **JHINV**	
AICF	Name	**Asbestos Injuries Compensation Fund Limited** a company limited by guarantee incorporated under the laws of the State of New South Wales, Australia, in its capacity as trustee for the Charitable Fund established under the Amended and Restated Trust Deed dated 14 December 2006 between it as trustee and JHINV
	ACN	117 363 461
	Address	Level 7, 233 Castlereagh Street Sydney New South Wales, 2000
NSW Government	Name	**The State of New South Wales**
	Address	c/- Department of Premier and Cabinet, Level 39, Governor Macquarie Tower, 1 Farrer Place, Sydney, NSW, 2000
JHINV	Name	**James Hardie Industries N.V.** a limited liability company incorporated in The Netherlands
	ARBN	097 829 895
	Address	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)
Recitals	AICF, NSW Government and JHINV are parties to the Parent Guarantee and wish to amend the Parent Guarantee on the terms set out in this agreement.	
Date of Amending Deed	[•] June 2009	

Amending Agreement — Parent Guarantee

General terms

1 Interpretation

These meanings apply unless the contrary intention appears:

Irish Registration Date means the date on which JHISE is registered by the Registrar of Companies of Ireland as having its registered office in Ireland.

JHI means:

(a) prior to the SE Transformation Date, JHINV;

(b) with effect on and from the SE Transformation Date up to the Irish Registration Date, JHISE with its corporate seat in the Netherlands; and

(c) with effect on and from the Irish Registration Date, JHISE with its corporate seat in the Republic of Ireland.

JHISE means JHINV once it has converted from its present corporate form as a Dutch NV (*Naamloze Vernootschap*) into an SE (*Societas Europaea*).

Parent Guarantee means the Guarantee dated 14 December 2006 between AICF, the NSW Government and JHINV.

SE Transformation Date means the date on which JHINV is registered as a "*Societas Europaea*" on the Dutch Trade Register pursuant to European Union Council Regulation 2157/2001.

2 Confirmations and acknowledgement

2.1 Confirmation in relation to definition of "Guarantor"

Each party confirms that the definition of "Guarantor" for the purposes of the Parent Guarantee is a reference to:

(a) with effect on and from the SE Transformation Date up to the Irish Registration Date, JHISE with its corporate seat in the Netherlands; and

(b) with effect on and from the Irish Registration Date, JHISE with its corporate seat in the Republic of Ireland.

2.2 JHI Confirmation

JHI confirms that, other than as provided for in clause 3 ("Amendments"), the Parent Guarantee remains in full force and effect and enforceable against it up to, including and after each of the SE Transformation Date and the Irish Registration Date.

2.3 Conflict

If there is a conflict between the Parent Guarantee and this agreement, the terms of this agreement prevail.

2.4 Consideration

This agreement is entered into in consideration of the parties' exchange of promises under this agreement and the receipt of valuable consideration which is hereby acknowledged.

3 Amendments

3.1 Parent Guarantee

As from the Irish Registration Date, the Parent Guarantee is amended as set out in schedule 1. The parties acknowledge that the amendments to the Parent Guarantee effected by this clause 3.1 are accurately reflected in the conformed copy of the Parent Guarantee attached at schedule 2.

3.2 Irrevocable Power of Attorney

The parties acknowledge that the Second Irrevocable Power of Attorney dated December 2006 between AICF and NSW Government will be replaced by a Third Irrevocable Power of Attorney between those parties in the form attached at schedule 3 from the date of execution of that Third Irrevocable Power of Attorney. To avoid doubt, JHI's execution of this agreement constitutes its prior written consent to the replacement effected by this clause 3.2 for the purposes of clause 6.3(c) of the Parent Guarantee.

4 Representations and warranties by JHI

JHI warrants as at the date of this agreement and repeats such warranty as at the SE Transformation Date and as at the Irish Registration Date that the following is true, accurate and not misleading:

(a) it has been duly incorporated and is validly existing under the laws of the jurisdiction of its incorporation and has the necessary corporate capacity and power to enter into this agreement and to perform its obligations under this agreement;

(b) all corporate and other action required to be taken by JHI to authorise the execution of this agreement and the performance of its obligations under this agreement has been duly taken;

(c) this agreement has been duly executed on behalf of JHI and constitutes legal, valid and binding obligations of JHI, enforceable in accordance with their terms subject to the terms of the opinion from Loyens Loeff delivered to the NSW Government and the Fund Trustee on or about the date of this agreement;

(d) the execution and performance of this agreement do not conflict with or result in a breach of any provision of the memorandum or articles of association of JHI or any provision of any applicable law in force on the date of this agreement or any deed to which JHI is a party, or on the SE Transformation Date or the Irish Registration Date;

(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 JHI under this agreement;

(f) the Parent Guarantee as amended by this agreement constitutes legal, valid and binding obligations of JHI, enforceable in accordance with their terms subject to the terms of the opinion from Arthur Cox delivered to the NSW Government and the Fund Trustee on or about the date of this agreement;

(g) the performance of the Parent Guarantee as amended by this agreement does not conflict with or result in a breach of any provision of the memorandum or articles of association of JHI or any provision of any applicable law in force on the date of this agreement;

(h) 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 JHI under the Parent Guarantee as amended by this agreement; and

(i) without limiting paragraphs (e) and (g) above, Dutch law does not preclude or otherwise prejudice the agreement of JHI as a Dutch company to the Irish Registration Date amendments set out in Schedule 1, which will only take effect on the Irish Registration Date.

JHI warrants as at the Irish Registration Date, the performance of the Parent Guarantee as amended by this agreement does not conflict with or result in a breach of any provision of the memorandum or articles of association of JHI or any provision of any applicable law in force on the Irish Registration Date.

5 Costs

Each party shall be responsible for its own costs, charges and expenses in connection with the preparation, negotiation and execution of this agreement.

6 General

Clause 5 (“Notices”) of the Parent Guarantee applies to this agreement as if it was fully set out in this agreement.

7 Counterparts

This agreement may consist of a number of copies each signed by one or more parties to the deed. If so, the signed copies are treated as making up the one document.

8 Governing law

This agreement is governed by the law in force in the Netherlands, with the exception of the Netherlands private international law. Any dispute arising out

of or in connection with this agreement shall be exclusively decided by the competent court in Amsterdam.

EXECUTED as an agreement.

Amending Agreement — Parent Guarantee

Schedule 1 — Irish Registration Date Amendments

The Parent Guarantee is amended as follows:

1 The definition of "Final Funding Agreement" in clause 1 ("Interpretation") is amended by inserting the words ", as amended from time to time" after the word Agreement in the third line.

2 Clause 2.4 ("Guarantee") is amended by deleting the sentence "This Guarantee is not a contract of surety (*borgtocht*)." and replacing it with the following sentence:

> "The liability of the Guarantor under this Guarantee shall be as sole and primary obligor and not merely as surety and the Guarantor hereby waives all and any of its rights as surety which may at any time be inconsistent with any of the provisions of this Guarantee.".

3 Clause 2.7 ("Guarantee") is amended by inserting the words ", insolvency, winding-up, dissolution, examinership, the granting of court protection, administration, composition or arrangement" after the words "moratorium of payment" in the fifth line.

4 Clause 2.9(a) ("Guarantee") is amended by inserting the words "insolvency, dissolution, examinership, the granting of court protection, administration, composition or arrangement," after the words "winding-up" in the first line.

5 Clause 3.2 ("Enforcement") is amended by deleting the word "(*verzuim*)" in the fourth line and replacing it with "in respect of the making of such Annual Payment".

6 Clause 3.3(b) ("Enforcement") is amended by:

- deleting the word "a" in the first line and replacing it with "any insolvency,"; and
- inserting the words "examinership, the granting of court protection, administration, composition or arrangement," after the words "winding-up" in the second line.

7 Clause 3.4 ("Enforcement") is amended by deleting the words "(*kort geding*)" in the third line.

8 Clause 3.5 ("Enforcement") is amended by:

- deleting the word "*(verrekening),*" in the first line and replacing it with "or"; and
- deleting the words "or suspension (*opschorting*)".

9 Clause 3.6 is deleted and replaced with "[intentionally blank]".

10 Clause 3.7(a)(i) ("Enforcement") is deleted and replaced with the following:

"(i) proceed against or exhaust or enforce any security held from the Performing Subsidiary, any other guarantor or any other Person or make or file any proof of claim in any insolvency proceedings relative to the Performing Subsidiary, any other guarantor or any other person,".

11 Clause 3.7(a)(iii) ("Enforcement") is amended by deleting the word "Guarantee" in the first line and replacing it with the word "Fund".

12 Clause 3.7(d) ("Enforcement") is amended by inserting a new sub-paragraph (iii) as follows (and re-numbering sub-paragraph (iii) as sub-paragraph (iv) accordingly):

"(ii) the right to interpose any defence based upon any claim of laches or set-off or counterclaim of any nature or description;".

13 Insert a new clause 3.8 as follows:

"3.8 The Guarantor confirms to the Fund Trustee and the NSW Government that neither the Fund Trustee nor the NSW Government need advise the Guarantor of any default by the Performing Subsidiary in respect of the Guaranteed Obligations."

14 Clause 5.1 is amended by replacing the existing address details for the NSW Government and the Guarantor with the following:

"**To the NSW Government:**

Name:	The State of New South Wales, c/- Department of Premier and Cabinet
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 S.E.
Address:	c/- Arthur Cox, Earlsfort Centre, Earlsfort Terrace, Dublin 2, Ireland
Fax number:	+35 3 618 0618
and	
	Level 3, 22 Pitt Street, Sydney, NSW 2000
Fax number:	+61 2 8274 5218
Attention:	General Counsel"

15 Clause 6.4 ("NSW Government's right to enforce") is deleted.

16 Clause 7 ("Choice of law and jurisdiction") is deleted and replaced with the following:

"7. **CHOICE OF LAW AND JURISDICTION**

7.1 This Guarantee shall be governed by and construed in accordance with the laws of Ireland.

7.2 The courts of Ireland have exclusive jurisdiction to settle any dispute arising out of or in connection with this Guarantee (including a dispute regarding the existence, validity or termination of this Guarantee) (a "**Dispute**").

7.3 The parties hereto agree that the courts of Ireland are the most appropriate and convenient courts to settle Disputes and accordingly no party hereto will argue to the contrary.

7.4 This clause 7 is for the benefit of each of the Fund Trustee and the NSW Government. As a result, each of the Fund Trustee and the NSW Government shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, each of the Fund Trustee and the NSW Government may take concurrent proceedings in any number of jurisdictions."

17 Insert a new clause 9 as follows:

"9. **RULE AGAINST PERPETUITIES**

Nothing in this Guarantee shall authorise or permit the postponement of any estate or interest arising under the trusts created in this Guarantee from vesting outside the perpetuity period. In this context "perpetuity period" means the period commencing on the date of this Guarantee and ending on the expiration of 21 years from the date of the death of the last survivor of the descendants now living of the President of Ireland, Mary McAleese."

Signing page

DATED: **2009**

SIGNED by The Honourable John Hatzistergos MLC Attorney-General of New South Wales

for **THE STATE OF NEW SOUTH WALES** in the presence of:

Signature of witness

Name of witness (block letters)

Signature

Office of Signatory

EXECUTED by **ASBESTOS INJURIES COMPENSATION FUND LIMITED** in accordance with section 127(1) of the Corporations Act 2001 (Cwlth) by authority of its directors:

Signature of director

Name of director (block letters)

Signature of director/company secretary*
*delete whichever is not applicable

Name of director/company secretary*
(block letters)
*delete whichever is not applicable

EXECUTED by)
)
)
)
as an authorised signatory for, and)
SEALED AND DELIVERED as a deed by,)
JAMES HARDIE INDUSTRIES N.V. in)
the presence of:)
)
)
)
)
)
)
)
Signature of witness)
)
)
Name of witness (block letters))
)
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By executing this agreement the signatory states that the signatory has received no notice of revocation of the authority under which the signatory signs this agreement

Position

By executing this agreement the signatory states that the signatory has received no notice of revocation of the authority under which the signatory signs this agreement

Position

MALLESONS STEPHEN JAQUES

Amending Deed — Intercreditor Deed

Dated June 2009

Asbestos Injuries Compensation Fund Limited in its capacity as trustee for the Charitable Fund ("**Fund Trustee**")
The State of New South Wales ("**NSW Government**")
James Hardie Industries N.V. ("**JHINV**")
AET Structured Finance Services Pty Limited ("**Guarantee Trustee**")

Mallesons Stephen Jaques
Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney
www.mallesons.com
Ref: 02-5501-6101

Amending Deed — Intercreditor Deed
Contents

Amending Deed — Intercreditor Deed

Details

Parties	**Fund Trustee, NSW Government, JHINV** and the **Guarantee Trustee**	
Fund Trustee	Name	**Asbestos Injuries Compensation Fund Limited** a company limited by guarantee incorporated under the laws of the State of New South Wales, Australia, in its capacity as trustee of the Charitable Fund established under the Amended and Restated Trust Deed dated 14 December 2006 between it as trustee and JHINV
	ACN	117 363 461
	Address	Level 7, 233 Castlereagh Street, Sydney NSW 2000
NSW Government	Name	**The State of New South Wales**
	Address	c/- Department of Premier and Cabinet, Level 39, Governor Macquarie Tower, 1 Farrer Place, Sydney, NSW, 2000
JHINV	Name	**James Hardie Industries N.V.** a limited liability company incorporated in The Netherlands
	ARBN	097 829 895
	Address	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)
Guarantee Trustee	Name	**AET Structured Finance Services Pty Ltd** in its capacity as trustee for the Financiers under the Guarantee Trust
	ABN	12 106 424 088
	Address	Level 22, 207 Kent Street Sydney, NSW, 2000
Recitals	The Fund Trustee, NSW Government, JHINV and the Guarantee Trustee are parties to the Intercreditor Deed and wish to amend the Intercreditor Deed on the terms set out in this deed.	
Date of Amending Deed	June 2009	

Amending Deed — Intercreditor Deed

General terms

1 Interpretation

These meanings apply unless the contrary intention appears:

Intercreditor Deed means the document entitled "Intercreditor Deed" dated 19 December 2006 between the NSW Government, JHINV, the Fund Trustee and the Guarantee Trustee.

Irish Registration Date means the date on which JHISE is registered by the Registrar of Companies of Ireland as having its registered office in Ireland.

JHISE means JHINV once it has converted from its present corporate form as a Dutch NV (*Naamloze Vernootschap*) into an SE (*Societas Europaea*).

SE Transformation Date means the date on which JHINV is registered as a "*Societas Europaea*" on the Dutch Trade Register pursuant to European Union Council Regulation 2157/2001.

2 Confirmations and acknowledgement

2.1 Confirmation in relation to definition of "JHINV"

Each party confirms that the definition of "JHINV" for the purposes of the Intercreditor Deed is a reference to:

(a) with effect on and from the SE Transformation Date up to the Irish Registration Date, JHISE with its corporate seat in the Netherlands; and

(b) with effect on and from the Irish Registration Date, JHISE with its corporate seat in the Republic of Ireland.

2.2 Confirmation

Each party confirms that, other than as provided for in clause 3 ("Amendments"):

(a) it is bound by and will continue to be bound by the Intercreditor Deed; and

(b) the Intercreditor Deed remains in full force and effect and enforceable against it,

up to, including and after each of the SE Transformation Date and the Irish Registration Date.

2.3 Conflict

If there is a conflict between the Intercreditor Deed and this deed, the terms of this deed prevail.

2.4 Consideration

This deed is entered into in consideration of the parties' exchange of promises under this deed and the receipt of valuable consideration which is hereby acknowledged.

3 Amendments

As from the Irish Registration Date, the Intercreditor Deed is amended as set out in schedule 1.

4 Costs

Each party shall be responsible for its own costs, charges and expenses in connection with the preparation, negotiation and execution of this deed.

5 General

Clause 11 ("Notices") of the Intercreditor Deed applies to this deed as if it was fully set out in this deed.

6 Counterparts

This deed may consist of a number of copies each signed by one or more parties to the deed. If so, the signed copies are treated as making up the one document.

7 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 and waives any right to claim that those courts are an inconvenient forum.

8 Guarantee Trustee limitation of liability

Clause 15 ("Guarantee Trustee limitation of liability") of the Intercreditor Deed applies to this deed as if fully set out in this deed.

EXECUTED as an deed.

Amending Deed — Intercreditor Deed

Schedule 1 — Irish Registration Date Amendments

The Intercreditor Deed is amended as follows:

- Clause 3.4 ("Status and ranking of the Compensation Debt") is amended by:
  - deleting the words "(*concurrente vordering*)" in paragraph (a); and
  - deleting paragraph (c) and replacing it with "[intentionally blank]".
- Schedule 1 ("Financier Nomination Letter") is amended by:
  - deleting the words "(*concurrente vordering*)" in paragraph (a); and
  - deleting paragraph (c) and replacing it with "[intentionally blank]".
- The definition of "Business Day' in clause 1 of Attachment A is amended by deleting the words "Amsterdam, The Netherlands" and replacing them with "Dublin, the Republic of Ireland".
- Deleting the definition of "Insolvency Official" in clause 1 of attachment A and replacing it with the following:

  "**Insolvency Official** means a custodian, receiver and manager, trustee, liquidator, provisional liquidator, administrator, examiner or any other officer appointed in connection with the Insolvency of JHINV and includes, without limitation:

  (a) a receiver, an examiner and a liquidator appointed under Irish 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 in respect of the Insolvency of JHINV."
- The definition of "Insolvent" in clause 1 of Attachment A is amended by deleting paragraph (b) and replacing it with the following paragraph:

  "(b) was established under Irish law and files a petition with any court in the Republic of Ireland in relation to its liquidation, the bringing forward of a scheme of arrangement or the appointment of an examiner;".
- The definition of "Reconstruction Event" in clause 1 of Attachment A is amended by deleting paragraph (c) and replacing it with the following paragraph:

"(c) a filing of a petition for the appointment of an examiner or the bringing forward of a scheme of arrangement under Irish law;".

- Deleting the definition of "Trust Convention" in clause 1 of Attachment A.
- The definition of "Wind-Up Event" in clause 1 of Attachment A is amended by deleting paragraphs (d) and (e) and replacing them with the following paragraphs:

"(d) the dissolution of such Person under Irish law or the law of any other jurisdiction;

(e) [intentionally blank];".

- Clause 2(f)(ix) ("Interpretation") of Attachment A is amended by deleting the words "Dutch law" on the second line and replacing them with "Irish law".
- Deleting clause 3 ("Trust Convention") of Attachment A.

Amending Deed — Intercreditor Deed

Signing page

DATED: June 2009

SIGNED, SEALED AND DELIVERED by The Honourable John Hatzistergos MLC Attorney-General of New South Wales

for **THE STATE OF NEW SOUTH WALES** in the presence of:

Signature of witness

Name of witness (block letters)

Signature

Office of Signatory

EXECUTED by **ASBESTOS INJURIES COMPENSATION FUND LIMITED** in accordance with section 127(1) of the Corporations Act 2001 (Cwlth) by authority of its directors:

Signature of director

Name of director (block letters)

Signature of director/company secretary*
*delete whichever is not applicable

Name of director/company secretary* (block letters)
*delete whichever is not applicable

EXECUTED by

as an authorised signatory for, and **SEALED AND DELIVERED** as a deed by, **JAMES HARDIE INDUSTRIES N.V.** in the presence of:
Signature of witness
Name of witness (block letters)

By executing this deed the signatory states that the signatory has received no notice of revocation of the authority under which the signatory signs this deed

Signature of witness

Position

Name of witness (block letters)

By executing this deed the signatory states that the signatory has received no notice of revocation of the authority under which the signatory signs this deed

Position

The Common Seal of AET Structured Finance Services Pty Limited ABN 12 106 424 088 was affixed with the authority of:

(signed)

(print name)

Authorised Officer

(signed)

(print name)

Authorised Officer

MALLESONS STEPHEN JAQUES

Amending Deed — Performing Subsidiary Intercreditor Deed

Dated June 2009

Asbestos Injuries Compensation Fund Limited in its capacity as trustee for the Charitable Fund ("**Fund Trustee**")
The State of New South Wales ("**NSW Government**")
James Hardie 117 Pty Limited (formerly known as LGTDD Pty Limited) ("**JH117**")
AET Structured Finance Services Pty Limited ("**Guarantee Trustee**")

Mallesons Stephen Jaques
Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney
www.mallesons.com
Ref: 02-5501-6101

Amending Deed — Performing Subsidiary Intercreditor Deed

Contents

Amending Deed — Performing Subsidiary Intercreditor Deed
Details

Parties	**Fund Trustee, NSW Government, JH117** and the **Guarantee Trustee**	
Fund Trustee	Name	**Asbestos Injuries Compensation Fund Limited** a company limited by guarantee incorporated under the laws of the State of New South Wales, Australia, in its capacity as trustee for the CharitableFund established under the Amended and Restated Trust Deed dated 14 December 2006 between it as trustee and JHINV
	ACN	117 363 461
	Address	Level 7, 233 Castlereagh Street, Sydney NSW 2000
NSW Government	Name	**The State of New South Wales**
	Address	c/- Department of Premier and Cabinet, Level 39, Governor Macquarie Tower, 1 Farrer Place, Sydney, NSW, 2000
JH117	Name	**James Hardie 117 Pty Limited**
	ABN	30 116 110 948
	Address	Level 3, 22 Pitt Street, Sydney in the State of New South Wales
Guarantee Trustee	Name	**AET Structured Finance Services Pty Ltd** in its capacity as trustee for the Financiers under the Guarantee Trust
	ABN	12 106 424 088
	Address	Level 22, 207 Kent Street, Sydney, NSW, 2000
Recitals	The Fund Trustee, NSW Government, JH117 and the Guarantee Trustee are parties to the Performing Subsidiary Intercreditor Deed and wish to amend the Performing Subsidiary Intercreditor Deed on the terms set out in this deed.	
Date of Amending Deed	June 2009	

Amending Deed — Performing Subsidiary Intercreditor Deed
General terms

1 Interpretation

These meanings apply unless the contrary intention appears:

Irish Registration Date means the date on which JHISE is registered by the Registrar of Companies of Ireland as having its registered office in Ireland.

JHINV means James Hardie Industries N.V. (ARBN 097 829 895).

JHISE means JHINV once it has converted from its present corporate form as a Dutch NV (*Naamloze Vernootschap*) into an SE (*Societas Europaea*).

Performing Subsidiary Intercreditor Deed means the document entitled "Performing Subsidiary Intercreditor Deed" dated 19 December 2006 between the NSW Government, the Fund Trustee, JH117 and the Guarantee Trustee.

SE Transformation Date means the date on which JHINV is registered as a "*Societas Europaea*" on the Dutch Trade Register pursuant to the European Union Council Regulation 2157/2001.

2 Confirmations and acknowledgement

2.1 Confirmation in relation to definition of "JHINV"

Each party confirms that the definition of "JHINV" for the purposes of the Performing Subsidiary Intercreditor Deed is a reference to:

(a) with effect on and from the SE Transformation Date up to the Irish Registration Date, JHISE with its corporate seat in the Netherlands; and

(b) with effect on and from the Irish Registration Date, JHISE with its corporate seat in the Republic of Ireland.

2.2 Confirmation

Each party confirms that, other than as provided for in clause 3 ("Amendments"):

(a) it is bound by and will continue to be bound by the Performing Subsidiary Intercreditor Deed; and

(b) the Performing Subsidiary Intercreditor Deed remains in full force and effect and enforceable against it,

up to, including and after each of the SE Transformation Date and the Irish Registration Date.

2.3 Conflict

If there is a conflict between the Performing Subsidiary Intercreditor Deed and this deed, the terms of this deed prevail.

2.4 Consideration

This deed is entered into in consideration of the parties' exchange of promises under this deed and the receipt of valuable consideration which is hereby acknowledged.

3 Amendments

As from the Irish Registration Date, the Performing Subsidiary Intercreditor Deed is amended as set out in schedule 1.

4 Costs

Each party shall be responsible for its own costs, charges and expenses in connection with the preparation, negotiation and execution of this deed.

5 General

Clause 11 ("Notices") of the Performing Subsidiary Intercreditor Deed applies to this deed as if it was fully set out in this deed.

6 Counterparts

This deed may consist of a number of copies each signed by one or more parties to the deed. If so, the signed copies are treated as making up the one document.

7 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 and waives any right to claim that those courts are an inconvenient forum.

8 Guarantee Trustee limitation of liability

Clause 15 ("Undertaking and Guarantee Trustee limitation of liability") of the Performing Subsidiary Intercreditor Deed applies to this deed as if fully set out in this deed.

EXECUTED as an deed.

Amending Deed — Performing Subsidiary Intercreditor Deed
Schedule 1 — Irish Registration Date Amendments

The Performing Subsidiary Intercreditor Deed is amended as follows:

- Clause 1 of Attachment A is amended by deleting the definition of "Insolvency Official" and replacing it with the following:

  "**Insolvency Official** means a custodian, receiver, receiver and manager, trustee, liquidator, provisional liquidator, administrator, examiner or any other officer appointed in connection with the Insolvency of the Performing Subsidiary".

- The definition of "Insolvent" in clause 1 of Attachment A is amended by deleting paragraph (b) and replacing it with the following paragraph:

  "(b) was established under Irish law and files a petition with any court in the Republic of Ireland in relation to its liquidation, the bringing forward of a scheme of arrangement or the appointment of an examiner;".

- The definition of "Reconstruction Event" in clause 1 of Attachment A is amended by deleting paragraph (c) and replacing it with the following paragraph:

  "(c) a filing of a petition for the appointment of an examiner or the bringing forward of a scheme of arrangement under Irish law;".

- The definition of "Wind-Up Event" in clause 1 of Attachment A is amended by deleting paragraphs (d) and (e) and replacing them with the following paragraphs:

  "(d) the dissolution of such Person under Irish law or the law of any other jurisdiction;

  (e) [intentionally blank];".

DATED: **2009**

SIGNED, SEALED AND DELIVERED by The Honourable John Hatzistergos MLC Attorney-General of New South Wales

for **THE STATE OF NEW SOUTH WALES** in the presence of:

Signature of witness

Name of witness (block letters)

Signature

Office of Signatory

EXECUTED by **ASBESTOS INJURIES COMPENSATION FUND LIMITED** in accordance with section 127(1) of the Corporations Act 2001 (Cwlth) by authority of its directors:

Signature of director

Name of director (block letters)

Signature of director/company secretary*
*delete whichever is not applicable

Name of director/company secretary* (block letters)
*delete whichever is not applicable

EXECUTED by **JAMES HARDIE 117 PTY LIMITED** in accordance with section 127(1) of the Corporations Act 2001 (Cwlth) by authority of its directors:

Signature of director	)	Signature of director/company secretary*
	)	*delete whichever is not applicable
Name of director (block letters)	)	Name of director/company secretary* (block letters)
	)	*delete whichever is not applicable

The Common Seal of AET Structured Finance Services Pty Limited ABN 12 106 424 088 was affixed with the authority of:

(signed)

(print name)

Authorised Officer

(signed)

(print name)

Authorised Officer

Deed of Confirmation

Dated 23 June 2009

James Hardie Industries N.V. ("JHINV")
James Hardie 117 Pty Limited (formerly known as LGTDD Pty Limited) ("JH117")
The State of New South Wales ("NSW Government")
Asbestos Injuries Compensation Fund Limited in its capacity as trustee of the Asbestos Injuries Compensation Fund ("Trustee")

Mallesons Stephen Jaques
Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney
www.mallesons.com
Ref: 02-5501-6101

Deed of Confirmation
Contents

Deed of Confirmation

Details

Parties	**JHINV, JH117, the NSW Government and the Trustee**
JHINV	**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, 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)
JH117	**James Hardie 117 Pty Limited** (formerly known as LGTDD Pty Limited) ABN 30 116 110 948, of Level 3, 22 Pitt Street, Sydney in the State of New South Wales
NSW Government	**The State of New South Wales** c/- The Department of Premier and Cabinet, Level 39, Governor Macquarie Tower, 1 Farrer Place, Sydney in the State of New South Wales
Trustee	**Asbestos Injuries Compensation Fund Limited in its capacity as trustee of the Asbestos Injuries Compensation Fund** established under the Amended and Restated Trust Deed dated 14 December 2006 between it as trustee and JHINV as settlor of Level 7, 233 Castlereagh Street, Sydney in the State of New South Wales

Recitals

A. JHINV, JH117, the NSW Government and the Trustee are parties to the AFFA.

B. JHINV intends to transform its status to a "*Societas Europaea*" (**Transformation**) and subsequently transfer its registered office and corporate seat from The Netherlands to the Republic of Ireland (**Transfer**).

C. JHINV has consulted with the NSW Government and the Trustee in relation to the proposed Transformation and Transfer.

D. The NSW Government has not objected to the proposed Transformation and Transfer on the basis set out in this deed.

E. Each party, in entering into this deed, intends:

(i) to confirm that it continues to be bound by the AFFA and those Related Agreements to which it is party during the course of, and after full implementation of, the Transaction;

(ii) to amend the AFFA in certain respects; and

(iii) to agree the form of amendments proposed to be made to the Replacement Parent Guarantee, the Intercreditor Deed and the Performing Subsidiary Intercreditor Deed.

Date of Deed of Confirmation See Signing page

Deed of Confirmation

General terms

1 Interpretation

1.1 Definitions

These meanings apply unless the contrary intention appears:

Accepted Tax Conditionshas the meaning given to it in the AFFA.

AFFA means the document entitled "Amended & Restated Final Funding Agreement in respect of the provision of long term funding for compensation arrangements for certain victims of Asbestos-related diseases in Australia" dated 21 November 2006 between JHINV, JH117, the NSW Government and the Trustee, as amended by amending deeds dated 6 August 2007, 8 November 2007, 11 June 2008 and 17 July 2008 between those parties.

AFFA Related Documents has the meaning given to that term in clause 2.3(b).

Affected Provision has the meaning given to that term in clause 10.

Amending Agreement (Parent Guarantee) has the meaning given to that term in clause 3.2.

ATO means the Australian Taxation Office.

ATO Confirmations means the confirmations referred to in clause 4.1.

Intercreditor Deed means the document entitled "Intercreditor Deed" dated 19 December 2006 between the NSW Government, JHINV, AET Structured Finance Services Pty Limited and the Trustee.

Irish Registration Date means the date on which JHISE is registered by the Registrar of Companies of Ireland as having its registered office in Ireland.

JHI means:

(a) until it has transformed into *a Societas Europaea* on the SE Transformation Date, JHINV; and

(b) with effect on and from the SE Transformation Date up to the Irish Registration Date, JHISE with its corporate seat in the Netherlands; and

(c) with effect on and from the Irish Registration Date, JHISE with its corporate seat in the Republic of Ireland..

JHISE means JHINV once it has transformed from its present corporate form as a Dutch NV (*Naamloze Vernootschap*) into an SE (*Societas Europaea*).

Liable Entities has the meaning given to it in the AFFA.

Liable Group has the meaning given to it in the AFFA.

NSWG Tax Advisor means Gilbert + Tobin or such other tax advisor as the Government may appoint.

Performing Subsidiary Intercreditor Deed means the document entitled "Performing Subsidiary Intercreditor Deed" dated 19 December 2006 between the NSW Government, the Trustee, JH117 and AET Structured Finance Services Pty Limited.

Related Agreements has the meaning given to it in the AFFA.

Relevant Obligations has the meaning given to it in the AFFA.

Replacement Parent Guarantee means the document entitled "Parent Guarantee" dated 14 December 2006 between JHINV, the NSW Government and the Trustee.

Ruling has the meaning given to it in the AFFA.

SE Transformation Date means the date on which JHI is registered as a *Societas Europaea* on the Dutch Trade Register pursuant to the SE Regulation.

SE Regulation means European Union Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European Company (SE).

Transaction means a transaction comprising the following steps in the following sequence:

(a) the merger between JHI and an Irish public company limited by shares that is a subsidiary of JHI, with 100% of its issued share capital beneficially owned by JHI, established specifically for the purposes of effecting this merger;

(b) following implementation of (a), the registration of JHI as a *Societas Europaea* with its registered office in The Netherlands with effect on and from the SE Transformation Date; and

(c) the transfer of the registered office of JHI to Ireland and the registration of JHI by the Registrar of Companies of Ireland as a *Societas Europaea* having its registered office in Ireland with effect on and from the Irish Registration Date,

together with any other actions that are ancillary to, or necessary or expedient to give effect to, those steps. For the avoidance of doubt, a reference in this Deed to "the Transaction" includes a reference to any part of the Transaction and the implementation of the Transaction.

1.2 Headings

In this deed, headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this deed.

2 Warranties, representations and acknowledgement

2.1 Warranties by JHI and JH117

Each of JHI and JH117 warrants and represents for the benefit of each of the NSW Government and the Trustee as at the date of this deed that:

(a) the Transaction does not, at any time up to, including and after the Irish Registration Date, breach clause 7 of the AFFA; and

(b) without limiting the generality of clause 2.1(a), but subject to clauses 7.2 and 7.6 of the AFFA, the Transaction will not, at any time up to, including and after the Irish Registration Date, result in a variation of any rights attaching to all or part of the share capital of JHI that has the consequence of materially adversely affecting the rights of the Trustee relative to JHI equityholders such that the Liable Group would, by reason of the Transaction, cease to be likely, assessed on a reasonable basis (having regard to all the circumstances), to be able to satisfy the Relevant Obligations that would have arisen had the Transaction not occurred,

and each of JHI and JH117 acknowledges that each of the NSW Government and the Trustee have entered into this deed in reliance on each of the warranties and representations set out in this clause 2.1.

2.2 Acknowledgement by JHI and JH117

Each of JHI and JH117 confirms that:

(a) it is bound by the AFFA and those Related Agreements to which it is a party (including, without limitation, the Replacement Parent Guarantee, the Intercreditor Deed and the Performing Subsidiary Intercreditor Deed) and will continue to be bound by the AFFA and those Related Agreements as amended in accordance with this deed up to, including and after the Irish Registration Date;

(b) other than as described in clause 3 ("Amendments"), the AFFA and Related Agreements (including, without limitation, the Replacement Parent Guarantee, the Intercreditor Deed and the Performing Subsidiary Intercreditor Deed) remain and will remain in full force and effect and enforceable against it up to, including and after the Irish Registration Date; and

(c) it will not, at any time up to, including and after the Irish Registration Date, seek to rely on the Transaction as a defence to the enforcement of its obligations under the AFFA and those Related Agreements to which it is a party, as amended or replaced in accordance with this deed (including, without limitation, the

Replacement Parent Guarantee, the Intercreditor Deed and the Performing Subsidiary Intercreditor Deed).

2.3 Additional warranties by JHI

JHI further warrants and represents for the benefit of each of the NSW Government and the Trustee as at the date of this deed that:

(a) **incorporation:**

(i) JHINV is a company duly incorporated and validly existing under the laws of The Netherlands;

(ii) JH117 is a company duly incorporated and validly existing under the laws of Australia;

(b) **corporate power**: each of JHINV and JH117 has the corporate power to enter into and perform its obligations under this deed, the Amending Agreement (Parent Guarantee) and the other deeds of amendment to the Related Agreements described in clause 3 (together, the "**AFFA Related Documents**") 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 procured by JHINV and provided to the NSW Government at or about the date of this deed, the AFFA Related Documents are valid, binding and enforceable against each of JHINV and JH117 in accordance with their terms in competent courts exercising jurisdiction in New South Wales or, in the case of the Amending Agreement (Parent Guarantee), in The Netherlands;

(d) **no contravention by JHINV:** so far as JHINV is aware, the execution by JHINV of the AFFA Related Documents 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 JH117:** so far as JHINV is aware, the execution by JH117 of the AFFA Related Documents to which it is a party will not violate in any material respect any provision of:

(i) the constituent documents of JH117;

(ii) any material agreement or judgment binding upon JH117 or the assets of JH117; or

(iii) any law or regulation of any Government Authority or Stock Exchange;

(f) **Solvency:** JHINV is, immediately after entering into the AFFA Related Documents, able to pay its debts as and when they fall due; and

(g) **Authorisations:** all material authorisations, consents, approvals, registrations, notices, exemptions and licences with or from any Governmental Authority or Stock Exchange necessary for the due and valid execution by JHINV and JH117 of, the AFFA Related Documents to which JHINV or JH117 is a party, or which would, if not obtained by JHINV or JH117, prevent the exercise by the Trustee of its remedies under the AFFA Related Documents to which JHINV or JH117 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,

and JHI acknowledges that each of the NSW Government and the Trustee have entered into this deed in reliance on each of the warranties and representations set out in this clause 2.3.

A reference in this clause 2.3 to JHINV's awareness shall be taken to be a reference solely to the awareness of the Chief Financial Officer of JHINV, after having made reasonable enquiries.

2.4 Acknowledgment by NSW Government and Trustee

Each of the NSW Government and the Trustee confirms that, on the basis of the information provided by JHINV on or before the date of this deed:

(a) it is satisfied that the Transaction does not:

(i) constitute an 'Insolvency Event', 'Wind-Up Event' or 'Reconstruction Event' for the purposes of clause 10 ("JHINV Guarantee and Wind-Up and Reconstruction Events") of the AFFA or under the Replacement Parent Guarantee;

(ii) constitute a default under clause 16 ("Default") of the AFFA; or

(iii) constitute a breach of the AFFA or any of the Related Agreements by JHINV, JH117 or any other party to them;

(b) it is bound by the AFFA and those Related Agreements to which it is a party (including, without limitation, the Replacement Parent Guarantee, the Intercreditor Deed and the Performing Subsidiary Intercreditor Deed) and will continue to be bound by the AFFA and those Related Agreements as amended or replaced in accordance with this deed up to, including and after the Irish Registration Date; and

(c) other than as provided for in clause 3 ("Amendments"), the AFFA and Related Agreements (including, without limitation, the Replacement Parent Guarantee, the Intercreditor Deed and the Performing Subsidiary Intercreditor Deed) remain in full force and

effect and enforceable against it at all times up to, including and after the Irish Registration Date.

3 Amendments

3.1 AFFA

In consideration of the exchange of promises under this deed and the receipt of valuable consideration which is hereby acknowledged, the parties agree that, as from the Irish Registration Date, the AFFA is varied as set out in Schedule 1.

3.2 Replacement Parent Guarantee

JHI agrees to execute and deliver to the Trustee an amending agreement to the Replacement Parent Guarantee in the form set out in Annexure A ("Amending Agreement (Parent Guarantee)") on execution of this deed.

3.3 Intercreditor Deed and Performing Subsidiary Intercreditor Deed

(a) Each party agrees to execute a deed of amendment to the Intercreditor Deed in the form set out in Annexure B ("Amending Deed to Intercreditor Deed") on execution of this deed.

(b) Each party agrees to execute a deed of amendment to the Performing Subsidiary Intercreditor Deed in the form set out in Annexure C ("Amending Deed to Performing Subsidiary Intercreditor Deed") on execution of this deed.

(c) The parties agree to seek the execution of the deeds of amendment referred to in clauses 3.3(a) and (b) by AET Structured Finance Services Pty Limited as soon as possible after execution of this deed.

3.4 Confirmation in relation to the definition of "JHINV"

Each party confirms that the definition of "JHINV" for the purposes of the AFFA, Intercreditor Deed and the Performing Subsidiary Intercreditor Deed is a reference to:

(a) with effect from the SE Transformation Date until the Irish Registration Date, JHISE with its corporate seat in The Netherlands; and

(b) with effect on and from the Irish Registration Date, JHISE with its corporate seat in the Republic of Ireland.

3.5 Confirmation in relation to the definition of "JHINV Guarantee"

Each party confirms that the definition of "JHINV Guarantee" for the purposes of the AFFA, Intercreditor Deed and the Performing Subsidiary Intercreditor Deed is, with effect on and from the Irish Registration Date, a reference to the Replacement Parent Guarantee as amended by the Amending Agreement (Parent Guarantee).

3.6 Confirmation in relation to the definition of "JHINV Boards"

Each party confirms that the definition of "JHINV Boards" for the purposes of the AFFA is a reference to:

(a) with effect from the SE Transformation Date until the Irish Registration Date, each of the Supervisory Board and the Managing Board of JHISE; and

(b) with effect on and from the Irish Registration Date, the single board of directors of JHISE.

4 Tax Requirements

4.1 Confirmation of Rulings

The parties have agreed that James Hardie Research Holdings Pty Limited (as head company of the James Hardie tax consolidated group) and the Trustee (for itself and for the Liable Entities) will, and JHINV undertakes to procure that James Hardie Research Holdings Pty Limited does, as a result of the Transaction apply to the ATO:

(a) for rulings (which reaffirm the conclusions and opinions reached by the ATO in the Rulings) to replace the existing Rulings in the event that the Transaction proceeds; and

(b) for confirmation that the Accepted Tax Conditions will remain unchanged in all material respects,

(together, "**ATO Confirmations**"). The ATO Confirmations, if obtained, will constitute a renewed or substituted ruling as contemplated by the definition of the term "Ruling" in clause 1.1 of the AFFA.

4.2 Reasonable assistance and information

(a) The NSW Government agrees to provide any information or assistance reasonably requested by JHINV or the Trustee in relation to the applications for the ATO Confirmations.

(b) JHINV and the Trustee will keep all parties informed of progress in relation to applying for, and obtaining, the ATO Confirmations and within 2 business days of a request from another party provide copies of correspondence with the ATO, together with any explanation that may reasonably be required.

4.3 JHINV undertaking

JHINV agrees that it will not complete the merger referred to in paragraph (a) of the definition of "Transaction" in this deed before the applications for the ATO Confirmations have been determined. However, nothing in this clause shall prevent JHINV convening and holding a meeting of its shareholders to approve the implementation of the Transaction and undertaking other steps of a preparatory nature.

4.4 Notification upon receipt of ATO Confirmations

(a) The ATO Confirmations will be taken to have been obtained if PricewaterhouseCoopers, acting for JHINV and the Trustee, confirm to JHINV and the Trustee and NSWG Tax Advisor, acting for the NSW Government, confirms to the NSW Government, that in their respective opinions the form of the ATO Confirmations satisfy the requirements of clause 4.1.

(b) JHINV and the Trustee each agree to notify the other parties within 2 business days after the ATO has advised them of its determination in respect of the matters the subject of the application for the ATO Confirmations and to confirm whether or not PricewaterhouseCoopers has given the confirmations contemplated by clause 4.4(a).

(c) The New South Wales Government agrees to procure that NSWG Tax Advisor provides its opinion within 5 business days of receipt by the New South Wales Government of the notification referred to in clause 4.4(b) and to notify the other parties as to whether or not NSWG Tax Advisor has given the confirmation contemplated by clause 4.4(a) within those 5 business days.

(d) The provision of the confirmations by PricewaterhouseCoopers and NSWG Tax Advisor contemplated by clause 4.4(a) shall, as between the parties, constitute conclusive evidence that the ATO Confirmations have been obtained. However, failure to obtain the confirmations from PricewaterhouseCoopers and NSWG Tax Advisor as contemplated by clause 4.4(a) shall not prevent JHINV from establishing that the ATO Confirmations have been obtained by other means, including a final declaration by a court of competent jurisdiction.

4.5 Position if ATO Confirmations cannot be obtained

If the applications for the ATO Confirmations have not been determined by 30 September 2009 (or such later date as the parties may agree) then the obligation in clause 4.3 will continue until the earlier of the date on which the applications for the ATO Confirmations are determined and 31 December 2009, on which date JHINV will be released from that obligation**.** To avoid doubt, the release of JHINV from the obligation in clause 4.3 in accordance with this clause 4.5, or the implementation by JHINV of the Transaction without obtaining the ATO Confirmations after the applications for the ATO Confirmations have been determined, does not affect the remaining provisions of this Deed of Confirmation, the amending agreement to the Replacement Parent Guarantee referred to in clause 3.2, or the deeds of amendment to the Intercreditor Deed and Performing Subsidiary Intercreditor Deed referred to in clauses 3.3(a) and (b), all of which will continue in full force and effect.

5 Notice of change of details

5.1 JHINV address

For the purposes of clauses 30(b) and 30(i) of the AFFA, JHINV notifies each other party that its new contact address, with effect from the Irish Registration Date, is as follows:

"c/- Arthur Cox
Earlsfort Centre
Earlsfort Terrace
Dublin 2
Ireland
Fax: + 35 3 618 0618

and

Level 3
22 Pitt Street
Sydney NSW 2000
Fax: +61 2 8274 5218".

5.2 JH117 address

For the purposes of clause 30(b) and 30(i) of the AFFA, JH117 notifies each other party that its new contact address, with effect from the Irish Registration Date, is as follows:

"c/- Arthur Cox
Earlsfort Centre
Earlsfort Terrace
Dublin 2
Ireland
Fax: +35 3 618 0618

and

Level 3
22 Pitt Street
Sydney NSW 2000
Fax: +61 2 8274 5218".

5.3 Other details unchanged

For the avoidance of doubt, the other notice details for JHINV and JH117 specified in clause 30 of the AFFA remain unchanged.

6 Costs

Each party shall be responsible for its own costs, charges and expenses in connection with the preparation, negotiation and execution of this deed.

7 Counterparts

This deed may consist of a number of copies each signed by one or more parties to the deed. If so, the signed copies are treated as making up the one document.

8 Governing law and submission to jurisdiction

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 and waives any right to claim that those courts are an inconvenient forum.

9 Preservation of obligations and further assurances

If for any reason any provision of the AFFA or the Replacement Parent Guarantee, in each case as amended in accordance with this deed ("**Affected Provision"**), becomes void, voidable, unenforceable or otherwise ceases to have effect for any reason as a result of the Transaction or the implementation of the Transaction:

(a) each party upon whom any obligation is imposed by the Affected Provision covenants by this deed to be bound in respect of that obligation by a provision which, to the maximum extent possible without itself being void, voidable, unenforceable or ineffective, has the same content as the Affected Provision; and

(b) the parties agree to execute any further documents and do any further acts or things necessary to give effect to this clause.

10 Service of documents

(a) A document may be served on a party by delivering it to that party at its address specified for the purposes of clause 30 ("Notices") of the AFFA.

(b) This clause 10 does not prevent another mode of service.

(c) JHI 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 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.

EXECUTED as a deed.

Deed of Confirmation

Schedule 1 — Amendments to AFFA

The AFFA is amended as follows:

- The definition of "Insolvent" in clause 1.1 ("Definitions") is amended by deleting paragraph (b) and replacing it with the following paragraph:

  "(b) was established under Irish law and files a petition with any court in the Republic of Ireland in relation to its liquidation, the bringing forward of a scheme of arrangement or the appointment of an examiner;".

- The definition of "Joint Board" in clause 1.1 ("Definitions") is deleted.

- The definition of "Reconstruction Event" in clause 1.1 ("Definitions") is amended by deleting paragraph (c) and replacing it with the following paragraph:

  "(c) a filing of a petition for the appointment of an examiner or the bringing forward of a scheme of arrangement under Irish law;".

- The definition of "Wind-Up Event" in clause 1.1 ("Definitions") is amended by deleting paragraphs (d) and (e) and replacing them with the following paragraphs:

  "(d) the dissolution of such Person under Irish law or the law of any other jurisdiction;

  (e) [intentionally blank];".

- Clause 10.3(g)(i) ("JHINV Wind Up Event or Reconstruction Event") is amended by deleting the words "Dutch law" on the sixth line and replacing them with "Irish law".

MALLESONS STEPHEN JAQUES

Amending Agreement — Parent Guarantee

Dated 23 June 2009

Asbestos Injuries Compensation Fund Limited in its capacity as trustee for the Charitable Fund ("**AICF**")
The State of New South Wales ("**NSW Government**")
James Hardie Industries N.V. ("**JHINV**")

Mallesons Stephen Jaques
Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney
www.mallesons.com
Ref: 02-5501-6101

Amending Agreement — Parent Guarantee
Contents

Amending Agreement — Parent Guarantee

Details

Parties	**AICF, NSW Government** and **JHINV**	
AICF	Name	**Asbestos Injuries Compensation Fund Limited** a company limited by guarantee incorporated under the laws of the State of New South Wales, Australia, in its capacity as trustee for the Charitable Fund established under the Amended and Restated Trust Deed dated 14 December 2006 between it as trustee and JHINV
	ACN	117 363 461
	Address	Level 7, 233 Castlereagh Street Sydney New South Wales, 2000
NSW Government	Name	**The State of New South Wales**
	Address	c/- Department of Premier and Cabinet, Level 39, Governor Macquarie Tower, 1 Farrer Place, Sydney, NSW, 2000
JHINV	Name	**James Hardie Industries N.V.** a limited liability company incorporated in The Netherlands
	ARBN	097 829 895
	Address	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)
Recitals	AICF, NSW Government and JHINV are parties to the Parent Guarantee and wish to amend the Parent Guarantee on the terms set out in this agreement.	
Date of Amending Deed	23 June 2009	

Amending Agreement — Parent Guarantee

General terms

1 Interpretation

These meanings apply unless the contrary intention appears:

Irish Registration Date means the date on which JHISE is registered by the Registrar of Companies of Ireland as having its registered office in Ireland.

JHI means:

(a) prior to the SE Transformation Date, JHINV;

(b) with effect on and from the SE Transformation Date up to the Irish Registration Date, JHISE with its corporate seat in the Netherlands; and

(c) with effect on and from the Irish Registration Date, JHISE with its corporate seat in the Republic of Ireland.

JHISE means JHINV once it has converted from its present corporate form as a Dutch NV (*Naamloze Vernootschap*) into an SE (*Societas Europaea*).

Parent Guarantee means the Guarantee dated 14 December 2006 between AICF, the NSW Government and JHINV.

SE Transformation Date means the date on which JHINV is registered as a "*Societas Europaea*" on the Dutch Trade Register pursuant to European Union Council Regulation 2157/2001.

2 Confirmations and acknowledgement

2.1 Confirmation in relation to definition of "Guarantor"

Each party confirms that the definition of "Guarantor" for the purposes of the Parent Guarantee is a reference to:

(a) with effect on and from the SE Transformation Date up to the Irish Registration Date, JHISE with its corporate seat in the Netherlands; and

(b) with effect on and from the Irish Registration Date, JHISE with its corporate seat in the Republic of Ireland.

2.2 JHI Confirmation

JHI confirms that, other than as provided for in clause 3 ("Amendments"), the Parent Guarantee remains in full force and effect and enforceable against it up to, including and after each of the SE Transformation Date and the Irish Registration Date.

2.3 Conflict

If there is a conflict between the Parent Guarantee and this agreement, the terms of this agreement prevail.

2.4 Consideration

This agreement is entered into in consideration of the parties' exchange of promises under this agreement and the receipt of valuable consideration which is hereby acknowledged.

3 Amendments

3.1 Parent Guarantee

As from the Irish Registration Date, the Parent Guarantee is amended as set out in schedule 1. The parties acknowledge that the amendments to the Parent Guarantee effected by this clause 3.1 are accurately reflected in the conformed copy of the Parent Guarantee attached at schedule 2.

3.2 Irrevocable Power of Attorney

The parties acknowledge that the Second Irrevocable Power of Attorney dated December 2006 between AICF and NSW Government will be replaced by a Third Irrevocable Power of Attorney between those parties in the form attached at schedule 3 from the date of execution of that Third Irrevocable Power of Attorney. To avoid doubt, JHI's execution of this agreement constitutes its prior written consent to the replacement effected by this clause 3.2 for the purposes of clause 6.3(c) of the Parent Guarantee.

4 Representations and warranties by JHI

JHI warrants as at the date of this agreement and repeats such warranty as at the SE Transformation Date and as at the Irish Registration Date that the following is true, accurate and not misleading:

(a) it has been duly incorporated and is validly existing under the laws of the jurisdiction of its incorporation and has the necessary corporate capacity and power to enter into this agreement and to perform its obligations under this agreement;

(b) all corporate and other action required to be taken by JHI to authorise the execution of this agreement and the performance of its obligations under this agreement has been duly taken;

(c) this agreement has been duly executed on behalf of JHI and constitutes legal, valid and binding obligations of JHI, enforceable in accordance with their terms subject to the terms of the opinion from Loyens Loeff delivered to the NSW Government and the Fund Trustee on or about the date of this agreement;

(d) the execution and performance of this agreement do not conflict with or result in a breach of any provision of the memorandum or articles of association of JHI or any provision of any applicable law in force on the date of this agreement or any deed to which JHI is a party, or on the SE Transformation Date or the Irish Registration Date;

(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 JHI under this agreement;

(f) the Parent Guarantee as amended by this agreement constitutes legal, valid and binding obligations of JHI, enforceable in accordance with their terms subject to the terms of the opinion from Arthur Cox delivered to the NSW Government and the Fund Trustee on or about the date of this agreement;

(g) the performance of the Parent Guarantee as amended by this agreement does not conflict with or result in a breach of any provision of the memorandum or articles of association of JHI or any provision of any applicable law in force on the date of this agreement;

(h) 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 JHI under the Parent Guarantee as amended by this agreement; and

(i) without limiting paragraphs (e) and (g) above, Dutch law does not preclude or otherwise prejudice the agreement of JHI as a Dutch company to the Irish Registration Date amendments set out in Schedule 1, which will only take effect on the Irish Registration Date.

JHI warrants as at the Irish Registration Date, the performance of the Parent Guarantee as amended by this agreement does not conflict with or result in a breach of any provision of the memorandum or articles of association of JHI or any provision of any applicable law in force on the Irish Registration Date.

5 Costs

Each party shall be responsible for its own costs, charges and expenses in connection with the preparation, negotiation and execution of this agreement.

6 General

Clause 5 (“Notices”) of the Parent Guarantee applies to this agreement as if it was fully set out in this agreement.

7 Counterparts

This agreement may consist of a number of copies each signed by one or more parties to the deed. If so, the signed copies are treated as making up the one document.

8 Governing law

This agreement is governed by the law in force in the Netherlands, with the exception of the Netherlands private international law. Any dispute arising out

of or in connection with this agreement shall be exclusively decided by the competent court in Amsterdam.

EXECUTED as an agreement.

Amending Agreement — Parent Guarantee

Schedule 1 — Irish Registration Date Amendments

The Parent Guarantee is amended as follows:

1 The definition of "Final Funding Agreement" in clause 1 ("Interpretation") is amended by inserting the words ", as amended from time to time" after the word Agreement in the third line.

2 Clause 2.4 ("Guarantee") is amended by deleting the sentence "This Guarantee is not a contract of surety (*borgtocht*)." and replacing it with the following sentence:

> "The liability of the Guarantor under this Guarantee shall be as sole and primary obligor and not merely as surety and the Guarantor hereby waives all and any of its rights as surety which may at any time be inconsistent with any of the provisions of this Guarantee.".

3 Clause 2.7 ("Guarantee") is amended by inserting the words ", insolvency, winding-up, dissolution, examinership, the granting of court protection, administration, composition or arrangement" after the words "moratorium of payment" in the fifth line.

4 Clause 2.9(a) ("Guarantee") is amended by inserting the words "insolvency, dissolution, examinership, the granting of court protection, administration, composition or arrangement," after the words "winding-up" in the first line.

5 Clause 3.2 ("Enforcement") is amended by deleting the word "(*verzuim*)" in the fourth line and replacing it with "in respect of the making of such Annual Payment".

6 Clause 3.3(b) ("Enforcement") is amended by:

- deleting the word "a" in the first line and replacing it with "any insolvency,"; and
- inserting the words "examinership, the granting of court protection, administration, composition or arrangement," after the words "winding-up" in the second line.

7 Clause 3.4 ("Enforcement") is amended by deleting the words "(*kort geding*)" in the third line.

8 Clause 3.5 ("Enforcement") is amended by:

- deleting the word "*(verrekening),*" in the first line and replacing it with "or"; and
- deleting the words "or suspension (*opschorting*)".

9 Clause 3.6 is deleted and replaced with "[intentionally blank]".

10 Clause 3.7(a)(i) ("Enforcement") is deleted and replaced with the following:

"(i) proceed against or exhaust or enforce any security held from the Performing Subsidiary, any other guarantor or any other Person or make or file any proof of claim in any insolvency proceedings relative to the Performing Subsidiary, any other guarantor or any other person,".

11 Clause 3.7(a)(iii) ("Enforcement") is amended by deleting the word "Guarantee" in the first line and replacing it with the word "Fund".

12 Clause 3.7(d) ("Enforcement") is amended by inserting a new sub-paragraph (iii) as follows (and re-numbering sub-paragraph (iii) as sub-paragraph (iv) accordingly):

"(ii) the right to interpose any defence based upon any claim of laches or set-off or counterclaim of any nature or description;".

13 Insert a new clause 3.8 as follows:

"3.8 The Guarantor confirms to the Fund Trustee and the NSW Government that neither the Fund Trustee nor the NSW Government need advise the Guarantor of any default by the Performing Subsidiary in respect of the Guaranteed Obligations."

14 Clause 5.1 is amended by replacing the existing address details for the NSW Government and the Guarantor with the following:

"**To the NSW Government:**

Name:	The State of New South Wales, c/- Department of Premier and Cabinet
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 S.E.
Address:	c/- Arthur Cox, Earlsfort Centre, Earlsfort Terrace, Dublin 2, Ireland
Fax number:	+35 3 618 0618
and	
	Level 3, 22 Pitt Street, Sydney, NSW 2000
Fax number:	+61 2 8274 5218
Attention:	General Counsel"

15 Clause 6.4 ("NSW Government's right to enforce") is deleted.

16 Clause 7 ("Choice of law and jurisdiction") is deleted and replaced with the following:

"7. **CHOICE OF LAW AND JURISDICTION**

7.1 This Guarantee shall be governed by and construed in accordance with the laws of Ireland.

7.2 The courts of Ireland have exclusive jurisdiction to settle any dispute arising out of or in connection with this Guarantee (including a dispute regarding the existence, validity or termination of this Guarantee) (a "**Dispute**").

7.3 The parties hereto agree that the courts of Ireland are the most appropriate and convenient courts to settle Disputes and accordingly no party hereto will argue to the contrary.

7.4 This clause 7 is for the benefit of each of the Fund Trustee and the NSW Government. As a result, each of the Fund Trustee and the NSW Government shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, each of the Fund Trustee and the NSW Government may take concurrent proceedings in any number of jurisdictions."

17 Insert a new clause 9 as follows:

"9. **RULE AGAINST PERPETUITIES**

Nothing in this Guarantee shall authorise or permit the postponement of any estate or interest arising under the trusts created in this Guarantee from vesting outside the perpetuity period. In this context "perpetuity period" means the period commencing on the date of this Guarantee and ending on the expiration of 21 years from the date of the death of the last survivor of the descendants now living of the President of Ireland, Mary McAleese."

Amending Agreement — Parent Guarantee

Signing page

DATED: 23 June **2009**

SIGNED by The Honourable John Hatzistergos MLC Attorney-General of New South Wales

for **THE STATE OF NEW SOUTH WALES** in the presence of:

/s/ Leigh Rae Sanderson
Signature of witness

Leigh Rae Sanderson
Name of witness (block letters)

/s/ John Hatzistergos
Signature

Attorney General
Office of Signatory

EXECUTED by **ASBESTOS INJURIES COMPENSATION FUND LIMITED** in accordance with section 127(1) of the Corporations Act 2001 (Cwlth) by authority of its directors:

/s/ Joanne Marchione
Signature of director

Joanne Marchione
Name of director (block letters)

/s/ Dallas Booth
Signature of company secretary*
*delete whichever is not applicable

Dallas Booth
Name of company secretary* (block letters)
*delete whichever is not applicable

EXECUTED by

Marin Firek and Sean O' Sullivan
as an authorised signatory for, and
SEALED AND DELIVERED as a deed by,
JAMES HARDIE INDUSTRIES N.V. in
the presence of:

/s/ Timothy William Blue
Signature of witness

Timothy William Blue
Name of witness (block letters)

/s/ Marcin Firek
By executing this agreement the signatory states that the signatory has received no notice of revocation of the authority under which the signatory signs this agreement

Attorney
Position

/s/ Sean O' Sullivan
By executing this agreement the signatory states that the signatory has received no notice of revocation of the authority under which the signatory signs this agreement

Attorney
Position

MALLESONS STEPHEN JAQUES

Amending Deed — Intercreditor Deed

Dated 23 June 2009

Asbestos Injuries Compensation Fund Limited in its capacity as trustee for the Charitable Fund ("**Fund Trustee**")
The State of New South Wales ("**NSW Government**")
James Hardie Industries N.V. ("**JHINV**")
AET Structured Finance Services Pty Limited ("**Guarantee Trustee**")

Mallesons Stephen Jaques
Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney
www.mallesons.com
Ref: 02-5501-6101

Amending Deed — Intercreditor Deed
Contents

Amending Deed — Intercreditor Deed

Details

Parties	**Fund Trustee, NSW Government, JHINV** and the **Guarantee Trustee**	
Fund Trustee	Name	**Asbestos Injuries Compensation Fund Limited** a company limited by guarantee incorporated under the laws of the State of New South Wales, Australia, in its capacity as trustee of the Charitable Fund established under the Amended and Restated Trust Deed dated 14 December 2006 between it as trustee and JHINV
	ACN	117 363 461
	Address	Level 7, 233 Castlereagh Street, Sydney NSW 2000
NSW Government	Name	**The State of New South Wales**
	Address	c/- Department of Premier and Cabinet, Level 39, Governor Macquarie Tower, 1 Farrer Place, Sydney, NSW, 2000
JHINV	Name	**James Hardie Industries N.V.** a limited liability company incorporated in The Netherlands
	ARBN	097 829 895
	Address	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)
Guarantee Trustee	Name	**AET Structured Finance Services Pty Ltd** in its capacity as trustee for the Financiers under the Guarantee Trust
	ABN	12 106 424 088
	Address	Level 22, 207 Kent Street, Sydney, NSW, 2000
Recitals	The Fund Trustee, NSW Government, JHINV and the Guarantee Trustee are parties to the Intercreditor Deed and wish to amend the Intercreditor Deed on the terms set out in this deed.	
Date of Amending Deed	June 2009	

Amending Deed — Intercreditor Deed

General terms

1 Interpretation

These meanings apply unless the contrary intention appears:

Intercreditor Deed means the document entitled "Intercreditor Deed" dated 19 December 2006 between the NSW Government, JHINV, the Fund Trustee and the Guarantee Trustee.

Irish Registration Date means the date on which JHISE is registered by the Registrar of Companies of Ireland as having its registered office in Ireland.

JHISE means JHINV once it has converted from its present corporate form as a Dutch NV (*Naamloze Vernootschap*) into an SE (*Societas Europaea*).

SE Transformation Date means the date on which JHINV is registered as a "*Societas Europaea*" on the Dutch Trade Register pursuant to European Union Council Regulation 2157/2001.

2 Confirmations and acknowledgement

2.1 Confirmation in relation to definition of "JHINV"

Each party confirms that the definition of "JHINV" for the purposes of the Intercreditor Deed is a reference to:

(a) with effect on and from the SE Transformation Date up to the Irish Registration Date, JHISE with its corporate seat in the Netherlands; and

(b) with effect on and from the Irish Registration Date, JHISE with its corporate seat in the Republic of Ireland.

2.2 Confirmation

Each party confirms that, other than as provided for in clause 3 ("Amendments"):

(a) it is bound by and will continue to be bound by the Intercreditor Deed; and

(b) the Intercreditor Deed remains in full force and effect and enforceable against it,

up to, including and after each of the SE Transformation Date and the Irish Registration Date.

2.3 Conflict

If there is a conflict between the Intercreditor Deed and this deed, the terms of this deed prevail.

2.4 Consideration

This deed is entered into in consideration of the parties' exchange of promises under this deed and the receipt of valuable consideration which is hereby acknowledged.

3 Amendments

As from the Irish Registration Date, the Intercreditor Deed is amended as set out in schedule 1.

4 Costs

Each party shall be responsible for its own costs, charges and expenses in connection with the preparation, negotiation and execution of this deed.

5 General

Clause 11 ("Notices") of the Intercreditor Deed applies to this deed as if it was fully set out in this deed.

6 Counterparts

This deed may consist of a number of copies each signed by one or more parties to the deed. If so, the signed copies are treated as making up the one document.

7 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 and waives any right to claim that those courts are an inconvenient forum.

8 Guarantee Trustee limitation of liability

Clause 15 ("Guarantee Trustee limitation of liability") of the Intercreditor Deed applies to this deed as if fully set out in this deed.

EXECUTED as an deed.

Amending Deed — Intercreditor Deed

Schedule 1 — Irish Registration Date Amendments

The Intercreditor Deed is amended as follows:

- Clause 3.4 ("Status and ranking of the Compensation Debt") is amended by:
  - deleting the words "(*concurrente vordering*)" in paragraph (a); and
  - deleting paragraph (c) and replacing it with "[intentionally blank]".
- Schedule 1 ("Financier Nomination Letter") is amended by:
  - deleting the words "(*concurrente vordering*)" in paragraph (a); and
  - deleting paragraph (c) and replacing it with "[intentionally blank]".
- The definition of "Business Day' in clause 1 of Attachment A is amended by deleting the words "Amsterdam, The Netherlands" and replacing them with "Dublin, the Republic of Ireland".
- Deleting the definition of "Insolvency Official" in clause 1 of attachment A and replacing it with the following:

  "**Insolvency Official** means a custodian, receiver and manager, trustee, liquidator, provisional liquidator, administrator, examiner or any other officer appointed in connection with the Insolvency of JHINV and includes, without limitation:

  (a) a receiver, an examiner and a liquidator appointed under Irish 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 in respect of the Insolvency of JHINV."
- The definition of "Insolvent" in clause 1 of Attachment A is amended by deleting paragraph (b) and replacing it with the following paragraph:

  "(b) was established under Irish law and files a petition with any court in the Republic of Ireland in relation to its liquidation, the bringing forward of a scheme of arrangement or the appointment of an examiner;".
- The definition of "Reconstruction Event" in clause 1 of Attachment A is amended by deleting paragraph (c) and replacing it with the following paragraph:

"(c) a filing of a petition for the appointment of an examiner or the bringing forward of a scheme of arrangement under Irish law;".

- Deleting the definition of "Trust Convention" in clause 1 of Attachment A.
- The definition of "Wind-Up Event" in clause 1 of Attachment A is amended by deleting paragraphs (d) and (e) and replacing them with the following paragraphs:

  "(d) the dissolution of such Person under Irish law or the law of any other jurisdiction;

  (e) [intentionally blank];".
- Clause 2(f)(ix) ("Interpretation") of Attachment A is amended by deleting the words "Dutch law" on the second line and replacing them with "Irish law".
- Deleting clause 3 ("Trust Convention") of Attachment A.

Amending Deed — Intercreditor Deed

Signing page

DATED: 23 June 2009

SIGNED, SEALED AND DELIVERED by The Honourable John Hatzistergos MLC Attorney-General of New South Wales for **THE STATE OF NEW SOUTH WALES** in the presence of:

/s/ Leigh Rae Sanderson
Signature of witness

Leigh Rae Sanderson
Name of witness (block letters)

/s/ John Hatzistergos
Signature

Attorney General
Office of Signatory

EXECUTED by **ASBESTOS INJURIES COMPENSATION FUND LIMITED** in accordance with section 127(1) of the Corporations Act 2001 (Cwlth) by authority of its directors:

/s/ Joanne Marchione
Signature of director

Joanne Marchione
Name of director (block letters)

/s/ Dallas Booth
Signature of company secretary*
*delete whichever is not applicable

Dallas Booth
Name of company secretary* (block letters)
*delete whichever is not applicable

EXECUTED by

Marin Firek and Sean O' Sullivan
as an authorised signatory for, and
SEALED AND DELIVERED as a
deed by, **JAMES HARDIE**
INDUSTRIES N.V. in the presence of:
Signature of witness
Name of witness (block letters)

/s/ Timothy William Blue
Signature of witness

Timothy William Blue
Name of witness (block letters)

/s/ Marcin Firek

By executing this deed the signatory states that the signatory has received no notice of revocation of the authority under which the signatory signs this deed

Attorney
Position

/s/ Sean O' Sullivan

By executing this deed the signatory states that the signatory has received no notice of revocation of the authority under which the signatory signs this deed

Attorney
Position

The Common Seal of AET Structured Finance Services Pty Limited
ABN 12 106 424 088 was affixed with the authority of:

(signed)

(print name)

Authorised Officer

(signed)

(print name)

Authorised Officer

MALLESONS STEPHEN JAQUES

Amending Deed — Performing Subsidiary Intercreditor Deed

Dated 23 June 2009

Asbestos Injuries Compensation Fund Limited in its capacity as trustee for the Charitable Fund ("**Fund Trustee**")
The State of New South Wales ("**NSW Government**")
James Hardie 117 Pty Limited (formerly known as LGTDD Pty Limited) ("**JH117**")
AET Structured Finance Services Pty Limited ("**Guarantee Trustee**")

Mallesons Stephen Jaques
Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
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DX 113 Sydney
www.mallesons.com
Ref: 02-5501-6101

Amending Deed — Performing Subsidiary Intercreditor Deed

Contents

Amending Deed — Performing Subsidiary Intercreditor Deed
Details

Parties	**Fund Trustee, NSW Government, JH117** and the **Guarantee Trustee**	
Fund Trustee	Name	**Asbestos Injuries Compensation Fund Limited** a company limited by guarantee incorporated under the laws of the State of New South Wales, Australia, in its capacity as trustee for the CharitableFund established under the Amended and Restated Trust Deed dated 14 December 2006 between it as trustee and JHINV
	ACN	117 363 461
	Address	Level 7, 233 Castlereagh Street, Sydney NSW 2000
NSW Government	Name	**The State of New South Wales**
	Address	c/- Department of Premier and Cabinet, Level 39, Governor Macquarie Tower, 1 Farrer Place, Sydney, NSW, 2000
JH117	Name	**James Hardie 117 Pty Limited**
	ABN	30 116 110 948
	Address	Level 3, 22 Pitt Street, Sydney in the State of New South Wales
Guarantee Trustee	Name	**AET Structured Finance Services Pty Ltd** in its capacity as trustee for the Financiers under the Guarantee Trust
	ABN	12 106 424 088
	Address	Level 22, 207 Kent Street, Sydney, NSW, 2000
Recitals	The Fund Trustee, NSW Government, JH117 and the Guarantee Trustee are parties to the Performing Subsidiary Intercreditor Deed and wish to amend the Performing Subsidiary Intercreditor Deed on the terms set out in this deed.	
Date of Amending Deed	June 23 2009	

Amending Deed — Performing Subsidiary Intercreditor Deed
General terms

1 Interpretation

These meanings apply unless the contrary intention appears:

Irish Registration Date means the date on which JHISE is registered by the Registrar of Companies of Ireland as having its registered office in Ireland.

JHINV means James Hardie Industries N.V. (ARBN 097 829 895).

JHISE means JHINV once it has converted from its present corporate form as a Dutch NV (*Naamloze Vernootschap*) into an SE (*Societas Europaea*).

Performing Subsidiary Intercreditor Deed means the document entitled "Performing Subsidiary Intercreditor Deed" dated 19 December 2006 between the NSW Government, the Fund Trustee, JH117 and the Guarantee Trustee.

SE Transformation Date means the date on which JHINV is registered as a "*Societas Europaea*" on the Dutch Trade Register pursuant to the European Union Council Regulation 2157/2001.

2 Confirmations and acknowledgement

2.1 Confirmation in relation to definition of "JHINV"

Each party confirms that the definition of "JHINV" for the purposes of the Performing Subsidiary Intercreditor Deed is a reference to:

(a) with effect on and from the SE Transformation Date up to the Irish Registration Date, JHISE with its corporate seat in the Netherlands; and

(b) with effect on and from the Irish Registration Date, JHISE with its corporate seat in the Republic of Ireland.

2.2 Confirmation

Each party confirms that, other than as provided for in clause 3 ("Amendments"):

(a) it is bound by and will continue to be bound by the Performing Subsidiary Intercreditor Deed; and

(b) the Performing Subsidiary Intercreditor Deed remains in full force and effect and enforceable against it,

up to, including and after each of the SE Transformation Date and the Irish Registration Date.

2.3 Conflict

If there is a conflict between the Performing Subsidiary Intercreditor Deed and this deed, the terms of this deed prevail.

2.4 Consideration

This deed is entered into in consideration of the parties' exchange of promises under this deed and the receipt of valuable consideration which is hereby acknowledged.

3 Amendments

As from the Irish Registration Date, the Performing Subsidiary Intercreditor Deed is amended as set out in schedule 1.

4 Costs

Each party shall be responsible for its own costs, charges and expenses in connection with the preparation, negotiation and execution of this deed.

5 General

Clause 11 ("Notices") of the Performing Subsidiary Intercreditor Deed applies to this deed as if it was fully set out in this deed.

6 Counterparts

This deed may consist of a number of copies each signed by one or more parties to the deed. If so, the signed copies are treated as making up the one document.

7 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 and waives any right to claim that those courts are an inconvenient forum.

8 Guarantee Trustee limitation of liability

Clause 15 ("Undertaking and Guarantee Trustee limitation of liability") of the Performing Subsidiary Intercreditor Deed applies to this deed as if fully set out in this deed.

EXECUTED as an deed.

Amending Deed — Performing Subsidiary Intercreditor Deed
Schedule 1 — Irish Registration Date Amendments

The Performing Subsidiary Intercreditor Deed is amended as follows:

- Clause 1 of Attachment A is amended by deleting the definition of "Insolvency Official" and replacing it with the following:

  "**Insolvency Official** means a custodian, receiver, receiver and manager, trustee, liquidator, provisional liquidator, administrator, examiner or any other officer appointed in connection with the Insolvency of the Performing Subsidiary".

- The definition of "Insolvent" in clause 1 of Attachment A is amended by deleting paragraph (b) and replacing it with the following paragraph:

  "(b) was established under Irish law and files a petition with any court in the Republic of Ireland in relation to its liquidation, the bringing forward of a scheme of arrangement or the appointment of an examiner;".

- The definition of "Reconstruction Event" in clause 1 of Attachment A is amended by deleting paragraph (c) and replacing it with the following paragraph:

  "(c) a filing of a petition for the appointment of an examiner or the bringing forward of a scheme of arrangement under Irish law;".

- The definition of "Wind-Up Event" in clause 1 of Attachment A is amended by deleting paragraphs (d) and (e) and replacing them with the following paragraphs:

  "(d) the dissolution of such Person under Irish law or the law of any other jurisdiction;

  (e) [intentionally blank];".

DATED: _____ 2009

SIGNED, SEALED AND DELIVERED by The Honourable John Hatzistergos MLC Attorney-General of New South Wales for **THE STATE OF NEW SOUTH WALES** in the presence of:	)	
_____ Signature of witness	)	_____ Signature
_____ Name of witness (block letters)	)	_____ Office of Signatory
EXECUTED by **ASBESTOS INJURIES COMPENSATION FUND LIMITED** in accordance with section 127(1) of the Corporations Act 2001 (Cwlth) by authority of its directors:	)	
_____ Signature of director	)	_____ Signature of director/company secretary* *delete whichever is not applicable
_____ Name of director (block letters)	)	_____ Name of director/company secretary* (block letters) *delete whichever is not applicable

EXECUTED by

as an authorised signatory for, and

SEALED AND DELIVERED as a deed by, **JAMES HARDIE INDUSTRIES N.V.** in the presence of:

Signature of witness

Name of witness (block letters)

By executing this deed the signatory states that the signatory has received no notice of revocation of the authority under which the signatory signs this deed

Position

By executing this deed the signatory states that the signatory has received no notice of revocation of the authority under which the signatory signs this deed

Position

EXECUTED by **JAMES HARDIE 117 PTY LIMITED** in accordance with section 127(1) of the Corporations Act 2001 (Cwlth) by authority of its directors:

Signature of director

Name of director (block letters)

Signature of director/company secretary*
*delete whichever is not applicable

Name of director/company secretary* (block letters)
*delete whichever is not applicable

DATED: **2009**

SIGNED, SEALED AND DELIVERED by The Honourable John Hatzistergos MLC Attorney-General of New South Wales for **THE STATE OF NEW SOUTH WALES** in the presence of:	)	
/s/ Leigh Rae Sanderson	)	/s/ John Hatzistergos
Signature of witness	)	Signature
Leigh Rae Sanderson	)	Attorney General
Name of witness (block letters)	)	Office of Signatory
EXECUTED by **ASBESTOS INJURIES COMPENSATION FUND LIMITED** in accordance with section 127(1) of the Corporations Act 2001 (Cwlth) by authority of its directors:	)	
/s/ Joanne Marchione	)	/s/ Dallas Booth
Signature of director	)	Signature of company secretary* *delete whichever is not applicable
Joanne Marchione	)	Dallas Booth
Name of director (block letters)	)	Name of company secretary* (block letters) *delete whichever is not applicable

EXECUTED by **JAMES HARDIE 117 PTY LIMITED** in accordance with section 127(1) of the Corporations Act 2001 (Cwlth) by authority of its directors:

/s/ Bruce Potts	)	/s/ Marcin Firek
Signature of director	)	Signature of /company secretary*
	)	*delete whichever is not applicable
Bruce Potts	)	Marcin Firek
Name of director (block letters)	)	Name of /company secretary* (block letters)
	)	*delete whichever is not applicable

The Common Seal of AET Structured Finance Services Pty Limited ABN 12 106 424 088 was affixed with the authority of:

(signed)

(print name)

Authorised Officer

(signed)

(print name)

Authorised Officer

Amending Agreement — Parent Guarantee

Details

Parties	**AICF, NSW Government** and **JHINV**	
AICF	Name	**Asbestos Injuries Compensation Fund Limited** a company limited by guarantee incorporated under the laws of the State of New South Wales, Australia, in its capacity as trustee for the Charitable Fund established under the Amended and Restated Trust Deed dated 14 December 2006 between it as trustee and JHINV
	ACN	117 363 461
	Address	Level 7, 233 Castlereagh Street Sydney New South Wales, 2000
NSW Government	Name	**The State of New South Wales**
	Address	c/- Department of Premier and Cabinet, Level 39, Governor Macquarie Tower, 1 Farrer Place, Sydney, NSW, 2000
JHINV	Name	**James Hardie Industries N.V.** a limited liability company incorporated in The Netherlands
	ARBN	097 829 895
	Address	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)
Recitals	AICF, NSW Government and JHINV are parties to the Parent Guarantee and wish to amend the Parent Guarantee on the terms set out in this agreement.	
Date of Amending Deed	23 June 2009	

Amending Agreement — Parent Guarantee

General terms

1 Interpretation

These meanings apply unless the contrary intention appears:

Irish Registration Date means the date on which JHISE is registered by the Registrar of Companies of Ireland as having its registered office in Ireland.

JHI means:

(a) prior to the SE Transformation Date, JHINV;

(b) with effect on and from the SE Transformation Date up to the Irish Registration Date, JHISE with its corporate seat in the Netherlands; and

(c) with effect on and from the Irish Registration Date, JHISE with its corporate seat in the Republic of Ireland.

JHISE means JHINV once it has converted from its present corporate form as a Dutch NV (*Naamloze Vernootschap*) into an SE (*Societas Europaea*).

Parent Guarantee means the Guarantee dated 14 December 2006 between AICF, the NSW Government and JHINV.

SE Transformation Date means the date on which JHINV is registered as a "*Societas Europaea*" on the Dutch Trade Register pursuant to European Union Council Regulation 2157/2001.

2 Confirmations and acknowledgement

2.1 Confirmation in relation to definition of "Guarantor"

Each party confirms that the definition of "Guarantor" for the purposes of the Parent Guarantee is a reference to:

(a) with effect on and from the SE Transformation Date up to the Irish Registration Date, JHISE with its corporate seat in the Netherlands; and

(b) with effect on and from the Irish Registration Date, JHISE with its corporate seat in the Republic of Ireland.

2.2 JHI Confirmation

JHI confirms that, other than as provided for in clause 3 ("Amendments"), the Parent Guarantee remains in full force and effect and enforceable against it up to, including and after each of the SE Transformation Date and the Irish Registration Date.

EXHIBIT 21

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.

Name of Company	Jurisdiction of Establishment
James Hardie 117 Pty Ltd.	Australia
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 Australia Finance	Australia
James Hardie Building Products Inc.	United States
James Hardie Europe B.V.	Netherlands
James Hardie Holdings Limited	Ireland
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 Finance Limited	Ireland
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 Research Pty Ltd	Australia
James Hardie U.S. Investments Sierra Inc.	United States
JHCBM plc.	Ireland
JHIHCBM plc.	Ireland
N.V. Technology Holdings A Limited Partnership	Australia
RCI Pty Ltd.	Australia

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in this Registration Statement on Form F-4 of our report dated June 27, 2008 relating to the financial statements and the effectiveness of internal control over financial reporting, which appears in James Hardie Industries N.V.'s Annual Report on Form 20-F for the year ended March 31, 2008. We also consent to the references to us under the headings "Experts" and "Selected Financial Data" in such Registration Statement.

/s/ PricewaterhouseCoopers LLP
PricewaterhouseCoopers LLP
Los Angeles, California
June 19, 2009

Exhibit 24.1

POWER OF ATTORNEY

Each person whose signature appears below hereby constitutes and appoints Russell Langtry Chenu, Robert Ernest Cox and Paul Bokota, or any of them, his true and lawful attorney-in-fact and agent with full power of substitution and resubstitution, for him in his name, place and stead, in any and all capacities, to execute a registration statement on Form F-4 relating to the registration of Ordinary Shares, a registration statement on Form F-6 relating to the registration of American Depositary Shares of James Hardie Industries SE and a registration statement on Form S-8 relating to the registration of securities offered to employees and directors pursuant to employee benefit plans and to sign any and all amendments and supplements to such registration statements, including post-effective amendments, and any additional registration statement pursuant to Rule 462(b) under the Securities Act of 1933 and other instruments necessary or appropriate in connection therewith, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, and hereby grants to such attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary or desirable to be done, and to take or cause to be taken any and all such further actions in connection with such registration statements as such attorney-in-fact and agent, in his sole discretion, deems necessary or appropriate, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent or his substitute or substitutes may lawfully do or cause to be done by virtue hereof.

This power of attorney has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Louis Gries Louis Gries	Chief Executive Officer and Managing Board Director	June 23, 2009
/s/ Russell Chenu Russell Chenu	Chief Financial Officer, Principal Accounting Officer/Controller and Managing Board Director	June 23, 2009
/s/ Michael N. Hammes Michael N. Hammes	Chairman and Joint and Supervisory Board Director	June 23, 2009
/s/ Donald McGauchie AO Donald McGauchie AO	Deputy Chairman and Joint and Supervisory Board Director	June 23, 2009
/s/ Brian Anderson Brian Anderson	Joint and Supervisory Board Director	June 23, 2009
/s/ David Harrison David Harrison	Joint and Supervisory Board Director	June 23, 2009

Signature	Title	Date
/s/ Rudy van der Meer Rudy van der Meer	Joint and Supervisory Board Director	June 23, 2009
/s/ James Osborne James Osborne	Joint and Supervisory Board Director	June 23, 2009
/s/ Robert E. Cox Robert E. Cox	Managing Board Director	June 23, 2009

Excerpts of the ASX Settlement and Transfer Corporation
Pty Ltd as of March 31, 2009
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;

(b) the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook; and

(c) the Corporations Act.

To the extent of any inconsistency between these Rules and the Procedures, these Rules will prevail.

Introduced 11/03/04 Amended 31/3/08

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

1.2.5 Australian Securities Exchange Disciplinary Processes and Appeals Rulebook

The Australian Securities Exchange Disciplinary Processes and Appeals Rulebook form part of these Rules for the purposes of the Corporations Act.

Introduced 31/3/08

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

Section 2 DEFINITIONS AND INTERPRETATION

This Section contains the definitions and sets out a number of general principles by which these Rules are to be interpreted.

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, and whether or not 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, and whether or not 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 deemed to have been engaged in also by the person.

Introduced 11/03/04 Origin SCH 21.3.2 Amended 31/03/08

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 and whether or not the conduct was 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 Amended 31/03/08

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

2.7.2 References to Australian Stock Exchange Limited

All references to 'Australian Stock Exchange Limited' in the Rules, Procedures, appendices, schedules, guidance notes, circulars, notices, bulletins, explanatory memoranda and other communications issued or made by ASTC under the Rules are as and from 5 December 2006 taken to be references to 'ASX Limited'.

Introduced 20/07/07

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 CHESS 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 CHESS 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 CHESS 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 CHESS 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.

"Alternative Settlement Facility" means a CS Facility which, in the opinion of ASTC, has:

(a) adequate rules or procedures relating to the operation of the facility, including effective risk management procedures;

(b) adequate arrangements for supervision and regulation of the facility; and

(c) sufficient resources to conduct the facility and perform its supervisory and regulatory functions.

Introduced 18/12/06

"Appeal" means an appeal in accordance with the provisions of the Australian Securities Exchange Disciplinary Processes and Appeals Rulebook.

Amended 31/03/08

"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 determines and who is appointed by the Managing Director of ASTC.

Amended 18/12/06

"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 ASX Limited (ABN 98 008 624 691).

Amended 20/07/07

"ASX Group" means ASX and its subsidiaries and controlled entities.

"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 CHESS 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 CHESS 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 1996,

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 CHESS 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 CHESS 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 CHESS Subregister of Holders of CDIs; or

(b) with the consent of ASTC, a CHESS Subregister of Holders of CDI.

Note: ASTC may consent to a CDI Register consisting of a CHESS 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.

"CHESS" 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, Transfering 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 CHESS which may affect the balance of a CHESS 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 CHESS Holding, means the Participant that has the capacity in CHESS 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 Depositary 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 Depositary Nominee.

"CS Facility" means a CS facility licensed as such under the Corporations Act or a Foreign Clearing House.

"CUFS" stands for CHESS 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 Depositary 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 CHESS Holdings or CHESS 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) CHESS Depositary Nominees Pty Ltd (as long as it remains admitted to participate in CHESS 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 CHESS 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 CHESS 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 CHESS 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 CHESS 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 Depositary Nominee as the date by reference to which the Depositary 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 CHESS.

"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 Depositary Interest and which comprises a beneficial interest or Other Interest in a Participating International Financial Product held by a Depositary 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 Depositary Nominee records or removes FDIs in the FDI Register, as the case requires.

"Feeder System" in relation to CHESS, 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 CHESS 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 operating rules of an Approved Market Operator, where the Residency Indicator of both the Source and Target Holdings is "F", thus resulting in a Holding of Confirmed FOR Financial Products.

Amended 18/12/06

"Full Download" in relation to the CHESS 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 CHESS Subregister; and

(b) link the Holding details maintained on the CHESS 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 CHESS for the purpose of operating one or more CHESS 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 CHESS 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 CHESS 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 CHESS Holding pursuant to a new issue of Approved Financial Products;

(c) move Financial Products from a CHESS Holding for the purpose of Divestment or forfeiture; or

(d) move Financial Products to or from a CHESS 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 CHESS 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 CHESS 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.

"Marketable Parcel" means in relation to a Financial Product, the number determined by an Approved Market Operator to be a marketable parcel.

Introduced 18/12/06

"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 CHESS.

"Net Position Record" in relation to an RTGS Participant, means a facility established within CHESS 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 CHESS 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 CHESS 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 Participant" means:

(a) in relation to a group of Participants within paragraph (a) of the definition of 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 Participant Group, the Settlement Participant that is notified to ASTC by all the Participants within that group.

Amended 18/12/06

"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 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 written agreement with one or more Account Participants and each of those Account Participants with whom it has a written agreement.

Amended 18/12/06

"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 CHESS 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 CHESS 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 CHESS; 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 CHESS Participants on behalf of CHESS 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 CHESS Subregister; and

(b) included in a Message header to identify the source and/or destination of CHESS 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 given where applicable to Participants, Issuers and third party service providers in accordance with Rule 1.4 and, without limitation, includes any EIS and the ASTC Settlement Procedures as amended from time to time.

Amended 18/12/06

"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 CHESS, 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 CHESS; 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 CHESS 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 CHESS 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 CHESS set out in Rule 11.6.1; and

(b) has been admitted to participate in Real Time Gross Settlement in CHESS 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 CHESS 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 Depositary Nominee.

"Settlement Account" means a Holder Record maintained in CHESS 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 CHESS 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 CHESS Holdings or CHESS 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 CHESS by which in accordance with Rule 14.1.3:

(a) activity in relation to Financial Products held in a CHESS 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 CHESS Subregister or an Issuer Operated Subregister; or

(b) in the case of CDIs, a CDI Register.

"Surveillance Report" means a report generated by CHESS 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 CHESS 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 CHESS Holding pursuant to acceptance of an offer for the Financial Products made under a takeover scheme.

"Takeover Transferee Holding" means a CHESS 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 CHESS;

(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 CHESS 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 CHESS.

"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 CHESS Holding to any other Holding; or

(b) from any Holding to a CHESS 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 CHESS 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 CHESS 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 FDIs, or FDIs 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 CHESS 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;

(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, 20/07/07, 31/03/08

SECTION 8 HOLDING FINANCIAL PRODUCTS IN THE SETTLEMENT FACILITY

SECTION 8 HOLDING FINANCIAL PRODUCTS IN THE SETTLEMENT FACILITY

In order to participate in the Settlement Facility, an Issuer's Financial Products must be Approved by ASTC under these Rules. This Section sets out the requirements which Financial Products must satisfy in order to be Approved, including the Technical and Performance Requirements which an Issuer must satisfy and also contains provisions in relation to:

(a) suspension and revocation of Approval;

(b) establishing and dealing with Holdings of Financial Products and CHESS Subregisters; and

(c) other provisions affecting Holdings (such as confidentiality, Holding Locks, reporting, recording details, Corporate Actions and correction of errors).

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 CHESS 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 CHESS Subregister

Holdings that may be maintained on a CHESS 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 CHESS 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 CHESS; 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 CHESS 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 CHESS Holding as specified in the notification from ASTC.

Introduced 11/03/04 Origin SCH 5.4B

8.10 RESTRICTION ON CHESS HOLDINGS

8.10.1 Restrictions on number of joint holders

Unless permitted under an Issuer's constitution, a Participant must not establish a CHESS 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 CHESS 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 Amended 18/12/06

8.10.3 Equitable Interests

Unless required by these Rules or the law, ASTC need not record on the CHESS 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 CHESS Holding;

(b) the PID of the Controlling Participant of a CHESS 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 CHESS 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 CHESS Holder; or

(d) the PID of the Controlling Participant of the CHESS 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 CHESS 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 CHESS 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 CHESS Bidder; or

(iii) any agent that the bidder or the CHESS 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 CHESS Holding, including information in relation to deductions from or transfers to a CHESS 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 CHESS to CHESS 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 CHESS Holding, the date, as evidenced by the CHESS 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 CHESS SUBREGISTER TO REMAIN OPEN ON EACH BUSINESS DAY

8.13.1 ASTC to keep CHESS Subregister open and must process Messages

On any Business Day, ASTC:

(a) unless otherwise provided in these Rules, must not close a CHESS 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 CHESS 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 CHESS 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 CHESS 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 CHESS Subregister under Rule 8.14.2.

Introduced 11/03/04 Origin SCH 5.13.3 Amended 10/06/04

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 Depositary 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 Depositary Nominee; and

(c) record:

(i) the CDIs corresponding to the Principal Financial Products on the CHESS 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 CHESS 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 Depositary 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 Trust for holders of CDIs

When 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 Amended 17/03/08

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 Depositary Nominee on the Principal Register; and

(b) where applicable, it has one or more Certificates registered in the name of the Depositary Nominee in its possession which represent the same number of Principal Financial Products as are registered in the name of the Depositary 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 CHESS 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 CHESS 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

13.5A TERMINATION OI CDI HOLDING BY THE DEPOSITARY NOMINEE

13.5A.1 Termination of trust over Principal Financial Products

If approval of CDIs in respect of a class of Principal Financial Products is revoked by ASTC, the Depositary Nominee may, by resolution of its board of directors, revoke the trust under which it holds the Principal Financial Products on a date specified in the resolution. The Depositary Nominee must notify the affected Holders of CDIs of the revocation in accordance with the Procedures.

From the date of revocation specified in the resolution:

(a) the Depositary Nominee holds the Principal Financial Products and any other relevant property on trust for distribution to each Holder of CDIs and otherwise on the same terms as far as practicable as it held the Principal Financial Products and other relevant property before such revocation of trust;

(b) the Depositary Nominee may, in its absolute discretion, continue to hold on trust the Principal Financial Products and any other relevant property for any period determined by the Depositary Nominee instead of distributing that property to the Holder of CDIs and, in doing so, the Depositary Nominee will not be liable for any loss, cost, damage or expense suffered by the Holder of CDIs (except where such loss, cost, damage or expense is directly caused by the Depositary Nominee's actual fraud or dishonesty); and

(c) the Depositary Nominee may appoint a custodian or agent (including the Principal Issuer) for the purpose of holding Principal Financial Products and any other relevant property (including, without limitation, net proceeds referred to in Rule 13.5A.2(c)) or performing any of its duties relating to the distribution or holding of property or for any other purpose for which a trustee may appoint an agent.

Introduced 17/03/08

13.5A.2 Distribution of Principal Financial Products and power of sale

If a Depositary Nominee revokes the trust under which it holds a class of Principal Financial Products in accordance with Rule 13.5A.1:

(a) the Depositary Nominee may, in its absolute discretion, notify the affected Holders of CDIs in accordance with the Procedures of a procedure by which the Principal Financial Products and any other relevant property will be distributed to Holders;

(b) subject to any law or rule of any financial market where the Principal Financial Products are listed or quoted, the Principal Issuer must use all reasonable endeavours to assist the Depositary Nominee to distribute the Principal Financial Products and any other relevant property to Holders of CDIs in accordance with the procedure notified by the Depositary Nominee; and

(c) if the Depositary Nominee, after taking any steps specified in the Procedures, has been unable to distribute the Principal Financial Products and any other relevant property to a Holder of CDIs, then the Depositary Nominee may sell the Principal Financial Products and any other relevant property and hold the net proceeds on trust for distribution to the Holder of CDIs and may, after any period specified by law for holding unclaimed moneys, remit those monies to a regulatory authority in accordance with relevant law.

Introduced 17/03/08

13.5A.3 Exercise of power of sale

In exercising the power of sale in Rule 13.5A.2, the Depositary Nominee may do any of the following:

(a) sell, dispose of, transfer or otherwise deal with the Principal Financial Products and any other relevant property to any person including without limitation to an associate of any of the Principal Issuer, the Holder of CDIs or the Depositary Nominee;

(b) effect any sale by a single contract or in separate lots or parcels or in any other manner that the Depositary Nominee may in its absolute discretion think fit, with power to the Depositary Nominee to apportion the sale price and all costs, expenses, purchase money and fees between the Principal Financial Products so dealt with, provided the apportionment is fair and equitable;

(c) subject to any contrary rule of law or equity, allow a purchaser of the Principal Financial Products any time for payment of the whole or any part of the purchase money either with interest at any rate or without interest and either upon the security of the property sold or any part or upon any other security or without any security and the conditions of sale may include such special conditions as the Depositary Nominee may in its absolute discretion think fit;

(d) receive and retain the proceeds of any sale and issue receipts in respect of such proceeds; or

(e) sign deeds of sale with respect to the sale of any Principal Financial Product and any other relevant property, and execute any other documents as may be required to transfer the rights of such Principal Financial Products or any other relevant property.

Introduced 17/03/08

13A.5A.4 Limitation of liability

If a Depositary Nominee exercises the power of sale in accordance with this Rule 13.5A, the exercise of that power does not involve on the part of the Depositary Nominee:

(a) incurring any personal liability in connection with that exercise or its consequences unless it is committed, made or omitted in bad faith or as a result of negligence or wilful default; and

(b) any breach of duty or trust whatsoever, unless it is committed, made omitted in bad faith or as a result of negligence or wilful default.

Introduced 17/03/08

13.5A.5 Appointment of custodian or agent

If the Depositary Nominee appoints a custodian or agent in accordance with this Rule 13.5A, the following will apply to such appointment:

(a) the Depositary Nominee may in its absolute discretion appoint one or more persons whom the Depositary Nominee determines to be properly qualified to act as the custodian or agent in respect of the Principal Financial Products and any other relevant property (including, without limitation, net proceeds referred to in Rule 13.5A.2(c)) ("Relevant Property");

(b) the Depositary Nominee and the custodian or agent must execute a written agreement setting out the terms and conditions in relation to the appointment of the custodian or agent which provides among other things:

  (i) that the appointment of the custodian or agent will be subject to such conditions as the Depositary Nominee may from time to time determine, and the Depositary Nominee may delegate to and confer upon the appointed custodian or agent any authorities, powers and discretions as the Depositary Nominee sees fit;

  (ii) a representation from the custodian or agent to the Depositary Nominee that it has the skill, facilities, capacity and staff to carry out the duties of a custodian or agent;

  (iii) a representation that the custodian or agent agrees to follow any proper instructions or communications from the Depositary Nominee or any relevant regulatory authority in relation to the transfer, disposal or remittance of the Relevant Property;

  (iv) for such other matters that by law are required to be specified in the written agreement between the Depositary Nominee and the custodian or agent;

(c) any consideration or fees applying to the provision of custodian or agency services under this Rule 13.5A will be deducted from the Relevant Property by the custodian or agent (or as otherwise determined in accordance with the relevant custody or agency agreement referred to in this Rule 13.5A); and

(d) where the Depositary Nominee appoints a custodian or agent in accordance with this clause 13.5A, the exercise of that power does not involve on the part of the Depositary Nominee:

(i) incurring any personal liability in connection with that exercise or its consequences unless it is committed, made or omitted in bad faith or as a result of negligence or wilful default; and

(ii) any breach of duty or trust whatsoever unless it is committed, made or omitted in bad faith or as a result of negligence or willful default.

Introduced 17/03/08

13.6 CORPORATE ACTIONS

13.6.1 Application of Rules

The purpose of the following Rules is to ensure that, to the extent permitted by the laws of the Principal Issuer's jurisdiction of incorporation, 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, 17/03/08

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 Origin SCH 3A.6.4B Amended 04/04/05

13.6.7 Corporate Actions

(a) Subject to paragraph (d), 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 that result in:

(i) the issue of additional or replacement Financial Products in respect of the Principal Financial Products; or

(ii) the cancellation, buy back or other reduction in number by whatever means of the Principal Financial Products (whether in whole or part), as if each Holder of CDIs with respect to the Depositary Nominee's Holding is a Holder of a corresponding number of Principal Financial Products, so that the Holding of each Holder of CDIs is adjusted as a result of the Corporate Action (whether by issuing additional or replacement CDIs to Holders of CDIs, or by cancelling or otherwise reducing the number of CDIs in the existing Holdings of Holders of CDIs, as the case may be) 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.

(b) If the benefits conferred in the Corporate Action are additional or replacement Financial Products as described in paragraph (a)(i), the Principal Issuer must ensure that those Financial Products are vested in the Depositary 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.

(c) The Principal Issuer must ensure that the benefit of Corporate Actions is conferred on Holders of CDIs in proportions determined by the Transmutation Ratio.

(d) If:

(i) the laws of the Principal Issuer's jurisdiction of incorporation do not permit the Principal Issuer to administer a Corporate Action as if each Holder of CDIs with respect to the Depositary Nominee's Holding is the Holder of a corresponding number of Principal Financial Products in the manner described in paragraph (a); and

(ii) the Principal Issuer has:

(A) so notified ASTC in writing;

(B) given ASTC:

a. written details of an alternative proposal ("Alternative Proposal") under which the number of Principal Financial Products held by the Depositary Nominee (when adjusted in accordance with the Alternative Proposal), combined with any other benefits (if any) to be conferred on the Depositary

Nominee pursuant to the Alternative Proposal (such as cash), will result in each CDI Holder being placed as nearly as practicable in the same economic position as a result of the Corporate Action as if the Principal Issuer had administered the Corporate Action in the manner described in paragraph (a); or

b. if the laws of the Principal Issuer's jurisdiction of incorporation require the Corporate Action, so far as it concerns the Depositary Nominee and the Holders of CDIs with respect to the Depositary Nominee's Holding, to be administered having regard only to the Depositary Nominee's holding of Principal Financial Products at that time, to the exclusion of all other considerations, and such laws do not admit of any alternative proposal under which the interests of Holders of CDIs with respect to the Depositary Nominee's Holding may be taken into account (including, without limitation, by the payment of cash consideration in lieu of any additional CDIs to which the Holders of CDIs would have been entitled if the Principal Issuer had administered the Corporate Action in the manner described in paragraph (a)), a statement to that effect ("Statement");

(C) provided an undertaking to ASTC that it has disclosed the details of the Corporate Action (including details of any Alternative Proposal or Statement, as applicable) to Holders of CDIs in accordance with all applicable laws; and

(D) provided to ASTC any additional information or documents which ASTC requests for the purpose of evaluating the Corporate Action (as it affects CDI Holders) and the Alternative Proposal or Statement (as applicable) including, without limitation, a legal opinion satisfactory to ASTC confirming the matters referred to in paragraph (d)(i) and such other matters related to the Corporate Action and the Alternative Proposal or Statement (as applicable) as ASTC in its discretion may nominate; and

(iii) ASTC has confirmed in writing its acceptance of the Alternative Proposal or Statement (as applicable),

the Principal Issuer must ensure that:

(iv) the Corporate Action is administered in accordance with the Alternative Proposal or Statement (as applicable); and

(v) the Holding of each Holder of CDIs is adjusted as a result of the Corporate Action accordingly.

For the purpose of evaluating the Corporate Action (as it affects CDI Holders) and the Alternative Proposal or Statement (as applicable), and in confirming its acceptance of the Alternative Proposal or Statement (as applicable), ASTC relies and is entitled to rely on all information, opinions and other documents provided to it by the Principal Issuer. By confirming its acceptance of the Alternative Proposal or Statement (as applicable), ASTC does not and shall not be taken for any purpose to:

(vi) endorse, promote or otherwise support the Alternative Proposal or Statement;

(vii) express any view about the merits or the correctness of the legal and factual basis of the Alternative Proposal or Statement or any other matter connected with them; or

(viii) accept any liability in connection with the Corporate Action, Alternative Proposal or Statement.

For the purposes of this Rule 13.6.7, "Corporate Action" includes (but is not limited to) bonus issues, rights issues, mergers and reconstructions (including any action taken by a Principal Issuer to reduce (or that will have the effect of reducing) the number of Principal Financial Products held by a Depositary Nominee).

Introduced 11/03/04 Origin SCH 3A.6.6 Amended 06/06/05, 17/03/08

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 Depositary Nominee; and

(d) if a Holder of CDIs elects to receive financial products, issue Principal Financial Products to the Depositary 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 Depositary 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

(a) Subject to paragraph (b), if a Corporate Action would give Holders of CDIs a fractional entitlement to additional or replacement Principal Financial Products (if they held Principal Financial Products directly), the Principal Issuer must ensure that:

(i) the number of additional or replacement Principal Financial Products issued to the Depositary Nominee is calculated as if each Holder of CDIs with respect to the Depositary Nominee's Holding is a Holder of a corresponding number of Principal Financial Products; and

(ii) Holders of CDIs receive additional or replacement CDIs reflecting the entitlements so calculated.

(b) If:

(i) the laws of the Principal Issuer's jurisdiction of incorporation do not permit the Principal Issuer to calculate the number of additional or replacement Principal Financial Products issued to the Depositary Nominee in the manner described in paragraph (a)(i) and to ensure that Holders of CDIs receive additional or replacement CDIs reflecting the entitlements so calculated; and

(ii) the Principal Issuer has:

(A) so notified ASTC in writing;

(B) given ASTC:

a. written details of an alternative proposal ("Alternative Proposal") under which the number of additional or replacement Principal Financial Products issued to the Depositary Nominee, combined with any other benefits (if any) to be conferred on the Depositary Nominee pursuant to the Alternative Proposal (such as cash), will result in each CDI Holder receiving as nearly as practicable the same economic benefit as a result of the Corporate Action as if the number of additional or replacement Principal Financial Products issued to the Depositary Nominee had been calculated in the manner described in paragraph (a)(i) and the Principal Issuer had ensured that Holders of CDIs received additional or replacement CDIs reflecting the entitlements so calculated; or

b. if the laws of the Principal Issuer's jurisdiction of incorporation require the number of additional or replacement Principal Financial Products issued to the Depositary Nominee to be calculated having regard only to the Depositary Nominee's holding of Principal Financial Products at that time, to the exclusion of all other considerations, and such laws do not admit of any alternative proposal under which the interests of Holders of CDIs with respect to the Depositary Nominee's Holding may be taken into account (including, without limitation, by the payment of cash consideration in lieu of such additional or replacement CDIs as the Holders of CDIs would have received if the number of additional or replacement Principal Financial Products issued to the Depositary Nominee had been calculated in the manner described in paragraph (a)(i)), a statement to that effect ("Statement");

(C) provided an undertaking to ASTC that it has disclosed the details of the Corporate Action (including details of any Alternative Proposal or Statement, as applicable) to Holders of CDIs in accordance with all applicable laws; and

(D) provided to ASTC any additional information or documents which ASTC requests for the purpose of evaluating the Corporate Action (as it affects CDI Holders) and the Alternative Proposal or Statement (as applicable) including, without limitation, a legal opinion satisfactory to ASTC confirming the matters referred to in paragraph (b)(i) and such other matters related to the Corporate Action and the Alternative Proposal or Statement (as applicable) as ASTC in its discretion may nominate; and

(iii) ASTC has confirmed in writing its acceptance of the Alternative Proposal or Statement (as applicable),

the Principal Issuer must ensure that:

(iv) the number of additional or replacement Principal Financial Products issued to the Depositary Nominee is calculated in accordance with the Alternative Proposal or Statement (as applicable); and

(v) Holders of CDIs receive additional or replacement CDIs reflecting the entitlements so calculated.

For the purpose of evaluating the Corporate Action (as it affects CDI Holders) and the Alternative Proposal or Statement (as applicable), and in confirming its acceptance of the Alternative Proposal or Statement (as applicable), ASTC relies and is entitled to rely on all information, opinions and other documents provided to it by the Principal Issuer. By confirming its acceptance of the Alternative Proposal or Statement (as applicable), ASTC does not and shall not be taken for any purpose to:

(vi) endorse, promote or otherwise support the Alternative Proposal or Statement;

(vii) express any view about the merits or the correctness of the legal and factual basis of the Alternative Proposal or Statement or any other matter connected with them; or

(viii) accept any liability in connection with the Corporate Action, Alternative Proposal or Statement or any other matter connected with them; or

(viii) accept any liability in connection with the corporate Action, Alternative Proposal or Statement.

For the purposes of this Rule 13.6.10, “Corporate Action” includes (but is not limited to) bonus issues, rights issues, mergers and reconstructions (including any action taken by a Principal Issuer to reduce (or that will have the effect of reducing) the number of Principal Financial Products held by a Depositary Nominee).

Introduced 11/03/04 Origin SCH 3A.6.8 Amended 06/06/05, 17/03/08

13.6.10A Disposal of surplus Principal Financial Products

If:

(a) the Depositary Nominee receives Principal Financial Products in connection with a Corporate Action; and

(b) following receipt of the Principal Financial Products, the Depositary Nominee’s Holding of Principal Financial Products exceeds the aggregate of each CDI Holder’s entitlement to a whole number of Principal Financial Products,

the Depositary Nominee must sell such surplus Principal Financial Products and distribute the proceeds of sale (less transaction costs) to Holders of CDIs in proportion to their respective Holdings.

Introduced 17/03/08

13.6.11 General Direction and Acknowledgment by Depositary Nominee

A Depositary 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 Depositary 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

13.6.13 Divestment of small Holdings

If CDIs in respect of a class of Principal Financial Products are approved and:

(a) in accordance with the Listing Rules, a Holder of less than a specified number of Principal Financial Products can be subject to divestment or sale of those Principal Financial Products by the Principal Issuer; and

(b) a Holder of CDIs would be subject to divestment or sale if it held the corresponding number of Principal Financial Products directly,

the Principal Issuer may give a Notice of Divestment in accordance with Rule 5.12.2 to the Holder of CDIs. The Principal Issuer must also give a Holder of CDIs the benefit of any notice and consent procedure that may be contained in the constitution of the Principal Issuer, the Listing Rules and the rules of any financial market on which the Principal Financial Products are listed or quoted to which the Holder of CDIs would be entitled if it held the Principal Financial Products directly.

Introduced 17/03/08

13.6.14 Depositary Nominee may consent to sale or divestment

If the Depositary Nominee is reasonably satisfied that the Principal Issuer has complied with its obligations under Rule 13.6.13, the Depositary Nominee is authorised to consent to the sale or divestment of the number of Principal Financial Products which correspond to the Holder's CDIs.

Introduced 17/03/08

13.6.15 Principal Issuer must distribute proceeds

The Principal Issuer must distribute to the Holder of CDIs any proceeds of a sale made pursuant to a notice given under Rule 13.6.13 (net of transaction costs). If the Principal Issuer is required under the laws of its jurisdiction of incorporation to distribute the net proceeds to the Depositary Nominee in its capacity as the Holder of the Principal Financial Products, the Depositary Nominee shall be taken to have directed the Principal Issuer to distribute the net proceeds to the Holder of CDIs. Upon distribution of the net proceeds to the Holder of CDIs, the Principal Issuer must cancel the Holder's CDIs corresponding to the Principal Financial Products which have been sold.

Introduced 17/03/08

13.6.16 Indemnity by Principal Issuer

By giving a Notice of Divestment, a Principal Issuer indemnifies the Depositary Nominee and ASTC against any loss, cost, damage, expense or liability which they may suffer or incur as a result of any sale or divestment of Principal Financial Products and the cancellation of CDIs under this Rule.

Introduced 17/03/08

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 Depositary Nominee, the Depositary 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 Depositary 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 Depositary 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 Depositary Nominee; and

(b) corresponding CDIs are held on the Issuer Sponsored Subregister,

then the Depositary 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 Depositary 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 Depositary Nominee with a clear statement of the number of Principal Financial Products held by the Depositary 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 CHESS 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 give a Notice of the meeting to each Holder of CDIs at the same time as Notice of the meeting is sent to Holders of the Principal Financial Products.

For the purposes of this Rule 13.8.2, a Principal Issuer may give a Notice of the meeting to a Holder of CDIs in any manner provided for in the Corporations Act.

Note: this Rule 13.8.2 is intended to cover the means by which a notice of meeting may be given under section 249J of the Corporations Act.

Introduced 11/03/04 Origin SCH 3A.8.1 Amended 18/12/06

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 06/06/05

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 given 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 Amended 18/12/06

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 Depositary Nominee;

(b) ensure that the Depositary 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 Depositary Nominee, unless provision has been made for the discharge of the liability by some person other than the Depositary Nominee.

The obligations of the Principal Issuer and the Depositary 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 CDI's

Any obligation to give notice to Holders of CDIs under Rules 13.1 to 13.13 must be discharged upon the Depositary 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

SUBDIVISION B -- THE MARKET'S OPERATING RULES AND PROCEDURES

793A CONTENT OF THE OPERATING RULES AND PROCEDURES

(1) The operating rules of a licensed market must deal with the matters prescribed by regulations made for the purposes of this subsection.

(2) The regulations may also prescribe matters in respect of which a licensed market must have written procedures.

(3) However, subsections (1) and (2) do not apply if the licensee is also authorised to operate the market in the foreign country in which its principal place of business is located and the licence was granted under subsection 795B(2) (overseas markets).

(4) In a subsection (3) case, ASIC may determine, by giving written notice to the licensee, matters in respect of which the licensed market must have written procedures.

793B LEGAL EFFECT OF OPERATING RULES

The operating rules (other than listing rules) of a licensed market have effect as a contract under seal:

(a) between the licensee and each participant in the market; and

(b) between a participant and each other participant;

under which each of those persons agrees to observe the operating rules to the extent that they apply to the person and to engage in conduct that the person is required by the operating rules to engage in.

793C ENFORCEMENT OF OPERATING RULES

(1) If a person who is under an obligation to comply with or enforce any of a licensed market's operating rules fails to meet that obligation, an application to the Court may be made by:

(a) ASIC; or

(b) the licensee; or

(c) the operator of a clearing and settlement facility with which the licensee has clearing and settlement arrangements; or

(d) a person aggrieved by the failure.

(2) After giving an opportunity to be heard to the applicant and the person against whom the order is sought, the Court may make an order giving directions to:

(a) the person against whom the order is sought; or

(b) if that person is a body corporate -- the directors of the body corporate;

about compliance with, or enforcement of, the operating rules.

(3) For the purposes of this section, a body corporate that is, with its acquiescence, included in the official list of a licensed market, or an associate of such a body corporate, is taken to be under an obligation to comply with the operating rules of that market to the extent to which those rules purport to apply to the body corporate or associate.

(4) For the purposes of this section, if a disclosing entity that is an

undertaking to which interests in a registered scheme relate is, with the responsible entity's acquiescence, included in the official list of a licensed market, the responsible entity, or an associate of the responsible entity, is taken to be under an obligation to comply with the operating rules of that market to the extent to which those rules purport to apply to the responsible entity or associate.

(5) For the purposes of this section, if a body corporate fails to comply with or enforce provisions of the operating rules of a licensed market, a person who holds financial products of the body corporate that are able to be traded on the market is taken to be a person aggrieved by the failure.

(6) There may be other circumstances in which a person may be aggrieved by a failure for the purposes of this section.

793D CHANGING THE OPERATING RULES

Licensed markets other than subsection 795B(2) markets

(1) As soon as practicable after a change is made to the operating rules of a licensed market, other than a market licensed under subsection 795B(2) (overseas markets), the licensee must lodge with ASIC written notice of the change. The notice must:

(a) set out the text of the change; and

(b) specify the date on which the change was made; and

(c) contain an explanation of the purpose of the change.

(2) If no notice is lodged as required by subsection (1) with ASIC within 21 days after the change is made, the change ceases to have effect at the end of that period.

Subsection 795B(2) markets

(3) As soon as practicable after a change is made to the operating rules of a market the operation of which is licensed under subsection 795B(2) (overseas markets), the licensee must lodge with ASIC written notice of the change. The notice must:

(a) set out the text of the change; and

(b) specify the date on which the change was made; and

(c) contain an explanation of the purpose of the change.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

793E DISALLOWANCE OF CHANGES TO OPERATING RULES

(1) This section does not apply in respect of an Australian market licence granted under subsection 795B(2) (overseas markets).

(2) As soon as practicable after receiving a notice under section 793D from a market licensee, ASIC must send a copy of the notice to the Minister.

(3) Within 28 days after ASIC receives the notice from the licensee, the Minister may disallow all or a specified part of the change to the operating rules.

(4) In deciding whether to do so, the Minister must have regard to the consistency of the change with the licensee's obligations under this Part (including in particular the obligation mentioned in paragraph 792A(a)).

Note: The Minister must also have regard to the matters in section 798A.

(5) As soon as practicable after all or a part of a change is disallowed, ASIC must give notice of the disallowance to the licensee. The change ceases to have effect, to the extent of the

disallowance, when the licensee receives the notice.