

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

**Post-Effective Amendment No. 1**

**FORM S-8**

**REGISTRATION STATEMENT  
UNDER THE SECURITIES ACT OF 1933**

**JAMES HARDIE INDUSTRIES SE  
(FORMERLY JAMES HARDIE INDUSTRIES N.V.)**

(Exact name of registrant as specified in its charter)

**The Netherlands**

(State or other jurisdiction of incorporation  
or organization)

**Not Applicable**

(IRS Employer  
Identification Number)

**Atrium, 8<sup>th</sup> Floor  
Strawinskylaan 3077  
1077 ZX Amsterdam, The Netherlands  
(Address of Principal Executive Offices)**

**Amended and Restated James Hardie Industries SE Managing Board Transitional  
Stock Option Plan 2005  
Amended and Restated James Hardie Industries SE Supervisory Board Share Plan 2006  
(Full title of the Plan)**

**Russell Chenu  
Chief Financial Officer  
JAMES HARDIE INDUSTRIES SE  
Atrium, 8<sup>th</sup> Floor  
Strawinskylaan 3077  
1077 ZX Amsterdam, The Netherlands  
(Name and address of agent for service)**

**31 20 301 2980**

Telephone number, including area code, of agent for service

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

Large accelerated filer

Accelerated filer

Non-accelerated filer   
(Do not check if a smaller reporting company)

Smaller reporting company

## EXPLANATORY NOTE

This Post-Effective Amendment No. 1 to our registration statement on Form S-8 (Registration No. 333-153446), as filed with the Securities and Exchange Commission on September 11, 2008 (the "Registration Statement"), is being filed solely for the purpose of reflecting that, pursuant to registrant's transformation from a public limited liability corporation registered in The Netherlands (Naamloze Vennootschap (NV)) to a European Company (Societas Europaea (SE) registered in The Netherlands, registrant changed its name from James Hardie Industries N.V. to James Hardie Industries SE and to provide updated Exhibits 23.1 and 23.2, which are the consents of our independent registered public accounting firms.

Pursuant to Rule 414(d) under the Securities Act of 1933, as amended (the "Securities Act"), James Hardie Industries SE expressly adopts the Registration Statement as its own registration statement for all purposes of the Securities Act and the Securities Exchange Act of 1934, as amended (the "Exchange Act").

## PART II. INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

### Item 8. Exhibits

See "Exhibit Index" below.

### Item 9. Undertakings

(a) 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;

(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) if, in the aggregate, the changes in volume and price represent no more than a 20 percent 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;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, 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.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act 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.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

**SIGNATURES**

Pursuant to the requirements of the Securities Act, JAMES HARDIE INDUSTRIES SE certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Post-Effective Amendment No. 1 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Amsterdam, The Netherlands on this 22nd day of February, 2010.

**JAMES HARDIE INDUSTRIES SE**

By: /s/ Russell Chenu  
Russell Chenu  
Managing Board Director and  
Chief Financial Officer

Pursuant to the requirements of the Securities Act, this Post-Effective Amendment No. 1 to the Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Louis Gries</u> Louis Gries	Chief Executive Officer and Chairman of the Managing Board (Principal Executive Officer)	February 22, 2010
<u>/s/ Russell Chenu</u> Russell Chenu	Chief Financial Officer and Member of the Managing Board (Principal Financial and Accounting Officer)	February 22, 2010
<u>*</u> Michael N. Hammes	Chairman of the Supervisory Board	February 22, 2010
<u>*</u> Donald McGauchie AO	Deputy Chairman of the Supervisory Board	February 22, 2010
<u>*</u> Brian Anderson	Member of the Supervisory Board	February 22, 2010
<u>*</u> David Harrison	Member of the Supervisory Board	February 22, 2010
<u>*</u> Rudy van der Meer	Member of the Supervisory Board	February 22, 2010
<u>*</u> James Osborne	Member of the Supervisory Board	February 22, 2010
<u>*</u> David Dilger	Member of the Supervisory Board	
<u>*</u> Robert E. Cox	Member of the Managing Board	February 22, 2010

\*By: /s/ Russell Chenu  
Russell Chenu  
Attorney-in-fact

## EXHIBIT INDEX

<b>Exhibit Number</b>	<b>Description</b>
4.1	Form of Articles of Association of James Hardie Industries SE, a European Company registered in The Netherlands (incorporated herein by reference to Exhibit 3.1 to our registration statement on Form F-4, filed on June 23, 2009)
4.2	Amended and Restated James Hardie Industries SE Managing Board Transitional Stock Option Plan 2005
4.3	Amended and Restated James Hardie Industries SE Supervisory Board Share Plan 2006
5.1	Opinion of Diederik Ex
23.1	Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm
23.2	Consent of PricewaterhouseCoopers LLP Independent Registered Public Accounting Firm
23.3	Consent of Diederik Ex (contained in its opinion filed as Exhibit 5.1 hereto)
24.1	Power of Attorney (contained on the signature pages of this Registration Statement)

**JAMES HARDIE INDUSTRIES NV**

ARBN 097 829 895

Incorporated in The Netherlands with corporate seat in Amsterdam. The liability of members is limited.

**JAMES HARDIE INDUSTRIES SE  
2005 MANAGING BOARD TRANSITIONAL STOCK OPTION PLAN  
Amended and Restated  
(as of •, 2009)****1. Purpose, definitions and interpretation**

**1.1** This Plan sets forth the rules agreed between the Company and the holders of Options regarding the Options issued pursuant to this Plan.

**1.2** In this Plan, the following words and expressions have the meanings indicated unless the contrary intention appears:

**Applicable Regulations** means the listing requirements imposed by any exchange or trading system upon which the Company's securities trade and any law or regulation that applies to the operation of the Plan.

**Articles** means the articles of association of the Company.

**ASX** means Australian Securities Exchange or the stock market conducted by it, as the context requires.

**ASTC Settlement Rules** means the settlement rules of ASX Settlement and Transfer Corporation Pty Limited (ACN 008 504 532).

**Board** means the supervisory board of the Company.

**Business Day** means a day which is a trading day on ASX.

**Change in Control** means:

- (a) a person obtains Voting Power in the Company of at least 30% pursuant to a takeover bid for all or a proportion of all of the voting shares of the Company which is or becomes unconditional;
- (b) a scheme of arrangement or other merger proposal in relation to the Company becomes binding on the holders of all of the voting shares of the Company and by reason of such scheme or proposal a person obtains Voting Power in the Company of at least 30%; or
- (c) a person becomes beneficial owner of at least 30% of the voting shares of the Company on issue other than under (a) or (b).

**Company** means James Hardie Industries SE, a Societas Europaea under Dutch law with corporate seat at Amsterdam, The Netherlands (and for the avoidance of doubt, for the period until conversion to an SE under Dutch law, James Hardie Industries N.V.).

**CUF** means a Chess Unit of Foreign Securities (which has the meaning given by the ASTC Settlement Rules) in respect of an Ordinary Share.

**Exercise Price** means the closing price of CUFS on ASX on the Issue Date, as adjusted in accordance with Section 5 in respect of Ordinary Shares.

**Family Member** means the spouse or a child of a Participant.

**Fifth Anniversary** means the day falling five years from the Issue Date or, if that day is not a Business Day, the next succeeding Business Day.

**Group** means the Company and its subsidiaries as defined in the *Corporations Act 2001*.

**Issue Date** means the date upon which an Option is issued to a Participant under the Plan.

**Just Cause Dismissal** means a termination of a Participant's employment (including deemed employment under Section 4.11) for cause under the terms of the Participant's employment agreement, or for any of the following reasons:

- (a) the Participant violates any reasonable rule or regulation of the Company or the Participant's superiors, including the Board, and that violation:
  - (i) results in damage to the Company; or
  - (ii) has not ceased within such reasonable time as the Company may specify by written notice to the Participant;
- (b) any willful misconduct or gross negligence by the Participant in the responsibilities assigned to him or her;
- (c) any willful failure to perform his or her job;
- (d) any wrongful conduct of a Participant which has an adverse impact on the Company or which constitutes fraud, embezzlement or dishonesty;
- (e) the Participant's performing services for any other person or entity which competes with the Company while he or she is employed by the Company without the written approval of the Chief Executive Officer of the Company, or, in the case of the Chief Executive Officer, the Board; or
- (f) any other conduct that the Board determines constitutes Just Cause for Dismissal; provided, however, that if the term has been defined in an employment agreement between the Company and the Participant, then Just Cause Dismissal shall have the definition set forth in such employment agreement.

The foregoing definition shall not in any way preclude or restrict the right of the Company to discharge or dismiss any Participant or other person in the service of the Company for any other acts or omissions, but such other acts or omission shall not be deemed, for purposes of this Plan, to constitute grounds for Just Cause Dismissal.

**Listing Rules** means the Listing Rules of ASX.

**Median TSR** means the middle value of the series comprising the TSR for each company comprising the Peer Group for the Performance Period.

**Nominee** means a Family Member or company nominated by a Participant for an issue or transfer of Ordinary Share under Section 3.1.

**Option** means an option granted under this Plan to subscribe for or purchase an Ordinary Share at the Exercise Price.

**Ordinary Shares** means ordinary shares in the capital of the Company.

**Participant** means a member of the managing board of directors of the Company and a former member of the managing board of directors of the Company to whom Section 4.11 applies.

**Peer Group** means the companies in the Peer Group Index or, if any of the S&P/ASX 200 Index, the 200 Financials Index or the 200 Property Trust index is not published, such other comparable companies as the Board may determine in its sole discretion, but always excluding the Company.

**Peer Group Index** means the companies listed in the S&P/ASX 200 Index at the start of the Performance Period, excluding the companies listed in the 200 Financials and 200 Property Trust indices and companies which cease to be included in the S&P/ASX 200 Index during the Performance Period.

**Performance Period** means the period of time between the Issue Date and the date on which the Vesting Criteria are applied to determine if an Option has vested under Section 4.3 or 4.4.

**Permanent Disability** means, in respect of a Participant:

- (a) the inability of the Participant to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of twelve months or more; or
- (b) if the words "Permanent Disability" are given a particular meaning in the Participant's employment agreement, the same as those words do in that agreement.

**Plan** means this 2005 Managing Board Transitional Stock Option Plan, as amended from time to time.

**Record Date** has the meaning given under the Listing Rules.

**Tenth Anniversary** means the day falling ten years from the Issue Date or, if that day is not a Business Day, the next succeeding Business Day.

**Third Anniversary** means the day falling three years from the Issue Date or, if that day is not a Business Day, the next succeeding Business Day.

**TSR** means, in respect of a company, Total Shareholder Returns (including dividends and other distributions) of such company for the Performance Period, as calculated in accordance with the procedure set out in Schedule A to these Rules.

**TSR Ranking** means the percentile ranking of the Company amongst the Peer Group, where the Company and each company in the Peer Group are ranked in ascending order according to their TSR for the Performance Period so that company with the highest TSR for the Performance Period is at the 100th percentile (being the percentage of companies in the Peer Group above which the Company ranks on this basis).

**Voting Power** has the same meaning as is given to that term in the *Corporations Act 2001*.

1.3 Where any calculation or adjustment made under this Plan produces a fraction of a cent or a share, the fraction must be eliminated by rounding to the nearest whole number favourable to an Option holder or its designee.

1.4 Words denoting the singular number only shall include the plural number and vice versa.

1.5 Headings have been inserted for ease of reference only and shall not affect the interpretation of this Plan.

1.6 Subject to Section 5, the number of Ordinary Shares that may be issued and outstanding or subject to outstanding Options under this Plan shall not exceed 1,380,000.

## 2. Grant Of Options

2.1 Subject to the express provisions of this Plan, the Board may, from time to time in its discretion, grant each Participant Options. The number of Options granted to each Participant hereunder, if any, will be determined by the Board based upon, among other matters, a Participant's specific position and responsibilities, grants to other senior executives in the Group, and such other factors as the Board may deem appropriate. Each Option shall be subject to the terms and conditions of this Plan and such other terms and conditions established by the Board as are not inconsistent with the provisions of the Plan. Options may be granted from time to time by the Board, provided that all Option grants shall be made during one of the Company's four open trading windows each year when the Company does not have any material non-public information.

2.2 Upon grant of an Option, the Company must deliver to the Option holder a certificate or other written statement evidencing the Option and setting out the terms of its issue and the rights of the Option holder under this Plan.



**2.3** Unless a Participant has agreed in writing to receive an Option before the Issue Date for the Option, the Participant may, within 10 days of the Issue Date of an Option, or such other period as may be specified in the certificate given to the Participant pursuant to Section 2.2, disclaim his or her rights and entitlements in respect of that Option by written notice to the Company. If a Participant gives the Company notice in respect of an Option under this Section 2.3, the Option is deemed not to have been granted to the Participant. If the Participant does not give the Company notice in respect of an Option under this Section 2.3, the Participant is deemed to have accepted the grant of the Option with effect from the Issue Date.

**3. Entitlement**

**3.1** Subject to Section 3.2, each Option entitles the holder, upon exercise, to be issued or, subject to any Applicable Regulations, transferred, one Ordinary Share (newly issued or existing), credited as fully paid, or, at the Option holder's request and subject to any Applicable Regulations, to have issued or transferred to a Nominee, one Ordinary Share (newly issued or existing), credited as fully paid.

**3.2** The Option grant, the certificate provided to an Option holder under Section 2.2, or other written agreement with an Option holder in respect of an Option may provide that the Option entitles the holder upon exercise to be issued (but not transferred) one Ordinary Share credited as fully paid or, at the Option holder's request and subject to Applicable Regulations, to have one Ordinary Share issued (but not transferred) to a Nominee.

**3.3** Ordinary Shares issued or transferred on the exercise of Options will rank *pari passu* with all existing Ordinary Shares from the date of issue or transfer.

**3.4** The Company must, in the case of newly issued Ordinary Shares, promptly make application for official quotation by the ASX of all Ordinary Shares issued on the exercise of Options.

**4. Exercise of Options**

**4.1** An Option that has vested under Section 4.3 or 4.4 is exercisable by the holder delivering to the Company's Secretary, or assignee:

- (a) a notice in the form of the notice in Schedule B (or such other form as the Board may, in its discretion approve for the purpose of this Section 4.1(a)) addressed to the Company and signed by the Option holder stating the number of Options which are to be exercised;
- (b) if required by Dutch law, a notification form for purposes of the insider trading notification to the Dutch Securities Board; and
- (c) payment to the Company in cleared funds of the Exercise Price applicable to all of the Options specified to be exercised.

**4.2** If the items listed in Section 4.1 are delivered in accordance with that Section, the Company must issue, or, as applicable, transfer, an Ordinary Share (newly issued or existing, as applicable) to the Option holder or, subject to Section 3.1, his or her Nominee, as soon as practicable after the date on which the Option is exercised. Subject to the Listing Rules, if an Option holder requests that he or she or (subject to any Applicable Regulations) his or her Nominee, is allocated a CUF in respect of the Ordinary Share issued, or, as applicable, transferred, to the Option holder or his or her Nominee on the exercise of an Option, the Company will do everything practicable to promptly facilitate the issue, or, as applicable, transfer, of a CUF to the Option holder or his or her Nominee, as applicable, in respect of that Ordinary Share.

**4.3** On the Third Anniversary of the Issue Date, Options granted hereunder shall vest in accordance with the following criteria (the '*Vesting Criteria*')

- (a) 50% of the Options shall vest if the Company's TSR Ranking is equal to or above the Median TSR; and
  - (b) an additional 2% of Options shall vest for each 1% increment that the Company's TSR Ranking is above the Median TSR *é.g.*, if the Company's TSR Ranking is 4% above the Median TSR, then 58% of the Options shall vest; if the Company's TSR Ranking is 25% above the Median TSR, then 100% of the Options shall vest);
- 4.4** If any Options remain unvested on the last Business Day of each six month period following the Third Anniversary and before the Fifth Anniversary, the Company will reapply the Vesting Criteria to those Options on that Business Day, and those Options shall vest on that Business Day according to the Vesting Criteria as applied on that date. If the last Business Day of the fourth consecutive six month period following the Third Anniversary is after the Fifth Anniversary, the Company will reapply the Vesting Criteria on the last Business Day immediately preceding the Fifth Anniversary. The Vesting Criteria will be applied on the basis that the number of Options that vest is the number determined by applying the Vesting Criteria to the total number of vested and unvested Options in that tranche and then deducting the number of Options that have previously vested. For the avoidance of doubt, if an Option vests under Section 4.3 or this Section 4.4, the Option will not become unvested as a result of any subsequent application of the Vesting Criteria under this Section 4.4. Any Options that do not vest before the Fifth Anniversary, shall immediately expire and become unexercisable on the Fifth Anniversary. For the sake of clarity, by way of example, see Schedule C hereto.
- 4.5** Subject to Section 4.10, if a Participant's employment with the Company ceases for any reason, then all of such Participant's unvested Options granted hereunder shall immediately expire and become unexercisable as of the date of such cessation of service.
- 4.6** If a Participant's employment ceases for any reason, then all of such Participant's vested Options granted hereunder shall be treated in accordance with this Section 4.6:
- (a) Termination for Cause. Except as otherwise provided by the Board, in the event of a Just Cause Dismissal of a Participant, all of the outstanding vested Options granted to such Participant shall expire and become unexercisable as of the date of such Just Cause Dismissal.
  - (b) Termination Other Than For Cause. Subject to Section 4.6(a) above, and except as otherwise provided by the Board, in the event a Participant's cessation of service to the Company is due to:
    - (i) any reason other than Just Cause Dismissal, death, Permanent Disability or retirement, all of the outstanding vested Options granted to the Participant shall expire and become unexercisable as of the earlier of:
      - (A) the date such Options would expire in accordance with their terms if the Participant had remained employed by the Company; or
      - (B) 18 months after the Participant's employment by the Company is terminated.
    - (ii) Death or Permanent Disability. All of the outstanding vested Options granted to the Participant shall expire and become unexercisable as of the earlier of:
      - (A) the date such Options would expire in accordance with their terms if the Participant had remained in service; or
      - (B) 24 months after the date of death or termination.
    - (iii) Retirement. All of the outstanding, vested Options granted to the Participant shall expire and become unexercisable as of the earlier of:
      - (A) the date such Options expire in accordance with their terms; or
      - (B) 24 months after the date of retirement.
- 4.7** If a Participant dies after an Option has vested and before it has expired or become unexercisable, with the approval of Board, in its absolute discretion, the Option may (but only at a time permitted by the approval and in accordance with any conditions specified in the

approval) be exercised by the legal personal representative of the Participant in accordance with Section 4.1, and to the extent necessary for this to occur, the Option may be transferred to the legal personal representative.

**4.8** Unless the Board provides otherwise in the Option grant or in a written agreement, and subject to any Applicable Regulations, in the event of a Change in Control, the Board shall provide that all Options either:

- (a) vest in full upon the Change in Control and terminate at the end of the period determined by the Board for the purpose of this Section 4.8(a);
- (b) are assumed or continued in effect in connection with the Change in Control transaction;
- (c) are cashed out for an amount equal to the deal consideration per share less the Exercise Price; or
- (d) are substituted for similar awards of the surviving corporation.

Subject to the Listing Rules, each Option that is assumed or otherwise continued in effect in connection with a Change in Control shall, if deemed necessary by the Board, be appropriately adjusted, immediately after such Change in Control, to apply to the number and class of securities which would have been issuable or transferable to an Option holder in consummation of such Change in Control had the Option been exercised immediately prior to such Change in Control. Appropriate adjustments to reflect such Change in Control shall, if deemed necessary by the Board, also be made to the Exercise Price for each outstanding Option, provided the aggregate of the Exercise Prices for all outstanding Options shall remain the same. To the extent the holders of Ordinary Shares receive cash consideration in whole or part for their Ordinary Shares in consummation of the Change in Control, the successor corporation may, in connection with the assumption of the outstanding Options, substitute one or more shares of its own common stock, or the equivalent thereof, with a fair market value equivalent to the cash consideration paid per share of Ordinary Share in such Change in Control transaction.

**4.9** Subject to Sections 4.5 and 4.6, all Options shall expire on the earlier to occur of:

- (a) in the case of Options which do not vest by the Fifth Anniversary under Section 4.3, 4.4 or 4.8(a), on the Fifth Anniversary; and
- (b) in the case of Options which vest by the Fifth Anniversary under Section 4.3, 4.4 or 4.8(a), on the Tenth Anniversary.

**4.10** If a Participant ceases employment with the Company, or gives notice of their intention to cease employment with the Company, the Supervisory Board may in its absolute discretion (on any conditions which it thinks fit) decide that some or all of the unvested Options held by the Participant do not lapse under Section 4.5, but lapse at the time and subject to the conditions it may specify by notice to the Participant, which may include one or more of the following:

- (a) that the Performance Period of an Option is reduced to a period shorter than that specified in Section 4.3 or 4.4;
- (b) that the Vesting Criteria applicable to an Option be waived; and
- (c) that an Option which vests in accordance with the terms and conditions specified in the notice may be exercised within the period specified in Section 4.6 or any shorter period specified in the notice.

**4.11** If:

- (a) a Participant's employment agreement provides that the Participant will commence as a consultant to a Group company on ceasing employment with the Company; and
- (b) on ceasing employment with the Company, the Participant commences as a consultant to a Group company in accordance with that agreement,

then:

- (c) the Participant is deemed to continue as an employee of the Company for the purpose of this Plan; and
- (d) the Participant will cease to be an employee for the purpose of this Plan when the Participant ceases to be a consultant to that Group company.

**5. Anti-dilution provisions**

**5.1 Participation in new issues**

An Option holder may, to the extent his or her Option has vested and can otherwise be exercised, participate in new issues of securities of the Company to holders of Ordinary Shares if the Option is exercised before the record date for determining entitlements to the issue. The Company must give 7 Business Days' notice of any new issue to the holder before the record date for determining entitlements to the issue in accordance with the Listing Rules, so as to permit the holder to exercise any Option which, on its terms, may be exercised before that record date. An Option holder has no right to participate in new issues of securities of the Company to holders of Ordinary Shares in respect of an Option which has not been exercised before the Record Date for determining entitlements to the issue.

**5.2 Bonus Issues**

- If:
- (a) the Company makes a bonus issue of shares or other securities pro rata to holders of Ordinary Shares; and
  - (b) an Option has not yet vested or can otherwise not be exercised before the Record Date for determining entitlements to the bonus issue,
- then:
- (c) the number of securities over which that Option is exercisable is increased by the number of securities which the Option holder would have received if the Option had been exercised before the Record Date for the bonus issue.

**5.3 Rights Issues**

- If:
- (a) the Company makes pro rata issue to the holders of Ordinary Shares (other than a pro rata issue to the holders of Ordinary Shares for which no consideration is payable by them); and
  - (b) an Option has not yet vested or can otherwise not be exercised before the Record Date for determining entitlements to the rights issue,
- then:
- (c) the Exercise Price will be the greater of the Exercise Price applying before the pro rata issue and the amount calculated as:

$$O' = O - \frac{E[P - (S+D)]}{N + 1}$$

O' = the new exercise price of the option.

O = the old exercise price of the option.

E = the number of underlying securities into which one option is exercisable.

**Note:** E is one unless the number has changed because of a bonus issue.

P = the average market price (as defined in the Listing Rules) per security (weighted by reference to volume) of the underlying securities during the five (5) trading days ending on the day before the ex rights date or ex entitlements date.

S = the subscription price for a security under the pro rata issue.

D = the dividend due but not yet paid on the existing underlying securities (except those to be issued under the pro rata issue).

N = the number of securities with rights or entitlements that must be held to receive a right to one new security.

#### **5.4 Consolidation of capital**

Where prior to the expiration of an Option the Company consolidates its Ordinary Shares, the number of Options is consolidated in the same ratio as the Ordinary Shares are consolidated, and the Exercise Price is amended in inverse proportion to the ratio in which the Ordinary Shares are consolidated.

#### **5.5 Subdivision of capital**

Where prior to the expiration of an Option the Company subdivides its Ordinary Shares, the number of Options is subdivided in the same ratio as the Ordinary Shares are subdivided, and the Exercise Price is amended in inverse proportion to the ratio in which the Ordinary Shares are subdivided.

#### **5.6 Return of capital**

Where prior to the expiration of an Option the Company returns issued capital to holders of Ordinary Shares, the Exercise Price of each Option is reduced by the same amount as the amount returned in relation to each Ordinary Share.

#### **5.7 Reduction of capital by cancellation**

Where prior to the expiration of an Option the Company reduces its issued capital by a cancellation of paid up capital that is lost or not represented by available assets and where no Ordinary Shares are cancelled, the number of Options and the Exercise Price of each Option remain unaltered.

#### **5.8 Pro-rata cancellation of capital**

Where prior to the expiration of an Option the Company cancels Ordinary Shares on a pro-rata basis, the number of Options is reduced in the same ratio as the Ordinary Shares are cancelled, and the Exercise Price of each Option is amended in inverse proportion to the ratio in which the Ordinary Shares are cancelled.

#### **5.9 Other reorganisations of capital**

Where prior to the expiration of an Option the Company reorganises its issued capital in a manner that is not referred to in Sections 5.4 to 5.8, the number of Options, or the Exercise Price of those Options, or both, must be reorganised so that the Option holder does not receive a benefit that holders of Ordinary Shares do not receive. This Section 5.9 does not prevent a rounding up of the number of Ordinary Shares the Holder may receive on exercise of an Option if the rounding up is approved at the meeting of Ordinary Share holders which approves the reorganisation.

#### **5.10 Listing Rules**

If the Company is listed, each amendment contemplated by the provisions of this Section 5 is subject to its being consistent with the Listing Rules. The rights of a Participant will be changed to the extent necessary to comply with the Listing Rules applying to a reorganisation of capital at the time of the reorganisation.

### **6. Miscellaneous**

**6.1** The Company must send to the holder of Options all reports and accounts required to be laid before a general meeting of the Company, and all notices of general meetings of shareholders, as if the Option holder was the holder of an Ordinary Share.

**6.2** If Options are exercised simultaneously, then the holder may aggregate the number of Ordinary Shares or fractions of Ordinary Shares or other securities to which the holder is

entitled to subscribe under those Options. Fractions in the aggregate number only will be disregarded in determining the total entitlement to subscribe.

- 6.4** In spite of anything else in this Plan, the exercise of Options, the issue, or, as applicable, transfer, of Ordinary Shares to and/or the acquisition of CUFS by an Option holder or his or her Nominee, and the disposal of the resulting Ordinary Shares and/or CUFS is subject to:
- (a) insider trading rules and securities offering rules imposed by law; and
  - (b) the securities transactions rules to which the Company and each Participant has agreed.

**6.5** Subject to Section 4.7, Options are not transferable.

**6.6** Any power or discretion which is conferred on the Board by the terms of the Plan or an Option may be delegated by the Board to a committee consisting of those Directors, other officers, employees of the Company (or any combination of people who hold any of these positions) as the Board thinks fit.

## **7. Notices**

**7.1** The Company must give notices to Option holders in the manner prescribed by the Articles for the giving of notices to holders of Ordinary Shares. For this purpose the provisions of the Articles prescribing the manner for giving notices to holders of Ordinary Shares apply, with all necessary modifications, to giving notices to Option holders.

**7.2** Whenever adjustments are made to:

- (a) the Exercise Price for an Option;
- (b) the number of Options held by an Option holder;
- (c) the entitlement to Ordinary Shares on exercise of Options; or
- (d) this Plan,

then the Company must give notice of the adjustment to each Option holder.

## **8. Shareholder approval**

If any Applicable Regulations require the approval of holders of Ordinary Shares of the grant of Options to a Participant, no Options will be granted to the Participant before that approval is obtained in accordance with the Applicable Regulations.

## **9. Amendments; Interpretation**

**9.1** This Plan is effective from its approval by the Company's shareholders to 31 December 2006, unless terminated by the Board prior to that date, whereupon the Plan will terminate automatically. The Board may, insofar as permitted by law, from time to time suspend or terminate the Plan. No Options may be granted during any suspension of this Plan or after its termination. Any Option outstanding after the termination of the Plan shall remain in effect until such Option has been exercised or expires in accordance with its terms and the terms of the Plan. The Board may, insofar as permitted by any Applicable Regulations, from time to time revise or amend the Plan in any respect except that, unless required to comply with any Applicable Regulations, no such amendment shall adversely affect any rights or obligations of an Option holder under any outstanding Option previously granted under the Plan without the consent of such Option holder. Amendments shall be subject to approval by a general meeting of the Company to the extent such approval is required to comply with any Applicable Regulations.

- 9.2 Subject to the express provisions of the Plan, the Board has the authority to interpret the Plan and any documents used to evidence Options, to determine the terms and conditions of Options and to make all other determinations necessary or advisable for the administration of the Plan. All interpretations, determinations and actions by the Board shall be final, conclusive and binding upon all parties. The Board has authority to prescribe, amend and rescind rules and regulations relating to the Plan.
- 9.3 Subject to any Applicable Regulations, the Board may make any modifications to the terms and conditions of an outstanding Option provided that the resultant provisions are permissible under the Plan and the consent of the Option holder shall be obtained if the amendment will materially and adversely affect his or her rights under the Option.
- 9.4 The Plan shall be binding upon the successors and assigns of the Company.

**10. Governing Law**

This plan is governed by the laws in force in The Netherlands and are construed and take effect in accordance with those laws.

**SCHEDULE A**

**CALCULATION OF TSR**

The TSR for each company in the Peer Group over the Performance Period shall be calculated in accordance with the following procedure:

	<u>Explanation</u>	<u>Example</u>			
Step 1	Calculate the average daily closing price of an ordinary share of a company over the 5 days immediately preceding the end of the Performance Period.	Suppose average closing price at end of Performance Period is \$9.00.			
Step 2	Work out the average daily closing price of an ordinary share of a company over the 5 days immediately preceding the start of the Performance Period.	Suppose average closing price at start of Performance Period is \$6.00.			
Step 3	Divide the result from Step 1 by the result from Step 2.	$9.00 \div 6.00 = 1.50$			
Step 4	Divide each dividend (including all cash payments for capital reductions, special dividends etc) paid on an ordinary share of the same company during the Performance Period by the price of an ordinary share of the same company on the date of payment of the respective dividend. Each of these amounts is the "dividend yield".	<b>Year</b>	<b>Price</b>	<b>Dividend</b>	<b>Dividend Yield</b>
		1	6.50	12.0 cents	1.8462%
		2	7.50	12.0 cents	1.6000%
		3	8.50	12.0 cents	1.4118%
Step 5	Add 1.0 to each of the dividend yields for the Performance Period. Each of these amounts is a result.	<b>Year</b>	<b>Result</b>		
		1	1.018462		
		2	1.016000		
		3	1.014118		
Step 6	Multiply each of the results in Step 5 together.	$1.018462 \times 1.016000 \times 1.014118 = 1.049365$			
Step 7	Multiply the result from Step 3 by the result from Step 6.	$1.50 \times 1.049365 = 1.574048$			
Step 8	Subtract 1.0 from the result from Step 7.	$1.574048 - 1.00 = 0.574048$			
Step 9	Multiply the result from Step 8 by 100.	$0.574048 \times 100 = 57.4048\%$			



**SCHEDULE B**

**NOTICE OF EXERCISE FOR NONQUALIFIED STOCK OPTION**

Date: \_\_\_\_\_

To: James Hardie Stock Plan Administrator

James Hardie Industries N.V.  
26300 La Alameda, Suite 100  
Mission Viejo, California 92691 USA

(ACN 000 009 263)  
e-mail: stock.options@jameshardie.com  
FAX: 1-949-348-4579

Notice is hereby given that I elect to purchase \_\_\_\_\_ shares of common stock, represented by CHESS Units of Foreign Securities, or "CUFS" (the "Shares") pursuant to the stock option (option grant number \_\_\_\_\_) granted to me on \_\_\_\_\_ with an exercise price of A\$\_\_\_\_\_ per share (the "Option").

I understand that James Hardie Industries N.V. (the "Company") is not obligated to issue or transfer any Shares unless I have paid the total exercise price for the Shares and all tax withholding requirements as may be applicable with respect to the exercise of the Option and issuance of the Shares, which consists of:

*COMPLETE ONE OR MORE AS APPLICABLE*

<u>Exercise Price</u>	<u>Withholding Tax</u>	
<input type="checkbox"/>	<input type="checkbox"/>	A direct deposit in Australian dollars into the Company's bank account maintained at ANZ Bank, Pitt Street, Sydney, NSW, Australia; BSB 012 003; Account 8372 04785
<input type="checkbox"/>	<input type="checkbox"/>	A direct deposit in US dollars into the Company's bank account maintained at Wells Fargo Bank, Los Angeles, CA, USA; ABA 121000248; Account XXXXXXXX
<input type="checkbox"/>	<input type="checkbox"/>	If acceptable to Goldman Sachs JBWere Equity Finance Pty Ltd, I request it provide me with a recourse loan for the amount due in order to exercise my stock options. I authorize Goldman Sachs JBWere Equity Finance Pty Ltd to repay the loan from the proceeds of the immediate sale at market of the exercised shares less brokerage and interest fees. (This requires immediate sale of shares after exercise at market price. See the attached Form B for details required to sell these shares.)

Please instruct the company register to issue the CUFS holding statement (in lieu of a share certificate) in my name as designated below. I hereby acknowledge that, to the extent I am an "affiliate" of the Company (as that term is defined in Rule 144 promulgated under the Securities Act of 1933, as amended) or to the extent that the Shares have not been registered under the Securities Act of 1933, as amended, or applicable state securities laws,

the Shares are subject to, and the certificates representing the Shares (or holding statements for the CUFs) may, in the Company's discretion, be legended to reflect, certain trading restrictions under applicable securities laws (including particularly the Securities and Exchange Commission's Rule 144), and I hereby agree to comply with all such restrictions and to execute such documents or take such other actions as the Company may require in connection with such restrictions.

I confirm that I do not possess any Insider Information as such term is defined in the Company's Insider Trading Policy.

I acknowledge that I understand that this Option is a Nonqualified Stock Option, meaning that it is not eligible for United States tax deferral, and accordingly that if I am subject to taxation in the United States, I will owe taxes on the difference between the Option exercise price and the Company's stock price on the date of exercise, and I must pay over to the Company an amount required to satisfy withholding tax obligations on the date of this Option exercise.

I agree to provide to the Company such additional documents or information as may be required pursuant to the Company's 2005 Managing Board Transitional Stock Option Plan.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 200\_\_

OPTIONEE:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Home Street Address

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
City/State/ZIP

\_\_\_\_\_  
Social Security or Other Identification Number

\_\_\_\_\_  
Country

FORM B

NOTICE OF IMMEDIATE SALE OF SHARES (CUFS) AFTER EXERCISE OF OPTIONS

To: Donna Gulbin — [donna.gulbin@gsjwbw.com](mailto:donna.gulbin@gsjwbw.com)

Cc: Corporate Secretary

Date:

From: Cathy McCutcheon as agent for James Hardie Industries SE 2005 Managing Board Transitional Stock Option Plan  
(Phone: 1-949-348-4408; fax 1-949-348-4579; e-mail: [Cathy.Mccutcheon@jameshardie.com](mailto:Cathy.Mccutcheon@jameshardie.com))

SUBJECT: Confirmation of James Hardie Industries SE CUFS sale order placed today.

To be completed by employee selling Shares:

Full Name:

Home Address (in full):

Street  
City/State/Zip code  
Country

Security Holder Reference Number (SRN) — *if available*

Number of Shares being exercised (as a number and spelled out)

Exercise Price (AUD\$)

Date Options vested

Number of Shares being SOLD (as a number and spelled out)

ASX price limits in AUD (if any)

Note: you can only set AUD price limits if you already own the shares or are using a "cash" exercise.

**SETTLEMENT INSTRUCTIONS:**

*(items 1 & 2 to be completed by plan administrator)*

**Goldman Sachs JBWere Pty Ltd**

1. Repayment of advance in AUD to be directly credited to:

1. Sale proceeds to be directed as follows for repayment of advance:

a. Advance provided by JH:

a. AUD \$\_\_\_\_\_ to Goldman Sachs JBWere Equity Finance Pty Ltd

b. Advance provided by Goldman Sachs JBWere Equity Finance Pty Ltd:

b. Interest on the above loan charged at the prevailing margin lending rate for the number of days debt is outstanding with a minimum of AUD\$200.

2. Withholding taxes (USD) — if applicable, credited directly to:

2. USD \_\_\_\_\_ credited to: **JH Building Products Corporate** account at Wells Fargo Bank, Los Angeles, CA USA. **ABA#121000248; account #4375690534**

3. Remainder to seller's account after, brokerage fees, loan repayment and applicable taxes (converted to sellers nominated currency):

3. Direct Credit of remainder, after fees, in local currency to:

Name of holder of bank account: \_\_\_\_\_

bank name: \_\_\_\_\_

address: \_\_\_\_\_

ABA(BSB)# \_\_\_\_\_

account # \_\_\_\_\_

currency: \_\_\_\_\_

OPTIONEE:

\_\_\_\_\_

\_\_\_\_\_

**SCHEDULE C**

**VESTING UPON RETESTING**

For the sake of clarity, by way of example only:

If 100,000 options were granted to a Participant and 58% (58,000) vested because the Company's TSR Ranking on the Third Anniversary was 54%, then 42,000 Options would remain unvested. If, upon retesting the Company's TSR Ranking after the Third Anniversary in accordance with Section 4.4, it is determined that the Company's TSR Ranking is 60%, then an aggregate of 70,000 Options are entitled to be vested. Accordingly, because 58,000 were already vested, an additional 12,000 Options would become vested, for a total of 70,000 Options being vested as of the retest date.

Assume that, on the next retest date, it is determined that the Company's TSR Ranking is 55%, 5% less than it was the last time the Company's TSR Ranking was tested. In this event, such retest would have no effect on the Participant's vested or unvested Options: 70,000 would remain vested and 30,000 would remain unvested.

# MALLESONS STEPHEN JAQUES

James Hardie Industries SE  
Supervisory Board Share Plan

Dated 14 August 2006 and amended and restated as of 2009

**Mallesons Stephen Jaques**

Level 60  
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](http://www.mallesons.com)

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## **1 Introduction**

### **1.1 Purpose**

The Plan provides Supervisory Board Members with an opportunity to acquire an ownership interest in the Company either directly, or indirectly through a Superannuation Plan nominated by them.

### **1.2 Commencement**

The Plan commences on the date that the Company determines.

### **1.3 Rules are binding**

The Company and each Participant are bound by these rules.

## **2 Invitation, application and acceptance**

### **2.1 Eligibility**

The Managing Board, with the approval of the Supervisory Board may determine the Supervisory Board Members who are eligible to participate in the Plan from time to time.

### **2.2 Invitation may be made**

From time to time the Company may make, and a person who is eligible to participate in the Plan in accordance with rule 2.1 may receive, an Invitation to participate in the Plan.

### **2.3 Content of Invitation**

The Invitation must be in writing and include the following details:

- (a) the number of CUFS or the method of calculating the number of CUFS for which the Participant may apply;
- (b) any restrictions or other conditions relating to the CUFS as determined by the Managing Board; and
- (c) the method of acceptance of an Application.

### **2.4 Application Form**

The Invitation to a Participant must be accompanied by an Application Form.

### **2.5 Applying for CUFS**

A Participant who receives an Invitation under rule 2.2 may apply for CUFS by completing and returning the Application form in accordance with the directions in the Invitation.

## **2.6 Election as to method of satisfying Applications**

The Company may elect to satisfy an Application either by issuing new shares (to be held in the form of CUFS) or purchasing shares on market (as defined in section 9 of the Corporations Act) on behalf of the Participant.

## **2.7 Participant agrees to be bound**

Each Participant is, by submitting an Application Form, deemed to have agreed to be bound by:

- (a) the terms of the Invitation and Application Form;
- (b) the Insider Trading Policy of the Company;
- (c) the provisions of these rules; and
- (d) the articles of association of the Company and the laws applicable to the Company.

## **2.8 Acceptance of Application**

The acceptance by the Company of an Application by a Participant is effective and occurs at the time of allotment or transfer of the CUFS to the Participant.

## **2.9 When Applications will not be accepted**

A Participant's Application will not be accepted if, at the date of the proposed allotment or transfer of CUFS, they are not a Supervisory Board Member (or a Superannuation Plan nominated by a person who is a Supervisory Board Member).

## **2.10 Board may deny Application**

The Managing Board, with the approval of the Supervisory Board has the discretion to determine that an Application by a Participant who otherwise would be eligible to acquire CUFS under the Plan will not be accepted.

## **3 Acquisition Price**

### **3.1 Shares issued to Participants**

Any shares issued to a Participant under the Plan are to be issued at a price equal to the average of the closing prices for CUFS on the ASX during the period of five business days immediately preceding the date of issue of the shares.

### **3.2 Shares acquired on market**

Any shares purchased on market under the Plan on behalf of a Participant are taken to be transferred under the Plan to the Participant at the price at which the relevant CUFS were acquired by the Company. Any brokerage, stamp duty or other costs are to be borne by the Company.

#### **4 Allotment of CUFS**

##### **4.1 Notice**

The Company must advise a Participant that it has allotted or transferred CUFS to them under the Plan as soon as reasonably practicable after the allotment or transfer occurs.

##### **4.2 Ownership of CUFS**

- (a) Subject to (b) and (c), each Supervisory Board Member has the legal and beneficial ownership of the CUFS allotted or transferred to them.
- (b) If CUFS have been allotted or transferred to a Superannuation Plan, the trustee or its equivalent in respect of the relevant Superannuation Plan will hold the legal interest in the CUFS allotted to the Superannuation Plan.
- (c) Any disposal of those CUFS referred to in (a) or (b) above by a Participant is restricted in accordance with any restrictions specified in the Invitation to the Participant to apply for the CUFS under rule 2.3(b).

##### **4.3 Quotation of CUFS**

The Company must apply to ASX for official quotation of any new shares / CUFS allotted under the Plan.

#### **5 Administration of Plan**

##### **5.1 Managing Board to administer Plan**

The Plan is to be administered by the Managing Board in accordance with these rules. The Managing Board, with the approval of the Supervisory Board may make further provisions for the operation of the Plan which are consistent with these rules.

##### **5.2 Managing Board powers and discretions**

Any power or discretion which is conferred on the Managing Board by these rules must be exercised by the Managing Board in the interests or for the benefit of the Company, and the Managing Board is not, in exercising any power or discretion, under any fiduciary or other obligation to any other person.

##### **5.3 Delegation of Managing Board powers and discretions**

Any power or discretion which is conferred on the Managing Board by these rules may be delegated by the Managing Board to a committee consisting of those directors (other than directors who are members of the Supervisory Board), other officers or employees of the Company as the Managing Board thinks fit.



#### **5.4 Managing Board decision: final and conclusive**

The decision of the Managing Board as to the interpretation, effect or application of these rules is final and conclusive.

#### **5.5 Suspension of Plan**

The Managing Board, with the approval of the Supervisory Board may suspend the operation of the Plan and may cancel the Plan even if the suspension or cancellation of the Plan is prejudicial to the existing rights of a Participant under the Plan. Suspension or termination of the Plan does not give rise to any liability on the part of, or any right of action against, the Company.

#### **6 Overriding restrictions on the Plan**

Despite any other provision of these rules, no CUFS may be acquired by a Participant or other person under the Plan if to do so would contravene the Corporations Act, the Dutch Civil Code, the U.S. Securities Act of 1933 or the Listing Rules.

#### **7 Amendment of the Plan**

##### **7.1 Managing Board may amend**

The Managing Board may, with the approval of the Supervisory Board at any time by written instrument amend all or any of the provisions of these rules, including this rule 7, even if the amendment is prejudicial to the existing rights of a Participant under the Plan. Amendment of the Plan does not give rise to any liability on the part of, or any right of action against, the Company.

##### **7.2 Retrospective amendment possible**

Any amendment made under rule 6.1 may be given retrospective effect as specified in the written instrument by which the amendment is made.

#### **8 Miscellaneous provisions**

##### **8.1 Instructions by Members**

For the purposes of these rules, the Company is entitled to regard any notice, direction or other communication given or purported to be given by or on behalf of a Participant (or a legal personal representative of a Supervisory Board Member) as valid, whether given orally or in writing.

##### **8.2 Governing law**

These rules are governed by the laws in force in The Netherlands and are construed and take effect in accordance with those laws.

### 8.3 Rounding

Unless expressly provided for in these rules, any calculation of a number of CUFS under the Plan is to be rounded down to the nearest whole number.

## 9 Definitions and interpretation

### 9.1 Definitions

The following words and expressions have the following meanings unless the contrary intention appears:

**Application** means an application for CUFS made by a Participant under the terms of an Invitation.

**Application Form** means an application form for CUFS attached to an Invitation.

**ASTC** means Australian Settlement and Transfer Corporation Pty Limited (ABN 49 008 532).

**ASTC Settlement Rules** means the settlement rules of ASTC.

**ASX** means Australian Securities Exchange.

**CUFS** means a CHESS Unit of Foreign Securities, as defined in the ASTC Settlement Rules, in respect of a Share.

**Company** means James Hardie Industries SE, a Societas Europaea under Dutch law (and for the avoidance of doubt, for the period until conversion to an SE under Dutch law, James Hardie Industries N.V., incorporated in The Netherlands). (The liability of members is limited).

**Corporations Act** means the *Corporations Act 2001* (Cwlth).

**Invitation** means an invitation to apply for CUFS under the Plan made in accordance with clause 2.2.

**Listing Rules** means the Listing Rules of ASX, except to the extent of any express waiver by ASX.

**Managing Board** means all or some of the members of the managing board of the Company acting as such, and includes a committee of the Managing Board and a delegate of the Managing Board.

**Participant** means any Supervisory Board Member eligible to acquire CUFS under this Plan in accordance with rule 2.1 and includes any Superannuation Plan nominated, with the prior written approval of the Managing Board, by a Supervisory Board Member to receive an Invitation for which the relevant Supervisory Board Member would otherwise be eligible.

**Plan** means the Supervisory Board Share Plan as amended from time to time, the rules of which are set out in this document.

**Shares** means fully paid ordinary shares in the capital of the Company.

**Superannuation Plan** means a personal superannuation or pension plan nominated by a Supervisory Board Member to participate in the Plan that meets such criteria as the Managing Board may, in its discretion, from time to time determine.

**Supervisory Board** means the supervisory board of the Company.

**Supervisory Board Member** means a member of the Supervisory Board.

## 9.2 Interpretation

In these rules, unless the contrary intention appears:

- (a) words importing the singular include the plural and vice versa;
- (b) references to these rules, or any particular clause of these rules, means these rules, or the relevant clause, as amended from time to time;
- (c) references to a document or any part of a document means the document or relevant part, as amended from time to time;
- (d) references to a statute or other law include regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (e) references to the exercise of a power or discretion include a decision not to exercise the power or discretion; and
- (f) “including” when introducing a list of items does not exclude a reference to other items whether of the same class or genus or not.

Headings are for convenience only and do not affect the interpretation of these rules.

## OPINION OF DIEDERIK EX

22 February 2010

James Hardie Industries SE  
Strawinskylaan 3077  
1077 ZX Amsterdam

Privileged

Ladies and Gentlemen,

I have examined the the Post-Effective Amendment to Registration Statement on Form S-8 (the "**Registration Statement**") of James Hardie Industries SE, a european public company (*societas europaea*) under Dutch law (the "**Company**"), to be filed with the United States Securities and Exchange Commission (the "**SEC**") in connection with the offering of up to 7,758,230 shares of the capital of the Company, having a nominal value of €0.59 per share (the "**SE Shares**") to be issued under the Amended and Restated James Hardie Industries SE Managing Board Transitional Stock Option Plan 2005, Amended and Restated James Hardie Industries SE Supervisory Board Share Plan 2006 and Amended and Restated James Hardie Industries SE Long Term Incentive Plan 2006 (the "**Plans**").

I have examined the originals, or photostatic or certified copies, of such records of the Company and such other documents as I have deemed relevant and necessary as the basis for the opinions set forth below.

For the purpose of the opinions expressed herein, I have assumed:

- (i) the genuineness of all signatures;
  - (ii) the authenticity of all agreements, certificates, instruments, and other documents purporting to be originals;
  - (iii) the conformity to the originals of all agreements, certificates, instruments and other documents purporting to be copies;
  - (iv) that the Company has not been dissolved (*ontbonden*), merged (*gefuseerd*), split up (*gesplitst*), granted a suspension of payments (*surseance verleend*), declared bankrupt (*failliet verklaard*), subjected to any other insolvency proceedings listed in Annex A or winding up proceedings listed in Annex B of the 29 May 2000 Council Regulation (EC) No 1346/2000 on Insolvency Proceedings (the "**Insolvency Regulation**"), listed in Annex I to Council Regulation (EC) No 881/2002 of 27 May 2002 or listed and marked with an asterisk in the Annex to Council Common Position 2001/931 of 27 December 2001 relating to measures to combat terrorism, as amended from time to time;
  - (v) that the entering into the Plan and the transactions pursuant thereto by the Company is in furtherance of its corporate objects as meant in section 2:7 of the Dutch Civil Code;
  - (vi) the SE Shares to be issued will be newly issued shares;
  - (vii) the nominal amount of the SE Shares and any agreed share premium will have been validly paid;
  - (viii) the SE Shares will be issued in registered form and in accordance with the requirements of the articles of association (*statuten*) of the Company (the "**Articles**") and will be validly accepted by the subscribers for them;
  - (ix) the Company's authorised share capital will at the time of issue be sufficient to allow for the issue of the SE Shares; and
-

- (x) the SE Shares will be offered, issued and accepted by the subscribers in accordance with all applicable laws (including, for the avoidance of doubt, Dutch law and including, the Act on Financial Supervision (*Wet op het financieel toezicht*)).

Based upon the foregoing and subject to the qualifications and limitations stated hereinafter, I am of the opinion that on the date hereof:

#### Share capital

When issued, the SE Shares will be validly issued, fully paid up and non-assessable.

This opinion is subject to the following qualifications:

- a. The opinions expressed herein may be affected or limited by the provisions of any applicable bankruptcy (*faillissement*), insolvency, fraudulent conveyance (*actio Pauliana*), reorganisation, suspension of payments (*surseance van betaling*) and other laws of general application now or hereafter in effect, relating to or affecting the enforcement or protection of creditors' rights (including but not limited to the laws that apply pursuant to the Insolvency Regulation).
- b. The validity of the Plan and the transactions pursuant thereto may be affected by the ultra vires provisions of section 2:7 of the Dutch Civil Code. These provisions give legal entities the right to invoke the nullity of a transaction if such transaction entered into by such entity cannot serve to realise the objects of such entity and the other parties to such transaction knew, or without independent investigation, should have known, that such objects and purposes have been exceeded. All circumstances relevant in determining corporate benefit should be taken into account, including the wording of the objects clause of the Articles and the level of (direct or indirect) benefit derived by the legal entity.

I express no opinion on any law other than Dutch law (unpublished case law not included) as it currently stands. I express no opinion on any laws of the European Communities (insofar as not implemented in the Netherlands in statutes or regulations of general application) unless it concerns EU Regulations (*Verordeningen*) in effect in the Netherlands on the date of the opinion). In this opinion letter I express no opinion on tax law and on the business merits of the transaction contemplated by the Plans, on financial assistance rules or on anti-trust law. I do not express an opinion on the enforceability or validity of the Plans.

In this opinion letter Dutch legal concepts are sometimes expressed in English terms and not in their original Dutch terms. The concepts concerned may not be identical to the concepts described by the same English term as they exist under the laws of other jurisdictions. This opinion letter may only be relied upon under the express condition that any issue of interpretation or liability arising thereunder will be governed by Dutch law and be brought exclusively before the competent court in Amsterdam, the Netherlands. This opinion letter is issued by me only; natural persons that are involved in the services provided by or on behalf of the Company cannot be held liable in any manner whatsoever. This opinion letter may only be relied upon under the express condition that any liability of mine is limited to the amount paid out under my professional liability insurance policies.

This opinion letter is strictly limited to the matters stated herein and may not be read as extending by implication to any matters not specifically referred to. Nothing in this opinion letter should be taken as expressing an opinion in respect of any representations or warranties, or other information, contained in any of the above documents or any other document examined in connection with this opinion letter except as expressly confirmed herein.

This opinion letter is addressed to the Company and may only be relied upon by the Company in connection with the Registration Statement, and may not be relied upon by any other person, firm, company, or institution without our prior written consent. It is not to be quoted or referred to in any public document or filed with anyone without my written consent except that it may be filed with the SEC as an exhibit to the Registration Statement. My consent for that reference and filing is not required under Section 7 of the United States Securities Act of 1933, as amended.

Yours faithfully,

/s/ Diederik Ex

**CONSENT OF ERNST & YOUNG LLP, INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in this Post-Effective Amendment No. 1 to Registration Statement (Form S-8 No. 333-153446) pertaining to the Amended and Restated James Hardie Industries SE Managing Board Transitional Stock Option Plan 2005 and the Amended and Restated James Hardie Industries SE Supervisory Board Share Plan 2006 of our reports dated June 19, 2009 with respect to the consolidated financial statements and schedules of James Hardie Industries N.V. included in its Annual Report (Form 20-F) for the year ended March 31, 2009, and to the effectiveness of internal control over financial reporting of James Hardie Industries N.V. filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Orange County, California  
February 17, 2010

**CONSENT OF PRICEWATERHOUSECOOPERS LLP, INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We hereby consent to the incorporation by reference in this Post-Effective Amendment No. 1 to Registration Statement on Form S-8 of our report dated June 27, 2008 relating to the financial statements, which appears in James Hardie Industries N.V.'s Annual Report on Form 20-F for the year ended March 31, 2009.

/s/ PricewaterhouseCoopers LLP

Los Angeles, California

February 17, 2010