

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

FORM 20-F

(Mark One)

- REGISTRATION STATEMENT PURSUANT TO SECTION 12(b) OR (g) OF THE SECURITIES EXCHANGE ACT OF 1934
- OR
- ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended March 31, 2010
- OR
- TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
- OR
- SHELL COMPANY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Date of event requiring this shell company report

For the transition period from to

Commission file number 1-15240

JAMES HARDIE INDUSTRIES SE

(Exact name of Registrant as specified in its charter)

N/A

(Translation of Registrant's name into English)

Republic of Ireland

(Jurisdiction of incorporation or organization)

Europa House, Second Floor

Harcourt Center

Harcourt Street, Dublin 2, Republic of Ireland

(Address of principal executive offices)

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(Contact name)

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

Title of each class:	Name of each exchange on which registered:
Common stock, represented by CHESS Units of Foreign Securities	New York Stock Exchange*
CHESS Units of Foreign Securities	New York Stock Exchange*
American Depositary Shares, each representing five units of CHESS Units of Foreign Securities	New York Stock Exchange

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

Securities registered or to be registered pursuant to Section 12(g) of the Act.

None.

Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act.

None.

Indicate the number of outstanding shares of each of the issuer's classes of capital or common stock as of the close of the period covered by the annual report 434,524,879 shares of common stock at March 31, 2010.

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

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

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

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days.

Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes No

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 Smaller reporting company
(Do not check if a smaller reporting company)

Indicate by check mark which basis of accounting the registrant has used to prepare the financial statements included in this filing:

U.S. GAAP International Financial Reporting Standards as issued by the International Accounting Standards Board Other

If “Other” has been checked in response to the previous question, indicate by check mark which financial statement item the registrant has elected to follow:

Item 17 Item 18

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

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PART I

Item 1. Identity of Directors, Senior Management and Advisers

Not Required.

Item 2. Offer Statistics and Expected Timetable

Not Applicable.

Item 3. Key Information

On August 21, 2009, our shareholders approved Stage 1 of a two-stage re-domicile proposal (together, the “Re-domicile”) to move our corporate domicile from The Netherlands to the Republic of Ireland (which we refer to as Ireland). Following this vote, on February 19, 2010, James Hardie Industries SE completed its transformation from a public limited liability corporation registered in The Netherlands (“Naamloze Vennootschap” (N.V.) to a European Company “Societas Europaea” (SE)) registered in The Netherlands (Stage 1). On June 2, 2010, our shareholders approved Stage 2 of the Re-domicile to transform James Hardie Industries SE to an Irish SE by moving our corporate domicile from The Netherlands to Ireland (Stage 2). Following this vote, on June 17, 2010, we moved our corporate domicile to Ireland and are now subject to Irish law in addition to the Council of the European Union’s Regulation on the Statute for a European Company (SE Regulations). We became an Irish tax resident on June 29, 2010.

In this annual report, unless the context otherwise indicates, James Hardie Industries SE, a “Societas Europaea,” or a European company incorporated and existing under the laws of Ireland, is referred to as JHI SE. JHI SE together with its direct and indirect wholly owned subsidiaries as of the time relevant to the applicable reference, are collectively referred to as the James Hardie Group. JHI SE and its current direct and indirect wholly owned subsidiaries are collectively referred to as “we,” “us,” “our,” “JHI SE and its wholly owned subsidiaries” or the “Company.”

The term “fiscal year” refers to our fiscal year ended March 31 of such year; the term “dollars,” “US\$” or “\$” refers to U.S. dollars; the term “A\$” refers to Australian dollars; and the term “NZ\$” refers to New Zealand dollars. Unless otherwise stated, all amounts in A\$ have been converted into US\$ at the March 31, 2010 exchange rate of A\$1.0919 to \$1.0000. The term “msf” or “thousand square feet” refers to thousands of square feet, where a square foot is defined as a standard square foot of 5/16” thickness and the term “mmsf” or “million square feet” refers to millions of square feet, where a square foot is defined as a standard square foot of 5/16” thickness.

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

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

Selected Financial Data

We have included in Item 18 of this annual report the audited consolidated financial statements of JHI SE, consisting of our consolidated balance sheets as of March 31, 2010 and March 31, 2009, and our consolidated statements of operations, changes in shareholders’ equity and cash flows for the years ended March 31, 2010, 2009

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and 2008, together with the related notes thereto. The consolidated financial statements included in this annual report have been prepared in accordance with accounting principles generally accepted in the United States of America, or “U.S. GAAP.”

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

	Fiscal Year ended March 31,				
	2010	2009	2008	2007	2006
(In millions except sales price per unit and per share data)					
Consolidated Statements of Operations Data:					
Net Sales					
USA and Europe Fiber Cement (1)	\$ 828.1	\$ 929.3	\$ 1,170.5	\$ 1,291.2	\$ 1,246.7
Asia Pacific Fiber Cement (2)	296.5	273.3	298.3	251.7	241.8
Total net sales	<u>\$ 1,124.6</u>	<u>\$ 1,202.6</u>	<u>\$ 1,468.8</u>	<u>\$ 1,542.9</u>	<u>\$ 1,488.5</u>
Operating (loss) income (3)	\$ (21.0)	\$ 173.6	\$ (36.6)	\$ (86.6)	\$ (434.9)
Interest expense	(7.7)	(11.2)	(11.1)	(12.0)	(7.2)
Interest income	3.7	8.2	12.2	5.5	7.0
Other income (expense) (4)	6.3	(14.8)	—	—	—
(Loss) income from operations before income taxes	(18.7)	155.8	(35.5)	(93.1)	(435.1)
Income tax (expense) benefit	(66.2)	(19.5)	(36.1)	243.9	(71.6)
(Loss) income from operations	<u>\$ (84.9)</u>	<u>\$ 136.3</u>	<u>\$ (71.6)</u>	<u>\$ 150.8</u>	<u>\$ (506.7)</u>
Net (loss) income	<u>\$ (84.9)</u>	<u>\$ 136.3</u>	<u>\$ (71.6)</u>	<u>\$ 151.7</u>	<u>\$ (506.7)</u>
(Loss) income from operations per common share — basic	\$ (0.20)	\$ 0.32	\$ (0.16)	\$ 0.32	\$ (1.10)
Net (loss) income per common share — basic	\$ (0.20)	\$ 0.32	\$ (0.16)	\$ 0.33	\$ (1.10)
(Loss) income from operations per common share — diluted	\$ (0.20)	\$ 0.31	\$ (0.16)	\$ 0.32	\$ (1.10)
Net (loss) income per common share — diluted	\$ (0.20)	\$ 0.31	\$ (0.16)	\$ 0.33	\$ (1.10)
Dividends paid per share	\$ —	\$ 0.08	\$ 0.27	\$ 0.09	\$ 0.10
Weighted average number of common shares outstanding					
Basic	433.1	432.3	455.0	464.6	461.7
Diluted	433.1	434.5	455.0	466.4	461.7
Consolidated Cash Flow Information:					
Cash flows provided by (used in) operating activities	\$ 183.1	\$ (45.2)	\$ 319.3	\$ (67.1)	\$ 238.4
Cash flows used in investing activities	\$ (50.5)	\$ (26.1)	\$ (38.5)	\$ (92.6)	\$ (154.0)
Cash flows (used in) provided by financing activities	\$ (159.0)	\$ 25.0	\$ (254.4)	\$ (136.4)	\$ 118.7
Other Data:					
Depreciation and amortization	\$ 61.7	\$ 56.4	\$ 56.5	\$ 50.7	\$ 45.3
Adjusted EBITDA (5)	\$ 40.7	\$ 230.0	\$ 19.9	\$ (35.9)	\$ (389.6)
Capital expenditures	\$ 50.5	\$ 26.1	\$ 38.5	\$ 92.1	\$ 162.8
Volume (million square feet) (6)					
USA and Europe Fiber Cement (1)	1,303.7	1,526.6	1,951.2	2,216.2	2,244.4
Asia Pacific Fiber Cement (2)	389.6	390.6	398.2	390.8	368.3
Average sales price per unit (per thousand square feet)					
USA and Europe Fiber Cement (1)	\$ 635	\$ 609	\$ 600	\$ 583	\$ 555
Asia Pacific Fiber Cement (2)	A\$ 894	A\$ 879	A\$ 862	A\$ 842	A\$ 872

	Fiscal Year ended March 31,				
	2010	2009	2008	2007	2006
(In millions except sales price per unit and per share data)					
Consolidated Balance Sheet Data:					
Net current assets (7)	\$ 50.4	\$ 137.7	\$ 183.7	\$ 259.0	\$ 150.8
Total assets	\$ 2,178.8	\$ 1,891.7	\$ 2,179.9	\$ 2,128.1	\$ 1,445.4
Total debt	\$ 154.0	\$ 324.0	\$ 264.5	\$ 188.0	\$ 302.7
Common stock	\$ 221.1	\$ 219.2	\$ 219.7	\$ 251.8	\$ 253.2
Shareholders' (deficit) equity	\$ (117.9)	\$ (108.7)	\$ (202.6)	\$ 258.7	\$ 94.9

- (1) On April 1, 2008, the Company realigned its operating segments by combining the previously reported segments of USA Fiber Cement and Other into one operating segment, USA and Europe Fiber Cement. USA and Europe Fiber Cement manufactures fiber cement interior linings, exterior siding and related accessory products in the United States which are sold in the United States, Canada and Europe.
- The segment also includes fiber cement manufactured and sold in Chile (through July 2005), fiber reinforced concrete pipes manufactured and sold in the United States (through May 2008) and a roofing pilot plant in the United States (through fiscal year 2006). Our roofing pilot plant was closed and the business ceased operations in April 2006. Our Plant City, Florida Hardie Pipe Plant was closed and the business ceased operations in May 2008.
- (2) Asia Pacific Fiber Cement includes all fiber cement manufactured in Australia, New Zealand and the Philippines and sold in Australia, New Zealand, Asia, the Middle East (Israel, Kuwait, Qatar and United Arab Emirates) and various Pacific Islands.
- (3) Fiscal year 2010 operating loss includes \$224.2 million of unfavorable asbestos adjustments; \$2.1 million of Asbestos Injuries Compensation Fund (which we refer to as the AICF) SG&A expenses; and \$3.4 million of expenses related to the Australian Securities and Investments Commission (which we refer to as ASIC). Fiscal year 2009 operating income includes \$17.4 million of favorable asbestos adjustments; \$0.7 million of AICF SG&A expenses; and \$14.0 million of expenses related to the ASIC.
- Fiscal year 2008 operating loss includes \$240.1 million of unfavorable asbestos adjustments; \$4.0 million of AICF SG&A expenses; \$5.5 million of ASIC expenses; and \$71.0 million of impairment charges.
- Fiscal year 2007 operating loss includes Special Commission of Inquiry (which we refer to as the SCI) and other related expenses of \$13.6 million and \$405.5 million related to unfavorable asbestos adjustments.
- Fiscal year 2006 operating loss includes SCI and other related expenses of \$17.4 million, \$715.6 million related to the establishment of an asbestos provision and \$13.4 million related to the impairment of our former roofing plant. In addition, fiscal year 2006 operating loss includes a \$0.8 million loss related to the disposal of our Chilean fiber cement business.
- For additional information on the asbestos adjustments, AICF SG&A expenses and expenses related to ASIC, see Item 5, "Operating and Financial Review and Prospects" and Notes 11 and 13 to our consolidated financial statements in Item 18. For additional information on the impairment charges for fiscal year 2008, see Item 5, "Operating and Financial Review and Prospects" and Note 7 to our consolidated financial statements in Item 18.
- (4) Other income in fiscal year 2010 primarily includes a realized gain arising from the sale of restricted short-term investments held by the AICF. Other expense in fiscal year 2009 consists of an other-than-temporary impairment charge related to restricted short-term investments held by the AICF of \$14.8 million. For additional information see Item 5, "Operating and Financial Review and Prospects — Results of Operations."

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- (5) Adjusted EBITDA represents income from operations before interest income, interest expense, income taxes, other non-operating (income) expense, described in footnote four above, cumulative effect of change in accounting principle, and depreciation and amortization charges. The following table presents a reconciliation of Adjusted EBITDA to net cash provided by (used in) operating activities, as this is the most directly comparable GAAP financial measure to Adjusted EBITDA for each of the periods indicated.

	Fiscal Years Ended March 31,				
	2010	2009	2008 (In millions)	2007	2006
Net cash provided by (used in) operating activities	\$ 183.1	\$ (45.2)	\$ 319.3	\$ (67.1)	\$ 238.4
Adjustments to reconcile net (loss) income to net cash provided by (used in) operating activities	(312.0)	(3.5)	(318.9)	4.5	(789.1)
Change in operating assets and liabilities, net	<u>44.0</u>	<u>185.0</u>	<u>(72.0)</u>	<u>214.3</u>	<u>44.0</u>
Net income (loss)	(84.9)	136.3	(71.6)	151.7	(506.7)
Cumulative effect of change in accounting principle	—	—	—	(0.9)	—
Income tax expense (benefit)	66.2	19.5	36.1	(243.9)	71.6
Interest expense	7.7	11.2	11.1	12.0	7.2
Interest income	(3.7)	(8.2)	(12.2)	(5.5)	(7.0)
Other (income) expense	(6.3)	14.8	—	—	—
Depreciation and amortization	<u>61.7</u>	<u>56.4</u>	<u>56.5</u>	<u>50.7</u>	<u>45.3</u>
Adjusted EBITDA	<u>\$ 40.7</u>	<u>\$ 230.0</u>	<u>\$ 19.9</u>	<u>\$ (35.9)</u>	<u>\$ (389.6)</u>

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

- (6) Fiber cement volume is measured in 5/16" thick square feet, which are referred to as standard feet.
- (7) Total current assets less total current liabilities.

Risk Factors

Our business, operations and financial condition are subject to various risks and uncertainties. We have described below significant factors that may adversely affect our business, operations, financial performance and condition or industry. You should be aware that the occurrence of any of the events described in the following risk factors, elsewhere in or incorporated by reference into this report, and other events that we have not predicted or assessed, could have a material adverse effect on our results of operations, financial condition and business.

Our wholly owned Australian subsidiary, James Hardie 117 Pty Ltd (which we refer to as the Performing Subsidiary), is required to make payments to a special purpose fund that provides compensation for Australian asbestos-related personal injury and death claims for which certain former companies of the James Hardie Group are found liable.

On November 21, 2006, JHI SE (formerly JHI NV), the AICF, the Government of the State of New South Wales, Australia (which we refer to as the NSW Government) and the Performing Subsidiary entered into an amended and restated Final Funding Agreement (which we refer to as the Amended FFA) to provide long-term funding to the AICF, a special purpose fund that provides compensation for Australian asbestos-related personal injury and death claims for which certain former companies of the James Hardie Group, including ABN 60 Pty Limited (which we refer to as ABN 60), Amaca Pty Ltd (which we refer to as Amaca) and Amaba Pty Ltd (which we refer to as Amaba) (collectively, the Former James Hardie Companies) are found liable.

We have recorded an asbestos liability of \$1.6 billion in our consolidated financial statements as of March 31, 2010, based on the Amended FFA governing our anticipated future payments to the AICF. The initial funding contribution of A\$184.3 million (\$145.0 million at the time of payment) was made to the AICF in February 2007. No contribution was required to be made under the Amended FFA in fiscal year 2008. Further contributions were made on a quarterly basis in July and October 2008 and in January and March 2009, inclusive of interest, totaling A\$118.0 million (\$110.0 million). Under the terms of the Amended FFA, we were not required to make a contribution to the AICF in fiscal year 2010. We expect to make an additional contribution of \$63.7 million (an equivalent of A\$75.0 million translated at the prevailing exchange rate as of May 31, 2010) to the AICF in fiscal year 2011. Future funding for the AICF continues to be linked under the terms of the Amended FFA to our long-term financial success, especially our ability to generate net operating cash flow.

As a result of our obligation to make payments under the Amended FFA, our funds available for capital expenditures (either with respect to our existing business or new business opportunities), repayments of debt, payments of dividends or other distributions have been, and will be, reduced by the funding paid to the AICF, and consequently, our financial position, liquidity, results of operations and cash flows have been, and will be, reduced or materially adversely affected. Our obligation to make these payments could also affect or restrict our ability to access equity or debt capital markets.

See Item 4, “Information on the Company — Commitment to Provide Funding on a Long-Term Basis in Respect of Asbestos-Related Liabilities of Former Subsidiaries,” Item 5, “Operating and Financial Review and Prospects — Liquidity and Capital Resources — Capital Requirements and Resources” and Note 11 to the notes to our consolidated financial statements included in Item 18 for more information.

Potential escalation in proven claims made against, and associated costs of, the AICF could increase our annual funding payments required to be made under the Amended FFA, which may cause us to have to increase our asbestos liability in the future.

The amount of our asbestos liability is based, in part, on actuarially determined, anticipated (estimated), future annual funding payments to be made to the AICF on an undiscounted and uninflated basis. Future annual payments to the AICF are based on updated actuarial assessments that are to be performed as of March 31 of each year to determine expected asbestos-related personal injury and death claims to be funded under the Amended FFA for the financial year in which the payment is made and the next two financial years. Estimates of actuarial liabilities are based on many assumptions, which may not prove to be correct, and which are subject to considerable uncertainty, since the ultimate number and cost of claims are subject to the outcome of events that have not yet occurred, including social, legal and medical developments as well as future economic conditions.

For instance, it is possible that the categories of payable claims could be extended to include claims that are not presently compensable or legally recognized. Further, estimating the future extent and pattern of asbestos-related diseases that will arise from past exposure to asbestos and the proportion of those claims that will be successful is inherently difficult and therefore could materially differ from actual results. In addition, particularly during times of credit market downturns, the investments of the AICF could decline in value, as we experienced in fiscal year 2009.

If future proven claims are more numerous, the liabilities arising from them are larger than that currently estimated by the AICF's actuary (currently KPMG Actuaries Pty Ltd, which we refer to as "KPMG Actuaries") or if the AICF investments decline in value, it is possible that pursuant to the terms of the Amended FFA, we will be required to pay higher annual funding payments to the AICF than currently anticipated and on which our asbestos liability is based. If this occurs, we may be required to increase our asbestos liability which would be reflected as a charge in our consolidated statements of operations at that date. Any such changes to actuarial estimates which require us to increase our asbestos liability could have a material adverse effect on our financial position, liquidity, results of operations and cash flows.

See Item 4, "Information on the Company — Commitment to Provide Funding on a Long-Term Basis in Respect of Asbestos-Related Liabilities of Former Subsidiaries," Item 5, "Operating and Financial Review and Prospects — Critical Accounting Policies" and Note 11 to the notes to our consolidated financial statements included in Item 18 for more information about our asbestos liability. In addition, see Item 5, "Operating and Financial Review and Prospects — Results of Operations" for more information on the Other Expense of \$14.8 million recorded in fiscal year 2009 related to losses on investments by AICF.

Even though the Amended FFA has been implemented, we may be subject to potential additional liabilities (including claims for compensation or property remediation outside the arrangements reflected in the Amended FFA) because certain current and former companies of the James Hardie Group previously manufactured products that contained asbestos.

Up to 1987, two former subsidiaries of ABN 60, Amaca and Amaba, which are now owned and controlled by the AICF, manufactured products in Australia that contained asbestos. In addition, prior to 1937, ABN 60, which is also now owned and controlled by the AICF, manufactured products in Australia that contained asbestos. ABN 60 also held shares in companies that manufactured asbestos-containing products in Indonesia and Malaysia, and held minority shareholdings in companies that conducted asbestos-mining operations based in Canada and Southern Africa. Former ABN 60 subsidiaries also exported asbestos-containing products to various countries. The AICF is designed to provide compensation only for certain claims and to meet certain related expenses and liabilities, and the legislation introduced in New South Wales in connection with the Amended FFA seeks to defer all other claims against the Former James Hardie Companies. The funds contributed to the AICF will not be available to meet any asbestos-related claims made outside Australia, or claims made arising from exposure to asbestos occurring outside Australia, or any claim for pure property loss or pure economic loss or remediation of property. In these circumstances, it is possible that persons with such excluded claims may seek to pursue those claims directly against us. Defending any such litigation could be costly and time consuming, and consequently, our financial position, liquidity, results of operations and cash flows could be materially adversely affected.

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Prior to 1988, a New Zealand subsidiary in the James Hardie Group manufactured products in New Zealand that contained asbestos. In New Zealand, asbestos-related disease compensation claims are managed by the state-run Accident Compensation Corporation (which we refer to as the ACC). Our New Zealand subsidiary that manufactured products that contained asbestos contributed financially to the ACC fund as required by law via payment of an annual levy while it carried on business. All decisions relating to the amount and allocation of payments to claimants in New Zealand are made by the ACC in accordance with New Zealand law. The Injury Prevention, Rehabilitation and Compensation Act 2001 (NZ) bars compensatory damages for claims that are covered by the legislation which may be made against the ACC fund. However, we may be subject to potential liability if any of these claims are found not to be covered by the legislation and are later brought against us, and consequently, our financial position, liquidity, results of operations and cash flows could be materially adversely affected.

Apart from the funding obligations arising out of the Amended FFA, it is possible that we could become subject to suits for damages for personal injury or death in connection with the former manufacture or sale of asbestos products that have been or may be filed against the Former James Hardie Companies. Although the ability of any claimants to initiate or pursue such suits is restricted by the legislation enacted by the NSW Government under the terms of the Amended FFA (see Item 4, “Information on the Company — Commitment to Provide Funding on a Long-Term Basis in Respect of Asbestos-Related Liabilities of Former Subsidiaries”), we cannot predict with any certainty the outcome of any future claims or allegations that may be made, how the laws of various jurisdictions may be applied to the facts or how the laws may change in the future. If a court of competent jurisdiction relying on applicable law at the time were to find JHI SE or a James Hardie Group subsidiary liable for damages connected with existing or former subsidiaries for their past manufacture of asbestos-containing products, we may incur material liabilities in connection with any damages that may be awarded in the legal proceedings, in addition to the costs associated with defending against such claims. Any such additional liabilities could have a material adverse effect on our financial position, liquidity, results of operations and cash flows.

Because our revenues are primarily derived from sales in U.S. dollars and payments pursuant to the Amended FFA are made in Australian dollars, we may experience unpredictable volatility in our reported results due to changes in the U.S. dollar (and other currencies from which we derive our sales) compared to the Australian dollar.

Approximately 19%, 16% and 14% of our net sales in fiscal years 2010, 2009 and 2008, respectively, were derived from sales in Australia. Payments pursuant to the Amended FFA are required to be made to the AICF in Australian dollars. In addition, annual payments to the AICF are calculated based on various estimates that are denominated in Australian dollars. To the extent that our future obligations exceed our Australian dollar cash flows, and we do not hedge this foreign exchange exposure, we will need to convert U.S. dollars or other foreign currency into Australian dollars in order to meet our obligations pursuant to the Amended FFA. As a result, any unfavorable fluctuations in the U.S. dollar (the majority of our revenues is derived from sales in U.S. dollars) and other currencies from which we derive our sales compared to the Australian dollar will require us to convert more U.S. dollars and other currencies from which we derive our sales to pay the same amount of Australian dollar denominated annual payments to the AICF.

In addition, because our results of operations are reported in U.S. dollars and the asbestos liability is based on estimated payments denominated in Australian dollars, unfavorable fluctuations in the U.S. dollar compared to the Australian dollar may materially affect our reported results of operations since we will be required to expense any such fluctuations in the reported period in order to increase the reported value of the asbestos liability on our balance sheet.

Due to the size of the asbestos liability recorded on our balance sheet, fluctuations in the exchange rate will cause unpredictable volatility in our reported results for the foreseeable future. For example, during fiscal years 2010 and 2009, we recorded an unfavorable impact of \$220.9 million and a favorable impact of \$179.7 million, respectively, due to fluctuations in the U.S. dollar compared to the Australian dollar. Any unfavorable fluctuation in U.S. dollar and the other currencies from which we derive our sales compared to the Australian dollar could have a material adverse effect on our financial position, liquidity, results of operations and cash flows. See Item 11, “Quantitative and Qualitative Disclosures About Market Risk.”

The Amended FFA imposes certain non-monetary obligations.

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

The Amended FFA does not eliminate the risk of adverse action being taken against us.

There is a possibility that, despite certain covenants agreed to by the NSW Government in the Amended FFA, adverse action could be directed against us by one or more of the NSW Government, the government of the Commonwealth of Australia (which we refer to as the Australian Commonwealth Government), governments of the states or territories of Australia or any other governments, unions or union representative groups, or asbestos disease groups with respect to the asbestos liabilities of Amaba, Amaca and ABN 60. Any such adverse action could materially adversely affect our financial position, liquidity, results of operations and cash flows.

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

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

Due to the long-term nature of the Amended FFA, unforeseen events may result in one or more of the parties to the Amended FFA (including the Company) wishing to renegotiate the terms and conditions of the Amended FFA or any of the related agreements. Any amendments to the Amended FFA or related agreements in the future would require the consent of the Company, the Performing Subsidiary, the NSW Government and the AICF, and therefore may not be achieved.

Until the proposed NSW Government loan facility to the AICF is formally in place there remains a risk of a short-term funding shortfall for the AICF.

On November 7, 2009, the NSW Government and the Australian Government advised that the Australian Government would loan up to A\$160 million to the NSW Government to contribute towards a standby loan facility of up to A\$320 million that the NSW Government intends to make available to the AICF. The proposed standby loan facility is intended to enable the AICF to meet any short-term funding shortfall, and to continue to make payments to claimants in full and without rationing. The NSW parliament has subsequently passed the James Hardie Former Subsidiaries (Winding Up and Administration) Amendment Act 2009 to facilitate the entry into a loan facility and related security documentation by the AICF.

While the form of loan facility and related security documentation with the NSW Government has been drafted, it has yet to be finalized and executed. Until the loan facility and related security documentation is finalized and

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executed by the parties to it there can be no certainty that the loan will be made available to the AICF or as to the terms of the loan and there remains a risk of a short-term funding shortfall for the AICF.

A short-term funding shortfall for the AICF could subject us to negative publicity. Such 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.

There is no certainty that the proposed NSW Government loan facility to the AICF will remain in place for the entire term of the facility.

Once the proposed NSW Government loan facility is in place, drawings under it will be subject to satisfaction of certain specified conditions precedent and the NSW Government (as lender) will have the right to cancel the loan facility, require repayment of money advanced and enforce security granted to support the loan in the various circumstances prescribed in the loan facility agreement and related security documentation. There will also be certain positive covenants given by, and restrictions on the activities of, the AICF, Amaca, Amaba and ABN 60 which apply during the term of the loan. A breach of any of these covenants or restrictions may also lead to cancellation of the facility, early repayment of the loan and/or enforcement of the security. As such, there can be no certainty that the loan facility will remain in place for its intended term.

If the loan facility does not remain in place for its intended term, the AICF may experience a short-term funding shortfall. A short-term funding shortfall for the AICF could subject us to negative publicity. Such 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 have insufficient Australian taxable income to utilize tax deductions.

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

Certain Amended FFA tax conditions may not be satisfied.

Despite the Australian Taxation Office (which we refer to as the ATO) rulings for the expected life of the Amended FFA, it is possible that new (and adverse) tax legislation could be enacted in the future. It is also possible that the facts and circumstances relevant to operation of the ATO rulings could change over the life of the Amended FFA. We may elect to terminate the Amended FFA if certain tax conditions are not satisfied for more than 12 months. However, we do not have a right to terminate the Amended FFA if, among other things, the tax conditions are not satisfied as a result of the actions of a member of the James Hardie Group.

Under certain circumstances, we may still have an obligation to make annual funding payments on an adjusted basis if the tax conditions remain unsatisfied for more than 12 months. If the tax conditions are not satisfied in a manner which does not permit us to terminate the Amended FFA, our financial position, liquidity, results of operations and cash flows may be materially adversely affected. The extent of this adverse effect will be determined by the nature of the tax condition which is not satisfied.

Regulatory action and continued scrutiny may have an adverse effect on our business.

We are subject to oversight by various governmental agencies throughout the world because of our numerous locations, large number of employees, various tax jurisdictions and the trading of our securities on the ASX and NYSE.

We have in the past been subject to regulatory action, which has resulted in significant costs to operate our business, including our ongoing compliance with the provisions of the Amended FFA, costs relating to the ASIC proceedings and appeals, as well as assessments by various governmental tax revenue authorities.

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Our compliance with laws and regulations can be subject to future government review and interpretation. If we fail to comply with applicable laws and regulations, we could be subject to fines, penalties, or other legal liability. Also, should these laws and regulations be amended or expanded, or should new laws and regulations be enacted, we could incur additional compliance costs or restrictions on our ability to manufacture our products and operate our business. Furthermore, our failure to comply with such laws and regulations could result in additional costs, fees or reporting requirements as well as significant regulatory action including fines, penalties and legal defense costs, and could subject us to negative publicity. Such actions could have a material adverse effect on our financial position, results of operations and cash flows.

See Item 4, “Information on the Company — Legal Proceedings,” for more information.

We may be liable for defense costs and liabilities incurred in the ASIC proceedings and appeals by current or former directors, officers or employees of the James Hardie Group to the extent that those costs and liabilities are covered by indemnity arrangements granted by the James Hardie Group to those persons.

We have entered into deeds of indemnity with certain of our directors and officers, as is common practice for publicly listed companies. Our Articles of Association also contain an indemnity for directors and officers. To date, claims have been received from certain former directors and officers in relation to the ASIC investigation, the examination of these persons by ASIC delegates and in respect of the ASIC proceedings and appeals. It is our policy to expense such costs as incurred. In fiscal years 2010, 2009 and 2008, we had incurred \$3.4 million, \$14.0 million and \$5.5 million, respectively, of net expenses related to the ASIC proceedings and appeals. Our net costs in relation to the ASIC proceedings and appeals from February 2007 to March 31, 2010 totaled \$23.1 million.

As a result of the ASIC proceedings and appeals, we have and may continue to incur further costs under these indemnities which may be material. In this respect, as with the first instance proceedings, we have obligations, or have agreed, to advance funds in respect of the appeals and such advances have been and may continue to be made. In addition, there is a possibility that we could become responsible for other amounts in addition to these costs, such as a proportion of ASIC’s costs of the ASIC proceeding and/or the appeals. These costs could materially adversely affect our financial position, liquidity, results of operations and cash flows.

Currently, a portion of the appeal costs of the former directors are being advanced by third parties, with the Company paying the balance. Based on the information currently available, we expect this arrangement to continue.

See Item 4, “Information on the Company — Legal Proceedings” for more information on the ASIC proceedings and appeals. Losses and expenses arising from the ASIC proceedings and appeals could have a material adverse effect on our financial position, liquidity, results of operations and cash flows.

In connection with transforming the company to an Irish SE, we and certain of our subsidiaries were required to negotiate the terms of future employee involvement in JHI SE and certain of its subsidiaries with employees from the European Economic Area (which we refer to as the EEA) member states in which we operate. These negotiations resulted in an agreement that requires us, among other things, to provide information to employees annually and upon certain other events and for us to consult with employees on these matters. There is a risk that our entry into the employee involvement agreement may result in a material change to our governance or adversely affect our decision making process.

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 employee representatives in EEA member states to come to an arrangement on future employee involvement in the SE. As a result of the SNB process, we and certain of our subsidiaries have entered into an agreement on the involvement of employees governing the provision of information to and consultation with our European employees. The agreement generally provides that the management of JHI SE and certain of our subsidiaries will provide information to our European employees regarding certain matters both annually and as such matters may arise. The agreement also provides that we will, subject to certain conditions, provide additional information and engage in a dialogue and exchange of views with those European employees who express an interest in these communications in a manner and with a content that allows those employees to express an opinion

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so that their opinion may be taken into account in our decision-making process. We also have agreed that we will convene a meeting with non-EEA member state employees to discuss information related to certain matters.

As contemplated by the agreement, we provided notice to and consulted with our European employees regarding the migration of our corporate domicile from The Netherlands to Ireland.

While we do not expect that the entry into the employee involvement agreement will result in a material change to our governance or the way James Hardie runs its business, we have not operated under this type of agreement before and there can be no assurance that it will not affect our governance or decision making process. In addition, an adverse change in our governance or decision making process as a result of the employee involvement agreement could for a period of time affect our results of operations or the market price of our publicly traded securities.

The actual benefits that we realize as an Irish SE could be materially different from our current expectations.

The Re-domicile was designed to enable us to reorganize the Company 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 JHI SE regarding its future tax obligations. In addition, the transformation was partly driven by the desire to increase our future flexibility by becoming subject to Irish 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 applicable to our operations will not adversely change in the future, that Irish 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 realize as an Irish SE 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 transformation to an Irish SE, including the reduction of amounts available for contributions under the Amended FFA resulting from the costs associated with the Re-domicile 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 NSW Government in the Amended FFA and the standby loan arrangements, adverse action could be directed against us by one or more of the NSW Government, 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 Re-domicile reducing the amounts available for contribution under the Amended FFA in the financial year following the Re-domicile, particularly if the AICF does not have sufficient funding in future years to meet obligations to claimants or requires additional loans 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 to prior taxation years.

Our transformation to an Irish SE also could result in increased negative publicity related to the Company. There continues to be negative publicity regarding, and criticism of, companies that conduct substantial business in the U.S. but are domiciled in foreign countries. We cannot assure you that we will not be subject to similar criticism based on the Re-domicile. We previously have been the subject of significant negative publicity in connection with the events that were considered by the SCI and the ASIC proceedings in Australia, which we believe has in the past contributed to declines in the price of our publicly traded securities.

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.

Our effective income tax rate could increase and materially adversely affect our business.

We operate in multiple jurisdictions and pay tax on our income according to the tax laws of these jurisdictions. Various factors, some of which are beyond our control, determine our effective tax rate. The primary drivers of our 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 (which we refer to as the FRR) regime in The Netherlands (our participation in the FRR regime in The Netherlands was terminated on October 16, 2009 upon the transfer of our treasury and finance operations to Ireland), 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. Such changes to our effective tax rate could materially adversely affect our financial position, liquidity, results of operations and cash flows.

Tax benefits are available under the U.S.-Netherlands Income Tax Treaty to U.S. and Dutch taxpayers that qualify for those benefits. In spite of a favorable settlement with the Appeals Division of the Internal Revenue Service (which we refer to as the IRS) for calendar years 2006 and 2007 (as discussed below), our eligibility for continuing benefits under the U.S.-Netherlands Tax Treaty is still undetermined for 2008 and subsequent years.

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

Companies eligible for benefits under the New U.S.-NL Treaty qualify for a zero percent U.S. withholding tax rate not only on interest and royalties but also, in certain circumstances, on dividends. However, the LOB provision of the New U.S.-NL Treaty has a number of new, more restrictive eligibility requirements for eliminating or reducing U.S. withholding taxes and for other treaty benefits. We changed our organizational and operational structure as of January 1, 2006 to satisfy the requirements of the LOB provision of the New U.S.-NL Treaty and believe we are eligible for the benefits of the New U.S.-NL Treaty commencing February 1, 2006.

On June 23, 2008, the IRS issued a Notice of Proposed Adjustment to us (which we refer to as NOPA) that concluded that we did not qualify for the LOB provision of the New U.S.-NL Treaty applying from early 2006. However, on April 15, 2009, we announced that the Appeals Division of the IRS had entered into a settlement agreement with our subsidiaries in which the IRS agreed to concede the government’s position in full with regard to its assertion that we did not qualify for benefits under the New U.S.-NL Treaty for calendar years 2006 and 2007. The IRS has concluded that, for those years, we are entitled to reduced withholding tax rates under the LOB provision of the New U.S.-NL Treaty for certain payments from our U. S. subsidiaries to our Netherlands subsidiaries.

In spite of this favorable settlement with the Appeals Division of the IRS for calendar years 2006 and 2007, our eligibility for continuing benefits under the New U.S.-NL Treaty is still undetermined for 2008 and subsequent years because such eligibility is determined on an annual basis and we could be audited by the IRS for this same issue in the future. If during a subsequent tax audit or related process, the IRS determines that we are not eligible for continuing benefits under the New U.S.- NL Treaty, we may not qualify for treaty benefits. As a result, our effective tax rate could significantly increase beginning in the fiscal year that such determination is made and we could be liable for taxes owed for calendar year 2008 and subsequent periods, which could materially adversely affect our financial position, liquidity, results of operations and cash flows.

Tax benefits are available under the U.S.-Ireland Income Tax Treaty for certain intercompany payments made by our U.S. subsidiaries to our Irish subsidiaries. Interest and royalty payments paid by our U.S. subsidiaries to our Irish subsidiaries may not qualify for treaty benefits under the “derivative benefits” clause.

On October 9, 2009 we transferred our intellectual property to James Hardie Technology Ltd, an Irish tax resident incorporated in Bermuda. On October 16, 2009, we transferred our treasury and finance operations to James Hardie International Finance Ltd, which is incorporated in and a tax resident of Ireland. We believe that interest and royalties paid by our U.S. subsidiaries to these companies qualify for treaty benefits in the form of reduced withholding tax under the U.S.-Ireland Income Tax Treaty (which we refer to as the U.S.-Ireland Treaty). For the period between the incorporation of these companies until the date that we became a tax resident in Ireland, under provisions of the U.S.-Ireland Treaty, our Irish subsidiaries qualified for treaty benefits under the “derivative benefits” clause so long as we were also eligible for treaty benefits under the amended U.S.-NL Income Tax Treaty.

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 apply to us, including that JHI SE will not be treated as an Irish tax resident for purposes of the U.S.-Ireland Treaty and The Netherlands-Ireland Treaty.

On August 21, 2009, shareholders approved Stage 1 of the Re-domicile to move our corporate domicile to Ireland. Following this vote, on February 19, 2010, we completed our transformation from a N.V. to a SE registered in The Netherlands. Subsequently, on June 2, 2010, shareholders approved Stage 2 of the Re-domicile; and on June 17, 2010, we became subject to Irish law in addition to the SE Regulation.

As part of this process, we requested and received certain rulings from the Irish and Dutch Revenue authorities. One of the rulings received from the Irish Revenue authorities confirms, among other things, that so long as we are centrally managed and controlled in Ireland, we will be a tax resident of Ireland. The ruling received from the Dutch Revenue authorities confirms, among other things, that we will no longer be subject to Dutch corporate income tax (except on Dutch source income) nor Dutch dividend withholding tax as long as we remain an Irish tax resident for purposes of The Netherlands-Ireland Treaty.

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. We intend to establish that we are centrally managed and controlled in Ireland by, among other things, holding a majority of our board meetings in Ireland with participation of a majority of our directors in Ireland; the board deciding on corporate strategy, including decisions relating to significant transactions and investments, capital expenditures, equity and debt raising and dividend payments in Ireland; and maintaining our head office function in Ireland. One of the rulings from the Irish Revenue authorities confirms that if we operate in this manner, we will be considered a tax resident of Ireland.

On June 29, 2010, we conducted our first board meeting in Ireland. In addition, we have expressed an intent to become an Irish tax resident and intend to hold the majority of our subsequent board meetings, at which key decisions affecting us are made, in Ireland. On this basis, with effect from June 29, 2010 and forward, we believe that we should be considered to be an Irish tax resident and should no longer be considered to be a Dutch tax resident.

If we fail to satisfy the requirement that we are centrally managed and controlled in Ireland because we fail to operate in the manner set out in the ruling from the Irish Revenue authorities or otherwise, we may not qualify as an Irish tax resident for the purposes of the U.S.-Ireland Treaty and The Netherlands-Ireland Treaty. In such a circumstance, we could be subject to taxation in another jurisdiction, including The Netherlands. We may also in the future fail to operate in a manner consistent with other facts upon which the rulings of the Irish and Dutch revenue authorities are based. In such an event, the conclusions reached in the revenue rulings would no longer apply and we may not receive some or all of the anticipated benefits of the US-Ireland Treaty.

In addition, we requested and received rulings from the Irish Revenue authorities in relation to the residence position of both James Hardie Technology Ltd and James Hardie International Finance Ltd. These rulings confirmed that so long as both companies are centrally managed and controlled in Ireland, they will be tax residents of Ireland. We

believe that James Hardie Technology Ltd and James Hardie International Finance Ltd should be considered to be Irish tax residents as of October 9, 2009 and October 16, 2009, respectively, because they have held their board meetings, and have been centrally managed and controlled in Ireland. If the companies fail to satisfy the requirement that they be centrally managed and controlled in Ireland, or they fail to operate in a manner consistent with other facts upon which our rulings are based, they may not qualify as Irish tax residents for the purposes of the U.S.-Ireland Treaty. As a result, our effective tax rate could significantly increase beginning in the fiscal year that such determination is made and we could be liable for taxes owed for calendar year 2009 and subsequent periods, which could materially adversely affect our financial position, liquidity, results of operations and cash flows.

Tax benefits are available under the U.S.-Ireland Income Tax Treaty to U.S. and Irish taxpayers that qualify for those benefits. Our eligibility for benefits under the U.S.-Ireland Tax Treaty is determined on an annual basis and we could be audited by the IRS for this issue. If during a subsequent tax audit or related process, the IRS determines that we are not eligible for benefits under the U.S.-Ireland Treaty, we may not qualify for treaty benefits. As a result, our effective tax rate could significantly increase and we could be subject to a 30% U.S. withholding tax rate.

We believe that, under the limitation on benefits (which we refer to as the LOB) provision of the U.S.-Ireland Treaty, no U.S. withholding tax applies to interest or royalties that our U.S. subsidiaries paid to James Hardie Technology Ltd (our Irish intellectual property management subsidiary) and James Hardie International Finance Ltd (our Irish treasury and finance subsidiary). The LOB provision has various conditions of eligibility for reduced U.S. withholding tax rates and other treaty benefits, all of which we believe are satisfied. If, however, we do not qualify for benefits under the U.S.-Ireland Treaty, those interest and royalty payments would be subject to a 30% U.S. withholding tax.

Our eligibility for benefits under the U.S.-Ireland Tax Treaty is determined on an annual basis and we could be audited by the IRS for this issue. If during a subsequent tax audit or related process, the IRS determines that we are not eligible for benefits under the U.S.-Ireland Treaty, we may not qualify for treaty benefits. As a result, our effective tax rate could significantly increase beginning in the fiscal year that such determination is made and we could be liable for taxes owing for calendar year 2010 and subsequent periods, which could materially adversely affect our financial position, liquidity, results of operations and cash flows.

Finally, with effect from June 29, 2010 forward (i.e., the date upon which we became an Irish tax resident), we believe that, under the U.S.-Ireland Treaty, a 5% U.S. withholding tax applies to dividends paid to us by our U.S. subsidiaries. The LOB provision of the U.S.-Ireland Treaty has various conditions of eligibility for reduced U.S. withholding tax rates and other treaty benefits, all of which we believe we have satisfied. If, however, we do not qualify for benefits under the U.S.-Ireland Treaty, dividend payments would be subject to a 30% U.S. withholding rate.

See Item 4, "Information on the Company — Legal Proceedings" for more information.

Under Dutch tax law, from April 1, 2009 through October 15, 2009, we derived tax benefits from the group finance operations of our Netherlands-based finance subsidiary, and changes in the laws applicable to the finance subsidiary could have increased our effective tax rate and, as a result, could materially adversely affect our business. As of October 16, 2009, our group treasury and finance operations were transferred to Ireland.

Prior to October 16, 2009 we conducted our finance and treasury activities in our Dutch finance subsidiary located in The Netherlands. In addition to providing financing to our various subsidiaries, the finance subsidiary owned and developed intellectual property that it licensed to our operating subsidiaries. Under the Dutch International Group Finance Company rules, we obtained a ruling from the Dutch Revenue authority that allowed the finance subsidiary to set aside, in a FRR, a portion of its taxable profits from its financing activity and from licensing its intellectual property. The amounts set aside in the FRR were free of current Dutch income tax. Consequently, the finance subsidiary generally incurred an effective tax rate of approximately 13% to 15% on its qualifying financing and licensing income and was taxable at the 25.5% statutory rate on all other income received (25.5% is the Dutch statutory rate for calendar year 2007 and subsequent years). Such other income includes any amounts involuntarily released from the FRR to cover any risks (such as currency losses, bad debt losses and foreign branch losses) for which the FRR was established. The effective tax rate on qualifying income may be reduced to as low as approximately 5% to 7% depending on the extent to which amounts from the FRR paid for qualifying capital

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contributions that were used to finance capital and other certain qualifying expenditures and resulted in a tax exempt release from the FRR. However, the effective tax rate may also be higher than 13% to 15% if (1) the risks for which the FRR was formed materialized or (2) if there were insufficient opportunities to obtain tax exempt releases from the FRR. The Dutch revenue ruling became effective on July 1, 2001 and, when issued, was to apply for 10 years so long as we satisfied the requirements of the Dutch International Group Finance Company provisions under Dutch tax law. As discussed below, the Dutch revenue ruling was set to expire on December 31, 2010. However, our participation in the FRR Regime in The Netherlands terminated on October 16, 2009 upon the transfer of our treasury and finance operations to Ireland.

The European Commission (which we refer to as the Commission), the executive arm of the European Union (which we refer to as the EU), reviewed the tax regimes of its member countries to identify tax concessions that the Commission considered to be a form of “prohibited state aid” and, therefore, contrary to the provisions of the European Community Treaty. In February 2003, the Commission concluded that the existence of special tax concessions in certain countries, including the Dutch International Group Finance Company regime, cannot be reconciled with EU rules regarding state aid. Accordingly, the Commission banned certain concessionary tax regimes, including the Dutch International Group Finance Company regime, but allowed companies then operating under that regime, including our Dutch finance subsidiary, to continue to operate under the regime until December 31, 2010.

Under Irish tax law, our Irish subsidiaries are subject to tax at the trading rate of 12.5%. Failure to meet the conditions required to qualify for this rate could increase our effective tax rate and, as a result, could materially adversely affect our business.

We transferred our intellectual property to James Hardie Technology Ltd on October 9, 2009, and terminated our participation in the FRR by transferring our treasury and finance operations to James Hardie International Finance Ltd on October 16, 2009.

We have secured rulings from the Irish Revenue authorities which confirm, subject to certain conditions (which we believe we satisfy), that James Hardie International Finance Ltd should be regarded as carrying on a “trade of treasury operations” in Ireland and James Hardie Technology Ltd should be regarded as carrying on a “trade of intellectual property management”, such that the profits arising to both companies should be subject to tax in Ireland at the trading rate of 12.5%.

If, however, we do not qualify for the trading rate of tax on our finance income and our royalty income, we will be subject to tax in Ireland at the passive rate of 25% on this income with the additional risk of limited deductions for our expenses. As a result, our effective tax rate could significantly increase beginning in the fiscal year that such determination is made and we could be liable for taxes owing for fiscal year 2010 and subsequent periods, which could materially adversely affect our financial position, liquidity, results of operations and cash flows.

Our wholly-owned subsidiary, RCI Pty Ltd (which we refer to as RCI), has been required to post a substantial cash deposit and may incur substantial expenses in order to pursue an appeal of an assessment by the ATO. In addition, if the assessment is ultimately upheld this also would materially and adversely affect our business.

In March 2006, RCI received an amended assessment from the ATO based on the ATO’s calculation of RCI’s net capital gains arising as a result of an internal corporate restructuring carried out in 1998. During fiscal year 2007, we agreed with the ATO that in accordance with the ATO Receivables Policy, we would pay 50% of the total amended assessment being A\$184.0 million (\$148.4 million — converted at the March 31, 2007 spot rate) and provide a guarantee from JHI SE in favor of the ATO for the remaining unpaid 50% of the amended assessment, pending the outcome of the appeal of the amended assessment. We also agreed to pay general interest charges (which we refer to as GIC) accruing on the unpaid balance of the amended assessment in arrears on a quarterly basis.

We believe that it is more likely than not that the tax position reported in RCI’s tax return for the 1999 fiscal year will be upheld on appeal. Therefore, we believe that the requirement to recognize a liability for an uncertain tax position relating to the ATO amended assessment has not been met. Accordingly, we have not recorded any liability at March 31, 2010 for the amended assessment.

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We have accounted for all payments made to the ATO and related accrued interest receivable as a deposit, see the line item “Deposit with Australian Taxation Office” in our consolidated balance sheets in Item 18. In addition, it is our intention to treat any payments to be made at a later date as a deposit. As of March 31, 2010, this deposit totaled A\$269.9 million (\$247.2 million).

Even if RCI is successful in appealing the amended assessment and the amount paid to the ATO is ultimately refunded to RCI, the requirement to initially pay 50% of the amended assessment and make ongoing payments of accruing general interest charges pending the outcome of the appeal could materially and adversely affect our financial position and liquidity, as the cash required to make these payments is not available during the appeals process for ordinary corporate purposes. If RCI is unsuccessful in appealing the amended assessment, RCI will be required to pay the remaining 50% of the unpaid amended assessment, reverse the “Deposit with Australian Taxation Office” amount and recognize an expense amount for the total amended assessment and general interest charge payments. As a result, our financial position, liquidity, results of operations and cash flows would be materially and adversely affected. See Item 4, “Information on the Company — Legal Proceedings”, Item 5, “Operating and Financial Review and Prospects — Liquidity and Capital Resources” and Note 14 to the notes to our consolidated financial statements included in Item 18 for more information.

Exposure to additional income tax liabilities due to audits could materially adversely affect our business.

Due to our size and the nature of our business, we are subject to ongoing reviews by authorities in taxing jurisdictions on various tax matters, including challenges to various positions we assert on our income tax and withholding tax returns. We accrue for tax contingencies based upon our best estimate of the taxes ultimately expected to be paid, which we update over time as more information becomes available. Such amounts are included in taxes payable or other non-current liabilities, as appropriate. We record additional tax expense in the period in which we determine that the recorded tax liability is less than the ultimate assessment we expect. The amounts ultimately paid on resolution of reviews by taxing jurisdictions could be materially different from the amounts included in taxes payable or other non-current liabilities and result in additional tax expense which could materially adversely affect our financial position, liquidity, results of operations and cash flows.

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

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

Irish law contains provisions that could delay or prevent a change of control that may otherwise be beneficial to shareholders.

Irish law contains several provisions that could have the effect of delaying or preventing a change of control of our ownership. The Irish Takeover Rules generally prohibit the acquisition of shares of our common stock if, because of an acquisition of a relevant interest (including interests held in the form of shares of our common stock, CUFS or ADSs) in such shares, the voting rights of the shares in which a person (or persons acting in concert) holds relevant interests increases (i) from 30% or below to over 30% or (ii) from a starting point that is above 30% and below 50%. However, this prohibition is subject to exceptions, including acquisitions that result from acceptances under a mandatory takeover bid made in compliance with the Irish Takeover Rules. Although the Irish Takeover Rules may help to ensure that no person acquires voting control of us without making an offer to all shareholders, they may also have the effect of delaying or preventing a change of control that may otherwise be beneficial to you. See Item 10, “Additional Information — Key Provisions of our Articles of Association — Limitations on Right to Hold Common Stock.”

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

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

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

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

The authority to issue shares and to grant rights (e.g. options) to subscribe for shares, up to the amount of authorized share capital has been delegated to the Board, although this right is limited by the applicable listing rule of the ASX or the New York Stock Exchange (which we refer to as the NYSE). Accordingly, our Board could decide to issue shares or grant rights to subscribe for shares, such as options, up to the amount of our authorized share capital, without shareholder approval, which could dilute the value of your shares and materially adversely affect the price of our common stock.

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

Indemnification claims arising under certain indemnification agreements we have granted to third parties could have a material adverse effect on our business.

From time to time we have entered into indemnification agreements with third parties. If claims are made under these indemnification agreements, our obligations could be significant and could materially adversely affect our financial position, liquidity, results of operations and cash flows.

For instance, we entered into an indemnity agreement in connection with the sale of our former United States gypsum wallboard manufacturing facilities in April 2002, under which we agreed to indemnify the buyer from certain future liabilities, including, for a period of 30 years, liabilities arising from asbestos-related injuries to persons or property arising from our former gypsum business that exceed \$5 million in the aggregate, subject to a \$250 million in the aggregate limit.

See Item 4, “Information on the Company — Legal Proceedings” for more information.

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

Because our reporting currency is the U.S. dollar, our non-U.S. operations face the additional risk of fluctuating currency values and exchange rates. Such operations may also face hard currency shortages and controls on currency exchange. Approximately 28%, 24% and 22% of our net sales in fiscal years 2010, 2009 and 2008, respectively,

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were derived from sales outside the United States. Consequently, changes in the value of foreign currencies (principally Australian dollars, New Zealand dollars, Philippine pesos, Euros, U.K. pounds and Canadian dollars) could materially affect our business, results of operations and financial condition. We generally attempt to mitigate foreign exchange risk by entering into contracts that require payment in local currency, hedging transactional risk, where appropriate, and having non-U.S. operations borrow in local currencies. Although, we may enter into such financial instruments from time to time to manage our foreign exchange risks, we did not have any material forward exchange contracts outstanding as of March 31, 2010. There can be no assurance that we will be successful in these mitigation strategies, or that fluctuations in foreign currencies and other foreign exchange risks will not have a material adverse effect on our financial position, liquidity, results of operations and cash flows.

See also the Risk Factor above captioned "Since our revenues are primarily derived from sales in U.S. dollars and payments pursuant to the Amended FFA are made in Australian dollars, we may experience unpredictable volatility in our reported results due to changes in the U.S. dollar (and other currencies from which we derive our sales) compared to the Australian dollar." Any of these factors could materially affect our financial position, liquidity, results of operations and cash flows.

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

Demand for our products depends in large part on the residential construction markets and, to a lesser extent, on commercial construction markets. The level of activity in residential construction markets depends on new housing starts and residential remodeling projects, which are a function of many factors outside our control, including general economic conditions, the availability of financing, mortgage and other interest rates, inflation, unemployment, the inventory of unsold homes, the level of foreclosures, home resale rates, housing affordability, demographic trends, gross domestic product growth and consumer confidence in each of the countries and regions in which we operate.

For example, in fiscal year 2010, our results continued to be affected by the on-going economic downturn of our major market, the U.S. housing market, where housing starts in the United States reached a seasonally-adjusted annual rate of 531,000 units in March 2010. This reflects a 77% decline from the January 2006 peak of 2.265 million starts. We believe that analysts remain confident that the U.S. housing market will continue to improve in fiscal year 2011; however, uncertainty remains as to the extent and sustainability of an anticipated recovery in the U.S. housing market.

In Australia, the residential housing market is expected to modestly improve during calendar year 2010, supported by increases in housing approvals, robust employment numbers and high levels of immigration. However, such improvements cannot be assured. In New Zealand, new housing construction and renovation activity are anticipated to soften over the short-to-medium term. Softness in renovation and commercial markets is likely to partially offset stronger residential housing growth.

Any slow down in the markets we serve could result in decreased demand for our products and cause us to experience decreased sales and operating income. In addition, the level of activity in construction markets also depends on our ability to grow primary demand for fiber cement and convert sales of alternative materials to sales of fiber cement. Historically, in periods of economic decline, both new housing starts and residential remodeling also decline. The level of activity in the commercial construction market depends largely on vacancy rates and general economic conditions. Because residential and commercial construction markets are sensitive to cyclical changes in the economy, downturns in the economy or a lack of substantial improvement in the economy of any of our geographic markets could materially adversely affect our financial position, liquidity, results of operations and cash flows. In addition, during periods of economic decline, we may have difficulty retaining our workforce which may, in turn, lead to additional costs such as the costs of deferred bonus programs and the training of new workers. Because of these and other factors, our results of operations may be subject to substantial fluctuations and the results for any prior period may not be indicative of results for any future period.

We do not know how long current market conditions will persist, or when or how successful any future recovery of the housing market may be. Further deterioration or continued weaknesses in general economic conditions, such as

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higher interest rates, continued high levels of unemployment, continued restrictive lending practices and increased number of foreclosures could have a material adverse effect on our business, financial condition and operating results.

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

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

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

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

Increased competition into any of the markets in which we compete would likely cause pricing pressures in those markets. Any of these factors could have a material adverse effect on our financial position, liquidity, results of operations and cash flows.

If damages resulting from product defects exceed our insurance coverage, paying these damages could result in a material adverse effect on our business.

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

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

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

Warranty claims resulting from unforeseen defects in our products and exceeding our warranty reserves could have a material adverse effect on our business.

We have offered, and continue to offer, various warranties on our products. In April 2009, we replaced our 50-year limited pro-rated warranty with a 30-year limited non-prorated warranty for certain of our fiber cement siding products in the United States. As of March 31, 2010, we have accrued \$24.9 million for such warranties. See the line items “Accrued product warranties” in our consolidated balance sheets and Note 10 to our consolidated financial statements in Item 18. Although we maintain reserves for warranty-related claims and legal proceedings that we believe are adequate, we cannot assure you that warranty expense levels or the results of any warranty-related legal proceedings will not exceed our reserves. If our warranty reserves are significantly exceeded, the costs associated with such warranties could have a material adverse effect on our financial position, liquidity, results of operations and cash flows.

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

In all the jurisdictions in which we operate, we are subject to environmental, health and safety laws and regulations governing, among other matters, our operations, including the air, soil, and water quality of our plants, and the use, handling, storage, disposal and remediation of hazardous substances currently or formerly used by us or any of our affiliates. Under these laws and regulations, we may be held jointly and severally responsible for the remediation of any hazardous substance contamination at our or our predecessors’ past or present facilities and at third-party waste disposal sites. We may also be held liable for any claims arising out of human exposure to hazardous substances or other environmental damage, including damage to natural resources, and our failure to comply with air, water, waste, and other environmental regulations. In addition, we will continue to be liable for any environmental claims that arose while we owned or operated any of the three gypsum facilities that we sold in April 2002. Pursuant to the terms of our agreement to sell our gypsum business, subject to certain limitations, we retained responsibility for any losses incurred by the buyer resulting from environmental conditions at the Duwamish River in the State of Washington so long as notice of a claim is given within 10 years of closing. Our indemnification obligations in this regard are subject to a \$34.5 million limitation, although non-contractual environmental obligations could exceed this amount. The Seattle gypsum facility had previously been included on the “Confirmed and Suspected Contaminate Sites Report” released in 1987 due to the presence of metals in the groundwater. See Item 10, “Additional Information — Material Contracts.”

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

The costs of complying with environmental and health and safety laws relating to our operations or the liabilities arising from past or future releases of, or exposure to, hazardous substances, greenhouse gases, or product liability matters, or our failure to comply with air, water, waste, and other than existing environmental regulations may result in us making future expenditures that could have a material adverse effect on our financial position, liquidity, results of operations and cash flows. Such regulations and laws may increase the cost of energy or other products necessary to our operation, thereby increasing our operating costs. In addition, we cannot make any assurances that the laws currently in place that directly or indirectly relate to environmental liability will not change. If, for example, applicable laws or judicial interpretations related to successor liability or “piercing the corporate veil” were to

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change, it could have a material adverse effect on our financial position, liquidity, results of operations and cash flows. See Item 4, “Information on the Company — Legal Proceedings.”

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

In the United States, a large proportion of our fiber cement products are sold in the Southeastern, South Central and Pacific Northwest regions of the country. An increasing proportion of our fiber cement products are sold in the Northeast and Midwest regions of the United States. Demand for building products in all regions is seasonal because construction activity diminishes during the winter season. In Australia, New Zealand and the Philippines, demand for building products is also seasonal because, in Australia and New Zealand, construction activity diminishes during the summer period of December to February, and in the Philippines, construction activity diminishes during the wet season from June to September and the last half of December due to the slowdown in business activity over the holiday period. Because of these and other factors, our quarterly results of operations may vary throughout the year and the results for any quarterly period may not be indicative of results for any future period.

We may experience adverse fluctuations in the supply and cost of raw materials and energy supply necessary to our business. A significant reduction, disruption or cessation of shipments from an important supplier of raw materials or a significant increase in fuel and energy costs could have a material adverse effect on our business.

Cellulose fiber (wood-based pulp), silica, cement and water are the principal raw materials used in the production of fiber cement, and the availability and cost of such raw materials are critical to our operations. Our fiber cement business periodically experiences fluctuations in the supply and costs of raw materials, and some of our supply markets are concentrated. Pulp prices declined by 11% in fiscal year 2010 as the continued weakness of the global economy further loosened global demand. However, late in the fourth quarter of fiscal year 2010, the market price for pulp in North America increased in response to the February 2010 earthquake in Chile, from which approximately 8% of the world supply of pulp is sourced.

Energy costs also are affected by various market factors, including the availability of particular forms of energy, energy prices and local and national regulatory decisions. We cannot estimate whether there will be substantial increases in energy prices, or a decline in the availability of energy in the future. Significant increases in the cost of fuel can also result in material increases in the cost of transportation.

Price fluctuations or material delays may occur in the future due to lack of raw materials, suppliers, or supply chain disruptions. The loss or deterioration of our relationship with a major supplier, an increase in demand by third parties for a particular supplier’s products or materials, delays in obtaining materials, or significant increases in fuel and energy costs could have a material adverse effect on our financial position, liquidity, results of operations and cash flows.

See Item 11, “Information on the Company — Quantitative and Qualitative Disclosures About Market Risk” for more information.

If our research and development efforts fail to generate new, innovative products or processes, our overall profit margins may decrease and demand for our products may fall, which would have a material adverse effect on our business. In addition we may incur substantial expenses related to unsuccessful research and development efforts.

For fiscal years 2010, 2009 and 2008, our expenses for research and development were \$27.1 million, \$23.8 million and \$27.3 million, respectively. We believe that investing in research and development is key to sustaining and growing our existing market leadership position in fiber cement. Because profit margins for fiber cement products and building products generally erode the longer a product has been on the market, innovation is particularly important. We rely on our research and development efforts to generate new products and processes to increase demand and to protect profit margins. If our research and development efforts fail to generate new, innovative products or processes, our overall profit margins may decrease and demand for our products may fall, which would have a material adverse effect on our financial position, liquidity, results of operations and cash flows. In addition, we may incur substantial expenses related to unsuccessful research and development efforts.

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

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

To determine the net realizable value of our inventory, management regularly reviews inventory quantities on hand and evaluates significant items to determine whether they are excess, slow-moving or obsolete. The estimated value of excess, slow-moving and obsolete inventory is recorded as a reduction to inventory and an expense in cost of sales in the period it is identified. This estimate requires management to make judgments about the future demand for our products, and is therefore at risk to change from period to period. If our estimate for the future demand of our products is greater than actual demand and we fail to reduce manufacturing output accordingly, we could be required to record additional inventory reserves, which could have a material adverse effect on our financial position, liquidity, results of operations and cash flows.

Our ability to sell our products into certain markets is influenced by building codes and ordinances in effect in the related localities and states and may limit our ability to compete effectively in certain markets and our ability to increase or maintain our current market share for our products.

Most states and localities in the markets in which we sell our products maintain building codes and ordinances that determine the requisite qualities of materials that may be used to construct homes and buildings for which our products are intended. Our products may not qualify under building codes and ordinances in certain markets, prohibiting our customers from using our products in those markets. This may limit our ability to sell our products into certain markets. In addition, ordinances and codes may change over time which may, from the time they are implemented, prospectively limit or prevent the use of our products in those markets, causing us to lose market share for our products. Although we keep up-to-date on the current and proposed building codes and ordinances of the markets in which we sell or plan to sell our products and, when appropriate, seek to become involved in the ordinance and code setting process, our efforts may be ineffective, which would have a material adverse effect on our financial condition, liquidity, results of operations and cash flows.

We rely on only a few customers to buy our fiber cement products and the loss of any major customer could materially adversely affect our business.

Our top five customers in the U.S. represented approximately 63% of our total USA and Europe Fiber Cement gross sales in fiscal year 2010. Our top five customers in Australia accounted for approximately 27% of our total gross sales in Asia Pacific Fiber Cement in fiscal year 2010. We generally do not have long-term contracts with our large customers. Accordingly, if we were to lose one or more of these customers because our competitors were able to offer customers more favorable pricing terms or for any other reasons, we may not be able to replace customers in a timely manner or on reasonable terms. The loss of one or more customers could have a material adverse effect on our financial position, liquidity, results of operations and cash flows.

Our financial performance could be impacted by a customer's inability to pay amounts owed.

Our financial performance is dependent on our customers within the building products industry. Our customers' businesses have been impacted by the current economic environment, disruptions to the capital and credit markets and decreased demand for their products and services. If any of our largest customers or a substantial number of smaller customers are adversely affected by these conditions, if we become aware of information related to the credit worthiness of a major customer, or if future actual default rates on receivables in general differ from those currently anticipated, we may have to adjust the reserves for uncollectible receivables, which could have a material adverse effect on our financial position, liquidity, results of operations and cash flows.

Our reliance on third party distribution channels could impact our business.

We offer our products directly and through a variety of third party distributors and dealers. Changes in the financial or business condition of these distributors and dealers could subject the company to losses and affect its ability to

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bring our products to market and could have a material adverse effect on our business, financial position, liquidity, results of operations and cash flows.

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

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

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

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

Because our intellectual property and other proprietary information may be or may become publicly available, we are subject to the risk that competitors could copy our products or processes.

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

Natural disasters or disruptions in power supply could have an adverse effect on our overall business.

Our plants and other facilities are located in places that could be affected by natural disasters, such as hurricanes, typhoons, cyclones, earthquakes, floods, tornados and other natural disasters. Natural disasters that directly impact our plants or other facilities could materially adversely affect our manufacturing or other operations and, thereby, harm our overall financial position, liquidity, results of operations and cash flows.

In the manufacture of our products, we rely on a continuous and uninterrupted supply of electric power, water and, in some cases, natural gas, as well as the availability of water, waste and emissions discharge facilities. Any future shortages or discharge curtailments, of a material nature, could significantly disrupt our operations and increase our expenses. We currently do not have backup generators on our sites with the capability of maintaining all of a site's full operational power needs and we do not have alternate sources of power in the event of a sustained blackout.

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While our insurance includes coverage for certain “business interruption” losses (i.e., lost profits) and for certain “service interruption” losses, such as an accident at our supplier’s facility, any losses in excess of the insurance policy’s coverage limits or any losses not covered by the terms of the insurance policy could have a material adverse effect on our financial condition. If blackouts interrupt our power supply, we would be temporarily unable to continue operations at the affected facilities. Any future material and sustained interruptions in our ability to continue operations at our facilities could damage our reputation, harm our ability to retain existing customers or obtain new customers and could result in lost revenue, any of which could have a material adverse effect on our financial position, liquidity, results of operations and cash flows.

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

As of May 31, 2010, approximately 51%, or 244, of our employees in Australia¹, approximately 66%, or 91, of our employees in New Zealand and 19%, or 29 of our employees in the Philippines were represented by labor unions. Our unionized employees are covered by a range of federal and state-based agreements in Australia and other agreements in New Zealand. Two of our labor agreements in Australia will expire in fiscal year 2011 and one labor agreement will expire in June 2014. Our labor agreement for our Meeandah (Queensland, Australia) plant expires in December 2011. Our New Zealand labor agreement expires in October 2012. We cannot assure you that any of these agreements will be renewed on reasonable terms, or at all. During the past three years, we experienced occasional strikes and work interruptions lasting up to 5 days in Australia. In each case the strike action was confined to a small group of employees and had minimal impact on operations. If we were to experience a prolonged labor dispute at any of our facilities, any strikes or work interruptions associated with such dispute could have a material adverse effect on our financial position, liquidity, results of operations and cash flows.

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

In the future, we may not be able to renew credit facilities on substantially similar terms, or at all; we may have to pay additional fees and expenses that we might not have to pay under current circumstances; and we may have to agree to terms that could increase the cost of our debt facilities. If we are unable to renew our credit facilities on terms which are not materially less favorable than the terms currently available to us or obtain alternative or additional financing arrangements, we may experience liquidity issues and will have to reduce our levels of planned capital expenditures, continue to suspend dividend payments or take other measures to conserve cash in order to meet our future cash flow requirements. See Item 5, “Operating and Financial Review and Prospects — Liquidity and Capital Resources.”

Our ability to pay dividends is dependent on Irish law and may be limited in the future if we are not able to maintain sufficient levels of Freely Distributable Reserves (which we refer to as FDRs).

Under Irish corporate law, an Irish company is able to pay dividends up to the amount of its FDRs which are determined under applicable accounting practices generally accepted in Ireland (which we refer to as Irish GAAP). We believe that our current corporate structure has allowed us to maintain sufficient levels of FDRs to continue paying dividends in accordance with our publicly disclosed dividend policy, which is updated from time to time. However, transactions or events could cause a reduction in our FDRs, resulting in our inability to pay dividends on our securities, which could have a material adverse impact on the market value of the securities that you have invested in.

Ineffective internal controls over financial reporting could impact our business and operating results.

Our internal control over financial reporting may not prevent or detect misstatements because of its inherent limitations, including the possibility of human error, the circumvention or overriding of controls, or fraud. Even effective internal controls can provide only reasonable assurance with respect to the preparation and fair presentation

¹ Under Australian law, we cannot keep records of union members. The number quoted is the number of people who work in our factories that have union participation and therefore may be represented by a union.

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of financial statements. If we fail to maintain the adequacy of internal controls, our business and operating results could be harmed and we could fail to meet our financial reporting obligations.

Our use of accounting estimates involves judgment and could impact our financial results.

Our most critical accounting estimates are described in the Note 2 to our consolidated financial statements in Item 18. In addition, as discussed in Note 10, “Product Warranties” and Note 13, “Contingencies and Commitments” to our consolidated financial statements in Item 18, we make certain estimates including decisions related to legal proceedings and warranty reserves. Because by definition these estimates and assumptions involve the use of judgment, actual financial results may differ.

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 our Re-domicile on June 17, 2010, our Supervisory and Managing Boards were replaced with a single board which, over time, is expected to consist of eight non-executive directors and one executive director. All of the seven directors that served on the Supervisory Board continued as non-executive directors, with one new director to be added to the board over time. Our Board includes one director who was appointed following shareholder approval of Stage 1 of the Re-domicile.

Only one of the existing seven directors on our Supervisory Board who continued as a director on our single board has served more than four years on our board. The balance of the board, other than our CEO, is made up of directors with less than four years experience with the Company. The changes to our board structure and composition as a result of the Re-domicile could for a period of time impact the effectiveness of our directors and of board-level decision-making.

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

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

We are dependent upon our key management personnel for our future success.

Our success is greatly influenced by our ability to attract and retain qualified executives with experience in our market and industry. Our ability to retain executive officers and key management personnel is important to the implementation of our strategy. We could potentially lose the services of any of our senior management personnel due to a variety of factors that could include, without limitation, death, incapacity, personal issues, retirement, resignation, or competing employers. We may fail to attract and retain qualified key management personnel required to continue to operate our business successfully. The unexpected loss of senior management, coupled with our failure to recruit qualified successors, could have a material adverse effect on our business and the trading price of our common stock.

Forward-Looking Statements

This annual report contains forward-looking statements. We may from time to time make forward-looking statements in our periodic reports filed with or furnished to the SEC, 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 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 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, including potential tax charges;
- statements regarding tax liabilities and related audits, reviews and proceedings;
- statements as to the possible consequences of proceedings brought against us and certain of our former directors and officers by the ASIC;
- expectations about the timing and amount of contributions to the AICF, a special purpose fund for the compensation of proven Australian asbestos-related personal injury and death claims;
- expectations concerning indemnification obligations;
- statements about product or environmental liabilities; and
- statements about economic conditions, such as the levels of new home construction, unemployment levels, the availability of mortgages and other financing, mortgage and other interest rates, housing affordability and supply, the levels of foreclosures and home resales, currency exchange rates and consumer confidence.

Words such as “believe,” “anticipate,” “plan,” “expect,” “intend,” “target,” “estimate,” “project,” “predict,” “forecast,” “guideline,” “aim,” “will,” “should,” “likely,” “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 current expectations, estimates and assumptions and because forward-looking statements address future results, events and conditions, they, by their very nature, involve inherent risks

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and uncertainties, many of which are unforeseeable and beyond our control. 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 “Key Information — Risk Factors” beginning on page 6, include, but are not limited to: all matters relating to arising out of the prior manufacture of products that contained asbestos by current and former James Hardie subsidiaries; required contributions to the AICF, any shortfall in the AICF and the effect of currency exchange rate movements on the amount recorded in our financial statements as an asbestos liability; proposed governmental loan facility to the AICF; compliance with and changes in tax laws and treatments; competition and product pricing in the markets in which we operate; seasonal fluctuations in the demand for our products; 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; the potential that competitors could copy our products; 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; the effect of the transfer of our corporate domicile from The Netherlands to Ireland to become an Irish SE including employee relations, changes in corporate governance, potential tax benefits and the effect of any negative publicity; 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, Irish and U.S. securities agencies and exchanges (as appropriate). We caution you 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.

Item 4. Information on the Company

History and Development of the Company

Our initial date of incorporation was October 26, 1998. Our legal name was changed to James Hardie Industries N.V. from RCI Netherlands Holdings B.V. in July 2001 when our legal form was converted from a “*besloten vennootschap met beperkte aansprakelijkheid*” (which we refer to as a B.V.), or a N.V., or a public limited liability company whose stock, unlike a private limited liability company, may be transferred without executing a notarial deed if such company is listed on a recognized stock exchange. In February 2010, our legal name was changed to James Hardie Industries SE when our legal form was converted from a N.V. to a Dutch SE in connection with implementing Stage 1 of the Re-domicile to move our corporate domicile from The Netherlands to Ireland. On June 17, 2010, we implemented Stage 2 of the Re-domicile and moved our corporate domicile to Ireland.

We conduct our operations under legislation in various jurisdictions. As an Irish SE, we are subject to Irish law in addition to the SE Regulation, European Union Council Regulations and relevant European Union Directives.

Our corporate domicile is located in Ireland. The address of our registered office in Ireland is Europa House, Second Floor, Harcourt Centre, Harcourt Street, Dublin 2, Ireland. The telephone number there is +353 1411 6924. Our agent in the United States is CT Corporation. Its office is located at 3 Winners Circle, 3rd Floor, Albany, New York 12205.

Corporate Restructuring

On July 2, 1998, JHIL, now called ABN 60, which was then a public company organized under the laws of Australia and listed on the ASX, announced a plan of reorganization and capital restructuring (which we refer to as the 1998 Reorganization).

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

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

In February 2001, ABN 60, or JHIL, established the Medical Research and Compensation Foundation (which we refer to as the Foundation) by gifting A\$3.0 million (\$1.7 million based on the March 31, 2001 exchange rate of A\$1.7989 to US\$1.0000) in cash and transferring ownership of Amaca and Amaba to the Foundation.

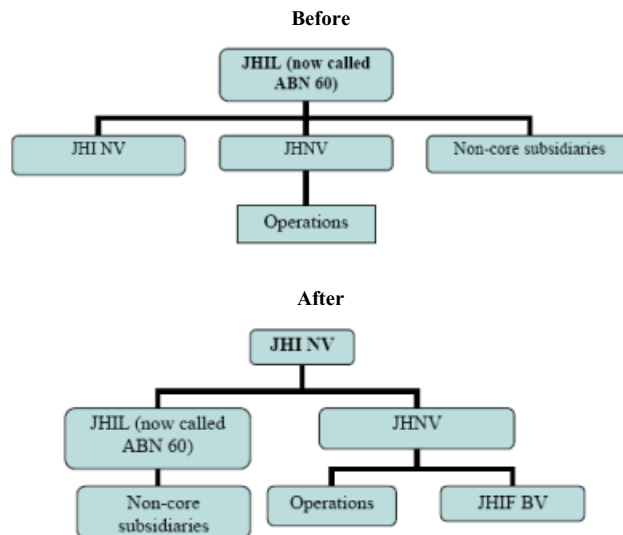
On July 24, 2001, ABN 60 announced a further plan of reorganization and capital restructuring (which we refer to as the 2001 Reorganization). On October 19, 2001, we completed our 2001 Reorganization. This restructuring was done to provide us with a more efficient financial structure in light of potential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

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

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

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

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



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

During fiscal year 2003:

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

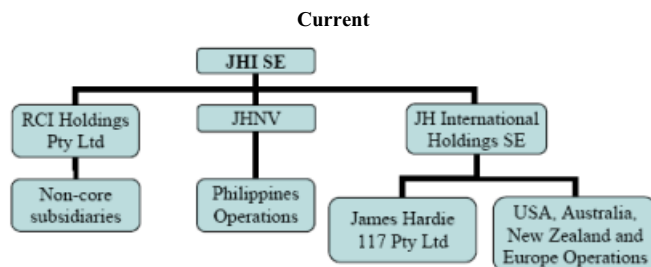
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During fiscal year 2006, we completed a further restructuring to allow us to continue paying dividends and continue realizing benefits available under the Dutch Financial Risk Reserve regime. See Item 3, “Key Information — Risk Factors.”

In August 2008, following proceedings commenced by the Commissioner of Taxation, the Federal Court of Australia made orders providing for the reinstatement of James Hardie Australia Finance Pty Ltd (which we refer to as JHAF), and the appointment of a liquidator. JHAF is a subsidiary of JHIF BV that was deregistered in August 2005 following a member’s voluntary winding up. In December 2008, following our settlement with the ATO, the Federal Court of Australia made orders terminating the liquidation of JHAF. Accordingly, the liquidator was removed and JHAF came under our full control as a wholly owned subsidiary of JHIF BV. For additional information on the ATO settlement see Note 14 to our consolidated financial statements in Item 18.

In August 2009, JHI NV shareholders approved Stage 1 of the Re-domicile to move our corporate domicile from The Netherlands to Ireland. Following this vote, in February 2010, the Company transformed from a N.V. to a SE corporation registered in The Netherlands. The legal name of the Company was changed to James Hardie Industries SE. JHI SE controls the same assets and liabilities as JHI NV controlled immediately prior to the transformation. On June 2, 2010, our shareholders approved Stage 2 of the Re-domicile. Following this vote, on June 17, 2010, we moved our corporate domicile to Ireland and are now subject to Irish law in addition to the SE Regulations, European Union Council Regulations and relevant European Union Directives.

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



Consolidation of the AICF

In February 2007, our shareholders approved a proposal pursuant to which we provide long-term funding to the AICF. JHI SE owns 100% of James Hardie 117 Pty Ltd (the “Performing Subsidiary”) that funds the AICF subject to the provisions of the Amended FFA. We appoint three of the AICF directors and the NSW Government appoints two of the AICF directors.

Under the terms of the Amended FFA, the Performing Subsidiary has an obligation to make payments to the AICF on an annual basis, depending on our net operating cash flow. The amounts of these annual payments are dependent on several factors, including our free cash flow (as defined in the Amended FFA), actuarial estimations, actual claims paid, operating expenses of the AICF and the annual cash flow cap. JHI SE guarantees the Performing Subsidiary’s obligation. As a result, we consider us to be the primary beneficiary of the AICF.

Our interest in the AICF is considered variable because the potential impact on us will vary based upon the annual actuarial assessments obtained by the AICF with respect to asbestos-related personal injury claims against the Former James Hardie Companies.

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Although we have no legal ownership in the AICF, we consolidate the AICF due to our pecuniary and contractual interests in the AICF as a result of the funding arrangements outlined in the Amended FFA. Our consolidation of the AICF resulted in a separate recognition of the asbestos liability and certain other items including the related Australian income tax benefit. Among other items, we recorded a deferred tax asset for the anticipated tax benefit related to asbestos liabilities and a corresponding increase in the asbestos liability. The Performing Subsidiary is able to claim a tax deduction for contributions to the asbestos fund. Since fiscal year 2007, we have classified the expense related to the increase of the asbestos liability as asbestos adjustments and we have classified the benefit related to the recording of the related deferred tax asset as an income tax benefit (expense) on our consolidated statements of operations. See Note 2 to our consolidated financial statements in Item 18.

Recent Developments (events occurring after April 1, 2010)

ASIC Proceedings

In February 2007, ASIC commenced civil proceedings in the Supreme Court of New South Wales against us, ABN 60, and ten then-present or former officers and directors of the James Hardie Group.

On April 23, 2009, Justice Gzell issued judgment against us, ABN 60 and the ten former officers and directors of the James Hardie Group. All defendants other than two lodged appeals against Justice Gzell's judgments, and ASIC responded by lodging cross-appeals against the appellants. The appeals lodged by the former directors and officers were heard in April 2010 and the appeal lodged by us was heard in May 2010. Judgment in respect of all appeals is still pending.

See Item 3, "Key Information — Risk Factors", "Legal Proceedings" below and Note 13 to our consolidated financial statements in Item 18 for additional information on the ASIC proceedings.

Re-domicile

As noted above, on June 2, 2010, shareholders approved Stage 2 of the Re-domicile; and with effect from June 17, 2010, the Company became subject to Irish law in addition to the SE Regulation.

Debt Facilities

On June 16, 2010, \$161.7 million of our term facilities matured, which included \$95.0 million of term facilities that were outstanding at March 31, 2010. We did not refinance these facilities. Accordingly, amounts outstanding under these facilities were repaid in June 2010 by using longer term facilities. See Item 5, "Operating and Financial Review and Prospects — Liquidity and Capital Resources" for more information.

General Overview of Our Business

Based on net sales, we believe we are the largest manufacturer of fiber cement products and systems for internal and external building construction applications in the United States, Australia, New Zealand, and the Philippines. Fiber cement has been one of the fastest growing segments (in terms of market growth) of the U.S. residential exteriors industry for the past three years according to NAHB's Builder Practices Reports — Siding Usage/Exterior Wall Finish In New Construction and Consumer Practices Reports — Siding Usage/Exterior Wall Finish In Repair & Remodel (which we refer to as the NAHB's Builder Practices Reports). Based on our knowledge, experience and third-party data regarding our industry, we estimate that the total U.S. industry shipments of fiber cement siding was between 0.87 and 0.93 billion square feet during fiscal year 2010, a decrease of approximately 19 to 23% from fiscal year 2009. Based on our knowledge, experience and third-party data, we estimate that we have 30 to 40% of the U.S. backerboard category. We market our fiber cement products and systems under various Hardie brand names and other brand names such as Artisan® Lap and Artisan™ Accent Trim by James Hardie, and Cemplank® siding (we also formerly marketed siding under the brand name Sentry™ siding). We believe that, in certain applications, our fiber cement products and systems provide a combination of distinctive performance, design and cost advantages when compared to other fiber cement products and alternative products and systems that use solid wood, engineered wood, vinyl, brick, stucco or gypsum wallboard. The sale of fiber cement products in the United States accounted for 72%, 77% and 78% of our total net sales in fiscal years 2010, 2009 and 2008, respectively.

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Our fiber cement products are used in a number of markets, including new residential construction (single and multi-family housing), manufactured housing (mobile and pre-fabricated homes), repair and remodeling and a variety of commercial and industrial applications (stores, warehouses, offices, hotels, motels, schools, libraries, museums, dormitories, hospitals, detention facilities, religious buildings and gymnasiums). We manufacture numerous types of fiber cement products with a variety of patterned profiles and surface finishes for a range of applications, including external siding and soffit lining, internal linings, facades, fencing and floor and tile underlayments.

In contrast to some other building materials, fiber cement provides durability attributes, such as strong resistance to moisture, fire, impact and termites, requires relatively little maintenance and can be used as a substrate to create a wide variety of architectural effects with textured and colored finishes. Based on our knowledge, experience and third-party data regarding our industry, we estimate that, in fiscal year 2010, we sold approximately 12%¹ of the estimated total of 6.0 to 6.5 billion square foot U.S. exterior siding market (all types of siding; excludes fascia, trim and soffit).

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

	Fiscal Year Ended March 31,		
	2010	2009 (In millions)	2008
USA and Europe Fiber Cement	\$ 828.1	\$ 929.3	\$ 1,170.5
Asia Pacific Fiber Cement	296.5	273.3	298.3
Total	<u>\$ 1,124.6</u>	<u>\$ 1,202.6</u>	<u>\$ 1,468.8</u>

Industry Overview

U.S. Housing Industry and Fiber Cement Industry

In the United States, fiber cement is principally used in the residential building industry. Such usage fluctuates based on the level of new home construction and the repair and remodeling of existing homes. The level of activity is generally a function of interest rates and the availability of finance to homeowners to purchase a new home or make improvements to their existing homes, inflation, unemployment levels, demographic trends, gross domestic product growth and consumer confidence. Demand for building products is also affected by residential housing starts and existing home sales, the age and size of the housing stock and overall home improvement expenditures. According to the U.S. Census Bureau, annual domestic housing starts decreased from approximately 1.35 million in calendar year 2007 to approximately 554 thousand in calendar year 2009. Based on our knowledge, experience and third-party data regarding our industry, we estimate that total U.S. industry shipments of fiber cement siding was between 0.87 and 0.93 billion square feet during fiscal year 2010, a decrease of approximately 19 to 23% from fiscal year 2009. The future growth of fiber cement products will depend on overall demand for building products and on the rate of penetration of fiber cement products against competing materials such as wood, engineered wood (hardboard and oriented strand board), vinyl, masonry and stucco. See Item 3, “Key Information — Risk Factors.”

In the United States, the largest application for fiber cement products is in the external siding industry. Based on the NAHB’s Builder Practices Reports, for the past three years, fiber cement has been one of the fastest growing segments (in terms of market growth) of the siding industry. Siding is a component of every building and it usually occupies more square footage than any other building component, such as windows and doors. Selection of siding material is based on installed cost, durability, aesthetic appeal, strength, weather resistance, maintenance requirements and cost, insulating properties and other features. Different regions of the United States show a decided preference among siding materials according to economic conditions, weather, materials availability and local taste. The principal siding materials are vinyl, stucco, fiber cement, solid wood, and brick. Vinyl has the largest share of the siding market. In recent years, based on the NAHB’s Builder Practices Reports, fiber cement has been gaining market share against vinyl, and this is believed to be due to a number of reasons, including aesthetics, and durability concerns.

¹ Actual repair and remodeling siding usage reports from NAHB for calendar year 2009 will not be available until July 2010.

International Fiber Cement Industry

In Australia and New Zealand, fiber cement building products are used in both the residential and commercial building industries with applications in external siding, internal walls, ceilings, floors, soffits and fences. The residential building industry represents the principal market for fiber cement products. We believe the level of activity in this industry is generally a function of interest rates, inflation, unemployment levels, demographic trends, gross domestic product growth and consumer confidence. Demand for fiber cement building products is also affected by the level of new housing starts and renovation activity. According to the Australian Bureau of Statistics (which we refer to as the ABS) total dwelling commencements in Australia declined from 148,880 in calendar year 2007 to 137,695 in calendar year 2009. Renovation activity, as measured in local currency expenditures by the ABS has increased from calendar year 2007 to calendar year 2009 for a total increase over this period of approximately 1.2%. According to Statistics New Zealand, new dwellings authorized in New Zealand declined from approximately 25,544 in calendar year 2007 to 14,425 in calendar year 2009. Residential renovation activity in New Zealand has decreased from calendar year 2007 to calendar year 2009 for a total decrease over this period of approximately 6.8%. The Housing Industry Association of Australia expects new housing construction and renovation activity to maintain a steady recovery while InfoMetrics New Zealand believes new housing construction and renovation activity are expected to soften over the short-to-medium term in New Zealand.

Fiber cement products have, across a range of product applications, gained broader acceptance in Australia and New Zealand than in the United States, primarily due to earlier introduction in Australia and New Zealand. Former subsidiaries of ABN 60 developed fiber cement in Australia as a replacement for asbestos cement in the early 1980s. Asbestos sheet production ceased in the early 1980s and asbestos pipe production ceased in early 1987. Competition has intensified over the past decade in Australia. In addition to competition from solid wood, engineered wood, wallboard, masonry and brick, two Australian competitors have established fiber cement manufacturing facilities in Australia and fiber cement imports are also growing. Competition continues to intensify in New Zealand as fiber cement imports have become more cost competitive and overseas manufacturers struggling with the global recession look for additional markets to their existing ones. See Item 3, "Key Information — Risk Factors."

In the Philippines and other Asian and Middle East (Israel, Kuwait, Qatar and the United Arab Emirates) markets, fiber cement building products are used in both the residential and commercial building industries with applications in external siding, external facades, internal walls, ceilings, floors, and soffits. The residential building industry represents the principal market for fiber cement products. In general, fiber cement products have, across a range of product applications, gained broader acceptance in these regions over the last decade. However, in some of the developing markets, gypsum usage has increased and penetrated into fiber cement applications. Fiber cement and asbestos cement facilities are located throughout Asia and exporting between countries is common practice. We believe that fiber cement has good long-term growth potential because of the benefits of light-weight and framed construction over traditional masonry construction. In addition, we believe the opportunity to replace wood-based products, such as plywood, with more durable fiber cement will be attractive to some consumers in some of these markets.

In Europe, fiber cement building products are used in both residential and commercial building industries with applications in external siding, internal walls, floors, soffits and roofing. We compete in most segments except roofing and promote the use of fiber cement products against traditional masonry, gypsum based products and wood based products. Since we commenced selling our products in Europe in fiscal year 2004, we have continued to work to grow demand for our products by building awareness among distributors, builders and contractors. Management believes that the growth outlook for fiber cement in Europe is favorable in light of stricter insulation requirements driving demand for advanced cladding systems and better building practices increasing the use of fiber cement in interior applications.

Products

We manufacture fiber cement products in the United States, Australia, New Zealand and the Philippines. In July 2005, we sold our Chilean fiber cement business. In fiscal year 2004, we commenced our European fiber cement business by distributing our fiber cement products in the United Kingdom and France. We also manufacture fiber cement pipes in Australia and previously manufactured fiber cement pipes in the United States. In May 2008, we ceased operation of our pipe business in the United States. Our total product offering is aimed at the building and

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construction markets, including new residential construction, manufactured housing, repair and remodeling and a variety of commercial and industrial building applications.

We offer a wide range of fiber cement products for both exterior and interior applications. In the United States and elsewhere, our products are typically sold as planks or flat sheets with a variety of patterned profiles and finishes. Planks are used for external siding while flat sheets are used for internal and external wall linings and floor and tile underlayments. Outside the United States, we also manufacture fiber cement products for use in other applications such as building facades, lattice, fencing, decorative columns, flooring, soffit lining and ceiling applications, some of which have not yet been introduced into the United States.

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

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

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

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

In the United States, the following new products were released over the last five years:

- During fiscal years 2005 and 2006, after considerable market research, we re-launched the ColorPlus® collection of products with additional colors, board profiles, and pallet sizes. In addition, we expanded our manufacturing capacity and capabilities to meet increasing demand for our siding, trim and soffit products with ColorPlus® Technology.
- During fiscal year 2006, we added Moldblock™ Technology to our EZGrid® underlay and Hardiebacker® sheets.
- During fiscal year 2008, we introduced Artisan® Lap siding, Artisan™ Accent Trim, HardieWrap™ weather barrier. Additionally, in the past five years, we launched many new textures, styles and coatings in fiber cement siding products in the United States to capitalize on demand for a variety of styles among homebuilders and homeowners.

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- During fiscal year 2009, we introduced two new siding profiles, Beaded Porch Panel and Shingle Plank.
- During fiscal year 2010, we introduced HardieZone™ System siding products.

In Australia and New Zealand, new products released over the past five years include Eclipsa® eaves lining, Linea® weatherboard and Axon® cladding; in Australia only, new products include: Matrix™ cladding, Stria™ cladding, Axent™ trim, Secura™ Interior Flooring, Secura™ Exterior Flooring and EasyLap™ Panel; in New Zealand only, new products include: ShingleSide panel and CLD Cavity Battens, Horizon Lining and Rigid Air Barrier.

In the Philippines, new products released over the past five years include Hardisenepa™ Fascia Board, Hardiplan® Siding, Hardifloor™ Boards and Hardipattern™ Boards.

Seasonality

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

Raw Materials

The principal raw materials used in the manufacture of fiber cement are cellulose fiber (wood-based pulp), silica (sand), portland cement and water. Pulp has historically demonstrated more price sensitivity than other raw materials that we use in our manufacturing process. For example, in fiscal year 2010, the average Northern Bleached Softwood Kraft (which we refer to as NBSK) pulp price was 7% lower compared to fiscal year 2009. However, during the fourth quarter of fiscal year 2010, the average pulp price was 24% higher than in the fourth quarter of fiscal year 2009 and 9% higher than in the third quarter of fiscal year 2010 as a result of continued strong demand and the effects on supply of the Chilean earthquake in February 2010. In addition, cement prices rose in fiscal year 2008, but declined in fiscal year 2009 and 2010. We expect that pulp prices will continue to increase and cement prices to remain relatively flat in fiscal year 2011.

Cellulose Fiber. Reliable access to specialized, consistent quality, low cost pulp is critical to the production of fiber cement building materials. Cellulose fiber is sourced from New Zealand, the United States, Canada, and South America (Chile) and is processed to our specifications. It is further processed using our proprietary technology to provide the reinforcing material in the cement matrix of fiber cement. We have developed a high level of internal expertise in the production and use of wood-based pulps. This expertise is shared with pulp producers, which have access to appropriate raw wood stocks, in order to formulate superior reinforcing pulps. The resulting pulp formulas are typically proprietary and are the subject of confidentiality agreements between the pulp producers and us. Moreover, we have obtained patents in the United States and in certain other countries abroad covering certain unique aspects of our pulping formulas and processes that we believe cannot adequately be protected through confidentiality agreements. However, we cannot assure you that our intellectual property and other proprietary information will be protected in all cases. See Item 3, “Key Information — Risk Factors.” During fiscal year 2008 and the first half of fiscal year 2009, we experienced cost increases related to increases in the price of pulp. In the second half of fiscal year 2009 and during fiscal 2010, lower pulp prices had a favorable impact on our overall cost. Pulp prices increased in the fourth quarter of fiscal year 2010 and are expected to continue to increase in fiscal year 2011. We have entered into contracts that discount pulp prices in relation to various pulp indices over a longer-term and purchase our pulp from several qualified suppliers in an attempt to mitigate price increases and supply interruptions.

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

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

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

Sales, Marketing and Distribution

The principal markets for our fiber cement products are the United States, Australia, New Zealand, the Philippines, Canada, and increasingly in parts of Europe, including the United Kingdom and France. In addition, we sell fiber cement products in many other countries, including Belgium, China, Denmark, Germany, Hong Kong, India, Indonesia, Ireland, Malta, the Middle East (Israel, Kuwait, Qatar and the United Arab Emirates), The Netherlands, Norway, various Pacific Islands, South Africa, South Korea, Spain, Sri Lanka, Switzerland, Taiwan, Turkey and Vietnam. Our brand name, customer education in comparative product advantages, differentiated product range and customer service, including technical advice and assistance, provide the basis for our marketing strategy. We offer our customers support through a specialized fiber cement sales force and customer service infrastructure in the United States, Australia, New Zealand, the Philippines, Europe and Canada. The customer service infrastructure includes inbound customer service support coordinated nationally in each country (customer service support for Canada is based out of the United States), and is complemented by outbound telemarketing capability. Within each regional market, we provide sales and marketing support to building products dealers and lumber yards and also provide support directly to the customers of these distribution channels, principally homebuilders and building contractors.

In the United States, we sell fiber cement products for new residential construction predominantly to distributors, which then sell these products to dealers or lumber yards. This two-step distribution process is supplemented with direct sales to dealers as a means of accelerating product penetration and sales. Repair and remodel products in the United States are typically sold through the large home center retailers and specialist distributors. Our top five U.S. customers accounted for approximately 63% of our total USA Fiber Cement gross sales in fiscal year 2010. See Item 3, “Key Information — Risk Factors.” In Australia and New Zealand, both new construction and repair and remodel products are generally sold directly to distributor/hardware stores and lumber yards rather than through the two-step distribution process, which is generally used in the United States. In the Philippines, a network of thousands of small to medium size dealer outlets sells our fiber cement products to consumers, builders and real estate developers. Physical distribution of product in each country is primarily by road or sea transport, except in the United States where transportation is primarily by road and, to a lesser extent, by rail.

We maintain dedicated regional sales management teams in our major sales territories. As of May 31, 2010, the sales teams (including telemarketing staff) consisted of approximately 255 people in the United States and Canada, 67 people in Australia, 20 people in New Zealand, 30 people in the Philippines, and 23 people in Europe. We also employ one person based in Hong Kong who functions as a regional export salesperson, and who covers markets such as South Korea, Hong Kong, Macau, China and the Middle East (Israel, Kuwait, Qatar and the United Arab Emirates). Our national sales managers and national account managers, together with the regional sales managers and sales representatives, maintain relationships with national and other major accounts. Our sales force includes skilled trades people who provide on-site technical advice and assistance. In some cases, sales forces manage specific product categories. For example, in the United States, there are individuals who may specialize in siding products or interior products, although recent reorganizations have integrated many of these individuals into collaborative teams. Some interior products sales representatives provide in-store merchandising support for home center retailers. We also use trade and consumer advertising and public relations campaigns to generate demand for our products. These campaigns usually explain the differentiating attributes of our fiber cement products and the suitability of our fiber cement products and systems for specific applications.

Despite the fact that distributors and dealers are generally our direct customers, we also aim to increase primary demand for our products by marketing our products directly to homeowners, architects and builders. We encourage them to specify and install James Hardie® products because of the quality and craftsmanship of our products. This “pull through” strategy, in turn, assists us in expanding sales for our distribution network as distributors benefit from the increasing demand for our products. See Item 3, “Key Information — Risk Factors.”

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

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

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

Research and Development

We pioneered the successful development of cellulose reinforced fiber cement and, since the 1980s, have progressively introduced products resulting from our proprietary product formulation and process technology. We believe we have capitalized on our strong market positions to maintain leadership in product research and development and process technology enhancements. Our product differentiation strategy, and our quest to maintain our position as one of the low cost manufacturers of fiber cement, is supported by our significant investment in research and development activities. See Item 3, "Key Information — Risk Factors." The following table sets forth our research and development expenditures for the three preceding fiscal years:

(In millions)	Fiscal Years Ended March 31,		
	2010	2009	2008
Research and Development Expenditures (1)	\$ 30.4	\$ 28.3	\$ 27.4
Research and Development Expenditures as a percentage of total net sales	2.7%	2.4%	1.9%

(1) Included within research and development expenditures for fiscal years 2010, 2009 and 2008 is \$3.3 million, \$4.5 million and \$0.1 million, respectively, classified as selling, general and administrative expenses.

Dependence on Trade Secrets and Research and Development

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

In addition, the Company has a variety of patents and licenses; industrial, commercial and financial contracts; and manufacturing processes. While the Company is dependent on the competitive advantage that these items provide as a whole, the Company is not dependent on any one of them individually and does not consider any one of them

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individually to be material. We do not materially rely on intellectual property licensed from any outside third parties. See Item 3, “Key Information — Risk Factors.”

Governmental Regulation

As noted above, on June 17, 2010 we moved our corporate domicile to Ireland and are now subject to Irish law in addition to the SE Regulations. See Item 10, “Additional Information — Key Provisions of our Articles of Association” for information regarding Irish company law and regulations to which we are subject.

Environmental Regulation

Our operations and properties are subject to extensive federal, state and local and foreign environmental protection and health and safety laws, regulations and ordinances. These environmental laws, among other matters, govern activities and operations that may have adverse environmental effects, such as discharges to air, soil and water, and establish standards for the handling of hazardous and toxic substances and the handling and disposal of solid and hazardous wastes. In the United States, these environmental laws include, but are not limited to:

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

as well as analogous state, regional and local regulations. Other countries also have statutory schemes relating to the protection of the environment.

Some environmental laws provide that a current or previous owner or operator of real property may be liable for the costs of removal or remediation of environmental contamination on, under, or in that property or other impacted properties. In addition, persons who arrange, or are deemed to have arranged, for the disposal or treatment of hazardous substances may also be liable for the costs of removal or remediation of environmental contamination at the disposal or treatment site, regardless of whether the affected site is owned or operated by such person. Environmental laws often impose liability whether or not the owner, operator or arranger knew of, or was responsible for, the presence of such environmental contamination. Also, third parties may make claims against owners or operators of properties for personal injuries, property damage and/or for clean-up associated with releases of hazardous or toxic substances pursuant to applicable environmental laws and common law tort theories, including strict liability.

Environmental compliance costs in the future will depend, in part, on continued oversight of operations, expansion of operations and manufacturing activities, regulatory developments and future requirements that cannot presently be predicted. See Item 3, “Key Information — Risk Factors.” Also see “Legal Proceedings” below.

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Organizational Structure

JHI SE is incorporated and domiciled in Ireland.

The table below sets forth our significant subsidiaries, all of which are wholly-owned by JHI SE, either directly or indirectly, as of June 10, 2010.

<u>Name of Company</u>	<u>Jurisdiction of Establishment</u>
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 Building Products Inc.	United States
James Hardie Europe B.V.	Netherlands
James Hardie Holdings Limited	Ireland
James Hardie International Finance Limited	Ireland
James Hardie International Holdings SE	Ireland
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 Technology Limited	Bermuda
James Hardie U.S. Investments Sierra Inc.	United States
N.V. Technology Holdings A Limited Partnership	Australia
RCI Pty Ltd.	Australia

Capital Expenditures and Divestitures

The following table sets forth our capital expenditures for each year in the three-year period ended March 31, 2010.

	Fiscal Years Ended March 31,		
	2010	2009 (In millions)	2008
USA and Europe Fiber Cement (1)	\$ 40.6	\$ 20.0	\$ 31.3
Asia Pacific Fiber Cement	6.7	4.9	5.6
Research and Development and Corporate	3.2	1.2	1.6
Total Capital Expenditures	<u>\$ 50.5</u>	<u>\$ 26.1</u>	<u>\$ 38.5</u>

- (1) On April 1, 2008, the Company realigned its operating segments by combining the previously reported segments of USA Fiber Cement and Other into one operating segment, USA and Europe Fiber Cement. USA and Europe Fiber Cement includes all fiber cement manufactured in the United States and sold in the United States, Canada and Europe.

The segment also includes fiber reinforced concrete pipes manufactured and sold in the United States at our Plant City, Florida Hardie Pipe Plant, which was closed and ceased operations in May 2008.

For further information See Note 7 to our consolidated financial statements in Item 18.

The Company did not have any material divestitures in the fiscal years ended March 31, 2010, 2009 and 2008.

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

- commencement of a new finishing capability on an existing product line in fiscal year 2009. As of March 31, 2010, we have incurred \$18.9 million related to this project; and
- the implementation of our ColorPlus® strategy in fiscal year 2005. This strategy included constructing additional ColorPlus® coating capacity inside our existing plants. Over the last three fiscal years, we have incurred \$14.1 million of capital expenditures related to our ColorPlus® strategy.

In addition, in fiscal year 2006 we commenced our implementation of a new ERP software system. This project was completed in fiscal year 2008. Over the last three fiscal years, we incurred \$4.4 million related to our ERP software system.

We currently expect to spend approximately \$70 million to \$80 million in fiscal year 2011 for capital expenditures, including facility upgrades, equipment to enhance environmental compliance, and the implementation of new fiber cement technologies. The expected amount of spending in fiscal year 2011 includes additional capital expenditures expected to be made on projects that were in progress during fiscal year 2010, including the completion of a new finishing capability on an existing product line. We expect to fund our capital expenditures through a combination of internal cash and funds from our credit facilities.

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

Property, Plant and Equipment

We estimate that our manufacturing plants are among the largest and lowest cost fiber cement manufacturing plants in the United States. We believe that the location of our plants positions us near attractive markets in the United States while minimizing our transportation costs for product distribution and raw material sourcing.

Our manufacturing plants use significant amounts of water which, after internal recycling and reuse, are eventually discharged to publicly owned treatment works (with the exception of our Blandon, Pennsylvania and Summerville, South Carolina facilities, which maintain closed loop systems, at which production was suspended at November 2007 and November 2008, respectively). The discharge of process water is monitored by us, as well as by regulators. In addition, we are subject to regulations that govern the air quality and emissions from our plants. In the past, from time to time, we have received notices of discharges in excess of our water and air permit limits. In each case, we have addressed the concerns raised in those notices, including the payment of any associated minor fines and capital expenditures associated with preventing future discharges in excess of permitted levels. See Item 3, “Key Information — Risk Factors.”

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Plants and Process

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

Location	Existing Annual Design Capacity (1)
Fiber Cement (in million square feet)	
United States	
Fontana, California (2)	180
Plant City, Florida	300
Cleburne, Texas	500
Tacoma, Washington	200
Peru, Illinois	560
Waxahachie, Texas	360
Blandon, Pennsylvania (3)	200
Summerville, South Carolina (2)	190
Reno, Nevada	300
Pulaski, Virginia	600
Total United States	3,390
Australia	
Sydney, New South Wales	180
Brisbane, Queensland (Carole Park) (4)	120
Total Australia	300
New Zealand	
Auckland	75
The Philippines	
Manila	145
Total Fiber Cement Flat Sheet	3,910
Fiber Reinforced Concrete Pipes (in tons) (5)	
Plant City, Florida (pipes) (6)	—
Brisbane, Queensland (Meeandah) (4)	50,000
Total Fiber Reinforced Concrete Pipes	50,000

- (1) Annual design capacity is based on management's historical experience with our production process and is calculated assuming continuous operation, 24 hours per day, seven days per week, producing 5/16" thickness siding at a target operating speed. Annual design capacity is not necessarily reflective of our actual capacity utilization at each plant. See below for a description of average capacity utilization rates for our fiber cement plants by region. Plants outside the United States produce a range of thicker products, which negatively affect their outputs. Actual production is affected by factors such as product mix, batch size, plant availability and production speeds and is usually less than annual design capacity.

Beginning September 2010, annual design capacity will be calculated assuming approximate current product mix and then adjusted for 5/16" thickness. This change in methodology will be implemented to reflect changes in our product mix as we expect to increase production of thicker products.

- (2) We suspended production at our Summerville, South Carolina and Fontana, California plants in November 2008 and December 2008, respectively.
- (3) We suspended production at our Blandon, Pennsylvania plant in November 2007. See Note 7 to the notes to our consolidated financial statements included in Item 18 for more information.

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- (4) There are two manufacturing plants in Brisbane. Carole Park produces only flat sheets and Meeandah produces only pipes and columns.
- (5) Pipe and column capacity is measured in tons rather than million square feet.
- (6) Our Plant City, Florida Pipe plant ceased operations in May 2008. See Note 7 to the notes to our consolidated financial statements included in Item 18 for more information.

While the same basic process is used to manufacture fiber cement products at each facility, plants are designed to produce the appropriate mix of products to meet each market's specific, projected needs. Many of our manufacturing facilities have been either newly constructed or substantially modernized and upgraded in the past five years. The facilities were constructed so production can be efficiently adjusted in response to increased consumer demand by increasing production capacity utilization, enhancing the economies of scale or adding additional lines to existing facilities, or making corresponding reductions in production capacity in response to weaker demand. Except for the Waxahachie, Texas facility, we own all of our fiber cement sites and facilities located in the United States. The lease for the Waxahachie, Texas facility expires on March 31, 2020, at which time we have an option to purchase the facility.

Our three Australian fiber cement manufacturing facilities are not owned by us. Prior to March 2004, the land and buildings on which these facilities are located were leased on a long-term basis from Amaca. In March 2004, various subsidiaries of Multiplex Property Trust (now Brookfield Asset Management Inc., which we collectively refer to as Brookfield Multiplex), an unrelated third party, acquired the land and buildings related to these three fiber cement manufacturing facilities from Amaca. The land and buildings on which these facilities are located are leased on a long-term basis from Brookfield Multiplex. One of the leases expires on March 23, 2016, with an option to renew the lease for two further terms of 10 years expiring in March 2036. The other two leases expire on March 23, 2019, and contain options to renew for two further terms of 10 years expiring in March 2039. There is no purchase option available under our leases related to our Australian sites.

Our one New Zealand fiber cement manufacturing facility is not owned by us. Prior to March 2004, the land and buildings on which this facility is located were leased on a long-term basis from Studorp Limited or Studorp. In March 2004, Multiplex Property Trust (now Brookfield Multiplex) acquired the relevant land and buildings from Studorp. On June 30, 2005, an unrelated third party, the Location Group Limited, acquired the relevant land and buildings from Multiplex Property Trust. Penrose Land Limited, a company within the Location Group Limited, took over as landlord in respect of the lease of the land and buildings to James Hardie New Zealand Limited. The lease for our New Zealand facility expires on March 22, 2016, at which time we have an option to renew the lease for two further terms of 10 years expiring in March 2036. There is no purchase option available under our lease related to our New Zealand facility.

We own 40% of the land on which our Philippines fiber cement plant is located, and 100% of the Philippines plant itself.

For fiscal year 2010, average capacity utilization for our fiber cement plants by region was approximately as follows:

<u>Region</u>	<u>Capacity Utilization (1)</u>
United States	40%
Asia Pacific (2)	69%

- (1) Capacity utilization is based on design capacity. Design capacity is based on management's estimates, as described above. No accepted industry standard exists for the calculation of fiber cement manufacturing facility capacities.
- (2) Included in Asia Pacific capacity utilization are our fiber cement plants located in Australia, New Zealand, and the Philippines.

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Mines

We lease silica quartz mine sites in Tacoma, Washington; and Reno, Nevada. The lease for our quartz mine in Tacoma, Washington expires in February 2014 (with options to renew). The lease for our silica quartz mine site in Reno, Nevada expires in January 2014 (with options to purchase).

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

The Amended FFA to provide long-term funding to the AICF was approved by shareholders in February 2007. The accounting policies utilized by us to account for the Amended FFA are described in Note 2 to our consolidated financial statements in Item 18.

Asbestos Adjustments

The asbestos adjustments included in the consolidated statements of operations comprise the following:

(In millions)	Fiscal Years Ended March 31,		
	2010	2009	2008
Change in estimates:			
Change in actuarial estimate — asbestos liability	\$ (3.8)	\$ (180.9)	\$ (175.0)
Change in actuarial estimate — insurance receivable	1.9	19.8	27.4
Change in estimate — AICF claims-handling costs	(1.4)	(1.2)	(6.5)
Change in estimate — other	—	—	1.2
Subtotal — Change in estimates	(3.3)	(162.3)	(152.9)
(Loss) gain on foreign currency exchange	(220.9)	179.7	(87.2)
Total Asbestos Adjustments	\$ (224.2)	\$ 17.4	\$ (240.1)

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Asbestos-Related Assets and Liabilities

Under the terms of the Amended FFA, we have included on our consolidated balance sheets certain asbestos-related assets and liabilities. These amounts are detailed in the table below, and the net total of these asbestos-related assets and liabilities is commonly referred to by us as the “Net Amended FFA Liability.”

(In millions)	March 31,	
	2010	2009
Asbestos liability — current	\$ (106.7)	\$ (78.2)
Asbestos liability — non-current	(1,512.5)	(1,206.3)
Asbestos liability — Total	(1,619.2)	(1,284.5)
Insurance receivable — current	16.7	12.6
Insurance receivable — non-current	185.1	149.0
Insurance receivable — Total	201.8	161.6
Workers’ compensation asset — current	0.1	0.6
Workers’ compensation asset — non-current	98.8	73.8
Workers’ compensation liability — current	(0.1)	(0.6)
Workers’ compensation liability — non-current	(98.8)	(73.8)
Workers’ compensation — Total	—	—
Deferred income taxes — current	16.4	12.3
Deferred income taxes — non-current	420.0	333.2
Deferred income taxes — Total	436.4	345.5
Income tax payable	16.5	22.8
Other net liabilities	(1.7)	(2.0)
Net Amended FFA liability	(966.2)	(756.6)
Restricted cash and cash equivalents and restricted short-term investment assets of the AICF	57.8	98.3
Unfunded Net Amended FFA liability	\$ (908.4)	\$ (658.3)

Asbestos Liability

The amount of the asbestos liability reflects the terms of the Amended FFA, which has been calculated by reference to (but is not exclusively based upon) the most recent actuarial estimate of the projected future asbestos-related cash flows prepared by KPMG Actuaries. The asbestos liability also includes an allowance for the future claims-handling costs of the AICF. We receive an updated actuarial estimate as of March 31 each year. The last actuarial assessment was performed as of March 31, 2010.

The changes in the asbestos liability for the year ended March 31, 2010 are detailed in the table below:

	AS Millions	AS to US\$ rate	US\$ Millions
Asbestos liability — March 31, 2009	(1,869.2)	1.4552	(1,284.5)
Asbestos claims paid (1)	103.2	1.1749	87.8
AICF claims-handling costs incurred (1)	3.6	1.1749	3.1
Change in actuarial estimate (2)	(4.1)	1.0919	(3.8)
Change in estimate of AICF claims-handling costs (2)	(1.5)	1.0919	(1.4)
Loss on foreign currency exchange			(420.4)
Asbestos liability — March 31, 2010	(1,768.0)	1.0919	(1,619.2)

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- (1) The average exchange rate for the period is used to convert the Australian dollar amount to U.S. dollars based on the assumption that these transactions occurred evenly throughout the period.
- (2) The spot exchange rate at March 31, 2010 is used to convert the Australian dollar amount to U.S. dollars as the adjustment to the estimate was made on that date.

Insurance Receivable — Asbestos

The changes in the insurance receivable for the year ended March 31, 2010 are detailed in the table below:

	A\$ Millions	A\$ to US\$ rate	US\$ Millions
Insurance receivable — March 31, 2009	235.2	1.4552	161.6
Insurance recoveries (1)	(16.9)	1.1749	(14.4)
Change in actuarial estimate (2)	2.0	1.0919	1.8
Gain on foreign currency exchange			52.8
Insurance receivable — March 31, 2010	220.3	1.0919	201.8

- (1) The average exchange rate for the period is used to convert the Australian dollar amount to U.S. dollars based on the assumption that these transactions occurred evenly throughout the period.
- (2) The spot exchange rate at March 31, 2010 is used to convert the Australian dollar amount to U.S. dollars as the adjustment to the estimate was made on that date.

Deferred Income Taxes — Asbestos

The changes in the deferred income taxes — asbestos for the year ended March 31, 2010 are detailed in the table below:

	A\$ Millions	A\$ to US\$ rate	US\$ Millions
Deferred tax assets — March 31, 2009	502.7	1.4552	345.5
Amounts offset against income tax payable (1)	(17.9)	1.1749	(15.3)
Impact of other asbestos adjustments (1)	(8.3)	1.1749	(7.0)
Gain on foreign currency exchange			113.2
Deferred tax assets — March 31, 2010	476.5	1.0919	436.4

- (1) The average exchange rate for the period is used to convert the Australian dollar amount to U.S. dollars based on the assumption that these transactions occurred evenly throughout the period.

Income Tax Payable

A portion of the deferred income tax asset is applied against our income tax payable. At March 31, 2010 and 2009, this amount was \$15.3 million and \$8.8 million, respectively. During the year ended March 31, 2010, there was a \$6.6 million favorable effect of foreign currency exchange.

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Other Net Liabilities

Other net liabilities include a provision for asbestos-related education and medical research contributions of \$2.6 million and \$2.2 million at March 31, 2010 and 2009, respectively. Also included in other net liabilities are the other assets and liabilities of the AICF including trade receivables, prepayments, fixed assets, trade payables and accruals.

These other assets and liabilities of the AICF were a net asset of \$0.9 million and \$0.2 million at March 31, 2010 and 2009, respectively. During the year ended March 31, 2010, there was a \$0.6 million unfavorable effect of foreign currency exchange on the other net liabilities.

Restricted Cash and Short-term Investments of the AICF

Cash and cash equivalents and short-term investments of the AICF are reflected as restricted assets as these assets are restricted for use in the settlement of asbestos claims and payment of the operating costs of the AICF. During the year ended March 31, 2010, the AICF sold \$61.1 million (A\$71.8 million) of its short-term investments. The sales for the year ended March 31, 2010 resulted in a realized gain of \$6.7 million (A\$7.9 million) which was recorded in the line item *Other Income*.

At March 31, 2010, we revalued the AICF's remaining short-term investments available-for-sale resulting in a positive mark-to-market fair value adjustment of \$1.2 million (A\$1.4 million). This appreciation in the value of the investments was recorded as an unrealized gain in *Other Comprehensive Income*.

The changes in the restricted cash and short-term investments of the AICF for the year ended March 31, 2010 are detailed in the table below:

	<u>A\$ Millions</u>	<u>A\$ to US\$ rate</u>	<u>US\$ Millions</u>
Restricted cash and cash equivalents and restricted short-term investments — March 31, 2009	143.1	1.4552	98.3
Asbestos claims paid (1)	(103.2)	1.1749	(87.8)
AICF operating costs paid — claims handling (1)	(3.6)	1.1749	(3.1)
AICF operating costs paid — non-claims handling (1)	(2.5)	1.1749	(2.1)
Insurance recoveries (1)	16.9	1.1749	14.4
Interest and investment income (1)	3.9	1.1749	3.3
Unrealized gain on investments (1)	1.4	1.1749	1.2
Gain on investments (1)	7.9	1.1749	6.7
Other (1)	(0.8)	1.1749	(0.7)
Gain on foreign currency exchange			27.6
Restricted cash and cash equivalents and restricted short-term investments — March 31, 2010	<u>63.1</u>	1.0919	<u>57.8</u>

- (1) The average exchange rate for the period is used to convert the Australian dollar amount to U.S. dollars based on the assumption that these transactions occurred evenly throughout the period.

Actuarial Study; Claims Estimate

The AICF commissioned an updated actuarial study of potential asbestos-related liabilities as of March 31, 2010. Based on KPMG Actuaries' assumptions, KPMG Actuaries arrived at a range of possible total cash flows and proposed a central estimate which is intended to reflect an expected outcome. We view the central estimate as the basis for recording the asbestos liability in our financial statements, which under U.S. GAAP, we consider the best estimate. Based on the results of these studies, it is estimated that the discounted (but inflated) value of the central estimate for claims against the Former James Hardie Companies was approximately A\$1.5 billion (\$1.4 billion). The undiscounted (but inflated) value of the central estimate of the asbestos-related liabilities of Amaca and Amaba as determined by KPMG Actuaries was approximately A\$2.9 billion (\$2.7 billion). Actual liabilities of those companies for such claims could vary, perhaps materially, from the central estimate described above. The asbestos liability includes projected future cash flows as undiscounted and uninflated on the basis that it is inappropriate to

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discount or inflate future cash flows when the timing and amounts of such cash flows are not fixed or readily determinable.

The asbestos liability has been revised to reflect the most recent actuarial estimate prepared by KPMG Actuaries as of March 31, 2010 and to adjust for payments made to claimants during the year then ended.

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

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

The potential range of costs as estimated by KPMG Actuaries is affected by a number of variables such as nil settlement rates (where no settlement is payable by the Former James Hardie Companies because the claim settlement is borne by other asbestos defendants (other than the former James Hardie subsidiaries) which are held liable), peak year of claims, past history of claims numbers, average settlement rates, past history of Australian asbestos-related medical injuries, current number of claims, average defense and plaintiff legal costs, base wage inflation and superimposed inflation. The potential range of losses disclosed includes both asserted and unasserted claims. While no assurances can be provided, we believe that we are likely to be able to partially recover losses from various insurance carriers. As of March 31, 2010, KPMG Actuaries' undiscounted central estimate of asbestos-related liabilities was A\$2.9 billion (\$2.7 billion). This undiscounted (but inflated) central estimate is net of expected insurance recoveries of A\$434.9 million (\$398.3 million) after making a general credit risk allowance for insurance carriers for A\$61.5 million (\$56.3 million) and an allowance for A\$77.7 million (\$71.2 million) of "by claim" or subrogation recoveries from other third parties. We have not netted the insurance receivable against the asbestos liability on our consolidated balance sheets.

A sensitivity analysis has been performed to determine how the actuarial estimates would change if certain assumptions (i.e., the rate of inflation and superimposed inflation, the average costs of claims and legal fees, and the projected numbers of claims) were different from the assumptions used to determine the central estimates. This analysis shows that the discounted (but inflated) central estimates could be in a range of A\$1.0 billion (\$0.9 billion) to A\$2.4 billion (\$2.2 billion). The undiscounted, but inflated, estimates could be in the range of A\$1.8 billion (\$1.6 billion) to A\$5.1 billion (\$4.7 billion), as of March 31, 2010. The actual cost of the liabilities could be outside of that range depending on the results of actual experience relative to the assumptions made. One of the critical assumptions of the analysis is the estimated peak year of mesothelioma disease claims which is forecasted by KPMG actuaries to be 2010/2011. Potential variation in this estimate has an impact much greater than the other sensitivities. If the peak year occurs five years later, in 2015/2016, the discounted central estimate could increase by approximately 50%.

Claims Data

The AICF provides compensation payments for Australian asbestos-related personal injury claims against the Former James Hardie Companies. The claims data in this section are only reflective of these Australian asbestos-related personal injury claims against the Former James Hardie Companies.

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

	Years Ended March 31,				
	2010	2009	2008	2007	2006 ⁽¹⁾
Number of open claims at beginning of period	534	523	490	564	712
Number of new claims	535	607	552	463	346
Number of closed claims	540	596	519	537	502
Number of open claims at end of period	529	534	523	490	556
Average settlement amount per settled claim	A\$ 190,627	A\$ 190,638	A\$ 147,349	A\$ 166,164	A\$ 151,883
Average settlement amount per settled claim	\$ 162,250	\$ 151,300	\$ 128,096	\$ 127,163	\$ 114,318
Average settlement amount per case closed	A\$ 171,917	A\$ 168,248	A\$ 126,340	A\$ 128,723	A\$ 122,535
Average settlement amount per case closed	\$ 146,325	\$ 133,530	\$ 109,832	\$ 98,510	\$ 92,229

(1) Information includes claims data for only 11 months ended February 28, 2006. Claims data for the 12 months ended March 31, 2006 was not available at the time our financial statements were prepared.

Under the terms of the Amended FFA, we have obtained rights of access to actuarial information produced for the AICF by the actuary appointed by the AICF (which we refer to as the Approved Actuary). Our future disclosures with respect to claims statistics are subject to us obtaining such information from the Approved Actuary. We have had no general right (and have not obtained any right under the Amended FFA) to audit or otherwise require independent verification of such information or the methodologies to be adopted by the Approved Actuary. As such, we will need to rely on the accuracy and completeness of the information and analysis of the Approved Actuary when making future disclosures with respect to claims statistics.

See Item 3, “Key Information — Risk Factors” for additional information concerning the Amended FFA.

Legal Proceedings

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

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

ASIC Proceedings

In February 2007, ASIC commenced civil proceedings in the Supreme Court of New South Wales against us, ABN 60 and ten then-present or former officers and directors of the James Hardie Group. While the subject matter of the allegations varied between individual defendants, the allegations against us were confined to alleged contraventions of provisions of the Australian Corporations Act/Law relating to continuous disclosure and engaging in misleading or deceptive conduct in respect of a security.

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We defended each of the allegations made by ASIC and the orders sought against us in the proceedings, as did the other former directors and officers of the Company.

The proceedings commenced on September 29, 2008 before his Honor Justice Gzell. On April 23, 2009, Justice Gzell issued judgment against us, ABN 60 and the ten former officers and directors of the James Hardie Group. All defendants other than two lodged appeals against Justice Gzell's judgments, and ASIC responded by lodging cross appeals against the appellants. The appeals lodged by the former directors and officers were heard in April 2010 and the appeal lodged by us was heard in May 2010. A final judgment has not been rendered.

Depending upon the outcome of the appeals and cross-appeals, further or different findings may be made as to the liability of each defendant-appellant, any banning orders, fines payable, and as to the costs of the appeal and the first instance proceedings that we may become liable for either in respect of our own appeal or the appeals of other defendants-appellants under indemnities. As with the first instance proceedings, we have agreed to pay a portion of the costs of bringing and defending appeals, with the remaining costs being met by third parties. We note that other recoveries may be available, including as a result of successful appeals or repayments by former directors and officers in accordance with the terms of their indemnities.

It is our policy to expense legal costs as incurred. Losses and expenses arising from the ASIC proceedings and appeals could have a material adverse effect on our financial position, liquidity, results of operations and cash flows.

As a result of the above uncertainties, it is not presently possible for us to estimate the amount or range of amounts, including costs that we might become liable to pay as a consequence of the appeal proceedings. Accordingly, as of March 31, 2010, we have not recorded any related loss reserves.

For further information, see Item 3, "Key Information — Risk Factors" and Note 13, "Commitments and Contingencies" in Item 18.

Chile Litigation

On April 24, 2009, a trial court in Santiago, Chile awarded the then equivalent of \$13.4 million in damages against the former James Hardie Chilean entity now known as Compañía Industrial El Volcán S.A. ("El Volcan") in civil litigation brought by Industria Cementa Limitada ("Cementa") in 2007.

Cementa, a fiber cement manufacturer in Chile, commenced anti-trust proceedings in 2003 against the former James Hardie Chilean entity alleging that it had engaged in predatory pricing, by selling products below cost when it entered the Chilean market, in breach of the relevant anti-trust laws in Chile. Electrónica Quimel S.A. ("Quimel") also joined the proceedings.

As these actions existed prior to the sale of our Chilean business in July 2005, we had agreed to indemnify the buyer, El Volcan, subject to certain conditions and limitations, for damages or penalties awarded against FC Volcan in relation to such proceedings.

After the anti-trust proceedings concluded in 2006, Cementa, in 2007, brought a separate civil action against FC Volcan claiming that Cementa had suffered damages, allegedly as a result of predatory pricing.

Quimel also filed a separate civil action against FC Volcan in 2007 claiming that it had suffered damages, allegedly as a result of predatory pricing. On June 23, 2009, the Chilean trial court dismissed the claim filed by Quimel against FC Volcan.

On December 30, 2009, we entered into a settlement agreement with El Volcan resolving all outstanding issues between the parties relating to the sale of the former James Hardie Chilean entity to El Volcan in July 2005. Under the settlement agreement, we have no further obligation to defend or indemnify El Volcan in the antitrust proceedings commenced by Cementa or Quimel. El Volcan is now responsible for its own defense of the antitrust proceedings, including payment of any final judgments rendered on appeal. El Volcan will also be required to defend and indemnify us against any future claims by third parties related to the management or business of the former James Hardie Chilean entity, including any future antitrust allegations.

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We denied and continue to deny the allegations of predatory pricing in Chile. The terms and conditions of the settlement remain confidential. All amounts owed by us under the terms of the settlement were paid in full on December 31, 2009. As a result, the amount of our provision in excess of the settlement amount was reversed, resulting in a gain of \$7.6 million included in the consolidated statements of operations for the year ended March 31, 2010.

Tax Contingencies

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

In fiscal years 2010, 2009 and 2008, we recorded an income tax expense of \$2.2 million, an income tax benefit of \$3.0 million and nil, respectively, as a result of the finalization of certain tax audits (whereby certain matters were settled), the expiration of the statute of limitations related to certain tax positions and adjustments to income tax balances based on the filing of amended income tax returns, which give rise to the benefit recorded by us.

We or one of our subsidiaries file income tax returns in various jurisdictions, including the United States, Ireland, Australia and The Netherlands. We are no longer subject to U.S. federal examinations by the IRS for tax years prior to tax year 2007. We are no longer subject to examinations by The Netherlands tax authority, for tax years prior to tax year 2005. We are no longer subject to Australian federal examinations by the ATO for tax years prior to tax year 2007.

The Original U.S.-Netherlands treaty was amended during fiscal year 2005 and the New U.S.-NL Treaty became effective for us on February 1, 2006. We derived significant tax benefits under the New US-Netherlands Treaty up until June 29, 2010 when we became an Irish tax resident. The New U.S.-Netherlands treaty provides, among other things, requirements that we must meet for us to continue to qualify for treaty benefits and our effective income tax rate. During fiscal year 2006, we made changes to our organizational and operational structure to satisfy the requirements of the amended treaty and believe that we were in compliance and qualified for treaty benefits until June 29, 2010. However, if during a subsequent tax audit or related process, the IRS determines that these changes do not meet the requirements, we may not qualify for treaty benefits and our effective income tax rate could significantly increase beginning in the fiscal year that such determination is made and we could be liable for taxes owed for calendar year 2008 and subsequent periods.

On June 29, 2010, we conducted our first board meeting in Ireland. In addition, we expressed an intent to become an Irish tax resident and intend to hold the majority of our subsequent board meetings, at which key decisions affecting our company are made, in Ireland. On this basis, with effect from June 29, 2010 forward, we believe we should be considered to be an Irish tax resident and should no longer be considered to be a Dutch tax resident.

IRS NOPA

On June 23, 2008, the IRS issued us with a NOPA that concluded that we did not qualify for the U.S.-Netherlands Treaty LOB provision of the U.S.-Netherlands Treaty applying from early 2006 and that accordingly, we were not entitled to beneficial withholding tax rates on payments from our United States subsidiaries to our Netherlands companies for the calendar years 2006 and 2007. On April 15, 2009, we announced that the Appeals Division of the IRS had entered into a settlement agreement with our subsidiaries in which the IRS conceded its position in full with regard to its assertion in the NOPA. The IRS concluded that, for those years, we are entitled to reduced withholding tax rates under the LOB for certain payments from our United States subsidiaries to our Netherlands companies. This settlement outcome had no impact on our results. This agreement applies only to the 2006 and 2007 calendar years and does not affect or limit the IRS' ability to challenge our qualification for benefits in later years.

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We believe that it is more likely than not that we are eligible for treaty benefits and should continue qualifying for treaty benefits. Therefore, we believe that the requirement for recording a liability has not been met and therefore we have not recorded any liability at March 31, 2010 for the treaty benefits.

For further information, see Item 3, “Key Information — Risk Factors.”

ATO Settlement

As announced on December 12, 2008, we and the ATO reached an agreement that finalized tax audits being conducted by the ATO on our Australian income tax returns for the years ended March 31, 2002 and March 31, 2004 through March 31, 2006 and settled all outstanding issues arising from these tax audits. With the exception of the assessment in respect of RCI (see below) for the 1999 financial year, the settlement concluded ATO audit activities for all years prior to the year ended March 31, 2007. The agreed settlement, made without concessions or admissions of liability by either us or the ATO, required us to pay an amount of \$101.6 million (A\$153.0 million) in December 2008.

Amended Australian Taxation Office Assessment

In March 2006, RCI received an amended assessment from the ATO based on the ATO’s calculation of RCI’s net capital gains arising as a result of an internal corporate restructuring carried out in 1998. During fiscal year 2007, we agreed with the ATO that in accordance with the ATO Receivables Policy, we would pay 50% of the total amended assessment being A\$184.0 million (\$148.4 million — converted at the March 31, 2007 spot rate) and provide a guarantee from JHI SE in favor of the ATO for the remaining unpaid 50% of the amended assessment, pending the outcome of the appeal of the amended assessment. We also agreed to pay GIC accruing on the unpaid balance of the amended assessment in arrears on a quarterly basis.

On May 30, 2007, the ATO issued a Notice of Decision disallowing RCI’s objection to the amended assessment (“Objection Decision”). On July 11, 2007, RCI filed an application appealing the Objection Decision and the matter was heard before the Federal Court of Australia in September 2009. Judgment was reserved and a decision is awaited.

We believe that it is more likely than not that the tax position reported in RCI’s tax return for the 1999 fiscal year will be upheld on appeal. Therefore, we have not recorded any liability at March 31, 2010 for the amended assessment.

We expect that amounts paid in respect of the amended assessment will be recovered by RCI (with interest) at the time RCI is successful in its appeal against the amended assessment. As a result, we have treated all payments in respect of the amended assessment that have been made up through March 31, 2010 and related accrued interest receivable as a deposit, and it is the Company’s intention to treat any payments to be made at a later date as a deposit. At March 31, 2010 and 2009, this deposit totaled \$247.2 million (A\$269.9 million) and \$173.5 million (A\$252.5 million), respectively.

Included in other non-current liabilities are taxes payable in relation to GIC charged of \$43.0 million and \$27.3 million at March 31, 2010 and 2009, respectively.

For further information, see Item 3, “Key Information — Risk Factors” and Item 5, “Operating and Financial Review and Prospects — Liquidity and Capital Resources” and Note 14 to our consolidated financial statements in Item 18.

Item 4A. Unresolved Staff Comments

None.

Item 5. Operating and Financial Review and Prospects

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

Overview

We intend this discussion to provide information that will assist in understanding our March 31, 2010 consolidated financial statements, the changes in significant items in those consolidated financial statements from year to year, and the primary reasons for those changes and the factors and trends which are anticipated to have a material effect on our financial condition and results of operations in future periods. This discussion includes information about our critical accounting policies and how these policies affect our consolidated financial statements, and information about the consolidated financial results of each business segment to provide a better understanding of how each segment and its results affect our financial condition and results of operations as a whole.

Our consolidated financial statements are prepared in accordance with U.S. GAAP. Our discussion in this section includes several non-GAAP measures to provide additional information concerning our performance. We believe that these non-GAAP measures enhance an investor's overall understanding of our financial performance by being more reflective of our core operational activities and to be more comparable with our financial results over various periods. In addition, we use non-GAAP financial measures internally for strategic decision making, forecasting future results and evaluating current performance. Non-GAAP financial measures include

- Operating income excluding asbestos, ASIC expenses and asset impairments
- Effective tax rate excluding asbestos, asset impairments and tax adjustments
- Net income excluding asbestos, ASIC expenses, asset impairments and tax adjustments

We have reconciled these non-GAAP financial measures to the most directly comparable U.S. GAAP financial measure for fiscal years 2010 and 2009 on pages 63-64 and 67-70, respectively. These non-GAAP financial measures are not prepared in accordance with U.S. GAAP; therefore, the information is not necessarily comparable to other companies' financial information and should be considered as a supplement to, not a substitute for, or superior to, the corresponding measures calculated in accordance with U.S. GAAP.

Our pre-tax results for fiscal years 2010 and 2009 were affected by unfavorable asbestos adjustments of \$224.2 million and favorable asbestos adjustments of \$17.4 million, respectively; AICF SG&A expenses of \$2.1 million and \$0.7 million, respectively; and ASIC expenses of \$3.4 million and \$14.0 million, respectively. Information regarding our asbestos-related matters and ASIC matters can be found in this discussion, Item 3, "Key Information — Risk Factors," Item 4, "Information on the Company — Commitment to Provide Funding on a Long-Term Basis in Respect of Asbestos-Related Liabilities of Former Subsidiaries", Item 4, "Information on the Company — ASIC Proceedings and Notes 11 and 13 to our consolidated financial statements in Item 18.

The Company and the Building Product Markets

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

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Our fiber cement products are used in a number of markets, including new residential construction (single and multi-family housing), manufactured housing (mobile and pre-fabricated homes), repair and remodeling and a variety of commercial and industrial applications (stores, warehouses, offices, hotels, motels, schools, libraries, museums, dormitories, hospitals, detention facilities, religious buildings and gymnasiums). We manufacture numerous types of fiber cement products with a variety of patterned profiles and surface finishes for a range of applications, including external siding and soffit lining, internal linings, facades, fencing and floor and tile underlayments.

Our products are primarily sold in the residential housing markets. Residential construction levels fluctuate based on new home construction activity and the repair and renovation of existing homes. These levels of activity are affected by many factors, including home mortgage interest rates, the availability of financing to homeowners to purchase a new home or make improvements to their existing homes, inflation rates, unemployment levels, existing home sales, the average age and the size of housing inventory, consumer home repair and renovation spending, gross domestic product growth and consumer confidence levels. A number of these factors continued to be generally unfavorable during fiscal year 2010, resulting in weaker residential construction activity.

Fiscal Year 2010 Key Results

Total net sales decreased 6% to \$1,124.6 million in fiscal year 2010. We recorded an operating loss of \$21.0 million in fiscal year 2010 compared to an operating income of \$173.6 million in fiscal year 2009. The operating loss of \$21.0 million in fiscal year 2010 was adversely affected by the unfavorable asbestos adjustment of \$224.2 million. Operating profit excluding asbestos and ASIC expenses increased 22% to \$208.7 million in fiscal year 2010 from \$170.9 million in fiscal year 2009.

Net income excluding asbestos, ASIC expenses and tax adjustments increased 32% to \$133.0 million in fiscal year 2010 from \$100.5 million in fiscal year 2009. Including asbestos, ASIC expenses and tax adjustments, net income moved from \$136.3 million to a loss of \$84.9 million.

Our largest market is North America. Based on the NAHB's Builder Practices Reports, for the past three years, fiber cement has been one of the fastest growing segments (in terms of market growth) of the U.S. residential exteriors industry. During fiscal year 2010, USA and Europe Fiber Cement net sales contributed approximately 74% of total net sales, and its operating income was the primary contributor to the total Company results. Net sales for our USA and Europe Fiber Cement business decreased due to a reduction in sales volume, slightly offset by a higher average net sales price.

Operating income for our USA and Europe Fiber Cement segment increased in fiscal year 2010 from fiscal year 2009 primarily due to lower material input costs, higher average net sales price and improved plant performance, partially offset by lower sales volume and a resulting increase in the fixed unit costs of manufacturing as fixed costs were spread over significantly lower production volume.

During fiscal year 2010, Asia Pacific net sales contributed approximately 26% of total net sales. Net sales increased 9% due to favorable currency exchange rates movements in the Asia Pacific business' currencies compared to the U.S. dollar and a 2% increase in average net sales price.

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

Critical Accounting Policies

The accounting policies affecting our financial condition and results of operations are more fully described in Note 2 to our consolidated financial statements included in Item 18. Certain of our accounting policies require the application of judgment by management in selecting appropriate assumptions for calculating financial estimates, which inherently contain some degree of uncertainty. Management bases its estimates on historical experience and other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the reported carrying value of assets and liabilities and the reported amounts of revenues and expenses that may not be readily apparent from other sources. Actual results may differ from these estimates under different assumptions and conditions. We consider the following policies to be the most critical in understanding the judgments that are involved in preparing our consolidated financial statements and the uncertainties that could impact our results of operations, financial condition and cash flows.

Accounting for Contingencies

We account for loss contingencies arising from contingent obligations when the obligations are probable and the amounts are reasonably estimable. As facts concerning contingencies become known, we reassess our situation and make appropriate adjustments to the consolidated financial statements. For additional information regarding asbestos-related matters, ASIC proceedings, and Chile litigation, see Item 3, “Key Information — Risk Factors,” Item 4, “Information on the Company — Commitment to Provide Funding on a Long-Term Basis in Respect of Asbestos-Related Liabilities of Former Subsidiaries,” Item 4, “Information on the Company — Legal Proceedings” and Notes 11 and 13 to our consolidated financial statements in Item 18.

Accounting for the Amended FFA

Prior to March 31, 2007, our consolidated financial statements included an asbestos provision based on the Original Final Funding Agreement governing our anticipated future payments to the AICF as announced on December 1, 2005 (which we refer to as the Original FFA).

In February 2007, the Amended FFA was approved to provide long-term funding to the AICF, a special purpose fund that provides compensation for Australian asbestos-related personal injury and death claims for which the Former James Hardie Companies are found liable.

The amount of the asbestos liability reflects the terms of the Amended FFA, which has been calculated by reference to (but is not exclusively based upon) the most recent actuarial estimate of projected future cash flows prepared by KPMG Actuaries. Based on the their assumptions, the KPMG Actuaries arrived at a range of possible total cash flows and proposed a central estimate which is intended to reflect an expected outcome. The Company views the central estimate as the best estimate for recording the asbestos liability in the Company’s financial statements. The asbestos liability includes these cash flows as undiscounted and uninflated on the basis that it is inappropriate to discount or inflate future cash flows when the timing and amounts of such cash flows is not fixed or readily determinable.

The asbestos liability also includes an allowance for the future operating costs of the AICF.

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

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

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

For additional information regarding our asbestos liability, see Item 3, “Key Information — Risk Factors,” Item 4, “Information on the Company — Commitment to Provide Funding on a Long-Term Basis in Respect of Asbestos-Related Liabilities of Former Subsidiaries” and Note 11 to our consolidated financial statements in Item 18.

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Sales Rebates and Discounts

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

Accounts Receivable

We evaluate the collectability of accounts receivable on an ongoing basis based on historical bad debts, customer credit-worthiness, current economic trends and changes in our customer payment activity. An allowance for doubtful accounts is provided for known and estimated bad debts. Although credit losses have historically been within our expectations, we cannot guarantee that we will continue to experience the same credit loss rates that we have in the past. Because our accounts receivable are concentrated in a relatively small number of customers, a significant change in the liquidity or financial position of any of these customers could impact their ability to make payments and result in the need for additional allowances which would decrease our net sales. For additional information regarding our customer concentration, see Item 3, "Key Information — Risk Factors" and Note 17 to our consolidated financial statements in Item 18.

Inventory

Inventories are recorded at the lower of cost or market. In order to determine market, management regularly reviews inventory quantities on hand and evaluates significant items to determine whether they are excess, slow-moving or obsolete. The estimated value of excess, slow-moving and obsolete inventory is recorded as a reduction to inventory and an expense in cost of sales in the period it is identified. This estimate requires management to make judgments about the future demand for inventory, and is therefore at risk to change from period to period. If our estimate for the future demand for inventory is greater than actual demand and we fail to reduce manufacturing output accordingly, we could be required to record additional inventory reserves, which would have a negative impact on our gross profit. For additional information regarding our inventories, see Item 3, "Key Information — Risk Factors."

Accrued Warranty Reserve

We have offered, and continue to offer, various warranties on our products. In April 2009, we replaced our 50-year limited pro-rated warranty with a 30-year limited non-prorated warranty for certain of our fiber cement siding products in the United States. Because our fiber cement products have only been used in North America since the early 1990s, there is a risk that these products will not perform in accordance with our expectations over an extended period of time. A typical warranty program requires that we replace defective products within a specified time period from the date of sale. We record an estimate for future warranty-related costs based on an analysis by us, which includes the historical relationship of warranty costs to installed product. Based on this analysis and other factors, we adjust the amount of our warranty provisions as necessary. Although our warranty costs have historically been within calculated estimates, if our experience is significantly different from our estimates, it could result in the need for additional reserves. For additional information regarding warranties, see Item 3, "Key Information — Risk Factors."

Accounting for Income Tax

We recognize deferred tax assets and deferred tax liabilities for the expected tax consequences of temporary differences between the tax bases of assets and liabilities and their reported amounts using enacted tax rates in effect for the year in which we expect the differences to reverse. We record a valuation allowance to reduce the deferred tax assets to the amount that we are more likely than not to realize. We must assess whether, and to what extent, we can recover our deferred tax assets. If full or partial recovery is unlikely, we must increase our income tax expense by recording a valuation allowance against the portion of deferred tax assets that we cannot recover. We believe that we will recover all of the deferred tax assets recorded (net of valuation allowance) on our consolidated balance sheet at March 31, 2010. However, if facts later indicate that we will be unable to recover all or a portion of our net deferred tax assets, our income tax expense would increase in the period in which we determine that recovery is unlikely.

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We evaluate our uncertain tax positions in accordance with the guidance for accounting for uncertainty in income taxes. We believe that our reserve for uncertain tax positions, including related interest, is adequate. Due to our size and the nature of our business, we are subject to ongoing reviews by taxing jurisdictions on various tax matters, including challenges to various positions we assert on our income tax returns. The amounts ultimately paid upon resolution of these matters could be materially different from the amounts previously included in our income tax expense and therefore could have a material impact on our tax provision, net income and cash flows. Positions taken by an entity in its income tax returns must satisfy a more-likely-than-not recognition threshold, assuming that the positions will be examined by taxing authorities with full knowledge of all relevant information, in order for the positions to be recognized in the consolidated financial statements. Each quarter we evaluate the income tax positions taken, or expected to be taken, to determine whether these positions meet the more-likely-than-not threshold. We are required to make subjective judgments and assumptions regarding our income tax exposures and must consider a variety of factors, including the current tax statutes and the current status of audits performed by tax authorities in each tax jurisdiction. To the extent an uncertain tax position is resolved for an amount that varies from the recorded estimated liability, our income tax expense in a given financial statement period could be materially affected.

For additional information, see Item 3, “Key Information — Risk Factors” and Note 14 to our consolidated financial statements in Item 18.

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Results of Operations

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

	Fiscal Years Ended March 31,					
	2010		2009		2008	
Net sales:						
USA and Europe Fiber Cement (1)	\$ 828.1	73.6%	\$ 929.3	77.3%	\$ 1,170.5	79.7%
Asia Pacific Fiber Cement	296.5	26.4	273.3	22.7	298.3	20.3
Total net sales	1,124.6	100.0	1,202.6	100.0	1,468.8	100.0
Cost of goods sold	(708.5)	(63.0)	(813.8)	(67.7)	(938.8)	(63.9)
Gross profit	416.1	37.0	388.8	32.3	530.0	36.1
Selling, general and administrative expenses	(185.8)	(16.5)	(208.8)	(17.4)	(228.2)	(15.5)
Research and development expenses	(27.1)	(2.4)	(23.8)	(2.0)	(27.3)	(1.9)
Impairment charges	—	—	—	—	(71.0)	(4.8)
Asbestos adjustments	(224.2)	(20.0)	17.4	1.5	(240.1)	(16.4)
Operating (loss) income	(21.0)	(1.9)	173.6	14.4	(36.6)	(2.5)
Interest expense	(7.7)	(0.7)	(11.2)	(0.9)	(11.1)	(0.7)
Interest income	3.7	0.3	8.2	0.7	12.2	0.8
Other income (expense)	6.3	0.6	(14.8)	(1.3)	—	—
(Loss) income from operations before income taxes	(18.7)	(1.7)	155.8	12.9	(35.5)	(2.4)
Income tax expense	(66.2)	(5.9)	(19.5)	(1.6)	(36.1)	(2.5)
(Loss) income from operations	\$ (84.9)	(7.6)%	\$ 136.3	11.3%	\$ (71.6)	(4.9)%

(1) On April 1, 2008, the Company realigned its operating segments by combining the previously reported segments of USA Fiber Cement and Other into one operating segment, USA and Europe Fiber Cement. USA and Europe Fiber Cement includes all fiber cement manufactured in the United States and sold in the United States, Canada and Europe.

The segment also includes fiber cement manufactured and sold in Chile (through July 2005), fiber reinforced concrete pipes manufactured and sold in the United States (through May 2008) and a roofing pilot plant in the United States (through April 2006). Our Plant City, Florida Hardie Pipe Plant was closed and the business ceased operations in May 2008. Our roofing pilot plant was closed and the business ceased operations in April 2006.

Year Ended March 31, 2010 Compared to Year Ended March 31, 2009

Total Net Sales. Total net sales decreased 6% from \$1,202.6 million in fiscal year 2009 to \$1,124.6 million in fiscal year 2010 reflecting the ongoing decline in U.S. housing activity.

USA and Europe Fiber Cement Net Sales. Net sales decreased 11% from \$929.3 million in fiscal year 2009 to \$828.1 million in fiscal year 2010 due to lower sales volume, partially offset by a higher average net sales price.

Sales volume decreased 15% from 1,526.6 million square feet in fiscal year 2009 to 1,303.7 million square feet in fiscal year 2010, primarily due to weaker demand for our products in the United States as a result of the downturn in activity in the U.S. housing construction and renovations market amid overall weak economic conditions. Although housing affordability has improved, the reduced availability of mortgage credit for prospective home buyers, the large inventory of homes for sale and relatively low consumer confidence continued to negatively affect demand.

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The average net sales price increased 4% from \$609 per msf in fiscal year 2009 to \$635 per msf in fiscal year 2010 as a result of a price increase early in fiscal year 2010 and a favorable shift in product mix.

According to the U.S. Census Bureau, annualized seasonally-adjusted single family housing starts in March 2010 were 531,000, still significantly below the January 2006 peak of 1.823 million annualized starts.

For the full year ended March 31, 2010, the NBSK pulp price was \$761 per ton, 7% down compared to \$814 per ton for the prior year; however during the course of the year, key raw material and energy costs increased. The average pulp price in the fourth quarter was 24% higher than in the fourth quarter of fiscal year 2009, and 9% higher than in the third quarter of fiscal year 2010 as a result of continued strong demand, especially from China, and the effects on supply of the Chilean earthquake in February 2010.

Although production capacity has been re-commissioned as the NBSK pulp price index has risen, the price of pulp is expected to remain high in the immediate to medium term. In April 2010, the average NBSK pulp price rose to \$939 per ton.

Similarly, freight costs were lower for fiscal year 2010, compared to fiscal year 2009. However, freight costs rose in the fourth quarter of fiscal year 2010, compared to the third quarter of fiscal year 2010 and the fourth quarter of fiscal year 2009, in response to significantly higher diesel prices amid emerging signs of a recovery in the United States economy.

Over the full year, the ColorPlus® product range continued to increase its penetration rate.

The company's strategy remains unchanged, with the focus continuing to be on primary demand growth, product mix shift and zero to landfill.

Asia Pacific Fiber Cement Net Sales. Net sales from Asia Pacific Fiber Cement increased 9% from \$273.3 million in fiscal year 2009 to \$296.5 million in fiscal year 2010. The higher value of the Asia Pacific business' currencies against the U.S. dollar accounted for 7% of the increase, while the remaining 2% of the increase was due to the underlying Australian dollar business results. In Australian dollars, net sales increased 2% due to an increase in average net sales price.

Australian Bureau of Statistics (ABS) reported a 16% increase in housing approvals in fiscal year 2010 compared to the fiscal year 2009.

Asia Pacific sales volume was stable as increasing volume in Australia and the Philippines was offset by an 11% decrease in New Zealand volume, due to a weaker domestic market in fiscal year 2010, compared to fiscal year 2009.

In Australia, the Scyon™ branded product range continued to build momentum over the course of the fiscal year. In New Zealand, sales of differentiated products also grew in fiscal year 2010. Similarly, in the Philippines, sales of differentiated products, primarily thicker board, increased over the full year.

Appreciating local currencies resulted in a 5% decrease in raw material costs measured in Australian dollar terms for the Asia Pacific business compared to fiscal year 2009. The vast majority of this saving relates to pulp which is traded in U.S. dollars.

Gross Profit. Gross profit increased 7% from \$388.8 million in fiscal year 2009 to \$416.1 million in fiscal year 2010. The gross profit margin increased 4.7 percentage points from 32.3% in fiscal year 2009 to 37.0% in fiscal year 2010.

USA and Europe Fiber Cement gross profit increased 5% in fiscal year 2010 compared to fiscal year 2009. Gross profit benefited 11% as a result of higher average net sales price and 12% from a reduction of input costs, primarily pulp, energy and freight and lower warranty expenses. The benefits were partially offset by a 19% detriment due to lower sales volume and a resulting increase in the fixed unit cost of manufacturing, as fixed costs were spread over a lower production volume.

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The gross profit margin of the USA and Europe Fiber Cement business increased by 5.9 percentage points.

Asia Pacific Fiber Cement gross profit increased 16% in fiscal year 2010 compared to fiscal year 2009. The higher value of Asia Pacific business' currencies against the U.S. dollar accounted for 8% of the increase.

In Australian dollars, Asia Pacific Fiber Cement gross profit benefited 6% as a result of a favorable price movement, including product mix shift. In addition, gross profit benefited 5% from reduced manufacturing costs and decreased raw material input costs as appreciating local currencies more than offset increasing costs of raw materials that are traded in U.S. dollars. These benefits were offset by higher warranty expenses.

The gross profit margin of the Asia Pacific Fiber Cement business increased by 1.9 percentage points.

Selling, General and Administrative (SG&A) Expenses. SG&A expenses decreased 11% from \$208.8 million in fiscal year 2009 to \$185.8 million in fiscal year 2010. The decrease was primarily due to a favorable \$7.6 million adjustment to a legal provision following settlement of a contractual warranty and lower general corporate costs, partially offset by higher SG&A spending in the USA and Europe Fiber Cement and Asia Pacific Fiber Cement segments. As a percentage of sales, SG&A expenses declined 0.9 of a percentage point to 16.5% in fiscal year 2010. For fiscal year 2010, SG&A expenses included non-claims handling related operating expenses of the AICF of \$2.1 million.

ASIC Proceedings

For the year ended March 31, 2010, we incurred legal costs related to the ASIC proceedings and appeals, noted as ASIC expenses, of \$3.4 million. These costs were substantially lower compared to fiscal year 2009, when we incurred ASIC expenses of \$14.0 million. ASIC expenses are included in SG&A expenses.

Our net costs in relation to the ASIC proceedings from their commencement in February 2007 and the appeals to March 31, 2010 total \$23.1 million.

See Item 3, "Key Information — Risk Factors," Item 4, "Information on the Company — Legal Proceedings" and Note 13 to our consolidated financial statements in Item 18 for more information.

Chile Litigation

On December 31, 2009, we entered into a settlement agreement with El Volcan resolving all outstanding issues between us relating to the sale of FC Volcan to El Volcan in July 2005. Under the settlement agreement, we will have no further obligation to defend or indemnify El Volcan in the antitrust proceedings commenced by Cementa or Quimel.

El Volcan will now be responsible for its own defense of the antitrust proceedings, including payment of any final judgments rendered on appeal. El Volcan will also be required to defend and indemnify us against any future claims by third parties related to the management or business of FC Volcan, including any future antitrust allegations. The terms and conditions of the settlement remain confidential. All amounts we owed under the terms of the settlement were paid in full on December 31, 2009. As a result, the amount of the provision in excess of the settlement amount was reversed, resulting in a gain of \$7.6 million included in general corporate costs for the year ended March 31, 2010.

We denied and continue to deny the allegations of predatory pricing in Chile.

See Note 13 to our consolidated financial statements in Item 18 for more information.

Research and Development Expenses. Research and development expenses include costs associated with "core" research projects that are designed to benefit all business units. These costs are recorded in the Research and Development segment rather than being attributed to individual business units. These costs were 9% higher for fiscal year 2010 at \$15.7 million.

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Other research and development costs associated with commercialization projects in business units are included in the business unit segment results. In total, these costs were 24% higher for fiscal year 2010 at \$11.4 million compared to fiscal year 2009.

Asbestos Adjustments. The asbestos adjustments are derived from an estimate of future Australian asbestos-related liabilities in accordance with the Amended FFA that was signed with the NSW Government in November 2006 and approved by our security holders in February 2007.

The discounted central estimate of the asbestos liability has decreased from A\$1.782 billion at March 31, 2009 to A\$1.537 billion at March 31, 2010. The reduction in the discounted central estimate of A\$245 million is primarily due to increases in yields on Government Bonds, which are used for discounting the future cash flows; and a reduction in the projected future number of claims to be reported for a number of disease types.

The asbestos-related assets and liabilities are denominated in Australian dollars. Therefore the reported value of these asbestos-related assets and liabilities in our consolidated balance sheets in U.S. dollars is subject to adjustment, with a corresponding effect on our consolidated statement of operations, depending on the closing exchange rate between the two currencies at the balance sheet date.

For fiscal year 2010, the Australian dollar appreciated against the U.S. dollar by 33%, compared to a 25% depreciation in fiscal year 2009. We receive an updated actuarial estimate as of March 31 each year. The last actuarial assessment was performed as of March 31, 2010. The asbestos adjustments for the fiscal years ended March 31, 2010 and 2009 are as follows:

(In millions)	Fiscal Years Ended March 31,	
	2010	2009
Change in estimates	\$ (3.3)	\$ (162.3)
Effect of foreign exchange movements	(220.9)	179.7
Asbestos adjustments	<u>\$ (224.2)</u>	<u>\$ (17.4)</u>

Claims Data

The number of new claims filed in fiscal year 2010 of 535 is lower than new claims of 607 reported for fiscal year 2009, and also slightly below actuarial expectations for fiscal year 2010.

The number of claims settled of 540 for fiscal year 2010 is lower than claims settled of 596 for fiscal year 2009.

The average claim settlement of A\$191,000 for fiscal year 2010 is in line with fiscal year 2009 and slightly below the actuarial expectations for fiscal year 2010.

Asbestos claims paid of A\$103.2 million for fiscal year 2010 were lower than the actuarial expectation of A\$114.2 million for fiscal year 2010.

As of March 31, 2010, the AICF had cash and investment assets of A\$63.1 million (\$57.8 million). We will make a contribution of approximately \$63.7 million to the AICF on July 1, 2010. This amount represents 35% of the company's free cash flow for fiscal year 2010, as defined by the Amended FFA.

All figures provided in this claims data section are gross of insurance and other recoveries. See Note 11 to our consolidated financial statements in Item 18 for further information on asbestos adjustments.

Operating Income (Loss). Operating income moved from \$173.6 million in fiscal year 2009 to a loss of \$21.0 million for fiscal year 2010. The loss for fiscal year 2010 includes net unfavorable asbestos adjustments of \$224.2 million (due primarily to the appreciation of the Australian dollar against the U.S. dollar during the period), AICF SG&A expenses of \$2.1 million and ASIC expenses of \$3.4 million.

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In fiscal year 2009, operating income included net favorable asbestos adjustments of \$17.4 million (attributable to depreciation of the Australian dollar against the U.S. dollar during the period, partially offset by a change in the actuarial estimate), AICF SG&A expenses of \$0.7 million and ASIC expenses of \$14.0 million.

Excluding asbestos and ASIC expenses, operating income increased from \$170.9 million in fiscal year 2009 to \$208.7 million in fiscal year 2010.

USA and Europe Fiber Cement operating income increased by 5% from \$199.3 million in fiscal year 2009 to \$208.5 million in fiscal year 2010. The improvement was driven by lower material input costs (primarily pulp, energy and freight), higher average net sales price and improved plant performance which contributed to lower average unit manufacturing costs. These benefits were partially offset by lower sales volume and a resulting increase in the fixed unit cost of manufacturing as fixed costs were spread over significantly lower production volume. The USA and Europe Fiber Cement operating income margin was 3.8 percentage points higher at 25.2%.

Asia Pacific Fiber Cement operating income increased 25% from \$47.1 million in fiscal year 2009 to \$58.7 million in fiscal year 2010. Favorable currency exchange rate movements in the Asia Pacific business' currencies compared to the U.S. dollar accounted for 11% of this increase. In Australian dollars, Asia Pacific Fiber Cement operating profit for the full year increased 14% due to strong primary demand growth offsetting weakened local markets, an increase in average net sales price, and favorable product mix shift, together with lower raw materials costs and reduced manufacturing costs. These benefits were partially offset by an increase in warranty expenses. The operating profit margin was 2.6 percentage points higher at 19.8%.

General Corporate Costs. General corporate costs decreased \$27.7 million from \$70.6 million in fiscal year 2009 to \$42.9 million in fiscal year 2010. We incurred costs associated with our Re-domicile of \$9.1 million in fiscal year 2010, compared to \$10.3 million in fiscal year 2009. ASIC expenses decreased from \$14.0 million in fiscal year 2009 to \$3.4 million in fiscal year 2010.

General corporate costs excluding ASIC expenses and domicile change related costs for fiscal year 2010 decreased from \$46.3 million in fiscal year 2009 to \$30.4 million in fiscal year 2010. The reduction was due to a \$7.6 million reversal of a legal provision and reductions in other general corporate costs.

Net Interest Expense. Net interest expense increased from \$3.0 million in fiscal year 2009 to \$4.0 million in fiscal year 2010. Net interest expense for fiscal year 2010 included AICF interest income of \$3.3 million and a realized loss of \$2.5 million on interest rate swap contracts. Net interest expense for the fiscal year 2009 included AICF interest income of \$6.4 million and nil related to interest rate swap contracts.

Other Income (Expense). Other income moved from an expense of \$14.8 million in fiscal year 2009 to income of \$6.3 million in fiscal year 2010. The turnaround resulted from an other-than-temporary impairment charge of \$14.8 million recognized at March 31, 2009 on restricted short-term investments held by the AICF. Other income for the full year also benefited from a \$6.7 million (A\$7.9 million) realized gain arising from the sale of restricted short-term investments held by the AICF, partially offset by an unrealized loss of \$0.4 million resulting from movements in the fair value of interest rate swap contracts.

Income Tax. Income tax expense increased from \$19.5 million in fiscal year 2009 to \$66.2 million in fiscal year 2010. Our effective tax rate on earnings excluding asbestos and tax adjustments was 34.4% in fiscal year 2010, compared to 41.4% for fiscal year 2009. The change in effective tax rate excluding asbestos and tax adjustments is attributable to changes in the geographic mix of earnings and expenses, reductions in non-tax deductible expenses and the reversal of a non-taxable legal provision in operating profit.

We recorded favorable tax adjustments of \$2.0 million in fiscal year 2010 compared to unfavorable tax adjustments of \$7.2 million in fiscal year 2009. The tax adjustments in fiscal years 2010 and 2009 relate to uncertain tax positions.

Net Income (Loss). Net loss moved from income of \$136.3 million in fiscal year 2009 to a loss of \$84.9 million in fiscal year 2010. Net income excluding asbestos, ASIC expenses and tax adjustments increased from \$100.5 million in fiscal year 2009 to \$133.0 million in fiscal year 2010.

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Fiscal year 2010 includes a legal provision reversal of \$7.6 million. See Note 13 to our consolidated financial statements in Item 18 for further information on the legal provision reversal.

Non-GAAP Financial Information Derived from GAAP Measures for Fiscal Year 2010

The following tables set forth the reconciliation of our non-GAAP financial measures included in our discussion above to the most directly comparable GAAP financial measure. These non-GAAP financial measures are not prepared in accordance with U.S. GAAP; therefore, the information is not necessarily comparable to other companies' financial information and should be considered as a supplement to, not a substitute for, or superior to, the corresponding measures calculated in accordance with U.S. GAAP.

<i>Operating income (loss) excluding asbestos and ASIC expenses</i> (In millions)	Fiscal Years Ended March 31,	
	2010	2009
USA and Europe Fiber Cement	\$ 208.5	\$ 199.3
Asia Pacific Fiber Cement	58.7	47.1
Research and Development	(19.0)	(18.9)
General Corporate:		
General corporate costs	(42.9)	(70.6)
Asbestos adjustments	(224.2)	17.4
AICF SG&A expenses	(2.1)	(0.7)
Total operating (loss) income	\$ (21.0)	\$ 173.6
Excluding:		
Asbestos:		
Asbestos adjustments	224.2	(17.4)
AICF SG&A expenses	2.1	0.7
ASIC expenses	3.4	14.0
Operating income excluding asbestos and ASIC expenses	\$ 208.7	\$ 170.9
<i>Effective tax rate excluding asbestos and tax adjustments</i> (In millions)		
(Loss) income before income taxes	\$ (18.7)	\$ 155.8
Excluding:		
Asbestos:		
Asbestos adjustments	224.2	(17.4)
AICF SG&A expenses	2.1	0.7
AICF interest income	(3.3)	(6.4)
(Gain) impairment on AICF investments	(6.7)	14.8
Income before income taxes excluding asbestos	\$ 197.6	\$ 147.5
Income tax expense	(66.2)	(19.5)
Excluding:		
Tax benefit (expense) related to asbestos adjustments	1.1	(48.7)
Tax adjustments	(2.9)	7.2
Income tax expense excluding asbestos and tax adjustments	\$ (68.0)	\$ (61.0)

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	Fiscal Years Ended March 31,	
	2010	2009
Effective tax rate	354.0%	12.5%
Effective tax rate excluding asbestos and tax adjustments	34.4%	41.4%
<i>Net income (loss) excluding asbestos, ASIC expenses and tax adjustments</i>		
<i>(In millions)</i>		
	Fiscal Years Ended March 31,	
	2010	2009
Net (loss) income	\$ (84.9)	\$ 136.3
Excluding:		
Asbestos adjustments	224.2	(17.4)
AICF SG&A expenses	2.1	0.7
AICF interest income	(3.3)	(6.4)
(Gain) impairment on AICF investments	(6.7)	14.8
Tax expense (benefit) related to asbestos	1.1	(48.7)
ASIC expenses	3.4	14.0
Tax adjustments	(2.9)	7.2
Net income excluding asbestos, ASIC expenses and tax adjustments	<u>\$ 133.0</u>	<u>\$ 100.5</u>

Year Ended March 31, 2009 Compared to Year Ended March 31, 2008

Total Net Sales. Total net sales decreased 18% from \$1,468.8 million in fiscal year 2008 to \$1,202.6 million in fiscal year 2009. Net sales from USA and Europe Fiber Cement decreased 21% from \$1,170.5 million in fiscal year 2008 to \$929.3 million in fiscal year 2009 due to decreased sales volume, slightly offset by a higher average net sales price. Net sales from Asia Pacific Fiber Cement decreased 8% from \$298.3 million in fiscal year 2008 to \$273.3 million in fiscal year 2009 due to unfavorable currency exchange rate movements.

USA and Europe Fiber Cement Net Sales. Net sales decreased 21% from \$1,170.5 million in fiscal year 2008 to \$929.3 million in fiscal year 2009 due to decreased sales volume, slightly offset by a higher average net sales price. Sales volume decreased 22% from 1,951.2 mmsf in fiscal year 2008 to 1,526.6 mmsf in fiscal year 2009, primarily due to weaker demand for our products in the U.S. as a result of continuing weakness in housing construction activity and deteriorating economic conditions. Although housing affordability has increased, we believe that demand is being restricted by limited availability of mortgage credit for prospective home buyers and lack of consumer confidence. The average net sales price increased 2% from \$600 per msf in fiscal year 2008 to \$609 per msf in fiscal year 2009. As announced on May 22, 2008, we have closed the USA Hardie Pipe business. An insignificant amount of sales related to this business were recorded in fiscal year 2009.

The USA and Europe Fiber Cement business recorded its seventh consecutive quarter where sales declined compared to the corresponding quarter in the previous year, reflecting the on-going deterioration in U.S. housing starts. The NAHB reported U.S. housing starts of a seasonally-adjusted annual rate for the quarter ended March 31, 2009 of 523,000 units, down 50% from the 1.053 million units for the corresponding quarter in fiscal year 2008.

The decline in top-line performance was due to reduced exterior and interior product volumes, as product demand was lower in all regions. Lower SG&A costs and a higher average selling price partially offset lower volumes and the higher unit cost of sales due to product mix and material costs. The business continues to focus on its three main strategic initiatives of primary demand growth, product mix shift and zero to landfill, and progress is being made on these initiatives despite softening market demand.

Our differentiated ColorPlus[®] range of products continues to contribute to primary demand growth. Our initial focus on the ColorPlus range of products against vinyl siding manufacturers in the northern region of the United

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States has now been expanded to the western and southern regions of the United States with both areas posting moderate gains in ColorPlus penetration rate compared to fiscal year 2008.

Our growth strategy is complemented by accessories (particularly XLD™ trim, HLD™ trim and soffit) which provide a suite of exterior products for a “full wrap” solution to builders and remodelers. The strategy is further supported by positioning our interior backer products as a wet area wall solution, including G2 1/2” backer as the pre-eminent wet area solution and featuring Moldblock™ Technology on both 1/4 and 1/2” products. HardiZone exterior products are currently being launched in the U.S. These products are engineered for specific climate conditions utilizing our seventh generation product technology.

Asia Pacific Fiber Cement Net Sales. Net sales decreased 8% from \$298.3 million in fiscal year 2008 to \$273.3 million in fiscal year 2009 due to a 6% decrease in the average net sales price and a 2% decrease in sales volume. Unfavorable currency exchange rates of the Asia Pacific business’ currencies compared to the U.S. dollar accounted for an 8% decrease in net sales in U.S. dollars. In Australian dollars, net sales were flat due to a 2% increase in average net sales price, offset by a 2% decrease in sales volume.

In Australia, the Scyon™ product range continues to build momentum with fiscal year 2009 sales volumes up 47% compared to fiscal year 2008. Scyon differentiated products now represent 10.7% of sales, up from 7.5% in fiscal year 2008. Growth has been particularly strong for Scyon Stria™ cladding and Scyon Secura™ external flooring released during fiscal year 2009. An increased share of the residential market was achieved by increasing the volume of differentiated James Hardie products used in individual homes. Core products also regained volume in the face of increased competition, although revenue was affected by low-priced imports. For fiscal year 2009, the Australian Bureau of Statistics reported total dwelling unit approvals of 134,499 units, down 14% from 156,697 unit approvals for fiscal year 2008. Sales in the multi-unit sector also remained depressed as the lack of available credit and general economic uncertainty led to a reduction in investment through the second half of calendar year 2008. While some cost improvements have been achieved, these have been largely offset by increases in some input costs resulting from a depreciating Australian dollar and from lower production volumes and higher utility costs. In New Zealand, residential construction continues to decline, with total residential approvals for fiscal year 2009 down 34% to 16,200 units compared to fiscal year 2008. The New Zealand business continued to out-perform the market by growing sales of its differentiated range of products, including Linea™ weatherboards, the Horizon™ wall lining and HomeRAB™ preclad lining which was launched during fiscal year 2009. Sales of these differentiated products now account for almost half of sales volume. The Philippines business reported lower sales volumes and revenue as a result of a softening domestic market, and export volumes affected by the global slow down and pricing pressures stemming from Asian currencies’ depreciation against the U.S. dollar. The Philippines business continues to seek avenues for volume growth and to establish a lower cost base.

Gross Profit. Gross profit decreased 27% from \$530.0 million in fiscal year 2008 to \$388.8 million in fiscal year 2009. The gross profit margin decreased 3.8 percentage points from 36.1% in fiscal year 2008 to 32.3% in fiscal year 2009.

USA and Europe Fiber Cement gross profit decreased 29% compared to fiscal year 2008 due to lower sales volume and higher average unit costs. The gross profit margin of our USA and Europe Fiber Cement business decreased 4.1 percentage points in fiscal year 2009.

Asia Pacific Fiber Cement gross profit decreased 15% compared to fiscal year 2008. Unfavorable currency exchange rate movements in the Asia Pacific business’ currencies compared to the U.S. dollar accounted for 8% of this decrease while the underlying Australian dollar business results accounted for the remaining 7% decrease. The gross profit margin of our Asia Pacific Fiber Cement business decreased 2.0 percentage points in fiscal year 2009. In Australian dollars, gross profit decreased 7% in fiscal year 2009 primarily due to reduced gross profit performance in New Zealand driven by lower sales volumes.

Selling, General and Administrative (SG&A) Expenses. SG&A expenses decreased 9% from \$228.2 million in fiscal year 2008 to \$208.8 million in fiscal year 2009, primarily due to lower SG&A spending in our USA and Europe Fiber Cement and Asia Pacific Fiber Cement segments, partially offset by higher general corporate costs. However, as a percentage of sales, SG&A expense increased 1.9 percentage points to 17.4% in fiscal year 2009. For fiscal year 2009, SG&A expenses include non-claims handling related operating expenses of the AICF of \$0.7 million.

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ASIC Proceedings

See “Year Ended March 31, 2010 compared to Year Ended March 31, 2009” above for discussion of the ASIC proceedings.

Chile Litigation

See “Year Ended March 31, 2010 compared to Year Ended March 31, 2009” above for discussion of the Chile litigation.

Research and Development Expenses. Research and development expenses include costs associated with “core” research projects that are designed to benefit all business units. These costs are recorded in the Research and Development segment rather than being attributed to individual business units. These costs were 20% lower at \$14.4 million in fiscal year 2009 compared to fiscal year 2008. Other research and development costs associated with commercialization projects in business units are included in the business unit segment results. In total, these costs were 1% higher at \$9.4 million in fiscal year 2009.

Asbestos Adjustments. The asbestos adjustments are derived from an estimate of future Australian asbestos-related liabilities in accordance with the Amended FFA that was signed with the NSW Government on November 21, 2006 and approved by our security holders on February 7, 2007.

The asbestos-related assets and liabilities are denominated in Australian dollars. Therefore the reported value of these asbestos-related assets and liabilities in our consolidated balance sheets in U.S. dollars is subject to adjustment, with a corresponding effect on our consolidated statement of operations, depending on the closing exchange rate between the two currencies at the balance sheet date. We receive an updated actuarial estimate as of March 31 each year.

The asbestos adjustments for the fiscal years ended March 31, 2009 and 2008 are as follows:

(In millions)	Fiscal Years Ended March 31,	
	2009	2008
Change in estimates	\$ (162.3)	\$ (152.9)
Effect of foreign exchange movements	179.7	(87.2)
Asbestos adjustments	\$ (17.4)	\$ (240.1)

Operating Income (Loss). Operating income improved from a loss of \$36.6 million in fiscal year 2008 to income of \$173.6 million in fiscal year 2009. Operating income in fiscal year 2009 includes net favorable asbestos adjustments of \$17.4 million and AICF SG&A expenses of \$0.7 million. In fiscal year 2008, operating loss includes net unfavorable asbestos adjustments of \$240.1 million and AICF SG&A expenses of \$4.0 million.

Operating income excluding asbestos, ASIC expenses and asset impairments decreased 40% to \$170.9 million in fiscal year 2009.

USA and Europe Fiber Cement operating income (excluding impairment charges of \$71.0 million) decreased 35% from \$306.2 million in fiscal year 2008 to \$199.3 million in fiscal year 2009, primarily due to reduced gross profit performance in the U.S., which resulted from lower sales volume and higher average unit manufacturing costs. The higher average unit manufacturing costs were the result of fixed costs being absorbed over significantly reduced volumes. The operating income margin (excluding impairment charges of \$71.0 million) in fiscal year 2009 increased by 4.8 percentage points to 21.4%.

Asia Pacific Fiber Cement operating income decreased 6% from \$50.3 million in fiscal year 2008 to \$47.1 million in fiscal year 2009. The unfavorable currency exchange rate movements in the Asia Pacific business’ currencies compared to the U.S. dollar accounted for a 10% decrease, partially offset by a 4% increase in the underlying Australian dollar business results. In Australian dollars, Asia Pacific Fiber Cement operating income for fiscal year 2009 increased 4% due to decreased SG&A expenses, partially offset by lower gross margin performance. The operating income margin was 0.3 percentage points higher at 17.2% for fiscal year 2009.

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General Corporate Costs. General corporate costs increased by \$10.7 million from \$59.9 million in fiscal year 2008 to \$70.6 million in fiscal year 2009. The increase was primarily due to higher costs associated with the ASIC proceedings and additional legal provisions, partially offset by reduced general corporate cost spending as management continues to focus on cost reductions.

Net Interest (Expense) Income. Net interest moved from income of \$1.1 million in fiscal year 2008 to an expense of \$3.0 million in fiscal year 2009. The movement was primarily due to higher interest expense due to higher average debt and reduced interest income earned by the AICF due to lower average investment and cash balances held.

Other Expense. As disclosed in Note 2 of our consolidated financial statements in Item 18, we are required to consolidate the AICF and to present the AICF's results in compliance with U.S. GAAP. Specifically as it relates to the treatment of unrealized losses on investments, we must assess whether an investment is other-than-temporarily impaired.

The AICF invested a portion of the initial funding contribution from us in February 2007, by acquiring units in managed funds. During the year ended March 31, 2009 and 2008, the units decreased in value A\$13.1 million (\$10.4 million) and A\$5.1 million (\$4.4 million), respectively. None of the units have been sold, and thus from a commercial perspective the impairment in value remains unrealized.

At March 31, 2008, we recorded the A\$5.1 million (\$4.4 million) decrease in investment value as unrealized under U.S. GAAP and thus did not take a charge to the Consolidated Statement of Operations, but rather recorded the loss in equity as a component of other comprehensive income. At March 31, 2008, we did not consider the investments to be other-than-temporarily impaired. However, at March 31, 2009, we determined that the decrease in the investment value totaling A\$18.2 million (\$14.8 million) was other-than-temporarily impaired and as prescribed by U.S. GAAP recorded this decrease in investment value as a charge to the Consolidated Statement of Operations in the line item *Other Expense*.

Income Tax Expense. Income tax expense decreased from \$36.1 million in fiscal year 2008 to \$19.5 million in fiscal year 2009. Income tax expense in fiscal year 2009 includes a tax benefit related to asbestos adjustments of \$48.7 million and unfavorable tax adjustments of \$7.2 million related to our uncertain tax positions. Income tax expense in fiscal year 2008 includes a tax benefit related to asbestos adjustments of \$45.8 million; a tax benefit related to asset impairments of \$27.6 million; and unfavorable tax adjustments of \$5.8 million related to adjustments for uncertain tax positions.

Our effective tax rate on earnings excluding asbestos, asset impairments and tax adjustments was 41.4% in fiscal year 2009, compared to 37.9% for fiscal year 2008. The change in effective tax rate excluding asbestos, asset impairments and tax adjustments is attributable to changes in the geographic mix of earnings and expenses.

Net Income (Loss). Net income (loss) moved from a net loss of \$71.6 million in fiscal year 2008 to net income of \$136.3 million in fiscal year 2009. Net income for fiscal year 2009 included favorable asbestos adjustments of \$17.4 million; loss on AICF investments of \$14.8 million; a tax benefit related to asbestos adjustments of \$48.7 million; ASIC expenses of \$14.0 million; and unfavorable tax adjustments of \$7.2 million related to adjustments to our uncertain tax positions.

Net income excluding asbestos, ASIC expenses, asset impairments and tax adjustments decreased 43% to \$100.5 million.

Non-GAAP Financial Information Derived from GAAP Measures for Fiscal Year 2009

The following tables set forth the reconciliation of our non-GAAP financial measures included in our discussion above to the most directly comparable GAAP financial measure. These non-GAAP financial measures are not prepared in accordance with U.S. GAAP; therefore, the information is not necessarily comparable to other companies' financial information and should be considered as a supplement to, not a substitute for, or superior to, the corresponding measures calculated in accordance with U.S. GAAP.

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<i>Operating income (loss) excluding asbestos, ASIC expenses and asset impairments</i> (in millions)	Fiscal Years Ended March 31,	
	2009	2008
USA and Europe Fiber Cement (1)	\$ 199.3	\$ 306.2
Asia Pacific Fiber Cement	47.1	50.3
Research and Development	(18.9)	(18.1)
General Corporate:		
General corporate costs	(70.6)	(59.9)
Asbestos adjustments	17.4	(240.1)
AICF SG&A expenses	(0.7)	(4.0)
Impairment charges	—	(71.0)
Total operating income (loss)	\$ 173.6	\$ (36.6)
Excluding:		
Asbestos:		
Asbestos adjustments	(17.4)	240.1
AICF SG&A expenses	0.7	4.0
ASIC expenses	14.0	5.5
Asset impairments:		
Impairment charges	—	71.0
Impairment related costs	—	3.2
Operating income excluding asbestos, ASIC expenses and asset impairments	\$ 170.9	\$ 287.2

(1) Excluded from USA and Europe Fiber Cement operating income in the table above is \$71.0 million of impairment charges for fiscal year 2008.

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Effective tax rate excluding asbestos, asset impairments and tax adjustments (In millions)

	Fiscal Years Ended March 31,	
	2009	2008
Income (loss) before income taxes	\$ 155.8	\$ (35.5)
Excluding:		
Asbestos:		
Asbestos adjustments	(17.4)	240.1
AICF SG&A expenses	0.7	4.0
AICF interest income	(6.4)	(9.4)
Impairment on AICF investments	14.8	—
Asset impairments:		
Impairment charges	—	71.0
Impairment related costs	—	3.2
Income before income taxes excluding asbestos and asset impairments	<u>\$ 147.5</u>	<u>\$ 273.4</u>
Income tax expense	\$ (19.5)	\$ (36.1)
Excluding:		
Tax benefit related to asbestos adjustments	(48.7)	(45.8)
Tax benefit related to asset impairments	—	(27.6)
Tax adjustments	7.2	5.8
Income tax expense excluding asbestos, asset impairments and tax adjustments	<u>\$ (61.0)</u>	<u>\$ (103.7)</u>
Effective tax rate	12.5%	101.7%
Effective tax rate excluding asbestos and tax adjustments	41.4%	37.9%

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<i>Net income (loss) excluding asbestos, ASIC expenses, asset impairments and tax adjustments</i> (In millions)	Fiscal Years Ended March 31,	
	2009	2008
Net income (loss)	\$ 136.3	\$ (71.6)
Excluding:		
Asbestos:		
Asbestos adjustments	(17.4)	240.1
AICF SG&A expenses	0.7	4.0
AICF interest income	(6.4)	(9.4)
Impairment of AICF investments	14.8	—
Tax benefit related to asbestos adjustments	(48.7)	(45.8)
ASIC expenses (net of tax)	14.0	5.5
Asset impairments:		
Impairment charges (net of tax)	—	44.6
Impairment related costs (net of tax)	—	2.0
Tax adjustments	7.2	5.8
Net income excluding asbestos, ASIC expenses, asset impairments and tax adjustments	\$ 100.5	\$ 175.2

Impact of Recent Accounting Pronouncements

Disclosures about Derivative Instruments and Hedging Activities

In March 2008, the FASB issued authoritative guidance that changed the disclosure requirements for derivative instruments and hedging activities. Entities are required to provide enhanced disclosures about how and why an entity uses derivative instruments, how derivative instruments and related hedged items are accounted for and how derivative instruments and related hedged items affect an entity's financial position, financial performance, and cash flows. The adoption of this authoritative guidance did not result in a material impact to our consolidated financial position, results of operations or cash flows.

Share-Based Payment Awards as Participating Securities

In June 2008, the FASB issued authoritative guidance that clarified that share-based payment awards that entitle their holders to receive non-forfeitable dividends before vesting should be considered participating securities. As participating securities, these instruments should be included in the calculation of basic earnings per share. This authoritative guidance is effective for financial statements issued for fiscal years beginning after December 15, 2008, as well as interim periods in those years. The adoption did not result in a material impact to our consolidated financial position, results of operations or cash flows.

Disclosures about Fair Value of Financial Instruments for Interim Reporting Periods

In April 2009, the FASB expanded disclosure requirements for interim reporting periods to include disclosures about the fair value of financial instruments held by us. We adopted this statement effective for our first quarter of fiscal year 2010, which resulted in the disclosure of fair values attributable to debt instruments included in Note 12 to our consolidated financial statements in Item 18.

Hierarchy of Generally Accepted Accounting Principles

Effective for our second quarter of fiscal year 2010, we adopted the FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles which only affected the specific references to U.S. GAAP literature in the notes to the consolidated financial statements. There was no impact on our results of operations, financial condition or liquidity.

Liquidity and Capital Resources

Our treasury policy regarding our liquidity management, foreign exchange risk management, interest rate risk management and cash management is administered by our treasury department and is centralized in Ireland. This policy is reviewed annually and is designed to ensure that we have sufficient liquidity to support our business activities and meet future business requirements in the countries in which we operate. Counterparty limits are managed by our treasury department and based upon the counterparty credit rating; total exposure to any one counterparty is limited to specified amounts that are approved annually by the Chief Financial Officer.

We have historically met our working capital needs and capital expenditure requirements through a combination of cash flow from operations, credit facilities and other borrowings, proceeds from the sale of property, plant and equipment and proceeds from the redemption of investments. Seasonal fluctuations in working capital generally have not had a significant impact on our short-term or long-term liquidity. We anticipate that we will have sufficient funds to meet our planned working capital and other cash requirements for the next 12 months based on our existing cash balances, cash available under proposed new credit facilities and anticipated operating cash flows arising during the year. We anticipate that any additional cash requirements will be met from existing cash, unutilized committed credit facilities, anticipated future net operating cash flows and proposed new facilities.

Excluding restricted cash, we had cash and cash equivalents of \$19.2 million as of March 31, 2010. At that date, we also had credit facilities totaling \$426.7 million, of which \$154.0 million was drawn, leaving \$272.7 million available to be drawn. The credit facilities are all uncollateralized and consist of the following:

<u>Description</u>	<u>At March 31, 2010</u>		
	<u>Effective Interest Rate</u>	<u>Total Facility</u> (In millions)	<u>Principal Drawn</u>
Term facilities, can be drawn in US\$, variable interest rates based on LIBOR plus margin, can be repaid and redrawn until June 2010	0.86%	\$ 161.7	\$ 95.0
Term facilities, can be drawn in US\$, variable interest rates based on LIBOR plus margin, can be repaid and redrawn until February 2011	—	45.0	—
Term facilities, can be drawn in US\$, variable interest rates based on LIBOR plus margin, can be repaid and redrawn until December 2012	—	130.0	—
Term facilities, can be drawn in US\$, variable interest rates based on LIBOR plus margin, can be repaid and redrawn until February 2013	1.01%	90.0	59.0
Total		<u>\$ 426.7</u>	<u>\$ 154.0</u>

At March 31, 2010 we had net debt of \$134.8 million, a decrease of \$146.8 million from net debt of \$281.6 million at March 31, 2009.

In December 2009, we refinanced \$130.0 million in facilities, which previously had maturity dates in or prior to June 2010. The maturity date of these new facilities is December 2012. On June 16, 2010, \$161.7 million of our term facilities matured. We did not refinance these facilities. Accordingly, amounts outstanding under these facilities were repaid by using longer term facilities.

The weighted average remaining term of the total credit facilities at March 31, 2010 was 2.6 years. For all facilities, the interest rate is calculated two business days prior to the commencement of each draw-down period based on the US\$ London Interbank Offered Rate (which we refer to as LIBOR) plus the margins of individual lenders and is

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payable at the end of each draw-down period. During fiscal year 2010, we paid \$1.3 million in commitment fees. As of March 31, 2010, \$154.0 million was drawn under the combined facilities and \$272.7 million was available.

In March 2006, RCI received an amended assessment from the ATO of A\$412.0 million (\$310.0 million). The assessment was subsequently amended to A\$368.0 million (\$252.9 million).

During fiscal year 2007, we agreed with the ATO that in accordance with the ATO Receivables Policy, we would pay 50% of the total amended assessment being A\$184.0 million (\$148.4 million — converted at the March 31, 2007 spot rate) and provide a guarantee from JHI SE (formerly JHI NV) in favor of the ATO for the remaining unpaid 50% of the amended assessment, pending outcome of the appeal of the amended assessment. We also agreed to pay GIC accruing on the unpaid balance of the amended assessment in arrears on a quarterly basis. Up to March 31, 2010, we have paid A\$118.6 million (\$108.6 million) of GIC to the ATO. This amount includes GIC of A\$76.7 million (\$70.2 million) paid as part of the payment of A\$184.0 million (\$148.4 million — converted at the March 31, 2007 spot rate) towards the amended assessment in fiscal year 2007. On April 15, 2010, we paid an additional amount of A\$2.5 million (\$2.3 million) in GIC related to the quarter ended March 31, 2010.

RCI strongly disputes the amended assessment and is pursuing all avenues of appeal to contest the ATO's position in this matter. We believe that RCI's view on its tax position will ultimately prevail in this matter. As a result, we have treated all payments in respect of the amended assessment and the accrued interest receivable on such payments as of March 31, 2010 as a deposit. It is our intention to treat any payments to be made at a later date and accrued interest receivable as a deposit. We expect that any amounts paid would be recovered, with interest, by RCI at the time RCI is successful in its appeal against the amended assessment. However, if RCI is unsuccessful in its appeal, RCI will be required to pay the entire assessment. As of March 31, 2010, we had not recorded any liability for the amended assessment as we believe it is more-likely-than-not, based on the technical merits, that our position will be upheld. For more information, see Note 14 to our consolidated financial statements in Item 18 and Item 3, "Key Information — Risk Factors."

If we are unable to extend our credit facilities, or are unable to renew our credit facilities on terms that are substantially similar to the ones we presently have, we may experience liquidity issues and may have to reduce our levels of planned capital expenditures, continue to suspend dividend payments, or take other measures to conserve cash in order to meet our future cash flow requirements.

As of March 31, 2010, our management believes that we were in compliance with all restrictive covenants contained in our credit facility agreements. Under the most restrictive of these covenants, we (i) are required to maintain certain ratios of indebtedness to equity which do not exceed certain maximums, excluding assets, liabilities and other balance sheet items of the AICF, Amaba, Amaca, ABN 60 and Marlew Mining Pty Limited; (ii) must maintain a minimum level of net worth, excluding assets, liabilities and other balance sheet items of the AICF; for these purposes "net worth" means the sum of the par value (or value stated in the books of the James Hardie Group) of the capital stock (but excluding treasury stock and capital stock subscribed or unissued) of the James Hardie Group, the paid in capital and retained earnings of the James Hardie Group and the aggregate amount of provisions made by the James Hardie Group for asbestos related liabilities, in each case, as such amounts would be shown in the consolidated balance sheet of the James Hardie Group if Amaba, Amaca, ABN 60 and Marlew Mining Pty Limited were not accounted for as subsidiaries of the Company; (iii) must meet or exceed a minimum ratio of earnings before interest and taxes to net interest charges, excluding all income, expense and other profit and loss statement impacts of the AICF, Amaba, Amaca, ABN 60 and Marlew Mining Pty Limited; and (iv) must ensure that no more than 35% of Free Cash Flow (as defined in the Amended FFA) in any given Financial Year is contributed to the AICF on the payment dates under the Amended FFA in the next following Financial Year. The limit does not apply to payments of interest to the AICF. Such limits are consistent with the contractual liabilities of the Performing Subsidiary and us under the Amended FFA.

Cash Flow — Year Ended March 31, 2010 compared to Year ended March 31, 2009

Net operating cash moved from a cash outflow of \$45.2 million in fiscal year 2009 to a cash inflow of \$183.1 million in fiscal year 2010, primarily due to two significant cash outflows in fiscal year 2009 that did not recur in fiscal year 2010: the ATO settlement payment of \$101.6 million in settlement of disputes for the years 2002 and 2004 to 2006, and the quarterly installment payments to the AICF totaling \$110.0 million. Under the terms of the Amended FFA, we were not required to make a contribution to the AICF during fiscal year 2010. Net operating cash

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flow was also favorably impacted by a net improvement in operating results across the business, changes in accrued liabilities and an increase in accounts payable due to rising levels of inventory. These favorable movements were partially offset by an increase in accounts receivable.

Historically, we have generated cash from operations before accounting for unusual or discrete large cash outflows. Therefore, in periods when we do not incur any unusual or discrete large cash outflows, such as or similar to the ATO settlement during fiscal year 2009, we expect that net operating cash flow will be the primary source of liquidity to fund business activities. In periods where cash flows from operations are insufficient to fund all business activities, we expect to rely more significantly on available credit facilities and other sources of working capital.

Net cash used in investing activities increased from \$26.1 million in fiscal year 2009 to \$50.5 million in fiscal year 2010 as capital expenditures increased from the prior year.

Net financing cash moved from a cash inflow of \$25.0 million in fiscal year 2009 to a cash outflow of \$159.0 million in fiscal year 2010, primarily due to repayment of our 364-day facilities of \$93.3 million and a reduction in our outstanding term facilities of \$76.7 million during fiscal year 2010.

Capital Requirements and Resources

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

During the fiscal year ended March 31, 2010, we met our capital expenditure requirements through a combination of internal cash and funds from our credit facilities. We expect to use cash primarily generated from our operations to fund capital expenditures and working capital. During fiscal year 2011, we expect to spend approximately \$70 million to \$80 million on capital expenditures, including facility upgrades, equipment to enhance environmental compliance and capital to implement new fiber cement technologies. We plan to fund any cash flow shortfalls that we may experience due to payments related to the Amended FFA and payments made to the ATO under the amended assessment, with future cash flow surpluses, cash on hand of \$19.2 million at March 31, 2010, and cash that we anticipate will be available to us under credit facilities.

Under the terms of the Amended FFA, we are required to fund the AICF on an annual basis, depending on our net operating cash flow. The initial funding payment of A\$184.3 million (\$145.0 million at the time of payment) was made to the AICF in February 2007 and annual payments will be made each July. The amounts of these annual payments are dependent on several factors, including our free cash flow (as defined in the Amended FFA), actuarial estimations, actual claims paid, operating expenses of the AICF and the annual cash flow cap. No contribution was required to be made under the Amended FFA in fiscal year 2008. Further contributions in fiscal year 2009 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). Under the terms of the Amended FFA, we were not required to make a contribution to the AICF in fiscal year 2010. We expect to make a contribution to the AICF in fiscal year 2011 of approximately \$63.7 million. Future funding for the AICF continues to be linked under the terms of the Amended FFA to our long-term financial success, especially our ability to generate net operating cash flow.

We anticipate that our cash flows from operations, net of estimated payments under the Amended FFA, will be sufficient to fund our planned capital expenditure and working capital requirements in the short-term. If we do not generate sufficient cash from operations to fund our planned capital expenditures and working capital requirements, we believe the cash and cash equivalents of \$19.2 million at March 31, 2010, and the cash that we anticipate will be available to us under credit facilities, will be sufficient to meet any cash shortfalls during at least the next 12 months.

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

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

In May 2007, we announced a dividend policy of a payout ratio of between 50% to 75% of net income before asbestos adjustments, subject to funding requirements. In November 2008, we announced that our Board decided to omit the interim dividend for fiscal year 2009 and that we would continue to review our dividend policy, but that it was likely dividends would be suspended until conditions improved significantly. On May 20, 2009, we announced that we would omit the year-end dividend for fiscal year 2009 to conserve capital and that, until such time as market and global economic conditions improve significantly and the level of uncertainty surrounding future industry trends as well as company specific contingencies dissipates, we anticipate that dividends will continue to be suspended in order to conserve capital. This remains our position.

We believe our business is affected by general economic conditions, such as level of employment, consumer confidence, consumer income, the availability of financing and interest rates in the United States and in other countries because these factors affect housing affordability and the level of housing prices. Over the past several years, the ongoing sub-prime mortgage fallout, rising unemployment, increased foreclosures, high current inventory of unsold homes, tighter credit and volatile equity markets have materially adversely impacted our business. We expect that business derived from current U.S. forecasts of new housing starts and renovation and remodel expenditures will result in our operations generating cash flow sufficient to fund the majority of our planned capital expenditures. It is possible that a deeper than expected decline in new housing starts in the United States or in other countries in which we manufacture and sell our products would negatively impact our growth and our current levels of revenue and profitability and therefore decrease our liquidity and ability to generate sufficient cash from operations to meet our capital requirements. See Item 3, "Key Information — Risk Factors."

Pulp and cement are primary ingredients in our fiber cement formulation, which have been subject to price volatility, affecting our working capital requirements. See Item 3, "Key Information — Risk Factors." Our pulp prices are discounted from a global index, NBSK, which based on information we receive from RISI and other sources, are predicted to increase in fiscal year 2011 due to increased demand and the effects on supply of the Chilean earthquake in February 2010. To minimize additional working capital requirements caused by rising pulp prices, we have entered into contracts that discount pulp prices in relation to various pulp indices over a longer-term and purchase our pulp from several qualified suppliers in an attempt to mitigate price increases and supply interruptions.

We expect our average price for cement to remain relatively flat compared to fiscal year 2010. We continue to look for opportunities to negotiate lower prices with our cement suppliers in some markets and continue to evaluate opportunities to increase our supplier base.

Freight costs decreased in fiscal year 2010 due to shifts in product mix; however, freight costs increased in the fourth quarter of fiscal year 2010 in response to significantly higher diesel prices amid emerging signs of recovery in the U.S. economy. We expect this to continue in fiscal year 2011.

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

Capital Expenditures

Our total capital expenditures, including amounts accrued, for continuing operations for fiscal years 2010, 2009 and 2008 were \$50.5 million, \$26.1 million and \$38.5 million, respectively.

Significant capital expenditures in fiscal years 2010 and 2009 included expenditures related to a new finishing capability on an existing product line. Significant capital expenditures in fiscal year 2008 included (i) expenditures

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related to a new finishing capability on a new product line and (ii) expenditures related to the implementation of our new ERP software system. See Item 4, "Information on the Company — Capital Expenditures and Divestitures."

Contractual Obligations

The following table summarizes our contractual obligations at March 31, 2010:

(In millions)	Payments Due				
	Total	2011	2012 to 2013	2014 to 2015	Thereafter
Asbestos Liability (1)	\$ 1,619.2	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Long-Term Debt	154.0	95.0	59.0	—	—
Estimated interest payments on Long-Term Debt (2)	24.1	5.7	11.2	5.7	1.5
Operating Leases	114.4	17.4	31.5	28.0	37.5
Purchase Obligations (3)	0.7	0.7	—	—	—
Total	<u>\$ 1,912.4</u>	<u>\$ 118.8</u>	<u>\$ 101.7</u>	<u>\$ 33.7</u>	<u>\$ 39.0</u>

- (1) The amount of the asbestos liability reflects the terms of the Amended FFA, which has been calculated by reference to (but is not exclusively based upon) the most recent actuarial estimate of the projected future asbestos-related cash flows prepared by KPMG Actuaries. The asbestos liability also includes an allowance for the future claims-handling costs of the AICF. The table above does not include a break down of payments due each year as such amounts are not reasonably estimable. See Item 3, "Key Information — Risk Factors," Item 4, "Information on the Company — Commitment to Provide Funding on a Long-Term Basis in Respect of Asbestos-Related Liabilities of Former Subsidiaries" and Note 11 of our consolidated financial statements in Item 18 for further information regarding our future obligations under the Amended FFA.
- (2) Interest amounts are estimates based on gross debt remaining unchanged from the March 31, 2010 balance and interest rates remaining consistent with the rates at March 31, 2010. Interest paid includes interest in relation to our debt facilities, as well as the net amount paid relating to interest rate swap agreements. The interest on our debt facilities is variable based on a market rate and includes margins agreed to with the various lending banks. The interest on our interest rate swaps is set at a fixed rate. There are several variables that can affect the amount of interest we may pay in future years, including: (i) new debt facilities with rates or margins different from historical rates; (ii) expiration of existing debt facilities resulting in a change in the average interest rate; (iii) fluctuations in the market interest rate; (iv) new interest rate swap agreements; and (v) expiration of existing interest rate swap agreements.
- (3) Purchase Obligations are defined as agreements to purchase goods or services that are enforceable and legally-binding on us and that specify all significant terms, including: fixed or minimum quantities to be purchased; fixed, minimum or variable price provisions; and the approximate timing of the transactions.

The table above excludes \$7.7 million of uncertain tax positions as we are unable to reasonably estimate the ultimate amount or timing of settlement. See Note 14 to our consolidated financial statements in Item 18.

See Notes 9 and 13 to our consolidated financial statements in Item 18 for further information regarding long-term debt and operating leases, respectively.

Off-Balance Sheet Arrangements

As of March 31, 2010 and 2009, we did not have any material off-balance sheet arrangements.

Inflation

We do not believe that inflation has had a significant impact on our results of operations for the fiscal years ended March 31, 2010, 2009 or 2008.

Seasonality and Quarterly Variability

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

Research and Development

For fiscal years 2010, 2009 and 2008, our expenses for research and development were \$27.1 million, \$23.8 million and \$27.3 million, respectively.

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

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

Outlook

Although new housing construction activity in the U.S. improved in the fourth quarter of fiscal year 2010, the start of fiscal year 2011 has seen another decline in new U.S. housing numbers following the expiration of the government’s housing initiatives on April 30, 2010.

Analysts are less confident that the U.S. housing market will continue to improve in fiscal year 2011. Severe challenges remain, including constrained credit conditions that are restricting the availability of finance for prospective buyers and developers, a weak employment market, and a continuing supply of foreclosed homes.

Asia Pacific markets that we participate in are likely to be somewhat better in fiscal year 2011 than in fiscal year 2010.

Operating costs are expected to be considerably higher in fiscal year 2011 than in fiscal year 2010, as market demand drives upward pressure on basic commodity prices.

Despite the challenging environment and higher input costs, we will continue to pursue strong financial returns, and at the same time, increase spending on long-term product and market initiatives.

Changes in our asbestos liability to reflect changes in foreign exchange rates or updates of the actuarial estimate, ASIC proceeding matters, income tax related issues and other matters referred to in Item 3, “Key Information — Forward Looking Statements,” may have a material impact on our consolidated financial statements.

Item 6. Directors, Senior Management and Employees

Board Practices and Senior Management

Board Structure

Number of Boards

During the entire fiscal year 2010, we had a multi-tiered board structure. Until completion of Stage 1 of the Re-domicile on February 19, 2010 this consisted of a Joint Board, a Supervisory Board and a Managing Board. Following completion of Stage 1 of the Re-domicile, the Managing Board remained in place but the Joint Board ceased to exist and all of its

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responsibilities were assumed by the Supervisory Board. Since completion of Stage 2 of the Re-domicile, we have had a single Board. References to the “Board” in Item 6 are references to the Supervisory Board prior to completion of the Re-domicile, and to the single Board following completion of the Re-domicile.

The responsibilities of our Board/s and Board Committees are formalized in charters and our Articles of Association, which set out the responsibilities of the Board/s and Board Committees. These charters and our Articles of Association also identify the matters reserved to the Board or Board Committees and the matters reserved to the Managing Board or the CEO.

Single Board

The single Board has been in place since completion of the Re-domicile and is comprised of seven non-executive directors and the CEO. The Board must have no less than three and not more than twelve directors, as determined by the Board.

Board directors may be elected by our shareholders at general meetings, or by the Board if there is a vacancy. The Board and our shareholders have the right to nominate candidates for the Board. Board directors may be dismissed by our shareholders at a general meeting.

Irish law provides that the Board is responsible for the management and operation of our company. The Board can, and has, delegated authority to the CEO to manage the corporation within specified authority levels. The Board has also reserved certain matters to itself, including:

- appointing, removing and assessing the performance and remuneration of the CEO and CFO;
- succession planning for the Board and senior management and defining our management structure and responsibilities;
- approving our overall strategy, including the three year business plan and annual operating and capital expenditure budgets;
- convening and monitoring the operation of shareholder meetings and approving matters to be submitted to shareholders for their consideration;
- approving annual and periodic reports, results announcements and related media releases and notices of shareholder meetings;
- approving the dividend policy and interim dividends and making recommendations to shareholders regarding the annual dividend;
- reviewing the authority levels of the CEO and management;
- approving our remuneration framework;
- overseeing our corporate governance matters;
- approving corporate-level company policies;
- considering management’s recommendations on various matters which are above the authority levels delegated to the CEO or management; and
- any other matter which the Board considers ought to be approved by the Board.

The full list of those matters reserved to the Board are formalized in our Board charter, which is available on our website www.jameshardie.com, select “Investor Relations,” “Corporate Governance,” then “Board Structure”.

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

Supervisory Board

The Supervisory Board was in operation for all of fiscal year 2010 and until completion of the Re-domicile on June 17, 2010, when it was replaced by the single Board.

The Supervisory Board was comprised of only non-executive directors, with at least two members or a higher number as determined by the Supervisory Board.

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Supervisory Board directors were appointed by our shareholders at a general meeting or by the Supervisory Board if there was a vacancy. The Supervisory Board and our shareholders had the right to nominate candidates for the Supervisory Board. Supervisory Board directors could be dismissed by our shareholders at a general meeting.

The Supervisory Board supervised and provided advice to the Managing Board, and was responsible for, among other matters:

- nominating Managing Board directors for election by shareholders;
- appointing and removing the CEO and the Chairman of the Managing Board;
- approving Managing Board decisions relating to specified matters or above agreed thresholds;
- approving the strategic plan and annual budget proposed by the Managing Board;
- approving the annual financial accounts;
- supervising the policy and actions of the Managing Board;
- supervising the general course of our affairs and the business we operate; and
- approving issues of new shares.

Following completion of Stage 1 of the Re-domicile and the abolishment of the Joint Board, the Supervisory Board also became responsible for the following matters previously reserved solely to the Joint Board as well as those matters where responsibility was previously shared with the Supervisory Board:

- approving declaration of dividends;
- approving any share buy-back programs and cancelling the shares bought back;
- approving any significant changes in the identity or nature of our company;
- approving the strategy set by the Managing Board;
- monitoring company performance; and
- maintaining effective external disclosure policies and procedures.

Managing Board

The Managing Board was in operation for all of fiscal year 2010 and until completion of the Re-domicile on June 17, 2010. It was comprised of only executive directors, with at least two members or such higher number as determined by the Supervisory Board. The Managing Board directors were appointed by our shareholders at a general meeting. The Supervisory Board could appoint interim members to the Managing Board if there was a vacancy on the Managing Board. The Supervisory Board and our shareholders could nominate candidates for the Managing Board.

The Supervisory Board appointed one Managing Board director as its Chairman and one member as its CEO. Throughout the period until the Managing Board ceased to exist, our current CEO occupied both roles.

Managing Board directors could be dismissed by our shareholders at a general meeting and suspended at any time by the Supervisory Board.

The Managing Board was accountable to the Supervisory Board, the Joint Board (while it was in operation) and to the shareholders for the performance of its duties, and was responsible for our day-to-day management, including:

- administering our general affairs, operations and finance;
- preparing a strategic plan and budget setting out operational and financial objectives, implementation strategy and parameters for us for the next three years, for approval by the Joint and Supervisory Boards;
- ensuring the implementation of our strategic plan;
- preparing quarterly and annual accounts, management reports and media releases;
- monitoring our compliance with all relevant legislation and regulations and managing the risks associated with our activities;
- reporting and discussing our internal risk management and control systems with the Supervisory Board and the Audit Committee; and
- representing, entering into and performing agreements on our behalf.

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Joint Board

The Joint Board was in operation for part of fiscal year 2010 until it ceased to exist on completion of Stage 1 of the Re-domicile on February 19, 2010, when its responsibilities were assumed by the Supervisory Board.

The Joint Board comprised of between three and twelve members as determined by the Supervisory Board's Chairman, or a greater number as determined by our shareholders at a general meeting. The Joint Board included all of the Supervisory Board directors as well as our CEO.

The Joint Board was allocated specific tasks under the Articles of Association but was primarily a forum for communication between the Managing Board and Supervisory Board. It was responsible, in some cases jointly with the Supervisory Board, for:

- supervising the general course of our affairs;
- approving declaration of dividends;
- approving any share buy-back programs and cancelling the shares bought back;
- approving issues of new shares;
- approving any significant changes in our identity or nature;
- approving the strategy set by the Managing Board;
- monitoring our performance; and
- maintaining effective external disclosure policies and procedures.

The core responsibility of the Joint Board was to oversee the general course of our affairs by exercising business judgment in the best interests of our company and our stakeholders.

Operation of the Board

Board Meetings

The Board meets at least four times a year or whenever the Chairman or three or more members have requested a meeting.

While the Supervisory Board was in operation, meetings were generally held at our offices in The Netherlands. At each physical meeting, the Board met in executive session without management present for at least part of the meeting. The Board was also able to pass resolutions by written consent.

During fiscal year 2010, the Managing Board met regularly and the majority of its meetings were held at our offices in The Netherlands.

On June 29, 2010, the single Board held its first meeting in Ireland. We intend to hold the majority of our subsequent Board meetings, at which key decisions affecting us are made, in Ireland.

Director Qualifications

Directors have skills, qualifications, experience and expertise which assist the Board to fulfill its responsibilities and assist us in creating shareholder value.

Directors must be able to devote a sufficient amount of time to prepare for, and effectively participate in, Board and Board Committee meetings. The Nominating and Governance Committee reviews the other commitments of Board members each year.

Succession Planning

The Board, together with the Nominating and Governance Committee, has developed, and periodically reviews with the CEO, management succession plans, policies and procedures for our CEO and other senior executives.

Board renewal has been a priority for the Board and Nominating and Governance Committee during recent years. A number of changes occurred in the composition of the Board during fiscal year 2010.

In the lead up to implementation of the Re-domicile, the Board, together with the Nominating and Governance Committee, considered the desired composition of the Board, including the right number, mix of skills, qualifications, experience, expertise and geographic location of its directors, to maximize the effectiveness of the Board following completion of the Re-domicile. As a result of this review, two Irish-based directors were appointed to the Board. The Board will continue to review and evaluate the desired profile of the Board and expects that an additional European-based director may be appointed in the future.

Retirement and Tenure Policy

During fiscal year 2010, we adhered to the recommendation of the Dutch Corporate Governance Code (which we refer to as the Dutch Code) which limited the tenure of Supervisory Board directors to 12 years (unless the Supervisory Board determined that it would be in our best interests for a director to serve longer than this period). There was no tenure policy for Managing Board directors. Following completion of the Re-domicile, we are no longer subject to the Dutch Code.

None of our current directors has served for more than seven years and we have elected not to adopt a retirement and tenure policy following completion of the Re-domicile. The length of tenure of individual Board directors will be considered as part of the Board's decision making process when considering whether a director should be recommended by the Board for re-election.

Board Evaluation

The Nominating and Governance Committee supervises the director evaluation process and makes recommendations to the Board. During fiscal year 2010, a purpose-designed survey was used by directors to self-assess the operation of the Supervisory Board and each Board Committee, and the results were reviewed and discussed by the Nominating and Governance Committee and the Supervisory Board.

The Chairman discussed with each Supervisory Board director, and the Deputy Chairman discussed with the Chairman, his performance and contribution to the effectiveness of the Board. Following completion of Stage 2 of the Re-domicile, the Nominating and Governance Committee and the Board continue to discuss annually the performance of the CEO and the CEO's direct reports, and the Chairman provides that feedback to the CEO. The CEO uses the feedback as part of an annual review of his direct reports.

Director Re-election

No director (other than the CEO) shall hold office for a continuous period of more than three years, or past the end of the third annual general meeting (which we refer to as AGM) following his or her appointment, whichever is longer, without submitting him or herself for re-election. A person appointed to the Board to fill a vacancy must submit him or herself for re-election at the next AGM.

Directors are not automatically nominated for re-election at the end of their term. Nomination for re-election is based on their individual performance and our needs. The Nominating and Governance Committee and the Board discuss in detail the performance of each director due to stand for re-election at the next AGM before deciding whether to recommend their re-election.

Because our company is a European "SE" company, the CEO is required to stand for re-election every six years as long as he remains as the CEO. We believe this policy is appropriate (having regard to Australian practice under the rules of the ASX) as it supports the continuity of management performance.

Independence

We require the majority of directors on the Board and Board Committees, as well as the Chairman of the Board and Board Committees, to be independent, unless a greater number is required to be independent under the rules and regulations of the ASX, the NYSE or any other applicable regulatory body.

Each year, the Board, together with the Nominating and Governance Committee, assesses each Board director and his or her responses to a lengthy questionnaire on matters relevant to his or her independence according to the rules and regulations of the Dutch Code (up until completion of the Re-domicile), the NYSE and SEC as well as the Corporate Governance Council Principles and Recommendations published by the ASX Corporate Governance Council (which we refer to as the Principles and Recommendations). Following this assessment, the Board has determined that each Board director is independent.

All directors are expected to bring their independent views and judgment to the Board and Board Committees and must declare any potential or actual conflicts of interest. The Board has not set materiality thresholds for assessing independence and considers all relationships on a case-by-case basis, considering the materiality of the relationship and the rules and regulations of the applicable exchange or regulatory body.

The Board considered the following specific matters prior to determining that each director was independent:

- Mr. Brian Anderson is a director of Pulte Homes, a home builder in the United States. Pulte Homes does not buy any of our products directly from us, although it does buy a small amount of our products through our customers;
- Mr. Rudy van der Meer is a member of the Supervisory Board of ING Bank Nederland N.V. and ING Verzekeringen (Insurance) Nederland N.V. Entities in the ING Group provide financial services to us. In each case those entities were providing these services to us prior to Mr. van der Meer becoming a Board director; and
- Mr. David Dilger is a director of a number of our subsidiaries and receives directors' fees for such service approved by the Board.

Any transactions mentioned above were conducted on an arms-length basis and in accordance with normal terms and conditions and were not material to any of the companies listed above or to us. Each of these relationships, other than Mr. Dilger's service as a director of a number of our subsidiaries, existed and was disclosed before the person in question became a Board director. It is not considered that these directors had any influence over these transactions.

Orientation

We have an orientation program for new directors, which was reviewed and updated during fiscal year 2010. The program includes an overview of our governance arrangements and directors' duties in The Netherlands, the United States and Australia, plant and market tours to impart relevant industry knowledge, briefings on our risk management and control framework, financial results and key risks and issues, and meeting other Board directors, the CEO and members of management. New directors are provided with orientation materials including relevant corporate documents and policies and are expected to complete the entire orientation process within six months of their appointment. Following completion of the Re-domicile, this program will also include details of our governance arrangements and an overview of directors' duties in Ireland.

Board Continuing Development

We operate within a complex industry, geographical and regulatory framework. We regularly schedule time at physical Board meetings to develop the Board's understanding of our operations and regulatory environment, including updates on topical developments from management and external experts. A yearly plant and market tour forms an important part of the Board's continuing development.

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Letter of Appointment

Each incoming Board director receives a letter of appointment setting out the key terms and conditions of his or her appointment and our expectations of them in that role. We do not provide any benefits for our Board directors upon termination of employment.

Chairman

The Board appoints one of its members as the Chairman. The Chairman must be an independent, non-executive director. The Chairman appoints the Deputy Chairman. The Chairman co-ordinates the Board's duties and responsibilities and acts as the main contact with the CEO.

The Chairman:

- provides leadership to the Board;
- chairs Board and shareholder meetings;
- facilitates Board discussion;
- monitors, evaluates and assesses the performance of our Board and Board Committees; and
- is a member of and attends meetings of all Board Committees.

The Chairman may not also be the Chairman of the Audit Committee. The current Chairman is Mr. Hammes and the current Deputy Chairman is Mr. McGauchie.

Indemnification

Our Articles of Association provide for indemnification of any person who is (or keep indemnified any person who was) a Board director or our company secretary and our employees and any other person deemed by the Board to be an agent of our company, who suffers any loss as a result of any action in discharge of their duties, provided they acted in good faith in carrying out their duties. This indemnification will generally not be available if the person seeking indemnification acted with gross negligence or willful misconduct in performing their duties.

We and some of our subsidiaries have provided Deeds of Access, Insurance and Indemnity to Board directors and senior executives who are officers or directors of our company or our subsidiaries. The indemnities provided are consistent with the Articles of Association and relevant laws.

Evaluation of Management

At least once a year, the CEO, the Remuneration Committee and the Board review the performance of each member of the Group Management Team against agreed performance measures. This discussion occurs at a different meeting to that which discusses management succession planning. The CEO uses this feedback to assist in the annual review of members of the Group Management Team. This process was followed during fiscal year 2010.

Information for the Board

Board directors receive timely and necessary information to allow them to fulfill their duties, including access to senior executives if required. The Nominating and Governance Committee periodically reviews the format, timeliness and content of information provided to the Board.

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

The Board has regular discussions with the CEO (and while we were domiciled in The Netherlands; the Managing Board) on our strategy and performance, including two sessions each year where Board members formally review

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our strategy and progress. The Board has also scheduled an annual calendar of topics to be covered to assist it to properly discharge all of its responsibilities.

Board directors receive a copy of all Board Committee papers for physical meetings and may attend any Board Committee meeting, whether or not they are members of the Board Committee. Board directors also receive the minutes which record each Board Committee's deliberations and findings, as well as oral reports from each Board Committee Chairman. While we were domiciled in The Netherlands, the Board also received and reviewed the minutes of each Managing Board meeting.

Delegation to the CEO

The Board has delegated to the CEO the power to manage our business to achieve the mission statements and corporate goals approved by the Board from time to time. This delegation is subject to a specified monetary cap for a range of matters, above which Board approval is required.

Board Committees

The Board Committees are generally committees of the Board and comprise the Audit Committee, the Nominating and Governance Committee and the Remuneration Committee. The Board Committee charters are available from the Investor Relations area of our website (www.jameshardie.com).

Each Board Committee meets at least quarterly and has scheduled an annual calendar of meeting and discussion topics to assist it to properly discharge all of its responsibilities. The Board may also form ad hoc committees from time to time. During fiscal year 2009, the Board formed the Due Diligence Committee (discussed in more detail below) to review management's progress in formulating the Re-domicile. This committee continued to meet during fiscal year 2010.

Audit Committee

The Audit Committee oversees the adequacy and effectiveness of our accounting and financial policies and controls. The key aspects of the terms of reference followed by our Audit Committee are set out in this report. The Audit Committee meets at least quarterly in a separate executive session with the external and internal auditors.

Currently, the members of the Audit Committee are Mr. Anderson (Chairman) and Messrs. Hammes, Harrison and Dilger.

All members of the Audit Committee must be financially literate and must have sufficient business, industry and financial expertise to act effectively as members of the Audit Committee. At least one member of the Audit Committee shall be an "audit committee financial expert" as determined by the Nominating and Governance Committee and the Board in accordance with the SEC rules. These may be the same person. The Nominating and Governance Committee and the Board have determined that Messrs. Anderson, Harrison and Dilger are "audit committee financial experts".

Under the NYSE listing standards that apply to U.S. companies, if a member of an audit committee simultaneously serves on the audit committees of more than three public companies, the listed company's board must determine that the simultaneous service will not impair the ability of this member to effectively serve on the listed company's audit committee. Although we are not bound by this provision, we follow it voluntarily. Currently, none of our directors serve on the audit committees of three or more public companies in addition to our Audit Committee.

The Audit Committee provides advice and assistance to the Board in fulfilling its responsibilities and, among other matters:

- overseeing our financial reporting process and reports on the results of our activities to the Board;
- reviewing with management and the external auditor our annual and quarterly financial statements and reports to shareholders;

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- discussing earnings releases as well as information and earnings guidance provided to analysts;
- reviewing and assessing our risk management policies and procedures;
- having general oversight of the appointment and provision of all our external audit services, the remuneration paid to the external auditor, and the performance of our internal audit function;
- reviewing the adequacy and effectiveness of our internal compliance and control procedures;
- reviewing our compliance with legal and regulatory requirements; and
- establishing procedures for complaints regarding accounting, internal accounting controls and auditing matters, including any complaints from our Ethics Hotline.

Conflicts of Interest

The Audit Committee oversees our Code of Business Conduct and Ethics policy and other business-related conflict of interest issues as they arise.

Reporting

The Audit Committee will inform the Board of any general issues that arise with respect to the quality or integrity of our financial statements, our compliance with legal or regulatory requirements, our risk management systems, the performance and independence of the external auditor, or the performance of the internal audit function.

Nominating and Governance Committee

The Nominating and Governance Committee is responsible for:

- identifying and recommending to the Board individuals qualified to become Board directors;
- overseeing the evaluation of the Board and senior management;
- assessing the independence of each Board director;
- reviewing the conduct of the general meetings; and
- performing a leadership role in shaping our corporate governance policies.

The current members of the Nominating and Governance Committee are Mr. McGauchie (Chairman) and Messrs. Hammes, van der Meer and Osborne.

Remuneration Committee

The Remuneration Committee oversees our overall remuneration structure, policies and programs; assesses whether our remuneration structure establishes appropriate incentives for management and employees; and approves any significant changes in our remuneration structure, policies and programs. It also:

- administers and makes recommendations on our incentive compensation and equity-based remuneration plans;
- reviews the remuneration of Board directors;
- reviews our remuneration framework; and
- makes recommendations to the Board on our recruitment, retention and termination policies and procedures for senior management.

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

The members of the Remuneration Committee are Mr. Harrison (Chairman) and Messrs. Anderson, Hammes, McGauchie and Dilger.

Due Diligence Committee

During fiscal year 2009, the Board formed the Due Diligence Committee, comprised of representatives from the Supervisory Board together with the Managing Board and a representative of our management. This committee was formed to assist the Board with reviewing and considering alternative proposals to move our domicile by coordinating and overseeing implementation of the due diligence process and reporting back to the Boards regarding the conduct of this process.

The purpose of the due diligence process was to assist in ensuring that the Explanatory Memorandum and Notices of Meeting (which we refer to as the Meeting Materials) prepared in connection with the Re-domicile were accurate and complete in all material respects and contained all required information.

The due diligence and verification process undertaken by the Due Diligence Committee culminated in a report to the Board on the due diligence process undertaken and its results, including recommending that the Meeting Materials for the Re-domicile be submitted to shareholders.

Policies and Processes

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

- Code of Business Conduct and Ethics;
- Ethics Hotline;
- Continuous Disclosure and Market Communication; and
- Insider Trading.

Copies of all these policies are available in the Investor Relations area of our website www.jameshardie.com.

Code of Business Conduct and Ethics and Ethics Hotline

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

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

Continuous Disclosure and Market Communication

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

Our Continuous Disclosure and Market Communication Policy aims to ensure timely communications so that investors can readily:

- understand our strategy and assess the quality of our management;
- examine our financial position and the strength of our growth prospects; and
- receive any news or information that might reasonably be expected to materially affect the price or market for our securities.

The CEO is responsible for ensuring we comply with our continuous disclosure obligations. A Disclosure Committee comprised of the CEO, CFO, General Counsel and the Vice President — Investor and Media Relations is responsible for all decisions regarding our market disclosure obligations outside of our normal financial reporting calendar. For our quarterly and annual results releases, the CEO and CFO are supported by the Financial Statements Disclosure Committee, which provides assurance regarding our compliance with reporting processes and controls. The CEO, CFO and General Counsel discuss with the Audit Committee any issues arising out of meetings of the Financial Statements Disclosure Committee that affect the quarterly and annual results releases. The Audit Committee reviewed our disclosure practices under the Continuous Disclosure and Market Communication policy during fiscal year 2010.

Share Trading

All of our employees and directors are subject to our Insider Trading Policy. Our employees and directors may only buy or sell our securities within four weeks beginning two days after the announcement of quarterly or full year results, or another period designated by the Board for this purpose, provided they are not in possession of material non-public price sensitive information. There are additional restrictions on trading for designated senior employees and directors, including a requirement that they receive prior clearance from our compliance officer before trading or pledging their shares by taking out a margin loan over them, and a general prohibition on hedging or selling any shares or options for short-swing profit. Our employees who are not designated employees may hedge vested options or shares, provided they notify us.

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

Risk Management

Overall Responsibility

The Audit Committee has oversight of our risk management policies, procedures and controls. The Audit Committee reviews, monitors and discusses these matters with the CEO, CFO and General Counsel. The Audit Committee, CEO, CFO and General Counsel report periodically to the Board on our risk management policies, processes and controls.

The Audit Committee is supported in its oversight role by the policies put in place by management to oversee and manage material business risks, as well as the roles played by the Risk Management Committee (described in detail below) and internal and external audit functions. The internal and external audit functions are separate from and independent of each other and each has a direct reporting line to the Audit Committee.

Objective

We consider that a sound framework of risk management policies, procedures and controls produces a system of risk oversight, risk management and internal control that is fundamental to good corporate governance and creation of shareholder value. The objective of our risk management policies, procedures and controls is to ensure that:

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

Risk management does not involve avoiding all risks. Our risk management policies seek to strike a balance between ensuring that we continue to generate financial returns and simultaneously manages risks appropriately by setting appropriate strategies and objectives.

Policies for Management of Material Business Risks

Management has put in place a number of key policies, processes and independent controls to provide assurance as to the integrity of our systems of internal control and risk management. In addition to the measures described elsewhere in this report, the more significant policies, processes or controls adopted by us for oversight and management of material business risks are:

- quarterly meetings of the Risk Management Committee to assess the key strategic, operations, reporting and compliance risks we face, the level of risk and the processes implemented to manage each of these key risks over the upcoming twelve months;

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- quarterly reporting to the Audit Committee of the Risk Management Committee's conclusions regarding the key strategic, operations, reporting and compliance risks we face;
- an Enterprise Risk Management process, which involves developing contingency plans for the key risks we face and our assumptions in its three year strategic plans and beyond;
- a planning process involving the preparation of three-year strategic plans and a rolling twelve month forecast;
- annual budgeting and monthly reporting to monitor performance;
- an internal audit department with a reporting line direct to the Chairman of the Audit Committee;
- increased monitoring of our liquidity and status of renewals of finance facilities;
- maintaining an appropriate insurance program;
- maintaining policies and procedures in relation to treasury operations, including the use of financial derivatives;
- issuing and revising standards and procedures in relation to environmental and health and safety matters;
- implementing and maintaining training programs in relation to legal issues such as trade practices/antitrust, trade secrecy, and intellectual property protection;
- issuing procedures requiring significant capital and recurring expenditure to be approved at the appropriate levels; and
- documenting detailed accounting policies, procedures and guidance for the group in a single group finance manual.

A summary of these policies, processes and controls is available in the Investor Relations area of our website (www.jameshardie.com).

Another example of our approach to managing significant business risks is the establishment of the Due Diligence Committee, which was formed to oversee the formulation of our Re-domicile.

During fiscal year 2010, the Audit Committee, and through it the Board, received a number of reports on the operation and effectiveness of the policies, processes and controls described in this section. This included a review of our current compliance programs and disclosure controls and processes, how they compare with best practices and the steps proposed by management to continue cultivating our risk management culture.

Risk Management Committee

The Risk Management Committee, which reviews and monitors the risks we face, is our primary management forum for risk assessment and risk management. This role is more formally documented in our Risk Management Committee charter. The Risk Management Committee comprises of a cross-functional group of employees and reports quarterly to both the CEO, CFO, General Counsel and Audit Committee on the procedures in place for identifying, monitoring, managing and reporting on the principal strategic, operational, financial and legal risks we face. The Risk Management Committee also oversees our Enterprise Risk Management process.

Internal Audit

The Director of Internal Audit heads the internal audit department. The Internal Audit charter sets out the independence of the internal audit department, its scope of work, responsibilities and audit plan. The internal audit department's workplan is approved annually by the Audit Committee. The Director of Internal Audit reports to the Chairman of the Audit Committee and meets quarterly with the Audit Committee and Board in executive sessions.

External Audit

The external auditor reviews each quarterly and half-year results announcement and audits the full year results. The external auditor attends each Audit Committee meeting, including an executive session where only members of the Audit Committee and Board directors are present. The Audit Committee has approved policies to ensure that all non-audit services performed by the external auditor, including the amount of fees payable for those services, receive prior approval. The Audit Committee also reviews the remuneration paid to the external auditor and makes recommendations to the Board regarding the maximum compensation to be paid to the external auditor.

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Financial Statements Disclosure Committee

The Financial Statements Disclosure Committee is a management committee comprising of our senior finance, accounting, compliance, legal, tax, treasury and investor relations executives, which meets with the CEO, CFO and General Counsel prior to the Board's consideration of any quarterly or annual results. The Financial Statements Disclosure Committee is a forum for the CEO, CFO and General Counsel to discuss, and, on the basis of those discussions, report to the Audit Committee, about a range of risk management procedures, policies and controls, covering the draft results materials, business unit financial performance and the current status of legal, tax, treasury, accounting, compliance, internal audit, complaints and disclosure control matters.

Shareholders' Participation

Listing Information

For most of fiscal year 2010, we were a N.V. incorporated under Dutch law. On February 19, 2010, following the completion of Stage 1 of the Re-domicile, we transformed from a Dutch NV company to a Dutch SE company named "James Hardie Industries SE". On June 17, 2010, we moved our corporate domicile to Ireland. Our securities trade as CUFS on the ASX and as ADSs (which reference American Depositary Shares) on the NYSE.

Annual Information Meeting

Recognizing that most shareholders were not able to attend the AGM in The Netherlands, we conducted our 2009 Annual Information Meeting (which we refer to as the AIM) in Australia to allow shareholders to review the items of business and other matters to be considered and voted on at the AGM. Shareholders were able to appoint representatives to attend the AIM on their behalf and ask questions.

Beginning in 2010, we will hold our AGM in Ireland, and will simulcast this meeting to a venue in Sydney so that Australian shareholders can attend a meeting together and ask questions of the Board and external auditor.

We distribute with our Notice of Meetings (for annual meetings) a question form which shareholders can use to submit questions in advance of the meetings. Shareholders can also ask questions relevant to the business of the meeting during the meeting.

For those shareholders unable to attend, the annual meetings are broadcast live over the internet in the Investor Relations area of the website (www.jameshardie.com). The webcast remains on our website so it can be replayed later if desired.

AGM

The 2009 AGM was held in The Netherlands within seven days of the AIM. Beginning in 2010, the AGM will be held in Ireland.

Each shareholder (other than an ADS holder) has the right to:

- attend the AGM either in person or by proxy;
- speak at the AGM; and
- exercise voting rights, including at the AGM subject to their instructions on the Voting Instruction Form.

While ADS holders cannot vote directly, ADS holders can direct the voting of their underlying shares through the ADS depository.

The external auditor attends the AGM and is available to answer questions.

Communication

We are committed to communicating effectively with our shareholders through a program that includes:

- making management briefings and presentations accessible via a live webcast and/or teleconference following the release of quarterly and annual results;
- audio webcasts of other management briefings and webcasts of the annual shareholder meeting;
- a comprehensive Investor Relations website that displays all company announcements and notices (promptly after they have been cleared by the ASX), major management and investor road show presentations;
- site visits and briefings on strategy for investment analysts;
- an email alert service to advise shareholders and other interested parties of announcements and other events; and
- equality of access for shareholders and investment analysts to briefings, presentations and meetings.

Investor Website

We have a dedicated section on corporate governance as part of the Investor Relations area of our website (www.jameshardie.com). Information on this section of the website is progressively updated and expanded to ensure it presents the most up-to-date information on our corporate governance structure. Except where stated, the contents of the website are not incorporated into this annual report.

Compliance with Corporate Governance Requirements

In accordance with the NYSE corporate governance standards, listed companies that are foreign private issuers (which includes us) are permitted to follow home-country practice in lieu of the provisions of the corporate governance rules contained in Section 303A of the Listed Company Manual, except that foreign private issuers are required to comply with Section 303A.06, Section 303A.11 and Section 303A.12(b) and (c), each of which is discussed below.

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

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

Section 303A.12(b) provides that each listed company's CEO must promptly notify the NYSE in writing after any executive officer of the listed company becomes aware of any material non-compliance with any applicable provisions of Section 303A. Section 303A.12(c) provides that each listed company must submit an executed written affirmation annually to the NYSE about its compliance with the NYSE's corporate governance listing standards and an interim written affirmation to the NYSE as and when required by the interim written affirmation form specified by the NYSE.

We presently comply with the mandatory NYSE listing standards and many of the non-compulsory standards including, for example, the requirement that a majority of our directors meet the independence requirements of the NYSE.

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

- In the U.S., an audit committee of a public company is required to be directly responsible for appointing the company's independent registered public accounting firm. Under Dutch law, the independent registered public accounting firm is appointed by the shareholders or, in the absence of such an appointment, by the Supervisory Board and then the Managing Board. Under Irish law, the independent registered public

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accounting firm is appointed by the shareholders where there is a new appointment, otherwise the appointment is deemed to continue unless the firm retires, is asked to retire or is unable to perform their duties; and

- NYSE rules require each issuer to have an audit committee, a compensation committee (equivalent to a remuneration committee) and a nominating committee composed entirely of independent directors. As a foreign private issuer, we do not have to comply with this requirement. In our case, the Board Committee charters reflect Australian and Irish practices, in that we have a majority of independent directors on these committees, unless a higher number is mandatory. Notwithstanding this difference, our Board has determined that all of the current members of our Audit Committee, Remuneration Committee and Nominating and Governance Committee presently qualify as independent in accordance with the rules and regulations of the SEC and the NYSE.

As an Irish-domiciled company, we will also continue to follow the NYSE corporate governance standards for listed companies that are foreign private issuers.

Current Directors and Executive Officers

Upon completion of the Re-domicile on June 17, 2010, the Managing Board was dissolved. Louis Gries, our Chief Executive Officer, ceased to serve as Chairman and member of the Managing Board. Mr. Gries continues to serve as a director on our Board. Russell Chenu, our Chief Financial Officer, and Robert Cox, our General Counsel, also ceased to be members of the Managing Board but continue in their executive roles.

In preparation for any recovery in the U.S. market, and to allow an increased focus on top line growth and product mix shift that will enable us to achieve our long term growth objectives, we have implemented a restructure of our senior management team with effect from the beginning of 2010.

Our former Senior Leadership Team transitioned into a Group Management Team comprised of:

- Louis Gries, Chief Executive Officer;
- Russell Chenu, Chief Financial Officer;
- Robert Cox, General Counsel;
- Mark Fisher, Executive General Manager — International;
- Nigel Rigby, Executive General Manager — USA; and
- Sean O'Sullivan, Vice President Investor and Media Relations.

The current members of our Board and Group Management Team are as follows:

Name	Age	Position	Last Elected
Board			
Michael Hammes	68	Chairman of the Board	2009
Donald McGauchie AO	60	Deputy Chairman of the Board	2009
Brian Anderson	59	Member of the Board	2009
David Dilger (1)	53	Member of the Board	Appointed September 2009
David Harrison	63	Member of the Board	2008
James Osborne	61	Member of the Board	2009
Rudy van der Meer	65	Member of the Board	2009
Group Management Team			
Louis Gries (2)	56	Chief Executive Officer and member of the Board	
Russell Chenu (3)	60	Chief Financial Officer	

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<u>Name</u>	<u>Age</u>	<u>Position</u>	<u>Last Elected</u>
Robert Cox(4)	56	General Counsel	
Mark Fisher	39	Executive General Manager — International	
Sean O’Sullivan	45	Vice President — Investor and Media Relations	
Nigel Rigby	43	Executive General Manager — USA	

- (1) Mr. Dilger was appointed as a non-executive director on September 2, 2009. As required by our Articles of Association, Mr. Dilger will stand for re-election at the 2010 AGM.
- (2) Mr. Gries was also Chairman and member of the Managing Board until June 17, 2010.
- (3) Mr. Chenu ceased to be a member of the Managing Board on June 17, 2010 in connection with the Re-domicile.
- (4) Mr. Cox ceased to be a member of the Managing Board and Company Secretary on June 17, 2010 and June 29, 2010, respectively, in connection with the Re-domicile.

Directors

Michael Hammes is Chairman of our Board and a member of our Audit Committee, Remuneration Committee, and Nominating and Governance Committee. Mr. Hammes also served on our Re-domicile Due Diligence Committee. Mr. Hammes was appointed as an independent non-executive director of JHI SE at the Extraordinary General Meeting in February 2007 and was appointed Chairman of the Joint and Supervisory Boards in January 2008. He was re-elected by our shareholders at our Annual General Meeting in August 2009. Following the completion of the Re-domicile, he became the Chairman of the single Board. He has held a number of executive positions in the medical products, hardware and home improvement, and automobile sectors, including Chief Executive Officer and Chairman of Sunrise Medical, Inc., which designs, manufactures and markets home medical equipment worldwide (2000 to 2007). Mr. Hammes is currently lead director of Navistar International Corporation (since 1996).

Donald McGauchie is Deputy Chairman of our Board, Chairman of our Nominating and Governance Committee and a member of our Remuneration Committee. Mr. McGauchie joined JHI SE as an independent, non-executive director in August 2003. He was re-elected by our shareholders at our Annual General Meeting in August 2009. Mr. McGauchie was appointed Acting Deputy Chairman of our Joint and Supervisory Boards in February 2007 and Deputy Chairman of our Joint and Supervisory Boards in April 2007. Following the completion of the Re-domicile, he became the Deputy Chairman of the single Board. Mr. McGauchie has wide commercial experience within the food processing, commodity trading, finance and telecommunication sectors. He also has extensive public policy experience, currently serving as a director of The Reserve Bank of Australia and having previously held several high-level advisory positions to the Australian Government. Mr. McGauchie is currently a director of Nufarm Limited (since 2003), GrainCorp Limited (since 2009) and Australian Agricultural Company Limited (since May 2010). In 2003, he was awarded the Centenary Medal for service to Australian society through agriculture and business.

Brian Anderson is a member of our Board and Chairman of our Audit Committee. Mr. Anderson also serves on our Remuneration Committee and was Chairman of our Re-domicile Due Diligence Committee. Mr. Anderson was appointed as an independent, non-executive director on December 14, 2006 after joining JHI SE as a consultant to

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the Board in August 2006. He was re-elected by our shareholders at our Extraordinary General Meeting in February 2007 and our Annual General Meeting in August 2009. Previously, Mr. Anderson was Executive Vice President and Chief Financial Officer of OfficeMax, Inc. from 2004 until 2005 and prior to that he held a variety of senior positions at Baxter International, Inc., including Corporate Vice President of Finance, Senior Vice President and Chief Financial Officer from 1997 until 2004. Mr. Anderson has been an accredited Certified Public Accountant since 1976. Mr. Anderson is currently non-executive Chairman of A.M. Castle & Co. (since April 2010 and a director since August 2005), and a director of Pulte Homes Corporation (since September 2005) and W.W. Grainger (since 1999).

David Dilger is a member of our Board, Audit Committee and Remuneration Committee, and was appointed as an independent non-executive director of JHI SE on September 2, 2009. Mr. Dilger has significant experience as an executive of listed companies in Ireland. Previously, Mr. Dilger was Chief Executive Officer of Greencore Group plc from 1995 to 2008 and prior to that he held a number of senior executive positions at Food Industries plc and Woodchester Investments. Mr. Dilger served as a non-executive director of the Bank of Ireland plc between 2003 and 2009 as Chairman of the Bank's Remuneration Committee and currently serves as Chairman of the Board of Directors of Dublin Airport Authority plc.

David Harrison is a member of our Board, Chairman of our Remuneration Committee and a member of our Audit Committee. Mr. Harrison was appointed as an independent non-executive director of JHI SE effective May 19, 2008 and re-elected at our Annual General Meeting in August 2008. Mr. Harrison is an experienced company director and has a distinguished finance background, having served with special expertise in corporate finance roles, international operations and information technology during his 22 years with Borg-Warner General Electric Co. He is Managing Partner of the U.S. financial investor, HCI Inc. and previously spent ten years at Pentair, Inc., as Executive Vice President and Chief Financial Officer. Mr. Harrison is currently a director for National Oilwell Varco (since 2003) and Navistar International (since 2007).

James Osborne is a member of our Board and Nominating and Governance Committee. Mr. Osborne also served on our Re-domicile Due Diligence Committee. He was appointed as an independent non-executive director of JHI SE in March 2009 and re-elected by our shareholders at our Annual General Meeting in August 2009. Mr. Osborne is an experienced company director with a strong legal background and considerable knowledge of international business operating in North America and Europe. His career includes 35 years with the leading Irish law firm, A&L Goodbody, in roles which included opening the firm's New York office in 1979, and serving as the firm's managing partner for 12 years. He has served as a consultant to the firm since 1994. Mr. Osborne also contributed to the listing of Ryanair in London, New York and Dublin and continues to serve on its board. Mr. Osborne is currently a director at Ryanair Holdings plc (since 1996).

Rudy van der Meer is a member of our Board and Nominating and Governance Committee. Mr. van der Meer was appointed as an independent non-executive director of JHI SE at the Extraordinary General Meeting in February 2007 and re-elected by our shareholders at our Annual General Meeting in August 2009. During his 32 year association with Akzo Nobel N.V., he held a number of senior positions including Chief Executive Officer — Coatings from 2000 to 2005, Chief Executive Officer — Chemicals from 1993 to 2000, member of the five member Executive Board from 1993 to 2005, Division President — Akzo Salt & Base Chemicals from 1991 to 1993 and member of the Executive Board — Akzo Salt & Base Chemicals from 1989 to 1991. Mr. van der Meer is currently a director of Imtech N.V. (since 2005).

Group Management Team Officers

Louis Gries is our Chief Executive Officer and a member of the Board. Mr. Gries was elected to the Managing Board by our shareholders at our 2005 Annual General Meeting and continued as Chairman of the Managing Board until it was dissolved in June 2010. Mr. Gries joined us as Manager of the Fontana fiber cement plant in California in February 1991 and has held a number of roles with us leading to his appointment as Executive Vice President — Operations in January 2003, responsible for operations, sales and marketing in our businesses in the Americas, Asia Pacific and Europe. In October 2004, Mr. Gries was appointed interim Chief Executive Officer and in February 2005, he was appointed Chief Executive Officer. He has previously held management positions with United States Gypsum Corporation, or USG. He has a Bachelor of Science in Mathematics from the University of Illinois and an MBA from California State University, Long Beach.

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Russell Chenu is our Chief Financial Officer. Mr. Chenu joined us in October 2004 as Interim Chief Financial Officer and Executive Vice President, Australia. In February 2005, he was appointed Chief Financial Officer. Mr. Chenu was elected to our Managing Board by our shareholders at our 2005 Annual General Meeting, was re-elected at our Annual General Meeting in August 2008 and continued as a member of the Managing Board until it was dissolved in June 2010. From February 2001 to July 2004, Mr. Chenu served as Chief Financial Officer of Tab Limited, then a publicly traded entertainment and gambling company. Mr. Chenu previously worked for us for 13 years in a variety of capacities, ultimately as Group Banking Manager from 1982 to 1984. He has a Bachelor of Commerce from the University of Melbourne and an MBA from Macquarie Graduate School of Management in Australia.

Robert Cox is our General Counsel. Mr. Cox joined us in January 2008 as General Counsel and became Company Secretary and a member of the Managing Board effective May 7, 2008. He was re-elected at our Annual General Meeting in August 2008 and continued as member of the Managing Board until it was dissolved in June 2010 and as Company Secretary until June 29, 2010. Prior to joining us, Mr. Cox was Vice President, Deputy General Counsel and Assistant Secretary with PepsiCo Inc. for five years. His experience also includes 10 years as a partner of the international law firm Bingham McCutchen LLP, at their offices in Asia and California. Mr. Cox has a Bachelor of Arts from Wesleyan University in Connecticut; a Master of Arts from the John Hopkins School of Advanced International Studies in Washington, D.C. and a JD from the University of California, Berkeley, California.

Mark Fisher is our Executive General Manager — International. Mr. Fisher joined us in 1993 as a Production Engineer and has held a variety of production, sales and management roles with us. In November 2004, Mr. Fisher became Vice President — Specialty Products. In December 2005, he was appointed as Vice President — Research and Development. In February 2008, his role was expanded to cover Engineering & Process Development. In January 2010, he was appointed Executive General Manager — International, responsible for research and development, engineering, manufacturing logistics and product management, as well as our non-U.S. businesses. Before joining us, Mr. Fisher worked in engineering for Chevron Corporation. Mr. Fisher has a Bachelor of Science in Mechanical Engineering and an MBA from University of Southern California.

Nigel Rigby is our Executive General Manager — USA. Mr. Rigby joined us in 1998 as a Planning Manager for our New Zealand business and has held a number of sales, marketing and product and business development roles with us. In November 2004, Mr. Rigby became Vice President — Emerging Markets. In 2006, he was named Vice President — General Manager Northern Division. In November 2008, he became Vice President — General Manager of the newly-formed Eastern Division, which incorporated the former Northern and Southern Division markets and plants. In January 2010, he was appointed Executive General Manager — USA, responsible for the U.S. business. Before joining us, Mr. Rigby held various management positions at Fletcher Challenge, a New Zealand based company involved in energy, pulp and paper, forestry and building materials.

Sean O'Sullivan is our Vice President — Investor and Media Relations. Mr. O'Sullivan joined us in December 2008. For the eight years prior to joining James Hardie, Mr. O'Sullivan was Head of Investor Relations at St. George Bank, where he established and led the investor relations function. Mr. O'Sullivan's background includes thirteen years as a fund manager for GIO Asset Management with responsibility for domestic and global investments. During this period, he spent a period of time on secondment with McKinsey and Co. After leaving the GIO, Mr. O'Sullivan worked for Westpac Banking Corporation in funds management sales. Mr. O'Sullivan has a Bachelors of Arts majoring in Economics from Sydney University and an MBA from Macquarie Graduate School of Management.

None of the persons above has any familial relationship with each other. In addition, none of the individuals listed above is party to any arrangement or understanding with a major shareholder, customer, supplier or other entity, pursuant to which any of the above was selected as a director or member of senior management.

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Employees

As of the end of each of the last three fiscal years, we employed the following number of people:

	Fiscal Years Ended March 31,		
	2010	2009	2008
Fiber Cement United States and Canada	1,605	1,323	1,809
Fiber Cement Australia	382	396	397
Fiber Cement New Zealand	137	167	188
Fiber Cement Philippines	150	158	167
Pipes (United States and Australia)	56	63	116
Fiber Cement Europe	42	45	46
Research & Development, including Technology	105	106	111
General Corporate	34	48	48
Total Employees	<u>2,511</u>	<u>2,306</u>	<u>2,882</u>

Our Plant City, Florida Hardie Pipe Plant was closed and the business ceased operations in May 2008. As of the end of March 31, 2010, of the 2,511 people employed, approximately 364 were members of labor unions (approximately 244 in Australia¹, 91 in New Zealand and 29 in the Philippines). Our management believes that we have a satisfactory relationship with these unions and its members and there are currently no ongoing labor disputes. We currently have no employees who are members of a union in the United States or the Philippines. See Item 3, “Key Information — Risk Factors.”

Compensation

Remuneration

The aggregate amount of compensation that we paid to, or accrued with respect to, all persons serving as members of our Supervisory Board, Managing Board or our executive officers (14 persons in aggregate) during fiscal year 2010 was approximately \$16.8 million. This figure consists of base salaries, bonuses paid, accrued compensation relating to awards of superannuation and retirement benefits, stock options, restricted stock and severance. We also pay for expenses related to Board spousal travel to accompany them to up to one Board meeting per year.

The table below sets forth the compensation for our current non-executive directors who served on the Board during the fiscal years ended March 31, 2010 and 2009:

Name	Primary Directors' Fees (1)	Equity JHI SE Stock (2)	Other Benefits (3)	Total
Current Non-Executive Directors				
M. Hammes				
Fiscal year 2010	\$ 221,000	\$ 85,000	\$ 10,641	\$ 316,641
Fiscal year 2009	222,500	21,250	3,988	247,738
D. McGauchie				
Fiscal year 2010	185,000	—	2,428	187,428
Fiscal year 2009	185,000	—	11,627	196,627
B. Anderson				
Fiscal year 2010	155,000	10,000	8,290	173,290
Fiscal year 2009	155,000	—	1,300	156,300
D. Dilger (4)				
Fiscal year 2010	75,000	—	1,784	76,784
Fiscal year 2009	N/A	N/A	N/A	N/A

¹ Under Australian law, we cannot keep records of union members. The number quoted is the number of people who work in our factories that have union participation and therefore may be represented by a union.

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<u>Name</u>	<u>Primary Directors' Fees (1)</u>	<u>Equity JHI SE Stock (2)</u>	<u>Other Benefits (3)</u>	<u>Total</u>
D. Harrison (5)				
Fiscal year 2010	130,000	10,000	10,000	150,000
Fiscal year 2009	105,537	—	4,178	109,715
J. Osborne (6)				
Fiscal year 2010	127,500	10,000	990	138,490
Fiscal year 2009	6,333	—	—	6,333
R. van der Meer				
Fiscal year 2010	120,000	10,000	—	130,000
Fiscal year 2009	60,000	60,000	14,407	134,407
Total Compensation for Current Non-Executive Directors				
Fiscal year 2010	\$ 1,013,500	\$ 125,000	\$ 34,133	\$ 1,172,633
Fiscal year 2009	734,370	81,250	35,500	851,120

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- (1) Amount includes base, Chairman, Deputy Chairman, Committee Chairman and Due Diligence Committee attendance fees.
 - (2) The actual amount spent by each Board member was determined after deducting applicable Dutch taxes from this amount. The number of JHI SE shares acquired was determined by dividing the amount of participation in the Supervisory Board Share Plan 2006 (which we refer to as SBSP) by the market purchase price.
 - (3) Other Benefits includes the cost of non-executive directors' fiscal compliance in The Netherlands.
 - (4) Mr. Dilger was appointed to the Company's Joint and Supervisory Boards effective September 2, 2009.
 - (5) Mr. Harrison was appointed to the Company's Joint and Supervisory Boards effective May 19, 2008.
 - (6) Mr. Osborne was appointed to the Company's Joint and Supervisory Boards effective March 12, 2009.

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The table below sets forth the compensation for those executive directors who served on the Managing Board during the fiscal years ended March 31, 2010 and 2009; and for our current senior executives during the fiscal years ended March 31, 2010 and 2009:

Name	Base Pay	Primary		Post-employment Superannuation and 401(k) Benefits	Equity Awards (3)	Other Relocation Allowances, Expatriate Benefits, and Other Non- recurring (4)	Total
		Bonuses (1)	Noncash Benefits (2)				
Senior Executives, including Managing Board							
L. Gries							
Fiscal year 2010	\$ 936,860	\$1,688,832	\$471,208	\$ 12,999	\$3,744,250	\$ 174,510	\$ 7,028,659
Fiscal year 2009	863,448	1,215,876	268,008	19,872	2,146,279	171,674	4,685,157
R. Chenu							
Fiscal year 2010	738,463	320,148	83,728	66,462	607,122	185,971	2,001,894
Fiscal year 2009	676,719	216,453	40,983	60,025	296,514	148,366	1,439,060
R. Cox							
Fiscal year 2010	450,000	245,699	74,721	14,700	606,351	156,807	1,548,278
Fiscal year 2009	444,808	339,300	14,354	—	79,575	308,583	1,186,620
M. Fisher							
Fiscal year 2010	384,169	382,303	33,098	12,842	536,472	—	1,348,884
Fiscal year 2009	340,433	273,670	35,961	14,014	328,408	—	992,486
N. Rigby							
Fiscal year 2010	397,558	406,711	24,228	—	536,472	—	1,364,969
Fiscal year 2009	340,433	273,670	24,967	—	328,408	—	967,478
Total Compensation for Senior Executives, including Managing Board							
Fiscal year 2010	\$2,907,050	\$3,043,693	\$686,983	\$ 107,003	\$6,030,667	\$ 517,288	\$13,292,684
Fiscal year 2009	2,665,841	2,318,969	384,273	93,911	3,179,184	628,623	9,270,801

- (1) Bonuses in respect of each fiscal year are paid in June of the following fiscal year. The amounts in fiscal years 2010 and 2009 include all incentive amounts accrued for in respect of each fiscal year, pursuant to the terms of the applicable plans. In addition, since the amount reported each year is an estimate, fiscal year 2010's bonus amounts include any adjustments to the 2009 bonus amounts previously reported to the extent necessary to reflect the actual bonus paid. The bonus for fiscal year 2010 was paid to senior executives in the form of performance shares.

See "Other Compensation" for a summary of the terms of our incentive plans.

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- (2) Includes the aggregate amount of all noncash benefits received by the executive in the year indicated. Examples of noncash benefits that may be received by our executives include medical and life insurance benefits, car allowances, membership in executive wellness programs, long service leave, and tax services.
- (3) Includes grants of Scorecard Long Term Incentive (LTI) awards granted in fiscal year 2010 and Relative TSR and Executive Incentive Program RSUs. Scorecard LTI awards are liability-classified awards that are remeasured based on the Company's stock price at each reporting period at an assumed scorecard rating. Equity awards are valued using either the Black-Scholes pricing model or the Monte Carlo pricing method, depending on the plan the equity awards were issued under, and the fair value of equity awards granted are included in compensation during the period in which the equity awards vest.
- (4) Other non-recurring benefits include cash paid in lieu of vacation accrued, as permitted under our U.S. vacation policy and California law.

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Employment Contracts

Remuneration and other terms of employment for the Chief Executive Officer, Chief Financial Officer, General Counsel and certain other senior executives are formalized in employment contracts. The main elements of these contracts are set forth below.

Chief Executive Officer

Details of the terms of our Chief Executive Officer's employment contract are as follows:

<u>Components</u>	<u>Details</u>
Length of contract	Initially a three year term, commencing February 10, 2005. Term is automatically extended on 9th day of each February for an additional one year unless either party notifies the other, 90 days in advance of the automatic renewal date, that it does not want the term to renew.
Base salary (1)	\$950,000 for fiscal year 2010. Salary reviewed annually by the Board and there will be no base salary increase for fiscal year 2011.
Short-term incentive	Annual short-term incentive target is 125% of annual base salary for fiscal year 2011. The quantum of short-term incentive target is reviewed annually by the Board in May. The Remuneration Committee recommends the Company's and Chief Executive Officer's performance objectives, and the performance against these objectives, to the Board for approval. The Chief Executive Officer's short-term incentive is calculated under the Executive Incentive Plan and the Individual Performance Plan.
Long-term incentive	Upon the approval of the shareholders, stock options or other equity incentive will be granted each year. The recommended number of options or other form of equity to be granted will be appropriate for this level of executive in the United States. For fiscal year 2011, the LTI target will be \$2.8 million.
Defined Contribution Plan	The Chief Executive Officer may participate in the U.S. 401(k) defined contribution plan up to the annual IRS limit. The Company will match the Chief Executive Officer's contributions into the plan up to the annual IRS limit.
Resignation	The Chief Executive Officer may cease employment with the Company by providing written notice. If the Chief Executive Officer retires with the approval of the Board, then the unvested restricted stock units and awards will not be forfeited and will be held until the next test date.
Termination by James Hardie	The Company may terminate the Chief Executive Officer's employment for cause or not for cause. If the Company terminates the employment, not for cause, or the Chief Executive Officer terminates his employment "for good reason" the Company will pay the following: a. amount equivalent to 1.5 times the Chief Executive Officer's annual base salary at the time of termination; and b. amount equivalent to 1.5 times the Chief Executive Officer's average short-term incentive actually paid in up to the previous three fiscal years as Chief Executive Officer; and c. continuation of health and medical benefits at the Company's expense for the remaining term of the agreement and consulting agreement referenced below.

Components	Details
Post-termination Consulting	The Company will request the Chief Executive Officer, and the Chief Executive Officer will agree, to consult to the Company upon termination for a minimum of two years, as long as the Chief Executive Officer maintains the Company's non-compete and confidentiality agreements and executes a release of claims following the effective date of termination. Under the consulting agreement, the Chief Executive Officer will receive the annual base salary and annual target incentive in exchange for this consulting and non-compete. Under the terms of equity incentive grants made to the Chief Executive Officer under the Managing Board Transitional Stock Option Plan and Long-Term Incentive Plan, the Chief Executive Officer's outstanding options will not expire during any post-termination consulting period. This arrangement is a standard arrangement for U.S. executives, and the Board considers that it is an appropriate restraint for Mr. Gries given his intimate involvement in developing the Company's fiber cement business in the U.S. over the past 19 years.

(1) See actual salary paid for fiscal year 2010 in this section under "Compensation."

Chief Financial Officer

Details of our Chief Financial Officer's employment contract are as follows:

Components	Details
Length of contract	Fixed concluding October 5, 2012.
Base salary (1)	A\$874,058 for fiscal year 2010. Salary reviewed annually by the Board.
Short-term incentive	Annual short-term incentive target is 33% of annual base salary as set out in his employment contract based on personal goals. The Chief Financial Officer does not participate in the Executive Incentive Plan for his short-term incentive, other than the arrangement where some of the Chief Financial Officer's long-term incentive target is transferred to short-term incentive target in the form of Executive Incentive Program restricted stock units (RSUs).
Long-term incentive	Stock options or other long-term equity with performance hurdles will be granted each year. The recommended value of equity to be granted will be equivalent to at least \$350,000. If the Chief Financial Officer ceases employment with the Company then a pro-rata amount of each tranche of the Chief Financial Officer's unvested options or other form of equity will expire on the date employment ceases, calculated based on the formula $D=Cx(A/B)$, where A is the number of months from the date employment ceases to the first testing or vesting date, B is the number of months from the date of grant until the first testing or vesting date and C is the total number of options or other form of equity granted in the relevant tranche. The remaining unvested/unexercised options or other form of equity will continue as if the Chief Financial Officer remained employed by the Company until the first testing or vesting date, at which point any options or other form of equity that do not vest at that time will also lapse.

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<u>Components</u>	<u>Details</u>
Superannuation/Pension	The Company will contribute A\$50,000 to the Chief Financial Officer's nominated superannuation/pension fund.
Other	The Chief Financial Officer receives an additional benefit of approximately A\$30,000.
Resignation or Termination	The Company or Chief Financial Officer may cease the Chief Financial Officer's employment with the Company by providing three months' notice in writing.
Redundancy or diminution of role	If the position of Chief Financial Officer is determined to be redundant or subject to a material diminution in status, duties or responsibility of the role, the Company or the Chief Financial Officer may terminate the Chief Financial Officer's employment. The Company will pay the Chief Financial Officer a severance payment equal to the greater of 12 months' pay or the remaining proportion of the term of the contract.

(1) See actual salary paid for fiscal year 2010 in this section under "Compensation."

General Counsel

Details of our General Counsel's employment contract are as follows:

<u>Components</u>	<u>Details</u>
Length of contract	Indefinite.
Base salary (1)	\$450,000 for fiscal year 2010. Salary reviewed annually by the Board and there will be no base salary increase for fiscal year 2011.
Short-term incentive	Annual short-term incentive target is 65% of annual base salary as set out in his employment contract. The General Counsel's short-term incentive is calculated under the Executive Incentive Plan (which includes the Individual Performance Plan).
Long-term incentive	Stock options or other long-term equity with performance hurdles will be granted each year. The recommended value of equity to be granted will be equivalent to at least \$500,000.
Resignation	The General Counsel may cease employment with the Company by providing 30 days' written notice.
Termination by James Hardie	The Company may terminate the General Counsel's employment for cause or not for cause. If the Company terminates the employment, not for cause, or the General Counsel terminates his employment "for good reason", the Company may request the General Counsel to consult to the Company for two years as set out below. No other termination payment is payable.
Post-termination Consulting	Depending on the reasons for termination, the Company may request the General Counsel, and the General Counsel will agree, to consult to the Company for two years upon termination, as long as he signs and complies with 1) a consulting agreement, which will require him to maintain non-compete and confidentiality obligations to the Company, and 2) a release of claims in a form acceptable to the Company. In exchange for the consulting agreement, the Company shall pay the General Counsel's annual base salary as of the termination date for each year of consulting.

(1) See actual salary paid for fiscal year 2010 in this section under "Compensation."

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Benefits Contained in Contracts for Chief Executive Officer, Chief Financial Officer and General Counsel

In fiscal year 2010, and until we moved our corporate domicile to Ireland, the Chief Executive Officer, Chief Financial Officer, and General Counsel were on international assignments in The Netherlands. During the time of their international assignment, their employment contracts also specified the following benefits:

<u>Components</u>	<u>Details</u>
International Assignment	Additional benefits due to international assignment: housing allowance, expatriate Goods and Services allowance, moving and storage.
Other	<p>Tax Equalization: The Company covers the extra personal tax burden imposed by residency in The Netherlands.</p> <p>Tax Advice: The Company will pay the costs of filing income tax returns to the required countries.</p> <p>Health, Welfare and Vacation Benefits: Eligible to receive all health, welfare and vacation benefits offered to all U.S. employees, or similar benefits. Are also eligible to participate in the Company's Executive Health and Wellness program.</p> <p>Business Expenses: Entitled to receive reimbursement for all reasonable and necessary travel and other business expenses incurred or paid for in connection with the performance of their services under their employment agreements.</p> <p>Automobile: The Company will either purchase or lease an automobile for business and personal use or, in the alternative, they will be entitled to an automobile equivalent to the level of vehicle they could receive in the U.S.</p>

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Other Senior Executives' Employment Contracts

Details of the employment contracts for current senior executives are as follows:

<u>Components</u>	<u>Details</u>
Length of contract	Indefinite.
Base salary	Base salary is subject to Remuneration Committee approval and reviewed annually.
Short-term incentive	An annual short-term incentive target is set at a percentage of the senior executive's salary. The short-term target is between 55% and 65% and reviewed annually.
Long-term incentive	Upon the approval of the Board, grants of Scorecard LTI awards and Relative TSR and Executive Incentive Plan RSUs have been made under the LTIP plan.
Defined Contribution Plan	U.S. senior executives may participate in the U.S. 401(k) defined contribution plan up to the annual IRS limit. The Company will match the senior executive's contributions into the plan up to the annual IRS limit.
Resignation	The senior executive may cease employment with the Company by providing 30 days' written notice.
Termination by James Hardie	The Company may terminate the senior executive's employment for cause or not for cause. Other than the post-termination consulting arrangement discussed below for a termination without cause or a resignation for good reason, no other termination payments are payable.
Post-termination Consulting	Depending on the senior executive's individual contract, and the reasons for termination, the Company may request the senior executive, and the senior executive will agree, to consult to the Company for two years upon termination, as long as they sign and comply with 1) a consulting agreement, which will require them to maintain non-compete and confidentiality obligations to the Company, and 2) a release of claims in a form acceptable to the Company. In exchange for the consulting agreement, the Company shall pay the senior executive's annual base salary as of the termination date for each year of consulting.
Other	<p>Health, Welfare and Vacation Benefits: Eligible to receive all health, welfare and vacation benefits offered to all U.S. employees and also eligible to participate in the Company's Executive Health and Wellness program.</p> <p>Business Expenses: The senior executives are entitled to receive reimbursement for all reasonable and necessary travel and other business expenses incurred or paid in connection with the performance of services under their employment.</p> <p>Automobile: The Company will either lease an automobile for business and personal use by the senior executive, or, in the alternative, the executive will be entitled to an automobile lease allowance not to exceed \$750 per month.</p>

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Share Ownership

As of May 31, 2010, the number of shares of our common stock beneficially owned by each person listed in the table under the heading “Compensation — Remuneration,” is set forth below.

Name	Number of Shares Beneficially Owned	Percent of Class (1)
Current Directors and Executive Officers		
Michael Hammes (2)	32,847	*
Donald McGauchie (3)	20,372	*
Brian Anderson	7,635	*
David Harrison	12,384	*
James Osborne	2,551	*
Rudy van der Meer	17,290	*
David Dilger (4)	25,000	*
Louis Gries	1,553,475	*
Russell Chenu	229,000	*
Robert Cox	—	—
Mark Fisher	941,672	*
Nigel Rigby	747,392	*

* Indicates that the individual beneficially owns less than 1% of our shares of common stock.

(1) Based on 434,550,172 shares of common stock outstanding at May 31, 2010 (all of which are subject to CUFS).

(2) As of May 31, 2010, 27,847 shares were held in the name of Mr. and Mrs. Hammes.

(3) As of May 31, 2010 6,000 shares were held for the McGauchie Superannuation Fund for which Mr. McGauchie is a trustee.

(4) As of May 31, 2010, 25,000 shares were held for the David Dilger Approved Retirement Fund for which Mr. Dilger is a beneficiary.

None of the shares held by any of the directors or executive officers has any special voting rights. Beneficial ownership of shares includes shares issuable upon exercise of options which are exercisable within 60 days of May 31, 2010.

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Option Ownership

The number of shares of our common stock that each person listed in the table under the heading “Compensation — Remuneration,” have an option to purchase as of May 31, 2010 was:

Name	Number of Shares Underlying Options Owned	Exercise Price	Expiration Date
Current Executive Officers			
Louis Gries	325,000(1)	A\$6.4490/share(2)	December 2012
	325,000(3)	A\$7.05/share	December 2013
	1,000,000(4)	A\$8.53/share	November 2015
	381,000(5)	A\$8.40/share	November 2016
	415,000(5)	A\$8.40/share	November 2016
	437,000(5)	A\$7.83/share	August 2017
Russell Chenu	445,000(5)	A\$7.83/share	August 2017
	93,000(6)	A\$6.30/share	February 2015
	90,000(4)	A\$8.53/share	November 2015
	60,000(5)	A\$8.40/share	November 2016
	65,000(5)	A\$8.40/share	November 2016
	66,000(5)	A\$7.83/share	August 2017
Robert Cox	—		
Mark Fisher	68,283(7)	A\$5.0586/share(8, 2)	December 2011
	74,000(1)	A\$6.4490/share(2)	December 2012
	132,000(3)	A\$7.05/share	December 2013
	180,000(9)	A\$5.99/share	December 2014
	190,000(10)	A\$8.90/share	December 2015
	158,500(11)	A\$8.40/share	November 2016
	277,778(12)	A\$6.38/share	December 2017
Nigel Rigby	20,003(7)	A\$5.0586/share(8, 2)	December 2011
	27,000(1)	A\$6.4490/share(2)	December 2012
	33,000(3)	A\$7.05/share	December 2013
	180,000(9)	A\$5.99/share	December 2014
	190,000(10)	A\$8.90/share	December 2015
	158,500(11)	A\$8.40/share	November 2016
	277,778(12)	A\$6.38/share	December 2017

- (1) Granted under the 2001 Equity Incentive Plan. All options vested and became exercisable in December 2005.
- (2) The exercise price reflects an A\$0.2110 per share price reduction due to a capital return paid to shareholders in November 2003.
- (3) Granted under the 2001 Equity Incentive Plan. All options vested and became exercisable in December 2006.
- (4) Granted under the Managing Board Transitional Stock Option Plan. Option vesting is subject to ‘performance hurdles’ as outlined in the plan rules.

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- (5) Granted under the Long Term Incentive Plan. Option vesting is subject to 'performance hurdles' as outlined in the plan rules.
- (6) Granted under the 2001 Equity Incentive Plan. All options vested and became exercisable in February 2008.
- (7) Granted under the 2001 Equity Incentive Plan. All options vested and became exercisable in December 2004.
- (8) The exercise price reflects an A\$0.3804 per share price reduction due to a capital return paid to shareholders in November 2002.
- (9) Granted under the 2001 Equity Incentive Plan. All options vested and became exercisable in December 2007.
- (10) Granted under the 2001 Equity Incentive Plan. All options vested and became exercisable in December 2008.
- (11) Granted under the 2001 Equity Incentive Plan. All options vested and became exercisable in November 2009.
- (12) Granted under the 2001 Equity Incentive Plan. Options vest and become exercisable in three installments: 25% on December 10, 2008; 25% on December 10, 2009; and 50% on December 10, 2010.

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Restricted Stock Unit Ownership

The number of shares of our common stock that each person listed in the table under the heading “Compensation — Remuneration,” held as restricted stock units as of May 31, 2010 was:

<u>Name</u>	<u>Number of Restricted Stock Units Owned</u>	<u>Unvested</u>
Current Executive Officers		
Louis Gries	201,324(1)	201,324
	558,708(2)	558,708
	487,446(3)	487,446
	234,900(4)	234,900
	81,746(5)	81,746
Russell Chenu	108,637(2)	108,637
	94,781(3)	94,781
	45,675(4)	45,675
	15,895(5)	15,895
Robert Cox	155,196(2)	155,196
	135,402(3)	135,402
	65,250(4)	65,250
	22,707(5)	22,707
Mark Fisher	36,066(6)	36,066
	116,948(7)	116,948
	77,548(3)	77,548
	39,150(4)	39,150
	13,624(5)	13,624
Nigel Rigby	36,066(6)	36,066
	116,948(7)	116,948
	77,548(3)	77,548
	39,150(4)	39,150
	13,624(5)	13,624

- (1) Granted under the Long Term Incentive Plan and Deferred Bonus Program on September 15, 2008. Restricted stock units vest in one installment, 100% on September 15, 2010.
- (2) Granted under the Long Term Incentive Plan on September 15, 2008. Restricted stock units vesting is subject to ‘performance hurdles’ as outlined in the plan rules.
- (3) Granted under the Long Term Incentive Plan on May 29, 2009. Restricted stock units vesting is subject to ‘performance hurdles’ as outlined in the plan rules.

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- (4) Granted under the Long Term Incentive Plan on September 15, 2009. Restricted stock units vesting is subject to 'performance hurdles' as outlined in the plan rules.
- (5) Granted under the Long Term Incentive Plan on December 11, 2009. Restricted stock units vesting is subject to 'performance hurdles' as outlined in the plan rules.
- (6) Granted under the 2001 Equity Incentive Plan and Deferred Bonus Program on June 17, 2008. Restricted stock units vest in one installment, 100% on June 17, 2010.
- (7) Granted under the Long Term Incentive Plan on December 17, 2008. Restricted stock units vesting is subject to 'performance hurdles' as outlined in the plan rules.

Stock-Based Compensation

At March 31, 2010, we had the following equity award plans: the Executive Share Purchase Plan (which we refer to as the Plan); the 2005 Managing Board Transitional Stock Option Plan; the JHI SE 2001 Equity Incentive Plan; the Supervisory Board Share Plan 2006 and the Long-Term Incentive Plan 2006 as amended in 2008 (which we refer to as LTIP). Following completion of the Re-domicile on June 17, 2010, each of these plans (except for the Executive Share Purchase Plan, which is no longer operational), ceased to be governed by Dutch law and became governed by Irish law. The plans were also amended to reflect the fact that Irish SE will have a single board of directors, including changing the names of the plans as appropriate to reflect the single board.

Executive Share Purchase Plan

Prior to July 1998, JHIL issued stock under the Plan. Under the terms of the Plan, eligible executives purchased JHIL shares at their market price when issued. Executives funded purchases of JHIL shares with non-recourse, interest-free loans provided by JHIL and collateralized by the shares. In such cases, the amount of indebtedness is reduced by any amounts payable by JHIL in respect of such shares, including dividends and capital returns. These loans are generally repayable within two years after termination of an executive's employment. Variable plan accounting has been applied to the Executive Share Purchase Plan shares granted prior to April 1, 1995 and fair value accounting has been applied to shares granted after March 31, 1995. The Company recorded no compensation expense during the years ended March 31, 2010, 2009 and 2008. No shares were issued under this plan during years ended March 31, 2010, 2009 and 2008.

Managing Board Transitional Stock Option Plan

The Managing Board Transitional Stock Option Plan provides an incentive to the members of the Managing Board. The maximum number of 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, 2010 there were 1,090,000 options outstanding under this plan.

On November 22, 2005, we granted options to purchase 1,320,000 shares of our common stock 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 (which we refer to as TSR) (essentially our dividend yield and common stock performance) from November 22, 2005 to that date were at least equal to the median TSR for the companies comprising our peer group, as set out in the plan. In addition, for each 1% increment that our TSR is above the median TSR, an additional 2% of the options become exercisable. If any options remain unvested on the last business day of each six month period following November 22, 2008 and November 22, 2010, we will reapply the vesting criteria to those options on that business day. As of May 31, 2010, no options under this plan have vested or are exercisable.

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

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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.

JHIL SE 2001 Equity Incentive Plan

Under our 2001 Equity Incentive Plan, our employees, including employees of our subsidiaries and officers who are employees, but not including any member of our Managing Board or Supervisory Board, are eligible to receive awards in the form of nonqualified stock options, performance awards, restricted stock grants, stock appreciation rights, dividend equivalent rights, phantom stock or other stock-based benefits 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 Joint Board subject to implementation of the consummation of our 2001 Reorganization.

An aggregate of 45,077,100 shares of common stock have been made available for issuance under the 2001 Equity Incentive Plan, provided that such number (and any awards granted) is subject to adjustment in the event of a stock split, stock dividend or other changes in our common stock or capital structure or our restructuring. Our ADSs evidenced by ADRs and our common stock in the form of CUFS will be equivalent to and interchangeable with our common stock for all purposes of the 2001 Equity Incentive Plan, provided that ADSs will be proportionately adjusted to account for the ratio of CUFS in relation to ADSs.

The following number of options to purchase shares of our common stock issued under this plan were as follows:

Share Grant Date	Number of Options Granted	Options Outstanding as of May 31, 2010
October 2001 (1)	5,468,829	115,140
December 2001	4,248,417	254,309
December 2002	4,037,000	796,500
December 2003	6,179,583	1,758,250
December 2004	5,391,100	1,523,250
February 2005	273,000	93,000
December 2005	5,224,100	2,284,500
March 2006	40,200	40,200
November 2006	3,499,490	1,704,085
March 2007	330,900	168,500
December 2007	5,031,310	2,638,729
Total outstanding		11,376,463

(1) Awarded to our employees on October 19, 2001 in exchange for the cancellation of JHIL shadow stock awards under the JHIL Key Management Equity Incentive Plan.

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, 2010
June 2008	698,440	13,685
December 2008	992,271	237,595
December 2009	278,569	—
Total	1,969,280	251,280

Our Remuneration Committee administers the 2001 Equity Incentive Plan. Subject to the provisions of the 2001 Equity Incentive Plan, our Remuneration Committee is authorized to determine who may participate in the 2001 Equity Incentive Plan, the number and types of awards made to each participant and the terms, conditions and limitations applicable to each award. In addition, our Remuneration Committee will have the exclusive power to interpret the 2001 Equity Incentive Plan and to adopt such rules and regulations as it deems necessary or appropriate for purposes of administering the 2001 Equity Incentive Plan. Subject to certain limitations, our Remuneration

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Committee will be authorized to amend, modify or terminate the 2001 Equity Incentive Plan to meet any changes in legal requirements or for any other purpose permitted by law.

The purchase or exercise price of any award granted under the 2001 Equity Incentive Plan may be paid in cash or other consideration at the discretion of our Remuneration Committee. Our Remuneration Committee, in its discretion and as allowed by applicable laws, may allow cashless exercises of awards or may permit us to assist in the exercise of options.

Stock Options. Under the 2001 Equity Incentive Plan, our Remuneration Committee is authorized to award nonqualified options to purchase shares of common stock as additional employment compensation. Options are exercisable over such periods as may be determined by our Remuneration Committee, but no stock option may be exercised after 10 years from the date of grant. Options may be exercisable in installments and upon such other terms as determined by our Remuneration Committee. Options are evidenced by notices of option grants authorized by our Remuneration Committee. No option is transferable other than by will or by the laws of descent and distribution or pursuant to certain domestic relations orders.

Performance Awards. Our Remuneration Committee, in its discretion, may award performance awards to an eligible person contingent on the attainment of criteria specified by our Remuneration Committee. Performance awards are paid in the form of cash, shares of common stock or a combination of both. Our Remuneration Committee determines the total number of performance shares subject to an award, and the terms and the time at which the performance shares will be issued.

Restricted Stock Awards. Our Remuneration Committee may award restricted shares of common stock, which are subject to forfeiture under such conditions and for such periods of time as our Remuneration Committee may determine. Restricted shares may not be sold, transferred, assigned, pledged or otherwise encumbered so long as such shares remain restricted. Our Remuneration Committee determines the conditions or restrictions of any restricted stock awards, which may include requirements of continued employment, individual performance or our financial performance or other criteria.

Stock Appreciation Rights. Remuneration Committee also may award stock appreciation rights either in tandem with an option or alone. Stock appreciation rights granted in tandem with a stock option may be granted at the same time as the stock option or at a later time. A stock appreciation right entitles the participant to receive from us an amount payable in cash, in shares of common stock or in a combination of cash and common stock, equal to the positive difference between the fair market value of a share of common stock on the date of exercise and the grant price, or such lesser amount as our Remuneration Committee may determine.

Dividend Equivalent Rights. Dividend equivalent rights, defined as a right to receive payment with respect to all or some portion of the cash dividends that are or would be payable with respect to shares of common stock, may be awarded in tandem with stock options, stock appreciation rights or other awards under the 2001 Equity Incentive Plan. Our Remuneration Committee determines the terms and conditions of these rights. The rights may be paid in cash, shares of common stock or other awards.

Restricted Stock Units. In fiscal 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. We granted 278,569 and 1,690,711 restricted stock units under the 2001 Equity Incentive Plan in the years ended March 31, 2010 and 2009, respectively. As of March 31, 2010, there were 1,416,339 restricted stock units outstanding under this plan.

Cash Settled Units. In fiscal year 2010 and 2009, 35,741 and nil cash settled units, respectively, were granted to employees. Compensation expense recognized for awards are based on the fair market value of JHI SE's common stock on the date of grant and recorded as a liability. The liability is adjusted for subsequent changes in JHI SE's common stock price at each balance sheet date. Vesting of cash settled units is subject to a service condition.

Other Stock-Based Benefits. Our Remuneration Committee may award other benefits that, by their terms, might involve the issuance or sale of our common stock or other securities, or involve a benefit that is measured by the

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value, appreciation, dividend yield or other features attributable to a specified number of shares of our common stock or other securities, including but not limited to stock payments, stock bonuses and stock sales.

Effect of Change in Control. The 2001 Equity Incentive Plan provides for the automatic acceleration of certain benefits and the termination of the plan under certain circumstances in the event of a “change in control.” A change in control will be deemed to have occurred if either (1) any person or group acquires beneficial ownership equivalent to 30% of our voting securities, (2) individuals who are members of our 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 recapitalization 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.

Supervisory Board Share Plan 2006

At the 2006 AGM, 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 AGM 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 old Supervisory Board Share Plan under which Supervisory Board members were required to contribute a portion of their annual fees in shares/CUFS. As of March 31, 2010, 98,106 shares had been acquired under this plan.

Shares/CUFS received under the Supervisory Board Share Plan can be either issued or acquired on the open 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 the open 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.

Long-Term Incentive Plan

At our 2006 AGM, our shareholders approved the establishment of the LTIP 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 LTIP 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 AGM, our shareholders amended the LTIP to also allow restricted stock units to be granted under the LTIP. In August 2007 and November 2006, 1,016,000 options and 1,132,000 options, and in September 2008, December 2008, May 2009, September 2009 and December 2009, 1,023,865, 545,757, 1,066,595, 522,000 and 181,656 restricted stock units, respectively, were granted under the LTIP to our Managing Board and to certain members of our management, respectively. The vesting of these equity awards are subject to “performance hurdles” as outlined in the LTIP 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 LTIP rules. As of May 31, 2010, there were 1,937,000 options and 3,320,382 restricted stock units outstanding under this plan.

Under the terms of the LTIP, 1,089,265 and nil Scorecard LTI units were granted during the years ended March 31, 2010 and 2009, respectively, that provide recipients a cash incentive based on JHI SE’s common stock price on the

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vesting date. The vesting of awards is measured on individual performance conditions based on certain performance measures. Compensation expense recognized for awards are based on the fair market value of JHI SE's common stock on the date of grant and recorded as a liability. The liability is adjusted for subsequent changes in JHI SE's common stock price at each balance sheet date.

Effect of Change in Control, Takeover by Certain Organizations or Liquidation The LTIP 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 organizations 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.

Other Compensation

Deferred Bonus Program

After carefully assessing the senior executives' response to and performance in the extreme market conditions facing the entire housing industry in the United States, the Supervisory Board concluded that executives' performance was of such a standard that in this instance, an exceptional discretionary bonus was justified, and implemented the 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 an amount equal to 75% of the bonus bank the senior executive had accumulated for the Company's 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, 2010, there were 519,406 restricted stock units outstanding under the 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.

Executive Incentive Program and Individual Performance Plan

The Company maintains two variable pay plans:

- an Individual Performance Plan (which we refer to as the IP Plan), and
- an Executive Incentive Program (which we refer to as EIP).

The IP Plan contains the same terms as the Individual Performance component of the Company's previous EP/IP plan and is solely for eligible employees who have limited direct influence on the Company's financial performance. The IP Plan is based on the individual's performance on certain mutually agreed upon personal objectives.

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The EIP contains a corporate component which will reward management based on performance against predetermined Earnings Before Interest and Taxes (which we refer to as EBIT) goals which are adopted at the start of each fiscal year, as well as individual components on the same terms as the IP Plan which will reward management based on strategic financial and individual objectives. Participating employees will have different EBIT and individual goals, depending on their function and location. The Remuneration Committee has the authority and discretion to approve payments under this plan to the Chief Executive Officer and his direct reports and the Chief Executive Officer has the authority and discretion to approve or delegate payments due under this plan to other Company employees for any given fiscal year.

Fiscal year 2009 bonuses under the EIP and IP plan were paid in cash as per the plan. Fiscal year 2010 bonuses will also be paid in cash for all employees other than the Chief Executive Officer or his direct reports, who will be granted shares in lieu of cash bonuses.

401(k) Plan

We sponsor a U.S. defined contribution plan, the James Hardie Retirement and Profit Sharing Plan, for our employees in the United States and a defined benefit pension plan, the James Hardie Australia Superannuation Plan, for our employees in Australia. The U.S. defined contribution plan is a tax-qualified retirement and savings plan (which we refer to as the 401(k) Plan) covering all U.S. employees, subject to certain eligibility requirements. Participating employees may elect to reduce their current annual compensation by up to \$16,500 in calendar year 2010 and have the amount of such reduction contributed to the 401(k) Plan, with a maximum eligible compensation limit of \$245,000. In addition, we match employee contributions dollar for dollar up to a maximum of the first 6% of an employee's eligible compensation.

James Hardie Australia Superannuation Plan

The James Hardie Australia Superannuation Plan is funded based on statutory requirements in Australia and is based primarily on the contributions and income derived thereon held by the plan on behalf of the member, and to a lesser degree, on the participants' eligible compensation and years of credited service. Under Australian law, employees do not have to belong to their employer's superannuation fund.

Item 7. Major Shareholders and Related Party Transactions

Major Shareholders

As of May 31, 2010, all issued and outstanding shares of our common stock were listed on the ASX in the form of CHESS Units of Foreign Securities, or CUFS. CUFS represent beneficial ownership of our shares. CHESS Depository Nominees Pty Ltd is the registered owner of the shares represented by CUFS. Each of our CUFS represents one share of our common stock.

To our knowledge, the following table identifies those shareholders who beneficially owned 5% or more of our shares based on the holdings reported by the shareholder in its last shareholder notice filed with the ASX and their percentage of shares outstanding based on the number of shares outstanding as of May 31, 2010 which was 434,550,172 shares.

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Shareholder	Shares Beneficially Owned	Percentage of Shares Outstanding
Schroder Investment Management Australia Limited (1)	31,024,755	7.14%
Commonwealth Bank of Australia (2)	30,986,692	7.13%
FMR LLC and FIL Limited (3)	29,347,020	6.75%
National Australia Bank Limited Group (4)	28,198,184	6.49%
Concord Capital (5)	26,255,160	6.04%
UBS Nominees Pty Ltd and its related bodies corporate (6)	24,743,787	5.70%
Baillie Gifford & Co (7)	22,325,859	5.14%

- (1) 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 holding in of our issued share capital on April 6, 2004 to 39,835,741 shares. Schroder Investment Management Australia Limited reduced its holding to 31,024,755 shares on January 8, 2007 in the last notice received.
- (2) Commonwealth Bank of Australia became a major shareholder on November 12, 2009, with a holding of 21,820,423 shares of our issued capital and, through subsequent purchases, increased its holdings of our issued capital to 30,986,692 on February 26, 2010 in the last notice received.
- (3) FMR LLC and FIL Limited became a major shareholder on July 23, 2009, with a holding of 34,119,335 shares of our issued share capital and through subsequent sales and purchases, FMR LLC and FIL Limited reduced their holding to 29,347,020 shares of our issued share capital on May 20, 2010 in the last notice received.
- (4) National Australia Bank Limited Group became a major shareholder on May 25, 2004, with 23,060,940 shares of our issued share capital and increased its holding to 28,198,184 shares of our issued share capital on June 16, 2004 in the last notice received.
- (5) 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 holding 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 26,255,160 shares on October 9, 2009 in the last notice received.
- (6) UBS Nominees Pty Ltd and its related bodies corporate became a major shareholder on February 22, 2010, with 24,743,787 shares of our issued capital in the last notice received.
- (7) 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. On June 26, 2009, 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 June 29, 2009. On November 12, 2009, in the last notice received, Baillie Gifford & Co. became a major shareholder again with a holding of 22,325,859 shares of our issued capital in the last notice received.

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 holdings of our issued share capital on April 24, 2008 to 65,424,399 shares. Through subsequent sales, Lazard Asset Management Pacific Co. ceased to be a major shareholder on May 3, 2010.

BlackRock Investment Management (Australia) became a major shareholder on December 2, 2009 with a holding of 25,598,562 shares of our issued share capital and ceased to be a major shareholder on March 10, 2010.

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. Through subsequent purchases and sales, their holdings have decreased below 5%

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and increased over 5% of our issued share capital. On February 5, 2010, their substantial holding status again ceased when their holdings of our issued share capital fell below 5%.

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 ceased to be a major shareholder on June 25, 2009. On July 15, 2009, 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 September 28, 2009.

Each of the above shareholders has the same voting rights as all other holders of our common stock. To our knowledge, except for the major shareholders described above, we are not directly or indirectly owned or controlled by another corporation, by a foreign government or by any other natural or legal persons severally or jointly.

Other Security Ownership Information

As of May 31, 2010, 0.45% of the outstanding shares of our common stock was held by 70 CUFS holders with registered addresses in the United States. In addition, as of May 31, 2010, 0.87% of our outstanding shares was represented by ADSs held by 7 holders, all of whom have registered addresses in the United States. A total of 1.32% of our outstanding capital stock was registered to 77 U.S. holders as of May 31, 2010.

Related Party Transactions

Existing Loans to our Directors and Directors of our Subsidiaries

On October 1, 2009, a former executive director of the Company repaid his loan of \$14,175 in full in respect of the Executive Share Purchase Plan (which we refer to as ESPP). Loans under the ESPP are interest free and repayable from dividend income earned by, or capital returns from, securities acquired under the ESPP. The loans are collateralized by CUFS under the ESPP. No new loans to Directors or executive officers of JHI SE, under the ESPP or otherwise, and no modifications to existing loans have been made since December 1997. There are no more outstanding loans from our executive directors or former directors of subsidiaries of JHI SE under the ESPP.

Payments Made to Directors and Director Related Entities of JHI SE during the Year

Deputy Chairman Mr. McGauchie was until May 2009 a director of Telstra Corporation Limited from whom the Company purchases communications services. Supervisory Board director Mr. van der Meer is a Supervisory Board director of ING Bank Nederland N.V. and ING Verzekeringen (Insurance) Nederland N.V. Entities in the ING Group provide various financial services to the Company. All transactions were in accordance with normal commercial terms and conditions. It is not considered that these directors had significant influence over these transactions.

Item 8. Financial Information

See Item 4, Information on the Company — Legal Proceedings,” Item 4, “Information on the Company — Commitment to Provide Funding on a Long-Term Basis in Respect of Asbestos-Related Liabilities of Former Subsidiaries,” Item 18, “Financial Statements,” and pages F-1 through F-47. There has been no significant change to the financial statements included in this annual report since the date of such financial statements.

See Item 10, “Additional Information — Key Provisions of our Articles of Association — Dividends.”

Item 9. Listing Details**Price History**

The high and low trading prices of JHI SE CUFS on the ASX are as follows:

Period	High		Low	
	(A\$)	(US\$)	(A\$)	(US\$)
Fiscal year ended:				
March 31, 2010	8.86	7.54	3.73	3.17
March 31, 2009	7.04	5.59	2.89	2.29
March 31, 2008	9.65	8.39	5.34	4.64
March 31, 2007	10.24	7.84	6.31	4.83
March 31, 2006	9.81	7.38	5.49	4.13
Fiscal quarter ended:				
March 31, 2010	8.86	8.04	7.07	6.41
December 31, 2009	8.59	7.92	6.73	6.20
September 30, 2009	7.95	6.66	3.73	3.12
June 30, 2009	5.15	3.91	3.86	2.93
March 31, 2009	4.79	3.31	2.89	2.00
December 31, 2008	5.49	3.89	3.20	2.27
September 30, 2008	5.79	5.16	3.82	3.40
June 30, 2008	7.04	6.64	4.13	3.90
Month ended:				
May 31, 2010	8.05	7.04	6.98	6.11
April 30, 2010	7.73	7.16	6.92	6.41
March 31, 2010	7.93	7.30	7.07	6.51
February 28, 2010	8.15	7.21	7.27	6.43
January 31, 2010	8.86	8.12	7.50	6.87
December 31, 2009	8.59	7.84	7.82	7.14

The U.S. dollar prices set forth above were calculated using the weighted average exchange rate for the relevant period.

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The high and low trading prices of JHI SE ADSs on the NYSE are as follows:

Period	High (US\$)	Low (US\$)
Fiscal year ended:		
March 31, 2010	41.22	14.50
March 31, 2009	31.55	9.38
March 31, 2008	40.50	23.00
March 31, 2007	41.70	24.20
March 31, 2006	36.36	21.54
Fiscal quarter ended:		
March 31, 2010	41.22	31.90
December 31, 2009	39.91	30.67
September 30, 2009	34.50	14.50
June 30, 2009	18.99	14.95
March 31, 2009	16.60	9.38
December 31, 2008	22.53	10.65
September 30, 2008	24.25	18.10
June 30, 2008	31.55	20.15
Month ended:		
May 31, 2010	36.96	28.91
April 30, 2010	35.75	31.96
March 31, 2010	36.04	32.25
February 28, 2010	35.58	31.90
January 31, 2010	41.22	33.19
December 31, 2009	39.91	34.67

Trading Markets

Our securities are listed and quoted on the following stock exchanges:

Common Stock (in the form of CUFS)	Australian Securities Exchange
ADSs	New York Stock Exchange

We cannot predict the prices at which our shares and ADSs will trade or the volume of trading for such securities, nor can we assure you that these securities will continue to meet the applicable listing requirements of these exchanges.

Trading on the Australian Securities Exchange

The ASX is headquartered in Sydney, Australia, with branches located in each Australian state capital. Our CUFS trade on the ASX under the symbol "JHX." The ASX is a publicly listed company with trading being undertaken by brokers licensed under the Corporations Act. Trading principally takes place between the hours of 10:00 a.m. and 4:00 p.m. on each weekday (excluding Australian public holidays). Settlement of trades in uncertificated securities listed on the ASX is generally effected electronically on the third business day following the trade. This is undertaken through CHESS, which is the clearing and settlement system operated by the ASX.

Trading on the New York Stock Exchange

In the United States, five JHI SE CUFS equal one JHI SE ADS. Our ADSs trade on the New York Stock Exchange under the symbol "JHX." Trading principally takes place between the hours of 9:30 a.m. and 4:00 p.m. Eastern Time on each weekday (excluding U.S. public holidays). All inquiries and correspondence regarding ADSs should be directed to The Bank of New York Mellon, depository for our ADSs, at 101 Barclay Street, 22W, New York, NY 10286. To speak directly to a Bank of New York Mellon representative, please call 1-888-BNY-ADRS (1-888-269-2377) if you are calling from within the United States. If you are calling from outside the U.S., please call 201-680-6825. You may also send an e-mail inquiry to shrrelations@bnymellon.com or visit the website at www.bnymellon.com/shareowner.

Item 10. Additional Information

General

We were originally incorporated in 1998 as a private company with limited liability, or B.V. By notarial deed dated July 24, 2001, we changed our name to James Hardie Industries N.V. and by the same deed we changed our legal form into that of a N.V., a public limited liability company under Dutch law. By a notarial deed dated February 19, 2010, we changed our name to James Hardie Industries SE and by the same deed we changed our legal form into that of a SE, being a Dutch public limited company. Effective June 17, 2010, Stage 2 of the Re-domicile was implemented and we became an Irish SE company incorporated and existing under the laws of Ireland and became an Irish tax resident on June 29, 2010.

Our corporate domicile is in Ireland and our office is located at Europa House, Second Floor, Harcourt Center, Harcourt Street, Dublin 2, Republic of Ireland. We are registered at the Companies Registration Office of the Department of Enterprise Trade and Innovation in Dublin, Ireland under number 485719.

Key Provisions of our Articles of Association

Purpose of the Company

Our main object, which is stated in our Memorandum of Association is 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.”

The Memorandum of Association also states that we 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.

We also have the usual powers of an Irish public limited company. These include the power to borrow, to charge assets, to grant guarantees and indemnities, to incorporate new companies and to acquire existing companies.

Provisions of our Articles of Association Related to Directors

General and borrowing powers: Our Articles of Association grant the directors a general power to manage the Company. The directors will have the power to exercise all of the powers of the Company that have not been otherwise expressly reserved to the shareholders by Irish company law or our articles of association. In addition, the directors also will be granted certain specific powers by our articles of association, including:

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

Our articles of association will expressly list some, but not all, of the duties of directors.

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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.

Power to vote on compensation: The maximum aggregate remuneration of the non-executive directors is U.S. \$1,500,000 and can be changed 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. Arrangements for remuneration in the form of shares or CUFS for directors requires shareholder approval pursuant to an ordinary resolution.

There is no requirement for our shareholders to approve the remuneration policy. The company currently intends to continue voluntarily producing a remuneration report.

These provisions are subject to the relevant listing rules of the ASX regarding director remuneration.

Age Limit for Retirement or Non-Retirement: Our articles of association do not include any provisions regarding the mandatory retirement age of a director.

Number of shares for Director's qualification: No director will require a share qualification in order to act as a director.

Issuance of Shares; Preemptive Rights

We have been 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 may by ordinary resolution determine.

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

The Board has the power (a) to issue shares up to a maximum of our authorized 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 authorizing the board to issue shares).

Our Articles of Association grant these authorizations to the board, which will expire (unless renewed) on June 2, 2015.

These authorizations are 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).

If the Board is at any time not designated as the authorized body for such powers, the shareholders acting by ordinary resolution have the power to issue shares, but only upon the proposal of the Board.

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As an Irish company that has listed securities in Australia and the United States, we are subject to applicable legislation regarding insider trading. Generally, Australian law prohibits persons from trading on the basis of information which is not generally available and which, if it were generally available, a reasonable person would expect to have a material effect on the price or value of securities. Similarly, in the United States, persons are prohibited from trading on the basis of material, non-public information. We have adopted an internal code on insider trading consistent with Australian and U.S. laws and regulations.

Repurchase of Shares and Reduction of Capital

Irish law permits us to redeem our shares (provided such shares are redeemable) at any time whether on or off market without shareholder approval. Accordingly, our articles of association provide that, when we agree to acquire any shares (unless we elect to treat the acquisition as a purchase), it shall be a term of such contract that the relevant shares become redeemable on the entry into of that contract and that completion of that contract shall constitute redemption of the relevant shares. This means that we may acquire our own shares.

In addition, Irish company law permits an Irish company and its subsidiaries to make market purchases of the shares of the Irish company on a recognized stock exchange if shareholders of the company have granted the company and/or its subsidiaries a general authority by ordinary resolution to do so. Currently, the Irish Stock Exchange, the New York Stock Exchange, NASDAQ and the London Stock Exchange are the recognized stock exchanges for this purpose.

As the ASX is not currently a recognized stock exchange for the purposes of Irish law, on- and off-market purchases of our shares (by way of trading CUFS) will only be available to us through their redemption in accordance with the redemption mechanism in our articles of association, outlined above, provided we do not treat such acquisition as a purchase.

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.

Under Irish company law, the board may determine whether shares that we have repurchased or redeemed will either be held in treasury or cancelled. However, under Irish company law, the nominal value of treasury shares held by us may not, at any one time, exceed 10% of the nominal value of our issued share capital.

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 at any general meeting unless at least 5% of Irish SE's issued share capital is present or represented.

Shareholders Meetings and Voting Rights

Our first annual general meeting must be held within 18 months of completion of the Re-domicile. Our annual general meetings will generally 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. There is no requirement that extraordinary general meetings be held in Ireland. Following our first annual general meeting, we must hold an annual general meeting in each calendar year and within six months after the financial year end and we shall announce the date of each such annual general meetings no less than 35 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 (if required); and (5) the fixing of the remuneration of the auditors.

We shall announce the date of an extraordinary general meeting no less than 35 business days before such meeting is due to be held save in exceptional circumstances where the board resolves otherwise. An extraordinary general meeting may be convened by (1) the directors or (2) pursuant to Irish company law, by one or more persons who alone or together hold 10% of our issued share capital. An extraordinary general meeting must be convened within 21 calendar days after a request has been made of us by a shareholder (who holds 10% or more of our issued share

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capital), and the extraordinary general meeting must be held no later than two months after such a request has been made by a shareholder.

One or more persons who alone or together hold at least 10% of our issued share capital may request that the Board call an extraordinary general meeting. In addition, such holders may also request that the Board place a matter on the agenda of any general meeting so long as any such request shall be received by us at least 30 business days before the general meeting to which it relates, at such postal or e-mail address as specified by us for that purpose in the announcement of the general meeting. Such request must be accompanied by stated grounds justifying its inclusion, or a draft resolution, together not to exceed 1,000 words. Such a request will be declined by our Board where: (i) the request is contrary to the memorandum or articles of association, Irish law or the ASX Listing Rules, or (ii) the time limits specified in the articles of association have not been complied with.

The quorum for general meetings and for meetings of a separate class of shareholders in Irish SE is 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 apply to all adjourned meetings.

Holders of CUFS and ADSs do not appear on our 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 depository 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 depository or converting their CUFS to shares.

All shares issued have the right to one vote for each share held on every matter submitted to a vote of the shareholders. CUFS holders are entitled to attend and to speak at our shareholder meetings and can vote at our shareholder meetings:

- by instructing CHES Depository Nominees Pty Limited (who we refer to as "CDN"), as legal owner of our shares represented by CUFS, how to vote the shares represented by the holder's CUFS;
- by directing CDN to appoint itself (or another person) as the Nominated Proxy pursuant to a voting instruction form provided by the Company; or
- by converting the holder's CUFS into our shares 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.

ADR holders will not be entitled to attend our general meetings of shareholders, but can vote by giving an instruction to The Bank of New York Mellon, as the ADS depository on how to instruct CDN to vote at a meeting.

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.

Annual Report

Our fiscal year runs from April 1 through March 31. Dutch law requires that within five months after the end of our fiscal year, unless the general meeting of shareholders has extended this period for a maximum of six months, our Managing Board must make available to our shareholders a report with respect to that fiscal year. This report must include the financial statements and a report of an independent accountant. The annual report must be submitted to the shareholders for adoption. The annual report, including the management report, is prepared in English and, in the case of the consolidated accounts of JHI SE and its wholly owned subsidiaries, according to U.S. GAAP, and in the case of JHI SE's accounts for our fiscal year 2010, according to Dutch GAAP.

Irish law requires that our annual accounts must be laid before the shareholders at the AGM within nine months of the balance sheet date and that copies of our financial statements must be sent to the shareholders 21 days before the AGM. Our consolidated annual accounts will be prepared under Generally Accepted Accounting Principles

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applicable in the U.S. (which we refer to as U.S. GAAP). We will prepare consolidated annual accounts under “modified” US GAAP, which is US GAAP to the extent that it is not inconsistent with Irish company law. Beginning with our fiscal year 2011, the annual entity accounts of Irish SE also will be prepared under Generally Accepted Accounting Principles applicable in Ireland (which we refer to as Irish GAAP).

The annual accounts will also include report of an independent accountant.

Indemnification

Our articles of association provide that our current and former directors, company secretary, employees and persons who may be deemed by our board to be our agent are indemnified by us for costs, losses and expenses arising out of such person’s exercise of their duties to us. However, under Irish company law, this indemnity only binds us to indemnify a current or former director or company secretary where judgment is given in any civil or criminal action in favor 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 our board to be our agent who are not current or former directors or company secretary.

We have also entered into deeds of access, insurance and indemnity with our directors, company secretary and certain senior employees.

Dividends

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) we have sufficient freely distributable reserves and (b) our net assets are in excess of the aggregate of called up share capital plus undistributable reserves and the distribution does not reduce our net assets below such aggregate.

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 us. The payment by directors of any unclaimed dividend or other moneys payable in respect of a share into a separate account shall not constitute us a trustee in respect thereof.

Our board also determines the record dates at which time registered holders of our shares, including the CHESSE Depository Nominee issuing CUFS to the ADS depository, will be entitled to dividends and sets the payment dates. Dividends are declared payable to our shareholders in U.S. dollars. The ADS Depository (Bank of New York Mellon) receives dividends in U.S. dollars directly from JHI SE on each CUFS dividend payment date and will distribute any dividend to holders of ADSs in U.S. dollars pursuant to the terms of the deposit agreement. Other CUFS holders registered at a dividend record date are paid their dividend on each CUFS dividend payment date in the equivalent amount of Australian dollars, as determined by the prevailing exchange rate shortly after the CUFS dividend record date.

Amendment of Articles of Association

Our Articles of Association may be amended by our shareholders by resolution approved by 75% of the votes cast at a general meeting of shareholders at which at least 5% of our issued share capital is present or represented.

Liquidation Rights

In the event of our liquidation, and after we have paid all debts and liquidation expenses, the excess of any assets shall be distributed among our 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 our shareholders. As a holding company, our sole material assets will be the capital stock of its subsidiaries.

Limitations on Right to Hold Common Stock

The Irish Takeover Rules regulate takeover and merger transactions, however effected, by which control of a target incorporated in Ireland 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.

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.

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

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- 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.

The prohibition does not apply to holdings by the CUFS depository, CDN, of our shares as custodian for the CUFS holders but will apply to CDN where another person acquires or holds a relevant interest in breach of the provisions. If a person acquires or holds a relevant interest in breach of the prohibition, JHI SE has several powers available to it under our Articles of Association. These include powers to require the disposal of our common stock, disregard the exercise of votes and suspend dividend rights. These powers will only extend to that number of shares of common stock which are acquired or held in breach of the prohibition.

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

Disclosure of Holdings

Under Irish law, a person must notify us 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 our 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 our 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 our issued share capital before a disposition and falls below 5% as a result of such disposition.

In addition, under Irish law, we can, if we have reasonable cause to believe that a person or company has an interest in our 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 our shares and the interests (if any) of all persons having a beneficial interest in the shares. To the extent any such information is made available to us, Irish law requires that we make such information available to any person upon such person's request.

Failure of a shareholder to disclose its interests in our shares as described above 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 us when we make a request for information in the manner described above, we 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 us. 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.

Shareholders are also subject to beneficial ownership reporting disclosure requirements under U.S. securities laws, including the filing of beneficial ownership reports on Schedules 13D and 13G with the SEC. The SEC's rules require all persons who beneficially own more than 5% of a class of securities registered with the SEC to file either a Schedule 13D or 13G. This filing requirement applies to all holders of our shares of common stock, ADSs or CUFS because our securities have been registered with the SEC. The number of shares of common stock underlying ADSs and CUFS is used to determine whether a person beneficially owns more than 5% of the class of securities. This beneficial ownership-reporting requirement applies whether or not the holders are U.S. residents. The decision of whether to file a Schedule 13D or a Schedule 13G will depend primarily on the nature of the beneficial owner and the circumstances surrounding the person's beneficial ownership. A copy of the rules and regulations relating to the

reporting of beneficial ownership with the SEC, as well as Schedules 13D and 13G, are available on the SEC's website at www.sec.gov.

Material Contracts

In addition to the other contracts that are described in this annual report, including without limitation the Amended FFA and certain other related agreements described in Item 4, "Information on the Company — Commitment to Provide Funding on a Long-Term Basis in Respect of Asbestos-Related Liabilities of Former Subsidiaries," our stock option plans and certain material employment contracts described under Item 6, "Directors, Senior Management and Employees — Stock Based Compensation," and any material contracts that have been entered into in the ordinary course of business, the following are the contracts we consider to be material to us. All contracts described below have been filed as exhibits to this annual report and are hereby incorporated by reference, and the summary below is qualified in its entirety by reference to the full texts of such contracts.

U.S. Dollar Cash Advance Facilities. At March 31, 2010, our credit facilities were drawn to \$154.0 million, of which \$95.0 million matured in June 2010 and \$59.0 million will mature in February 2013. For all facilities, interest is calculated two business days prior to the commencement of each draw-down period based on LIBOR, plus the margins of individual lenders, and is payable at the end of each draw-down period. At March 31, 2010, there was \$154.0 million drawn under the combined facilities and \$272.7 million was available.

As of March 31, 2010, we were in compliance with all restrictive covenants contained in our credit facility agreements. Under the most restrictive of these covenants, we (i) are required to maintain certain ratios of indebtedness to equity which do not exceed certain maximums, excluding assets, liabilities and other balance sheet items of the AICF, Amaba, Amaca, ABN 60 and Marlew Mining Pty Limited, (ii) must maintain a minimum level of net worth, excluding assets, liabilities and other balance sheet items of the AICF; for these purposes "net worth" means the sum of the par value (or value stated in the books of the James Hardie Group) of the capital stock (but excluding treasury stock and capital stock subscribed or unissued) of the James Hardie Group, the paid in capital and retained earnings of the James Hardie Group and the aggregate amount of provisions made by the James Hardie Group for asbestos related liabilities, in each case, as such amounts would be shown in the consolidated balance sheet of the James Hardie Group if Amaba, Amaca, ABN 60 and Marlew Mining Pty Limited were not accounted for as subsidiaries of the Company, (iii) must meet or exceed a minimum ratio of earnings before interest and taxes to net interest charges, excluding all income, expense and other profit and loss statement impacts of the AICF, Amaba, Amaca, ABN 60 and Marlew Mining Pty Limited and (iv) must ensure that no more than 35% of Free Cash Flow (as defined in the Amended FFA) in any given Financial Year is contributed to the AICF on the payment dates under the Amended Final Funding Agreement in the next following Financial Year. The limit does not apply to payments of interest to the AICF. Such limits are consistent with the contractual liabilities of the Performing Subsidiary and the Company under the Amended FFA.

Gypsum Indemnity. We sold our gypsum wallboard manufacturing facilities in April 2002. Under the terms of the sale agreement with the buyer, BPB U.S. Holdings, Inc., we agreed to customary indemnification obligations which generally have expired. However, pursuant to the sale agreement, we agreed to indemnify the buyer for any future liabilities arising from asbestos-related injuries to persons or property arising from our former gypsum business. Although we are not aware of any asbestos-related claims arising from the gypsum business nor circumstances that would give rise to such claims, our obligation under the sale agreement to indemnify the buyer for liabilities arising from asbestos-related injuries arises only if such claims exceed \$5 million in the aggregate, is limited to \$250 million in the aggregate and will continue for 30 years after the closing date of our gypsum business.

Pursuant to the terms of our agreement to sell our gypsum business, we also retained responsibility for any losses incurred by the buyer resulting from environmental conditions at the Duwamish River in the State of Washington so long as notice of a claim is given within 10 years of closing. Our indemnification obligations in this regard are subject to a \$34.5 million limitation. The Seattle gypsum facility had previously been included on the "Confirmed and Suspected Contaminate Sites Report" released in 1987 due to the presence of metals in the groundwater. Because we believe the metals found emanated from an offsite source, we do not believe we are liable for, and have not been requested to conduct, any investigation or remediation relating to the metals in the groundwater. See Item 3, "Key Information — Risk Factors."

Exchange Controls

The European Commission has imposed financial sanctions on a number of countries throughout the world that are suspected of being involved in activities such as terrorism or repression of its citizens. Ireland has given effect to these sanctions through the implementation of regulations and statutory instruments. We do not have any subsidiaries located in countries with imposed financial sanctions by the European Commission. In addition, we do not conduct business or other revenue-generating activities in these countries.

Except for restrictions contained in the regulations or statutory instruments referred to above, there are no legislative or other legal provisions currently in force in Ireland or arising under our Articles of Association restricting the import or export of capital, including the availability of cash and cash equivalents for use by JHI SE and its wholly owned subsidiaries, or remittances to our security holders not resident in Ireland. In addition, except for restrictions contained in the regulations or statutory instruments referred to above, cash dividends payable in U.S. dollars on our common stock may be officially transferred from Ireland and converted into any other convertible currency.

There are no limitations, either by Irish law or in our Articles of Association, on the right of non-residents of Ireland to hold or vote our common stock.

Taxation

The following summarizes the material U.S., Dutch and Irish tax consequences of an investment in shares of our common stock. This summary does not address every aspect of taxation relevant to a particular investor subject to special treatment under any applicable law and is not intended to apply in all respects to all categories of investors. In addition, except for the matters discussed under “Dutch Taxation,” and “Irish Taxation”, this summary does not consider the effect of other foreign tax laws or any state, local or other tax laws that may apply to an investment in shares of our common stock. This summary assumes that we will conduct our business in the manner described in this annual report. Changes in our organizational structure or the manner in which we conduct our business may invalidate all or parts of this summary. The laws on which this summary is based could change, perhaps with retroactive effect, and any law changes could invalidate all or parts of this summary. We will not update this summary for any law changes after the date of this annual report.

This discussion does not bind either the U.S., Irish, or Dutch tax authorities or the courts of those jurisdictions. We have not sought a ruling nor will we seek a ruling of the U.S., Irish, or Dutch tax authorities about matters in this summary. We cannot assure you that those tax authorities will concur with the views in this summary concerning the tax consequences of the purchase, ownership or disposition of our common stock or that any reviewing judicial body in the United States, The Netherlands or Ireland would likewise concur.

PROSPECTIVE INVESTORS SHOULD CONSULT THEIR TAX ADVISERS REGARDING THE PARTICULAR TAX CONSEQUENCES OF THEIR ACQUIRING, OWNING AND DISPOSING OF SHARES OF OUR COMMON STOCK, INCLUDING THE EFFECT OF ANY FOREIGN, STATE OR LOCAL TAXES.

United States Taxation

The following is a summary of the material U.S. federal income tax consequences generally applicable to “U.S. Shareholders” (as defined below) who invest in shares of our common stock and hold the shares as capital assets. For purposes of this summary, a “U.S. Shareholder” means a beneficial owner of our common stock that is: (1) a citizen or individual resident of the United States (as defined for U.S. federal income tax purposes); (2) a corporation created or organized in or under the law of the United States or any of its political subdivisions; (3) an estate whose income is subject to U.S. federal income taxation regardless of its source or (4) a trust if (i) a court in the United States can exercise primary supervision over the administration of the trust, and one or more United States persons can control all of the substantial decisions of the trust, or (ii) the trust was in existence on August 20, 1996 and properly elected to continue to be treated as a United States person. If a partnership (including for this purpose any entity treated as a partnership for U.S. federal tax purposes) is a beneficial owner of a share of our common stock, the U.S. federal tax treatment of a partner in the partnership generally will depend on the status of the partner and the activities of the partnership. A holder of our common stock that is a partnership and partners in

that partnership should consult their own tax advisers regarding the U.S. federal income tax consequences of holding and disposing of those shares.

This summary does not comprehensively describe all possible tax issues that could influence a current or prospective U.S. Shareholder's decision to buy or sell shares of our common stock. In particular, this summary does not discuss: (1) the tax treatment of special classes of U.S. Shareholders, like financial institutions, life insurance companies, tax exempt organizations, tax-qualified employer plans and other tax-qualified or qualified accounts, investors liable for the alternative minimum tax, dealers in securities, shareholders who hold shares of our common stock as part of a hedge, straddle or other risk reduction arrangement, or shareholders whose functional currency is not the U.S. dollar; (2) the tax treatment of U.S. Shareholders who own (directly or indirectly by attribution through certain related parties) 10% or more of our voting stock; and (3) the application of other U.S. federal taxes, like the U.S. federal estate tax. The summary is based on the Internal Revenue Code, applicable U.S. Department of Treasury regulations, judicial decisions and administrative rulings and practice, all as of the date of this annual report.

Treatment of ADSs. For U.S. federal income tax purposes, a holder of an ADS is considered the owner of the shares of stock represented by the ADS. Accordingly, except as otherwise noted, references in this summary to ownership of shares of our common stock includes ownership of the shares of our common stock underlying the corresponding ADSs.

Taxation of Distributions. Subject to the passive foreign investment company rules discussed below, the tax treatment of a distribution on shares of our common stock held by a U.S. Shareholder depends on whether the distribution is from our current or accumulated earnings and profits (as determined under U.S. federal income tax principles). To the extent a distribution is from our current or accumulated earnings and profits, a U.S. Shareholder will include the amount of the distribution in gross income as a dividend. To the extent a distribution exceeds our current and accumulated earnings and profits, a U.S. Shareholder will treat the excess first as a non-taxable return of capital to the extent of the U.S. Shareholder's tax basis in those shares and thereafter as capital gain. See the discussion of "Capital Gain Rates" below. Notwithstanding the foregoing described treatment, we do not intend to maintain calculations of our current and accumulated earnings and profits. Dividends received on shares of our common stock will not qualify for the inter-corporate dividends received deduction.

Distributions to U.S. Shareholders that are treated as dividends may be subject to a reduced rate of tax under U.S. tax laws. For taxable years beginning after December 31, 2002 and before January 1, 2011, "qualified dividend income" is subject to a maximum tax rate of 15%. "Qualified dividend income" includes dividends received from a "qualified foreign corporation." A "qualified foreign corporation" includes (1) a foreign corporation that is eligible for the benefits of a comprehensive income tax treaty with the United States that contains an exchange of information program and (2) a foreign corporation that pays dividends with respect to shares of its stock that are readily tradable on an established securities market in the United States. We believe that we are, and will continue to be, a "qualified foreign corporation" and that dividends we pay with respect to our shares will qualify as "qualified dividend income." To be eligible for the 15% tax rate, a U.S. Shareholder must hold our shares un-hedged for a minimum holding period (generally, 61 days during the 121-day period beginning on the date that is 60 days before the ex-dividend date of the distribution). Although we believe we presently are, and will continue to be, a "qualified foreign corporation," we cannot guarantee that we will so qualify. For example, we will not constitute a "qualified foreign corporation" if we are classified as a "passive foreign investment company" (discussed below) in either the taxable year of the distribution or the preceding taxable year.

Distributions to U.S. Shareholders that are treated as dividends are generally considered income from sources outside the United States and, for purposes of computing the limitations on foreign tax credits that apply separately to specific categories of income, foreign source "passive category" income or, in the case of certain holders, "general category" income. However, if United States persons own, directly or indirectly, 50% or more of our shares of common stock, then a portion of the dividends (based on the portion of our earnings and profits that is from U.S. sources) may be treated as sourced within the United States. This 50% ownership rule could potentially limit a U.S. Shareholder's ability to use foreign tax credits against the shareholder's U.S. tax liability. In addition, special rules will apply to determine a U.S. Shareholder's foreign tax credit limitation if a dividend distributed with respect to our shares constitutes "qualified dividend income" (as described above). See the discussion of "Credit of Foreign Taxes Withheld" below.

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The amount of any distribution we make on shares of our common stock in foreign currency generally will equal the fair market value in U.S. dollars of that foreign currency on the date a U.S. Shareholder receives it. A U.S. Shareholder will have a tax basis in the foreign currency equal to its U.S. dollar value on the date of receipt and will recognize ordinary U.S. source gain or loss when it sells or exchanges the foreign currency. U.S. Shareholders who are individuals will not recognize gain upon selling or exchanging foreign currency if the gain does not exceed \$200 in a taxable year and the sale or exchange constitutes a “personal transaction” under the Code. The amount of any distribution we make with respect to shares of our common stock in property other than money will equal the fair market value of that property on the date of distribution.

Credit of Foreign Taxes Withheld. Under certain conditions, including a requirement to hold shares of our common stock un-hedged for a certain period, and subject to limitations, a U.S. Shareholder may claim a credit against the U.S. Shareholder’s federal income tax liability for the foreign tax owed and withheld or paid with respect to distributions on our shares. Alternatively, a U.S. Shareholder may deduct the amount of withheld foreign taxes, but only for a year for which the U.S. Shareholder elects to deduct all foreign income taxes. Complex rules determine how and when the foreign tax credit applies, and U.S. Shareholders should consult their tax advisers to determine whether and to what extent they may claim foreign tax credits.

Under certain conditions, we may retain a portion of Dutch taxes we withhold from dividends paid to our shareholders, rather than pay that portion of the withheld taxes to The Dutch Tax Administration. Uncertainty exists whether a U.S. Shareholder can properly claim as a foreign tax credit any Netherlands withholding taxes we retain. As a result, U.S. Shareholders should consult their tax advisers regarding their ability to do so. If unable to claim a foreign tax credit for those taxes, a U.S. Shareholder still may deduct them for U.S. federal income tax purposes, but only in a year in which the U.S. Shareholder elects to deduct all foreign income taxes. The conditions under which we could retain Netherlands withholding taxes are unlikely to occur, but upon request, we will inform U.S. Shareholders whether we retained any Dutch tax withheld from distributions on shares of our common stock.

Sale or Other Disposition of Shares. Subject to the passive foreign investment company rules discussed below, a U.S. Shareholder will recognize capital gain or loss on the sale or other taxable disposition of shares of our common stock, equal to the difference between the U.S. Shareholder’s adjusted tax basis in the shares sold or disposed of and the amount realized on the sale or disposition. Individual U.S. Shareholders may benefit from lower marginal tax rates on capital gains recognized on shares sold, depending on the U.S. Shareholder’s holding period for the shares. See the discussion of “Capital Gain Rates” below. Capital losses that do not offset capital gains are subject to limitations on deductibility. The gain or loss from the sale or other disposition of shares of our common stock generally will be treated as income from sources within the United States for foreign tax credit purposes, unless the U.S. Shareholder is a U.S. citizen residing outside the United States and certain other conditions are met.

Capital Gain Rates. For individual U.S. Shareholders, the tax rates applicable to capital gain and ordinary income may vary substantially. For calendar year 2009, the highest marginal income tax rate that could apply to the ordinary income of an individual U.S. Shareholder (disregarding the effect of limitations on deductions) was 35%. In contrast, a maximum rate of 15% applied to any net capital gain of an individual U.S. Shareholder if that gain was attributable to the sale or exchange of capital assets held more than one year. Gain attributable to the sale or exchange of capital assets held one year or less is short-term capital gain, taxable at the same rates as ordinary income. In addition, a maximum rate of 15% applies to “qualified dividend income” (as described above).

Passive Foreign Investment Company Status. Special U.S. federal income tax rules apply to U.S. Shareholders owning capital stock of a PFIC. A foreign corporation will be a PFIC for any taxable year in which 75% or more of its gross income is passive income or in which 50% or more of the average value of its assets is “passive assets” (generally assets that generate passive income or assets held for the production of passive income). For these purposes, passive income excludes certain interest, dividends or royalties from related parties.

If we were a PFIC, each U.S. Shareholder would likely face increased tax liabilities upon the sale or other disposition of shares of our common stock or upon receipt of “excess distributions,” unless the U.S. Shareholder elects (1) to be taxed currently on its pro rata portion of our income, regardless of whether the income was distributed in the form of dividends or otherwise (provided we furnish certain information to our shareholders), or (2) to mark its shares to market by accounting for any difference between the shares’ fair market value and adjusted basis at the end of the taxable year by either an inclusion in income or a deduction from income (provided our

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ADSS, CUFS or common shares satisfy a test for being regularly traded on a qualified exchange or other market). Because of the manner in which we operate our business, we are not, nor do we expect to become, a PFIC.

Controlled Foreign Corporation Status. If more than 50% of either the voting power of all classes of our voting stock or the total value of our stock is owned, directly or indirectly, by citizens or residents of the United States, United States domestic partnerships and corporations or estates or trusts other than foreign estates or trusts, each of which owns 10% or more of the total combined voting power of all classes of our stock entitled to vote, which we refer to as 10-Percent Shareholders, we could be treated as a CFC, under the Code. This classification would, among other consequences, require 10-Percent Shareholders to include in their gross income their pro rata shares of our "Subpart F income" (as specifically defined by the Code) and our earnings invested in U.S. property (as specifically defined by the Code).

In addition, gain from the sale or exchange of our common shares by a United States person who is or was a 10-Percent Shareholder at any time during the five-year period ending with the sale or exchange is treated as dividend income to the extent of the earnings and profits attributable to the stock sold or exchanged. Under certain circumstances, a corporate shareholder that directly owns 10% or more of our voting shares may be entitled to an indirect foreign tax credit for income taxes we paid in connection with amounts so characterized as dividends under the Code.

If we were classified as both a PFIC and a CFC, generally we would not be treated as a PFIC with respect to 10-Percent Shareholders. We believe that we are not and will not become a CFC.

U.S. Federal Income Tax Provisions Applicable to Non-United States Holders. A Non-U.S. Holder means a beneficial owner of our common stock that is (1) a nonresident alien as to the United States for U.S. federal income tax purposes; (2) a corporation created or organized in or under the law of a country, or any of its political subdivisions, other than the United States; or (3) an estate or trust that is not a U.S. Shareholder. A Non-U.S. Shareholder generally will not be subject to U.S. federal income taxes, including U.S. withholding taxes, on any dividends paid on our shares or on any gain realized on a sale, exchange or other disposition of the shares unless the dividends or gain is effectively connected with the conduct by the Non-U.S. Shareholder of trade or business in the United States (and is attributable to a permanent establishment or fixed base the Non-U.S. Shareholder maintains in the United States if an applicable income tax treaty so requires as a condition for the Non-U.S. Shareholder to be subject to U.S. taxation on a net income basis on income related to the common stock). A corporate Non-U.S. Shareholder under certain circumstances may also be subject to an additional "branch profits tax" on that type of income, the rate of which may be reduced pursuant to an applicable income tax treaty. In addition, gain recognized on a sale, exchange or other disposition of our shares by a Non-U.S. Shareholder who is an individual generally will be subject to U.S. federal income taxes if the Non-U.S. Shareholder is present in the United States for 183 days or more in the taxable year in which the sale, exchange or other disposition occurs and certain other conditions are met.

U.S. Information Reporting and Backup Withholding. Dividend payments on shares of our common stock and proceeds from the sale, exchange or redemption of shares of our common stock may be subject to information reporting to the Internal Revenue Service and possible U.S. backup withholding at a current rate of 28%. Backup withholding will not apply to a shareholder who furnishes a correct taxpayer identification number or certificate of foreign status and makes any other required certification or who is otherwise exempt from backup withholding. United States persons who are required to establish their exempt status generally must provide that certification on a properly completed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification). Non-U.S. Shareholders generally will not be subject to U.S. information reporting or backup withholding. However, Non-U.S. Shareholders may be required to provide certification of non-U.S. status in connection with payments received in the United States or through certain U.S. related financial intermediaries.

Backup withholding is not an additional tax. Amounts withheld as backup withholding may be credited against a shareholder's U.S. federal income tax liability, and a shareholder may obtain a refund of any excess amounts withheld under the backup withholding rules by filing the appropriate claim for refund with the Internal Revenue Service and furnishing any required information.

Dutch Taxation

As from April 1, 2009 through June 28, 2010 we believe we should be considered to be a Dutch tax resident. However, with effect from June 29, 2010 forward, we believe we should be considered to be an Irish tax resident, as explained below under the Irish Taxation section, and should no longer be considered to be a Dutch tax resident. In this regard, for the period covering April 1, 2009 through June 28, 2010, the following summary of the material Dutch tax consequences is generally applicable to an investment in shares of our common stock by a beneficial owner who is neither a tax resident nor a deemed tax resident of The Netherlands. This summary does not comprehensively describe all possible tax issues that could influence a prospective shareholder's decision to acquire shares of our common stock. For example, this summary omits from discussion Netherlands' gift, estate and inheritance taxes. The summary is based on the Dutch tax legislation, published case law and other applicable regulations as at the date of this annual report, any of which may change possibly with retroactive effect.

Treatment of ADSs. In general, for Dutch tax purposes, an owner of depositary receipts is considered the owner of the shares of stock represented by depositary receipts. Accordingly, except as otherwise noted, references in this section of the annual report to ownership of shares of our common stock includes ownership of the shares underlying the corresponding ADSs.

Dutch Dividend Withholding Tax. As from January 1, 2007, The Netherlands has unilaterally reduced its dividend withholding tax rate to 15% irrespective of whether the recipient is entitled to the benefits of a tax treaty concluded with The Netherlands. The term "dividends" for this purpose includes, but is not limited to:

- (1) direct or indirect distributions in cash or in kind, deemed or constructive distributions, and repayments of additional paid-in capital not recognized as such for The Netherlands dividend withholding tax purposes;
- (2) liquidation proceeds, proceeds of redemption of shares of common stock or, generally, except if a certain specific exemption applies, consideration paid by us for the repurchase of shares of common stock in excess of the average paid-in capital recognized for The Netherlands dividend withholding tax purposes;
- (3) the par value of shares of common stock issued to a holder of shares of common stock or an increase of the par value of shares of common stock, as the case may be, to the extent that no contribution to capital, recognized for The Netherlands dividend withholding tax purposes, was made or will be made; and
- (4) the partial repayment of paid-in capital, recognized for Netherlands dividend withholding tax purposes, if and to the extent that there are net profits, *overtuivere winst*, for dividend withholding tax purposes, unless the general meeting of our shareholders has previously resolved to make such repayment and provided that the par value of the shares of common stock concerned has been reduced by a corresponding amount by changing our Articles of Association. As a result of contributions in kind (i.e., in shares) to our paid-in capital made prior to the listing of our common shares, a portion of such paid-in capital may not be recognized for Dutch dividend withholding tax purposes.

If a double taxation convention is in effect between The Netherlands and the country of residence of a non-resident shareholder and depending on the terms of that double taxation convention, such non-resident shareholder may be eligible for a full or partial exemption resulting in a lower dividend withholding tax rate than 15%.

For example, under the U.S.-NL Treaty, certain U.S. corporate shareholders owning directly at least 10% of our voting power are eligible for a reduction to 5% with respect to dividends that we pay, unless the shares of common stock held by such residents form part of the business property of a business carried on through a permanent establishment in The Netherlands. The same exception applies if the beneficial owner of the shares, being a citizen or resident of the United States, performs independent personal services from a fixed base situated in The Netherlands and the holding of the shares of common stock in respect of which the dividends are paid pertains to such fixed base in The Netherlands. The U.S.-NL Treaty fully exempts from tax dividends we pay to exempt

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pension organizations and exempt organizations, as defined under the treaty. A shareholder of our common stock, other than an individual, will be ineligible for the benefits of the U.S.-NL Treaty unless the shareholder satisfies certain tests under the limitation on benefits provisions of Article 26 of the U.S.-NL Treaty. To prevent so-called dividend stripping, The Netherlands law generally denies the treaty benefit of a reduced dividend withholding tax rate for any dividend paid to a recipient who is not the “beneficial owner” of the dividend.

A qualified exempt pension organization may obtain a full exemption from the dividend withholding tax if, before the payment of the dividend, the organization gives us in duplicate a signed Form IB 96 USA, along with the requisite banker’s affidavit as described above, and includes IRS Form 6166 for the relevant year or a valid qualification certification issued by the competent Dutch tax office and complies with certain other requirements. Other qualifying exempt organizations are ineligible for relief from withholding at source but may claim a refund of the tax withheld by filing a Form IB 95 USA and complying with certain other formalities.

Holders of shares of our common stock through a depository will initially receive dividends subject to a withholding tax rate of 15%. Upon timely receipt of required documents concerning a holder’s eligibility for the reduced rate under the U.S.-NL Treaty, dependent on the status of the holder, the dividend-disbursing agent (via any nominee) will pay an amount equal to 10% of the dividend to the holder.

Dutch Taxes on Income and Capital Gains. A shareholder of shares of our common stock will not be subject to any Dutch taxes in respect of dividends distributed by us or capital gains realized on the disposition of shares of our common stock (other than the dividend withholding tax described above), provided that:

- (1) such shareholder is neither tax resident nor deemed to be tax resident in The Netherlands, nor has elected to be subject to the rules of the Dutch Income Tax Act 2001 that apply to residents of The Netherlands;
- (2) such shareholder does not have a business or an interest in a business that is, in whole or in part, carried on through a permanent establishment or a permanent representative in The Netherlands and to which business or part of a business, as the case may be, the shares of common stock are attributable;
- (3) such shareholder does not perform independent personal services in The Netherlands giving rise to a fixed base in The Netherlands to which the shares of common stock are attributable; and
- (4) the shares of common stock owned by such shareholder do not form part of a substantial interest or a deemed substantial interest, as defined below, in our share capital or, if such shares of common stock do form part of such an interest, they form part of the assets of a business other than a Dutch business.

Generally, a shareholder of our common stock will have a substantial interest in our shares only if the shareholder, the spouse of the shareholder, certain other relatives (including foster children), or certain persons in the household of the shareholder, alone or together, whether directly or indirectly, own or possess certain rights (e.g., the right of usufruct) in, shares of our stock representing 5% or more of the total issued and outstanding capital (or the issued and outstanding capital of any class of shares), or rights to acquire the shares, whether or not already issued, that represent at any time 5% or more of the total issued and outstanding capital (or the issued and outstanding capital of any class of shares) or the ownership of certain profit participating certificates that relate to 5% or more of the annual profit and/or to 5% or more of the liquidation proceeds. Shareholders of our common stock who do not hold a substantial interest themselves will also be subject to the “substantial interest” regime if their spouse and/or certain other relatives hold a substantial interest. A deemed substantial interest is present if a substantial interest or part of a substantial interest has been disposed of, or is deemed to have been disposed of, without recognition of a gain.

If a shareholder has a substantial interest in the shares of our common stock and is resident of a country with which The Netherlands has concluded a convention to avoid double taxation, such shareholder may, depending on the terms of such double taxation convention, be eligible for an exemption from Dutch tax on capital gains realized upon the disposition or deemed disposition of shares of our common stock, or to a full or partial exemption from Netherlands income tax on dividends we pay.

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Under the U.S.-NL Treaty, capital gains realized by a shareholder that has a substantial interest in the shares of our common stock and is a resident of the United States (as defined in the U.S.-NL Treaty) upon the disposition of shares of our common stock, are, with certain exceptions, generally exempt from Dutch tax.

As indicated above, a shareholder of shares of our common stock, other than an individual, will be ineligible for the benefits of the U.S.-NL Treaty if such shareholder does not satisfy the limitation on benefits provisions under Article 26 of the U.S.-NL Treaty.

Other Taxes and Duties. No other Dutch registration tax, transfer tax, stamp duty or any similar documentary tax or duty will be payable by our investors in respect of or in connection with the subscription, issue, placement, allotment or transfer of shares of our common stock.

Irish Taxation

As discussed above, with effect from June 29, 2010 forward, we believe we should be considered to be an Irish tax resident and should no longer be considered to be a Dutch tax resident. Accordingly, we believe that the Irish tax implications set out below are relevant for shareholders who invest in shares of our common stock and hold the shares as capital assets.

The following is a summary of the material Irish tax consequences generally applicable to shareholders who invest in shares of our common stock, who are neither tax resident, nor ordinarily resident in, Ireland. This summary does not contain a detailed description of all Irish tax consequence to all shareholders, which depend on that shareholder's particular circumstances, and should not be a substitute for advice from an appropriate professional adviser in relation to all of the possible tax issues that could influence a prospective shareholder's decision to acquire shares of our common stock. This summary is based on Irish tax legislation, relevant Irish case law, other Irish Revenue guidance and published opinions and administrative pronouncements of the Irish tax authorities, income tax treaties to which Ireland is a party, and such other authorities as we have considered relevant, all as in effect and available as at the date of this annual report, any of which may change possibly with retroactive effect.

Treatment of ADSs. In general, for Irish tax purposes, an owner of depositary receipts is considered the owner of the shares of stock represented by depositary receipts. Accordingly, except as otherwise noted, references in this section of the annual report to ownership of shares of our common stock includes ownership of the shares underlying the corresponding ADSs.

Irish Dividend Withholding Tax. Distributions made by us to non-Irish resident shareholders will, subject to certain exceptions, be subject to Irish dividend withholding tax at the standard rate of income tax (which is currently 20%) unless you are a shareholder who falls within one of the categories of exempt shareholders referred to below. Where dividend withholding tax applies, we will be responsible for withholding the dividend withholding tax at source. For dividend withholding tax purposes, a dividend includes any distribution made by us to our 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 shareholders prior to payment of the dividend.

Certain of our non-Irish tax resident shareholders (both individual and corporate) are 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 us where the shareholder is:

- 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;

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- 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 recognized 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 recognized 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, the shareholder has made the appropriate non-resident declaration to us prior to payment of the dividend.

Where our shareholders hold ADSs, they may not be required to submit an appropriate declaration in order to receive dividends without deduction of Irish dividend withholding tax provided their registered address is in the US.

Non-resident shareholders who are entitled to an exemption, as outlined above, and held their shares on June 23, 2009, will generally be able to receive dividends without any dividend withholding tax (and without the need to complete the aforementioned non-resident declaration forms) for a period of one year from June 29, 2010. Shareholders who acquired their shares after June 23, 2009 will not be entitled to this one year grace period and will be subject to the non-resident declaration procedures described below.

After this one year period, shareholders must complete and send to us a non-resident declaration form in order to avoid Irish dividend withholding tax. If the appropriate declaration is not made, these shareholders will be liable for Irish dividend withholding tax of 20% on dividends paid by us and may not be entitled to offset this tax. In this case, it would be necessary for shareholders to apply for a refund of the withholding tax directly from the Irish Revenue authorities.

Shareholders that do not fulfil the documentation requirements or otherwise do not qualify for one of the withholding tax exemptions outlined above may be able to claim treaty benefits under a double taxation convention. In this regard, where a double taxation convention is in effect between Ireland and the country of residence of a non-resident shareholder, depending on the terms of that double taxation convention, such a non-resident shareholder may be eligible for a full or partial exemption resulting in a lower dividend withholding tax rate than 20%.

For example, under the U.S.-Ireland Treaty, certain U.S. corporate shareholders owning directly at least 10% of our voting power, are eligible for a reduction in withholding tax to 5% with respect to dividends that we pay, unless the shares of common stock held by such residents form part of the business property of a business carried on through a permanent establishment in Ireland. The same exception applies if the beneficial owner of the shares, being a citizen or resident of the United States, performs independent personal services from a fixed base situated in Ireland and the holding of the shares of common stock in respect of which the dividends are paid pertains to such fixed base in Ireland. A shareholder of our common stock, other than an individual, will be ineligible for the benefits of the U.S.-Irish Treaty unless the shareholder satisfies certain tests under the LOB provisions of Article 23 of the U.S.-Ireland Treaty. To prevent so-called dividend stripping, Irish law generally denies the treaty benefit of a reduced dividend withholding tax rate for any dividend paid to a recipient who is not the "beneficial owner" of the dividend.

Irish Taxes on Income and Capital Gains. Shareholders who are neither tax resident of, nor ordinarily resident in, Ireland should not be subject to any Irish taxes in respect of dividends distributed by us (other than the dividend withholding tax described above) or capital gains realized on the disposition of shares of our common stock 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. 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 realized (subject to the availability of exemptions or reliefs).

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Capital Acquisitions Tax. Irish capital acquisitions tax (which we refer to as CAT) applies to gifts and inheritances. Subject to certain tax-free thresholds (which are determined by the relationship between the donor and successor or donee), gifts and inheritances are liable to tax at 25%. Gifts and inheritances passing between spouses are exempt from CAT.

Where a gift or inheritance is taken under a disposition made on or after December 1, 1999, it will be within the charge of CAT:

- to the extent that the property of which the gift or inheritance consists is situated in Ireland at the date of the gift or inheritance;
- where the person making the gift or inheritance is or was resident or ordinarily resident in Ireland at the date of the disposition under which the gift or inheritance is taken;
- in the case of an appointment from a discretionary trust where the person who settled the assets on trust was resident or ordinarily resident in Ireland (i) at the date he made the settlement, or (ii) at the date of the appointment of the property from the trust or, (iii) if the appointment occurs after his death, at the date of his death; or
- where the person receiving the gift or inheritance is resident or ordinarily resident in Ireland at the date of the gift or inheritance.

A non-Irish domiciled individual will not be regarded as resident or ordinarily resident in Ireland for CAT purposes on a particular date unless they are resident or ordinarily resident in Ireland on that date and have been resident in Ireland for the 5 consecutive tax years immediately preceding the year of assessment in which the date falls.

A gift or inheritance of our common stock will be within the charge of CAT, notwithstanding that the person from whom or by whom the gift or inheritance is received is domiciled or resident outside Ireland.

The Estate Tax Convention between Ireland and the United States generally provides for CAT paid on inheritances in Ireland to be credited against U.S. federal estate tax payable in the United States and for tax paid in the United States to be credited against tax payable in Ireland, based on priority rules set forth in the Estate Tax Convention. The Estate Tax Convention does not apply to CAT paid on gifts.

Irish Stamp Duty. Any electronic transfers of shares through the CHESSE or the ADR system will be treated as exempt from stamp duty in Ireland. If a shareholder undertakes 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.

Documents Available for Review

We are subject to the reporting requirements of the Exchange Act applicable to “foreign private issuers” and in accordance therewith file reports, including annual reports, and other information with the SEC. Such reports and other information have been filed electronically with the SEC since November 4, 2002. The SEC maintains a site on the Internet, at www.sec.gov, which contains reports and other information regarding issuers that file electronically with the SEC. In addition, such reports may be obtained, upon written request, from our Company Secretary at Europa House, Second Floor, Harcourt Center, Harcourt Street, Dublin 2, Republic of Ireland or our Company Secretary — Australia at Level 3, 22 Pitt Street, Sydney, NSW 2000. Such reports and other information filed with the SEC prior to November 2002 may be inspected and copied at prescribed rates at the public reference facilities maintained by the SEC at 100 F Street N.E., Washington, D.C. 20549, or obtained by written request to our Company Secretary. Although, as a foreign private issuer, we are exempt from the rules under the Exchange Act prescribing the furnishing and content of proxy statements and annual reports to shareholders and the quarterly reporting requirements of the Exchange Act, we:

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- furnish our shareholders with annual reports containing consolidated financial statements examined by an independent registered public accounting firm; and
- furnish quarterly reports for the first three quarters of each fiscal year containing unaudited consolidated financial information in filings with the SEC under Form 6-K.

Item 11. Quantitative and Qualitative Disclosures About Market Risk

Cash and cash equivalents include amounts on deposit in banks and cash invested temporarily in various highly liquid financial instruments with original maturities of three month or less when acquired.

We have operations in foreign countries and, as a result, are exposed to foreign currency exchange rate risk inherent in purchases, sales, assets and liabilities denominated in currencies other than the U.S. dollar. We also are exposed to interest rate risk associated with our long-term debt and to changes in prices of commodities we use in production.

Periodically, interest rate swaps, commodity swaps and forward exchange contracts are used to manage market risks and reduce exposure resulting from fluctuations in interest rates, commodity prices and foreign currency exchange rates. Our policy is to enter into derivative instruments solely to mitigate risks in our business and not for trading or speculative purposes.

Foreign Currency Exchange Rate Risk

We have significant operations outside of the United States and, as a result, are exposed to changes in exchange rates which affect our financial position, results of operations and cash flow. In addition, payments to the AICF are required to be made in Australian dollars which, because the majority of our revenues is produced in U.S. dollars, exposes us to risks associated with fluctuations in the U.S. dollar/Australian dollar exchange rate. See Item 3, “Key Information — Risk Factors.”

For our fiscal year ended March 31, 2010, the following currencies comprised the following percentages of our net sales, cost of goods sold, expenses and liabilities:

	US\$	A\$	NZ\$	Other (1)
Net sales	71.9%	19.1%	4.5%	4.5%
Cost of goods sold	69.6%	20.7%	5.1%	4.6%
Expenses (2)	33.7%	62.1%	1.3%	2.9%
Liabilities (excluding borrowings) (2)	44.2%	54.4%	0.6%	0.8%

For our fiscal year ended March 31, 2009, the following currencies comprised the following percentages of our net sales, cost of goods sold, expenses and liabilities:

	US\$	A\$	NZ\$	Other (1)
Net sales	75.9%	16.1%	4.2%	3.8%
Cost of goods sold	74.9%	16.7%	4.2%	4.2%
Expenses (2)	76.7%	15.0%	2.7%	5.6%
Liabilities (excluding borrowings) (2)	17.7%	79.8%	0.9%	1.6%

(1) Comprised of Philippine Pesos and Euros.

(2) Liabilities include A\$ denominated asbestos liability, which was initially recorded in the fourth quarter of fiscal year 2006. Expenses include adjustments to the liability. See Item 3, “Key Information — Risk Factors,” Item 4, “Information on the Company — Commitment to Provide Funding on a Long-Term Basis in Respect of Asbestos-Related Liabilities of Former Subsidiaries,” and Note 11 of our consolidated financial statements in Item 18 for further information regarding the asbestos liability.

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We purchase raw materials and fixed assets and sell some finished product for amounts denominated in currencies other than the functional currency of the business in which the related transaction is generated. In order to protect against foreign exchange rate movements, we may enter into forward exchange contracts timed to mature when settlement of the underlying transaction is due to occur. As of March 31, 2010, there were no material contracts outstanding.

Funding Under the Amended FFA

The AS to \$ assets and liabilities rate moved unfavorably for us from 1.4552 as of March 31, 2009 to 1.0919 as of March 31, 2010, a 25.0% movement, resulting in a \$220.9 million unfavorable impact on our fiscal year 2010 net income. Assuming that our unfunded net Amended FFA liability in Australian dollars remains unchanged at AS\$991.9 million and that we do not hedge this foreign exchange exposure, a 10% favorable or unfavorable movement in the AS to \$ exchange rate (at the March 31, 2010 exchange rate of 1.0919) would have approximately a \$82.5 million and \$101.0 million favorable and unfavorable impact, respectively, on our net income.

For fiscal year 2009, assuming that our unfunded net Amended FFA liability in Australian dollars remains unchanged at AS\$958.0 million and that we do not hedge this foreign exchange exposure, a 10% favorable or unfavorable movement in the AS to \$ exchange rate (at the March 31, 2009 exchange rate of 1.4552) would have approximately a \$59.8 million and \$73.2 million favorable and unfavorable impact, respectively, on our net income.

Interest Rate Risk

We have market risk from changes in interest rates, primarily related to our borrowings. As of March 31, 2010 and 2009, all of our borrowings were variable rate. From time to time, we may enter into interest rate swap contracts in an effort to mitigate interest rate risk. As of March 31, 2010, we had six interest rate swap contracts with a fair value of \$2.4 million, which are included in Accounts Payable. For all of these interest rate swap contracts, we have agreed to pay fixed interest rates while receiving the floating interest rate. These contracts were entered into to protect against upward movements in LIBOR and the associated interest the Company pays on its external debt.

An assumed 9 basis point move in the interest rates applicable to our borrowings (a 10 percent move against our weighted-average floating rate interest rates as of March 31, 2010) would have had a 0.8% change on our fiscal year 2010 income before income taxes.

For fiscal year 2009, an assumed 15 basis point move in the interest rates applicable to our borrowings (a 10 percent move against our weighted-average floating rate interest rates as of March 31, 2009) would have had a 0.3% change on our fiscal year 2009 loss before income taxes.

Commodity Price Risk

We are exposed to changes in prices of commodities used in our operations, primarily associated with energy, fuel and raw materials such as pulp and cement. Pulp has historically demonstrated more price sensitivity than other raw materials that we use in our manufacturing process. In addition, fuel and cement prices rose in fiscal years 2007 and 2008, but declined in fiscal year 2009 and 2010. We expect that pulp prices will rise and that energy, fuel and cement prices will continue to fluctuate in the near future. To minimize the additional working capital requirements caused by rising prices related to these commodities, we have entered into contracts that discount pulp prices in relation to various pulp indices over a longer-term and purchase our pulp from several qualified suppliers in an attempt to mitigate price increases and supply interruptions. However, if such commodity prices do not continue to rise, our cost of sales may be negatively impacted due to fixed pricing over the longer-term. We have assessed the market risk for pulp and believe that, a \$100 per metric ton movement in market pulp prices, which represents approximately 10% of the market pulp price at March 31, 2010, would have had approximately a 1.6% change in our cost of sales in fiscal year 2010. We have also assessed the market risk for cement and believe that, a \$9 per metric ton price movement in cement prices, which represents approximately 10% of the market cement price at March 31, 2010, would have had approximately a 0.6% change in cost of sales in fiscal year 2010.

For fiscal year 2009, we had assessed the market risk for pulp and believe that, a \$72 per metric ton movement in market pulp prices, which represented approximately 10% of the market pulp price at March 31, 2009, would have had approximately a 0.7% change in our cost of sales in fiscal year 2009. We also assessed the market risk for

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cement and believe that, a \$10 per metric ton price movement in cement prices, which represents approximately 10% of the market cement price at March 31, 2009, would have had approximately a 0.4% change in cost of sales in fiscal year 2009.

Item 12A. Debt Securities

Not applicable.

Item 12B. Warrants and Rights

Not applicable.

Item 12C. Other Securities

Not applicable.

Item 12D. American Depositary Shares

We have listed our securities for trading on the NYSE. We sponsor a program whereby beneficial ownership of five CUPS is represented by one ADS, which is issued by The Bank of New York Mellon. These ADSs trade on the NYSE in the form of ADRs under the symbol "JHX." Trading principally takes place between the hours of 9:30 a.m. and 4:00 p.m. Eastern Time on each weekday (excluding U.S. public holidays).

The following is a summary of the fee provisions of our deposit agreement with The Bank of New York Mellon. For more complete information regarding ADRs, the entire deposit agreement should be read. The deposit agreement, as amended, has been filed as an exhibit to this annual report as Exhibit 2.1.

Persons depositing or withdrawing share or ADS holders must pay:

Taxes and other governmental charges

For:

As necessary

Registration or transfer fees

Transfer and registration of shares on our share register to or from the name of the depositary or its agent when you deposit or withdraw shares

Any charges incurred by the depositary or its agents for servicing the deposited securities

As necessary

Expenses of the depositary

Converting foreign currency to U.S. dollars

\$5.00 (or less) per 100 ADSs (or portion of 100 ADSs)

Execution and delivery of ADSs, including issuances resulting from a distribution of shares, rights, or other property

\$0.02 (or less) per ADS (or portion thereof)

Cash distributions and depositary services

If any tax or other governmental charge becomes payable with respect to any security on deposit, such tax or other governmental charge is payable by the ADS holder to the Depositary. The Depositary may refuse to effect any transfer or withdrawal of a deposited security until such payment is made. The Depositary may withhold any dividends or other distributions or may sell for the account of the ADS holder any part or all of the deposited securities, and may apply such dividends, other distributions, or proceeds of any such sale in payment of such tax or other governmental charge and the ADS holder will remain liable for any deficiency.

All inquiries and correspondence regarding ADSs should be directed to The Bank of New York Mellon, depositary for our ADSs, at 101 Barclay Street, 22W, New York, NY 10286. To speak directly to a Bank of New York Mellon representative, please call 1-888-BNY-ADRS (1-888-269-2377) if you are calling from within the United States. If you are calling from outside the U.S., please call 201-680-6825. You may also send an e-mail inquiry to shrelations@bnymellon.com or visit the website at www.bnymellon.com/shareowner.

PART II

Item 13. Defaults, Dividend Arrearages and Delinquencies

None.

Item 14. Material Modifications to the Rights of Security Holders and Use of Proceeds

In connection with implementation of Stage 2 of our Re-domicile on June 17, 2010, we adopted articles of association consistent with Irish company law and SE regulations resulting in substantial changes to the rights of security holders. The information required by this Item is incorporated by reference to the section of this report entitled “Additional Information — Key Provisions of our Articles of Association” contained in Item 10.

Item 15. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Exchange Act) as of the end of the period covered by this report. In designing and evaluating our disclosure controls and procedures, our management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives and are subject to certain limitations, including the exercise of judgment by individuals, the difficulty in identifying unlikely future events, and the difficulty in eliminating misconduct completely. Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that, our disclosure controls and procedures were effective at a reasonable assurance level as of March 31, 2010, to ensure the information required to be disclosed in the reports that we file or submit under the Exchange Act were recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC and that such information was accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, to allow for timely decisions regarding required disclosures.

Management’s Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rule 13a-15(f) of the Exchange Act. Because of its inherent limitations, internal control over financial reporting may not prevent or detect all misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

We assessed the effectiveness of our internal control over financial reporting as of March 31, 2010. In making this assessment, we used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in *Internal Control — Integrated Framework*. Based on our assessment using those criteria, we concluded that our internal control over financial reporting was effective as of March 31, 2010.

The effectiveness of our internal control over financial reporting as of March 31, 2010 has been audited by Ernst & Young LLP, an independent registered public accounting firm, as stated in their report below.

Changes in Internal Control over Financial Reporting

There were no changes in our internal controls over financial reporting that occurred during the period covered by this annual report on Form 20-F that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Report of Independent Registered Public Accounting Firm

The Board of Directors and Shareholders of James Hardie Industries SE:

We have audited James Hardie Industries SE and subsidiaries' internal control over financial reporting as of March 31, 2010, based on criteria established in Internal Control —Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). James Hardie Industries SE's management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, James Hardie Industries SE maintained, in all material respects, effective internal control over financial reporting as of March 31, 2010 based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of James Hardie Industries SE and subsidiaries as of March 31, 2010 and 2009, and the related statements of operations, changes in shareholders' deficit and cash flows for the years ended March 31, 2010 and 2009, and our report dated May 27, 2010 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

Orange County, California
May 27, 2010

Item 16A. *Audit Committee Financial Expert*

Our Board has determined that Messrs. Anderson, Harrison and Dilger are “audit committee financial experts,” as such term is defined by applicable SEC rules, and qualify as independent under the rules of the NYSE.

Under the NYSE listing standards applicable to U.S. companies, if a member of an audit committee simultaneously serves on the audit committees of more than three public companies, the listed company’s board must determine that such simultaneous service would not impair the ability of such member to effectively serve on the listed company’s audit committee.

Item 16B. *Code of Business Conduct and Ethics*

We seek to maintain high standards of integrity and we are committed to ensuring that we conduct our business in accordance with high standards of ethical behavior. We require our employees to comply with the spirit and the letter of all laws and other statutory requirements governing the conduct of our activities in each country in which we operate. Our Code of Business Conduct and Ethics applies to all of our employees and directors. The Code of Business Conduct and Ethics covers many aspects of our policy that governs compliance with legal and other responsibilities to stakeholders. All of our directors and employees worldwide are reminded annually of the existence of the Code of Business Conduct and Ethics and asked to confirm that they have read it.

Our Code of Business Conduct and Ethics policy provides employees with advice about who they should contact if they have information or questions regarding violations of the policy. We have a telephone Ethics Hotline operated by an independent external provider which allows employees to report anonymously any concerns. All of our employees worldwide are reminded annually of the existence of the Ethics Hotline. Our Code of Business Conduct and Ethics policy prohibits any employee from retaliating or taking any adverse action against anyone for raising or helping to resolve a concern about integrity.

All complaints, whether to the Ethics Hotline or otherwise, are initially reported directly to the General Counsel and Director of Internal Audit (except in cases where the complaint refers to one of them). The most serious complaints are referred immediately to the Chairman of the Audit Committee and Board; less serious complaints are reported to the Audit Committee on a quarterly basis and at different levels of detail, depending on the nature of the complaint.

We have not granted any waivers from the provisions of our Code of Business Conduct and Ethics during fiscal year 2010.

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

Item 16C. Principal Accountant Fees and Services**Fees Paid to Our Independent Registered Public Accounting Firm**

In December 2007, our Audit Committee and Supervisory Board undertook a competitive bid process to evaluate the alternatives for our independent registered public accounting firm in the interest of good corporate governance. In our 2008 AGM, our shareholders ratified a resolution of the Supervisory Board to approve the engagement of Ernst & Young LLP as our independent registered public accounting firm for the year commencing April 1, 2008.

Fees paid to our independent registered public accounting firm for services provided for fiscal years 2010, 2009 and 2008 were as follows:

(In millions)	Fiscal Years Ended March 31,		
	2010	2009	2008
Audit Fees (1)	\$ 2.5	\$ 2.4	\$ 4.2
Audit-Related Fees (2)	—	—	—
Tax Fees (3)	—	—	4.9

- (1) Audit Fees include the aggregate fees for professional services rendered by our independent registered public accounting firm. Professional services include the audit of our annual financial statements and services that are normally provided in connection with statutory and regulatory filings. During fiscal year ended March 31, 2008, total audit fees includes fees for Sarbanes-Oxley compliance testing of \$2.0 million, \$0.8 million of which related to Sarbanes-Oxley compliance testing performed for fiscal year 2007, but paid in fiscal year 2008. In addition, during fiscal year ended March 31, 2008, total audit fees includes fees for statutory reporting of \$0.8 million, \$0.4 million of which related to statutory reporting fees performed for fiscal year 2007, but paid in fiscal year 2008.
- (2) Audit-Related Fees include the aggregate fees billed for assurance and related services rendered by our independent registered public accounting firm. Our independent registered public accounting firm did not engage any temporary employees to conduct any portion of the audit of our financial statements for the fiscal years ended March 31, 2010, 2009 and 2008.
- (3) Tax Fees include the aggregate fees billed for tax compliance, tax advice and tax planning services rendered by our independent registered public accounting firm.

Audit Committee Pre-Approval Policies and Procedures

In accordance with our Audit Committee's policy and the requirements of the law, all services provided by our independent registered public accounting firm are pre-approved annually by the Audit Committee. Pre-approval includes a list of specific audit and non-audit services in the following categories: audit services, audit-related services, tax services and other services. Any additional services that we may ask our independent registered public accounting firm to perform will be set forth in a separate document requesting Audit Committee approval in advance of the service being performed.

All of the services pre-approved by the Audit Committee are permissible under the SEC's auditor independence rules. To avoid potential conflicts of interest, the law prohibits a publicly traded company from obtaining certain non-audit services from its independent registered public accounting firm. We obtain these services from other service providers as needed.

Item 16D. Exemptions from the Listing Standards for Audit Committees

Not Applicable.

Item 16E. Purchases of Equity Securities by the Issuer and Affiliated Purchasers

None.

Item 16F. Change in Registrant's Certifying Accountant

During the years ended March 31, 2010 and 2009, and through the date of this report, the principal independent accountant engaged to audit our financial statements, Ernst & Young LLP, has not resigned, indicated that it has declined to stand for re-election after the completion of its current audit or been dismissed.

Item 16G. Corporate Governance

See Item 6, "Directors, Senior Management and Employees — Compliance with Corporate Governance Requirements" on pages 89-90 for significant ways in which our corporate governance practices differ from those followed by U.S. domestic companies under NYSE listing standards.

Item 17. Financial Statements

Not Applicable.

PART III

Item 18. Financial Statements

See pages F-1 through F-47 included at the end of this annual report.

Item 19. Exhibits

Documents filed as exhibits to this annual report:

Exhibit Number	Description of Exhibits
1.1	Articles of Association dated June 17, 2010 of James Hardie Industries SE, a European Company registered in Ireland (13)
2.1	Deposit Agreement dated as of September 24, 2001, as amended and restated as of February 19, 2010 and as further amended on June 17, 2010, between James Hardie Industries SE and The Bank of New York Mellon, as depository
2.2	Amended and Restated Common Terms Deed Poll dated October 6, 2009 among James Hardie International Finance B.V., James Hardie Building Products, Inc., James Hardie International Finance Limited and James Hardie Industries N.V.
2.3	Amended and Restated Common Terms Deed Poll dated December 21, 2009 among James Hardie International Finance Limited, James Hardie Building Products, Inc. and James Hardie Industries N.V.
2.4	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 (6)
2.5	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 (6)
2.6	Form of Guarantee Deed between James Hardie Industries N.V. and Financier (2)
2.7	Form of Lender Deeds of Confirmation dated June 23, 2009 between James Hardie International Finance B.V., James Hardie Building Products, Inc., James Hardie Industries N.V. and Financier (7)
2.8	Form of Novation Deed dated October 9, 2009 between James Hardie International Finance Limited, James Hardie International Finance B.V., James Hardie Building Products, Inc., James Hardie Industries N.V. and Financier (14)

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Exhibit Number	Description of Exhibits
2.9	AET Guarantee Trust Deed dated December 19, 2006 between James Hardie Industries N.V. and AET Structured Finance Services Pty Limited (14)
2.10	Amending Deed to the AET Guarantee Trust Deed dated October 6, 2009 between James Hardie Industries N.V. and AET Structured Finance Services Pty Limited
2.11	Performing Subsidiary Undertaking and Guarantee Trust Deed dated December 19, 2006 between James Hardie 117 Pty Limited and AET Structured Finance Services Pty Limited (14)
2.12	Amending Deed to the Performing Subsidiary Undertaking and Guarantee Trust Deed dated October 6, 2009 between James Hardie 117 Pty Limited and AET Structured Finance Services Pty Limited
2.13	Form of Term Facility Agreement between James Hardie International Finance Limited and Financier (9)
4.1	Amended and Restated James Hardie Industries SE 2001 Equity Incentive Plan (10)
4.2	Executive Incentive Plan 2009 (7)
4.3	Amended and Restated James Hardie Industries SE Supervisory Board Share Plan 2006 (11)
4.4	Amended and Restated James Hardie Industries SE Managing Board Transitional Stock Option Plan 2005 (11)
4.5	Amended and Restated James Hardie Industries SE Long Term Incentive Plan 2006 (12)
4.6	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 (2)
4.7	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 (2)
4.8	Form of Deed of Access, Insurance and Indemnity between James Hardie Industries N.V. and Supervisory Board directors and Managing Board directors (6)
4.9	Form of Indemnity Agreement between James Hardie Building Products, Inc. and Supervisory Board directors, Managing Board directors and certain executive officers (6)
4.10	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 (7)
4.11	Lease between 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 (7)
4.12	Variation of Lease dated March 23, 2004, among Brookfield Multiplex Rosehill Landowner Pty Ltd (f/k/a Multiplex Rosehill Landowner Pty Ltd) 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 (1)
4.13	Lease dated April 3, 2009, between Welshpool Landowner Pty and James Hardie Australia Pty Limited re premises at Rutland Avenue, Welshpool, Western Australia, Australia (7)
4.14	Lease Amendment dated March 23, 2004, among Brookfield Multiplex Meeandah Landowner Pty Ltd (f/k/a Multiplex Meeandah Landowner Pty Ltd) 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 (1)
4.15	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 (1)
4.16	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 44-74 O'Rorke Road, Penrose, Auckland, New Zealand (1)
4.17	Ownership transfer related to corner of O'Rorke and Station Roads, Penrose, Auckland, New Zealand and 44-74 O'Rorke Road, Penrose, Auckland, New Zealand effective June 30, 2005 (3)

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Exhibit Number	Description of Exhibits
4.18	Industrial Building Lease Agreement, effective October 6, 2000, between James Hardie Building Products, Inc. and Fortra Fiber-Cement L.L.C., re premises at Waxahachie, Ellis County, Texas (2)
4.19	Asset Purchase Agreement by and between James Hardie Building Products, Inc. and Cemplank, Inc. dated as of December 12, 2001 (2)
4.20	Amended and Restated Stock Purchase Agreement dated March 12, 2002, between BPB U.S. Holdings, Inc. and James Hardie Inc. (2)
4.21	Amended and Restated Final Funding Agreement dated November 21, 2006 (4)
4.22	Amended FFA Amendment dated August 6, 2007 (6)
4.23	Amended FFA Amendment dated November 8, 2007 (6)
4.24	Amended FFA Amendment dated June 11, 2008 (6)
4.25	Address for Service of Notice on Trustee dated June 13, 2008 (6)
4.26	Amended FFA Amendment dated July 17, 2008 (7)
4.27	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 (5)
4.28	Deed Poll dated June, 11, 2008 — amendment of the Asbestos Injuries Compensation Fund Amended and Restated Trust Deed (6)
4.29	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 (3)
4.30	Amending Agreement (Parent Guarantee) dated June 23, 2009 by and among Asbestos Injuries Compensation Fund Limited, The State of New South Wales, and James Hardie Industries N.V.
4.31	Deed of Release by and between James Hardie Industries N.V. and The State of New South Wales dated June 22, 2006 (3)
4.32	Second Irrevocable Power of Attorney by and between Asbestos Injuries Compensation Fund Limited and The State of New South Wales dated December 14, 2006 (5)
4.33	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 (5)
4.34	Intercreditor Deed dated December 19, 2006 between The State of New South Wales, James Hardie Industries N.V., Asbestos Injuries Compensation Fund Limited and AET Structured Finance Services Pty Limited (14)
4.35	Letter agreement dated March 21, 2007 amending 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 (14)
4.36	Amending Deed (Intercreditor Deed) dated June 23, 2009 between The State of New South Wales, James Hardie Industries N.V., Asbestos Injuries Compensation Fund Limited and AET Structured Finance Services Pty Limited
4.37	Performing Subsidiary Intercreditor Deed dated December 19, 2006 between The State of New South Wales, James Hardie 117 Pty Limited, Asbestos Injuries Compensation Fund Limited and AET Structured Finance Services Pty Limited (14)
4.38	Letter agreement dated March 21, 2007 amending 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 (14)
4.39	Amending Deed (Performing Subsidiary Intercreditor Deed) dated June 23, 2009 between The State of New South Wales, James Hardie 117 Pty Limited, Asbestos Injuries Compensation Fund Limited and AET Structured Finance Services Pty Limited

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Exhibit Number	Description of Exhibits
4.40	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 (8)
4.41	Agreement on the Involvement of Employees dated February 10, 2010 between James Hardie Industries N.V., JH CBM plc, James Hardie International Holdings N.V., JHIHCBM and the Special Negotiating Bodies (9)
8.1	List of significant subsidiaries of James Hardie Industries SE
12.1	Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
12.2	Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
13.1	Certification of the Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
15.1	Consent of Ernst & Young LLP, independent registered public accounting firm
15.2	Consent of PricewaterhouseCoopers, LLP, independent registered public accounting firm
15.3	Consent of KPMG Actuaries Pty Ltd
99.1	Excerpts of the ASTC Settlement Rules as of March 31, 2009 (7)
99.2	Subdivision B, Division 3 of Part 7.2 of the Corporations Act 2001 as of January 1, 2009 (7)
99.3	ASIC Class Order 02/311, dated November 3, 2002 (2)
99.4	ASIC Modification, dated March 7, 2002 (2)
99.5	ASIC Class Order 04/166, dated February 26, 2004 (3)

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- (1) Previously filed as an exhibit to our Annual Report on Form 20-F dated November 22, 2004 and incorporated herein by reference.
 - (2) Previously filed as an exhibit to our Annual Report on Form 20-F dated July 7, 2005 and incorporated herein by reference.
 - (3) Previously filed as an exhibit to our Annual Report on Form 20-F dated September 29, 2006 and incorporated herein by reference.
 - (4) Previously filed as an exhibit to our Current Report on Form 6-K dated January 5, 2007 and incorporated herein by reference.
 - (5) Previously filed as an exhibit to our Annual Report on Form 20-F dated July 6, 2007 and incorporated herein by reference.
 - (6) Previously filed as an exhibit to our Annual Report on Form 20-F dated July 8, 2008 and incorporated herein by reference.
 - (7) Previously filed as an exhibit to our Form F-4 dated June 23, 2009 and incorporated herein by reference.
 - (8) Previously filed as an exhibit to our Amendment No. 2 to Form F-4 dated July 10, 2009 and incorporated herein by reference.
 - (9) Previously filed as an exhibit to our Post Effective Amendment No. 1 to Form F-4 dated February 19, 2010 and incorporated herein by reference.
 - (10) Previously filed as an exhibit to our Post Effective Amendment No. 2 to Form S-8 (Registration No. 333-14036) dated June 17, 2010 and incorporated herein by reference.
 - (11) Previously filed as an exhibit to our Post Effective Amendment No. 2 to Form S-8 (Registration No. 333-153446) dated June 17, 2010 and incorporated herein by reference.

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- (12) Previously filed as an exhibit to our Post Effective Amendment No. 2 to Form S-8 (Registration No. 333-161482) dated June 17, 2010 and incorporated herein by reference.
- (13) Previously filed as an exhibit to our Current Report on Form 6-K dated June 18, 2010 and incorporated herein by reference.
- (14) Previously filed as an exhibit to our Post Effective Amendment No. 1 to Form F-4 dated June 17, 2010 and incorporated herein by reference.

SIGNATURES

The registrant hereby certifies that it meets all of the requirements for filing on Form 20-F and that it has duly caused and authorized the undersigned to sign this annual report on its behalf.

JAMES HARDIE INDUSTRIES SE

By: /s/ Louis Gries

Louis Gries
Chief Executive Officer

Date: June 30, 2010

**JAMES HARDIE INDUSTRIES SE
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Report of Independent Registered Public Accounting Firm

The Board of Directors and Shareholders of
James Hardie Industries SE:

We have audited the accompanying consolidated balance sheets of James Hardie Industries SE and Subsidiaries (formerly “James Hardie Industries N.V. and Subsidiaries”) as of March 31, 2010 and 2009, and the related consolidated statements of operations, changes in shareholders’ deficit, and cash flows for the years then ended. These financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of James Hardie Industries SE and Subsidiaries at March 31, 2010 and 2009, and the consolidated results of their operations and their cash flows for the years then ended in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), James Hardie Industries SE’s internal control over financial reporting as of March 31, 2010, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated May 27, 2010 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

Orange County, California
May 27, 2010

Report of Independent Registered Public Accounting Firm

To the Board of Directors and Shareholders of
James Hardie Industries SE (formerly James Hardie Industries N.V.):

In our opinion, the accompanying consolidated statement of operations, cash flows, and changes in shareholders' deficit for the year ended March 31, 2008 present fairly, in all material respects, the consolidated results of James Hardie Industries SE (formerly James Hardie Industries N.V.) and its subsidiaries for the year ended March 31, 2008, in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit of these statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

As discussed in Note 14 to the consolidated financial statements, during the year ended March 31, 2008, the Company changed the manner in which it accounts for uncertain tax positions.

/s/ PricewaterhouseCoopers LLP
Los Angeles, California
June 27, 2008

James Hardie Industries SE and Subsidiaries
Consolidated Balance Sheets

	(Millions of US dollars)	
	March 31 2010	March 31 2009
Assets		
Current assets:		
Cash and cash equivalents	\$ 19.2	\$ 42.4
Restricted cash and cash equivalents	0.6	0.3
Restricted cash and cash equivalents — Asbestos	44.5	45.4
Restricted short-term investments — Asbestos	13.3	52.9
Accounts and other receivables, net of allowance for doubtful accounts of \$2.3 million and \$1.4 million as of March 31, 2010 and March 31, 2009, respectively	155.0	111.4
Inventories	149.1	128.9
Prepaid expenses and other current assets	25.6	20.4
Insurance receivable — Asbestos	16.7	12.6
Workers' compensation — Asbestos	0.1	0.6
Deferred income taxes	24.0	25.5
Deferred income taxes — Asbestos	16.4	12.3
Total current assets	<u>464.5</u>	<u>452.7</u>
Restricted cash and cash equivalents	4.7	5.0
Property, plant and equipment, net	710.6	700.8
Insurance receivable — Asbestos	185.1	149.0
Workers' compensation — Asbestos	98.8	73.8
Deferred income taxes	3.2	2.1
Deferred income taxes — Asbestos	420.0	333.2
Deposit with Australian Taxation Office	247.2	173.5
Other assets	44.7	1.6
Total assets	<u>\$ 2,178.8</u>	<u>\$ 1,891.7</u>
Liabilities and Shareholders' Deficit		
Current liabilities:		
Accounts payable and accrued liabilities	\$ 100.9	\$ 89.1
Short-term debt	—	93.3
Current portion of long-term debt	95.0	—
Accrued payroll and employee benefits	42.1	35.5
Accrued product warranties	6.7	7.4
Income taxes payable	34.9	1.4
Asbestos liability	106.7	78.2
Workers' compensation — Asbestos	0.1	0.6
Other liabilities	27.7	9.5
Total current liabilities	<u>414.1</u>	<u>315.0</u>
Long-term debt	59.0	230.7
Deferred income taxes	113.5	93.8
Accrued product warranties	18.2	17.5
Asbestos liability	1,512.5	1,206.3
Workers' compensation — Asbestos	98.8	73.8
Other liabilities	80.6	63.3
Total liabilities	<u>2,296.7</u>	<u>2,000.4</u>
Commitments and contingencies (Note 13)		
Shareholders' deficit:		
Common stock, Euro 0.59 par value, 2.0 billion shares authorized; 434,524,879 shares issued at March 31, 2010 and 432,263,720 shares issued at March 31, 2009	221.1	219.2
Additional paid-in capital	39.5	22.7
Accumulated deficit	(437.7)	(352.8)
Accumulated other comprehensive income	59.2	2.2
Total shareholders' deficit	<u>(117.9)</u>	<u>(108.7)</u>
Total liabilities and shareholders' deficit	<u>\$ 2,178.8</u>	<u>\$ 1,891.7</u>

The accompanying notes are an integral part of these consolidated financial statements.

James Hardie Industries SE and Subsidiaries
Consolidated Statements of Operations

(Millions of US dollars, except per share data)	2010	Years Ended March 31	
		2009	2008
Net sales	\$ 1,124.6	\$ 1,202.6	\$ 1,468.8
Cost of goods sold	(708.5)	(813.8)	(938.8)
Gross profit	416.1	388.8	530.0
Selling, general and administrative expenses	(185.8)	(208.8)	(228.2)
Research and development expenses	(27.1)	(23.8)	(27.3)
Impairment charges	—	—	(71.0)
Asbestos adjustments	(224.2)	17.4	(240.1)
Operating (loss) income	(21.0)	173.6	(36.6)
Interest expense	(7.7)	(11.2)	(11.1)
Interest income	3.7	8.2	12.2
Other income (expense)	6.3	(14.8)	—
(Loss) income before income taxes	(18.7)	155.8	(35.5)
Income tax expense	(66.2)	(19.5)	(36.1)
Net (loss) income	\$ (84.9)	\$ 136.3	\$ (71.6)
Net (loss) income per share — basic	\$ (0.20)	\$ 0.32	\$ (0.16)
Net (loss) income per share — diluted	\$ (0.20)	\$ 0.31	\$ (0.16)
Weighted average common shares outstanding			
(Millions):			
Basic	433.1	432.3	455.0
Diluted	433.1	434.5	455.0

The accompanying notes are an integral part of these consolidated financial statements.

James Hardie Industries SE and Subsidiaries
Consolidated Statements of Cash Flows

(Millions of US dollars)	Years ended March 31		
	2010	2009	2008
Cash Flows From Operating Activities			
Net (loss) income	\$ (84.9)	\$ 136.3	\$ (71.6)
Adjustments to reconcile net (loss) income to net cash provided by (used in) operating activities:			
Depreciation and amortization	61.7	56.4	56.5
Deferred income taxes	19.2	(58.2)	(54.0)
Pension cost	0.1	0.7	1.0
Stock-based compensation	7.7	7.2	7.7
Asbestos adjustments	224.2	(17.4)	240.1
Tax benefit from stock options exercised	(0.9)	—	—
Other-than-temporary impairment on investments	—	14.8	—
Impairment charges	—	—	71.0
Other	—	—	(3.4)
Changes in operating assets and liabilities:			
Restricted cash and cash equivalents	14.9	69.0	44.7
Restricted short-term investments	54.4	—	—
Payment to the AICF	—	(110.0)	—
Accounts and other receivables	(30.1)	6.6	39.6
Inventories	(12.2)	40.3	(26.6)
Prepaid expenses and other assets	(48.1)	5.7	4.9
Insurance receivable — Asbestos	14.4	16.5	16.7
Accounts payable and accrued liabilities	35.4	(11.4)	2.6
Asbestos liability	(91.0)	(91.1)	(67.0)
Deposit with Australian Taxation Office	(29.3)	(9.9)	(9.7)
ATO settlement payment	—	(101.6)	—
Other accrued liabilities	47.6	0.9	66.8
Net cash provided by (used in) operating activities	\$ 183.1	\$ (45.2)	\$ 319.3
Cash Flows From Investing Activities			
Purchases of property, plant and equipment	\$ (50.5)	\$ (26.1)	\$ (38.5)
Net cash used in investing activities	\$ (50.5)	\$ (26.1)	\$ (38.5)
Cash Flows From Financing Activities			
Proceeds from short-term borrowings	\$ —	\$ 128.8	\$ 7.0
Repayments of short-term borrowings	(93.3)	(125.5)	—
Proceeds from long-term borrowings	274.0	431.6	69.5
Repayments of long-term borrowings	(350.7)	(375.4)	—
Proceeds from issuance of shares	10.1	0.1	3.3
Tax benefit from stock options exercised	0.9	—	—
Treasury stock purchased	—	—	(208.0)
Dividends paid	—	(34.6)	(126.2)
Net cash (used in) provided by financing activities	\$ (159.0)	\$ 25.0	\$ (254.4)
Effects of exchange rate changes on cash	\$ 3.2	\$ 53.3	\$ (25.1)
Net (decrease) increase in cash and cash equivalents	(23.2)	7.0	1.3
Cash and cash equivalents at beginning of period	42.4	35.4	34.1
Cash and cash equivalents at end of period	\$ 19.2	\$ 42.4	\$ 35.4
Components of Cash and Cash Equivalents			
Cash at bank and on hand	\$ 13.1	\$ 8.9	\$ 21.6
Short-term deposits	6.1	33.5	13.8
Cash and cash equivalents at end of period	\$ 19.2	\$ 42.4	\$ 35.4
Supplemental Disclosure of Cash Flow Activities			
Cash paid during the year for interest, net of amounts capitalised	\$ 7.4	\$ 7.8	\$ 12.8
Cash paid during the year for income taxes, net	\$ 48.5	\$ 23.2	\$ 70.4

The accompanying notes are an integral part of these consolidated financial statements.

James Hardie Industries SE and Subsidiaries
Consolidated Statements of Changes in Shareholders' Deficit

(Millions of US dollars)	Common Stock	Additional Paid-in Capital	Accumulated Deficit	Treasury Stock	Accumulated Other Comprehensive (Loss) Income	Total
Balances as of March 31, 2007	\$ 251.8	\$ 180.2	\$ (178.7)	\$ —	\$ 5.4	\$ 258.7
Comprehensive loss:						
Net loss	—	—	(71.6)	—	—	(71.6)
Pension and post-retirement benefit adjustments	—	—	—	—	0.6	0.6
Unrealized loss on investments	—	—	—	—	(4.4)	(4.4)
Foreign currency translation gain	—	—	—	—	15.3	15.3
Other comprehensive income	—	—	—	—	11.5	11.5
Total comprehensive loss						(60.1)
Adoption of uncertainty in income taxes	—	—	(78.0)	—	—	(78.0)
Stock-based compensation	—	7.7	—	—	—	7.7
Stock options exercised	0.5	2.8	—	—	—	3.3
Dividends paid	—	—	(126.2)	—	—	(126.2)
Treasury stock purchased	—	—	—	(208.0)	—	(208.0)
Treasury stock retired	(32.6)	(171.4)	—	204.0	—	—
Balances as of March 31, 2008	\$ 219.7	\$ 19.3	\$ (454.5)	\$ (4.0)	\$ 16.9	\$ (202.6)
Comprehensive income:						
Net income	—	—	136.3	—	—	136.3
Pension and post-retirement benefit adjustments	—	—	—	—	0.7	0.7
Unrealized gain on investments	—	—	—	—	4.4	4.4
Foreign currency translation loss	—	—	—	—	(19.8)	(19.8)
Other comprehensive loss	—	—	—	—	(14.7)	(14.7)
Total comprehensive income						121.6
Stock-based compensation	—	7.2	—	—	—	7.2
Tax benefit from stock options exercised	—	(0.4)	—	—	—	(0.4)
Stock options exercised	—	0.1	—	—	—	0.1
Dividends paid	—	—	(34.6)	—	—	(34.6)
Treasury stock retired	(0.5)	(3.5)	—	4.0	—	—
Balances as of March 31, 2009	\$ 219.2	\$ 22.7	\$ (352.8)	\$ —	\$ 2.2	\$ (108.7)
Comprehensive income:						
Net loss	—	—	(84.9)	—	—	(84.9)
Pension and post-retirement benefit adjustments	—	—	—	—	(0.2)	(0.2)
Unrealized gain on investments	—	—	—	—	1.2	1.2
Foreign currency translation gain	—	—	—	—	56.0	56.0
Other comprehensive income	—	—	—	—	57.0	57.0
Total comprehensive loss						(27.9)
Stock-based compensation	—	7.7	—	—	—	7.7
Tax benefit from stock options exercised	—	0.9	—	—	—	0.9
Stock options exercised	1.9	8.2	—	—	—	10.1
Balances as of March 31, 2010	\$ 221.1	\$ 39.5	\$ (437.7)	\$ —	\$ 59.2	\$ (117.9)

The accompanying notes are an integral part of these consolidated financial statements.

James Hardie Industries SE and Subsidiaries
Notes to Consolidated Financial Statements

1. Background and Basis of Presentation

Nature of Operations

The Company manufactures and sells fiber cement building products for interior and exterior building construction applications primarily in the United States, Australia, New Zealand, the Philippines and Europe.

Background

On July 2, 1998, ABN 60 000 009 263 Pty Ltd, formerly James Hardie Industries Limited (“JHIL”), then a public company organized under the laws of Australia and listed on the Australian Stock Exchange, announced a plan of reorganization and capital restructuring (the “1998 Reorganization”). James Hardie N.V. (“JHNV”) was incorporated in August 1998, as an intermediary holding company, with all of its common stock owned by indirect subsidiaries of JHIL. On October 16, 1998, JHIL’s shareholders approved the 1998 Reorganization. Effective as of November 1, 1998, JHIL contributed its fiber cement businesses, its US gypsum wallboard business, its Australian and New Zealand building systems businesses and its Australian windows business (collectively, the “Transferred Businesses”) to JHNV and its subsidiaries. In connection with the 1998 Reorganization, JHIL and its non-transferring subsidiaries retained certain unrelated assets and liabilities.

On July 24, 2001, JHIL announced a further plan of reorganization and capital restructuring (the “2001 Reorganization”). Completion of the 2001 Reorganization occurred on October 19, 2001. In connection with the 2001 Reorganization, James Hardie Industries N.V. (“JHI NV”), formerly RCI Netherlands Holdings B.V., issued common shares represented by CHESS Units of Foreign Securities (“CUFS”) on a one for one basis to existing JHIL shareholders in exchange for their shares in JHIL such that JHI NV became the new ultimate holding company for JHIL and JHNV.

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

On August 21, 2009, JHI NV shareholders approved a plan (“Proposal”) to transform the Company into a Societas Europaea (“SE”) (Stage 1 of the Proposal) and, subsequently, change its domicile from The Netherlands to the Republic of Ireland (Stage 2 of the Proposal). On February 19, 2010, the Company completed Stage 1 of the Proposal and was transformed from a Dutch “NV” company to a Dutch “SE” Company and now operates under the name of James Hardie Industries Societas Europaea (“JHI SE”).

Previously deconsolidated entities have been consolidated beginning March 31, 2007 as part of the process of accounting for certain asbestos liabilities. Upon shareholder approval of the Amended and Restated Final Funding Agreement on February 7, 2007 (the “Amended FFA”), the Asbestos Injuries Compensation Fund (the “AICF”) was deemed a special purpose entity and, as such, it was consolidated with the results for JHI SE. See Note 2 and Note 11 for additional information.

Basis of Presentation

The consolidated financial statements represent the financial position, results of operations and cash flows of JHI SE and its wholly-owned subsidiaries and special purpose entity, collectively referred to as either the “Company” or “James Hardie” and “JHI SE”, together with its subsidiaries as of the time relevant to the applicable reference, the “James Hardie Group,” unless the context indicates otherwise.

James Hardie Industries SE and Subsidiaries
Notes to Consolidated Financial Statements

2. Summary of Significant Accounting Policies

Reclassifications

Certain prior year balances have been reclassified to conform to the current year presentation. The reclassifications do not impact shareholders' deficit.

Accounting Principles

The consolidated financial statements are prepared in accordance with accounting principles generally accepted in the United States of America ("US GAAP"). The US dollar is used as the reporting currency. All subsidiaries and special purpose entities are consolidated and all significant intercompany transactions and balances are eliminated.

Use of Estimates

The preparation of financial statements in conformity with US GAAP requires management to make estimates and assumptions. These estimates and assumptions affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from these estimates.

Foreign Currency Translation

All assets and liabilities are translated into US dollars at current exchange rates while revenues and expenses are translated at average exchange rates in effect for the period. The effects of foreign currency translation adjustments are included directly in other comprehensive income in shareholders' equity. Gains and losses arising from foreign currency transactions are recognized in income currently.

Restricted Cash and Cash Equivalents

Restricted cash and cash equivalents relate to amounts subject to letters of credit with insurance companies which restrict the cash from use for general corporate purposes.

Inventories

Inventories are valued at the lower of cost or market. Cost is generally determined under the first-in, first-out method, except that the cost of raw materials and supplies is determined using actual or average costs. Cost includes the costs of materials, labor and applied factory overhead. On a regular basis, the Company evaluates its inventory balances for excess quantities and obsolescence by analyzing demand, inventory on hand, sales levels and other information. Based on these evaluations, inventory costs are written down, if necessary.

Property, Plant and Equipment

Property, plant and equipment are stated at cost. Property, plant and equipment of businesses acquired are recorded at their estimated fair value at the date of acquisition. Depreciation of property, plant and equipment is computed using the straight-line method over the following estimated useful lives:

James Hardie Industries SE and Subsidiaries
Notes to Consolidated Financial Statements

	Years
Buildings	40
Building improvements	5 to 10
Manufacturing machinery	20
General equipment	5 to 10
Computer equipment, software, and software development	3 to 7
Office furniture and equipment	3 to 10

The costs of additions and improvements are capitalized, while maintenance and repair costs are expensed as incurred. Interest is capitalized in connection with the construction of major facilities. Capitalized interest is recorded as part of the asset to which it relates and is amortized over the asset's estimated useful life. Retirements, sales and disposals of assets are recorded by removing the cost and accumulated depreciation amounts with any resulting gain or loss reflected in the consolidated statements of operations.

The Company accrues for all asset retirement obligations in the period in which the liability is incurred. The initial measurement of an asset retirement obligation is based upon the present value of estimated cost and a related long-lived asset retirement cost is capitalized as part of the asset's carrying value and allocated to expense over the asset's useful life.

Impairment of Long-Lived Assets

Long-lived assets, such as property, plant and equipment, and purchased intangibles subject to amortization are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of the asset exceeds its estimated future cash flows, an impairment charge is recognized by the amount by which the carrying amount of the asset exceeds the fair value of the assets.

Environmental Remediation Expenditures

Environmental remediation expenditures that relate to current operations are expensed or capitalized, as appropriate. Expenditures that relate to an existing condition caused by past operations, and which do not contribute to current or future revenue generation, are expensed. Liabilities are recorded when environmental assessments and/or remedial efforts are probable and the costs can be reasonably estimated. Estimated liabilities are not discounted to present value. Generally, the timing of these accruals coincides with completion of a feasibility study or the Company's commitment to a formal plan of action.

Revenue Recognition

The Company recognizes revenue when the risks and obligations of ownership have been transferred to the customer, which generally occurs at the time of delivery to the customer. The Company records estimated reductions in sales for customer rebates and discounts including volume, promotional, cash and other discounts. Rebates and discounts are recorded based on management's best estimate when products are sold. The estimates are based on historical experience for similar programs and products. Management reviews these rebates and discounts on an ongoing basis and the related accruals are adjusted, if necessary, as additional information becomes available.

Depreciation and Amortization

The Company records depreciation and amortization under both cost of goods sold and selling, general and administrative expenses, depending on the asset's business use. All depreciation and amortization related to plant building, machinery and equipment is recorded in cost of goods sold.

James Hardie Industries SE and Subsidiaries
Notes to Consolidated Financial Statements

Advertising

The Company expenses the production costs of advertising the first time the advertising takes place. Advertising expense was \$9.1 million, \$9.9 million and \$11.9 million during the years ended March 31, 2010, 2009 and 2008, respectively.

Accrued Product Warranties

An accrual for estimated future warranty costs is recorded based on an analysis by the Company, which includes the historical relationship of warranty costs to installed product.

Income Taxes

The Company accounts for income taxes under the asset and liability method. Under this method, deferred income taxes are recognized by applying enacted statutory rates applicable to future years to differences between the tax bases and financial reporting amounts of existing assets and liabilities. The effect on deferred taxes of a change in tax rates is recognized in income in the period that includes the enactment date. A valuation allowance is provided when it is more likely than not that all or some portion of deferred tax assets will not be realized. Interest and penalties related to uncertain tax positions are recognized in income tax expense.

Financial Instruments

The Company calculates the fair value of financial instruments and includes this additional information in the notes to the consolidated financial statements when the fair value is different from the carrying value of those financial instruments. When the fair value reasonably approximates the carrying value, no additional disclosure is made. The estimated fair value amounts have been determined by the Company using available market information and appropriate valuation methodologies. However, considerable judgment is required in interpreting market data to develop the estimates of fair value. Accordingly, the estimates presented herein are not necessarily indicative of the amounts that the Company could realize in a current market exchange. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated fair value amounts.

Periodically, interest rate swaps, commodity swaps and forward exchange contracts are used to manage market risks and reduce exposure resulting from fluctuations in interest rates, commodity prices and foreign currency exchange rates. Where such contracts are designated as, and are effective as, a hedge, changes in the fair value of derivative instruments designated as cash flow hedges are deferred and recorded in other comprehensive income. These deferred gains or losses are recognized in income when the transactions being hedged are recognized. The ineffective portion of these hedges is recognized in income currently. Changes in the fair value of derivative instruments designated as fair value hedges are recognized in income, as are changes in the fair value of the hedged item. Changes in the fair value of derivative instruments that are not designated as hedges for accounting purposes are recognized in income. The Company does not use derivatives for trading purposes.

Stock-based Compensation

The Company recognized stock-based compensation expense (included in selling, general and administrative expense) of \$9.3 million, \$7.2 million and \$7.7 million for the years ended March 31, 2010, 2009 and 2008, respectively. Included in stock-based compensation expense for the year ended March 31, 2010 is an expense of \$1.6 million related to liability-classified awards.

Earnings Per Share

The Company discloses basic and diluted earnings per share ("EPS"). Basic EPS is calculated using net income divided by the weighted average number of common shares outstanding during the period. Diluted EPS is

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similar to basic EPS except that the weighted average number of common shares outstanding is increased to include the number of additional common shares calculated using the Treasury Method that would have been outstanding if the dilutive potential common shares, such as options, had been issued. Accordingly, basic and dilutive common shares outstanding used in determining net (loss) income per share are as follows:

(Millions of shares)	Years Ended March 31		
	2010	2009	2008
Basic common shares outstanding	433.1	432.3	455.0
Dilutive effect of stock awards	—	2.2	—
Diluted common shares outstanding	<u>433.1</u>	<u>434.5</u>	<u>455.0</u>
(US dollars)	2010	2009	2008
Net (loss) income per share — basic	\$(0.20)	\$0.32	\$(0.16)
Net (loss) income per share — diluted	\$(0.20)	\$0.31	\$(0.16)

Potential common shares of 13.7 million, 19.0 million and 10.4 million for the years ended March 31, 2010, 2009 and 2008, respectively, have been excluded from the calculation of diluted common shares outstanding because the effect of their inclusion would be anti-dilutive.

Unless they are anti-dilutive, restricted stock units (“RSUs”) which vest solely based on continued employment are considered to be outstanding as of their issuance date for purposes of computing diluted EPS and are included in the calculation of diluted EPS using the Treasury Method. Once these RSUs vest, they are included in the basic EPS calculation on a weighted-average basis.

RSUs which vest based on performance or market conditions are considered contingent shares. At each reporting date prior to the end of the contingency period, the Company determines the number of contingently issuable shares to include in the diluted EPS, as the number of shares that would be issuable under the terms of the RSU arrangement, if the end of the reporting period were the end of the contingency period. Once these RSUs vest, they are included in the basic EPS calculation on a weighted-average basis.

Asbestos

At March 31, 2006, the Company recorded an asbestos provision based on the estimated economic impact of the Original Final Funding Agreement (“Original FFA”) entered into on December 1, 2005. The amount of the net asbestos provision of \$715.6 million was based on the terms of the Original FFA, which included an actuarial estimate prepared by KPMG Actuaries as of March 31, 2006 of the projected future cash outflows, undiscounted and uninflated, and the anticipated tax deduction arising from Australian legislation which came into force on April 6, 2006. The amount represented the net economic impact that the Company was prepared to assume as a result of its voluntary funding of the asbestos liability which was under negotiation with various parties.

In February 2007, the shareholders approved the Amended FFA entered into on November 21, 2006 to provide long-term funding to the Asbestos Injuries Compensation Fund (“AICF”), a special purpose fund that provides compensation for Australian-related personal injuries for which certain former subsidiary companies of James Hardie in Australia (being Amaca Pty Ltd (“Amaca”), Amaba Pty Ltd (“Amaba”) and ABN 60 Pty Limited (“ABN 60”) (collectively, the “Former James Hardie Companies”)) are found liable.

Amaca and Amaba separated from the James Hardie Group in February 2001. ABN 60 separated from the James Hardie Group in March 2003. Upon shareholder approval of the Amended FFA in February 2007, shares in the Former James Hardie Companies were transferred to the AICF. The AICF manages Australian asbestos-related personal injury claims made against the Former James Hardie Companies and makes compensation payments in respect of those proven claims.

James Hardie Industries SE and Subsidiaries
Notes to Consolidated Financial Statements

AICF

In February 2007, the shareholders approved a proposal pursuant to which the Company provides long-term funding to the AICF. The Company owns 100% of James Hardie 117 Pty Ltd (the "Performing Subsidiary") that funds the AICF subject to the provisions of the Amended FFA. The Company appoints three of the AICF directors and the NSW Government appoints two of the AICF directors.

Under the terms of the Amended FFA, the Performing Subsidiary has an obligation to make payments to the AICF on an annual basis, depending on the Company's net operating cash flow. The amounts of these annual payments are dependent on several factors, including the Company's free cash flow (as defined in the Amended FFA), actuarial estimations, actual claims paid, operating expenses of the AICF and the annual cash flow cap. JHI SE guarantees the Performing Subsidiary's obligation. As a result, the Company considers it to be the primary beneficiary of the AICF.

The Company's interest in the AICF is considered variable because the potential impact on the Company will vary based upon the annual actuarial assessments obtained by the AICF with respect to asbestos-related personal injury claims against the Former James Hardie Companies.

Although the Company has no legal ownership in the AICF, the Company consolidates the AICF due to its pecuniary and contractual interests in the AICF as a result of the funding arrangements outlined in the Amended FFA. The Company's consolidation of the AICF resulted in a separate recognition of the asbestos liability and certain other items including the related Australian income tax benefit. Among other items, the Company recorded a deferred tax asset for the anticipated tax benefit related to asbestos liabilities and a corresponding increase in the asbestos liability. As stated in "Deferred Income Taxes" below, the Performing Subsidiary is able to claim a tax deduction for contributions to the asbestos fund. For the year ended March 31, 2007, the Company classified the expense related to the increase of the asbestos liability as asbestos adjustments and the Company classified the benefit related to the recording of the related deferred tax asset as an income tax benefit (expense) on its consolidated statements of operations.

For the year ended March 31, 2010, the Company did not provide financial or other support to the AICF that it was not previously contractually required to provide. Future funding for the AICF continues to be linked under the terms of the Amended FFA to the Company's long-term financial success, specifically the Company's ability to generate net operating cash flow.

The AICF has operating costs that are claims related and non-claims related. Claims related costs incurred by the AICF are treated as reductions to the accrued asbestos liability balances previously reflected in the consolidated balance sheets. Non-claims related operating costs incurred by the AICF are expensed as incurred in the line item *Selling, general and administrative expenses* in the consolidated statements of operations. The AICF earns interest on its cash and cash equivalents and on its short-term investments; these amounts are included in the line item *Interest income* in the consolidated statements of operations.

See Asbestos-Related Assets and Liabilities below and Note 11 — Asbestos for further details on the related assets and liabilities recorded in the Company's consolidated balance sheet under the terms of the Amended FFA.

Asbestos-Related Assets and Liabilities

The Company has recorded on its consolidated balance sheets certain assets and liabilities under the terms of the Amended FFA. These items are Australian dollar-denominated and are subject to translation into US dollars at each reporting date. These assets and liabilities are referred to by the Company as *Asbestos-Related Assets and Liabilities* and include:

James Hardie Industries SE and Subsidiaries
Notes to Consolidated Financial Statements

Asbestos Liability

The amount of the asbestos liability reflects the terms of the Amended FFA, which has been calculated by reference to (but is not exclusively based upon) the most recent actuarial estimate of projected future cash flows prepared by KPMG Actuaries. Based on their assumptions, they arrived at a range of possible total cash flows and proposed a central estimate which is intended to reflect an expected outcome. The Company views the central estimate as the basis for recording the asbestos liability in the Company's financial statements, which under US GAAP, it considers the best estimate. The asbestos liability includes these cash flows as undiscounted and uninflated on the basis that it is inappropriate to discount or inflate future cash flows when the timing and amounts of such cash flows are not fixed or readily determinable.

Adjustments in the asbestos liability due to changes in the actuarial estimate of projected future cash flows and changes in the estimate of future operating costs of the AICF are reflected in the consolidated statements of operations during the period in which they occur. Claims paid by the AICF and claims-handling costs incurred by the AICF are treated as reductions in the accrued balances previously reflected in the consolidated balance sheets.

Insurance Receivable

There are various insurance policies and insurance companies with exposure to the asbestos claims. The insurance receivable determined by KPMG Actuaries reflects the recoveries expected from all such policies based on the expected pattern of claims against such policies less an allowance for credit risk based on credit agency ratings. The insurance receivable generally includes these cash flows as undiscounted and uninflated on the basis that it is inappropriate to discount or inflate future cash flows when the timing and amounts of such cash flows are not fixed or readily determinable. The Company only records insurance receivables that it deems to be probable.

Included in insurance receivable is \$12.5 million recorded on a discounted basis because the timing of the recoveries has been agreed with the insurer.

Adjustments in insurance receivable due to changes in the actuarial estimate, or changes in the Company's assessment of recoverability are reflected in the consolidated statements of operations during the period in which they occur. Insurance recoveries are treated as a reduction in the insurance receivable balance.

Workers' Compensation

Workers' compensation claims are claims made by former employees of the Former James Hardie Companies. Such past, current and future reported claims were insured with various insurance companies and the various Australian State-based workers' compensation schemes (collectively "workers' compensation schemes or policies"). An estimate of the liability related to workers' compensation claims is prepared by KPMG Actuaries as part of the annual actuarial assessment. This estimate contains two components, amounts that will be met by a workers' compensation scheme or policy, and amounts that will be met by the Former James Hardie Companies.

The portion of the estimate that is expected to be met by the Former James Hardie Companies is included as part of the *Asbestos Liability*. Adjustments to this estimate are reflected in the consolidated statements of operations during the period in which they occur.

The portion of the estimate that is expected to be met by the workers' compensation schemes or policies of the Former James Hardie Companies is recorded by the Company as a workers' compensation liability. Since these amounts are expected to be paid by the workers' compensation schemes or policies, the Company records an equivalent workers' compensation receivable.

James Hardie Industries SE and Subsidiaries
Notes to Consolidated Financial Statements

Adjustments to the workers' compensation liability result in an equal adjustment in the workers' compensation receivable recorded by the Company and have no effect on the consolidated statements of operations.

Asbestos-Related Research and Education Contributions

The Company agreed to fund asbestos-related research and education initiatives for a period of 10 years, beginning in fiscal year 2007. The liabilities related to these agreements are included in "Other Liabilities" on the consolidated balance sheets.

Restricted Cash and Cash Equivalents

Cash and cash equivalents of the AICF are reflected as restricted assets, as the use of these assets is restricted to the settlement of asbestos claims and payment of the operating costs of the AICF. The Company classifies these amounts as a current asset on the face of the consolidated balance sheet since they are highly liquid.

Restricted Short-Term Investments

Short-term investments consist of highly liquid investments held in the custody of major financial institutions. All short-term investments are classified as available for sale and are recorded at market value using the specific identification method. Unrealized gains and losses on the market value of these investments are included as a separate component of accumulated other comprehensive income. Realized gains and losses on short-term investments are recognized in *Other Income* on the consolidated statement of operations.

AICF — Other Assets and Liabilities

Other assets and liabilities of the AICF, including fixed assets, trade receivables and payables are included on the consolidated balance sheets under the appropriate captions and their use is restricted to the operations of the AICF.

Deferred Income Taxes

The Performing Subsidiary is able to claim a taxation deduction for its contributions to the AICF over a five-year period from the date of contribution. Consequently, a deferred tax asset has been recognized equivalent to the anticipated tax benefit over the life of the Amended FFA. The current portion of the deferred tax asset represents Australian tax benefits that will be available to the Company during the subsequent twelve months.

Adjustments are made to the deferred income tax asset as adjustments to the asbestos-related assets and liabilities are recorded.

Foreign Currency Translation

The asbestos-related assets and liabilities are denominated in Australian dollars and thus the reported values of these asbestos-related assets and liabilities in the Company's consolidated balance sheets in US dollars are subject to adjustment depending on the closing exchange rate between the two currencies at the balance sheet date. The effect of foreign exchange rate movements between these currencies is included in *Asbestos Adjustments* in the consolidated statements of operations.

Recent Accounting Pronouncements

In March 2008, the FASB issued authoritative guidance that changed the disclosure requirements for derivative instruments and hedging activities. Entities are required to provide enhanced disclosures about how and why an entity uses derivative instruments, how derivative instruments and related hedged items are accounted for and how derivative instruments and related hedged items affect an entity's financial position, financial performance,

James Hardie Industries SE and Subsidiaries
Notes to Consolidated Financial Statements

and cash flows. The adoption of this authoritative guidance did not result in a material impact to the Company's consolidated financial position, results of operations or cash flows.

In June 2008, the FASB issued authoritative guidance that clarified that share-based payment awards that entitle their holders to receive non-forfeitable dividends before vesting should be considered participating securities. As participating securities, these instruments should be included in the calculation of basic earnings per share. This authoritative guidance is effective for financial statements issued for fiscal years beginning after December 15, 2008, as well as interim periods in those years. The adoption did not result in a material impact to the Company's consolidated financial position, results of operations or cash flows.

In April 2009, the FASB expanded disclosure requirements for interim reporting periods to include disclosures about the fair value of financial instruments held by the Company. The Company adopted this statement effective for its first quarter of fiscal 2010, which has resulted in the disclosure of fair values attributable to debt instruments included in Note 12.

Effective for the Company's second quarter of fiscal 2010, the Company adopted the FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles which only affected the specific references to US GAAP literature in the notes to the consolidated financial statements. There was no impact on the Company's results of operations, financial condition or liquidity.

3. Cash and Cash Equivalents

Cash and cash equivalents include amounts on deposit in banks and cash invested temporarily in various highly liquid financial instruments with original maturities of three months or less when acquired.

Cash and cash equivalents consist of the following components:

(Millions of US dollars)	2010	March 31 2009
Cash at bank and on hand	\$ 13.1	\$ 8.9
Short-term deposits	6.1	33.5
Total cash and cash equivalents	<u>\$ 19.2</u>	<u>\$ 42.4</u>

4. Restricted Cash and Cash Equivalents

Included in restricted cash and cash equivalents is \$5.3 million related to an insurance policy as of March 31, 2010 and 2009, respectively.

5. Accounts and Other Receivables

Accounts and notes receivable consist of the following components:

(Millions of US dollars)	2010	March 31 2009
Trade receivables	\$ 122.8	\$ 96.6
Other receivables and advances	34.5	16.2
Allowance for doubtful accounts	(2.3)	(1.4)
Total accounts and other receivables	<u>\$ 155.0</u>	<u>\$ 111.4</u>

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The collectability of accounts receivable, consisting mainly of trade receivables, is reviewed on an ongoing basis. An allowance for doubtful accounts is provided for known and estimated bad debts by analyzing specific customer accounts and assessing the risk of uncollectability based on insolvency, disputes or other collection issue.

The following are changes in the allowance for doubtful accounts:

(Millions of US dollars)	2010	March 31 2009
Balance at beginning of period	\$ 1.4	\$ 2.0
Charged to expense	0.9	0.4
Costs and deductions	—	(1.0)
Balance at end of period	<u>\$ 2.3</u>	<u>\$ 1.4</u>

6. Inventories

Inventories consist of the following components:

(Millions of US dollars)	2010	March 31 2009
Finished goods	\$ 99.8	\$ 82.5
Work-in-process	4.8	4.7
Raw materials and supplies	52.0	48.9
Provision for obsolete finished goods and raw materials	<u>(7.5)</u>	<u>(7.2)</u>
Total inventories	<u>\$ 149.1</u>	<u>\$ 128.9</u>

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7. Property, Plant and Equipment

Property, plant and equipment consist of the following components:

(Millions of US dollars)	Land	Buildings	Machinery and Equipment	Construction In Progress (1)	Total
Balance at March 31, 2008:					
Cost	\$ 17.2	\$ 208.9	\$ 840.5	\$ 82.4	\$ 1,149.0
Accumulated depreciation	—	(52.0)	(340.6)	—	(392.6)
Net book value	17.2	156.9	499.9	82.4	756.4
Changes in net book value:					
Capital expenditures	0.8	3.4	52.7	(30.8)	26.1
Depreciation	—	(9.4)	(47.0)	—	(56.4)
Other movements	—	—	(0.2)	—	(0.2)
Foreign currency translation adjustments	—	—	(25.1)	—	(25.1)
Total changes	0.8	(6.0)	(19.6)	(30.8)	(55.6)
Balance at March 31, 2009:					
Cost	18.0	212.3	867.9	51.6	1,149.8
Accumulated depreciation	—	(61.4)	(387.6)	—	(449.0)
Net book value	<u>\$ 18.0</u>	<u>\$ 150.9</u>	<u>\$ 480.3</u>	<u>\$ 51.6</u>	<u>\$ 700.8</u>
Changes in net book value:					
Capital expenditures	0.1	3.6	30.0	16.8	50.5
Depreciation	—	(9.7)	(52.0)	—	(61.7)
Other movements	—	—	20.7	(20.7)	—
Foreign currency translation adjustments	—	—	21.0	—	21.0
Total changes	0.1	(6.1)	19.7	(3.9)	9.8
Balance at March 31, 2010:					
Cost	18.1	215.9	939.6	47.7	1,221.3
Accumulated depreciation	—	(71.1)	(439.6)	—	(510.7)
Net book value	<u>\$ 18.1</u>	<u>\$ 144.8</u>	<u>\$ 500.0</u>	<u>\$ 47.7</u>	<u>\$ 710.6</u>

(1) Construction in progress consists of plant expansions and upgrades.

Interest related to the construction of major facilities is capitalized and included in the cost of the asset to which it relates. Interest capitalized was \$0.2 million, \$0.1 million and \$0.6 million for the years ended March 31, 2010, 2009 and 2008, respectively. Depreciation expense was \$61.7 million, \$56.4 million and \$56.5 million for the years ended March 31, 2010, 2009 and 2008, respectively.

Included in property, plant and equipment are restricted assets of the AICF with a net book value of \$2.3 million and \$0.8 million as of March 31, 2010 and 2009, respectively.

Asset Impairments

Asset Impairments

The Company recorded an asset impairment charge of \$32.4 million in the year ended March 31, 2008 in its USA and Europe Fiber Cement segment related to the suspension of production at its Bandon, Pennsylvania plant in the United States. The impaired assets include buildings and machinery, which were reduced to their estimated fair value based on valuation methods including quoted market prices and discounted future cash flows. These assets are being held for use by the Company.

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The Company recorded an asset impairment charge of \$25.4 million in the year ended March 31, 2008 in its USA and Europe Fiber Cement segment, related to the closure of its Plant City, Florida Hardie Pipe plant. The impaired assets include buildings and machinery, which were reduced to their estimated fair value based on valuation methods including quoted market prices and discounted future cash flows. These assets are being held for use by the Company.

The Company recorded an asset impairment charge of \$13.2 million in the year ended March 31, 2008 related to buildings and machinery utilized to produce materials for the Company's products. This asset impairment was recorded in its USA and Europe Fiber Cement segment. The impaired assets were reduced to their estimated fair value based on valuation methods including quoted market prices and discounted future cash flows. These assets are being held for use by the Company.

8. Accounts Payable and Accrued Liabilities

Accounts payable and accrued liabilities consist of the following components:

(Millions of US dollars)	2010	March 31 2009
Trade creditors	\$ 71.3	\$ 44.4
Other creditors and accruals	29.6	44.7
Total accounts payable and accrued liabilities	<u>\$ 100.9</u>	<u>\$ 89.1</u>

9. Short and Long-Term Debt

Debt consists of the following components:

(Millions of US dollars)	2010	March 31 2009
Short-term debt	\$ —	\$ 93.3
Current portion of long-term debt	95.0	—
Long-term debt	59.0	230.7
Total debt	<u>\$ 154.0</u>	<u>\$ 324.0</u>

The weighted average interest rate on the Company's total debt was 0.92% and 1.48% at March 31, 2010 and 2009, respectively.

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At March 31, 2010, the Company's credit facilities consisted of:

Description (US\$ millions)	Effective Interest Rate	Total Facility	Principal Drawn
Term facilities, can be drawn in US\$, variable interest rates based on LIBOR plus margin, can be repaid and redrawn until June 2010	0.86%	\$ 161.7	\$ 95.0
Term facilities, can be drawn in US\$, variable interest rates based on LIBOR plus margin, can be repaid and redrawn until February 2011	—	45.0	—
Term facilities, can be drawn in US\$, variable interest rates based on LIBOR plus margin, can be repaid and redrawn until December 2012	—	130.0	—
Term facilities, can be drawn in US\$, variable interest rates based on LIBOR plus margin, can be repaid and redrawn until February 2013	1.01%	90.0	59.0
Total		\$ 426.7	\$ 154.0

For all facilities, the interest rate is calculated two business days prior to the commencement of each draw-down period based on the US\$ London Interbank Offered Rate ("LIBOR") plus the margins of individual lenders and is payable at the end of each draw-down period. At March 31, 2010, there was \$154.0 million drawn under the combined facilities and \$272.7 million was unutilized and available.

In December 2009, the Company refinanced \$130.0 million in facilities, which previously had maturity dates on or prior to June 2010. The maturity date of these new facilities is in December 2012. At March 31, 2010, the Company held \$161.7 million of term facilities that will mature in June 2010. The weighted average term of all debt facilities is 2.6 years at March 31, 2010.

At March 31, 2010, the Company was in compliance with all restrictive debt covenants contained in its credit facility agreements. Under the most restrictive of these covenants, the Company (i) is required to maintain certain ratios of indebtedness to equity which do not exceed certain maximums, excluding assets, liabilities and other balance sheet items of the AICF, Amaba, Amaca, ABN 60 and Marlew Mining Pty Limited, (ii) must maintain a minimum level of net worth, excluding assets, liabilities and other balance sheet items of the AICF; for these purposes "net worth" means the sum of the par value (or value stated in the books of the James Hardie Group) of the capital stock (but excluding treasury stock and capital stock subscribed or unissued) of the James Hardie Group, the paid in capital and retained earnings of the James Hardie Group and the aggregate amount of provisions made by the James Hardie Group for asbestos related liabilities, in each case, as such amounts would be shown in the consolidated balance sheet of the James Hardie Group if Amaba, Amaca, ABN 60 and Marlew Mining Pty Limited were not accounted for as subsidiaries of the Company, (iii) must meet or exceed a minimum ratio of earnings before interest and taxes to net interest charges, excluding all income, expense and other profit and loss statement impacts of the AICF, Amaba, Amaca, ABN 60 and Marlew Mining Pty Limited and (iv) must ensure that no more than 35% of Free Cash Flow (as defined in the Amended FFA) in any given Financial Year is contributed to the AICF on the payment dates under the Amended FFA in the next following Financial Year. The limit does not apply to payments of interest to the AICF. Such limits are consistent with the contractual liabilities of the Performing Subsidiary and the Company under the Amended FFA.

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10. Product Warranties

The Company offers various warranties on its products, including a 30-year limited warranty on certain of its fiber cement siding products in the United States. A typical warranty program requires the Company to replace defective products within a specified time period from the date of sale. The Company records an estimate for future warranty related costs based on a trend analysis of actual historical warranty costs as they relate to sales. Based on this analysis and other factors, the adequacy of the Company's warranty provisions is adjusted as necessary. While the Company's warranty costs have historically been within its calculated estimates, it is possible that future warranty costs could differ from those estimates.

Additionally, the Company includes in its accrual for product warranties amounts for a Class Action Settlement Agreement (the "Settlement Agreement") related to its previous roofing products, which are no longer manufactured in the United States. On February 14, 2002, the Company signed the Settlement Agreement for all product, warranty and property related liability claims associated with these previously manufactured roofing products. These products were removed from the marketplace between 1995 and 1998 in areas where there had been any alleged problems. The total amount included in the product warranty provision relating to the Settlement Agreement is \$1.2 million and \$1.9 million as of March 31, 2010 and 2009, respectively.

The following are the changes in the product warranty provision:

(Millions of US dollars)	2010	Years Ended March 31 2009	2008
Balance at beginning of period	\$ 24.9	\$ 17.7	15.2
Accruals for product warranties	8.1	14.6	10.2
Settlements made in cash or in kind	(8.4)	(7.1)	(7.9)
Foreign currency translation adjustments	0.3	(0.3)	0.2
Balance at end of period	<u>\$ 24.9</u>	<u>\$ 24.9</u>	<u>\$ 17.7</u>

11. Asbestos

The Amended FFA to provide long-term funding to the AICF was approved by shareholders in February 2007. The accounting policies utilized by the Company to account for the Amended FFA are described in Note 2, *Summary of Significant Accounting Policies*.

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Asbestos Adjustments

The asbestos adjustments included in the consolidated statements of operations comprise the following:

(Millions of US dollars)	2010	Years Ended March 31 2009	2008
Change in estimates:			
Change in actuarial estimate — asbestos liability	\$ (3.8)	\$ (180.9)	\$ (175.0)
Change in actuarial estimate — insurance receivable	1.9	19.8	27.4
Change in estimate — AICF claims-handling costs	(1.4)	(1.2)	(6.5)
Change in estimate — other	—	—	1.2
Subtotal — Change in estimates	(3.3)	(162.3)	(152.9)
(Loss) gain on foreign currency exchange	(220.9)	179.7	(87.2)
Total Asbestos Adjustments	\$ (224.2)	\$ 17.4	\$ (240.1)

Asbestos-Related Assets and Liabilities

Under the terms of the Amended FFA, the Company has included on its consolidated balance sheets certain asbestos-related assets and liabilities. These amounts are detailed in the table below, and the net total of these asbestos-related assets and liabilities is referred to by the Company as the “Net Amended FFA Liability”.

(Millions of US dollars)	2010	March 31 2009
Asbestos liability — current	\$ (106.7)	\$ (78.2)
Asbestos liability — non-current	(1,512.5)	(1,206.3)
Asbestos liability — Total	(1,619.2)	(1,284.5)
Insurance receivable — current	16.7	12.6
Insurance receivable — non-current	185.1	149.0
Insurance receivable — Total	201.8	161.6
Workers’ compensation asset — current	0.1	0.6
Workers’ compensation asset — non-current	98.8	73.8
Workers’ compensation liability — current	(0.1)	(0.6)
Workers’ compensation liability — non-current	(98.8)	(73.8)
Workers’ compensation — Total	—	—
Deferred income taxes — current	16.4	12.3
Deferred income taxes — non-current	420.0	333.2
Deferred income taxes — Total	436.4	345.5
Income tax payable	16.5	22.8
Other net liabilities	(1.7)	(2.0)
Net Amended FFA liability	(966.2)	(756.6)
Restricted cash and cash equivalents and restricted short-term investment assets of the AICF	57.8	98.3
Unfunded Net Amended FFA liability	\$ (908.4)	\$ (658.3)

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Asbestos Liability

The amount of the asbestos liability reflects the terms of the Amended FFA, which has been calculated by reference to (but is not exclusively based upon) the most recent actuarial estimate of the projected future asbestos-related cash flows prepared by KPMG Actuaries. The asbestos liability also includes an allowance for the future claims-handling costs of the AICF. The Company receives an updated actuarial estimate as of March 31 each year. The last actuarial assessment was performed as of March 31, 2010.

The changes in the asbestos liability for the year ended March 31, 2010 are detailed in the table below:

	AS Millions	AS to US\$ rate	US\$ Millions
Asbestos liability — March 31, 2009	A\$(1,869.2)	1.4552	\$ (1,284.5)
Asbestos claims paid (1)	103.2	1.1749	87.8
AICF claims-handling costs incurred (1)	3.6	1.1749	3.1
Change in actuarial estimate (2)	(4.1)	1.0919	(3.8)
Change in estimate of AICF claims-handling costs (2)	(1.5)	1.0919	(1.4)
Loss on foreign currency exchange			(420.4)
Asbestos liability — March 31, 2010	<u>A\$(1,768.0)</u>	1.0919	<u>\$ (1,619.2)</u>

Insurance Receivable — Asbestos

The changes in the insurance receivable for the year ended March 31, 2010 are detailed in the table below:

	AS Millions	AS to US\$ rate	US\$ Millions
Insurance receivable — March 31, 2009	A\$235.2	1.4552	\$ 161.6
Insurance recoveries (1)	(16.9)	1.1749	(14.4)
Change in actuarial estimate (2)	2.0	1.0919	1.8
Gain on foreign currency exchange			52.8
Insurance receivable — March 31, 2010	<u>A\$220.3</u>	1.0919	<u>\$ 201.8</u>

- (1) The average exchange rate for the period is used to convert the Australian dollar amount to US dollars based on the assumption that these transactions occurred evenly throughout the period.
- (2) The spot exchange rate at March 31, 2010 is used to convert the Australian dollar amount to US dollars as the adjustment to the estimate was made on that date.

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Deferred Income Taxes — Asbestos

The changes in the deferred income taxes — asbestos for the year ended March 31, 2010 are detailed in the table below:

	AS Millions	AS to US\$ rate	US\$ Millions
Deferred tax assets — March 31, 2009	A\$502.7	1.4552	\$ 345.5
Amounts offset against income tax payable (1)	(17.9)	1.1749	(15.3)
Impact of other asbestos adjustments (1)	(8.3)	1.1749	(7.0)
Gain on foreign currency exchange			113.2
Deferred tax assets — March 31, 2010	<u>A\$476.5</u>	1.0919	<u>\$ 436.4</u>

- (1) The average exchange rate for the period is used to convert the Australian dollar amount to US dollars based on the assumption that these transactions occurred evenly throughout the period.

Income Taxes Payable

A portion of the deferred income tax asset is applied against the Company's income tax payable. At March 31, 2010 and 2009, this amount was \$15.3 million and \$8.8 million, respectively. During the year ended March 31, 2010, there was a \$6.6 million favorable effect of foreign currency exchange.

Other Net Liabilities

Other net liabilities include a provision for asbestos-related education and medical research contributions of \$2.6 million and \$2.2 million at March 31, 2010 and 2009, respectively. Also included in other net liabilities are the other assets and liabilities of the AICF including trade receivables, prepayments, fixed assets, trade payables and accruals.

These other assets and liabilities of the AICF were a net asset of \$0.9 million and \$0.2 million at March 31, 2010 and 2009, respectively. During the year ended March 31, 2010, there was a \$0.6 million unfavorable effect of foreign currency exchange on the other net liabilities.

Restricted Cash and Short-term Investments of the AICF

Cash and cash equivalents and short-term investments of the AICF are reflected as restricted assets as these assets are restricted for use in the settlement of asbestos claims and payment of the operating costs of the AICF. During the year ended March 31, 2010, the AICF sold \$61.1 million (A\$71.8 million) of its short-term investments. The sale of investments for the year ended March 31, 2010 resulted in the Company recording a realized gain of \$6.7 million (A\$7.9 million) in the line item *Other Income*.

At March 31, 2010, the Company revalued the AICF's remaining short-term investments available-for-sale resulting in a positive mark-to-market fair value adjustment of \$1.2 million (A\$1.4 million). This appreciation in the value of the investments was recorded as an unrealized gain in *Other Comprehensive Income*.

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The changes in the restricted cash and short-term investments of the AICF for the year ended March 31, 2010 are detailed in the table below:

	AS Millions	A\$ to US\$ rate	US\$ Millions
Restricted cash and cash equivalents and restricted short-term investments — March 31, 2009	A\$143.1	1.4552	\$ 98.3
Asbestos claims paid (1)	(103.2)	1.1749	(87.8)
AICF operating costs paid — claims-handling (1)	(3.6)	1.1749	(3.1)
AICF operating costs paid — non claims-handling (1)	(2.5)	1.1749	(2.1)
Insurance recoveries (1)	16.9	1.1749	14.4
Interest and investment income (1)	3.9	1.1749	3.3
Unrealized gain on investments (1)	1.4	1.1749	1.2
Gain on investments (1)	7.9	1.1749	6.7
Other (1)	(0.8)	1.1749	(0.7)
Gain on foreign currency exchange			27.6
Restricted cash and cash equivalents and restricted short-term investments — March 31, 2010	<u>A\$63.1</u>	1.0919	<u>\$ 57.8</u>

(1) The average exchange rate for the period is used to convert the Australian dollar amount to US dollars based on the assumption that these transactions occurred evenly throughout the period.

Actuarial Study; Claims Estimate

The AICF commissioned an updated actuarial study of potential asbestos-related liabilities as of March 31, 2010. Based on KPMG Actuaries' assumptions, KPMG Actuaries arrived at a range of possible total cash flows and proposed a central estimate which is intended to reflect an expected outcome. The Company views the central estimate as the basis for recording the asbestos liability in the Company's financial statements, which under US GAAP, it considers the best estimate. Based on the results of these studies, it is estimated that the discounted (but inflated) value of the central estimate for claims against the Former James Hardie Companies was approximately A\$1.5 billion (\$1.4 billion). The undiscounted (but inflated) value of the central estimate of the asbestos-related liabilities of Amaca and Amaba as determined by KPMG Actuaries was approximately A\$2.9 billion (\$2.7 billion). Actual liabilities of those companies for such claims could vary, perhaps materially, from the central estimate described above. The asbestos liability includes projected future cash flows as undiscounted and uninflated on the basis that it is inappropriate to discount or inflate future cash flows when the timing and amounts of such cash flows is not fixed or readily determinable.

The asbestos liability has been revised to reflect the most recent actuarial estimate prepared by KPMG Actuaries as of March 31, 2010 and to adjust for payments made to claimants during the year then ended.

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

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

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The potential range of costs as estimated by KPMG Actuaries is affected by a number of variables such as nil settlement rates (where no settlement is payable by the Former James Hardie Companies because the claim settlement is borne by other asbestos defendants (other than the former James Hardie subsidiaries) which are held liable), peak year of claims, past history of claims numbers, average settlement rates, past history of Australian asbestos-related medical injuries, current number of claims, average defense and plaintiff legal costs, base wage inflation and superimposed inflation. The potential range of losses disclosed includes both asserted and unasserted claims. While no assurances can be provided, the Company believes that it is likely to be able to partially recover losses from various insurance carriers. As of March 31, 2010, KPMG Actuaries' undiscounted central estimate of asbestos-related liabilities was A\$2.9 billion (\$2.7 billion). This undiscounted (but inflated) central estimate is net of expected insurance recoveries of A\$434.9 million (\$398.3 million) after making a general credit risk allowance for insurance carriers for A\$61.5 million (\$56.3 million) and an allowance for A\$77.7 million (\$71.2 million) of "by claim" or subrogation recoveries from other third parties. The Company has not netted the insurance receivable against the asbestos liability on its consolidated balance sheets.

A sensitivity analysis has been performed to determine how the actuarial estimates would change if certain assumptions (i.e., the rate of inflation and superimposed inflation, the average costs of claims and legal fees, and the projected numbers of claims) were different from the assumptions used to determine the central estimates. This analysis shows that the discounted (but inflated) central estimates could be in a range of A\$1.0 billion (\$0.9 billion) to A\$2.4 billion (\$2.2 billion). The undiscounted, but inflated, estimates could be in a range of A\$1.8 billion (\$1.6 billion) to A\$5.1 billion (\$4.7 billion), as of March 31, 2010. The actual cost of the liabilities could be outside of that range depending on the results of actual experience relative to the assumptions made. One of the critical assumptions is the estimated peak year of mesothelioma disease claims which is targeted for 2010/2011. Potential variation in this estimate has an impact much greater than the other sensitivities. If the peak year occurs five years later, in 2015/2016, the discounted central estimate could increase by approximately 50%.

Claims Data

The AICF provides compensation payments for Australian asbestos-related personal injury claims against the Former James Hardie Companies. The claims data in this section are only reflective of these Australian asbestos-related personal injury claims against the Former James Hardie Companies.

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

	2010	2009	For the Years Ended March 31		
			2008	2007	2006(1)
Number of open claims at beginning of period	534	523	490	564	712
Number of new claims	535	607	552	463	346
Number of closed claims	540	596	519	537	502
Number of open claims at end of period	529	534	523	490	556
Average settlement amount per settled claim	A\$190,627	A\$190,638	A\$147,349	A\$166,164	A\$151,883
Average settlement amount per case closed	A\$171,917	A\$168,248	A\$126,340	A\$128,723	A\$122,535
Average settlement amount per settled claim	\$ 162,250	\$ 151,300	\$ 128,096	\$ 127,163	\$ 114,318
Average settlement amount per case closed	\$ 146,325	\$ 133,530	\$ 109,832	\$ 98,510	\$ 92,229

(1) Information includes claims data for only 11 months ended February 28, 2006. Claims data for the 12 months ended March 31, 2006 were not available at the time the Company's financial statements were prepared.

Under the terms of the Amended FFA, the Company has obtained rights of access to actuarial information produced for the AICF by the actuary appointed by the AICF (the "Approved Actuary"). The Company's future

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disclosures with respect to claims statistics are subject to it obtaining such information from the Approved Actuary. The Company has had no general right (and has not obtained any right under the Amended FFA) to audit or otherwise require independent verification of such information or the methodologies to be adopted by the Approved Actuary. As such, the Company will need to rely on the accuracy and completeness of the information and analysis of the Approved Actuary when making future disclosures with respect to claims statistics.

12. Fair Value Measurements

Assets and liabilities of the Company that are carried at fair value are classified in one of the following three categories:

- Level 1 Quoted market prices in active markets for identical assets and liabilities that the Company has the ability to access at the measurement date;
- Level 2 Observable market-based inputs or unobservable inputs that are corroborated by market data for the asset or liability at the measurement date;
- Level 3 Unobservable inputs that are not corroborated by market data used when there is minimal market activity for the asset or liability at the measurement date.

Fair value measurements of assets and liabilities are assigned a level within the fair value hierarchy based on the lowest level of any input that is significant to the fair value measurement in its entirety.

The Company's financial instruments consist primarily of cash and cash equivalents, restricted cash and cash equivalents, restricted short-term investments, trade receivables, trade payables, debt and interest rate swaps.

Cash and cash equivalents, Restricted cash and cash equivalents, Trade receivables and Trade payables— These items are recorded in the financial statements at historical cost. The historical cost basis for these amounts is estimated to approximate their respective fair values due to the short maturity of these instruments.

Restricted short-term investments — Restricted short-term investments are recorded in the financial statements at fair value. The fair value of restricted short-term investments is based on quoted market prices. Changes in fair value are recorded, net of tax, as other comprehensive income and included as a component in shareholders' deficit. Restricted short-term investments are held and managed by the AICF and are reported at their fair value. At March 31, 2009, the Company determined that these investments were other-than-temporarily impaired due to the current economic environment, the length of time the fair value of the assets were less than cost and the extent of the discount of the fair value compared to the cost of the assets. The Company recorded an unrealized gain on these restricted short-term investments of \$1.2 million for the year ended March 31, 2010. This unrealized gain is included as a separate component of accumulated other comprehensive income.

Debt — Debt is generally recorded in the financial statements at historical cost. The carrying value of debt provided under the Company's credit facilities approximates fair value since the interest rates charged under these credit facilities are tied directly to market rates and fluctuate as market rates change.

Interest Rate Swaps — Interest rate swaps are recorded in the financial statements at fair value. Changes in fair value are recorded in the statement of operations in *Other Income*. At March 31, 2010, the Company had interest rate swap contracts with a total principal of \$200.0 million. For all of these interest rate swap contracts, the Company has agreed to pay fixed interest rates while receiving a floating interest rate. The purpose of holding

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these interest rate swap contracts is to protect against upward movements in US\$ LIBOR and the associated interest the Company pays on its external credit facilities.

At March 31, 2010 the weighted average fixed interest rate of these contracts is 2.40% and the weighted average remaining life is 3.6 years. These contracts have a fair value of \$2.4 million, which is included in *Accounts Payable*. For the year ended March 31, 2010, The Company included in *Other Income* an unrealized loss on interest rate swaps of \$0.4 million. Included in *Interest Expense* is a realized loss on settlements of interest rate swap contracts of \$2.5 million for the year ended March 31, 2010.

The following table sets forth by level within the fair value hierarchy, the Company's financial assets and liabilities that were accounted for at fair value on a recurring basis at March 31, 2010 according to the valuation techniques the Company used to determine their fair values.

(Millions of US dollars)	Fair Value at March 31, 2010	Fair Value Measurements Using Inputs Considered as		
		Level 1	Level 2	Level 3
Assets				
Cash and cash equivalents	\$ 19.2	\$ 19.2	\$ —	\$ —
Restricted cash and cash equivalents	49.8	49.8	—	—
Restricted short-term investments	13.3	13.3	—	—
Total Assets	\$ 82.3	\$ 82.3	\$ —	\$ —
Liabilities				
Interest rate swap contracts	2.4	—	2.4	—
Total Liabilities	\$ 2.4	\$ —	\$ 2.4	\$ —

13. Commitment and Contingencies

The Company is involved from time to time in various legal proceedings and administrative actions incidental or related to the normal conduct of its business. Although it is impossible to predict the outcome of any pending legal proceeding, management believes that such proceedings and actions should not, except as it relates to asbestos, the ASIC proceedings and income taxes as described in these financial statements, individually or in the aggregate, have a material adverse effect on its consolidated financial position, results of operations or cash flows.

ASIC Proceedings

In February 2007, the Australian Securities and Investments Commission (“ASIC”) commenced civil proceedings in the Supreme Court of New South Wales (the “Court”) against the Company, ABN 60 and ten then-present or former officers and directors of the James Hardie Group. While the subject matter of the allegations varies between individual defendants, the allegations against the Company are confined to alleged contraventions of provisions of the Australian Corporations Act/Law relating to continuous disclosure, a director’s duty of care and diligence, and engaging in misleading or deceptive conduct in respect of a security.

The Company defended each of the allegations made by ASIC and the orders sought against it in the proceedings, as did the other former directors and officers of the Company.

The proceedings commenced on September 29, 2008 before his Honor Justice Gzell. On April 23, 2009, Justice Gzell issued judgment against the Company and the ten former officers and directors of the Company. All defendants other than two lodged appeals against Justice Gzell’s judgments, and ASIC responded by lodging

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cross appeals against the appellants. The appeals lodged by the former directors and officers were heard in April 2010 and the appeal lodged by the Company was heard in May 2010. A final judgment has not been rendered.

Depending upon the outcome of the appeals and cross-appeals, further or different findings may be made as to the liability of each defendant-appellant, any banning orders, fines payable, and as to the costs of the appeal and the first instance proceedings that the Company may become liable for either in respect of its own appeal or the appeals of other defendants-appellants under indemnities. As with the first instance proceedings, the Company has agreed to pay a portion of the costs of bringing and defending appeals, with the remaining costs being met by third parties. The Company notes that other recoveries may be available, including as a result of successful appeals or repayments by former directors and officers in accordance with the terms of their indemnities.

It is the Company's policy to expense legal costs as incurred. Losses and expenses arising from the ASIC proceedings could have a material adverse effect on the Company's financial position, liquidity, results of operations and cash flows.

As a result of the above uncertainties, it is not presently possible for the Company to estimate the amount or range of amounts, including costs that it might become liable to pay as a consequence of the appeal proceedings. Accordingly, as of March 31, 2010, the Company has not recorded any related loss reserves.

Chile Litigation

On April 24, 2009, a trial court in Santiago, Chile awarded the then equivalent of \$13.4 million in damages against the former James Hardie Chilean entity now known as Compañía Industrial El Volcán S.A. ("El Volcan") in civil litigation brought by Industria Cementa Limitada ("Cementa") in 2007.

Cementa, a fiber cement manufacturer in Chile, commenced anti-trust proceedings in 2003 against the former James Hardie Chilean entity alleging that it had engaged in predatory pricing, by selling products below cost when it entered the Chilean market, in breach of the relevant anti-trust laws in Chile. Quimel also joined the proceedings.

As these actions existed prior to James Hardie's sale of its Chilean business in July 2005, the Company had agreed to indemnify the buyer, El Volcan, subject to certain conditions and limitations, for damages or penalties awarded against FC Volcan in relation to such proceedings.

After the anti-trust proceedings concluded in 2006, Cementa, in 2007, brought a separate civil action against FC Volcan claiming that Cementa had suffered damages, allegedly as a result of predatory pricing.

Electrónica Quimel S.A. ("Quimel") also filed a separate civil action against FC Volcan in 2007 claiming that it had suffered damages, allegedly as a result of predatory pricing. On June 23, 2009, the Chilean trial court dismissed the claim filed by Quimel against FC Volcan.

On December 30, 2009, the Company entered into a settlement agreement with El Volcan resolving all outstanding issues between the parties relating to the sale of the former James Hardie Chilean entity to El Volcan in July 2005. Under the settlement agreement, James Hardie will have no further obligation to defend or indemnify El Volcan in the antitrust proceedings commenced by Cementa or Quimel. El Volcan will now be responsible for its own defense of the antitrust proceedings, including payment of any final judgments rendered on appeal. El Volcan will also be required to defend and indemnify James Hardie against any future claims by third parties related to the management or business of the former James Hardie Chilean entity, including any future antitrust allegations. The terms and conditions of the settlement remain confidential. All amounts owed by the Company under the terms of the settlement were paid in full on December 31, 2009. As a result, the amount of the Company's provision in excess of the settlement amount was reversed, resulting in a gain of \$7.6 million included in the consolidated statements of operations for the year ended March 31, 2010.

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Environmental and Legal

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

Operating Leases

As the lessee, the Company principally enters into property, building and equipment leases. The following are future minimum lease payments for non-cancellable operating leases having a remaining term in excess of one year at March 31, 2010:

Years ending March 31 (Millions of US dollars):

2011	\$	17.4
2012		16.4
2013		15.1
2014		14.1
2015		13.9
Thereafter		37.5
Total	\$	<u>114.4</u>

Rental expense amounted to \$13.2 million, \$14.5 million and \$10.2 million for the years ended March 31, 2010, 2009 and 2008, respectively.

Capital Commitments

Commitments for the acquisition of plant and equipment and other purchase obligations, primarily in the United States, contracted for but not recognized as liabilities and generally payable within one year, were \$0.7 million at March 31, 2010.

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14. Income Taxes

Income tax expense includes income taxes currently payable and those deferred because of temporary differences between the financial statement and tax bases of assets and liabilities. Income tax (expense) benefit consists of the following components:

(Millions of US dollars)	2010	Years Ended March 31 2009	2008
(Loss) income from operations before income taxes:			
Domestic (1)	\$ 12.8	\$ 24.6	\$ 80.1
Foreign	(31.5)	131.2	(115.6)
Total (loss) income before income taxes	<u>\$ (18.7)</u>	<u>\$ 155.8</u>	<u>\$ (35.5)</u>
Income tax (expense) benefit:			
Current:			
Domestic (1)	\$ 0.6	\$ (0.1)	\$ (7.1)
Foreign	(137.7)	37.4	(102.1)
Current income tax (expense) benefit	<u>(137.1)</u>	<u>37.3</u>	<u>(109.2)</u>
Deferred:			
Domestic (1)	(0.9)	(0.1)	(0.2)
Foreign	71.8	(56.7)	73.3
Deferred income tax benefit (expense)	<u>70.9</u>	<u>(56.8)</u>	<u>73.1</u>
Total income tax expense	<u>\$ (66.2)</u>	<u>\$ (19.5)</u>	<u>\$ (36.1)</u>

(1) Since JHI SE is a Dutch parent holding company, domestic represents The Netherlands.

Income tax (expense) benefit computed at the statutory rates represents taxes on income applicable to all jurisdictions in which the Company conducts business, calculated as the statutory income tax rate in each jurisdiction multiplied by the pre-tax income attributable to that jurisdiction. Income tax (expense) benefit is reconciled to the tax at the statutory rates as follows:

(Millions of US dollars)	2010	Years Ended March 31 2009	2008
Income tax benefit (expense) at statutory tax rates	\$ 8.3	\$ (47.0)	\$ 7.8
US state income taxes, net of the federal benefit	(3.7)	(2.9)	(1.9)
Asbestos — effect of foreign exchange	(66.4)	51.2	(27.5)
Benefit from Dutch financial risk reserve regime	3.2	1.8	7.3
Expenses not deductible	(3.7)	(7.8)	(3.2)
Non-assessable items	2.0	1.6	2.7
Losses not available for carryforward	(0.6)	(4.1)	(1.4)
Change in reserves	(2.2)	(13.4)	(18.5)
Taxes on foreign income	(1.6)	(2.7)	(2.1)
State amended returns and audit	(2.2)	3.0	—
Other permanent items	0.7	0.8	0.7
Total income tax (expense) benefit	<u>\$ (66.2)</u>	<u>\$ (19.5)</u>	<u>\$ (36.1)</u>
Effective tax rate	<u>354.0%</u>	<u>12.5%</u>	<u>101.7%</u>

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Deferred tax balances consist of the following components:

(Millions of US dollars)	2010	March 31 2009
Deferred tax assets:		
Asbestos liability	\$ 436.6	\$ 345.5
Other provisions and accruals	37.4	28.5
Net operating loss carryforwards	9.9	10.8
Capital loss carryforwards	30.4	22.8
Taxes on intellectual property transfer	—	3.6
Prepayments	2.8	4.2
Foreign currency movements	—	6.6
Other	0.2	2.1
Total deferred tax assets	517.3	424.1
Valuation allowance	(39.2)	(31.7)
Total deferred tax assets, net of valuation allowance	478.1	392.4
Deferred tax liabilities:		
Property, plant and equipment	(115.7)	(105.7)
Accrued interest income	(12.0)	(7.5)
Foreign currency movements	(0.3)	—
Total deferred tax liabilities	(128.0)	(113.2)
Net deferred tax assets	<u>\$ 350.1</u>	<u>\$ 279.2</u>

The Company establishes a valuation allowance against a deferred tax asset if it is more likely than not that some portion or all of the deferred tax asset will not be realized. The Company has established a valuation allowance pertaining to all of its Australian and European capital loss carry-forwards. The valuation allowance increased by \$7.5 million during fiscal year 2010 due to foreign currency movements.

At March 31, 2010, the Company had Australian tax loss carry-forwards of approximately \$3.0 million that will never expire.

At March 31, 2010, the Company had \$101.3 million in Australian capital loss carry-forwards which will never expire. At March 31, 2010, the Company had a 100% valuation allowance against the Australian capital loss carry-forwards.

At March 31, 2010, the Company had European tax loss carry-forwards of approximately \$32.8 million that are available to offset future taxable income, of which \$22.3 million will never expire. Carry-forwards of \$10.5 million will expire in fiscal 2019. At March 31, 2010, the Company had a 100% valuation allowance against the European tax loss carry-forwards.

In determining the need for and the amount of a valuation allowance in respect of the Company's asbestos related deferred tax asset, management reviewed the relevant empirical evidence, including the current and past core earnings of the Australian business and forecast earnings of the Australian business considering current trends. Although realization of the deferred tax asset will occur over the life of the Amended FFA, which extends beyond the forecast period for the Australian business, Australia provides an unlimited carry-forward period for tax losses. Based upon managements' review, the Company believes that it is more likely than not that the Company will realize its asbestos related deferred tax asset and that no valuation allowance is necessary as of March 31, 2010. In the future, based on review of the empirical evidence by management at that time, if management determines that realization of its asbestos related deferred tax asset is not more likely than not, the

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Company may need to provide a valuation allowance to reduce the carrying value of the asbestos related deferred tax asset to its realizable value.

At March 31, 2010, the undistributed earnings of non-Dutch subsidiaries approximated \$790.4 million. The Company intends to indefinitely reinvest these earnings, and accordingly, has not provided for taxes that would be payable upon remittance of those earnings. The amount of the potential deferred tax liability related to undistributed earnings is impracticable to determine at this time.

The Company is subject to ongoing reviews by taxing jurisdictions on various tax matters, including challenges to various positions the Company asserts on its income tax returns. The Company accrues for tax contingencies based upon its best estimate of the taxes ultimately expected to be paid, which it updates over time as more information becomes available. Such amounts are included in taxes payable or other non-current liabilities, as appropriate. If the Company ultimately determines that payment of these amounts is unnecessary, the Company reverses the liability and recognizes a tax benefit during the period in which the Company determines that the liability is no longer necessary. The Company records additional tax expense in the period in which it determines that the recorded tax liability is less than the ultimate assessment it expects.

In fiscal years 2010, 2009 and 2008, the Company recorded an income tax expense of \$2.2 million, an income tax benefit of \$3.0 million and nil, respectively, as a result of the finalization of certain tax audits (whereby certain matters were settled), the expiration of the statute of limitations related to certain tax positions and adjustments to income tax balances based on the filing of amended income tax returns, which give rise to the benefit recorded by the Company.

The Company or its subsidiaries files income tax returns in various jurisdictions including the United States, The Netherlands, Australia and the Republic of Ireland. The Company is no longer subject to US federal examinations by US Internal Revenue Service ("IRS") for tax years prior to tax year 2007. The Company is no longer subject to examinations by The Netherlands tax authority, for tax years prior to tax year 2005. The Company is no longer subject to Australian federal examinations by the Australian Taxation Office ("ATO") for tax years prior to tax year 2007.

The Company currently derives significant tax benefits under the US-Netherlands tax treaty. The treaty was amended during fiscal year 2005 and became effective for the Company on February 1, 2006. The amended treaty provides, among other things, requirements that the Company must meet for the Company to continue to qualify for treaty benefits and its effective income tax rate. During fiscal year 2006, the Company made changes to its organizational and operational structure to satisfy the requirements of the amended treaty and believes that it is in compliance and should continue qualifying for treaty benefits. However, if during a subsequent tax audit or related process, the Internal Revenue Service ("IRS") determines that these changes do not meet the requirements, the Company may not qualify for treaty benefits and its effective income tax rate could significantly increase beginning in the fiscal year that such determination is made and it could be liable for taxes owed for calendar year 2008 and subsequent periods.

The Company believes that it is more likely than not that it is in compliance and should continue qualifying for treaty benefits. Therefore, the Company believes that the requirements for recording a liability have not been met and therefore it has not recorded any liability at March 31, 2010 for the treaty benefits.

ATO — 1999 Disputed Amended Assessment

In March 2006, RCI Pty Ltd ("RCI"), a wholly-owned subsidiary of the Company, received an amended assessment from the ATO with respect to RCI's income tax return for the year ended March 31, 1999. The amended assessment related to the amount of net capital gains arising as a result of an internal corporate restructure carried out in 1998 and was issued pursuant to the discretion granted to the Commissioner of Taxation under Part IVA of the Income Tax Assessment Act 1936. The amended assessment issued to RCI was for a total of A\$412.0 million. However, after subsequent remissions of general interest charges ("GIC") by the

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ATO the total was changed to A\$368.0 million, comprising primary tax after allowable credits, penalties, and GIC.

During fiscal year 2007, RCI agreed with the ATO that in accordance with the ATO Receivable Policy, RCI would pay 50% of the total amended assessment being A\$184.0 million (\$152.5 million), and provide a guarantee from James Hardie Industries SE (formerly James Hardie Industries N.V.) in favor of the ATO for the remaining unpaid 50% of the amended assessment, pending outcome of the appeal of the amended assessment. RCI also agreed to pay GIC accruing on the unpaid balance of the amended assessment in arrears on a quarterly basis.

On May 30, 2007, the ATO issued a Notice of Decision disallowing RCI's objection to the amended assessment ("Objection Decision"). On July 11, 2007, RCI filed an application appealing the Objection Decision and the matter was heard before the Federal Court of Australia in September 2009. Judgment was reserved and a decision is awaited.

The Company believes that it is more-likely-than-not that the tax position reported in RCI's tax return for the 1999 fiscal year will be upheld on appeal. Therefore, the Company has not recorded any liability at March 31, 2010 for the amended assessment.

The Company expects that amounts paid in respect of the amended assessment will be recovered by RCI (with interest) at the time RCI is successful in its appeal against the amended assessment. As a result, the Company has treated all payments in respect of the amended assessment that have been made up through March 31, 2010 and related accrued interest receivable as a deposit, and it is the Company's intention to treat any payments to be made at a later date as a deposit. At March 31, 2010 and 2009, this deposit totaled \$247.2 (A\$269.9 million) and \$173.5 million (A\$252.5 million), respectively.

Included in other non-current liabilities are taxes payable on accrued interest of \$43.0 million and \$27.3 million at March 31, 2010 and 2009, respectively.

ATO Settlement

As announced on December 12, 2008, the Company and the ATO reached an agreement that finalized tax audits being conducted by the ATO on the Company's Australian income tax returns for the years ended March 31, 2002 and March 31, 2004 through March 31, 2006 and settled all outstanding issues arising from these tax audits. With the exception of the assessment in respect of RCI for the 1999 financial year, the settlement concluded ATO audit activities for all years prior to the year ended March 31, 2007.

The agreed settlement, made without concessions or admissions of liability by either the Company or the ATO, required the Company to pay an amount of \$101.6 million (A\$153.0 million) in December 2008.

Dutch Exit Tax

In connection with implementing Stage 1 of the Company's proposal to re-domicile its corporate seat from The Netherlands to the Republic of Ireland, the Company incurred a tax liability that arose from: (i) a capital gain on the transfer of its intellectual property from The Netherlands to a newly-formed James Hardie entity located in Bermuda and tax resident in the Republic of Ireland and (ii) the exit from the Dutch Financial Risk Reserve regime.

The Dutch Tax Authority (the "DTA") reviewed the Company's assessed fair value of the intellectual property as performed by a third party valuation firm. Based on the DTA's review, the Company incurred a capital gain and Dutch exit tax liability of \$40.8 million. The charge has been deferred and included in non-current *Other Assets* on the Company's consolidated balance sheet as of March 31, 2010 and will be amortized on a straight-line basis over the remaining useful life of the intellectual property.

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Unrecognized Tax Benefits

A reconciliation of the beginning and ending amount of unrecognized tax benefits and interest and penalties are as follows:

(US\$ millions)	Unrecognized tax benefits	Interest and Penalties
Balance at April 1, 2007	\$ 39.0	\$ 39.7
Additions for tax positions of the current year	1.3	—
Additions for tax positions of prior year	16.0	1.8
Foreign currency translation adjustment	5.6	5.5
Balance at March 31, 2008	\$ 61.9	\$ 47.0
Additions for tax positions of the current year	1.7	—
Additions (deletions) for tax positions of prior year	37.3	(14.3)
Settlements paid during the current period	(72.0)	(39.6)
Foreign currency translation adjustment	(16.6)	(9.1)
Balance at March 31, 2009	\$ 12.3	\$ (16.0)
Additions for tax positions of the current year	1.2	—
Additions (deletions) for tax positions of prior year	4.4	(4.1)
Other reductions for the tax positions of prior periods	(10.2)	(0.6)
Foreign currency translation adjustment	—	(6.2)
Balance at March 31, 2010	\$ 7.7	\$ (26.9)

As of March 31, 2010, the total amount of unrecognized tax benefits and the total amount of interest and penalties accrued related to unrecognized tax benefits that, if recognized, would affect the effective tax rate is \$7.7 million and an expense of \$26.9 million, respectively.

The Company recognizes penalties and interest accrued related to unrecognized tax benefits in income tax expense. During the year ended March 31, 2010 and 2009, the total amount of interest and penalties recognized in tax expense as a benefit was \$4.7 million and \$14.3 million, respectively.

The liabilities associated with uncertain tax benefits are included in other non-current liabilities on the Company's consolidated balance sheet.

A number of years may lapse before an uncertain tax position is audited and ultimately settled. It is difficult to predict the ultimate outcome or the timing of resolution for uncertain tax positions. It is reasonably possible that the amount of unrecognized tax benefits could significantly increase or decrease within the next twelve months. These changes could result from the settlement of ongoing litigation, the completion of ongoing examinations, the expiration of the statute of limitations, or other circumstances. At this time, an estimate of the range of the reasonably possible change cannot be made.

On April 1, 2007, the Company adopted a new accounting standard for uncertainty in income taxes. This standard clarified the accounting for uncertainty in income taxes recognized in an enterprise's financial statements. The adoption of this standard resulted in the reduction of the Company's consolidated beginning retained earnings of \$78.0 million. As of the adoption date, the Company had \$39.0 million of gross unrecognized tax benefits that, if recognized, would affect the effective tax rate. As of the adoption date, the Company's opening accrual for interest and penalties was \$39.7 million.

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15. Stock-Based Compensation

At March 31, 2010, the Company had the following equity award plans: the Executive Share Purchase Plan; the JHI SE 2001 Equity Incentive Plan; the 2005 Managing Board Transition Stock Option Plan; the Long-Term Incentive Plan 2006 as amended in 2009 and the Supervisory Board Share Plan 2006.

Compensation expense arising from equity-based award grants as estimated using pricing models was \$7.7 million, \$7.2 million, \$7.7 million for the years ended March 31, 2010, 2009 and 2008, respectively. As of March 31, 2010, the unrecorded deferred stock-based compensation balance related to equity awards was \$8.9 million after estimated forfeitures and will be recognized over an estimated weighted average amortization period of 2.4 years.

JHI SE 2001 Equity Incentive Plan

Under the JHI SE 2001 Equity Incentive Plan (the “2001 Equity Incentive Plan”), the Company can grant equity 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 was approved by the Company’s shareholders and the Joint Board subject to implementation of the consummation of the 2001 Reorganization. The Company is authorized to issue 45,077,100 shares under the 2001 Equity Incentive Plan.

On October 19, 2001 (the grant date), JHI NV granted 5,468,829 options to purchase shares of the Company’s common stock under the 2001 Equity Incentive Plan to key US executives in exchange for their previously granted Key Management Equity Incentive Plan (“KMEIP”) shadow shares that were originally granted in November 2000 and 1999 by JHIL. These options may be exercised in five equal tranches (20% each year) starting with the first anniversary of the original shadow share grant. As of March 31, 2010, 115,140 options were outstanding and exercisable with an exercise price of A\$3.78. The options will expire in November 2010.

Under the 2001 Equity Incentive Plan, additional grants have been made at fair market value to management and other employees of the Company. Each option confers the right to subscribe for one ordinary share in the capital of JHI SE. The options may be exercised as follows: 25% after the first year; 25% after the second year; and 50% after the third year. All unexercised options expire 10 years from the date of issue or 90 days after the employee ceases to be employed by the Company.

The following table summarizes the additional stock option grants:

Share Grant Date	Original Exercise Price (A\$)	Number of Options Granted	Option Expiration Date
December 2001	5.65	4,248,417	December 2011
December 2002	6.66	4,037,000	December 2012
December 2003	7.05	6,179,583	December 2013
December 2004	5.99	5,391,100	December 2014
February 2005	6.30	273,000	February 2015
December 2005	8.90	5,224,100	December 2015
March 2006	9.50	40,200	March 2016
November 2006	8.40	3,499,490	November 2016
March 2007	8.90	179,500	March 2017
March 2007	8.35	151,400	March 2017
December 2007	6.38	5,031,310	December 2017

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As set out in the plan rules, the exercise prices and the number of shares available on exercise may be adjusted on the occurrence of certain events, including new issues, share splits, rights issues and capital reconstructions. Consequently, the exercise prices on the December 2002 and December 2001 option grants were reduced by A\$0.21 for the November 2003 return of capital and the December 2001 option grant was reduced by A\$0.38 for the November 2002 return of capital.

Under the 2001 Equity Incentive Plan, the Company granted 278,569 and 1,690,711 restricted shares of common stock to its employees in the years ended March 31, 2010 and 2009, respectively. These restricted shares may not be sold, transferred, assigned, pledged or otherwise encumbered so long as such shares remain restricted. The Company determines the conditions or restrictions of any restricted stock awards, which may include requirements of continued employment, individual performance or the Company's financial performance or other criteria. At March 31, 2010, there were 1,416,339 restricted stock units outstanding under this plan.

Managing Board Transitional Stock Option Plan

The Managing Board Transitional Stock Option Plan provides an incentive to the members of the Managing Board. The maximum number of shares that may be issued and outstanding or subject to outstanding options under this plan without further shareholder approval is 1,320,000 shares. There were 1,090,000 and 1,320,000 options outstanding at March 31, 2010 and 2009, respectively, under this plan.

On November 22, 2005, the Company granted options to purchase 1,320,000 shares of the Company's common stock at an exercise price per share equal to A\$8.53 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. 50% of these options become exercisable on the first business day on or after November 22, 2008 if the total shareholder returns ("TSR") (essentially its dividend yield and common stock performance) from November 22, 2005 to that date were at least equal to the median TSR for the companies comprising the Company's peer group, as set out in the plan. In addition, for each 1% increment that the Company's TSR is above the median TSR, an additional 2% of the options become exercisable. If any options remain unvested on the last business day of each six month period following November 22, 2008 and November 22, 2010, the Company will reapply the vesting criteria to those options on that business day.

Long-Term Incentive Plan

At the 2006 Annual General Meeting, the Company's shareholders approved the establishment of a Long-Term Incentive Plan ("LTIP") to provide incentives to members of the Company's Managing Board and to certain members of its management ("Executives"). The shareholders also approved, in accordance with certain LTIP rules, the issue of options in the Company to members of the Company's Managing Board and to Executives. At the Company's 2008 Annual General Meeting, the shareholders amended the LTIP to also allow restricted stock units to be granted under the LTIP.

In November 2006 and August 2007, 1,132,000 and 1,016,000 options were granted to the members of the Managing Board, respectively, under the LTIP. The vesting of these equity awards are subject to 'performance hurdles' as outlined in the LTIP rules. Unexercised options expire 10 years from the date of issue.

In September 2008, December 2008, May 2009, September 2009 and December 2009, 1,023,865, 545,757, 1,066,595, 522,000 and 181,656 restricted stock units, respectively, were granted under the LTIP to members of the Company's Managing Board and to senior members of management. These restricted shares may not be sold, transferred, assigned, pledged or otherwise encumbered so long as such shares remain restricted. The Company determines the conditions or restrictions of any restricted stock awards, which may include requirements of continued employment, individual performance or the Company's financial performance or other criteria. Restricted stock units expire on exercise, vesting or as set out in the LTIP rules.

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At March 31, 2010, there were 1,937,000 options and 3,320,382 restricted stock units outstanding under this plan.

Supervisory Board Share Plan 2006

At the 2006 Annual General Meeting, the Company's shareholders approved the replacement of its Supervisory Board Share Plan with a new plan called the Supervisory Board Share Plan 2006 ("SBSP 2006"). Participation by members of the Supervisory Board in the SBSP 2006 is not mandatory. The SBSP 2006 allows the Company to issue new shares or acquire shares on the market on behalf of the participant. The total remuneration of a Supervisory Board member will take into account any participation in the SBSP 2006 and shares under the SBSP 2006. At March 31, 2010, 98,106 shares had been acquired under this plan.

Stock Options

The following table summarizes all of the Company's stock options available for grant and the movement in all of the Company's outstanding options during the noted period:

	Shares Available for Grant	Outstanding Options	
		Number	Weighted Average Exercise Price (A\$)
Balance at March 31, 2008	15,564,294	22,190,237	7.29
Newly Authorized	4,291,230		
Exercised		(25,000)	5.99
Forfeited		(3,892,309)	7.34
Forfeitures available for re-grant	3,892,309		
Balance at March 31, 2009	<u>23,747,833</u>	<u>18,272,928</u>	7.28
Exercised		(2,058,275)	5.51
Forfeited		(1,770,215)	7.97
Forfeitures available for re-grant	1,540,215		
Balance at March 31, 2010	<u>25,288,048</u>	<u>14,444,438</u>	7.44

The Company's stock based-compensation expense is the estimated fair value of options granted over the periods in which the stock options vest.

The Company estimates the fair value of each option grant on the date of grant using either the Black-Scholes option-pricing model or a binomial lattice model that incorporates a Monte Carlo Simulation (the "Monte Carlo method").

There were no stock options granted during the years March 31, 2010 and 2009. For the year ended March 31, 2008, the Company granted 5,031,310 stock options under the 2001 Equity Incentive Plan. For the year ended March 31, 2008, the Company granted 1,016,000 stock options under the LTIP.

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The following table includes the weighted average assumptions and weighted average fair values used for stock option grants valued using the Black-Scholes option-pricing model during the year ended March 31, 2008:

Dividend yield	5.0%
Expected volatility	30.0%
Risk free interest rate	3.4%
Expected life in years	4.4
Weighted average fair value at grant date (A\$)	1.13
Number of stock options	5,031,310

The following table includes the weighted average assumptions and weighted average fair values used for stock option grants valued using a binomial lattice model that incorporates the Monte Carlo method during the year ended March 31, 2008:

Dividend yield	5.0%
Expected volatility	32.1%
Risk free interest rate	4.2%
Weighted average fair value at grant date (A\$)	3.14
Number of stock options	1,016,000

The total intrinsic value of stock options exercised was A\$4.7 million, nil and A\$1.2 million for the years ended March 31, 2010, 2009 and 2008, respectively.

The weighted average grant-date fair value of stock options granted was A\$1.47 per share during the year ended March 31, 2008.

Windfall tax benefits realized in the United States from stock options exercised and included in cash flows from financing activities in the consolidated statements of cash flows were \$0.9 million, nil and nil for the years ended March 31, 2010, 2009 and 2008, respectively.

The following table summarizes outstanding and exercisable options as of March 31, 2010:

Exercise Price (A\$)	Options Outstanding				Options Exercisable		
	Number	Weighted Average Remaining Life (in Years)	Weighted Average Exercise Price (A\$)	Aggregate Intrinsic Value	Number	Weighted Average Exercise Price (A\$)	Aggregate Intrinsic Value (A\$)
3.09	115,140	0.6	3.09	480,134	115,140	3.09	480,134
5.06	254,309	1.7	5.06	559,480	254,309	5.06	559,836
5.99	1,523,250	4.7	5.99	1,934,528	1,523,250	5.99	1,934,528
6.30	93,000	4.9	6.30	89,280	93,000	6.30	89,280
6.38	2,638,729	7.7	6.38	2,322,082	1,103,462	6.38	971,047
6.45	796,500	2.7	6.45	645,165	796,500	6.45	645,165
7.05	1,758,250	3.7	7.05	369,233	1,758,250	7.05	369,233
7.83	1,016,000	7.4	7.83	—	—	0.00	—
8.35	151,400	7.0	8.35	—	151,400	8.35	—
8.40	2,646,560	6.6	8.40	—	2,470,160	8.40	—
8.53	1,090,000	5.7	8.53	—	—	0.00	—
8.90	2,321,100	5.7	8.90	—	2,321,100	8.90	—
9.50	40,200	5.9	9.50	—	40,200	9.50	—
Total	<u>14,444,438</u>	<u>6.6</u>	<u>7.44</u>	<u>6,399,902</u>	<u>10,626,771</u>	<u>6.83</u>	<u>5,049,223</u>

James Hardie Industries SE and Subsidiaries
Notes to Consolidated Financial Statements

The aggregate intrinsic value in the preceding table represents the total pre-tax intrinsic value based on stock options with an exercise price less than the Company's closing stock price of A\$7.26 as of March 31, 2010, which would have been received by the option holders had those option holders exercised their options as of that date.

Restricted Stock

The Company estimates the value of restricted stock issued and recognizes this estimated value as compensation expense over the periods in which the restricted stock vests.

The following table summarizes all of the Company's restricted stock activity during the noted period:

	Shares	Weighted Average Fair Value at Grant Date (A\$)
Nonvested at March 31, 2008	—	—
Granted	3,260,333	3.98
Vested	(24,052)	3.85
Forfeited	(245,220)	4.40
Non-vested at March 31, 2009	2,991,061	3.95
Granted	2,048,820	5.38
Vested	(208,884)	3.85
Forfeited	(94,276)	4.32
Non-vested at March 31, 2010	<u>4,736,721</u>	4.57

Restricted Stock — service vesting

The Company granted restricted stock units with a service vesting condition to employees as follows:

Grant Date	Equity Award Plan	Restricted Stock Units Granted
June 17, 2008	2001 Equity Incentive Plan	698,440
September 15, 2008	Long-Term Incentive Plan	201,324
December 17, 2008	2001 Equity Incentive Plan	992,271
May 29, 2009	Long-Term Incentive Plan	1,066,595
December 7, 2009	2001 Equity Incentive Plan	278,569
		<u>3,237,199</u>

The fair value of each restricted stock unit (service vesting) is equal to the market value of the Company's common stock on the date of grant, adjusted for the fair value of dividends as the restricted stock holder is not entitled to dividends over the vesting period.

James Hardie Industries SE and Subsidiaries
Notes to Consolidated Financial Statements

The following table includes the assumptions used for restricted stock grants (service vesting) valued during the years ended March 31, 2010 and 2009:

	2010		2009		
	Dec 7, 2009	May 29, 2009	Dec 17, 2008	Sep 15, 2008	Jun 17, 2008
Dividend yield (per annum) (1)	\$ 0.00	\$ 0.00	\$ 0.10	\$ 0.20	\$ 0.20
Risk free interest rate (1)	n/a	n/a	1.3%	1.8%	2.9%
Expected life in years	3.0	2.0	3.0	2.0	2.0
JHX stock price at grant date (A\$)	8.30	4.31	3.85	4.98	4.93
Number of restricted stock units	278,569	1,066,595	992,271	201,324	698,440

(1) The risk free rate for the grants in fiscal year 2010 are not applicable as the assumed dividend yield is nil.

Restricted Stock — market condition

Under the terms of the LTIP, the Company granted 703,656 and 1,368,298 restricted stock units (market condition) to members of the Company’s Managing Board and senior managers during the years ended March 31, 2010 and 2009, respectively. The vesting of these restricted stock units is subject to a market condition as outlined in the LTIP rules.

The fair value of each of these restricted stock units (market condition) granted under the LTIP is estimated using a binomial lattice model that incorporates a Monte Carlo Simulation (the “Monte Carlo method”).

The following table includes the assumptions used for restricted stock grants (market condition) valued during the years ended March 31:

	2010		2009	
	Dec 11, 2009	Sep 15, 2009	Dec 17, 2008	Sep 15, 2008
Expected volatility	49.9%	42.1%	37.6%	34.9%
Risk free interest rate	2.1%	2.5%	1.3%	2.6%
Expected life in years	3.0	3.0	3.0	3.0
JHX stock price at grant date (A\$)	8.20	7.04	3.85	4.98
Number of restricted stock units	181,656	522,000	545,757	822,541

Scorecard LTI — Cash Settled Units

Under the terms of the LTIP, the Company granted awards equivalent to 1,089,265 and nil Scorecard LTI units during the years ended March 31, 2010 and 2009, respectively, that provide recipients a cash incentive based on JHI SE’s common stock price on the vesting date. The vesting of awards is measured on individual performance conditions based on certain performance measures. Compensation expense recognized for awards are based on the fair market value of JHI SE’s common stock on the date of grant and recorded as a liability. The liability is adjusted for subsequent changes in JHI SE’s common stock price at each balance sheet date.

Cash Settled Units

The Company granted 35,741 and nil cash settled units (service vesting) to employees during the years ended March 31, 2010 and 2009, respectively, under the 2001 Equity Incentive Plan. Compensation expense recognized for awards are based on the fair market value of JHI SE’s common stock on the date of grant and recorded as a liability. The liability is adjusted for subsequent changes in JHI SE’s common stock price at each balance sheet date.

James Hardie Industries SE and Subsidiaries
Notes to Consolidated Financial Statements

The total compensation cost related to liability classified awards for the years ended March 31, 2010 and 2009 was \$1.6 million and nil, respectively.

16. Share Repurchase Program

On August 15, 2007, the Company announced a share repurchase program of up to 10% of the Company's issued capital, approximately 46.8 million shares. The Company repurchased nil, nil and 35.7 million shares of common stock during the years ended March 31, 2010, 2009 and 2008, respectively. The shares repurchased during the year ended March 31, 2008 had an aggregate cost of A\$236.4 million (\$208.0 million) and the average price paid per share of common stock was A\$6.62 (\$5.83). The US dollar amounts were determined using the weighted average spot rates for the days on which shares were purchased. The Company officially cancelled 35.0 million shares on March 31, 2008. On 27 March 2009, the Company cancelled the remaining 0.7 million shares held in treasury. The Company ceased the share repurchase program on August 20, 2008.

17. Operating Segment Information and Concentrations of Risk

The Company has reported its operating segment information in the format that the operating segment information is available to and evaluated by the Managing Board of Directors. USA and Europe Fiber Cement manufactures fiber cement interior linings, exterior siding and related accessories products in the United States; these products are sold in the United States, Canada and Europe. Asia Pacific Fiber Cement includes all fiber cement manufactured in Australia, New Zealand and the Philippines and sold in Australia, New Zealand, Asia, the Middle East, and various Pacific Islands. Research and Development represents the cost incurred by the research and development centers.

The Company's operating segments are strategic operating units that are managed separately due to their different products and/or geographical location. On April 1, 2008, the Company realigned its operating segments by combining the previously reported segments of USA Fiber Cement and Other into one operating segment, USA and Europe Fiber Cement. On May 22, 2008, the Company ceased operation of its pipe business in the United States.

Operating Segments

The following are the Company's operating segments and geographical information:

(Millions of US dollars)	2010	Net Sales to Customers (1) Years Ended March 31	
		2009	2008
USA & Europe Fiber Cement	\$ 828.1	\$ 929.3	\$ 1,170.5
Asia Pacific Fiber Cement	<u>296.5</u>	<u>273.3</u>	<u>298.3</u>
Worldwide total	<u>\$ 1,124.6</u>	<u>\$ 1,202.6</u>	<u>\$ 1,468.8</u>

James Hardie Industries SE and Subsidiaries
Notes to Consolidated Financial Statements

(Millions of US dollars)	(Loss) Income Before Income Taxes Years Ended March 31		
	2010	2009	2008
USA & Europe Fiber Cement (2), (3)	\$ 208.5	\$ 199.3	\$ 235.2
Asia Pacific Fiber Cement (2)	58.7	47.1	50.3
Research and Development (2)	<u>(19.0)</u>	<u>(18.9)</u>	<u>(18.1)</u>
Segments total	248.2	227.5	267.4
General Corporate (4)	<u>(269.2)</u>	<u>(53.9)</u>	<u>(304.0)</u>
Total operating (loss) income	(21.0)	173.6	(36.6)
Net interest (expense) income (5)	(4.0)	(3.0)	1.1
Other income (expense)	6.3	(14.8)	—
Worldwide total	<u>\$ (18.7)</u>	<u>\$ 155.8</u>	<u>\$ (35.5)</u>

(Millions of US dollars)	Total Identifiable Assets March 31	
	2010	2009
USA & Europe Fiber Cement	\$ 780.8	\$ 765.6
Asia Pacific Fiber Cement	216.9	167.9
Research and Development	<u>14.2</u>	<u>12.2</u>
Segments total	1,011.9	945.7
General Corporate (6), (7)	<u>1,166.9</u>	<u>946.0</u>
Worldwide total	<u>\$ 2,178.8</u>	<u>\$ 1,891.7</u>

Geographic Areas

(Millions of US dollars)	Net Sales to Customers (1) Years Ended March 31		
	2010	2009	2008
USA	\$ 808.9	\$ 912.2	\$ 1,153.1
Australia	214.3	193.2	198.6
New Zealand	50.6	50.0	67.3
Other Countries	<u>50.8</u>	<u>47.2</u>	<u>49.8</u>
Worldwide total	<u>\$ 1,124.6</u>	<u>\$ 1,202.6</u>	<u>\$ 1,468.8</u>

James Hardie Industries SE and Subsidiaries
Notes to Consolidated Financial Statements

(Millions of US dollars)	Total Identifiable Assets March 31	
	2010	2009
USA	\$ 783.6	\$ 767.4
Australia	131.6	99.8
New Zealand	49.8	27.1
Other Countries	<u>46.9</u>	<u>51.4</u>
Segments total	1,011.9	945.7
General Corporate (6), (7)	<u>1,166.9</u>	<u>946.0</u>
Worldwide total	<u>\$ 2,178.8</u>	<u>\$ 1,891.7</u>

- (1) Export sales and inter-segmental sales are not significant.
- (2) Research and development costs of \$10.4 million, \$8.0 million and \$7.7 million in fiscal years 2010, 2009 and 2008, respectively, were expensed in the USA and Europe Fiber Cement segment. Research and development costs of \$1.0 million, \$1.2 million and \$1.6 million in fiscal years 2010, 2009 and 2008, respectively, were expensed in the Asia Pacific Fiber Cement segment. Research and development costs of \$15.7 million, \$14.4 million and \$18.0 million in fiscal years 2010, 2009 and 2008, respectively, were expensed in the Research and Development segment. The Research and Development segment also included selling, general and administrative expenses of \$3.3 million, \$4.5 million and \$0.1 million in fiscal years 2010, 2009 and 2008, respectively.
 Research and development expenditures are expensed as incurred and in total amounted to \$27.1 million, \$23.8 million and \$27.3 million for the years ended March 31, 2010, 2009 and 2008, respectively.
- (3) Included in USA and Europe Fiber Cement for the year ended March 31, 2008 are asset impairment charges of \$71.0 million.
- (4) The principal components of General Corporate are officer and employee compensation and related benefits, professional and legal fees, administrative costs, and rental expense net of rental income on the Company's corporate offices. Included in General Corporate for the year ended March 31, 2010 are unfavorable asbestos adjustments of \$224.2 million, AICF SG&A expenses of \$2.1 million and ASIC expenses of \$3.4 million. Included in General Corporate for the year ended March 31, 2009 are favorable asbestos adjustments of \$17.4 million, AICF SG&A expenses of \$0.7 million and ASIC expenses of \$14.0 million. Included in General Corporate for the year ended March 31, 2008 are unfavorable asbestos adjustments of \$240.1 million, AICF SG&A expenses of \$4.0 million and ASIC expenses of \$5.5 million.
- (5) The Company does not report net interest expense for each operating segment as operating segments are not held directly accountable for interest expense. Included in net interest (expense) income is AICF interest income of \$3.3 million, \$6.4 million and \$9.4 million in fiscal years 2010, 2009 and 2008, respectively. See Note 11.
- (6) The Company does not report deferred tax assets and liabilities for each operating segment as operating segments are not held directly accountable for deferred income taxes. All deferred income taxes are included in General Corporate.
- (7) Asbestos-related assets at March 31, 2010 and 2009 are \$797.7 million and \$681.0 million, respectively, and are included in the General Corporate segment.

James Hardie Industries SE and Subsidiaries
Notes to Consolidated Financial Statements

Concentrations of Risk

The distribution channels for the Company's fiber cement products are concentrated. If the Company were to lose one or more of its major customers, there can be no assurance that the Company will be able to find a replacement. Therefore, the loss of one or more customers could have a material adverse effect on the Company's consolidated financial position, results of operations and cash flows. The Company has three major customers that individually account for over 10% of the Company's net sales in one or all of the past three fiscal years.

These three customers' accounts receivable represented 37% and 35% of the Company's trade accounts receivable at March 31, 2010 and 2009, respectively. The following are gross sales generated by these three customers, which are all from the USA and Europe Fiber Cement segment:

(Millions of US dollars)	2010		Years Ended March 31 2009		2008	
	\$	%	\$	%	\$	%
Customer A	224.4	20.0	277.1	23.0	431.3	27.9
Customer B	144.5	12.8	149.6	12.4	167.3	10.8
Customer C	93.2	8.3	46.8	3.9	108.2	7.0
	<u>462.1</u>		<u>473.5</u>		<u>706.8</u>	

Approximately 28% of the Company's fiscal year 2010 net sales were derived from outside the United States. Consequently, changes in the value of foreign currencies could significantly affect the consolidated financial position, results of operations and cash flows of the Company's non-US operations on translation into US dollars.

18. Accumulated Other Comprehensive Income

Accumulated other comprehensive income consists of the following components:

(Millions of US dollars)	March 31	
	2010	2009
Pension and post-retirement benefit adjustments	\$ (1.6)	\$ (1.4)
Unrealized gain on restricted short-term investments	1.2	—
Foreign currency translation adjustments	59.6	3.6
Total accumulated other comprehensive income	<u>\$ 59.2</u>	<u>\$ 2.2</u>

19. Re-domicile

On August 21, 2009, JHI NV shareholders approved Stage 1 of a two-stage plan to transform the Company into a Dutch Societas Europaea (SE) (Stage 1) and, subsequently, change its corporate domicile from the Netherlands to the Republic of Ireland (Stage 2). On February 19, 2010, the Company completed Stage 1 of the proposal and was transformed from a Dutch "NV" company to a Dutch "SE" Company and now operates under the name of James Hardie Industries Societas Europaea (SE).

On March 17, 2010 (US time), the Company filed with the US Securities and Exchange Commission ("SEC") a Registration Statement on Form F-4 including a draft Explanatory Memorandum outlining Stage 2 of the Proposal which will transform the Company from a Dutch SE to an Irish SE by moving the Company's corporate domicile from The Netherlands to the Republic of Ireland.

James Hardie Industries SE and Subsidiaries
Notes to Consolidated Financial Statements

On April 21, 2010 (US time), following SEC review of the Registration Statement and formal Board approval of the change in corporate domicile, the final Explanatory Memorandum for Stage 2 was submitted to the SEC and the ASX with a filing date of April 22, 2010.

For additional information on and implementation timing of Stage 2 of the Proposal, readers are referred to the Company's Explanatory Memorandum, which was filed with the SEC on April 22, 2010 (File No. 333-165531).

James Hardie Industries SE and Subsidiaries
Selected Quarterly Financial Data
(unaudited, not forming part of the consolidated financial statements)

The information furnished in the selected quarterly financial data for the years ended March 31, 2010 and 2009 is unaudited but includes all adjustments which, in the opinion of management, are necessary for a fair statement of the financial results of the respective interim periods. Such adjustments are of a normal recurring nature. Interim financial statements are by necessity somewhat tentative; judgments are used to estimate interim amounts for items that are normally determinable only on an annual basis

(Millions of US dollars)	Year Ended March 31, 2010				Year Ended March 31, 2009			
	First	Second	Third	Fourth	First	Second	Third	Fourth
Net sales	\$ 284.5	\$ 304.2	\$ 261.0	\$ 274.9	\$ 365.0	\$ 341.9	\$ 254.4	\$ 241.3
Cost of goods sold	(174.1)	(186.6)	(164.3)	(183.5)	(241.0)	(228.7)	(172.0)	(172.1)
Gross profit	110.4	117.6	96.7	91.4	124.0	113.2	82.4	69.2
Operating (loss) income	(57.1)	(0.8)	25.1	11.8	22.9	192.2	118.9	(160.4)
Interest expense	(1.5)	(1.5)	(1.8)	(2.9)	(2.6)	(2.3)	(2.5)	(3.8)
Interest income	0.8	1.1	1.0	0.8	1.5	2.6	1.4	2.7
Other income (expense)	4.8	(1.0)	2.2	0.3	—	—	—	(14.8)
(Loss) income from operations before income taxes	(53.0)	(2.2)	26.5	10.0	21.8	192.5	117.8	(176.3)
Income tax (expense) benefit	(24.9)	(17.4)	(11.6)	(12.3)	(20.4)	(39.0)	(6.8)	46.7
Net (loss) income	<u>\$ (77.9)</u>	<u>\$ (19.6)</u>	<u>\$ 14.9</u>	<u>\$ (2.3)</u>	<u>\$ 1.4</u>	<u>\$ 153.5</u>	<u>\$ 111.0</u>	<u>\$ (129.6)</u>
Net income per share — basic	\$ (0.18)	\$ (0.05)	\$ 0.03	\$ 0.01	\$ —	\$ 0.36	\$ 0.26	\$ (0.30)
Net income per share — diluted	(0.18)	(0.05)	0.03	0.01	—	0.35	0.26	(0.30)

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 February 19, 2010

As Further Amended and Restated as of June 17, 2010

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DEPOSIT AGREEMENT

DEPOSIT AGREEMENT dated as of September 24, 2001, as amended and restated as of February 19, 2010, as further amended and restated as of June 17, 2010, 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 Republic of Ireland and with its corporate seat in Dublin, Republic of Ireland (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.

WITNESSETH:

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 amended and restated the James Hardie Industries N.V. Deposit Agreement on February 19, 2010 (the "James Hardie Industries SE 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 and the Depositary now wish to amend and restate the James Hardie Industries SE Deposit Agreement to, change the country of incorporation of the Issuer from The Netherlands to the Republic of Ireland;

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 Depository or with the Custodian (as hereinafter defined) as agent of the Depository 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 Depository.

The term “CUFS Depository” shall mean the CUFS depository nominee, CHESS Depository 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 Depository, 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 Depository for the purposes of this Deposit Agreement, and any other firm or corporation which may hereafter be appointed by the Depository 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 Depository, (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 Depository; Corporate Trust Office.

The term “Depository” shall mean The Bank of New York Mellon, a New York banking corporation and any successor as depository hereunder. The term “Corporate Trust Office”, when used with respect to the Depository, shall mean the office of the Depository 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 Depository 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 Republic of Ireland and with its corporate seat in Dublin, Ireland 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 Depository 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 Republic of Ireland, 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 CHES.

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 CHES 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 CHESSE 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 CUSF Depository (or appointed agent or agents of the CUSF Depository for transfer and registration of the CUSF) satisfactory to the Depository that any deposited CUSF have been recorded upon the CHES Subregister of the CUSF Depository (or by the appointed agent of the CUSF Depository for transfer and registration of CUSF), if applicable, in the name of the Depository or its nominee or such Custodian or its nominee), together with the other documents required as above specified, such Custodian shall notify the Depository 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 Depository 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 Depository, 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 Depository Shares requested by such person or persons, but only upon payment to the Depository of the fees of the Depository 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 CUSF and the issuance of such Receipt or Receipts.

SECTION 2.04 Transfer of Receipts; Combination and Split-up of Receipts.

The Depository, 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 Depository 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 CHESSE evidenced by such Receipt, instruct the Depositary to procure the electronic transfer through CHESSE 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 Depository for delivery at the Corporate Trust Office of the Depository. 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 Depository, the Issuer, the CUFS Depository, Custodian or Registrar may require payment from the depositor of CUFS or the presenter 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 Depository 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 Depository are closed, or if any such action is deemed necessary or advisable by the Depository, the Issuer, or the CUFS Depository 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 Depository 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 Depository 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 Depository 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 Depository 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 Depository (i) a request for such execution and delivery before the Depository 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 Depository.

SECTION 2.08 Cancellation and Destruction of Surrendered Receipts.

All Receipts surrendered to the Depository shall be cancelled by the Depository. The Depository is authorized to destroy Receipts so cancelled.

SECTION 2.09 Pre-Release of Receipts.

Notwithstanding Section 2.03 hereof, the Depository may execute and deliver Receipts prior to the receipt of CUFS pursuant to Section 2.02 ("Pre-Release"). The Depository 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 Depository knows that such Receipt has been Pre-Released. The Depository 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 Depository deems appropriate, (c) terminable by the Depository on not more than five (5) business days notice, and (d) subject to such further indemnities and credit regulations as the Depository 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 Depository reserves the right to change or disregard such limit from time to time as it deems appropriate.

The Depository 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 Depository 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 Depository 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 Depository, (B) delivery to the Depository at its Corporate Trust Office of an instruction to surrender American Depositary Shares not evidenced by a Receipt or (C) surrender to the Depository 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 Depository 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 Depository, 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 Depository, 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 Depository 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 Depository may register the ownership of uncertificated American Depositary Shares, which ownership shall be evidenced by periodic statements issued by the Depository 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 Depository 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 Depository 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 Depository 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 Depository’s reliance on and

compliance with instructions received by the Depository through the DRS/Profile System and in accordance with this Deposit Agreement shall not constitute negligence or bad faith on the part of the Depository.

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 Depository or the Custodian such proof of citizenship or residence, exchange control approval, or such information relating to the registration on the CHESSE Subregister if applicable, to execute such certificates and to make such representations and warranties, as the Depository may deem necessary or proper. The Depository 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 Depository. The Depository 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 Republic of Ireland all amounts withheld and owing to such agency. The Depository will forward to the Issuer or the CUFS Depository such information from its records as the Issuer or the CUFS Depository may reasonably request to enable the Issuer or the CUFS Depository to file necessary reports with governmental agencies, and the Depository or the Issuer or the CUFS Depository 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 Depository shall receive any distribution other than a distribution described in Sections 4.01, 4.03 or 4.04, the Depository shall cause the securities or property received by it to be distributed to the Owners entitled thereto, in proportion to the number of American Depository Shares representing such Deposited Securities held by them respectively, in any manner that the Depository may deem equitable and practicable for accomplishing such distribution; provided, however, that if in the opinion of the Depository 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 Depository or the Depository 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 Depository deems such distribution not to be feasible, the Depository 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 Depository as provided in Section 5.09) shall be distributed by the Depository to the Owners entitled thereto as in the case of a distribution received in cash. Any distributions received by the Depository 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 Irish 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 Depository shall not make such distribution or offering, and shall allow any rights, if applicable, to lapse.

SECTION 5.03 Obligations of the Depository, 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 Depository 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 Depository 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 Depository.

Neither the Depository 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 120~~th~~ 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 CUFSS generally on the CHESSE Subregister and applicable to transfers of CUFSS to or from the name of the Depository 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 Depository 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 Depository to Owners, (8) a fee of \$.02 or less per American Depositary Share (or portion thereof) for depository 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 Depository, any of the Depository's agents, including the Custodian, or the agents of the Depository's agents in connection with the servicing of CUFSS or other Deposited Securities (which charge shall be assessed against Owners as of the date or dates set by the Depository in accordance with Section 4.06 and shall be payable at the sole discretion of the Depository by billing such Owners for such charge or by deducting such charge from one or more cash dividends or other cash distributions).

The Depository, 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, Europa House, Second Floor, Harcourt Centre, Harcourt Street, Dublin 2, Republic of Ireland, 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 Depository 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 Depository Receipt Administration, or any other place to which the Depository 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. 2 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 CHES and CUFS.

The American Depositary Shares represent deposited CUFS. The Receipt shall contain the following description of CHES and CUFS:

CHES

CHES facilitates the transfer of legal title and settlement of market transactions in Australia with an electronic subregister system. CHES, 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 CHES 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 CHES 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 Depository on behalf and for the benefit of CUFS holders.

(ii) Voting

CUFS holders are entitled to direct the CUFS Depository 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 Depository 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 Depository, such fees and expenses shall be paid by the Issuer to the CUFS Depository.

(v) Immobilization of Shares

The certificate issued to the CUFS Depository as evidence of its legal title to Shares is held by the Issuer for safekeeping. The CUFS Depository 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 Depository and the CUFS Depository 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 CHESSE 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 Depository. CUFS holders who are sponsored by the Issuer will receive uncertificated holding statements from the Issuer's Australian registry on behalf of the CUFS Depository.

(vii) Converting CUFS to Shares

A holder of CUFS in CHESSE who wishes to convert CUFS to Shares of the Issuer can do so by instructing its sponsoring CHESSE participant (ie, broker or non-broker participant). The participant transmits a CHESSE message to the Issuer's registry instructing the registry to transfer the Shares from the CUFS Depository into the name of the holder. The transfer is effected by a written instrument signed by the CUFS Depository, 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 CHESSE, can do so by lodging the Share certificate, if applicable, with their sponsoring CHESSE 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 CHESSE message to the Issuer's registry instructing the registry to establish a

CHES 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. CHES, 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: /s/ Paul Bokota
Name: Paul Bokota
Title: Deputy General Counsel

THE BANK OF NEW YORK MELLON,
as Depositary

By: /s/ Joanne F. Di Giovanni
Name: Joanne F. Di Giovanni
Title: Vice President

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
JAMES HARDIE INDUSTRIES SE
(INCORPORATED UNDER THE LAWS OF THE REPUBLIC OF IRELAND)**

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 CHES Units of Foreign Securities (herein called "CUFS") of James Hardie Industries SE, incorporated under the laws of the Republic of Ireland (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 February 19, 2010, as further amended and restated as of June 17, 2010 (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 CHESSE evidenced by such Receipt, instruct the Depositary to procure the electronic transfer through CHESSE 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

Depository 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 Depository 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 Depository and upon compliance with such regulations, if any, as the Depository 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 Depository, the Company, the CUFS Depository, the Custodian, or Registrar may require payment from the depositor of CUFS or the presenter 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 Depository 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 Depository are closed, or if any such action is deemed necessary or advisable by the Depository, the Company, or the CUFS Depository 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 Depository 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 Depository. The Depository 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 CHES 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 CHESSE Subregister and applicable to transfers of CUFS to or from the name of the Depository 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 Depository 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 Depository 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 Depository, any of the Depository's agents, including the Custodian, or the agents of the Depository'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 Depository in accordance with Section 4.06 of the Deposit Agreement and shall be payable at the sole discretion of the Depository by billing such Owners for such charge or by deducting such charge from one or more cash dividends or other cash distributions).

The Depository, 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 Depository may execute and deliver Receipts prior to the receipt of CUFS pursuant to Section 2.02 of the Deposit Agreement ("Pre-Release"). The Depository 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 Depository knows that such Receipt has been Pre-Released. The Depository 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 Depository deems appropriate, (c) terminable by the Depository on not more than five (5) business days notice, and (d) subject to such further indemnities and credit regulations as the Depository 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 Depository reserves the right to change or disregard such limit from time to time as it deems appropriate.

The Depository 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 Depository, notwithstanding any notice to the contrary, may treat the person in whose name this Receipt is registered on the books of the Depository 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 Depository by the manual or facsimile signature of a duly authorized signatory of the Depository 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 Depository 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 Depository 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

Depository to the Owners of Receipts entitled thereto as in the case of a distribution received in cash. Any distributions received by the Depository 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 Depository may distribute to the Owners of outstanding Receipts entitled thereto, additional Receipts evidencing an aggregate number of American Depository 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 Depository 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 Depository as provided in Section 5.09 of the Deposit Agreement. In lieu of delivering Receipts for fractional American Depository Shares in any such case, the Depository 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 Depository Share shall thenceforth also represent the additional CUFS distributed upon the Deposited Securities represented thereby.

In the event that the Depository determines that any distribution in property (including CUFS and rights to subscribe therefor) is subject to any tax or other governmental charge which the Depository is obligated to withhold, the Depository 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 Depository deems necessary and practicable to pay any such taxes or charges and the Depository 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 Depository 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 Depository be converted on a reasonable basis into Dollars and the resulting Dollars transferred to the United States, the Depository 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 Depository 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 Depository 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 Depository causes a change in the number of CUFS that are represented by each American Depositary Share, or whenever the Depository shall receive notice of any meeting of holders of CUFS or the Shares underlying the CUFS or other Deposited Securities, the Depository 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 Depository 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 Depository, which shall contain (a) such information as is contained in such notice of meeting received from the CUFS Depository 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 Irish law and of the Articles of Association of the Company, to instruct the Depository 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 Depository for such purpose (the "Instruction Date"), the Depository shall endeavor, in so far as practicable, to instruct, or cause the Custodian to instruct, the CUFS Depository to vote or cause to be voted, the Shares underlying the CUFS in accordance with the instructions received by the Depository from Owners. The Depository shall not instruct, or cause the Custodian to instruct, the CUFS Depository 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 Depository will have enough time to instruct the CUFS Depository to vote or that the CUFS Depository 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 CUPS, 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

Depository 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 Depository. Neither the Depository 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 CUSFS 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 Depository shall not be liable for any acts or omissions made by a successor depository whether in connection with a previous act or omission of the Depository or in connection with any matter arising wholly after the removal or resignation of the Depository, provided that in connection with the issue out of which such potential liability arises the Depository performed its obligations without negligence or bad faith while it acted as Depository. The Depository 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 Depository, 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 Depository 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 Depository may at any time resign as Depository 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 depository and its acceptance of such appointment as provided in the Deposit Agreement. The Depository 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 Depository or (ii) the appointment of a successor depository and its acceptance of such appointment as provided in the Deposit Agreement. Whenever the Depository 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 Depository 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 Depository 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 Depository 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 Depository shall have delivered to the Company a written notice of its election to resign and a successor depository 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 Depository, (b) payment of the fee of the Depository 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 Depository 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 Depository 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 Depository (after deducting, in each case, the fee of the Depository 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. 2 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 Australian Corporations 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 CHESSE 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 Depository into the name of the holder. The transfer is effected by a written instrument signed by the CUFS Depository, 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 Depository and establishes a CUFS holding in the name of the holder. CHESS, on behalf of the CUFS Depository, 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 Depository 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 Depository 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 Depository, (B) delivery to the Depository at its Corporate Trust Office of an instruction to surrender American Depositary Shares not evidenced by a Receipt or (C) surrender to the Depository 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 Depository 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 Depository, 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 Depository, 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 Depository 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 Depository may register the ownership of uncertificated American Depositary Shares, which ownership shall be evidenced by periodic statements issued by the Depository 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 Depository 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 Depository 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 Depository 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 Depository's reliance on and compliance with instructions received by the Depository through the DRS/Profile System and in accordance with the Deposit Agreement shall not constitute negligence or bad faith on the part of the Depository.

MALLESONS STEPHEN JAQUES

James Hardie — Common
Terms Deed Poll

Amended and restated on 6 October 2009

James Hardie International Finance B.V. (“**JHIF**”)
James Hardie International Finance Limited (“**JHIFL**”)
James Hardie Building Products, Inc. (“**JHBP**”)
James Hardie Industries N.V. (“**Guarantor**”)

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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
Corporate seat		Dublin
Registration Number		471702
Address		Arthur Cox Building Earlsfort Terrace Dublin 2 Ireland
Fax		+353 1 618 0618
Attention		Bradwell Limited, Company Secretary
JHBP		Name
	Incorporated in	Nevada
	Address	Suite 100 26300 La Alameda Mission Viejo CA 92691 United States of America
	Fax	+ 1 949 348 4534

Guarantor

Attention	Company Secretary
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

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.
 - C The accession of JHIFL as a Borrower is evidenced by its execution of this deed.

James Hardie — Common Terms Deed Poll

General terms

1 Interpretation

1.1 Definitions

These meanings apply unless the contrary intention appears:

AS\$, 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 (c) 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 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.

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.

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 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 on or about 25 September 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 Obligor; and

- (iv) **(fees)** evidence of instructions issued by the Obligor's 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 Obligor

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 Obligor's 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 Obligor's 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

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9807451_3

James Hardie – Common Terms Deed Poll
2 October 2009

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[name]
[address]

Tel [insert]
Fax [insert]

To: [Name of financier]

USS[•] 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 N.V. (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:

I 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:

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James Hardie – Common Terms Deed Poll
2 October 2009

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James Hardie — Common Terms Deed Poll

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 1] 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:

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James Hardie – Common Terms Deed Poll
2 October 2009

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James Hardie — Common Terms Deed Poll

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 N.V.
(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]

James Hardie — Common Terms Deed Poll

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 **f]** 2009.

The Creditor releases the Retiring Borrower described above from all liability under the CTDTP 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 CTDTP.

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 CTDTP 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: 6 October 2009

SIGNED, SEALED AND DELIVERED by)
)

and)

as attorneys for **JAMES HARDIE**)
INTERNATIONAL FINANCE)
B.V. under power of attorney dated)

/s/ Marcin Firek

in the presence of:)
)

/s/ Bruce Potts

Signature of witness

Marcin Firek

By executing this amended and restated deed each attorney states that the attorney has received no notice of revocation of the power of attorney

Bruce Potts

Name of witness (block letters)

SIGNED, SEALED AND DELIVERED by)
Geraldine Lillis)
and)
Andrew Ryan)
as attorneys for **JAMES HARDIE**)
INTERNATIONAL FINANCE)
LIMITED under power of attorney)
dated 25 September 2009)

in the presence of:)
)

/s/ Dermot Marah

Signature of witness

By executing this amended and restated deed each attorney states that the attorney has received no notice of revocation of the power of attorney

Dermot Marah

Name of witness (block letters)

MALLESONS STEPHEN JAQUES

James Hardie — Common
Terms Deed Poll

Amended and restated on 21 December 2009

James Hardie International Finance Limited (“**JHIFL**”)
James Hardie Building Products, Inc. (“**JHBP**”)
James Hardie Industries N.V. (“**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:YYC

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James Hardie — Common Terms Deed Poll

Details

Interpretation — Definitions are in clause 1.

Parties **JHIFL, JHBP** and the **Guarantor**, each as described below.

JHIFL	Name	James Hardie International Finance Limited
	Corporate seat	Dublin
	Registration Number	471702
	Address	Europa House Second Floor Harcourt Centre Harcourt Street Dublin 2 Ireland
	Fax	+ 353 1 479 1128
	Attention	Treasurer
	JHBP	Name
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

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 and 6 October 2009 (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.
 - C The amendment and restatement of the Previous Deeds only applies to a Financier which has agreed to the changes made to the Previous Deeds by the amendment and restatement

James Hardie — Common Terms Deed Poll

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 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:

- (i) 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
- (ii) in accordance with GAAP,

but excluding all consequential balance sheet and other accounting impacts of any settlement or any court ruling of the "ATO — 1999 Disputed Amended Assessment" (as described in the financial statements of the Group and provided that the amount does not exceed the US Dollar equivalent of A\$445 million (calculated on the basis of the USD / AUD exchange rate quoted by the Reserve Bank of Australia on the date the consequential balance sheet and other accounting impacts are recognised) plus accrued interest since 30 September 2009),

in each case, on:

- (A) the most recent Reporting Date; or
- (B) 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 (c) 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 Asbestos Injuries Compensation Fund Limited in its personal capacity) 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.

Guarantor Financial Reports means the non-public financial or equivalent reports prepared in respect of the Guarantor (or separate reports prepared for each division of the Guarantor) for the purpose of preparing consolidated financial statements of the Group, the form and content of which is at the discretion of the Guarantor.

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 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.

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.

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.

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.

JHT Undertaking means the deed poll dated on or about 25 September 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 JHIFL 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 Disposal means:

- (a) a disposal in the ordinary course of business;
- (b) a disposal of assets in exchange for other assets comparable or superior as to type, value and quality;
- (c) a disposal of obsolete assets or assets no longer required for the purpose of the relevant Group Member's business or operations;
- (d) the payment of cash for any asset acquired in the ordinary course of business;
- (e) the investment of funds which are not immediately required in the relevant Group Member's business in accordance with the Group's established money market treasury policies or the realisation of such investments;
- (f) the sale of assets for cash which is applied in or towards the purchase of assets comparable or superior as to type, value and quality within 6 months or used to reduce the Financial Indebtedness of any Obligor;
- (g) the application of the proceeds of an issue of securities (whether debt or equity) for the purpose stated in the prospectus or other offering document relating to that issue;
- (h) a disposal comprised in or which occurs as part of any forward sale, stock loan or repurchase transaction;
- (i) a disposal constituted by, or arising as a result of, any Permitted Security Interest or any Permitted External Financial Indebtedness;

- (j) a disposal by a Group Member to another Group Member;
- (k) all other disposals where the aggregate net proceeds of such other disposals in any 12 month period does not exceed 10% of total assets as shown in the balance sheet on the most recent Reporting Date; and
- (l) a disposal not falling within paragraphs (a) to (k) above which has 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).

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.

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).

Part 1 Creditors and Facilities

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) prior to the Irish Registration Date, Loyens & Loeff N.V., Netherlands legal advisers to the Guarantor;
 - (B) after the Irish Registration Date, Arthur Cox, Irish legal advisers to the Guarantor;
 - (C) Arthur Cox, Irish legal advisers to JHIFL;
 - (D) McDonald Carano & Wilson, United States of America legal advisers to JHBP;
 - (E) Mallesons Stephen Jaques, Australian legal advisers to the Obligors; and
 - (F) 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 Obligor; and

- (iv) **(fees)** evidence of instructions issued by the Obligor's 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 JHIFL is an Obligor:

- (A) the most recent financial statements of JHIFL 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 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 and disposals

Each Obligor undertakes to each Creditor that it will not, and will not permit any of its Subsidiaries (excluding the Excluded Entities):

- (a) to, create or allow to exist a Security Interest over any of its assets, other than a Permitted Security Interest; nor
- (b) to, dispose of any assets other than a Permitted Disposal.

9.4 Financial undertakings

- (a) **(Consolidated Net Worth)** The Guarantor must ensure that Consolidated Net Worth on each Reporting Date and, where applicable, on each ASX CNW Announcement Date is not less than the greater of:
 - (i) US\$420 million; and
 - (ii) 75% of Consolidated Net Worth as at the preceding 31 March.
- (b) **(EBIT)** The Guarantor will ensure that EBIT will not be less than 3.25 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. For avoidance of doubt, if the Guarantor elects to make instalment payments to the Fund pursuant to clause 9.7(a)(i) of the AFFA, the 35% cap does not include any interest payable under clause 9.7(b) of the AFFA.
- (d) **(Funded Debt)** The Guarantor will ensure that the ratio of Consolidated Funded Debt to Consolidated Funded Capitalisation does not exceed 55% 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 10% 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 and Guarantor statements and reports)**

- (i) 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;

(ii) 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;

(iii) for so long as there is a Guarantor:

(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 Guarantor Financial Reports are prepared as a matter of general internal accounting practice of the Guarantor, a copy of the Guarantor 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 Guarantor Financial Reports are prepared as a matter of general internal accounting practice of the Guarantor, a copy of the Guarantor 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; and
- (b) 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.
- (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.

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

James Hardie — Common Terms 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 Limited (with a registered office in Dublin) / James Hardie Industries N.V. (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#

© Mallesons Stephen Jaques
10137271_8

James Hardie – Common Terms Deed Poll
21 December 2009

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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 200

Name:

© Mallesons Stephen Jaques
10137271_8

James Hardie – Common Terms Deed Poll
21 December 2009

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James Hardie — Common Terms Deed Poll

Schedule 2 — Facility Nomination Letter (clause 2.1)



**James Hardie International
Finance Limited**

Europa House
Second Floor
Harcourt Street
Harcourt Street
Dublin 2
Ireland

Tel [insert]
Fax +35 1 479 1128

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 Limited as Obligors’ Agent

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.

For and on behalf of *[Insert name of Creditor]*

by its Authorised Officer

Name:

Title:

© Mallesons Stephen Jaques
10137271_8

James Hardie – Common Terms Deed Poll
21 December 2009

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James Hardie — Common Terms Deed Poll

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]

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 N.V.
(with corporate seat in Amsterdam)

For and on behalf of
[Insert the **name of the retiring Borrower**]

Authorised Officer: [Name]

Authorised Officer: [Name]

James Hardie — Common Terms Deed Poll

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 **f**] 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]

James Hardie — Common Terms Deed Poll

Signing page

DATED: 21 December 2009

**SIGNED, SEALED AND
DELIVERED by**

Russell Chenu
Chief Financial Officer

and

Diederik J. Ex

as attorneys for **JAMES HARDIE
INTERNATIONAL FINANCE
LIMITED** under power of attorney
dated

in the presence of:

/s/ Dirk van Hilten
Signature of witness

Dirk van Hilten

**SIGNED, SEALED AND
DELIVERED by**

Russell Chenu
Chief Financial Officer

and

Diederik J. Ex

and

as attorneys for **JAMES HARDIE
INDUSTRIES N.V.** under power of
attorney dated

in the presence of:

/s/ Dirk van Hilten
Signature of witness

Dirk van Hilten

© Mallesons Stephen Jaques
10137271_8

James Hardie – Common Terms Deed Poll
21 December 2009

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MALLESONS STEPHEN JAQUES

Amending Deed — Guarantee Trust Deed

Dated 6 October 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

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Ref: 02-5501-6101

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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, 8 th floor, Strawinskyiaan 3077, 1077ZX Amsterdam, The Netherlands (with its Australian registered office at Level 3, 22 Pitt Street, Sydney in the State of New South Wales)
Guarantee Trustee	Name	AET Structured Finance Services Pty Ltd in its capacity as trustee for the Beneficiaries 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 “ <i>Societas Europaea</i> ” and subsequently to transfer its corporate domicile from The Netherlands to the Republic of Ireland (together, the “ Redomicile Transaction ”).
	C	JHINV has confirmed to the Guarantee Trustee that 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 and that upon the transfer of JHINV’s corporate domicile to the Republic of Ireland (then having the form of a <i>Societas Europaea</i> 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.

- E** JHINV has confirmed to the Guarantee Trustee that, 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 Creditors (as defined in the CTDP) under the Transaction Documents,

(together, the “**Treasury / IP Transfer**”), and that

upon completion of the Treasury / IP Transfer, JHIF will no longer have any finance and treasury responsibilities for the James Hardie 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 the Guarantee Trust Deed.

Date of Amending Deed

6 October 2009

Amending Deed — Guarantee Trust Deed

General terms

1 Interpretation

Clause 1 (“Interpretation”) of the 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:

Amending Agreement (Parent Guarantee) means the document entitled “Amending Agreement (Parent Guarantee)” dated 23 June 2009 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.

Briefing Paper means the document entitled “James Hardie: Final Briefing Paper for Financiers and Guarantee Trustee regarding domicile proposal” dated 16 June 2009 prepared by the Guarantor and its advisers and provided to the Guarantee Trustee.

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 references to the Guarantor in 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 “Fund Guarantee”

Each party confirms that the definitions of “Guarantee” and “Fund Guarantee” for the purposes of the Intercreditor Deed and Guarantee Trust Deed respectively are, with effect from the Irish Registration Date, references 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 and 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;
- (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; and
- (c) the Guarantee Trust Deed will apply to the borrowings of JHIFL (as Debtor) under the relevant Finance Documents (as novated pursuant to the Novation Deeds) and, for the avoidance of doubt, the Guaranteed Moneys includes all amounts payable by JHIFL under or in connection with the novated Finance Documents.

2.4 Acknowledgement from Guarantee Trustee

The Guarantee Trustee agrees that, in accordance with the directions of the Beneficiaries:

- (a) the Redomicile Transaction (including each action outlined in the Briefing Paper) will 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 agrees (and in the case of the Guarantee Trustee, in accordance with the directions of the Beneficiaries) that, on the Novation Date, the novation of all rights and obligations of JHIF under the Transaction Documents to JHIFL pursuant to each Novation Deed constitutes a Beneficiary Nomination Letter nominating:

- (a) 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;
- (b) 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
- (c) the Financier (as defined in each Novation Deed) 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).

This clause operates as a deed poll in favour of each Beneficiary.

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

As from the Novation Date, the Guarantee Trust Deed is amended as set out in schedule 1.

4 Costs

Clause 22.1 (“What the Guarantor agrees to pay”) of the Guarantee Trust Deed applies to this deed as if it was fully set out in this deed but as if all references to “this deed” were to this deed and to the ‘Amending Deed — Intercreditor Deed’ dated 23 June 2009 between the Fund Trustee, the State of New South Wales, the Guarantor and the Guarantor Trustee (the “**Amending Deed — Intercreditor Deed**”).

In addition, the Guarantor shall be responsible for and pay to the Guarantee Trustee on demand all costs, charges, expenses, fees, disbursements incurred by external legal counsel or advisers of the Guarantee Trustee in connection with the preparation, negotiation and execution of this deed and/or the Amending Deed — Intercreditor 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.

8 Guarantee Trustee limitation of liability

Clause 1.6 (“Guarantee Trustee’s limitation of liability”) of the Guarantee Trust Deed applies to this deed as if fully set out in this deed.

EXECUTED as a deed

Amending Deed — Guarantee Trust Deed

Schedule 1 — Novation 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 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 replacing the words “Dutch law” in the final line with the words “applicable law”.
- 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 Financier provided the Guarantor with written confirmation as to any of its name, address, registration number, (in the case of a Financier 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, 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 replacing the words “Dutch law” in the final line with the words “applicable law”.

Amending Deed — Guarantee Trust Deed

Signing page

DATED: 2009

EXECUTED by)

as attorney for, and)

SEALED AND DELIVERED as a deed by, **JAMES**)

HARDIE INDUSTRIES N.V. in the presence of:)

/s/ Shane Grimes) Attorney

Signature of witness) Position

Shane Grimes)

Name of witness (block letters))

/s/ Marcin Firek

) By executing this deed the attorney states that the signatory has received no notice of revocation of the authority under which the signatory signs this deed

) Attorney

) Position

) /s/ Bruce Potts

) By executing this deed the attorney 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:

/s/ Philip John Walter Joseph (signed)

Philip John Walter Joseph (print name)

Authorised Officer

/s/ Glenn White (signed)

Glenn White (print name)

Authorised Officer

MALLESONS STEPHEN JAQUES

Amending Deed — Performing Subsidiary Undertaking and Guarantee Trust Deed

Dated 6 October 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

Level 61

Governor Phillip Tower

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Ref: 02-5501-6101

Amending Deed — Performing Subsidiary Undertaking and Guarantee Trust Deed
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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 undertaking and guarantee trustee for the Beneficiaries under the 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	6 October 2009	

Amending Deed — Performing Subsidiary Undertaking and Guarantee Trust Deed

General terms

1 Interpretation

Clause 1 (“Interpretation”) of the 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 “James Hardie — 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.

JHINV means James Hardie Industries N.V., a limited liability company incorporated in The Netherlands.

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.

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.

Trust means the Performing Subsidiary Undertaking and Guarantee Trust established by clause 5.1 of the Performing Subsidiary Undertaking and Guarantee Trust Deed.

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

Clause 23.1 (“What the Performing Subsidiary agrees to pay”) of the Performing Subsidiary Undertaking and Guarantee Trust Deed applies to this deed as if it was fully set out in this deed but as if all references to “this deed” were to this deed and to the ‘Amending Deed — Performing Subsidiary Intercreditor Deed’ dated 23 June 2009 between the Fund Trustee, the State of New South Wales, the Performing Subsidiary and the Guarantor Trustee (the “**Amending Deed — Performing Subsidiary Intercreditor Deed**”).

In addition, the Guarantor shall be responsible for and pay to the Guarantee Trustee on demand all costs, charges, expenses, fees, disbursements incurred by external legal counsel or advisers of the Guarantee Trustee in connection with the preparation, negotiation and execution of this deed and/or the Amending Deed — Intercreditor 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.

8 Guarantee Trustee limitation of liability

Clause 1.5 (“Undertaking and Guarantee Trustee’s limitation of liability”) of the Performing Subsidiary Undertaking and Guarantee Trust Deed applies to this deed as if fully set out in this deed.

EXECUTED as a deed

© Mallesons Stephen Jaques
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Amending Deed – Performing Subsidiary Undertaking and Guarantee Trust Deed
1 October 2009

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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 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 JHINV, the Performing Subsidiary, 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).”.
- 3 All references to “Final Funding Agreement” in the Performing Subsidiary Undertaking and Guarantee Trust Deed are deleted and replaced with “AFFA”.
- 4 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”.

Amending Deed — Performing Subsidiary Undertaking and Guarantee Trust Deed
Signing page

DATED: 2009

EXECUTED by)

as attorney for, and)
SEALED AND DELIVERED as a deed by, **JAMES HARDIE 117 PTY**)
LIMITED in the presence of:)

/s/ Shane Grimes)
Signature of witness)

Shane Grimes)
Name of witness (block letters))

/s/ Marcin Firek)
By executing this deed the attorney states that the signatory has received no)
notice of revocation of the authority under which the signatory signs this deed)

Attorney)
Position)

/s/ Bruce Potts)
By executing this deed the attorney 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:

/s/ Philip John Walter Joseph (signed)

Philip John Walter Joseph (print name)

Authorised Officer

/s/ Glenn White (signed)

Glenn White (print name)

Authorised Officer

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
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F +61 2 9296 3999
DX 113 Sydney
www.mallesons.com
Ref: 02-5501-6101

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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

ã Malleons Stephen Jaques
9955394_2

Amending Agreement — Parent Guarantee
16 June 2009

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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

Schedule 2 — Conformed copy of the Parent Guarantee incorporating the Irish Registration Date Amendments

ã Malleons Stephen Jaques
9955394_2

Amending Agreement — Parent Guarantee
16 June 2009

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DATED 14 December 2006

Asbestos Injuries Compensation Fund Limited in its capacity as trustee for the

Charitable Fund

as the Beneficiary

and

The State of New South Wales Government

and

James Hardie Industries N.V.

as the Guarantor

PARENT GUARANTEE

THIS PARENT GUARANTEE is made on 14 December 2006 in Sydney, New South Wales

BETWEEN:

1. ~~(1)~~ **Asbestos Injuries Compensation Fund Limited (ACN 117 363 461**, a company limited by guarantee incorporated under the laws of the State of New South Wales, Australia, having its registered office at Level 3, 22 Pitt Street Sydney New South Wales, in its capacity as trustee for the **Charitable Fund** (the "**Fund Trustee**"), duly represented by Peter Baker and Joanne Marchione;

and

2. ~~(2)~~ The **State of New South Wales**, Level 39, Governor Macquarie Tower, Farrer Place, Sydney NSW 2000, Australia (the "**NSW Government**"), duly represented by Robert John Debus;

and

3. ~~(3)~~ **James Hardie Industries N.V.**, a company incorporated under the laws of the Netherlands, with its corporate seat in Amsterdam, the Netherlands, registered with the trade register of the Chamber of Commerce with number 34106455 (the "**Guarantor**"), duly represented by Meredith Hellicar and Russell Chenu.

The aforementioned parties also collectively referred to as the "**Parties**" or individually as the "**Party**".

RECITALS:

1. ~~(1)~~ On 1 December 2005 the NSW Government, JHINV and the Performing Subsidiary entered into the Original Final Funding Agreement with the common intention of making funding available by JHINV and/or its subsidiaries to pay, on the basis set out in the Original Final Funding Agreement, Proven Claims (as defined in the Original Final Funding Agreement) against the Liable Entities (as defined in the Original Final Funding Agreement).
 2. ~~(2)~~ On 8 June 2006 the Fund Trustee executed a Deed of Accession so as to become a party to the Original Final Funding Agreement and to give effect to the intention and agreement of the relevant parties referred to in paragraph 1 above.
 3. ~~(3)~~ On 8 June 2006 Asbestos Injuries Corporation Fund Limited, the NSW Government and the Guarantor executed a Parent Guarantee (the "**Original Parent Guarantee**").
 4. ~~(4)~~ On 21 November 2006 the parties to the Original Final Funding Agreement (including the Fund Trustee) entered into Final Funding Agreement, thereby amending and restating the Original Final Funding Agreement.
 5. ~~(5)~~ On 14 December 2006 Asbestos Injuries Compensation Fund Limited entered into the Trust Deed and on December 2006 in its capacity as trustee of the Discretionary Fund became a party to the Final Funding Agreement by executing a Deed of Accession.
 6. ~~(6)~~ Pursuant to **Clause 10** of the Final Funding Agreement, the Guarantor has agreed to deliver this Guarantee to the Fund Trustee and the NSW Government.
 7. ~~(6)~~ The NSW Government is not a creditor of the Guarantor in relation to the payment of the Guaranteed Obligations.
-

IT IS AGREED AS FOLLOWS:**1. INTERPRETATION**

Capitalised terms shall be used herein as such terms are defined in the Final Funding Agreement (and such terms will be interpreted in accordance with the laws of New South Wales, Australia, being the governing law of the Final Funding Agreement), unless defined otherwise in this Guarantee; and

“**Final Funding Agreement**” means the deed dated 21 November 2006 between the NSW Government, JHINV, the Performing Subsidiary and the Fund Trustee which amended and restated the Original Final Funding Agreement, as amended from time to time

“**Guarantee**” means this guarantee.

“**Guaranteed Obligations**” means any of the payment obligations of the Performing Subsidiary to the Fund Trustee under the Final Funding Agreement, including the obligation to pay the Wind-Up or Reconstruction Amount, and “**Guaranteed Obligation**” means any one such payment obligation. Where the Performing Subsidiary would have been liable to make a payment under the Final Funding Agreement but for the Liquidation or Insolvency of the Performing Subsidiary or the occurrence of a Wind-up Event or Reconstruction Event in respect of the Performing Subsidiary, it will be taken still to be liable for the purposes of this Guarantee.

Original Final Funding Agreement means the legally binding agreement entitled “Final Funding Agreement” dated 1 December 2005 between JHINV, the Performing Subsidiary and the NSW Government to which the Fund Trustee became a party on 8 June 2006.

1A ORIGINAL PARENT GUARANTEE

The parties agree that this Guarantee supersedes the Original Parent Guarantee and that, notwithstanding clause 2.2 of the Original Parent Guarantee, on the date on which all parties duly execute this Guarantee, the Original Parent Guarantee shall be terminated and the obligations of all parties under it shall be fully and finally discharged. On that date the Fund Trustee and the NSW Government shall procure that all originals of the executed Original Parent Guarantee in their possession are promptly returned to the Guarantor.

2. GUARANTEE

2.1 The Guarantor hereby irrevocably and unconditionally:

- (a) guarantees to the Fund Trustee the due and punctual performance by the Performing Subsidiary of the Guaranteed Obligations;
 - (b) guarantees to the Fund Trustee that, whenever the Performing Subsidiary does not pay any amount due under any of its Guaranteed Obligations, the Guarantor shall immediately on first written demand by the Fund Trustee pay that amount to the Fund Trustee, as if it were the principal obligor thereof; and
 - (c) guarantees to the Fund Trustee that it shall immediately on first written demand by or on behalf of the Fund Trustee pay to the Fund Trustee, all costs and expenses incurred by the Fund Trustee in relation to the protection or enforcement of its rights under this Guarantee and all costs and damages incurred by the Fund Trustee as a result of the Performing Subsidiary not fulfilling one or more of the Guaranteed Obligations when due.
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- 2.2 The obligations of the Guarantor pursuant to **Clause 2.1** shall be continuing obligations and extend to all sums payable by the Performing Subsidiary under the Guaranteed Obligations. The obligations of the Guarantor pursuant to **Clause 2.1** shall remain in full force and effect until all the Guaranteed Obligations shall have been paid, satisfied or discharged in full. Termination of this Guarantee is only allowed if and when the Final Funding Agreement is terminated (otherwise than due to breach or default by the Guarantor or the Performing Subsidiary) and the Performing Subsidiary has fully discharged all of the Guaranteed Obligations. The obligations of the Guarantor shall remain in full force in the event that the Performing Subsidiary is replaced by another subsidiary of the Guarantor in accordance with clause 6.2 of the Final Funding Agreement.
- 2.3 This Guarantee is a guarantee of performance of the Guaranteed Obligations by payment of all amounts that are the subject of the Guaranteed Obligations when due and payable.
- 2.4 ~~The Guarantee is not a contract of surety (borgtocht)~~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. The obligations of the Guarantor hereunder are independent of the obligations of the Performing Subsidiary and the obligations of any other guarantor of the obligations of the Performing Subsidiary under the Final Funding Agreement.
- 2.5 Payment by the Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify, abridge or extinguish the Guarantor's liability for any portion of the Guaranteed Obligations which has not been paid. Without limiting the generality of the foregoing, if the Fund Trustee is awarded a judgment in any proceedings brought to enforce the Guarantor's obligations to pay a portion of the Guaranteed Obligations, such judgment shall not be deemed to release the Guarantor from its obligation to pay the portion of the Guaranteed Obligations that is not the subject of such proceedings, and such judgment shall not, except to the extent satisfied by the Guarantor, limit, affect, modify, abridge or extinguish any part of the Guarantor's liability in respect of the Guaranteed Obligations.
- 2.6 This Guarantee is independent of, in addition to and shall not prejudice or affect or be prejudiced or be affected by any other right, remedy, guarantee, indemnity or security and may be enforced without first having recourse to the same or any other mortgage, charge, pledge or lien now or hereafter held by or available to the Fund Trustee and/or the NSW Government.
- 2.7 If any discharge (whether in respect of the Guaranteed Obligations or any security for those obligations or otherwise) or arrangement is made in whole or in part on the faith of any payment, security or other disposition by the Performing Subsidiary or the Guarantor which is subsequently avoided or which must be restored (without limitation) on bankruptcy, liquidation, moratorium of payment, winding-up, insolvency, dissolution, examinership, the granting of court protection, administration, composition or arrangement or otherwise, the liability of the Guarantor will continue or be reinstated as if the discharge or arrangement had not occurred. This clause 2.7 survives the discharge of this Deed.
- 2.8 Unless and until all the Guaranteed Obligations have been satisfied or discharged in full, the Guarantor shall not, after a claim has been made or by virtue of any payment
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or performance under this Guarantee, in respect of any payment made to the Fund Trustee and/or the NSW Government:

- (a) exercise any right of subrogation in respect of or claim to be subrogated to any rights, security or moneys held, received or receivable by the Fund Trustee;
- (b) exercise against or claim from the Performing Subsidiary any right of contribution or recourse;
- (c) claim as a creditor of the Performing Subsidiary in competition with the Fund Trustee; or
- (d) have the benefit of or take any action to receive or claim any payment, distribution or security in respect of the Guaranteed Obligations or amounts payable under this Guarantee from or on account of the Performing Subsidiary, or exercise any right of set-off as against the Performing Subsidiary (and the Guarantor waives any right it would otherwise have to have the benefit of or receive or claim any such payment, distribution or security or to exercise any such right of set-off).

2.9 This Guarantee will not be discharged or otherwise affected as security for the Guaranteed Obligations as a result of any of the following:

- (a) bankruptcy, moratorium of payment, winding-up, insolvency, dissolution, examinership, the granting of court protection, administration, composition or arrangement, reconstruction, liquidation or similar proceedings relative to the Performing Subsidiary;
 - (b) any change in the status, function, control or ownership of the Performing Subsidiary;
 - (c) any extension of time or other forbearance being granted or agreed to be granted to the Performing Subsidiary in respect of its Guaranteed Obligations;
 - (d) any amendment to, or any increase, variation, waiver or release of, any of the Guaranteed Obligations or any termination, amendment or variation of the Final Funding Agreement (and any reference herein to the Final Funding Agreement shall be taken as referring to the Final Funding Agreement as amended or varied from time to time);
 - (e) the taking, variation, compromise, exchange, substitution, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights or remedies against, or security over assets of the Performing Subsidiary or any other person, or any non-presentment or non-observance of any formality or other requirement in respect of any instruments or any failure to realise the full value of any security;
 - (f) any present or future guarantee, indemnity, mortgage, charge, pledge, lien or other security or right or remedy held by or available to the Fund Trustee being or becoming wholly or in part void, voidable or unenforceable on any ground whatsoever; or
-

- (g) any other act, event or omission (other than performance by the Guarantor of this Guarantee) which, but for this clause might operate to discharge, extinguish, impair or otherwise affect any of the obligations of the Guarantor contained herein or any of the rights, powers or remedies conferred in respect of the Guarantor upon the Fund Trustee and/or the NSW Government by this Guarantee or by law.

3. ENFORCEMENT

3.1 The Fund Trustee may enforce this Guarantee only upon the occurrence of (i) a breach of any Guaranteed Obligation by the Performing Subsidiary; (ii) a Wind-Up Event; or (iii) a Reconstruction Event, in accordance with and subject to clause 10 of the Final Funding Agreement.

3.2 A claim under this Guarantee in respect of the obligation of the Performing Subsidiary to make Annual Payments (and/or instalments thereof) under clause 9 of the Final Funding Agreement, can only be made if the Performing Subsidiary has been in default ~~(or in default)~~ in respect of the making of such Annual Payment for a period of 40 days from the date when such Annual Payment (or any instalment thereof) was due, provided that:

- (a) the Performing Subsidiary or the Guarantor has immediately provided to the NSW Government reasons for the default and such reasons are reasonable in the circumstances (for example and without limitation, that the Guarantor is experiencing temporary cash flow difficulties and is seeking to rectify that difficulty); and
- (b) the Guarantor has promptly after that due date entered into and continued to pursue or been ready, willing and able to enter into and pursue discussions with the NSW Government and (if available) the Fund Trustee to remedy the breach and provides to the Fund Trustee and NSW Government material particulars of the breach and the proposed remedy or remedies;
- (c) the Guarantor is not and does not become Insolvent at any time during that period; and
- (d) subject to clause 10 of the Final Funding Agreement, a Reconstruction Event does not occur at any time during that period,

provided that such period shall automatically expire upon any of the requirements in paragraphs (a) to (d) inclusive ("**Moratorium Requirements**") ceasing to be satisfied.

If the Moratorium Requirements remain satisfied at the expiry of the above 40 day period and if in the opinion of the NSW Government (acting reasonably) there is a reasonable prospect of the Guarantor or the Performing Subsidiary paying the outstanding amount within a further period of 50 days, the initial 40 day period shall be extended once by a further 50 days, save that such period shall automatically expire upon any of the Moratorium Requirements ceasing to be satisfied.

3.3 Without prejudice to clause 3.2 above, the Fund Trustee shall not be obliged before bringing a claim under this Guarantee:

- (a) to take any action against the Performing Subsidiary or to obtain judgment in any court against the Performing Subsidiary or any other person;
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- (b) to file any claim in any insolvency, bankruptcy, moratorium of payment, winding-up, examinership, the granting of court protection, administration, composition or arrangement, liquidation or similar proceedings relative to the Performing Subsidiary or any other person; or
- (c) to make, enforce or seek to enforce any claim against the Performing Subsidiary or any other person under any agreement or arrangement.
- 3.4 The restrictions to the enforcement of the Guarantee as set out in clause 3.2 of this Guarantee do not apply in respect of claims under or in relation to the Guarantee brought by the Fund Trustee in summary proceedings (~~kort geding~~) or other proceedings to obtain urgent interlocutory Court relief.
- 3.5 The Guarantor waives any and all rights of set off (~~verrekening~~), or counterclaim or suspension (~~opshorting~~) it may have at any time with respect to amounts payable hereunder against amounts owed to it by the Fund Trustee.
- 3.6 ~~The Guarantor waives to the fullest extent allowed by the laws of the Netherlands all rights, privileges, defences and exceptions pursuant to the Articles 6:139, 7:852, 853, 854, 855 and 856 of the Dutch Civil Code.~~ [intentionally blank]
- 3.7 To the extent permitted by law the Guarantor hereby waives, for the benefit of the Fund Trustee and the NSW Government:
- (a) any right to require the Fund Trustee and/or the NSW Government, as a condition of payment or performance by the Guarantor, to:
- (i) proceed against or exhaust 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,
- (ii) proceed against or have resort to any balance of any credit on the books of the Fund Trustee and/or the NSW Government in favour of the Performing Subsidiary or any other Person, or
- (iii) pursue any other remedy in the power of the ~~Guarantee~~ Fund Trustee and/or the NSW Government whatsoever;
- (b) any defence arising by reason of the incapacity, lack of authority or any disability or other defence of the Performing Subsidiary or any other guarantor, including any defence based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of the Performing Subsidiary or any other guarantor from any cause other than payment in full of the Guaranteed Obligations;
- (c) any defence based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal;
-

~~(d)~~

- (d) ~~(e)~~ any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any discharge of the Guarantor's obligations hereunder;
- (i) the benefit of any statute of limitations affecting the Guarantor's liability hereunder or the enforcement hereof,
 - (ii) the right to interpose any defence based upon any claim of laches or set-off or counterclaim of any nature or description;and
 - (iii) ~~(iii)~~ promptness, diligence and any requirement that the Fund Trustee and/or the NSW Government protect, secure, perfect or insure any security interest or lien or any property subject thereto;
- (e) notices, demands, presentments, protests, notices of protest, notices of dishonour and notices of any action or inaction, including acceptance hereof, notices of default hereunder, the Final Funding Agreement, any other Related Agreement or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit to the Performing Subsidiary and any right to consent to any thereof; and
- (f) any defences or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof.

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.

4. REPRESENTATIONS AND WARRANTIES

- 4.1 The Guarantor warrants that the following is true, accurate and not misleading as of the date of this Guarantee and will at all times after the date of this Guarantee up to and including the Commencement Date be true accurate and not misleading:
- (a) The Guarantor has been duly incorporated and is validly existing under the laws of its jurisdiction and has the necessary corporate capacity and power to enter into the Guarantee and to perform its obligations under the Guarantee.
 - (b) All corporate and other action required to be taken by the Guarantor to authorise the execution of the Guarantee and the performance of its obligations under the Guarantee has been duly taken.
 - (c) The Guarantee has been duly executed on behalf of the Guarantor and constitutes legal, valid and binding obligations of the Guarantor, enforceable in accordance with their terms subject to the terms of the opinion from de Brauw Blackstone Westbrook referred to in schedule 5 of the Final Funding Agreement.
 - (d) The execution and performance of the Guarantee do not conflict with or result in a breach of any provision of the articles of association of the Guarantor, including but not limited to its corporate purpose, or any provision
-

of any applicable law in force on the date of this Guarantee or any agreement to which the Guarantor is a party.

- (e) No approval, consent, license or notice to any regulatory or governmental body (other than such approvals, consents, licenses or notices as have been obtained or given) is necessary to ensure the validity, enforceability or performance of the obligations of the Guarantor under the Guarantee.

5. NOTICES

- 5.1 All notices, consents, waivers and other communications under this Guarantee must be in writing in English and delivered by hand or sent by regular mail, registered mail, express courier, facsimile or e-mail to the appropriate addresses and facsimile numbers set out below or to such address and facsimile number as a Party may notify to the other Party from time to time. A notice shall be effective upon receipt and shall be deemed to have been received at the time of delivery (if delivered by hand, registered mail or express courier) or at the time of successful transmission (if delivered by fax or e-mail).

To the Fund Trustee:

Name: Asbestos Injuries Compensation Fund Limited
 Address: Level 3, 18-22 Pitt Street Sydney New South Wales
 Fax number: +612 8274 5217
 Attention: The Chairman

To the NSW Government:

Name: The State of New South Wales, c/~~The Department of Premier and Cabinet Office~~
 Address: Level 39, Governor Macquarie Tower, Farrer Place, Sydney, NSW 2000
 Fax number: + 61 2 9228 3062
 Attention: Deputy Director-General (Legal)

To the Guarantor:

Name: James Hardie Industries N.V.S.E.
~~Addresses: Atrium, 8th floor, Strawinskylaan 3077, 1077ZX
 Amsterdam, The Netherlands~~
Addresses: c/- Arthur Cox, Earlsfort Centre, Earlsfort Terrace,
 Dublin 2, Ireland
Fax number: +35 3 618 0618
 and
 Level 3, 2022 Pitt Street, Sydney, NSW 2000

Fax number: +61 2 8274 5218
 Attention: ~~The Chairman and the Chief Financial Officer~~ General Counsel

6. NSW GOVERNMENT'S RIGHT TO ENFORCE

- 6.1 ~~6.1~~ The parties agree and acknowledge that clause 16.6 of the Final Funding Agreement provides that the NSW Government shall be entitled directly to enforce all promises made by the Guarantor to the Fund Trustee under this Guarantee to the full extent permitted by law on and subject to the terms of clause 16.6 of the Final Funding Agreement.
- 6.2 ~~6.2~~ Any person (including, but not limited to, a firm, body corporate, unincorporated association, court or authority) who deals with the NSW Government in good faith in relation to this Guarantee may, without enquiry, assume that the NSW Government has complied with clause 16.6 of the Final Funding Agreement unless the contrary is proved.
- 6.3 ~~6.3~~ The parties agree and acknowledge that:
- (a) the Guarantee is a Related Agreement under the Final Funding Agreement;
 - (b) under an Irrevocable Power of Attorney, a copy of which is attached as Annexure A to this Guarantee, and in addition to its rights under clause 6.1 of this Guarantee, the NSW Government shall have the power directly to enforce as an attorney of the Fund Trustee under the Irrevocable Power of Attorney and on behalf of the Fund Trustee all promises made by the Guarantor to the Fund Trustee under this Guarantee, subject to the terms of clause 16.6 of the Final Funding Agreement;
 - (c) under the Final Funding Agreement, the NSW Government and the Fund Trustee covenanted that they will not amend or replace that Irrevocable Power of Attorney without the prior written consent of the Guarantor, not to be unreasonably withheld; and
 - (d) any actions taken by the NSW Government under that Irrevocable Power of Attorney in respect of this Guarantee are valid and binding to the extent such actions are made in accordance with that Irrevocable Power of Attorney.
- 6.4 ~~On the legal relationship of the Beneficiary and the NSW Government vis a vis the Grantor, article 6:16 of the Dutch Civil code does not apply.~~

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 Guarantee is governed by the laws of the Netherlands, with the exception of the Netherlands private international law. Any dispute arising out of or in connection with this Guarantee shall be exclusively decided by the competent court in Amsterdam. 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.

8. **COUNTERPARTS**

This Guarantee may be executed in any number of counterparts. All counterparts together will be taken to be one instrument.

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.

Thus agreed and signed in Sydney on 14 December 2006.

Signed for Asbestos Injuries)
 Compensation Fund Limited by)

 Name: Peter Baker
 Director / Secretary

 Name: Joanne Marchione
 Director

Signed by Meredith Hellicar)
 and Russell Chenu for James)
 Hardie Industries N.V.)

 Meredith Hellicar
 Chairman

 Name: Russell Chenu
 Director

Signed by)
 for the State of New South Wales)
 in the presence of)

 Signature of Witness

 Name:

 Name of Witness



Annexure A
Irrevocable Power of Attorney
(attached)

Amending Agreement — Parent Guarantee

Schedule 3 — Third Irrevocable Power of Attorney

ã Malleons Stephen Jaques
9955394_2

Amending Agreement — Parent Guarantee
16 June 2009

10

**THIRD IRREVOCABLE POWER
OF ATTORNEY**

**ASBESTOS INJURIES
COMPENSATION FUND LIMITED**
(in its capacity as Trustee of the
Compensation Funds)

**THE STATE OF NEW SOUTH
WALES**

2 Park Street Sydney NSW 2000 Australia
email@gtlaw.com.au <http://www.gtlaw.com.au> Facsimile + 61 2 9263 4111 Telephone + 61 2 9263 4000

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THIS THIRD IRREVOCABLE POWER OF ATTORNEY is made on 23 June, 2009

BETWEEN

1. **ASBESTOS INJURIES COMPENSATION FUND LIMITED ACN 117 363 461**, a company limited by guarantee incorporated under the laws of the State of New South Wales, Australia, having its registered office at Level 7, 233 Castlereagh Street, Sydney, New South Wales, in its capacity as trustee for the Compensation Funds (**Appointor**)
2. **THE STATE OF NEW SOUTH WALES**(Attorney)

THE PARTIES AGREE

1. **PRELIMINARY**

Defined Terms and Interpretation

- 1.1 A term or expression starting with a capital letter which is defined in the Dictionary in Part 1 of Attachment A (**Dictionary**), has the meaning given to it in the Dictionary.
- 1.2 The Interpretation clauses in Part 2 of Attachment A (**Interpretation**) set out rules of interpretation for this deed.

2. **APPOINTMENT**

The Appointor appoints the Attorney to be its attorney from the date of this deed for the duration of the Final Funding Agreement.

3. **CONSIDERATION**

Each party acknowledges entering into this deed and incurring obligations and giving rights under this deed for valuable consideration received from the other party to this deed.

4. POWERS

4.1 Scope

Subject to clause 4.2, the Appointor hereby irrevocably grants the Attorney the powers to do in the name of the Appointor and on its behalf everything that the Attorney considers necessary or expedient to enforce on behalf of the Appointor all promises made by JHI and the Performing Subsidiary to the Appointor under clauses 6, 9, 10, 15.1 and 15.7 of the Final Funding Agreement and under each Relevant Agreement, including without limitation the powers to:

- (a) subject to clause 10 of the Final Funding Agreement, vote and prove, on behalf of the Appointor, the Wind-Up or Reconstruction Amount or any debt owing to the Appointor under clause 6, 9, 10, 15.1 and 15.7 of the Final Funding Agreement and any Relevant Agreement and make application to any court of competent jurisdiction in relation to any Reconstruction Event or Insolvency Event of JHI;
- (b) subject to clause 10 of the Final Funding Agreement be present and vote at any meeting relating to any Reconstruction Event or, subject to the Intercreditor Deeds, any Insolvency Event of JHI, or any other meeting of creditors of JHI where the obligation owed to the Appointor arises under clause 6, 9, 10, 15.1 or 15.7 of the Final Funding Agreement or any Relevant Agreement;
- (c) individually make submissions to an Insolvency Official or any court having jurisdiction in connection with any Reconstruction Event or an Insolvency Event of JHI; and
- (d) do anything which in the Attorney's opinion is necessary or desirable to ensure the validity and enforceability of this power of attorney under any applicable law (including without limitation, stamping or registering this power of attorney or filing this power of attorney with any government authority).

Without limiting the foregoing but subject to clause 4.2, in respect of an obligation owed to the Appointor which arises under clause 6, 9, 10, 15.1 or 15.7 of the Final Funding Agreement or the Relevant Agreements, the Appointor hereby authorizes the Attorney, as attorney in fact for the Appointor and with full power of substitution to attend the meeting of creditors of JHI or any adjournment thereof, and, subject to the Intercreditor Deeds, to vote in the Appointor's behalf on any question that may be lawfully submitted

to creditors at such meeting or adjourned meeting, and for a trustee or trustees of the estate of JHI and to accept or reject any plan of reorganisation of JHI.

4.2 Exercise

- (a) The foregoing powers of enforcement are subject to clause 16.6 of the Final Funding Agreement.
- (b) This power of attorney automatically terminates in the event of the termination of the Final Funding Agreement.

5. VALIDITY OF ACTS AND RATIFICATION

The Appointor:

- (a) declares that everything done by the Attorney in exercising powers under this power of attorney is as valid as if it had been done by the Appointor; and
- (b) agrees to ratify, confirm and be bound by whatever the Attorney does in exercising powers under this power of attorney.

6. DECLARATION

The Appointor declares that a Person who deals with the Attorney in good faith may accept a written statement signed by the Attorney to the effect that this power of attorney has not been revoked as conclusive evidence of that fact.

7. USE OF NAME

The Attorney may exercise powers under this power of attorney in the name of the Appointor or in the name of the Attorney including the conduct of any court proceedings.

8. AUTHORITY TO BENEFIT THIRD PARTIES

The Appointor expressly authorises the Appointor to do anything which may result in a benefit to a third party.

9. APPOINTMENT IRREVOCABLE

The Appointor declares that this power of attorney is given for valuable consideration and is irrevocable from the date of this deed for the duration of the Final Funding Agreement.

10. US ACKNOWLEDGMENT

The Appointer must, on request by the Attorney, use all reasonable endeavours to ensure that the execution of this deed is acknowledged before one of the officers enumerated in *28 U.S.C § 459, § 953, Rule 9012*, or a person authorised to administer oaths under the laws of the state where the oath is administered.

11. GOVERNING LAW

This deed is governed by the laws applicable in New South Wales.

12. NOTICES

Clause 30 of the Final Funding Agreement shall apply to this deed with the necessary changes.

13. COUNTERPARTS

This deed may be executed in any number of counterparts, each of which when executed, is an original. These counterparts together make one instrument.

EXECUTED as a deed.

**EXECUTED by ASBESTOS
INJURIES COMPENSATION FUND LIMITED**

in its capacity as trustee of
the Compensation Funds:

/s/ Joanne Marchione

Signature of Director*

Joanne Marchione

Name of Director (print)

/s/ Timothy W Blue

Signature of witness

Timothy William Blue

Name of witness (print)

/s/ Dallas Booth

Signature of Director/Secretary*

Dallas Booth

Name of Director/Secretary (print)

/s/ Timothy W Blue

Signature of witness

Timothy William Blue

Name of witness (print)

* Each individual signing this deed on behalf of Asbestos Injuries Compensation Fund Limited acknowledges that he or she is a director or secretary of the corporation named above and is authorised to execute this power of attorney on its behalf.

SIGNED by the Honourable John
Hatzistergos MLC, Attorney General of
New South Wales, for the State of New
South Wales:

/s/ John Hatzistergos

ATTACHMENT A — DICTIONARY AND INTERPRETATION
DICTIONARY AND INTERPRETATION
(Clause 1.1)

1. DICTIONARY

In this deed:

Amending Agreement (Parent Guarantee) means the agreement of that title dated on or about the date of this deed between the Appointor, the Attorney and JHI.

Amending Deed to the Intercreditor Deed means the deed of that title dated on or about the date of this deed between the Appointor, the Attorney, JHI and AET Structured Finance Services Pty Limited.

Amending Deed to the Performing Subsidiary Intercreditor Deed means the agreement of that title dated on or about the date of this deed between the Appointor, the Attorney, the Performing Subsidiary and AET Structured Finance Services Pty Limited.

Claimants has the meaning given to it in the Final Funding Agreement.

Compensation Funds has the meaning given to it in the Final Funding Agreement.

Controlled Entity has the meaning given to it in the Final Funding Agreement.

Cross Guarantee has the meaning given to it in the Final Funding Agreement.

Deed of Confirmation means the Deed of Confirmation dated on or about the date of this deed between JHI, the Performing Subsidiary, the Attorney and the Appointor.

Final Funding Agreement 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, the Performing Subsidiary, the Attorney and the Appointor, as amended by amending deeds dated 6 August 2007, 8 November 2007, 11 June 2008 and 17 July 2008 between those parties and by the Deed of Confirmation.

Initial Funding has the meaning given in the Final Funding Agreement.

Insolvency Event has the meaning given to it in the Final Funding Agreement.

Insolvency Official has the meaning given to it in the Intercreditor Deeds.

Intercreditor Deed means each deed so entitled to be entered into between JHI or the Performing Subsidiary (as the case may be), the Attorney, the Appointor and the Guarantee Trustee (as defined in that deed), substantially in the form annexed as Annexure 7A or 7B respectively, of the Final Funding Agreement, as may be amended with the agreement of JHI and the Attorney (in each case acting reasonably) as the result of review by, and negotiations with, JHI's existing bank Lenders (as defined in the Final Funding Agreement) or pursuant to the Deed of Confirmation.

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;
 - (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,
- and any Parent Entity.

JHINV means James Hardie Industries N.V. and any Parent Entity.

JHISE means JHINV once it has converted from its present corporate form as a Dutch NV (*Naamloze Vernootschap*) into an SE (*Societas Europaea*) and any Parent Entity.

Notice has the meaning given to it in the Final Funding Agreement.

Parent Entity means any Person and all such Persons of which JHI is a Controlled Entity and where there are two or more such Persons, only the immediate holding company and the ultimate holding company of JHI.

Performing Subsidiary means James Hardie 117 Pty Ltd or, if a subsidiary of JHI other than that entity is nominated under clause 6.2 of the Final Funding Agreement to perform the obligations described in clauses 6 and 9 of the Final Funding Agreement and each of JHI and that subsidiary has complied with clause 6.2 of the Final Funding Agreement, that subsidiary.

Person includes any general partnership, limited partnership, corporation, limited liability company, joint venture, trust, business trust, governmental agency, co-operative, association,

individual or other entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such a person as the context may require.

Reconstruction Event has the meaning given to it in the Final Funding Agreement.

Relevant Agreements means each of those documents listed in Schedule 1 to the Final Funding Agreement to which the Appointor is a party, each Cross-Guarantee given in favour of the Appointer by any Controlled Entity of JHI, the Deed of Confirmation, the Amending Agreement (Parent Guarantee), the Amending Deed to the Intercreditor Deed and the Amending Deed to the Performing Subsidiary Intercreditor Deed.

SE Transformation Date means the date on which JHI is registered as a “*Societas Europaea*” on the Dutch Trade Register pursuant to European Union Council Regulation 2157/2001.

Wind-Up or Reconstruction Amount has the meaning given to it in the Final Funding Agreement.

2. INTERPRETATION

In this deed the following rules of interpretation apply unless the contrary intention appears.

- (a) Headings are for convenience only and do not affect the interpretation of this deed.
- (b) The singular includes the plural and vice versa.
- (c) Words that are gender neutral or gender specific include each gender.
- (d) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (e) The words ‘such as’, ‘including’, ‘particularly’ and similar expressions are not used as nor are intended to be interpreted as words of limitation.
- (f) A reference to:
 - (i) a thing (including but not limited to a chose in action or other right) includes a part of that thing;
 - (ii) a document includes all amendments or supplements to that document;
 - (iii) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this deed;

- (iv) this deed includes all schedules and attachments to it;
- (v) an agreement other than this deed includes an undertaking, or legally enforceable arrangement or understanding whether or not in writing; and
- (vi) a monetary amount is in Australian dollars.

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)

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/ John Hatzistergos
Signature

Attorney General
Office of Signatory

/s/ Dallas Booth
Signature of ~~director~~/company
secretary*

*delete whichever is not applicable

Dallas Booth
Name of ~~director~~/company secretary*
(block letters)
*delete whichever is not applicable

EXECUTED by)

Marcin 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/ 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/ T. W. Blue

) Signature of witness)

) T. W. Blue

) Name of witness (block letters))

) /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
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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, 8 th 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) /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 ~~director~~/company secretary*

Joanne Marchione) *delete whichever is not applicable
 Name of director (block letters))

Dallas Booth)
 Name of director/company secretary* (block letters)

 *delete whichever is not applicable

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

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Governor Phillip Tower
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Ref: 02-5501-6101

Amending Deed — Performing Subsidiary Intercreditor Deed

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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 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
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

ã Malleons Stephen Jaques
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Amending Deed — Performing Subsidiary Intercreditor Deed
22 June 2009

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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];”.

Amending Deed — Performing Subsidiary 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)

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/ John Hatzistergos
Signature

Attorney General
Office of Signatory

/s/ Dallas Booth
Signature of ~~director~~/company
secretary*
*delete whichever is not applicable

Dallas Booth
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:

/s/ Bruce Potts
Signature of director

Bruce Potts
Name of director (block letters)

The Common Seal of AET Structured Finance Services Pty Limited
ABN 12 106 424 088 was affixed with the authority of:

/s/ Philip John Walter Joseph (signed)

Philip John Walter Joseph (print name)

Authorised Officer

/s/ Glenn White (signed)

Glenn White (print name)

Authorised Officer

ã Malleons Stephen Jaques
9869960_8

Amending Deed — Performing Subsidiary Intercreditor Deed
22 June 2009

LIST OF SIGNIFICANT SUBSIDIARIES

The table below sets forth our significant subsidiaries as of March 31, 2010, all of which are 100% owned by James Hardie Industries SE, 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 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 SE	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 Technology Limited	Bermuda
James Hardie U.S. Investments Sierra Inc.	United States
N.V. Technology Holdings A Limited Partnership	Australia
RCI Pty Ltd.	Australia

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Louis Gries, certify that:

1. I have reviewed this annual report on Form 20-F of James Hardie Industries SE;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the company as of and for the periods presented in the consolidated financial statements;
4. The company's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the company and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the company's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting; and
5. The company's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of the company's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the company's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal control over financial reporting.

/s/ Louis Gries

Louis Gries

Chief Executive Officer

Date: June 30, 2010

**CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Russell Chenu, certify that:

1. I have reviewed this annual report on Form 20-F of James Hardie Industries SE;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the company as of and for the periods presented in the consolidated financial statements;
4. The company's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the company and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the company's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting; and
5. The company's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of the company's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the company's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal control over financial reporting.

/s/ Russell Chenu

Russell Chenu

Chief Financial Officer

Date: June 30, 2010

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002***

Each of the undersigned hereby certifies, in his capacity as an officer of James Hardie Industries SE (the "Company"), for purposes of 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of his knowledge:

- the Annual Report on Form 20-F for the fiscal year ended March 31, 2010 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- the information contained in such report fairly presents, in all material respects, the financial condition and results of operation of the Company.

Dated: June 30, 2010

/s/ Louis Gries

Louis Gries
Chief Executive Officer

/s/ Russell Chenu

Russell Chenu
Chief Financial Officer

* The foregoing certification is being furnished as an exhibit pursuant to the rules of Form 20-F and Section 906 of the Sarbanes-Oxley Act of 2002 and, accordingly, is not being filed with the Securities and Exchange Commission as part of the Form 20-F and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933 or the Securities Exchange Act of 1934 (whether made before or after the date of the Form 20-F, irrespective of any general incorporation language contained in such filing).

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the following Registration Statements:

- (1) Registration Statement (Form S-8 No. 333-14036) pertaining to the Amended and Restated James Hardie Industries SE 2001 Equity Incentive Plan;
- (2) 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;
- (3) Registration Statement (Form S-8 No. 333-161482) pertaining to the Amended and Restated James Hardie Industries SE Long Term Incentive Plan 2006;

of our reports dated May 27, 2010, with respect to the consolidated financial statements of James Hardie Industries SE and the effectiveness of internal control over financial reporting of James Hardie Industries SE included in this Annual Report (Form 20-F) of James Hardie Industries SE for the year ended March 31, 2010.

/s/ Ernst & Young LLP

Orange County, California
June 28, 2010

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statement on Form S-8s (No. 333-153446, 333-161482, 333-14036) of James Hardie Industries SE (formerly James Hardie Industries N.V.) of our report dated June 27, 2008 relating to the consolidated financial statements which appears in this Form 20-F.

/s/ PricewaterhouseCoopers LLP
Los Angeles, California
June 28, 2010

Consent of KPMG Actuaries Pty Ltd (“KPMG Actuaries”) in relation to Form 20-F filing

We hereby consent to your references to KPMG Actuaries Pty Ltd (“KPMG Actuaries”) and to our actuarial valuation report effective as of March 31, 2010, dated May 27, 2010 (the “Report”), and to make use of, or quote, information and analyses contained within that Report for the purpose of James Hardie Industries SE’s (“JHI SE”) Annual Report on Form 20-F for fiscal year ended March 31, 2010.

In addition, we hereby consent to your references to past actuarial valuations performed by KPMG Actuaries for the purpose of JHI SE’s (formerly JHI NV’s) Annual Report on Form 20-F for fiscal year ended March 31, 2010.

Your attention is drawn to the Important Note at the beginning of the Executive Summary and Section 1 of the Report.

/s/ Neil Donlevy

Neil Donlevy MA FIA FIAA

Director

KPMG Actuaries Pty Ltd

Fellow of the Institute of Actuaries (London)

Fellow of the Institute of Actuaries of Australia

Sydney, Australia

June 30, 2010