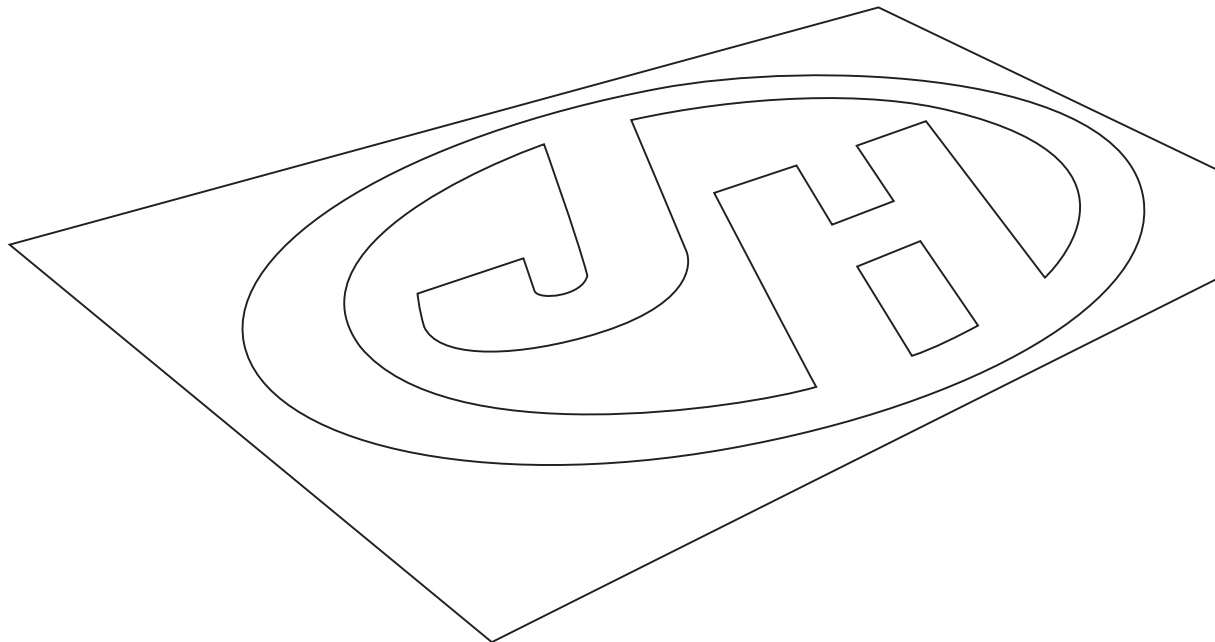


Part E 

Scheme of Arrangement



Scheme of Arrangement

Scheme of arrangement

Pursuant to section 411 of the Corporations Act 2001

BETWEEN: **JAMES HARDIE INDUSTRIES LIMITED**

(ABN 60 000 009 263)

AND: **THE HOLDERS OF ORDINARY SHARES IN JAMES
HARDIE INDUSTRIES LIMITED**

1. Definitions and interpretation

1.1 Definitions

ADS means an American Depositary Share.

ASIC means the Australian Securities & Investments Commission.

ASX means Australian Stock Exchange Limited.

Business Day means a day on which the stock market of ASX is open for trading.

Capital Reduction means the proposed equal capital reduction of JHIL, involving the return of A\$1.72 per JHIL Share held by JHI NV, to be effected pursuant to the Implementation Deed and in accordance with Division 1 of Part 2J.1 of the Corporations Act 2001.

CDN means CHESS Depository Nominees Pty Limited (ABN 75 071 346 506).

CHESS means the clearing house electronic sub-register system of share transfers operated by ASX Settlement and Transfer Corporation Pty Limited.

Corporations Act 2001 means the Corporations Act 2001 (Cth) and the regulations made under that Act.

Court means the Supreme Court of New South Wales.

CUFS means CHESS Units of Foreign Securities, each of which represents a beneficial holding of an underlying share.

Depository means The Bank of New York, as depository of JHIL ADSs or JHI NV ADSs, as appropriate, under the JHIL ADS or JHI NV ADS program.

Deed Poll means the Deed Poll dated 20 August 2001 executed by JHI NV in favour of Scheme Participants whereby JHI NV covenants to carry out its obligations under the Scheme.

Effective means, when used in relation to the Scheme, the coming into effect, pursuant to section 411(10) of the Corporations Act 2001, of the order of the Court made under section 411(4)(b) in relation to the Scheme.

Effective Date means the date on which the Scheme becomes Effective.

Implementation Date means the first day after the Scheme Record Date.

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Implementation Deed means the Implementation Deed dated 20 August 2001 between JHIL and JHI NV relating to the implementation of the Proposal.

JHIL means James Hardie Industries Limited (ABN 60 000 009 263) of 8th Floor, James Hardie House, 65 York Street, Sydney, NSW 2000, Australia.

JHIL ADSs means ADSs issued by the Depository or its agents, each of which represents two (2) JHIL Shares.

JHIL Register means the JHIL register of members.

JHIL Shareholders means each person who is registered in the JHIL Register as the holder of a JHIL Share from time to time.

JHIL Shares means ordinary shares in the capital of JHIL.

JHI NV means James Hardie Industries N.V., ARBN 097 829 895, a limited liability company incorporated under the laws of The Netherlands with its corporate seat in Amsterdam, The Netherlands.

JHI NV ADSs means the ADSs issued by the Depository or its agents, each JHI NV ADS representing five (5) JHI NV CUFS.

JHI NV Articles of Association means the articles of association of JHI NV in force on the Implementation Date.

JHI NV CUFS means CUFS in respect of JHI NV Shares, each JHI NV CUFS representing a beneficial holding in one JHI NV Share.

JHI NV CUFS Register means the sub-register of JHI NV CUFS held by CDN.

JHI NV Deposit Agreement means the deposit agreement to be entered into between JHI NV, the Depository and those people who are to be the owners and holders of JHI NV ADSs.

JHNV means James Hardie N.V., a limited liability company incorporated under the laws of The Netherlands with its corporate seat in Amsterdam, The Netherlands.

JHI NV Register means the register of members of JHI NV and any subregister or branch register.

JHI NV Shares means common (or ordinary) shares in the capital of JHI NV.

Listing Rules means the Listing Rules of the ASX.

Nominee means Sethold Nominees Pty Limited (ABN 44 011 064 903) of Level 25, Governor Phillip Tower, 1 Farrer Place, Sydney NSW 2000.

NYSE means the New York Stock Exchange.

Partly Paid Shares means 100,000 partly paid shares in JHIL, to be issued to JHI NV on or before effecting the Capital Reduction, on the terms set out in the Implementation Deed.

Permitted Jurisdictions means Australia (and its external territories), New Zealand, the United States and the United Kingdom.

Prescribed Foreign Shareholders means each Scheme Participant:

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- (a) whose address as shown in the JHIL Register is a place outside the Permitted Jurisdictions, unless JHI NV is satisfied before the Implementation Date that such person lawfully can be issued JHI NV CUFS pursuant to the Scheme under the laws of the place of such address; or
- (b) (in the case of corporate entities) whose name, as shown in the JHIL Register, indicates that they are incorporated in The Netherlands.

Proposal means:

- (a) the proposed acquisition of all of the issued shares in the capital of JHIL by JHI NV pursuant to the Scheme;
- (b) the subsequent transfer of all of the issued shares in JHNV and the dividend and Capital Reduction in accordance with the terms of the Implementation Deed; and
- (c) the issue of the Partly Paid Shares in accordance with the terms of the Implementation Deed.

Scheme means this scheme of arrangement, subject to any alterations or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act 2001.

Scheme Consideration means one JHI NV Share in respect of each Scheme Share:

- (a) to be held in the form of JHI NV CUFS in the case of all Scheme Participants (other than Prescribed Foreign Shareholders); and
- (b) to be sold by the Nominee in the case of Scheme Participants who are Prescribed Foreign Shareholders, with the net proceeds of sale to be distributed to those Prescribed Foreign Shareholders.

Scheme Meeting means the meeting of JHIL Shareholders convened by the Court pursuant to section 411(1) of the Corporations Act 2001.

Scheme Participants means JHIL Shareholders, or persons entitled to be registered as JHIL Shareholders, as at 5.00pm (Sydney time) at the Scheme Record Date.

Scheme Record Date means the fifth Business Day following the Effective Date.

Scheme Shares means JHIL Shares which are on issue as at the Scheme Record Date.

SEC means the Securities Exchange Commission of the United States of America.

Second Court Date means the day on which the Court makes an order pursuant to section 411(4)(b) of the Corporations Act 2001 approving the Scheme.

Second Court Hearing means the hearing of the Court on the Second Court Date.

Share Registry means Computershare Investor Services Pty Limited of Level 3, 60 Carrington Street, Sydney NSW 2000.

Subsidiaries has the meaning given to it in section 46 of the Corporations Act 2001.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise.

- (a) The **singular** includes the plural and conversely.
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- (b) A *gender* includes all genders.
- (c) Where a *word* or *phrase* is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a *person* includes a body corporate, an unincorporated body or other entity and conversely.
- (e) A reference to a *clause* or *schedule* is to a clause of or schedule to this Scheme.
- (f) A reference to any *agreement* or *document* is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by that other agreement or document.
- (g) A reference to any *legislation* or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it.
- (h) Mentioning anything after *include*, *includes* or *including* does not limit what else might be included.
- (i) A reference to *dollars* or *\$* is to Australian currency.
- (j) A reference to a particular time of day shall be a reference to that time in Sydney.
- (k) A word or expression to which a meaning is attributed in the Corporations Act 2001 shall bear that meaning.

1.3 Business day

Except where otherwise expressly provided, where the day on which any act, matter or thing is to be done is a day other than a Business Day, such act matter or thing shall be done on the immediately succeeding Business Day.

2. Preliminary

- (a) JHIL is a public company incorporated in New South Wales and is a company limited by shares.
- (b) JHIL has been admitted to the official list of the ASX and its shares have been granted official quotation.
- (c) Certain JHIL Shares are held by the Depository or the Depository's agents to enable US based investors to hold an interest in JHIL, in the form of ADSs which trade in the over-the-counter market in the United States of America.
- (d) At the date of this Information Memorandum, 450,771,082 JHIL Shares were on issue.
- (e) JHI NV is a Dutch limited liability company with its corporate seat in Amsterdam, The Netherlands.
- (f) JHIL and JHI NV have entered into the Implementation Deed which sets out certain of the steps to be taken by those parties in connection with the Proposal.

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- (g) JHI NV has entered into the Deed Poll in favour of Scheme Participants pursuant to which it has covenanted, amongst other things, to carry out the obligations which it must perform under the Scheme.

3. Conditions precedent

3.1 Conditions precedent

The obligations of JHIL and JHI NV in respect of the Scheme are conditional on the satisfaction of each of the following conditions precedent prior to 5.00pm on the day before the Second Court Date:

- (a) JHI NV Shares, in respect of the JHI NV CUFS to be issued under the Scheme, being approved for official quotation by the ASX (conditional only on JHI NV providing to the ASX the information contained in Appendix 1A of the Listing Rules);
- (b) JHI NV ADSs representing JHI NV CUFS to be issued to the Depositary or its nominee under the Scheme being approved for listing on the NYSE or, if approval for listing on the NYSE is not granted, on any other stock exchange registered with the SEC as a national securities exchange for the purposes of the Securities Exchange Act of 1934, with such approval to be unconditional or subject only to the following conditions: the Court making an order approving the Scheme; JHIL lodging the Court order with ASIC; and such other conditions as are acceptable to the Court;
- (c) the SEC declaring the registration statements in respect of those JHI NV ADSs and JHI NV CUFS effective, with such declaration to be unconditional or subject only to the following conditions: the Court making an order approving the Scheme; JHIL lodging the Court order with ASIC; and such other conditions as are acceptable to the Court;
- (d) JHI NV and the Depositary executing the JHI NV Deposit Agreement;
- (e) the Nominee executing a deed under which it agrees to sell the JHI NV CUFS as contemplated in clause 3.4 of the Implementation Deed;
- (f) CDN formally agreeing to act as depositary nominee in respect of the JHI NV CUFS and to the allotment to it of JHI NV Shares under the Scheme; and
- (g) the Implementation Deed not being terminated in accordance with clause 7 of that deed.

3.2 Satisfaction of conditions

- (a) JHIL shall provide to the Court at the Second Court Hearing a certificate, or such other evidence as the Court requests, confirming whether or not all the conditions precedent in clause 3.1 have been satisfied or waived.
 - (b) The Scheme will lapse and be of no further force or effect if the conditions precedent in clause 3.1 are not satisfied or waived on or before 30 November 2001.
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4. The Scheme

4.1 Court orders

JHIL will lodge with ASIC office copies of the Court order approving the Scheme pursuant to section 411(4)(b) of the Corporations Act 2001 within 5 Business Days of the making of that Court order.

4.2 Implementation

If the Scheme becomes Effective then:

- (a) Immediately after the Scheme Record Date, JHIL shall give JHI NV the names and addresses shown in the JHIL Register of all Scheme Participants who hold JHIL Shares and the number of JHIL Shares held by them at such date and such other information as is set out in the JHIL Register as JHI NV may require.
- (b) All of the JHIL Shares, together with all rights and entitlements attaching to the JHIL Shares as at the Scheme Record Date, will be transferred to JHI NV on the Implementation Date without the need for any further act by any Scheme Participant.
- (c) In consideration for the transfer of the JHIL Shares to JHI NV, JHI NV will procure, through CDN, the issue of the Scheme Consideration to Scheme Participants or, in the case of Prescribed Foreign Shareholders, to the Nominee, for each JHIL Share registered in the name of that Scheme Participant in accordance with the provisions of the Scheme.
- (d) JHIL shall be bound by the terms of, and comply with its obligations under, the Implementation Deed.

4.3 Share transfer forms and registers

- (a) JHIL will deliver to JHI NV duly completed and executed share transfer forms or a master form to transfer all of the JHIL Shares to JHI NV on the Implementation Date.
- (b) JHI NV will execute the share transfer form or forms referred to in paragraph (a) and then will deliver the share transfer form or forms to JHIL for registration on the Implementation Date.
- (c) Immediately following receipt of the transfer form or forms in respect of the JHIL Shares under paragraph (a), JHIL shall enter the name of JHI NV in the JHIL Register in respect of the JHIL Shares.
- (d) On, or as soon as practicable after, the Implementation Date, JHI NV shall:
 - (i) procure the entry of CDN in the JHI NV Register in respect of the JHI NV Shares making up the Scheme Consideration due to each Scheme Participant;
 - (ii) procure the entry of the name of each Scheme Participant (other than any Prescribed Foreign Shareholder) in the JHI NV CUFS Register in respect of

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those JHI NV Shares in the form of JHI NV CUFS making up the Scheme Consideration due to that Scheme Participant; and

- (iii) procure the entry of the name of the Nominee in the JHI NV CUFS Register in respect of those JHI NV Shares in the form of JHI NV CUFS making up the Scheme Consideration that would be otherwise due to each Prescribed Foreign Shareholder.

5. Dealings in JHIL Shares

- (a) For the purpose of establishing who are Scheme Participants, dealings in JHIL Shares on or before the Scheme Record Date will only be recognised as a valid transfer:
 - (i) in the case of dealings of the type to be effected using CHESS, if the transferee is registered in the JHIL Register as the holder of the relevant JHIL Shares at 5.00pm (Sydney time) on the Scheme Record Date; and
 - (ii) in all other cases, if registrable transmission applications or transfers in respect of those dealings are received before 5.00pm (Sydney time) on the Scheme Record Date at the place where the JHIL Register is kept.
- (b) JHIL must register registrable transmission applications or transfers in respect of those dealings which are received before 5.00pm (Sydney time) on the Scheme Record Date at the place where the JHIL Register is kept.
- (c) JHIL will not accept for registration or recognise for any purpose any transmission application or transfer in respect of JHIL Shares received after 5.00pm (Sydney time) on the Scheme Record Date.
- (d) For the purpose of determining entitlements to the Scheme Consideration, JHIL will, until the Scheme Consideration has been provided, maintain the JHIL Register in accordance with the foregoing provisions of this clause 5 and the JHIL Register in this form will solely determine entitlements to the Scheme Consideration.
- (e) As from the Scheme Record Date, all holding statements for the JHIL Shares will cease to have effect, and each entry of a Scheme Participant on the JHIL Register at that date will cease to have any effect other than as evidence of entitlement to the Scheme Consideration.

6. Quotation of JHIL Shares

- (a) It is expected that suspension of quotation on the ASX of JHIL Shares will occur from the close of business on the Effective Date.
 - (b) On or about the first Business Day after the Implementation Date, JHIL will apply for termination of the official quotation of JHIL Shares on the ASX.
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7. General Scheme provisions

- (a) Should the Court propose to approve the Scheme subject to any alterations or conditions, JHIL may, by its counsel, consent on behalf of all persons concerned to those alterations or conditions to which JHI NV has consented.
- (b) JHIL may subsequently vary the Scheme so long as such variation is:
 - (i) in a manner not materially prejudicial to Shareholders;
 - (ii) confirmed by Senior Counsel of not less than 3 years' standing;
 - (iii) approved by the Court and the ASIC; and
 - (iv) lodged with the ASIC.
- (c) In the case of joint holders of JHIL Shares who are not Prescribed Foreign Shareholders, the names of those Scheme Participants shall be entered into the JHI NV CUFS Register as joint holders of that number of JHI NV CUFS representing the JHI NV Shares making up the Scheme Consideration due to those joint holders.
- (d) Where a notice, transfer, transmission application, direction or other communication referred to in the Scheme is sent by post to JHIL, it shall not be deemed to be received in the ordinary course of post or on a date other than the date (if any) on which it is actually received at JHIL's registered office or at its Share Registry.
- (e) The Scheme Participants agree to the transfer of their JHIL Shares to JHI NV and the issue to them or, in the case of Prescribed Foreign Shareholders, to the Nominee, of the Scheme Consideration in accordance with the terms of the Scheme.
- (f) The Scheme Participants are deemed to have warranted to JHI NV that all their JHIL Shares (including any rights attaching to those shares) which are transferred to JHI NV under the Scheme will, at the date of the transfer of them to JHI NV, be fully paid and free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they have full power and capacity to sell and to transfer their JHIL Shares together with any rights attaching to such shares.
- (g) The JHIL Shares transferred to JHI NV under the Scheme shall be transferred free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise.
- (h) JHI NV shall be beneficially entitled to the JHIL Shares transferred to it under the Scheme pending registration by JHIL of JHI NV in the JHIL Register as the holder of the JHIL Shares.
- (i) The Scheme Participants consent to JHIL doing all things necessary or incidental to the implementation of the Scheme.
- (j) JHIL will execute all documents and do all acts and things necessary incidental or expedient to give full effect to the provisions of the Scheme and the transactions contemplated by it.

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- (k) Each Scheme Participant, without the need for any further act, irrevocably appoints each of JHIL and any of its directors and officers (each an *Authorised Person*) as its attorney and agent for the purpose of executing any document necessary to give effect to the Scheme including without limitation, a proper instrument of transfer of its JHIL Shares for the purposes of section 1091 of the Corporations Act 2001 which may be a master transfer of all the JHIL Shares and, to the extent applicable, for the purpose of accepting the JHI NV CUFS in exchange for their JHIL Shares.
 - (l) Each Authorised Person may, in performing the said acts as attorney and agent, act pursuant to a power of attorney granted by one or more other persons involved in the acts referred to in the preceding sentence. Each Authorised Person may appoint another attorney and agent and grant to such person a power of attorney to perform, directly or indirectly, acts in the name of each Scheme Participant within the limits of the power of attorney granted pursuant to the previous paragraph, and each Authorised Person may substitute another person for himself as authorised person; such other person shall be an Authorised Person for the purposes of the power of attorney granted pursuant to the previous paragraph.
 - (m) The governing law of the Scheme is the law of the State of New South Wales.
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