HARDIE JAMES INDUSTRIES NV
Form 20-F
July 07, 2005

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

**Form 20-F**

(Mark One)

| | |
|---|---|
| o | **REGISTRATION STATEMENT PURSUANT TO SECTION 12(b) OR (g) OF THE SECURITIES EXCHANGE ACT OF 1934** |
| | **or** |
| þ | **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934** |
| | **For the fiscal year ended March 31, 2005** |
| | **or** |
| o | **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934** |
| | **For the transition period from to** |

**Commission file number 1-15240**
**James Hardie Industries N.V.**
*(Exact name of Registrant as specified in its charter)*
**N/A**
*(Translation of Registrant s name into English)*
**The Netherlands**
*(Jurisdiction of incorporation or organization)*
**Atrium, 8th floor**
**Strawinskylaan 3077**
**1077 ZX Amsterdam, The Netherlands**
*(Address of principal executive offices)*
**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: 459,373,176 shares of common stock at March 31, 2005.

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 þ No o

Indicate by check mark which financial statement item the registrant has elected to follow. Item 17 o Item 18 þ

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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***

*In this annual report, unless the context otherwise indicates, James Hardie Industries N.V., a naamloze vennootschap, or a Dutch public limited liability company incorporated and existing under the laws of The Netherlands, is referred to as JHI NV. JHI NV and together with its direct and indirect wholly owned subsidiaries as of the time relevant to the applicable reference, the James Hardie Group, and JHI NV and its current direct and indirect wholly owned subsidiaries are collectively referred to as we, us, our, JHI NV 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 or $ refers to U.S. dollars; the term A$ refers to Australian dollars; the term NZ$ refers to New Zealand dollars; the term PHP refers to Philippine pesos; and the term CLP refers to Chilean pesos. 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 The Netherlands, JHI NV has listed its securities for trading on the Australian Stock Exchange ( ASX ) through the use of the Clearing House Electronic Subregister System ( CHESS ) Units of Foreign Securities ( CUFS ). CUFS are a form of depositary security that represents a beneficial ownership interest in the securities of a non-Australian corporation. Each of our CUFS represents the beneficial ownership of one share of common stock of JHI NV, the legal ownership of which is held by CHESS Depositary Nominees Pty Ltd. The CUFS are listed and traded on the ASX under the symbol JHX.*

*The Company has also listed its securities for trading on the New York Stock Exchange ( NYSE ). The Company sponsors a program, whereby beneficial ownership of five CUFS is represented by one American Depositary Share ( ADS ), which is issued by The Bank of New York. These ADSs trade on the NYSE in the form of American Depositary Receipts ( ADRs ) under the symbol JHX. Unless the context indicates otherwise, when we refer to ADRs, 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 CUFS.*

**Selected Financial Data**

We have included in Item 18 of this annual report the audited consolidated financial statements of JHI NV, consisting of our consolidated balance sheets as of March 31, 2005 and March 31, 2004, our consolidated statements of changes in shareholders equity as of March 31, 2005, March 31, 2004 and March 31, 2003, and our consolidated statements of income and cash flows for the years ended March 31, 2005, 2004 and 2003, together with the related notes thereto. For periods prior to October 19, 2001, the effective date of our corporate restructuring (see Item 4, Information on the Company History and Development of the Company Corporate Restructuring ), the consolidated financial statements represent the financial position, results of operations and cash flows of ABN 60 000 009 263 Pty Ltd ( ABN 60 ), which was formerly known as James Hardie Industries Limited ( JHIL ) and its wholly owned subsidiaries. For periods after October 19, 2001, our consolidated financial statements represent the financial position, results of operations and cash flows of JHI NV and its wholly owned subsidiaries.

The consolidated financial statements included in this annual report have been prepared in accordance with accounting principles generally accepted in the United States, or U.S. GAAP.

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The selected consolidated financial information summarized below has been derived in part from JHI NV s financial statements. You should read the selected consolidated financial information in conjunction with JHI NV 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 Years Ended March 31, | | | | |
|---|---|---|---|---|---|
| | **2005** | **2004** | **2003** | **2002** | **2001** |
| | **(In millions, except sales price per unit and per share data)** | | | | |
| **Consolidated Statements of Income Data:** | | | | | |
| Net Sales | | | | | |
| USA Fiber Cement | $ 939.2 | $ 738.6 | $ 599.7 | $ 444.8 | $ 373.0 |
| Asia Pacific Fiber Cement(1) | 236.1 | 219.8 | 174.3 | 141.7 | 152.0 |
| Other(2) | 35.1 | 23.5 | 9.6 | 5.2 | 1.3 |
| Total net sales | $ 1,210.4 | $ 981.9 | $ 783.6 | $ 591.7 | $ 526.3 |
| Operating income(3) | $ 196.2 | $ 172.2 | $ 128.8 | $ 46.8 | $ 40.5 |
| Interest expense | (7.3) | (11.2) | (23.8) | (18.4) | (21.4) |
| Interest income | 2.2 | 1.2 | 3.9 | 2.4 | 8.2 |
| Other (expense) income(4) | (1.3) | 3.5 | 0.7 | (0.4) | 1.6 |
| Income from continuing operations before income taxes | 189.8 | 165.7 | 109.6 | 30.4 | 28.9 |
| Income tax (expense) benefit | (61.9) | (40.4) | (26.1) | (3.1) | 0.6 |
| Income from continuing operations | $ 127.9 | $ 125.3 | $ 83.5 | $ 27.3 | $ 29.5 |
| Net income | $ 126.9 | $ 129.6 | $ 170.5 | $ 30.8 | $ 38.6 |
| Income from continuing operations per common share basic | $ 0.28 | $ 0.27 | $ 0.18 | $ 0.06 | $ 0.07 |
| Net income per common share basic | 0.28 | 0.28 | 0.37 | 0.07 | 0.09 |
| Income from continuing operations per common share diluted | 0.28 | 0.27 | 0.18 | 0.06 | 0.07 |
| Net income per common share diluted | 0.28 | 0.28 | 0.37 | 0.07 | 0.09 |
| Dividends paid per share | 0.03 | 0.05 | 0.08 | 0.05 | 0.10 |
| Return of capital per share | $ | $ 0.15 | $ 0.20 | $ 0.05 | $ |
| Weighted average number of common shares outstanding | | | | | |
| Basic | 458.9 | 458.1 | 456.7 | 438.4 | 409.6 |
| Diluted | 461.0 | 461.4 | 459.4 | 440.4 | 409.6 |
| **Consolidated Cash Flow Information:** | | | | | |
| | $ 219.8 | $ 162.6 | $ 64.8 | $ 76.6 | $ 94.6 |

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Cash flows provided by operating activities | | | | | | | | | | |
| Cash flows (used in) provided by investing activities | | (149.2) | | (58.0) | | 237.9 | | (77.2) | | (162.9) |
| Cash flows (used in) provided by financing activities | $ | (28.2) | $ | (87.9) | $ | (279.4) | $ | (40.8) | $ | 1.3 |
| **Other Data:** | | | | | | | | | | |
| Depreciation and amortization(5) | $ | 36.3 | $ | 36.4 | $ | 27.4 | $ | 23.5 | $ | 20.6 |
| Adjusted EBITDA(6) | | 232.5 | | 208.6 | | 156.2 | | 70.3 | | 68.6 |
| Capital expenditures(7) | $ | 153.0 | $ | 74.1 | $ | 90.2 | $ | 50.8 | $ | 114.7 |

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| | Fiscal Years Ended March 31, | | | | |
|---|---|---|---|---|---|
| | 2005 | 2004 | 2003 | 2002 | 2001 |
| | (In millions, except sales price per unit and per share data) | | | | |
| Volume (million square feet)(8) | | | | | |
| USA Fiber Cement | 1,855.1 | 1,519.9 | 1,273.6 | 988.5 | 852.3 |
| Asia Pacific Fiber Cement(1) | 376.9 | 362.1 | 349.9 | 320.7 | 318.9 |
| Average sales price per unit (per thousand square feet) | | | | | |
| USA Fiber Cement | $ 506 | $ 486 | $ 471 | $ 450 | $ 438 |
| Asia Pacific Fiber Cement(1) | A$ 846 | A$ 862 | A$ 887 | A$ 861 | A$ 857 |
| **Consolidated Balance Sheet Data:** | | | | | |
| Net current assets(9) | $ 180.2 | $ 195.9 | $ 159.4 | $ 115.1 | $ 84.9 |
| Total assets | 1,088.9 | 971.2 | 851.8 | 968.0 | 969.0 |
| Long-term debt(10) | 147.4 | 165.0 | 165.0 | 325.0 | 357.3 |
| Shareholders equity | 624.7 | 504.7 | 434.7 | 370.7 | 281.1 |

(1) Asia Pacific Fiber Cement includes all fiber cement manufactured in Australia, New Zealand and the Philippines and sold in Australia, New Zealand and Asia. See Item 5, Notes to Results of Operations, on page 61 for additional details on sales volume and average sales price per unit in fiscal years 2004 and 2003.

(2) Includes fiber cement manufactured and sold in Chile, fiber reinforced concrete pipes manufactured and sold in the United States, fiber cement operations in Europe and roofing operations in the United States. Also includes general corporate income in fiscal years 2002 and 2001 comprised primarily of rental income from subleasing office space in Sydney, Australia.

(3) For fiscal year 2005, operating income includes Special Commission of Inquiry and other related expenses of $28.1 million. In addition, operating income includes restructuring and other operating income/expenses as follows: (i) for fiscal year 2005, $6.0 million consisting of a settlement loss of $5.3 million related to an employee retirement plan and a $0.7 million loss on the sale of land in Sacramento, California; (ii) for fiscal year 2004, $2.1 million expense primarily related to an increase in cost provisions for our Australian and New Zealand business; (iii) for fiscal year 2003, $1.0 million income related to the settlement of a terminated derivative contract; (iv) for fiscal year 2002, $12.6 million expense related to the roofing Class Action Settlement Agreement in the United States, $7.4 million expense associated with the corporate reorganization and $8.1 million expense related to the decrease in fair value of derivative contracts; and (v) for fiscal year 2001, asset write-downs, lease termination charges and employee termination costs of $15.5 million primarily associated with the restructuring of our fiber cement business in Australia and the creation of the new Asia Pacific regional structure.

(4) Consists primarily of the following: (i) for fiscal year 2005, the $1.3 million expense consisted of a $2.1 million impairment charge that we recorded on an investment in a company that filed a voluntary petition for reorganization under Chapter 11 of the U.S. bankruptcy code, partly offset by a $0.8 million gain on a separate investment; (ii) for fiscal year 2004, the net gain achieved after accounting for income items, including a $4.5 million profit on the sale of our New Zealand property, was partially offset by expense items, including $3.2 million primarily due to a capital duty fee paid in conjunction with our Dutch corporate structure; (iii) for

fiscal year 2003, investment income of $0.7 million; (iv) for fiscal year 2002, investment expenses of $0.4 million; and (v) for fiscal year 2001, investment income of $1.6 million.

(5) Information for depreciation and amortization is for continuing businesses only.

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(6) Represents income from continuing operations before interest income, interest expense, income taxes, other nonoperating expenses, described in footnote four above, net, depreciation and amortization charges, and certain other property, goodwill and equipment impairment charges as follows:

| | Fiscal Years Ended March 31, | | | | |
|---|---|---|---|---|---|
| | **2005** | **2004** | **2003** | **2002** | **2001** |
| ( **Adjusted EBITDA** ) | | | **(In millions)** | | |
| Net cash provided by operating activities | $ 219.8 | $ 162.6 | $ 64.8 | $ 76.6 | $ 94.6 |
| Adjustments to reconcile net income to net cash provided by operating activities, net | (61.2) | (51.1) | 62.1 | (41.1) | (44.8) |
| Change in operating assets and liabilities, net | (31.7) | 18.1 | 43.6 | (4.7) | (11.2) |
| Net Income | $ 126.9 | $ 129.6 | $ 170.5 | $ 30.8 | $ 38.6 |
| Loss (income) from discontinued operations | 1.0 | (4.3) | (87.0) | (3.5) | (9.1) |
| Income tax expense (benefit) | 61.9 | 40.4 | 26.1 | 3.1 | (0.6) |
| Interest expense | 7.3 | 11.2 | 23.8 | 18.4 | 21.4 |
| Interest income | (2.2) | (1.2) | (3.9) | (2.4) | (8.2) |
| Other expense (income) | 1.3 | (3.5) | (0.7) | 0.4 | (1.6) |
| Depreciation and amortization | 36.3 | 36.4 | 27.4 | 23.5 | 20.6 |
| Impairment of property, plant and equipment | | | | | 7.5 |
| Adjusted EBITDA | $ 232.5 | $ 208.6 | $ 156.2 | $ 70.3 | $ 68.6 |

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 such as goodwill and asset impairment charges, as well as nonoperating income and expense items. See our consolidated financial statements and our discussion under Operating and Financial Review and Prospects for further information to assist in identifying and evaluating trends in Adjusted EBITDA.

(7) Information for capital expenditures includes both cash and credit purchases, and is for continuing businesses only.

(8) Fiber cement volume is measured in 5/16 thick square feet, which are referred to as standard feet.

(9) Total current assets less total current liabilities.

(10) Includes current portion of long-term debt.

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## Risk Factors

***We may be subject to potential liability because certain current and former James Hardie Group subsidiaries previously manufactured products that contained asbestos.***

Prior to 1987, a New Zealand subsidiary in the James Hardie Group manufactured products in New Zealand that contained asbestos. Statutory provisions in New Zealand currently bar claims for compensatory damages arising from work-related asbestos exposure.

Prior to 1987, two former subsidiaries of ABN 60, Amaca Pty Limited ( Amaca ) and Amaba Pty Limited ( Amaba ), which are now owned and controlled by the Medical Research and Compensation Foundation (the Foundation ), manufactured products in Australia that contained asbestos. In addition, prior to 1937, ABN 60, which is now owned by the ABN 60 Foundation Pty Ltd ( ABN 60 Foundation ), manufactured products in Australia that contained asbestos. For reasons provided below under Item 4, Information on the Company Legal Proceedings, we do not believe that we will have any liability under current Australian law if future liabilities of ABN 60 or the ABN 60 Foundation exceed the funds available to those entities. However, we cannot predict with any certainty 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 NV, our New Zealand subsidiary or another James Hardie Group subsidiary liable for damages connected with existing or former subsidiaries or their past manufacture of asbestos-containing products, we may incur significant 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. See Item 4, Information on the Company Legal Proceedings.

***As a result of the Special Commission of Inquiry that was established in Australia to consider matters related to the Foundation, we may be subject to claims and allegations regarding asbestos-related liability and our corporate restructurings, including the corporate restructurings that resulted in the creation of the Foundation and the ABN 60 Foundation and associated intercompany transactions.***

In February 2004, the Government of the State of New South Wales (the NSW Government ), Australia established a Special Commission of Inquiry ( SCI ) to investigate, among other matters, the circumstances in which the Foundation was established. The SCI heard evidence and received submissions from April 5, 2004 to August 13, 2004.

On July 14, 2004, the Company announced that it would recommend that its shareholders approve a form of statutory scheme to be developed in relation to the compensation of proven asbestos-related personal injury and death claims ( Claims ) against Amaca, Amaba and ABN 60 (the Liable Entities ).

The SCI issued its report on September 21, 2004. The SCI indicated that the establishment of the Foundation and the establishment of the ABN 60 Foundation were legally effective, that any liabilities in relation to the asbestos claims for claimants remained with Amaca, Amaba or ABN 60 (as the case may be), and that no significant liabilities for those claims could likely be assessed directly against the Company. In relation to the question of the funding of the Foundation, the SCI found that there was a significant funding shortfall. In part, this was based on actuarial work commissioned by the Company indicating that the discounted value of the central estimate of the asbestos liabilities of Amaca and Amaba was approximately A$1.573 billion as of June 30, 2003. The central estimate was calculated in accordance with Australian Actuarial Standards, which differ from generally accepted practices in the United States. As of June 30, 2003, the undiscounted value of the central estimate of the asbestos liabilities of Amaca and Amaba, as determined by KPMG Actuaries Pty Ltd ( KPMG Actuaries ), was approximately A$3.403 billion ($2.272 billion). The SCI found that the net assets of the Foundation and the ABN 60 Foundation were not sufficient to meet these prospective liabilities and were likely to be exhausted in the first half of 2007. The SCI s findings are not binding and if the issues were presented to a court, it might come to different conclusions on one or more of the issues.

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Accordingly, shortly after the release of the SCI report on September 21, 2004, the Company commenced negotiations with the Australian Council of Trade Unions ( ACTU ), the UnionsNSW (formerly known as the Labor Council of New South Wales) and a representative of the asbestos claimants (together, the Representatives ) and subsequently also with the NSW Government, in relation to the anticipated future funding shortfall of the Liable Entities in relation to their ability to meet expected future Claims. The statutory scheme that the Company proposed on July 14, 2004 was not accepted by the Representatives.

On October 28, 2004, the NSW Government announced its preparedness to pass legislation that would alter the Company s current liability position. See Item 4, Information on the Company Legal Proceedings, and the risk factor below entitled The Government of the State of New South Wales has announced that it is prepared to pass legislation that would impose retroactive liability on the Company if current negotiations between the Company, the NSW Government, the ACTU and asbestos claimants do not reach an acceptable conclusion.

On November 5, 2004, the Australian Attorney-General and the Parliamentary Secretary to the Treasurer (the two relevant ministers of the Australian Federal Government) issued a news release stating that the Ministerial Council for Corporations (the relevant body of Federal, State and Territory Ministers, MINCO ) had unanimously agreed to support a negotiated settlement that will ensure that victims of asbestos-related diseases receive full and timely compensation from James Hardie and if current negotiations between James Hardie, the ACTU and asbestos victims do not reach an acceptable conclusion, MINCO also agreed in principle to consider options for legislative reform. The news release of November 5, 2004 indicated that treaties to enforce Australian judgments in Dutch and U.S. courts are not required, but that the Australian Government has been involved in communications with Dutch and U.S. authorities regarding arrangements to ensure that Australian judgments are able to be enforced where necessary. If current negotiations do not lead to an acceptable conclusion, the Company is aware of suggestions of legislative intervention, but has no detailed information as to the content of any such legislation. The NSW Government has stated that it would not consider assisting the implementation of any proposal advanced by the Company unless it was the result of an agreement reached with the unions acting through the Representatives.

On December 21, 2004, the Company announced that it had entered into a non-binding Heads of Agreement with the NSW Government and the Representatives which is expected to form the basis of a proposed binding agreement (the Principal Agreement ) under which a subsidiary of JHI NV will agree to provide, and JHI NV will guarantee, funding payments to a special purpose fund (the SPF ) established to provide funding on a long-term basis to be applied towards meeting Claims against the Liable Entities. Once executed, the Principal Agreement will be a legally binding agreement. The implementation of the Principal Agreement will be subject to a number of conditions precedent, including the delivery of an independent expert s report and approval of the Company s board of directors, shareholders and lenders.

The Heads of Agreement contained two additional conditions precedent to the Principal Agreement. The first was the conduct of a review of legal and administrative costs associated with dust diseases compensation in New South Wales and the implementation of the results of that review by legislation of the NSW Government. The purpose of this review was primarily to determine ways to reduce legal and administrative costs, and to consider the current processes for handling and resolving dust diseases compensation claims in New South Wales. The NSW Government announced its findings on March 8, 2005. Legislation was passed in the NSW Lower House (Legislative Assembly) on May 24, 2005 and the Upper House (Legislative Council) on May 25, 2005. The bill became an act on May 26, 2005. The commencement date was July 1, 2005. Based upon the passage of the act and its terms, the Company believes that this condition has been satisfied.

The second additional condition precedent contained in the Heads of Agreement pertains to the certainty of the tax deductibility of potential asbestos compensation payments. The tax deductibility of such payments is one of the determinants of affordability which is important because it preserves the Company s ability to fund its expansion and growth initiatives. It is also important to Claimants because it improves the Company s capacity to fund Claims. The Company continues to be in discussions with the Australian Taxation Office and the Treasury of the Australian Government to ensure the tax deductibility of all proposed asbestos compensation payments. Without certainty regarding the tax deductibility of the potential asbestos compensation payments, the Company may not enter into the Principal Agreement. As noted above, this could result in legislative action being taken.

On April 15, 2005, the Company announced that it had extended the coverage of the funding arrangements agreed under the Heads of Agreement to enable the SPF to settle or meet proven Claims by members of the Baryugil community in Australia against Asbestos Mines Pty Ltd ( Asbestos Mines ), a former ABN 60 subsidiary, which conducted asbestos-related mining activities in or around Baryugil. The Company has no current right to access any Claim information in relation to Claims against Asbestos Mines, and has no current involvement in the management or settlement of such Claims. The Company s proposal to provide additional funding to the SPF will be based on actuarial assessments of the estimated Claims against Asbestos Mines. The Company s proposal is not limited as to the time period to which the Claims arose.

The Company s offer to extend the funding arrangements of the SPF to permit the SPF to meet proven asbestos-related Claims from members of the Baryulgil community is proposed to be implemented subject to the same or similar conditions applicable to funding provided to the SPF for use in meeting proven claims from Amaca, Amaba and ABN 60, including that information in relation to the proven claims is provided to the Company. Asbestos Mines has not been part of the James Hardie Group since 1976, when it was sold to Woodsreef Mines Ltd, which was subsequently renamed Mineral Commodities Ltd. From 1954 until 1976, Asbestos Mines was a wholly owned subsidiary of James Hardie Industries Limited (now ABN 60). Except as described below, the Company has not had access to any information regarding claims or the decisions taken by the Foundation in relation to them.

The parties have announced a timetable for negotiations which envisages the signing of the Principal Agreement, depending on the timing of the resolution of certain matters, in late July/early August 2005 and the shareholder meeting to consider the voluntary funding proposal being held in late September/early October 2005.

If negotiations of the Principal Agreement are completed and the Principal Agreement is subsequently executed and becomes effective, the Company may be required to make a substantial provision in its financial statements and it is possible that the Company may need to seek additional borrowing facilities. If the terms of the Principal Agreement involve the Company making payments, either on an annual or other basis, the Company s financial position, results of operations and cash flows could be materially adversely affected and its ability to pay dividends could be impaired. See Item 4, Information on the Company Legal Proceedings.

If no resolution is reached and implemented, it is not possible to predict what action the Foundation, the ABN 60 Foundation, the NSW Government, other state and territory governments, the Australian federal government, the Representatives or others may take or what the outcome of any such actions may be, although certain government officials and others have stated their anticipated actions in such circumstances. See Item 4, Information on the Company Legal Proceedings and risk factor below entitled The Government of the State of New South Wales has announced that it is prepared to pass legislation that would impose retroactive liability on the Company if current negotiations between the Company, the NSW Government, the ACT