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EXPLANATORY NOTICE - PROHIBITIONS IMPOSED BY THE ASBESTOS ABATEMENT REGULATIONS, 2020

On the 10th of November 2020 the Department Employment and Labour promulgated new Asbestos Abatement Regulations, 2020. The new regulations replaced the Asbestos Regulations, 2001, as promulgated under the Occupational Health and Safety Act, 1993. The promulgation of the new regulations was long overdue as the old Asbestos Regulations, 2001, mainly prescribed legal requirements to be complied with when using asbestos in the manufacturing of asbestos containing material. As the use of asbestos was largely prohibited by the Regulations for the Prohibition of the Use, Manufacturing, Import and Export of Asbestos and Asbestos Containing Material, 2008, as promulgated under the Environment Conservation Act, 1989, the Asbestos Regulations, 2001, served very little purpose.

As the name suggests the Asbestos Abatement Regulations, 2020, have as its main goal the abatement (Systematically getting rid of) of all asbestos and asbestos containing material. Although the regulations do not prescribe a date by which all asbestos containing material must be removed, the regulation surely makes it very difficult to maintain existing asbestos or asbestos containing material. For this reason, the regulations contain several prohibitions. The purpose of this document is to explain the prohibitions imposed on building owners or persons who may have asbestos or asbestos containing material on their premises. It should be noted that the Asbestos Abatement Regulations, 2020, is criminal legislation which could result in criminal charges being brought should the Department of Employment and Labour be able to prove non-compliance.

The Asbestos Abatement Regulations, 2020, as amended on the 12th of July 2024, prescribes that no person may:

1. Sell any asbestos or asbestos containing material. By sell the regulations also prohibits offer or display for sale or import into the Republic, exchange and or the donation of asbestos or asbestos containing material;

2. Reuse or re-installation of any asbestos or asbestos containing material. In the past it was common practice that a few roof sheets need to be removed as to enable the installation of a new hot water cylinder. After installation of the new hot water cylinder the roof sheets previously removed will be reinstalled. With the new regulations this action is prohibited. Once removed the items removed will have to be replaced with new non-asbestos containing material (I.e., fibre cement product). This may be problematic in the event of the same profile non-asbestos containing roof sheets no longer being available on the market. Effectively this will mean that all roof sheets will have to be removed and be replaced with non-asbestos containing roof covering;

3. The cleaning of any asbestos containing material is prohibited. As previously mentioned, the intention of the new regulations is to get rid of asbestos and asbestos containing material. Should the owner of the building be prohibited from cleaning the roof, re-painting of that roof may not be possible. This provision will apply irrespective of the method of cleaning used, the condition of the roof or whether the roof is currently painted or sealed.

   Interesting to note is the fact that the Department of Employment and Labour will even regard the treatment of the roof with an anti-fungal solution prior to painting as preparation. The Department of Employment and Labour recently published an updated frequently asked questions document. One of the questions posed in the document reads “May an asbestos roof be cleaned and cleared of moss and lichen before it is painted?” The Department of Employment and Labour’s answer to this question reads:- “No, the cleaning and preparation of asbestos containing materials such an asbestos roof are prohibited. Cleaning methods, water blasting, scraping, brushing or other methods loosen fibres from the cement and can then become airborne, making it possible for the fibres to be breathed in by people. Lichen secretes organic acids that break down the cement over time, thus if the lichen is removed, fibre release is then very possible”.

   Above mentioned prohibition will effectively also prohibit the cleaning of areas around cracks or holes in existing roofs as to enable waterproofing to be done. In the explanatory notice issued by the Department of Employment and Labour the Department as mentioned above states that Asbestos containing roofs may be sealed or be encapsulated on condition that **NO PREPARATION OR SURFACE CLEANING** is done. This will make proper waterproofing impossible, effectively resulting in the owner of the building having no choice but to remove the asbestos containing roof;

4. The regulations prohibit the temporary storage of asbestos or asbestos containing material for periods longer than three months. In the past it was a common practice for owners of buildings to store a few old roof sheets removed from other buildings as to enable small repairs to buildings with roofs cladded with the same profile roof sheet. With the new regulations this action will be prohibited as any material removed must be disposed of within three months after removal;

5. Should asbestos containing material temporarily be stored on site, the material must be stored in such a manner as to prevent the contamination of groundwater systems or cause the release of asbestos dust. This will effectively mean that any waste temporarily stored must be stored in proper waste skips;

6. The use of compressed air to remove asbestos dust from any surface is prohibited;

7. The use of electrical power tools, such as angle grinders or any other fast-moving equipment on asbestos or asbestos containing material is prohibited. Above mentioned equipment may therefore not be used to cut, grind

or drill into asbestos or asbestos containing material. Effectively this prohibition will result in it being impossible to install solar panels or similar equipment on an asbestos containing roof as prior to installation of the panels or equipment a frame will have to be fixed to the existing roofing structure. Fixing the frame holding the solar panels or other equipment will require drilling through the asbestos containing roof sheets, an action which is prohibited by the regulation.

The legislation does allow for the use of slow-moving tools for activities which forms part of the removal of asbestos or asbestos containing material. It is unclear why this addition was made to the regulation as special slow speed tools fitted with a proper vacuum system is impossible to find in South Africa. The only activity known where the use of a slow speed cutter would be useful is the cutting of big pipes where manual pipe cutters cannot be used. The interpretation of what is meant with a slow speed cutter will vary substantially considering that the legislation does not define a slow speed cutter;

8. The Asbestos Abatement Regulations, 2020, places an onus on owners of buildings to conduct an inventory of asbestos in place and an asbestos risk assessment exercise, after which an asbestos management plan must be drafted. The regulations further places and onus on owners of buildings to ensure that no asbestos work be performed on site unless above-mentioned assessments have been conducted. The regulation places a further onus on the asbestos client for whom asbestos work is being performed to make copies of above-mentioned inventory of asbestos in place and the asbestos risk assessment documentation available to contractors prior to tendering and commencement of the asbestos work; and

9. The issue of whether solar systems may be installed on asbestos containing roofs have been a major issue of debate as the legislation did not specifically prohibit such installation. In the amendments to the regulations published on the 12th of July 2024 in Government Gazette Notice Number 50930 the Department of Employment and Labour has resolved this debate as the regulation now prohibits the installation of solar systems on asbestos containing roofs as it states:- *"No person may make any installation or fitting on or onto asbestos containing materials".*

   Effectively above-mentioned legal requirement will result in the department being able to criminally charge persons who:

   a. Install or own a solar system which was after the date of promulgation installed on or over an asbestos containing roofing structure;

   b. Installed structures or machinery such a ventilation ducting and systems on asbestos containing roofs; and

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c. Installed a new roof over the old asbestos containing roof without removing the asbestos containing roofing material first. This process is normally referred to a sheet over. See photo in photo log below.

PHOTOLOG

This photo shows a solar installation, installed on top of an asbestos containing roof.



This photo shows a sheet over project where new IBR roofing material is installed directly on top of asbestos containing roofing material.



As can be seen from above-mentioned prohibitions the Asbestos Abatement Regulations, 2020, has as its main goal the safe removal and disposal of asbestos or asbestos containing material. Above mentioned prohibitions when complied with and properly enforced surely achieve this goal. Please feel free to contact the office of SafeNet should you require more information or assistance with the safe removal of asbestos and asbestos containing material.

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Should you require any further assistance, you are welcome to contact Thabied Davids – 073 657 0293 or Dylan Prange 081 047 9957