

NEW FLEMISH ASBESTOS DECREE

IMPACT ON REAL ESTATE TRANSACTIONS AND NEW REQUIREMENTS FOR PROPERTY OWNERS

On 20 March 2019, the Flemish Parliament approved a decree on asbestos management (the "**Asbestos Decree**"). The Asbestos Decree's main objective is to accelerate the removal of asbestos from existing buildings and to reduce the risk of asbestos exposure incidents. This is useful given that, in Belgium, asbestos was commonly used in building materials until the end of the nineties. Many buildings therefore still contain asbestos.

The Asbestos Decree will only apply in Belgium's Flemish Region. We expect, however, that it will also influence property owners, authorities and investors in the other regions of the country.

The most significant provisions of the Asbestos Decree are the following:

1. ASBESTOS INVENTORY REQUIREMENTS

Under currently applicable legislation, only premises in which staff are employed need to dispose of an asbestos inventory. It is the employer that is legally required to ensure that this inventory is in place and annually updated. The Asbestos Decree significantly expands the scope of application of asbestos inventory requirements.

(i) Requirements at the occasion of asset deals

The Asbestos Decree requires the seller or transferor of a right *in rem* in a building that was constructed before 2001 to provide the purchaser or transferee with an asbestos inventory in relation to the building. This inventory must be provided *before* entering into a private sales or transfer agreement related to the transaction. This requirement applies to all types of buildings, irrespective of their use or occupants. Therefore, residential premises also fall within the scope of application.

This asbestos inventory is to be prepared by a specialised consultant and to be certified by OVAM (i.e. the Flemish Waste Agency). The private agreement and notarial deed relating to the transaction must contain a

provision in which the inventory's date and conclusions are mentioned, and in which it is indicated whether the document was provided to the transferee.

The transferee may claim the annulment in Court of a transaction that was entered into without these requirements being met. Such annulment will no longer be possible if the transferee (i) was provided with a copy of the necessary asbestos inventory before signing of the notarial deed and (ii) waived any annulment claims in that deed.

(ii) General asbestos inventory requirement as of 2032

By 31 December 2031 at the latest, all owners of buildings that were constructed before 2001 will need to dispose of an asbestos inventory.

Landlords that rent out such buildings will have to provide their tenants with the necessary asbestos inventory either (i) when the lease is signed or (ii) within one month after inventory is issued, if this issuance occurs after the lease was signed.

2. REQUIREMENTS FOR OWNERS OF BUILDINGS THAT ARE OCCUPIED BY PUBLIC AUTHORITIES

The Asbestos Decree provides the following additional requirements for buildings that were constructed before 2001 and are occupied by a public authority:

- by **1 January 2034** (i) all easily accessible and non-bound asbestos-containing materials and (ii) all asbestos applications in the building's exterior elements (e.g. in roofing; at the façade or in chimneys) must have been removed; and
- by **1 January 2040** the building must be covered by a formal 'asbestos safe certificate'.

Note that it is the owner of the relevant building, and not the public authority that occupies the premises, that will be responsible for ensuring that these requirements are met.

3. PREVENTIVE MEASURES

The Asbestos Decree imposes several measures to prevent asbestos exposure incidents, including:

- an obligation to remove easily accessible asbestos applications at the occasion of maintenance, repair or refurbishment works;
- a prohibition on cleaning or de-mossing roofing or façade cladding that contains asbestos; and
- a prohibition on covering, installing or to attaching equipment (e.g. billboards or solar panels) to asbestos-containing roofing or façades.

4. ENTRY INTO FORCE

The Asbestos Decree was published in the Official Gazette on 17 April 2019.

The date of entry into force of the Decree is to be set by the Flemish Government. This will only happen after the installation of the new Government following the elections that will take place on 26 May 2019.

We expect, however, that the Asbestos Decree will impact on the attitude towards asbestos management of property owners, tenants and investors even before its actual date of entry into force.

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