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# NOTE

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### NON-ARBITRABILITY OF RESIDENTIAL LEASE DISPUTES IN FLANDERS

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The new Flemish Residential Lease Decree (Vlaams Woninghuurdecreet, Article 44) prohibits the arbitration of disputes relating to residential leases. The Flemish Parliament considered that the costs of arbitration proceedings are often out of proportion with the amounts at stake in this type of disputes, with the consequence that arbitration clauses constitute a barrier to access to justice. The non-arbitrability rule prohibits arbitration clauses included in a lease as well as arbitration agreements entered into after a dispute has arisen.

The Decree was published in the Belgisch Staatsblad of 7 December 2018 and entered into force on 1 January 2019. Lease agreements concluded in writing before that date are not subject to the new Decree. Existing arbitration clauses therefore remain valid, future disputes arising out of pre-2019 leases will continue to be arbitrable and arbitration proceedings that

are pending on 1 January 2019 can run their course. Retail leases and office leases are not caught by the new Decree and may still validly provide for the arbitration of disputes.

The power to regulate residential lease agreements was transferred from the Federal State to the Regions in 2014 as part of the sixth State reform package. All three Regions have since made use of this power: Brussels amended its Housing Code (Code bruxellois du Logement / Brusselse Huisvestingscode) with effect on 1 January 2018, Wallonia's new Décret relatif au bail d'habitation entered into force on 1 September 2018 and Flanders now has its Vlaams Woninghuurdecreet. Brussels also chose to prohibit arbitration clauses in residential leases and, contrary to Flanders, decided to extend this prohibition to pre-existing agreements – but in Brussels parties may opt for arbitration once their dispute has arisen, whilst in Flanders they may not. Wallonia allows the arbitration of residential lease disputes – but an official brochure on Le bail d'habitation en Wallonie warns tenants and landlords that “il s'agit d'une procédure extrêmement coûteuse”...

The exact scope of the Regions' powers is not settled; the Council of State advised Flanders and Brussels that their attempt to regulate arbitration clauses was illegal. Both Parliaments disagreed and took the view that this falls within their power. The issue is currently pending before the Constitutional Court, where the Chambre d'Arbitrage et de Médiation / Kamer van Arbitrage en Bemiddeling, an arbitral institution with a specific focus on lease disputes, is challenging the Brussels non-arbitrability rule.