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**WALLOON RESIDENTIAL
LEASES MAY NOT PROVIDE
FOR ARBITRATION**

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After Brussels in 2017 and Flanders in 2018, the Walloon Region also decided that residential leases may not provide for the arbitration of disputes.

The rule is contained in a new Article 51/1 of the Walloon Decree of 15 March 2018 on residential leases (*décret relatif au bail d'habitation*), inserted pursuant to a Decree of 2 May 2019 published in the *Moniteur belge* dated 28 May 2019. Arbitration clauses contained in a residential lease agreement are invalid. As in Brussels and unlike in Flanders, landlords and tenants remain free to opt for

arbitration once a dispute has arisen – they just may not make that choice upfront. Arbitration clauses in retail or office leases are not affected.

The amending Decree was submitted to the Walloon Parliament in the form of a Member's proposal rather than as a Government's bill. The Council of State was therefore not involved and did not have a chance to comment on the proposal. In its advice on the similar Brussels and Flemish rules, the Council of State took the view that – subject to some possible exceptions – the Regions lack competence to legislate on the arbitrability of disputes, this being a matter of judicial law reserved to the Federal State. All three Regional Parliaments decided to go ahead nevertheless and the explanatory memorandum of the recent Decree explains why the Walloon Parliament regards the matter as falling within the scope of its implied powers. The issue is pending before the Constitutional Court, which is currently seised of a challenge against the non-arbitrability rule in the Brussels Ordinance of 27 July 2017 on the Regionalisation of Residential Leases. Judgment is expected in the second half of this year.

The Walloon Decree and its legislative history are totally silent as to any transitional arrangements. They do not make it clear whether the prohibition extends to arbitration clauses contained in pre-existing leases (as in Brussels) or is limited to lease contracts made after its entry into force (as in Flanders). The difficulty is compounded by the circumstance that the Decree was adopted on 2 May and published on 28 May 2019, but provides that it retroactively enters into force as of 1 March 2019. Again, the legislative history is silent about the reasons for this retroactive effect.