

Survey report

Lease agreements –
most disputable clauses



Introduction

The purpose of our survey was to identify the most time-consuming clauses of the lease agreements.

We started with our findings resulting from our experience. Then, we consulted those findings with our clients and other market participants (other landlords, agents, other lawyers). On this basis we prepared a list of clauses which were most often indicated as difficult and time-consuming.

Then, in cooperation with the Polish Council of Shopping Centres we conducted an online survey the results of which you will find below.

Summary

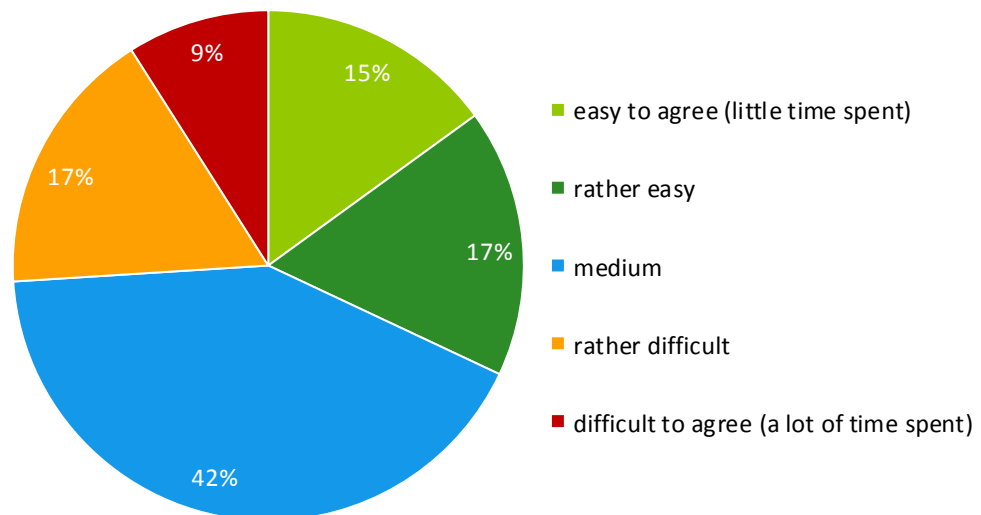
We present below answers of the participants of our survey, listed from the most to the least difficult to negotiate (column marked “%” shows proportion of the answers “difficult” and “rather difficult” to all answers).

no.	description	%
1.	Consequences of failure to reach certain leasing ratios	71.7 %
2.	Consequences of reconstruction works in centres	66.0 %
3.	Contractual penalty for early termination	60.4 %
4.	Regulation of service charges	50.9 %
5.	Fit-out standards / landlords' fit-out contribution	41.5 %
6.	Consequences of delayed delivery of premises	33.96%
7.	Non-competition clauses	28.3%
8.	Termination by landlords	26.41%
9.	Scope of tenants' liability	26.41%
10.	Early delivery of bank guarantees	26.41%
11.	Extension options	20.75%
12.	Date of opening of a centre	15.1%
13.	“Tolerance clause” relating to differences between agreed and measured areas	13.2 %
14.	Measurement & measurement criteria	5.66%
15.	Delivery of premises	3.78%

Please assess if your organization experiences difficulties while negotiating with tenants the below clauses:

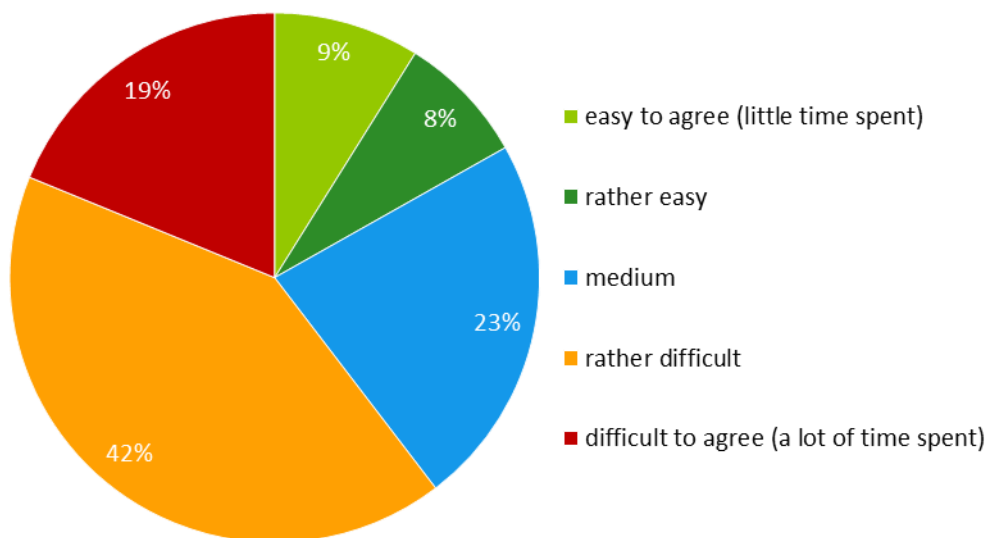
Termination by landlords

easy to agree (little time spent)	15,09%
rather easy	16,98%
medium	41,51%
rather difficult	16,98%
difficult to agree (a lot of time spent)	9,43%



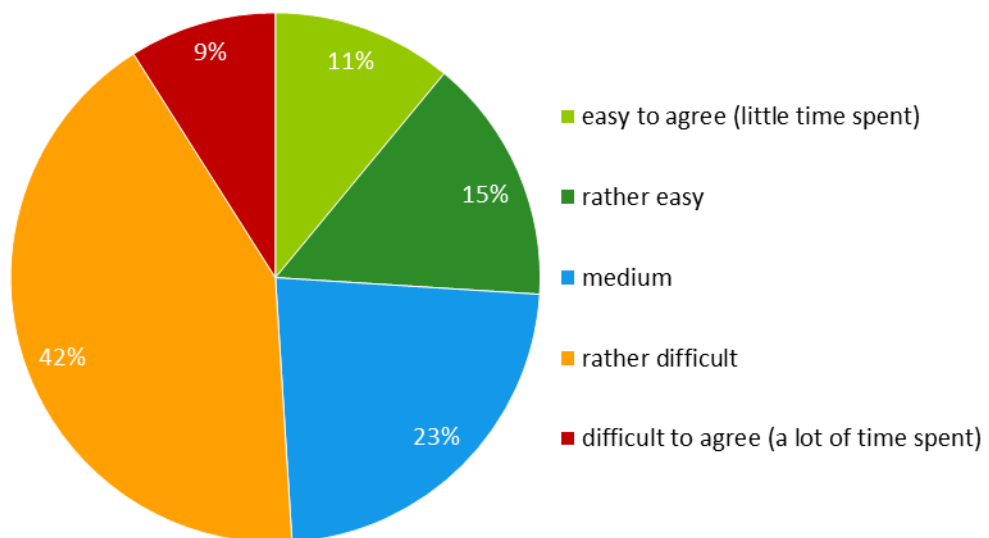
Contractual penalty for early termination

easy to agree (little time spent)	9,43%
rather easy	7,55%
medium	22,64%
rather difficult	41,51%
difficult to agree (a lot of time spent)	18,87%



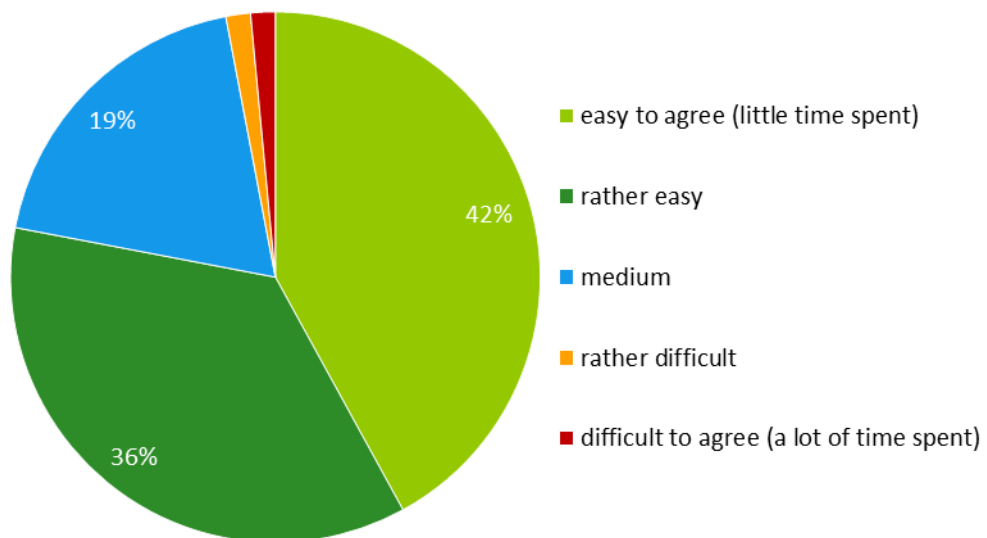
Regulation of service charges

easy to agree (little time spent)	11,32%
rather easy	15,09%
medium	22,64%
rather difficult	41,51%
difficult to agree (a lot of time spent)	9,43%



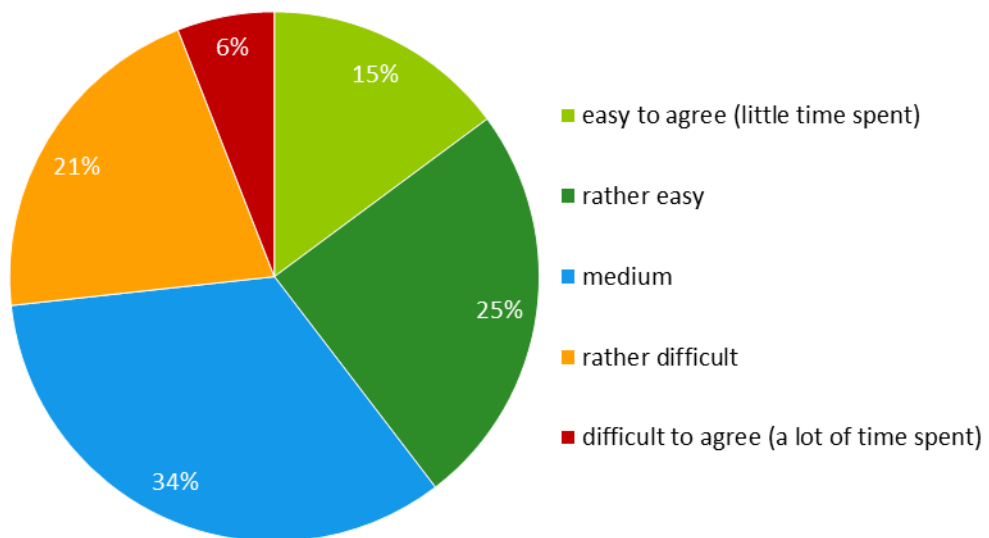
Delivery of premises

easy to agree (little time spent)	41,51%
rather easy	35,85%
medium	18,87%
rather difficult	1,89%
difficult to agree (a lot of time spent)	1,89%



Scope of tenants' liability

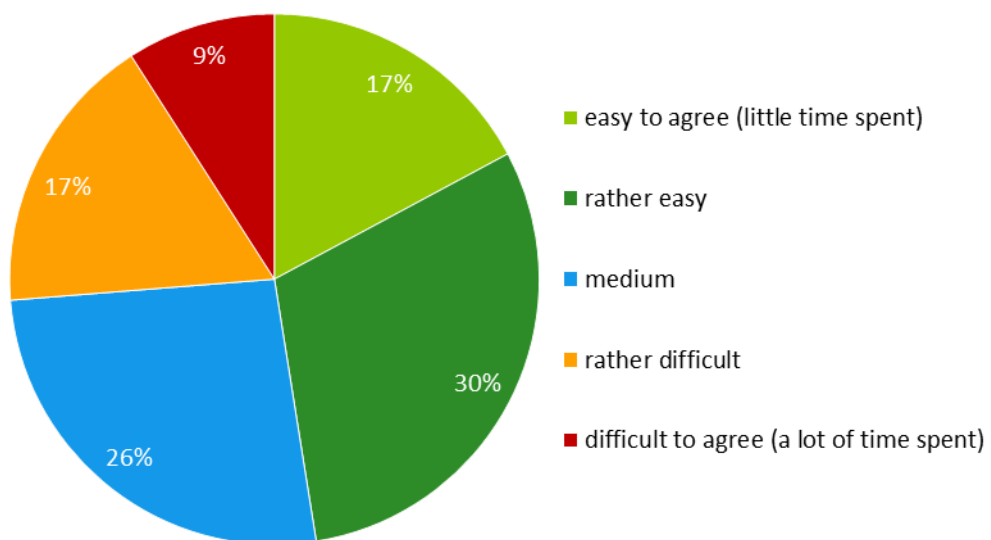
easy to agree (little time spent)	15,09%
rather easy	24,53%
medium	33,96%
rather difficult	20,75%
difficult to agree (a lot of time spent)	5,66%



Early delivery of bank guarantees

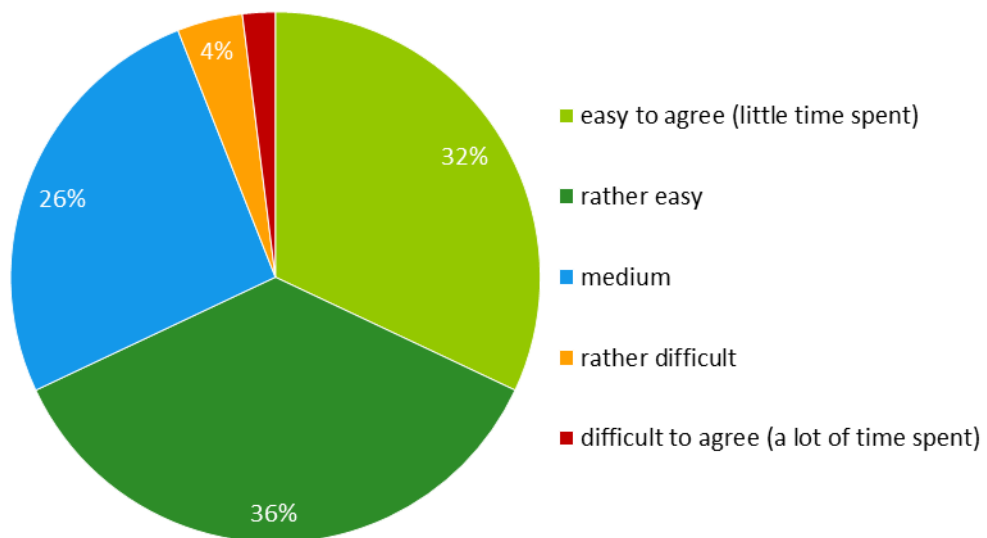
%

easy to agree (little time spent)	16,98%
rather easy	30,19%
medium	26,42%
rather difficult	16,98%
difficult to agree (a lot of time spent)	9,43%



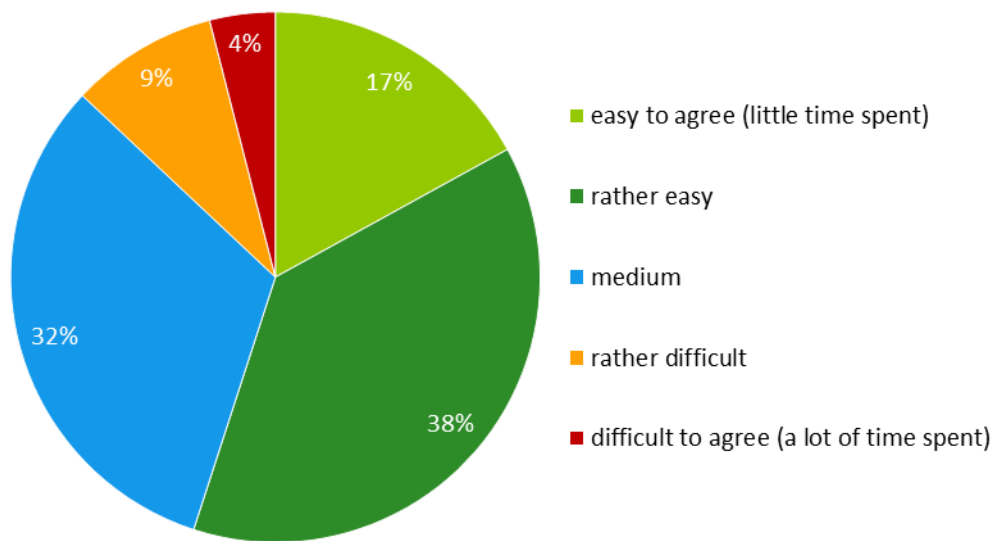
Measurement & measurement criteria

easy to agree (little time spent)	32,08%
rather easy	35,85%
medium	26,42%
rather difficult	3,77%
difficult to agree (a lot of time spent)	1,89%



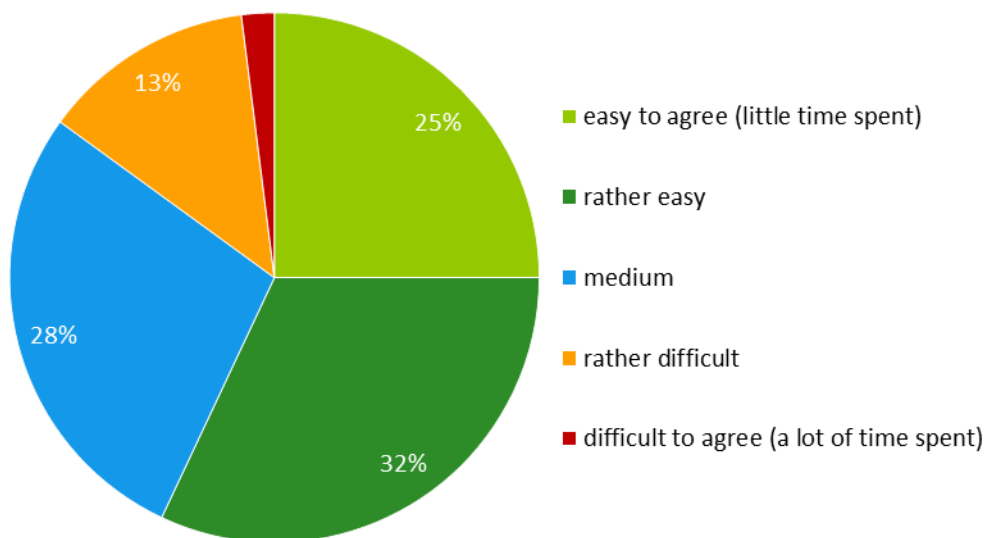
“Tolerance clause” relating to differences between agreed and measured areas

easy to agree (little time spent)	16,98%
rather easy	37,74%
medium	32,08%
rather difficult	9,43%
difficult to agree(a lot of time spent)	3,77%



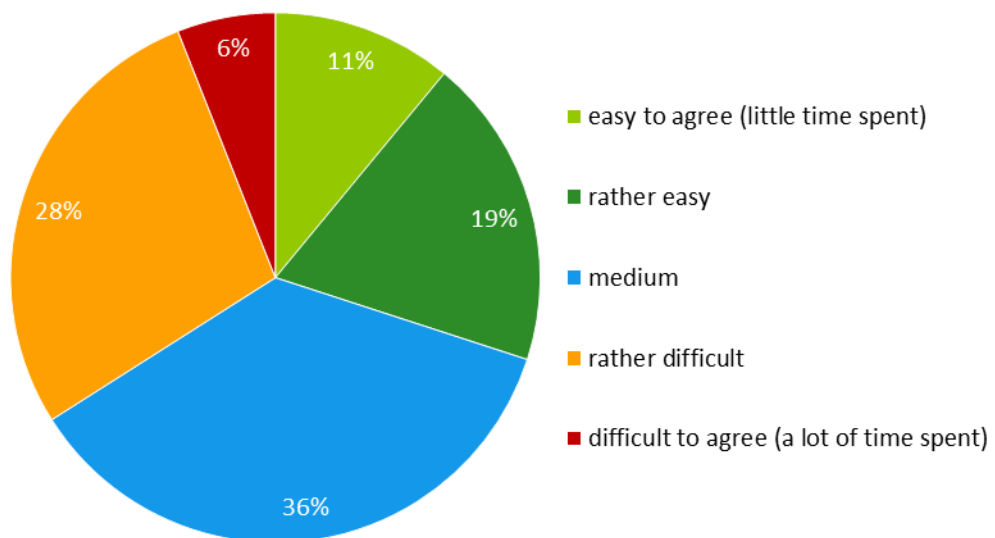
Date of opening of centres

easy to agree (little time spent)	24,53%
rather easy	32,08%
medium	28,30%
rather difficult	13,21%
difficult to agree (a lot of time spent)	1,89%



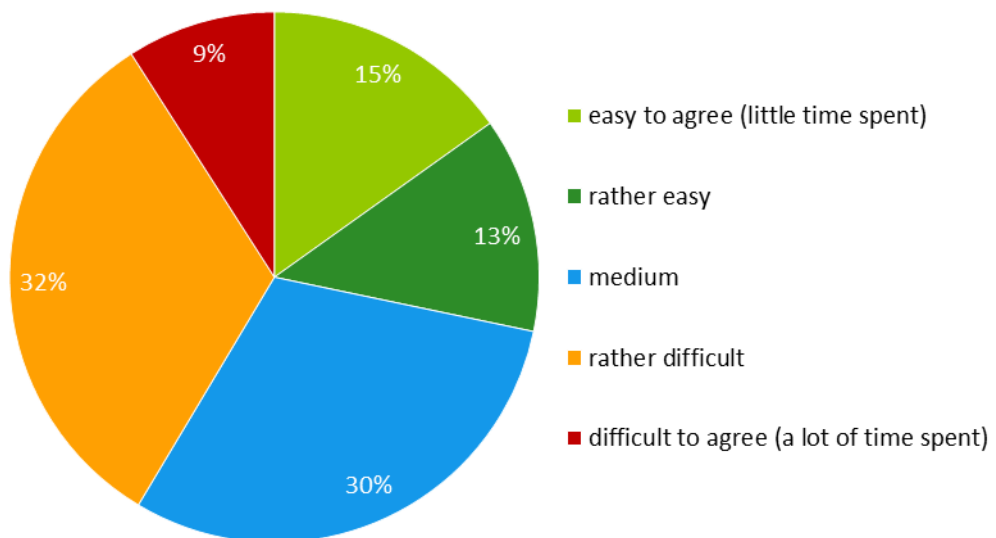
Consequences of delayed delivery of premises

easy to agree (little time spent)	11,32%
rather easy	18,87%
medium	35,85%
rather difficult	28,30%
difficult to agree (a lot of time spent)	5,66%



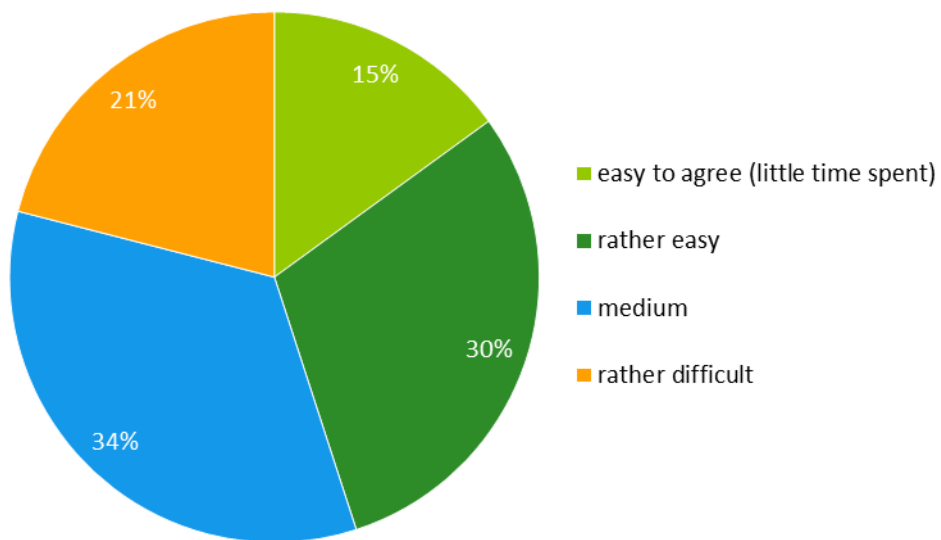
Fit-out standards / landlords' fit-out contribution

easy to agree (little time spent)	15,09%
rather easy	13,21%
medium	30,19%
rather difficult	32,08%
difficult to agree (a lot of time spent)	9,43%



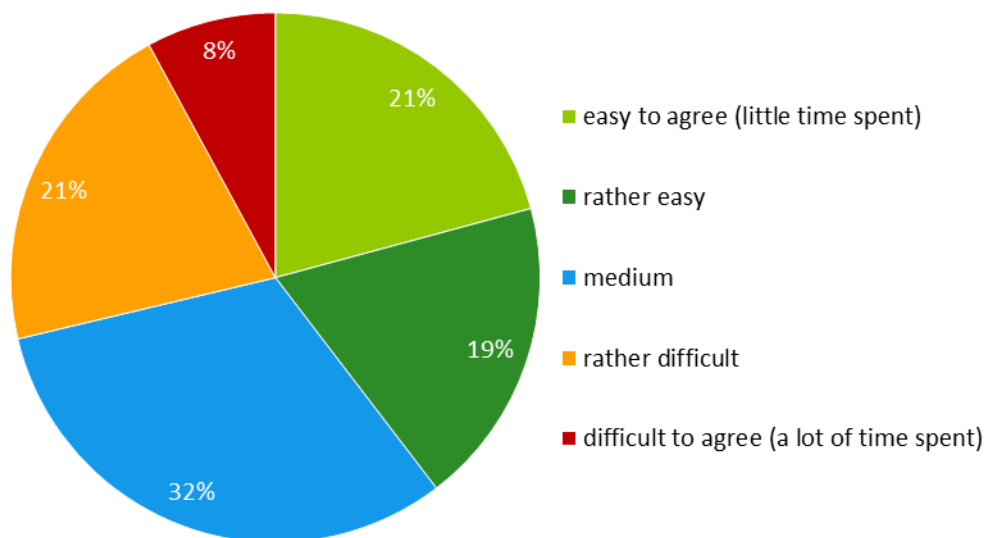
Extension options

easy to agree (little time spent)	15,09%
rather easy	30,19%
medium	33,96%
rather difficult	20,75%
difficult to agree (a lot of time spent)	0,00%



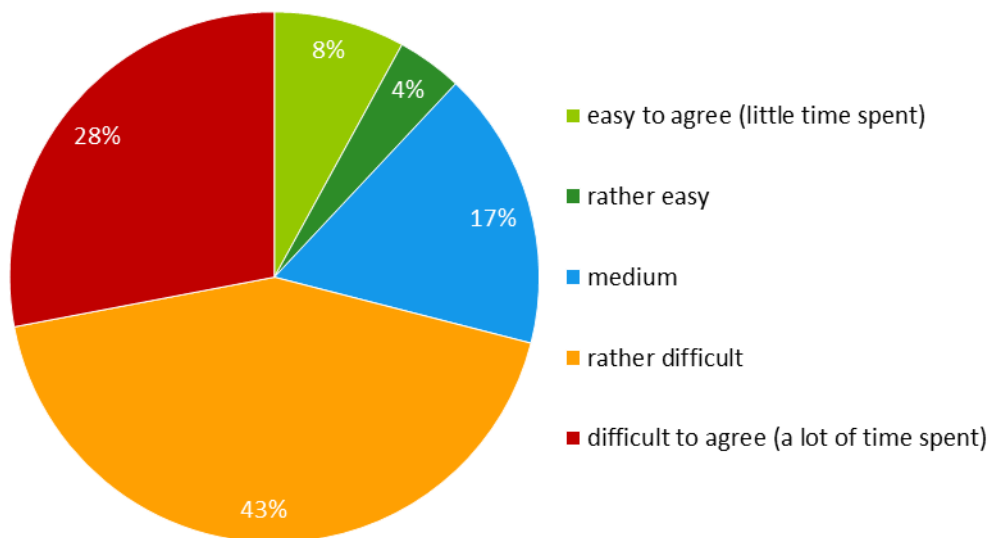
Non-competition clauses

easy to agree (little time spent)	20,75%
rather easy	18,87%
medium	32,08%
rather difficult	20,75%
difficult to agree (a lot of time spent)	7,55%



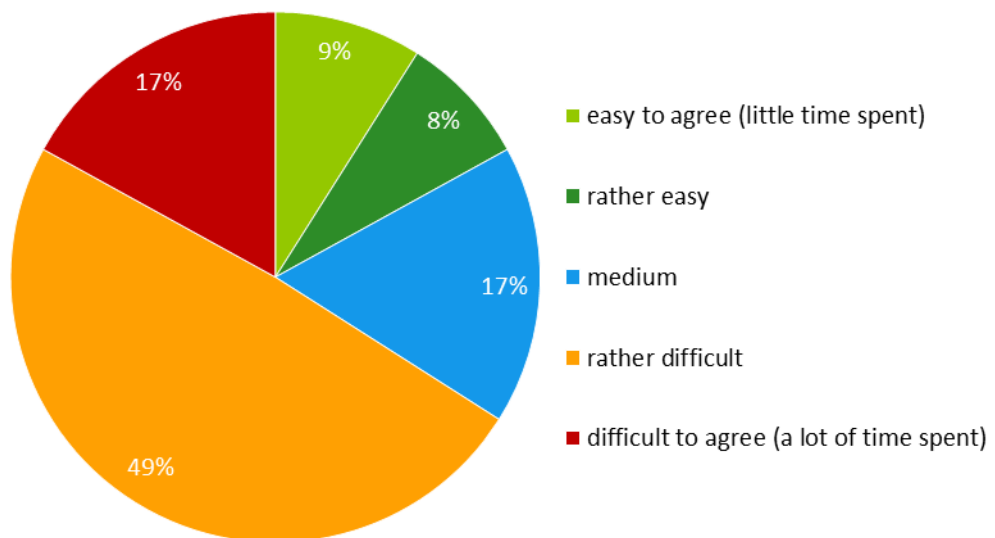
Consequences of failure to reach certain leasing ratios

easy to agree (little time spent)	7,55%
rather easy	3,77%
medium	16,98%
rather difficult	43,40%
difficult to agree(a lot of time spent)	28,30%



Consequences of reconstruction works in centres

easy to agree (little time spent)	9,43%
rather easy	7,55%
medium	16,98%
rather difficult	49,06%
difficult to agree (a lot of time spent)	16,98%



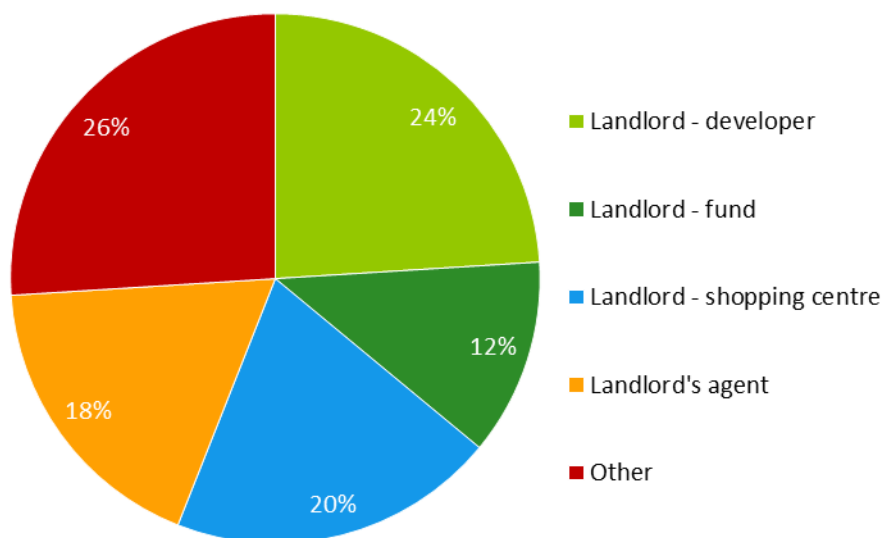
Other difficult clauses - please indicate

- turnover rent (exceptions, monthly vs. annual)
- payments' deadlines (delivery of invoices)
- relocation of a tenant to other premises in a centre
- amount of security resulting from art. 777 of the Code of Civil Procedure
- resignation from security in a form of a bank guarantee or deposit while applying only security resulting from art. 777 of the Code of Civil Procedure in relation to return of premises
- securing instruments in a form of a notarial deed based on art. 777 of the Code of Civil Procedure
- consequences of failure to secure desirable variety of tenants
- common areas
- scope of a building insurance, consequences of damage / destruction of a building and influence on activity / operations of a tenant
- step rent / turnover rent and guaranteed rent (or all together)
- rules of sublease or using premises by companies not related to a tenant or tenant's clients
- deposit
- participation in marketing and ecological campaigns
- participation in service charges for food court
- termination of an agreement by tenants
- scope of landlord's liability
- landlord's consent for changing concept / brand by a tenant
- standard of return of premises
- liability due to media outage
- scope of internal regulations of a centre and landlord's right to introduce changes
- pledge on tenant's movables
- deposit vs. bank guarantee
- insurance (amount up to which a tenant should be insured)
- clauses regarding environment
- insurance subrogation
- termination in the event of not reaching projected turnover
- amount of rent and extra charges
- tenant's exclusivity
- settlement of costs when leaving premises
- possibility of change of tenant's legal structure
- rules of rent indexation
- sublease / assignment
- marketing share in service charges

- consequences of delay in opening a centre

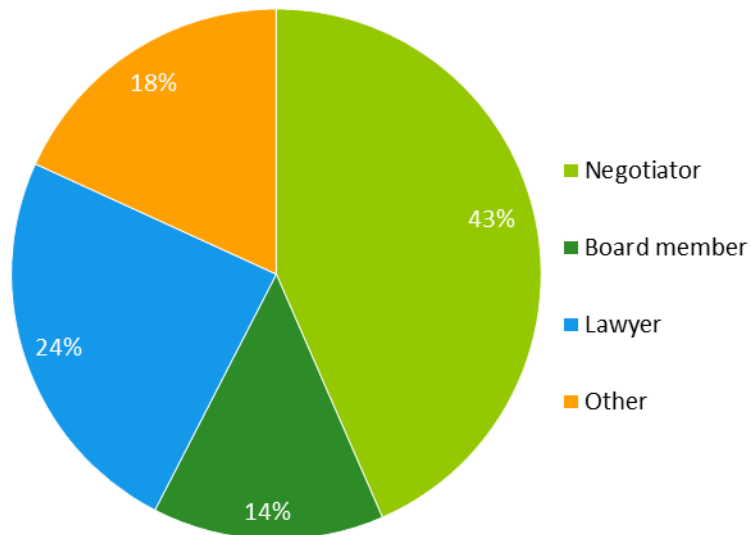
Please describe your firm's profile:

Landlord - developer	24,00%
Landlord - fund	12,00%
Landlord - shopping centre manager	20,00%
Landlord's agent	18,00%
Other: law firm, tenant, agency	26,00%



Please specify your function in your organization:

Negotiator	42,86%
Board member	14,29%
Lawyer	24,49%
Other: leasing director, asset manager, asset management assistant, negotiator - owner, proxy of the management board for development, sales director, department director	18,37%





E: office@galt.com.pl

W: www.galt.com.pl

T: 22 211 22 60