



REPORT FROM POLL SURVEY:

**THE MOST DISPUTABLE CLAUSES
IN OFFICE PREMISES LEASE AGREEMENTS**





INTRODUCTION

Negotiating lease agreements might be time-consuming and the parties often “get stuck” while trying to agree on certain issues regulated by such contracts. Prolonged negotiations may pose a threat to meetings the deadlines agreed by landlords with banks (with respect to project commercialisation milestones) and prolong the time devoted by commercialisation teams of landlords to negotiations (and increase the costs). In the case of objects that are already in use, they may also negatively affect the cash flow of the landlord.

Our research consisted in the identification of clauses that are the most time-consuming to negotiate. The conclusions drawn from our own experience were consulted first of all with our customers and other representatives of the sector (real property brokers, landlords, other lawyers). Basing on these consultations, we prepared a list of those provisions that were most often referred to as tedious and time-consuming, and then we used an online survey to verify whether the experiences of other landlords confirm our observations.

CONCLUSION

The following section presents five clauses that were specified by the participants of our survey as the most difficult, ordered by the number of votes for answers “rather difficult” and “difficult to reach agreement on”:

1. Contractual penalty in case of termination of agreement

The reservation of a contractual penalty is very important for the prognosed cash flow of the landlord. Due to that, provisions referring to contractual penalties are analysed by banks that finance the project (as well as by potential purchasers of the given project). From the tenants’ point of view, the reservation of a contractual penalty in the lease agreement may constitute an additional risk – in the case of early termination of lease it is easier for the landlord to pursue the payment of contractual penalty than to claim the repair of damages (as it is not required to prove the amount of damage incurred by the owner).

2. Consequences of delays in handing over the premises

Arrangements with respect to the consequences of delay in handing over the premises by the landlord may include, among others: the obligation of the landlord to pay contractual penalties, lowering the rent or withdrawal from the agreement.

From the point of view of the landlord, the loss of a tenant as a result of withdrawal from



the agreement is a serious risk. On the other hand, from the point of view of the tenant, the lack of possibility to use the premises at the stipulated time is a threat, particularly if the previous lease agreement has expired and the tenant remains deprived of the premises necessary to run its business.

3. Consequences of disturbances in using the object of lease

The most threatening disturbances listed by tenants include interruptions in the supply of power, water or other media. They may make it practically impossible to use the premises. The issue that generates disputes are the consequences of the occurrence of such violations. They may include, e.g.: lowering the rent, contractual penalties, and the possibility to terminate the agreement. Disputes may refer to the scale of the lowering, the amount of penalties as well as to the duration of the disturbances that enables the tenant to exercise the agreed consequences.

4. Standard of fit-out works/contribution of the landlords to fit-out works

Disputes referring to this group are of a commercial nature: it might be time-consuming to agree on the standard of fit-out works of the office and on the share of the tenant and the landlord in the costs of furnishing and fit-out works.

5. Scope of responsibility of tenants.

Doubts concerning this point refer to such issues as how and to what extent the tenants are responsible for the maintenance of the facilities and systems in the premises. Are they responsible for possible damages caused by their employees, contractors, visitors? To what extent are they responsible for damages caused by their fit-out works? Reaching agreement on the issues mentioned hereinabove also belongs to the most time-consuming areas of negotiations.

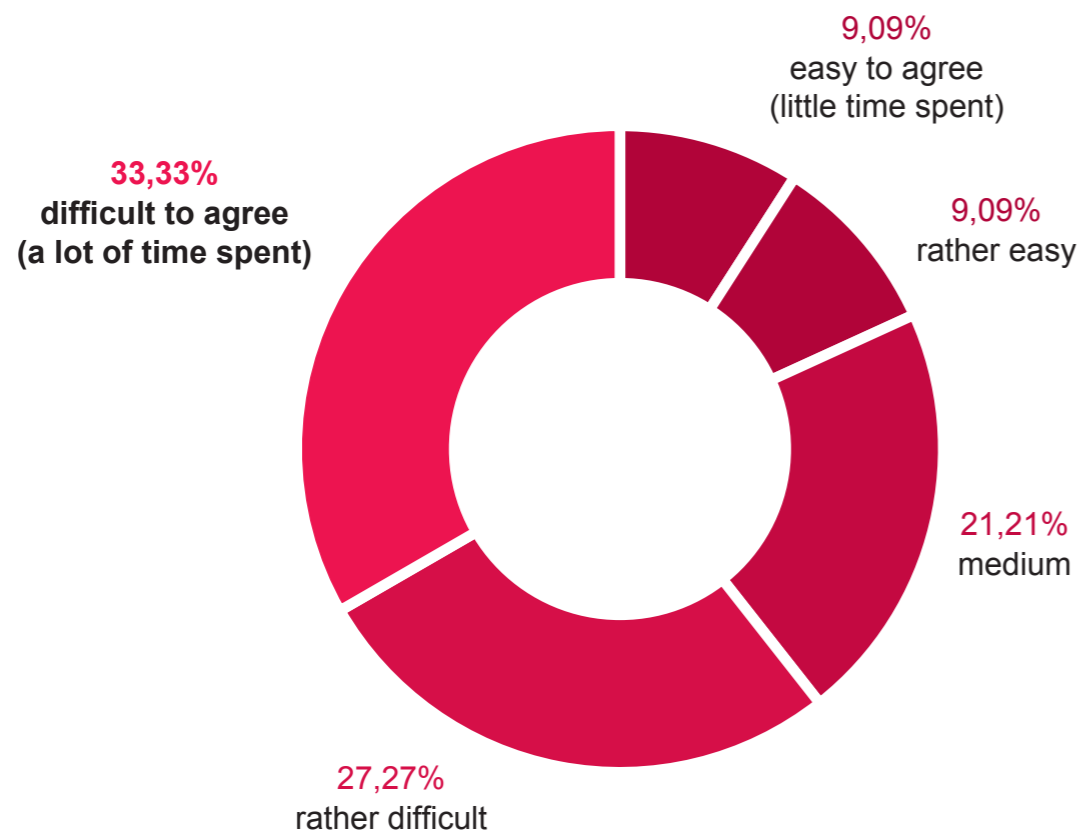
Negotiating the groups of provisions listed above is time-consuming, as they refer to commercially significant terms of lease, where the interests of the parties are conflicting. However, it is possible to shorten the duration of negotiations by landlords by means of adapting the general lease agreement, for example by adjusting its provisions to the current market situation. Certain provisions that are favourable for landlords and that used to seem obvious some time ago are currently very difficult or nearly impossible to obtain from tenants due to increased supply of office space. It is also worth to consider the removal of such provisions that generate disputes although their importance in the context of practical management of an office building is low.

The further part of this section presents the detailed results of the conducted survey.

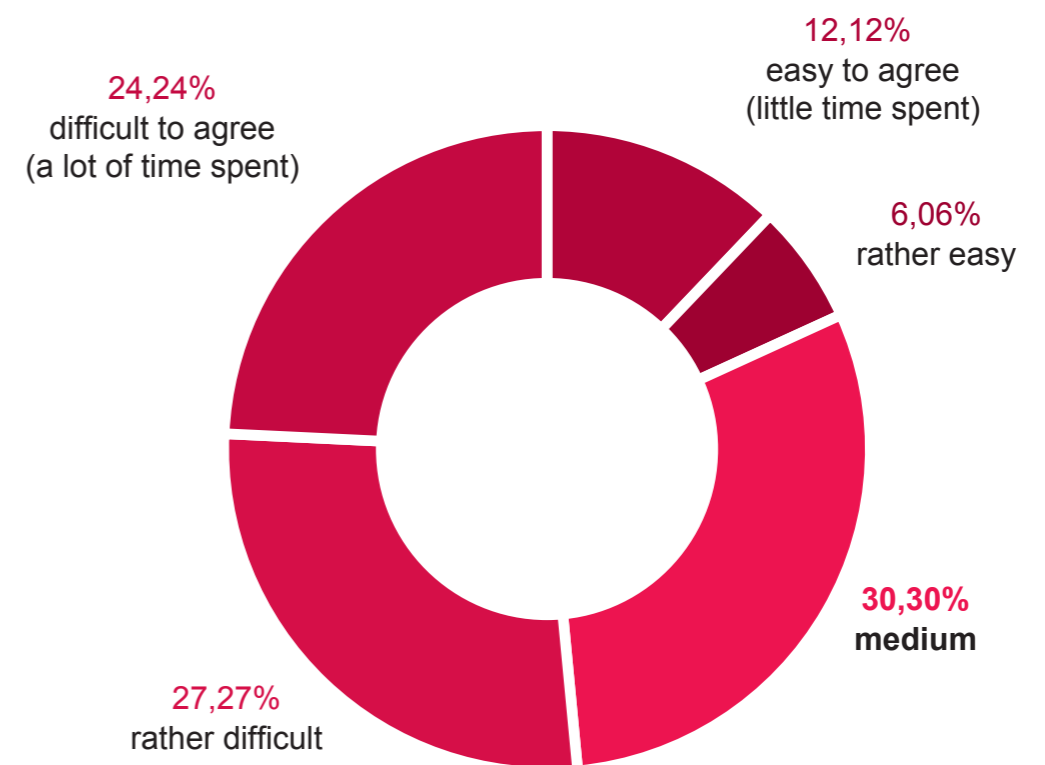
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Contractual penalty in case of termination of agreement



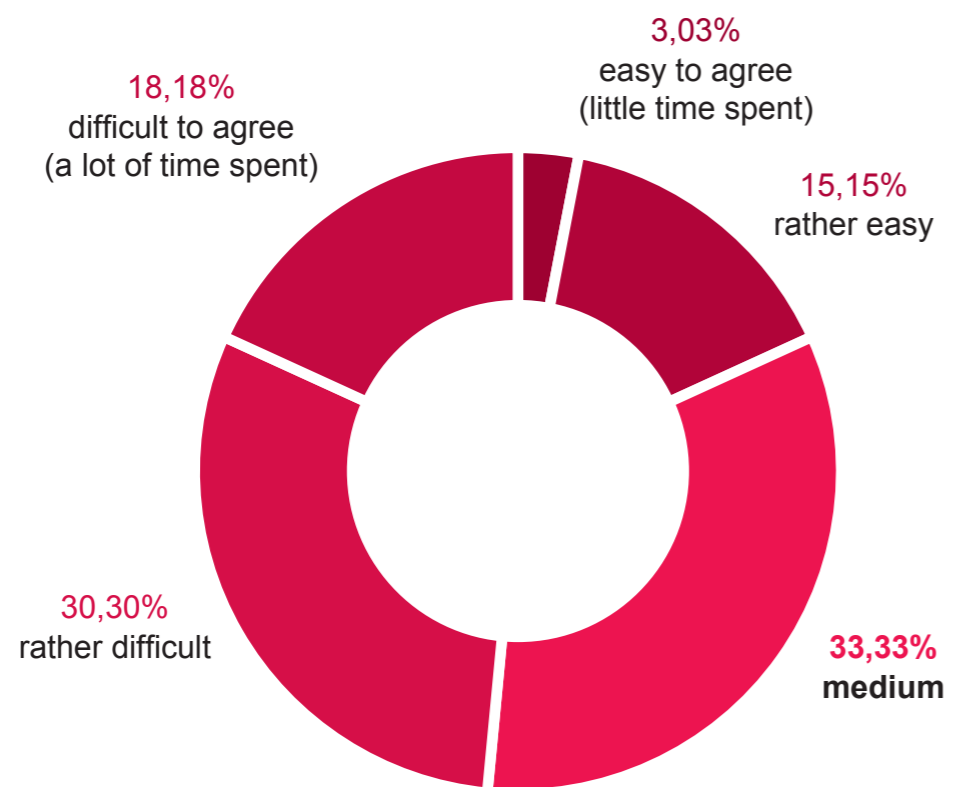
Consequences of delays in handing over the premises



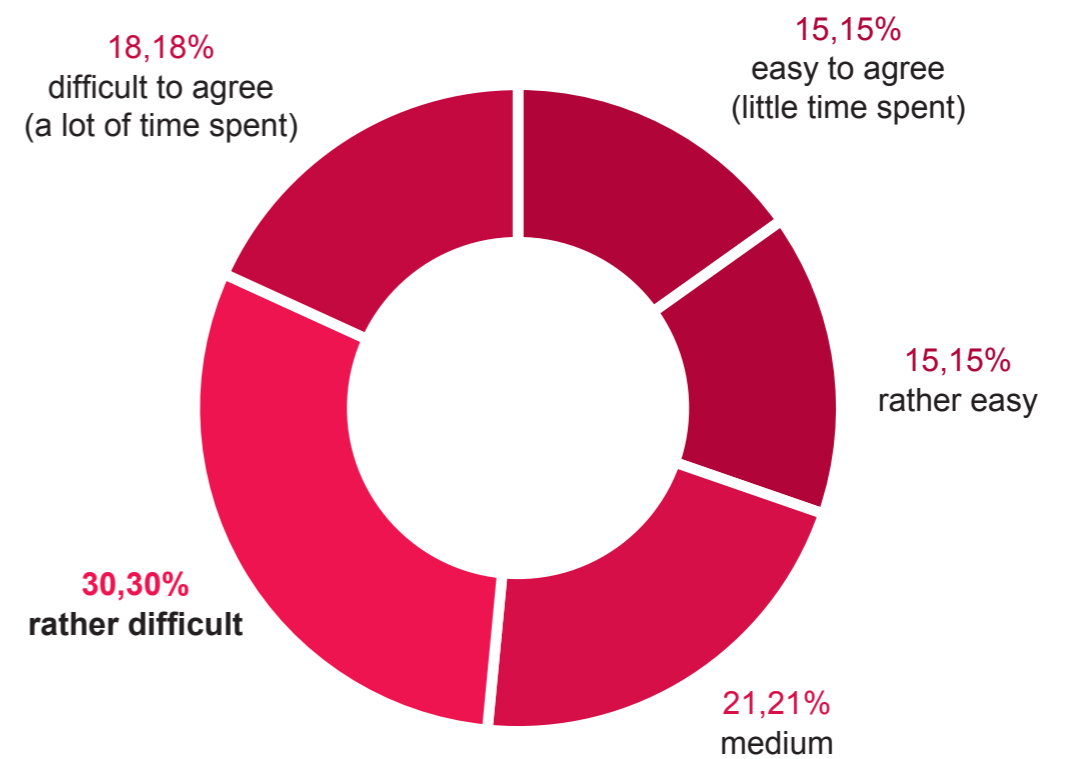
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Consequences of disturbances in using the object of lease



Standard of fit-out works /contribution of the landlords to fit-out works

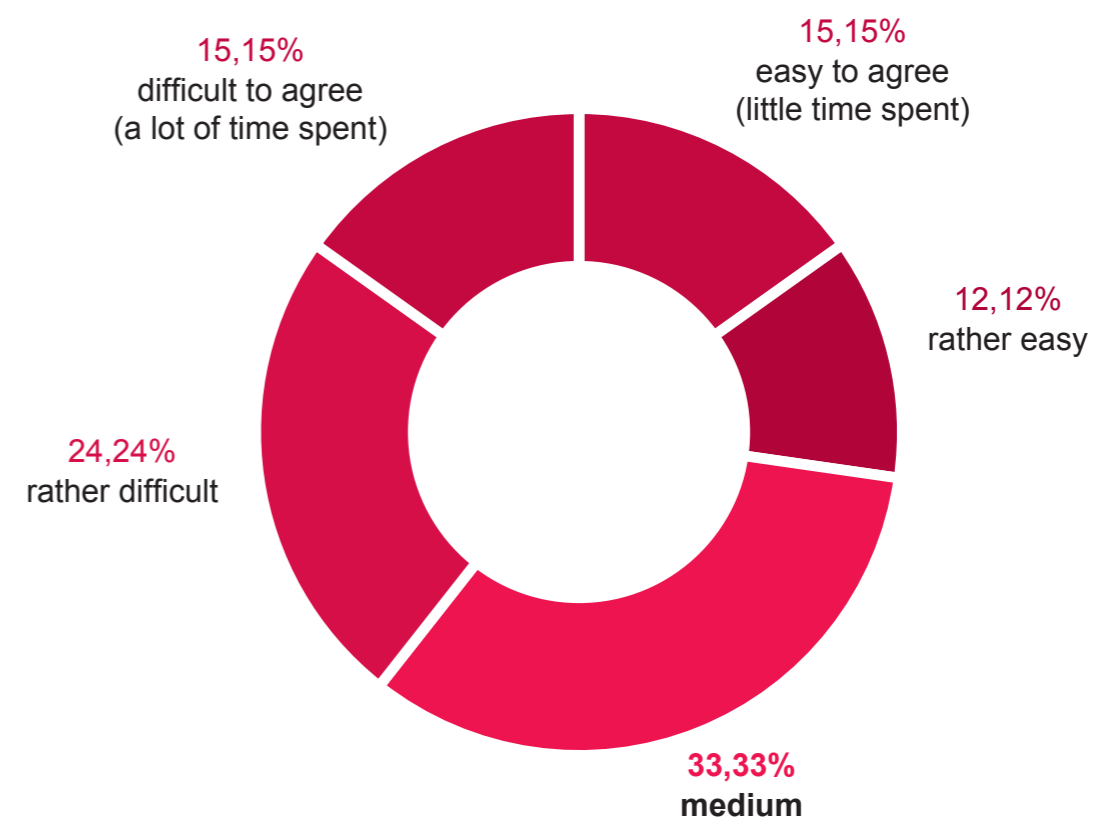
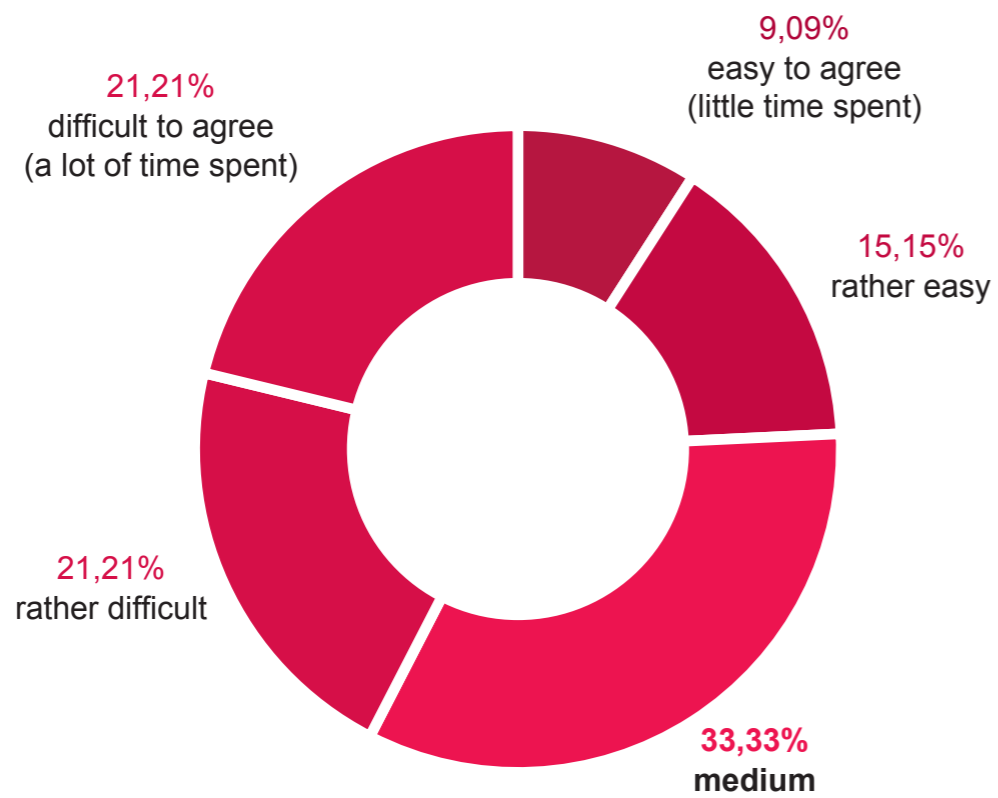


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Scope of responsibility of tenants

Termination of agreement by landlord

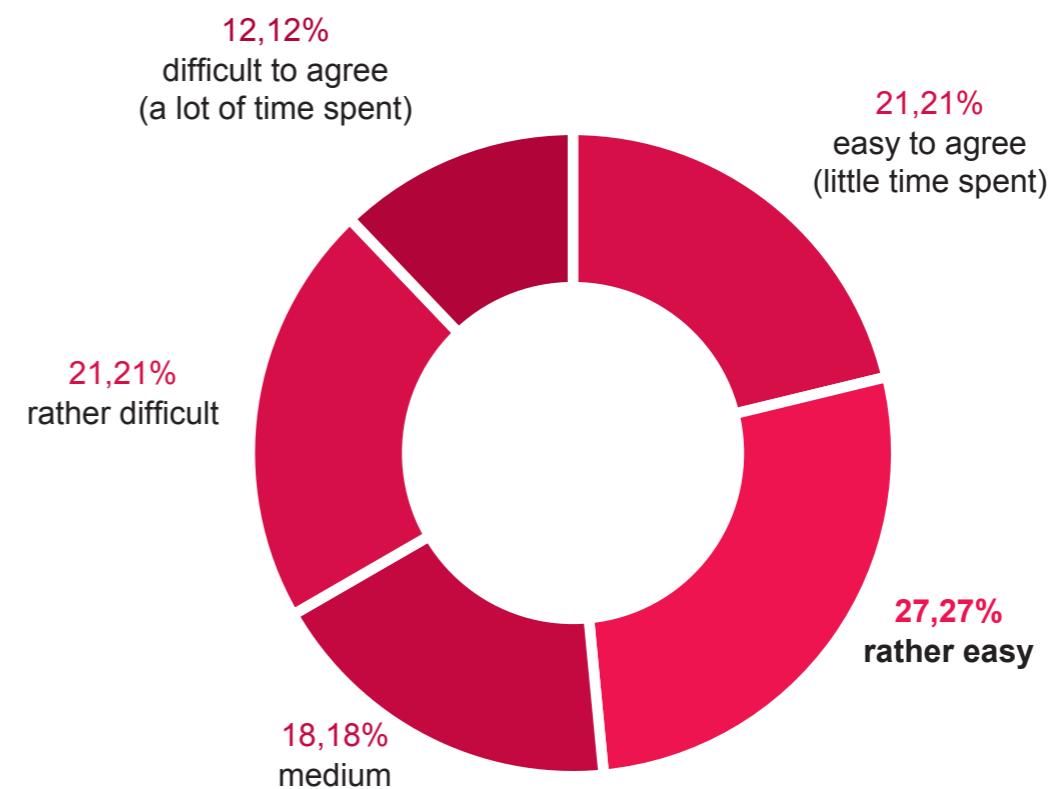
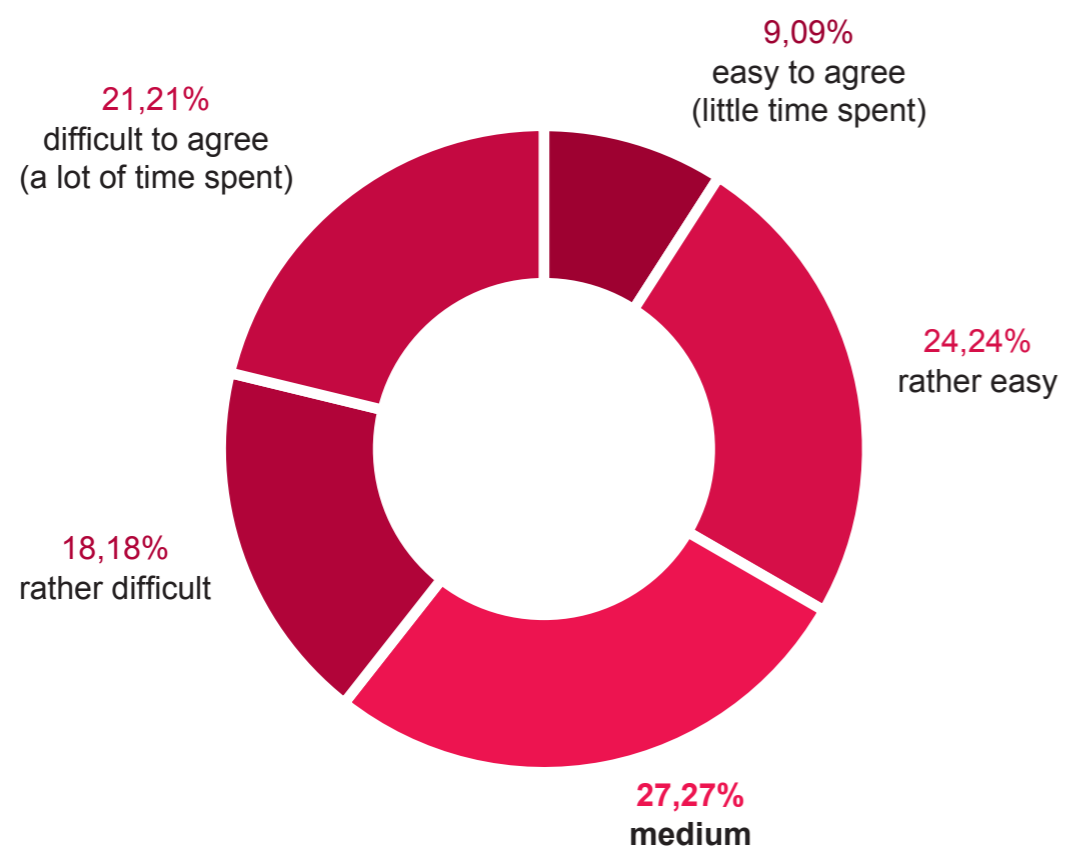


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Damages to the object of lease – degree of damage releasing the tenant from execution his/her obligations under the agreement

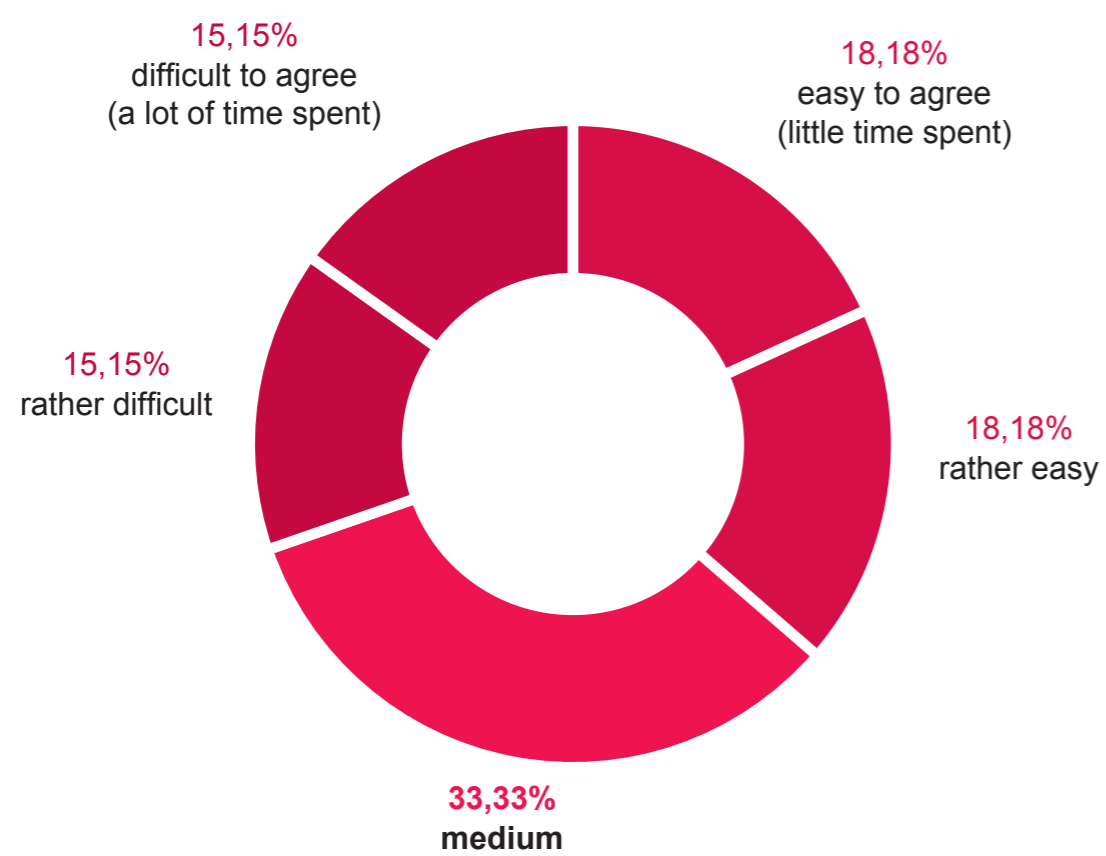
Guarantee – validity period after expiry of the agreement



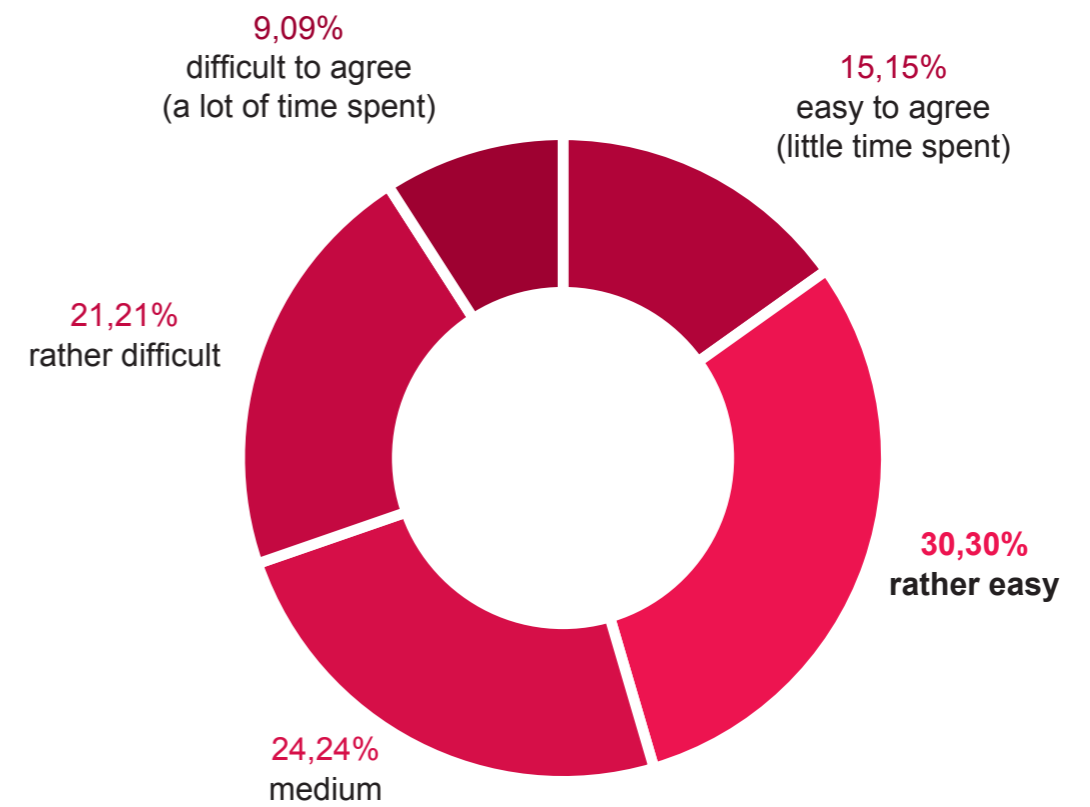
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Principles of regulating service charges



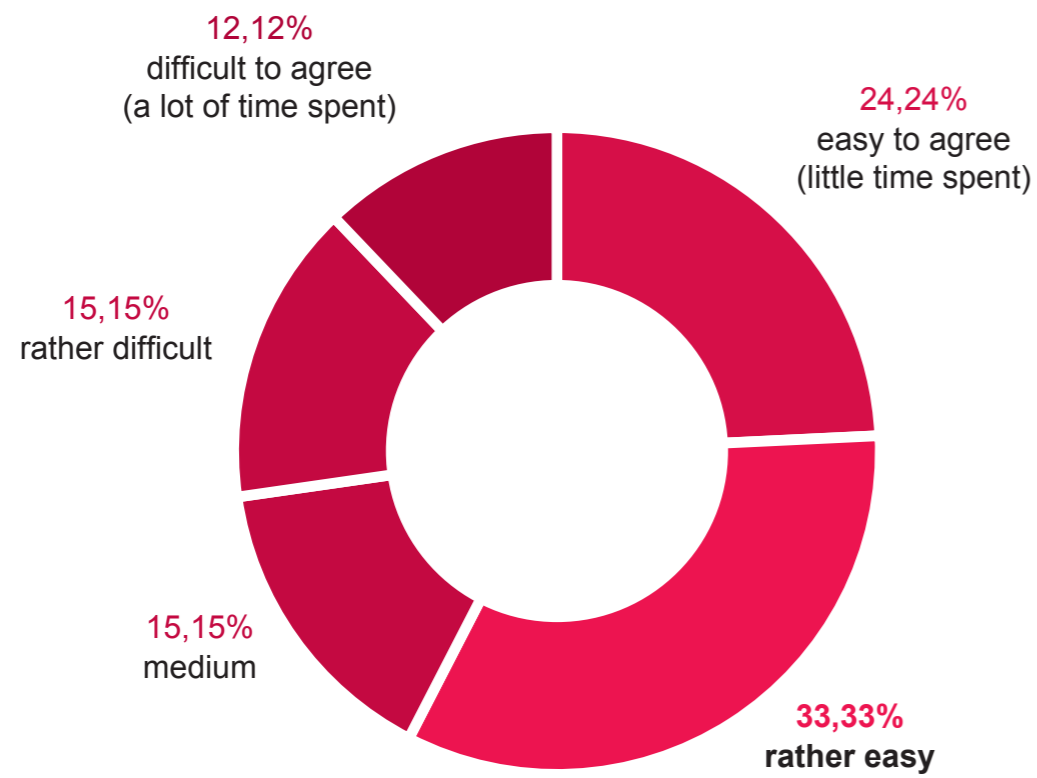
Early provision of bank guarantees



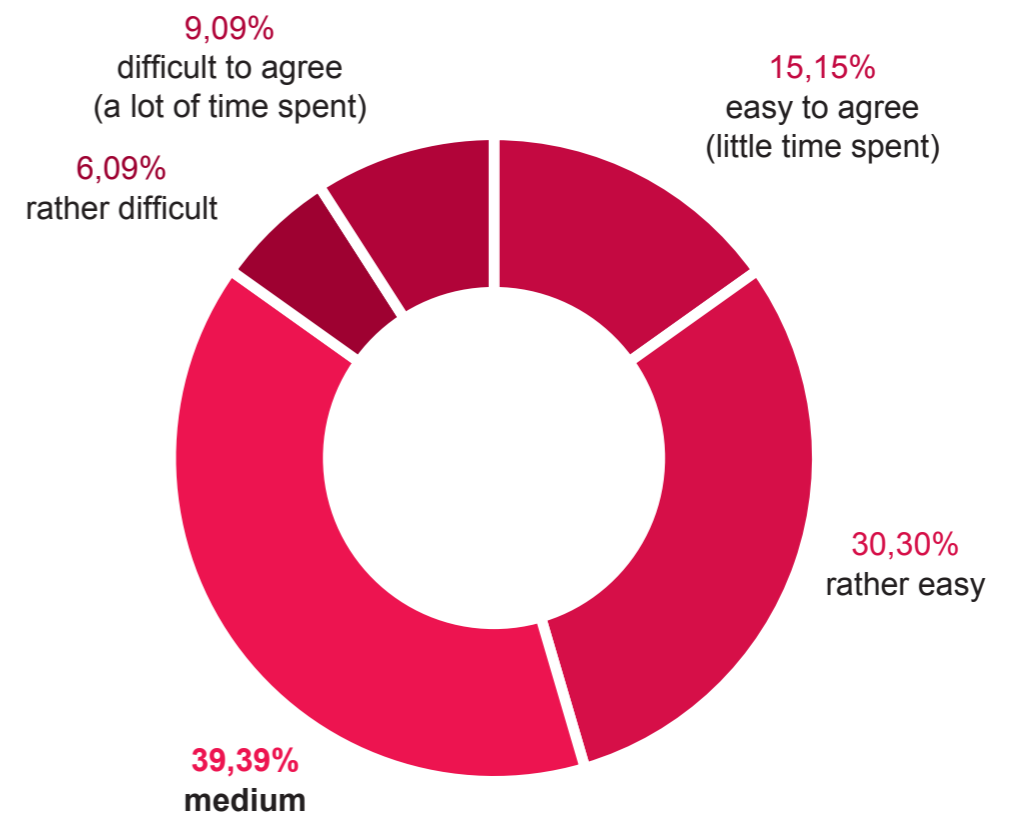
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Options of prolongation of lease agreements



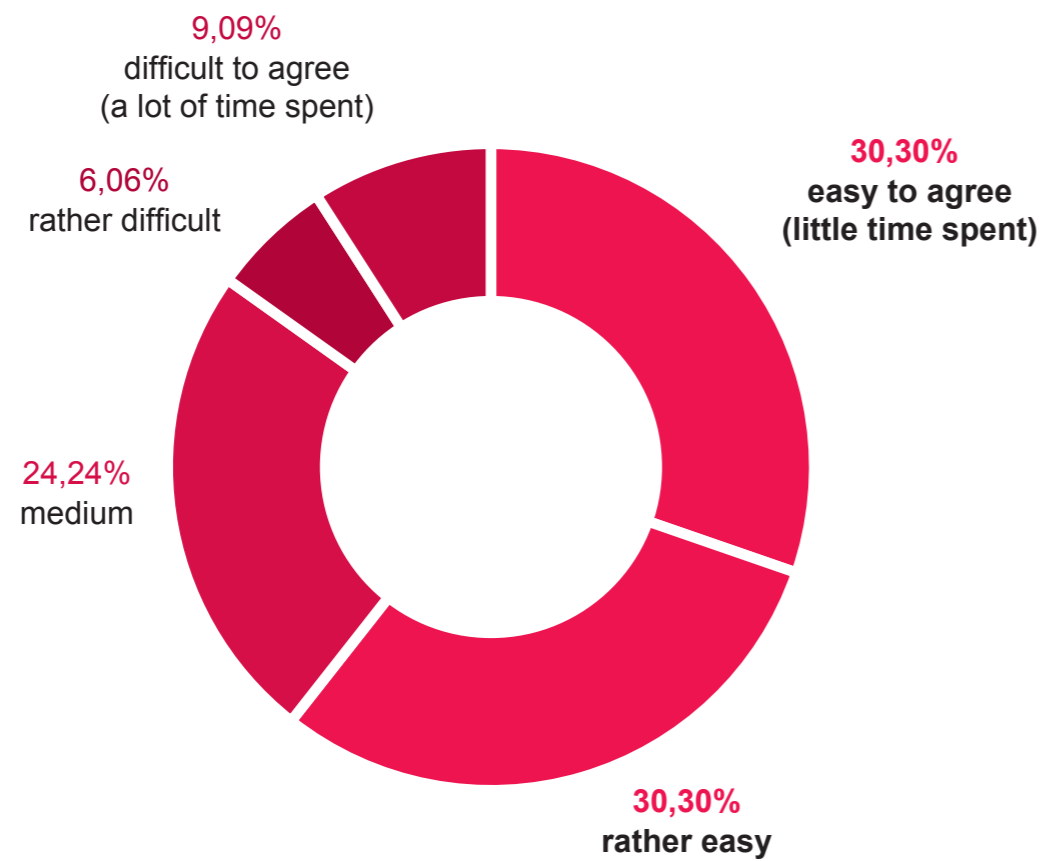
“Tolerance clause” referring to the difference between the agreed and measured areas



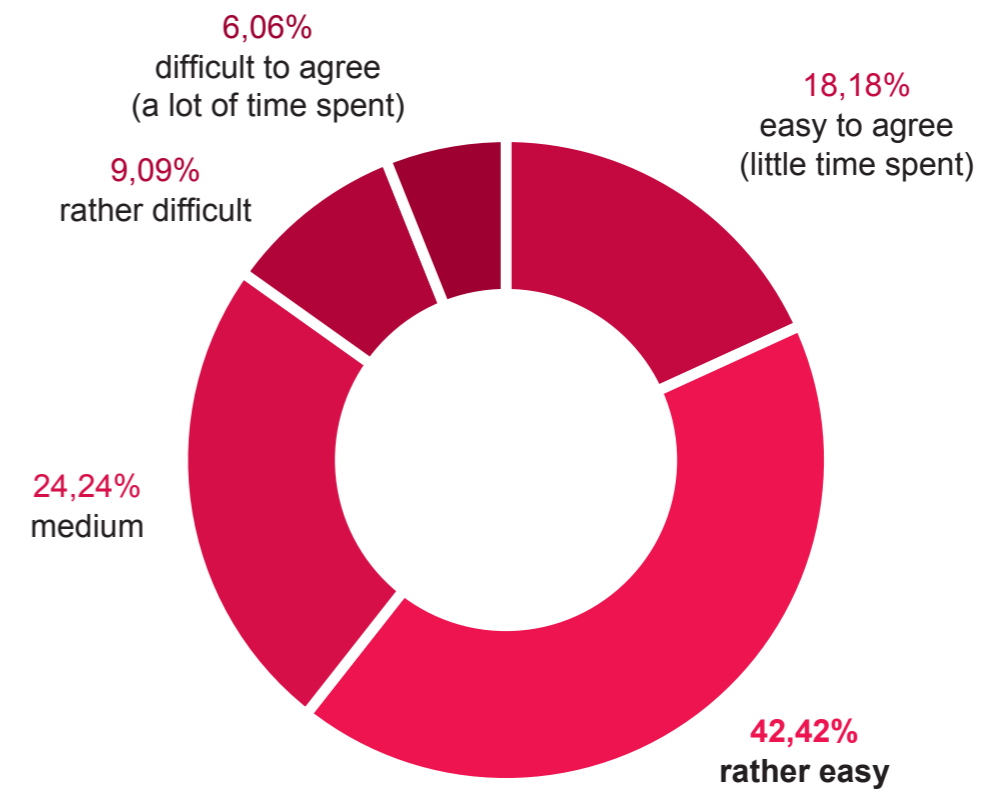
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Measurements and measurement criteria



Insurance – coverage and amount

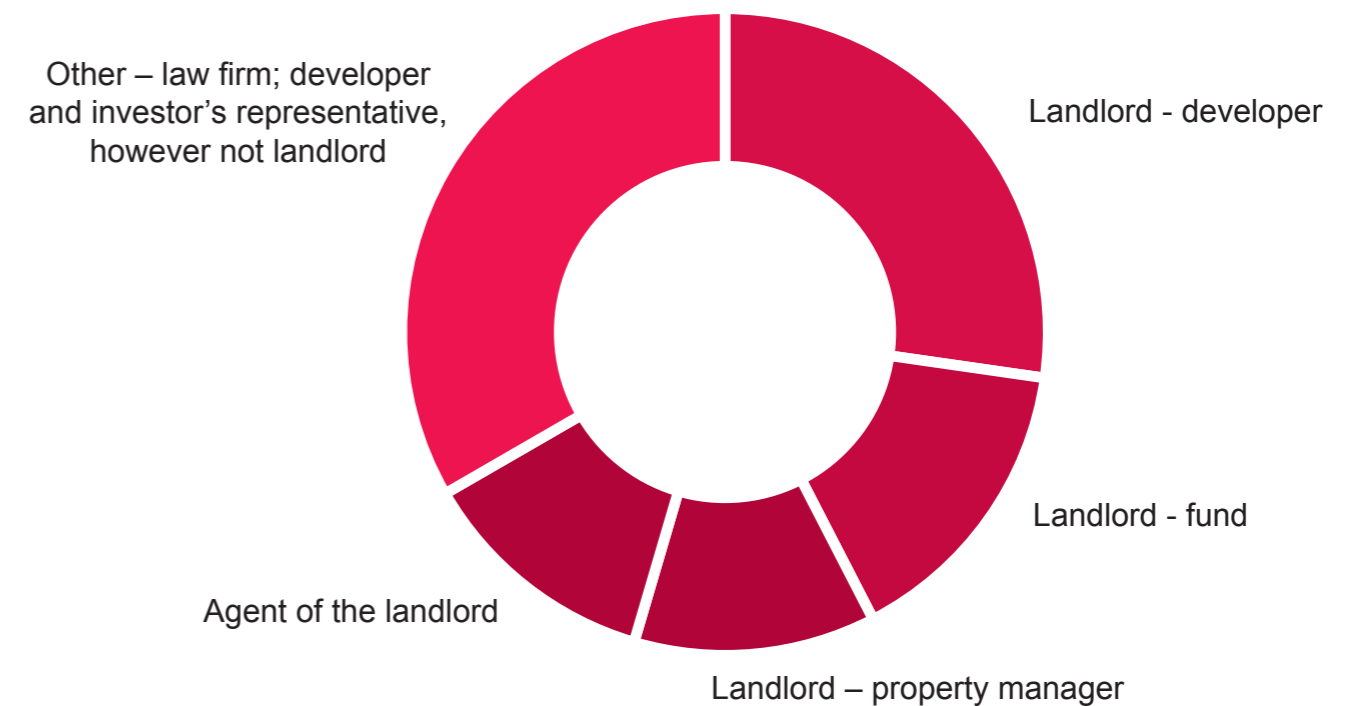




Other difficult clauses

- Conversion of rent currency,
- Termination of lease agreement by landlord and the related compensation,
- Responsibility of the landlord,
- Right of first refusal,
- Exclusion of the right to offset,
- Decreasing and increasing the lease area during the period of the agreement,
- Provisions referring to assignment/sublease,
- Force majeure,
- Repairs and maintenance works,
- Liability of the landlord for interruptions in media supply,
- Conditions for the return of the premises,
- Non-competition clause,
- Payment terms and schedules,
- Changes in the regulations without the tenant's consent.

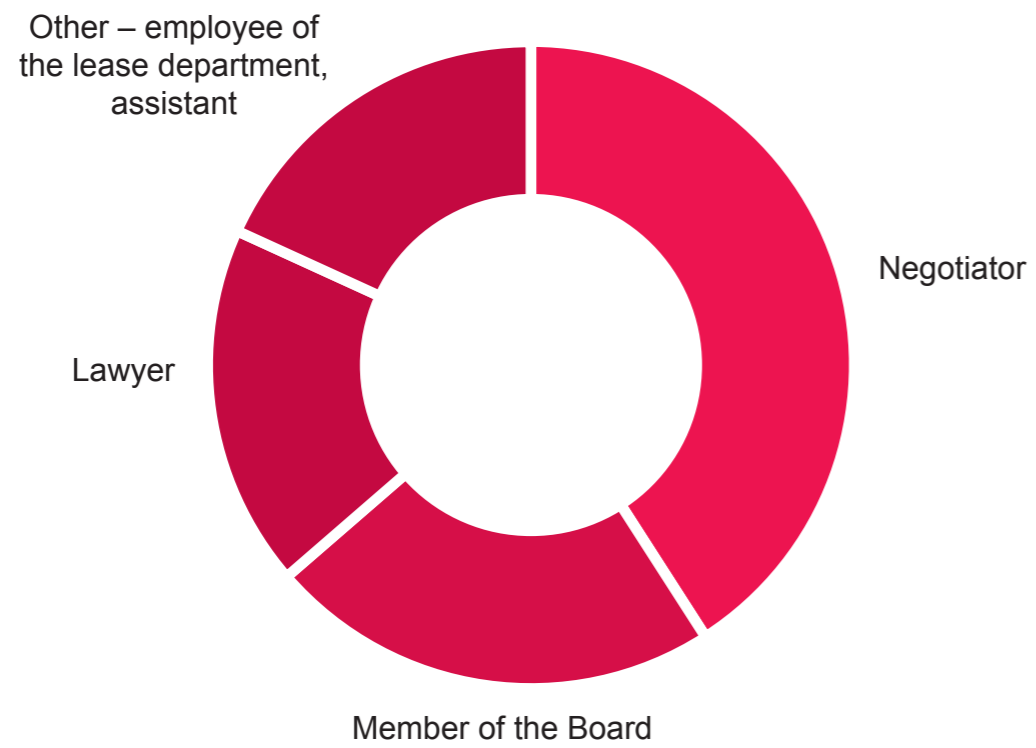
Company profile





Function of the survey participant in the organisation

NOTES





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