



Alternative Fee Arrangements

A Guide to Alternative Fee Arrangements

De Brauw Blackstone Westbroek
September 2014

Introduction

Welcome to the first edition of the De Brauw Blackstone Westbroek Alternative Fee Arrangement guide.

The legal profession is changing and Alternative Fee Arrangements (“AFAs”) are becoming more established within the practice of law. To meet the demands of clients, we want to provide some guidance on the various possible fee arrangements.

We distinguish in this guide four main categories of alternatives to the standard hourly rate. And we focus on providing practical information and examples of the different arrangements within those categories. We are receptive to AFAs in all our clients' matters, in both word and deed.

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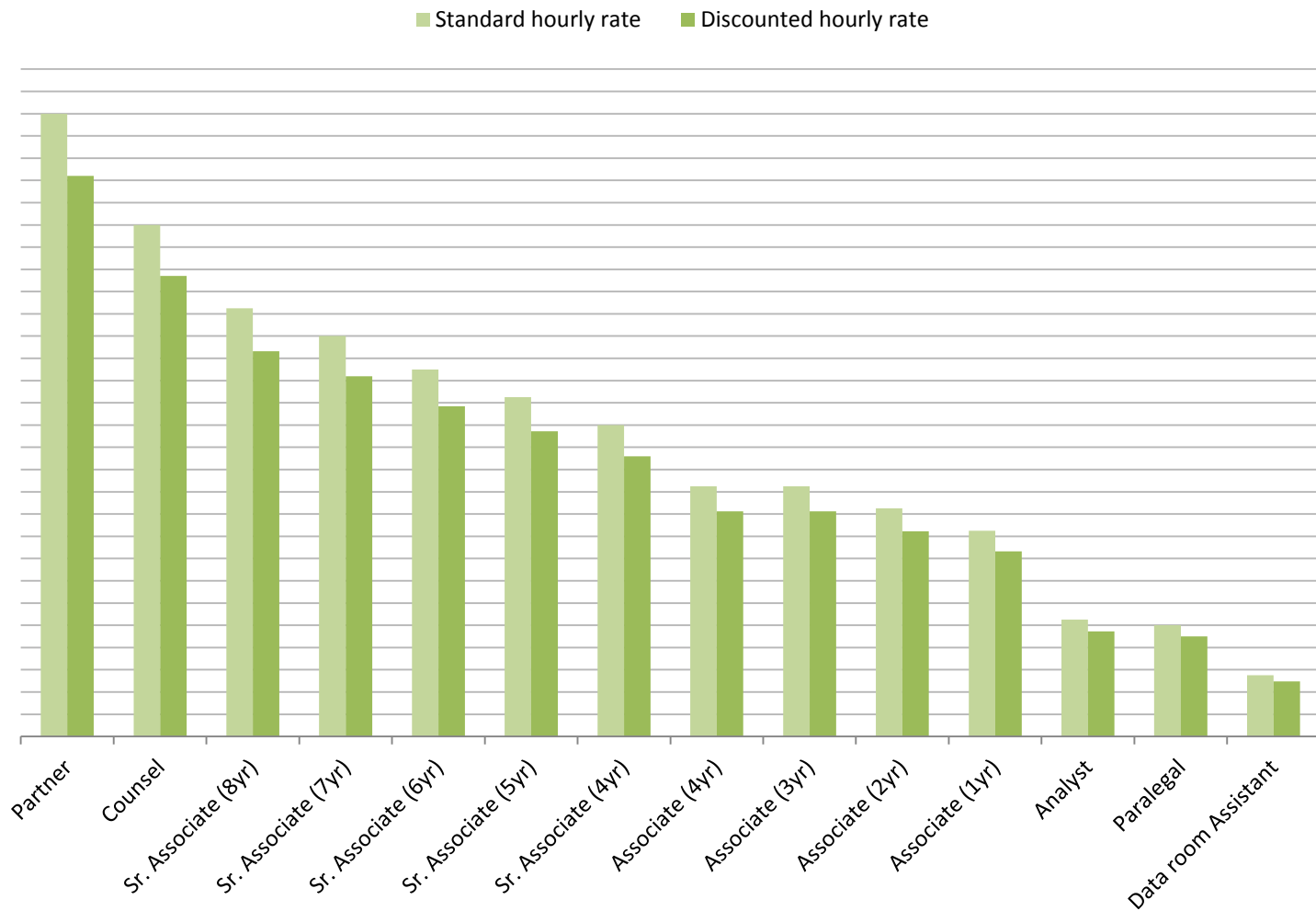
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1.1 Alternative Hourly Rates

Discounted Hourly Rates

Discounted Hourly Rate

The simplest way to cut costs for our clients is to agree on discounted hourly rates.

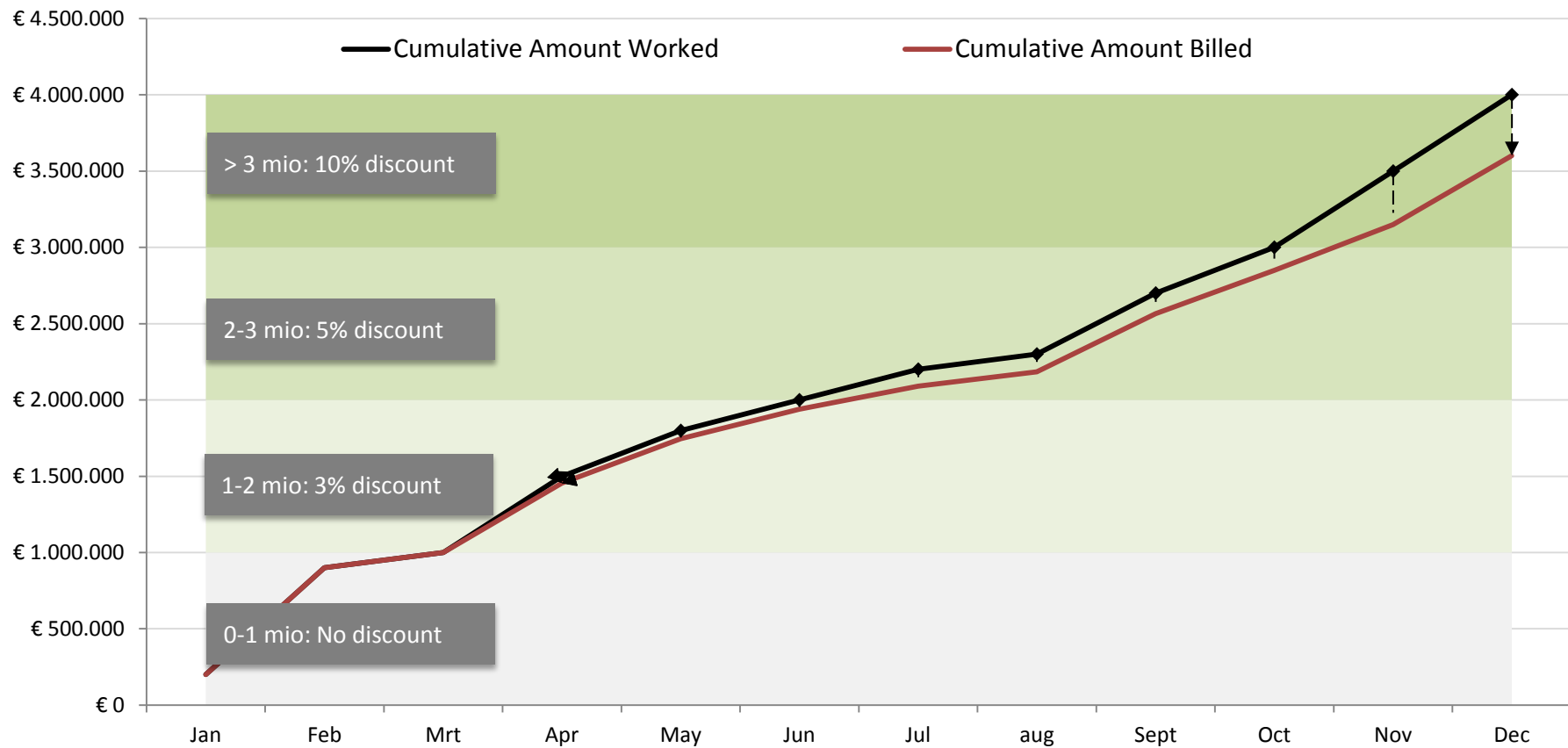


1.2 Alternative Hourly Rates

Volume Discount

Volume Discount

A reduction in hourly rates or an overall discount as the volume of legal work reaches certain agreed levels in a specified period. Alternatively, a client and De Brauw agree on set discounted hourly rates if a client guarantees a minimum amount of legal work.

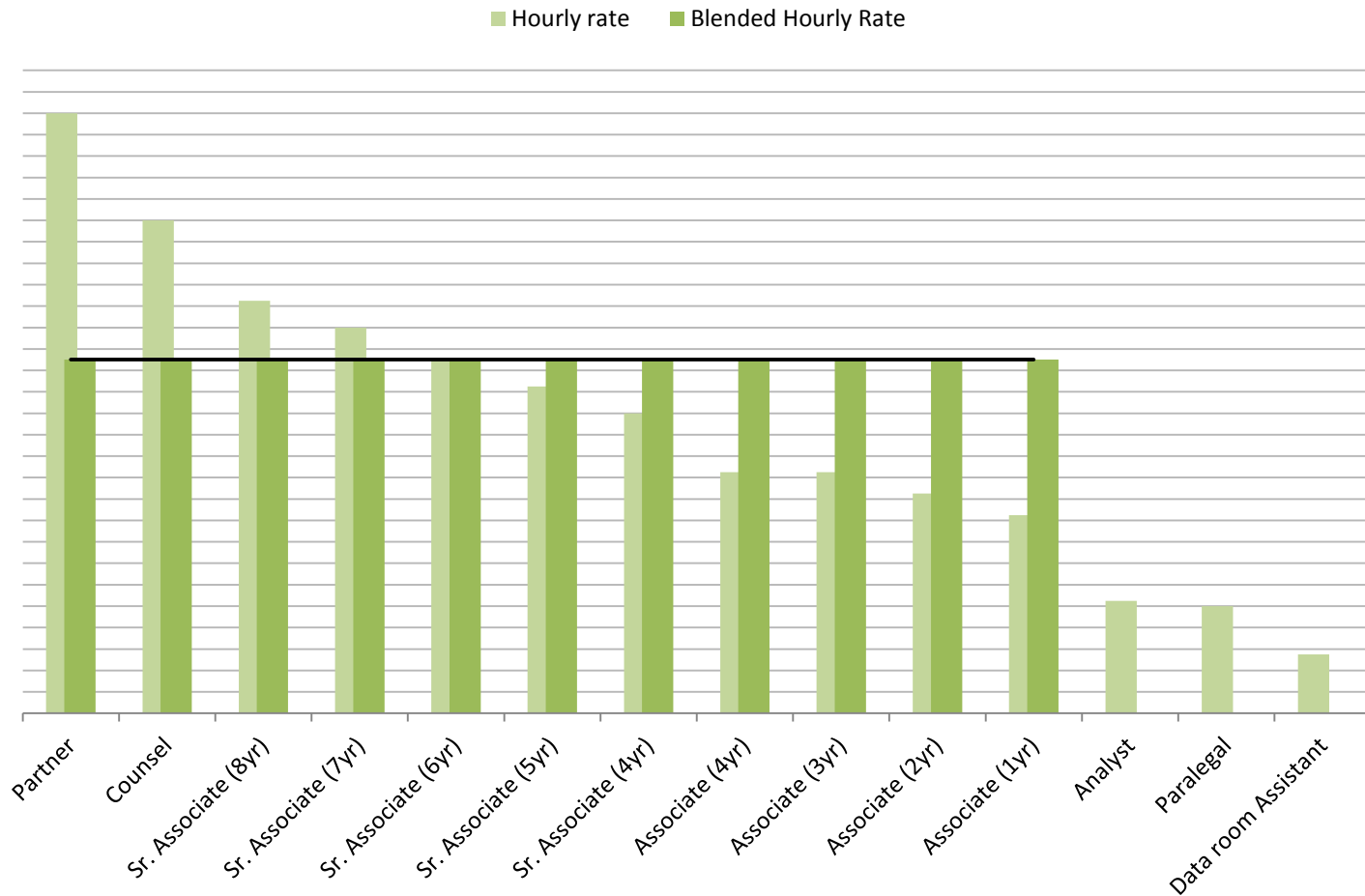


1.3 Alternative Hourly Rates

Blended Hourly Rate

Blended Hourly Rate

A flat rate that applies to all lawyers working on a matter, regardless of each lawyer's level of experience or individual billing rate. The amount of the blended rate will be determined on the basis of the respective rates of those lawyers expected to be working on the matter, the allocation of hours for each rate group and the volume of the anticipated work.

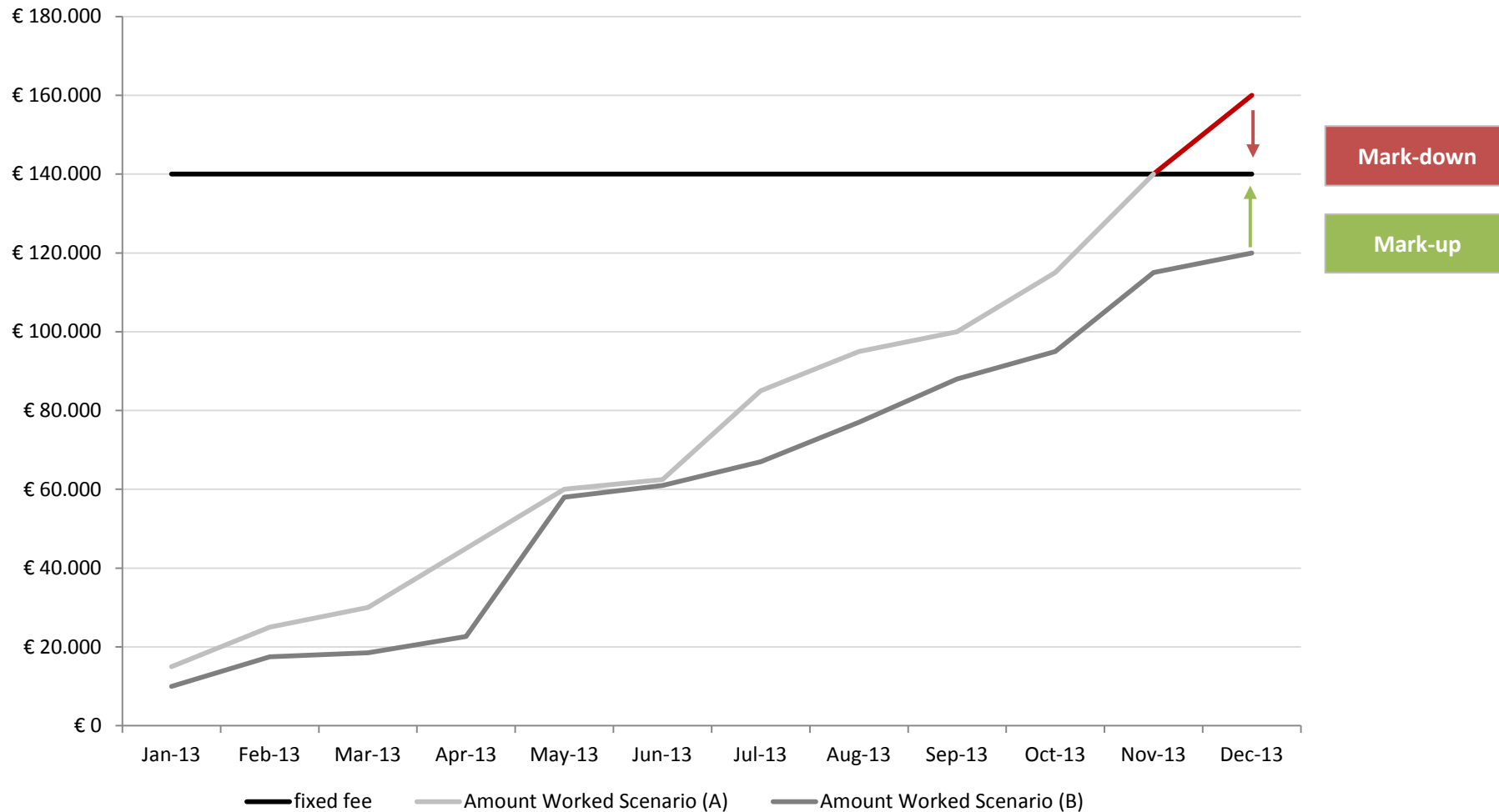


2.1 Fixed or Flat Fees

Straight Fixed Fee

Straight Fixed Fee

Services within a predetermined scope can be provided at a set fee. Typically, De Brauw bears the downside risk of cost overruns, but if the work is done more efficiently De Brauw benefits from the upside risk.

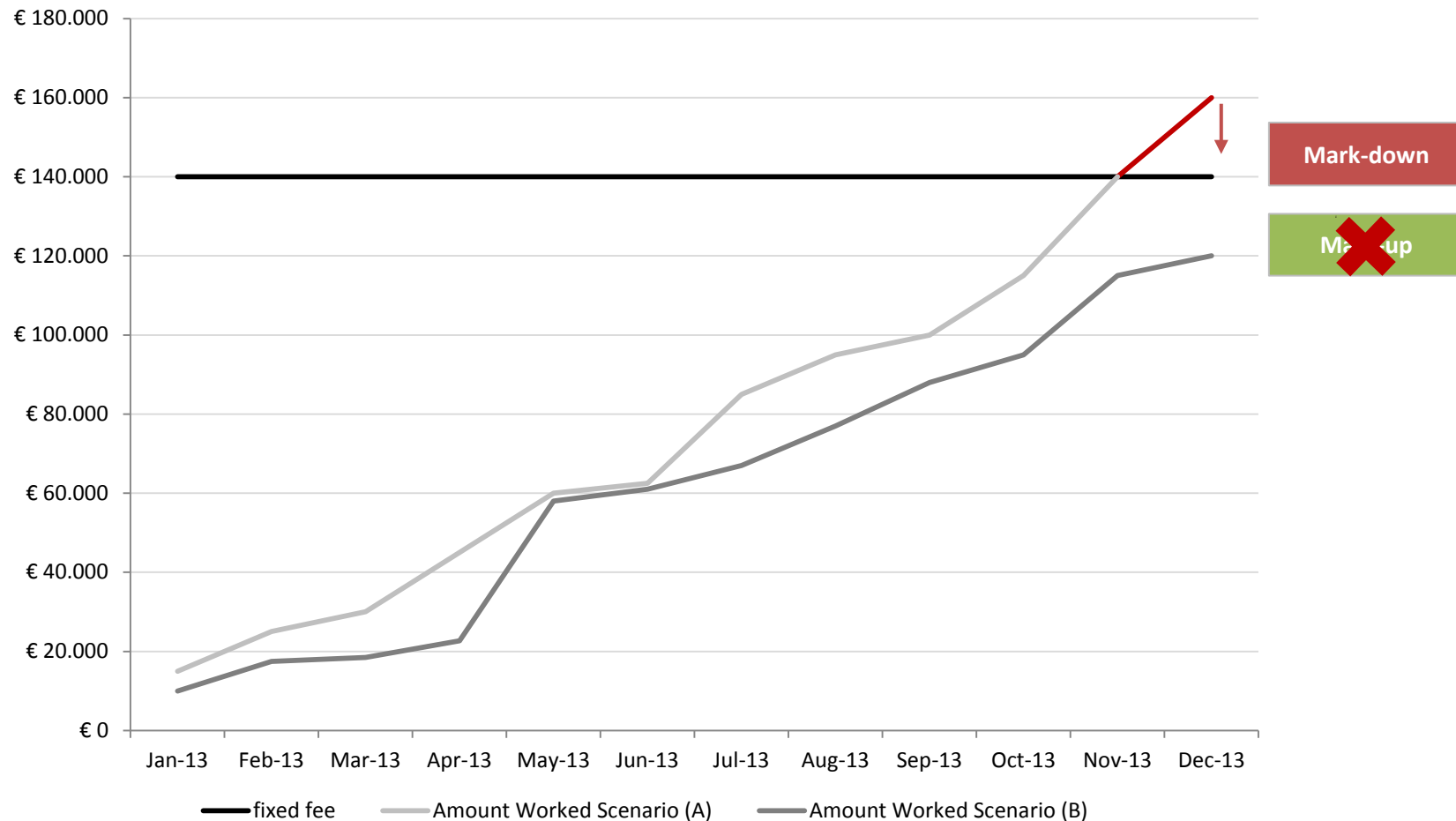


2.2 Fixed or Flat Fees

Fee Cap

Fee Cap

Similar to a fixed fee, the fee cap sets a maximum amount of fees. A well defined scope describes the work to be carried out within this fee cap. If the value of the time expended on the matter exceeds the fee cap, the client will not be billed more than the fee cap. In the case of a lower amount worked, the client is only charged for the actual time spent.

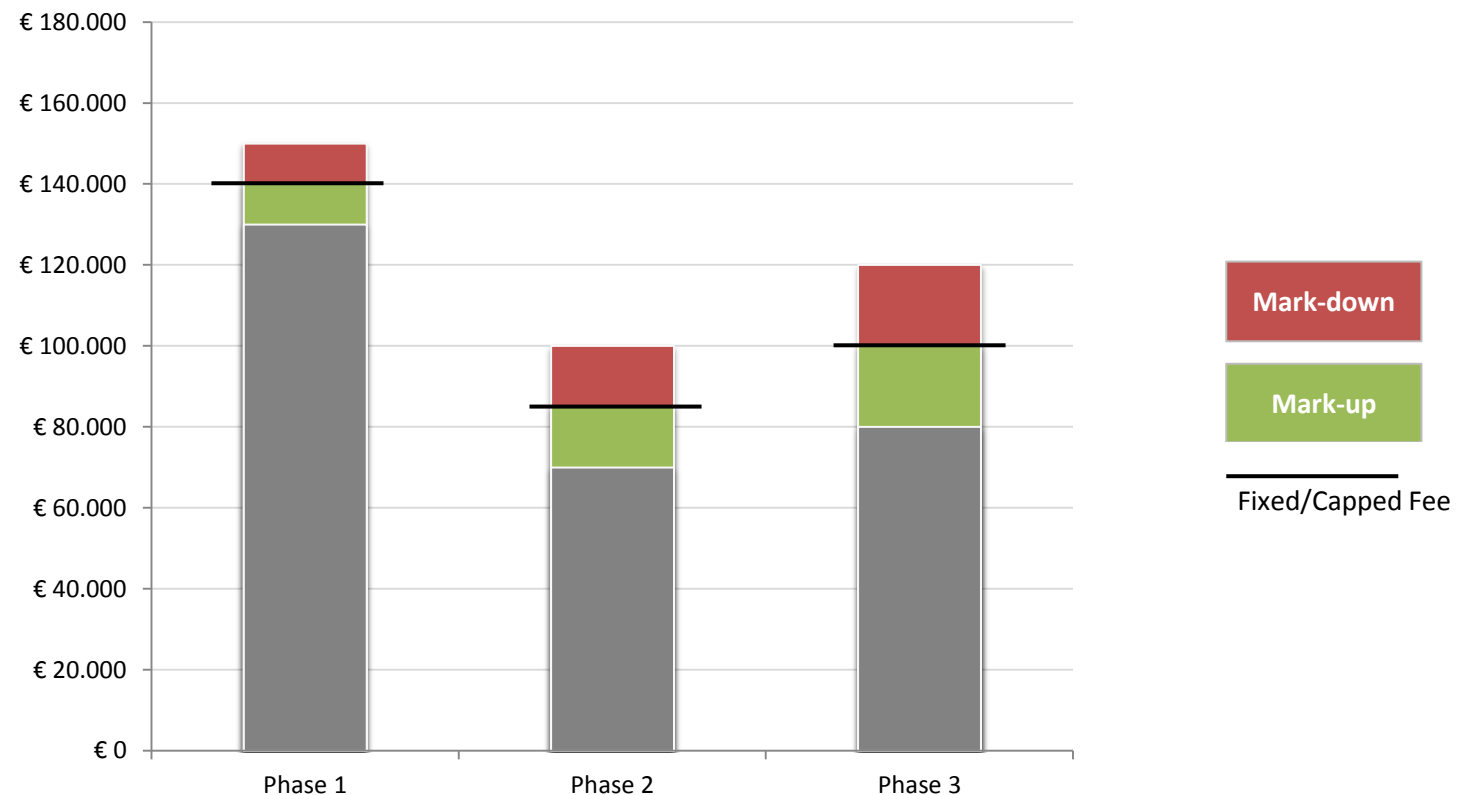


2.3 Fixed or Flat Fees

Phase-Based Fees

Phase-Based Fees

A specific fee is determined for each phase of the matter based on the work anticipated for each phase. As with “regular” fixed and capped fees, De Brauw bears the risk for fees that exceed the fixed budget of a certain phase. In the case of a fixed fee De Brauw benefits from the upside risk if the work is successfully carried out more efficiently. In the case of a capped fee the client is only charged for the actual time spent.

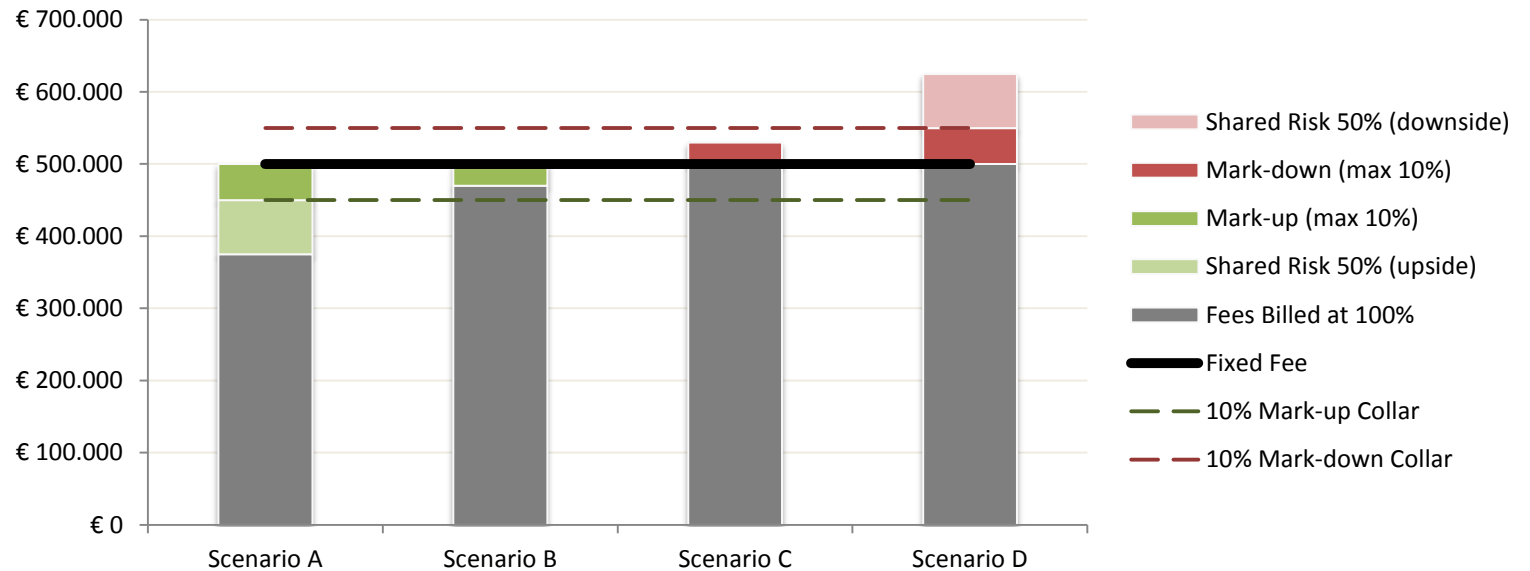


2.4 Fixed or Flat Fees

Fixed Fee with Collar

Fixed Fee with Collar

Some fixed fee arrangements will warrant a “collar”, either for the entire matter or per phase. The collared fixed fee anticipates the situation that the actual required amount of work is far less or far greater than what was initially thought. A fixed price is set for the legal fees and a range is set around that fixed price: the collar. If the fees spent on the matter fall within that collar, the fixed price is the amount to be billed. If the fees spent on the matter fall outside the collar, the upside and downside risk will be shared between the client and De Brauw.



Scenario	Fees Recorded	Mark-up / Mark-down inside 10% Collar	50% Shared Risk outside 10% collar	Fees Billed
A	EUR 375,000	EUR + 50,000	EUR + 37,500 (50% EUR 75,000)	EUR 462,500
B	EUR 480,000	EUR + 20,000	n/a	EUR 500,000
C	EUR 530,000	EUR - 30,000	n/a	EUR 500,000
D	EUR 625,000	EUR - 50,000	EUR - 37,500 (50% EUR 75,000)	EUR 537,500

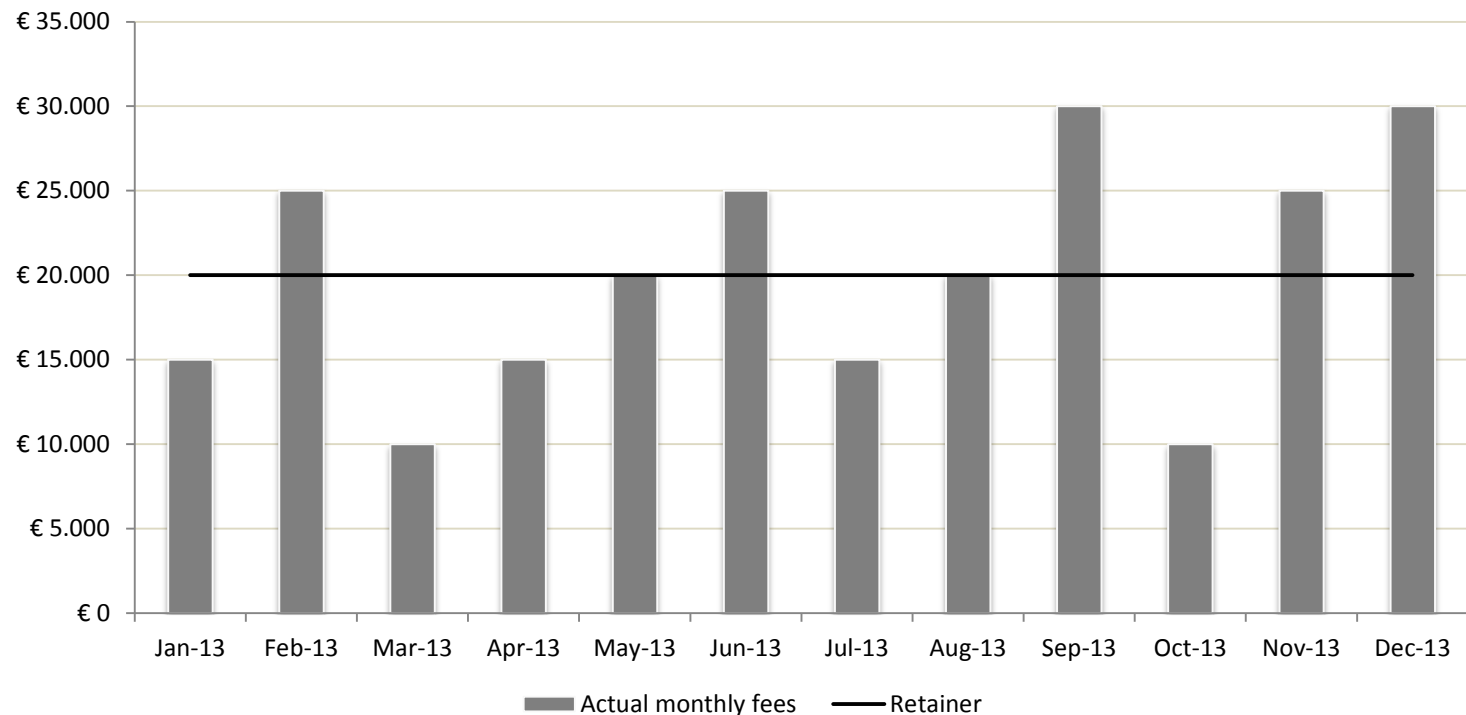
2.5 Fixed or Flat Fees

Retainer

Retainer

Retainer arrangements are a variation on fixed fee arrangements. Clients can make use of certain predetermined legal services on a monthly or an annual basis at a fixed fee. This offers easy access to legal services within a predictable cost frame. The retainer amount is determined on the basis of an estimate of the (average) amount of legal support the client is likely to need on an annual basis and can be reviewed on an open book basis at the end of the year to jointly set a reasonable fee for the next year.

Retainer arrangements are most suitable for clients who seek legal support on a consistent basis for straight forward legal advice and wish to have a set budget for their legal work. A retainer arrangement can add value by distinguishing between situations that can be dealt with easily, while simultaneously lowering the barrier to seeking advice in these matters, and situations that may incur more cost exposure, like litigation, internal investigations and transactions.



3.1 Risk-Sharing Arrangements

Bonus / Malus

Bonus / Malus

De Brauw can agree on a percentage from the regular billing, contingent upon success in the matter and quality of service. De Brauw is to be paid the regular fees, the discounted fees or the fees including a bonus, based on one or more predetermined criteria or the client's appreciation of certain parameters, e.g., quality of legal advice, meeting certain deadlines, results, cost-awareness, efficiency, creativity, collaboration with subcontractors, and effective utilisation of resources.

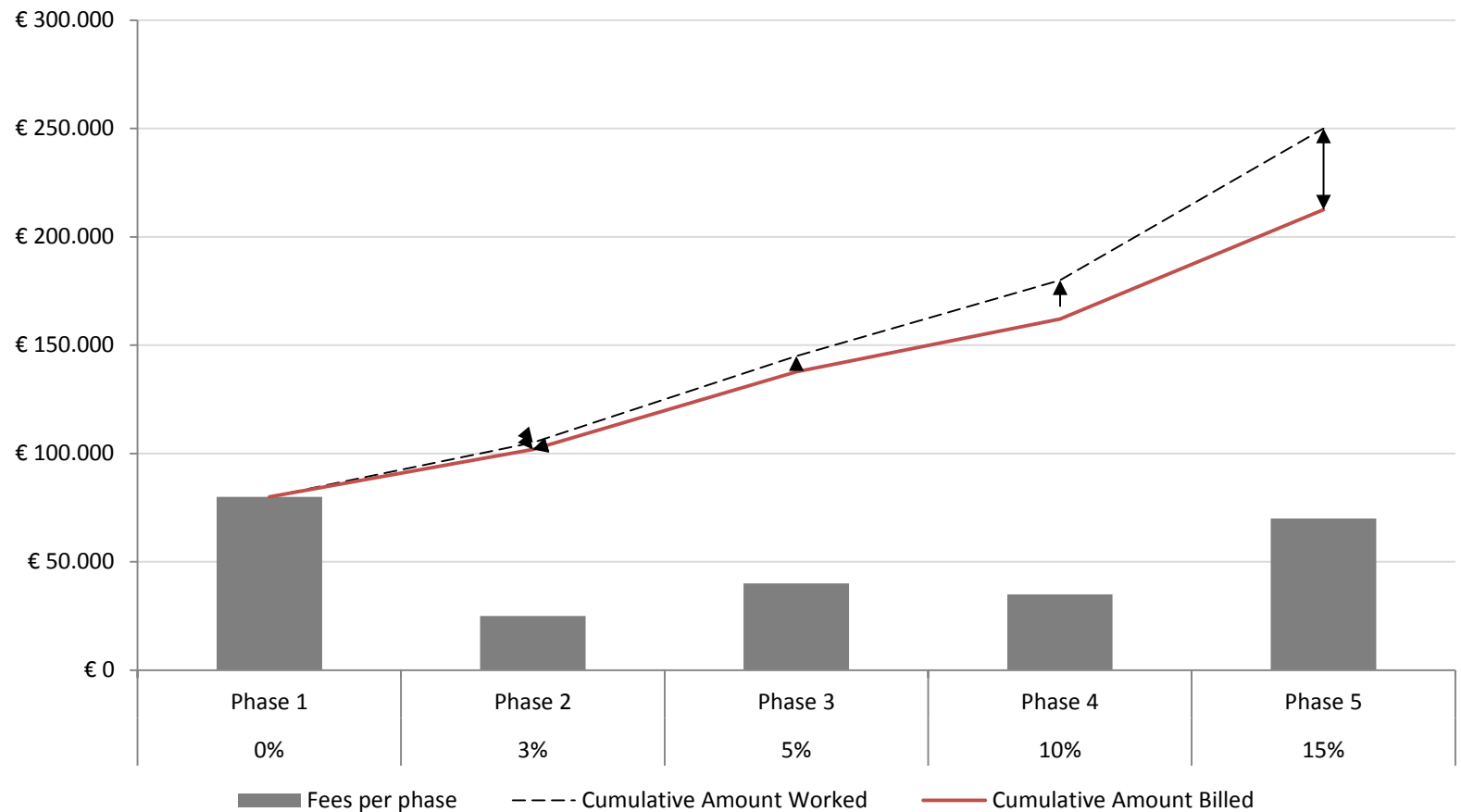


3.2 Risk-Sharing Arrangements

Broken Deal Discount

Broken Deal Discount

De Brauw would agree on a discount on regular invoices or an agreed fixed or capped fee if a project does not proceed beyond a certain stage. The amount of the discount should correlate with the phase in which the matter is aborted.

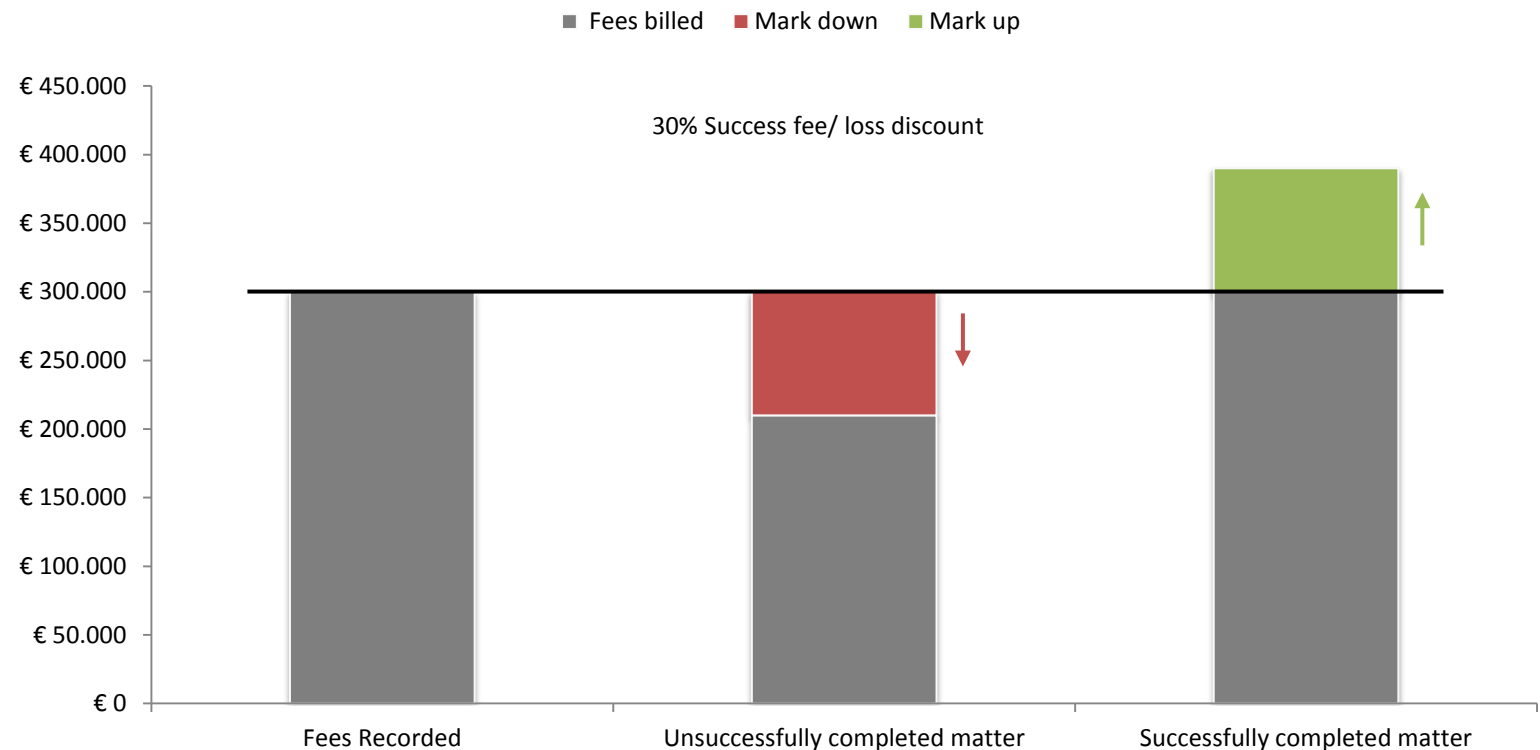


3.3 Risk-Sharing Arrangements

Success Fee / Loss Discount

Success Fee / Loss Discount

Another type of risk sharing is the contingency arrangement. Under a contingency arrangement De Brauw receives an agreed percentage of the client's recoveries. Contingency arrangements are prohibited under the rules of the Dutch Bar Association. A legitimate variation on this type of risk-sharing arrangement we do offer is a success fee and a loss discount arrangement. If, for example, a matter does not proceed beyond a certain stage or does not have the desired outcome, De Brauw shares in the downside risk and would apply a discount to its invoices with a maximum of 50%. Equally, if the matter is concluded successfully, De Brauw shares in the success and would apply a success fee to its invoices at the same percentage.



4 Hybrid Fee Arrangements

In certain situations, the best approach is a combination of several pricing arrangements

4.1 Hybrid Fee Arrangements by Matter Phase

In certain situations, the best approach is a combination of several pricing arrangements. For example: (i) phase based fee, with agreed fixed fees for certain project phases such as a due diligence; (ii) risk-sharing arrangement or success fee for another phase, such as reaching a successful closing or not; and (iii) for more bespoke segments of the project, such as expert advice on a particular issue, a standard or discounted hourly rate or retainer could be suitable.

4.2 “Frequent-Flyer” Credits towards new legal services

Frequent flyer credits are an example of loyalty induced arrangements. In one matter De Brauw may consider a significant reduction in fees in exchange for a client's commitment to assign new legal services, for example matters for business units or in areas De Brauw does not yet advise the client on.