



MOOC
Advanced Module
2.4. Interest rates
and exchange rates

Objectives of the module

- Legal bases for the award of interest and their financial applications
- Pre-award interest rates that have been applied
- Relationship between exchange rates, damages, and pre- and post-award interest rates

Pre-award interest can be a large part of total damages

Case	Damages/interest
Tenaris and Talta v. Venezuela (2016)	\$87m damages + \$86m pre-award interest
Kuwait v. Aminoil (1982)	\$83m damages + £96m pre-award interest
Compañía del Desarrollo de Santa Elena v. Costa Rica (2000)	\$4m damages + \$12m pre-award interest
Ioannis Kardassopoulos and Ron Fuchs v. The Republic of Georgia (2010)	\$30m damages + \$60m pre-award interest
Rockhopper Italia S.p.A., Rockhopper Mediterranean Ltd, and Rockhopper Exploration Plc v. Italy (2022)	€191m damages + over €52m pre-award interest

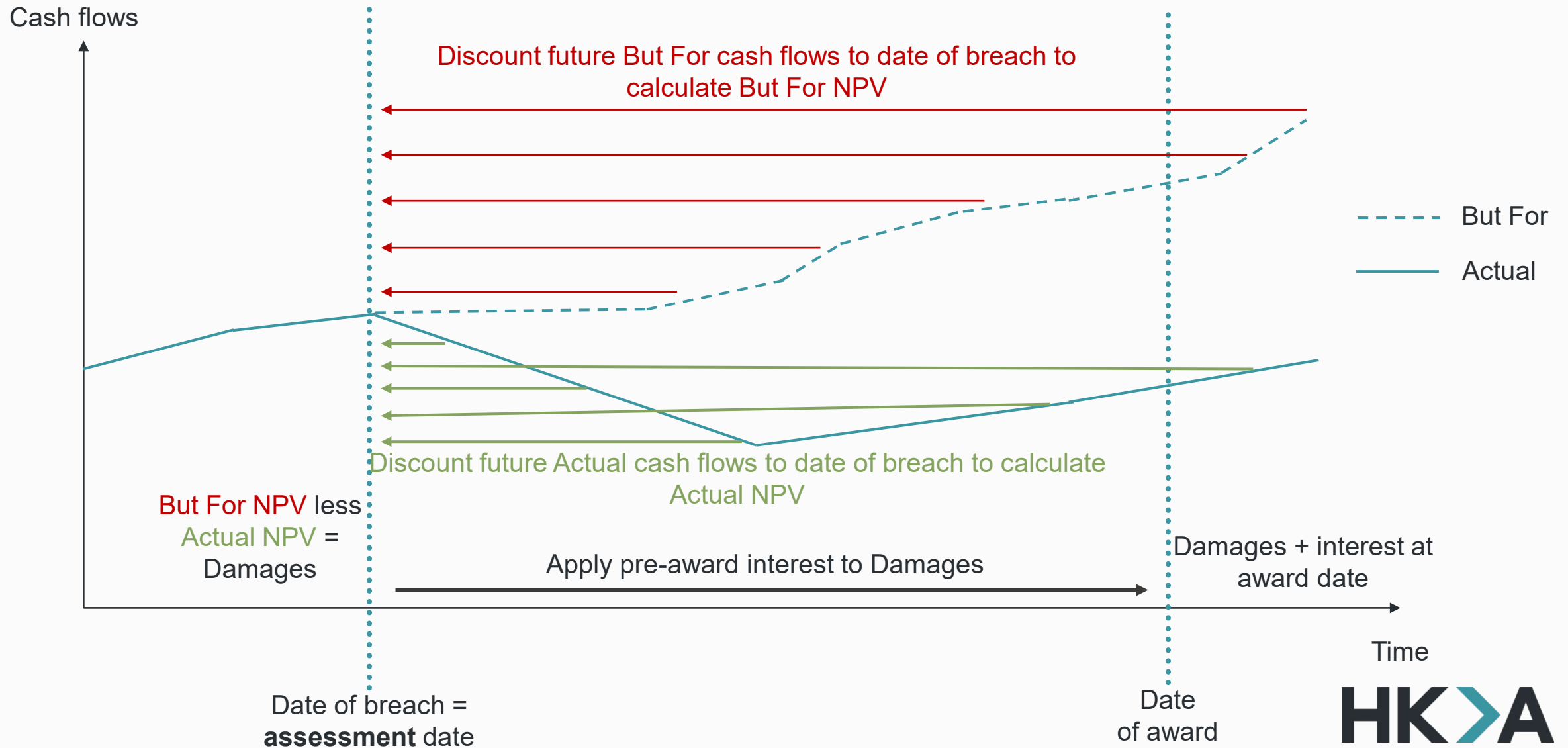
Damages assessment dates

- Typically just before the date of breach/expropriation or knowledge thereof – ex ante
- Unlawful expropriations, creeping expropriation, and non expropriatory breaches – different dates:
 - a. Date of first breach – ex ante
 - b. Date of last breach / effective expropriation – ex ante
 - c. Date of award – ex post
 - d. A date between breach and award
- Hindsight NOT normally allowed in ex ante valuations

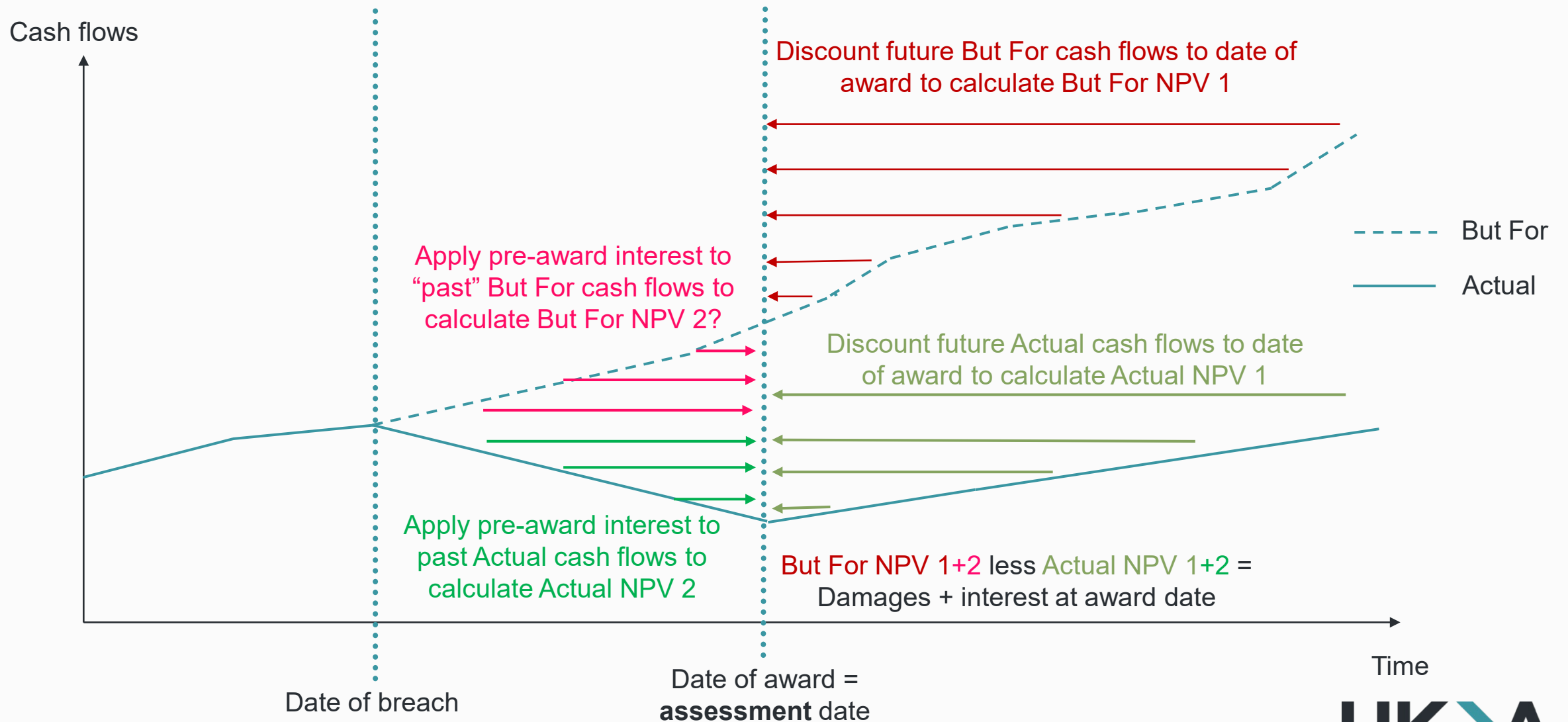
Purpose of pre-award interest

1. **Compensatory** function: To compensate the claimant for having been “*deprived of the use and disposition of that sum it was supposed to receive*” (Vivendi Universal S.A. v. Argentine Republic, 2007)
2. **Restitutionary** function: To prevent the respondent's unjust enrichment

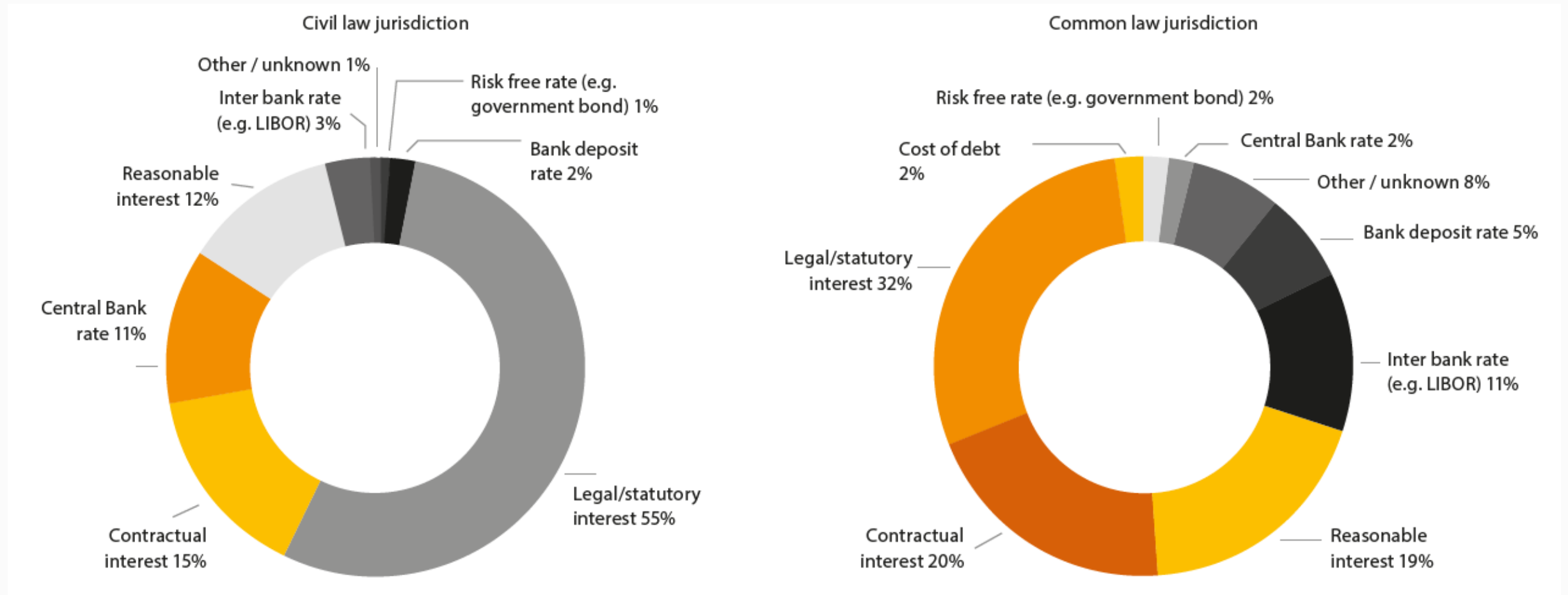
Pre-award interest in ex ante valuation



Pre-award interest in ex post valuation



Pre-award interest rates – ICC



Source: Damages awards in international commercial arbitration, A study of ICC awards, QMUL and PwC, December 2020

Pre-award interest rates – ICSID

Base	Adder						Grand total
	1%	2%	4%	5%	9.11% (MRP)*	None	
1%						1	1
2%						1	1
3%						1	1
5%						4	4
6%						10	10
8%						2	2
9%						2	2
10%						2	2
Claimants' cost of capital						1	1
Central Bank of West African States		1					1
Marginal Lending Facility (European Central Bank)						1	1
Average bank lending rate in country						1	1
Maximum overdraft rate: Tunisia Central Bank	1						1
Ecuador Central Bank rate						1	1
Euribor		3				1	4
Libor	2	10	5	1		3	21
Mex Govt Bonds						1	1
US 6MO CDs						1	1
US Prime		1				1	2
US Treasury		2			1	6	9
WSJ Prime		1					1
Grand total	3	18	5	1	1	40	68

Rate used	Number of ICSID awards
Specified rate	23
Claimant's cost of capital	1
Central bank rate	4
Libor/Euribor +	25
US/WSJ prime rate	3
Average bank lending rate	1
Government bond rate	1
US treasury	9
US certificate of deposit	1
TOTAL	68

Risk-adjusted rate of return

Borrowing rate

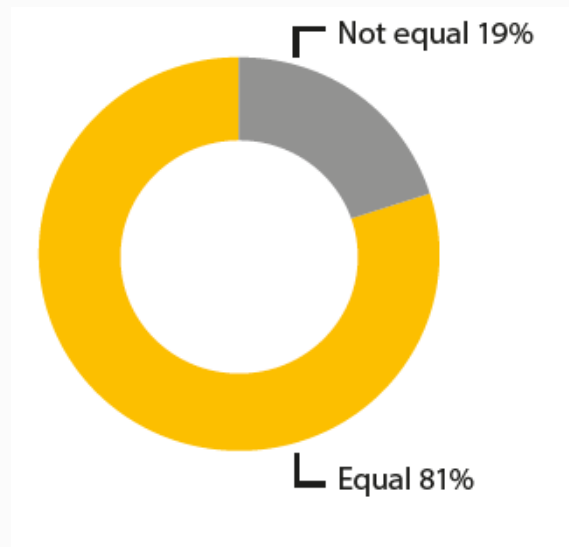
Risk-free rate

Source: Table 2, page 310, 4th Edition of GAR Guide to Damages in International Arbitration, published ICSID awards



Post-award interest rates – ICC

Comparison of pre and post award interest rates:



Source: *Damages awards in international commercial arbitration, A study of ICC awards, QMUL and PwC, December 2020*

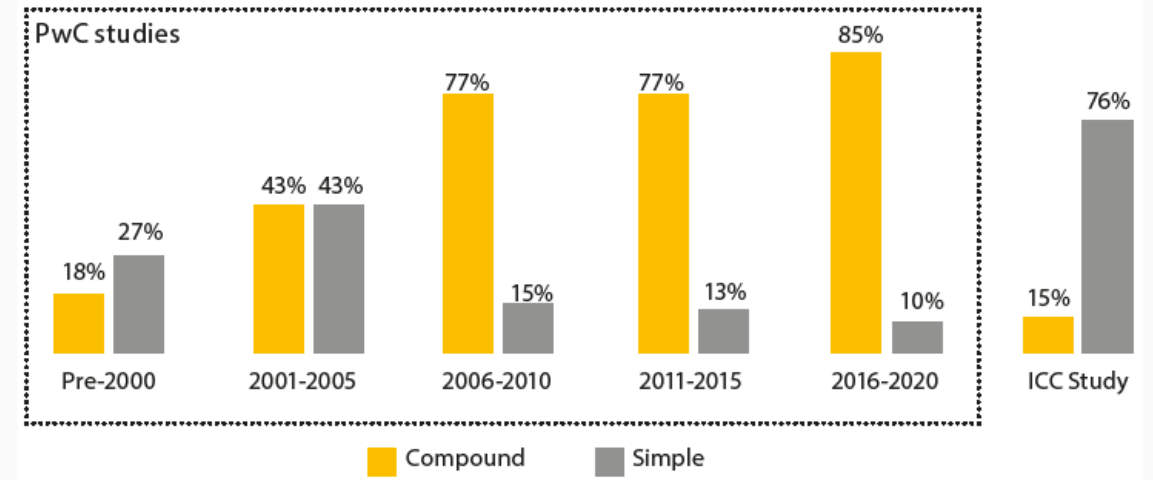
Compound or simple interest?

1. **Simple interest:** applied to the principal amount only
2. **Compound interest:** applied to the principal amount and accrued interest



Compound or simple interest?

Interest			
Award year	Compound	Simple	Grand total
1988		1	1
1990		1	1
1992		1	1
1997		1	1
1999		1	1
2000	2	1	3
2002	1	1	2
2003	1	2	3
2005		1	1
2006	2		2
2007	4	2	6
2008		2	2
2009	1		1
2010	6	1	7
2011	1	1	2
2012	3	2	5
2013	3	2	5
2015	4	3	7
2016	2	4	6
2017	5	1	6
2018	1		1
2019		1	1
2020		3	3
Grand total	36	32	68



Source: *Damages awards in international commercial arbitration, A study of ICC awards, QMUL and PwC, December 2020*

Source: Table 1, page 308, 4th Edition of GAR Guide to Damages in International Arbitration

Compounding period

Compounding frequency should not make any difference. E.g.

- Correct calculation: Monthly interest rate = $(1 + \text{Annual interest rate})^{(1/12)} - 1$
- Incorrect calculation: Monthly interest rate = Annual interest rate/12

Correctly calculated periodic interest rates			
		Principal of 100 + interest after 2 years	
Annual	12%	$100 \times (1+12\%)^2$	125.44
Quarterly	2.87%	$100 \times (1+2.87\%)^8$	125.44
Monthly	0.95%	$100 \times (1+0.95\%)^{24}$	125.44
Incorrectly calculated periodic interest rates			
		Principal of 100 + interest after 2 years	
Annual	12%	$100 \times (1+12\%)^2$	125.44
Quarterly	3.00%	$100 \times (1+3\%)^8$	126.68
Monthly	1.00%	$100 \times (1+1\%)^{24}$	126.97

Exchange rates

Currency affects:

1. Cash flow forecasts
2. Discount rate
3. Pre- and post-award interest rate
4. Damages awarded

Consistent currency needed between:

- Forecasts and discount rate \gg damages
- Damages and pre-award and post-award interest rates

Further reading

- [DIA | Interest \(icca-asil-damages.com\)](https://www.icca-asil-damages.com/dia/interest)
- [The Guide to Damages in International Arbitration - Fourth Edition - Global Arbitration Review](#)
- On Pre-Award Interest Rates, Guilherme Recena Costa, published by Wolters Kluwer – 40 under 40 International Arbitration 2021
- [DIA | Currency \(icca-asil-damages.com\)](https://www.icca-asil-damages.com/dia/currency)
- [Damages awards in international commercial arbitration, A study of ICC awards, Queen Mary University of London and PwC, December 2020](#)
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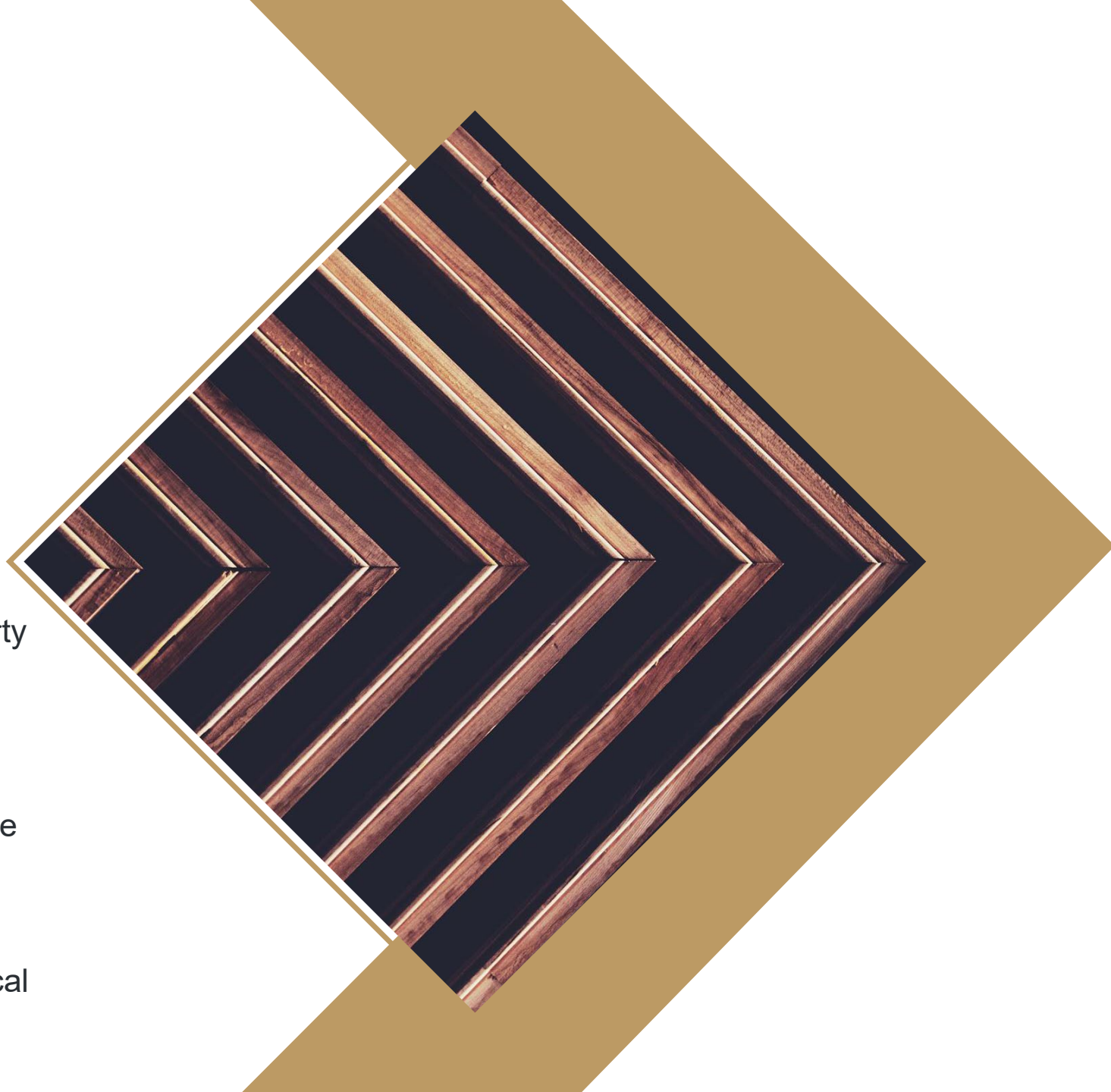


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