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Evidence in IT disputes

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NKF

Evidence in IT disputes

What do we have to consider?

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Usually, you do not win an
«unpromising» case . . .

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. . . but good preparation will improve
your position.

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Hypothetical case:

A group-wide cross-border
outsourcing project . . .

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. . . results in a disaster.

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Did the legal advisors anticipate the
dispute . . . ?

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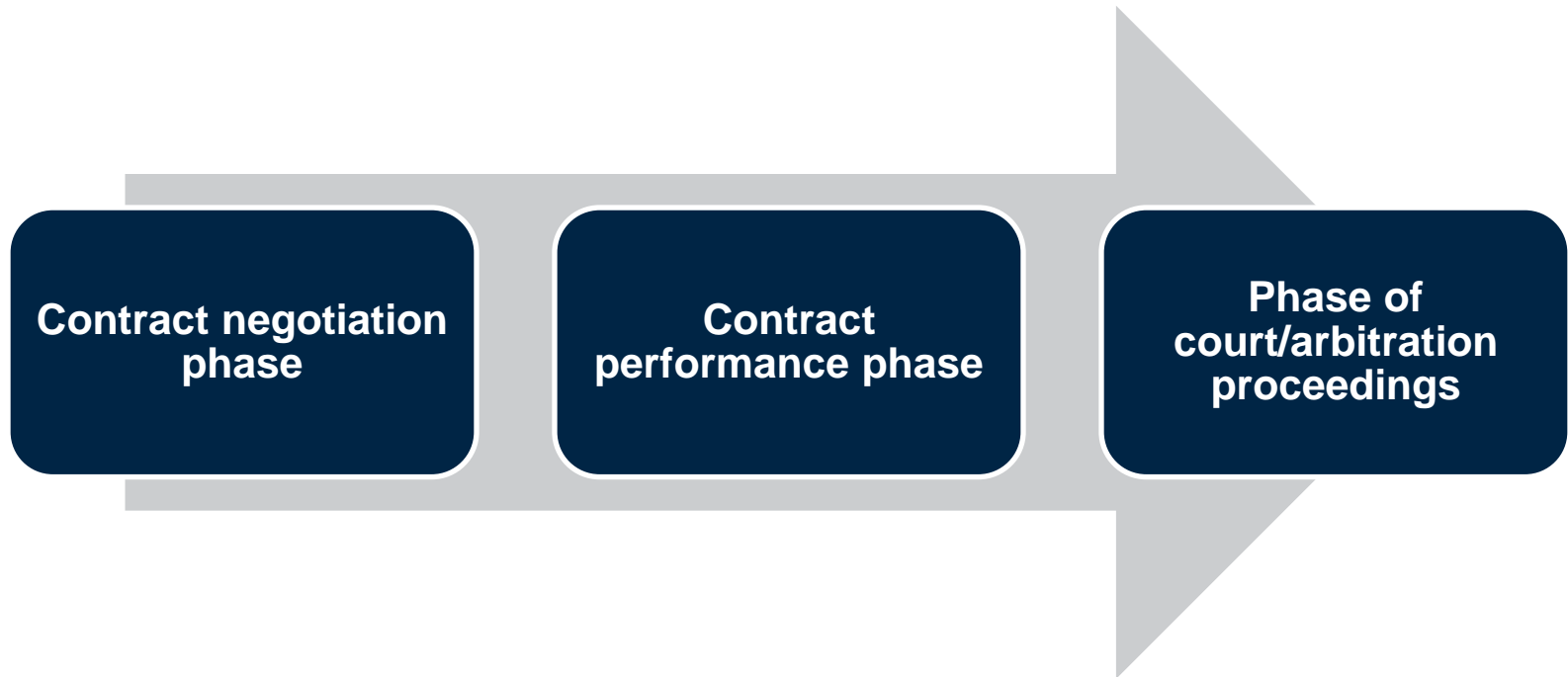
Can we do better . . . ?



Yes

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Be active in:



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■ Arbitration

- Widely based on party agreement-flexibility
- Be familiar with arbitration rules
- IBA Rules on the Taking of Evidence
- Limitation of types of evidence?
- Be familiar with *lex arbitri*

May influence taking of evidence

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■ State court proceedings

- Be familiar with applicable procedural law, e.g.
- Preparation of witnesses not permitted
- Enforcement of production requests against third parties
- Certain rights to refuse production of evidence

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■ Focus on practical measures

- Be careful with minutes!
- Appoint contract manager
- Store relevant software versions
- Store relevant versions of documentations
- Prepare other documentary evidence
- Engage third party expert

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- What types of evidence are available?
- Carefully select witness of fact
- Carefully prepare witness of fact
- Carefully select expert witness

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- Consider multi-expert engagement
- Produce documentary evidence, incl. software etc.
- Consider limitations re production requests
- Submit evidence on time

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Can we do better . . . ?



Yes

Do you agree . . . ?

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