

# EXECUTION & REGISTRATION OF TRANSACTION DOCUMENTS IN NEPAL

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RE: SECTION 36 OF THE NATIONAL (MULUKI) CIVIL  
PROCEDURE CODE, 2074 AND ITS IMPLICATION ON  
TRANSACTION DOCUMENTS

2 JANUARY 2020

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### BACKGROUND

With the advent of **National (Muluki) Civil Procedure Code, 2074** (hereinafter the "**Code**") in the year 2017, courts and regulators are observed to be increasingly stringent on compliance of transaction documents to the requirements of Section 36 of the Code.

Section 36 broadly provides for validity and enforceability of deeds and documents which includes methods valid execution and procedures for certain deeds to be registered with the local municipal authorities. However, the worrisome provision within the Section reads:

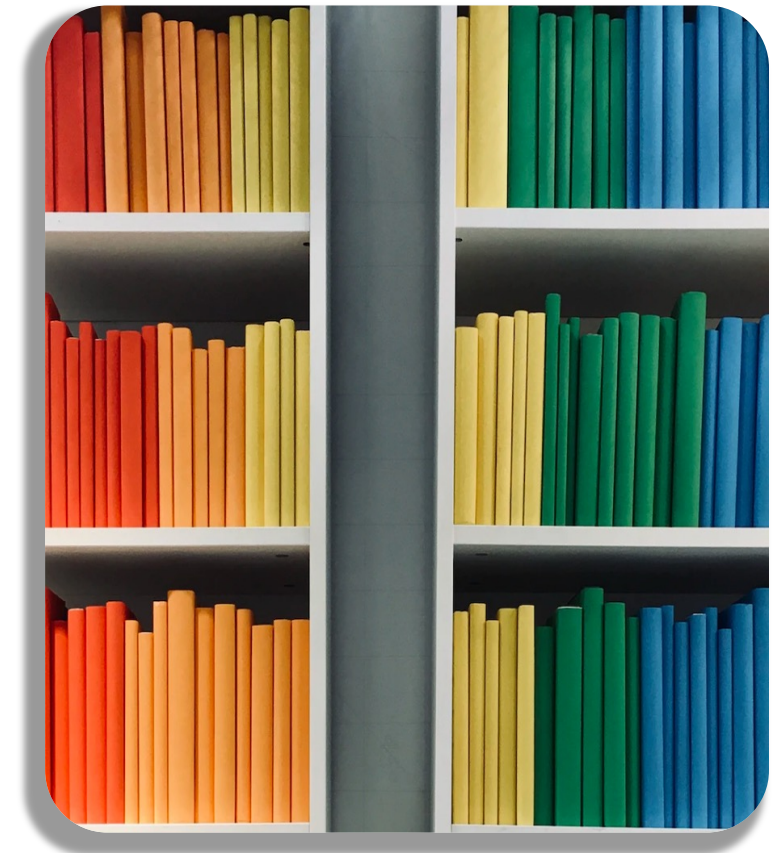
*“.....The court shall not enforce a deed failing to meet the requirements referred to in this Section.....”*

What is the implication of this provision in law on corporate transaction documents is definitely a matter of concern.

To the date of this memo, **Section 36** has not been interpreted by Supreme Court (the only court of record in Nepal). Due to which the said section has to be understood and applied on the basis of accepted norms and rules of interpretation. There are unfortunately grey areas as far as applicability of section 36 in relation to registration of corporate contracts worth more than **Rs. 50,000/-** is concerned.

However, due to precise draft on the subject the provision could potentially lead to ambiguities in its implementation. Nevertheless, the law as it stands has to be complied until its defects in its

are cured either through judicial interpretation or subsequent amendments.



## KEY ANALYSIS OF SECTION 36



- Provides uniformity and added security to a transaction
- Provision would aid and provide recourses to documents that are lost or destroyed
- Prevents transactional forgeries and frauds ensuring that the registered documents are less contentious



- Abiguity in the text of the provision especially the provisions relating to registration and extent of applicability of the term “negotiable instrument”
- Compliance to the provision is not practical and deviates from accepted norms
- Lack of clarity on contracts concluded in Nepal with foreign dispute resolution and governing clause



- Non compliance to the provision could potentially render bonafide transaction documents unenforceable
- Procedure of registration is unclear leading to varying implementation of the provision.
- Local municipal authorities seem unclear on registration of deed and are often intervene on texts of documents or reject rejection

.....“**36. Deeds to be valid:** (1) If signature or thumb impression is affixed on a deed pursuant to this Chapter, the deed shall, subject to law, be valid for any purpose whatsoever and enforced in accordance with law.

(2) Notwithstanding anything contained in sub-section (1), in the case of any deed which involves transaction of more than fifty thousand rupees and requires affixation of signature or thumb impression pursuant to this Chapter or which involves transaction of an amount in excess of such an amount as may be so determined by the Government of Nepal, by a notification in the Nepal Gazette, that it is **not less than fifty thousand rupees**, and is prepared in household within Nepal, except any deed which is by law required to be authenticated or approved by anybody, or recorded in, or enforced by, such a body, or is transacted through a negotiable instrument or any contract, agreement under a publicly notified tender, the concerned parties shall appear before the office of the Local Level or ward committee of the Local Level and have the deed certified on top of it by such an office, and in so certifying a deed, the certifying office shall cause the executors of such a deed to affix their respective signature or thumb impressions on the deed.

Provided that the parties to a deed prepared in household, involving transaction of less than fifty thousand rupees, may, if they so wish, have even such a deed certified pursuant to this Section.

(3) If a deed is tendered for certification pursuant to subsection (2), the office of the concerned Local Level or ward committee of the Local Level shall certify such a deed on the same day, upon maintaining the records setting out, inter alia, the name, surname and address of each party to the deed, the date of execution of the deed, the amount transacted or claimed amount specified in the deed.

(4) The office of the Local Level or ward committee of the Local Level may charge a fee not **exceeding two hundred rupees** for certification a deed pursuant to sub-section (3).

(5) The court shall not enforce a deed failing to meet the requirements referred to in this Section.

Provided that the provision of this Section shall not prejudice the recognition or enforcement of a deed prepared in accordance with the law in force for the time being prior to the commencement of this Section.”.....

## EXCEPTIONS UNDER THE PROVISION

### WHAT IS THE INTERPRETATION OF SECTION 36 SPECIFICALLY REGARDING THE REQUIREMENT OF REGISTRATION OF VARIOUS CORPORATE DEEDS (INCLUDING CONTRACTS WITH NATIONAL AND INTERNATIONAL PARTIES) ?

**Section 36 (1)** requires all transaction documents including contracts that carry the value of **Rs. 50,000.00** or above to be duly registered in the local municipal (ward) office of the local government.

However, **Sub-section (2)** of section 36 exempts certain categories of deeds and contracts that would not require registration in ward office. It includes any deed which is by law required to be authenticated or approved by anybody, or recorded in, or enforced by, such a body, or is transacted through a negotiable instrument or any contract, agreement under a publicly notified tender. The exceptions are basically meant for deeds/contracts whose

payments and transactions can be verified and are appropriately recorded for future references, when required. Hence, the following transaction documents and contracts are **exempted from registration:**

- Documents which involve all payments under the deed or contract through cheques, bank drafts or other banking instruments that can be categorised as negotiable.
- Document that involves deeds or contracts that involve foreign parties.
- and which is to be expressly governed by foreign law and foreign jurisdiction for all kinds of dispute settlement under the

contract.

- Contracts awarded through public tender and/or sealed quotations
- Contracts or deeds that need to be registered, certified or enforced by any legally established body.

Hence, registration for transaction document would not be specifically necessary as long as the payments under the contract or the transaction document is agreed to be done or received through negotiable instruments such as cheques, drafts and other banking instruments that can be categorised as negotiable instrument or if it meets any of the criteria mentioned above.

### OTHER COMPLIANCES MANDATED BY SECTION 36

## WHAT ARE THE OTHER COMPLIANCE REQUIREMENTS OF SECTION 36 AND ALSO HOW CAN REGULAR TRANSACTION DOCUMENTS BE EXEMPTED FROM THE REQUIREMENT OF REGISTRATION?

Considering the provision regarding registration, in order to ensure that the contract or the transaction documents having a monetary value of **NPR. 50,000.00** or more is exempted from registration requirement, it must adhere to the one of the following:

- The document should provide that all payment consideration under the contract are done through negotiable instruments such as cheque, draft or any other banking instruments that can be categorised as such, or
- The Contract should be procured through public notification and public tender, If not, the deed must be registered with the

local municipal authorities after the payment of registration fees as prescribed (up to **NPR. 200**).

In addition to the above, the authorised signatory must execute the transaction document as follows:

- Affix the executors signature on top and bottom of each page of the document.
- Short signature or initial in all other pages except for the main the execution page would be acceptable.
- If the document is executed on behalf of an entity the stamp of such entity must be affixed on each page of the transaction documents.

- The document must include the full signature with name, designation and address of the executor/signatory.

These should be inculcated as a part of Contract Management Procedure of an enterprise.



## SECTION 36 AND DIGITAL SIGNATURE

### IS A DIGITALLY SIGNED TRANSACTION DOCUMENT VALID?

On specific reading of provisions under **Chapter 4** of the Code (viz. Sections 28-32), though unclear the provisions seem to indicate that the document must be physically signed (through wet ink). Further, the provisions therein explicitly do not recognise application or usage digital signature in transaction documents.

However, it is important to note that Electronic Transaction Act, 2063 (1996 A.D.) makes special provision for recognition of electronic signature vide Section 5 read with Section 2 (O) of the referred Act. Accordingly, digital signature is defined to be authentication system based on asymmetric crypto system.

**Section 5** of the referred act provides:

*“Legal Recognition of Digital Signature:*

*Where the prevailing law requires any information, document, record or any other matters to be certified by affixing signature or any document to be signed by any person; then, if such information, documents, records or matters are certified by the digital signature after fulfilling the procedures as stipulated in this Act or the Rules made hereunder, such digital signature shall also have legal validity.”*

**Section 3** further provides that electronic records can be authenticated through the digital signature.

To resolve this contrasting position in the Code and latter referred law, it is to be considered that the the Civil Procedure Code is a general law and if there is a conflicting provision in a specific law, the latter precedes over the general law.

As the matter of digital signature is specifically governed by Electronic Transaction Act and Section 4 of the Act reads **“Where the prevailing law requires any information, document, record or any other matters to be certified by affixing signature or any document to be signed by any person.....”** digitally signed transaction documents are valid in Nepal.



## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, get in touch with these key contacts.



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