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# National Policy on Professional and Judicial Co- Operation

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Supreme Court of Nepal

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- Nepal is in the transition period and is undergoing constitution making process
  - The structure of judicial system also under review.
  - The discussion on national policy of professional and judicial cooperation is very timely
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- Nepal does not have:
  - legal provisions in the area covering judicial co-operation both in relation to economic laws and criminal laws
  - mechanism for enforcement of foreign judgments (though there is mechanism for enforcement of foreign arbitral awards)
  - serving of process
  - Legal assistance
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# Problems

- Non enforcement of foreign judgements hampers Nepal image for foreign investors.
  - No legal mechanism for foreign creditors to enforce claim from local assets and for local creditors to claim from assets in foreign jurisdiction in case of insolvency.
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# Policy Discussion on Judicial Co-Operation has started

- Nepal Law Commission has circulated Bill on Mutual Legal Assistance which covers cooperation in criminal matters
- Supreme Court of Nepal formed a three member committee to recommend a draft policy on judicial co-operation. It focuses on
  - (i) cross border insolvency
  - (ii) enforcement of foreign judgment
  - (iii) service of judicial process, examination of witness etc.

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# Two School of Thoughts

- Two school of thoughts in the modality
  - One school of thought is in favor of Attorney General's office or the Ministry of Justice to act as a nodal agent for seeking and providing judicial co-operation on all related matters including enforcement of judgment, service of process and recognizing insolvency process initiated in foreign country.
  - This requires the process to be moved through diplomatic channel.
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# Two School of Thoughts

- The other school of thought supports the view that the Supreme Court of Nepal should act as nodal agency without the use of diplomatic channel on the matter of the recognition of cross border insolvency .
  - Supreme Court should deal with all matters related to judicial cooperation for the protection of insolvent debtor's assets for protecting the interest of creditors and other stakeholders.
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# Divided View

- The view is divided on implementation strategy for Judicial Co-Operation.
- The Law Commission supports the view for bilateral or multilateral treaty as basis for judicial co-operation.
- The other view unilateral approach to be implemented, either through the enactment of special law or through the amendment of sectoral legislations to incorporate required provisions on judicial co-operation

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# Different Approaches Under Consideration

- (i) Passing of special legislation on Judicial Co-operation or Amendment in the existing Supreme Court, Judicial Administration Act, Insolvency Act (inclusion of chapter on insolvency law is sufficient) to incorporate required provision on judicial co-operation.
  - (ii) Bilateral Treaty with countries which have business relation with Nepal. Priority is for bilateral arrangement with India and China.
  - (iii) Regional Treaty among the member countries of SAARC which includes 8 countries.
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