In the event of coming up with 3rd edition of LEGAL & REGULATORY ASPECTS OF BANKING we have made following changes in the 2nd edition book :

UNIT - 1

Page 3

1.2 MEANING OF A BANK / FINANCIAL INSTITUTION

The portion - " Section 2 of BFI Act and NRB Act…….notice in the Nepal Gazette " is to be replaced by following -

A common definition of Bank is a financial institution that accepts deposit from the public and creates credit or loan. It means bank creates assets by its liabilities. Section 2 of BAFIA and NRB Act has defined a bank and financial institution as follow:
What is Bank?

"Bank" means a corporate body incorporated to carry on Banking and financial transactions as referred to in Sub- Section (1) of Section 49 and the word also includes a branch office or other office of a foreign bank located in Nepal, a branch office or other office opened outside Nepal by a bank incorporated in Nepal and an infrastructure development bank to carry out functions referred to in sub-section (5) of section 49.

What is Financial Institution?
"Financial Institution" means a corporate body incorporated to carry on banking and financial transactions as referred to in sub- section (2), (3) or (4) of section 49 and the word also includes a branch office or other office of a development bank, finance company, micro finance development bank or a branch office or other office of a foreign finance company located in Nepal or a branch office or other office opened outside Nepal by a financial institution incorporated in Nepal. Further , NRB Act has stated that the objectives of a financial institution established as above may include providing loans for Agriculture , industrial or any other specific economic purpose or for collecting deposits from the general public. A "Financial Institution" also includes an institution prescribed as financial institution by government of Nepal by publishing notice in the Nepal Gazette.

Page 4-11

From the start of Section 1**.3 STRUCTURE OF BANKS/…** to end of section **1.6.4. INCREASING & RESTRUCTURING OF SHARE CAPITAL** have been replaced by the following -

1.3 STRUCTURE OF BANKS / FINANCIAL INSTITUTIONS IN NEPAL

Nepalese financial system has a wide geographic reach and institutional diversification. After 1980, when Nepal adopted Financial Sector Liberalization, the door opened for foreign banks to open Joint Venture in Nepal. The structure comprises commercial banks, development banks, financial companies, micro credit (Grameen)

development banks, which are popularly known as A, B, C & D class financial institution. Recently amended BAFIA has mentioned about the infrastructure development bank but has not put infrastructure development bank under any of the existing classifications. Commercial banks held dominant share (around 80%) on the major banks components of financial system.

1.4 INCORPORATION OF A BANK / FINANCIAL INSTITUTION

Any person wishing to incorporate a bank or financial institution to carry on financial transactions should incorporate a bank or financial institution as a registered public limited company under the prevailing law of Nepal with prior approval of Nepal Rastra Bank by fulfilling the conditions prescribed in section 4 of the BFI Act. The individual desiring for the incorporation of such entity is required to submit an application to Rastra Bank for prior approval with the prescribed documents. Nepal Rastra Bank is required to conduct necessary due diligence and grant permission to establish a bank or financial institution with or without terms or conditions if all the criteria are met and information of disapproval with reason is also to be given to the concerned person in case the application is denied. Similarly, any foreign bank or financial institution wishing to establish a bank or financial institution by making joint venture investment with a corporate body incorporated in Nepal or with a Nepali citizen or as a subsidiary company with prescribed equity holding share is eligible to furnish the application to establish a bank or financial institution.

1.4.1 Prior Approval to be obtained to incorporate Bank or financial institution:

The person or institution willing to incorporate a bank or financial institution have to submit an application to the Rastra Bank along with the prescribed fee by Rastra Bank for obtaining prior approval accompanied by the following documents:
A) Memorandum of Association (MOA) , Articles of Association (AOA) of the proposed bank or financial institution;
b) Feasibility study report of the proposed bank or financial institution;
c) Personal details of the promoters in the form prescribed by the Nepal Rastra Bank;
d) A certificated copy of the agreement, if any, entered into between the promoters prior to the incorporation of a bank or financial institution in relation to the incorporation of the bank or financial institution;
e) Evidence of tax clearance by the promoters.
f) Details as to whether or not the promoter of the proposed bank or financial institution is declared bankrupt in Nepal and abroad , whether or not any loan is availed from any bank or financial institution, whether or not a period of three years passed after being blacklisted in any transaction with a bank or financial institution, if any;
g)Details as to actions taken against or punished to promoters of the proposed bank or financial institution in Nepal or abroad for being involved in cheating, fraud, dishonesty or other criminal act;
h) Self Declaration as to whether or not action is taken against promoter of the proposed bank or financial institution in Nepal or abroad by any regulating or supervisory authority or whether or not license of the company or licensed institution in which he/she is associated has been suspended, revoked or subjected to mandatory dismissal or is in the course of so;
i) Details as to name and address and relationship of the members of family of promoters of the proposed bank or financial institution; significant ownership and capacity of each of them and if any of them is Director, official or employee in any institution, details as to the title of posts each of them hold;

j)If any institution or corporate body is a promoter, details of the persons having significant ownership and capacity as referred to in this sub-section and audited financial statements of the last three years;
k) Written authority given to the Nepal Rastra Bank to allow it to conduct an inquiry by itself or to cause to be conducted the inquiry by an agency established according to the prevailing laws as to the financial, criminal and professional background of promoters of the proposed bank or financial institution and to share such notice or information;
l) Any other details or documents specified by Nepal Rastra Bank from time to time.
The Rastra bank shall grant its prior approval upon the examination of the above mentioned submitted documents to incorporate bank or financial institution within 120
days after filing of the application, with or without prescribing any conditions. Such provision has been newly incorporated in New BAFIA.

1.4.2 Prior Approval For Foreign Investment in Bank and Financial Institution (BFIs):

According to section 5 of BAFIA, any foreign bank or financial institution shall apply to grant pre-approval of BFIs.For this purpose they have to submit joint application with a corporate body registered in Nepal or a Nepali citizen as joint venture or as a subsidiary company under this Act having maintained the share capital as specified by the Rastra Bank, have to submit the following documents and details as well along with the fee specified by the Rastra Bank:

a) The MOA and AOA and a copy of the certificate of registration of the BFI in the concerned country and capital structure thereof;
b) Copy of license obtained from the concerned country of the foreign BFIs for carrying out banking and financial transactions;
c) Details as to the principal place of business;
d) Certified copy of the audited balance-sheet and profit and loss account of the latest three years of the foreign BFI;
e) Details as to proposed business plan in business strategies in Nepak
f) Authority given by the concerned foreign BFI and regulating agency to open bank or financial institution in Nepal.

The Rastra Bank shall grant its prior approval upon the examination of the above mentioned submitted documents to incorporate such bank or financial institution in joint venture or within the prescribed share limit within 120 days after filing of the application, with or without prescribing any conditions. This provision also has been newly incorporated in New BAFIA.

1.4.3 Prior Approval for Foreign BFIs Branch:

According to section 6 of BAFIA, In case any internationally rated bank or financial institution desires to open branch office to carry on banking and financial transaction within Nepal, an application shall have to be submitted to grant pre-approval of branch. For this purpose they have to submit an application along with the capital and fees prescribed by the Rastra Bank.
While submitting application such bank or financial institution shall have to submit the following additional details and documents:
a)Written commitment of the Board of Directors of the concerned foreign BFIs that it will make available on the demand of the Ratra Bank the amount necessary for fulfilling its entire

liabilities with regard to commercial activities of its branch, sub-branch, representative or liaison office in Nepal and any other liabilities;

b. Details as to the location of the proposed branch or office of the foreign bank or financial institution.

c. Details as to the probable officials to be engaged in the proposed branch or office of the foreign bank or financial institution.

In case the Rastra Bank deems it appropriate while conducting inquiry of the additional documents submitted may grant approval to incorporate a branch or representative or liaison office in Nepal within 120 days after filing of the application, with or without prescribing any conditions.

1.4.4 Nepal Rastra Bank may deny the prior approval:

According to section 7 of BAFIA, the Rastra Bank may deny granting the prior approval for the incorporation of a bank or financial institution or foreign branch in any of the following circumstances:

a. If the name of proposed BFIs or financial transaction is not found to be appropriate or desirable from the point of view of public interest, religion, caste and ethnicity or communal harmony.

b. If the objective of the proposed BFI is the contrary of the laws in force.

c. Doesn't seem technically appropriate.

d. If the provided documents do not provide the ground to believe that it may carry the financial transactions in a healthy and competitive manner.

e. If all promoters of the proposed bank or financial institution have not signed in MOA and AOA.

f. If found to be consistent with the incorporation of bank or financial institution and licensing policy issued by the Rastra Bank.

g. If any condition prescribed by the Rastra Bank is not fulfilled.

Similarly, according to Subsection (3) of section 4 of BAFIA, no prior approval shall be given to open a bank or financial institution to the following person or group:

- ***a. Having been subjected to regulatory actions of the Rastra Bank.***
- ***b. Having been convicted and punished in cheating, fraud, forgery;***
- ***c. Having been convicted and punished according to the law against AML/CFT***
- ***d. Having been convicted and punished with imprisonment according to the laws against corruption.***
- ***e. Having been convicted and punished in the serious types of offences of human trafficking, kidnapping, hostage-taking, rape;***

1.4.5. License to be issued to carry on Financial Transaction:

According to section 33 of BAFIA, a bank or financial institution desirous of carrying on financial transactions shall make an application to the Rastra Bank along with prescribed documents and fee. BAFIA has mentioned additional documents to be required for foreign bank or foreign BFI branches.

Section 34 of BAFIA has mentioned about the final license of BFIs. After observing the submitted documents, if all requirements under the BAFIA are met, Rastra bank may issue the license of any class within 120 days to operate the Banking transactions based on the classification. Before granting the license, Rastra bank shall have to ascertain in the following matters:

a. ***Granting of license for operation of BFI will result in development of healthy competition and effective financial intermediary transactions and it will result in protection of interest of depositors.***
b. ***It is capable to operate banking and financial transactions subject to BAFIA and Nepalese legal framework.***
c. ***Submitted documents and details of physical infrastructures are adequate.***
d. ***Any official to be appointed or included in the bank or financial institution is capable of carrying out banking and financial transactions.***

1.4.6 Power of Nepal Rastra Bank to deny granting Final Approval:

According to section 35 of BAFIA, however anything contained in previous section in BAFIA, Rastra Bank may deny issuing license to operate banking and financial transactions to a bank or financial institution in any of the following circumstances.

a. If it causes adverse effects on the stability, fair competition and credibility of the financial system of Nepal.
b. If it is not reasonable and appropriate to issue license for operation of transaction for protection of interests of depositors.
c. If the infrastructure to operate banking and financial transactions are not completed.
d. If other particulars or conditions referred to in this Act are not found to be completed.
In case there is a situation that the license to operate banking and financial transactions could not be issued, the Rastra Bank shall have to inform the concerned bank or financial institution stating the reasons thereof within 90 days of the date of filing of the application.

1.4.7. Power of Nepal Rastra Bank to prescribe condition:

According to section 36 of BAFIA, while granting license for carrying out banking and financial transactions the Rastra Bank may specify necessary terms and conditions having regard to the status of the existing banks or financial institutions, healthy operation of financial transaction and protection of interests of depositors. It shall be the duty of the concerned BFIs to abide by such class and conditions.

1.5 Classification of Licensed Institutions:
According to section 37 of BAFIA, Nepal Rastra Bank classifies the institutions into "A", "B", "C" and "D" classes on the basis of their paid up capital required for license and their working areas. Working areas of different classes have been mentioned in section 49 of BAFIA. However, infrastructure Development Bank shall not be classified in any class.

1.6 Up-gradation in higher class of Financial Institutions:
f a financial institutions (B or C class) of lower class desires to be converted into a bank or financial institution of one level higher class, it has to submit an application to the Rastra Bank. However, D class institution may not be converted into the higher class.
NRB may grant prior approval for the upgrading subject to the following terms and conditions:

a. ***If proposed institution has met the paid up capital requirement for a bank or financial institution prescribed by NRB.***
b. ***If it has continuously maintained the capital fund adequacy (CAR) according to the Rastra Bank directives for the last five years, it is in profit for the last 5 years, and the average NPL of the last 5 years is within the limit prescribed by the Rastra Bank.***

c. ***If preliminary expenses have been written off.***
d. ***If the shares to be issued publicly have been issued and already been allotted.***
e. ***If the general meeting has already decided to be converted into the bank or financial institution of upper class.***
f. ***If it has met all conditions as prescribed by the Rastra Bank.***

1.7 CAPITAL STRUCTURE OF BANKS / FINANCIAL INSTITUTIONS

The minimum authorized capital, issued capital and paid-up capital of the licensed institutions will be as prescribed by Nepal Rastra Bank from time to time. Every licensed institution will maintain the capital structure within the period prescribed by Nepal Rastra Bank. A licensed institution which fails to maintain the capital within the prescribed period, will not be allowed to declare or distribute dividends until it maintains such capital.

1.7.1 Capital to be increased

Nepal Rastra Bank may, if it so deems appropriate, gives a directive to any licensed institution to increase its authorized capital, issued capital and paid-up capital. If Nepal Rastra Bank gives a directive, the concerned licensed institution will increase its authorized capital, issued capital and paid-up capital.

1.7.2. Capital fund

Every licensed institution will maintain a capital fund in the ratio prescribed by Nepal Rastra Bank on the basis of its total assets or total risk-weighted assets. If any bank or financial institution fails to maintain the capital fund, the Board of the licensed institution will give information thereof to Nepal Rastra Bank within thirty five days. The information so given will also be accompanied by, inter alia, the reasons for the failure to maintain the capital fund and the plan or program prepared by the Board to increase the capital fund and restore it to its previous condition.

On receipt of the information, if Nepal Rastra Bank considers the plan or program submitted by the Board of the concerned institution to be reasonable, it may give a directive to the concerned bank or financial institution to implement such plan or program; and if any amendment or alteration is to be made in the proposed plan or program, it may give a directive, accompanied by the reasons for such amendment or alteration, to the concerned bank or financial institution to amend or alter such plan or program and implement the same.

If any bank or financial institution fails to meet the obligation or if it does not appear that it can do so immediately, Nepal Rastra Bank may take action against such bank or financial institution. If it is found that the concerned bank or financial institution has failed to maintain its capital fund by the reason of the failure of the Board of Directors to comply with the directives given by Nepal Rastra Bank from time to time or by the reason of malice, recklessness or mala fide intention of the director or chief executive, Nepal Rastra Bank may punish such director or chief executive with a fine equal to the amount involved. If such act of the director or chief executive is found to have caused any loss or damage as a result of the failure to maintain the capital fund, Nepal Rastra Bank, the concerned bank or financial institution or any shareholder holding up to five per cent of the paid-up capital of such bank or financial institution may either individually or collectively file a petition with the court against such director or chief executive for the recovery of that amount, in accordance with laws in force.

1.7.3 Provision concerning possible losses

According to section 43 of BAFIA, a licensed institution will maintain appropriate loan loss provision prescribed by Nepal Rastra Bank in such a manner that it can cover its potential risk concerning assets including loans and liabilities.

1.7.4 General reserve fund

According to section 44 of BAFIA, a licensed institution must maintain a general reserve fund. At least twenty per cent of the net profits of each year will continue to be credited to such fund until the amount of such fund doubles the paid-up capital. The amount credited to the reserve fund of a licensed institution may not be invested or transferred to any other head without the prior approval of the Rastra Bank.

1.7.5. Liquid Asset required to be maintained: A BFI which collects deposits and supplies the credit should maintain the liquid assets as prescribed by Rastra Bank. Liquid assets refer cash and near cash assets e.g. vault cash, CRR, SLR, or assets which are declared by NRB as liquid assets.

1.8 ISSUE OF SHARE CAPITAL BY A BANK / FINANCIAL INSTITUTION

1.8.1 Prospectus

Before publicly issuing its securities, every bank or financial institution will register the prospectus with office of the company registrar, obtain approval of the Securities Board in accordance with the laws in force relating to securities and have the prospectus registered with the Rastra Bank. Until the prospectus is so registered, the bank or financial institution, or anybody acting on behalf of such bank or financial institution will not publish the prospectus of such bank or financial institution.

The procedures required to be fulfilled while publishing a prospectus and the matters to be mentioned in the prospectus will be as mentioned in the laws in force relating to securities. The bank or financial institution will, subject to the laws in force relating to securities, make an application in writing to the Securities Board for the approval of the Securities Board for the purpose of registration of its prospectus.

Nepal Rastra Bank will not register a prospectus until it receives information in writing that approval has been given by the Securities Board for the registration of the prospectus. If any person intends to inspect the prospectus, the bank or financial institution will allow such person to inspect the prospectus, without collecting any fee or charge.

1.8.2 Allotment of shares

Every bank or financial institution will set aside at least thirty per cent of its total issued capital for subscription by the general public (natural person). The bank or financial institution may set aside 0.5 per cent of the shares so set aside for its employees. The shares in such percentage as prescribed by the Rastra Bank, will be sold and allotted to the general public, in the case of a bank or financial institution incorporated in joint venture with a foreign bank or financial institution. While inviting application from the general public for the subscription of its shares, every bank or financial institution will demand payment of cent percent amount of the face value of its shares along with application. BFI may convert its promoter shares into public shares having fulfilled the process specified by NRB after 10 years of its operation. NRB may allow after observing the BFIs' situation and capital market position of the country.

1.8.3 Dealing in securities

While issuing its securities for subscription by the general public, every bank or financial institution will do all acts such as the sale, allotment, and recovery of amounts, of such securities in accordance with the laws in force relating to securities. Every bank or financial institution will file with Nepal Rastra Bank and the Securities Board a copy of an agreement made by it on the dealing of securities through any institution dealing in securities, within seven days after the date of making of such agreement.

1.8.4 Increasing and re-structuring of Share Capital

The share capital of a bank/financial institution may be increased or restructured on the following conditions:

(a) ***Capital may be increased only on the condition that the ratio of share ownership of general public prevailed before increase of the capital is not less in the total capital after the capital increment.***

(b) ***Licensed banks and financial institution will not be allowed to add new shareholder in the Promoters group while increasing its capital except for the purpose of right-renouncing to maintain the prescribed minimum paid up capital according to the capital plan submitted by bank and financial institution, other than those institutions which are required to complete the prescribed paid up capital according to directives of Rastra Bank,***

(c) ***Increasing or restructuring the capital of banks and financial institution will have to be approved by Annual General Meeting/Special General Meeting of the concerned institution according to laws. In the event where approval in principle has been given for this purpose ,these provisions will not be deemed to have hindered to implement the measures subject to the terms and conditions referred to in the said approval in principle.***

Page 11-12

Sections titled "LET US SUM UP", "KEY WORDS" and "CHECK YOUR PROGRESS " have been numbered as 1.9, 1.10 and 1.11 respectively.

Question No. 4 has been changed as follows:

1. The bank or financial institution may set aside a maximum of -------- per cent of the shares so set aside for its employees:

(a) 1
(b) ***0.5*** (Answer)
(c) 2
(d) 5

UNIT - 2

Page 14-19

Sections 2.1 INTRODUCTION to section 2.2.4 CLASS "D" LICENSE INSTITUTION have been replaced by the following :

2.1 INTRODUCTION

The definitions of a "Bank" and "Financial Institution" stipulate that they are authorized to do only such financial transaction which Banks and Financial Institutions Act, 2073 permits to do so. Section 49of BAFIA contains a category-wise detailed list of financial functions which a licensed institution can transact. Similarly, Section 50 explains the activities prohibited for being carried out by licensed institutions. If any licensed institution contravenes these regulations in whatsoever manner, its license would be cancelled.

2.2 PERMITTED FINANCIAL TRANSACTIONS

2.2.1 Class "A" licensed institution

A Class "A" licensed institution can carry on the following financial transactions subject to BFI Act and the memorandum of association and articles of association:

a) Accepting deposits with or without interest and repaying the deposits through various financial instruments;
b) Accepting deposits, making payments, having transactions, provide intermediary services and transfer funds through various electronic medium (devices & instruments).
c) Disbursement of credit (hire-purchase, leasing, overdrafts and housing);
d) Disbursement of credit on project or hypothecation , collateral and disbursing and causing to be disbursed loans in consortium financing having divided the collateral on pari passu according to the agreement entered into between one another;
e) Disburse loans on the guarantee of foreign bank or FI;
f) Disbursing loans within the value covered by the movable or immovable assets which has already been mortgaged to it or disbursing loans on remortgaged within the value covered by movable or immovable assets which has already been mortgaged to other bank or financial institution;
g) Issuing guarantees, getting executed necessary bonds such customers in consideration thereof, obtaining security, and acquire their movable or immovable assets as collateral or mortgage, or the assets of 3rd persons as collateral;
h) Availing refinance from NRB as may be necessary or lending or providing loans from other bank or financial institution;
i) Disbursing or managing loans from amount received from GoN or other native or foreign agency for project promotion;
j) Write off credits as per prevailing credits write off Byelaws;
k) Issuing shares, debenture, bond and so on to meet the capital fund subject to the limitations, conditions or directives issued by the Rastra Bank.
l) Issuing, accepting, paying, discounting or purchasing and selling letters of credit, bills of exchange, promissory notes, cheques, travelers cheques, drafts or other financial instruments;
m) Issuing, accepting, managing digital card or other instruments for electronic transactions and appointing agencies to carry out acts relating thereto;
n) Foreign currency transactions subject to the prevailing laws;
o) Carrying out government transactions subject to the limits, terms and conditions or directives of NRB;
p) Purchasing, selling or accepting bonds issued by NRB and GoN;
q) Remitting or transmitting funds to different places within or outside Nepal and receive remittance from abroad to make payment thereof;
r) Act as custodian in the sale or purchase of shares, debentures or securities; collecting interest etc and also arrange safe deposit vaults for customers acting as a commission agent of its customers;
s) Carrying on off-balance sheet transaction;
t) Disbursing credits within prescribed limit of NRB, against individual or collective guarantee, for the economic up-liftment of the deprived sector people, low-income families, victims of natural calamities and inhabitants in any area of the country;
u) Exchanging with NRB or any other BFI particulars of, information or notices on debtors or customers who have obtained credits from it or other banks or financial institutions;
v) Buying and selling of gold and silver bullions;

w) Conduct, study, research and do survey work relating to the the establishment, operation and evaluation of projects and provide training, consultancy and other information;
x) Prudently managing or selling its assets of all type to come under its ownership according to this Act and the prevailing laws;
y) As per the prevailing laws, giving guarantee with consent of the parties involved on matters of payment to be made or values to be recovered for performance of any act between two or more persons.
z) Carry out other functions as prescribed by the Rastra Bank.

2.2.2 Class "B" licensed institution

Subject to BAFIA and the MOA/AOA, the limitation and conditions imposed and directives issued by the Rastra Bank, Class "B" financial institution may carry on the following financial transactions, in addition to the financial transactions referred to class "A" bank in clauses (a), (b), (c), (f), (g), (h), (i), (j), (k), (n), (p), (r), (s), (t), (u) and (x) :

a) Arrange to jointly disburse credits on the basis of consortium financing in collaboration with other bank or financial institutions in accordance with the mutual agreement entered into for the division of the collateral pari passu;
b) Issuing guarantees on behalf of its customers, having such customers execute necessary bonds in consideration thereof, obtaining security, and acquiring their movable or immovable assets as collateral or on mortgage, or the assets of third persons as collateral;
c. Issuing, accepting, paying, discounting or purchasing and selling bills of exchange, promissory notes, cheques, traveler's cheques, drafts, etc.
d. Raising loans having mortgaged its movable and immovable assets.
e. Carrying on transactions of letters of credit and remittance with prior approval of Rastra Bank.
f. Carrying on transactions of transfer of money within Nepal.
h. Carrying out such other functions as may be prescribed by the Rastra Bank.

2.2.3 Class "C" licensed institution

Subject to BAFIA and the MOA/AOA the limitation and conditions imposed and directives issued by the Rastra Bank, Class "C" financial institution may carry on the following financial transactions, in the addition to the financial transactions referred to class "A" bank in clauses (a), (b),(f), (h), (j), (k), (p), (r), (t), (u) and (x).
a. Disbursing credit for hire purchase, leasing, housing loans.
b. Making arrangements for jointly disbursing credits on the basis of consortium financing in collaboration with other banks or financial institutions in accordance with the mutual agreement entered into for the division of the collateral paripassu.
c. Raising loans having mortgaged its movable and immovable assets.
d. Making appropriate provisions of its assets, selling or renting them out.
e. Issuing, accepting, paying, discounting, or purchasing and selling bills of exchange, promissory notes, cheques, traveler's cheques, drafts, etc.
f. Carrying out foreign currencies transactions with approval from the Rastra Bank;
g. Disbursing installment or hire-purchase credit to any person, firm, company or institution for motor vehicles, machinery ,tools, equipment , durable household goods or similar other movable property.
h. Making available lease finance to any person, firm, company or institution to hire transport vehicle, machines, tools or instruments, household durable goods, or the like movable assets or giving or taking such on hire;

I. Issue guarantees on behalf of its customers, having such customers executed necessary bonds in consideration thereof, obtaining security, and acquiring their movable or immovable properties as collateral or on mortgage, or the assets of third third persons as collateral.
j. Selling off or leasing out whole or part of its assets.
k. Prescribing prices of goods on consent with the finance company and seller in case any goods procured has to be sold to other purchaser on current price deferred price.
l) Carry out such other functions as may be prescribed by the Rastra Bank.

2.2.4 Class "D" licensed institution

Subject to BAFIA and the MOA/AOA, and limits, conditions and directives issued by the Rastra Bank, the Class "D" financial institution may carry on the following financial transactions:-

a) Disbursing micro-credit, with or without any movable or immovable property as the collateral or security, for operating any micro-enterprise prescribed by NRB to any group or a member thereof which/ who have regularly saved for the period and maintained the prescribed saving;
b) Obtaining loans or grants from any bank or financial institution or native or foreign organization, and use such loans or grants for the supply of micro-credit of for making the same effective;
Provided that approval of Rastra Bank shall be obtained prior to obtaining loans or grants from any foreign organization.
c) Prior to disbursing micro-credits, evaluating the schemes for which micro-credits have been requested and determining whether or not they are feasible;
d) Providing necessary services and consultation to groups with regard to mobilization of micro finance;
e) Carry out necessary actions for recovery of the micro credits on time;
f) Subject to the limit prescribed by the Rastra Bank, accepting deposits and refund such deposits;
g) Issue shares, debentures, bonds for the purpose of meeting the capital fund requirements subject to the limitations, conditions and directives prescribed by the Rastra Bank;
h) Exchanging with the Rastra Bank or any other bank or financial institutions particulars of, information or notices on debtors or customers who have obtained credit or any kind of facility from it and other bank or financial institutions;
i) Carry out such other functions as may be prescribed by the Rastra Bank.

We have added Section - ***2.2.5 Infrastructure Development Bank*** and the content under this is as follows :

2.2.5 Infrastructure Development Bank

Subject to BAFIA and the MOA/AOA, and limits, conditions and directives issued by the Rastra Bank, the Infrastructure Development Banks may carry on the following transactions:-

a) Disbursing loans and financing in shares in projects concerning infrastructure development;
b) Financing in securities of the companies operating projects concerning infrastructure development;
c) Opening letters of credits and issue guarantees for purchase, sale and installation of machines, instruments and tools required for construction and operation of projects concerning infrastructure development;
d) Issuing financial instruments in national or foreign currencies with approval of the Rastra Bank for collecting fund for investment in projects concerning infrastructure development;
e) Mobilizing resources by accepting long term deposits or issuing debenture subject to directives issued by NRB
f) With approval of NRB carry out leasing transactions
g) Provide loans and other facilities to projects having accepted guarantee of foreign banks and FIs
h) Carry out other acts as prescribed by NRB.

Page 20

2.3 ACTIVITIES PROHIBITED FOR BEING CARRIED OUT BY LICENSED INSTITUTIONS

In the first line - "section 48 of BAFIA" has been replaced by " ***section 50 of BAFIA*** "

Activity No. (a) has been changed to

(a) ***Purchasing or selling goods for commercial purpose, or purchasing any immovable property except when it is required for its own use.***

Page 23

2.7 CREDIT TO BE SUPPLIED

In the first line - "section 56 of BAFIA" has been changed to " ***section 55 of BAFIA***"

Page 25

2.10 LET US SUM UP

In the first line - "section 47 of BFI Act" has been changed to " ***section 49 of BFI Act***"

Page 28 - 30

The whole of portion under Annexuere "A" has been replaced by the following -

Annexure "A"

Some of The Provisions Relating to Lending to Deprived Sector

1. ***The "A" class licensed institutions are required to lend at least 5 percent of their total outstanding loan and advances (including bills purchased and discounted), "B" class licensed institutions will require to extend 4.5 percent of their total credit (including the bills purchased and discounted) and class "C" licensed institutions are required to lend 4 percent in deprived sector lending.***

2. ***A "deprived " means low income and especially socially backward women, tribal people, Dalit, blind, hearing impaired and physically incapacitated persons, marginalized and small farmers, craft-men, labour and landless squatters family. All micro-credits to be extended for the operation of self-employment oriented micro-enterprises for the upliftment of economic and social status of deprived sector up to the limit specified by this Bank is termed as "deprived sector lending".***

3. ***The following loans and advances directly extended by the licensed class "A", "B" and "C" bank and development banks will be included under the deprived sector lending:-***

a) ***Micro credit extended up to Rs. 100,000 per group/individual against group/personal guarantee to the deprived or low income individual for operating micro business. If the borrower is regular since 2 years then limit of loan could be Rs. 300,000***

b) ***Extension of loan not exceeding Rs. 100,000 per family for the purpose of Micro Hydropower Project, Solar-Home-System, solar cooker, solar dryer, solar pump, bio-gas, improved water mills, improved cooking stoves and wind energy according to renewable energy technology. The limit could be enhanced upto Rs 150,000 if the borrower is regular since 2 years***

c) ***Micro industrial credit up to Rs. 300,000 for each business extended to deprived or low income individual to operate the micro industries against acceptable collateral/to group members against the guarantee of the group gradually enhanced. The limit could be enhanced upto NPR 700,000 if the borrower is regular since 2 years***

d) ***Loans up to Rs.150,000 per person extended to the individuals who are going for foreign employment on the basis of the tripartite loan agreement between the bank, the person going for foreign employment and the concerned Manpower Company that can produce assurance letter from the employer companies of the employing nation confirming the employment and recovery of loan in instalment;***

e) ***Loans extended up to Rs. 150,000/- per person with or without collateral to persons going for foreign employment;***

(f) ***Foreign employment loan extended by any "A" class licensed bank in coordination with a bank prescribed by Government of Nepal to workers going for foreign employment under the Youth Self-employment and Employment Training Program of the Government of Nepal;***

(g) ***The loan not exceeding Rs. 300,000, if the borrower is regular since 2 years, loan could be enhanced upto 400,000 rupees extended by bank or financial institutions to per individual/family eligible to receive deprive sector lending for sheep farming to produce wool necessary for carpet or for maintaining handloom to weave carpet against acceptable collateral security will be calculated as the deprive sector lending. Similarly, the loan not exceeding Rs 300,000 extended by banks or financial institutes to per family eligible to receive the deprive sector lending for purchasing fertilizer or installation of seeds and cold storage for seeds and collection, collective storage, products marketing, animal husbandry small irrigation, willow tube wells.***

4. ***The following loans extended indirectly by "A", "B" and "C" class licensed institutions will be calculated as the deprived sector lending:-***

a) ***Wholesale loan extended against the institutional capability and institutional guarantee to the "D" class licensed institutions and bodies established for performing micro credit related works under the prevailing statutes relating to financial intermediation activities;***

b) ***With a view to improve the level of income and to enhance employment for those living below poverty line, deprived or people with low income, wholesale loan can be extended to the Co-operative Societies licensed by Rastra Bank and to the Co-operative Societies established and in operation in rural area upon appropriate evaluation by "A", "B" and "C" class licensed institution for the purpose of extension of deprived sector loan as stated in above sub-point (a). The concerned banks will monitor as to whether or not such loan has been utilized in the deprived sector and submit the report to this Bank in every six months.***

c) ***Extension of wholesale loan to "D" class micro finance development bank established for the purpose of providing wholesale credit to Small Farmer Cooperative Societies and institutions conducting micro credit activities.***

d) ***Loans not exceeding Rs. 150,000/- extended to the workers going for foreign employment by the licensed financial institutions by borrowing funds from "A", "B" and "C" class licensed institutions. Such loan will be calculated only as deprived sector lending of the "A", "B" and "C" class licensed institutions.***

Moreover, banks and financial institutions are required to obtain progress report in every six months regarding the utilization of the extended credit towards deprived sector from the institutions which were provided with

wholesale credit with the intention of including the same under the deprived sector lending. If such wholesale credit is, during the inspection of this Bank, found to be misused, the amount to the extent of misuse will not be considered for as deprived sector lending.

5. The promoter share capital investment made by the licensed "A", "B" and "C" class banks and financial institutions in the class "D" financial institutions will also be calculated as indirect the deprived sector lending.

6. Cent percent of the amount received by micro finance development banks from the licensed institutions under the deprived sector lending will have to be compulsorily extended to the deprived sector. If no such investment is made, the wholesale loans to be extended to the licensed institutions to the micro finance development banks will not be calculated as the deprived sector lending.

7. The loans extended to the deprived sector will be calculated based on the total outstanding loans before six months (including bills purchases and discounted, except the portion of the deprived sector) in every quarter i.e. at the end of the months of Ashwin, Paush, Chaitra and Ashadh.

8. The loans to be directly extended to hospitals by the licensed commercial banks ("A" class), development banks ("B" class) and finance companies ("C" class) subject to the following terms and conditions will be calculated as the deprived sector lending:-

(a) Such hospitals will have to be incorporated in the concerned agency as a not-profit- making company;

(b) The concerned bank/financial institution can extend up to 5 percent of their core capital for this purpose;

(c) The concerned hospital will have to fully comply with all the terms and conditions prescribed by the concerned agency at the time of granting operational approval;

(d) The concerned hospital will have to make provisions for providing at least 10 percent of its total bed capacity free of cost to the people belonging to deprived sector.

(e) The concerned banks and financial institutions will extend loan only after confirming that the terms and conditions referred to above have been fully complied with.

9. Regarding Inclusion of Low Cost Housing Loans in Deprived Sector Lending:

The loans extended fulfilling the following conditions for the purchase of land and house construction to the persons eligible for inclusion under the deprived sector will be eligible for inclusion under the deprived sector lending:-

(a) The loan not exceeding Rs 400,000 provided against secured collateral on a group or individual basis;

(b) The credit policy of the concerned bank and financial institution has to contain the specific policy as to the extension of loan to deprived sector for the purpose of purchase of land and house construction.

(c) All necessary requirements according to the laws in force for the time being and the Directives of this Bank have to be observed.

(d) Deprived sector will mean people with low income, particularly socially backward women, tribal people and dalit, blind, having the hearing capacity impaired and physically disabled, marginalized and small farmers, craft-men, labour and landless squatters as defined by the Government

10. Regarding Micro-Credit

The "D" class micro-finance institutions can lend fully secured micro-finance of up to Rs. 60,000 (sixty thousand only) to the intending individuals who are not affiliated to any Group.

11. Relating to Young and Small Entrepreneurs Self-Employment Fund

1. ***One third of the amount to be extended to deprived sector by banks financial institutions i.e. 3 percent ("A" class), 1.5 percent ("B" class) and 1.0 percent ("C" class) will deposited in the account opened in the name of Government of Nepal, Ministry of Finance, Youth and Small Entrepreneurs Self Employment Fund (herein after referred to as the "Fund") opened in its own. This clause will not prohibit the interested banks and financial institutions to contribute more into this account. The amount disbursed to the Fund will be deemed to be the loan extended to the Fund by the bank and financial institutions, and such fund will be considered as the deprived sector lending.***

2. ***For the purpose of categorization of loan and provisioning, the loan disbursed by the bank, under any circumstances, will qualify for categorization as pass loan. Similarly, for the purpose of capital adequacy under BASEL II, such loan can be included under the head "Claims on Government" and that "B" and "C" class financial institutions can provide zero risk weightage to such loans.***

3. ***The bank and financial institution will open the account in the name of "Youth and Small Entrepreneurs Self Employment Fund" after obtaining the documentation including the authority for opening and operation of the account and signing of the loan deed.***

4. ***It will be the responsibility of the fund to repay the loan disbursed to it by the bank and financial institution.***

5. ***The agreement between the banks and financial institutions and the Fund will be executed according to the prescribed format. For this purpose, there will be no requirement of any documentation other than the said agreement.***

6. ***The amount of loan not exceeding Rs.200,000 extended to the Youth and Small Entrepreneurs against the collateral of the project itself according to the Youth and Small Entrepreneurs Self Employment Fund (Operations) Rules, 2008 will qualify for inclusion under deprived sector lending.***

Following provisions will apply in respect of disbursement of such loans:-

   a. ***Depending on the nature of the project, the tenure of the loan will be up to five years. Bank and financial institutions will prescribe the instalments to be paid according to its rules. Grace period for payment of principal and interest will be as prescribed by the Fund.***

   b. ***The movable and immovable assets related to the self-employment oriented business of the concerned person will remain as the collateral until the principal and interest are fully paid up.***

   c. ***All rights to accept or reject the loan will lie with the bank and financial institution.***

   d. ***The concerned bank and financial institution will bear the risk associated with the loan and responsibility as to its recovery.***

7. ***For the purpose of lending according to Clause 6 above, the bank and financial institution can obtain refinance facility at 7 percent per annum interest from the Youth and Small Entrepreneurs Self Employment Fund.***

8. ***Operations of the Fund will be according to the Youth and Small Entrepreneurs Self Employment Fund (Operations) Rules 2008, the Directives issued by this Bank.***

9. The licensed banks and financial institutions (other than the Class "D") need not have to deposit, amount in the Youth and Small Entrepreneurs Self Employment Fund, which is to be calculated in the deprived sector lending.

10. The quarterly statement relating to deprived sector lending will be prepared in the format referred to in NRB Form No. 9.5 and be sent to the concerned supervision Department of this Bank within 15 days of the completion of the quarter.

11. The concerned licensed institution will have to state clearly in its Credit Policy the policy and procedural provisions relating to the loans to be extended to the deprived sector.

12. Notwithstanding anything contained in other Directives, no loan loss provision of 20 percent will be required for the loans to be extended to the deprived sector directly or indirectly against the group/personal/institutional guarantee.

13. In case the licensed institution of classes "A", "B" and "C" do not extend the deprived sector lending to be extended according to the Directives relating thereto or extend lesser amount of loans, the amount not extended or less extended will be fined to the concerned licensed institution at the rate of highest percentage of interest it charges on loans during that calculation time pursuant to Section 81 of the NRB Act.

For full Details : refer to Directive No. 17 of Unified Directives 2074

UNIT 3

Page 32 - 34

Section 3.2 to Section 3.2.5 have been replaced by the following :

3.2 FORMATION OF BOARD OF DIRECTORS

Section 14 of BFI Act contains provisions with regard to the formation of Board of Directors as under:

Every bank or financial institution will have a Board of Directors. The Board will consist of not less than five and not more than seven Directors, out of which one will be a professional independent director. The professional director will be appointed to the Board having met the specific qualification according to BAFIA section 17.. The Director to be so appointed is not required to have subscribed more than 0.1 percent share of the concerned bank or financial institution. A director chosen by the directors from amongst themselves, by a majority decision, will be the chairperson of the Board of Directors.

3.2.1 Appointment of Directors

Section 14 of BFI Act stipulates provisions for the appointment of directors as under:

(1) The directors of a bank or financial institution will be appointed by the general meeting of the bank or financial institution, subject to fulfilling the eligibility criteria and provisions of the articles of association. If the first annual general meeting of the bank or financial institution has not been held, directors will be appointed by the promoters. In the event of any vacancy in the post of a director prior to the holding of the annual general meeting, the Board may appoint a director for the remainder of term.

(2) In the case of a bank or financial institution in which a corporate body holds shares, the concerned corporate body may appoint director(s) in a number proportionate to the value of the shares held by it. While appointing director in proportion to the shares of the bank or financial institution held by it, a body corporate,

foreign bank or financial institution may also appoint alternate director authorizing him/her or them to work during the absence of the director.

(3) The professional expert director will be appointed by the Board of Directors.

3.2.2 Qualification of directors

Section 16 of BAFIA stipulates that the person has to possess the following qualification in order to be eligible for appointment as Director :

- ***(a) Work experience of five years as a director or official level of foreign or native bank or financial institution or of related sector or of an office of Government of Nepal***
- ***(b) Having attained the degree of graduation with work experience of at least three years as a director or official level of a foreign or native bank or financial institution or of related sector or as an office of Governement of Nepal.***
- ***(c) Having completed the post graduate degree in the related subject as prescribed. However, the academic qualifications and experiences of directors of a financial institution of class "D" shall be as prescribed by the Rastra Bank from time to time.***

3.2.3 Qualification of Professional/Independent Director

Section 17 of BAFIA stipulates while appointing professional director of a bank or FI. According to this section such appointment shall be made from among the persons having met the following qualifications –

- ***(a) In case of Class A or Class B National level Development banks, having obtained at least Masters Degree in the subject prescribed by NRB and having had the experiences as specified.***
- ***(b) In case of Class B, (except National level) class institutions and financial institutions of Class C, having obtained at least graduation level in the subject prescribed by NRB and having the experiences as prescribed.***
- ***(c) In case of micro finance institutions of Class D, the person having had the qualifications and experiences as set by NRB.***

3.2.4 Disqualification of Director

Section 18 of BAFIA stipulates, none of the following persons shall be eligible to become a Director of Bank and Financial institution:-

- ***a) Having not attained the age of 25 years;***
- ***b) Having had unsound mind or being an insane;***
- ***c) Having been declared bankrupt in Nepal or in abroad for being unable to pay debt;***
- ***d) Having been blacklisted in connection with financial transaction and a period of at least three years has not passed after his or her name has been removed from that list;***
- ***e) The person, firm or company who is a borrower, an auditor or advisor of any bank or financial institution or having personal interests towards concerned BFIs;***
- ***f) Who has acquired membership of the Stock Exchange to act as a securities broker of merchant banker;***
- ***g) Who is director or employee of licensed institution/Deposit taking institution /Insurance relating company;***
- ***h) Who is an incumbent employee of Government of Nepal , of an organization having ownership of Government of Nepal, of Rastra Bank or licensed bank or financial institution;***
- ***i) Having not paid tax to be paid as per the prevailing laws;***

j) Having not completed a period of ten years after replenishment of punishment upon being convicted of an offence of theft, cheating, forgery , fraud, any offence involving moral turpitude or a banking offence from a court of Nepal or of a foreign country

k) Having been taken action by a regulatory agency as per law for committing an act against law or not having completed a period of five years after being taken such action;

3.2.5 As to an incumbent constitutional position holder :

No person who holds a constitutional position shall, so long as he or she is holding such position, be eligible in the board of Directors or as the chief Executive of any bank or financial institution.

3.2.6 Tenure of office of Director

The term of office of a director shall be of four years in maximum as provided for in the Articles of Association and he/ she may be reappointed. Independent Director may be appointed for only one term. However, the executive chairperson or managing director appointed after commencement of BAFIA shall remain in the office for two consecutive terms.

Section 3.2.6 **Disclosure by Directors** has been numbered as ***3.2.7***

In the first line - "Section of 22 of BFI" has been changed to "***Section 25 of BFI*** …"

Page 35

3.3 FUNCTIONS, DUTIES AND POWERS OF BOARD

In the first line - "Section 14 of BAFIA" has been changed to "***Section 22 of BAFIA***"

One more point has been added in this part as -

(3) To prepare internal control system and risk management norms for avoiding risk.

Existing point No. (3) has been changed to Point No. (4).

3.3.1 Delegation of authority

In the first line - "Section 15 of BFI Act" has been changed to ***Section 27 of BFI Act***

In the second line - "The Board may…… under its supervision and direction" has been changed as -

The Board may on having stated with rational and reason ,delegate any of its powers to the chairperson, any director, a sub-committee formed, chief executive or any person, firm, company or body acting as the chief executive on the condition that such powers will be exercised under its supervision or direction.

3.3.2 Power to form sub-committees

In the first line - "Section 16 of BFI Act" has been changed to "***Section 26 of BFI Act***"

3.3.3 Meetings of Board

In the first line - "Section 23 of BFI Act" has been changed to "***Section 21 of BFI Act***"

3.4 RESPONSIBILITIES AND DUTIES OF DIRECTORS

In the first line - "Section 24 of BFI Act" has been changed to "***Section 23 of BFI Act***"

Page 37

3.4.1 Meetings of Board

In the first line - "Section 21 of BFI Act" has been changed to "***Section 28 of BFI Act***"

3.5 Appointment & Condition os service of Chief Executive

In the first line - "Section 26 and 27 of BFI Act" has been changed to "***Section 29 of BFI Act***"

The 2nd sentence of the 2nd paragraph has been changed to -

While making appointment of the chief executive, a qualified person will be appointed from amongst the persons who have done Masters degree in specified subject or have bachelors degree and have gained at least ten years of experience of the office of director or of the executive level in banking, financial or corporate sector.

The 2nd line of last paragraph has been changed to -

The tenure of office of the chief executive will be a maximum of four years; and he or she may be re-appointed again for another term of office.

3.5.1 Functions, duties and powers of chief executive

In the first line - "Section 22 of BAFIA" has been changed to "***Section 30 of BAFIA***"

Page 43

The whole content under ***C. Appointment of Chief Executive*** has been deleted because of duplication.

Page 48

3.7 LET US SUM UP

The sentence - "The Board will consist of not less than five and not more than nine directors, out of which one will be a professional director." has been changed to -

The Board will consist of not less than five and not more than <u>seven</u> directors, out of which one will be a professional director.

<u>UNIT 4</u>

Page 55

4.3.11 Open Market Operations

The last line - "For this purpose,…..will be used" has been changed to -

For this purpose, Treasury Bill , Government Bond and NRB Bond will be used.

4.4 POWER TO ISSUE BANKNOTES AND COINS

1st line has been inserted as -

Section 52 of NRB Act explains about issuance of bank notes.

Page 57

4.4.3 Provisions Relating to Currency Inventory and Issuance of Currency

A new statement has been added immediately after the 1st sentence. It is as follows -

To supply regularly bank notes and currency, NRB has established dozens of Note chest in RBB and NBL throughout the country.

Page 61

4.7.1 Provisions Relating to Compulsory Reserve/Statutory Liquidity

Point No**. 6(a)** has been changed to -

(a) ***The compulsory reserve will be examined on past two weeks deposits.***

UNIT 5

Page 68

5.2.2 Balance sheet, profit and loss account and audit

The 2nd sentence in point No. (1) has been changed to -

These statements will be audited, within four months after the completion of a financial year.

Page 69

5.2.3 Appointment of auditor

The whole content has been revised as -

(1) ***The general meeting will appoint an auditor for three consecutive times.***

(2) While appointing an auditor, the general meeting will appoint a chartered accountant in the case of a licensed institution of Class "A" or "B" or "C", and a chartered accountant or a registered auditor in the case of a licensed institution of Class "D".

(3) In case any BFI could not appoint Auditor, NRB may appoint the auditor.

5.2.5 Disqualification for appointment as auditor

Point No. a, b and j have been changed as follows -

(a) ***A promoter, CEO /director of the licensed institution or his or her family member;***

(b) An official , employee or internal auditor of the licensed institution;

(j) A person who is disqualified to become an auditor according to the laws in force.

After Section No. **5.2.10 Report to be forwarded by Auditor** a new part has been added as follows-

5.2.11 Recommendation for taking action against auditors:

In case of an auditor who does not perform his/her duties, NRB shall write to concerned regulating authority to remove of such an auditor from the panel of the auditors for 1 to 3 years. In our country the auditors regulating authority is ICAN.

Page 75-76

5.7.3 Punishment for violation of regulation of Rastra Bank

A line has been added at the very beginning of this section as -

According to section 99 of BAFIA-

Point No. (2) has been revised as -

(2) In the event of the failure of a licensed institution to submit such documents, returns, data or records as demanded by Nepal Rastra Bank or its officer carrying out inspection and supervision under the NRB Act or the Rules or Bye-laws framed thereunder, within the time prescribed by Nepal Rastra Bank or its officer carrying out such inspection and supervision, Nepal Rastra Bank can punish such licensed institution with a fine ranging from one hundred thousand to One hundred fifty thousand rupees, based on the expiry of the time for documents to be submitted.

At the start of point No.(4) the following has been added -

According to NRB Act, section no.100 (2)

Page 78

Question No. 4 has been changed as follows -

4. The "A" category licensed institution will appoint an auditor by its…….

(a) AGM
(b) its own panel
(c) the panel prepared by the Chartered Accountant Institute
(d) the Govt. panel

UNIT 6

Page 80

6.1 INTRODUCTION

A line has been inserted towards the end of this part as -

However, merger is not only the instrument of problematic institution. It is a business strategy.

6.4.6 With regard to upgrading

Section (B) on Page 90-91 has been ***deleted.***

UNIT 7

Page 95

7.3 MEANING OF 'BANK', & 'FINANCIAL INSTITUTION'

The content under this replaced by the following-

(1) "Bank" means a corporate body incorporated to carry on Banking and financial transactions as referred to in Sub- Section (1) of Section 49 and the word also includes a branch office or other office of a foreign bank located in Nepal, a branch office or other office opened outside Nepal by a bank incorporated in Nepal and an infrastructure development bank to carry out functions referred to in sub-section (5) of section 49.

(2) "Financial Institution" means a corporate body incorporated to carry on banking and financial transactions as referred to in sub- section (2), (3) or (4) of section 49 and the word also includes a branch office or other office of a development bank, finance company, micro finance development bank or a branch office or other office of a foreign finance company located in Nepal or a branch office or other office opened outside Nepal by a financial institution incorporated in Nepal. Further , NRB Act has stated that the objectives of a financial institution established as above may include providing loans for Agriculture , industrial or any other specific economic purpose or for collecting deposits from the general public. A "Financial Institution" also includes an institution prescribed as financial institution by government of Nepal by publishing notice in the Nepal Gazette.

Page 101- 102

7.4.7 Liability of Government Entity & Reporting entity

The content under this part has been revised as -

(1) The government entity and reporting entity will fulfil the following responsibilities for the purpose of ALP Act:-

(a) To maintain records of amounts transacted beyond the threshold prescribed by Rastra Bank, at a single or in a series of transactions, by a person,

(b) To investigate and inquire into any transaction which appears to be suspicious or transacted with the motive of asset laundering, or so laundered, or there are reasonable grounds for suspicion of laundering,

(c) To inform the Financial Intelligence Unit about the transactions mentioned in (a) above within fifteen days of event and the transactions mentioned in clause (b) immediately after the event.

(2) In case, anything happens to be omitted in the information reported to the Financial Intelligence Unit or anything different from original information or particulars received from the concerned person during the transaction is subsequently received, the reporting entity will promptly report such details to the Financial Intelligence Unit.

(3) In case there is any suspicion on the transactions of persons having regular business relation or transactions, the reporting entity will inform the Financial Intelligence Unit after making an inquiry.

(4) The reporting entity will maintain a secured record of transactions at least for a period of five years from the date of such transaction.

7.5.1 Formation of Coordination Committee

Under this , 2 more points have been added as follows-

- Secretary, Commission for Investigation of Abuse of Authority - Member
- Chief, Department of Money Laundering Investigation - Member

7.7.3 Procedure for investigation and inquiry

Option **N. Offense not required to be established** in Page 107 has been deleted.

7.7.4 Penalty

The content under this *up to the end of Punishment for concealing or destroying evidences* in Page 108 has been replaced with the following-

(1) Anyone who has committed the offence of financing of terrorist activities will be liable to imprisonment from three years to twenty years and fine of five times to the claimed value where claimant value is identified and up to five hundred thousand rupees where claimant value is not identified.

(2) Anyone who has committed the offence, other than one mentioned above will be liable to fine double to the claimant value and two years to ten years of imprisonment.

(3) In case any legal person has committed offence, the official or staff of such bank, financial institution or non-financial institution who is identified as perpetrator of the offence or in case such perpetrator is not identified, the office bearer of the institution at the time of commission of the offence, will be liable to penalty.

(4) If any civil servant or official, chief of staff of any bank, financial institution or non-financial institution has committed the offence, such person will be liable to ten percent additional punishment to the punishment.

(5) Anyone who attempts, assists or incites the offence under this Act will be liable to half of the punishment imposed to the commission of the offence.

(6) If anyone commits or cause to commit offence under this Act by using any firm, company or institution, such firm, company or institution will be liable to fine.

(7) If anyone violates this Act or the rules or directives under this Act in a manner other than those provided for, one will be liable to fine equivalent to claimant value by confiscating such value and up to five hundred thousand rupees where such value is not identified.

Imposing Fines:

The Financial Intelligence Unit can impose fine upto 10 lakhs to reporting entity for:

(a) Not maintaining documents and records as per the provision of ALP Act.

(b) Non submission of particulars or information to the Financial Intelligence Unit.

(c) Not reporting information to the Financial Intelligence Unit

The person aggrieved with the penalty decided can make an appeal before the High Court, within thirty five days from the day fine is imposed.

Punishment for Concealing or Destroying Evidences:

Any person who commits the offence of concealing or destroying evidence related to acts deemed to be an offence under this Act will be liable to the imprisonment of one month to three months and/or fine of fifty thousand rupees to one hundred thousand rupees or both in accordance with the gravity of offence and the person assisting the commission of such act will be liable to half of such punishment.

Page 111

Content under the sub topic - *Report to be submitted* has been **deleted.**

UNIT 15

Page 233

15.4.2 Registration of company

In the 2nd line "15 days" has been replaced by ***"7 days".***

Page 247

Question No. 1 has been changed as -

(1) Where an application is made for the incorporation of a company, the Company Registrar Office will, after making necessary inquiries, register such company within ---------- after the date of making of the application:

(a) 60 days
(b) 45 days
(c) 30 days
(d) 7 days (answer)

UNIT 17

Page 275

17.2.1 Number of directors

A sentence has been added in the end. It reads as follows -

Where there is a woman shareholder in limited company, one of the directors must be a woman.

*Further "BAFIA 2063" has been changed to **BAFIA 2073** in all the courseware.*