

**Advanced Taxation
Suggested Answer**

Roll No.....

Maximum Marks - 100

Total No. of Questions - 6

Total No. of Printed Pages - 7

Time Allowed - 3 Hours

Marks

Attempt all questions. Working notes should form part of the answer.

Use separate answer book for each question.

1. Bright Nepal Hydropower Ltd. (BNHL) is engaged in generation of Electricity from Tamakoshi River of Dolkha. Power plant of BNHL is located in under developed area "B" as per Industrial Enterprise Act, 2076 and company is listed in NEPSE. BNHL has electricity generation installed capacity of 356 MW. Following are the details of income and expenditure of the company for fiscal year 2076/077.

Particulars	Amount (Rs. '000')
Income	
Revenue from sale of electricity to NEA	11,788,050.00
Interest from call deposit at a Commercial Bank	26,500.00
Interest from Fixed Deposit	153,476.00
Income from sale of bid documents	187.00
Total Income	11,968,213.00
Expenses	
Power plant operation cost	2,947,012.50
Repair and maintenance expenses	736,753.13
Interest on loan	1,059,333.11
Employee cost	368,719.00
Actuarial loss on valuation of leave provision	55,307.85
Employee bonus	418,887.46
Other office and administrative overhead	231,450.00
Depreciation and amortisation	2,123,890.00
Provision for Income Tax	805,371.99
Total Expenses	8,746,725.03
Profit for the year	3,221,487.97

Additional Information:

- Commercial date of operation of the power project is 2068.04.01.
- Following are the details of fixed assets of the company for tax purpose:

Particulars	Opening Value	Addition During the Year	Disposal Proceeds
Land	46,800.00	15,600.00	-
Civil structure	236,536.00	-	-
Office equipments	13,450.00	567.00	-
Furniture and fixtures	6,578.00	432.00	-
Transmission line	5,275,505.00	-	-
Plant and equipments	10,706,929.00	150,000.00	12,310.00
Vehicle	52,134.00	4,750.00	-
Other miscellaneous assets	4,764,087.00	-	-
Total	21,102,019.00	171,349.00	12,310.00

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All the additions were made in 3rd quarter of the Fiscal Year. However, a turbine which was purchased on 2067.05.12 for Rs. 137,600 is replaced by new one on 2077.03.27 for Rs. 150,000.

Company hardly realized Rs. 6,570 from sale of old turbine.

- Following are the details of repair and maintenance cost for the year:

Details of Repair and Maintenance	
Pool	Actual Cost
A	20,105.56
B	1,502.10
C	324.00
D	714,821.47
Total	736,753.13

During the year, company had to incur substantial repair and maintenance cost in pool A as per the instruction given by Electricity Regulation Commission (ERC) on onsite visit of the project location by ERC. ERC is the regulator of the power sector.

- During the year, Large Taxpayer Office (LTO) has made an assessment of Income Tax Return for FY 2074/075 and assessed the tax loss of the company at Rs. 744,041 (company had submitted return for FY 2074/075 with tax on profit as nil) on the grounds that the company has not charged depreciation on accelerated rate. Consequently, decreasing the WDV of the following pool of assets. Company did not file for administrative review for the same.

Pool	Amount
A	211,470.00
B	3,421.00
C	5680.00
D	523,470.00
Total	744,041.00

- Company has reported tax loss of Rs. 153,420 for FY 2075/076.
- 70% of interest on loan is to paid to Consortium banks (7 commercial banks) and 30% interest is paid to Provident Fund (PF) as a lender, PF is also the promoter of the company and holds 25% shares of the company.

From the above information, you are required to:

- Determine the taxable income of the company for FY 2076/077. 15
- Compute tax liability of the company for FY 2076/077. 5

Answer:

- Statement Showing computation of taxable income for Income Year 2076/077

Particulars	Income from Hydropower Business	Investment Income	Remarks
Inclusions:			
Revenue from Sale of Electricity to NEA	11,788,050.00	-	
Interest from call deposit	26,500.00	-	
Interest from Fixed Deposit	-	153,476.00	
Income from sale of bid documents			

	187.00	-	
Total Inclusions (A)	11,814,737.00	153,476.00	
Deductions:			
Power plant operation cost	2,947,012.50	-	
Repair and maintenance expenses	718,109.20	-	W.N. 3
Interest on bank loan	1,059,333.11	-	W.N. 4
Employee cost	368,719.00	-	
Actuarial loss on valuation of leave provision (No deduction is allowed for revaluation of provision)	-	-	
Employee bonus	418,887.46	-	
Other office and administrative overhead	231,450.00	-	
Regular/Normal Depreciation	5,427,458.91	-	W.N. 1
Terminal Depreciation	22,975.30	-	W.N. 2
Total Deductions (B)	11,193,945.47	-	
Assessable Income from Business (A-B)	620,791.53	153,476.00	
Less: Carry Forward of Tax Loss	153,420.00	-	W.N. 5
Taxable Income for the Year	467,371.53	153,476.00	

b) Statement Showing computation of tax liability for Income Year 2076/077

Particulars	Income from Hydropower Business	Investment Income
Taxable Income for the Year	467,371.53	153,476.00
Tax Rate (W.N. 6)	10%	21.25%
Tax Liability for the Year	46737.15	32,613.65
Total Tax for the Year	79350.80	

Working Notes:

W.N. 1: Computation of Depreciation

Particulars	Pool A	Pool B	Pool C	Pool D	Total
Opening Value as per tax (given)	236,536.00	20,028.00	52,134.00	20,746,521.00	21,055,219.00
Less: Additional Depreciation as per Order of IRD	(211,470.00)	(3,421.00)	(5,680.00)	(523,470.00)	(744,041.00)
Revised Opening Value	25,066.00	16,607.00	46,454.00	20,223,051.00	20,311,178.00
Add: Absorbed Addition	-	666.00	3,166.67	50,000.00	53,832.67
Less: Disposal Proceeds	-	-	-	(12,310.00)	(12,310.00)
Depreciation base for the Income Year	25,066.00	17,273.00	49,620.67	20,285,361.00	20,377,320.67
Depreciation Rate	6.67%	33.33%	20%	26.67%	
Normal Depreciation	1,671.90	5,757.09	9,924.13	5,410,105.78	5,427,458.91
Terminal Depreciation (W.N. 2)	-	-	-	22,975.30	22,975.30
Remaining Amount	23,394.10	11,515.91	39,696.53	14,852,279.92	14,926,886.46
Add: Un-absorbed Addition	-	333.00	1,583.33	100,000.00	101,916.33
Add: Unabsorbed Repair	18,350.94	292.99	-	-	18,643.93
Closing WDV	41,745.04	12,141.90	41,279.87	14,952,279.92	15,047,446.72

W.N. 2: Computation of Terminal Depreciation

Date of purchase of turbine	2067.05.12	Remarks
Date of Commercial Operation	2068.04.01	
Cost of Purchase	137,600.00	
WDV for Income Year 2067/068	137,600.00	No depreciation, project is not completed.
WDV for Income Year 2068/069	116,960.00	85% of opening value
WDV for Income Year 2069/070	99,416.00	85% of opening value
WDV for Income Year 2070/071	84,503.60	85% of opening value
WDV for Income Year 2071/072	71,828.06	85% of opening value
WDV for Income Year 2072/073	61,053.85	85% of opening value
WDV for Income Year 2073/074	51,895.77	85% of opening value
WDV for Income Year 2074/075	44,111.41	85% of opening value
WDV for Income Year 2075/076	35,289.13	80% of opening value, because of 1/3rd additional allowance of depreciation by IRD
Terminal Depreciation on Turbine:		
Opening value for Income Year 2076/077	35,289.13	
Less: Disposal Proceeds	(6,570.00)	
Depreciable Value of Turbine	28,719.13	
Less: Depreciation already charged in regular calculation	(5,743.83)	Including 1/3rd additional allowance
Terminal Depreciation	22,975.30	
** As per 19(2(ka)) of Income Tax Act, 2058, on replacements of plants by person engaged in development of electricity, there will be terminal depreciation equal to the amount of WDV of replaced plants.		

W.N.3 Computation of Allowable Repair

As per section 16 of the Income Tax Act, 2058, allowable deduction of repair and improvement cost will be lower of actual repair and maintenance cost incurred by person or 7% of depreciation base. So, allowable repair and improvement cost will be:

Particulars	Pool A	Pool B	Pool C	Pool D	Total
Depreciation base for the Income Year (from W.N.1)	25,066.00	17,273.00	49,620.67	20,285,361.00	20,377,320.67
7% of Depreciation Base	1,754.62	1,209.11	3,473.45	1,419,975.27	1,426,412.45
Actual Repair and Improvement Cost	20,105.56	1,502.10	324.00	714,821.47	736,753.13
Allowable Repair and Improvement Cost	1,754.62	1,209.11	324.00	714,821.47	718,109.20
Repair and Improvement cost to be Capitalized	18,350.94	292.99	-	-	18,643.93

W.N. 4 Computation of Allowable Interest Expenses

Since the Provident Fund is exempt from tax and holding 25% shares of the company, PF becomes the exempt controller and company becomes exempt controlled entity. In this case, provision of section 14(2) applies and allowable deduction of the interest paid to PF would be lower of:

i. Actual interest paid to PF i.e. Rs. 317,799.93	
ii. Interest Income + 50% of Adjusted Taxable Income (ATI) u/s 14(2) (26,500+153,476)+50% of 1,653,624.24	1,006,788.32
So, allowable deduction u/s 14(2) would be	317,799.93
Allowable deduction u/s 14(1) would be	741,533.18
Hence, total deduction would be	1,059,333.11
Now, lets compute ATI for 14(2)	
Inclusions:	
Revenue from Sale of Electricity to NEA	11,788,050.00
Income from sale of bid documents	187.00
Total Inclusions (A)	11,788,237.00
Deductions:	
Power plant operation cost	2,947,012.50
Repair and maintenance expenses	718,109.20
Employee cost	368,719.00
Employee bonus	418,887.46
Other office and administrative overhead	231,450.00
Regular/Normal Depreciation	5,427,458.91
Terminal Depreciation	22,975.30
Total Deductions (B)	10,134,612.36
Adjusted Taxable Income (A-B)	1,653,624.64

W.N. 5 Carryforward of Tax Loss

As per section 20(1(kha)) of Income Tax Act, 2058, unused tax loss of Hydropower can be carryforward and set-off for coming 12 years. But at the same time section 20(3), tax loss incurred while generating tax exempted income can be set-off with tax exempt income only.

In the given case, commercial operation date of the company is 2068.04.01. As per the provision of section 11 of the Act, company is exempted for 1st 7 years' of operation. Means, company is not required to pay tax till Income Year 2074/075. Tax loss borne by the company till Income Year 2074/075 (Rs. 744,041) cannot be settled with taxable profit of later year. Hence, additional tax loss created on assessment of tax by IRD cannot be settled with taxable income of FY 2076/077. Only tax loss of FY 2075/076 is allowed as set-off.

W.N. 6 Applicable tax rate

Particulars	Income from Hydropower Business	Investment Income
Normal tax rate as per schedule 1	25%	25%

Less: Adjustments for various concession option u/s 11 Option 1: Company is allowed for 7 years tax holiday for first 7 years of operation and for later 3 years, company is only taxed at 50% on tax rate applicable to special industry (hydropower is special industry as per section 17(2) of Industrial Enterprises Act).	10%	-
Option 2: Company is allowed 20% concession u/s 11(3chha)	5%	5%
Option 3: Company is allowed 15% concession u/s 11(3chha) as company is listed in NEPSE	3.75%	3.75%
Applicable Tax Rate	12.5%	20%

2.

- a) On 15th Asoj 2077, M/s Aarya Traders Pvt. Ltd. has received a notice under section 101(6) of Income Tax Act, 2058 issued by Tax office Gaushala for amended assessment for financial year 2075-076 and assessed the taxable profit and tax payable with fine and penalty by considering the relevant provision of Income Tax Act, 2058.

Details of amended assessment are as under:

	Amount (Rs.)
Amended assessment income for 2075-076	23,767,500
Tax as per Income Tax Act	5,941,875
Tax deposited as per return	2,423,500
Difference in tax as per assessment and return	3,518,375
Section 120(Ka)	-
Section 120(Kha)	3,518,375
Section 117-1 Ka	-
Section 117-1 Ga	-
Section 118 interest	527,756
Section 119	527,756
Section 119 ka	25,000
Total fine and penalty	4,598,887
Tax deposited as per return	2,423,500
Tax to be deposited	8,117,262

Grounds of assessment:

- i) The company has made payment of interest Rs. 3,900,000 without deducting applicable TDS and expense has been disallowed and added to income of the company due to non deduction of TDS.
- ii) The company has provided additional incentive to its sales managers for the year for Rs. 5,100,000 but TDS has not been deducted, so this amount is included as income of the company.
- iii) The purchase of equipment on which input VAT is disallowed is Rs. 388,250 and accordingly equipment amount of Rs. 2,986,540 is included for amended assessment for the financial year 2075-076.
- iv) The company has been using telephone whose ownership is not with the company and accordingly telephone expenses of Rs. 2,086,960 is included in income of the company.

Required:

7

As tax consultant of M/s Aarya Traders Pvt. Ltd., your opinion is sought on the notice issued by the Tax Officer for amended assessment for financial year 2075-076. You should advise the remedy available to the company on the issues raised.

- b) Following is the details of income and expenses of Mr. Radha Krishna Khanal (who is the proprietor of Radha Enterprises), for FY 2076/077:

Particulars	Amount (Rs.)	Remarks
Income:		
Sales revenue from Radha Enterprises	8,756,230.00	
Interest on Call Deposit	87,530.00	Net of TDS
Interest on 3 Years FD made for his child's education	240,000.00	Gross income
Gain on disposal of promoter shares of NCC Bank Ltd.	675,230.00	
Income from training (He is an agricultural expert and gives training on occasional basis)	75,000.00	Gross income
Dividend received from a co-operative	50,000.00	
Rental income from renting 1 st floor of his residential house	240,000.00	
Insurance compensation made by Nepal Life Insurance Co. on his accident	1,375,600.00	
Salary income of his wife which is credited to his bank account	875,630.00	
Total Income	12,375,220.00	
Expenses:		
Expense incurred to run Radha Enterprises	8,034,520.00	
Contribution made to Lumbini Development Trust to protect birth place of Lord Buddha. Payment given from Bank account of Radha Enterprises	543,000.00	
Expense incurred from his child's education	176,430.00	
Depreciation on private car	543,210.00	
Salary paid to driver	260,000.00	
Expense incurred for his treatment due to accident	965,000.00	
Payment of life insurance premium for his child	65,000.00	Policy is for 15 years

From the above information, you are required to compute the tax liability of Mr. Radha Krishna Khanal for FY 2076/077. Assume single for tax purpose.

7

- c) Discussing relevant provisions of Income Tax Act, 2058 and Rules 2059, comment on below statement –

(2×3= 6)

- Income Tax Return once submitted cannot be amended.
- Once appeal has been filed for departmental review and case is not decided for long period, a tax payer cannot file appeal to the revenue tribunal without depositing whole of tax liability as per assessment order.

Answer:

- a) Under section 101(1) of the Income Tax Act, 2058, has empowered the department to amend an assessment made under section 99 of Income Tax Act, 2058 i.e., self-assessment so as to adjust the assessed person's liability to tax in accordance to the Department's best judgment and in consistent with the intention of the Act. The power to make such an amended assessment is restricted to a time period of four years from the due date for filing the return as per section 101(3) of Income Tax Act, 2058.

However, the time restriction is not relevant if the reason for the amendment is fraud. Where in the case of fraud the department shall make an amended assessment within a period of one year after the information of fraud is received under section 101 (4) of Income Tax Act, 2058. The amendment excludes issues that have been decided by order of the Revenue Tribunal or a court of competent jurisdiction in cases where an assessment has been amended or reduced following a decision of a court the tax administration is not allowed to make another amendment to that extent under section 101 (5) of Income Tax Act 2058. According the amended assessment by the Income Tax Officer is within the periphery of the Income Tax Act, 2058.

M/s Aarya Traders Pvt. Ltd can reply to the notice within the time limit with the following supportings:

Clarification for the point number (i) of Interest of Rs. 3,900,000 disallowed and point number (ii) inclusion of additional incentive of NPR. 5,100,000 as Income of the company.

The expenditure of interest and incentive can be disallowed only in the conditions mentioned in section 21 of the Income Tax Act, 2058. The payments on which the withholding taxes are not deducted do not mean that they are not allowed for deduction in calculating the taxable income. As per section 90(3) of Income Tax Act 2058, where a person having a duty to deduct tax at source, does not deduct tax, he shall be deemed to have deducted the TDS and the TDS so deemed to have been deducted should be deposited within 15 days from the end of the month in which it is deducted. Since in the given case the company did not deposit the TDS so it is deemed to have been deducted, the department as per section 90(8) of Income Tax Act 2058, may require the company to deposit such deemed TDS together with interest and fine as applicable under section 117 and 119 of Income Tax Act 2058. Further where On the basis of the above provision, the decision of the tax officer to disallow the interest of NPR. 3,900,000 and the additional incentive amount of NPR.5,100,000 on the ground that TDS was not deducted on the payment is not in accordance with the provision set forth by the Income Tax Act, 2058.

Clarification for point number (iii) Input VAT is disallowed for Rs. 388,250 and equipment amount of Rs. 2,986,540 is included for amended assessment for the financial year 2075-076:

Value added Tax Act, 2058 and Income Tax Act, 2058 are separate independent tax laws in Nepal. Input tax disallowed under VAT is not justifiable ground for disallowing or allowing under Income Tax Act 2058. As per section 142 of Income Tax Act 2058 it is clearly mentioned that no other Act except the Income Tax Act itself can making changes, amendment and other tax related provisions other than the provisions relating to imposition, assessment, reduction, increment, exemption, or remission of tax to be made by amending this Act itself by Finance Acts. While considering the above provision, the action of the tax officer to disallow the expenditure on the ground that input tax credit under the VAT in accordance

with the provision set forth by the Income Tax Act, 2058. So, inclusion of equipment as income is not in line with the Income Tax Act 2058.

Clarification of point number (iv) inclusion of income of the company relating to telephone expenses of Rs. 2,086,960: An agreement with the legal owner regarding the use of telephone can be produced for supporting and is allowed for deduction if used for the business and beneficial ownership can be established for deduction of expenses.

In conclusion:

It is suggested to M/s Aarya Traders Pvt. Ltd that, submit above arguments as reply to the notice issued under Section 101(6) of Income Tax Act 2058 by the Income Tax Officer. After submission of the clarification even if, the final assessment is against the company, the company can apply for administrative review under section 115 of Income Tax Act 2058 and appeal to the Revenue Tribunal under section 116 of Income Tax Act 2058.

b)

1. Computation of Assessable Income from Business

Particulars	Amount (Rs.)
Inclusion:	
Sales Revenue	8,756,230.00
Interest on call deposit	87,530.00
Total Inclusion (A)	8,843,760.00
Deduction:	
Expense incurred to run Radha Enterprises	8,034,520.00
Total Deduction (B)	8,034,520.00
Assessable Income from Business (A-B)	809,240.00

2. Computation of Assessable Income from Investment

Particulars	Amount (Rs.)	Remarks
Inclusion:		
Interest on 3 Years FD	0.00	Not related to business, subject to final withholding u/s 92
Gain on Disposal of Shares	675,230.00	
Dividend income from co-operative	0.00	Subject to final withholding u/s 92
Rental income from renting residential building	0.00	This income is not taxed under Income Tax Act, 2058. Respective local authority charge tax on this income
Insurance Compensation	-	As per section 31, insurance compensation relating to death and physical injury of natural person is not subject to tax.
Salary income of his wife	-	She needs to pay tax separately.
Total Inclusion	675,230.00	
Less: Deduction	-	
Assessable Income from Investment	675,230.00	

Computation of Taxable Income	
Assessable Income from Business	809,240.00
Assessable Income from Investment	675,230.00
Total Taxable Income	1,484,470.00

Computation of Income Tax Liability

Particulars	Taxable Amount	Tax Rate	Tax Liability
1st Slab	400,000.00	0%	-
2nd Slab	100,000.00	10%	10,000.00
3rd Slab	200,000.00	20%	40,000.00
4th Slab	109,240.00	30%	32,772.00
Gain on Disposal of Securities, listed in NEPSE	675,230.00	5%	33,761.50
Total Amount	1,484,470.00		116,533.50

Notes:

- Income from training is part time teaching income and subject to final withholding u/s 92.
- Contribution made by company for heritage protection and sports development is allowed as deduction at the minimum of 10% of assessable income or Rs. 1,000,000 is allowed as deduction while computing taxable income of the company. However, prior approval of IRD is required for such deduction. In the given case Mr. Radha Krishna Khanal made contribution to Lumbini Development Trust to protect birth place of Lord Buddha. This is not allowed as deduction u/s12A.
- Child education fee, depreciation on private vehicle and salary of driver is personal cost and not allowed as deduction.
- As per section 31 of the Act, insurance compensation received by natural person on his personal injury and death is not to be taxed under Income Tax Act, 2058 and cost incurred for medical treatment to the extent of compensation received is not considered for medical tax credit.

c)

i) Income Tax Return once submitted cannot be amended.

Section 96(6) of income tax act, 2058 provides that if a person wishes to amend the income tax return submitted to tax department, then he can do so if –

- (i) The said income tax return has been filed within the time period provided for filing of income tax return, and
- (ii) The amendment shall be done within 30 days of submission of income tax return.

Hence, income tax return once submitted can be amended if above mentioned conditioned are satisfied. Income tax return which has been submitted after due date of filing of income tax return can not be modified.

ii) Once appeal has been filed for departmental review and case is not decided for long period, a tax payer cannot file appeal to the revenue tribunal without depositing whole of tax liability as per assessment order.

- (i) Section 115 of income tax act, 2058 provides that if no decision is taken with respect to the review petition filed with department within 60 days of filing of appeal, then a tax payer may presume that his appeal has been rejected by department.

- (ii) For the said purpose, a tax payer has to inform tax department in writing stating that since decision is not made within 60 days of filing of application, it may be presumed that the appeal is rejected.
- (iii) After that, a tax payer may file appeal to the revenue tribunal by depositing the amount as prescribed by Revenue Tribunal Act.
- (iv) However, section 116(3) of the income tax act provides that the mere reason of filing of appeal may not be hinder that tax office from collecting tax liability. Hence, a tax office may collect whole of tax due.

3.

a) Briefly mention the requirement prescribed by ICAN Code of Ethics for professional accountants with respect to compliance with anti-money laundering provisions.

5

b) Pandey & Associates, a chartered accountant's firm performs statutory audit of a client named Incremental Finance Ltd, which is also a listed entity in NEPSE. The client requests the auditor to assist and prepare income tax calculations and deferred tax assets/liabilities calculation of the entity as a part of audit for the client. Explain in light of revised Code of Ethics issued by the Institute of Chartered Accountants of Nepal (ICAN), steps to be adhered to by the firm.

5

Answer:

- a) ICAN has issued a hand book of code of ethics for professional accountants which acts as a guideline for its members in complying the highest degree of professional ethics and standards. ICAN has basically adopted The International Code of Ethics for Professional Accountants (including International Independence Standards) which sets out fundamental principles of ethics for professional accountants, reflecting the profession's recognition of its public interest responsibility. These principles establish the standard of behavior expected of a professional accountant. The fundamental principles are: integrity, objectivity, professional competence and due care, confidentiality, and professional behavior.

The Code provides a conceptual framework that professional accountants are to apply in order to identify, evaluate and address threats to compliance with the fundamental principles. The Code sets out requirements and application material on various topics to help accountants apply the conceptual framework to those topics. Code has different sections which is applicable for members in business and for members in public practice. In addition to which there is International Independence Standards that prescribes the standards for Independence for audit review engagements and Independence for assurance engagements other than audit and review engagements.

A distinguishing mark of the accounting profession is its acceptance of the responsibility to act in the public interest. A professional accountant's responsibility is not exclusively to satisfy the needs of an individual client or employing organization. Therefore, the Code contains requirements and application material to enable professional accountants to meet their responsibility to act in the public interest.

A member in business may be working for the employer, however host of other stakeholders e.g. investors, creditors, employees, business community, government and general public rely on the works performed by him. He may be an employee, contractor, partner, director etc, whatever be the contractual relationship his ethical responsibilities remains the same as a professional accountant.

Professional accountants are required to comply with the legal and regulatory provisions of the jurisdiction they work at all times. As regards the compliance with anti-money laundering (AML) provisions, it comes under the requirement of compliance with the laws and regulations. An accountant has to see depending on the industry he works if there is requirement to regularly report the suspicious activity to the competent authority and the organization meets the requirement. He also has to see that there are procedures in place that prohibits on alerting the relevant parties. Depending on which level he works he should look at consulting the supervisors, colleagues and other authorities as appropriate in resolving the matter.

A professional accountant might encounter or be made aware of non-compliance or suspected non-compliance in the course of providing a professional service to a client. There could be different course of action when responding to non-compliance or suspected non-compliance with: (a) Laws and regulations generally recognized to have a direct effect on the determination of material amounts and disclosures in the client's financial statements; and (b) Other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the client's financial statements, but compliance with which might be fundamental to the operating aspects of the client's business, to its ability to continue its business, or to avoid material penalties. Depending on the industry/unit the accountant is engaged with, the non-compliance with anti-money laundering provisions may become a major non-compliance issue, therefore it is important for the professional accountant in public practice to be aware of the rules regulations relating to the AML and check the compliance of the same and if not, take relevant action.

- b) As per Para 604.5.A1, preparing calculations of current and deferred tax liabilities (or assets) for an audit client for the purpose of preparing accounting entries that will be subsequently audited by the firm creates a self-review threat. And as per Para 604.6, a firm or a network firm shall not prepare tax calculations of current and deferred tax liabilities (or assets) for an audit client that is a public interest entity for the purpose of preparing accounting entries that are material to the financial statements on which the firm will express an opinion.

In the given case, since the requests includes preparation of tax calculations of current and deferred tax liabilities (or assets) that are inhered in the accounting system of the entity, the firm should not prepare such calculations for such audit client.

4.

- a) Eight Star Ltd. has constructed international standard business complex for tourist in core area of Thamel, Kathmandu. Some area of complex is used for providing hotel services and remaining area is rented out to various business outlet for international as well as Nepalese brands. The details of the financial transaction are given below:

Sales revenue for the period:

Particulars	Amount (NPR)
Space Leased Rental Income	40,000,000
Hotel Services, Food, Beverage and Laundry Sales	90,000,000
Tour Package Sold to Foreign Trip Advisor Companies (Out Bound tour package)	15,000,000
Tour Package Sold to Nepali Trip Advisor Companies (In bound tour package)	15,000,000

Details of purchased transaction for the period are:

Particulars	Amount (NPR)
Cost of Civil Construction	140,000,000
Financial Cost (interest during construction)	15,000,000
Electrification & Plumbing	10,100,000
Hotel Equipment's	15,300,000
Elevator, Generator	24,000,000
Vehicles	28,000,000
Vehicle for Managing Director	5,000,000
Office Equipment's	5,500,000
Cost of Diesel & Gas	5,060,000
Cost of High-Speed Internet	830,000
Groceries Purchased for Hotel Operation	6,100,000
Ticket Purchased from Airlines	5,000,000
Cost of National Park Permit for Hotel Guests	1,380,500
Cost paid to VAT not registered Contractor for various Building works	5,300,000
Management Fee	3,000,000

Additional information for the period transactions:

- Cost of Civil Construction (60% of cost is VAT applicable raw materials and remaining is non - VAT applicable raw materials)
- Electrification & plumbing (80% is VAT applicable items, and remaining non -VAT applicable raw materials/ wages)
- Elevator, Generator (all VAT Attractive) (used for Hotel as well as the other businesses located in the building)
- Vehicles (Approved from Department of Tourism) and Vehicle for Managing Director (not approved from Department of Tourism)
- Office Equipment's (used for office of building as well as the Hotel)
- Cost of Diesel & Gas (Fuel used for Hotel Kitchen)
- Cost of High-Speed Internet (used for building and hotel)
- Groceries Purchased for Hotel Operation (75% VAT Applicable)
- Management Fee paid to Foreign Hotel Management Service provider company
- The given amounts are excluding VAT (if applicable).

Required:

10

Calculate the VAT payable/receivable by the M/s Eight Star Ltd. for the period Ashad end 2077. Consider the relevant provision of Value added tax Act, 2052 for answering the question.

- b) Below is the detail of transaction of Sunny Bunny Foods Private Limited for the month of Magh 2077 –

Import Detail:

Import of Raw Material :

- (a) Raw Material Imported : 50 MT (2 Containers)
 (b) FOB Russia Price per MT : USD 500

- (c) Freight till Dry Port (Birgunj) : USD 200 per MT
 (d) Insurance : NPR 400,000 per Container
 (e) Other Incidental Expenses till Dry Port (Birgunj) : NPR 50,000 per Container
 (f) Customs Clearance Expenses : NPR 10,000 per Container
 (g) Local Transportation and Other Expenses : NPR 100,000 Per Container
 (h) Applicable Custom Duty Rate : 10%
 (i) Applicable Excise Duty Rate : 10%
 (j) Raw Material is VAT Applicable
 (k) Consider USD Rate : NPR 120

Import of Packing Material :

- (a) Packing Material Imported : 25 MT (1 Container)
 (b) FOB Russia Price per MT : USD 400
 (c) Freight till Dry Port (Birgunj) : USD 200 per MT
 (d) Insurance : NPR 400,000 per Container
 (e) Other Incidental Expenses till Dry Port (Birgunj) : NPR 50,000 per Container
 (f) Customs Clearance Expenses : NPR 10,000 per Container
 (g) Local Transportation and Other Expenses : NPR 100,000 Per Container
 (h) Applicable Custom Duty Rate : 10%
 (i) Applicable Excise Duty Rate : 10%
 (j) Packing Material is VAT Applicable
 (k) Consider USD Rate : NPR 120

Other Detail :

Opening stock of finished goods : 100 MT Valued at 15,000,000
 Closing stock of finished goods : 25 MT
 Production for the month : 30 MT
 Selling price per MT : NPR 200,000
 Opening stock of Raw Material : Nil
 Closing stock of Raw Material : 10 MT
 Opening stock of Packing Material : 50 MT Valued at 5,000,000
 Closing stock of Packing Material : 40 MT
 Direct Factory Expenses for the Month : Rs 500,000
 Indirect Factory Expenses for the Month : Rs 200,000
 Selling and Other Expenses for the Month : Rs 1,000,000.
 Excise Duty applicable on finished goods @ 5% of cost.
 Company follows weighted average method of stock keeping.

You are required to calculate –

(4+6=10)

- i) Customs Duty and Excise Duty payable at the time of import at customs point, and
 ii) Excise Duty Payable for the month of Magh 2077.

Answer:

- a) Calculation of Taxable and Non-Taxable Sales

Particulars (Output Tax and Ratio of taxable and non-taxable sales)	Total Sales	Taxable	Non-Taxable	Tax
Space leased rental income	40,000,000	-	40,000,000	-
Food, Beverage and Laundry Sales	90,000,000	90,000,000		11,050,000

Tour Package Sold to Foreign Trip Advisor Companies (Out Bound tour package) (Sold at 0% Tax Rate for Export)	15,000,000	15,000,000		-
Tour Package Sold to Nepali Trip Advisor Companies (In Bound tour package)	15,000,000	15,000,000		15,000,000
Total	160,000,000	120,000,000	40,000,000	26,050,000
Ratio	100.00%	75.00%	25.00%	

**Calculation of the VAT payable/receivable by the M/s. Eight Star Ltd for the period
Ashad end 2077**

Particulars	Amount	Tax Paid	VAT to be paid as Reverse Charge (Section 8Ka)	Allowed amount for credit	Remarks
Cost of Civil Construction	140,000,000	10,920,000	7,280,000	8,190,000	i
Financial Cost (interest during construction)	15,000,000	-	-	-	ii
Electrification & plumbing	10,100,000	1,050,400	262,600	787,800	iii
Hotel Equipment's	15,300,000	1,989,000	-	1,989,000	iv
Elevator, Generator	24,000,000	2,816,667	-	2,112,500	v
Vehicles	28,000,000	1,083,333	-	1,083,333	vi
Vehicle for Managing Director	5,000,000	476,667	-	143,000	vii
Office Equipment's	5,500,000	2,383,333	-	1,787,500	viii
Cost of Diesel & Gas	5,060,000	657,800	-	0	ix
Cost of High-Speed Internet	830,000	107,900	-	80,925	x
Groceries Purchased for Hotel Operation	6,100,000	622,700	-	467,025	xi
Ticket purchased from Airlines	5,000,000	0	-	0	xii
Cost of National Park Permit for Hotel Guests	1,380,500	179,833	-	179,833	xiii
Cost paid to non VAT registered contractor for various building works	5,300,000		689,000	0	xiv
Management Fee	3,000,000		390,000	0	xv
Total	269,570,500	22,287,633	8,621,600	16,820,916	
Tax allowed for credit				16,820,916	
Tax collected on sales				13,650,000	
Net Receivable				3,170,916	

Remarks for claim and adjustment

- Civil Construction (60 % of cost is VAT attractive raw materials and remaining is non - VAT attractive raw materials)-For Non-VAT attractive cost capitalized, the Reverse charge VAT need to be assessed and paid. Allowed for credit in the taxable sales ratio.
- No VAT (and reverse charge VAT) applicable for interest during construction.
- Electrification & plumbing (80% is VAT attractive items, and remaining non -VAT attractive raw materials/ wages), for non-VAT attractive cost capitalized, the Reverse charge VAT need to be assessed and paid. Allowed for credit in the taxable sales ratio.
- These are hotel equipment, so all allowed for credit.

- v. Elevator, Generator (all VAT Attractive) (used for Hotel as well as the other businesses located in the building) allowed in the ratio of taxable sales.
- vi. Full amount allowed for credit and Approved from Department of Tourism.
- vii. Only 40% allowed, further the Managing Director allocates the time for building and hotel, allowed for taxable sales ratio.
- viii. Office Equipment's (used for office of building as well as the Hotel), allowed in the ratio of taxable sales.
- ix. Fuel used for Hotel Kitchen not allowed.
- x. Cost of High-Speed Internet (used for building and hotel), allowed in the ratio of taxable sales.
- xi. 75% are VAT Attractive, only that portion allowed.
- xii. Not taxable.
- xiii. Full amount allowed for credit, because the national park permit is for hotel business.
- xiv. For non-VAT attractive cost capitalized, the Reverse charge VAT need to be assessed and paid. Allowed for credit in the taxable sales ratio.
- xv. Management Fee paid to foreign hotel management service Provider Company is subject to reverse Charge VAT need to be assessed and paid, the same is allowed for credit.
- xvi. The amount reverse charge needs to be paid separately.

b)

Calculation of Customs Duty and Excise Duty at Customs Point

Particulars	Import of raw Material		Import of Packing Material	
		Amount		Amount
FOB Price	USD 500*50*NPR 120	30,00,000	USD 400*25*NPR 120	12,00,000
Freight Till Dry Port	USD 200*50*NPR 120	12,00,000	USD 200*25*NPR 120	6,00,000
Insurance	NPR 4,00,000*2	8,00,000	NPR 4,00,000*1	4,00,000
Other Incidental Expenses till Dry Port	NPR 50,000*2	1,00,000	NPR 50,000*1	50,000
Total Assessable Value for Customs		51,00,000		22,50,000
Customs Duty	10%	5,10,000	10%	2,25,000
Assessable Value for Excise Duty		56,10,000		24,75,000
Excise Duty	10%	5,61,000	10%	2,47,500
Total Value of Goods for VAT Purpose		61,71,000		27,22,500

Calculation of Excise Duty Payable for the month of Magh 2077

Calculation of Value of Raw Material Issued

Particulars	Qty	Amount	Particulars	Qty	Amount
Opening Stock	0	0			
Purchase	50	61,71,000	Issue	40	65,52,800
Other Expenses – Customs Clearance		20,000	Closing Stock	10	16,38,200
Local Transportation and Other Expenses		2,00,000			
Total	50	81,91,000	Total	50	81,91,000

Calculation of Value of Packing Material Issued

Particulars	Qty	Amount	Particulars	Qty	Amount
Opening Stock	50	50,00,000			
Purchase	25	22,50,000	Issue	35	34,34,667
Other Expenses – Customs Clearance		10,000	Closing Stock	40	39,25,333
Local Transportation and Other Expenses		1,00,000			
Total	75	73,60,000	Total	75	73,60,000

Valuation of Cost of Production for the month of Magh 2077:

Particulars	Qty	Amount	Remarks
Direct Factory Expenses		5,00,000	
Indirect Factory Expenses		2,00,000	
Raw Material Consumed		65,52,800	
Packing material Consumed		34,34,667	
Total Finished Goods Cost	30 MT	1,06,87,467	

Finished Goods Ledger

Particulars	Qty	Amount	Particulars	Qty	Amount
Opening Stock	100	1,50,00,000			
Production for the month	35	1,06,87,467	Sales	110	2,09,30,529
			Closing Stock	25	47,56,938
Total	135	2,56,87,467	Total	135	2,56,87,467

Calculation of Excise Duty Payable for the month of Magh 2077 :

Particulars	Amount
Factory cost of Goods Sold	2,09,30,529
Excise Duty Liability @ 5%	10,46,526.45
Less : Excise Duty Credit	
On Raw Material	5,61,000
On Packing Material – Not Allowed	0
Net Excise Duty Payable for the month of Magh 2077	4,85,526.45

5.

- a) Golden Trade Concern has received VAT assessment order as per which Company has to pay Rs. 1,000,000 as below –
VAT : Rs. 600,000
Fine u/s 29 : Rs. 150,000
Additional Levy : Rs. 200,000
Interest : Rs. 50,000
Out of this, Company disputes VAT liability of Rs. 400,000 and wants to file appeal for Departmental Review. VAT assessment Order is dated 2077.09.25, and Company received the same on 2077.10.15.

You are required to:

(3+4 =7)

- i) Compute amount to be paid or deposited at the time of appeal.
ii) Advise date within which appeal can be made for Departmental Review as per VAT Act, 2052 along with time extension.

- b) Determine the applicable fine and penalties on the following cases with reference to the Excise Act, 2058 with quoting relevant provision:

7

S.N.	Particulars
1	ABC Brewery Pvt. Ltd. uses duplicate excise stickers on supplying beer manufacture by it.
2	Dinesh Trading Concern imported 30 cartoons of cigarette without obtaining excise license.
3	Rabina Traders sold 40 bottles of whisky without obtaining excise license.
4	One lot of liquor produced by ABC Brewery Pvt. Ltd. are distributed in market but the batch number of such liquor was not mentioned in respective bottle.

- c) Explain the time limit for the following under Custom Act 2064.
- For post clearance audit & inspection.
 - Application by custom agent to Director General against the suspension of the license by Custom Officer.
 - Period for which no demurrage is levied.
 - Application for refund of excess duty paid under customs act.
 - Time limit for payment of Custom Duty which was short paid earlier.
 - Goods deposited in customs godown shall be cleared.

6

Answer:

- a) **Calculation of VAT to be paid or deposited at the time of filing appeal :**

Particulars	Amount
Total VAT Liability	
VAT	6,00,000
Fine u/s 29	1,50,000
Additional Levy	2,00,000
Interest	50,000
Total VAT Liability	10,00,000
Undisputed VAT Liability	4,00,000
Disputed VAT Liability	6,00,000
A. VAT to be Paid – Whole of Undisputed	4,00,000
B. VAT to be Deposited – 25% of Disputed	1,50,000

Time within which VAT Appeal to be filed with Department

- Section 31A(1) of the VAT Act, 2052 provides that appeal to the Department for Departmental review shall be made within 30 days of receipt of notice of VAT assessment. Hence, appeal has to be filed within 2077.11.14, i.e. 30 days from the date of receipt of assessment order.
- Further, section 31A(2) of the VAT Act provides that if the time period specified u/s 31A(1) is expired, then a person can file application for extension of time to the Department within 7 days expiry of deadline of filing application, i.e., application for extension of date for filing appeal has to be made within 7 days of 2077.11.14, and Department pay provide time up to 30 days considering appropriate reasons for filing of appeal.

b)

S.N.	Offence	Applicable Fine/Penalty as per Excise Act, 2058
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1	Use of duplicate excise stickers	Owner of ABC brewery shall be punished with imprisonment for a term not exceeding One year or with a fine in a sum equivalent to the amount in controversy or with both punishments for such offence, and the amount in controversy shall also be seized. (section 16(e))
2	Import of excisable good by Dinesh Trading Concern without obtaining excise license	
3	Sale or store of excisable goods or services without obtaining license	Tax officer may impose fine from Rs. 5,000 to Rs. 15,000. (section 16(4)(b))
4	Omission of retail price, production date and batch number on cigarette, liquor or tobacco related goods by excise license holder	Fine in a sum equivalent to the amount in controversy or Rs. 100,000 whichever is higher. (section 16(4)(b))

c) **The time limit for the various activities under Custom Act 2064 is as per below**

s.no	Particular	Section	Time Limit
1	For post clearance audit & inspection	Section 34(4) of Custom Act 2064	4 years
2	Application by custom agent to DG against the suspension of the license by custom Officer.	Section 56 of Custom Act 2064	35 days
3	Period for which no demurrage is levied	Rule 50 of Custom Rule 2065	7 days
4	Application for refund of excess duty paid under customs act.	Section 75(2) of Custom Act 2064	60 days
5	Time limit for payment of custom duty which was short paid earlier	Rule 57(2) of Customs Rules 2064	15 days
6	Goods deposited in customs go-down shall be cleared	Rule 32(2) Customs Rules, 2065	90 days

6.

a) Describe the mechanism for taxation on "Independent Personal Service" in the light of Double Taxation Avoidance Agreement between the Government of Nepal and the Government of Republic of India. 5

b) Covid-19 Pandemic has serious impact on global Business and Nepal is also affected from 3rd quarter of financial year 2076-077. Are there any provision which provide relief to Nepal's business sector due to COVID 19. Explain details with reference to Finance Act, 2077. 5

Answer:

a) The followings are the mechanism for taxation of Independent personal services under double tax avoidance treaty:

Income derived by an individual who is a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State:

(a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State; or

(b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any period of 12 months; in that case only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

2. The term “professional services” includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, surgeons, dentists and accountants.

b) Yes, there is special section 25 for providing relief from covid-19 as per financial act 2077. According section 25 of Finance Act 2077, special provision for rebate on transaction affected by Covid-19 are as follow;

- Business having turnover up to Rs. 20 lac or profit up to Rs. 2 lacs annually, tax applicable as per subsection 4 of section 4 of Income Tax Act 2058 for financial year 2076-077, 75% rebate on tax applicable. (subsection 1 of section 25 of Finance Act 2077)
- Tax payer paying tax on turnover base, turnover from Rs. 20 lacs to Rs. 50 Lac tax applicable for the financial year 2076-077, 50% rebate on tax applicable. (subsection 2 of section 25 of Finance Act 2077)
- Individual having turnover up to Rs. 1 crore, 25% tax rebate on applicable tax for the financial year 2076.77 as per Income Tax Act 2058. (subsection 3 of section 25 of Finance Act 2077)
- Hotel, travel, trekking, transport or airline service person having turnover up to Rs. 1 crore, 20% rebate on tax applicable for financial year 2076.077 as per Income Tax Act 2058. (subsection 3 of section 25 of Finance Act 2077)

Corporate Law
Suggested Answer

Roll No.....

Maximum Marks - 100

Total No. of Questions - 6

Total No. of Printed Pages - 3

Time Allowed - 3 Hours

Marks

Attempt all questions.

Use separate answer book for each question.

1. Answer the following questions:

a) Kantipur Industry Pvt. Ltd. was incorporated in Kathmandu to manufacture and export quality garments. After certain years of incorporation, the Company Registrar's Office (CRO) cancelled the registration of the company on certain stipulated grounds. Three years after the public notification of the cancellation of registration of the company, some of the shareholders of the company filed an application before the court for the restoration of registration of the company. Now, answer the following questions in the light of the relevant provisions of the Companies Act, 2063:-

10

- i) Under what circumstances may the CRO cancel the registration of a company?
- ii) What process must the CRO pursue before or after cancelling the registration of the Company?
- iii) What happens to the liability and debt of the company after the cancellation of its registration?
- iv) In which circumstance(s) may the court order restoration of the company's registration?
- v) What other conditions must the company fulfill in order to enforce the court's order of restoration of the company?

b) Shripur Bank Limited, a newly established commercial bank is looking for the suitable candidates for the post of Chief Executive Officer (CEO) of the bank. The Board of Directors are considering Mr. RJ Rana as a probable candidate with master degree in rural development and 7 years' experience as senior manager in the Premier Bank Ltd. Chairperson of the bank enquire you about the relevant legal provisions of the Banks and Financial Institutions Act, 2073 in the following issues.

10

- i) What are the qualifications required to be appointed as the Chief Executive Officer of a bank?
- ii) What are the functions, duties and powers of Chief Executive Officer?
- iii) Whether Mr. Rana can be appointed in the post of Chief Executive Officer of the bank.

Answer:

a)

- i) Pursuant to section 136(1) of the Companies Act, 2063, the Companies Registrar's Office (CRO) may cancel the registration of a company in the following circumstances: (0.5 for section and 0.5 mark to each point till three points)

(2)

(a) If the promoter of the company makes an application, showing a reason for the failure to commence the business of the company, and accompanied by the prescribed fees, for the cancellation of the registration of the company:

(b) If the company is in default in submitting to the CRO the returns as referred to in section 80 of this Act or fails to pay the fine as referred to in section 81 of this Act for three consecutive financial years; or

(c) If, based on the proofs received in the course of administration of the company, the CRO has a reasonable ground to believe that the company is not carrying on its business or the company is not in operation.

- ii) Pursuant to section 136(2) of the Companies Act, 2063, if it is required to cancel the registration of company, the CRO shall, prior to the cancellation of registration, give a notice, accompanied by the reason for such registration to the company. *(0.5 for section and 1.5 marks for the other parts)*

While sending a notice to the company as above, the notice shall be sent pursuant to section 136(2) of this Act to the company at its registered office or to any officer of such company if the address of the registered office of such company is not registered with the CRO or if the office of the company is not located at the address registered and to the address of every promoter as mentioned in the memorandum of association of the company if even the address of such officer is not available to the CRO or is not known.

Pursuant to section 136(4) of this Act, a notice given as above shall also be published in a national daily newspaper, as per necessity.

If the company fails to make an application, specifying the reasons that the registration of the company should not be canceled, within two months from the date of receipt by the company of a notice or, despite the making of such application, the reasons specified are not found reasonable, the registration of such company may be canceled pursuant to section 136(5) of this Act.

If the registration of a company is canceled, information thereof shall be given to the concerned directors and shall also be published in a national daily newspaper pursuant to section 136(6) of this Act.

(2 marks)

- iii) Pursuant to section 136(7) of the Companies Act, 2063, if the registration of Kantipur Company Pvt. Ltd. is canceled, and if there exists any kind of liability of the company, the liability of the officer or shareholder of the company shall continue to exist; and nothing contained in this Section shall be deemed to bar the instituting of necessary legal action against them to have such liability fulfilled.

Pursuant to section 136(8) of this Act, the assets, rights, benefits or liabilities held in the name of the company at the time of cancellation of its registration shall devolve on its shareholders in the proportion of their shareholding.

Provided, however, that the title and ownership of any property which has been held by the company as a trustee in favor of any other person shall not devolve on the shareholders.

UYQ

(3)

If any debt to be repaid by or any liability to be performed/discharged by the company of which registration has been canceled pursuant to this Section cannot be settled from the assets, rights, or benefits devolved on the shareholders pursuant to sub-section 136(8) above, the shareholders, directors or officers who were involved in the management of such company and responsible for giving rise to the situation as referred to in section 136(1) above shall personally bear such remaining loan or liability pursuant to section 136(9) of this Act.

As regards to the legal consequence of cancellation of company's registration, sections 136(10) and (11) of this Act, provide the followings:

- (1) A company of which registration is canceled pursuant to this Section shall not be allowed to carry on any business by the name of the same company.
- (2) Following the cancellation of registration of any company pursuant to this Section, the CRO shall return to the shareholders only such property, if any, remaining after deducting therefrom the expenses incurred in the cancellation of the registration of that company.

iv) Section 137 of the Companies Act, 2063 provides the following for the restoration of registration of company of which registration was canceled:- *(0.5 for section and 0.5 mark to each point till three points)*

- (1) In the case of cancellation of the registration of a company pursuant to Sub-section (5) of Section 136 of this Act, where the company or its shareholder or creditor makes a petition, setting out the reasons, to the Court to have the company restored, no later than five years after the date of publication of the notice of cancellation of registration of the company, the Court may, if the following circumstance, order to restore the company and restore its name in the company register:
 - (a) If it appears that the registration of the company was canceled while such company was carrying on its business;
 - (b) If the Court considers it to be just to restore the name of the company for the proper management of the assets and liabilities of such company.
- (2) In the event of restoration of a company by virtue of an order of the Court pursuant to section 137(1) above, the company shall be considered to have been in existence from the date of its registration.
- (3) In issuing an order pursuant to section 137(1) above, the court may issue such orders and make an order to make such arrangements as it may consider appropriate and necessary for restoring the company and all other persons into the *status quo ante* as if the registration of the company were not canceled.

v) Pursuant to section 137(4) of the Companies Act, 2063, where a company is restored pursuant to section 137(1) above, and any fine as referred to in section 81 of this Act is to be paid, the company shall be restored and its name reentered in the company register only after such fine is paid to the CRO.

Where a company of which registration has been canceled pursuant to section 136 of this Act, is restored pursuant to this Section, such company shall have the following property reverted to it:

(4)

- (a) Any property received by its shareholders in such capacity pursuant to section 136(8) above by virtue of the cancellation of registration of the company;
- (b) Where the property as referred to in Clause (a) has already been sold and disposed of, the proceeds of such sale and disposal.

Provided, however, that no property or amount already employed in the payment of debt or liability of a creditor shall be returned.

- i) The chief executive officer of a bank or financial institution is the chief administrator of the bank thereof. Business and day-to-day administration and management of bank or financial institution is under the control of the chief executive officer. *(1 mark for background and 2 marks for two points)*

Sub-section (5) of Section 29 of BAFIA, 2073 has laid down the qualifications of Chief Executive as under-

- Person having attained Master's degree in management, banking, finance, monetary, economics, commerce, statistics, accounting, mathematics, business administration or law.
- Person having work experience of at least ten years as an officer level or above in banking or finance sector, government entity, corporate body, university or an international institution or organization to carry on similar works after having attained bachelor's degree in chartered accountancy or management, banking, finance, monetary, economics, commerce, bookkeeping, statistics, account, mathematics, business administration or law,

- ii) The functions, duties and powers of chief executive are as follows as per the section 30 of the Bank and Financial Institution Act, 2073: *(0.75 to each points=6 marks)*

- (a) To implement the decisions of the Board and supervise and control the activities and transactions of the bank or financial institution, subject to this Act and the memorandum of association and articles of association;
- (b) To prepare annual budgets and action plans of the bank or financial institution and present them before the Board for approval;
- (c) To manage necessary human resources, subject to the personnel bye-laws of the bank or financial institution;
- (d) To implement, or cause to be implemented, the decisions of the General Meeting,
- (e) To operate the institution according to Act and directives of the Rastra Bank and to carry out effective internal control and risks management.
- (f) To submit statements, documents, decisions, etc. to be submitted by the bank or financial institution to the Rastra Bank or any other agency, on time subject to Act, directives of Rastra Bank and memorandum of association and articles of association;
- (g) To operate the institution taking into consist optimum protection of interests of depositors. Share holders and the institution itself.
- (h) To apply appropriate criteria for senior management subject to the policy as determined by the Board of Directors.

- iii) As Mr. RR Rana has not got qualification required as per the provisions stated above, so he is not qualified to be appointed as the Chief Executive Officer of the bank. *(1)*

2. Answer the following questions:

- a) Mr. Bishnu Khadayat, a member of ICAN signed in the minute of Board of Directors of Pokhara Microfinance. He has signed in the minute with his profession title of Chartered Accountant. Latter, the minute is questioned for

(5)

the requirements of the illegal transaction likely to be a crime. In relation to the activity of Mr. Bishnu is there any particular code of conduct to be abided by him? State the power of the Disciplinary Committee regarding the breaches of code of conduct as per the Nepal Chartered Accountants Act, 2053.

7

b) The Public Procurement Act, 2063 requires each public entity to maintain separate roaster of suppliers, builders, consultants, non-governmental organizations and service providers having the qualifications as set under section 10 of the Act according to the nature of public procurement befitting a qualified bidder or proponent. Accordingly, state the qualifications of a bidder in order to obtain a procurement contract under the Public Procurement Act, 2063.

7

c) Co-operative is a kind of institution, where various sectors of local people are integrated by mobilizing the scattered capital and skill of the members thereof to carry out community based economic social and cultural activities for the development of national economy. List out the exemptions and facilities provided to the cooperative societies under the Co-operative Act, 2074?

6

Answer:

a) ICAN Act, 2053 has provided the code of conduct that should be observed by the members of the ICAN. Section 34 of this Act has enumerated the various code of conducts for the member of ICAN. The following conducts are relevant to the activity of Mr. Bikash Bhattarai. (0.5 mark to each point till 6 points =3 marks)

- (1) Members and members holding Certificate of Practice should fully abide by the Nepal Chartered Accountants Act, 2053 and the Regulations framed under this Act.
- (2) One shall not disclose or divulge any information and explanations acquired in the course of professional service to any person other than the employer employing him and the person whom he is compelled by the law to do so.
- (3) Member holding Certificate of Practice should, in order to truly present the financial statement certified by him, clearly indicate all the material facts or any false statements or explanations known to him or to the best of his knowledge.
- (4) Members holding Certificate of Practice should discharge their duties with due care in the course of their profession and shall draw attention of all concerned to all material facts which are or have taken place contrary to the prevailing law and do not comply with generally accepted principles of auditing
- (5) A member holding Certificate of Practice should not accept his appointment as an auditor of an organization without ascertaining that all required procedures for appointment as the auditor under the prevailing law has been duly fulfilled.
- (6) One should have obtained sufficient information prior to give audit opinion.

Powers of the Disciplinary Committee have been provided under Section 14 of this Act, as under:

- (1) A Disciplinary Committee shall be constituted to recommend the Council to take necessary actions after investigation upon complains lodged against any action, contrary to this code of conduct framed under this Act. (1)
- (2) The Disciplinary Committee shall have the authority, similar to a judicial court, in respect of summoning concerned person and investigating evidences and witnesses. (1)
- (3) The Disciplinary Committee shall recommend to the Council, along with its opinion and finding, for necessary action against a member, if found guilty, and the Council

(6)

may, considering such a recommendation, impose any of the following punishment according to the degree of offense:- (2)

- a. Reprimanding,
 - b. Removing from the membership for a period up to five years,
 - c. Prohibiting from carrying on the accounting profession for any particular period,
 - d. Cancellation of the Certificate of Practice or membership.
- b) Pursuant to section 10 of the Public Procurement Act, 2063, a bidder shall have to have the following qualifications in order to obtain a procurement contract:-

(0.5 mark for section. 1 marks each for 6 points)

- (1)(a) In the case of a bidder, the qualification criteria set forth in the bidding documents or where prequalification proceedings have been conducted for procurement, the qualification criteria set forth in the prequalification documents , and
- (b) In the case of a consultant the qualification criteria set forth in the documents relating to proposals.
- (2) In setting forth qualification criteria pursuant to Sub-section (1) above in the bidding documents or documents relating to proposals, professional and technical qualifications, equipment availability, past performance, after-sale service arrangements, availability of spare parts, legal capacity, financial resources and condition, punishment for having committed professional offenses and similar other criteria may be set forth.
- (3) In setting forth the criteria pursuant to Sub-section (2) above, no provision can be so made as to allow only a particular class of construction entrepreneur, supplier, consultant or service provider to participate or to prevent any particular class of construction entrepreneur, supplier, consultant or service provider from participating in the procurement process.
- (4) Bids, pre-qualification proposals and consultancy service proposals shall be evaluated only in accordance with the criteria set forth in the bidding documents, pre-qualification documents and in the documents relating to proposals, respectively, and such criteria shall equally be applicable to all bidders or proponents without any discrimination.
- (5) Notwithstanding anything contained elsewhere in this Section, no qualification requirements shall be prescribed for the procurement of a construction work the cost estimate of which is less than twenty million rupees.
- (6) The Public Entity may disqualify a bidder or proponent at any time if it finds that the statement submitted by such bidder or proponent concerning the qualifications was factually false or substantially incomplete.

Provided that minor errors can be corrected by seeking information pertaining thereto from the concerned bidder or proponent. (0.5)

- c) Section 78 of the Cooperative Act, 2074 grants the following exemptions and facilities to a cooperative society: (1.5 to point one and 0.5 to each other points till 9 points)

- (1) Notwithstanding anything contained in the prevailing law, the cooperative society will be entitled to the various exemptions and facilities under the Section 78(1) of the Act as follows:
 - (a) The cooperative society will not be required to have registration passed of any instrument relating to its transaction, other than an instrument relating to immovable property.

(7)

(b) No revenue stamp fee or registration fee will be charged on a document or any kind of instrument related with the purchase and sale of an immovable property as carried out for the construction of its office building in the course of providing service by the cooperative society. However, revenue stamp fee or registration fee will be charged on a document or any kind of instrument related with the purchase of land and other immovable properties for the purpose its business.

And also that, where the land and immovable properties purchased with exemption of revenue stamp fee or registration fee as per the exemption facilities, is sold without being used by it, the exemption charges of registration fee enjoyed by it, is required to be returned.

(c) No charges will be levied on its loan investment or in the registration of pledged land which is received as guarantee.

(2) Notwithstanding anything contained in the prevailing law, no income tax will be levied on the sum allotted for the reserve fund as per Sec. 68(2)(a), the amount allotted as protection fund under Section 69(2) and amount allotted as cooperative promotion fund as per Sec. 70(2) of this Act. Provided that, it will be levied tax pursuant to the prevailing law where an amount is received by the member from the secured capital redemption fund,.

(3) Government of Nepal may, by a notification in the Nepal Gazette and pursuant to the prevailing law, exempt fully or partly from chargeable customs tariff or sales tax or VAT on such machineries, industrial and agro-machines, equipment, spare parts, raw materials, office equipment and means of transport as are imported by a cooperative society for its use.

(4) Government of Nepal may, by a notification in Nepal Gazette and pursuant to the prevailing law, exempt fully or partly from chargeable excise duty or value added tax on the goods produced by a cooperative society for this purpose.

(5) Government of Nepal may, by a notification in Nepal Gazette and pursuant to the prevailing law, exempt fully or partly from export tax on the goods produced by a cooperative society and provided export cash grant as given to other industries.

(6) A cooperative society doing industrial business will also be provided such other exemptions, facilities and protection as the industries are entitled pursuant to the law, in addition to the exemptions mentioned as above.

(7) Government of Nepal or Provincial government or local bodies may, exempt fully or partly from any tax in the industry, or cooperative agriculture carried by marginalized group or dalit or by the backward class on the basis of their skill or labour under the self employment promotion scheme.

(8) Government of Nepal may provide seedling grant or loan by fixing at low interest rate facilities for transfer of ownership of sick public industries or to handle such industries by the labours themselves under the cooperative scheme or exempt tax as an encouragement for transfer of ownership in a reasonable way for helping them.

(9) Government of Nepal may, by a notification in Nepal Gazette provide fully or partly exemption facilities in the land acquisition charges or payment of the same or VAT and other taxes, in cases of industries intended to operate in the specific industrial cooperative village with market place policies under the participation of shares scheme.

(10) While providing the exemption and facilities under this provision, it is required to follow the procedures as prescribed thereof.

3. Answer the following questions:

- a) Mr. Kim, a South Korean national, want to invest in Nepal for the establishment of industry related to production of explosive materials which can be used for rock breaking in road and tunnel construction works. As there is high construction works of road in remote mountainous area, Mr. Kim observed the immense scope of such industry and beneficial to Nepal as well. He wants your advice whether such industry can be established under the

(8)

- Foreign Investment and Technology Transfer Act, 2075. Advise him is there any industry or business restricted for the foreign investment in Nepal. 7
- b) Mr. Ramananda Jha has a current account in Kabilas Branch of XYZ Bank Ltd. for two years. Recently, the Branch Manager of bank came to know that Mr. Jha is the central committee member of a political party called Janakalyan Nepal Party. Branch manager wants to know what he should do in this connection as per the Assets (Money) Laundering Prevention Act, 2064. Advise him. 7
- c) State the provisions regarding classification of industries as per the size and investment under the Industrial Enterprises Act, 2076. 6

Answer:

- a) As per section 3 of the Foreign Investment and Technology Transfer Act 2075, Foreign Investor may make investment in any industry and receive benefit (Interest, dividend) from such investment. (0.5 for section)

However foreign investment shall not be allowed in any industry prescribed in annexure of the Foreign Investment and Technology Transfer Act 2075. (1)

Accordingly, following industry or business restricted for Foreign Investment (Negative List):
(0.5 mark to each point till nine points =4.5 marks)

- Primary Agriculture sectors such as fish farming, animal husbandry, horticulture, milk business and others
- Micro and cottage enterprise.
- Personal Service Business (such as Hair saloon, Tailoring, Driving etc)
- Arm and ammunition industry, industry producing biological and chemical weapons, industries related to explosive, gun powder, radioactive materials, atomic energy.
- Real estate businesses (excluding construction industries), retail business, internal courier services, local catering services, money changer, remittance services.
- Tourism based travel agency, trekking agency, expedition service provider, home stay and rural tourism.
- Mass media business (such as newspaper, radio, TV and online news), movies of national language.
- Business and organizations providing management, accountancy engineering and legal consultancy services and language training, music training and computer training
- Business having more than 51% foreign investment in consultancy services.

As the industry related to production of explosive material is Industry restricted for Foreign Investment in Nepal, Mr. Kim cannot establish such industry under Foreign Investment and Technology Transfer Act, 2075. (1)

- b) Section 7B of Assets (Money) Laundering Prevention Act 2064 makes special provision relating to identification of politically exposed person.

Reporting Entity shall establish a risk management system to identify whether a customer, person seeking to be customer or a beneficial owner of a customer or transaction is politically exposed person. (1)

Reporting Entity, while evaluating as above shall adopt the following additional measures in establishing business relationship or transactions if it finds the customer or beneficial owner is either a foreign politically exposed person or a domestically exposed person or international politically exposed person evaluated to be of high risk: (1 mark for each points=5marks)

(9)

- a. To obtain approval from senior management official while establishing a business relationship.
- b. To acquire approval from senior management official to continue the business relation with an existing customer if he is identified as a politically exposed person.
- c. To take all reasonable measures to identify the source of amount, fund and property of such customer or beneficial owner.
- d. To provide ongoing monitoring of such customer and the business relationship.
- e. To apply Enhanced Customer Due Diligence.

In this case branch manager of the Kabilas Branch of XYZ Bank Ltd should acquire approval from senior management official to continue the business relation with Mr. Ramananda Jha, who is recently identified as a politically exposed person. (1)

- c) Chapter-3 of the Industrial Enterprises Act, 2076 prescribes the provision regarding classification of industries. (1 for background)

The Act prescribes the provision regarding general classification of industries on the basis of:

1. Size of fixed asset investment, and
2. Nature/sector of business.

Thus the Act continues the general classification of industries based on; (a) size of investment on the fixed assets, by changing the terms of threshold fix assets which have been detailed in ANNEX- I. as follows:

According to Section 17 (1) Classification of Industries on the size of the investment have been made as follows:

- a. Micro entrepreneur/Industries:* Except industries mentioned in Schedule I required to obtain permission, following industries will be considered as micro entrepreneur/industries: (2 mark)

- With fixed capital up to twenty lakh rupees except land and house
- Industries run and managed by the proprietor himself
- Not exceeding nine employees including proprietor
- Having less than Ten million rupees transaction annually
- Machines, equipment or applying electrical energy having capacity less than 20 kilowatts

- b. Cottage Industries:* Following industries will be considered as Cottage industries: (1.5 mark)

- Traditional skill and technology based industries
- Labour intensive and local resources and local technology and culture related industries
- Industries which have been using machines equipment's or up to 50 kilowatts of electricity
- Industries prescribed in Schedule II

- c. Small Scale Industries:* It refers to the industries other than micro and small industries with fixed capital up to 150,000,000 (One hundred Fifteen Million rupees) (0.5)
- d. Medium Scale Industries:* It refers to the industries with fixed capital more than From 150,000,000 (One hundred Fifteen Million rupees) to 500,000,000 (Five Hundred Million rupees) (0.5)
- e. Large Scale Industries:* It refers to the industries having fixed capital more than 500,000,000 (Five Hundred Million rupees) (0.5)

4. Answer the following questions:

- a) Most of the developed and developing countries where mutual funds are popular have regulated this business through their enabling laws. In Nepal, the Securities Act, 2063 has introduced this business for operation under the framework of collective investment scheme. A Nepalese financial entity, 'M' wants to run a mutual fund as the scheme manager and asks your advice in the following issues. Advise him as per the Securities Act, 2063.
- i) What is collective investment scheme? 2
- ii) How 'M', the scheme manager, can obtain permission for operating this business? Are there any restrictions therein? 4
- iii) What are the requirements to be fulfilled by the scheme manager to operate this business upon obtaining the permission? 2
- b) Nepal Development Bank wants to get insolvent but it has no idea how to proceed with. It needs to get appropriate information as to the relevant law and procedure, particularly, whether it has to get prior approval to institute insolvency proceedings to the court and what other legal requirements has to be fulfilled for this purpose. Give your opinion to the bank in the light of the Insolvency Act, 2063. 7

Answer:

- a)**
- i)** Pursuant to section 2(w) of the Securities Act, 2063, "Collective investment scheme" means such an investment fund, unit trust or similar other participatory fund management program as specified by Nepal Securities Board (Board), from time to time as may be operated by a scheme manager in accordance with this Act in order to distribute returns to, the participants of the concerned program proportionately, accrued from the efficient investment service on saving investment amount which has been undertaken in custody of the manager and so mobilized that various persons or bodies that have participation in it. (2)
- ii)** Section 71 of the Securities Act, 2063 requires the Scheme Manager 'M' to obtain permission before operating a Collective Investment Scheme, as this section restricts: (0.5 mark for section)
- (1) No one shall operate a collective investment scheme or carry out or cause to be carried out, any of the following acts without obtaining a permission from the Board pursuant to this Act:- (0.5 mark to each point = 1 marks)
- (a) To make an advertisement making an invitation to participate in the collective investment scheme or to make an offer containing any kind of information for participating in such a scheme whether directly or indirectly,

- (b) To provide opinion, advice or consultation to anyone to participate in the collective investment scheme.
- (2) Anyone who contravenes Sub-section (1) above shall be deemed to have committed an offense referred to in this Act.

The Board may grant permission to operate collective investment scheme pursuant to section 72 of this Act as under: *(0.5 mark to each point = 2.5 marks)*

- (1) The scheme manager shall, prior to operating the collective investment scheme to be managed and operated by him/her, make an application to the Board in such format and accompanied by such details and fees as may be prescribed in order to register such scheme with the Board and obtain permission to operate the same.
- (2) If an application is received pursuant to Sub-section (1) above, the Board shall, if it considers appropriate to grant permission upon conducting necessary inquiry into the matter, register the collective investment scheme and give permission to operate it within ninety days from the date of receipt of such an application.
- (3) If, in conducting an inquiry in relation to the registration of a collective investment scheme and granting a permission to operate it pursuant to Sub-section (1) above, any notice, description, information or documents appear necessary, the Board may demand such notice, description, information or documents from the concerned scheme manager. The Board shall not grant permission to operate the collective investment scheme unless it receives the notice, description, information or documents so demanded.
- (4) In registering a collective investment scheme and in granting permission to operate it pursuant to Sub-section (2) above, the Board may give permission in a manner that a certificate of participation or a proof thereof is to be given to a participant.
- (5) In granting permission to the scheme manager to operate the collective investment scheme pursuant to this Section, the Board may specify necessary terms and conditions in relation to the operation of the collective investment scheme and the issue of the certificate on participation. The Board may make necessary modification or alteration in the terms and conditions so specified.

iii) Operation of collective investment scheme has been provided by section 73 of this Act as under: *(0.5 mark to each point = 1 mark)*

- (1) The scheme manager may, with a view to operate a collective investment scheme, and upon considering the needs and interests of participants, operate the collective investment scheme of one or several types and by one or several names as prescribed.
- (2) The scheme manager shall, prior to operating any scheme pursuant to Sub-section (1) above, make an agreement with the depository as prescribed.

Other provisions relating to operation of collective investment schemes are provided by section 75 of this Act as under: *(0.5 mark to each point = 1 mark)*

- (1) Other provisions and operational procedures required to be made and followed for the operation of a collective investment scheme to be operated by a scheme manager in consonance with the interests of participants shall be as prescribed.
- (2) The regulation shall contain ten different matters in relation to such scheme.

(3) In making the regulation incorporating the provisions referred to in Sub-section (1) above, in relation to the operation of the collective investment scheme, such regulation may provide for different provisions for different types of collective investment schemes.

- b) Nepal Development Bank in order to get insolvent, has to fulfill certain legal requirements under the Insolvency Act, 2063. In pursuance to section 3 of the Insolvency Act, 2063, save as ordered by the Commercial Bench of the concerned High Court (Court), no person shall commence insolvency proceedings against any company. *(1 for the background)*

As a rule, where it is required to institute insolvency proceedings against any company, any of the following persons may make an application to the above Court in the prescribed form for the institution of such proceedings pursuant to Section 4(1) of this Act: *(0.5 to each points =3 marks)*

- (a) A company itself which has become insolvent;
- (b) Out of the total creditors of a company which has become insolvent, at least ten percent creditor or creditors who has or have lent money;
- (c) Shareholder(s) that has or have subscribed at least five percent of shares, out of the total shareholders of a company;
- (d) Debenture-holder(s) that has or have subscribed at least five percent of debentures, out of the total debenture-holders of a company;
- (e) A liquidator who has been appointed to liquidate a company; or
- (f) In the case of a company that carries on any specific type of business set forth in Section 8 of this Act, a body authorized to administer and regulate such business.

Yes, in pursuance to section 4(1)(a) of this Act, in order to get insolvent Nepal Development Bank itself shall apply to the Court in the prescribed form for insolvency proceedings. Notwithstanding, anything contained in section 4 above, Nepal Development Bank carrying on banking and financial business shall obtain prior approval of Nepal Rastra Bank (NRB) for applying to the Court in order to institute insolvency proceedings pursuant to section 8(1)(a) of this Act. Pursuant to section 8(2) of this Act, a copy of such NRB approval must be accompanied to the application filed before the court under section 4(1) of this Act.

(1)

Further, pursuant to section 4(3) of this Act, the application to be made pursuant to section 4(1) above shall be accompanied by the reason for making the application, short description of the financial condition of the company and the evidence supporting the fact that the company has become insolvent and the following details as well: Where Development Investment Bank, itself which has become insolvent makes such application shall under section 4(3)(a) of the Insolvency Act, 2063 supply the following details along with the application: (1) a document certified by the Board of Directors of the company, mentioning that the company has become insolvent; (2) a special resolution adopted by the Board of Directors of the Company to institute the insolvency proceedings pursuant to this Act; (3) Certified copies of the balance sheet and audit report of the company available at the time of making application for the institution of insolvency proceedings. *(1)*

Nepal Development Bank which claims it to be insolvent shall be deemed to have become insolvent once the general meeting of the shareholders of the company adopts a resolution that the company has become insolvent or a meeting of the Board of Directors of the Company makes such decision under section 7(1)(a) of the Act save as otherwise proved. (1)

5. Answer the following questions:

(3×5=15)

- a) State the formation of disciplinary committee and the powers vested on it under the Nepal Chartered Accountants Act, 2053.
- b) Explain the regulatory power of Nepal Rastra Bank under the Nepal Rastra Bank Act, 2058.
- c) State the legal provisions as to the corporate social responsibility (CSR) under Industrial Enterprises Act, 2076.

Answer:

- a) Section 14 (1) of the Nepal Chartered Accountants Act, 1997, says - there shall be a Disciplinary committee as follows to inquire into a complaint, in case anyone lodges the complaint in the Institute that any Member or practicing Accountant has done any act and action contrary to Act or the Regulations or Code of Conduct framed under this Act or the Institute receives such information, and then recommend the council for necessary action. (2 marks for formation & 3 marks for powers)

The committee shall be constituted as follows:

- a. A fellow chartered accountant designated by the council from amongst the councilors- Chairman
- b. Three persons nominated by council from amongst the councilors- Member
- c. Two persons nominated by council from the members- Member
- d. One person nominated by the Auditor General - Member

Notwithstanding anything contained above at a meeting to be held to inquire into a complaint claiming that the chairman or any member of the Disciplinary committee has done any act and action contrary to this Act or the Regulations, Bye-laws or code of conduct framed under the Act and to make recommendation to the council for necessary action, such a chairman or a member shall not be entitled to take part and cost a vote at the meeting.

The Disciplinary committee shall have the same powers as are vested in the court in respect of issuing an order to the concerned person, receiving evidences and examining witnesses.

The Disciplinary committee shall recommend to the Council along with its opinion and finding for necessary action against a members or practicing Accountants found guilty from its investigation, and the council may, considering such a recommendation impose any of the following punishments on a concerned members or practicing accountants, according to the gravity of the offence.

- a. Reprimanding
- b. Removing from the membership for a period not exceeding five years.
- c. Prohibiting from carrying on the accounting profession for any specified period.
- d. Cancelling the certificate of practice or membership.

- b) Section 79 of Nepal Rastra Bank Act, 2058 mentions about the regulatory power of the bank which are as follows:

(1) The Bank shall have full powers to regulate the functions and activities of commercial banks and financial institutions. (0.5)

- (2) For the purpose of the regulation under Sub-section (1), the Bank may frame rules and bye-laws on the matters which the Bank deems appropriate and issue necessary order, directives and circular and it shall be the duty of the concerned commercial bank and financial institution to abide by such Rules, Bye-laws, order, directives and circular. (0.5)
- (3) The Bank shall issue appropriate directives to commercial banks and require them to submit the following particulars:- (1)
- (a) Its balance sheet accounts, off balance sheet commitments, statement of income and expenditures and their ratio among accounts or items.
 - (b) Prohibitions, restrictions or conditions concerning specific types or forms of credit or investments, or of credit or investments, forms of commitments of a risk-bearing nature which are not matching as to maturity of assets and liabilities and off-balance-sheet items, foreign currency, spot or advance rate of interest, swap, option or similar instruments or access to the payments system through electronic or other means.
 - (c) Other particulars and documents prescribed by the Bank.
- (4) Bank may issue necessary directives to commercial banks on the following matters and require to submit particulars on the following subjects:- (1)
- (a) Books and accounts, profit and loss account, balance sheet and off-balance-sheet transaction and commitment, statement of income and expenses and their ratio among accounts or items.
 - (b) Prohibitions, restrictions or conditions concerning specific types or forms of credit or investments, loan and investment in excess of the ceiling prescribed by the Bank, risk bearing commitment, position of foreign exchange, payment and electronic and other means of payment.
 - (c) Other particulars and documents prescribed by the Bank.
- (4a) For the purpose of preventing financial investment in the money laundering and terrorist activities, the Bank can give necessary directives to the commercial banks and financial institutions regarding providing financial information unit established as per existing law relating to money laundering prevention, knowing the customers and classifying and managing the risk of the customers, the description of the limit including money transfer, deposit, or doubtful transaction. (0.5)
- (5) The Bank shall have the following powers with regard to commercial banks and financial institutions:- (1.5)
- (a) To enforce authority and responsibility granted under this Act and any other Act enacted for licensing, supervising and regulating commercial banks and financial institutions and to revoke the license of commercial banks and financial institutions and to take over or to provide in trusteeship the commercial banks or financial institutions which have been declared insolvent or are on the verge of insolvency;
 - (b) To investigate or inspect, or supervise or to cause to investigate, inspect or supervise by any official of the Bank or the person designated by the Bank the books and accounts, records, documents or register of commercial banks or financial institutions in order to find whether or not any commercial bank or financial institution has conducted business and transaction in accordance with the provision made under this Act or the Rules, Bye-laws framed thereunder and an order or directive issued thereunder;
 - (c) To issue order to the member of the Board of Directors, official or employee of any commercial bank or financial institution to provide necessary information about the bank or institution in cases where it is necessary to inspect and supervise the transaction of such bank or financial institution.
- c) Section 54 of Industrial Enterprises Act, 2076 had made provision for the allocation of fund for Corporate Social Responsibility (CSR). (1 mark to Section)

Following industries are required allocate at least 1% of the annual net profit to be utilized towards corporate social responsibility. (1.5 mark to each point)

- (i) Medium industries
- (ii) Large industries; and
- (iii) Cottage industries and small industries having annual turnover more than NPR. 150 Million.

The fund created for CSR is to be utilized in the prescribed sector on the basis of annual plans and programs. (0.5)

The progress report of the utilization of the fund for CSR is required to be submitted to the relevant government authorities within six months from expiry of the financial year. (1)

Amount allocated for Corporate Social Responsibility (CSR) shall be allowed to be deducted as expenditure for income tax purpose. (1)

6. Answer the following questions:

- a) List out the documents amounting to have entered into a written agreement under the Arbitration Act, 2055. 4
- b) How is the fund of a Financial Mediator Institution created? 3
- c) What do you mean by the Foreign Currency and Convertible Foreign Currency under the Foreign Exchange (Regulation) Act, 2019? 3

Answer:

- a) As per the section 2(a) of Arbitration Act, 2055 Agreement means a written agreement reached between the concerned parties for a settlement through arbitration of any dispute concerning any legal issue that has arisen or may arise in the future under a contract or otherwise. (1 for section and background)
For the purpose of this clause, the concerned parties shall be deemed to have entered into a written agreement in case any of the following documents exists: (1 mark to each point till three points)
 - 1. Any contract containing provisions for arbitration or any separate agreement signed in that connection.
 - 2. Letter, telex, telegram or telefax message or any other similar messages exchanged through telecommunication media whose records can be maintained in written form, between the concerned parties which provide for referring their dispute to arbitration.
 - 3. In case any party has presented a claim for referring any dispute to arbitration and the objective of that claim submitted by the party objecting to that claim without rejecting the proposal for referring the dispute to arbitration.
- b) Pursuant to sub-section (1) of section 24 of the Financial Mediator Act, 2058, the institution shall have a separate fund of its own, and the following amounts shall be credited to the fund: (1 mark to every two points)
 - (a) Amount received from the Government of Nepal or native or foreign organization, institution etc. as a grant or loan,
 - (b) Amount received upon collecting the micro-savings,
 - (c) Amount received from a commercial bank or financial institution,
 - (d) Amount as prescribed out of the fees received from the members of the Association,
 - (e) Amount of service charge received in consideration for the service provided by the institution,
 - (f) Amount including interest, fee received from the micro-credit.
 - (g) Amount received from any other source.

- c) As per section 2(b) of Foreign Exchange (Regulation) Act 2019 'Foreign Currency' means any currency other than Nepalese currency and this term also includes *(1 marks for each two points = max 2 marks)*
- special rights to draw funds (Special Drawing Rights) from International Monetary Fund,
 - the Asian Currency Unit,
 - the European Currency Unit and
 - such other instruments as may be prescribed by the Nepal Rastra Bank by publishing and broadcasting a public notice.

Pursuant to section 2(c1) of this Act, 'Convertible foreign currencies' means any foreign currencies as may be designated as Convertible foreign currencies by the Nepal Rastra Bank by publishing and broadcasting a public notice. *(1)*