Going Public on Hydropower: Regulatory Framework for Issuance, Transfer and Sales

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Presentation Content

- Current Scenario
- Legal Provisions
- Issues
- Opportunities
Public Issuance of Hydropower

- Amount of Public Issue – Rs. 11.55 billion (from 2004 to November 2016)
- Hydropower companies floating shares to public – 18
- Hydropower companies with IPO on pipeline – 6 worth Rs. 35mil.
- Status of Public Issue in Hydropower in last 3 years:

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<tbody>
<tr>
<td>Number of Public Issue</td>
<td>4</td>
<td>3</td>
<td>7</td>
<td>(25.00)</td>
<td>133.33</td>
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<td>Amount of Public Issue (In Rs. Billion)</td>
<td>1.41</td>
<td>4.05*</td>
<td>2.69</td>
<td>187.23</td>
<td>(33.58)</td>
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*IPO of Rs. 3.6 billion by Upper Tamakoshi Hydropower Ltd. alone
In last 3 years, there is increasing trend in issuing shares of hydropower companies to public (14 issuance of Rs. 8.59 billion in last 3 years in comparison to 4 of Rs. 2.96 billion in previous 10 years). Approx. 75% (in terms of amount) of total issuance has been done on last 3 years.

By amending Securities Registration and Issue Regulations, 2064, SEBON introduced provision to provide share to public residing in the affected area on 2067 and till date shares worth Rs. 1.93 billion has been issued to public of industry affected area.
The registration and issuance of securities is being guided by Securities Registration and Issue Regulations, 2073. The major provisions (with special focus on real sector) are:

- Securities to be registered with SEBON before issuance of the securities
- Documents required for registration of securities are –
  - MOA and AOA for companies established under Companies Act
  - Operating Regulation or Bylaws of institutions operated under special act
  - Board Minute
  - Power of Attorney given by Board of Directors to register securities
  - Audited Financial report of latest fiscal year
- SEBON, upon receiving the application, shall examine and information and documents and shall register the securities within seven working days if the Board deems appropriate to register.
A body corporate shall issue and sale securities by using letter or electronic means targeting to a maximum of fifty investors through the use of circular method and the body corporate shall be required to have obtained the resolution of the general meeting and target the sale of the securities to different associations, institutions, persons or institutional investors designated to be qualified by the Board.

If a Corporate Body intends to sale and distribute its securities to more than fifty persons at a time, it shall be required to make public issuance of securities.

The corporate body is required to issue at least 10% and not more than 49% of its issued capital unless otherwise prescribed by the regulating body related with the concerned business.

The body corporate can set aside up to ten percent of its issued capital for the people residing in the area affected by the industry or project.

**Explanation:** For the purpose of this Regulation "Affected Area" means the affected area as mentioned in the report of environment impact assessment of the industry established.
Provisions related to issue of securities (Contd…)

Other conditions:

- The Company is required to complete one year of initiating necessary works required for operation of business under its objectives.
- Completion of Audit and Annual General Meeting as per the regulations.
- If the Corporate Body has to obtain approval, license or consent from anybody pursuant to the prevailing laws, it is required to have obtained such approval, license or consent.
- Have purchased or managed through other means, the land required for the Corporate Body and have initiated construction works of factory building, office building, warehouse and other necessary amenities.
- If it is required to select the manufacturing technology and purchase necessary mechanical equipment required for the industry, should have initiated the purchasing procedure.
- Should have executed of Issue and Sales Manager related to public issue.
- Should have agreed to maintain the loan and capital ratio of the Company throughout the project construction period as it is prescribed by the Securities Issuance Directives.
The share amount as agreed by the promoters should have been paid in full.

Should have concluded financial closure for the construction of the project.

If corporate body is manufacturing hydropower, it should have concluded Power Purchase Agreement and have called tender for construction of Powerhouse and other infrastructure.

The shares set aside for the public issuance should have been underwritten as prescribed in the Securities Issuance Directives.
Policy related to rights and further public issue of securities......

- SEBON has just passed a policy regarding rights issuance and further public offerings of real sector companies. Companies have to comply with the conditions set forth before rights and FPO issuance.
- Some Highlights are:
  - Clear Financial and Strategic Plan regarding the uses of the money collected from the rights issuance should have been approved from the AGM.
  - Rights Issuance two years after IPO.
  - Submit Financial Closure or Letter of Intent from financial institution.
  - Have obtained such approval, license or consent if the Body corporate has to obtain approval, license or consent from anybody pursuant to the prevailing laws.
  - Have purchased or managed through other means, the land required for the Body corporate and have initiated construction works of factory building, office building, warehouse and other necessary amenities.

**Introduction of ASBA system for IPO application**

Hassle free mechanism for IPO.

This facilitates the distribution of shares all across the country.
Transfer Sale and Exchange

Shares can be traded through the stock exchange or the OTC market of NEPSE. Currently, NEPSE is working on upgrading its trading system to facilitate online trading and trying to mechanize the over-the-counter market.
Recent Development

**Introduction of ASBA system for IPO application**
- Hassel free mechanism for IPO
- This facilitates the distribution of shares all across the country.

**Mandatory DP account for share application and trading.**
**Mandatory bank account while opening DP account.**
Issues of Public Issuance of Hydropower

- Lack of corporate governance.
- Weak compliance to reporting requirements.
- Lack of effective and independent regulatory body of hydro sector in Nepal. Sector having regulatory body like BFIs, Insurance are comparatively more transparent.
- Confusion among investors about ownership transfer to government after certain period of operation of hydropower project.
- Investment Centered on Capital Gain Rather than Company Returns
- Three years lock in period from the date of allotment of shares to the local after which they sell their shares and put additional demands to the company.
Opportunities of Public Issuance of Hydropower

- The government has declared a National Energy Crisis Reduction and Electricity Development Decade (2016-2026) with an aim to end the current power outage within three years and develop the hydropower sector.

- SEBON, through different policy measures and effective regulations, is now facilitating the flow of funds from general public to hydropower sector.

- Banks are made mandatory, through monetary policy, to invest 12% of its total loan and advances to hydropower and agriculture sector.

- Private sector investment is increasing in this sector.

- Public interest on investment in hydropower sector is highly positive. The hydropower IPOs are oversubscribed by 100 folds in an average.

- Appropriate investment opportunities very less for general public.

- High liquidity in the market.
Opportunities of Public Issuance of Hydropower....

- Bank based financing more than equity based financing in hydro sector in the past but in last 2-3 years there is increasing trend of equity financing in hydro sector.
- Public participation on IPOs of hydropower is very encouraging in Nepal.
THANK YOU