

# Sebi shocker for law firms handling IPOs

Offer papers a key marketing tool for lawyers at present

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**THE SECURITIES AND** Exchange Board of India (Sebi) is nudging investment bankers to exclude names of legal counsel who are not directly advising a company in an initial public offering (IPO) from the offer documents.

The regulator recently communicated this to bankers through observation letters and informal advisories, said three people familiar with the matter.

Investment bankers are supposed to file a certificate with Sebi that they have done their due diligence on the company. Since bankers are not legal experts, they appoint lawyers on their behalf to do the legal diligence.

Apart from counsel advising the company, large offerings also have a domestic and an international legal counsel (ILC) advising the banker, as well as counsel advising the selling shareholders.

Currently, Issue of Capital and Disclosure Requirements (ICDR) rules say offer documents have to include names of legal counsel to the issuer, but are silent on naming other counsel. Sebi, which otherwise has no direct oversight on lawyers and cannot take action against them for erring on due diligence on the issuer or on drafting documents, now seems to have taken a more rigid view.

"It is a very weird interpretation that the regulator has taken. More disclosures are always better as long as the information is not factually

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incorrect. If there are three counsel involved in a deal, I don't see any reason why that shouldn't be disclosed. My sense is that one or two law firms could have persuaded the regulator to take this decision to dissuade competition in the space," said a lawyer.

Continued on Page 6

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The fact that multiple lawyers have reviewed the offer document can actually be deemed to be material information to investors, the omission of which could make bankers and company liable, said experts.

The move would be a blow to law firms as the IPO offer document is their primary marketing tool and the chief source of information for those compiling league tables. Other than IPOs, Sebi's interpretation may impact rights issues as well in future, said market observers.

Lawyers in India are prohibited from marketing their work by the Bar Council of India as well as the Advocates Act. Players like Chambers & Partners, India Business Law Journal and other ranking platforms use the publicly available data to determine the top counsel for volume and value. The regulator's stance also contradicts US laws, which require names of law firms involved in a public offering to be specifically disclosed in the offer documents.

"There will be no authoritative source for compiling the league tables and law firms may have to increasingly rely on social media or news coverage to publicise the deals they were part of, which can create a problem of its own," said an industry official. "International lawyers may now give a qualified opinion to bankers instead of a clean one, which can create a big issue for banks from a compliance point of view."

Sebi cannot pass an order or take action against errant law firms as they do not interface with the investors or the regulator, said experts. This is unlike in the case of auditors, which have to sign financial statements included in the offer document and have been hauled up by Sebi in the past. The bankers, however, can sue the lawyers for failing on due diligence or furnishing incorrect information.

"Sebi does not have a direct oversight on law firms nor is it planning to create one because doing so would amount to getting into totally uncharted and difficult territory. But the regulator would like law firms involved with IPOs to be directly or indirectly responsible for what they do," said a senior industry official.

An email sent to Sebi did not immediately get a reply.

The recently concluded issue of Mankind Pharma had Shardul Amarchand Mangaldas as legal counsel to the company and the promoter selling shareholders. Cyril Amarchand Mangaldas was the legal counsel to the investment bankers and Sidley Austin was the ILC to the bankers. The more recently filed document of Fincare Small Finance Bank, however, only lists Cyril Amarchand Mangaldas as counsel to the issuer.

While every counsel issues a legal opinion to the bankers, the main difference between the company's and the banker's counsel is that the former also drafts the offer documents, which is then reviewed by the banker's counsel. ILCs, if involved, often draft the business section of the draft prospectus. Counsel also negotiate agreements between merchant bankers and companies at different stages of an IPO.