

CHAPTER 2

Evolution of the offer document

This article aims to:

Provide a synopsis of the recent updates to the offer document and the offer document review process



Background

A public offer is a process that enables companies to raise funds for multiple purposes. An offer document (in whatever name it is referred) plays an eminent role in the public offer process. It introduces a company, its operations, financial health, risks, opportunities and its offer of securities to a potential investor. Information in the offer document would influence potential investor's investment decision process.

The Securities and Exchange Board of India (SEBI) closely reviews offer documents. SEBI, vide the SEBI (Issue of Capital and Disclosure Requirement) Regulations, 2018, as amended (ICDR Regulations) prescribe the content of the offer document¹ and require merchant bankers (lead managers) to ensure adequacy of the information.

With a view to enhance the appositeness of the offer documents to the investors, SEBI has from time to time issued circulars or directions to companies and to lead managers prescribing certain matters. In this article we have summarised some of the recent key circulars issued by SEBI with regard to the offer documents.



1. Content of the draft and final offer documents and letters of offer are prescribed in Schedule VI of the ICDR Regulations.



Recent circulars and directions of SEBI pertaining to offer documents

Some of the recent key circulars and directions issued by SEBI with regard to offer documents include the following and are discussed below:



Confidential filing of offer documents

Return and resubmission procedure

Disclosure requirement by lead managers

Audio visual presentation

(Source: KPMG in India's analysis, 2024)



Confidential filing of offer documents

Prior to the introduction of confidential filing of offer documents, issuers exploring the possibility of an Initial Public Offer (IPO) had to disclose sensitive information about their business in the Draft Red Herring Prospectus (DRHP), which was made available to public at a time when there was uncertainty on the execution of an IPO. Public disclosure of sensitive information could be misused by peer competitors.

To overcome this and other challenges faced by issuers of securities, on 21 November 2022, SEBI introduced an optional alternative mechanism of ‘pre-filing’ of offer documents² with SEBI in case of an IPO on the main board.

Under the pre-filing mechanism a pre-filing draft offer document (PDRHP) which includes all disclosures required by a DRHP should be filed with SEBI (along with filing fees) without

making it public for an initial scrutiny period. At the time of pre-filing a public announcement of such filing needs to be made. Also, during the pre-filing period³ the issuer of the lead manager to the issue may interact with the qualified institutional buyer for limited marketing of the intended issue⁴.

SEBI reviews the PDRHP and issues its observations on the same within a stipulated period⁵, the validity of these observations is 18 months. This means that the observations of SEBI need to be inculcated in the draft offer document, and an Updated DRHP (UDRHP-I) would need to be filed. A UDRHP-I can be filed with SEBI (and made public) at any time suitable to the issuer, during the validity period of SEBI’s observations⁶. Apart from this confidentiality factor, the rest of the filing process is substantially similar to the regular filing procedure.

2. This mechanism was introduced by inserting Chapter IIA - *Initial public offer on main board through pre-filing of draft offer document* in the ICDR Regulations.
3. Period from the time of pre-filing of draft offer document till SEBI issues any observations on such pre-filed draft offer document.
4. This process is often referred to as Testing The Waters in the capital markets parlance.



5. Within 30 days from the receipt of satisfactory reply to the clarification sought from Lead Manager/ in-principle approval from stock exchange(s)/ intimation of closure of interaction with qualified institutional buyers whichever is later.
6. It is to be noted that the observations of SEBI are valid for 18 months, provided the UDRHP-I is filed within 16 months.



Return and resubmission procedure

In February 2024, SEBI issued a circular, specifying the criteria for returning of Draft Offer Documents (DODs) and its resubmission⁷. The circular provides broad guidelines basis which a DOD would be scrutinised by SEBI, non-compliances of which would lead to a return of the same. Such guidelines would boost the ease of doing business as they reduce processing time and cost and enable investors to have clear and consistent disclosures for review. This circular was effective from 6 February 2024.

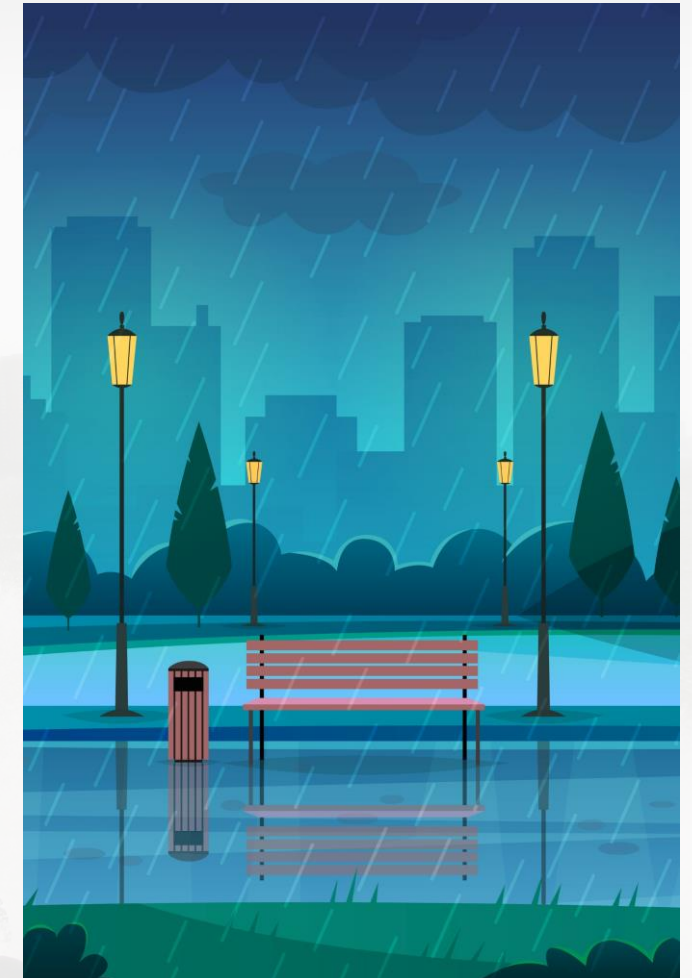
Some of the key guidelines mentioned in the circular include:

- An offer document should be drafted in simple, clear and concise language
- There should be visual representation of data, that would facilitate ease of understanding of the contents
- Risk factors should be clearly articulated so that they are not undermined
- Where any regulatory authority/enforcement agency has expressed material concern with regard to the issue/DOD, the same should be remediated prior to resubmission of the DOD
- Any pending litigation matters that impact the eligibility criteria of an issue, as provided under ICDR regulations would trigger the return of the DOD
- DODs that require substantial revisions or corrective measures would be returned.

Resubmission of DOD

On resubmission of a DOD, an issuer should consider the following:

- A **public announcement and disclosure** of such resubmission should be made within two days of such resubmission in the mode and manner prescribed by the ICDR regulations.
- The **sectoral regulator** should be intimated regarding such return and resubmission.
- While **no additional fees** would be imposed on resubmission of the DOD, **fees pertaining to essential updates** or revisions on the document will remain applicable.



7. Circular – 'Guidelines for returning of draft offer document and its resubmission' dated 6 February 2024



Disclosure requirement by lead managers

As per the current process, SEBI reviews the DOD and seeks clarification on matters from the lead manager. Basis these clarifications, SEBI issues an observation letter on such documents. This process could be time consuming, given the ongoing communication between SEBI and the lead managers.

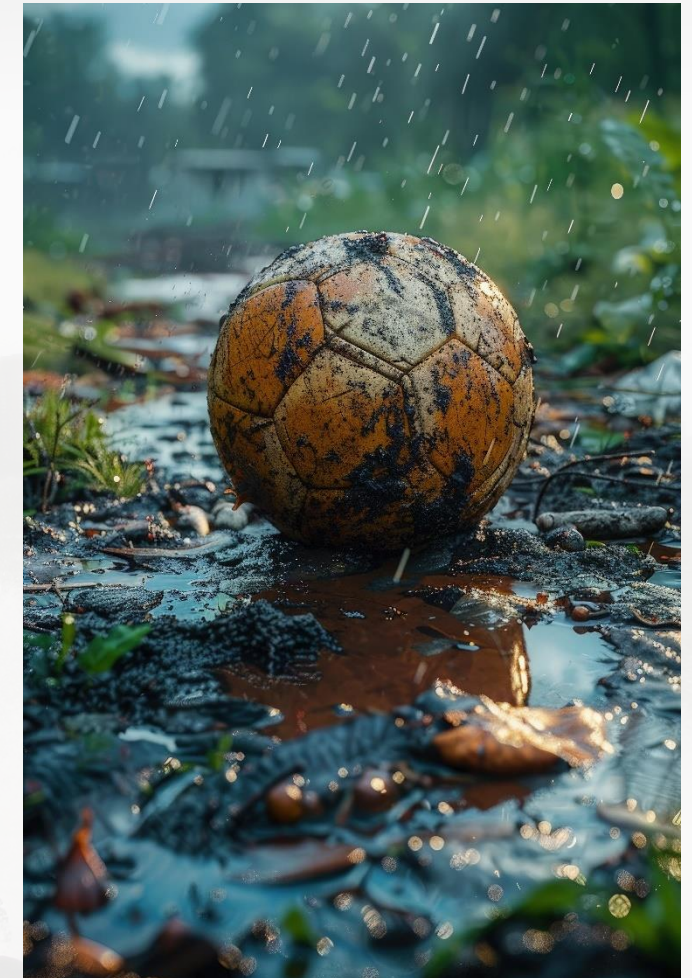
With a view to enhance disclosures and for faster processing of documents, certain confirmations and disclosures are sought from lead managers in the DODs⁸. In the absence of the disclosures, the DODs could be returned to the lead managers in accordance with the February 2024 circular on return and resubmission of draft offer documents (as discussed in the section 'Return and resubmission procedure' above).

Some of the key confirmations and disclosure requirements of the lead managers include ensuring DOD is written in lucid and economical language, compliances with the Companies Act, 2013 with respect to issuance of securities and Employee Stock Option Plans (ESOPs), ensure disclosure of all material clauses of agreements and observations of regulators in DOD, delays in payment of statutory dues, material clauses of the Articles of Association (AoA) are included in the DOD and any special rights of any person or entity under the AoA are cancelled prior to filing the UDRHP.

Lead managers should ensure any conflict of interest between the supplier, third party service provider or lessor of immovable property and the company⁹ should be

disclosed and where the top 10 suppliers/customers account for more than 50 per cent of revenue or supplies, their names should be disclosed. With regard to Pre-IPO placement, certain disclosures are required in the DOD and confirmations are required with regard to utilisation of proceeds. Specific disclosures are prescribed in the risk factor section, including bifurcating the risk factors into internal and external factors.

The objects of the issue should not be vague or ambiguous, and should be substantiated with quantitative data. Specific disclosures have been defined whether the objects of the issue include investments in subsidiaries/associates/joint ventures or entering into a scheme of arrangement or repayment of loans or capacity expansion.



8. This was communicated to lead managers vide a communique issued in June 2024.

9. In this case, company includes the company, promoter, promoter group, key managerial personnel, directors and subsidiaries/group company and its directors.



Audio visual presentation

To capacitate investors for easy understanding the features of public issues, SEBI issued a circular dated 24 May 2024 requiring issuers to make salient features of a DRHP, RHP and price band advertisement available in Audio Visual (AV) format. This requirement would be applicable to all DRHPs filed on or after 1 July 2024 on a voluntary basis, and from 1 October 2024 onwards on a mandatory basis.

The key requirements of the circular are:

- **Language of issue:** The AV would be in a bilingual format, i.e. English and Hindi (Devanagri script).
- **Duration of the AV:** The duration of the AV would be approximately 10 minutes and

be equitably distributed to cover material disclosures made under various sections of the DRHP and RHP. This includes information about the company, risk factors, capital structure, objects of the offer, business of the issuer, promoters, management, summary of financial information, litigations, material developments and terms of the offer, etc.

- **Content of AV:** The content of the AV should be factual, non-repetitive, non-promotional, and not be misleading. It should comply with the requirements of Schedule IX of the ICDR Regulations¹⁰ and include certain caveats.

The issuer and lead managers would be responsible for the content of the AV.

- **Timeline and place for upload:** The AV would be made available within five working days of filing the DRHP/RHP and in case of pre-filing of DRHP, then within five working days of filing UDRHP-I. The AV would be uploaded on the following websites:

- Website of the issuer and their digital/social media platforms
- Website of the Association of Investment Bankers of India (AIBI) and their digital/social media platforms
- The AV should also be made accessible through a QR code

The web link of the AV would be made available on the websites of the stock exchanges and lead managers.



Conclusion

SEBI as a principal regulator of the securities market in India is working towards fostering investor confidence, promoting orderly growth and development. In its role, it is also pursuing to augment ease of doing business for issuers and to protect and further the interests of investors and to educate them. With the listing process being most commonly tapped by issuers for fundraising, the DOD would be closely scrutinised by regulators.

¹⁰. Schedule IX of ICDR Regulations- Public communications and publicity materials