



Equirus Capital Private Limited
12th Floor, C Wing, Marathon Futurex,
N. M. Joshi Marg, Lower Parel,
Mumbai - 400 013
Tel: +91-22- 4332-0600
Fax: +91-22-4332-0601

Date: September 20, 2021

Corporation Finance Department
Securities & Exchange Board of India
SEBI Bhawan
Plot C4-A, G Block
Bandra Kurla Complex,
Bandra (East)
Mumbai – 400051

Kind Attn.: Chief General Manager

Dear Sir / Madam,

Sub: Request for informal guidance by way of interpretative letter under the provisions of Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 in relation to provisions of Chapter III (Prospectus and Allotment of Securities) - Part I (Public Offer) of Companies Act, 2013, as amended (the "Companies Act")

This is a request for an interpretative letter under the Securities and Exchange Board of India SEBI (Informal Guidance) Scheme, 2003 (hereinafter referred to as "**the SEBI Scheme**").

1. **Background**

1.1. **Power to file the application:**

1.1.1. In terms of Paragraph 4 of the SEBI Scheme, a SEBI registered intermediary can make an application for a request for informal guidance by way of an interpretative letter.

1.1.2. Equirus Capital Private Limited is a SEBI registered Category I Merchant Banker bearing registration number INM000011286.

1.1.3. We have been approached by certain prominent shareholders ("**the Shareholders**") of Fabindia Overseas Private Limited, a company incorporated under the Companies Act 1956 (hereinafter referred to as the "**Company**") to seek clarity on the captioned subject. We are making this application to seek an interpretative letter under the SEBI Scheme, pursuant to extensive discussions we have had with the Company and the Shareholders.

1.2. **About the Company**

1.2.1. The Company is currently a private limited company with an authorised capital of INR 15,00,00,000/- and issued and paid-up capital of INR 14,73,63,780/- comprising of 14,73,63,780 equity shares of face value of INR 1/- each.

1.2.2. As of September 10, 2021, the shareholding pattern of the Company is broadly as follows, (a) 48.94% of the share capital of the Company is owned by the promoters and promoter group, (b) 30.41% of the share capital of the Company is owned by certain investors, (c) 15.22% of the share capital of the

Company is owned by employees including directors, past and present, and (d) the balance 5.43% of the share capital of the Company is owned by other shareholders.

- 1.2.3. The Company is one of India's largest retailers for products that are made from traditional techniques, skills and hand-based processes. The Company sources products from more than 55,000 artisans across the country and markets the products across the globe, thereby creating a base for skilled, sustainable rural employment, and preserving India's traditional handicrafts in the process. Fabindia's subsidiary, Organic India works with thousands of small family farmers in India to cultivate tens of thousands of acres of sustainable organic farmland. All their farmers and tribal wildcrafters are educated in organic and biodynamic agricultural practices, and Organic India pays all the fees associated with acquiring the necessary organic certifications for them, before purchasing the harvested crops and herbs.
- 1.2.4. The Company has been profit making since 1976 and has a track record of distributing dividends, except the year ended March 31, 2021, in which it suffered losses due to the COVID 19 pandemic.
- 1.2.5. As per submissions made to us by the Shareholders, they are considering taking the Company public through an initial public offering ("IPO") over the next 6-9 months.

2. Legal framework

2.1 **What constitutes a public offer**

2.1.1 Section 23 of the Companies Act - Public Offer and Private Placement

"1. A public company may issue securities-

- a) to public through prospectus (herein referred to as "public offer") by complying with the provisions of this Part; or*
- b) through private placement by complying with the provisions of Part II of this Chapter; or*
- c) through a rights issue or a bonus issue in accordance with the provisions of this Act and in case of a listed company or a company which intends to get its securities listed also with the provisions of the Securities and Exchange Board of India Act, 1992 (15 of 1992) and the rules and regulations made thereunder.*

2. A private company may issue securities-

- a) by way of rights issue or bonus issue in accordance with the provisions of this Act; or*
- b) through private placement by complying with the provisions of Part II of this Chapter.*

Explanation- For the purposes of this Chapter, "public offer" includes initial public offer or further public offer of securities to the public by a company, or an offer for sale of securities to the public by an existing shareholder, through issue of a prospectus."

2.1.2 Section 28 of the Companies Act - Offer of sale of shares by certain members of company

"1. Where certain members of a company propose, in consultation with the Board of Directors to offer, in accordance with the provisions of any law for the time being in force, whole or part of their holding of shares to the public, they may do so in accordance with such procedure as may be prescribed.

2. Any document by which the offer of sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company and all laws and rules made thereunder as to the contents of the prospectus and as to liability in respect of mis-statements in and omission from prospectus or otherwise relating to prospectus shall apply as if this is a prospectus issued by the company.

3. The members, whether individuals or bodies corporate or both, whose shares are proposed to be offered to the public, shall collectively authorise the company, whose shares are offered for sale to the public, to take all actions in respect of offer of sale for and on their behalf and they shall reimburse the company all expenses incurred by it on this matter."

2.1.3 Section 42 of the Companies Act - Issue of shares on private placement basis

"1. A company may, subject to the provisions of this section, make a private placement of securities.

2. A private placement shall be made only to a select group of persons who have been identified by the Board (herein referred to as "identified persons"), whose number shall not exceed fifty or such higher number as may be prescribed [excluding the qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option in terms of provisions of clause (b) of sub-section (1) of section 62], in a financial year subject to such conditions as may be prescribed.

3. A company making private placement shall issue private placement offer and application in such form and manner as may be prescribed to identified persons, whose names and addresses are recorded by the company in such manner as may be prescribed:

Provided that the private placement offer and application shall not carry any right of renunciation.

Explanation I.—"private placement" means any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement offer-cum-application, which satisfies the conditions specified in this section.

Explanation II.—"qualified institutional buyer" means the qualified institutional buyer as defined in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, as amended from time to time, made under the Securities and Exchange Board of India Act, 1992.

Explanation III.—If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Part I of this Chapter."

2.1.4 Section 56 of the Companies Act – Transfer and transmission of securities

1) A company shall not register a transfer of securities of the company, or the interest of a member in the company in the case of a company having no share capital, other than the transfer between persons both of whose names are entered as holders of beneficial interest in the records of a depository, unless a proper instrument of transfer, in such form as may be prescribed, duly stamped, dated and executed by or on behalf of the transferor and the transferee and specifying the name, address and occupation, if any, of the transferee has been delivered to the company by the transferor or the transferee within a period of sixty days from the date of execution, along with the certificate relating to the securities, or if no such certificate is in existence, along with the letter of allotment of securities:

Provided that where the instrument of transfer has been lost or the instrument of transfer has not been delivered within the prescribed period, the company may register the transfer on such terms as to indemnity as the Board may think fit.

2) Nothing in sub-section (1) shall prejudice the power of the company to register, on receipt of an intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted."

2.2 Powers of Securities and Exchange Board of India

2.2.1 Section 24 - Power of Securities and Exchange Board to regulate issue and transfer of securities, etc.

"1. The provisions contained in this Chapter, Chapter IV and in section 127 shall,—

(a) in so far as they relate to —

- (i) issue and transfer of securities; and*
- (ii) non-payment of dividend,*

by listed companies or those companies which intend to get their securities listed on any recognised stock exchange in India, except as provided under this Act, be administered by the Securities and Exchange Board by making regulations in this behalf;

(b) in any other case, be administered by the Central Government.

Explanation.—For the removal of doubts, it is hereby declared that all powers relating to all other matters relating to prospectus, return of allotment, redemption of preference shares and any other matter specifically provided in this Act, shall be exercised by the Central Government, the Tribunal or the Registrar, as the case may be.

The Securities and Exchange Board shall, in respect of matters specified in subsection (1) and the matters delegated to it under proviso to sub-section (1) of section 458, exercise the powers conferred upon it under sub-sections (1), (2A), (3) and (4) of section 11, sections 11A, 11B and 11D of the Securities and Exchange Board of India Act, 1992 (15 of 1992)."

2.2.2 Section 24 of the Companies Act grants powers to the Securities and Exchange Board of India ("SEBI") to administer various provisions of the Companies Act relating to issue and transfer of securities under Chapter III (Prospectus and Allotment of Securities) and Chapter IV (Share Capital and Debentures) of the Companies Act, by listed companies **or those companies which intend to get their securities listed on any recognised stock exchange in India**. In light of the provisions Section 24(1)(a)(i) of the Companies Act, coupled with the fact that the Company is proposing to undertake an IPO in the few months, the Company and the Shareholders are seeking SEBI's guidance, by way of this interpretative letter, in relation to a transfer of securities of the Company.

2.3 Powers of SEBI to prohibit certain dealings in securities in terms of Regulation 3 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, if applicable.

"3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed

on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.”

3. **Proposed Transaction**

3.1 The Shareholders **desire to gift** up to 15,00,000 equity shares of the Company, representing up to 1.017% of the paid-up share capital of the Company as on date, to various artisans across India and small and/or marginalized farmers, **without any consideration or any conditions.**

3.2 It is proposed that the shares shall be given to thousands of artisans and small and/or marginalized farmers across India, as may be identified by the Shareholders ("**Intended Beneficiaries**"). Such Intended Beneficiaries can include artisans who have had a long association as suppliers to the Company and other artisans, not being suppliers to the Company, who are selected from those who have contributed greatly to the traditions / craft heritage of India.

3.3 The intent for such distribution is benevolence and economic upliftment of such artisans and small and marginal farmer community at large.

3.4 The Shareholders shall arrange/ provide support to such identified artisans and small and /or marginalized farmers to receive the shares, including assistance in opening of bank accounts/ demat accounts, making any regulatory filings as required, etc.

3.5 The shares shall be gifted (directly or indirectly through a special purpose private independent trust in the manner as detailed in Para 3.6 below) by the Shareholders to the identified artisans and small and/or marginalized farmers after the conversion of the Company to a public limited company and before the filing of Draft Red Herring Prospectus with SEBI, for undertaking the IPO.

3.6 **Manner of gifting of shares by Shareholders to the Intended Beneficiaries:**

3.6.1 For the Intended Beneficiaries who have a PAN Card and are thus in a position to open / operate bank accounts and demat accounts, the Shareholders propose to directly gift approximately 20 shares to each such Intended Beneficiaries to hold and own the said shares beneficially as well as legally.

3.6.2 For the Intended Beneficiaries who don't have a PAN Card and are thus not in a position to open demat accounts, a special purpose private independent trust ("**Trust**") will be formed with an independent trustee (e. g. SBICAP Trustee Company) to hold these shares in trust on behalf of such Intended Beneficiaries. The Shareholders shall either gift the shares to the Trust or the Shareholders will create a corpus to enable the Trust (acting through its trustee) to acquire the shares, for onward gifting to such Intended Beneficiaries. These shares in the Trust will be held for the benefit of specified Intended Beneficiaries only and once such Intended Beneficiaries procures a PAN and thus is able to open a Demat account, he/she shall get his allocated shares transferred, free of cost, from the Trust to his personal Demat Account. The Trust shall deploy its own corpus for the purchase of shares of the Company from the Shareholders, if needed. Such Intended Beneficiaries will not pay any consideration at any stage, in any form, for receiving such shares in their own Demat Account under their control. Further, if any Intended Beneficiaries is unable to procure a PAN but wishes to exit from the Trust at any point of time, the Trust (acting through its trustee) will sell the allocated number of shares on the stock exchange and distribute cash to such Intended Beneficiaries, net of taxes. Thus, the shares will be indirectly gifted through the Trust, in a situation where the Intended Beneficiaries did not have their PAN Card.

3.7 The Company has obtained an opinion from a legal counsel with respect to the implications of the Proposed Transaction as described under points 3.1 to 3.6 above under the Companies Act. Copy of the same is attached as **Annexure 1** hereto.

- 3.8 The Trustees shall also be giving education to the Intended Beneficiaries on what equity instruments like shares mean and how they can benefit from them.
- 3.9 Further, in order to answer queries from the Intended Beneficiaries the Trustees shall provide a grievance cell or helpline number.

4. **Clarifications sought**

4.1 **Whether the Proposed Transaction will be deemed to constitute a 'public offer'**

4.1.1 **Section 42 of the Companies Act of the Companies Act**

As per Section 42 of the Companies Act, which provides for private placement by a Company, read with Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014, any offer by a company, listed or unlisted, to allot or invitation to subscribe, or allotment of securities to more than the 200 persons, in the aggregate, in any financial year, shall be deemed to be an offer to the public offer. In the present case, the Proposed Transaction does not involve any issuance of securities by the Company to the Intended Beneficiaries and thus should not be subject to restrictions imposed under Sections 42 of the Companies Act.

4.1.2 **Section 23 of the Companies Act**

4.1.2.1 As per Section 23 of the Companies Act, a public company may undertake an issue of shares through one of the following ways, (a) to the public through prospectus, i.e., a public offer; or (b) through private placement; or (c) through a rights issue or a bonus issue. 'Public offer' has been defined under Section 23 of the Companies Act to include initial public offer or further public offer of securities to the public by a company, **or an offer for sale of securities to the public by an existing shareholder, through issue of a prospectus, i.e., a secondary sale by the existing shareholders.**

4.1.2.2 However, in the present case, the Proposed Transaction does not involve an issuance of shares by the Company or offer for sale of the securities of the Company by the Shareholders to the Intended Beneficiaries. The Proposed Transaction involves a gift to the Intended Beneficiaries, directly or indirectly through the Trust (as detailed in Para 3.6 above), for no consideration and subject to no conditions, and thus should not be included within the definition of a 'public issue' contained under Section 23 of the Companies Act.

4.1.3 **Section 28 of the Companies Act**

4.1.3.1 As per Section 28 of the Companies Act, where certain members of a company propose, in consultation with the Board of Directors to offer, whole or part of their holding of shares to the public, **any document by which the offer of sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company.**

4.1.3.2 However, in the present case, as mentioned above, the Proposed Transaction does not involve an offer for sale of the securities of the Company by the Shareholders to the Intended Beneficiaries. The Proposed Transaction involves direct/ indirect gift to the Intended Beneficiaries, for no consideration, and thus should not be subject to restrictions imposed under Section 28 of the Companies Act.

4.1.4 In the instant case, the shares are proposed to be transferred (directly or indirectly, as explained above) by way of gift to the Intended Beneficiaries without any consideration and conditions. Further, in the instant case, there is no offer to allot shares or invitation to subscribe to shares, or allotment of shares, or an agreement to allot shares as prescribed under Section 42 of the Companies Act. Hence, in our

view, the said gift of shares of the Company to the Intended Beneficiaries should not be considered as a deemed public offer under the provisions of Section 42, Section 23 and/or Section 28 of the Companies Act.

4.1.5 Further, the aforementioned transfers will be undertaken in accordance with the applicable procedures laid down under Section 56 of the Companies Act, only after the Company is converted into a public limited company.

4.2 **Whether the Proposed Transaction would be prohibited by the Regulation 3 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, if applicable.**

4.2.1 The transfer of shares is proposed as a gift of shares to the Intended Beneficiaries without any consideration or conditions, with the intention of financially empowering the said beneficiaries.

4.2.2 Also, there are no non-monetary benefits sought by the Shareholders or by the Company as a result of the Proposed Transaction. The legal and beneficial ownership in the gifted shares and voting rights thereon is intended to be transferred to and to vest with the Intended Beneficiaries, on the completion of the gift, in the manner explained under Paragraph 3.6 above.

4.2.3 Basis the above, in our view, the provisions of Regulation 3 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 should not be applicable to the Proposed Transaction.

5. **In the context of the Proposed Transaction, i.e., the proposed gift (directly or indirectly, through the Private Trust (purely to facilitate the intended gift)) of shares of the Company by its shareholders to thousands of artisans and small and/or marginalized farmers across India, please be kind to let us know:**

(a) **If you concur with our views that such gift of shares by the shareholders of the Company to the identified artisans and small and/or marginalized farmers, directly or indirectly, in the manner set out in Paragraph 3.6 above, does not amount to a deemed 'public offer' under the provisions of the Companies Act; and**

(b) **Given the large number of artisans and small and/or marginalized farmers to whom the gift of shares is proposed to be made, whether any specific disclosures with regard to, (i) the transferors; (ii) the artisans and small and/or marginalized farmers; and/or (iii) any other undertakings, will be required to be made by the Company in the Draft Red Herring Prospectus to be filed by it with SEBI, for undertaking the IPO.**

6. **Request for interpretative letter**

Through this letter and on behalf of the Shareholders, Equirus requests for an interpretative letter under the SEBI (Informal Guidance) Scheme, 2003 as amended and Chapter III (Prospectus and Allotment of Securities) - Part I (Public Offer) of the Companies Act, for the Proposed Transaction on the abovementioned aspects.

7. **Request for confidentiality**

Considering that the above contemplated transactions may be a material event, we request that this letter and its contents be kept confidential for the maximum period permissible under the Scheme, i.e.,

up to 90 (ninety) days or for such number of days as you may deem fit from the date of issue of response by your good office.

8. **Fees**

As per the requirements prescribed under the SEBI Scheme, we are enclosing cheque no. 51117515 for Rs. 25,000/- dated September 17, 2021 drawn in favour of Securities and Exchange Board of India on Federal Bank Limited, towards the fees for seeking this interpretative letter.

We seek your considered informal guidance to this effect and will extend our full co-operation in case you require any further information. Any request for further information/ clarification may be addressed to:

Contact person	Telephone no.	Email id.
Venkatraghavan S	+91-22-43320731	venkat.s@equirus.com

Thanking you,

For **Equirus Capital Private Limited**


Bhavesh Shah
Managing Director



Encl: Annexure 1 – Legal Opinion