



भारतीय प्रतिभूति
और विनियम बोर्ड
Securities and Exchange
Board of India

General Manager
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SEBI/HO/CFD/DIL1/P/OW/2021/39809/1

December 29, 2021

Equirus Capital Private Limited
12th Floor, C Wing, Marathon Futurex,
N.M. Joshi Marg, Lower Parel,
Mumbai-400013
Maharashtra

Kind Attention: Mr. Bhavesh Shah, Managing Director

Dear Sir,

Sub: Request for informal guidance by way of "Interpretive Letter" under the SEBI (Informal Guidance) Scheme, 2003 in relation to provisions of Chapter III (Prospectus and Allotment of Securities) - Part I (Public Offer) of Companies Act, 2013.

1. This has reference to your letter dated September 20, 2021 seeking informal guidance by way of interpretive letter under SEBI (Informal Guidance) Scheme, 2003 and subsequent correspondence exchanged vide email dated November 26, 2021 in this regard..
2. Vide your letter and subsequent correspondence under reference, you have, *inter alia*, represented as under:
 - a. You, a SEBI registered Merchant Banker, were approached by certain prominent shareholders ("Shareholders") of Fabindia Overseas Private Limited ("Company") for seeking a clarification on the proposed transaction mentioned hereunder.
 - b. The Company was 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. 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 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.

सेबी भवन, प्लॉट नं. सी 4-ए, "जी" ब्लॉक, बान्द्रा-कुर्ला कॉम्प्लेक्स, बान्द्रा (पूर्व), मुंबई - 400 051

दूरभाष : 2644 9950 / 4045 9950 (आई.बी.आर.एस.), 2644 9000 / 4045 9000 फैक्स : 2644 9019 से 2644 9022 वेब : www.sebi.gov.in

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- c. The Company has since been converted into a public company known as Fabindia Limited. As submitted, the Company is in the process of preparation of DRHP for its prospective IPO.
- d. The shareholders of the company desire to gift upto 15,00,000 equity shares of the company, representing 1.017% of the paid-up share capital as on date, to various artisans across India and small and/or marginalized farmers, without any consideration or any conditions. ("Proposed Transaction")
- e. The prominent shareholders include the Promoter / Promoter Group (Mr. William Nanda Bissell and family and associated concerns) who own 48.94% and Premji Invest (through PI Opportunities Fund I) who own 22%. There may be other shareholders who will contribute to the gift of shares. The Promoter / Promoter Group holds shares since 1976 and 'PI' have got shares in 2012 and 2016.
- f. The shares shall be given to thousands of artisans and /or marginalized farmers across India as may be identified by the shareholders ("Intended Beneficiaries"). The artisans / farmers are yet to be identified by the promoters and they will be identified based on the experience of the Company and Promoter/s. These artisans / farmers have had a long association with the Company as suppliers of products and produce. Fabindia was originally formed in 1960, while the current form and shape (in the form of Fabindia Overseas Private Limited and now Fabindia Limited) was established in 1976. Over the last 60 years, Fabindia has been sourcing products / produce from various artisans / farmers directly, and through various collectives and communities all over India which are organized in clusters.
- g. Adequate support will be provided by shareholders to receive the shares, including assistance in opening of bank accounts/ demat accounts, making regulatory filings, etc. to intended beneficiaries. The communication about the proposed gift (transaction) to the artisans / farmers is yet to be made by the promoters. However, the Company has been actively assisting them in getting PAN cards, opening demat accounts, etc.
- h. The shares shall be gifted (directly or indirectly through a special purpose private independent trust for the Intended beneficiaries who do not have a PAN and thus, are not in a position to open a demat account) by the Shareholders to the intended beneficiaries before filing of DRHP with SEBI, for undertaking the IPO.
- i. The intent for such distribution is benevolence and economic upliftment of such artisans and small and marginal farmer community at large.



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- j. Upon your analysis of the legal framework, you have stated that the proposed transaction would not be considered as a deemed public issue.
3. Based on the above facts, you have sought interpretive letter from SEBI on the following issues, in terms of the provisions of Chapter III (Prospectus and Allotment of Securities) - Part I (Public Offer) of Companies Act, 2013,
- i. *Whether the Proposed Transaction will be deemed to constitute a 'public offer'.*
 - ii. *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.*
 - iii. *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 disclosure with regard to, (1) the transferors; (ii) the artisans and small and / or marginalized farmers; and (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.*
4. In this regard, it may be noted that we have considered the submissions made by you in your letter under reference and without necessarily agreeing with your analysis, our views on the queries raised by you are as under:
- i. As per Section 42(2) of the Companies Act, 2013 read with Rule 14 of the Companies (Prospectus and Allotment of securities) Rules, 2014 (corresponding provision – Section 67 of the Companies Act, 1956), any offer by a company, listed or unlisted, to allot or invitation to subscribe, or allotment of securities to more than 200 persons, in the aggregate, in any financial year, shall be deemed to be an offer to public. In terms of Section 23 of the Companies Act, 2013, public offer by a company 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.
 - ii. In order to be considered as an offer to the public in terms of section 42 of the Companies Act, 2013, the offer, invitation to subscribe or allotment shall be made by a company or by the existing shareholders, to more than 200 persons in the aggregate, in any financial year. Gifting of shares by the existing shareholders of a company, which does not involve payment of any consideration by the transferees may not constitute a deemed public offer, unless there is an existence of a design / arrangement between the company and the existing shareholders to circumvent the applicable provisions of law.



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- iii. In the instant case, since it has been stated there shall be gifting of shares by the existing shareholders to the identified beneficiaries, that may not *per se* be a deemed public issue in the absence of any existence of a design / arrangement stated to exist between the existing prominent shareholders and the company particularly to circumvent the provisions of law. Thus, with respect to query at 3(i) above, under these circumstances, ^{the} proposed transaction would not constitute a deemed public issue.
- iv. Further, with respect to query at 3(ii) above, it is noted that the aforesaid interpretation being sought is general in nature and the information provided in the request letter and subsequent correspondence is not sufficient to examine existence of the ingredients of Regulation 3 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations. Thus in terms of clause 8(i) of the SEBI (Informal Guidance) Scheme, 2003, reply cannot be given for the same.
- v. With respect to the query at 3(iii) above, you may note that the disclosures to be made in the Draft Red Herring Prospectus is specified in the SEBI (Issue of Capital and Disclosure Requirements) Regulations. Further, it is noted that since the transaction at this stage is only a proposed transaction and not been implemented, the same can be said to be a hypothetical situation and there is no certainty as to how the transaction would be actually executed. In view of the same, in terms of clause 8(ii) of the SEBI (Informal Guidance) Scheme, 2003, reply cannot be given for the same.
5. Vide your aforesaid letter, you have requested for confidentiality in respect of your application. Accordingly, it has been decided that the interpretive letter issued to you in this matter will not be made public for a period of 90 days from the date of issuance of this letter.
6. The above position is based on the information furnished in your letter and the subsequent correspondence under reference. Different facts or conditions might lead to a different result. Further, this letter does not express a decision of the Board on the questions referred.
7. You may also note that the above position / views are expressed only with respect to the clarification sought in your letter under reference with respect to provisions of Chapter III (Prospectus and Allotment of Securities) - Part I (Public Offer) of Companies Act, 2013 and do not affect the applicability of any other law or requirements of any other SEBI Regulations, Guidelines and Circulars administered by SEBI or of the laws administered by any other authority.

Yours sincerely,


Rajesh Gujjar