

CHAPTER 19 PRODUCER COMPANIES

Producer Company means

a body corporate having objects or activities specified u/s 581B; *and* registered as Producer Company under Companies Act.

any person engaged in any activity connected with or relatable to any primary produce.

Producer institution means

a Producer Company; *or* any other institution having only producers or Producer Companies as its Members whether incorporated or not having any of the objects specified u/s 581B and which agrees to make use of services of Producer Companies.

Primary produce means

1

- Produce of farmers , arising from
- agriculture (including animal husbandry, horticulture, floriculture, pisciculture, viticulture, forestry, forest products, re-vegetation, bee raising and farming plantation products);
- from any other primary activity or services

2

- produce of persons engaged in handloom, handicraft and other cottage industries

3

- any product resulting from any of the above activities, including by -products of such products

4

- any product resulting from an ancillary activity that would assist or promote any of the aforesaid activities

5

- any activity which is intended to increase the production of anything referred to in sub-clauses (a) to (d) or improve the quality thereof.

Patronage means

the use of services offered by the Producer Company to its Members by participation in its business activities.



Patronage Bonus means

payments made by a Producer Company out of its surplus income to the Members in proportion to their respective patronage.

Withheld price means

part of the price due and payable to any member for goods supplied to the Producer company.

Limited Return means

the maximum dividend as may be specified by the articles.

Member means

a person or Producer institution (whether incorporated or not) admitted as a Member of a Producer Company and who retains the qualifications necessary for continuance as a Member

Active Member means

a Member who fulfils the quantum and period of patronage as may be required by the articles.

FORMATION OF PRODUCER COMPANY AND ITS REGISTRATION

Who can make the application?

The application for registration as a Producer Company shall be made by –

- a) 10 or more individuals, being producers; or
- b) 2 or more producer institutions, or
- c) A combination of above

Enclosures to application

Following documents must be attached with the application

- a) Memorandum
- b) Articles duly signed by the subscribers to the memorandum

Application to whom?

The application shall be made to the Registrar of the State where registered office of a Producer Company is proposed to be situated.

Conditions for incorporation

Objects- The object clause of the memorandum must contain all or any of the matters specified u/s 518B

Nature of company- The Producer Company shall be a company limited by shares.

Compliance - The proposed Producer Company shall comply with all the provisions of Part IX-A of the Act.

Issue of certificate of incorporation

Conditions for issue of certificate- If the Registrar is satisfied that the Producer Company has complied with all the requirements of Act in respect of registration and matters precedent and incidental thereto, he shall –

- a) register the memorandum, articles and other documents: and
- b) issue the certificate of incorporation.

Time limit for issue of certificate- The Registrar must issue the certificate of incorporation within 30 days of the receipt of the documents required for registration.

Reimbursement of promotional expenses

To whom- Promoters

Nature of expenses- All the direct costs associated with the promotion and registration of the Producer Company may be reimbursed by the Producer Company after its formation. Such payment may be made by way of registration fees, legal fees, printing of memorandum and articles, or any other law expenses.

Legal requirements- The payment made by the Producer Company shall be subject to the approval in the first GM.

Effects of incorporation

- On registration, the Producer Company shall become a body corporate.
- A Producer Company shall be a company limited by shares.
- Every Producer Company shall use the words Producer Company Ltd at the end of its name.
- All the provisions of the Act shall apply to a Producer Company as if it is a private limited company. However, a Producer Company is neither a private company in terms of Sec. 3(l) (iii), nor a public company in terms of Sec. 3(l) (iv) of the Act.
- A Producer Company shall not, under any circumstance whatsoever become or be deemed to become a public limited company.
- There shall not be any limit on number of members of a Producer Company.

CONVERSION OF AN EXISTING ISCS INTO A PRODUCER COMPANY (Sec. 581 J)

Application by whom?

- a) An ISCS with objects not confined to one State
- b) A co-operative society formed by producers may apply if –
 - i) It is registered under any law; and
 - ii) It has extended its objects outside the state

Hereinafter, the society making application u/s 581J is referred to as the society

Enclosures to application

- a) Special resolution, of not less than 2/3rd of total Members
- b) Names, addresses and occupations of the directors and Chief Executive
- c) List of members



- d) A statement stating that the society is engaged in one or more of the objects specified u/s 581B
- e) Declaration by 2 or more directors certifying that particulars given above are correct
- f) Memorandum
- g) Articles duly signed by the subscribers to memorandum.

Issue of certificate of incorporation

Conditions for issue of certificate- If the Registrar is satisfied that the society has complied with all the requirements of Act relating to the conversion, he shall

- a) register the memorandum, articles and other documents: and
- b) issue the certificate of incorporation.

Time limit for issue of certificate- The Registrar must issue the certificate of incorporation within 30 days of the receipt of the documents required for registration.

Transformation date- The date when erstwhile Society is converted into a Producer Company is referred to as the transformation date.

Effects of conversion

Applicability of Companies Act (Sec. 581 J)

- The erstwhile society shall be governed by the provisions of Part IX-A of the Companies Act, 1956.
- Any law which was applicable to erstwhile society shall cease to apply.
- The Registrar of Companies shall give intimation to the Registrar with whom the erstwhile society was earlier registered. The Registrar of erstwhile society shall delete its name from register.
- No claim shall lie against the erstwhile society by reason of conversion into a Producer Company

Liability for prior acts (Sec 581 J) - Anything done or omitted to be done by the society before its registration as a Producer Company shall remain unaffected.

Effect on members (Sec 581K) - The Members of the society immediately before the transformation date become the Members of Producer Company.

Vesting of undertaking in Producer Company (Sec. 581L)- All the properties, assets, rights, debts, liabilities, interests, privileges, obligations, contracts, sums of money due, matters and things engaged to be done as on the transformation date shall be transferred to the Producer Company.

Concessions and privileges (Sec. 581 M) - All fiscal and other concessions, licences, benefits, privileges and exemptions granted to the society under any law shall be deemed to have been granted to Producer Company (Sec. 581M).

Effect on directors (Sec. 581 N)

- All the directors of the society shall have a right to continue in office for 1 year from transformation date.
- No director of the society shall be entitled to any compensation for loss of office or for the premature termination of any contract.

Effect on employees (Sec. 581 N)

- ✓ Every officer or employee of society shall become an officer or employee of the-Producer Company. He shall hold his office for the same tenure, at the same remuneration, upon the same terms and conditions, with the same obligations and with the same rights and privileges as he had in the erstwhile society.
- ✓ An officer or employee of the society may opt not to be in employment of the Producer Company. In such a case, following consequences shall follow:
 - a) He shall be deemed to have resigned.
 - b) He shall not be entitled to any compensation.

Effect on retired officers and employees (Sec. 581 N)

The officers and employees who have retired from the society before the transformation date shall be entitled to receive the same benefits, rights or privileges as per their entitlement from the society.

Effects on trust (Sec. 581N)

The trusts of provident fund and gratuity fund of the society shall-

- discharge their functions in the Producer Company;
- enjoy tax exemption, if any granted earlier to the society.

OBJECTS OF A PRODUCER COMPANY (Sec 581 B)

- Production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of Members
- Processing the produce of Members (i.e; preserving, drying, distilling, brewing, vinting, canning and packaging of produce of Members)
- Manufacture, sale or supply of machinery, equipment or consumables to its Members
- Providing education on the mutual assistance principles to its Members.
- Rendering services - technical, consultancy, training, research and development.
- Generation, transmission and distribution of power, revitalisation of land and water resources.
- Insurance of producers or their primary produce.
- Welfare measures or facilities for the benefit of members.
- Promoting mutuality and mutual assistance
- Any- other activity, ancillary or incidental to any of the activities referred to in above clauses
- Financing of procurement, processing, marketing or other activities specified in above clauses (i.e; extending credit facilities or any other financial services to its members)

Every Producer Company shall deal primarily with the produce of its active Members for carrying out any of its objects specified in this section [Sec. 581 B (2)].

RECONVERSION OF A PRODUCER COMPANY INTO ISCS (Sec 581ZS)

Eligibility to make an application

A producer company may make an application for being converted into an ISCS only if it was formed as a producer company by way of conversion of a society into a prod company u/ s 581J.

Application for reconversion

- ❖ Application to whom - The application shall be made to the High Court,
- ❖ Application by whom- The application may be made by the members or creditors:
- ❖ Members- The application shall be made with the consent of atleast 2/3rd of members, present and voting in the GM.
- ❖ Creditors- The application shall be made by creditors representing 3/4th in value of total creditors.

Directions for holding the meeting

- The High Court shall direct that a meeting of members/ creditors shall be held.
- The meeting shall be conducted in such manner as may be directed by the High Court.

Stay of suits and proceedings

The High Court may stay the commencement or continuation of any suit or proceeding against the company.



Approval by members/creditors

The reconversion must be approved by-

- ✓ members representing 3/4th in value of members, present and voting; or
- ✓ creditors representing 3/4 in value of creditors, present and voting.

Disclosure of material facts

All the material facts must be disclosed to the High Court, including –

- the latest financial position of the company
- the latest auditor's report
- the pendency of any investigation proceedings
- other similar information and disclosures.

Sanction of the reconversion

- If the reconversion is approved by the required majority, the High Court shall have the discretion to sanction reconversion.
- If the reconversion is sanctioned by the High Court, it shall be binding on –
 - a) all the members
 - b) all the creditors: and
 - c) the Producer Company.

Filing of order of the Court

- The order of High Court shall be filed with the Registrar of companies.
- The order shall become effective on filing only

Application for registration as MSCS

Application to whom- The application shall be made to the Registrar of MSCS or any other law for the time being in force.

Purpose of application- The erstwhile Producer Company be registered as MSCS.

Time limit for making application- the application shall be filed within 6 months of order of High Court sanctioning the reconversion

MUTUAL ASSISTANCE PRINCIPLES TO BE CONTAINED IN THE ARTICLES (SEC 581 G)

Voluntary membership

- ✦ The membership shall be voluntary
- ✦ The membership shall be available to all persons –
 - who can participate or avail of the services of Producer company; and
 - who are willing to accept the duties of membership

Voting rights

- Each member shall have only one vote irrespective of his shareholding or patronage.
- However, where a Producer Company consists of Producer Institutions only, voting rights shall be based on –
 - a) participation of the Producer Institutions in the business of the Producer Company in the previous year
 - b) shareholding of the Producer Institutions during the first year.

Board of directors

- The Producer Company shall be administered by a Board of directors.
- The Board of directors shall be appointed in accordance with the provisions of Part IX-A.
- The Board shall be accountable to the members.

Limited return- There shall be limited return on share capital.

Distribution of surplus- The surplus shall be distributed for -

- a) development of business of the Producer Company;
- b) providing common facilities; and
- c) distributing amongst the members, in proportion to their respective participation in the business

Education of members

- ✓ Provision shall be made for the education of members, employees and others.
- ✓ Education shall be provided on the principles of mutual assistance

Co-operation with other Producer Companies- The Producer Company shall actively co-operate with

- a) other Producer Companies; and
- b) other organisations following similar principles.

MANAGEMENT OF PRODUCER COMPANY

Number of directors (Sec. 581O)

Minimum- Five (5)

Maximum- Fifteen (15)

During the first year of conversion- If a Producer Company is formed by way of conversion of society into a Producer Company, all the directors of the erstwhile society as on the transformation date shall continue in office for a period of 1 year from the transformation date.

Appointment of directors (Sec. 581P)

Time limit for election of directors

The directors shall be elected within 90 days from the date of registration of the Producer Company.

The election of the directors shall be conducted within 1 year, if –

- a) the Producer Company is formed by conversion of society into a Producer Company; and
- b) at least 5 directors held office as on the date of conversion of society into Producer Company

Tenure of office

The tenure of office of every director shall be specified in the articles

The tenure shall be –

- a) Minimum- 1 year
- b) Maximum - 5 years

Appointing authority

The directors shall be elected or appointed by the members in the AGM.



Retirement of directors

The directors shall retire in accordance with the articles of company.

A retiring director shall be eligible for re-appointment.

Additional directors

The Board may co-opt one or more expert directors additional directors for such period as the Board may deem fit.

These directors shall not exceed 1 /5th of the total number of directors.

Meetings of Board and quorum (Sec. 581V)

Minimum number of BM

At least 4 BMs must be held in each calendar year.

At least 1 BM must be held in every quarter.

Notice of BM

Notice of every BM shall be given in writing.

The notice shall be given to every director for the time being in India, and at his usual address in India to every other director.

Duty to give notice of BM

It shall be the duty of Chief Executive to give notice of all BM.

Length of notice

The notice of every BM shall be given by the Chief Executive, at least 7 days before the date of BM.

If a BM is called at a shorter notice, the reasons thereof shall be recorded in writing by the Board.

Quorum for BM

The quorum for a BM shall be higher of-

1/3rd of total strength; or

3 directors

Sitting fees

The directors may be paid such fees and allowances for attending BM, as may be decided by the Members in GM.

Sitting fees can also be paid to additional or expert directors.

Secretary of Producer Company (Sec. 58IX)

Mandatory appointment

Every Producer Company having an average annual turnover exceeding Rs5 crores in each of 3 consecutive financial years shall have a whole-time secretary.

Qualifications of secretary

Only a member of ICSI can be appointed as secretary.

Penalty for default

Failure to appoint a secretary shall be punishable with fine upto Rs500 for every day during which the default continues.

Defence for default

However, it shall be a defence to prove that

- i. all reasonable efforts were made to appoint a whole-time secretary: or
- ii. the financial position of the company was such that it was beyond its capacity to engage a whole-time secretary.

FINANCE, ACCOUNTS AND AUDIT

Nature of Books of account to be kept (Sec. 581ZE)

Every Producer Company shall keep proper books of account with respect to

- a) all sums of money received and expended
- b) all sales and purchase of goods
- c) the instruments of liability executed by or on behalf of the Producer Company
- d) the assets and liabilities
- e) in case of a Producer Company engaged in production, processing and , manufacturing, the particulars relating to utilisation of materials or labours or other items of costs.

Place of keeping books of account

The books of account shall be kept at the registered office (Sec. 581ZE).

Internal audit (Sec. 581ZF)

- ❖ Every Producer Company shall have internal audit of its accounts at such interval and in such manner as may be specified in the articles
- ❖ The internal audit shall be carried out by a CA.

Duties of auditor (Sec. 581ZG)

Without prejudice to the provisions contained in Sec. 227 the auditor shall report on the following additional matters relating to the Producer Company:

- a) the amount of debts due along with particulars of bad debts, if any
- b) the verification of cash balance and securities
- c) the details of assets and liabilities
- d) all transactions which appear to be contrary to the provisions of Part IX-A
- e) the loans given by the Producer Company to the directors
- f) the donations or subscriptions given by the Producer Company
- g) any other matter as may be considered necessary by the auditor.

Donations or subscription by a Producer Company (Sec. 581ZH)

Donation by SR

SR shall be required for making any donation or subscription to any institution or individual for the purpose of

- i. promoting the social and economic welfare of Producer Members or producers general public; or,
- ii. promoting the mutual assistance principles.

Ceiling on donations

The aggregate amount of all donations and subscriptions in any FY shall not exceed 3 % of the net profit of the preceding FY.



Prohibition on political contributions

A Producer Company is prohibited from making, directly or indirectly (i.e. by making available any facilities including personnel or materials), any political contribution, i.e. the prohibition extends to –

- i. any contribution or subscription to a political party
- ii. any contribution or subscription to any person for any political purpose

General and other reserves (Sec. 581ZI)

- Every Producer Company shall maintain a General Reserve in every FY
- The General Reserve shall be maintained as per the articles.
- If the Producer Company does not have sufficient funds in any FY for transfer to reserves, the contribution to the reserve shall be shared amongst the Members in proportion to their patronage of that FY.

Issue of bonus shares- Conditions (Sec. 581ZJ)

- Bonus shares may be issued by capitalisation of amounts from General Reserve
- The bonus shares shall be issued in proportion to the shares held by the members as on date of the issue of bonus shares.
- The issue of bonus shares must be recommended by the Board
- The issue of bonus shares shall require a resolution in GM

LOANS TO MEMBERS (Sec 581ZK)

Compliance with articles

The loans can be made to the Members in accordance with the articles of the Producer Company.

Loans by whom

The loans may be granted to the Members only with the approval of the Board.

Cases in which loans may be made

- a) A Member may be given credit facility in connection with the business of the Producer Company, for a period not exceeding 6 months.
- b) loans can be made to members if the following conditions are satisfied ;
 - The loan is secured by some security specified in the articles.
 - The loan is repayable within a period exceeding 3 months but not exceeding 7 years.

Loans to directors and their relatives

Any loan or advance to any director or his relative shall be granted only after obtaining the approval of the Members in GM.

CANCELLATION OF REGISTRATION OF A PRODUCER (Sec 581 ZP)

Circumstances in which registration is cancelled

The Registrar has the power to pass an order cancelling the registration of a Producer Company in the following cases:

- i. Where a Producer Company fails to commence business within 1 year of its registration
- ii. Where a Producer Company ceases to transact business with the Members
- iii. Where the Registrar is satisfied that the Producer Company is no longer carrying on any of its objects specified u/s 581B

Condition for making an order of cancellation

- The Registrar shall give a reasonable opportunity of being heard to the Producer Company.
- A copy of show cause notice shall also be given to all the directors of the producer company.

Appeal against order of cancellation

Who can appeal - Any Member of the Producer Company who is aggrieved by order of cancellation of registration of the Producer Company may file an appeal.

Appeal with whom- The appeal shall be filed with CLB

Time limit for filing appeal- The appeal shall be within 60 days of order of Registrar cancelling the registration.

Effect of filing appeal- The order of cancellation of registration shall not take effect until the appeal is disposed of.

STRIKING OFF NAME OF A PRODUCER COMPANY (Sec. 581ZP)

When can name be struck off

Where the Registrar has reasonable cause to believe that a Producer Company is not maintaining any of the mutual assistance principles.

Procedure for striking off name

The Registrar shall strike off the name of the producer company in accordance with the provision contained in Sec.560.

OVERRIDING EFFECT OF PART IX-A (Sec 581ZQ)

Applicability of the provisions of the Companies Act Part IX-A overrides the entire Companies Act. 1956. i.e.. –

Applicability- The whole of the Companies Act. 1956 shall apply to a Producer Company

Non-applicability- Such provisions of the Companies Act. 1956 shall not apply to a Producer Company which are inconsistent with Part IX-A.

POWER OF CG TO MODIFY PROVISIONS RELATING TO PRODUCER COMPANIES (Sec 581ZT)

Manner of giving exemption

CG may give any exemption to a Producer Company by issuing a notification in Official Gazette.

Nature of exemption

Any provision of the Act shall not apply to a Producer Company or any class of Producer Companies.

Any provision of the Act shall apply to a Producer Company or any class of Producer Companies with such exception or adaptation as may be specified in the notification.

Limitations on powers of CG

CG cannot exercise this power in respect of any matter contain in Part IX-A.



JUNE 2009

Q. The promoters of Balaji Producer Company Ltd., proposed to be registered under Section 581C of the Companies Act, 1956 desire to have the following information: Can the company be registered with seven individuals?

ANS

A Producer Company cannot be registered with 7 individuals since, as per Section 581C, an application for incorporation of a Producer Company be made by -

- i. Any 10 or more individuals, each of them being a 'producer'; or
- ii. any 2 or more producer institutions; or
- iii. a combination of 10 or more individuals and producer institutions.

NOV 2004

Q. An Interstate Cooperative Society has been incorporated on 1st May, 2004 as a producer Company under provisions of the Companies Act, 1956. Give your comments on its proposal to have 18 directors on its Board after incorporation as a Producer Company.

ANS

Maximum 15 directors - A producer company can have a maximum of 15 directors

Maximum 18 directors for first year - A producer company can continue to employ up to 18 directors if it is formed by way of conversion of an ISCS into a producer company

May 2004

Q. Producer Company Limited was incorporated on 1st April, 2003. At present it has got 200 members and its Board consists of 10 directors. The Board of directors of the company seeks your advice in respect of appointment of one expert director and one additional director by the Board for a period of four years. Advise the Board of directors explaining the relevant provisions of the Companies Act, 1956.

ANS:

Company is authorised to appoint - One expert director and one additional director since expert directors or additional director fall within the limit of 1/5th of total number of directors

Tenure of office - Their tenure of office shall be such as is specified by the articles (Sec. 581P)

NOV 2007

Q. . Z an expert in modern agriculture practices is willing to lend his services as a director of M/s Lord Krishna Cotton Producer Company Ltd, registered under Section 581C of the Companies Act, 1956. Advise Mr. Z as to how he can be appointed as a director including (1) The total number of directors that can be appointed (2) The tenure of the Directors (3) The time limit within which the appointment should be made (4) the co-option of directors and (5) the voting powers of such co-opted directors

ANS

Total number of directors that can be appointed in a producer company is - However, if a Producer Company is formed by way of conversion of a society into a Producer Company, all the directors of the erstwhile society as on the transformation date shall continue in office for a period of 1 year from the transformation date (5810).

Tenure of directors is - Minimum-1 year Maximum – 5 years.

Time limit for appointment of directors is - 90 days from the date of registration of the Producer Company. However, the election of directors shall be conducted within 1 year, if-

- the Producer Company is formed by conversion of a society into a Producer Company: and
- at least 5 directors held office as on the date of conversion of society into Producer Company

The co-option of directors is possible - The Board may co-opt one or more expert directors or additional directors. These directors shall not exceed 1/5th of the total number of directors.



Voting power of co-opted directors - The expert directors shall not have the right to vote in the election of the chairman but shall be eligible to be elected as chairman if so provided by its articles.

MAY 2004

Q. XYZ Producer Company Limited was incorporated on 1st April, 2003. At present it has got 200 members and its Board consists of 10 directors. The Board of directors of the company seeks your advice in respect of making a donation of Rs. 10,000 to a Political Party. Advise the Board of directors explaining the relevant provisions of the Companies Act, 1956.

ANS

Political contribution of Rs. 10000 is prohibited since a Producer Company is prohibited from making any contribution or subscription to any person for any political purpose (Sec 581ZG)

MAY 2005

Q. A 2 year old Producer Company registered under Section 581C of the Companies Act, 1956 wants to donate some amount. Chief Executive of the Producer Company has approached you to advise him as to how and for what purposes the donation can be made by such company. Also state the monetary restrictions, if any, laid down in the Companies Act, 1956 on making donations by a Producer Company. You are informed that as per the Profit & Loss account of the Producer Company for its last accounting year net profit was 20.00 lacs.

ANS:

Prohibition on political contributions - A Producer Company is prohibited from making, directly or indirectly any donation to a political party or for any political purpose.

Other donations can be made - if it is made for the purposes of promoting the social and economic welfare of Producer Members or producers general public; or promoting the mutual assistance principle. If aggregate amount of all donations and subscriptions in any FY does not exceed 3% of the net profit of the preceding FY. If SR is passed for making a donation or subscription

MAY 2004

Q. A producer company has received applications from Mr. Ramanathan, a Director of the company, and Mr. Prem. a member of the Company for grant of loan of Rs. 2, 00,000 and Rs. 25,000 respectively.

Discuss the relevant provisions of the Companies Act 1956 as to how the applications for grant of loan will be disposed of by the Company

ANS:

Loan of Rs. 10000 to Mr. X is permissible with the approval of members in GM, provided conditions and limits of loan are specified in the resolution passed by members (Sec. 581ZK)