

CH. 28 Producer Company

GENESIS

Producer Companies are still governed by the Companies Act, 1956.

Meaning

According to Section 581A(1) of the Companies Act, 1956, "Producer Company" means a body corporate having objects or activities specified in section 581B and registered as Producer Company under this Act.

The membership of producer companies is open to such people who themselves are the primary producers, which is an activity by which some agricultural produce is produced by such primary producers.

The concept of *Producer Company* in India was introduced to allow cooperatives to function as a corporate entity under the Ministry of Corporate Affairs.

OBJECTS OF PRODUCER COMPANY

Objects of Producer Company (Section 581B (1) of the Companies Act, 1956)

(1) The objects of the Producer Company shall relate to all or any of the following matters, namely:

- (a) production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of the Members or import of goods or services for their benefit
- (b) processing including preserving, drying, distilling, brewing, and packaging of produce of its Members;
- (c) manufacture, sale or supply of machinery, equipment or consumables mainly to its Members;
- (d) providing education on the mutual assistance principles to its Members and others;
- (e) rendering technical services, consultancy services, training, research and development and all other activities for the promotion of the interests of its Members;
- (f) generation, transmission and distribution of power, revitalisation of land and water resources, their use, conservation and communications relatable to primary produce;
- (g) insurance of producers or their primary produce;
- (h) promoting techniques of mutuality and mutual assistance;
- (i) welfare measures or facilities for the benefit of Members as may be decided by the Board;
- (j) any other activity or incidental to any of the activities referred to in clauses (a) to (i)
- (k) financing of procurement, processing, marketing or other activities specified in clauses (a) to (j) which include extending of credit facilities or any other financial services to its Members.

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

FORMATION OF PRODUCER COMPANY AND ITS REGISTRATION

Any ten or more individuals, each of them being a producer or any two or more producer institutions, or a combination of ten or more individuals and producer institutions, desirous of forming a Producer Company having its objects specified in section 581B and complying with

the provisions of this Act in respect of registration, may form an incorporated Company as a Producer Company under this Act.

‘Producer institution’ means a Producer Company or any other institution having only producer or producers or Producer Company or Producer Companies as its member, having any of the objects referred to in Section 581B.

The Registrar on being satisfied that all requirements relating to registration and incidental matters have been complied with, shall register the memorandum, articles and other documents and issue a certificate of incorporation within 30 days of the receipt of the documents for registration.

On registration, the Producer Company shall be **deemed to be a private company limited by shares without any limit on the number of members.**

MEMBERSHIP AND VOTING RIGHTS OF MEMBERS OF PRODUCER COMPANY

Voting Rights	<p>Section 581D of the Act provides that unless the membership of the Producer Company consists of a Producer institution only, every member shall have a single vote irrespective of the number of shares held.</p> <p>In case, where the membership consists solely of Producer Institutions, the voting rights of such Producer institutions shall be determined on their previous year’s participation in the business of the company.</p> <p>However, during the first year of its regulation, the voting rights in a Producer Company shall be determined on the basis of shareholding by producer institutions.</p> <p>Where the membership of Producer Company consists of a combination of individuals and Producer Institutions, every member shall exercise a single vote. The Articles may however, authorize the Producer Company to restrict the voting rights to active members only.</p>
Member’s interest in conflict with Producer Company	<p>No person, who has any business interest which conflicts with the business of Producer Company, shall become a member of that Producer Company and if subsequently a member acquires any business interest which is in conflict with the business of the Producer Company, he shall cease to be a member.</p>

BENEFITS TO MEMBERS

Receipt of goods supplied	<p>Section 581E states that, initially every member shall receive only such value of the produce supplied as is determined by the Board of Producer Company and the withheld price may be disbursed later in cash or in kind or by allotment of equity shares.</p> <p>Every such member shall be entitled to receive a limited return and may be allotted bonus shares.</p>
----------------------------------	---

	Withheld price	Withheld price means part of the price due and payable for goods supplied by any member to the Producer Company, and as withheld by the Producer Company for payment on a subsequent date.
Patronage Bonus	Patronage bonus may be disbursed proportionately, if any, surplus remains after making provision for limited return and reserves. Patronage bonus refers to the payment by Producer Company out of its surplus income to the members in proportion to their respective patronage.	
The approval of Board of directors is necessary for disbursing 'withheld price' whereas for disbursing the 'patronage bonus', either in cash or by way of allotment of equity shares or both, the approval of members at the general meeting is required.		

MEMORANDUM OF ASSOCIATION & ARTICLES OF ASSOCIATION

The Memorandum of Association and the Articles of Association of the Producer Company, duly signed by the subscribers are required to be presented to the Registrar of the state where the Company's registered office is proposed to be set up.

The Memorandum and Articles shall contain the disclosures as provided under the provisions of Sections 581F and 581G respectively and are as under:

Contents of Memorandum of Producer Company u/s 581F

the Memorandum of Association of every Producer Company shall state the following:

- the name of the company with "Producer Company Limited" as the last words of the name of such Company;
- the State in which the registered office of the Producer Company is to situate;
- the main objects of the Producer Company shall be one or more of the objects specified in Section 581B;
- the names and addresses of the persons who have subscribed to the memorandum;
- the amount of share capital with which the Producer Company is to be registered and division thereof into shares of a fixed amount;
- the names, addresses and occupations of the subscribers being producers, who shall act as the first directors;
- that the liability of its members is limited;
- opposite to the subscriber's name the number of shares each subscriber takes:

NOTE (i) No subscriber shall take less than one share;
(ii) In case the objects of the Producer Company are not confined to one State, the States to whose territories the objects extend.

Contents of Articles of Association u/s 581G

According to Section 581G of the Act, the contents of the Articles of a Producer Company shall contain (1) Mutual Assistance Principles and (2) other provisions, which are as under:

1. Mutual Assistance Principles	The articles shall contain the following mutual assistance principles, namely: (a) the membership shall be voluntary and available to all eligible persons who avail of the facilities or services of the Producer Company, and are willing to accept the duties of membership;
--	--

	<p>(b) each Member shall have only a single vote irrespective of the shareholding;</p> <p>(c) the Producer Company shall be administered by a Board consisting of persons elected or appointed as directors;</p> <p>(d) there shall be limited return on share capital;</p> <p>(e) the surplus arising out of the operations of the Producer Company shall be distributed in an equitable manner by:</p> <ul style="list-style-type: none"> (i) providing for the development of the business of the Producer Company; (ii) providing for common facilities; and (iii) distributing amongst the Members, as may be admissible in proportion to their respective participation in the business; <p>(f) provision shall be made for the education of Members;</p> <p>(g) the Producer Company shall actively co-operate with other Producer Companies at local, national or international level so as to best serve the interest of their members and the communities.</p>
<p>2. Other Provisions relating to Contents of Articles of Producer Company</p>	<p>The Articles shall also contain the following provisions, namely:</p> <p>(a) the qualifications for membership, the conditions for continuance or cancellation of membership and the terms, conditions and procedure for transfer of shares;</p> <p>(b) the manner of ascertaining the patronage and voting right based on patronage;</p> <p>(c) the manner of constitution of the Board, its powers and duties, the minimum and maximum number of directors, manner of election and appointment of directors and retirement, qualifications for being elected.</p> <p>(d) the election of the Chairman, term of office of the Chairman, manner of voting at the general or special meetings of Members.</p> <p>(e) the circumstances under which, and the manner in which, the withheld price is to be determined and distributed;</p> <p>(f) the manner of disbursement of patronage bonus in cash or by issue of equity shares, or both;</p> <p>(g) the matters relating to issue of bonus shares out of general reserves;</p> <p>(h) the basis and manner of allotment of equity shares of the Producer Company in lieu of the whole or part of the sale proceeds of produce or products supplied by the Members;</p> <p>(i) the credit, loans or advances which may be granted to a Member and the conditions for the grant of the same;</p> <p>(j) the right of any Member to obtain information relating to general business of the company;</p>
<p>Amendment to Memorandum and Articles</p>	
<p>Amendment in the Memorandum can be done by way of passing a Special Resolution, whereas, the amendment in the Articles is required to be proposed by not less than two-third of the elected directors or by not less than one-third of the members and adopted by passing a Special Resolution in the general meeting.</p> <p>A copy of the amended Memorandum or Articles along with a duly certified copy of Special Resolution thereof are to be filed with the Registrar of Companies within thirty days from the date of its adoption at the general meeting.</p>	

OPTION OF INTER-STATE CO-OPERATIVE SOCIETIES TO BECOME PRODUCER COMPANIES

Meaning	An 'Inter-State Co-operative Society' means a Multi-State Co-operative Society formed under Multi-State Co-operative Societies Act, 2002 and includes any co-operative society registered under law in force and which has after its formation, extended any of its objects to more than one State.
----------------	---

Conversion	Section 581J of the Act provides that any Inter-State Co-operative Society whose objects are not confined to one state may submit an application together with the prescribed documents to the Registrar for registration as Producer Company. The Registrar on being satisfied, that all the requirements relating to registration have been complied with, shall within 30 days of receipt of the application, issue a certificate of incorporation and the words "Producer Company Limited" shall form part of its name to explain its identity.
-------------------	---

Any Inter-State Cooperative Society willing to register itself as a Producer Company shall submit an application to ROC along with following documents:

1. a copy of the Special Resolution passed with 2/3rd majority of the members;
2. a statement showing names, addresses and occupation of the directors and the chief executive;
3. a list of the members;
4. a statement indicating that the Inter-State Cooperative Society is engaged in any one or more of the objects specified in Section 581-B;
5. a declaration by two or more directors certifying that the particulars given as per Para (1) to (4) above are correct.

The 'Inter-State Co-operative Society' shall, upon registration stand transformed into a Producer Company, and shall be governed by the provisions of the Companies Act, 1956.

All properties, assets, movable or immovable, and all rights, debts, liabilities, interests, privileges and obligations of the Inter-State Co-operative Society shall vest in the Producer Company with effect from the transformation/registration date.

Any pending suit, arbitration, appeal or other legal proceeding, of whatever nature, by or against, the Inter- State Co-operative Society on transformation date may be continued, prosecuted and enforced by or against the Producer Company.

NUMBER OF DIRECTORS OF PRODUCER COMPANY

Every Producer Company shall have minimum five and not more than fifteen directors. However, in the case of an Inter-State Co-operative Society as a Producer Company, such company may have more than fifteen directors for a period of one year from the date of its incorporation as a Producer Company.

APPOINTMENT OF DIRECTORS

The subscribers of the Memorandum and Articles may designate or nominate therein, the Board of directors consisting of not less than five, who shall govern the affairs of Producer Company

until directors are elected. However, such designation shall remain effective for a period of 90 days only.

The election of directors shall be conducted within a period of ninety days of registration of Producer Company. However, in the case of an Inter-State Co-operative Society, which has been registered as a Producer Company, election of directors should be conducted within a period of three hundred and sixty-five days.

TENURE OF DIRECTORS

A director shall hold office as such for not less than one year but not exceeding five years and every director who retires shall be eligible for re-appointment. The tenure of such directors shall not exceed such period as may be specified in the Articles.

VACATION OF OFFICE BY DIRECTORS

The office of director of a Producer Company shall become vacant under the following circumstances:

- (a) if he is convicted by a court of any offence involving moral turpitude and sentenced in respect thereto with imprisonment for not less than six months;
- (b) if the Producer Company, in which he is a director, has made a default in repayment of any advances or loans taken from any company or institution or any other person and such default continues for ninety days;
- (c) if he has made a default in repayment of any advances or loans taken from the Producer Company in which he is a director;
- (d) if the Producer Company, in which he is a director:
 - (i) has not filed the annual accounts and annual return for any continuous three financial years; or
 - (ii) has failed to, repay its deposit or withheld price or patronage bonus or interest thereon on due date, or pay dividend and such failure continues for one year or more;
- (e) if default is made in holding election for the office of director, in the Producer company in which he is a director, in accordance with the provisions of the Companies Act;
- (f) if the annual general meeting or extraordinary general meeting of the Producer Company, in which he is a director, is not called in accordance with the provisions of the Act except due to natural calamity or such other reasons.

POWERS AND FUNCTIONS OF BOARD

The Board of Directors may exercise the following powers:

- (a) determination of the dividend payable;
- (b) determination of the quantum of withheld price;
- (c) admission of new Members;
- (d) pursue and formulate the organizational policy;
- (e) appointment of a Chief Executive and such other officers of the Producer Company;
- (f) exercise superintendence, direction and control over Chief Executive and other officers appointed by it;
- (g) cause proper books of account to be maintained; prepare annual accounts to be placed before the annual general meeting with the auditor's report;
- (h) acquisition or disposal of property of the Producer Company in its ordinary course of business;

- (i) investment of the funds of the Producer Company in the ordinary course of its business;
- (j) sanction any loan or advance, in connection with the business activities of the Producer Company to any Member, not being a director or his relative.

MATTERS TO BE TRANSACTED AT THE GENERAL MEETING

The following powers shall be exercised by the Board of directors on behalf of the company only by means of passing of resolutions at the annual general meeting of the company:

- (a) approval of budget and adoption of annual accounts;
- (b) approval of patronage bonus;
- (c) issue of bonus shares;
- (d) declaration of limited return and decision on the distribution of patronage;
- (e) specify the conditions and limits of loans that may be given by the Board to any director; and
- (f) approval of any transaction of the nature as is to be reserved in the Articles for approval by the Members.

LIABILITY OF DIRECTORS

Anything done by the directors, whether by way of voting on a resolution or approving by any other means, anything, in contravention of the provisions of this Act or its Articles, shall make them jointly and severally liable towards the Producer Company to make good the loss or damage suffered by such company.

Where as a result of the above, such director has made any profit, the Producer Company shall have the right to recover an amount equal to said profits from such director.

COMMITTEE OF DIRECTORS

Board may constitute such number of committees as it may deem fit for the purposes of assisting the Board in efficient discharge of its functions.

However, the Board of directors shall not delegate any of its powers or assign the powers of the Chief Executive, to any committee of directors.

Every such committee shall function under general superintendence, direction and control of the Board as may be specified.

MEETINGS OF THE BOARD AND QUORUM

Board meeting of a Producer Company shall be held at least once in every three months and at least four such meetings shall be held in every year.

The Chief Executive shall give notice to every director for the time being in India, and at his usual address in India to every other director at least seven days prior to the date of meeting.

However, a Board meeting may also be called at a shorter notice after recording reasons thereof in writing.

The quorum for the meeting shall be one-third of the total strength of directors, subject to a minimum of three.

SECRETARY OF PRODUCER COMPANY

Every Producer Company having an average annual turnover exceeding five crore rupees in each of three consecutive financial years shall appoint a member of the Institute of Company Secretaries of India as a whole-time Secretary of the company.

If a Producer Company fails to appoint Company Secretary, the company and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

QUORUM OF THE GENERAL MEETING

Unless Articles of Association require a larger number, one-fourth of the total membership shall constitute the quorum at a general meeting.

VOTING RIGHTS

Every member of the Producer Company shall have one vote irrespective of the number of shares hold by him. In the case of equality of votes, the Chairman or the person presiding over the meeting shall have a casting vote.

ANNUAL GENERAL MEETINGS

First AGM	Every Producer Company shall hold its first Annual General Meeting (AGM) within a period of ninety days from the date of its incorporation.
Gap between Two AGMs	Not more than fifteen months shall elapse between the date of one AGM of the Producer Company and that of the next AGM.
Extension	The Registrar may, for any special reason, permit the extension of time for holding of an AGM (not being the first AGM) by a period not exceeding three months.
Notice along with documents	Notice in writing indicating date, time and place of the meeting shall be given at least fourteen days before the meeting and shall also be accompanied by the following documents which shall be sent to every member and auditor of the company: (a) agenda of the meeting; (b) minutes of the previous AGM or extraordinary general meeting; (c) names and qualifications of candidates for election of directors; (d) audited balance sheet, profit and loss account and Board's report of the co.; (e) draft resolution for appointment of auditors; (f) draft resolution for proposed amendment, if any, in memorandum or articles.
Place & Timings of AGM	The Annual General Meeting shall be held during business hours, on a day not being a public holiday at the registered office of the company or at any other place within the city, town or village where the registered office of the company is situated.
Quorum	Unless the Articles provide for a larger number, the quorum of the general meeting shall be one-fourth of the total number of members.

Documents to be filed with ROC	Within sixty days from the date of the annual general meeting, the company is required to file the proceedings of the meeting, the audited balance sheet, the profit and loss account and the Director's report together with an annual return along with the filing fees with the Registrar.
EGM	On the requisition made in writing and duly signed by not less than one-third of the members, the Board of directors shall call an Extraordinary General Meeting (EGM).

SHARE CAPITAL

Producer Company's share capital shall consist of equity shares only.

Transferability of shares	A member of the Producer Company may, transfer whole or part of his shares along with any special rights, to an active member at par value only but after obtaining the previous approval of the Board. Special rights for this purpose means any rights relating to supply of additional produce by the active member.
Surrender of shares	If the Board of a Producer Company is satisfied that any member has ceased to be a primary member, or he has failed to retain his qualifications, necessary to enable him to remain the member of the Producer Company, then Board may direct him to surrender his shares to the company together with Special Rights, if any, attached therewith, at the value determined by the Board.
Issue of Bonus Shares	A Producer company may, after — the recommendation of the Board, and — passing of a resolution in General Meeting, issue bonus shares to its members in proportion to the shares held by them, on the date of the issuance of such shares, by capitalizing the amounts from its general reserves.

STRIKING OFF NAME OF PRODUCER COMPANY

Registrar can after making an inquiry strike off the name of a company where the company:

- (i) has failed to commence its business within one year of its registration;
- (ii) ceases to transact business;
- (iii) is no longer carrying on its objectives;
- (iv) is not following the mutual assistance principles.

The Registrar shall, before passing the order issue a show cause notice to the company with a copy to the directors and give a reasonable opportunity of being heard. Any member of the Producer Company aggrieved by an order may appeal to CLB within sixty days of passing an order.

RE-CONVERSION OF PRODUCER COMPANY TO INTER-STATE CO-OPERATIVE SOCIETY

Any Producer Company may make an application, after a resolution has been passed in the general meeting by not less than two-third of its members present and voting or on request by its creditors representing three fourth of its value of creditors, to the High Court for its re-conversion to Inter-State Co-operative Society.