



FAQs on Producer Companies

The Companies Act, 2013 Series



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

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PREFACE

"Agriculture is our wisest pursuit, because it will in the end contribute most to real wealth, good morals and happiness."

The above words of the erstwhile American president, Thomas Jefferson hold true not just in the context of the United States but on a global level and that too even after 200 years of having put out. As far as the Indian scenario is concerned, the relevance is even greater considering the fact that the Indian mainland has primarily been considered an agrarian economy. The farmers of the country have witnessed a long struggle on a variety of fronts ranging from stifling competition in global markets to prices yielding lower profit margins, imports leading to major setbacks in business, so on and so forth; the list seems endless.

It is this elongated list of pressing issues that had led to the evolution of the concept of 'producer company'; an institution structured primarily to channelize and govern the business activities of farmers and agriculturists, who could collectively be referred to as 'producers'. The idea was to allow farmers cooperatives to function as a corporate entity under the Ministry of Corporate Affairs. Providing these companies with a legal framework, the Companies Act, 1956 provided defined to not just 'Producer', 'Producer Company', or 'Producer Institution', but it laid down, in detail, the objectives of such companies as well, bringing a host of activities under its garb. However, even after being put in place for more than half a century, the laws need elucidation and explanation.

Understanding this gap and with an intent to fill it, the Institute of Company Secretaries of India has prepared this handbook titled 'FAQs on Producer Companies'. The publication aims to elucidate the law in line with the practical issues facing the professionals as have been brought before the Institute in the form of queries through dedicated e-mail for the purpose, while covering topics related to law and procedures regarding formation and registration, management and administration, share capital and member's rights, accounts, audit, loans and investments of producer companies.

I place on record my sincere thanks to CS Tushar Santosh Tendulkar and Advocate Sujay Pramod Joshi, Company Secretaries in practice for writing the manuscript of this publication.

I place on record my sincere thanks to CS Shamalee Vaze, Company Secretary in Practice and CS Makarand Lele, Vice President & Central Council Member for their valuable inputs while reviewing the draft of this publication. I also commend the dedicated efforts of CS Deepa Khatri, Deputy Director, in finalizing the publication with the able guidance of CS Samir Raheja, Director and CS Banu Dandona, Joint Director in the Directorate of Corporate Law and Governance, ICSI.

I am confident that this publication will be of practical value not only for members, practitioners and students but other stakeholders as well. However, considering the fact that there is always scope for improvement, I would personally be grateful to readers and users for their suggestions/comments for bringing about further refinement in this publication.

CS (Dr.) Shyam Agrawal

President

Place: New Delhi

Date : 16th November, 2017

The Institute of Company Secretaries of India

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PRODUCER COMPANIES – AN OPTION TO FUNCTION CO-OPERATIVES AS COMPANIES

1. What is the historical background of producer companies in India?

Producer Companies as an Institution have been conceptualised and structured, taking into the considerations of farmers, agriculturists (termed as '**Producers**'), with a view that the business activities relating to agriculture, be channelized and governed in a formal manner. Part IX A was introduced in the Companies Act, 1956 by the Companies (Amendment) Act, 2002, which consists of Chapters I to XII, covering Sections 581A to 581 ZT, encompassing the provisions of producer companies. The Policy makers realised that, inspite of India being an Agrarian Economy since ages, formalisation and good governance have not even touched the Agricultural Sector. The challenges faced by primary producers, farmers due to their limited asset and capital base, climate issues, mobilisation of resources, issues relating to agricultural labour, policy changes, technological advancements, transparency, governance and systems have been taken into consideration here by the policy makers.

Principally the structure, concept and philosophy of Co-operative Societies formed under the Co-operative Societies Act, 1961 has been kept intact as a basic framework and then the same has been improvised. Provisions relating to conversion of the existing Co-operative Societies registered under various other statutes have been also incorporated so as to give an opportunity to the co-operative sector to corporatize itself.

The basis of this entire structure and system of co-operatives in India, takes us behind atleast a 100 years from now. The Primary Agricultural Co-operative Society (PACS) is one of the oldest producer institutions in India. On the basis of the 'Principle of Co-operation', there have been various structures which have evolved like Self-Help Groups, Common Interest Groups etc. The objective of co-operative institutions, which the producer companies today have adhered to is not just earning profits but to help every member of such institutions and to share the profits between the members of such institutions.

The co-operative institutions and societies work under the following cardinal principles :

- (a) Democratic management – one vote for each member irrespective of their shareholdings.

- (b) Limited share in profits.
- (c) The concept of mutual assistance.
- (d) Co-operation and association with similar institutions

2. What is the basic working and management structure of Co-operative Institutions in India?

Co-operative Societies have been popularised due to the Co-operative Movement in India. These Organisations work on the Principles of Co-operation, Mutual aid and Assistance, protection of rights and interests of the Members of the Society etc.

Typically Co-operative Societies have a Socialist and Populist agenda while working. An important aspect of this is that, as against Companies and Corporate forms of organisations, the Co-operative Societies have a Principle of "One Head One Vote" and not "One Share One Vote". A typical Co-operative Society would have members, owning shares in the institution, and a Management Board, like a Board of Directors in a Company. Certain other features of the Structure of a Co-operative Society can be outlined as follows :

Governing Statute	Related Co-operative Societies enactments
Membership	Open to all
Professionals on Board	No Specific Provision to that effect
Area of Operations	Restricted geographically
Relation with other entities:	Only Transaction Based
Shares	Not Freely Tradable
Member Stakes	No linkage with number of Shares held
Voting Rights	1 Person 1 Vote, Registrar to have Veto Power
Reserves	Optional to create, if profit is achieved
Profit Sharing	Limited fixed Dividend
Government intervention	Excessive and Significant
Disclosure and Audit Requirements	Annual Report and Representation to regulator
Borrowing Power	Excessive Restrictions
Dispute Settlement	Through Co-operative Court/Admin System

The members in a co-operative society are the same persons having resource

contribution to the said Society. Example, in a Sugar Co-operative, the persons who have contributed either on land, capital, farm produce etc, are members having shares of the society.

These members elect a Management Committee or a Board like a Board of Directors in a company, which manages the day-to-day affairs of the Society. However the Registrar of Co-operative Societies is at the helm of the structure of the Society.

3. Explain in detail the concept of producer company as per the Companies Act?

The concept of producer companies was introduced in 2002 by incorporating a new Part IXA (Section 581A to 581ZT) into the Companies Act, 1956, ("the Act") based on the recommendations of an expert committee led by an economist, Mr. Y. K. Alagh.

Reference Section 581 of Companies Act 1956- Provisions of Part IX A of the Companies Act 1956 shall be applicable mutatis mutandis to producer companies in the manner as if the Companies Act 1956 has not been repealed.

A **producer company** is a company incorporated under Companies Act 2013 (formerly the Companies Act 1956) and shall carry on following activities as mentioned in section 581B of Companies Act 1956 :

- Production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of the Members or import goods for their benefit
- Processing including preserving, drying, distilling, brewing, venting, canning and packaging of produce of its members
- Manufacture, sale or supply of machinery, equipment or consumables mainly to its Members.
- Providing education on the mutual assistance principles to its Members and others
- Rendering technical services, consultancy services, training, research and development and all other activities for the promotion of interest of its members
- Generation, transmission and distribution of power, revitalisation of land and water resources, their use, conservation and communications relatable to primary produce
- Insurance of producers or their primary produce

- Promoting techniques of mutuality and mutual assistance
- Welfare measures or facilities for the benefit of Members as may be decided by the Board
- Any other activity, ancillary or incidental to any of the activities referred to in above clauses which may promote the principles of mutuality and mutual assistance amongst the Members in any other manner
- Financing of procurement, processing, marketing or other activities specified in above clauses which include extending credit facilities or any other financial services to its members

Over the period of time Producer Company has gained popularity due to the following:

- Co-operatives have largely been state promoted, with a focus on welfare rather than to do business on commercial lines and more State government intervention in the management of Co-operatives.
- Whereas Companies Act is central legislation comparatively more liberal and minimal government control in the management of the Company.
- A Producer Company is hybrid of Company and Co-operative Society.
- It combines the goodness of a co-operative enterprise and vibrancy and efficiency of a company and accommodates the unique elements of cooperative business with a regulatory framework similar to that of a company.

4. A producer company is governed under which law?

The formation and regulation of Producer Company is governed under the provisions of Sections 581A to 581ZL of Companies Act, 1956, read with Companies Act, 2013, and the rules made thereunder.

5. Whether Producer Company is Private Company or Public Company?

As the name of the Company ends with Producer Company Limited it seems to be a Public Company but as per clause (5) of the section 581C of Companies Act, 1956, on registration the Producer Company shall become a body corporate as if it is a Private Company and shall not under any circumstances deemed to be a Public Company.

6. Whether the limit of 200 members is applicable to Producer Company?

As per clause (5) of the section 581C of Companies Act, 1956, the Producer Company shall become a body corporate as if it is a Private Company without however any limit to the number of members.

7. Who can be member in a Producer Company?

A person being a “producer” or a “producer institution” (whether incorporated or not) can be admitted as member of Producer Company.

Here “**Producer**” means any person engaged in any activity or connected with or relatable to any primary produce and **primary produce** of farmer is defined as produce of farmer arising from agriculture including animal husbandry, horticulture, floriculture, pisciculture, viticulture, forestry, forest products, re-vegetation, bee raising and farming plantation products), or from any other primary activity or service which promotes the interest of the farmers or consumers or produce of persons engaged in handloom, handicraft and other cottage industries or any product resulting from any of the above activities, including by-products of such products.

“**Producer Institution**” means a producer company or any other institution having only producer or producers or Producer Company or Producer Companies as its member whether incorporated or not having any of the objects referred to in section 581B and which agrees to make use of the services of the Producer Company or Producer Companies as provided in its articles.

8. What if a member of the producer company ceased to be a primary producer?

As per clause (5) of section 581ZD, where the Board of a Producer Company is satisfied that where the Board of a Producer Company is satisfied that the Board shall direct the surrender of shares together with special rights, if any, to the Producer Company at par value or such other value as may be determined by the Board.

Provided that the Board shall not direct such surrender of shares unless the Member has been served with a written notice and given an opportunity of being heard.

9. What are the benefits derived by the members of producer companies?

Following benefits are derived by the members of producer companies:

- Subject to provisions made in articles, every member shall initially receive only such value for the produce or products pooled and supplied as the Board of Producer Company may determine, and the withheld price may be disbursed later in cash or in kind or by allotment of equity shares, in proportion to the produce supplied to the producer company during the financial year to such extent and in such manner and subject to such conditions as may be decided by the Board.

- Every member shall, on the share capital contributed, receive only a limited return provided that every such member may be allotted bonus shares in accordance with the provisions contained in section 581ZJ.
- The surplus if any, remaining after making provision for payment of limited return and reserves referred to in section 581ZI, may be disbursed as patronage bonus, amongst the members, in proportion to their participation in the business of the producer company, either in cash or by way of allotment of equity shares, or both, as may be decided by the members at the general meeting.

10. What is the difference between a Producer Company, Private Limited Company and Public Limited Company?

S. No.	Particulars	Producer Company	Private Limited Company	Public Limited Company
1.	No. of Members	Any ten or more individuals or two or more Producer Institutions or their combinations can form a Producer Company without any restriction on maximum no. of members.	Any two or more individuals or companies can form a Private Company	Any seven or more individuals or companies can form a Public Company
2.	Objects	A Producer company can be established for objects specified in section 581B of the Act.	A Private Limited Company can be set up for any lawful object.	A Public Limited Company can be set up for any lawful object.
3.	Name of Company	A "Producer Company Limited" would form part of its name.	A "Private Limited" would form part of its name.	A "Limited" would form part of its name.
4.	Cessation of membership	A person ceases to be a member of Producer company	No specific provisions are made for Private	No specific provisions are made for Public

		<p>if</p> <p>(a) he ceases to a Primary Producer</p> <p>(b) he has any business interest which is in conflict with the business of Producer company.</p>	<p>Companies until occurrence of certain events eg. buy back or transfer of shares, non-payment of allotment or call money, if member gets expired or insolvent, by the order of court etc.</p>	<p>Companies until occurrence of certain events eg. buy back or transfer of shares, non-payment of allotment or call money, if member gets expired or insolvent, by the order of court etc.</p>
5.	No. of directors	<p>Every Producer company shall have at least five and not more than fifteen Directors.</p>	<p>Every Private company shall have at least two and not more than fifteen Directors.</p>	<p>Every Public company shall have at least three and not more than fifteen Directors.</p>
6.	Number of additional or expert directors	<p>Total Number of additional or expert directors should not exceed one fifth of the total strength of the number of directors on the Board.</p>	<p>No such limit is prescribed for appointment of additional or expert directors. However total number of directors including additional directors shall not exceed the maximum strength fixed for the Board after passing special resolution.</p>	<p>No such limit is prescribed for appointment of additional or expert directors. However total number of directors including additional directors shall not exceed the maximum strength fixed for the Board after passing special resolution.</p>
7.	Vacation of office of directors	<p>The directors shall vacate the office on the grounds specified in section 581Q of the Act.</p>	<p>The directors shall vacate the office on the grounds specified in section 167 of the Act.</p>	<p>The directors shall vacate the office on the grounds specified in section 167 of the Act.</p>

8.	Appointment of whole time secretary	Every Producer company having an average annual turnover exceeding Rs.5 Crore in each of 3 financial years shall appoint whole time Company Secretary.	Appointment of whole time Secretary is mandatory for companies having paid up share capital of Rs. 5 Crore.	Appointment of whole time Secretary is mandatory for companies having paid up share capital of Rs. 5 Crore.
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A producer company is thus a hybrid between a private limited company and a cooperative society. It combines the goodness of a cooperative enterprise and the vibrancy and efficiency of a company. It accommodates the unique elements of cooperative business with a regulatory framework similar to that of a private limited company.

11. What are the tax benefits available to a Producer Company?

The Income Tax Act, 1961, ("the IT Act") specifically exempts tax on agricultural income under Section 10(1). However, the exemption for such agricultural income shall sometimes vary depending upon the kind of agricultural activity carried on.

It is to be noted that though the IT Act does not per-se give any special benefits or exemptions to Producer Companies as such, but depending upon the kind of agricultural activity it carries on, certain tax benefits can be availed.

Dividend tax at the applicable rates is required to be paid by the Company at the time of patronage bonus, limited return distribution and the same will be tax free in the hands of the members.

Bonus shares will not attract any tax in the hands of the members at the time of allotment, however at the time of sale or redemption necessary provision of capital gain tax shall apply.

FORMATION AND REGISTRATION OF PRODUCER COMPANY

1. How many members are required to form a Producer Company?

As per section clause (1) of section 581C of the Companies Act, 1956, any one of the following combination can form a Producer Company:

- Any ten or more individuals each of them being a producer
- Or any two or more Producer Institutions
- Or Combination of 10 or more individuals and Producer Institutions

2. What is the minimum number of directors required for formation of Producer Company?

As per clause (1) of section 581O of the Companies Act, 1956, every producer company shall have at least five and not more than fifteen directors provided in the case of an inter-state co-operative society incorporated 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.

3. Explain the procedure of incorporation of a Producer Company.

As the minimum numbers of members are more than 10, SPICE forms cannot be used for formation of Producer Companies. Producer Company is incorporated through Form INC – 7, Form DIR – 12 and Form INC – 22.

(1) Application for DIN

- The Directors of the proposed Producer Company are required to apply for DIN (Director Identification Number) in Form DIR – 3 by attaching prescribed documents.
- The DIN No. is valid for life time of applicant.

(2) Incorporation of Producer Company

- (i) **Application for reservation of name:** The application for the reservation of the name is to be filed in **Form INC-1** with DIN / PAN numbers of all 10 proposed subscribers. Such name shall be available for reservation for a period of 60 days from the date of application made to Registrar.

Every Producer Company shall have the words “Producer Company Limited” as the last words of its name.

Criteria for name approval: The name of Producer Company should not be undesirable as per rule 8 of Chapter II of Company Incorporation Rules.

(ii) Filing of Incorporation Document:

- The incorporation document is required to be filed in Form INC- 7, Form DIR – 12 and Form INC – 22.
- Form INC – 7, DIR – 12 and INC – 22 should state following details –
 - a. the name of the Producer Company;
 - b. Authorized and Subscribed Capital;
 - c. Particulars of all ten subscribers which were mentioned at the time of filing form INC – 1. If there is any change in promoter subscribers No objection has to be attached
- Along with the incorporation document there shall be filed Memorandum of Association and Articles of Association alongwith subscribers sheet,
- duly notarised Affidavit in Form INC – 9 of all subscribers,
- declaration in Form INC - 8, made by either an advocate, or a Company Secretary or a Chartered Accountant or a Cost Accountant, who is engaged to give declaration under section 7 (1) (b) that all the requirements of this Act and the rules made thereunder have been complied with,
- PAN copies of all subscribers
- Aadhar Card / Driving License / Voter Id / Passport as proof of identity
- electricity Bill / mobile Bill / telephone Bill / bank Statement as proof of address
- **proof of farming 7/ 12 extracts of Agricultural Land or certificate from District Tahsildar this is additional requirement (proof of farming will differ state to state)**
- Consent to act as director in Form DIR – 2
- Electricity Bill of registered office address
- The Registrar may accept the statement (made by an Advocate/ Company Secretary/ Chartered Accountant/Cost Accountant, who is engaged in the formation of the Company and by any one who subscribed his name to the incorporation document, that all the requirements of this Act and the rules made thereunder have been

complied with, in respect of incorporation and matters precedent and incidental thereto) as sufficient evidence that the requirement has been complied with.

- The certificate shall be signed by the Registrar and authenticated by his official seal.
- The certificate shall be conclusive evidence that the Producer Company is incorporated by the name specified therein.

4. Whether Table F of Articles of Association under Schedule I of Companies Act 2013 is applicable?

No, Table F of Articles of Association is not applicable to Producer Companies. However, the Articles of Association of a Producer Company shall include mutual assistance principles as mentioned in section 581G of Companies Act 1956.

5. Whether existing Inter-State Co-operative Societies can be registered as Producer Companies?

- As per Section 581J of the Companies Act, 1956, any Inter-State Co-operative Society with objects not confined to one State may make an application to the Registrar for registration as Producer Company under this Part.
- Every application under sub-section (1) shall be accompanied by –
 - (a) a copy of the special resolution, of not less than two-third of total members of inter-State co-operative society, for its incorporation as a Producer Company under this Act
 - (b) a statement showing names and address or the occupation of the Directors and Chief Executive, if any, by whatever name called of such co-operative and list of members of such co-operative
 - (c) a statement indicating that the Inter state co-operative society is engaged in any one or more of the objects specified in section B
- a declaration by two or more directors of the inter-State co-operative society certifying that particulars given in clauses (a) to (c) are correct.
- When an inter-State co-operative society is registered as Producer Company the words "Producer Company Limited" shall form its name with any word or expression to show its identity preceding it.
- A co-operative society formed by producers, by Federation or Union of co-operative societies of producers or co-operatives of producers, registered under any law for the time being in force which has extended

its objects outside the State, either directly or through a union or federation of co-operatives of which it is a constituent, as the case may be, and any Federation or Unions of such co-operatives, which has so extended any of its objects or activities outside the State, shall be eligible to make an application under sub-section (1) and to obtain registration as a Producer Company under this Part.

- The inter-State co-operative society shall, upon registration under sub-section (1), stand transformed into a Producer Company, and there-after shall be governed by the provisions of this Part to the exclusion of the law by which it was earlier governed, save in so far as anything done or omitted to be done before its registration as a Producer Company, and notwithstanding anything contained in any other law for the time being in force, no person shall have any claim against the co-operative institution or the company by reason of such conversion or transformation.
- Upon registration as a Producer Company, the Registrar of Companies who registers the company shall forthwith intimate the Registrar with whom the erstwhile inter-State co-operative society was earlier registered for appropriate deletion of the society from its register.
- As per section 581K, every shareholder of the inter-State co-operative society immediately before the date of registration of Producer Company (hereafter referred to as the transformation date) shall be deemed to be registered on and from that date as a shareholder of the Producer Company to the extent of the face value of the shares held by such shareholder.
- As per Section 581L, all the properties, assets, liabilities, rights, debts, money dues or contracts, suits, subsidies, grants shall stand transferred to Producer Company.

*As per Companies Act 2013, Inter State Co-operative has to make an application in **Form URC-1** as per the provisions of Section 366 of Companies Act, 2013, to get it registered under Part I of this Chapter.*

MANAGEMENT AND ADMINISTRATION OF PRODUCER COMPANIES

1. Elaborate on the aspect of management of Producer Companies.

Principally, a Producer Company being a Company, a body corporate in itself, the aspect of management and ownership is differentiated by the statute itself.

The Management of the Producer Company is vested in the Board of Directors and the ownership of the Company is vested in the Shareholders/Members. The Board of Directors in a Producer Company manage and operate the day to day affairs of the Company. An additional post of a Chief Executive is provided for as a linkage in the said Producer Company.

A Producer Company shall have the liability of its Members limited and can neither be limited by guarantee with or without share capital nor unlimited liability companies.

2. How is a director appointed in a Producer Company?

As per Section 581P of the Companies Act, 1956, save as provided in section 581N, the Members who sign the memorandum and the articles may designate therein the Board of directors (not less than five) who shall govern the affairs of the Producer Company until the directors are elected in accordance with the provisions of this section.

The election of directors shall be conducted within a period of ninety days of the registration of the Producer Company.

Above provision needs clarification and needs to be aligned with existing provisions of Chapter of "Appointment and Disqualification of Directors" under Companies Act 2013.

Reasons – As per current procedure of formation of Companies, First Directors are already mentioned in Articles of Association and also Form DIR – 12 with consent to act as Directors in Form DIR – 2 is filed with Registrar at the time of Incorporation and thus the First Directors are already appointed.

There is no point in taking elections within 90 days of the Registration of Company for Appointment of Directors.

3. What are the circumstances for vacation of office by director?

As per section 581Q of the Companies Act, 1956, the office of director of Producer Company shall become vacant if:

- (a) he is convicted by a Court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months
- (b) the Producer Company in which he is director has made 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) he has made a default in repayment of any advances or loans taken from the Producer Company in which he is a director
- (d) 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 commencing on or after the 1st day of April, 2002 ; 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) 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 this Act and articles
- (f) 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 this Act except due to natural calamity or such other reason

The above provisions shall, as far as may be, apply to the director of a Producer institution which is a member of a Producer Company.

Above provisions need to be aligned as per section of 164 of the Companies, 2013, in clause (d)(i) of the above provisions it is mentioned the office of Director shall become vacant if the Producer Company in which he is director has not filed the **annual accounts and annual return** for any continuous period of three financial years.

As per section 164(2)(a) of the Companies, 2013, a person shall not be eligible for appointment as Director of a Company if he has not filed **financial statements or annual return** for continuous period of the three financial years.

In first instance director will be disqualified if he has not filed both annual accounts **and** annual return for a period of continuous three in financial years and in second instance he is disqualified if either of financial statement **or** annual return are not filed for a continuous period of three financial years.

4. What are the powers and functions of the Board of Directors of a Producer Company?

The Board of directors of Producer Company shall do all such acts and things and exercise all such powers as is authorised by the Articles and by the provisions of this Act.

Certain powers which shall be exercised by the Board of Directors of Producer Company are:

- day to day management functions of the Producer Company such as formulation of the organisational policies & objectives including long-term and annual objectives,
- formulation of corporate strategies and financial plans;
- determination of the dividend payable;
- determination of the quantum of withheld price and recommendation of patronage Bonus; admission of new Members;
- appointment of officers of the Producer Company including Chief Executive, Company Secretary & exercise of superintendence, direction and control over Chief Executive and other officers appointed;
- maintenance of books of accounts;
- preparation of annual accounts to be placed before the annual general meeting with the auditor's report and the replies on qualifications, if any, made by the auditors;
- acquisition or disposal of property in the ordinary course of business of Producer Company;
- investment of the funds in the ordinary course of business ;
- sanction any loan or advance to any Member not being a director or his relative ;
- such other measures as may be required in the discharge of functions or exercise of powers.

All the above mentioned powers shall be exercised by means of resolution passed at the Board. The persons who are not in the Board shall not exercise any of the above mentioned powers. Therefore the ex officio directors like Chief Executive Officer cannot exercise above powers.

The Board of Directors of Producer Company cannot transact business reserved for General Body as mentioned u/s 581S.

5. What is the Liability of the Directors in a Producer Company?

Liabilities of directors in a Producer Company:

- Section 581T of the Companies Act, 1956, provides that any contravention of the provisions of this Act or any other law or provisions of articles, done by the directors of Producer Company, either by way of voting on a resolution or approving by any other means, shall make such directors either jointly or severally liable towards the Producer Company to make good any loss or damage suffered by such Company.
- In all such cases, the Producer Company shall have the right to recover from its directors and if such director has made any profit (with ill intention), the Producer Company shall have the right to recover an amount equal to said profits from such directors and if in case of a loss or damage an amount equal to that loss or damage.
- The liability so imposed shall be in addition to and not in derogation of a liability imposed under this Act or any other law for the time being in force. However all acts done by the directors in the general interest of the company and its members and in accordance with the provisions of Memorandum, Articles and provisions of this act and loss or damage, if any suffered by company, then such loss or damage shall not be considered as personal liability of the directors and they shall not be required to make good such loss or damage.
- There can be various Committees of Directors which can be formed as a means of improving board effectiveness and efficiency, in areas where more focused, specialised and technical discussions are required. There commendation of the committee has to be approved by the Board.
- Section 581U of the Companies Act, 1956, states that the 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 may with the approval of the Board, co-opt such number of persons, as it deems fit, as the members of the committee. However in every such committee the Chief Executive appointed under Section 581W or a director of Producer Committee shall be a member.
- Every such committee shall be subject to general superintendence, direction and control of the Board. The Board may decide the duration, functioning and the fees and allowances to be paid to the members of the

committee. The minutes of every Committee meeting shall be placed before the next Board meeting.

4. Whether appointment of Chief Executive is mandatory?

Yes, as per Section 581W of the Companies Act, 1956, every Producer Company shall have a full time Chief Executive, by whatever name called, to be appointed by the Board from amongst persons other than Members.

The Chief Executive shall be ex officio director of the Board and such director shall not retire by rotation.

In the above section 581W, time period within which a Producer Company shall comply with the provisions of appointment of Chief Executive is not mentioned, as per general practice we should comply it before closure of first financial year as in Form MGT – 7 we have to mention whether Company has complied with all the provisions of Companies Act or not.

5. Who is the Chief Executive of a Producer Company?

The Chief Executive Officer shall be an ex-officio director and shall not retire by rotation.

The qualifications, experience and the terms and conditions of Chief Executive Officer shall be such as may be determined by the Board subject to the provisions contained in the Articles. The chief executive, who shall be entrusted with substantial powers of the management, shall manage the affairs of the Producer Company but subject to the superintendence, direction and control of the Board and is accountable to the Board for the performance of the Producer Company.

Unless the articles otherwise provide to the contrary, the Chief Executive Officer need not be a Producer.

6. What are the powers and functions of Chief Executive?

The Chief Executive shall be entrusted with substantial powers of management and may exercise powers and discharge the following functions:

- (a) do administrative acts of a routine nature including managing the day-to-day affairs of the Producer Company
- (b) operate bank accounts or authorise any person, subject to the general or special approval of the Board in this behalf to operate the bank account
- (c) make arrangements for safe custody of cash and other assets of the Producer Company

- (d) sign such documents as may be authorised by the Board, for and on behalf of the company
- (e) maintain proper books of account ; prepare annual accounts and audit thereof ; place the audited accounts before the Board and in the annual general meeting of the Members
- (f) furnish Members with periodic information to appraise them of the operation and functions of the Producer Company
- (g) make appointments to posts in accordance with the powers delegated to him by the Board
- (h) assist the Board in the formulation of goals, objectives, strategies, plans and policies
- (i) advise the Board with respect to legal and regulatory matters concerning the proposed and on going activities and take necessary action in respect thereof
- (j) exercise the powers as may be necessary in the ordinary course of business
- (k) discharge such other functions, and exercise such other powers, as may be delegated by the Board

7. Whether appointment of Company Secretary is applicable to Producer Company?

As per Section 581K of the Companies Act, 1956, every Producer Company having an **average annual turnover exceeding five crore rupees in each of three consecutive financial years** shall have a whole-time secretary.

No individual shall be appointed as whole-time secretary unless he possesses membership of the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980.

*Clarification needed from MCA as in the above section appointment of Company Secretary is based on **average annual turnover of the Company of preceding three consecutive financial years** whereas Section 203 of Companies Act, 2013, states **every company whose paid-up capital is 5 crores or more** need to appoint a Whole time Company Secretary in Employment.*

8. Whether Producer Companies can appoint Committees?

The Board may constitute such number of committees as it may deem fit for the purpose of assisting the Board in the efficient discharge of its functions provided that the Board shall not delegate any of its powers or assign the powers of the Chief Executive, to any committee.

A committee constituted under with the approval of the Board, co-opt such number of persons as it deems fit as members of the committee provided that the Chief Executive appointed under section 581W or a director of the Producer Company shall be a member of such committee.

The Chief Executive appointed under section 581W or a director of the Producer Company shall be a member of such committee.

The fee and allowances to be paid to the members of the committee shall be such as may be determined by the Board.

The minutes of each meeting of the committee shall be placed before the Board at its next meeting.

9. How many Board Meetings shall held in a financial year?

As per section 581V of the Companies Act, 1956, meetings of the Board shall be held not less than once in every three months and at least four such meetings shall be held in every year.

Above provisions need clarification and need to be aligned with Section 173 of Companies Act, 2013 and Secretarial Standard I, as per Secretarial Standard I read with Companies Act, 2013, every company shall hold 4 Board meetings in a calendar year and gap between 2 Board Meetings shall not be more than 120 days, in case of one person company and small company are required to hold one Board Meeting in each of calendar year and gap between 2 Board Meetings shall not be less than 90 days.

10. What are the provisions with respect to Annual General Meeting for Producer Company?

As per section 581ZA of the Companies Act, 1956, every Producer Company shall in each year, hold, in addition to any other meetings, a general meeting, as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a Producer Company and that of the next.

The Registrar may, for any special reason, permit extension of the time for holding any annual general meeting (not being the first annual general meeting) by a period not exceeding three months.

A Producer Company shall hold its first annual general meeting within a period of ninety days from the date of its incorporation.

Above clause 2 of Section 581ZA states that the first Annual General Meeting shall be held within a period of 90 days from the date of its incorporation which is different from existing Companies Act 2013.

As per section 96 of Companies Act, 2013, first Annual General Meeting shall held within 9 months of close of first financial year.

11. What is the business to be transacted in First Annual General Meeting of the Producer Company?

The members shall adopt the articles of the Producer Company and appoint directors of its Board in the Annual General Meeting.

The Ministry may consider deletion of clause 2 of section 581ZA and aligned with clause 1 of section 96 of Companies Act 2013 where clause 1 states that the first Annual General Meeting of the Company shall be held within 9 months of the closure of first financial year.

Justification with practical difficulty is briefed hereunder:

Business to be transacted at the first Annual General Meeting, i.e. Adoption of Articles of Association, as per the procedure followed under Companies Act 2013, the Articles are already subscribed by the proposed promoters at the time of incorporation and said subscribed articles are attached in Form INC – 7.

Adopting already subscribed Articles in the Annual General Meeting by the same persons is of no use and redundancy of procedure.

Secondly the provision says about appointment of Directors, as per the procedure of formation of Companies under Companies Act, 2013, First Directors are already mentioned in Articles of Association which are already subscribed by all the promoters and also Form DIR – 12 with consent to Act as Directors in Form DIR – 2 is filed with Registrar at the time of Incorporation and thus this Directors are already appointed.

Appointing already appointed Directors in the first Annual General Meetings is again redundancy of procedure.

- i) Appointment of First Auditors – As per clause 6 of section 139 first Auditors shall be appointed by the Board of Directors within 30 days from the date of its incorporation and such auditor shall hold office till the conclusion of **First Annual General Meeting.***

So in case of a Producer Company the term of first Auditor shall be only of 90 days as the producer company has to hold its first Annual General Meeting in 90 days from the date of its incorporation. So if we go by the provisions of 581ZA then an auditor has to be again appointed in that First Annual General Meeting or will he continue to be the Auditor till the end of financial year is a part of confusion.

- ii) Case 1 say a Company is incorporated on 25th December 2016 and as per*

the provisions of the Companies Act 2013, the Company has to end its financial year on 31st March 2017.

In above case as per Clause 2 of 581ZA Company has to hold its first annual general meeting within 90 days, lets say company held its First Annual General Meeting on 20th March 2017, but within a period 6 months Company has to again hold its Annual General Meeting before 30th September for Adoption Accounts of first financial year. It cannot take benefit of taking Annual General Meeting within 9 months as per the section 96 of Companies Act as practically this will be second Annual General Meeting of the Company.

- iii) *Case 2 say a Company is incorporated on 05th January 2016 and as per provisions of Companies Act 2013 the Company has to end its financial year on 31st March 2017.*

In above case as per Clause 2 of 581ZA Company has to hold its first annual general meeting within 90 days, lets say company held its First Annual General Meeting on 28th March 2016, but in this case the Company has to hold its Annual General Meeting for adoption of Accounts of the first financial year ending in 31st March 2017 by 28th June 2017 as the acts states that there shall not be a gap of more than 15 months between the two Annual General Meetings.

Again in above case going through the Act the Company has to finalised accounts by May and lay it before Shareholders by June as it cannot take benefit of taking Annual General Meeting within 9 months as per the section 96 of Companies Act as practically this will be second Annual General Meeting of the Company.

Citing above practical difficulties and confusion which leads to diverse practices followed by professional Ministry should re-consider the provisions and necessary changes shall be made in the Act.

There is some practical difficulty arising while working with Producer Companies with regard to Allotment of Shares. The Ministry may consider for the clarification in this regard.

Producer Companies are getting government assistance under various schemes, such as SFAC Equity grant scheme, SFAC Venture capital scheme, MACP scheme (Maharashtra), Nabard Finance Scheme, but in all above schemes minimum members required for eligibility are 50, 500, 350 and 250 respectively.

Now the problem arises as in section 581 there is no provisions w.r.t the allotment of shares, we have to follow procedure ,mentioned in section 42 of Companies

Act 2013 for private placement, which itself is very lengthy and impracticable in above case. As minimum application size shall be of Rs.20000/- and further we cannot allot shares above 49 members in a single meeting and further we cannot allot more than 200 members in a financial year.

Means if a company has to avail a venture capital of SFAC it has to hold 10 Board Meetings in 2.5 year and allot shares to 49 persons in each meeting then only then they will be eligible, so it's not practicable to hold 10 Board meeting which will be very costly to the Company, further farmers are already very much low in finance so how can a farmer take minimum shares of Rs.20000.

Probable solution for the above problem:- As there is a exemption notification for NIDHI Companies wherein they have exempted NIDHI companies from Section 42(2) Explanation (1), 42(3), 42(5), 42(7) (Private Placement) such exemptions also shall be granted to PRODUCER COMPANIES so that they will not face above problems.

SHARE CAPITAL AND MEMBERS RIGHTS

1. What are the types of shares which producer Company can issue?

As per section 581ZB of the Companies Act, 1956, the share capital of a Producer Company shall consist of equity shares only.

The shares held by a Member in a Producer Company, shall as far as may be, in proportion to the patronage of that company.

Here "**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.

2. Can a Producer Company give some special rights to the members of the Company?

The producers, who are active Members may, if so provided in the articles, have special rights and the Producer Company may issue appropriate instruments to them in respect of such special rights.

The instruments of the Producer Company issued shall, after obtaining approval of the Board in that behalf, be transferable to any other active Member of that Producer Company.

Explanation. - For the purposes of this section, the expression "**special right**" means any right relating to supply of additional produce by the active Member or any other right relating to his produce which may be conferred upon him by the Board.

3. Whether shares of Producer Companies are transferable?

A Member of a Producer Company may, after obtaining the previous approval of the Board, transfer the whole or part of his shares along with any special rights, to an active Member at par.

Here "**active members**" means a member who fulfils the quantum and period of patronage of the Producer Company as may be required by the articles.

In the above provision there is one practical difficulty as if there are only 10 members as required by the Act and if one of them wants to transfer his shares and as the above provision suggest that the shares can be transferred only to active member, whether an outsider incoming member can be termed as an

active member is the question and if he transfers his shares to existing members then minimum requirement of members will fall below which is again a default.

Probable resolution – the provision of obtaining previous approval of the Board for transfer of shares shall be kept as it is only the word transfer to active members shall be interchanged with Producer.

4. Whether the members of the Producer Company can appoint nominee?

Every Member shall, within three months of his becoming a Member in the Producer Company, nominate, in the manner specified in articles, a person to whom his shares in the Producer Company shall vest in the event of his death.

The nominee shall, on the death of the Member, become entitled to all the rights in the shares of the Producer Company and the Board of that Company shall transfer the shares of the deceased Member to his nominee.

In a case where such nominee is not a producer, the Board shall direct the surrender of shares together with special rights, if any, to the Producer Company at par value or such other value as may be determined by the Board.

5. How are the voting rights of members determined in Producer Companies?

The voting rights are determined as follows:

- ***In a case where the membership consists solely of individual members,*** the voting rights shall be based on a single vote for every Member, irrespective of his shareholding or patronage of the Producer Company.
- ***In a case where the membership consists of Producer institutions only,*** the voting rights of such Producer institutions shall be determined on the basis of their participation in the business of the Producer Company in the previous year, as may be specified by articles.

Provided that during the first year of registration of a Producer Company, the voting rights shall be determined on the basis of the shareholding by such Producer institutions.

- ***In a case where the membership consists of individuals and Producer institutions,*** the voting rights shall be computed on the basis of a single vote for every Member.

ACCOUNTS, AUDIT, LOANS AND INVESTMENTS

1. What are the requirements with respect to Internal Audit for Producer Companies?

As per section 581ZF of the Companies Act, 1956, every Producer Company shall have internal audit of its accounts carried out, at such interval and in such manner as may be specified in articles, by a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Institute of Chartered Accountants Act, 1949.

As per Section 138 of Companies Act, 2013, has widened the term of Internal Audit, any professional like a Chartered Accountant, Cost Accountant, Company Secretary or Advocate can be appointed as Internal Auditor whereas as per section 581ZF of the Companies Act, 1956, internal audit of Producer Company can be carried out only by a Chartered Accountant.

Clarification- If in future above criteria mentioned as per Section 138 of Companies Act, 2013, is made applicable to the Producer Companies most of the Companies would be exempted from carrying out Internal Audit.

2. What are the duties of an Auditor?

The auditor shall report on the following additional matters relating to the Producer Company, namely:

- (i) the amount of debts due along with particulars of bad debts if any
- (ii) the verification of cash balance and securities
- (iii) all transactions which appear to be contrary to the provisions of this Part
- (iv) the loans given by the Producer Company to the directors
- (v) the donations or subscriptions given by the Producer Company
- (vi) any other matter as may be considered necessary by the auditor

3. Whether Producer Companies can make donations or subscriptions?

As per sections 581ZH of the Companies Act, 1956, a Producer Company may, by special resolution, make donation or subscription to any institution or individual for the purposes of:

- a) promoting the social and economic welfare of Producer Members or producers or general public

- b) promoting the mutual assistance principles

The aggregate amount of all such donation and subscription in any financial year shall not exceed three per cent of the net profit of the Producer Company in the financial year immediately preceding the financial year in which the donation or subscription was made.

No Producer Company shall make directly or indirectly to any political party or for any political purpose to any person any contribution or subscription or make available any facilities including personnel or material.

5. Whether Producer Companies are required to transfer any funds to general reserves?

Every Producer Company shall maintain a general reserve in every financial year, in addition to any reserve maintained by it as may be specified in articles.

In a case where the Producer Company does not have sufficient funds in any financial year for transfer to maintain the reserves as may be specified in articles, the contribution to the reserve shall be shared amongst the Members in proportion to their patronage in the business of that company in that year.

6. Can Producer Companies advance Loans or provide for financial assistance or credit facilities to its members?

As per Section 581ZK of the Companies Act, 1956, the Board may, subject to the provisions made in articles, provide financial assistance to the Members of the Producer Company by way of:

- a) credit facility, to any Member, in connection with the business of the Producer Company, for a period not exceeding six months
- b) loans and advances, against security specified in articles to any Member, repayable within a period exceeding three months but not exceeding seven years from the date of disbursement of such loan or advances :

Further, any loan or advance to any director or his relative shall be granted only after the approval by the Members in general meeting.

Comparison with Companies Act, 2013:

Above provisions are in respect of loan to directors, their relatives and members, when the above provisions were enacted, Section 295 of Companies Act, 1956, was not applicable to private companies, but in current scenario Section 185 of Companies Act, 2013, is applicable to private companies (Read with exemption notification for Private Companies dated 05th June 2015).

7. Elaborate the aspect of investment by the Producer Company in other Companies, Formation of Subsidiaries etc.***Investment by the Producer Company in other Companies, Formation of Subsidiaries etc.:***

- (i) As per Section 581ZL of the Companies Act, 1956, the general reserves of any Producer Company shall be invested to secure the highest returns available from approved securities, fixed deposits, units, bonds issued by the Government or co-operative or scheduled bank or in such other mode as may be prescribed.
- (ii) Any Producer Company may, for promotion of its objectives acquire the shares of another Producer Company.
- (iii) Any Producer Company may subscribe to the share capital of, or enter into any agreement or other arrangement, whether by way of formation of its subsidiary company, joint venture or in any other manner with any body corporate, for the purpose of promoting the objects of the Producer Company by special resolution in this behalf.
- (iv) Any Producer Company, either by itself or together with its subsidiaries, may invest, by way of subscription, purchase or otherwise, shares in any other company as in point (ii) , other than a Producer Company, or subscription of capital as in point (iii), for an amount not exceeding thirty per cent of the aggregate of its paid-up capital and free reserves
- (v) A Producer Company may, by special resolution passed in its general meeting and with prior approval of the Central Government, invest in excess of the limits specified in this section.
- (vi) All investments by a Producer Company may be made if such investments are consistent with the objects of the Producer Company.
- (vii) The Board of a Producer Company may, with the previous approval of Members by a special resolution, dispose of any of its investments referred to in points (iii) and (iv).
- (viii) Every Producer Company shall maintain a register containing particulars of all the investments, showing:
 - the names of the companies in which shares have been acquired,
 - number and value of shares ;

- the date of acquisition ; and
 - the manner and price at which any of the shares have been subsequently disposed of
- (ix) The register shall be kept at the registered office of the Producer Company and the same shall be open to inspection by any Member who may take extracts therefrom.