

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 :

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| 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 |
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| 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 |

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| | | if (a) he ceases to a Primary Producer (b) he has any business interest which is in conflict with the business of Producer company. | 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. | 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. |
| 5. | No. of directors | Every Producer company shall have at least five and not more than fifteen Directors. | Every Private company shall have at least two and not more than fifteen Directors. | Every Public company shall have at least three and not more than fifteen Directors. |
| 6. | Number of additional or expert directors | Total Number of additional or expert directors should not exceed one fifth of the total strength of the number of directors on the Board. | 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. | 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. |
| 7. | Vacation of office of directors | The directors shall vacate the office on the grounds specified in section 581Q of the Act. | The directors shall vacate the office on the grounds specified in section 167 of the Act. | The directors shall vacate the office on the grounds specified in section 167 of the Act. |

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| 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.