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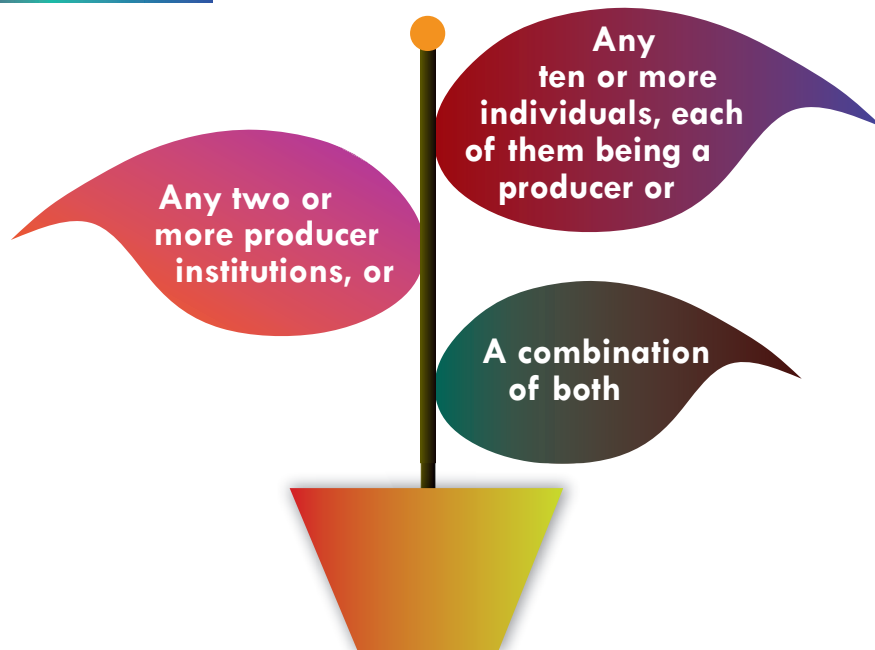
PRODUCER COMPANIES

PART IX-A OF COMPANIES ACT, 1956

SECTION-581C

Formation and registration

Number of members:-



Can form a producer company by submitting the application in the prescribed form and by paying the required fees to the Registrar of Companies (ROC).

The ROC, on being satisfied of compliance of the requirements of the Act, shall cause the company registered and issue a certificate of incorporation.

All the costs incurred by the promoters towards incorporation of the Producer Company shall be re-imbursed to them subject to the approval by the Members at the **First Annual General Meeting**.

All provisions applicable to private companies shall apply to a producer company, other than those provided specifically in the Act u/s **581 ZR**.

*Everything you do,
is for your future...*

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PRODUCER COMPANIES



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Definition of Producer Companies

Company means a body corporate having objects or activities specified in **section 581B** and registered as producer company under this Act. [S.581A(1)]

SECTION-581B

Objective of Producer Companies

- 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, canning and packaging of produce of its members;
- c** Manufacture, sale or supply of machinery, equipment or consumables mainly to its members;
- d** Providing education to its members and others based on mutual assistance;
- 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, revitalization 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(ies), whether ancillary or incidental to the activities (a) to (i) that helps to promote mutuality and mutual assistance among the members in any other manner;
- 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.

NOTE The above activities can be carried on either by itself or through other institutions.

SECTION-581D

Membership & Voting Rights

- ✧ Where membership consists of only individuals, every member shall have a SINGLE vote.
- ✧ Where membership consists of only producer institutions,



1 For the first year of registration – voting right shall be determined based on the shareholding by such producer institutions.

2 For the other years – based on the participation in the business of the producer company in the previous year.

- ✧ Where membership consists of both individuals and producer institutions, every member shall have a SINGLE vote.
- ✧ The Articles of Association may provide for conditions, subject to which, membership shall be given to a person or producer institution and also the manner in which the voting rights shall be exercised by the members.
- ✧ The voting rights of the members can also be restricted to active members, subject to authorization by the AOA.
- ✧ A member having business interest conflicting with the business of the producer company shall not become a member of the producer company and in which case, he may be removed in accordance with the AOA.

SECTION-581F

Memorandum of Association

The MOA of Producer Company shall state –

1

The name of the company with “Producer company limited” as the last words of the name of such company;

2

The state in which the registered office of the producer company is to be situated;

3

The main objects of the producer company (as in **S.581B**);

4

The names and addresses of the persons who have subscribed to the memorandum;

5

The amount of share capital with which the producer company is to be registered and division thereof into shares of a fixed amount;

6

The names, addresses and occupations of the subscribers being producers, who shall act as the first directors in accordance with **S.581J (2)**;

7

That the liability of its members is limited;

8

The number of shares each subscriber shall take (**not more than one**);

9

If the objects of the producer company are not confined to one state, the states to whose territories the objects extend;

SECTION-581G

Articles of Association

The AOA shall contain the following mutual assistance principles:

1

Membership shall be voluntary and be available to all persons who are willing to accept the duties of the membership;

2

Each member shall have only **ONE** vote irrespective of his shareholding, unless provided otherwise;

3

The producer company shall be administered by a Board consisting of persons elected or appointed as directors in the manner as provided in **Part IXA** of the Act;

4

There shall be limited return on share capital, save as provided in this Part;

5

The surplus, arising out of operations, shall be distributed in an equitable manner by-

a

Providing for the development of the business of the producer company;

b

Providing for common facilities; and

c

Distributing among the members, as may be admissible in proportion to their respective participation in the business.

6

Provisions shall be made for education of members, employees and others based on principles of mutuality and techniques of mutual assistance;

7

It shall co-operate with other producer companies so as to best serve the interests of their members and the communities it purports to serve.

**Hard work in silence,
Let Success make the NOISE...**

IN ADDITION TO THESE IT SHALL ALSO CONTAIN OTHER PROVISIONS IN RESPECT OF –

1

Qualification for membership. Cancellation of membership, procedure for transfer of shares.

2

The manner of ascertaining the patronage and voting right based on patronage.

3

The manner of constitution of Board, its powers and duties, the number of directors, manner of appointment and removal of directors etc.

4

Manner of disposal of funds available for distribution in the event of dissolution or liquidation after meeting all liabilities.

5

Such other provisions, as specified in the above section and those, which the members by special resolution, recommend to be included in the AOA. (Refer S.581G for complete list)

SECTION-581G



Alteration of MOA

a Alteration of objects clause

- ① Alteration only through a special resolution.
- ① A copy of the amended MOA along with a copy of the resolution shall be certified by TWO DIRECTORS and filed with the ROC within 30 DAYS from the date of resolution.

b Alteration of situation clause

- ① Transfer of regd. Office from jurisdiction one ROC to another, copies of special resolution certified by TWO DIRECTORS be filed with both ROCs within 30 days of the date of resolution.
- ① Transfer from one state to another requires confirmation by the NCLT/CLB.

SECTION-581L

Alteration of AOA

- Special resolution is required.
- The amendment shall be proposed by -
 - ⊙ **Not less than 2/3rd of the elected directors** or
 - ⊙ **Not less than 1/3rd of the members of the producer company**
- Copy of the amended articles and special resolution certified by **2 directors** be filed with the Registrar **within 30 days** of the date of adoption through the resolution.

SECTION-581O

Number of Directors



Exception:- An inter-state co-operative society incorporated as a producer company can have more than **15 directors** for a period of **1 year** from the date of **incorporation/transformation date** as a producer company.

SECTION-581P

Appointment of Directors

- 1** The directors shall be appointed **within 90 days** of registration of the producer company.
- 2** The number of directors to be appointed shall be **not less than 5**.
- 3** A person can hold office as a director for a period of **not less than 1 year but not more than 5 years**.
- 4** The Board may appoint one or more expert or additional directors for such period as it may deem fit. The number of additional directors/**co-option of directors /expert directors** shall not exceed **1/5th of the total number of directors**.
- 5** Voting powers of co-opted/additional/expert directors-The expert directors shall not have the right to vote in the election of chairman but shall be eligible to be elected as chairman if provided by the articles.
- 6** Tenure of co-opted/additional/expert directors-Will be provided in AOA .However it **cannot exceed 5 years**.
- 7** In case of inter-state co-op. society incorporated as a producer company, the directors shall be elected within 365 days from the date of registration provided at least 5 directors of the society continue to hold office in the producer company.


Option for Inter-State co-op. Societies to become Producer Companies


1 An inter-state co-op. society can get incorporated into a producer company by submitting application to the Registrar in the prescribed form. The objects of the society should not be confined to a single state.

2 Every application shall be accompanied by-

a A copy of the special resolution approved by **not less than 2/3rd** of the total members of the society for its incorporation as a producer company.

b A statement indicating –

 The names, addresses and occupations of the director or chief executive of the society, by whatever name called;

 List of members of the society.

c A statement showing that the society is engaged in one or more objects that are required for a producer company.

d A declaration that the particulars in (a), (b) and (c) are correct, certified **by 2** or more directors of the society.

3 The Registrar shall issue a certificate of incorporation **within 30 days** from the date of receipt of application.

4 The ROC is bound to inform the Registrar of societies with whom the society was registered earlier for deleting the society from its register.

5 The following can also opt for being registered as a producer company:-

a A co-operative society formed by producers.

b A co-operative society formed by Federation or union of co-operative societies of producers Co-operatives of producers.

The secret to getting ahead

is getting started...

Procedure of re-conversion of Producer Company to interstate cooperative society (Similar to procedure of compromise/arrangement)

- 1** Application to HC- after passing a resolution in GM by not less than two third of members present and voting or three fourth of creditors in value.(yeh resolution application dene ke liye hai).
- 2** Holding of meeting-HC may direct to conduct meeting of members or creditors.
- 3** Obtain approval in meeting-dual approval-majority in no and three fourth in value of members or creditors.
- 4** If HC is satisfied, it will sanction the scheme which will be binding on all members and creditors.
- 5** Filing a copy of certified order with ROC. In case of default, **100 Rs. fine** for every day for company and every officer in default.
- 6** Copy of order to be annexed with every copy of Memorandum issued thereafter.

Vacation of office by Directors

A director shall vacate his office if –

- 1** He is convicted by a court of any offence involving moral turpitude and in respect of which he has been imprisoned for **not less than 6 months**.
- 2** The producer company has defaulted in repaying any advances or loans taken from any company, institution or any other person and **the default continues for 90 days**.
- 3** The director makes a default in repayment of loans or advances taken from the producer company in which he is a director.
- 4** The producer company has defaulted in -
 - a** Filing the annual accounts and annual returns for **3** continuous financial years commencing on or **after 1.4.2002** or
 - b** Failed to repay its deposit or withheld price or patronage bonus or interest thereon or pay **dividend for 1 year** or more.
- 5** Default is made in holding election for the office of director in the producer company in which he is the director.
- 6** The AGM or EGM of the producer company in which he is a director is not called according to the provisions of the Act except for defaults owing to natural calamity or like reasons.

SECTION-581S

Matter to be transacted at a General Meeting

- 1 Approval of budget and adoption of annual accounts of the producer company.
- 2 Approval of patronage bonus.
- 3 Issue of bonus shares.
- 4 Declaration of limited return and decision on distribution of patronage.
- 5 Determination of conditions and limits of loans that can be given to director by the Board.
- 6 Approval of such transactions that require approval of Members as required by the AOA.

Matter to be transacted at a General Meeting

- 1 The board meeting shall be held not less than once in every 3 months. At least 4 such meetings shall be held in every year.
- 2 Notice for meeting shall be given in writing -
 - a to every director for the time being in India and
 - b to every other director at his usual address in India
- 3 Quorum: - $1/3^{\text{rd}}$ of the total strength of the directors subject to a minimum of 3 directors.

SECTION-581X

Secretary of the Producer Company

- Every producer company with an average annual turnover exceeding 5 crore rupees in each of the 3 consecutive financial years shall appointed a whole-time secretary who is a member of the ICSI.
- If CS is not appointed, company and every officer of company are liable for default. But defense is available if all reasonable steps were taken to ensure compliance or financial position of the company is weak.



General Meetings

1 Not less than 14 days' notice in writing shall be given to call a GM to all the members and auditors of the company specifying the time, date and venue of the meeting. [S.581ZA(1)]

2 Quorum shall be $\frac{1}{4}$ th of the total number of members. However the articles may provide for a higher quorum. (S.581Y).

3 Every member shall have one vote. In case of equality of votes, the Chairman or person presiding over the meeting shall have a casting vote. Casting vote is not available in case of election of Chairman. (581Z)

4 Annual General Meetings (Section 581ZA)

- There shall be an AGM for each year. Year means calendar year.
- Notice shall specify as AGM.
- Time gap between two AGMs shall **not be more than 15 months**. The ROC may, for any special reason, extend this time by **not more than 3 months**.
- First AGM should be held **within 90 days** from the date of incorporation.
- The proceedings of every AGM, the Directors' Report, audited balance sheet, P&L A/c and annual return shall be filed with the Registrar **within 60 days from the date on which the AGM is held**



SECTION-581ZB

Share Capital

The share capital of a producer company shall comprise of **equity shares only**. The shares held by a member shall be in proportion to the patronage of that company.

“**Patronage**” means the use of services offered by the producer company to its members by participation in its business activities

Transferability of shares

The shares of a producer company **shall not be transferable.** (Section 581D) This is subject to the following:-

- ⊕ A member can transfer his shares, either wholly or partly, along with any special rights to an active member.
- ⊕ The transfer shall be at par value.
- ⊕ Prior approval of the Board is required.

A member shall nominate a person to whom his shares vest on his death **within 3 months** of becoming a member.

Surrender of shares

- ⌘ Board can order for surrender of shares along with special rights if it is satisfied that a member has ceased to be a primary producer or failed to retain his qualification as member.
- ⌘ Before taking any action the member shall be served with a written notice and be given an opportunity of being heard.

SECTION-581ZP

Power of registrar to strike off the name of producer company

a Grounds

- The producer company fails to commence business **within 1 year** of its registration.
- The producer company ceases to transact with its members.
- The Registrar is satisfied that the producer company is no longer carrying on all or any of the objects required for a producer company.
- The Registrar has reasonable cause to believe that the producer company is not maintaining any of the mutual assistance principles.



- b** An order for cancellation shall not be passed unless show cause notice is given to the producer company and an opportunity to be heard is given.
- c** Any member aggrieved of the order of the ROC may appeal to the NCLT **within 60 days** of the order.
- d** The order of the ROC shall not take effect until the appeal is disposed off.
- e** The striking of name shall be done in accordance with **Section 560** of the Act.

S.L.No	Basic differences	Normal Company	Producer Company
1.	Share of Profit	Dividend is given	Patronage bonus FIRST preference and Dividend is given.
2.	Basis of distribution of extra profit	Dividend is given based on then number of shares held by the shareholders	Patronage bonus is given based on the participation of the members to the company.
3.	First AGM	First AGM to be held within 9 months from the end of the Financial Year.	First AGM to be held within 90 days from the incorporation.
4.	Loans	A normal company cannot give loan to directors. Except in certain cases.	A producer company can give loan to its directors and their relatives but subject to some condition.
5.	Investment	A company can invest higher of 60 % of Paid Capital and reserves or 100 % of Free reserves and securities premium	A producer company can invest in Government treasure bounds, Fixed deposits and in another Producer company without any limit. But if they want to invest in any other company (namely One-person company, Private company, Limited company or Public company, it should not exceed 30 % of the paid up capital and free reserves.
6.	Voting Power	“One share one vote”	“One man one vote”

7.	Notice	21 Days	14 Days
8.	Valuation of shares during transfer	Valued at fair value	Valued at Par value
9.	Time limit for appointing First Director	No time limit in appointing First Director.	First Director should be appointed within 90 days from in incorporation.
10.	Minimum number of Directors	One person company should have 1 director, Private company should have 2 directors and Public Company should have 3 directors as the minimum number.	Minimum 5 directors should be appointed in Producer company.
11.	Maximum number of Directors	<p>Maximum number of Directors to be appointed in One-person company in 15. However, U/s 149 (1), the company can increase the number of directors above 15 by passing special resolution to give the effect in Articles of Association.</p> <p>Exception: Section 8 companies can increase the number of directors above 15, without passing special resolution</p>	<p>Maximum number of directors can have is 15.</p> <p>Exception: A Producer Company can have more than its directors from the date of its incorporation to the period of 1 year, in case 2 producer institutions (inter cooperative society) become a member</p>
12.	Additional Director	<p>A company have any number of additional Director.</p> <p>NOTE: The act is silent with regard to Additional Directors and its maximum numbers.</p> <p>TENURE: till AGM</p>	In a producer company, 1 or more expert OR additional director can be appointed provided additional shall not exceed $1/5^{\text{th}}$ of the total number of directors. (tenure AOA will decide)

13.	Disqualification of office of Director	Director will be disqualified if he has not filed the Annual Accounts or Annual returns for a continuous period of 3 years in a normal company and non-payment of interest on Debentures, Deposits or Declared dividend.	Director should vacate the office if he has not filed both Annual accounts and Annual returns for a continuous period of 3 years and non-repayment of loans.
14.	Number of Board meetings and time limit	A company should have minimum 4 board meetings in a year. Maximum time gap between 2 boards meeting cannot exceed 120 days. Exception: One-person Company is not required to follow sec 173.	A Producer Company should have 1 board meeting in each quarter. There is no restriction placed on the time gap and time limits.
15.	Quorum	1/3 rd or 2 directors whichever is higher	1/3 rd or 3 directors whichever is higher.
16.	Contribution to Charity	Board of Directors in their meeting can contribute 5% of its Net profit to Charity. If they want to contribute more that 5% they should pass an Ordinary Resolution in the General Meeting U/s 181.	3% of net profit can only be contributed by way of donation by Producer Company contribution can be made only for promoting social and economic welfare of Producer members and producer.
17.	Policy party contribution	A company can contribute to Political Party	A Producer Company cannot contribute to either Electoral trust or political party.
18.	Loan of members	Company cannot give loans to members.	If unsecured – up to 6 months and if secured – 3 months to 7 years.

19.	Loans to Directors	Prohibited U/s. 185	Possible by-passing ordinary resolution in G.M.
20.	Quorum of AGM	5 - up to 1000 members 15 – 1001 to 15000 30 -> 5000 members	1/4 th of total members.
21.	Internal Audit	Not mandatory to all	Mandatory for Producer (as per AOA)

Loans, Donations and Investments

Loans

To Director/Relative (Conditions)

- Approval from members at AGM

To Members

- Approved by Board
- Secured by some security specified in articles.
- Repayable within a person
 - a) Exceeding 3 months.
 - b) Not exceeding 7 years.

- ✗ Member may be given credit facility in connection with Business of Producer Co. for maximum 6 months.



Donations

- SR is required and only for purpose of promoting social/economic welfare or promoting mutual assistance principal.
- Maximum donation in a single FY = 3% of N/P of preceding FY.
- Donation to political party is absolutely prohibited (directly/indirectly).

“IF YOU’RE NOT MAKING MISTAKES, THEN YOU’RE NOT DOING ANYTHING”

Investments

Prescribed modes of investment (Investment in)

- Approved securities. FD, units and bonds issued by CG or SG or co-operative societies or scheduled bank.
- Co-operative bank. State co-operative bank, co-operative land development bank or central co-operative bank.
- Any other Scheduled Bank.
- Other securities specified in Section 20 of Indian Trusts Act, 1882.
- Other securities of any other multi-state co-operative society or co-operative society.
- Shares, securities or assets of PFI.



Limits of investment

- Shares of other Co.-Max 30% of paid up capital & free reserves.
- To exceed limit, pass SR and CG approval.
- No limit in acquiring shares of other producer co. to promote its objects.
- To subscribe share capital of body corporate & to enter agreement/arrangement, pass SR.
- To dispose off investment pass SR.

Other requirements

Mandatory requirement to create General Reserves in every FY as per articles. If sufficient funds are not there to transfer to reserve, distribute to members in proportion to their patronage of that FY. This General Reserve may be capitalized by issue of Bonus Shares.

Issue of Bonus Shares-Must be recommended by Board, resolution in GM, to be issued in proportion to shares held by members.