

Reference Section 465(1) of the Companies Act, 2013

PART IXA of Companies Act 1956: PRODUCER COMPANIES

CHAPTER I: PRODUCER COMPANIES

581A. Definitions

CHAPTER II: INCORPORATION OF PRODUCER COMPANIES AND OTHER MATTERS

581B. Objects of Producer Company

581C. Formation of Producer Company and its registration

581D. Membership and voting rights of Members of Producer Company

581E. Benefits to Members

581F. Memorandum of Producer Company

581G. Articles of association

581H. Amendment of memorandum

581-I. Amendment of articles

581J. Option to inter-State co-operative societies to become Producer Companies

581K. Effect of incorporation of Producer Company

581L. Vesting of undertaking in Producer Company

581M. Concession, etc., to be deemed to have been granted to Producer Company

581N. Provisions in respect of officers and other employees of inter-State co-operative society

CHAPTER III: MANAGEMENT OF PRODUCER COMPANY

581O. Number of directors

581P. Appointment of directors

581Q. Vacation of office by directors

581R. Powers and functions of Board

581S. Matters to be transacted at general meeting

581T. Liability of directors

581U. Committee of directors

581V. Meetings of Board and quorum

581W. Chief Executive and his function

581X. Secretary of Producer Company

581Y. Quorum

581Z. Voting rights

CHAPTER IV: GENERAL MEETINGS

581ZA. Annual general meetings

CHAPTER V: SHARE CAPITAL AND MEMBERS RIGHTS

581ZB. Share capital

581ZC. Special user rights

581ZD. Transferability of shares and attendant rights

CHAPTER VI: FINANCE, ACCOUNTS AND AUDIT

581ZE. Books of account

581ZF. Internal audit

581ZG. Duties of auditor under this Part

581ZH. Donations or subscription by Producer Company

581ZI. General and other reserves

581ZJ. Issue of bonus shares

CHAPTER VII: LOANS TO MEMBERS AND INVESTMENTS

581ZK. Loan, etc., to members

581ZL. Investment in other companies, formation of subsidiaries, etc

CHAPTER I: PRODUCER COMPANIES

581A. DEFINITIONS

In this Part, unless the context otherwise requires, -

- (a) *"active Member" means a member who fulfils the quantum and period of patronage of the Producer Company as may be required by the articles ;*
- (b) *"Chief Executive" means an individual appointed as such under sub-section (1) of section 581W ;*
- (c) *"limited return" means the maximum dividend as may be specified by the articles ;*
- (d) *"Member" means a person or Producer institution (whether incorporated or not) admitted as a Member of a Producer Company and who retains the qualifications necessary for continuance as such ;*
- (e) *"inter-State co-operative society" means a multi-State co-operative society as defined in clause (k) of section 3 of the Multi-State Co-operative Societies Act, 1984 (51 of 1984) and includes any co-operative society registered under any other law for the time being in force, which has, subsequent to its formation, extended any of its objects to more than one State by enlisting the participation of persons or by extending any of its activities outside the State, whether directly or indirectly or through an institution of which it is a constituent ;*
- (f) *"mutual assistance principles" means the principles set out in sub-section (2) of section 581G ;*
- (g) *"officer" includes any director or Chief Executive or Secretary or any person in accordance with whose directions or instructions part or whole of the business of the Producer Company is carried on ;*
- (h) *"patronage" means the use of services offered by the Producer Company to its Members by participation in its business activities ;*
- (i) *"patronage bonus" means payments made by a Producer Company out of its surplus income to the Members in proportion to their respective patronage ;* (j) *"primary produce" means -*
- (i) *produce of farmers, 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*
- (ii) *produce of persons engaged in handloom, handicraft and other cottage industries ;*
- (iii) *any product resulting from any of the above activities, including by-products of such products ;*
- (iv) *any product resulting from an ancillary activity that would assist or promote any of the aforesaid activities or anything ancillary thereto ;*
- (v) *any activity which is intended to increase the production of anything referred to in sub-clauses (i) to (iv) or improve the quality thereof ;*
- (k) *"producer" means any person engaged in any activity connected with or relatable to any primary produce ;* (l) *"Producer Company" means a body corporate having objects or activities specified in section 581B and registered as Producer Company under this Act ;*
- (m) *"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.*
- (n) *"withheld price" means part of the price due and payable for goods supplied by any Member to the Producer Company ; and as withheld by the Producer Company for payment on a subsequent date.*

CHAPTER II: INCORPORATION OF PRODUCER COMPANIES AND OTHER MATTERS

581B. OBJECTS OF PRODUCER COMPANY

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

- (a) *production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of the Members or import of goods or services for their benefit.*

Provided that the Producer Company may carry on any of the activities specified in this clause either by itself or through other institution ;

- (b) *processing including preserving, drying, distilling, brewing, vinting, 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 on the mutual assistance principles to its Members and others ;*

- (e) rendering technical services, consultancy services, training, research and development and all other activities for the promotion of the interests of its Members ;
 - (f) generation, transmission and distribution of power, revitalisation of land and water resources, their use, conservation and communications relatable to primary produce ; (g) insurance of producers or their primary produce ;
 - (h) promoting techniques of mutuality and mutual assistance ;
 - (i) welfare measures or facilities for the benefit of Members as may be decided by the Board ;
 - (j) any other activity, ancillary or incidental to any of the activities referred to in clauses (a) to (i) or other activities which may promote the principles of mutuality and mutual assistance amongst 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.
- (2) Every Producer Company shall deal primarily with the produce of its active Members for carrying out any of its objects specified in this section.

581C. FORMATION OF PRODUCER COMPANY AND ITS REGISTRATION

- (1) Any ten or more individuals, each of them being a producer or any two or more Producer institutions, or a combination of ten or more individuals and Producer institutions, desirous of forming a Producer Company having its objects specified in section 581B and otherwise complying with the requirements of this Part and the provisions of this Act in respect of registration, may form an incorporated Company as a Producer Company under this Act.
- (2) If the Registrar is satisfied that all the requirements of this Act have been complied with in respect of registration and matters precedent and incidental thereto, he shall, within thirty days of the receipt of the documents required for registration, register the memorandum, the articles and other documents, if any, and issue a certificate of incorporation under this Act.
- (3) A Producer Company so formed shall have the liability of its Members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them and be termed a company limited by shares.
- (4) The Producer Company may reimburse to its promoters all other direct costs associated with the promotion and registration of the company including registration, legal fees, printing of a memorandum and articles and the payment thereof shall be subject to the approval at its first general meeting of the Members.
- (5) On registration under sub-section (1), the Producer Company shall become a body corporate as if it is a private limited company to which the provisions contained in this Part apply, without, however, any limit to the number of Members thereof, and the Producer Company shall not, under any circumstance, whatsoever, become or be deemed to become a public limited company under this Act.

581D. MEMBERSHIP AND VOTING RIGHTS OF MEMBERS OF PRODUCER COMPANY

- (1) (a) 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.
- (b) 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.
- (c) 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.
- (2) The articles of any Producer Company may provide for the conditions, subject to which a Member may continue to retain his membership, and the manner in which voting rights shall be exercised by the Members.
- (3) Notwithstanding anything contained in sub-section (7) or sub-section(2), any Producer Company may, if so authorised by its articles, restrict the voting rights to active Members, in any special or general meeting.
- (4) No person, who has any business interest which is in conflict with business of the Producer Company, shall become a Member of that Company.
- (5) A Member, who acquires any business interest which is in conflict with the business of the Producer Company, shall cease to be a Member of that Company and be removed as a Member in accordance with articles.

581E. BENEFITS TO MEMBERS

- (1) 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.
- (2) 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.

(3) 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.

581F. MEMORANDUM OF PRODUCER COMPANY

The memorandum of association of every Producer Company shall state : -

- (a) the name of the company with "Producer Company Limited" as the last words of the name of such Company ;
- (b) the State in which the registered office of the Producer Company is to situate ;
- (c) the main objects of the Producer Company shall be one or more of the objects specified in section 581B ;
- (d) the names and addresses of the persons who have subscribed to the memorandum ;
- (e) the amount of share capital with which the Producer Company is to be registered and division thereof into shares of a fixed amount ;
- (f) the names, addresses and occupations of the subscribers being producers, who shall act as the first directors in accordance with sub-section (2) of section 581J ; (g) that the liability of its members is limited ;
- (h) opposite to the subscriber's name the number of shares each subscriber takes :
Provided that no subscriber shall take less than one share ;
- (i) in case the objects of the Producer Company are not confined to one State, the States to whose territories the objects extend.

581G. ARTICLES OF ASSOCIATION

(1) There shall be presented, for registration to the Registrar of the State to which the registered office of the Producer Company is, stated by the memorandum of association, to be situate : -

- (a) memorandum of the Producer Company ;
 - (b) its articles duly signed by the subscribers to the memorandum.
- (2) The articles shall contain the following mutual assistance principles, namely : -
- (a) the membership shall be voluntary and available, to all eligible persons who, can participate or avail of the facilities or services of the Producer Company, and are willing to accept the duties of membership ;
 - (b) each Member shall, save as otherwise provided in this Part, have only a single vote irrespective of the share holding ;
 - (c) the Producer Company shall be administered by a Board consisting of persons elected or appointed as directors in the manner consistent with the provisions of this Part and the Board shall be accountable to the Members;
 - (d) save as provided in this Part, there shall be limited return on share capital ;
 - (e) the surplus arising out of the operations of the Producer Company shall be distributed in an equitable manner by :
 - (i) providing for the development of the business of the Producer Company ;
 - (ii) providing for common facilities ; and
 - (iii) distributing amongst the Members, as may be admissible in proportion to their respective participation in the business ;
 - (f) provision shall be made for the education of Members, employees and others, on the principles of mutuality and techniques of mutual assistance ;
 - (g) the Producer Company shall actively co-operate with other Producer Companies (and other organisations following similar principles) at local, national or international level so as to best serve the interest of their Members and the communities it purports to serve.
- (3) Without prejudice to the generality of the foregoing provisions of sub-sections (1) and (2), the articles shall contain the following provisions, namely : -
- (a) the qualifications for membership, the conditions for continuance or cancellation of membership and the terms, conditions and procedure for transfer of shares ;
 - (b) the manner of ascertaining the patronage and voting right based on patronage ;
 - (c) subject to the provisions contained in sub-section (1) of section 581N, the manner of constitution of the Board, its powers and duties, the minimum and maximum number of directors, manner of election and appointment of directors and retirement by rotation, qualifications for being elected or continuance as such and the terms of office of the said directors, their powers and duties, conditions for election or co-option of directors, method of removal of directors and the filling up of vacancies on the Board, and the manner and the terms of appointment of the Chief Executive ;
 - (d) the election of the Chairman, term of office of directors and the Chairman, manner of voting at the general or special meetings of Members, procedure for voting, by directors at meetings of the Board, powers of the Chairman and the circumstances under which the Chairman may exercise a casting vote ;
 - (e) the circumstances under which, and the manner in which, the withheld price is to be determined and distributed ;
 - (f) the manner of disbursement of patronage bonus in cash or by issue of equity shares, or both ;

- (g) *the contribution to be shared and related matters referred to in subsection (2) of section 581ZI ;*
- (h) *the matters relating to issue of bonus shares out of general reserves as set out in section 581ZJ ;*
- (i) *the basis and manner of allotment of equity shares of the Producer Company in lieu of the whole or part of the sale proceeds of produce or products supplied by the Members ;*
- (j) *the amount of reserves, sources from which funds may be raised, limitation on raising of funds, restriction on the use of such funds and the extent of debt that may be contracted and the conditions thereof ;*
- (k) *the credit, loans or advances which may be granted to a Member and the conditions for the grant of the same ;*
- (l) *the right of any Member to obtain information relating to general business of the company ;*
- (m) *the basis and manner of distribution and disposal of funds available after meeting liabilities in the event of dissolution or liquidation of the Producer Company ;*
- (n) *the authorisation for division, amalgamation, merger, creation of subsidiaries and the entering into joint ventures and other matters connected therewith ;*
- (o) *laying of the memorandum and articles of the Producer Company before a special general meeting to be held within ninety days of its registration ;*
- (p) *any other provision, which the Members may, by special resolution recommend to be included in articles.*

581H. AMENDMENT OF MEMORANDUM

- (1) *A Producer Company shall not alter the conditions contained in its memorandum except in the cases, by the mode and to the extent for which express provision is made in this Act.*
- (2) *A Producer Company may, by special resolution, not inconsistent with section 581B, alter its objects specified in its memorandum.*
- (3) *A copy of the amended memorandum, together with a copy of the special resolution duly certified by two directors, shall be filed with the Registrar within thirty days from the date of adoption of any resolution referred to in sub-section (2) :*
Provided that in the case of transfer of the registered office of a Producer Company from the jurisdiction of one Registrar to another, certified copies of the special resolution certified by two directors shall be filed with both the Registrars within thirty days, and each Registrar shall record the same, and thereupon the Registrar from whose jurisdiction the office is transferred, shall forthwith forward to the other Registrar all documents relating to the Producer Company.
- (4) *The alteration of the provisions of memorandum relating to the change of the place of its registered office from one State to another shall not take effect unless it is confirmed by the¹Company Law Board on petition.*

1. To be read as 'National Company Law Tribunal'.

581-I. AMENDMENT OF ARTICLES

- (1) *Any amendment of the articles shall be proposed by not less than two-third of the elected directors or by not less than one-third of the Members of the Producer Company, and adopted by the Members by a special resolution.*
- (2) *A copy of the amended articles together with the copy of the special resolution, both duly certified by two directors, shall be filed with the Registrar within thirty days from the date of its adoption.*

581J. OPTION TO INTER-STATE CO-OPERATIVE SOCIETIES TO BECOME PRODUCER COMPANIES

- (1) *Notwithstanding anything contained in sub-section (1) of section 581C, 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.*
- (2) *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 -*
 - (i) *names and addresses or the occupation of the directors and Chief Executive, if any, by whatever name called, of such co-operative ; and*
 - (ii) *list of members of such inter-State co-operative society ;*
 - (c) *a statement indicating that the inter-State co-operative society is engaged in any one or more of the objects specified in section 581B;*
 - (d) *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.*
- (3) *When an inter-State co-operative society is registered as a Producer Company, the words "Producer Company Limited" shall form part of its name with any word or expression to show its identity preceding it.*
- (4) *On compliance with the requirements of sub-sections (1) to (3), the Registrar shall, within a period of thirty days of the receipt of application, certify under his hand that the inter-State co-operative society applying for registration is registered and thereby incorporated as a Producer Company under this Part.*

(5) 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.

(6) 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 insofar 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.

(7) 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.

581K. EFFECT OF INCORPORATION OF PRODUCER COMPANY

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.

581L. VESTING OF UNDERTAKING IN PRODUCER COMPANY

(1) All properties and assets, movable and immovable, of, or belonging to, the inter-State co-operative society as on the transformation date, shall vest in the Producer Company.

(2) All the rights, debts, liabilities, interests, privileges and obligations of the inter-State co-operative society as on the transformation date shall stand transferred to, and be the rights, debts, liabilities, interests, privileges and obligations of, the Producer Company.

(3) Without prejudice to the provisions contained in sub-section (2), all debts, liabilities and obligations incurred, all contracts entered into and all matters and things engaged to be done by, with or for, the society as on the transformation date for or in connection with their purposes, shall be deemed to have been incurred, entered into, or engaged to be done by, with or for, the Producer Company.

(4) All sums of money due to the inter-State co-operative society immediately before the transformation date, shall be deemed to be due to the Producer Company.

(5) Every organisation, which was being managed immediately before the transformation date by the inter-State co-operative society shall be managed by the Producer Company for such period, to such extent and in such manner as the circumstances may require.

(6) Every organisation which was getting financial, managerial or technical assistance from the inter-State co-operative society, immediately before the transformation date, may continue to be given financial, managerial or technical assistance, as the case may be, by the Producer Company, for such period, to such extent and in such manner as that company may deem fit.

(7) The amount representing the capital of the erstwhile inter-State co-operative society shall form part of the capital of the Producer Company.

(8) Any reference to the inter-State co-operative society in any law other than this Act or in any contract or other instrument, shall be deemed to be reference to the Producer Company.

(9) If, on the transformation date, there is pending any suit, arbitration, appeal or other legal proceeding of whatever nature by or against the inter-State co-operative society, the same shall not abate, be discontinued or be in any way prejudicially affected by reason of the incorporation of the Producer Company under section 581C or transformation of the inter-State co-operative society as a Producer Company under section 581J, as the case may be, but the suit, arbitration, appeal or other proceeding, may be continued, prosecuted and enforced by or against the Producer Company in the same manner and to the same extent as it would have, or may have been continued, prosecuted and enforced by or against the inter-State co-operative society as if the provisions contained in this Part had not come into force.

581M. CONCESSION, ETC., TO BE DEEMED TO HAVE BEEN GRANTED TO PRODUCER COMPANY

With effect from the transformation date, all fiscal and other concessions, licences, benefits, privileges and exemptions granted to the inter-State co-operative society in connection with the affairs and business of the inter-State cooperative society under any law for the time being in force shall be deemed to have been granted to the Producer Company.

581N. PROVISIONS IN RESPECT OF OFFICERS AND OTHER EMPLOYEES OF INTER-STATE CO-OPERATIVE SOCIETY

- (1) Notwithstanding anything contained in section 581-O, all the directors in the inter-State co-operative society before the incorporation of the Producer Company shall continue in office for a period of one year from the transformation date and in accordance with the provisions of this Act.
- (2) Every officer or other employee of the inter-State co-operative society (except a director of the Board, Chairman or Managing Director) serving in its employment immediately before the transformation date shall, insofar as such officer or other employee is employed in connection with the inter-State co-operative society which has vested in the Producer Company by virtue of this Act, become, as from the transformation date, an officer or, as the case may be, other employee of the Producer Company and shall hold his office or service therein by the same tenure, at the same remuneration, upon the same terms and conditions, with the same obligations and with the same rights and privileges as to leave, leave travel concession, welfare scheme, medical benefit scheme, insurance, provident fund, other funds, retirement, voluntary retirement, gratuity and other benefits as he would have held under the erstwhile inter-State cooperative society if its undertaking had not vested in the Producer Company and shall continue to do so as an officer or, as the case may be, other employee of the Producer Company.
- (3) Where an officer or other employee of the inter-State co-operative society opts under sub-section (2) not to be in employment or service of the Producer Company, such officer or other employee shall be deemed to have resigned.
- (4) Notwithstanding anything contained in the Industrial Disputes Act, 1947 or in any other law for the time being in force, the transfer of the services of any officer or other employee of the inter-State co-operative society to the Producer Company shall not entitle such officer or other employee to any compensation under this Act or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority. (5) The officers and other employees who have retired before the transformation date from the service of the interState co-operative society and are entitled to any benefits, rights or privileges, shall be entitled to receive the same benefits, rights or privileges from the Producer Company.
- (6) The trusts of the provident fund or the gratuity fund of the inter-State cooperative society and any other bodies created for the welfare of officers or employees shall continue to discharge functions in the Producer Company as was being done hitherto in the inter-State co-operative society and any tax exemption granted to the provident fund or the gratuity fund would continue to be applied to the Producer Company.
- (7) Notwithstanding anything contained in this Act or in any other law for the time being in force or in the regulations of the inter-State co-operative society, no director of the Board, Chairman, Managing Director or any other person entitled to manage the whole or substantial part of the business and affairs of the inter-State co-operative society shall be entitled to any compensation against the inter-State co-operative society or the Producer Company for the loss of office or for the premature termination of any contract of management entered into by him with the inter-State cooperative society.

CHAPTER III: MANAGEMENT OF PRODUCER COMPANY

581-O. NUMBER OF DIRECTORS

Every Producer Company shall have at least five and not more than fifteen directors :

Provided that 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.

581P. APPOINTMENT OF DIRECTORS

- (1) *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.*
- (2) *The election of directors shall be conducted within a period of ninety days of the registration of the Producer Company :*
Provided that in the case of an inter-State co-operative society which has been registered as a Producer Company under sub-section (4) of section 581J in which at least five directors [including the directors continuing in office under sub-section (1) of section 581N] hold office as such on the date of registration of such company, the provisions of this sub-section shall have effect as if for the words "ninety days", the words "three hundred and sixty five days" had been substituted.
- (3) *Every person shall hold office of a director for a period not less than one year but not exceeding five years as may be specified in the articles.*
- (4) *Every director, who retires in accordance with the articles, shall be eligible for re-appointment as a director.*
- (5) *Save as provided in sub-section (2), the directors of the Board shall be elected or appointed by the Members in the annual general meeting.*
- (6) *The Board may co-opt one or more expert directors or an additional director not exceeding one-fifth of the total number of directors or appoint any other person as additional director for such period as the Board may deem fit : Provided that the expert directors shall not have the right to vote in the election of the Chairman but shall be eligible to be elected as Chairman, if so provided by its articles :*

Provided further that the maximum period, for which the expert director or the additional director holds office, shall not exceed such period as may be specified in the articles.

581Q. VACATION OF OFFICE BY DIRECTORS

(1) The office of the director of a 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 a director, has made a default in repayment of any advances or loans taken from any company or institution or any other person and such default continues for ninety days ;
 - (c) 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.
- (2) The provisions of sub-section (1) shall, as far as may be, apply to the director of a Producer institution which is a member of a Producer Company.

581R. POWERS AND FUNCTIONS OF BOARD

- (1) Subject to the provisions of this Act and articles, the Board of directors of a Producer Company shall exercise all such powers and to do all such acts and things, as that company is authorised so to do.
- (2) In particular and without prejudice to the generality of the foregoing powers, such powers may include all or any of the following matters, namely: -
- (a) determination of the dividend payable ;
 - (b) determination of the quantum of withheld price and recommend patronage to be approved at general meeting ; (c) admission of new Members ;
 - (d) pursue and formulate the organisational policy, objectives, establish specific long-term and annual objectives, and approve corporate strategies and financial plans ;
 - (e) appointment of a Chief Executive and such other officers of the Producer Company, as may be specified in the articles ;
 - (f) exercise superintendence, direction and control over Chief Executive and other officers appointed by it ;
 - (g) cause proper books of account to be maintained ; prepare annual accounts to be placed before the annual general meeting with the auditor's report and the replies on qualifications, if any, made by the auditors ; (h) acquisition or disposal of property of the Producer Company in its ordinary course of business ;
 - (i) investment of the funds of the Producer Company in the ordinary course of its business ;
 - (j) sanction any loan or advance, in connection with the business activities of the Producer Company to any Member, not being a director or his relative ;
 - (k) take such other measures or do such other acts as may be required in the discharge of its functions or exercise of its powers.
- (3) All the powers specified in sub-sections (1) and (2) shall be exercised by the Board, by means of resolution passed at its meeting on behalf of the Producer Company.
- Explanation. - For the removal of doubts, it is hereby declared that a director or a group of directors, who do not constitute the Board, shall not exercise any of the powers exercisable by it.

581S. MATTERS TO BE TRANSACTED AT GENERAL MEETING

- (1) The Board of directors of a Producer Company shall exercise the following powers on behalf of that company, and it shall do so only by means of resolutions passed at the annual general meeting of its Members, namely: -
- (a) approval of budget and adoption of annual accounts of the Producer Company ;
 - (b) approval of patronage bonus ;
 - (c) issue of bonus shares ;
 - (d) declaration of limited return and decision on the distribution of patronage ;
 - (e) specify the conditions and limits of loans that may be given by the Board to any director ; and
 - (f) approval of any transaction of the nature as is to be reserved in the articles for approval by the Members.

581T. LIABILITY OF DIRECTORS

- (1) When the directors vote for a resolution, or approve by any other means, anything done in contravention of the provisions of this Act or any other law for the time being in force or articles, they shall be jointly and severally liable to make good any loss or damage suffered by the Producer Company.
- (2) Without prejudice to the provisions contained in sub-section (1), the Producer Company shall have the right to recover from its director -
 - (a) where such director has made any profit as a result of the contravention specified in sub-section (1), an amount equal to the profit so made ;
 - (b) where the Producer Company incurred a loss or damage as a result of the contravention specified in sub-section (1), an amount equal to that loss or damage ;
- (3) The liability imposed under this section shall be in addition to and not in derogation of a liability imposed on a director under this Act or any other law for the time being in force.

581U. COMMITTEE OF DIRECTORS

- (1) 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.
- (2) A committee constituted under sub-section (1) may, 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.
- (3) Every such committee shall function under the general superintendence, direction and control of the Board, for such duration, and in such manner as the Board may direct.
- (4) The fee and allowances to be paid to the members of the committee shall be such as may be determined by the Board.
- (5) The minutes of each meeting of the committee shall be placed before the Board at its next meeting.

581V. MEETINGS OF BOARD AND QUORUM

- (1) A meeting 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.
- (2) Notice of every meeting of the Board of directors shall be given in writing to every director for the time being in India, and at his usual address in India to every other director.
- (3) The Chief Executive shall give notice as aforesaid not less than seven days prior to the date of the meeting of the Board and if he fails to do so, he shall be punishable with fine which may extend to one thousand rupees :
 Provided that a meeting of the Board may be called at shorter notice and the reasons thereof shall be recorded in writing by the Board.
- (4) The quorum for a meeting of the Board shall be one-third of the total strength of directors, subject to a minimum of three.
- (5) Save as provided in the articles, directors including the co-opted director, may be paid such fees and allowances for attendance at the meetings of the Board, as may be decided by the Members in the general meeting.

581W. CHIEF EXECUTIVE AND HIS FUNCTIONS

- (1) 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.
- (2) The Chief Executive shall be ex officio director of the Board and such director shall not retire by rotation.
- (3) Save as otherwise provided in articles, the qualifications, experience and the terms and conditions of service of the Chief Executive shall be such as may be determined by the Board.
- (4) The Chief Executive shall be entrusted with substantial powers of management as the Board may determine.
- (5) Without prejudice to the generality of sub-section (4), the Chief Executive may exercise the powers and discharge the functions, namely : -
 - (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.*
- (6) *The Chief Executive shall manage the affairs of the Producer Company under the general superintendence, direction and control of the Board and be accountable for the performance of the Producer Company.*

581X. SECRETARY OF PRODUCER COMPANY

- (1) *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.*
- (2) *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.*
- (3) *If a Producer Company fails to comply with the provisions of sub-section (1), the company and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues :*

Provided that in any proceedings against a person in respect of an offence under this sub-section, it shall be a defence to prove that all reasonable efforts to comply with the provisions of sub-section (1) were taken or that the financial position of the company was such that it was beyond its capacity to engage a whole-time secretary.

581Y. QUORUM

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

581Z. VOTING RIGHTS

Save as otherwise provided in sub-sections (1) and (3) of section 581D, every Member shall have one vote and in the case of equality of votes, the Chairman or the person presiding shall have a casting vote except in the case of election of the Chairman.

CHAPTER IV: GENERAL MEETINGS

581ZA. ANNUAL GENERAL MEETINGS

- (1) *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 : Provided that 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.*
- (2) *A Producer Company shall hold its first annual general meeting within a period of ninety days from the date of its incorporation.*
- (3) *The Members shall adopt the articles of the Producer Company and appoint directors of its Board in the annual general meeting.*
- (4) *The notice calling the annual general meeting shall be accompanied by the following documents, namely : -*
 - (a) *the agenda of the annual general meeting ;*
 - (b) *the minutes of the previous annual general meeting or the extraordinary general meeting ;*
 - (c) *the names of candidates for election, if any, to the office of director including a statement of qualifications in respect of each candidate;*
 - (d) *the audited balance-sheet and profit and loss accounts of the Producer Company and its subsidiary, if any, together with a report of the Board of directors of such Company with respect to -*
 - (i) *the state of affairs of the Producer Company ;*
 - (ii) *the amount proposed to be carried to reserve ;*
 - (iii) *the amount to be paid as limited return on share capital ;*
 - (iv) *the amount proposed to be disbursed as patronage bonus ;*
 - (v) *the material changes and commitments, if any, affecting the financial position of the Producer Company and its subsidiary, which have occurred in between the date of the annual accounts of the Producer Company to which the balance sheet relates and the date of the report of the Board ;*
 - (vi) *any other matter of importance relating to energy conservation, environmental protection, expenditure or earnings in foreign exchanges ;*
 - (vii) *any other matter which is required to be, or may be, specified by the Board ;*
 - (e) *the text of the draft resolution for appointment of auditors ;*

- (f) *the text of any draft resolution proposing amendment to the memorandum or articles to be considered at the general meeting, along with the recommendations of the Board.*
- (4) *The Board of directors shall, on the requisition made in writing, duly signed and setting out the matters for the consideration, made by one-third of the Members entitled to vote in any general meeting, proceed to call an extraordinary general meeting in accordance with the provisions contained in sections 169 to 186 of this Act.*
- (5) *Every annual general meeting shall be called, for a time during business hours, on a day that is not a public holiday and shall be held at the registered office of the Producer Company or at some other place within the city, town or village in which the registered office of the Company is situate.*
- (6) *A general meeting of the Producer Company shall be called by giving not less than fourteen days prior notice in writing.*
- (7) *The notice of the general meeting indicating the date, time and place of the meeting shall be sent to every Member and auditor of the Producer Company.*
- (8) *Unless the articles of the Producer Company provide for a larger number, one-fourth of the total number of members of the Producer Company shall be the quorum for its annual general meeting.*
- (9) *The proceedings of every annual general meeting along with the Directors' Report, the audited balance sheet and the profit and loss account shall be filed with the Registrar within sixty days of the date on which the annual general meeting is held, with an annual return along with the filing fees as applicable under the Act.*
- (10) *In the case where a Producer Company is formed by Producer institutions, such institutions shall be represented in the general body through the Chairman or the Chief Executive thereof who shall be competent to act on its behalf : Provided that a Producer institution shall not be represented if such institution makes a default or failure referred to in clauses (d) to (f) of sub-section (1) of section 581Q.*

CHAPTER V: SHARE CAPITAL AND MEMBERS RIGHTS

581ZB. SHARE CAPITAL

- (1) *The share capital of a Producer Company shall consist of equity shares only.*
- (2) *The shares held by a Member in a Producer Company, shall as far as may be, be in proportion to the patronage of that company.*

581ZC. SPECIAL USER RIGHTS

- (1) *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.*
- (2) *The instruments of the Producer Company issued under sub-section (1) 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.

581ZD. TRANSFERABILITY OF SHARES AND ATTENDANT RIGHTS

- (1) *Save as otherwise provided in sub-sections (2) to (4), the shares of a Member of a Producer Company shall not be transferable.*
- (2) *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 value.*
- (3) *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.*
- (4) *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:
Provided that 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) *Where the Board of a Producer Company is satisfied that -*
- (a) *any Member has ceased to be a primary producer ; or*
- (b) *any Member has failed to retain his qualifications to be a Member as specified in articles,*
- 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.*

CHAPTER VI: FINANCE, ACCOUNTS AND AUDIT

581ZE. BOOKS OF ACCOUNT

- (1) *Every Producer Company shall keep at its registered office proper books of account with respect to -*
- (a) *all sums of money received and expended by the Producer Company and the matters in respect of which the receipts and expenditure take place ;*
 - (b) *all sales and purchase of goods by the Producer Company ;*
 - (c) *the instruments of liability executed by or on behalf of the Producer Company ;*
 - (d) *the assets and liabilities of the Producer Company ;*
 - (e) *in case of a Producer Company engaged in production, processing and manufacturing, the particulars relating to utilisation of materials or labour or other items of costs.*
- (2) *The balance sheet and profit and loss accounts of the Producer Company shall be prepared, as far as may be, in accordance with the provisions contained in section 211.*

581ZF. INTERNAL AUDIT

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 (38 of 1949).

581ZG. DUTIES OF AUDITOR UNDER THIS PART

Without prejudice to the provisions contained in section 227, the auditor shall report on the following additional matters relating to the Producer Company, namely : -

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

581ZH. DONATIONS OR SUBSCRIPTION BY PRODUCER COMPANY

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 ; or (b) promoting the mutual assistance principles :*

Provided that 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:

Provided further that 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.

581ZI. GENERAL AND OTHER RESERVES

- (1) *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.*
- (2) *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.*

581ZJ. ISSUE OF BONUS SHARES

Any Producer Company may, upon recommendation of the Board and passing of resolution in the general meeting, issue bonus shares by capitalisation of amounts from general reserves referred to in section 581ZI in proportion to the shares held by the Members on the date of the issue of such shares.

CHAPTER VII: LOANS TO MEMBERS AND INVESTMENTS

581ZK. LOAN, ETC., TO MEMBERS

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 :*
Provided that any loan or advance to any director or his relative shall be granted only after the approval by the Members in general meeting.

581ZL. INVESTMENT IN OTHER COMPANIES, FORMATION OF SUBSIDIARIES, ETC

- (1) *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.*
- (2) *Any Producer Company may, for promotion of its objectives acquire the shares of another Producer Company.*
- (3) *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.*
- (4) *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, other than a Producer Company, specified under sub-section (2), or subscription of capital under sub-section (3), for an amount not exceeding thirty per cent of the aggregate of its paid-up capital and free reserves :*

Provided that 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.

- (5) *All investments by a Producer Company may be made if such investments are consistent with the objects of the Producer Company.*
- (6) *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 sub-sections (3) and (4).*
- (7) *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.*
- (8) *The register referred to in sub-section (7) 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.*