

An overview of Producer Companies

Background

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, Y. K. Alagh.

Aim of the Committee was to -

Frame a legislation that would enable incorporation of **cooperatives as companies** and conversion of existing cooperatives into companies; · ensuring the unique elements of cooperative business with a regulatory framework similar to that of companies.

Meaning of Producer Company :

A producer company is basically a body corporate **registered as Producer Company** under

Companies Act, 1956 and shall carry on or relate to any of following activities classified broadly:-

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

(b) rendering technical services, consultancy services, training, education, research and development and all other activities for the promotion of the interests of its Members;

(c) generation, transmission and distribution of power, revitalization of land and water resources,

their use, conservation and communications relatable to primary produce;

(d) promoting mutual assistance, welfare measures, financial services, insurance of producers or their primary produce;

**Primary produce has been defined as a produce of farmers arising from agriculture including animal husbandry, horticulture, floriculture, pisciculture, viticulture, forestry, forest products, re-vegetation, bee raising and farming plantation products: produce of persons engaged in hand-loom, handicraft and other cottage industries: by - products of such products; and products arising out of ancillary industries. -By Ashish M.*

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Salient Provisions of Companies Act relating to Producer Companies

Incorporation

Any of the following combination of producers can incorporate a producer company:

- ten or more producers (individuals); or
- two or more producer institutions; or
- combination of the above two (10+2).

Registration

(a) In a Producer Company, only persons engaged in an activity connected with, or related to,

primary produce can participate in the ownership. The members have necessarily to be primary producers.

(b) These companies shall be termed as "Companies with Limited Liability" and the liability of

the members will be limited to the amount, if any, unpaid on the shares.

(c) The name of the company shall end with the words "**Producer Company Limited**"

(d) On registration, the producer company **shall become as if it is a private limited company**

for the purpose of application of law and administration of the company (however it shall comply with the specific provisions of part IXA).

(e) The maximum number of **50 members is not applicable** to these companies.

Share Capital and Voting Rights

(i) The share capital of a Producer Company shall consist of **equity shares only**.

(ii) Members' equity cannot be publicly traded but only transferred.

(iii) Voting when membership is

- only of individuals then voting rights shall be based on a **single vote for every member**.

- only of producer institutions then voting rights on the **basis of their participation**.

- combination of both individuals and producer institutions then voting rights shall be based on a **single vote for every member**.

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Management

- Every producer company is to have **at least five and not more than 15 directors**.

- A full time **chief executive should be appointed** by the board and shall be entrusted with

substantial powers of management as the board may determine.

Reserves

- Every producer company **has to maintain a general reserve** in every financial year and in

case there are not sufficient funds in any year for such transfer, the shortfall has to be made

up by members' contribution in proportion to their *patronage in the business.

**Patronage, in turn, is defined as the use of services offered by producer companies to their members by*

participation in their business activities.

Members' Benefit

- Members will initially receive only such value for the produce or products pooled and supplied as the directors may determine. The withheld amount may be disbursed later either in cash or in kind or by allotment of equity shares.

- Members will be eligible to receive bonus shares.

- There is a provision for the distribution of patronage bonus (akin to dividend) after the

annual accounts are approved — patronage bonus means payment out of surplus income

to members in proportion to their respective patronage (not shareholding).

Dispute Resolution

Dispute relating to producers companies are to be settled by conciliation or arbitration under the

Arbitration and Conciliation Act, 1996 as if the parties to the dispute have consented in writing to

such procedure.

Audit & Internal Audit Requirements

Producer Companies shall carry out an internal audit of its accounts, at regular intervals in

accordance with its articles of association and such an audit shall be carried on by a Chartered

Accountant.

In addition to the internal audit, the auditor shall make an annual audit report to the members of

the company on the accounts examined by him, and on every balance sheet and profit and loss

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account and on every other document declared by the Act to be part of or annexed to the balance

sheet or profit and loss account, which are laid before the company in general meeting and the

report shall state whether, in his opinion and to the best of his information and according to the

explanations given to him, the said accounts give the information required by the Act in the

manner so required and give a true and fair view.

Tax Benefits

Indian economy is basically an agrarian economy. More than two-thirds of the Indian population

depends upon agriculture for their livelihood.

The Indian 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. For instance, if green tea leaves are grown and sold directly without any further processing, the income derived from such an activity is considered as agricultural income under the IT Act and such income is 100 % tax free, but if the green tea leaves are further processed and tea is manufactured only 60% of the income derived from such an activity is considered as agricultural income and the tax exemption can be availed only on the said 60% of such income. Thus, it is clear that the tax exemption to a producer company depends upon the activity it carries on.

Producer Companies in India

India has witnessed fewer than one hundred registered producer companies as yet. Majority of the

Companies are floated in Maharashtra and Madhya Pradesh as an initiative by the Government

basically for the betterment of unprivileged farmers. For example, Government of Madhya

Pradesh under District Poverty Initiatives Programme (DPIP) has promoted a few Producer

Companies in various parts of the State to eradicate poverty.

The following is a list of few companies incorporated as Producer Companies in India

- The Indian Organic Farmer Producer Company Limited is an Aluva (Kerala) company of

farmers producing organic products.

- Vanilla India Producer Company Ltd (VANILCO) has been promoted by Kerala based Indian Farmers Movement (Infarm), a charitable society with over one lakh farmer members for catering to the long-term interests of the vanilla farmers.

- Coinonya Farm Producer Company Limited for turmeric and Karbi Farms Producer Company Limited for ginger and chilly in Assam.

- Karnavati Producer Company Limited in Madhya Pradesh.

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Case Study

Amul plant at Anand, Gujarat

It was in the year 2006 in the month of May where in a major initiative by AMUL, which is a cooperative

society was to change the organizational model by transforming the co-operative society

into a producer company. The proposed transformation was basically to have an exit from the very

restrictions of co-operatives.

The below quoted are the then views of the Chairman of AMUL :

"The State Government's permission is required for everything now, from opening of offices in

other States to investment of surplus funds, issue of bonus shares, election of Chairman and

appointment of statutory auditors. It gives lot of scope for official interference.

The Companies Act, which is a Central legislation, is comparatively more liberal, especially since

the passing of an amendment in 2002 enabling creation of 'producer companies'. These are akin to

private limited companies, though in this case, there are no limits to the number of members.

Moreover, voting rights are based on the cooperative principle of one man-one vote and not the

extent of shareholding as in normal private or public limited companies.

"A producer company will have more flexibility in so far as investment in other companies and

formation of subsidiaries is concerned.

"Also, since shares can be attached, it would be possible to raise more borrowings from commercial banks and other institutions for expansion of business," the official added.

However, as yet AMUL is a co-operative society as the proposal above was not implemented.

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Conclusion

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.

Therefore, it can aptly be concluded that the intention behind insertion of the concept of Producer Company in Companies Act, 1956 is to ensure a more beneficial and easy adaptable regulatory framework of such companies and it is to be well noted that whether it is a Producer Co-operative registered under Co-operative Societies Act, or a Producer Company under the Companies Act, they both serve for the common purpose as to serve its members and work for their betterment.

“PROMOTE INDIAN CULTURE ; PROMOTE PRODUCER COMPANIES”

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