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FERTILIZER

PRODUCER COMPANY

Agricultural Land holding in the Country is dominated by small farmers with an average size of less than 1 hectare. These farmers face some challenges both in production and post-production stages like access to production technology, quality, credit etc.

There are no separate provisions under the Companies Act, 2013 regarding producer Company. As mentioned above it still govern by chapter IXA of Companies Act, 1956.

Ministry of Company Affairs, India has introduced a Bill for amendment (based on the report submitted by High Powered Committee under the Chairmanship of Dr. YK Alagh) in the Companies Act, 1956 by inserting Part IX A, paving a way for the incorporation of Producer Companies.

However, incorporation of the Producer Company includes not only legal formalities but also promoting the company, organising the members, accountability, auditing etc.

It is however first important to understand some basics:

Primary Produce

Produce of farmers from agriculture and allied activities or produce of persons engaged in handloom, handicraft and other cottage industries, including any by-product and product resulting from ancillary activities thereof.

Producer

Any person engaged in any activity connected with or relatable to any primary produce

Producer Institution

Producer Company or Institution having only producer(s) or Producer Company(ies) as its members (may or may not be incorporated) having specified objects and agreeing to make use of the services of the Producer Company(ies)

Producer Company

A body corporate registered under the Companies Act, 1956; and having specified objects and activities (refer box). Ownership and membership of such companies is held only by 'Primary Producers' or 'Producer Institution', and member equity shall not be publicly traded. However it may be transferred, only with the approval of the board of directors of the Producer Company.

The Initiator

Initiator could be 'a person' or 'a group of persons' who takes the responsibility to initiate and establish a producer company. Further, 'initiator' could also be one of the promoters6 of the company. The initiators, starts the entire process, through meeting with the producers, developing rapport with them and introducing the concept amongst them.

OBJECTIVE OF PRODUCER COMPANIES

The objects given under section 581B are as follows:

- ❖ Production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary production 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.
- ❖ Processing including preserving, drying, distilling, brewing, vinting, canning, and packaging of the produce of its Members.
- ❖ Manufacture, sale or supply of machinery, equipment or consumables mainly to its Members.
- ❖ Providing education on the mutual assistance principles, to its Members and others.
- ❖ Rendering technical services, consultancy services, training, research and development and all other activities for the promotion of the interests of its Members.
- ❖ Generation, transmission, and distribution of power, revitalization of land and water resources, their use, conservation and communication relatable to primary produce.
- ❖ Insurance of producers or their primary produce.
- ❖ Promoting techniques of mutuality and mutual assistance.
- ❖ Welfare measures or facilities for the benefit of Members as may be decided by the Board.
- ❖ Any other activity, ancillary or incidental to any of the activities referred to in clauses (a) to (i) or other activities which may promote the principles of mutuality and mutual assistance amongst the Members in any other manner.
- ❖ Financing of procurement, processing, marketing or other activities specified in clauses (a) to (j) which include extending of credit facilities or any other financial services to its Members.

WHO CAN FORM PRODUCER COMPANY?

Any one of the following can get a producer company incorporated under the Act:

- Any ten or more persons engaged in any activity connected with primary produce, or
- Any two or more producer institutions or companies, or
- A combination of ten or more individuals and producer institutions.
- The maximum number of members can not exceed 50.
- Members' equity cannot be publicly traded but be only transferred.

STATUS OF PRODUCER COMPANY

The registered producer company should be treated as a private limited company with the significant difference that a minimum of two persons cannot get them registered.

• It shall never become a public (or deemed public) limited company.

• It can never be converted into a public company however it can be converted into a multi-state co-operative society.

DIRECTORS IN PRODUCER COMPANY

Every producer company is to have

At least 5 and not more than 15 Directors.

A full time chief executive should (CEO) be appointed by the board and shall be entrusted with substantial powers of management as the board may determine.

If any director resigns from his post the election shall be conducted within 90 days from the date of resignation of such director. The Director shall hold his office for a period not less than 1 year but not more than 5 years as may be specified in the articles.

Every director shall be eligible for reappointment. The Directors of the Board are elected by the members in the Annual General Meeting.

The Board may co-opt one or more expert directors or additional directors not exceeding one fifth of the total number of directors. The expert director and additional director shall hold the post for the period as prescribed in the articles.

CHARACTERISTICS OF PRODUCER COMPANY

. • These companies are with limited liabilities and limited only by share capital.

• The liability of the members is limited to the unpaid amount of the shares held by them.

• As per the new circular, minimum paid-up authorized capital is of Rs. 5 lakh.

ANNUAL GENERAL MEETING OF PRODUCER COMPANY

1. First AGM shall be conducted within 90 days from the date of incorporation.

2. Like Private Limited Companies, the Registrar may permit extension of the time for holding Annual General Meeting (not being the first annual general meeting) by a period not exceeding 3 months and the Producer Company shall in each year hold an Annual General Meeting and not more than 15 months shall elapse between the date of one Annual General Meeting to the next.

4. The AGM shall be called by issuing at least 14 days notice.

5. The proceedings of every AGM along with Directors' Report, the audited Balance Sheet and Profit & Loss Account shall be filed with the Registrar within 60 days of AGM.

INTERNAL AUDIT

Irrespective of any limit of capital or other factors, every Producer Company shall have internal audit of its accounts carried out in such intervals and in such manner as specified by its articles, by a Chartered Accountant.

MEETINGS OF THE BOARD QUORUM:

Board shall meet at least once in every three months and at least four such meetings shall be convened in every year.

The Chief Executive shall give notice for the board meeting at least 7 days in advance of the meeting. Meeting can be called with shorter notice but the reasons thereof shall be recorded by the Board.

Quorum:- 1/3rd of the total strength of Directors subject to a minimum – 3

RESERVES:

Every producer company has to maintain a general reserve in every financial year. Where there is no 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.

ALTERATION OF MEMORANDUM OF ASSOCIATION AND ARTICLES OF ASSOCIATION

By passing Special Resolution Memorandum or Articles of the company can be altered, but alteration of MoA or AoA shall not be inconsistent with Section 581B.

In case of alteration of Articles- It has to be proposed by not less than 2/3rd of the elected directors or by not less than 1/3rd of the Members and adopted by special resolution.

Copy of the altered MoA or AOA alongwith the copy of the special resolution has to be filed with the Registrar within 30days of adoption.

STRIKING OF NAME

The Registrar shall strike the name of the Producer Company if the company fails to commence its business within one year from the date of registration or ceases it transactions after giving a notice to the company. Any Member of the Producer Company is aggrieved against such order

REGISTRATION PROCEDURE

The process of registering a Producer Company is similar to that of a Private Limited.

There is a requirement under the Act that the name of a producer company must end with the words "Producer Limited Company".

For registration of Private Limited company please check article by click on below link:

https://blogging.godaddy.com/blog/354639ea-3ac4-4558-95d7-f8ccfd804f47/posts/afffe51a-286a-4cd9-be1e-ae17c617f02a

SHIFT OF REGISTERED OFFICE OF PRODUCER COMPANY

The Ministry of Corporate Affairs (MCA) notified the Producer Companies Rules, 2021. The provisions of the new rules shall apply to a Producer Company as referred in clause (l) of section 378A of the Companies Act, 2013 As regards to the Change of place of registered office from one State to another, the MCA notified that the rules 27, 30 and 31 of the Companies (Incorporation) Rules, 2014, including the forms stated therein shall be applied for the purpose of change of place of registered office of a Producer Company from one State to another.

As per MCA Notification dated 11th February, 2021
http://www.mca.gov.in/Ministry/pdf/ProducerCompaniesRules_16022021.pdf

INVESTMENT BY PRODUCER COMPANIES

Investment of general reserves.-

A Producer Company shall make investments from and out of its general reserves in any one or in combination of the following, namely:--

(a) in approved securities, fixed deposits, units and bonds issued by the Central Government or State Governments or co-operative societies or scheduled bank; or

(b) in a co-operative bank, State co-operative bank, co-operative land development bank or Central co-operative bank; or

(c) with any other scheduled bank; or

(d) in any of the securities specified in section 20 of the Indian Trusts Act, 1882 (02 of 1882); or

(e) in the shares or securities of any other inter-State co-operative society or any co-operative society; or

(f) in the shares, securities or assets of public financial institutions specified under clause (72) of section 2 of the Act.

As per MCA Notification dated 11th February, 2021
http://www.mca.gov.in/Ministry/pdf/ProducerCompaniesRules_16022021.pdf

Thank You

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