

15. Producer Companies

Definitions

- **Producer Company:** means a body corporate having objects or activities specified in section 581B and registered as Producer Company under the companies Act, 1956.
- **Producer:** means any person engaged in any activity connected with or relating to any primary produce.
- **Producer institution:** means a producer company or any other institution having only producer or producers or Producer Company or producer companies as its members whether incorporated or not having any of the objects referred in section 581B and which agrees to make use of the services of the Producer Company or producer companies as in its articles.
- **Primary Produce:** means
 - ✓ Produce of farmers, arising from agricultures, or from any other primary activity or service which promotes the interests of the farmers or consumers.
 - ✓ Produce of persons engaged in handloom, handicraft and other cottage industries; or
 - ✓ Any product resulting from an ancillary activity that would assist or promote any of the aforesaid activities or anything ancillary thereto; or
 - ✓ Any product resulting from any above activities, including by-products of such products; or
 - ✓ Any activity which is intended to increase the production of anything referred above or improves the quality thereof.
- **Patronage:** means the use of service offered by the producer company to its members by participation in its business activities.
- **Patronage bonus:** means a payment made by a producer company out of its surplus income to the members in proportion to their respective patronage.
- **Withheld price:** means a 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.
- **Limited return:** means the maximum dividend as may be specified by the articles.

Objects:

- (i) 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 at its option carry on any of the activities specified in this clause either by itself or through other institution;
- (ii) processing including preserving, drying, distilling, brewing, vinting, canning and packaging of produce of its member;
- (iii) manufacture, sale or supply of machinery, equipment or consumables mainly to its members;
- (iv) providing education on the mutual assistance principles to its members and others;
- (v) rendering technical services, consultancy services, training, research and development and all other activities for the promotion of the interests of its members;
- (vi) generation, transmission and distribution of power, revitalisation of land and water resources, their use, conservation and communication relating to primary produce;
- (vii) insurance of producers or their primary produce;
- (viii) promoting techniques of mutuality and mutual assistance;
- (ix) welfare measures or facilities for the benefit of members as may be decided by the Board;

- (x) any other activity, ancillary or incidental to any of the activities referred to in clauses (i) to (ix) or other activities which may promote the principles of mutuality and mutual assistance amongst the members in any other manner;
- (xi) financing of procurement, processing, marketing or other activities specified in clauses (i) to (x) which include extending of credit facilities or any other financial services to its members.

Formation of Producer Company and its registration (Section 581C)

➤ Conditions

- ✓ Application to whom- to the registrar of the state where the RO of PC is proposed
 - ✓ By whom
 - a) Any ten or more individuals, each of them being a 'producer'; or
 - b) Any two or more producer institution (PI); or
 - c) A combination of ten or more individuals and PI.
 - ✓ Subscription to memorandum and articles:
 - a) Accompanied by memorandum of PC; and
 - b) Articles of the PC duly signed by the subscribers to memorandum.
 - ✓ Object clause of memorandum must specify the object of the PC.
 - ✓ Producer company 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.
 - ✓ Other provisions specified for registration in Part IX-A
- After receiving above documents and if the registrar satisfied that he issued certificate of incorporation. The registrar duty is bound to issue the COI within 30 days of the receipt of documents required for registration.
- The producer company may reimburse to its promoters all the direct costs associated with the promotion and registration of the company including all expenses. Such payment is subject to the approval at the first GM of the members.
- On registration the PC shall become a body corporate as if it is a private company, though all the privileges of a private company shall be available to the PC. A PC need not limit its number of members to 50. A PC shall not, under any circumstance whatsoever become or be deemed to become a public limited company.
- Any contravention is related to registration or prohibits any person, other than a PC to use name which contain the 'Producer Company limited'. Any contravention is punishable with fine up to Rs. 10,000 for every day during which such name is used by him.

Status of a producer company and provisions applicable to it (581ZR)

- A PC need not to limit its number of members to 50.
- A PC need not have a minimum paid up capital or Rs. 1 Lakh.
- Being a private company, a PC shall not –
 - ✓ Make an invitation to the public for subscription of any shares or debentures;
 - ✓ Make any invitation or accepts deposits from persons other than the members, directors or their relatives.
- The transfer of shares in a PC shall be restricted as provided in this section.

Conversion of an existing inter-state co-operative society into a producer company (581J)

- The conversion is at option it is not compulsory
- Eligibility to apply
 - ✓ An inter-state co-operative society with objects not confined in one state may make an application for register as a PC.
 - ✓ A co-operative society formed by producers, by federation or union of co-operative societies 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 of Unions of Such co-operatives, which has so extended any of its objects or activities outside the state, may make an application for registration as a PC.
- Procedure
 - ✓ To whom – registrar of the state where RO of the proposed to be situated.
 - ✓ Application shall be accompanied by-
 - a) A copy of the SR, of not less than 2/3rd of the total members of inter-state co0operative society, for its incorporation as a PC under this act;
 - b) A statement showing-
 - Names and address or the occupation of the directors and CE, if any, by whatever name called, of such co-operative; and
 - List of members of such inter-state co-operative society (ISC-OS);
 - c) A statement indicating that the ISC-OS is engaged in any one or more business specified in the section 581B
 - d) A declaration by two or more directors of the ISC-OS certifying particulars given (a) to (c) are correct.
 - e) Memorandum of the PC
 - f) Articles of PC duly signed by the subscribers of memorandum.
- Registration as a PC
 - ✓ The registrars after satisfying the process issue certificate within 30 days from the receipt of application
- The words “Producer Company Limited” shall form part of its name with any word or expression to show its identity preceding it.
- Consequences upon registration as PC shall follow by ISC-OS:
 - ✓ The ISC-OS shall stand transformed into a PC, and thereafter shall be governed by the provisions of part IX-A of the companies Act, 1956
 - ✓ Any law which was applicable to ISC-OS before registration shall cease to apply
 - ✓ Anything done or omitted to be done before its registration as a PC shall remain unaffected.
 - ✓ No person shall have nay claim against co-operative institution or the company by reason of such conversion or transformation.
 - ✓ The registrar of companies who register the company shall forthwith intimate the Registrars with whom erstwhile ISC-OS was earlier registered for appropriate deletion of the society from its register.

Implications on conversion from ISC-OS to PC

- Members of the society become the member of the PC (581K)
- Vesting of undertaking in PC

On transformation date all:

- ✓ Properties and assets, movable or immovable, of, or belonging to ISC-OS transfer to PC
 - ✓ All the rights, debts, liabilities interests, privileges and obligation of ISC-OS transfer to PC
 - ✓ All the debts, liabilities and obligation incurred as on transformation date shall be deemed to have been incurred by the PC
 - ✓ All the contracts entered into by, or with the ISC-OS transfer to PC
 - ✓ All the matters and things engaged to be done by the society as on TD shall be deemed to be done by PC.
 - ✓ All sums of money due to ISC-OS immediately before transformation date deemed to be due to the PC.
 - ✓ Every organisation, which was being managed immediately before the transformation date by the ISC-OS shall be managed by the PC for such period, to such extent and in such manner as the circumstances may require.
 - ✓ Every organisation which was getting financial, managerial or technical assistance from the ISC-OS, immediately before the transformation date, may continue to given to the PC, to such extent and in such manner as that company may deem fit.
 - ✓ The amount representing the capital of the erstwhile ISC-OS shall form part of the capital of PC.
 - ✓ Any reference to ISC-OS in any law other than this act or on any contract or other instrument shall be deemed to be reference to the PC.
 - ✓ Any law, suit, arbitration, appeal or any other proceedings pending on transformation date shall be transfer on the name of PC.
- With effect from the transformation date, all fiscal and other concession, licenses, benefit, privileges and exemptions granted to ISC-OS under any law for the time being in force shall be deemed to have been granted to the PC. (581M)
 - Employees of the society become employee of the PC (581N)
 - ✓ In the same condition as in ISC-OS.
 - ✓ No compensation if any one resign on his own risk
 - ✓ The officer who retire before transformation date and who are entitled to receive any benefit, privilege from ICS-OS are entitled to receive such from PC.
 - ✓ The trusts if the provident fund or the gratuity fund of the ISC-OS and any other bodies crated for the welfare of officers of employees shall continue to discharges functions in PC.
 - ✓ No director, chairman, MD or any other person entitled to manage the whole or substantial part of the business and affaires of the ISC-OS shall be entitled to any compensation for the loss of office or for the premature termination of any contract of management entered into by him with the ISC-OS.

Contents of memorandum (581F)

- Name clause
- Registered office clause
- Objects clause
- Liability clause
- Capital clause – equity share only
- Directors clause – name, address and occupation
- Association clause – name, address and occupation who subscribe the memorandum. No subscriber shall take less than one share.

Content of Articles of Association of a PC (581G)

The articles should contain the following provisions, namely:

- (a) the qualifications for member, the conditions for continuance or cancellation of member 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 sub-section (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 member may, by special resolution recommend to be included in articles.

The articles should also 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 member:

- (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 member, 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.

Amendment in memorandum (581H)

- A PC shall not alter the condition contained in its memorandum except in the cases, by the mode and to the extent for which express provision made in the act.
- A PC may alter the objects specified in its memorandum by passing a SR. A copy of the amended memorandum, together with a copy of SR duly certified by two directors, shall be filed with the Registrar within 30 days from the date of passing SR.
- A producer company may shift the RO from the jurisdiction of one registrar to another by passing a SR. A copy of the amended memorandum, together with a copy of SR duly certified by two directors, shall be filed with the Registrar within 30 days from the date of passing SR. The alteration of the provisions in memorandum relating to the change in place of its RO from one state to another state shall not take effect unless it is conformed by the CLB on petition.

Amendment of articles (581I)

- The amendment of article shall be proposed by not less than 2/3rd of the elected directors or by not less than 1/3rd of the members of PC.
- The amendment shall be adopted by the members by a SR.
- A copy of the amended articles together with a copy of SR duly certified by two directors, shall be filed with the Registrar within 30 days from the date of passing SR.

Management of Producer Company (Section 581o to 581 X)

- Number of directors (581O)
 - ✓ At least 5 but not more than 15
 - ✓ Where ISC-OS incorporated as a PC, such company may have more than 15 directors for a period of 1 year from the date of incorporation as PC.
- Appointment of directors
 - ✓ The subscribers of memorandum shall govern the affairs of the PC until the directors are elected in accordance with the provisions of the act.
 - ✓ The election for directors shall be conducted within 90 days from registration
 - ✓ Where conversion than election shall be conducted within 365 days from such conversion.

- ✓ Every person shall hold office as a director for a period not less than 1 year but not exceeding 5 years, as may be specified in articles.
- ✓ Every retired director shall be eligible for re-appointment as per article provision
- ✓ The directors shall be appointed by the members in the AGM.
- ✓ The board may co-opt one or more expert directors or additional directors not exceeding 1/5th of the total number of directors.

➤ **Vacation of office by directors (581Q)**

- (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.

The above provisions may also apply to the director of a Producer institution, which is a member of a producer company.

➤ **Powers and functions of board (581R)**

- (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 member;
- (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.

All the above powers may be exercised by the Board, through a resolution passed at its meeting on behalf of the producer company. However, a director or a group of directors, who do not constitute the Board, shall not exercise any of the powers exercisable by it.

➤ **Liability of directors (581T)**

The producer company is having the right to recover from its director—

- (a) where such director has made any profit as a result of the contravention of law or articles, an amount equal to the profit so made;
- (b) where the producer company incurred a loss or damage as a result of the contravention of law or articles, an amount equal to that loss or damage.
- (c) 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.

➤ **Committee of BOD (581U)**

(f) **Committee of directors (Section 581U):** 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. However, the Board shall not delegate any of its powers or assign the powers of the Chief Executive, to any committee.

A committee may, with the approval of the Board, co-opt such number of persons as it deems fit as member of the committee. However, the Chief Executive appointed under Section 581W or a director of the producer company shall be a member of such committee.

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.

The fee and allowances to be paid to the members of the committee shall be such as may be determined by the Board.

The minutes of each meeting of the committee shall be placed before the Board at its next meeting.

➤ **Meetings of Board and quorum (581V)**

- ✓ At least 1 BM shall be held in every 3 months and at least 4 shall be held every year.
- ✓ Notice of BM shall be given in writing to every director at his usual address in India.
- ✓ It shall be duty of the chief executive to give notice prior to 7 days of BM. If he fails to do so, he shall be punishable with fine which may extend to Rs. 1,000.
- ✓ The quorum – 1/3rd of the total strength of director, or 3 directors WEH
- ✓ The directors including the co-opted directors may be paid such fees and allowances for attending the BM, as may be decided by the members in GM.

➤ **Secretary of producer company (581X)**

- ✓ Every PC having an average annual turnover exceeding Rs. 5 Crores in each of 3 consecutive financial years shall have a whole-time secretary.
- ✓ No individual shall be appointed as whole-time secretary unless he possesses membership of the ICSI under the company secretaries Act, 1980.
- ✓ Failure to appoint shall be punishable with a fine up to Rs. 500 for every day during which the default continues. However, it shall be defence to prove that-
 - a) All reasonable effort were made to appoint a whole-time secretary; or
 - b) The financial position of the company was such that it was beyond its capacity to engage a whole-time secretary.

General meetings of a PC

- Quorum – unless the article requiring large number, 1/4th of the total membership shall constitute a quorum at a GM.
- Membership and voting rights to members
 - ✓ Membership consists Solely by individuals – single vote for every member
 - ✓ Membership consist only producers institutions – basis on their participation in the business. (in first year it shall be decided on shareholding pattern)
 - ✓ Both – single vote for every member

- ✓ In case of equality of votes chairman has right to casting vote
- ✓ The articles may provide condition for membership and about their voting rights.
- ✓ A PC may, is so authorised by its articles, restrict the voting rights to active members, in any special or general meeting.
- ✓ No person, who has any business interests which is in conflict with business of the PC, shall become a member of that company.
- ✓ A member, who has acquired any business interest which is in conflict with the business of the PC, shall cease to a member of that PC.
- AGM (581ZA)
 - ✓ First AGM within 90 days from the date of its incorporation
 - ✓ AGM in each year. Not more than 15 months shall elapse between two AGM.
 - ✓ The registrar may extension of time for holding (Except First AGM) by a period not exceeding 3 months
 - ✓ The notice shall be accompanied with following documents:
 - a) Agenda
 - b) Minutes of the previous GM.
 - c) Names of candidates for election as a director
 - d) Audited BS and P & L of PC and its subsidiary, if any, together with a report of the BOD of such company with respect to –
 - The state of affairs of company;
 - The amount proposed to carried to reserve;
 - The amount to be paid as limited return on share capital;
 - The amount proposed to be disbursed as patronage bonus;
 - The material changes and commitments, if any, affecting the financial position of the PC and its subsidiary.
 - Any other matter of importance relating to energy conservation, environmental protection, expenditure or earnings in foreign exchanges.
 - Any other matter which is required to be, or may be, specified by the board.
 - ✓ About meeting
 - a) Time – during business hours
 - b) On a day that is not a public holiday
 - c) At a RO of the company or within city where RO situated
 - ✓ The following documents shall be filed, alone with filing fees, with the registrar within 60 days from the date of holding an AGM:
 - a) The proceedings of the AGM.
 - b) The directors report
 - c) The audited BS and P & L.
 - d) The annual return
 - ✓ In the AGM, the members shall
 - a) *Adopt the articles of PC; and*
 - b) *Appoint* directors of the PC.
- General meetings (581ZA)
 - ✓ Shall be Called by giving not less than 14 days prior notice in writing
 - ✓ The notice of GM shall send to every member and auditor

- ✓ The notice shall state the time, date and place
- ✓ Quorum – unless the articles require large number, 1/4th of the total members
- ✓ Where a PC is formed by producer institution than chairman or the Chief executive shall be competent to act on behalf
- ✓ The BOD shall proceed to call an extraordinary general meeting, if a requisition is made in writing by 1/3rd of the members entitled to vote in a GM.

Share capital and members' rights

- Share capital (581ZB)
 - ✓ Equity share only
 - ✓ The shares held by a member in a PC, shall as far as possible, be in proportionate to the patronage of that company
- Special user rights (581ZC)
 - ✓ The active members may, if so provided in articles, have special rights and the producer company may issue appropriate instrument to them in respect of such special rights.
 - ✓ Such instrument shall be transferable to any other active member of that PC, subject to the prior approval of the Board.
- Transferability of shares and attendant rights (581ZD)
 - ✓ The share not transferable, except the following condition
 - a) After obtaining previous approval of the Board.
 - b) Within 3 months of his becoming a member in the PC, nominate vest in the event of his death.
 - ✓ In the following case, the board shall, after giving opportunity of being heard, direct the surrender of shares with special rights, at par or any other value decided by the Board.
 - a) Where the board is satisfied that any member has ceased to be a primary producer; or
 - b) Where the Board is satisfied that any member has failed to retain his qualification to be a members as specified in articles.

Finance, account and audit

- **BOA (581ZE):** keep at RO with respect to-
 - ✓ All sums of money received and expended by the PC and the matters in respect of which the receipts and payments take place;
 - ✓ All sales and purchase of goods by the PC;
 - ✓ The instruments of liability executed by or on behalf of the PC;
 - ✓ The assets and liabilities of the PC;
 - ✓ In case of a PC engaged in production, processing and manufacturing, the particular relating to utilisation of material; or labour or other items of cost.
- Internal Audit (581ZF)
 - ✓ As may be specified in articles. It shall be carried out by a CA
- Duties of auditor (Section 581ZG) : report on the following *additional matter* relating to PC
 - ✓ The amount of debts due along with particulars of bad debts if any;
 - ✓ The verification of cash balance and securities;
 - ✓ The details of assets and liabilities;
 - ✓ All transaction which appear to be contrary to the provisions of this part;

- ✓ The loans given by the PC to director;
- ✓ The donations or subscriptions given by the PC;
- ✓ Any other matter as may be considered necessary by the auditor.
- Donations or subscription by a PC (581ZH)
 - ✓ SR required for making donations: for the purposes of
 - a) Promoting the social and economic welfare of producer members or producers general public; or
 - b) Promoting the mutual assistance principles.
 - ✓ Ceiling limit on donations
 - a) Aggregate amount of donations and subscriptions shall not exceed 3% of the NP of the preceding FY of PC.
 - ✓ Prohibition on political contribution
 - a) To a political party
 - b) For any political purpose
 - c) Making available any facilities including personnel or material to a political party or nay person for any political purpose.
- General and other reserves (581ZI)
 - ✓ Shall maintain GR in every FY, in addition to reserves maintained by it as may be specified in articles.
 - ✓ In a case where the PC does not have sufficient funds in any FY for transfer to reserves, the contribution to the reserve shall be shared amongst the members in proportion to their patronage in the business of the PC in that year.
- Issue of bonus shares (581ZJ)
 - ✓ By capitalisation of general reserves
 - ✓ The issues of bonus share in proportion to share held by members
 - ✓ The issue of bonus shall require-
 - a) Recommendations form the board; and
 - b) Passing of resolution in the GM.

Loans to members (581ZK)

- The board may, subject to the provisions made in the articles, provide loan to the members by way of-
 - ✓ Credit facility – but shall not exceeding 6 months
 - ✓ Loans and advances against security specified in articles, repayable within 3 months but not exceeding 7 years from the date of disbursement
- Any loan or advance to any director or his relative shall be granted only after the approval by the members in GM.

Penalty (581ZM)

- If a director or an officer of a company, who wilfully fails to furnish any information relating to the affairs of the PC required by a member or person duly authorised in this behalf, he shall be liable to imprisonment for a term which may extend 6 months and with fine equivalent to 5% of the turnover of that company during preceding FY.
- If a director or officer of a PC –

- ✓ Makes a default in handing over the custody of BOA and other documents or property in his custody to the PC of which he is a director or officer; or
- ✓ Fails to convene AGM or other GM,
 - a) He shall be punishable with fine may extend to 1 lakh rupees or
 - b) If the fine continues than it may extend to 10,000/day for every day during default or failure continues.

Investment in other companies, formation of subsidies etc. (581ZL)

- (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 investment 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 there from.

Other provision for just refer

10.11 Amalgamation, Merger or Division

Amalgamation, merger or division, etc., to form new producer companies (Section 581ZN)

- (1) A producer company may, by a resolution passed at its general meeting,—
 - (a) decide to transfer its assets and liabilities, in whole or in part, to any other producer company, which agrees to such transfer by a resolution passed at its general meeting, for any of the objects specified in section 581B;
 - (b) divide itself into two or more new producer companies.
- (2) Any two or more producer companies may, by a resolution passed at any general or special meetings of its members, decide to—
 - (a) amalgamate and form a new producer company; or
 - (b) merge one producer company (hereafter referred to as 'merging company') with another producer company (hereafter referred to as 'merged company').

- (3) Every resolution of a producer company under this section shall be passed at its general meeting by a majority of total Members with right of vote not less than two-thirds of its Members present and voting and such resolution shall contain all particulars of the transfer of assets and liabilities, or division, amalgamation, or merger, as the case may be.
- (4) Before passing a resolution under this section, the producer company shall give notice thereof in writing together with a copy of the proposed resolution to all the Members and creditors who may give their consent.
- (5) Notwithstanding anything contained in articles or in any contract to the contrary, any Member, or any creditor not consenting to the resolution shall, during the period of one month of the date of service of the notice on him, have the option,
- (a) in the case of any such Member, to transfer his shares with the approval of the Board to any active Member thereby ceasing to continue as a Member of that company; or
 - (b) in the case of a creditor, to withdraw his deposit or loan or advance, as the case may be.
- (6) Any Member or creditor, who does not exercise his option within the period specified in sub-section (5), shall be deemed to have consented to the resolution.
- (7) A resolution passed by a producer company under this section shall not take effect until the expiry of one month or until the assent thereto of all the members and creditors has been obtained, whichever is earlier.
- (8) The resolution referred to in this section shall provide for—
- (a) the regulation of conduct of the producer company's affairs in the future;
 - (b) the purchase of shares or interest of any members of the producer company by other members or by the producer company;
 - (c) in the case of purchase of shares of one producer company by another producer company, the consequent reduction of its share capital;
 - (d) termination, setting aside or modification of any agreement, howsoever arrived between the company on the one hand and the directors, secretaries and manager on the other hand, apart from such terms and conditions as may, in the opinion of the majority of shareholders, be just and equitable in the circumstances of the case;
 - (e) termination, setting aside or modification of any agreement between the producer company and any person not referred to in clause (d):
Provided that no such agreement shall be terminated, set aside or modified except after giving due notice to the part concerned and also no such agreement shall be modified except after obtaining the consent of the party concerned;
 - (f) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property, made or done by or against the producer company within three months before the date of passing of the resolution, which would if made or done against any individual, be deemed in his insolvency to be a fraudulent preference;
 - (g) the transfer to the merged company of the whole or any part of the undertaking property or liability of the producer company;
 - (h) the allotment or appropriation by the merged company of any shares, debentures, policies, or other like interests in the merged company;
 - (i) the continuation by or against the merged company of any legal proceedings pending by or against any producer company;
 - (j) the dissolution, without winding-up, of any producer company;
 - (k) the provision to be made for the members or creditors who make dissent;
 - (l) the dissolution, without winding-up, of any producer company;
 - (k) the provision to be made for the members or creditors who make dissent;
 - (l) the taxes if any, to be paid by the producer company;
 - (m) such incidental, consequential and supplemental matters as are necessary to secure that the division, amalgamation or merger shall be fully and effectively carried out.
- (9) When a resolution passed by a producer company under this section takes effect, the

resolution shall be a sufficient conveyance to vest the assets and liabilities in the transferee.

(10) The producer company shall make arrangements for meeting in full or otherwise satisfying all claims of the members and the creditors who exercise the option, within the period specified in sub-section (4), not to continue as the member or creditor, as the case may be.

(11) Where the whole of the assets and liabilities of a producer company are transferred to another producer company in accordance with the provisions of sub-section (9), or where there is merger under sub-section (2), the registration of the first mentioned Company or the merging company, as the case may be, shall stand cancelled and that Company shall be deemed to have been dissolved and shall cease to exist forthwith as a corporate body.

(12) Where two or more producer companies are amalgamated into a new producer company in accordance with the provisions of sub-section (2) and the producer company so formed is duly registered by the Registrar, the registration of each of the amalgamating companies shall stand cancelled forthwith on such registration and each of the Companies shall thereupon cease to exist as a corporate body.

(13) Where a producer company divides itself into two or more producer companies in accordance with the provisions of clause (b) of sub-section (1) and the new producer companies are registered in accordance with the provisions of sub-section (8), the registration of the erstwhile producer company shall stand cancelled forthwith and that Company shall be deemed to have been dissolved and cease to exist as a corporate body.

(14) The amalgamation, merger or division of companies under the foregoing sub-sections shall not in any manner whatsoever affect the pre-existing rights or obligations and any legal proceedings that might have been continued or commenced by or against any erstwhile company before the amalgamation, merger or division, may be continued or commenced by, or against, the concerned resulting company, or merged company, as the case may be.

(15) The Registrar shall strike off the names of every producer company deemed to have been dissolved under sub-sections (11 to 14).

(16) Any member or creditor or employee aggrieved by the transfer of assets, division, amalgamation or merger may, within thirty days of the passing of the resolution, prefer an appeal to the High Court.

(17) The High Court shall, after giving a reasonable opportunity to the person concerned, pass such orders thereon as it may deem fit.

(18) Where an appeal has been filed under sub-section (16), the transfer of assets, division, amalgamation or merger of the producer company shall be subject to the decision of the High Court.

(b) Striking off name of producer company (Section 581ZP): If a producer company fails to commence business within one year of its registration or ceases to transact business with the members or if the Registrar is satisfied, after making such inquiry as he thinks fit, that the producer company is not carrying any of its objects specified in Section 581B, he shall make an order striking off the name of the producer company, which shall thereupon cease to exist forthwith.

No such order cancelling the registration as aforesaid shall be passed until a notice to show cause has been given by the Registrar to the producer company with a copy to all its directors on the proposed action and reasonable opportunity to represent its case has been given.

Where the Registrar has reasonable cause to believe that a producer company is not maintaining any of the mutual assistance principles specified, he shall strike its name off the register in accordance with the provisions contained in Section 560 of this Act.

Any member of a producer company, who is aggrieved by an order made under this section, may appeal to the Company Law Board within sixty days of the order. After disposing the appeal, if any, the order to striking off the name shall take effect.