PRODUCER COMPANIES

581B. OBJECTS OF A PRODUCER COMPANY

- A Producer Company may be formed only if its objects relate to all or any of the objects mentioned in this section.

581C. FORMATION OF PRODUCER COMPANY AND ITS REGISTRATION

Individuals (being producers) ≥ 10

OR/AND

Producer Institutions ≥ 02

Desirous of forming a Producer Company having its objects specified in section 581B may form an incorporated Company as a Producer Company under this Act.

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

Members	Voting Right
1. Individuals only	Single vote for every Member, irrespective of his shareholding or patronage of the Producer Company.
2. Producer Institutions only	
• First Year	Determined on the basis of the shareholding by such Producer institutions
• Later on	Determined on the basis of their participation in the business of the Producer Company in the previous year, as may be specified by articles
3. Individuals and Producer Institutions	Single vote for every Member

- Producer Company may, if so authorised by its articles, restrict the voting rights to active Members, in any special or general meeting.
- No person, who has any business interest which is in conflict with business of the Producer Company, shall become a Member of that Company.
- 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.

581F. MEMORANDUM OF PRODUCER COMPANY

- The memorandum of association of every Producer Company shall state: -
  - the name of the company with "Producer Company Limited" as the last words of the name of such Company ;
  - the State in which the registered office of the Producer Company is to situate ;
  - the main objects of the Producer Company shall be one or more of the objects specified in section 581B ;
  - the names and addresses of the persons who have subscribed to the memorandum ;
  - the amount of share capital with which the Producer Company is to be registered and division thereof into shares of a fixed amount ;
  - 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 ;
  - that the liability of its members is limited ;
  - opposite to the subscriber's name the number of shares each subscriber takes : Provided that no subscriber shall take less than one share ;
  - in case the objects of the Producer Company are not confined to one State, the States to whose territories the objects extend.

581H. AMENDMENT OF MEMORANDUM

- Not to 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.
- A Producer Company may, by special resolution, not inconsistent with section 581B, alter its objects specified in its memorandum.
  - 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
  - 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.
  - 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 the 1Company Law Board on petition.

581-I. AMENDMENT OF ARTICLES

- Shall be proposed by - not less than two-third of the elected directors or by not less than one-third of the members
  and adopted by - the members by a special resolution
- 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

Conditions to be fulfilled and procedure to be followed:

- Objects of the ISCS not confined to one State
- Application to the Registrar accompanied by,
  (a) A copy of special resolution, , of not less than two-third of total members of the ISCS
  (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 ISCS
  (c) A statement indicating that the ISCS is engaged in any one or more of the objects specified in section 58IB
  (d) A declaration by two or more directors of the ISCS certifying that particulars given as above are correct.
- When an ISCS 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.
- The Registrar shall, within a period of thirty days of the receipt of application, certify under his hand that the ISCS applying for registration is registered and thereby incorporated as a Producer Company under this Part
- Upon registration as a Producer Company, the Registrar of Companies who registers the company shall forthwith intimate the Registrar with whom the erstwhile ISCS was earlier registered for appropriate deletion of the society from its register.

581-O. NUMBER OF DIRECTORS

- Every Producer Company shall have at least five and not more than fifteen directors
- In the case of an ISCS 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

- 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.
- The election of directors shall be conducted within a period of ninety days of the registration of the Producer Company
    - Three hundred and sixty five days from registration in case of an ISCS converted into Producer Company under section 581J
- Save as provided above, the directors of the Board shall be elected or appointed by the Members in the annual general meeting.
- 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.
- Every director, who retires in accordance with the articles, shall be eligible for re-appointment as a director.
- 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
    - 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
    - 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

- The office of the director of a Producer Company shall become vacant if-
  - 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 ;
  - 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 ;
  - He has made a default in repayment of any advances or loans taken from the Producer Company in which he is a director ;
  - The Producer Company, in which he is a director –

    (a) 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

    (b) 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 ;
  - 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 ;
  - 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, 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

- 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.
- 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.

581S. MATTERS TO BE TRANSACTED AT GENERAL MEETING

- Producer Company shall exercise the following powers on behalf of that company only by means of resolutions passed at the annual general meeting of its Members, namely : -
  - Approval of budget and adoption of annual accounts of the Producer Company ;
  - Approval of patronage bonus ;
  - Issue of bonus shares ;
  - Declaration of limited return and decision on the distribution of patronage ;
  - Specify the conditions and limits of loans that may be given by the Board to any director ; and
  - Approval of any transaction of the nature as is to be reserved in the articles for approval by the Members.

581V. MEETINGS OF BOARD AND QUORUM

- A Board meeting shall be held not less than **once in every three months** and **at least four such meetings shall be held in every year**.
- **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.
- 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.
  - A meeting of the Board may be called at shorter notice and the reasons thereof shall be recorded in writing by the Board.
- The **quorum** for a meeting of the Board shall be **one-third of the total strength of directors**, subject to a **minimum of three**.
- 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

- 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.
- The Chief Executive shall be ex officio director of the Board and such director shall not retire by rotation.
- 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.
- The Chief Executive shall be entrusted with substantial powers of management as the Board may determine.
- 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

- 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.
- 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.
- If a Producer Company fails to comply with these provisions, 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
    - it shall be a defence to prove that all reasonable efforts to comply with these provisions 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 58ID, 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.

581ZA. ANNUAL GENERAL MEETINGS

- 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.
- Not more than fifteen months shall elapse between the date of one annual general meeting of a Producer Company and that of the next
    - 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.
- A Producer Company shall hold its first annual general meeting within a period of ninety days from the date of its incorporation.
- The Members shall adopt the articles of the Producer Company and appoint directors of its Board in the annual general meeting

581ZB. SHARE CAPITAL

- The share capital of a Producer Company shall consist of equity shares only.
- 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

- "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.
- 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.
- These instruments of the Producer Company shall, after obtaining approval of the Board in that behalf, be transferable to any other active Member of that Producer Company.

581ZD. TRANSFERABILITY OF SHARES AND ATTENDANT RIGHTS

- 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.
- 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.
- 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
    - 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.
- 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
    - 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.

581ZE. BOOKS OF ACCOUNT

- 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.
- 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

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
- 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:
- 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

- 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.
- 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.

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
- 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

- 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.
- Any Producer Company may, for promotion of its objectives acquire the shares of another Producer Company.
- 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.
- 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, for an amount not exceeding thirty per cent of the aggregate of its paid-up capital and free reserves.
    - 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.
- All investments by a Producer Company may be made if such investments are consistent with the objects of the Producer Company.
- 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 point 3 and 4 above.
- 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.
    - The register 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.

581ZS. RECONVERSION OF PRODUCER COMPANY TO INTER- STATE CO- OPERATIVE SOCIETY

- Any Producer Company, being an erstwhile ISCS, formed and registered under this Part, may make an application-
  - after passing a resolution in the general meeting by not less than two- third of its Members present and voting; or
  - on request by its creditors representing three- fourth value of its total creditors,

  to the High Court for its re- conversion to the ISCS.

- The High Court shall, on the application made, direct holding meeting of its Members or such creditors, as the case may be, to be conducted in such manner as it may direct.
- If a majority in number representing three- fourths in value of the creditors, or Members, as the case may be, present and voting in person at the meeting conducted in pursuance of the directions of the High, agree for reconversion, if sanctioned by the High Court, be binding on all the Members and all the creditors, as the case may be, and also on the company which is being converted.
  - No order sanctioning re- conversion shall be made by the Court unless the Court is satisfied that the company or any other person by whom an application has been made for reconversion has disclosed to the Court, by affidavit or otherwise, all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company, the pendency of any investigation proceedings in relation to the company under sections 235 to 251, and the like.
- An order made by the Court shall have no effect until a certified copy of the order has been filed with the Registrar.
- A copy of every such order shall be annexed to every copy of the memorandum of the company issued after the certified copy of the order has been filed as aforesaid, or in the case of a company not having a memorandum, to every copy so issued of the instrument constituting or defining the constitution of the company.
- If default is made in filing the order with the Registrar, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one hundred rupees, for each copy in respect of which default is made.
- The Court may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceeding against the company on such terms as the Court thinks fit, until the application is finally disposed of.
- Every Producer Company which has been sanctioned reconversion by the High Court, shall make an application, under the Multi-State Co-operative Societies Act, 2002 (39 of 2002) or any other law for the time being in force for its registration as multi-State co-operative society or co-operative society, as the case may be, within six months of sanction by the High Court and file a report thereof to the High Court and the Registrar of companies and to the Registrar of the co-operative societies under which it has been registered as a multi-State co-operative society or co-operative society, as the case may be.