After reading this chapter, you will be able to:

- Understand the concept of Producer Companies, the need for Producer Companies in today's scenario
- Know the legal provisions regarding formation and working of Producer Companies
- Know the procedure for conversion of Co-operative society into Producer Company and vice versa
1. INTRODUCTION

(a) Background of the law relating to producer companies: The co-operative movement in India is considered as the backbone of the Indian economy. The movement was able to make rapid strides in the rural economy, uplifting the standard of living of the rural masses, which enabled them to sell their produce under an organised structure and form of organisation. The co-operative businesses in India are a time tested and successful form of organisation which enabled wider participation of the member constituting it and today there are many co-operative businesses, which are, not only state oriented but have become multi-state and national co-operatives. With the on set of reforms in the Indian economy, a need was felt that such of those producer co-operatives should be able to corporatise themselves into company form of organisation.

In the back drop of corporatisation of businesses, the Central Government incorporated provisions to facilitate the formation of co-operative businesses as companies and to make it possible to convert existing co-operative business into companies. The option of conversion is purely voluntarily.

Thus, the Companies Act, 1956 contains Sections 581A to 581ZT relating to formation of producer companies, their administration and management, conversion of existing co-operative businesses into producer companies and matters connected therewith.

Note: In this chapter, wherever the word ‘Act’ is used, it refers to the Companies Act, 1956.

Part IXA of the Companies Act, 1956 deals with Producer companies. It consists of 12 chapters.

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<th>The twelve chapters dealing with the respective matters as shown below:</th>
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2. APPLICATION OF PROVISIONS RELATING TO PRIVATE COMPANIES

All the limitations, restrictions and provisions of this Act, other than those specified in this part, applicable to a private company, shall, as far as may be, apply to a producer company, as if it is a private limited company under this Act in so far as they are not in conflict with the provisions of this Part. [Section 581ZR]

Although, the status of a producer company shall be that of a private company, strictly speaking, it cannot be construed as a private company in terms of section 3(1)(iii) of the Companies Act, 1956 which defines a private company. In terms of restriction on the transfer of shares, a producer company shall be restricted as provided in sections 581ZD(ii) and (iv). A producer company cannot make any invitation to the public for subscription of any shares or debentures of the company or accept any invitation of deposits.

3. POWER TO MODIFY ACT IN ITS APPLICATION TO PRODUCER COMPANIES [SECTION 581ZT]

(1) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act (other than those contained in this Part) specified in the said notification:

(a) shall not apply to the producer companies or any class or category thereof; or

(b) shall apply to the producer companies or any class or category thereof with such exception or adaptation as may be specified in the notification.

(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of 30 days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid,

1Section 2(68) of the Companies Act, 2013.
both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

4. DEFINITIONS

Section 581A summarises the following definitions:

(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 (p) of Section 3 of the Multi-State Co-operative Societies Act, 2002 (39 of 2002) 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 member by participation in its business activities;

(i) “patronage bonus” means payments made by a producer company out of its surplus income to the member 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.

5. OBJECTS OF A PRODUCER COMPANY

Producer company means a body corporate having objects or activities specified in Section 581B and registered as a producer company under the Companies Act, 1956.

Every producer company should deal basically with the produce of its active member for carrying out any of its objects. The objects of the producer company, as per section 581B, may be relating to all or any of the following matters, namely:

(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 relatable 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.

6. FORMATION OF A PRODUCER COMPANY AND ITS REGISTRATION

The formalities relating to registration of a producer company are similar as applicable for all companies. However, for registration of a producer company, the requirements of Part-IXA should also be complied with. [Section 581C].

1. A producer company can be formed by any 10 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 and provisions of this Act in respect of registration, may form Producer Company under this Act.
Example: A group of 8 individuals together with a producer institution approached the Registrar for incorporation of a producer company under Section 581 of the Companies Act, 1956. Can the Registrar go ahead with the registration and incorporation? Discuss.

Answer: In the problem given here, a group of 8 individuals together with a producer company approached the registrar for incorporation of a producer company. Since the requirements "combination of ten or more individuals and producer institutions" of this provision has not been complied with in respect of registration, so registrar cannot proceed with the registration and incorporation of the company.

2. If the Registrar of Companies 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 30 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. After incorporation, 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 as company limited by shares.

4. It also becomes 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.

5. 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.

### Registration of Producer Co.

- Within 30 days of the receipt of the documents required for registration
- Issue a certificate of incorporation

### After incorporation

- Producer Co. 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 as company limited by shares.

### Body Corporate

- Private Limited Co.
- Not a Public Co.

### Reimbursement to promoters

- All other direct costs associated with the promotion and registration of the company including registration, legal fees, printing of a memorandum and articles
- Such payment shall be subject to the approval at first general meeting of the members.

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7. **EFFECT OF INCORPORATION OF PRODUCER COMPANY (SECTION 581K)**

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.

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8. MEMBERSHIP AND VOTING RIGHTS OF MEMBERS (SECTION 581D)

1. A person, who has any business interest which is not in conflict with business of the producer company, shall become a member. On the other hand, a member, who acquires any business interest which is in conflict with the business of the producer company, shall cease to be a member and be removed as a member in accordance with articles of the producer company.

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.

These voting’s rights are:

(i) In a case where the members consist 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.

(ii) In a case where the member 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.
(iii) In a case where the members consist of individuals and producer institutions, the voting rights shall be computed on the basis of a single vote for every member.

3. However, a producer company may, if so authorised by its articles, restrict the voting rights to active members, in any special or general meeting.

**Voting Rights**

- **Individual Members**
  - Single vote for every member
  - Irrespective of his shareholding or patronage

- **Producer Institutions**
  - Based on: participation in the business of the producer company in the previous year
  - For 1st year of registration: Based on shareholding by such Producer institutions

- **Combination**
  - Single vote for every member

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**9. BENEFITS TO MEMBER [SECTION 581E]**

The member of the producer company may get benefited in the following ways:

1. Every member of producer company, subject to provisions made in the articles, 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. However, 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 also 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.
10. MEMORANDUM OF PRODUCER COMPANY [SECTION 581F]

The memorandum of association of every producer company should contain the following:

(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 member 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.
11. AMENDMENT OF MEMORANDUM [SECTION 581H]

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. However, a producer company may, by special resolution, not inconsistent with section 581B, alter its objects specified in its memorandum.

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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 resolution.

In 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 Company Law Board on petition.

12. ARTICLES OF ASSOCIATION [SECTION 581G]

Registration of Articles

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

Provisions contained in the Articles

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.

**Mutual Assistance Principles in the 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.

13. AMENDMENT OF ARTICLES [SECTION 581-I]

Any amendment of the articles should 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.

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<td>Atleast 1/3rd of the members of the producer company</td>
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<td>Adopted by:</td>
<td>Members by Special Resolution</td>
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A copy of the amended articles together with the copy of the special resolution, both duly certified by two directors, should be filed with the Registrar within thirty days from the date of its adoption.

14. INTER-STATE CO-OPERATIVE SOCIETIES

I. Conversion of Inter-State Co-operative Societies to become producer companies [Section 581J]

1. Any inter-State co-operative society having objects for multiplicity for states may make an application to the Registrar for registration as producer company.
2. Such application 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,
   (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. The word “Producer Company Limited” should form part of its name to show its identity.

4. On compliance with the requirements of the Act, 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.

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 union of such co-operatives, which has so extended any of its objects or activities outside the State, shall be eligible to make an application as above to obtain registration as a producer company under this Part.

6. The Inter-State Co-operative Society upon its registration, under this section transformed into a producer company, and thereafter shall be governed by the provisions of this Part to the exclusion of the law by which it was earlier governed, save in so far 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 is required to intimate the Registrar with whom the erstwhile inter-State co-operative society was earlier registered for appropriate deletion of the society from its register.
II. Vesting of undertaking in producer company [Section 581L]

1. All properties and assets, 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 part, 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 part, 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.
III. Concession, etc. to be deemed to have been granted to producer company [Section 581M]

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 co-operative society under any law for the time being in force shall be deemed to have been granted to the producer company.

IV. Provisions in respect of officers and other employees of Inter-State Co-operative Society [Section 581N]

1. All the directors in the inter-State co-operative society before the incorporation of the producer company shall continue in office for a part 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, in so far 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 co-operative 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 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 inter-State 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 co-operative 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. The 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 co-operative society.

15. MANAGEMENT

I. Number of directors

Every producer company shall have at least 5 directors and not more than 15 directors. (Section 581O). The proviso to the section states that in the case of the Inter-State Co-operative Society incorporated as a producer company, such company may have more than 15 directors for a period of one year from the date of its incorporation as a producer company.

Example: An Inter-state co-operative society was incorporated on 1st May 2017 as a Producer company under the provisions of the Companies Act, 1956. Advise the company whether it can have 18 Directors on its Board after incorporation.

Answer: In the instant case, the Inter-State Co-operative Society was incorporated as a producer company on 1st May, 2017. Thus, it can appoint 18 directors on its Board for a period of one year after incorporation.

II. Appointment of Directors [Section 581P]

1. The members who sign the memorandum and the articles are designated as first directors and shall govern the affairs of the company until the directors are appointed at the Annual General Meeting.

2. The Election of Directors shall be conducted within 90 days from the date of registration of the producer company.

3. In the case of Inter-State Co-operative Society the election shall be held within a period of 365 days.
4. The period of office of a director shall be not less than one year and not exceeding 5 years as may be specified in the articles.

5. The directors retiring by rotation in accordance with the articles shall be eligible for re-appointment as a director.

6. Normally, the directors of the Board shall be elected or appointed by the members in the Annual General Meeting.

7. Co-opted or expert directors or additional director

The Board may also co-opt one or more expert directors or an additional director. Such directors cannot exceed 1/5th of the total number of directors. The expert directors shall not have the right to vote in the election of chairman but shall be eligible to be elected as chairman if it is provided by the articles. The maximum period for which expert director or additional director holds office shall not exceed such period as may be prescribed in the articles.

III. Vacation of office by directors [Section 581Q]

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.

The above provisions may also apply to the director of a Producer institution, which is a member of a producer company.
Example: Under provisions of Companies Act, 1956, relating to producer company, examine whether the office of director of such company shall fall vacant in the following circumstances:

(i) Jubin a Director of Xtra Ltd., a producer company has made a default in payment of loan taken from a company and default continues for 60 days.

(ii) Zara a Director of the above company could not call the Annual General Meeting for the company due to some natural calamity which occurred three days before the Schedule date.

Answer

(i) According to provisions of Companies Act, 1956, as contained in section 581Q, if the producer company in which 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 90 days, the office of such director shall become vacant. In the given case the default on the part of Jubin, the director continues for less than 90 (i.e. only 60 days) days, the office of director shall not fall vacant.

(ii) The office of director of a producer company shall become vacant if 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. In the given case since the Annual General Meeting could not be held due to some natural calamity, the office of Zara, the director shall not fall vacant. This is an exception.

IV. Powers and functions of Board [Section 581R]

The Board of directors of a producer company shall exercise, subject to articles, all such powers and to do all such acts and things, as the company is authorised so to do. These powers may include all or any of the following matters, namely:

(i) determination of the dividend payable;

(ii) determination of the quantum of withheld price and recommend patronage to be approved at general meeting;

(iii) admission of new member;

(iv) pursue and formulate the organisational policy, objectives, establish specific long-term and annual objectives, and approve corporate strategies and financial plans;

(v) appointment of a Chief Executive and such other officers of the producer company, as may be specified in the articles;

(vi) exercise superintendence, direction and control over Chief Executive and other officers appointed by it;
(vii) 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;

(viii) acquisition or disposal of property of the producer company in its ordinary course of business;

(ix) investment of the funds of the producer company in the ordinary course of its business;

(x) 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;

(xi) 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.

V. Liability of directors [Section 581T]

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

   (i) 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;

   (ii) 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.

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.

VI. Committee of directors [Section 581U]

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. However, the Board shall not delegate any of its powers or assign the powers of the Chief Executive, to any committee.

2. 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.

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

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

VII. Meetings of Board and quorum [Section 581V]

1. A meeting of the Board shall be held not less than once in every 3 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. However, 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. Subject to provisions 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 member in the general meeting.

VIII. Chief Executive and his functions [Section 581W]

1. Every producer company shall have a full time Chief Executive to be appointed by the Board from amongst persons other than member.

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. 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. Without prejudice to the above the Chief Executive may exercise the powers and discharge the functions, namely:

(a) doing administrative acts of a routine nature including managing the day-to-day affairs of the producer company;
(b) operating 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) making arrangements for safe custody of cash and other assets of the Producer Company;

(d) signing such documents as may be authorised by the Board, for and on behalf of the company;

(e) maintaining paper books of account; preparing annual accounts and audit thereof; placing the audited accounts before the Board and in the annual general meeting of the member;

(f) furnishing members with periodic information to appraise them of the operation and functions of the producer company;

(g) making appointments to posts in accordance with the powers delegated to him by the Board;

(h) assisting the Board in the formulation of goals, objectives, strategies, plans and policies;

(i) advising the Board with respect to legal and regulatory matters concerning the proposed and ongoing activities and taking necessary action in respect thereof;

(j) exercising the powers as may be necessary in the ordinary course of business;

(k) discharging such other functions, and exercising such other powers, as may be delegated by the Board.

IX. Secretary of a producer company [Section 581X]

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, who possesses membership of the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980.

2. If a producer company fails to comply with this, 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.

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

I. Matters to be transacted at general meeting [Section 581S]

The Board of directors of a producer company shall exercise the following powers on behalf of the 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.

II. Quorum [Section 581Y]

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

III. Voting Rights [Section 581Z]

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.

IV. Annual general meetings [Section 581ZA]

1. Every producer company shall hold, annual general meeting in each year and the time gap between one annual general meeting to another, should not be more than fifteen months.

   In this regard, 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 part 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 member 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 extra-ordinary 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.

5. 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.

6. Every annual general meeting should be called during business hours, on a day that is not a public holiday and shall be held at the registered office or at some other place within the city, town or village in which the registered office of the Company is situate.

7. A general meeting of the producer company shall be called by giving not less than fourteen days prior notice in writing.

8. 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.
9. 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.

10. 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.

11. 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.

Example: A producer company was incorporated on 1st September, 2015. At present the paid-up share capital of the company is ₹ 10 lakhs consisting of 1,00,000 equity shares of ₹ 10 each fully paid-up held by 200 individuals and 20 producers institutions. You are required to answer the following with reference to the provisions of the Companies Act, 1956:

(i) What is the time limit for holding the First Annual General Meeting and the subsequent Annual General Meetings?

(ii) What is the Quorum for the Annual General Meeting?

Answer

(i) **Annual General Meeting** – The first annual general meeting of a producer company shall be held within 90 days of incorporation i.e. on or before 29th November, 2015 in this case.

   In the case of subsequent AGMs gap between two AGMs must not be more than 15 months. Registrar of Companies may extend the time for holding any AGM other than the first AGM by a period not exceeding 3 months for any special reason.

(ii) **Quorum**: Unless the articles of association of the producer company provide for a larger number, 1/4th of the total number of members of the producer company shall be the quorum for its annual general meeting. In this case the company has got 220 (200+20) members. Hence, the quorum is 55.

17. **SHARE CAPITAL AND MEMBER RIGHTS**

I. **Share capital [Section 581ZB]**

   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.

II. Special user rights [Section 581ZC]

1. The producers, who are active member 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 shall be issued after obtaining approval of the Board in that behalf, be transferable to any other active member of that producer company.

Here, 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.

III. Transferability of shares and attendant rights [Section 581ZD]

The provisions are as follows:

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 of Producer Company, nominate, as 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.

### 18. BOOKS OF ACCOUNTS [SECTION 581ZE]

1. Every producer company has to maintain 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 account of the producer company shall be prepared, as far as may be, in accordance with the provisions contained in section 211 of the Companies Act, 1956.

### 19. INTERNAL AUDIT [SECTION 581ZF]

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.

### 20. DUTIES OF AUDITOR UNDER THIS PART [SECTION 581ZG]

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.
21. DONATIONS OR SUBSCRIPTION BY PRODUCER COMPANY [SECTION 581ZH]

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 member 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.

Further, 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.

Example: A two year old Producer Company registered under Section 581C of the Companies Act, 1956 wants to donate some amount. As per the Profit & Loss account of the Producer Company for its last accounting year, net profit was ₹ 20.00 lacs. What amount it can donate?

Answer: Since the net profit of the Producer Company as per its last profit & loss account was ₹ 20.00 lacs, it can make a total donation of ₹ 60,000/- in this year being 3% thereof.

22. GENERAL AND OTHER RESERVES [SECTION 581ZI]

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 member in proportion to their patronage in the business of that company in that year.

23. ISSUE OF BONUS SHARES [SECTION 581ZJ]

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 member on the date of the issue of such shares.
24. LOAN, ETC., TO MEMBER [SECTION 581ZK]

The Board may, subject to the provisions made in articles, provide financial assistance to the members of the producer company by way of—

(i) credit facility, to any member, in connection with the business of the Producer Company, for a period not exceeding six months;

(ii) 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.

However, any loan or advance to any director or his relative shall be granted only after the approval by the members in general meeting.

Example: Anant Producer Company Limited was incorporated on 1st April, 2003. The company wants to grants a loan of ₹10,000 to Mr. Amit, a Director of the company repayable within a period of six months. The Board of directors of the company seeks your advice on the said proposal.

Answer: The directors must convene the general meeting and get the approval of the members before granting the proposed loan of ₹10,000 to Mr. Amit, a director of the company.

25. INVESTMENT IN OTHER COMPANIES, FORMATION OF SUBSIDIARIES, ETC. [SECTION 581ZL]

The producer company has to follow the following provisions under this section.

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.

Example: Dhanlaxmi India Sugar Producer Company Limited, having paid-up capital of ₹ 5 lakh and free reserves of ₹ 3 lakh, propose to make the investments of ₹ 3 lakh in the equity shares of Ganesh Marketing Limited.

State the restrictions, if any, in this regard and also the legal requirements to be complied with by the Company under the provisions of the Companies Act, 1956.

Answer:

Investment in other companies: As per section 581ZL of the Companies Act, 1956, 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. Further, the provision provides 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.

Thus, according to the above provision, the Dhanlaxmi India Sugar Producer Company Limited cannot invest an amount exceeding thirty per cent of the aggregate of its paid-up capital and free reserves i.e. ₹ 2,40,000/- (i.e., 30% of 8,00,000) in Ganesh Marketing Limited. However, the company may invest in excess of the limits (more than 2,40,000) by special resolution passed in its general meeting and with prior approval of the Central Government.
26. PENALTIES

Penalty for contravention [Section 581ZM]

1. If any person, other than a producer company registered under this part, carries on business under any name which contains the words "producer company limited", he shall be punishable with fine which may extend to ten thousand rupees for every day during which such name has been used by him.

2. If a director or an officer of a producer company, who willfully fails to furnish any information relating to the affairs of the producer company required by a member or a person duly authorised in this behalf, he shall be liable to imprisonment for a term which may extend to six months and with fine equivalent to five per cent of the turnover of that company during preceding financial year.

3. If a director or officer of a producer company—
   (a) makes a default in handing over the custody of books of account and other documents or property in his custody to the producer company of which he is a director or officer; or
   (b) fails to convene annual general meeting or other general meetings,

he shall be punishable with fine which may extend to one lakh rupees, and in the case of a continuing default or failure, with an additional fine which may extend to ten thousand rupees for every day during which such default or failure continues.

27. AMALGAMATION, MERGER OR DIVISION [SECTION 581ZN]

Amalgamation, merger or division, etc., to form new producer companies

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 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.

28. RESOLUTION OF DISPUTES

I. Disputes [Section 581ZO]

1. Where any dispute relating to the formation, management or business of a producer company
arises—

   (i) amongst members, former members or persons claiming to be members or nominees of
deeased members; or

   (ii) between a member, former member or a person claiming to be a member, or nominee of
deeased member and the producer company, its Board of directors, office-bearers, or
liquidator, past or present; or

   (iii) between the producer company or its Board, and any director, office-bearer or any
former director, or the nominee, heir or legal representative of any deceased director of
the producer company,

such dispute shall be settled by conciliation or by arbitration as provided under the Arbitration
and Conciliation Act, 1996 as if the parties to the dispute have consented in writing for
determination of such disputes by conciliation or by arbitration and the provisions of the said
Act shall apply accordingly.

Explanation—For the purposes of this section, a dispute shall include—

(a) a claim for any debt or other amount due;

(b) a claim by surety against the principal debtor, where the producer company has recovered from the surety amount in respect of any debtor or other amount due to it from the principal debtor as a result of the default of the principal debtor whether such debt or amount due be admitted or not;

(c) a claim by producer company against a member for failure to supply produce as required of him;

(d) a claim by a member against the producer company for not taking goods supplied by him.

2. If any question arises whether the dispute relates to formation, management or business of the producer company, the question shall be referred to the arbitrator, whose decision thereon shall be final.

II. Striking off name of producer company [Section 581ZP]

1. 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.

2. 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.

3. Any member of a producer company, who is aggrieved by an order made under this section, may appeal to the Company Law Board NCLT within sixty days of the order. After disposing the appeal, if any, the order to striking off the name shall take effect.
29. RE-CONVERSION OF PRODUCER COMPANY TO INTER-STATE CO-OPERATIVE SOCIETY [SECTION 581ZS]

The method is as follows:

(1) **Application to the High Court:** Any producer company, being an erstwhile inter-State co-operative society, formed and registered under this Part, may make an application—

(a) after passing a resolution in the general meeting by not less than two-third of its members present and voting; or

(b) on request by its creditors representing three-fourth value of its total creditors, to the High Court for its re-conversion to the inter-State co-operative society.

(2) **Holding of meeting:** The High Court shall, on the application made under sub-section (1), direct holding meeting of its members or such creditors, as the case may be, to be conducted in such manner as it may direct.

(3) **Majority in agreement with reconversion:** 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 Court under sub-section (2),
agree for re-conversion, 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:

Provided that 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 under sub-section (1) 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.

(4) **Filing of certified copy with Registrar:** An order made by the Court shall have no effect until a certified copy of the order has been filed with the Registrar.

(5) **Copy of order to be annexed with every copy of Memorandum:** 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.

(6) **Default in filing of certified copy:** If default is made in complying with sub-section (4), 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.

(7) **Stay on suit/proceeding until the disposal of application:** 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.

(8) **Filing of an application under the Co-operative Society Act etc. after being sanctioned re-conversion by the High-Court:** Every producer company which has been sanctioned re-conversion by the High Court, shall make an application, under the Multi-State Co-operative Societies Act, 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.
Question 1

*XYZ Producer Company Limited was incorporated on 1st April, 2003. At present it has got 200 members and its board consists of 10 Directors. The Board of directors of the company wants to appoint one expert Director and one Additional Director by the Board for a period of four years. Advise the Board of directors explaining the relevant provisions of the Companies Act, 1956.*

**Answer**

**Appointment of expert director or additional director:** Section 581P(6) of the Companies Act, 1956 empowers the Board of directors of a producer company to co-opt one or more expert directors or an additional director not exceeding one fifth of the total number of directors for such period as the Board may deem fit. But the maximum period shall not exceed the period specified in the Articles of the company (Second Proviso to section 581P(6)).

The number of directors proposed to be co-opted is only 2 and it does not exceed one-fifth of the total number of directors. They can hold office for the period specified by the Board provided it does not exceed the period specified in the Articles (Section 161(1) of the Companies Act, 2013 stipulating that the additional director can hold office only up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier, is not applicable to a producer company). Hence, the proposed appointment of one expert director and one additional director is in order.

Question 2

*Mr. Z an expert in modern agriculture practices is willing to lend his services as a director of M/s. Lord Krishna Cotton Producer Company Ltd. registered under Section 581C of the Companies Act, 1956. Advise Mr. Z as to how he can be appointed as a director including (1) The total number of directors that can be appointed (2) The tenure of the directors (3) The time limit within which the appointment should be made (4) the co-option of directors and (5) the voting powers of such co-opted directors.*

**Answer**

According to section 581P of the Companies Act, 1956 the members who sign the memorandum and the articles may designate (not less than five) as first directors and who shall govern the affairs of the company until the directors are appointed at the Annual General Meeting.

1. According to section 581-O every producer company shall have at least five and not more than fifteen directors.

2. The period of office of director shall be not less than one year and not exceeding 5 years as may be specified in the articles.
The election of directors shall be conducted within 90 days from the date of registration of the producer company. In the case of Inter-state co-operative society, the election shall be held within a period of 365 days.

(4) The directors are normally elected and appointed by the members in the Annual General Meeting. The Board may also co-opt one or more expert directors as an additional director. Such directors cannot exceed 1/5th of the total number of directors.

(5) The expert directors shall not have the right to vote in the election of Chairman but shall be eligible to be elected as Chairman if it is provided by the articles. Thus Mr. Z can be appointed as an expert director but he will not have any voting right in the election of chairman of the Board of directors. His tenure of office can be between one to five years.

Question 3

Mr. Zameen, a member of a Producer Company, wants to transfer his shares. You are required to state as to how he can transfer his shares under the provisions of the Companies Act, 1956.

Answer

According to the provisions of section 581ZD (1) and (2) of the Companies Act, 1956, the shares of a member of a Producer Company shall not be transferable but 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.

Based on the above provisions relating to the transfer of shares of a member in a Producer Company, Mr. Zameen has to obtain prior approval of the Board and then transfer his shares to an active member of the Producer Company at par value.

Question 4

DHP Producer Company Limited, a producer company, is having an average turnover of ₹7 crores in the last five years. Referring to the provisions of the Companies Act, 1956, answer the following:

(A) Is it obligatory for the company to appoint a whole time secretary?

(B) What consequences will follow in case the company does not comply with the provisions in relation to the above?

Answer

Secretary of Producer Company: As per the provisions of Section 581X of the Companies Act, 1956, every Producer company having an average annual turnover exceeding rupees five crores in each of three consecutive financial years shall have a whole-time secretary, who possesses membership of the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980. Hence, it is obligatory for DHP Producer Company Limited to appoint a...
whole time secretary. If a producer company fails to comply with this requirement, 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.

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

Question 5

Ideal Producer Co. Ltd. was incorporated on 1st April, 2009. Its paid up capital of ₹ 10 Lakh consists of 1 lakh equity shares of ₹ 10 each held by 100 individuals. There are 6 directors on its Board. Referring to the provisions of the Companies Act, 1956, answer the following:

(i) What is the quorum for the Annual General Meeting?

(ii) What is the quorum for the Board Meeting?

(iii) The Board of Directors wants to co-opt one expert in the field of agronomics, as Director on its Board. Whether is it permissible?

(iv) Is it obligatory for this company to have internal audit of its accounts for Financial Year 2015-16?

Answer

(i) As per section 581 Y of the Companies Act, 1956, unless the Articles requires a larger number, one fourth of the total number of members of the producer company shall be the quorum at a general meeting. In this case, the company has got 100 members and hence, the quorum is 25.

(ii) Section 581 V of the Companies Act, 1956, provides that the quorum for a meeting of the Board shall be one third of the total strength of directors, subject to a minimum of three.

In the given case, 1/3 of 6 directors comes to 2, but minimum required is 3, hence, the quorum will be 3 directors for a board meeting.

(iii) Section 581 P of the Companies Act, 1956, empowers the Board of Directors of a producer company to co-opt one or more experts as director, but not exceeding one fifth of the total number of directors. As there are 6 directors in the given case, hence, co-opting one expert on the Board will be in order.

(iv) Yes, as per section 581 ZF of the Companies Act, 1956, every producer company is required to have internal audit of its accounts carried out by a Chartered Accountant at such intervals and in such manner as may be specified in the Articles.
Question 6

The Articles of Association of Coimbatore Milk Producers Limited restricts the membership to producers. You are required to answer the following questions explaining the relevant provisions of the Companies Act, 1956.

(i) Mr. Gopal, one of the members proposes to transfer part of his shares. State the steps to be taken by Mr. Gopal to give effect to the proposed transfer.

(ii) Mr. Ramu, one of the members, nominated his son, Mr. Krishnan to be entitled to his shares in the event of his death. Mr. Ramu died. State the action that can be taken by the producer company in case Mr. Krishnan is not a producer.

Answer

(i) **Transferability of shares and attendant rights** - According to section 581 ZD of the Companies Act, 1956, 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.

Mr. Gopal may transfer the part of his shares, after obtaining the previous approval of the Board.

(ii) **Rights of the nominee related to transfer of shares of the deceased member** - According to Section 581ZD (3) every member shall within three months of his becoming a member of producer company nominate, as specified in articles, a person to whom his shares in the producer company shall vest in the event of death. The nominee shall become entitled to all the rights in the shares of the producer company in the event of death of the member. The Board of Directors of the producer company shall transfer the shares of Mr. Ramu to his nominee Mr. Krishnan.

In this case as the nominee is not a producer, action may be taken by the company under proviso to Section 581ZD(4). The Board of Directors of the producer company shall direct Mr. Krishnan to surrender the shares together with special rights. The surrender may be made either at par value or such other value as may be determined by the Board of Directors of the producer company.