

## PRODUCER COMPANY- AT GLANCE

### SECTION 378A OF COMPANIES ACT, 2013

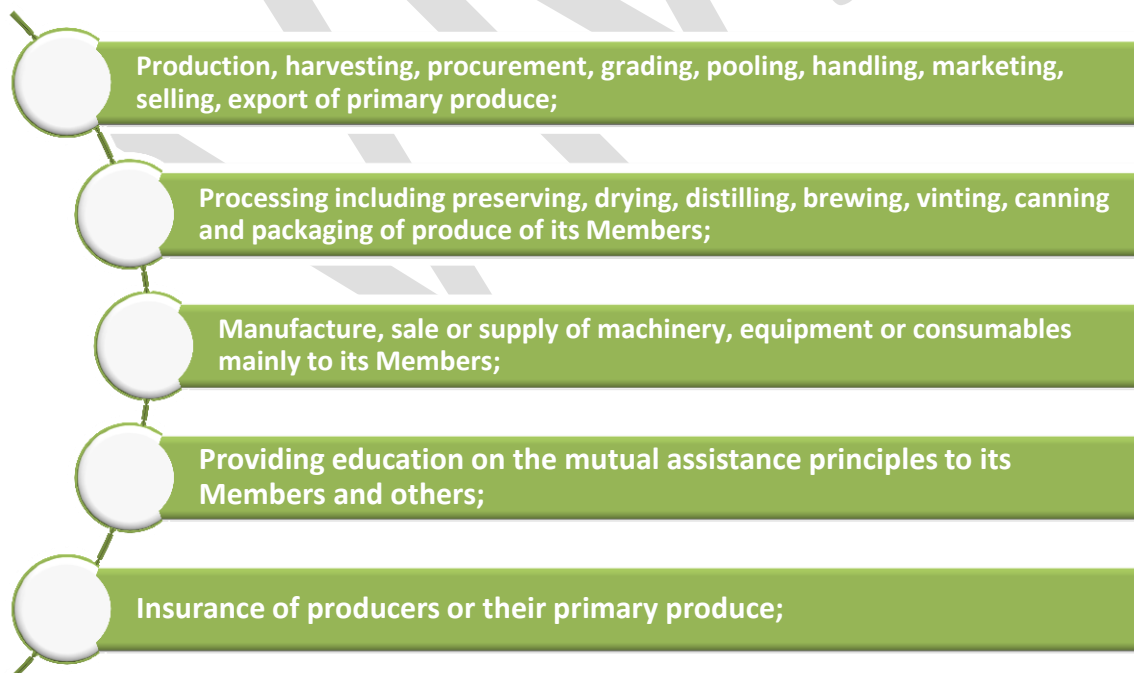
*Corresponding Section in previous Companies Act: Part IXA of Companies Act 1956- Producer Company (Section 581A in Companies Act 1956)*

"Producer Company" means a body corporate having objects or activities specified in section 378B and registered as Producer Company under this Act or under the Companies Act, 1956;

"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 378B and which agrees to make use of the services of the Producer Company or Producer Companies as provided in its articles;

\*The Companies Amendment Act, 2020 has introduced a separate Chapter (Section 378A to 378ZU) relating to Producer Companies under the Companies Act, 2013. [Amendment effective from 11th February 2021]

**THE OBJECTS OF THE PRODUCER COMPANY SHALL RELATE TO ALL OR ANY OF THE FOLLOWING MATTERS, NAMELY:**



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The list of objects of Producer Company is inclusive. And for more detailed view of Objects of Producer Company please refer the below link:

[https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/acts.html?act=NTk2MQ==#Objects\\_of\\_Producer\\_Company](https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/acts.html?act=NTk2MQ==#Objects_of_Producer_Company)

## DO YOU WISH TO FORM A PRODUCER COMPANY?

1) Note that a Producer Company can be formed and incorporated under this Act by:

- 10 or more individuals, each of being producer\* ; or
- 2 or more producer Institutions\* ; or
- A combination of 10 or more individuals and producer Institution, complying with all requirements of Chapter XXIA in the Act may form an incorporated company as Producer Company;

\*Producer” means any person engaged in any activity connected with or relatable to any primary produce;

\*Here "Primary produce" means -

- 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
- produce of persons engaged in handloom, handicraft and other cottage industries; or
- any product resulting from any of the above activities, including by-products of such products; or
- any product resulting from an ancillary activity that may assist or promote any of the aforesaid activities or anything ancillary thereto; or
- any activity which is intended to increase the production of anything referred to in sub-clauses (i) to (iv) or improve the quality thereof;

2) Select in order of preference, 2 suitable names each should indicate one of the principal objects of proposed company with “Producer Company Limited” as last words of the name of such Company.

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- 3) Forms required to be filed while incorporating a producer Company are:
- SPICE+PART-A (For name approval)
  - SPICE+PART-B (for incorporation of Company)
  - AGILE-PRO-S (Fill in details of GST, EPFO, ESIC, and BANK Account)
  - INC-9 (Declaration by Subscribers and first Directors)

\*INC-33 and INC-34 not required to be filed in case of Producer Company as these are attached as attachment with Spice+Part-B.

- 4) Note that a producer Company shall have at least 5 and not more than 15 Directors.
- 5) Keep in mind that the producer company may reimburse to its promoter all other direct cost associated with the promotion and registration of company including:
- Registration and legal fees;
  - Printing of Memorandum and Articles and payment thereof

Shall be subject to approval of members at first Annual General Meeting

- 6) The date given by ROC on the Certificate of Incorporation will be the date of incorporation of your producer Company and on that date, the company will come into being as a separate legal entity.
- 7) Memorandum and Articles of Producer Company lay down before the members in general meeting for adoption and the Articles of Company shall contain the provisions as to the requirement of Section 378G of Companies Act, 2013.
- 8) Following documents and information are required to be filed with ROC as attachment with electronically filed forms for incorporating Producer Company:
- Signed Memorandum of Association;
  - Signed Articles of Association;
  - Proof of registered office address:
    - NOC From owner/ Lease holder (If the Registered office is Rented or taken on Lease)
    - Address Proof (Electricity bill /Gas bill /postpaid mobile bill /broadband bill) not older than 2 months.
    - Rent agreement or lease deed, if any
  - BR passed in case of Company, LLP Resolution in case of Limited liability Partnership, and Resolutions in case of Trust, Partnership and Society, by the Entity giving NOC\*



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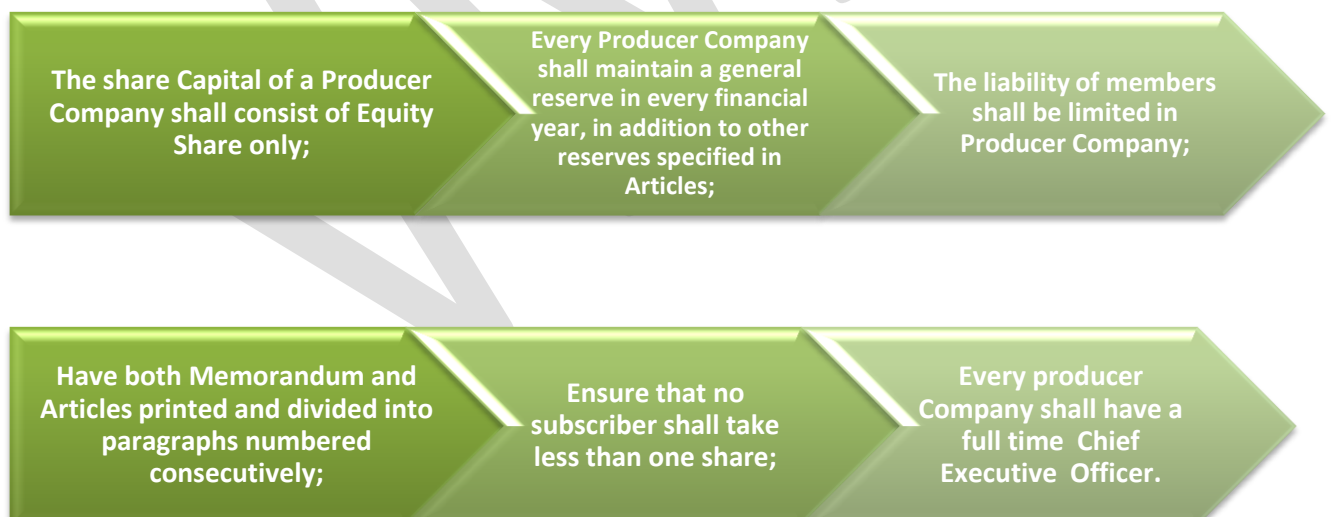
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for the purpose of usage of Place as registered office of Proposed Company (NOC has to be received on letter head)

- Details of directors (at least 5) along with their DIN, if any and members (at least 10) and their proposed designation;
- Self-attested Id and address proof of Directors and members (PAN, Driving license/Voter ID/Passport and Bank statement/ Utility bill);
- Photograph of all subscribers and proposed directors;
- Farmers certificates/ Handicraft Certificates (Certificate based on the objects proposed to be pursued by Company) should be at letter head of tehsildar signed by tehsildar or any upper authority;
- Objects to be pursued by company;
- Name of bank in which account to be opened;
- E mail id and phone no. of all subscribers and directors along with their qualification details , Years of stay at current address, Occupation of proposed director and subscribers;
- Authorized Share Capital of Proposed Producer Company;
- Paid up Share Capital (INR 5 lac) of Proposed Producer Company.

It shall be noted that Subscriber sheet of Producer Company shall be manually filed.

## 9) OTHER IMPORTANT TERMS:



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## ARTICLES STATE THE FOLLOWING:

Ensure that the Articles of Association of Producer Company shall contain the following provision:

- a) Qualification for membership, conditions and procedure for transfer of shares, conditions for continuation or cancellation of membership and the terms;
- b) Manner of ascertaining the patronage and voting rights based on patronage;
- c) Manner of constitution of the Board of Directors of your proposed producer company , and also the following:
  - Minimum and Maximum number of Directors (Minimum 3 & Maximum 15);
  - Powers and duties of Directors;
  - Qualifications for being elected as a Director or continuance as such;
  - Conditions for election or co-option of Directors;
  - Method of removal of Directors and filling up of vacancies on Board;
  - Manner and terms of appointment of the Chief Executive.
- d) The Election of Chairman, terms of office of Directors and the Chairman, and
  - manner of voting at general meeting of members,
  - procedure for voting, by Directors at Board meeting,
  - Powers of Chairman and the circumstances in which Chairman exercise a Casting vote.
- e) Circumstances in which, and the manner in which withheld price is to be determined and distributed;
- f) Manner of disbursement of patronage bonus shares in:
  - In cash; or
  - By issue of equity shares; or
  - Both.
- g) Matters relating to issue of Bonus shares out of general reserves as set out in section 378ZJ of Companies Act, 2013.
- h) Basis and manner of allotment of equity shares of Producer Company in lieu of whole or part of sale proceeds of produce supplied by members;
- i) The right of any member to obtain information relating to general business of Company;

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- j) Basis and manner of distribution and disposal of funds available after meeting liabilities in event of dissolution or liquidation of producer Company;
- k) Any other provision, which members may by special resolution, recommended being included in Articles of Association.

Further ensure that Articles of Association of your producer Company contain the mutual assistance principles as stated in Section 378G (2) of Companies Act, 2013.

For more details that what should be stated in the Articles please refer the below link:

[https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/acts.html?act=NTk2MQ==#Articles\\_of\\_association](https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/acts.html?act=NTk2MQ==#Articles_of_association)

## MEMORANDUM STATES THE FOLLOWING:

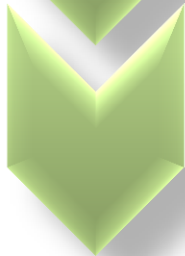
Ensure that the Memorandum of Association of your proposed Producer Company shall states the following:



- Name of Company with " *Producer Company Limited*" as last words of name of proposed Company;
- The *State* in which the registered Office of Producer Company is to be situated;



- *Main Objects* of Producer Company should be one or more of objects specified in Section 378B of Companies Act, 2013;
- Name and address of persons who have *subscribed to the memorandum*;
- Name, address, occupation of persons who *act as first directors of Company*;



- *Liability of members* to be limited;
- *Amount of Share Capital* with which producer company is registered;
- Opposite to his name *the number of shares each Subscriber takes*; (not less than one share)

\*In case, the Objects of Producer Company are not confined to one state, the states to whose territories the objects extend.

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## KEY REQUIREMENTS OF PRODUCER COMPANY REGISTRATION

### Are you planning to begin a Producer Company Registration in India?

If yes, you must register your Company with Ministry of Corporate Affairs (MCA) under the Companies Act, 2013. Ensuring that your Company operates legally and smoothly is essential. This section of article deals with key requirements for Producer Company Registration.

- MINIMUM NUMBER OF MEMBERS

10 or more individuals, each of being producer; or 2 or more producer Institutions; or combination of both

- CAPITAL REQUIREMENT

Second requirement for producer Company is to encourage members to contribute to the capital. For instance, minimum requirement of capital is five lakhs.

- MINIMUM NUMBER OF DIRECTORS

Producer Company shall have at least 5 and not more than 15 Directors.

Every person shall hold office of a director for a period of not less than 1 year but not exceeding 5 years as may be specified in Articles.

- DOCUMENTS REQUIRED

Firstly, members and Directors are required to obtain DSC, for which here are the documents required for making the digital signature application:

- i. Self-Attested copy of PAN Card (Coloured);
- ii. Self-Attested copy of Aadhar Card (Coloured);
- iii. Self-Attested Copy of Passport in case of NRI; (Non-resident Indian)

- In case of foreign national PAN card is not mandatory, but we should prefer to have the same;
- In case of NRI either all documents shall be of India or of foreign nation, if the documents are of India than Apostiled documents are not required. Otherwise they will;
- If the documents are of foreign nation, documents shall be apostiled and notarised from home country or Indian consulate and if not in English language than same shall be converted in English and both the sets i.e. Originals and Converted shall be apostiled and notarised;
- If, Passport of foreign National does not contain address than, any other photo ID proof (having photo and Address) shall be mandatory requirement and this shall also be apostiled and notarised.

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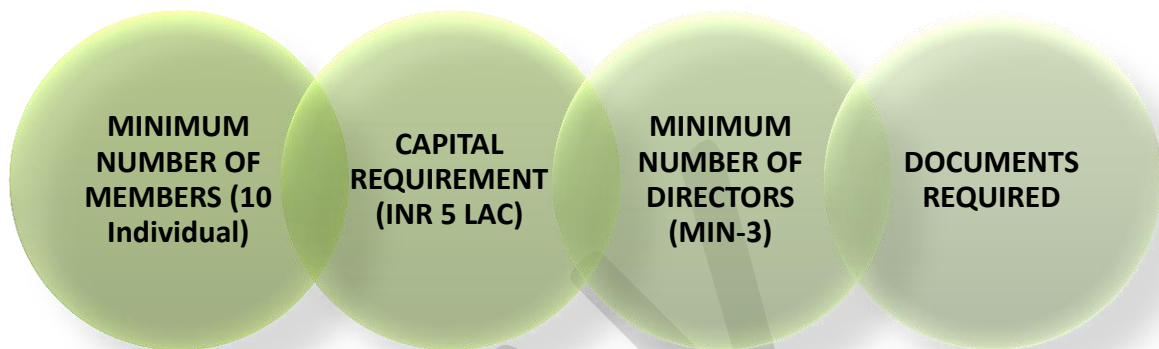
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- iv. **Passport Size Photograph (Coloured);**
- v. **Email ID and Contact Number.**

Secondly other incorporation documents are told earlier.



## BENEFITS OF PRODUCER COMPANY REGISTRATION





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- **LIMITED LIABILITY**

One of the primary benefits of the Producer Company registration is Limited Liability protection granted to its members. Within this, the limited assets of the people are not put at risk, even if any legal or financial capabilities might arise. Such a thing extinguishes financial pressures and allows for the smooth functioning of business operations.

- **SEPARATE LEGAL ENTITY**

Second advantage of Producer Company is a separate legal entity distinct from their members, which specifies how it might own the property or enters into contract. This can help you secure enough credibility and trust among suppliers, investors and customers.

- **ACCESS TO GOVERNMENT SUBSIDIES AND GRANTS**

Farmer Producer Companies are eligible for various government subsidies and grants, which can help them, finance their operations and grow their business.

- **EASIER ACCESS TO CREDIT FROM BANKS AND FINANCIAL INSTITUTIONS**

Banks and financial institutions are more likely to lend money to Farmer Producer Companies, than to individual farmers, as Farmer Producer Companies are seen as being more creditworthy. FPOs have a larger pool of assets and members and can negotiate better interest rates.

## **ANNUAL COMPLIANCES OF PRODUCER COMPANY**

S.No.	Events	Due Date and Particulars
1.	Board Meeting	1st Board Meeting shall be held within 30 days from the date of incorporation;
		7 days prior notice of Board Meeting ( date of sending the notice and date of meeting should be excluded );
		Meeting of Board shall be held not less than once in every three months; and
		After the first meeting, a minimum of 4 meetings of the Board of Directors need to be held in a year and gap of not more than 120 days between the two consecutive meetings of the Board;
		Quorum should be one-third of its total strength or three directors, whichever is higher;

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	<p>Chief Executive shall give notice not less than 7 days prior to meeting otherwise liable to penalty of Rs. 5000; BM may be called on shorter notice and reasons thereof shall be recorded in writing by the Board.</p>
2. Filing	<p>Form MBP-1 ( notice of Director's interest ) should be filed by Director's at first Board Meeting, 1st Board Meeting of every year or whenever there is any change in disclosure; Form DIR-8 (Notice of Director's qualification) should be filed by Director's in Board Meeting. Annual Filing (AOC-4, MGT-7/7A) has to be filed within 30 and 60 days of conclusion of Annual General Meeting.</p>
3. Internal Auditor	<p>Every Producer Company shall have internal audit of its accounts carried out in such intervals and in such manner as specified by its articles, by a Chartered Accountant.</p>
4. Annual General Meeting	<p>First annual general meeting within a period of 90 days from the date of its incorporation; General Meeting of a Company shall be called by giving not less than 14 days prior notice in writing ( date of sending the notice and date of meeting should be excluded ); 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; One-fourth of the total number of members of the Producer Company shall be the quorum for its annual general meeting; Not more than 15 months shall elapse between the date of one annual general meeting and that of the next. In special reason, extension of annual general meeting allowed by a period not exceeding 3 months (except 1st AGM).</p>
5. Secretary	<p>Every Producer Company that is having an average annual turnover exceeding Rs. 5 Crores in each of the three consecutive financial years shall need to appoint a whole time Company Secretary.</p>
6. General Reserve	<p>A Producer Company shall maintain a general reserve each year. In case of insufficient funds for transfer to the reserve, the members of the Producer Company shall contribute the same in accordance with their share in the company.</p>

## APPLICATION OF PROVISION RELATING TO PRIVATE COMPANIES

### Section 378ZR of Companies Act, 2013:

All the limitations, restrictions and provisions of this Act, other than those specified in this Chapter, 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 Chapter.

Although a Producer Company is of the nature of a Private Limited Company where the maximum limit on the number of shareholders is 200, there is no such restriction or maximum limit on the number of members in a Producer Company.

### As per Section 378C (5) of Companies Act, 2013:

- On registration under sub-section (2), the Producer Company shall become a body corporate as if it is a private limited company to which the provisions contained in this Chapter 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.

## CONCLUSION:

From reading and observing the whole, it was concluded at the end that:

- A Producer Company (PC) is one such and relatively new legal entity of the producers of any kind, viz., agricultural produce, forest produce, artisanal products, or any other local produce, where the members are primary producers;

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- Although a Producer Company is of the *nature of a Private Limited Company* where the maximum limit on the number of shareholders is 200, there is no such restriction or maximum limit on the number of members in a Producer Company (*Refer Section 378C (5) of Companies Act, 2013*).
- Every Producer Company shall have a *full time Chief Executive Officer*, 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;
- *Post incorporation formalities and legal compliances* of Producer Company are more than that of a normal private or public Company. For example: *Producer companies have to do its first annual general meeting within 90 days of company's registration.*
- Every producer Company should deal with the produce of its active Members for carrying out any of its objects specified under *Section 378B of Companies Act, 2013 (which are already discussed on first page on Article)*
- The Articles of Association of Producer Company should follow certain *Mutual Assistance Principles* like regardless of the quantity of shares they own, each member is only allowed one vote and; Surplus from operations is distributed fairly for business development, common facilities, and among members etc.,
- Mistakes during the company registration process can lead to delays in getting the *Registration Certificate.*
- *It is recommendation for promoters of the Company to hire a professional* for incorporating a Producer Company as it is a complex process, as it requires the preparation of various legal documents, such as the Memorandum and Articles of Association, and adherence to specific regulatory requirements.