



# PRODUCER COMPANY

## AT GLANCE

# SECTION 378A OF COMPANIES ACT, 2013

- "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]**

# OBJECTS OF THE PRODUCER COMPANY

Production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce;

Processing including preserving, drying, distilling, brewing, vinting, canning and packaging of produce of its Members;

Manufacture, sale or supply of machinery, equipment or consumables mainly to its Members;

Providing education on the mutual assistance principles to its Members and others;

Insurance of producers or their primary produce;

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

- ❖ Every producer Company should deal with the produce of its active Members for carrying out any of its objects specified under Section 378 B of Companies Act, 2013 (which are already discussed on first page on Article)

# 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 relating to any primary produce;

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.

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.

# DOCUMENTS AND INFORMATION ARE REQUIRED TO BE FILED WITH ROC AS ATTACHMENT

- Signed Memorandum of Association (MOA);
- Signed Articles of Association (AOA);
- Proof of registered office address like No Objection Certificate, Rent Agreement, utility bill which should not be older than 2 months;
- 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;



- Objects to be pursued by company;
- Name of bank in which account to be opened;
- **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;**
- 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 of Proposed Producer Company (Minimum INR 5 lac);

**It shall be noted that Subscriber sheet of Producer Company shall be manually filed and signed by the Subscribers of Company.**


# OTHER IMPORTANT TERMS:

- ❑ Have both Memorandum and Articles printed and divided into paragraphs numbered consecutively;
- ❑ Ensure that no subscriber shall take less than one share;
- ❑ Every producer Company shall have a full time Chief Executive Officer;
- ❑ The share Capital of a Producer Company shall consist of Equity Share only;
- ❑ Every Producer Company shall maintain a general reserve in every financial year, in addition to other reserves specified in Articles;
- ❑ The liability of members shall be limited in Producer Company;

# MEMORANDUM STATES THE FOLLOWING:

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

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

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- *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*;

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- *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)

# ARTICLES STATE THE FOLLOWING:

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

- Qualification for membership, conditions and procedure for transfer of shares, conditions for continuation or cancellation of membership and the terms;
- Manner of ascertaining the patronage and voting rights based on patronage;
- 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.

- Manner of **disbursement of patronage bonus** shares in cash or by issue of equity shares or both.
- Matters relating to **issue of Bonus shares** out of general reserves as set out in section 378ZJ of Companies Act, 2013.
- 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;
- 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/actsrules/ebooks/acts.html?act=NTk2MQ==#Articles\\_of\\_association](https://www.mca.gov.in/content/mca/global/en/actsrules/ebooks/acts.html?act=NTk2MQ==#Articles_of_association)

# BENEFITS OF PRODUCER COMPANY REGISTRATION



# 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;
		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.
2.	Filing	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 filed within 30 and 60 days of conclusion of Annual General Meeting.



3.	Internal Auditor	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
4.	Annual General Meeting	<p>First annual general meeting within a period of 90 days from the date of its incorporation;</p> <p>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 );</p> <p>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;</p> <p>One-fourth of the total number of members of the Producer Company shall be the quorum for its annual general meeting;</p> <p>Not more than 15 months shall elapse between the date of one annual general meeting and that of the next.</p> <p>In special reason, extension of annual general meeting allowed by a period not exceeding 3 months (except 1st AGM).</p>
5.	Secretary	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.
6.	General Reserve	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.

# 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.

## 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;
- ❖ 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.
- ❖ 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.
- ❖ 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.



If you need any further assistance, Feel free to contact us.

<https://bkacs.com/>