FARMER PRODUCER ORGANIZATIONS

AN INNOVATIVE INSTITUTIONAL APPROACH FOR COLLECTIVE ACTION

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CHAPTER-10: GOVERNANCE OF FARMER PRODUCER ORGANIZATIONS

CHAPTER-10: MONITORING OF FARMER PRODUCER ORGANIZATIONS

The administration or governance of a FPO forms the most important aspect in successful management of FPO. Governance is done by the various actors in the company such as the shareholders or the members, board of directors and the executive staff of the company or the office bearers.

10.1 Members:

A member of the FPO is defined as a person or producer institution, whether incorporated or not, admitted as a member of a FPO and who retains the qualifications necessary for continuance. Being a membership based entity, membership shall be voluntary and is available to all eligible members (criteria of membership defined in the Articles of Association of a company) who can participate and avail the facilities or services of the FPO. When the shares in a Company can be held in more than one name such membership is called as 'Joint Membership'. Under the Companies Act, there is no ceiling on the number of persons holding shares jointly.

10.1.1 Ways of Acquiring Membership

A person or an institution can become a Member of a FPO through any of the following ways:

Four Ways of Acquiring Membership

a) By subscribing to the Memorandum of Association.

b) Agreeing in writing

c) By transfer of shares

d) By transmission of shares

a) By subscribing to the Memorandum of Association:

A person who subscribes to the Memorandum of Association of the proposed FPO becomes the member ipso facto on incorporation of the company, in respect of the shares subscribed by him/her, without any further application by him/her or allotment of shares to him/her. He/she will be liable for whatever number of shares he/she has subscribed for. A subscriber to the Memorandum remains a Member of the Company until he/she accepts a surrender of the shares for valid reasons to do so by the articles of association or the subscriber himself transfer shares to somebody else.

b) Agreeing in writing:

Two essential conditions have to be fulfilled by any person to become a member of a Company other than by subscribing to its Memorandum of Association, they are an agreement in writing to become a member.

c) Bytransfer of shares:

The membership of the FPO may be acquired from an existing member by the purchase of all or any of the shares of the company. A transfer deed duly executed by both transferor and the transferee together with the share certificate has to be submitted to the company. However, the membership will be granted to transferee only after the transferor gives in writing in a prescribed form, and when the transfers registered in the books of the company.

d) By transmission of shares:

A person can become a shareholder of the company in consequence or by reason of the death or bankruptcy of a member or any other event constituting transmission. Here also, person will become member only when he/she applies in writing requesting the company to make him/her a member and the company puts his/her name on the register of members.

10.1.2 Powers of Members:

Powers of the General Body: The general body is the supreme authority and has important powers vested in it by the law. The powers of the general body include several aspects pertaining to a company such as approving the annual budget, quantum of withheld price, patronage bonus; authorizing the issue of bonus shares to the members; appointing the auditor; declaring the dividend and deciding on the distribution of patronage and effecting the amendments to MOA.

The general body of the company is the highest authority and the members of the FPO act through the General Body. The powers of the general body include,

(a) Approving the annual budget of the company
(b) Adopting the annual accounts of the company
(c) Approving the quantum of withheld price
(d) Approving the patronage bonus
(e) Authorizing the issue of bonus shares to the members
(f) Appointing an auditor for auditing of the annual accounts of the company
(g) Declaring the dividend and deciding on the distribution of patronage
(h) Effecting the amendments to the Memorandum of Association and Articles
(i) Specifying the conditions and limits of loans that may be given by the Board to any Director
(j) Approving any other matters that are specifically reserved in the Articles for decision by the Members

10.1.3 Rights of Members

After a person becomes a member of a FPO, he/she is entitled to exercise all the rights given to the member. He /She will continue to exercise the power given under the provisions of the company act until he/she ceases to be a member in accordance with the provisions of the act. The important rights of the members of the FPO are given in the box.

Rights of members

- to transfer his/her shares
- to vote on resolutions at meetings of the FPO
- to propose a requisition for an extraordinary general meeting of the company
- to receive notice of general meeting and to attend the general body meeting
- to speak in the general meeting & move amendments to resolutions proposed at meetings
- in case the member is a corporate body, to appoint a representative to attend and vote in the general meetings on its behalf
- *to request the company to circulate its resolutions
- to enjoy the profits of the company in the share of dividends
- *to elect directors and to participate in the management of the Company through them
- *to apply to the Company Law Board for relief in case of oppression
- to apply to the Company Law Board for relief in case of mismanagement or to apply to the Court for winding up of the Company
- to share in the surplus on winding up and to have a share certificate issued to him/her in respect of his/her shares.

(* It can be exercised only if the person possesses the requisite minimum shares holding. Otherwise they can be exercised jointly with the number of shareholders).

10.1.4 Voting Rights of a Member

a) When the membership consists solely of an individual, the voting right will be based on single vote for every member, irrespective of his/her shareholding or patronage of the FPO.

b) No additional votes will be allocated to any active member at the end of each financial year based on their patronage.

c) In a case where the membership is composed only of producer institutions, the voting rights may be computed on the basis of the participation in the business dealings of the company by the respective institutions in the previous year, save that for the first year of its registration, the voting rights shall be determined on the basis of the shareholding.

d) When the membership is composed of individuals as well as Producer institutions, the voting rights shall be computed on the basis of a single vote for every Member.

e) Each active member shall have a minimum of one vote. However newly admitted members shall have no voting rights for at least six months (or for a time period as specified by the Board).

10.1.5. Cessation of Membership:

The cessation of the membership of any member takes place in the following situations.

- Transfer of shares of the members by a member. When a person transfers his/her shares will lose the membership. In the case of a transfer of shares, the person transferring the shares will continue to be a Member until his/her shares are registered in the name of the transferee.
- By forfeiting his/her shares or by a valid surrender of shares

- o by death, but until shares are transmitted, his/her stake will be for any money due on shares
- o by the Company selling his/her shares in exercise of its right under its Articles of Association;
- o by order of a Court or any other competent authority attaching and selling the shares, in satisfaction of a decree or claim
- o by the official assignee disclaiming his/her shares, on his/her adjudication as an insolvent

10.2 Board of Directors:

The Board of Directors is an important executive body of the company. Every company should have a Board of Directors. The number of directors should not be less than five and more than fifteen in number.

10.2.1 Powers and Functions of the Board of Directors

The Board of Directors may act only in those areas that are not reserved to the General Body and may not exercise executive functions. In general, the board has the authority and is responsible for formulating, supervising, and monitoring of the performance of the FPO in respect of the following matters

- Determination of the quantum of dividend payable to the members.
- Determination of the quantum of withheld price and recommended patronage to be approved at the general body meeting.
- Admission of new members to the company.
- Pursue and formulate the organizational policy, objectives, establish long-term and annual objectives,
- Approve corporate strategies and financial plans of the company

- Appointment of a CEO and other officers, as may be specified in the Articles and as per the requirement of the company.
- Exercise supervision, direction and control over CEO and other officers of the company.
- Sanction any loan or advance, in connection with the business activities of the FPO to any member, not being a director or his relative.
- Investment of the funds of the company
- Acquisition or disposal of property of the company
- Exercise supervision over the book keeping especially 'books of account' of the company
- Ensure the annual auditing of the company
- Presenting the annual accounts in the annual general meeting with the auditor's report.
- Take such measures or do such other acts as may be required in the discharge of its functions or exercise of its powers.

The Board may make recommendations in the case of those matters reserved for decision of the General Body. All the powers specified above shall be exercised by the board only by means of a resolution passed in its meeting and the decision can be made or resolution adopted by 'circulation'. Also to be noted that a director or a group of directors who do not constitute the board, shall not exercise any of the powers exercisable by the board.

10.2.2. Appointment of Directors:

The members who sign the memorandum and articles of association may designate therein the first 'Board of Directors' who shall govern all affairs of the company until the directors are formally elected by the members in the general body meeting, which shall be done within ninety days after the incorporation of the company. Every director in a company is elected by the members in the general meeting shall hold office for a period of not less than one year and not more than five years. The entire Board of Directors, except the Chief Executive Officer and Expert Directors, is subject to retirement by rotation in a period of five years. Retirement of directors shall take place at the Annual General Meeting where the re-election also shall take place. However, every director who retires is eligible for re-appointment to the board.

10.2.3. Appointment of Directors by the Board

a. Additional or Expert Directors

The Board of Directors may co-opt one or more expert directors or additional directors not exceeding one fifth of the total number of directors, or appoint any other person as additional director for such period as the Board may deem fit. Expert Directors, who are not shareholders, shall not have the right to vote in the election of the Chairman, but may serve in that position if elected by the Board.

b. Alternate Directors

The Board of Directors of a FPO may, if authorized by its Articles of Association or a resolution passed by the company in its general body meeting, appoint an alternative director to act in a place of an original director during his absence for not less than three months from the state in which the board meetings are ordinarily held. The alternative director so appointed holds office for the period the original director is away from the state and when the original director returns to the state in which the meetings of the board are ordinarily held, the alternative director ceases to be the director.

10.2.4. Qualifications of the directors:

The qualifications of the directors are described by the act. As per the Companies Act, 1956, Section 253, only an individual can be a director on the company. There is no statutory requirement that a director must hold qualification shares in the company in which he/she is a director. Thus a person may be a director in a company without being its member.

10.2.5. Remuneration to Directors

The members of the FPO have authority to receive the reimbursement of actual expenses of travelling, lodging and food incurred by them while attending the company's meeting (Business/Non-business). However in case of business need of the company, provision can be made for a fixed daily allowance and other facilities like communication allowances for all or only selected directors who are giving their extra time for the company.

10.2.6. Removal of a director and cessation of directorship

a. Removal of the directorship by the shareholders

A director may be removed from office before the expiry of his/her term by shareholders of the Company. The shareholders of a company may, by passing an ordinary resolution at a general body meeting, remove a director before the expiry of the period of his/her office. However, the following directors cannot be removed by the company unless otherwise stipulated in the terms of their appointment.

a) A director appointed by the central government under Section 408
b) A director appointed by a financial institution under the terms of a loan agreement
c) A director appointed by the National Company Law Tribunal.

b. Removal of the directorship by the central government

A director may be removed by the central government by making a case against the person and refer the same to the tribunal with the request to the tribunal to inquire into the case and record the decision as to whether or not such a person is a eligible to hold the office of director, or any other office connected with the conduct and management of any company. The central government may make such an application to the Tribunal where it is of the opinion that there are circumstances suggesting,

(a) that any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or

(b) default in carrying out his obligations and functions under the law, or breach of trust; or that the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices; or

(c) that a Company is or has been managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which the Company pertains; or

(d) that the business of a company is or has been managed by such person with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest.

10.2.7. The Tribunal

When an application is made to the tribunal for prevention of oppression under Section 397 and mismanagement under Section 398 of the Company's Act, the Tribunal finds that the relief ought to be granted, it may terminate or set aside any agreement of the company with the director or managing director or other managerial personal on such terms and conditions as it think just and equitable. The court may constitute an advisory board as a proper administrator. Where the appointment of the director is so terminated or set aside, he/she cannot, except with the leave of the Tribunal, serve any company in a managerial capacity for a period of five years. He /she also cannot sue the company for damages or compensation for loss of office.

10.2.8. Resignation of Directors

The Companies Act does not make express provisions for the resignation of a director. A director may resign his/her office according to the provisions of the MOA. If the Articles contain no provision regarding the resignation by a director, he/she may resign his/her office at any time by giving a reasonable notice to the company, no matter whether the company accepts it or not. Thus, in the absence of any provision in the articles of association, resignation once made will take effect immediately when the intention to resign is made clear by the director. In such a case, the resignation tendered by a director equivocally in writing will take effect from the time when such resignation is tendered. A Chief Executive Officer or Managing Director or Whole Time Director, however, cannot resign merely by giving notice. His/her resignation is governed by the terms and conditions of his/her appointment. In this case, the formal acceptance of the resignation is essential so as to make it effective, for he/she has to be relieved of his/her duties and obligations.

Penalty of a Director: If a director or an officer of a company willfully fails to furnish any information relating to the affairs of the company required by a member or a person shall be liable for imprisonment. The period of imprisonment shall be for a term which may extend to six months along with a fine equivalent to five per cent of the turnover of that company during preceding financial year. Thus, if a director or an officer of a company makes a default in handing over the custody of books of account and other documents or property in his/her custody to the company of which he/she is a director or an officer becomes liable for punishment.

10.3. Office bearers:

The officers that are formally appointed by the company to look after the day-to-day affairs of the company shall include Chief Executive Officer, Accountant and Store Keeper etc. These officers are paid the salary for their services to the company. Chief Executive Officer (CEO)or the Managing Director is appointed on full time basis by the Board of Directors from amongst persons other than members. The qualifications, experience, terms and conditions of services shall be decided by the Board. The CEO shall be the ex-officio director of the board and shall not retire by rotation. The CEO shall be entrusted with substantial powers of management as may be determined by the board. He/She is accountable for the performance of the company, both, to the Board of Directors and to the members. The CEO shall be authorized to exercise the powers and discharge the functions such as,

a) Undertake all administrative functions of routine nature including managing the day-to-day affairs of the company.

b) Operate bank accounts or authorize any person on behalf of the company(this is subject to the general or special approval of the board).

c) Make suitable arrangements for safe custody of cash and other assets of the company.

d) Sign all business related documents as may be authorized by the Board' for and on behalf of the company.

e) Maintain proper books of accounts prepare annual accounts; place the audited accounts before the board and in the annual general meeting of the members.

f) Furnish the members with periodic information to appraise them of the operation and functions of the company.

g) Make appointments to positions based on the requirements of the company in accordance with the powers delegated to him/her by the board.

h) Help the board in the formation of goals, objectives, strategies, plans and policies of the company.

I) Advise the board on legal and regulatory matters concerning the proposed and ongoing activities and take necessary actions.

j) Exercise the powers as may be necessary in the ordinary course of business of the company.

k) Discharge such other functions, and exercise such other powers, as may be delegated by the Board of Directors based on the needs of the company.

l) To provide timely information to the Members and Board of Directors for the meetings.

10.4 Conducting Meetings in the FPO

Meetings are the means of taking decisions of the FPO based on the collective wisdom. The FPO is like a corporate body and every member have equal voting rights. The meetings in the FPO are thus very important for collective decision making which give opportunity and space for fruitful discussions and active participation of the managerial team of the company in planning and executing of the tasks and important jobs assigned to them and later on justifying their actions before the general body. Such forums enable free and face-to-face exchange of ideas and views and provide for collective wisdom to be brought into place for achieving the corporate goals. The Companies Act, 1956 has given enough scope and elaborated provisions for holding and conducting different meetings. Different bodies in the FPO are given different provisions and it is necessary to observe these provisions while organizing the meetings failing which will disqualify the decisions.

10.5 Annual General body Meeting (AGM)

The general body of the FPO is an important body which primarily consists of the shareholders of the company who are the owners. It is essential that they should meet once in a year.

The Annual General Body: AGM mainly discuss and review the progress of the company, proposed plans for the succeeding year; Election of new directors or reelection of the existing directors; Decision to change or re-appointing of auditors for succeeding year and Review the annual report of the company and take decision on distribution of dividend

10.6 Conditions relating to Annual General Meeting

The following are the conditions pertaining to the annual general meeting.

- The FPO has to conduct its first general body meeting within 90 days from the date of its incorporation.
- FPO should regularly organize the annual general meeting (in addition to any other meetings).
- Time interval between two annual general meetings should not be more than 15 months.
- The notice for organizing an annual general meeting of the Company has to be issued to the members at least 14 days in advance in writing.
- The Registrar of Company may, for any special reason, permit extension of the time for holding any annual general meeting (not being the first annual general meeting) by a period not exceeding three months.
- The members shall adopt the articles of the company and appoint directors for the board in the annual general meeting.

- The notice for convening the annual general meeting of the FPO shall be accompanied by the documents such as,

(a) The agenda of the meeting

(b) The minutes of the previous AGM or the extraordinary 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 company and its subsidiary, if any, together with a report of the Board of Directors pertaining to (i) The state of affairs of the FPO (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 company and its subsidiary, which have occurred in between the date of the annual accounts of the company to which the balance sheet relates and the date of the report of the board.

- Any other matter of importance relating to energy conservation, environmental protection, expenditure or earnings in foreign exchanges;
- Any other matter which is required to be, or may be, specified by the Board;
- The text of the draft resolution for appointment of auditors;
- 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.
- The Board of Directors based on the written request made in writing, duly signed and setting out the matters for the consideration by one-third of the members entitled to vote in any general meeting, proceed to call an extraordinary general meeting.

- Every AGM shall be called at a time during business hours on a day (excluding public holiday).
- The AGM shall be held at the registered office of company or at some other place within the place where the registered office is situated.
- 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 company.
- A minimum of one-fourth of the total number of members of the company shall be the quorum for the AGM.
- The proceedings of every AGM along with the director's 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 AGM is held, with an annual return along with the filing fees as applicable under the act.
- In the case where a company is formed by producer institutions, such institutions shall be represented in general body through competent authority such as Chairman or CEO.

8.7 Business to be transacted at annual general meeting:

The AGM mainly deals with the following approvals.

- The agenda of the annual general meeting
- The minutes of the previous AGM or the extraordinary general meeting.
- The name of the candidates for election, if any, to the office of the director including statement of qualifications in respect of each candidate.
- The audited balance sheet and profit and loss accounts of the FPO and its subsidiary, if any, together with a report of the Board of Directors of such Company with respect to, the state of affairs of the FPO, the amount proposed to be carried to reserve, the amount to be paid as limited return on share capital and the amount proposed to be distributed as patronage bonus.
- All major (equal or more to Rs.1 lakh) contracts with other company or persons, done by Board of Directors or CEO or other person authorized on behalf of the Company.
- Any other disputed/ unsolved issues of Board of Directors or any other business matters required so far and felt by CEO can be brought in the meeting for approval or finalization.
- 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.

10.8 Extraordinary General Meeting Convened By the Board

- Any general meeting, other than annual general meeting is called as an extraordinary general meeting.
- It is usually convened by the Board of Directors for transecting some urgent business for which has to be done before the next annual meeting.
- Extraordinary general meeting to be convened as per provisions of companies law.
- The Board of the Directors upon requisition made in writing duly signed and setting out the matters for consideration, made by one-third of the members entitled to vote in any general meeting can proceed to convene an extraordinary general meeting.

10.9 Meeting of Board of directors:

- The Board of Directors can meet any number of times as per the needs.

- The Board of Directors may meet as often as it may consider necessary for regular transaction of the business of the company.
- The Board of Directors shall meet at least once in every two months. In any circumstances, the Board of Directors shall meet at least once in every three months and at least four such meetings shall be held in every year.
- The CEO of the company has to give at least seven days notice to the members to convene the meeting of Board of Directors.
- In case of any emergencies the meeting shall be organized at a shorter notice.
- As per the Part IX A of the Companies Act, 1956, Section No. 581ZH, FPO shall not make, directly or indirectly, any contribution or subscription or make available any facilities including personnel or material to any political party or for any political purpose to any person.
- In case, the CEO fails to issue a notice for holding a meeting of the Board, s/he will be punishable with fine which may extend to one thousand rupees.
- Every year after the constitution of the Board, in the first Board meeting the Board shall elect the Chairman of the company for a period of two years.
- The Chairman shall preside over the meeting of the board. In case of his absence, the directors present shall elect one of the elected directors as the Chairman of the meeting.
- Each member of the board shall have one vote.
- Decisions at the board meeting shall be arrived at by majority votes of the directors present. In case of a tie, the Chairman of the meeting shall have the casting vote in addition to his usual vote except in case of election of the Chairman. In case of election of chairman, the matter shall be decided by draw of lots.

- An elected member of the board who is absent from three consecutive meetings of the board without obtaining the leave of absence, shall cease to be a member of the board.
- No member shall be present at discussion or vote on any matter in which he has personal interest.

10.10. Quorum:

The presence of at least three directors or one third of its total strength, whichever is higher, shall form the quorum for the board's meeting. In absence of quorum in a meeting, then the meeting shall automatically stand adjourned till the same day in the next week, at the same time and place, and if that day is public holiday, till the next succeeding day, which is not a public holiday, at the same time and place.

Sitting Fee:

The Articles of Association may authorize the payment of a sitting fee and allowance to the directors, including the co-opted directors for attending the Board meetings. The quantum of the sitting fee and allowance shall be determined by the members in a general meeting from time to time.

10.11 Contributions of Board of Directors:

A FPO may make contributions or donations in some special occasions or situations such as,

(a) Contributions to the National Defense Fund etc.

The Board of Directors of any Company or any person or authority exercising the powers of the Board of Directors of a Company or of the company in general meeting, may contribute such amount as it thinks fit to the National Defense Fund or any other fund approved by the Central Government for the purpose of national defense.

(b) Through a special resolution a FPO shall make donations or subscription to any institution or individual for the purposes of promoting the social and economic welfare of the members of the FPO or other producers or general public or promoting the mutual assistance principles

10.12. Annual filing:

Electronic filing has been made mandatory to all type of companies and physical documents are not permissible for filing. As a part of Annual Filing companies incorporated under the Companies Act, 1956 are required to file the following documents along with the e-Forms to the Registrar of Companies.

Sr. No.	Document	e-Form
1	Balance-Sheet	Form 23AC to be filed by all companies
2	Profit & Loss Account	Form 23ACA to be filed by all companies
3	Annual Return	Form 20B to be filed by companies having share capital
4	Annual Return	Form 21A to be filed by companies without share capital
5	Compliance Certificate	Form 66 to be filed by companies with paid up capital between Rs. 10 lakh to Rs. 2 crore

10.12. Methods of filing:

The companies can do e-Filing in three different ways:

(a). The representative of the company shall upload the e-Forms from the MCA21 portal through the Annual Filing Process' link. The company has to register as a user of the portal. The filing can also be done by the company representative at his/her convenience from his / her office or home. This is regarded as the most convenient way for e-Filing.

(b). The representative of the company can prepare the e-Form following the guidelines and copy them in a pen-drive or a CD and go to the nearest Temporary Facilitation Offices opened for the purpose of accepting Annual Filings /e-Forms.

(c) Alternatively, the company can also take service of Company Secretary to avoid official problems. The nominated company representative can also contact any of the Certified Filing Centers (CFCs) for the Annual Filing of e-Forms by paying the service charges to the CFCs. The details about the CFCs are available under the 'CFC Corner' on the MCA21 Portal.

Important Points to be remembered include,

- The Balance Sheet and the Profit and Loss Accounts are to be filed as two separate documents with different e-forms.
- Each e-Form along with the relevant attachment should be less than 2.5 MB
- The Annual Return, the Balance Sheet and the Profit and Loss Account are filed as attachments to the respective e-Forms.
- So far, the users have been filing the attachments as scanned images of those documents. The scanned copy considerably increases the size of the document and is more expensive. As such, it is advised to use the Text file/ Excel sheets as such, convert the same into PDF by using the PDF converter (the software is available on the portal for a registered user without any charge) and upload these attachments as PDF documents.
- The MCA21 database in respect of Authorized Capital and Paid-up Capital may not be correct. The companies have been requested to apply for correction of Master Data in this respect. Since this process is taking time, the Ministry

will be accepting the Authorized Capital and Paid-up Capital figures as declared by the companies in the respective forms pertaining to Annual Filings. Accordingly, the companies have to declare the correct amount on these points without waiting for formal correction in the database.