

FARMER PRODUCER ORGANIZATIONS

AN INNOVATIVE INSTITUTIONAL APPROACH
FOR COLLECTIVE ACTION

Ashok S. Alur
Shankar B. Dandin
D. L. Maheswar



CENTRE OF EXCELLENCE FOR
FARMER PRODUCER ORGANIZATIONS (COE-FPO)
UNIVERSITY OF HORTICULTURAL SCIENCES,
BAGALKOT (UHS-B)
&
NATIONAL BANK FOR AGRICULTURE AND
RURAL DEVELOPMENT (NABARD)



CHAPTER-5 INCORPORATION OF A FARMER PRODUCER ORGANIZATION A COMPANY

CHAPTER-5: INCORPORATION OF A FARMER PRODUCER ORGANIZATION AS A COMPANY

5.1 Introduction:

The process of incorporation of a Farmer producer organization is an important step and has to be initiated by a person or by an organization having enough experience in organizing farmer's institutions. A person or an organization involved in initiating the process of formation of a FPO is called as an initiator or a facilitator who leads the process of incorporation of the FPO guides the group of farmers through the entire process.

5.2 Initiator/ Facilitator:

The initiator of FPO could be 'an institute', 'a person' or 'a group of persons' who shoulders the entire responsibility of initiating and establishing a FPO. Initiator has to mobilize as well as invite farmers to be shareholders of the FPO. The initiator could also be one of the promoters of the FPO. There are different types of initiators for the FPO. The initiator along with other promoters takes the initiative of drafting the 'Memorandum and Articles of Association' and files the same with 'the Registrar of Companies' along with other documents and papers. The initiator also attends to the suggestions and carries out the corrections as indicated by the Registrar of Companies and get the 'Certificate of Incorporation' for the FPO.

Following different, singly or in a group, can be the initiators (if the initiator is not a primary producer, then she/he could not be a promoter),

- a) Any person who is not necessarily a primary producer.
- b) Interested group of persons who are willing to contribute their time and resources to promote a FPO for the benefit of a group of farmers.

c) Any voluntary organization working with the primary producers group and willing to introduce the concept of 'FPO' for the economic development of farmers

d) A Non-Governmental Organization interested in the concept of FPO but not working with the primary producers can take the initiative of mobilizing the farmers to initiate or start a 'FPO'

e) Any community based organization, whose members are interested in the concept of formation of FPO are willing to initiate a FPO and also to mobilize farmers and required resources for the same.

f) Any government organization, Farm University, development departments such as Department of Agriculture / Horticulture /Sericulture /Animal Husbandry or any other allied agriculture based development department willing to promote a FPO for the benefit of selected farmers or group of farmers in an area.

g) Government can approach a voluntary organization, a local administrative body such as Gram Panchayat(GP)or Taluk Panchayat(TP) or Zilla Panchayat(ZP) or any community based organization (CBO) for the purpose of formation of FPO. Government could give the financial and professional support to the implementing body.

Selection of the area of operation for the FPO:

The promoter of the FPO has to select the area of operation for the FPO after,

- Preliminary consultations with the farmers individually and in groups
- The understanding the demand-supply aspects of the targeted product
- The Strength-Weakness-Opportunity-Threat (SWOT) analysis

- Realistic assessment of risks involved in the proposed venture.
- Repeated meetings with the farmers or the producers
- Developing rapport with proposed members
- Introducing the concept of producer's organizations among the farmers.

Once the concept is understood by the group, generally an exposure visit to successful site is organized to further strengthen the understanding of the identified group of producers. This involves interaction with producers or farmers who are already involved with a FPO. Such an exposure visit is organized to facilitate on-farm learning, sharing of experiences and to enhance the motivation level of the potential farmer-members. Once the potential members are convinced about the concept of FPO the focused group meetings are organized with the objective of discussing the objectives as well as possible ideas for formulation and strengthening the producers companies. This will help the farmers to analyze and accept the concept and in developing common understanding about the business plan. Accordingly the initiator will take up the drafting 'Memorandum and Articles of Association' including the roles and responsibilities of each office bearers. The shareholders also have to finalize the authorized capital of the company and the cost of each share.

The entire process might take between two to six months and in some cases it may even take more time depending upon the response of the proposed members. After having the consent of the members about the directors of the company and the Memorandum and Articles of Association, the facilitator undertakes the registration process. The amount collected through shareholders and promoters (directors could be promoters and can share the cost of registration,

which will be refunded later) could be used for registration. After the completion of the registration process, the first General meeting of the shareholders has to be held within the 90 days to finalize the Board of Directors. The proceedings of the meeting have to be sent to the Company's Registrar within sixty days along with the list of directors.

Clarification of the objectives:

The initiators should do adequate ground work to popularize the concept and objective of the FPO, ensure that the shareholder are aware of the agenda of the meeting well in advance, Participation of vulnerable group, such as women, Schedule Caste and Schedule Tribe, in the meeting is taken care while organizing the first meeting along with required logistics.

5.3 Process of incorporation of FPO:

The process of incorporation of an FPO need to be planned properly and executed meticulously. This should also follow the social process as done in case of a community based organizations (CBO). It is also essential to know that a FPO is also a CBO. The FPO also has a shared objective, mutually agreed plan of actions, shared responsibilities and benefits and a mechanism of functioning where the decisions are taken by the opinions of majority of the members. Hence, the processes of building an organization cannot be different in case of FPO than what is generally followed for any CBO. Generally the processes start with the conceptualization of the idea by the initiator about the objective and structure of the CBO that is intended to be formed in a given situation.

However the Producer Company Act. 2002 do not provide any guidelines, suggestions or directions about the mobilization and social processes that need to be followed while forming the FPO. The documented experiences

capturing the hands on experience in establishing producer companies are also very less mainly due to the fact that there are limited initiatives currently going on in India on the FPO.

In the implementation of various developmental projects and programs in the country the community based organizations are promoted and their participation is given top priority. These community based organizations mainly include several primary CBO's such as self-help groups, water users associations, commodity groups, watershed groups, common interest groups , farmer interest groups etc. It is better to follow the approach of organizing the members into primary groups on the basis of common interest, geographical locations and then federate them as FPOs to address the bigger issues of integration with the market, value chain development, etc. and that too when such need has been felt by the members of primary groups. This approach can bring about following advantages,

- (a) It builds further on the organization building efforts already made with the primary groups.
- (b) Since the primary groups are already strengthened therefore their participation in the process of incorporation of FPO will be more effective resulting in better leadership and governance of the FPO.

Some of the experiences indicate that it will have greater participation of members in the affairs of the FPO. However, such approach usually takes little longer time than direct incorporation of a FPO through membership campaign. If the FPOs are formed with the Farmers Interest Groups (FIGs) Common Interest Groups(CIGs), Self Help Groups (SHGs), Water Users' Groups (WUG's) etc which were already existing in the target villages may be included into FPO. After the formation of the FPO the original identity of such groups, need not be diluted, and they can continue to function as the primary groups as earlier.

Usually the process of formation of FPO is externally triggered by the promoting agency or the initiators because often resource poor people do not realize the need to organize and use their organization as a means to fight for their issues.. Hence, the promoting agency or the initiator leads the initiative in establishing the FPO . This is also true for majority of the initiatives for community based organizations.

5.4 Preliminary preparations for the formation of FPO:

This is an important stage which precedes the process of legal registration of the company. An important step in this stage is mobilization of producers for the company. The processes related to the mobilization of producers are purely context specific and it varies from case to case. The factors which contribute towards mobilization of producers are many and these are many times very complex and complicated. However, it is experienced that existence of primary groups in the area, rapport of the facilitating external agency or the initiator and their understanding about the local context and issues, play a significant role in effective mobilization of the producers. However, the broad general steps that are to be followed by the facilitator while mobilizing the members for the FPO are given below. The steps described below are neither in chronological order nor are in the watertight compartment. These steps may vary from case to case and they could overlap depending upon the situation.

Step-1: Setting the goal and objective of the company:

It is essential for the facilitator or the facilitating organization to have crystal clarity on the objectives of setting up a FPO. The facilitator must have clear vision on the proposed objective and the potential of the business to be undertaken by the proposed FPO.

Step-2: Developing the blue print of the company:

A thorough baseline study of the area of operation, type and number of producers, assessment of requirement of land, infrastructures, volume of business, working capital requirement, financial viability, procedures of incorporation etc. In short there should be a blue print or plan with the initiator beforehand. It is needless to mention that the facilitator has to take a professional approach in completing these tasks and may even take external support.

Step-3: Identification of area of operation:

Though the company can have entire Union of India as its area of operation, it is necessary to identify the focused area of operation. Selection of area of operation on the basis of cluster approach means a cluster of 12-15 villages at least should be targeted.

Step-4: Finalizing the number of producers for the company:

The number of producers to be inducted as members is very important aspect. Usually about 800-1000 producers are a good size to form horticulture or agriculture based. However the number can be changed based on the products to be handled by the proposed. Normally selection of the area and the members is done on the basis of the commonalities like produce, farmers' need and common problems they are facing in terms of production and marketing.

Step-5: Building rapport with the potential members:

The facilitator has to build close rapport with the potential members of the proposed FPO. This requires organizing a series of consultation meetings with the potential producers, developing rapport with them and introducing the concept of FPO. It is essential for the facilitator to explain the potential socio-economic benefits of establishing a company and also the possible risks and their implications on shareholders of the company.

Step-6: Exposure visit/study visit for the proposed members:

Exposure visits play an important role in enhancing the understanding of the members regarding the FPO. Once the concept of instituting the FPO is understood by the potential members, exposure visits to successful producer companies need to be organized. The study visit will further strengthen the understanding of the identified group of producers. The exposure visit is found to be the better approach in clarifying concepts and methodologies to the potential members in comparison to the class room training. However, the exposure visit should be meticulously planned and facilitated by an experienced person who can explain things in right perspectives.

Step-7: Assessment of training needs of the proposed members:

Assessment of training needs of the farmers is an important step as it decides the overall success of the intervention in the later stage. The actual needs are to be identified and trainings are to be planned on basis of the expressed needs rather than the felt needs.

Step-8: Training of the proposed members:

Later after the exposure when the FPO is incorporated a formal training would be required to the Board of director's members in some of the important areas of managing the company. Some of the important areas include,

- (a) Rules and regulations of FPO
- (b) Statutory requirements to the Registrar of Companies
- (c) Business plan of the FPO
- (d) Government schemes relevant for the company
- (e) Leadership qualities
- (f) Basic accounting and record keeping
- (g) Any other area expressed by the members

Step-9: Preparing the calendar for the successive years:

It is important that a capacity building plan for Board of Directors is discussed and an event calendar is prepared every year and reviewed periodically by the promoting agency.

Step-10: Fixing the share value and share collection:

The Membership process needs to be explained to the producers. The shareholders have also to finalize the authorized capital of the company and the cost of each share. While finalizing the cost of share and the number of shares per member, the paying capacity of the economically deprived shareholders should also be considered. Normally the share value is kept at Rs. 10 per share. The share capital contribution per member depends upon the economic condition of the producers. In some of the companies equal numbers of shares are distributed to the members, whereas in some cases it varies. There is no bar on the number of shares per member in the Act.

However, it is suggested to have equal number of shares among the members to maintain a balance in the power structure of the FPO. The norms for distribution of share should be mentioned in the Articles of Association of the FPO.

Step-11: Membership:

The eligible farmers who are interested in seeking the membership of the FPO are required to apply through a membership application form (specified in the Act.) to the Board of Directors. The General Body of the FPO is the final authority to approve or reject the membership application of the interested applicant members.

Step-12: Developing the outline for business plan:

Once the concept is well accepted, based on the common understanding a business plan is developed in consultation with the members. The business proposal, its

viability, market opportunity, size of business and possible benefits of the new enterprises must be shared properly with the potential members.

Step-13: Building Memorandum of Articles of the Association:

Developing the memorandum of articles of the association is an important step in the registration of the FPO. The facilitator has to initiate the consultations for drafting the memorandum of articles of the association with the support from the members. The draft Memorandum of Articles of Association' should specify the roles and responsibilities of each of the office bearers of FPO.

Step-14: First meeting of the share holders:

After the preparation of the above steps and the documents required for the company, the first formal meeting of the shareholders of the FPO has to be organized. The basic agenda for this meeting shall be to get the approval on the Memorandum and Articles of Association as well as select/elect the Board of Directors of the FPO.

Step-15: Selection or election of the members:

In the first meeting after the approval of the memorandum of articles of the association, it is desirable that the facilitator should take all measures to avoid election at this stage as it can lead to drift amongst members. However, if the situation is conducive for election, the facilitator can go for it as the process of election would enhance the democratic process and transparency.

Step-16: Registration of the FPO/PC:

After taking the consent of the members on the selected list of directors of the PC and the Memorandum and Articles of Association, the initiator can go ahead with the registration process. The amount collected through shareholders could be used for registration fees and other processing related

expenditures like fees for Company secretary, stationary, travel etc. In the books of accounts it can be shown as loan taken from the share capital. Once the PC mobilizes, resources through business it can be repaid.

Step-17: General Body:

After having registration of the company, the first General meeting of the shareholders should be conducted within the mandatory 90 days of the registration. Other than discussing the business plan, the General Body has to select/elect the Board of Directors for the next tenure. The proceedings of the meeting should be sent to the Registrar of Company within 60 days of the meeting along with the list of finalized Board of Director.

First General Body:

The first General Body meeting should be held within 90 days after the registration. The first General Body has to select or elect the Board of Directors for the next tenure. The proceedings of the meeting should be submitted to the Registrar of Company (ROC) within 60 days of the meeting along with the list of Board of Directors.

The entire process might take two to six months (sometimes more), depending upon the motivation and inclination of the producers.

5.5 Registration of FPO under company's act:

The process of actual registration of the company can be undertaken after the completion of above mentioned preparations. The various steps involved in the registration of a 'FPO' are described below.

5.6 Obtaining Digital Signature Certificate (DSC):

The Information Technology Act, 2000 has the provision of use of Digital Signatures on the documents in order to

ensure the security and authenticity of the documents filed electronically. It is now compulsory to have DSC of minimum one Director or Chairman to start with the formal registration process. DSC enables the secure and authentic way for the electronic submission of the documents. Further all filings done by the companies are required to be filed by using the Digital Signatures. Hence it is essential for the FPO to authorize a person's signature who will sign the documents.

The prescribed application form for DSC is available at the website of Ministry of Corporate Affairs (MCA). After filling the required information, the form has to be submitted online to the 'Certification Agencies'. The DSCs are typically issued with one to two year validity. These are renewable on expiry of the period of initial issue. A person who already has the specified DSC for any other application can use the same for filings under MCA and is not required to obtain a fresh DSC. The official fee for issuance of DSC is Rs. 1800/-. In addition, the Certification Agency charges a service fee which varies from agency to agency. The company representatives and professionals required to obtain DSCs are free to procure the same from any one of the approved Certification Agencies as per the web site. The issuance costs in respect of each Agency.

5.7 Obtaining Director Identification Number (DIN):

The director identification number can be obtained online only from the company affairs cell located at Noida in Uttar Pradesh without any fees by providing identification proof number (Only PAN Card, Voter Identity card, passport or driving license number is accepted). The prescribed form is available in the website of MCA and the application can be done online.

5.8 Naming the FPO:

A FPO should be named using the following suffix ".....FPO Limited" appropriately indicating its status of FPO. The word "private" is not used in the name and the absence of

which does not indicate that the company is a "public". The procedures for selecting and applying for the availability of name for a FPO are:

(a) The members have to select one suitable name for the company. The name should indicate the objectives of the company. It is also essential to select up to a maximum of five names in the order of preference proposed for the company.

(b) It is necessary to ensure that the name(s) selected for the company does not resemble the name of any other already registered company and also does not violate the provisions of emblems and names (Prevention of Improper Use Act, 1950) by availing the services of checking name availability on the portal (<http://www.mca.gov.in>).

(c) After selecting the name(s) apply to the concerned Registrar of Companies to ascertain the availability of name in e-Form 1(A)7 by logging in to the portal (<http://www.mca.gov.in>). A fee of Rs. 500/- has to be paid alongside and the digital signature of the applicant proposing the company has to be attached in the form.

(d) If all the proposed five names are not available, the Registrar of Companies will indicate the same to the applicant organization. Subsequently the applicant organization has to apply for a fresh name on the same application.

(e) There is further scope of changing the name of the FPO, if required. However it is not easy to do it frequently. As per the company Act 1956 section 21, an application to Registrar of Companies with a supporting of a resolutions passed by 2/3 majority of Board of directors and 1/3 of General Body and fees of Rs. 500 is required to be submitted along with new proposed name and 4 other alternative names in order of preference for allocation.

5.9 Memorandum and Articles of Association:

After the allocation of the name of the FPO by the Registrar of Companies the memorandum and articles of association prepared earlier has to be finalized. Memorandum and Articles of Association should be printed. It is preferable to have the computer printout printed on both side of the paper. Further the Memorandum and Articles of Association has to be duly stamped and the Memorandum and Articles of Association is signed by the requisite number of promoters, in their own hand, their father's name, occupation, address and the number of shares subscribed for. It is essential to ensure that the Memorandum and Article is dated on a date after the date of stamping.

5.10 Documents to be submitted to the Registrar of Companies for the Incorporation of FPO:

The following documents along with the fees payable (The amount of registration fees to be paid will depend upon the authorized share capital kept by the company in the Article of Association) with the Registrar of Companies of the state, where the Registered Office of the company is to be situated:

- (a) Copy of the letter of Registrar of Companies confirming the availability of name for formation of the company should be made
- (b) Memorandum and Articles of Association duly stamped and signed
- (c) Form 18 regarding situation (full address) of Registered Office (As per the Companies (Amendment) Act, 2002, Section No. 146).
- (d) Form 32 (in duplicate) regarding particulars of directors (As per the Companies (Amendment) Act, 2002, Section No. 303)

- (e) Form-1 (on a stamp paper) declaring compliance of all/ incidental matters regarding formation of companies {As per the Companies (Amendment) Act, 2002, Section No. 33 (2)}.
- (f) Form 29 - consent of the director
- (g) An affidavit has to be submitted by subscribers, if the Memorandum of Association is submitted in Hindi by subscribers claiming the understanding of same.
- (h) Power of Attorney.

All the information and forms are available on the website of MCA (<http://www.mca.gov.in>) and that the forms can be directly accessed and filled in on-line.

5.11 Certificate of Incorporation:

The Registrar of the Companies, on being satisfied that all the documents for the incorporation of a company are submitted, the registrar is obliged to register the memorandum, the articles and other documents, if any, and issue a 'certificate of incorporation' within thirty days, which is a conclusive proof of formation of FPO in terms of Part IX A. [Section 581C (2)]. The incorporation of FPO is effective from the date mentioned in the certificate of registration granted by the Registrar of Company. On incorporation, a company becomes a juristic entity, i.e. an entity in the eyes of law. It has perpetual succession i.e. its members may come and go but the company goes on till it is wound up by following the process of law. The company will have its common seal, which is affixed on all the documents executed on behalf of the company in the presence of a director and be signed by the authorized signatory or signatories. The company is empowered to hold all properties in its own name and has its own right. It can sue others and can be sued by other and enter into contracts in its own name.

5.12 Power of Attorney:

All actions required for the incorporation of a FPO can be done either by the Board of Directors or alternatively, the General Body can authorize anyone of the members or any other person to follow the matter with the Registrar of Company. Usually the service of a Chartered Accounting firm or Company Secretary is sought by the FPO. When the services of the a company secretary or chartered accountant firm is sought the FPO has to execute a power of attorney in favor of the person, who is authorized to act on behalf of the FPO. The power of attorney form duly stamped and executed by all the subscribers of directors have to be submitted to the Registrar of Company. A power of attorney holder is, specifically, authorized to make corrections, as may be necessary in the Memorandum and Articles of Association and all other documents filed with the Registrar of Company and to attest the same on their behalf and to receive the Certificate of Incorporation.

5.13 Cost of Registration of FPO:

The incorporation of a company involves cost. An example showing the estimated cost required for the incorporation of a FPO with minimum mandatory authorized capital of Rs. 5 lacs is given in the table below. The important cost centers include,

- 1) Charges involved in applying for the name of the company
- 2) Obtaining the Digital Signature Certificate
- 3) Stamp duty for the registration of the company
- 4) Filing and registration fees
- 5) When service of a Chartered Accounting firm or Company Secretary is sought for the registration of the company the fees of Chartered accountant firm or Company Secretary as per the market rate has to be given. This may vary from company to company.
- 6) Stamp charges
- 7) Expenses for preparing affidavit
- 8) Other incidental charges

Table-2: Table showing the summary of costs involved in the registration of a FPO.

Details of the costs	Heads	Amount (Rs.)
Application for the allocation of a name of the FPO	Fees	500.00
Digital Signature Certificate	Fees	2,600.00
Stamp duty for the registration of the company	Memorandum of Association (MoA)	500.00
	Article of Association(AoA)	1,000.00
Registration/filing fees	MoA	16,000.00
	AoA	300.00
	Form-1	300.00
	Form-18	300.00
	Form-32	300.00
Fees of Chartered accountant firm or Company secretary as per the market rate(this is variable)	Consultancy fees	10,000.00
Stamps cancellation	Charge	300.00
Affidavit expenses	Fees of Notary	450.00
Share transfer fees & processing charge		5,000.00
Total		37,550.00

Some Important Frequently Asked Questions and Answers:

1) What is a Producer Company?

"Producer Company" means a body corporate

- a. registered under amended Companies Act, 1956,
- b. the terms of section 465 of the Companies Act, 2013, the provisions of the Part IX A of the Companies Act, 1956 shall be applicable mutatis mutandis to a producer company
- c. the objects of producer company shall conform to the activities included in 581B of the Companies Act, 1956

2) Who are members of a Producer Company and their position in a company?

- a. In a producer company, only primary producers or producer organisations can become members
- b. Membership is acquired by purchase of shares in a Producer Company
- c. A Producer Company can act only through its members
- d. Members create the company
- e. Members can also wind up the company
- f. Members act through their General Meetings

3) What is the minimum share capital for a producer company?

- a. The minimum Authorized Capital of Producer Company is Rs.5 lakh.
- b. The Authorized Capital of the company can be more than Rs. 5 lakh as indicated in the Memorandum of Association.
- c. The authorized share capital should be sufficient for carrying out the objects mentioned in the memorandum.
- d. The authorized share capital should be realistic.
- e. The minimum paid up capital for Producer Company is Rs. 1 Lakh.

4) What are the preparatory arrangements for registration and incorporation of a Producer Company (PC)?

The preparatory steps to be followed for the incorporation of a PC are

- a. Identify a cluster where the producer organization can be formed.
- b. Conduct Baseline and Feasibility Studies to ensure that a viable producer organization can be formed in the cluster. Plan for business activities that are possible to improve the incomes.

c. Meet the villagers (primary producers) and introduce the concept of Producer Company to them.

d. Explore the need for a Producer Company (PC) with the primary producers. The primary producers should understand the benefits and feel the need for it.

e. Take the interested primary producers on an exposure visit to a functioning Producer Company and enable meaningful interaction among them.

f. Create a critical group of primary producers, who are very enthusiastic about the idea of Producer Company and empower them further with the concept and details and benefits of a producer company.

g. Use the critical group for canvassing among other eligible members about the need, urgency and benefits of a Producer Company.

h. Allow enough time to the prospective primary Producer Company members to understand the idea. Make frequent visits to them and clarify all their doubts. The objective should be that the prospective members have right understanding, and willing to participate and work together for their mutual benefit. It may take typically 3 to 6 month time for this kind of social mobilisation.

i. Have focused group meeting and motivate eligible members to become shareholders.

j. Hold a meeting with the prospective shareholders and discuss objectives and possible business ideas for the company.

k. Revise the business plan for the company taking into account the views of the prospective members.

l. Once the primary producers are willing to form a Producer Company and are ready to contribute to the share capital

a. Identify Promoter Directors.

b. Prepare a draft Articles of Association (AoA).

- c. Prepare a draft Memorandum of Association (MoA). Hire the services of a consultant to get the AoA and MOA drafted, if necessary.
- d. Call first informal meeting of the shareholders to approve
 - i. Articles of Association
 - ii. Memorandum of Association
 - iii. Selection of Promoter
 - iv. Authorized capital and cost of each share
- m. Collect the capital and savings also if possible.

5) What are the legal formalities for formation of a Producer Company?

- a. Obtain Digital Signature of the Nominated Director, who will be affixing DSC on all the documents to be submitted to RoC online, on behalf of the company.
- b. Chose maximum 4 names for the Producer Company in order of preference.
- c. Apply for the name availability in Form - INC1.
- d. Once name is available, a letter is received from RoC indicating it. The documents to be submitted to ROC thereafter are:
 - e. Articles of Association (AoA).
 - f. Memorandum of Association (MoA).
 - g. Form No. INC-22 for Registered Office.
 - h. Form No. DIR-12 for Directors' Appointment.
- I. Apply on-line for Directors Identification Number (DIN) for the proposed Directors.
- j. INC-7 - Affidavits by subscribers to Memorandum of Association to be filed, in case, if they have signed in Hindi.
- k. Power of Attorney in favour of a consultant to authorize him to make necessary changes in MoA and AoA as required by the RoC.

l. Submit the documents to RoC for Incorporation of Producer Company.

m. Obtain Certificate of Commencement in INC-21

6) What is Digital Signature Certificate?

- a. Digital Signature Certificates are equivalent to the paper certificates e.g. Driving License, Pass port etc. The certificates serve as a proof of identity of a person for a particular purpose. DSCs are used by the people for filing various important documents on-line.
- b. All documents need to be signed digitally and submitted online to the RoC as per MCA21 e-Governance programme and in accordance with Information Technology Act 2000.
- c. Digital Signature Certificate (DSC) is to be obtained for signing documents of the PC for submission online by the authorized person of the PC.
- d. Form for obtaining Digital Signature Certificate (DSC) is available from the Certifying Agencies of Certifying Authorities.
- e. After filling the form, it is to be submitted to Certifying Authorities.
- f. The DSCs are issued with one or two year validity normally and can be renewed thereafter.
- g. There are three classes of DSCs namely Class 1, Class 2 and Class 3. Class -2 DSC need to be used by an individual for filing various forms for Producer Company or to file an Income Tax Return.
- h. The cost of obtaining Class -2 (DSC) is market driven and depends on the Certification Agency and it costs Rs. 1000/- for one year and Rs. 1200/- for two years, as quoted by M/s Varacity an agent of M/s Safescript and (n)Code Solutions which are Certifying Authorities.

7) What is a Certifying Authority (CA) for Digital Signature Certificate and list the CAs?

The IT Act provides for the Controller of Certifying Authorities (CCA) to license and regulate the working of Certifying Authorities. The Certifying Authorities (CAs) issue Digital Signature Certificates for electronic authentication of users. At present the following organisations are authorized as Certifying Authorities under CCA, Government of India.

- a. NIC (For Government Departments / Undertakings only) (<http://nicca.nic.in>)
- b. (n)Code Solutions CA(GNFC) (www.ncodesolutions.com)
- c. Safescript (www.safescript.com)
- d. TCS (www.tcs-ca.tcs.co.in)
- e. MTNL (www.mtnltrustline.com)
- f. Customs & Central Exercise (www.icert.gov.in)
- g. e-Mudhra (www.e-mudhra.com)
- h. IDRBT

8) What is Director Identification Number (DIN)?

a. Ministry of Company Affairs (MCA) maintains the details of all the Directors of all the companies with a unique Identification Number which is called Director Identification Number (DIN).

b. Every director needs to have a DIN form MCA. DIN form is available on the website of MCA. Before formation of the PC all the Directors / Chairman should have DIN.

c. If any Director got a DIN, the same need not be obtained afresh.

d. MCA on online application provides DIN at a cost of Rs. 1000/- against identity proof. For identity only PAN Card, Voter ID Card, Passport or Driving License number is accepted.

9) How the company is named?

a. Every Producer Company name should be unique.

b. Every Producer Company name should end with “Producer Company Limited” which indicates its status as Producer Company.

c. The Producer Company may be named in such a way that it inspires the entire membership and creates a sense of ownership for its members and is to be indicative of the objectives of the company.

d. It is a better idea not to use the name of the Producer Organization Promoting Institution (producer organization promoting institute) directly or indirectly in the Producer Company name. Using producer organization promoting institute name will not help in creating ownership in the minds of the members.

e. Apply for the name online to MCA in e-form INC-1.

f. A fee of Rs. 1000/- is to be paid along with e-form INC-1.

g. Digital Signature of the applicant for the name is to be attached.

h. If the name is not available, RoC will inform about the same. This necessitates submission of fresh set of names in the same application.

10) What is Memorandum of Association (MoA)?

a. MoA is a document that indicates what activities the company can undertake.

b. MoA needs to be prepared carefully to cover all the activities planned for the present and future of the Producer Company in a broad manner.

c. MoA should be prepared and printed on both sides of the paper.

d. It is to be subscribed/signed by the requisite number of subscribers/promoters in his/her own hand along with details

like father's name, occupation, address and the number of shares subscribed for, by them.

e. MoA needs to be dated after the date of stamping of the Articles of Association (AoA).

11) What is Articles of Association (AoA)?

a. AoA is a document that specifies the rules for a company's operations.

b. It defines the company's purpose and lays out how tasks are to be accomplished within the organization.

c. It includes the process for appointing Directors and how financial records are handled.

d. AoA should be prepared and printed on both sides of the paper.

e. It is to be subscribed/signed by the requisite number of subscribers/promoters in his/her own hand along with details like father's name, occupation, address and the number of shares subscribed for.

12) What are the documents to be submitted to the Registrar of Companies (RoC) for incorporation of a Producer Company?

a. Copy of the letter of RoC confirming the availability of name.

b. MoA and AoA duly stamped and signed.

c. Form INC-22 indicating the Registered Office of the company with full address.

d. Form DIR-12 in duplicate with details about the directors of the company.

e. Form INC-7 on stamp paper declaring compliance with all and incidental matters regarding formation of companies.

f. Consent of each of the Directors along with form DIR-12.

g. An affidavit indicating that MoA is fully understood by the subscribers/signees, if they sign in Hindi.

h. Power of Attorney to the agent who is dealing with the RoC to make corrections in MoA and AoA, if necessary, to the satisfaction of the RoC.

13) What is Certificate of Commencement (CoC)?

a. CoC is issued by the RoC as a conclusive proof of formation of a Producer Company.

b. Producer Company is effective and comes into existence from the date mentioned in the Certificate of Registration granted by the RoC.

14) What is the legal status of a Producer Company?

a. On incorporation and from the date mentioned in the Certificate of Commencement (CoC), the company becomes a person in the eyes of law.

b. It has perpetual succession, meaning members may come and go, but it will go on until it is wound up by following the process of law.

c. It has a common seal, which is affixed on all the documents executed on behalf of the company in the presence of a director and signed by the authorized signatory or signatories.

d. It is empowered to hold the properties in its own name and has its own right.

e. It can enter into contracts in its own name.

f. It can sue others and can be sued by others.

g. In simple terms it has contractual capacity in the eyes of law just like any other person who has contractual capacity.

15) How much time is taken for registration of a Producer Company?

It may take anything between 2 to 6 months.

16) How much it costs for registration of a Producer Company?

- a. It is estimated that it may cost Rs. 40,000/- approximately.
- b. It depends on the fee charged by CA, Company Secretary and Authorized Agents etc.

17) Who will bear the cost of the registration of a Producer Company?

- a. Initially the promoters of the company will bear the cost of registration of the company.
- b. The promoters are generally the Producer Organisation Promoting Institution (producer organization promoting institute) or the initial directors.

18) Whether Producer Company reimburses the cost of registration to the promoters?

The cost of registration may be reimbursed to the promoters duly approved by its general body in its first meeting with a resolution passed to that effect.

19) Who will run a Producer Company?

The company is run / governed by members /shareholders, Board of Directors and Office bearers.

20) Who are Board of Directors (BoD)?

- a. Board of Directors are elected by the members.
- b. BoD may act collectively only through meetings.

21) Who are Office Bearers?

- c. An office bearer is a person who is selected / appointed to look after the day-to-day affairs of the Producer Company.
- d. The office bearers include Chief Executive officer (CEO), Accountant, godown keeper,
- e. The company pays salaries to all the office bearers.

22) How to become a member of a Producer Company?

- a. By subscribing to the MoA.
- b. By an agreement in writing to become a member and with an entry in the register.

23) What is the authority of the members on the company?

Members exert authority on the company only through General Meetings. The General Meetings alone can do the following:

- a. Approve Budget and adopt Annual Accounts of the Company
- b. Approve the quantum of withheld price
- c. Approve the patronage bonus
- d. Authorize the issue of bonus shares
- e. Appoint an auditor
- f. Declare a dividend and decide on the distribution of patronage
- g. Amend the MoA and AoA
- h. Specify the conditions and limits of loans that may be given by the Board to any Director
- i. Approve any act or any other matter that is specifically reserved in the articles for decision for members

24) What are the rights of the members?

- a. to transfer one's shares
- b. to vote on resolutions at meetings of the Company
- c. to requisition an extraordinary general meeting of the Company or to make a joint requisitions
- d. to receive notice of a general meeting; to attend and speak in a general meeting
- e. to move amendments to resolutions proposed at meetings
- f. in case the member is a corporate body, to appoint a representative to attend and vote at general meetings on its behalf

- g. to require the company to circulate its resolutions
- h. to enjoy the profits of the company in the form of dividends
- l. to elect directors and to participate in the management of the company through them
- j. to apply to the Company Law Board in case of oppression
- k. to apply to the Company Law Board in case of mismanagement
- l. to apply to the court for winding up of the company
- m. to share the surplus on winding up
- n. to have a share certificate issued to him/her in respect of his/her shares

25) What are the voting rights of a member?

- a. In case of Producer Company comprising only of individual members or combination of individual members and producer institutions, then the voting rights shall be based on one vote per member.
- b. In case of Producer Company consisting only of producer institutions, then the voting rights shall be based on the participation in the business of the Producer Company in the previous year.
- c. The Producer Company can restrict the voting rights to only its active members provided it is authorized by its Articles of Association.

26) How a member is ceased of his/her membership?

- d. By completely transferring his/her shares
- e. By forfeiting his/her shares
- f. By a valid surrender
- g. By death
- h. By the company selling his shares in exercise of its right under its Articles of Association

- l. By order of a court or any other competent authority attaching and selling the shares, in satisfaction of a decree or claim
- j. By the official assignee disclaiming his shares, on his adjudication as an insolvent
- k. By rescission of contract of membership, on the grounds of misrepresentation or mistake

27) How many Board of Directors are permitted in a Producer Company?

A producer company can have a minimum of 5 Directors and not more than 15 Directors.

28) What are the powers and functions of the Board?

- a. The Board is responsible for formulating, supervising and monitoring the performance of the Producer Company.
- b. It should not act on the areas reserved for General Body.
- c. It should not exercise executive powers.

29) What are the matters, which the Board generally deals with?

- a. Determination of the dividend payable;
- b. Determination of the quantum of withheld price and recommended patronage to be approved at General Body Meeting;
- c. Admission of new members;
- d. Pursue and formulate the organizational policy, objectives, establish long term and annual objectives, and approve corporate strategies and financial plans;
- e. Appointment of Chief Executive Officer (CEO) and other officers, as may be specified in the AoA. Control CEO and other officers by exercising superintendence and direction;
- f. To sanction any loan or advance to members, who are not directors or their relatives, in the course of its business

- g. Ensure proper books are maintained
- h. Acquire or dispose property of the company in the day-to-day affairs of the business
- I. Investment of the funds in the day to day business
- j. Ensure annual accounts are placed before the Annual General Meeting (AGM) with the auditor's report.

30) Who appoints the Board of Directors?

- a. The names of the first Board of Directors are indicated in the MoA
- b. The AGM elects the directors in the first meeting and thereafter whenever required

31) What is the period of tenure for the Directors?

The tenure of a director appointed by AGM is minimum one year and a maximum of 5 years.

32) Who is an expert Director?

- a. Any person who is having expert knowledge in running the Producer Company can be co-opted by the Board as an expert director.
- b. Expert directors will not have right to vote in the election of Chairman.
- c. Expert directors should not exceed one fifth of the total number of directors.
- d. Expert director can become a Chairman.

33) Who is an alternate Director?

If a regular director is out of the State in which the meetings are held, for a period of 3 months or more, another person can be appointed as director in his place, who is called an alternate director. The tenure of the alternate director must be not less than 3 months. The moment the original director returns, the alternate Director ceases to be the Director.

34) How the Directors are remunerated?

Generally the Directors are reimbursed the cash expenditure incurred by them for attending the board meetings like expenditure on travel, lodging and food. However, if any Director, spends more time for the company, provisions may be made for providing fixed allowances like communication allowance, fixed daily allowance etc.

35) What should be the qualification of a Director?

Only individuals can be directors of a company. No educational qualification or minimum holding of shares is required. Hence any individual can become a Director as per Section 465(1) of Companies Act, 2013.

36) What is the procedure for removing directors?

- a. The shareholder directors of the company can be removed before the tenure by passing an ordinary resolution at a general body meeting.
- b. The Director ceases his post on completion of the tenure which ranges from 1 to 5 years.

37) What is the procedure for resignation of Director/s?

- a. Any Director can resign from his post by giving intimation to the company in a manner indicated in the AoA.
- b. If AoA do not indicate any procedure for resignation, then a Director can resign by giving reasonable notice. The resignation is deemed as accepted the moment the notice is given.
- c. In case of Chief Executive Officer or Managing Director or whole-time Director, mere notice of resignation will not be deemed as resignation. Their resignation will be governed by the terms and conditions of the appointment. In this case acceptance of the resignation is required to get relieved of their duties.

38) What is the accountability of a Director in a Producer Company?

- a. A director or an officer who fails to provide information to a member or a person, for whom he is required to provide information about the Producer Company, the Director is liable for imprisonment for a term extending to 6 months and with a fine equivalent to 5% of turnover of the company in the previous year
- b. If there is a failure for convening an Annual General Meeting or other general meetings, the Director shall be punishable with a fine extended up to Rs. 1 lakh. In case the default continues, an additional fine extended up to Rs. 10,000/- per day.

39) Who appoints the CEO and what are his/her functions?

- a. A full time CEO is appointed by the Board of Directors as per AoA
- b. The CEO is to be other than a member
- c. The CEO is accountable to both the Board of Directors and members

40) What are the functions of a CEO?

The functions of a CEO include the following:

- a. Do administrative acts of routine nature including managing the day-to-day affairs of the Company;
- b. operate bank accounts or authorize any person, subject to the general or special approval of the Board;
- c. make arrangements for safe custody of cash and other assets of the Company;
- d. sign business related documents as may be 'authorized by the Board' for and on behalf of the Producer Company;
- e. maintain proper books of account, 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 posts in accordance with the powers delegated to him by the Board;
- h. assist the Board in the formation of goals, objectives, strategies, plans and policies;
- i. advise the Board with respect to legal and regulatory matters concerning the proposed and ongoing activities and take necessary action in respect thereof;
- j. exercise the powers as may be necessary in the ordinary course of business;
- k. discharge such other functions, and exercise such other powers, as may be delegated by the Board;
- l. to provide timely information to the Members and Board of Directors for scheduled company meetings or emergency or short notice meetings.

41) What is the minimum qualification for appointment of a CEO in a producer company?

- a. As indicated in AoA, the qualifications, experience and the terms and conditions of service of the Chief Executive shall be such as may be determined by the Board.
- b. The Chief Executive Officer (CEO) of a Producer Company shall be a full time employee of the company.
- c. The CEO shall be appointed by the Board of Directors of the company amongst persons other than members.
- d. The CEO shall be ex-officio director of the Board and such director shall not retire by rotation.

42) What are the advantages of a Producer Company?

- a. A Producer Company is a hybrid between a Private Limited Company and a Cooperative Society, thus enjoying the benefits of professional management of a Private Limited Company as well as mutual benefits derived from a Cooperative Society.

b. Ownership and membership of a Producer Company is held only by “primary producers” or “Producer Institution/s” and member’s equity cannot be traded. Hence, nobody can take over the company or deprive the primary producers of their organisation.

c. The clauses of Private Limited Company shall be applicable to the producer companies except the clauses specified in Producer Company Act from 581-A to 581-ZL which make it different from a normal private or limited company (refer the Producer Company Act for details). This enables a professional framework for a Producer Company.

d. The liability of the members is limited to the unpaid amount of the shares held by them. Hence, the private assets of the members are safe from company losses.

e. The minimum paid-up Capital being Rs. 1 Lakh and minimum authorized capital being Rs.5 lakh for a PC, it easy to mobilize the small amount.

f. Minimum number of producers required to form a PC is 10 while there is no limit for maximum number of members and the membership can be increased as per feasibility and need. This helps even 10 individuals start a Producer Company which is easy.

g. There cannot be any government or private equity stake in the Producer Companies, which implies that PC cannot become a public or deemed public limited company. Hence, any Government or other corporate threat is non-existent in professional functioning of the company.

h. The area of operation for a PC is the entire country giving flexibility to expand and do business in a free and professional manner.

43) What are the limitations of a Producer Company?

a. A Producer Company is to be registered as per the Part IXA of Indian Companies Act 1956, Reference Section 465(1) of the

Companies Act 2013. It is a must to register the company and non-registered entities are not given the benefit of the Act.

b. Registration of a Producer Company is a bit difficult, generally requiring the services of a consultant.

c. The registration of a Producer Company is a sometimes time consuming process.

d. The members cannot transfer their shares freely.

e. Getting a professional CEO at an affordable cost is little difficult.

f. The Producer Company should follow the statutory provisions of Indian Companies Act and should comply with the mandatory prescriptions of the Act without fail which is little difficult for the illiterate members to understand.

44) What is a Section 8 Company?

Section 8 Companies are those companies which are formed for the sole purpose of promoting commerce, art, science, religion, charity or any other useful object.

a. These types of companies can be either public company or private company having a limited liability.

b. Profits earned by these companies can only be applied for promoting its objects and cannot be distributed as dividend among its members.

c. These companies can be formed with or without share capital. In case they are formed without capital, the necessary funds for carrying the business are brought in the form of donations, subscriptions from members and general public.

45) What advantages do the Producers Organizations get on registering themselves as Section 8 companies?

Section 8 Company is preferred as compared to Trust, society because of following reasons:

a. Section 8 Company has uniform law across the country.

b. Section 8 Companies are also preferred, as compared to others, in foreign funding because of stringent disclosure norms and regulatory provisions under Companies Act, 1956 and Foreign Contribution Regulation Act.

c. The Central and State Governments recognised Section 8 Company in various Schemes implemented by them.

d. A wide range of activities can be taken up.

e. Exempted from using the word Private Limited or Limited

f. Members/Owners easily transfer ownership in shares and interest by the manner provided by the Article of Association.

g. The continuation of an incorporated Section 8 Company is unaffected by the death of any of its owner(s) or the transfer of its shares to a new entity/person

46) What are the disadvantages of a Section 8 Company?

The followings are the disadvantages of Section 8 Company:-

a. Profits cannot be distributed as dividends to members and it will be applied for promoting its objects only.

b. Alteration in the objects clause of the Company requires prior approval of Central Government.

c. In comparison to Society and Trust, registration of Section 8 Company and complying with other terms & conditions are costly. Also, if there is any breach of law, a Section 8 Company has to bear penalties and fines.

d. Section 8 Companies also fall under the definition of Company under Income tax. Therefore, same rate of tax is applicable to Section 8 Companies which is applicable to the normal profit making company.

e. Generally, complete closure or winding of Section 8 Companies takes around 1-2 years and involves compliance of various formalities. Moreover, in certain cases, it requires the approval from the High Court.

47) What are the essential conditions for producer organization to get registered as Section 8 Company?

For registration of Section 8 Company, the following conditions must be fulfilled:-

a. Minimum 2 Shareholders (for Private Limited Co.) and 7 Shareholders (for Public Limited Co.)

b. Minimum 2 Directors (for Private Limited Co.) and 3 Directors (for Public Limited Co.)

c. DIN (Director Identification Number) is required for every director.

d. At least one Director of the producer organization should obtain Digital Signature.

e. Memorandum of Association

f. Articles of Association

48) What documents are required to be filed for obtaining Certificate of Commencement as a company?

For Grant of License the following documents are also required:-

a. Three Copies of Memorandum of Association and Articles of Association

b. Three Copies of list of names, descriptions, addresses of promoters/directors

c. Three Copies of Statement showing estimates of future income and expenditure

d. Three Copies of Statement giving in brief description of work done or proposed to be carried out after incorporation

e. Three Copies of Statement specifying the grounds on which the application is made

f. Declarations by all the directors of the company as per the prescribed proforma

g. Declaration by Chartered Accountant or advocate of Supreme Court or of a High Court, an attorney or pleader entitled to appear before High Court or a Company Secretary that the Memorandum & Articles of Association have been drawn up in accordance with the provisions of the Act.

h. Documentary Evidence in support of addresses of promoters

I. All due diligence documents shall be notarized/attested by a gazetted officer or CA/CS/CWA

49) What is Director Identification Number (DIN)?

Any individual who intends to become a Director of a company shall have Director Identification Number (DIN) which is mandatory for e-filing of forms and documents with the Registrar of Companies and PAN cannot be used as an alternative to DIN. DIN is also mandatory for directors of Indian companies who are not citizens of India. But, DIN is not mandatory for directors of foreign company having branch offices in India. Further, only a single DIN is required for an individual, irrespective of the number of directorship held by him/her. Documents and information required for getting DIN (Director Identification Number) of Director:-

- a. Self-attested PAN Card of Director
- b. Self-attested address proof of Director
- c. Affidavit
- d. Self-attested colour photo of Director
- e. e-mail id of Director
- f. Mobile No. of Director
- g. Educational qualification of Director
- h. Current occupation of Director

50) What is a Digital Signature or a Digital Signature Certificate?

Physical documents are signed manually. Similarly, electronic documents, for example e-forms, are required to be signed digitally using a Digital Signature Certificate. Documents required for getting Digital Signature or Digital Signature Certificate are as follows:-

- a. Self-attested PAN Card of Director
- b. Self-attested address proof of Director
- c. One colour photo

51) What is Memorandum of Association of a Producer Company?

Memorandum of Association is a Charter document by which a company is registered. It contains the name of the company, state in which registered office of the company is situated, objects of the Company, authorised capital and capital subscribed by the shareholders of the Company.

52) What is Article of Association of a Producer Company?

Article of Association is the bye laws for the internal management of a company and defines the relationship between members and directors.

53) What is the Registered Office of a Producer Company?

Registered office is the principal place of business and is used for all official communication of the company. The registered office does not have to be necessarily owned by the company, it may be in a rented premises. Also, a company can change its registered office any time after following specific procedures as mentioned in the Companies Act, 1956 within the same state or in a different state from the state in which it was originally registered.

54) After registering a Producer Organisation as Section 8 Company whether any more registrations are required?

If a Section 8 Company gets registered under section 12A and 80G of Income Tax Act, it enjoys the following benefits:-

- a. Registration under Section 12A of Income Tax Act:- Income of Section 8 Company is exempt if it is registered under Section 12A of Income Tax Act. This is a one-time registration.
- b. Registration under Section 80G of Income Tax Act: Donors can claim tax deductions for donations to the Producer Organisation, if it is registered under Section 80G of Income Tax Act. This needs to be renewed after expiry of the validity period.