

Companies (Amendment) Act, 2002

Chapter III - CHAPTER III

MANAGEMENT OF PRODUCER COMPANY 581-O. Number of directors .-- Every Producer Company shall have at least five and not more than fifteen directors: Provided that in the case of an inter-State co-operative society incorporated as a Producer Company, such company may have more than fifteen directors for a period of one year from the date of its incorporation as a Producer Company. 581P. Appointment of directors .-- (1) Save as provided in section 581N, the Members who sign the memorandum and the articles may designate therein the Board of directors (not less than five) who shall govern the affairs of the Producer Company until the directors are elected in accordance with the provisions of this section. (2) The election of directors shall be conducted within a period of ninety days of the registration of the Producer Company: Provided that in the case of an inter-State co-operative society which has been registered as a Producer Company under sub-section (4) of section 581J in which at least five directors [including the directors continuing in office under sub-section (7) of section 581N] hold office as such on the date of registration of such company, the provisions of this sub-section shall have effect as if for the words "ninety days", the words "three hundred and sixty five days" had been substituted. (3) Every person shall hold office of a director for a period not less than one year but not exceeding five years as may be specified in the articles. (4) Every director, who retires in accordance with the articles, shall be eligible for re-appointment as a director. (5) Save as provided in sub-section (2), the directors of the Board shall be elected or appointed by the Members in the annual general meeting. (6) The Board may co-opt one or more expert directors or an additional director 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: Provided that the expert directors shall not have the right to vote in the election of the Chairman but shall be eligible to be elected as Chairman, if so provided by its articles: Provided further that the maximum period, for which the expert director or the additional director holds office, shall not exceed such period as may be specified in the articles. 581Q. Vacation of office by directors .-- (1) The office of the director of a Producer Company shall become vacant if-- (a) he is convicted by a Court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months; (b) the Producer Company, in which he is a director, has made a default in repayment of any advances or loans taken from any company or institution or any other person and such default continues for ninety days; (c) he has made a default in repayment of any advances or loans taken from the Producer Company in which he is a director; (d) the Producer Company, in which he is a director-- (i) has not filed the annual accounts and annual return for any continuous three financial years commencing on or after the 1st day of April, 2002; or (ii) has failed to, repay its deposit or withheld price or patronage bonus or interest thereon on due date, or pay dividend and such failure continues for one year or more; (e) default is made in holding election for the office of director, in the Producer Company in which he is a director, in accordance with the provisions of this Act and articles; (f) the annual general meeting or extraordinary general meeting of the Producer Company, in which he is a director, is not called in accordance with the provisions of this Act except due to natural calamity or such other reason. (2) The provisions of sub-section (1) shall, as far as may be, apply to the director of a Producer institution which is a member of a Producer Company. 581R. Powers and functions of Board .-- (1) Subject to the provisions of this Act and articles, the Board of directors of a Producer Company shall exercise all such powers and to do all such acts and things, as that company is authorised so to do. (2) In particular and without prejudice to the generality of the foregoing powers, such powers may include all or any of the following matters, namely:-- (a) determination of the dividend payable; (b) determination of the quantum of withheld price and recommend patronage to be approved at general meeting; (c) admission of new Members; (d) pursue and formulate the organisational policy, objectives, establish specific long-term and annual objectives, and approve corporate strategies and financial plans; (e) appointment of a Chief Executive and such other officers of the Producer Company, as may be specified in the articles; (f) exercise superintendence, direction and control over Chief Executive

and other officers appointed by it; (g) cause proper books of account to be maintained; prepare annual accounts to be placed before the annual general meeting with the auditor's report and the replies on qualifications, if any, made by the auditors; (h) acquisition or disposal of property of the Producer Company in its ordinary course of business; (i) investment of the funds of the Producer Company in the ordinary course of its business; (j) sanction any loan or advance, in connection with the business activities of the Producer Company to any Member, not being a director or his relative; (k) take such other measures or do such other acts as may be required in the discharge of its functions or exercise of its powers. (3) All the powers specified in sub-sections (1) and (2) shall be exercised by the Board, by means of resolution passed at its meeting on behalf of the Producer Company. Explanation.--For the removal of doubts, it is hereby declared that a director or a group of directors, who do not constitute the Board, shall not exercise any of the powers exercisable by it. 581S. Matters to be transacted at general meeting .-- (1) The Board of directors of a Producer Company shall exercise the following powers on behalf of that company, and it shall do so only by means of resolutions passed at the annual general meeting of its Members, namely:-- (a) approval of budget and adoption of annual accounts of the Producer Company; (b) approval of patronage bonus; (c) issue of bonus shares; (d) declaration of limited return and decision on the distribution of patronage; (e) specify the conditions and limits of loans that may be given by the Board to any director; and (f) approval of any transaction of the nature as is to be reserved in the articles for approval by the Members. 581T. Liability of directors .-- (1) When the directors vote for a resolution, or approve by any other means, anything done in contravention of the provisions of this Act or any other law for the time being in force or articles, they shall be jointly and severally liable to make good any loss or damage suffered by the Producer Company. (2) Without prejudice to the provisions contained in sub-section (7), the Producer Company shall have the right to recover from its director-- (a) where such director has made any profit as a result of the contravention specified in sub-section (7), an amount equal to the profit so made; (b) where the Producer Company incurred a loss or damage as a result of the contravention specified in sub-section (7), an amount equal to that loss or damage; (3) The liability imposed under this section shall be in addition to and not in derogation of a liability imposed on a director under this Act or any other law for the time being in force. 581U. Committee of directors .-- (1) The Board may constitute such number of committees as it may deem fit for the purpose of assisting the Board in the efficient discharge of its functions: Provided that the Board shall not delegate any of its powers or assign the powers of the Chief Executive, to any committee. (2) A committee constituted under sub-section (1) may, with the approval of the Board, co-opt such number of persons as it deems fit as members of the committee: Provided that the Chief Executive appointed under section 581W or a director of the Producer Company shall be a member of such committee. (3) Every such committee shall function under the general superintendence, direction and control of the Board, for such duration, and in such manner as the Board may direct. (4) The fee and allowances to be paid to the members of the committee shall be such as may be determined by the Board. (5) The minutes of each meeting of the committee shall be placed before the Board at its next meeting. 581V. Meetings of Board and quorum .-- (1) A meeting of the Board shall be held not less than once in every three months and at least four such meetings shall be held in every year. (2) Notice of every meeting of the Board of directors shall be given in writing to every director for the time being in India, and at his usual address in India to every other director. (3) The Chief Executive shall give notice as aforesaid not less than seven days prior to the date of the meeting of the Board and if he fails to do so, he shall be punishable with fine which may extend to one thousand rupees: Provided that a meeting of the Board may be called at shorter notice and the reasons thereof shall be recorded in writing by the Board. (4) The quorum for a meeting of the Board shall be one-third of the total strength of directors, subject to a minimum of three. (5) Save as provided in the articles, directors including the co-opted director, may be paid such fees and allowances for attendance at the meetings of the Board, as may be decided by the Members in the general meeting. 581W. Chief Executive and his functions .-- (1) Every Producer Company shall have a full time Chief Executive, by whatever name called, to be appointed by the Board from amongst persons other than Members. (2) The Chief Executive shall be ex officio director of the Board and such director shall not retire by rotation. (3) Save as otherwise provided in articles, the qualifications, experience and the terms and conditions of service of the Chief Executive shall be such as may be determined by the Board. (4) The Chief Executive shall be entrusted with substantial powers of management as the Board may determine. (5) Without prejudice to the generality of sub-section (4), the Chief Executive may exercise the powers and discharge the functions, namely:-- (a) do administrative acts of a routine nature including managing the day-

to-day affairs of the Producer Company; (b) operate bank accounts or authorise any person, subject to the general or special approval of the Board in this behalf, to operate the bank account; (c) make arrangements for safe custody of cash and other assets of the Producer Company; (d) sign such documents as may be authorised by the Board, for and on behalf of the company; (e) maintain proper books of account; prepare annual accounts and audit thereof; place the audited accounts before the Board and in the annual general meeting of the Members; (f) furnish Members with periodic information to appraise them of the operation and functions of the Producer Company; (g) make appointments to posts in accordance with the powers delegated to him by the Board; (h) assist the Board in the formulation of goals, objectives, strategies, ; plans and policies; (i) advise the Board with respect to legal and regulatory matters concerning the proposed and on going 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. (6) The Chief Executive shall manage the affairs of the Producer Company under the general superintendence, direction and control of the Board and be accountable for the performance of the Producer Company. 581X. Secretary of Producer Company .-- (1) Every Producer Company having an average annual turnover exceeding five crore rupees in each of three consecutive financial years shall have a whole-time secretary. (2) No individual shall be appointed as whole-time secretary unless he possesses membership of the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980. (3) If a Producer Company fails to comply with the provisions of sub-section (1), the company and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues: Provided that in any proceedings against a person in respect of an offence under this sub-section, it shall be a defence to prove that all reasonable efforts to comply with the provisions of sub-section (1) were taken or that the financial position of the company was such that it was beyond its capacity to engage a whole-time secretary. 581Y. Quorum .-- Unless the articles require a larger number, one-fourth of the total membership shall constitute the quorum at a general meeting. 581Z. Voting rights .-- Save as otherwise provided in sub-sections (1) and (3) of section 58ID, every Member shall have one vote and in the case of equality of votes, the Chairman or the person presiding shall have a casting vote except in the case of election of the Chairman.