

A Critical Appraisal of the Provisions of Producer Company

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20 December 2007

PRADAN'S WORKSHOP ON PRODUCER COMPANIES

Evolution of Coop Legislation

- ☐ Pre Independence
- ☐ Post Independence
 - 1953 to 1991
 - 1995 to 2007

Time line of the main Committees

1895 – Report of Sir Fredrick Nicholson

1901 - Sir Edward Law Committee

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1999 – Dr Alagh's High powered committee

Main restrictive clauses in the Traditional Coop Legislation

- ☐ Power of the Registrar/Govt. to give directive
- ☐ Compulsory amendment of Byelaws
- ☐ Compulsory amalgamation/ division
- ☐ Power to nominate Directors and veto powers to the nominated Directors

Main restrictive clauses in the Traditional Coop Legislation

- ☐ Power to annul or rescind Board Resolutions.
- ☐ Super session and suspension of the Board
- ☐ Restriction on holding office in a number of Coops simultaneously
- ☐ Restrictions on terms

Producer Company (Section 581 of the Cos. Act)

- ☐ Outside the purview State govt. & Registrar
- ☐ Based on patronage, mutual and self help
- ☐ Retaining the spirit of Coop principles

Key positive features of Producer Company Legislation

- ☐ Private Institution of members focused on business
- ☐ Exclusive space on the basis of Patronage
- ☐ Membership – Individuals or Producer Institutions or both
 - ☐ PI's Incorporated or unincorporated
- ☐ Special Rights and its transferability

contd.

Key positive features of Producer Company Legislation

- ☐ Limited return but scope for Bonus share
- ☐ Freedom to appropriate surplus including freedom to define limits for limited return in AoA
- ☐ Freedom to promote new Initiatives/ Alliances
 - ☐ Subsidiaries
 - ☐ Joint ventures
- ☐ Better compliance mechanism – Company secretary provision

contd.

Key positive features of Producer Company Legislation

- ☐ Governance
 - ☐ Board size
 - ☐ Rotational
 - ☐ 1 to 5 years term
 - ☐ Scope for continuation if eligible
 - ☐ Co-option of expert Directors
 - ☐ Eligibility of Expert Directors for Chairmanship
 - ☐ Accountability of Directors
 - ☐ Incentives – Sitting fee and allowances

Points that need attention

- ☐ Extension of patronage based voting rights to all producer companies
- ☐ Creation of mechanism for single point taxation
- ☐ Clarification regarding patronage bonus
 - ☒ Expense or Post tax appropriation

contd.

Points that need attention

- ☐ Implications of ' Withheld Price' for purchase tax
- ☐ Implications of carry forward deficit for a patronage based system

Irani Committee's Concerns

- ☐ Not in tune with general frame work for Companies with limited liability
 - ☒ Restrictions of transfer of shares thus denial of exit opportunity
 - ☒ Absence of competitive market for corporate control
 - ☒ Infeasibility of imposing Corporate Governance regime

..... *Is it not the same for Pvt. Ltd. Cos.*

Additional Questions

- ☐ Why have the existing coop's not come forward to take advantage of the conversion clause
- ☐ What steps are needed to carry the Producer Companies to people

Thank You.
