

# Participant Guarantee System

## Module Three Running a Company

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**PARDI**



**This Handbook has been prepared for use by Participant Guarantee System (PGS) Farmers Groups in association with the Pacific Agribusiness Research Initiative (PARDI) and in particular with the PARDI PGS Project listed below, and farmers in the Sigatoka Valley and Koronivia area, Fiji.**

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# PGS

## MODULE THREE RUNNING A COMPANY

### What is a Company?

There are several types of companies in Fiji, but the one that is a private company is limited by shares. It is registered under the Fiji Law known 'the Companies Act 1982'. This allows a company to be formed by no less than ten and not more than 50 people, and must have a registered office and a registered name that is used in the conduct of its business

A company has a life of its own that will continue indefinitely, and is not dependent on any one member. It is backed by full legal recognition and brings a range of benefits to members, as well as responsibilities that promote financial and managerial stability and security.

In law there are two kinds of persons: 'natural persons' like you and me who are born and die and have a series of rights under the law; and 'artificial persons' who are created under law, do not die, and have a series of rights under the law that are largely similar to the rights of a natural person. Both kinds of persons also have a duty to observe the law relating to them. Both will be referred to in this document.

### Why form a company?

After examining the alternatives, the PGS organisers decided that the most appropriate structure for the PGS farmers groups is the private limited company. This is because there is need for a legally recognised organisation for the farmers in order to enter into contracts and to signify legal ownership of property (amongst other things).

Another major reason why we need a company is to run bank accounts. Like any natural person, a company has a TIN (tax identification number), which is required to open a bank account. A company also has a 'common seal' which is a rubber stamp with ink that needs to be applied to any documents that the company uses in its

business, such as an application to open a bank account. Without the company, the PGS group cannot legally open a bank account.

### Company framework

Companies have a clear framework under the Companies Act, which outlines the details of what they can and cannot do, and provides legal protection. Other organisations may also have a legal framework, such as trusts and cooperatives, but have different requirements and scope. The details of the company members' rights and requirements are written in 'Articles of Association'. The details of what the company members want to do, or the objectives, are written in a 'Memorandum of Association'. Together these are known as the 'memo and arts', and must be available for all members to view.

### Definitions

**Shares** a company will issue shares, which are paid for by the members, which gives them a part ownership of the company. The private company limited by shares has a limited number of shares (no more than 50,000) and cannot issue more than this. The value of shares is set at Fj \$1.00 each, and the money from the shares is called working capital. (The membership fee that was set at \$50.00 per member in the PGS farmers company, gives each member one share for \$1.00, and an additional amount of \$49.00 which is subscribed as working capital). A shareholder can be given a share certificate for his/her shares, which is a piece of paper with the details of the share owned by that person and which is issued by the company. Each share ranks equally in the voting and ownership rights it gives its owner.

**Working Capital** is the money which should always be held in the company bank account or if it is not being used, may be invested in certain investments which are limited to safe investments such as bank interest bearing deposits. The money is used for the costs of the operation of the company.

**Directors** are the people who run the company on behalf of the members. They are elected by the members in an annual vote, and must retire (and can be re-elected) at the end of each year. We have decided in our rules that the President, Secretary and Treasurer who were elected shall be the Directors of the PGS company in each case, but in future the Directors must be elected every year for one year only. Each Director has legal responsibility to run the company in the best interest of the shareholders (members) and can be held legally responsible if they do not.

**Members** are company shareholders and are required to vote for or against resolutions about the policy and operations of the company, and election of office bearers, who are the Directors.

**Executive** is the President, Secretary and Treasurer, who are also Directors of the company. They should meet regularly to decide on matters to do with the running of the company. They are also known as the **Board of Directors** or the **Board** when they meet.

**Company Secretary** is a Director who has special responsibility in keeping the affairs of the company in order. He/she has responsibility to ensure that minutes of meetings are kept correctly, and everything is done properly and management of any staff follows correct procedures.

**Private Company** the 'PGS Farmers Company Limited' is a private company which means that the right to sell and transfer shares is limited to fifty shareholders maximum, and shares cannot be advertised to be sold to the general public. Directors and Shareholders must be Fiji citizens over the age of 18.

**Local Traders** include commission agents, transport operators and agricultural supply providers. Local traders all have a part to play in the formation, funding and operation of a PGS farmers company.

## Governance and functioning

The 'PGS Farmers Company Limited' is run by the Board and the Directors (that is the President, Secretary and Treasurer) and by the members who join in a meeting. A meeting of the Executive is called a Board Meeting and should be held regularly, preferably each month. A meeting of members is called a General Meeting, and there are three types:

1. **Annual general meeting (AGM).** This is a meeting held at the end of each year. This is an important occasion and is for the purpose of company business including:
  - Receiving reports from the Board about the performance of the company over the past year,

particularly i) Presidents Report about the operations of the company and the results such as the amount of produce marketed during the year, the prices received and the work of the Board; ii) The Treasurers Report about the financial management of the company, and the state of the company finances, such as a profit and loss statement, and annual financial report and bank reconciliation and assets and liabilities.

- To propose plans and proposals for the next year and longer. The AGM can vote to accept these or reject them or modify them as the meeting sees fit.
- To hold elections for office bearers – the three Directors (President, Secretary and Treasurer). The current Directors must retire but can be re-elected.
- Discuss general business – other matters that may be of concern to the members.

### Other functions of the AGM

- Approve the terms of reference (the duties of) of office bearers.
- Adopt and amend the constitution and the rules in general and in particular:
- Should:
  - set the limits for investments (if any) that can be approved by the Board (beyond which the investment must be approved by a general meeting, item by item).
  - set the limit for the amount of money payments that the Treasurer can authorise (make payment).
  - decide on amount of share capital to be raised and the contributions to be made by the individual members.
- Review and approve annual reports and other reports.
- Approve annual work-plans and business plans.
- In case of dispute between members and office bearers, discuss and if necessary appoint a committee of members to mediate and reconcile disputes/conflicts.

An **Agenda** is required for every AGM (this is a list of the things that will be discussed) which should be circulated with a notice that the meeting will be held, where and when, to each member in reasonable time to allow the items to be understood before the meeting (say a week or two before the meeting).

2. **General meeting (GM).** This is the meeting which is held every month to discuss the running of the PGS company. First the names of people attending should be recorded. Each meeting should have the last meetings minutes read and vote to accept them, as this refreshes the memory of the members about what has been going on and what was intended over the past month. Then any reports that may be given, by the

Board. Then the items of business that are to be dealt with are discussed.

The GM is the supreme authority over the PGS farmers company management, and makes decisions as a group, by passing motions and resolutions that must be followed by the company (Executive Committee and any Committees). The GM monitors the company activities and plans and ensures the following.

- The PGS company management: does not practice a discriminatory membership policy and that the PGS company's policies are good for the farming community.
- The PGS company is carrying out all required matters and especially financial control.
- Community audits are being carried out.
- The PGS company is meeting its primary purpose and objectives (particularly making a profit).

These roles and practices are carried out in regular meetings of members (GM) and through reviews of the accounts, and at the AGM annual performance and audit reports.

#### **The Board has the duty to:**

- Run the day-to-day management of the PGS company.
- Make decisions regarding the marketing, financial management, operational management and such decisions that are not exclusively the requirement of the GM or AGM.
- Draw up plans, financial statements and the like for presentation to the GM or AGM.

### **3. Extraordinary general meeting (EGM)**

An extraordinary general meeting can be called by a Director or by at least three members who may request a meeting of members be called to discuss a matter of interest.

#### **Financial management/financial powers of the GM**

- Decide on amount of share capital to be raised and the contributions to be made by the individual members.
- Discuss and approve payment of any net surpluses to the members.
- Approve the financial plan and annual budget.
- Approve the use and management of the working fund (if any) by the Executive Committee as specified in the Rules and in of the Farmer Marketing Collectives Act and Rules, regarding Reserve Funds.
- May declare the PGS company insolvent by two-thirds vote of present members in a GM - following proposal by Executive Committee.
- Set limits for the amount that can be paid out of the PGS company funds by the Treasurer. Any more than that amount will require the authorisation of a GM.

#### **Quorum**

No business shall be conducted by a meeting unless there is a quorum present. In the rules, a quorum is a simple majority that is half of the members of the PGS company plus one member.

**The PGS Farmers Company Limited** is a business, owned by the members. All the actions and affairs of the company should be directed to running and improving business for the members.

## **Director Responsibilities and Tasks**

There is very little in the Fijian legislation about the responsibilities and tasks of Directors. This will change when the new law is brought in, which is predicted to be 2015/16.

In general, Directors have a duty to act in good faith, in the best interests of the company, to avoid any conflict of interest, to act honestly, to prevent the company trading while it is unable to pay its debts, and if the company is being wound up, to assist the liquidator and report to him or her.

Legislation is not the only mode of regulation. The Commerce Commission in Fiji, has its own regulatory practices which affect corporate governance. In general, good company structures encourage companies to create value (through professional management, entrepreneurship, innovation and development) and provide accountability and control systems suitable for the risks involved. A company should safeguard integrity and honesty in financial reporting, promote ethical and responsible decision-making and establish sound systems of risk oversight and internal control.

The new law will contain a range of detailed Director duties including: to act with care, skill and diligence; to promote the success of the company; and to act 'independently'.

These are also principles that apply to the Directors of our PGS farmers companies. We have mentioned in our PGS handbook that we operate on TRUST, and the principles of voluntary and open membership, good planning, good management, transparency, good advice and self-reliance. In addition, a Director is required to fulfill the following.

- Be over 18 years of age and a member of a reputable PGS farmers company.
- To the best of their knowledge and capacity, conduct the business of the PGS farmers company with utmost loyalty, dedication and sincerity.
- Strive to work and serve in the best interests of the members and the company during their tenure. They shall not be involved in anything that is contrary to the interests of the company and the provisions of its memorandum and articles of association and rules. They shall record their undertaking and commitment by

- accepting nomination to one of the Directors positions (as President, Secretary or Treasurer) by submitting their name and a nomination paper giving name and address and Tax Identification Number (TIN).
- Shall maintain confidentiality about the business of the company and its operations to protect the interests of the company and its members.
- Promote, provide a venue and make themselves available and cooperate fully with Community Audits.

In our companion volume 'Farmers Group Handbook' the qualities, roles and responsibilities of Directors are explained as follows:

## The President

### Qualities of the President:

- He/she must be literate
- Be trustworthy and faithful
- Be able to mobilize PGS farmers company members
- Be honest
- Be able to give all the time required to the company operation
- Be acceptable to the company members.

### Responsibilities of the President:

- Chair all PGS Farmers Group meetings (AGM, GM and Special GM) in normal and in emergency conditions.
- Undertake discussions with the Board and members to prepare the agenda incorporating the interests and concerns of PGS Farmers Group meetings.
- Sign all resolutions passed by the PGS Farmers Group, and minutes of each meeting together with the Secretary.
- Coordinate the technical and non-technical aspects of the company, to ensure the business aspects are being properly run.
- To develop the PGS Farmers Group linkages with markets, other institutes and NGO's where appropriate
- Maintain a check on the PGS Farmers Group records from time-to-time especially prior to the monthly meeting.
- Ensure the Articles of Association and appropriate laws of Fiji are followed during the meeting, and in operation of the PGS Farmers Company.
- Encourage unity and joint interest among the PGS Farmers Company members.

## The Secretary

### Qualities of the Secretary:

- He/she must be literate
- Prepared to work for the PGS farmers company and give the time required

- Be honest and acceptable to other PGS Farmers Company members
- Trustworthy and faithful
- Capable of undertaking the requirements of the work of the Secretary.

### Responsibilities of the Secretary:

- Every action and decision of every PGS farmers company meeting must be recorded in the company minutes.
- The financial contributions of the PGS farmers company members must be maintained in the cash book and members accounts.
- Any financial contribution to the PGS farmers company from whatever source should be made known to other PGS farmers company members.
- During each meeting the minutes of the previous meeting are read out to the members present.
- Ensure proper maintenance and safe keeping of PGS farmer company records including directory of members, memorandum and articles of association and certificate of incorporation and rules, minutes of the GM and Executive Committee, financial records and annual reports.

### Record Keeping Role of the Secretary:

In addition, the Secretary must maintain and hold open for inspection by any member:

- The PGS farmers company membership register and attendance register
- The PGS farmers company records including:
  - PGS farmers company articles and memorandum of association, objects and constitution
  - PGS farmers company by-laws (rules)
  - PGS farmers company business plans
  - Resolution forms and other such forms as are required for the business of the PGS farmers company.

## The Treasurer

### Personal Qualities of the Treasurer:

- He/she must be literate and numerate
- Must have a good reputation for honesty and integrity
- Must be willing to maintain the financial assets of the group
- Must be willing to keep the financial records up to date.

### Responsibilities of the Treasurer

The Treasurer must maintain the financial records and with the assistance of the Board, carry out the financial

management and control of the PGS farmers company, including but not limited to:

- Make payments and receive monies on behalf of the PGS company
- Maintain the financial contribution register,
- Maintain the cash book
- Maintain members' accounts
- Maintain stock control books
- Operate the PGS farmers company cheque book
- Operate the PGS farmers company bank account/s
- Keep a register of receipts and invoices and other evidence of expenditure and stock control
- Maintain the accounts and all required financial records, assets registers and hold them ready for inspection by members at any reasonable time.

Other areas that should be given attention:

- The Treasurer must design and operate an appropriate system of receiving and recording share capital and working capital contributions and membership fees as provided in the 'Farmer Marketing Collectives By-laws'.
- Operate the PGS Farmers Company Training and Education Fund (if any) following a program approved by the members at a GM.
- The Treasurer has power to approve operational costs up to the maximum ceiling fixed in the rules of the PGS farmers company concerned.
- The members at a GM shall set the upper limit for the Treasurer to make payments without the specific approval of the GM.
- Ensure that an Annual Audit is carried out of the PGS Farmers Company if required by the members, covering financial operations conducted by qualified Auditors if necessary.

## Member Responsibilities and tasks at an AGM and GM

As outlined earlier in this handbook, a every PGS farmers company should hold a monthly GMs, and an AGM towards the end of each year and close to the anniversary of the last AGM. All members who are able to should attend these meetings. The key functions of the AGM are outlined below.

## Governance and functioning

Members are various responsibilities at an AGM. Those which related to governance and functioning include the following.

- Elect from within the members a Board of Directors comprising a President, a Vice-President (if any), a Secretary and a Treasurer, who are to assume their responsibilities within one week of their election. The Directors may stand for re-election but he/she shall not be elected for more than three consecutive terms.
- Conduct the business of the PGS farmers company to the best of their knowledge and capacity, with loyalty, dedication and sincerity.
- Receive, accept and invite applications for membership.
- Prepare and implement long term business plans.
- Authorise expenditure and guidelines for management of funds for the PGS farmers company, kept in the PGS farmers company bank account.
- Receive annual performance report of the activities of the PGS farmers company for timely submission/presentation to the AGM and other relevant agencies/authorities, as and when required.
- Call for extraordinary GMs as and when required. These may be required when something unusual occurs, such as a shipment of produce is lost through an accident.
- Ensure equal voting rights among members are observed.
- Conduct monitoring of election procedures and results.
- Ensure that community audits take place during the trading season (when the PGS Farmers company members crop is being sold) at least monthly, where members meet with the Board of Directors and receive information about the financial and trading activities of the PGS farmers company.

### Financial management / financial powers

- Ensure that the PGS farmers company follows prudent financial management practices and there is proper utilization of resources for the common benefit of its members.
- Ensure that proper books of accounts are kept and that there is complete recording of all the financial activities. These books are to be made available for any member to inspect at any reasonable time.
- Ensure proper maintenance and safety of PGS farmer company records including directory of members, memorandum and articles of association and certificate of incorporation and rules, minutes of the GMs and Executive Committee, financial records and annual reports.



## Member Responsibilities and roles

All members have responsibilities and duties as follows.

- Agree to grow high-quality products to be sold by their PGS farmers company.
- Provide their produce for sale through the company.
- Be involved at all stages in the operation of the business.
- Guide the Board of Directors through the AGM and GMs in all matters related to their PGS farmers company policies, marketing, operations, strategies and management issues.
- Support capacity building of the company.
- Attend GMs and EGMs and the company AGM.
- To act to uphold the good name and reputation of the PGS farmers company at all times.

## Business support services

- These are the providers of services in marketing, book-keeping and marketing, and who assist the PGS farmers company in its operation and help to ensure success by providing these services and training, and assist in marketing and governance. They are paid for their services by the company and have the following functions:
- Are involved in assisting the Directors in the operation of the business.
- Are the main persons responsible to assist with book keeping, marketing, planning and governance of a PGS farmers company.
- Business support services guide the Board of Directors in interacting directly with the terminal markets such as resorts and the Municipal Market in Suva to make arrangements for sales of produce.
- They support capacity building of members and Directors of a PGS farmers company.
- Business support services assist to set up and maintain records related to the structure, membership and business operations of farmer marketing collectives.

## Winding up and bankruptcy

- In the unlikely event that a PGS farmers company reports a major loss and is subject to closing down i.e. 'winding up', the law in Fiji provides the power and instruction that the company that cannot pay its debts can be wound up. This can be done voluntarily by a decision of a GM, or involuntarily by a decision of a court, which issues an order.
- Any order to wind up would have to be issued by a Court of Fiji.

- But it should be noted that because a PGS Farmers Company is a Limited Company, liability (that is, how much each member may be called upon to pay) is limited to the value of their shareholding, that is normally \$1.00 each member.

## Fraud

- In Fiji, section 324(1)(a) of the 'Companies Act' provides that during the course of winding up, the court may declare (if it thinks it is proper to do so) that persons who appear to have been knowingly carrying on the business of the company for a fraudulent purpose shall be personally liable for the debts of the company. In this case the liability is extended beyond the \$1 limit.
- Similarly Section 325(1) says that on winding up of a company people involved in the company who has misused the money or property of the company may be compelled to repay or restore the money or property, or pay money for compensation. Evidence would have to be provided to the court by the liquidator or others in the case of fraud.
- The principles of corporate governance are focused on the principles that companies are fundamentally about profit-making and shareholder/manager trust. Corporate governance is about running the company with concern for social justice, fairness, respect and trust.

## New company law for Fiji

New laws relating to the 'Company Act' and associated legislation have been prepared in Fiji over recent years. It was originally planned that these laws would be introduced in 2013, but no change has been made so far, and the first three companies to be set up as a result of the PARDI PGS work, have been registered under the 1983 laws.

What will happen if the new law is introduced? There will be no change in the way existing companies are run, and the new law will not disturb the existing way Directors operate.

So why introduce the new laws? One commentator, who drafted some of the new laws said:

*'The 1983 Act' was a simplified version of 'The 1961 Australian Companies Act'. Its content was over 50 years old. A lot has happened in that period and Fiji is in dire need of a new law which reflects today's more sophisticated corporate world. The new 'Companies Decree' is a completely new law.*

## Special situations

- In case of potential division, merger or consolidation with other PGS farmers companies, it is necessary to prepare a feasibility study (for merger and

consolidation with the Board of the other PGS farmer company) and give recommendations to the GMs of both for approval or rejection. If both GMs agree, the two Boards finalise the necessary details and sign the respective agreements.

- Directors may undertake mediation /conciliation of disputes and conflicts between members of a PGS company (relating to the policies and operation of the PGS farmers company) or if this is not possible, referral of the case to court.
- If required to do so, Directors must clear all outstanding issues and dues within following two months, and if required propose the voluntary dissolution of the PGS farmer company to its GM and, if agreed, arrange the necessary distribution and winding up activities.

National Authorities — Ministry of Primary Industry headed by the Secretary, and various Departments headed by the relevant Directors, or their field staff may be involved at local level.

Provincial and District Officials – Relevant Officials (e.g. Ministry of Primary Industries Provincial staff including the Senior Agricultural Officer, and Extension Officers) and should be kept informed of the PGS farmer company formation and operation.

#### **Board of Directors – but specific to the President**

The President is a member of the Board of Directors and as such involved in all the activities specified there under. She/he also bears some specific roles and responsibilities:

## **Governance and functioning**

- Will undertake the chairmanship of AGM and GM and Special GM meetings unless decided otherwise in a vote by members.
- In case of dismissal or death of a member of the Executive Committee assign interim responsibilities to another member of the Executive Committee until replacement member is elected (next GM).
- In case of termination of membership of any member, record details and reasons in the minutes following the meeting which undertook the termination.
- If the membership of a PGS farmers company falls below the minimum needed (which is ten members), the Board must consider either extending the membership or winding up the PGS farmers company.

## **Conflict resolution**

Conflict resolution means of dealing with an issue where there is disagreement or even hostility between members of the PGS farmer company. The steps that should be taken are:

- Proper identification of issue or need.

- The background of the issue along with its proposed solution in writing.
- The full support of PGS farmer company in the written solution is sought at a GM.
- The resolution needs to be clearly accepted by the two conflicted parties.

#### **Importance of Resolution of conflicts**

- To assure the full unified participation PGS farmer company members.
- Promotion of growth in self-maturity.
- The resolution is a step of record keeping.
- Brief introduction of resolution format that describes one role of PGS Board.

#### **Action to be taken**

- For disputes between members the Board of Directors acts as mediators and, if the conflict cannot be handled, as a last resort the Board files a case with the court.
- For disputes between the members and (the) office bearers, a committee of members, appointed by a GM, will act as mediator and, if dispute cannot be solved, can suggest to GM to file a case.
- In the case of disputes between the PGS Farmer Company and outside Organizations, the Board will act as mediator and can refer the case to court, if needed.

## **What is planning?**

The activities of a PGS farmer company will be planned and implemented through a business plan prepared by the Board and other members who may be assigned the responsibilities to carry out the activities of the PGS farmer company. The plan should be presented to an AGM or GM and may be modified, following which it must be passed by a majority and it can then be implemented. The activities should be completed within a given time period which may be specified in planning, provided such time frame is reasonable. Should deadlines not be met, the plans should be discussed at EGM of the members, and alternative plans prepared.

Planning will be completed following the steps outlined in the PGS Group Handbook, and Model Rules.

## **Conclusion**

A private company is the ideal structure to provide the foundational organisation for PGS farmers groups in Fiji. However, they must be set-up following the correct procedure and run in accordance with the Laws of Fiji. Such a company will ensure a sound foundation for the long-term future of the PGS organisations in the Fiji Islands.





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