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# Working Paper

**Greek legislation on rural co-operatives:  
A concise presentation**

Michael FEFES

**CIRIEC No. 2018/09**

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## **Greek legislation on rural co-operatives: A concise presentation**

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**Working paper CIRIEC No. 2018/09**

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### ***Abstract***

The legislative regime on Greek rural co-operatives has repeatedly changed during the last decades. Most importantly, the legislature's role and intervention has been increased. In this paper, we offer a brief presentation of the current co-operative legislation commented, where necessary, on several provisions that do not go along with co-operative principles.

**Keywords:** rural co-operatives; Greek legislation; Law 4384/2016

## 1. Introduction

Law 4384/2016 is the legal instrument regulating the regime of rural co-operatives in Greece. Law 4384/2016 is, in essence, the only legal text that now governs rural co-operatives, since it abolished the pre-existing co-operative legislation. More specifically, article 50 of the Law under the title “Repealed Provisions” provides that from the entry into force of Law 4384/2016, Law 2810/2000 and Law 4015/2011 are abolished.<sup>1</sup> Article 61 defines the entry into force of the new Law (since its publication in the Government Gazette), thus the Law is in force since 26/04/2016.

As regards the text of Law 4384/2016, it is divided in 12 chapters, each one of which is taking over different issues of the co-operatives. The division is as follows:

- Chapter A (arts 1-3) includes general institutional provisions concerning the purpose, the name, the shares and many other institutional elements of rural co-operatives.
- Chapter B (arts 4-5) describes the procedure of establishing (creation) of a co-operative. Chapter C (arts 6-8) includes provisions for the co-operative’s members, their rights and obligations.
- Chapter D (arts 9-10) includes provisions for the co-operative’s share capital, the shares, and the members’ liability as to the debts of the co-operative.
- Chapter E (arts 11-17) concerns the co-operative’s administration and management.
- Chapter F (arts 18-21) provides for the co-operative’s supervision and control by the relevant state organs.
- Chapter G (arts 22-23) includes provisions for economic and financial issues of the co-operative.
- Chapter H (arts 24-27) regulates the co-operative’s bankruptcy, winding-up, liquidation and amalgamation.
- Chapter I (arts 28) includes special criminal law provisions for crimes - felonies regarding co-operative issues.
- Chapter J (arts 29-30) describes the relations between rural co-operatives and the State.
- Chapter K (arts 31-41) provides for collective bodies in co-operative sector.

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<sup>1</sup> Only Articles 5 and 17 of Law 4015/2011 are retained by the new Law, nevertheless these articles concern the rural associations and the agro-unionist organizations, that is they are provisions irrelevant to rural co-operatives.

- Chapter L (arts 42-61) includes the special and the final provisions, whereas others are relevant to issues of the Ministry of Rural Development and Food and others are totally irrelevant with co-operatives or the Ministry.

## **2. Definition and scope of activities**

According to Article 1 of the Law, a rural co-operative is an autonomous association of persons formed voluntarily and seeks, through the mutual assistance and solidarity of its members, their collective economic, social, cultural development and promotion through a jointly-owned and democratically-controlled enterprise.<sup>2</sup> Rural co-operatives are agricultural, fisheries, livestock, poultry, beekeepers, sericulture, agro-tourism co-operatives and any other cooperatives of any branch or activity of the rural economy. Forestry co-operatives and their Associations do not fall under the provisions of Law 4384/2016, but are governed by separate provisions contained in Law 4423/2016; therefore, technically, they are not rural co-operatives as defined by Law 4384/2016.<sup>3</sup>

The remaining Unions of Rural Cooperatives (UAs), which have not been transformed into rural cooperatives, no longer have a legal framework governing them, so that, outside the cooperative legal framework, they are governed by their statutes and the Civil Code (Articles 61-77 for legal persons).

Rural co-operatives are private-law legal entities and have commercial status. They may be engaged in all kinds of activities in order to achieve their goals under the law and their statutes. For the fulfillment of their objectives, co-operatives may form other legal entities, co-operate with consumer or other co-operatives, public or private legal entities, charitable organizations, local government organizations, foreign co-operatives and, generally, with natural or

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<sup>2</sup> The definition in Greek law is more or less the same (with more words) as the internationally accepted definition formulated by the International Co-operative Alliance (ICA), which reads: “A co-operative is an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly owned and democratically-controlled enterprise”, <https://ica.coop/en/what-co-operative>.

<sup>3</sup> The abolished Law 2810/2000 provided for the formation of Unions of Rural Cooperatives. Such Unions were abolished by Law 4015/2011, and the choices were either to transform to rural (first grade) co-operatives, or to be wound-up and liquidated. Nevertheless, several Unions did not follow the said procedure and still exist as legal persons. Those Unions no longer have a legal framework governing them, therefore they are governed by their statutes and the relevant provisions of Civil Code for legal persons (Articles 61-77).

legal persons in the context of transnational or interprofessional co-operation. They may also establish branches or offices domestically and abroad.<sup>4</sup>

### 3. Formation

A rural co-operative may be formed by at least twenty persons. The founding members must provide their co-operative with written statutes. The statutes is a private document<sup>5</sup> that includes provisions as regards the function of the co-operative and necessarily bears a date and the signatures of the founding members. Furthermore, the document shall be filed with the Registry of rural co-operatives. The Registry is kept at the Magistrates' Court (*Ειρηνοδικείο*) of the place of the co-operative's registered office. For instance, if a co-operative has its office at Larissa, its statutes will be filed and registered at the Larissa Magistrates' Court. Only after the conclusion of the former actions, a co-operative acquires legal personality and commercial capacity, that is it becomes an autonomous entity within the economic and legal environment (art. 4§1).

There are certain exceptions as to the minimum number of the founding members. First, according to article 2, in case where the statutes provide that only women may be members of a co-operative, five founding members are enough to form such co-operative (women's co-operative).

Secondly, fishery co-operatives and co-operatives formed by farmers cultivating organically-grown products may be formed by at least 10 members.

Thirdly, co-operatives functioning on 26.04.2016 (date of entry into force of Law 4384/2016) may have less than 20 members, if: a) their annual turnover was over 100.000 euros, and b) have their office in islands (other than Crete and Evvoia) or mountainous areas as defined in Directive 81/654<sup>6</sup>.

Three comments are relevant as to the above provisions.

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<sup>4</sup> Such references to the possibility of co-operation with other entities, contained in Law 4015/11, are totally unnecessary, since they describe business activities quite self-evident in a free-market. Therefore, it makes no sense to refer to those entrepreneurial choices, as if they would be prohibited if not directly referred to in the Law.

<sup>5</sup> Documents in Greek legal system are categorized in public and private. Public documents, e.g., are documents formed by a notary public, while private documents are a lease contract, a car purchase et.c.

<sup>6</sup> OJ L 238/1, 24.8.1981. Amended by D. 85/148 (OJ L 56/1, 25.2.1985) and D. 93/66 (OJ L 184/1, 27.7.1993).



First, according to the ICA, co-operatives, where membership is only open to women, do not breach the 1st Co-operative Principle<sup>7</sup>, **only where** they are established to overcome gender discrimination and disadvantage. In some countries and cultures where women are still perceived as subservient to men, women may set up women's co-operatives to overcome discrimination and gain a voice and a place for women that is not accessible to them because of religious or cultural gender discrimination. So, where restricting membership is a direct response to wider gender discrimination and disadvantage women face in society, restricting membership to women only does not breach this 1<sup>st</sup> Principle.<sup>8</sup> Since Greece is a country where gender equality is a reality from a legal and substantive point of view, one may safely conclude that article 2 violates the 1<sup>st</sup> Principle.

The new Law introduces in Article 2 a specific provision for women's co-operatives. In Greece such distinction of co-operatives into "mixed" and purely women's becomes legislative for the first time. I think that, even if it was done with the best of intentions, this separation is unfortunate and problematic. The legislative prohibition (which, of course, will be also statutory) of male participation in a "female" partnership, regardless of whether these men otherwise fulfill the conditions for participation in such a co-operative (under the terms of its statutes and the law) means that there is a clear discrimination on grounds of sex. Consequently, this provision, if it does not violate Article 4 of the Greek Constitution, is certainly in violation of the first co-operative principle (voluntary and free membership). Finally, it is recalled that equality of men and women has been established for co-operatives since the year 1844, as an article in the statutes of the Equitable Pioneers of Rochdale.

Secondly, the minimum number of founding members is unreasonably high and restrictive. A co-operative is an enterprise based on the genuine will of the members to collaborate with sincerity and solidarity having fully comprehended the principles and the advantages of the institution and the co-operation through it. L. 2810/2000 provided for a minimum of seven members, which is a fair number suitable to begin with. It is self-evident that we need viable co-operatives; however this is not achieved by imposing a high number of founding members. The members themselves should decide

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<sup>7</sup> The 1<sup>st</sup> Co-operative Principle reads as follows: "Co-operatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination", <https://ica.coop/en/what-co-operative>.

<sup>8</sup> <https://ica.coop/sites/default/files/publication-files/ica-guidance-notes-en-310629900.pdf>, pp. 10-11.

whether a “big size” enterprise is at their own benefit and then turn to that direction at their own free will.

Thirdly, the exception provided for island and mountainous areas is not clear-cut. The minimum number is not specified, so one may assume that the minimum number is seven members as provided for in L. 2810/2000, as well as whether the “technical” requirements (€ 100.000 and island or mountains) have a permanent or an “on the spot” character with reference to 26.04.2016. One may suppose that these requirements are to be abided with after 26.04.2016, therefore if a co-operative lacks one of them, it either has to add more members to reach number twenty, or it will be wound-up.

#### **4. Statutes**

Article 5 provides for the compulsory content of the statutes, that is the statutes must, at least, include provisions as regards the following:

- a) Surnames, names, father names and addresses of the natural persons-founding members or name, Tax Registration Number (*AΦM*) and office addresses of the legal persons-founding members.
- b) Name, seat and borough of the co-operative. The name includes necessarily the main object or activities of the co-operative, its kind as rural as well as the place of its seat. The name may also refer to a distinct title.<sup>9</sup> If we meet more co-operatives with the same object in the same borough, their names must be different and clearly distinct. The name is compulsorily used in all transactions and legal actions of the co-operative. Though it is not very clear from the text, the office of a co-operative will be in a municipality and the borough will be one of the geographical areas defined as boroughs by the Callicrates Programme,<sup>10</sup> e.g., Borough of Peloponnese.
- c) The object, the means of its attainment and the activities of the co-operative.
- d) The conditions and procedures for the admission, expulsion and resignation of members the rights and obligations of members and the sanctions in case they violate their obligations.
- e) Provisions governing the convention, function, competences and procedure of election of the governing bodies.

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<sup>9</sup> Distinct title is, in general terms, a sign put outside an entity’s premises or establishment.

<sup>10</sup> Law 3852/2010, art. 3, FEK A 87/7.6.2010.

- f) The value (meaning the nominal value) of the compulsory and optional share and the manner and time of paying such amount as well as the procedure for repayment of the subscribed co-operative shares.
- g) The extent of the liability of members.
- h) The minimum proportion of the surpluses to form reserves.
- i) The duration of the co-operative.
- j) The appointment of a temporary Board of Directors (BoD) to approve the statutes and the date of the first convention of the General Assembly (GA) to elect the governing bodies.
- k) The winding up and liquidation of the co-operative.
- l) The auditors of the first annual accounts and their fees.

The temporary BoD will file an application with the Magistrates' Court to register the statutes (art. 4§§2, 3, 4). The judge may within 30 days after the application accept or deny the registration, if there are omissions or illegal provisions. In case of a denial, the judge indicates the necessary amendments to the temporary BoD. Any person bearing a legal interest, e.g., the temporary BoD or a member, may proceed against the denial within 30 days after its issuance. The legal remedy against the denial is called *ανακοπή* (appeal) and the procedure is called *εκούσια δικαιοδοσία* (voluntary jurisdiction).<sup>11</sup> Following the registration, the Court's secretary sends to the competent authority (hence the "Authority")<sup>12</sup> a copy of the statutes within 30 days of the date of registration. The above procedure is followed after every amendment of the statutes.

**5. The National Registry of rural co-operatives:** We have met above, the Registry of rural co-operatives kept at the Magistrates' Court of the place of the co-operative's registered office. Besides that Registry, there is also the National Registry (art. 19) wherein all rural co-operatives of Greece should be registered. The National Registry is a digital database kept at the Authority and its form, content, procedure of registration, maintenance as well as any other relevant issue is described in Ministerial Decision no 2062/132509/25.11.2016.<sup>13</sup> Rural co-operatives bear no obligation to register with the General Commercial Registry (*ΓΕΜΗ*), the Merchants' Registry (*Μητρώο Εμπόρων*) and the Chambers of Commerce (*Εμπορικό Επιμελητήριο*) of their borough.

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<sup>11</sup> Civil Procedure Code, arts 741 – 781.

<sup>12</sup> The competent authority is the Directorate of Economic Controls and Supervision at the Ministry of Rural Development and Foods.

<sup>13</sup> FEK B 3938 7.12.2016.

To register with the National Registry, co-operatives have to apply within one month from the date of their registration in the local Registry submitting several documents, such as a statutes copy, a certificate of their registration in the local Registry, a list of the founding members and a summarized business plan for the next 3 years. The documents are submitted in an electronic form and are corroborated by the Authority and, if complete, the co-operative is registered with the National Registry. The Authority gives to the registered co-operative a Registration Number (*Αριθμός Μητρώου*), which is compulsorily referred to in any document and its website (if there is any). To acquire a Tax Registration Number the co-operative must file a certificate of its registration (bearing its Registration Number) provided by the Authority.

Furthermore, co-operatives have to submit annually (June 30th) to the National Registry in an electronic form a regular statement, informing thereby any potential amendment of the above data. They also submit their annual financial accounts, the auditors' report, the certificate of submission to the tax authorities of the list of the persons compelled to file property statements and a declaration by the chairman of the BoD (*υπεύθυνη δήλωση*) that the members of the co-operative deliver their produce or purchase their supplies from the co-operative.<sup>14</sup>

The co-operatives are quashed from the National Registry for several reasons provided for in the Ministerial Decision no 2062/132509/25.11.2016, e.g., if they do not submit annual accounts for 3 years or if they are wound up and liquidated.

Supervision of co-operatives is exercised by the Ministry of Rural Development and Food through the Directorate of Financial Controls and Inspection, which is, as said above, the Authority. The supervision concerns a wide range of matters, which may be categorized in decisions of the co-operatives (via their statutory organs) and law-compliance of the co-operatives. Within the first category one may include a) the proper functioning of the co-operatives, b) the legality of acts, c) the statutes, and d) the decisions of the GAs. As to the second category, there is the supervision on a) the correct application of the provisions of the law, b) the correct application of the provisions of the statutes, c) the correct application of the provisions of the decisions of the governing bodies, d) the keeping of the register and their evaluation through it, e) the verification of the accuracy and truth of the financial statements and generally of the books and data held by the co-operatives, f) the verification of

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<sup>14</sup> The remaining information and documents to be submitted annually, such as number of members, nominal value of the shares, attendance of educational seminars by the members, etc., are described in Ministerial Decision no 2062/132509/25.11.2016.

the payment of the value of the members' shares or other overdue financial obligations of the members. Within the supervisory context falls the proper assistance of the co-operatives function, though one may say that the assistance has nothing to do with supervision.

## **6. Members**

Any natural person involved in any sector or activity of rural economy, whose interests may be served by the co-operative's business, and who wishes to use the co-operative's services, may become member of the co-operative. The candidate member should have legal capacity. The statutes may provide for the acquisition of membership by another co-operative or a legal person under the condition that its activity will be solely rural and will use the co-operatives' services (art. 6§1). It goes without saying that the sector or the activities of the candidate member will be supplementary to those of the co-operative. The law provides that the statutes will define the percentage of the shares held by legal persons-members. I presume that by "percentage" the wording means how many legal persons may become members compared to natural persons, since in co-operatives, where the "one person – one vote" rule stands, the word percentage makes no meaning as it is in Société Anonyme.

The candidate member must apply in writing for admission in the co-operative. The application is filed with the BoD. The BoD will accept or reject the application at its first meeting after the application explaining the grounds of its decision. In case of rejection, the applicant may appeal to the GA, which is the final judge.<sup>15</sup> If the application is accepted either by the BoD or the GA, the applicant acquires membership at the date of the decision of acceptance under the condition that it will pay up the proportion of the compulsory co-operative share provided by the statutes. No new members are accepted three months before the date of election of the members of BoD and the Supervisory Board (SB).<sup>16</sup>

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<sup>15</sup> The founding members acquire the membership after the registration of the statutes in the local Registry under the condition that they will have paid up the provided by the statutes proportion of the co-operative share.

<sup>16</sup> The prohibition of entrance of new members is a unique provision not to be met in legislation for other entities. It echoes perceptions, actually obsessions, not suitable to the co-operative institution and is a telling example of the failure of co-operatives in Greece. The legislator fears that the entrance of new members before the election may "influence" the outcome with the result that the co-operative will be politically controlled (as if a co-operative is a party or a union and not a commercial enterprise serving the interests of its members).

The members fulfill the conditions and undertake to accept the statutes and the rights and obligations described therein without reservation (art. 8). A member may participate in the GA, elect and be elected for the BoD and the SB, participate in the distribution of the annual surplus, if any, participate in the activities and transactions of the co-operative (e.g., offering its labour<sup>17</sup>) and attend co-operative courses and seminars financed by the co-operative. Furthermore, a member should be informed on its rights and obligations<sup>18</sup>, the evolution of the co-operative business and the economic viability of the co-operative and receive copies of the statutes, the internal by-laws (if any), and the decisions of the governing bodies, the books and the annual accounts of the co-operative. The way to enact such rights is described in the law, the statutes and the decisions of the governing bodies.

The member should pay up the remaining proportion of its compulsory co-operative share within one year of registration (unless the statutes provide for a lesser period) and must refrain from activities competing the co-operative (e.g. owner of an olive oil plant being the same time member of an olive oil co-operative) or actions harming the co-operative (e.g., prevent or avert others from becoming members, defame the co-operative).

The member's main obligation is to deliver at least 80% of its crop to the co-operative (the statutes may provide for a bigger percentage) and purchase its supplies (both for its business and its household) from the co-operative at a percentage provided for by the statutes.<sup>19</sup> Such obligations are reflecting the legislator's concern to secure the largest possible business between the co-operative and its members. My opinion is that such provisions are unnecessary (if not harmful). Each co-operative should be left alone to regulate the volume of its business with its members at their own best interest. A legislative intervention is obsolete. The said issues are within the entrepreneurial sphere only and, furthermore, if the members themselves are not in a position to take care of their own interest and do not comprehend the value of co-operation, no legislation may rectify this fact.

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<sup>17</sup> The labour offered by a member is not considered a private labour contract and its value is transferred to the annual surplus distributed to the members.

<sup>18</sup> I guess that such rights and obligations are created during the function of the co-operative, since the member knows and accepts the rights and obligations included in the statutes.

<sup>19</sup> The member is exempted by such obligations, if it is unable to fulfill them for objective and serious reasons or before its entrance it is contractually binded to deliver products to third persons or the co-operative is not in a position to absorb the offered quantity. For this, it needs a decision by the GA with a qualified quorum and majority.

The members are liable for co-operative debts to a certain extent. The extent is defined by the statutes and may be equal to the sum of the compulsory share or a multiple of such sum (art. 10). Therefore, a creditor may sue the co-operative for the whole of the debt and its members up to the extent of their liability and not for the whole of the debt. A member is bound by all the obligations towards third parties which were incumbent upon him even after its resignation, if such obligations were created during its membership or were undertaken at its entrance. Creditors' claims are limited to a five-year period beginning at the final day of the year they were born. For instance, claims born whenever within 2017 are claimable till 31/12/2022. There are different periods in case of winding up or bankruptcy of the co-operative. The claims are limited to a one-year period after the conclusion of the bankruptcy or liquidation. Therefore, any legal action is to be exercised within the above periods. A member cannot be incarcerated for co-operative debts to creditors or public bodies (e.g, public insurance organizations).

On the other hand, the co-operative is not liable for debts of its members. Therefore, members' creditors are not able to proceed to execution measures against the property of the co-operative, the surpluses or the shares (compulsory and optional) as well as seize the shares, the produce delivered to the co-operative, the member's income from such transaction and any loan received by the co-operative on behalf of the members.

Article 7 regulates the voluntary (resignation) and involuntary (expulsion) exit of a member. Generally, a member may leave the co-operative whenever after a timely written notification addressed to the BoD. Loss of membership shall entitle the member to repayment of the capital he has subscribed at the nominal value of his shares. The co-operative must pay the relevant sum within one year from the date of the member's exit. The statutes, nevertheless, may provide for a specific period of compulsory stay of a member. Such practice is common for newly established co-operatives in order to avoid the "free riders" phenomenon.

A member may be expelled after a reasoned decision of the BoD. The reasons of expulsion are described in the statutes. Law 4384/2016 states that a member shall be expelled, if he does not deliver the specified percentage of produce to or does not purchase the specified percentage of supplies from the co-operative. The member to be expelled may appeal to the GA, which is the final judge after a secret ballot. It goes without saying that the expelled member may find recourse to the competent Court (Magistrates' Court) against the expulsion decision.

The law provides that persons who do not expect to use the co-operative's services may be admitted as investor (non-user) members. Such members may be natural or legal persons. The details of such membership, such as entry and exit, rights and obligations, is clarified by the statutes. Investor-members will acquire optional co-operative shares, which will serve as an additional cash flow for the co-operative. They may contribute to the advancement of the objects of the co-operative, however they have no obligation to do business with the co-operative.<sup>20</sup>

## 7. Governance

In co-operatives having more than 30 members, the governing bodies are three: the General Assembly, the Board of Directors and the Supervisory Board (SB). If the members are less than 30, there is no need to elect an SB, unless the statutes provide otherwise.<sup>21</sup>

The governing bodies have different and distinct competences as follows:

**A) General Assembly:** It is the supreme governing body of the co-operative. Each member has one vote irrespective of the number of shares held.<sup>22</sup> All members participate in the GA and are entitled to vote under the condition they do not have pending financial obligations with the co-operative.

The GA decides on any issue, unless it is specifically provided for that another body is competent to decide. One may say that the GA has a general competence, while the other governing bodies have conferred competences. The law (art. 12§2) provides for specific exclusive competence of the GA on several matters, such as: i. Statutes amendments, ii. amalgamation, extension of duration, winding-up and re-establishment of co-operative, iii. election and recall of the members of the BoD, iv. approval of annual accounts and

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<sup>20</sup> Nevertheless if an investor member has transactions with the co-operative, the financial output of such transactions are categorised as surpluses and not as profits, see below under "Economic management".

<sup>21</sup> The choice between one-tier and two-tier system of corporate governance should be left to the exclusive discretion of the co-operative as is in the SCE Regulation 1435/2003.

<sup>22</sup> The provision is wrong. The legislator should follow the internationally accepted practice that the statutes may allow members to have more than one vote, especially in cases where the co-operative does not consist of natural persons only. The statutes should, in that event, lay down the circumstances in which a member may have more than one vote mainly depending on the measure to which the member takes part in the co-operative's activities. The statutes could also lay down limits on the number of votes which may be cast by a single member to ensure that no member personally controls more than a tenth (or another proportion) of the votes of each GA.



allocation of the annual surplus, v. change of share's nominal value, vi. additional members' financial contribution, vii. approval of business plan and the relevant budget, viii. approval of internal by-laws, ix. decision to form producers' group, x. appointment of auditors as well as any other matter provided for in the law or the statutes. The GA may delegate decision-making on internal by-laws and formation of producers' group to the BoD.

A GA may be ordinary or extraordinary. An ordinary GA shall be held once a year, not later than six months after the end of the co-operative's financial year. The BoD will convene an extraordinary GA either for reasons specified in law or the statutes, or when it is necessary for the interest of the co-operative, or at the request of the SB, or at the request of the 1/5 of the members. If the BoD fails to convene the extraordinary GA within 20 days after the request, the said minority of members or the SB will convene the GA themselves. Whenever there is an issue concerning a modification of the co-operative objects, or amalgamation with another co-operative, or winding-up the co-operative, the BoD is bound to convene an extraordinary GA. The detailed rules governing the procedure of convention and conduct of the GA will be laid down in the statutes. As seen above, there is a secret ballot for specific items of the agenda, e.g., expulsion of a member, election of the BoD.

Where a co-operative has more than 500 members, the statutes may provide for the holding of sectional meetings before the GA is held. These meetings shall elect delegates, who shall in their turn be convened as GA. The statutes shall lay down the precise number of delegates, their duties and the way of their potential recall (art. 12§7). The GA will be formed by at least 400 delegates. In case of a co-operative with sectional meetings, the 1/20 of its members are entitled to request the BoD to convene an extraordinary GA for important issues concerning a reduction of volume of co-operative business or the financial standing of the co-operative.

A legal quorum exists, if more than half of the vote-holding members are present or represented.<sup>23</sup> If there is no such quorum at the firstly convened GA, then there will be another GA without convention next week (same place, same time, same agenda), where there will be a legal quorum regardless of the number of members present or represented. A vote cast by the absolute

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<sup>23</sup> Article 12§1 provides that the members participate in GA **in person**. Furthermore, article 14§1 provides that the GA decides on all agenda items with the absolute majority of the **present** members. These words are contradictory to the wording of article 13 on quorum for represented members. One may assume that the former wording is of no importance and members entitled to vote shall be entitled to appoint a proxy to represent them. It is self evident that the statutes will lay down the procedures of proxy voting at the GA.

majority of the members present or represented (50% plus one vote) is a legal majority. In certain items of the agenda, however, a special (statutory) quorum and majority is needed, that is we need 2/3 of the members at the firstly convened and 1/2 at the repetitive GA for a legal quorum and a 2/3 of the votes cast for a legal majority. Such items are, for instance, modification of the co-operative objects, or amalgamation with another co-operative, or winding-up the co-operative, or amendment of the statutes. The statutes may provide other issues to be resolved with a special quorum and majority.

Resolutions of the GA may be declared void on the grounds that they infringe the law or the statutes (art. 15). An action for such a declaration may be brought by any member of the co-operative, the Authority, or any other person, provided he can show that he has an interest in having the infringed provision observed within 30 days before the Magistrates Court due to the rules of voluntary jurisdiction (*εκούσια δικαιοδοσία*). The court's decision is subject to appeal.

**B) Board of Directors:** The BoD is elected by the GA with secret ballot. All members entitled are voting, and all members may be elected at an office of the BoD (with the exception of investor members). The number of members in the BoD is provided for in the statutes, it is varying, and it is always even and not less than 3. The duration of the office is defined by the statutes; however it lasts from 3 to 5 years (art. 16). If there are more than 20 employees in the co-operative, one of them is participating in the BoD as their representative voting only for employees' issues. There is no remuneration for the directors, however the statutes may provide for travel, accommodation and daily expenses, if they travel for co-operative interests out of the borough of the seat of co-operative. The statutes provide for the competences of the BoD, however, in case of any doubt, the BoD collectively represents the co-operative judicially and extrajudicially. All members are obliged to attend lectures on the basic co-operative education (principles, function, et.c.) within the first 6 months of their term. In case of denial or deferment, they are replaced. The directors are during their office personally liable and for the total amount for any damage they have caused to the co-operative with fraud or gross negligence.

The elections for the members of the BoD (art.17) are directed by an election committee comprised by members of the co-operative and a lawyer (acting as head of the committee) appointed by the local bar of the registered office of the co-operative (a lawyer is not needed, if the members are less than 30, unless the statutes provide otherwise). There is a compulsory quota of women candidate for the office of the member of the BoD respective to the number of

female members of the co-operative. For instance, if there are 100 women being members of a co-operative of 500 members (20%) and the number of directors are 9, there must be at least 2 female candidates for the BoD.<sup>24</sup> The election is by secret ballot and with a single ballot paper. The number of votes in each ballot paper may not exceed the 1/3 of the total number of candidates. Those who receive the most votes are elected and in the event of a tie, a draw is made. Finally, the law provides for several non-eligibility criteria, such as final conviction (for any sentence or penalty) for theft, embezzlement, fraud, extortion, perjury, forgery, bribery, et.c.). The statutes provides for all further procedural issues as regards the election of the BoD.

The BoD at its first convention (following its election) assembles as a body as provided for in the statutes. The BoD convenes and meets once a month and there is a quorum, when the present members are more than the absent, nevertheless there is no legal quorum if the present members are less than 3. It decides with the absolute majority of its present members. If the statutes provides so, the convention and meeting is possible through teleconference. A member of the BoD may not cast a vote for issues concerning himself, his spouse or relatives of second degree either by blood or by affinity.

The head of the BoD may be elected for only two consecutive services, which means after this he may serve as a simple member of the BoD or at another office within the BoD (e.g., secretary). If the turnover of the co-operative exceeds 10.000.000 euros, the head of the BoD may receive pecuniary remuneration (if the GA decides so).

**C) Supervisory Board:** What was said above for the BoD as regards the election, quorum, majority, members' liability, remuneration, education and non-eligibility criteria is valid as well for the SB with the following differences:

- 1) No employee representative participates in the SB.
- 2) The SB does not represent the co-operative judicially and extrajudicially.
- 3) There is no specific provision for the convention of the SB or its frequency; therefore the statutes may provide for such details.

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<sup>24</sup> Both the presence of a lawyer (not to mention as head of the committee) and the quota of female candidates are unnecessary legislative interventions in purely internal organisational co-operative matters. Such provisions are not met in other entrepreneurial entities; therefore one may conclude that the legislator adopts a patronising attitude towards rural co-operatives. Let us think for a moment that no woman member wishes to be involved in co-operative direction issues. What will happen with the ballot? The provision stays silent in such a case.

The SB's task is to check and control the BoD's actions as well as to secure that it abides by the provisions of law, statutes and resolutions of the GA. It has the right (and the obligation) to receive and be informed on any book, document or account of the co-operative and supervise its course of affairs. It may submit proposals to the BoD for the amelioration of the co-operatives' economic affairs and its development and suggest co-operative educational programmes for the officers and the members. If the SB becomes aware of any violation of law, the statutes or the resolutions of the GA, it submits a written report, informs the BoD and indicates remedies to rectify the situation. If it considers that the said violations are of significance and may harm and jeopardise the co-operatives' interests, the SB convenes the GA and informs the Authority submitting a written report.

No person may be member of the BoD and the SB at the same time. Members of the BoD and the SB may not be relatives of first degree either by blood or by affinity.

**D) Manager:** The statutes may provide that the BoD's may appoint (contractually) a general manager or manager and delegate part or the whole of the BoD's powers and competences (with the exception of those which, according to law or the statutes, demand collective action) along with the direction and management of the co-operative's affairs. The BoD publishes (in a daily newspaper of the borough of the place of registered office and the internet site of the co-operative, if any) an invitation for the expression of interest for the office of manager and elects the most suitable candidate. Following that, the BoD specifies his rights, obligations and tasks. The appointment of a manager is compulsory, if the co-operative has a 1.000.000 euros turnover.

## 8. Shares

The co-operative capital is formed by co-operative shares. A co-operative share is the minimum amount of money that a member must contribute to the co-operative capital. Each member is obliged to cover one co-operative share (compulsory share). The law abolished the ability of covering more than one compulsory share, as provided in previous laws.<sup>25</sup> The amount and the payment

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<sup>25</sup> The abolition of the ability to acquire more than one compulsory shares is one more legislative error. Additional compulsory shares are a method of additional cash flow for co-operatives injected by the members in order to avoid further exposure to banks. The acquirement of such additional shares is usually related to the volume of business between the co-operative and the member. Members acquiring additional shares may have more votes in the GA (usually up to 3 or 5). Such practices are internationally common in co-

conditions of the share are regulated by article 9 and the statutes. More specifically, at least the first half of the nominal amount of the compulsory share is paid at the date of registration of the member with the co-operative. The remainder is paid at least within one year from the registration date, unless the statutes provide for a shorter period. The share is indivisible and equal for all members. The share value changes only with a resolution of the GA and amendment of the statutes.

The statutes may include terms and conditions for the acquirement of more shares (optional shares) not bearing voting rights. Members or investor members (if any) may acquire optional shares. It goes without saying that optional shares will offer specific advantages to their holders, such as interest, dividends or other provided for in the statutes (one may say that optional shares are similar to preferential shares of a *société anonyme*).

In several cases, transfer of shares is prohibited; therefore when a member leaves the co-operative for any reason, the share or shares held are paid back at their nominal value to the member or the member's successors, in case of death, after an application filed within one year from the date of death. This means that the co-operative capital is volatile depending on the number of members.

The statutes allow the transfer of co-operative shares under the condition that the transferee fulfills the requirements to become a member himself and only after a decision of the BoD. In case a member deceases, the successor may apply to succeed the deceased as a member, only if he fulfills the requirements to become a member himself. If there are more successors, they may indicate by written agreement one of them to succeed the deceased as a member, if he fulfills the requirements to become a member himself. Given the complicate procedure, one may assume that the most possible provision of the statutes will be the ability to transfer the optional shares and the prohibition to transfer the compulsory shares.

## **9. Audit**

As article 21 provides, the financial, accounting and auditing control of the annual financial accounts of a co-operative and, where applicable, the annual consolidated financial accounts is delivered annually. The control is

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operatives, nevertheless the Greek legislator deprives co-operatives from such opportunities.

undertaken by at least one statutory auditor or auditing firm<sup>26</sup>, only if the co-operative has more than 50 members and an annual turnover more than 50.000 euros. As regards the other co-operatives, they are controlled by one (at least) auditor, who is licensed to exercise the economic profession.<sup>27</sup> Moreover, co-operatives with less than 50 members and annual turnover of up to 50.000 euros may submit their annual financial statements to a statutory auditing every 3 consecutive financial years cumulatively.

The auditors and an equal number of substitutes are appointed by the previous regular GA of the co-operative, with the exception of the auditors of the first financial year, who are appointed by the statutes. The remuneration of the auditors is determined either by the appointing GA or the statutes. The auditors may be re-appointed for up to 5 consecutive financial years. No members and employees of the co-operative-to-be-audited or their relatives by blood or by marriage up to the second degree may be appointed as auditors.

The co-operative (through its competent bodies) has the obligation to make available to the auditors the appropriate premises, all the accounting records, documents and accounts and provide any other data and information that the auditors may need in order to carry out their tasks. Besides their standard tasks, the auditors shall especially verify the legality of the decisions and acts of the management bodies of the co-operative, the accounting orderliness and, in particular, whether the principles and rules of the accounting science have been respected, the financial standing of the co-operative, as reflected in the audit of the annual financial statements and the management report of the BoD and the management orderliness, as far as the legality of the expenditure is concerned. Such audit is primarily targeting to identify on the one hand any potential irregularities, misconduct, embezzlement or other offenses committed, and on the other hand to identify the persons responsible for such offences. If the audit finds evidence that actions punishable, according to Penal Code or special criminal laws, have been committed, the auditors are

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<sup>26</sup> Law 3693/2008, article 3, paras 1, 2 provide that the right to carry out statutory audits have statutory auditors or auditing firms licensed to practice (professional license). The competent authority for the granting of professional leave to statutory auditors and audit firms is HAASOB (ELTE). HAASOB is the national supervisory body for the auditing-accounting profession. It is the appropriate body to establish and supervise correct and effective implementation of accounting and auditing standards. Its mission is to constantly enhance the trust of investors in the operation of the auditing and accounting institution in Greece. Its objectives are to secure the auditing services' quality and enhance financial information reliability and transparency.

<sup>27</sup> Presidential Decree 475/1991, article 2 provides that membership in the Economic Chambers of Greece is the requirement for authorization of an economic profession.

required to submit their findings to the relevant Prosecution Authority within 10 days and notify the Authority of the above submission.

The auditors are required to submit their audit report together with all relevant necessary information to the BoD of the co-operative not later than 30 days prior to the GA. They have also to submit a copy to the Authority. The report must describe the course of the economic situation of the co-operative within the scope of its statutory activities and its annual action programmes. The BoD is obliged to communicate the report to the members of the first GA to be convened after the audit. Furthermore, the BoD invites in writing the auditors at least 5 days before the GA in order to attend its session. The auditors are required to attend the GA and provide any information or clarification requested by the GA.

The auditors may request the BoD to convene an extraordinary GA. Their request includes the agenda items to be discussed. Following that, the BoD shall obligatorily convene the GA within one month from the submission of the application, with the agenda items mentioned in the application.

## **10. Economic management**

Articles 22 and 23 are the relevant provisions for financial and accounting issues of co-operatives. More specifically:

The fiscal year may not include more than twelve months. At its end, a) the accounting records of the co-operative are closed, b) the inventory of its assets is drawn up and c) the annual financial statements are prepared according to the provisions of Law 4308/2014.<sup>28</sup> The statements are submitted to the annual GA by the BoD together with the auditors' report and the management report of the BoD for the concluded year. Furthermore, the BoD has to draw up an action and development plan for the co-operative for the next year. The plan shall be accompanied by a revenue and expenditure budget and is submitted for approval by the GA.

The co-operative has the obligation to publish annually its financial statements on the co-operative's website, if available, as well as on the website of the Ministry of Rural Development and Food no later than twenty days before the date of the convention of the annual GA, which shall approve them.

At the end of the year, all expenses, losses, depreciation of assets and interest on the optional shares are deducted from the gross revenues of the co-

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<sup>28</sup> On the Greek Accounting Standards.

operative. What remains is the balance of the financial year. The balance includes surpluses and profits.

A) *Surpluses*: The surpluses come from the co-operative's transactions with its members and with any members – investors, who did business with the co-operative. 10% of the annual surplus is reserved to form a regular reserve. This retention ceases to be mandatory, when the statutory reserve reaches the total amount of the mandatory shares of the co-operatives. The retention is repeated, if the statutory reserve lags behind the total amount of the members' mandatory shares. The statutes may provide for a higher percentage of retention. The part of surpluses withheld for the statutory reserve is considered as an equal money contribution of the members.

After the above retention, the remaining surplus is available for:

- a) Return to members, depending on their transactions with the co-operative.
- b) Developing the co-operative.
- c) Supporting social activities and implementing sustainable development actions in the community where the co-operative operates, at a rate determined by the statutes.
- d) Education and training of the co-operative members, in which case there must be at least 2% of the remaining surpluses.

If the statutes provides for the participation of the optional shares in the surpluses (e.g., in the form of a remuneration for the acquirement of optional shares), such amounts shall be deducted before any other use of the surpluses.

If the GA decides so, the amounts to be returned to the members from the remaining surpluses may remain in the co-operative's treasury as individualized interest-bearing deposits by the members. The interest rate paid in this case shall be determined by the GA and shall not exceed the borrowing rate offered by the banks to the co-operative.

B) *Profits*: The over-the-counter balance, after the surpluses are deducted, is assumed to be a profit. Profits come from transactions with non-members. More specifically, the co-operative, by decision of its GA, may provide its services to non-members of the co-operative, which do not hold optional shares. The volume of transactions of the co-operative with non-members in relation to its members is determined by the statutes. The terms and conditions for the purchase of non-members' products by the co-operative or



the disposal of inputs to them may not be more favourable than the respective terms and conditions of the transactions with its members.

The total of profits (tax reserved) go to the statutory reserve<sup>29</sup>, unless part of the profits are made available (by decision of the GA) to support social activities and implement sustainable development actions in the community where the co-operative operates.

Since the surpluses go to the statutory reserve or the members, separate accounts are kept for the formation of surpluses and profits for tax purposes.

## **11. Books and records**

Co-operatives keep the accounting records and the accounting documents provided for in Law 4308/2014<sup>30</sup> and, furthermore, the following books (certified and sealed by the Magistrates Court of their seat):

- a) Registry of members.
- b) Minutes of their governing bodies.
- c) Any other book provided for in the statutes.

## **12. Rural collective organisations**

The law provides for other shapes of rural co-operation at a more collective basis besides rural co-operatives, which are organised at a primary level. Those organisations are regulated by article 31 and are the Sectoral Rural Co-operatives (SRC) and the Sectoral National Rural Co-operatives (SNRC).

An SRC may be formed by two or more co-operatives with an activity related to a product or a group of similar products, for instance olive-oil or citrus fruits. An SNRC may be formed after an initiative of at least 2/3 of the co-operatives with an activity related to a product or a group of similar products, that is a SNRC may be formed at a national level for a specific product or group of products. Rural Partnership Associations<sup>31</sup> may as well become members of SRCs and SNRCs, provided that their members are exclusively co-operatives.

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<sup>29</sup> Other financial resources going in the statutory reserve come from donations or any other revenue not otherwise allocated by the statutes.

<sup>30</sup> On the Greek Accounting Standards.

<sup>31</sup> Rural Partnership Associations are joint-stock companies formed as *sociétés anonymes*. They operate in any branch of the rural economy, and their shareholders must be either co-

The objectives of SRCs and SNRCs include the co-ordination of the work of their members, the expansion of their activities at national and international level and the undertaking of large-scale economic activities. In order to fulfill their objective, SRCs and SNRCs collaborate with co-operatives on issues regarding financing, marketing, export and import, marketing and manufacturing-standardization, education and training, financial accounting, legal and technical assistance, as well as on issues of social interest, such as research, environmental protection or development of communities in which their members are active. The activities of SRCs and SNRCs are complementary and not competitive to the activities of co-operatives.

As for the establishment of SRCs and SNRCs, the procedure followed is the same as in the case of co-operatives described above. Supervision and control of SRCs and SNRCs is exercised by the Authority. SRCs and SNRCs must be registered in the National Registry, the digital database kept at the Authority and are supervised accordingly by the Authority. The statutes of the SRCs and SNRCs determine all matters relating to their operation, in accordance with the provisions of the co-operative law.

### **13. State relations**

Under the title “Relations between Co-operatives and State”, articles 29 and 30 refer to several beneficial measures aiming to assist co-operatives. The rationale of such measures lie in the *sui generis* nature of co-operatives and the fact that they are formed by weak economic units that use the entrepreneurial vehicle of co-operative in order to ameliorate their living conditions. The beneficial measures have the form of financial aids, tax exemptions and other incentives. Before we go on with the description of the measures, one should point out that such preferential treatment is not shown to co-operatives only. There are from time to time incentives for other entrepreneurial vehicles, such as *sociétés anonymes*, in order to encourage investments in Greek economy.

Article 29 provides for the content of the measures and article 30 provides for the beneficiaries of the measures. More specifically:

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operatives or co-operatives and other RPAs. Their shares are always registered. In every case of transfer of shares, pre-emptive rights are granted to existing shareholders, co-operatives and RPAs. No shareholder may acquire more than 20% of the total number of shares in the RPA, unless the shareholders are fewer than five, in which case a shareholder can acquire up to 50% of the total number of shares in the RPA.

A) Members' contributions to co-operatives are not subject to tax or stamp duty or any other charge in favor of third parties.

By "contributions" we mean the compulsory shares of the members. We remind that the statutes may include terms and conditions for the acquirement of optional shares not bearing voting rights by members or investor-members. Members' optional shares fall definitely within the "charge exemption", while the same should be valid for the optional shares purchased by investor – non users – members, though the wording "members" is not very helpful. Nevertheless, the true interpretation of the word "members" must include all kinds of co-operatives' members, as is suggested from the (c) paragraph.

b) Whenever a co-operative acts as an intermediary for insurance contracts, either drawn up for first time or renewed, the statutory commission is paid to it.

c) Any surpluses of the annual turnover that are distributed to members and members-investors are subject only to income tax, irrespective of whether they were paid back to the members or are retained as individual deposits to co-operatives' treasury.

We remind that the surpluses come from the co-operative's transactions with its members and with members – investors.

d) Co-operatives may be included in the every-time applicable development laws.

This is a measure, which seems self-evident, since it makes sense only if and when co-operatives are explicitly excluded from such laws, which was never the case.

e) Co-operatives that are merged<sup>32</sup> are exempt from any tax, fee, stamp duty, parafiscal charge, land registry rights, fund rights, proportional rights of notaries and any other exemption provided for in this case in Codified Law 2190/1920<sup>33</sup>, Presidential Decree 1297/1972<sup>34</sup> and Law 2166/1993<sup>35</sup>, provided that the conditions for the exemptions are met.

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<sup>32</sup> According to article 24, two or more co-operatives may be merged either by setting up a new co-operative in which the merged co-operatives are incorporated or by the absorption of one or more existing co-operatives by another one already operating. The merger takes place, only if the co-operative resulting from the merger has a positive financial position.

<sup>33</sup> On *Société Anonyme*.

Furthermore, registrations in the Land Registries are free, while the transfer or assignment of a property right on a real estate in which an unlawful construction has been carried out or an unlawful change of use is permitted, regardless of the general prohibition of such transactions.<sup>36</sup>

f) Additional incentives for the merger and development of co-operatives may be established by a Common Decision of the Ministers of Economy, Development and Tourism, Finance and Rural Development and Food. Such incentives may relate to investments, co-operative development, recruitment and training of staff, eligibility for project assignments and encouragement of initiatives and activities for the benefit of their members. Terms and conditions for inclusion of co-operatives to the above incentives shall be defined in the same or similar ministerial decisions.

g) Any legislation granting facilitation or relief or exemptions from taxes, stamp duty or other public charges, or contributions or rights in favour of any third person for the merger of enterprises shall also apply *mutatis mutandis* to co-operatives, provided that they meet the conditions laid down in the relevant legislation.

h) All provisions establishing incentives or exemptions of economic, fiscal or other beneficial nature for the conversion of commercial companies into commercial companies of another legal type shall apply under the same conditions and for the conversion of Compulsory Co-operatives and their Unions.<sup>37</sup>

Article 30 provides that the beneficiaries of the above financial aid, tax exemptions and incentives are all co-operatives and the Rural Partnership Associations found in the National Registry. They enjoy any financial aid, tax exemptions and incentives, they take advantage of any relevant development laws and EU programmes, and have right of access to all development

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<sup>34</sup> On the provision of tax incentives for the merger or conversion of enterprises to form large economic units.

<sup>35</sup> On incentives for business development, arrangements for indirect and direct taxation and other provisions.

<sup>36</sup> Such general prohibition is found in Law 4178/2013, article 1, par. 1.

<sup>37</sup> In Greece there are co-operatives formed in a compulsory nature, that is all farmers are obliged to be members of a co-operative without being able to form another co-operative or not being members at all. Such legislation was a clear violation of the first co-operative principle (free and voluntary participation – open door principle. Pursuant to Article 32 of the new Law 4384/2016, such compulsory co-operatives may be converted to co-operatives and any member may leave after receiving the sum responding to its co-operative share.

programmes, which are launched by or on behalf of the Greek State and are funded by national and EU funds.

#### **14. Bankruptcy, winding-up, liquidation**

A) *Bankruptcy*: Article 25 regulates the event when a co-operative goes bankrupt. The Bankruptcy Code applies as a supplement, if article 25 is silent. A co-operative is declared bankrupt, if there is a full and continuous suspension of payment of its debts. The bankruptcy is declared by the Court of First Instance of the place of the registered office of the co-operative after a petition by any creditor, the BoD or the liquidator. After being declared bankrupt, the co-operative winds up. The bankruptcy of the co-operative does not mean the simultaneous bankruptcy of its members.

B) *Winding up*: The co-operative is dissolved, a) if its duration expired (unless the GA decides its extension), b) if the GA decides so with a statutory quorum and majority, c) if, as seen above, it goes bankrupt, and d) if the Magistrates Court of the place of the registered office decides so in the following cases: aa) After a petition of any person bearing a legal interest claiming that the co-operative has no activities, therefore it has abandoned its object and bb) after a petition of the Authority claiming i) that the co-operative has not submitted to the National Registry three successive annual financial accounts approved by the GA and ii) that the co-operative was deleted from the National Registry. In case that the co-operative was wound up due to expiration of duration, it may revive after a resolution of the GA (art. 26).

C) *Liquidation*: With the exception of bankruptcy, winding-up is followed by liquidation. Article 27 regulates the event of liquidation and the Civil Code provisions for judicial inheritance liquidation (arts 1913-1922) apply as a supplement, if article 27 is silent. The legal personality of the co-operative exists till the conclusion of liquidation. The GA preserves its duties and functions during the liquidation period exclusively for the needs of liquidation procedure. The GA appoints one or more liquidators, unless the co-operative was wound up after a decision of the Magistrates Court in which case the Court appoints the liquidator(s). The liquidator(s) is imbued with the powers of the BoD, which ceases to act. The liquidator(s) may not be prosecuted, or incarcerated, nor bears any liability for co-operative debts to the State or Social Insurance Services. Persons who have served as directors or managers or employees of the co-operative cannot be appointed as liquidators.

The liquidator publishes<sup>38</sup> within one month since his appointment an invitation to the co-operative's creditors calling them to declare their claims against the co-operative. At the same time, the liquidator sends the invitation to the Authority in order to be registered with the National Registry. The invitation is very important, because its date is the date of commencement of legal temporal limitation of claims. Creditors' claims against the under-liquidation-co-operative are limited to a three-year period. Therefore, any legal action is to be exercised within the above period.

After the publication, the liquidator makes a full record of the co-operative estate and draws up a balance sheet within one year of its winding-up. If the liquidation lasts more than one year, the liquidator draws up a balance sheet for each year as well as a final balance sheet at the conclusion of the liquidation procedure. The liquidation procedure may last for five years. If it exceeds that period, the liquidator convenes the GA and submits a plan of acceleration and conclusion of the liquidation procedure to be approved by the GA. If the GA approves the plan, the liquidation procedure is concluded according to the prescribed plan. If not, the liquidator or the 1/3 of the co-operative's members may ask the Magistrates Court to approve the plan. The court has the right to amend the submitted plan but not put additional actions not included in the plan.

The liquidator is legally obliged to conclude without delay the pending co-operative affairs, turn into money the co-operative estate, pay up its debts and collect the co-operative claims against its debtors. The liquidator may get to new business activities only if this is for the benefit of the co-operative under liquidation. The cooperative's real estate may be sold only after the expiration of a four-month period since its winding up. Any creditor or member of the co-operative may ask the Magistrates Court to set a minimum sale price for the real estate and the court's decision is binding for the liquidator.

The liquidator pays up the co-operative debts from the liquidation assets. He pays the creditors according to articles 975-978 and 1007 of the Civil Procedure Code. Very briefly, the order of payment is as follows: 65% of the money are paid to secured (pledge or mortgage) claims, 25% goes to the employees, lawyers, the State and Social Insurance Entities and the remaining 10% to unsecured claims. Holders of optional shares are repaid the nominal value of their shares and, if there is anything left, it is not distributed to the members

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<sup>38</sup> Publication is done in a daily national and a daily borough newspaper of the place of the registered office of the co-operative as well as the co-operative's internet site, if any. If there is no daily borough newspaper, the publication is done in a borough periodical newspaper.

and goes to another co-operative or to a social cause as a donation (principle of indivisible reserves or disinterested distribution).

## **References**

International Co-operative Alliance

<https://ica.coop/en/what-co-operative>

<https://ica.coop/sites/default/files/publication-files/ica-guidance-notes-en-310629900.pdf>







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