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# Liquidation of Cooperatives under Polish Law

## Abstract

Cooperatives have a rich tradition in Poland and remain an important part of the economic landscape. Cooperatives bring members together to conduct joint economic activities in their collective interest. The liquidation of primary-level cooperatives is regulated by the current Act of 16 September 1982 – Cooperative Law. The aim of this article is to analyze this institution, with particular emphasis on the legal basis, the liquidation process, and the role of the bodies involved in this process. The author argues that the legal regulation governing the liquidation of cooperatives under said law, despite its formal detail, does not meet contemporary economic security standards due to fundamental shortcomings in determining the date of commencement of liquidation, qualification requirements for liquidators, and the status of cooperative bodies during liquidation proceedings. These legal gaps lead to interpretive uncertainty, risks to creditors' rights and the ineffectiveness of liquidation procedures, which requires a comprehensive amendment to align cooperative liquidation rules with those applicable to commercial companies.

**Keywords:** cooperative law, liquidation of cooperatives, National Cooperative Council

## Introduction

Cooperatives in Poland have a rich tradition dating back to the nineteenth century and remain an important part of the economic landscape. Cooperatives bring together members to conduct joint economic activity in

their collective interest. They are one of the basic organizational and legal forms of conducting economic activity in the Polish legal system.

The institution of cooperative liquidation has been an integral part of Polish cooperative law since its codification in 1920. The first comprehensive regulation in this area was set out in the Act of 29 October 1920 on Cooperatives, in which the legislator devoted Section II, Chapter 11, comprising Articles 85–106, to this matter.[1] The next stage in the development of cooperative legislation was the Act of 17 February 1961 on Cooperatives and Their Unions, which regulated liquidation in Part I, Title I, Chapter IX, Articles 72–86.[2] The current legal framework is defined by the Act of 16 September 1982 – Cooperative Law, which regulates in detail the issues of liquidation of cooperatives in Part I, Title I, Section XII, entitled "Liquidation of Cooperatives," covering Articles 113–129.[3]

In legal terms, the liquidation of a cooperative should be understood as a specific procedure regulated in Section XII CL and in other specific provisions. The liquidation procedure is therefore a set of factual and legal actions provided for by law, aimed at removing the cooperative from the register of entrepreneurs.[4] It should be emphasized that the subject of this analysis is the liquidation of a primary-level cooperative, regulated in Section XII CL. Due to the limited scope of this study and the differences in legal regulations, liquidation procedures relating to other entities of the cooperative movement, particularly social cooperatives or audit unions, are outside its scope. Each of these organizational forms is characterized by specific legal solutions that would require a separate analysis.

The purpose of this article is to analyze the institution of liquidation of primary-level cooperatives in the Polish legal system, with particular emphasis on the legal basis, the course of liquidation proceedings, and the role of the authorities involved. The study also aims to identify interpretive problems and regulatory gaps in the binding law and to formulate de lege ferenda proposals intended to streamline the liquidation procedure and enhance the security of economic transactions.

The author argues that the legal framework governing the liquidation of cooperatives under the CL, despite its formal detail, does not meet contemporary standards of economic transaction security due to fundamental

1 Consolidated text: Journal of Laws of 1950, No. 25, item 232, as amended.

2 Journal of Laws of 1961, No. 12, item 61.

3 Consolidated text: Journal of Laws of 2024, item 593, as amended; hereinafter: "CL."

4 Marta Stepnowska-Michaluk, *Likwidacja spółdzielni* (Sopot: Spółdzielczy Instytut Naukowy, 2009), p. 29.

shortcomings in determining the date of commencement of liquidation, the qualification requirements for liquidators, and the status of cooperative bodies during liquidation proceedings. These legal gaps lead to interpretive uncertainty, risks to creditors' rights and the ineffectiveness of liquidation procedures, which requires a comprehensive amendment to align the liquidation framework with the rules applicable to commercial companies.

The study uses a dogmatic-legal method, consisting of an analysis of the applicable provisions of the CL and related legal acts, such as the Act of 23 April 1964 – Civil Code[5] and the Act of 15 September 2000 – Commercial Companies Code.[6] The historical-legal method was also used to show the evolution of regulations concerning the liquidation of cooperatives from 1920 to the present. In addition, a comparative method was employed, contrasting cooperative liquidation with analogous procedures applicable to commercial companies, as well as a case law and literature analysis, enabling the assessment of practical problems in the application of regulations and the identification of necessary legislative changes.

## Reasons for the liquidation of cooperatives and types of liquidation

### Statutory liquidation

Under Article 113 § 1(1) and (2) CL, a cooperative enters into liquidation by operation of law: (1) upon expiry of the period for which it was established under its articles of association, or (2) when the number of members falls below the minimum specified in the articles of association or in the CL, and the cooperative fails to increase the number of members to the required majority within one year.

A cooperative is to be placed in liquidation ex lege upon expiry of the period for which it was established, provided that its articles of association expressly indicate the temporary nature of its activities. Pursuant to Article 5 § 1(2) CL, the articles of association of a cooperative must specify its duration if it was established for a fixed term.

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5 Consolidated text: Journal of Laws of 2025, item 1071; hereinafter "CC."

6 Consolidated text: Journal of Laws of 2024, item 18, as amended; hereinafter "CCC."

A cooperative is to be placed in liquidation ex lege when the number of its members falls below the threshold specified in the articles of association or in the CL, and if it fails to increase the number of members to the required minimum within one year (Article 113 § 1(2) CL).[7] This period is calculated from the date on which the number of members first fell below the required minimum. The term "permanent loss of members" should be understood as the continuous maintenance of this state during the one-year period. It does not constitute a separate, additional condition beyond the requirement that the insufficient number of members persists for one year. The cooperative is wound up by operation of law, without the need for a resolution by the general meeting or another cooperative body.[8]

It should be noted that a cooperative whose membership falls below the minimum specified in its articles of association, yet remains above the statutory minimum, may avoid liquidation by amending its articles of association accordingly. A cooperative established for a fixed term may, however, amend its articles of association before the term expires, thereby extending its duration.

It should be emphasized that the management board or the liquidator must attach to the application for the opening of liquidation proceedings documents confirming the current number of members of the cooperative and the dates on which membership ceased, to the extent necessary for the registry court to determine that the statutory conditions for liquidation under Article 113 § 1(2) CL have been met.[9]

## Voluntary liquidation

Pursuant to Article 113 § 1(3) CL, a cooperative is liquidated as a result of two unanimous resolutions of the general meetings, each adopted by a 3/4 majority, with at least a two-week interval between them.[10] This form of liquidation is known as voluntary liquidation. It is based on two principles:

7 According to the judgment of the Court of Appeal in Gdańsk of 27 March 2013, I ACa 815/12, LEX No. 1335628, in the light of Article 113 § 1(2) CL, the existence of a cooperative depends on it having the minimum number of members specified in the relevant provisions, and not on it having assets.

8 See the judgment of the Supreme Administrative Court of 15 December 2020, II FSK 1068/19, LEX No. 3150051.

9 Stepnowska-Michaluk, *Likwidacja spółdzielni,* p. 87.

10 Adam Żabski, *Komentarz dla wszystkich do ustawy Prawo spółdzielcze* (Warszawa: Wydawnictwo Spółdzielcze, 1983), p. 69.

(1) the voluntary nature of establishing and dissolving a cooperative, and (2) self-governance, understood as the members' right to decide on the most important matters of the cooperative, including its liquidation.

Voluntary liquidation is a legally defined sequence of events, the order of which is specified by the CL.[11] This sequence includes:

- two resolutions of the general meeting (or the meeting of representatives),
- consistency between both resolutions concerning the liquidation of the cooperative,
- adoption of both resolutions by a 3/4 qualified majority,
- adoption of both resolutions at two consecutive general meetings held at least two weeks apart.[12]

Voluntary liquidation carried out in this manner constitutes a unilateral legal act. All of these conditions must be met for the cooperative to enter liquidation, and failure to satisfy any of them renders the resolutions legally ineffective. The general meeting may not adopt a resolution to liquidate the cooperative without following the prescribed procedure, as this would violate the mandatory provisions of the CL.[13] It should be emphasized that voluntary liquidation cannot be replaced by a resolution of the cooperative members to suspend the cooperative's business activity for an indefinite period.

## Compulsory liquidation

Compulsory liquidation of a cooperative is a special form of terminating its legal existence, initiated not by the will of its members, but by a resolution adopted by an external supervisory body. In accordance with the applicable legal order, compulsory liquidation occurs when the cooperative is placed into liquidation by a resolution adopted by the competent audit union, duly authorized by statute. For cooperatives not affiliated with an audit union, the National Cooperative Council, which acts as their supervisory body, is empowered to adopt such a resolution.

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11 Such an accurate description of voluntary liquidation was presented by Adam Jedliński, *Członkostwo w Spółdzielczej Kasie Oszczędnościowo-Kredytowej* (Warszawa Wydawnictwo Prawnicze LexisNexis, 2002), p. 247.

12 Stepnowska-Michaluk, *Likwidacja spółdzielni*, p. 88.

13 See the judgment of the Court of Appeal in Gdańsk of 12 October 1994, I ACr 614/94, OSA 1995, vol. 2, item 7.

In Article 114 § 1(1–3) CL, the legislator specified three basic conditions which, if met, authorize the audit union to adopt a resolution to place the cooperative in liquidation. The first refers to a situation in which the cooperative's activities exhibit gross and persistent violations of the law or the provisions of its articles of association. In this provision, the legislator employed vague terms that require interpretation in light of specific factual circumstances. In cooperative law doctrine, a gross violation is understood as a serious and significant breach, typically relating to fundamental organizational matters and to the manner, subject matter, and scope of the cooperative's economic activity.[14] A persistent violation, by contrast, refers to conduct of a cooperative that is unlawful or contrary to its articles of association and that is repetitive and sustained, indicating the systemic nature of the irregularity.[15]

The second condition concerns a situation in which a cooperative was registered in violation of the law and relates closely to the fact that a cooperative, as an entrepreneur, is required to be entered in the court register under Article 7 CL. Defective registration may involve either formal deficiencies in the founding documentation and a failure to satisfy statutory requirements regarding the minimum number of founding members or the number of shares.

The third condition is met when the cooperative has not conducted business activity for at least one year, which is a statutory obligation of every cooperative under Article 1 § 1 CL, which defines a cooperative as an entity conducting joint business activity in the interest of its members.[16] Non-operation occurs when a cooperative fails to perform the activity specified in its articles of association or required under specific provisions. The list of circumstances under which an audit union may place a cooperative in liquidation is closed.[17]

A necessary condition for initiating liquidation proceedings is to demonstrate that the cooperative, despite a prior request from an authorized audit union performing supervisory functions, has not remedied the identified deficiencies within the time limit set for that purpose. Only the persistent

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14 Stepnowska-Michaluk, *Likwidacja spółdzielni*, p. 93.

15 Ibid., p. 94.

16 See Supreme Court resolution of 13 December 2000, III CZP 43/00, OSNC, No. 5, item 68; Supreme Court resolution of 21 January 2001, III CZP 44/00, OSNC 2001, No. 5, item 69.

17 Marta Stepnowska, Piotr Zakrzewski, "Ustanie spółdzielni", In *System Prawa Prywatnego, Prawo spółdzielcze* 21, edited by Krzysztof Pietrzykowski (Warszawa: C.H. Beck, 2020), p. 394.

nature of these violations and the lack of an appropriate response from the cooperative's authorities can justify the conclusion that the continuation of the entity's activities conflicts with the principles of sound cooperative management and the applicable legal order.

## Removal of a cooperative from the National Court Register without liquidation proceedings

A special provision under Article 115 CL provides for the possibility of removing a cooperative from the National Court Register (Pol. *KRS*) without conducting liquidation proceedings. The application of this provision is permissible only if two substantive legal conditions are met cumulatively: (1) the cooperative has not commenced actual economic activity within one year of its entry in the register, and (2) it possesses no assets whatsoever. The legal standing to file a request for removal is held by the audit union to which the cooperative belongs. If the cooperative is not affiliated with any audit union, the National Cooperative Council acts in its place.

The removal of a cooperative from the court register pursuant to Article 115 CL takes place without the need to conduct liquidation proceedings within the meaning of Article 113 et seq. CL. Although this legal effect is not expressly stated in the analyzed provision, a logical and systematic interpretation of Article 115 CL,[18] read in conjunction with Articles 113 and 114 CL thereof, leads to the unequivocal conclusion that the legislator intended to establish a simplified procedure dispensing with liquidation for entities that possess no assets and conduct no economic activity whatsoever.

## Specific legal grounds for the liquidation of a cooperative: absence of cooperative bodies (Article 42 CC)

The legal grounds for placing a cooperative in liquidation are also regulated outside the CL. An example is Article 42 CC. In a situation where a cooperative is unable to function due to the absence of a body authorized to represent it, the legislator has provided a remedial mechanism in the form of the appointment of a court-appointed administrator (curator) under Article 42 § 1 CC. This measure prevents the paralysis of the entity's

18 Stepnowska, Zakrzewski, "Ustanie spółdzielni", p. 395.

decision-making and operational functions. The court appoints a curator for such a legal person, who acts under the court's ongoing supervision.

The scope of application of Article 42 CC in relation to cooperatives is very narrow, as a curator may be appointed only when no cooperative body exists, resulting in an inability to manage the entity's affairs. The body authorized to manage the cooperative's affairs, in accordance with Article 48 CL, is the management board.[19]

Until the management board is appointed, the curator represents the cooperative and manages its affairs within the limits specified in the court certificate (Article 42 § 2 CC).[20] His primary and immediate duty is to take measures to appoint or supplement the composition of the representative body and, where necessary, to liquidate it (Article 42 § 3 CC).[21] If these measures prove ineffective, the administrator must instead prepare the cooperative for liquidation. However, the curator does not enjoy unrestricted authority in managing the entity's assets. Under pain of nullity, the curator must obtain authorization from the registry court for key transactions, such as the sale of a business or real estate (Article 42 § 4 CC). As a rule, a curator is appointed for a period not exceeding one year (Article $42^1$ § 1 CC). In duly justified cases, when remedial measures require more time, this period may be extended (Article $42^1$ § 1 CC). However, if the measures undertaken by the curator within the specified period do not result in the restoration of the cooperative's governing bodies or in its liquidation, the curator has another obligation: they must immediately apply to the registry court for the dissolution of the legal person (Article $42^1$ § 2 CC). This is a final measure to ensure that a dysfunctional cooperative does not remain in a state of legal limbo. This power does not preclude dissolution under separate provisions (Article $42^1$ § 2 CC).

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19 Stepnowska-Michaluk, *Likwidacja spółdzielni,* p. 101.

20 According to the judgment of the Supreme Administrative Court of 10 March 2008, II OSK 59/07, LEX No. 456325, Article 42 § 1 CC imposes on the curator the obligation to immediately take measures to appoint the bodies of a legal person and, when necessary, to liquidate it. The curator should therefore take all permissible measures to enable the legal person to function through its bodies in the manner specified in the law and in relevant statutes, in accordance with Article 38 CC. However, they are not authorized to replace these bodies in the exercise of their powers. The scope of the curator's powers is defined in Article 42 § 2 CC, which specifies measure that they are authorized to undertake.

21 As the Supreme Court correctly concluded in its judgment of 6 October 2011, V CSK 457/10, LEX No. 1027202, the powers of a cooperative administrator appointed pursuant to Article 42 § 1 CC are limited only to efforts to immediately appoint the cooperative's bodies and, when necessary, to liquidate it.

In practice, the need to appoint a court-appointed administrator pursuant to Article 42 § 1 CC will arise primarily in relation to so-called "dead cooperatives," which no longer have members serving on their governing bodies, and, moreover, have often never been re-registered in the new National Court Register from the former register of cooperatives in force before 1 January 2000, i.e. the date of the Act of 20 August 1997 on the National Court Register becoming effective.[22]

## Commencement of liquidation proceedings

An application for the commencement of liquidation, whether statutory or voluntary, is to be submitted to the registry court by the cooperative's management board or the appointed liquidator. The entity submitting the application must also provide notice to the competent audit union.[23] In relation to non-affiliated cooperatives, the functions of the audit union are performed by the National Cooperative Council (Article 259 § 3 CL[24]). In the event of non-compliance, the burden of making the notification within 14 days of becoming aware of the existence of grounds for liquidation is shifted to the indicated institutions.

The application for entry of the commencement of liquidation in the register must be accompanied by (1) the resolutions of the general meetings placing the cooperative in liquidation, (2) financial statements prepared as at the date of commencement of liquidation, and (3) a notarized specimen signature of the liquidator.

Unlike the CCC(Article 274 § 1 and Article 461 § 1), the CL does not specify the date of commencement of liquidation.[25] Considering the legal significance of this moment in the life of a cooperative, the current regulation should be considered inadequate. To eliminate uncertainty, it would be reasonable to propose that a provision be included in the CL explicitly stating that liquidation commences on the date on which this information in entered in the register.

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22 Consolidated text: Journal of Laws of 2025, item 869. Stepnowska-Michaluk, *Likwidacja spółdzielni,* p. 104.

23 Henryk Cioch, *Prawo spółdzielcze* (Warszawa: Wolters Kluwer Polska 2011), 100.

24 Adam Stefaniak, *Prawo spółdzielcze. Ustawa o spółdzielniach mieszkaniowych. Komentarz* (Warszawa: Wolters Kluwer, 2018), p. 228.

25 See the decision of the Provincial Administrative Court in Gdańsk of 25 October 2018, III SA/Gd 616/18, LEX No. 2572901.

In practice, the date on which liquidation commences is determined by the reason for its initiation. When liquidation results from the expiry of the period of activity or from a reduction in the number of members below the threshold specified in the articles of association or in the CL, liquidation commences on the first day following the relevant event. When liquidation is initiated on the basis of resolutions of the general meeting, adopted by a three-quarters majority at two consecutive meetings held at least two weeks apart, liquidation commences on the date of adoption of the second resolution. However, in the cases specified in Article 114 § 1(1–3) CL, liquidation commences on the date on which the resolution of the audit union or the National Cooperative Council to place the cooperative in liquidation becomes final.[26]

The entry recording the commencement of liquidation is only incidentally constitutive,[27] as the cooperative does not lose its legal personality. After entering or being placed in liquidation, it continues to have legal capacity, the capacity to perform legal acts, and the capacity to be a party to court and administrative proceedings. Yet, its activities are limited to those necessary to complete current affairs, satisfy creditors, and liquidate its assets.

Pursuant to Article 121 § 1 CL, a cooperative in liquidation retains its existing name, but the phrase "in liquidation" must be included therein to protect the interests of third parties. The entry recording the commencement of liquidation in the National Court Register causes the expiry of existing powers of attorney that are subject to registration. Powers of attorney and proxies granted before the commencement of liquidation expire by operation of law on the date of that entry and are deleted from the register upon the liquidator's request (Article 120 CL). The cooperative is represented by the liquidator, who may be a natural or legal person within the meaning of Article 118 CL.

The provisions of Section XII CL do not clearly define the legal position of individual cooperative bodies after the commencement of liquidation. An analysis of individual provisions imposing specific obligations on the supervisory board and the general meeting during liquidation indicates that these bodies continue to operate. The supervisory board is entitled

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26 Stepnowska-Michaluk, *Likwidacja spółdzielni,* pp. 114–115.

27 Małgorzata Wrzołek-Romańczuk, *Rejestr spółdzielni. Zagadnienia materialnoprawne i procesowe* (Warszawa: Wydawnictwo Spółdzielcze, 1986), 104; Paweł Suski, Rejestry sądowe spółek handlowych, spółdzielni, przedsiębiorstw państwowych (Warszawa: Wydawnictwo Prawnicze, 1994), p. 157.

to conclude an agreement with the liquidator for the performance of liquidation activities (Article 118 § 3 CL), and the general meeting retains competences such as the appointment and dismissal of liquidators and the approval of the financial statements as at the date of completion of liquidation (Article 126 § 1 CL). The absence of any statutory exclusion of their activities during liquidation further supports the view that these bodies continue to operate.

The status of the management board remains controversial. H. Cioch, referring to Article 116 § 2 CL, according to which "the management board or the liquidator should immediately report the resolution on the restoration of the cooperative's activities to the National Court Register," argues that the management board continues to operate after the commencement of liquidation.[28] M. Stępnowska-Michaluk, by contrast, points out that upon the commencement of liquidation, all powers are transferred to the liquidators, who thereby replace the management board.[29]

The commencement of liquidation entails specific legal consequences. Upon the commencement thereof, the provisions of the CL regulating the order of covering balance sheet losses from individual cooperative funds cease to apply, as specified in Article 123 CL. The cooperative's existing own funds are merged into a single basic fund, allocated entirely to the purposes of the liquidation proceedings.[30] The provisions governing the payment of membership shares and the distribution of the balance-sheet surplus also cease to apply.

## Cooperative liquidators

The CL does not contain a legal definition of the term "liquidator of a cooperative." In doctrine, it is understood that a liquidator is a person appointed at the time of placing a cooperative in liquidation and tasked with conducting the liquidation proceedings aimed at terminating its activities,

28 Cioch, *Prawo spółdzielcze,* p. 69. He states, however, that during the liquidation proceedings, the liquidator and the management board of the cooperative cannot operate simultaneously.

29 Stepnowska-Michaluk, *Likwidacja spółdzielni,* p. 131. This position is also confirmed by doctrine, see Remigiusz Bierzanek, *Prawo spółdzielcze w zarysie* (Warszawa: PWN, 1989), 80; Mirosław Gersdorf, Jerzy Ignatowicz, *Prawo spółdzielcze. Komentarz* (Warszawa: Wydawnictwo Prawnicze, 1985), p. 202.

30 Marta Stepnowska-Michaluk, "Majątek likwidowanej spółdzielni (cześć I)", *Prawo i Wieź,* no. 3 (2009): 117.

repaying creditors, and liquidating its assets.[31] Pursuant to Article 118 § 1 and 2 CL, a liquidator may be a natural or legal person who does not need to be a member of the cooperative, including a member of the last management board, a person elected by the general meeting, a person appointed by the audit union, or an external entity.[32] The admission of legal persons is an exceptional solution compared to commercial companies, where this function may be performed only by natural persons with full legal capacity (Article 18 § 1 CCC).

The legal status of a liquidator is, in principle, the same as that of members of the cooperative's management board. For this reason, the general provisions concerning members of the management board apply to liquidators, unless the provisions concerning the liquidation of cooperatives provide otherwise.[33] The CL provides for restrictions on the appointment of a liquidator. Pursuant to Article 56 § 1 in conjunction with Article 119 § 1 CL, a member of the supervisory board may not serve as a liquidator, unless they first resign from the position. Furthermore, pursuant to Article 56 § 3 in conjunction with Article 119 § 1 CL, a person conducting business competitive to the cooperative being liquidated may not be appointed as a liquidator.

However, the CL does not specify formal legal criteria for a candidate for the position of liquidator. It is therefore possible to appoint a person who does not have full legal capacity or who has been convicted of offences against property. This solution differs from the model of commercial companies, where, pursuant to Article 18 § 1–2 CCC, only a natural person with full legal capacity and not convicted of offences specified in Chapters XXXIII-XXXVII of the Act of 6 June 1997 – Criminal Code[34] may be appointed as a liquidator. The absence of such restrictions has a negative impact on the security of economic transactions and on the protection of creditors. De lege ferenda, it is proposed to introduce a requirement of full legal capacity, to exclude persons convicted of offences against property or economic transactions, and to consider limiting the function of liquidator to natural persons only. The relevant provisions could be included in Section IV, Chapter 3 CL, which, through Article 119 § 1, would apply mutatis mutandis to liquidators.

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31 Stepnowska-Michaluk, *Likwidacja spółdzielni,* p. 145.

32 See the judgment of the Court of Appeal in Gdańsk of 16 July 2019, III AUa 1274/18, LEX no. 3388787.

33 Leopold Stecki, *Prawo spółdzielcze* (Warszawa PWN, 1987), p. 177.

34 Consolidated text: Journal of Laws of 2025, item 383, as amended.

The determination of the authority competent to appoint a liquidator depends on the type of liquidation. Article 118 § 1 CL stipulates that liquidators may be members of the last management board or persons elected by the general meeting. In the case of statutory or voluntary liquidation, the appointment is made by a resolution of the general meeting. If several liquidators have been appointed, Article 54 § 1 and 3 in conjunction with Article 119 § 1 CL applies to the submission of declarations of intent. In the event of compulsory liquidation, pursuant to Article 114 § 2 sentence 2 CL, the liquidator shall be appointed by the audit union or the National Cooperative Council. De lege ferenda, it is proposed that the obligation to appoint a liquidator should rest with the supervisory board rather than the general meeting, due to the difficulties in convening a general meeting at the liquidation stage, when the majority of members are not interested in active participation. It is easier and quicker to convene a meeting of the supervisory board, and the decision to appoint a liquidator is a simple act that, in the case of statutory liquidation, de facto confirms the existing legal situation.

After appointing a liquidator, the supervisory board concludes an agreement with them for the performance of liquidation activities (Article 118 § 3 CL).[35] In the event of difficulties in convening the board or if the liquidator has been appointed by the audit union, the agreement is concluded by the union itself. This relationship should be based on a contract of mandate.[36] However, according to A. Tomanek, the provision should be understood as allowing flexibility regarding the legal basis for the liquidator's engagement. Therefore, the establishment of an employment relationship is theoretically possible, but the current legal framework excludes basing this relationship on anything other than a contract.[37] De lege ferenda, it is proposed that the law should expressly provide that the legal relationship with the liquidator be based on a contract of mandate concluded in writing, which would increase legal certainty and facilitate evidentiary matters in disputes.

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35 Marta Stepnowska-Michaluk, "Likwidator spółdzielni – część I" *Przegląd Prawno-Ekonomiczny,* no. 1 (2007): 67.

36 Wojciech Jastrzębski, *Prawo spółdzielcze. Zarys wykładu* (Warszawa: Wydawnictwo Spółdzielcze, 1987), 117; Supreme Court judgment of 5 April 1966, I PR 71/66, LEX No. 4551.

37 Artur Tomanek, "Status prawny likwidatora w zakresie stosunku zatrudnienia" in: Księga dla naszych kolegów: prace prawnicze poświęcone pamięci doktora Andrzeja Ciska, doktora Zygmunta Masternaka i doktora Marka Zagrosika, ed. Jacek Mazurkiewicz (Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego, 2013), p. 462.

The entry of the liquidator in the National Court Register is merely declarative – the legally decisive factor is the appointment or designation. The legal event giving rise to the acquisition of rights is the resolution of the general meeting or the audit union. Pursuant to Article 119 § 1 CL, the provisions concerning the management board apply accordingly to the liquidator;[38] accordingly, they do not constitute a corporate body of the cooperative, and those may be applied to them only subsidiarily and by analogy. The liquidator is the statutory representative of a legal person, whose function is to wind up its affairs and terminate its legal existence.[39] Unlike a corporate body, a statutory representative is not part of the organizational structure of a legal person, does not embody the legal person, nor are they permanently linked to its existence. While a corporate body expresses the will of the legal person itself, a representative, acting on its behalf, expresses their own will.[40] The liquidator assumes the rights and obligations of the former members of the management board, manages the cooperative's affairs, and represents it externally. Pursuant to Article 119 § 2 CL, they may not conclude new contracts unless it is necessary for the purpose of the liquidation. Further restrictions may be imposed by the appointing body, but these must be reported to the National Court Register. If there are difficulties in convening a general meeting or supervisory board, the audit union may authorize the liquidator to perform actions that would otherwise require a resolution of those bodies (Article 119 § 3 CL). The liquidator acts by making declarations of intent and may not be deprived of this right.[41]

Pursuant to Article 119 § 4 CL, the liquidator may be dismissed at any time by the body that appointed them.[42] In statutory and voluntary liquidation, dismissal falls within the competence of the general meeting, whereas in compulsory liquidation, it lies with the audit union or the National Cooperative Council. The audit union may dismiss the liquidator for cause, regardless of the appointing authority (Article 119 § 4 sentence 2 CL). Valid grounds for dismissal include loss of trust, the commission of an offence to the detriment of the cooperative, gross violation of duties or lack of

38 See Grzegorz Tylec, *Statut spółdzielni i jego kontrola w postępowaniu o wpis do Krajowego Rejestru Sądowego* (Warszawa: Difin, 2012), p. 144.

39 See the Supreme Court ruling of 12 December 2017, II UK 43/17, LEX No. 3548237.

40 Resolution of the Supreme Court of 11 February 2014, I UZP 3/13, OSNP 2014/7/101.

41 Piotr Pałka in *Prawo spółdzielcze. Komentarz*, ed. Dominik Bierecki and Piotr Pałka (Warszawa: C.H. Beck, 2024). Legalis /el.

42 See Supreme Court judgment of 26 April 1999, I CKN 1126/97, LEX No. 1211836.

due diligence.[43] The dismissing body is required to appoint a replacement liquidator simultaneously (Article 119 § 5 CL).

The law does not specify the procedure for dismissing liquidators who are members of the last management board. De lege ferenda, this competence should be vested in the general meeting, and the notion of valid grounds for dismissal should be clarified to enhance transparency and predictability of the application of the law.

The liquidator's liability operates on three distinct levels. First, organizational liability – including the possibility of dismissal or suspension by the supervisory board (Article 50 § 1 in conjunction with Article 119 § 1 CL). Second, civil liability towards the cooperative for damage caused (Article 58 CL) and towards creditors in the event of the cooperative's removal from the register (Article 128 § 1 CL). Third, the liquidator bears criminal liability for acts specified in Articles 267b-267d CL, including actions to the detriment of the cooperative.

## The course of liquidation proceedings

Liquidation proceedings are a key stage in the life cycle of a cooperative, the purpose of which is to terminate its activities, liquidate its assets and satisfy its creditors. The course of these proceedings is strictly regulated by the provisions of the CL, in particular through the obligations imposed on the liquidator. Pursuant to Article 122 CL, the liquidator is subject to a number of obligations which they must undertake immediately upon appointment. These obligations, enumerated exhaustively, constitute a closed set of activities necessary for the proper conduct of the liquidation.

The liquidator is required to submit an application for the entry of the commencement of liquidation in the National Court Register, unless this has already been done. The liquidator must notify the audit union to which the cooperative belongs, as well as the National Cooperative Council, of the commencement of liquidation. At the same time, they must notify the banks financing the cooperative and the tax authorities about the circumstances. A key obligation of the liquidator is to publish a notice of the commencement of liquidation of the cooperative in *Monitor Spółdzielczy*

43 Krystyna Kwapisz, *Prawo spółdzielcze. Komentarz Praktyczny* (Warszawa: LexisNexis, 2011), 204.

(Cooperative Gazette), which must include a call for creditors to submit their claims within three months from the date of publication.[44]

In terms of financial documentation, the liquidator is required to prepare financial statements as at the date of commencement of liquidation and, a list of the cooperative's liabilities, a liquidation financial plan, a plan for the satisfaction of creditors' claims. The purpose of liquidation, which is to terminate the cooperative's activities and satisfy its creditors, determines the scope of the liquidators' activities and, consequently, the content of their rights and obligations. The handling of creditors' claims is among the central aspects of the liquidation proceedings. Pursuant to Article 124 § 3 CL, the liquidator is authorized to acknowledge claims submitted within the statutory time limit. Written acknowledgment of claims interrupts the running of the limitation period and other relevant time limits. If the liquidator refuses to satisfy a claim, pursuant to Article 124 § 1 CL, they are required to notify the creditor in writing within four weeks from the date of filing the claim. During this period, pursuant to Article 124 § 2 CL, the limitation period or statutory time limit is suspended. A special obligation of the liquidator, resulting from Article 131 CL, is to apply immediately to the court for a declaration of bankruptcy if the cooperative's insolvency is established during the liquidation proceedings. The CL provides a comprehensive regulatory framework for liquidation, imposing a number of precise obligations on the liquidator. The proper conduct of the entire liquidation process, and in particular, the protection of creditors' rights, depends on their reliable and timely performance. An analysis of the relevant legal provisions indicates the central role of the liquidator as the body conducting the liquidation proceedings and ensuring their proper execution.

## The order of satisfying creditors' claims in cooperative liquidation proceedings

The liquidation proceedings of a cooperative perform two fundamental functions: a dissolutive function, intended to terminate the legal existence of the entity, and a guarantee function, designed to protect the interests of creditors. The guarantee function is reflected in detailed regulations

44 Stepnowska, Zakrzewski, "Ustanie spółdzielni", p. 406.

governing the order of satisfaction of claims, which are mandatory and may not be altered by the liquidator or the cooperative's authorities.

In Article 125 § 1 CL, the legislator established a fixed hierarchy for the satisfaction of claims from the assets of a cooperative in liquidation.[45] Priority is given to liquidation costs, including all expenses necessary for the proper conduct of the proceedings. The next category covers claims arising from employment relationships and claims of a similar protective nature, including compensation for personal injury or death, in particular due to accidents at work and occupational diseases. At the same level of priority, satisfied are the claims of the Bank Guarantee Fund related to the financing of compulsory restructuring and support. Next in the hierarchy are tax liabilities and other public law levies, governed by the Act of 29 August 1997 – Tax Ordinance,[46] alongside receivables arising from bank loans. All other liabilities that do not fall within any of the above categories are satisfied last.

The liquidator is required to deposit with the court the amounts corresponding to disputed or not-yet-due claims at a given stage of the proceedings, as provided in Article 125 § 2 CL.[47] This measure serves as a security, ensuring the subsequent satisfaction of creditors whose claims cannot be enforced during the ongoing liquidation. The notification procedure begins with the publication of a notice of the commencement of the liquidation of the cooperative in *Monitor Spółdzielczy*, which contains a call for creditors to submit their claims within three months from the date of publication. As H. Cioch rightly points out, this period is not a strictly preclusive deadline because, as provided in Article 125 § 4 CL, creditors who submit their claims after the deadline may seek satisfaction solely from the cooperative's undistributed assets.[48] This rule is designed to maintain a balance between procedural efficiency and the protection of creditors' rights.

A separate legal regime applies to claims asserted by cooperative members arising from their contributions. Such claims may be satisfied only after two conditions set out in Article 125 § 3 CL have been met: (1) the full satisfaction or securing of all cooperative's creditors, and (2) the lapse of

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45 In this context, it is worth noting the judgment of the Court of Appeal in Kraków of 4 March 1992, I ACr 29/92, LEX No. 1680334.

46 Consolidated text: Journal of Laws of 2025, item 111.

47 See the judgment of the Provincial Administrative Court of 9 April 2019, III SA/Wa 1345/18, LEX No. 2770529.

48 Henryk Cioch, *Zarys prawa spółdzielczego* (Warszawa: Wolters Kluwer Polska 2007), p. 70.

six months from the date of publication of the notice in *Monitor Spółdzielczy*. The distribution of share payments is proportional to the amount of contributions made. This special rule excludes the application of the general provisions for the return of shares under Article 26 § 1 CL, as confirmed by the Supreme Court in its judgment of 23 June 1992, which held that once liquidation has commenced, a claim for the return of membership shares cannot be effectively pursued under that provision until cooperative liabilities have been repaid and the sums securing disputed or not-yet-due liabilities have been deposited with the court.[49]

The disposition of the remaining assets, once all liabilities have been satisfied or secured, is determined by a resolution of the last general meeting of members, as provided in Article 125 § 5 CL.[50] That resolution may authorize the distribution of the remaining assets among members and former members who have not received their due shares before the commencement of liquidation (Article 125 § 5a CL). The provision contained in Article 125 § 5a CL does not apply to housing cooperatives, due to the specific nature of membership rights related to residential premises in such entities. If the general meeting adopts no resolution, the liquidator is required to transfer the remaining assets without consideration for cooperative or social purposes. Such a transfer for cooperative purposes may be made to another cooperative, an audit union or the National Cooperative Council. A transfer for social purposes may be made to entities conducting statutory social activities, regardless of their organizational form or sector of operation.[51]

## The closing of liquidation proceedings

The termination of a cooperative's legal existence through liquidation is a complex and multi-stage process, culminating in the removal of the entity from the National Court Register. The closing of the liquidation proceedings, following the satisfaction of creditors and the distribution of any remaining assets, imposes several reporting and formal legal obligations on the liquidator. The precise fulfilment of these obligations determines

49 Judgment of the Supreme Court of 23 June 1992, I PRN 27/92, OSNCP 1993, No. 4, item 66.

50 Zdzisław Niedbała, "Podstawowe zmiany w prawie spółdzielczym w świetle projektowanej ustawy" Ruch Prawniczy, Ekonomiczny i Socjologiczny vol. 3 (1994): 45.

51 Krzysztof Pietrzykowski, *Prawo spółdzielcze. Komentarz do zmienionych przepisów* (Warsaw: Wydawnictwo Prawnicze, 1995), p. 138.

the lawful and effective completion of the entire process, and any failure to comply may result in liability for damages.

The actual closure of the liquidation process, understood as the final distribution of the cooperative's remaining assets, initiates the final phase. The liquidator's essential obligation is to prepare a financial statement as at the date on which the liquidation is completed. This document, which must include a balance sheet and final accounts, is prepared as at the date of closing the books, a process that must take place within three months from the date of closing the liquidation. Although this report is not subject to a mandatory audit by a certified auditor, it must be submitted to the supervisory board, which verifies its reliability and accuracy, in accordance with Article 46 § 1 point 1 in conjunction with Article 88a § 1 CL.[52] The next step is to submit the financial statements to the general meeting of the cooperative for approval, which is a sine qua non condition for submitting an application for the removal of the cooperative from the register.[53] Anticipating potential difficulties in convening a general meeting, the legislator introduced, in Article 126 § 2 CL, a subsidiary mechanism that allows the report to be approved by the audit union to which the cooperative belongs. After obtaining approval, the liquidator is required to submit an application with the National Court Register within seven days for the removal of the entity and to transfer the cooperative's books and documentation for storage. The entry concerning the removal must be published in *Monitor Sądowy i Gospodarczy* (Judicial and Economic Gazette). The detailed rules governing the storage of documentation are set out in a regulation issued by the Minister of Justice, in consultation with the minister responsible for culture and national heritage and after consultation with the National Cooperative Council, as provided in Article 129 CL.[54] It should be emphasized that, in accordance with the judgment of the Provincial Administrative Court in Krak**ó**w of 17 April 2007, Article 129 CL provides the legal basis for determining the manner and duration of the storage of books and documents of liquidated cooperatives and cooperative

52 See Supreme Court judgment of 3 February 2000, I CKN 648/99, OSNC 2000, no. 7–8, item 145.

53 Gersdorf and Ignatowicz, *Prawo spółdzielcze,* 206.

54 See Regulation of the Minister of Justice of 4 April 1995 on the manner and time of storage of books and documents of liquidated cooperatives and cooperative organizations (Journal of Laws No. 47, item 248).

organizations.[55] This regulation has a general character and applies to the documentation of all cooperatives and cooperative organizations, not merely to an individual entity undergoing liquidation.

In practice, lengthy court proceedings involving a cooperative in liquidation may pose a significant barrier to the efficient completion of the liquidation process. To address these challenges, Article 127 CL introduces a mechanism enabling the formal completion of liquidation before the final resolution of all pending judicial disputes.[56] The use of this mechanism is conditional upon the prior satisfaction of all undisputed claims and the depositing with the court of amounts securing disputed or not-yet-due claims. In such a case, after the cooperative has been removed from the register, the audit union to which it belonged enters into its position as a party to the pending proceedings. If the cooperative was not affiliated with any audit union, it will be replaced by the National Cooperative Council.[57] This succession in litigation is universal in scope and encompasses all procedural rights and obligations. The financial resources obtained by the union or council as a result of the final resolution of such disputes must be allocated to the purposes specified in the resolution of the last general meeting, or, in the absence thereof, to cooperative or social purposes, in accordance with Article 125 § 5–6 CL.[58] The removal of a cooperative is constitutive in effect, namely it takes effect when the court's decision on removal becomes final. It marks the end of the entire process leading to the removal of that legal person from transactions under civil law.[59]

It should be emphasized that the removal of a cooperative from the National Court Register, which becomes effective upon the court's decision becoming final, does not release the liquidator from liability for damages incurred by creditors as a result of the liquidator's failure to fulfil their statutory duties. Pursuant to Article 128 § 1 CL, such liability is a tort.[60] This means that liability arises only where the liquidator fails to perform their duties, causes damage to the creditor and where a causal nexus exists between the liquidator's act or omission and the damage caused. Liability

55 Judgment of the Provincial Administrative Court in Kraków of 17 April 2007, III SA/Kr 1360/06, Legalis No. 1140542.

56 Zdzisław Niedbała, *Komentarz do znowelizowanego prawa spółdzielczego* (Poznań: Ławica, 1994), p. 61.

57 Supreme Court decision of 21 May 2009, V CZ 19/09, LEX No. 1381052.

58 Piotr Pałka in *Prawo spółdzielcze*, Legalis/el

59 Supreme Court ruling of 2 December 2010, I CSK 120/10, LEX No. 818556.

60 Supreme Court judgment of 24 January 2014, V CSK 123/13, LEX No. 1478716; Supreme Court judgment of 27 June 2002, IV CKN 1171/00, Legalis No. 58482.

is imposed on the liquidator on the basis of fault. Fault may take the form of intent, where the liquidator, through their unlawful conduct, intends – or at least accepts – damage to the creditor or negligence, understood as a failure to exercise the required standard of diligence. The liquidator is required to exercise a higher standard of due diligence, commensurate with the objective of liquidation, namely to terminate the cooperative's activities and distribute its assets. A breach of these duties may be manifested, in particular, by premature termination of the liquidation proceedings without first satisfying all creditors. Members of the cooperative's last management board bear similar liability, as confirmed in Article 128 § 2 CL, which applies where a cooperative is removed from the register pursuant to Article 115 CL, i.e. due to failure to commence business activity within one year of registration. The finalization of the liquidation process therefore requires the liquidator not only to act meticulously, but also to be aware of the long-term legal consequences of the decisions taken.

## Conclusion

The liquidation of a cooperative is one of the most complex and significant processes governed by the CL. It combines elements of both civil and commercial law. Its role is not limited to the technical termination of the cooperative's legal existence but also serves an organizational and guarantee function, ensuring the protection of the interests of creditors, members, and other participants in economic transactions. By regulating the liquidation process in detail, the legislator seeks to maintain a balance between the self-governance of cooperatives and the need to safeguard transactional security and the stability of the legal system.

An analysis of the applicable provisions leads to the conclusion that, despite their overall consistency and comprehensiveness, the CL still requires clarification in several areas. This applies, in particular, to the status of cooperative bodies after the commencement of liquidation proceedings, the formal requirements for candidates for liquidators, and the unambiguous determination of the precise moment of commencing liquidation. De lege ferenda, it would be prudent to introduce a provision modelled on Article 274 § 1 CCC, expressly indicating the date of entry of the commencement of liquidation in the register as the operative date of commencement. It is likewise proposed to introduce a requirement that a liquidator possess full legal capacity and a clean criminal record with

respect to offences against property and economic turnover, following the solutions adopted in the CCC. Furthermore, it is equally important to clarify the competences of cooperative bodies during liquidation, in particular by specifying whether the management board continues to operate in a limited capacity or whether its powers are entirely transferred to the liquidator. Taken together, these proposals would serve to increase procedural transparency and strengthen the protection of participants in the liquidation proceedings.

It should be emphasized that the liquidation of a cooperative should not be understood solely as the final stage of its economic activity, but rather as a process of broader systemic importance that directly affects the economic and legal order. Ensuring an efficient, transparent and secure liquidation process remains a cornerstone of institutional stability within the Polish cooperative sector. Enhancing the regulatory framework in this area, coupled with consistent enforcement of liquidation obligations and the strengthening of supervisory mechanisms of audit unions and the National Cooperative Council, would constitute a significant step towards increasing confidence in the cooperative sector and its further development in a market economy.

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