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Crisis situations in non-profit entities: dissolution, liquidation and extinctions*

Las situaciones de crisis en las entidades no lucrativas: disolución, liquidación y extinción

Situações de crise em entidades sem fins lucrativos: dissolução, liquidação e extinção

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Abstract

In Spain, there is no rule that regulates non-profit entities since the only existing law in this regard, Law 49/2002, is related to the tax regime of non-profit entities and tax incentives for patronage, besides being limited to regulating their regime fiscal. This law allows this type of organization to adopt different legal forms. In this work, we propose to analyze the different solutions that have been proposed for the cases of crisis – dissolution, liquidation, and extinction – of this type of organization, especially about the destination of their assets.
Keyworks: nonprofit organizations, cooperative societies, associations, foundations, legal entities, juridical person, dissolution, liquidation extinction.

Resumen

En España no existe una norma que regule las entidades no lucrativas puesto que la única ley existente al respecto, la Ley 49/2002, de régimen fiscal de las entidades sin fines lucrativos y de los incentivos fiscales al mecenazgo, se limita a regular su régimen fiscal. En esta ley se permite que este tipo de organizaciones puedan adoptar diferentes formas jurídicas. En este trabajo nos proponemos analizar las distintas soluciones que se han planteado para los casos de crisis -disolución, liquidación y extinción- de este tipo de organizaciones, especialmente en lo referente al destino su patrimonio.
Palabras clave: *entidades no lucrativas, cooperativas, asociaciones, fundaciones, persona jurídica, disolución, liquidación, extinción.*

Resumo

Na Espanha não existe uma norma que regule as entidades sem fins lucrativos, visto que a única lei existente a este respeito, a Lei 49/2002, é relativa ao regime tributário das entidades sem fins lucrativos e aos incentivos fiscais ao mecenato, limita-se a regular o seu regime fiscal. Esta lei permite que este tipo de organização adote diferentes formas jurídicas. Neste trabalho, portanto, propomo-nos a analisar as diferentes soluções que têm sido propostas para os casos de crise – dissolução, liquidação e extinção – deste tipo de organizações, especialmente no que diz respeito à destinação dos seus ativos.
Palavras-chave: *organizações sem fins lucrativos, cooperativas, associações, fundações, pessoa jurídica, dissolução, liquidação, extinção.*

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1 Introduction

Today the institutional structure of industrialized market economy societies is made up of three sectors: the public sector, the private mercantile sector, and the private non-profit sector or *third sector*[1]. The Third Sector (also called voluntary, independent, non-governmental or non-profit) tries to create a balance between the public sector and the market. In this way, by carrying out private management for purposes of general interest, it traces complementary routes to the market economy and to the action of the State. The Third Sector does not obey the laws of the market (because economic profitability is not its end, although at a certain moment it may be a means of action), the internal political power of organizations does not rest on the ownership of social capital, its motivation is change for purposes of general interest and discovers in service the essence of life and the reason for being (Cabra De Luna; De Lorenzo García 2005).

Non-Profit Entities (hereinafter ENLs) can take different corporate forms, which means that their legal regulation depends on the corporate form they adopt. However, its hard core is foundations and associations (Luna; García, 2005).[2] To this dispersion, in terms of their legal regulation, we must add another of a territorial nature, since in Spain some of these legal persons, when they are not commercial, have a double regulation, at the state and regional level, as is the case with associations and foundations in the case of the Valencian Community.

Most of the rules that regulate the corporate forms that ENLs can adopt predate two state regulations that have a certain impact on them: Law 22/2003, of 9 July, on Insolvency and the Consolidated Text of the Capital Companies Act approved by Royal Legislative Decree 1/2010, of 2 July (hereinafter LSC). We believe that the problems related to the crises of the ENLs, such as the dissolution, liquidation, extinction, destination of the surplus assets, as the case may be, as well as the impact of the declaration of bankruptcy on these entities, cannot be dealt with, without making a rereading taking into account the new solutions provided for in those laws. In this paper we are going to use the technique of applying to ENLs, as far as possible, the solutions that have been developed for capital companies, on the occasion of the Revised Titleof

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[2] In our work we are going to use the expression ENL's because we understand that it is a more restricted concept than the Third Sector, because it is more concerned with the corporate form of the entities.

the Capital Companies Act approved by Royal Legislative Decree 1/2010, of July 2 (hereinafter LSC)[3]. We will also take into account the impact of the Insolvency Law on the dissolution of ENLs.

2 Concept of non-profit entities

The realization of this work requires starting from a precise concept of non-profit entity, for this we have considered as the most convenient option to use the definition provided by *Law 49/2002, on the tax regime of non-profit entities and tax incentives for patronage* (hereinafter Patronage Law or LM).[4] All this without losing sight of the fact that this law does not intend to establish the legal regime of ENLs but to regulate their tax regime, as well as that of patronage.

The concept of ENL is arrived at through the sum of two requirements: firstly, it is based on the requirement to use a specific corporate form, so according to Article 2, *"non-profit entities" are considered to be: a) Foundations; b) Associations declared to be of public utility; (c) The non-governmental development organizations referred to in Law 23/1998 of 7 July 1998 on International Cooperation for Development, provided that they have one of the legal forms referred to in the preceding paragraphs; d) The Spanish sports federations, the territorial sports federations at the regional level integrated into them, the Spanish Olympic Committee and the Spanish Paralympic Committee. e) The federations and associations of the non-profit entities referred to in the preceding paragraphs. (f) Entities not resident in Spanish territory that operate therein with a permanent establishment and are similar to any of those provided for in the preceding paragraphs [...]; g) Entities resident in a Member State of the European Union or other Member States of the European Economic Area with which there are regulations on mutual assistance in the exchange of tax information under the terms provided for in Law 58/2003, of 17 December, General [5]Taxation".*

[3] This interrelationship with company law is palpable in the field of cooperatives. The doctrine considers that the laws that have regulated cooperatives in recent times have projected part of the commercial regulations on the cooperative. This is evidenced in the Explanatory Memorandum of the current Law 27/1999, on Cooperatives, where the priority objective is to "strengthen the business consolidation of the cooperative". Cooperatives are also subject to the legal status of the merchant in some aspects, such as accounting, advertising and transparency (Broseta Pont; Martínez Sanz, 2021, T.I, p. 695 et seq.). However, the mercantility of cooperatives was already evident after the STC of 29 July 1993.

[4] We allow ourselves the freedom to use the expression Patronage Law to refer to Law 49/2002, given the difficulty of using its acronym.

[5] The list of Law 49/2002 is not merely illustrative, but is considered *a numerus clausus* or a closed list (Cabra De Luna, and De Lorenzo García 2005).

A second criterion, which overlaps with that of the corporate form adopted, refers to the purpose pursued by those organisations. In this sense, Article 3 establishes that non-profit entities will be considered those that *"pursue purposes of general interest, such as, among others, those of defense of human rights, of victims of terrorism and violent acts, those of social assistance and social inclusion, civic, educational, cultural, scientific, sports, health, labor, institutional strengthening, development cooperation, the promotion of volunteering, the promotion of social action, the defence of the environment, the promotion and care of people at risk of exclusion for physical, economic or cultural reasons, the promotion of constitutional values and the defence of democratic principles, the promotion of tolerance, the promotion of the social economy, of development of the information society, or of scientific research and technological development or innovation and of its transfer to the productive fabric as a driving element of business productivity and competitiveness".*

Along with these two requirements, which we could call the main ones, the law adds others: such as that in the event of dissolution, they allocate their assets in their entirety to one of the entities considered as beneficiaries of patronage or to public entities of a non-foundational nature that pursue purposes of general interest, and this circumstance is expressly contemplated in the foundational business or in the statutes of the dissolved entity (art. 3.3 LM). There is also the requirement that ENLs allocate at least 70% of part of their income to the realization of those purposes (art. 3.2 LM). Likewise, there is the fact that the activities carried out by them do not consist of the development of economic operations unrelated to their object or purpose of the bylaws (art. 3.3 LM).

NGDOs that meet the above requirements may register in an open register with the Spanish Agency for International Cooperation or in the registers that may be created for the same purpose in the Autonomous Communities (art. 33 Law 23/1998, of 7 July, on international cooperation for development). Registration in any of these Registers is an essential condition for receiving aid or subsidies from the public administrations that can be counted as official development aid[6].

The strict application of all the requirements of the Patronage Law, however, produces some undesired results such as leaving social initiative cooperatives out of the ENLs, since the

[6] Failure to comply with any of the requirements entails the loss of the special tax regime and the obligation to pay the amounts of the taxes accrued during the tax year in which the non-compliance occurs, together with the applicable default interest.

cooperative is not among the corporate forms of art. 2 of Law 49/2002[7]. All this despite the fact that this type of cooperative does meet the rest of the requirements demanded by the aforementioned law. Thus, from our point of view, this type of cooperative, regulated in article 106 of Law 27/1999, on Cooperatives (hereinafter LCoop), deserves[8] the qualification of ENL's since its purpose coincides with the provisions of article 3 of the Patronage Law, although its corporate form – the cooperative – is not included in the list of article 2 of the aforementioned law. It is a different matter if ENLs that take advantage of this corporate form risk not being able to enjoy the tax advantages provided by Law 49/2002.

3 Rules for the dissolution and liquidation of capital companies

Once the criteria to determine what an ENL's is has been established, we will first analyse the regime followed in capital companies for their dissolution, liquidation and extinction, in order to have a reference guide from which to find solutions to the different problems that arise in the field of ENLs. In addition, we cannot ignore the existence of some organisations with commercial legal status that pursue objectives specific to the Third Sector, as is the case with insertion companies (art. 4) provided for by Law 44/2007, of 13 December, for the Regulation of Insertion Companies (Casado, 2009, p. 8).[9] These companies may take the legal form of a commercial company or a cooperative society (art. 4), are intended for the employment of people in a situation of social exclusion (art. 2.1) and must meet a series of requirements established in article 5, which broadly are: a) Be promoted and participated in by one or more promoting entities; b) Be registered in the Register corresponding to their legal form, as well as

[7] Some authors propose a broader list of entities, by also including those in the solidarity sector, since it constitutes another set of entities or socio-business realities that make up the social economy, once associations and foundations have been discounted. Within it are cooperatives, labor corporations, mutual societies, other emerging realities that are not constituted in a differentiated way with their own legal forms, such as special employment centers for people with disabilities and insertion companies; and to mixed realities made up of parent non-profit organisations, which use special or common business organisations as operational instruments to carry out their activities (business groups: Mondragón Corporación Cooperativa, Grupo Fundosa, etc.). (Cabra De Luna; Lorenzo García 2005).

[8] Article 106.1 of the LCoop establishes that: "Cooperatives which, on a non-profit basis and regardless of their type, have as their social purpose either the provision of welfare services through the performance of health, educational, cultural or other activities of a social nature, or the development of any economic activity whose purpose is the integration into the labour market of people suffering from any kind of social exclusion and, in general, the satisfaction of social needs not met by the market".

[9] Art. 4.1 Law 44/2007: "An insertion company shall be considered to be a legally constituted commercial company or cooperative society which, duly qualified by the competent regional bodies in the matter, carries out any economic activity involving the production of goods and services, whose social purpose is the integration and socio-occupational training of people in a situation of social exclusion as a transition to ordinary employment".

in the Administrative Register of Insertion Companies of the Autonomous Community; c) Maintain percentages of workers in the process of insertion: d) Apply at least 80% of the results of each year to the production and insertion structures; e) To present annually a Social Balance of the company's activity; f) Have the necessary means to comply with the commitments derived from the itineraries of socio-occupational insertion.

Capital companies, like ENLs, are configured as legal entities, so they are endowed with their own life and are formally independent of their partners. Legal persons in general, and companies in particular, may be extinguished by decision by their own decision or by circumstances beyond the control of the company[10].

The legal text, the LSC, regulates unitarily in its Title X (Dissolution and liquidation) the solutions that were previously contemplated separately in the LSA and the LSRL. The extinguishing period of capital companies, both in the repealed texts and in the current one, is divided into two phases: the first of these is the dissolution (affects the internal sphere of the company), which is followed by the liquidation (affects the third party corporate creditors and the partners). After these two phases, the extinction itself takes place, which involves the cancellation of the entries in the Mercantile Registry, and consequently with the disappearance of the legal personality of the company.

3.1 The dissolution of capital companies

The company is said to be in a period or situation of dissolution when it is in any of the cases described by the Law or the bylaws as a cause for dissolution. These cases may generate automatic dissolution *(ope legis),* or they may only cause it when the existence of the cause for dissolution has been verified by the General Meeting or by the judge[11]. In the LSC, the causes of dissolution are systematized as follows:

1. Dissolution of full right. Article 360 of the LSC includes a series of causes for dissolution that operate automatically – *ope legis* – without the need for the agreement of the Shareholders' Meeting[12]: *a) Due to the expiry of the term of duration set out in*

[10] BROSETA PONT & MARTÍNEZ SANZ, 2021, P. 585.
[11] BROSETA PONT & MARTÍNEZ SANZ, 2021, PP. 585-589.
[12] As indicated in the RESOLUTION of the DGRN of 19 September 2005, referring to limited companies, the agreement of the Meeting will not always be required; this resolution reads as follows: "*there are causes for dissolution that operate automatically (allow the Registrar to carry them out ex officio and because a certification has been requested or at the request of any interested party (among them is the dissolution of the*

the articles of association, unless expressly extended and previously registered in the Mercantile Registry. b). For the lapse of one year from the adoption of the resolution to reduce the share capital below the legal minimum as a result of compliance with a law, if the transformation or dissolution of the company, or the increase of the share capital to an amount equal to or greater than the legal minimum has not been registered in the Commercial Registry [...]. In any of these cases, the Registrar may declare the dissolution ex officio or at the request of any interested party[13].

2. Dissolution due to the existence of a legal or statutory cause. Outside of cases of full dissolution, the agreement, the General Meeting or even a judicial decision will be necessary. The LSC establishes the following causes for dissolution (art. 363): "a) For the cessation of the exercise of the activity or activities that constitute the corporate purpose. In particular, it will be understood that the cessation has occurred after a period of inactivity of more than one year; b) By the conclusion of the enterprise that constitutes its object; c) Due to the manifest impossibility of achieving the corporate purpose; d) By the paralysis of the corporate bodies in such a way that their operation is impossible; e) For losses that reduce the net assets to an amount less than half of the share capital, unless this is increased or reduced to a sufficient extent, and provided

company due to compliance with the term established in the articles of association in accordance with the provisions of article 107 of the Law on Limited Liability Companies) and those that require the General Meeting to verify their existence and consequently agree to their dissolution, (including the paralysis of the corporate bodies in such a way that it is impossible for them to operate or the failure to exercise the activity that constitutes their corporate purpose for three consecutive years, being necessary in the first case an agreement of the General Meeting or judicial dissolution file at the request of the directors or at the request of any interested party (cf. article 105.3 of the Law on Limited Liability Companies) and in the second case that the factual issues relating to the consecutive nature of the lack of exercise and the degree of inactivity of the company in question be determined in court".

[13] Article 238 of the RRM refers to it, which reads: "*Dissolution by operation of law. 1. The Registrar, ex officio, when he has to make an entry on the sheet open to the company or certification has been requested, or at the request of any interested party, shall make a note in the margin of the last registration, stating that the company has been dissolved, in the following cases: 1. When the term of the company has elapsed . 2. When one year has elapsed since the adoption of the agreement to reduce the capital of the public limited company, limited liability company or limited partnership by shares below the minimum established by law as a result of compliance with a legal rule, without the transformation or dissolution of the company or the increase in the share capital having been registered. 3rd. When one year has elapsed since the date of the reimbursement or deposit of the amount corresponding to the separated or excluded partner of a limited liability company, with a reduction of the capital below the legal minimum, without the transformation or dissolution of the company or the increase of the share capital having been registered. 2. In the cases referred to in the previous paragraph, the Registrar shall issue a note in the margin of the registration of the appointment of the directors, stating that they have ceased to hold office. If the directors are converted into liquidators as established by law or the bylaws, the Registrar shall record this in the corresponding entry. 3. In the event of dissolution due to the expiry of the term, the extension of the company will not produce effects if the corresponding agreement is presented to the Commercial Registry after the term of duration of the company has elapsed*".

that it is not appropriate to request the declaration of bankruptcy; f) By reduction of the share capital below the legal minimum, which is not a consequence of compliance with a law; g) Because the nominal value of the non-voting shares or non-voting shares exceeds half of the paid-up share capital and the proportion is not restored within two years; h) For any other reason established in the statutes [...] ». In the cases indicated, a dissolution agreement taken by the general meeting by an ordinary majority will be required (art. 364 LSC).

3. Judicial dissolution (art. 366 LSC), this type of dissolution will proceed in the following cases: "1. If the meeting is not convened, is not held, or does not adopt any of the resolutions provided for in the previous article, any interested party may request the dissolution of the company before the commercial judge of the registered office. The application for judicial dissolution must be directed against the company. 2. The directors are obliged to request the judicial dissolution of the company when the corporate resolution is contrary to the dissolution or cannot be achieved [...]".
4. Dissolution by mere agreement of the general meeting. The capital company may be dissolved by the mere resolution of the general meeting adopted with the requirements established for the modification of the bylaws (art. 368 LSC).
5. Dissolution of the company due to the existence of bankruptcy

The LSC has also considered the declaration of bankruptcy as a cause for dissolution (art. 361); from the content of the aforementioned precept it can be deduced that the declaration of bankruptcy of the capital company will not constitute, by itself, cause for dissolution, we understand that it is automatic. However, the same provision states that "2. The opening of the liquidation phase in the insolvency proceedings will result in the full dissolution of the company". It can therefore be understood that the opening of the bankruptcy liquidation phase does produce – *ipso jure* – the opening of the dissolution phase, while the bankruptcy liquidation replaces the ordinary liquidation (Blanco, 2004, p. 480). At this point, the insolvency judge in the resolution opening the liquidation phase of the insolvency will have to record the dissolution and, without the appointment of liquidators, the liquidation of the company will be carried out in accordance with the provisions of chapter II of title V of the Insolvency Law (arts.

361 and 372 LSC)[14]. The bankruptcy liquidation phase can be opened at the request of the debtor, on a voluntary basis (art. 406 LC) or mandatory as soon as the debtor is aware of the impossibility of complying with the payments (407 LC); also by creditors when it is not requested by the debtor in bankruptcy during the term of the agreement (art. 407.2 LC); it can also be requested by the insolvency administrator in the event of total or partial cessation of professional or business activity (art. 408 LC), even ex officio by the judge in the cases provided for in art. 409 LC.

This cause for the dissolution of capital companies, as a result of the opening of the liquidation phase, is also fully applicable to ENLs, since the Insolvency Law dispenses with the status of entrepreneur as a subjective prerequisite for its application, to the point that natural persons can also be declared insolvent (art. 1 LC).[15] In addition, the literal wording of Article 3 II LC, where a conditional "if" is used when it says that "If the debtor is a legal person, he shall indicate in the report the identity of the partners or associates of which he has evidence", allows us to reaffirm our thesis, so that associations can also be subject to bankruptcy, and by extension any type of ENL's.

3.2 Liquidation of capital companies

Once the company is dissolved, the liquidation period begins (art. 371 LSC), since both are complementary and successive institutes that end with the extinction of the company (Portabales, 2004, p.20). The liquidation that includes a whole series of acts that lead to the total or partial payment of the company's debts (liquidation of liabilities) and, where appropriate, to the distribution of the surplus of the company's assets (liquidation of the assets) among the partners in proportion to their participation in the share capital. This is an exceptional situation of the company heading towards its extinction, which begins with the registration of the dissolution agreement in the Commercial Registry and ends with the cancellation of the registration of the company in said registry[16]. During this period, the company still retains its

[14] In the event of bankruptcy of the company, registration will be carried out by virtue of testimony of the final judicial decision declaring bankruptcy (Article 239 of the RRM). In addition, Article 372 LSC, referring to the "Speciality of bankruptcy liquidation" establishes that: "In the event of opening the liquidation phase in the company's insolvency proceedings, the liquidation will be carried out in accordance with the provisions of Chapter II of Title V of the Insolvency Law".

[15] Art. 1.1 LC. "The declaration of bankruptcy shall proceed with respect to any debtor, whether natural or legal person."

[16] BROSETA PONT & MARTÍNEZ SANZ, 2021, p. 592 et seq.

legal personality, although the phrase "in liquidation" is added to its name (art. 371 LSC). In addition, it is understood that there is an implicit modification of the purpose of the company in liquidation, becoming the extinction of the company, so that the acts carried out must pursue this purpose.

Key to achieving the aforementioned objective is the figure of the liquidators, who are responsible for the management, direction and control of the company's business, the representation of the company in and out of court and the administration, disposition and distribution of the company's assets (Blanco, 2004, p. 484). The LSC the liquidation process in articles 371 to 390 LSC. Among the tasks of the liquidators, we are interested in the division of the company's assets, for their subsequent distribution – where appropriate – among the partners (arts. 391 to 394 LSC), unlike those with the ENL's where the payment of the liquidation fee to the partners is vetoed.

Liquidation operations begin with the liquidators drawing up an inventory and balance sheet of the company on the date of dissolution (art. 383 LSC). Based on this documentation, the liquidators will reflect in the accounts the operations, new and pending, that they carry out until the liquidation. The operations of liquidation are the collection of credits and the payment of debts, the custody and disposal of company assets, the cancellation of contractual relations, the judicial or arbitration claim of assets or rights or the opposition to claims (Blanco, 2010, p. 487).

3.3 Proposal for the division of corporate assets

At the end of the aforementioned transactions, the liquidators will submit to the approval of the general meeting a final balance sheet, a complete report on these operations and a project for the division among the shareholders of the assets resulting from the company's equity (art. 391.1 LSC). Once the balance sheet has been approved, the remaining assets are distributed among the shareholders, which in general, unless otherwise provided for in the bylaws, must be distributed in proportion to their participation in the share capital (art. 392 LSC). Unless unanimously agreed by the partners, the right to receive the fee must be in money (art. 393.1 LSC). It is also possible for the articles of association to contemplate the possibility that "one or more partners have the right to have the quota resulting from the liquidation paid to them through the restitution of the non-monetary contributions made or through the delivery of other

corporate assets, if they subsist in the corporate assets, which will be valued at their real value at the time of approval of the project to divide the resulting assets among the partners" (art. 393.2 LSC).

As we have already mentioned, one of the major differences between capital companies and ENLs is precisely in the division of the company's assets, since the liquidation in these entities has its own characteristics determined by the lack of a profit-making purpose and the express prohibition of the distribution of the remainder (Portabales, 2004, p.21). Hence, in the case of ENLs, it will be necessary to give it the destination indicated in each of the different laws that regulate the different figures that these legal entities can adopt.

3.4 Extinction of capital companies

Once the liquidation fees have been paid or deposited, the liquidators must execute a deed of termination of the company (arts. 394 and 395 LSC), in which it will be mentioned that their functions have concluded, the creditors' claims have been satisfied, the final balance sheet has been rendered and that the liquidation fee has been paid to the partners, all this together with the final liquidation balance that must be attached to the deed. The aforementioned deed of termination will be registered in the Mercantile Registry, and once the cancellation of the registration of the company in the Mercantile Registry has occurred, the legal personality of the company will be extinguished[17].

4 The dissolution, liquidation and extinction of foundations

Foundations are another of the corporate forms that ENLs can adopt, provided that their purpose is one of those provided for in Article 3 of the Patronage Law. This requirement in principle seems to be met by the vast majority of foundations, as can be deduced from their legal concept established in art. 2 of the LF, which establishes that foundations are *"non-profit organisations which, by the will of their creators, have their assets permanently allocated to the achievement of purposes of general interest and must be registered in the Register of Foundations".*

[17] BROSETA PONT & MARTÍNEZ SANZ, 2021, P. 596.

Foundations are regulated, at the state level, by Law 50/2002, of 26 December, on Foundations (hereinafter LF) and by a whole series of regional foundation laws. By way of example, we cite Law 8/1998, of 9 December, on Foundations of the Valencian Community (hereinafter LFV). From the content of the state regulation it can be deduced that foundations are governed by the will of the founder, by their Statutes, by Law 50/2002, of 26 December, on Foundations and Law 49/2002, of 23 December, on the tax regime of non-profit entities and tax incentives for patronage. In similar terms we must pronounce on the Valencian Law on Foundations.

The right to a foundation is a fundamental right recognised in the Spanish Constitution (hereinafter CE) and in the Civil Code (hereinafter CC), specifically in articles 34 and 22.2 and 4 CE and 35, 37 and 39 CC. Since foundations can be public and private, it is evident that in this study we only refer to those of a private nature, given that ENLs can only be private entities.

4.1 Dissolution of foundations

The procedure that Law 50/2002 follows for the extinction of foundations has a certain similarity with that reflected in the LSC. However, it should be noted that the state legislation on foundations does not clearly differentiate between the phases of dissolution, liquidation and extinction, but limits itself to regulating the stages of extinction (arts. 31 and 32) and liquidation (art. 33) dispensing with the dissolution. The LFV incurs the same systematic deficiency as in the state law, so that in chapter V, which revolves under the heading "Modification, merger, extinction and liquidation" we do not find any reference to dissolution. In part, because article 25 LFV refers to what is set out in the state law regarding the extinction of foundations.

Despite using different concepts, we understand that the "causes of termination" referred to in Article 31 LF[18] are comparable to the "causes of dissolution" of capital companies. In support of our thesis is art. 32 LF when it contemplates as a case of extinction – *ope legis* – or by operation of law the expiration of the term for which it was constituted. In the case of capital companies, article 360 LSC prefers to speak of dissolution by operation of law due to the expiry

[18] Article 31 LF. Causes of termination: "The foundation shall be extinguished: a) When the period for which it was constituted expires. b) When the foundational purpose has been fully realized. c) When it is impossible to carry out the foundational purpose, without prejudice to the provisions of Articles 29 and 30 of this Law. d) When this results from the merger referred to in the previous article. e) When any other cause provided for in the constitutive act or in the Articles of Association occurs. F) When any other cause established by law occurs.

of the term set out in the articles of association. So we consider that the law should have used the expression "dissolution" instead of extinction, reserving the latter for the phase after liquidation. In the other cases of termination, the agreement of the Board of Trustees ratified by the Protectorate will be required (art. 32.2 LF), which would be comparable to the cases of dissolution of companies by agreement of the Assembly due to legal existence or statutory cause (arts. 364 and 366 LSC). Termination by judicial decision is also provided for when there is another cause provided for in the laws (art. 32.2 and 3).

4.2 Liquidation of foundations

Article 33 LF, unlike what happens with dissolution, does distinguish the liquidation phase of foundations. This section has certain similarities with the provisions of the LSC for the liquidation of capital companies, both in content and in the terminology used.

The extinction of the foundation – dissolution in the case of capital companies – except in the case of a merger, will mean the opening of the liquidation phase, which will be carried out by the Board of Trustees of the foundation under the control of the Protectorate. The LF is very sparing when it comes to regulating liquidation, since art. 33.4 establishes that " the regulatory criteria for the liquidation procedure referred to in the previous paragraphs shall be established by regulation". The Government has fulfilled this mandate by issuing Royal Decree 1337/2005, of 11 November, which approves the Regulation of foundations of state competence, establishes in its article 39 the regulatory criteria of the liquidation procedure[19]. In the case of the LFV, the regulation of liquidation, made in art. 26, is more detailed than the state one because it incorporates part of what is established in the state regulations on foundations.

[19] Article 39: "1. The liquidation of the extinguished foundation will be carried out by the board of trustees under the control of the protectorate. To this end, the protectorate may request from the Board of Trustees any information it deems necessary, even on a periodic basis, on the liquidation process. 2) Without prejudice to the provisions of the previous section, the Board of Trustees may authorize or delegate the material execution of its agreements relating to the liquidation process. 3) The liquidation procedure begins with the approval by the Board of Trustees of the balance sheet opening the liquidation. 4) The requirements established in general for the disposing of the assets and rights of the foundation, as well as the rules governing the liability of the trustees, are applicable to the liquidation process. 5) The protectorate will challenge before the judicial authority the acts of liquidation that are contrary to the legal system or the statutes of the foundation. 6) The assets and rights resulting from the liquidation may not be allocated to private non-profit entities that pursue purposes of general interest or to public entities, of a non-foundational nature, that pursue purposes of general interest when it has been provided for in the statutes of the foundation that it is being extinguished without all the creditors having been satisfied or without having deposited the amount of their credits. When there are unexpired credits, payment will be previously assured.

The agreement to terminate the foundation, or, where appropriate, the judicial decision, will be registered in the corresponding Register of Foundations (art. 32.4 LF). This means that this will be the moment of the extinction of the legal personality of the foundation, since the registration has constitutive effects as established in art. 4.1 LF when it says that "Foundations will have legal personality from the registration of the public deed of their constitution in the corresponding Register of Foundations". The LFV is expressed in similar terms (art. 4.1).

4.3 Destination of the corporate assets resulting from the liquidation

In a similar way to what happens with all ENLs. The assets and rights resulting from the liquidation of foundations (art. 33.2 LF and 26 LFV) will be destined to foundations or private non-profit entities (including public in the case of Valencian foundations as established in art. 26.2 LFV) that pursue purposes of general interest and that have their assets affected, even in the event of its dissolution, to the achievement of these, and that have been designated in the founding business or in the Statutes of the extinct foundation. Failing this, this destination may be decided, in favour of the same foundations and entities mentioned, by the Board of Trustees, when it has this power recognised by the founder, and, in the absence of such power, it will be the responsibility of the Protectorate to fulfil this task.

As an exception to the above, art. 33.3 LF provides for the possibility that foundations may provide in their Statutes or founding clauses that the assets and rights resulting from the liquidation are destined to public entities, of a non-foundational nature, that pursue purposes of general interest (Antón, 2009, p. 48). The provisions of article 33 LF (as well as 26.2 LFV) mean that the reversion of assets to the founder or his heirs, or even to other natural or legal persons who have been called in the foundational legal transaction and do not meet the characteristics indicated in the precept (Gullón, 2017, p.629).

4.4 Bankruptcy as a cause for the extinction of foundations

The State Law on Foundations does not contain any reference to the current Law 22/2003, Insolvency, as a cause for dissolution or extinction of the foundation. Although this silence is understandable because the LF was dated prior to the LC, it should nevertheless have contained at least some reference to the old commercial institutions of bankruptcy, suspension of

payments or the civil institution of bankruptcy. In the case of the LVF, even though it also predates the LC, it is not understood that it does not contain any reference to it either, since it was the subject of a profound transformation on the occasion of Law 9/2008, of 3 July 2008, of the Generalitat, amending Law 8/1998, of 9 December 1998, of Foundations of the Valencian Community.

However, we consider that what has been stated in relation to the bankruptcy and dissolution of capital companies is applicable to the foundation-type legal person, since it is clear that a foundation, like a sports association, or any legal person can fall into a state of insolvency and generally dismiss the payment of its current obligations (Iruzubieta, 2009). Thus, it can be stated that both the foundation and all ENLs in general, are subject to the Bankruptcy Law. This position is defensible for two reasons: firstly, because the LC dispenses with the condition of entrepreneur as a subjective prerequisite for its application (art. 1 LC).[20] In addition, the doctrine considers that when art. 4 of the LC, instead of referring to the Mercantile Registry, uses the broader expression of "Public Registry in which it is registered" it is because it is referring to the registers for the registration of cooperatives, associations or foundations (Soler, 2006).

5 Dissolution, liquidation and extinction of a public interest association

5.1 Concept of declaration of public interest

Associations declared to be of public utility are the second legal persons that Law *49/2002* considers as non-profit entities (art. 2.b) provided that they comply with the requirements of art. 3 LM. Associations, both those of private interest and those of public utility, at the state level are regulated by Organic Law 1/2002, of 22 March, regulating the right of association (hereinafter LA), and at the level of the Valencian Community by Law 14/2008, of 18 November 2008, of the Generalitat, on Associations of the Valencian Community (hereinafter LAV)[21]. Associations, in general, are entities constituted by the agreement "of three or more legally constituted natural or legal persons, who undertake to share knowledge, means,

[20] Art. 1.1 LC. "The declaration of bankruptcy shall proceed with respect to any debtor, whether natural or legal person."

[21] It is noteworthy that many associations have their own specific regulation, such as political parties, trade unions, business organizations, churches, consumer and user associations, etc.

activities to achieve lawful, common purposes, of general or particular interest, and are provided for in the Statutes that govern the operation of the association" (art. 5 LA). The associations that fall under the scope of the Valencian law have a more restricted object than the state ones, since according to art. 1 LAV: "The purpose of this Law is the regulation, promotion and encouragement of associations of a teaching, cultural, artistic and charitable-welfare nature, of social volunteering and the like, whose main scope of action is the Valencian Community [...]".

5.2 Requirements for obtaining the declaration of public interest

The declaration of public interest is an act of the public administration subject to administrative law. At the state level, the competence is held by the Minister determined by regulation (art. 35.1 L0 1/2002) and at the regional level the competence is held by "the competent department" (art. 34.3 Valencian law). To obtain the declaration of public interest, the requirements established by Article 32 of the State Law and 33 LAV (where applicable) must be met.

In order for associations to be declared of public utility, the requirements established in Articles 32 LA and 33 LAV must be met, which are practically the same: "a) *That their statutory purposes tend to promote the general interest, in the terms defined by Article 31.3 of this Law, and are of a civic nature, educational, scientific, cultural, sports, health, promotion of constitutional values, promotion of human rights, victims of terrorism, social assistance, development cooperation, promotion of women, promotion and protection of the family, protection of children, promotion of equal opportunities and tolerance, for the defence of the environment, for the promotion of the social economy or research, for the promotion of social volunteering, for the defence of consumers and users, for the promotion and care of people at risk of exclusion for physical, social, economic or cultural reasons, and any other of a similar nature*".

The second requirement refers to *"b) That its activity is not restricted to favouring its members exclusively, but that it can be extended to any other person who meets the circumstances and characteristics of the scope and nature of its purposes".* This open nature of the association of public utility, the fact that any other possible beneficiary has access to it, is the second relevant characteristic note. Although in order for these associations to be declared

of public utility, certain conditions are required in their organization [article 32.1 sections c, d, and e)[22]. In case law, the request for a declaration of public utility has been denied to sports societies that provide onerous services[23]. However, associations have been declared to be of public utility even if they carry out commercial or business activities or receive economic compensation for performing certain services[24].

It has been said that associations declared to be of public utility constitute a third kind among legal-public and legal-private associations. They are associations that do not participate in the public administrations, but perform functions of collaboration so valuable to them, partially assuming their functions, that they are not outside the field of the public.

5.3 Rights of associations declared to be of public interest

The declaration of an association of public interest represents a whole series of advantages for the association provided for in art. 33 LA: "a) To use the mention "Declared of Public Utility" in all kinds of documents, after its name. b) To enjoy the tax exemptions and benefits that the laws recognize in favor of them, under the terms and conditions provided for in the

[22] '(c) Members of representative bodies who receive remuneration do not do so from public funds and subsidies. Notwithstanding the provisions of the previous paragraph, and under the terms and conditions determined in the Statutes, they may receive adequate remuneration for the performance of services other than the functions that correspond to them as members of the representative body.
d) That they have the appropriate personal and material resources and the appropriate organisation to guarantee compliance with the purposes of the bylaws.
e) That they are constituted, registered in the corresponding Register, in operation and effectively complying with their statutory purposes, uninterruptedly and in compliance with all the above requirements, at least during the two years immediately prior to the submission of the application".

[23] In the STS (3rd) 19 March 2018 (ECLI:ES:TS:2018:968) that request was rejected on the grounds that the main activity carried out by that association was onerous, as it was found that the entity's income came mainly from the provision of services in the form of a price, fee or temporary subscription, compared to the low percentage of public subsidies, and with respect to free social vouchers that it distributes, they represent the consideration paid by the City Council of Pamplona for the enjoyment on a lease basis of some plots of land owned by the latter, and the staff who provide their work in the entity receive their corresponding salary. The resolution establishes that the onerous nature of these activities prevents their purposes from being classified as of general interest, but rather that they have a particular interest.

[24] This is the case of the STS (3rd) 11 November 2011 (ECLI:ES:TS:2015:4621). The Association for the Development of the Arlanza Region (ADECOAR) is admitted. In this case, the applicant association is financed through the fees received from its members, and from subsidies from the public administrations within the scope of state and community aid programmes. It should also be borne in mind that the members of the Board of Directors hold their positions free of charge (Articles 6 and 12 of the Statutes), that the association is not for profit (Article 1 of the Statutes) and that in the event of dissolution, if there is a liquid surplus, it will be used for charitable, cultural, social or similar purposes (Article 30 of the Statutes). The fact that the Association obtains income from the development of its activity does not presuppose the profit motive in its action nor does it necessarily imply the impairment of the general interest that it must pursue and, consequently, is not incompatible with its quality as an Association of public utility.

regulations in force. c) To enjoy the economic benefits that the laws establish in their favour. d) Legal aid under the terms provided for in the specific legislation". In the case of associations under Valencian law, they are determined in art. 35[25].

5.4 Dissolution, liquidation and termination of associations

There is no difference between the dissolution of associations on the ground that they have been declared to be in the public interest. Hence, the regime for its dissolution, liquidation and extinction will be that provided for in general terms in state and regional law. Article 17 of the LA contemplates as causes for dissolution of the association: those provided for in the Statutes, and in their absence the will of the members expressed in the General Assembly, as well as those of article 39 of the Civil Code [expiration of the term, in the case of temporary associations; achievement of the social purpose or impossibility of achieving it] and, dissolution by a final court judgment is also contemplated. The Valencian law in its art. 50, when referring to the causes of dissolution, indicates those indicated in art. 17 of the State Law and, in addition, adds the following: "a) When any cause established in the Statutes occurs. b) Due to the withdrawal of the associates, so that they are reduced to less than three. c) When any other legal cause occurs. d) By a final judicial judgment".

After the dissolution phase, both state and Valencian law provide for the liquidation phase, which constitutes the second phase of the extinction procedure, until the end of which the association will retain its legal personality (art. 18.1 state law and 52 Valencian law). The liquidation will be carried out by the liquidators, a function that will fall to the members of the representative body at the time of dissolution, unless otherwise provided for in the Articles of Association or appointed by the General Assembly or the judge who agrees to the dissolution. The functions of the liquidators will be to ensure the integrity of the corporate assets, conclude

[25] '1. Associations declared to be of public interest in the Valencian Community have the following rights recognised: a) To use the mention 'declared to be of public interest in the Valencian Community' in all their documents. b) To enjoy the tax benefits that the laws regulating the taxes of the Valencian Community recognise in their favour. c) To enjoy the appropriate compensation for the state and local taxes that fall on them, if they are not exempt and under the terms established by the laws of the Valencian Community. d) That the regulatory bases of subsidies in matters over which the Generalitat has exclusive competence may establish assessment priorities in their favour, when the objectives of these bases coincide with their statutory purposes, in accordance with the corresponding calls for applications. e) To receive transfers from the budgets of the Generalitat for its operation, under the terms established for each financial year in the budget laws. f) To have free spaces in the public social media dependent on the public bodies and institutions of the Generalitat or any Valencian public administration, under the terms determined by regulations. g) To free legal aid, under the terms established in the specific legislation. […]».

the pending operations and carry out the new ones required for the liquidation, collect the association's credits, liquidate the assets and pay the creditors, apply the surplus assets to the purposes provided for by the Statutes and request the cancellation of the entries in the Registry (art. 18.3 state law and 53 Valencian law). In the event of the insolvency of the association, promote the representative body, or if this is the case, the liquidators will promote the appropriate bankruptcy proceedings before the competent judge (art. 18.4 LA).

5.5 Destination of the assets of the associations

State law states that the social assets, once the association has been dissolved, must be used as provided for in the Statutes (art. 17.2). The fact that the destination of the assets in the event of dissolution is contemplated in the statutes is a legal requirement (art. 7.1.k LA). In addition, the destination of this assets "may not distort the non-profit nature of the entity". The Valencian law presents as a novelty with respect to the state law that in art. 52 it is established that the surplus assets, in the event that the statutes or the dissolution agreement "do not specify in a singular manner the entity receiving the remainder, it will be assigned to associations or other non-profit entities that carry out similar or analogous purposes to those of the dissolved association and in the same locality or in the Valencian Community".

5.6 Bankruptcy as a cause for the extinction of associations

Unlike what happened with the laws, state and regional, on foundations, in the case of associations there is a reference to bankruptcy. Thus, art. 18.4 LA establishes that: "In the event of insolvency of the association, it is the responsibility of the representative body, or if it is the case, the liquidators will promote the appropriate bankruptcy proceedings before the competent judge". On the contrary, Valencian law lacks any reference to bankruptcy.

In the case of associations, what we have been reiterating in this work will also apply, that the opening of the liquidation phase in the bankruptcy proceeding automatically produces the opening of the dissolution phase of the associations.

6 Dissolution, liquidation and extinction of a cooperative society

The double regulation, state and regional, characteristic of associations and foundations, becomes threefold in the case of cooperatives: firstly, there is Law 2/2011 that regulates the operation of European Cooperative Societies domiciled in Spain; secondly, at the state level we find Law 27/1999, of 16 July, of Cooperatives (hereinafter LCoop) and Legislative Decree 2/2015, of 15 May, of the Consell, which approves the Revised Text of the Law on Cooperatives of the Valencian Community (hereinafter TRLCCV).

6.1 Dissolution

The dissolution and liquidation of the cooperative refer to the extinction of the cooperative and the subsequent phase of payment of its debts and distribution of the resulting liquid assets among the members of the cooperative in accordance with the provisions of articles 70 et seq. of the Lcoop. In the aforementioned operations, basically the same steps are followed as those provided for in the Capital Companies Act. In the case of a Cooperative Society, it may take place for any of the following reasons (art. 70 Lcoop and 81 TRLCCV): 1. compliance with the term set in the Articles of Association (although extension may be granted); 2nd resolution of the General Assembly adopted by a two-thirds majority of the members (reactivation is possible); 3. the paralysis of the corporate bodies or of the cooperative activity for two years, without justified cause, so that it is impossible for them to function; 4th. Reduction of the number of shareholders below the minimums established in the LCoop or of the share capital below the minimum established by the bylaws, without being reinstated within a period of one year; 5. due to the fulfilment of the corporate purpose or the impossibility of its fulfilment; 6. by merger, absorption or total spin-off and 7. by any other cause established by Law or in the Articles of Association.[26]

To these causes must be added two others (Serrano, 2010): a) the opening of the liquidation phase of the bankruptcy (art. 145.3 LCon)[27]. b) the administrative resolution of

[26] BROSETA PONT, AND MARTÍNEZ SANZ, 2021, T.I, p. 706, consider that cooperatives have two specific causes of dissolution that separate them from capital companies, such as paralysis or inactivity for two years, as well as the reduction of the number of members below the legal minimum [art. 70.1. c) and d)].

[27] Article 81.1.h TRLCCV does establish as a cause for dissolution: "h) Resolution of the general assembly adopted, as a result of the declaration of the cooperative in bankruptcy, with the favourable vote of the simple

disqualification of the cooperative adopted by the Ministry of Labour and Social Affairs which, once final, will lead to the forced dissolution of the company (art. 116 LCoop and art. 81.1.i TRLCCV).

The dissolution requires the agreement of the General Assembly, in all the cases of article 70 except in the cases of the expiration of the period set in the statutes and the opening of the liquidation phase of the bankruptcy that operate automatically -*ipso iure*-. In the event that the Meeting is not convened for this purpose, any interested party may request the judicial dissolution of the company (art. 70.3 Lcoop).

In the LCcoop there is no reference to the Bankruptcy Law, since the last regulation was approved almost four years after the first. In the original wording of the LCoop, there were references to the bankruptcy and suspension of payments regulations, which were repealed by Law 22/2003, Insolvency. Thus, paragraph 7 of Article 73 Lcoop, which established that among the functions to be performed by the liquidators was to request, in the event of the insolvency of the cooperative, the declaration of bankruptcy or suspension of payments, was expressly repealed; the fourth additional provision of Law 27/1999, of 16 July, was also expressly repealed. of Cooperatives, which established that the legislation on suspension of payments and bankruptcy was applicable to these societies (Rodríguez, 2008). On the other hand, in the case of the TRLCCV, as it is subsequent to the Insolvency Law, it does contain a reference to it in Article 84 by stating that: "the insolvency procedures provided for in state insolvency legislation shall apply to the cooperative". Likewise, in art. 81.1.h among the causes of the dissolution of Valencian cooperatives is their declaration of bankruptcy. However, the agreement of the general assembly approved by a simple majority is required.

In any case, what has been said regarding the other corporate forms of the ENLs in terms of insolvency proceedings will apply to the cooperative – both state and regional. In other words, the declaration of bankruptcy does not constitute, in itself, a cause for dissolution, but if the bankruptcy proceedings were to open the bankruptcy liquidation phase, the cooperative would be automatically dissolved. In this case, the bankruptcy judge will record the dissolution in the opening order and, without appointing liquidators, will proceed to carry out the liquidation in accordance with Title V of the Insolvency Law[28].

majority of the members present and represented". It also provides for another particular cause for dissolution in section i) of art. 81.1: "i) The disqualification of the cooperative in accordance with this law".

[28] VIDAL PORTABALES, 2004, p.43.

6.2 Settlement

Liquidation is the phase after the dissolution of the cooperative. The state law provides for liquidation in its article 71 and the TRLCCV in art. 82. The state and regional regulations coincide in the main in terms of the liquidation of the cooperative. The liquidation phase of the cooperative has a series of particularities, in relation to the previous figures analysed: it is based on the patrimonial interest of the members in the distribution of the resulting assets. In the doctrine, both the thoroughness of the liquidation procedure regulated in articles 71 to 76 of the law have been highlighted, as well as the particular destination to the different items of the final balance sheet[29].

The foregoing is without prejudice to the right of creditors to receive their claims in preference to any division of assets among them, so that in this respect the liquidation of the cooperative is close to that of capital companies. except in relation to the distribution of surplus assets, since the cooperative does not have room for the liquidation quota in favour of the members.

Once the company has been dissolved and the liquidation phase has begun, the General Assembly will appoint the liquidators from among the members, who may only be members of the cooperative in an odd number. Its acceptance and registration in the Register of Cooperative Societies is required (art. 71.1 Lcoop). In the event that two months have elapsed since the liquidation without liquidators having been appointed, either the Governing Council or any member may request their judicial appointment (art. 71.2 Lcoop). After their appointment, they will have to sign with the Governing Council an inventory and balance sheet of the company referring to the time when the liquidation begins and before they begin their work (art. 71.3 Lcoop). During the liquidation, meetings of the General Assembly will continue to be convened, which will be convened and chaired by the liquidators who will report on the progress of the liquidation (art. 71.4 and 5 Lcoop).

In the operations of the liquidation of the cooperative, an auditor may be appointed to supervise these operations, it may be requested by 20 percent of the social votes to the Judge of first instance (art. 72 Lcoop).

In the liquidation period, the liquidators are those who perform the management and representative functions of the company, aimed at liquidating the liabilities and realising the

[29] BROSETA PONT, & MARTÍNEZ SANZ, 2021, T.I, p. 706,

assets. These functions are detailed in Article 73 of the Lcoop: "1. To keep and guard the books and correspondence of the cooperative and to ensure the integrity of its assets. 2. To carry out the pending operations and the new ones that are necessary for the liquidation of the cooperative, including the disposal of the assets. 3. Claim and receive outstanding credits, either against third parties or against partners. 4. To enter into transactions and commitments when it is convenient for the company's interests. 5. To pay creditors and members, to transfer to whom it corresponds the education and promotion fund and the surplus of the liquid assets of the cooperative, in accordance with the rules established in Article 75 of this Law. 6. To represent the cooperative in court and outside of it for the performance of the functions entrusted to them".

Once the liquidation operations have been completed, the liquidators will submit to the General Assembly for approval a final balance sheet, a management report on these operations and a project for the distribution of the surplus assets, which must be previously censured by the liquidation auditors, if they have been appointed (art. 74.1 LCoop). Once the balance sheet and the distribution project have been approved, they will be published in one of the most widely circulated newspapers in the province of the registered office. Such agreements may be challenged by the partners, by the creditors, within the period established in the forty days from the date of publication. As long as the period for challenging them has not elapsed or the claims filed have been resolved by a final judgment, the resulting assets may not be distributed. However, the liquidators may proceed to make payments on account of the company's assets provided that their amount is not affected by the outcome of those claims (art. 74.1 LCoop).

6.3 Termination

Once the liquidation of the cooperative has been completed, the liquidators will execute a public deed of extinction of the company (article 76 LCoop and 83 LCCV). This deed must be registered in the Register of Cooperative Societies, and the request of the liquidators to proceed with the cancellation of the registry entries must be recorded.

6.4 The fate of the assets of cooperatives after dissolution

The absence of a profit-making purpose and the presence of non-distributable funds (art. 75.2 LCoop) constitute an impediment to the distribution of the remainder of the assets among the partners (Portabales, 2004, p.21).

The resulting assets, once the social debts have been satisfied, must be applied in accordance with the order established in art. 75 LCoop: 1. the amount of the Education and Promotion Fund will be made available to the federal entity to which the cooperative is associated, or it will be paid into the State Confederation of Cooperatives of the same class as the cooperative in liquidation, and failing that, it will be paid into the Public Treasury for the purpose of allocating it to the constitution of a Fund for the Promotion of Cooperativism; 2. The amount of the contributions to the share capital, once paid or deducted from the profits or losses corresponding to previous years, shall be refunded to the members starting with the contributions of the collaborating partners, the voluntary contributions of the other partners and then the mandatory contributions; 3. It shall also reimburse the members for their participation in the voluntary Reserve Funds that are distributable by provision of the Articles of Association or by agreement of the General Assembly; 4. If there is surplus liquid, it will be given an institutional destination similar to that provided for the Education and Promotion Fund.

Thus, the system for the allocation of the social assets of cooperatives is halfway between the absolute prohibition of the distribution of any amount of the remainder in the case of associations and foundations and the distribution of the entire remainder, among the members in the case of capital companies[30]. Thus, in cooperatives there is part of the remainder that is allocated to the members, such as the amount of capital contributions (art. 75.2.b) and their participation in the voluntary reserve funds (art. 75.2.c.). Another part, such as the amount of the education and promotion fund, is made available to the federal entity to which the cooperative is associated and, failing that, to the one determined by the General Assembly (art. 75.2.a). The surplus liquid, if any, will be made available to the cooperative society or federative

[30] BROSETA PONT, & MARTÍNEZ SANZ, 2021, T.I, p. 706, highlight that only a part is refundable to the partners, after the creditors have been satisfied, specifically the contributions -mandatory and voluntary- to the share capital, once deducted -where appropriate- the losses corresponding to previous years, as well as their participation in voluntary reserve funds that have the status of distributable as established in the Articles of Association or have been determined by the Assembly. The surplus liquid, where appropriate, will be made available to the cooperative or federation that is included in the statutes or designated by the Assembly. Finally, the education and promotion fund will be made available to the state to which the cooperative is associated.

entity that is expressly included in the Statutes or that is designated by agreement of the General Assembly (art. 75.2.d). In the case of the Valencian Community, the destination of the liquid surplus is established in art. 82.6[31].

In conclusion, we can say that the distribution system of cooperatives is mixed, on the one hand it constitutes a situation in a certain way, similar to that which occurs with associations and foundations, except for the particularities of the cooperative with respect to the destination of the education and promotion fund, the reimbursement to the members of the contributions of social capital, and their contributions to voluntary reserve funds.

7 Dissolution, liquidation and extinction of a non-governmental development organization

Non-governmental development organisations (NGDOs) are regulated by Law 23/1998, of 7 July, on International Development Cooperation (hereinafter LCID), article 31 of which defines them as those *"legally constituted and non-profit entities governed by private law, which have among their purposes or as an express purpose, according to their own Statutes, carrying out activities related to the principles and objectives of international cooperation for development. Non-governmental development organizations should have full legal capacity and capacity to act, and should have a structure capable of sufficiently ensuring the fulfilment of their objectives."*

NGDOs may be registered in the Register of the Spanish Agency for International Cooperation, or, where appropriate, in the Register of Autonomous Communities (art. 33.1 LCID). Registration in any of these Registers is an essential condition for receiving from the Public Administrations, within the scope of their respective competences, aid or subsidies that can be counted as official development aid.

[31] Article 82. 6 TRLCCV establishes the destination of the surplus liquid in the following terms: "6. Subsequently, each member shall be paid the corresponding part of the voluntary distributable reserves, if any, as well as the amount of their net contribution, if any, updated, starting with voluntary contributions and continuing with mandatory contributions. If there are contributions whose reimbursement has been refused by the governing board, they will have preference in the distribution of the social credit. Finally, the surplus liquid, if any, shall be made available to the cooperative or cooperatives, union, federation or confederation, which appears in the statutes. If there is no designation, this amount will be made available to the Valencian Council of Cooperativism, so that it can be used for the purposes of promotion and promotion of cooperativism that it determines. If the designated entity is a cooperative society, it shall incorporate the amount received into the mandatory reserve, undertaking that for a period of fifteen years it shall be unavailable, without losses arising from the cooperative being imputed to the amount incorporated".

NGDOs do not constitute a corporate form in themselves, unlike what happens with the entities we have analysed so far, foundations, public interest associations and cooperatives. This means that NGDOs have to resort to other legal forms, however, the problem lies in the fact that the LCID does not require a specific legal form for NGDOs, but leaves the door open to the use of "legally constituted and non-profit private law entities". In view of this generic expression, the doctrine considers that within this expression, foundations and associations fit perfectly, as they are the prototypes of corporate modalities of private law and non-profit[32]. This is reinforced by the fact that art. 2.b of Law 49/2002, on Patronage, which considers as non-profit entities, among others, "*c)* Non-governmental development organizations, provided that they have the legal form of a foundation or association".

In our opinion, NGDOs would also have a place within private law and non-profit entities the so-called mutualist-based companies, and within them, especially social initiative cooperatives, as they are the only ones that could have as their purpose "*the performance of activities related to the principles and objectives of international cooperation for development"* (art. 33 LCID). However, resorting to corporate forms, other than association and foundation, would leave NGDOs outside the subsidy system and the special tax regime of the aforementioned Law 49/2002.

The Patronage Law does regulate the requirement relating to the destination of the assets of non-profit entities in the event of dissolution (art. 3.6), which must be allocated to some of the entities benefiting from patronage or to public entities of a non-foundational nature that pursue purposes of general interest. This form of destination of the patrimony is practically similar to that established in the Valencian state and regional legislation of associations, foundations and, to a certain extent, for cooperatives.

Thus, in the absence of a unitary legal regime for NGDOs, it would have to be sought within the regulatory norms of each of the different legal forms that these organizations can adopt[33]. Thus, we can conclude that all issues relating to the dissolution, liquidation, extinction, destination of surplus assets, and impact of the declaration of bankruptcy on the NGDO's will depend on the corporate form used. Consequently, everything analysed in the previous sections of this work, with respect to foundations, associations and cooperatives, will be applicable to NGDOs.

[32] ANTÓN, 2009, p. 48.
[33] ANTÓN, 2009, p. 47

8 Conclusions

In all ENLs, regardless of the corporate form they adopt, the same scheme is repeated in crisis situations. All of them must go through a period of dissolution, which affects the internal sphere of the entity, and which takes place when it is in any of the cases of dissolution indicated in the Law or in the Statutes. The decision to dissolve the entity can be approved by the General Meeting or Assembly, it can also be triggered automatically – *ope legis* – when the factual assumptions contemplated in the different laws that regulate them occur, even dissolution by judicial means. The dissolution does not mean the extinction of the ENLs, since the company once it has been dissolved goes into liquidation but does not disappear[34].

The liquidation is the next phase, which affects both the associates/partners and the third party corporate creditors, and during it a whole series of operations will be carried out to eliminate the links that unite the company with third parties and with its partners[35]. During this phase , the total or partial payment of the corporate debts is made, for which the scheme is repeated again in all the ENLs, liquidators are appointed to replace the administrators in their functions, occupying the functions of representation and administration of the ENLs. In this phase, it is a matter of determining and establishing, once the corporate debts have been satisfied, whether or not there is a remainder of surplus assets. In all cases of ENLs, the liquidation phase is subject to publicity requirements, which ends with the registration of the dissolution agreement in the Registry that corresponds to each type of company, with the consequent cancellation of the registry entries and the consequent extinction of the legal personality of the ENL.

A common characteristic of all ENLs is that the surplus assets cannot be distributed among the partners and that their destination must be established in the Articles of Association, and in any case the different laws that regulate the corporate modalities of ENLs, essentially agree that the surplus assets must be allocated to other entities that have a similar corporate purpose. The exception to this rule occurs when the ENL's adopts the form of a capital company, in which it will be distributed among the partners in proportion to their share in the share capital.

It is also a common place for all ENLs that may be subject to insolvency proceedings on the basis of Article 1 of the Insolvency Law. In addition, in all cases of ENLs, including those

[34] SACRISTAN, 2006, 823
[35] SACRISTÁN BERGIA, 2006, P. 824

in the form of a capital company, the start of the liquidation phase within the insolvency proceedings will also mean the dissolution of the legal entity.

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