

Legal Update

by Allan Garro N.

Getting Your Corporation in Costa Rica

Most expats living/investing in Costa Rica decide to register a corporation. There are various reasons; to establish a business, open bank accounts or get asset protection seem to be the most common. The numbers of existing corporations in the country are awesome. As you are reading this article the Registry is issuing numbers over 600.000. However, creating a new company or buying a "shelf" corporation doesn't mean people understand how they legally operate or what the right type of company is for their purpose.

SOCIEDAD ANONIMA or SA is preferred, being equivalent to Limited Companies in the USA, Canada and similar companies in other parts of the world. They can legally enter any permitted commercial, agricultural, livestock or industrial activities, manage bank accounts, be part of other corporations, acquire properties and vehicles, give and take credits, apply for or make loans, enter lawsuits and provide all kind of professional services. The corporations have rights and responsibilities separate from their owners or managers. To incorporate a corporation requires a public document with the articles of incorporation, a minimum of two shareholders, a minimum of four directors – a president, secretary, treasurer and fiscal - stock certificates and six legal books. Any further amendments to the articles of incorporation require approval of at least 51% of the voting shareholders to be valid.

Many corporations have appointed directors that shareholders don't even know. The explanation for this is that when a company is created for sole ownership, the owner will be usually be appointed as President with unlimited, universal power of attorney. The rest of directors are appointed only to comply with the minimum set by law. In this case it is very important to ensure the other directors don't have any kind of power of attorney over the corporation. Shareholders can



remove appointed directors and name new ones, who must then be registered in the Company Registry.

A different kind of company structure that is strongly recommended is a LIMITADA or LTDA. This is another type of Limited Liability Corporation. Apart from giving the same liability separation provided by an SA, it doesn't need to have a set of directors, only a manager or two. The word Limitada means stock can't be transferred by simple endorsement, but that the rest of the shareholders have first right of refusal in any stock transfer while on S.A. corporations stock can be transferred by endorsement of the stock certificate. This makes LLC companies easier to manage and safer regarding stock. Also, amendments require support of at least 75% of the voting shareholders to be valid.

Both S.A.s and LIMITADAs can have capital stock either in colons or dollars. They also can grant power of attorneys to anyone, not just directors or managers if necessary. In both cases liability is limited to shareholders' investments. Also, according to the latest criteria from Tributacion Directa (The Costa Rican income tax department), if they are not used to operate a business or generate profits, there is no longer a requirement to file tax returns at the end of the fiscal year. However, such criteria might change in the future. Even though at least two people are required to form them, there is no restriction after registration to prevent the shares being transferred to one person.

Corporations are required to have six legal books as follows:

1. General Assembly keep the minutes of shareholder meetings, and especially decisions to amend the original articles of incorporation by changing the corporate structure, legal address, raising capital stock, granting powers of attorney and electing the board of directors.
2. Board of Director's minutes, which is seldom used except for those companies operating commercially. It's a book to register the decisions taken by directors in order to decide the business direction of the company,
3. Shareholders Records, which is the book, used to register all share ownership and transfers,

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4. Ledger book, 5. Journal book and 6. Balance and Inventory. Last three books mentioned are for accounting purposes only. LIMITADAs have only 5 books since they are not required to have a Board of Director's minute book.

Other types of corporations that exist in Costa Rica are: 1. EMPRESA INDIVIDUAL DE RESPONSABILIDAD LIMITADA or E.I.R.L.s, which is a limited liability company formed by one person only, 2. SOCIEDAD EN NOMBRE COLECTIVO or Collective Company, designed for those companies managed by family groups working together for generations and 3. SOCIEDADES EN COMANDITA which are silent partnerships where some stockholders take care of

the control and legal representation while others contribute with capital investment only. The question is why are these three types of company seldom used in Costa Rica? The answer is that they don't differentiate between liabilities held by the company and those held by shareholders - liability is not limited. Personal assets are not protected like S.A.s and LIMITADAs do.

There is one more type of corporate structure usable in Costa Rica: Expats owning a foreign company for example in Panama, USA or Canada can legally open a branch in Costa Rica according to article 5 of the Code of Commerce. By fulfilling all requirements set by law, the foreign company can keep the same name; have a corporate identification number and a person with an unlimited power of attorney can operate the company with full legal rights.

It's good practice to avoid owning assets or doing business in a personal name. The best company structures are S.A.s and LIMITADAs since they are recognized by all banks, public institutions and people in general. Once you get your Costa Rican company take good care of the legal books. If they are lost, having them replaced is very complicated. Don't forget to double check everything is properly registered according to your personal needs.

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