

by Allan Garro

What Type of Corporation To Get In Costa Rica?

At some point most expats living / investing in Costa Rica decide to register a corporation. There are numerous reasons why, but establishing a business, opening a bank account, or obtaining asset protection, seems to be some of the most common ones.

The number of existing corporations in the country is awesome; at the present time the Registry of Corporations is issuing new corporation accounts with numbers over 700,000.

Creating a new company, or acquiring a “shelf” corporation, is an easy process. But that doesn’t mean people understand how the corporation legally operates, or even what type is the right type for their purpose. In this article we will discuss the most common types of corporations.

The most popular corporation is the Sociedad Anonima, or S.A. It is equivalent to a standard corporation in USA and similar structures in other parts of the world, and can legally be used by any permitted commercial, agricultural, livestock, or industrial activity to manage bank accounts, be a part of other corporations, to acquire properties and vehicles, to give and take credit, to apply for making loans, to enter lawsuits, or to provide all kinds of professional services. The most important thing to know is that this type of corporation has rights and responsibilities separate from their owners and/or directors.

To register a new S.A. requires having an attorney and notary create a public document. That document must contain the Articles of Incorporation which lists a minimum of two shareholders and four directors (President, Secretary, Treasurer and Fiscal). Also included are stock certificates and a set of three legal books. After the new corporation is registered, the transfer the stock may be accomplished by endorsing the stock certificates. It is legal that the entire capital stock becomes property of one only person. Once the incorporation has been established any amendments or changes to the articles of incorporation require the approval of at least 51% of the voting shareholders to become valid.

In some case S.A. corporations may have appointed directors that current stockholders don’t even know about. The explanation for this is that when a corporation is created for sole ownership and the owner is appointed as President with an unlimited and universal power of attorney, to comply with the law, the rest of directors are appointed in name only. In this case it is very important to ensure the other directors do not have any kind of power of attorney over the corporation. Stockholders can remove any appointed directors and name new ones, but any changes must be registered at the Registry of Corporations.

A different type of corporate structure is a Limitada, equivalent to a Limited Liability Corporation or LLC. This type of corporation is often recommended because, apart from giving the same liability separation provided by an S.A., it does not need to have a set of directors, only a manager. (There can be more individuals included at the owner’s discretion, but the minimum required is only one.) The word Limitada means stock cannot be transferred by simple endorsement, since the rest of stockholders have the first right of refusal in any stock transfer. This is in contrast to an S.A. whose stock can be transferred by simple endorsement.

Limitada companies are easier to manage and can be considered a bit safer regarding their stock. Also, any 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 may also grant powers of attorney to anyone, not just directors or managers, if necessary. In both cases liability is limited to stockholders’ investments only. Basically the S.A. has a structure that permits operation of large or medium businesses, while the LIMITADA is designed for medium and small business operations.

Corporations used to be required to have six legal books. Nevertheless, a recent amendment made to the Code of Commerce eliminated the obligation to have three of those accounting books (named Mayor, Diario, and Inventarios y Balances.) The presently required legal books are as

follows: 1. General Assembly, to keep the minutes of stockholders' meetings, 2. Board of Directors, which is seldom used except for those that businesses which operate commercially and, 3. Shareholders Records, which is used to register all share ownership and stock transfers. LIMITADA's are not required to have a Board of Directors minute book.

There are also some other types of corporation that exist in Costa Rica. These are: 1. Empresa Individual de Responsabilidad Limitada, which is a limited liability company formed by only one person, 2. Sociedad en Nombre Colectivo or Collective Company, designed for those companies being managed by family groups working together for generations, and 3. Sociedades en Comandita, which are silent partnerships where some stockholder(s) take care of both control and legal representation while others contribute with capital investment only.

These three types of companies are seldom used because they don't differentiate between liabilities held by the company and those held by the stockholders, meaning liability is not limited at all. In other words, personal assets of the business owners and officers are not protected in the same way as they are in S.A.s and Limitada's.

There is one more type of company structure which can also be used here: Expats owning a foreign company outside Costa Rica, for example in Panama, Canada, or the U.S.A., can legally open a branch in Costa Rica. According to Article 5 of the Code of Commerce, they must keep the same name, have a local corporate ID number, and have a local, appointed legal representative.

When following the normal procedures set by law, the usual elapsed time to get a corporation registered is about two weeks. However, it is now possible to register a new corporation online through a system found at www.crearempresa.go.cr. To use this system the Notary chosen by the client needs to have a digital signature which has been previously registered with that system. Using this system to register a new corporation can be accomplished in only about 24 hours, which is a major improvement. It is important to note, however, that it is still necessary to hire a Notary to create the corporation and complete the registration process.

Many residents may remember that during 2012 a law named Tax on Corporations took effect, imposing an annual tax to every corporation registered in Costa Rica. The amount of the tax was around US\$400 for corporations operating commercially and US\$200 for those qualified as "inactive", which were usually used as holding companies and for asset protection. This law was nullified by the Constitutional Court during 2015, and exempted payment starting 2016 year.

Currently, the government is trying to bring the Tax on Corporations back to life, arguing they need the money to fund the Police Departments. If this tax sees the light of day again it will be a good time to consider transforming an existing corporation to another special type of structure named SOCIEDAD CIVIL or civil company. This type corporation does not pay that tax while also working well to protect assets. But that is a something we will keep for a future article, in case the tax comes back to life.

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