

Are Your Assets Secure Inside a S.A Corporation in Costa Rica

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Many expats in CR have some type of corporation registered in the country. There are numerous reasons why, but establishing a business, opening a bank account, or obtaining asset protection seem to be some of the most common ones. The main objective usually is to keep any personal liability separate from the corporation's patrimony and vice versa. It also allows the owner to include within the corporation other persons with some type of contingent Power of Attorney as part of an Estate Planning strategy.

The most popular corporation is the "**Sociedad Anonima**", or S.A as we call it for short. 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, or industrial

organization as well as for providing all kinds of professional services. The second most popular type of corporation is a Limited Liability Corporation or "**Limitada**", which basically provides the same benefits of owning an SA without requiring an entire board of directors to be appointed.

To register a new S.A. requires having an attorney to create a public document containing the Articles of Incorporation which lists a minimum of two shareholders and four directors (President, Secretary, Treasurer and Fiscal). In many cases 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, the rest of directors are appointed in name only.

A person owning a Sociedad Anonima, being sole owner and President, was able to run the

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corporation without any problem. As President holding an unlimited and universal Power of Attorney, he or she was entitled to sign any type of contract as well as to sell or encumber any assets of the corporation without further authorization, and as a stockholder to issue any authorization required by most banks to authorize different type of credits. This situation recently changed causing a great disturbance.

On October 4th, 2016 the Protection of Small Investors Act number 9392 took effect, which introduced an article number 32- section 3rd – subsection b of the Code of Commerce. With this amendment it became mandatory for all corporations to have the previous approval of the entire board of directors (President, Secretary and Treasurer) for any transaction involving selling or encumbering assets. This affects basically all the S.A. companies, no matter what kind of faculties were granted to the president.

The above-mentioned amendment has been the cause of major problems. In many cases, purchase agreements involving real estate properties and vehicles have been ruined because the president was no longer authorized to transfer title without a previous authorization signed by the Secretary and Treasurer. There are thousands of S.A. corporation where the owner and President had no idea where to find the other board members or even who they are.

It was a common practice that the initial board members were part of the staff at the law firm that registered the corporation, and were never removed as the only person of importance was the President. In other cases, the owner appointed board members who were familiar, like friends, siblings and other family members. However, in time those members passed away or moved to live in a distant country, making it impossible or very difficult to obtain their signatures for an approval.

It is logical that many corporation owners don't like to have their hands tied when getting approvals from board members just because of a dumb new regulation that just does not make sense. The solution they have found is to request a lawyer to transform their current S.A. into an LLC Company or Limitada because Limitadas don't require a board of directors, only one or more managers chosen by the owner, with full and unlimited power of attorney.

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. Limitada companies are easier to manage and can be considered a bit safer regarding their stock. Also, amendments require support of at least 75% of the voting shareholders to be valid. They also provide the same separation between personal liability and corporate assets found on S.A.s, without requiring previous approval issued by three members instead of one.

One important aspect to take into consideration is that Limitada companies also pay the tax on corporations just like S.A. If you are looking for a way out of paying that tax you can consider using another type of company named "**Sociedad Civil**" or Civil company.

About the Author: Allan Garro was incorporated as a lawyer and public notary in 1996. He specializes in Litigation, Corporate and Real Estate Law. He has also acted as external legal consultant to Congress. He has been the author of more than 100 published English Language

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