

# A Complete Guide to Opening up a Corporation in Costa Rica

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Many expats coming to live or invest in Costa Rica decide or receive advice that creating a corporation is the best way to operate and protect their investment here. There are numerous reasons why they decide to proceed with that, but establishing a business, opening a bank account, or obtaining asset protection seem to be the most common ones. The initial process of a creating a new corporation is simple, but that does not mean people understand all details and extra obligations implied, and which is the right one required for their specific purposes.

The most popular and usual types of corporations are “**Sociedad Anonima or S.A**”. and “**Sociedad de Responsabilidad Limitada or Limitada**”. There are also other types of corporations that exist, which are: 1. Empresa Individual de Responsabilidad Limitada, 2. Sociedad en Nombre Colectivo, 3. Sociedades en Comandita, which are silent partnerships

and 4. Sociedad Civil or Civil Company. These types of companies are seldom used because they do not differentiate between liabilities held by the company and those held by the stockholders.

One more type of structure that can also be used here is to choose the option of those owning an existing corporation outside Costa Rica, like in Panama, Canada or USA, to proceed opening a branch in the country. According to articles 5 and 226 of the Code of Commerce, they must keep the same name, have a Costa Rican corporate ID number and also to have a local appointed legal representative. The process of opening the branch needs to be performed through a Costa Rican notary public, for which is necessary to provide proof of the existence of the corporation on a different country.

The Sociedad Anonima or S.A. it is equivalent to a standard corporation in USA and similar structures in other countries. It can be legally used on any permitted activity in the country. One important aspect to know is that this type of corporation has rights and responsibilities separate from their directors or legal representatives. After the corporation is registered it is valid to transfer the stock to any other person or corporation by endorsing the stock certificates and place the required entry on one of the legal books, but this is now subject to a newer regulation as explained later.

To register a new S.A. requires a Costa Rican Public Notary (which in the country needs to be a lawyer also) to proceed creating the articles of incorporation on a public document. To start a minimum of two stockholders are necessary, as well as to proceed appointing at least four directors, which are President, Secretary, Treasurer and Fiscal. After the incorporation, the stock can become property of one only person if that is required; also amendments or changes to the articles of incorporation require the approval of at least 51% of the voting shareholders to become valid.

In some cases, it is possible to find S.A corporations with appointed directors that current stockholders do not even know who they are. The reason is because probably only one or two persons requested the creation for a corporation and the other extra directors were appointed using the staff of the notary public or similar. In such case it is important to ensure those other directors do not have any type of power of attorney. Stockholders can remove any appointed directors and name new ones, but changes require further registration at the Registry of Corporations.

Sociedad de Responsabilidad Limitada or LLC companies might be a better choice. This type of structure 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, but only a Manager as minimum. That does not prevent from appointing more managers if required. On this type of corporation, the 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 any amendments require support of 75% of the voting shareholders to be valid. They may also grant separate powers of attorney to other persons, not just to directors or managers. Using a Costa Rican Corporation is also the tool used by non-residents to provide some services or run a business that they could not establish in their name without legal status. Many other only use it for the purpose of holding assets acquired with their savings and monies earned on a different country, so their corporation has the status on Inactive for tax purposes.

The basic procedure to get an S.A. or Limitada corporation properly registered is as follows:

1. The Notary Public creates the articles of incorporation, which include the name, legal address, identification of the stockholders and appointment of directors o managers depending on the type of corporation chosen.
2. The document is submitted for registration online on the site <https://crearempresa.go.cr/>, where only an authorized Notary Public can submit the registration document. Also the registration taxes and payment for an official publication is completed.
3. Under normal conditions, the registration process takes 48-72 hours to complete, unless there are any corrections requested by the Registry of Corporations.
4. Once the corporation is registered, an electronic document is sent to the Notary Public showing the general information and the assigned Corporate ID number or cedula juridica and the specific number for the creation of the legal books.
5. In case of an S.A. three legal Actas books are created: a. Asamblea General or General Assembly, b. Stockholders Records or Registro de Socios and c. Board of Directors Minutes or Actas de Junta Directiva. Same applies for the Limitada except the third book Board of Directors Minutes is not required because they do not have a board.

After the registration takes place some extra obligations that need to be taken care of are:

1. Proceed registering the corporation as Active or Inactive in front of the Tax Authority or Dirección General de Tributacion.
2. Since 2017 there is a tax named Impuesto a las Personas Juridicas or Tax on Corporations, which is an annual tax imposed for the existence of the corporation. The amount to pay is approximate 69,000 colons (around US\$125 at present time) for Inactive corporations. It increases for Active corporations depending on their annual sales. Not paying this tax for three years in a row will cause that the government proceeds dissolving it.
3. Since 2019 it is mandatory to perform a report named Final Beneficiary Report to Central Bank of Costa Rica. This report is to inform who are the stockholders of the corporation. In case the stock belongs to another corporation it is necessary to disclose who are the stockholders on that other corporation, until persons are reached. Next report is due April 2021.
4. A new regulation is taking effect on March 2021. About this one there are 2 aspects of importance to consider:
  - 4.1 All Inactive corporations will need to file tax returns, and also report the amount of capital stock as well as any assets held by the corporation. This might sound illogic, because if

the corporation is inactive the rent tax is zero. However, there is something behind this, it is a way to control capital gains. If an inactive corporation sells three lots that can be considered a business activity subject to capital gains and rent tax.

4.2 Most inactive corporations have a basic amount of capital stock, but also have acquired assets like real estate property with a much higher value, paid with capital contributions from the stockholders. In this case it is advised to proceed adjusting the capital stock according to the value of new assets acquired. This will help preventing tax authorities assuming that the differences in value might represent an “unjustified increase of patrimony”.

Due to the new regulations involved in having a corporation, many have decided to dissolve their inactive corporation in Costa Rica. But it must be considered that transfer taxes must be paid in order to pass the assets on behalf of the stockholders or a third party. It should also be considered that if the assets are held in a personal name it is important to have a will in Costa Rica, specific to the assets acquired here. Keep a corporation still offers advantages like protecting assets from potential personal liabilities or to grant powers of attorney by having stockholders’ meetings on a different country, which can also be held virtually now. That certainly helps to take care of any urgent needs that might arise when the owners are not in the country.

**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 an external legal consultant to Congress. He has been the author of more than 100 published English Language articles and can be reached at [email protected]