

I COSTA RICAN CORPORATIONS

A. OVERVIEW:

Costa Rican law recognizes a wide variety of organizations, including general and limited partnerships, capital stock corporations, individual enterprises of limited liability, trusts, foundations, civil associations and cooperatives.

Foreign companies may operate legally through local branches, joint-ventures, trusts, wholly-owned subsidiaries, or other corporate organizations.

Regardless of the method of operation, enterprises doing business in Costa Rica must be registered with the Public Registry, thus becoming “Costa Rican” enterprises regardless of the nationality of their owners or officers. Foreigners can act as officers, directors, partners or trustees in local companies, make use of negotiable commercial paper, and enter into any kind of contract with practically no limitation.

Costa Rican corporations named “Sociedad Anonima” are generally preferred as a business structure since they are usually easier to manage than other entities, especially regarding powers of representation of the company, decision-making issues and other day-to-day business administration undertakings.

Local corporations such as “Sociedad Anonima” or “Sociedad de Responsabilidad Limitada” (limited liability company) limit shareholders' financial exposure and responsibilities vis-à-vis third-parties. On the contrary, branches of foreign companies are considered locally as one and the same entity as the principal which may, consequently, subject the latter to local and unexpected claims. Due to the above, local corporations are usually more favored by foreign concerns when getting established in Costa Rica.

B. CORPORATIONS:

1. Formation:

Under Costa Rican law, both of these structures: *Sociedad Anónima* (“S.A.”) and *Sociedad de Responsabilidad Limitada* (“S.R.L.”) are regulated through mostly the same corporate and tax principles as both limit the shareholders’ financial exposure and responsibilities vis-à-vis third-parties in the same manner.

Costa Rican corporations may be formed by public subscription or simultaneous organization. Its charter or articles of incorporation must always appear in a notarized public instrument which must be recorded in the Mercantile Registry and comply with the below requirements.

The corporation must be formed by a minimum of 2 members (after formation the corporation may have any number of shareholders, including a sole owner).

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2. Corporate Name:

The name of the corporation can be expressed in either Spanish or any other language (English included). The name must be preceded or followed by the expressions (i) “*Sociedad Anónima*” or “S.A.”; or (ii) “*Sociedad de Responsabilidad Limitada*” or “S.R.L”, as it may be the case, which may also be registered with the Intellectual Property Registry as a trade name.

Corporate names should differ substantially from those already registered with the Mercantile Section of the Public Registry to avoid confusion; thus, availability of a desired name should be previously checked.

3. Shares of Stock:

25% of capital stock must be paid-in, but shares which are to be paid in kind have to be fully paid-in.

The number of shares of the stock and their par value could be stated in Costa Rican colones (“CRC”) or in any other foreign currency. The establishment of corporations with bearer shares is prohibited. Non-par value shares are not permissible either. Common shares have equal rights and are entitled to one vote each.

Articles of incorporation may allow issuance of different classes of shares with different denominations, preferences, privileges, restrictions and/or limitations, as well as the establishment of other terms and conditions regarding profits, corporate assets or specific business decisions or any other corporate aspect.

Voting rights of shares other than common shares may be restricted or denied, but never for a special meeting called to modify the corporate purpose, the duration, transformation, or merger of the corporation, or to change its domicile to a place outside Costa Rica. The elimination of any preference of a class of stock must be approved by such class at a special meeting.

Ownership of stock is registered in a private registry which is, thus, not open to the public.

S.A.’s shares are freely transferable unless the charter provides otherwise; instead, S.R.L.’s shares, named “quotas” can only be transferred after the transaction be approved by the shareholders.

Dividends shall be paid in cash to shareholders unless the charter provides otherwise.

4. Shareholders' Meetings:

Shareholders' meetings have all the powers not vested upon any other corporate organ by the articles of incorporation and/or the by-laws. Meetings may be held

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out of Costa Rica when so provided by the articles of incorporation.

Ordinary meetings shall be held at least once a year for: (i) approval or rejection of the balance sheet after hearing the administrator's and the controller's report; (ii) distribution of profits; (iii) appointment or dismissal of members of the board of directors, when necessary, and controller or auditors; and (iv) any other matters not reserved to special meetings, and proposed in the agenda.

Extraordinarily, shareholders must convene for: (i) amendment of the articles of incorporation or by-laws; (ii) issuance of other classes of shares not provided in the by-laws; (iii) other purposes when so required by law or the charter.

Shareholders representing 25% of the capital of the corporation may request that a meeting be called.

Quorum for ordinary meetings on first call shall be constituted by 50% of the shares with a right to vote. For extraordinary meetings on first call, quorum is constituted by 75% of the voting shares unless a higher number is required by the articles of incorporation.

Resolutions are taken by more than one-half of the votes present at ordinary meetings and at extraordinary meetings by more than one-half of all shares with the right to vote. On second calls any attendance constitutes quorum and more than one-half of votes present decides.

5. Management:

S.A.'s are managed by a board of directors of no less than 3 members (President, Secretary and Treasurer) who need not be shareholders.

The President of the board legally represents the corporation, although the corporation may also be represented by any other members specified in the charter. These officers may delegate all or some of their powers to other members of the board if the charter permits so. They may also appoint one or more managers at will.

One-half of the members of the board is required for meetings and a majority of those present to form a valid resolution, the President having two votes in case of a tie. Meetings may be held at a place designated outside Costa Rica when articles of incorporation so provide.

Instead of the S.A.'s Board of Directors' structure, S.R.L.'s are managed through one or more managers. The specific powers of attorney of each manager shall be described (e.g., general or full powers of attorney, acting individually or jointly, specific conditions and limitations of each attorney-in-fact, etc.).

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6. Supervision:

Supervision of the corporate business shall be exercised as provided in the charter.

In the case of S.A's, one or more controllers or auditors (shareholders or not) must be appointed, who have specific duties provided by law, among them: to request monthly balance sheets, to report about the yearly balance, to call meetings of shareholders, to be present at board of directors and shareholder's meetings, to receive complaints from shareholders and to report on them to the board of directors.

7. Resident Agent:

All local corporations must appoint a Resident Agent, who must be a local attorney duly authorized to practice in Costa Rica with a professional office open in this country, should the company directors not be permanently residing in Costa Rica.

8. Corporate Books:

Once incorporated, six corporate books are required per company: (a) three legal books consisting of: (i) Minutes of Shareholders' Meetings; (ii) Minutes of the Board of Directors Meetings; and (iii) Shareholders' Registry Book; and (b) three accounting books: (i) Ledger; (ii) Inventories and Balance Sheet; and (iii) Journal.

S.R.L.'s do not have a Board of Directors' legal book nor are required to have one for the manager's decisions.

Any corporate books should be legalized with the Tax Administration in a procedure that usually takes from 10 to 15 working days.

9. Registration and Costs of Incorporation:

Registration procedures for a fresh corporation could take from 3 to 5 weeks before completion.

The cost of forming a corporation, including registration and legal fees and expenses, is US\$800, provided the registered capital stock is not particularly high.

Duly registered S.A. companies ("shelf-companies") including legalized books are immediately available at our offices for the same cost above.