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# INTERNATIONAL LAWYERS NETWORK



**CORDERO & CORDERO ABOGADOS  
ESTABLISHING A BUSINESS ENTITY IN COSTA RICA**



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## ESTABLISHING A BUSINESS ENTITY IN COSTA RICA



### *“Establishing a Business Entity in Costa Rica”*

Lawyers at  
Cordero & Cordero Abogados– San Jose

### About Us

*Cordero & Cordero Abogados* is a full-service law firm that specializes in Business and Corporate Law, Foreign Investment and Free Trade Zone Law.

This firm established in 1940, with offices in San José and Guanacaste, has earned its reputation as a top tier law firm preferred by local and international clients doing business in Costa Rica. *Cordero & Cordero Abogados* has been ranked by international directories such as Chambers & Partners and is currently referred to by the U.S. Commercial Service ([www.buyusa.gov](http://www.buyusa.gov)) as well as other regional bar associations.

The firm's staff is made up of high level, experienced and multilingual attorneys capable of dealing with complex matters and transactions in all of the following practice areas: Corporate and Contract Law; Foreign Investment & Free Trade Zone Law; Information Technologies & Telecommunications; Real Estate; Mergers & Acquisitions; Banking, Project Finance & Insurance Law; Civil Litigation Practice; Intellectual Property; Labor & Immigration, Energy & Infrastructure Law.

### 1. Types of Business Entities in Costa Rica

The most common types of business entities in Costa Rica are Corporations, known as Sociedades Anónimas (also referred to as “S.A.”), and Limited Liability Companies, known as Sociedades de Responsabilidad Limitada

(also referred to as “Limitada” or “Ltda.”), which are governed by the Costa Rican Code of Commerce.

The Costa Rican Code of Commerce also establishes three other business forms: Sole Proprietorship Companies, also known as “One Man Companies”; Partnerships; and Collective Name Companies. No additional reference will be made to these types of business forms, since they are less used in Costa Rican business practice.

The following summarizes general characteristics, basic steps and requirements and obligations for both corporations and limited liability companies in Costa Rica.

### 2. Corporations (Sociedades Anónimas)

#### 2.1 Incorporation

All corporations must be incorporated before a Costa Rican Notary Public by a minimum of two natural persons, two corporations, or any combination thereof.

#### 2.2 Capital Stock

The corporation is formed by the paid in capital contribution of the founding partners, in the form of Capital Shares, which will reflect the distribution of the paid capital amongst the partners. In order to increase (or reduce) the Share Capital, the corporation must follow the guidelines and requirements established in the Costa Rican Code of Commerce.

- Minimum Capital Stock: There is no minimum authorized capital stock required for a corporation. Most corporations start up with a ₡10,000.00 capital stock (approximately. US\$20.00).



- Currency: The capital stock in a corporation can be established in a foreign monetary unit.
- Transfer: Shares are assigned by mere endorsement and by registering the assignment in the entity’s Shareholder’s Record Legal Book. The assignment of shares does not need acceptance by the assignee.

### 2.3 Responsibility

The shareholders’ legal responsibility in the Corporation is limited to the amount of capital shares belonging to each.

### 2.4 Administration

A Board of Directors composed of at least a President, Secretary and Treasurer shall administer the corporation. The legal representation, as well as typically a full power of attorney, are granted to the President, in accordance with the Commercial Code, but such powers of attorney may be limited in their amount and functions, as decided by the shareholders. Other powers of attorney may be granted to other members of the Board. The positions outlined above are the minimum necessary in order to establish the entity; nevertheless, this does not exclude the possibility of appointing vice presidents, vocal (member at large), etc.

### 2.5 Comptroller

It is required to appoint a Comptroller that will be in charge of supervising the actions of the Board of Directors. Thus, the Comptroller cannot be related to any of the members on the Board of Directors. Also, the Comptroller cannot be a shareholder and will have no power of attorney to act on behalf of the corporation.

### 2.6 Resident Agent

If none of the Directors that are vested with the legal representation of the Corporation are domiciled in Costa Rica, the Corporation must appoint a Resident Agent who must be a lawyer with an open office in Costa Rica. This appointment is in order to receive legal notifications or notices on behalf of the company.

### 2.7 Shareholders’ Assemblies

The shareholders’ assembly is the maximum body of authority of the corporation and it is empowered to decide on all matters, including any amendments or modifications to the articles of incorporation, increasing or reducing the Corporation’s Share Capital, granting powers of attorney, appointing and revoking persons as members of the Board of Directors, etc.

### 2.8 Minority Rights

The protection of minority shareholders is stipulated in Title I, Third and Seventh Chapters of the Commercial Code. Said regulation establishes as “minority shareholders” those that own shares that equal to or less than ten percent (10%) of the share capital. Based on the above, the following details the rights of minority shareholders:

- Right to examine books, correspondence and other documents of the corporation. Also, they may examine documents and contracts of those transactions that involve the acquisition, sale, mortgage or pledge of assets of the company that represent a percentage equal to or greater than 10% of the total assets. In this sense, minority shareholders representing at least 10% of the share capital can



appear before a Judge to order an auditing of the company.

- Right to request information during shareholders' meetings, such as, but not limited to, reports and clarifications regarding topics that are on the agenda. If this information is requested by Shareholders representing at least 10%, there will be no excuse for not providing the information on said grounds.
- Right to receive a report on the results of the company's annual fiscal year (approval of the financial statements) presented by the directors at the ordinary (annual) shareholders meeting.
- In those cases in which the Shareholders' meeting has agreed to pay dividends, the partners will have the right to collect the dividends agreed upon, within a maximum period of three months after the meeting in which said dividends were agreed.
- The Board of Directors must approve prior to the sale, acquisition, mortgage or pledge of assets of a company that represent a percentage equal to or greater than 10% of its total assets. Likewise, the obligation is regulated that any transaction of the company that involves the acquisition, sale, mortgage or pledge of assets of this company with the general manager, with some of the members of the Board of Directors or with related parties must be previously reported to the Board by whoever is involved in the transaction, providing all the relevant information about the interest is of the parties to the transaction.
- Right to Recess, which consists of a technical resource that gives protection to minority shareholders, without

requiring any minimum percentage to exercise it. This entails, that every member may withdraw from the company before any substantial modification or any resolution that generates an increase in their liability and may obtain reimbursement of the real value of their shares. In accordance with article 32 bis, there are five cases in which the Right to Recess could be applied, namely: (i) Extension of the Social Term; (ii) Transfer of the Social Domicile to the Foreigner; (iii) Transformation or Fusion; (iv) Non-distribution of profits in two consecutive periods in which there have been profits; and/or (v) Change of turn or object. Although this is a little known and applied right in practice, it is an important tool for minority shareholders should they request it.

### 3. Limited Liability Company (Sociedad de Responsabilidad Limitada)

#### 3.1 Constitution

This type of business organization is a hybrid between a Partnership and a Corporation and it is known as "Sociedades de Responsabilidad Limitada" or "S.R.L.", or limited liability companies.

#### 3.2 Ownership

The capital stock in a Limited Liability Company unlike Corporations is not represented by shares, but by what are known as "quotas".

- Minimum Capital Stock: The quotas on a Limited Liability Company are required to have a value each of at least 100 Colones, Costa Rican legal currency.
- Currency: The capital stock in a Limited Liability Company cannot be established in a foreign monetary unit.



- Transfer: Unlike the shares of a corporation that can typically be easily transferred, the transfer of ownership of a quota holder is limited by the following rules:
  - Quotas may only be transferred with the unanimous consent of the remaining quota holders. This limitation can be lowered to a maximum consent of seventy-five percent of the quota holders;
  - Quota holders may oppose a transfer and thus a right of first refusal would be constituted for the other quota holders to acquire the quotas under the same conditions as they were offered to third parties. If the quota holders do not exercise this option during the subsequent fifteen days, the transfer may be carried out to the third party;
  - In order to be effective, all transfers of quotas must be granted in a private or public document, registered in the Company’s quota holder Registry Book.

**3.3 Responsibility**

The personal liability of a quota holder is limited to his or her paid-in capital contribution to the company.

**3.4 Administration**

The management of a Limited Liability Company is much simpler than that of a Corporation, since it only requires a minimum of one Manager to oversee the Company’s administration. The Manager will be the legal representative of the representation of the Company and his powers of attorney can be limited as is desired by the quota holders in the quota-holders assembly. The positions outlined above are the minimum necessary in

order to establish the entity; nevertheless, this does not exclude the possibility of appointing other Managers or Sub-Managers.

**3.5 Quota holders Assembly**

The Quota Holders Assembly is the maximum body of authority, and in the same manner as Shareholders Assembly in corporations, it is empowered to decide on all matters. Nonetheless, since Limited Liability Companies are not required to appoint a Comptroller, the Quota Holders Assembly will be in charge of this function.

**3.6 Minority Rights**

Minority Rights in Limited Liability Companies are the same as in Corporations, as stated in section 2.8.

**3.7 Resident Agent**

A Limited Liability Company must also appoint a Resident Agent, if none of the Managers that represent the Company are domiciled in Costa Rica.

**3.8 Steps and requirements to establish a Corporation**

Firstly, all Corporations and Limited Liability Companies must be constituted before a Notary Public by a minimum of two natural persons or two corporations, or any combination thereof. Secondly, the Notary Public must proceed to submit the following information required to register the company through an online platform, namely:

- Name of the corporation: Also referred to “razón social” or “denominación social”: The name can be in any language, nonetheless the name may not be identical to any registered entity in the Public Registry. Also, the name of the corporation may be the corporate identification number assigned by the online platform. The same must be





preceded by the words "Sociedad Anónima" or its abbreviation "S. A. " or "Sociedad de Responsabilidad Limitada" or its abbreviation "Limitada".

- Domicile: A registered office must be assigned, and an address must be specified.
- Term: The term may an unlimited number of years.
- Object: The object can be specific or general.
- Capital Stock: Must be issued pursuant to section 2.2 for corporations and pursuant to section 3.2 for Limited Liability Companies.
- Board of Directors or Managers.
- Comptroller: Only for Corporations as stated in section 2.5.

Once registered, corporations will be assigned a corporate identification number, which will serve to identify the corporation in all its acts, known in local legislation as the "Cédula Jurídica" or Corporate Identification Number. This number will be issued by the online system upon registration.

#### 4. Basic Tax Aspects

Entities shall only pay taxes over income generating activities located in Costa Rica. Corporate Tax rates shall apply. Before an entity begins any commercial operation, it shall be registered before the Tax Contributor Registry (*Registro de Contribuyentes*). Also, due to a recent Corporate Law that took effect on September 2017, all inactive entities (not registered as income and/or sales tax payers with the Tax Administration), must also be registered before the Tax Authority as inactive.

There is a bill currently in Congress which includes certain changes or reforms to the income tax law, specially related to

incorporating capital gains as well as worldwide income tax system. As of today, Costa Rica is based on a territorial tax system.

#### 4.1 Corporate Tax

Corporate tax shall be paid on an annual basis and shall be paid on or before January 31 of each year. The amount paid is related to the gross income of the entity. For 2018, the amounts to be paid were:

- Inactive entity: 63.930.00 colones (USD **\$112** approximate)
- Active Entity income less than 51 million colones: 106.550.00 colones (USD **\$109** approximate)
- Active Entity income between 51 million colones and 119 million colones: 127,860.00 (USD **\$255** approximate)
- Active Entity with income above 119 million colones: 213,100.00 (USD **\$375** approximate)

The Tax payment can be made in any of the banks of the Costa Rican Banking System and can be paid through the Internet banking managed by any bank of preference. If the legal representatives or owners do not have a Costa Rican bank account, the payment can be arranged through a local contact (property manager, accountant and/or attorney). It is important to keep the receipt for your record.

#### 4.2 Bookkeeping System

All tax contributing entities are required have a proper book-keeping system. All tax contributing entities will have 3 accounting books known as "Diario", "Mayor" and "Inventarios y Balances". The accountants are in charge of keep these books updated. Entities are not obligated to hire auditors or have an auditor in staff. This is a standard practice once the company is actually operating a business.



### 4.3 Annual Tax Declaration

All tax-contributing entities are required to file an annual tax declaration form (D.101) at the end of every fiscal year. The accountants are the persons in charge of preparing this form. However, a confirmation by the auditor is not a formal/legal requirement. The only formal requirement is to have the declaration form signed by the legal representative of the company. If the company is not actively operating and the income generated is “zero”, then this form may be completed and filed (with the legal representative’s signature) by anyone. Once the form is duly signed the accountant may pay the taxes and file the form on behalf of the entity. Inactive entities (not registered as income and/or sales tax payers with the Tax Administration) are not required to file a declaration form.

### 4.4 Transparency and Beneficial Ownership New Registry.

In accordance to the By Laws of Registry and Transparency of Final Beneficiaries #410140-H of April 5<sup>th</sup>, 2018, coming into force on January 1<sup>st</sup>, 2019, all entities, including legal persons and legal arrangements such as, but not limited to companies, trusts, foundations, partnerships, and others, shall disclose and report to the Costa Rican authorities who are the natural persons that ultimately are the owners / controllers of the legal persons or legal arrangements, either through their ownership interests, through positions held in the legal persons or legal arrangements. This new requirement shall include the ownership chain all the way to natural persons, including disclosure of Holding Companies, Trusts, Institutions or others involved. Such policy will require certain formalisms to be fulfilled and could trigger and limit each entity on their future ability to operate. The purpose of

this new registry is to reach international standards on transparency.

### 5. Other considerations.

It is of the utmost importance to realize that becoming the owner and/or part of a foreign entity may have an impact on one’s tax responsibilities. Seeking proper advice at the home country becomes a must in these cross-border interactions.

### 6. Foreign Investment, Thin Capitalisation, Residency Restrictions

#### 6.1 Foreign Investment

Costa Rica encourages and enables domestic and foreign entities to establish businesses through various institutions such as the Foreign Trade Promotion Corporation (PROCOMER), Costa Rican Investment and Development Board (CINDE), Tourism Institute (ICT), and others. Nonetheless, there are some limitations, such as:

- There are several areas known as legal monopolies that belong to the public sector, for example public transportation services.
- In areas such as medical series, communication and insurance, state entities take over, though there is no limitation for private entities to compete.

#### 6.2 Thin Capitalisation Rules

Costa Rica does not have specific “thin capitalization rules”. However, there are limits on the payment of interest by a Costa Rican Limited Liability Company to its members and/or head office. These rules do not apply to a Corporation (Sociedad Anónima), only to Limited Liability Companies (Sociedades de Responsabilidad Limitada).





### 6.3 Remitting funds out of jurisdictions

Residents of Costa Rica, as well as non-residents, are taxed on their income only if it originates from a Costa Rican source. Consequently, income received from or generated from foreign sources is not taken into consideration when calculating the taxes to be paid either by individuals or corporations. All persons who carry out commercial activities and all corporations must register before the Costa Rican Tax Authority as tax payers.

Notwithstanding the above, payment of dividends by local companies to foreign individuals or companies established abroad is subject to a 15% withholding tax.

### 6.4 Residency

#### 6.4.1 Residency as an Investor

A foreigner can only apply for this type of residency if he/she has and may demonstrate investments in Costa Rica for at least USD\$ 200,000. If the investment is in specific areas such as tourism, reforestation, and/or any other activity supported by the Costa Rican government, the investment may be lowered to an amount between USD \$80,000.00 - USD \$100,000. Also, a foreigner may apply for this type of visa if he/she one or more properties in Costa Rica that add up to \$200,000 or more.

#### 6.4.2 Companies Accredited as a "Recognized Company"

Companies that require a constant migration flow in their plan of operation of active employees or executive level employees may be accredited before the General Direction of Immigration. To request this recognition a company must be registered before any of the following institutions:

- Companies that are operating under special plans to promote exportation, administered by the Ministry of Foreign Trade (COMEX) and the Promoter of Foreign Trade of Costa Rica (PROCOMER). If the company is registered under this institution, it will be classified to request the application as Company under **Classification "A"**.
- That has the support of COMEX, by explicit references to organizations with proven track record, national or international level. If the company is registered under this institution it will be classified to request the application as Company under **Classification "B"**.
- That is acting with the statement issued by the tourist Costa Rican Tourism Institute (ICT). If the company is registered under this institution it will be classified to request the application as Company under **Classification "C"**.
- That are registered with one of the following agencies: the Superintendence of Financial Institutions (SUGEF), the Superintendence of Pension (SUPEN) and the Superintendence of Securities (SUGEVAL). If the company is registered under this institution it will be classified to request the application as Company under **Classification "D"**.
- Company under **Classification F**: The multinationals that do not belong to the classifications described above, characterized by having a name or brand whose history is known worldwide, in which the main corporate offices have decided the establishment of a subsidiary in Costa Rica, whose line of operation is



developed in areas of production and marketing of goods and services.

- Company under **Classification G:** Those foreign or national companies that are operating or will start operations in Costa Rica and were hired and duly awarded by the Costa Rican government through the processes of Government Contracts.

The requirements will vary and depend on the classifications stated above. Once registered the companies will be able to request residency permits for the employees before and if the General Direction of Immigration will accept or deny their applications through an expedite process that usually takes between 1-3 months.