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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”*

CORDERO & CORDERO  
ABOGADOS  
EST. 1940

Lawyers at  
Cordero & Cordero Abogados– San  
Jose

### About Us

*Cordero & Cordero Abogados* is a full-service law firm that specializes on 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 (Sociedad Anónima)

#### 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, 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, “vocals” (members 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 members of the Board of Directors are domiciled in Costa Rica, the company must appoint a Resident Agent who must be a lawyer with an open office in Costa

Rica, in order to receive legal notifications 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 are equal to or are 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 or greater than 10% of the total asset. 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, 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 merger; (iv) Non-distribution of profits in two consecutive periods in which there have been profits; and / or (v) Change of the object the company. 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 quotes 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 per cent 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 of 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 members of the Managers 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 be 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.

Also, due to a recent corporate law that took effect on September 2017, all inactive entities (not registered as income and/or sales taxpayers with the Tax Administration), must also be registered before the Tax Authority as inactive within of month of constitution.

### 5. Transparency and Final Beneficiary Registration

The Transparency and Final Beneficiary Registration is a new corporate obligation that entered into effect on September 1<sup>st</sup>, 2019.

This registration requires the legal representative (either a duly appointed officer or a proxy of the company duly authorized by means of a power of attorney executed before a Costa Rican Notary Public) to submit to a centralized registry controlled and operated by the Costa Rican Central Bank (“BCCR”) information regarding the company’s shareholders. The information must include all shareholders up to the final beneficiary which has to be a physical person. In case there are holding companies, information on these is also going to be required and the registration -as indicated- should be completed up to the

identification of a physical person. The only exception to this is when there are publicly traded companies as a final beneficiary.

This registration process will be executed through a digital platform created for this effect by the BCCR, with secure access by means of a digital signature<sup>1</sup>. This database shall be used by the government authorities in order to identify the individuals or physical persons behind legal structures such as companies and corporations. According to the law, access to this database will be very limited and shall only be used for money laundering investigations, anti-terrorism and similar crimes. Many countries around the globe are implementing or have implemented similar registries recently. This registration comes as part of the *Best Practices* recommended by Non-Government Organizations and Task Forces against Money Laundering and Terrorism.

The person in charge of uploading the information, must have a digital signature issued by an authorized entity of the BCCR.

Companies that do not comply with the Transparency and Final Beneficiary Registration will not be able to obtain corporate certifications, file modifications to its bylaws and risks to be charged with fines if they do not file the information in 3 days after each notification.

### 4. Basic Tax Aspects

Entities shall pay taxes over income generating activities located in Costa Rica. Corporate

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<sup>1</sup> A digital signature is a technological tool issued by the BCCR, that contains a public key in order to sign documents digitally and specifies the identity associated with the key, providing authenticity to the signee and the information associated to that signature. Foreigners that do not have residency in Costa Rica are not eligible right now to obtain a digital signature. This means that they must grant a power of attorney in behalf of the company to someone with a digital signature.



Income Tax rates shall apply based on the income generated annually.

In any event, before a company begins any commercial operation which generates income, 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 non-active entities (not registered as income and/or sales taxpayers with the Tax Administration), must also be registered before the Tax Authority as such (non-active).

#### 4.1 Corporate Tax

In addition to the Corporate Income Tax, a fixed tax shall be paid on an annual basis and shall be paid on or before January 31 of each year. The amount paid is proportional to the income of the entity, as follows:

- Non-Active entities shall pay approximately US\$112.00;
- Active entities with an income less than 51 million colones shall pay approximately US\$109.00;
- Active entity with an income between 51 million colones and 119 million colones shall pay approximately US\$255; and
- Active entity with income above 119 million colones shall pay approximately US\$375.

This fixed corporate 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 Costa Rican bank account the payment can be arranged through a local contact (property manager, accountant and/or attorney).

#### 4.2 Book-keeping 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 at the end of every fiscal year. Nonetheless, passive income entities, such as those which have rental generating activities have to file a monthly declaration form before the Tax Administration.

Non-active entities (not registered as income and/or sales taxpayers with the Tax Administration) are not required to file a declaration form. The tax rate on profits and passive income is calculated as follows

##### Income Tax Brackets

- Up to 30% of the profit when the taxpayer has a gross income above CRC106 MM (US181,200.00).
- When the taxpayer has a gross income under CRC106 MM (US181,200), the tax is calculated as follows:
  - Up to CRC 5 MM: 5%
  - From CRC5 – 7.5 MM: 10%
  - From CRC7.5 - 10 MM: 15%
  - Excess of CRC10 MM: 20%

##### Tax on passive income:

- 15% on the result of the gross income minus 15% fixed deductible expenses.
- Deductible expenses are allowed for a 15% on gross income.





- 12.75% effective tax rate on gross income.

## 5. Foreign Investment, Thin Capitalization, Residency Restrictions

### 5.1 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.

### 5.2 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 individuals and entities who carry out commercial activities must register before the Costa Rican Tax Authority as taxpayers.

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

### 5.3 Residency

#### 5.3.1 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 owns one or more properties in Costa Rica that sum up to a \$200,000 worth or more.

#### 5.3.2 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 has 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.