



Abogados & Notarios

GUIDE FOR INCORPORATIONS AND START-UPS

GUIDE FOR INCORPORATION AND START-UP OF A COMPANY IN COSTA RICA - CORPORATE STRUCTURE - COSTA RICA CORPORATE LAW - REQUIREMENTS FOR INCORPORATION AND START-UP IN COSTA RICA - COSTA RICA COMPANY START-UP- COSTA RICA BUSINESS - DOING BUSINESS IN COSTA RICA- By: Rogelio Navas Rodríguez, Esq., Costa Rica Corporate Attorney -The first step to start a company or business in Costa Rica, is choosing the corporate structure that suits best to the activity you intend to develop. Through the proper corporate structure, it is possible to set up a subsidiary of a transnational company, establish a call-center, open a hotel or a touristic establishment, start a family business, provide payroll and human resources management services, hire workers for different activities, and manage Real Estate and other assets, among many options. To that end, we facilitate the following information, which will prove to be useful to set up your company.

I. KINDS OF CORPORATIONS: The Costa Rican Code of Commerce provides for the constitution of legal entities or companies under different corporate structures. Notwithstanding the above, there are two which are the most commonly used: la Sociedad Anónima (S.A.) (“Anonymous Partnership”) and Sociedad de Responsabilidad Limitada (S.R.L.) (“Limited Liability Corporation”). The following are the most important differences between them:

SOCIEDAD ANÓNIMA OR S.A. The “Sociedad Anónima”, also known as “S.A.”, is one of the corporate structures most commonly used in Costa Rica. The Sociedad Anónima is a legal entity and, as such, it is legally capable of entering into businesses and subscribing valid and effective contracts. Furthermore, the S.A. offers protection to the assets of its’ shareholders and legal representatives as the company’s liabilities and obligations are not transferred in any way to said individuals. In that same way, the company’s assets would be protected from the personal obligations and liabilities incurred by the company’s shareholders and legal representatives.

1.a) REQUIREMENTS FOR THE REGISTRATION OF A SOCIEDAD ANÓNIMA OR S.A. To incorporate and register a Sociedad Anónima or S.A., at least two individuals must appear as founding partners in the act of constitution.

The Sociedad Anónima or S.A. is managed by a Board of Directors integrated by at least three members (President, Secretary and Treasurer), and a Comptroller. These positions can be filled by shareholders or third parties appointed to that end. By law, the President will always bear the legal representation of the company with full powers of attorney without limitations. However, it is possible to grant powers of attorney and signing authority to other members of the Board of Directors and/or to third parties. Said powers of attorney which can be full powers of attorney or limited to specific actions, amounts or



kinds of the transaction. It can also be provided that actions performed by legal representatives or holders of powers of attorney require joint signatures, among many other limitations that can be imposed on the powers granted.

Should the company not have a legal representative residing in Costa Rica, a Resident Agent must be appointed. Such position must be occupied by a lawyer with offices in Costa Rica, and would be in charge of receiving notifications on behalf of the company.

SOCIEDAD DE RESPONSABILIDAD LIMITADA OR S.R.L. The Sociedad de Responsabilidad Limitada, also known as S.R.L., Limitada or Ltda., is another of the corporate structures most commonly used in Costa Rica. As it happens with the Sociedad Anónima, the S.R.L. is a legal entity with full capacities to act and to assume obligations. It also provides protection to the assets of the shareholders and representatives, as the liabilities and obligations of the company are not transferred to them in any ways. Likewise, the company's assets are not affected by the obligations and liabilities that the shareholders and representatives acquire in their personal capacities.

2.b) REQUIREMENTS FOR THE REGISTRATION OF A SOCIEDAD DE RESPONSABILIDAD LIMITADA OR S.R.L.

To incorporate and register a Sociedad de Responsabilidad Limitada (S.R.L., Limitada o Ltda.) , at least two individuals must appear as founding partners in the act of constitution. The Sociedad de Responsabilidad Limitada is directed by one or more Managers, do not necessarily need to be shareholders. The Manager or Managers also act as legal representatives of the company, to whom full or limited powers of attorney may be granted. Other powers of attorney without limitations, or limited to the type of transaction or the amount, may also be granted to a third party who does not necessarily need to be appointed as Manager. Joint signatures may also be required.

Should the company not have a legal representative residing in Costa Rica, a Resident Agent must be appointed. Such position must be occupied by a lawyer with offices in Costa Rica, who will be in charge of receiving notifications on behalf of the company.

WHICH ONE TO CHOOSE: SOCIEDAD ANÓNIMA or SOCIEDAD DE RESPONSABILIDAD LIMITADA? Both, the S.A. and the S.R.L. offer the same possibilities to set up a business in Costa Rica. Also, both offer the same protection to the personal assets of the shareholders, representatives and managers.

The main difference between one corporate structure and the other is in the amount of individuals required to fill the administration positions. While a Sociedad Anónima requires at least four individuals (five in case a Resident Agent is necessary), a Sociedad de Responsabilidad Limitada only requires one person (two when a Resident Agent is



necessary). This difference is relevant from a practical point of view, being the fact that a Sociedad de Responsabilidad Limitada facilitates the incorporation of a company when there are not as many people available or when the shareholders are not interested in having as many individuals involved, as needed to create a Sociedad Anónima.

There are other differences, for example, in a Sociedad de Responsabilidad Limitada, should one of the shareholders wish to sale or transfer his or her shares, the rest will have a right of first refusal to purchase them. However, such circumstances rarely pose any kind of inconvenient.

HOW IS A COSTA RICAN CORPORATION CREATED? In order to create and register a corporation in Costa Rica, the shareholders must appear before a Notary Public to sign a public instrument containing the Articles of Incorporation. Later on, the Notary Public must enter all the company's information into the Costa Rican Public Registry. By the time this information is being entered, the corresponding registration taxes and taxes on legal entities, as well as the publication of the edict in the Official Gazette must have been paid. It is important to keep in mind, that it is not legally possible to incorporate a legal entity under a name that is already being used by another company; therefore, carefully choosing and checking the name of the new corporation is an important step prior to registration.

MAY A FOREIGN CITIZEN CREATE OR BE A SHAREHOLDER IN A SOCIEDAD ANÓNIMA OR A SOCIEDAD DE RESPONSABILIDAD LIMITADA? As provided by article 19 of the Costa Rican Constitution, foreign citizens have the same rights as Costa Rican citizens, including the right to be a shareholder in a company, to create one and/or to even purchase shares of existing companies.

MAY A FOREIGN CITIZEN BE A MANAGER OR REPRESENTATIVE OF A COSTA RICAN CORPORATION? Foreign citizens can be members of the Board of Directors and/or legal representatives of Costa Rican corporations. Notwithstanding the above, should the company not have a legal representative residing in Costa Rica, a Resident Agent must be appointed. Such position must be occupied by a lawyer with offices in Costa Rica, who will be in charge of receiving notifications on behalf of the company.

MAY A FOREIGN CORPORATION BE A SHAREHOLDER IN A COSTA RICAN COMPANY? A foreign company or corporation can be stockholder or owner of a Costa Rican company. This allows transnational corporations to operate in Costa Rica through a Costa Rican legal entity (S.A. or S.R.L.) acting as a branch or local subsidiary. Operating this way represents an advantage to the parent company or corporation, as the obligations and liabilities assumed by the Costa Rican entity are generally not binding for the foreign company.

IS IT POSSIBLE TO AMEND OR CHANGE THE ARTICLES OF INCORPORATION OF A COSTA RICAN COMPANY? The statutes of a Costa Rican company can be amended by way of shareholders' agreements. It is possible to modify the structure of representation of a corporation, its capital stock, powers of attorney and representation provisions, corporate domicile, corporate object or purposes, and even its nature (a sociedad anónima can be transformed into a sociedad de responsabilidad limitada and viceversa), all in order to adjust it to the needs of the shareholders. Notwithstanding the above, before proceeding with an amendment, it is important to consider that the cost of implementing these amendments could be similar or higher than the cost of creating a new corporation.

II) FOREIGN ENTITIES:

According to Costa Rican law, foreign companies and transnational corporations may start operations in Costa Rica without creating a Costa Rican company. To that end, it provides the following options:

BRANCH: A company based outside of Costa Rica may perform commercial activities in Costa Rica through a branch, which allows it to open bank accounts, hire personnel, participate in public bids, perform all kinds of commercial operations, with the same rights and obligations of a Costa Rican company. In this case, the parent company is liable for all obligations and responsibilities assumed by the local branch, as they are considered one same entity.

REGISTRATION OF POWERS OF ATTORNEY: A foreign company may also operate in Costa Rica by appointing a representative with full powers of attorney without limitation as to an amount, complying with the requirements set forth in the Costa Rican Code of Commerce.

In order to grant the power of attorney and register it at the Public Registry, the representative of the parent company must file a request before the Costa Rican Consulate in the country where the parent company is located. Said request will then be recorded at the Costa Rican Public Registry.

STRUCTURING POWERS OF ATTORNEY AND LIMITATIONS: Article 226 of the Code of Commerce provides that all foreign companies that have or wish to open branches in Costa Rica, are legally obligated to maintain at least one representative with full powers of attorney based locally in order to manage the branches business and operation.

The branch and its' representative's powers, should their registration be needed, will be completed by filing the following documents with the Public Registry: appointment document along with a certificate issued by the Consul of Costa Rica or that of a friendly nation indicating that that company is registered and authorized per the laws of its' main



domicile.

WHAT TO CONSIDER IN ORDER TO DECIDE BETWEEN A LOCAL ENTITY, A BRANCH OR THE REGISTRATION OF POWERS OF ATTORNEY? In general, setting up a branch or granting a power of attorney would seem simpler, mostly from an operational point of view. However, there are reasons that could make it more convenient to use a local entity to operate in Costa Rica. For example, some activities require special government authorizations, and many times such permits are only granted to local entities, thus making it impossible to operate with a branch or a power of attorney.

Also, from the practical standpoint, many would rather incorporate and register a local company with the assistance of lawyers they know and trust, which may result simpler than having the representatives of the parent company appear before the Costa Rican Consulate in its country of origin.

It is important to bear in mind that the parent company is liable for all obligations and responsibilities assumed by the branch or its representatives, which does not happen when a local entity is used to operate.

Finally, we have seen cases in which a branch that is not operating is notified in Costa Rica about certain process or lawsuit being conducted against it. Should the parent company not be aware of this, it would still be considered duly notified and the consequences could be considerable.

Remember that choosing the corporate structure that best suits your needs may be key to the successful and healthy development of your business. For more information, do not hesitate to contact us at navas@costarica-law.com