

## FAQ's ON FORMING A COSTA RICAN BUSINESS CORPORATION

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### **What advantages are associated with the use of a business corporation in Costa Rica?**

A corporation can be used to advantage in several manners:

- Privacy in terms of ownership of assets.
- Liability limitation or separation from other assets.
- Purchasing and selling by proxy to save travel and expenses.
- Holding separate powers of attorney among partners.
- Avoiding possible complicated probate issues.
- Transferring control of assets without paying title transfer taxes.
- Income tax strategy planning

### **Can a foreign person or company own and operate a business corporation in Costa Rican?**

Although the CR Code of Commerce restricts the carrying out of business by foreign persons to those with at least ten years of legal residency, there is no restriction to a foreign person or company either forming or acquiring a business corporation. A locally formed business corporation is by definition Costa Rican and enjoys all legal rights on par with

Costa Rican nationals operating a business with very few exceptions that are usually accommodated through association with CR citizens. Despite the fact that Free Trade Agreements, Globalization and the Internet, are rendering the above restrictions for non long term residents irrelevant, using a CR corporation is the universal practice for nationals and foreigners in CR.

### **What kinds of Costa Rican business corporations are available?**

The CR Code of Commerce provides for five types of business corporations. Of these, only two are generally used. These two most common types of corporations used by businesses here are the "Sociedad Anonima" abbreviated "S.A.", (translatable as "Stock-held Company") and the "Sociedad de Responsabilidad Limitada" abbreviated "Ltda." or "S.R.L." (translatable as "Limited Liability Company"). Despite the different legal names used these two types of business corporations are actually both "stock-held" and "limited liability companies", and generally follow the same principles in use internationally. Both types of corporations limit shareholder responsibility to the amount of registered capital thus excluding personal assets being affected by corporate liabilities.

### **What are the most important differences between these two types of business corporations?**

An important difference between the two is that the "S.A." must be represented by a board of directors with a minimum of three members and have a statutory examiner, whereas the "Ltda." need only be represented by one or more Managing Directors at the choosing of the shareholders; another difference is that stock transfers in a "Ltda." have a legal "first right of refusal" in favor of current shareholders, whereas in an "S.A." a "first right of refusal" on stock transfers must be specifically included in the corporate bylaws if desired. It is important to note that the "S.A." allows for different types of privileged or preferred stock whereas the "Ltda." does not.

A consideration for some U.S. companies is that the "Ltda." has reportedly been understood by the IRS to be a "partnership" and thus have a different tax situation when considering a consolidated or global U.S. taxable income. However under CR law this distinction does not exist, so it is questionable that the IRS should do so.

### **What is the purpose of the two different types of management structures?**

The law intended the "S.A." to be used by larger groups of investors needing to be represented by a board of directors for the purpose of supervising day to day operations,

while the "Ltda." was intended for smaller groups of owners more directly involved in the business management. However, there is no restriction in this regard and both types of business corporations can and are used by both large and small groups of investors in Costa Rica.

### **Are there limitations as to the persons designated as directors or managers in these business corporations?**

In an "S.A." or "Ltda.", board members and managers may be shareholders or outsiders, foreigners or nationals. The only restriction in connection with these posts is that of the statutory examiner in the "S.A." who may not also act as a director or manager nor be a close relative of these.

### **How many persons are required to form a Costa Rica business corporation?**

The CR Code of Commerce stipulates that a corporation must be formed by at least two initial shareholders. It also allows, however, the acquisition of the totality of the capital stock by a single shareholder immediately after formation, thus essentially permitting the formation and control of business corporations by a single interested person or company with the help of a nominal and temporary shareholder.

### **What are the minimum capital requirements for forming a Costa Rican business corporation?**

Business corporations in Costa Rica generally do not have a minimum capital requirement for purposes of formation. The most notable exception are those business corporations intended for operations in the financial and banking sectors where mandatory and significant levels of initial capitalization do apply. Of course, specific needs such as participation in public bids and concessions, obtaining of financing, etc. can dictate a need for real levels of registered capitalization. Registered capital stock may be denominated in local or foreign currency.

### **Is the assignment or transfer of stock in Costa Rican business corporations a complicated matter?**

The assignment or transfer of stock in a Costa Rican business corporation should not be a complicated matter, however local custom in the this area has evolved several variations in procedure, some of which, when combined with less than perfect corporate stock record book keeping can make a stock acquisition more complicated than normally necessary.

### **How should a stock assignment or transfer of Costa Rica Business Corporation be legally carried out?**

According to the CR Code of Commerce the following aspects must be taken into account:

- A corporation must have an officially sealed Stock Record book and record stock issues, certificates and assignments. Stock certificates must bear the name of the original or current owner and the ownership must be registered in the Stock Record.
- Stock certificates must be assigned by a nominative assignment contract or a nominative stock certificate endorsement. A corporation must record all assignments of shares in the Stock Record book.

### **What are the consequences if these aspects are not duly followed?**

A Costa Rica business corporation can only recognize a shareholder as such if he/she is registered in the Stock Record book. No act or operation with reference to stock certificates will prejudice either the corporation or third parties if it is not recorded in the Stock Record book.

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### **Can a Costa Rican business corporation have a foreign language company name?**

Yes, the registered corporate name can be in a foreign language as long as a Spanish translation is given in the articles of incorporation. The choice of name is subject to normal restrictions relative to similarity, generality, and common use terms. Reservation of a company name prior to formation is also possible. With over half a million registered corporations in CR, corporate names are difficult to obtain due to the chances of similar names already being registered. One solution is to use the corporate ID number as the corporate name where a particular name is not important.

### **Can a Costa Rican business corporation hold Board & Stockholders Meetings outside of the country?**

Yes, if the articles of incorporation and bylaws specify that possibility and name the place(s) where such meetings can be held.

### **Can foreign companies carry out business through a locally registered branch?**

Yes, however the rules for registering a local branch of a foreign company are far more complicated than forming a wholly owned local subsidiary, whether an "S.A." or a "Ltda.", resulting in that most foreign companies choose the latter option. Foreign companies having a limited

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operative need locally can also choose to register a local representative with sufficient powers of attorney as may be necessary for that purpose.

### **Is a resident agent required in a Costa Rican business corporation?**

Only in the case where the registered company directors or managers are all foreign domiciled. In this case, the resident agent must be a local attorney in private practice. The resident agent's duties and powers are limited to receiving official administrative or judicial notices and transmitting them to the company representatives.

### **What are the consequences of not having a resident agent?**

The recently updated "Judicial Notifications Law" places the burden of providing a clear, precise and real corporate domicile for the purpose of receiving judicial notifications on the corporation. That means the information on the Corporate Record at the Public Registry must be clear, precise and real and also updated. That seems simple until you take into account that most addresses in CR do not conform to any normal international standard to say the least and each time the corporate office is moved the process of updating the corporate address may be neglected as it requires as much paperwork as registering a corporation to begin with. In case a court official cannot locate the corporate address for a

notification of a lawsuit, the above-mentioned law provides for continuance of the judicial process with a court appointed attorney, obviously this is something less than optimum or desirable. If a corporation has a resident agent on the Corporate Record the courts will notify the resident agent assuming his/her address on record is also clear, precise and real, thus adding a measure of legal security in the process of being served, that is informed of a court matter of potentially great importance.

### **Are "shelf companies" frequently used in Costa Rica?**

Though not uncommon, "shelf companies", whether "S.A." or "Ltda." are not used as frequently by foreigners or nationals in Costa Rica, as say in Panama or in other typical "offshore" corporate domiciles. Possibly the major reason is that "bearer" shares are not allowed in CR legislation making it more difficult to maintain the anonymity normally associated with these companies.

### **Why would a person or company consider using a "shelf company"?**

Other than a possible need for a company being already registered and immediately legally operable there are few reasons for opting for a preformed and registered "shelf company" as opposed to a "tailor made" business corporation, since anonymity, if desired, can be maintained in both situations.

### **What should a person or company take into account when acquiring a “shelf company”?**

Unless a person or company desires to leave the legal representation of the “shelf company” in the hands of the nominee directors or managers designated by the law firm offering it, one should replace and record new representatives in the National Registry, review and possibly change the structure of powers of attorney, voting percentages in stockholders’ meetings, financial and reporting bylaws, and legal domicile, among others. In practice this can amount to more work and expense than having an altogether new business corporation formed to suit the purpose of the investment.

### **What other drawbacks may be associated with using a preformed corporation?**

Other than the more complicated restructuring mentioned above, there is a serious question always present as to what liabilities the corporation may have acquired while in the control of the former corporate officers. In fact it is impossible to entirely exclude or guarantee the non-existence of off-the-books liabilities in a preformed or “shelf” corporation, particularly if the corporation has operated in a business environment.

### **What yearly official fees are applicable to Costa Rican business corporations?**

Other than low initial recording fees there are no official yearly fees required to maintain a Costa Rica business corporation in good standing in the National Registry. There is a modest stamp tax usually of a few dollars depending on the amount of the registered capital that is paid along with the yearly income tax declaration. The resident agent is also entitled to charge approx. \$125 per year as a set fee for occupying that post.

### **What kind of expenses and time frame can I expect in the formation of a business corporation?**

Expenses in terms of attorney/notary fees vary greatly depending on the particular qualifications of the responsible attorney/notary, the complexity of the formation, and the importance of the investment. The range for most corporation registrations is usually from \$500 to \$1,000, although fees for extensive legal counsel in related matters may be additional. Recording charges at the National Registry are usually negligible. The time frame of the formation depends mainly on the complexity of the articles of incorporation and bylaws and the degree of cooperation between attorney and client. Once formed a corporation can usually be fully registered within a month’s time depending on the current workload at the National Registry.