

CORPORATE STRUCTURES **COMMONLY USED FOR BUSINESS AND INVESTMENT**

Costa Rica's Legal System, as the rest of the country happens to be, is very friendly and trustworthy for everybody. This means that rarely it discriminates between the status of being a national citizen or resident, or that of being a foreigner. In this sense, our main recommendation as a first step for doing any kind of business, is to always make sure and be well advised in how our legal structures work, since through them is the most common and safe way to do business.

The Commercial Code 1964 governs the creation of companies or corporations. All these entities are recorded under the Mercantile Registry Section of the Public Registry of Costa Rica. It is required that all founding members and original shareholders sign the documents of incorporation, which need to be notarized by a Costa Rican Notary Public in their protocol book. Once incorporated, the Registry issues an official corporate registration card number (*cédula jurídica*) and assigns the registration entry numbers (*citas de inscripción*). Afterwards the company must fill out an application at the local tax authority, the Revenue Administration Seals Unit (*Unidad de Timbraje de Tributación Directa*), so that this office can properly seal the accountable and recording books that every corporation needs to have. For example, in the case of a regular Stock Corporation (*Sociedad Anónima*) this books are: Shareholder's/Member's Assembly, Board of Director's/Manager's Meetings, Shares/Quotas Registry and three books for the accounting (*Daily, Ledger and Inventories and Balances*).

The constitutive document of every corporation specifies the By-Laws by which the entity is going to govern itself and regulate its affairs, always in accordance of the law. It is very important to always remind that these By-Laws can be changed at any time, and the process to do it depends on the type of business organization.

STOCK CORPORATION (*Sociedades Anónimas or S.A.*):

The stock corporation is the most popular and commonly used form of entity. Basically, to constitute a business organization like this one, you need at least 4 people. This is because there should exist a Board of Directors with a minimum of 3 officers (President, Secretary and Treasurer), and a Fiscal. Also at least two shareholders are required, which by the way, can be members of the Board of Directors.

Basic Characteristics:

- Shareholders: At the moment of incorporation, there must be 2 subscribing shareholders or more, which could be physical people, or other corporate entities. Once the company is registered, single shareholders are allowed.
- Shareholder Assemblies: It is the highest organ within the corporation. These meetings can be held anywhere in the world, as long as their constitutive articles and By-Laws permit it, and in the presence of the shareholders themselves or by representatives appointed by them. We always advise to specify the process of summoning for these meetings in the By-Laws, even though the Code of Commerce establishes a generic procedure. Through these meetings, any constitutive By-Law or Power of Attorney can be changed
- Board of Directors: Integrated by at least 3 members, resident or non resident. These are the President (general manager and director of the company), the Secretary (person in charge of the corporative books and records), and the Treasurer (who is responsible for the financial affairs).
- The Power of Attorney: Can be described as the legal representation of the company against third parties. This empowerment can be limited or unlimited, and can be held by one or several members of the Board. If held by more than one person, their powers can allow them to either act solely or must act in junction.
- Fiscal and Resident Agents: The Fiscal is a type of auditor, inspector or corporate controller. He is not part of the Board of Directors and cannot be immediate relative to any of them, since his duty is to actually supervise and inquiry the actions of the officers of the Board. He reports directly to the shareholders, and has the right to investigate any corporate member, legal document, financial or accounting briefing. He may convoke Shareholders Assemblies in case of emergency. The Resident Agent is a figure needed only when the members and shareholders of the company don't reside in the country. He is usually a local attorney, and is responsible for receiving any Judicial and Administrative notifications that might arise during the life of the corporation.
- Shares: They are common and nominative, and by law, not divisible. According to the amount of shares that a person owns, it grants them rights to as many dividends or obliges them to as many expenses as the corporation produced. They may be transferred to anybody, either a physical person or a corporate entity, through an endorsement of the share and due record in the corporate Shareholder's Registry book.

- Accountable and Recording Books: Once issued, they must be sealed by the Revenue Administration Seals Unit (Unidad de Timbraje de Tributación Directa). They are: Shareholder's/Member's Assembly, Board of Director's/Manager's Meetings, Shares Registry and three books for the accounting (Daily, Ledger and Inventories and Balances). No official meeting (such as the Shareholders Assemblies) may be held before these books are issued and authorized by the tax authorities, since all meetings must be recorded in the specific book created for that purpose. So these means, that no changes can be performed before these books exist, neither on the By-Laws nor on the power of attorney.
- Legal Liabilities: Within the entity, the shareholders are liable for as much shares as they have subscribed to their names. The legal representatives are liable for any actions that might result damaging or against the interests of the corporation itself or its shareholders.
- Tax Liabilities: A Fiscal or Tax Declaration must be filed at every end of the fiscal year, which goes from October 1 to September 30 of each year. If the company is involved in business and commercial activities, they must be in addition, formally registered as Tax Contributors, and will respond for as much income as the entity perceived. Now, if the corporation is inactive, meaning it is only used for holding assets, the company is only required to hand in the Tax Declaration (stating that no economic activity was performed during this time period). This must be done in order to avoid any kind of penalty.

LIMITED LIABILITY CORPORATION (Sociedades de Responsabilidad Limitada or S.R.L):

This type of business organization is also used very frequently, though not as much as the S.A., which is by far the most popular kind of entity. Among the most noticeable differences that can be emphasized, one should notice the fact that the affairs and administration of this kind of corporation are handled by a single manager with broad powers of attorney, instead of a Board of Directors like in the S.A. So basically, only two people are needed to create a company such as this one (in order to meet with the nature of a business organization, which should group together at least 2 individual physical members). These constituent persons are to be shareholders of the corporation.

Now, even though only one person is required to be the manager, there can be co-managers or sub-managers as well, and share the power of attorney too. This manager or co-managers could either be shareholders or not. Managers are liable for any actions that might result damaging or against the interests of the corporation itself or its shareholders. Once the entity is already inscribed in the National Registry, a sole shareholder is subsequently allowed (like in the SA's). In Limited Liability Companies, the shares are formally called quotas.

One other very significant fact to take in consideration is that the shares or quotas cannot be transferred to non-shareholders unless there is previous expressed consent by the rest of the shareholders enabling the transfer. This means that the shareholders can transmit their quotas only if the rest of the shareholders allow them to.

It is very important to remark that the liability of its members is limited to the sum of quotas that they subscribe, just as in the S.A. Its structure is very appealing to those interested in having a simpler and more centralized administrative organ, since it can be integrated by only one person (the manager); instead of the Board of Directors in the S.A. that requires 3 officers plus a Fiscal, meaning that at least 4 people are needed for inscription.

As far as the tax liabilities, it is very similar to the S.A.'s. If it produces income or goods, or provides services, then the company must be formally registered as Tax Contributors and pay the tributes that correspond according to their Tax Declaration. In addition, all Limited Liability Corporation should file for the accountable and registry books at the tax authorities, who will issue 5 books, which are: Quota-Shareholder's/Member's Assembly, Shares-Quota Registry and three books for the accounting (Daily, Ledger and Inventories and Balances). Now, if the entity is inactive (solely asset holders), they should only hand in the Tax Declaration, stating that no economic activity was performed during this time period.

LIMITED PARTNERSHIP CORPORATIONS (*Sociedades en Comandita*):

This type of entity is not used very frequently. Its structure is very simple, consisting in at least 2 associates: a general partner who is the manager and has entire control over the corporation, total power of attorney, and unlimited liability; and a limited partner, who has limited liability, and is in a detrimental position in comparison to the general partner because he has no control over the administration nor way to make sure it is done properly. When there is more than one general partner, they are all liable in junction, meaning that they all respond for the company's debts. Tax liabilities are similar to the S.A.'s and the S.R.L.'s.

There is another type of limited partnership company called Collective Corporations (*Sociedades Colectivas*), whose legal mechanisms are still valid in our legislation and Code of Commerce, but just as the *Sociedad en Comandita*, is no longer used in real commercial life.

We personally believe that the unpopularity of these corporations resides in the fact that the distribution of liabilities is quite discriminating, and that the other 2 kinds of business organizations work very efficiently in the national commercial and investing worlds.

WHY USE A CORPORATION?

You can name hundreds of reasons explaining why is so favorable to use companies in a daily basis, and they can actually be established in a case-by-case scenario. Now, there are 3 very common and general uses we could think of, and are listed below:

- Commercial Affairs
- Industrial Business
- Holding Assets (either vehicles or properties)
- Estate Planning

As you can see, corporations are fundamental in Costa Rica's business and commercial reality, and are used in a daily basis. We firmly believe that one of the first steps that any investor or business man must take as he embarks in Costa Rica's commercial, industrial or investment opportunities is to make sure and understand what a corporation in our country is, and know how to work through them in order to take advantage of its many benefits, such as assuring assets and making successful business happen.



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