



SPC Legal International Services LLP, Ltd.
Costa Rica:
Calle 36, Avenidas 4 & 6
Apdo. 1218 - 1007
San José, Costa Rica
p. +506. 2257. 7414
f. +506. 2257. 7562
e. general@spclegal.com

Corporations in Costa Rica

CORPORATIONS IN COSTA RICA

To introduce the topic of corporations our firm has prepared the following general explanation that is based specifically on the registration process of Limited Liability Corporation (S.R.L.) and the Sociedad Anónima (S.A.) in Costa Rica.

LIMITED LIABILITY CORPORATION

An SRL is formed by shareholders whose liability is limited to their capital contributions. Incorporation procedures and costs for SRLs are very similar to those of SAs.

The capital of an SRL is divided into shares, which local regulations call "quotas". Unless specifically provided otherwise in the articles of incorporation, transfer of "quotas" requires unanimous consent of all shareholders. Furthermore, "quotas" may never be transferred by simple endorsement. It is important to note that as established by law, the capital stock must be established in "colones", legal tender of Costa Rica.

"Quotas" may only be transferred following the procedure set forth in the Commercial Code. In order to assign and transfer "quotas", the unanimous, prior and express approval of the "quota holders" is required, unless the company's articles of incorporation provide a lesser voting requirement (which, in any event, may never be less than 75% of the voting "quotas"). If the proposed transfer is not approved, the company or the remaining "quota holders" shall have the right to purchase the "quotas" being sold within fifteen (15) days following the proposed transfer and under the same conditions offered to the third parties whose purchase is being rejected. If this option is not exercised, the proposed assignment shall be deemed approved. Finally, in order for the transfer of "quotas" to have full legal effect, an entry of the transfer must be recorded in the company "quota holder's" registry book. New "quota" certificates must be issued to replace the previous certificates.

Regarding the company's governance, SRLs must be run by one or more managers, who may or may not be partners or third parties, the power of attorney can be held by the managers or just one it can be established in the constitution of the SRL. The appointment of managers can be made in the articles of incorporation or afterwards. The original or initial appointment must be made public in the official *Gazette*, as well as duly recorded at the Mercantile Public Registry. Regarding the period for which the appointment is made, it can be for all the term of duration of the company, or for fixed terms. In this case, the managers may be reelected indefinitely for equal periods, without it being necessary to publish or record such reelection, whereas new appointments must fulfill the publishing and recording requirement. Furthermore, the appointments may be revoked at any time, through shareholders' agreement.

As in the SA, there is an obligation to keep records of financial and legal movements in the corresponding books. The SRL must obtain the authorization of the company's books by the Tax authorities. In the case of SRLs, the books are Journal, General Ledger, General Account, Shareholders' Registry and Minute Books for Shareholders' meetings, differing from the SA only in the obligation that the SA has to keep a Minute Book for Board's meetings, since the SRL is governed by managers and not a board. After the company has been duly recorded before the Commercial Section of the Public Registry, the books are stamped and therefore authorized by the Tax authorities. Computer-kept accounting records may be used, provided that summary entries are manually posted in the books.

SOCIEDAD ANÓNIMA (SA)

SAs are the most commonly used entity given their structural flexibility. SAs must be formed by at least two parties, each of which must subscribe at least one share. However, there are no legal restrictions regarding ownership of shares, which means that immediately after formation, 100% of the shares may be legally owned by a single party, without altering the legal status of the original corporation. In order to incorporate a legal entity, it is necessary to draft and execute the corresponding articles of incorporation before a notary public, and insert them into the notary's book of deeds; publish a notice of the incorporation in the official *Gazette*; and record the articles of incorporation in the Mercantile Public Registry.

Founding parties (and any shareholders thereafter) may be individuals and/or any type of body corporate, regardless of citizenship and domicile.

The capital stock of an SA is divided in shares, and the shareholders' liability is limited to their capital contributions. Further to the incorporation requirements and formalities, in an SA, its articles of incorporation must state the nominal value of the shares that form the capital stock, as well as their nature and type. In the case of the SA, as opposed to the SRL, common or preferred shares or any other type of share may be issued in a foreign currency. Moreover, in an SA it is possible to transfer ownership of the shares by endorsement.

The governance structure of an SA is a board of directors, formed by a minimum of three members which must be President, Secretary and Treasurer. As the (statutory) legal representative of the corporation it is mandatory for the President to hold full power of attorney. However, if deemed suitable, other directors, as well as managers and outside individuals, may hold power of attorney of any kind to act individually or jointly on behalf of the company. The power of attorney may be limited or restricted to amounts or specific acts, in order to maintain the company's internal controls.

Board members are appointed at the initial shareholders' meeting upon formation of the SA and from time to time thereafter, in accordance with the terms for which they are appointed. Appointments thereof are for fixed time periods and made in conformity with provisions set forth in the articles of incorporation.

The quorum is valid with the presence of the 50% of the members and the decisions of the Board are approved by 50% of the members. Official board meetings may be held at any location outside the country when so provided for in the articles of incorporation.

The SA must have the required books for the recording of financial and legal matters. Specifically, these books are Journal, General Ledger, General Account, Shareholders' Registry and Minute Books for Shareholders and Board's meetings. After the company has been duly recorded before the Mercantile Public Registry, the books are stamped and therefore authorized by the Tax authorities. Computer-kept accounting records may be used provided summary entries are manually posted in the books.

The most significant differences between SRLs and SAs are:

Capital Stock: SRLs divide their capital stock into what local regulations call "quotas" as opposed to shares in an SA. Transfer of "quotas" cannot be made by endorsement, and it requires unanimous consent of all partners;

Governance: SRLs are run by one or more managers or assistant managers who hold power of attorney as provided for in the articles of incorporation, as opposed to the SA which is run by a board of directors.

INCORPORATION

As established in the Costa Rican Commercial Code, all commercial entities shall be formed by the subscription of the corresponding articles of incorporation. These articles of incorporation shall govern the company.

The articles of incorporation shall be granted before a Notary Public. Thereafter, the articles of incorporation shall be recorded before the Mercantile Public Registry. Upon registration, the Public Registry shall issue an incorporation certificate.

All articles of incorporation of any company with a commercial purpose, whether SA or SRL, shall include provisions regarding the following issues.

- Place and date on which the company is formed.
- Names and other relevant information of the founding partners (persons or other legal entities).
- Type of company that is being incorporated, and its object or purpose. It is important to note that as opposed to other jurisdictions where comprehensive, meticulous and lengthy descriptions of the corporate purpose are required, business purpose and local activities are broadly implied in the laws of Costa Rica. Thus, although simple and general descriptions thereto are sufficient and very common, detailed descriptions are permitted.
- Company name, which must be a word or a group of words, with or without a meaning, as long as it is not deemed generic and provided it has not been previously registered, it can't infringe the industrial property regulations. The name can be in either Spanish or English, but in this last case the due translation to Spanish must be provided. In any event, the company name must be followed by the words "Sociedad Anónima", abbreviated "S.A.", or "Sociedad de Responsabilidad Limitada", abbreviated "SRL", which identify the nature of the entity.
- Duration or term of existence of the company. The law does not allow indefinite terms, thus a fixed term must be determined. This term may be shortened or extended, and any provision about these issues must be expressly stated. The term of companies usually ranges between 50 and 99 years.
- Capital stock, which is the amount used to capitalize the company. The capital stock is necessarily a fixed amount, and it is divided into shares (SAs) or "quotas" (SRLs), each entitled to one vote. There is no minimum capital stock requirement. Shares or "quotas" may be issued as single units or as share certificates thereof. Other than common shares or "quotas", the company may authorize, at formation or thereafter, issuance of other types of shares (such as preferred shares) with privileges, restrictions, limitations and rights as agreed upon by the shareholders. These include, but are not limited to, benefits, assets, specific activities, profits, vote and related matters, all of which must be established in the articles of incorporation.
- Description of the contribution made by each share or "quota holder" to the company, and its nature: money, real estate, or other assets. It is important to note that whenever an asset is being brought to the company, the corresponding monetary value of such asset must be specified. The lack of actual contribution whenever it has been stated in the articles of incorporation, causes shareholders' joint liability in regard to third parties.
- Legal registered address of the company. Since formation takes place according to local laws, the corporation is by law domiciled in Costa Rica, in a place or address where communications and notifications to the company may be delivered. Notwithstanding the above, agencies and branches may be created to carry out activities within or outside the country. Unless instructed otherwise we will provide the registered address.

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- Means of administration and legal power of the officers. As it is detailed below, SAs are governed by a board of directors formed by at least three members. SRLs must have one or more managers or manager assistants. The legal representative of the SA must be appointed among the directors, and that of the SRL must be designated among the appointed managers. There are no nationality restrictions for appointing either directors or managers, respectively.
- Appointment of a resident agent, we provide the resident agent, it will be one of our legal partners of the Law Firm, who must be a practicing attorney, with registered business office within the Costa Rican territory, that allows the notification of court, administrative, or other types of communications that must be made to the company.
- Form of making the balances and distributing earnings or losses among the share or “quota holders”.
- Provisions about the requirement of the formation of a legal reserve. SAs are required to annually assign 5% of their net earnings to form a legal reserve of up to 20% of its capital stock. In the case of SRLs, the reserve must reach 10% of such capital stock.
- Description of the cases or scenarios in which the company may eventually be dissolved before the expiration of its term (e.g. achievement of its corporate purpose or impossibility thereof; or definitive loss of 50% of share capital unless the shareholders agree to replace it).
- Grounds for performing the liquidation of the company, procedure for appointing liquidators, and powers granted to them.
- Any other covenant upon which the shareholders agree.

Any amendment to the articles of incorporation must follow the same formalities required for the formation of the company, namely be granted before a Notary Public and recorded before the Commercial Section of the Public Registry.

REQUIREMENTS FOR INCORPORATION

The requirements for the incorporation of a Sociedad Anónima by our law firm are the following:

For ready-made, incorporated corporations:

1. Full legal name, nationality, marital status, occupation, passport or government issued identity card number, exact legal domicile of each of the shareholders to be;
2. Ready-made corporations have a one hundred thousand colones capital and one hundred shares, each share representing five thousand colones. Our firm needs written indication of how many shares must be given to each of the shareholders mentioned in the last point;
3. The corporation requires at least three board members (President, Secretary, and Treasurer) and a comptroller. Full legal name, nationality, marital status, occupation, passport or government issued identity card number, exact legal domicile of each of the board members and comptroller and the position he or she will hold (remember that ready-made corporations grant representation and unlimited power of attorney to the President of the Board, this may be changed afterwards). An appointment acceptance letter to the shareholder’s assembly from the three board members and the comptroller appointed is required; our firm will provide the draft of this letter. Our firm may also nominate the board members at an annual additional fee.
4. Address where all documentation should be sent to;

36 Street, 4 & 6 avenue,
"Don Bosco" building
San Jose, Costa Rica

5. Payment of all fees and costs.

For a newly created corporation:

1. We will act as first incorporators and immediately assign all shares to the respective individuals or companies.

3. Newly created corporations have a one hundred thousand colones capital and one hundred shares. Our firm needs written indication of how many shares must be given to each of the shareholders mentioned in the last point (remember that the persons executing the articles of incorporation must have at least one share, which may later be transferred to someone else; in case our firm executed the articles of incorporation shares will be immediately and irrevocably assigned to the shareholders in accordance to the instructions provided);

4. The corporation requires at least three board members (President, Secretary, and Treasurer) and a comptroller. Full legal name, nationality, marital status, occupation, passport or government issued identity card number, exact legal domicile of each of the board members and comptroller and the position he or she will hold. An appointment acceptance letter to the shareholder's assembly from the three board members and the comptroller appointed is required; our firm will provide the draft of this letter. Our firm may also appoint the board members at an annual additional fee.

In order to act on behalf of the corporation, or to represent the corporation, the articles of incorporation must state which persons must have the judicial and extrajudicial representation of the corporation and who will have power of attorney on behalf of the corporation. Power of attorneys may be general or specific, unlimited or limited to certain acts or money amounts. Provisions or changes of representation and power of attorneys may be made by the shareholders at any time. Newly created corporations are incorporated with the representation with unlimited power of attorney on the President and Secretary of the corporation acting separately; this may be changed at any time.

Unless required otherwise by the client our incorporation services include the provisim of the registered address and Resident Agent, included in the annual maintenance fee.

DOCUMENTS OF INCORPORATION

Our firm provides the following documents of incorporation for every corporation:

1. Share Certificate for every shareholder of the corporation, either issued on the shareholder's name or endorsed to his or her name at the client's preference;
2. Certificate of Incumbency for the corporation;
3. Original, Incorporation Certificate;
4. Original notarial certification of registered articles of incorporation, including the corporation's registration book number, entry number and sequence number;
5. Original notarial certification of the Board of Directors and Comptroller and the representation and power of attorneys held;

6. Original legalized and authorized Shareholders Meetings Book; Directors or Administration Book; and Shareholders Registry Book may remain in our office for safe keeping if the client wishes, if our firm has appointed the board of directors these books must remain in our office at all times;
7. Introduction to Corporations Brochure and copies of all documents filed on behalf of the corporation;
8. Any other special document requested by the client.

SENDING INFORMATION

The requirements must be send to our office via e – mail, fax or regular mail.

C/O Licda. Andrea Hector V.

SPC Legal Internacional Services

Calle 36, avenida 4 & 6 edificio Don Bosco 2do piso.

TEL.: 506.2257.7414 - Fax: 506.2257.7562

E-mail: ahector@spclegal.com

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