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**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

Lawyers at
Cordero & Cordero Abogados– San Jose

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Cordero & Cordero Abogados is a full-service law firm specializing in 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 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 & 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 in Spanish as “Sociedades Anónimas” (also referred to as “S.A.’s”), and Limited Liability Companies, known in Spanish as “Sociedades de Responsabilidad Limitada” (also referred to as “Limitada,” “Ltda” or “SRLA”), which the Costa Rican Code of Commerce governs.

The Costa Rican Code of Commerce also establishes three other business forms: Sole

Proprietorship Companies, known as “One-man companies,” Partnerships, and Collective Name Companies. No additional reference will be made to these business forms since they are less used in Costa Rican business practice.

The following summarizes general characteristics, basic steps, requirements, and obligations for both corporations and limited liability companies in Costa Rica.

2. Corporations (Sociedades Anónimas)

2.1 Incorporation

All corporations must be incorporated before a Costa Rican Notary Public by at least 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. To increase (or reduce) the Share Capital, a corporation must follow the guidelines and requirements established in the Costa Rican Code of Commerce.

- Minimum Capital Stock: No minimum authorized capital stock is 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 representation and typically a total power of attorney are granted to the President under the Commercial Code. Still, such powers of attorney may be limited in their amount and functions as the shareholders decide. Other powers of attorney may be granted to other members of the Board. The positions outlined above are the minimum necessary 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 supervise the actions of the Board of Directors. Thus, the Comptroller cannot be related to any of the members of 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 Directors vested with the Corporation's legal representation are domiciled in Costa Rica, the Corporation must appoint a Resident Agent who must be a lawyer with an open office in Costa Rica. This appointment is to receive legal notifications or notices 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 owning shares equal to or 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 company assets that represent a percentage equal to 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 audit 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 cases where the Shareholders' meeting has agreed to pay dividends, the partners will have the right to collect the



dividends decided upon within three months after the meeting in which said dividends were approved.

- The Board of Directors must approve before the sale, acquisition, mortgage, or pledge of a company's assets that represent a percentage equal to or greater than 10% of its total assets. Likewise, the obligation is regulated that 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 consists of a technical resource that protects 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 resolution that generates an increase in their liability and may obtain reimbursement of the actual value of their shares. Per 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 Fusion; (iv) non-distribution of profits in two consecutive periods in which there have been profits; and/or (v) Change of turn or object. Although this is a little-known and applied right in practice, it is an essential 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 known as "Sociedades de Responsabilidad Limitada" or "S.R.L.s," or limited liability companies.

3.2 Ownership

The capital in a Limited Liability Company, unlike Corporations, is not represented by shares but by what is known as "quotas."

- Minimum Capital: 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 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 assigned with the unanimous consent of the remaining quota holders. This limitation can be lowered to a maximum consent of seventy-five percent 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 conducted to the third party.

- 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

Managing a Limited Liability Company is much simpler than managing 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 desired by the quota holders in the quota-holders' assembly. The positions outlined above are the minimum necessary to establish the entity; nevertheless, this does not exclude the possibility of appointing other Managers or Sub-Managers.

3.5 Quota holders Assembly

The Quota Holders Assembly is the maximum body of authority, and in the same manner as the 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 responsible for this function.

3.6 Minority Rights

Minority Rights in Limited Liability Companies are the same as in Corporations, as in section 2.8.

3.7 Resident Agent

A Limited Liability Company must also appoint a Resident Agent if none of the Company's

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:

- 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 corporation's name 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 under section 2.2 for corporations and 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 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.

4. Basic Tax Aspects

Entities shall only pay taxes over income-generating activities located in Costa Rica. Corporate Tax rates shall apply. Before an entity begins any commercial operation, it shall be registered before the Tax Contributor Registry (*Registro de Contribuyentes*). Also, all inactive entities (not registered as income and/or sales taxpayers with the Tax Administration), must be registered before the Tax Authority as inactive and declare all its assets, liabilities, and capital stock.

The income tax is regulated by the income tax law N° 7092 (“Ley del Impuesto sobre la renta”) and its regulation (“Reglamento a la Ley del Impuesto sobre la renta, Decreto Ejecutivo N° 18445-H”)

Additionally, there was a tax reform called “Ley de Fortalecimiento a las Finanzas Públicas” N° 9635, which entered into force in July 2019; therefore, the income tax law must be read and analyzed in conjunction with the tax reform law.

A tax is established on the profits of natural persons, legal entities, and collective entities without legal personality, domiciled in the country, who develop lucrative activities of Costa Rican sources.

The taxable event of the income tax is the receipt or accrual of revenues in cash or in kind, continuous or occasional, from lucrative activities of a Costa Rican source, as well as any other income or benefit from a Costa Rican source excepted by law.

The tax period changed after the new tax reform entered into force on July 1st, 2019; now, the tax period is according to the calendar year (it starts

January 1st and ends December 31st of every year).

4.1 Corporate Tax

The corporate tax shall be paid annually and on or before January 31 of each year. The amount paid is related to the gross income of the entity. For 2023, the amounts to be paid were:

- Inactive entity: 69,330.00 colones (USD **\$132** approximate)
- Active Entity income less than ₡55,464,000 colones: 115,550.00 colones (USD **\$218** approximate)
- Active Entity income between ₡55,464,000 colones and ₡129,416,000 colones: 138,660.00 (USD **\$263** approximate)
- Active Entity with income above ₡129,416,000 colones: 231,100.00 (USD **\$436** approximate)

The Tax payment can be made in any of the banks of the Costa Rican Banking System and can be paid through 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). It is important to keep the receipt for your record.

4.2 Bookkeeping System

All tax contributing entities are required to have a proper bookkeeping system. All tax contributing entities will have three accounting books known as “*Diario*,” “*Mayor*” and “*Inventarios y Balances*.” The accountants are in charge of keeping 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 operating a business.



4.3 Annual Tax Declaration

All tax-contributing entities must file an annual tax declaration form (D.101) at the end of every fiscal year. The accountants are the persons in charge of preparing this form. However, a confirmation by the auditor is not a formal/legal requirement. The only formal requirement is to sign the declaration form by the company's legal representative. If the company is not actively operating and the income generated is "zero," then anyone may complete and file this form (with the legal representative's signature). Once the form is duly signed, the accountant may pay the taxes and file the form on behalf of the entity. Inactive entities (not registered as income and/or sales taxpayers with the Tax Administration) must also file a declaration form on an annual basis.

4.4 Transparency and Beneficial Ownership New Registry.

Under By-Laws of Registry and Transparency of Final Beneficiaries #410140-H of April 5th, 2018, all entities, including legal persons and legal arrangements such as, but not limited to companies, trusts, foundations, partnerships, and others, must disclose and report to the Costa Rican authorities who are the natural persons that ultimately are the owners/controllers of the legal persons or legal arrangements, either through their ownership interests, through positions held in the legal persons or legal arrangements. This requires including the ownership chain to natural persons, including disclosure of Holding Companies, Trusts, Institutions, or others involved. Specific formalisms must be fulfilled and could trigger and limit each entity on its future ability to operate. The purpose of this registry is to reach international standards of transparency.

5. Other considerations.

It is of the utmost importance to realize that

becoming the owner and/or part of a foreign entity may impact one's tax responsibilities. In these cross-border interactions, seeking proper advice in the home country becomes necessary.

6. Foreign Investment, Thin Capitalization, Residency Restrictions

6.1 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. Nonetheless, there are some limitations, such as:

- Several areas are known as legal monopolies belonging to the public sector, such as public transportation services.
- In areas such as medical series, communication, and insurance, state entities take over, though private entities can compete.

6.2 Thin Capitalization Rules

Costa Rica does not have specific "thin capitalization rules." However, there are limits on the payment of interest by a Costa Rican Limited Liability Company to its members and/or head office. These rules do not apply to a Corporations (Sociedad Anónima), only to Limited Liability Companies (Sociedades de Responsabilidad Limitada).

6.3 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 persons who



conduct commercial activities and all corporations 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.

6.4 Residency

6.4.1 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\$ 150,000. 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 of approximately 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 \$150,000 worth or more.

With the new law for the Attraction of Investors, Rentiers and Pensioners, there are several special incentives for the next five years, including: there are several incentives that will apply for the next five years: a) A one-time exemption from all import taxes for the importation of a household, b) A one-time exemption from import taxes and VAT for the importation of two personal or family-use transportation vehicles (cars or ships). c) If the beneficiary is the property's registered owner, 20% of the transfer tax for real estate purchased within the law's validity will be waived.

6.4.2 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 have 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 expedited process that usually takes between 1-3 months.

Furthermore, on August 2021 entered in effect the law to promote the attraction of workers and service providers that are conducted

remotely, to promote long-stay visitation in Costa Rica and increase the expenditure of resources of foreign origin in the country and the administrative regulation of how to implement it came in effect on July 4th, 2022.

This new migratory category of non-resident, subcategory of “estancia,” Worker or Remote Service Provider, can be granted for one year, extendable for a single period of one additional year. To authorize said extension, the beneficiary must have stayed in the country for a minimum of 180 days during the year originally granted. Some incentives are total exemption from the income tax, exempt from paying all taxes on the importation of basic personal computer, validity of driver’s license from beneficiary’s country of origin, and may open savings accounts in the banks of the national banking system.