



***THE 2005 CORPORATE GUIDE TO
DOING BUSINESS IN COSTA RICA***

2005

CORPORATIONS:

General Principles:

According to Costa Rica legislation, corporations, in any of their varieties, can be completely owned or controlled by foreign entities or individuals. There is no need for Costa Rican citizens to be members of the Board of Directors or shareholders.

All matters that relate to commercial corporations are governed by the Commercial Code. The corporations included in this Code are Stock Corporation (Sociedad Anónima), General Partnership (Sociedad en nombre colectivo), Limited Partnership (Sociedad en Comandita Simple), and Limited Liability Company (Sociedad de Responsabilidad Limitada). The most commonly used are the Stock Corporation and the Limited Liability Company.

Stock Corporations:

Known in Spanish as “*Sociedad Anonima*” it is very similar to a stock corporation.

It is the most frequently used form of association in Costa Rica. *The main feature of the corporation is that the liability of the shareholders is limited to their capital contributions.*

A Costa Rican Corporation is usually formed by simultaneous subscription. This method requires the incorporators to appear before a Public Notary to execute the articles of incorporation. At least two individuals must take into effect the articles of incorporation by subscribing at least one share each.

Once the articles of incorporation are executed, they must be filed with the Office of the Public Registry.

With regards to the **capital structure** of the Corporation, the law requires that the articles of incorporation also set forth:

- Capital: Indicating the total subscribed and paid in capital, how it is allocated, number and type of shares, and how it is

paid in. The paid-in capital is deposited in a bank, meanwhile the corporation goes the process of being recorded in the Public Registry. Once the corporation has been properly recorded, the individual

Articles of Incorporation of a Stock Company

The articles of incorporation must specify the following aspects:

- Date and place of incorporation.
- Type of corporation being formed.
- Incorporators: Full name, personal identification number (passport number for foreigners), marital status, activity, domicile, and exact address.
- Company name: Certain guidelines have to be followed with regards to the corporation name, and already registered and similarly named corporations. Also, the deed should specify terminology or logos that the company might use in letterheads, publications, etc.
- Objective: Should be included in a broad way, and must cover most of the eventual fields of its intended activity.
- Amount of authorized capital and the manner in which it will be subscribed.
- Cash, property, or other capital contributions to the shareholders.
- Duration: Specified in number of years. It can be extended at any time during the life span of the company.
- Domicile: Must be a physical address within Costa Rica where the corporation can be validly served with process notices. Resident Agent: A Costa Rican Corporation must name a *Resident Agent*. This representative must be an active Costa Rican attorney who has a local office and is capable of receiving judicial and administrative notices on behalf of the corporation. The resident agent has no vote or management power in the affairs of the corporation. *The public Registry shall not accept for registration any corporate document unless a Resident Agent has been appointed.*
- Enumeration of Powers of Attorney.
- Allocation of profit and losses: Inventories and balances are made at the close of every fiscal year (September 30). Costa Rica follows accounting practices similar to those prevailing in the US.
- Dissolution of the corporation: The company shall be dissolved by the end of the term or due to the following: Impossibility to fulfill its purpose, the loss of 50% of its capital, or by agreement of the shareholders. Once the dissolution of the company is agreed upon, the general assembly appoints one or several liquidators and sets their duties.

(Continues on Page 3)

who represents the corporation can get the paid-in capital out of the bank..

- **Shares:** The share titles or certificates are nominative and usually require the signature of the President and Secretary of the Board of Directors.
- The terms and method of payment for the shares.

The corporation only recognizes as shareholders those who have been registered as such. Each common share has the right to one vote. The concept of “straight voting” is used, under which each shareholder may cast the number of votes equal to the number of shares they hold.

Shareholder Meetings:

Shareholders should hold an annual ordinary meeting within the following three months at the end of the fiscal year. The meeting can take place in Costa Rica, or in other agreed location. Extraordinary meetings can be held anytime, and as much as they are needed. At least 50% of the voting shares must be represented at the meeting.

Corporate resolutions will be approved by vote of majority.

According to Costa Rican Laws, **corporate management** must meet the following specific requirements:

- **Administration:** The corporation is to be managed by a Board of Directors comprised of three members, with such titles as President, Secretary and Treasurer, whether shareholders, regardless of their citizenship. The representation and powers of the attorney of the company correspond to the President and to any other authorized with such powers in the deed. The directors can also be empowered to grant powers of attorney, substitute theirs all or in part, always preserving their mandate. Shareholders must also appoint a Comptroller of the Corporation. General Powers of Attorney are recorded

in the Public Registry.

- **Personnel Incorporation:** The Board may hire employees or agents and create new offices. Although the Board has the option to delegate its functions, it remains ultimately responsible for fulfilling its obligations.

Limited Liability Companies (LLC's):

A limited liability company is composed by partners whose liability is limited to their capital contributions. The LLC's legal structure is equivalent to the United States concept of “Partnerships,” and thus, qualifies as such for US tax purposes. Incorporation procedures and costs for LLC's are very similar to those of corporations. The more significant differences being:

- **Share Capital:** LLC's divide their share capital into what local regulations call “quotas” as opposed to shares. Unless specifically provided otherwise in the articles of incorporation, transfer of “quotas” requires unanimous consent of all partners.
- **Management:** LLC's are run by one or more managers or assistant managers who hold power of attorney as provided for in the articles of incorporation.

Capital Repatriation:

There are no restrictions on capital repatriation because of the free exchange system, authorized by the Central Bank of Costa Rica. Companies do not have to register their capital investments in the country.

Transferring Stock:

In order to transfer company stocks, the following steps must be followed:

- The original stockholder must transfer the stocks by endorsement and this must

(Continues on Page 4)

be recorded in the stockholders registration book of company.

- Once the stocks are transferred, a stockholders general assembly must take place in order to modify the company's legal representation by electing the new members of the board of directors and determining the company's representative.
- This general assembly must be summoned following the procedure established in the company's statutes. All the assembly agreements must be recorded in the company's book. A public notary must legalize this document in order to be submitted to the Mercantile Register to record any modifications.
- If the company owns properties or goods, it is recommended that if these support any mortgage, lien or encumbrance this be confirmed at the Public Registry.
- It is important to note that the new shareholders will not be registered in the Public Registry, they will only appear recorded in the stockholders registration book, which is a private legal book of the document often kept in the domicile of the corporation. This gives the new shareholders an important level of confidentiality, since their names will not appear to the public eye. Courts orders are necessary for the disclosure of the information contained in the legal books of the corporations.
- The only modifications that will be recorded in the Registry will be those of the members of the Board of Directors and the legal representatives of the company. Also any change or modification in the articles of incorporation, such as the stock capital amount, etc.
- Even though our law requires at least two persons to create a corporation, it allows for one or all of the shareholders to transfer or sell all of the shares (100%) to one individual or company. This means that even though a corporation can not be created with just one person, after it has been recorded and created, it can exist with only one shareholder.

CORPORATE TAXES:

Corporate Income Tax:

Tax is collected on net income at a **30% rate**.

Corporate Residence:

In most cases, the place of incorporation is regarded by Costa Rican authorities as the corporate residence. However, income taxes on corporations in Costa Rica are levied on local income irrespective of the place of incorporation, since any business not registered under Costa Rican laws that carries on industrial, agricultural or commercial activity is subject to taxation in the same way as a registered business. At the same time, under the Costa Rican Income Tax Law, certain transactions (income and expenses) may be regarded as performed outside Costa Rica and, therefore, as not subject to income taxes. Corporations may have their residence in Costa Rica and perform the central management function of other nonresident affiliates from Costa Rica and not be subject to taxes, as long as the registered entity performs no income-generating activities within the country and all local disbursements are subject to reimbursement from an outside source.

Real Estate Property Tax:

Every property, house, building, etc, is subject to a property tax. The municipal government is in charge of collecting the tax which amounts to 0.25% of the property value.

Branch Income Tax:

Branch income is subject to income tax under the tax rates applicable for corporate income taxes. A 15% tax in lieu of a dividend withholding tax is assessed on profits transferred abroad.

(Continues on Page 5)

Capital Gains Tax:

Capital gains and losses on the disposition of real state assets or shares of other companies are excluded for income tax purposes if it is not the entity's or the individual's habitual activity.

Inter-Company Dividends:

Dividends between domestic subsidiaries and other domestic corporations are not subject to any taxes. There are no ownership requirements to qualify for this exclusion.

Foreign Income:

Foreign source income is not taxable.

Dividends:

Stock dividends are allowed and are taxed at a flat 15%.

Deductions:

As a general principle established by Costa Rican Income Tax Law expenditures may be tax deductible as long as they are classified as "necessary to produce taxable income". These are expenditures that are compulsory or required to the activity. Besides this principle, there are other requirements such as:

- The obligation of withholding and paying other taxes established in this Law among them income tax salary for company's workers, tax on payments abroad, and dividends.
- Mandatory employer-employee contributions to the Social Security Regime known as Caja Costarricense del Seguro Social (CCSS) base on salaries reported to this institution.
- Expenses must be adequately supported and backed up by authorized invoices.
- Expenses must correspond to the period

they were incurred.

- over one through five fiscal periods.
- Depreciation and depletion/only the straight line and sum of the years digits methods of depreciation are allowed.
- Under certain limitations, it is permissible to depreciate revalued amounts of net assets using approved indexes.

Net Operating Losses:

Losses incurred by industrial and agricultural enterprises may be deducted from the taxable profits of the following three and five years, respectively. Loss carrybacks are not allowed.

Payments to Foreign Affiliates:

Corporations can claim deductions for royalties, technical and management service fees, and interest charges paid to foreign affiliates, provided a tax of 25% for royalties and other services and 15% for interest is withheld. However, the deductions for technical and management service fees cannot exceed 10% of gross sales in the aggregate if paid to the parent company.

Other Taxes:

With the exception of the vehicle tax, penalties, interest, and the income tax itself, all other taxes are deductible expenses when determining taxable income.

Withholding Taxes:

Taxes are withheld on payments to non-domiciled foreign corporations or individuals as follows.

- **Dividends 15%.** This tax must be withheld regardless of the origin or source of

the retained earnings. Total or partial exemption will be authorized by the Tax authorities to the extent that a foreign tax credit is totally or partially disallowed to the taxpayer in the taxpayer's country of residence. This exemption will not be allowed, however, if this type of income is not taxable to the taxpayer in the country of residence.

- Interest and other financial expenses 15%. No tax is withheld if the recipient is a bank or a financial Institution recognized as such by the Central Bank of Costa Rica or a supplier of merchandise. Interest or financial expenses paid to parties other than those mentioned above are subject to a 15% withholding tax.
- An 8% withholding tax applies to interest on bearer documents issued by financial entities registered at the Central Bank's General Auditor's Office or stock exchange. No withholding applies to interest paid on securities issued by the Workmen's Bank or the Mortgage Housing Bank and its authorized institutions or on foreign currency securities issued by the state banks.
- Royalties, patents, trademarks, franchises, and formulas. These payments are subject to a 25% withholding tax.
- Technical service and management fees. A 25% tax is withheld from these fees.
- Personal services fees paid for activities carried out by nondomiciled in Costa Rica are subject to the following withholdings: employees 10%; directors 15%; others, depending on the nature of the services rendered 30%.
- Transportation and communication services Fees for these services are subject to an 8.5% withholding tax.

Tax Treaties:

The only tax treaty in force between Costa Rica and the United States has been effective as of February 12, 1991. The principal benefits of this agreement to Costa Rica are access to Section 936 funds from Puerto Rico, U.S. tax deductibility of business expenses related to conventions held in Costa Rica and the location of foreign sales corporations (FSCs) in Costa Rica.

Tax Administration:

Tax returns with certain exceptions, of all corporations must be filed by November 30 on the basis of a fiscal year ending on September 30. Entities with an operating period of less than four months may present a return together with the following year's return. The present legislation contemplates that other fiscal year ends may be adopted with the prior approval of the Tax authorities. The tax system is one of self assessment with occasional auditing by the Tax authorities.

Payment of Tax:

On March, June and September, all corporations must prepay installments that total 75% of the average income taxes paid in the last three fiscal years. Failure to pay at these dates results in the accrual of interest unless the taxpayer has requested on a timely basis that the Tax authorities eliminate the corresponding payments. Any amount owed in excess of the installments should be paid by December 31.

Overview:

EMPLOYMENT LAWS

- The provisions of the local labor statutes and regulations are labeled of public interest, thus any waiver of statutory rights and benefits in individual agreements, personnel handbooks

and/or benefit plans is prohibited.

- Costa Rican employment law is governed by a **protectionist philosophy**, according to which in cases involving conflict of laws, the provision most favorable to the employee will apply. In addition, local courts will often appeal to the use of the “*in dubio pro operario*” principle. In practice, the referred principle translates in that the sympathy of our labor courts will almost always lie with the employee in those cases where there is doubt as to the application or interpretation of various rules or facts.
- In cases involving conflict of laws or interpretation of various rules, the provision most favorable to the employee shall apply.

Hiring and Selection:

- **Protecting Against Discrimination:** The recently approved amendment to the Costa Rican Labor Code, which introduced **Title XI (Law No. 8107 of July 2001)**, ensures that all hiring decisions be made without regard to an applicant’s race, color, religion, national origin, age, and gender.
- **Title XI** allows the employer to establish job requirements and work standards for job ads and applications. However, the employer should refrain from using criteria that may discriminate any of the protected groups under Title XI.
- **Equal Employment for Individuals with Disabilities Act, Law No. 7600**, employers should refrain from discriminating against an individual with a disability, who with reasonable accommodation may perform the essential functions required under the position.
- Basing employment decision on the fact that an applicant has HIV/AIDS virus is considered discriminatory and thus prohibited.
- **References and Background Checks:** Requesting references from prior employers is customarily and not regulated under local statutes and laws. In Costa Rica, private entities do not have direct access to criminal records for the purpose of screening job ap-

plicants.

- **Testing and Screening:** It is normal for employers to require the use of several tests during the selection process. Some of these tests may include, but are not limited to: written tests, polygraph tests, medical tests, substance abuse and drug screening tests. Generally speaking, there are no laws that regulate these tests on a pre-employment stage. Nonetheless, under local statutes, employers are not allowed to request job applicants for medical tests to determine the existence of the HIV/AIDS virus. In all cases, employers should remain careful not to disclose any information that may be construed of a privacy nature, so as not to inflict any personal injury.

Employment Contracts:

- Employment agreements are required to be in writing.
- In the absence of a written agreement, the employee may argue the existence of an implicit and/or implied contract.
- All contracts must include the following information: employee’s name(s); nationality; gender; civil status; address; her/his identity card number; the work site/location; the duration of the contract; work hours; wage rate; terms of payment; the place and date of the contract; and the signatures of both employee and employer.
- Generally, and in accordance with the “**indefinite employment**” doctrine, employment agreements should be regarded as indefinite term contracts.
- Definite term contracts are acceptable under local labor statutes, only if the characteristics and nature of the service being hired justifies a fixed term. If the employee continues to provide the service for which he/she was hired after the expiration of the term, then the employment contract will be considered of indefinite term. Definite term contracts may not exceed one-year terms.
- Other than the conditions listed above, the requirements for indefinite term and definite term contracts are the same under local employment statutes. There are circumstances

when a contract or part of a contract may be declared null or void, namely when a clause contravenes a provision of the local labor statutes. The provisions embraced by local labor statutes and regulations are categorized as essential to public welfare, therefore all employment agreements should at the very least embrace all guarantees and rights granted under local labor ordinances. Any clause or provision in an employment agreement that may be deemed as a waiver of employee's statutory rights under local law, would be considered null and void.

Statutory Benefits:

- **Christmas Bonus:** Employees are entitled to a Christmas Bonus referred to as *Aguiñaldo*, equal to 1 month's salary.
- Payment is calculated based on the ordinary and extraordinary salaries earned during the 12 months before December 1 of each year.
- New hires, with more than 1 month of employment, are paid proportionately according to the months worked.
- It is common practice for employers to make monthly reserve provisions equal to 8.33% (1/12) of monthly wages (this practice is not required by law).
- In the event of voluntary or involuntary termination, the Christmas Bonus is paid proportionately up to the time of settlement. Christmas Bonus must be paid during the first 20 days of December.
- **Paid Vacations:** At least 2-week paid vacation after 50 weeks of employment.
- Paid vacations must be awarded during the 15 weeks following the completion of the 50 weeks term.
- Carryovers of mandatory vacation time to a succeeding year is prohibited, with the exception of high ranking and skilled employees who are permitted to carry their vacation time to a succeeding year for one time only.
- Employers are not allowed to reimburse employees for unused vacation time, unless as a termination result, in which case the employee is entitled to 1 day of compensation for every month worked.
- The amount of vacation does not increase

with the length of service; however, employers are allowed to supplement statutory vacation plans with their own flexible program, so long as the mandatory paid time is awarded.

- **Public Holidays:** There are 11 legal holidays, 9 of which are mandatory paid and the remaining two are non-mandatory paid. In general, employers are expected to grant holidays at all times, consequently employees are not expected to work during holidays.
- 9 mandatory paid holidays:
 1. New Year's Day (January 1);
 2. Juan Santamaria's Day—National Hero (April 11);
 3. Good Thursday (Thursday before Easter);
 4. Good Friday (Friday before Easter);
 5. Labor Day (May 1);
 6. Guanacaste's Annexation Day (July 25);
 7. Mother's Day (August 15);
 8. Independence Day (September 15); and
 9. Christmas Day (December 25).
- 2 non-mandatory paid holidays:
 1. Virgin Mary of Los Angeles Day (Patroness of Costa Rica) (August 2);
 2. Columbus Day (October 12).
- Difference between a mandatory and a non-mandatory holiday is relevant only for weekly-paid workers. During a mandatory paid holiday, weekly wage employees are entitled to receive payment for that day's regular rate salary. During a non-mandatory paid holiday, the employee is entitled to enjoy time-off, but not to receive pay. If asked to work, the employee shall receive 200% regular rate for mandatory-paid holidays and 100% regular rate for work performed during a non-mandatory paid holiday. For *monthly wage* employees, non-mandatory and mandatory paid holidays are treated alike.

Work Week and Shifts:

- **Day Shift** (5 a.m.-7 p.m.): 48 hours per week, 8 hours per day. 10 hours per day if work is not dangerous or unhealthy and does not exceed 48 hours per week.
- **Night Shift** (7 p.m.-5 a.m.): 36 hours per week, 6 hours per shift.

- **Split Shift** (includes day and night shifts): If more than 3.5 hours are worked after 7 p.m., the entire shift is regarded as night shift. 42 hours per week and 7 hours per day. 8 hours per shift if work is not dangerous or unhealthy and does not exceed 48 hours per week.
- **Shifts for "Exempt" Employees** (also Employees under Positions of Trust): 12-hour ordinary shifts with a paid break (meal and/or rest time) of 1.5 hours.
- **Overtime:** Overtime applies for all hours above the standard work hours, both daily and weekly. Jointly ordinary hours and overtime hours may never exceed 12 hours per shift.
- **Weekly rest day(s):** 1 full day of rest after 6 days of work, usually Sunday.
- **Daily rest period(s):** 30-minute paid break for meals and rest. Meal breaks that surpass 60 minutes and that allow employees to enjoy time off from company grounds are unpaid.
- Employers must count as payable time any periods when employees are not actually working, but are required to stay on company grounds or premises. Even if employees are allowed to leave the premises, on-call time would be considered time on the job, provided that the employee cannot use the time for his/her own enjoyment and leisure.
- Services and benefits provided under the Social Security Program are administered and delivered through the Costa Rica's Social Security Fund (*Caja Costarricense del Seguro Social*).
- Employers and employees contribute on a monthly basis, and contributions are calculated as a percentage of employee's gross pay, including all benefits-in-kind. As of March 2001, employer's contributions were set at 23% of gross wages. As of March 2002, the contribution rate was increased to 24% of employee wages and by March 2003 reached 25%. Employee's contributions are withheld by the employer and have remained the same, at 9%.
- **Worker's Compensation Insurance:** Employers are obligated to provide Worker's Compensation Insurance to all employees. In the case of absence due to injury or accident, the National Insurance Institute (INS) covers 75% of the injured worker's salary during the first 45 days of absence. After the initial 45 days, the INS will pay a subsidy equal to 100% of the employee's wage. The INS will continue to provide financial support during a 2-year period, after which the employee may be entitled to disability benefits. There is also a detailed schedule containing the percentages of disability as a result of accidents.

Social Security and Worker's Compensation Insurance:

- **Compulsory social security coverage:** Costa Rica has a compulsory social security program that provides all local labor force with medical care, disability payments, survivor and old age benefits, and maternity leave benefits. As of March 2001, a rate increase in the social security contributions provided in the Worker's Protection Act, No. 7983, was put into effect in order to supply financial support to a *Labor Capital Accumulation Fund*, used to finance a mandatory-complementary defined contribution retirement program and an employee individual savings plan.

Disciplinary Practices:

- Misconduct may be approached with verbal and/or written warnings and suspensions.
- All disciplinary action should be imposed within 30 days of employee's misconduct.
- Avoid suspensions without pay, unless the misconduct allows for immediate termination.
- Paid suspensions (leaves) are allowed in connection with ongoing investigations.
- Avoid salary and job demotions as a means of disciplining employees.

Termination of Employment:

- At the time of termination, the company is required to issue a letter stating the date of hiring and job description. At the employee's request, the company is also required to include the reasons for terminations.
- An employer that terminates an employment on discriminatory grounds or without "just cause" will be subject to the payment of a severance indemnity as provided by the Costa Rican Labor Code.
- Employers may ask employees to agree to covenants not to compete. Violation of these agreements may constitute grounds for immediate termination.
- Employees involved in both "passive" and "active" bribery may be subject to immediate termination. Furthermore, the act of bribery does not need to be consummated for the employer to have a cause of dismissal. Lastly, our courts have also mentioned the employee's duty to report any conduct that may constitute an act of bribery; failure to do so may result in immediate justified termination.

Causes for Termination:

- Reasons for "just cause" for dismissal include:
 1. Employee publicly conducts himself in an immoral manner during his work, or when he/she engages in slander, calumny or physical insult against his employer;
 2. Employee engages in slander, calumny or physical insult against any of his fellow workers, during working hours, provided that, as a consequence, the working environment is severely altered and the work is interrupted;
 3. Employee, outside the working site and during non-working hours, engages in slander, calumny or physical insult against his employer or against his representatives, as long as such acts have not been provoked and that, as a consequence of these behaviors, peaceful cohabitation and harmony in the working

- environment is impossible;
- 4. Employee commits a crime against the employer's property, or when he intentionally causes material damage to the machines, tools, raw materials, products and other objects immediately and undoubtedly related with his work;
- 5. Employee discloses confidential information;
- 6. Employee, because of his inexcusable imprudence and negligence, compromises security at the site or the physical integrity of the persons who are there;
- 7. Employee is absent from work without permission of the employer without just cause during 2 consecutive days or during more than 2 alternative days within the same calendar month;
- 8. Employee refuses in a manifest and repeated manner to adopt the preventive security measures or to submit to the procedures established in order to prevent accidents or sickness;
- 9. Employee refuses to follow the directions and orders established by the employer or his representative in order to obtain the greatest efficiency and performance in the work duties;
- 10. After employees have been warned not to, they: a) Leave company premises during working hours without a just cause or without permission from the employer; b) Carry out political-electoral propaganda or contrary to the democratic institutions of the country during working hours, or execute any act which means the oppression of religious liberty established by the Constitution in force; c) Work under the effects of alcohol or under any other similar condition or vice;
- 11. Employee, at the time he agrees to the labor contract, misleads the employer, pretending to have capacities, abilities, conditions or knowledge which he apparently does not possess, or presenting to him personal references or affidavits which he are subsequently found to be false, or executing his duties in a manner which clearly shows his inability to undertake the duties for which he was hired;
- 12. Employee is temporarily imprisoned and

employee does not inform employer of his/her impossibility to return to work within the 3 days following imprisonment. If the employee is convicted and sentenced to a prolonged jail term, the employer is also allowed to terminate the

Employee incurs in any other severe fault, which violates any of the obligations contained in the labor contract.

- Employees belonging to “protected” groups may only be terminated for “just cause.” These groups include: union officials and representatives; any representative of a legitimate worker’s association, pregnant women and new mothers; probationary employees during the three month trial or introductory period, if pregnant or fall in any of the remaining “protected groups”; sexual harassment victims; under-aged employees; dismissals based on sex, age, race, ethnics or religion.
- Employees are entitled to terminate contracts, if the employer fails to make appropriate and timely payment of wages, if they feel an employer has mistreated them, or if they feel the workplace is unsafe and their responsibilities are life endangering.

Severance Pay and Pre-Termination Notice:

- Employees are entitled to receive severance termination benefits in the following cases:

1. Involuntary termination,
 2. Dismissals for reasons other than just cause,
 3. Terminations based on Redundancy, or employer’s restructuring,
 4. Retirement,
 5. Employer’s Bankruptcy,
 6. Force Majeure,
 7. Death
- Prior to introduction of the *Workers’ Protection Act* (implemented in March 2001), severance pay was roughly calculated as one month’s salary times years of service, limited at 8 years.
 - The new system for calculating the appropri-

ate severance payment is now subject to the following guidelines:

1. Employees with between 3 and 6 months of service are entitled to 7 days severance pay.
 2. Employees between 6 and 12 months of service are entitled to 14 days severance pay.
 3. Employees after 1 year of service are entitled to 19.5 days per year of service.
 4. Employees after 2 years of service are entitled to 20 days per year of service.
 5. Employees after 3 years of service are entitled to 20.5 days per year of service.
 6. Employees after 4 years of service are entitled to 21 days per year of service.
 7. Employees after 5 years of service are entitled to 24.24 days per year of service.
 8. Employees after 6 years of service are entitled to 21.5 days per year of service.
 9. Employees after 7 to 9 years of service are entitled to 22 days per year of service.
 10. Employees after 10 years of service are entitled to 21.5 days per year of service.
 11. Employees after 11 years of service are entitled to 21 days per year of service.
 12. Employees after 12 years of service are entitled to 20.5 days per year of service.
 13. Employees after 13 or more years of service are entitled to 20 days per year of service.
- In any case, employees shall only be paid severance for the last 8 years of service.
 - Employees that initiated work after March, 2001 are entitled to severance using the new system introduced by *Worker’s Protection Act*, No. 7983.
 - Employees that have not yet accumulated 8 years of service (as of March 2001), and that initiated work prior to March 2001, shall be paid their severance using both plans (the years of service accumulated under the old plan will be paid using the past formula); however, in any case, only the last 8 years of service shall be compensated.

- Prior to a dismissal for reasons other than just cause (no prior notice is required if the employee is dismissed for just cause), the employer has the obligation to notify the individual. The employer is required to give notice under the following guidelines:
 1. More than 3 months but less than 6 months service: 7 days notice;
 2. More than 6 months service but less than 1 year: 15 days notice;
 3. More than 1-year service: 30 days notice.
 4. In lieu of notice, the employer may compensate the employee with an amount equivalent to the salary that would have been earned during the notice period.

Foreign / Migrant workers:

- There are no restrictions as to the number or percentage of local employees that must be hired by a company doing business in Costa Rica.
- Employers are prohibited from hiring unauthorized alien workers.
- Foreign/migrant workers have the right to seek employment.
- Employers are prohibited from discrimination between foreign and national citizens.
- Wage discrimination in the basis of national origin or citizenship is prohibited under local law.
- Foreign employees have the right to join unions, however, they may not pursue a management or board position within the worker's association.

Overview:

INVESTING IN REAL ESTATE

In Costa Rica, most properties have fee simple title, and titles are registered and centralized at the offices of the Public Registry in San José. Most titles are currently organized by the means of a computer system called "Folio

Real", although some of them, specially the ones for properties that have had no transfers or other transactions affecting them for a long time, are not organized in the computer system and are still registered in an older fashion, which refers to specific books, pages and entries of hard records at the Register.

"Folio Real" System:

Property transfers require for the buyer and seller to execute a public deed before a Costa Rican Notary Public (whose concept is different than the one in many other countries such as the United States, Canada or the United Kingdom and is required to formalize all transactions dealing with real estate) and for such deed to be recorded at the public Register.

All titled land in the country, notwithstanding of the being registered following the newer "Folio Real" system or the older book/page/entry system can be accurately and safely title-searched in order to determine all relevant aspects on the specific property, such as ownership, liens, encumbrances, annotations or other issues that may affect ownership rights or the possibility of transferring the land to a third party.

Title searches on "Folio Real" properties may begin online at the Public Registry's webpage (www.registronacional.go.cr), but will probably require to be continued in the book/page/entry system, specially when the computer search shows liens, encumbrances or other property characteristics that were "inherited" from older transactions on such land before it was transferred to the "Folio Real" system. Additionally, although the computer system will indicate a list of liens and encumbrances, in most cases a thorough and complete title search will require the review of microfilmed or scanned documents indicating the details of such finds, which are not accessible on-line and can only be obtained at the offices of the Public Registry.

Although, as indicated, the "Folio Real" system is accessible on-line, in general terms private parties lack the legal training to be able to accurately, safely and thoroughly interpret the in-

formation, as well as follow-up any required further steps, reason for which it is strongly recommend for a knowledgeable professional to be used for performing and reporting the title search.

Form of Ownership:

In addition to the performance of a title search, when the property is owned by a corporate entity, it is essential to per-

form a corporate search at the Commercial Section of the public Register, since only this step will allow to verify that the entity transferring the property is in good standing as well as that the proposed signatory of the transfer deed has sufficient authority to do so.

Although titled land can be purchased in Costa Rica in the name of an individual as well as in the name of a company (domiciled in Costa Rica or not), foreign ownership is fully permitted. Nevertheless it is advisable to purchase property through a corporation. This structure allows to have flexibility and more predictability on areas ranging from estate planning (if share ownership is properly structured the investor can avoid his heirs a painful and lengthy long-distance probate procedure), tax management (as an example, rules on corporate expenses are more flexible than the ones on personal ones), and representation (shareholders meetings can facilitate granting special powers of attorney or other types of authorizations for many actions thus not requiring physical presence in the country).

Buying the Shares of a Company:

A somehow common practice has been to transfer the shares of an existing company that owns the land to be purchased, instead of transferring it through the Public Register to a third party.

Although the share transfer system may sound appealing at first sight since it allows to save money in notary fees and transfer taxes and may seem like a faster way to achieve the goal of transferring control of the property to the buyer it is not recommend to take this path and strongly advise to transfer property through the

Register under the standard procedure of a notarized deed.

The reason being that when you acquire the shares of a corporation in Costa Rica, as in most other countries, you are not only acquiring the company's assets (in this case, mainly, the land) but also its liabilities, and there is no mechanism to satisfactorily list them or rule out their existence. Such liabilities, if existent, would directly affect the land being purchased.

Transferring a piece of property:

Under such term, it is recommended that the extra cost is taken and that a normal transfer

through the Public Registry is made. This extra cost can be considered as a type of insurance of the property which will shield them against possible future claims from the seller's creditors.

Breakdown of closing costs and expenses (does not include mortgage costs)	%
Duties and Stamps	0.9
Transfer taxes	1.5
Legal fees	1.25
Total	3.65

Purchase of portions of a titled property are also possible in Costa Rica, this is called "segregación". For such purposes, a registered map for the land to be purchased is required, as well as an authorization from the local Municipality. Such authorization must appear in the registered map in the form of a stamp, which is referred to as "visado municipal".

Concession:

Several areas of the country, mainly the ones affected by the Maritime Zone Law and

located adjacent to the ocean, are not subject to private ownership and their possession is granted as a concession which could simplistically be compared to a lease made from the government for a specific period of time.

Concessions require special attention as there are specific zonings established in the regulating plans that may limit the possibility of what can be legally constructed on the concessioned land. Additionally, investors need to understand the foreign ownership limitation established by law before proceeding with the purchase of this type of lands.

IMMIGRATION:

If you are planning to live in Costa Rica for over a year, or more than 90 days at a time, we recommend that you consider applying for residency status. There are different categories of residencies available under local immigration provisions. These categories vary depending on the motive that brings you to Costa Rica and/or family links with Costa Rican nationals.

Categories of Residencies:

Permanent Residency as an Investor (requires a minimum investment in the country of US\$200,000 – investments in real estate do not qualify).

Permanent Residency as a result of a family relationship with a Costa Rican citizen (must be married to or be a descendent of a Costa Rican citizen).

Permanent Residency as a “Rentista” (Must be able to prove and guarantee a monthly income equal to or greater than US\$1000 per month over the course of the next 5 years. – very popular choice among foreigners seeking to obtain a residency in Costa Rica)

Permanent Residency as a retiree (requires a retirement benefit equal to or greater than US\$600 per month).

Temporary Residence for foreign employees (qualified technicians and executive level) of companies operating in Costa Rica.

- Regardless of the residency category, you will in all likelihood be asked to furnish the following documents:
- Birth Certificate (also required for accompanying dependents);
- Police Record/Certificate of Good Conduct (also required for accompanying dependents over the age of 18);
- Marriage Certificate (only required if your spouse will be staying with you during assignment in Costa Rica)

Documents Required with Residency Application:

Additionally, all applicants (including dependents) will need to include the following:

- Photocopies of all pages in your passport (please make sure that your passport is valid for at least the next six months);
- Eight (8) passport size pictures.

Public Documents and Certificates Issued Abroad:

IMPORTANT: All documents issued abroad (outside CR) must be previously stamped and sealed by the nearest Costa Rican consulate office. For a list of available consulates near your area, please visit: www.rree.go.cr.

“Rentista Residency”:

• You will be asked to furnish a letter from a Bank of your choosing confirming that it has received instructions (from the applicants) to irrevocably wire to a bank in Costa Rica, a minimum of **US\$1000** per month over the course of the next five years. The bank must also certify that the applicants have sufficient funds/investments to guarantee a steady monthly income of at least **US\$1000** for the next five years. Our office will gladly supply you with a draft of the letter required from the bank.

- This letter must be notarized by the nearest Consulate of Costa Rica from the locality where

it was issued.

“Retiree Category”:

- In addition to the bank letter mentioned in the previous paragraph, you will also require a statement from a qualified pension fund operator certifying that you are the beneficiary to a life time pension equal to or greater than **US\$600** per month. Our office can provide you with a draft of the letter required from the Pension Fund Operator.
- This document must also be notarized by the nearest Costa Rican Consulate Office from where it was issued.
- Before traveling to Costa Rica, please consult with your relocation specialist in order to verify if a travel visa is required;
- All documents filed before Costa Rican authorities must be officially translated into Spanish. Most of the translations can be carried out in Costa Rica, using translators authorized by the local Ministry of Foreign Affairs, however, there may be a limited availability depending on the language in which your document was drafted. Please consult with your relocation specialist in order to confirm availability.

Processing Time:

Please anticipate a processing time of 90 – 120 days after the application has been submitted before Costa Rican immigration authorities

For more information, please contact Fernan Pacheco and Sergio Solera, real estate attorneys from Facio & Cañas (www.fayca.com) or Tomas Ghormley from Century 21 Jaco, at legal@c21jaco.com.