

LEGAL GUIDE
COSTA RICA

Thompson, Barrientos & Obando has prepared this document with the idea of providing basic orientation with regards to the Costa Rican legal framework. We expect this guide will be useful to your understanding of our country. Before taking any decision with legal implications please engage the legal professionals that will provide you with the proper advice.

1. REAL ESTATE:

Costa Rican has been experiencing a very impressive real estate growth in the last years, therefore, it is very important to bear in mind several aspects of the real estate market, if you are interested in any kind of investment.

There are no restrictions for foreigners to own property, personally or through a corporate structure, with the only exception of beach-front property known as “concession property”.

An owner of a titled property can use and enjoy the property as he decides, having the right to sell, lease, construct or improve it in any way. Although, it is important to research what kind of “use” has been established for this property by the local municipality, and what kind of other restrictions have been set up by other governmental institutions. This is the reason why it is important to perform a Due Diligence before buying the property.

In Costa Rica, titled property is transferred by a “Deed of Transfer” which is a document executed by the parties before a Notary Public.

Although, it is possible to execute an “Option Agreement”, which implies that the property will be available for the buyer for certain time frame and under certain conditions (among these conditions it is a common practice to deposit in favor of Seller certain amount of the sale price); this Option can be executed without the presence of a Notary Public, but it is recommendable to received proper legal advice before entering into this kind of agreements, since it would pre-establish certain conditions for the closing.

2. CONCESSION PROPERTY

The maritime zone encompasses two hundred meters of beach frontage which is owned

by the Costa Rica government. The 200 meters regulated by the Maritime Law extend all over the Pacific and Atlantic coasts of the Republic and any of its nature, terrains, rocks that are exposed at low tide, according to article 9 of the Maritime Zoning Law. Furthermore, the mentioned law establishes that the maritime zone is composed of two sections: The PUBLIC ZONE which is the first 50 meters of tideland and the areas that are left exposed during the low tide, the RESTRICTED ZONE is the remaining 150 meters inland.

The first 50 meters are absolutely public and are not granted in any way for private use. Although, the Maritime Zoning Law allows the government to grant leases called Concessions for the occupation and use of the next 150 meters for periods of time that range from five to twenty years. These concessions can be granted to individuals or corporations, under the terms and conditions of the Maritime Zoning Law, the local municipality, the Costa Rican Board of Tourism and/or the Institute of Land and Colonization. These individual must be nationals or foreigners who have resided in the country for a minimum of 5 years. With regards to corporations, their capital stock must be owned in majority by Costa Ricans or foreigners (with the condition stated above). A concession generates a yearly fee paid in favor of the Municipality and the amount is paid based on an appraisal performed by the government.

It is prohibited to give or compromise, in any way or to transfer or sublet totally or partially, the concessions or the rights derived from them, without the express consent of the corresponding municipality and the Costa Rican Institute of Tourism or the Institute of Land and Colonization. These authorities can intervene in any tourist activity or development in the Maritime Zone or access those persons or companies that have any concessions.

Since this is a delicate aspect of the real estate market, it is very important to receive legal advice and perform proper research before committing to enter into an agreement related to concession property.

3. LEASING:

Leasing contracts in Costa Rica do not require any formalities to be valid, and oral agreements are even upheld.

It is provided by law, although is not mandatory, that parties may register their lease agreement in the Public Registry in order to make it public and effective against third parties.

4. ESTATE PLANNING:

TB&O considers that estate planning shall be a priority for all our clients. It is important not only to take the appropriate steps to acquire a property with free and clean title and have a clear idea of the rights and limitations related to the use of such property, but to consider a suitable estate planning structure.

Our lawyers are in the capacity to provide you with simple or complex estate planning structures, from a simple Will to a complex Trust, that will provide the protection your heirs need to receive the property or goods, if something happens to you.

5. CORPORATIONS:

In Costa Rica, the Sociedad Anónima is the most common used corporation form of business organization.

The corporation must be formed by a minimum of two organizers. After formation, the corporation may have any number of shareholders; including the option of one person or corporation being the sole owner of one hundred percent of the capital stock. The liability of the shareholders is limited to their capital contribution. The stock ownership could transfer easily by the partners, by a simple endorsement, although, depending on the kind of transaction the shares could be object of complex transfer structures.

Common shares have equal rights and one vote each. However, the bylaws may authorize the issuance of different classes of shares with different denominations, preferences, privileges, restrictions and limitations (such as the establishment of different terms and conditions regarding profits, assets, a specific business or any other company's affairs). Voting rights of shares other than common shares may be restricted, but never with respect to any Extraordinary Shareholders' Meetings or Special Shareholders' Meetings celebrated to eliminate or modify any preference or conditions of that special class of stock.

The corporations' Shareholders' Meeting is the maximum organ and the resolutions approve in such meeting are mandatory to the partners, board of directors and the management of the company. The Commercial Code provides the rules by which a Shareholders' Meeting shall operate.

Another organ of the Costa Rican corporations is the Board of Directors, which shall have as minimum three members (President, Secretary and Treasurer) and are appointed by the Shareholders' Meeting. The President of the Board is the member who usually represents the corporation, having full powers of attorney. Although, the Shareholders may decide to grant full power of attorney, general power of attorney (usually granted for management purposes) or special power of attorney (for specific actions) to other members of the Board of Directors (to act jointly or separately) or third persons.

Additionally, the corporation shall have a Comptroller (who cannot be family related with any other Board Member).

A Resident Attorney or Agent has to be appointed in case the members of the Board of Directors have no domicile in Costa Rica. This person shall be an Attorney at Law in Costa Rica.

6. LIMITED LIABILITY COMPANY (LLC):

The Limited Liability Company (Sociedad de Responsabilidad Limitada, SRL or LTDA) is very similar to the Corporation and shares its basic corporate structure. In the LLC the liability of the owners is limited to its capital contribution. According to law, to create a LLC, at least two organizers (who could be physical persons or legal entities) are required and, as in the Corporation, after creating the LLC, one person or company may be the sole owner of one hundred percent of the capital.

The capital of the LLC is represented by individual and registered “quotes” (which are the equivalent of the shares in the Corporations). The quotes have equal rights and one vote each. These “quotes” have a distinctive characteristic, which is that may only be transferred to third parties with the prior approval of one hundred percent of the quoteholders (or at least three-quarters of the company’s capital, if it is expressly established in the by-laws) and if such transfer is not approved, the current quoteholders would have the opportunity to buy the quotes under the same terms and conditions as offered to such third party (Right of First Refusal).

The maximum authority of the LLC is the Quoteholders’ Meeting that operates pursuant the provisions of the Commercial Code.

In the LLC there is no Board of Directors and therefore is managed by one or several Managers, who may or may not be quoteholders and who may have full or general powers of attorney.

7. BRANCHES:

Branches of foreign companies may be established by appointing in Costa Rica a representative with full powers of attorney for all of the branch’s business. The power of attorney must contain: (a) The business purpose of the branch and the capital “assigned” to it; (b) The business purpose, capital, complete names of officials or administrators, and the duration of the “parent company”; (c) a declaration that the representative and the branch submit to the laws and courts of Costa Rica with respect to acts or contracts executed in the country and that expressly renounce to the laws of their domicile; and (d) evidence that the person granting the power has sufficient authority.

The power or any other document coming from abroad must be legalized by the appropriate Costa Rican Consul.

8. IMMIGRATION:

If you arrive to Costa Rica as a Tourist you would have as much as 90 days to stay in Costa Rica without having any immigration issue to deal with (this term may vary depending on the foreigner's nationality). Although, if you are planning to stay for a period of time longer than the mentioned above, you may consider to receive legal advice.

Foreigners that have decided to live in Costa Rica shall consider applying for a Temporary Residency. Pursuant to article 75 of the Immigration and Foreigners Law, among others, the following persons could apply for this kind of residency:

- a) The spouse of a Costa Rican citizen that has a marital life,
- b) Members of a religious order of a religion credited before the Foreign Affairs Ministry,
- c) Executives, representatives, managers and technical personnel (as well as their spouses and children) of established corporations in the country, dedicated to those areas defined as a priority according to the immigration policies.
- d) Investors
- e) Retired individuals
- f) Scientists, professionals, specialized technicians
- g) Sportsman, duly certified by the National Council of Sports
- h) Correspondents and journalism agencies personnel.

There are other ways or special categories to apply for a Costa Rican Temporary Residency, but they shall be studied on case by case basis.

Additionally, a foreigner can apply to a Permanent Residency when he or she is the a spouse/husband or a first-degree relative that have lived for three consecutive years as temporary residents in Costa Rica and also when he or she has a first-degree blood Costa Rican citizen relative. Permanent residents have no limitation to remain in Costa Rica. A Permanent Residency procedure is complex, therefore, the professional advice is required when considering this kind of Residency.

It is also available for foreigners the "Temporary Working Permit", although, as of today, this working permit is only granted in very special situations.

In order to decide what kind residency suits better your profile, it is important to receive legal advice by a professional on this area. Our lawyers are prepared to take you through this delicate process.

9. TAXES:

Costa Rica is a “source” jurisdiction from an income point of view. That means that both Costa Rican tax residents and non-residents generally are subject to tax, only on their Costa Rican source income.