

DOING BUSINESS IN COSTA RICA

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1. GEOGRAPHY AND CLIMATE

1.1 Geography

Situated in the geographic center of the Americas, Costa Rica is bordered by Nicaragua to the north, by Panama to the south, by the Pacific Ocean to the west and the Caribbean Sea to the east.

Three mountain ranges define Costa Rica, forming five distinct areas: the tropical lowlands on the Pacific and Caribbean coasts; the North Central tropical plains; the Central Valley high lands; and the broad, generally low Northwest Zone. The Central Valley's easy access and temperate climate with an average temperature of 20 degrees centigrade (68 degrees Fahrenheit) have attracted two thirds of the country's population, an even greater proportion of its industry and is the site of the capital city, San José. With an extension of 9.47 sq. km. (3.66 sq. miles) and an elevation of 1.150 meters (3.773 feet) above sea level, San José is the country's largest city.

1.2 Climate

At 51.100 square kilometers (19.730), Costa Rica's small size belies its enormous diversity of

climates, soils, altitudes and geographical zones. The country's mountainous, pyramidal topography provides for dramatic climatic and geographical variation with each change of altitude. This variety has led to recent and exciting changes in land use, as high-profit, non-traditional fruit, vegetable and flower cultivation muscle in on the traditional, but low profit-yielding domains of sugar, coffee and meat production.

There are basically two seasons in Costa Rica: the rainy season (May through November) and the dry season (December through April). Annual precipitation varies among the different provinces from 55-98 inches on the North Pacific to 118-177 inches on the Atlantic.

2. TRANSPORTATION & COMMUNICATION

2.1 Road

Costa Rica's infrastructure is among the best developed in the region. There are more than 7.000 kms of principal highways and roads and some 16.000 kms. of rural roads.

There is good taxi and public bus service in San José.

2.2 Air Travel

San José's principal airport, Juan Santamaría is served by 17

international passenger airlines and 10 cargo airlines. A new terminal, along with a three-stage renovation plan, is planned to upgrade the airport's capacity and adequacy, and a study is underway to examine the need for a new airport for the San José area.

To serve the Guanacaste tourist area, the Daniel Oduber Quiros Airport was inaugurated in October 1995.

In addition, there are approximately 31 small, rural airports in the country.

2.3 Shipping

Several steamship companies maintain regular and frequent cargo service for containers from both coasts to the United States, Europe, Japan and Latin America. The largest of all ports, Limón handles up to 80% of all cargo. On the Pacific Coast, Puntarenas, supported by Taiwanese funds, has recently completed a new pier that is opening to large cruise ships. And within 90 miles of San José is the port of Caldera. Built in 1982 to replace the aging Puntarenas port, it has adequate storage space, three berths and a passenger terminal. Caldera is a busy port handling approximately 30 to 40 ships per month. All three ports can service containers and roll on/roll off cargo.

2.4 Communications

The Costa Rican telephone system is excellent, offering direct dial access to most countries. Public telephones are found throughout major cities. Costa Rica has a fully automated system of telecommunications, providing a high standard of national and international communication including facsimile facilities and e-mail. Cellular telephones were introduced in 1994 and the service providers cover the whole country.

3. POLITICAL HISTORY

For a century and a half, Costa Rica has been building a stable society with benefits shared by all. The country's commitment to socioeconomic development is evident in present-date Costa Rica, the nation with the most equitable distribution of wealth, highest health standards, and longest life expectancy in Central America. In 1990, the United Nations cited Costa Rica as having the best human development indices among developing nations. In 1996, Costa Rica again tops the list in Central America in terms of human development.

For years, this small republic's democratic traditions and peaceful business climate have encouraged and successfully attracted foreign

investment. This is underscored by the Costa Rican constitution, which, except for participation in political affairs, guarantees foreign investors the same legal rights as Costa Rican citizens.

All this translates into an ideal place to conduct business. The country's industrial base is strong; the highly educated labor force is easy to train; a fairly well-developed production infrastructure is available; and a modern, efficient communications system ensures ready access to the global marketplace. In addition, the country enjoys multilateral and bilateral trade agreements with other nations, allowing for preferential access to foreign markets.

The business environment is second to none in the region. A quick analysis and comparison of Costa Rica's social, political and economic policies with those of its neighbors make the choice easy for international investors seeking fresh opportunities for their technology and know-how.

4. POPULATION & EMPLOYMENT

4.1 Population

The majority of Costa Rica's 3 million inhabitants are descendants of Spanish and other European families and, as such, do not exhibit characteristic Indian features.

Costa Rica's population growth rate has been relatively stable over the last four years, reaching 2.7 percent in 1988. The Central Valley, the principal area of concentration, will continue to absorb about 60% of this growth and is projected to become one giant metropolitan area comprising San José, Alajuela, Heredia and Cartago.

Promotion of family planning over the last 20 years has lowered the birth rate and altered demographic trends. In 1960, about half the population was under 15 years of age; by the late 1970s that figure was 20%, and the Census Bureau forecasts a further drop to 26% by the year 2000. Accordingly, the productive population (ages 15 to 64) should increase from 49 to 67% by the year 2000.

4.2 Language

The country's official language is Spanish, although English is the most widely spoken foreign language, and is commonly spoken in the business community.

4.3 Employment

Labor Relations

Though labor costs are somewhat higher in Costa Rica than in neighboring countries, the labor force also has a higher level of

education and generally high level of productivity. The U.S. Embassy, in its "General Business Information on Costa Rica" states that "the Costa Rican labor force can be characterized as relatively well-educated, skilled and easily trainable. The average worker has demonstrated a willingness to seek, and an ability to absorb, additional specialized training".

Labor regulations have their legal base in the Costa Rican Labor Code. Since its enactment in 1943, it has been the country's principal law concerning labor relationships, protecting both worker and employer by stating the legal rights and responsibilities of each.

Though this section presents the main provisions of this code, potential investors should be aware that these may be changed by the legislature in order to comply with modern administrative systems and global marketing requirements. A labor consultant attorney should be consulted in order to fully understand and comply with the requirements of this code.

Foreign employees

All foreign workers require a work permit.

The employer has to submit a request to the Foreign and Migration General Administration, who will in

turn presents its opinion to the Work and Social Security Ministry.

Working hours

Three different shifts are described. The day shift is any eight hours between 5-10 a.m. and 10 p.m., not to exceed 49\8 hours weekly. The night shift is any six hours between 6:00 p.m. and 5:00 a.m., not to exceed 36 hours weekly. Finally, a mixed shift is up to seven hours of both day or night hours, not to exceed 42 hours weekly.

Overtime is calculated at time and a half, with the work day not to exceed twelve hours. No overtime is allowed when working conditions are dangerous or unhealthy. Employers must pay double time for work on Sundays.

Holidays and vacations

Costa Ricans receive remuneration for all mandatory holidays prescribed by the Labor Code. Religious or civic holidays, are unpaid, and the decision to give time off varies from employer to employer. If a company needs to work on a holiday, it can do so by letting employees know in advance and paying double for the hours worked. On special days such as Christmas Day, May 1, or Holy Week, companies usually not only

pay double, but provide transportation, meals and a bonus.

In addition to these holidays, a worker is entitled to two weeks of paid vacation for every 50 weeks of continuous employment with the same employer. If the employee works her or his vacation, it must be paid as double time. Employees terminated before the 50-week mark are entitled to receive pay for one vacation day per month worked. In practice, additional vacation days are very common benefits offered, especially as part of executive packages.

Sick leave

According to the labor Code, the employer is required to pay 50% of an employee's salary for the first three days of an illness. From the fourth day, the social security system (Caja Costarricense del Seguro Social) pays 50% of the worker's salary with no further obligation from the employer except to allow the worker to return to his or her former position. The custom, however, is that big companies pay the employee's salary in full the first three days. Sick leave per person averages approximately four days per year.

Maternity leave

An employee is entitled to up to four months of maternity leave, 30 days before and 90 days after the birth. The employer is required to pay 50% of the employee's salary during this leave, and social security covers the other 50%.

Leave for work-related injuries

If an employee must be absent from work because of an on-the-job-injury, the National Insurance Institute(INS) covers 75% of the injured worker's salary, with no time limit. Some companies pay the other 25%, but this is decided by each employer. The INS insurance is paid by the employer, in the form of an occupational hazard tax.

Wages and salaries

Minimum wage is based on a cost-of-living index and adjusted biannually by the National Council of Salaries. This council also reviews professional fees. Blue collar workers generally work 48 hours weeks and are paid weekly. Salaries of white collar and domestic workers are based on a thirty-day 240-hour month and are generally paid bimonthly.

Costa Rica has a very competitive labor market, which obliges employers to pay above the minimum wage if they want to maintain a reasonable turnover rate. The main reasons for the situation

are a very low unemployment rate (4-5%); a good educational level, which enables people to move around easily; and other options available in the market. This is true at the professional level as well, where the competition issue is even stronger.

Salaries can be paid by check, however companies usually provide the services of a local bank, which comes into the installations to cash the checks. Management is very often paid by direct deposit through modern banking systems.

Mandatory payroll deductions and bonuses

Social Security The Costa Rican social security system covers health, indemnification, and retirement pensions. Costs are calculated as a percentage of the worker's salary. Twenty-two percent of the worker's gross salary must be paid by the employer, with 9% to be deducted from the employee's salary.

Income tax. It is the employer's responsibility to make monthly income tax deductions directly from employees' salaries. Below is the schedule:

From 0 to 419,000 month (about US\$855) no income tax is paid. From 419,000 to 690,000 (about \$1,408) 10% income tax is paid.

From 690,000 and up, 15% income tax is paid

Occupational Hazard Tax. This is the tax that gives employees access to the INS's insurance for work-related injuries. A payment of 3.75 percent of the worker's salary is paid by the employer.

Christmas Bonus (aguinaldo). All workers must be paid a Christmas bonus equivalent to a twelfth of their annual income (one month's salary after one year's work) within the first twenty days of December. The employee does not pay tax on the bonus, and the employer may deduct the amount from the tax base for income tax purposes.

Supplementary Benefits

Costa Rican companies often grant workers benefits over and above those mandated by law. Such benefits vary, but commonly include subsidized food, uniforms, transportation, company medical services, and education scholarships.

5. BUSINESS ENVIRONMENT

Both the public and private sectors recognize that foreign private investment is essential to increased exports and employment. This is especially relevant in light of

decreased U.S. aid to the country in the last several years.

Intent on joining other countries in market liberalization, Costa Rica was accepted into the General Agreement of Tariffs and Trade (GATT) in November 1990. This important move spawned more reform-oriented and transparent-trade policies.

Import licenses have been virtually eliminated, and tariffs have been reduced from nearly 80 to 20 percent for most non-durable consumer goods, and to 10 percent for capital goods. Import duties will be reduced to one percent on raw materials, and by 1999 duties on capital goods will be lowered to one percent and finished products to 15 percent.

Investment and export incentives

The failed protectionism model of the 1960s and 1970s forced manufacturers to seek new markets outside Central America and improve the production, pricing, and quality of their products. Because of increased world production and competition, the country's traditional, mostly agricultural, products commanded low prices. In order to promote both domestic and

foreign investment in nontraditional exports, the government streamlined import and export procedures and implemented a structural adjustment program to carry out economic reforms.

Today, fiscal incentives are available for reforestation and tourist oriented projects. These are three major investment incentive plans under which a company or individual may operate:

1. Regime of Active Finishing
2. Free Zones
3. Incentives for the Tourist Infrastructure
4. Generalized System of preference
5. Caribbean Basin Initiative (CBI)

6. THE ECONOMY

Costa Rica has a market economy with major government participation in certain sectors. Insurance, refineries and major service industries are dominated by public corporations, although closely held companies and family enterprises are common. Utilities, transport and some primary industries are owned by semi-autonomous state monopolies, but there is a trend towards privatization.

6.1 Aims of Government Policy with regard to the Economy

Government policy is directed toward stimulating economic growth, especially in areas away from the main urban centers and to privatize state-owned industries and utilities as far as possible. Decentralization of industry is a major objective of government economic planning and regional incentives are available.

7. EXCHANGE CONTROL

Exchange controls

Exchange controls were removed by the Central Bank in March 1992. Exchange rates are established by the market, and dollar transactions are no longer restricted. The only exception to this rule are export earnings from companies not operating under the Export Contract, Free Zone, or Temporary Admission "Drawback" System described in the Investment Incentives sector.

Companies not operating under any of these systems must convert 60% of their export earnings into Costa Rican colones through the national banking system.

Capital repatriation

Although it is no longer necessary to register foreign capital with the Central Bank to ensure capital repatriation, investors are advised to convert their foreign currency

through the national banking system.

8. TAXATION

Tax treaties

Costa Rica has bilateral investment treaties with Germany, France, Romania, Chile, Netherlands and Great Britain. Treaties for the avoidance of double taxation with respect to income and property taxes have been signed only with Spain, but it still needs Congress approval to be implemented.

A Tax Information and Exchange Agreement (TIEA) with the United States became effective in 1991. Under this agreement, Costa Rica is now eligible for Section 936 funds. These are profits earned by U.S. companies in Puerto Rico that are exempted from U.S. income tax when invested in any qualifying Caribbean Basin country. In addition, the TIEA enables U.S. businesses holding conferences or seminars in Costa Rica to deduct those expenses on their U.S. income tax returns.

Taxes on dividends

According to Costa Rica law, upon credit or payment of a dividend, whichever occurs first, the company must withhold 15% of the amount

credited or paid. The 15% withholding tax does not apply if: (1) payments are made in shares of the distributing entity; (2) payment is made to another Costa Rican corporation; or (3) foreign tax credits are not allowed by the recipient country (previous authorization from local Tax Authorities is required). If the distribution company is registered in a local stock exchange and the shareholder acquired the shares through the stock exchange, the applicable withholding tax decreases to 5%.

The amounts withheld must be deposited with Tax Authorities within the first 10 days of the month following the date of credit or payment of the dividend.

Corporate tax rates

With the exception of qualified and limited free trade zone, export, forestry, and tourist-oriented activities, a corporation's net profits are taxed according to their annual gross income as follows:

Up to ₡27.811.000 : 10%
 Up to ₡55.943.000: 20%
 In excess of ₡55.943.000: 30%

Exchange rate: US\$1 = ₡490

The tax is levied on net income before dividend or reserve distributions.

Foreign remittances

Foreign remittances such as royalties, leasing, technical advise, salaries or services are subject to withholding taxes ranging from 5.5 to 33%, as follows:

- (1) Transport and communications 8.5%
- (2) Salaries 10%
- (3) Fees on personal basis, commisions, and other personal remunerations for non employees 15%
- (4) Reinsurance premiums 5.5%
- (5) Dividends 15%
- (6) Operating leasing 15%
- (7) Royalties, techincal consultancies, management fees or other services provided by consulting companies or headquarters 25%
- (8) Other concepts not defined above 30%

Payments or credits made by subsidiaries or branches to parent companies for royalties, franchises, trademarks, etc., are limited to a maximum of 10% of its gross sales. Companies are normally exempt from withholding taxes on interest remittances provided the lenders

are financial institutions or banks duly recognized by the Costa Rican Central Bank and first order financial institutions.

Municipal, permit and stamp taxes

Costa Rica has no state or city income taxes. There are, however, minor municipal taxes, operation permit fees and stamp taxes. Stamp taxes are levied most legal documents.

Education and culture stamp tax

An education and culture statutory stamp tax is imposed annually, with fees ranging from 750 colones to 9.000 colones, based on the capital stock of the company.

Real estate tax

This tax is applicable to real estate, land, buildings and permanent structures. The tax is managed, assessed and controlled by local governments (Municipalities) of the administrative district where the property is located. The taxable base is equivalent to the value of the property registered with the Municipality. Annual real estate tax rates are defined individually by each local government and must range between 0.3% and 1%. However, until May of the year

2000, the applicable tax rate by all Municipalities will be 0.6%.

Import tariffs

At the time of Costa Rica's entry into the General Agreement on Tariffs and Trade (GATT) in 1990, the country had a maximum duty of 55% on imported goods. Under GATT, this rate was lowered in June 1993 to a maximum of 20% and a minimum of 5% with few exceptions. Nonetheless, luxury items such as automobiles, can be subject to combined tariffs and taxes (such as the selective consumption tax among others) of up to 100%. A detailed explanation of how imports are taxed is beyond the scope of this book. AmCham strongly recommends consulting qualified professionals if you are considering importing goods.

Sales tax

The sales tax as in 1997 was recently reduced from 15% to 13% and is applicable to most goods. This tax is payable monthly on sales within Costa Rica for the previous month, Less the amount paid within the same month to suppliers. In the case o of imports, sales tax is paid as part of the import duties required for the release from customs of the goods. Certain qualifies imports are exempt from sales tax.

Gross income includes earnings, benefits and rents, whether in cash or in kind. Companies may deduct from gross income all costs and expenses necessary to produce taxable income or to protect their investments. Resident and nonresident corporations are taxed the same under Costa Rican law. Partnerships are treated as corporations independent of their partners and are liable for corporate taxes on net profits.

As a general rule, capital gains and losses on non-depreciable assets or shares of other companies are excluded for income tax purposes. Branch income is taxed at the same rate applied to corporations and foreign source income is not taxed. Corporations may request an extension to file their returns with prior approval from the Ministry of Finance.

Deductions

Following is a summary of the deductions corporations can take against gross income:

- Expenses necessary to produce taxable income are

deductible provided they are duly recorded, deemed necessary and the obligation to withhold (if applicable) has been met.

- Bad debts provided evidence of legal action to collect exists.
- Payments to residents or nonresidents for rents, royalties, technical or financial assistance, trademarks, franchises and similar items, provided the proper withholding is made.
- Taxes paid, except income, sales and consumption taxes as well as related penalties.
- Interest payments on business loans, as well as the costs of obtaining said loans.
- Loss of assets not covered by insurance.
- Casualty losses not covered by insurance.
- Contributions to a recognized cultural or charitable institution
- Local insurance premiums.
- Foreign exchange losses, except when related to the acquisition of fixed assets.

Depreciation and other allowances

- Unless authorized by the Tax Authorities, depreciation rates cannot be higher than those prescribed by law. A company can choose either the straight line or the sum-of-the-year digits methods of depreciation. However, once chosen, that method must be used consistently. Accelerated depreciation is allowed in certain circumstances.
- Annual depletion allowance is granted to companies that use natural and depletable resources.
- Organizational and pre-operational expenses can be amortized in one or five years.
- Operational losses can only be carried forward up to three years by companies engaged in industrial operations and five years for agricultural operations. The amount to be carried forward or used as a deduction is up to the discretion of the taxpayer. Amounts not used during the allotted time periods are lost.

Invalid deductions

The tax administration can judge a deduction invalid under any of the

following circumstances: non-income generating, excessive or unreasonable, or pertaining to another tax period.

9. BUSINESS ENTITIES

All matters relating to commercial enterprises are governed by the Commercial Code. Foreigners are granted full freedom to acquire and/or operate a business in Costa Rica with some exceptions in the area of communications. One important stipulation, however, is that a foreigner cannot carry out business in her or his own name unless she or he has accumulated ten years of legal residency. The most widely chosen alternate is to carry out business through a corporation legally formed and registered in Costa Rica.

Types of commercial companies

Five types of legal capacities are allowed by Costa Rican law:

1. The stock corporation
2. The limited liability company
3. The collective company
4. The limited partnership
5. The individual enterprise with limited liability (this option is the only one regarded as an individual rather than corporate personalities).

Of these five, the first two are the most utilized.

- **Stock Corporations.** By far the most popular form of commercial company, the corporation is public entity whose members are liable for the amount of their contribution. As for the limited liability company, a minimum of two shareholders is required; a basic difference is that the administration of a Stock corporation is more sophisticated. The company must be organized with registered shares. Title of these is recorded only in the company's shareholder register, a private record whose access is restricted to shareholders and/or administrators. Third parties have access only through judicial resolutions. Shareholders are not necessarily incorporators; instead, members or employees of the legal agents organizing the incorporation usually act as incorporators in a formal capacity, and once the corporation is registered the shares are delivered to legitimate shareholders.

There must be a board of directors with at least three directors and a statutory examiner, all of whom can be foreigners if desired. The name of the corporation must be registered (and be different than those already registered) and followed by the words Sociedad Anónima, or the abbreviation S.A.

- **Limited Liability Company.**

The limited liability company is a stock-held corporation, with a minimum of two shareholders required at the formation. Afterwards, a single person or company may become the sole owner of all the shares and this will not cause its termination. Thus, a board of directors is not required. The shares can be issued only in registered form and have to be transferred by assignment.

The limited liability company requires a very simple administration and, therefore, is suitable for enterprises of medium size, where the basic needs are those of limitation of liability and administrative simplicity. The only position required, though there may be more, is a manager with broad powers of attorney.

The company name must include either the phrase Sociedad de Responsabilidad Limitada (limited liability company) or the abbreviation S.R.L. or Ltda. and must be stated in all company advertisements, invoices, publications, and other documents. A limited liability company is not dissolved automatically upon the death, interdiction, or bankruptcy of a partner, unless otherwise provided for in its charter. Bankruptcy of the company does not include bankruptcy of its partners. In this

legal entity the partners are liable only to the extent of their contributions to the capital.

This type of company is the most widely used after the corporation.

Foreign companies

Foreign companies may operate branch offices or transfer their headquarters to Costa Rica. Branch offices are subject to Costa Rican Law. They must provide the Mercantile Registry with a certificate or statement issued by the Costa Rican consul or other friendly nation's consul stating that the prospective branch office has been authorized by its headquarters to operate in Costa Rica.

Foreign companies headquartered in Costa Rica continue to be governed by the laws of the country where they were organized with regard to the charter, but they are bound by Costa Rica public law and obligated to pay income tax on business carried out in the country.

Foreign enterprises may also operate in Costa Rica by granting a powers of attorney to a representative. This power has to be registered in the National Public Register.

Some specifics in business law

Power of attorney, surety and guaranty, as well as trusts are legal actions that may be of use to business at certain times. Their Costa Rican versions are described and explained in this section, as well as pertinent aspects of selected business-related legislation.

Powers of Attorney

The document in which a person or entity is given certain rights to act on behalf of another party is known as a power of attorney (poder). A power of attorney is a rather common legal instrument that allows a foreign investor to delegate the handling of certain business matters to her or his attorney or other trusted representative.

The person granting the power of attorney is known as the poderante. The person or entity appointed is known as the apoderado. There are four types of power of attorney, which allows the power delegated to be adjusted to the nature of the task or type of actions needed.

- **Special Power of Attorney.** A special power of attorney (especial) is granted for a given transaction in or out of court. Once this is accomplished, the power of attorney ceases.

- **Very Special Power of Attorney.** The law requires a very special power of attorney (especialísimo) for the contraction of marriage through a proxy, the making of a donation through a representative, or any other case of special importance.

- **General Power of Attorney.** A general power of attorney (general) is given for any and all transactions conferring full and general powers of administration to the attorney-in-fact with regard to a specific matter.

- **The Very General Power of Attorney.** This final classification of power of Attorney (generalísimo) covers all the transactions a person may wish to have carried out, such as the right to sell, mortgage, or any other way alienate or encumber any type of property; to accept or renounce inheritances, to act in court, to execute any type of contract, and to perform almost any other legal act.

Trusts

The Commercial Code contains provisions permitting the establishment of trusts. A trust is an arrangement by which a founder transfers to a trustee the ownership of certain property or rights with the obligation to employ them for the purposes outlined in the trust.

Any person or legal entity having the legal capacity to acquire rights and contract obligations may serve as a trustee. The original instrument designates the person who is to receive the assets of a trust. If no designation exists, then the assets are returned to the founder or heirs.

Any kind of property or rights that form a legal part of a business may be the object of a trust and become separate and independent assets for the purpose of the trust.

The following trusts are prohibited: (1) A trust made for secret purposes. (2) Trusts having a duration of more than thirty years if the trustee or beneficiary is a legal entity. This rule does not apply if the beneficiary is the state or a nonprofit charitable, scientific, cultural, or artistic institution. (3) A trust in which the trustee is allotted earnings, commissions, premiums, or advantages other than the remuneration indicated in the original instruments or determined by a court.

10. ACCOUNTING & AUDITING REQUIREMENTS

10.1 Accounting

Public and private companies are required to maintain accounting records in terms of the Commercial Code and the Income Tax Law, which also requires that the annual financial statements are prepared in conformity with International Financial Reporting Standards, and it also prescribes certain disclosure and other requirements for the annual financial statements.

10.2 Auditing

In terms of the Institute of Public Accountants Law, only registered members are qualified to perform audits. External audits are mandatory for banks, pension funds and other financial companies only. The accounting and auditing standards are laid down by the Institute of Public Accountants and are based on the International Auditing Standards.