

Keep company legal books safe

By Garland M. Baker

Exclusive to A.M. Costa Rica

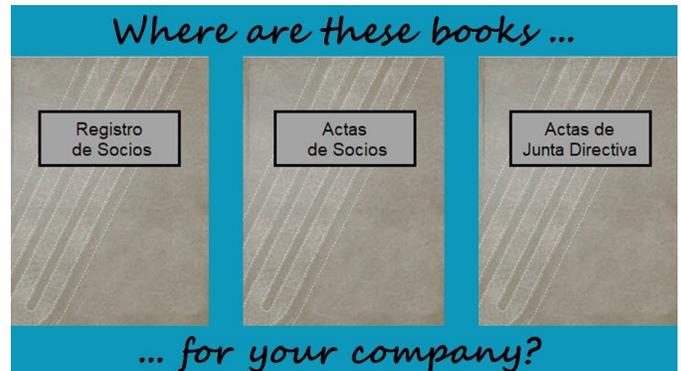
All organizational structures in Costa Rica should have company legal books. Sometimes neglectful notaries do not prepare them for clients as they should when they create a company. In other cases, notaries want to keep them for their clients saying they need them handy to make legal movements as laws change.

The truth is, it really comes down to legal fees. Legal professionals charge handsomely to act as custodian of a company's books. In this day and age, especially now after the National Registry changed its position on online board meetings, people should keep their own books. There have been cases where unscrupulous notaries have taken advantage of their custodianship to manipulate clients, even embezzling property when someone dies.

Why should people manage their books? Here are some good reasons:

- Some law firms are very cautious about the security of their clients' legal documents. Other are not.
- Big law firms keep hundreds of sets of company legal books, and sometimes they get lost in the labyrinth. Individual notaries just do not have the protocols in place to keep tabs on too much information.
- When books are needed, it may take days to get access to them, sometimes even longer, when they are not in the possession of the stockholders or directors.
- Often owners or director just forget who has them. Time passes quickly, people forget, and the books are lost because no one remembers where they are.
- It is easy to steal property using company legal books. It is better they are in the possession of their owners.

Here is some background information: Any company, whether it be active or inactive, created in Costa Rica is



required by Article 53 of the Tax Code, and Articles 251 through 271 of the Commercial Code to have books. The law sets forth what the books should contain and how they should be administered. They are referred to in Spanish as *libros legales*, and obtained at a stationery store. A Costa Rica notary requests a legalization number from the National Registry, and legalizes them for use when a company is created.

Legalizing books for the first time usually goes hand-in-hand with filing Form D-140 called the *Declaración de Inscripción, Modificación y Desinscripción en el Registro de Contribuyentes*. This translates into English as declaration of enrollment, modification, and disenrollment in the tax contributor's registry. Many inactive companies in the past were never registered using a D-140, but the tax department updated their records in January, registering all companies by default.

There are three books for a *sociedad anomima*, usually referred to as an S.A., and two for a *sociedad de responsabilidad limitada*, referred to as an S.R.L. In the past, there were more, but many years ago, the tax department ended the need for physical accounting books because they proved redundant in the age of computers.

Costa Rica Expertise

Tele: +506-2256-8585 • Fax: +506-2256-7575 • info@crexpertise.net

This A.M. Costa Rica Reprint is free to copy, distribute, and display. Please give credit to source and authors.

© 2000 – 2020 Consultantes Río Colorado S.A. and Garland M. Baker

The books common to both company structures are: 1) *Actas de Asamblea de Socios* or *Actas del Asamblea de Cuotistas* (stockholders' or shareholders' minutes) and 2) *Actas de Registro de Socios* or *Registro de Cuotistas* (registry of stockholders or shareholders). The book that is unique to an S.A. is the *Actas de Junta Directiva* or *Actas de Consejo de Administración*, the directors' or administrators' minutes. This minute book records board of director decisions and is unique to this company structure because limited companies do not have directors only managers.

Why are these books so important? The legal books of a company hold a list of the shareholders, the minutes of their decisions and those of the directors in the case of an S.A. Minutes in Spanish are called *actas* or "acts" of the shareholders, and directors.

Entities are required to have shareholder registration and minutes up-to-date and written in the books by law. This means a company is dead-in-the-water without this documentation if important changes are needed to the corporate structure. Making an important change in the makeup of an S.A. or S.R.L. is impossible without having the legal books.

Most books today are in two-hole binders with posts and screws, so printed documents can easily be added to them. In the past, all books were bound, and minutes had to be handwritten into them. Today, it is not uncommon to see printed minutes pasted into the old-style books. They are perfectly legal, as if they were handwritten as long as they are properly signed. There is no prescribed format to add entries, but many notaries have their unique methodology.

Anyone can prepare and write entries into company books, but for them to be registered in the National Registry, a Costa Rica notary must transcribe the entries into his or her *protocolo* (notary's legal record book) and submit the *protocolización* (notarized document) for legal registration.

Before Aug. 5, companies had to have a special clause in the constitution of incorporation of their company to qualify for online general assembly meetings. The rules were bothersome and antiquated in today's technological world. Company meetings had to be physical with the attendance of the shareholders or their proxies. After a meeting, the decisions made were written in legal books and notarized by a notary public.

Now everyone associated with a company automatically has the right to have online board meetings, unless a company's constitution prohibits them. This is great news because owners can now have virtual shareholders meetings and prepare the minutes with a Costa Rican notary. And they are perfectly legal.

In an S.A., the secretary of company is the caretaker of the legal documents, and in an S.R.L. any designated manager is. That person should be organized and responsible enough to take care of the company's "jewels," so to speak, or the organization should get someone else.

The benefit of keeping a company's corporate records, including legal books, in perfect order is that such a company can be transferred quickly and easily to another person or entity when it is sold or transferred.

Here is a simple checklist to organize a company: Who has the company books? Are they up to date? What does the company own? If nothing should it even exist? They cost money to maintain. Who in the company has power of attorney, and who does not? Are the books safe, and easy to get to if they are needed? Is there a succession plan in place in case a stockholder dies?

Sadly, many owners of companies in Costa Rica cannot answer most of the above questions.

Editor's note: Garland M. Baker solves problems for expats in Costa Rica. He is a 48-year resident and naturalized citizen. Reach him at info@crexpertise.net. Baker has undertaken the research leading to his articles with A.M. Costa Rica. Find the collection at crexpertise.net. A free reprint is available at the end of each piece. Copyright 2020. Use without permission prohibited.

Costa Rica Expertise

Tele: +506-2256-8585 • Fax: +506-2256-7575 • info@crexpertise.net

This A.M. Costa Rica Reprint is free to copy, distribute, and display. Please give credit to source and authors.

© 2000 – 2020 Consultantes Río Colorado S.A. and Garland M. Baker