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Time to fess up or pay up!

By Garland M. Baker
Special to A.M. Costa Rica

The Costa Rican government will require full disclosure starting next month of everyone's secrets hidden in companies.

Unless the powers-that-be change their minds again, full registration of all legal entities in the country, as mandated by Law 9416, will begin on Sept. 1 and continue through the end of January.

The first deadline was March 1, six months ago, to start the process, but many business leaders complained loudly so the deadline was extended. There has been so much tax news this year, it is easy to get confused by all the information, so an update follows to refresh people's memories.

Law 9416 was approved Dec. 14, 2016, to require the registration of all shareholders, beneficial owners, and assets of all legal entities except for ones under the control of some governmental institutions. The purpose of the law is to record them all into a big computerized database to cross-check assets with the taxes paid to find where illicit money might be hidden. The registration requirement is yearly or 15 days after any ownership change.

The legal entities include, but are not limited to, these legal structures:

- *Sociedad anónima* (S.A.);
- *Sociedad de responsabilidad limitada* (S.R.L. is also known as L.L.C.);
- *Sociedad civil* (S.C. is also known as a civil society);



- *Sucursal* (branch of a foreign corporation);
- *Asociación* (association of any type includes nonprofit);
- *Fideicomiso* (trust except for public trusts).

The difficulty with registration is that not just anyone can do the filing. Only the people within an organization and with specific representation on the following list are approved.

- S.A. – only the president;
- S.R.L. – any manager with legal representation;
- S.C. – only the administrator;
- Sucursal – only representative with full power-of-attorney;
- Asociación – administrator with full power-of-attorney;
- Fideicomiso – trustee

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To make things even harder, the person doing the registering must have a *firma digital* or digital signature supervised by the Banco Central of Costa Rica. Only those with a citizenship identification card, called a *cédula de identidad*, or with a foreigner identification card, called a DIMEX, can qualify for one.

To clarify for those who do not know what a firma digital is, it is a smart card with a SIM chip on it like the one in a cellular telephone. It is the size of a credit card, designed to go into a small USB reader connected to a computer. The card is programmed with a person's personal information by an approved organization. Banco Central has a current list of where to get a firma digital on their website with contact information and pricing. The cost ranges from \$50 to \$75 for the registration process, the smart card, and the USB reader. The information on the [website*](#) is only in Spanish.

There is one other option. That is giving authority to someone who is not part of one's organization but who has a firma digital. A special power of attorney is possible for use only in the registration process to comply with the law.

That may sound easy enough, but the special power must be written into a Costa Rican notary's legal protocol book. That book is the record book notaries keep, and it is ultimately filed with the National Archive with all other legal recordings. Once the special power is recorded, it is then registered with a special government entity at the Banco Central called [Central Directo*](#). Only then can a third-party file the paperwork required by Law 9416 for someone else.

A reader with legal residency and a DIMEX card that owns a house in Costa Rica, and that house is an inactive company decided to go through the system last month to get her firma digital. She told her story in an interview, "It was a little hard to get an appointment at the Banco Nacional because everything is done through email which is a back-and-forth process over days. Pablo, the man that processed my information spoke little English, but it was enough to get through the procedure. He was kind and patient with me," she said.

In summary, registering a legal entity in Costa Rica is not rocket science or brain surgery but it does involve some pretty strict details, as follows:

- All Costa Rican entities need to register their stockholders, beneficial owners, and assets with Central Directo every year. Central Directo is the division of the Banco Central responsible for Law 9416 compliance.

- Only certain individuals within a company can legally file the information, and they must have a firma digital to do so.

- If a company does not have a qualified person on its board of directors, the company can assign the task to another person by giving that individual a special power of attorney, but that person must have a firma digital and that authorization must be registered by a Costa Rican notary with Central Directo.

- Registration starts Sept. 1 and continues through Jan. 31.

The above covers the "fess up" part. Now for the "pay up" component. Any entity that does not comply with the law by Jan. 31, can be fined a minimum of three base salaries (currently 446,200 colons or about \$800) up to one-hundred or an estimated \$80,000.

This project the government is embarking on is overwhelmingly ambitious. As stated in other articles, there are an estimated 300,000 companies in Costa Rica. 50,000 are estimated defunct, and only about 50,000 actually are doing business. So there are about 200,000 non-active companies, many of which hold assets and are owned by foreigners. Most of those people have no clue Law 9416 even exists, and many do not speak Spanish. Government websites like Central Directo are only in Spanish, and so are those offering firma digital services. These facts do not support the government will be overly successful in its endeavor without a bunch of problems.

They may be counting on the "pay up" equation, fining people to death until they figure out what is going on and comply one way or another.

Editor's note: Garland M. Baker is a 47-year resident and naturalized citizen of Costa Rica. His team solves problems for expats. 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.info. A free reprint is available at the end of each piece. Copyright 2019. Use without permission prohibited.

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